

SAAKNOMMER: CC 482/85

DELMAS

1986-09-22

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

COURT RESUMES ON 22 SEPTEMBER 1986.

MR BIZOS : My Lord, I hope that it is a hypothetical application. The medical orderly at the prison has asked for leave to confirm an appointment for Mr Matlole, accused no. 17 on 1 October 1986. We earnestly hope that we will be finished before that, but in case if the appointment could be made.

COURT : In case we sit on that particular day, permission is granted.

MNR. JACOBS : Die aansoek van die verdediging spesifiseer(10) vyf weersprekings. Ek moet toegee daar is die weersprekings in 'n groot mate in daardie opsig en is dit my gevoel en my aansoek aan u dat as u hierdie aansoek sal toestaan, dat dit sal beperk word tot hierdie aangeleentheid. Die getuie het reeds volledig getuig. Hy was volledig onder kruisverhoor geneem en ek vra dat hierdie aansoek sal wees om op te klaar wat onduidelik is en dat dit nie sal wees om die getuie van voor af weer onder kruisverhoor te neem nie. Verder kan ek eintlik hierdie saak nie verder voer as dit nie.

IN THE SUPREME COURT OF SOUTH AFRICA(TRANSVAAL PROVINCIAL DIVISION)

DELMAS

1986-09-22

THE STATE

versus

P.M. BALEKA and 21 OTHERS

JUDGMENT ON APPLICATION FOR RECALL OF WITNESS I C NO. 6

VAN DIJKHORST, J. : Mr Bizos on behalf of the accused applied for the recall of the witness I C no. 6. It appears that (10) since he gave evidence in this court, he testified in the case of S v TSETSE ELIAS MOKELE, Case no. 14/1/99/86 in the Regional Court at Pretoria. This accused in Pretoria is the same person to whom reference was made in this court by the name of Stompie Mokele.

Prima facie it appears that there are certain conflicts between the evidence that he gave in this court and the evidence that he gave in the court in Pretoria. There are three aspects to which I will refer.

In this court he testified that he made three missions (20) into South Africa from Lesotho. To Germiston, to East London and to Queenstown. At Queenstown he was arrested. In the court at Pretoria he testified that just before his mission to Germiston he accompanied one Old Man for a day into South Africa and returned to Lesotho and that this occurred in

mid/...

mid May 1985. This appears from pages 153, 166, 167 and 171 of the Pretoria record. It is clear that this is the same occasion to which he referred in this trial, but in this trial he mentioned that he accompanied Stompie and did not mention that he accompanied Old Man. This aspect of the evidence in this trial was put to him in the Pretoria trial and he stated there that he had made a mistake in Delmas. He never accompanied Stompie into South Africa.

Now, if the record is correct, this prima facie appears to me to be a conflict which may be material. (10)

The second instance is the following. In the Pretoria trial he testified that he never gave Stompie any pamphlets and that he knows nothing about anyone else giving Stompie pamphlets. This is in conflict with the evidence in this trial where he told this court that the political department of the ANC distributed pamphlets and that they (that is then the political department) handed to Stompie certain pamphlets and gave him advice on the rents issue in the Vaal. Prima facie, if the record is correct, it appears to me to be a conflict which requires an explanation. (20)

Thirdly, in this court he stated that Stompie was a member of the Vaal Civic Association and that he knew it because he had taken his biography. In the Pretoria case he said that he had not taken the biography of Stompie, he had only read it and that he was not told by Stompie that he is a member of the Vaal Civic Association. Actually, he never had a direct conversation with Stompie until after Stompie's detention. If the record of the Pretoria trial is correct, this appears to me to be a conflict which requires an explanation. (30)

I/...

I therefore recall the witness I C no. 6 on these points mentioned by me, which I intend putting to him, as soon as he is available, for clarification purposes.

HOF : Mnr. Jacobs, wanneer is die getuie beskikbaar?

MNR. JACOBS : Die getuie is hierso. Hy het net 'n malaria-aanval, maar ons het gesorg dat hy nog hier by die hof is.

HOF : Hoe lank gaan die aanval duur?

MNR. JACOBS : Ons het gepraat met hom vanoggend. Hy is bereid om te kom getuienis gee. Ek noem dit maar net dat hy het die aanval. Hy het gelê tot nou toe en hulle het hom gebring nogtans hiernatoe. Ek weet nie hoe ernstig so 'n aanval is en hoe lank dit duur nie.

HOF : As u iets anders het om mee aan te gaan kan u intus-(10) sen daarmee aangaan en dan kan die distriksgeneesheer miskien na die getuie kyk.

MNR. JACOBS : Ek was van plan gewees om die V reeks - om die regstellings wat daar gemaak moet word in die hof te doen, maar My Geleerde Vriend, mnr. Bizos, het versoek dat ons dit liever op 'n skedule doen. Ek wou dit persoonlik op die bewysstukke doen. Hulle het blykbaar 'n skedule opgetrek.

HOF : Sal dit nie vir my makliker wees as u vir my sê waar dit is nie, anders moet ek self gaan soek of gaan dit lank duur? (20)

MNR. JACOBS : Ek het gedink om met elke bewysstukke hier in die hof te handel en na die bladsy te gaan en te sê wat is die verskil wat daar is en die regstelling wat gemaak moet word.

HOF : Ek het gedink dit sal vir my makliker wees as u vir my aandui waar dit is en dat ek dit net in die transkripsie reg maak, eerder as wat ek self gaan staan en soek by die huis, behalwe as dit nou 'n onbehoorlike lang tyd gaan duur.

MNR. JACOBS : Dit sal nie vreeslik lank wees nie, maar ons sal deur al die bewysstukke moet gaan. Daar is woordjies(30)

wat/...

wat reggemaak moet word. Dit is nie enige ingrypende verandering nie. Dit gaan op woorde. My persoonlike gevoel was gewees dit sou miskien makliker gewees het in die hof om net die bewysstuk te vat en te sê daardie bladsy, daardie reël en daardie woord.

HOF : Dit beteken nie dat ek dink dat dit nie nodig is om 'n skedule in te handig nie. Dit sal nodig wees omdat u ons nie kenis gegee het nie, het my assessore nie die bewysstukke hier nie. So, dit is 'n bietjie ongemaklik. Alternatiewelik kan u die skedule opstel en vir my klerk gee en dan kan (10) hy maar die korreksies aanbring. Dit is ook 'n moontlikheid.

MNR. JACOBS : Kan ons dit so doen, want dit is die versoek van mnr. Bizos. Ek dink wat hy in gedagte het is om eers vooraf te gaan seker maak volgens sy skedule dat dit is die plekke waar mnr. Kam en ek ooreengekom het dat daar wel woorde is wat verander moet word.

HOF : Wat is u houding, mnr. Bizos?

MR BIZOS : There are so many copies of the transcripts, but I think that it would be unwise with respect not to have a schedule which is identified on record relating to each (20) one of these. We will then be in Your Lordship's hands whether Your Lordship wants us to go through the schedule in open court or whether either the attorneys or Your Lordship's registrar or both can correct the copies.

COURT : Well, I think that can be done administratively by my registrar and the attorney. That should be easy enough.

MR BIZOS : But I do feel with respect that rather than Your Lordship sitting and having been told to put a "have" instead of "has" there or a square bracket here and a round bracket there and that sort of thing, there will be an errata (30) sheet/...

sheet which will cover all these and then each copy can be corrected. I think that is a wiser way to do it. I am asked to inform Your Lordship also that the same exercise has been done in relation to the translation of documents rather than having Your Lordship listening to the ... (Court intervenes)

COURT : Yes, that is quite in order, but I must be certain that I am working from is absolutely correct, because if there is a mistake, it may influence the result, one way or the other.

MR BIZOS : This is so. This is why we want to avoid it and once there is a schedule the possibility of a mistake is (10) diminished. What we suggest is that the question of the witness having undergone the unfortunate experience myself at a younger age, if he has a temperature, it would be unwise to call him. If it is a slight temperature it does not matter. If he has a high temperature - usually mid morning is the worst time.

COURT : We can take a short adjournment so sort this out.

MNR. JACOBS : Kan ek dit so stel, ons gaan nou reël met 'n distriksgeneesheer om hom te kom sien en vir ons te sê wat is die posisie. Dan kan ons vir u in kamers kom inlig (20) wat is die posisie.

HOF : Het u enigiets anders om mee aan te gaan?

MNR. JACOBS : Op die oomblik niks nie. Dit is die finale stuiptrekkings. Dit is maar net die dokumente.

HOF VERDAAG.

HOF HERVAT.

MNR. JACOBS : Ek kan dit miskien net op rekord stel dat ons het verdaag dat ons die getuie na die dokter toe stuur, waar die dokter hom gesien het en dat die dokter sê hy ly op die oomblik aan griep en dat hy kan vandag sy kruisondervraging staan. (30)

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