

Edwin Cameron: From the orphanage to the bench of the Constitutional Court

Narnia Bohler-Muller

1953–



There is still too much to be done, and the peril confronting our country [and] the rule of law remains too large ... Tough times lie ahead for those of us who are committed to democracy and to governance under law and to social justice for all people in our country and not the enrichment of an inside elite.

Cameron in Chabalala, 'There is still too much to be done'

Edwin Cameron has been recognised for his brilliance, commitment to human rights and social justice, and for his HIV and AIDS activism. He was born in Pretoria on 15 February 1953. When Cameron was a young boy, his father was imprisoned for car theft, leaving his mother with no means of supporting the family. This left Cameron spending much of his adolescence in an orphanage in Queenstown. At the age of nine he lost his sister Laura in an accident. He recalls his father attending Laura's funeral, and not understanding why his father had been imprisoned.¹ Cameron describes this as his first encounter with the law at a tender age: 'Was it only an instrument of rebuke and correction and subjection? Or could it be more? I did not know it then, but this vivid encounter imprinted and impelled my future life and career.'²

Despite living in poverty as a child, Cameron matriculated from Pretoria Boys' High School with financial assistance. On an Anglo-American scholarship, he was able to attend and graduate, cum laude, from the University of Stellenbosch with a BA Law, and an honours degree in Latin. He became a classical studies and Latin lecturer before leaving to study on a Rhodes scholarship at Oxford University, obtaining BA (Jurisprudence) and civil law degrees. Cameron graduated with an LLB degree from Unisa in 1978.³

From 1983 till 1994, Cameron practised at the Johannesburg Bar. During this time, he joined the Centre for Applied Legal Studies at the University of the Witwatersrand, practising as a human rights lawyer. In this role, he covered the entire spectrum from labour and employment law to treason, evictions and land tenure, as well as LGBTQ+, religious and conscientious discrimination. In 1989, the university awarded him a professorship. Cameron also contributed significantly to the drafting of the 'Charter of Rights on AIDS & HIV', was the co-founder of the AIDS Consortium (a national body for AIDS-affiliated NGOs), and founded and was director of the AIDS Law Project. In 1988, he held an advisory role for the National Union of Mineworkers on HIV and AIDS, helping to negotiate and draft the AIDS agreement, the first of its kind, for the industry with the Chamber of Mines. Cameron had oversight in the submissions made by the LGBTQ+ community to the Kempton Park negotiating process. His inaugural lecture at the University of the Witwatersrand, titled 'Sexual Orientation and the Constitution: A Test Case for Human Rights', influenced securing the addition of 'sexual orientation' in section 9 of the South African Constitution.⁴

In 1994, Cameron was appointed as senior counsel. In the same year the Minister of Justice, Dullah Omar, appointed him as chair of the commission tasked with investigating the illegal arms trade. He was appointed as an acting judge while carrying out this task. Later that year, Cameron was officially appointed a judge in the Johannesburg High Court, Gauteng Division. Cameron was asked by the late chief justice Arthur Chaskalson to act in the Constitutional Court from 1999 to 2000. He was subsequently appointed to the Supreme Court of Appeal in 2001. On 31 December 2008, Cameron was appointed as a Constitutional Court judge by former President Kgalema Motlanthe. Described as a jurist 'of the highest order', Cameron was considered a pivotal, progressive member of the judicial panel.⁵ Cameron chaired the governing council of the University of the Witwatersrand between 1998 and 2008, and maintains his involvement in charities and public causes.

In 1995, Cameron co-authored a book with Mark Gevisser that chronicles the history of the gay community in South Africa through the life stories of gay people during both the apartheid and post-apartheid eras.⁶ In 1997, the Gay and Lesbian Memory in Action (Gala) archive was created, with Cameron as one of the founding forces behind its establishment. Gala was established a year after the 1996 Constitution, which included a 'gay rights clause', was adopted by Parliament. Besides its primary role in archiving relevant gay-related material, it has outreach programmes in support of local gay groups.⁷

The recognition Cameron has received includes The Nelson Mandela Award for Health and Human Rights in 2000, and honorary doctorates in law from King's College, London (2009), and the universities of Wits (2009), Oxford (2011), St Andrews (2012), Stellenbosch (2015) and Sussex (2016). He has received numerous honours for his legal and human rights work, including a special award by the Bar of England and Wales in 2002 for his contribution to international jurisprudence and the protection of human rights.⁸

In 1999, Cameron was in the headlines when he announced his HIV status, 12 years after contracting HIV. He was one of the first high profile people in South Africa to disclose his status publicly.⁹

Towards the end of September 1997, nearly 11 years after my doctor had called to tell me I had HIV, and three years after our country became a democracy, I fell ill with Aids. The illness hit me hard. Both my lungs were debilitated by pneumocystis pneumonia.¹⁰

In 2005, Cameron wrote a prize-winning memoir, *Witness to AIDS*, detailing his personal experience living with AIDS. The book was eventually selected as co-winner of the prestigious Sunday Times Alan Paton award. As an HIV, AIDS and gay rights activist, Cameron openly criticised former President Thabo Mbeki's AIDS-denialist policies.¹¹ In the foreword to this book, South Africa's first democratic President Nelson Mandela refers to Cameron as 'a true hero of the country'.¹² Cameron was very aware that his relative wealth granted him a privilege, health-wise, that he otherwise would not have had, and he urged Government to provide treatment to all.

Cameron's keynote address at the 2000 International AIDS Conference in Durban, South Africa, as illustrated in the film documentary, *Fire in the Blood*, was an electrifying occasion in what was a considerable struggle for developing countries to access antiretroviral treatment.

I exist as a living embodiment of the iniquity of drug availability and access in Africa. This is not because, in an epidemic in which the heaviest burden of infection and disease are borne by women, I am male; nor because, on a continent in which the virus transmission has been heterosexual, I am proudly gay; nor even because, in a history fraught with racial injustice, I was born white. My presence here embodies the injustices of AIDS in Africa because, on a continent in which 290 million Africans survive on less than one US dollar a day, I can afford monthly medication costs of approximately US\$400 per month.

Amidst the poverty of Africa, I stand before you because I am able to purchase health and vigour. I am here because I can pay for life itself. To me this seems a shocking and monstrous iniquity of very considerable proportions – that, simply because of relative affluence, I should be living when others have died; that I should remain fit and healthy when illness and death beset millions of others.¹³

This address made a significant impact on the political atmosphere, preparing the way for the Treatment Action Campaign (TAC) to approach the High Courts of South Africa for relief.¹⁴ Cameron's observation was that this case 'was a test of law's power when government behaved irrationally. And it was a test that the Constitution, and the court created to guard it, passed with honour'.¹⁵ In consequence, once antiretroviral provisioning was made available by the government in December 2004, it superseded many other state-provided medications to become

the largest of its kind globally.¹⁶ Cameron's revelation, combined with his support for the TAC, went a long way towards removing the stigma around AIDS.

His compelling autobiography, *Justice – A Personal Account* (2014), won the South African Literary Award for creative non-fiction.¹⁷ Justice Dennis Davis had this to say about Cameron's award-winning book:

A judge should possess a clear vision of the role the constitution must play in the reconfiguration of a legal system which suffered terrible damage under apartheid in particular, and more generally in the transformation of our society into one that substantively embraces the core values of equality, dignity and freedom. In addition, a judge should hold an emphatic regard for the other; an understanding of the diversity of South Africa and a consequent realisation that his or her world vision cannot necessarily lay claim to an unqualified, universal acceptance ... Cameron's book reveals all these qualities as he seamlessly stiches together the personal, political and the legal.¹⁸

In chapter six of his book *Justice: A Personal Account*,¹⁹ Cameron describes the difficulties of his childhood, and engages with the topic of charity and its role in relation to political – and legal – action. He emphasises that charity is not interchangeable with or mutually exclusive to political action. However, if perfect social justice was something that existed, then the need for charity would be minimal, if not non-existent. In this chapter, he relates the story of a random act of kindness that clearly touched his life and influenced his thinking as he journeyed from an orphanage to the highest court in the land.²⁰ The mysterious act occurred on his sister Jeanie's birthday. A smartly dressed woman knocked on their door and handed the young Cameron an envelope. After she had left, they opened the envelope to discover R10 and no note. This allowed them to buy a R2 ice-cream cake for Jeanie.

What remains most deeply imprinted on my mind are not these later hand-outs, whose beneficence touched us through the anonymous mechanism of a fund. What lingers most vividly is the unnamed woman's mysterious act of personal generosity. It left me deeply under the impression of how important acts of interventive kindness are.

I appreciate the argument that, to remedy social injustice, charity is no substitute for political action. In the abstract, this is undeniable, but there is no reason why charity cannot exist alongside political action. Indeed, unless social justice can be realised instantaneously – and we know, sadly, that it cannot – benefaction now is as imperative as political change in due course.²¹

Edwin Cameron retired from the Bench after 25 years of service as a judge on 20 August 2019. In a fitting tribute to his courage, Chief Justice Mogoeng shared a light moment, illustrative of the generosity (and even quirkiness) of Justice Cameron:

He is the only judge who invited me to his chambers during lunch time and fed me with something I had never known. I was (too shy) to ask the first day, subsequently I said ‘what is that special meal that you shared with me?’ He said it was a spinach and feta quiche. Bear with me, I’m a village boy, I had never been exposed to that delicacy before ... Thank you for introducing me to quiche.²²

In writing about Cameron, Eusebius McKaiser perhaps best points to what infused Cameron’s enormous contribution and what makes him worthy of emulation: ‘being a mensch first, Edwin-style’.²³

Notes

- 1 N. Bohler-Muller, M. Cosser and G. Pienaar, ‘Edwin Cameron: From an Orphanage in Queenstown to Constitution Hill’, *Daily Maverick*, 22 August 2019. Accessed August 2019, <https://www.dailymaverick.co.za/article/2019-08-22-edwin-cameron-from-an-orphanage-in-queenstown-to-constitution-hill/>.
- 2 Bohler-Muller, Cosser and Pienaar, ‘Edwin Cameron’, para. 4; E. Cameron, ‘Was I Ready to be a Judge with HIV?’, *Mail & Guardian*, 7 February 2014. Accessed June 2019, <https://mg.co.za/article/2014-02-06-was-i-ready-to-be-a-judge-with-hiv>.
- 3 Constitutional Court of South Africa (CCSA), ‘Justice Cameron’. Accessed August 2022, <https://www.concourt.org.za/index.php/13-current-judges/179-justice-cameron-2>.
- 4 CCSA, ‘Justice Cameron’.
- 5 R. Calland, ‘A Chief Justice Who Doesn’t Write Appointed by a President Who Doesn’t Read’ [book excerpt], *The Con*, 2 September 2013, para. 135. Accessed August 2022, <http://www.theconmag.co.za/2013/09/02/a-chief-justice-who-doesnt-write-appointed-by-a-president-who-doesnt-read/>.
- 6 M. Gevisser and E. Cameron (eds), *Defiant Desire, Gay and Lesbian Lives in South Africa* (New York: Routledge, 1995).
- 7 Y. Martin, ‘“Now I Am Not Afraid”: Simon Nkoli, Queer Utopias and Transnational Solidarity’, *Journal of Southern African Studies* 46:4 (2020), pp. 673–687.
- 8 Bohler-Muller, Cosser and Pienaar, ‘Edwin Cameron’.
- 9 Staff Reporter, ‘The Judge who Lives with Aids’, *Mail & Guardian*, 23 April 1999. Accessed July 2019, <https://mg.co.za/article/1999-04-23-the-judge-who-lives-with-aids>.
- 10 E. Cameron, ‘Was I Ready to be a Judge with HIV?’, *Mail & Guardian*, 7 February 2014, para. 1. Accessed June 2019, <https://mg.co.za/article/2014-02-06-was-i-ready-to-be-a-judge-with-hiv>.
- 11 Staff Reporter, ‘Two Aids Books win Alan Paton Reward’, *Mail & Guardian*, 18 June 2006. Accessed June 2019, <https://mg.co.za/article/2006-06-18-two-aids-books-win-alan-paton-award>.
- 12 E. Cameron, *Witness to AIDS* (London: IB Tauris, 2005).

- 13 E. Cameron, 'First Jonathan Mann Memorial Lecture: "The Deafening Silence of Aids"'. International Aids Conference, Durban, 10 July 2000, paras 23–24. Accessed June 2019, <http://www.actupny.org/reports/durban-cameron.html>.
- 14 *Minister of Health and Others v Treatment Action Campaign and Others* 2002 (5) SA 721 (CC); *Minister of Health and Others v Treatment Action Campaign and Others* (No 2) (CCT8/02). The challenge in the second case was that government was limiting the supply of nevirapine to two 'pilot sites' per province, regardless of the capacity of facility, the willingness of doctors to dispense, and the availability of the medication. The essence of the court ruling against government was that its plan was unreasonable and inflexible, and that nevirapine should be available to all who need it. The judgment in this case is estimated to have saved tens of thousands of lives.
- 15 D. Davis, 'Judge Cameron Takes us into His Confidence with Memoir', *Mail & Guardian*, 5 June 2014, para. 7. Accessed May 2019, <https://mg.co.za/article/2014-06-05-judge-cameron-takes-us-into-his-confidence>.
- 16 Davis, 'Judge Cameron Takes us into His Confidence'.
- 17 South African Literary Awards, 'Edwin Cameron'. Accessed June 2019, <https://sala.org.za/edwin-cameron-2/>.
- 18 Davis, 'Judge Cameron Takes us into His Confidence', para. 2.
- 19 E. Cameron, 'Poverty, Social Justice and the Constitution' in *Justice: A Personal Account* (Cape Town, NB Publishers, 2014), p. 230ff.
- 20 Cameron, 'Poverty, Social Justice and the Constitution', pp. 230–236; Bohler-Muller, Cossier and Pienaar, 'Edwin Cameron'.
- 21 Cameron, 'Poverty, Social Justice and the Constitution', pp. 230–236.
- 22 N. Jordaan, "'Thanks to Him, the Lives of Many Have Been Saved": Chief Justice Mogoeng on Edwin Cameron. PS Thanks for Feeding me Quiche', *TimesLIVE*, 20 August 2019, para. 13. Accessed June 2019, <https://www.timeslive.co.za/news/south-africa/2019-08-20-thanks-to-him-the-lives-of-many-have-been-saved-chief-justice-mogoeng-on-edwin-cameron/>.
- 23 E. McKaiser, 'Being a Mensch First, Edwin-Style', *Mail & Guardian*, 22 August 2019. Accessed June 2019, <https://mg.co.za/article/2019-08-22-being-a-mensch-first-edwin-style>.