G.J. Marcus V 464

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IN DIE HOOGGEREGSHOF VAN SUID-AFRIA

(TRANSVAALSE PROVINSIALE AFDELING)

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1988-12-12

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. YACOOB
ADV. G.J. MARCUS

TOLK: MNR. B.S.N. SKOSANA

KLAGTE: (SIEN AKTE VAN BESKULDIGING)

PLEIT: AL DIE BESKULDIGDES: ONSKULDIG

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KONTRAKTEURS : LUBBE OPNAMES

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VOLUME 464

(Bladsye 28 957 - 28 991)

COURT RESUMES ON 12 DECEMBER 1988

MR CHASKALSON ADDRESSES COURT: Your lordship indicated on Thursday that we should address your lordship today on the issue of leave to appeal and your lordship also raised specifically the question as to whether leave should be general or special. Now we want to ask your lordship for general leave to appeal and perhaps I should indicate two propositions to your lordship first. Why we think general leave should be necessary before we say anything more, and then our particular attitude to the application. We think that the judg- (10) ment is so complex and inter-linked and there are so many points of law which may arise that if any significant structure of the judgment, if another court should take a different view in relation to any significant structure of the judgment that would have an impact on the rest of the judgment which in many respects is based on circumstantial evidence and inferential reasoning, because on key issues there was no direct evidence. So it seems to us that any attempt to limit the appeal would in effect be futile because one would have to raise so many different issues, related one to the other, that in the end (20) it would amount to a general leave. Now we are in a position today to indicate to your lordship certain of the principal grounds which we would ask to be taken into account by your lordship in considering whether or not general leave to appeal should be granted but we are not yet in a position to formulate our grounds in detail or to argue the application in detail if your lordship should not be disposed to granting general leave to appeal and would feel that the case would be one where it would be appropriate for questions of law, special entries and leave on specific matters to be granted. Should (30)

that be the situation we would want to take the time that we have under the statute to clarify the points, to look at them very carefully and to make sure that in what we list we do not leave out anything of importance. Also if there were to be special leave we would want to formulate carefully a number of questions of law and special entries which may not all be necessary, if general leave were to be granted. Now, so we really require some directions from your lordship in regard to the, to today's proceedings.

COURT: Yes. I have a problem Mr Chaskalson and a possible (10) solution which might curtail the proceedings. The problem is I have this whole week available for you and if we cannot finish this week I will even be prepared to sit some time into next week until we finish. If you do it the formally correct way and your formulate by way of notice and you file your notice then the matter will have to be set down by the registrar on a date that suits you and a date that suits me or you will have to get another judge to hear the application which can be done under the section. So this means then that, taking into account my long leave you may have to wait a long time (20) before you have this application heard which I would not like to happen. So if at all possible I think we should attempt to resolve these issues within this week if we can.

MR CHASKALSON: Yes my lord I think we would like to do that as well.

COURT: Now what I provisionally, and subject to what Mr Jacobs has to say, had in mind is something of the following - as far as all points of law are concerned, any point of law you want to raise you may raise. As far as the constitution of the court is concerned that is left for the appellate (30)

division to decide upon. So as far, whether the court is correctly constituted at present and anything that that entails. As far as the UDF as such is concerned, apart from the question of the various areas I would like to be addressed on that. I think there leave should be granted because it is a question of inference from documentation and videos. As far as the videos is concerned that is a matter of law whether they are admissible or not so that is a legal point and legal points are free for all as far as I am concerned. As far as the Vaal is concerned I am at present in two minds and I think that possibly leave should be refused in toto if you are applying for leave in respect of each and every Vaal accused. As far as the accused no. 16 is concerned my prima facie view is that he should be granted leave, you fully argue his case. As far as the credibility of witnesses are concerned my view is that, prima facie view is that I might refuse leave to appeal. So these are the sort of lines I am thinking about at the moment and I will tell you why. There must surely, after three years of hearing, be certain areas where this court is right. After three years this court cannot be wrong on each and every finding of fact it made. Therefore there should be certain areas where you should not be able to get leave and it may well be that matters of credibility, applying the normal test, are such areas. And this is the lines I am thinking about and if you want some time to consider that we can adjourn and you can think it over and I would like to hear Mr Jacobs in any event because he will probably contend that no leave at all should be granted.

MR CHASKALSON: Yes well we would want leave on credibility and ...

COURT:/....

COURT: May I limit the question of credibility. Credibility as far as the accused themselves are concerned of course should be granted. It is a question of whether we should get Mr X in Craddock and have an argument all over again whether Mr X did or did not throw the stone at the police van or whatever it was.

MR CHASKALSON: Well it is partly that particular problem that has troubled us. There are for instance areas which we think, for instance if I could take Somerset East, the conflict regarding the evidence of Nguba - I think the name was - the policeman. That is an important finding and there is substantial, there are substantial arguments to be advanced on that issue. So it may be that there are particular areas where one would have to look to see where there are substantial credibility issues. I accept that there are some witnesses whose credibility we would not wish to, that we would not want to...

COURT: So it has to be sorted out. I am prepared to grant you some time to get your thoughts arranged but you are entitled to apply the law strictly and file your formal notice. You are welcome to do so but it may create problems for both of us.

MR CHASKALSON: No I, the reason why I raised it with your lordship was in the hope that we might get some indication from your lordship of the areas where you wished, that you wished us to address ourselves. Can I say something to your lordship about the credibility findings, which seem to us to be relevant in any application that we want to make and that is that a substantial number of the credibility findings seem to have been based upon the prima facie impressions which your lordship formed and which are recorded in the schedule Z.

Now/....

Now of course what happened during the course of the argument is that most of those matters were not raised by the state at all in argument. We have never addressed those matters because we were not, at the time, aware of what was in schedule Z and we had nothing from the state which we had to answer. So a lot of the credibility findings have been made without having heard us and it is that which causes a problem in relation to the credibility findings and which we may wish to take up and it is part of the complex nature of this case that again it is so time consuming to go back to everything. But I understand (10) what your lordship is saying and what I would like to do, my learned friend Mr Bizos knows the Vaal side of the case and he should address your lordship in regard to his attitude to that. I think if we could take up your lordship's invitation to hear the response of the state and possibly give us a little bit of time after that to consider what our response is and what we think we would like to do before we adjourn today's proceedings. I think my learned friend Mr Bizos may wish to indicate the general attitude towards the Vaal side of the case. (20)

COURT: I have an idea I know what Mr Bizos' attitude is. It will not be difficult to guess but if he promises not to repeat it later on he can put it now but I think that will be an impossible promise to keep.

MR CHASKALSON: Yes, it is an impossible promise to ask for but perhaps he may surprise your lordship.

COURT: So then I will give him a chance later on.

MR BIZOS: My lord in relation to the Vaal what I, we are indebted to your lordship for your lordship's prima facie view and there is just one very short submission that I (30)

want/....

want to make in relation to your lordship's, for your lordship's consideration and that is this that we agree that it would be unnecessary to refer to every one of the Vaal witnesses. May I take the meeting of the 26th as an example. Once your lordship found that actual violence was not advocated it would probably be unfair on any court, and especially the appellate division, to refer to the evidence of all the witnesses that have given evidence in order to rebut the evidence of the state that violence was advocated. But to refuse general leave on that ground may make it very difficult to argue the (10) case, particularly in relation to accused no. 16, because we will have to make a submission in relation that certain other witnesses that were disbelieved or ought to have been disbelieved may serve as a reason why the witnesses against no. 16 should not be believed. But that would be of a limited nature. But what we would ask your lordship to consider is to grant all the accused general leave and leave it to the parties, such orders have been made, and leave it to the parties to come together and agree which portion or portions of the record need not go up. Because if I may recall to your (20) lordship's memory that practically the whole of the choir of the Catholic Church at Small Farms was called. Now it does not, it will not matter in the final result and it will be a futile exercise as to whether they were believed or not in view of your lordship's finding that there was no violence. So we, as the appellants, can be held responsible for putting proposals over to the state as to which portions of the record need not go up in order to facilitate the ... Now I know that there may be difficulties in relation to consent.

COURT: It is an understatement to speak of difficulties (30)

in the light of the track record between you and the state in the past.

MR BIZOS: This is why I added the rider, but then of course the wrath of the appellate division is something that one has to bear in mind and I am sure ...

COURT: Normally when the wrath of the appellate division occurs it is on paper and counsel are far away from Bloemfontein when that judgment is delivered.

MR BIZOS: Well it is a point but nevertheless it can be left to us, in my respectful submission, because not to have general leave, not to have general leave will impede us in the case particularly of accused no. 5 and accused no. 16 where the Daleside conference will have to be examined and how does one do that on your lordship's finding that, the evidence of what happened at other meetings in the Vaal. So I would submit with the greatest respect that your lordship does give consideration to granting general leave and I associate myself with the remarks made by my learned friend Mr Chaskalson that we should try and dispose of the whole matter as soon as possible and not formal notice. I may indicate also for your lordship's consideration that if your lordship does give us general leave the way we understand the cases is that the grounds in generalised form must be formulated and placed on record in the absence of a notice. We would be in a position to do that if we were given an indication ...

COURT: Well you would have to do that in any event before I grant leave. I cannot hear an application for leave without grounds.

MR BIZOS: Well that is so my lord, so that what I would suggest is that if we were to have to argue special leave

it would take us a long time. If your lordship grants general leave then we can generalise the questions of law and the questions of fact and those will be a fair indication of what it is that we want to argue and it may be guidance for the state in relation to what portion of the record should be put up. Thank you my lord.

COURT: Mr Jacobs?

MNR JACOBS: Met alle respek ek kan nie insien hoe dat ek, op hierdie stadium, namens die staat kan instem tot enige algemene gronde van verlof om te appelleer nie. In die eerste instansie ek staan hierso, ek weet nie wat naastenby gaan kom van die verdediging af nie. Ek moet antisipeer en dinge wat ek miskien glo wat behoorlik bewys word dit gaan 'n geskil word tussen ons hierso onder advokate, ek kan nie sien hoe kan dit van die staat verwag word nie. Met alle respek edele kwessies van geloofwaardigheid, dit is iets wat ons dan sal moet benader in die lig van die beskouing van die appêlhof, hoe benader die appêlhof 'n bevinding van 'n verhoorhof. En dan moet daarso redelike gronde bestaan dat die appêlhof tot ander insigte kan kom. Edele daar is soveel probleme wat daardeur geopper kan word dat ek nie kan sien hoe gaan ons op die ou end ooreenkom nie en ek dink die voorstel van mnr Bizos dat dit deur die staat en die verdediging moet gedoen word is eintlik onbillik. Ons moet ook reg laat geskied deur die hof en hoe kan ons dit doen as ons nie dit behoorlik argumenteer nie? En hoe kan 'n mens dit argumenteer as ons nie iets het voor ons nie? Daar is hoegenaamd geen stukke voor die hof met gronde gestel waarop ons weet ons voorbereid moet wees, waarop ons moet antwoord nie. Die verdediging kon ten minste dan, as hulle, vandat hierdie uitspraak

gegee/....

gegee is tot vandag toe kon hulle darem seker van die belangrikste aspekte wat hulle op appèl wilneem, kon hulle redes opgestel het waarom hulle voel dat dit onder appèl geneem moet word. So edele op hierdie stadium en met die toetse wat daar gestel was dat daar 'n redelike moontlikheid van sukses moet wees is dit my submissie dat die stukke, veral weens die omvang van hierdie saak, die moeilike kwessies in hierdie saak, dat hulle behoorlike redes gee of dat dit behoorlik gestel word voordat die staat enigsins daarop kan antwoord. Ek is bevrees om nou te gaan net op 'n los en vaste basis (10) mens sou weet waar is u nie, om dit gaan doen gaan onreg laat geskied ook teenoor die hof en teenoor die saak. Op hierdie stadium kan ek eerstens nie met mnr Bizos se voorstel dat ons, die twee stelle advokate, gaan en dit, dit geskilpunte gaan afbaken nie, dat dit enigsins suksesvol sal wees nie. Want, en die tweede aspek, om 'n algemene appèl op hierdie stadium te gee sonder dat daar op hierdie stadium enigsins vir die hof redes gegee is waarom dit redelik moontlik is dat 'n ander hof tot 'n ander insig te kan kom kan ek ook nie sien nie. Veral in die, daar is in die verlede ek gee toe (20) al deur die howe algemene verlof sonder uiteensetting van redes gegee omdat daar dan appèlhoofde agterna kom maar dit is in 'n gewone alledaagse saak. Maar met hierdie saak, met die omvang, met die verskeie regspunte wat hier ter sprake kan 'n mens, en 'n mens sou verwag dat dit behoorlik voor die hof gelê word sodat daar behoorlik op ingegaan kan word en beslis kan word. In die verband wil ek net verwys na een saak waar die hof gesê het dat die reëls is daar om nagekom te word. Waar dit gaan waar, hierdie aspek was nog nooit deur die appèlhof besluit of die redes vroegtydig gegee moet (30)

word/....

word of nie maar in die saak van Hlatswayo, S v Hlatswayo 1982 4 SA 744 (A) het die hof gehou, waar dit gegaan het oor spesifieke appèlgronde in terme van artikels (2) en (5) van artikel 316 dat die hof gesê het:

"These sections should always be observed."

Dit is 'n riglyn wat 'n mens sal vat en 'n duidelike aanduiding en dit sal 'n mens veral verwag vir die hof van appèl wat duidelikheid moet kry op die ou end en wat weet presies wat is die geskilpunte wat afgebaken moet word, dat die reëls nagekom sal word, veral met so 'n saak van hierdie omvang. (10)

HOF: Nou aanvarend vir 'n oomblike dat u my kan oortuig dat ek nie algemene verlof tot appèl moet gee nie wat sê u van die voorlopige punte wat ek genoem het waarop heel moontlik wel verlof gegee moet word?

MNR JACOBS: Ek het hulle, as ek reg het het ek sewe punte wat die hof gegee het afgeskryf.

HOF: Ja ek het sommer so uit my kop 'n paar opgenoem. Ek het nie 'n detailed studie van die ding gemaak nie.

MNR JACOBS: Edele ek sal dit moet oorweeg as die verdediging vir 'n mens gronde kan gee op daardie punte of hulle 'n rede- (20) like moontlikheid van sukses, of dat 'n ander hof, daar 'n redelike moontlikheid bestaan dat 'n ander hof tot 'n ander insig sal kom op hierdie dinge. Ek sal dit moet oorweeg in daardie lig en om sommer net uit die vuis te gaan sê dit moet toegestaan word ek dink nog die toets, die staat moet die geleentheid gebied word, nadat die verdediging gehoor is of daar 'n redelike moontlikheid van sukses is. Ek wat as 'n voorbeeld die kwessie van die video's wat die hof sal opper het hierso, en daar sal ek prima facie op hierdie stadium sal ek redelik dink ek kan argumenteer dat dit nie op daardie (30)

grond/....

grond toegestaan moet word nie.

HOF: U sal my hart bly maak as u die argumenteer maar u sit met 'n volbankbeslissing van Natal. Daar is 'n verskil van mening tussen twee afdelings. Dit is juis 'n ding wat die appèlhof behoort uit te stryk, so iets.

MNR JACOBS: Ja. Daar is natuurlik die ding dat daar is heelwat ander howe wat dieselfde rigting gevolg het as u, met respek, in hierdie saak edele. Ook nie teenstaande die, ons het die Oos-Kaapse saak waarna ons ook verwys het.

HOF: Nee maar ons kan dit later argumenteer. Ek noem dit nou maar net terloops. Dit is juis 'n punt dink ek wat die appèlhof behoort te beslis. Dit is 'n baie belangrike punt.

MR JACOBS: Dit is ook wat 'n mens miskien in daardie lig sal moet oorweeg maar afhangende van wat daar aangevoer word daarteen. Ek stem saam 'n mens sal graag in so 'n belangrike aspek, in so 'n belangrike ....

HOF: Mens kan nie oor so 'n wesenlike ding in twee afdelings twee verskillende interpretasies hê nie. Dit is totaal ongewens.

MNR JACOBS: Dit gee ek toe en dit wys dat 'n mens sal moet 'n bietjie dink oor hierdie goed. Jy kan net sommer uit die vuis uit gaan besluit daaroor nie.

HOF: Goed, laat ek hoor wat sê mnr Chaskalson.

MR CHASKALSON: What I would like to suggest is that if your lordship would give us half an hour, or even possibly less but I think within half an hour. Perhaps we could let your lordship's registrar know. We would just like to talk amongst ourselves in regard to how long we think we would need in the light of what your lordship has put to us today. Would you lordship like us to fix a time of half an hour or should we...

COURT:/...

COURT: I can give you more.

MR CHASKALSON: I think that half an hour should be adequate but perhaps we could communicate with your lordship's registrar when we ...

COURT: Well let us attempt to do it within half an hour.

COURT ADJOURNS. COURT RESUMES.

MR CHASKALSON: My lord we would like, if it is possible to do so, to continue on this informal basis and try to expedite matters as best we can. We have thought that if we set about now trying to identify the points which we would want (10) on record as the grounds for appeal that we would be able to have most, if not all of them, ready by Thursday and in a position to let the state have a copy by 14h00 Thursday. The problem is Friday of course is a holiday and your lordship's registrar will directly have a copy of that by Thursday. We may wish to amplify it a little bit more if we are not fully complete but what we were suggesting was that we would try to formulate the main grounds, plus the questions of law, plus the special entries by Thursday, let drafts be available on Thursday afternoon and hopefully they will be finalised by (20) then. If they are not we will address your lordship on a time that your lordship would fix. Because we think that we cannot really get it done this week but Monday, we spoke, I have spoken to my learned friend Mr Jacobs and he, like us, feels the sooner the better and he would, we both think that possibly Monday may be the day, with our giving your lordship and the state such writing as we have available by Thursday afternoon, try and get it across to Pretoria early in the afternoon on Thursday, say by 14h00, without necessarily being bound to have everything done by then. We think that if we do that (30)

we would be in a position to address your lordship on Monday.

COURT: Monday.

MR CHASKALSON: That is what we think, we think to try for Thursday, today is Monday, if we try for Thursday we think we are just going to put everybody under too much pressure. That is our sense of it.

COURT: How long do you expect your argument would take?

MR CHASKALSON: That ...

COURT: The last time I gave you a chance you spoke for a month and a week. (10)

MR CHASKALSON: Yes my lord. I think you have given us indications so that there are large parts of it which those indications are firmed by, by Monday. It looks as if there will not be major issues upon which we would have to address your lordship. It depends to some extent upon what your lordship wants to hear from us as well. There, it is this sort of domino effect in this case.

COURT: Do you, well my problem is this, it seems to me that you are possibly going to a lot of trouble to formulate a lot of points which might possibly be covered by a sort of a (20) blanket clause and when you have done all that and you get up I say well I do not want to hear you on all these points and you have taken half a week to formulate them whereas I myself could have done it in five minutes. It will be an awful waste of time, of everybody's time.

MR CHASKALSON: I understand that. Our difficulty is that we do not want to cut corners to the prejudice of the accused. If we misunderstand the position and do not formulate something then the accused at the end of the day will be the people who would be harmed. And our real difficulty is that we (30)

know/....

know in general terms what we want to say to your lordship. I could today already indicate ten or twenty bases from my own knowledge of main findings which we would want to challenge but which I think are covered in the much broader sweep which your lordship has given us and we would not need to try and break it up into those sort of details.

COURT: Now if that is done and I hear Mr Jacobs on that first what is the problem?

MR CHASKALSON: The problem is first of all as far as the Vaal side of the case is concerned your lordship has given (10) a prima facie indication which I think requires us to look carefully at the judgment to identify both law questions and factual issues which we would like to argue. As far as the areas are concerned it is difficult to divorce them entirely from the UDF side of the case because of the linkage which exists between them and the tail could wag the dog as it were, if there are findings in regard to the areas which may have an impact on the UDF side of the case and as I have indicated there may be areas which we, where we would accept certain findings and there may be areas where we would want to deal (20) with, to challenge certain findings. So I do not see how we can, then there is the question of the special entries and the questions of law. Now I do not see how we can deal with all that today. If your lordship wants to hear from me the sort of issues which we have in mind without them being a complete category I am happy to tell your lordship but I do not know whether we are saving time or wasting time by doing that if it is not complete.

COURT: We feel you might possibly, with a bit of hard work, formulate your main points today and tomorrow and argue on (30)

Wednesday./....

Wednesday. It may well be that we clear a lot of ground once we have seen your points.

MR CHASKALSON: As long as we retain flexibiliity. My concern at this stage - I must be quite clear ....

COURT: The moment I have your points on my desk I will be able to tell you on what points I want to hear you and on which I do not want to hear you.

MR CHASKALSON: Yes, my lord, that I understand.

COURT: And I do not need to wait till Thursday to do that.

MR CHASKALSON: No that I understand but the, our difficulty(10) is this, we would not like to come before your lordship inadequately prepared to deal with the matters upon which your lordship wants to hear us and that is my difficulty at the moment. It is one thing to identify the points, it is another thing to be ready to address argument, if we have to address argument on it. Now ...

COURT: Well is your situation not that today you can identify your points? If you can today identify your points I can tell you this afternoon which points I want to hear argument on and then we can start on Wednesday. (20)

MR CHASKALSON: Well I can identify a number of points today but I cannot say that they are a complete catalogue of points.

COURT: Well at least you will have main headings. You see it is no good arguing about each and every witness. One has to sort of take a general approach on witnesses and on areas and on that sort of thing and the moment the general approach is decided either way the whole thing falls into place.

MR CHASKALSON: I understand that. Well if your lordship would, it would save time, if your lordship is prepared to do it somewhat informally, as your lordship has suggested, that we (30)

advance/....

advance certain main points now and your lordship can respond to them and say well that I would want to hear and on that I would not want to hear you on. But we may get somewhere today on that score and we may be able to make an earlier time for your lordship.

COURT: Yes well let us do that.

MR CHASKALSON: Yes, if we may do that. Well as far as the UDF is concerned I think your lordship has, yes I am not quite sure how your lordship has in mind dealing with the UDF side. I understood, or the note that my learned friend Mr Marcus (10) has is that apart from the areas that on the UDF side of the case leave should be granted. Now ...

COURT: Yes I have this in mind. As far as admissibility of documents is concerned you get leave. You can argue whatever you like as far as admissibility of documents and admissibility of the videos is concerned. Then as far as the interpretation of the documents and videos is concerned you get leave. As far as the UDF accused are concerned on credibility they get leave. So, otherwise it is no good granting, not granting them leave on credibility, then the whole thing falls apart. That I (20) think would cover the UDF because, except for the various areas.

MR CHASKALSON: Well could I ask your lordship this, for instance one would ordinarily, in the, one would ordinarily for instance ask for leave to challenge the main findings, for instance that it was conceived in the councils of the African National Congress and that the African National Congress' call for a national front, liberation front, played a major role in its formation.

COURT: Well it is easy to take the index and tell me what you challenge in the index.

MR CHASKALSON: Yes. Well I have made a note. If I could (30)

just go down my notes with your lordship and, that the main findings on the UDF seem to us to be these. First that it was, that the UDF was conceived in the councils of the ANC and that the ANC's call for a national front for liberation played a major role in its formation. Secondly that the dominant leadership of the UDF acted as the internal wing of the ANC. Thirdly that accused nos. 19, 20 and 21 formed part of that dominant leadership that constituted the internal wing of the ANC. Fourth that violence was an intended, necessary and inevitable component of the action by the masses, that the UDF promoted and was intended to make South Africa ungovernable. Fifth that the UDF, by speeches, publications and acts, intentionally created a revolutionary climate. Sixth that the campaign against the Black Local Authorities was an effective means of mobilising the masses and fanning the flames of their anger, and that the UDF leadership held the view that the end justified the means as far as the destruction of the Black Local Authorities system was concerned and that violence was an accepted and effective option of achieving that object. Then that the UDF was responsible for violence in any of the areas referred to in the judgment. Next that the UDF was not genuinely interested in a national convention and was merely interested in the transfer of power to the people. Then that the UDF regarded scholars, students and the working youth as its forces in the freedom struggle and supported and directed and manipulated them to that end, and that in that context that the UDF welcomed the disturbances and the violence which flowed out of school boycotts as a means of mobilising the youth in the freedom struggle. There are, I think that is the core of the judgment as far as the UDF is concerned.

I do not think we have left out any of the major structures of that judgment there. But it is of course, as your lordship put it to us, to a large extent based on inferential reasoning, circumstantial evidence and interpretation of documents and obviously one of the things we would want to argue is the application of the rule in Blom's case and the question of inferential reasoning in a case such as this where there are many different structures. As far as the questions of law are concerned I think your lordship may have identified the major questions by indicating your lordship's attitude in regard (10) to anything in regard to documents and anything in regard to tapes. It is not clear to me, your lordship for instance has made findings in regard to the construction of the indictment, as to whether or not it was limited to violent treason but on your lordship's findings of course that finding is not relevant to the actual judgment. So too is your finding on non-violent treason, so too is your finding on the interpretation of the furthering the objects of the African National Congress. All those things may become issues but I do not think it is really ... (20)

COURT: Well it falls outside the scope of the appeal. If it becomes an issue there then it becomes an issue there and then you argue it there.

MR CHASKALSON: It becomes a secondary issue.

COURT: It is something else. It is not part of an appeal.

MR CHASKALSON: As I understand it that would be the position but I would not like to be taken to have accepted those law points without, as I understand them those, your lordship's expression, your lordship's ....

COURT: For example my view on the furthering of the aims of (30)

the/...

the ANC, that aspect is actually obiter.

MR CHASKALSON: Obiter. Well I ...

COURT: And you cannot appeal against an obiter remark. Even if it takes 20 pages.

MR CHASKALSON: No, that was my understanding of it. In other words we, so that we would understand there too - and I hope correctly so - that the question of the construction of the indictment as to whether it would embrace non-violent treason is also obiter in the circumstances of this case. The views which your lordship expresses in regard to non-violent (10) treason is also obiter and the findings in regard to the, the findings in regard to the furthering of the objects. I think that on the UDF side of the case that really covers the major issue save for the question insofar as the credibility of particular witnesses may be concerned. I have in mind witnesses for instance like Bishop Buthelezi, his evidence may be material and there were findings made there. Dr Mlotlana is another one and there may be others who at the moment I do not recall in the entire structure as to the role that they play. But that is indeed something that I would think (20) that we could isolate and if we wished to supplement, if your lordship were with us on what we have said today and said that you can identify additional areas and supplement them I think we could make the time that your lordship has given to us. There would also, as I have indicated, be the questions of special entries which we would want to think about. But that too I think we can make that point. My learned friend Mr Bizos may be able to give your lordship some indication of some of the broad sweep of the Vaal side of the case.

COURT: Well prima facie it would then appear that as far (30)

as/....