IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(TRANSVAALSE PROVINSIALE AFDELING)

HSS. 2

SAAKNOMMER: CC 482/85

DELMAS

1987-04-10

DIE STAAT teen:

PATRICK MABUYA BALEKA EN 21 ANDER

VOOR:

SY EDELE REGTER VAN DIJKHORST EN

ASSESSOR : MNR. W.F. KRUGEL

NAMENS DIE STAAT:

ADV. P.B. JACOBS
ADV. P. FICK
ADV. W. HANEKOM

NAMENS DIE VERDEDIGING:

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

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

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KONTRAKTEURS:

LUBBE OPNAMES

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VOLUME 204

(Bladsye 10 672 - 10 730)

IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

Case No. CC.482/85

DELMAS

1987-04-10

THE STATE

versus

PATRICK MABUYA BALEKA AND 21 OTHERS (10)

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REASONS FOR JUDGMENT

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VAN DIJKHORST, J.: On 10 March 1987 I made a statement in court. It was to the effect that I had been informed the previous day that one of my assessors, Dr W.A. Joubert had participated in the Million Signature Campaign of the United Democratic Front by signing one of its declarations, declaring inter alia that he gave full support for the UDF "in its efforts to unite our people in their fight against (20) the constitution and Koornhof Bills". It is the State's case that the UDF's efforts to unite the people in their fight against the constitution and the Koornhof Bills (by which is meant inter alia the statutes creating the Black Local Authorities) are unlawful and treasonable. After due consideration I formed the opinion that in the circumstances Dr Joubert had to recuse himself and I held that he had become unable to act as assessor. In terms of section 147 of the Criminal Procedure Act No. 51 of 1977 I directed that the trial proceed before the remaining members of the court. (30)

Having/...

Having reserved their rights in this respect the 19 accused on 20 March 1987 brought an application for the quashing of the trial on three grounds, alternatively for the recusal of myself, and further alternatively for the recusal of my other assessor Mr W.F. Krugel. After hearing argument on four consecutive days and giving certain rulings on the admissibility of reports the applications for the recusal of myself and my remaining assessor were withdrawn. I dismissed the application in toto. Here are my reasons.

The three grounds for the application to quash the (10) proceedings were:

"(i) The dismissal of the assessor Prof. W.A. Joubert was made without power and was wrong in law and in consequence thereof the court which is now hearing the trial is not a properly constituted court;

Alternatively

(ii) The dismissal of the assessor Prof. W.A. Joubert by the presiding judge constituted a material irregularity which was such a gross departure from established rules of practice and procedure that (20) the accused can no longer properly be tried by the court which is hearing the trial;

Alternatively

(iii) The failure by the presiding judge to hear the accused on how the discretion given to him by section 147 of the Criminal Procedure Act should be exercised, prior to ruling that the trial be continued before himself and the assessor Mr W.F. Krugel, constituted a material irregularity which cannot now be remedied, and in consequence (30)

whereof/...

whereof, the trial cannot properly be continued."

The word "dismissal" is a misnomer. The order made was a ruling that Dr Joubert has become unable to act as assessor in terms of section 147 of the Criminal Procedure Act No. 51 of 1977 and a direction that the trial proceed before the remaining members of the court.

The argument of the applicants ran thus:

1. A court has power to direct that the trial be stopped and the proceedings be quashed when an irregularity has occurred which makes it undesirable for the trial to (10) be continued. Reliance was placed on R v MATSEGO 1956 (3) SA 411 (A) at 417H; S v APOLIS 1965 (4) SA 178 (C) at 179D; S v GCABA 1965 (4) SA 325 (N) and S v MOSELLI 1969 (1) SA 650 (O) 653/4.
2. In S v MOODIE 1961 (4) SA 752 the Appellate Division formulated the following rules with regard to irregularities:
   i. The general rule with regard to irregularities is that the court will be satisfied that there has in fact been a failure of justice if it cannot (20) hold that a reasonable trial court would inevitably have convicted if there had been no irregularity.
   ii. In an exceptional case, where the irregularity consists of such a gross departure from established rules of procedure that the accused has not been properly tried, this is per se a failure of justice, and it is unnecessary to apply the test of enquiring whether a reasonable trial court would have inevitably convicted if there had been no irregularity. (30)

iii/...

iii. Whether a case falls within (i) or (ii) depends upon the nature and the degree of the irregularity.

3. It was argued that what happened in the instant case is an irregularity of the second category and per se amounting to a failure of justice and that in such a case the power to quash the proceedings ought to be exercised. It was argued that even in cases where the irregularity falls into the first category described in MOODIE's case the power to quash exists and should be exercised where the irregularity can result in a suspicion that the trial has not been conducted fairly. (10)

Two questions arise: Can this court reconsider the validity of its previous decision? Was the ruling given an irregularity?

On the first question the decision has to be against the applicants.

The decision that section 147 was applicable and the decision to invoke it without calling upon the State or defence was made after due deliberation. To find on the correctness of that decision would be a review by the court of its own decision. That it cannot do. It is functus officio. WEST RAND ESTATES LTD v NEW ZEALAND INSURANCE CO. LTD 1926 AD 173 at 178; ESTATE GARLICK v COMMISSIONER FOR INLAND REVENUE 1934 AD 499 at 502; S v SULIMAN 1968 (3) SA 219 (T) at 224H - 225B. (20)

It is, however, apposite to set out my reasons why the argument that the ruling and direction given amounted to an irregularity cannot be upheld.

The power exercised in this case arises solely from the provisions of section 147 of the Criminal Procedure Act. (30)

To/...

To apply the common law principles of procedure on recusal, as the applicants seek to do, is fallacious.

The section reads:

"147(1) If an assessor dies or, in the opinion of the presiding judge, becomes unable to act as assessor at any time during a trial, the presiding judge may direct -

(a) that the trial proceed before the remaining member or members of the court;

or (10)

(b) that the trial start de novo, and for that purpose summon an assessor in the place of the assessor who has died or has become unable to act as assessor."

The Afrikaans version is as follows:

"147(1) Indien 'n assessor te eniger tyd gedurende 'n verhoor sterf of, na die oordeel van die voorsittende regter, onbekwaam raak om as assessor op te tree, kan die voorsittende regter gelas -

(a) dat die verhoor voor die oorblywende (20) lid of lede van die hof voortgaan;

of

(b) dat die verhoor de novo begin, en te dien einde 'n assessor oproep in die plek van die assessor wat gesterf het of onbekwaam geraak het om as assessor op te tree."

Three questions arose:

1. Whether the words "becomes unable to act" should be limited to physical and mental disability.

2. Whether the word "becomes" excludes cognizance of a (30) latent/...

latent disability which, having arisen prior to the trial, only comes to light after its commencement.

3. Whether the judge before forming his opinion should afford the parties a hearing.

A historical review of the section may be of benefit. Section 216(2) of the Criminal Procedure and Evidence Act 31 of 1917 provided for trial by judge and assessors. The Act contained no provision dealing with the contingency where an assessor dies or becomes incapacitated during the trial. That contingency arose in R v JOHNSON 1947 (4) SA 849 (C) (10) and R v PRICE 1955 (1) SA 219 (A). In the latter case it led to an unfortunate result. The legislature reacted speedily by inserting section 216 bis of Act 31 of 1917 by section 33 of Act 29 of 1955.

In the consolidated Criminal Procedure Act 56 of 1955 it became section 110. Except for references to renumbered sections the English wording is identical. The Dutch text becomes Afrikaans. I paraphrase sections 110(1) and (3):

> "If at any time during a trial ... any assessor dies or becomes in the opinion of the judge incapable of (20) continuing to act as assessor, the judge may if he thinks fit, direct that the trial shall proceed without such assessor."

This applies where the summoning of assessors was optional. Where it was obligatory "the consent of the accused and the prosecutor" was required for such direction.

The Afrikaans was:

> "... 'n assessor te sterwe kom of volgens die oordeel van die regter onbekwaam word om verder as assessor te dien ..." (30)

By/...

By section 9 of Act 92 of 1963 section 110 of Act 56 of 1955 was amended by the deletion of sub-section (3) which had required the consent of the accused and the prosecutor where assessors had been obligatory. Apart from this the section remained as paraphrased above.

This remained the law until the consolidating Criminal Code in 1977. The word "incapable" became "unable". The words "of continuing to act as assessor" became "to act as assessor". The Afrikaans "onbekwaam word om verder as assessor te dien" became "onbekwaam raak om as assessor op te tree". I do not think that much can be read into the change from "incapable" to "unable". The Afrikaans (and before it the Dutch) had always been "onbekwaam" and it surely cannot be said that the Afrikaans text (which was the signed text in both codes) changed its meaning because the English text exchanged synonyms.

It could also be argued that the English text was amended after O'HAGAN, J. in R v GUBUDELA AND OTHERS 1959 (4) SA 93 (E) at 95H tentatively held that the words "becomes incapable" in section 149(3) of Act 56 of 1955 applied only to the physical and mental incapacity of jurors. One could then argue that the legislature intended by the amendment to "unable" to widen the scope of the section.

Whatever conclusions one may draw from the change, in my view "onbekwaam", "unable" and "incapable" are all wide enough to embrace not only physical and mental disability but also disability flowing from legal impediments and disqualifications.

The Handwoordeboek van die Afrikaanse Taal sv "onbekwaam gives inter alia "ongeskik".

Shorter/...

Shorter Oxford English Dictionary sv "unable" gives inter alia "not able to do something specified; unequal to the task or need; incompetent."

Sv incapable: "not having the capacity, power or fitness for; unable. Not (legally) qualified or entitled; disqualified."

Die Nuwe Praktiese Woordeboek of H.J. TERBLANCHE gives for "onbekwaam" the English "incapable, unable, incompetent, unfit". One finds materially the same version in Tweetalige Woordeboek of BOSMAN, VAN DER MERWE EN HIEMSTRA. (10)

The Oxford English Dictionary sv "able" has inter alia the following meanings:

> "2. suitable, fit; .. 4. having the qualifications for, and means of, doing anything ... qualified, competent, capable."

I find support for my view that the scope of section 147 is much wider than mere physical and mental disability in The Law of South Africa (edited DR JOUBERT) Vol. 5 p. 428. The learned author states:

> "The expression 'unable to act as assessor' is wide (20) enough to embrace circumstances other than physical ones. If facts adverse to the accused have come to the knowledge of an assessor extra-curially, the judge may hold him to be unable to act and secure his recusal rather than have the verdict set aside on the ground of irregularity."

See also HIEMSTRA Suid-Afrikaanse Strafproses 4th ed. p. 320.

There is no reason to curtail the scope of the section as the applicants contend. Why should an assessor who admits having taken a bribe and refuses to recuse himself not be (30)

dealt/...

dealt with under the section? Why should the sole option be to quash the proceedings and start de novo? Such a course can only be detrimental to all concerned. It is argued that this would place wide powers in the hands of a judge. That is also the case if the section is interpreted restrictively. To form an opinion on the mental capability of an assessor could be more difficult for a judge than deciding on a legal disqualification.

I turn now to the second question, namely whether latent disabilities which come to light during the trial fall under the section.

Counsel for the applicants stressed that the words "becomes unable" connote a situation which did not exist previously and that the question has to be answered in the negative.

This interpretation does not take into account either the history of the phrase in which the word is found or its context. "Becomes unable to act" was previously rendered as "becomes incapable of continuing to act". I do not think that any change in meaning was intended by the changed expression. It is an attempt at streamlining. It means and has always meant "can act no more".

The meaning is even more apparent when regard is had to the operative phrase "in the opinion of the judge". A judge who summons an assessor is always of the opinion that such assessor is able to act as assessor - physically, mentally and legally. Should the basis upon which the assessor is appointed be shown to have been wrong, the judge changes his opinion to an opinion that the assessor is no longer able to act. In the opinion of the judge he has now

become/...

become unable to act.

I hold therefore that section 147 applies to all disqualifications whether they arise during the trial or, having been latent, come to light only during the trial.

The third question to be dealt with is whether a judge before forming his opinion should afford the parties a hearing. The Act does not state that. Should that requirement be read into the section?

There are many sections of the Act where the same or a similar wording is used and where it is clear that it (10) was not intended that the rule audi alteram partem applies. See for example sections 112(1)(a); 112(1)(b); 113; 114(1); 116(1); 123; 125(1); 148(1); 167; 185(1) and 186.

In section 145 which deals with assessors we find provisions where an opinion is formed without application of the audi alteram partem rule. Section 145(1)(b) defines an assessor as a person who in the opinion of the judge has certain qualifications. Section 145(2) provides for the summonsing of assessors where the presiding judge is of the opinion that a certain type of sentence may have to be (20) imposed. Section 145(4)(b) provides that if the judge is of the opinion that it would be in the interests of the administration of justice that the assessors do not take part in certain decisions, he alone shall decide the question and may sit alone. Section 145(4)(c) likewise gives the judge a discretion to decide whether in deciding certain questions he will sit alone. In none of these instances do the parties have a right to be heard.

In my view the same applies where section 147 is concerned. The parties have no right to be heard before (30)

the/...

the judge forms his opinion. They have no right to complain if they are not.

To hold that a full scale hearing on the matter is required by section 147 would run counter to what the Appellate Division held in respect of the old section. In R v MATSEGO 1956 (3) SA 411 (A) 418A-C it was stated:

> "It is essential in the interests of the proper administration of justice that an assessor should retire from the case as soon as it is proved that he has been given information detrimental to the accused which has not (10) been proved in evidence, for nothing should be done which creates even a suspicion that there has not been a fair trial. In my opinion the learned judge should not have imposed upon himself the difficult and invidious task of considering whether up to the stage where the assessor's memory was refreshed the discussion with the first appellant's previous counsel has been erased from the mind of the assessor. There is, as far as I am aware, no provision in Act 56 of 1955 whereby an assessor can during the trial of an accused person, be put on (20) trial as to whether he should take part in the trial of the accused."

It was argued that the opinion that Dr Joubert was unable to continue to act as assessor was formed without affording Dr Joubert a proper hearing on the issue. As appears from the facts put on record this argument is based on wrong facts.

In order to avoid (as much as possible) becoming a witness in this case I will however examine the common factual ground. The following facts are undisputed: (30)

The/...

The Million Signature Campaign is a material portion of the State's case.

The State alleges that the Million Signature Campaign is part of a conspiracy of the UDF, ANC and/or SACP to cause a violent revolution.

Dr Joubert signed this campaign pledging full support for the UDF "in its efforts to unite our people in their fight against the constitution and Koornhof Bills" in either 1983 or 1984.

Whether the UDF's efforts to unite the people in their (10) fight against the Constitution and the Koornhof Bills (by which the Black Local Authorities inter alia are created) are unlawful and treasonable is one of the main issues in this case.

Dr Joubert was asked by me when I asked him to join the bench as assessor in this case whether he had had any relationship with the UDF. He replied in the negative.

Dr Joubert did not disclose to me that he had signed in the campaign until 9 March 1987. (Some seventeen months after the commencement of this trial.) (20)

On 9 March 1987 Dr Joubert knew that I was concerned about his signing in support of the UDF and would consider overnight what steps to take.

On 10 March 1987 I informed Dr Joubert that I had consulted the Judge-President and that both of us were of the opinion that he should recuse himself.

Dr Joubert, fully aware of the seriousness of the situation, did not on the afternoon and evening of 9 March 1987 nor on the morning of 10 March 1987 offer any explanation for his conduct. He did express the view that if he had to recuse (30)

himself/...

himself the judge would have to do likewise. The only explanation he wanted to offer in court was that he had taken an oath and that he regarded himself as bound thereby. From his first report it appears that Dr Joubert is not a timid man.

On these facts, which are common ground, it is clear that Dr Joubert did not offer an explanation and that he was not prevented from doing so. The point fails.

There remains the question whether the judge, having formed the opinion that an assessor is unable to act, is (10) obliged to afford the parties a hearing before deciding whether to invoke sub-section (a) or (b) of section 147. Though normally it would be done (often by means of a private conference in chambers) I do not regard it as a requirement laid down by the Act. I did not call upon the parties to address me in this regard as I did not think it possible that any accused after having been through a trial of some seventeen months would prefer to start de novo. Nor do I believe the present protestations to be genuine in this respect. When I asked what would the argument have been had the assessor (20) died, I could not get a clear answer from defence counsel. It seems to me that defence counsel are shaping their argument according to facts learnt ex post facto.

For these reasons the application for a quashing of the proceedings was dismissed.

Not only was the action taken by myself in terms of section 147 unprecedented, but the reaction of Dr Joubert and the conduct of the defence team in the ensuing days was, to say the least, unusual.

Defence attorneys Bell Dewar and Hall on 12 March (30)

1987/...

1987 wrote a letter to Dr Joubert's attorneys stating that the accused intended to take steps to have the proceedings quashed and that they were also considering to apply in the alternative for the recusal of the judge or for the recusal of the other assessor. They sought information from Dr Joubert, to be verified on affidavit for the purpose of their application, inter alia on the events which gave rise to the ruling given and the circumstances under which it was given. Dr Joubert was further invited to furnish any other information relevant to the application.

On 18 March 1987 Dr Joubert made a statement, which is called a report, under oath. He sent it to the State President, the Minister of Justice, the Chief Justice, the Judge-President of the Transvaal Provincial Division, myself, the Attorney-General, the Defence team, the General Council of the Bar and the Association of Law Societies.

The defence team received this report on 18 March. Upon perchance hearing on 19 March 1987 that a report existed, I asked advocate Bizos for a copy. Copies were supplied and I perused one. When the report was mentioned in court on 19 March 1987 I told the defence that the report was materially incorrect and that they should not rely thereon. I stated that both I and my assessor Mr Krugel held it to be incorrect.

The defence team did not take any steps to ascertain from me or Mr Krugel in which respects the report was incorrect. I find this strange because it contains a direct attack on my integrity.

The defence team proceeded with the application based mainly on this report. It was signed on 20 March 1987.

I/...

I received an unsigned copy thereof that same afternoon and the original some days later.

On 19 March 1987 in expectation of the service of the application the case was adjourned until 30 March 1987 to enable the State to answer.

I prepared a statement to be read into the record when the court resumed.

On 27 March 1987 the State filed an answering affidavit and intimated that it would apply for the striking out of portions of Dr Joubert's report on the basis that he dealt with discussions between members of the bench which were confidential and therefore inadmissible on the grounds of public policy. The Attorney-General contended that it had been extremely improper for Dr Joubert to prepare and distribute his report.

On 30 March 1987 at the resumption of the case defence counsel handed up a replying affidavit. This contained a second report by Dr Joubert which was a reply to the Attorney-General's affidavit and attempted to provide for certain omissions in the first report. Paragraph 6 thereof contained reference to confidential discussions between judge and assessors.

Before reading the replying affidavit and report I put certain facts on record. In order to accommodate defence counsel and to give them adequate time to study my statement, of which they got a copy, I ruled that both sides would first argue the application to quash the proceedings. This was done.

Notice was given on 30 March 1987 that the State would apply for the striking out of paragraph 6 of Dr Joubert's

second/...

second report on the same basis as previously set out and heads of argument were handed in by counsel for the State.

During his reply on 1 April 1987 defence counsel indicated that he would hand up and refer to a third report of Dr Joubert which had come to hand that morning in order to contradict some of what had been put on record by myself. He tendered an affidavit of the accused incorporating it. Mr De Villiers for the Attorney-General objected. I required both counsel to address me on the admissibility thereof.

This argument lasted till 2 April 1987 when I ruled (10) at 12h15 that the third report was not admissible. Mr Chaskalson then continued his reply on the application to quash the proceedings. This lasted till approximately 14h15 when he requested a ruling on the admissibility of the first and second reports of Dr Joubert. I ruled that paragraph 6 of the second report was inadmissible and that the first report was admissible.

Mr Chaskalson thereupon asked whether the rulings precluded him from leading evidence to contradict what I had put on record and I ruled that that was the position. (20)

I requested Mr Chaskalson to commence his argument on the applications for the recusal at 14h20 and refused an adjournment of the trial to enable him to study my statement and consult with the accused thereon as he had had ample time to do so since 30 March 1987. After an adjournment of 15 minutes he told me that he was not proceeding with the applications for recusal.

I thereupon dismissed the applications in toto. Here follow my reasons for the above rulings.

The first report of Dr Joubert and the motive for (30)

issuing/...

issuing it should be seen against the factual background. Dr Joubert signed the declaration of the UDF's Million Signature Campaign prior to the commencement of this trial but during the period covered by the indictment. When I asked him to join the bench as an assessor I expressly asked him whether he had had any relationship with the UDF. The answer was negative. He did not inform me that he had signed in the UDF's Million Signature Campaign. The case started on 16 October 1985 with legal argument only. The assessors commenced to sit with me on 4 November 1985 and (10) took the required oath. The normal preliminary legal wrangles over particulars to the indictment ensued and the accused only pleaded on 20 January 1986. Evidence commenced the following day.

The indictment and particulars have numerous references to the Million Signature Campaign. I set these out when I put certain facts on record. The Million Signature Campaign was from the outset an important feature of the State's case.

Until 9 March 1987 I was not informed by Dr Joubert (20) of the fact that he had signed the declaration.

When this fact came to light on this day I was very perturbed. On 10 March 1987 Dr Joubert was informed by me that both the Judge-President whom I had consulted and I were of the opinion that he should recuse himself. He refused.

Upon being informed that he left me no option but to discharge him he said that I could not do so and that if he had to recuse himself so had I (and the other assessor). Thereupon followed the proceedings in court. (I have set out the facts which are undisputed and leave the areas (30)

of/...

of dispute aside for the moment.)

The first report of Dr Joubert followed. He prefaced it by stating he is disclosing "facts" regarding the conduct of this trial to those responsible for the administration of justice in this country knowing that he himself "will bear the heavy burden of disclosure" and stating that he is "aware that the disclosure of these facts may have an impact upon the continued conduct" of this trial.

Anyone reading this report would therefore know from the outset that it contains disclosures which are either (10) improper or unlawful and that it is foreseen that these disclosures may place the continuation of this trial in jeopardy. Put bluntly, it is a clear attempt to interfere with the administration of justice disguised in a flimsy frock of alleged noble motives.

The report can be divided into three sections. The first deals with the attributes of Dr Joubert as an academic, politician and assessor.

The second section deals with alleged "very great differences" in political perceptions between Dr Joubert and (20) myself and different prima facie perceptions "concerning various matters relating to the credibility of witnesses, their demeanour, the probabilities and the motivations for various courses of conduct evidenced in the case".

It is insinuated that the different political dispositions of Dr Joubert and myself constituted the reason why I held that he had to recuse himself. He states that from our deliberations he had "become increasingly unhappy with the disposition of the judge" but that he decided to carry on as assessor as his presence "was an important counteracting(30)

force/...

force to the approach of the judge".

The third section of the report deals with what occurred on 9 and 10 March 1987 in my chambers following the revelation that Dr Joubert had signed the Million Signature Campaign Declaration. The allegation is made that Dr Joubert was not given "any opportunity of being properly heard" on the question whether he should recuse himself.

The unique situation created by the defence team's use of this report left me with only two alternatives. Strike the report (or major sections of it) off the record, (10) leaving in the minds of the accused (and all others who have read it) an entirely incorrect impression of my political perspectives and my approach to this case and of what happened in my chambers on 9 and 10 March 1987. Or admitting the report in evidence and setting the record straight. This would necessarily entail a conflict between my version and that of Dr Joubert. In the interests of justice I chose the latter.

In answer to the first section of his report I put on record that my esteem of Dr Joubert's capabilities as an (20) assessor did not equal his self-esteem.

On the second section of the report I put on record that knowing Dr Joubert's political background and that his political views and mine did not necessarily co-incide, I asked him to join the bench as an assessor as I have an open mind on political issues and thought that his presence on the bench would be beneficial when political perspectives were discussed. I put on record that generally no party politics were discussed between judge and assessors but that on a few occasions the conversation did stray into the field of general (30)

politics/...

politics. Though we did not have the same point of view in all respects I do not recall "very great differences".

We did have sharp differences of opinion at times on prima facie opinions and conclusions. These were subject to what would emerge further during the evidence and argument.

I put on record that difference of opinion was sometimes sharp when I found Dr Joubert injudicious where factual matters and the credibility of witnesses were concerned, and opinionated and not open to reason where matters touching (10) upon politics were concerned. I gained the impression that he totally associated himself with the defence case.

I rejected the insinuation that my view of the case is or will be politically tainted and put on record that I reject the attempt to portray my political views as strong or right wing. I have no political credentials. I have never been a member of any political party or organisation and have been totally inactive politically. I never belonged to any secret society.

On the third section of the report I stated that it (20) was incorrect and, giving details on what happened on 9 and 10 March 1987, denied that Dr Joubert had had no opportunity to put his case and stated that he knew that I intended to discharge him.

The accused had in their application for the recusal of myself and my other assessor Mr W.F. Krugel made certain allegations in the vaguest terms possible about an impression they gained that (a) we had formed opinions adverse to their case and (b) our questioning of State witnesses and the accused who have given evidence has been addressed to (30)

strengthening/...

strengthening the State's case. The accused said that they have gained this clear impression both from the questions asked by us and the manner of our questioning. No other details or references to the record which ran to some 10 000 pages were given. We are still in the dark on what these serious allegations against us are based. I may point out that these allegations were not made in Dr Joubert's report.

The accused further alleged that there was much more communication in court between myself and Mr Kruger than with Dr Joubert, and that the latter was to some extent (10) excluded from deliberations in court. I point out that this was not a complaint of Dr Joubert.

These matters were dealt with by me in the facts put on record.

The accused sought to effect the recusal of Mr Krugel in an abject manner. Without, through their counsel, approaching Mr Krugel, who is a most respected man of the highest integrity and the president of the Northern Transvaal Regional Court, to verify their "facts", they alleged that they believed he and Major P.E.J. Kruger the investigating (20) officer are both members of the Afrikaner Broederbond. They alleged that the policies of the Afrikaner Broederbond are closely linked to if not the basis for the government policy against which the UDF is alleged in the indictment to have run campaigns and that the Afrikaner Broederbond is hostile to policies such as those pursued by the UDF and its affiliates as well as those pursued by other organisations such as AZAPO.

The accused stated that they believed that members of the Afrikaner Broederbond have access to secret briefings (30)

inter alia/...

inter alia on the ANC, UDF and AZAPO. They believed that Mr Krugel as liquidator of a number of political organisations which were declared unlawful in October 1977 worked closely with the security police. For these reasons they said Mr Krugel will have had close contact with the security police and access to information based on security police reports and Broederbond circulars including information concerning UDF and AZAPO, the tri-cameral parliament and the Koornhof laws and other issues which have been or are likely to be debated in this trial. Such secret information the accused alleged is likely to advance the State case and damage theirs.

This is a very serious allegation against Mr Krugel. Bluntly put, it is that one of the highest ranking regional magistrates in the country, in breach of his duty to be frank with the presiding judge, has failed to disclose that he has had access to secret information relevant to issues in this case.

One would have expected the defence team to verify their facts before making out this case.

I asked Mr Krugel to clarify his position insofar as this trial is concerned. The following is a truncated version of what was put on record:

Mr W.F. Krugel joined the Afrikaner Broederbond in 1975 and is still a member. He does not hold any position in the executive of that organisation.

When approached to join the Afrikaner Broederbond he explicitly asked whether his membership could directly or indirectly influence his functions as a judicial officer. He was told that it could not. That statement was correct.

He also asked whether in undertaking to serve and promote the best interests of his own people it would be expected of him to love his neighbour less or to prejudice the interests of others. He was assured that it would not and that everything is to be seen within the broader interests of the country as such and all its people. He has not found this assurance incorrect. At no stage has the Afrikaner Broederbond in any way attempted to influence the course of the administration of justice where he was involved and he is not aware of any executive directive that inhibits his (10) freedom of conscience or requires him to adopt a particular position in respect of any public matter.

Mr Krugel was unaware of the fact (if it is a fact) that Major P.E.J. Kruger was a member of the Afrikaner Broederbond, till it was stated by the defence in this application. He has had no contact with Major Kruger except for greeting him (and others of the State team) and exchanging a few remarks about matters totally unrelated to this case. He has no special affinity to Major Kruger nor does his membership of the Afrikaner Broederbond lead to it. (20)

Mr Krugel regards the Afrikaner Broederbond as an Afrikaner cultural and political think-tank. It does not prescribe to its members what political beliefs to adhere to. In his presence the so-called Koornhof bills and the council system were never discussed. The members of the Afrikaner Broederbond at local level were requested to comment on the constitutional proposals for the tri-cameral parliament and they were discussed at local level. The expressed view of Mr Krugel, to which he still adheres, was that he was not content with the proposed tri-cameral parliament as any (30)

constitutional/...

constitutional dispensation which does not have the support of and cater for the political aspirations of all the people of South Africa, including the Blacks, will not work. At best in his view the tri-cameral parliament can be a step in an evolutionary constitutional process.

Mr Krugel has not received any information or reports secret or otherwise from the Afrikaner Broederbond pertaining to any issue in this case.

Mr Krugel was designated liquidator of the assets of certain unlawful organisations on 19 October 1977 in terms of section 3(1)(b) of Act 44 of 1950 with the powers and duties set out in section 4 of that Act. He acted accordingly. The organisations were listed by me. This task was for all practical purposes completed on 19 February 1979.

At no stage since becoming an assessor was Mr Krugel aware that any of the accused had been a member of any of these organisations.

He knows of no facts detrimental to the accused or to Dr Naude (who we were informed could become a witness) which came to his knowledge during the liquidation process.

He did not work in close co-operation with members of the security police except for the liquidation process of the assets of the said organisations. He did not receive any information from the security police or the executive of the Broederbond on the so-called dangers of such organisations.

This is what was put on record in this respect.

The second report of Dr Joubert was obtained from him by defence attorneys Bell Dewar and Hall. They requested his attorneys to furnish them with Dr Joubert's comments on the answering affidavit of the Attorney-General. The

second report was annexed to the replying affidavit of the accused.

In paragraph 6 of this report paragraph 33 of the answering affidavit of the Attorney-General is dealt with. The Attorney-General stated that those portions of Dr Joubert's report relating to discussions by members of the court inter se were inadmissible in evidence and should be struck out as it is against public policy to disclose confidential discussions of this nature. The Attorney-General suggested that this aspect may have slipped Dr Joubert's mind. (10)

The Attorney-General denied in any event that one could deduce from Dr Joubert's first report that political differences between members of the Court had played a role in my decision in terms of section 147. (In my opinion the insinuation had been made.)

This lacuna which the Attorney-General thought he had perceived in the first report was quickly filled in the second report. As in the first report stark conclusions are drawn from facts which are not mentioned.

The method employed is the same in both reports: Make (20) a positive damning statement in the nature of a conclusion but refrain from giving the factual data on which it is based, because that would "not be desirable or proper". The method is also very effective, because the point has been brought home, the judge's integrity has been damaged, and he is precluded from dealing with the factual data as that is confidential and should he divulge details of the discussions between members of the bench, he would effectively cause the termination of the case.

I did not accept the third report which was tendered (30)

to/...

to me from the bar by defence counsel on 1 April 1987, but required argument on its admissibility. I was informed that it amplified the second and third sections of the first report. I asked Mr Chaskalson how he proposed to dissect the third report as at that stage he was merely handing it in in support of his reply to the first application (to quash the proceedings) and not on the application for my recusal. Counsel stated that he would not dissect it but that the portion relevant to the application for recusal (that is in respect of the second section) was admissible on another ground. The two grounds advanced for the admissibility of the third report were as follows:

(1) the portion thereof amplifying the third section of the first report dealt with matters which were not part of discussions between members of the bench for the purposes of the decision of the issues in this trial (and thus privileged) but were merely data on an ancillary occurrence, that is the inquiry into the ability of the assessor to act, and as such fell outside the scope of the rule of public policy.

(2) That portion of the third report which amplified the second section of the first report and dealt with my alleged political perspectives was tendered not as proof of the facts but as reason for the belief of the accused in my alleged bias. How a report received on 1 April 1987 can be the basis of a belief set out in an affidavit as early as 20 March 1987 I fail to see. This ground cannot support the admissibility of a third report. Failure of this ground would render the report inadmissible in toto as dissection of the report was

not/...

not attempted or proposed.

Wisely defence counsel did not dispute the existence of a rule that it is against public policy that discussions and deliberations between judge and assessors on the case be disclosed.

The case of a jury is analogous. Members of a jury could not give evidence to prove what had been discussed in a jury room R v KRASNER 1950 (2) SA 475 (A) at 480 - 485. The Appellate Division here referred to inter alia ELLIS v DEHEER 1922 (2) KB 113 at 121 and RAS BEHARI LAL AND OTHERS v THE KING-EMPEROR (1933) 150 LT 3 at 4. See also R v THOMPSON 1962 (1) AER 65; BOSTON v W.S. BAGSHAW & SONS 1967 (2) AER 87 at 88; Phipson on Evidence, 13th ed, par 14-12; GARDINER & LANSDOWN, South African Criminal Law and Procedure, Vol. 1 (1957) p 522; Halsbury's Laws of England, 4th ed. Vol. 17 par. 236.

In ELLIS v DEHEER, (supra) at 151 I-152 B. BANKES L.J. said the following:

"I desire to make it very clear that the Court will never admit, for the purpose either of questioning or of supporting a verdict, any evidence from jurymen of the discussion which they may have had between themselves when they were considering their verdict or of the reasons for their decision, whether the discussion took place in the jury room after their retirement or in the jury box itself. This has been a well-accepted rule for many years, the policy underlying it being that it ought not, when once a verdict has been given, to be open to an individual juryman to challenge the verdict, or, if it was challenged, to attempt to

support/...

support it. But I think the matter goes further. Not only is there such a rule of law, but it has also been generally accepted by the public and by the Press as a rule of conduct that what passes in the jury room during the discussion by the jury as to what their verdict should be is something which ought to be treated as private and confidential."

To this ATKIN, L.J. added at p. 455A:

"To my mind, it is a principle which is of the very highest importance in the interests of justice to maintain, and an infringement of the rule appears to me to be a very serious interference with the administration of justice."

It is generally regarded as undesirable that a judge should give evidence about proceedings in which he was involved. Cross On Evidence, 5th ed. p.317 has the following quotation from the judgment in THE DUKE OF BUCCLEUCH v METROPOLITAN BOARD OF WORKS 1872 LR 5HL 418 at 433:

"With respect to those who fill the office of judge it has been felt that there are grave objections to their conduct being made the subject of cross-examination and comment (to which hardly any limit could be put) in relation to proceedings before them; and, as everything which they can properly prove can be proved by others, the courts of law discountenance and I think I may say prevent them being examined."

(In the instant case the latter reason is not cogent however.) See also HOFMANN & ZEFFERT, The South African Law of Evidence 3rd ed. p. 221/2. R v HARVEY 1858 (8) COX CC p. 99 at 103.

In EX PARTE WOLPERT 1917 WLD 98 at 99 MASON, J.

stated/...

stated obiter

> "that it is contrary to public policy to allow a judge to be examined and cross-examined with reference to his performance of his judicial duties."

See also Phipson on Evidence 13th ed. par 14-11; SCHMIDT Bewysreg (1982 ed) p. 572; Halsbury's Laws of England 4th ed. vol. 17, par 236.

There is a sound reason for holding that the discussions between members of a bench about pending matters may not be disclosed. What was said in this respect by LORD HEWART, C.J. in R v ARMSTRONG 1922 AER 153 at 157 on the question of jurymen divulging what occurred in the jury room is equally applicable here.

> "If one juryman might communicate with the public upon the evidence and the verdict, so might his colleagues also, and if they all took this dangerous course, differences of individual opinion might be made manifest which, at least, could not fail to diminish the confidence that the public rightly has in the general propriety of criminal verdicts."

How very apt.

The Court exists for the protection of the rights of the community, individual as well as public. Its foundation is the law itself but its legitimacy depends upon the trust of the community. No legal system can afford that that confidence be undermined. Therefore the integrity of both the law and the judiciary must be maintained not for its own sake but for the benefit of the community as a whole.

As LORD SIMON of GLAISDALE said in ROGERS v SECRETARY OF/...

OF STATE FOR HOME DEPARTMENT 1972 (2) AER 1057 (HL) at 1066f

"The Court will proprio motu exclude evidence the production of which it sees is contrary to public interest."

To this LORD SALMON added at page 1071b

"The principle is that whenever it is clearly contrary to the public interest for a document or information to be disclosed, then it is in law immune from disclosure."

The above is in my opinion a conclusive reason for exclusion of the third report. Two further reasons can, however, be added.

Even if that portion of the third report which amplified the third section of the first report had stood on its own, being the sole content of the third report, it was intended to some extent to contradict the detailed facts which I had put on record (with the concurrence of my assessor Mr Krugel). That cannot be allowed. It would put the credibility of the court itself at issue. Such a situation is unthinkable. It is also against public policy.

A court should be extremely reluctant to put on record observations made of occurrences where the parties are not present, because of the definitive nature of such recording. It could give rise to a situation where the court itself becomes a "witness". This should be avoided, if possible. But where it is necessary to act thus in the interests of justice and the facts have after due consideration been recorded by the court, that is the end of any dispute about the matter.

RUMPFF, J. (as he then was) found himself in this situation in R v ADAMS AND OTHERS (an unreported judgment

delivered/...

delivered on 4 August 1958 in the Special Criminal Court) in an application for his recusal. It was an important question in this application whether the learned judge had recommended to the Minister of Justice the appointment of Mr Justice LUDORF and Mr Justice KENNEDY as members of the Special Criminal Court in that trial. The applicant relied on newspaper reports that the Minister of Justice on 14 July 1958 in his reply to the second reading debate on the Special Criminal Courts Amendment Bill had said so. The Rand Daily Mail, Star, Burger, Transvaler and Economist were handed up. Hansard was different to a certain extent. The applicants relied on their alleged fear of bias on the part of the learned judge, engendered by the newspaper reports.

The learned judge set out in detail his conversation with the Minister and proceeded:

> "I think it was Disraeli who said that Justice is truth in action. Although he was not a jurist and although the definition is somewhat broad it is not unapt in the consideration of this application. I know also that it has been said that a judge cannot be a witness in his own cause. I am afraid that in this matter I am constrained to be a witness in my own cause in order to put truth in action.
>
> I do not know if the newspaper reports correctly reflect what the Minister said in the House of Assembly. If Hansard gives the correct version, the newspapers are wrong. But whatever was said by the Minister, it is my duty to state the facts to the accused as they occurred and to judge this application accordingly. I have stated what the facts are and I repeat that I

did/...

did not recommend the appointment of Mr Justice LUDORF, or Mr Justice KENNEDY.

On these facts the fear which the accused say has been created in their minds need no longer exist.

That fear was based on wrong information."

Thereupon the learned judge dismissed the application for his recusal.

There is a further reason why the third report was ruled inadmissible. It was an attempt at interference with the administration of justice in a pending trial. As stated (10) before, Dr Joubert stated expressly that should he have to recuse himself I and the other assessor would have to do likewise. He made his first report with the intent that it be used in this trial in support of an application for my recusal. He stated that he would bear the heavy burden of disclosure and that he was aware that the disclosure of these "facts" may have an impact upon the continued conduct of this trial.

The second report is an attempt to take his inadmissible disclosures a step further by attempting to fill in the void in the second section of his first report pointed out by (20) the Attorney-General in his answering affidavit. This he did in paragraph 6 of his second report. In reply to the Attorney-General's complaint that his conduct is very improper his attitude is that he will continue to supply privileged information in future as and when he deems fit.

I was informed from the bar that the third report had been furnished by Dr Joubert to the defence unsolicited.

No court can countenance an attempt to interfere with the administration of justice. No court can allow outsiders to frustrate its function by attempting to remove those (30)

who constitute it. This goes without saying. These improper attempts have to be parried with the only means at present at my disposal - ruling the evidence inadmissible.

For these reasons the third report and paragraph 6 of the second report were ruled inadmissible evidence.

The same reasoning would hold true for the first report. It was likewise inadmissible. There were however complicating factors. The accused alleged in their application that as a result of the first report they had been strengthened in and formed certain convictions on which they (10) founded their application for my recusal. I could not in fairness to them leave them with a warped impression, strike out the first report and continue with the trial. The true facts had to be stated. Having done this I deemed it unfair thereafter to delete that to which I had replied. For this reason I admitted the first report.

The applications for the recusal of Mr Krugel and myself were withdrawn. No apology was tendered.

That would normally conclude this judgment. I would however fail in my duty if I did not remark upon the con- (20) duct of defence counsel and attorneys in this unfortunate affair.

I preface these remarks by stating clearly that I subscribe unqualifiedly to the Bar Rule of Ethics that

> "an advocate should, while acting with all due courtesy to the tribunal before which he is appearing, fearlessly uphold the interests of his client without regard to any unpleasant consequences either to himself or to any other person. Counsel has the same privilege as his client of asserting and defending the client's (30)

rights/...

rights and of protecting his liberty or life by the free and unfettered statement of every fact and the use of every argument and observation, that can legitimately, according to the principles and practice of law conduce to this end; and any attempt to restrict this privilege should be jealously watched."

This rule is equally applicable to attorneys.

It should be noted that the exhortation to act fearlessly is no licence to act foolishly, irresponsibly, or dishonourably. (10)

The administration of justice is founded upon the preservation of the dignity of the courts. It is the duty of counsel and attorneys to assist in upholding it. They are not mere agents of the clients; their duty to the court overrides their obligations to their clients (subject to their duty not to disclose the confidences of their clients).

The conduct of the defence team, when measured against the high standards set for the professions, falls far short thereof.

The attorneys Bell Dewar and Hall solicit privileged (20) confidential information from an ex-assessor who has an axe to grind and who supplies that information with the known intention that it be used to terminate this trial, thereby attempting to interfere with the administration of justice.

The defence team knowing this information to be confidential and privileged, improperly transmit it to their clients, the accused, thereby prejudicing their minds against the court and creating a cause of action.

The defence team, warned in open court by myself that the contents of the first report was incorrect and that (30)

they/...

they should not rely thereon do not take any steps to ascertain from me in what respects Mr Krugel and I differ from the ex-assessor.

Thereafter having deliberately refrained from ascertaining the version of the bench an application is brought for my recusal upon the most serious ground of bias.

That application instead of setting out clearly the accusations against me, is in the vaguest terms possible. It merely sets out the conclusion of the accused that there is bias on my part, no particulars at all are given of "the questions asked and the manner of the questioning" which led them to this conclusion. In fact accused no. 20 in an attempt to explain why they did not lodge their objection long ago states that they had been advised that they had no case.

No doubt this advice was given in view of the dictum of SCHREINER, J.A. in the Appellate Division in R v SILBER 1952 (2) SA 475 (A) at 481 C-H.

> "Neither counsel has been able to find any reported case in which an application for recusal has been made in the course of a trial on the ground that the judicial officer has shown bias by his conduct of the proceedings. And this is not surprising, since the ordinary way of meeting any apparent bias shown by the Court in its conduct of the proceedings would be by challenging his eventual decision in an appeal or review. Bias, as it is used in this connection, is something quite different from a state of inclination towards one side in the litigation caused by the evidence and the argument, and it is difficult to suppose that any lawyer could

believe/...

believe that recusal might be based upon a mere indication, before the pronouncement of judgment, that the court thinks that at that stage one or the other party has the better prospects of success. It unavoidably happens sometimes that, as a trial proceeds, the court gains a provisional impression favourable to one side or the other, and, although normally it is not desirable to give such an impression outward manifestation, no suggestion of bias could ordinarily be based thereon. Indeed a court may in a proper case call upon a party to argue out of the usual order, thus clearly indicating that its provisional view favours the other party, but no reasonable person, least of all a person trained in the law, would think of ascribing this provisional attitude to, or identifying it with bias."

This application was therefore launched as a result of my lawful ruling that Dr Joubert was unable to act as assessor and based upon his improper revelations irresponsibly used by the defence team.

The matter does not end there. Having been warned by the Attorney-General's answering affidavit that the use of the first report was highly improper, the defence team proceeds to solicit an amplification thereof in the form of the second report and places it before court. Again there is objection thereto in the form of an application to strike out.

Not content with the damage already caused, the defence team in their zeal to dislodge the judge by every means at their disposal attempt to hand in a third report.

When this fails no attempt at all is made to

substantiate/...

substantiate their serious allegations against me from the record. The application for my recusal is withdrawn. I am left in the dark about what I did wrong.

I deal now with the application for the recusal of Mr Krugel.

The allegations against Mr Krugel on which the application for his recusal was founded were based on mere speculation. It was that because of his membership of the Afrikaner Broederbond there existed a special bond between himself and the investigating officer and that he had access to (10) secret information pertaining to issues in this case. The implication of these allegations was that Mr Krugel, one of our most senior regional magistrates, was in breach of his duty to withdraw from the case and that he had kept me in the dark.

These are very serious allegations indeed.

They were totally false.

Why was Mr Krugel not confronted therewith in private and asked for an explanation? It would have been given. He was embarrassed by the application and had to clarify (20) his position in court. The application for his recusal was withdrawn. No apology has been tendered.

The defence team clearly paid no regard to what was said by VOET 5.1.46 (GANE's translation):

> "Otherwise however no favour should be shown to trivial and foolish reasons for suspicion, such are now and then found to be set up either in malice or thoughtlessness. It seems that we should rather believe that those who are bound by a sworn and tested loyalty, and have been raised to the function of judging for their eminent (30)

industry/...

industry and dignity, will not so readily and for such slender causes depart from the straight path of justice and give judgment in defiance of their own inner sense of duty."

It would not be unfair to suggest that to the knowledge of the defence team these applications for our recusal would do irreparable harm to the image of the administration of justice in South Africa.

They chose to proceed therewith in wilful ignorance of the facts. They utilised inadmissible confidential infor-(10) mation.

Their conduct falls far short of the high standards set by this court for these honourable professions.

Inasmuch as Dr Joubert's first report was sent to the General Council of the Bar of South Africa and the Association of Law Societies of South Africa inter alia, I consider it proper that the above bodies be informed of this judgment and of my statement which I put on record, and request the Registrar to act accordingly.

(20)

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JUDGMENT FOR REVISION

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COURT RESUMES.

MR BIZOS : With Your Lordship's leave, we would wish to put, to place one matter on record, mindful of the fact that we are not allowed and indeed do not wish to debate Your Lordship's judgment in the matter. We would like to place on record that we do not with respect interpret Mr Chaskalson's statement on page 10 432, which are the concluding remarks, as a withdrawal of any applications.

COURT : Yes, thank you, it is noted.

TSIETSI DAVID MPHUTHI, v.o.e. (Deur tolk) (10)

KRUISONDERVRAGING DEUR MNR. JACOBS (vervolg) : Mnr. Mphuthi, toe die Masenya insident plaasgevind het, was daar enige stelling gemaak of 'n bewering gemaak dat hy moet eers die raadslede repudieer voordat hy toegelaat word om te praat? -- Dit is so.

En het hy toe geweier om hulle te repudieer? -- Hy het niks daaromtrent gesê nie.

En toe is hy geweier dat hy kan praat, want hy het nie die raadslede gerepudieer nie? -- Nee, dit was hy self wat besluit het om nie te praat nie, want die voorsitter het (20) hom toe weer 'n kans gegee om te praat.

Sonder dat hy die raadslede gerepudieer het? -- As hy miskien daardie kans gegee was om dit te doen, sou hy dit miskien gedoen het.

Maar my vraag is, sonder om die raadslede te repudieer, is hy weer 'n kans gegee om te praat? -- Ja, hy was die kans gegee om 'n toespraak te maak.

Na die insident met Masenya plaasgevind het, sê jy het beskuldigde nr.5 gepraat. Is dit reg? -- Ja.

Is jou volgorde daar reg? Hy het gepraat nadat - (30)

beskuldigde/...

beskuldigde nr. 5 het gepraat na die Masenya insident? -- Dit is hoe ek dit onthou hoe dit plaasgevind het.

Beskuldigde nr. 5, het hy op enige stadium 'n woordelikse aanval geloods teen raadslede en hulle sleg gemaak en gesê hulle is oneerlik of hulle is "puppets" van die Regering of enigiets van die aard? -- Nee, beskuldigde nr. 5 het nooit sulke woorde gebesig nie.

Het hy nooit teen die raadslede gepraat nie? -- Nee, hy het niks teen die raadslede gesê nie.

Hy het niks gesê daarop dat hulle moet bedank nie? --(10) Behalwe die resolusies wat hy gelees het, dat daar besluit was dat die raadslede moet bedank, het hy niks self gesê nie.

Het hy self gesê, behalwe dat hy nou gesê het dit is 'n besluit wat by 'n ander plek geneem is, dat hulle moet bedank, het hy teenoor hierdie vergadering gesê dat hulle moet aandring dat hulle moet bedank? -- Nee, hy het dit nie gesê nie.

Het hy enigiets gesê van sy kant af op daardie vergadering dat die mense moet aandring dat die raadslede se (20) besighede moet geboikot word? -- Hy het nie so iets gesê nie.

Het hy enige stappe aangemoedig teenoor hierdie vergadering wat die vergadering moet neem teen raadslede? -- Hy het niks van daardie aard gesê nie.

Het hy gesê dat hierdie mense moet ook die resolusie aanvaar, die mense op hierdie vergadering, dat daar 'n wegblyaksie op Maandag, die 3de moet wees, 3 September 1984? -- Nee, hy het nie.

Die volgende spreker wat jy onthou is dan mnr. Khabi? -- Ja, dit is hoe ek onthou. (30)

Het/...

Het hy enige voorstelle gemaak aan hierdie vergadering teen raadslede in sy toespraak dat hulle "puppets" is of dat hulle ... (Hof kom tussenbei)

HOF : Wag 'n bietjie. Voorstelle teen raadslede of 'n beskrywing van raadslede gegee?

MNR. JACOBS : Ek sal dit liewers stel 'n beskrywing van raadslede gegee as "puppets", oneerlik of nie aanvaarbaar vir die gemeenskap nie? -- Nee, hy het nie so gesê nie.

Hoegenaamd niks teen hulle gepraat nie? -- Nee.

Het hy enige voorstelle gemaak dat die raadslede moes(10) bedank of dat stappe geneem moes word dat hulle moes bedank? -- Nee, hy het nie daarvan gepraat nie.

Beskuldigde nr. 17 was ook 'n man wat daar 'n toespraak gelewer het. Het hy dit gedoen? 'n Beskrywing van die raadslede gegee en voorstelle gedoen wat hulle moes aanvaar teenoor raadslede en die raadstelsel? -- Nee, hy het niks daarvan gepraat wat gedoen moet word teenoor die raadslede nie.

Verstaan ek dan jou getuienis korrek dat die sprekers wat amptelik opgetree het as sprekers en selfs dié wat op(20) hulle eie versoek opgetree het as sprekers, niks gesê het om die raadslede te beskryf as onaanvaarbaar of niks gesê het dat daar stappe geneem word teen die raadslede nie? -- Daar was niks van daardie aard wat gesê was nie.

En die voorstelle dat hulle moes bedank, is net genoem dat daar 'n resolusie gewees het wat beskuldgide nr. 5 daar aangehaal het wat hy gesê het op 'n ander vergadering geneem was? -- Ja, dit is terwyl hy daardie resolusie gelees het.

Het hy hom gelees? -- Hy het melding gemaak van die resolusies wat geneem was by 'n vorige vergadering waar hy (30)

was/...

was.

HOF : Het hy dit voorgelees? -- Hy het 'n papier in sy hand gehad.

MNR. JACOBS : En het hy dit daarvanaf gelees? -- Ja.

'n Ander aspek waarmee ek net kortliks met jou oor wil handel is, jy sê dat op 'n Vrydagaand, nè, het julle 'n vergadering gehou van Gebied 7 se mense, dit is voor die vergadering van die 2de plaasgevind het. Is dit korrek? Ek dink jy het vir die Hof gesê dit was 1 September. Is dit reg? -- Ja, ek het so gesê. (10)

Wat het jy gesê was die doel van hierdie vergadering, op 1 September? -- Dit was 'n Gebied 7 se komiteevergadering wat gehou was. Dit het gegaan oor die vergadering wat die Sondag gehou sou word.

Het julle daar bespreek die memorandum wat opgestel moes word? -- By hierdie vergadering het ons bespreek dat ons die Sondag, by die Sondag se vergadering, 'n memorandum gaan opstel wat dan Houtkop toe geneem sal word.

Wie het die voorstel gemaak dat julle 'n memorandum sal opstel die Sondag en wat Houtkop toe geneem moes word? -- (20) Dit was bespreek gewees in die Gebied 7 komiteevergadering op 1 September.

HOF : Die vraag is, wie het die voorstel daar gemaak? -- Ons voorsitter het die voorstel gemaak.

MNR. JACOBS : Wat het sy presies gesê? Hoekom moet julle nou so 'n memorandum opstel? -- Sy het 'n rede aangevoer as volg, dat na aanleiding van die versoeke van die gemeenskap wat openbaar was by die vergadering van die 26ste, is dit dan nodig om die opstel van hierdie memorandum aan te pak, dat dit die gemeenskap se gevoel van die 26ste moet bevat(30)

as/...

as inhoud.

Het sy daar op daardie vergadering gesê dat julle moet so 'n voorstel gaan maak op die 2de se vergadering dat julle 'n memorandum moet opstel? -- Wat gesê was is die volgende. Dat daar 'n vergadering gehou gaan word op die 2de, by welke vergadering 'n memorandum opgestel gaan word wat dan later deurgeneem sal moet word na Houtkop toe.

Het julle daar op julle vergadering van Gebied 7 besluit wie die voorstel op die vergadering van die 2de sal doen dat 'n memorandum opgestel word? -- Dit was nie nodig vir 'n voorstel op 2 September nie, want die rede van hierdie vergadering was reeds al bekend dat ons dit moet gaan doen by hierdie vergadering. (10)

Op die 2de se vergadering, 2 September, kan jy vir ons sê watter gebiede, areakomitees van VCA was almal teenwoordig op daardie vergadering? -- Dit was die komitees van Gebied 3 en Boipatong wat teenwoordig was, Gebiede 7, 12. Dit is al gebiede wat daar vergader het.

Bophelong en Sharpeville? -- Daar was niemand gewees wat dié twee areas verteenwoordig het nie. (20)

Hoekom moes hierdie ander gebiede, behalwe nou Gebied 7 en Gebied 3, saam met julle vergader het op die vergadering van die 2de? -- Die rede hoekom hulle daar teenwoordig was was as gevolg van die feit dat ons daar moes gaan bespreek het die memorandum wat oorgedra moet word by Houtkop op die 3de.

En die opmars, moes dit nie ook bespreek word nie? -- Dit was by die vergadering van die 26ste bespreek.

Was dit glad nie bespreek op die vergadering van die 2de nie? -- Dit was al 'n bekende feit gewees by hierdie (30)

vergadering/...

vergadering omdat dit alreeds op die 26ste besluit was.

HOF : Maar dit is nie bespreek nie? -- Ons het daaroor gepraat.

MNR. JACOBS : Maar dit moes mos bespreek word? Julle moes mos beplanning doen vir die opmars, is dit nie? -- Dit is reg, maar die bespreking het nie op die dag van die 2de begin nie.

Dit is tog nie wat ek jou gevra het nie. -- Gaan maar voort.

Is dit nie so nie dat op hierdie 2de moes hierdie (10) ander wyke saam met julle vergader omdat daar ook in die algemeen opmarse op verskillende punte sou begin het, dat alles saam gereël moes word? -- Die bespreking van die begin van die optog was nie van belang nie. Wat van belang was, was die opstel van die memorandum. Dit was wel so kortliks geraak waar en wanneer die optogte sou begin het.

Kyk, daar sou 'n optog ook begin in die vierkant in Boipatong, dink ek is die plek. Weet jy daarvan? -- Dit is reg.

Daar sou 'n ander optog begin het in die pad naby (20) Sirela? Stem jy saam? -- Ek verstaan dit nou nie.

Daar sou ook 'n optog begin by Sirela in die pad wat ook na Houtkop toe gaan?

MR BIZOS : I thought that we had established that Boipatong and Sirela are the same place. Two different names for the same place.

COURT : It may well be. I must have forgotten. Is dit so?

MNR. JACOBS : Ek is nie so seker daarvan nie.

HOF : Laat ons nou net eers die getuie vra of Sirela dieselfde ding is, dan weet ek waarvan ons praat. Is Boipatong en (30)

Sirela/...

Sirela dieselfde plek? -- Dit is een plek.

MNR. JACOBS : Daar sou een optog begin by die vierkant. Is dit reg? -- Die optog sou in Boipatong begin het.

In die vierkant? -- Nee, by enige punt waar hulle bymekaar sou gekom het, sou die optog daarvandaan begin het na Houtkop toe.

Is dit nie in hierdie vergadering van julle gemeld dat daar sal so 'n optog begin by die vierkant nie? Dit is die punt wat daar gereël was? -- Al besluit wat daar gemaak was, was dat die optog om 08h00 sal begin te Boipatong. Die (10) ontmoetingspunt vir die vertrek van die optog was vir hulle gelaat om te besluit waar sou dit plaasgevind het.

En dan daar naby Vanderbijlpark, van daar af sou mense gekom het wat ook onder Sirela val, onder Boipatong val, wat in die pad bymekaar sou kom. Weet jy daarvan of nie? -- Naby Vanderbijlpark?

Ja? -- Nee, ek weet nie van so iets nie.

Dan wil ek net 'n ander aspek behandel en dit is die dag van die optog self, hoe laat het jy jou huis verlaat? -- Ek kan nie onthou hoe laat dit was toe ek van die huis(20) af weg is nie.

Was dit om en by 08h00, voor 08h00 of na 08h00? -- Na 08h00.

Hoe lank na 08h00? -- Ek sal nie met sekerheid kan sê hoe lank na 08h00 dit was wat ek vertrek het nie, behalwe dat ek kan sê dit was na 08h00.

Jy woon in Gebied 7. Is dit reg? -- Ja.

Is dit Gebied 7A of B? -- A.

Is Gebied 7, as jy van jou huis af gaan na die kerk toe, moet jy deur Gebied 7B gaan of verby dit gaan? -- Ek moet(30)

daar/...

daar verby, ja.

En Gebied 7, die Sebokeng Skool, is dit daar naby of aangrensend of in Gebied 7B? -- Watter een? Watter skool praat u nou van?

Die Sebokeng Skool? Die skool bekend as die Sebokeng Skool?

MR BIZOS : To facilitate matters, if My Learned Friend refers to the place nearby the Catholic Church, it is not on record up to now as Sebokeng School. It is the Teacher's Training College. (10)

COURT : I thought it was the Esokwazi High School?

MR BIZOS : No.

COURT : But any way, I am not sure that the prosecutor is referring to that place.

MR BIZOS : I thought that I might facilitate matters, but I think that is what he is in fact referring to, a place that was marked on the coloured photograph.

MNR. JACOBS : Kan jy vir ons sê, is daar 'n skool naby die bushalte van Gebied 7? -- Ja, dit is die skool wat bekend staan as Sebokeng Teachers Training College. (20)

Is jy daar naby verby? -- Nee, ek het 'n entjie ver van die skool verbygegaan, want die skool is geleë heel onder van waar ek beweeg het.

08h00 was hierdie skool aan die brand gewees. Het jy die rook gesien toe jy daar gery het?

MR BIZOS : There is no evidence in respect of that.

MNR. JACOBS : Ek verwys na die getuienis. Gee my net 'n paar oomblikke. Ek het die volume laat haal in die tussentyd.

MR BIZOS : We have been through this before. It has not been described as that. (30)

MNR. JACOBS/...

MNR. JACOBS : Kan jy net vir ons sê, weet jy waar raadslid G. Nkiwane bly in Gebied 7B? -- Dit is Makiwane. Ek weet waar hy woon, ja.

Is jy naby sy huis verby? -- Hy is ook 'n entjie ver vanwaar ek verby is.

Sy huis was ook aan die brand gewees ongeveer 08h00 daardie oggend. Het jy daardie rook gesien? -- Ek het dit glad nie gesien nie.

Ek wil dit aan jou stel, toe jy daardie oggend uit Gebied 7 gery het, was daar in die algemeen 'n hele paar (10) plekke aan die brand en jy moes die rook gesien het? -- Dit is nie so nie.

Ek wil dit aan jou in die algemeen stel, dat die gebeure op 3 September was deel van jou en jou kollegas in Gebied 7 en in VCA se poging in die uitvoering van die kampanje van UDF om Swart plaaslike besture onwerkbaar te maak, hetsy deurdat hulle moet bedank of anders, as hulle nie bedank nie, deur hulle aan te val, dat die gebeure op 3 September plaasgevind het? -- Dit is onwaar.

Ek stel dit verder aan jou dat julle het doelbewus (20) die mense opgesweep deur gebruik te maak van wat ons gister getermineer het as "issues", soos hoë huur, uitsetting van mense, swartsmering van die raadslede, as oneerlik, dit het julle aangewend om die mense op te sweep? -- Dit is glad nie die waarheid nie. Niemand was ooit gesê van iets met die doel om die perscon te mobiliseer soos dit nou aan my gestel word nie. Dit het glad nie plaasgevind nie, selfs by die vergaderings wat daar gehou was.

En ek wil dit aan jou pertinent ook stel dat op die vergadering van 26 Augustus was daar heelwat swartsmeerdery(30)

van/...

van die raadslede gewees om hulle te beskryf as mense wat "puppets" van die Regering is, om te sê hulle is oneerlik, hulle het beloftes gemaak wat hulle nie nagekom het nie, daar was heelwat sulke mense uitgesit uit huise sonder rede, sulke "issues" was gebruik om die mense op te sweep op daardie vergadering? -- Ek ontken dit. Al die stellings wat nou aan my gestel was, is net nie die waarheid nie.

En dan stel ek dit verder aan jou dat die gedagte van die optog en die wegbly-aksie op 3 September het nie daar ontstaan nie, maar die optog het al ook by ander punte ontstaan in dieselfde gebied? -- Dit was nooit as 'n stryd bestempel nie. Al wat daar gesê was, was ons het besluit op 'n wegbly-aksie en na die besluit geneem was, was dit toe later besluit dat dit nie eintlik die doel sal dien om net 'n wegbly-aksie te neem nie, maar daar moet nog 'n optog by wees om na Houtkop toe te gaan.

En snaaks genoeg stel ek dit verder aan jou dat daardie dag was net dieselfde soort resolusie aanvaar dat daar 'n optog sou wees en die mense bymekaar sou kom in Boipatong in die vierkant? -- Ja, dit is so. Wat van belang was daar, was om by Houtkop uit te kom. Dit was die belangrikste van alles. Dat ons net daar moet uitkom.

En ek wil dit aan jou ook stel dat beskuldigde nr. 5 - laat ek dit eers net so aan jou stel. Die man wat georganiseer het en gekoördineer het oor hierdie verskillende vergaderings, dat dieselfde resolusies aangeneem word, is Esau Raditsela? -- Dit is nie die waarheid nie, want die resolusies van 'n ander vergadering wat vroeër gehou was, dit wil sê by 'n ander punt of plek, was eers deur beskuldigde nr. 5 die Sondag uitgelees.

En/...

En ek wil dit verder aan jou stel dat beskuldigde nr. 5 was daar gewees op die verkryging van Esau. Esau het ook aandeel in sy verkryging, dat hy gepraat het op julle vergadering en daarom het hy gekom met hierdie ding van die wegbly-aksie en dat die opmars sou wees? -- Beskuldigde nr. 5 het glad nie gepraat van 'n wegbly-aksie nie. Geen melding is daarvan gemaak hoegenaamd.

Niks nie? Niks gesê van daar sal Maandag, 3 September 'n wegbly-aksie wees volgens 'n besluit wat die vorige dag, die 25ste geneem is in 'n ander woongebied nie? -- Nee, ons moet 'n verskil maak hier. Wat hy gelees het as 'n resolusie van 'n ander vergadering by 'n ander punt, is nie wat hy self sê van sy mond nie. Wat ek hier sê is dat hy nie uit sy eie gesê het dat dit die posisie moet wees nie.

En ek wil dit verder aan jou stel, hierdie wegbly-aksie was doelbewus deur julle so beplan dat julle die mense almal daar byderhand het in die woongebiede op Maandag, die 3de, dit is die jeug, die werkers en al die ander inwoners? -- Doelbewus? Deur wie?

Deur julle wat die organiseerders is in VCA en VCA se areakomitees? En dan in Sharpeville, die mense van Sharpeville wat saam met julle gewerk het? -- Dit is alles nie die waarheid nie. Wat u nou gestel het dra ons geen kennis van nie.

En wat besonder belangrik was in julle beplanning was dat veral die jeug moet daar teenwoordig wees, COSAS se mense, want elkeen van julle resolusies, elkeen van julle kennisgewings het spesifiek voorsiening gemaak dat die jeug ook teenwoordig moet wees? -- Is die jeug dan net die lede van COSAS?

En/...

En die ander jeug ook. Ek sê mos die jeug? Insluitende COSAS? -- Dit is nog nie die waarheid nie. Ons het nog nie by die waarheid gekom as u dit so stel nie, want ons weet van niemand by die jeug wat 'n lid is van COSAS nie.

En die hele doel was die vernietiging van Swart plaaslike besture? -- Ek het alreeds vir die Hof gesê wat die doel was van die mense die Maandag, naamlik dat die mense teenwoordig wou gewees het om te luister tydens die bespreking van hulle griewe.

HOF : Bedoel u dat hulle by Houtkop wou wees of bedoel (10) u op 'n ander plek? -- Hulle wou teenwoordig gewees het te Houtkop persoonlik dat hulle self daar kan wees.

MNR. JACOBS : En dat dit nie net by die Swart plaaslike besture is nie, maar ook die ander Regeringsinstansies in die woongebiede wat aangeval is en moes word? -- Nee, dit is alles nuut vir my. Ek dra geen kennis daarvan nie.

Sal jy saamstem aanvalle was in daardie tyd geloods teen polisiebeamptes en hulle huise? -- Waar?

In die Vaal? -- Die gebied waar ek is, Gebied 7, dra geen kennis van 'n polisieman wat aangeval is nie. Byvoor-(20) beeld, nie ver van my huis af nie, woon daar 'n polisiebeampte, SAP. Tot vandag toe is hy nog nie aangeval nie.

Sê jy in die Vaal is daar geen aanvalle gedoen op die huise van polisiebeamptes in die woongebiede daar nie? -- Ek sal nie weet by ander areas ver van my woning nie. Ek praat van die area in die onmiddellike omgewing van my was daar geen polisieman wat aangeval was nie.

Sal u saamstem dat skole is aangeval en afgebrand? -- Ek sal dit nie betwis nie, maar ek weet net nie wanneer, van watter stadium u praat dat die skole aangeval was deur dit(30)

te/...

te brand nie.

In die onluste wat begin het op die 3de en solank hulle geduur het? -- Nie naby waar ek woon nie. Daar was geen skool wat aan die brand was nie.

Sal u saam met my stem dat kantore en geboue van raads-kantore van die Rade is aangeval en beskadig en gebrand? -- Dit weet ek van.

Sal u saamstem dat ander werksplekke, ander werkswinkels van raadslede ... (Hof kom tussenbei)

HOF : Bedoel u winkels van raadslede? (10)

MNR. JACOBS : Werkswinkels van die Rade. Ek sal dit so stel. Eers die amptelike besighede sal ek vat, amptelike geboue? -- Ek sal dit nie ontken nie.

Dat biersale en ander sulke tipe besighede van raadslede aangeval was? Op daardie stadium was dit nog nie hulle eiendom nie en nog die eiendom van die Raad?

HOF : Wag net so 'n bietjie. Moenie die ding so deurmekaar maak nie. 'n Biersaal is die eiendom van òf die Raad òf 'n raadslid. Toe hy aangeval is, wat sê u was hy?

MNR. JACOBS : Eiendomme van die Raad? -- Ja, ek erken (20) dat dit aangeval was en aan die brand was, maar ek weet nie hoe dit begin het nie.

Dat die persoonlike huise van raadslede aangeval was en hulle motors en ander eiendom, winkels vernietig is en ver-brand is? -- Dit het gebeur.

En dat eiendom in die sin van huise van raadslede is aangeval terwyl die mense nog in daardie huise was en die familielede van raadslede? -- Dit dra ek nie van kennis nie.

En dat raadslede ook vermoor is?-- Ek weet daarvan dat daar raadslede gedood was. (30)

Dat/...

Dat van die vervoerdienste, die PUTCO mense, se busse aangeval en beskadig is?

HOF : Is dit Vaal Transport of is dit PUTCO daar? Of is dit dieselfde ding? Ek weet nie.

MNR. JACOBS : Dit is my fout. Ek verstaan hulle is nie dieselfde nie. Vaal Transport se busse is aangeval? -- Ek het dit nie gesien nie.

Jy kan dit ook nie betwis nie? -- Ek het geen busse die betrokke Maandag gesien nie.

En wat meer is, wil ek aan jou stel, dat mense wat (10) die Maandagoggend wou gaan werk het, is verhoed om te gaan werk toe hulle die busse wou betree het? -- Maar dit was mos bekendgemaak op die 26ste dat daar nie werk toe gegaan sal word op die 3de nie, maar Houtkop toe.

So, as daar mense wou gaan werk het, moes hulle verhoed word? -- Watter mense praat u van? Want hulle is dieselfde mense wat dit bespreek het.

Mense wat - hoeveel mense was op daardie vergadering van die 26ste? -- Omtrent 'n duisend.

En jy het gister vir ons vertel dat daar is 'n klompie(20) honderd duisend mense wat in die Vaal woon? -- Ja, dit is reg, maar dit wat u nou van praat dat daar mense verhoed was om werk toe te gaan, weet ek nie van nie.

Stem jy saam met my, 'n duisend mense kan nie vir 'n paar honderdduisend, ek dink jy het gepraat van driehonderdduisend gister, ek praat onder korreksie. Eenduisend mense kan nie vir driehonderdduisend mense gaan besluit wat hulle moet doen of nie moet doen nie?

HOF : Dit was tweehonderdduisend.

MNR. JACOBS : Kom ons maak dit tweehonderdduisend. -- Ek(30)

is/...

is nie saam met u nie. Kan u dit vir my mooi stel. Ek verstaan nie wat die vraag is nie.

Ek sê eenduisend mense wat op 'n vergadering is, kan nie gaan besluit wat moet tweehonderdduisend mense doen en dan die tweehonderdduisend mense bind nie? -- Daar was vergaderings gehou by verskillende punte in die gedeelte van die Vaal.

En op al hierdie vergaderings by die verskillende punte is dieselfde besluite geneem. Is dit wat jy sê? -- Ek weet nie wat hulle besluite was nie. Wat ek sê is dat dit was(10) nie die enigste vergadering in die Vaal wat by die Roomse Kerk gehou was nie.

En die ander punte, dit was so georganiseer dat die punte met dieselfde besluit kom? -- Nee, ons weet nog nie wat se besluite hulle mee gekom het nie. Ek het alreeds gesê.

HOF : Dit word genotuleer dat beskuldigde nr. 3 teruggekeer het hof toe.

MNR. JACOBS : Dan wil ek vir jou vra wat is dan die relevantheid van jou antwoord om vir die Hof te sê dat (20) daar was verskillende vergaderings gewees waar besluite geneem is? -- Ek het mos melding daarvan gemaak dat daar 'n vergadering gehou was by Gebied 13. Dit was op die 25ste.

Wat is die relevantheid, want jy het mos nie geweet nie, dit was mos nie so beplan gewees nie, volgens jou? -- Wat my daar bring is die melding van die Staatsadvokaat van die honderdduisende persone. Die honderdduisende persone is nie net in Sebokeng nie.

Jy sien, jy het nou so half en half die kat uit die sak gelaat. Julle het geweet, julle het beplan in al (30)

daardie/...

daardie ander vergaderings dat dit by die mense gepropageer moet word dat hulle moet wegbly, dat hulle 'n optog gaan hê. Dit was 'n beplande aksie gewees? -- Dit is nie die waarheid nie.

RE-EXAMINATION BY MR BIZOS : Mr Mphuthi, when you were living in Evaton, did you have to have a permit? -- I had one, yes.

Is that a permit that had to be renewed from time to time or was in perpetuity, so to speak? -- I used to pay monthly for this permit.

Did you have any knowledge ... (Court intervenes) (10)

COURT : Just before we leave this. Is this a lodger's permit? -- I cannot quite remember exactly what it was termed at the time. All I can tell Your Lordship now here is that I used to pay every month for that particular kind of a permit.

MR BIZOS : Was it renewed with a stamp or was a new permit issued for a month or how did it happen? -- What happened is, the amount paid by me was being recorded and then has a stamp on it which will also indicate for which month that was.

I want you to cast your mind back, please, to the day that you got a notice that there is a house available (20) in Sebokeng and that if you do not take it up, you will be responsible for the damage. Did you know from any source whatsoever what would happen if you did not take up that house and you went for the renewal of that permit? -- Yes, I knew what was going to happen. The procedure followed there was whenever a person was given a note informing this person that a house has been allocated to you at such an address and if you do not go there to take occupation of that house, the next time you go to the office to go and renew your permit, that is your monthly permit, on arrival there(30)

you/...

you will be told by the clerk or whoever is in charge there that you have been allocated a house which you must take occupation of. Should you refuse and say you are not going to take occupation of that house, then what happened was the following. They were going to withhold your permit which you handed them to renew and not give it back to you for renewal and the next step to be taken was that you would get arrested the same evening for having been there without the necessary payment.

MNR. JACOBS : Ek weet nie of My Geleerde Vriend nou (10) met nuwe getuienis kom en of hy nou net herverhoor nie.

HOF : Wel, eintlik is dit 'n vraag wat ek gestel het, wat mnr. Bizos probeer opklaar. Ek kon nie begryp hoe iemand verplig kon word om in 'n huis in 'n ander woongebied in te trek as hy wettiglik in een gebied is nie. Nou is mnr. Bizos besig om te verduidelik hoe dit wel kan. Ek dink dit is heeltemal toelaatbaar. -- If I may explain something further to that. My experience was the following. That some people was sort of using this as an excuse for not taking occupation of the house allocated to them saying they do not have (20) transport or they cannot afford to pay for the transport to convey their belongings from Evaton to the newly allocated address. Then what would happen there is, the Administration Board would send a vehicle in the form of a truck which truck is in fact known to be a police truck to come and convey the belongings to the new address, as a result this kind of a truck was then names a four-room, that means a four-roomed house, but this time referring to this truck.

Had it not been for the fear of arrest and the taking in of your permit, would you have moved out of Evaton to (30)

Sebokeng? -- No, not all, I would not have done that.

In relation to whether you are Sebokengers or Evatonners, when did this change take place that your portion of Zone 7 was now handed over to Evaton? Do you know? Did you become aware when this change took place? -- If my memory serves me well, it was somewhere near the end of the year 1983 or beginning of 1984.

Do you recall whether it was before or after the council elections, which were, if I remember correctly, held on 29 November 1983? -- I cannot quite remember that, whether it(10) was before or after the elections.

I think you have told His Lordship that you did not want a council election in Zone - your portion of Zone 7 and that the person who called himself your councillor was not elected, could you please clarify that? Was there an election to your knowledge at all? -- No elections were held in that zone.

COURT : Sometimes people are elected unopposed, so in fact no elections are held. Could this not have been the position here? -- With reference to this particular section we are(20) now dealing with, that is Zone 7 falling under Evaton, there were no such talks that there was any elections to be held, never mind a person being elected without any elections being held. There was no such a talk. If I may add again to that. Why, because, this very person we later came to know as a councillor was not known to the residents of this particular area he is purporting to represent.

But where did he live? Did he live in your ward or did he live in Evaton proper? -- He lived in this Zone 7, Evaton. (30)

MR BIZOS/...

MR BIZOS : You had five members of your committee, you told His Lordship, who were really from the end of 1983, beginning of 1984 although known as Sebokeng, before that now known as Evaton. Houtkop as a place or as an office building, how is it regarded by you in relation to Sebokeng, Evaton and the other areas? What is really Houtkop? -- It is known to us as a station. The offices there are in the immediate vicinity of this station and therefore names Houtkop.

These offices, do they concern themselves just with Sebokeng or the other areas such as Evaton and others? --(10) Those offices are known to us to be the Administration Board offices which is in fact the authority offices for all the areas in the Vaal Triangle.

Including Evaton? -- That is so.

You told us that one of the placards at the demonstration to celebrate on 12 May 1984, was "Do not feast with the Apostels of evil." Sorry "Disciples". -- That is so.

You also told us that the security police were present? -- Yes, they were present there. They even gave instructions. That is correct. (20)

Did any security policeman come to you and say that this placard was offensive or an incitement to anything? -- No such a person approached me.

Thank you, My Lord, I have no further questions.

COURT : Mr Mphuthi, have you ever seen an aerial photograph before? -- I saw it once here in court.

Would you be able to point out your house if I show you an aerial photograph? -- I can try and see if I can find that one.

I hand you EXHIBIT AAR1 and the orderly will point (30)

out/...

out to you where Zone 7, it is ringed and I put a 7 in that. Will you make a little mark where your house is? Will you orientate yourself. Do you know where the Roman Catholic Church is? If you look at the portion ringed 7 and then the portion ringed 8 and from the 7, across the 8, you will see a small number 1 there, which is next to Selbourne Road and where it seems that the housing is more disorderly than in the section ringed 8. -- Yes, I can see that.

So, you can see where Selbourne Road is and you know where Zone 7 is because that has been marked and could you (10) make a little mark where your house is. If you are not certain, please make certain before you put down your mark. -- (Witness makes mark)

I point an arrow at that spot, the head of the arrow is exactly where he lives and the number I give to this will be 67 and it will be entered in the index as 67 no. 7's house. Will you take this back, please and put the pin where the house of your brother is where you left your bicycle. -- I can find Selbourne Road, but I cannot locate exactly where that place is. (20)

I can give you a bit of help. If you look on the extreme left side where "start" is, above that start you will find numbers 62, 63 and 64. Those are the shops. The inside one is accused no. 6's shop, that is number 62 and the outside two are two Indian shops. Could you orientate yourself having regard to those shops? Then beyond the shops there is the little stream. -- If Your Lordship can just direct me where to find the Catholic premises, then I will be able to trace my brother's place.

Small Farms Catholic Church? -- Small Farms, yes. (30)

Small/...

Small Farms is again along Selbourne Road to where the number 1 is, just next to the circled 8. The big circled 8, there is a small number 1 on the west, that is on the left. -- I would not be able to pin exactly on my brother's house. I will just pin the immediate area.

It does not matter whether you are one or two houses out. This will be numbered 68 and it will be described as house of brother of no. 7. When you went from your brother's house where you left your bicycle to join the procession, did you go straight across the open space which is between(10) Small Farms and Zone 12? -- That is so.

Did you then take the road virtually through the middle of Zone 12? -- No, I used the route further down.

Further down means to the west? -- Yes, to the west.

Could you indicate to the Court on the aerial photograph which road it is that you used moving through Zone 12? You should start at your brother's house. -- I used this route. From my brother's place I went into Zone 12 not far from the point 29 and 28 to join the main road which is the one marked with red - which serves as a sort of a boundary between 13 and 12 and 11 down to the point marked 13, that is where the post office is to join the march.

NO FURTHER QUESTIONS.

COURT ADJOURNS TO 23 APRIL 1987.