

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

SAAKNOMMER: CC 482/85

PRETORIA
1988-12-15

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. YACOBS
ADV. G.J. MARCUS

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS :

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COURT RESUMES ON 15 DECEMBER 1988

FURTHER ADDRESS BY MR BIZOS: The submissions thusfar made to your lordship in support of the application for leave to appeal refer to all the accused from the Vaal that have been convicted. In the time available we have decided to address detailed reasons to your lordship in relation to the case of no. 5. Your lordship will see from the submissions that we have to make that in order to do it for all the accused would be a task which we would not have been able to complete, either to prepare or to present. Since we have had your lordship's (10) judgment we have had to prepare evidence in mitigation and do other things. But I am going to deal with accused no. 5 and ask your lordship by parity of reasoning to, by parity of reasoning to apply what we have to say in relation to him to the other accused and to accept that in the time that we have had available we can make substantially similar submissions in relation to the case of the others as we are able to make in relation to accused no. 5. After all it is our task to persuade your lordship that there is a reasonable prospect that your lordship's judgment may not stand in relation to (20) findings of fact and that is what we are busy with now. Now with those matters in mind I will turn to accused no. 5. Your lordship deals with him in Annexure Z at Z30. And your lordship finds him to be of impeccable demeanour and calm but who tells material untruths without batting an eyelid. Your lordship then sets out reasons for that conclusion, some 23 of them in number, and we want to submit that a number of those reasons are not well founded on the record and none of them justify the finding that he tells material untruths. We submit that on the weight of evidence, and more particularly the (30) probabilities/....

probabilities, his version could on the very least be reasonably true and I may say at the outset that although this test is well known in relation to this particular accused we do not, with respect, find it used or the evidence and facts analysed in order to determine whether that is so or not. I will take the reasons seriatim. The first is that it is hard to believe that accused no. 5, the great fighter for the youth, for the youth organisation in the Vaal who chaired all the youth bodies did not know VYCO or its zone 14 branch of which a big banner was displayed at the funeral of Joseph (10) Sithole. I would ask your lordship to read that together with reason no. 8 where your lordship finds that he spoke on behalf of the youth and promised the support of the youth at the ERPA meeting on 26 August 1984. It is hard to believe that there is no organisation of the youth as he said. I think with respect that those two can be taken together for the purposes of argument. Now the submissions that we want to make is that he had no reason to be untruthful. His case is not advanced nor is it damaged by the existence or non-existence of VYCO. There is no allegation, nor any evidence, that VYCO committed (20) any wrongful act in the Vaal, unless he was telling the truth why should he want to distance himself from an organisation if it in fact existed? We would submit that if in fact there was VYCO and it did anything it is passing strange on the probabilities that not a single document, not a single minute, not a single T-shirt, not a single letter or any other insignia relating to VYCO was found either in his possession or in the possession of any of his co-accused or in the possession of any person in the Vaal or elsewhere. That probability has not been examined by your lordship and it (30)

is/....

is possible, we submit, that another court may find that once this was given as a reason for the finding that he is capable of telling untruths that that finding may be disturbed. It is again with regret that I have to submit to your lordship that your lordship's expression "the great fighter" is an expression which may be interpreted as used in an ironical sense which is not warranted in the circumstances. Who was he fighting and how was he fighting? The finding that "who chaired all the youth bodies" is not warranted on the evidence. His evidence was, and there is (10) no evidence to the contrary, that there were small groups

- working towards the formation of the organisation, they rotated the chairmanship and that accused no. 5 had possibly more than his fair share of that rotation on his own evidence. But that does not amount to chairing all the youth bodies in the Vaal. Your lordship will recall the evidence of accused no. 11 that he himself took an initiative in Boiphatong. The evidence of accused no. 11 that there was an independent initiative in Bophelong. Then if we were to read the 8th reason together with this his evidence was that he took this (20) opportunity of speaking there hoping that there would be young people at this meeting in which he was to propagate the idea of a youth organisation to the youth of Evaton. His evidence was that as there were only elderly people there he did not make that appeal. There is no evidence of the existence of an organisation and the inference that your lordship seeks to draw that there must have been an organisation if in fact he was there as a young person to speak on behalf of the youth, there is no reason why his evidence that he spoke in his personal capacity to support the people's struggle in (30)

Evaton because he himself was born there, there is no reason, we may be able to persuade the court appeal that there was no reason why he should be ... Of course I am reminded that in relation to the first one, that he was chairman of COSAS that was at a time outside the period of the indictment but there is no reason, the fact that he chaired COSAS, that the organisation had been formed. But to return to the 8th reason the evidence of accused no. 5 is to be found in 10 791 to 10 793. The other witness who gave evidence about this meeting was Mrs Mokoena. She is, has been described by your lordship (10) as a pathetic witness. Therefore anything that she might have said cannot reasonably be held to validly contradict the evidence of accused no. 5 and your lordship recalls that there was no other state witness but Mayini(?) gave evidence, who was a defence witness and who was conceded to be a bad witness. Your lordship found him to be wholly untrustworthy and he is the only one of, who admitted to having heard of VYCO but he obviously was at sixes and sevens about everything. Then the second ground that the account of his breaking up of the march is unreliable. On perusing the evidence we would concede that there is some criticism to be levelled in relation to the reliability of the witness in relation to that but what we ask your lordship to take into account, that it depends on one's vantage point, that it was a traumatic experience for all concerned, that there was teargas used which affected him and this unreliable account is not a factor which indicates that he tells material untruths. What I would ask your lordship to note that this witness was in the witness box for eight days, subjected to five and a half days of cross-examination, in fact longer (30) than/....

than any state witness was cross-examined by the defence and his evidence runs over 480 pages. That there should be some unreliability in relation to a matter which is really common cause, that the police did in fact disperse the march. The manner in which it was done or if there was some exaggeration from a person who was the victim of teargas and shooting that does not, with respect, that does not support a finding of material untruths. We turn to the third ground. His denial in cross-examination that the police blockade of the road indicated that the police intended to stop the march is (10) ridiculous. With the greatest respect that is not the evidence.

We would refer your lordship to 10 857 in answer to his cross-examiner what he said was that the police would not necessarily stop the march, that they might have asked the leaders of the march where they were going and what did they want and might have allowed them to go on. It is correct that in that passage your lordship will find the usual insistence to a yes or no answer but the accused insisted that that was his belief and that it is not an unreasonable belief. We have evidence that that is what happened in Tumahole after the (20) original trouble and it is not an unreasonable belief for any person to hold. The next reason for your lordship holding that he was an untruthful witness, no. 4, is to be read with points no. 10 and 19 which in our respectful submission is really the same point expressed from a slightly different point of view. The word "gathering" I would submit with respect is somewhat strange in layman's ears. People speak of meetings and marches. His evidence is that he thought that meetings were prohibited but that marches were not and that even if "gathering" was used that it is not synonymous with march (30)

in common parlance. The evidence that he assured the people at the meeting of the 26th that it was legal is equally consistent with his bona fide belief that it was legal, with the belief found by your lordship that he intended to mislead. The next one is no. 5. We submit with respect that your lordship has correctly summarised the position there but what I am asking your lordship to find is that this is not a reason for holding that the witness was untruthful. He was giving evidence about an event which took place three years before in respect of which he could not have been reasonably (10) expected to have perfect recollection. And it does not really advance his case one way or the other to have been untruthful about any of the matters described in that paragraph. Six, on the assumption that after the march he fled from the police, Edith Lethlake as well, this is because the VCA was the leader of the march and of the meetings, it is not clear to us whether your lordship means immediately afterwards or whether the "fled" was went into hiding. I do not know what your lordship had in mind but it would appear that what your lordship had in mind, on the evidence, that he fled (20) after the march. Well everybody fled after the march, everybody went away from there. We do not know why that is a ground. The seventh ground, that his denial that accused no. 7 at the ERPA meeting of 26 August referred to the councillors or the council is in conflict with accused no. 6 who said he did, as did some state witnesses. Now the only state witness there that gave evidence about this meeting was Rina Mokoena. There were no state witnesses. There was only one state witness in relation to this meeting. We have already referred your lordship to your lordship's finding that she was a (30)

pathetic/....

pathetic witness. If we understood yesterday's proceedings correctly your lordship actually did not even grant her an indemnity. No. 6 was rejected as a witness and we pose the question why should his recollection be rejected in preference to that of no. 6 and/or Rina Mokoena? In any event let us assume that his recollection in relation to this is faulty. It is no reason for finding him to be untruthful. Then your lordship sets out his antagonistic attitude towards the councillors and your lordship gives a number of examples. Now that is what he believed, that is what there is an abundance of evidence many people in the Vaal believed. That is the belief that was commonly held according to Professor Van der Walt. Why does the expression of that belief be a ground for rejecting the evidence he gave in court? There would have been valid criticism if he told your lordship that he did not believe these things and your lordship in your lordship's judgment indicated that the people here were not on trial for their beliefs. Honestly and strongly held beliefs expressed in strong or even strident language cannot be a ground for disbelieving an accused. Insofar as your lordship refers to the Evaton situation we submit, with respect, that the evidence puts a different hue on what your lordship has found in relation to the duty of the Community Council vis a vis the freehold rights of the people of Evaton. I want to merely refer your lordship to that evidence on page, I am sorry, volume 208 page 10 925 to 7. Then in relation to the eleventh criticism we would ask your lordship to bear in mind that he gave evidence more than three and a half years later and the only criticism that can be levelled is that his memory was not particularly good on matters which were not so highly

(10)

(20)

(30)

placed/....

placed in the order of importance in this trial. Now the twelfth criticism we submit that your lordship had found, has found that IC.8 is not to be believed unless he is corroborated. Mr Malindi, accused no. 5, denied the evidence. His denial was corroborated by accused no. 13. The evidence of IC.8 is highly improbable and we submit that the probability relied on by your lordship that they would want a poet/writer into this organisation was not, is not really a probability. Why would they want a person who was on his own evidence a member of AZAPO and other matters - we do not want to overdevelop (10) the point. Then in relation to the thirteenth criticism we submit that the criticism is not well founded on the evidence. It is to be found in his evidence-in-chief in 10 780 and under cross-examination in 10 990 to 10 991. In relation to the fourteenth criticism the criticism is not a valid one and we will rely on your lordship's criticism of Mr Jacobs for pursuing the point. May we remind your lordship that exhibit C.103 is an undated document produced from the internal content after his arrest which was 23 September 1983. Your lordship will see that C.103 relies for its information on clippings(20) from The Star, The Sowetan and other newspapers. Oh I beg your pardon, no I beg your pardon I confused it with the subsequent one. C.103 is the COSAS document. I beg your pardon. The one page, I beg your pardon I confused it with the ... And, yes I am sorry, this is where his evidence is that this was not the policy of COSAS at his time. He had not seen it before. Your lordship will find that at 11 041. Your lordship at 11 043 upholds an objection that clarity must be put to the witness that this was a subsequent document and your lordship suggested to my learned friend that you should (30) perhaps/....

perhaps allow the witness to read the document overnight. The matter was not taken any further but there is no reason, in our submission, to have any suspicions in regard to it and certainly it does not add to the reasons that the witness was unsuccessful - I am sorry that the witness was untruthful. Then if we take the 15th reason and the use of the word "child". His evidence that the word "child" is used in different contexts is not unreasonable. Many other witnesses dealt with it on different bases. Your lordship says when pressed stated that he did not regard himself as a child. Your lordship will find at page 11 061 line 12 to 24 that questions were asked by your lordship and we submit that if one has regard to that evidence it does not support the fact that he was an untruthful witness. Now 16 has partly been dealt with by me and I do not want to repeat it. I merely want to mention, I do not want to argue it I merely want to mention the points. Why no. 5? If in fact he was in conspiracy with Raditsela why did he not suggest this during the morning ERPA meeting. The improbability that Raditsela would have left it to chance although in general terms is correct on the facts it is likely that Marupeng, who suggested the march as an addition to the stayaway, may have been the person with whom Raditsela had made this arrangement but that once the proposal for the stayaway was made by accused no. 5 he confined himself to the second leg of the march and we submit that that is not an adequate reason for disbelieving the accused. Seventeen we submit either way is not a vital point. When a witness three and a half years later is asked whether he would necessarily have heard something or not not much can turn on it. Then the 18th point. He is in conflict with accused no. 10 who said that/....

that accused no. 5 referred to the resolution of 25 August, that councillors resign and if not that their businesses be boycotted on the 26th. He denies that the latter part, and that is given as a reason for disbelieving him. But why disbelieve him? Your lordship has found accused no. 10 unreliable and on the general probabilities who is more likely to remember what he himself said. It is not a ground for disbelieving him, more particularly when Mr Malindi, accused no. 5, actually must have given your lordship the impression that he is not one to try and run away from responsibility. Your lordship (10) will recall that in relation to the moving of the resolution to stay away that there was evidence both from no. 10 and no. 8 that he merely referred to the resolution and he did not specifically propose that they should be adopted. Accused no. 5 went into the witness box and said in-chief "I brought it to their attention and I formally moved that it should be adopted". He made his position clear that he was in favour of boycotts so that if it was suggested that his version is, was an attempt to evade responsibility one could understand it but there is no basis in our submission. The 19th reason(20) depends on the rejection ...

COURT: I think you took that together with another point.

MR BIZOS: Yes my lord, the four, no. 4.

COURT: Point 4 and 10.

MR BIZOS: No. 4, yes my lord, I do not want to repeat it, yes. And now in relation to no. 20 your lordship by parity of reasoning in the judgment relating to accused no. 2 said that people coming from zone 3 could not have seen what was going on equally applies to him. I think that the point is made. Then point no. 21, having regard to the disputes as to who (30)

are/....

are children and who are not children and depending from the vantage point of a particular person this is not a sufficient ground for disbelieving the accused in our submission. No. 22, that his brother did not participate was not investigated and there may be all sorts of reasons why his brother did not participate. We do not know what his job commitments were. Once it is not investigated it is not a ground for disbelieving. Then the 23rd reason, as to whether he slept in zone 3. His evidence was that he did. He was not challenged nor was it investigated. But his home - if it were challenged we (10) could have called persons, possibly called persons to corroborate him but it was not challenged. There may have been all sorts of reasons that he was with his friends there the night before, that he got transport in the evening and thought that there may not be transport the next day. There are all sorts of ... Now we submit that that is not a ground. So that to sum up the position it seems that the most numerous and most cogent reasons advanced by your lordship for disbelieving this person relate to his evidence in relation to VYCO and pertinently your lordship finds that he is untruthful (20) because it must have existed. Now I want to refer your lordship to page 767 of your lordship's judgment in which your lordship says:

"On the basis of the above we find that there existed in the Vaal a number of youth organisations for non-schooling youths. This includes Sebokeng. Whether it was formally constituted as VYCO is immaterial. Accused no. 5 was the leader of this group in Sebokeng and accused no. 11 was the leader in Boiphatong. The youth groups, who worked in close association with the VCA (30)

in/....

"in Bophatong and Bophelong associations."

We read this as a finding that it is reasonably possibly that VYCo was not launched. That is all accused no. 5 was telling your lordship and therefore he cannot be disbelieved. In any event what he told your lordship may have reasonably been true. Your lordship will recall the evidence of the calling of the Saturday meeting and the letter, if my memory serves me correctly it is AN.4 on which this meeting was called. So it is clear that it was not formed in June/July, until June/July 1984. If it was not in existence in June the probabilities are it did not come into existence by 23 September when the accused was arrested. But in any event, but in any event once it is conceded as a possibility that it did not there is no basis for the disbelief in our submission. Then he did not try to diminish his role in relation to the formation of a youth organisation and we would submit, contrary to your lordship's general finding, that a young person of his age, giving evidence some three, three and a half years after the events and being subjected to eight days of examination and cross-examination he did not do too badly. Then your lordship deals with this matter in another part of your lordship's judgment on page 760. I will try and do it as quickly as possible by merely referring to the page number and the paragraph and what we submit. On page 761 your lordship finds that your lordship has grave difficulty that COSAS played no role at the meetings of the VCA in 1984 and your lordship says that relying on the evidence of McCamel that there were banners of COSAS at meetings which were attended by McCamel in 1984. The only evidence before your lordship of the VCA meetings attended by accused no. 5 is that he attended the (10) meeting/....

meeting of 25 August and 26 August, in 1984. McCamel was not at these two meetings. The VCA meetings that McCamel attended, on his own evidence read together with his reports, were for the formation of area committees in Bophelong and other zones and we submit therefore that the evidence of McCamel cannot be used to disbelieve accused no. 5 when he said that he did not see any COSAS banners at the meetings which he attended. No one suggested that there were COSAS banners at the two VCA meetings he did attend. Therefore the finding on 761 that he cannot be believed is not well founded, and there (10) is no evidence that there were COSAS speakers despite the entry in a programme to that effect. And your lordship has had enough evidence of people not turning up at meetings. There is also, in relation to this, a probability in favour of accused no. 5 that if VYCO existed in 1984 surely the presence of such an organisation would have been made known by banners and pamphlets and presence at meetings at which McCamel and IC.8 attended. The absence of such banners or pamphlets makes highly probable the young man who accompanied Mamsi(?) to make the banner for the reasons stated shortly before 23 September. (20) Then your lordship's finding in relation to accused no. 5, and it also applies to accused no. 11 on the same page, on the reliance of the VCA on the co-operation of COSAS we would ask your lordship to take into consideration that accused no. 5 was not on the committee of the VCA nor was he privy to any discussions between Raditsela and McCamel. Then on page 762 where your lordship says accused no. 5 had to wait from May 1982 to April 1983 to get the green light for the formation of a youth group in the Vaal from one Mandla, a member of the said committee. This is odd. If it is true it indicates (30) that/....

that the youth movement in the Vaal was neither spontaneous nor autonomous. In fact the witness IC.8 was told in February 1983 at a COSAS meeting by accused no. 5 and no. 13 that VYCO is a branch of COSAS which is active in politics for non-schooling youths. Now may we pause there for a moment that your lordship cannot rely on IC.8. This was denied by accused no. 5 and no. 13 and, having heard the evidence as to how COSAS did not want people who had left school to be in its ranks the evidence of IC.8 that VYCO was a branch of COSAS is nonsense and it should have been rejected. The evidence (10) relied on by your lordship as to what was contained in SASPU National, that some, that the Port Elizabeth Youth Congress was established earlier in the year as part of COSAS policy of creating regional youth organisations does not show that it was formed or that accused no. 5 was ... Then on page 763 your lordship's reliance on Joshua Raboroko that word got around in 1983 that VYCO was going to be launched in 1983. We merely want to say that talk of going to be launched does not equal launch, and in any event that is consistent with the evidence that it was intended to have an organisation. (20) May I have a couple of minutes to finish this section?

COURT: Yes certainly.

MR BIZOS: Then your lordship mentions at page 763 that William Myini(?) of Evaton had heard, I have already dealt with him, that he is a completely unreliable witness and only one of about three dozen who specifically denied that, who said the opposite. Your lordship mentions on the same page AN.4. We submit that that is destructive of the notion that it was formed and that accused no. 5 was being untruthful. On page 764 the statement in SASPU National reporting that over 20 (30) youth/....

youth congresses sprung up does not take the matter any further. It is certainly not evidence that anything happened, of that nature, at the Vaal. And in 1983, and we know that in 1984 the Vaal people were still talking about it. Your lordship again mentions the banner of the 14th. We have already dealt with that on page 764. Then the document that I was confused about earlier is AN.8, page 7, which your lordship deals with on page 764. That is the document which the sources are from The Star and The Sowetan and other newspapers. That he had been a member of the, that the deceased(10) had been a member of the youth congress. First of all it is clear that whatever the admissibility position of SASPU National as proving facts may be very little weight, if any, can be attached to it. In any event he was variously described elsewhere as a member of the VCA and as a member of COSAS. Of course he was, on the evidence, part of the working group of VYCO and it may be in the journalistic style a member of a working group towards the formation may have been too long a matter to report and rather make him a member. Then the, your lordship's statement on page 765: (20)

"To this we can add the press statement of the Transvaal Area Committee of the UDF names VYCO as one of the organisers of the stayaway of the 5th and 6th of November 1984."

This cannot have any effect on the, a document published after, may I continue my lord? A document produced after 5 and 6 November, some months after the detention of accused no. 5 cannot be used in order to show what the state of facts were before he was arrested. The probability mentioned by your lordship at page 765 that at the ERPA meeting of 26 August (30)

accused/....

accused no. 5 promised the support of the youth. This could hardly do if there was no existing organisation. If he was busy trying to form an organisation and if he was seeking support and consistent with his evidence that he was busy forming it there is no reason, we submit, there is no improbability and no reason for disbelieving. Then an acceptance of page 767 of the possibility that it did not exist makes his evidence reasonably true. There was no evidence, nor was the matter put by the state that there was any co-operation between no. 11's doings in Boiphatong with the (10) people in Sebokeng and there was only minimum co-operation between the civic associations of Boiphatong and Bophelong which were in an embryonic form and in any event at the time with the Boiphatong youth organisation. Then the final matter that the birth of these youth organisations, when regard is had to the time thereof, fits in with the call of the UDF for the formation of such organisations and with the same call of the ANC. There is no evidence that the accused no. 5 knew anything about that and in any event if the call was made and there was such a flurry of activity elsewhere (20) in the country, and more particularly in the Eastern Cape, the facts in relation to Sebokeng where accused no. 5 is concerned can only show that either they did not know about the call or if they did know about the call they were very tardy about such youth organisations. I want to briefly refer to the portion of the judgment on which your lordship's reasons are put together for the finding of guilty of accused no. 5 commencing on page 912 of your lordship's judgment. If your lordship looks at the second paragraph:

"That on the 16th of June COSAS memorial service he (30)

spoke/....

"spoke for the formation of the youth group and Masiya, accused no. 22 and Esau Raditsela spoke on the formation of the civic. Two days later he attended meetings in furtherance of these objects and he became a member and co-chairman of the Vaal Action Committee, prepared the ground for the founding of the Vaal Civic Association. He worked closely with Raditsela in respect and it is probable that like McCamel there listened to tape recordings of ANC Radio Freedom programmes and the revolutionary freedom songs."

(10)

And then your lordship gives the exhibit numbers. Now what we want to say about that is that it is a speculative finding. There is no evidence that any of these things happened.

COURT: What page are you on now?

MR BIZOS: 916 my lord.

COURT: Yes, thank you.

MR BIZOS: The second paragraph. There is no evidence of this. The evidence is to be found at 10 897 line 11 to 14. He was asked, he denied it. There is no evidence to the contrary. Now how can such a finding, in our respectful (20) submission, be made on the probabilities in a criminal case without any basis of the evidence. It is possible, and your lordship may be entitled to be suspicious. Your lordship may even be in a position to elevate it to a probability that your lordship has found but in the absence of evidence it is not a fact which can be put into the scale in order to convict the accused. Then your lordship says:

"Accused no. 5 testified that in 1983 he became religious. We have only his word for it."

Well we will leave that there. It did not affect his (30) attendance/....

attendance at political meetings it seems. Well in it, in our respectful submission, there is a judgment that has something wrong with it. Why should he not have and why does that make him, is that a fact which is dealt with on the summation of the reasons for his conviction? He participated in the VCA's, VAC survey to test public opinion and to do the groundwork for the formation of the civic association. Yes. But what adverse inference can this have. In fact it is destructive of the state's submission that they were merely to arouse people's feelings where no grievances existed. This is what he him- (10) self has said. He took responsibility for his actions. We do not know, with the greatest respect, why your lordship finds that as a ground which leads to a particular conclusion. Then the final paragraph on 916, the finding of fact is correct but it is common cause that the urging of accused no. 19, at the bottom of page 916 my lord, the urging of accused no. 19 was for the formation of a UDF area committee was rejected and he was told that, 19 was told that the civic association would decide whether or not they would affiliate. Then on page 917 your lordship will find the evidence that he only came there (20) at the very end of the meeting, having attended a wedding. Your lordship will find that at 10 775. And he was corroborated by this, in this by Mazibuko. The next paragraph is a correct statement of fact but the question arises, if a person believes that the candidates are oppressors why should he not say so, and why does that show any adverse fact supporting a conviction? The next paragraph we submit, with respect, does not correctly set out the facts and your lordship will find the evidence, this is the one in November 1983, your lordship will find the evidence at 10 779 line 16 to 10 780 (30)

line/....

line 7. But let us assume that he asked embarrassing questions and let us assume, well we know that he did not vote in the elections. It is his right to do so and that furnishes no reason why he should be convicted.

COURT: Well what do you say is wrong with the statement?

MR BIZOS: No, the embarrassing questions were not by him.

COURT: Is that the complaint?

MR BIZOS: That is the complaint. That he did not vote, that he, I am sorry I should have made it clear. That he did not ask the questions. But even if he did we submit (10) that there is nothing wrong with it. Then the next paragraph about participation, at the Raborapi(?) Festival where some of the councillors were referred to as disciples of evil. It may be exaggerated language, it may even be in bad taste, it was done in the presence of the security police, no action was taken, no trouble arose out of it. Why should it be used in a judgment on convicting an accused of terrorism. He spoke at the COSAS meeting on June 16, commemorative meetings in 1983 and 1984. Well again it only shows that he is a person who was interested. But why should that - he acknowledges (20) it, it does not affect his credibility. Then on page 918 he wholeheartedly supported the UDF. We would have no quarrel with that, but worked for affiliations of organisations to the UDF, there is no evidence on. The evidence in relation to affiliation, if your lordship wants them I have them, were not as your lordship has set it out. Your lordship will find that at 10 767 line 30 to 10 768 line 14 and 10 972 line 28 to 10 903 line 10. He is an adherent of the freedom charter. Why is that a fact to be set out in a judgment finding him guilty of the type of terrorism that he has been found (30) guilty/....

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