

SAAKNOMMER: CC 482/85

DELMAS

1987-06-30

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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HOF HERVAT OP 30 JUNIE 1987.

MNR. HANEKOM : U Edele, al die beskuldigdes is teenwoordig. Dan wil die Staat net vra of die W-reeks aanhangsels, soos W1 tot 15, die oorspronklikes aan die polisie terug oorhandig kan word. Hulle is bewysstukke ook in 'n ander saak wat hangende is.

HOF : Enige beswaar, mnr. Bizos?

MNR. BIZOS : Geen beswaar nie.

HOF : Dit word so gelas.

Before I start with this judgment I would like to (10) make an announcement and that is that we will take the adjournment today and the case will resume on the first Monday of August, but we will not resume this case in Delmas. This case will be resumed in the Supreme Court C Court in Pretoria. That is in the Palace of Justice. We initially started in Delmas because there were certain renovations made in the Supreme Court in Pretoria which made it unsafe to hold this case there. These renovations have been completed and furthermore the length which it seems this case will further last creates such administrative difficulties (20) for My Learned Assessor, that it is imperative that we continue in Pretoria.

IN THE SUPREME COURT OF SOUTH AFRICA(TRANSVAAL PROVINCIAL DIVISION)

DELMAS

1987-06-30

THE STATE

versus

PATRICK MABUYA BALEKA AND 21 OTHERS

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JUDGMENT ON APPLICATION FOR BAIL

VAN DIJKHORST, J. : On 7 November 1984 the accused applied (10) for bail to the Full Bench of the Transvaal Provincial Division. That application was dismissed. On 21 March 1986 I dismissed the application of the accused for bail. I held that I was bound by the decision of the Full Bench as there had not been a material change in the security situation of the country. That judgment can be found at page 2 665 and following of the record. I will not repeat what I said then. The ratio was that the Full Bench had decided that the security situation in the country was such that bail could not be granted. The Full Bench had, however, left the door open (20) for a fresh application for bail "should greater stability be achieved as regards the situation of unrest or if the state of emergency is lifted." The application in March 1986 was brought after the state of emergency was lifted. I held, however, on the basis of information placed before me that

there/...

there had been no material change.

Thereafter on 12 June 1986 the state of emergency was reimposed and it is still in force. It has recently been prolonged for another year. This application was filed in January 1987. The State opposed and on 9 February 1987 filed voluminous answering affidavits wherein inter alia State security and a fear that the accused will abscond should bail be granted, are advanced as objections. The matter rested there as the defence chose first to lead the evidence of the accused living in the Vaal triangle (10) before proceeding with its bail application in order to enable me to gauge their defences and determine therefrom inter alia the probability of their being a threat to State security and also the chances of them absconding should they be granted bail.

On 15 June 1987 I was handed a set of replying affidavits. The State was afforded an opportunity to replicate in view of the expiry of time. This was done on 26 June 1987. To this the accused answered on 29 June 1987.

This application is, however, not brought by all accused. (20) Some were released on bail in November 1986 by agreement between the State and the defence. They are accused nos. 1, 6, 7, 9, 15 and 22. The applicants now are accused nos. 2, 3, 5, 8, 10, 11, 13, 14, 16, 17, ~~19~~, 20 and 21.

The case for the accused in the application is generally that there has been a material change in circumstances since 7 November 1985 when the Full Bench of the Transvaal Provincial Division refused their application for bail. In particular that the State's case against them has closed and that the state of emergency which was in force in November (30)

1985/....

1985 has been lifted. Their case is that although a state of emergency has again been declared, the circumstances now existing are not the same as the circumstances which existed in November 1985 when their bail application was refused by the Full Bench of the Transvaal Provincial Division. They point out that the second state of emergency was imposed at a time when they had been in custody for over a year. Their case is that the second state of emergency exists irrespective of the fact that at all material times they were in custody and they state that it cannot be suggested that (10) their release on bail will have any bearing on the emergency or the security situation. They draw attention to the following facts :

Numerous persons named as co-conspirators in the indictment have not been detained or restricted in any way by the State and are free to carry out their own personal affairs. Various other persons who have been named as co-conspirators and were detained in the second emergency, have been released since, albeit subjected to certain restrictions. They state that the accused who have been released on bail with the (20) consent of the State indicate that the affidavit by the Attorney-general at the time of the first bail application to the effect that it was not in the interests of State security that they be released on bail, can clearly no longer be correct. They state that they will all be required to attend court on a daily basis and will have little, if any, time for matters other than those connected with their defence and their families. It is stated that they have no intention of engaging in any activities which might endanger the security of the State and they state that they are willing (30)

to/...

to submit to any bail conditions designed to ensure that this will not happen. They all deny that they were parties to a conspiracy as relied upon by the state. It is stated that the fact that the State's case is now closed means that the objection previously raised to their release on bail on the ground that they could interfere with State witnesses is no longer relevant. They annex to their application for bail a schedule setting out the names and capacities of persons who, though named as co-conspirators were either not detained and not restricted in any way (10) or simply not detained at all. These include a president of the UDF, members of the national executive committee of the UDF, members of the regional executive committees of the UDF, members of COSAS, members of AZASO and members of other affiliates of the UDF. This basically is the case for the accused on the security aspect, except for a reference to an interview by a deputy minister.

The State answered this case by placing before Court a number of affidavits of police officers who mainly referred to documents but to a material extent also relied on information obtained from informers who remained anonymous. As stated these affidavits were amplified some five months later. A synopsis of the State's objection to the application for bail is as follows:

The ANC in its New Year's message in 1986 set out its strategy for 1986 which amounted to the intensification of united mass action to be co-ordinated through the UDF, those actions to be combined with an armed struggle to evolve into a people's war which the security forces cannot contain. Furthermore to build on the successes in demolishing (30) governmental/...

governmental structures and to create alternative structures for the institution of "people's power". The State's case is that in the period January 1986 to January 1987 this strategy was followed and countrywide alternative structures were instituted to create people's power. Since October 1985 the UDF and its affiliates launched a national campaign entitled "Forward to People's Power." The State's case is that structures created as a result of this UDF campaign includes street and area committees, instituted by civic associations in co-operation with youth workers and women's (10) organisations. These structures aim to destroy governmental structures and to replace them in order to establish people's power. To ensure their proper functioning, violence and intimidation is used, people's courts employing inter alia sentences of corporal punishment and necklacing enforce compliance.

The State's case is that the ANC launched a national anti-rent campaign to damage the economy and cause the downfall of the local government structures in Black residential areas. This campaign is to be bolstered and enforced by (20) street committees and civic associations.

The UDF in its publications UDF News and Iziswe still propagates people's power, street committees and no go areas, people's courts and people's education.

Pertaining to the youth, the State's case is that the said New Year's message of the ANC called for the establishment of a national youth organisation. This call was followed by a visit to the ANC by Peter Mokaba, a member of the co-ordinating committee of the UDF Northern Transvaal and Deacon Mathe a youth organiser of the UDF in August/ (30)

September/...

September 1986. The launch of a national youth organisation was discussed with members of the ANC. At a report back meeting it was resolved to launch the national youth organisation in January 1987 under the name South African Youth Congress SAYCO.

Mohammed Valley of the UDF handed Frans Mohlala the constitution of SAYCO, Mohlala helped found the Northern Transvaal Youth Congress from youth organisations affiliated to the UDF. This is the State's case.

I interpose here to say that some of this is admitted(10) in an affidavit of Peter Mokaba. He denies any links with the ANC or that the ANC's call initiated the youth organisation. The visit to the ANC is admitted but he states that it was done openly. He states that the national youth organisation has not been launched yet. This denial is refuted by the State which produced documentary proof of the existence of SAYCO in the following form:

In May and June 1987 two issues of the Sowetan and an issue of COSATU News and UDF News proclaim loudly its existence and contain militant statements and claims by (20) that organisation. People's power, alternative structures and socialism are propagated in some of these publications.

The State's case is further that, despite the proclamation on 12 June 1986 of the state of emergency, the revolutionary climate was increased by actions and publications of the ANC and UDF, accompanied by ANC campaigns for a national rent boycott, actively supported by UDF and its affiliates who demand further the resignation of councillors. Actions by Mkhonto we Sizwe and revolutionaries caused serious damage to properties, injuries and loss of life, the State (30) says/...



says. It is further stated that the UDF met the ANC on 10 June 1986, according to a publication Iziswe.

After proclamation of the state of emergency necklacing, attacks on councillors, security forces and property decreased but as at January 1987 the position was not normalised. Pertaining to the Vaal Triangle the State's case is as follows:

In 1986 various campaigns were launched, inter alia the "Free the Sharpeville Six" campaign. Pamphlets of the UDF Vaal were distributed against the so-called apartheid courts, claiming that the six convicted for the murder of councillor Dhlamini were not responsible therefor, calling for the resignation of councillors and that the rent be decreased to R30,00 per month. There were also pamphlets propagating a consumers' boycott.

The State indicates that the campaign against the payment of rent was successful. Violence in the Vaal Triangle decreased in the latter part of 1986, but the organising, mobilising and politicising of the masses including the Black youth did not cease. Attempts were made to unite youths on a national basis as a front also in the Vaal (20) Triangle. At present in the Vaal Triangle there is still pamphleteering of an inflammatory nature, threats of mass action are made, a stay-away organised and a consumer boycott initiated. The Vaal Civic Association is still making statements to newspapers and mobilising and organising the masses. A UDF campaign was launched for the unbanning of the ANC, youth and civic organisations and the trade unions, including the VCA, hold clandestine meetings to plan, organise, mobilise and politicise the masses in the Vaal Triangle. The rent boycott in the Vaal Triangle is effective. In (30) the/...

the first semester of this year there were arson, petrol bombing, stone throwing, intimidation, school boycotts and bomb threats in the Vaal Triangle. The situation is not normal. This is the State's case.

It further is that on the West Rand in Kagiso, Mohlakeng and Munsiville there are active organisations affiliated to the UDF, particulars of which are set out in the papers. They campaigned in 1986 to cause the withdrawal of the South African Police and South African Defence Force from the townships. They campaigned to force councillors to resign. (10) This campaign was enforced by arson. A consumers' boycott was enforced by force and a bus boycott by violence and intimidation through comrades. Alternative structures were created, consisting of a police force, a department of justice and other departments. These enforced their will by people's courts and interfered with the work of the South African Police. The State's case is that all this was done on the instructions of the UDF. The aim is to create liberated zones where the government will have no power.

As far as the East Rand is concerned, the State's case (20) is that in Tembisa there are organisations working with the UDF and COSATU who are actively busy implementing alternative structures in Tembisa to establish people's power. The case is that area committees and section committees exist and that they are instructed by the civic associations that I have mentioned. Section committees are subdivided into block committees which hold people's courts and are subdivided into street committees. The street committee is to create the first phase of the people's war liberated zones, to attack the SADF and SAP and to deal with so-called (30) collaborators/...

collaborators.

As far as Tembisa, KwaThema, Actonville, Vosloosrus, Tsakane, Duduza, Kathlehong, Daveyton, Ratanda, Wattville, Thokoza, Balfour, Bothleng, Edenpark and Kemptonpark are concerned the State's case is as follows: In the period March to 12 June 1986 there was unrest in these areas, consisting of one or more of the following: Necklacing, stone throwing, arson, petrol bomb attacks, illegal gatherings, hand grenade attacks, limpet mine attacks, intimidation, road obstructions, murders, attempted murders. Councillors (10) and policemen were threatened and murdered, scholars were intimidated to boycott classes and workers to boycott work. During illegal gatherings slogans in favour of the UDF, the ANC and Mkhonto we Sizwe were shouted. It should be noted, however, that this evidence only relates to the period up to 12 June 1986 and is therefore old.

It is further stated that a bus boycott was effective and that since the emergency regulations of June 1986 up to January 1987 there was a decrease in violence but that it still prevailed. (20)

On Alexandra the State's case is that organisations, two of which are or were affiliated to the UDF, controlled alternative structures and that in that township people's courts were held and that the alternative structures had the purpose as I have already mentioned. It is the State's case that the revolutionary climate has not wholly been normalised.

In Ratanda at Heidelberg the State's case is that in June 1986 UDF pamphlets and placards were found in the possession of the chairman of the civic association and that these referred to councillors as collaborators, demanded the (30)  
unbanning/...

unbanning of the ANC and referred to ten fighting years 1976 to 1986 and people's education for people's power. There was a campaign against the emergency, the government was accused of murder and arson and the pamphlets propagated the establishment of street committees.

There is also evidence of the State on Cradock in a similar vein. That is the State's case.

The accused in reply repeat their denial that their release will adversely affect the security situation. Accused no. 21 denies being in the management of the UDF and accused (10) nos. 19 and 20 deny being active members of the management. The accused deny associating with the ANC in any way and deny that they subscribed to violence or a policy of violence. They point out that they have been in detention since at least April 1985 and most of them since prior to that date and that they have had no part in the strategy of the UDF after their arrest and deny knowledge of the aspects thereof upon which the State bases its objection. About most of the allegations of the State they plead ignorance.

In an affidavit by the national treasurer of the UDF (20) it is denied that liberated zones, people's courts, alternative structures, no go areas, to make the country ungovernable and the people's war are UDF policy.

The accused reiterate that alleged co-conspirators walk free and that the same considerations should apply to them. This is a cogent argument. It is not conclusive, however, as the same position prevailed when the Full Bench gave its judgment and at the time of my subsequent judgment. I have to look at each accused individually and not use a collective approach. This means that in respect of each (30)

accused/...

accused it will have to be shown that the circumstances that prevailed previously when bail was twice refused have materially changed.

Two factors are relevant here. The overall security situation and whether the individual may have an adverse effect on it should he be released on stringent bail conditions keeping him outside his area of operation. The overall security situation is better than it was at the time when the state of emergency was reimposed, but it is still not satisfactory. There is evidence of much underground sub-(10)versive activity, yet the situation in the Vaal Triangle seems to be better than on the Witwatersrand.

I place considerable reliance on the opinion of the Attorney-general, but his attitude is not conclusive when bail is considered. I have an advantage over him in that I have seen many of the accused in the witness-box and heard the State evidence against them. I have a fair view of their personalities, political inclinations, health, status and age. These factors affect the likelihood of their endangering the security of the State. (20)

In the case of some accused I am convinced that their release will not endanger the State security provided stringent conditions are imposed. In the case of other accused I have not been convinced that their release will not endanger State security. In that case the attitude of the Attorney-General will have prevalence and the Full Bench decision will remain in force.

In respect of those accused whose release on bail will not endanger the security of the State, the next step applies. That is to answer the question whether such accused will (30) stand/...

stand his trial, even if his prospects of acquittal become nil and submit to sentence. If the answer is negative or if it is not improbable that he will abscond, bail will not be granted.

In this respect there are various considerations. This is not a normal criminal case. It has deep political undertones. Any accused who decides to abscond, will with little difficulty be able to leave South Africa for some of our neighbouring countries where he will not be subject to extradition. (10)

The State has placed information before me of several people in leading positions in UDF affiliated organisations who were charged during 1985 and 1986, broke their bail conditions, left the Republic of South Africa and joined the ANC in Botswana.

The investigating officer in our case states that he has information that the ANC plans to help the accused to escape as soon as they are released on bail. The accused say that they have no knowledge of this, but would not avail themselves of such help as they wish to stand trial and (20) show that they are innocent. This statement by the accused about their intention to stand trial should, however, be seen against the background of their previous affidavits, wherein they stated that they had no belief in the impartiality of this Court. Such mistrust might easily lead them to justify abscondment should it be to their advantage.

The fact that the accused in the Pietermaritzburg treason trial and the other accused on bail in this trial did not or have not absconded, is not conclusive. One does not expect flight till the shoe pinches. That would make (30)

the/...

the close of this case the period of greatest risk.

I grant bail to the following accused on conditions which I will set out:

Accused no. 2, accused no. 3, accused no. 5, accused no. 8, accused no. 10, accused no. 11, accused no. 13, accused no. 14, accused no. 16 and accused no. 17.

I refuse bail to accused nos. 19, 20 and 21.

Accused nos. 2, 3, 5, 8, 10, 11, 13, 14, 16 and 17 are released on bail of R15 000,00 each on the following conditions: (10)

- (1) The accused will not attend any meeting of whatsoever nature or participate in the organisation of such meeting except bona fide church services.
- (2) The accused will not enter the residential areas of Sebokeng, Evaton, Boipatong, Bophelong or Sharpeville without permission in writing of one of the investigating officers and should such permission be granted, they will strictly comply with the conditions laid down therein.
- (3) The accused will not participate in any political activity or make any political statements. (20)
- (4) Accused no. 16 will not participate in any of the activities of the Soweto Civic Association.
- (5) Each accused will daily at the places and between the times set out in the annexure report at the police station designated in the annexure.
- (6) Each accused will hand such passports and travel documents as he holds to the investigating officer before his release on bail and no accused will apply for new travel documents while on bail. (30)

(7) Each/...

(7) Each accused is to attend court daily on the days the Court sits from the hour indicated by the Court.

These are the bail conditions.

The terms of the annexure are to be finalised between counsel and will then be placed on record by me as soon as that is done.



MR BIZOS : There are just two matters which we wish to raise. The first is that in view of the change in venue, it may be necessary to change the police stations at which the previous accused had to report. We would incorporate everyone in one annexure. There is one other matter that we want to raise and I have instructions from the accused to raise it with Your Lordship and that is not in relation to the application for bail or the case as a whole, but rather with a matter which has caused considerable concern to the accused and that is the statement broadcast on (10) SABC TV at 20h00 on Thursday, 18 June 1987 which - a transcript of which appears on page 1 004 in the papers before Your Lordship. The concern of the accused is this. Firstly the terms of the statement, that the African National Congress has acknowledged officially for the first time that it is behind the formation of the United Democratic Front. The use of the words has acknowledged officially for the first time on a high profile medium such as the 20h00 news indicates to the ordinary reader or may indicate to the ordinary reader that we have known about this, but now (20) it has been officially acknowledged. That is the first point that I have been asked to draw Your Lordship's attention to. Furthermore it goes on to quote what it purports to be the passima verba. We formed the South African National Youth Congress, the United Democratic Front and others right under the shadow of marshall law. We do not expect with respect the writer of a news item such as this to possibly have the knowledge of Mr Tom Lodge in relation to the language used by the African National Congress as indicated in the affidavit, but what is even more worrying is this. That (30)

this/...

this statement was denied both by the African National Congress and by the UDF and why the publicity was given in newspapers in relation to that denial. The accused who are abet radio listeners say that although the statement was broadcast on radio and they themselves heard it, abet radio listeners have never heard that denial carried on any of the radio programs. Those of us who are able to watch television and do so from time to time have never seen or heard a denial being published. Your Lordship's judgment in the matter in relation to trial by press and Your Lordship may have noticed(10) that a portion of it has found its way into the law journal in the latest issue as an extract that there should never been trial by press, that passage in Your Lordship's judgment ... (Court intervenes)

COURT : Do you want an amendment adding "and by TV"?

MR BIZOS : That would help, because Your Lordship will see at page 1 005 . We welcome the attitude of the Minister of Law and Order, Mr Adriaan Vlok. He says "I will not comment on a matter such as this." It is a matter in issue before a court. One would have expected the SABC to have the same(20) respect for the sub judicæ rule. There is another aspect that the accused have asked me to draw Your Lordship's attention to and that is this. That the allegations against them have been - were given the widest possible publicity that they are in conspiracy with the African National Congress. The indictment was dealt with in the early days. Not a single word of their case to the best of their knowledge has ever been broadcast by the SABC. Not a word of Mr Chaskalson's opening, as to what the defence case and not a word of evidence of anyone of the accused. There is authority if allegations(30) against/...

against people are published, their answer should in fairness also be published and it fact it goes further and says that it is contempt of they do not. I know that Your Lordship cannot become a monitor as to what newspapers and the SABC publish, but there is another aspect to it and that is this, that Your Lordship referred a matter of this similar nature to the Attorney-general. We do not know whether Your Lordship has heard ... (Court intervenes)

COURT : I have not heard anything.

MR BIZOS : Well, neither have we. So, that the accused (10) feel somewhat hopeless that there is apparently - well, there is a de facto situation that their case is completely ignored whilst the allegations against them are given the widest possible prominence. We can do nothing more than draw Your Lordship's attention to this. I do not know what Your Lordship may want to do about this.

COURT : Well, at the outset I will assure the accused that this case will not be decided by SATV or by any newspaper. It will be decided by this Bench and it will be decided on evidence which is placed before Court and not wild statements (20) made outside court and secondly I can assure the accused that I read in the newspaper, in some newspaper a denial on behalf of the UDF of that allegation.

COURT ADJOURNS.

COURT RESUMES.

K799 MR BIZOS : My Lord, a schedule of police stations at which the persons admitted to bail by Your Lordship, has been prepared and I ask for leave to hand it in and at the same time in fulfilment of the condition about travel documents, five of the accused have documents. Most of them believe that they expired any way, but they are at odd places and (30) the/...

the State has agreed that they should hand them in subject - we are asking Your Lordship to amend by consent the condition Your Lordship directed before they were released on bail. The State is happy that those should be handed in by not later than when they report between 18h00 and 21h00 tomorrow, 1 July. That too has been reduced to writing subject to Your Lordship's concurrence. That will enable - we understand that the required cash deposit is about to be made and that will make it possible for them to be released.

IN THE SUPREME COURT OF SOUTH AFRICA  
(TRANSVAAL PROVINCIAL DIVISION)

DELMAS

1987-06-30

THE STATE

versus

PATRICK MABUYA BALEKA AND 21 OTHERS

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AMENDMENT OF PREVIOUS BAIL CONDITION

VAN DIJKHORST, J.: I amend the previous bail condition (10) pertaining to the travel documents. The travel documents are to be handed in as follows :

By accused no. 3 at Kathlehong police station;

By accused no. 5 at Jeppe police station;

By accused no. 10 at Jeppe police station;

By accused no. 14 at Orlando police station and

By accused no. 16 at Orlando police station.

They are to be handed in at the given police stations during or before the hours of 18h00 to 21h00 on 1 July 1987.

The schedule to which I referred when stating the bail(20) conditions is as follows:

Accused no. 1 is to report at the John Vorster Square police station. It will be noted that we have combined the previous schedule with the schedule pertaining to the judgment this morning.

Accused no. 2 is to report at Kathlehong police station  
up/...

up to 2 August 1987 and then to the Parkview police station from 3 August 1987.

Accused no. 3 is to report to the Kathlehong police station up to 2 August 1987 and then to the Parkview police station from 3 August 1987.

Accused no. 5 is to report to the Jeppe police station.

Accused no. 6 to the Hillbrow police station.

Accused no. 7 to the Hillbrow police station.

Accused no. 8 to the Jeppe police station.

Accused no. 9 to the Jeppe police station. (10)

Accused no. 10 to the Jeppe police station.

Accused no. 11 to the Dobsonville police station.

Accused no. 13 to the Jeppe police station.

Accused no. 14 to the Orlando police station.

Accused no. 15 to the Jeppe police station.

Accused no. 16 to the Orlando police station.

Accused no. 17 to the John Vorster Square police station.

Accused no. 22 to the Jeppe police station.

All the accused are to report daily between 06h00 and 08h00 and further between 18h00 and 21h00. (20)

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COURT : As stated previously, this case will be adjourned - it is adjourned to C Court in the Palace of Justice, Church Square, Pretoria. On 3 August 1987 we will resume and we will resume at 10h00.

COURT ADJOURNS.