

SAAKNOMMER: CC 482/55

DELMAS

1986-04-30

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

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)

PLEIF:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS:

LUBBE OPNAMES

COURT RESUMES ON 30 APRIL 1986.

IN CAMERA WITNESS NUMBER 10, d.s.s. (Through interpreter)

CROSS-EXAMINATION BY MR BIZOS (continued) : After the adjournment yesterday you went out of court and you pointed out a person? -- Yes.

My Lord, I am instructed that the witness pointed out Mr Jacobs, leading counsel for the State.

Is he the person who interviewed you on 17 February 1986? -- Yes.

Is he the person that showed you the typed statement?(10) -- Yes.

Is he the person to whom you said that you did not remember anything about what was in the statement? -- Yes.

Is he the person who told you that you must give evidence of what is typed in the statement and nothing else? -- Yes.

Is he the person to whom you said that you had been assaulted, but that he did not ask you any further questions as to when, where and by whom you were assaulted? -- Yes.

Is he the person who said that you would go to jail for a long time if you did not give evidence in accordance (20) with what was contained in the typed statement that he showed you? -- Yes.

Were you showed a photograph of Mr Lekota before you came into court? -- No.

Had you seen Mr Lekota's photograph in newspapers before you came to court? -- No.

Were you shown an album of photographs? -- No.

We will come back to that in due course, but let us ask you about something else. You told us that you made this statement in August 1986 - I beg your pardon, 1985? -- (30) Yes, that is what I said, but yesterday I made a mistake in

... / saying

saying 1985. It was 1984.

When did you realise that you made this mistake? -- Yesterday.

Was it in August 1984? -- Yes.

Are you sure about that? -- Yes. I will tell you why I remember this. It is because during the winter of 1985 I was fetched by the police from Sebokeng to Sasolburg where I was asked by the police whether I still remember what I said in my statement.

Which you had made a year before? -- Yes. (10)

And why are you sure that it was made in 1984? -- It is because I remember it took about a year before they came to ask me whether I still remember about the contents of the statement I made and I had not been to court about it before.

Let us just get absolute clarity. This must have been, if you made this long handwritten statement in 1984, this must have been shortly after the events had occurred? -- I do not understand the question.

If your statement was made in 1984 it must have been shortly after the events that you described that happened (20) in 1984 within a week or two or within a month? -- Yes.

MNR. FICK : Kan ek net dalk vra dat die vraag beter geformuleer word, want die getuie het getuig oor gebeure in 1984 aaneenlopend tot in 1985. Watter gebeure praat My Geleerde Vriend nou eintlik van?

HOF : Nee, die vraag is geregverdig. Dit gaan oor wanneer is die verklaring gemaak. Die verklaring kan nie in 1984 gemaak wees oor 1985 se gebeure nie. Dus die vraag is, is die verklaring gemaak kort na die gebeure in die verklaring.

MR BIZOS : Was your statement made shortly after the things(30) that you described in the statement happened? -- Yes.

... / And

And how long after you saw Mr Lekota in 1984 did you - do you now say you made your statement? -- I would like to explain this. During the year 1984 Mr Lekota was not known to me. At the time of my arrest on 8 August, I was taken to the police station in Parys, where I was asked whether I knew Mr Lekota, on which I said I do not know Mr Lekota, as a result of which then they said to me they are going to hit me, I must tell the truth about Mr Lekota. I again repeated to them saying that I do not know Mr Lekota, in which they said "How does it happen that you do not know him, being a com-(10)rade?" and I further said to them "It does not help to force me to say that I know a person I do not know." I said I do not know this person, but because of their forcing me to say things about Mr Lekota, I then decided to say things about him which are not true. In fact, what I have said here about Mr Lekota is not true.

Who forced you in Parys in August 1984 - tried to force you in August 1984 to say false things about Mr Lekota? -- Those Whites who were present there, other people who forced me. (20)

But then, if you did not know Mr Lekota in August 1984, how did you come to point him out? -- In 1984, after having said things about Mr Lekota which are not true, I was left alone, in fact I was released to go. In 1985 I was fetched by the police from the place I was visiting in Sebokeng and taken to Sasolburg where some photographs were shown to me. In fact a document or a book containing more than one photograph was shown to me from where I was asked if I could identify Mr Lekota from that book, on which I told them that I do not know Mr Lekota. At that time I was scared of telling them (30) that what I said about Mr Lekota was in fact not true.

... / Who

Who showed you this book and you told them that you did not know Mr Lekota? -- Mr Nel.

When you told him that you did not know Mr Lekota, what did he do? What did Mr Nel do? -- He did not say anything. In fact he did not do anything, except that I was taken back to Sebokeng.

Yes, but were you not shown Mr Lekota's photograph in that book? -- I did not know Mr Lekota at all. In fact, what happened is, yesterday just before I came into the court-room here it was explained and Mr Lekota was described to me (10) as to how he looks like and the description was as follows: That he does not have one tooth in the front.

COURT: And what else? -- That was all that was explained to me.

I see and on that description you identified him in court? -- Yes.

MR BIZOS : Who told you that Mr Lekota's front tooth was missing? -- That White man who was sitting behind you yesterday. He is not there now. He told me.

COURT : That would be Captain Botes.

MR BIZOS : The person with the blond hair?-- Yes. (20)

COURT : How did you see that the front tooth of accused no. 20 is missing? I have been in court for a long time and I have not noticed it? -- When I came in here I looked at them and noticed that Mr Lekota was smiling. From where I stood I could see that he does not have one front tooth.

Is that the only one who has got one tooth missing? -- Yes, he is the one without the front tooth.

My Lord, it is clearly visible from where I am standing.

COURT : Yes, it is now clearly visible to me also, but only when he smiles. Was there anything to smile about yester-(30) day when the witness came into court.

MR BIZOS : Far be it for me to comment on the credibility of a State witness at this stage.

When you made - let us put it this way. When you made the statement to Mr Van der Merwe and Mr Nel, do you recall that, after you have been sjamboked?-- Yes.

Do you recall that whether any untruths were told to you - I am sorry, were told by you in that statement other than those relating to Mr Lekota? -- No.

Well, I am going to suggest to you that there is much in your other evidence which is not correct. Did you (10) ever tell anyone that you saw Mr Lekota during September 1984? -- No.

Did you tell anybody that you saw Mr Lekota after August 1984? -- No.

If the State has told His Lordship that Mr Lekota was busy doing things with the Tumahole Students' Organisation during September 1984, it could have have come from you?

COURT : How are you going to use this evidence now? Are you going to rely on this witness to present an argument to me later on? What is the use of this cross-examination? As far as (20) accused no. 20 is concerned, the witness says it is a total fabrication.

MR BIZOS : That is so.

COURT : Where does this cross-examination take you?

MR BIZOS : I will tell Your Lordship where it takes us. Accused no. 20 was detained on 21 August and was kept in solitary confinement for a considerable period. Your Lordship doubted, with the greatest respect the possible veracity of this witness in relation to the circumstances under which she came to identify Mr Lekota and dismissed her evidence as (30) not worthy of any belief whatsoever. If in truth and in fact

the witness was made to say at some time or another on which the allegation in the amended indictment is based, alleges that Mr Lekota did something whilst he was in detention, I may well be able to argue that - on the evidence of this witness and unhappily certain other evidence - that may be forthcoming and placed before Your Lordship - evidence from her on that point is that she did not know Mr Lekota and that she was put up to it, may be true and if that is true then the whole substratum with the greatest respect of the serious allegations made against Mr Lekota and some of the other (10) accused and the identity of the person who was responsible for interviewing these persons and taking statements from them, is of the utmost importance for a just decision in this case. With the greatest respect, I would thought that Your Lordship would consider it relevant, particularly relevant as to how a young woman comes along and gives this evidence and to want to enquire as to whether possibly what she is saying might be true and not dismiss it out of hand.

COURT : Not dismissing out of hand her allegation that it is a total fabrication. I am putting it to you that she (20) says that the allegation against accused no. 20 is a total fabrication, where does that lead us, the further cross-examination?

MR BIZOS : Because she is not the only witness who has given, in our submission, fabricated evidence and we are entitled to enquire possibly whether - if we can establish objectively that it was in fact a fabrication, it goes very far in proving what she is saying now.

COURT : But what is she saying now? I do not follow you, Mr Bizos? (30)

MR BIZOS : May I explain. I consider it particularly

important that if I have not made myself clear up to now, I want an opportunity to make it clear. I do not want ... (Court intervenes)

COURT : My point is this. This witness says that what she told me yesterday about accused no. 20 is a total fabrication. So, as far as I am concerned, I draw a line through that evidence. I take no cognisance of it at all. Can I go further than that?

MR BIZOS : Yes. Let me try and explain how much further Your Lordship can go. If in fact I put to this witness and (10) we established that some of the allegations made against Mr Lekota could not possibly be true, because he was in detention from 21 August until a later date, then objectively - objectively Your Lordship will may accept ... (Court intervenes)

COURT : But she is giving you two dates now. The one is in 1984 and the other one is in 1985.

MR BIZOS : No, but I am not talking about the dates that she gives. I am talking about the dates alleged in the indictment, in the amended indictment. She has given two dates (20) in relation to the statement that she has made. I am cross-examining her in order to establish whether she knows where the State might have got the information to allege that during September 1984 Mr Lekota was busy inciting the members of the Tumahole Students' Organisation. If we established that ... (Court intervenes)

COURT : On her basis, the State could not have got it from her, because she says "My statement was made in August 1984." So, where does it lead us?

MR BIZOS : One of her statements was made in August 1984. (30)

COURT : Yes, go ahead.

... / MR BIZOS



MR BIZOS : Did you ever tell anyone that Mr Lekota did things with the Tumahole Students' Organisation during September 1984?

-- No.

And you would not know where he might have got this from?

-- No.

Do you agree that you were arrested in relation to events that were supposed to have taken place in August 1985? You, as an accused not as a witness or a detainee? -- Because of the reason that I had been arrested on many occasions, I cannot remember. (10)

Do you recall whether you were ever arrested in relation to incidents that were supposed to have occurred on 14 November 1985 and were you arrested and charged with public violence?

-- Yes, I am not quite certain, I cannot remember exactly what was happening. All I can remember that I was arrested in November.

Of what year? -- 1985.

Do you recall whether you took part in any activity which would have justly caused your arrest shortly after 14 November 1985? -- I cannot recall that. (20)

COURT : You do not know why you were arrested? -- When? On the 14th or after the 14th?

Go ahead.

MR BIZOS : Do you recall whether you were arrested about things that might have happened on the 14th? -- I do not quite remember.

Do you recall whether you made a written statement about the events of 14 November 1985 to the police? -- No.

Do you recall whether you were arrested in relation to events that happened on 28 November 1985? -- I cannot remember (30) the dates.

Do you recall ever making a statement to the police in relation to any of the events of your involvement on 28 November 1985? -- I cannot recall that.

Do you recall whether in relation to this then, whether you said in your statement to the police that you did not take part, but that you were drinking at a shebeen on that night? -- I cannot remember.

Do you agree that you were never a committee member or formerly a member of any organisation in Parys? -- No.

COURT : No, what? -- It is no when it is being put to me (10) that I was never a member of any organisation in Parys.

So, is the answer then, you were a member of an organisation? -- Yes.

MR BIZOS : Which organisation do you say you were a member of? -- Tumahole Youth Congress.

When do you say did you become a member of that organisation? -- During 1983.

Did you perform any act? Did you sign any form or did you pay any membership fee or did you do anything to become a member of this organisation? -- No, I did not sign any (20) document, nor did I pay any fees.

When do you say that the rental became an issue in Parys? -- On 17 July.

Did you know nothing about rental before 17 July 1984? -- Yes.

COURT : Are we speaking of 1984? -- Yes.

MR BIZOS : You have mentioned 17 July as an important date. How do you remember 17 July? Why did you consider it as an important date? -- Because that was the first day when we started fighting for rent. (30)

Do you recall what happened on 17 July that it is such an

.. . / important

important day to you? -- Not quite well.

You see, because I am going to put to you that you are just a township hanging around, so to speak. That you are just loose sort of persons hanging around in Parys ... (Court intervenes)

COURT : A township loafer?

MR BIZOS : A township loafer? -- What do you mean?

That you really, I do not know what you are up to on your own and with your special friends, but that you have no organisational connection with any of the organisations(10) other than being the girlfriend for some time of one of the members of your organisation? -- I do not agree.

You see, if the first thing that you knew about the rental and 17 July - let me put it to you this way, that first of all, the march was not 17 July but 15 July? What do you say to that? -- I do not quite remember.

What day of the week was the march? -- I cannot remember because these things happened long ago.

And if July, be it the 15th or the 17th, was the first time that you were aware of anything about the rent, there(20) could not have been the things that you have spoken about in your evidence-in-chief?-- I do not understand that.

You see, what I am going to put to you is this, that the Youth Organisation was not concerned with rental at the time that you said in your evidence-in-chief that it was concerned with?

COURT : That is TSO?

MR BIZOS : TSO. They were not concerned with rental at the time you said that they were concerned with the matter?--

I am listening.

(30)

Well, what do you say? Where was TSO concerned with

... / rental

rental in the beginning of 1984? -- Yes.

When was the announcement about the rent increase? -- I do not know.

I am going to put to you, you do not know what the rent was before and you do not know what the increase was and you do not know what it was increased to? -- Yes.

That was how much you were interested in the organisation and the rent issue? -- I am listening.

What is the name of the person you referred to as Barnard? Is that Jacob Malekwane? -- He is known to me as Barnard. (10)

Well, but if he spoke at this meeting, surely they would have given his name and not his nickname? -- I do not know if they did not mention his proper name. He is known to me as Barnard.

Were you at a meeting at which he was formally introduced as a speaker and spoke? -- Which meeting is that? On what date? And where?

Yes, well, perhaps you should tell us again when and where did Barnard speak at the meeting where you were present? -- It was at Max Moleko's garage. (20)

When? -- I cannot remember the exact date.

The month or the year? -- I cannot remember.

Before or after the rental became an issue? -- Before.

Before the rental became an issue? -- Yes.

So Barnard never made any mention of any rent when he spoke? -- No.

Why did you come in your evidence-in-chief to say to His Lordship he spoke about rent? -- I am now confused. Which meeting are you referring to? Are we talking about the first meeting that I attended there or which meeting are you talking about? (30)

I am talking about the meeting where you heard Barnard speak? Do you think we can cut this short by saying that you do not really know what portions, if any, of your evidence-in-chief is true and what portions are false, because of your confusion? -- In court here the people do not know what happens to us. The police immediately arrest you and they want you to say something about someone and you say you do not know a thing about that person, they will force you to say things about that person. Therefore it means some of the things that I said in my statement were false and some were true. (10)

Would you now be able to distinguish what was true and what was false? -- I would not be in a position to explain that, because I cannot quite remember.

Well, let me put to you that your attempt in your evidence-in-chief to involve organisations in your activities, in fact you have in fact been throwing stones yourself, is false? The fact that you attempted to show that there was co-ordination between the people of Sharpeville and Sebokeng and the people of Parys was false. The fact that you tried to connect your personal activities with any local or national organisation is false. What do you say to all those? -- I would like to explain to you, please. At the time when I was arrested I was being forced to say anything and therefore things that I said there I said because of trying to protect myself from being hit.

COURT : What counsel puts to you is that all these things which he has enumerated of which you told the Court, are false? Do you agree or disagree? -- I agree with him that this is not true.

HERONDERVRAGING DEUR MNR. FICK : Geen vrae. (30)

GEEN VERDERE VRAE.

HOF VERDAAG.

... / HOF