

SAAKNOMMER: CC 482/85

DELMAS

1986-09-22

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 154 (IN CAMERA GETUIE NR. 6)

(Bladsye 7 594 - 7 599 )

IN CAMERA WITNESS NO. 6, d.s.s.

COURT : I have asked that you be recalled as a witness and in this court you are known as in camera witness no. 6. This trial is also held in camera at the moment. The reason why I asked that you re-attend court is because it was brought to my knowledge that it seems that you made conflicting statements, meaning that your evidence in this court differs from evidence you gave in the Pretoria court in the case of one Tsetse Elias Mokele, also known as Stompie. You did give evidence in that case at Pretoria. Is that (10) correct? -- Yes.

I will summarise to you what I understand your evidence to be in that court and in which way it conflicts with your evidence in this court. If there is any difficulty about the summary, or if you are not sure, I will read to you the particular passages. Firstly you told the court in Pretoria that you had made three missions into South Africa from Lesotho, that is to Germiston, to East London and to Queenstown and that you were arrested at Queenstown. You also told the court in Pretoria that before your Germiston mission you (20) accompanied a man called Old Man for a day into South Africa and then returned to Lesotho and that this happened in mid May 1985. Is that correct? -- That is correct.

This on the paper seems to have been the occasion which was referred to in this trial. You also told this court here that you accompanied somebody into South Africa from Lesotho but in this court you said it was Stompie that you accompanied. You did not mention that it was Old Man. When asked about this difference in your testimony, you told the Pretoria court that you had made a mistake in Delmas, that is here (30)

in/...

in this court that you never accompanied Stompie into South Africa. Do you recall saying this to the magistrate? -- Yes.

Now I want clarification on this point. What is the position? Did you or did you not accompany Stompie into South Africa? -- I was not accompanying Stompie as such, but he was in that trip, but I was accompanying Old Man. My specific instructions were to accompany Old Man.

Is there any explanation for your telling this court here that you accompanied Stompie? -- When I said that I (10) accompanied Stompie, what in actual fact I wanted to say was that he was in the company of Old Man. It was just a mistake in the way I put it.

Are you saying that the party consisted of three, yourself and Stompie and Old Man? -- I was with Old Man, but Stompie was in the same taxi that we were moving in.

The second point on which I want clarification is this. You were asked in this court about ANC pamphlets brought into South Africa by people and then duplicated in South Africa. You were asked in this court to whom were pamphlets given (20) and you stated to this court that the political department of the ANC distributes pamphlets, that they handed to Stompie pamphlets, I think your word was "ons", we, so I say they, handed pamphlets to Stompie and gave Stompie advice on the rents issue in the Vaal Triangle. In the Pretoria court you told the Court that you never gave Stompie any pamphlets and that you know nothing about anybody giving - anybody else giving Stompie pamphlets. Have you got anything to say? Firstly, is that what you told the Pretoria court? -- Yes, that is what I told them, but I was going to clarify that (30)

as/...

as time went on.

Well, it seems to me that that evidence is very clear. The counsel put the Delmas evidence to you, that is this evidence here and asked you whether you ever gave Stompie any pamphlets, your answer was no and asked you whether you knew anything about anyone else giving Stompie pamphlets and your answer was no. -- In fact I think that was just a rash answer, because pamphlets were given to Stompie by the political department. That I am quite sure of.

There is a third aspect. You told this court here (10) that Stompie was a member of the VCA, that is the Vaal Civic Association and that you knew this because Stompie - because you had taken Stompie's biography. You were asked about this in the Pretoria court and in the Pretoria court you stated that you did not take his biography, you only read his biography and that you were not told by Stompie that he is a member of the VCA. In fact you told the Pretoria court that you had never had any direct conversation with Stompie until after he and you were detained. Now what do you have to say about this? Did you tell the Pretoria court that (20) you did not take his biography and that were not told by Stompie that he is a member of the VCA? -- In fact Stompie's biography was not taken by me, but it was taken by people from my department. We never conversed with Stompie until our detention was not through. We had direct dialogue with Stompie in Lesotho, the time of the death of two fellows who were drowned in Lesotho.

Well, I understood your evidence in Pretoria to be that that was discussed by Stompie with somebody else in your presence, but that you did not speak directly to Stompie (30)

as/...

as he was not to be allowed in that camp where you were the commandant? -- When I spoke to him I was retributing him for having been in the premises of the camp.

So, in fact you have no personal knowledge whether Stompie was a member of the VCA or not? -- Except from the biography, that is all.

Well, that is something that you read somewhere? -- Yes.

MR BIZOS : The first thing that I would ask Your Lordship to record is an admission by the state that the record placed before Your Lordship correctly reflects what the witness (10) said before the magistrate in Pretoria.

COURT : Then we must give this an exhibit number. This will then be AAQ(57).

MR BIZOS : I want to ask one question only and also place on record that we will use the record in order to try and show to Your Lordship that the attempted explanations cannot be accepted, because I do not examine the explanations closely but there is one thing I think that I must put to the witness.

CROSS-EXAMINATION BY MR BIZOS : You have found reasons for the conflicts between the evidence before the magistrate (20) and what you gave in this court. You have given some explanations to His Lordship. Is that correct? -- That is correct.

Why did those explanations not occur to you when wwere being cross-examined by Mr Baslian in Pretoria when you tried to explain the conflicts in the main by saying that the record that he was reading from of your evidence in this court was wrongly recorded? Why did you do that? -- I did not finish my cross-examination in Pretoria. I would have explained it further had it come ... (Mr Bizos intervenes)

No, I am going to suggest to you that this answer of (30)

yours/...

yours that you did not finish your cross-examination has got nothing to do as an answer to my question. My question is, if there were explanations for these conflicts, why did you not give the explanations to the magistrate, but instead said that the record that Mr Baslian was reading from was not a correct record of your evidence? Have you any explanation for that? -- As I say, I never completed my evidence-in-chief - in cross-examination. Had I completed it, I would have given the same explanation I have given now.

I will repeat the question with His Lordship's leave.(10) Perhaps, My Lord, we should ask the interpreter to translate so that there is no difficulty about it. Would you like to have it through the interpreter? -- I understand fully.

Do you understand fully? -- Yes.

Why did you not give the explanations that you tried to give to His Lordship when Mr Baslian put these conflicts to you and why did you say that the record he was reading from was wrong? -- Well, as I say, I never finished my cross-examination and if I had, in fact there was quite a lapse of time between the evidence here and the evidence I gave (20) in Pretoria. Had I been given enough time, I would have given the same explanations.

Is there anything else that you want to add in answer to my question? -- No.

RE-EXAMINATION BY MR JACOBS : Can you tell me, in the ANC when you were given an instruction to go and do something ... (Court intervenes)

COURT : Does this flow from the recall of this witness? On the three aspects which I mentioned?

MR JACOBS : Yes, it might be that he can explain why he (30) always/...

always mentioned Old Man first, because he mentioned here that his instructions were that he must accompany Old Man over the border.

COURT : You can ask him why did he mention Old Man first, but I do not want this recall to run wider than the purpose of the recall?

MR JACOBS : Why did you always mention Old Man first when you gave you evidence? -- Because Old Man was the direct contact that we had with the Vaal and Stompie came as a result of Old Man. (10)

NO FURTHER QUESTIONS.