Lubbe/Recordings/MCL

IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

PRETORIA

1988-03-25

THE STATE

versus

PATRICK MABUYA BALEKA AND 21 OTHERS

JUDGMENT ON BAIL APPLICATION

VAN DIJKHORST, J.: Accused numbers 19, 20 and 21 applied for bail. On 7 November 1984 the full bench dealt with the (10) application of all the accused for bail on the merits and refused the application in respect of all of them. On 21 March 1986 application was again brought for bail, after the lifting of the state of emergency. I quoted in my judgment extensively from the full bench judgment and it is not necessary to repeat those passages. I found that the situation was unchanged and bail was refused. In November 1986 some accused were released on bail by agreement between the state and the defence. On 30 June 1987 a further application for bail was dealt with. The state of emergency had been (20) reimposed on 12 June 1986. I stated then that the accused have to show a material change of circumstances since the previous refusal of bail. Two factors are relevant here. The overall security situation and whether the individual

may/...

may have an adverse effect on it should he be released on stringent bail conditions keeping him outside his area of operation. I found that certain accused had not convinced me that their release would not endanger the security of the state and/or that I had not been convinced that they would stand trial till the conclusion of the case. Bail was thereupon refused in respect of accused nos. 19, 20 and 21. It was granted in respect of the other accused who had not yet been released on bail. On 27 November 1987 a further application for bail was dealt with on behalf of these (10) three accused and I refused bail.

The applicants in the present application rely on two changed circumstances to justify their release on bail. Firstly they rely on the proclamation of proclamation R23 of 24 February 1988 in terms of which the UDF and sixteen other organisations have been prohibited from performing "any acts or activities whatsoever". Secondly they submit that the sheer duration of the applicants' incarceration is in itself a changed circumstance.

Short swift can be made of the second alleged change (20) in circumstances. The sheer duration of this case has led to excessive exasperation on the part of the bench and, I am sure, untold hardship on the part of the accused. I will have something to say about it when and if this case comes to a conclusion, but the fact that the case lasts longer than anticipated, has to my knowledge never yet been held to have been a changed circumstance to entitle an accused to repeated applications for bail. This cannot be read into the judgment of the full court.

I revert to the first alleged change of circumstances. (30)

An unpleasant note crept into the debate with allegations of a lack of candour on the part of the applicants centring around the non-disclosure of the fact of an application in the Cape Provincial Division to set aside the proclamation and regulations and the involvement of Mrs Priscilla Jana, attorney for the applicants, therein. I will disregard this issue for the purposes of this application for bail. As far as counsel's conduct is concerned I will decide if there is cause for complaint after perusal of the record in due course. (10)

The applicants have to convince me that the circumstances have materially changed since the last application for bail. Had one of the last two applications been granted, it would have been under strict bail conditions, precluding all political activity, as is evidenced by the conditions laid down in respect of the successful applicants. While this possibility was then considered in respect of accused nos. 19, 20 and 21 it was rejected as such conditions would in their case have been ineffective. If one bears this fact in mind it should be evident that the proclamation and (20) government notice do not bring about a situation which materially alters that which was previously adjudicated upon. They have no greater effect than the previously considered bail conditions would have had. Applied to our case, they merely add an additional penalty to the already heavy penalty of loss of liberty upon estreatment of bail.

Insofar as it is argued that there can no longer be overt UDF political activity, the answer is that I am not convinced that there will be no covert activity by some of those who belong to the UDF. In fact, the state has in (30)

papers/...

papers which run to some two hundred and thirty pages made out a strong case in this respect. The state has also shown that there has been no change in the security situation in South Africa. Particulars of stone throwing, arson, attacks on vehicles, on the police and on civilians are given. Acts of terrorism are referred to. There is no answer by the accused to this.

It follows that the three applicants have not shown materially changed circumstances since the previous application and their application for bail is dismissed (10)

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1988-03-28

Lubbe Recordings/Pretoria/MCL

IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

PRETORIA

1987-11-27

THE STATE

versus

PATRICK MABUYA BALEKA AND 21 OTHERS

JUDGMENT ON APPLICATION FOR BAIL

VAN DIJKHORST, J.: On 25 November 1987 accused no. 19, (10) accused no. 20 and accused no. 21 again applied for bail and I reserved judgment on this application. I have considered the matter from all angles. It would be inopportune to set out reasons for my decision as those may rightly or wrongly influence the parties in the further conduct of this case and could possibly create the wrong impression that issues in this case have been finally decided.

The three accused have to convince me that there has been a material change in the situation since my previous judgment. I have not been so convinced. (20)

The application is dismissed.

Lubbe Opnames/Pta/MCL

Vol 381

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(TRANSVAALSE PROVINSIALE AFDELING)

PRETORIA

1988-04-18

DIE STAAT

teen

PATRICK MABUYA EN 21 ANDER

UITSPRAAK OP TOELAATBAARHEID VAN VIDEO

VAN DIJKHORST, R. : Tydens die kruisondervraging van hierdie(10) getuie deur mnr. Fick het mnr. Tip beswaar gemaak teen die feit dat mnr. Fick 'n video van 'n sekere begrafnis in Julie 1985 in Cradock aan die getuie wou toon. Die agtergrond van hierdie beswaar moet gesien word teen 'n beswaar tot 'n mate soortgelyk wat gemaak is toe mnr. Fick getuienis wou lei van getuie Labuschagne oor hierdie besondere begrafnis. By daardie geleentheid het ek bevind dat daardie getuienis buite die beperkinge van die akte van beskuldiging val en ek het geweier om dit toe te laat. Die saak is daarby gelaat en die staat het dit nie goed gedink om 'n wysiging van sy akte(20) van beskuldiging aan te vra ten einde die tydperk wyer te laat strek nie.

Die doel waarom hierdie video aan die getuie getoon moet word is oënskynlik om die geloofwaardigheid, soos mnr. Fick dit stel, van die getuie te toets, want, so beweer mnr.Fick,

die/...

die getuie het ontken dat sy enige kennis dra van 'n algemene sameswering waarby die UDF, sy geaffilieerdes, die ANC en die SAKP betrokke is en hierdie video sou dit dan nou bewys omdat die video sekere vlae van die ANC, sekere liedere van die ANC en dies meer sou toon wat by die begrafnis ter sprake was.

Soos ek die saak sien probeer mnr. Fick inderdaad om by die agterdeur in te kry wat hy nie by die voordeur kon inkry nie. Met ander woorde, besonderhede van hierdie begrafnis voor die hof te plaas, nie hoofsaaklik om die getuienis (10) van hierdie getuie wat betref geloofwaardigheid te toets nie, maar om die gegewens voor die hof te plaas ten einde moontlik later te vra dat die hof sekere afleidings daarvan maak. Dit is miskien met 'n bietjie verbeelding moontlik om te sê dat daar tot 'n mate 'n punt gemaak kan word op geloof-waardigheid sou die video op een of ander wyse die saak 'n bietjie verder voer as wat die getuie alreeds gesê het. Dit kan ek op hierdie stadium nie beoordeel nie, maar wat vir my baie duidelik is is dat in hierdie besondere geval en wat hierdie besondere getuie betref, die nadeel van die video (20) vir die verdediging veel groter sal wees as enige voordeel wat die staat uit die video mag trek en ek bly by my reëling wat ek gemaak het toe die getuie Labuschagne getuig het en my bevinding is dat die video nie toelaatbaar is op hierdie stadium nie.