

IN DIE HOOGGEREGSHOF VAN SUID-AFRIA
(TRANSVAALSE PROVINSIALE AFDELING)

SAAKNOMMER: CC 482/85

PRETORIA
1988-12-07

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

KONTRAKTEURS :

LUBBE OPNAMES

COURT RESUMES ON 7 DECEMBER 1988.

SAMUEL MOKGETHI MOTSUENYANE: d.s.s.

EXAMINATION BY MR BIZOS: Dr Motsuenyane would you give his lordship a short resume of your background. You are a businessman? -- I am indeed a businessman, president of the National African Federated Chamber of Commerce, chairman of the African Bank. I hold many directorships and chairmanships in various companies.

Do those companies include your own private companies involved in commerce and in construction? -- Yes. (10)

And are you in addition a director of Barlow-Rand? -- Yes.

And a director of the Small Business Development Corporation? -- Yes.

And a director of Barclays Bank? -- Yes.

COURT: Does it still exist?

MR BIZOS: I beg your lordship's pardon, yes First National Bank?-- Yes.

The danger of reading from a curriculum vitae that was printed before the change.

COURT: Yes, two years ago. (20)

MR BIZOS: Two years ago. Are you a council member of the International Chamber of Commerce? -- Yes, since 1974.

Where are its headquarters? -- The International Chamber of Commerce has its headquarters in Paris.

Have honorary doctorates been conferred on you by the University of the Witwatersrand and the University of Cape Town? -- Yes.

In Commerce and Economic Science? -- That is correct.

Now were you educated at the Wilberforce Institute in the Vereeniging district in the Vaal triangle? -- Yes, I did (30)

my/....

my high school work at that school.

And did you attend the University of North Carolina in the United States? -- Yes. I was enrolled in the University of North Carolina as a graduate in the Department of Agronomy.

Was a degree of Bachelor of Science conferred on you? -- Yes.

And were you the recipient of a Diploma in social work by the Jan Hofmeyer School of Social Work? -- That is correct.

Now were you given copies of his lordship's judgment. Perhaps my lord, could I set the pages out for the sake of (10) convenience, from pages 30 to 48 and 491 to 507, page 181 to 82, 216 to 288 and his lordship's conclusion on pages 722 to page 729. Were you advised Dr Motsuenyane that you must accept these findings for the purposes of your evidence before his lordship? -- I do accept the judgment and have been advised accordingly.

Yes. Now in order that some of the things that you may say to his lordship may be explained would you mind giving us some background to your own political activities Dr Motsuenyane? Were you a member of the African National Congress? -- Yes I (20) was a member of the African National Congress during the years that I was a student at the Jan Hofmeyer School of Social Work and until that organisation was banned in 1960. I was unfortunately away from the country when it was banned in 1960, being in the United States. I joined the African National Congress in those years because it was the only black recognised national organisation fighting for black political rights in our country. It enjoyed popular leadership of persons in the 50's such as Dr A.B. Puma(?) and later Chief Luthuli. People like Seloki Tema(?) and leaders of great character and (30) leadership/....

leadership ability and for that reason we felt this was the only organisation that we could support at that time as it was indeed, from my point of view, necessary for this country South Africa to undergo change towards involving blacks more in the political life of the country.

You have mentioned some of the leaders. Were you acquainted with the late Dr Moroka? -- I knew Dr Moroka personally as a farmer in the Free State and I being involved in farming I spent some time in his house at Taba Nchu.

Was he one of the presidents of the African National Congress? -- He certainly was one of the reputable presidents of the African National Congress. (10)

And did you know Professor Z.K. Mathews? -- I knew Professor Z.K. Mathews at Fort Hare and did in fact have a great deal of admiration for his scholarly abilities.

Now did you know either Mr Nelson Mandela or Mr Oliver Tambo in the 50's? -- I certainly know Mr Mandela very well, as well as Mr Tambo. I knew them as lawyers and as friends.

You have described the esteem that other leaders of the African National Congress enjoyed. Did Mr Mandela and Mr Tambo enjoy the same esteem and reputation? -- In their time as leaders of the ANC they certainly had popular support of the black community in general. (20)

Did they in your opinion divert from this venerable view that you have expressed for other leaders of the African National Congress?

COURT: What does that mean?

MR BIZOS: Well I understood

COURT: Are you asking the witness whether he in his view they were held in as high an esteem as the firstmentioned (30)

number/....

number of people?

MR BIZOS: It would have been a clearer way of putting it, thank you my lord. You have heard his lordship's question. What is the answer Dr Motsuenyane? -- I believe that, I stress the fact that the ANC enjoyed popular leadership in its early days, committed to non-violence and I believe these two gentlemen were also committed for some time to the same course except that in the early 1960's there was need for them to change direction and emphasise the importance of an armed struggle against the government because for all the years (10) of peaceful protest in this country they had seen no visible signs of change on the part of government and they felt justified in seeking an alternative that would precipitate a quicker response from government.

Do you know what sort of violence Mr Mandela and Mr Tambo and the African National Congress decided to embark upon in, when the organisation was banned in 1960, or after the organisation was banned in 1960?

COURT: Were you present? -- I came back only in 1963 from the United States. (20)

MR BIZOS: Did you keep yourself informed with the affairs in South Africa? -- Well I naturally would be interested in getting current events from home. I did know that in the early 60's an organisation was formed which was dedicated towards the armed struggle called Mkhonto we Sizwe.

Have you met Mr Tambo after he left South Africa in 1960? -- Yes sir. As recent as 1986 I led a delegation of businessmen to Lusaka to confer with the ANC because were regarded it important from our point of view to meet with the leadership of the ANC and to discuss the future together. In our view (30) there/....

there is no way that any solution to the problems of our country can be reached without implicating the ANC because it does have a constituency, a silent constituency although it is banned. When I went to Lusaka then I met Mr Oliver Tambo in the presence of his whole executive and we had a two day meeting with him to discuss mainly matters relating to business, the economy, as well as the political future of South Africa.

Do you know from what you were told by Mr Tambo or other persons as to how easy or difficult the decision to take up (10) violence as part of the strategy of the African National Congress? -- Unfortunately as will be seen in the appended information on this interview we discussed more the political issues and stayed clear of discussing the violent option.

Yes. -- We were in fact at that time coming to Lusaka just after the group of eminent men had failed to find a solution for the peaceful settlement in the country. Therefore we were still pursuing a peaceful option; a peaceful negotiation, with the ANC. We did not talk about the violence.

You spoke of the appended information. Did you report (20) to you annual meeting after you returned from Lusaka? -- Yes. This is what I am referring to as the appended information. I did report fully to my national organisation on the discussions between NAFCOC and the ANC and Lusaka.

Was that done privately or publicly? -- My report was given very generous publicity throughout the country and it was done publicly.

What sort of South Africa do you want in the future Dr Motsuenyane? -- Our aspirations are to see a South Africa of the future that would generate a spirit of togetherness (30) among/....

among all South Africans of all racial groups. A democratic non-racial type of political dispensation in our country. This is what we would substantially agree with the ANC on.

What do you personally say, as your personal view, in relation to the part of the programme taken up by the African National Congress of violence Dr Motsuenyane? -- I regret the violence although I have not personally condemned the violence because I have a very deep appreciation of why the ANC had to take this option of violence. But I do not personally subscribe to violence as an option. If negotiation could be (10) our first option I would go for negotiation.

You have told his lordship that you have not condemned the violence of the ANC. Have you seen that as a support by you or those associated by you with the programme of violence of the ANC? -- The men who have in desperation and out of sheer frustration committed themselves to the violent option enjoy a considerable amount of credibility in my community and it is hardly an easy matter for a man like me to stand on public platform in condemnation of the violence that is being generated. I believe we applaud most of these men as (20) heroes in the black community because they are working for the change which all of us believe must take place in our country.

The violence and the other efforts undertaken by the ANC do you know to what end they are directed? -- I would think that the attempt by the ANC in generating violence is really to evoke some quick response from, on the part of the authorities in this country to come to the negotiating table. I would think this is the main object. If in fact we could see people coming in a very serious way to negotiate about a just future for all South Africans I believe the violence would (30)

automatically/....

automatically cease.

You have told his lordship that in your view the men like Mr Mandela and Mr Tambo are regarded as heroes in your community. Why precisely would you say is there this feeling Dr Motsuenyane? -- These men have sacrificed professions which would have brought them prosperity and affluence, they have spent their lives and their time in jail sacrificing for the benefit of the many who are not jailed but who nevertheless share the same views and aspirations and therefore they are being applauded and held in high regard for the sacrifices (10) that they have given for the freedom of the many people who * hold the same views in my community.

We were told during the course of this trial Dr Motsuenyane that the leaders of black people in the community and especially those in the ANC and the UDF, to use the words of the state, that they exploit the so-called grievances of the black people. Would you like to tell his lordship anything about whether these grievances are so-called or otherwise? -- Many of the grievances that are experienced in the black community must be seen as legitimate. I myself am a member (20) of a family that has had grievances which are real. My uncles and grandfathers were the first people to buy land in the area between Potchefstroom and Klerksdorp where the mining town of Stilfontein is now situated. If that place was not declared a white area and the people consequently removed from that area to another area where later platinum was discovered in the Rustenburg district, there again they had to moved in order to give way to the mining companies that are now drawing wealth out of the ground. We believe that this is a real grievance and one of many such grievances that are experienced by (30)

black/....

black people in South Africa and therefore I do not think that the leaders are exploiting grievances. They are really having a legitimate case about which to raise their voices.

It might be suggested to your Dr Motsuenyane that you have not done too badly personally? -- Well if a little autobiography were to be written on my life then it would reveal, perhaps to the amazement of a lot of people, about the struggle that I personally had to endure in the early years of my life.

COURT: No doubt you will write your autobiography at some stage doctor but is it necessary to give it in court? -- I (10) am merely answering a question which I thought wanted me to say something about my own case.

MR BIZOS: Has it been an easy road to the position that you have reached? -- It has not been an easy road. This is why I say it has been a process of overcoming difficulty after difficulty.

I want now to turn to the United Democratic Front. Have you had close contact with the United Democratic Front since its formation in 1983? -- No I have not had very intimate connections with the United Democratic Front except that I (20) have heard and read a great deal about the United Democratic Front.

And how have you perceived it since its formation? -- My perception is that the United Democratic Front fulfils a needful role in our community. It preaches non-violence in the first instance, it preaches unity of all people, black and white and it preaches against the injustices that all of us recognise in our community.

What was your personal attitude to the Black Local Authorities as they were instituted in the late 60's and (30)

continued/....

continued in various forms up to 1984/85 Dr Motsuenyane? --
The black community has been subjected to a number of toothless advisory bodies for a long long time and I regarded the creation of these local authorities as the creation of another toothless system that is not going to give black people the executive control and power that they desire to have in their country. Therefore I personally rejected them as being relevant to the aspirations of the black community.

Did you know, either personally or by reputation, any of the leaders of the United Democratic Front Dr Motsuenyane? (10)
-- I did not know them very intimately but I have heard of them and I know that they enjoy tremendous support among the black people that I move amongst.

Did you know of Mr Molefe, accused no. 19, Mr Lekota, accused no. 20, Mr Chikane, accused no. 21 whilst the UDF was operating during 1983, 1984 and a portion of 1985? -- Yes I got to know them not very intimately and read a lot about their activities in the UDF and I have great admiration for the spirit of fortitude with which they led their organisation.

Would you like to express any view as to whether or not (20) they would have any meaningful role to play in any process of reconciliation in our divided society? -- I have no doubt that first of all as young men, much younger than myself, that these men have a role to play in the South Africa of the future in reconciling existing differences between races in, and as well as ethnic groups in our country because this happens to be the motive, the main motivation in the setting up of their organisation.

Are you familiar with the freedom charter Dr Motsuenyane?
-- I am familiar with the freedom charter. (30)

Has/....

Has your organisation drawn up any charter, particularly related to business, for a future South Africa? -- We found it necessary to formulate a charter which we regard as complementing the freedom charter that does not touch on certain vital aspects of business, especially after our discussions with the ANC in Lusaka. We have a NAFCOC charter.

Did you become aware of any other business charter being drawn up at or about the time that your own charter was being drawn up? -- Yes I am aware that the Federated Chamber of Industries drew their charter just before ours was adopted. (10) We were consulted about that charter as well.

Is this a copy of your charter? -- It is.

COURT: How is that relevant Mr Bizos?

MR BIZOS: Well it is relevant on the issue on which your lordship made the finding of fact in relation to the freedom charter.

COURT: Yes, I am not interested in anything that goes against the grain of any finding of fact of this court.

MR BIZOS: No my lord, what we are entitled to place before your lordship, with respect, is not what goes, contradicts (20) the judgment. The year in which the freedom charter has been circulated was discussed by the accused and in relation to sentence we are entitled to draw to your lordship's attention that the freedom charter was not the only document to use the sort of language that is used there, not the only document which makes claims which are fundamentally different to the present situation in South Africa.

COURT: But what are you busy with Mr Bizos? I found that the UDF chose the violent option. I did not find the UDF guilty because they had adhered to the principles of the freedom (30) charter./....

charter.

MR BIZOS: But my lord I do not want to debate your lordship's judgment at this stage but ...

COURT: You are taking, throughout this evidence the last couple of days you have taken a number of portions of the judgment out of context and attempted to lead evidence to contradict it. But you are setting up targets and shooting them down which are irrelevant.

MR BIZOS: Well we do not know what your lordship's approach on the question of sentence is going to be but we would (10) have thought, with respect, that the, your lordship's finding was made in a particular milieu, in a particular set of circumstances. Much time was spent during the course of this trial in relation to the freedom charter.

COURT: Now if you had all that opportunity why lead it in mitigation again?

MR BIZOS: No because we are entitled, with respect, in mitigation to lead additional evidence in order to show the circumstances and milieu in which the accused did what your lordship has found ... (20)

COURT: Well I am not interested in NAFCOC's charter Mr Bizos and it is not allowed.

MR BIZOS: We will have to accept your lordship's ruling in that regard and I will leave it at that. The violence and the disorder that took place during 1984 and 1985 could you describe to his lordship in what sort of atmosphere that violence took place? In your opinion were there or were there not justified grievances amongst the population as a whole? -- I think the violence of 1984 and 1985 took place against the backdrop of increased tensions in the land, against the local (30)

authorities/....

authorities, the creation of local authorities as well as the Tricameral parliament which people did not really accept and there was a lot of turbulence in the schools and it has to be regretted. We as businessmen suffered a great deal of hardships at that time because it is known that among the victims were many business people and who lost not only lives but property. But it is of course those who were seen to be part of a system that had to be done away with. So that background to me paints a picture that requires you to give accommodation and compassion in your judgment. (10)

Do you think that the severity or otherwise of the sentence in this case would have any general effect on the black community? -- I believe that the severity of sentence will certainly impact on the attitudes of people, particularly the black people in South Africa. It could erode the spirit of goodwill which this country requires at this time and on the basis of which possible negotiations for the future need to be negotiated.

Thank you my lord, I have no further questions.

CROSS-EXAMINATION BY MR FICK: Dr Motsuenyane did you belong (20) to any organisation affiliated to the UDF at any time? -- No our organisation is not affiliated to UDF.

Are you conversant with the aims and objects of the UDF? -- I have read, as I said, some of the aims of the UDF in their declaration.

Is that all? -- Yes.

You have not seen any other UDF documents? -- I have seen mainly the declaration and the founding documents.

When? -- 1983.

Now is there any reason why your organisation did not (30) affiliate/....

affiliate to the UDF? -- Well we regarded the UDF as a national body. We are a national body and we have to get our people together and get a mandate to talk to UDF before we even affiliated. I think this is the reason. There is no real division, severe serious division between the aspirations of the UDF and that of NAFSOC.

Yes but why then did you not affiliate? -- Well we would really be doing just about the same thing. I think we see ourselves as playing a meaningful role in the economy. Bringing about the correct climate in the economy whilst the (10) UDF was looking at a much broader field.

How would you describe yourself Dr Motsuenyane, as a capitalist or what? -- I am not a capitalist.

What are you? -- I am a businessman.

What is your attitude towards socialism? -- My attitude is that socialism has got very good aspects in it which are in fact operating in our economy at the present time. South Africa has a quasi-socialist order. In the black community certainly we regard the system to be inclined more towards socialism because government owns everything. We own (20) nothing. Properties, houses and everything is owned by government and we are suffering because there is socialism in the black areas.

All your companies are owned by the government? -- Many companies are still owned by government or para-statal organisations.

I am talking about your companies Dr Motsuenyane. -- Pardon?

I am talking about your companies. -- My companies?

Yes, are they owned by the government? -- My companies are now owned by us but this is a recent development. The, (30)

up/....

up until 1975 my lord we were not even allowed to form a company in this country.

Now do you still support the ANC? -- I do support the objectives of the ANC, except for the violence.

And what is your attitude towards the alliance between the ANC and the Communist Party? -- Well I believe that the ANC has a right to negotiate with whatever group in the world as all countries are free to do. We in this country, in South Africa, are talking to the communists across the border, we are talking to Angola, we are talking to Mocambique and I do (10) not see any harm in the ANC talking to the communists.

Ja but that is not the question. I am talking about the alliance, not talking. -- I do not know much about their alliance.

You did not question them in Lusaka about the alliance? -- We did not discuss the alliance.

Now do you know what sort of South Africa the ANC or the South African Communist Party seeks to establish? -- I would like to speak for the ANC although I am, at the moment the ANC is not here but I have had meeting which make me believe (20) that the type of country the ANC would like this to be is a country in which all people, black and white, would have equal rights politically. It would, we would seek to establish a just order where the minority does not dominate the majority.

Do you agree that the ANC is not interested in talks, it is interested only in taking over the government by violence? -- I do not believe that. I think the ANC would, if the proper climate were created in this country, come to the conference table and talk.

Now are you aware of the fact that the government (30)

asked/....

asked Mr Mandela to forswear violence? -- I am aware.

And are you aware of the fact that Mr Mandela refused to do that? -- I am aware. I think in principle when a man has done his sentence it is not fair for him to be asked to abide by other conditions which do not normally apply in the case of a man who has done his sentence. I think it is unfair to have to ask Mr Mandela to forswear violence when the country itself is being accused of being violent.

Now do you agree that the ANC is not prepared to forswear violence at this stage? -- I believe that in the absence of (10) a realistic plan which will show the light on the other end of the tunnel, what sort of direction South Africa is going to move to, in the absence of a plan that reveals the type of future that the government has in mind it is very difficult for anybody who is trying to bargain, I would like to say that the ANC wants to bargain with the government and the government must see this as an honest attempt to get them to a conference table where all of us, black and white, would structure a future that is sustainable and just. That is the sort of feeling I have, perception I have about the ANC and its (20) attempts.

Do you have any knowledge about the conditions set by the ANC or the UDF before they are prepared to talk with the government? -- As a non-member I would not say that I know all the conditions. I would certainly say that some of the conditions, before the cessation of the violence, is that the government must reveal its intent to allow people equal opportunity and participation in the government of the country. I think this is one of the preconditions that, and of course it has been said that the political prisoners must be freed to (30)

participate/....

participate in any negotiations about the future of the country.

And the return of the exiles? -- And the return of the exiles.

And the disbanding of the ANC and the PAC? -- Of course I would agree that how else can we negotiate if the ANC has its hands tied and are not able to participate in any meaningful talks. I think that it is realistic and logical to have the ANC unbanned before the discussions take place so that some of the ANC people can participate in creating this new (10) dispensation for South Africa.

And the disarmament and disbandment of the police and the army? As a condition? -- I would say about that I do not believe that any country can run without an army and a police force, but I believe that the type of arm and police force that is now practising in my view is seen to be buttressing as system that is totally unacceptable to the black community at the present time.

You gave evidence to the effect that you knew accused no. 19, 20 and 21 since 1983 and you have great admiration for (20) them and with their ability to lead their organisation. Is that the perception you got that accused no. 19, 20 and 21 are the brains behind the UDF? -- I think they are leaders, young leaders in their organisation and for the role that they play they have got the support of the black people.

COURT: For what role? -- The role of leading their organisation, the UDF, which is seen as an instrument that would bring about desirable changes in the political climate in our country.

Now you also gave evidence to the effect that the (30) severity/....

severity of the sentence would have a certain effect on the community. Now on what do you base that opinion? -- It is based on previous judgments of a similar nature. We have seen over the last twenty years a lot of our black leaders sentenced for long terms of imprisonment to Robben Island and other places and I know that this has impacted on the feelings and the attitudes of the black community in a very negative way. Because the cause for which these men stand appears in our view to be a just cause.

Ja, but do you agree they were not sentenced for the (10) cause for which they stood but for their actions, their violent actions? Murder, petrol bombs, car bombs, land mines? -- We regret, I have already said I personally regret the violence.

COURT: Well may I just get your personal point of view Dr Motsuenyane. Should a court sentence a person who has planted a bomb? Even if he does it because he is an ANC terrorist? Or is your view he should not be sentenced? -- Much depends very much on the compelling factors. We cannot disregard totally, I know the planting of a bomb is not an acceptable thing.

Well the question is easy. Should a court sentence (20) such a man? -- Well the sentence must be weighed, if it has to be done must be weighed against the overwhelming evidence of the compelling factors. I do not believe we should isolate in sentencing any man who has done that, we should isolate the compelling factors from the sentence.

Yes now having said all that what is your answer? -- My answer is I stand here to plead that if sentence has to be passed, and I have already said I have respect for the judgment, it has to be in extreme mitigation.

Doctor let us just get down to brass tacks. Do I (30)

understand/....

understand you to say that a man who has planted a bomb, let us take the extreme case, should (a) not be sentenced or (b) not be sentenced to imprisonment? -- I would say a man who has planted a bomb is guilty and should be sentenced but then in considering the sentence, and which is I think the purpose of my being here, is to plead that if guilt is established that there be a consideration of the compelling factors.

Yes that, you can take it for granted that that will be done. I want to know where you stand as far as imprisonment is concerned. We have been talking around the issue at the (10) moment. -- In the case, in this particular case ...

No, no, the case where a man who plants a bomb. This particular case I will decide on its merits. -- Well I think this is something hypothetical now.

Yes. -- We have to move away from a practical situation to a hypothetical situation.

It is not so very hypothetical because on Robben Island there were quite a few people who planted bombs. So, but even if it is hypothetical what is your answer? -- I have said if the person is found guilty of having planted a bomb (20) that person should be sentenced.

And should he go to jail? -- He should go to jail.

Yes. -- But then the term ...

Well that is a different matter.

MR FICK: Are you aware of the fact that Mr Mandela, in 1962, received military training in Algeria? -- I am not aware of that. Am I permitted to ask any question.

COURT: If it is relevant to the case. -- Because I would like to know why this question is asked.

MR FICK: You call him your leader. -- Pardon?

(30)

You/....

You call him your leader and a hero. Do you still regard him as a hero? -- I do.

When he received military training in Algeria? -- Unquestionably so.

And is he still your hero if he planned a violent revolution and the killing of many people? -- I believe I have already explained the circumstances, the prompting factors. Mr Mandela and many of us who believe in what he believes hold the view that this country must change its policies. I believe that we, everything that is done by the groups we are now talking, (10) I mean that are now facing judgment this morning, are doing these things in an attempt to prompt change in our land. The whole world talks about change in South Africa and Mr Mandela is no exception.

What do you say if I put it to you that Mr Mandela seeks a communist government in South Africa? -- I would disagree that Mr Mandela is in fact construed by all of us a nationalist rather than a communist.

Are you aware of the fact that he wrote a book on communism, "How to be a Good Communist"? -- The overwhelming (20) membership of the ANC, traditionally and historically, is a membership of nationalists, not communists. They do not hold the preponderance and I believe, in my judgment, Mr Mandela's - and I want to say this is based on authoritative information that I gathered from our interview with the Lusaka people, is that their views are seriously being misinterpreted for deliberate reasons in this country.

Is it not so that the ANC leadership was hijacked by the communist party? Is it not a well known fact? -- I do not believe that is true.

(30)

Now/....

Collection Number: AK2117

Collection Name: Delmas Treason Trial, 1985-1989

PUBLISHER:

Publisher: Historical Papers Research Archive, University of the Witwatersrand

Location: Johannesburg

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