

AREA NO 8 - KWA THEMA (Betoog pages 409 - 419)

1. It is alleged at page 78 of the Further Particulars that since October 1984, COSAS organised and attacks were directed at the dwellings of police and rioting, violence and arson took place.

2. Only one witness was called by the State. W/O Nkosi testified about the events in Kwa-Thema. He testified about various incidents in this area including an attack on his house and on that of the mayor of Kwa-Thema, the stoning of buses after a meeting, his own eviction from a meeting when he was identified as a policeman, the resignation of councillors, attacks on beerhalls, and a stayaway on 5 and 6 November 1984. These events are all alleged to have taken place after October 1984 and at the time when the UDF, COSAS, AZAPO and AZASM were active in the area.

No particulars are given of the respects in which the UDF, AZAPO and AZASM were active in the area. There is a little more particularity in relation to COSAS but, as will be submitted later on, this evidence is not reliable.

3. The specific incidents are dealt with below. However, at the outset, it is submitted that the witness did

not establish any direct connection of a particular organisation or individual with any one of the incidents which he described. In fact, every incident is characterised by the absence of evidence identifying those responsible.

4. In the first place, the witness conceded under cross-examination that there were a number of other organisations which were active in the area. These were:

4.1. ERAPO but only since 1986;
Vol 122 p6103 lines 27 - 31

4.2. MAWU which was active but not more active than the other organisations.
Vol 122 p6104 lines 5 - 8

4.3. UMMAWUSA which was described as 'not much active'.
Vol 122 p6104 lines 15 - 18

4.4. FOSATU which was described as active.
Vol 122 p6104 lines 26 - 28

The witness said that FOSATU concerned itself with local issues and that both MAWU and UMMAWUSA held meetings in the area.

5. The witness stated that one Cyril Jantjies was connected with UDF, AZAPO and COSAS. Jantjies is not mentioned as a co-conspirator. The witness was unable to say what position he held in these organisations.
Vol 122 p6092 lines 25 - 30

6. Under cross-examination he stated simply that Jantjies frequents meetings of these organisations.
Vol 122 p6116

7. The witness also says that one Pepsi Mahlangu was a member of COSAS.
Vol 122 p6092 lines 19 - 21

Mahlangu is not mentioned in the indictment as a co-conspirator.

8. Evidence was given of attacks on various houses. However, he conceded that the house of Jantjies was also attacked. He thought this was in 1985.
Vol 122 p6118 lines 5 - 11

9. There was mention of a meeting on 6 January 1985 alleged to be a COSAS meeting after which buses were stoned. There was no evidence whatsoever about what was said at the meeting nor as to the cause of the stoning thereafter. The witness did state however

that the meeting was attended by students from Duduza and Tsakane. There is nothing to suggest that the stoning was a result of a campaign against the Black Local Authorities nor is there anything to suggest that this was in fact a COSAS meeting. Indeed the witness conceded in cross-examination that his evidence that it was a COSAS meeting was based on hearsay.

Vol 122 p6093 lines 28 - 29

Vol 122 p6110 line 27 - p6111 line 4

10. At a meeting of 22 January 1985, a scholar in the audience wearing a COSAS T-shirt announced that policemen were present and stated 'laat die honde uitgaan'. Witness stated that according to a pamphlet which he had seen this meeting had been called by COSAS.

Vol 122 p6094 lines 17 - 22

The pamphlet was not produced, and when it was put to him that the meeting had actually been convened by a committee of parents and scholars which had started in September 1984, the witness repeated that what he knew was as a result of information received. It is clear that his evidence as to COSAS having called the meeting is also based on hearsay. This evidence is totally unreliable.

Vol 122 p6111 lines 9 -19

11. Under cross-examination, the witness made a number of important concessions:

11.1. The meeting was a meeting of both parents and scholars although the majority present were scholars.

Vol 122 p6111 lines 20 - 29

11.2. Trade union leaders from MAWU and FOSATU attended the meeting and were on the platform.

Vol 122 p6112 lines 7 - 11

12. The evidence concerning attacks on property did not go so far as to establish who was responsible.

13. The witness assumed that Exhibit ABA64 which is an anonymous pamphlet issued in connection with the stayaway was issued by COSAS and the UDF. The exhibit does not justify this. If the witness could make a mistake of this sort, to what extent is it possible to rely on his evidence when he says that pamphlets calling for a particular meeting were issued by COSAS.

Vol 122 p6105 lines 1 - 19

14. The witness said that in Kwa-Thema, people were prevented from going to work on 5 and 6 November. Those doing the preventing allegedly hid in the veld and attacked commuters with sjamboks.

Vol 122 p6099 line 18 - p6100 line 9

In cross-examination it appeared that his evidence was concerned with one incident involving unknown people early in the morning.

Vol 122 p6115 line 19 - p 6116 line 6

15. Under cross-examination, the witness recalled an incident on 2 October when a baker's van was attacked after it had run out of control and resulted in the death of three people and injury to six more. Thereafter youth went on the rampage and attacked the Kwa-Thema Civic Centre and town council offices. Police reacted and shot. The witness did not know of any acts of violence or any attack on any home or business prior to 2 October 1984.

Vol 122 p6109 line 20 - p6110 line 18

This was clearly not 'organised violence'.

This is a good example of an incident which is completely unrelated to any political activity and which sparked off acts of violence.

The State is incorrect in its submission that Nkosi did not confirm that violence began on 2 October.

Betoog: Vol 3 p413 para 2.3.1

16. The witness also conceded that unemployment was a problem in Kwa-Thema during 1984.
17. With regard to COSAS, the witness was unable to state the extent of its membership.
18. It is submitted that Nkosi was not a good witness.
 - 18.1. In the first place, there is his evidence concerning the fact that the document ABA64 is a pamphlet issued by COSAS and the UDF. The document itself does not bear him out.
 - 18.2. In the second place, and in relation to the meeting of 22 January 1985, he says that this was a COSAS meeting, having got to know about this from a pamphlet. However, when it was put to him that it could be a meeting called by some other body, he says he does not know.
 - 18.3. When his evidence concerning the extent to which the UDF is active in the area is tested, it turns out to be quite pathetic. He first says that Jantjies is the chairman of the UDF and then says that he says this only because he does not know which organisations Jantjies himself belongs to. He does not know the names of any of the other officials. Yet, he

regards the UDF as the organisation which was most active in this area. His evidence in regard to the activity of the UDF in the area cannot be believed. The fact that his evidence is so vague in this connection places the whole of this evidence in jeopardy.

Nkosi: Vol 122 p6102 line 1 - p6103 line 19

- 18.4. At some stage in the cross-examination, the witness says that he knows of no organisation active in Kwa-Thema other than the four he had already mentioned, namely, UDF, COSAS, AZAPO and AZASM. However, it emerges from the cross-examination later that he knows about the existence of the Metal and Allied Workers Union.

Nkosi: Vol 122 p6103 lines 20 - 26 and p6104 lines 6 - 11

- 18.5. Even later in the cross-examination, he concedes that FOSATU was active in local issues.

Vol 122 p6104 line 26 et seq

- 18.6. He contradicts himself about how he knew that the meeting of 22 January was a meeting of COSAS. He says in his evidence-in-chief that

a pamphlet was issued. Under cross-examination, he says that he knew it was a COSAS meeting because of information received.
Compare: Vol 122 p6110 line to 6111 line 19
 with p6094 lines 17 - 22

19. The Court cannot rely upon this witness, standing alone. Indeed, no particulars of the organising activities carried out by COSAS is given nor is there any link between the violence that occurred at Kwa Thema and the activities of COSAS.

20. The State tries to support this evidence by a reference to certain documents.

20.1. The document C118 has already been dealt with. It has already been pointed out that the East Rand area committee did not function. The document does not say that the proposals are made in order to render the so-called oppressive measures ineffective. There is no basis for the suggestion that the area committee was established before September 1984.

Betoog: Vol 3 p417 para 7.1

20.2. The State also relies on the document ABA49. However, this document has to do with a

meeting to be held on 16 June 1985. It can have nothing to do with the period October 1984 to April 1985 which is covered by the indictment. In the circumstances, it is irrelevant.

Betoog: Vol 3 p418 para 7.3

20.3. Reliance is placed on ABA64 and AB7 document 6.

ABA64 is not a UDF document. It is produced by a stayaway committee which is not an affiliate of the UDF. AB7 document 6 is produced by the Transvaal area committee. The UDF has no such area committee. In any event, AB7 document 6 is merely a press statement. One does not know whether it was ever issued.

Betoog: Vol 3 p419 para 7.4

21. On the assumption that the Court finds that the document C110 is a UDF document and that there is prima facie proof of the truth of the facts mentioned in the document, it is pointed out that the document does not refer to Kwa Thema at all on page 16.

Kwa Thema is mentioned on page 23. However, no

organisation is mentioned as being active there.
There is no indication from the document that any
organising work was done there.

22. The documentary evidence does not help the State.

23. The accused cannot be held liable for any of the
violence which took place in Kwa Thema.