

**Chancellor, I have the honour to present to you, for the degree of Doctor of Laws, *honoris causa*,
Thulisile Nomkhosi Madonsela**

In 1896, Chief Justice Kotze of the Zuid Afrikaansche Republiek stated in his celebrated judgment in *Brown v Leyds*, *NO* that seemingly insignificant infringements of a constitution, if they are allowed to go uncorrected, are likely to lead to the demise of constitutional governance. As a result, he and his court upheld the challenge of an 'uitlander' to the validity of a decision of the Volksraad. President Kruger duly dismissed from office all the judges involved.

Given the appalling absence of democratic institutions and practices in the public governance of this country, the interim Constitution in 1993 provided for what have become known in the 1996 Constitution as the "Chapter 9 Institutions", or more formally, the State Institutions Supporting Constitutional Democracy. Prominent among these has been the Office of the Public Protector, more commonly known as the "ombudsman" in other constitutions, a novelty in our constitutional firmament since 1994.

The independence of the first incumbent of that office (1994 to 2002), Selby Baqwa, was not tested too often during his tenure, and he created a solid platform for its future operations. The second Public Protector, Lawrence Mushwana, however, showed undue deference to the dominant party in government, so much so that he was rapped over the knuckles by the courts for the lack of commitment shown in investigating a particular incident of alleged corruption.¹As the Supreme Court of Appeal said: "If [the Public Protector] falters, or finds itself undermined, the nation loses an indispensable constitutional guarantee".

Thus, at her appointment by President Zuma in 2009, Thuli Madonsela faced a challenge, to establish a truly fearless and principled pursuit of efficiency and honesty in government at all levels of the public administration. She came to the office steeped in the traditions and activities of the anti-apartheid movement. Prior to 1994, she had been employed mainly in the trade union movement and as an academic, in both teaching and research, and after freedom in 1994, she had extensive and varied service across many departments within the public service. She is formally described in her official profile as a "human rights lawyer, equality expert and policy specialist with over two decades of post legal qualification experience".

Nonetheless, her track record before appointment did little to indicate that she would, within a few years, become a household name and the symbol of the fight against corruption and abuse of power that she now is. Some who knew her better were confident that she would be unswerving in promoting the values which underlies our constitutional democracy.

One of them was the director of the Centre for Applied Legal Studies at Wits University in the early 1990s, now Judge Dennis Davis, who writes as follows:²

"She started her professional career at CALS as a junior research officer in the early 1990s. CALS at that time housed strong-minded and strong-willed people like Edwin Cameron, Halton Cheadle, Fink Haysom and Paul Benjamin ... Thuli was never one to defer to these senior people. In short, she has always been her own person – even then it was clear that if she felt that she had a worked out position she did not defer to authority, but only to a better argument. "

¹ Public Protector v Mail and Guardian 2011, per Nugent JA.

² Personal communication.

And so it has proved. Some may argue that Ms Madonsela's role as Public Protector over the past six years has been enhanced by a burgeoning level of crass corruption and maladministration in the public sphere, such that her responses were necessitated; that she could not have found otherwise. As the term of office immediately before her indicates, however, that is far from an accurate assessment.

Thuli Madonsela has pursued both the letter and spirit of her mandate with enormous vigour, determination and sensitivity. She is clearly a very adept interlocutor with the media, and in her soft-spoken and relentlessly logical manner, she has communicated her message to the broader public in this country, whom she primarily serves, and from whom she derives her legitimacy. If you need an example of her exemplary use of language and her persuasiveness, you need read no further than page 33 of last Friday's *Mail & Guardian* newspaper.

She has had to navigate immense obstacles put in her path, including shamefully by the very Parliament which recommended her appointment in 2009 with 100% support. Given his track record in a raft of such appointments at a very senior level of regulation of the exercise of public power, President Zuma and his advisors should have heard alarm bells ringing.

True to form, however, they had not done their homework properly, if their own self-preservation was the watchword: or perhaps for once they acted in the spirit and in pursuit of the values of the constitutional democracy so bravely and optimistically adopted in those heady years of the mid-1990s.

Ms Madonsela has unremittingly promoted the values of the Constitution through her work, and has not shrunk from pursuing accountability, even when venomously and unfairly attacked by leading figures within the political establishment. Her reports are characterised by the careful gathering of facts, critical analysis of the arguments, and clear findings and recommendations for remedial action, along with a flair for catchy titles and phrases (see *Secure in Comfort*, *Costly Moves* and *Permitted Benefits*, for example). Despite intense attention and the stresses of office, she has at all times maintained a decorum and sense of perspective, which have helped her navigate many political minefields.

There can be little doubt that Ms Thuli Madonsela has contributed greatly, through the courageous execution of her constitutional duties, to achieving and maintaining the values of "accountability, responsiveness and openness" which infuse the Constitution. She has refused to connive in the many minor and some major instances of unlawfulness and unconstitutional conduct which collectively undermine our constitutional democracy like an insidious cancer.

For all these reasons, Chancellor, I have the honour to present to you, for the degree of Doctor of Laws, *honoris causa*, Thulisile Nomkhosi Madonsela