

A

IN DIE HOOGGEREGSHOF VAN SUID-AFRIA
(TRANSVAALSE PROVINSIALE AFDELING)

SAAKNOMMER: CC 482/85

PRETORIA

1988-09-07

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. H. SMITH

NAMENS DIE VERDEDIGING:

ADV. A. CHASKALSON
ADV. G. BIZOS
ADV. K. TIP
ADV. Z.M. YACCOB
ADV. G.J. MARCUS

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS :

LUBBE OPNAMES

VOLUME 458

(Bladsve 27 086 tot 27 125)

COURT RESUMES ON 7 SEPTEMBER 1988.

MR BIZOS: My lord there are two further consents in relation to Mr Hlomoka and, no Mr Hlanyane and Mr Vilakazi where the investigating officer has consented. I ask for leave to hand them in and ask accordingly.

(10)

(20)

(30)

ORDER/

IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

CASE NO. CC. 482/85

PRETORIA

1988-09-07

THE STATE

versus

PATRICK MABUYA BALEKA & 21 OTHERS

(10)

O R D E R

VAN DIJKHORST, J.: I place the following on record. Firstly pertaining to accused no. 10: In accordance with paragraph 2 of the conditions of bail accused no. 10, Bavumile Herbert Vilakazi, is granted permission to visit Sebokeng during the period 17 September 1988 to 18 September 1988 to attend the unveiling of the tombstone of his late aunt Annie Ramotshehoa subject to the following conditions:

1. He reports at the police station as set out in the conditions of bail on 17 September 1988 immediately before leaving for Sebokeng. (20)
2. He reports at Sebokeng police station immediately on arrival in Sebokeng and between 18h00 and 21h00 on 17 September 1988; between 06h00 and 09h00, and immediately before his departure from Sebokeng on 18 September 1988.
3. He reports at the police station between the hours as set out in the conditions of bail.
4. During his visit to Sebokeng he limits his movements to 552041 Zone 3, Sebokeng, 2841 Union Road Evaton, the cemetery/.... (30)

cemetery in Evaton and the Sebokeng police station.

5. All other conditions of bail stand and are to be strictly adhered to.

I place on record the following in respect of accused no. 15. In accordance with paragraph 2 of the conditions of bail accused no. 15, Serame Jacob Hlanyane, is granted permission to visit Sebokeng during the period 17 September 1988 to 18 September 1988 to attend the unveiling of the tombstone of his late aunt Annie Ramotshehoa subject to the following conditions: (10)

1. He reports at the police station as set out in the conditions of bail on 17 September 1988 immediately before leaving for Sebokeng.
 2. He reports at Sebokeng police station immediately on arrival in Sebokeng and between 18h00 and 21h00 on 17 September 1988, between 06h00 and 09h00 and immediately before his departure from Sebokeng on 18 September 1988.
 3. He reports at the police station between the hours as set out in the conditions of bail.
 4. During his visit to Sebokeng he limits his movements (20) to 592045 Zone 3, Sebokeng, 2841 Union Road, Evaton, the cemetery in Evaton and the Sebokeng police station.
 5. All other conditions of bail stand and are to be strictly adhered to.
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PAGES 27 087 AND 27 088 - AWAITING RETURN
OF REVISED ORDER.

MR BIZOS: Whilst we are on this and on the assumption that your lordship may take some time to consider your lordship's judgment experiences have been, experience has shown us that during these adjournments this sort of urgent difficulty may come into operation. We do not want to worry your lordship during this period. I have had a brief discussion with Mr Jacobs. If your lordship would sanction the proposed procedure that we produce a document such as that has been placed before your lordship this morning and Mr Jacobs thinks that it would be better if we ask one or other of the judges in chambers (10) to alter the conditions or to deal with it on an informal basis.

COURT: Well as far as the conditions, the visits to Sebokeng etcetera are concerned, I think the original order provides for that. I was merely, in order to obviate any problems, setting this out on record so that we have it. But in the meantime you can go ahead, have it signed by Major Kruger and keep it, each keeps a copy and you amend the conditions of bail accordingly. I do not think ...

MR BIZOS: By consent. (20)

COURT: I think so. I do not think you need bother a judge about it.

MR BIZOS: As your lordship pleases, we will follow that procedure, thank you. It remains for me to make certain submissions in relation to Mr Ratsomo, accused no. 22. The main allegation against him is to be found in the further particulars, page 82 paragraph 12.3, to the effect that he was on the management structure of the Vaal Civic Association and it is common cause that he was elected treasurer of the VCA at the launch on 9 October 1984. And, 1983 I beg your pardon, (30) and/....

and it is alleged further that by doing so he made himself party to the conspiracies alleged in the indictment. Now that part of the case has been dealt with by the Vaal witnesses and the arguments that we have advanced but there is one, there are two bits of evidence that we want to refer your lordship to which makes it clear that his period of involvement was limited and he was certainly not an office bearer after February 1984. The state evidence is to be found in the evidence of IC.8 in volume 20, page 929 line 12 to 930 line 12, at which IC.8 says that on 25 January a number of matters were discussed mainly about Mr Motheti not doing his job as secretary properly but in relation to accused no. 22, Mr Ratsomo, according to IC.8 he, no. 22, announced that he was going to resign because he was going to study at Rhodes University. Your lordship will find that specifically at page 932 line 15-21. Reliance was placed by us on this fact during the course of the argument at the application for the accused's discharge and if my memory serves me correctly your lordship remarked that there was a difference between saying that he was going to resign and that there was no evidence that he actually resigned. (10)

The matter has now been met, in our submission, by the unchallenged evidence of Mr Vilakazi, accused no. 10, who in volume 159, page 7 826 line 29 to 7 827 line 29 said that at a meeting in January Mr Ratsomo indicated that he had hopes of being admitted to Rhodes University where he wished to study journalism. In February 1984 he resigned his position as treasurer of the VCA and for all practical purposes ceased to be a member. There was some cross-examination as to who was the treasurer and in cross-examination it came out that Miss Lethlake was appointed by the committee as acting (30)

treasurer/....

treasurer because they thought that it was wrong to appoint a treasurer proper without the concurrence of a general meeting. So that that fact has been established and therefore insofar as membership of any management structure may make any difference during the protest and the marching during August and September 1984 this accused is certainly out of that. Then the state in its "Betoog" tried to introduce the accused's membership of the Black Student Movement or society at the Rhodes University which was affiliated to AZASO which in turn was affiliated, which featured in this case. Your lordship will (10) find that in the "Betoog", volume 431 of this argument, it is not a reference to, it is a reference to the argument before your lordship and not the, perhaps reference to the record, volume 431, 25 251 line 29 to 25 521 line 23.

COURT: 251? 25 251?

MR BIZOS: 51, yes my lord.

COURT: To 25 500?

MR BIZOS: To 25 521 ...

COURT: That is 250 pages, more.

MR BIZOS: No, it is 25 251 line 29 to 25 5 ... it is in (20) one of them my lord, let me just get it. 25 251 to, line 29 to the following page, which would be 25 522, 25252 line 23. I am advised I should say et seq and then it would be easier.

COURT: Et seq?

MR BIZOS: Et seq.

COURT: How many seqs?

MR BIZOS: Reference is also made in what are described as "gebeure", events, in Grahamstown in the handwritten argument handed in and that is a very belated attempt, so belated that it did not even find itself in typing, to connect accused (30)

no. 22 with whatever may or may not have happened in Grahams-
town. However there is nothing anywhere in the indictment,
the further particulars or the further and better particulars
in which Grahamstown is mentioned in relation to Mr Ratsomo's
doings or non-doings. Nor are the BSM or AZASO alleged to be
part of organisations which organised or mobilised any of the
troubles that occurred in Grahamstown. It is really a preserve
of COSAS according to the, your lordship will find that at
page 79 paragraph 19 of the further particulars. There was
even an amendment to the further particulars and again BSM (10)
or AZASO are not mentioned. Your lordship will find that in
the further particulars, page 27 read together with the amend-
ment that your lordship allowed and recorded in volume 33 on
page 1 511 of the record. It was submitted by my learned friend
Mr Chaskalson that it would not be competent to even look at
that or consider it in view of the absence of allegations. I
would refer your lordship to the defence argument, volume 432,
25 296 line 1 to 5 to 297, 26 and better still if your lord-
ship takes it to the next page, 298 line 3. And again the
matter is dealt with in the defence argument at page 25 298 (20)
line 3 to 9. The evidence in relation to the Vaal insofar as
they refer to Mr Ratsomo, accused no. 22, your lordship will
find on page, sorry volume 435, 25 540 line 30 and subsequent.
And again at 435, volume 435, 25 545, 10-15. The role that he
played in the ad hoc committee for the establishment is dealt
with in our argument in volume 435, 25 545, 1-9. He was one
of the persons that looked at the documents and assisted with
the application for the affiliation of the VCA to the UDF. We
do not intend giving your lordship any reference individually
but most of it is to be found in volume 435, page 25 545 (30)

line/....

line 20 to 25 546 line 20. As far as his personal contact with the UDF, even before the formation of the VCA your lordship will recall that it was he who rejected the suggestion for the formation of a Vaal area committee made by accused no. 19 before the formation of the UDF and that it was his view that a local organisation should be formed and that organisation should decide whether or not it would affiliate to the UDF is consistent with his views that the VCA, certainly when he was in it, if he had anything to do with it, was an organisation independent of the UDF. Your lordship will find all (10) of that and the references to the evidence of accused no. 5 and accused no. 19 in the defence argument, volume 435, 25 546 line 21 to 25 547 line 29. Insofar as the evidence of McCamel has been referred to in relation to the doings of the VCA whilst he, McCamel, was active and his conclusion that he knew of no conspiracy to commit any unlawful act it would be an a fortiori case in the case of Mr Ratsomo, accused no. 22. Your lordship will find that argued in our argument, volume 435, 25 555 to 25 557 and in volume 437 page 25 654, 16 to 655 line 3. The reasons as to why he was the person that was chosen (20) and other matters relating to the affiliation your lordship will find that he was working in Johannesburg, he was going there every day and it was convenient, and other matters which establish a probability of his innocent association with the VCA in volume 435, 25 553 and subsequent pages. He was arrested in Grahamstown and a number of documents were found in his possession. No real argument has been advanced in relation to any one of these documents making him guilty of any of the offences and in view of your lordship's earlier indication that possession of a particular document does (30)

not/....

not really show anything in particular we submit that there is nothing in them from which any adverse inference can be drawn against him. We would submit that although your lordship will find that he was for a short while a member of the management structure that it was not, that he was not involved in any conspiracy nor did he personally commit any act on which he can possibly be found guilty of any offence under this indictment and we would ask for his acquittal. Thank you my lord.

COURT: Mr Chaskalson?

MR CHASKALSON: I think I should begin by taking up a matter(10) which your lordship raised with me a little while ago and that is the question of the dates on which documents may have been found. I should tell your lordship that a schedule¹¹ has been prepared by the state and handed to us. In the circumstances in which we find ourselves now we have not had time to consider this schedule but it has been given to us I think about a week ago, some days ago at any rate. We have not had time to go through it in any detail but it seems to us that there are likely to be only comparatively few documents in which the date of finding may be relevant. Because our argument (20) to your lordship was that where a document was found in the possession of an alleged co-conspirator other than an accused that there had to be evidence at that date of finding that such person held office in one or other of the organisations and we think there are only comparatively few people who fall into that position. What we would want to do is that we will, and what I have advised counsel for the state is that we will as soon as we are in a position to do so we will give attention to this and we will inform your lordship through your lordship's registrar either that we do not contend that any(30) document/....

document is inadmissible by reason of the date on which it was found or we will inform your lordship's registrar that we are unable to make any admissions. But I do not anticipate that, as I say I think it applies to only comparatively few documents and so we will inform your lordship in that way.

COURT: In those cases I wish to state it clearly that if it is relevant I will consider calling the necessary witnesses and should you not agree on that particular aspect I would like to be supplied with the particulars of the witness who needs to give that evidence so that we can make the necessary arrangements. (10)

MR CHASKALSON: We hope to be able to give attention to that as soon as we have the time to do so. I think I should also tell your lordship that I do not think I am going to be able to complete what I have to say to your lordship within the next half hour.

COURT: Yes, Mr Bizos has eaten up much of your time.

MR CHASKALSON: Well I think I should just tell your lordship that that is so.

COURT: Yes, go ahead, let us see where you get. (20)

MR CHASKALSON: Now as far as the position of accused nos. 19, 20 and 21 are concerned some bare statistics to begin with. Accused no. 19 began his evidence-in-chief on 3 August and he left the witness box on 1 September. His evidence covers 1 833 pages and he was in the witness box for some 21 court days during that period. Accused no. 20 commenced his evidence on 9 September, he completed his evidence on 6 October and his evidence extended over 1 511 pages and he was in the witness box also for approximately 21 court days. Accused no. 21 commenced his evidence-in-chief on 7 October, he completed (30)

it/....

it on 29 October. I think there was a court recess during that period and the result was that he was in the witness box for six days and his evidence runs to 596 pages. Now what is striking immediately if one looks at those very long periods of time, particularly as far as accused nos. 19 and 20 are concerned and the vast areas which were traversed over that period of time it becomes striking that the state has been unable to refer your lordship to any passages in their evidence on which your lordship is asked to find that they were not good witnesses and that it has really been unable to direct (10) any criticism to their evidence, other than the very broad generalisations to which I previously drew attention. And the submission that we make to your lordship is that they were really witnesses of unusual calibre dealing with complex issues, openly and directly, not hiding anything that persons in their position may be expected to hide, volunteering information at times which was not necessary for them to volunteer and that there is really no basis upon which your lordship can find that the evidence given by them might not reasonably be true. But then I would like to deal in general terms, or (20) make some general submissions to your lordship which are of application to these three persons before I turn to deal with what the state says about each of them in turn. Now there was one common allegation made in the document handed up by the state to your lordship, it was the continuation of the "Betoog" in which it dealt with the position of the accused and in relation to each one of these three persons the state makes the point that they participated in planning and co-ordination of activities of the UDF. I am sorry apparently only in the case of accused nos. 19 and 20 did they make that submission. (30)

I/.....

I was going to say they do not point out the extent to which each did so, but that is as I told your lordship previously it is not in dispute that it was part and parcel of the work of accused nos. 19 and 20 as the officers of the UDF to undertake such work. Of course unless the evidence shows that as a matter of policy the UDF sought to achieve its goals through the use of violence the fact that accused nos. 19 and 20 participated in the planning and co-ordinating its activities proves nothing against the accused. And in regard especially to their position the passage in the judgment of Rumpff, J. (10) in the final judgment in the treason trial which I handed up to your lordship at page 164 to 165 in regard to the difficulty of proving by inference a policy designed to lead masses into violent revolution at some uncertain and some undetermined time in the future is pertinent to this case. So too is a passage from Cassel v Powell Duferin Associates Collieries, it is a passage, it is a judgment ...

COURT: Have we not had that case before?

MR CHASKALSON: Yes I was going to say that it is particularly pertinent. I was going to tell your lordship it has been (20) referred to your lordship by Mr Bizos. I think your lordship has a reference, if your lordship wants me to give you the reference again I can.

COURT: Yes.

MR CHASKALSON: It is at 1939 3 AE 722 at 733, and it is particularly pertinent to them that the importance of distinguishing between conjecture and speculation and inference which can clearly be drawn from proven facts. Now if one were to assume for the moment that some people within the UDF structures had in mind the policy pleaded by the state - and I do not (30) concede/....

concede for a moment that that has been shown - but if I were to ask your lordship for the moment to, for the purposes of my argument to make that assumption the questions which then have to be addressed is who are those persons, when did they reach agreement on such policy, how did they reach agreement on such policy, how did they communicate their agreement to each other, what is there to show that the accused were amongst that group, what can be pointed to to show that assuming that such a group exists? Because one cannot attribute to each one of the accused knowledge of everything that has been said (10) and done and written around the country and elsewhere and all the documents from a variety of organisations, of affiliates, publications which are not freely available and which have been produced by the state, ANC publications and other such matters, one cannot attribute to them the conglomerate of knowledge which your lordship may have at this stage as a result of so much paper having been put before you. You cannot attribute to them the knowledge of what was said by individuals all around the country at different times. And so what one has to do is to try to disabuse one's mind as (20) it were of the totality and look at the picture as it emerges in relation to each one of the individuals, which is an extremely complex and difficult task. Because you have to assume that you do not know some of the things which you do know in order to understand what they may know and what they may have believed. Also it is further complicated by the fact that if the dates of the, I have already made submissions to your lordship about the importance of the date raised but let us assume that your lordship were to take the view that you could look at policy at a date later than 20 August 1983, (30)

August/....

August 1983, let us assume, may I take any hypothetical date, let me say December 1984 for the want of any better date.

If that were to be the date of the policy it has a profound impact upon the admissibility of evidence because you would then have to reject ...

COURT: Yes you have mentioned that before, this is not a new concept. But do not reargue the case Mr Chaskalson.

MR CHASKALSON: Alright, well my lord I had not realised that I had mentioned that before. I had thought that I had adverted to some of the difficulties of proof but I had not (10) realised that it had been ...

COURT: I thought you would now address us on the particular liability of the particular accused.

MR CHASKALSON: Yes I am.

COURT: Yes. This aspect you have mentioned.

MR CHASKALSON: But I am addressing your lordship on the liability of each one of the accused in relation to those matters which are applicable to each one of them and rather than say that three times I am saying it once.

COURT: Yes but this is a matter of approach. It is a (20) question of which documents you take and which you do not take, whether you take them, whether you can still take them when the conspiracy arises after 20 August or not.

MR CHASKALSON: Yes, well that was all that I was submitting to your lordship. Now as far as accused no. 19 is concerned the, in the document handed up to your lordship by the state the points which are made are these. First it is said that on 7 October 1983 he and accused no. 20 discussed opposition to the black local authorities with COSAS at Tebong and also gave an account of the struggle and EXHIBIT 52 is referred to by (30)

the/....

the state in this context but no reference is made to the record of any evidence relating to this.

ASSESSOR (MR KRUGEL): EXHIBIT 52?

MR CHASKALSON: C.52. Now EXHIBIT C.52 is a handwritten document and it is not disputed that that was a memorandum prepared by accused nos. 19 and 20 for the executive committee. That document does not seem to have been put to accused no. 19 at all during the course of his evidence. Though accused no. 19 did mention having gone to the Orange Free State. Your lordship will find that in volume 272 page 14 777 lines 13-22. (10) Now the submission which we make to your lordship is that there is nothing in EXHIBIT C.52 which is indicative or suggestive of any wrongdoing on the part of accused no. 19. Nor is there any connection between this visit which is not disputed and any of the unrest which is alleged to have taken place in Welkom. Details of this visit to the Orange Free State were in fact given by accused no. 20 when he gave evidence. He dealt with it at volume 290, page 16 167 line 24 to 16 169 line 27 and the effect of his evidence was that there was a meeting with about 15 or 20 people, that the purpose of that meeting was to (20) introduce them to the UDF to explain the position of the UDF in relation to various matters. But there was nothing in his evidence which could connect that discussion in any way with any unlawful conduct or which in any way could be used to suggest that unlawful conduct was being promoted. Then the state contended that accused no. 19 had offered training courses in Huhudi and there they referred to EXHIBIT AL.37. EXHIBIT AL.37 is a handwritten document. The document was not referred to in evidence, it does not seem to us to be admissible at all. But in any event it reflects only ... (30)

COURT:/.....

COURT: How does it come before court?

MR CHASKALSON: It was, well when I say it was not, it is alleged to, it is said to have been found with somebody called W. Crutse.

COURT: Crutse?

MR CHASKALSON: C-r-u-t-s-e.

COURT: W?

MR CHASKALSON: W. And we cannot find any W. Crutse amongst the ...

COURT: There is a Kotso Crutse. (10)

MR CHASKALSON: There was a different, yes I think there was a Kotso Crutse but there is no W. Crutse who we think has been referred to in this case at all. But in any event I do not think anything is going to turn on that because the document seems to be a perfectly innocuous document which does not take the state case any further. It is, it reflects a workshop. It reflects a poor attendance at that workshop. It shows that those who attended came late and that the workshop could not really be conducted because the venue was to be used for church services shortly after the scheduled time. And (20) what happened was that there was a general discussion on the UDF and its campaigns, including the million signature campaign. So the document itself is really of no moment. The only other matter referred to by the state concerning accused no. 19 was that he was a speaker or was present at meetings which are reflected in EXHIBITS V.2, V.3, V.4, V.14, V.21 and V.26. V.21 is I think the anti-SAIC meeting, which as far as I know is not really before the court. But in any event Mr Molefe was not there. As far as the other meetings are concerned the state has not in any way indicated in what (30) respects/.....

respects it suggests that Mr Molefe's presence at such meetings, or anything he may have said at such meetings constitutes any of the offences or provides proof of any of the offences with which he is charged. Certainly it has pointed to no policy decisions taken at such meetings which would show the adoption of a policy to overthrow the state by violence. Indeed his participation at these meetings was not all that substantial. He was of course at the national launch. He was there elected as the national secretary and his role at that meeting, his public role at that meeting at any rate appears to have (10) been to reading out the objectives and tasks of the UDF. He was at the meeting which was reflected in V.2, which was the solidarity with SAWU meeting. There he made, he introduced certain of the speakers and made the opening address and towards the end of the meeting he outlined the form and the nature of the proposed campaign against the Ciskei and he put forward five practical measures. He said first that there should be donations towards aiding the people of the Ciskei. Most of these people were, as he said, staying in the stadium, they have got no blankets or clothes and that they could be helpful in (20) providing them with some tracksuits. Secondly he urged that a publicity campaign be mounted against the Ciskei. He suggested the establishing of links with the international media to expose what was happening in the homelands. He suggested that individual organisations arrange a series of solidarity meetings with the people of the Ciskei and that the International Labour Organisation and other support groups should be approached to put pressure on the government in relation to the Ciskei. Now the submission we make to your lordship is that there is nothing there supportive of a thesis of violent revolution. (30)

Accused/....

Accused no. 19 was present at the meeting reflected in EXHIBIT V.3. He played a comparatively small part at that meeting. He read out certain messages and made a very brief condemnation of repression in Kwa-Zulu and South Africa. The next meeting is V.9 which was the TIC meeting at Lenasia. He was present at that meeting but he did not make a speech, and the last of them, EXHIBIT V.14 which is the Transvaal Indian Congress meeting in July of 1984 he did not make a speech there but once again he was called upon to read resolutions. The resolution which he addressed concerned criticisms of the new (10) constitution and it was followed by a resolution to boycott the forthcoming election. So the, his words do not show anything supportive of the state case. That is all that the state put before your lordship in regard to accused no. 19.

Now, so let me then turn to accused no. 20. As far as accused no. 20 is concerned there was one feature about the case against him which calls for comment. There were three late amendments. Your lordship will recollect that after the case had been under way and during the course of the case amendments were moved to introduce three particular inci- (20) dents. Once was an allegation that he participated in the throwing of stones at a funeral in Seeisoville, the second was that he gave instructions to people in connection with the making of petrol bombs and the third was that in some way he had been concerned with the events subsequent to the disturbances in Tumahole at which IC.17 suggested that pressure was put upon him to resign. What is significant is that the stone throwing allegation has not been persisted with by the state and seems clearly to be based on false evidence. The petrol bombing is not being persisted in by the state and equally (30)

seems/....

seems clearly to be based on false evidence, and all that we now find persisted in by the state is the meeting with IC.17 and I am going to suggest to your lordship that that too ought not to have been persisted in by the state because the evidence is very strongly in favour of the position as put by accused no. 20. Now it is said by the state in a short document which was put up by your lordship, that accused no. 20 was involved in discussions with IC.17 after he had been attacked and the only reference to the evidence that is given is to the evidence of, in-chief, of IC.17. No reference is made there (10) to the extensive evidence given by Lekota, Molefe and other defence witnesses concerning this incident. Now it may be dealt with elsewhere in the state's argument but on this particular point I do not know whether it is or not. But here we are not referred back to any other section of the state's argument and what I would like to do now is to try and examine with your lordship what this evidence was and why we suggest to your lordship that nothing emerging from this evidence can be held against accused no. 20. Now IC.17, the effect of the evidence of IC.17 in-chief was that he said (20) that he had, as a result of having seen a comment in a newspaper which he said had been made by Bishop Tutu and accused no. 20 he arranged a meeting with Bishop Tutu and that subsequently a meeting was held between him, Bishop Tutu, accused no. 19 and accused no. 20 and he indicated that his daughter Mrs Smith was also present. And he said in his evidence that accused no. 20 had indicated that the councillors were making the people angry because they worked within the system and that the UDF as an organisation was opposed to the government because of its policy of apartheid and other matters and that he had (30) said/....

said that the people of Tumahole were busy with a peaceful demonstration and that the police had intervened. He said that Bishop Tutu had indicated that he had no power to stop the violence for as long as people remained councillors and that he would only do something if the witness resigned. And he also said that accused no. 20 had said that he had been working, he had worked with the leaders of Parys and that he had actually had contact that day with a man whose name he had mentioned, a Mr Musopedi. Now that evidence your lordship will find generally in volume 97 at pages 4 716 through to (10) 4 719 and I think there is another matter which I should also mention as having been part of his evidence-in-chief which was to the effect that he said he resigned, that he phoned Bishop Tutu who told him that he would send the press and that he would ensure that accused no. 20, who was at Bloemfontein, would come in to speak to the people of Tumahole. Now that evidence was directly contradicted by accused nos. 19 and 20 and what was more important possibly is that it was also contradicted by Mrs Smith who was the daughter of IC.17. Now the effect of what accused no. 19 said about this incident was (20) that he was called to Bishop Tutu's office by accused no. 20 on that day and that when he came to the meeting he found accused no. 20 there, he was saying that it was not the style of the UDF to attack individuals and that he had denied that the UDF was responsible for the violence in Tumahole. He said that IC.17 had indicated that he wanted to resign as a councillor but would only do so after he had received compensation and that IC.17 had expressed anger with the people of Tumahole because they had not appreciated the substantial service which he had rendered to the community. He had (30) complained/....

complained that he had spent a lot of time building up his business which had been destroyed by ungrateful people, and he said that it was in fact IC.17 who raised the question of a press statement and that Bishop Tutu's attitude had been that he could make a press statement but he did not know whether or not it would help and it was also said that no mention was made about contact between the UDF and the leadership of Tumahole. Accused no. 19 also testified to the fact that he subsequently received a telephone call from IC.17 during which IC.17 indicated that he had resigned and he had asked accused no. 19 (10) whether he would inform the press and accused no. 19 had said that IC.17 had wanted to speak to the press, he should speak to the press himself and he gave IC.17 telephone numbers that he could phone. Now that your lordship will find in accused no. 19's evidence in volume 252 at page 13 482. Accused no. 20 also dealt with this matter in his evidence. He substantially confirms what accused no. 19 said. He said that before accused no. 19 had arrived that IC.17 had blamed the UDF for the violence and it was in this context that he, accused no. 20, had made the denial to which accused no. 19 referred in (20) his own evidence. He said that he had told accused no. 19 that as far as he knew, from information that he had received, that there had been a peaceful protest in Tumahole and that it was as a result of the way that the police had acted against the people that violence had occurred and that he had made clear that he, accused no. 20, had no personal knowledge of what had happened at Tumahole. That your lordship would find in accused no. 20's evidence in volume 286 page 15 734. Now Mrs Smith gave evidence. She had made a statement to the police or she was on standby at any rate as a state witness (30) and/....

and had not been called by the state and the effect of her evidence was that she and her mother had had a discussion with IC.17 on the evening of the disturbances at a place called Vredefort. During the course of that discussion both Mrs Smith and her mother had advised IC.17 to resign from the council but that he had been reluctant to do so because he was concerned about whether he would receive compensation for the damages which he had suffered. That your lordship will find at volume 343, page 19 579 lines 13 to 26 and 19 580 lines 22 to 28. She had said that it was really her idea that her father, IC.17, (10) should visit Bishop Tutu and the reason why she had suggested that was that she had seen the publication in The Sowetan newspaper which was handed in as EXHIBIT DA.115. That was a publication of 18 July 1984 in which Bishop Tutu had made appeals for calm and she said that it was for that reason that she had made the suggestion that her father should visit Bishop Tutu. That your lordship will find in the same volume, page 19 580 line 29 to 19 583 line 9. She was present at the meeting and she confirmed the account that Mr Lekota arrived first. She confirmed that Mr Lekota had denied that the UDF had (20) been involved in any violence. She confirmed also accused no. 19's attitude when he arrived. She confirmed that it was the witness IC.17 who suggested making a press statement and she confirmed that neither Bishop Tutu nor accused nos. 19 or 20 had suggested that IC.17 should resign as a councillor. She said in effect that the suggestion had come from the family. All that is in volume 343 page 19 583 line 9 to 19 586 line 17. The submission which we make to your lordship is that the evidence of the accused nos. 19, 20 and Mrs Smith should be accepted in preference to that of IC.17. At the very (30) least/....

least it is reasonably possibly true. IC.17 was not a good witness. There were respects in which his evidence was contradictory and in which it was contradictory of other witnesses and in which it was improbable. That the evidence of the defence witnesses on this issue was good, was probable, was consistent with the public statements made by Bishop Tutu and also with the public statement made by Mr Lekota condemning the violence. Your lordship will recollect the cutting which went in which was DA.43 in which Mr Lekota issued a public statement saying that in effect we will not burn councillors (10) houses and we will not burn their cars, we will boycott them. There are a number of criticisms of IC.17's evidence which I do not intend to set out in any detail now but in view of your lordship's ruling in relation to how we should present our argument to you I will prepare a list of those. Now another proposition advanced by the state in the document handed to your lordship was that accused no. 20 had regular contact with organisations in Tumahole. The reference there is to volume 97, page 4 755. This is, really emerges from what was put to IC.17 in cross-examination. He was asked whether accused (20) no. 20 had indicated that in his dealings with the TSO and other organisations he had never heard of any complaints against IC.17 and the answer that IC.17 gave was that "hy het nie een word gepraat van TSO of enige organisasies nie". Now one could hardly elevate that putting which indicated some contact with TSO into regular contact with organisations in Tumahole, which is the way that it is put to your lordship in the draft and which is the, and that is the reference given for it. It was also stated that he was involved in a funeral at Seeisoville on 18 February 1985 when clashes with the (30) police/....

police occurred, and various passages in the record are referred to. The first is at volume 286 page 15 741 to 15 743. The second is at volume 352 page 20 153 and the third is at page 353 which is page 20 228. Now the first of the references was to the evidence of accused no. 20 in-chief in which he described what had happened at the funeral on that particular day. The state refers to only three pages of the evidence. If one wants to look to the account of what, the account given by accused no. 20 of the trouble which occurred one has to go beyond the pages referred to by the state (10) because it really, he describes that at page 15 744 and the following pages and he describes how the police shot teargas at the mourners whilst the grave was being filled. He also describes how he himself had to look after a blind person and how the grandfather of the deceased collapsed when he was overcome by the teargas. He in fact stated that apart from that incidence there was no act of violence of any kind, certainly that there were no stones thrown by anybody in particular nor by the main body of people that he was with and those that had remained behind. And there your lordship(20) will find that, as I have said, in the two pages not cited by the state, 15 744 to 15 745. The second of the passages cited by the state is from the evidence-in-chief of Dennis Blum(?). And the evidence indicates that it was at Blum's suggestion made to the parents of the deceased that accused no. 20 was invited to speak at the funeral. The third passage is from the cross-examination of Dennis Blum and in it the state looks for a contradiction between the evidence of Blum and the evidence of accused no. 20. In effect what that passage comes down to is that Mr Blum denied having said to accused no. 20 that (30)

he/....

he should come in order to popularise the UDF. He said that what he had said was he felt that accused no. 20's presence would make the UDF more popular and accused no. 20's evidence was that Mr Blum had raised the issue that it might be to the advantage of the UDF for him to be seen to be united with the people around the events of this nature and to share with the people their difficulties. So in fact there does not really appear to be any contradiction at all. It is, and nothing really turns on that in any event even if there were one. Substantially they are both saying much the same thing and (10) there is nothing of any moment even if there are slight differences in recollection or in perception as to how the invitation was issued. Then there was the funeral of 18 February 1985 and here it is not dispute that Mr Lekota was born in Moekang and that his mother lived there ...

COURT: Are you dealing with the funeral of 18 February or 25 February?

MR CHASKALSON: 18 February.

COURT: Yes. I thought we were busy with that.

MR CHASKALSON: It is a different passage my lord. (20)

COURT: I see. Yes?

MR CHASKALSON: It is a different passage, the state relies on that and what I now want to do is take it a little bit further forward because what the state gives your lordship is three passages. What I want to do is take it forward a little bit to explain. Basically what I wanted to draw your lordship's attention to is the fact that there is evidence that Mr Lekota did speak at this funeral on 18 February and that one of the matters he dealt with at that funeral was that there should not be violence. He really made a speech at (30)

that/....

that funeral discouraging violence. Now none of that is referred to in the state argument. It is reasonable that he would have, for him to have been there. He came from the area and in view of the atmosphere at funerals it is reasonable that he would have addressed the issue of violence and urged people not to act violently. Again I will prepare a note of the various passages in the evidence in which this is referred to. I could give it to your lordship now if you would like to have it now.

COURT: No I think you must put it in your note please. We (10) will take the adjournment now for fifteen minutes and we will let you go on to 12h00 to help you finish by that time.

MR CHASKALSON: Yes I think I should.

COURT ADJOURNS FOR TEA. COURT RESUMES.

MR CHASKALSON: Could I ask your lordship to deal with another request for release, or amendment of the bail conditions concerning accused ...

COURT: Is it the same tombstone?

MR CHASKALSON: No my lord, Mr, it affects accused no. 17 who needs to ... (20)

COURT: Yes before I place this on record we have a problem. That is as far as the continuation of this case is concerned. Obviously one cannot give judgment in this case at the conclusion of argument so the matter will have to be adjourned for a very lengthy time it seems. We cannot wait until the day allotted for the giving of judgment to do something about documentation which has not been agreed upon. We have to work on the judgment in the meantime and we have got to know exactly where we stand. I do not know how long the state will have to, needs to answer your argument but before we (30)

adjourn/....

adjourn we would like to know exactly where we stand so that we can make the necessary arrangements and postpone, if necessary, to a short date and get everyone together and get that out of the way so that we know where we stand. So we cannot leave the thing in abeyance as proposed by you and I would like you to discuss this with Mr Jacobs so that you either agree or that you tell me where you disagree so that I know what to do about it.

MR CHASKALSON: I am not sure precisely what the issues are that your lordship feels that we should discuss. (10)

COURT: Well the issue is this Mr Chaskalson that when I, at the commencement of the case, asked counsel to get together to agree on documentation so that it would not be necessary to call a particular policeman to say I found it on top of a cupboard ...

MR CHASKALSON: My lord, I am sorry, I understand the documents. Is there anything besides the documents?

COURT: No it is only on the documents.

MR CHASKALSON: Only the documents, well no then I understand.

COURT: Only the document aspect. (20)

MR CHASKALSON: My difficulty my lord, and I put it to your lordship and that is that ...

COURT: Well you say you have not had time to study the thing.

MR CHASKALSON: Yes.

COURT: Well that may be but it may then run into the situation where we have to say well we adjourn till next week and get everybody together again just to hear that you have agreed. Which I think would be rather unfortunate.

MR CHASKALSON: It would be but my difficulty is that if I...

COURT: So I was hoping that you would enter into your (30)
agreement/....

agreement or give me particulars of your disagreement before the conclusion of Mr Jacobs' argument.

MR CHASKALSON: Oh I see, oh I understand that. In other words your lordship contemplates that the state may wish to reply, may wish a day or two to reply.

COURT: I do not know how long Mr Jacobs is going to reply. It may take a day, it may take shorter or longer.

MR CHASKALSON: All I really need, it has been, it has not been easy the last few weeks. We have been working very long hours and we have been trying to concentrate on certain (10) aspects ...

COURT: Yes our problem is a technical one, it is not a real difficulty but it is a technical one. But we do not want to get everybody together just because there is a technical problem.

MR CHASKALSON: I understand that and if I were to have a day or so without any other problems around my neck I am sure I could, we could resolve that very quickly. So if Mr Jacobs...

COURT: Well maybe you could pass the problem on to the rest of your think tank, especially Mr Tip and Mr Fick with (20) whom the problem originated.

MR CHASKALSON: Mr Tip has been very busy my lord, but I do not anticipate any difficulty, really I do not. That is what I have indicated to your lordship. I just need to satisfy myself on certain things and I believe when I have the time I can do that. So if Mr Jacobs is going to start his reply, I assume that it may not be too long because it is on the law and it may, I do not know how long he needs to answer.

HOF: Hoe lank het jy nodig mnr Jacobs?

MNR JACOBS: Edele ek wil vir die hof, ek weet nie, ek wil (30) graag/....

graag die verdere deel van die betoog, ek weet nie wat gaan ingehandig word nie, sal ek graag ook wil lees. Ek het oorweeg om 'n skriftelike betoog op te stel. Ek het die stukke alreeds by mekaar gekry en dan in te handig by die hof en dan baie kortliks net na sekere aspekte te verwys. So die staat sal nie lank wees nie. Ek het, terwyl die hof dit meld, gedink dat as ons miskien die saak verdaag tot volgende week Dinsdag dat of dit net dan ingehandig word as die verdediging hulle ander stuk ingee en as daar nie verdere reg uitkom daaruit nie dat ons dit dan doen, en dan 'n tweede aspek wat (10) ek dink wat ons ook onder die aandag van die hof moet bring omtrent hierdie dokumente is dat die datums wat gegee was aan die verdediging is die datums van die inventarisse of wanneer die goedere gekry was en waarin aanvanklik mnr Tip saam met mnr Fick die insae gehad het in die inventarisse. Ek kan nie eintlik verstaan wat is die groot probleme nie, waar die dokumente gevind was deur inventarisse, by besig-hede

HOF: Nee ek kan goed verstaan wat die groot probleem is mnr Jacobs. Die groot probleem is julle het nie geskryf (20) wat julle ooreengekom het nie en dit moet net eenvoudig af-geskryf gewees het wat ooreengekom is en wat die datums is. Dan is daar nie 'n probleem nie. Maar nou is die ding in die lug gelaat.

MNR JACOBS: Dan, ek stem saam want ons het gevra om elke keer om daardie erkennings terug te kry voordat hulle gemaak is. U sal onthou edele ons is elke keer ook maar net gehoor in die hof dan kom mnr Tip ...

HOF: Ja, maar dit help nou nie dat ons dit debatteer en skuld oor en weer uitdeel nie. Die feit is die ooreenkoms staan (30) geskryf/.....

geskryf in 'n sekere vorm. Die vorm waarin dit geskryf is is onaanvaarbaar vir my. Ek wil duidelikheid hê en dink intussen hoe u vir my duidelikheid kan gee voordat hierdie saak verdaag.

MNR JACOBS: Ek is bereid om saam met mnr Chaskalson enige tyd te ontmoet dat ons hierdie ding oplos.

HOF: Nou die enige tyd moet asseblief wees vroeër eerder as later.

MNR JACOBS: Ja, ek, dit is daarom dat ek gevra het as ons kan ...

HOF: Wel ek sal, met daardie gedeelte sal ek handel mnr (10) Jacobs wanneer mnr Chaskalson klaar is met sy betoog.

MNR JACOBS: Soos die u behaag.

HOF: Met die verdere velloop van die saak.

(20)

(30)

ORDER/.....

IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

CASE NO. CC.482/85PRETORIA

1988-09-07

THE STATE

versus

PATRICK MABUYA BALEKA & 21 OTHERS

(10)

O R D E R

VAN DIJKHORST, J.: I place the following on record in respect of accused no. 17. In accordance with paragraph 2 of the conditions of bail accused no. 17, Hlabeng Sam Matlole, is granted permission to visit Sebokeng on 9 September 1988 to pay a visit to the social worker at Lekoa subject to the following conditions:

1. He reports at the police station as set out in the conditions of bail on 9 September 1988 immediately before leaving for Sebokeng. (20)
2. He reports at Sebokeng police station immediately on arrival at Sebokeng and again immediately before his departure from Sebokeng on 9 September 1988.
3. During his visit to Sebokeng he limits his movements with the social worker at Lekoa.
4. All other conditions of bail stand and are to be strictly adhered to.

PAGE 27 116 - AWAITING RETURN OF REVISED ORDER.

MR CHASKALSON: I think there are two matters which I should mention arising out of what has been said to your lordship. the first is we were not asked to agree dates, it was not a question of an incorrect agreement. It was only when your lordship raised it and the first time we were ever given dates was during the course of this argument on which to reach agreement, on which the state said the inventories were made available and were studied and were looked and discussed but we were never asked to agree that.

COURT: Well I understood the state to say that when Mr Fick(10) and Mr Tip got together the inventories were placed before Mr Tip and the inventory has a date.

MR CHASKALSON: Yes but we were not asked to address the question of dates, we were asked to address the question of place.

COURT: Surely that is a matter which was, well it does not matter. What is agreed is set out on paper.

MR CHASKALSON: Yes. Secondly I think I should indicate to your lordship it is not our intention to address any further law argument to your lordship. We have completed everything(20) that we contemplate that we need to say about the law. The, if I could continue then with the, what the state has drawn attention to insofar as accused no. 20 is concerned

COURT: Yes well we will add a further quarter of an hour to your time Mr Chaskalson.

MR CHASKALSON: Yes well I am cutting back to meet your lordship's time limit. It is said that accused no. 20 had close contact with Dennis Blum and furnished him with UDF documents. Now the state refers to passages in the evidence and what appears from that is Mr Blum received about 300 (30) copies/....

copies of UDF News for distribution and about 25 copies of the UDF declaration. Well I am not sure what the state makes of that. I mean accused no. 20 was after all the publicity secretary. The fact that he should seek some publicity for the UDF in Mr Blum's area seems perfectly natural and not to assist the state's case in any way. Then it is said that accused no. 20 was at Thabong at the funeral, at a funeral held there. The passage referred to by the state is from the evidence of, I am not sure of his rank and I will refer to him as Mr Hugo. I am not sure of his rank, but anyway he describes how he searched accused no. 20's car and thereafter saw him at the cemetery where he saw him speaking. He did not give any evidence as to what was said at the funeral but there is evidence about that because it is common cause that accused no. 20 did speak at that funeral and once again evidence was led to the effect that he spoke along the lines of non-violence. He disavowed violence and proclaimed the UDF as a peaceful organisation. That is again understandable on the occasion, it was a funeral where emotions run high and he spoke to that effect. So again I shall collect those references rather than take your lordship through them at this stage, and let your lordship have them in writing later. I seem to have gone beyond one which said that, apparently I took it out of order that there is also a statement that accused no. 20 was at the launch of the Million Signature Campaign in Thabong. Yes that was on 25 February and the passage again is in Mr Hugo's evidence. But there are no details concerning his activities or of anything suggesting that he did anything improper and once again it seems to be perfectly natural and straightforward that the publicity secretary should make

such/.....

such an appearance for what was essentially a non-violent campaign. It is said that accused no. 20 addressed a mass meeting in Huhudi on 28 July. Reference is made to EXHIBIT V.16. In fact V.16 is a meeting which I think took place at Kimberley. But it is correct that he did speak at Huhudi. That is reflected in V.12 and that was on 1 July. There is then a reference to a number of occasions upon which Mr Lekota spoke. Once again the state draws attention, in those specific parts of his speeches it points to nothing which it says is indicative of the allegations which it makes, either against (10) him in relation to his alleged adoption of violence or in relation to the UDF generally. And I think it would be best in the circumstances if I very briefly suggest what are the main themes which are picked up by Mr Lekota in his speeches. Really there seem to be, the main theme seems to be he addresses the question of opposition to the Tricameral parliament. He addresses that quite frequently and one would understand that because that was part of the campaign which was being conducted at the time that he was making those speeches. He consistently advances four reasons why the Tricameral par- (20) liament should be rejected. First that it was imposed by the governing party and that it excluded blacks from participation in the central government. Secondly that the constitution in effect retained apartheid and retained the principal of white superiority. Thirdly, which is really part and parcel I suppose of the first proposition, that the constitution was drafted without consultation with the black majority. And fourthly that the coloured and indian participants in the system would have no power to effect any meaningful change. Those are the main themes which he addresses when he deals with the (30)

Tricameral/....

Tricameral parliament. Another theme which is frequently there is the call for a national convention. Nowhere does the accused ever proposed a violent or a bloody confrontation. He continually calls for reconciliation and those are the factors which we suggest do emerge predominantly from his speeches. Let me give the rest of my time to accused no. 21. It is said that he was at Mankweng and had contact with local organisations and that when consideration was given to the establishment of a UDF region there he spoke and gave an overview of the struggle. And there are references to EXHIBIT (10) S.20 and to ABA.42. And I think your lordship would note that EXHIBIT ABA.42 is a typed version of EXHIBIT ABA.17. Now it is correct that accused no. 21 did go to the Northern Transvaal and that he did have discussions there concerning the establishment of a region and his evidence is at volume 300, page 17 037 line 5 to 17 042 line 28. The exhibit ABA.42 and ABA.17 which are the same reflect substantially that what he did was to give a brief report on the background to the formation of the UDF which he traces to the call by the Reverend Allan Boesak. He was cross-examined about this meeting. We have (20) two references to it, one at volume 304 page 17 410 line 20 to 17 420 line 21, and again at volume 305 page 17 453 line 14 to 17 457 line 26. In that second passage he deals with the EXHIBIT S.20. Now the submission we make to your lordship is that there is nothing in any of this evidence, or on anything that the state has put before your lordship, to suggest any unlawful conduct or criminal conduct on the part of accused no. 21 and nor has any reason been advanced why these matters which have been brought to your lordship's attention should lead your lordship to the conclusion that accused no. 21 is (30) guilty/....

guilty of any of the offences with which he has been charged or why his evidence in relation to such matters should be rejected. It is also stated that accused no. 21 was involved in the question of education at Saulsville/Attridgeville and that he had encouraged pupils to boycott classes or that he would encourage pupils to boycott classes until demands were met. There the state refers to the evidence-in-chief of C.1547 Warrant Officer Du Toit and Captain Loots. Now no reference is made there at all to the very extensive evidence given by the defence witnesses on this issue. I dealt with that (10) fully and I do not want to repeat it but the suggestion we make to your lordship is that it is quite clear from what I have already put to your lordship that Mr Chikane's conduct in relation to Saulsville/Attridgeville shows a positive attempt to end the boycott and active participation in community efforts going beyond himself and the UDF involving as many people as possible designed to bring the boycott to an end. And I have already made submissions to your lordship in regard to the evidence of Du Toit and Loots. It is then said that accused no. 21 was involved in the Daleside workshop held on (20) 27 to 29 April. The reference is made to EXHIBIT U.4(a). Now the evidence here is that accused no. 21 played a part in issuing invitations and in formulating the programme for that workshop but he was not present at the workshop itself. That your lordship will find in his evidence in volume 300, page 16 982 line 4. Then it was said that he was the regional secretary of the Northern Transvaal and reference was made to Loots' evidence at volume 105 page 5 211. I do not understand that at all, that is clearly wrong. He was a part time co-secretary of the Transvaal region. Indeed there was no (30)

Northern/....

Northern Transvaal region - I think even in embryonic form - at the time that he saw Loots. It is also stated that he was, as it is said, not only at the June 16 commemoration service but also at a gathering where the Mamelodi, I think it is MYO, constitution was made known and again there is a reference to the evidence of Loots in volume 105 page 5 217. I am not sure again what the relevance of this is. First of all neither of these incidents are referred to in the indictment. Secondly no evidence is given in regard to what happened on such occasions and there is simply nothing from his attendance (10) at such events from which you can refer anything of any moment to this case. Now if I may say something about accused no. 21. He was the part time co-secretary for the Transvaal. His role, he had other responsibilities. He was not a full time UDF official. He did not have a permanent office of his own. Though he was clearly an active, actively involved in the UDF affairs nothing has been pointed to, there is really no evidence of his attending meetings of any significance to which the state draws attention. There is nothing to suggest that he would have any knowledge of affairs materially (20) different to anybody else who might have had some role in a UDF structure. On the few occasions where we have seen any direct evidence concerning his activities he really has emerged as a person of peace. At almost every instance where any investigation of what he has done has been undertaken he has been shown to be a person who has spoken against violence, who characterised the police as doing their job, who has sought to get the children back to school. What is there that brings him into this grand conspiracy? What is there to suggest that even remotely he could be seen to be supportive of violence?(30)

And/....

And our suggestion is that there is in fact nothing, and that the state can point to nothing. Your lordship will also remember that he went out of office on 9 March 1985 and is not shown to have had any material involvement with affairs subsequent to that date. I have cut back perhaps more than I thought I would but I do not want to say anything more now about accused no. 21 nor about the case itself. It is not clear to me what your lordship expects of us from now onwards but perhaps we should find out what is going to happen as far as the state is concerned. (10)

HOF: Mnr Jacobs?

MNR JACOBS: Op hierdie stadium dan wil die staat vra dat, of die saak sal verdaag tot Dinsdag, om die staat die geleentheid te gee om skriftelike betoogshoofde in te handig oor die regs-aspekte waarop die staat graag antwoord wil gee, en ander aspekte wat ons dink wat ...

HOF: Wel mnr Jacobs hoekom het u so lank nodig daarvoor? Die regsargument is tog al 'n dag of twee gelede gevoer en ons het die regsargument al uitgepluis by die aansoek om ontslag. Destyds, wat my betref het daardie baie min (20) nuuts bygekom nou behalwe die kwessie van die toelaatbaarheid van dokumentasie wat ek dink 'n belangrike aspek is.

MNR JACOBS: Dit is die enigste aspek waarop ons ook eintlike diep ...

HOF: Daardie aspek het op die eerste dag van mnr Chaskalson se betoog voorgekom, dit is al 'n maand gelede.

MNR JACOBS: Edele ons het die stukke wat ons graag wil steun, het ons by mekaar gekry. Dit is net ons, daar kom, u sal onthou dat gedurende die betoog van die verdediging is daar kort-kort terugverwya na stukkies toe wat op regs - (30) aspekte/....

aspekte gegaan het en wat daarop gaan. Daarom moes ons nou wag om te hoor om presies, want ons het nie geweet op hierdie stadium of daar nou nog iets gaan bykom. nie. Nou kan ons nie ons goedere op skrif gaan stel het nie. Ons moes hulle net, ons het hulle by mekaar gehou, ons het ons notas gemaak edele maar ons het dit nie gesistematiseer nie want ons wag, ons weet nie wat gaan aan nie, totdat ons presies hoor wat is dit wat ons presies moet op antwoord, en daarom het ons die probleem gehad dat ons nie kon gaan en nou eers daar gaan sit en dit klaar doen nie. (10)

HOF: Nee mnr Jacobs ons is nie tevrede om vir u 'n uitstel te gee nie. Dit is nie nodig dat u u betoog op skrif stel nie. U kan dit maar mondeling lewer en ons sal u die reg gee, net soos ons aan die verdediging die reg gee om hulle betoë verder op skrif te stel om ook u betoog op skrif te stel en dit later in te handig. En dan sal ons 'n tyd bepaal waarop die verdediging s'n en u betoë albei moet inwees. Maar u kan maar mondeling die punte uithaal wat u dink van belang is en dit dan lewer en u kan dit aanvul by wyse van skrif. Ons kan nie tot Dinsdag wag daarvoor nie. (20)

MNR JACOBS: Edele kan ek dan ten minste tot môre kry daarvoor want ek moet tog my goed, ek het dit nie hier nie want ek het nie verwag nie, ons het gister nog gehoor dat daar gaan nog skriftelike betoe inkom. Ons het nie geweet wat die aard is nie. Ons het nie verwag dat daar sou iets gebeur nie.

HOF: Ja ons sal u 'n kans gee om tot môre oor die ding te dink, veral omdat daar 'n aspek is waarop ons u graag wil hoor, en dit is the kwessie van die verklarings. Daar word beweer dat verklarings gemaak is deur vier staatsgetuies wat nie openbaar is aan die hof nie. Dit is nou IC.8 en Mahlatsi, (30)

Rina/....

Rina Mokoena, en dan is daar nog een dink ek. Dit is mev. Smith, as daar 'n verklaring is. En daar word sekere beskuldigings bedek of onbedek teenoor u gemaak en dit is ongelukkig ontvlug om die aspek ten volle te ondersoek. Ons sal u graag daarop ook wil hoor môre-oggend.

MNR JACOBS: Soos dit u behaag.

HOF: En hoe lank dink u gaan u môre besig wees?

MNR JACOBOS: Ek, dit is moeilik om te sê maar ek glo nie dit kan meer as seker, kan ek net met mnr Fick konsulteer edele?

HOF: Ja.

MNR JACOBS: Dit sal nie in elk geval langer as 'n dag wees nie.

HOF: Maar ons wil môre-oggend ook van u hoor, en van mnr Chaskalson, hoe die situasie is oor die dokumentasie, en ek will aanraai dat u vanmiddag gebruik om dit ook uit te sorteer want ons wil môre oggend een kant toe of ander kant toe 'n beslissing bevel daaroor.

MNR JACOBS: Daarby sal dit hang van mnr Chaskalson of, ons is bereid om ...

HOF VERDAAG TO 8 SEPTEMBER 1988.