

755
Ass. 2
IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(TRANSVAALSE PROVINSIALE AFDELING)

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:

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MNR. JACOBS : U Edele, op die oomblik is dit so ver as wat ek kan gaan. Ons is besig om nou daardie skedule uit te werk en ek mag dit net meld, ons het al 'n hele ent wegge- werk in die tyd voor ons hier na die hof toe gekom het. Daar is 'n hele klomp goed wat blykbaar nie laas in gewees het wat nie bygesit is nie, wat moet inkom in die skedule. So, hy sal blykbaar oorgetik moet word.

HOF : Wanneer sal hy beskikbaar wees?

MNR. JACOBS : Ons werk nou aan hom. Dit hang af hoe vinnig kan hulle tik. Miskien môreoggend. (10)

HOF : Is daar 'n metode dat u dit kan verskaf aan my klerk wat dan die gegewens in my dokumente kan inskryf?

MNR. JACOBS : Ek sal vir hom die skedule gee.

HOF : Hy moet dit dan doen voordat hy dit na my toe bring. Ons moet een of ander plan maak met die assessore ook.

MNR. JACOBS : Ek weet nie of daar miskien aantekeninge of goed gemaak is nie, anders kan ek aanbied dat ons sal dit doen. Ek wil nie insae hê as daar miskien enige aantekeninge deur die bank gemaak is op enige van die dokumente nie.

HOF : Ons kan dit op die basis laat dat tensy u van die (20) assessore verneem, kan u aanvaar dat hulle dit self sal doen. As hulle wil hê u moet dit doen, sal hulle u laat weet, maar so gou as moontlik moet daardie skedule dan verskaf word. Is die gedagte dat ons dan nou verdaag?

MNR. JACOBS : Ja, ek wil dan vra dat ons nou verdaag. Met die erkennings en so aan kan ons môre klaar wees daarmee. Ek weet nie. Ons wag vir die verdediging daarvoor.

HOF : Ek het die volgende gedagte. Ek het verneem van die verdediging dat hulle graag 'n lang uitstel wil hê om voor te berei vir 'n aansoek om ontslag. Tegnies maak dit eintlik (30)

nie/...

nie verskil of u nou u saak m^oreoggend sluit en of u u saak nou op die 22ste sluit nie. As u 'n aanduiding gee dat daar in elk geval waarskynlik geen ander getuie is nie, kan dit aan die voorbereiding geen verskil maak nie. Dan kan u maar u erkennings inhandig op die 22ste en u saak sluit en die betoog kan begin.

MR BIZOS : With respect, we would like certainty before the adjournment.

COURT : Well, the adjournment is today. You cannot have me riding backwards and forwards just for five minutes (10) session. We cannot have that.

MR BIZOS : This question of the admissions is something which should be placed before Your Lordship and there is also one other aspect, that in going through the evidence we want to draw Your Lordship's attention to two or three matters where we have not put the matter quite correctly, but this is just a matter of explanation and we want to do that as well.

COURT : First of all the question arises why the admissions have not been completed by this time. You will tell me you (20) had a lot of work to do obviously, but I did take Friday off and half of Thursday, so you did have some time. If you want clarity or finality, you can draw a document with the state prosecutor who informs you that that is his evidence, he can deliver a document to me in Pretoria, but I am not going to drive to Delmas to hear that you say well, here is a list of admissions. That can be delivered to my home. I cannot see the purpose in going backwards and forwards to Delmas.

MR BIZOS : We would have no objection on an assurance (30)
that/...

that the State case is closed. We would have no ... (Court intervenes)

COURT : Technically it would make very little difference, because if on the 22nd the State stands and says well, we have now found this new evidence or this or that, probably they will ask for a re-opening. What is the difference in fact?

MR BIZOS : Well, we are preparing an application for a discharge. We want certainly so that ... (Court intervenes)

COURT : When were you asked to make the admissions which (10) are still not ready?

MR BIZOS : With the greatest respect, we have been working at it, a schedule is here, it came this morning and as a result of further discussions it has to be amended in a number of respects. We do not want to hand in an untidy document.

COURT : I appreciate that. You can take it from me I am not going to come to Delmas just to have a document handed to me. So, you can solve your problems in another way.

MR BIZOS : Well, if the State has no further evidence, what (20) I would ask that they close their case subject to this being handed in. We would have no objection to that, but in a case such as this, to leave it open ended, with the greatest respect is going to create the sort of uncertainty that I do not think that any defence counsel would want to live with while they are making an application for a discharge, which is going to take some time and a considerable amount of effort. If My Learned Friend has ... (Court intervenes)

COURT : My difficulty is, I cannot force the State to close its case while there are certain admissions hanging around (30) and/...

and that is not dependent on them, it is dependent on you. You are not ready. So, you cannot tell them to close their case when you are not ready with your admissions.

MR BIZOS : No, with the greatest respect. The State is not entitled to admissions as of right. The State has to place a case before Your Lordship. In a spirit of co-operation we have offered numerous admissions in this case ... (Court intervenes)

COURT : I quite appreciate that, but you indicated that there were certain aspects on which admissions could be (10) reached. Now that has not been sorted out. What you are asking me and my assessors to do is because you have not sorted out your admissions, we have got to go back all the way to Pretoria and come back here again. I am telling you I am not prepared to do it.

MR BIZOS : I am not saying that. Your Lordship does not have to come back, but the State, if it has no other witnesses, except in relation to that and we give them an assurance that there has been a substantial agreement, but in order to avoid difficulties, My Learned Friend was prepared to read (20) it into the record this morning. We do not want to do that, because it is capable of misunderstanding. It is capable of debate and what we want is to draw a document which the accused will sign as they have done up to now so that there is certainty about it and that there are no difficulty.

COURT : Well, they need not sign any document about the transcripts, because they have not signed the transcripts.

MR BIZOS : But at least it must be a document in its final form which will not give rise to any difficulty and what we are asking Your Lordship is that because of those admissions (30) and/...

and because of one or two matters that we want to draw Your Lordship's attention in relation to matters that we have put and because we believe that in a case such as this there must be certainly as to whether the case has been closed or not and because of the job that we are particularly doing, what I am asking Your Lordship is to either adjourn until tomorrow morning or possibly until Wednesday morning when these can be ... (Court intervenes)

COURT : What is it you want to put straight? What is it you want to correct? Apart from the transcripts, that is (10) a technical matter.

MR BIZOS : There are a couple of things that we have put on instructions and we want to correct that. There are two or three aspects. I will give Your Lordship an example.

COURT : Well, hand the State a list of what you have incorrectly put. The State may well want to call a witness if you have incorrectly put something.

MR BIZOS : I do not think it is fundamental. It is only ... (Court intervenes)

COURT : That is not for me to decide. (20)

MR BIZOS : But this is why we wanted to do that. They are not fundamental matters, but we wanted to do that. So, as reluctant as we ourselves are to come to Delmas, I think that a final day for this ... (Court intervenes)

COURT : That which you want to correct, why do you not do it now? I mean, you can tell me now what you say you have incorrectly put.

MR BIZOS : I want to give Your Lordship the page number and in order to avoid further ... (Court intervenes)

COURT : Because you have not got the page numbers ready (30) you/...

you want me to come back to Delmas and I have already told you I am not prepared to do it.

MR BIZOS : No, not because of the page numbers, because it is one of those things that happen as an odd and end at the end of a long case, that I want to consult with the accused and formulate it precisely. There has been a misunderstanding in certain detail once. I do not want any further misunderstanding to occur again and that is why I want to do this. We have been coming here on many a day ...

(Court intervenes) (10)

COURT : I have heard your reasons. I have told you I am not coming back for it. Now you can take your choice. How do you solve the problem?

MR BIZOS : Can we have a short adjournment.

COURT : Well, I have no objection to you telling me "Well, I have put it wrongly in this way and I want to put it right in that way." I do not want the page number. I do not need it. If you tell me that you made a mistake, you can tell me now, that is what I put and it is mistakenly put, this is how I want to put it, then I will put it on record and that (20) is the end of the story. You can later give me a page number.

MR BIZOS : I have no objection in doing it in simple terms. I have a note of them. I do not know whether it is not going to be neater if we do it. Perhaps I should mention it in view of - Your Lordship will recall that it was put that for a certain period there were no ... (Court intervenes)

COURT : Just a minute. I would have to write it down now.

MR BIZOS : It is in three areas that I want to take a specific instruction on and this is what I was hoping to do when Your Lordship adjourned the case, but ... (Court (30) intervenes)/...

intervenes)

COURT : I am prepared to give you that opportunity. We will adjourn the case until 22 September as we arranged, but you want to have your cake and eat it.

MR BIZOS : No, My Lord. If you would give me ten minutes - ten to fifteen minutes and I can do this part of it and then we can possibly do something about the schedule, but we want an assurance that the State case is closed.

COURT : That I will decide upon or Mr Jacobs can have his choice, I do not mind, but I will give you ten minutes to (10) have your corrections sorted out.

MNR. JACOBS : Kan ek miskien net sê voor die Hof verdaag, sodat mnr. Bizos nie onder 'n wanindruk verkeer nie. Daar moet erkennings kom. As daar nie ooreengekom is nie, dan moet ek getuienis bring op daardie erkennings. Ek kan nooit so 'n onderneming gee op hierdie stadium nie, totdat ek weet gaan hy hierdie feite erken of gaan hy dit nie erken nie.

MR BIZOS : Subject to the admissions being arrived at, obviously, if the State has asked for admissions in relation to the tapes and it is not forthcoming, of course they would (20) have the right to lead evidence.

COURT : Very well, Mr Bizos, we have now had enough debate on this. I adjourn for ten minutes.

COURT ADJOURNS. COURT RESUMES.

MR BIZOS : The two aspects that I want to draw Your Lordship's attention to is that Your Lordship will recall that I put to Warrant Officer Du Toit, that was the man from the security police in Pretoria, who deposed to a conversation with accused no. 21, Mr Chikane. I put to that witness at 4 826 that there were no school boycotts in Pretoria during 1983 (30) and/...

and that they only started in the beginning of 1984. What I want to place on record is that I overstated the position as far as the general knowledge is concerned. What I should have put is that to the knowledge of accused no. 21 there were no boycotts because it has come to our notice that there were certain minor incidents at the schools during 1983 and we thought in fairness to the State that we must place that on record.

The second matter relates to pages 1 622 to 1 623 where My Learned Friend, Mr Chaskalson, was cross-examining the (10) witness Lord McCamel. Here again Mr Chaskalson put tentatively and relied on his memory according to the record as to whether it was the meeting of 27 November 1983 or 9 October 1983, when accused nos.3 and 16 went to a meeting in the Vaal Triangle together. What we want to correct in that regard is that although it appears that both of them were at a meeting, there is apparently no absolute certainty as to which of the two, may I say that we cannot put with any great degree of confidence that it was the one or the other.

Those are the two matters that we thought - the (20) uncertainty is in any event there. The recollection varies. The recollection is in relation to 9 October, but we thought that we would just indicate that degree of uncertainty which we have on our instructions. Those are really the two matters that we wanted to put right and subject to that I want to inform Your Lordship that steps are being taken to correct the schedule. We are going to try our best with that troublesome Huhudi meeting and we have an assurance from the State that if agreement is reached in relation to the transcripts, the State case is at an end. On that basis (30)

we/...

we do agree with respect that it will not be necessary For Your Lordship to return to Delmas. The document will - arrangements will be made for the document to be placed before Your Lordship and the learned assessors and on that basis we would like to place on record that we intend formulating an application for discharge of the accused and that we do require time in order to formulate that application and we will try our best to reduce the application and the reasons for the application to writing in order to expedite matters and we hope to be able to let the State have at (10) least a portion of the argument before the date on which we are going to ask Your Lordship to adjourn the case to. Mindful that the accused are in custody and trying to do as best we can to prepare this application as soon as possible, we do not feel that we cannot be ready to do justice to the application before 22 October and we would ask Your Lordship accordingly to adjourn the trial to that date.

MNR. JACOBS : Daar is n paar aspekte wat ek net graag onder die Hof se aandag wil bring. Die eerste is dat tot op hierdie stadium het ons nog nie die dokumente aan die Hof oorhandig (20) waarop beslag gelê is by UDF se kantore en by verskillende mense nie. Ons het vir die Hof fotokopieë gegee wat die Hof mee werk, maar ons moes nog, afhangende van die erkennings wat gemaak word, hierdie hele lot vir die Hof ingee en daar is nog n paar uitstaande erkennings op daardie aspek. Daar is vertalings wat daar gedoen was wat mnr. Tip-hulle met mnr. Fick sou ooreengekom het. Dit moet nog afgehandel word sodat ons die stukke, soos hulle beslag op gelê is en waar daar dan fotokopieë is dat ons daardie aspekte regstel vir die Hof. Dit is dus nie net die skedule van die transkripsies (3 wat/...

wat ter sprake is nie, maar dit is ook nog daardie deel.

Die tweede deel is, soos ek sê die transkripsies. Daaraan werk ons. Wat my aanbetref het ek die ding reg gehad. Dit is net die kwessie dat die skedule wat nou opgestel moet word, moet heeltemal korrek opgestel word en dit gaan 'n tydjie neem.

Daar is 'n ander aspek oor 'n sekere band wat by Esau Raditsela gekry was wat My Geleerde Vriend, mnr. Tip en mnr. Fick oor samesprekings gevoer het en wat in beginsel besluit is dat daarvoor sou 'n erkenning kom. So, hier is 'n hele (10) paar los punte waarvoor daar erkennings is, afgesien van dié oor die transkripsies en dan is daar die kwessie van die Huhudi band waarvoor ons moet verder praat. Blykbaar, as ek die Hof miskien net kan inlig wat die probleem is, nie volledig nie, maar dat die Hof in die prentjie kom dat in die taal wat gebruik is, is daar blykbaar volgens die amptelike tolk wat 'n inspekteur van tolke is in die Departement van Justisie - in die Tswana is daar sekere, soos dit aan my verduidelik is, "slang", dan spel hulle soso bona - een spel hom b-o-n-a en die ander groep sal hom spel 'n b-w of iets (20) anders. Die foute wat daar is, is met die spelling. Dit verandering glad nie aan die betekenis nie. Dit is net die persoon wat die eerste transkripsie gedoen het, het dit in hierdie slang gedoen, dus het hy die woorde so gebruik en terwyl dit in werklikheid, die tolk wat dit gaan oor doen het, het gegaan en om sekere ongerief en onsekerheid uit te skakel om die werklike stelling soos - spelling, soos die verdediging daarop aangedring het, uit te bring, maar aan die uiteindelijke betekenis is daar nie verskil nie en daarvoor moet ons samesprekings dan nou voer, of dit so erken word. So, dit(30)

mag/...

mag dan wees, as ons nie kan ooreenkom nie, dat ons dan getuienis oor hierdie aspek sal moet lei en ook oor die ander aspekte, as ons nie kan ooreenkom omtrent die erkennings wat nog gemaak moet word nie. Van die groot massa van die bewysstukke wat ons by die Hof sal inlewer en wat erken is volgens die erkennings, is daar n paar waar daar vertalings is en nog moet erken word. Dan word dit in n Bantoetaal geskryf word, waar die vertaling gedoen is, dat dit daar ingeheg is dat die Hof nie sit met dinge in n Bantoetaal nie. Dit is daardie klein puntjies wat opgeklaar moet word.(10) Dit sluit dan daardie aspek af. Op hierdie stadium het ek geen ander getuienis in vooruitsigte behalwe dié wat raak die erkennings nie.

HOF : Wat sê u van die voorgestelde verdaging tot die 22ste toe?

MNR. JACOBS : Ek sal nou daarby kom. Net voor ek daarby kom wil ek net my bewysstukkewessie afhandel. Ek het die oorspronklike oorkonde van hierdie saak wat in die Landdroskantoor begin het en waaraan al die sertifikate van die prokureur-generaal geheg is, die oorspronklik stukke, ek(20) wil net hierdie oorkonde van hierdie gebeure by die Hof inhandig as BEWYSSTUK ABC, onder andere die vervolging van die beskuldigdes, die magtiging van vervolging van die beskuldigdes onder die Veiligheidswetgewing.

Dan die kwessie van die verdaging van My Geleerde Vriend, ek ondersteun sy aansoek. Al wat ek vra is dat - hy het gemeld dat die beskuldigdes is in hegtenis en dit mag sy argument bemoeilik. Op hierdie stadium sien ek nie dat die beskuldigdes eintlik n sê het in die opstel van die argument nie, want dit gaan op die oorkonde soos dit voor(30)

die/...

die Hof sal wees en ek dink met alle billikheid teenoor die Staat dat twee dae om net die ding te gaan deurlees, as ek so verstaan gaan die ding taamlik lywig wees as ek so luister en daar sal moet gekorreleer word, dat ons sal miskien verplig wees, as hulle net vir ons die ding twee dae voor die tyd gee, om vir 'n langer tyd te vra daarna om reg te laat geskied in hierdie hof en om die hof - ons gaan in die tussentyd werk en ons dinge agtermekaar kry, maar dit mag net wees om korrelasie te doen dat daar meer as twee dae gaan nodig wees vir die Staat en dit gaan 'n bietjie (10) kort wees.

HOF : Ek doen aan die hand dat u vir mnr. Bizos vra om maar sy betoog so stuk-stuk aan u beskikbaar te stel soos dit beskikbaar kom.

MNR. JACOBS : Ons het so 'n versoek gerig, maar blykbaar sou mnr. Bizos dit nie heeltemal so wou doen nie.

HOF : In elk geval, ek het nie 'n sê daaroor nie. My sê begin wanneer ons weer hervat.

MNR. JACOBS : So, daarom is my voorspraak op hierdie stadium dat as ons dit nie kry nie, gaan twee dae miskien 'n bietjie (20) kort wees, want sekerlik gaan hier heelwat regsaspekte geopper word wat ons sal moet gaan naslaan en die gesaag wat daar na verwys word.

HOF : Ons sal oor daardie slootjie spring wanneer ons by hom kom.

MR BIZOS : My Learned Friend, Mr Tip, wants to say something to Your Lordship in relation to some of the admissions.

MR TIP : Very briefly, My Lord, it is correct that in the course of the past few weeks with the view to avoiding evidence and further burdening of the record insofar as (30) possible/...

possible, we have had continuing discussions with the State and there are some eight or nine items additional to those that My Learned Friend has mentioned here and what we would propose subject to Your Lordship's convenience, is to set those out in a single document and we have had our eye on doing that and again with the view to avoiding the Court having to journey here unnecessarily to hand that in administratively and when we resume, we can just formulise that it has been done.

COURT : Yes, we can place it on record. You can either (10) hand it to my registrar or arrange with somebody to come and hand it to my home, whatever it is.

MR TIP : We will see to that. That will be done within the next two or three days at the most.

MR BIZOS : But we will try to give at least a portion of the argument as soon as the section becomes available.

COURT : You might consider just giving them a sort of an outline of what you intend doing in respect of each accused. That might help and then the answer will also be in the same sort of form which will make it much easier, otherwise I (20) have a disjointed argument.

MR BIZOS : We will try and co-operate in that regard so that the argument flows more smoothly.

COURT ADJOURNS UNTIL 22 OCTOBER 1986.