

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(TRANSVAALSE PROVINSIALE AFDELING)

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DELMAS

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DIE STAAT teen:

PATRICK MABUYA BALEKA EN 21

ANDER

VOOR:

SY EDELE REGTER VAN DIJKHORST EN

ASSESSORE: MNR. W.F. KRUGEL

PROF. W.A. JOUBERT

NAMENS DIE STAAT:

ADV. P.B. JACOBS

ADV. P. FICK

ADV. W. HANEKOM

NAMENS DIE VERDEDIGING:

ADV. A. CHASKALSON

ADV. G. BIZOS

ADV. K. TIP

ADV. Z.M. YACOOB

ADV. G.J. MARCUS

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS:

LUBBE OPNAMES

(IN CAMERA GETUIE)

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11

COURT RESUMES ON 30 JANUARY 1986.

COURT IN CAMERA.

FRANK XOLAMBANE, still under oath (Through interpreter)

CROSS-EXAMINATION BY MR BIZOS : When did you go out of South Africa? -- 23 July 1983. From Zimbabwe.

And when did you join the ANC? -- I was recruited in Zimbabwe.

And you came back to South Africa when? -- 20 February 1985.

How much time did you spend in camps being trained? --(10) From February to the beginning of August.

Approximately six months? -- That is so.

I know that you have described yourself as a soldier and you told us that you did not know much about politics? -- That is so.

But in the camp did you not have political training? -- I was trained in that.

And from what we have heard in other cases this includes an extensive course in political economy? -- That is so.

And an analysis of the South African situation? -- (20) That is so. In fact, what became important to me was the military, why because I had left South Africa legally. So, they were in a hurry that I qualify in my training as soon as possible, because they wanted me to return to South Africa and come and train people here.

Listen to what else I am going to suggest to you this course consisted of. The differences between capitalism and socialism? -- Is that what you want me to tell you?

No, I do not want you to tell me. I merely want you to tell His Lordship whether or not those are the matters in (30) which you were taught about? -- Yes, I was.

You were taught about monopolies? -- No, I was not.

Any way, you see, was your training the same as anyone of the other recruits? -- No, it was not the same, the reason being that some of the recruits there were new and in fact had to undergo some crash courses first and me and my group were the people to whom they were concerned more as they wanted us to come back as soon as possible.

You see, when you were asked about what political training you received by the prosecutor in your evidence-in-chief, why did you only mention the UDF? -- Those are the people I was (10) suppose to train in this country. That is why it was stressed on that.

I am going to suggest to you that the question that was then asked did not relate at all to what you were going to do in the country and we will come to that, but you were asked whether you had any political training and the only political training that you mentioned was the UDF?

MNR. JACOBS : In billikheid teenoor die getuie. Dit is miskien net die aanklaer wat vir hom op daardie aspek gevra het. Ek het hom nie gaan heeltemal uitvra op sosialisme, kapitalisme(20) en daardie hele ding nie. Hy was gelei na die deel van UDF toe.

MR BIZOS : Does Your Lordship wish me to reply to the objection?

COURT : You can put the question.

MR BIZOS : Thank you. You were asked what sort of political training did you receive and you said mainly about the UDF?  
-- That is so.

COURT : To be correct, the answer was "Meeste van die tyd is ons opgelei aangaande die UDF."

MR BIZOS : I am indebted to His Lordship, it is even stronger than I have put it to you? -- That is so, most of the time,(30) that is my evidence.

Were you not given books about the history of the Soviet Union? -- There were books. Sometimes the instructor would, when he has time, give us the books. In my group we were eleven in number and we were the people to whom they concentrated more about training, because they were in a hurry to get us back to Zambia in order to get back to South Africa and train people. That is why my group was sort of chosen.

Just answer the question, please. Were you given books by different authors on the history of the Soviet Union? You told us yes? -- Did I not answer that question? (10)

Yes. Were you given books on the revolution in Cuba? -- We read those books in the library. They are available.

Were your instructors concerned to teach you about how those revolutions succeeded? -- He used to tell us, yes, how it succeeded.

What I want to ask you is this. When you were asked the wide question what sort of political training did you receive, why did you not mention those things?

COURT : Yes, that is now entirely fair, because the previous answer before he answered that was "Terwyl ek in Kashito (20) politiek opgelei is, het ons instruksies ontvang oor organisasies in Suid-Afrika. Meeste van die tyd is ons opgelei aangaande UDF." Can it not be that that answer relates to organisations in South Africa?

MR BIZOS : With respect, the question was - the answer was that they received political training and military training and then the question was what sort of political training did you receive, but I will not pursue the matter any further. I think, with respect, that whatever point can be made, can be made on the evidence as it is. (30)

Other than the two books that you have mentioned to us

yesterday, that is the Eye and the one issue of UDF News and possibly the showing of a film in Zambia, was there anything else that you were taught about the UDF? -- The only training I received about UDF was the training at the camps and when I was given the mission to contact Mohape, who was in turn going to make people available for training and then mine was just to train those people.

The question was whether, except for the two documents that you mentioned and possibly the cassette, the video, was there any other documentation or anything else besides (10) what you have told us, that you were told about the UDF? -- No.

Let us deal with your (coughing) I assume that you were carrying out the policy of the ANC to try and give crash courses to as many people as you possibly could? -- Yes.

Are you going to tell us that you would only train people who were in the UDF or if you found a prospective recruit that you satisfied yourself would make a good ANC soldier or a good MK soldier, you would recruit him irrespective? -- My mission from my commander Bushy - from Honey was that I must contact a person by the name of Bushy Mohape, who is a (20) member of the UDF in the Northern Cape and that person was going to make people available to me for training. That is UDF people.

But why would they have to be UDF people? -- Mine was just to take the instruction from my commander as a mission to go and carry out. As to why it should be UDF people only, I had no right to question that.

But are you sure that those were your instructions that you only had to recruit UDF people or the people that Mohape introduced to you, that they were members of the UDF or not?(30)

MNR. JACOBS : Net dat daar nie latere verwarring kom nie.

Ek glo nie die getuie het gesê hy moet mense kom werf nie, want My Geleerde Vriend het nou gestel "recruit people".

COURT : To come to train people supplied by Mohape.

MR BIZOS : Yes, well, I used the word recruit loosely. Why did you believe that you had to confine yourself with the training of UDF people only? -- I repeat it again. My mission was to meet one Bushy Mohape in the Northern Cape, a senior member of the UDF. He is the man who is going to make people available to me in order to train me.

Would you agree that from the point of view of security(10) people with any sort of political profile are more likely to receive the attention of the security police? -- That is correct. That is what they told us.

If you went about training people who were UDF - who had a UDF profile, whether high or low, the chances of discovery by the security police of the people that you have trained would have been greater? -- My Lord, they could discover me, though they did not have a chance, but if they discovered me, it is that they would have discovered me. A soldier will always die in the war. (20)

That is a sentiment which I do not want to comment on, because I would thought that you would want to live, but what I am asking you is, that if you confined yourself to training UDF people ... (Court intervenes)

CCURT : Just a moment. Do you want all that interpreted to the witness?

MR BIZOS : Yes.

COURT : That you would not like to comment on the sentiment et cetera, et cetera?

MR BIZOS : No. (30)

COURT : Because strictly speaking it all has to be interpreted.

It wastes a lot of time and it gets us no where. It can be interpreted, Mr Bizos?

MR BIZOS : I do not want it interpreted.

COURT : What is the question?

MR BIZOS : The question is, not your willingness to die, the question was that if you trained UDF people, they would be more easily exposed to the security police? -- That I do not know.

And is it not a rule that MK people must not become involved in the open political activity and thus draw attention to themselves? -- That is so. (10)

So, going about recruiting UDF people for training here in South Africa, would in some respect lead to violation of that instruction?

MNR. JACOBS : Ek herhaal weer my beswaar. My Geleerde Vriend stel dit weer dat "recruiting people in South Africa." Die getuie het nog nooit gesê dat hy het gekom om mense in Suid-Afrika te werf nie en om 'n stelling te maak dat as hy mense werf, dan stel hy sy sekuriteit in gevaar, is nie wat hy gesê het nie. (20)

COURT : The witness said he came to train people. Why can you not just cross-examine him on that basis?

MR BIZOS : I will use an even more simple expression which will please My Learned Friend and that is do "crash courses". I think that is what the witness said. If you gave crash courses to people with a political profile and they became members of MK in the country after they had these crash courses, it would have been a violation of the rule that people with high political profiles should not be involved in MK? -- My mission as I said was to contact Bushy Mohape, who was going to make people available to me, who I was suppose to (30)

train on crash courses during the time that I was going to be here and I was not going to be here for a long time. I was given only five weeks to do that.

COURT : What is MK? -- That is Mkhonto we Sizwe.

A person who does a crash course, does he become a member of MK? -- That is so. Another thing is, knowing that I come from outside the country, I would not go and attend meetings where UDF or COSSAS was holding a meeting. I knew that I was supposed to be underground.

MR BIZOS : So, the choice of the recruits would really be (10) Mohape's and not yours? of the trainees, I do not want to use the word recruits. -- Who was brought there for this training, had nothing to do with me. Mohape was the only person concerning that.

If I understood your evidence correctly this morning, you say that there was a hurry to get you back to South Africa to do crash courses? -- That is so.

When was that decision taken to your knowledge that people should be sent into the country for crash courses? -- Before I went to Angola to the camp from Zambia. (20)

And did I understand you correctly that your commanders were in a hurry to get you trained as soon as possible so that you could come back to South Africa for that purpose? -- That is so.

Well, in view of that, in that great hurry, how come you spent three weeks being a chauffeur in Zambia? -- It was because I was waiting for my mission. They were busy making contacts with Mohape. That is what delayed me. Because the position was that I was supposed to go straight to him, that is Mohape and not go about looking for people like I did, (30) which resulted in my being arrested.



Did you have a travel document? -- Yes, I had one.

What sort of document did you have? -- I still have it. A South African travelling document.

And a reference book? -- I left it at the office, because they take possession of the reference books.

Was that a South African travelling document which was issued as a result of an arrangement in the Ciskei or the Transkei? -- My travelling document was a South African document, but when I left for Zimbabwe, I was using the Ciskei one. On my return I used the South African one. (10)

Were you given any instructions that you should not be caught out without a travel document or proper identification? -- That is why I had my passport all the time. Wherever I was, I had it with me.

Was that a specific instruction to all cadres? -- That is so.

And you were also given instructions not to go to high profile UDF people? -- That is so.

Would you consider going to the head-office of the UDF a violation of such instructions? -- Yes, that would mean (20) I have violated that instruction.

Are you sure that the only reason why guns were thrown on you was you because you asked for the UDF office and because you could not speak Sotho? -- In the first place a person who is a stranger somewhere, this person can easily be identified as a stranger at a place. He is not a person who lives there and my way had to pass the police station. That is the direction that I was walking. I had to pass the police station.

Was it a Black or White policeman or more policemen that you came across? -- It was a Black policeman who was working (30) for the security police.

And did you have hand-grenades and a fire-arm with you?  
-- These I had in my bag, that is the hand-grenades and the AK. In my possession I had a Makarov pistol and twee magazines, meaning one in the pistol itself and the pistol was cocked and the other one was in my possession.

Tell me before you set off from Vryburg to Kimberley, did you enquire whether Mr Mohape was a one-man show in Vryburg or whether there were other persons around him? -- My mission was to go and meet Mohape at this particular place. On my arrival there I only discovered that Mohape is not there. (10)  
On that then, on my own initiative I then said to myself the next big town here is Kimberley. So, then, let me go to Kimberley. There must be a UDF office there.

Did you not try to ascertain whether despite Mr Mohape arrest, there was a UDF present in Vryburg, another office there besides Mr Mohape? -- If I may explain something on that.

Yes? -- The position here with a mission is that whenever you have to meet a person at a certain place on a mission and you come there and do not find this person, you must use (20) your own initiative. In fact, you must make it a point that you leave that place as soon as possible, because you do not know now whether this man has now changed, he has decided to work for the people who are enemies to you. Therefore, that is why one does not go about asking. Those are the instructions we get.

So, would it be correct then to describe your mission as a very special mission to meet Mr Mohape only? -- Yes, my mission was only to meet Mohape, who in turn was just to bring me the UDF people to train. That is all. (30)

You see, I am going to suggest to you the reason why you

call them UDF people is because you have been made aware that the leaders of the UDF or some of the leaders of the UDF are in this dock and we cannot go to your commander to ask him for instructions to contradict you? — Am I now to answer that?

Yes, please? — In the first place, nobody told me about UDF here, except that the defence is now telling me that amongst the people in the dock there are UDF people. Otherwise they are all strangers to me. I do not know them. Not only a single one of them is known to me from the people there.

So, you knew so little about the UDF when you were (10) outside, that you did not know who the general secretary of the UDF was? — We were bring given lectures about the UDF. I knew at the time from the lectures what portfolio is held by whom at the time there, but I have since forgotten who is holding what position. Secondly, the only people from the UDF I could identity then were those that I saw on the video cassette and in fact now, as I am standing here, I doubt very much if I will be able to identify them if I were to come across those people I saw on that video cassette.

Did you not ask anybody before you went into the (20) witness-box, just out of curiosity what sort of case is this that I am expected to come and speak about my doings out of the country? Did you not ask anybody? — No, I did not ask anybody. I am staying all by myself at the place where I live, except from my wife and my children of course.

Do you not, as a free man, read the newspapers? — I do.

Did you not see in anyone of them reports about this trial in the town, the strange town that you were coming to to give evidence? — I read about that.

And did you not connect the reports - the newspaper (30) reports, that it was being held in Delmas and that you were

told that you were going to come to Delmas to give evidence?  
-- I am here to give evidence of what I know. What I read about in the papers or not, does not in fact have any bearing on my giving evidence. I am here to tell about what I know and if I do not know, I will tell you I do not know about that.

You told us that you did not know what the case that you were going to give evidence in was about? -- About this case, during November 1985 a White man came to my residence and this person was sort of investigating about what I was doing (10) outside the country, on which I related to this person what I was doing outside the country and I even told this person how I came back here and what the purpose of my coming back was. That was the last time I saw that person.

Were you a free man when this person came to ask you these questions? -- Yes, I was released in July from jail. I was a free man by then.

Had you not mentioned already in any statement what your purpose in South Africa was before your release? -- I had mentioned that while I was still in detention, because I had (20) no chance, because the guns were also there.

For how long did you remain in detention? -- From 22 February until 17 July.

When were you told that you would have to come to court to give evidence? -- A person came to my residence there and told me that I will have to come here to this court and on which then I said to the person "Look, I do not have money." That is after he had told me that I will have to come and testify here. I said to him "I do not have money, because I am not yet employed. I had just completed forms. I want (30) to join the police force."

COURT : The question is, when were you told that you had to come and give evidence in this trial? -- It can be two weeks back.

MR BIZOS : In the indictment, the charges against the accused, the allegation is made ... -- Which one?

That people in your position, if you wanted help, you should approach the UDF, but not at a high level, because they may be watched. Does that accord with your instructions? -- That is so.

Did you in your statement either in the one which you (10) made to the police - the police officer who approached you after your arrest - or in the statement that you made whilst under detention, mention that you had come to give "crash courses" to members of the UDF? -- Yes, in my statement prior to my release, it was mentioned. It is contained there.

Prior to your arrest? -- Yes.

And in your statement that you made to the police officer? -- I think it must be contained in that as well, because this is long back now. My memory is a bit poor about that.

Did you ever go to Kuruman? -- No, I have never been (20) to Kuruman. I do not even know how it looks like there.

Could you give us some idea of the distance between Vryburg and Kimberley? -- No, I do not know.

ASSESSOR (MR JOUBERT) : How did you go there? By train? -- From Vryburg to Kimberley? -- From Mafikeng to Vryburg by train and from Vryburg by lift to Kimberley. That I did because the guy that I was suppose to have met at the station, did not show up at the station. Therefore I decided to change now and make use of a different kind of transport. What the distance is between Vryburg and Kimberley, that I do not (30) know, but I paid R8,00 fare from a pirate taxi.

MR BIZOS : From whom did you receive the information that Mohape was arrested? -- I did not know that before I had to write my biography and related to the people there why I was here and who I was suppose to meet. After having written that I was told that "You know the person that you were suppose to have met there, is in detention." That is how I came to know about it.

Do I understand that answer to mean that you did not know that Mohape was arrested before you left Vryburg? -- No, I did not know that. From the information that I got from the (10) security police at Kimberley, they said to me Mohape was detained just before I came.

My Lord, two of our attorneys undertook to see two different persons. Although attempts were made last night, they were not entirely successful. I was hoping that they would be here by now, but they are not yet here. I am in your Lordship's hands.as to what to do about that?

COURT : We cannot wait indefinitely and I am prepared to have the witness stand down and be replaced by another witness.

WITNESS STANDS DOWN. (20)

COURT ADJOURNS. COURT RESUMES.

FRANK XOLAMBANE, still under oath

CROSS-EXAMINATION BY MR BIZOS (continued) : I just want to get some clarity. You told us that at the end of October you left Zambia and you came to Zimbabwe? -- That is so.

That is October 1984? -- Yes.

Did you wait in Zimbabwe for approximately three months before coming over to South Africa? -- That is so.

You did not go back to your job of being a driver again in Zambia after the end of October 1984? -- No, I did not. (30)

Not even on an occasional basis? You were no longer

Mr Slovo's driver after the end of October 1984? -- No, I was not.

Well, I am going to put it to you that you deliberately lied about Bishop Tutu. -- There is no such. I am telling the truth.

And I am going to put to you that it is easy for you to give evidence that cannot be checked, and where evidence can be checked you will be found to be completely untruthful? -- I am telling the truth.

If your evidence is true, then Bishop Tutu and Mrs (10) Tutu must have been in Zambia between August and October while you were Mr Slovo's driver? -- I am not sure of the exact date. I said yesterday that I did not know exactly the date that he was there.

Yes, but I did not ask you about the date. You have committed yourself that this was between August and October? -- Yes, during that period, those months.

And if I were to put to you that during that period Bishop Tutu was visiting professor at a prestigious university in the United States, what would you say? -- That I do not (20) know.

And if I were to tell you that he did visit Zambia towards the end of December 1984 as a guest of President Kaunda, what would you say to that? -- Yes, he first had a meeting with President Kaunda at the State house and then thereafter they had a secret meeting. That is when he was now leaving.

If you were in Zambia in December 1984 at least a portion of your evidence may have been correct, because Bishop Tutu ... -- I am telling the truth.

Because Bishop Tutu publicly stated that he had met (30) the executive of the ANC whilst he was in Zambia? -- Well, he

may have said that or he said that, but he did not explain what the discussion was about, because this was a secret meeting and I could not ask Slovo, nor could I ask Tutu what was the meeting about.

Do you recall that when Bishop Tutu went to Zambia, wherever you might have been, that there was an announcement that Bishop Tutu had met the executive of the ANC? -- I was during that time in Zambia, myself. It was said in papers that Bishop Tutu will have a meeting with the executive of the ANC including Slovo, Thambo, Alfred Nzou, Moise Mabida, all of (10) them. Their drivers were there. We were all there as drivers.

I am going to put to you something else, that Bishop Tutu says that he has never had the pleasure of meeting Mr Joe Slovo? -- I am going to explain to you as follows. I drove Slovo to the airport. On arrival there Thambo's vehicle also arrived. This was escorted by two other cars, one in front and one behind him. I was in fact at the time serving as a body-guard to - a body-guard and a chauffeur to Slovo. Why I say this is because I always had my AK with me.

Let us just examine this bit of evidence that you have (20) given. Do you agree that when Bishop Tutu came to Zambia - when you say you were present with your AK 47 - that there were newspaper people there and television cameras and that it was an event? -- As I said, we only brought Slovo there, and had to make sure that he is safe and then went out. What was happening inside we do not know. Whether there were press people inside, I cannot tell, because I did not see who was in there. We, the drivers, including Thambo's driver and Nzou's driver, remained outside.

Why did you leave Mr Thambo out when you said that (30) Bishop Tutu met Slovo? Why did you leave Mr Thambo out? --



I said I had gone to drop Slovo there, because it was an executive of the ANC and he is an executive.

Do you agree that Mr Thambo is the head of the ANC? —  
Yes, I do.

Why did you not say that "I went there with Mr Slovo for Bishop Tutu to meet the president of the ANC, Mr Thambo?" —  
I am talking about the person that I was driving, that is Slovo.

You see, because I am going to put to you that that evidence was given, not because it had anything to do with this case, (10) but in order to try and embarrass Bishop Tutu in the eyes of at least a portion of the South African public?

MNR. JACOBS : Ek maak beswaar teen die stelling deur My Geleerde Vriend. Die suspisie word nou op die Staat se mense gegooi dat ons het nou hierdie getuienis aangebied om hierdie dinge te doen. Dit is nie die doel waarom die getuienis aangebied was nie. Hierdie getuienis was lankal beskikbaar gewees. Dit is gelei om 'n deel van die saak uit te maak.

COURT : Are you, Mr Bizos, accusing the State or are you accusing the witness? (20)

MR BIZOS : The witness.

COURT : But on what basis can you accuse the witness as he was being led by the State prosecutor? He did not volunteer this evidence.

MR BIZOS : With the greatest respect he, knowing that the president of the ANC was at the meeting, shows only one person to mention. This is the basis upon which I put it to him. I am not going to mince my words about it. We submit with the greatest respect ... (Court intervenes)

COURT : I am not waiting for a submission, I just want to (30) know, are you accusing the witness or are you accusing the

State? You say you accuse the witness?

MR BIZOS : The witness.

COURT : Of what exactly do you accuse the witness?

MR BIZOS : That he falsely alleged that there was a meeting between Desmond Tutu - Bishop Desmond Tutu and Mr Slovo, for a purpose not connected with the issues in this case.

COURT : Well, put that to the witness.--The question yesterday was put to me whether I saw any South Africans there, as a result of which then I mentioned three names of the people who are South Africans that I saw there. (10)

MR BIZOS : The question was - my question is, when you mentioned Bishop Desmond Tutu's name, why did you single out Mr Slovo as the only person that he was suppose to have met to your personal knowledge? -- It is because I had taken Slovo there.

Did I misunderstand your evidence that you actually went to the airport in order to take Bishop Tutu and Mrs Lea Tutu from the airport? -- There is no such.

You did not have anything to do with Bishop Tutu or ...  
-- I had nothing to do with Bishop Tutu. (20)

And insofar as your evidence might have suggested that you had personal knowledge of the fact that Bishop Tutu met Mr Slovo himself, what would you say to that now? -- He met Thambo, Alfred Nzou and the others, but why I had to mention Slovo is because I am talking about the person I took there.

I want to read to you Mr Tip's notes of your evidence-in-chief "Terwyl jy sy drywer was, moes jy hom neem na spesifieke plekke en ontmoeting met persoon in RSA." "Ja, ek het." "Wie en waarheen?" "Na Zambië International Airport waar hy Desmond Tutu en sy eggenote ontmoet het." "Was daar openlik n (30) gesprek?" Then My Learned Friend recorded the answer in

English.

COURT : It was given in English.

MR BIZOS : "It was a secret meeting. They were the only ones, they remained in car."

COURT : Just a moment "It was a secret meeting. We were not allowed to enter there. We remained in the cars." We. So, there were more cars than this specific car.

MR BIZOS : If this meeting between Bishop Tutu took place towards the end of December you could not have been there. Do you agree? -- What I know is, I drove Joe Slovo to a (10) meeting. When this meeting was exactly I cannot tell.

Do you know how far this meeting was from the place where you parked the car before the end of October? How far did you park your car from the spot where this meeting was suppose to have taken place in October? Or During the period August to October? -- At the parking place.

The actual meeting that took place between Bishop Tutu at any time, do you know how far away from the parking place it may have been? -- No, that I do not know.

Do you recall whether at the time that you say that (20) this meeting took place, the Nobel prize had already been conferred on Desmond Tutu or not? -- I do not know.

At the meeting where you say you were, where you parked your car in the parking lot, when - did you see Bishop Tutu and his wife going into the airport? -- Yes, I did.

Did you see Mr Oliver Thambo going into the airport? -- I have already said, in fact in details that we were already there when Mr Thambo's car arrived, being escorted by two other cars. His car was in the middle of the two while they were arriving there. (30)

Did it stop at the main entrance to the airport? -- Yes,

that is where he got off with his two body-guards.

Was that presumably the car that was carrying Bishop Tutu?

-- No, Bishop Tutu was already there.

Did the car that brought Bishop Tutu also stop outside the main entrance of the airport? -- Yes, it was also there outside.

Were there any newspaper men and television cameras? -- I repeat again, in answer to the question, I did not see the press people and the other activities there.

Can you describe whether Bishop Tutu came there in a (10) State car or not? -- No, it was not a State car.

My Lord, we have not been able to get any instructions in relation to the evidence of this witness of Mr De Jongh. In view of the admission in relation to the ANC conspiracy, we do not know why the evidence was led and as we have had no instructions, we do not know what to do.

COURT : Have you tried the Netherlands Embassy?

MR BIZOS : It is not so easy to get there. The attorney was suppose to try and see him, but in view of the admission - but we are concerned and we are concerned that we do not (20) leave unchallenged that which can be challenged. Perhaps, the best basis of dealing with it is for me to move in view of the admission that the evidence be struck off. Then it cannot be suggested ... (Court intervenes)

COURT : But you cannot move for evidence to be struck off because it is admitted. It is not irrelevant and on what basis can you ask that it should be struck off? It may be a waste of time. That is a different matter, but it is not irrelevant.

MR BIZOS : Once an admission - I do not want to have a semantic argument with Your Lordship, but once an admission is made (30)

then perhaps irrelevant is not the correct word. Redundant perhaps is a better word.

CCURT : There is much, too much redundant evidence in this case and there will be lots of it. I am afraid I would not be able to strike it out.

MR BIZOS: Well, we have made our position clear. I do not think that we should take up any more court time in order to try and get an instruction in relation to that matter. There are just one or two other matters that I want to put to this witness. (10)

I want to give you an opportunity to deal with what appears to be a contradiction in your evidence. Yesterday you said that on arrival at Vryburg you found that Bushy Mohape had been arrested and you therefore proceeded to Kimberley? -- Yes.

This morning you said that you did not know that Bushy Mohape had been arrested at the time of your arrest in Kimberley. Can you explain that contradiction if the records shows that that is what you said? -- I only came to know about Bushy's arrest or detention after I was arrested. If I ever said (20) that yesterday, that I knew about him having been arrested before I left Vryburg, then I must have made a mistake or it was just a mistake which I cannot explain, because at Vryburg I did not even make enquiries about him, I did not ask anybody there.

So, your mission was, so to speak, Bushy Mohape or nothing? -- My mission was to meet Bushy Mohape. If I cannot find him then I take my own initiative as a soldier.

As a body-guard and driver to Mr Slovo, would you agree that you yourself must have been a fairly high profile person?(30) -- No, that is not the way it works.

Did you not think that perhaps the security police in South Africa would have information on you in view of the fact that you drove Mr Slovo all over the place? -- No, I never thought of that.

Did it ever occur to you that the pulling out of the guns on your arrest may not have been just a matter of chance? -- That is why I surrendered.

Is a Ciskei passport recognised in Zimbabwe where you say that you went into it with? -- My Ciskeian passport is in fact in this way. I went to the representatives of the Ciskei(10) that is in Main Street, Port Elizabeth, where I was given forms then referred to Dönges House ... (Mr Bizos intervenes)

I am sorry to interrupt you. It was a simple question. The passport that you presented, the Ciskeian passport that you presented at Zimbabwe, was that acceptable? -- Well, I used that passport.

Is the answer yes? -- Yes.

And what document did you use to come back to South Africa? -- South African.

Did you have the Ciskeian document with you? I do not (20) mean on your person, in your bag or anywhere else, when you came back to South Africa? -- No, I left it with the ANC.

HERONDERVRAGING DEUR MNR. JACOBS : Geen vrae.

GEEN VERDERE VRAE.

HOF : Mnr. Jacobs, u het nog geen aansoek aan my gerig onder artikel 204 ten aansien van die vorige getuie of hierdie getuie nie. Dit is my gebruik om die soort aansoek aan die einde van die saak af te handel.

MNR. JACOBS : Dit is daarom dat ek dit nie gedoen het nie. Ek het gevoel dat die Hof nie op hierdie stadium 'n bevinding(30) kan gee omtrent die getuie nie.

HOF : Sal u dit in gedagte hou dan later?

MNR. JACOBS : Ja. Edele, die volgende getuie wat die Staat roep is 'n getuie wat sal getuig oor van die gebeure in die Vaal Driehoek. Hoofsaaklik gaan sy getuienis oor die vergadering wat op 26 Augustus gehou was in die Roomse Kerk, in die kleinhoewes. Die getuie het by my gevra en opdrag gegee dat ek by die Hof moet aansoek doen dat hy sy getuienis in camera gee. Dit is in terme van artikel 153 van Wet 51 van 1977.

HOF : Wel, ek sal die saak ondersoek in camera en dan 'n beslissing vel. (10)

MNR. JACOBS : Dit is wat ek dan wou gevra het dat ek op hierdie stadium - dat dit in camera ondersoek word.

HOF : Sal die pers die hof verlaat. Dit sal ongeveer 'n kwartier of 'n halfuur duur.

PERS VERLAAT DIE HOFSAAL.

HOF : Wat is die besonderhede van die getuie?

MNR. JACOBS : Die getuie is 'n persoon wat in diens is van die Staat in Vereeniging.

HOF : As wat?

MNR. JACOBS : As 'n tolk. (20)

HOF : In die Landdroshof?

MNR. JACOBS : In die Landdroshof. Hy het my meegedeel dat as gevolg van die aktiwiteite daar en deurdat hy lid van of in diens van die Staat is, moes hy sy woonplek alreeds verlaat daar en vir hom nuwe huisvesting in 'n ander woongebied gaan soek. Hy het aan my gesê dat as ek die versoek aan die Hof rig, ek dit kan noem dat hy vrees vir nie net sy lewe nie, maar ook vir die van sy gesin as sy identiteit bekend word onder die mense van die Vaal. Aansluitend hierby wil ek die volgende argument in sy guns doen. In hierdie saak word (30) 'n bewering gemaak dat daar 'n sameswering is tussen die ANC

UDF se mense en ondersteuners, organisasies wat daarby geaffilieer is. In die saak word daar bewerings gemaak dat veral in die Vaal Driehoek daar organisasies is waar die leidende rol gespeel was deur die Vaal Civic Association, in kort genoem die VCA. Ons het hier getuienis dat mense - of ekskuus, nie getuienis nie, ons het 'n bewering hier in die akte van beskuldiging dat mense van in die Vaal gebied spesifiek wat met die Staat saamgewerk het, doodgemaak is. In die besonder die raadslede. Ons het getuienis aangebied in die saak by die eerste aansoek en gehoor dat die ANC 'n beleid voer wat genoem(10) word "sell-outs", dat hulle geëlimineer moet word en 'n "sell-out" is 'n persoon wat saam met die regering of die regeringstruktuur - wat algemeen genoem word as die "enemy" - werk. Ons het ook in die besonder hier een van die getuies wat in die saak getuig het, dat daarso die raadslede self, die "enemy" is net om hierby aan te sluit en dat hulle geëlimineer moet word. Ons het die getuienis wat ook al reeds in 'n soortgelyke aansoek aangebied was, dat 'n getuie wat in hierdie saak moes getuig alreeds geëlimineer is in die Vaal. So, my submissie respekvol is dat daar nie net met woorde gespeel (20) word wanneer gevra word vir die mense se beskerming in die hof nie, maar dat daar 'n wesenlike gevaar is, dat dit wel gebeur het, dat getuies doodgemaak is en die getuies is bewus van hierdie omstandighede dat dit gebeur. Ons het vervolgens getuienis reeds in 'n soortgelyke aansoek in hierdie selfde saak waar 'n belangrike Staatsgetuie alreeds verdwyn het onder uiters verdagte omstandighede. Afgesien van hierdie getuienis wat aangebied is wat ek nou opgenoem het, is daar - kan die Hof kyk na omringende omstandighede wat insluit dan die aanklag wat voor u dien. Volgens die aanklag kan 'n mens sê dat(30) die bewering is dit is 'n aanslag op die sisteem en die mense



wat met die sisteem saamwerk "sell-outs". Intimidasie wat geskied om mense wat met die Staat saamwerk of as hulle nie... ophou om met die Staat saam te werk nie, dat hulle wel doodgemaak is en doodgemaak moet word. Die Hof kan ook geregtelike kennis neem en ek dink dit is 'n alombekende feit dat "sell-outs" oor die land, wat beskou word as "sell-outs", mense wat met die Staat saamwerk, kry die sogenaamde "necklaces". Die beroep wat die getuie my gevra het om op die Hof te doen, het hy my dan ook verder gevra om te benadruk dat hy werk daagliks, deur die aard van sy werk, met mense wat (10) in daardie gebied in die Vaal is en dit is 'n verdere rede hoekom hy reken dat hy en sy familie se lewens in gevaar is, want hy moet tolk en dan as die mense skuldig bevind word, kan dit ook nog net verder geneem word dat hy 'n persoon is wat die "enemy" steun, of die sisteem steun. So, dit is die substansie van my argument aan u en daarby wil ek net voeg dat my aansoek is dan in terme van artikel 153 van Wet 51 van 1977.

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HOF : Watter artikel?

MNR. JACOBS : Ek wil dit op albei basisse doen en die (20) eerste is, dit is belangrik vir die regspleging, dat getuies toegelaat word - ek verminder nie en ek beseft die waarde daarvan dat getuienis in 'n ope hof gelewer moet word, maar dit is net so belangrik dat getuies die geleentheid gebied word om, as dit moontlik is onder die omstandighede, vreesloos hulle getuienis te kom gee ... (Hof kom tussenbei)

HOF : Op die basis wat u dit voorhou, sal dit dan beteken dat daar geen polisieman uit die Vaal Driehoek sal getuig, behalwe agter geslote deure nie en geen amptenaar sal getuig, behalwe agter geslote deure nie. Dan beteken dit ons het (30) feitlik die hele verhoor agter geslote deure.

MNR. JACOBS : Die getuies kom na my toe en hulle noem dit dat ek so 'n opdrag het. Ek het die opdrag nog net aan u gelewer soos hulle my versoek het. Dit is 'n ernstige versoek van die getuies. Lede van die Suid-Afrikaanse Polisie het tot sover nog nie so 'n versoek aan my gerig nie en ek dink dié wat getuig het, het al getuig sonder dat hulle so 'n versoek gerig het, maar sekere van die mense wat in die woonbuurt woon, het 'n wesenlike probleem en ek kan net vir die Hof - die bevel was aanvanklik gewees ons sal elke aansoek moet behandel, dat u nie bereid was om een algemene bevel te maak nie, maar (10) dat elke aansoek op sy eie meriete beoordeel moet word. Dit is daarom dat ek nou hierdie geval so behandel.

HOF : Ja, maar ons het nou gehoor dat die persoon woon nou nie meer in die woonbuurt nie.

MNR. JACOBS : Hy woon in die Vaal Driehoek nog.

HOF : Die Vaal Driehoek is baie groot.

MNR. JACOBS : In een van die ander voorstede daar, een van die Swartvoorstede.

HOF : Maar nie in die voorstad waar hierdie gebeure plaasgevind het nie? (20)

MNR. JACOBS : Nee, dit is in een van hulle wat hy nou woon, maar hy het getrek van waar hy algemeen bekend was en eers gewoon het na 'n ander woonbuurt waar hy minder bekend was en nie so bekend was nie.

HOF : Moet ons nie hoor wat hy presies sê nie, sodat ons dit kan uitpluis?

MNR. JACOBS : Ons kan dit doen.

HOF : Roep hom as getuie.

MNR. JACOBS : Sal ons dan versoek dat die pers en almal wat buitekant in die gang staan, eers heeltemal gega pad hier (30) by die hof?

HOF : Het ek bevoegdheid buite hierdie hofsaal?

MNR. JACOBS : Nee.

HOF : Sover ek weet strek my bevoegdheid binne die hofsaal.

MNR. JACOBS : Binne die hofsaal, ja.

ASSESSOR (MNR. JOUBERT) : Mnr. Jacobs, mag ek net daarop wys, terwyl ons wag, ek is nie by hierdie ding betrokke nou nie, as assessor, maar as dit kom by getuienis, wanneer u stem kompeteer met die sterk stem van die tolk, kan ek u baie moeilik hoor. U praat dikwels gelyk.

MNR. JACOBS : Ek sal probeer om hard te praat en ek sal (10) probeer om te kyk dat ek nie saam met die tolk praat nie.

LESEBANA JOHN MASENYA, v.o.e. (Deur tolk)

HOF : Hierdie deel van die ondersoek is in camera om vas te stel of ek 'n bevel moet maak dat u getuienis in camera afgeleë moet word. Kan u vir my sê waarom? — Die eerste rede is dat ek eintlik deur die mense beskou was as een van die raadslede. Ek het verskeie kere by my werksplek 'n rapport gemaak aangaande hierdie gebeurtenisse en daar was ook intimidasies gewees, as gevolg waarvan ek toe later moes getrek het van waar ek gewoon het vroeër, van Gebied 7 na Gebied 14 toe. Dit is (20) toe ek beseef het dat my lewe in gevaar was, dat ek daardie besluit geneem het.

ONDERVRAGING DEUR MNR. JACOBS : Kan jy die Hof net meer inlig omtrent die intimidasie waarna jy verwys het? — Op 'n sekere tyd was daar ander onbekende seuns gewees by my woning te Gebied 7 wat na my kom soek het. Hulle het my bestempel as een van die blokmanne. Toe ek by die hek was van my erf waaruit hulle my geneem het, het een van hulle wat nie aan my bekend is nie en tot op datum nie bekend is aan my nie, 'n gesprek met hulle daar gevoer. Al het ek nie presies gehoor waaroor (30) die gesprek was nie, is hulle toe daarna weg. Met hulle weggaan

daar het hulle 'n woord gelaat dat hulle my sal sien.

As wat gebeur? Hoekom sal hulle jou sien? — Hulle het nie 'n rede verstrek nie.

Wat is 'n blokman nou? — Dit is die raadslede in beheer van die woongebied.

Was daar nog intimidasie gewees? — Op 'n stadium het ek gaan help of gekeer by Tsotsuwe se winkel waar hulle besig was om in te breek deur die ysters, die diefwering, af te breek. Dit is ook een van die redes wat my in hierdie gevaar geplaas het. Dit is nou die redes wat ek kan noem. (10)

Is jy bang? — Baie.

Het jy kinders? — Ja, ek het.

CROSS-EXAMINATION BY MR BIZOS : Mr Masenya, we were informed by the prosecutor that you were going to give evidence in this case about what happened on 26 August at a meeting? Is that so? -- I hear that now, yes.

I do not know what do you mean by what you are saying. Is it so, do you have knowledge of a meeting held on 26 August on Small Farms? — Yes, I have knowledge of that.

Was that a public meeting? — It was a meeting held (20) in a building at the Roman Catholic place.

That is a hall? — Yes.

Holding over two, three hundred people? Is that correct? — It can be so, yes.

And it was full of people? — Yes, it was.

I do not want to enter into the merits of what may have been and may not have been said at this stage. I am going to ask you to just sketch briefly as to what sort of evidence we are expecting from you for the purposes of deciding the application before His Lordship? (30)

CCURT : Well, let us enquire from the prosecutor what he

expects. It may well be that the prosecutor intends to lead just a part of what the witness knows. The witness probably has a lot of knowledge of what happened in the townships. Are you dealing now with that particular meeting or are you dealing with his general knowledge?

MR BIZOS : No, I merely put to the witness what the prosecutor told us. I may be confusing what he told me privately and what he told the Court. Has the prosecutor told Your Lordship that the witness would deal with the events of 26 August?

COURT : Yes, that is correct. (10)

MR BIZOS : That is the basis upon which I want to ask the questions.

COURT : Just that meeting?

MR BIZOS : I am not going to tie the witness down, that that is all he is going to say.

COURT : With this witness, can you not be direct and put to him "Look here, you were there, lots of people were there, they must have seen you", et cetera, et cetera. Please take it directly. This is not the merits of the case we are dealing with. (20)

MR BIZOS : This was a public meeting and hundreds of people were there? -- Yes.

And you were told an interpreter in court? -- Yes.

Did you ever stand for election to the council? -- In 1984.

And would it be correct to describe you then, that you took part in the public life in the community in which you are living? -- That is so.

And within your own community you are a person of reasonably high profile? -- The community with whom I live there, will know that. (30)

By that you mean you do not want to judge yourself, but

you cannot deny the suggestion? -- That is what I mean, yes.

I am going to be direct as His Lordship has suggested. You have not entered into any conspiracy either with the ANC or the UDF or the civic association or anyone else? -- Yes, that is so.

And you have no secret information in relation to any such conspiracy? -- Not at all.

And what you intend telling His Lordship in this case is really what one may call a public record. It may be difficult to determine precisely what the record shall say, but it (10) is public record?

COURT: Just put it the other way round. You are going to tell me what you in fact observed and what you observed, anybody else present could have observed. Is that correct? -- Yes.

MR BIZOS : And that as far as the civic association was concerned - were you elected by the way? -- No, I was not.

There was really a political difference between you and members of the Civic Association? -- That I would not know.

I do not know that you can be so modest, but I will accept the answer for the time being. Would you agree that (20) you are easily recognised as a public figure by some of the accused who come from the Vaal? -- It can be so.

And now I am going to put something to you which I ask you to please give serious consideration to this application. Would you agree with me that to keep your identity as a secret from the whole of the community that you and the accused and their relatives are living in, is a very, very difficult matter? -- To be kept secret, it is because of the reasons I have already given to His Lordship. That is the intimidation.

We will come to that. Do you agree that you living in (30) the same community as the accused and their families, it will

be almost impossible to keep the fact that you are giving evidence in this case a complete secret? -- I still go back to my explanation, the intimidation I have already mentioned, not that I am refusing to live with these people, no.

I will leave it for argument, but I want to go to the next part. What I am appealing to you is this, assume that you give evidence behind close doors and it is discovered in your community that you gave evidence, do you not think that the suspicions against you in your community are going to be even greater than if you gave evidence in open court so (10) that your community and your friends and the people who were present at Small Farms on the 26th come and hear - you know there were two, three hundred people there, they can come and say "Obviously this man is telling the truth," why do you not want it that way? -- I am not scared of talking in the presence of any other person. The only thing is, the reasons I have already advanced to this Court, are the only reasons which are making me to be scared of my life in the sense that that will put me in danger.

Would you have any objection if members of your commu- (20) nity are here at the back of the court, the people that were your organisers for election to the council, that they must hear that their aspirant came today speaking openly and freely before the Court. Would that not improve your position, rather than to give evidence in secret? -- They came to know me during the time of the election. Unfortunately I was not successful in being elected. Secondly, this thing is not going to end up here. As it is being put to me by the defence that I am scared of my own community to listen to my evidence I know it would not end up here. It will end up where it (30) will put my life in danger.

When did you say you stood for election? -- During the year 1984.

What month? -- During September.

Was that after 3 September? -- No, 3 September was before the election.

COURT : Could I ask something here. Mr Masenya, would it not be better for you, as a leader in the community and for the community itself that it be seen that you stand up in court and be counted, especially as you are a leader in the community and as far as I see it, it is the duty of a leader in the (10) community to lead in fact, that is to show openly when something is evil that it is evil and tell everybody it is evil and take proper steps that the evil be eradicated? And the sooner we get leaders in the community to do that openly, the sooner the evils in a community will be eradicated? -- I am not scared of that. What I am scared of is what everybody is going to be scared of. Was it not that I was present as the Court puts it now, I was a leader and if this Court can sort of guarantee that the threats are going to be removed, then I am prepared to talk in the presence of the community(20) or the public.

No court can guarantee that the threats will be removed, but in my view the threats will still be there if you give evidence openly or whether you give evidence behind close doors and in my view, in the special circumstances in which you find yourself, being known to a number of the accused, being a well-known person in the community, an order that this case be held in camera, as far as your evidence is concerned, would be totally ineffective. This does not mean that I do not have sympathy with you. I have a lot of sym-(30) pathy with people who are brought as witnesses in this type



of case and have to give evidence and thereby possibly endanger themselves or their kin, but there is a principle here at stake and in your particular case I am of the view that your evidence will have to be given in open court. That is my ruling. The evidence will therefore be given in open court.

... / LESEBANA

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

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