

(TRANSVAALSE PROVINSIALE AFDELING)

SAAKNOMMER: CC 482/85

DELMAS

1986-09-16

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)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS:

LUBBE OPNAMES

VOLUME 151

(Bladsye 7 519 - 7 540)

MR BIZOS : The application is brought in terms of Section 167. Your Lordship would probably remember it more readily as the erstwhile Section 210 of the previous Act, which reads :

"The Court may at any stage in criminal proceedings examine a person other than an accused who has been subpoenaed to attend such proceedings or who is in attendance in such proceedings and may recall and re-examine any person including an accused already examined at the proceedings and the Court shall (10) examine or re-call and re-examine the person concerned if his evidence appears to the Court essential to a just decision of the case."

It seems that we are going to always have provincial differences of opinion in practically everything that arises in this case.

COURT : It is a good thing that there is an Appellate Division.

MR BIZOS : But in our respectful submission, Your Lordship, for the purposes of this case, does not have to go into (20) the apparent conflict between the judgment in S v KANDILE 1974 (3) SA 774 (Transkei) at 775 where MUNNIK C.J. as he then was, sets out a test which has been criticised in this division in S v M 1976 (4) SA 8, a judgment of CILLIERS, J. This goes - the difference is really this that MUNNIK J. says that Your Lordship has to grant the application for a re-call and at 775 D he puts it this way :

"The refusal of a request to recall a witness for cross-examination or even for further examination, is a power that should be exercised by presiding officers (30) sparingly/...

sparingly and then only in the rare cases where it is clear to the presiding officer that the request is made frivolously or as part of a deliberate delay in tactics, design to secure for the party concerned or his attorneys some unfair advantage over the opponent."

That is the test that MUNNIK, J. would have the court apply. In S v M CILLIERS, J. criticises this test. At page 10 H after quoting the passage that I have read to Your Lordship he says :

(10)

"With respect I do not think that the Court's discretion to grant or refuse an application for the recall of a witness for cross-examination should be confined to cases where the request is made frivolously or as part of deliberate delaying tactics. That the court has a wider discretion appears from various judicial statements on what was the duty of the Court in regard to the conduct of a trial and the way in which the court should exercise its discretion about the production of evidence so as to ensure a fair trial."

(20)

And CILLIERS, J. quotes the case of R v GANI 1958 (1) SA 102 (A) 108 and quotes the brief passage from SCHREINER, J.'s judgment. Your Lordship will recall that the GANI case was the body in the disused mine shaft. SCHREINER, J. said :

"A trial court must be accorded all proper powers to control the length to which parties should be permitted to go in investigating matter of a subordinate nature on the fringe of the case. It is of some importance that a trial should not be unduly prolonged by an over-elaborate examination or minute details which

(30)

cannot/...

cannot materially affect the central issue."

We want to argue this case on the basis of that dictum, by referring Your Lordship to some of the facts, but what we submit is a correct approach in the particular situation.

The case that we would urge Your Lordship to follow in these circumstances is the case of R v MAKHUDU 1953 (4) SA 143 T per BLACKWELL, J. in which LUDORF then acting concurred, if my memory serves me correctly. We submit that the test that is laid down by BLACKWELL, J. is the correct one.

The facts may be instructive in that a clerk working at (10) the university was on the opinion of a handwriting expert guilty of a forgery. The evidence of a handwriting expert was for all practical purposes the only evidence. Save that, a witness gave evidence that the finger-print was apparently found on the file on which the forged document was in.

COURT : The clerk's fingerprint?

MR BIZOS : The clerk's fingerprint. No questions were asked by the legal representative of the witness about this, but when it came to the argument stage the question arose did he have access to this file in the ordinary course of (20) his duty. Your Lordship will hear BLACKWELL, J. in his robust way, he would have been surprised if the clerk had not handles the file anyway, but any way the application was refused on the basis that there was ample opportunity to put the matter and it was not ... (Court intervenes)

COURT : The application was to recall?

MR BIZOS : The application was to recall in order to put ,... (Court intervenes)

COURT : Not the fingerprint expert?

MR BIZOS : No, but the person who had produced the file. (30)

COURT/...

COURT : In court?

MR BIZOS : In court to say that the accused would or might reasonably have had access to the file for obvious reasons. If the fingerprint could have been explained, the expert's evidence would have been uncorroborated. The application to recall this witness, was refused by the court of first instance. His Lordship at page 144 D says the following :

"This question of recalling a crown witness for cross-examination came before my brother STEYN (later chief justice) and myself on 31 July in the case of (10)
MONOSI v R 1953 (1) PH H131." (May this be my contribution to this library's accuracy, that the reference in the law report is wrong. It is 1953 (2) PH H131 and not (1) as given in the law report.) "In which much of the same circumstances existed and I have expressed the opinion then and I reiterate today that magistrates should not deny a request that a crown witness be recalled for further cross-examination, unless they think that such a request is unreasonable or obstructive. The whole problem before the court is (20) to arrive at the truth. You should not convict an accused person upon testimony led by the crown until you have probed the testimony to the fullest legitimate degree. It sometimes happen that the point which should be explored immediately in cross-examination is not explored. In the earlier case I have mentioned it was because of a change of legal advisers, but whatever the reason might be, my own feeling is that courts should lean over backwards (if I may use that phrase) in assisting the defence to bring about (30)
any/...

any points which they are anxious to explore. No prejudice is suffered by the crown. No harm is done to anybody and that all that results is that the accused is given a fairer trial than he might otherwise receive. In the present case it was patently an error of judgment on the part of the magistrate to have excluded the evidence et cetera and the conviction was set aside." What happened is, that after the witness that we wish to have recalled gave evidence before Your Lordship ... (Court intervenes) (10)

COURT : That is I.C. 8?

MR BIZOS : I.C. 8, gave evidence before Your Lordship. He gave evidence in another case and a certified copy of that record is in our possession. He gave evidence at some length and he was cross-examined at some length, more particularly in relation to his identification of the accused in that case and more particularly as to what had happened at the meeting at the Catholic Church Small Farms early on the morning of 3 September. Let me assure Your Lordship that I have gone through this evidence and the witness has, we (20) will submit in due course, in material respects, contradicted himself.

Firstly, let me deal with the meeting of the early morning of the 3rd. He contradicted himself as to what was happening on his arrival. He contradicted himself.- If one compares Your Lordship's record with the record before the other court. He contradicted himself as to precisely what happened there and we submit that those facts are facts which came into being after the witness's cross-examination was finished in this case and we are entitled, with (30) respect/...

respect, to put to him those contradictions, because they most materially affect his credibility. I have tabulated the contradictions. I would appeal to Your Lordship not to ask me to enumerate all of them, but to take an assurance that a perusal of the record will make it clear that those contradictions are there, but that is perhaps not as important as the other aspect as to what happened at the house of Caeser Motjeane. Your Lordship will recall that in this case he pointed out certain persons as being in the immediate vicinity without actually taking any active part, but in (10) the trial in the other court he pointed the finger at one of the accused as having taking a very important part. He in fact pointed out the person that was really responsible for starting the arsen, the end of a stick with a "lap" and fire. He pointed that person out.

COURT : Should you not be more specific? I cannot without any facts before me decide this matter. Are you going to place before me that record and indicate to me on that record where a contradiction is, comparing it with our record? (20)

MR BIZOS : I can do that, but what I would submit is that I will be guided, I have it ready, by Your Lordship's ...
(Court intervenes)

COURT : No, I cannot tell you how you should run your application, but I would think that before a court recalls a witness who has given evidence some seven or eight months ago for further cross-examination or putting certain inconsistencies to him, there at least have to be some good grounds advanced and that will have to be shown to the court not merely on the say so of counsel. (30)

MR BIZOS/...

MR BIZOS : If I take Your Lordship's point, then I will have to do that, but let me just give Your Lordship the overall effect of that. The overall effect of it was that for the first time something that this witness did not mention to Your Lordship, he there says that he actually took cover behind a wall and much of the action went past him because of his taking cover behind this wall. He had to concede that he did not see.

COURT : He did not see what?

MR BIZOS : . What was happening at the vital period, despite(10) his evidence-in-chief in that case to the contrary.

Also he contradicted himself between what he said here and what he said there and when passages of the record were read to him, he denied that he said the things that were read to him out of an official copy of the record and his excuse was he did not accept what was being put to him, because that was not said by him. He in fact informed that court that he remembered well that Your Lordship told Mr Bizos that he had not recorded the evidence correctly. He really thought that he was being cross-examined on my notes(20) and that was his excuse. I am sure Your Lordship must have at one or other stage corrected my putting to him.

COURT : May be clarified a wide statement.

MR BIZOS : He said that was written down wrongly. We submit that these are matters which are material.

If Your Lordship wants a comparative table, if Your Lordship wants to receive the record in the other cas, then I will hand it in. There is a certified copy available. There is one copy available at this stage.

COURT : You can use it and I can use it afterwards. (30)

MR BIZOS/...

MR BIZOS : Could I just give Your Lordship the comparative pages?

COURT : Yes.

MR BIZOS : That in relation go the meeting of the 3rd - I will give the references of this trial first.

COURT : Have I got the name of that other trial? It will appear from the case?

MR BIZOS : Yes, it is the Mashela case. Your Lordship will see that on my assistance the name has been deleted because it was typed on top of the record. If Your Lordship com- (10)
pares the following pages in relation to the meeting 773 ... (Court intervenes)

COURT : Volume? In our volume?

MR BIZOS : I am sorry, I do not have the volume.

COURT : You can that to me later on. 773 compared to?

MR BIZOS : Your Lordship as to take three pages, 773, 775 and 1 001. They are to be compared with Mashela 541 and 664. The contradiction we submit in that regard relates to what was happening on his arrival at the meeting at the Catholic Church on the morning of the 3rd. Then Your Lordship (20)
will see that at 775 of the Baleka case that there is no suggestion that he went to this meeting or the march against his will.

COURT : To the meeting or on the march?

MR BIZOS : To the meeting and to the march. There is no suggestion of that. He says on Mashela 663 to 665 that he was forced to go to the meeting and that he was forced to actually go onto the platform. Then in the Baleka trial at 999 he told Your Lordship that he was there from the beginning of Raditsela's speech and if Your Lordship compares (30)
that/...

that with the Mashela case, there is a group of references here, 539, 647, 701 to 702, 692 and 693 where he says that he arrived late, the meeting was in progress, two speakers had already spoken and that Raditsela was busy speaking when he arrived there. Then as to whether he had heard - the next contradiction I submit - Raditsela utter threatening words before or not, we submit that there is a contradiction. If one compares Baleka 1 001 with Mashela 656 to 658.

In relation to the number of persons present at Small Farms, we are still there, in the Baleka case page 1 001 (10) two hundred people present and if that is compared with Mashela 545, 646, he says people were there in their thousands rather than in their hundreds.

Then at page 780 of Delmas he puts a number of people present but does not put accused no. 13 there at all. On Mashela page 650 he says that he saw accused no. 13 there and that no. 13 had asked him if he, the witness, had prepared a poem for the occasion.

Then we turn to the march. I have the references. I do not know whether your Lordship wants the whole of it. (20)
COURT : The point is a relevant point, materially relevant. I would like to know the information. I do not want smallish points of no consequence.

MR BIZOS : In view of this application I would appeal to all concerned, to regard this witness, if Your Lordship does grant the application as still being under cross-examination and that we are entitled, with respect to investigate this without losing any element of surprise. If Your Lordship requires it, I will give it to Your Lordship.

COURT : Well, at the end of this application, you will (30)
have/...

have to address me on whether I should allow you to have full cross-examination or whether I should allow you to put the inconsistencies to the witness. That is another matter that we will have to sort out.

MR BIZOS :I will not seek to traverse the whole ground again. I do not think I am entitled to that. In relation to the march Your Lordship will compare page 783 of the Baleka record. He says that people were forced to take part in the march and that this was done on the instructions of Raditsela and on their own and at the Mashela trial (10) page 546 he says that he only saw one person doing this and that is Dorcas Raditsela. The only person that he saw pulling people into the march. As to whether the whole march was singing, whether all the people in the march were singing, Your Lordship will compare in Your Lordship's record page 782 with the Mashela record page 550, that only a portion of approximately two to three hundred people were singing and others not.

Again there is a contradiction between the songs that were sung, where as on page 782 he told His Lordship that (20) he only remembered the song Siyaya and could not remember anything else. In the Mashela case page 546 to 547, he mentions a number of songs including Siyaya e Houtkop. At page 780 in the Baleka record he says that Simon Nkoli, that is accused no. 13 before Your Lordship, asked him to act as a marshall. At page 661 he says that accused no. 5 did so.

In relation to the position taken by him on the march page 1 021. Your Lordship will recall that he told Your Lordship that he was, because of his duties as a marshall, (30)

he/...

he went backward and forward on the march. At page 667 in the Mashela case he said he remained in front. This appears not to be such an important contradiction, but if it is taken in particular context when Your Lordship reads it, Your Lordship will see that he actually switched to going away from the front at the time when he was in difficulty under cross-examination and Your Lordship will see the reason for that particular switch.

Then he told Your Lordship at page 1 006 that the destination was for Mr Ganz and Your Lordship will recall (10) that when he was cross-examined on the probability of that with Raditsela saying destroy anything along the way, he told Your Lordship in cross-examination that that would happen only after we had been to Mr Ganz with our protest march. Then he is cross-examined on this in the Mashela case and in my respectful submission Your Lordship will see that he contradicts himself and self-contradicts himself in the Mashela case at the following pages: 661, 667, 669, 670 and 671. We would submit that it is not only the contradictions and self-contradictions, but also on those (20) pages Your Lordship will see that once that material is placed before Your Lordship that the witness is inventive in trying to explain a way in probabilities which he faces when being cross-examined. He was asked why if there was a poster with Kill Mahlatsi for instance and the intention was to only do it after he had been to Mr Ganz, Your Lordship will see a facetious answer there.

Then in relation to the events at the late Caesar Motjeane's house. Your Lordship will see at page 1 007 that under cross-examination he told Your Lordship that a (30) dozen/...

dozen or two people broke away from the march as a result of the unusual events that were taking place at Caesar's house and that the march itself, Your Lordship will recall the message there, that they may have formed themselves in the little lane but what he says in the Mashela trial is that a thousand people went along. In order to show that the witness is just completely unreliable, Your Lordship will see that contradiction.

COURT : What is that reference?

MR BIZOS : I am sorry. 553. Then there is a comparison (10) between page 786 as to when the shots were fired with page 553 and when the fence was uprooted. Your Lordship will compare his evidence before Your Lordship page 787 where a detailed description is given to Your Lordship of the person he referred to as a boy with a 5 litre container while shots were being fired. Your Lordship will compare that with page 581 of the Mashela trial. Your Lordship will see that he moves himself away to a place from which he would not have been able to see the things that he described to Your Lordship. (20)

Then, we submit that if Your Lordship reads the evidence inbetween 581 and 584 and compares that with pages 787 - no, I have broken my rule. If Your Lordship compares pages 789 to 790 in this case with 581 to 584 in the Mashela case Your Lordship may be persuaded that when, the witness described what he saw, is unreliable and that his identification of accused nos. 2, 5 and 13 being in the immediate vicinity, although inactive, may be suspect, because of the fact that he had taken cover behind the wall together with another large group, a fact which he did not mention to Your (30)

Lordship/...

Lordship.

Then on page 1 080 to 1 081 in the matter before Your Lordship the witness told Your Lordship that he was watching what was happening. This we would submit is of fundamental importance and if nothing else existed that the recall of the witness is ... Our Learned Friend Mr Sogit(?) at page 605 of the Mashela case puts the version appearing on page 1 080 to 1 081 to Your Lordship and the contradiction is put to him so that Your Lordship has the nature of the contradiction "Here you say you took cover and you did not know (10) what was happening. Look what you have said at the Delmas trial." There he denies that he said this to Your Lordship. In part he blames the interpreter in part for wrong interpretation. Your Lordship will find that he his denials there.

Then he is again pressed for this on pages 610 and 611 but he denies that he said what was quoted to him from a transcript of these proceedings. At pages 612 and 613 in order to justify the contradiction, is the passage in which he tells His Lordship VAN DER WALT, J. no, he is right, (20) he never said those things, it was Mr Bizos who wrote the thing down wrongly, but I want to assure Your Lordship that our learned friend, Mr Sogit, was not quoting from my notes, but from the official court record.

Then for some reason or another - perhaps I better not comment. At 789 to 790 he puts the people whom he recognised outside Caesar Motjeane's house before Your Lordship Without having done so in this trial, he puts Raditsela at Motjeane's house .

The next aspect is in relation to his interrogation.(30)

We/...

We submit that this is of some importance. He denied to Your Lordship at pages 973 to 975 that the police during the course of his interrogation were particularly interested in accused nos. 2, 5 and 13 before Your Lordship. He says the opposite at page 703 in the Mashela trial. He goes further, it is still the same point but slightly off on a tangent that at 622 to 623 he says that he was shown photographs of people during his interrogation and more particularly those who attended the meetings.

Then Your Lordship will recall that he was asked a (10) number of times before Your Lordship as to when for the first time the witness mentioned Raditsela's speech of the morning of 3 September. He gives the version at page 994 in the trial before Your Lordship. He is cross-examined on what he is told Your Lordship and Your Lordship is to find that cross-examination on page 703 in the Mashela's case. He gives a different version, the version before Your Lordship is put to him and he says that the version that is read out to him purporting to be the Delmas case, is false.

Then on page 944 in the record before Your Lordship (20) the witness denied that he was shown a list of suspects of Motjeane's - responsible for Caesar Motjeane's killing - page 944. There he denies that that is so. It is very crisp, line 19 to line 22. In the Mashela case at page 682 he admits that EXHIBIT E was shown to him during his interrogation. There is no reference for this in Your Lordship's trial, but he admits that during his detention he had hallucinations in which he could not distinguish between fantasy and reality. Your Lordship will find that in the Mashela trial page 684 to 685. (30)

Then/...

Then there is a contradiction about the circumstances of his interrogation. At page 980 lines 17 to 23 he repeats the refrain throughout his evidence about his interrogation to the effect that everything they wanted to know is what is contained in my statement, but we submit that a different statement is made in the Mashela trial page 685 lines 15 to 20. He says that the reason for the length of his interrogation was explained to him, because I did not give them the suitable answers or because I did not give them something which they wanted out of me. (10)

Then if Your Lordship compares page 983 before Your Lordship again where he repeats this refrain, we will submit that at a certain stage in his cross-examination here he said "No, they only wanted to know what is in my statement." That is to be found again at page 983. If Your Lordship compares that with page 707 line 10 to 21 in the Mashela trial, he says that tremendous pressure was put on him in relation to the suitable answers or something that they wanted out of me and that he says that he did not know whether he would have deviated from his course in maintaining that presumably that he did not know some things if it were not for his family and his health. (20)

Then finally, there is a clear and categorical statement said in various ways and on a number of occasions in the Mashela trial between pages 703 and 705, that he did not mention Raditsela's speech in his statement. They were only interested in the names of people who attended meetings and who were at Caesar Motjeane's place.

K464 We have a situation where these facts ... (Court intervenes?) (30)

COURT/...

COURT : Just a moment. This is 703 and 705. With what is that to be compared?

MR BIZOS : With the previous - the 983 the reference that I last gave you from Delmas.

We submit that even on the most stringent test that one has to show that one is eminently reasonable, we submit that that sort of contradiction must of necessity weigh heavily with members of the court, may I say in parenthesis that this according to the case is a decision for Your Lordship alone. (10)

On whether or not this is relevant, can be tested in a simple manner. This witness has given evidence at length before another court. I am not for one moment suggesting that Your Lordship is bound by the decision of any other court on the question of fact, but if this witness is recalled, we will, we submit, or we might establish the following. That he contradicted himself and gave so un satisfactory evidence in relation to identification, at any rate, in relation to the happenings of the morning of the 3rd, that another court, actually acquitted one of (20) the persons that was well-known to him and who was said to have played an active role in the killing of Caesar Motjeane. Without wishing to address Your Lordship on the remoteness ... (Court intervenes)

COURT : But now was his evidence rejected?

MR BIZOS : It may be because of the contradictory nature of his evidence.

COURT : Was it specifically rejected on the basis of the contradictory nature of the evidence?

MR BIZOS : No. I have a copy of the judgment which I will seek/ ... (30)

seek to hand in and I can hand it in now if Your Lordship wants it.

COURT : I am not very interested in the copy of the judgment. You are now telling me that it may be that because that court acquitted a person, we should draw certain conclusions?

MR BIZOS : No.

COURT : Therefore I ask you, if that is so, was his evidence rejected and on what basis?

MR BIZOS : No, I do not want to put it on that basis.

I merely raised it on the question of relevance. The (10)
witness identified a person as actively participating in the events that led to Caesar Motjeane's death.

COURT : Well, it may be that Mr A says the position is A Mr B, an accused, says the position is B, the State has not proved beyond reasonable doubt that the position is A and therefore Mr B is acquitted. It does not mean that Mr A's evidence is rejected.

MR BIZOS : I am not putting it that way. I am only saying that it goes to the root of the matter with respect, in view of his identification of accused before Your Lordship. (20)
We have a situation that in a subsequent trial the witness for the first time says that he took cover behind the wall. Surely, in our respectful submission we are entitled to put this to him that he went behind this wall. We are entitled ... (Court intervenes)

COURT : Did he say he did not peek over the wall?

MR BIZOS : Your Lordship will see from the passages that My Learned colleague Mr Soggit ... (Court intervenes)

COURT : Did he close all the holes in the wall?

MR BIZOS : He closed all the holes in the wall, so that (30)

I/...

I think, with respect, that Your Lordship will see that these are not peripheral matters. It may well be that if a witness is cross-examined on credibility only, if the issue is as to whether or not he committed fraud and we find out that there is a contradiction as to whether or not he slapped his wife perhaps it will not be a good enough reason, even though it is a contradiction, to recall him, but where the contradictions appear to be directly on the points in issue, we submit with the greatest respect that Your Lordship will have no hesitation in directing (10) the State to recall the witness for the purposes of further cross-examination. The extent to which Your Lordship will allow this, will no doubt be a matter of which - Your Lordship will no doubt as Your Lordship has kept a tight control over the proceedings, but that is not in issue at this stage as to whether he should be recalled or not.

I have a certified copy of the record, if Your Lordship wants it.

COURT : Give me some information. How long did it take you to work this out? How long will it take me to work (20) through that copy and compare it with our own record? Can it be done in a day?

MR BIZOS : I had assistance. Mrs Nichols went through the record and drew my attention to a number of them, but then I did read it and I made the notes that I have made in my handwriting. It is not easy or a task that one wants to do guster, because it is really going over matter that one has dealt with already, but I do agree that it is not an easy task. What we have done in order to avoid having full copies of the record is that we have actually made (30) photostatic/...

photostatic copies of the pages so that people can satisfy themselves as to - that it has been taken in proper context and we will naturally make those available or if the State and the learned assessors insist for a full record, we are obliged to make it available. We will be in Your Lordship's hands in that regard.

MNR. FICK : Kan ek net meld, ek is heeltemal onverwags gevang.

HOF : Wil jy dit vinnig deurlees in die teeverdaging of die eteverdaging? (10)

MNR. FICK : Ek het die onderneming gehad dat hierdie ding vir my voor die tyd gegee sou word. Ek was onder die indruk gebring dat hierdie rekord is nog nie gekry nie. Ek het nou vir die eerste keer gehoor hy is gekry.

HOF : Wat doen u aan die hand?

MNR. FICK : Mag ek aan die hand doen dat daardie notule eers vir die Staat gegee word dat ons afdrukke hierso maak, dat ek ook kan voorberei, want ek kan onmoontlik - dit is 34 verskillende punte wat genoem word wat ek moet deurwerk.

HOF : Wanneer is u gereed om my toe te spreek daarop? (20)

MNR. FICK : Dit is vandag Dinsdag. Mag ek vra vir Donderdagoggend, dat ek môre heeldag deur hierdie ding werk.

HOF : Die probleem is, dan sit ek en wag intussen. As u die rekord vir my kan gee vandag, dat ek ook 'n bietjie kan lees aan die punte, dan is daar nie soveel tyd gemors nie. As ons eers vir u 'n kans moet gee en dan vir my, gaan daar te veel tyd verlore.

MNR. FICK : Ek wil aan die hand doen dat die Staat die rekord kry en 'n afdruk maak en al gaan u terug Pretoria toe, ons kan sien dat u vandag nog 'n afskrif kry van die rekord. (30)

MR BIZOS/...

MR BIZOS : We can deliver a copy of the record to the State this afternoon.

COURT : That would be in order. What do you say as to an adjournment until Thursday morning? I cannot see it being done faster than in a day.

MR BIZOS : If Your Lordship pleases. I must also disclose to Your Lordship that there is a possibility of course that we may ask Your Lordship, make a similar application in relation to possibly two other witnesses.

COURT : Now why are we doing this peacemeal? Can we not(10) do it altogether?

MR BIZOS : Well, there is a problem about that and that is that we are finding it difficult to get permission to show Your Lordship or the State the record if we take the orders that have been made literally, but I may say that steps have been taken to get the permission. We hope to get some clarity today or early tomorrow morning in that regard.

COURT : Well, as long as you bear in mind that a discrepancy or a contradiction has to be, as far as I am concerned, a material contradiction, otherwise I would not go through(20) this process.

MR BIZOS : I want to assure Your Lordship that we are not making this application - well, I have given Your Lordship what we have done. If the references that I have referred Your Lordship to bear out what we have to say, we submit with respect that this is a clear case. The other cases are also material contradictions with one possible difference. That their evidence has no direct material bearing on the accused. What I mean by direct material bearing, is that there were witnesses who gave - well travelled witnesses(30)

who/...

who gave evidence of a general nature about the overall conspiracy.

COURT : You mean whether a man was in Quibaxe in June of in July?

MR BIZOS : It comes a little nearer than that, but that is perhaps a material difference. We have this in mind and we have done some work on it and we have asked for permission and we believe that this will be forthcoming. One is from Natal and the other is from a local judicial officer.

COURT : Well, I cannot say anything about that until I (10) have heard that application, but in the meantime I will deal with this one. Any objection to the matter standing over to Thursday?

MR BIZOS : No. We are working on final admissions and such matters. I understand that the State has no other witnesses.

COURT : What solution do you have for our Huhudi transcript?

MR BIZOS : I do not know. I have not heard anything further.

COURT : If there is a hitch, we may be obliged to give that whole tape to an official court interpreter and ask him to go through it. (20)

MNR. FICK : Mag ek meld wat mnr. Bizos nie weet nie, ons het intussen die inspekteur van tolke gekry. Hy sit by mnr. Jacobs-hulle en as dit op die punt kom, is hy bereid om die hele transkripsie oor te doen, heeltemal h nuwe een van Huhudi spesifiek.

MR BIZOS : First of all, I do not know how Your Lordship can be asked to do anything about it. A consent will have to be forthcoming one way or the other.

COURT : If there is no consent, and there is still a hitch, I will appoint an interpreter to do it on my behalf and (30)

take/...

take that transcript as an official transcript. That will be the end of the matter. Whether anybody likes it or not, I am not concerned.

MR BIZOS : We hope that that will not become necessary, because we tried hard, the accused tried hard and as indicated a person at the university said that as it stood it could not be ...

COURT ADJOURNS UNTIL 18 SEPTEMBER 1986.