

IN THE SUPREME COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION

In the matter:

SYLVIA NEAME

Appellant

VS

THE STATE

Respondent.

JENNETT. J.P.

The appellant spent the years 1956, 1957, 1958 and 1960 at Rhodes University where she completed a degree course. During her stay at the University she became interested in and joined the Liberal Party. Though she attended certain house political meetings of that Party the evidence shows that she made no contribution to the discussions and that she was not a particularly active member of the Party. She did, however, assist a Committee formed under the Chairmanship of the Bishop of Grahamstown to raise funds for the support of the families of 8 men who had been detained. And she assisted in organising a demonstration in the City after the incidents at Sharpeville.

According to her evidence and that of the Chairman of the Liberal Party at the relevant period she reflected the outlook of that Party in its opposition to violence as a political weapon and its opposition to the African National

/Congress.....

Congress because it confined its membership to non-Europeans.

In 1960 she took religious instruction with a view to becoming a nun. In that year, too, she and others made contact with some Africans with a view to their recruitment into the Liberal Party, the African National Congress having been declared a banned organisation.

Dealing still with this period appellant maintained that she had nothing to do with the A.N.C., had no contact with that organisation and had never attended any A.N.C. meeting.

Having completed her course at the end of 1960 appellant proceeded to Cape Town where she took up a teaching post at Loretta Convent. She held that post until mid-April, 1961. She remained in Cape Town thereafter until she moved to Johannesburg where she attended Wits University. She then joined the Communist Party and was later charged, convicted and sentenced for such membership.

While in Cape Town she assisted the Liberal Party there, and devoted much of her spare time to organising and taking part in what is referred to in the evidence as the Sit-in Campaign. Apparently that campaign was organised by the Liberal Party as a protest against racial apartheid and involved mixed racial groups going to Cinemas and restaurants.

/As.....

As a result she was arrested and during February, March and April, 1961 three charges were pending against her for her activities in the campaign.

That campaign received very little support.

In May, 1961, appellant resigned from the Liberal Party and joined the Congress of Democrats because by reason of its membership the latter organisation offered a wider platform to demonstrate the possibility of White and non-White forming a common democratic society.

I have set out this personal history of the appellant as disclosed by the evidence of herself and corroborated by the evidence of Rev. Nuttall and Miss Jewell and other inferences because it shows prima facie that up to February, 1961, at least she had no political contact with the A.N.C. or with any other movement so connected with it as to make it likely that she would be selected to perform any serious task in the interests of that organisation.

The basis of the charges against appellant on which she was convicted is her attendance at a meeting of the A.N.C. in the Location at Grahamstown in or about February, 1961. It is alleged that she attended that meeting, urged the adoption of a plan to use violence to attain the ends of the

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organisation and subscribed funds for use by the organisation.

The meeting in question was one held at the home of Vuma Nkosinkulu in the Grahamstown location on a Sunday afternoon. The meeting was arranged a few days earlier. It is not clear whether it was arranged by letter or by a personal interview between Siwundla and Nzube of Port Elizabeth and Njekula of Grahamstown. At any rate certain members of the Regional Executive of the A.N.C. in Port Elizabeth proceeded in the car of Siwundla to Cradock on a Saturday afternoon. At Cradock they interviewed one Vara. On Sunday morning they travelled from Cradock to Grahamstown arriving in the early afternoon. They called at Njekula's house and were told that the meeting would take place at Nkosinkulu's house to which they then went.

According to the evidence for the State the purpose of the expedition was to ascertain the views of the branches at Cradock and Grahamstown on what has been called the "New Plan." Apparently the members of the Port Elizabeth branch held differing views on the question of adoption of the New Plan. That plan involved a change of organisation which included the dissolution of the Youth League, the nomination as opposed to the election of Office bearers and a move towards the adoption of violence in the campaign of the

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organisation. There was also the possible question whether the New Plan had emanated from the National Executive or from some other source. Another matter was the sending of a delegate to the National Executive to put forward the views of the branches concerned on the adoption or otherwise of the New Plan.

At this stage it is not necessary to deal with the conflict between the State witnesses and those for the defence on details of the discussion at the meeting and on the presence at it of two of the persons who, according to the State evidence, were present.

The evidence for the State was to the effect that the Port Elizabeth contingent and some five members of the Grahamstown branch met at Nkosinkulu's house. They were welcomed by a member from Grahamstown. The discussions began and then appellant knocked at the door and walked in. Her appearance apparently startled some of those present and Nkosinkulu then reassured them by introducing her as a comrade. Then, according to the evidence, appellant addressed them and said they must adopt the New Plan as the A.N.C. had been banned and there were no other ways of fighting oppression.

Thereafter a question of money was raised and Grahams- town members said they had no money as one Mini had some weeks

/before.....

before taken charge of what funds there had been. Appellant then said she had no money with her but if someone would accompany her she would see what she could get. Two of the persons present then went with her to a house in Grahamstown where she handed them R3.00 took them back to Nkosinkulu's house where they alighted and she left. She had stated that she was intending to go to Cape Town and therefore had not a great deal of time to spare.

According to some of the witnesses appellant had said that she knew the Cape Town A.N.C. had adopted the New Plan.

For the State five of the persons present at the meeting gave evidence in support of the allegations referred to. Two persons present at the meeting gave evidence for the defence and maintained that two of the State witnesses had not been present and that the appellant had not been there. All those witnesses are accomplices whose evidence therefore had to be approached with great caution. They were all cross-examined very thoroughly.

It is not necessary for reasons which will be apparent later to deal with contradictions or flaws which the defence claimed emerges from the evidence of the five witnesses for the State. It is apparent that there was a meeting in

/Nkosinkulu's.....

Nkosinkulu's house on a Sunday afternoon in or about February, 1961. The crucial question is whether or not the State proved beyond reasonable doubt the presence of the appellant at that meeting.

In September, 1964, and at Graaff Reinet six of the persons present at the meeting were convicted because of their attendance at it. Two of them were witnesses in the trial of appellant. At the trial in Graaff Reinet the State called as witnesses two of the five persons who gave evidence against appellant. In short, therefore, two of the five persons who gave evidence against appellant had been convicted for being present at the meeting and another two had given evidence leading to those convictions. Considerable cross-examination was directed to the question whether before or at the trial at Graaff Reinet the presence of appellant at the meeting had been disclosed. It is apparent from the evidence that appellant's name had not been mentioned at the Graaff Reinet trial as one of those present at the meeting. It is also apparent that at that trial questions had been asked of the witnesses which could and should have disclosed appellant's presence at the meeting if she had been there.

One of the witnesses said in appellant's trial that

/he.....

he had disclosed appellant's name in his original statement to the police. If that is so it is strange that appellant was not charged with the six persons tried at Graaff Reinet. The portion of the record of the Graaff Reinet trial that was proved in appellant's trial shows that another of the witnesses in her trial had claimed that in addition to the persons he had named as being at the meeting there had been two strangers or new faces. He did not know the names. That was obviously not an honest answer but it fits in with the design to involve no more persons than those facing trial.

Dealing with the criticism just referred to the Magistrate says that it was not shewn that there had been put to any witness in the Graaff Reinet trial a question which could not have been honestly and fully answered without disclosing the presence of appellant.

Among the reasons for requiring caution in dealing with the evidence of accomplices are the ability of such persons to be impressive because their participation in the happenings constituting the offence qualifies them to speak with knowledge of all the details; the possibility that in order to hide the true culprits they substitute others; and the possibility that in expectation of advantage to themselves

/they.....

they may falsely involve someone to please the authorities. Though the last mentioned possibility may be lessened in the case of persons already convicted and sentenced for the offence it nevertheless exists.

The Magistrate realised that he was dealing with evidence of accomplices. He reviewed thoroughly and ably the evidence of the five State witnesses. He then very properly turned his attention to the evidence for the defence to decide the effect of its impact on an adverse conclusion based on the State evidence.

I have already outlined the personal political history of the appellant which makes it prima facie unlikely the appellant would be present at an A.N.C. meeting in early 1961 or to have urged then the adoption of violence as a political weapon.

Because appellant admitted that the reformation she desired was not succeeding through the Whites and that she knew that the A.N.C. was the important political body of the non-Whites the Magistrate considered her claim that she had made no contact with the A.N.C. or its members unacceptable. For that reason and in view of the appellant's political activities during about February, 1961, he considered that her

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presence at an A.N.C. meeting as alleged by the State witnesses "would not in the least be surprising".

I think one must bear in mind that one is dealing with the political outlook of the appellant in February, 1961, and not as it may have developed thereafter. At that time she was a member of the Liberal Party concerned actively with its "Sit-in" campaign. There is no shred of evidence to shew that prior to that time she had shewn active interest in the A.N.C. If the State case is correct appellant had not only become sufficiently associated with the A.N.C. to attend one of its meetings but had already abandoned the Liberal Party's opposition to violence as a political weapon.

Be that as it may the fact remains that appellant was in February, 1961, resident in Cape Town where she held a teaching post. She said in evidence that she had never returned to Grahamstown after leaving it in November or December, 1960. She was sharing a house with Miss Jewell and their close association led some months later to their separating their places of residence because neither could see her friends without the other being present. Appellant had a motor car which Miss Jewell also used.

Miss Jewell gave evidence of these facts. According

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to her she and appellant had become friends when both had been at Rhodes University where Miss Jewell had been a lecturer. When appellant accepted the teaching post in Cape Town Miss Jewell had offered her accommodation.

They had been very closely associated. She described appellant's activities in respect of the "Sit-in" campaign.

It was Miss Jewell's evidence that appellant had never been absent from their house for any night during their stay together. Also that it was inconceivable in view of their close association that appellant would undertake the long journey from Cape Town to Grahamstown without her knowing about it. She would have wished to accompany appellant on such a visit to Grahamstown where she had friends.

If that evidence is true it obviously lends strong support to appellant's denial that she had visited Grahamstown during the period in question.

In his Reasons for Judgment the Magistrate says "The evidence of Miss Jewell supports the accused in this respect (appellant's political activities and aspirations) but if accepted, it makes it unlikely, if not impossible, that the accused could have gone to Grahamstown for a week-end. Miss Jewell is admittedly a political associate of the accused

/and.....

and a close friend. Apart from that, she admits that she would not like to give evidence which would incriminate anybody. In addition, she was completely ignorant as to the exact movements of the accused during the early part of 1961. She appears to have purposely come to Court to say one thing only, and that is, that the accused could not have been away from Cape Town during February, 1961."

That Miss Jewell admitted that she would not like to give evidence which would incriminate anybody is no proper criticism of her evidence. It is not surprising that after a lapse of 4 years Miss Jewell found it impossible to detail the exact movements of appellant during February, 1961. If she had been able to do so there might have been grave reason to doubt her evidence.

I pass now to another feature. Rev. Nuttall, Chairman of the Liberal Party in Grahamstown in 1961, said he had no knowledge of any visit to Grahamstown by appellant during that year, or for that matter, since. He said, too, that it would be highly unlikely that she would visit Grahamstown without making contact with him or some other member of the Liberal Party there.

While it is fair to say in favour of the case for the

/State.....

State that it may be improbable that so many persons would be prepared to involve appellant falsely or able to coincide in their description of her visit to and statements at the meeting unless true, there is, in my view, another improbability which operates greatly in favour of the appellant.

The meeting in question had been arranged at most about 4 days before it took place. It was designed to ascertain the views of the Grahamstown branch of the "New Plan." One must ask oneself how it came about that appellant attended it. Did she undertake the long and arduous journey to Grahamstown specially for it or did she merely happen to have come to Grahamstown on a social visit and hear of the meeting while she was there?

In respect of both possibilities the question arises as to how she heard of it. There is no reason to think that the meeting was one known to the National Executive of the A.N.C. or to other branches of the A.N.C. It was arranged to discuss what might be called the "parochial" attitude to the New Plan.

On the evidence it is quite inconceivable that appellant had any mandate from the National Executive. There is no reason to think that she was a member of the A.N.C. - on the contrary - and less to think that she had risen

/to.....

to such prominence within it to be given a mandate from the National Executive or any branch of the A.N.C.

On the State evidence her appearance at the meeting was wholly unexpected and startling.

Did she undertake the task on her own initiative?

There is as little reason to think that that is a possibility.

Miss Jewell's unawareness of the visit and appellant's failure to contact any of the Liberals in Grahamstown make it highly improbable that appellant was on a social visit to Grahamstown and happened to hear of the meeting.

Although according to the evidence two persons who gave evidence for the State accompanied her to some place in Grahamstown to get the money she paid them they were quite ~~unable~~ unable to indicate where that place was. One may well be sure that the investigations included a careful search for evidence from others of appellant's presence in Grahamstown in 1961 without success. The evidence shews, too, that the Loretta Convent authorities must have been questioned and the inference is that they could not say anything that assisted the case for the State.

The State could not assign an exact date for the meeting in question. The possible difficulties that that created

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for the defence in its rebuttal of the charge must be borne in mind. Appellant produced evidence of a withdrawal and a deposit in appellant's Savings Bank on two different Saturdays in February, 1961. Appellant's signature was necessary in each case. Of course she might have furnished the signed forms to a friend to execute the transactions but the evidence indicates prima facie the extent to which despite the long lapse of time the defence was able to go in its efforts to meet the charge.

It seems to me therefore in the result that it was not possible for the Magistrate to hold that there were sufficient grounds to enable him to reject the evidence for the defence. That being so, and the effect of that evidence being what it was, he should have held that, on all the evidence the State case had not been proved beyond reasonable doubt.

In view of this conclusion it is not necessary to consider evidence for the defence to suggest that any New Plan involving the use of violence in its campaign was conceived only months after February, 1961.

It follows that the appeal must succeed. The appeal is allowed and the convictions and sentences are set aside.

A.G. JENNETT.
JUDGE PRESIDENT, EASTERN CAPE DIVISION.

I agree.

E.F. VAN DER RIET.
JUDGE OF THE SUPREME COURT OF SOUTH AFRICA.

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ZIZ GEORGE NKIKELANA: (sworn states)

BY THE COURT: There is just one aspect of this meeting at Grahamstown that the Court would like to ask you about. You have told the Court that this question of money was raised there, and then eventually you got a donation from (5 the accused, or from the lady at this meeting, European lady?---Correct.

I think you also said that this Grahamstown branch had no money?---Correct.

Did you advance any reason why they had no (10 money?---I can't remember the reason. I remember them saying, though, that they had no money!

You don't know whether they advanced a reason or not?---No, I can't remember what they said the reason was.

FURTHER QUESTIONS BY MR. SOGGOT: Zizi, I want to put to (15 you passages of evidence which you gave at the Graaff-Reinet trial: that is The State vs. Siwundla, Sir. There are three trials that I am going to deal with; the first is the Siwundla trial. On page 4 of the record, what I will do is I will read it to you and then I will ask you whether that is (20 a correct recording of your evidence. Now on page 4 the following appears:

"What transpired after your arrival at Mjekula's house?"

Your answer was: - Sir, I will translate 'Accused No.4' (25 into 'Mjekula.'

"One of Mjekula's children was sent to call him and Mjekula arrived shortly afterwards."

Question: "Yes, and then?"

Answer: "In my presence Winnard Mati informed accused (30 No. 4 (that is Mjekula) that he wanted to see the National Executive. I beg your pardon, not the National Executive, the Executive."

And when the Court asked you:

"The Executive of what?"

Your/....

Your answer was: "Of the African National Congress branch in that area."

Is that correct?--"That is correct.

You gave that evidence and that evidence was true?

---That is correct. I recall that.

Then, at the top of page 5 the prosecutor asked you - perhaps I should start at the bottom of page 4, where you said:

"Mjekula informed us to wait for a while and he left. On his return (that is Mjekula) he told (10 us to go to another private house where we will meet these men."

Is that right?--Yes, I said so.

Then the prosecutor said:

"Yes"?

And you answered "We left the vehicle at Mjekula's house and waled to this other house."

---?I remember saying so, yes.

Was that right?--As I recall it. As I recall it, yes.

And then you went on: I'm sorry, then you were asked:

"Now is that other house in the same location in Grahamstown?"

And you answered:

"Yes, we went to this house. It was on the outskirts of Grahamstown Location."

---?I remember saying so, yes.

"And did any of the accused accompany you to (30 that house?"

Answer: "Accused No. 1, (that is Abner) accused No. 4 (that is Mjekula) were present."

And then you were asked - I will read this whole passage.

"Who/..."

- QUES: "Who did you find at this house when you arrived there?--
- ANSWER: "On arrival at the house accused No.2 (that is Stanley Kaba was present, No. 3 Jackson, No.5 Elias and No. 6 Vuma."
- QUES. And you say you arrived there in the company of Abner and Njekula?"
- ANSWER: Yes.
- QUES: "And then what happened?"
- ANSWER: "Stanley Kaba stood up and addressed us, saying to the rest: Here are the gentlemen from Port Elizabeth. With that, Stanley Kaba asked any of us from Port Elizabeth if we wished to say anything. With that Deliza Hewana stood up and asked the men from Grahamstown if they had been instructed in connection with the new plan."
- QUES: "New plan for what?"
- ANSWER: "The new plan for the African National Congress. He went on to say that it is required that the Youth League be dissolved."
- QUES: "What Youth League?"
- ANSWER: "Of the African National Congress."
- QUES: Yes?"
- ANSWER: "Accused No.2 (that is Stanley Kaba-)replied, saying they had received instructions in connection with the new plan of the African National Congress and Stanley Kaba went on to say that Vuyisile Mini had brought his instructions and had visited them there, Stanley Kaba went on to say that they were satisfied with the new plan for the A.N.C., and that they had appointed (30 seven men, and, according to the new plan, the subscription would be 20 cents monthly; that is per person.
- QUES: "Yes?"
- ANSWER: "Stapleton Nzube, who is not present today, said (35 that they did not know whether these instructions had in fact come from the National Executive of the A.N.C. He went on to say that if the Grahamstown men wanted to satisfy themselves they must send a man, a representative, to the 940 National Executive of the A.N.C. in Johannesburg."

QUES:/.....

QUES: "Yes."
 ANSWER: "At that stage the meeting was closed."
 QUES: "You say that this was said in a meeting? What meeting was this?"
 ANSWER: "It was an A.N.C. meeting."
 QUES: "Was this meeting open to anyone to attend?" (5
 ANSWER: "No".
 QUES: "Can you tell us who was allowed to attend this meeting? What persons were allowed?"
 ANSWER: "It was open to members of the A.N.C. only."
 Then you give details about the month and the time and then you were asked:

"How did the persons present react on what was said?"

ANSWER: "They made it known that they were satisfied with the position." \$15

QUES: "What happened after the meeting?"

ANSWER: "We returned to Port Elizabeth by car, in the same car that we went there in."

Is all that right?--Yes, I remember saying that.

On page 16 of the Siwundla record you were (20 asked, actually it is at the bottom of page 15:

QUES: "Now when was this order received from the National Executive that the Youth League had to be dissolved?"

ANSWER: "We received this instruction in 1960, late 1960."

QUES: "This was late 1960 that you received these orders from the National Executive and in 1961 you visited Grahamstown as Deputy President Eastern Cape, of the Yough League. That was \$30 about quite a few months after the instructions to dissolve?"

ANSWER: "Yes."

QUES: "Did you cling to your office?"

Then, I am afraid, the record is indistinct.

All that I have put to you now, is that what you said, and was that evidence true?--Yes.

On/.....

On page 16, at the bottom, you were asked:

"What was this new plan?"

- ANSWER: "This new plan was that the Youth League must dissolve and the members of the A.N.C. must not be as far as that they used to be elected now (5 they are going to be chosen."
- QUES: "They are not going to be elected, they were going to be chosen?"
- ANSWER: "Yes."
- QUES: "Do you mean they were going to be appointed? (10
- ANSWER: "Yes."

Then on page 19, you were asked: - you told the Court there that you went to Cradock, then you were asked:

"What about petrol money..."

915

The question before that was:

"Accused No. 1 (that is abner) did he also take you to Cradock?"

- ANSWER: "Yes."
- QUES: "What about petrol money at that stage?" (20
- ANSWER: "We got the money from the New Brighton Branch and, I think, some other branches too. They did have some money donated, because this was a thing for the Regional office and the Provincial members were also there, and they (25 also donated the money."
- QUES: "First you said you collected about a pound; then you said you got fifteen shillings from the New Brighton Branch?"
- ANSWER: "Yes."
- QUES: "Can't you remember?"
- ANSWER: "I said some other branches they also donated from that end when you go down there."
- QUES: "Was it agreed that a certain fee would be paid to him?" (35

I/.....

I am sorry:

- QUES: "Was it agreed that a certain fee would be paid to him? He isn't just going to take his car and travel up to Cradock without any agreement?"
- ANSWER: "Because since he was an officer he also accepted that he must go there, and if he can just have petrol then he can also donate - he did donate also."
- QUES: "Did you only pay his petrol? Or did you pay him anything besides petrol?"
- ANSWER: "No, we didn't pay anything."
- QUES: "Who threw in the petrol in the car? Who paid the petrol attendant on these trips?"
- ANSWER: "He himself paid the petrol, and..."
- And then you were interrupted.
- QUES: "Who gave the money to him?"
- ANSWER: "I don't know who gave him the money."
- QUES: "Now money was contributed by the Youth League. Was this trip sponsored by the Youth League?"
- ANSWER: "Yes,, the Youth League and the mother body (20 because Terrence Makwabe was the secretary of the working committee."

That is on page 19. Did you give that evidence, and was it correct?---Yes, I recall having said that.

On page 20 you were asked by the attorney: (25

- QUES: "Listen, please answer my question. Who handled the financial side of this matter with Abner?"
- ANSWER: "The money was given to Abner by the Secretary."
- QUES: "Who is the Secretary?"
- ANSWER: "The Secretary was Stapleton Nzube." (30
- QUES: "Who was Stapleton Nzube?"
- ANSWER: "Stapleton Nzube was the Secretary of the African National Congress, Youth League Provincial Committee."

QUES:/.....

QUES: "He handed the financial affairs?"

ANSWER: "He gave the money to accused No. 1."

And then a little lower down on the page, I am skipping something.

QUES: "Where does your story about fifteen shillings (5 come from then?"

ANSWER: "As a gift fifteen shillings was from the New Brighton branch, not from the other, from the A.N.C. Youth League, New Brighton Branch. That branch that I am sure that gave us fifteen (10 shillings for the purpose of travelling."

QUES: "You said that the secretary, Stapleton, paid him, you had nothing to do with it, and you don't know how much it was? -Now you talk about fifteen shillings that was paid by the New (15 Brighton Branch of the Youth League. Now who paid on behalf of the New Brighton Youth League Branch then?"

ANSWER: "As the money was given to Stapleton Nzube Stapleton gave Abner for the trip."

QUES: "How much was it?"

ANSWER: "I said the money - I know myself is the money from the New Brighton branch."

QUESTION (BY THE COURT.) "Well where did the money come from that Stapleton handed over?" (25

ANSWER: "The monies were from the other branches, Veeplaas and so on, all the other branches of the Eastern Cape."

QUES: "Stapleton also handed money over from other branches?" (30

ANSWER: "Yes".

QUES: "And included in that money handed over is the fifteen shillings from your branch?"

ANSWER/.....

ANSWER: "Yes".

Then, at the bottom of that page - I am skipping something -

QUES: "Now just to get back to the money you said that Stapleton did all the paying and that type of thing. Is that correct?"

ANSWER: "That's correct."

Is that evidence what you gave and is it correct?--I remember saying so, yes.

8 Page 22.

QUES: "And the monies was handed to Stapleton by (10 the different branches; is that correct?"

ANSWER: "Yes."

QUES: "Was any other money, except the money handed to Stapleton by the branches paid over to accused No.?" (15.

ANSWER: "You question was that there"...

I repeat that:

"Your question was that were there any monies?"

QUES: "My question is were there any other monies besides the monies handed to Stapleton (20 by the branches handed over to Abner?"

Then the Court intervenes:

QUES: (BY THE COURT) "Is that in respect of the trip?"

THE DEFENCE: "Yes".

And you answered: (25

"Yes, we did give some money, for we were the occupiers of the car."

QUES: "Yes, who collected those monies?"

ANSWER: "We didn't collect. Just anybody gave what he had." (30

QUES: "What did you, for instance, give?"

ANSWER: "I gave three shillings."

QUES/.....

QUES: "Didd you see any of the others hand over money?"

ANSWER: "Yes. But I didn't know how much they all gave him."

QUES: "Where did they hand over the money?"

ANSWER: "In Cradock."

QUES. You also in Cradock?"

ANSWER: "Yes"

QUES: "Now this is a long time ago. How do you so distinctly remember that it was three shillings handed over?" (10

ANSWER: "The money that I gave it out myself, it belongs to me."

That was page 22. Did you say that? And was it correct?--
Yes, I remember that.

Now just a little bit more from this record (15.

You were asked on page 26:

QUES: "When did you reach Grahamstown about?"

ANSWER: "We reached Grahamstown about somewhere about 2.00 in the afternoon. I am not sure of that time.

QUES: "And how long did you stay there?" (20

ANSWER: "We left there about 6.00 or 7.00, I am not sure of the time."

Is that correct?--I remember, yes.

Now I want to just refer you to page 30. You were asked: (25

"Listen to my question. Was finances discussed during the meeting?"

ANSWER: "The only finances...."

I think I had better give you the whole context. The whole context of that. I will go back a bit. This is page 30. (30

You were asked:

"Now during this meeting at Grahamstown was

"finances/!!!!

"finances discussed?"

ANSWER: "The finances that was discussed in that we are short of money to go to Port Elizabeth. We wanted some money for petrol."

QUES: (BY THE COURT) "Was that discussed at Grahamstown?" (5

ANSWER: "Yes."

QUES: (BY THE DEFENCE) "During the meeting?"

ANSWER: "Yes, after the meeting."

QUES: "Listen to my question. Was finances discussed during the meeting?"

ANSWER: "The only finances that was discussed during the meeting was of the ticket that people must donate must pay two shillings."

QUES: "What tickets are these?"

ANSWER: "They must pay two shillings for fees in exchange (15 for the membership card. Now they are going to pay two shillings per month."

QUES: "Two shillings a month for what?"

ANSWER: "For payment for the membership."

Did you say that, and is it correct?--Yes, I remember. (20

And then on page 31, at the bottom,:

QUES: "What did you disagree with? Was in this new plan nauseated you to such an extent?"

ANSWER: "It is because we though (it is the word 'though' he here, but it must read 'thought') that this new (25 plan was forced to the people by certain individuals."

QUES: (BY THE COURT) "Because it was forced?"

ANSWER: "Yes".

QUES: (BY THE DEFENCE) "So you didn't like the way it was implemented?"

ANSWER: "Yes".

QUES: "You didn't have it against the plan, as such?"

ANSWER/.....

ANSWER: "I was against the plan as a whole thing, then I decided to sit down."

That is page 32. Did you say that, and was that evidence correct?--Yes, I said so.

Now you have already told his Worship that you (5 gave evidence against Mati and others?--Yes.

That was at Graaff Reinet?--Yes.

Your Worship, I think this case - I don't want there to be confusion - I think this case originally started off with Pather in it, and then Pather was separated. So it might appear as The State versus Pather: but in the copy that I have got it has got: Winnard Mati, Pather and 20 Others."

This was - where was this? I don't know where this was.

Was this at Graaff-Reinet? The Mati case?--Yes.

I read from page 19 of the record. I must just (15 try and give you the context. You gave evidence there and your evidence commences on page 11, and I am referring to page 19. You were asked:

"Just shortly, what did Vuyisile Mini tell you and these two accused who were present, and others (20 who were present at the meeting, what did he say?"

ANSWER: "He told us that he had been sent there by the A.N.C. Executive to dissolve the branch."

And then you went on to say that you were not satisfied about the proof of the statement and I think he wanted a (25 typewriter as well, the property, is that correct?--No, I don't follow, I'm afraid. What meeting and where?

This is a meeting at the end of 1960 in the Red Location. Are you with me?--Yes.

Do you remember that event?--Yes, I recall it (30 now.

And then you were asked - you said you refused

to/.....

to surrender the typewriter and all the other equipment.

And then you were asked:

"And then...?"

ANSWER: "With that the meeting was closed and we went away."

QUES: "After that did you have contact with any of the (5 other members of the organisation?"

ANSWER: "No, your Worship, not for some short period after the meeting."

QUES: "And then...?"

ANSWER: "Your Worship, we then gathered and tried to (10 select someone who would go to the Head Office in Johannesburg."

QUES: "When was this?"

ANSWER: "It was the beginning of 1961.

QUES: "And where did you gather?"

ANSWER: "Your Worship we just met in the open."

QUES: "Who met?"

QUES: (BY THE COURT) "In the open where?"

ANSWER: "In the New Brighton Location."

QUES: (PROSECUTOR) "In the street, or outside the Location?"

ANSWER: "In the street."

QUESTION: "How many of you?"

ANSWER: "Five"

Do you remember that evidence?--Yes, I remember.

Then you were asked - I am still on page 19 - (25.

"Now when you met there what was the object of this get-together?"

ANSWER: "It was to elect someone to send to Johannesburg to the National House."

QUES: "For what purpose?"

ANSWER: "It was to ascertain whether what this Mini had said to us was the truth about this organisation that was to be dissolved."

QUES: /....

QUES: "You were still not satisfied with what had been told?"

ANSWER: "No."

Then you were asked - the top of page 20 -:

QUES: "Was anybody chosen?"

ANSWER: "Yes."

QUES: "Who was chosen?"

ANSWER: "One named Temba Mgota." (MGOTA spelt by Mr. Soggot.)

Then you were asked:

"Was there any arrangement made as to the collection of monies to send this person to Johannesburg?"

ANSWER: "Your Worship this person did have sufficient money to go and he was going to go to help us out."

I will just repeat that:

"Your Worship, this person did have sufficient money to go and he was going to go to help us out."

QUES: "And did he go?"

ANSWER: "Yes."

Did you give that evidence and was it correct?--Yes. (20

So your delegate, it seemed, had enough money of his own to go to Johannesburg?--I don't know if it was his personal money.

I just want to repeat this to you once more to give you an opportunity of amending your answer. The question (25 was:

"Was there any arrangement made as to the collection of monies to send this person?"

ANSWER: "To Johannesburg...." No, the question mark is in the wrong place Mr. Interpreter.

"Was there any arrangement made as to the collection of monies to send this person to Johannesburg?"

ANSWER/....

ANSWER: "Your Worship, this person did have sufficient money to go and he was going to go to help us out."

-----Yes, I understand that.

Have you any further comment?--Well, you see, your Worship, what actually happened was this; this person (5 was actually going to Pietermaritzburg so it was an opportune time then for him to go to Johannesburg.

I see, good. On page 20 at the bottom:

QUES: "Now after that there was at that time a meeting held to explain to you people, those who were (10 opposed to the plan, the objects of the plan?"

ANSWER: "Yes. This was before we sent this representative to Johannesburg."

QUES: "Where was the meeting held?"

It has got here Post Village but I believe it is Boast. (15.

ANSWER: "In Boast Village in New Brighton."

QUES: "And at whose place?"

ANSWER: "In the house of Raymond Mahlaba."

QUES: "And who explained there?"

ANSWER: "Govan Mbeki."

QUES: "Can you say who was present at the meeting?"

And you mention that Mati was there, and other people.

And then you were asked:

QUES: "What did Govan Mbeki say?"

I am sorry, I must go back.

QUES: "Now what did Govan Mbeki say to you?"

ANSWER: "Your Worship he told us there that there was a plan which he had obtained in Johannesburg before the State of Emergency which we were to follow now."

QUES: "Did he explain the plan to you?"

ANSWER: "Yes."

QUES: "What did Mbeki say?".

ANSWER/.....

MBEKI MEETING

- ANSWER: "That this committee of the new plan was to consist of seven people."
- QUES: "Yes? Chosen or appointed?"
- ANSWER: "No, they were to be appointed by one person."
- QUES: "And what was the name of this one person?"
- ANSWER: "He just said that it would be by a contact."
- QUES: "So he explained to you that a committee of seven would be appointed by a contact?"
- ANSWER: "Yes."
- QUES: "Did you agree to that?"
- ANSWER: "No, we didn't agree to that."
- QUES: "Why?"
- ANSWER: " Because we could see that there were some people that would be able to tell him that this plan did not originate in Johannesburg. That there would (15 be some that would know that this plan did not originate in Johannesburg. "
- QYES: "And where did it originate?"
- ANSWER: "It came from the gaol, during the State of Emergency." (20
- QUES: "What other objection did you have to this, that one person had to appoint a committee of seven?"
- ANSWER: "The other objection was that the people chosen would be the people that would be liked by this person and not by the other members of the (25 organisation."
- QUES: "In other words that you mean that people - you used the word 'chosen' - the people appointed by this contact?"
- ANSWER: "Yes." (30
- Was all that evidence correct?--Yes, I remember that.
- Now Stapleton Nzube was at that meeting, wasn't he?

----Which meeting?

This one, where Mbeki was?--Yes.

And Mbeki made no mention of violence or sabotage?

----I can't remember.

Whatever it is, you here, when you talk about the (5
new plan and your objections to it, you at no stage mention
violence as an element?--That is correct. Well I wasn't
asked on violence.

You were asked what other objections you had?--

(During interpretation Mr. Soggot intervenes) (10

Let me just get this clear; you were at all times
opposed to violence?--Yes, I was.

And Abner also?--Yes, he too.

Stapleton also?--Yes, previously as far as I
know. (15.

Yes, well let us say at the stage when you went to
Grahamstown, all of you were opposed to violence? The P.E.
people?--No, I wouldn't be able to comment on that. Our
purpose in having gone to Grahamstown was in connection with
the new plan. (20

I just want to get one thing clear from you: at
that stage.....(Prosecutor intervenes)

THE PROSECUTOR OBJECTS TO THE DEFENCE RECALLING THIS WITNESS
ON A SPECIFIC MATTER AND THEN PROCEEDING TO CROSS-EXAMINE
HIM ON MATTERS WHICH DO NOT FALL WITHIN THE AMBIT OF HIS (25
ORIGINAL APPLICATION TO RECALL THE WITNESS.

MR. SOGGOT REPLIES:

THE COURT: We must draw the line somewhere Mr. Soggot.
Otherwise we will have all this evidence over again.

MR. SOGGOT: I am just asking on something that came out (30
through Stapleton, Sir.

THE COURT. (Inaudible) evidence of the other witnesses. If

you/.....

you had to raise all those points again, then.....(Mr. Soggot intervenes)

MR. SOGGOT: I haven't suggested that, Sir.

THE COURT. I am merely requesting you to make this the minimum. (5

MR. SOGGOT: May I put it specifically Sir? May I have your leave to cross-examine him on this one point; that is the attitude of the others to violence at that stage.

THE PROSECUTOR OBJECTS TO THE APPLICATION ON HIS ORIGINAL GROUNDS OF OBJECTION. (10.

THE COURT: I will allow you to put it very briefly to him, just this one aspect: but it must be very brief.

MR. SOGGOT: Zizi, at the stage when you people went to Grahamstown what was the attitude of the other members (15 or the occupants towards violence?--I don't know what they thought.

On page 46 of the record...(Court intervenes)

THE COURT: The same record?

MR. SOGGOT: The same record? You were asked by the (20 defence - by the way, in your evidence-in-chief you had said that you attended five A N.C. meetings after the banning. That is on page 16 of the record. I think I had better read that so that there is no confusion.

QUES: "Can you give an estimation shortly, now, (25 how many meetings did you attend after the banning approximately?"

ANSWER: "There were five."

Do you remember that?--I remember saying so.

Then on page 46 the attorney for the defence asked (30 you:

"Now you said in your evidence that you attended

"several"/.....

"Several meetings of the A.N.C. after the A.N.C. was banned. You said that you attended five meetings in all. Can you give me the date and place where each of these five meetings were held?"

ANSWER: "I can furnish the months and places: that is all. (5) I can't furnish the exact dates."

QUES: "Yes, well carry on."

ANSWER: "The first meeting was at the Red Location. It was It was in October 1960. In April, 1961 at Cawston (Korsten). The third meeting was at New Brighton at Molife Street: it was in May 1961. Boast Village at New Brighton; it was also in October 1960. At Klainskool in Port Elizabeth in 1960."

QUES: "When in 1960?"

ANSWER: "I think it was in April."

QUES: "April, 1960?"

ANSWER: "Yes."

On page 47....:

"Those were the only meetings that you attended?"

ANSWER: "The last time it wasn't a proper meeting. We (20) did come together and that was intended to return the property which we held."

Did you give that evidence and was it true?--(Prosecutor intervenes)

THE PROSECUTOR INFORMS THE COURT THAT THE DEFENCE COUNSEL (25) IS REPEATEDLY ASKING A DOUBLE QUESTION : "DID YOU GIVE THAT EVIDENCE AND WAS IT TRUE?" AND STATES THAT IN HIS OPINION THAT QUESTION SHOULD BE SEPARATED INTO TWO DIFFERENT QUESTION IN ORDER TO OBTAIN CLARITY.

MR. SOGGOT: Would you please split them Mr. Interpreter. (30) -----Would you please repeat those five meetings?

"The first meeting was at the Red Location. It

was/.....

"was in October 1960. In April, 1961 at Korsten. A third meeting was at New Brighton at Molife Street: it was in May 1961. Boast Village at New Brighton. It was also in October 1960. At Kleinskool Port Elizabeth 1960."

QUES: "When in 1960?"

ANSWER: "I think it was in April."

QUES: "In April, 1960?"

ANSWER: "Yes."

QUES: "Those were the only meetings that you attended?" (10

ANSWER: "The last time wasn't a proper meeting. We did come together and that was intended to return the property which we held."

Did you give that evidence?--Yes, I did. I recall that.

Was it correct?--Yes.

(15

You made no mention of Grahamstown?--Well it is the manner in which the question was directed to me.

Is that your explanation?--Yes.

When you went to the meeting with Nelson Mandela you went in a person called 'Pongoshe's car - something like that? you remember?--Yes, I remember.

You sat in front: is that right?--Yes.

And...(Court intervenes)

THE COURT: Is this taken from the record?

MR. SOGGOT: Yes. I am just looking for the exact part.

And Stapleton sat with you in front?--Yes.

That appears on page 60 of the record. The person is Pakamile - he was the driver?--(No audible reply.) (30

And at the back of the car there were a number of people whose names you have mentioned, not so? One a person

called/....

called Cecil, another Kolisile, another Siphso, another George Gubase, and Manga Sali: do you remember those names you gave?--Yes.

THE COURT: What meeting was that Mr. Soggot?

MR. SOGGOT: That was the one which we have heard (5 of already, the Pather meeting, where Mandela was present.

THE COURT: Is that so? Is that the meeting you are referring to, where you gave those names?---(Mr. Soggot intervenes)

(Mr. Soggot and interpreter speak together and part of Mr. Soggot's remarks are unintelligible.) (10

(?? As to who was in the van?)
MR. SOGGOT:just a moment. Those names refer to
....(Court intervenes)

THE COURT: Yes, I follow that.----Yes, in this van that took us there, yes.

MR. SOGGOT: I think that completes my question to (15 him on that record. I just want to put a few passages to him and then be finished, from the Rivonia record.

THE PROSECUTOR OBJECTS TO THE COUNSEL FOR DEFENCE NOW PUTTING PASSAGES FROM THE RIVONIA RECORD TO THE WITNESS.

MR. SOGGOT: I'll tell you why I want to read from the (20 Rivonia Record: there are a few passages which I want to put in. I want to do so, Sir, so that the complete dialogue is there. My cross-examination, if I remember correctly was to say to him: "You did or you didn't say this at Rivonia." What I want to do, Sir, is put a page or two (25 in which gives the exact dialogue.

THE PROSECUTOR PERSISTS WITH HIS OBJECTION.

ARGUMENT ENSUES.

THE COURT: As long as you remain within the limits of the narration and as long as you don't introduce completely (30 new material, which you could have done in your first cross-examination. If it is just a matter of putting the

precise/.....

precise dialogue then the Court will allow it. I suppose what you want to do - you don't want to put in the record, Mr. Soggot?

MR. SOGGOT: That would make it far too expensive, Sir. I want it properly in front of your Worship, and really, Sir, it is upsetting to have technical little attitudes that my learned friend takes. All I wanted was to put in is a few pages, so that it is quite clear to your Worship.

FURTHER ARGUMENT ENSUES BETWEEN MR. SOGGOT AND THE PROSECUTOR.

THE COURT: Carry on Mr. Soggot.

MR. SOGGOT: I want to refer you to page 5 of the record. I don't think that this is properly in the record. You were giving evidence about the meeting at Boast Village, again where you were told something by Govan Mbeki, and you were asked this:

"What happened at this meeting?"

ANSWER: "There we were told by Govan Mbeki about the new plan."

QUES: "What did he tell you about the new plan?"

ANSWER: He told us that the Congress as it was known (20 in its present state, had to be changed, so that the officers of this congress should not be known."

QUES: "Should not be known to whom?"

ANSWER: "They had not been known to members of the Congress and not to anyone."

QUES: "And how would that be accomplished?"

ANSWER: "The new officers would be appointed, and instead of being elected as in the past."

QUES: "Did he tell you anything else in regard to the new set-up of the A.N.C.?"

I repeat that:

"Did he tell you anything else in regard to the

"new/....."

"new set-up of the A.N.C.?"

ANSWER: "He told us that the new way of working was laid down by the National Executive of the A.N.C. in Johannesburg.

And then you went on to describe how the contact had come (5 from the High Command, and so on. And then you were asked on page 6 - I leave a gap -

"And then you were told how the branches would word?--

ANSWER: "No, we were not told because we were against (10 the thing there and then."

QUES: "Why do you say you were against it? Did anybody voice your objection?"

ANSWER: "Yes, because when the plan was told by Govan Mbeki we all had heard that this was not a (15 National issue."

QUES: "You all...?"

ANSWER: "We all had heard from the people who were arrested with Govan Mbeki during the State of Emergency."

And then you were asked - I leave a small gap -

"Did anybody raise an objection?"

ANSWER: "We did raise an objection to Mr. Mbeki. He was told about this plan, the plan that were drafted in gaol, it is not a National issue."

QUES: "You told him it was drafted in gaol, it was (25 not a National issue: who raised that objection?"

ANSWER: Stapleton Nzube."

QUES: "And you, yourself, how did you feel about this new plan?"

ANSWER: "We did not accept it there and then, and said (30 we would never work under it."

QUES: "You did not agree either. And what was the last

"about/....

"about working under it?"

ANSWER: "We said we won't work under this plan."

QUES: "You won't work under the new plan?"

ANSWER: "Yes."

QUES: "Were you given any further information at that (5 meeting by No. 4 (which I think was Mbeki)"

Was Mbeki accused No.4 in the Rivonia Court?--No, I can't remember that, Sir.

Well I will just go back to page 4 for the record.
You were asked: (10.

"And you also mentioned the name Govan Mbeki.
Did you know such a man?"

ANSWER: "Yes M'Lord."

QUES: "Do you see him in Court?"

ANSWER: "Yes M'Lord."

QUES: "Which one?"

ANSWER: "Accused No. 4."

So we have got it.

QUES: "You won't work under this new plan?"

ANSWER: "Yes."

QUES: "Were you given any further information at that meeting by Mbeki?"

ANSWER: "The only thing was that Accused No.4, Mbeki, said we must adopt this plan that have been given by Mr. Mbeki and try and work on it because (25 it is a National issue, and try it for a period of time."

QUES: "Who was that who said that?"

ANSWER: "Mbeki"

QUES: "And were you agreeable to do so?"

ANSWER: "Nobody said a word and the meeting was over."

Now I am not sure - this is the last that I want to put it.

I".....

I have an idea that I quoted it, but I couldn't find it in the record. For caution I think I will just put it in again.

You were referring to the meeting where Mandela was present.

"What happened at that particular meeting?" (5

ANSWER: "At this particular meeting the meeting was opened, the Chairman was Mr. Mandela. He told us that he came a long way from Johannesburg to find out what is the trouble in New Brighton of the A.N.C. within the A.N.C. ranks. Then I stood up and told Mr. Mandela what was taking place, that the plan that is being used here, now this plan that had used, that the A.N.C. must be dissolved and they must be dissolved and this plan that certain members..

QUES: "Wait a minute."

ANSWER: "And all the officers will be certain members the Executive will be seven members no more eleven."

QUES: "Is that what Mandela said?"

ANSWER: "No, what I told Mandela."

QUES: "Oh you told Mandela?" (20

ANSWER: "Yes."

QUES: "Yes?"

ANSWER: "So I told him that there are people who have been threatened that if they don't work under this new plan they must be assaulted. When I finished (25 saying that we wanted to know if this new plan is from the African National Congress Executive."

What I have read to you, did you say that to the Court?

---Yes I recall that.

And was that correct?---Yes.

Just to clinch that, Mandela said he was against the threatening, is that right?--No, I don't recall that

part/.....

part.

Oh I know I put that part to him.

NO FURTHER QUESTION BY MR. SOGGOT.

NO RE-EXAMINATION BY THE PROSECUTOR:

THE COURT: Just one point I would like to give you an (5
opportunity to explain. As far as I understood the passages
quoted by Counsel for the Defence, you gave evidence at
Graaff-Reinet against Siwundla, where you made mention of this
meeting at Grahamstown?--Yes.

And I understood this passage which was quoted (10
to be the effect that when you came to Grahamstown you
walked to the house of Vuma where the meeting was held?---
(Court adds) Is my interpretation correct Mr. Soggot?

MR. SOGGOT: It is.

THE COURT: That was not your evidence here in this Court. (15

MR. SOGGOT: I don't think he was asked that, Sir.

THE COURT: Oh,---Your Worship I am not positive actually,
I can't say positively how we got to the house of Vuma.

You can't recollect that?--No. I can't recollect,
in fact whether we went there on foot, or how we went. (20

So in other words, you can't say whether that
portion of your evidence was actually the truth or not?--
No, I can't because as I say I am not positively sure as
regards how we got there.

MR./.....

MR. SOGGOT RECALLS:

ABNER TEMBE SIWUNDLA: (sworn states)

FURTHER QUESTIONS BY MR. SOGGOT: When you gave evidence last you told us that your car was left at the scrapyard of a person called Bita?--Yes.

Did you leave it there and never take it away again?
--I didn't again take it. It was scrapped there.

I want to tell you that Bita denies all of this. He says your car was never left there as scrap. He said he never had it and he hasn't got it.?---I deny that. He must definitely have knowledge of that because there was a Coloured busy on taking cars to pieces, and he was collecting the parts as a matter of fact.

Bita hasn't even got a scrapyard. He works in the back of his yard. He has no old cars there at all. (15
---My car was one of those that had to be scrapped because you were not permitted by the Council to accumulate cars there.

THE COURT: You mean he had to take it to pieces?--Yes.

MR. SOGGOT: He says that he did work for you on one or two occasions, but you never left the car there as scrap. (20
---I am absolutely positive of what I am saying. I have no doubt whatsoever. If he was here, as a matter of fact, I would remind him.

Can you suggest any reason to his Worship why Bita should be untruthful on this point?--I don't (25
say he is telling a lie. What I might well say is he is making a mistake and perhaps if I reminded him of some things he would recall.

Are you saying that Bita took that car away from the yard there?--It was scrapped there. It was taken (30
to pieces there. It was stripped, in other words.

What happened to the shell?--On one occasion

I/.....

I saw Chicks scrap metal truck standing there loading up old motor car parts and shells, and there was also a Coloured person from round about Veeplaas. He also came by lorry and collected old parts from motor cars.

Did you see your car being removed?---- I (5
left it there: it was stripped. As a matter of fact he told me that the Council had informed him that he must remove all the cars in his backyard and he sent them to Chicks.

NO FURTHER QUESTION BY MR. SOGGOT:

NO QUESTION BY THE PROSECUTOR:

THE COURT: Please tell the Court, did you receive any benefit out of this car, after it had been scrapped, or abandoned?--Nothing at all.

If this car was sold as scrap, or if parts were sold or so on, you did not receive any of the proceeds?--- (15
No, I didn't. As a matter of fact we had words about that. I went to him. I said: "Where is the car?" He said: "The Council has instructed me to remove all the cars in my yard. It was subsequently stripped and scrapped and sent away to Chicks."

So you had a sort of argument with Bitu about this?--Yes, we had an argument about that. As a matter of fact I expected, when he said it was stripped and parts were disposed of, that I would get some of the proceeds and I didn't.

You expected to receive something?---Yes, I did.

THE COURT TAKES THE LONG ADJOURNMENT.

ON RESUMPTION:

BY MR. SOGGOT: Your Worship I do, at the outset, want to apologise for the delay. I'm going to make an application now and, in support of the application, I'm going to put in an affidavit which comes to three pages, and this affidavit we could only prepare finally and have typed and signed this morning. The accused arrived at 9.30 and from the time she arrived till now we have been working under full pressure.

BY THE COURT: Yes, the Court appreciates that.

BY MR. SOGGOT: Your Worship this is an application - may (10 I beg leave to hand in the affidavit immediately, Sir?

My learned friend has already been given a copy of this.

I wonder if I can briefly explain to your Worship the purpose of my application and then refer your Worship to the affidavit.

Sir, this is an application launched in terms of (15 Section 216 of the Code and it relates to the order which your Worship, as a Trial Magistrate, can make in respect of persons who are required as witnesses in a case. Now at this stage the application is made in respect of one person who is, I understand, a prisoner on Robben Island, a person (20 called Govan Mbeki, who has been referred to, your Worship will remember, in the evidence. He, obviously, was a leading A.N.C. man here, apparently in the legal and in the illegal A.N.C., and he was one of the accused at the Rivonia trial. I say all this, Sir, because the particulars (25 relating to Mbeki are not given in the affidavit since they are already before your Worship; particulars in the sense that your Worship will appreciate the materiality of this witness and the fact that, in all the circumstances, he would know the subject which he would be required to give (30 evidence on.

Now may I immediately refer you to the Section?

Section/.....

Section 216 of the Code, with particular reference to sub-section 3, although sub-section 1 is also very relevant. It may be desirable if I can make my submissions briefly on the effect of this Section before your Worship has a look at the affidavit. (5

My submissions, briefly, on the effect of this Section, Sir, is that first of all your Worship has got power to order Govan Mbeki to be brought to this Court to give evidence, and that power is one that your Worship can exercise at the beginning of this trial or at any stage during (10 the trial.

The second submission which I make is as follows. This section contemplates two different cases. The one is the case where you have a private prosecutor or an accused person. Where these people, an accused person or a private prosecutor, want a person like Mbeki brought, then they've got to pay deposits to cover the cost of escort and of custody. In order to get such an order it's only necessary to make the application, and unless I think the Court considers the application frivolous, the Court in my (20 respectful submission, is required to grant it. The Section, however, is different in the case which I say it is our contention the accused falls under. That is the case of an accused who alleges and satisfies your Worship that she has no means - the phrase I refer to is in sub-section 3: "An (25 accused person to whose Defence the evidence of such witness is deemed material, and who has not sufficient means to make the deposit..." Now in other words, Sir, my application here comes within the ambit of that exception. In other words what we're asking for here is an order by your Worship (30 that Govan Mbeki should be brought here, and that the accused need not make a deposit to cover the cost of

custody/....

custody and of escort, for the reasons which are set out in the affidavit. They are, firstly, that she is without means and, secondly, the other thing which we must show cause, we must prove to your Worship, satisfy your Worship, and that is that the evidence of Mbeki - I may quote the Section (5 "...is deemed material. "

Now I wonder, it might be desirable if your Worship looks at the contents of the affidavit because, substantially, the affidavit deals with those two points.

(AT THIS STAGE THE COURT PERUSES AFFIDAVIT.) (10

Sir, my submission is that the accused, although owed money in respect of a car, that is R350.00, hasn't got the money, it's so to speak a potential asset, no more. I understand that the attorney has advised that an attempt will be made to recover this money from the person who owes it. (15 But as we understand it, there just isn't the money at the moment. If I may put it on this basis, whatever monies she has at the moment, she would hand over for the purpose of the deposit, but our contention is that it seems that she hasn't got the money in order to cover the total deposit. (20

Now there is another point, Sir, that is the materiality of Mbeki. I don't know whether your Worship wishes me to argue on it, but the question of violence, the question of the policy of the A.N.C., the question of the right of Europeans to admission at Executive meetings, the (25 right to membership - all the questions of the A.N.C. which took up - I'm now talking of the period of 1961 up to the material period - all those questions which were canvassed in cross-examination on which evidence was led. My submission is Mbeki is one witness who is essential to the Defence (30 case.

Sir, I want to say something which I'm not sure

that/....

that my learned friend appreciated during the course of this case. I'm not blaming him, I want to tell your Worship now that I've conducted the Defence case without any instructions from a person who was connected with the A.N.C. at the time. I want to refer your Worship to one piece of evidence, only (5 one witness from Grahamstown gave evidence, and without dealing with the acceptability of any part of his evidence, on his own evidence Miss Neame attended only one meeting of the A.N.C. in Grahamstown and that is this meeting. I'm not interested in the probabilities now, but I want to say that (10 even on the State case it doesn't seem that Miss Neame could have known what was going on, and I want to tell your Worship now, on behalf of the Defence, that a lot of questions were asked about what happened at other meetings, also for the purpose of trying to grasp some sort of historical thread, (15 and that is why the Defence, until now, in the conduct of the cross-examination, has been embarrassed. I want to go further and say that I haven't had one specific instruction on what happened in the February '61 meeting. Now it's this gap which, in my submission, must be filled. I must get (20 instructions and of course, if there's evidence I can lead to the contrary, but assuming that there is and that assumption must be made, in my submission, in favour of the Defence, we say - I have for example read out Mandela's statement to this Court, which indicates that violence (20 was only thought of in the middle of 1961, that I want to prove, Sir. The question of membership came up. Stapleton in one trial said that Europeans were not allowed to be members, now he's come with a modified version. I want to lead evidence, Sir. If that evidence is available I want to lead that evidence, and my instructions are that Europeans were not allowed in the A.N.C. As for the new plan and what it meant, that is at the heart of this case. Did the new

plan/.....

plan involve violence? Evidence has been put before this Court, I think in particular of Zizi and I'm thinking of Stapleton, where they talked about the new plan in other Courts, and here they've come with a statement which we challenge. There I want to call somebody who was (5 authoritative, a man of status in the organisation. And it appears sufficiently clearly, Sir, from the evidence which is already in front of your Worship that Mbeki was a leading figure in the A.N.C. not only in the Cape but also in Rivonia. that he belonged to the National Executive. (10 I want to call him so we can get evidence, so to speak, from the horse's mouth. I may say now, I say this because it will be interesting to see what attitude my learned friend takes in this. If we can't have a man like Mbeki then the Defence will be paralysed in a major part of its case, and in my (15 submission it will be difficult for - it will prevent your Worship doing justice in this case, if Mbeki or a man like Mbeki is not called. I say a man like Mbeki because when Mr. Briggs and I consult Mr. Mbeki, we may learn from him that there are other people better equipped in the Congress (20 to give evidence before your Worship, who may have a peculiar insight and knowledge into the workings, either in the Eastern Cape or in the Transvaal or in the country as a whole. That is why I say a man like Mbeki. We must have access to this man. When we have got access to him then we will find out. (25

Now that being so, is my submission on materiality....(The Court intervenes).

BY THE COURT: Mr. Soggot does that not destroy your entire submission that Mbeki is a material witness? Does your submission now not indicate that you are not certain (30 whether he is as material as you submit?

BY MR. SOGGOT: No, no, Sir. I'm saying that there may be

somebody/.....

sombdoy who is more material.

BY THE COURT: Do I not follow that you are not certain whether he is in a position to give you that material... (Mr. Soggot intervenes).

BY MR. SOGGOT: Well, your Worship, I haven't consulted with (5 him, but from the instructions which I have I am satisfied that his evidence alone is highly material to the evidence in this case. What I'm saying, I'm guarding myself against the suggestion that my interest is confined to Mbeki. What I'm doing, Sir, is putting my cards on the table. I'm telling (10 your Worship that I haven't consulted any such person, that so to speak we have been in the dark. And, because of that, I'm saying to your Worship when I see Mbeki it may well be that he may advise us that there's someone even better equipped that should be brought along to this Court. (15. This is not to say that he's not thoroughly equipped, but I don't want to make any representations to your Worship, I have not seen him; but I'm advised - the basis is this, I have for example Mandela's statement, Mandela was with Mbeki at the Rivonia Court and Mandela set out important (20 aspects of policy. He talked about non-violence and the change to violence, and he talked about membership of the A.N.C. I am confident that Mbeki would be able to give your Worship evidence on these two very important points. His materiality, in my submission, is not for a moment in (25 doubt as far as I'm concerned.

The other point, your Worship, is the question of money. The accused states that she's got no money. There is the allegation that her Defence is being paid for by other sources. My submission is that the question which is (30 squarely before your Worship now is not whether the accused has got other people who may be sympathetic to her, and are

perhaps/.....

perhaps doing their very best, such as her family, to get monies to assist with the payment of the Defence; there's only one question before your Worship in my submission, and that is whether the accused has the means. If the accused, let us say, has got a very rich aunt who could pay, that is (5 not germane to the proceedings. The question is the accused herself.

Now my submission, Sir, is that there is as full a statement of the accused's financial affairs as we could muster this morning in front of your Worship, which indicates that, at the moment, she is substantially penniless. Sir, it is for those reasons that I ask for an order in terms of this Section.

DIE AANKLAER SPREEK DIE HOF TOE.

MR. SOGGOT REPLIES:

AT THIS STAGE THE COURT TAKES A SHORT ADJOURNMENT.

ON RESUMPTION:

BY MR. SOGGOT: Before Your Worship commences, may I (20 repeat a suggestion which I did mention before you adjourned, and that is that - whether your Worship has considered the desirability of postponement of this application? Pending further consultations.

BY THE COURT: Yes, the Court will deal with that. (25.

R U L I N G.

BY THE COURT:

The Court has carefully considered this (30 application. It appears, under sub-section 1 of Section 216, the Court is given a general discretion to order or

not/.....

not to order a prisoner to attend as a witness. That discretion should be exercised in an ordinary manner. It appears, however, that before an order under sub-section 3 of Section 216 of the Code could be issued, the Court authorising that a prisoner should be called as a witness I repeat. It appears, however, that before an order under sub-section 3 of Section 216 of the Code could be issued, the authorising of the attendance of a prisoner as a witness for an accused person should require special considerations. The Court must be satisfied, in the first instance, that the evidence of such a witness is material for the Defence, not only relevant or important, but material. And, in addition to that, not alternative to that, the Court must be satisfied that the accused has insufficient means to pay for the expense of calling this witness.

Now in this case the application is for an order compelling the authorities to release Mbeki for appearing in this Court as a witness for the Defence. Now in this case, as far as Mbeki is concerned, the Defence told the Court that it has not had an opportunity to have an interview with (20 Mbeki and the Defence is not in a position to say what evidence Mbeki can give. There is mention made of the difficulties in having a consultation with this prisoner. Presumably there are Prison regulations that have to be complied with, but it appears to the Court that these (25 difficulties are not unsurmountable. It may be difficult and it may be under unusual circumstances, but that is unavoidable. After all this witness, Mbeki, is a peculiar type of witness, being a prisoner. On the information supplied in the affidavit and by counsel in his address, (30 the Court is, in the first place, not satisfied that Mbeki can give such material evidence, and the Court is not

satisfied/....

satisfied that he is the only person who can give that evidence.

Now the second leg of the inquiry which the Court has to make, or the second point on which the Court has to be satisfied is the means of the accused. I will refer (5 to that as the means test. From the affidavit the Court is not satisfied that she has insufficient means or at least not access to such means. The Court cannot disregard the aspect raised by the Prosecutor regarding the presentation of the Defence case by two Barristers from the bar as far (10 distant as Johannesburg. No suggestion by any of the Barristers has been made that they, or any one of them, or the lady assisting them clerically, or the additional Bantu clerk whom they wanted to introduce at one stage, that either of these people acted pro deo or pro amico. (15.

In the Court's opinion the Section under consideration does not apply to a case like this, where an accused has access to funds or where limited funds were made available, but applied in a luxurious manner and then became exhausted. The Court is still prepared to consider any application (20 by the Defence to get a witness from any prison under the ordinary discretion which the Court referred to, discretion provided for under Section 216, Sub-section 1, provided the Court can be satisfied that that witness can give the material evidence; but the Court is not prepared to make (25 any such order at the State expense.

If you would like to re-submit your application on that score....(Mr. Soggot intervenes).

BY MR. SOGGOT: Or on a different basis?

BY THE COURT: Yes. The Court will consider that. (30

BY MR. SOGGOT: Sir, I wonder if your Worship will give me time. There are certain gaps. If I - I don't know, I'm

speaking/....

speaking entirely practically now. I want to say immediately, Sir, that I have no information which enables me to believe that - at this stage, that monies can be raised in the event of your Worship giving an order under sub-section 1. That's my one difficulty. The other (5 difficulty is, I spoke to my learned friend and it's not really known the exact amount that the expenses would amount to. That is an investigation which would have to be made. The third thing is, one doesn't know how many witnesses we will require. The thing is this, there are at this stage §10 so many uncertainties, I would not like to commit myself to an application under sub-section 1 and then find that your Worship's order, if it's given, is of no assistance to us because we can't raise the monies. I think, subject to your Worship's convenience, it might be desirable to (15 postpone this matter till 2 o'clock. I'd like to consider my position and discuss the matter with my learned friend.

AT THIS STAGE THE COURT TAKES AN ADJOURNMENT.

ON RESUMPTION:

MR. SOGGOT AT THIS STAGE APPLIED FOR A POSTPONEMENT.

BY MR. SOGGOT: At this stage of the proceedings, and in view of your Worship's findings this morning, I do want to ask for a postponement of this case. I think, for the (25 purpose of record, I want to - I should state the reasons for this request. The Defence proposes to call a number of witnesses from all parts of the country, who are now in all parts of the country, to give evidence on behalf of the accused. These witnesses need to be consulted with. (30 Secondly, and this flows directly from your Worship's judgment, it will be necessary for Mr. Briggs and I to consult

with/.....

with Mbeki and Mati and possibly others that I've mentioned, and the assessment is this; it's difficult at this stage to tell your Worship how soon we will be allowed to see these prisoners, but I'm fairly confident that once we explain to the Commissioner for Prisons the circumstances of this case, and the urgency of the matter, there should not be too long a delay. My estimate, I don't know how reliable it is, because it's difficult to anticipate these things, is that I should - we should be able to assess our position by Wednesday, by way of knowing whether to bring further (10 applications or an application of a different kind, that is under sub-section 1, before your Worship. To be quite clear, Sir, at this stage it's not known whether there's any point in making an application under sub-section 1 of the Section 216 before your Worship, because it's not known exactly how much the cost would be, how many witnesses would be involved and whether any of the monies that are relevant to the making of the deposit could be raised at all by persons who are benevolently disposed towards the accused. My assessment is by Wednesday or Thursday we should be in a position to (20 be able to know what sort of application we should make. We may have to renew our application under sub-section 3 and again, depending on your Worship's decision, it may be necessary to go further, I don't know. Because of that I would suggest to your Worship that it seems as if by (25 Monday a week the Defence should be in a position to proceed with this case to the final determination. I must say that, speaking for myself and Mr. Briggs, we've been anxious all the time to get a move on with the case and, as far as my client is concerned, she is particularly anxious that the (30 case should be brought to a speedy termination as possible.

My assessment, Sir, and it's also that of Mr.

Mr. Briggs/....

Mr. Briggs, is that we should be ready by Monday, but I do want to guard against the - to suggest that there is a possibility that we may be held up, there may be complications and I can't make that promise. We would do our best, Sir, to be ready by that date. I do (5 formally apply, with this indication that is by Wednesday or Thursday I will probably return to your Worship for an order. If your Worship were then to give me an order and presumably....(The Court intervenes).

BY THE COURT: That will then be of an interim nature? (10

BY MR. SOGGOT: That is correct.

BY THE COURT: The Application?

BY MR. SOGGOT: That is correct. It doesn't seem to me, I make this submission, that the accused's presence will be necessary. This is an application which - it's an (15 application in a sense similar to a bail application, that can be made in the absence of the accused, it's not part of the proceedings against her. All I can say is that Mr. Briggs and I will appear, after giving proper notice to my learned friend, make whatever application in terms of (20 that Section we consider necessary at that stage. I formally ask, Sir, for the postponement of this matter to Monday week, which I think is the 21st.

DIE AANKLAER SPREEK DIE HOF TOE.

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