

IN DIE HOOGGEREGSHOF VAN SUID-AFRIA  
(TRANSVAALSE PROVINSIALE AFDELING)

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SAAKNOMMER: CC 482/85

PRETORIA

1988-08-23

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. H. SMITH

NAMENS DIE VERDEDIGING:

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

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS :

LUBBE OPNAMES

THE COURT RESUMES ON 23 AUGUST 1988

MR BIZOS: As your lordship pleases. Your lordship will recall that I was giving your lordship references to what portions of the state's case based upon the evidence of witness IC.8 was contradicted by others. I was referring your lordship back to the argument already delivered so that we do not have to deliver it again and I had just given your lordship a reference to accused no.3's alleged membership of AZAPO. The next part of the argument in which IC.8's evidence is contradicted is in relation to the launch of the VCA and your (10 lordship will find that argument in volume 349 page 25 605 lines 17 to 25. I am sorry, line 17 to page 25 606 line 10 and again at page 25 607 line 27 to page 25 609 line 4. Further he is contradicted at what was said and your lordship will find that in the further argument in volume 439 page 25 595 line 28 to page 25 599 line 2.

ASSESSOR: What was that about, Mr Bizos?

MR BIZOS: What was said..

ASSESSOR: What was said at the launch?

MR BIZOS: The evidence denying IC.8's evidence as to (20 what he says was said at the launch, the speeches of Shabangu and Motlana and people like that. Then in relation to the differences between AZAPO and COSAS and the probabilities of that having happened, your lordship will see in the argument again volume 439 page 25 776 line 9 to 25 777 line 13 and again at page 25 778 line 6 to 25 780 line 2. Those are the aspects in respect of which argument has already been advanced to your lordship as to what portion of his evidence is denied and by whom and there are some reasons advanced as to why he should not be accepted. Your lordship yesterday (30 indicated/..

indicated correctly in our respectful submission that it is not axiomatic that a person has been detained, threatened, assaulted; axiomatically his evidence should be disbelieved but here the circumstances, the circumstances under which he came to give evidence as such that your lordship does not have to apply any general rule. The state adopted a strange attitude towards the cross-examination. They firstly objected and tried to persuade your lordship that I should not be allowed to ask any questions whatsoever as to the circumstances under which this witness' statement was taken and (10 important parts of the cross-examination were interrupted by that sort of objection. I would submit with respect that everything that was asked was particularly relevant having regard to the authorities that I referred your lordship to yesterday afternoon. Your lordship will find the attitude of the state at page - volume 21, page 949 to 952, an attitude which persisted throughout the cross-examination. Your lordship will find that according to this witness' evidence he went into hiding on 04/09/84 and managed to keep out of the way of the police for some time. Your lordship (20 will find that on page 951, volume 21 page 951. He was then taken in according to his own evidence under section 29 and the only thing that he was told when he was taken in was that he was responsible for the riots. Page 951 line 14 to 16. He denied any knowledge of this and he was interrogated nevertheless. Your lordship will find that on page 979 line 8 to 25. He was interrogated in such a manner that he thought that he wanted to do away with himself, page 988 line 9 to line 30. Now in relation to the manner in which this witness was treated it would be necessary with respect (30

to refer your lordship to a number of passages and I do this for this reason, that the state has to show if we read the cases correctly that despite this treatment your lordship can nevertheless rely upon this witness and your lordship will only be able to rely on this witness if the fear that was instilled in him during his detention was not present whilst he was giving evidence before your lordship. That is why we submit it is necessary to look at these passages carefully and I am relying for this approach on a judgment of JONES J sitting with DE KLERK J in the case of S v Bacela (10 1988 2 SA 665 in the ECD. There were two charges against the accused. He was found guilty on both by the regional magistrate. The conviction on the first count was confirmed but I would like to read the headnote in relation to the second count appearing at 666:

"The appellant had also been convicted on the second count of making conflicting sworn statements in contravention of section 319(3) of the Criminal Procedure Act no.56 of 1955. On appeal it was contended that the appellant had not been a free agent when he had sworn (20 the statement in question made by him to the police before his trial and it was not properly sworn statement in that it did not comply with section 7 of the Justices of the Peace, Commissioners of Oath Act 16 of 1963, which section prohibited the commissioner of oaths from administering the oath where he has reason to believe that the person making the statement was unwilling to take the oath. It was alleged that the commissioner of oaths before whom the police statement had been sworn must have had every reason to believe that appellant (30

had / ..

"had been unwilling to take the oath as at the time the statement was made appellant had been detained in solitary confinement for four months in terms of the Internal Security Act 74 of 1982 and had been assaulted by the police. It was further contended that for the same reasons the statement had been made under compulsion. The court considered the decisions of S v Tlekani 1964 4 SA 429E and S v Hibi 1978 2 SA 173E and came to the conclusion that neither judgment precluded it from taking the circumstances of appellant's detention (10 and interrogation into account as one of the elements which might have induced him to swear to the police statement unwillingly and found that, bearing in mind the probable combined effect of prolonged solitary confinement whilst in detention, the fact that appellant had been seriously assaulted by his captors who were virtually the only persons he had come into contact with during his solitary confinement and the appellant's direct evidence that he did not act as a free agent when signing the statement, that the state had not discharged the onus of disproving the defence of compulsion. (20 Furthermore, a reasonable commissioner of oaths who was aware of these circumstances, would certainly have had reason to believe that the appellant was not willing to swear to the affidavit and that he was accordingly precluded from administering the oath. The court consequently set aside the appellant's conviction on the second count."

The argument won is not a direct one, but one by analogy, that the fears that Bacela - if I am pronouncing his name (30 correctly / ..

correctly had were the fears that the witness expressly told his lordship he had whilst he was in the witness-box. It is not necessary for us with the greatest respect to go as far as to say that the evidence is not proper evidence before the court because of that fear. We do not have to go that far but what I want to use the case for is the court's, we submit, proper approach to this sort of evidence where there is uncontradicted evidence by the witness himself as to the manner in which he was treated, the manner in which he came to make his statement and that that fear, as I will refer your (10 lordship to the evidence was still present in his mind.

There is long discussion with an analysis of the cases that I referred your lordship to yesterday from page 670G to the end of the judgment and I submit with respect that your lordship will find the case by analogy particularly instructive in finding as a fact that no reliance whatsoever can be placed on this witness' evidence. Now the fact that this witness first denied that he had been assaulted and subsequently admitted it and the reason that he gave for his first denial are particularly relevant into this inquiry. (20

I refer your lordship to page 948 of the evidence line 3 to page 949 line 4. Your lordship will recall that I was cross-examining him as to whether or not he had sent a note to accused - have I got the wrong volume, m'lord?

ASSESSOR: We have got 21 here. I think we need no.20.

COURT: It is not in 21, your reference is in 20.

MR BIZOS: Oh, I am sorry. Unfortunately for my benefit all those covers were taken off and the whole of his evidence put into one file, so I could not readily check it when going into it; I merely have the page. (30

COURT / ..

COURT: Yes, thank you.

MR BIZOS: I am sorry, m'lord, that I had been cross-examining him as to whether he had sent a note but he denied that but he said that he nevertheless had spoken directly to the sister of accused no.2:

"Well, let me come directly to the point. Did you tell accused no.2's relatives that your dentures were broken as a result of having been assaulted whilst in custody and when denying that you were responsible for the death of Motuane? -- No, that is not so. (10

Well, I am going to put to you that not only did you say that to the accused's relatives but to other people that my dentures were broken because of the assault by the police. -- That is incorrect.

How were they broken? -- On the way out, the word used is ambiguous, it may mean at the time of my release or on my way out of detention, my dentures fell out of my mouth, how I do not know. It may be that I pushed them with my tongue. In fact they were sort of causing some discomfort in my mouth in the sense that they were (20 causing some pain. Therefore I used my tongue to push the dentures and that is how they broke.

Is that what you told the family of Oupa, accused no.2 and his friends or did you tell them a different story? -- That is the way in which I was putting it.

You see, I am going to put to you that you came out and gave, told them how you had been assaulted for the purpose of admitting that you were at the place where Caesar Motuane was killed and that they wanted you to make a statement admitting it. -- I will deny ever saying (30

that / ..

that to Oupa's people, that is no.2's people, because really things that I told them are not things that I may be scared of making mention here in court."

By implication m'lord, but we do not have to speculate because he said directly afterwards that he was really afraid to admit this assault:

"The reason being that I did not consider Oupa just as an ordinary friend, I was taking Oupa's friendship with me like a brother and his people I was sort of taking them like my own people and therefore things said by (10 me to them about myself will not be of the things that I would be scared of mentioning here in court."

Now I would refer your lordship to page 957 line 3:

"Yes. Now then you tell us that you said to the sister that you had been treated badly and accused of Caesar motuane's murder? -- That is so.

And that you had denied that you were responsible or that you knew anything material about it. -- That is so. At the time yes, I did.

And that you had denied that you were responsible or (20 that you knew anything material about it. -- That is so. At the time yes, I did.

Did you tell the sister of accused no.2, Oupa, the truth? -- That is so.

Right now please I would appeal to you to tell us in what respects you were treated badly. -- It is not a good experience. Well, alright, I will talk about it if it has been said that I must talk about it. The people who were treating me in this fashion I do not know who they are except knowing that they are police. (30

"These people were assaulting me, (The witness demonstrates his clenched fist and indicates his face) with a view in fact saying to me that I must tell the truth about what happened there. I kept denying saying that I had nothing to do or I was not at all involved in the killing of Caesar. They then left me and fetched the others because we were many although of course they would keep on coming back to me with questioning until they released me and let me go."

That of course is a direct contradiction and the question (10 arises of course why he does not speak about the assault in the first instance. He himself gives the answer at page 975 and page 976. At page 975 line 19:

"Incidentally, when you told his lordship yesterday that your teeth were broken or your dentures were broken because you pushed them out with your tongue, was that the truth? -- No, it was not the truth. It was not the truth, the reason being that I could not just have mentioned the cause of the broken dentures because I thought of my previous experiences that it can happen to me (20 again, therefore I could not tell the actual reason how this broke."

Now that is clear enough with respect that the fear was still present whilst he was giving evidence in this court, but if we read on it becomes even clearer:

COURT: And what was the cause? -- That was as result of a blow with a clenched fist, indicated by the witness as I now indicate, on the side of the head.

On the side of the chin? -- On the side of the chin. When the blow landed there it resulted in my dentures (30 falling /..

falling out of my mouth and then breaking?

Was this during your first detention? -- That is so.

And that fear of what the police might do to you if you say anything against their interest was still present in you yesterday afternoon? -- Yes, that should I make mention of that these people can still assault me, I still had that fear.

Who are these people that you are still afraid of, or you were still afraid of yesterday afternoon? -- The people who had to do with me during my detention, (10 those that I have said I do not know what their names are.

Did they appear to you to be investigating this case or part of this, or the case of the death of Motuane?

-- Yes, specifically concerning the death of Motuane."

And if we go on as to the manner in which his statement was taken, whilst your lordship has got page 976 there, let us look at line 25:

"Could you judge from the sort of question that was being put to you what they wanted you to say in order to (20 stop assaulting you? -- Yes, I will say so because the way in which they were asking me questions, for instance to say is not that you were there too assaulting Motuane, their questions in fact was just like that. I would say it was in form of leading question, it was not diplomatic."

And at page 978, line 3:

"Now tell me, it is quite obvious from the way in which you mentioned this assault this morning that this week was a complete nightmare to you? -- That is so.

That would now be the week in October, not the week (30

"we are busy with now? -- Yes, I understand that.

Yes, it is something that you have not forgotten about and you are not likely to forget? -- I will never forget that. That will remain history with me which I will pass over even to my children as history of my experience.

Yes, and now obviously you have not forgotten about it during the second period of detention? -- No, I have not."

So that insofar as it may be suggested that the initial assault was sort of soothed over by the time the second lengthy interrogation took place over a period of four months, (10 there is direct evidence from the witness himself that this nightmarish assault over a period of four days was still present in his mind when he - even when he gave evidence in this court.

If your lordship has a look at page 981 in relation to the circumstances under which the witness' statement was taken it was mainly in answer to your lordship:

"Could I just get clarity on one thing? I understood you to say that the statement from which Mr Fick, the prosecutor led you in this court was taken at a time when you were not detained, on the one day you went (20 to the security police offices? -- There was probably a misunderstanding. What I mean to say is this a statement or a portion of the statement which was taken on the day when I visited the police station for a day and the most of that was not used but it was a portion used and thereafter on my second detention during the interrogation, another or other facts sort of came out which facts then were put together with the facts which were given during my first day when I visited the police station in order to lead me in court here as evidence.(30

Yes / ..

Yes, so the initial statement was amplified during your detention? -- That is so."

But I will ask your lordship to read that with subsequent pages:

"That is so, I heard the interpreter using the word that I visited the police offices. I only hope that it is not understood that I have gone there for a mere visit, where I had to go and enjoy myself.

That is not the idea, I did not get that impression."

I think that that is your lordship, m'lord - (10

"Now you say that a portion of the first statement, a portion of the first statement was used and a portion was not used? -- Yes, that combined with the facts after my detention.

Yes, but now let us just get clarity first because I do not think that you and the cross-examiner are on the same wavelength. Is it correct to say that a portion of the first statement was rejected and substituted with something else? -- No, it was accepted as a whole.

And then something was added to it? -- That is so." (20  
Then we go about the..

"Right, can you tell us how many pages your first statement was? -- I do not know.

But now tell me, can you remember whether the statement the final statement from which Mr Fick led you, when that was signed by you? -- I remember signing it. Now to say during which month or when exactly it was that when I attached my signature to that statement I cannot remember. All I can say it was during the year 1985.

After your daily interrogation was completed? -- Yes (30  
long / ..

long after that.

Long after that? -- Yes.

And was the oath administered to you when this final statement was signed by you? -- Yes, it was.

And were you told that you are going to be called as a witness after the completion of everything pertaining to the statement? -- It was then that they told me that I must now - that I am going to be called as a witness.

And did they tell you, did they remind you that you had taken the oath? -- Yes, that is so. (10

Did they remind you what might happen to you if you departed in any way from what said on oath in that statement? -- I am not clear on the question. ..

Did you once you signed it under oath, were you told or do you know what will happen to you if you depart from that statement? -- All they told me was that I must know that I am going to be called as a witness. I merely objected to that, trying to find out the reason why.

COURT: The question actually is were you told that (20 you have now taken the oath and that therefore something will happen to you if you deviate from your statement? -- Yes, I was told.

What were you told would happen to you if you deviated from your statement? -- They said to me one thing. I must bear in mind that should I deviate from my statement for which I have taken an oath I must know that I can be kept in detention for a period of five years. Now thinking back about my family as a whole and thinking back about myself as a person, my health condition, I (30

then / ..

"then decided that I will have to stick to what I have said in this statement.

Well, would you like now to tell his lordship that what you said, some of the things that you said in your statement are not true or are you still afraid of the five years detention? -- Now at this moment it has come to a point where I do not care. I came here to give evidence about what I know and what is contained in my statement is the truth."

Well, of course m'lord, if you lordship accepts that, that (10 what I am now saying, "what was in my statement is the truth", it may be of some assistance to the state but let us analyse it. Let us assume that this witness was charged and that statement was tendered as evidence and objection was taken to the admissibility of his statement against himself on the ground that it was not freely and voluntarily made, would your lordship have had any hesitation in throwing the state's tender of this statement out of court unceremoniously if the facts to which he deposes are accepted and the state tells you he was a good witness, so that how can my lord accept (20 a statement which has been procured in this manner? But there is even more. At the bottom of page 983 line 26:

" Now would you agree that if there was no difficulty between you and your interrogator, your statement would have been taken in two or three days? -- Well, that I will not know because all what I know was telling him, is what I knew about.

Yes, but you related your story in approximately one day if my memory serves me correctly. Was there any reason why your whole story could not have been (30 related / ..

related to your interrogator in two or three days or even a week? -- They will know why it took so long.

Yes well, first of all let us ask you who are "they", who? -- The interrogators, the very first person who took a statement from me introduced himself to me as Captain Kruger. Then thereafter, after my detention different people used to come to me. I will not be able to remember their names, all of them, otherwise officially I can still recognise them should I see them again. (10

Were they under the direction of Captain Kruger during the period of approximately four months that your statement was being taken? -- That is so."

So it took four months. Your lordship will recall the evidence earlier on that that was the period. Then, this on line 21:

"Why do you say that the people who were questioning you for four months were under the direction of Captain Kruger? .."

and he gives a reason for that, so that this is not an interrogation outside the particular investigation in this case (20 and on line 30:

"Who told you that you would spend five years in detention if you departed from your statement? -- One of the interrogators.

Who many people interrogated you? -- They were alternating, I think that they were five."

He gives the names of Van Niekerk and Bezuidenhout. And having regard to what the cases that I have referred your lordship to say, this is what he says about his conditions of detention at page 985 line 11: (30

"Now / ..

"Now whilst you were being interrogated over this period of approximately four months did you have the benefit of the companionship of any fellow prisoners? -- I was staying all by myself in the cell.

So if you were not being interrogated you were alone in your cell? -- Yes.

Every night, weekends? -- All the time.

During this period that you were being interrogated and kept alone in your cell, were you allowed any visitors?

-- No.

(10

Were you allowed any reading matter? -- They used to bring me some comics meant for young kids just to keep myself busy".

Your lordship will recall that this person had poetic aspirations for himself at any rate -

"Were you in despair while you were being, during this period of four months? -- That is so.

Now I would ask everyone present to respect the privacy of what I am going to put to you, but were you in fact contemplating doing away with yourself after (20 your first detention? -- Yes, I was in fact considering that. It occurred to me on many occasions.

After your first detention? -- Yes, even during the second detention."

And on line 7 on page 986 I leave out the position of accused no.2's mother -

"Well, you know, I do not want to go on for too long with this, but will you agree with me that during the period of detention, your second period of detention you would say or do anything in order to try and get (30

out / ..

out of that desperate situation? -- That is not so.

Well, you know, I am not unmindful of the pressures that there are on you and I do not want to add to them, do you not find yourself as you are standing there in the witness-box that you are really trapped? -- I do not understand that, trapped in what way?

Well, if you concede that anything in your statement or in your evidence-in-chief, any material thing is wrong you must be afraid that you will go back to that miserable condition of loneliness in the cell all by (10 yourself? -- Not really because I am at the present moment all by myself. From there I go to a cell where I am being locked up alone. .

Are you not anxious that it should come to an end as soon as possible? -- I am anxious in fact from the beginning I was anxious, that this must just be finished as soon as possible, so that even if I have to wait for some time but then I must know after a certain period I will peep from the cell.

The conflict situation that made you think of (20 doing away with yourself during the second detention, was that as a result of what was being put to you by your interrogators? -- No, that is not so.

Was it the nightmare of the first detention? -- The reason why I, in fact it occurred to me, to my mind to get rid of myself or to do away with myself was when I think of my children at the present moment and the people who showed respect to me in the community are now pointing a finger at me saying, there is he in jail.

Now as you are standing there now in the witness- (30

box / ..

box, do you feel that you have done, that you have done anything wrong? That you have committed any crime or anything that you had done in your capacity as a member of AZAPO? -- Not at all, I do not feel like that.

Did you feel that everything that you did was above board and lawful? -- Even if it was not lawful I did not expect it to have created such a serious problem as this one in which I find myself.

Yes, what you mean lawful that it is possible (10 that the march may not have had permission to march or something? -- Yes, that I mean by marching and for instance stopping people from paying their house rent."

I am sorry that I read that again, I recall that I read it earlier on and compared it to Mohapi's statement in the second page of his cross-examination, but it does show the state of mind that he was in and he says at page 988 that the - and these are significant words, m'lord, at line 15 is that the government would not look deep into the whole thing, they will just accept it on face value that "we, the people who had a lot to say, are the people who caused by having a (20 lot to say, that the councillors be killed and therefore I felt it should be wise to kill myself."

And again on page 988 line 25:

"Yes well, were the interrogators not saying to you that you and the other members of AZAPO and the VCA and the ANC were responsible for all this? Was that not the line taken by the interrogators during the period of four months? -- At times in passing they would say that yes.

They would say that. Were you told by your (30  
interrogators/..

interrogators that you will only be released from detention if you make a statement which was to the satisfaction of the commissioner of police?"

He denies that but he says that it would be in your lordship's discretion at the rest of 989. The difficulty with that of course is that he was also told that if he departs from his statement he will get five years and also that he was afraid that if he departed from his statement that he would go back to the miserable conditions that he had described. And again at line 21 at page 989: (10

"I see yes, but before you reached the state of the completion of your statement, did you get an idea from your interrogators that the more you resisted their suggestions the longer you would remain in detention? -- No such suggestions were made to me.

Did you not work this out for yourself? -- As I say I was thinking about a lot of things because they are coming to me so regularly and all the time is because they were not satisfied about what I was telling them." and so it goes on. I do not want to read any further (20 passages in support of the submission that this witness falls squarely into the class of person in the Bacela case that I have referred your lordship to and that his evidence contradicted as it is cannot be accepted.

The state has not argued the matter before your lordship and we feel that some sort of onus has been placed on us to satisfy your lordship that despite all this, his evidence cannot be accepted. Of course even a witness who has come into the witness-box under the most adverse conditions may eventually tell the truth. Theoretically it is possible but (30

of course your lordship has no guarantee that what he has told you directly affecting the accused or directly affecting favourably the state case is the truth. The state has this difficulty if I may put up the skittle in order to knock it down, and say well IC.8 says that there should be violence - Raditsela said that there should be violence on the morning of the 3rd, there was violence therefore he is corroborated. The problem with that is that his interrogators who were programming him for four months knew all about that and he got on his own evidence the idea that he has to go along with (10 it, having said it in the statement he had to repeat it before your lordship. So that we submit that it would be asking your lordship to misdirect yourself, with respect, if the state says that the subsequent events have proved IC.8 correct therefore his evidence is the truth. It is equally consistent that the five interrogators, the names of two of whom we know and we do not know why we do not know the names of the other three; it may have been - I do not know how a person spends four months in interrogation and does not manage to learn the names of his interrogators, but be that (20 as it may - it is equally consistent that insofar his evidence squares up, up to a point with what happened subsequently is the suggestion of the interrogators, the desire of this witness to buy his freedom, to return to his children as he says and in order to get it finished with. And once the fear was still in court I do not know how the state can possibly rely on his evidence.

Your lordship will recall that we - well, let me put it this way, your lordship will remember that we asked your lordship to recall this witness and your lordship did not (30 grant / ..

grant the application at that stage and gave a number of reasons for that. Your lordship also in your lordship's judgment left it open to us at the end of the case to reapply if we thought fit at the end of the case. I am pleased to inform your lordship that we have decided not to renew the application and the main reason is because we believe that it would indeed be a waste of the court's time in view of the unsatisfactory nature of this witness' evidence and in view of the weight of evidence that has been submitted to your lordship against it. The application is to be found (10 in volume 151 page 7 519 to page 7 540. Your lordship's judgment on this issue appears on page 7 571 ..

COURT: Still 151?

MR BIZOS: I am sorry, 152. Volume 152.

COURT: 7 551?

MR BIZOS: 7 571 to page 7 586. Now I submit with respect that those facts having been brought to your attention and the judgment of his lordship VAN DER WALT J having been brought to your attention, your lordship cannot ignore the outcome in the Mashela case and I am not putting it on the (20 basis of the evidence but on the basis of approach. On the basis of approach we urge your lordship to follow the reasoning of VAN DER WALT J. I do not recall whether we - I do recall that we handed documents in to your lordship, I do not recall whether your lordship handed them back or not and there is a possibility that your lordship may not have the judgement of his lordship VAN DER WALT J?

COURT: If I have it I cannot place my hand on it immediately.

MR BIZOS: Well, should we then make copies available?

COURT: I think so because - I can look for it and see (30

where / ..

where it is.

MR BIZOS: It is not a very long judgment.

COURT: Just give me the reference.

MR BIZOS: It is S v R S Mashela delivered on 30 May 1986 in this division. Now this witness..

COURT: I do not think we have it, Mr Bizos. Could we have a copy, please?

MR BIZOS: We will make a copy, m'lord. I will hand it to your lordship, I will give your lordship the gist of the argument because it is within a very narrow compass on this (10 issue. Let me say to your lordship that IC.8 is referred to in this judgment as witness no.3. Now your lordship will see that one of the reasons why we wanted to recall IC.8 is to put to him that a person that he had given direct evidence against and pointed out at the Motuane home as taking an active part in the killing of Motuane and his body guard, and your lordship will in our respectful submission, reading the passages on page 1 730 of the judgment and page 1 733, and your lordship asked during the course of the presentation of the application, but did another court find this witness (20 untruthful. Well, your lordship will find that at page 1 753 of the judgment, line 27 his lordship VAN DER WALT J says the following:

"There are the various aspects on which state witnesses have proved themselves to be strangers to the truth.." speaking about the witnesses generally including witness no.3 -

"..and applying the tests as laid down in S v Oosthuizen the court must find and does find that the evidence of these witnesses are as a whole tainted by those untruths and the court then in the final instance finds that (30

although / ..

although this is a case where one would like to bring to book the culprits and the perpetrators of these savage deeds and they should be brought to book, the court on the facts as given in evidence before it and in view of the serious criticisms on the state witnesses and their evidence, and although the state witnesses clearly knew the accused, the court cannot find on the evidence that the state has proved beyond reasonable doubt those offences attributed in the charge sheet to each of the accused." (10

There may be technical rules which I do not want with the greatest respect to make any submissions about at this stage and become bogged down with a judgement of his lordship COETZEE J in which I received some criticism, in Damale's case as to whether a finding by one court in relation to the credibility of one witness can be used by another witness, but leaving that aside I do not think that - if your lordship wants the case I can give it to you. It is the Damale case but I do not want to enter into that, I am appealing to your lordship to adopt a common sense approach, that we (20 are in the Transvaal Provincial Division IC.8 under the guise of witness no.3, points the finger at an accused before his lordship VAN DER WALT J and says he took part in the killing of Caesar Motuane and his bodyguard. That evidence is not sufficient to convict that accused. The same witness and I am not even prepared to discuss whether there were even more witnesses in that case than IC.8 to point a finger at that particular accused; the state in this case is asking you to rely on the evidence of the same witness on fundamental aspects of its case in respect of which it has no other (30 evidence / ..

evidence whatsoever.

COURT: But because there was not a conviction in the other case it is not a non sequitur. It is a non sequitur that the witness was found to be a lying witness. It may well be that there was one witness for the state and five for the defence and the court did not know what to find.

MR BIZOS: No, m'lord, what I am saying - this is why I am saying, this is why I am saying that I am quoting the judgment as a matter of approach and not as - because he was disbelieved by one court, he must be disbelieved by another (10 court but where we have a situation that a witness gives evidence. He is contradicted by those accused and VAN DER WALT J cannot rely on that evidence and we have a case running parallelly with the same deceased, because after all I do not know on what possible legal basis but let us take it on the indictment. The accused were facing a charge of murder on Motuane, and accused no.5, 13 and 2 are facing a charge in relation to their presence, and they deny it, on the evidence of a single witness who..

COURT: But Mr Bizos, without a study of the evidence of (20 that case and the conclusions of the judge, how can one reach any conclusion as to that witness in that case?

MR BIZOS: M'lord, what I am saying is this. I am not asking your lordship to sit as a court of appeal or to either confirm or otherwise the judgment of his lordship VAN DER WALT J. What I am saying to your lordship is that you and VAN DER WALT J had the same witness before you, alleging that the accused before both of you are guilty of murder.

COURT: No, they were not the same accused.

MR BIZOS: No.

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COURT / ..

COURT: And this witness did not allege that they were guilty of murder.

MR BIZOS: Well, m'lord..

COURT: This witness merely said they were present and they were looking on like everybody else.

MR BIZOS: Well, I am indebted to your lordship for the distinction but I am concerned with is to meet the argument of the state who asked your lordship to find that as an act of murder against these accused and what I am saying is that the approach by his lordship VAN DER WALT J in not relying on (10 this evidence because it was contradicted by the evidence of the accused should be the same approach of your lordship and if your lordship adopts that approach - perhaps I should come back to what I started. I am not arguing to your lordship the principles in the Damale's case. This is why, let us assume that your lordship finds as a fact that IC.8 is correct that accused 2, 5 and 13 were at Motuane's, it can only be as a result of a completely different approach to the assessment of the evidence.

COURT: A different approach from whom? (20

MR BIZOS: Well, from his lordship VAN DER WALT J.

COURT: I do not know what his approach was, he had different evidence.

MR BIZOS: Well, he said..

COURT: He had other witnesses as well.

MR BIZOS: He had defence witness and he had..

COURT: Yes, and I take it he had state witnesses as well. I do not know, there may have been contradictions but one cannot argue this sort of point unless you have a meticulous study of the evidence and the judgment in that particular (30

case.

MR BIZOS: I have no quarrel with that statement.

COURT: One can or one cannot take it either way..

MR BIZOS: I have no quarrel with this statement.

COURT: Even judge Van der Walt had said he was a good witness I would not have been bound by that.

MR BIZOS: I have no quarrel with that statement. I am only saying that common sense would dictate with the greatest respect that the conclusion should be the same on the evidence of this case for the reasons advanced in this case. Not (10 merely because of what his lordship VAN DER WALT J said, that is all I am saying. As a matter of reproach and not as a matter of following blindly what his lordship VAN DER WALT J said, because it has only got to be stated..

COURT: Well, your argument is that it is only proper that the same court sitting in the same division should come to the same conclusion, provided they have the same facts?

MR BIZOS: No, I cannot say that. What I do say is that his lordship VAN DER WALT J's approach to the assessment of the evidence should be adopted by your lordship, that we (20 have..

COURT: Well, isn't the approach normally the same? I would expect that one should be meticulous in assessing the evidence and take account of everything that is said against the witness..

MR BIZOS: I have no quarrel with that.

COURT: That you have argued already.

MR BIZOS: I have no quarrel with that. I am just concerned that the conclusion..

COURT: Can one go further?

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MR BIZOS / ..

MR BIZOS: I am just concerned that the conclusion should be the same that is all.

COURT: Well, let us first wait for the conclusion.

MR BIZOS: As your lordship pleases. That is the approach to this witness that we submit your lordship will adopt. I would like now to show your lordship the evidence of Mahlatsi. Now there was a period of time that lapsed between the calling of IC.8 and the calling of Mahlatsi and I submit if your lordship has a look at Mahlatsi, although it is a different kind of pressure, he has not fared any better. This witness (10 whilst his statement was being taken was so concerned about what he was being asked to say that he did not eat anything for eight days. He shied away from the expression hunger strike, m'lord, he did not think that it was a hunger strike, he just did not eat. Your lordship will find that in volume 41 page 1 975 line 7 to 8 and again 18 to 20. He signed his statement whilst he was so abstaining although he says that there was no compulsion on him to sign it. Volume 41 page 1 976 line 2 to 6. He says that he signed his statement three or four days after his detention. (20 Volume 41 page 1 976 lines 13 to 19. He says that after making his first statement he made a second statement because he says he wanted to clear certain matters up. He wanted to clear certain matters up. Volume 41, page 1 976 lines 15 to 21. He says that he made his second statement because he felt he could not keep things to himself as a priest because it would be a sin in the eyes of God. Volume 41 page 1 978 lines 1 to 5. He says that the reason why he did not include these things in his first statement was because he was confused at the time there "and I am was not happy in my heart. I (30

did / ..

did not have a happy feeling. Volume 41 page 1 978 lines 6 to 12. And this is where his trouble really starts.

COURT: After tea.

MR BIZOS: After tea, as your lordship pleases.

THE COURT ADJOURNS FOR TEA / THE COURT RESUMES

MR BIZOS: As your lordship pleases. Your lordship will recall that without wishing to be disrespectful the illiterate reverend who also calls himself a bishop, wanted to clarify a few things in the second statement. He said it was part of his priestly duty, but when asked what the subject (10 matter was that he wanted to clarify the whole situation changes. The subject matter that he added in the second statement was pertaining to the march, the setting alight of Caesar's house and what happened to the councillors. Now your lordship will find that in volume 41 page 1 978 lines 21 to 26. In the first statement he did not say anything about the violence being spoken about at the meeting of the 26th. In his first statement he did not mention anything that Esau Raditsela called for violence against councillors on the morning of 3 September 1984. Volume 41 page 1 978 (20 line 30 to 1 979 line 2. He also did not mention that he later said in evidence, Raditsela calling on the people on the march to attack Caesar Motuane's house but merely that in the procession of the march they would have to go to different councillors' houses to show them the placards for them to join the march. Volume 41 page 1 979 lines 2 to 16. In his first statement he denied that he participated in the march. Volume 41, page 1 979 lines 26 to 30. In his first statement he says there is a specific part saying: "I do not know of anyone committing any acts of violence". Volume 42(30

page 1 995 lines 7 to 9. There is also a statement saying: "I know of no-one who incited other people to commit acts of violence". Page 1 995 lines 15 to 20. He says that he only made mention of violence in his second statement after having decided to tell the truth, volume 42, page 1 995 lines 21 to 25. In his first statement he did say that Rina Mokoena spoke at the meeting of the 26th but omitted to mention anything about violence. Volume 42 page 1 996 lines 11 to 20.

He says that he did not make mention of the fact that Mrs Mokoena made any reference to violent action in his first statement because "I did not hear, that is true". Volume 42, page 1 996 lines 21 to 25. He then says in his first statement he mentions that Mr Cabi called for violent action against the councillors. 1 997, lines 11 to 16; having contradicted himself in the earlier statement that there was nothing about violence in his first statement. In his first statement he said that Mr Cabi said that these dogs are using our money and he requested from the people that they should go and set alight the house of Dougs Dipoko. Volume 42 page 2 012 lines 23 to 29. This of course is in direct contradiction to the statement that he made mention of, no violence at all was referred to in his first statement. Your lordship will remember that that is at page 1 978 line 27 to 29. It was put to Mahlatsi that he made his first statement on 23 December 1984 and the second statement on 11 January 1985. He agreed with this. His arrest is said to have been on 18 December 1984. Volume 42 page 1 981 lines 11 to 16. When he was arrested on 18 December he was taken to a captain who explained to him that he was being detained under section 29. He did not tell

him / ..

him for how long nor did he tell him why he was being detained under section 29 and he adds because he, Mahlatsi, already knew what his trouble was. Volume 42, 1 988 line 27, 1 989 line 2. Mahlatsi's statement took two or three days to write down. Page 1 992 lines 14 to 15. The person who took his statement was friendly and even bought his cool drinks he tells your lordship. Volume 42 page 1 994. However, it did not occur to him to ask this friendly man whether he was going to be an accused or a witness because he was just waiting to see what they were going to do with him, it being (10 the first time that he had ever been arrested. Your lordship will find that in volume 42, page 1 994. He identifies the captain who took the first statement and the second statement as Captain Botes. Volume 42 page 2 003 line 1. Captain Botes did not tell Mahlatsi of the seriousness of making two conflicting statement on oath because he accepted what Mahlatsi told him was the truth in the last signed statement. Your lordship will find that in volume ..

COURT: If one is addressing the appellant division who has not sat for ages listening to the evidence I can understand (20 that you tell us, tell them what they do not know, but we have listened to the evidence. What you are telling us now is not the point you are making against the witness, so why tell us this or make us write it down?

MR BIZOS: Because I am going to argue on the basis of these admissions by the witness who have been, and the admissions are spread all over the place, because I submit with respect that having listened to the evidence is one thing. To critically analyse the evidence is a right which an accused has with respect to do through his counsel in order to (30

try and persuade your lordship that critical analysis of this evidence makes it with respect..

COURT: Yes, you can take it that we did listen to the evidence, that we did study the evidence and that we know a bit about the evidence.

MR BIZOS: But I am talking about..

COURT: But you can do it your way, Mr Bizos. Go ahead but don't give me all this detail and expect that I write it down. Make the point which is a good point and I will write it down. (10

MR BIZOS: Well, if I make the point that I want to make it is this, the passages that I have already given and the two or three other passages that I would give your lordship are these. I want to make this point, that according to this witness two statements on oath were made by him which were in conflict. No attempt was made by the state to let us have these statements from the internal content of which we may have been placed in a position to cross-examine this witness and if the evidence of the witness is correct then we have been placed at a disadvantage by the state's failure (20 to make the conflicting statements available to us. I don't know whether your lordship wants the references?

COURT: But now what do I do with it? I know there is an appellate division authority on this but do I do - having said that what do I do with it?

MR BIZOS: You put your lordship's pen right through Mahlatsi's evidence.

COURT: Why? Because the state did not do its duty?

MR BIZOS: Yes, because an accused is entitled to a fair trial. (30

COURT: Did you ask for the statements?

MR BIZOS: M'lord...(hesitates)

COURT: Well, it is not a difficult question. Did you ask for the statements?

MR BIZOS: I do not recall.

COURT: Well, then?

MR BIZOS: It is not for me to ask for statements. It is for the state to tender them to the defence, that is what the appellate division says. And your lordship will see that this argument cannot come as any sort of surprise to the (10 state because the two passages that I was about to read to your lordship actually relate to this very matter and the state cannot have been taken by surprise, because the next passage that I was going to - I know m'lord, with the greatest respect that it may be painful to listen to this detail. It was even more painful to prepare in order to extract it and it is even more painful to prepare it. But with the greatest respect one cannot take a broad or global attitude to the evidence of a witness and on this very issue on which your lordship I submit would be interested in the specific (20 references because judging by your lordship's question the references that I am about to give to your lordship may well refresh your lordship's memory in assessing the validity of the witnesses, the witnesses' evidence. Because I was about to tell your lordship that Captain Botes did not tell Mahlatsi of the seriousness of making two conflicting statements on oath because he accepted what Mahlatsi told him was the truth in the last signed statement. I don't know whether your lordship wants the reference to that passage?

COURT: If you want to give a reference, give it and it (30

will / ..

will be in the typed summary and if I want to look it up, I can look it up.

MR BIZOS: Thank you, m'lord. Your lordship will find that in volume 42 page 2 005 lines 20 to 26. Captain Botes according to this witness expressed satisfaction when Mahlatsi made his second statement because it was in accordance with the others, what the others had told him and it was after completion of the second statement that he told Mahlatsi that he would be a witness. He told he could be a witness as soon as he had signed the second statement. (10

K1507 Volume 42 page 2 006 lines 1 to 17. Captain Botes did not say that he would have to disclose to the prosecutor and even to the court that Mahlatsi had made two conflicting statements on oath. That should have been sufficient notice to the state. Volume 42 page 2 006 line 26 to 30. Mahlatsi agrees that accused no.15 was also detained in the cell at the time at the same police station. Originally he denied that they were in adjoining cells and said that this cell was three cells away from his. He admits that they communicated with each other. Your lordship will find this in (20

volume 42 page 2 001 to 2 007. He contradicts himself, volume 42, page 2 008 line 22 to 28, when he finds himself in difficulties as to how they managed to communicate. After he signed his second statement he agrees that he was given a luxury radio after he had completed his statement, the second statement. Page 2 009 lines 23 to 27. Now we submit that although Mahlatsi does not admit any assault or threat of assault once on his own version he had made two statements on oath and that the second statement came about during his detention under section 29. On the authorities (30

to which we have referred your lordship, his evidence cannot be believed. For that and a number of other reasons which we will examine during the course of the analysis of the evidence on matters on which there is a dispute. We also want to draw your lordship's attention and we do not know m'lord, we do not know, we do not find Rina Mokoena's name mentioned anywhere in the "betoog".

COURT: Are we leaving Mahlatsi now? We are going to Rina now?

MR BIZOS: We are leaving - Rina Mokoena in relation to (10 her detention and the circumstances under which she made her statement. Now I am in your lordship's hands in relation to this. I always thought that if a witness is going to be relied on, something is going to be said about that witness in the state's argument. In the seven volumes and a bit that we have been given of "betoog" we have not been able to find Rina Mokoena's name. I do not know whether your lordship has had any..

COURT: I did not see her.

MR BIZOS: Well, what are we supposed to do about that (20 now? Are we to address your lordship on her credibility or are we not? I have the notes, I have the references, I have the submissions..

COURT: We feel you have got to make your points, your main points shortly.

MR BIZOS: I will try and do it as..

COURT: In the end the judgment has to include it, you know. We cannot just say there was Rina Mokoena and we say nothing about her.

MR BIZOS: Well, your lordship would have asked I would (30 have / ..

have thought with respect our learned friends for the state, are you relying on her or are you not? And if you do, in what respect do you rely on her? In what respect don't you rely on her?

COURT: Well, it was not asked so will you make your points?

MR BIZOS: Well, m'lord, we submit with respect that Rina Mokoena's evidence should be rejected in toto, partly because of the manner in which her statement was taken. Let me remind your lordship of the plight of this unfortunate human being that came to your lordship's court, that in chief (10 she was dizzy and even whilst giving her evidence-in-chief she repeatedly says that she felt bad and that her heart was still sore. Your lordship will find that in volume 37, 1 710 line 2 to 17 and 1 717, 21 to 25. Even in her evidence-in-chief she showed herself to be confused and uncertain. Your lordship early in cross-examination remarked how confused and uncertain she was when she was being asked about warrant officer Moage, volume 37, 1 722 line 24 to 1 723, line 7. In her confused state she could not remember for how long she had been interrogated because she said that the discus-(20 sion was done in such a way that it confused her in her head. Volume 37, page 1 766 line 9 to 23. Again we have the same story of two statements. This time there is a long lapse between the two - well, she was detained in November 1984 and she made her last statement in July 1985. Your lordship will recall that this was after the accused were brought to court. Volume 37, 1 723, 22 to 1 724, line 12. Asked when she made her first statement she said she could not say and in view of what happened subsequently with her evidence, we quote what she said:

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"At /..

"At the time of my being taken into detention I was ill with my ill-health and not in my full senses and up to now I am still not yet alright. I cannot think proper." Volume 38, 1 744, 10-19. We were not asking about months or dates. Asking the witness whether she could recall whether she could recall whether her first statement had been taken during the winter or during the summer period, the answer is no, during that time it was bad with me. I know nothing. She knew nothing due to the shock and the pains she was suffering. Evidently this was a shock she says experienced (10 at the time of her detention. Volume 38, 1 745, 21, to 1 746, 1. Asked whether there were any differences between the first and the second statements she said she was unable to say. Volume 38, page 1 746, line 21; 1 747, 29.

Although she has testified in chief that she herself called for the killing of councillors, in cross-examination she says I may have mentioned that or not. When asked what does she mean by this, she says:

"I am guilty because I did not dismiss that kind of talk when it was said that these people must be (20 killed."

Volume 38, 1 749, 2-26. Asked when it first came into her head that she was guilty of calling for the councillors' death, she replied:

"Whilst I was in detention it occurred in my mind that I am here arrested now because of those people and the documents."

That is her answer. Volume 38, page 1 749, 27, 1 750, line 1. She agreed that the account of a speech in the indictment was accurate. I would draw your lordship's attention that the (30 indictment/..

indictment does not suggest that she called for the killing of anyone and she had no answer to the question whether the story of the killing only arose in the second statement. Your lordship will find that in volume 38, page 1 759, line 8 to 1 760, line 9. Of course the second statement was after the service of the indictment on the accused in June 1984. I beg your pardon, 1985. Again in her view she had committed no crime. Volume 38, 1 727, line 30 to 1 728 line 12. And of course we have the rather bizarre situation that she went into detention because her husband told her (10 she must agree. Your lordship will recall that her husband was taken in first and then he was released and she went in as a sort of a substitute.

COURT:

MR BIZOS: Ja. Volume 38, 1 733, 17-27. Now I am not only dealing - because I do not intend coming back to her, I will deal with her as a whole. Because her detention, even before her detention this woman was a woman who conducted her affairs in accordance with what voices told her. 38, 1 733, 28 to 1 734 line 29. The voices were still speaking - they (20 started way back in 1977 and they were still speaking to her whilst she was testifying. Volume 38, 1 735, 25-31. She heard these voices throughout her detention. Volume 38, page 1 736, 1-25. She puts down her detention as some form of pre - what is it called, predestination, is it? Because the voice had predicted that this would happen to her.

COURT: It does not mean it is predestination.

MR BIZOS: No, it is not. Premonition, she had this premonition because the voice told her. Volume 38, 1 741, line 4 to 1 743, 28. (30

COURT / ..

COURT: Have you ever heard of Siener Van Rensburg?

MR BIZOS: Yes, he predicted something during the war or before the war, didn't he?

COURT: Yes, he also had premonitions about a lot of things.

MR BIZOS: Yes, I think it was in the Pakenham book that I read that. Well, I do not remember the details but I think it was proved that it was wrong to follow him, m'lord. But not remembering the facts fully I had better not enter into historical debate with your lordship. Now specifically in relation to the ERPA meeting on the morning of the 26th (10 having said that both she and accused no.17, Mr Matlole, called for violence, she contradicted herself as to whether this was said at all by her or by accused no.17. Volume 38, 1 754, 7-11. Then it would appear that she could not remember if it was at the meeting of the morning of the 17th that this was said by no.17 or not. Volume 38, 1 752, 13-26. When these contradictions were put to her this was her answer:

"The pressure was in it, is it not common that I am not in detention because of the confusion which took place."

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so the feelings of guilt that I referred to in the cases are evidenced in her insofar as one can rely on anything that this person says. Then in relation to the afternoon meeting of the 26th she said that she called for the killing of the councillors in the afternoon, echoing what accused no.17 said at the morning meeting. Your lordship will find that in volume 38, 1 771, 20-33. Yesterday your lordship heard the submissions made by my learned friend Mr Tip in relation to the morning meeting. I do not want to repeat that argument that no reliance can really be placed on anybody (30

having / ..

having said that violence was called and the fact that it is transported into the afternoon meeting says quite a lot about the question.

In relation to the release from detention she says that this is a matter for God to decide but in any event she did not remember whether or not she had been told that she must stick to her statement. So we submit with the greatest respect that these witnesses insofar as their evidence is put into issue by the accused cannot be believed.

As far as Mohapi is concerned we have to go no further (10 than refer your lordship to Mohapi's evidence in volume 39 page 1 787 - I beg your pardon, no, page 1 825 which I want to read out to your lordship:

" Do you feel that you had done anything wrong, that you had committed any illegal act, any crime as result of becoming involved in this anti-rent campaign? -- Yes it occurred to me that I am guilty of a crime or any offence, the reason being that some of the people with whom I was involved in the committee had to disappear or run away and some were arrested. That to me (20 created the feeling that I am also guilty of an offence of some kind.

Yes, but you feel that you yourself had committed any offence? -- Yes.

What offence did you feel that you have committed. -- Because of my having taken part in making people aware and bring them together to unite and fight the increased rents and make people accept the point that we were to march in order to go and talk to the people in authority about the question of the rent. (30

Is that what you think your offence has been? -- Yes.

And is that what you came to believe whilst you have been in detention? -- Yes.

You yourself did not commit any unlawful act other than what you now believe after this detention might have been an unlawful act? -- No, I do not know of any other offence except that this occurred in my mind, I have just mentioned."

Your lordship will recall the passages in Professor Matthews' book on the facts of this case. It tells quite a lot of the effects of detention and interrogation and taking of statements which your lordship has not seen.

Now we now have to address your lordship on what happened at the meeting of 2 September 1984 in Sharpeville and what happened in..

COURT: Sharpeville?

MR BIZOS: In Sharpeville. And what happened on 2 September in Small Farms and what happened on 3 September at Sharpeville and at Small Farms. I intend dealing with 2 September 1984 at Sharpeville first. The meeting of 2 September 1984 in Sharpeville, the allegations are contained in paragraph 73.8 of the indictment on page 329.

COURT: Page?

MR BIZOS: 329. The allegations are again under the general conspiratorial allegation except that in this case particulars are given of the involvement of COSAS. Your lordship will find that in 73.8(v) and the allegation that a stay-away was propagated. A march was propagated, a mass march was propagated and that there was to be a mass protest and demonstration on the morning of the 3rd. The main issue between the state

and / ..

and the defence in relation to this meeting is the following - or the following issues, that whether AZAPO, this was a meeting at which AZAPO was involved; whether a member of COSAS addressed the meeting; whether there was a decision to have a stay-away on the morning of the third and a march or a mass demonstration . The only evidence for the state on this is from IC.8. His evidence is that he attended this meeting and that he came to know about it from accused no.2. Volume 16, page 769, 30; to 770, line 6. He says that this meeting was of the organisations of the whole of the Vaal triangle (10 there were representatives he says of AZAPO, COSAS and the Vaal civic association. Volume 16, page ..there seems to be some..could I leave that out m'lord. It follows closely on 769 but I have not got the precise page, but it will be thereabouts. He says that he arrived at the meeting long after the meeting had started. He stood at the door where there were other people standing as well. Volume 16, page 770 lines 15 to 20.

COURT: What does he say was the purpose of this meeting?

MR BIZOS: Well, he says it was in order to take resolutions (20 on what should happen the next day. This is really what he says. Your lordship will recall that he was not, he does not give evidence that he was at the meeting, the meetings of 12th, 19th, 26th. And what I ask your lordship to note is that although he arrived long after the meeting had started he purports to support the whole of the state case set out in the indictment which obviously throws considerable, additional considerable doubt on his voracity. He saw a pamphlet; this is the first thing he describes, he saw a pamphlet in the possession of the person a short distance away from him; (30

he / ..

he looked at this pamphlet and saw that it contained a resolution of parents, workers and children and he identifies that as a similar document to AN.15(ii). That is volume 16, page 770 lines 21 to 28. Although he characterises this meeting as a meeting of AZAPO, COSAS and VCA in his evidence-in-chief what appears with his evidence under cross-examination is analysed as the following. He says that he, to use his own words, never got to know who the convenor of the meeting was or who was responsible for the holding of the meeting. And obviously if he came so late he would not have known anyway (10 I do not want to repeat the argument that I have already advanced to your lordship as to whose meetings were the Sharpeville meetings earlier on. I do not remember whether I gave your lordship the references to who the convenor was. Did I give your lordship the reference? 1 113, 5-11.

COURT: Have you got the volume number?

MR BIZOS: Sorry, yes, 23. He does not know whether this meeting was organised by accused no.3 with the assistance of Mjeza and Hlube. He states however that pamphlets of the organisations referred to by him, being AZAPO, COSAS and (20 the VCA, were there at the meeting. Volume 23, 1 114, 22-25. Well, this is to be compared with his evidence-in-chief to the effect that these organisations were in fact represented by certain members as deposed by him in volume 16, page 770 line 7-13. What this really amounts to is this, you came late to this meeting. How do you know who represented who at this meeting. Then the answer is no, maybe I do not know that but their documents were there. The evidence as a whole is that there was only one document there which was held up by this woman and said what about this.

(30)

COURT: Is this his evidence or no.2's evidence you are referring to?

MR BIZOS: No, I am now referring to - what I am saying is the contradiction, he contradicts himself. Firstly he says there were people then he says there were documents, therefore what I am saying is that accused no.2, no.3 and the other witnesses say that it was not such a meeting but that it was one of the series of the Asenamali (?) committee. He could not dispute that this meeting was called by accused no.3 with the assistance of Mjeza and Hlube, volume 23, 1 114: 29 to 1 115, line 2. When asked about the pamphlets he merely refers to the one pamphlet and when he is further pressed he says I did not know in fact how this came about or how the pamphlets came there or what they were, a completely vague answer. Volume 23, 1 115, line 3 to 7. Now AN.15(ii) has no name of any organisation on it and that is the only pamphlet that he could really - your lordship recalls what AN.15(ii) is, that is the.. How we come to COSAS and AZAPO and the VCA is with respect.. He does not mention the names of anyone from the VCA or from COSAS nor does he say anything about what they would have said or what they did say at this meeting. He concedes that he knew about the Sharpeville anti-rent committee, he knew that accused no.3 was one of the people on this committee; volume 23, page 1 117, 6-13. Of course he is unable to explain the tremendous improbability in his evidence. Why there should have been a need to form a Sharpeville anti-rent committee of which accused no.3 was a member; if accused no.3, accused no.2 and he were in the executive of AZAPO and this was an AZAPO meeting. Again IC.8 is alone in alleging that the ugly words of violence were used in this church

at this meeting and he puts into the mouth of accused no.3 the Rev Moselane: now is the time that Mahlatsi and his company must be shown and I will quote it in Afrikaans that it was translated into: "dat dit lank is dat hulle op ons koppe speel en hulle het nou by die laaste stasie gekom". Your lordship will find that in volume 16 page 771 line 20 to page 772 line 2. Accused no.3 according to IC.8 also said: Away with councillors, away with high rents. Volume 16, page 772 line 3 to 5. The next bit of evidence in his evidence-in-chief is palpably false if your lordship takes (10 all the facts into consideration. He said that accused no.3 also said that on the following day they would march to Houtkop to speak to Mr Gantz. When he finished speaking about accused no.3, the audience shouted "Amandla" and gave the Black Power salute. Volume 16, 772, 5-14. Your lordship of course knows that accused no.3 was going to be at the synod of his church the next morning and the declaration that "we will march" including accused no.3, did not make sense - does not make sense on the evidence as a whole. Then he does not fare particularly well in cross-examination. He (20 was asked in volume 23, page 1 126 line 7 to 1 127 line 1 about his understanding of the Rev Moselane, accused no.3's statement:

"Did you understand what Father Moselane said according to you in relation to Mr Mahlatsi to be an incitement to violence against Mr Mahlatsi."

and the answer is a curious one and does not make sense one way or the other:

"My understanding of what he said, those are not words which could have caused that there be fighting (30 because / ..

because he said we are going to Houtkop to one Gantz." Now when asked to explain all that he fails miserably in our respectful submission and it is again one of the instances where the allegation of - well, the direct evidence to support an allegation of violence comes from a person who was treated in the manner in which IC.8 was treated, and who knew that the escape hatch for his freedom was to place an incitement to violence at the door of others. He also says that there were placards at this meeting which again if your lordship takes, which is denied, but if your lordship takes into (10 consideration what happened at the meetings of 12, 19 and 26th on the probabilities that we have submitted to your lordship why should the meeting of the 2nd have been any different. He says that accused no.2 said that there should be a stay-away and that there should be a march to Houtkop. Volume 16, page 773 lines 8 to 18. And that he too uttered words which were capable of meaning that there should be some form of violence against the councillors by saying "Mabathe". Volume 16, 773, line 16 to 19. That it was in relation to the councillors becomes clear later on on the same page, page (20 773, lines 20 to 23. Then he says the people became emotional and they shouted with their fists in the air, "Amandla" and "Awethu" and there was singing of "Siyaya Siyaya". Volume 16, page 773 line 24 to page 773(a), line 3.

Again IC.8 makes a startling concession. Coming to Oupa when he used the word "Mabatha" and having known him not to be a person who is in favour of fighting or involving himself in any fighting "he did not ring a bell to me or it was not clear to me what does he mean when he says "Mabathe". What does he mean by "Mabathe". Volume 23, 1 127, line 26. It would (30

indeed / ..

indeed be surprising if accused no.2 had used these words on the meeting of the 2nd when your lordship has an uninterrupted and complete record of his speech on 26 August saying in effect that the only thing that we really want the councillors to feel is some of the pain the people are feeling who haven't got the rent to pay and there is no suggestion of any violence at all in his speech. It is in fact a conciliatory speech critical of the councillors. Where do the probabilities lie, m'lord? And these attempts of his to place innocent interpretations of words which were hardly (10 capable of innocent interpretations, are capable of two possible conclusions. The one, that he was giving evidence against his friends and that he wanted to soften the blow by giving innocent interpretations, or the other, that he was really compelled in the manner which he has described to please his interrogators over the period of four months. He included these things in his statement and he thought that if he did not utter them he himself would go to prison for five years, as prospect which he did not rejoyce. And what he did in fact was that having repeated his statement he (20 thought well, let us try and make it a little easier. The one may be more probable than the other, depending on one's predisposition or way of thinking but one of the difficulties because of the circumstances under which IC.8's statement was taken, your lordship will never know which of the two and that is why his lordship THERON J says that the evidence should not be relied on. He also says that Kele Mthembu spoke. He did not know what position he occupied in AZAPO and he supports the case for the state by saying that people should stay away from work on Monday and they should not (30

worry if they are going to be dismissed because AZAPO would provide the defence if they were arrested. Volume 16, page 773(a) line 4 to 18. He says a resolution to march to Houtkop on Monday was adopted, that the people who live in the vicinity of the Anglican church should meet there; the other people would meet them in Seiso Street, the main street in Sharpeville. 773, 19-28. He says that nothing was said about what other groups such as those of women and children would do on 3 September 1984. Meetings held in other areas were not mentioned. Now this of course is completely destructive (10 of the state's thesis. Your lordship will find it in volume 16, 773(a): 29; to 774, line 4.

The evidence of accused no.2 was that he did not in fact inform IC.8 of the meeting of 2 September and that he did not meet him at all before that meeting. Accused no.2 denies that he gave IC.8 the idea that this would be a AZAPO, COSAS or VCA meeting. The evidence of accused no.2 is clear and satisfactory in every respect we submit, that this was a meeting similar to the previous two that he, accused no.2 had attended on the 19th and the 26th; and that it was organised by the anti-rent committee. Your lordship will find the evidence of accused no.2 in volume 220, page 11 667 lines 11 to 17 and his cross-examination in volume 227, page 12 027 line 9 to 15. He is supported in this by accused no.3 in volume 232, page 12 335 lines 3 to 16. And by the evidence of Mayekise vol. 313, 17 966 lines 12 to 30. The witnesses for the defence, Amos Nzimanga and Elias Xaba did not even know of the existence of these organisations mentioned by IC.8 although they were present at that meeting. Nzimanga, vol. 342, 19 509 line 17 to 20; Xaba, vol.349, 19 993:18 (30 to / ..

to page 19 994:4. They all depose that there were no banners or placards from any organisation and that the only banner in the church on that day was the one that your lordship saw on film to have been up on the 26th when Mr Kevin Harris filmed this meeting, singing "Hareng sjelete" and "Asinga mali" (?).

Now I have a catalogue of references here. I do not know if your lordship wants them. I want to give your lordship an assurance that they actually bear out those witnesses' evidence and I am sure that that must accord with your lordship's recollection of those witnesses' evidence.

The defence witnesses that I have referred to also deny that accused no.3 uttered the words about Mahlatsi as does accused no.3, accused no.2, Mjeza, Nzimanga and Xaba. Again it is unnecessary I submit, I have the references here but your lordship will recall that all these people denied that anything like that was ever said. Then in relation to what accused no.2 is supposed to have said about the stay-away and the march, the evidence of IC.8 is denied by accused no.2 and the same witnesses and they all deny that (20 he used the word "Mabatha". In relation to Kele Mtembu they again all deny that he spoke on behalf of AZAPO or made any assurances of financial support. What the evidence of all the witnesses is, is that the people of Sharpeville must stand united whenever they have difficulty in order to achieve success and that he mentioned Ratanda and Mohlakeng. He said in Ratanda the people stood united in their call for councillors to resign and councillors resigned. In Mohlakeng the rent increase had been proposed, the community stood united in their call for the scrapping of the increase and (30 their / ..

their complaint about the rent increase was listened to and the rent increase was not put into effect. Again I want to give your lordship an assurance that accused no.2, Mr Nzimanga, Mr Xaba and accused no.3 and Mjeza supported accused no.2 in his denial. No resolution to march to Houtkop on the following morning of the 3rd was adopted at this meeting. A march was never discussed at this meeting and again accused no.3, accused no.2, Mjeza, Nzimanga and Xaba deny this. A mass stay-away was not propagated at the meeting of 3 September 1984 according to the same witnesses. In fact no resolution to stay away was taken at the meeting. The evidence is and there is general agreement among the defence witnesses and IC.8 stands alone against them, that when the question of a stay-away was discussed at the time when Nnana raised her hand with the document, EXHIBIT AN.52 or a similar one, raised her arm up in the air. The evidence is that Nnana informed the audience that she was in possession of a document which was calling for a stay-away. She said that the document contained the resolutions from Sebokeng. Nnana proposed that the people of Sharpeville should adopt the resolution passed in Sebokeng and that the audience was divided on this issue. No.3 stated that he was unable to ascertain the origin of the document after he had studied it. No.3 states further that this was the first time he saw the resolutions contained in this document. He had only heard about the stay-away from rumours and from Captain Steyn. Nnana's proposal received a mixed response according to the evidence. Some of the people were in favour and others were not in favour. I submit that that is a fair summary of the evidence of accused no.3, accused no.3, Mjeza, Xaba and Nzimanga. I

(30

have the references available but I would submit that it is not necessary because although there are little contradictions in their evidence as to whether there was voting by show of hands or acclamation and non-acclamation and other matters the gist of the version is that there was in fact no agreement. Furthermore, accused no.2 noticed that the audience was divided about the question of the stay-away. He suggested that those who did stay away should come to the church the next morning on 3 September. They were going to meet in order to see what could be done further about the rent increase; (10 that accused no.2 stated that he expected that the question of petitions would be taken further as it appeared that the signatures already collected were not enough. Again the two accused and the defence witnesses that attended this meeting support this version. Petitions were once again discussed at the meeting. That accused no.3 announced that signatures collected were not sufficient and urged the people to sign the petitions in great numbers. He also called on more people to volunteer to circulate the petitions. He further announced that the signed petitions would be (20 delivered to his house and furthermore that he announced to the meeting that he was going to be leaving that day and the meeting had to be cut short because there was a synod the next day and the priests had to gather presumably for vespers the night before the synod and that the meeting ended peacefully with the singing of "Nkosi Sikelel'iAfrica" and after the meeting the number of petition forms were still being handed around to be signed for the purposes of being brought to his house the next morning.

Now the issue that your lordship has to determine in (30  
relation/..

relation to this meeting is, was violence advocated at this meeting or not. Was a decision taken to stay away? Was there a decision to march. On the one hand your lordship has what we submit to be a completely discredited witness, standing alone; having made inconsistent statements; having been assaulted; having been told that he has got to stick to his statement or go to prison. And there is against that the two accused and three defence witnesses, coupled with a number of overwhelming probabilities favouring the defence version and completely destructive of the fanciful evidence (10 of this single and unreliable witness. I propose listing the improbabilities in the state version, but your lordship may want..

COURT: Yes, we will take the adjournment now.

THE COURT ADJOURNS FOR LUNCH

COURT RESUMES AT 14h00.

MR BIZOS : My lord, we would submit that your lordship would not require lengthy argument as to why the version of IC.8 in relation to the happenings at the meeting of the 2nd should be rejected and that of the accused accepted for the reasons already advanced, but in addition, what IC.8 says contradicts the main thesis of the state's case, that resolutions were taken for a stay-away and a march on 25 and 26 August. The obvious question that arises is if such meetings were held as the state alleges, why would it have been (10) necessary to have a motion to that effect from accused no. 2 according to IC.8? It does not make sense.

It is also contrary to the suggestion by the state and IC.8 that this was a meeting with numerous organisations. The absence of any VCA speaker at any of the Sharpeville meetings including the one on the 2nd is completely destructive of the state thesis that this was an overall VCA/UDF conspiracy. There can be little doubt that the VCA was the primary community organisation in the Vaal. Its absence from any of the Sharpeville meetings is equivalent to having a (20) wedding without a bride and groom and that does not make sense.

The other thesis of the state is that the 3rd was specially chosen because of the opening of the tri-cameral system of parliament in the Cape. If that was a deliberate date on the state's thesis one of the main parties to that agreement, if there was such an agreement would have been accused no. 3. Would he have arranged it for a day on which the synod would have started?

COURT : What should he have moved? The parliament or the synod? (30)

MR BIZOS/...

MR BIZOS : That is a good question. Perhaps the point was not a good one as we should really thought, but if I may say in self-defence that he might have said well, I will appoint some deputy or other to do this, but I take your lordship's point. The idea of the people of Sharpeville marching to Houtkop, the elderly pensioners, just does not square up with IC.8's evidence.

COURT : Could I just pause there. The distance between Boipatong and Houtkop, is that not further than Sharpeville and Houtkop? (10)

MR BIZOS : I do not remember.

COURT : Because we know that the march was arranged from Boipatong, which did not get off the ground. So, the question of the distance does not come into it.

MR BIZOS : Well, is it further? I do not remember.

COURT : I am not clear. I have an idea it is a bit further.

MR BIZOS : I know that Sharpeville was agreed I think at 15 kilometres. I do not remember Boipatong. I am instructed that in fact Boipatong is shorter, but I do not remember what was on record. I remember seeking an admission and getting (20) some sort of admission in relation to Sharpeville during the cross-examination of IC.8 but it is something that we would ... (Court intervenes)

COURT : Well, we can always look at the map. It is easy enough.

MR BIZOS : The other thing is that the state changed its suggestion at some stage, but I again have no recollection that it was not really to Houtkop, but they were going to take the petitions - yes, they picked up something the course of the cross-examination of one of the witnesses, but the idea (30) is/...

is to go on - keen to prove that there would be a march in Sharpeville. There was a suggestion at one stage by the state that it would not be a march to Houtkop, but that there would be a march to present the petition to the superintendent, again which is just an afterthought during the course of the case, but in truth and in fact there was no march and we will make submissions to your lordship about the credibility of Brigadier Viljoen despite his high rank, that the little bit of evidence that he gave about Seeiso Street with a placard is not supported by the evidence at all, but that was hardly (10) a march. Your lordship did remark during the course of the lengthy cross-examination of one of the Sharpeville witnesses, if my memory serves me correctly by Mr Fick, that your lordship had not heard much about the march in Sharpeville on the 3rd. The whole thesis of the state that all three areas were orchestrated by Raditsela on the 26th, is completely disproved by what has happened in - what is common cause to have happened in Sharpeville and what I want to - but we will deal with this under another heading, also particularly relevant on the probabilities. That there were conflicting reports (20) and conflicting pamphlets about the stay-away.

COURT : Are we coming to that later?

MR BIZOS : We are coming to that later, but I merely add it now because it has - it lends weight to the probability of accused no. 2's evidence that there was uncertainty and that the audience was divided and your lordship will recall that Raboroka and many others really spoke about this conflict. I think we have said enough to persuade your lordship that IC.8's version of what happened at the meeting. Of course there may be criticism of the accused's case - of the (30) accused's/...

accused's evidence or portions of it in relation to all sorts of detail and precisely what Mr Makhela spoke about, being an insurance man, he probably got a plug in or not or he may or may not have, but that is not really the sort of matter that your lordship really wants to start weighing up. The substance of the matter is not there to support the state's case.

I want to go on to make submissions in relation to what was happening on the Sebokeng side on 2 September 1984.

ASSESSOR (MR KRUGEL) : Small Farms? (10)

MR BIZOS : Small Farms and what we say here is that although the state was unable to provide further particulars detailing a specific decision or plan relating to the riots and violence in the Vaal Triangle, if remains a foundation stone of the state case that what he called the marches of 3 September 1984 were decided on and impressed upon the residents of the Vaal Triangle with the object of leashing a chain of violence in furtherance of the overall conspiracy. We will show your lordship later - actually told our learned friends that there was only one march. (20)

Consistently with its inability to plead any such decision or plan the state was unable to lead any direct evidence of any such discussion, decision or plan having occurred at any committee meeting of the VCA, ERPA, AZAPO, COSAS Vaal or any other group in existence in the Vaal Triangle at that time. That in itself in our respectful submission creates a tremendous improbability against the state. If there was such a conspiracy the dramatis personae of that little planning committee could not have been too small. Mohapi could not have been kept out of it. McCamel could not have been (30)

kept/...

kept out of it. Mahlatsi could not have been kept out of it, Mrs Mokoena for what she is worth could not have been kept out of it. Mrs Oliphant could not have been kept out of it. Accused no. 10 could not have been kept out of it. Accused no. 5 has no place in any management structure in the Vaal. So, he may or may not have been kept out.

But there would have to be people who had decided that there would be violence in Bophelong, Boipatong, Sharpeville, Evaton and the various zones in Sebokeng. The state's inability or failure to produce a single witness to give direct (10) evidence of any planning to go over to violence creates in our respectful submission an answerable probability in favour of the accused that the genesis of the violence has got to be sought elsewhere and again, why should your lordship be asked to try and infer from bits of evidence such as a piece of paper not mentioning the name of any organisation that says residents, workers and children, if there was an organisational conspiracy? Where is the evidence? And what we submit is that in contra distinction to the state's inability in this regard, the defence by way of contrast has led evi-(20) dence from a number of witnesses or a VCA meeting at which planning was in fact undertaken in relation to the march and which far from being orientated towards violence, the concern was with a proper and orderly procession of the marchers to Houtkop and the compilation of a memorandum for submission to the authorities at Houtkop. It is submitted that this meeting alone decisively disposes of the state's contentions concerning the conspiracy or violence and underlines the bona fide purposes amongst the accused and their colleagues and the VCA to responsively represent the grievances of the (30) community/...

community to the authorities.

Your lordship has been told already and I do not want to amplify it at great length, but merely to mention it because it is particularly irrelevant to the probabilities, that the violence started from the antipodes of Small Farms. In Bophelong, not in Sebokeng Small Farms and the violence travelled north eastwards rather than in a south westerly direction in which the march was moving.

So much cross-examination was directed to the defence witnesses on this point, but your lordship was constraint (10) to put to the cross-examiner, Mr Jacobs, whether or not the state disputed that this meeting had taken place or not. They answered no, that it was not disputed that it did not take place. Your lordship will find that during the cross-examination of accused no. 8, volume 177 page 9 092 lines 15 to 28.

The origins of this meeting of 2 September 1984 are to be found at the conclusion of the joint zones 3 to 7 meeting on 26 August 1984.

Before I go on, could I ask your lordship for a direc-(20) tive. We had a discussion during the break and we came to the conclusion that - Mr Tip and I - we are in fact not ready to continue with the argument in relation to the 3rd in the manner in which we would want to concisely and having regard to what your lordship has said, to present it in a most speedily and the best possible way. Our learned friends, Mr Chaskalson and Mr Marcus, are ready to present argument to your lordship tomorrow morning. I have another thirteen pages of notes in relation to this.

COURT : What is your speed per page?

(30)

MR BIZOS/...

MR BIZOS : I do not know. It depends on how the mood takes me along the way, because I tend to confine myself ... (Court intervenes)

COURT : What is your mood at present?

MR BIZOS : Because I do not know that, what I really want to say to your lordship is this, that anticipating that this sort of thing may happen, I have a number of what I call fillers in the argument. So, that, I merely want to give your lordship an example in relation to the inference or non-inference to be drawn by the four accused who have not (10) given evidence, which is a straight forward question of law which has got to be argued at some time or another. The probabilities are that I may have some little time left over after I finished these notes now and before sending of Miss Potter to bring many books from the library, which may have to either delay Mr Chaskalson's start tomorrow, well, may be brought here without good purposes and have to be carted back, what would your lordship's view be on the basis of our taking the adjournment as soon as I have finished these notes. I am ready to argue the question of the accused if your (20) lordship thinks that I should. It may run into tomorrow and it may run into all sorts of things. I am in your lordship's hands.

COURT : If it helps you along, we are prepared to take the adjournment as soon as you finish your present subject.

MR BIZOS : Thank you. A brief discussion took place among a number of committee members of zones 3 and 7, at which it was decided that the committee of the different areas should meet on 2 September for the purpose of planning the march and putting forward the grievances at Houtkop. It was (30) agreed/...

agreed that this should apply to all the area committees relation to the Vaal Civic Association and Edith Lethlake undertook to inform the areas of this. Accused no. 8, volume 170 page 8 782 line 11 to page 8 784 line 4.

The meeting was held at Small Farms from 09h00 to approximately 12h30. Accused nos. 8 and 15 were among the people from zone 3. Accused no. 7 and Raditsela attended from zone 7. Accused nos. 9 and 17 came in briefly in order to get money for petrol, so that they could continue their announcements over the ... (Court intervenes) (10)

COURT : Let me just get it right. 8 and 17 from zone 3. Is that right?

MR BIZOS : 8 and 15 from zone 3.

COURT : 8 and 15.

MR BIZOS : 7 and Raditsela from zone 7. 9 and 17 came there in order to get money for petrol. There were two people who were not known to accused no. 8 and 12. Accused no. 11 came and Tsotso were there from Boipatong and there were five other people who were thought to be from zones 11, 13 and 14.

The caretaker of the church Ratibisi was also present (20) and I submit his presence is of some importance to negative the suggestion of conspiracy. There were also another two ladies who came from zone 12 under the impression that this was a mass meeting. They were allowed to stay, again which indicates the lack of a conspiratorial nature of this meeting.

Your lordship will find that this evidence was given by accused no. 8 in volume 171 page 8 790 line 2 to page 8 702 line 11.

Ratibisi volume 306 page 17 570 line 26 to page (30)

17 571 line 5.

The purpose of the meeting was to clarify the grievances which would be submitted to the administration board and for the planning of the march. The meeting discussed the question of increased rent and looked into the resolutions which had been taken at the meeting of 25 August in zone 13 and 26 August in Small Farms and Boipatong. Accused no. 8, volume 171 page 8 793 lines 10 to 23. Ratibisi, volume 307 page 17 613 line 19 to page 17 614 line 6.

Your lordship will recall that we had many members (10) of the choir giving evidence in this case. Some of them were cross-examined at length as to what they saw and they did not see on the Sunday morning. I will not give your lordship those references because they can only go to the credit of the witnesses as to whether or not there was such a planning meeting on the 2nd or not. Once Mr Jacobs told your lordship that the state cannot contest that there was such a meeting then no useful purpose will be served in giving your lordship any reference to the choir - to the choristers.

It is noteworthy we submit that despite the allega- (20) tions concerned in Sharpeville and Bophelong and the supposed co-ordinating role played by Raditsela and the VCA in respect of those areas, there was no mention of the meetings in those areas and it is evidence from the schedule of persons set out in the preceding paragraphs that there were no representatives either from Sharpeville or Bophelong.

If there was any nexus between Sharpeville and VCA Sebokeng and if IC.8 was a truthful and reliable witness, one would have expected him - one would have expected someone at the meeting, at the afternoon meeting of the 2nd at (30) Sharpeville/...

Sharpeville to say this is what was decided at Sebokeng this morning or we have information that this was what happened in Sebokeng this morning or our representatives to the Sebokeng meeting this morning or according to the plan for tomorrow made at Sebokeng, nothing like that was said even by IC.8.

The evidence goes further that zone 3 representatives put forward that a memorandum should be drafted according to the resolutions relating to the rental and the resignation of councillors. This was accepted and a memorandum was (10) drawn. A delegation was appointed at this meeting which was to hand over the memorandum to superiors of the administration board. The members of the delegation were accused nos 7, 8, 9, 11, Raditsela and Tsotso. Accused no. 8, volume 171 page 8 793 line 24 to page 8 795 line 20.

The memorandum was drafted in duplicate, the original to go to the board and the copy to be retained. Raditsela had both the original and the copy and neither is now available. Accused no. 8, volume 171 page 8 794 lines 29 to 30; page 8 795 line 26 to page 8 796 line 4. (20)

There is some speculation on record that these documents may have been destroyed in the fire which gutted the house of Raditsela. Insofar as this is speculation the court cannot be asked to have regard to it. Equally it is submitted that the court can draw no adverse inference from the fact that none of the accused after the events of 3 September 1984 made it his business to seek out the whereabouts of the documents and to place them in safekeeping. Once the purpose of this memorandum, delivery to the officials of the board had been frustrated with the dispersal of the march on 3 (30)

September/...

September 1984, it would have been curious and indeed giving a chaotic state of affairs in the days thereafter for any of the accused to make it his business to establish the whereabouts of the memorandum.

On the probabilities having regard to the accused - I beg your pardon, to the state's Thomaslike attitude in not believing, although there is no evidence to the contrary as to the existence or non-existence of this memorandum, may I remind your lordship that that is precisely what the people in Tumahole did on 9 September. They submitted a memorandum. (10) The submission of a memorandum by people who do not have other ways of expressing themselves is not an improbable thing.

COURT : 9th of July?

MR BIZOS : It was September. There was also much cross-examination as to whether this would be to the councillors or the board or to both. Generally speaking, the evidence was that it was going to be to the board but we submit with respect that many of the state witnesses and I need remind your lordship no more than the evidence of Masenya which I have already referred to, that as far as Masenya was concerned (20) the people who called the shots were the white officials at Houtkop. Why should any of the area representatives the morning of the 2nd think any differently? It covers much of the cross-examination. Did you phone the councillors to make an appointment or did you expect them to be there?

That sort of cross-examination does not carry the case any further. There is an administration for this area at Houtkop. They were going to the seat of the local government so to speak and if Masenya, a court interpreter, thought that the whites at Houtkop called the shots, why should members (30)

of/...

of the VCA be blamed for thinking the same thing? The memorandum according to the evidence sets out the reasons for the opposition to the increase of the rental and it also sets out the reasons for the call for the resignation of councillors. Certain ancillary demands were set out and the document was then signed on behalf of the residents. There was a specific request that if the councillors resign, the administration board should take over the running of the affairs of the township. Accused no. 8, volume 171 page 8 796 line 18 to page 8 800 line 8. (10)

The march was then discussed at length. It was agreed that on the morning of the 3rd people would be chosen who would act as marshalls. There was also discussion of the people who were to lead the march. The order of the march and the placards were to be displayed also formed a subject matter of discussion. The meeting was informed also that the transport people had been written to to inform them of the stay-away. Accused no. 8, volume 171 page 8 700 line 12 to page 8 801 line 6.

There was discussion specifically about what was to (20) happen if the police came across your way or you came across their way. It was agreed that should this eventuality occur the purpose of the march would be explained to the police and they would be requested to allow it to continue. Should they refuse permission, then the people on the march would be asked to disperse. The communication with the people would not end with that, however. The delegation which was to hand over the memorandum would nevertheless still ask for permission to be allowed to proceed in order to do this. Volume 171 - accused no. 8 - page 8 801 lines 7 to 30. (30)

One can only speculate if instead of firing on the march on the morning of the 3rd, senior police officers went up to the leaders of the march and spoke to them, how different things might have been.

Accused no. 8 established that Raditsela had the memorandum in his possession on the morning of the 3rd. Volume 177 page 9 103 to 5.

The appointment of marshalls was held over until the morning of 3 September in order to allow those elderly responsible people who are prepared to give a hand an (10) opportunity to act as marshalls, using the words of accused no. 8. There were to be three persons at the head of the march. One from zone 7, one from zone 3 and a third from any other zone. They were to remain leaders until the march arrived at Houtkop. Accused no. 8, volume 171 page 8 802 line 17 to page 8 803 line 15.

Once the march reached Houtkop the delegation was to go into the offices whilst the other people waited outside. The delegation would then report to those waiting whereafter the intention was to march back into the township from (20) where people would disperse into their different zones. Accused no. 8, volume 171 page 8 803 line 17 to page 8 804 line 15.

The question of who was to speak to the police should they be encountered during the course of the march was not left to chance. It was agreed that Raditsela was to approach the police accompanied by the members of the delegation which was to hand the memorandum over to the board. Accused no. 8, volume 171 page 8 804 line 16 to page 8 805 line 10.

Contrary to the state's thesis that the Reverend (30)

McCamel/...

McCamel had deliberately been sidelined, it was specifically asked of Raditsela whether the Reverend McCamel would be present at this march, to which Raditsela answered that he would not be. Accused no. 8, volume 171 page 8 805 line 21 to page 8 806 line 4.

Again this must be a matter for speculation. The man has lost his job as a priest as a result of becoming the chairman of the VCA and on his own evidence he was more concerned with his personal affairs after he lost his job because his poor congregation could not support him without the regular (10) salary that he had been receiving as a teacher in Bophelong up to February/March 1984.

There was discussion on the content of the wording of the placards and the following was agreed upon: "Asinamali. Away with rent hikes. Councillors must resign." This was to be handwritten on cardboard-boxes on the morning of the 3rd. Accused no. 8, volume 171 page 8 806 lines 5 to 27.

It was at this meeting that accused no. 8 and others learnt about another march which was to come from Boipatong. Interestingly this information came from the people from (20) Boipatong themselves, that is accused no. 11 and Tsotso and not from Raditsela. It was agreed that the march from Small Farms would meet with the one from Boipatong at Houtkop. Accused no. 8, volume 171 page 8 806 line 28 to page 8 807 line 24.

Again we submit that it is significant that on the uncontradicted evidence of accused no. 8 that they should have learnt about the march from Boipatong at this meeting. Taking up a reply that people from zones 11, 12, 13 and 14 should take part in the march from Small Farms, your lordship (30) advanced/...

advanced a suggestion that there had been discussions concerning whether different zones would link up with the march. Accused no. 8 replied that no such discussion had taken place and that a discussion took place around people who wanted to participate in the march coming to Small Farms although there had been some thought that others would join whilst the march was en route. Accused no. 8, volume 177 page 9 098 line 27 to page 9 100 line 4.

It is clear on the evidence as a whole that groups joined the march as it was going along and more particularly(10) the group at the intersection which we will deal with when we deal with the evidence relating to the 3rd.

The suggestion made in the "betoog" that there was no bona fide belief that there would be a march from Boipatong but merely an excuse to get people there, is negatived in our submission by the discussions on the morning of the 2nd of September and indeed this was not put to the people who gave evidence as to what happened on the morning of the 2nd.

At the meeting of 2 September at Small Farms there was no discussion as to whether or not the march would be (20) unlawful. Accused no. 8, volume 177 page 9 105 line 26 to page 9 106 line 3.

Nor did the people gathered on the morning of the 2nd at Small Farms know whether there were any other meetings taking place in the Vaal Triangle during that day. Accused no. 8, volume 177 page 9 112 line 30 to page 9 113 line 4.

An indication of the bona fides of the march organisers in respect of their intention for the march to proceed to Houtkop and for the memorandum to be presented there, is afforded by the evidence of accused no. - the evidence that(30) accused/...

accused no. 7 visited accused no. 9 late on the afternoon of 2 September 1984 in order to inform accused no. 9 that he had been chosen at the meeting as one of the people to present the memorandum to the board and that the members of the area committees were to serve as marshalls. Accused no. 9, volume 180 page 9 277 lines 2 to 10 and accused no. 7, volume 201 page 10 550 lines 17 to 26.

In respect of the content of the discussion and proceedings of the meeting itself, materially consistent with the accounts given by accused no. 7 - were given also by (10) accused nos. 7 and 11 and accused no. 7's evidence is to be found in volume 201 page 10 513 to page 10 515 line 4. Accused no. 11, volume 213 page 11 271 line 1 to page 11 272 line 22.

Accused no. 11 also confirms that he was chosen as one of the members of the delegation which was to hand the memorandum over to the authorities at Houtkop on the following day. Accused no. 11, volume 213 page 11 273 line 23 to page 11 274 line 7.

In relation to the state of mind of accused no. 11 (20) and the events of Boipatong on the following day, it is relevant to note that his understanding of the discussion on the manner in which the march was to be regulated. He records that it was agreed at this meeting of 2 September that there should be marshalls who would be in control of the march and to see to it that people behave in a proper, peaceful and respectful way on the march. It was agreed also that the two marches should depart at such times as to arrive at Houtkop simultaneously. Accused no. 11, volume 213 page 11 274 lines 8 to 24. (30)

Accused/...

Accused no. 11 attended this meeting at Small Farms after having been invited to do so by Edith Lethlake. This invitation included the information that Edith Lethlake had found on her return home after the meeting held at Boipatong on 26 August that a similar meeting had been held at which resolutions have been taken including one concerning the stay-away and the march to Houtkop. As far as she could remember this was the first time that accused no. 11 had heard about the march from Small Farms. Volume 213 page 11 270 lines 13 to 20. (10)

We submit that this evidence warrants the observation that it once more underlines the absence of a conspiracy. It makes clear that neither the co-ordinating and planning meeting of 2 September 1984 nor the notion of marchers orchestrated or at all had been present at the time that the respective meetings in Boipatong and Small Farms on 26 August 1984 got on the way. It may be observed further that there is in fact nothing inherently startling about the fact that proposals for a march should have arisen at both such meetings. Where the frame work of the discussion in the manner of (20) demonstrating dissatisfaction, a matter to the authorities, then the notion of a protest march is an obvious alternative or supplementary step to a simple stay-away. We submit that it would indeed have been a surprise had this idea not presented itself in the minds of one or more persons amongst the hundreds present at each of these meetings.

Die "betoog" cannot really deal with this uncontradicted evidence intelligently. If my memory serves me correctly the main point made was why did you not look for the memorandum or the memorandum did not exist. Well, we submit that (30) there/...

there is nothing inherently improbable about it, but what is important in relation to the meeting is the overwhelming probability that the state is wrong when it says that a mob came together on the morning of the 3rd. If it was intended at this meeting that there should be unbridled violence on the morning of the 3rd, there would have been no talk of the appointment of marshalls. There would have been no talk of the preparation of placards. There would have been no talk of representatives from different zones acting as marshalls. There would have been no talk of representatives of various (10) zones taking the lead on the march and we would submit that this uncontradicted evidence goes a long way to showing that the charge handed in in relation to the Vaal accused, the gravamen of which is that they came together as a mob and spread the violence from Small Farms outwards, cannot be sustained by the evidence.

As indicated to your lordship we would like to frame and particularly make specific references to the "betoog" in our argument relating to the 3rd and I would ask your lordship to adjourn until tomorrow morning when Mr Chaskalson (20) will address your lordship.

COURT : Would you give us an estimate of what further time is required for the argument?

MR BIZOS : We are going to try very hard to finish by the end of next week. We will try hard, but there are questions which my learned friend - I think my learned friend Mr Chaskalson will indicate to your lordship what topics he is going to address your lordship on, but as far as we are concerned, we have to deal with the 3rd in particular and there are ancillary matters and then of course there (30)

is/...

is the lengthy and tedious task of addressing your lordship on the twenty-three areas.

COURT : Who is going to be the culprit in that respect.

MR BIZOS : It is split. I will be doing three or four, my learned friend Mr Tip will be doing some, Mr Yacoob will be doing some. We may draw your lordship's attention that there is more argument in relation to what facts ought to be found proved in relation to the thirty-one area in the "betoog". It is a different quality. With due respect to whoever did it, at least it identifies the issues. We disagree with (10) it but it identifies the issues and submissions there and quotations of evidence. We wish that the "betoog" contains specific matters in relation to the Vaal which really is more germane to many of the accused but I promise not to complain about that again.

COURT : As far as the various areas are concerned, will you have your references on paper, because that will save a lot of time.

MR BIZOS : We hope so and I will most certainly raise it at our meeting. One of the things that we may have this (20) afternoon of course is to get together. We will see if we can have the references on paper. There are of course some of these areas which may be considered - which we may do in greater detail than others, because of the evidence led, like Tumahole for instance where there was some attempt to - with the comings and goings of Mr Lekota. We may take a little bit more time in relation to those, but we do intend adopting the bold approach in relation to the others more distant and more distantly related to any of the accused.

COURT : If you could attempt to pace Mr Fick it will be (30) appreciated.

COURT ADJOURNS UNTIL 24 AUGUST 1988.

## **DELMAS TREASON TRIAL 1985-1989**

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