

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

In the matter between :-

ROBERT MANGALISO SOBUKWE Applicant

and

THE MINISTER OF JUSTICE Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

ROBERT MANGALISO SOBUKWE,

do hereby make oath and say that :-

1. I am the Applicant in these proceedings, and I am an adult male residing at 6 Naledi Street, Galeshewe Village, Kimberley.
2. The Respondent is the Minister of Justice, Union Buildings, Pretoria.
3. I am a South African Citizen by birth.
4. (a) In terms of orders issued by the Respondent in terms of the Suppression of Communism Act No.44 of 1950 as amended, I am presently subjected to various restrictions, including that I am confined to the Magisterial District of Kimberley. These orders are, according to their terms of force and effect until 31st May 1974, and any breach is a criminal offence with severe penalties.

(b) / ...

J. M. M. M. *J. R. M. M.*

- (b) I attach hereto marked "A" a copy of the orders containing the restrictions aforesaid.
5. (a) I hold the degrees of B.A. (S.A.); B.A. HONS. (UNIVERSITY OF THE WITWATERSRAND) and B.Sc., Economics (University of London) and I was at one time a demonstrator in African languages at the University of the Witwatersrand. I am unable to continue my profession because of the restrictions aforesaid and in particular my confinement to Kimberley, and a restriction which prevents me from being on the premises of any educational institution.
- (b) Upon careful consideration I have decided to leave the Republic of South Africa permanently and to take my family with me and live in the United States of America.
6. (a) After making enquiries I was offered a post by the University of Wisconsin in the United States of America. This University is prepared to admit me as a student to study for a Ph. D. degree and as a teacher on its staff. The financial arrangements suggested are adequate.
- (b) I annex hereto marked "B" a copy of a letter of the 4th March 1970, making the offer, and marked "C" a copy of my telegram of the 16th March 1970 accepting the offer.

7. (a) In addition I have been invited to join the faculty at Roosevelt University and at the Adlai Stevenson Institute in Chicago, United States of America. It would appear from correspondence I have received that I will be able to teach part time at these institutions while at the University of Wisconsin.
- (b) I have not attached the correspondence to my Application in order to save costs but it will be available at the hearing should this Honourable Court deem it pertinent to inspect it.
8. I applied to the Secretary for the Interior for a Passport but my application was refused. I attach the letter of refusal which is dated the 13th May, 1970, and which I have marked "D".
9. (a) On 23rd May 1970 I wrote to the Secretary for the Interior to apply for a "Departure Permit" in terms of Section 5 of the Departure from the Union Regulation Act No. 34 of 1955 as amended.
- (b) A copy of my letter is annexed hereto marked "E".
10. In anticipation of the issue of a Departure Permit, I made the necessary bookings to leave for the United States of America with my family from Jan Smuts Airport on the 18th June 1970 and requested the Secretary for the Interior in my letter of the 26th May 1970 (a copy of which is annexed hereto marked "F"), to let me have the Departure permit aforesaid timeously.

11. / ...

J. M. Magble

J. R. H. Salomon

11. On the 3rd June 1970 the Secretary for the Interior wrote to me in response to annexure "E". In his letter, a copy which is annexed hereto marked "G" he asked that I supply certain further documents namely :

- "(a) Documentary proof that permanent residence has been granted to you by the country you intend emigrating to.
- (b) Documentary proof that you are no longer restricted to the Magisterial District of Kimberley. (Only documents furnished by the Department of Justice will be accepted.)".

It was further stated that "the Department will under no circumstances consider your application without the documents requested in paragraph 2 above."

12. On the 8th June 1970 I wrote to the Secretary of Justice asking for a document as required by the Secretary of the Interior in regard to my restrictions to Kimberley. A copy of my letter is annexed hereto marked "H".

13. (a) On the 10th June 1970 I again wrote to the Secretary for the Interior and complied with all the requirements made in annexure "G" save that :

- (i) I stated that I had asked the American Consulate to furnish proof of the grant to me of permanent residence in the United States of America, and
- (ii) I undertook to furnish the letter from the Department of Justice when received.

(b) A copy of my letter is annexed hereto marked "I".

14. I annex hereto marked "J" a photostatic copy of a letter from the American Consul General dated the 14th December 1970 addressed to the Secretary for the Interior, wherein it is confirmed that the United States of America has accorded to me and my family the right of permanent residence.
15. On the 24th June 1970 the Respondent in a letter written by his Private Secretary (a copy which is annexed hereto marked "K") advised that my "application for the relaxation of the notices in force against you under the Suppression of Communism Act, 1950, to enable you to leave the country, has been refused."
16. On the 24th day of August 1970 I wrote to the Secretary for the Interior, and I stated that I was entitled to have my Application for a departure permit considered by him and requesting his advice within ten days from that date. A copy of this letter is annexed hereto marked "L".
17. On the 18th day of December 1970, my attorney, Mr. Raymond Tucker, wrote to the Minister of the Interior and appealed against the failure to issue a departure permit. A copy of this letter is annexed hereto marked "M".
18. On the 28th December 1970 my said attorney wrote to the Respondent calling upon him to grant me permission to leave Kimberley to enable me to depart permanently from the Republic of South Africa and advising him of my intention to apply to the Supreme Court for an order compelling him to permit me to leave the area of Kimberley with the object of my departing permanently from South Africa. A copy of this letter is annexed hereto marked "N". This letter was acknowledged by the Private Secretary for the Minister of Justice

W. J. M. ...

as / ...

W. J. M. ...

as per copy of letter dated the 30th December 1970, annexed hereto marked "O".

19. On the 1st March 1971 in a letter addressed to my aforesaid attorney, a copy whereof is annexed hereto marked "P", the Private Secretary to the Minister of the Interior stated that the Minister of the Interior had approved the grant to me of a departure permit.
20. I am thus in an invidious position in which I have the required departure permit but the Respondent refuses to allow me to use it.
21. I submit that the Respondent's refusal to permit me to leave Kimberley to travel to Jan Smuts Airport for the purpose of embarking on an aircraft in order to travel to the United States is unlawful in that :
 - (a) I have satisfied the Secretary of the Interior that I intend to leave the Republic of South Africa permanently;
 - (b) The said Secretary has accordingly authorised the issue to me of a departure permit as he is obliged in terms of Section 5 of the Departure from the Union Regulation Act No. 34 of 1955 as amended;
 - (c) I have a right conferred upon me by the said Statute to receive such permit and to use it to leave the Republic of South Africa;
 - (d) The Respondent is not entitled to use a discretion vested in him under the Suppression of Communism Act to frustrate me in the exercise of the right granted me in the said Statute.

22. In all the circumstances I seek an order obliging the Respondent to permit me to travel from Kimberley to Jan Smuts Airport in order to leave the Republic of South Africa.

WHEREFORE I pray that it may please the above Honourable Court to grant an order :

1. Directing the Respondent to permit the Applicant to leave the Magisterial District of Kimberley and to travel to Jan Smuts Airport to enable the Applicant to embark on an aircraft leaving the Republic of South Africa pursuant to the departure permit granted in terms of the Departure from the Union Regulation Act No. 34 of 1955 as amended;
2. That the Respondent pay the costs of this Application;
3. Allowing other or alternative relief.

and D. H. Sibbald

SIGNED and SWORN to before me at Kimberley, this the 14th day of MARCH 1971, the Deponent having acknowledged that he knows and understands the contents of this Affidavit.

and H. G. ...

COMMISSIONER OF OATHS.

*Deputy Officer Commissioner
Kimberley*

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DOCUMENT DETAILS:

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Author:- **Robert Sobukwe**

Document Date:- **19 March 1971**