

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 ROBERTS SWART in
his capacity as Minister of
Justice in the Government of
the Union of South Africa.

Second Respondent.

AFFIDAVIT.

I, JOHANNES DE VILLIERS LOUW of Johannesburg,
make oath and say:-

1.

I am additional Chief Magistrate, Johannesburg.

2.

On the 23rd day of August 1950, I was appointed
as Liquidator of the assets of the Communist Party of
South Africa by Second Respondent in terms of Section 3
of the Suppression of Communism Act, 1950, and was
furthermore directed by him to compile a list of such
persons as are referred to in Section 4(10) of the said
Act. As such I have been cited as First Respondent in
this matter.

3.

For the purpose of the appointment referred to in
the foregoing paragraph I have been assigned an

office/.....

office with the department of Justice, Pretoria.

4.

On the 21st September 1950 the Deputy Sheriff, Pretoria, served on me a copy of the rule nisi granted by this Honourable Court on the 18th day of September 1950, and I have since been furnished with, and perused copies of the Petition completed by Applicant at Cape Town on the 18th day of September 1950, and the annexures thereto including the supporting affidavits referred to below.

5.

I admit paragraphs (1), (2), (3), (13) and (14) of Applicant's Petition.

6.

As I had information that Applicant is or was a member of the Communist Party of South Africa I addressed the communication of which annexure "A" to the said Petition is a copy, to the Applicant.

7.

On the 5th day of May 1950, the Communist Party of South Africa was an existing organisation and Applicant a member thereof.

8.

I have no knowledge of the steps alleged to have been taken in order to effect the dissolution of the said Communist Party or of the alleged termination of Applicant's membership, association or support thereof, and do not admit either.

9

(a) Save/.....

9.

(a) Save to the extent hereinafter stated, I do not admit paragraphs (6), (7), (8), (9), (10), (11) or (12) of Applicant's Petition.

(b) I have reason to believe that certain transactions were carried out by the Communist Party after the date on which it is said to have been dissolved. I refer to and annex hereto a photostatic copy of a cheque dated the 23rd June 1950, from which it appears that it was at that date still operating on an account at the Pretoria East Branch of Barclays Bank (Dominion, Colonial and Overseas). I also attach a photostatic copy of a deposit slip dated the 21st June 1950, from which it appears that on that date an amount of £17.10.0. was deposited to the credit of the Party's account at the aforesaid bank. I have reason to believe that there is still a balance of £12.10.0. standing to the credit of the Party, and that the account has not yet been closed off.

10.

Furthermore, and in any event, I respectfully submit that the issues raised in the said Petition, both legal and factual, are issues to be determined by me in the discharge of my duties under the said Act, after having received, examined and considered all submissions and statements put forward by or on behalf of persons afforded the opportunity mentioned in Section 4 (10) thereof.

11.

In any/.....

11.

In any event, even if the allegations in paragraphs (7), (8), (9), and (10) of the said Petition were correct, I deny that the Communist Party of South Africa has ceased to exist, or that the Applicant has ceased to be an office-bearer, officer, member or active supporter thereof, in that:-

- (a) whereas the resolution referred to in the said paragraphs made the dissolution of the Communist Party conditional upon the Unlawful Organisations Bill passing a third reading in the House of Assembly, as will appear more fully from the attached affidavit by Jacobus Malan Hugo, the said Bill has not at any time passed any such third reading; and
- (b) In terms of the constitution of the Communist Party it could not lawfully be dissolved by resolutions of the Central Committee and/or general meetings of the District Organisations.

12.

As regards the affidavit of MOSES KOTANE:

- (a) Save that I do not admit that the said Moses Kotane has ceased to be a member or General Secretary of the Communist Party of South Africa, I admit paragraph (1) thereof;
- (b) I admit paragraphs (2), (4) and (5) thereof;
- (c) Save as stated herein, I have no knowledge of

the/.....

the allegations in paragraphs (3), (5) (7), (9), (10), (11), (12), (13), (14), (15) and (16) hereof and I do not admit the same;

- (d) As paragraph (8) ; I respectfully refer to the Affidavit of Jacobus Malan Hugo attached hereto;
- (e) Save that I admit that the alleged dissolution of the Communist Party was generally reported in the press and in broadcast news service, I have no knowledge of the allegations in paragraph 17 and do not admit the same; and
- (f) I deny paragraph (18) thereof.

13

As regards the affidavit of ISAAC OSLER HORVITCH:

- (a) Save that I do not admit that the said Horvitch has ceased to be the National Chairman of the Communist Party, I admit paragraph (1) thereof; and
- (b) Save that I admit that the Suppression of Communism Bill was passed by Parliament on the 23rd day of June 1950, I deny paragraph (3).

14

As regard the affidavit of FRED CARNESON:

- (a) Save that I do not admit that the said Fred Carneson has ceased to be a member of the Central Committee of

the/.....

the Communist Party I admit paragraphs (1) and (2) thereof; and

- (b) Save as stated herein, I have no knowledge of the allegations in paragraphs (3), (4), (5), (6), (7) and (8) thereof and I do not admit the same.

15

In reply to the affidavit of BRIAN PERCY BUNTING, I respectfully refer to the foregoing paragraph.

16.

As regards the affidavit of DANIEL JOHANNES DU PLESSIS:

- (a) Save that I do not admit that the said du Plessis has ceased to be Secretary for the Johannesburg District of the Communist Party, and save that I deny that the Communist Party has been dissolved, paragraph (1) thereof is admitted;
- (b) I deny that the Central Executive Committee (or the Central Committee) of the Communist Party on the 6th or 7th May 1950, resolved that the said Party would dissolve on the day of the third reading of the Suppression of Communism Bill by the House of Assembly and in this respect refer to the attached affidavit of Jacobus Malan Hugo from which it appears that the Suppression of Communism Bill first emerged from a

Select/.....

Select Committee on the 5th day of June
1950; and

- (c) I have no knowledge of the allegations
in paragraphs (3), (4) and (5) thereof,
and I do not admit the same.

17.

In reply to the affidavit of YOUSOF MOHAMED
DADOO I respectfully refer to the foregoing paragraph.

18.

As regards the affidavit of ARTHUR SHUMI
DAWANE:

Save as stated herein I have no knowledge
of the allegations therein and do not admit the same,
In particular and as regards paragraph (2), I
respectfully refer to paragraph 16(b) above.

19.

In reply to the affidavit of LEWIS BAKER
I respectfully refer to the foregoing paragraph.

20.

As regards the affidavit of BABOTE
SYADICE MOKGATIE:

Save as stated herein I have no knowledge
of the allegations therein and do not admit the
same. In particular and as regards paragraph (2)
I respectfully refer to paragraph 16(b) above.

21.

As regards the affidavits of

- (a) APPASANY SIGAMONEY,

(b) LUCAS SHAI, S/...

- (b) LUCAS SHAI
- (c) BERNICE SHAI
- (d) ADAM MATIE; and
- (e) REGINALD KENNETH SEPTEMBER :

I have no knowledge of the allegations in these affidavits and do not admit the same.

22.

As regards the affidavits of

- (a) GEORGE PONNEN; and
- (b) DAWOOD AHMED SEEDAT :

I have no knowledge of the allegations therein and do not admit the same. In particular and as regards paragraph (2) of each of these affidavits, I respectfully refer to paragraph 16(b) above.

23.

I do not dispute the allegations in the affidavit of VERNON CILLIERS BERRANCE.

WHEREFORE I respectfully pray that it may please this Honourable Court to discharge the rule nisi granted by it on the 18th September 1950 with costs.

(sgd) J. de W. Louw

SWORN to before me at Cape Town this 18th day of OCTOBER, 1950, the deponent having duly acknowledged that he is aware of and fully understands the contents of this affidavit.

(sgd) J. E. Cloete

COMMISSIONER OF OATHS:

Capacity: Asst. Registrar of the
Supreme Court.
Area: Union of S.A.

Die Nasionale Bank van Suid-Afrika Beperk
East End

Pretoria. Branch.

21 - 6 - 1950.

(Box/Postbus 786)

CREDIT, Communist Party of South
Africa Pretoria District.

Effects uncleared

JHB

S/B 17. 10. 0.

(Date stamped
Barclays Bank
(Dominion, Colonial
& Overseas)
East End Branch
21 JUN 1950.
Teller 3
Pretoria)

17. 10. 0.

Amount in words : Seventeen Pounds Ten Shil-
lings.

Paid in by:

A. Sigamoney.

Communist Party of S.A.
Pretoria District

23.- 6 - 50.

Barclays Bank (Dominion, Colonial & Overseas)
with which is amalgamated

The National Bank of South Africa Limited
East End Branch Pretoria Transvaal (7-565)

Pay the Communist Party of S.A. Pretoria or Bearer
the sum of Eight pounds fourteen shillings six pence

(£8.14.6.

(Sgd.) N. Nyadice Mokgatle Chairman
(Sgd.) A. Sigamoney Secretary

No. P 1 755085

(stamped PAID 23rd June 1950)

(Date stamped Barclays
Bank Dominion Colonial
& Overseas.
East End Branch
23rd June 1950
Teller 3
Pretoria.)

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 ROBERTS SWART in
his capacity as Minister of
Justice in the Government of
the Union of South Africa

Second Respondent.

A P P I D A V I T

I, JACOBUS MALAN HUGO of Cape Town, make
oath and say:-

1.

I am the Clerk of the House of Assembly,
and I know Applicant and Second Respondent.

2.

On the 5th day of May, 1950, and in the
House of Assembly, Second Respondent moved for leave
to introduce ~~an~~ a bill to prohibit certain activities
detrimental to the interests of the Union, and to make
provision for declaring organizations promoting such
activities to be unlawful, and for prohibiting certain
periodical or other publications, and for matters
incidental thereto. After discussion, this motion
was put and agreed to by the said House. Second

Respondent 2/...

Respondent thereupon moved that the Unlawful Organizations Bill, a copy of which is attached hereto and marked "A", be read a First Time and this motion was also agreed to. He then moved that the Second Reading of the said Bill be taken on the 10th day of May, 1950, and this motion was likewise adopted.

3.

On the 10th day of May, 1950, the Unlawful organizations Bill (with other matters on the Order Paper) was not reached and it remained in abeyance until the 19th day of May, 1950, when Second Respondent proposed to move, as an unopposed motion, that the Order for the Second Reading of the said Bill be discharged, and that the subject thereof be referred to a Select Committee for consideration and report, such Committee to have leave to bring up an amended bill, and that it be an instruction to such Committee to bring up its report not later than the 31st day of May, 1950. To this an objection was made and Second Respondent thereupon gave notice in terms of the rules of the House, that he would move a motion in these terms on the 22nd May 1950, as will appear more fully from a copy of the Votes and Proceedings of the said House on the 19th day of May 1950, which, is attached hereto and marked "B".

4.

On the 22nd day of May, 1950 the House agreed to the said motion and the Select Committee referred to therein was duly appointed.

5.

On the 31st day of May, 1950, the Chairman 3/...

Chairman of the Select Committee aforesaid submitted a special report requesting that the date by which the Committee was in terms of the motion above-mentioned to submit its report, be extended until the 5th day of June, 1950, and to this the House agreed.

6.

On the 5th day of June, 1950, the said Chairman brought up the Select Committee's Report, in terms of which it reported an amended Bill entitled the Suppression of Communism Bill (a copy of which is attached hereto marked "C").

7.

On the date last-mentioned Second Respondent moved that the Report and proceedings of the Select Committee be printed and he further moved, as an unopposed motion, that the First Reading of the Unlawful Organizations Bill (annexure "A" hereto) be discharged, and that the said Bill be withdrawn. Both these motions were agreed to by the House as will appear from a copy of the Votes and Proceedings thereof on that date which is attached hereto and marked "D".

8.

The said Unlawful Organizations Bill could therefore not be proceeded with and did in fact at no time pass a Second or Third Reading in the House of Assembly.

9.

On the 5th day of June, 1950, furthermore, and by direction of Mr. Speaker, the Suppression of Communism Bill (annexure "C" hereto), as submitted

by the Select Committee above described, was read a first time in the House of Assembly. Thereafter Second Respondent moved that the said Suppression of Communism Bill be read a Second Time on the 8th day of June, 1950. Applicant thereupon moved as an amendment to the said motion, that for the word "eighth" there be substituted the word "fifteenth" but this amendment was negatived, and the House of Assembly adopted the motion as moved by Second Respondent.

10.

The Suppression of Communism Bill with other matters on the Order Paper, was not reached on the 8th day of June 1950, but on the 14th day of June, 1950, Second Respondent moved that the said Bill be read a Second time. The debate on this motion was continued on the 15th day of June, 1950, and after two amendments which had been proposed were defeated on divisions, the said Bill was read a Second Time, as will appear more fully from a copy of the Votes and Proceedings of the said House on the date last-mentioned, which is attached hereto marked "E".

11.

The Committee Stage of the Suppression of Communism Bill was set down for the 17th day of June, 1950, and the House considered it on that date and on the 19th idem, when the said Bill went through the Committee stage, - the Report Stage being set down for the 20th day of June, 1950. On the last-mentioned date and after the Report Stage had been taken, the House of Assembly passed

The Third Reading of the Suppression of Communism Bill, which in due course became the Suppression of Communism Act, 1950.

DATED at CAPE TOWN this 13th day of OCTOBER 1950.

(Sgd) J. M. Hugo

Clerk of the House of Assembly.

SWORN to before me at Cape Town this 13th day of October, 1950, the deponent having duly acknowledged that he is aware of and fully understands the contents of this Affidavit.

(sgd.) S. van Platsen

COMMISSIONER OF OATHS

Capacity: Registrar of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa.

Area: Union of S.A.

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 ROBERTS SEART in
his capacity as Minister of
Justice in the Government of
the Union of South Africa

Second Respondent.

A F F I D A V I T

I, JACOBUS BESTER of Cape Town, make
oath and say:-

1.

I am a Detective Sergeant attached to the
Special Staff, Criminal Investigation Department,
South African Police, Cape Town, and in that capacity
I have attended meetings held by the Communist Party
of South Africa, at Cape Town and other centres in
the Cape Western area during the past three years.

2.

I know ISAAC OSIER HORVITCH, an Architect
of Cleghorn's Chambers, Cape Town, who for some time
has been a member of and National Chairman of the
Communist Party of South Africa, and who has
continued to hold this office this year.

3.

I also know SHEILA HORVITCH, who is a sister
of the said ISAAC OSIER HORVITCH. From time to time

I have 2/...

I have seen her working in the offices of the Cape District Committee of the said Communist Party in Burg Street Cape Town, and on other occasions I have seen her acting as Chairman at meetings held by the said Communist Party at the Grand Parade, Cape Town.

4.

The said SHEILA HORVITCH, was, and to the best of my knowledge and belief still is a member of the said Communist Party.

5.

On the 1st day of April 1949, the said Sheila Horvitch, embarked at Cape Town on the R.M.M.V. Pretoria Castle and left South Africa for England.

6.

The said Sheila Horvitch has not yet returned to the Union of South Africa and therefore could not have attended any meetings of the Communist Party of South Africa during the months of May 1950 and June 1950, at Cape Town or elsewhere in the said Union.

(Sgd) J. Bester

SWORN to before me at Cape Town on this 19th day of October, 1950 the deponent having duly acknowledged that he is aware of and fully understands the contents of this affidavit.

(sgd) J.E. Cloete

COMMISSIONER OF OATHS

Capacity Asst. Registrar of the
Supreme Court.

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Publisher: **Historical Papers Research Archive, University of the Witwatersrand**

Location: **Johannesburg**

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