

SAAKNOMMER: CC 482/85

DELMAS

1986-01-27

DIE STAAT teen:

PATRICK MABUYA BALEKA EN 21

ANDER

VOOR:

SY EDELE REGTER VAN DIJKHORST EN

ASSESSORE: MNR. W.F. KRUGEL

PROF. W.A. JOUBERT

NAMENS DIE STAAT:

ADV. P.B. JACOBS

ADV. P. FICK

ADV. W. HANEKOM

NAMENS DIE VERDEDIGING:

ADV. A. CHASKALSON

ADV. G. BIZOS

ADV. K. TIP

ADV. Z.M. YACOOB

ADV. G.J. MARCUS

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS:

LUBBE OPNAMES

VOLUME 8

(Bladsye 382 - 425) (IN CAMERA GETUIE)

COURT RESUMES AT 14h00

106 : d.s.s. (Through Interpreter - In Camera)

FURTHER CROSS-EXAMINATION BY MR BIZOS: Precisely what were you going to do with the money which you hoped to get from Dr Naude? --I was going to use the money for transport purposes, again for food and there are some emergencies.

Now please, precisely for what were you going to use it? Transport from where to where and for who? -- I was going to use it for my own transport during the work I was doing there, I was supposed to be doing there in Johannesburg. (10)

What precise work were you supposed to do? Precisely what? -- I was supposed to have plotted a D.L.B. at Crown Station.

What is a D.L.B.? -- A dead letter box. You dig a hole in which you keep some arms and other things.

COURT: Could I just get clarity. I missed a couple of lines. Could you just repeat what he said, the money he was to use?

MR BIZOS: He was to use for transport ....

COURT: Fuel and some emergencies.

MR BIZOS: Food and other emergencies for himself. (20)

COURT: How did we get to the dead letter box.

MR BIZOS: And I say precisely what were, or precisely what you were going to do with the money, to transport whom to where. That was the question, and the answer was that I was to establish a dead letter box at Crown Station.

Right. You were going to establish a dead letter box but the letters were going to be bombs? Is that, do I understand you correctly? -- I never said so.

Well what did you say a moment ago when His Lordship, what did you say about arms before His Lordship asked me (30) what was the question? -- I am talking about a D.L.B. in a  
military/.....

military sense. It is a hole you dig for keeping your arms which will not be known to other people except yourself and the person you will have to contact. I never made mention of bombs.

Was the dead letter box that you were going to establish at Crown Station for the military purpose that you have just described? -- All I had to do was to plot the D.L.B. Who was going to fill it up I do not know and who was going to lift it I do not know. That is for security reasons.

I see. Was there an urgency in establishing this dead (10) letter box? -- That is so.

And is that one of the purposes that you had been sent from Lesotho? -- Those were instructions.

Were you given a deadline by which you had to do it? -- That is so.

Which was the deadline? -- The deadline was not a date as to what date I am supposed to have completed that but I was given days that by such and such a time you ought to be back here.

Which date were you supposed to be back by? -- By the next sitting of the cadres committee. (20)

When was that? -- It varies in days.

Now which was going to be the next meeting of that committee after you left Lesotho? -- We are being told only two days before the day of the meeting, that is on month end, that on such a day it is a meeting.

So you did not know when the date was? -- That is so.

What other emergencies did you have to perform? -- You do not in fact have to know exactly what the emergencies are. The emergencies crop up at their own. Because if that be the case that one would know about emergencies before they would (30) give you money for to meet the emergencies but an emergency

it/.....

it is something which occurs in the spur of the moment, and another thing is if one knows what an emergency was going to be then one would avoid that.

Yes thank you for those general remarks but will you please tell us what emergencies you had in mind on the day you went to Khotso House, other than the one that you have mentioned now. -- Road blocks, secondly there are times when you suddenly have to leave the place where you are staying and you need transport.

Could I please ask you, I am not asking you generally (10) what emergencies can arise in the life of an underground cadre because I think we can all imagine those. -- Those are the emergencies I have just mentioned.

COURT: But the witness has told you Mr Bizos that one does not know the exact nature of an emergency in advance. Now you keep on pressing him so he gives you a generalised idea of the sort of emergencies that may arise.

MR BIZOS: That could arise. But what I would like to ask you was what emergency did you have in mind that you risk arousing suspicion at the receptionist's office? -- For instance at (20) the time when I left the office, probably say it was to happen that I come across the police and I must get away from the police. Then I would need money to make use of taxis and I was going to run out of money. An again while busy plotting your D.L.B. on those premises which belong to the South African Railways you may encounter a difficulty that the railway workers or railway people may emerge there and you have to give way, you must have a way of getting away from there. To recognise a place you do not go to a place once and then plot a D.L.B. Your must reconnoitre it in order to verify (30) of people may experience some problems there. There is the

initial/.....

initial reconnaissance and then there is a final reconnaissance. All those things involve money.

Yes. When you went to Khotso House and you did not give the name to receptionist and you were referred to the white secretary what did you say to the white secretary? -- She did not ask for my name. When I came to that person I just said I want to see Dr Naude, it is an emergency, on which she said "He has got somebody inside." When I said to her it was urgent she went in and told me that I would see him.

Did she not try to ascertain what the nature of the (10) urgency was? -- No.

But did she try to possibly find out what the whole purpose was that she might deal with it in order to avoid you seeing the Secretary General, Dr Beyers Naude? -- No.

And you did not tell her that only Dr Naude could deal with the matter? -- The only person to whom I said I want to see Dr Naude personally is the receptionist. This one I only went up to her and she knew about what I wanted to do there and she said I will meet Dr Naude. After I told her of course that this was personal. (20)

When you went into Dr Naude's office did he ask you for your name? -- No I just started talking to him.

Did you never disclose or mention a name to him? -- No there is no such.

Did he ask you any questions whatsoever to try and determine your identity? -- I had already introduced myself. The only question he asked me was "How much money do you need".

So the answer to the question as to whether he asked any questions whatsoever in relation to your identity is no? -- That is so. Because I had already identified myself. (30)

Yes. Now and you had identified yourself as a member,  
that/.....

that you were from the ANC? -- Yes.

And that you needed money? -- That is so.

Did you explain what for? -- I said to him I need the money for travelling, which is transport.

Did he ask you where you had come from and where you wanted to go, if he could possibly give you a lift or he could arrange in some way? No questions at all? -- No he did not say anything about that.

Yes. Did you say to Dr Naude whether you, although you, you told us you were a member of the ANC, did you say to (10) Dr Naude that you required this money for your own personal purposes or whether you required it in order to do the work of the ANC? -- All I said to him was that I needed the money for transport and I am on duty.

You did not tell him that you wanted the money in order to do the ANC's work? -- After having told him that I am from the ANC and then I tell this person I need this money for travelling purposes. That is self-explanatory that I did not come back here at my own.

What I am asking you is whether you told Dr Naude that (20) you wanted money in order to do the ANC's work, whether you used those words? -- Not in those words but I did put it that way to him.

You did say you did not use the words "for the work of the ANC"? -- Not verbatim.

Yes. Did you tell him that you needed the money in order to do the work of the ANC here in the interior? -- In the first place if I were to go to Dr Naude and said I need money to go and use it outside the country he was going to be surprised that whether my head is functioning proper or not because (30) ANC has got money outside the country.

Please/.....

Please answer the question.

COURT: Yes actually he has already answered the question because he has told you exactly what he said to him and now you keep asking him whether he said something else and something else. Now it becomes an argument rather than a factual finding, but you are entitled to put the question.

MR BIZOS: Thank you My Lord. Did you mention to Dr Naude that you needed the money in order to do the ANC's work internally? -- That is so.

Yes. -- Why I say that is so it is because when I tell (10) him I need money for transport while being in this country here that explains that I need the money to be used inside the country. I would not be asking him for money for transport when I am outside the country, for instance in Lesotho.

The reason why I am putting these questions to you is this that this afternoon you told His Lordship that you only told Dr Naude that you were from the ANC and that you needed money for transport. In your evidence-in-chief we have recorded you as having said the following: "Ek het gesê ek soek geld vir werk binneland vir ANC se werk". Now please listen to (20) my question. Do you agree that that is what you said in your evidence-in-chief? -- Yes I agree that I have said but as I said just now that I did not put that verbatim. You can say something in many ways which mean the same thing.

But did Dr Naude not want to know what ANC work you wanted to do inside the country? -- He did not ask me. Even if he had asked there I would not have answered that.

You would not have answered. Did he react in any way when you said that to him? -- His only reaction was he asked me how much I need and to give me the money. (30)

No other reaction whatsoever? -- I then left.

In/.....

In your evidence-in-chief you gave a very conspiratorial reaction on the part of Dr Naude. You said that he told you to speak softly. Have you forgotten about that? -- I have not forgotten about that because there are certain things on which the Prosecutor said to me about they are not necessary in court. That is the very day when the Prosecutor asked me that question, that is during the time when I elaborated on that. Because his question was "Did you get the money from Dr Naude". I said "Yes". When I started elaborating he then said "No I have not come to that yet". After I had mentioned that. (10)

You know you are not here to give evidence on how you were told to give evidence by the Prosecutor on any particular issue. You ....

COURT: Now just a moment. He says he was explaining it and he was stopped by the Prosecutor.

MNR JACOBS: Ek mag net help Edele, ek wil net ..(onhoorbaar) beswaar daarteen, die stelling want ek het hom hier probeer stop wat ...(onhoorbaar)...(GLAD NIE IN MIKROFOON)

MR BIZOS: I have a note of what he said in relation to the reaction of Dr Naude. (20)

COURT: Yes he says he was not entitled to elaborate further as he was stopped.

MR BIZOS: The question that I am putting to the witness is the following, which in my submission is a permissible question, "I asked you a moment ago as to how Dr Naude reacted and you said that he did not react except to go and fetch the money."

COURT: Yes.

MR BIZOS: "That answer is in conflict with your evidence-in-chief. -- I do not agree.

You told me that Dr Naude did not react in any other (30) way except to go and fetch money? Was that answer true or false?/....



false? As things happened, never mind what the Prosecutor said. -- The question put to me now the defence gave me a choice of saying yes or no. Now I would like to ask this Court to go beyond that in answering this question.

COURT: Yes, amplify your answer. -- A reaction can be in many ways, it can be taken in different ways. There is a reaction biologically, there is a reaction in a layman's reaction, there is a reaction militarily. From the reaction that I was talking about that he did not react he just gave me money, I took it from day to day happenings, in the language sense now. (10)

MR BIZOS: Have you any other answer to the question that I put to you? -- If you want me to add something put it in a way that I will understand it better.

COURT: I am sorry? -- If you want me to add to that put it in a different way so that I can add to that.

MR BIZOS: Your reason for not answering to my question "Yes Dr Naude reacted by telling me to speak softly" was that I did not say it in answer to you because the Prosecutor told me not to elaborate? -- That is so.

Did you, when, did you, when you understood the ques- (20)  
tion as to how Dr Naude reacted remember that Dr Naude asked you to speak softly? -- Well I did not have to remember. This was still in my mind. If it was asked from me in that way that I must understand to answer it with that reaction which I had in my mind already I would have answered it that way at the time.

Is the answer to the question "Yes I did remember"? -- I do not agree with the remembering, the way you put it but what I am saying is I knew about that.

Yes. Why if you knew about it, never mind what the (30)  
Prosecutor might have said or not said, answer the question to  
the/.....

the best of your knowledge? -- I quite agree with you if you put it to me that my answer to the question should be yes or no. But if you want me to answer proper to a question I would like to ask you to put your questions properly.

I will leave it at that. Now who decided on the amount that you got? -- I did.

Now if we take the latest way in which you expressed yourself, I do not want to put it any further than that, as to the purpose for which you required the money did Dr Naude ask you where you wanted to go and whether a lesser amount might not do? If you only wanted to go to Soweto or Alexandra township it is only R2?

COURT: No just a moment now, now where is this question leading? You are entitled to repeat questions but you have already got the answer that Dr Naude was not interested in his destination. Now are you repeating that question?

MR BIZOS: I did not recall actually having asked the question and I apologise. Now can you explain, can you explain why Dr Naude should have taken the word of a complete stranger as to the amount of money that he required for his transport?(20) -- Only Dr Naude will be able to answer that one as to why he did not make further enquiries about that. He is a stranger to me too, I never stayed with him for some time. Perhaps I was going to have an idea of what kind of a person he is, his line of thinking.

Now is transport the only purpose that you mentioned expressly to Dr Naude? -- That is so.

You are sure of that? -- Yes that is so.

According to our note you said in your evidence-in-chief that you said to him that R60 would do but that you would (30) then use that money in order to fetch other money. I do not

know/.....

know My Lord, is that the correct ...

COURT: Yes.

MR BIZOS: Thank you. Mr Tip just sent me a note that he is not absolutely certain. -- Yes that is so. Now I ....

Why did you deny it a moment ago. -- May I just finish.

I am sorry. -- I do not know how does that one go with the recent questions I was answering just now.

What is your objection to the recent questions? -- The question put to me now, that is the last question, was if Dr Naude did try to find out from me whether the money, the (10) amount mentioned was going to be enough or not. Now I answered that question when I was talking right now. The fetching of the money has got nothing to do with these questions. It is an entity at its own. I will answer to that when it comes.

Well thank you for offering to do us that favour but let me read to you what I asked you and what your answer was. "Is transport the only purpose you mentioned expressly to Dr Naude", and your answer "Yes". "Are you sure that that was the only purpose", "Yes". -- Let me just correct something there.

Did you say that? -- With the Court's permission can (20) I ask one question, I had asked one question.

COURT: Well normally a witness does not ask the question but counsel does. -- From what was put to me by the defence as questions and answers there is something I want to correct in that.

Yes. -- He asked me if I told Dr Naude that the money I need for transport only and then I said yes, and that was the only purpose of my asking for the money and I said yes. Now there is something I would like to correct there. What I wanted to put straight there is fetching money still falls under (30) transport. I have to make use of transport from point A to  
point/.....

point B where I am fetching the other money. So it falls under the same subject of transport.

MR BIZOS: Are you being well served by the interpreter in your opinion? -- Quite well.

Yes I am sure that the interpreter will be pleased with that too as we all are in many cases that we have been in, but what I want to ask you is this that you were specifically asked whether anything else was said and you said no. And what I am going to suggest to you that you, like the training that you have had, the training that you have had, when you heard(10) what I read to you from your evidence-in-chief and you heard the confirmation from the Learned Assessor, you are very quick to put strained interpretations on your words. -- That is not so.

And that the reason for this sort of contradiction is that given by Dr Beyers Naude himself, that this incident did not happen. -- There is no such.

Have you been back to Khotso House after May? -- There is no reason for me to go there.

Is the answer no? -- Yes, no. (20)

Where have you been working since you became a cadet policeman?

COURT: Is the word cadet policeman entirely correct? Has it not got a technical meaning?

MR BIZOS: Well student My Lord, a prospective policeman.

COURT: Prospective would be better yes.

MR BIZOS: A prospective policeman. -- I do not have any limits, I am working all over in this country wherever my services are required.

You report for duty every day? -- No. We are being (30) told in the evening if we are required that we do not have to go, /.....

go, you are required, and then we remain, we do not go out.

I do not understand that, you mean if you are required the next morning you do not go home, you stay over? -- You are told in advance.

Told in advance. Now have you not been asked to do observation duties, you are such a useful prospective policeman, at Khotso House to see whether perhaps other members of the ANC go in and out? Being ideally suited?

MNR JACOBS: U Edele ek wil beswaar maak teen die getuienis wat nou gelei word oor polisie-aktiwiteite. (10)  
gekwalfiseerde inligting wat oor ander pligte gaan.

Op hierdie stadium is di irrelevant.

Dit is ander pligte wat hy verrig vir die polisie. Dit het niks te doen met hierdie saak op die oomblik nie.

COURT: How is it relevant? He has already told you that he has not gone back to Khotso House. Now you are telling him well you are well suited to go back to Khotso House but if he did not go back to Khotso House he did not go back to Khotso House. Are you not accepting that evidence? Have you got (20) something to the contrary?

MR BIZOS: Not yet on this point but I may have but I am entitled, with the greatest respect, to probe from this witness as to whether such knowledge as he may have of Khotso House may or may not have been acquired afterwards. The fact that he is doing security police work and the fact that he is well suited is a factor to be taken into consideration on the possibilities during the course of argument as to how he might have acquired that knowledge. I do not understand the objection, with the greatest respect, that we are prohibited. When a (30) witness such as this goes into the witness box in trying to

probe/.....

probe precisely what he is doing, we are not interested as to the identity of a particular person if it is subject to an investigation in another case, but which has whatever relevance there may be in relation to this case that there is protection of that sort of information.

COURT: It depends on whether you ask irrelevant questions Mr Bizos. You have got the answer that he has not gone back to Khotso House. Now you tell him well you are so eminently suited to cover Khotso House etcetera. Well he says he has not been there. (10)

MR BIZOS: But we may want to argue to Your Lordship that this knowledge that he purports to have of Khotso House need not necessarily have been acquired in the manner in which he has deposed to.

COURT: That may be Mr Bizos but at the moment we are dealing with an objection to a question which is a repetition of a previous question to which you got an answer that he has not gone back to Khotso House. If you want to ask other questions ask them and I will deal with them one at a time.

MR BIZOS: Do you agree that you are a person who would be (20) particularly useful to point out people from overseas, such as yourself, who may want to enter Khotso House? -- Well I could do that if so required but I am not the only one, quite a number of people could do that.

So are we to understand from your answer that if not you at least your prospective colleagues are keeping Khotso House under observation?

COURT: He has not said that. He says they could do it.

MR BIZOS: Yes. Well do you know whether they do or do not? -- What I have realised in South Africa is that you will (30) only be told about something which pertains to you and the thing/.....

thing that they feel you must know about and once they feel you are not involved in the whole thing, you ought not to be involved in the whole thing then you are not being told about what is happening.

Did you tell Dr Beyers Naude the truth in whatever you might have told him? -- That is so.

Where were you going to get other money from? -- In the first place, say for instance you run out of funds here in South Africa the ANC in Lesotho has got money. It is either you go there to go and get some more money or you send some- (10) one to bring money on your behalf from the ANC. They know you are their member, they will give you the money. Especially when you are on their duty.

Well did you intend to use the R60 in order to return to Lesotho to get money? -- Part of it, yes.

Was that part of the emergency? -- That is so.

When did you leave for Lesotho as part of the emergency? -- At the time of my arrest I was on my way to Lesotho. On my arrival at Ficksburg, I came there I found that there were soldiers there. I had to go back via the Cape through the (20) Quaggas Neck.

On what date did you try to get back to Lesotho? -- The 5th, that is two days prior to my arrest.

COURT: That is 5 June? -- 5 June, yes.

MR BIZOS: Now if it was an emergency to get to Lesotho as soon as you got the R60 from Dr Beyers Naude then you must have got the money nearer to the end of May beginning of June because it was an emergency you told us? -- It seems to me you are quoting me out of context. What I have said is this, what I said is I needed the money for some emergencies and for (30) travelling purposes. I remember even being asked about what

kind/.....

kind of emergencies on which I said one cannot tell beforehand about an emergency can come across. Therefore I did not say I went to get this money because there were some emergencies to attend to immediately.

Did you have no money at all when you went to Dr Beyers Naude on a Monday in May? -- No.

Right. -- I had money which was not enough, that is why I said I had to think for the emergencies.

How much money did you have? -- Well I am not in a position to guess exactly how much it was but it was less than (10) R30.

I understood you, your evidence in relation to emergency when we were dealing for your failure to give the name to the receptionist, that it was a matter of urgency that you should receive money? -- No, no, that is not what I said. I did not say it was urgent for me to get money. What I said is it was urgent for me to see Dr Naude because this receptionist did not even know what my reason was to see Dr Naude, what I wanted from him.

Now, so are you saying that there was no real urgency (20) because you were in immediate need of money? -- That is not what I am saying.

Well your evidence will speak for itself. Now this R60 that you say you got from Dr Naude was that the only money that you had during your stay in South Africa save the R30 that you have now spoken of?

COURT: After seeing Dr Naude?

MR BIZOS: Yes, after Naude, did you get any other money from anywhere? -- No.

How much money did you have on you when you were (30) arrested? -- About R5.

Were/.....



Were you given a prisoner's property receipt for it? --  
I did not register the money with the prison there. I went  
through with the money. I only took out the money after having  
been taken by the security police to ask them to buy me some  
toiletries with the money.

How did you get from Johannesburg to Ficksburg? -- By taxi.

How much did that cost you? -- R20, that is the fare for  
the taxi.

How did you get from Ficksburg to Queenstown? -- By a  
train. (10)

And how much did that cost you? -- About R50.

So from the 13th, I assume it to be 13 May, to 5 June you  
had approximately R20 to live on and to go on taxis and do the  
other emergencies that you had to do? -- There is no such.  
What I mean is that I was living on R20 there is no such. I  
was staying with some people, they used to supply me with  
meals so I got my meals from them. The only money that I  
would spend was for transport whenever I am going somewhere.

With whom were you staying? -- I was staying with a  
certain family. (20)

For how long did you stay with them? -- Something like  
two weeks, under correction, I cannot quite remember. I stayed  
with them until the day, or the time when I left.

About 5 June? -- The 4th.

Well do you say that you were only in Johannesburg for  
about two and a half weeks, before 5 June? -- That is so.  
Well I was not just there sitting and doing nothing.

Yes. You did not stay with them for six weeks? -- For me  
to have been staying with those people for six weeks it is  
the other period I was already in jail. That is, it (30)  
explains that I was already arrested.

Do/.....

Do you have any objection to disclosing to the Court the names of the people that you were living with? -- Yes I do have an objection but if the Court insists on that I would have to.

COURT: Let us first hear what your objection is? -- The people I was staying with are my distant relatives. They do not know about my present position. Up until now at times I do go and stay with them and now if I were to mention their names and their identities and we go there or somebody goes there then they will come back, or say for instance they (10) were to come back here, they were to come here then they will come back and say to me "Now what are you doing? Are you selling out?" Because up to date those people they do not know what kind of work I am doing, what am I doing. All they know about me I am that own kind of a person.

MR BIZOS: May I ask a question before I make a submission My Lord. Did you stay with them from the day that you came to Johannesburg on your second trip in May right up to the time that you stayed in Ficksburg? -- That is so.

My Lord if Your Lordship is going to ask me on the (20) question of the relevance of the matter I would ask that the witness be excused.

COURT: Yes will you go outside, we are going to argue the matter.

MR BIZOS: My Lord I ...

COURT: Just a moment before you continue, I did not want to interrupt the witness. I understood initially that there was nobody to be in the well of the court. I see that gradually the press has been encroaching first next to the door and then one more chair and now eventually where the attorneys (30) normally sit. Why is the press not put behind the accused?

Mr Jacobs/....

Mr Jacobs, wat is die reëlings van hierdie hof, wat is die  
possissie nou?

DISCUSSION BETWEEN COURT AND MR JACOBS.

COURT: Yes Mr Bizos.

MR BIZOS: Our instructions are, as indicated, that there is  
real evidence that Dr Beyers Naude left the country on 10 May.

COURT: Well that you have put.

MR BIZOS: I have put that. Members of the family with whom  
he was staying may be able to throw light on the precise date  
on which he arrived. If in fact he had arrived on some day (10)  
after the 9th, and I will explain if Your Lordship wants me to  
why the 9th because it was his last day that he, the evidence  
will be if need be that he did not see anybody on the 9th, on  
the Friday which also happened to be his 70th birthday and  
there was only a party at the office. If we can establish  
precisely when this person came as a date after 10 May with  
absolute certainty, with members of the family that he stayed  
with, may be able to assist us in this regard. It will have  
a very very serious consequence on his credibility. Secondly  
he says that .... (20)

COURT: On what basis are you going to approach them in view  
of my ruling on the in camera hearing?

MR BIZOS: Well he has had direct dealings with them. We have  
other difficulties. I was going to ask Your Lordship to  
excuse the witness earlier at approximately 15h30 because in  
order, I did not want to address Your Lordship in his presence  
but I want to assure you that we worked particularly hard  
during the weekend to try and see as many people as we possibly  
can. I am pleased to be able to report to Your Lordship that  
I was able to consult without divulging the witness's (30)  
identity, I take the duty imposed upon me seriously and I  
intend/.....

intend doing it, but it is almost impossible to prepare in relation to certain items of evidence given by this witness. And I have them, if Your Lordship wants to hear the whole thing now ...

COURT: No I do not think I would like to go into that. Let us stick to the point at present being answered.

MR BIZOS: If we confine ourselves to this person, let us deal with the question of relevance first. I submit that it is particularly relevant, unless Your Lordship finds that on the evidence of the witness Your Lordship finds, Your Lordship (10) may or may not be able to give an indication. If Your Lordship is satisfied that this witness has put himself in South Africa on the 13th or afterwards then that is the end of the story, then I will not insist on this but I do not think that Your Lordship can express a view at this stage in regard to the evidence given. How we are going to do it is the responsibility which I will have to discharge. I do not think that it can be done without disclosing his identity or without at least then having a pretty shrewd idea because one of the problems is this. Your Lordship has indicated that I must (20) mention the name, when I do have to mention the name I must not mention the fact that he has given evidence, that ....

COURT: Or that he has become a sell-out, as it is called.

MR BIZOS: I would not use that word anyway, I do not have any problem with that aspect. But the fact that he has given evidence is almost impossible, because it would really be, it would really be discounting completely the intelligence of the prospective witness or the interviewee so to speak, because we have encountered another difficulty. If you ask people what do you know about this they want, the first question that (30) they ask is "Why do you want to know".

COURT: /.....

COURT: And then you tell them you asked the question first so give the answer first.

MR BIZOS: Well this may be in the witness box and even then we are having difficulty but in the consultation ...

COURT: Yes well anyway that I think we have traversed.

MR BIZOS: Yes. I have to address Your Lordship generally but this .....

COURT: Let me just hear what is Mr Jacobs' point of view as to whether this witness has to answer the question. The question will probably be who are these people and I take (10) it that Mr Bizos will not rest there.

MR BIZOS: No who are they and where do they live.

COURT: Yes. Ja mnr Jacobs wat sê u?

MNR JACOBS: U Edele die getuie het die rede gegee dit is vir sy eie veiligheid en mense wat hom sal kan dadelik identifiseer as die sell-out. Dit gaan direk in botsing kom met u bevel wat u reeds gemaak het en waar hy juis vir sy lewe gevrees het. Die tweede, wat die relevantheid betref, as ek die ding reg verstaan dan wil mnr Bizos nou gaan getuienis kry waar mense kom om te kom getuig dat hy nou 'n leuen vertel het. (20) Ek dink as die getuies nou kom in die omstandighede en hulle weerspreek mekaar, maar ek dink dit is ontoelaatbaar op die beginsels van bewysleer dat 'n getuie geroep word om te bewys dat 'n ander getuie vertel 'n leuen. En op daardie basis sien ek geen basis waaroor daardie getuie geroep moet word nie. Of kan geroep word of dat daardie getuienis voorgelê word. So my submissie is dat in hierdie omstandighede waar hierso nou so 'n getuie gesien moet word gaan dit geen doel dien in die opsig dat daardie getuie, as dit 'n getuie sou wees, dan dat hy mag nie in hierdie hof daardie kom aanbied nie. En soos (30) ek sê die finale beslissing ook wat deurgaan is dat soos die

Hof, /.....

Hof, dan gaan dit direk in botsing met die Hof en dan word die hele beskerming wat die Hof aan hierdie man verleen het, word dan oorboord gegooi. Nou word mense vir wie hy juis bang is wat teen hom gaan getuig en dinge teen hom gaan sê, presies weet wat aangaan, mense wat nie weet wat is die werklike posisie.

COURT: Yes Mr Bizos?

MR BIZOS: My Lord the collateral issue rule has nothing to do with the situation in our respectful submission.

COURT: Why not?

MR BIZOS: Because if the witness said that I was not here (10) if the witness said "I was here on the 6th", on this issue as to whether the conspiracy was furthered by Dr Beyers Naude evidence would be admissible, it is tested, by the passport office, if he had a document, that he was not here on the 6th but he only crossed the border on the 12th, that would clearly be admissible. In order to show that this transaction in furtherance of this conspiracy on the indictment as amended did not take place.

COURT: But now that is not the issue, the issue at the moment is is this witness telling the truth or not as to his stay (20) in Johannesburg with a certain family, that you want to check.

MR BIZOS: I want to say what date he came to stay with them. That is what I want to check, that is the first issue. The second issue, let us assume that I can get a witness there who says that he had a wad of R20 notes and he actually stood us to dinner at the fancy hotel and that he had lots of money. There are lots of matters which would turn on it and this is why I do not understand the objection to the collateral source rule. This has been made one of the acts in furtherance of the conspiracy. Whether the act took place or not would depend (30) on this witness' evidence as to when he was, he came into

South/....

South Africa on his second trip and how he was living, whether he was short of money. And we are entitled, when we know where he was and where there is a reasonable possibility, I think I have made the point, I do not want to labour it but there is a more important point, and that is this I know of no provision in our criminal jurisprudence other than the well defined exceptions where a person may not incriminate himself beyond Section 43, I beg your pardon 204, where a witness can refuse to answer a question, unless it is sarcasm or completely personal. There is a provision in the Code that nobody, (10) Your Lordship remembers the wording that did you commit adultery when you were a young student when he is a 45 year old man, with student, with children students at a University. Save for those exceptions on what basis can a witness say that "I refuse to answer the question"? With the greatest respect I do not think that Your Lordship ...

COURT: Unless the question is irrelevant.

MR BIZOS: Unless it is irrelevant. If it is irrelevant of course, if it irrelevant then it does not matter. But this witness, this witness is not giving a reason that it is (20) irrelevant and that is the difficulty in calling witnesses and saying that you can depose to part of what you know and others I am going to, you do not have to depose. I know of no such provision in our jurisprudence and in my respectful submission if we get into a syndrome of allowing witnesses to say that "I don't want to answer this question" then we will be in very serious difficulties on a very fundamental issue in the conduct of a criminal trial.

COURT: The witness can come back.

RULING/.....

IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

CASE NO. CC. 482/85DELMAS

1986-01-27

THE STATE

versus

PATRICK MABUYA BALEKA & 21 OTHERS

(10)

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R U L I N G

VAN DIJKHORST, J.: I have heard argument on the question whether you have to answer the question put to you as to the identity of the people with whom you have been staying from time to time, and my ruling is that you have to answer the question. Bearing in mind that I have made an order that steps are to be taken not to disclose your identity directly or indirectly or the fact that you are giving evidence in this court.

(20)

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AWAITING RETURN OF REVISED RULING.

COURT: The question will have to be repeated.

MR BIZOS: Who were you staying with in May 1985? -- Mazwai's family.

Please give me the full names and the address? --  
Camago Mazwai, and the sister Notando, Betsie is her second name, at no. 149 Mafulo North in the vicinity of Ikwezi railway station, that is in Soweto.

My Lord I would like to ask a question which may assist me in any discretion that has been vested in my by Your Lordship. In fairness to the witness I do not want to (10) score any point on it. Could you, would you have any objection in disclosing to the Court what your relatives believe you are or have been doing?

COURT: Well he has already told you that they do not know of his present activities.

MR BIZOS: No, that is why I asked the question. What do they believe he is doing, what have you told them you are doing? -- In fact what I can say is all my relatives knew what I was doing because it is my own family paid me some visit when I was outside this country, that is in Swaziland and Lesotho. (20)

No perhaps I did not make myself clear. I am not interested in your family's state of knowledge. What I was asking is that you were concerned that your family should not learn what you were doing. What I want to ask you is what do they believe you have been doing since August? -- Only my immediate family knows what I am doing, otherwise the other relatives who are not within the immediate family they do not know what am I doing, all they know is I am still outside the country.

These two persons, those names you mentioned, do they (30) know that you are in the country? -- No. Whenever I go to them/.....

them for a visit they take it that I am still from Lesotho or Swaziland.

I see. Right. Pending that I am going to go onto another aspect of your evidence unless Your Lordship wants to hear the submissions that we have to make in relation to the other matter.

COURT: How long will the submissions take?

MR BIZOS: About ten minutes or so, I do not know ....

COURT: Well please continue for a further twenty minutes.

MR BIZOS: For a further twenty minutes, as Your Lordship (10) pleases. How old are you now? -- I am 25, my next birthday will be 26.

Right. So you left the country at about the age, you were not sixteen yet if I understood your evidence correctly? -- No that is not so. No that is not correct. I started my schooling in Swaziland because my family was not in my country then. Until my family came back in 1978 here, it is only then that I could be taken as a person from here. I joined the PAC when I was still a scholar in Swaziland.

In 1975? -- Yes, when I was still at Siligen(?) High (20) School, Manzini.

Right. Now do I understand you to now say that you and your family came back to South Africa in 1978? -- End of 1978 yes.

Well it has certainly cleared up one of the matters that was concerning me because you said that you came back to school when you came back after 1975. -- Yes that is so.

So that between 1975 and 1978 you were just a scholar who had been recruited by the PAC at a young and tender age in Swaziland? -- That is so. (30)

You did not perform any acts on behalf of the PAC if I understand/.....

understand you now correctly, between 1975 and 1978? -- No that is not correct. During that period they used to send me around, I was serving as a courier and nothing more than that.

Oh you were serving as a courier between Swaziland and South Africa? -- Yes.

And you came back to South Africa and you went to school? -- That is so.

How far did you go? -- I was doing my second year at the training course at Lennox Sebe and part time I was studying at the University of Fort Hare. I had obtained three courses (10) already.

In what faculty? -- The faculty of arts.

Yes. And when did you leave the Eastern Cape? -- 17 November 1981.

Now why did you leave in 1981? -- There were boycotts going on in the Ciskei during that period pertaining to the independence and as people who were involved in distributing pamphlets we had to leave.

There is an appeal for the witness to speak up because the accused cannot hear his evidence. Yes, and then you joined (20) the PAC? -- Not immediately.

Yes. Where did you go from here? -- I went to Swaziland.

Yes? -- On arrival there I was declared as a refugee. Because there was no PAC in Swaziland since 1978 from Swaziland I proceeded to Lesotho where I officially joined the PAC.

And having joined the PAC in Lesotho in 1981 you thereafter underwent military training? -- No that was in 1982.

1982. -- That is correct.

I do not want to, I do not want a lot of detail but are there in fact ideological differences between the PAC and (30) the ANC?

COURT:/.....

COURT: How is that relevant here?

MR BIZOS: It may have some bearing on the probabilities, I...

COURT: What sort of bearing can it have on what probabilities? Are you disputing that he was a member of the PAC? Is that being contended now?

MR BIZOS: No I do not think that I am in a position to dispute that but the reasons for the change over may be of some relevance and I merely wanted to ask one or two questions. I do not want to become involved in the ideological differences and this is why I prefaced the question in the manner in which (10) I did and I merely wanted an answer. I am not going to insist on it if Your Lordship feels that even that should not be ...

COURT: Well I did not understand the evidence to be that he changed sides because of ideological differences. He changed sides because of lack of action it seems to me.

MR BIZOS: Well I was going, that is precisely what I was going to lead up to.

COURT: Well why do you not ask it directly? Go ahead Mr Bizos.

MR BIZOS: Well may I persist in the question in relation to the ideological differences? I do not know if Your Lordship(20) wants an answer or not.

COURT: I do not want an answer. I cannot stop you now Mr Bizos. I am not entirely clear as to the relevance.

MR BIZOS: I will leave it out My Lord. Did you find it easy  
C33 to change over from the PAC to the ANC? -- Yes.

And you heard His Lordship summarise your reason given in your evidence-in-chief, the main reason for that changeover was because you were satisfied that the PAC was not active enough? -- Yes but I further said in my evidence-in-chief that there was an in-fighting which resulted in some of the(30) people, a good number of the people fleeing from this PAC

to/.....

to Kenya and another thing is my uncle also played a part in my switching over.

Were you dissatisfied with the lack of activity in the PAC? -- Yes I was.

And did you want to get into the ANC type of action? -- The question is not clear, could you put it again.

Did you want to do the sort of thing that your would-be colleagues in the ANC were doing in 1981? -- Well there are certain things that I did not agree with from the ANC and the military lines and there are certain things that I agreed (10) with.

Yes, did you want to take part in violent actions against the government of the Republic of South Africa? -- I did not hear that first portion?

Did you want to take part in violent actions against the government of the Republic of South Africa in South Africa? -- That is so.

Yes. Which would have included using AK 47's presumably? -- I was using an AK 47 and I knew it well.

Yes. The planting of landmines? -- The planting of (20) landmines it is a different entity, that is doing by the engineering group, the cells, Sappers, I am not there.

The planting of bombs at railway lines? -- All the other things about planting explosives was out of my line. I was going as far as the hand grenades, firearms, I was going as far as the explosives in grenades, otherwise firearms and rifles.

Yes. For what purpose was this training? -- To remove the government here.

How? How were you going to help remove the government?(30) -- Through arms insurrection by fighting.

Yes./.....

Yes. The English expression which you used yourself was armed resurrection? -- Insurrection, no I am talking about insurrection.

Yes we will not argue about pronunciation, we have enough differences. Right. Now did you believe that to be correct at the time? -- Right up until the time of my apprehension.

Did you take part in any use of AK 47's or hand grenades, did you use them at all in the Republic? -- No I did not. If I was given a chance I was going to use it.

Did you volunteer to do that? -- Yes in my signing the (10) army oath that was an admission.

Yes. And who would you shoot and who would you throw the hand grenades at? -- Now I would like to be clear on this. I have to tell you but now which one do you want, the PAC side or the ANC side?

No I think that we are concerned with the ANC. -- Military targets, that is the soldiers, those I was straightaway going to shoot.

Yes, who else? -- The police as well, still I was going to shoot them. (20)

Yes, who esle? -- Informers, traitors.

Yes, who else? -- Generally anybody who was being a stumbling block in our way because at times you can even shoot at the innocent people because they are to sacrifice for the struggle because it depends now in what situation are you.

And you were prepared to do all those things? -- That is so. The police who arrested me, I even told them that if I was given a chance I was going to kill them.

Was that during your interrogation? -- That is so.

So that whilst you were sitting there next to a police(30) officer, and I see some of them sitting around outside court with/.....

with guns and you could quickly grab a gun you would shoot him and if you thought that you could get away with it? -- And use the one which I had with me, any of them. If I get his gun in fact that means bonus to me.

Yes. And your commitment to the, to your oath, your commitment to your oath that you talk as a soldier of the ANC was such that you did not have any reservations about this? -- That is so.

And you were so committed to the struggle that you were prepared to spill blood for it? -- If need be, yes I was (10) going to spill.

And sometimes, as you have told us, even if need be to spill innocent blood in the furtherance of the struggle? -- Yes that is my evidence, as I said already that there are times when you find yourself in a situation where you have to do it and here you are killing innocent people, well it is unfortunate, that is the time when they will have to sacrifice for the struggle.

Yes. Now would you agree that what you tell us you were prepared to do shows a very deep commitment to the struggle, (20) to use your words? -- Yes that is how you see it and I agree.

Now, and this was not something that you were prepared to do for a short period of time? -- That is true.

Again without wanting to enter into any ideological dispute between the ANC and the PAC the PAC has a similar programme? -- Yes which differs here and there.

But as far as the spilling of blood is concerned there is no difference? -- Yes that is true.

And you have a commitment, you had a commitment to the spilling of blood from 1975 to June 1985? -- No not until (30) the end of June 1985, up to now while I am standing here.

Whoever/.....



Whoever is threatening my life I am going to shoot that person.

Well I think some of us would have to be careful, not that I would want to threaten your life but ....

COURT: Mr Bizos if you do not make comments and the witness does not make comments which are irrelevant then we will proceed with the case much quicker.

MR BIZOS: I am sorry My Lord. So you are prepared to kill anyone that stands in your way? -- Not a person standing in my way, I am talking about a person who is threatening my life. I must react on that. (10)

Who was threatening your life for those ten years that you wanted to kill? -- Nobody was threatening my life but I had that feeling that it is not supposed to be like this in this country, meaning South Africa.

And because you did not like the way things were in South Africa you were prepared to kill any of the persons that you have mentioned? -- Anybody who does what?

Any of the persons who fall into the class that you have mentioned? -- Yes at that time.

And I take it on the same basis that if you see anyone (20) in the street who was one of your colleagues in Lesotho, or you suspect him to have been sent by one of the persons in Lesotho and you have a gun you will shoot him? -- I do not go about shooting at random. All I am going to do I will ask that person what do you want here. If I must arrest him then I will arrest him but I am not trigger happy.

Have you got powers of arrest? -- No I do not have powers of arrest but I can go to any police station and point a person out and say here is that person and then they will arrest him.

So you really have considered yourself at war ever (30) since 1975? -- That is not so.

Well/.....

Well why is it not so? -- Because at the present moment I am not fighting, I am only watching whatever is coming towards me. In fact I am safeguarding my own life.

Do you want to become a policeman merely to save your own life or in order to serve the State? -- No first I have a duty to serve my State fearlessly. Secondly I have a duty to look after my own life, but first the State.

The State which up to 5 June you wanted to destroy? -- Well yes that is so but things change you know.

Oh yes. What was the most important single factor that (10) made you change, detention? -- Quite a lot.

Well did it start off with your detention? -- No it did not start from my detention, I always had it, it did not start from detention not at all.

Oh I see. Are you going to tell us that you were a reluctant soldier for ten years? -- That is not so.

My Lord this may be a convenient stage ...

COURT: Well would you round off this point otherwise we will have to start all over again. I have been wondering for the past thirty minutes where we are going so I would like to see (20) where we are going now.

MR BIZOS: Yes, merely that this person's attitude to violence...

COURT: You need not tell me, but just do not come back to this tomorrow morning so please finish the point.

MR BIZOS: Yes. -- I was still answering to the question.

COURT: Yes please answer. -- The differences with certain officials of the ANC were not that serious but I had other things in mind which I had to consider later. And later when I sat down and considered other things which were additional to the differences which I referred to which were personal (30) differences with some officials then I got to a conclusion, a different/....

different conclusion altogether and said to myself it does not serve the real purpose that I should go to jail for this.

Do you want to add anything else? -- No.

Thank you.

WITNESS EXCUSED UNTIL 28 JANUARY 1986.

MR BIZOS: My Lord having gone through the witness' evidence it will be almost impossible to check some of the things that he has said in relation to the following matters: Firstly that he has mentioned certain persons with whom he had direct dealings in the Eastern Cape, certain persons in the Western (10) Cape, certain persons in the Vaal Triangle, certain persons in Lesotho. If the evidence is in fact considered by the State to be relevant although outside the accused's personal knowledge or directly affecting the accused personally but nevertheless relevant in order to prove an organisational conspiracy between the ANC and the UDF then we cannot do justice to the accused's case without consulting the persons mentioned by the witness and others who may have personal knowledge of any of the transactions described by the witness. Now Your Lordship's order as it stands means that the instructing attorneys in (20) this case cannot do their usual and ordinary work.

COURT: Does this mean that they cannot consult according to you?

MR BIZOS: The way I interpret it, I have difficulties of interpretation.

COURT: Well I am not going to interpret my Order for you Mr Bizos. As far as I am concerned it is very clear and if you misinterpret it it is at your own risk.

MR BIZOS: Well I do not want to do that, I have enough responsibilities, with respect, I have enough responsibilities (30) in the running of this case and there are very real difficulties because/.....

because it is not really so much the interpretation but the practical application of the ordinary interpretation of that order which I want to bring to Your Lordship's attention and that is this, there is a need to consult with these witnesses. Let us assume that the attorney approaches such a witness and it is unpractical experienced, during the weekend. The attorney, the way we interpret the order is entitled to introduce himself as an attorney and consult with a witness but is not allowed to mention the name of the witness. The practical difficulties with that is that every witness that you approach in this (10) sort of case, and you cannot at least say what the purpose of the enquiries are immediately meets with tremendous suspicion.

COURT: Well give him a fictitious name and say that that fictitious person has told you the following facts. Why not?

MR BIZOS: Well because the fictitious person, you say I never had any dealings with that person, leave me alone, and ....

COURT: But you need not tell him that, yes well anyway go ahead.

MR BIZOS: This is the one aspect. Secondly let us assume that the attorney, the way we interpret the order, may be (20) able to say that a witness has given evidence which he is apparently entitled to do in terms of Your Lordship's order. The draft statement comes to me and then I come to the conclusion that for the proper discharge of our function in this court I can disclose the name of the witness. Then I would fall foul by the attorney's prior conduct who mentioned the fact that a person is giving the evidence. The moment I disclose the identity the two will be coupled together and Your Lordship's order will be frustrated. And I do not know what to do in that sort of situation. (30)

COURT: It has not occurred yet.

MR BIZOS:/.....

MR BIZOS: No but that is not all. If we are to send the attorneys, if we are to send the attorneys to the Eastern Cape and to the Western Cape to consult in this sort of situation they will not be able to obtain full instructions. In all probability the witnesses have got to be brought up, witnesses are not obliged to come to a consultation over a thousand kilometres away. There is a further aspect and that is the question of the cost. If witnesses in other centres are mentioned the usual practice is to ask colleagues in those towns to approach the person, to take a preliminary state- (10) ment. You give them some idea of what it is about, that is the first approach. That we apparently may not be able to do in terms of Your Lordship's order.

COURT: Why not?

MR BIZOS: Because the last paragraph of it says that the spirit of this order. If we are to start telephoning attorneys in various towns and give them a substantial portion of the information the transmission.....

COURT: What prevents you from telephoning for example an attorney in the Eastern Cape, telling him that we have the (20) following information which we would like you to check and that is that Mr X, being a very important person in the Trade Union movement, was during a certain weekend in Lesotho where he conferred with the ANC.

MR BIZOS: And where he was taught how to make pamphlets by the ANC.

COURT: Yes, something of that sort.

MR BIZOS: Now if we say that .....

COURT: If you just get that fact to be checked by your attorney in East London. (30)

MR BIZOS: Yes, now let us assume that that is checked. The attorney/.....

attorney will want to know what do I tell this person, for what purpose is this needed and that attorney will have to transmit to the prospective witness that it is required by Bell, Dewar & Hall, who are running a criminal case in Delmas.

COURT: They need not say in Delmas, who are involved in a case and they would like this information.

MR BIZOS: Yes who are involved in a case. They then go to a witness and the witness will want, the prospective witness will want information.

COURT: Yes. (10)

MR BIZOS: And the information the witness will want is when is this alleged to have happened and assume that we give him the information.

COURT: Yes you give him the date.

MR BIZOS: You give him a date. He will want to know who is it that says that I did this with the ANC.

COURT: Then the instructing, the attorney in East London says "I do not know because my instructing attorneys have not told me."

MR BIZOS: Yes, now My Lord, but it is not as simple as that (20) with respect. Under those circumstances the co-operation of the witness is likely not to be forthcoming.

COURT: Yes?

MR BIZOS: But there is a further aspect that the moment that is said, that the moment that is said then the witness, let us assume that the witness' evidence is true, let us assume that the witness' ....

COURT: That this witness' evidence is true?

MR BIZOS: That this witness's evidence is true. That he did teach that person to do pamphlets for the UDF. (30)

COURT: And that person denies it or does not deny it.

MR BIZOS:/.....

MR BIZOS: No assume that he keeps quiet, let us take a neutral position.

COURT: Refuses to say anything.

MR BIZOS: Keeps a neutral position or says something to the attorney in confidence but he says I am not prepared to say anything. Now assume that person says this then the identity of this witness has unwittingly been divulged to that witness in the Eastern Cape, whether the local attorney does it or a correspondent does it. So the permutations, we have worried, and I have been particularly worried about Your Lordship's (10) order and this is why I think that I find myself, particularly with Dr Naude's, it was as well that Dr Naude gave me a defence in the sense that from the facts as a whole it was not really necessary because he says this did not happen, I had no dealings with an ANC person in this way, and under those circumstances I said well I am not going to disclose it, it is not really necessary. But one does not expect first of all the facts to be substantially similar. The man's defence, he does not have to defend himself, the man's version may be "Yes I was in Lesotho and I did have contact with two persons". (20)

COURT: Yes well have you had any witness that has told you that so far?

MR BIZOS: No but we would like to know what the position is before we go to East London and to the Western Cape, and this is why Your Lordship's order, with the greatest respect, is placing a tremendous burden firstly on me personally because I want to assure Your Lordship that I do not intend contravening Your Lordship's order after 32 years of practice. I would have hoped that I would not have done it in my first year either. Secondly I cannot run around to the Eastern (30) Cape and to the Western Cape and run this case. It was bad enough/.....

enough that we had to work throughout the weekend, and this is why I would submit, with respect, that, this is the first time I may say, with the greatest respect, it having been my unhappy lot to have appeared in a number of these cases, where this sort of restriction has been placed on legal representatives and I would urge Your Lordship to give serious consideration to put the legal profession on its honour and to allow it, having regard to the circumstances as a whole, to do its work in an ordinary way. And insofar as My Learned Leader Mr Chaskalson and I, together with the other members of the (10) team are able to supervise it....

COURT: I think in many of the other cases there was just a blank refusal that the identity be made known by anybody to anybody, end of the story.

MR BIZOS: But there was always, if not an express certainly an implied authority given to legal practitioners to conduct their work in the ordinary way. This has been my experience.

COURT: Well Mr Bizos I am always open to a change of my ruling provided a concrete set of facts is placed before me in respect of a specific person that you have approached and (20) where a specific difficulty is being created. I am not prepared to change my ruling on the basis that there might be difficulties, obviously there will be difficulties. There is no doubt about that, I knew that from the outset but I will, I am prepared to ad hoc have a debate in respect of a specific difficulty but not on a difficulty that may or may not arise.

MR BIZOS: If Your Lordship bears with me because I understand that we have a specific difficulty in relation to the Cape. I am instructed that correspondents in the Western Cape have asked for details of what is it that they are to consult (30) with these people and that the attorneys entrusted with communicating/.....



communicating with these correspondents are hard pressed to sift what information they can give, for instance can they give that it was in Lesotho, can they give that it was a particular place, can they give that this person represented the ANC there. Because the moment they do that this person will be identified. On the assumption that they have some knowledge of it. There will be, and it is impossible to consult with these four persons without giving them that information.

COURT: Which persons are you referring to now?

MR BIZOS: I have them in, I will give Your Lordship all (10) the persons involved in ....

COURT: No do not give me all the persons involved. I know of them. I want to know what specific case do you have difficulties with that cannot be resolved by an attorney of the experience as I have been informed.

MR BIZOS: The people's names in the Eastern Cape are on the record, if Your Lordship wants me to find the page ...

COURT: No, no I can find them myself, I have them, I marked them. Yes?

MR BIZOS: Those persons I am instructed. ... (20)

COURT: The first one that occurs is a leading figure in the trade union movement that I understand that he is in Durban.

MR BIZOS: No, no there is, this person happily that Your Lordship is referring to is in Johannesburg.

COURT: I see.

MR BIZOS: He was in Johannesburg, we saw him, I did not disclose the name because the way I understood Your Lordship's ruling in that regard was that there was no direct communication, he only ....

COURT: Spoke of events or something. (30)

MR BIZOS: Saw him and his passport going into ANC houses.

COURT: /.....

COURT: Yes.

MR BIZOS: Now I did not, I regarded that to fall under the paragraph where there was no, to use Your Lordship's words, joint direct participation.

COURT: Now which persons in the Eastern Cape do you have? We do not seem to be able to pick up persons from the Eastern Cape immediately.

MR BIZOS: There are three Bezas, there are three Bezas, ...

COURT: That is the Beza family.

MR BIZOS: The Beza family. (10)

COURT: Yes?

MR BIZOS: Now how do we consult with the Beza family because there there was direct communication Your Lordship will recall. Because that falls under ....

COURT: How does the stay with the Bezas link him, link the UDF to this case?

MR BIZOS: Because according to this witness' evidence the East London Youth Congress was an affiliated organisation.

COURT: One of the Bezas was attached to the East London Youth Congress? (20)

MR BIZOS: That is so. On the question of cross-examination as to whether he stayed with his college friend because it was his college friend or because the younger brother was a member of, that goes to the weight but these persons may be able to give vital information in relation to the witness in other respects. Those are the one person. And then there is the person of, page 35 if Your Lordship bears with me, there is Stompie and the old man Wilberforce, there were direct dealings with them, they are apparently ....

COURT: How are you going to find Stompie and old man Wilberforce? (30)

MR BIZOS:/.....

MR BIZOS: We are instructed that the attorneys are looking for them.

COURT: Have they got them yet?

MR BIZOS: No My Lord.

COURT: So it is hypothetical. Have they got the Bezas yet?

MR BIZOS: No, because we did not want to go and approach them because of the difficulties.

COURT: It may well be that they do not find them at all.

MR BIZOS: I am instructed that the attorneys know where they are. (10)

COURT: Yes?

MR BIZOS: There are the others, the others are, they are the persons who are said to have been present at the Letambulu(?) concert and the inference sought to be ....

COURT: I am sorry persons present at the?

MR BIZOS: The witness gave it in a difficult way, which should be Leta, L-e-t-a, Mbulu, M-b-u-l-u, she is a singer.

COURT: Oh yes I remember, that was in Lesotho.

MR BIZOS: In Lesotho. And there is Baba Ncokutu was identified as a university student at the Cape and Mvula Fezile (20) Mthimkulu, and Zou, if I pronounce it correct, Z-o-u, Kota. And there was a Miranda from UDF. Now these persons are said to have been in direct participation with this witness. I know that if I were present at the consultation, unless they told me something like Dr Naude that we were never in Lesotho for this and I had absolutely unanswerable evidence that they were not in Lesotho I may not have disclosed the identity. But let us assume that they were in Lesotho and they did have some dealings with the witness. Right at the beginning of the consultation by the correspondent or by the attorney will lead (30) to the identification of the witness.

COURT: /.....

COURT: That is so.

MR BIZOS: And the question is if I am not there the attorney will have been guilty of divulging information which leads to the identity of the witness. How does one conduct a criminal trial in that fashion?

COURT: There are important facts in a criminal trial and less important facts in a criminal trial and whether the facts are important or less important and whether they cannot be properly judged eventually because of a lack of investigation are all factors which are taken into account when the (10) weight of the evidence is to be assessed. That is my view.

MR BIZOS: Well with the ....

COURT: And I am not prepared Mr Bizos to make the whole order nugatory because there are certain difficulties which the attorneys feel may arise. I foresaw that there would be difficulties from the outset. I am not happy that I have to make this type of order. It goes against the grain. I have given my reasons why I had to make this order and if the order is to be effective to some extent I am afraid I cannot help you in this respect. You may approach me further if you (20) have other people you want to approach. This evidence I am afraid will have to be judged on its merits bearing in mind the difficulties you had in consulting with these witnesses.

MR BIZOS: May I address Your Lordship on that?

COURT: Yes.

MR BIZOS: I respect Your Lordship's view but may I address Your Lordship. This places a tremendous, almost an impossible responsibility on us. How can I cross-examine a witness, how can I cross-examine a witness on a transaction which was not even specifically pleaded in the indictment but which My (30) Learned Friend contends and Your Lordship received the evidence on/.....

on the basis that he does not have to plead everything to prove the conspiracy? I cannot, I can probe, I can probe, and I think that my probing in relation to Samson Ndou who was not available over the weekend but I hope will be available later this afternoon or this evening, one can probe but one will not be able to ascertain facts such as we ascertained from Dr Beyers Naude. They may or may not be available. They are not often available but they may or may not be available. Are we to leave it open because of the restrictions in the order in which event the vital information having a bearing upon (10) the credibility of this witness is lost to us, or is the situation to be that Senior Counsel must now either at considerable expense to the accused say well please plead with these people to come up to Johannesburg so that he only may consult or must the case be adjourned so that I can become an itinerant statement taker? And what is going to happen to Your Lordship's desire, which we share, that we should really get on with this case whilst the attorneys are doing their proper function outside the court. Which leads me to the last and final point. If there is to be an investigation what do(20) we do with this witness? I most certainly cannot finish his cross-examination before I have instructions from those witnesses. This is of course the difficulty with a conspiracy trial where evidence is led as facts from which inferences may be drawn at the end. We want to assure Your Lordship that we may not be able to discharge our duty to our clients properly unless either some form of amendment to the order makes it possible for the attorneys to perform their function or an inordinate period of time is taken to prepare for the cross-examination of the witnesses as time goes on. As Your Lord- (30) ship pleases.

COURT:/.....

COURT: Thank you. I have considered your arguments Mr Bizos as far as these persons mentioned by you are concerned. The order stands.

COURT ADJOURNS UNTIL 28 JANUARY 1986.