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Judgment

IN THE SUPREME COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

BEFORE:

The Honourable Mr. Justice CLAASSEN.

In the matter of:

THE STATE vs. ANDREW MASHABA AND OTHERS

17th SEPTEMBER, 1964.

- JUDGMENT -

CLAASSEN, J:

At the opening of this trial the indictment was withdrawn against accused No. 7. The remaining nine accused were charged with the crime of SABOTAGE in contravention of Section 21(1) of Act No. 76 of 1962. In this judgment I need not repeat the indictment. Nor will I quote Section 21(1) of Act No. 76 of 1962.

The essence of the crime charged is one of conspiracy, and that requires an actual agreement to carry out a criminal act. That is clear from the case of Rex vs Labuschagne 1941 T.P.D. 271. I may say at once that although there are varying degrees of participation as far as these accused are concerned, I have come to the conclusion that all the accused before the Court must be found guilty of the crime charged.

The trial was conducted on the basis that an organisation known as Umkonto We Sizwe (Spear of the Nation) existed. It was an organisation formed with intention of sabotaging Government buildings with the object of coercing the Government of the Republic of South Africa into acceding, at least, to some of the political demands of the non-White peoples. It is

clear that if this object succeeded it could by implication have led to the overthrow of the Government of this country.

It would appear that this organisation had its headquarters probably in Johannesburg. The organisation was also established in Pretoria.

The evidence established that accused No. 1 lived in Johannesburg. He became the chief leader for the organisation in Pretoria. He was locally considered by the members of the organisation as the Big Leader. He was the person who approved all the sabotage plans. He supplied the explosive materials and demonstrated the manufacture and use of such materials, and also supplied a pistol and ammunition to the organisation in Pretoria.

Accused No. 2 was the deputy of No. 1. No. 2 lived in Pretoria and was the leader in Pretoria. He was responsible for selecting cell-leaders, who would each in turn form a cell of four "trustworthy" saboteurs. When a target for sabotage had been approved, No. 2 would acquire from No. 1 the necessary explosives and supply these to the particular cell leader. The witness John Musupye became the deputy of No. 2, and No. 3 in turn the chief executive under Musupye in the sense that he was the most active saboteur - the man who did most to plant the bombs in the buildings selected.

The organisation was to operate on a most secretive basis. The intention originally was that No. 1 would only know No. 2 in Pretoria. No. 2 in turn would know only the individual cell leaders without knowing the members of each cell. The cell leaders in turn

would not know who the other cell leaders were. In fact this secrecy could not be achieved, because the cell leaders were all trade union leaders, well known to each other, and on one occasion No. 1 met such cell leaders together at the invitation of No. 2, and on that occasion No. 1 demonstrated to them the manufacture and use of gunpowder. He also instructed them on the oath to be taken by all members of the organisation and they had a discussion about the possible targets to be sabotaged in the Pretoria area. This happened at the house of a witness, Johannes Letoboko, on Easter Monday of 1963.

It was a rule of the organisation that targets were to be selected in such a way and sabotaged without injuring or killing any human being. Many possible targets were at various times discussed and watched, but not sabotaged, because there was a risk of life involved.

All the accused pleaded not guilty. Mr. Beyers and Mr. Rossouw appeared for the State, while the accused were defended by Mr. Fischer and Mr. Hare. Mr. Hare appeared for No. 8 alone. Accused No. 6 was discharged at the end of the State's case - there being no evidence against him.

The first witness called by the State was John Tseleng Musupye. He is a person mentioned as a co-conspirator in the schedule to the indictment, and he was warned in terms of Section 254 of the Criminal Code. He gave his evidence-in-chief with great conviction, giving full details as to personalities, times and places. He was an impressive witness with a remarkable memory. At the same time it must be remembered that such a witness can be a most dangerous witness with all the inside

knowledge he has at his disposal. He was a traitor to his own cause and comrades. One also has to bear in mind that he was imprisoned in terms of what might be called the "90-days Act." Great caution must also be taken in accepting the evidence of other accomplices such as Letoboko, and the evidence of a police trap Machesane.

In cross-examination this witness was in my opinion not discredited, although his evidence was open to criticism. It does not follow that his every word has to be accepted, but in my opinion he gave in the main a truthful account of the happenings in Pretoria. I also bear in mind that where I draw certain inferences I must not overlook the principles laid down in the case of Rex vs. Blom 1939 A.D.

Accused Nos. 1, 2 and 3 gave evidence for the defence. Their evidence amounted in fact to pleas of "guilty" to the charge. They confirmed in substance the evidence given by the main State witness Tseleng John Musupye, and Johannes Letoboko, who was a co-conspirator with the accused.

I am of the opinion that accused Nos. 1, 2 and 3 in giving evidence endeavoured to shield the other accused as far as possible. Where they denied certain details of the evidence of Musupye, I got the distinct impression that this was done to shield the other accused, and I did not consider them as frank witnesses in those respects. It is important to notice that Musupye was prepared immediately on his arrest to tell the police all he knew. Furthermore when the defence witnesses differed from Musupye, all the probabilities of the case

tended to support Musupye. The greatest part of his evidence is supported by the defence, other State witnesses, and the probabilities of the case.

The witness John Musupye knows all the accused very well, except No. 1. They were all associated in political movements, mainly labour organisations, and also the banned African National Congress which will be referred to as the A.N.C. He got acquainted with Accused No. 1 on Easter Monday, 1963.

John told the Court that accused Nos. 3, 4 and 8 were members, with him, of the Domestic Workers' Union, and that Nos. 3, 4, 5, 8, 9 and 10 were members, with him, of the South African Trade Union Congress. All the accused except No. 1 and 2 were also associated with him in the A.N.C. He knew No. 2 only since 1956. No. 2 was the Chairman of the A.N.C. in the Pretoria region. John was on the executive of the A.N.C. in his capacity as organiser. He collected subscriptions from members and handed them over to accused No. 2.

From the newspapers he had learned that there was an organisation known as Umkonto We Sizwe (Spear of the Nation) in existence, and that this organisation committed acts of sabotage in the country. This was in December 1961. It was an organisation that grew out of the banned African National Congress - an organisation that remained active in spite of its having been banned in this country by legislation.

John Musupye discussed the new body Umkonto We Sizwe in the first instance with No. 2, but No. 2 did not then know details about the organisation, but later during 1962 he explained to John that although the A.N.C.

had been banned the members were still working together, and that he, No. 2, wanted soldiers for the Umkonto We Sizwe and wanted to know if John would join.

When No. 2 approached John, he knew that the Umkonto members were involved in the blowing-up of buildings. He inquired from No. 2 as to who had formed the Umkonto, and he was told that it had developed out of the A.N.C. Eventually, with that knowledge, he decided to join this organisation. This was during the period April to June 1962. He said he knew of the dangers involved and that if convicted he would receive a life or death sentence. He also knew that the materials to be used in acts of sabotage were dangerous and that he could endanger his own life and further that he could be killed by the police while they might be endeavouring to arrest him. He also knew that in giving himself to the organisation it may become necessary to die for that organisation.

Accused No. 2 described to him the type of targets fit for sabotage. These included police stations, Saracens, important Government buildings. He was told that an act of sabotage was equivalent to writing a letter to the Government. Up to that time he said that no reply had been received from the Government to ordinary letters in response to their request for a political say in the Government, so that from then on they were going to write letters in the form of acts of sabotage.

According to him accused No. 2 instructed him to form a cell of four people by recruiting three assistants and that he, John, was to be the leader of that cell.

When the cell was formed he had to report to No. 2, but No. 2 was not to know who those members were. He recruited as members of his cell accused Nos. 3, 4 and the person who was originally named as accused No. 7 in the indictment. To those members he explained the functions of Umkonto. All this took place during the period April to June 1962 while he, John, was a waiter at the Boulevard Hotel, and so was accused No. 4.

After that he reported to No. 2 that his cell had been formed, and there then followed a discussion with No. 2 as to the possible targets to be sabotaged. John mentioned the Old Synagogue - the place where criminal trials were conducted. He wanted the Synagogue to be destroyed, because that was the place where his leader Mandela and other members of the A.N.C. had been tried or were to be tried. No. 2 explained to him to pick his own targets, to spy around, but to make certain that no persons would be killed or injured, because it was a fundamental rule of the organisation that in committing acts of sabotage nobody was to be killed or injured, and that if this should happen, it would then be the result of an unfortunate mishap. With great reluctance John accepted that rule not to kill or to injure people.

John thereupon told his cell members to spy around the old Synagogue. This was towards July 1962. The materials necessary for blowing-up the building were to be supplied by No. 2, and they had to wait about 5 to 6 months for the necessary equipment. John Musupye and also accused Nos. 3 and 4 watched this target and discovered that between 8 and 9 in the evening there was nobody on guard. Musupye requested No. 2 to supply the

necessary materials. They had to wait a long time - so long a time that accused No. 7 became tired of waiting, with the result that John Musupye appointed Alpheus Bokaba, accused No. 8, in his place. The defence tried to show that No. 8 was not a member of the organisation, but in my view the State's evidence proved conclusively that he was in fact an active member. No. 8 was also instructed to look out for possible targets.

Accused No. 3 suggested the Pass Office in Von Wielligh Street, and he and No. 8 inspected that place. John also inspected that building and came to the conclusion that it could be safely entered from the back portion of that building. John in the meantime inspected a Post Office building at the corner of Queen and Proes Streets. No. 3 also inspected this place, but it was abandoned as a possible target, because it was found that a person usually slept on the premises.

John, as well as accused Nos. 3 and 8, also kept watch on the Voortrekker Gedenksaal but ultimately abandoned this building as a possible target. The Government Printing Works in Vermeulen and Bosman Streets were also kept under observation by John as well as accused Nos. 3 and 4, but this target was also abandoned.

John Musupye said he had decided to form a second cell and he had recruited as members Frans Mashilo, Judas Legwabe and John Moepye. Accused No. 3 according to Musupye, knew about this second cell because by this time, he said, No. 3 was his right-hand man and his deputy. These people are all mentioned as co-conspirators in the indictment. Another person, Petrus Segwarithle,

was apparently also induced by John to join one of the cells. In the evidence he was referred to as Petrus Tswarethle.

While waiting for No. 2 to supply the necessary explosives, other targets were considered and kept under observation by John. These included the Central Post Office - actually a telephone exchange in Waterkloof, and the Native Affairs building in Paul Kruger and Jacob Maré Streets. This latter building was suggested by No. 3. John and accused No. 8 kept this building under observation, but decided to abandon it as a possible target.

During January - February 1963 John said he had attended a meeting in Illovo, Johannesburg, where a report was given of an A.N.C. conference that had been held in Bechuanaland. There John learnt that the A.N.C. had abandoned its policy of non-violence and that this body would in future "fight back". On his return to Pretoria his leader No. 2 confirmed to him that the A.N.C.'s policy of non-violence had been abandoned. No. 2 denied this part of John's evidence, but I can see no reason for disbelieving John's evidence.

At about the middle of January 1963 No.2 informed John at his place of employment that he was then in possession of the necessary materials for blowing up the Old Synagogue. John reported to Nos. 3 and 4 that they would then attack the Old Synagogue in a few days' time. At this stage I may say that all the evidence taken together satisfied me that accused No. 4 was a member of the organisation.

John said that he expected to receive dynamite

from accused No. 2 and he arranged for accused No. 3 to receive the explosive materials from No. 2. No. 3 confirmed this in his evidence. Accused No. 2 had explained in detail to John how the bomb to be supplied had to be detonated. In the meantime John also procured a tin containing some oil, and to this he tied a piece of string and hid it in the vacant plot opposite the Boulevard Hotel. He also told accused No. 4 that the Synagogue would be attacked that evening. No. 4 worked with John at the Boulevard Hotel.

That evening John and accused Nos. 3 and 4 proceeded to the Old Synagogue with the tin of oil and the parcel that had been supplied by No. 2 to No. 3. No. 3 admitted his participation in this attempt. John carried the tin of oil, No. 3 the parcel and No. 4 followed behind. No. 3 confirmed this evidence that No. 4 had accompanied them. At the Synagogue John and No. 3 went over a fence into the yard, but John is not certain whether No. 4 also climbed over the fence. John broke a window and put the tin of oil through the opening into the building. He pulled the string to spill the oil. The bomb was actually contained in a tin pail, (Exhibit 1A) which was inside a paper carrier bag, (Exhibit 1B.)

While John was making ready to light the fuse at the base of Exhibit 1A, No. 3 told him that he had to handle that thing with gloves, whereupon he gave him a pair of gloves which John put on his hands. John tried to cut the fuse with a razor-blade, which broke. He then asked No. 3 for a knife and No. 3 in turn asked No. 4 for a knife. In the meantime John managed to cut the fuse

with the broken razor-blade and he then lit the fuse with No. 3's lighted cigarette. He heard the sizzling sound and threw the bomb through the window, and they departed hurriedly. John had pulled off the gloves, but in jumping the fence he dropped them. At that point they were later found by the police. No explosion was heard. The attempt took place on the 23rd January, 1963.

The next day No. 2 came to enquire from John whether the job had been done, but to their disappointment there was no report in the newspapers of an explosion. Late the same day accused No. 2 enquired from John what had happened to the gloves. It then became clear to John that No. 2 had supplied the gloves to No. 3, when handing over the parcel. Still later that day he saw many policemen around the Old Synagogue and realised that fingerprints might be found on the articles he had handled. And later on accused No. 4 said that his knife had been left behind. The knife was found by the police, and that knife was, according to the police evidence, claimed by No. 4 as his own.

After this failure other targets were considered, and particularly the Magistrate's Court building. This was early in 1963. It was watched by No.3 and by No. 8. They made reports to John, and that plan was ultimately abandoned.

Early on Easter Monday, 1963, No. 2 introduced No. 1 to John and was told that No. 1 was one of the higher officials from Johannesburg. No. 1 apparently made no objection to that form of introduction.

No. 2 enquired whether John had a stove at his

house, because No. 1 wanted to show them something, by using a coal or electric stove. John did not have such a stove. No. 2 went off to find a stove and said that he would then come to fetch them, or would send accused No. 5 to fetch them. No. 5 did come to call them, and one by one they went to the house of Johannes Letoboko in Lady Selbourne township. I may also say here that all the evidence taken together satisfied me that No. 5 was a member of this organisation.

At this house of Letoboko John found other men present. They were eight in number, namely, No. 1, No. 2, No. 5, No. 9, No. 10. Also John Mampane and Petrus Segwarithle. No. 1 was introduced by No. 2, and they then all greeted each other as comrades. Johannes Letoboko was outside, apparently attending a fire. This meeting was so secret that although Letoboko, who was a very trusted person, was not permitted to attend the meeting although the meeting was held at his house. It seems clear that only trusted individuals were allowed to be present. The defence claimed that Nos. 9 and 10 were not members.

Johannes brought in a fire made in a brazier and No. 1 demonstrated how explosives were made. He gave them a recipe for the ingredients which Musupye repeated in his evidence. He also said that each one present was required and did stir the mixture that was being cooked, so that they could get the "feel" of the substance.

John also said that each one present had been introduced by No. 2 to No. 1 as a cell leader in a specific area. This was denied by Nos. 1, 2, 3 and 9, but all

why | the facts, circumstances and probabilities convince me that Musupye was right in his evidence.

No. 1 instructed them that a great amount of this explosive material had to be made, for a great deal was required to be used in attacking targets and further, that what they had made had to be handed over to No. 2. They were also instructed to get plastic bags to put the stuff in. No. 1 told them that what he had made for them was gunpowder.

Right | It is impossible to accept that the disclosure of this most secretive and important information would have been disclosed in the presence of non-conspirators. I think they were all members in the sense that they were in sympathy with and co-operating with members of that organisation.

why | They were then requested to mention what targets they had in mind. John said that No. 10, who had been introduced as a cell leader in Atteridgeville, suggested a hall in Atteridgeville. Also a police station. No. 9, who had earlier been introduced as a section leader at Iscor, suggested the Pass Office in Von Wielligh Street, and also the power station at the steel works. No. 9 denied this evidence, but I see no reason for disbelieving John Musupye. No. 5 suggested a cement factory at Hercules. Pieter Mampane, a person also mentioned in the schedule to the indictment, suggested the Guest House at Mamelodi. John mentioned the post office at the corner of Proes and Queen Streets, and one in Waterkloof.

After that No. 1 enquired whether anyone knew the residence of the Minister of Justice. No one knew it at that stage, and it was agreed that they would try

to find out where it was. It was stated that if this house was blown up while that Minister was in Parliament, that act would cause him to take notice of their demands for political rights. After that they were all taught the Umkonto oath which was also there, I believe, administered to them while they all stood. This is how I understood John Musupye's evidence. The meeting then dispersed and John took accused No. 1 to his house for a meal.

John and accused No. 1 thereafter came into town - that is Pretoria, and John showed No. 1 certain possible targets. These were the Old Synagogue, the post office at the corner of Queen and Proes Streets and the Voortrekker Gedenksaal. No. 1 approved of these as possible targets.

To get a true picture of this meeting on Easter Monday, 1963, one must bear in mind the following:-

X The functioning of the organisation was intended to be completely secret. The leader in Pretoria was supposed to know only the cell leaders, and not the members in each cell. One cell leader was not supposed to know who the other cell leaders were. Cell leaders were to be kept in ignorance of those in higher positions than No. 2. No. 2 had recruited the cell leaders. He told the Court that he had recruited more than one, and more than one cell was in existence in Pretoria. No. 2 had invited those present and introduced them as cell leaders to No. 1, and at this meeting the big leader, No. 1, was made known. He could never have done what he did unless assured of the faithfulness to the cause of those present.

X

He revealed to all present their greatest secrets, namely the possession of explosives, the detailed knowledge of how to make bombs; each one was required to stir and get the "feel" of the mixture; the Umkonto oath was taught so that each one in turn could teach others. The types of buildings to be sabotaged were discussed; those present suggested possible targets.

There was the knowledge of the existence of possible spies and traitors. Letoboko, a trusted man at whose house the meeting took place and a man who had already taken part in sabotage at the Innesdal post office, was not allowed into the meeting.

ALB

The conclusion is inevitable and beyond reasonable doubt that those present at the meeting were carefully selected co-conspirators in higher positions than the ordinary rank-and-file members. John Musupye's evidence cannot be rejected when he said that they were all introduced as cell leaders in their respective areas. The evidence of No. 1, 2, (3) and 9 about this meeting is rejected as false beyond reasonable doubt. 21

The next day John went to No. 3 and told him what he had been taught, and that he in turn had to teach No. 3. He also instructed No. 3 to inform the other members of their cell. He asked No. 3 if he knew the residence of the Minister of Justice, but No. 3 only knew the residences of the Ministers of Defence and Finance. No. 3 was then requested to find out where the house of the Minister of Justice was to be found.

After that John and accused No. 8 went about buying ingredients to make gunpowder. Several chemist

shops were visited with a fair measure of success. John showed the materials bought to No. 4. He also requested him to get the permission of Matsimela (mentioned in the schedule) to use his house. This permission was obtained.

The following Sunday John taught No. 4 and No. 8 how to make gunpowder. The powder made that day was handed to No. 2 for his inspection. During that week John also instructed Nos. 4, 5 and Frans Mashilo, a person mentioned in the schedule, how to take the Umkonto oath, and the oath was also administered to them. After that John kept himself busy to some extent with the inspection of possible targets, but their work was interrupted by arrests. Those arrested included No. 6, Matsimela, No. 5, No. 10 and others.

During about May 1963 John Musupye said he discussed with No. 2 the formation of an Umkonto Regional Committee in Pretoria. At that stage John was working under No. 2 as his deputy. Such a committee, he said, was formed, consisting of No. 2 as the chief, John his deputy, and No. 3 as deputy to John. That committee was to be in charge of the work in Pretoria.

More targets were considered, and at that stage No. 3 brought a cutting from the "Pretoria News" to John, showing the house of the Minister of Defence in Olivier Street, Brooklyn. John and No. 3 watched this house of the Minister of Finance and decided it was not a suitable target, but that the house of the Minister of Defence was a suitable target. Later on an unsuccessful attempt was made to sabotage this house.

In preparing for this attempt, reports were made to No. 1 and No. 2. This was about June 1963.

No. 1 instructed John to get the necessary explosives from No. 2, and told him in detail what particular items to get. No. 1 also informed him that he, No. 1, would be staying with a friend in No. 27 Marais Street, Brooklyn, Pretoria. The next day John went to No. 2 to get the materials, whereupon he was told by No. 2 that those articles that he required were far away in a mountain, and that they would have to go at night to fetch them. He said further that No. 2 did have two particular parcels with him which John could acquire. No. 2 then went into a yard of a house and produced two parcels, and instructed John how to handle them. John handed them to No. 3 the next day.

John went to No. 2 again the following day to get the rest of the stuff, but No. 2 told him to come back for them the next Sunday. John was in a hurry and not prepared to wait, but was prepared to go and fetch the stuff himself. Johannes Letoboko then accompanied John and No. 3 to the "bank" in the mountains, that is, the hiding-place of the explosives. No. 3 was taken along so that he should know the whereabouts of the "bank" in case John got arrested. John said that they found the goods, and these were located at two spots. The "bank" consisted of two holes in the ground. They brought back from there sticks of dynamite and gelignite as well as a fuse and a timing watch.

John did not want to waste any time, and with

the goods immediately left for the suburb of Brooklyn. John and No. 3 parted and agreed to meet at a certain point. John went to meet No. 1 in Marais Street, but did not want No. 3 to meet No. 1 there. John and No. 1 went back to No. 3. No. 3 kept guard outside while John and No. 1 prepared a bomb. John described in detail the construction of the bomb. Thereafter John and accused No. 3 went to the target, but they found a European in front of the house. They then returned from there and John left the bomb with No. 3.

The next day John reported to No. 2 what had happened the previous night, and that they had obtained all the necessary materials from the "bank". For a while they then again watched the target and found it to be suitable. John then instructed No. 3 that he and his section should do that job. He showed him how to set the timing piece. Eventually the bomb was placed about two weeks later, but No. 3 reported that although he had set the timing piece as he had been shown, nothing had happened. The target was the house of the Minister of Defense. John reported the failure to Nos. 1 and 2 separately. They were surprised, and No. 1 said that that was the second one that had not gone off. He thought the fault lay with the gelignite or the timing device. Shortly after that Nos. 1 and 2 were arrested.

In that same week John said that he and No. 1 had discussed the formation of a Regional Command of Unkonto in Pretoria. They also decided to create more cells, but it was difficult to find the right people. During that week John, No. 2 and No. 3 formed themselves into a Regional Command, and they discussed the formation of more

cells. This was in June 1963, and No. 2 was arrested on the 24th June. John has not been in contact with him since that date. John said that after the 24th June the whole responsibility of the work rested on his shoulders in Pretoria. A new Regional Committee was then instituted, consisting of John, No. 3 and Johannes Letoboko.

During about November 1963 a trial was proceeding in the Magistrate's Court in Pretoria against some of John's comrades. At this trial John testified as a State Witness. John said that while giving evidence there he investigated the possibility of sabotaging the Magistrate's Court building. He said that he had instructed Nos. 3, 4 and 8 also to inspect the building with a view to sabotaging it before that particular trial was completed. He thought that such an act would cause the Minister of Justice to listen to their demands. The three just mentioned inspected the building and decided that the deed could be committed.

John discussed the matter with No. 1, who had been released from custody in the meantime. No. 1 told him that dynamite was the right thing to use. No. 1 undertook to supply the necessary explosives the next Wednesday. John suggested that this job should be done by himself, No. 3, Letoboko and Petrus Segwarithle.

On the appointed Wednesday John and No. 3 met No. 1. No. 1 had with him a brief-case which is Exhibit 1 before the Court. They then proceeded to the house of No. 4 in Lady Selbourne. They had first arranged to go to Lady Selbourne separately. While John was on his way alone, he was stopped by No. 8 and requested to wait for

Nos. 1 and 3. John, No. 1 and No. 3 then proceeded by taxi to the house of No. 4, who was not there. They requested the wife of No. 4 to leave the house. She complied. Inside the house No. 1 produced materials from his brief-case and showed them how to make another type of bomb from certain chemicals. These articles were at a later stage handed over to the police by John. No. 1 actually built the bomb and it was decided that No. 3 would carry out the act of sabotage. He was shown what to do in order to ignite the bomb.

It was decided that the 16th December, 1963 was the right time to plant the bomb, because that date was the birthday of their organisation, the Umkonto We Sizwe. All sorts of difficulties cropped up, and the bomb could not be placed. On the 17th No. 1 instructed John to dismantle that bomb. No. 3 suggested that the bomb be used in a church in either East Lynne or Eastwood. John refused, and wanted to use it at the post office in Waterkloof, where it was used with success on the 18th December. The act was carried out by No. 3 and Petrus Segwarithle. This success was reported to No. 1.

At that time, towards the end of December, 1963, John discussed with the members of his Regional Committee, that is No. 3 and Johannes Letoboko, that it was necessary for them to get revolvers, because he said that they, as soldiers, needed to be armed. No. 1 agreed to lend John a revolver.

It also happened at that time that there were two Bantu policemen of the Special Security Branch who had their eyes particularly on John and his men. They were very much annoyed about this. These two men were

Kwelie and Kumalo, and it was decided, according to John Musupye, that these two men must be got rid of. John discussed this with No. 1, but No. 1 was very much against killing anybody. This was in accordance with the attitude No. 2 had also taken up. No. 1 suggested that if he lent him a revolver it should only be used for frightening, say, a night-watchman. To that John replied, according to his evidence, that if he used it to frighten anyone he might as well shoot that person. Then No. 1 said that John had his own Region in Pretoria and they had to decide for themselves. Thereupon John informed his cell that a revolver might be procured, and they investigated where the two victims might be residing. John said that he knew that Kumalo lived somewhere in Atteridgeville, and Kwelie in Vlakfontein, that is, Mamelodi.

Roundabout the 20th December, 1963, No. 1 came to John and handed to him a loaded pistol, Exhibit 6 before the Court, in a holster, and demonstrated the use thereof to him. No. 1 also handed him an amount of £1.10.0 because he had run short of funds for buying explosive materials. The next day the revolver was also placed with the other explosive materials.

The next Sunday John arranged for No. 3, No. 4, Petrus and Johannes Letoboko to witness a demonstration of making explosive materials. Only Petrus and Johannes turned up. The demonstration took place at the house of an aunt of John. Later on John also showed Petrus, No. 8 and Johannes the pistol and showed them how to use it. They discussed the shooting of the two policemen mentioned earlier.

Towards the end of 1963 the main objects in John's mind were the destruction of the Guest House at Mamelodi, the Old Synagogue and the shooting of the two policemen. No. 3 and Mampane were involved in these objects, according to John's evidence.

The day before New Year's Day No. 3 was arrested in connection with a pass contravention. John made Petrus his deputy in the place of No. 3. John decided, because of the arrest of No. 3, to move the bank to another place, and No. 3 was released about two weeks later.

John also told the Court that he had received plastic capsules from accused No. 1, they were Exhibit 9 before the Court, in which acid could be placed to be used as a timing device for the explosion of bombs. It was agreed between John and No. 1 that the destruction of the Guest House at Mamelodi was to be Mampane's job, because Mampane was the cell leader in that area. The time was getting ripe for the job in Mamelodi, and using the eye-drop bottle, Exhibit 11, John demonstrated to No. 3 how the acid was to be placed in the capsule. This was on Sunday, 26th January, 1964. No. 3, according to John Musupye, also wanted to be shown how the pistol was to be handled, but by this time the pistol was in the possession of either No. 8 or No. 3. In the meantime No. 3 had obtained possession of the pistol and had left it in the possession of Johannes Letoboko, where John demonstrated to them the handling of the pistol.

On the evening of the 27th January, No. 3, Mampane and one Bernard Mochesane were on their way, armed with explosives, to the Guest House at Mamelodi

when the police intercepted them and arrested No. 3. No. 3 probably informed the police about John Musupye. They placed No. 3 in a police van and came into Pretoria. They arrested John Musupye when they met him in Fontein Street near the Central Police Station. They searched John, and a policeman said "Die grote het niks nie." They took him to the police vehicle, and there he saw No. 3 in the vehicle, handcuffed. With him was the tin, Exhibit 10.

John immediately admitted that No. 3 was Levy, and when asked where he had sent Levy to, he immediately replied "To Vlakfontein." That is Mamelodi. John said it was obvious to him that the police knew everything and that they knew that he, John, was the Regional Commander in Pretoria. He admitted that he had sent Levy to the Guest House of the Chiefs at Mamelodi. John was prepared to admit everything, and instructed those under him to make statements and show the police everything.

The arrest of No. 3 came about through Bernard Mochesane, who was a Bantu Detective-Constable from Kimberley. By false pretences he made friends with Mampane, pretended to join the Umkonto organisation and went with No. 3 and Mampane to blow up the Guest House at Mamelodi. In the meantime he had informed the police, and that is how No. 3 got arrested on the evening of the 27th, while on the way to blow up the Guest House. That led to the arrest of John Musupye and also other persons. In that way the whole conspiracy in Pretoria was exposed.

The evidence of John was that of an accomplice with full inside knowledge. His evidence must therefore

be carefully scrutinised. His story was in fact in the main fully supported by the evidence of accused Nos. 1, 2 and 3, also by Letoboko and some of the police evidence. The defence witnesses only differed from John in certain details.

The State called Petrus Tswarethle as a witness. He is mentioned as a co-conspirator in the indictment, and he was warned in terms of Section 254 of the Criminal Code. He told the Court how he and No. 3 detonated explosives roundabout the 16th December, 1963 in a building in a street between Brooklyn and Waterkloof. This was apparently the telephone exchange of Brooklyn which was blown up on the 13th December, 1963. This witness was not cross-examined. It must therefore be decided that his evidence was accepted by the defence as being correct. No. 3 also confirmed this evidence.

Johannes Letoboko was another co-conspirator called by the State. He was likewise warned in terms of Section 254 of the Code. In accepting his evidence in the main, I took into consideration the inherent dangers in accepting the evidence of an accomplice. He was a trade unionist and got to know accused Nos. 2, 5, 6 and 9. He also got to know accused Nos. 3 and 8 through the introduction of the witness John Musupye. He said that he worked together with Morris Matsimela, a person mentioned in the indictment, in "this work," meaning sabotage.

He said that Matsimela, during 1963, took him to the house of No. 5, and there he was told that they were looking for soldiers, but that he would be told later what sort of soldiers. Three weeks later

he was again taken by the same person to the house of No. 5, but there only his name and address were taken. A week later the same thing happened, but on that occasion Matsimela gave him 2/- and something contained in a paper bag, and Matsimela told him to go by taxi and take the parcel to Prinsloo Street in Pretoria, and there to wait for him. There he met Matsimela and No. 5, they walked along, reach^{ed}/Beatrix Street, and continued further to a place which the witness called the Gezina post office. He described how No. 5 walked up and down in front of the post office, obviously keeping guard. Matsimela put on black gloves, broke a window, and with a cigarette lit the strings of an object which he had taken out of the paper parcel. He heard a sizzling sound. Matsimela then threw the object through the broken window. They departed, forgetting the paper bag in front of the post office. Next day he saw Matsimela again, who was very disappointed because there was no report in the newspapers about the work they had done the night before. Matsimela explained to him that the same work had been very successful at the office of the Minister of Agriculture. He then really understood they were engaged in sabotage activities.

At a later date Matsimela again called him out on a Sunday afternoon to his home. There Matsimela produced two big tins from under his bed. They resembled Exhibit 13 before the Court. He also saw dynamite because he had worked in the mines. He was told that the other articles were bombs. He also saw a timing piece that looked like a watch. They took these things and an iron bar. They also took No. 5 along with them.

They climbed the mountain, they dug two holes, put the materials in the holes, covered them up with plastic material to keep the rain out. The holes were filled with earth and the witness stated that at a later date when he pointed that place out to the police, the holes were empty.

The next day he was again at the house of Matsimela. Then No. 2 came in and the three of them went back to the mountain to show No. 2 where the explosives had been hidden. A few days later the witness and Matsimela were again together at the house of No. 5 when No. 2 again arrived with a number of parcels. No. 2 showed them how a time bomb worked after setting the timing piece. He gave one bomb to No. 5 and they went off to bury the remaining three in the same place as before, in the mountain. He said that No. 2 also showed them how they could let a bomb through an opening by means of a piece of string, into a place to be blown up.

A while later Matsimela also instructed him to meet him at the bridge in Proes Street. There he met Matsimela and No. 5. Together they walked into Beatrix Street and from there observed a big white building. Matsimela said that that building was to be "worked." He said that the next day Matsimela told him that they would not "work" that building because there were police on guard there.

At that stage Matsimela broke his leg and had to go to hospital. A considerable time after that John arrived at his place and introduced him to No. 3 and told him that No. 2 had sent him to fetch goods from

the mountain. This was most probably the materials to be used for sabotaging the Magistrate's Court building, but that was later used for blowing up the Brooklyn telephone exchange. They removed from the "bank", dynamite, fuses and one bomb.

During about April, 1963, No. 2 came to him at about 7 o'clock in the morning and asked him for a room. No. 2 had visitors with him. This was probably Easter Monday morning when No. 1 demonstrated the making of bombs and gunpowder to certain people. The witness said that he gave No. 2 the room and the others returned at about 10 o'clock. The witness was asked to sit outside. He noticed there were present John, No. 5, No. 9, Mampane and another whose face he did not know. These people remained inside until about 2.00 p.m. Later on No. 5 called him in and he saw there a piece of galvanised iron on a primus stove which was apparently used after the coal fire in the brazier had gone out. No. 5 gave him a parcel to take to the mountain. He placed this stuff also in the mountain.

About that time No. 2 was arrested and a few days later No. 3 came to him and said that John had sent him to get the parcel. They went to the mountain but found only empty holes there. He reported that to Matsimela who had by that time been released from the 90-days' detention. At a later stage this witness pointed out these holes to the police. This witness also testified about the firearm. At some later stage he said that No. 3 brought along a bag on a Sunday and said that he was on his way to John. The

witness accompanied him to John. There the firearm was produced out of a tin. The tin was either Exhibit 8 or 10.

The witness also described how on one occasion John demonstrated the making of gunpowder. This was at the house of John's aunt. Witness also described how on one occasion he, John and Petrus Tswarethle had ground charcoal. This charcoal witness at a later stage gave to the police in a tin, Exhibit 14.

The witness also described an occasion when No. 8 helped them to dig a hole in the mountain to hide explosive materials in a big tin. Inside this tin was a smaller tin, Exhibit 8, which contained the pistol, Exhibit 6. If I understood his evidence correctly, the pistol was taken out and placed back in the tin in the presence of accused No. 8. At a later stage this pistol was removed from the "bank" and out of the tin, Exhibit 8. It was clear from the evidence of No. 3 that No. 8 was present on this occasion. He must therefore have known about the pistol and the secret of the "bank".

This witness was told by John on an earlier occasion that this pistol was required for two people of the Special Branch, namely Kumalo and Kwelie. But the pistol was, on that earlier occasion, put back in the tin inside the hole. At that stage there were present No. 8, the witness, John, Matsimela and Petrus Tswarethle. The witness said that a week later he met No. 8 and No. 3 in Prinsloo Street and went with them to Lady Selbourne. From there they went to the mountain and No. 8 removed the pistol from the "bank."

No. 3 had said that although No. 8 was present, he, No. 3, had removed the pistol without No. 8 seeing it.

A week later, on a Saturday, this witness was called to the place of employment of No. 3. They were supposed to go to Atteridgeville to find out where Kumalo lived. They did not have money for a taxi and in the end the witness went alone, but decided not to search for Kumalo's house as he did not want to be involved in any killing.

Then the next Sunday No. 3 again came to the witness. He had with him a bag. He left that bag there and the two of them went to John's place. There John produced the blue tin, Exhibit 10. It contained powder, and it looked like the powder which they had made on an earlier occasion. This powder was obviously gunpowder. This was clear from the experiment conducted in court, and later confirmed by technical witnesses. There John demonstrated to them the use of acid in capsules and how this was to be used with explosive materials. The materials there produced were placed in a tin and taken by No. 3.

From there the witness and No. 3 went to the witness's place and a little later John arrived. John asked for the parcel that had been left there earlier, and No. 3 took the pistol out of this parcel and John demonstrated to them how this pistol could be used. The pistol was left wrapped up in paper in the witness's tool box.

The very next day, 27th January, 1964, this witness was arrested at the Supreme Court. Sergeant Ferreira then showed him the pistol and asked him where

he had got it from, and he said that No. 3 had brought it to his place. On the 28th February, 1964, he showed the police the place where all the explosives had been kept, as he had been instructed by John. He also took the police to the post office that he had mentioned earlier in his evidence.

Two witnesses told this Court that they had witnessed a demonstration of the making of gunpowder by accused No. 10. This was not denied and must be accepted as a fact.

It is not necessary to detail the evidence given by members of the police force. This evidence confirmed the evidence leading to the arrests of John and accused No. 3. Evidence was also given of things and places pointed out by certain of the accused, namely No. 3 and No. 1.

The evidence established that No. 1 supplied John with a loaded pistol. No. 3 confirmed that John had discussed with him the use of this weapon to kill the two policemen, Kumalo and Kwele. No. 3 denied that he had ever agreed to the proposed killing. According to John, the whole purpose of the weapon was in the first place that they, as soldiers of Umkonto, should be armed, and in the second place that this very weapon was intended to bring about the death of the two policemen mentioned, and for that purpose it had been removed from the "bank".

I think the probabilities favour John's version, but I do not think it has been proved beyond reasonable doubt that there had been an actual agreement to kill the two policemen, and that No. 1 and No. 3 were parties

thereto. No definite attempt was made to kill the two policemen. It is clear that No. 1 had supplied this pistol for sabotage purposes; that he knew that this pistol could, in connection with that work, be used to kill someone. No. 3 and No. 8 and of course John knew this too. For a while No. 3 was in actual control and possession of the weapon. After his arrest he took the police to the house of Letoboko, where the weapon was hidden.

Where a person had not testified in his own defence, I have weighed that as a factor, together with all the other evidence, and I have borne in mind what has been said in Ncanana's case, 1948 (4)S.A. at 405, about an accused who has not given evidence to contradict the evidence of an accomplice.

To sum up, I find that the accused were all co-conspirators to commit acts of sabotage. Some acts of sabotage were committed and others planned, but not executed. The object of these acts and planned acts was to coerce the Government and force a change in Government policy. All the accused were implicated to a larger or lesser extent.

No. 1 on his own evidence, and that of others, was the go-between, between the organisation of Umkonto in Johannesburg and its members, or those who actively supported the organisation, in Pretoria. In connection with sabotage work he handed to Musupye a pistol and ammunition, well knowing that its use could lead to the death of one or more persons. He supplied explosives from Johannesburg to the organisation in Pretoria, and on Easter Monday, 1963, demonstrated in detail the

making of gunpowder for sabotage purposes. He taught to those present the Umkonto oath. He obtained suggestions for targets to be sabotaged and wanted to find the residence of the Minister of Justice for that purpose. I am satisfied he is a clever person, and he would never have disclosed his secrets before non-conspirators. He also approved of certain targets to be sabotaged and prepared the bombs necessary. His guilt is clear and beyond doubt.

No. 2 was recruited by No. 1 to be the leader of the organisation in Pretoria. No. 2 selected and instructed cell leaders in Pretoria, of whom John Musupye was apparently the most important. No. 2 was the man to approve all the plans for sabotage submitted by cell leaders. He organised the Easter Monday meeting and demonstration. He was responsible for getting the necessary explosives from No. 1 when any particular target was to be blown up. Thus he supplied the bomb when the attempt was made to blow up the Old Synagogue. His guilt as a leader and a co-conspirator in Pretoria is beyond doubt.

No. 3 has admitted in his own evidence his part in the conspiracy, and was one of the most active members in Pretoria. He took an active part in (a) the attempt to blow up the Old Synagogue, (b) the successful explosion in the Brooklyn telephone exchange, (c) was arrested with explosives in his possession while on his way to blow up the Guest House in Mamelodi. He surveyed, with a view to sabotage, several other buildings. He was the deputy to John Musupye. No. 3 admitted his guilt as co-conspirator and active saboteur.

No. 4: He was an associate of John Musupye and member of his cell. He actually accompanied him to attempt the blowing-up of the Old Synagogue. At the scene he supplied a knife to be used in getting the bomb ready for ignition. Ingredients of explosives were also found in his possession. He was taught by John Musupye how to make gunpowder and the Umkonto Oath was also administered to him by John Musupye. He also took part in the spying out of buildings. No. 4 did not give evidence in any way denying the charge against him. His guilt has been clearly established.

No. 5 attended the Easter Monday demonstration and was introduced as the leader of a cell. He accompanied others when a bomb was placed in the Innesdal post office. Letoboko's evidence in this respect was accepted. No. 5 gave no evidence in his own defence. He accompanied others to the mountain to bury explosives. He also surveyed potential targets to be sabotaged. There can be no doubt about his guilt as an active conspirator.

No. 8 gave no evidence. He was recruited into the conspiracy by John Musupye in the place of the former accused No. 7 when the latter dropped out. He also investigated targets. He accompanied John Musupye when he visited chemist shops to buy ingredients for making gunpowder. He was one of those present when John gave a demonstration of making gunpowder. The Umkonto oath was administered to him by John Musupye. He was told about the pistol and shown how to handle it. He accompanied those who went to fetch the pistol from the "bank". He helped to dig a hole when

explosives were buried. His presence at the secret hiding-place, the "bank", together with other evidence, show that he was an active conspirator.

No. 9 was present and introduced as a cell leader at the Easter Monday meeting. I have inferred that beyond doubt, beyond a reasonable doubt, he could not have been present without being a conspirator. He also suggested targets and took part in the making of gunpowder and the recitation of the Umkonto oath. His denials in evidence I have rejected as being contrary to the evidence of Musupye, and contrary to all the probabilities of the case. He is found guilty of having been a conspirator with the others to sabotage Government buildings. No active steps on his part to commit sabotage have been proved, and he was therefore less implicated than any of the other accused.

When dealing with accused No. 9 and No. 10, I took into account the cumulative effect of all the evidence that has been placed before the Court.

No. 10 gave no evidence, He attended the Easter Monday demonstration and was therefore, in my opinion, a conspirator. He took part in the proceedings of that meeting. At a later stage he demonstrated to others the making of gunpowder. There can be no doubt about the guilt of No. 10.

In the result, all the accused are found GUILTY of the crime of SABOTAGE.

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COUNSEL ADDRESS THE COURT.

CLAASSEN, J:

It is not necessary for me to say much about the seriousness of acts of sabotage. The legislature has placed them on the same level of seriousness as high treason, and for the most trifling offence in this respect, a minimum period of five years imprisonment has been stipulated.

Much has been said about the frustrating nature of certain pieces of legislation. Courts of Law cannot be involved in any consideration of the wisdom or otherwise, or the quality of legislation. They must merely apply the law. Sabotage is a crime for which the death sentence may be imposed. I shall not do so, in this case, but I do wish to issue a serious word of warning. It must not be thought by potential saboteurs that because in the Rivonia case and this case, death penalties have not been imposed, they will likewise never be imposed in future cases. It may well be that if these lesser sentences prove to have been ineffective, and future acts of sabotage are still being committed, that the Courts may well, in such fresh cases consider, if necessary, to impose the death sentence.

I have to exercise a discretion between a minimum of five years imprisonment for a trifling offence of sabotage, and a maximum of a death sentence or a life imprisonment sentence in serious cases. I must admit that I find it very difficult. It is clear that a difference must be made between leaders and those led.

The offences in this case have not been trifling, but very serious, and I have decided as follows:

In the Case of Accused Nos. 1 and 2, the
leaders, their sentence will be a period of 15 (FIFTEEN
YEARS IMPRISONMENT.

Accused No. 3 - a period of 12 (TWELVE YEARS)
IMPRISONMENT.

Accused Nos. 4, 5, 8 and 10 - 8 (EIGHT YEARS)
IMPRISONMENT.

And Accused No. 9 - 5 (FIVE YEARS) IMPRISONMENT.

IN THE SUPREME COURT OF SOUTH AFRICA
(Transvaal Provincial Division)

PRETORIA, FRIDAY the 18th day of September, 1964.

BEFORE the Honourable Mr. Justice CLAASSEN.

In the matter between :

THE STATE

versus

- | | | |
|----------------------|------------------------|----|
| 1. ANDREW MASHABA | 6. ANDRIES SEOMA. | |
| 2. PETER MOGANO | 7. JOHANNES MOGATJANE. | |
| 3. LEVY MOSES MOLEFE | 8. ALPHEUS BOKABA. | 10 |
| 4. NELSON DIALE | 9. ENOCH MATIBELA. | |
| 5. JACKSON NTSOANE | 10. PETRUS NCHABALENG. | |

Accused.

HAVING HEARD Mr. FISCHER S.A., with him Mr. HARE, of Counsel for ENOCH MATIBELA in an application for leave to Appeal to the Appellate Division against his conviction on a charge of sabotage by the Honourable Mr. Justice CLAASSEN at Pretoria on the 18th September 1964.

THE COURT ORDERS:

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THAT leave be, and is hereby granted to ENOCH MATIBELA to appeal to the Appellate Division of the Supreme Court.

BY ORDER OF THE COURT,

(Sgd) N.E.J. EHLERS.

Asst. REGISTRAR.

STENOGRAPHERS CERTIFICATE

We the undersigned, hereby certify that the afore-
going is a true and correct transcript, to the best of our
ability, of the proceedings taken down by mechanical means,
in the matter of:

THE STATE versus ANDREW MASHABA and OTHERS.

Pages 1 to 418 A. Vermeulen
A. VERMEULEN.

Pages 418 to 458 and
560 to 709 A. McKenzie
A. MCKENZIE

Pages 459 to 559 B. Pienaar
B. PIENAAR.

CERTIFICATE

I certify the foregoing to be a true copy of
the record filed in this Office.

(Sgd) J.J. MYBURGH.

REGISTRAR OF THE SUPREME COURT
TRANSVAAL PROVINCIAL DIVISION.

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**SOUTH AFRICAN INSTITUTE OF RACE RELATIONS, Security trials Court
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