

IN THE SUPREME COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

In the matter of the Petition of

SAM KAHN, Applicant,

and

J. DE VILLIERS LOUW, First Respondent.

and

CHARLES ROBBERTS SWART, in
his capacity as Minister of
Justice in the Government of the
Union of South Africa,
Second Respondent.

TO THE HONOURABLE THE JUDGE
PRESIDENT AND OTHER THE
HONOURABLE JUDGES OF THE ABOVE
HONOURABLE COURT.

The Petition of

SAM KAHN,

humbly sheweth:-

1. Your Petitioner is SAM KAHN, an Attorney of this Honourable Court, practising at 410. Empire House, Plein Street, Cape Town, Cape Province, a Member of Parliament, and a City Councillor of the Municipality of Cape Town.
2. First Respondent is Mr. J. DE VILLIERS LOUW, a Magistrate care of Palace of Justice, Department of Justice, Pretoria, Transvaal, (whose full christian names are to your Petitioner unknown).
3. Second Respondent is the Honourable CHARLES ROBBERTS SWART, Minister of Justice of the Union of South Africa, in his capacity as Minister of Justice of Palace of Justice, Department of Justice, Pretoria, Transvaal.
4. On or about 6th September, 1950, your Petitioner received by registered post a notice dated 4th September, 1950, signed by the First Respondent, in terms whereof the said First Respondent stated that he had "been directed by" the Second Respondent, in his capacity as Minister of Justice, "in terms of Section 4(10) of Act 44 of 1950," and he purported/.....

he purported to afford to your Petitioner a reasonable opportunity to show why his name should not be included in a list of persons who are or have been office bearers, officers, members or active supporters of what is described in the said notice as "the Communist Party of South Africa". Your Petitioner verily believes that the "list" referred to in the said notice is a list of the nature referred to in Section 4(10) of Act 44 of 1950. The said notice is annexed hereto marked "A".

5. In or about August, 1950, the Second Respondent, in his capacity aforesaid, purported, in terms of Section 3 (1)(b) of Act 44 of 1950, to designate the First Respondent as liquidator of the assets of what was described as the Communist Party of South Africa.
6. There is no such organisation as the Communist Party of South Africa, nor did any such organisation exist on 17th July, 1950, when Act 44 of 1950 was promulgated by publication in the Government Gazette of that date.
7. Prior to 22nd June, 1950, an organisation known as the Communist Party of South Africa (hereinafter referred to as "the said former organisation") existed, which was the same organisation as that referred to in paragraph 5 hereof. A copy of the former Constitution of the said former organisation is annexed hereto marked "B".
8. By the 22nd June, 1950, the said former organisation was dissolved in pursuance of a unanimous resolution of its Central Committee dated 7th May, 1950, which resolution was expressly accepted and adopted unanimously by a general meeting of each and every District of the said organisation. ^{The 1st Eleven} ^{viz - - - - -} Your Petitioners then being ~~a~~ members of the Central Committee, as also ~~a~~ members of the Central Executive Committee, attended the meeting thereof at which the said resolution was adopted, and supported the passing of such resolution. As to the general meetings of the several Districts hereinbefore referred to/.....

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referred to, at which the said resolution was accepted and adopted, your Petitioner craves leave to refer to the Affidavits of Moses Kotane, formerly General Secretary of the said former organisation, and others filed herein. A copy of the resolution for dissolution of the said organisation hereinbefore referred to is annexed hereto marked "C".

9. On 20th June, 1950, on behalf of the Central Committee of the said former organisation, there was adopted and issued a public statement regarding the dissolution of the Communist Party as per copy annexed hereto marked "D". Such statement was given the widest publicity in the daily press and over the radio and was read by ^{N. Sam Rahn M.P.} ~~Your~~ ~~Petitioner~~ in the House of Assembly on 20th June, 1950, during the course of the debate on the motion for the Third Reading of the Suppression of Communism Bill, and subsequently, and continuing to the present time there have been frequent reports in the daily newspapers circulating in the Union of South Africa, referring to the said former organisation as being defunct and as having been dissolved. At no time did any member, ex member or anyone purporting to be a member object to, dissent from or protest against the dissolution of said former organisation, or claim that the said former organisation continued to exist.

10. Prior to the dissolution of the said former organisation, the Communist Party of South Africa, the Central Committee, the Central Executive Committee, each and every District, and each and every Branch and Group, and every organ and section of the Communist Party of South Africa, lawfully disposed and divested itself entirely of all its funds and property, including all rights and documents; all employees were paid off and their contracts of employment forthwith lawfully terminated, leases and tenancies of all properties and premises were lawfully terminated, all Telephones/.....

all Telephones cancelled, all records destroyed and all liabilities of whatsoever nature lawfully discharged. In this respect Your Petitioners again crave leave to refer to the Affidavits of Moses Kotane, and others filed herein.

11. In the Premises Your Petitioners respectfully submit that at no date during its existence did the said former organisation become an unlawful organisation in terms of Act 44 of 1950, nor did or could its property vest in the first Respondent, since the said former organisation was dissolved and its property disposed of prior to the passing of the said Act. Your Petitioners submit that the designation of the First Respondent by the Second Respondent as liquidator of the said former organisation is null and void and of no effect in law.
12. Alternatively, even if the designation of the First Respondent as liquidator of the said former organisation is valid in law (contrary to your Petitioners' submissions aforesaid), Your Petitioners respectfully submit that the First Respondent possesses no lawful power or jurisdiction to place ^{their} ~~his~~ names on the aforesaid list in that, prior to the passing by Parliament of Act 44 of 1950, Your Petitioners supported and accepted the passing of the aforesaid resolution for dissolution of the said former organisation, severed all connection with the same, ceased to be members, office bearers, officers or active supporters, and at no time since the 20th June, 1950, ^{were} ~~was~~ or ^{have} ~~has~~ been members, office bearers, officers or active supporters thereof. The said Act No. 44 of 1950, was passed by Parliament on the 23rd June, 1950, and promulgated on the 17th July, 1950.
13. In response to the notice Annexure "A" from the First Respondent, referred in paragraph 4 hereof, Your Petitioner caused a letter dated 9th September, 1950, to be sent to the First Respondent by Messrs. T. H. Snitcher and Company, who were/.....

my request
to follow up reply
telegram etc.
etc.

who were then representing your Petitioner, a copy of which is annexed hereto marked "E", and at the same time caused a letter of the same date to be sent to the Second Respondent, a copy of which is annexed hereto marked "F", to which was annexed a copy of annexure "E".

14. On the 15th September, 1950, a reply dated 13th September, 1950, was received from First Respondent, hereto annexed marked "G", in which he states that he proposed to carry out his duties in terms of the said Act.

15. In view of the facts contained herein more particularly in paragraph 3 of annexure "E", from which it is quite clear that it will be impossible by virtue of the Rules of Court for an Application to be heard and determined before the 25th September, 1950, and in view of the First Respondent's clear intimation of his intention to continue to purport to act as liquidator, your Petitioner will suffer grave and irremediable damage and prejudice if the First Respondent places your Petitioner's name on the aforesaid list; which would be his next immediate step if the First Respondent is allowed to carry out his purported duties in terms of the Act.

+ 26 days of partition to indicate his agreement to the suggestions + requests contained in the letter & telegram addressed to him by your Petitioner's said atty & from which your Petitioner must infer that the 1st Resp clearly intends to

16. Your Petitioner respectfully submits that in such event your Petitioner will suffer irreparable damage and loss, and that there is no adequate remedy available to him other than the relief hereinafter prayed, for the following reasons inter alia:-

(a) Apart from any general consequences which may flow from your Petitioner's name being placed on the list aforesaid there is the fact that your Petitioner is a Member of Parliament of the Union of South Africa, and in terms of Section 5 of the Act the Second Respondent will have the power, subject to

the terms/.....

the terms of the Act to require your Petitioner to resign from the said Parliament and not again to become a Member of Parliament. The Prime Minister of the Union of South Africa, Dr. D. F. Malan, and the Second Respondent have publicly threatened that such action will be taken against your Petitioner in support whereof your Petitioner annexes hereto marked "H", a copy of a press cutting from the Newspaper The Natal Mercury published on 12th August, 1950, and marked "I", a copy of a press cutting from the Newspaper Cape Times published on the 14th September, 1950., which reports have not been corrected or repudiated by the said Ministers. Your Petitioner avers that the deprivation by Executive action of the right of any citizen to be a Member of Parliament by reason of such citizen's former lawful political activities is unprecedented in any country possessing free Parliamentary institutions.

(b) Similarly your Petitioner may be required to resign as a City Councillor of the Cape Town Municipality of which he has been a Councillor since 1943.

(c) The Second Respondent may by the exercise of his powers under the Act, prevent your Petitioner from earning his livelihood as an Attorney of this Honourable Court by requiring him to resign from and not again to become a member of the Law Society of the Cape of Good Hope and the Attorneys, Notaries and Conveyancers' Fidelity Fund, membership of which is obligatory to enable your Petitioner to practise as an Attorney.

W H E R E F O R E /

WHEREFORE Your Petitioners humbly prays that your Lordships may be pleased to grant:-

1. A rule nisi calling upon Respondents to show cause by a date to be fixed why this Honourable Court should not grant the following orders:-

(a) A declaration that the designation of the First Respondent by the Second Respondent as liquidator of what is described in annexure "A" hereto as the Communist Party of South Africa is null and void and of no legal effect:

(b) A declaration that the First Respondent has no lawful power or jurisdiction to place your Petitioner's names on a list of persons who are or have been members, office bearers, officers or active supporters of what is described in annexure "A" hereto as the Communist Party of South Africa:

(c) An order restraining the First Respondent from placing your Petitioner's names on a list of persons who are or have been members, officebearers, officers or active supporters of what is described as the Communist Party of South Africa in annexure "A" hereto, ^{and} ~~so~~ from acting in any ~~other~~ way in pursuance of his purported powers and duties ^{as} ~~is~~ liquidator:

(d) Such further or alternative relief as to your Lordships may seem meet:

(e) An order directing both Respondents to pay the costs of all the proceedings

~~and~~ ^{and} An order that the said rule nisi should operate as an interim interdict pending the final determination ^{in these proceedings} ~~hereof~~ restraining the First Respondent ~~act, in any way, in pursuance of his purported powers and duties, and~~ from placing your Petitioner's name on a list of ^{the} persons who are or have been members, office bearers, officers or active supporters of what is described in

annexure "A"/.....

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annexure ~~"~~ hereto as the Communist
Party of South Africa, ^{and} ~~is~~ from acting
in any ~~other~~ way in pursuance of his
purported powers and duties as a
liquidator.

A N D Your Petitioner as in duty bound will
ever humbly pray.

(7)

VERIFYING AFFIDAVIT.

I, SAM KAHN, do hereby make oath and say:-

1. That I am the Petitioner.
2. That the facts and allegations contained in
the foregoing Petition, are to the best of my
knowledge and belief true and correct.

S.
.....

SWORN to at CAPE TOWN,
This day of 1950.

The Deponent has declared that he knows and
understands the contents of this Affidavit.

BEFORE ME,

COMMISSIONER OF OATHS
ATTORNEY, CAPE PROVINCE.

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