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SAAKNOMMER: CC 482/85

PRETORIA

1988-06-22

DIE STAAT teen:

PATRICK MABUYA BALEKA EN 21

ANDER

VOOR:

SY EDELE REGTER VAN DIJKHORST EN

ASSESSOR : MNR. W.F. KRUGEL

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

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KONTRAKTEURS:

LUBBE OPNAMES  
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COURT RESUMES ON 22 JUNE 1988.

JOHAN VOLCHE POTGIETER: d.s.s.

EXAMINATION BY MR BIZOS: Professor Potgieter are you the director of the Institute for Planning Research at the University of Port Elizabeth? -- That is correct.

What does your institute do professor? -- We are full time engaged in research work, mainly in the soci-economic field, and relevant subjects.

And does your institute, besides yourself, employ persons qualified in the social sciences in order to do that research? (10)  
-- We have a full time staff of additional two research officers, two assistant research officers and three further admin and technical staff.

Do you public your findings in South Africa and overseas?  
-- Yes we issue various types of reports, research reports, fact papers and information bulletins which we distribute all over.

And is the result of your, would you look towards his lordship please professor, speak a little bit more loudly so that we can ... -- Ja. (20)

Is the result of your institute's labours relied upon by various government departments, agencies, employers, employer's organisations? -- Yes.

Trade unions and others in relation to the cost of living index, demands for higher wages and other purposes? -- Yes I can confirm that.

And is, in relation to the black people residing in various areas is the question of rent that they pay a matter to which your institute directed its attention at least from the early 80's? -- Coulc you just repeat please? (30)

Do/....

Do you deal with the question of rent? -- Yes I do.

In the black areas? -- In the black areas.

And have you published papers? -- I have published since 1971 papers on this issue.

Now how do you get the information as to what rent is going to be charged in each area? -- I get the information directly from the local authorities. Earlier on it was the administration boards but lately from the local municipalities, the black municipalities, either by means of personal visits or telephone calls or in writing. (10)

I have before me three reports, I do not intend handing them in my lord. Do they, are they reports that are issued by your institute professor? -- Yes, these are the reports.

And do people trained in the social sciences use your reports in, for comparative purposes and other purposes? -- Well I think I can say that, yes. It is used especially as mentioned earlier for this particular report for wage negotiations and for comparative purposes in assessing trends over time.

Now I want you to please have a look at EXHIBIT AAT.8. Your lordship may recall that your lordship at the time (20) admitted it but we had to say that at that time we would have to prove it properly in due course. That is really an attempt to prove the EXHIBIT AAT.8.

ASSESSOR (MR KRUGEL): It will take me some time to get mine out.

COURT: Yes go ahead Mr Bizos.

MR BIZOS: Now was AAT.8 shown to you professor? -- Yes I have seen this document.

And let us make it quite clear. You did not prepare this schedule, it was prepared by someone else? -- No the basic (30) figures/....

figures are from my report.

The figures are from your report. -- Yes.

And have you checked these figures against your report when the exhibit was shown to you? -- Yes I have checked the 1977 and the 1984 rental figures and they are correct.

And have you checked the calculations of the percentage increases, are they correct? -- I did make a quick check on some of them and they seem to be in order.

In any event that can be worked out by anyone with a calculator? -- Yes it is a simple calculation. (10)

But you did a test, did you do a test check in the time now available to you in relation to the percentage increases? -- Yes I did a spot check.

And did you find them to be correct? -- I found them to be correct yes.

And this schedule shows that there was a percentage increase of 469,50 increase in the rent in the Vaal from 1977 to 1984. Would you confirm that professor from the figures that are in your reports? -- Yes they are correct.

And for comparative purposes twenty other, approximately (20) twenty other places are mentioned giving the rent for the comparative period and is it clear that the Vaal triangle was the highest percentage increase of all the areas that appear on the schedule? -- Yes that is so, that is correct.

Now I want to, do you know the Vaal, the black housing in the Vaal triangle professor? -- I, in the early 50's, 1950's I did a housing survey there which took me all over Sharpeville and Sebokeng but since then I have been back once or twice in the early 80's to assess the rents from the local authorities.

Now in your assessment on your visit in the early 80's (30)

of/....

of the housing and services provided would you say that the housing and the services in the Vaal are far superior from those in Johannesburg, Pretoria, Springs, Krugersdorp, Kimberley, Brakpan, Uitenhage and the other areas that are mentioned there professor? -- No, I cannot say that. To me as a layman they all seem to be very much alike.

Are there in the various townships some houses which are extraordinary in the sense that they are bigger and they are built better and have much more money spent on them? In doing your survey do you take these comparative elite areas (10) into consideration or do you take the average housing into consideration? -- No I try not to include the high quality housing because the purpose of the study is to assess the basic needs of the lower income people.

Do you recall whether you made any enquiries from the Vaal local authority, the Lekoa Town Council, or anyone else as to what increase they intended having in the rent in 1984 Professor Potgieter? -- Yes, I, they told me in 1984 there would be an R8,40 increase in service charges.

Do you remember during what month that was said to you?(20) -- That was in April. Let me just make sure, no it was in September 1984.

COURT: Was this now over and above the latest increase which was to be effective on 1 September 1984? -- No this included, that figure was the R8,40 which they told me would be effective.

MR BIZOS: Now that increase, the reported increase to you, is that the, is there an R8,40 increase reflected in EXHIBIT AAT.8? This R67,60 is that with or without the reported increase to you? -- That is without the, no the increase is included in this, was included in my figure. (30)

In/....

In your report? -- No, my report quoted a figure of R70.

R70. -- R70, let me just make sure. R70,10 was reported in my report.

COURT: So is this figure of R67,60 an adjusted figure? -- It was an adjusted figure because I have got the information at a later stage that it was in fact R5,90 and not R8,40.

MR BIZOS: And was that corrected in your following paper? -- It was corrected in the following paper, yes.

And the EXHIBIT AAT.8 is the corrected figure? -- Yes.

I have no further questions, thank you. (10)

CROSS-EXAMINATION BY MR JACOBS: Professor when you were doing your investigation did you take into account the increase of the population over the period? Say over the period in the Vaal? -- I am not quite sure ..

COURT: Well on what aspect? Surely the witness would take that into account in certain reports but are you dealing now with the actual rent and the rent increase and if so what has that got to do with the rent increase?

MR JACOBS: Just for increase of, was there an increase in housing, in houses built in the Vaal, projects to build (20) houses? -- Yes there was an increase.

And was it a significant increase of houses being built in the Vaal because it being ... -- I did not assess that, what the order of the increase was. It was not the purpose of my investigation.

Because you said you did a housing survey in the 50's and then you checked again in the early 80's? -- No I think I was misunderstood. It was, these two had nothing to do with each other. In 1953 it was a housing survey on behalf of the CSIR and this present survey has nothing to do with that survey. (30)

I/....

I merely mentioned it to indicate that I am acquainted with the area, with Sharpeville and with Sebokeng.

Doctor in your survey did you take into account the increase of the inflation? -- No not at all. If I understood you correctly.

Did you try to find out why the rent in the Vaal was the highest, according to the findings on AAT? -- No I did not enquire why it was so high. I mentioned it in one of my reports that there was a tremendous increase over a short period of time but I did not enquire why it was increased that much. (10)

Now this figure, is it an increase of rent reflected in EXHIBIT AAT.8, this R67,60 or does it include also service charges? -- Could I perhaps just briefly explain how the rent is made up. Rent usually is made up of three components. It is site rent, it is house rent and then it is service charges and site rent and house rent remains the same and is calculated on the date of purchase or the date of, the cost of building the house which is then, the loan is then paid off over a thirty year period. So that remains the same. As new houses are built the costs of those houses is then included (20) into this figure. In other words there could be a relative increase in house rent. But the major spiralling cost I find is in the service charges which is considered every once a year, to cope with inflation.

COURT: So the component of the rent which caused the spiralling cost is the service charge? -- It is mainly the service charges.

And the spiralling of service charges is caused by either inflation or on the other hand by an extension of services, new services? -- It could be. It is mainly increase in labour costs and capital costs but it could be ... (30)

Yes/....

Yes well on the other hand one could have had a bucket system being replaced by a sewage system? -- Yes.

Water borne sewage? -- Yes.

Then that would increase the cost and that would be reflected in the services charges? -- This could be so, yes.

Or one could have electricity? -- Yes.

So if you look at AAT.8 and you compare the top and the bottom figures under rent the top one is R67,60, the bottom one is R16,37. It can either indicate that there are no, virtually no services at all in King William's Town or it can indicate that their services are very old and that they work on original instalment cost? -- It is unlikely that there are no services, even the basic, the site and service type of services provide for sewerage and water. So even in the case of King William's Town they have all the services. They do not have electricity. (10)

Yes but would you then be able to explain the difference between King William's Town of R16 and the Vaal of R67? There must be some sort of an explanation for the difference? -- I think sir the, specifically King William's Town it is part of Ciskei where a large labour comes from, Zwelitsha, that includes Zwelitsha and their charges are very very low. They have all the services but on purpose they do not increase rentals at all. (20)

So those charges are subsidised then? -- They may be subsidised.

Is the rent also subsidised, by means of a cheap loan? -- I do not know. I cannot say.

MR JACOBS: Professor will you accept that the Vaal is in an industrial area with an increase of the population, of people/.... (30)



people coming to work there? -- Yes.

And that necessitates that new projects and services must be given to the people coming into the place? -- Yes I agree with that.

And you will not find that so much in King William's Town for instance? -- Specifically King William's Town not.

And new projects must be undertaken by a municipality, like in the Vaal the Lekoa Town Council? -- Yes I would agree with that.

Do you know what projects the Lekoa Town Council were (10) busy with in 1983 and 1984? -- No sir I do not know.

Can you tell us in any of the other municipalities in EXHIBIT AAT what projects they were busy with? -- I know on the East Rand there is electrification project on.

Do you know in which towns in the East Rand? -- It is Germiston, it is Boksburg, I am not sure, I do not think Benoni but it is Springs, well it is all the East Rand towns except for I think it is Benoni. I am not sure if it is Benoni or Boksburg. I can tell you.

COURT: No it is not that important. -- Okay. (20)

Would the service charges be less in the case of a township where electricity was installed ten years ago than in the case of a township where the electricity is installed today? -- I cannot say for sure. I would think that it would not make any difference because the service charges are mainly based on, are mainly for rubbish removal, sewerage, water and provision and usually where electricity is introduced there is a specific levy for electricity supply.

Yes but is that not included in the figures? -- That is included not necessarily in the figures. It is included (30)

in/....

in the cost of, well the surcharge on electricity yes but the costs of electricity not. That is included under another item.

Well let us take an example of water borne sewage, if that is installed ten years ago and the same sort of thing is installed in the next township today would that make a difference to the service charges? -- Yes it would make a difference.

Because they are calculated on historical costs? -- Yes that is correct.

Yes, thank you.

(10)

MR JACOBS: Thank you sir.

RE-EXAMINATION BY MR BIZOS: No questions.

COURT: Now Mr Jacobs why did you let this witness come? These sort of figures could have been sorted out amongst you. One does not need a witness from Port Elizabeth to tell me this.

MNR JACOBS: Edele dit is nooit vir my gesê wat moet h getuie kom vir. Ek het gister dit vir die hof verduidelik, ek het dit die eerste keer ...

HOF: Wel was daar nie aan u gesê dat die getuie BEWYSSTUK AAT.8 moet kom bewys nie?

(20)

MNR JACOBS: Nee edele. Ek het vandag die eerste keer gehoor hier in die hof dat AAT.8 h bewysstuk gaan wees in hierdie ding. Dit is nooit vir my gesê dit is die, erkennings wil hê nie.

COURT: Mr Bizos why do you not tell Mr Jacobs this. You cannot let a professor come from Port Elizabeth because counsel do not communicate.

MR BIZOS: No my lord, I have had difficulty in getting an admission that a transcript is correct, I have had difficulty in getting admissions on matters which were, which are (30)

comparisons/....

comparisons of matters of record. Perhaps if I had any confidence that I would get an admission on this I would have but I just, I have not been able to get ...

COURT: Yes but that is not the point Mr Bizos. We are now dealing with this particular witness who has been inconvenienced to bring him from Port Elizabeth all the way on an exhibit and I did not know what it was all about, why he was coming there.

I had not even remembered the exhibit otherwise I might have pressed you both. But I really take a dim view of this sort of non-co-operation between senior counsel in this case. (10)

MR BIZOS: Well my lord may I say in self defence that I had not yet got an admission and I have to try and find a witness to prove the circulation figures of a newspaper. I am only saying it in self defence that if I cannot get an admission in relation to the circulation of newspapers how can I possibly hope to get an admission in relation that the, of the fact that the rentals in the Vaal were the highest in the country?

COURT: Well I may well express myself on that aspect later but at the moment I am dealing with AAT.8

MR BIZOS: Well I am only saying in self defence, in view of (20) your lordship's remarks that I have had difficulties in getting admissions on much simpler matters and that is why we called the witness.

COURT: Yes.

NO FURTHER QUESTIONS.

MNR JACOBS: Edele mag ek iets sê op hierdie laaste stelling van mnr Bizos. Ek dink dinge word nou onaangenaam in die hof met hierdie tipe dinge. Ek het van môre vir die eerste keer syfers van mnr Bizos gekry oor hierdie koerant sirkulasie-syfers. Hier is dit, ons het dit deurgegaan en wat daar (30)

nie,/...

nie, hy het vir ons skedules gegee waar ons kan nagaan en kan check die getalle. Dit kom nie eers ooreen met die goed nie edele en dit het ek vir mnr Bizos gewys en nou sê hy vir die hof dat die staat is nie bereid nie. As hy vir my die goed gee dat ek dit kan nagaan is ek bereid. Ek het vir hom gesê daardie is reg, daar het ons hulle gemerk ons kan dit erken maar hierdie ander goed wat nie, wat hy nie vir my syfers van gegee het nie ek kan nie gaan sommer net erken enige syfer wat vir my gegee word nie.

HOF: Mnr Jacobs ek sit nie hier as regter oor senior advokate(10) nie. Dit is nie my funksie nie. My funksie is om as regter te sit in hierdie saak en as julle julle sake nie onder mekaar kan uitspook nie dan kan ek dit nie help nie. Die saak moet nou voortgaan. Your next witness Mr Bizos.

MR BIZOS: My lord we have no other witnesses but we are awaiting admissions in relation to a number of matters and we would ask your lordship to allow the matter to stand down until these can possibly be formulated. We worked the whole of yesterday afternoon in the time available. I came in very early this morning to try and sort other matters out. One (20) of our attorneys is busy with a police officer in relation to another matter where the state wants to check certain things and it is with regret that I tell your lordship that they are not ready. Some are and some are not and I do not know what your lordship ...

COURT: How much time do you both need to sort these things out?

MR BIZOS: I do not really know. The figures in relation to the newspapers, a telephone call to the Audit Bureau of Circulation ...

(30)

COURT: /.....

COURT: But does it matter whether the circulation is 500 000 or three quarters of a million of a newspaper?

MR BIZOS: I do not think it does but ...

COURT: Now can it not merely be said that at least so much or approximately so much ...

MR BIZOS: I would be happy with that. I would be happy with that. Whether the Cape Times has a circulation of 67 000 or 72 000 during 1983 or 1984 does not really matter. We would have been, we would be happy with admissions that the Cape Times is published mainly in Cape Town but through the rest of the (10) county and it has a circulation, a mean circulation or an average circulation during this period of over 60 000. I do not really mind. But ...

COURT: But I cannot debate these sort of things with you Mr Bizos. It is not my function. This sort of thing you must discuss.

MR BIZOS: I know my lord, and I can only say that I have not had this sort of difficulty before. That is all I can say, in getting ..

COURT: Very well now. If I give you an hour would that be (20) adequate?

MR BIZOS: I hope so my lord.

HOF: Mnr Jacobs?

MNR JACOBS: Ek is bereid om die erkennings te gemaak het. Hier is h stel wat alreeds uitgeskryf is wat voor die hof is wat nou gemaak kan word.

HOF: Nou maar wat bly dan nou oor?

MNR JACOBS: Dit bly oor die koerante wat, die datums waarop die koerante verskyn het wat mnr Bizos hier ingehandig het, die DA's en die koerante waarin dit verskyn is. Dit word, (30) die/....

die datums word nagegaan.

HOF: Ja maar hoe lank gaan dit nog duur?

MNR JACOBS: Edele ons het, mnr Bizos het vir ons gegee, ons het dit nagegaan, daar is van die koerante wat nie verskyn op die datums wat hy gee nie. Daar is, dat ons nie die koerante kon kry waarin die berig verskyn nie. Ons het dit alreeds n lang tyd terug vir hom teruggegee en gesê ek dink daar is n stuk of vyftien, sestien van die bewysstukke wat ons nie dit kan kry nie.

HOF: Ja maar is daardie koerante nie hier by die Staats- (10)  
biblioteek beskikbaar nie?

MNR JACOBS: Ons het dit daar nagegaan en dit is dit is nie daar gevind nie edele. In die betrokke koerant wat gesê is, sê nou maar die Rand Daily Mail van 10 Januarie en het ons dit gegaan en nagegaan en die wat ons gekry het het ons afge-merk en vir mnr Bizos teruggegee. Die wat nie daar is nie. Dit is vir hom al verlede week teruggegee, edele en vir hom gesê en gereël kan hy iemand gee, ons is bereid gaan saam, gaan wys vir ons dat ons dan daardie koerante kry. Die ander aspek is hierdie kwessie van hierdie erkenning van die syfers. (20  
Mnr Bizos het gesê hy sal vir my n skedule gee, hy sal vir my stukke gee om te erken. Ek het die stuk vanoggend die eerste keer gekry. Ons het dit dadelik gecheck terwyl die hof gewag het, vir hom teruggegee en gesê goed, in sy skedules wat hy vir ons gee hierdie syfers verskyn daar, ons is dit bereid om te erken. Die ander wat nie daarin is nie weet ons nie waar kry hy die syfers vandaan nie. Ek weet nie, hy gee vir ons van hierso van, as ek net n oomblik kan kyk. n Skedule opgetrek wat hy begin van 1980 af wat hy vir ons van verskillende koerante syfers gee wat nie verskyn in sy (30)

skedule/....

skedule nie. Dit het ons nou net vir hom terugegee. Dit is al, dit is nie 'n kwessie dat die staat nie bereid is om die erkennings te maak nie. Ons is bereid is dit te maak maar gee net vir ons, as mnr Bizos net vir ons die basis gee waarop hy die erkennings wil hê en hoe hy dit wil hê. Dit is vir ons gesê dit is hoe hy dit erken wil hê.

COURT: Mr Bizos I will adjourn this case now for an hour. On those points on which you do not reach agreement you are required to call witnesses. I am afraid we cannot just wait and go on and on and on like this. I am not going to blame (10) either of you, I am just going to blame both of you.

COURT ADJOURNS FOR AN HOUR. COURT RESUMES.

MR BIZOS: Considerable progress was made during this period. Your lordship called for a transcript of EXHIBIT 42. An agreed transcript has been prepared and we ask for leave to hand it in as EXHIBIT V.33.

COURT: V.33.

MR BIZOS: V.33.

COURT: V.33 is an agreed transcript of EXHIBIT 42.

MR BIZOS: As your lordship pleases. (20)

COURT: Yes thank you.

MR BIZOS: Then there are a series of admissions made by the state who co-operated in a document which with your lordship's leave we have marked as AAS.15 and we beg leave to hand that in. I do not know whether your lordship wants me to read the admissions into the record.

COURT: We have done that so far, I think it would be safer. Are there many of them?

MR BIZOS: Not very many, just two pages.

COURT: Yes, please read them into the record. (30)

MR BIZOS:/.....

MR BIZOS: As your lordship pleases. The matters agreed between the state and the defence:

"The following matters are agreed between the State and the Defence:

1. The sound-track (Exhibit 36) was taken by the witness Harris to Edward Wingate Pearse of Cosmos Film (Proprietary) Limited for the purpose of making a copy on an ordinary cassette to enable a transcript to be made.
2. Exhibit 36 remained under the control of Edward (10) Wingate Pearse whilst making the necessary copy from 9 January 1986 to 10 January 1986. Other than making a copy on an ordinary cassette tape, Pearse or any of his employees did not interfere with Exhibit 36."

Your lordship will recall that is the large disc that was made at the meeting of 26 August.

- "3. Harris handed Exhibit 36 to Bell Dewar & Hall and it remained in the possession of Bell Dewar & Hall until 2 January 1986." (20)

That is the date on which ...

COURT: 2 June 1987.

MR BIZOS: I beg your pardon, 2 June 1987. That is the date on which Harris was shown it in court my lord.

" No partner or employee of Bell Dewar & Hall interfered with it whilst in their possession.

4. Exhibit V31A as amended is a correct transcript in the vernacular of what is recorded on Exhibit 40.
5. Exhibit V30 as amended is a correct transcript of what appears on Exhibit 40 in English. (30)

6./....



"6. The translation Exhibit V31 as amended of the transcript, of the vernacular is correct."

Then finally in this document my lord:

"7. Dr Christian Frederick Beyers Naude the Hon. General Secretary of the SACC left the RSA on 10 May 1985 (see p.6 of first passport) and remained out of the country until his return on 21 June 1985 (p. 8 of first passport).

COURT: Yes, will you hand that document to the typist please because you have not read it out entirely correctly and I would like it correctly typed.

MR BIZOS: As your lordship pleases, we will hand our copy to the typist. Then I hope that I do not have to read the next exhibit into the record because the circulation figures of the various newspapers have been agreed upon. They have been typed out. We would ask for leave to hand them in as EXHIBIT AAS.16. Then, and this is where we have to ask for an indulgence from your lordship. We will hand in but ask to immediately uplift what we hope your lordship will receive, a document dealing with the exhibit number which is from (20) DA.1 et seq. which are the newspapers and there is a column of the name of the publication, the date and for your lordship's convenience so that it can also serve as some sort of index, what the subject matter is in the last column. Now it would appear that this is, there is substantial agreement, there are about half a dozen that have not yet been traced in the State Library so that we can persuade the state that they were really published and it is a slow process. Miss Nichols and I think it is Captain Erasmus spent a long time in the library, both alone and together, but it is quite a process (30) to/...

to find them on the screen process. So I would ask your lordship to receive it as an exhibit, as AAS.17 and as initialled by, as it will be initialled by Miss Nichols and Warrant Officer Erasmus. If they cannot agree about one or two we may have to consider something about it in due course but we do not foresee much difficulty in relation to that. So will your lordship note it as EXHIBIT AAS.17, for the sake of completeness.

COURT: Yes. Could I just have a look at it.

MR BIZOS: As your lordship pleases. (10)

COURT: Have you not got a copy of this so far?

MR BIZOS: Unfortunately not because we were hoping to make the corrections and then copy the corrected one.

COURT: Yes. Very well then it goes in as EXHIBIT AAS.17 and it goes out at the same time.

MR BIZOS: As your lordship pleases. Now what I am about to say, we would like to place on record that it has been a long and in some respects arduous trial for everyone concerned. We believe that we have done whatever we had to do in relation to our defence case. In preparing the argument, however, it (20) may be that some oversight or omission - it is not usual for cases to last three years and it may be that some omission has occurred. I am merely placing this on record because we may have to approach your lordship to either, either the state for some admission or your lordship for some indulgence if it transpires during this long proceeding we omitted to do anything which we ought to have properly done, and subject to that reservation we close the defence case.

CASE FOR THE DEFENCE.

COURT: Thank you Mr Bizos. (30)

MNR JACOBS:/.....

MNR JACOBS: As u dit behaag edele. Die verloff het te kenne gegee aan die staat, aan die hof toe die getuie Harris se getuienis afgehandel was dat die staat graag vir dr Jansen vir terugroep as 'n getuie. Dit was aangedui dat die staat betwis die egtheid van die klankbaan op BEWYSSTUK 36 en ek doen nou dan formeel aansoek na die sluiting van die verdediging se saak en hulle getuienis, al hulle getuienis oor hierdie aspek om dr Jansen terug te roep om veral getuienis te lewer oor BEWYSSTUK 36.

HOF: Ja maar kan ons nou net 'n bietjie duidelikheid kry (10) mnr Jacobs. Ek het die indruk gekry uit die kruisondervraging en nadat mnr Harris gaan kyk het saam met dr Jansen in the laboratorium na die toetse en die dinge dat daar op baie punte gemeenskaplike veld is, dat daar baie min is waaroor hulle verskil. Is dit nie so nie?

MNR JACOBS: Dit is op die, nadat hulle gekyk het na die visuele deel was daar baie dele maar oor die klankbaan self.

HOF: Wel daar was nie so baie verskil oor die klankbaan ook nie, oor die interpretasie is daar 'n verskil gewees oor wat 'n mens daarvan moet aflei. Maar dat daar na soveel sekondes (20) soveel kolletjies is en dat daar weer iets anders is na soveel verdere sekondes dit het hulle ooreengestem as ek dit reg het.

MNR JACOBS: Maar ek het gestel aan hom, as ek reg onthou edele, dat hierdie BEWYSSTUK 36 is 'n reproduksie, dit is nie die oorspronklike wat geneem is die dag by die vergadering.

HOF: Maar ek wil nie hê mnr Jacobs dat u dieselfde veld dek met 'n getuie wat alreeds gemeensaak is nadat mnr Harris 'n inspeksie gedoen het in die laboratorium nie. Het u mnr Harris se getuienis weer gelees?

MNR JACOBS: Ek het dit gelees. (30)

Maar/....

HOF: Maar dan weet mos dat daar baie punte is waarop hy met u saamstem. Na vier minute is daar hierdie kolletjie en na twee en n half sekondes is daardie kolletjie en daardie lawaaitjie, daardie geruis en daardie rumble.

MNR JACOBS: Edele ek het net gedink dit is my plig ...

HOF: Moet ek nou n hele week lank sit en luister na iets wat gemeensaak is? U kan getuienis miskien lei oor die konklusie, dat mnr Harris se konklusie verkeerd is as dit die feite is en dat u konklusie reg is as dit die feite is.

MNR JACOBS: Ja. My plan was hom net te lei op BEWYSSTUK (10) 36 en sy konklusie te gee en hoekom hy daartoe kom. Ek dink ek sal dit moet vir die hof voorlê hoekom hy sê dat hy tot n ander konklusie kom as mnr Harris.

HOF: U sê dit is n vervalsing?

MNR JACOBS: Ek sê dit is n, ja dit is nie die oorspronklike baan nie, klankbaan nie.

COURT: Mr Bizos?

MR BIZOS: With due respect we oppose this application and your lordship has a discretion in the matter not to allow it and I submit that in the circumstances your lordship will (20) exercise the discretion. It is important always, when an application which is unusual, for the state to be given an opportunity to rebut defence evidence to bear in mind what it is that we are really concerned with here, and I want to very briefly, just in a few lines to indicate to your lordship why your lordship should exercise your lordship's discretion against it. The state alleges that there were calls to violence at the meeting of 26 August at Sharpeville. It is the one meeting on which the state has not led any evidence at all. There was no state witness that gave evidence. Some six (30)

or/....

or seven witnesses for the defence, it may be more I am merely going on overall impression, gave evidence that that, that the state's allegation is incorrect. Mr Kevin Harris was called in order to produce the soundtrack and the film. We, looking at the evidence of Mr Harris in cross-examination we have only, we have only heard the state put one main point in issue that whereas Mr Harris assured your lordship that this was the original the state says that it is a copy. Now the main issue before your lordship is not whether this is an original or a copy. The main issue that is before your (10) lordship is was violence advocated at the meeting of 26 August 1984. The state, not having led any evidence in relation to it your lordship will have to deal with the matter on the basis as to whether the half a dozen or so defence witnesses who gave evidence that it was not are to be believed or not. It will be argued that those witnesses are corroborated by the evidence of Mr Harris. Now whether it is a copy or not is a collateral issue. The main issue is what was said at that meeting. Mr Harris has denied that he in any way interfered with it. The person who made a copy for the purposes of (20) the transcript is admitted not to have made any alterations to it, or to have interfered with it. The attorneys for the accused are admitted not to have interfered with it. Now your lordship has been called upon to lead evidence and to make a finding of fact, I assume that your lordship can make it if your lordship hears Brigadier Jansen. But this is a copy. I assume, that is all really that Brigadier Jansen, and that is the only point that is in issue, not that it has been falsified. The state has no evidence and it cannot possibly suggest that this was falsified. That is a material difference. Had (30) there/....

there been any, if the brigadier could give evidence that it could be falsified then it may have been in the interests of justice itself as to whether a professional film maker falsified a soundtrack. The only thing that Brigadier Jansen can say that this is a copy, not that it is falsified. It may well be that if your lordship allows this evidence to be led that some criticism will be levelled against Mr Kevin Harris that well he says that it is an original and the brigadier says that it is a copy. But where will that get your lordship on the main point in issue? And I submit (10) nowhere. Your lordship will have to listen, your lordship listened to evidence - I may say that I was spared that duty or obligation.

COURT: Onerous burden.

MR BIZOS: As your lordship pleases. Now your lordship is going to have that resuscitated, and let us assume that your lordship comes to the conclusion that Brigadier Jansen is correct, that it is not an original but it is a copy. Now discretion is to be exercised, I submit, on the importance on the case as a whole, not on just that little point as to (20) whether it is a copy or an original, as to the just decision of the case and when your lordship has had half a dozen witnesses as to what was said there and some of whom were not challenged, for instance what accused no. 2 said he said there he incorporated what, he said what was said and he was not challenged. Accused no. 3 gave evidence as to what no. 2 gave there and he was not challenged on that. There was some cross-examination as to whether what he said was correct. But it is not going to get your lordship anywhere and we are going to waste a lot of time and the case which really deals with (30) the/....

the situation is the case of R v Limbada & Others, it must also have been a long case because it says two, 1956 1 SA 697, the judgment of Haenetsburg, J. in the Natal Provincial Division. In this case, perhaps I should give your lordship the facts very briefly:

"Mr Rees has applied for permission to recall the handwriting expert who gave evidence earlier in the case in rebuttal of some of the evidence led by the defence. Alternatively he has applied to the court to call him as a witness under powers conferred on it (so (10) that if he is not allowed to call it that the court should call him). He wishes this handwriting expert called in order that he may express his opinion as such expert in relation to the handwriting on three exhibits which purport to be invoices issued by one Kamer(?) and which were put in as exhibits (seven times D so that your lordship ...) and seven times E and six times F in the case. During the course of the evidence given by Kasimisol Limbada(?), accused no. 1."

Then his counsel objected to this and much of the authority, (20) both in our courts and in the English courts is quoted, which really means this that your lordship has a discretion. I do not want to read all those authorities because that is what it really means but I want to read to your lordship what is said at page 699 H:

"It seems to me that had this evidence been evidence relating to a matter in issue then it should have been led by the crown in the first instance."

That does not apply here because the state did not know.

"If however, as appears to me to be the case it is the (30) evidence/....

"evidence on a matter which is collateral then it is not admissible. But in any event (because there was an additional reason) as the effect of the evidence will really only be to confirm the crown case I do not think that it is admissible and therefore refuse the application for leave to call evidence in rebuttal. As I have refused the crown leave to call the evidence and in my judgment the evidence, if led, would only be such as would it accept it and relied upon to be confirmatory of the crown case I think the court should not recall the (10) handwriting expert."

The final submission that I want to make to your lordship is this that even if your lordship finds that it is a copy the most that your lordship will be able to do is to criticise Mr Kevin Harris as a witness, either in giving his expert opinion or in being possibly not entirely frank with the court. It would be completely wrong in my submission to allow Brigadier Jansen to give evidence. It was not put to Mr Harris that he actually falsified the document. In fact your lordship will recall that, I think it was in re-examination, that if someone, in (20) order to falsify it, in order to be of assistance to the accused one would have to be a particularly good Tswana linguist, which he is not, so that in my respectful submission no useful purpose would be served in granting the application. That is all I wish to say.

HOF: Wat is u antwoord hierop mnr Jacobs?

MNR JACOBS: Edele met alle respek ek dink mnr Bizos sien die hele punt verkeerd. Dit gaan nie hier oor of die valsheid daarvan of nie, dit gaan oor die toelaatbaarheid van die ding, die dokument. Dit is so die verdediging kry die geleentheid(30)

om/....



om vir hierdie hof te bewys dat hierdie dokument, of nie 'n dokument nie, hierdie bewysmateriaal wat hulle voorlê is toelaatbaar. Dit is, the onus is op hulle om dit te bewys en hulle moes dit, die getuienis voorgelê het dat dit toelaatbare getuienis is. Die staat het 'n geleentheid net soos by die staat se getuienis oor hierdie aspekte, 'n geleentheid om die teendeel te bewys dat dit is nie toelaatbare bewysmateriaal hierdie nie. Die enigste wyse waarop die staat kan bewys dat dit is nie toelaatbare bewysmateriaal nie is die kwessie dat hierdie getuienis wat gegee was dat dit 'n oorspronklike (10) stuk is wat deur mnr Harris geneem was op die betrokke dag is die staat se kontensie, en dit was gestel aan mnr Harris, dit is nie die oorspronklike nie. Hier gaan dit nie oor die geloofwaardigheid op daardie aspekte nie en op wat ander getuienisse gesê het nie. Hier gaan dit bloot wat die hof sal moet oordeel net soos in die geval toe die staat sy videos en bande voorgelê het en ingehandig het as getuienis dat die staat moet bewys dat dit outentiek is. Ek wil die hof hier verwys na die uitspraak van die hof vroeër toe die staat se saak gegaan het oor die toelaatbaarheid van daardie stukke, (20) dat dit gaan oor die outentiekheid van die stuk, voordat dit toelaatbaar word as 'n bewys in hierdie saak en die kwessie van die waarde wat daaraan geheg word word eers ter sake wanneer die getuienis as 'n geheel geoordeel word. Maar op hierdie stadium kan my geleerde vriend nie kom roep of die staat moet bewys dit is vals of vervals nie. Dit is afledings wat ons vir die hof alleen kan gaan vra nadat die hof besluit het wat in hierdie dokument gesê is of nie en of dit toelaatbaar is. Op hierdie stadium is my respekvolle submissie ook dat R v Limbada is heeltemal te onderskei want hier gaan (30)

dit/....

dit oor n basiese plig wat gerus het op die verdediging om te bewys dit is outentiek en in daardie kwessie het die staat die reg, met alle respek, dat die staat kan getuienis tot die teendeel aanbied om te bewys dat die stuk wat hulle op steun is nie outentiek nie. En dit is waaroor dit hier gaan, is my respekvolle submissie. Ek vra dus dat ek wel die getuienis kan aanbied om te bewys dat die stuk wat die verdediging aangebied het as bewys in hierdie saak is nie outentieke getuienis nie. Dankie.

COURT ADJOURNS UNTIL 14h00.

(10)

C.1448

COURT RESUMES AT 14h00

(20)

(30)

BEVEL/.....

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA(TRANSVAALSE PROVINSIALE AFDELING)SAAKNOMMER: CC 482/85PRETORIA

1988-06-22

DIE STAAT

teen

PATRICK MABUYA BALEKA EN 21 ANDER

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B E V E L

VAN DIJKHORST, J.: Mnr Jacobs het aan die einde van die verdediging se saak, na die verdediging sy saak gesluit het, verlof gevra om dr Jansen te herroep. Die doel is om die getuienis van mnr Kevin Harris wat namens die verdediging getuig het te weerlê in verband met bewysstuk 36. Mnr Bizos namens die verdediging het die aansoek teëgestaan. Ek het behoorlik oorweging geskenk aan die betoë aan albei kante en tot die konklusie gekom dat die betoog van mnr Bizos korrek is. Die aansoek word gevolglik afgewys.

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