IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA Ass. 2

(TRANSVAALSE PROVINSIALE AFDELING)

SAAKNOMMER: CC 482/85 DELMAS

1986-02-24

DIE STAAT teen: PATRICK MABUYA BALEKA EN 21 ANDER

VOOR: SY EDELE REGTER VAN DIJKHORST EN

ASSESSORE: MNR. W.F. KRÜGEL

PROF. W.A. JOUBERT

NAMENS DIE STAAT: ADV. P.B. JACOBS
ADV. P. FICK
ADV. W. HANEKOM

NAMENS DIE VERDEDIGING: ADV. A. CHASKALSON
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KLAGTE: (SIEN AKTE VAN BESKULDIGING)

PLEIT: AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS: LUBBE OPNAMES

(ONDERSOEK IN CAMERA)

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MNR. HANEKOM : Hierdie getuie - wil die Hof hê ek moet eerstens sê in breë trekke waaroor hy sal getuig of eers die in camera deel afhandel?

HOF : Laat ek hoor wat is die rigting waarin hy gaan getuig eers.

MNR. HANEKOM : Hy getuig van paragraaf 67 in die klagstaat af aan. Dit is van bladsy 277 af.

HOF : Waaroor gaan dit?

MNR. HANEKOM : Hy getuig van die stigting van die Vaal Civic Association af, die VCA. Hy was voorsitter van die organi-(10) sasie gewees, van die stigting af op 9 Oktober 1983 en hy getuig van daardie tydstip af aan oor die gebeure in die Vaal tot na die gebeure van 3 September 1984.

HOF : Waarom wil hy in camera getuig?

MNR. HANEKOM : Sy naam is al 'n paar keer genoem in die hof. Hy is 'n predikant in die Vaal Driehoek by die MacCamel's Paradise Church of God. Ek dink dit is beskryf in die hof dat dit die grootste kerk in die Vaal Driehoek is. Die getuie deel my mee ... (Hof kom tussenbei)

HOF: Is hy op vrye voet of word hy aangehou? (20)

MNR. HANEKOM : Hy is op vrye voet. Ek sien die getuie is in die hof. Gaan ons die aansoek afhandel in sy afwesigheid?

HOF : Ja, vra hom om net 'n bietjie buite te wag.

MNR. HANEKOM : Hy was aangehou ingevolge artikel 31 van die Veiligheidswet. Hy is onthef, maar sedert hy onthef is, het hy nie teruggegaan na sy woning in die Vaal Driehoek nie. Hy het op 'n plek gebly baie ver daarvandaan waar hy onbekend was. Hy deel my mee dat hy 'n leiersfiguur in die Vaal Driehoek was en hy het 'n groot kerkgevolg. Hy deel my mee dat sy volgelinge nie verstaan waaroor hofprosedure gaan nie. Hy (30) sê die blote feit dat hy optree as Staatsgetuie word deur

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hulle geïnterpreteer dat hy teen die mense en teen die organisasies in die Vaal Driehoek draai. Hy deel my mee aan die einde van verlede jaar het 'n neef van hom na sy woning gekom en met sy vrou gepraat en gesê die mense sê hulle lei af, omdat hy nie onder die beskuldigdes tel nie, moet hy 'n Staatsgetuie wees en hulle hou dop wat gaan hy doen. Hy sê vir my wat persoonlike of liggaamlike leed aanbetref, is hy ook bang vir die moontlikheid dat leed hom en sy gesin aangedoen kan word. Hy sê vir my hy is veral beangs oor sy vrou en kinders. Intimidasie en werklike leed wat hulle aangedoen kan word (10) as hy vir die Staat getuienis gee. In hierdie aansoek wil ek met respek klem lê op die belang van die regspleging. Ek het met die getuie baie gekonsulteer, baie te doen gehad en ek kan die Hof met respek eerlik inlig dat hierdie getuie baie onwillig is om enigsins vir die Staat te getuig as sy getuienis nie in camera is nie. Dit is al wat ek onder die Hof se aandag kan bring.

MR BIZOS : We oppose the application. This is a person, in our respectful submission, who has a high profile. He was the chairman of the organisation that is alleged to be one (20) of the conspirators. I submit with the greatest respect that before any further argument is advanced to Your Lordship that he should be called. I am not for one moment saying that this is not what he might or might not have told My Learned Friend for the State, but that he should be asked by You Lordship the sort of question that the first local person - the non-ANC person - on the procedure now adopted by Your Lordship I would submit that Your Lordship without having regard to what My Learned Friend has said, that Your Lordship should enquire and put to him what Your Lordship put, if (30) my memory serves me correct, it was an interpreter witness,

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I think his name was Masanye. Whether this person with the high profile as his would not be better from the point of view of his following in the church if he spoke out. As Your Lordship put it then, if there was evil, let us speak out about it. Here is a person with a high profile. I have this difficulty. I do not know whether he stayed away from his home on his own initiative or as a result of any arrangement by the police, because my experience tells me that often witnesses that the police do not want to remain in detention nevertheless whether he has been away from his home (10) on his own initiative or on the initiative of the police, and the option should be given to him and explained to him and what the effect can possibly be. What he told My Learned Friend that because he is not among the accused, therefore me must be a witness. It is an inevitable inference that the community is going to draw and would it not be better for him if there was evil, as Your Lordship put it, let him speak out in relation to evil. He is a charismatic person on our instructions who has a very large following and let us hear what he has to say. This should be explained to him so that (20) he could exercise a free will. I do not know for how long he has been out of detention or whether he has been out of detention only partially or under the supervision of the police, but if in fact he has been in social isolation of some sort or another, I think that Your Lordship should ask him to weigh up the advantages and disadvantages and I would also ask that the investigating officer should leave the Court for the purposes of this inquiry. The first question that everybody is going to ask the moment he is released, once he goes back to the Vaal Triangle is, "How come you are no (30) longer in detention?" Here is a trial which is getting a lot

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of publicity in which it is said that the Vaal Civic Association was a co-conspirator to overthrow the State and its chairman is free to move about in the Vaal Triangle, whereas the - I do not think we have - we do not have any high ranking Vaal Association Committee member except possibly accused mo. 22. We are going to have the chairman walking around free with the public speculating as to why his association is on trial and it is sought to make the members responsible. I cannot stress too strongly without wishing to pre-judge Your Lordship's finding in relation to the credibility of (10) the last witness but one, but I would submit with the greatest respect that some of the evidence that that witness gave could not possibly have been given in open court and there are grave dangers to the administration of justice where there has been public open activity over a thousand people - we are going to hear about a formation of the Civic Association which took place in the presence of newspaper reporters, people making public speeches in secret. There is no suggestion that he will speak of any specific little conspiracy, the way I understood My Learned Friend's outlining, so that(20) we have a situation that things can happen openly in society but the moment those things are described in court, it must be behind closed doors. It does not make sense in our respectful submission. One can understand where one has witnesses from the ANC - there are pamphlets, I do not want to repeat the evidence that Your Lordship heard that prompted Your Lordship to give that judgment, but this is a completely distinguished situation and if the chairman of the VCA gives evidence <u>in camera</u> everything that relates to the VCA which had a constitution, which had resolutions passed, which (30) had regular meetings in the open, it is going to be enquired

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into behind closed doors. I submit with the greatest respect that the closest possible inquiry possibly with permission to us to ask questions or to put propositions to the witness or Your Lordship doing it in order to persuade this witness not to wipe the evidence to be in camera, but rather that it is in his interest and the interest of the administration of justice. The accused are not going to deny that they were office bearers of the VCA. Your Lordship has seen how the case has been conducted on behalf of the defence up to now. It was not a secret society that he is going to come in and(10) say accused no. 22 took the minutes. It is going to be common cause. If the State wants to lead this evidence that happened publicly, let it lead it in public and let us have an open trial or especially having regard to the charges that are preferred against a background of open political activity which the accused in the main admit having participated in. There is another factor which particularly worries me. A defendant in a conspiracy trial occupies an uncomfortable seat. The image that is going to be created once there are witnesses, one after the other who took part in open and (20) apparently lawful political activity behind closed doors, the public's perception is being created that if the Court sees fit to hear these witnesses in camera, then the perception is being created, then it is a conspiracy that is being spoken about. It is our respectful submission that it will be a most unfortunate public perception that is being created. We urge Your Lordship to persuade this witness that it is in his interest and the interest of the administration of justice that he should give his evidence in open court.

HOF: Wil u nog iets byvoeg voordat ek die getuie onder- (30) vra?

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MNR. HANEKOM : Ek het niks by te voeg behalwe net dit nie. Ek het met die getuie self lank oor hierdie aspek gepraat. Hy laat val die klem daarop, hy sê vir my ongeag wat die inhoud van sy getuienis is, die blote feit dat hy 'n Staatsgetuie is, is waar die gevaar lê.

HOF : Dit sal duidelik bekend wees dat hy 'n Staatsgetuie is. Dit moet bekend word vanselfsprekend, as hy nie aangekla word in 'n saak soos hierdie nie en hy was lank in aanhouding?

MNR. HANEKOM : Die getuienis sal kom dat hy vir 'n baie groot deel van sy voorsitterskap onaktief geraak het in die organisasie. (10)

HOF : Is dit dan nie beter dat dit uitkom nie? Dat dit in die hof uitkom nie, ope hof? Maar ek sal hom ondervra.

GETUIE WORD GEVRA OM DIE HOFSAAL BINNE TE KOM.

IN CAMERA WITNESS,

COURT : Before you take the oath, I would like to put a few questions to you. This hearing here is in camera for the purpose of deciding whether you should give your evidence in camera. I understand that you are a minister of religion? -- That is so. (20)

I understand that you have been a minister of religion for many, many years? -- That is so.

And that you are a wellknown and important person in your community? -- That is so.

Have you been in detention?-- Yes.

How long were you in detention? -- For 358 days.

When were you released? -- On 30 October.

Did you go back to your community? -- No, I did not.

Why not? -- Because of the agreement between us. As soon as I am released, I should be away from the Vaal, not nearby. (30)

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So, was the agreement in terms of which you were released that you would stay away from the Vaal Triangle until this case was concluded? -- That is so.

Do you intend to return to the Vaal Triangle? -- Yes.

Do you intend to return as pastor of your congregation? -- Yes, that is so.

I understand that you requested the State advocate to request me to hold this evidence of yours in camera? -- That is so. That was my request.

Could you give me your reasons? -- In the first place (10) it is very difficult for my people to understand as to why does one appear in court and especially when a person is to appear in court in this situation where it can easily be said that you are in fact against the other people.

Let us deal with that aspect first. Do the people not understand that one is normally a witness in court under compulsion, that you are forced to come here by subpoena? -- There are those who may understand that, but it is not always that they accept that.

And what is more, it is not a question when you come (20) to Court to give evidence that you take sides. You take only one side and that is the side of the truth? -- That is true, but it is very difficult for my people to understand it that way.

Yes, but now if you give evidence in open court everybody will hear what you say and there can be no speculation about your evidence? Whereas if I hold this trial in camera people will think possibly he was a witness and what may he have said. What other reasons do you have apart from the people understanding and thinking that you would take sides? -- Some (30) days ago it came to my wife's ears by somebody who said to

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her it would appear because I am not one of the accused before this court that I am going to say things or speak against the accused. This person mentioned this because it was being discussed by different people as to what is happening to me, as a result of which then I came to the conclusion that what this person is saying can in fact be of danger or cause some danger by the people who would not understand or who do not understand at all.

Before you continue I have this difficulty. Some witnesses, for very good reasons, have given evidence in camera in this case, others not. If you return say for example next month to your home after having giving evidence here and you give evidence in camera, is it not possible that your evidence will be mixed up with that of other witnesses who have given evidence in camera and that people may think that you have given evidence and may draw entirely different conclusions? If you state it clearly that you are not here of your own volition, but because the Court wants witnesses and needs the truth and that you state the truth, how can anybody hold it against you? -- In view of our experience in previous occasions like in the cases in which I have just experienced some thing, you find that there are people who want things to be done their own way, whereas they know they would not be held responsible for certain things and therefore we will go out of the way to have things done their way. What I am talking about is the irresponsible element within the community.

What do you expect them to do? -- I would not know, but there are a lot of things they can do in the form of violence or fighting.

You were the chairman of the VCA I understand? -- That

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is so.

Did you personally have any connection with the ANC or the PAC? -- No.

Or AZAPO? -- No.

Do you not think that it would be more detrimental for you if you speak in camera than when you speak out openly in open court, because if you spoke in open court everybody will know what you say and how you say it, whereas when you speak in camera they might read in the press that somebody said this or that, but they will only guess what you said? -- The advan-(10) tage of giving evidence in a closed court is that even though people can read in the newspaper, they would not have any evidence to prove that who is the person who was giving that kind of evidence.

That is of course true, but then they will guess and all sorts of rumours will be spread and is it not so that as a leader in the community actually you should step forward and speak out on behalf of the truth? -- I would say so myself, but I find that there are problems that I am faced with. On the other side it is more serious than the one I am faced (20) with here should I give evidence in an open court.

What are the problems you are faced with? -- Even though people can see you giving evidence and hear you giving that kind of evidence that you are giving, when they take it further to go and relate it to people who were not there, you will find that what you have said has been decorated and given some other ingredients of speech that you did not in fact make mention of. Again, what I am trying to avoid is, the difficulty which can befall my family because of such people who will go about spreading such kind of talks. (30)

Do you mean that they will be slandered? -- Many things

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have happened. Some people have been killed without any proof. Some people have been killed because of some accusations which could not in fact be confirmed whether it is like that or not. Therefore anything can happen.

But now have you any evidence of people being killed because they testified in this sort of situation? -- I do not have that kind of evidence. What I am talking about is, I have already made mention of the irresponsible element which is capable of doing anything.

Is there anything else you would like me to consider? (10) -- Except what I have already mentioned that is that I would not like my family to be involved or befallen by something which one cannot predict now because of the situation in which I find myself.

Will you wait outside for a while. Counsel will have too adress me on this.

NO FURTHER QUESTIONS.

MNR. HANEKOM : Ek kan kwalik iets byvoeg by wat gesê is, behalwe dat die situasie in die woongebiede is nog nie normaal nie. Daar is getuienis van onverantwoordelike optrede(20) soos hierdie getuie dit gestel het, van die sogenaamde "necklaces" wat nog gereeld voorkom. Soos ek aanvanklik gesê het wil ek met respek klem lê op die belang van die regspleging. Ek het baie rede om te vermoed dat hierdie getuie nie vry en gemaklik sal voel om te getuig waaroor hy kan getuig nie, as hy nie die gemoedsrus het om in camera te getuig nie, soos hy versoek.

MR BIZOS : The first point that I want to draw Your Lordship's attention to in addition is that the witness has not remained away from his community as a result of his own free will, (30) but as a result of agreement. The probilities are that he

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would have returned to his community if it were not for that agreement. Secondly, we do not accept the ex parte statement that the situation in the Vaal Triangle is out of hand at the moment. There can be no doubt with respect that there is what the witness has called an irresponsible element. The irresponsible element is something that nobody can really predict or do anything about and one cannot allow an irresponsible unnamed and unidentified element to weigh so heavily with the administration of justice. It may well be that the witness may require some form of protection either from (10) the police or possibly from his own loyal supporters of whom we are told are many thousands in the community. We are instructed that he is a charismatic person who holds his own in a situation - and the fact that he was elected, Your Lordship has already got evidence that there were two other nominations, that he was elected the chairman. He is not a person who will stand alone. He is well rooted in the community and is the administration of justice and society as a whole to be so afraid of an unnamed unidentified irresponsible element that all the rules have got to be changed? We sub-(20) mit not. The other matter is this and which we submit will weigh heavily with Your Lordship and that is, this is not the sort of person who can stand up publicly and say - and be untruthful to his own people, to his own church. He is going to be asked "Where were you?" Presumably his congregation will be happy to see him back. They are going to ask him "Where were you?" What is he going to say? "I refuse to tell you." He is going to be asked "Did you give evidence?" What is he going to say? "I refuse to tell you". The political conspirator or the conspirator who is a member of a (30) gang can lie easily, because entering into the conspiracy is

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in itself something which has an element of secretness about is and not telling members of your family, not telling your friends, not telling your colleagues. That is the element of conspiracy, but this is not what we are dealing with here. This person of necessity has got to be frank. I accept his bona fides that he subjectively believes that some harm may come to him, which has come out as a result of what he has heard, as a result of what has happened. I know of non-necklaces in the Vaal Triangle in the last six or eight months as far as we are concerned. This person does not stand alone. (10) He is not a fugitive. He is a charismatic leader, we understand, of thousands of people within this community and we submit that despite his subjective feeling, objectively, the better decision would be in our respectful submission for his own good, for the image of the administration of justice that he gives his evidence in open court.

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