

IN DIE HOOGGEREGSHOF VAN SUID-AFRIA

(TRANSVAALSE PROVINSIALE AFDELING)

K. 222 Vol. 439 Pg. 25 769 - 25 846

SAAKNOMMER: CC 482/85

PRETORIA

1988-09-16

DIE STAAT teen :

PATRICK MABUYA BALEKA EN 21  
ANDER

VOOR:

SY EDELE REGTER VAN DIJKHORST en  
ASSESSOR : MNR. W.F. KRUGEL

NAMENS DIE STAAT:

ADV. P.B. JACOBS  
ADV. P. FICK  
ADV. H. SMITH

NAMENS DIE VERDEDIGING:

ADV. A. CHASKALSON  
ADV. G. BIZOS  
ADV. K. TIP  
ADV. Z.M. YACCOB  
ADV. G.J. MARCUS

TOLX:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS :

LUBBE OPNAMES

COURT RESUMES ON 16 AUGUST 1988.

*Tuesday*

MR BIZOS : My lord, we are going to submit to your lordship that the events in Sharpeville from the beginning of August to 2 September 1984 took place independently of the activities of the Vaal Civic Association in Sebokeng. The state's failure to realise this fact that there was an independent set of events in Sharpeville, has led the state into error in alleging that everything that happened in Sharpeville was with the co-operation of the VCA, but of course, the error is more fundamental than that, because it is of the very (10) essence of the state's case that everything that happened throughout the country after the formation of the UDF was under the direction of the UDF without having any evidence to prove it. We would refer your lordship to paragraph 73 of the annexure to the indictment to be found on page 320 which again repeats that in pursuance of the grand conspiracy or conspiracies that it alleges existed, a number of things happened in Sharpeville. It also had to allege in this paragraph in order to bring at least accused no. 2 into the grand conspiracy or conspiracies that it has pleaded, that (20) AZAPO co-operated and was party to the conspiracy in the Vaal. Your lordship will find that in the preamble of paragraph 73.

The - generally speaking the lack of particularity when particulars are sought as to how this conspiracy took place is evidence of the thing not having happened as alleged. Your lordship will find in paragraph 34 paragraph 3.1 on page 98 of the further particulars right up to page 100 that save for generalities and referring back with the used of the convenience words mutatis mutandis no particulars are (30) really/...

really given as to when and by whom this conspiracy is alleged to have been hatched. May I remind your lordship what we have already said, that there was hardly any presence at all in Sharpeville. We referred your lordship to the evidence of IC.8 that he really allowed his name to go forward at the request of the two women sitting next to him at the launch, because there was no one else there from Sharpeville and although he himself lived in Sebokeng, he thought that by virtue of the fact that he had been borne and had had his early part of his life in Sharpeville, that he would allow(10) his name to go forward as an area representative of the VCA. What I did not mention to your lordship at the time and I would like to do it now in furtherance of this submission is that on the state case the Reverend Moselane, accused no. 3, was there. Now, he was wellknown to IC.8. He was wellknown to McCamel. Practically all the accused and practically all the defence witnesses that gave evidence and who had been at the launch knew accused no. 3 as the priest in charge of the Anglican church in Sharpeville. If in fact accused no. 3 was party to any conspiracy which the state (20) alleges that he was, certainly on 9 October 1983 when the launch was taking place, how is it that so prominent a resident of Sharpeville could have been missed even by the witness IC.8 who said that there was no one there from Sharpeville? It shows, in our submission, that the defence version is correct that accused no. 3 was on his way elsewhere and he took the opportunity of going into the launch because he wanted to see what happened. McCamel, the chairman of the meeting, recognised him and asked him to come to the platform to wish him welcome, which he did and probably (30)

upset/...

upset by the fact that church premises at which a meeting was being held, there were people smoking, he merely appealed to the people not to smoke in church. We submit if any evidence was needed on the probabilities that the Reverend Moselane, accused no. 3, was not in any sort of conspiracy with the VCA or indeed any idea at all that he or his community should take part in this and indeed, the state has not led any evidence of any VCA activity at all during the period of the indictment. It was as a result of this lack of evidence that the state was constraint to rely on (10) the evidence of IC.8 upon whose general credibility we will make submissions later that there was an AZAPO presence and we submit that a meeting was said to have taken place which we submit we have proved did not place in order to prove some sort of connection.

The evidence of IC.8 is to the effect that the Vaal branch of AZAPO was formed in April 1983 at the St Cyprian Anglican church where accused no. 3 was a minister and he gives a list of persons who were elected to the committee. He gives accused no. 3 as a member of that committee. (20) Volume 16, page 735 line 26 to page 737 line 2 and the cross-examination on that topic in volume 19 page 820 line 18 to page 823 line 3.

We led evidence to the effect that the interim committee of AZAPO was elected in March 1980 and that a branch was formally established in May 1980 at the house of Khebi Shabangu in Evaton and at that stage the persons, the chairman was Khebi Shabangu, Mokgema Mokgema was the vice-chairman and Aubrey Motsware the secretary, accused no. 2, Oupa Hlomoka, was an ordinary member. There was also a treasurer elected (30) whose/...

whose name accused no. 2 could not remember. Accused no. 2, volume 218 page 11 569 line 27 to page 11 576 line 13. The cross-examination of that is to be found in volume 222 page 11 786 line 19 to page 11 787 line 19.

There was in corroboration of that fact also the evidence of Mabaso who, although he testified that he was not absolutely certain when AZAPO was formed in the Vaal, he had personal knowledge that the branch already existed in 1982 and continued to exist during 1983/84/85 and that in fact he attended one of the meetings of the branch in Boipatong. He also (10) said that new branches were formed during 1983/84. Mabaso, volume 421 page 24 655 lines 23 to 27. I would remind your lordship that in answer to your lordship the witness Mabaso said that it is true that there were other attempts to form other branches. He said yes, there were. Volume 421 page 24 684 line 22 to page 24 687 line 8. He was re-examined in volume 422 page 24 732 lines 1 to 23.

The purpose of, presumably of the cross-examination and his evidence that there were other branches, may be of some relevance in order to excuse IC.8's evidence that well, (20) he may have mistaken the establishment of AZAPO Vaal with the establishment of a branch, but that will not wash because his evidence is that this was the establishment of AZAPO Vaal and that office bearers were elected and the office bearers happened to be the office bearers that were in fact, held office - accused no. 2 had already been to a conference before that, so that it cannot be - I beg your pardon, IC.8's credibility cannot possibly be saved by that explanation.

There was further evidence by accused no. 2 that he first met IC.8 during 1983 at the Biko commemoration (30)

service/...

service held at the Anglican Church in Sharpeville. The only meeting of AZAPO Vaal during 1983 and at which elections were conducted was held after the first meeting with IC.8 in October 1983. This meeting was held at the house of accused no. 2 in Sebokeng and the people elected were accused no. 2 as chairman, Modise Lekgoko as secretary, later replaced by IC.8 in 1984, Jabu Shabalala, the treasurer and Charles Mabitsela only became treasurer in 1984 and not in 1983 as stated in the indictment. Victor Maluleka, Tebogo Kwetha as additional members. Boytjie Mohle and (10) Petrus Tapedi became members later that year in about November. The evidence of accused no. 3 himself as well as that of accused no. 2 was that accused no. 3 was not a member of the Vaal branch of AZAPO and in fact not a member of AZAPO at all. Accused no. 2, volume 218 page 11 574 line 26 to page 11 575 line 16. His cross-examination on that in volume 223 page 11 847 line 16 to page 11 848 line 26.

His evidence that is of IC.8 that accused no. 3 was a member of AZAPO in the Vaal and was elected on the committee of the Vaal in April 1983 alleged and said by the (20) witness, has been shown to be false. Once his evidence in that regard is shown to be false, then the possibility of a mistake is completely excluded. Your lordship will find the evidence of IC.8 in relation to accused no. 3 in volume 16 page 737 line 11 and his cross-examination in volume 19 page 823 line 5 to page 828 line 9.

Accused no. 3 gave evidence in this respect that he was not a member of AZAPO. Your lordship will recall that he was questioned about his belief in the most that the prosecutor managed to get out of accused no. 3 that he (30)

was/...

was an adherent to black theology, whatever definition that may be capable of having regard to the conflicting papers that your lordship has before you.

Accused no. 2 expressly said that accused no. 3 was not a member of AZAPO. Volume 229 page 12 152 line 1 to page 12 155 line 21. Again in volume 243 page 12 923 line 13 and subsequent pages.

Libon Mabaso gave evidence that accused no. 3 was known to him. That he as the high ranking official of AZAPO knew that accused no. 3 was not a member of AZAPO. (10) Volume 421 page 24 659 lines 14 to 19.

Whilst we are at it, Mr Mabaso also said that he knew accused no. 16, Mr Manthata. He knew him not to be a member of AZAPO as well, but we will deal with that later.

The state led no other evidence in relation to the membership of accused no. 3 being a member of AZAPO. We submit that the weight of evidence on the probabilities for the reasons stated by accused no. 3, are overwhelmingly in favour of the defence version and that your lordship will make a finding to that effect. If your lordship finds (20) it convenient, I do have the references of both Mabaso and accused no. 16, if your lordship wants them now.

COURT : Are you are coming back to it when you are dealing with no. 16?

MR BIZOS : Not really because this is really - we may mention it in passing then, but I have the references now.

COURT : Well, let us have them now.

MR BIZOS : The evidence of Mabaso in relation to this is in volume 421 24 659 lines 20 to 23 and that of accused no. 16 is in volume 274 page 14 938 line 11 and his cross-examination

at volume 227 page 15 077 lines 9 to 14.

ASSESSOR (MR KRUGEL) : There must be a mistake.

MR BIZOS : It is possible.

COURT : Is it 227 - the first one was 274 and the second one is 227.

MR BIZOS : I must check on that. Yes, that obviously must be a mistake.

COURT : Probably 224 the first one.

MR BIZOS : I see that it has been corrected on one copy.

ASSESSOR (MR KRUGEL) : Could we have the last one again, (10) please?

MR BIZOS : Page 15 077 lines 9 to 14. I will forbear from quoting the volume number until we have checked it. If 14 000 is in 274, it looks as if the first one is correct. The 15 077 - it is 277. I am sorry for that mistake.

As far as my recollection goes and as far as those who were asked to check are concerned, I am assured that Mr Mabaso was not cross-examined on this - on his assertion that he did know these two as members of AZAPO and if they were, that he would have known about it. (20)

In page 98 of the further particulars it is alleged that accused no. 2 played a broadcast from Radio Freedom to IC.8 and other people while recruiting for AZAPO in the Vaal. Not only to recruit accused no. - I beg your pardon, IC.8 but to recruit people in the Vaal generally. The evidence of IC.8 was to the effect that the tape played by accused no. 2 broadcast on Radio Freedom at a meeting at which IC.8 was present. He testified that this meeting took place at his brother's house in zone 3 Sebokeng. His evidence was further that this tape was played in a (30) secretive/...



secretive conspiratorial manner and that the tape was interrupted, when the owner of the house pulled up in his car outside the house. IC.8 further stated that when the tape could not be played further because of the arrival of the owner of the house, he requested accused no. 2 to leave the tape so that he could listen to it further. IC.8, volume 15 page 732 line 21 to page 734 line 4 and the cross-examination in volume 18 page 797 line 16 to page 809 line 7.

Then in order to join the people of Sharpeville to the other grand conspiracy or conspiracies, we have the (10) evidence of IC.8 in support of the allegation that AZAPO agreed to work with the UDF and the VCA to oppose elections for the black local authorities. IC.8 deposed to a meeting held in 1983 at the Anglican Church in Sharpeville. This is a meeting at which IC.8 says the Vaal branch of AZAPO was established. IC.8 further states that decisions were taken that members should recruit more people in order to make the Vaal branch of AZAPO strong as it was an organisation of the black people and also because this was preparation for opposing the elections for black authorities. (20) AZAPO was going to call for the boycott of these elections and was also going to demand a resignation of councillors. At this stage it was not elaborated on the strategy that was going to be used to achieve this according to IC.8 and he goes on to say that it was mentioned at this meeting that the people did not want puppets as leaders.

Your lordship will notice that there is nothing in IC.8's evidence about the alleged decision to co-operate with the VCA and the UDF in order to achieve the aim of opposing and boycotting the elections for black local (30) authorities/...

authorities. Your lordship will see that specifically in volume 16 page 737 line 20 to page 739 line 12.

According to IC.8 the first suggestion that there should be any co-operation between AZAPO and other organisations in the Vaal was made in June 1984 approximately eight months after the VCA had been launched at a committee meeting of the AZAPO branch of the Vaal Triangle and this would of course have been more than six months after the council elections were held at the end of November 1983 in the Vaal. He says that this co-operation at the June meeting was (10) suggested by accused no. 2. Volume 16 page 767 lines 9 to 31 and the cross-examination in volume 20 page 937 line 1 to page 943 line 15.

We submit that this whole question of the co-operation is contrived evidence, as contrived as the evidence of the nature and source of the tape that he has mentioned. Your lordship will recall the defence evidence in relation to that. Accused no. 2 told your lordship that this was not a tape from Radio Freedom but a tape from Capital Radio which he had got at the conference. Accused no. 2, volume (20) volume 218 page 11 577 line 21 to page 11 581 line 11 and again at page 11 583 line 6. His cross-examination in volume 228 page 12 092 line 24 to 12 093 and the evidence of Mr Mike Hannah who said that he actually conducted the interview and not Radio Freedom in Johannesburg and not in Lusaka. Mike Hannah, volume 387 page 22 400 line 13 to page 22 405 line 17. The existence of the tape and that it was freely available was corroborated by the evidence of Libon Mabaso in volume 421 page 24 652 line 8 to page 24 650 line 29 and his cross-examination on this issue in (30)

volume 422 page 24 717 line 9 to page 24 720 line 10.

There is also a relevant passage in the re-examination of Mr Hannah if your lordship would - the further reference in volume 388 - no, I think if we could just leave it. I think what I have given to your lordship is sufficient.

According to IC.8 and the suggestion by accused no. 2 was that AZAPO Vaal would co-operate with COSAS, UDF and the VCA. He states further that there was an agreement on this and a decision was taken that a meeting should be called to demonstrate to the government that all organisa-(10) tions in the area would work together in order to achieve a boycott of the black local authorities and persuade councillors to resign. IC.8, volume 16 page 768 line 1 to page 769 line 15.

We submit for the general reasons that will be advanced that IC.8 is a completely unreliable witness and that this evidence is contrived. IC.8 conceded under cross-examination that relations between AZAPO and COSAS were strained at this stage, but he says accused no. 2 stated that he was trying to restore the good relationship that ought to exist (20) between them. He conceded in cross-examination that whatever may or may not have been said at the meeting which accused no. 2 told your lordship never took place, that in any event nothing came of it and by 16 June 1984 - your lordship will recall where the COSAS people outmanoeuvred the young AZAPO people and diverting their meeting from the church hall. Your lordsdship will find that in volume 20 page 936 line 27 to page 943 line 17 and the cross-examination in volume 23 page 1 138 lines 9 to 22.

The evidence on behalf of the defence is that this (30)

meeting/...

meeting did not take place. Co-operation between AZAPO on the one hand and the VCA and COSAS on the other was never discussed. The relationship between AZAPO and COSAS was not a happy one and an example was given of the commemoration service arranged by AZAPO at the Roman Catholic Church Small Farms and of the funeral of a member of AZAPO the late Jabu Shabalala. A commemoration service was hijacked by members of COSAS by announcing that the venue for the service had been changed to the Anglican Church in zone 13, Sebokeng. When an attempt was made later to call back AZAPO supporters from the service in zone 13 Sebokeng, this was not taken well by COSAS and AZAPO members who had gone there to try to recall AZAPO supporters were accused of trying to divide the people. Accused no. 2 refused to include members of COSAS on the program for the memorial service of the late Jabu Shabalala. Accused no. 2 testified further that whenever there was a COSAS commemoration service at one venue, AZAPO would hold their own commemoration service at another venue. According to accused no. 2 this happy relationship between the two organisations still persisted (10) in the beginning of August 1984 when the question of the increased rental became an issue in the community. Accused no. 2 testified further that AZAPO took a decision to oppose the election before the launch of the Vaal Civic Association. This decision was taken on 2 October 1983 and the VCA was launched on 9 October 1983. Accused no. 2, volume 219 page 11 613 line 1 to page 11 615 line 4 and then again at 11 903 lines 13 to 21. In volume 219 page 11 610 line 6 to 11 611 line 8 and his cross-examination in volume 224 page 11 902 to page 11 903 - I am sorry that I have not the (30)

lines/...

lines and in volume 225 page 11 916 line 15 to page 11 918 line 24.

I am going to leave out the next section that we have prepared here because my learned friend Mr Chaskalson, if he has not already done so, I think he has, but he will certainly deal with this allegation of "op hoë vlak" in the documentation. I think he has already done it, but I do not intend repeating that, save to tell your lordship that if it becomes necessary that accused no. 2 was cross-examined for about six to seven hundred pages on documentation, which is AZAPO documentation, in order to try and prove through that documentation that he knew that there was this co-operation between the UDF and AZAPO at the high level in which he himself did not operate. He persistently denied that this was so. I have the references if your lordship wants them. It is a long cross-examination on the AZAPO documents. I am in your ... (Court intervenes)

COURT : Just give us the beginning and the end.

MR BIZOS : It starts off with cross-examination on EXHIBIT D1 in volume 224 and goes on - should I just give your lordship the exhibits perhaps that he was cross-examined on? Will that be of any help?

COURT : Yes.

MR BIZOS : He was cross-examined on D1, T5, P1, J4, T25, IB2, IB5 ... (Mr Krugel intervenes)

ASSESSOR (MR KRUGEL) : Did we have an IB series in the exhibits?

MR BIZOS : I am sorry. It is volume 1 and I read the 1 out as an I. It is B5, volume 1 of B5, B1.8, M2, T3, V10, V3, W9. That is the working progress that your lordship will

recall/...

recall that Mr Chaskalson dealt with and your lordship will find practically the whole of volume 224 deals with these exhibits, but we submit that despite the lengthy cross-examination it came to naught. No proof of any co-operation to his knowledge really was established. I do not want to repeat the evidence that has been dealt with about the seniority or lack of seniority of the delegations that were sent and that co-operation or affiliation was suggested there was laughter at the AZAPO meeting. All those things have been said over and over again. I submit that we do (10) not have to repeat them.

Accused no. 2 has denied that there was any such co-operation, more specifically in volume 224 page 11 908 line 25 to page 11 909 line 16. His evidence is specific that as chairman of the AZAPO Vaal he did not co-operate with the UDF and he gives direct evidence of the laughter that met the suggestion at the congress of AZAPO when it was reported that approaches had been made by the UDF to people to affiliate - or for AZAPO to affiliate. He was there. Volume 219 page 11 594 line 26 to page 11 596 line 2. (20)

Your lordship will recall the evidence of Mr Chikane and Mr Molefe that there was no such co-operation. The evidence of Mr Mabaso was to the effect that ... ( Court intervenes)

COURT : Have we not had this? Any way, you promised us it will come by Mr Chaskalson. We have not had it. Portions of this we have had.

MR BIZOS : I think that the high level part was dealt with by Mr Mabaso. I think I will be leaving this out, because I do recall Mr Chaskalson saying in referring your (30) lordship/...

lordship to Mr Mabaso's evidence, that if there was such an agreement, he would have known about it, because he was the president of the organisation at the time.

We now want to turn to the allegations by the state - oh yes, could I before I do that, I just have two extra references from the other side, so to speak, from the Sebokeng side to give your lordship on the lack of co-operation. Accused no. 10's evidence is not contradicted that there were no reports of any VCA activity in Sharpeville and he was on the VCA committee as area representative. Accused (10) no. 10, volume 163 page 8 152 line 29 to page 8 153 line 29 and there is an admission by IC.8 to the effect that he himself, IC.8, did not establish a VCA presence nor did he hold house meetings or attempt to form an area committee or perform any other VCA activity in Sharpeville right up to August 1984. I would refer your lordship to the evidence of accused no. 10, although there must be some confusion.

COURT : You are referring to an admission by IC.8.

MR BIZOS : I am about to give your lordship a reference. There is such - I see that I have a cross-reference in (20) relation to the "betoog". I will give that admission to your lordship, but accused no. 10's evidence in that regard - further in that regard of lack of co-operation is in volume 161 page 7 937 line 16 to page 7 938 line 2. I will find that concession and give your lordship the reference.

We now want to deal with the allegations in relation to the meetings in Sharpeville in August 1984 and your lordship will see that in furtherance of this conspiracy alleged in the preamble of paragraph 73 of the indictment, it is alleged in subparagraph 5 to be found on page 323 (30)

that/...

that accused no. 3 arranged a mass meeting at the church - at his church on 12 August 1984. This is a meeting in respect of which the state has led no evidence. Although it has led no evidence, it persists in the allegation that this meeting was in furtherance of that conspiracy. Accused no. 3 and a number of defence witnesses including Nozipo Myeza gave evidence for the defence. We would submit that none of the adverse allegations made from page 323 subparagraph 5(i) to 325 subparagraph 3 have been proved. No explanation has been furnished to your lordship as to why there has been (10) no state evidence in relation to this meeting, nor any reasons advanced to your lordship why the state persists in the allegation that the meeting in respect of which it has not led any evidence was in furtherance of the conspiracy.

The question that arises is whose meetings were these in Sharpeville in August 1984? The state alleges that they were as part of that conspiracy and all the accused and all the defence witnesses have denied it.

The evidence of IC.8 that accused nos. 2 and 3 were really doing this on behalf of AZAPO does not bear critical (20) examination. If we are correct in our submission that accused no. 3 proved beyond any doubt that he was not a member of AZAPO, then obviously once we know that accused no. 2 did not even know about the first meeting of 12 August and that he only went to it as a result of reading a newspaper report, it would be passing strange that the series of meetings were AZAPO meetings if the chairman says that he did not know about the first meeting and once it is common cause that he was not at the meeting. Even though the state has not led evidence, it does not allege, (30) although/...



although it makes specific allegations as to what is supposed to have happened at the meeting of the 12th, it does not allege that accused no. 2 was at the meeting of the 12th. How can the state seriously suggest that these meetings were really AZAPO meetings in furtherance of a conspiracy with the VCA, the UDF and going even further than that, the African National Congress and even possibly the South African Communist Party. It just does not make sense. We reiterate that these allegations were made and based upon the sketchy and to the very large extent contrived evidence (10) of IC.8 in order to try and try together these accused persons who in common law, could not have been joined together and if these allegations of the grand conspiracy were not made, they could not have been joined in this trial together in the manner in which they have been joined.

The only meeting that IC.8 attended was that of 2 September 1984 in Sharpeville and again if he was so centre to the situation, it would be even stranger still that the man who according to the state significantly was a member of AZAPO and the VCA, the one alleged common factor, absented (20) himself from the meetings of the 12th, 19th and the 26th. He obligingly said to support the state case that the meeting of 2 September 1984 to which he incidentally came late on his own version, the meeting was of all the organisations in the Vaal, so he says, namely AZAPO, COSAS and the VCA. Volume 16, page 770 line 7 to line 14.

Under cross-examination, however, he was unable to support this bit of evidence he gave in his evidence-in-chief echoing the indictment. He concedes that he had no knowledge of all the meetings or who was responsible for (30)

them/...

them. He says that he never found out. He did not know whether the meetings were organised by Moselane, accused no. 3, Peter Hlubi and/or Myeza, working as an ad hoc committee but states that pamphlets of the VCA, UDF, COSAS and AZAPO were available at the meeting of 2 September 1984. IC.8, volume 23 page 11 131 line 5 to page 11 1 - I better not give your lordship where it ends. The handwritten note is very clear line 7, but probably the next page 11 132 line 7.

ASSESSOR (MR KRUGEL) : It starts off at?

MR BIZOS : I am sorry, I have read the first letter for (10) line as 1. It is 1 113 line 5 to page 1 115 line 7. That is the correct reference. I am sorry. We have been checking these references at night and some of them are in pencil and some of them are in ink.

Questioned further, IC.8 stated further that the pamphlet which he saw was the one containing the resolutions by parents and workers and your lordship will find that evidence of IC.8 in volume 23 page 1 112 lines 1 to 22.

Your lordship will recall what pamphlet that was, which he did not really see. He saw a similar one, but it is (20) the one that a woman at the meeting of the 2nd waved in the air and said "What about this?" Your lordship will recall the one that recorded the resolutions - of doubtful origin on the face of it, but on the evidence produced by Radit-sela, but that is hardly a pamphlet of the VCA, the UDF, COSAS and AZAPO.

The other state witness on the meetings, the security police officer Koago, conceded in cross-examination that accused no. 3 had said at the meeting of 19 August 1984 that that meeting was a follow up to the meeting held on (30)

12 August 1984. He states that it was explained by accused no. 3 that that meeting had been called by him, that is accused no. 3, Hlubi and Myeza. He states, that is Koago, that no. 3 explained that elderly people who were being assisted by the church, approached him about the question of the rent increase, which is why the meeting had been called. Koago further said that he would disagree with any person who said that the meetings were meetings of the UDF or AZAPO or COSAS or anything like that and considered that it was made clear that no. 3 acting in his capacity (10) as the priest in charge of the parish. Koago saw no one with a UDF, COSAS, AZAPO or AZASM T-shirts at this meeting. Your lordship will find that very important concession in volume 25 page 1 189 to 1 190. Perhaps I should read this to your lordship, because I want to remind your lordship how much cross-examination and how much argument there has been that these meetings were conspiratorial meetings in conjunction with the UDF. At page 1 189 line 9 :

"Did accused no. 3 refer to the fact that this was not the first or the last meeting, but that a series of (20) meetings would be held? -- That is so.

Did he say that there had been a previous meeting on the 12th? -- That is so.

And did he say that he had explained to the people present on the 12th why he, Mr Hlubi and Nozipo Myeza had decided to call these meetings? -- That is so.

Did you recall that he said that his church has an assistance program for elderly people and more particularly old-aged pensioners who cannot make ends meet? -- That I cannot remember.

(30)

You/...

You are not prepared to deny that that is what was said?

-- No, I am not.

And do you recall that it was in that context that he said that he was responsible for giving out food parcels to these elderly people? -- No, I cannot remember that.

Yes, but you cannot deny that he said that? -- That is so.

But that in delivering the parcels, the people said 'Father, what are we going to do with this rent (10) increase?' Do you recall that? -- Yes, I do.

And do you recall that he mentioned to the meeting that many of these elderly people had said that they would not be able to buy food for their children and grand children will not be able to go to school if they had to pay any more of their meagre income on increased rental? -- That is so.

And that he felt it his duty as the priest in charge to approach Mr Hlubi, Nozipo Myeza and members of his church council so that steps could be taken to alleviate (20) the plight of these poor people? -- That I cannot remember.

And are you able to deny that he said it? -- No.

Now, if anyone were to suggest that this was a UDF meeting of an AZAPO meeting or a COSAS meeting or anything like that, you would say that that person was not speaking the truth? -- I will disagree with that person.

Because it was made quite clear that he was acting in his capacity as father in charge of that parish? -- That is so. (30)

Yes/...

Yes, and there were no people with UDF shirts or AZAPO shirts or COSAS shirts or AZASM shirts or anything like that? -- No, there was none.

And you would agree that nobody smoked."

The amount of time - I have already mentioned to your lordship of the five thousand seven hundred pages of cross-examination that was directed to the accused, the amount of time that was spent in order to establish that these meetings - through cross-examination of the accused - that these were meetings of AZAPO and the UDF and the VCA, was all to (10) naught, probably not remembering that this concession had been made by the principal state witness for the state. We will have something to say about some of the things that he said on his credibility in due course, but on this issue he made this concession. I may add that IC.9 who was his "handlinger" so to speak at this meeting, was not led on this point. We could find no reference to it.

COURT ADJOURNS.

COURT RESUMES.

MR BIZOS : The concession made by sergeant Koago that this was said on the 19th is corroborative in our respectful (20) submission of the evidence given particularly by Reverend Moselane, accused no. 3, that there were none of the political organisations involved in the calling of these meetings.

In his evidence he told your lordship that he became aware of the rent increase in July 1984, that during August 1984 he received complaints from his parishioners who were mainly pensioners and who were being provided with food parcels by the church. They raised the question of the rent increase and stated that they could not afford the rent increase as they were already in difficult financial (30) position/...

position. They requested accused no. 3 to provide extra food parcels so that they could afford to pay the rent. Volume 229 page 12 173 line 20 to page 12 175 line 7.

This matter was discussed with accused no. 3's parish council which advised him to call a meeting on Sunday, 12 August 1984 to try to discuss the matter. The parish council also advised him to seek the assistance of other people in this regard. Volume 229 page 12 175 line 8 to line 30. His evidence is that he was given authority to do what he thought necessary. It was his view that the rent increase(10) affected not only his parishioners but the community as a whole. Page 12 176 lines 1 to 6.

That he prepared a draft document in which he wanted to advertise the meeting of 12 August 1984 and which originally was going to be addressed to members of his church only. He approached or he was going to approach Mr Philip Masia, the general secretary of the Vaal General Workers Union, whose duplicating facilities he had actually used for such notices. For the first time he there met Nozipo Myeza who was a lowly paid newly employed typist of the (20) union. He asked her to type the document and that Myeza indicated that the matter of the rent affected the whole community and not just the parishioners and suggested that the meeting should be open to all, to which he agreed. Accused no. 3, volume page 12 177 line 29 to page 12 178 line 8 and subsequent lines. Myeza corroborated him on this. Volume 312 page 17 927 line 9 to page 17 928 line 16.

That Hlubi who came in late and who was replacing Masia as the acting secretary of the union, was requested by accused no. 3 to assist him in the distribution of the (30) pamphlet/...

pamphlet, calling the meeting of the 12th. Accused no. 3 knew Hlubi and Myeza as employees of the Orange Vaal General Workers Union. He did not know them as members of any other organisation. Myeza's evidence was that she did not do what she did on behalf of the union. She did it as a person who, as would appear later, was one of the breadwinners of an extended family of ten who was hardput to keep the family with food and accommodation. Accused no. 3, volume 229 page 12 180 lines 10 to 13 and Miss Myeza's evidence in volume - I am sorry, there are two references for accused (10) no. 3. I have given your lordship the one. I will give the other now. Again volume 229 page 12 176 line 7 to line 22 and Myeza's evidence in volume 312 page 17 924 line 6 to line 23.

Accused no. 3 did not intend AZAPO, VCA, UDF or any other organisation to be participants at the meetings as organisations. Accused no. 3, volume 229 page 12 180 lines 13 to 17.

Accused no. 3 did not contact Mr Hlomoka, the chairman of AZAPO, accused no. 2, nor did he invite him to the (20) meeting. He would not have invited him, because he was not a resident of Sharpeville, but a resident of Sebokeng. Volume 229 page 12 180 lines 18 to 22.

Accused no. 2 also testified on this aspect. He did not attend the meetings as a representative of AZAPO. He was not invited to the meetings. He had either in his personal capacity or in his capacity as chairman of the Vaal nothing to do with the calling of the meetings. The rent increase was never discussed by the committee of the AZAPO Vaal. He only knew about the Sharpeville meeting when he (30)

saw/...

saw a newspaper report, EXHIBIT DA10, about the meeting of 12 August 1984 and his understanding was that this meeting had been called by the anti-rent hike committee as stated in the newspaper report. He decided to attend this meeting and to contribute towards discussions that were to take place there. He did not know any of the people he met in accused no. 3's house on 19 August 1984, except for accused no. 3 whom he had approached on a few occasions before for permission to use the church as a venue for meetings. He did not know accused no. 16 who was the main speaker at (10) the meeting of the 19th but he had seen his picture in the newspapers. Accused no. 2, volume 219 page 11 616 line 5 to 11 620 line 12. He was cross-examined on it in volume 226 page 11 971 line 10 to 11 973 line 30. Again in volume 227 page 12 046 line 14 to page 12 047 line 9.

Mr Manthata, accused no. 16, gave evidence that he was invited to the meeting of 19 August by accused no. 3, Father Moselane. He was not invited in any specific capacity as representing any organisation, although accused no. 3 knew that he belonged to the Soweto Civic Association (20) and that he belonged to - and that he was an employee of the South African Council of Churches. He did not know any of the people he met at accused no. 3's house on 19 August 1984 until they had introduced themselves. He did not go to the meeting because of any ANC, SACP, UDF or AZAPO conspiracy. Accused no. 16 stated that no one was introduced at the meeting as being from the UDF or from the trade unions. The only people from organisations were accused no. 1 who was from AZANYO and accused no. 2 who was from AZAPO. Accused no. 16, volume 276 page 15 028 lines (30)



15 to 20 and page 15 052 lines 7 to 22. His cross-examination is in volume 282 page 15 422 lines 17 to 27.

Nozipo Myeza testified to the fact that she was not a member of AZAPO. She did not know accused no. 2 before she saw him on 19 August 1984. She was not a member of any other organisation. The meetings were arranged by accused no. 3 with the assistance of herself and Peter Hlubi. She knew nothing about AZANYO. Your lordship will find her evidence in volume 313 page 17 966 line 3 to page 17 969 line 14. Her cross-examination is to be found in volume (10) 317 page 18 139 line 28 to page 18 140 line 16 and page 18 167 line 15 to page 18 168 line 13.

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Myeza also stated that she knew nothing about the VCA in 1984. She became involved in the meetings held at the Anglican Church in Sharpeville only after she had been approached by accused no. 3 at the Orange Vaal General Workers Union. Your lordship will find that in her cross-examination, volume 315 page 18 052 line 20 to page 18 053 line 3. Would your lordship add, it is not from the one page to the other. It is also at the other page. At (20) the one page and also at the other page. Not on a continuous basis.

The witness Victor Mbatywa testified that he was a shop steward of the Metal and Allied Workers Union and that it was a particularly strong union in the Vaal. He stated that his union had nothing to do with the meetings arranged at the Anglican Church in Sharpeville. He knew about the meetings when he saw EXHIBIT AN15.5 advertising the meeting of 12 August 1984. He also testified that accused no. 3 had explained on 19 August 1984 how the meeting came to be (30)

held/...

held. He did not consider the meeting to be a meeting of the UDF, AZAPO or COSAS or any other political organisation. He did not know of the VCA. Volume 331, page 18 904 line 13 to 18 906 line 22. Also at page 18 916 lines 19 to 22. His cross-examination in volume 332 at page 18 934 lines 4 to 9 and at page 18 983 line 28 to page 18 985 line 28.

Mokati also testified on this aspect. She regarded this meeting as a meeting of the residents of Sharpeville. Volume 339 page 19 365 lines 19 to 25 and at page 19 407 lines 15 to 23. His cross-examination - his further (10) cross-examination - the first one was in chief, the second one that I gave your lordship was under cross-examination. His further cross-examination in volume 341 page 19 447 line 24 to page 19 448 line 15.

Msimanga testified that he heard about the meeting from his co-workers. Volume 341 page 19 462 lines 15 to 16. He stated that accused no. 3 explained that the meeting came about as a result of a request by his church council at the request of the residents. Volume 341 page 19 482 line 18 to page 19 483 line 21. He did not even know about the existence (20) of the organisations which were alleged to have been responsible for these meetings. Volume 341 page 19 482 line 10 to page 19 483 line 21. Also in volume 342 page 19 500 lines 17 to 20. Also in volume 341 page 19 462 lines 15 to 16 in chief. Under cross-examination volume 341 page 19 482 line 18 to page 19 483 line 21. Again at volume 342 page 19 509 lines 17 to 20.

The witness Xaba testified that he did not know about the VCA, COSAS or AZAPO at the time that he attended the meeting of 2 September 1984. Xaba, volume 349 page (30)

19 976 lines 23 to 30 and under cross-examination volume 349 page 19 993 line 18 to page 19 994 line 4.

The witness Paul Nhlapo testified that he attended the meeting of 12 August 1984 after he had heard about this meeting from his neighbours. He testified that accused no. 3 explained that this meeting was held as a result of complaints by members of his parish about the rent increase. He testified that there was no speaker from the UDF. He cannot remember any speaker from a union being introduced. He did not even know about AZANYO and AZAPO. Nhlapo. (10) volume 334 page 19 047 lines 3 to 7 and again on the same page lines 21 to 25. His cross-examination in volume 334 page 19 076 lines 9 to 27.

A journalist, Mr Raboroka testified that he filed a report of the meeting on 19 August 1984. Dealing with a paragraph in this report which reads "Several leaders from various political and civic organisations including UDF, AZAPO, AZANYO, SCA and trade unions, he said that he intended this paragraph as background material as to what organisations had already said about the rent increase. (20) Raboroka testified that he did not intend to convey any impression that these organisations were present at the meeting of 19 August 1984 but as a result of editing this background paragraph and another paragraph had been condensed into one. He testified that the final report as in AAQ7 handed in as an exhibit, was not in the sequence he had written his original report." Volume 362 page 20 777 line 3 to page 20 780 line 26.

Raboroka testified that he had read in the Rand Daily Mail the report filed by the late Nkabinde and produced (30)

as EXHIBIT AAQ6 that the meeting had been called by the anti-rent committee. He did not ask accused no. 2 about this about and about who was in control of the anti-rent committee.

Raboroka, volume 361 page 20 736 line 6 to page 20 737. Also in volume 362 page 20 777 line 3 to page 20 789 line 26 which I have previously given your lordship but we interspersed a more specific ...

We have gone to some trouble to show your lordship what the evidence on this is, because accused no. 3's evidence was described by the state as a "bog storie." I have always, (10) with the greatest respect understood that one had to examine the weight of evidence and the probabilities in order to make a submission as to where the truth lay and although I am not entirely familiar with the new answers of the adjective used by the prosecution, I would assume that it was intended as a term of ridicule that your lordship should outright reject his evidence and find on the contrary that these meetings were part of this conspiracy. Well, I would not count the number of witnesses who said that what accused no. 3 has told your lordship is correct. I have already (20) read out to your lordship the concession made by the chief state witness and I would submit with the greatest respect that the amount of time spent in cross-examination in order to try and disprove the obvious, once the concession was made, was really a waste of your lordship's time. We will deal later with what we will consider or what we will submit to your lordship have been a contrived bit of evidence that Mr Raditsela was supposed to have made a report at the meeting of 26 August 1984 at Small Farms, that he has just come from Sharpeville where similar resolutions had been (30)

taken/...

taken. The similar resolutions of course in the contrived bit of evidence was that there would be a stay-away and a march. Your lordship has abandoned evidence that no such resolutions were passed at the meeting of the 26th. Your lordship has a sound track. Your lordship has a film. Witnesses for the defence said that Raditsela did not come to Sharpeville. Your lordship has an interview between <sup>M</sup>Mr Harris and accused no. 3 and Mr Hlubi as to what has been decided at the meeting at an interview immediately after the meeting took place and there is nothing about a stay-away, (10) there is nothing about a march and of course the question will be asked as to why - well, all the witnesses from Small Farms deny that Raditsela said anything of the sort, but the question arises why should Raditsela who has been shown not to have been at the meeting of the 26th at all, should have come to make a convenient announcement to the state case that there were similar meetings in other places where similar resolutions were carried out. We submit that despite the lengthy questioning of Mr Raboroka, despite the suggestions that were made on interpretations of the (20) EXHIBIT AN15, that it is capable of meaning that the meetings of various organisations were held at various places, the weight of evidence and the probabilities established beyond any doubt whatsoever that the meetings at the Vaal were held independently of the meetings held in Sebokeng later and in fact we will refer your lordship to the evidence of a number of the Sebokeng accused that Sebokeng actually reacted to what was published in the newspapers as having occurred in Sharpeville and it may be said that they were reacting rather than taking the initiative in Sebokeng. It also (30)

has/...

has a bearing on the probabilities against the state's proposition that Raditsela was really the maestro that was conducting the operations. The evidence is overwhelming that long before Mr Raditsela decided to do anything in Sebokeng, there were protest meetings in Sharpeville without the concurrence or agreement of the VCA.

We now want to deal with the allegations that are made in relation to the meeting of 12 August 1984. What we have been busy with up to now is in order to try and establish that the meetings at Sharpeville were independently held (10) by what was known as the Asinamali committee that started off in the manner in which accused no. 3 deposed to.

The allegations in relation to the meeting of the 12th could be found in paragraphs 73 and 74 of the indictment - sorry 73.4 and 73.5 of the indictment. We have already indicated to your lordship that no evidence for the state was led at this meeting. The preamble is a usual one that it was held in pursuance of the conspiracy that we submit was not proved.

The evidence of accused no. 3 and Nozipo Myeza was (20) that this was a comparatively short meeting attended mainly by elderly people who were very concerned about the increased rental that they could not afford to pay. There were approximately two hundred people there. There were no banners displayed at this meeting. The meeting started at approximately 14h00 with the singing of the hymn "Re ha boka morena," and a prayer by the Reverend Moselane who also read from the Bible. May I pause here for one moment. If my memory serves me correctly there is a contradiction in no. 3's evidence about this banner. On one occasion he said that (30)

it/...

it was there on the 12th and on one occasion he said that it was there for the first time on the 19th, but we do not know what turns on that. The woman that actually got the piece of sheeting on which she wrote the banner, is likely to be more accurate on it, that it was after the first meeting that she actually made it and despite the lengthy period of time that was spent in cross-examining accused no. 3 about the contradiction of this evidence, it may show that accused no. 3's memory in that and some other respects is not particularly sharp on that sort of detail, but it (10) is hardly the basis upon which this can be disbelieved.

The evidence is that after the prayer accused no. 3 who presided over this meeting introduced the question of the rent increase. He explained that most of parishioners were pensioners and received food parcels from the church. He explained that they, his parishioners, had complained to him about the rent increase and stated that they would not be able to cope. No. 3 said that a solution had to be found to this problem and suggested among other things that petitions and court proceedings in which court interdicts (20) could be sought should be looked into. He indicated that legal advice would have to be sought on the aspect and that if any petitions were going to be presented, these should be presented on or before 1 September 1984, being the date on which the rent increase was to take effect.

Your lordship will find with respect all that evidence in the evidence of accused no. 3 in volume 229 page 12 185 line 20 to page 12 186 line 24. Thereafter people from the audience including Nozipo Myeza and Peter Hlubi asked questions and spoke. All the speakers expressed concern about the (30)

rent/...

rent increase and about the plight of the aged and the poor and the unemployed. Concern was also expressed about the fact that the councillors were not sympathetic to the plight of the aged. Nozipo Myeza reported about an abortive meeting called by councillors on 5 August 1984 and suggested that another meeting with the councillors should be sought in order to attempt to resolve the issue of the rent increase. She also mentioned that members of the trade union were also affected by the rent increase and were very unhappy.

Your lordship will find all that evidence in the evidence (10 of Myeza, volume 313 page 17 930 line 1 to page 17 931 line 9. Again in volume 315 page 18 064 lines 12 to 21. Page 18 065 lines 1 to 18. Page 18 067 lines 22 to 30.

The evidence of Victor Mbatywa, volume 331 page 18 906 line 14 to page 18 907 line 6. Under cross-examination, volume 332 page 18 933 line 5 to page 18 925 line 20.

In relation to the last matter, in relation to the trade union, your lordship will find that in the evidence of Myeza in volume 313 page 17 933 lines 10 to 14 to page 315 - unfortunately I have not got a line, but we would ask your (20) lordship to forgive us for that.

In addition to agreeing that legal advice is sought about the petitions and the court interdicts, the following resolutions were passed at this meeting.

"That councillors should be called upon to resign.

That the increase of R5,90 would not be paid, but that the old rent should be paid."

And that these suggestions came to the floor and were accepted as resolutions. The evidence of the witnesses - no, no. 3 in volume 229 page 12 886 line 17 to page 12 889 line 7; (30)

Myeza/...



Myeza, volume 313 page 17 933 line 26 to page 17 934 line 23.

The trade unionist , volume 331 page 18 907 line 15 to page 18 908 line 18. The cross-examination volume 332 page 18 937 line 4 to page 18 938 line 5.

The evidence of Mr Paul Nhlapo was to the same effect. I have not got a reference but I submit as there is no evidence to the contrary, we do not have to go further than the three witnesses we have already indicated to your lordship.

The evidence of the witnesses was that no attacks were made upon councillors and the black local authorities contrary to the allegations made in the indictment. No propaganda was made against the rent increase, whatever may be meant by propaganda in the indictment. The audience was not called upon to reject the councillors. The government was not condemned for not utilising state funds for the provision of more houses. No violence at all was advocated against the councillors or against their property. Your lordship will find all that in the evidence of accused no. 3, volume 229 page 12 185 line 20 to page 12 190 line 10. Myeza, volume 313 page 17 930 - unfortunately I have not (20) got a line to page 17 935 line 3, which deals with the whole meeting really. Cross-examination directed at her is to be found in volume 315 page 18 059 line 17 to page 18 085 line 9.

COURT : That is a lot. It is probably on two pages.

MR BIZOS : It may be if your lordship just takes them at these two pages and again for my inability to properly pronounce his name, the trade unionist, volume 331 page 18 905 line 29 to page 18 909 line 6 and his cross-examination in volume 331 on the whole of this meeting at page 18 931 line 21 (30)

to/...

to page 18 943 line 7. Nhlapo, volume 334 page 19 046 line 25 to page 19 048 line 20.

Of course, your lordship will make a finding, we submit, in the absence of any evidence to the contrary, that this is what happened at the meeting of the 12th. If that is what happened at the meeting of the 12th and we have established what happened at the meeting of the 26th in relation to the calls for violence or the non-calls for violence, it has an important bearing on the credibility of the two witnesses that were called by the state, Koago and IC.9 as to (10) whether they are speaking the truth when they say that violence was advocated at the meeting of the 19th. This is why we submit that it is important to make a finding of fact that no violence, because that is the evidence, was advocated on the 12th. We will in due course submit to your lordship there can only be one finding of fact in relation to the meeting of the 26th on the oral and documentary and electronic evidence available to us in relation to the meeting of the 26th. We will ask your lordship to make a finding of fact in relation to the meeting of the 26th (20) that no violence was advocated and the question will be, have an important bearing as to why violence should have been advocated at the meeting of the 19th where a security police officer and his friend attended the meeting.

We then want to deal with the meeting of 19 August 1984. The allegations about this meeting are contained in paragraph 73(6) of the indictment at page 325 to page 328 of the indictment.

of course your lordship knows that the very preamble of the subparagraph that one Mohapi Lazarus More was the (30) chairman/...

chairman of this meeting, is denied and your lordship in fact allowed a discharge of Mr More, accused no. 4 at the end of the state case, despite the evidence of both Koago and IC.9 that he was the chairman of the meeting and the gravamen of the allegation in translation of the indictment is also disputed that the audience were to a great extent politically incited, indoctrinated and/or intimidated to get rid of lawful structures of authority. The defence case is a denial that violence was advocated against any person or the property of any person. (10)

It is alleged that accused no. 16 delivered a strongly worded address in which he rejected councillors and presented - represented them as part of the oppressors and said that they had to resign and urged the residents not to pay the increased rent. Above all it is disputed that accused no. 16, Mr Manthata, advocated any violence against the person or property of the councillors. It is disputed that accused no. 2, Mr Hlomoka, spoke after accused no. 16 and identified himself with what had been said by accused no. 16, namely that councillors should be killed. It is disputed that (20) Myeza addressed this meeting at all. It is further disputed that anyone at the meeting said the words which she is alleged to have uttered. Your lordship will recall that people would be killed if they did not tow the line.

It is further disputed that accused no. 1 said what is set out in the indictment. It is disputed that one Mandla spoke at this meeting at all.

In relation to this meeting there is a sharp conflict of fact. Two witnesses testified on behalf of the state. Koago and IC.9. Their evidence is that they arrived at (30) this/...

this meeting in the company of another policeman, Letsele who has since passed away. The evidence is that they arrived at the St Cyprian Anglican Church in Sharpeville at approximately 13h30 before the meeting started. I will not deal with the contradictions and the improbabilities at this stage. I will do it in due course. This is a consensus or a synthesis of the evidence that they both appeared to be giving.

IC.9 states that when they arrived at the church the building was locked. He states that accused no. 3 accompanied - Hlubi later arrived and opened the church door and went inside. Accused no. 3 then again went out. Both witnesses stated that there was a banner inside the church and on which was written "Away with councillors. No more rent hikes." In addition, IC.9 says that the words "asina mali" were written on this banner.

Koago states that during the time while they were waiting accused no. 2 and Myeza were busy with preparations at the front of the church. While the witnesses were waiting, accused nos. 1, 3, 4 and 16 who were all known (20) to Koago, so that there can be no possibility of mistaken identity in relation - between Mr Peter Hlubi and Mr Lazarus More - in any event, your lordship saw Mr Lazarus More in court for a long time and your lordship saw Peter Hlubi on the film - came into the church and walked up to the platform and the front of the church. As they were walking to the front of the church, the audience rose, raised their fists and shouted "Amandla" and the church is said to have been full. The meeting opened with a prayer and reading from the Bible and a sermon by accused no. 3. It was established (30) that/...

that the passage from the Bible was Exodus 3 verse 17.

The witnesses state that in the sermon accused no. 3 made comparison of the Israelites and Egyptians with the people and the councillors. He said that the councillors oppressed people just like the Egyptians oppressed the Israelites. Accused no. 3 himself did not make a speech. He, however, related how he had been approached by a woman who said that if the rent was increased, she would not be able to buy food for her children or send them to the school. Thereafter accused no. 3 introduced the speaker Tom Manthata(10) from Soweto and said that he was a member of the committee of ten and the Soweto Civic Association. According to IC.9 accused no. 16 was introduced as the main speaker at that meeting.

Before accused no. 16 spoke he lifted his right hand with a clenched fist and said Amandla. The people including accused no. 3 responded to this by saying Ngawethu. Accused no. 16 spoke. In his speech he said - I will give your lordship the references in due course when we analyse the evidence - that it does not make sense for black people (20) oppress other black people. He said that the youth did not elect councillors and that councillors were elected by elderly people, after these were given bread and blankets in order to get them to participate in the elections.

Then he says that he made an example of the TV coverage when white old people complained about the rent increase and the government listened and did not increase the rent. He said that this does not happen in the case of black pensioners, that they had the power and they did not know how to use it, that the people had ask for councillors to resign, (30)

that/...

that people had asked to increase the rent and the councillors had not listened. He produced a piece of paper with a notice of the increase and said it is just as good as this paper should be set alight.

According to IC.9 people on the platform became excited and they shouted Amandla Ngawethu. Accused no. 16 continued with his speech and said that the people should not buy from the councillors' shops, should not use their filling stations, should not buy from their liquor stores. Accused no. 16 further said that now is the time that councillors(10) should be killed. Councillors should be attacked with stones and set alight and when this was said the audience rose and shouted Amandla. Accused no. 16 said that the people must join organisations but did not say which organisations. According to witnesses the audience became incited and emotions were very high at the time when accused no. 16 was speaking.

Your lordship will find the evidence of Koago in the main in volume 24 page 1 152 line 8 to page 1 153 line 22. His cross-examination in volume 25 more particularly at pages(20) 1 104 lines 2 to 28; 1 209 line 12 to page 1211 - unfortunately I have not the line at the moment, but I will be dealing with his evidence in greater detail. IC.9, volume 27 page 1 283 line 15 to page 1 286 line 7. They go on to say that the erstwhile accused no. 4 introduced accused no. 2. Accused no. 2 requested people not to buy from the shops of the councillors and not to use their taxi's. He requested people to convey this message to all people and get support for the boycott proposals. He said that councillors misused their power by ejecting people out of houses when they could(30)

not/...

not afford to pay the rent and that accused no. 2 associated himself with accused no. 16 and he said that he, accused no. 2, - sorry, that accused no. 16 - accused no. 2 said that accused no. 16 had already said all that he, accused no. 2, wanted to say. That would of course include if the evidence of these two witnesses is true, that Mr Hlomoka, accused no. 2, associated himself with the call that councillors should be killed and their property should be destroyed. Your lordship will find the references to this evidence in volume 24 of Koago, page 1 153 line 23 to 1 154 line 10. (10)

He was cross-examined at some length in relation to this. I will give your lordship all the references, but I will be analysing them later. Volume 25 page 1 197 lines 3 to 5. Page 1 198 to page 1 201 line 28. Page 1 207 line 29 to page 1 208 line 5. Page 1 209 lines 12 to 30. Page 1 214 lines 4 to 15. Page 1 217 line 10 to page 1 227 line 29. IC.8's evidence is to be found in volume 29 page 1 394 line 24 to page 1 396 line 25. His cross-examination appears - on this issue - in volume 28 page 1 301 line 27 to page 1 316 line 16. (20)

The state witnesses testified further that thereafter Nozipo Myeza spoke and said that anyone who was seen buying from shops owned by the councillors should be killed and his house should be set alight. She is alleged to have said that people should not be afraid because they were already involved in the struggle. She did not explain which struggle she was referring to. When she said these words, the people lifted their hands and said "Siyaya Siyaya." Your lordship will find this in the disputed evidence of Koago in volume 24 page 1 156 lines 8 to 21 and his cross-examination in (30)

volume 26 page 1 257 line 30 to page 1 260 line 4. The evidence of IC.9 in chief volume 27 page 1 288 lines 19 to 29. The cross-examination of IC.9 in volume 29 page 1 409 line 23 to page 1 411 line 8.

The evidence of these two witnesses whose evidence is disputed was further that at this stage people were making noise, there was some disorderliness. People moved up and down. People were excited. Koago testified that at this stage he got the impression that people could start fighting any time. Koago says further that Letsele decided(10) to leave because they were scared that they would be attacked. IC.9 also testified to this effect and that he also left the meeting at this stage. As they were leaving, people appeared to be wanting to fight with the reservist policeman in Sharpeville or wanted to attack him. I may say that this reservist policeman was never - never came to light in this case. Koago, volume 24 page 1 156 line 1 to 30 and volume 27 page 1 288 line 30 to page 1 289 line 9.

The evidence of the state is that there were no songs at this meeting except "Re ha boka morena". The evidence (20) of Koago under cross-examination was that when the meeting ended the people left the church premises in an orderly and peaceful manner. He saw the people from the police station which was very near the church and from which he could see what was happening. Volume 27, Koago, page 1 271 lines 19 to 22 and IC.9, volume 29 page 1 415 line 17.

The evidence of the two state witnesses was challenged by the evidence of accused no. 3, by the evidence of accused no. 2, by the evidence of Myeza, by the evidence of Victor Mbatywa, the evidence of Paul Nhlapo, the evidence of (30) Maria/...



Maria Mokati, the evidence of Amos Msimanga and the evidence of Elias Xaba.

I would like to give your lordship - we have the evidence of the security policeman and his companion being denied by these witnesses and I have the references to give to your lordship which directly deny the evidence of these two.

Accused no. 3 denies this in chief in volume 230 page 12 231 lines 13 to 15. Page 12 238 lines 24 to 27. Page 12 242 lines 18 to 28. In volume 239 page 12 730 line 6 to page 12 731 line 23. (10)

Mr Hlomoka, accused no. 2, denies the evidence of these two gentlemen. In volume 220 page 11 641 line 22 to 28. Page 11 642 lines 1 to 8. Volume 226 page 11 988 to page 11 993. The two latter references are in cross-examination.

The evidence of accused no. 16 - I am sorry I did not give his name in the list originally, Mr Manthata, volume 276 page 15 036 lines 60 to 25. Page 15 051 lines 2 to 16. Page 15 056 lines 6 to 7. In cross-examination, volume 282 page 15 421 lines 8 to 13. Page 15 422 lines 8 to 11.

The evidence of these two is also denied by the evidence of Nozipo Myeza. In chief, volume 313 page 17 946 lines 24 to 27. Page 17 948 lines 23 to 25. Page 17 949 lines 15 to 19. Volume 316 page 18 123 lines 3 to 13. Volume 317 page 18 138 line 19. Page 18 139 - sorry this is line 19 in page 18 138 to line 6 in page 18 139. Page 18 140 line 27 to page 18 141 line 8 to 21 and at page 18 142 line 1 et sequence. (20)

The witness Victor Mbatywa in chief, volume 331 page 18 911 lines 16 to 30. Page 18 914 lines 7 to 11. Page 18 915 lines 13 to 18 and lines 21 to 23. Volume 332 (30)

page 18 963 line 28 to page 18 964 line 5.

Mokati in chief, volume 340 page 19 369 line 29 to page 19 370 line 1. Page 19 371 lines 27 to 30. Page 19 375 lines 27 to 29. Page 19 416 lines 23 to 26. Page 19 418 lines 21 to 27. Page 19 424 lines 4 to 16.

Nhlapo, volume 334 page 19 050 line 26 to page 19 051 line 3. Page 19 052 lines 27 to 30. Page 19 053 lines 1 to 5. and on the same page lines 21 to 25. Page 19 054 lines 1 to 2. Volume 334 page 19 073 line 15, Page 19 073 line 29 to page 19 074 line 6. Page 19 078 line 22 to page 19 079 line 1. (10)

Msimanga in chief, volume 341 page 19 466 lines 28 to 30. Page 19 468 lines 7 to 8. Page 19 469 lines 24 to 26. Page 19 470 lines 18 to 22. Page 19 471 line 24 to page 19 472 line 1.

Xaba - no, I am sorry, could I ask your lordship to go back and scratch the name of Xaba out. Did I give your lordship Raboroka when I gave the list of witnesses?

COURT : No.

MR BIZOS : Could I ask your lordship to scratch out Xaba and put Raboroka in who was there. Xaba was a mistake. (20)  
I have a note that he was not at the meeting of the 19th, he was at the other meeting.

Raboroka, volume 361 page 20 737 line 24 to page 20 738 line 11. Volume 361 page 20 785 line 13 to 17. Page 20 785 line 30 to page 20 786 line 17.

We are not for one moment suggesting that merely because we called many more witnesses than the state did, that the issue should be decided in our favour merely on account of numbers, but what we will establish, we believe, to your lordship and the learned assessor's satisfaction, is that (30)

it/...

it is not only the weight of evidence, but taken together with the probabilities and the unsatisfactory nature of much of what Koago and his companion said, that your lordship will find as a fact that neither accused no. 16, Mr Manthata, nor accused no. 2, Mr Hlomoka, nor accused no. 1, Mr Baleka, nor Nozipo Myeza who gave evidence here or anyone else at the meeting advocated violence against the councillors and I propose to make detailed submissions to your lordship in relation to the credibility of these two state witnesses.

We will try and establish that their evidence is both (10) contradictory, self-contradictory, in some respects highly improbable and as already indicated, unless people's character changed between the 12th and the 26th, that they were not consistent with themselves, they are not telling the truth.

Koago was a police officer. His companion considered his occupation sensitive and was reluctant to make it known. Their positions do not make them witnesses whose evidence is to enjoy greater weight than the evidence of any other witness.

Police officers and those most closely associated (20) with them had been disbelieved by the courts when good reasons existed for disbelieving them and officers had been disbelieved in this court in this type of case of a much higher rank than Sergeant Koago.

I am going to refer your lordship to a passage in the unreported judgment of Cilliers, J. in S v French Beta delivered on 1 November 1971 and I am going to read a passage because it is particularly apposite, because we have had this sort of evidence from other police officers in this court and I want to show the court's approach, with respect, (30)

like/...

like the sort of admission that accused no. 21 is supposed to have conveniently made.

COURT : While you are referring to this unreported judgment, Mr Chaskalson promised us a copy of the unreported judgment in Adams case and we have not got it yet.

MR BIZOS : I am sorry, I also promised your lordship a copy of the indictment, but I will take steps in lunch time ...

(Court intervenes)

COURT : The indictment is not that serious. We can understand Afrikaans, but Adams case we have not got. (10)

MR BIZOS : I will make a telephone call during the adjournment. I know there was a problem because the first page of Kennedy, J.'s judgment is missing and they have been trying to find another copy on microfilm somewhere in order to make it complete, but I am going to suggest even if the first page is missing, let us have the rest and I will do that during the lunch hour.

COURT : Yes.

MR BIZOS : I may say that I only could find in my archives only these two pages of the judgment. I have not got the (20) full judgment of Cilliers, J. but I want to assure you that this is what his lordship said.

"At 4.45 on the afternoon of 20 January 1971 a number of police officers took part in a search of the accused's flat, number 512 Windsor Gardens. Three of these officers gave evidence. There were Lieutenant Colonel P.J. Greyling, Major J.F. Viviers and Captain K.J. Dirker. They entered the flat with the accused. During a thorough search in the second bedroom, one used by the accused as a spare bedroom, Major Viviers opened (30) the/...

the top door of the built-in cupboard. He was standing on a stool because the cupboard was about six feet from the floor. He found a big empty cardboard-box and behind it a shoe-box with the pamphlets enumerated in the indictment. (They were incidentally ANC pamphlets) One pamphlet was taken out and this everybody present could see. The accused was sitting on a chair and the officers say that he could not see what was in the box. Nevertheless, according to them, he disclaimed all knowledge of the articles in language which indicated(10) that he knew what was in the box. His reference to what was found was said to have been in the plural, although he could see only one pamphlet. The state argued that for this reason the accused should not be believed when he says that he did not know that the pamphlets were in his flat. The evidence of the officers was, however, unconvincing. In the first place they did not always agree on the exact words used by the accused and sometimes the words given in evidence-in-chief differed somewhat from the words given in cross-exami-(20) nation. No one had made a note of the words used by the accused, although at least one of them regarded the exact words as significant and important. Two of them gave unconvincing evidence about the shape of the envelopes in the box, another made a mistake about the photograph of the cupboard where the shoe-box was found, while the third made an unimpressive objection to the position in which the interpreter stood here in court. Before drawing the inference which the state has asked me to draw from the accused's words, I would(30)

require/...

require far greater precision in the evidence about the exact words of the accused. In the circumstances I cannot find that the accused by his words indicated that he had knowledge of the contents of the shoe-box. After the usual warning by one of the officers, the accused said that he did not know the pamphlets were in his flat and that he could not explain how they came to be there."

I give this as an example as to the sort of analysis that is required of the facts and the probabilities even when, (10) and perhaps even in this type of case particularly when members of the security police are giving evidence.

That is as far as the unreported judgment goes. I now want to refer your lordship to the reported judgment in the French Beta case.

COURT ADJOURNS UNTIL 14h00.

THE COURT RESUMES AFTER LUNCH

MR BIZOS: As your lordship pleases. I did speak to Mr Tipp and ask him to set the copy in motion, if it has not already been done and we hope tomorrow or at the very least the day after we will have...I read portion of the judgment of CILLIERS J. as to why certain officers that gave absolutely vital evidence which proved the accused's guilt, and I want to read a lengthy passage from the appellate division's judgment in relation to a witness that his lordship CILLIERS J P actually believed and the chief justice made a finding contrary on the evidence because the say so of the police officer against the general probabilities is not to be accepted and not only do we have Kuago in this situation but we also have two police officers from Pretoria in relation to accused no.21 and a captain, now a major, in relation to accused no.3 in the Vaal and I have the two reports for your lordship and learned assessor here in order to show the sort of analysis of the evidence in conflict that has to be made of the facts and the probabilities before a finding of fact is made. The case is a case of S v ffrench-Beytach 1972 3 SA 430 (A) and I want to refer particularly to page 451H: (10

"At this point (says the learned chief justice who incidentally on the headnote is only referred to as J A but he was the chief justice at the time) - it is convenient to refer to the conflict of testimony between Miss Norman and Major Zwart, an officer attached to the Security Branch of the South African Police. On the evening of 7th January 1979, Miss Norman, then on a visit to South Africa, travelled by train from Johannesburg to Pietermaritzburg en route to visit her cousin, (30

Sister /..

"Sister Phoebe Hanmer, a nun attached to a mission station not far from the village of Tsolo in the Transkei. Also in her compartment of the train was a young lady, apparently also an agent of the Security Branch, who is referred to in the evidence only under the name of June. According to Zwart's evidence, he was introduced to Miss Norman by June as "Mr Morley, a herb dealer travelling to the Transkei on business", and, further, as "a dedicated member of the Liberal Party of South Africa". In the ensuing conversation Miss Norman, according to (10 Zwart, asked him a number of questions about the Liberal Party, detention orders and the like, inter alia observing that "I am of the opinion that a revolutionary situation is developing. The government is smothering the political aspirations of the indigenous population". It is common cause that Zwart told Miss Norman that his firm would have a car awaiting him at Pietermaritzburg the next morning; that he offered her a lift to her destination; and that Miss Norman, who had contemplated making the journey from Pietermaritzburg to Tsolo by (20 bus, accepted his offer. There is likewise no dispute that the promised motor car was at Pietermaritzburg station the next morning, and that after breakfast in that city, June departed and Miss Norman and Zwart proceeded to Tsolo by car. Zwart's evidence of the subsequent events may be summarised as follows:.."

and then having analysed the evidence his lordship proceeded:

"In her evidence, Miss Norman denied either having been impressed by Zwart's "liberalism" or having interrogated him as stated by him in evidence. She repudiated (30

having / ..



"having employed the above-quoted expressions attributed to her by Zwart. She admitted having been hot, tired and thirsty at Tsolo and having drunk some beer at the hotel; she did not dispute that she might possibly have had three beers but she denied drinking any brandy there. She emphatically denied having said that she was an agent of International Defence and Aid or having, in any manner whatsoever, sounded Zwart regarding the distribution in the Republic of overseas funds, or having in any way mentioned either "prominent clergymen" or (10 any "contacts" as deposed to by Zwart."

Let me remind your lordship, m'lord, that one of the charges against the Dean of Johannesburg was that he was an agent of the unlawful Defence and Aid Fund and that he was given money to people furthering the objects of the African National Congress -

"After pointing out that Zwart had testified before him, whereas Miss Norman's evidence had only been given on commission in London, and remarking that Zwart had "made a good impression on the Court", Cillië J P (20 concluded an examination of some defence criticism of Zwart's evidence by saying:

'On a consideration of all the facts, I have come to the conclusion that Alison Norman's evidence in denying the conversation with Zwart is false and that Zwart's evidence is true. Therefore, the State has proved beyond reasonable doubt that she had said to him that she was an agent of the International Defence and Aid Fund for the distribution of funds and that she had not spoken the truth about it (30

before the commission.'"

May I indicate that I told your lordship about the commission the other day. This is the only case in which a commission has been appointed but the commission was actually asked for by the state in order to - the state did not have evidence of the..that it required of the bankers of the Defence and Aid Fund in London. It applied for a commission to be appointed which the defence politely agreed to but said that they had a witness too that they would like once the commission was appointed and this is why Miss Alison was added (10 but for the rest I know of no any case where a co-conspirator who is outside the country, a commission has been granted but this is just by the way.

"It was understandably enough, argued on behalf of the State that, whereas Miss Norman merely gave evidence on evidence on commission, at the trial this senior police officer created a favourable impression upon the learned trial Judge and that, accordingly, this Court should not disturb his credibility finding of the trial Court. This is indeed an argument of some weight, and it is a (20 factor in the case to which careful consideration has been given. However, in arriving at the decision to accept Zwart's testimony, CILLIÈ J P did not fully examine the conflicting testimony in the context of the general probabilities; and, as regards the good impression Zwart made upon him, it is to be borne in mind that, as was submitted by counsel for appellant, Major Zwart is ex hypothesi an accomplished actor. Neither Court has seen Miss Norman. In all the circumstances, this Court cannot, in my view, regard the trial Court's (30

aforementioned/..

"aforementioned credibility finding as being per se so decisive.

CILLIÈ J P found the allegation contained in sub-para (9) (d) of the indictment to have been proved; but it is worthy of notice that, although the State was presumably at all material times in possession of Zwart's aforementioned notes which clearly place Miss Norman's alleged admission regarding Defence and Aid as having been made in the Tsolo Hotel, the allegation in sub-para (9) (d) is "during her journey to the Transkei". (10 Counsel for appellant, while strenuously arguing that Zwart's evidence should be rejected on both legal and factual grounds, also submitted that, in any event, acceptance of Zwart's evidence would not necessarily establish that the appellant received Defence and Aid money from Miss Norman. Without necessarily rejecting the logical of that submission, the evidential value of the alleged admission, if satisfactorily proved would, in my opinion, nevertheless be considerable. It must, however, be mentioned that the admissibility against (20 appellant of this alleged admission by Miss Norman is, at the very least, questionable. Assuming, without deciding, that, as was contended by counsel for the State the form of Miss Norman's alleged enquiries of, and admissions to, Zwart were such as to constitute them an executive statement within the meaning of R v Mayet supra, the aliunde evidence of appellant's alleged participation in the conspiracy charged in the indictment - which, save for appellant's already rejected alleged admission to Jordaan, depends entirely upon (30 inference / ..

"inference - is so slight as, in my view, to render it doubtful whether, at the end of the case, the aforementioned admission should be taken into account against appellant within the ambit of the principles laid down in that decision. However, inasmuch as the trial Court was plainly largely influenced in convicting appellant by its acceptance of Zwart's evidence of Miss Norman's aforementioned alleged admission, and since the latter was in any event clearly relevant to Miss Norman's credibility, it is in my opinion desirable for this (10 Court to examine the evidence relating to the alleged admission upon the assumption, in favour of the State, that it is fully operative against the appellant.

At the outset it is to be observed that inherent improbability attends both to the nature of the alleged admission and the circumstances whereunder it is said to have been made. It is difficult to credit that a woman such as the evidence indicates Miss Norman to be, would, in the middle of a hot day, consume not only three beers but two double brandies as well, the (20 latter, as Zwart pointedly mentioned, being pre-metrickation tots. Moreover, if Miss Norman were indeed an agent for Defence and Aid, one would hardly expect her to communicate that fact to a chance acquaintance whom she had so recently met for the first time. However well Major Zwart played the part of the "liberal anti-government Mr Morley", it is not readily credible that Miss Norman - herself manifestly not unfamiliar with "liberals" - would either have been so readily taken in by "Mr Morley's" expressed sentiments, or (again (30

upon / ..

" upon the assumption that she was indeed a Defence and Aid agent) that she would have been so indiscreet as to endeavour to enlist his services upon such short acquaintance. That all the more so if she was in truth in contact with "several prominent clergymen", to whom she presumably could have referred "Mr Morley's" credentials. In his judgment CILLIE J.P. remarked that Zwart was "a liberal who was in the correct position and the correct place". There is, however, no evidence to support that view. The record contains no sug- (10 gession that distribution of Defence and Aid funds in the Transkei was envisaged at any time; nor did the herb-dealing "Mr Morley" disclose where his headquarters were situated. That Miss Norman would have employed the somewhat stilted and steotyped phraseology attributed to her by Zwart - who, incidentally, appears to be fluent in the English language - in his recorded notes of her alleged ipsissima verba, would appear to be somewhat unlikely. In addition, Miss Norman's address where it appears in Zwart's notes, has - contrary to (20 Zwart's evidence - the appearance of having been written in later, and the sequence of events reflected in the notes is not entirely beyond criticism. Before her journey to Pietermaritzburg Miss Norman had met, and had had a discussion with Jordaan. In his evidence Zwart maintained that he did not know June's surname and that, before embarking upon this assignment, he had been told noting about Miss Norman's political views or of any suspected association between her and the Defence and Aid; his instructions, he testified, were merely to (30

ascertain / ..

" ascertain what her movements were when she went to the Transkei. All this notwithstanding, it is somewhat surprising that, on his own admission, he addressed no enquiries to Miss Norman concerning the Defence and Aid Organisation after she had allegedly disclosed her agency, beyond asking her who the prominent clergymen were. Under cross-examination Zwart's explanation of his failure to do so was that Miss Norman "was talking pretty fast at that stage" and that "the conversation was going on at a rate where I could not ask her. It was (10 just not possible". Pressed further on the point, he replied: "I didn't ask her and I cannot say why I didn't".

Zwart gave evidence before Miss Norman did. Under cross-examination he insisted that only he and Miss Norman had breakfasted together in Pietermaritzburg; June he said, had been left at the station. He rejected the defence counsel's suggestion that in fact both June and another man were present at breakfast, and that this man had travelled in the car to Tsolo. He said that, as they were about to leave the Tsolo Hotel to proceed to the (20 Mission Station, a male hitch-hiker who appeared to be a Hollander or a German, had requested a lift to Umtata. This request was granted.

Before the subsequent commission, Miss Norman testified in substantiation of what had been put to Zwart in cross-examination. She identified the second man as the person from whom Zwart received the car at Pietermaritzburg. She deposed that, not only had this man breakfasted with herself, June and Zwart in Pietermaritzburg and thereafter travelled in the car from (30

Pietermaritzburg/..

Pietermaritzburg to Tsolo, but that he was also present during the stop at the Tsolo Hotel. Despite this sharp conflict on an obviously material point, and although the State's case was not yet closed when Miss Norman gave evidence, neither June nor the man who brought the car to Pietermaritzburg railway station was called by the State.

In the light of the various considerations I have mentioned, the Court below, in my judgment, erred in finding Miss Norman's aforementioned alleged admis- (10  
sion she was an agent of International Defence and Aid to have been duly proved beyond reasonable doubt."

I am not unmindful that an analysis of facts in one case cannot be of very great assistance in the analysis of facts in another case but what I do submit and rely on this passage for is this, that your lordship must look at the probabilities and the facts as a whole in the case in deciding whether Kuago has told your lordship the truth or not and more particularly at the probabilities. I do not want to burden your lordship with a list of cases which I have that a.. the mere fact (20  
that the person is a police officer means that he is to be believed. I have them, I do not think that it is necessary because it has been stated so often as to be axiomatic, but now I want to adopt the approach of his lordship the learned chief justice in relation to the analysis of the conflict of the meeting of 19 August 1984 and to show your lordship that both on the probabilities and the weight of evidence no reliance whatsoever can be placed on the evidence of Kuago nor on IC.9 and we will show the reasons why, which were projected in cross-examination; which are analogous to (30  
the / ..

the situation in the ffrech-Beytach case and although personally I have not had an opportunity to analyse fully the "betoog", from my memory and certainly from the passage that were read out in court no reasons have been advanced to your lordship why the parade of defence witnesses' evidence should be rejected and that of Kuago and IC.9 should be accepted.

The first point that we want to make is that there were approximately 1 000 people at the meeting. Among them there were two newspapermen. There were present police officers who were said to be members of no.3's congregation. These (10 facts, like in the case of Miss Alison were made quite clear during the cross-examination of Kuago who gave evidence early on. No explanation has been furnished as to why the state confined itself to these two witnesses and failed to call a number of others present to support its case. I would ask your lordship to compare that to the reasoning of his lordship the then chief justice at page 454 against the letter H of the report that we have read to your lordship. Why were not the members of the congregation who were identified or who were members of the police force, why weren't they called (20 to give evidence? The next improbability is this, that Mr Tom Manthata, accused no.16, was a public figure with a public image of seeking change in South Africa by non-violent means. A number of witnesses have said that. He knew of the presence of the newspapermen. That is a fact which we do not have to debate for very long because they were both there; we know that they filed reports the next day; we know that they were sitting in front; we know that they were making notes. He was apprised, m'lord, he was apprised of the presence of the police; that the meeting - both before he went into the (30 meeting / ..



meeting and after he had taken his place on the platform. There is no reason to reject that evidence; may I remind your lordship of the fact that the van, the car that was seen going around accused no.3's house - there is a whole circumstantial account of how Mosipho Myesa recognised the car because attempts were made to recruit her to be a police informer. The whole story is there and also the note that was passed by accused no.2 - your lordship will recall that accused no.2 was well-known to Kuago because he, no.2, is a political activist and Kuago is a member of the security(10 police, and Kuago - we will refer your lordship to the evidence later - knew accused no.2 and accused no.2 knew Kuago. So we have a situation that at a meeting which accused no.2 tells your lordship he recognised Kuago, he thought in passing it is strange that a member of the security police should be at this meeting. He passed a note through accused no.3 to accused no.16 and accused no.16 became aware that the security police were present at that meeting. On the probabilities would he in the circumstances utter words in the presence of two newspapermen and at least one sergeant of the security (20 police: go and kill the councillors. It does not make sense taken alone, but it is not alone, there are many other factors that have got to be taken together. It is common - well, there certainly are no evidence to the contrary, that after accused no..and I am dealing with the probabilities now and not the contradictions, merely the probabilities on the common cause or undisputed facts. He gave evidence, that is accused no.16, and he was corroborated by Mr Kevin Harris that during the course of the following week he, accused no.16, told Mr Kevin Harris that there would be a meeting on Sunday the (30

26th and that as he knew that Kevin Harris was looking for material as to what was happening in the country because he was making a film which would later become known as "Struggle from Within", he directed Kevin Harris to go and film the meeting that was going to take place on the 26th because as your lordship will recall, the fact that there would be a meeting on the 26th was announced at the end of the meeting of the 19th. The evidence of accused no.16 is that he did not forewarn accused no.3 that the filmmaker would be coming. The evidence of Kevin Harris is that as soon as he introduced himself in Sharpeville accused no.3 and the others were surprised. They obviously had not been informed, therefore your lordship must accept as a fact that a person who had addressed the meeting of the 19th arranged for a filmmaker to go to film one of a series of meetings which he knew was going to take place on the 26th. The question on the general and particular probabilities again cries for an answer which cannot be found on the state case: would accused no.16, having advocated the use of murder and malicious injury to property at the meeting of the 19th, have sent a filmmaker there (20 to go and record the continuation of this type of meeting the next day, which was going to be produced in order to indicate what was going on in the country, at a time in August 1984 when there was no more violence than usual. It may even have been fancifully argued - oh, the word leaked through somehow or another and the people at the meeting of the 26th behaved themselves for the benefit of the cameraman and the sound recorder, Mr Kevin Harris and his assistant. That does not make sense because both witnesses said not a word of this was mentioned and Mr Harris had to explain his presence. It (30

also / ..

also raises the question, m'lord, there were a thousand people on the 19th, how does one programme a thousand people thereafter if you do not even bother to tell the person who is primarily responsible for the meeting about it? It is common cause that at the meeting of the 26th accused no.3 came in late and a message had been sent to Hubi in order to apprise him of what was happening after Harris paid his respects. If there had been any stage setting in relation to the meeting of the 26th would the main actor have absented himself? (10

Could I have the exhibit, the V.31 I think. The one with the interruptions in it? I hope that your lordship's registrar was told about this, it is possible that - your lordship will recall V.31 I think it was .. you will recall the exhibit of the transcript of the proceedings of the 26th.

COURT: V31(a) I am sorry, V.31 is correct.

MR BIZOS: V.31(a), is that correct?

COURT: V.31(a) is the vernacular.

MR BIZOS: Is the vernacular? Oh, 31 is the English, it is the English one that I want to refer to. Oh, they are (20 both here? I see that I have them both together in one - thank you.

Now there is one piece of evidence here which is absolutely convincing. There is according to both the witnesses who your lordship will recall they put these interruptions in on EXHIBIT V.31 and they both agreed that the speech of accused no.2 is uninterrupted. The exhibit itself proves that because your lordship will see that there is no interruption in the speech of accused no.2 on the..

ASSESSOR: What page was that?

(30

MR BIZOS / ..

MR BIZOS: It starts at the bottom of page 4, and it goes to the middle of page 6. Now it is not really necessary to refer your lordship to the page numbers because your lordship must remember that on your lordship's suggestion Mr Harris and Brig Jansen went off in order to agree where the interruptions were and there is no interruption whatsoever in no.2's speech, so we know for certain what accused no.2 said at the meeting of the 26th.

Would your lordship excuse accused no.9, Mr Ramakgula?

COURT: Yes.

(10

MR BIZOS: He is introduced by Hlube on page 4. The translation is also agreed as correct. "I believe that those who were present last week saw him. I greet you all.." Now this is the man who said: kill the councillors, at the meeting of the 19th. There is a dispute, he says that he did not say this on the 19th, but let us see what he says at the meeting of the 26th about the matters that he spoke about on the 19th. He is introduced, he is Mr Hlomoka - "I believe that those who were present last week saw him so that just in case anybody miss the point" Mr Hlube puts it. And (20 he says: "I greet you all our community. We do not stand this way as people who have put themselves..", there is a pause and background noise, "we did not stand this way saying that we are people who say that we are your leaders. It is not so, we came here to work together about something that affects all of us in the Vaal triangle. We did not leave Sebokeng to tell the people of Sharpeville what they must do, we came here because this thing affects all of us in the Vaal triangle. Now I would like to add the words spoken by the chairman here that as the resolutions that were adopted (30

last / ..

last week are not going well.." - your lordship will recall that Hlube had asked has the resolution to boycott the councillors' businesses been successfully observed and as usual some people said yes and some people said no. "We explained well that when we say certain things must not be used we do not mean that we hate those people." - He was supposed to have said the week before: "Kill them". "That there must a fight and not what not, we do it so that when we say that their shops must not be used, it is a method we use so that those people must move from there. They must (10 resign because we no longer want councillors, so I was requesting that this thing must not move our feelings or we must not think that we are fighting them. We are not fighting them, we just want them to resign as councillors because we do not want councillors anymore because there are no good that councillors have brought for us".

The second point: "When we say that we do want councillors it does not mean that we want to go there to represent the people. There is nothing like that. It is because we know that such privilege which was done was done delibe- (20 rately. It is a trap made by the whites, by those who control us. That is those whites who are in control of the government so that they must not oppress us directly but use our own people to oppress us. So I was just requesting that we should work together in what we agree upon here. If we do not use the correct method a lot of problems will arise and we will find that when that day arrives of the rent that we have agreed on, that increase shall not be paid. Many people will realise that because of the things that we experience before that day we will be considered to be irresponsible (30 people / ..

people. Yes, by not paying that rent it is the responsibility that we are demonstrating that we are a community that wants to progress. To be progressive we must have money. We won't agree to be dispossessed of our money but the whites who send people who are councillors. So I was requesting that we should co-operate, we must run things properly. Thank you".

Now how consistent is that, m'lord, with this accused having said the week before: Go and kill the councillors, burn their shops. I agree fully with what accused no.16 said, it does not make sense on the probabilities. He was (10 supposed to have said this to a thousand people the week before. He says the opposite: that we do not really hate them and we do not want to fight them. Why didn't somebody stand up and say "Hey you, accused no.2, the leader of AZAPO, why do you speak with two tongues? Why did you tell us to go and kill them last week and here you come and pretend to be a man of peace on the 26th today. The reason why nobody did that on the 26th and he was uninterrupted in his speech was because neither he nor accused no.16 advocated violence on the 19th despite the affirmative evidence of Mr Kuago (20 and IC.9 to the contrary. The defence witness Maria Mokate is shown both on the film and is recorded on the sound track as having said at the meeting of the 26th that "we spoke nicely last week". Your lordship will find that in EXHIBIT V.31 page - I will find it in a moment, m'lord, it is on the top of the page. Yes, top of page 8. "Concerning the children we spoke well last week. I requested that my children do not fight, the government is not fighting and the law is not fighting. Leave the buses alone and take heed of last week's advice. Then it was stated that when we are asked for (30

rent increase we do not have any money. Now children are doing what they like. Secondly, I did not go to work, I reprimanded the children. My children do not destroy buses, there is nothing wrong with them, the fault is with us mothers and fathers" ..and there is a murmur in the meeting. Mrs Mokate has explained this. I do not want to enter into a long debate as to whether the explanation is correct or incorrect at this stage but what I do want to say is this, that Mrs Mokate was at the meeting of the 19th is proved on her own evidence; it is corroborated by the fact that we know (10 that we have her on sound and on film saying that "we spoke well last week". I do not know whether your lordship has a recollection of this woman. She certainly is no weakling nor a person who is afraid to express her feelings and it is not something that your lordship sees for the first time. Here she is telling you what she said the week before and it is recorded as to what she said here, that she expresses the view she was against this - now if violence was advocated at the meeting of the 19th, what would have been the reaction of this woman on the known facts? If she is prepared to (20 stand up on the 26th and condemn what children, schoolchildren did on the morning of the 20th, would she have stood by and applauded and shouted "Amandla" on the 19th if accused no.16 and accused no.2, for that matter accused no.1 or anyone else advocated violence? I submit with the greatest respect again that the facts as a whole do not bear critical examination of the state's position.

Those are the three tremendous improbabilities, but there are other unsatisfactory features of Kuago's evidence, and some of the improbabilities that follow are just as (30

important / ..

important. It is common cause that Manthata was arrested on 19 February 1985, six months to the day after he was alleged to have incited a large crowd to commit murder, arson and malicious injury to property. For more than five and a half months no attempt was made to arrest him after the events of 3 September 1984. The question that arises from the probabilities is: had he openly called for violence on 19 August 1984, would steps not have been taken immediately after the 3rd to arrest him if the very violence that he had advocated had in fact occurred. An attempt was made by (10 Kuago to explain this improbability. He says that although he made a written statement from which he was led on 24 October 1984 running into three handwritten pages for the purposes of being sent to the divisional headquarters - I do not know if I made myself clear, m'lord, that he made the statement from three pages or notes that were to be sent to divisional headquarters. Now had there been this report in the - of Kuago's that a person in the position of accused no.16, a high ranking officer of the South African Council of Churches, past president of the - vice-president of (20 the Black People's Convention; I have forgotten his precise office in SASO - he held office in SASO. Then we know from the evidence of Esau Mahlatsi that an application was made to the magistrate to restrict or ban the meetings that were being held in the Vaal and we know of the evidence of Esau Mahlatsi that on the information placed before the magistrate by mayor Mahlatsi and the security police that the magistrate said that he saw no reason for prohibiting meetings taking place in the Vaal during August 1984. Had Kuago in his three page written report that he told your lordship about (30

which / ..



which despite challenge of recent fabrication was never produced. Had he filed such a report why on the probabilities would the magistrate have refused to ban meetings. Of course there may have been other reasons but we are dealing with the probabilities. Because we submit that no violence was advocated, it was not in the report and that is why it was not produced. It does not appear from Mohlatsi's evidence in volume 63 page 3 301 to page 3 305 - did I give your lordship the volume? 63. As to precisely when this information was - as to precisely when this application to the (10 magistrate was made. Let us presume in favour of the state for a moment that it was made before the 19th on the evidence the meeting of the 5th had taken place by the councillors and if the councillors are to be believed there was no reason to ask for the banning of the meeting because nothing untoward happened according to the state's evidence. And only the meeting of the 12th had taken place, so the probabilities are that it took place after the meeting of the 19th but let us assume again in favour of the state that it actually - the application to the magistrate was made after the - (20 before the meeting of the 20th. Why did Major Steyn who had this report from Kuago, according to Kuago we will show your lordship, not immediately rush to the magistrate and say look, this is the information that I have from one of my sergeants who attended the meeting. Stop these meetings. He knew that another meeting was going to take place on the 26th. I would submit with respect that if there was such a report and there probably was, it did not contain the allegations that found themselves in the indictment and that if Mr Kuago did in fact make a statement in October it was done after the event (30

when / ..

when the unfortunate violence broke out and scapegoats were being looked for. Certainly the improbability was put to Kuago and he certainly other than denying it has no explanation of the logical sequence of events if his evidence is true, and your lordship will find that in volume 25 page 1. 161 line 16 to 25. It was put specifically that he fabricated this evidence after the event, after the violence. We would really have looked a very sorry team if this report was introduced and it contained the words complained of. A big chance we took m'lord, a great challenge that we issued (10 but the state did not respond to it and we would submit that the reason for the lack of response is because the offending words were not there. The attempt to explain the late arrest of Manthata on the basis that no instructions had been received from the head office and to use your lordship's aphorism at the time that I was putting to him that his is not to reason why, the absence of any other cogent facts does not make sense of the state version. Most of the accused from the Vaal were arrested during September/October 1984. No explanation has been given to your lordship as to why the (20 person who made the most direct call for violence shortly before the outbreak of violence was not arrested before 19 February of the following year, this no.16. Everyone else was arrested during September/October. That is I am talking about the Vaal people not Molefe, Lekota and Chikane. Those are the overwhelming probabilities which would have been enough to discredit the witness. But there are other equally cogent reasons in our submission on an examination of his evidence. His memory in relation to the happenings at the meeting is particularly wanting, and again we submit that (30

one can understand that he would not remember some of the details such as many of the defence witnesses were subjected to in cross-examination, but not to remember if a speaker spoke for a minute or two or half an hour is not acceptable from a witness who went there specially for the purposes of reporting what had happened at the meeting. Your lordship will find that in volume 25 page 1 173 line 10, 1 174 line 8. Nor can a witness be relied upon where he says that he does not remember that there were resolutions read by Hlube that the increased rent was not to be paid and a call for (10 the councillors to resign and that these resolutions were confirmed by the meeting to which he was sent to observe. After all he went there to observe this meeting - he was not at the meeting of the 12th - and resolutions were read out, he did not remember anything about it. Volume 25, page 1 192 line 2, to 1 193 line 5.

The witness' inability to remember that Hlube as at least a co-chairman, that he introduced the resolutions passed at the meeting of the 12th and asked for their confirmation of the meeting of the 19th, not remembering that he was a (20 co-chairman and put in an erstwhile accused, no.4..(hesitates) Yes, would your lordship excuse accused no.21?

COURT: Yes, certainly. Will we have accused left by 16h00?

MR BIZOS: I hope so, m'lord.

ASSESSOR: No.9 is back.

MR BIZOS: Is Ramakgula back? Ramakgula is back, m'lord.

It is recorded that a trial of 840 women was once abandoned for this reason (laughter). That is before the section was amended, it was the late 50s. We submit that he cannot be relied upon when he says that Hlube did not do these (30 things / ..

things. Your lordship will find that at volume 25, 1 192 line 2 to 1 193 line 5. Similarly that - yes, I have given your lordship that and I was on the next paragraph. That putting accused no.4 there, Lazarus More, in his place. Now presumably Mr Kuago's lack of memory or inability to observe properly led to the erstwhile accused no.4 in the main, there may have been other reasons, remaining in custody for two and a half years. That sort of thing cannot inspire confidence in a witness. This was put to him in volume 25 page 1 193 line 17 to 1 194 line 25. I have already made the (10 point that it could not have been a matter of mistaken identity. Your lordship might excuse a person, a passerby of a momentary incident in relation to the mistaken identity but not a security branch sergeant who was sent there specially to observe. If he makes a mistake about the chairman how can he be relied upon about anything else. He was unable to explain it. Also whilst I am on this, Hlube was available to the state. He was in detention for a period of ten months. I am relying on a tacit admission from Mr Jacobs to this effect in volume 235 page 12 510 lines 6 to 7. The evidence of (20 the witness that he recalls Manthata as being introduced as a member of the Soweto committee of ten and the Soweto civic association. He tells us that he has forgotten what he later admits was said by accused no.3 that the main reason why accused no.16 was called to speak at Sharpeville was because of his position in the South African Council of Churches relating to the administration of a poverty programme and he contradicts himself as to whether accused no.16 was part of what he tried to describe as a triumphant entry into the church. Volume 25 page 1 175 lines 19 to 25. He changes (30

his / ..

his mind almost immediately afterwards. He says accused no.16 was part of that procession and as soon as he entered the crowd including himself rose and shouted "Amandla!". Volume 25 page 1 181 line 23 to page 1 182 line 13. Your lordship may recall that the learned chief justice calling Major Zwart as ex hypothesi a good actor pretending to be a liberal. Well, if the evidence of sergeant Kuago is the same his standing up and shouting "Amandla!" at this grand entry probably puts him into the same class although perhaps of a lesser category. When the contradiction is put to him he has no answer. Volume 25, page 1 196 line 3 to 1 197 line 3. Then there are aspects of his evidence which I submit with respect make absolute nonsense of his evidence. In relation to accused no.16's speech he is asked: Was his speech interpreted? Answer: No. Question: Are you sure of that? Answer: Yes. Your lordship will find that in Kuago, volume 25 page 1 198 lines 9 to 10. When pressed he suddenly remembers that a portion of the speech was interpreted. Thereafter he says that there was more than one interpreter. When asked to give the name or a description of the interpreter or interpre- (20 ters he is unable to do so. Volume 24 page 1 198 line 13 to

COURT: Volume 25?

MR BIZOS: Volume 24, I beg your lordship's pardon. 24. Could I just check?

COURT: The previous one was 25, the same page.

MR BIZOS: No, sorry, let me just check. It looks as if 25 should have the day because practically all the references that I have given your lordship - let us just have a look. 25, m'lord. "Was the speech interpreted? -- No." "Are you sure of that? -- Yes." Yes, that is it, 1 198. Volume 25(30

The question of the interpreter is not just a matter of memory, m'lord. He is a sergeant in the security police and murder is being called for. His failure to try and ascertain the name of the interpreter or on his later version the interpreters who translated the words calling for violence against councillors and their property, coupled with their absence of an explanation for such failure, we submit should weigh very heavily against the state's version. Who would have been a better witness, m'lord, than the interpreter? Well, of course we know who the interpreter was because he gave (10 evidence. Your lordship will recall the dignified elderly gentleman, the person from Inkatha, Msimanga. But we will deal with his evidence later. Because the speech was not in Zulu the group of Zulu-speaking people there said no, stand up and interpret for us. Also in investigating this case whoever it was that undertook the duty to prove to your lordship beyond reasonable doubt, why didn't he look for the interpreter? After all there were a thousand witnesses present. Some of the contents of AA.26, the report of the late Nkabindi was put to him without disclosing that it came from the (20 report. He had no difficulty whatsoever in denying that some of the things attributed to each one of the accused, saying they were not said. When however the exhibit was produced and it was placed before him what he had flatly denied as having been said, he suddenly admitted to have been said and we would ask your lordship to compare his evidence in volume 25, page 1 200 line 4 to page 1 203 line 4 with page 1 204 line 12 to 1 208 line 11 and 1 208 line 27 to 1 209 line 22. When the contradictions were brought to the witness' attention the only explanation that he had is that the questions (30 were / ..

were phrased differently. Your lordship will find that answer in volume - it says 24 again in my notes, it must be 25 - volume 25 page 1 209 line 23 to 1 210 line 9. Similarly when EXHIBIT AA.28 was produced, that is the report of Mr Raboroko the witness admits what he had previously denied. I am informed that it should be AA.27. I beg your pardon.

ASSESSOR: 27. We were just going to look at that.

MR BIZOS: Thank you. I am sorry, AA.27. And we draw attention to the example of his admission in volume 25, 1 214 line 4 to 11, that accused no.16 had said that promises were made that rates would not be increased before the election (10 and his assertion that it was not said and that he would have remembered it if it had been said before the exhibit was produced, at page 1 200 line 31 to page 1 201 line 17. The witness with respect shows a clear tendency to either admit or say that he does not remember what one or other of the accused said at the meeting but has no trouble whatsoever in denying anything that is put to him which may lead to an inconsistency or improbability that violence was called for. A good example of that is to be found in volume 25, page (20 1 217 line 4, 1 221 line 17. This is not an inexperienced witness and he knows how to try and sail with the wind. Your lordship will recall that I put to him the very words in translation of what is alleged in the indictment to have been said by accused no.16. It appears on page 326 of the indictment. I read him in translation the following, that it had become time to show the councillors their power and that they were going to do it. They were also going to ask the councillors to resign and if they did not listen then the residents the so-called black power had to murder the councillors (30

by burning or stoning and they had to destroy their property. Now when this was first put to him and it was put to him that this was conditional and that in his evidence there was an unconditional call for violence, he immediately says that there was no condition and he is absolutely sure about that, but when this is put to him he says well no, it was not put conditionally that way and I put to him well, if somebody said this, would this be incorrect; he said yes, it would be incorrect. But then your lordship in the interest of clarity read the same passage. I remember as well that your (10 lordship obviously was reading from the indictment, holding it up. The moment he realised that the state was the source of this allegation he immediately tried to tailor his evidence to this end. Your lordship will see this at volume 25 page 1 222 line 19 to 1 225 line 20. His concession that there was to be some sort of meeting between the residents and the councillors after the meeting of the 19th which he concedes, volume 25, 1 225 line 21 to 1 226 line 1, is inconsistent with his own words that what he said is because they have increased the rent therefore they must be killed, at page 1 222 line (20 22 to 25. And having admitted that he understood the difference between a conditional and an unconditional statement and having said at page 1 223 line 10, it was an unconditional statement and your evidence in chief was that because they have increased the rent they will have to be killed, do you stand by these words - yes, I do; his failure to give a satisfactory explanation as to why he did not immediately after the meeting report the incitement to murder at the local police station or immediately telephoned his superiors to report the incitement to murder or to warn the (30

councillors/



councillors immediately his inconsistency with his evidence that such a call was made and he certainly had no explanation for this improbability that was put to him in volume 25 page 1 226 line 24 to 1 228 line 21. The boycotting of the business of the councillors was a motion moved by Hlomoka, accused no.2. This is conceded by the prosecution in this case in its argument and it is clearly so alleged in the indictment. I will find the reference, it may be in the further particulars but certainly it appeared to be common cause during the cause of the trial. On the contrary Kuago insists that (10 it was accused no.16 who introduced it. Volume 25 page 1 231 line 17 to 23. The witness' concession - did I give your lordship the reference of Kuago insisting that it was accused no.16.

COURT: 1 231.

MR BIZOS: Line 17 to 23, yes. The witness' concession that he specifically recalls accused no.16 calling on the people present to make use of the charitable organisations in South Africa and his inability to deny that accused no.16 finished off on the note not to make use of the organisations (20 would be evidence of a loss of faith in mankind and in God goes a long way in showing accused's speech could not have been a speech calling for murder and malicious injury to property. Your lordship will find that in volume 26 page 1 231 line 31 to 1 232 line 9. His concession that the speech taken as a whole touched upon the problems of the people present was correctly made having regard to the fact that he admitted that parents could not properly exercise their duty of parenthood in relation to their children whom they could not fee, clothe or house and the portions that he did not (30

remember / ..

remember or could not deny that he had said. Now how does one reconcile a statement which has now admittedly been made a concern about the behaviour of children and given poverty as a reason, how is that reconcilable with a blood and thunder speech that accused no.17 is alleged to have made. His concessions in this regard are to be found in volume 26 page 1 235 line 10 to 1 236 line 25.

The only reason as to why he thought that this was not a speech of christian reconciliation was the simplistic approach that anybody who shouts out "Amandla" could not (10 possibly have those motives. Volume 26 page 1 237 lines 9 to 23. Well, I think that we have all heard the reasons why "Amandla" is called for and as to whether it is evidence of what he says. It is significant that his concession that Manthata dealt with the reasons for the lack of discipline of children ties up with the evidence of Mrs Makathe who was shown on the film and heard on the sound track made by Harris and I again submit that his concern for the discipline of children is inconsistent with the murderous attack on councillors. The witness evaded the question as to (20 whether or not the call for violence was interpreted to the meeting and arguably on a fourth occasion his persistent answer that he did not pay any attention to the interpreter because he understood the language that the speaker used coupled with his inability to give any description of the interpreter and further coupled with his failure to make any enquiries as to who the person was who interpreted for the purposes of further investigation is inconsistent with the words having been used. If his statement that the reason for this was because he did not expect to give evidence is (30

to be believed the more likely reason why he did not expect to give evidence until the matter was raised in October and his own words "after the incidents which took place in Sharpeville and Sebokeng" is that the words were not uttered and that they were as had been earlier suggested in cross-examination introduced in order to buttress the case against those allegedly arrested, those already arrested and against Manthata who was arrested four months after he was called upon to give evidence for the first time at this trial.

Your lordship will find all that in volume 26 page 1 237 (10 line 25 to page 1 239 line 19. Again he says that after the call for murder, malicious injury to property and arson were utter he (the witness), the late Letsele and every other person stood up and shouted Amandla. Well, again this would put him in the character of the actor and even if one were to discount the general improbability that 1 000 people would in unison associate themselves with the call to murder, arson and malicious injury to property, his evidence is completely inconsistent with the evidence of Mrs Makathe, corroborated by that of Harris that at the meeting of the 26th she (20 strongly objected to any form of violence, even if committed by children against the bus, it was established that she was at the meeting of the 19th, her behaviour at the meeting of the 26th did not show her to be a timid person. If she condemned violence on the 26th why would she have associated herself with it or at the very best for the state remained silent if the words were uttered by Manthata at the meeting of the 19th. Your lordship will...

COURT: Yes, you have covered that ground.

MR BIZOS: I did, I sometimes ..but this was put to Kuago (30  
and / ..

and the reference is volume 26, 1 239 - line 20 to 1 240 line 20. If one compares the words attributed to Manthata by the witness in his evidence-in-chief to be found in 1 152 line 9 to 1 153 line 20, with the evidence under cross-examination in volume 25 page 1 221 line 20 to page 1 225 and one compares with what he said under further cross-examination on page 1 241 line 21 to page 1 243 line 18 the witness is not consistent with himself as to what the precise words were that were used by Manthata nor in the context in which the incitement in which the alleged violence was (10 made. We submit further that the witness is also unsatisfactory in relation to the evidence that he gave relating to accused no.1. What he attributes to accused no.1 could have been said in a minute or two. Your lordship will find that in his evidence-in-chief in volume 24 page 1 153 line 30 to 1 154 line 4. When portion of AAQ.7 was put to him attributed to accused no.1 he denied it but he later admitted it. Although in his evidence-in-chief the witness would let us believe that accused no.1 was one of the invited speakers coming in as part of the group that sat on the platform, (20 this is inconsistent with his concession that Peter Hlubi said that we have amongst us a person who wants to say a few words. Your lordship will find those references in volume..

COURT: Why is that inconsistent? Weren't there lots of people on the platform? This was a church, they had no platform as such in the normal sense?

MR BIZOS: No he first puts accused no.1 as part of the group coming in on this triumphant march.

COURT: Yes?

MR BIZOS: But then giving a clear indication that he was (30

one of the invited speakers, he is inconsistent when he later says we had someone here with us, we have amongst us a person who wants to say a few words, not calling upon him - accused no.1 actually introduced himself. Your lordship will find the matters that I have mentioned to your lordship in volume 25 page 1 202 line 9 to page 1 203 line 4 where he denied what accused no.1 was recorded to have said about the cost of living and matters such as GST and unemployment insurance. He later admits what he had previously denied in relation to the escalating costs, the payment - and for that reason (10 payment of higher rentals or that they would be a heavy blow on the black people, or that he spoke about unemployment insurance. He later admits it in volume 26 page 1 214 line 17 to page 1 215 line 10.

COURT: What is your first reference, the one before this - 1 214?

MR BIZOS: 1 202 line 9 to page 1 203 line 4. Trying to make accused no.1 as an invited speaker is inconsistent with his earlier evidence where he conceded that it made clear at the meeting that accused no.16 was the only invited (20 speaker. Volume 25 page 1 197 line 28 to page 1 198 line 4. Defence witnesses were corss-examined at great length as to precisely what was said at the meeting or who sat next to whom but we submit that that is not the basis upon which the general credibility of the witness is to be assessed, but Kuago is in a different position. Kuago was specifically to ascertain what was said at the meeting. If he is to be believed he files a report and then comes to court and says over and over again that he does not really remember what happened. Having filed a report I submit that the proper way to have led (30

this / ..

this witness would have been to make the contemporaneous report available, put him in the witness-box with it, refresh his memory from it and if it indeed was a contemporaneous report and that could easily have been proved by the senior police officer to whom it was sent, a lot of this dispute that your lordship is now burdened with and let me assure your lordship that reading the record and tabulating these things is possibly a harder burden than actually listening to it I would imagine. But all this could have been avoided and if need be we will refer your lordship to a case of - (10 the judgment of RAMSBOTTOM J in the Rosen case if my memory serves me correctly that were contemporaneous notes have been made and party to them chooses not to bring them along the inference for the worst must of necessity be drawn. Why were these notes not produced? Your lordship has no answer. but then Kuago could not explain it..

ASSESSOR: I am sorry to interrupt. Are you talking about contemporaneous notes because you first had the contemporaneous report?

MR BIZOS: The report.

(20

ASSESSOR: The report. It is the same document, it is not two separate sets of documents?

MR BIZOS: No, no, except that we will show that one of the witnesses says that he was busy making notes and the other one denies it so we have this conflict as well which makes the evidence of both destructive of the state's case, but I am referring, m'lord, once there is a dispute - I do not for one moment but my notes do reflect who said that he was making notes and who did not and I will come to that. I just do not remember it off-hand. But if it was he who said that he (30

made contemporaneous notes a fortiori but it does not matter I submit on the authorities what was written the next day would obviously qualify as something from which he would refresh his memory. These matters did not come as a surprise to the state because this sort of thing was specifically put. We cannot be accused of not sending telegrams to the state in relation to our intentions as to what we would argue about sergeant Kuago. In volume 26 page 1 247 line 10 to 1 249 line 16.

COURT: Are you going on to a different subject because today  
(10  
I would like to use up the credit we made yesterday.

MR BIZOS: Well, I think that my throat will appreciate that course.

THE COURT ADJOURNS UNTIL 17 AUGUST 1988

## **DELMAS TREASON TRIAL 1985-1989**

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