

DIE STAAT teen:

PATRICK MABUYA BALEKA EN 21

ANDER

VOOR:

SY EDELE REGTER VAN DIJKHORST EN

ASSESSORE: MNR. W.F. KRUGEL

PROF. W.A. JOUBERT

NAMENS DIE STAAT:

ADV. P.B. JACOBS

ADV. P. FICK

ADV. W. HANEKOM

NAMENS DIE VERDEDIGING:

ADV. A. CHASKALSON

ADV. G. BIZOS

ADV. K. TIP

ADV. Z.M. YACOOB

ADV. G.J. MARCUS

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS:

LUBBE OPNAMES

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MNR. JACOBS : Ek vra verlof dat mnr. Fick verder voortgaan met die aansoek.

MNR. FICK : Terwyl die hof op hierdie stadium ontruim is, wil ek eerstens aan die Hof aandui dat hierdie getuie gaan getuig oor paragraaf 67 en verder van die akte van beskuldiging. Dit is die Vaal Driehoek se gebeure. Dit is bladsy 277 van die akte van beskuldiging.

HOF : Tot by watter paragraaf?

MNR. FICK : Dit is die einde.

HOF : Val ook die massavergadering van September 1983 in (10) die tydvak?

MNR. FICK : Die getuie sal getuig oor die vergaderings, maar ek glo die vergadering van die 26ste val nie in hierdie getuie se getuienis waaroor die vorige getuie getuig het nie. Hy getuig nie oor elke paragraaf en subparagraaf nie, maar hy getuig oor die gebeure in die Vaal stukies en brokkies. Dit is vanaf paragraaf 67 tot by 3 September se gebeure.

HOF : Oor watter tydvak val dit dan? Van wanneer tot wanneer gaan strek sy getuienis?

MNR. FICK : Sy getuienis begin by Februarie 1983, maar dit(20) is nie die Vaal se gebeure nie. Dit is die agtergrond.

HOF : Tot wanneer loop dit?

MNR. FICK : Tot by 3 September.

HOF : 3 September van watter jaar?

MNR. FICK : 1984.

HOF : En wat gaan hy my vertel?

MNR. FICK : Die getuie sal vir die Hof aandui hy was lid van twee organisasies in die Vaal gewees.

MR BIZOS : The advisability - I do not know what Your Lordship's view is in relation to the advisability of the witness (30) being here, whilst this outline is being given. I am in Your

... / Lordship's

Lordship's and My Learned Friend's hands, but it may well be that the safer course would be that the witness should be excluded while this is being debated until he is required to give his own reasons.

COURT : Well, could we not first have his reasons and then Mr Fick can tell us - well, then we still have the difficulty.

MR BIZOS : That is so.

HOF : Mnr. Fick, ek dink u moet net die getuie laat buite staan.

GETUIE VERLAAT DIE HOFSAAL. (10)

HOF : Hy is lid van twee organisasies. Watter twee?

MNR. FICK : AZAPO en die VCA. Hy sal ook aan die Hof aandui dat hy vrees vir sy lewe, sy familie se lewe. Hy sal verder aandui dat dit bespreek was tydens vergaderings, nou nie ope vergaderings nie, maar van die bestuur van AZAPO dat persone wat wel teen hulle gaan getuig sal mee afgereken word. Op die basis vrees hy dan vir sy lewe as hy sou getuig, as dit bekend word dat hy dalk getuig. Hy sal verder ook getuig dat een van die beskuldigdes, beskuldigde Hlomoka, beskuldigde nr. 2, was op hierdie bestuur saam met hom gewees en onder die omstan-(20) dighede vra hy dan om in camera te getuig. Hy is bekend in die Vaal, hy woon in die Vaal Driehoekgebied. Ek sal uiteinde-lik vra vir 'n bevel. Ek kan net vir die Hof vir duidelikheid sê ingevolge artikel 153(2)(a) en (b).

HOF : Ek sal eers die getuie aanhoor.

IC8 v.o.e. (Deur tolk)

ONDERVRAGING DEUR MNR. FICK : Waar woon u? -- Sebokeng, Zone 14.

Waar is u werksaam? -- Vaal Transport Corporation.

Hoe lank is u woonagtig in die Vaal in Sebokeng? -- (30)

Ek is gebore in die Vaal Driehoek.

... / Het

Het u aangesluit by enige organisasies sedert 1983 in die Vaal Driehoek? -- Dit is so.

Kan u hulle noem? -- AZAPO en Vaal Civic Association.

Was u op die bestuur van enige van hierdie organisasies?  
-- Ek verstaan nie wat is die bestuur nie?

HOF : Management committee? -- Ja, dit is so, dit is van AZAPO.

MNR. FICK : U het aangedui dat u in kamera wil getuig. -- Dit is so.

Wat is die rede? -- Die rede is dat ek dink aan my (10)  
lewe wat in gevaar is.

Kan u aan die Hof aandui hoekom dink u u lewe is in gevaar? -- Soos wat ek lid was van AZAPO, het ons daarvan gepraat dat "sell-outs" (die woord gebruik is dubbelsinnig) moet weg, wat beteken hulle moet gedood word.

HOF : Wat het dit met u te doen? -- As ek getuienis gaan gee in 'n ope hof, gaan ek myself identifiseer as een van die "sell-outs".

MNR. FICK : Hierdie weg wat u van praat, kan u dit beter omskryf? -- Ek verstaan nie die weg nie. (20)

HOF : Die getuie het reeds gesê dit beteken om gedood te word. Wat is die tipe beskerming wat u van die Hof verlang? Is die tipe beskerming wat u verlang dat u naam nie gepubliseer word in die koerante nie of is die tipe beskerming wat u verlang dat daar niemand in die hof moet wees nie of albei? -- Albei.

CRO Hoe lank gelede is dit wat julle bespreek het dat "sell-outs" doodgemaak moet word? -- Dit is gedurende 1983 toe ek die eerste keer aangesluit het.

CROSS-EXAMINATION BY MR BIZOS : Let me place on record some of the things that you are known as publicly. You are a (30)  
close friend of accused no. 2? That is Mr Hlomoka? -- Yes,

... / that

that is so.

In fact at the time of Mr Hlomoka, accused no. 2's arrest in September, on 5 September 1984 you were living in his house?

-- That is not so.

Did you move into his house shortly after or some time after his arrest? -- After some time that he was arrested.

For how long did you live in his house? -- For a week or so.

Are you under detention at the moment? -- Yes.

Where were you detained? -- In the Vereeniging district.(10)

Where you detained at the accused's house, accused no. 2's house? -- No.

Were you an area representative on the VCA representing Sharpeville? -- That is so, from Sharpeville.

And did you attend committee meetings and public meetings in that capacity? -- That is so.

Were you also an executive member, in fact the secretary of AZAPO in the Vaal Triangle? -- That is so.

You are a leading member of the African Methodist Episcopal Church? -- That is so. (20)

And I understand one of its outstanding choir members? -- That is not so.

Are you not in the choir? -- No.

Are you a member of an association known as the Vaal Writers' Association? -- I was, yes.

And were you a delegate to the fourth annual congress of AZAPO conference held in Lenasia during January 1984? -- That is so.

And perhaps less relevantly, are you a person with a high profile in the social circles more particularly as master (30) of ceremonies? -- That is so.

... / The

The fact that you have been detained is that a well-known fact in your community -- I believe so, yes.

COURT : Are you still under detention? -- That is right.

MR BIZOS : On the assumption that you give evidence in secret or behind closed doors and without your name being disclosed, do you hope to go back to your community? -- Yes, very much so.

Do members of your family know that you were going to be called as a witness in this case? -- They do not know.

Do you know whether your family have appointed any lawyers ... (Court intervenes) (10)

COURT : How is that relevant to what we are busy with at the moment?

MR BIZOS : With respect, as to whether or not his family knows or not ... (Court intervenes)

COURT : How is it relevant to what we are busy with at the moment?

MR BIZOS : If the family knows, as I did in the previous case ... (Court intervenes)

COURT : His answer is that the family does not know.

MR BIZOS : As far as he knows. (20)

COURT : Well, now?

MR BIZOS : I will leave it at that.

COURT : Please stick to the enquiry that we are busy with.

MR BIZOS : As Your Lordship pleases. If you are released from detention in view of the close association between you and accused no. 2, do you not believe that members of your community will be asking you, in view of this close association why were you detained and why are you free? -- They are going to enquire from me.

Will you have any option but to say to at least a great(30) number of them the truth that you gave evidence? -- About my

... / having

having given evidence and release will depend entirely to His Lordship. I do not know what is going to happen to me after giving evidence.

We all understand that, but I think the question was, what are you going to tell members of your community? That you are closely associated in their minds with accused no. 2 as a leading member of AZAPO? -- There I think I will be able to explain to the people "Look, it was for the Court to decide on evidence and the Court decided that my evidence justified my being released and which evidence differs from the (10) evidence of accused no. 2 and therefore, that is how he remained behind."

Is your answer then that you do not intend keeping in secret the fact that you will have given evidence in this case if you are released? -- Just repeat that question?

COURT ; Where are we going with this cross-examination?

This inquiry is an inquiry where I asked the witness a couple of questions. I have been very lenient. I have allowed counsel to also participate in the proceedings which I think is actually wrong, seen from my point of view in order to clear up a (20) couple of facts and obviously I am getting a large number of facts on record which I would otherwise not have got, but there must be a limit to the cross-examination. How far as we going to go?

MR BIZOS : There are two aspects which we hope to show Your Lordship.

COURT : Well, you can address me on that and say well, in any case, he will tell this or that to the community. He will have to make up some story obviously.

MR BIZOSS: But that is not what he says. He says that he (30) will tell them that he gave evidence and if I am allowed to

... / develop

develop it, with the greatest respect, it may well be, as I did with the previous witness, to persuade Your Lordship that it will be in everybody's interest with regard to the factors that have to be weighed up by Your Lordship that the evidence should be given in open court, even in the witness ... (Court intervenes)

COURT : I suggest that you cut it short and not make a long story of this what he will tell the people when he gets home.

MR BIZOS : Do you accept that people outside court will sooner or later learn that you have given evidence in this case? (10)  
-- I do not agree with that.

Well, you have agreed a short while ago, but let us leave that aside for the moment. Would it not be in your interest for you to give evidence in open court in relation to the activities that you took part in in the last two and a half years? -- I do not see it wise to give evidence in an open court.

You say that there was a decision about sell-outs? -- That is so.

Do you know of any member of AZAPO who has been in any (20) way in danger? -- Not within this short time that I was with AZAPO.

I must take the opportunity of putting to you an instruction that I have from accused no. 2 that there was never such a decision that he knows of? -- I say there is such a decision which was taken by all of us.

HERONDERVRAGING DEUR MNR. FICK : Geen vrae.

GEEN VERDERE VRAE.

MR BIZOS : I submit that the balance that Your Lordship has enunciated in Your Lordship's judgment, clearly, in our (30) respectful submission favours that this witness should give

... / evidence



evidence in open court. There is no evidence that he was a member of any unlawful organisation or that he took part in any conspiracy or any evidence that any member of AZAPO has been in danger - endangered and with the greatest respect to, this witness was arrested in December, some four months - detained in December - after the events. He has apparently now been in detention for over a year. The dangers of evidence obtained under such circumstances from a witness whilst under detention have been enumerated by many of our courts. To close the court and hear the evidence behind close doors (10) may give the impression to the witness that he has to repeat the statement that he has made whilst he was under detention and may make it very difficult for us to enjoy any of the advantages that Your Lordship has enumerated in Your Lordship's judgment. That is what we will submit.

... / JUDGMENT

JUDGMENT SENT FOR REVISION