

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(TRANSVAALSE PROVINSIALE AFDELING)

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SAAKNOMMER: CC 482/85

DELMAS

1986-02-06

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. J

ADV. P. FIC

ADV. W. HAN

18

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

VOLUME 18 (IN CAMERA GETUIE)

(Bladsye 797 - 807)

ABRAM SEKGOTO: d.s.s. (Through Interpreter - In Camera)

MR BIZOS: My Lord before I commence the cross-examination there is a slight problem which arose just as Your Lordship was about to come in. Accused no. 17 suddenly felt very ill and he was taken down. The matters on which I am going to deal with with the witness do not directly affect him this morning although later on it might but in the meantime we would apply in terms of Section 159(2) of the Act to proceed in his absence and we will undertake, it is 159(2)(ii)(p)(aa) and (bb). (10)

COURT: Any objection Mr Jacobs, Mr Fick?

MNR JACOBS: Geen beswaar nie.

COURT: Yes an order is made that these proceedings continue in the absence of accused no. 17 until he is better disposed.

MR BIZOS: As Your Lordship pleases.

CROSS-EXAMINATION BY MR BIZOS: The first matter that I would like to deal with with you Mr Sekgato is your recruitment into AZAPO by Mr Hlomoka, accused no. 2. Now you will recall that you told us that there was a discussion and that he brought a radio cassette player and that he had a cassette? (20)

I know nothing about him having brought a radio cassette player. What I know is he brought with him a cassette.

And there was a radio cassette available? -- Yes it was available at home.

And the two of you were alone? -- Yes.

And then if I understood you correctly with the two of you being alone he in confidence told you that this was a broadcast from Freedom Radio of the PAC in Lusaka? -- No that is not correct. You are not putting it correctly. I never said it is a PAC cassette, broadcast of Lusaka. (30)

Did you not mention Lusaka? -- I did make mention of

Lusaka./.....

Lusaka.

In what context did you make mention of Lusaka? -- I said it was an interview between Radio Freedom and Lybon Mabaso and one Saths Cooper.

Yes and the Radio Freedom that you understood had this interview was Radio Freedom in Lusaka? -- That is so.

Yes. And did he tell you that he had acquired this secretly? -- No he did not explain whether he acquired this secretly.

But did he behave in a way which clearly indicated to (10) you that he believed it to be an unlawful thing to have with him? -- That is so.

And he was even so afraid in being in possession of it because it was a secret, because it was a secret thing, that he was not prepared to leave it with you? -- That is so.

And did you accept his assurance? -- Yes I did.

And were you completely satisfied that this was a broadcast at the instance of an unlawful organisation? -- That is so.

Did it occur to you which unlawful organisation might (20) have broadcast an interview with the two gentlemen from Zambia on Radio Freedom? -- Just put your question clearly.

Did you contemplate, did you think about which unlawful organisation would have arranged for a broadcast of this interview on Radio Freedom from Zambia, which unlawful organisation? -- No, I never came to that kind of thinking.

Well which are the two well known unlawful organisations that you know of operating beyond the borders of South Africa? -- PAC and ANC.

And you listened to a portion of this tape? -- That is (30) so.

And/.....

And would you say that that was the ideological, well

do not let us go too fast. From what you heard on the tape

firstly, did the, was there an introduction that this was

Radio Freedom in Lusaka? -- In the introduction of this cassette
it was made clear that this is Radio Freedom.

And broadcasting from Lusaka? -- That is so.

And that it was an interview with Messrs Saths Cooper

and what was the other gentleman's name? -- And Lybon Mabaso.

And Mr Lybon Mabaso. For how long did you listen to this

tape? -- I cannot remember as to how long it took us listen- (10)

ing to this cassette because I did not check on the time when

it started and nor did I check on the time when it stopped.

Yes we can understand that but please give us some idea

as to how long you listened to it, for how long you listened

to it? -- This is a rough estimation, it can be about ten

minutes.

Could you please tell us, for the ten minutes that you

did listen, for approximately ten minutes that you listened

what did you hear the, what part of the interview did you

hear? What did the questioner say and what were the answers? (20)

-- what I heard from the interviewer of Lybon Mabaso, that is

by the people of the Radio Freedom, they were asking from

Mabaso if they were able to operate properly in South Africa,

are they not experiencing any difficulties.

Yes. So .. -- That is in AZAPO.

Yes. So the people who were outside the country were

asking him what things were like inside the country? Is that

the impression that you got? -- Yes they wanted to know how

things are in South Africa concerning AZAPO.

Yes. And can you recall anything else that the over- (30)

seas people wanted to know about South Africa during this

interview?/.....

interview? -- I do not understand now when you talk about

overseas? How does it come into the whole thing?

Well the questioner in Zambia

COURT: Lusaka is not overseas, that is the difficulty.

MR BIZOS: Yes alright, beyond the borders.

COURT: The overland people.

MR BIZOS: Yes, sorry, beyond the borders. Yes beyond the

borders, you are quite right it is still part of Africa.

-- I am now confused, what was the question again about that?

Was the, for the ten minutes that you were listening, (10)

for the ten minutes that you were listening was that the

general effect of the questioning, that the questioner who

was beyond the borders of South Africa, to the north of

Eaton, or to the north of the Vaal Triangle wanted to know

how things were in South Africa and more particularly in

relation to AZAPO? -- Yes in fact their questioning was per-

taining to AZAPO, whether AZAPO was operating freely or whether

we were experiencing any difficulty in their operation.

COURT: Was that the whole time you listened? -- Not all

the time, they did not talk about one subject only. (20)

MR BIZOS: What other subjects did you hear them speaking

about? -- Another thing I can remember which was said by Lybon

Mabaso was they are bound to be operating from South Africa

so that when they get their freedom they must get it being

in South Africa, not outside South Africa.

Yes. Anything else that you can remember, any question

or any answer which was given to the man in Lusaka? -- There

is nothing more that I can remember.

And you place the existence of this tape in April 1983

when you say you were recruited into AZAPO? -- That is so. (30)

And so secretive and conspiratorial was this tape that

as/.....

as soon as the owner of the house came it was switched off?

-- That is so.

And would you, did you want to give the impression to His Lordship that this tape from Zambia was really being played by accused no. 2 for the purposes of persuading you that it was a good thing to join AZAPO and fight for freedom in South Africa? -- The purpose of his coming to play the cassette to me was not that he wanted to win but he had just come there to play it for me so that I hear what is happening.

Yes, and especially the concern that there was about (10) AZAPO in Lusaka? -- Yes I agree with that.

Well would you like to put, was it not perhaps after April some time, are you sure that it was in April 1983? What is the latest date on which you would put it? -- It was during April 1983.

And you cannot be mistaken about that perhaps? -- Not at all. I am not mistaken.

Not at all. And you are as confident about these answers that you gave to His Lordship as everything else that you have said in your evidence-in-chief? -- Yes that is so. (20)

And if I were to put to you that there was nothing conspiratorial about this tape but that a perfectly lawful tape that accused no. 2 had no concern about at all, its legality, what would you say? Would you say that accused's version is incorrect? -- I will dispute that.

And that your friend, accused no. 2, would be telling an untruth if he said anything like that? -- That is so.

My Lord I beg leave to hand in a newspaper extract from the Sunday Tribune of 9 October 1983 which deals with this tape. (30)

COURT: What will the number be Mr Bizos? AAP?

MR BIZOS:/.....

MR BIZOS: AAP.

COURT: Just a moment, AAP.

MR BIZOS: Yes, these are better copies and we have some for Our Learned Friends. And one for the witness.

COURT: You told me yesterday that you have difficulty standing. When you feel tired you may sit down. -- Thank you My Lord.

MR BIZOS: Now I am going to put to you that this report is a substantial correct report about the tape that you are referring to and let us just read it and see how secret and conspiratorial it was. (10)

COURT: Just a moment, is this the original?

MR BIZOS: No My Lord.

COURT: Is there an agreement that we use this instead of the original?

MR BIZOS: I would appeal to My Learned Friends.

COURT: And have you got my permission?

MR BIZOS: I appeal to the State to agree and I ask Your Lordship to allow a copy.

COURT: Where did you get it from? From a library?

MR BIZOS: From the Press Library. (20)

COURT: What is your attitude Mr Fick?

MNR FICK: Edele dit is die eerste keer wat ek hiervan hoor en dat ek dit sien, ek het dit nog nie gelees nie. Ek het geen idee wat hierdie is nie. Ek is nie in staat om enigiets te sê daaroor.

MR BIZOS: If need be the original will

COURT: We will continue on the basis that it is admitted unless Mr Fick disputes it. Would that suit you?

MR BIZOS: As Your Lordship pleases.

COURT: Yes, on that basis it is admitted. (30)

MR BIZOS: Thank you My Lord. The irony was that when AZAPO President/.....

President Lybon Mabaso and Vice-President Saths Cooper went on the air for the first time in South Africa this week no one raised a hair. A short while ago the authorities considered them so dangerous that they had banned Mr Mabaso and imprisoned Mr Cooper on Robben Island but once these men ...

COURT: I think we must in future see to it that when copies are made exact copies and proper copies are placed before the Court.

MR BIZOS: That they are properly, yes as Your Lordship pleases. I am sorry about that. But let us leave that word, "Once (10) these men were" and I will leave the next word out "and ready to answer questions on their ideology on Capital Radio's great referendum debate not a single right winger was prepared to confront their political bogeymen. Every caller during the hour long open line session appeared to sympathise with AZAPO, asking for advice on how to interpret their new constitution or condemning opinion polls that purported to show coloureds and indians to be in favour of (presumably) the proposed 'power sharing'. The most vexing question came from a Yacob Aba of the University of Durban-Westville. He asked why (20) AZAPO had not joined the United Democratic Front to fight the constitutional proposals. Mr Mabaso smiled, mentioned a letter from the UDF in his desk drawer and gave a Mona Lisa answer. That is an AZAPO-UDF issue, we will sort it out among ourselves. Saths Cooper diplomatically added that the two organisations were still discussing the matter, that they followed democratic processes and had the right to choose not to work with certain people. That sticky moment aside it was all plain sailing for the AZAPO men and it was up to the Capital news editor Mike Hanna to draw out their views on (30) the constitutional proposals. They are not telling Whites who/.....

who are qualified to vote whether to put their crosses in the
yes or no box. Whichever way the vote goes they see it as

having little relevance to Blacks and bringing no real changes
into their lives. But to avoid future shock Whites should

act responsibly said Mr Mabaso. Given AZAPO's radical repu-

tation and militant stands their language was surprisingly

bare of rhetoric and oratory. Mr Cooper's years on Robben

Island were evidently not wasted and through his studies

he has apparently become an astute observer of international

politics. In his comments he constantly puts today's events (10)

in an historical context using the background of the past to

drive home his point. Mr Mabaso has a sharp sense of humour

and wisecracked with the studio crew in the breaks on the

cigarette commercials in a non-smoking studio. But the only

real moment or relaxation came near the end of the soft

slow tones of Paul Young's 'Wherever I lay my hat that is my

home' waltzed across the studio. 'Well that is nice' said

the AZAPO President. These young men are dedicated to

achieving the goal they have set themselves, a South Africa

where race does not matter and they believe the only meaning-(20)

ful change towards this goal can come from the oppressed Black

class. The lasting impression of the two AZAPO men is one

of cool confidence, a question in itself when you realise

that their power base lies in the voteless powerless people

of the nation. AZAPO's rating, courtesy nine out of ten,

directness of answers to questions six out of ten, glibness

five out of ten, intelligibility of argument nine out of ten

and charisma six out of ten."

COURT: Now having read this will you inform me whether

Capital Radio is Freedom Radio?

MR BIZOS: No My Lord.

COURT: /.....

COURT: Because we are dealing with an entirely different thing here.

MR BIZOS: Well the evidence will be, with the greatest respect, that Mr Saths Cooper and Mr Mabaso had only one interview and this was it, and no other interview on Freedom Radio or any other radio.

COURT: Yes.

MR BIZOS: Now I am going to put to you that the only tape that accused no. 2 was in possession of was this tape, the tape of this interview. What do you say to that? -- I am (10) not going to agree with that. I will dispute that because this is Capital Radio and the one I am talking about is Radio Freedom.

Right, let us just get absolute clarity that if there is evidence that this is the only radio interview that Mr Seth Cooper and Mr Mabaso gave to Capital Radio and they never gave an interview to Freedom Radio will that evidence be incorrect? -- I will dispute that strongly because I have already told this Court that it was Radio Freedom.

And if I were to put to you that this tape, this tape (20) was readily available in South Africa? -- If the Court permits me I would like to answer this question with a question from me.

COURT: It can only be a rhetorical question because counsel is not going to answer your questioning.

MR BIZOS: Now may I proceed? Did you not know that AZAPO was so pleased with this radio interview that copies were made of this and sold? The interview on Capital Radio. Do you know whether ... -- I do not know about that.

Yes. And do you know that from the date on which this (30) was recorded, it appears from the newspaper cutting, that

AZAPO/....

AZAPO members were playing it freely and openly in order that they may get the organisation's tactical attitude to the forthcoming, the then forthcoming referendum? -- If that was the case my friend here, accused no. 2, would not have removed the cassette from the radio cassette player when the owner of the house arrived, and secondly he would not have had any reason to refuse leaving that cassette with me.

Because I am going to put to you that that evidence of yours is false as well? -- The evidence I have given pertaining to that radio cassette, it is just like that. (10)

Because I am going to put to you the evidence that will be led before His Lordship in relation to this, that the two of you were not alone? -- That I am going to dispute as well because we were only two there.

And it was played in the house of Mr Thapeli. I will spell that My Lord, T-h-a-p-e-l-i. -- I will dispute that because I was not staying with Thapeli in his house. I say accused no. 2 came to my place of residence.

Do you know Mr Thapeli? -- Yes I do.

Have you been to his house? -- Yes once. (20)

Was he interested in AZAPO? -- That is so.

And the next person present was one Moshe, M-o-s-h-e. Do you know him? -- I know Moshe, yes.

His surname please? -- That is the surname, Moshe is the surname.

And his first name? -- His first name is Booitjie, that is how we know him.

Booitjie Moshe. Well I am going to put to you that he was present and that you were present and Mr Charles Mabitsela was present, M-a-b-i-t-s-e-l-a. -- The day when I was at (30)
Thapeli's place Mabitsela was not there.

Was/....

Was Booitje Moshe there? -- Yes he was.

Was.....

COURT: Could we have a short adjournment please.

COURT ADJOURNS. COURT RESUMES.

COURT: Mr Bizos my Assessor, Professor Joubert is indisposed and we will not be in a position to continue today. This case will stand adjourned till 09h00 tomorrow morning.

COURT ADJOURNS UNTIL 7 FEBRUARY 1986.

DELMAS TREASON TRIAL 1985-1989

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