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MR. WOLPE

16th October, 1962.

The Chief Magistrate,
Magistrate's Court,
JOHANNESBURG.

Dear Sir,

re: THE STATE vs NELSON MANDELA

We are writing to you in order to lodge the strongest possible protest in regard to certain conduct by members of your staff in connection with the above matter.

We wish to place the following facts on record:-

- (a) On the 8th August, 1962 our Mr. J. Kantor appeared for our client when the case was remanded to the 16th August, 1962. At that time Mr. Kantor's name was placed on record.
- (b) Thereafter, on the 16th August, 1962 Mr. Kantor, whose name was again placed on record, appeared and on that date the hearing was remanded for trial on the 15th October, 1962 in "H" Regional Court.
- (c) At an early stage, we were advised that a certain Walter Sisulu was to be joined with our client as a co-accused and, in fact, the original charge sheet served on us was headed The State vs Mandela and Sisulu.
- (d) On or about the 3rd October, 1962, Mr. Bosch, the Prosecutor dealing with the matter, advised us that it had been decided to separate the trials and that on the 15th October, 1962 the trial would proceed as arranged against Mandela but Sisulu's case would be postponed until December.
- (e) During the week commencing the 8th October, 1962, Mr. Bosch advised us that the case against our client would be heard on the 15th October, 1962 not in H Court as previously arranged but in D Court.
- (f) On the morning of the 13th October, 1962 Mr. Bosch telephonically advised us that the trial against our client was to be heard in Pretoria.
- (g) No written document by the Attorney-General, as is required in terms of the relevant section of the Magistrate's Court Act, was displayed or served on us.
- (h) Rightly or wrongly, it is our opinion that even assuming the existence of the Attorney-General's decision in writing, the case having been remanded to the Regional Court, Johannesburg, the Magistrate was required to have an application addressed to him by the State, requesting that

the case/.....

the case be transferred to Pretoria or struck off the roll. We had been instructed by our client to be present at such hearing in order to address the presiding Magistrate on various aspects of the State's request.

- (i) In the circumstances at approximately 9 a.m. on the 15th instant, we telephoned Mr. Ellis, the regional control Prosecutor, and asked him in which Court the matter of Mandela and Sisulu would be called. Mr. Ellis advised us that the matter of Sisulu would be called in C Regional Court but that Mandela's case had been transferred to Pretoria.
- (j) On arrival at C Court we noticed that there were a large number of police in D Court and believing that possibly our client was to appear in this Court for the necessary formalities, we again twice approached Mr. Ellis, who again advised us that our client's matter was to be heard in Pretoria.
- (k) Not being entirely satisfied with the explanations given, the writer, our Mr. J. Kantor and Advocate Slovo, on at least six different occasions went to D Court and enquired as to whether or not Mandela's matter was to be called there. The enquiries were addressed to the Prosecutor, a police Major, the Orderly and a number of constables. We were told by all these gentlemen that the matter was not going to be called in H Court.
- (l) In C Court when the matter of Sisulu was called, Counsel who had been briefed by us attempted to raise the matter of Mandela, stating inter alia that "theoretically Mr. Mandela is before some Magistrate in this district". The Prosecutor, Mr. Oosthuizen, objected to the matter of Mandela being raised as it was not before the Court. Mr. van der Walt, the Senior Public Prosecutor, was present throughout the hearing and on the suggestion of Mr. Oosthuizen and the presiding Magistrate, Mr. Blom, an interview to discuss the matter was sought with Mr. van der Walt.
- (m) In the course of discussion Mr. van der Walt stated that he did not think it was necessary for the case against our client to be called in the Johannesburg Courts as the Attorney-General's direction was that the trial was to be heard in Pretoria. Mr. van der Walt, when questioned about the activity in D Court, said that it had nothing to do with Mandela and agreed that it was a "red herring". He also refused to have the matter called in Johannesburg.
- (n) At no stage, notwithstanding the fact that it was absolutely clear that we wished to be present if and when the case against our client was called, even for formal transfer, were we advised by any of the officials with whom the matter was discussed that the case would be called. In fact it was made quite clear that there was no intention of doing so.
- (o) At about 12.45 p.m. a person unconnected with the Courts drew our attention to the fact that the case against Mandela had been called in H Regional Court and had been struck off the roll.
- (p) On investigating the position we found that in fact at approximately 9.45 a.m. the matter had been called and that the Magistrate had endorsed the charge sheet with

the words/....

the words "Van Rol geskrap. (oorgeplaas na Pretoria)".

- (q) On obtaining the above information we telephoned Mr. Ellis and asked him why he had not advised us that the matter was to be called in H Court. Mr. Ellis inter alia stated that as far as he knew the matter was supposed to be called in C Court and that he did not know it was being called in H Court. As Mr. Ellis normally arranges which matters are to be heard in the respective Regional Courts, it is assumed that some person, without his knowledge, must have removed the matter from C to H Court.
- (r) It is abundantly clear that as the attorneys of record we were entitled to be advised as to the Court in which the matter was to be called and we were entitled to be present. It is also clear that notwithstanding our obvious anxiety to be present when the matter was called, the information as to the fact that it was to be called, and the Court, was deliberately withheld from us. In this regard it is significant that although the matters against Sisulu and Mandela have hitherto been dealt with in the same Court and together on this occasion they were dealt with in separate Courts.

In our view the conduct set out above by members of your staff is not only improper, but is actually reprehensible and in our submission calculated to create the impression of the lack of impartial administration of Justice. There can be no doubt that we, as the attorneys of record for Nelson Mandela, were entitled to be notified of a change of venue for the calling of the matter, even if it had not been mentioned by us. This is certainly far more the position when we tried unsuccessfully to find out whether the matter was to be called and were deliberately misled by officials of the State.

We venture to suggest that this is a matter which requires immediate investigation and would draw your attention to the fact that were we guilty of this type of conduct, there is no doubt that immediate judicial steps would be taken against us. We are astonished beyond measure at this type of behaviour, and we must ask you to notify us as to what steps it is proposed should be taken in this regard.

Yours faithfully,

KANTOR, ZWARENSTEIN AND PARTNERS.

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