UNIVERSITY OF LIMPOPO SECOND ONKGOPOTSE TIRO
MEMORIAL LECTURE
FRIDAY 27 SEPTEMBER 2013
CHIEF JUSTICE MOGOENG MOGOENG

"ONKGOPOTSE TIRO: A BRIGHT FUTURE AND A LIFE SACRIFICED IN
PURSUIT OF A SOUTH AFRICA THAT IS A TRULY PROGRESSIVE
CONSTITUTIONAL DEMOCRACY."

Programme Director
Members of Abram Onkgopotse Tiro’s family and his friends
Professor Mahlo Mokgalong, Vice Chancellor and Principal
University Executive Management Committee
Chairperson of Council, Madame Justice Lucy Mailula, and other Members of
Council
Members of Senate and Deans of Faculties
Staff Members both Academic and Administrative
Members of the legal fraternity
Community members
Students, Honoured Guests, Ladies and Gentlemen

It is an honour and privilege for me to be involved in today’s commemoration, to
pay homage to one of this country’s greatest sons, Abram Onkgopotse Tiro, and
reflect on the contribution he made to the delivery of freedom to the people of South Africa.

A very special honour and privilege indeed to have been asked to take the torch from Dr Ruel Khoza, the Chancellor of this great institution, who delivered the first lecture. With that torch I will, by delivering the second Onkgopotse Tiro Memorial Lecture, hopefully brighten the path towards the realization of Onkgopotse Tiro’s vision of a free South Africa.

I have never before been to this monumental institution which, as you know, gave birth to many heroes and heroines of our liberation struggle and leaders in many spheres of life in our country. But for this invitation, I would still not have touched the grounds of this historic and prestigious institution. The lecture is also particularly special to me because, apart from Onkgopotse Tiro and I being Batswana, we are both of the Bahurutshe clan and Zeerust is where people from our respective villages continue to do shopping, and will hopefully be meaningful participants in the economic life of that town in the not-too-distant future. The invitation is also special because he and I received our political baptism in the Black Consciousness Movement. Of added significance is the fact that the lecture takes place during the month of the assassination of the Father of the Black Consciousness Movement in South Africa, Steve Bantu Biko.

Because of what Tiro stood and lost his life for, I have titled my address “Onkgopotse Tiro: A bright future and a life sacrificed in pursuit of a South Africa that is a truly progressive constitutional democracy.”
For it takes a person determined and ready to lose his glorious future and life, if need be, to say as did Onkgopotse Tiro to the powers-that-be, in apartheid South Africa in 1972:

"There is virtually and actually nothing to thank Bantu Education for. I have been asked to come and thank you, but there is nothing to thank you for because our parents are not even in the hall. Most of them are standing outside and other people basically the relatives of the lecturers who are predominantly white are here enjoying the activities of the graduation ceremony."

This is the powerful message that Onkgopotse Tiro as a student leader delivered criticizing Bantu Education, an education system designed to keep blacks in a position of perpetual fear and servitude. As you know, that speech came to be known as the “Turfloop Testimony”. It so angered the university administration and the apartheid authorities that his expulsion from this University was expedited a few days later. That expulsion sparked off protests here which then spread to many institutions around the country. The protests led to the first large-scale uprising this country experienced in over a decade since the banning of the liberation movements in the early 1960’s.

The revolts served notice to the apartheid regime that the genie was out of the bottle. There was a segment of society, particularly among the students that were no longer afraid of the police, army and the apartheid apparatchik.

Tiro was not one to despair from his expulsion from university, in the final year of his studies. He took up a teaching position at the Morris Isaacson High School in Soweto. And as a teacher, he immersed himself into educating and conscientising
the youth and the high school students in Soweto of who they were and what was happening in their country. He was instrumental in establishing the South Africa Students Movement to organize high school students into a strong political force. Many student leaders were produced including Tsietsi Mashinini who came out of Morris Isaacson High School. The message was catching fire. It was this message that was to later influence the Soweto uprisings through which thousands of students said no to Bantu Education. They said no to an education system which sought to teach them that they were inferior to others, and no to the education system that sought to trap them in perpetual servitude. Historians proclaim this was the watershed event that marked the beginning of the end of apartheid.

Less than a year after he started teaching, the authorities expelled him. Tiro then moved towards grassroots organization around the country. The authorities were searching for him and to avoid arrest, he went into exile in Botswana. On 1 February 1974, Tiro like so many others of his generation paid the ultimate price. He was killed by an apartheid parcel bomb in Botswana.

In 1998 his remains were exhumed and returned to his place of birth in Dinokana village, South Africa for reburial. Dr Mosibudi Mangena, then President of AZAPO, in paying tribute to Tiro remarked that Tiro was “a man of strong convictions who refused to compromise his principles, a person of simple tastes who could not accept the way black people had been dehumanised by the apartheid policy, a man who lived by the motto that ‘it is better to die for an idea that will live than to live for an idea that will die’”.

How many South Africans, like Tiro, would refuse to compromise their principles and be prepared to be marginalised, projected as buffoons, lose their positions of
privilege and even their lives, if need be, in pursuit of what is in the best interests of this great nation?

Next year we celebrate the 20th anniversary of our progressive democratic Constitution. Undoubtedly much will be said about this remarkable document, the remarkable individuals that laid down their lives to help us arrive at the national-destiny-defining moment of its enactment, its symbolism, hopes, aspirations and meaning to millions of South Africans. As we ponder on the lessons and journey traveled in arriving at our constitutional democracy, it is also critically important for us to pause, reflect and take inspiration from the transformative figures and watershed events in our history, which brought us to where we are. Many in our society do not know the contribution made by unsung heroes and heroines of the 1970's like Onkgopotse Tiro. We cannot talk about our freedom, our Constitution and transformation without reflecting on the monumental influence of Onkgopotse Tiro and other leaders who paid heavily for the constitutional democracy that we now enjoy. The personalities that profoundly affected a generation, including myself, and propelled them into action.

Tiro and the Black Consciousness Movement recognized in the early 1970's that apartheid impaired the body and spirit of the black person. This impairment of the body, mind and spirit was so severe that the majority of the black population was weary and resigned to their institutionally-imposed condition of nothingness and abject poverty. They were unable to think about, let alone know how to challenge the oppressive conditions under which they, as the majority, resided. The black majority was gripped by a miasma of fear following the brutality of the 1960's, the banning of the liberation movements and the banishment and incarceration of their leadership. The stench of fear produced a docile population many of whom hated
themselves. Many were made to believe that they were less than human. Consequently, many believed that whiteness and aspiring towards being like their white fellow human beings, such as using white bleach to whiten their skin and hair straighteners or purchase hair as well as twanging would dignify them and make them more human. It was not just physical oppression but worse, psychological oppression which led a people to begin to hate or look down upon themselves. The physical brutality of apartheid was terrible. But this hate of or disregard for one’s self was the ultimate denigration of human dignity.

It was in response to this reality that the Constitutional Court affirmed the protection of human dignity as the cornerstone of our Constitution. Our Constitutional Court is acutely sensitive to the fact that apartheid at its core denigrated human dignity in the vilest manner.¹

In the 1970’s we were rewarded with a group of young leaders that transcended this fear and inspired a generation. Onkgopotse Tiro was one of them. They inspired the people with pride, optimism and determination. They showed us how to be proud and to hold our heads up high and not to subordinate ourselves to an evil system, that wanted blacks to believe that they were inferior, or that their lifestyles, institutions, history, colour, culture bore all the hallmarks of backwardness that can never have any place in a truly progressive constitutional democracy.

¹ See The Citizen 1978 (Pty) Ltd and Others v McBride The Citizen 1978 (Pty) Ltd and Others v McBride [CCT 23/10] [2011] ZACC 11; 2011 (4) SA 191 (CC); 2011 (8) BCLR 816 (CC) (8 April 2011). See also Khumalo and Others v Holomisa Khumalo and Others v Holomisa (CCT53/01) [2002] ZACC 12; 2002 (5) SA 401; 2002 (8) BCLR 771 (14 June 2002) and Dawood and Another v Minister of Home Affairs and Others; Shalabi and Another v Minister of Home Affairs and Others; Thomas and Another v Minister of Affairs and Others (CCT35/99) [2000] ZACC 8; 2000 (3) SA 936; 2000 (8) BCLR 837 (7 June 2000).
With intellect those leaders showed blacks how to value and embrace their history, culture, tradition, bodies, and families. They were steadfast and assiduous. They led the oppressed out from the recess of despair. They were the engineers and architects of what I am going to say was the most consequential war. The last time I used the term war as a metaphor, I raised the ire of some of our people. But I will use it again. Tiro like Biko and other leaders led the oppressed into arguably the most important war, the war to rid one’s self of psychological oppression.

Let me proclaim it, the war against psychological oppression was infinitely more consequential in our liberation than any other war. Human dignity is the cornerstone of our constitution. Liberation of the mind is the edifice for the enjoyment of human dignity. What Tiro, Biko and leaders of their time did in the 1970’s was to embolden the marginalized and oppressed with a sense of urgency, commitment, discipline, fortitude and importantly intellect to confront the challenges that affected their minds. They recognized and showed that if you change the mind of a people, you influence the consciousness which propels them to certain actions. Taking out the psychological shackles allows a person to take responsibility for their own destiny.

Their profound message was, you own your own destiny which they delivered with utmost clarity. Tens of thousands embraced these ideas. Political scientists talk about transformative moments in a nation’s history. This was a truly transformative moment in our history. The message unleashed a powerful weapon, a liberated mind.

Tiro and his generation recognised that the most potent tool in the liberation of a people is education. Are we honouring what they fought and died for namely
making quality and affordable education available to all? Do women and black men have easy access to those faculties that they previously did not have easy access to, like engineering? Do they receive adequate financial support during their studies? How many of them complete their degrees within the prescribed period? How is the failure rate in those previously exclusive faculties particularly because the quota system predetermined how many would pass during apartheid? Every South African should be curious about progress in this regard. Have significant numbers of women and black men since been allowed to teach in these areas at senior levels at all, and especially former white, universities? Do we have them in good numbers at professorial and managerial levels?

It was in recognition of this history that the Constitutional Court remarked in the case of *Oriani-Ambrosini, MP v Sisulu, MP Speaker of the National Assembly:* ²

"[49] The need to recognise the inherent value of representative and participatory democracy and dissenting opinions was largely inspired by this nation’s evil past and our unwavering commitment to make a decisive break from that dark history. South Africa’s shameful history is one marked by authoritarianism, not only of the legal and physical kind, but also of an intellectual, ideological and philosophical nature. The apartheid regime sought to dominate all facets of human life. It was determined to suppress dissenting views, with the aim of imposing hegemonic control over thoughts and conduct, for the preservation of institutionalised injustice. It is this unjust system that South Africans, through their Constitution, so decisively seek to reverse by ensuring that this country fully belongs to all those who live in it.”

² Oriani-Ambrosini, MP v Sisulu, MP Speaker of the National Assembly CCT 16/12 (2012) ZACC 27; 2012 (6) SA 588 (CC); 2013 (1) BCLR 14 (CC) (9 October 2012).
Tiro and his generation recognized the importance of taking control over your own destiny. To many, democracy means the right to vote and elect your own leaders. Democracy in the traditional African setting entailed participation of ordinary people in the decision making processes which affect their lives. Our Constitutional Court has also recognized that there are participatory elements in democracy that extend beyond the right to vote.\(^3\) In a number of cases, we have held that government has an obligation to consult ordinary people and engage them in a meaningful manner on matters and affairs that affect their lives.\(^4\) In the annals of constitutional law, this is a progressive development that is rooted in African traditions.

I cannot help wondering about the kind of Judiciary that Onkgopotse Tiro would have expected to see in this country right now. Similarly, I wonder what programmes or projects Onkgopotse Tiro would have embarked upon if he were the Chief Justice of South Africa right now.

I believe that his experience as a boy who grew under conditions of abject poverty, the accessible quality justice delivered by fairly well-trained traditional leaders, grounded in the principles of restorative justice, his knowledge of just how far-removed many villages are from mainstream courts and that many South Africans do not have the resources to travel to the courts, that not everybody is a lawyer and that litigation is so prohibitively expensive that only a few can afford legal

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\(^3\) See Oriani-Ambrosini, MP v Sisulu, MP Speaker of the National Assembly CCT 16/12) [2012] ZACC 27; 2012 (6) SA 588 (CC); 2013 (1) BCLR 14 (CC) (9 October 2012).

\(^4\) See Matatiele Municipality and Others v President of the Republic of South Africa and Others (1) [CCT73/05] [2006] ZACC 2; 2006 (5) BCLR 622 (CC); 2006 (5) SA 47 (CC) (27 February 2006) and Matatiele Municipality and Others v President of the Republic of South Africa and Others (2) [CCT73/05A] [2006] ZACC 12; 2007 (1) BCLR 47 (CC) (18 August 2006)
representation let alone legal representation of choice, he would have sought to bring about changes that would facilitate easier access to affordable quality justice by all South Africans especially the rural and township poor.

I believe that Onkgopotse Tiro would have done what we in the Judiciary have done which is to propose, to those who have the authority to effect the necessary changes, practical measures for the restructuring of existing traditional courts so that their composition and adjudicative processes could be constitutionally compliant. This would ensure that quality justice is brought to the doorsteps of even the people of Dinokana village where he grew up. Both men and women ought to participate equally and at all levels of the African traditional dispute resolution structures. Additionally, those involved in the running of traditional courts and all other African traditional dispute resolution structures, must be properly resourced and inducted in the Constitution and all other laws that apply to them, as well as the correct procedures to follow so that people can begin to use these easily accessible fora more.

We must all help to maintain, and where necessary, restore the credibility of these important institutions rather than assume unfairly, that all African institutions are incompatible with the proper administration of justice, the rule of law, good governance and democracy. African institutions, customs and traditions are the proud heritage of the African people and they must be defended against the denigration that commenced during the colonial era and has never really abated. The Judiciary, through the South African Judicial Education Institute (SAJEI) is currently discussing a curriculum with the Traditional Leaders of the Limpopo Province and the National House of Traditional Leaders on the training of Traditional Leaders, to help realise these objectives. The reintroduction of royal
academies to prepare our traditional leaders properly for their leadership role would go a long way towards strengthening the people’s confidence in traditional leadership, even in their adjudicative roles.

We also believe that like us, Onkgopotse Tiro would have proposed concrete measures for the restructuring of Small Claims Courts, Community Courts and Equality Courts. Like us he would have proposed that more of these Courts be opened in rural areas, with permanent and well-trained personnel to facilitate access to quality justice. This, without disregarding the budgetary constraints under which we are all operating.

Just as he wanted a better education system for black people and wanted black parents to be allowed into the hall where a graduation ceremony was held for their children, I think he would have pushed the judicial transformation agenda quite enthusiastically and unapologetically. He like former President Nelson Mandela would not have wanted to feel like a black man in a white man’s court and neither would he have wanted any woman to feel like courts are an institution exclusively reserved for men, as key role players. He would have wanted our very progressive Constitution to touch even the lives of the previously disadvantaged persons, including women of all races.

Having suffered injustices and seen many South Africans persecuted for standing for freedom and justice, Onkgopotse Tiro would have no doubt have insisted on the South African justice system that does not “belong” to any institution, any sector of society, or a grouping of powerful individuals. He would have demanded the appointment of Judges and Magistrates who would predictably stand for truth and justice, however strong the pressure to do otherwise might be. He, as all of us
should, would have insisted on the appointment of Judges and Magistrates who have no special "constituency" to please, but who simply do their work without fear, favour or prejudice. We have reason to believe that he would generally be pleased with the sterling, although admittedly imperfect, work done by both the Judicial Service Commission and the Magistrates Commission as well as the leadership of the Judiciary, to this end.

Like many South Africans, Onkgopotse Tiro would have been aware of the delays in the justice system and would have ensured that steps were taken to expeditiously dispose of child and women abuse cases, the murder and corruption cases, without compromising on the quality of justice. We want to believe that the judicial case management system which we are currently piloting in six Divisions of our High Court is a fitting and appropriate response to this concern. And so is the establishment of the National Efficiency Enhancement Committee, which brings together all the key role players in the broader justice system to identify hurdles to, and find solutions for, the speedy delivery of quality justice to all our people.

We also believe that Onkgopotse Tiro would, in keeping with his distaste for mediocrity and his passion for excellence, have demanded competence and excellence even from our courts so that all our people can have real justice delivered to them. With a deep sense of humility we say, he would have found comfort in our training programmes for aspirant, newly appointed and experienced Judges and Magistrates, held under the auspices of the South African Judicial Education Institute. The way these programmes are run and the fruit they are bearing would, in our humble opinion, not have given him any reason to be concerned.
We say all of the above aware that there is always room for improvement.

Tiro and his generation of leaders offer us edifying values that are essential to the nourishing of our constitutional democracy. If we fail to honour those values, our Constitution and democracy is failing. Let us constantly remind ourselves of those values. If Tiro were alive today, what would he ask? I suspect among other questions he would ask are the following: What does the Constitution mean to the ordinary person? Is it a document that allows people to participate in decisions which affect their conditions? Does it provide for political, judicial and economic transformation? Is it an instrument for pursuing happiness? Does our Constitution and democracy remedy the psychological, social and human costs of apartheid and does it seek to make the victims of apartheid whole? Does it resonate with the spirit of Ubuntu?

Tiro and Biko personified the best in the human spirit. They shaped the opinion, discourse and resistance with intellectual rigor under the most challenging conditions and horrific brutality and paid with their lives. Forty years after his assassination, we can all benefit from reflecting and engaging in introspection, on the lessons he, leaders of his generation and the movement he represented, left us. What is expected of us and what are we as a nation doing to meet his noble aspirations?

Tiro believed that one of the primary goals of liberation was the restoration of the land to the dispossessed. Our Constitution and laws provide a mechanism for the restoration of land. Have we done enough to honour what Tiro and his generation fought for? He would probably want to know what the Judiciary, among other arms of the State, has done to this end. The Judiciary would then point to Agri
South Africa v Minister for Minerals and Energy which captures the essence of this reality and transformative vision as follows:

"[1] South Africa is not only a beauty to behold but also a geographically sizeable country and very rich in minerals. Regrettably, the architecture of the apartheid system placed about 87 percent of the land and the mineral resources that lie in its belly in the hands of 13 percent of the population. Consequently, white South Africans wield real economic power while the overwhelming majority of black South Africans are still identified with unemployment and abject poverty. For they were unable to benefit directly from the exploitation of our mineral resources by reason of their landlessness, exclusion and poverty. To address this gross economic inequality, legislative measures were taken to facilitate equitable access to opportunities in the mining industry.

[61] ... We must therefore interpret section 25 [of the Constitution] with due regard to the gross inequality in relation to wealth and land distribution in this country. And by design, the [Mineral and Petroleum Resources Development Act] MPRDA is meant to broaden access to business opportunities in the mining industry for all, especially previously disadvantaged people. It is not only about the promotion of equitable access, but also about job creation, the advancement of the social and economic welfare of all our people, the promotion of economic growth and the development of our mineral and petroleum resources for the common good of all South Africans."

For this reason we concluded that:
"[73] The MPRDA constitutes a break through the barriers of exclusivity to equal opportunity and to the commanding heights of wealth-generation, economic development and power. It seeks to address the injustices of the past in the economic sector of our country in a more balanced way, by treating individual property rights with the care, fairness and sensitivity they deserve."

Let’s draw moral courage from Tiro and reflect with earnestness on these profoundly important issues. We pay homage to Tiro and the other fallen heroes of his generation who contributed immeasurably to our liberation. In doing so, we should constantly check and reassess how we as a nation are faring in realizing the goals they fought and died for.

As the title suggests, it could only have been Onkgopotse Tiro’s quest for the attainment of a true constitutional democracy that drove him to sacrifice his otherwise bright future and his life. At the risk of being unduly repetitive, the question that must keep on reverberating in our minds and hearts is, over the past years of political freedom, what are those of us who are privileged, unlike him, to still be alive doing to actualise the dream that he and Biko had for South Africa?

May it show in our daily conduct that, unlike Onkgopotse Tiro who did not have the fundamental rights of freedom of expression, conscience and thought, and yet spoke truth to power frankly and boldly, we do have these rights. May we exercise these fundamental rights to correct distortions about our heritage and the tendency to trivialise the good that many women and men of integrity and moral fortitude continue to do in pursuit of the realisation of the constitutional aspirations of all, not just for some, South Africans. May we not betray what Tiro and other heroes and heroines of this country stood and died for. May we spare no effort in
ensuring that national unity and reconciliation and a transformed and prosperous South Africa that truly belongs to all who live in it becomes a tangible reality.

I THANK YOU ALL