

AD 1901/41.5

STATE VS.

FATHER NGOUNMANE

COPIES OF
WENTZEL'S
OPINION

IN THE COURT OF THE MAGISTRATE FOR THE REGIONAL
DIVISION OF BANTEN CASE HELD AT ADDO

THE STATE
VS
FATHER NGUMANE

Case No. ROLY/65:

INDEX

CHARGE SHEET:

ADDENDUM TO CHARGE SHEET:

JUDGMENT:

SENTENCE:

WITNESSES:

Attwell Gase:	10
Richard Mngabe:	12
Peter Mbovut:	23

TRANSCRIBER'S CERTIFICATE:

REASONS FOR SENTENCE:

NOTICE OF APPEAL:

CHARGE SHEET: REGIONAL DIVISION.

ALDO 80 13 69
 No. 19
 Have finger-prints been taken? Yes.
 Police Station New Los Courts.
 R.C.A. No. 174.1.1965.

IN THE COURT OF THE MAGISTRATE.

For the Division of Eastern Cape, held at Addo.
 Before L.P. FRASER, Esquire,
 Magistrate for the said Division, on the 25th day of June, 1965

REGINA versus

Insert following
 particulars
 after each ac-
 cused's name—
 Sex.
 Race
 (whether
 South Afri-
 can born or
 otherwise).
 Occupation.
 Approximate
 age.

FATHAR SOGOMANE

Male; 30 years.

S.A.B.

IN 2161227.

(hereinafter called the accused),

charged with the offence of

as per enclosure

in that, upon (or about) the

day of

19

and

in the said Division,

the said accused did wrongfully and unlawfully

as per enclosure

on 18.6.65.

The accused, being arraigned, pleaded

(Avowance recorded on machine).

Judgment

Guilty all counts.

Sentence

Count 1: Two years imprisonment.

Count 2 - 4 Treated as one for sentence

Three years imprisonment.

L.P. FRASER

18.6.1965.

Magistrate of Regional Division.

FOR THE CROWN:

G.O. REYNARD

FOR DEFENCE:

M.R. PHILLIPS

INTERPRETER:

The following evidence was adduced in the presence and hearing of the accused, then in

sound and sober senses:

KLAGTESTAAT: STREEKADELING.

No. _____ 19 _____
 Is vingerafdrukke geneem? _____
 Polisiekantoor _____
 R.A.A. No. _____

IN DIE LANDDROSHOF.

Vir die Afdeling _____ gehou te _____
 Voor mnr. _____
 Landdros vir voormelde Afdeling, op die _____ dag van _____ 19 _____

Vol die volgende besonderhede in na die naam van elke beskuldigde:—
 Geslag.
 Ras (of in Suid-Afrika gebore).
 Be-roep. Ouderdom (ongeveer).

DIE KROON teen

(hieronder die beskuldigde(s) genoem)
 beskuldig van misdryf van _____
 deurdat genoemde beskuldigde(s), op (of omtrent) die _____ dag van _____ 19 _____
 en _____ in voormelde Afdeling,
 wederrigtelik en onwettiglik _____

Die beskuldigde het by verskyning voor die Hof _____ gepleit.
 Uitspraak _____
 Vonnis _____

Landdros van Streekafdeling.

VIR DIE KROON: _____
 VIR BESKULDIGDE: _____
 TOLK: _____

Die volgende getuienis is aangevoer in teenwoordigheid en ten aanhore van die beskuldigde(s), toe by
 volle verstand: _____

COUNT 1.

THAT the said accused is/are guilty of the offence of Contravening section 3(1)(a)(i) read with sections 11(c) and 11(m)(i) of Act 44 of 1950, as amended, further read with sections 1 and 2 of Act 34 of 1960, as amended, and Proclamations 119 of 1960, 83 of 1961, 67 of 1962, 31 of 1963, 93 of 1963 and section 14 of Act 37 of 1963; and further read with Section 22 Act 93 of 1963.

IN THAT during the period 8th APRIL, 1960 to the ^{31st December 1962} and at (or near) ~~Port Elizabeth~~ in the district of Port Elizabeth and within the area of jurisdiction of the Regional Court of Eastern Cape Division, the said accused did wrongfully and unlawfully become or continue to be a member(s), officer(s), or officebearer(s) of an unlawful organisation to wit the "African National Congress" also known as "Umkonto We Sizwe" or "Spear of the Nation".

COUNT 2:

THAT the said accused is/are guilty of the crime of contravening section 3(1)(a)(iii) read with sections 11(c) and 11(m)(i) of Act 44/1950, as amended, further read with Sections 1 and 2 of Act 34 of 1960 as amended and Proclamation 119/1960, 83/1961, 67/1962, 31/1963, 93/1963 and section 14 of Act 37/1963; and further read with Section 22 Act 93 of 1963.

IN THAT during the period the 8th APRIL, 1960 to the ^{31st December 1962} and at or near ~~Port Elizabeth~~ in the district of Port Elizabeth and within the area of jurisdiction of the Regional Court for Eastern Cape, the said accused did wrongfully and unlawfully contribute or solicit subscriptions or otherwise to be used directly or indirectly for the benefit of an unlawful organisation, to wit, the African National Congress. (A.N.C.)

COUNT 4.

THAT the said accused is guilty of the offence of contravening section 11(e) read with sections 11(ii) and 3(1)(a)(iv) of Act 44 of 1950, as amended, and further read with Sections 1 and 2 of Act 34 of 1960 and Proclamations 119 of 1960, 83 of 1961, 67 of 1962, 31 of 1963, 93 of 1963, 94 of 1963 and with Section 14 of Act 37 of 1963.

IN THAT during the period 8th of APRIL, 1960 to the ^{31st December 1962} and at or near Port Elizabeth in the district of Port Elizabeth and in the Regional Division of the Eastern Cape, the said accused did wrongfully and unlawfully and knowingly allow premises to wit a house occupied by him, to be used for the purpose of or in connection with an offence under Section 3(1)(a)(iv) of the said Act 44 of 1950, to wit by knowingly allowing members of the African National Congress, an unlawful organisation to take part in an activity or carry on in the direct or indirect interest of the said organisation in which it was or could have been engaged at the date when it was declared unlawful, to wit by holding meetings of the said unlawful organisation.

COUNT 3.

THAT the said accused is/are guilty of the crime of contravening section 3(1)(a)(iv) read with sections 11(c) and 11(m)(i) of Act 44/1950, as amended, further read with sections 1 and 2 of Act 34/1960 as amended, and Proclamations 119/1960, 83/1961, 67/1962, 31/1963, 93/1963 and section 14 Act 37/1963 and Section 22 Act 93 of 1963.

IN THAT during the period the 8th APRIL, 1960, to the ^{31st December 1962} and at or near ~~Port Elizabeth~~ in the district of Port Elizabeth within the area of jurisdiction of the Regional Court for Eastern Cape, the said accused did wrongfully and unlawfully take part in activities of an unlawful organisation, to wit, the African National Congress (A.N.C.) or carry on in the direct or indirect interest of the said organisation, activities in which it was or could have engaged at the date when it was declared unlawful, namely the 8th APRIL, 1960.

IN THE REGIONAL COURT FOR THE REGIONAL DIVISION EASTERN CAPE

HELD AT ADDO.

On the 18th August, 1965.

Case No. RC. 13/65.

THE STATE VERSUS:

FATHER NGCUMANE.

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DEFENCE TO COURT:

Before the accused pleads, may I inform the Court that I appear for the accused in this matter but only in so far my instructions go that I am to apply today for a postponement on behalf of the accused. My instructions are that the accused has been in custody for some 11 months and 4 days; that he did appear before this Court on an earlier occasion, some six weeks ago when it would appear so that the accused was not ready with his defence to proceed in the matter and that he then requested a postponement. I was informed this morning that in fact, the postponement was granted but that the postponement was for a particular day. There is legal representation available to the accused; legal representation which has been properly instructed to appear but I am informed that it was only on Monday of this week that the accused's legal advisers became aware of the fact that the trial was set down for today. That being the case, it was not possible for the accused to secure proper legal representation to be represented at the trial because the physical impossibility of the non-availability of counsel to appear for him. It would appear that the matter was postponed to the 26th of July, but was not heard on that day. It is now some 2½ or 3 weeks later that the matter is eventually brought to trial. Your Worship, will appreciate that it is therefore impossible to have had

counsel waiting for that period to appear on behalf of the accused. I understand that the position in this Court is that there is a continuous roll. In my submission this can only lead to prejudice of the accused because it is not possible then to know a particular day on which any matter is to be heard. This is the first experience that I have of a continuous roll. My experience in the working of the Court is that matters are set down for specific days so that the accused and his legal representatives and that his witnesses can be subpoenaed and can appear on that particular day on which the accused is to be charged. My request to the Court is for a postponement for a period of 2 weeks, which in my submission is not an excessive period, more particularly in view of the fact that the State has had something like 10½ months in which to prepare its case. I submit there can be no prejudice whatsoever to affording the accused an opportunity of a further two weeks in order to prepare his own case and that the matter be postponed to a particular date so that counsel may be briefed and properly instructed in the matter and that witnesses, such as there be, might also be subpoenaed for that particular day. I move for a postponement.

BY THE PROSECUTOR:

May it please the Court. This case was first called on the 25th of June, of this year. On that date the accused was not prepared to accept the counsel who was to appear for him and an application of postponement was granted. It is true that the record reflects that the case was remanded until the 26th of July, 1965, but that was not fixed as the date of trial; it was an order of Court that that was merely a provisional date of remand. The accused was informed to keep himself prepared; that his case will be called any day after the 25th of June. If my memory serves me correctly the 25th of June was a

Wednesday and the remarks of the Court were to the effect that it was possible his case would even be called the following Monday, either at this Court or at Humansdorp; whatever the case be, the accused was to be prepared and to have his legal representation ready whenever his case was to be called. It is now some six weeks after that and the accused still hasn't legal representation and once again request a remand. In view of the order made then, on the 25th of June, by the Court, I am opposed to this application for a further remand and I ask that the case proceed whether there be representation or not.

COURT TO DEFENCE:

Do I clearly understand the position that you are only appearing for this application?

BY THE DEFENCE:

Yes, Your Worship. If I might say so, I am indebted to my learned friend for elucidating what the position is, but in my submission this can only be in strength to the argument for a postponement. I am not being naive, but I have never heard in my years in practice of a matter being postponed provisionally to a particular day and an accused then being instructed to hold himself available and presumably it also means that his legal representatives are to hold themselves available at the pleasure of the State when it should feel or when it should be so inclined to call the matter for trial. It would appear that the accused was told on the 25th of July, that his matter might be called some time at the beginning of August. Well, we are now in the middle of August. Does this mean that legal representation is to be obtained for the accused and that counsel and attorney were to remain in attendance in the Court for a period of - today is the 18th - something like 18 days, waiting upon the pleasure of the State to when it would decide to charge the accused and formally bring

him before the Court? In my submission this is an entirely - and with respect to my learned friend - unjust procedure. It is a procedure - and I don't say that it is deliberately because these are not my instructions - which can only prejudice the accused. There apparently is only a certain amount of legal representation in numbers which is obtainable for the accused on a charge such as this, a limited number of persons who are available to appear. The bar in Port Elizabeth - as I understand it - is a very small bar and in Grahamstown as well, and apart from this work there is also the ordinary every day work - the run of the mill work which the bar is obliged to do in these centres in order to assist the Court; assist the smooth running of the Court and the administration of Justice. To argue that the accused's legal representative should have been available for some 2½ weeks, is in my submission, entirely unreasonable. I ask that as in any other matter - the fact that this matter has a particular over tone has got nothing to do with me, my learned friend or the Court. This is an ordinary matter which comes before the Court in the ordinary course, or should come before the Court in the ordinary course, and I see no reason why the treatment meted out to this accused because he happens - may be that is the reason, I don't know, may be because he happens to be charged with particular types of offences, should operate to his prejudice. There is not one standard of justice for the ordinary Common Law crime of housebreaking and another standard of justice for a political offence. As far as I am aware there is one standard of justice throughout the land for every offence. I submit that by the Court refusing a postponement today that the accused can only be prejudiced because my instructions are, that if the postponement is refused, that I am to withdraw from the matter. I move in the circumstances that the matter

be postponed to a definite day, approximately two weeks hence.

COURT TO PROSECUTOR:

Mr. Prosecutor, what date was the accused informed that the case would come on today?

BY THE PROSECUTOR:

He was informed that it definitely would be today on Monday, that was the 16th although the week prior to the 16th, the accused's legal representative in Port Elizabeth, Mr. Arderne, and the firm Allan Solomon, Arderne and Flynn was informed that the case would possibly be called on the Wednesday prior to the 16th which appears to be the 11th. Unfortunately though it was impossible to call the case on the 11th.

BY THE COURT:

The Court would intimate - Mr. Interpreter would you interpret this please to the accused - that originally when this case was called, during June, there was an advocate available to defend him; not only available and willing but prepared to start immediately. That was Advocate Martin. Mr. Martin informed the Court at that time and I have a note of it, that the accused objected to consulting with the advocate and wanted a remand to consider his defence. After further consultation, the Court itself spoke to the accused and asked him what the main objections were and explained the position to him. I made a note here that the accused said: he had not yet consulted with his own legal representatives and that he didn't want the advocate that was then appearing for him. Secondly, he objected to his case going on because his family did not know.

At the suggestion of Mr. Martin the Court adjourned to enable him to consult further with the accused and try and explain the position to him. On resumption Mr. Martin informed the Court that the accused still required the

remand; that he, the accused, wished to consult at length with his own legal adviser. Mr. Martin told the Court that the accused refused to go into any detail with him, Mr. Martin.

The Court then granted the remand to the accused to the 26th of July, 1965, informing him at the time that his case may well come on before that date or after that date but he was being given ample opportunity to consult his own legal representative and to see his people. As a matter of fact, the Court requested the police then present, to ensure that he was afforded the opportunity of seeing his people. The Court was also explicit and was quite satisfied that the accused understood that whenever the case was called, it would continue and it was for him now to get his legal representative here. At that time the Court understood the position that Advocate Martin was instructed by an attorney in Port Elizabeth, Mr. Arderne and Mr. Martin undertook to convey the Court's instructions and ruling to Mr. Arderne and explain to Mr. Arderne the accused's objections and that if Mr. Arderne was still the attorney for the accused that he would ensure that the counsel saw accused in the gaol. Before leaving from Port Elizabeth, Mr. Martin informed me that he had done so. I want to know from the accused now what steps he himself has taken to secure an attorney or an advocate for his defence.

BY THE ACCUSED: I did take steps to get an attorney.

BY THE COURT: Who?

BY THE ACCUSED: It is this gentleman on my left and he came to me yesterday.

BY THE COURT: What did he do prior to yesterday?

BY THE ACCUSED: Before this gentleman came to me, another attorney came and saw me.

BY THE COURT: Who?

BY THE ACCUSED: I don't know his name.

BY THE COURT: Did you give him instructions?

BY THE ACCUSED: This gentleman told me that he would phone the Court here at Addo and find out about my case.

BY THE COURT: Who was this gentleman? I want to know who he was?

BY THE ACCUSED: No, I forgot his name now.

BY THE COURT: How was it that that attorney came to see you? Who sent him there? Did he call for him?

BY THE ACCUSED: I had a visitor at gaol and I asked him to get this attorney for me.

BY THE COURT: What's that attorney's name? He must have told the person who it was he wanted.

BY THE ACCUSED: No, I gave him no name. I only told him to go to defence-and-aid.

BY THE COURT: And-?

BY THE ACCUSED: And to tell them that I was before Court and that they must get somebody to defend me.

BY THE COURT: And did he return?

BY THE ACCUSED: Yes, he did.

BY THE COURT: And you gave him all the instructions?

BY THE ACCUSED: Yes, I spoke to him.

BY THE COURT: How long ago was that?

BY THE ACCUSED: That was just the week after I left Addo.

COURT TO DEFENCE:

Now, Mr. Kades, who are you instructed by?

BY THE DEFENCE:

My instructing attorney is on my left: Mr. Feldman.

BY THE COURT: Can he throw any further light on the matter?

BY THE DEFENCE: My instructions are that Mr. Feldman was only instructed to appear for this accused on Monday and that he saw him on the first available opportunity to Mr. Feldman which was yesterday. Apart from that unfortunately I am unable to throw any light on this matter whatsoever.

BY THE COURT: Does Mr. Feldman perhaps know who the attorney was who saw him in the first instance, a week before?

BY THE DEFENCE: No.

BY THE COURT: The Court is also aware that with this series of cases that have been held both here at Addo and at Humansdorp that in the majority, in any event in all the cases held here, counsel have apparently been instructed by this body known as defence-and-aid, the various instructing attorneys. But the Court feels when granting a remand on this last occasion and having explained and obtained the insurance from Advocate Martin that the whole position was quite clear to them, that the Court cannot continually be granting remands; granted the Court doesn't want to prejudice the accused in any way but I feel there comes a time when these cases must be disposed of; that amount of importance is whether there is any prejudice to the accused but the Court will afford him every opportunity to obtain legal representation. I think the often quoted saying is: "the Court must almost bend over backwards". The Court has done so in this case. I feel the accused has been afforded adequate opportunity to obtain representation and the application for the remand is refused.

BY THE DEFENCE:

Might I place on record, the fact that whatever might be the position with other counsels here I don't know that in fact, that is the position but the counsel and more particular in my case, appears here on brief duly instructed by a firm of attorneys. I don't know what connection the particular firm of attorneys that instructs me has or does not have with an organization known as defence-and-aid; it is of no consequence to me or any of my colleagues who have appeared here-
(Court intervenes)

BY THE COURT: No, I quite appreciate that, Mr. Kades.

I mentioned it just now because in all these cases the Court has had this difficulty of a Mr. Arderne, of a certain firm of attorneys, who has contacted the Court through the Prosecutor in respect of these matters but has never himself actually appeared and has just requested certain particulars but actually and strictly speaking, I don't suppose Mr. Arderne is even the instructing attorney before Court. But it's just been a person whose name has been mentioned in this Court on numerous occasions and on one occasion this Court itself spoke to Mr. Arderne and set out the full position to him with these cases and he agreed with the Court that they would co-operate - he would endeavour to co-operate as much as he could and the position has been explained to him as long ago, I think it was May. These cases would be coming up one after the other and he didn't intimate then at the time whether they were appearing for each and every accused or which accused but the dates would be obtainable from the Prosecutor, bearing in mind the difficulty of knowing exactly when one case would start and when one would finish and the other would start again. In referring to the defence-aid, Mr. Kades I did not intend in any way to suggest that you were instructed by them or anything like that. You intimated you are instructed by Mr. Feldman who is sitting next to you. You intimated in the first instance that you were appearing for the postponement only and as the Court has intimated in the circumstances of this case, this Court is not prepared to grant a remand.

BY THE DEFENCE: As Your Worship pleases. Would Your Worship permit me to withdraw from the matter?

BY THE COURT: Yes.

CHARGES PUT TO THE ACCUSED.HE PLEADS NOT GUILTY ON COUNTS 1, 2, 3 and 4.

STATE PROSECUTOR CALLS:ATWELL GAZO, s.s. (Speaking English)XD. S.P.:

You are a sergeant in the South African Police attached to the Security Branch, Port Elizabeth. -- I am.

During your service with the Security Branch, did you do patrolling in New Brighton and Kwazakele Locations at Port Elizabeth? --- I did.

During the course of your patrolling did you on occasions pick up pamphlets that had been distributed in these locations? --- I did.

I show you a document then, sergeant, this will be Exhibit A. --- Yes.

Do you know that document? --- Yes.

What is that, sergeant? --- Exhibit A is a photo-static copy of a document which is similar to some of the copies I picked up in New Brighton, Kwazakele and Veeplaas.

BY THE COURT: Those are locations in Port Elizabeth? --- Those are locations.

XD. S.P.: (Cont.)

Yes? --- These were picked up by me in the early hours of the morning; between 4 and 6 in the morning.

When did you pick up the documents similar to that one you handed in, sergeant? --- This one I picked up at the bus terminus.

Yes, when, sergeant? --- In June, 1961.

What language is that document, sergeant? --- This document is printed in Xhosa language.

Are you a Xhosa linguist? --- I am.

Did you have English as a subject at school? --- I did.

Did you prepare a translation of that document? ---

Yes, I did.

Have a look at Exhibit B, sergeant. --- Yes, Exhibit B is the translation of Exhibit A.

Will you read that Exhibit B, sergeant? --- (WITNESS READS EXHIBIT B)

I show you another document which will be Exhibit C. Do you know Exhibit C, sergeant? --- Exhibit C is a photo-static copy of a document similar to some I picked up in June, 1962.

Where? Where did you pick them up? --- I picked these up in New Brighton, Kwazakele, Veeplaas and Walmer.

Those are locations in Port Elizabeth district? --- They are all locations in Port Elizabeth.

In what language is Exhibit C, sergeant? --- Exhibit C is printed in Xhosa language.

Did you also prepare a translation of that? --- I did.

Will you have a look at Exhibit D, sergeant? --- Exhibit D is a translation of Exhibit C.

Will you read that please, sergeant? --- (WITNESS READS EXHIBIT D)

NO FURTHER QUESTIONS BY PROSECUTOR.

XXD. ACCUSED:

Sergeant, can you tell the Court who wrote these circulars? Who drew these circulars up? --- No.

I know nothing about these circulars. I had nothing to do with them. --- (No answer)

NO FURTHER QUESTIONS BY ACCUSED.

NO Re.-XD. BY STATE PROSECUTOR.

STATE PROSECUTOR CALLS:

RICHARD NONGUBO, s.s.

XD. S.P.:

Do you know the organization known as the African National Congress? --- Yes, I know the organization.

Did you join that organization? --- Yes, I did join the organization.

When did you join the African National Congress? --- During January, 1960.

Where did you join the African National Congress? --- At Kwazakele Location in Port Elizabeth.

How did it come about that you joined the organization? --- My Chief Steward caused me to join the organization.

Who was that? --- Richard Tokwe.

Where was it that you joined? --- At Kwazakele Location in Port Elizabeth.

Was it at a meeting or at your house or at Tokwe's house? --- No, it was not at a meeting. He called me to his home.

Do you know that the African National Congress was later banned? --- Yes.

Did you still remain a member of the organization after it was banned? --- Yes, I was still a member of the organization after it was banned.

Did you hold any post in the organization? --- I was a cell steward in the organization.

Of what were you a cell steward? --- Cell steward of the African National Congress at Kwazakele, Port Elizabeth.

Were you a cell steward of the whole of Kwazakele or were you restricted to a certain area? --- I was cell steward in Zone 6.

And when were you appointed a cell steward of Zone 6? --- I was nominated as cell steward at a meeting

during November, 1960.

Where was that meeting held? --- At Richard Tokwe's house.

Where did Richard Tokwe stay? --- At Kwazakele Location.

Do you know the address? --- He lives in the same street as where I live but I cannot give you the number of the house.

Were you the only person at that meeting? --- No, there were others too at the meeting.

Did you know any of the people who were at the meeting with you? --- Yes, I know them.

Can you remember any of the persons who were there? ---
I can give you the names of who were there.

BY THE COURT: Do so. --- Richard Tokwe; Ndevu; Frans; Father Ngcumane, the accused; Sipho Mange; and Peter; and two twins called Siwa.

XD. S.P.: (Cont.)

You say the accused was one of the persons there? --- He was one of the persons who were there.

Where did you get to know the accused? --- I know him from Kwazakele Location.

Have you known him before this meeting in November, 1960? --- I knew him before this meeting of November, 1960.

As what did you know him? --- The accused was selling fish and I bought a lot of fish from him.

BY THE COURT: You mean he use to sell fish in the location? --- No, at his house.

XD. S.P.: (Cont.)

Where is his house? --- His house is in Kwazakele Location.

Was there a speaker at this meeting? --- Yes, there was a speaker there.

Who was that? --- Richard Tokwe. He was the chief steward.

Can you remember anything of what he said? --- I remember what was said there.

Tell the Court that which you can remember. --- At this meeting he told us that as from today, this organization is banned and from now we would go underground. He said that every member who has that old card with the name on, must burn it because as from today we will use the receipt book and the receipts will have a stamp of a bird, and from today our subscriptions will be 20 cents per month in stead of the 25 cents we paid per year previously. He also said that as from today we are all cell stewards.

Did he say what you had to do as cell stewards? --- We will collect subscriptions, we will have tea parties and we will have concerts and meetings; and we will collect money in that way for the organization.

BY THE COURT: What organization? --- The A.N.C.

XD. S.P.: (Cont.)

Was there anything else he said? --- He also told us at this meeting that we will have to take to violence but we will not discuss this matter now at this meeting. We will discuss that at a later date.

Anything else? --- I think that is all he said at this meeting.

You mentioned at this meeting a person having been there, Peter. Is that Peter - is that his surname or his christian name? --- That is his name; his surname is Nobomvu.

After this, did you attend any further meeting? --- Yes, I went to another meeting. I attended a meeting during June, 1961.

Where was that? --- This meeting was held in my house.

Were there any other people there? --- It was the same persons, including the accused, which were at the

first meeting.

What happened at this meeting? --- The speaker at that meeting was the chief steward, Richard Tokwe. At this meeting he told us that we must now take to violence. He said that as from today if we have a meeting and a policeman should appear, we must kill him. "I told you at the previous meeting that we will discuss this matter about violence and we are discussing it now". That is all that was said at this meeting.

Did you get any particular instructions at that meeting? --- He also told us that if we distribute a leaflet and we meet up with a policeman, we should kill him. .

Were you told anything at that meeting which you would have to do in the near future, shortly after that meeting? --- He also told us that there was going to be a meeting held at the accused's house.

Apart from the meeting at the accused's house, were you told that on a certain date or a certain day you had to go to a particular place for some reason or another? You had to go to Metuli to go and fetch leaflets there. --- He said all cell stewards of Kwazakelo must go to this Metuli to go and get the leaflets, the pamphlets.
BY THE COURT:

When? When would they have to do that? --- That we had to go and fetch these leaflets on a Saturday evening during the month of June.

This was at a meeting that you were told that? --- He was at a meeting when he was told that on a Saturday evening during the month of June they will have to go to Metuli to fetch the leaflets.

But he was told the, which ever night the meeting was, the first Saturday coming? The first Saturday night? --- That is correct.

So, what night was the meeting on? --- It was on a Wednesday evening.

XD. S.P.: (Cont.)

The meeting was on a Wednesday evening and on the Saturday you had to go to Metuli's house to fetch these pamphlets? --- When we were told about these leaflets, this meeting was held at the house of the accused. This meeting was held during 1961. That was the second meeting during 1961 because there were two meetings held during 1961. The second meeting was also during June, the middle of June, on a Wednesday, held at the house of the accused.

BY THE COURT:

So it wasn't at the meeting at his house that they were told about fetching leaflets? --- No, my house - the address given there was in connection with violence and at the accused's house, was in connection with these pamphlets.

XD. S.P.: (Cont.)

I see. So at your house you were told that there will be a meeting at the accused's house and then at the accused's house, you were told Saturday you got to go to Metuli's house to fetch the pamphlets. --- That is correct.

That Saturday then after the meeting at the accused's house, did you go to Metuli's house? (Court intervenes)

BY THE COURT: Before you go on to that. You say - you told us who was present at the meeting at your house but who was present at the meeting at the accused's house? --- All the members of the A.N.C. were also present at the house- (Court intervenes)

You mean all the cell stewards? --- All the cell stewards, yes.

Who were these cell stewards? --- It was myself; the two twins- (Court intervenes)

Twins? What were their names? --- I only know their surname; Siwa is their surname; and Peter; myself; Ntambo; Sipho Mange; Manengela; Tokwe and Ndevu.

XD. S.P.: (Cont.)

Did you then that Saturday go to Metuli's house? ---
Yes.

Did you go alone to Metuli's house? --- Peter accompanied me to Metuli's house.

Did you meet anyone at Metuli's house? --- I met quite a number of people there at Metuli's house; they were all cell stewards.

You said that you met cell stewards at Metuli's house.
--- Yes.

Were there any cell stewards there whom you knew very well? --- Yes, there were cell stewards whom I knew.

Who were they? --- It was myself; Peter; Father Ngcumane, the accused; Ntambo; and Siwa. They were the members of my zone.

What happened there at Metuli's house? --- There at this house we received notice, it was from Ndweba, the Chief of the Volunteers.

What instructions did he give you? --- The instructions that we got from Ndweba was that as from today, we are going to distribute leaflets. These leaflets were handed over to us.

BY THE COURT: By who? --- From the chief, Ndweba. These leaflets were at this house of Metuli.

XD. S.P.: (Cont.)

What did you do with these leaflets? --- We took these leaflets and we distributed it again in Kwazakele Location.

Did you also have some? --- Yes, I had some too.
BY THE COURT: What did you do with them? --- I went to the different houses and I pushed these leaflets through underneath the door.

XD. S.P.: (Cont.)

Was there anyone with you? --- There were a number

of us. It was myself and a group together, that went out.

BY THE COURT:

Who were in this group with him? --- The man that I know that was in my group was Peter Nobomvu.

Peter? --- Nobomvu.

XD. S.P.: (Cont.)

And then after distributing, what did you do? --- Then from there we went to the concert.

Where was that concert? --- At the Dutch Reformed Church.

Did anything happen along the way? --- On our way to this concert, we met up with the police.

And what happened? --- The cell stewards were killed- (Court intervenes)

BY THE COURT: Did he see this there? --- Yes, I saw this and that the head of the police was killed.

He saw it? --- No, I did not see it but I heard from the police that the head of the police was killed.

He says that on his way to the church, he met up with the police. Is that correct? --- As we were on our way to this concert, the police stopped us.

XD. S.P.: (Cont.)

And a report was made to you by the police? --- At the concert I heard that the cell stewards were the cause of the killing of a chief policeman, the head of the police.

Did you see the accused at this concert? --- Yes, he was also there.

Was this a public announcement to the effect that this policeman had been killed? --- All the people at this concert were arrested; everybody heard it.

BY THE COURT: Yes, but was it announced at the concert that a policeman had been killed? --- Yes.

And they were all arrested? --- Yes.

He as well? --- I was also arrested.

And the accused? --- Yes.

XD. S.P.: (Cont.)

When you were given this leaflet there by Ndweba at Metuli's house, did he say anything in regard to it? What it was about or what it related to or where it came from or something like that? --- He told us that these leaflets are in connection with the A.N.C., and that we are to distribute them.

Have you been to school? --- Yes, I did attend school, but I did not have much of an education.

What standard did you pass? --- Std. 3.

Can you read? --- I can read a little, yes, Xhosa language.

Did you read that pamphlet that you were given that night? --- I did read some of it but not all.

Can you remember what the pamphlet related to? --- Yes, I can remember what this pamphlet said; it was in connection with the two ways that we have got to follow.

And as a whole, did the pamphlet relate to any particular time or day or season or something to that effect? --- Generally every year on the 26th of June, these leaflets are distributed.

BY THE COURT: What is the 26th of June to him? --- Every year we have this day, it is actually Freedom Day; that day we don't make use of the buses.

PROSECUTOR TO INTERPRETER: He used the term: "Mdina"; it's the Day of Mourning. --- Interpreter: Yes, and that it is a Day of Mourning.

XD. S.P.: (Cont.)

And what did this pamphlet look like? --- It's a white paper.

What was the nature of the writing? --- That is the machine - it was typed.

Have a look at Exhibit A then. --- It is a circular similar to Exhibit A.

Was that the only occasion you distributed a pamphlet?

--- No, afterwards I again distributed leaflets after that day.

When again? --- During 1962.

When in 1962? --- During June, 1962.

What did that relate to? --- That was in connection with that we shouldn't buy newspapers.

When shouldn't you buy newspapers? --- On the Day of the Mourning.

Did you distribute that pamphlet alone? --- A number of us went about, distributing these circulars.

Who were you? --- There were a number of us; I can't remember the names now.

BY THE COURT: But he says 'us'. What does he mean by 'us'?

--- It was myself and Nobomvu and others.

XD. S.P.: (Cont.)

Where did you get those from? --- We got those from the chief steward, Tokwe.

So, what did you do with them? (Court intervenes)

BY THE COURT: Where did you get them? He said he got them from Tokwe, but where? --- At his house.

XD. S.P.: (Cont.)

What did you do with them? --- We distributed them in the location.

BY THE COURT: Which location? --- At Kwazakele in Port Elizabeth.

XD. S.P.: (Cont.)

You told the Court earlier that these meetings that you had attended, one which you said was in November, 1960, then one in June, 1961, when you were told about violence; then the one at the accused's house where you were told to go to Metuli's house in connection with the pamphlets. Other than that, were there any others? --- Yes, I attended another meeting during 1962, during May.

Where was that? --- I cannot tell the Court in whose house this meeting was held.

And who were with you at that meeting if there was anyone? --- It was me and the other members of this zone, including the accused.

And what happened at that meeting? --- At this meeting we were told that there is a new brach ~~armed~~ called the Umkonto we Sizwe, the Spear of the Nation.

BY THE COURT: Who told him that? --- The chief steward, Tokwe.

XD. S.P.: (Cont.)

What did he say about Umkonto we Sizwe? --- He told us that we have^{to}/collect a lot of money because the National Executive wants us to collect the amount of money to get weapons, for bombs and also swords and hammers so that we can destroy the government buildings.

Is there anything else he said? --- That is all that was said at this meeting.

And after that, did you become something else in regard to the African National Congress? --- Then I went to the Umkonto we Sizwe, The Spear of the Nation.

BY THE COURT: He joined it? --- Yes, I joined it.

XD. S.P.: (Cont.)

How did you join it? --- The Chief steward told me that I am now leaving the A.N.C. and I am going now to the Spear of the Nation.

What did you do as a member of Umkonto we Sizwe? --- We set the government buildings alight.

BY THE COURT: Which ones? --- At Kwazakale Location, Port Elizabeth.

Which government buildings did you set alight there? --- The houses of the policemen there, we must set them alight.

XD. S.P.: (Cont.) Did you in fact, burn a policeman's

house? --- Yes, I was present when a policeman's house was set alight.

In Kwazakele? --- Yes.

Whilst you were still a member of the African National Congress, did you subscribe to it in any way? --- Yes, I subscribed to it. I paid 20 cents per month; that was my subscription.

To whom did you subscribe? --- To the chief steward at the meeting.

Can you remember any particular occasion when you subscribed? --- I paid my subscription every month.

Were you the only one? --- All the cell stewards at Zone 6 paid their monthly subscriptions.

Is there an occasion that you can remember when any particular cell steward paid his subscription? --- I have seen the accused also pay his subscription; we used to pay our subscriptions together.

What I mean is: is there a specific occasion that you can particularly recall when some particular person paid, say for argument's sake March, 1961, or something to that effect? --- I remember after the accused was released from gaol, I saw him when he paid his subscription. BY THE COURT: Where? --- He paid his subscription at the chief steward's house.

At the meeting? --- At the meeting.

Which meeting? --- There were a number of meetings and these meetings were held in rotation.

XD. S.P.: (Cont.)

What were these meetings that you held every Wednesday? --- A.N.C. meetings.

Who attended them? --- The cell stewards attended these meetings.

NO FURTHER QUESTIONS BY PROSECUTOR.

COURT TO ACCUSED: The accused any questions to this witness?

BY THE ACCUSED: I don't want to say anything.

BY THE COURT: You understood what this witness said?

BY THE ACCUSED: I heard the lies he told the Court.

BY THE COURT: Tell him the purpose of cross-examination is for him to challenge any of these things that he said.

BY THE ACCUSED: I don't want to ask him any questions.

I don't want to argue with him.

BY THE COURT: Explain to him that if he doesn't question him about it, it could be that the Court accepts what this man says is correct.

BY THE ACCUSED: I don't want to ask any questions and I don't want to argue with him.

COURT TO INTERPRETER: Mr. Interpreter, perhaps you can explain to him in his own language exactly what cross-examination means.

INTERPRETER: Your Worship, I have explained; I feel I can't put it better than that.

BY THE COURT: Does he fully understand the implications of not asking questions?

BY THE ACCUSED: Yes.

BY THE COURT: He fully understands it?

BY THE ACCUSED: I fully understands it.

NO Re.-XD. BY STATE PROSECUTOR.

STATE PROSECUTOR CALLS:

PETER NOBOMVU, s.s.

XD. S.P.:

Do you know the organization known as the African National Congress? --- I know the organization.

Did you join the African National Congress? --- Yes.

When did you join the African National Congress? ---

I joined it during 1954 at Korsten, Port Elizabeth.

Do you know that the African National Congress was

banned? --- Yes.

After it was banned, did you remain a member of the organization? --- Yes, I was still a member of the A.N.C.

Did you hold any post in the African National Congress? --- I was a cell steward.

Of what were you a cell steward? --- I was a cell steward of Zone 6 at Kwazakele of the A.N.C.

When were you appointed to that post? --- During 1960.

Do you know when in 1960? --- November, 1960.

Where did that take place? --- At Richard Tokwe's house.

BY THE COURT: Who is he? --- He was our chief steward at Zone 6.

XD. S.P.: (Cont.)

What was there at the time at Richard Tokwe's house when you were appointed a cell steward? What was there at the time at Tokwe's house when he (the witness) was appointed as cell steward? --- At the time I was just a member of the A.N.C.

BY THE COURT: What was going on at the time? --- It was an A.N.C. meeting.

XD. S.P.: (Cont.)

Were there other people at that meeting? --- Yes, there were other people too at this meeting.

Do you know any of those people? --- Yes. The accused was present at this meeting; and the two twins Siwa; and Richard Nongubo; Richard Tokwe; myself and Frans and Manengela; and Anderson Nlevu.

Was there a speaker at the meeting? --- Yes, Richard Tokwe, our chief steward, he was the speaker at the meeting.

Can you remember anything of what he said? --- At this meeting he told us that the Dutch government has banned the organization. He also told us that he's going to do away with this personal card with our names

on; but that we are now going to be issued with receipts with the bird stamp on and we will have to pay 20 cents per month. He also told us at this meeting, that we will now take to violence but he did not tell us when we will start, taking part in violence. He also told us that the old cards with our names on, we should burn them. He also told us that these meetings will now be held in rotation, weekly on a Wednesday at the different houses of the members and he also told us that as from today we are all cell stewards.

Did he say what your duties would be as cell stewards?

--- That we must try and get other people to join and collect money for the A.N.C.

Anything else he said? --- That's all I can remember.

Can you remember any other meeting than this? --- I also remember a meeting that was held in June, 1961.

Where was that? --- That meeting was held at Richard Nongubo's house.

Where is his house? --- At Zone 6 at Kwazakele Location, Port Elizabeth.

Were there other people there? --- The other members were also present at this meeting.

What other members? --- The accused, myself, Richard Nongubo, Richard Tokwe and Anderson Ndevu and William Frans, Sipho Mange and John Ntambo and Manengela.

Was there a speaker at that meeting? --- Richard Tokwe was the speaker at this meeting.

Can you remember anything of what he said? --- Yes, I can remember what he said.

Tell the Court that which you can remember? --- He said at this meeting that he received a message from Edgar Ngoyi that we will now take to violence. If a policeman should arrive at the meeting now, we must kill him and that when distributing these leaflets and

we meet up with a policeman, we must kill him and walk over his body. This is the time now that we should drive, in and we are sitting down, but the Government doesn't want to listen to us.

Anything else? --- That's all that I can remember of this meeting.

After that was there another one? --- Yes, I remember another meeting that was held during June of that same month.

1961? --- In the middle of June, 1961.

Where was that held? --- It was held at the house of the accused.

Who were there? --- Myself, the accused and all the others that I had already mentioned that were present at the previous meetings.

What meeting was this at the accused's house? Some meeting of what was this in the accused's house? --- That was also a A.N.C. meeting.

Whilst the meeting was in progress, where was the accused? --- He was present.

What happened at this meeting? --- Tokwe told us at this meeting that on Saturday all the cell stewards of Kwazakele will meet at Metuli's house. There we will receive leaflets in connection with the A.N.C. about the 26th of June. We went on Saturday night to Metuli's house, there we received the leaflets, we distributed same and from there we went to the concert at the Dutch Reformed Church.

Did you go with anyone to Metuli's house? -- With Richard Nongubo.

Did you meet anyone at Metuli's house? --- The accused was at this house of Metuli.

Any other persons whom you knew? --- Yes, and others too whom I knew; John Ntambo; Siwa and myself and others.

What happened there at Metuli's house? --- There

these pamphlets were handed to us. Metuli handed these leaflets over to us. He was the volunteer-in-chief at Kwazakele.

Did he say anything when he handed these leaflets over? --- He said that if we meet up with a policeman, while we distribute these leaflets, we should kill him.

Were you handed leaflets? --- Yes.

What did you do with it? --- We went out and we distributed these leaflets in the yards of the people and also pushed them underneath doors, stuck them to gates so that the wind doesn't blow them away.

Was anyone with you? --- It was myself and the accused and Nongubo and Siwa - Richard Nongubo.

What did you do when you have finished distributing the leaflets? --- As we were walking along in the direction of the Dutch Reformed Church, I saw a number of police vans following us from behind.

Were you the only people in the street at the time? --- When we distributed these leaflets, it was in the early hours of the morning, about 1.00 a.m.

Were there other people in the street or was it only you and the group that you were with? --- No, it was only us that were distributing these leaflets that were in the street. I didn't see anybody else.

Can I put it to you this way: were there other volunteers apart from the group you were with? --- All these people that distributed these leaflets, were members of the A.N.C.

You say you saw the police vans. And then what happened? --- As we were walking along this road, the one side of this road was fenced in and I saw a European coming ^{up} along the fence; this man came up and stood in front of us and stopped us, said he wanted to talk to us. He said: "I don't want to

arrest you but I just want to talk to you".

What was this person? A civilian? ---- No, it was a policeman. He was wearing a uniform.

And then? --- He begged us to stop but we didn't take notice; we just walked on.

Where did you go to? --- We went to this A.N.C. concert in the Dutch Reformed Church.

Was the accused also at that concert? --- Yes, he was also present at this concert.

What happened at the concert? --- About 2 o'clock that morning, policemen together with a non-European entered this hall.

Without going into long details, what happened to the people who were at this concert? --- We were all arrested.

Including yourself? --- Including myself.

The accused - was he arrested? --- Yes, he was also arrested.

Have you been to school? --- Yes.

What standard did you pass at school? --- Std. 4.

Can you read? --- Yes, I can read a little.

What language do you read? --- Xhosa.

This pamphlet that you were handed that night, did you read that? --- Yes, I read that pamphlet.

In what language was it written? --- In Xhosa.

Can you remember what it was about? --- I remember the contents of the leaflet, June, 1961; that was the Day of Mourning, the 26th of June. This leaflet told us that on that day we should go to work on foot and come back home on foot and on that evening we should also make small fires in front of our houses and that is also proof for the struggle for freedom that we are fighting for. This leaflet also mentioned two ways.

Two ways, what about? --- It said there were two roads; the one road is to the hell and the other one

to heaven.

What did that pamphlet look like? --- It was a white pamphlet.

The nature of the writing? --- It was black letters; a machine was used when making these pamphlets.

Have a look at Exhibit A. --- Similar to this but the printing was black.

Was that the only pamphlet that you distributed? --- No, there were a number of leaflets that we distributed in the location.

Can you remember any other? --- And also in 1962, June, we distributed leaflets.

Where did you get those? --- From the chief steward.

Where? --- At his house in Zone 6.

Who were all handed leaflets by him? --- All the members of Zone 6.

Was the accused there? --- Yes, he was there.

What did you do with that one? --- These leaflets we distributed in Zone 6.

BY THE COURT: How big was Zone 6? --- Interpreter: It's from the bus terminus to the football field as he puts it.

How many streets is that? --- I did not count the streets but it was quite a number of streets.

XD. S.P.: (Cont.)

You told the Court about several meetings that you attended. Were there any other that you can remember apart from these you have already told the Court about?

--- I also remember a meeting held during May, 1962.

Where was that held? --- It was held in my house.

Who were there? --- All the members of Zone 6 including the accused.

What happened there? --- There at this meeting Tokwe told us that instead of having one tea party monthly, we should have a tea party every week. He

said to collect money for this new branch that was formed, Umkonto we Sizwe, The Spear of the Nation.

Did he say what this Umkonto we Sizwe was? -- He said this was a new branch of the A.N.C. and this is going to destroy the houses of the government, cut the telephone wires and destroy police camps and Post Offices, and that they want us to collect money to buy bombs and dynamite.

After this, did you subsequently become something else in the African National Congress other than a cell steward? --- I then joined The Spear of the Nation, Umkonto we Sizwe.

How did it come about that you joined Umkonto we Sizwe? --- Chief steward, Tokwe told me that I've got to join the Umkonto we Sizwe.

Then what did you do in Umkonto we Sizwe? (Court intervenes)

BY THE COURT: He took ^{part} in their activities? --- Yes.

XD. S.P.: (Cont.)

And as a member of the African National Congress, did you subscribe in any way? --- Yes, I gave my subscriptions.

What did you subscribe? --- Paid 20 cents per month, and I was issued with a receipt.

To whom did you pay the 20 cents and from whom did you get the receipt? --- I handed the 20 cent to the chief steward and he also issued me with the receipt.

Where would you hand him this 20 cents? --- At the different meetings.

Was there any occasion that you can remember when you paid a subscription fee? --- I remember that I paid him my subscription during November, 1960.

Were you the only one that paid subscription money? --- No, others also paid their subscriptions including the accused.

BY THE COURT: That was at that first meeting? --- Yes.

XD. S.P.: (Cont.)

Is there any other occasion that you can recall when the accused paid his subscription money? --- Yes, I have seen him paying his subscription but I cannot give you the name of the month.

NO FURTHER QUESTIONS BY PROSECUTOR.

BY THE COURT: Have you any questions to this witness, you've heard what he said?

BY THE ACCUSED: I have no questions to put to the witness. All of his statement is just one lie.

COURT TO INTERPRETER: Have you explained to him again the purpose of cross-examination and so on?

INTERPRETER: I have.

NO Re.-XD. BY STATE PROSECUTOR.

BY THE PROSECUTOR:

In terms of Section 251 sub-section (1) of Act 56/1955 I ask the Court to take Judicial notice of the proclamations referred to in the charge sheet.

CASE FOR THE STATE

BY THE COURT: Mr. Interpreter, will you explain his rights to him please. I also want you to explain to him that in terms of the Act under which he is charged, if it is proved by the State that he attended any meeting of a banned organization, such as the African National Congress, or he has advocated, advised, defended or encouraged the promotions of its purposes or assisted in the distribution of any periodical or publication or pamphlet issued by this organization, it is presumed - until the contrary is proved until he has proved otherwise - that he was a member or became a member or an active supporter of this organization. What I want you to explain to him is that once the

State has showed that he did attend a meeting of a banned organization, it is presumed he is a member unless he proves to the contrary.

BY THE ACCUSED: I understand and I elect to give evidence under oath.

ACCUSED,

FATHER NGCUMANE,

BY THE COURT: Will you swear him in please?

INTERPRETER: He said: "I am not taking the oath".

BY THE COURT: If he wishes to give evidence in the witness box, he must take the oath. But if he doesn't wish to give evidence under oath he may make a statement from where he stands. You have explained the difference between that to him?

INTERPRETER: I have.

BY THE COURT: Does he understand?

INTERPRETER: The accused now states that he is not going to make any statement.

BY THE COURT: He doesn't wish to give evidence under oath?

BY THE ACCUSED: No, I don't want to say anything.

BY THE COURT: Why did he first elect to give evidence?

INTERPRETER: He says he understood me to say I can elect the place where I want to stand to make a statement.

BY THE COURT: Now, explain to him again the difference that if he goes into the witness box, he will be required to give evidence under oath.

BY THE ACCUSED: I understand. I just want to tell the Court I don't take the oath.

BY THE COURT: Is it on religious grounds that he does not wish to take the oath?

BY THE ACCUSED: That is my law; I don't take the oath.

BY THE COURT: Is it on religious grounds that he doesn't want to take the oath?

BY THE ACCUSED: No, I am not a religious man.

BY THE COURT: Very well. We will go back from where we started. Does he wish to give evidence under oath or doesn't he?

BY THE ACCUSED: I have nothing to say.

BY THE COURT: Are there any witnesses he wishes to call?

BY THE ACCUSED: I have no witnesses to call.

BY THE COURT: And he has apparently nothing to say?

BY THE ACCUSED: I have nothing to say.

BY THE COURT: Does he wish to address the Court on the evidence before it?

BY THE ACCUSED: I've got nothing to put to the Court.

CASE FOR THE ACCUSED

J U D G M E N T.

BY THE COURT:

The accused is charged firstly, that during the period, the 8th of April, 1960, to the 31st of December, 1962, at Port Elizabeth, he wrongfully and unlawfully became, continued to be a member, an officer or an office bearer of an unlawful organization, the African National Congress. The second count: during the same period he wrongfully and unlawfully contributed or solicited subscriptions to be used directly or indirectly for the benefit of this unlawful organization, the African National Congress. The third count: during the same period he took part in the activities of this banned organization; activities which he could have been engaged in during that period after it was banned, to wit distributing pamphlets. The fourth count: during the same period he allowed premises, to wit a house occupied by him, to be used for the purposes of carrying on the activities of this organization; that is from the evidence by holding meetings in his house.

The State has called two witnesses who deal directly with its activities. The first one, Richard Nongubo, and the second one, Peter Nobomvu. Both these witnesses were members of the African National Congress and they attest to the activities of the Zone 6 of the African National Congress in Kwazakele Location. They tell of meetings held in November, 1960; two meetings in June, 1961; and a subsequent meeting in May, 1962. Both of them say that at this meeting the accused was present. Both of them say that he took part in the activities and assisted in the distribution of pamphlets. Both of them say there was one meeting held in the accused's house. Both of them say that the accused also paid his subscriptions.

Comparison of their evidence in which he did not in any way contest by any cross-examination, shows considerable corroboration of these activities. That pamphlets were distributed is also not disputed and the Court accepts that they were for there is the evidence of Bantu Detective sergeant Gazo who testified to picking up copies or similar pamphlets to those produced in Court, Exhibits A and C. Copies of similar pamphlets were, according to the two witnesses, Richard and Peter, distributed by the cell stewards of Zone 6 during 1961 and 1962.

The Court is satisfied that both these witnesses have told the Court the truth and accepts their evidence. They are co-participants in these activities and it is easy for them to relate exactly what happened for they took part in them and it is easy for them to relate these activities and then just include the accused as a person who took part in them and the Court must guard against any risk of false incrimination by them. That this false incrimination can be counted in various ways. One of which is if accused does not deny or rebut in any way the allegations of such co-participants. The accused has not done so.

His attitude is somewhat difficult to understand. The position has been explained to him most carefully, at least two or three times. He refuses to make any statement whatsoever as regards these allegations.

With the evidence before it, the Court is satisfied that the State has shown that he did attend these meetings and in those circumstances the provisions of section 12 (1) of the Act come into play and the presumption created by it has not been rebutted by the accused in any way and the Court is satisfied that the State has shown that the accused was, in fact, a member of the banned organization, the African National Congress. Similarly the Court is satisfied that the accused did pay subscriptions as alleged in Count 2; that he also distributed pamphlets as alleged by the State in Count 3. There is evidence that one of the meetings of this Zone 6 of the banned organization was held in his house and he was present at the time.

He is accordingly found GUILTY on all four counts.

ACCUSED HAS NO PREVIOUS CONVICTIONS.

ACCUSED HAS NOTHING TO SAY IN MITIGATION OF SENTENCE.

S E N T E N C E.

BY THE COURT:

He has been convicted on four counts of contravening Act 44 of 1950, Suppression of Communism Act. It has been shown that he participated in its activities for some time after it was banned. It is shown that he remained a member of it after this organization had turned to violence.

In view of those facts as I say, the Court can only regard the offences in a most serious light. Where an organization such as this is resorting to violence against the State and against Law and order in this country, it is the Court's duty to see that it is stamped out.

He has been in custody for a year. That will be taken into consideration as regards Count 1. On COUNT 1 he is sentenced to TWO YEARS IMPRISONMENT. Counts 2, 3 and 4 are to a certain extent part and parcel of being a member. The Court does not mean by that that he had to take part in these activities but by doing so, he aggravated the position. As this Court has dealt with in other similar cases, COUNTS 2, 3 and 4 - as it has done in other cases - will be treated as one for purpose of sentence. Those three counts treated as one for purpose of sentence, he is sentenced to THREE YEARS IMPRISONMENT.

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TRANSCRIBER'S CERTIFICATE.

I, the undersigned, hereby certify that the foregoing is a true and correct transcription of the original evidence recorded by mechanical means in the case of:

The State versus: FATHER NGCUMANE.

Typist:

L. Bauer
.....

CONTRACTORS:

LUBBE RECORDINGS (PTY) LTD.

IN THE COURT OF THE MAGISTRATE FOR THE REGIONAL
DIVISION OF EASTERN CAPE HELD AT ADDO

THE STATE

vs:

FATHER NGCUMANE

Case No. RC11/65

FACTS FOUND TO BE PROVED:

1. That the African National Congress was an unlawful organisation, as from the 8th April, 1960.
2. That the accused attended meetings of Zone 6 of the Kwasakale Branch of the African National Congress during the period November 1960 to May, 1962.
3. That accused was appointed as a Cell Steward of this Zone of the African National Congress and was a member of this unlawful organization.
4. That accused subscribed or contributed money to be used for the benefit of the unlawful organisation, the African National Congress.
5. That accused took part in the activities of the unlawful organisation, the African National Congress, in that he distributed leaflets issued by the said organisation.
6. That such distribution of leaflets was one of the activities of the unlawful organisation.
7. That accused allowed his house (premises occupied by him) to be used for the purpose of an offence under Section 3(1)(a)(iv) of Act 44 of 1950, by allowing members of the African National Congress to take part in one of its activities by holding meetings in his house of the said unlawful organisation.

REASONS FOR JUDGMENT:

The accused was charged with four contraventions of Act 44 of 1950 (as amended) read with various proclamations as set out in the indictment. To summarise, the State alleged that:

1. IN THAT during the period 8th April, 1960 to the 31st December, 1962 and at or near Port Elizabeth in the district of Port Elizabeth and within the area of jurisdiction of the Regional Court of Eastern Cape Division, the said accused did wrongfully and unlawfully become or continue to be a member, officer or office-bearer of an unlawful organisation to wit the "African National Congress" also known as "Umkonto we Sizwe" or "Spear of the Nation."
2. IN THAT during the period the 8th April, 1960 to the 31st December, 1962 and at or near Port Elizabeth in the district of Port Elizabeth, and within the area of jurisdiction of the Regional Court for Eastern Cape the said accused did wrongfully and unlawfully contribute or solicit subscriptions or otherwise to be used directly or indirectly for the benefit of an unlawful organisation, to wit, the "African National Congress."
3. IN THAT during the period the 8th April, 1960 to the 31st December, 1962 and at or near Port Elizabeth in the district of Port Elizabeth, within the area of jurisdiction of the Regional Court for Eastern Cape the said accused did wrongfully and unlawfully take part in activities of an unlawful organisation, to wit "The African National Congress" or carry on in the direct or indirect interest of the said organisation, activities in which it was or could have engaged at the date when it was declared unlawful, namely the 8th April, 1960.

MR. TUCKER: I shall not proceed with the matter, I leave it at that, my lord.

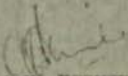
Statement handed in as Exhibit 18.

MR. BIZOS: No cross-examination.

C E R T I F I C A T E.

I, the undersigned, hereby certify that the foregoing is a true and correct transcript, to the best of my ability, of the evidence taken down by mechanical means, in the matter of:

THE STATE versus JACKSON FUZILI & 3 OTHERS.


A.H. VERMEULEN
TRANSCRIBER.

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