IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(TRANSVAALSE PROVINSIALE AFDELING)

A

SAAKNOMMER: CC 482/85 PRETORIA

1987-11-04

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

KONTRAKTEURS: LUBBE OPNAMES

VOLUME 309

(Bladsye 17 705 - 17 712)

Digitised by the Open Scholarship Programme in support of public access to information, University of Pretoria, 2017.

COURT RESUMES ON 4 NOVEMBER 1987.

MR BIZOS : My Lord, there is an unfortunate problem. One of the accused, accused no. 2, has not yet arrived. He did not come to the bus this morning. He did report last night in the company of Mr Mphuthi. We do have a telephone number and there is also a back-up arrangement from the place where the bus leaves and our attorney is busy telephoning Johannesburg to find out whether any of that back-up arrangement in order to avoid ... (Court intervenes)

COURT : No. 1 has got leave of absence?

MR BIZOS : That is so. It is no. 2 that is the problem. There may have been an accident or they may have been something. I do not know how Your Lordship wants to view the matter at this stage.

COURT : Mr Bizos, we feel that with your permission we would like to continue in the meantime and we will decide on the question of the estreatment of bail just after tea.

MR BIZOS : We will see. He may in the meantime turn up and we will ... (Court intervenes)

COURT : So, we will not decide anything at this stage until after tea.

MR BIZOS : Yes, there may be a good reason for it.

MNR. JACOBS : U Edele, mag ek net vra. Is dit nie wenslik dat 'n mens op hierdie stadium 'n lasbrief vir sy arrestasie magtig nie en dat dit net agterweë gehou word. Ek dink daar moet formele stappe geneem word op hierdie stadium ... (Hof kom tussenbei)

HOF : Is daar enige verskil of ons dit nou doen of 11h00?

MNR. JACOBS : Ek het net gereken dit is miskien die beste op hierdie stadium, maar ons kan dit maar oorlaat tot 11h00.

Digitised by the Open Scholarship Programme in support of public access to information, University of Pretoria, 2017.

HOF : Ons sal dit om 11h00 doen.

MNR. JACOBS : Dan net voor die getuie ingesweer word, wil ek net die Hof inlig dat hy het gister die geleentheid gehad om met gesofistikeerde toerusting die filmmateriaal te ondersoek in Johannesburg. Hy het redelik laat klaargekry daarmee om dit almal deur te gaan. Hulle het dit nie beskikbaar gehad nie, BEWYSSTUK 36 die klankmateriaal en daardie laaste deel kon nie behoorlik ondersoek word deur mnr. Harris nie, omdat hulle nie ŉ klankversterker daar gehad het nie. Dit is nog nie gedoen deur mnr. Harris dan nie en ek wonder of dit nie wenslik is nie, ek doen so aansoek by die Hof, dat die Hof miskien later vanoggend verdaag en dat hy geleentheid kry om saam met dr. Jansen te gaan na die polisielaboratorium en dat hy die geleentheid kry om hierdie deel van BEWYSSTUK 36 te ondersoek.

HOF : Hoe lank gaan dit duur?

MNR. JACOBS : Ek het dr. Jansen gevra. Hy het gesê vir ŉ behoorlike ondersoek en die tyd om soontoe te gaan, dan sal ons seker nie voor 14h00 kan begin nie. Dan is daar nog ŉ ander probleem wat ek het. Op die nommers blykbaar op BEWYSSTUK CA18 is daar nie foute nie, maar by die telling by party van die raampies is daar wel klein foutjies soos ek verstaan van dr. Jansen, maar dié materiaal het ek nie om dit nou reg te maak by die hof nie. Ons kan dit sommer terselfdertyd verkry ... (Hof kom tussenbei)

HOF : Meen u dat u korreksies wil aanbring op CA18?

MNR. JACOBS : CA18, want ongelukkig sal dit miskien ook wenslik wees voordat daar met kruisondervraging voortgegaan word dat ons die regte posisie voor die Hof het.

HOF : Wat is die situasie as ons om 14h00 vind dat die

deskundiges/...

Digitised by the Open Scholarship Programme in support of public access to information, University of Pretoria, 2017.

deskundiges nog nie klaar is nie?

MNR. JACOBS : Kan ek vra dat dr. Jansen my skakel voor 14h00. Ek sal nie daar by wees nie, ek gaan nie saam met hom na die laboratorium toe nie. Ek sal hier by die hof bly.

HOF : Maar wat is u skatting, gaan hulle klaar wees voor 14h00 of gaan ons nou net aan ŉ lyntjie gehou word en om 14h00 vertel word jammer ons is nog nie klaar nie? Want as dit die situasie gaan wees, dan help dit nie om voort te gaan nie.

MNR. JACOBS : Ek het vir dr. Jansen gevra hoe lank sal dit omtrent neem en toe sê hy vir my as ŉ mens die tyd moet vat wat hy moet ry terug Silverton toe, weer daarvanaf hiernatoe ry en so aan, dan reken hy alles kan afgehandel wees 14h00. Maar as daar ŉ probleem opduik dan mag dit langer neem

HOF : My assessor het administratiewe probleme op kantoor. Dus, dit sal hom beter pas as ons in elk geval nie vanoggend sit nie, om dan ook nie vanmiddag te sit nie, sodat hy sy administratiewe probleme kan uitsorteer. Sal dit enige verskil maak wesenlik?

MNR. JACOBS : Dit sal nie. Dit kan miskien dan geleentheid bied om hierdie verbeterings aan te bring en dit weer deur die woordprosessor te sit en dan ŉ heeltemal volledig korrekte stuk voor u te plaas. Dit maak dit miskien meer wenslik en vir die gerief van die Hof dat ons ŉ heeltemal korrekte stuk voor die Hof kan kry.

HOF : Maar wat u nou al gedoen het, u het CA18 nou al aan die getuie gestel. Gaan daar nou ten aansien van die gedeeltes wat gestel is, veranderings wees?

MNR. JACOBS : Dit mag in die raampies wees. Ek het dit

ongelukkig/...

Digitised by the Open Scholarship Programme in support of public access to information, University of Pretoria, 2017.

ongelukkig nie self gesien nie, maar van die raampies wat getel is hierso van waar daarso nou byvoorbeeld ... (Hof kom tussenbei)

HOF : U meen as daar 44 is, is daar dalk 42?

MNR. JACOBS : Ja.

HOF : So, u sal weer voor moet begin? Nog ṅ halwe dag daarmee heen.

MNR. JACOBS : Dit mag wees.

COURT : What is your attitude, Mr Bizos?

MR BIZOS : We do not know what passed between the experts yesterday. We are in the State and in Your Lordship's hands. If there is going to be any doubt as to whether the afternoon is going to be usefully employed in evidence or not, the better solution may well be to adjourn until tomorrow in order to give them an opportunity to amend the documents. I do not if the documents are amended, judging from what has been said up to now it may be that the witness can point out things to Dr Jansen which may facilitate things. So, we would not object to the application.

COURT : Well, then the next question which arises is, what about the estreatment of bail? We cannot let this be hanging in the air until tomorrow morning? We are obliged to deal with that now.

MR BIZOS : The practice insofar as I have understood it is to possibly give a reasonable opportunity on the morning. If Your Lordship is going to be available in the ... (Court intervenes)

COURT : Well, is it not merely a provisional estreatment of bail and it can be reinstituted?

MR BIZOS : It is really - it is a drastic step and if he

turns/...

Digitised by the Open Scholarship Programme in support of public access to information, University of Pretoria, 2017.

turns up in the next five minutes and Your Lordship is available and we inform Your Lordship ... (Court intervenes)

COURT : If he is still in Johannesburg, one would have expected him to telephone us and say "Well, I am here, there is a problem." You have not heard anything, we have not heard anything at all. It is now 10h15.

MR BIZOS : That is so. I do not know whether he had the telephone number of the registrar.

COURT : While you are dealing with that aspect and with your attorney, I would like to put a question to Mr Harris. Mr Harris, you were with the expert for the State yesterday. We have been told this morning that at least this morning will be needed to do what still has to be done to inform you properly of the State's case. We has some doubts as to whether we should sit in the afternoon because you might be rushed and we might find that at 14h00 we are informed you have not finished yet. That is what has been discussed so far. And as the assessor has problems at the office, we intend adjourning for the whole day to give you more time as well to be better informed. Would that suit you?

MR HARRIS : Yes.

MR BIZOS : The attorney has gone to make another telephone call. He had no success between 10h00 and now. I would ask Your Lordship to let us stand down until 11h00 and the reason that I advance for this is this. Assume that we would hear, hypothetically, that there has been an accident or something, if Your Lordship estreats the bail, even though Mr Hlomoka, accused no. 2, may have a satisfactory excuse for not being present, if Your Lordship estreats the bail now and he turns up in the next fifteen minutes or so, he

will/...

Digitised by the Open Scholarship Programme in support of public access to information, University of Pretoria, 2017.

he will have to spend the night in prison. It may well be a salutary lesson if it is mere neglicence, but it may be an unjust punishment in the circumstances if in fact he has a just excuse.

MNR. JACOBS : Ek het self - ek verstaan mnr. Bizos se probleem en die feit dat as beskuldigde nr. 2 slegs deur ŉ ongeluk verhoed was, dat hy moontlik vannag in die gevangenis mag deurbring. Ek kan dan eintlik nie beswaar maak nie. Dit is net vir die gerief van die Hof ... (Hof kom tussenbei)

HOF : Wel, is die aangewese weg nie dat ons die borg voorlopig verbeurd verklaar, soos ons veplig is om te doen onder die Wet; dat ons ŉ lasbrief magtig maar beveel dat die uitreiking daarvan oorgehou word tot 11h00, 14h00 of 16h00 of môre-oggend afhangend van hoe u die ding nou bespreek en dit dan sal verhinder dat hy in hegtenis geneem word inmiddels.

MNR. JACOBS : Dit is daarom dat ek voorgestel het aan die begin dat ŉ mens miskien ŉ lasbrief magtig op hierdie stadium maar dat die uitvoering daarvan net teruggehou word.

HOF : Ons kan geen lasbrief magtig as ons nie die borg voorlopig verbeurd verklaar nie.

MNR. JACOBS : Nee, die borg sal voorlopig verbeurd verklaar word en die uitvoering van die lasbrief oorgehou word tot môre en eers na môre uitgevoer word en ek dink dit ondervang mnr. Bizos se probleem dat as daar ŉ ongeluk net was, dat beskuldigde onnodig dan miskien vannag in ŉ gevangenis sal moet sit.

MR BIZOS : The suggestion by Your Lordship seems to meet the justice of the case, but perhaps if My Learned Friend could leave a representative - well, if he does turn up

in/...

Digitised by the Open Scholarship Programme in support of public access to information, University of Pretoria, 2017.

in the near future, we will ask the court orderly to note the matter or something like that.

Digitised by the Open Scholarship Programme in support of public access to information, University of Pretoria, 2017.

Lubbe Recordings/MCL/Pta Case No. CC.482/85

IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

PRETORIA

1987-11-04

THE STATE

versus

PATRICK MABUYA BALEKA AND 21 OTHERS

O R D E R

VAN DIJKHORST, J. : We make the following order :

The bail of accused no. 2 is estreated provisionally. A warrant for his arrest is authorised. The issue of this warrant is to be held over till 10h00 tomorrow morning, that is 5 November 1987.

Digitised by the Open Scholarship Programme in support of public access to information, University of Pretoria, 2017.