

(TRANSVAALSE PROVINSIALE AFDELING)

SAAKNOMMER: CC 482/85

DELMAS

1987-03-10

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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COURT RESUMES ON 10 MARCH 1987.

COURT : Before the witness is sworn in, I would like to make a statement. It is the case for the State that the ANC called for the formation of a United Democratic Front which was to organise, mobilise, condition, politicise, inflame, indoctrinate, co-ordinate and/or activate the Black masses to participate in activities, deeds, projects, and/or violence whereby the Republic of South Africa is made ungovernable. It is the State's case that the UDF was formed with its aims, the unlawful overthrow and/or (10) endangerment of the lawful government by violence and/or threats of violence and/or by other means which include or intend violence. It is the State's case that the UDF knows that it must unite, organise, mobilise, politically incite, condition and/or activate the Black masses to participate in acts and/or violence whereby the Republic of South Africa is made ungovernable and that, to attain this goal, inter alia propaganda attacks are used. It is the State's case that the UDF adopted broad guidelines for a program of action and in furtherance of its aim to organise, mobilise (20) and activate the Black masses around day to day issues, certain campaigns were decided upon. On 5 and 6 November 1983 the National Executive Council discussed a strategy to further the ANC and South African Communist Party and/or UDF's campaign against the new constitutional policy of the government by a million signature campaign against the constitution, so it is alleged. It is alleged that this campaign was to improve the organisational capabilities of activists and general organisation of the UDF to strengthen affiliated organisations and to create enormous propaganda (30) against/...

against the government and its policies. This is the State's case. It has to be proved. I express no opinion on the State's chances in this respect. What is clear is that the million signature campaign is an important facet of the State's case. It follows that it merits dispassionate and unfettered consideration by judge and assessors.

When I approached my learned assessors to act in that capacity, I enquired whether they had had any relationship with the UDF. The answer was negative in both cases. Yesterday, during the course of the morning, accused no. 6 was cross-(10) examined on the million signature campaign. During the tea adjournment in a discussion of the case the learned assessor, Dr W.A. Joubert, informed me that he had in fact participated in the million signature campaign by signing one of its declarations. An example is EXHIBIT AS1 document 2 which has as its logo the UDF logo and on top One Million Signature Campaign and then the following declaration is set out to which the signatories subscribe :

"We, the freedom loving South Africans, declare for the whole world to know that we reject apartheid, (20) we support the struggle and unity of our people against the evils of apartheid, we stand for the creation of a non-racial democratic South Africa free of oppression, economic exploitation and racism, we say no to the new constitution because it will further entrench apartheid and White domination, no to the Koornhof laws which will deprive more and more African people of their birthright, yes to the United Democratic Front, UDF, and give it our full support in its efforts to unite our people in their fight against the constitution (30) and/...

and Koornhof bills."

Whether the UDF's efforts to unite the people in their fight against the constitution, and inter alia the Black Local Authorities, that is the Koornhof bills, are unlawful and treasonable is one of the main issues in this case. I was perturbed at the implication of these facts and considered the matter from all angles last night. I also consulted the learned judge-president of the Transvaal Provincial Division. I have regretfully come to the conclusion that there is no option but to rule that Dr W.A. Joubert has to(10) recuse himself. I hold that Dr Joubert has become unable to act as assessor and in terms of Section 147 of the Criminal Procedure Act, no. 51 of 1977, I direct that the trial proceed before the remaining members of the Court.

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COURT ADJOURNS.

COURT RESUMES.

MR BIZOS : My Lord, during the short adjournment taken by Your Lordship we have been asked questions by our clients, the accused, to which we did not have ready answers in relation to the development that has taken place. In the circumstances we are constrained to ask Your Lordship to (20) grant us an adjournment till tomorrow morning so that we may consider the effect of Your Lordship's ruling and the departure of one of the members of the court and advise them and consider ourselves what course to take.

MNR. JACOBS : Die Staat het geen beswaar nie.

COURT : In view of the unfortunate circumstances, I can quite imagine that the accused are perturbed and I have full sympathy with their point of view. In the circumstances we adjourn until tomorrow morning at 09h00.

COURT ADJOURNS UNTIL 11 MARCH 1987.