

Why Mark Kaplan didn't become a Lawyer by Anthony Fagin

On the Monday morning at the beginning of the second week of the placement at Hoffman's, Paul Tabak, his trainer, came into Mark's office and announced: 'You'll be pleased something more interesting is coming up this week. On Thursday morning we're going to a briefing at Advocate Beresford's chambers. He's one of the best legal minds in this city.'

On the desk Paul deposited a pile of books he'd selected from the library. 'We're briefing Tim Beresford in a sad and tricky case.' Patting the top book, he instructed Mark: 'I want you to get up on race classification law.' He went on to explain the case: Mr & Mrs Tomlinson, a married couple, had asked Hoffman's to defend them against the South African state. They and their two children were classified as White but the state was trying to have Mrs Tomlinson and her daughter reclassified as Coloured. If the state won its case, the Tomlinsons' marriage would, in terms of the Immorality Act, become illegal retrospectively and, under the Group Areas Act, the family could not continue living in a White area.

'Tim Beresford is willing to defend the Tomlinsons *pro bono*. Do you know what that means?'

'No,' Mark said.

'It means 'unpaid'. Beresford only gets expenses, paid to him by Defence and Aid or by a charity like the Canon Collins Trust. Another term for *pro bono* is *pro Deo*, which your Latin will tell you means 'for God'. Beresford *is* doing it for God because he passionately believes apartheid is evil.'

With pale skin that should avoid the sun, and thinning ginger hair, Tim Beresford had an affable, no-nonsense manner and spoke without trace of a South African accent. He'd rolled up his shirt sleeves and was in the tiny kitchenette area of his chambers where he was making morning tea. While distributing the mugs, he introduced Paul and Mark to Mr and Mrs Tomlinson.

'Matthew, who is only fifteen, is at school this morning', Beresford explained. 'We've decided he be left out of all this; much too disturbing. But Emma, who is older than him, is implicated in this scandalous travesty of law. Though she's not here this morning, I'm afraid she will have to be at the court hearings.'

Beresford seated himself at his desk while the Tomlinsons, Paul and Mark sat in a semi-circle before him.

Frank Tomlinson was a tall, sturdy man with a rugby player's build and a pleasant smile. He worked as a station manager on the railways. Dee, his wife, was timid and withdrawn behind her spectacles.

'If we lose this case,' Beresford pressed on '- and I must warn you: we may well do so – the impact on you and your family will be immense, for these apartheid laws – 'laws', they call them! – are in their insidious way just as iniquitous as the Nuremberg Laws.'

'Mr Beresford,' Frank Tomlinson took advantage of the advocate's pause, 'on behalf of my family I want you to know how thankful we are to you for helping us. We are sure you will do your best for us.' His wife nodded her support.

'I most certainly will but in court in just under two weeks we're going to be up against Mr Pretorius, the State Prosecutor, who was only recently appointed to his position and hence still feels the need to prove himself.' He sipped his tea. 'A ferocious bigot of a man. I've encountered him on a few occasions and I can assure you it is no fun.'

Beresford went on to outline his strategy, which he had already discussed with Paul Tabak. He had no intention of presenting birth certificates in court. 'What I *do* have here is your marriage certificate, a copy of which – thank you, Mr Tomlinson – you have provided me with. The two of you were legally married in the eyes of God and that is enough for me and, I pray, for the judges.' The case was to be heard by a panel of three judges – 'or assessors, as they are called' – the chief of whom was Mr Justice de Wet, 'a fair man, as far as I know.'

Flicking through a sheaf of papers, Beresford addressed Dee Tomlinson: 'May I enquire, Mrs Tomlinson – just a point about your work record – how long you have been working – I see here, at Foschini's – as a book-keeper?'

'I started there, sir.....'

'Please please, Mrs Tomlinson, I am not 'sir'. I'm 'Tim' or, if you prefer, 'Mr Beresford'.'

'I started there, Mr Beresford, a little before we got married.'

'So you were married in, let me see, 1947. Well, that's a pretty solid work record – a good twenty years. I'm just waiting for the letter I requested from the Personnel Manager at Foschini's to come through, which will be confirmation of your employment record. Thank you, Mrs Tomlinson.'

To finish, Beresford reiterated his strategy: to present the Tomlinsons to the court as hard-working, decent members of society.

After the briefing, as they strolled down Burg Street back to Namaqua House, Paul commented to Mark: 'I don't like speaking in these terms and I haven't yet seen Emma, the daughter.....but Mrs Tomlinson does look to me as if she is Coloured.'

The first court hearing was held *in camera* one afternoon two weeks later in Courtroom B of the Cape Town branch of the South African Supreme Court, situated in Queen Victoria Street, opposite the Botanical Gardens.

Courtroom B had no windows. The dark wood panelling and the heavy bronze chandeliers overhead contributed to the air of oppression.

Three judges in black gowns sat, elevated, beneath the large escutcheon, high up on the wall, of the South African state.

Facing the judges were the two legal teams. On one side, Advocate Pretorius, the State Prosecutor, together with his assistants and several state witnesses. Mark took the seat on the outer end of the defence team. Next to him was Paul Tabak. Between Paul and Advocate Beresford were Mr and Mrs Tomlinson and their daughter Emma, neatly dressed, pretty, her hair gathered in a long ponytail.

'It is the contention of the South African state,' Mr Pretorius commenced, 'that the woman Madeleine, known as Dee, Tomlinson and her daughter' – he glanced at his written deposition – 'Emma Veronica Tomlinson, both currently classified as European, therefore White, no longer be regarded as such; that they be removed from this ethnic category and be reclassified as Coloured, therefore Non-White.'

'Thank you, Mr Pretorius,' said Mr Justice de Wet, the judge in the centre. 'Mr Beresford – good afternoon to you and your team – would you like to make your initial statement? How will you be proceeding?'

'Thank you, Your Honour. I shall not be calling any witnesses. I'll be engaging solely with Mrs Tomlinson, the defendant. I believe that her character, her family history and her work record speak for themselves. I shall not be calling Miss Tomlinson to the stand.'

'Very well, Mr Beresford, in that case, let us proceed. Mrs Tomlinson, would you take the stand, please?'

Dee Tomlinson rose and went over to the witness box, to one side of the judges' dais. In dialogue with Mrs Tomlinson, Beresford led the court through her respectable life as wife and mother, her impeccable work record – he presented to Justice de Wet a copy of the letter from the Personnel Manager at Foschini's, duly labelled 'Document A' – and ended with the Tomlinsons' marriage certificate, 'Document B', from which he extracted: 'Frank Martinus Tomlinson and Madeleine (Dee) Breda were married by the Reverend Thomas Pickford on the 29th of April 1946 in St Bede's Anglican Church, Ventnor Road, Rondebosch. They are a law-abiding, God-fearing couple. Dee Tomlinson is a devoted mother to her two children, Emma and Matthew, and a loving wife to her husband Frank. A couple joined together all those years ago in the sight of God. Who dares sever this enduring bond?'

'*Julle Engelse mense*, you English,' hissed Pretorius across to Beresford as he rose to his feet, gathering the folds of his gown. Beresford made a mock bow in the direction of Pretorius and took his seat.

'My Lords,' Pretorius addressed the three judges, 'what my learned friend Mr Beresford has just given you is nothing more than sentimentality. For the state, I would like to call to the stand as my first witness, Mr Cobus Labuschagne, who has lived in the house directly opposite the Tomlinsons in Calvinia Road, Dieprivier for the past eight years.'

It was Cobus Labuschagne who had initiated the action against the Tomlinsons.

An overweight middle-aged man lumbered up into the witness box.

'Mr Labuschagne,' Pretorius proceeded, 'would you say you are on good terms with Mr and Mrs Tomlinson?'

'Yes, sir. We are not close friends; we don't visit. But we do greet and chat like normal neighbours. Not long but social like.....'

'Now, Mr Labuschagne, I want you to consider very carefully my next question because, my Lords' – addressing the three judges – 'my case rests on this line of approach.' He paused for dramatic effect. 'Mr Labuschagne, this may not be an easy question for you to answer but you do need to answer it truthfully. How have you always regarded Mrs Tomlinson? We know she is a decent woman, a good wife and a loving mother. Mr Beresford has made this *very clear* to us all. But I am asking you my question from a *racial* point of view. Do you regard Mrs Tomlinson as a White person or as a Coloured person?'

'I have always regarded her' – Cobus Labuschagne was aware that everyone in the courtroom was hanging on his every word – 'as.....not quite a White person. I thought maybe she is Coloured.'

Mark noticed Dee Tomlinson putting an arm round her daughter who was leaning in towards her.

Pretorius hurried on: 'Then you must've wondered *why* Mrs Tomlinson was living in Calvinia Road in Dieprivier, an area clearly designated, in the terms of the Group Areas Act, as a *Whites-only area*.'

'Yes sir, that question was always in my mind.'

'Thank you, Mr Labuschagne, that will be all. You may step down.'

It was the breach of court decorum during Mr Pretorius's cross-examination of his second witness, Mrs Sylvia Erskine, of 87 Calvinia Road – two houses away from the Tomlinsons – that prompted Justice de Wet to call a brief recess.

Mrs Erskine and Dee Tomlinson had been friends for some time and had on occasion visited each other's homes for tea. But for some reason they had fallen out.

'Could you tell us, Mrs Erskine, why you no longer get on with Mrs Tomlinson?' Mr Pretorius pressed on the raw nerve.

'Well, er,' Mrs Erskine was becoming agitated, 'I don't like it when people start to put on airs and look down on me.' When Pretorius inevitably asked her how she regarded Mrs Tomlinson 'race-wise', an explosion was detonated: 'It's none of my business when there are people trying to be what they are not!' She was pointing her right index finger and jabbing it towards Mrs Tomlinson. 'Like that lady there and her airs-and-graces daughter!' She was sobbing in hysterical gasps and Justice de Wet had to assign two court attendants to calm her and usher her from the court. Mrs Tomlinson and her daughter Emma were weeping too; Mr Tomlinson was comforting them. To settle the atmosphere Justice de Wet ordered a ten-minute recess.

Afterwards Mr Pretorius proceeded. In reply to his mantra-like question 'How do you regard Mrs Tomlinson and her daughter *racially*?' two more near-neighbours replied: 'Non-White.'

At this point Tim Beresford leapt up, exasperated: 'Objection, Your Honour!'

'What is it, Mr Beresford, that you object to?' enquired Justice de Wet.

'Your Honour, the line of questioning that Mr Pretorius is so doggedly pursuing is outrageous.'

'How come?'

'This is not rational, provable stuff. This is the spite and vindictiveness of nasty neighbours.'

'No, Mr Beresford!' Pretorius cut in, '*you* don't like this. But, Your Honour, what I am trying to establish is: what is the blood that's running in the veins of this woman here and her daughter?'

'But you silly man!' Beresford could not contain himself: 'This is not biological, scientific evidence you are producing.....'

'Mr Beresford,' Justice de Wet intervened, 'you are out of order.'

'I apologise, Your Honour.'

'It is my duty,' de Wet went on, 'to inform everyone in this court that a key clause in the Race Classification Act of 1949 stipulates that the race of a person is in large part established by how he or she is *regarded* by neighbours, colleagues, associates and peers.'

'But Your Honour,' Beresford persevered, '- not wishing to cause offence – can't you see that this sort of thing is open to abuse?'

'That's as may be,' retorted de Wet, indicating he wished the matter to be closed.

After conferring briefly with his two fellow judges and consulting his diary, Mr Justice de Wet set the second court hearing for 17th March. In conclusion: 'This session has been dominated by sentiment and emotion. Next time I want to see the birth certificates of Mrs Tomlinson and Emma Tomlinson. I am not at all satisfied. Birth certificates, concrete proof, this is the route we will be pursuing next time. Court is adjourned.'

Mark finished the six-week placement at Hoffman's. In early March, despite his ongoing doubts, he began first year medicine – physics, chemistry, botany and zoology – as originally planned.

Sometime later in the month Mark remembered that the 17th had been a significant date – the second court hearing. Keen to find out what had happened, he looked up Paul Tabak's extension number at Hoffman's.

Paul was pleased to hear from him and reported on the events of the 17th. Through the meticulous research of Advocate Pretorius and his team what had come to light was that, though Dee Tomlinson's mother was White, her late father's birth certificate recorded him as 'Coloured'.

'Just shows you,' Paul said, 'that all this racial categorizing was going on long before the Nats' victory in '48. What they did was strictly codify all this nonsense in a thicket of rigid laws.'

A further complication, Paul went on to explain, was that Pretorius was pressing for a charge of making false declarations to be brought against Dee Tomlinson.

'On what grounds?' Mark asked.

'Her birth certificate gives her race as 'White'.'

'What a fucked-up system!' Mark exploded. '*She* didn't write 'White' on her birth certificate!' He sighed with exasperation. 'So, Paul, where do things go from here?'

'There's to be a third hearing in mid-May, at which the judges will deliver their final decision on Mrs Tomlinson's status and that of her daughter.'

'If the judges decide to reclassify them as 'Coloured', how is the family going to stay together?'

'They can appeal for a reassessment,' Paul explained, 'and if that fails, they can move to one of the few remaining so-called 'grey' residential areas, where racial lines are not so strictly drawn. Or, like others in the same position, they may decide to leave the country.'

'All this is ruining their lives. Perfectly decent, innocent people. How is it possible, Paul? I find the whole thing too cruel and painful.....'

'You think / don't? It's a pity you didn't carry on with us; we wanted to take you on as an articled clerk.....'

'It's madness to become a lawyer in such a legally sanctioned unjust system.'

'You could've gone on to train as a barrister. Remember you told me how much you admire Tim Beresford for his courage.'

'No Paul, it's not for me.'

'You could fight to change the system.'

'That's just it, Paul. I'm not like Beresford. I don't have the courage for this fight.'

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A Word about me:

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My name is Anthony (Tony) Fagin. I was born in Sea Point in 1950. I attended Sea Point Boys' Junior & High Schools.

I was barmitzvah-ed at Temple Israel, Green Point. After considering whether to become a lawyer or a doctor (I did first-year medicine at UCT), I went on to do a B.A., majoring in English & Drama. After that, I did a B.A. Honours degree in English Literature. I then left SA & travelled overseas (mainly Israel & Finland), eventually coming to London, where I did a Postgraduate Certificate in Education. My professional career of almost 40 years was in Teaching English to Foreign Learners. About 10 years ago I retired. (I'm now into my 72nd year.) My main focus these days is on writing stories. I had a lot of time to do so during lockdown! My ambition has always been to be a writer.

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