

How would you have come here?---I would have found a way to come.

You said that here you disappeared. How would you have found a permit or permission to come from Tanganyika back here again?---I could have enquired and requested this Government, by telling the Government that I disappeared. I ran away from here, to be allowed to come back again.

ACCUSED NOS. 4, 5, & 6: No questions.

CROSS-EXAMINATION BY MR. TERBLANCHÉ:

Before you left did you know the African National 10 Congress?---Yes.

Were you a member?---I never was a member.

Did you know an organisation called the South African Congress of Trade Unions?---No.

Now, when did you leave?---Last year.

What month?---June.

June. That's at least something. Now when you left did you know whether there was a place outside the union in Tanganyika where you could receive training as a motor mechanic?---No, I was going to look for a place. 20

Oh, you were going to look. Now were you employed before you left?---Casual work, yes.

In this refugee camp, how long did you stay there? ---I cannot stay for how many months.

You stayed there for months?---Yes.

Did you stay there from the time you arrived until the time you came back?---I was there all the time.

Did you ever look for this place where you could be trained? Did you make enquiries about it?---When I came there, I said I explained that I came there and I wanted 30 to learn.

Nobody took notice of you?---I had not up to the time

I left, been offered or found anything.

Do you know James Radebe?---The first name?

James Rade?---No, I do not know him.

Johannes Modiso?---No.

Tennissen Makiwane?---No.

Oliver Tambo?---I heard of him.

Tell me this, when you came back, what made you decide to come back, without having obtained your training?--- Because I did not belong to any organisation through which I could be assisted there. 10

Now did you also leave the country by train? How did you leave?---Yes.

BY THE COURT: Now do I understand that if you had belonged to an organisation in this country, you would have been assisted in Dar-es-Salaam to be trained as a mechanic?--- That, I wouldn't be able to know.

But why are you talking about not belonging to an organisation. That is why you couldn't be helped there? ---That is what I was told there.

No, that is what I am asking you - out there they 20 told you if you had belonged to an organisation in South Africa, banned or otherwise, they would have assisted you there?---No, I was just asked whether there was any organisation of which I was a member, and I said no.

CROSS-EXAMINATION BY MR. TERBLANCHE (CONTINUED):

How did you obtain this passport?---They brought it to me in the camp.

It was just given to you, You never asked that it be endorsed so that you could go to Ethiopia?---No, I never asked for any stamp to be put on. 30

Now you came back through Tunduma?---Yes.

Had any trouble getting across the border at

Tunduma?---No, no trouble.

You see because your passport is also stamped "Refused Entry"?---No, there was nothing there.

Oh, I see. It just happened then. Now another thing, when you left Lusaka coming back, you left Lusaka by train?---Yes.

With the intention of going where?---Palapye.

Palapye. Did you buy a ticket?---Yes.

Right through from Lusaka to Palapye?---Yes.

Then tell me why that ticket wasn't found in your 10 possession?---Well, the detectives took all our things, they should know where it is.

Yes, they said you had no ticket!---I say I had one.

Yes, now I want to suggest to you that some of these persons here present, had tickets for two persons, and you were one of those that had no ticket, but travelled on a ticket for two!---No you can't suggest that to me. The person that was in my company, was only No. 4. Not the others.

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No. 4 was in your company! Now will you look at this photo and tell me whether you appear on that? (Photo handed to witness). ---Yes, I am here. I can see now, that is my photo.

I suppose that was taken at the celebrations?--- Yes, that is correct.

And, I just want to show you this one. (Exh. 4H handed to witness). Are you on that one?---Yes, in the middle I am.

Yes, and this one is the last one? (Photo handed 30 to witness). Yes, I am on this photo. I point myself out.

Yes, alright. What happened to your identity book which you had in the Republic?---I don't know whether

it was left behind at the place where I was working before I left.

MR. TERBLANCHE: No further questions.

END OF THE DEFENCE CASE FOR ACCUSED NO. 7.

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BY THE COURT: Is there anyone of the accused still wanting to say anything, or present any further evidence?

ACCUSED NOS. 1 TO 7: All want to say something.

Decided to wait until Monday morning the 30th September, 1963, for them to state their case.

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AT THIS STAGE THE COURT ADJOURNS UNTIL MONDAY MORNING THE 30TH SEPTEMBER 1963, AT 10 A.M.

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

BEFORE: The Honourable Mr. Justice THERON.

In the matter of:

THE STATE vs. HENRY FAZZIE & 6 OTHERS

CHARGE: Sabotage.

PLEA: Not Guilty.

VERDICT: Guilty.

On Monday 30TH SEPTEMBER, 1963, at 10 am.

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- JUDGMENT -

THERON, J.:

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Before dealing with the evidence and the conclusions to which I have come, I have to deal with certain matters raised by some of the accused in the course of their argument.

At the conclusion of all of the State case, each one of the accused was asked individually whether he wished to call any witnesses. They all said they did not wish to call any witnesses, as the witnesses they could perhaps call were outside South Africa. Those were people in Tanganyika, mainly in Dar-es-Salaam.

The case then proceeded, each one of the accused 10 giving evidence under oath. In addressing me this morning, accused No.1 asked that the case be postponed because he wishes now to call certain three witnesses, their names being A.J. Lethuli, attorney M.B. Genkwa and Patrick Malawa. He gave in his prepared written address the address of those witnesses. When asked to tell me what he expected those witnesses to state in evidence, I gained the impression that he was not prepared to tell me what they could say,

except for saying that they would testify that what the accused are alleged to have done, and if they did do so, they did not do so in furtherance of the African National Congress.

As I mentioned to him, and now I state it again, justice requires that cases must be brought to finality. A clear opportunity was given to all the accused to elect to call witnesses if they wished to do so. They exercised that right and said they did not wish to call witnesses. Now, after each one's case has been closed, and at the stage of after argument by Counsel for the State, this request is made. I see no grounds, and certainly no reasons have been advanced, for deviating from what is usual, in refusing such an application unless good cause is shown why such witnesses should be called. In the circumstances of this case I do not see that there is any good cause shown for such a course. I therefore will not grant the postponement for that purpose. 10

Accused No. 3 in the course of his address used rather strong language, more of a political kind, and I must immediately say that this is not a political platform and I am not concerned with politics at all. The accused refers to the policeman being White, the prosecutor being White, and, unfortunately, the Judge being White: "The Whites, whose 'baasskap' we fight, are investigators, prosecutors and judges." He poses the question: "Can I and my colleagues here be expected to believe that there can be justice in such a system?" 20

I say again, I am only concerned with evidence that has been adduced and so much of the law as is concerned with the indictment before me. The colour of the witnesses who gave evidence is immaterial. I have to assess the 30

value of the evidence of each one of them, individually and then collectively. In fact, his criticism in this regard is without foundation because most of the witnesses who testified against them, were their own countrymen.

The last matter to be dealt with in this regard is the application by accused Nos. 5 and 7, who again complained that no provision was made for their defence, and have asked that the proceedings be referred to a higher Court for review. I am not going to deal with the question of the defence again. That was disposed of at the stage 10 when the trial commenced. They were given sufficient opportunity of engaging the aid of Counsel or attorney, if that was of any assistance to them, and even at the late stage when the trial started, through the Registrar's office contact was made with the persons mentioned by them, who were unable to undertake their defence. And in any event, there is no machinery for the procedure that they envisage or requested me to follow.

Dealing with the evidence, the prosecution has to satisfy this Court on facts in regard to certain matters. 20 They know that they are charged with contravention of Section 11(b) of Act 44 of 1950 as amended, because it is alleged that they as residents in the Republic left here and wrongfully and unlawfully underwent training of a military nature, which could be of use in furthering the achievement of the objects of the African National Congress, an organisation which has been declared to be an unlawful organisation under the Unlawful Organisations Act. The provisions of this section have been read out to them, and I do not wish to repeat it. 30

In terms of the indictment the prosecution has undertaken to prove beyond reasonable doubt, in order to

secure a conviction, that each of the accused were residents within the Republic, that they did undergo training of a military nature. The State has placed before me certain evidence, from which it asks me to conclude, not only that the accused did undergo training of a military nature, but that such training could be of use in furthering the achievement of the objects of the African National Congress. The law provides that if the State proves that you, or any one of you, did undergo military training outside South Africa, then it is for you to satisfy the Court that it was not for the purposes mentioned in the indictment. 10

Now what evidence has the State presented to the Court? There is the evidence of two persons who alleged that they were with you from the time that some of you left South Africa, later joined by two others, in more detail I will refer to the evidence; that you eventually went to Da-bra-zid, where you did undergo military training for three months. Now these two witnesses on their own statement, if they did go with you, did undergo military training themselves. They would therefore be subject to the same provisions of the Act as you are being <sup>charged</sup> with. For that reason their evidence is considered to be evidence of accomplices, and before a conviction can be secured on the evidence of accomplices, certain legal requirements as also procedural requirements, must be satisfied. 20

First of all there ought to be aliunde evidence of the commission of the crime if there is reliance placed on the evidence of an accomplice. Or if there is the evidence of an accomplice in order to secure a conviction, there must be corroboration of that accomplice's evidence on material aspects implicating the accused as well. Then there is the cautionary rule to which Counsel has already 30



Referred. Both these two witnesses will therefore be be treated in the same way as an ordinary accomplice for the purpose of assessing the quality of their evidence. It is clear in law that one accomplice, if satisfactory as a witness, may corroborate the evidence of another accomplice, if that person's evidence is satisfactory.

Now both these witnesses gave a very detailed, and, I must say, an impressive description of their initial joining up; their trip to Johannesburg and the purpose for coming to Johannesburg; and the various stages they went through from Johannesburg to Lobatsi; and eventually landed in Da-bra-zid. And as I said before, they say that all seven of you were with them at this military training school, where you all underwent the same training as they did and which they described, perhaps not both in equal details, but substantially the same. 10

It is clear from the evidence of the first witness, Isak Rani, that he was told something about a school by a person called Umklubula. In the course of gaining further information he was in contact with Archibald Sodoku and also Fred Buhla. Fred Buhla was the person who was with them at Cape Town when tickets were purchased for them to travel to Johannesburg. They were told to get into a train under certain false names. Some of the names they mentioned in Court here, and that was confirmed by a Mr. van Zyl who was the train controller, testifying about that train reaching Johannesburg. In addition, Buhla gave them each a box of cigarettes and inside there was an address written down. They were given black ties and arm-bands, and the purpose of that was, as they were unknown in Johannesburg, and as they were to meet somebody who would probably not know them, they were, on approaching 20 30

Johannesburg, to have put the arm-bands on and also the black ties. By that means the person who was to fetch them at the station would be able to recognise them.

According to the evidence of Isak Rani, they arrived at the station in Johannesburg, after leaving Cape Town on the 13th June, 1962. They did not meet anybody at the station. They were then compelled to make use of their own means of finding a taxi and going to the address given inside these cigarette boxes. According to Rani's evidence, there at this address he met Kantilal Moodli. Later, after speaking to Moodli, he was fetched and taken to Marabe Hotel. He met a person by the name of Kumalo, who informed them that their stay would be paid for by somebody there. They stayed for approximately three weeks. At the Marabe Hotel they were not to answer questions except, if asked what they were there for, to say that they were members of a football team. At this hotel, he says, he met a Joe Mokiso who visited them there. There, he says, he met accused No. 3, 4, 5, 6 and 7. 10

After about three weeks, a person by the name of Elias - he has forgotten the surname - called. Elias then left with accused No. 3 before supper one evening. Thereafter No. 3 accused returned and told them to take up all their belongings and to come along. There were then 14 or 15 of them, and they went to a double-storey house near the railway line and there he met Johnny Makitini and Josef Jack and also a certain Maloi, or Baloi it may be. After some time they were taken from there in a panel van and two Combis. Joe Modiso, Elias and Josef Jack were there. 20 30

He mentioned experiences on their trip to Lobatsi - I do not want to go into all the detail. He mentions,

for instance, being stopped by a traffic officer, and later having experience of trouble with the headlight of the van: that the van was then without lights and had to travel between the two Combis, as previously had led the fleet of vehicles. They arrived at Lobatsi at approximately 5 a.m. There they found a coloured pole closing their passage. They reversed and went around this and eventually landed in Lobatsi after having taken all their belongings and putting it into one van. There, in Lobatsi, Josef Jack and Makitini came and told them that they were to go 10 to Palapyo, where they met a certain Umpol, and they were then taken to Masalonti in two  $\frac{5}{4}$  vans. He says that at Masalonti a vehicle arrived with accused No. 2, and the next day, he says, they went through to Bulawayo. There they could not sleep on the station because they did not have tickets, and they were compelled to go to another station where Baloi bought them tickets and they travelled further to Lusaka.

At Lusaka they again were met by Josef Jack and Makatini. Because they did not have papers and mode of 20 conveyance they travelled on foot to Tunduma. There they went to the U.N.I.P. offices. He also described how they were met at Dar-es-Salaam; were taken to the A.N.C. offices there but it was locked. Only some of them went there. Others did not accompany them. There he met James Radebe and also ZENZELI Mgabu. The next day they were again taken to the A.N.C. offices. While at Dar-es-Salaam Tennyson Muhluwani took them to be vaccinated, and Josef Jack took certain snaps of them which were subsequently used for their identification cards, or call it passports 30 if you wish. They also met a certain Oliver Tambu, and he was present and did not overhear it, but he saw him

speaking to Johnny Makatini. There Tennyson told them that they were going to train as soldiers in Ethiopia. They were given these passport documents, £2-10/- each in cash, and they went by bus to Nairobi.

There they were met by accused No. 1. They met accused No. 1 at a bus-stop. A photo of their group was subsequently found when accused No. 2 was arrested. A small photo - Exhibit 2-J- was shown to him and he identified this as Lieutenant Yaya, of a Captain Mamo's army. According to his evidence, the Captain issued them with 10 clothing, and they were given quarters. There they received three months training, all of them. He did not only receive the training and the actual physical drilling, but also attended lectures in a class-room, each of them being issued with an exercisebook to keep notes. Those who could speak English, as the language in which they were taught was English, they wrote down, and those who could not write down, had it explained to them again by those who could.

According to his evidence, Macdonald Masala gave 20 No. 1 accused a note which was from Oliver Tambu. When shown the exercise-book now before Court - Exhibit 3-G- which was found in the possession of accused No. 3, the witness identified it as a note-book kept by accused No. 3 in the course of recording the tuition that he received. According to him, accused No. 3's nick-name was, or false name as he called it, was Mac Molikani and he also said that the instructions were given to them in Ethiopia at Da-bra-zid.

Alfred Jantjies also mentioned Umklubula as the 30 person who introduced him and stimulated his interest to an expedition for further education. He gave substantially

the same evidence in regard to their trip to Cape Town and from Cape Town to Johannesburg. About the black ties and the black arm-bands given to them and the purpose for which that was given to them. Also about the box of cigarettes given and the address given to them. That they went to the address and eventually were taken to the Marabe Hotel. There Joe Modiso visited them and told them to say if asked that they were members of a football team. There he also described meeting accused No. 3, 4, 5, 6 and 7. They were later, after three weeks stay, taken to a double- 10 storey house from which they left in two Combis and a van. He described the trip in substantially the same way as Gani: the traffic cop stopping them on the way; the trouble with the lights; the coloured pole barring their way at the boundary, and in fact he gave a little bit of evidence to which Gani did not testify, but which finds some support in the evidence of another witness, and I should mention it here.

He stated that when the driver of the front vehicle approached so close to this barrier across the 20 road, Joe Modiso was annoyed with him and told the driver 'you know you shouldn't come to here. This is not the first time that you have driven here.' They reversed, transferred the luggage to one Combi, and it was then said that that Combi should go through and if asked what it contained, it should be said that it contained samples.

They then went across the border, not by vehicle. By train from Lobatsi to Palapye, and further on to Francistown. He also says that approximately a mile from Francistown a lorry arrived with Joe Modiso and two others. 30 One person being accused No. 2. He described further the trip from there to Bulawayo, and in the same way as Gani,

described how they were not allowed to sleep at the Bulawayo station, but later took tickets at another station and proceeded further. And exactly as Gani stated he mentioned that at Lusaka Josef Jack and Makitini came to meet them.

At Tunduma, Josef Jack and Makitini went to the U.N.I.P. offices, so he says. He also described the trip in a similar fashion from there to Dar-es-Salaam; how they met a certain Mrs. Xabanisu, and at that stage, he says, all the accused from No. 2 up to No. 7 were present. Not accused No. 1. At Dar-es-Salaam he says he met Oliver Tambu and James Radebe and Tennissen Makiwane, and there at Dar-es-Salaam he says Josef Jack photographed him. These photographs were later used on their passports. There they were told by Radebe and Tambu that they were to leave on a certain day.

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Fourteen of them left, including Nos. 3 to 7. Accused No. 2 remained with Oliver Tambu and Tennissen at Tennissen's house. They then proceeded to Nairobi. At Nairobi they met a further five people and that made their complement now 19. They were required to have a complement of 20; one man stayed behind, and he says it was at Nairobi that accused No. 2 then joined them. In Nairobi he met No. 1 at a bus-stop, and he says that at this bus-stop...at Nairobi, Macdonald Masala took their passports away from them, that is to say the passports of all of them. He went somewhere and later returned with those passports, carrying an Ethiopian Consul stamp, authorising the holder to enter Ethiopia and remain there for 90 days.

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There they took the plane to Da-bra-zid in Ethiopia. He also mentions that a Captain Mamo was the captain of the army to which they were allocated. He spoke to them in English. That his lieutenant was the one

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whose picture was handed in to Court - Exhibit 2-J - the picture taken from the possession of accused No. 2. He also says that this is the person who taught them the drilling. They were taught drilling for fourteen days and then taught about guns. He also mentions that they attended lectures and they had exercise-books given to them, and in those exercise-books they were expected - those that could do so - to record the lectures given to them and their instructions.

A further photograph taken from the possession 10 of accused No. 2, which is a group photograph, he identified as a group of them, including all the accused, taken after the course was completed and before they returned. It was taken in Abyssinia. When their training was finished, they were taken to town, they were clothed, given shoes and luggage bags. There at Dar-es-Salaam, James Radebe took them to the A.N.C. offices again.

Tonnisson Makiwane and Oliver Tambu took them to Mboya. At Tunduma on their way back, he saw a policeman, and this policeman caught two of them while they were 20 in the process of illogally crossing back, crossing the border. According to his evidence, accused No. 4 and No. 7 did not join them on their return, they only joined them the next evening, and he also says that he was told that Joe Modiso was accused No. 2's brother-in-law.

Now that is the evidence that they have given. The question is, what corroboration is there of their evidence? I have purposely left out the evidence given by them of the nature of the training that they received. I do not wish to repeat it. You have heard their descrip- 30 tion of what you did: drilling, being taught the handling of certain firearms, explosives. How you were given

INSTRUCTION in reading and guiding the setting of sights on an unseen target, and how you were given lectures on patrols, and various aspects on which they gave evidence: all aspects of a military nature. And they say that those who could speak and write English, were required to keep notes of what was told them and the instructions given.

It is beyond any dispute that on their return, the nine of them were arrested at Bulawayo. There, certain documents were taken from their possession by Inspector-Officer Ivey. These documents have been handed in to Court.<sup>10</sup> They speak for themselves, and the accused have not denied being in possession of those documents. Now the State has asked me to come to the conclusion that the documents themselves strongly corroborate the evidence of the two accomplices. Not only corroborates them on material respects, but corroborates them to the extent of implicating each one of the accused, more particularly in regard to their identification of each one of you on a picture in Abyssinia, where you were trained. And in addition, the documents found in the possession of accused No. 1 and 20 No. 3, to which I shall refer presently, there notes are taken of instructions given concerning your military training that you received.

In addition to that, there are inferences, so the State says, to be drawn from the features of the passports issued to you and the vaccination certificates. Accused No. 1 did not accompany accused Nos. 3 to 7 from South Africa. On the evidence of accused No. 1, he left South Africa unlawfully in 1961, or 1960. In any event he says that he was issued with a passport which he 30 identified here in Court. That passport has a clear stamp of the Consul of Ethiopia under the date the 7th August, 1962, stamped at Nairobi. The same is to be said of all



the other identification cards.

The important feature of accused No. 2's identification card is, that he no doubt must have given the authorities the information that he was born in Johannesburg, because so it is endorsed. He is in fact a Nyassa, born in Nyasaland, but he admits that he came to South Africa where he received a document to which I shall refer later, to establish whether he was resident in South Africa. I have asked myself the question, although the matter was not investigated in evidence, why he should have said that he was born in Johannesburg. It is a probability that he knew he would not be given a passport as a Nyasaland resident, and therefore elected to say that he was born in Johannesburg, but however that may be, it does not really matter. He was given an identification card, or a passport, call it as you wish, dated the 7th August, 1962. It too is date stamped by the Consul of Ethiopia at Nairobi, but in his case it was given, that endorsement was made, on the 8th August, 1962. That seems to confirm the evidence of the witnesses here, who said that accused No. 2 remained behind at Dar-es-Salaam; that they proceeded to Nairobi, where in Nairobi on the 7th August all their passports were endorsed by the Ethiopian Consul to allow them access and entry into Ethiopia; that because one man stayed behind, accused No. 2 joined them, and in fact there is evidence by Jantjies, I think, that accused No. 2 told him that he came up by 'plane. That is proved by his own evidence, also the flight dossier that has been handed in here, of his ticket.

It is also remarkable that with the exception of accused No. 1 who was vaccinated on the 17th November and the 22nd. October, the other accused were all given

yellow-fever injections and small-pox vaccinations at roughly the same time. According to the State witnesses they were taken in batches for that purpose. Both of them say that Josef Jack is the person who took their pictures for their passports. I think it is the evidence of one of police officers from the Cape who said that he knows Josef Jack very well and he knows that he is accepted as an expert photographer, or a professional photographer.

But there the coincidence does not end. When looking at the tickets given to them for their journey back to Bulawayo, it is quite clear without having to juggle around with figures, that they were in one group. That is to say, the two State witnesses and the seven accused, making a complement of nine. Nine persons, including the seven accused and the two State witnesses were arrested at Bulawayo by a Mr. Ivey. They were all dressed in a similar fashion, all carrying similar bags, and when asked where they had come from, individually asked, they all had the same account to give, that they had come from an educational course, and were on their way to either Palapye or Lobatsi to visit friends or relatives. And I emphasise this fact because I consider it of importance, that all nine of them told him that they were from the Republic of South Africa.

In addition there is also evidence, of not very strong corroborative form, but of some evidential value that accused No. 1, when searched by Mr. Strumpher, had an Ethiopian copper coin in his possession, which he has not explained. And No. 2 accused had an Ethiopian dollar in his possession.

But in addition there is evidence that at the border when they were on their way back, the police caught

two of them, and endorsed their passports that entry was refused, and those two are the two that Jantjies pointed out in this court.

In addition, to come back to the commencement of their journey, there is evidence of the witnesses for the State, the owner of the Marabe Hotel, and also the witness Kantilal Moodli, who says that he was met by two persons in June of last year; that he contacted a Mr. Jack Hodgson, a person who later left the country for some reason. There is also the evidence of Jeremiah Mofokong, the owner of the 10 Marabe Hotel, who mentioned that he saw Bantus arriving at his hotel in 1962 and 1963. His evidence I ignore for the time being. But there is the evidence of Essep Amod Suliman, the owner of three vehicles: two Volkswagen Combis and a Van. Piet Coetzee and his brother Ebriam were the drivers of his pirate taxis.

He described how, on two occasions, his vehicles were engaged by Walter Maxie <sup>Sisulu</sup> Zulu to take Bantus to Lobatsi. And he says that his drivers drove on that occasion and again on the occasion in June. That is why I mentioned 20 earlier on the statement by Jantjies, that when the driver drove up to the pole which barred the way at the boundary, probably within sight of the immigration offices, he was remonstrated with because he knew from his previous experience of driving them there that he should not have driven as far as that.

This witness also says that in June, 1962 Sisulu again engaged him to take young Africans across the border to Lobatsi. He gave substantially the same account of the drive to Lobatsi as did the two State witnesses. His 30 evidence was, however, that he was taken by Modiso to the Marabe Hotel where he picked up these people. It is

obvious from his later evidence that he was mistaken in this regard, that he thought it was the Marabe Hotel, but in fact he says he did not know where the Marabe Hotel was. It was a double-storey house that he went to and he assumed that to be the Marabe Hotel.

He also says that Ebriam drove the one van and Modiso was with him. He was riding with Piet Coetzee. He also described the trouble with the generator of the van, and how the van drove between the two Combis. They reached the border, and all got out. They crossed the border through the veld, and he said the red Combi had the luggage in, and the red Combi was to drive through, as Modiso told us. Should it be asked what the van contained, it was to be said that the van contained samples. His evidence of the number of people is substantially the same as that of the two State witnesses, to whose evidence I have already referred. 10

Piet Coetzee gave evidence of the two trips that he drove the previous witness's -Sulimani- vehicle to Lobatsi conveying Bantus there. According to his evidence, 20 on the first occasion at the beginning of 1962, he attended a meeting where Sosulu and others spoke, and he heard what their plans were. On the second occasion, the same occasion to which the State witnesses testified, he again drove this van conveying the Bantu youths. How they came to the boundary, or the border, and there the persons left the vans and went through the veld. I should mention that his evidence in regard to the trip to Lobatsi, does not confirm in every detail the evidence given by the other witnesses, to whom I have already referred. 30

According to his evidence, there was no fault to be found with the van's lights, and the van drove ahead

all the time. To that extent his evidence is not reliable, and I will therefore pass on, and consider the other evidence to which the State has referred me.

Now in doing so, I have to refer again to the documents found in their possession, and I refer in particular to the documents found in the possession of accused Nos. 1, 2 and 3. I am not going to read them - you know them - accused No. 1 had a document on which there are certain sketches drawn and details given of what is clearly military matters. That has been identified as military 10 matters by State experts in that field. The same about the book found in possession of accused No. 3 and admittedly written in by him. Now both these accused have given explanations of these documents. No. 1 accused says that he had an Arab friend up there who had this document and taught him about this, and he wrote down what this friend taught him. No. 3 accused again says that the book that he has in his possession is a verbatim copy of a book that a friend of his had in Dar-es-Salaam; that he was interested in this copy and he made an accurate note of every detail, 20 including the man's name and address. Now it is so obvious that that story is a fabrication that I am not going to dwell on it. I say that it is a lie. There was no need, if he showed an interest in what was contained in the book, to write out the name of the person whose book he had in his possession, and also a name of a town.

There is evidence very strongly corroborating the testimony of the two State witnesses. The one State witness said that what false name appears on that book was his false name, as part of their scheme of training, 30 and I need not have military experts to tell me that what is written in that book is the result of very careful

instructions in military matters. The military experts were able to point to very salient aspects, to demonstrate that the evidence of the two State witnesses was correct, that they attended lectures, and were not just writing things down from a blackboard. They heard that evidence and I accept that evidence, and as I say, that confirms the testimony of the two State witnesses.

In addition there is the very important bit of evidence of a picture of a whole group of them being together. The two State witnesses identified each one of the accused as members of that group. And that group, as the prosecutor has rightly indicated, stands completely independent of any other larger group or any other association of people. No. 1 accused, whose evidence is admissible against all the other accused, irrespective of whether the documents might or might not be, says that that was taken of them as a group because they were all from South Africa. Yet the other accused wish me to believe that they did not know one another, except that No. 3, 5 and 7, I think, spoke to each other and found out they came from the same place, but that was all. 10 20

They lived in the same community refugee camps. They travelled on the same buses. According to the tickets the numbers are very close to one another, suggesting that they must have been in a group. Their railway tickets bringing them to Bulawayo is in a group, two of them on one ticket; and the story told to me about the one having two men on his ticket - accused No. 2 - said that, and at Bulawayo his friend ran away, is nonsense. The group were all in one, and that is how Ivey found them. 30

So therefore in whatever way you test the evidence given by the State, as against the false evidence given by each one of the accused, they were manufacturing

as they progressed in their testimony, it is obvious that the State witnesses were giving a true account of what happened. That picture shows that they were together with those seven accused, apparently in quite a happy, friendly gathering according to their testimony, at a festivity. Why should they now come and give this false evidence, and give it with such vast details? It could have been so simple for them if they wanted to fabricate, to say all seven accused left South Africa together, and they travelled together.

10

But that is not what they say. They gave evidence which if tested in the light of what is shown by the documents it is found that their testimony is the truth. All of those accused gave explanations of the reason why they left South Africa, except No. 1. (he said he didn't have a particular reason) reasons which I reject as untrue. I accept the evidence that they went as an organised group.

Now the other aspect on which the State must satisfy the Court is that they were either South African residents, or people who did reside here. All the accused, except No. 2 accused, are South African born. The officer who gave evidence in regard to the issue of reference books has satisfied me that they were so born here in South Africa and received their reference books. They have themselves admitted having been born here, and having left South Africa without the necessary passports. Therefore, in regard to that aspect of the case, that too has been proved.

30

Bolt 44. In regard to accused No. 2, who has asked me to make it clear to him why/<sup>he</sup> should be here, as he is a Nyassa. Well, the law says that as he was a person who was in South Africa and left here to go and take training outside, for the purpose set out in the indictment, he is as guilty

as those who live here permanently and are domiciled here. And again I say I find it difficult to understand why he should have obtained a passport with the information given, no doubt by him, that is the evidence that we have, that he was born in Johannesburg.

They have all denied that they took part in any training at all. They have denied strenuously being in Abyssinia. Now dealing with each individual accused:-

Accused No. 1 was proved to have obtained a passport entitling him, by an endorsement on his passport of the 7th August, to go to Ethiopia for 90 days. There is the evidence of the two State witnesses that in fact he did go, and I accept that evidence as it is confirmed. There is also the evidence of his association with Oliver Tambu, a person who has been proved on the evidence to be a member of the African National Congress. And a letter, Exhibit 1-D, which I shall not read. It is dated the 6th February, 1961, gives clear indication that he was there with a group of others. And he is also exhorted by Mr. Tambu to write further letters and lodge as many complaints as he likes and as forthright as he likes. Also, mention is made of a person whose name has been mentioned by the State witnesses. Then on the 4th October, Exhibit 1-E, there is a letter written by Tambu from London, clearly dealing with the accused as a person who could speak to others in a group and in the scheme of things. There is the document to which I have already referred, with the military instructions on it. His testimony in that regard is disbelieved as to how he came into possession. And comparing the details on that with the details of another document found in accused No. 3's possession, although it might not be evidence against No. 1 - in my view it is



evidence against No. 1 accused, as it is against all of them, because they were a group of people with a common desire and in agreement to go and undertake this training - it can be seen that there is meticulous correspondence or agreement between the one set of notes and the other on the details with which it deals. It cannot be such a coincidence that an arab in the one instance and a stranger to that arab in another instance, would have similar documents of tuition, handing them to two different accused persons, who are later found travelling together in a group and arrested at Bulawayo. On the evidence he is therefore found guilty on the charge preferred. 10

Accused No. 2. In his case there are these documents to which I have referred and the corroboration of the accomplices evidence. There is also the snapshots found in his possession, identified by these State witnesses in the one case as the lieutenant in the Ethiopian army who gave them drilling instructions, and on his false explanation, some member of a church. His evidence in that regard is too childish to be believed. 20

And in his case too I have mentioned the factors of his being left behind, joining up the group a day later. That is shown by the endorsement of his passport of the Ethiopian Consul at Nairobi on the 8th August. On his version there was no need for such an endorsement at all. He suggests that that endorsement was "canceled": c-a-n-c-e-e-l-e-d. It seems very much as though he did that cancellation of that endorsement, and in fact, the State witness Jantjies in reply to his own question, said so.

His vaccination and also his small-pox injection coincide with that of accused No. 4 - at a quick glance I pick that up - and also No. 7. On the same date. 30

Jantjies said they went in a group for these injections and vaccinations. I am therefore satisfied that the State witnesses are telling me the truth, that he is a person who also went up to Abyssinia and took the same training, and that training was for the purposes set out in the indictment. They were all members of a group going to receive military training, to further the objects of the banned African Legion or its mushroom associate military wing, the Umkonto Weziswe. The details of the Umkonto Weziswe have been described to me by one of their own 10 countryman, who confesses that he is an African National Congress member, Solomon Nkosi. And he has also mentioned that the purpose of having young men trained was to fight the Government. He had to recruit such men to go and receive voluntary training outside the country.

He also knew Makitini and Johnson Makitini as a member of the A.N.C. He described that the reason why people went outside to train was for the purposes of furthering the objects of the African National Congress. I therefore find accused No. 2 to be proved guilty of the 20 crime charged.

Dealing with No. 3 individually, I have already mentioned how he is linked up, not only by the State witnesses, but by his own testimony in acknowledging the writing down of the details in this book. Clearly military matters, and clearly matters not obtained in the manner that he suggested. And the other requirements of the section in regard to him are also proved to my satisfaction beyond all reasonable doubt. He is also found guilty of the crimes charged.

Accused No. 4, 5, 6 and 7 can be dealt with as 30 one group. The documents speak volumes against them. They are seen on the photograph of the same group. Identified

by the State witnesses as members of the same group, attending the same training in Ethiopia. They are found travelling in the same buses and the same trains. Joined in tickets, and, what is more significant, travelling in the same clothing, carrying the same bags. These, the witnesses said, were issued to you before you left Ethiopia as a matter of acknowledgement in some way. And when asked by Mr. Ivey, you all spoke in one voice: that you went up to Tanganyika, or Nyasaland, to receive schooling, and that you were all going down to relatives and friends in 10 Bechuanaland.

Their evidence I reject as as false as the evidence of the other accused to whom I listened, who were most unconvincing in their testimony. In regard to them too, the evidence is clear that they were accepting military training outside South Africa, in furtherance of the purposes of the African National Congress or its affiliated body, the banned Umkonto Weziswa. In the circumstances therefore, they are also found guilty as charged.

PREVIOUS CONVICTIONS OF ACCUSED NOS. 1 TO 7 PROVED  
AND ADMITTED.

NO. 1 ACCUSED: Nothing to say in regard to sentence.

No. 2 ACCUSED: I am too sick and too old to go to  
gaol.

NO. 3 ACCUSED: I want you to treat our case as humanly,  
and you must try and make sure that the  
proceedings of the case are reviewed.

NO. 4 ACCUSED: Nothing to say in regard to sentence.

NO. 5 ACCUSED: In considering the sentence, just to  
consider us as human being citizens.

NO. 6 ACCUSED: Nothing to say in regard to sentence.

NO. 7 ACCUSED: In passing sentence over us I just ask  
Your Lordship to consider very carefully  
again the evidence given by those two  
witnesses who were with us.

DEUR DIE HOF AAN MNR. TERBLANCHE: Wat is die Staat-  
bepaling?---Die Staatbepaling is dieselfde as vir hoog-  
verraad. Dit is vervat in Artikel 11, Paragraaf 1 van  
die Wet.

Watter Paragraaf?---Paragraaf 1 Biz soos ingevoeg  
deur dieselfde Artikel, dis weer artikel 5 van Wet 37 van  
1963. Dis dieselfde as vir hoogverraad met dien verstande  
dat behalwe waar die dooivonnis opgelê word, die oplegging  
van gevangenisstraf vir 'n tydperk van minstens vyf jaar  
verplichtend is. Hetsy 'n ander straf ook opgelê word  
aldan nie, en dat daar met niemand by skuldigbevinding  
van so 'n misryk kragtens Artikel 342, 345 en 352 van  
die Verslagproses wet gehang word nie. Dit is dit mag  
nie opgeskort word nie. Hulle mag nie as leegdiges be-  
handel word nie.

BY THE COURT TO ACCUSED: Tell the accused that I take  
a very serious view of their conduct. I am not concerned  
with the Political aspect at all, I am dealing with the  
Law of the land as I find it. The Law of the Land is there

for the protection of its Citizens, one and all, and for people to conspire against the Law of the Government of the Land or endeavour to use violent means of imposing their will upon the existing authorities, and the body of the State, namely the Public, is in itself a very serious crime, and for People to go outside the Republic to undertake military training to achieve exactly that unlawful purpose, is a very serious crime. Misguided people these days commit serious crimes of sabotage, do damage to Public property, irrespective of the consequences. I do not propose passing sentence on them now. I would like to read the Section dealing with the sentence very carefully, so that I can tell them what it embraces, and I shall pass sentence at 4 o ' clock.

AT THIS STAGE THE COURT ADJOURNS,

UNTIL 4 O'CLOCK.

S E N T E N C E.

STATE versus HENRY FAZZIE and 6 OTHERS.

THERON, J:

As I mentioned to you yesterday, the crime of which you have been found guilty is considered a most serious crime, meriting a very severe sentence. I have considered in your case whether the appropriate sentence would not be the death sentence. I have come to the conclusion that it is not. The reason I have come to that conclusion is that the evidence clearly shows that you people were recruited by leaders of your organisation. You were herded together where mass psychology misled you, and you were misguided by your leaders, but it is obvious that you went out to seek training to return to this country, to do damage to the security and the safety of the state. By applying and practising the knowledge you gained there and the military training you acquired there, would be dynamite to the security and safety of the State, and the safety of the public in general. For that reason your crime that you committed merits a very severe sentence.

The sentence of the Court is that you shall EACH be imprisoned for TWENTY (20) YEARS.

THE COURT ADJOURNS.

IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

In the matter between:-

<u>HENRY FAZZIE</u>	No. 1	
<u>JAMES CHIRWA</u>	" 2	
<u>MATTHEWS MAKHALIMA</u>	" 3	
<u>MAXWELL MAYEKISO</u>	" 4	
<u>ERNEST MALGAZ</u>	" 5	
<u>JACK NDZUZU</u>	" 6	10
<u>ALFRED KHONZA</u>	" 7	
	APPLICANTS	10

- AND -

THE STATE RESPONDENT

---

TO THE JUDGE PRESIDENT AND OTHER HONOURABLE JUDGES OF THE  
ABOVE HONOURABLE COURT

---

P E T I T I O N

THE PETITION OF:- 20

<u>HENRY FAZZIE</u>	
<u>JAMES CHIRWA</u>	20
<u>MATTHEWS MAKHALIMA</u>	
<u>MAXWELL MAYEKISO</u>	
<u>ERNEST MALGAZ</u>	
<u>JACK NDZUZU</u>	
<u>ALFRED KHONZA</u>	

HUMBLY SHEWETH THAT:-

1. YOUR first Petitioner is HENRY FAZZIE, a bantu male at present imprisoned at Robben Island, CAPE PROVINCE. Your first Petitioner came from site and services, Port Elizabeth, Cape Province, where his family presently resides.

2. YOUR second Petitioner is JAMES CHIRWA, a Bantu male at present imprisoned at Robben Island, Cape Province. Your second Petitioner came from Nyasaland, where his family presently resides.

3. YOUR third Petitioner is MATTHEWS MOKHELE, a Bantu male at present imprisoned at Robben Island, Cape Province. Your third Petitioner came from site and services, Port Elizabeth, Cape Province, where his family presently resides.

4. YOUR fourth Petitioner is MARCEL MUYKALO, a bantu male at present imprisoned at Robben Island, Cape Province. Your fourth Petitioner came from Middeldrift, Cape Province, where his family presently resides.

5. YOUR fifth Petitioner is ERNEST MALGAZ, a Bantu male at present imprisoned at Robben Island, Cape Province. Your fifth Petitioner came from New Brighton, Port Elizabeth, Cape Province, where his family presently resides.

6. YOUR sixth Petitioner is JACK NDZUZO, a Bantu male at present imprisoned at Robben Island, Cape Province. Your sixth Petitioner came from New Brighton, Port Elizabeth, Cape Province, where his family presently resides.

7. YOUR seventh Petitioner is ALFRED KHONZA, a Bantu male at present imprisoned at Robben Island, Cape Province.



Your seventh Petitioner came from New Brighton, Port Elizabeth, Cape Province, where his family presently resides.

8. On the 23rd September 1963, your Petitioners were jointly charged in the above Honourable Court before the Honourable Mr. Justice Theron, with the offence of contravening section 11(b) ter of Act No.44 of 1950, as amended, the allegations against them being that :-

"Being persons who are or were resident in the Republic, and during the period 27th July 1962 10  
to 18th January 1963, and at Da-bra-zid, 10  
Ethiopia, a place outside the Republic, and  
within the jurisdiction of the Transvaal  
Provincial Division of the Supreme Court of  
South Africa in terms of section 12 (6) (b) of  
Act 44 of 1950 did wrongfully and unlawfully  
undergo training of a military nature, which  
could be of use in furthering the achievement  
of the objects of the African National Congress,  
an organisation which has been declared to be 20  
an unlawful organisation under the Unlawful 20  
Organizations Act, 1960 (Act No. 34 of 1960)!"

9. The trial continued for a number of days and on the 30th September 1963, the said Judge found all your Petitioners guilty of the said charge. On the 1st day of October 1963, each of your Petitioners was sentenced to serve a period of imprisonment of twenty years.

10. YOUR Petitioners failed to make any application for leave to appeal against their convictions and sentences 30  
within the time limits prescribed, and your Petitioners 30  
now seek to obtain condonation of their failure to do so

timeously, and are desirous of applying for leave to bring the application set out in the Notice of Application which is hereunto annexed marked "A".

11. YOUR Petitioners were unrepresented at the trial, and as will be more fully set out below have been in custody since the 26th January 1963 when they were arrested at Bulawayo, Southern Rhodesia, and thereafter handed over to the South African Police at Beit Bridge on the 28th January after being brought to the Republic. 10

They were kept in custody at various police cells at Pretoria, and on the 1st and 2nd April 1963, they were all charged in the Regional Court Pretoria in terms of section 2 of Act No.34 of 1955 with leaving the Republic without being in possession of valid passports or permits. 10

all your Petitioners, with the exception of the second Petitioner, were convicted in the Regional court, and they were each sentenced to a period of imprisonment of two years. They have remained in custody ever since that time. Your second Petitioner, although he was found not guilty and discharged, was immediately re-arrested, and has also been in custody since that date. 20 20

12. YOUR Petitioners were asked whether they wished to write letters home to their parents and families and they all elected to do so. None of them have, however, received any replies thereto, and your Petitioners have not been able to ascertain whether any of the letters in fact reached their intended destinations. On the contrary, it appears that a certain letter written by your first Petitioner on the 12th August 1963 was never despatched by the person to whom it was handed, warrant Officer Strumpher, 30 30

but was retained by him and was produced as an exhibit during the above trial (Exhibit 1 - k) as proof of the handwriting of your First Petitioner. Your first Petitioner would point out that this letter was written by him at the invitation of the said Warrant Officer Strumpher. To the best of your Petitioners knowledge and belief none of their families ever heard from them at any stage prior to the abovementioned trial which commenced on the 23rd September 1963, and were therefore unable to make any arrangements in regard to their defences.

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13. On the 3rd September 1963, your Petitioners were brought before a Magistrate's Court in Pretoria, on which day an Indictment dated the 29th August 1963 were served upon them in terms of which they were charged as set out in paragraph 8 above, and the Magistrate remanded the matter for trial in the Supreme Court on the 23rd September 1963. This was the first notification which your Petitioners received of the fact that they were to be tried on such a charge and of the date of trial.

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The Magistrate was asked by your Petitioners to arrange for lawyers to represent them, and he directed the matter to be brought to the attention of the Prisoners Friend who took the name of your first Petitioner, and who was requested to telephone attorney Joel Carlson of Johannesburg.

14. WHEN your Petitioners returned to gaol on that day they asked permission to write to other lawyers, and were given permission to write as follows:-

30

1st Petitioner to James Kantor and Partners  
2nd, 3rd and 4th Petitioners to G.M. Pitje.  
5th Petitioner to attorney Lukhele  
7th Petitioner to R.A. Bhoolia.

Your second Petitioner wrote a letter to his family in Nyasaland. Notwithstanding that the request for legal representation was made through the Prisoners Friend and the abovementioned letters were written to the abovementioned attorneys, your Petitioners received no replies whatsoever thereto and were not visited in prison by any legal representative whatsoever.

Your Petitioners would respectfully point out, that apart from taking the abovementioned steps to obtain representation, they were not in a position to take any other or further steps in this regard since they were kept in solitary confinement in prison, were not visited by any family, (none of whom in any event resided in the Transvaal) or friends, and had no funds available to them with which to provide for their defences. Your Petitioners were under the firm belief that the letters written by them would meet with some response from one or other of the persons to whom they were addressed, and in particular that the Defence and Aid Fund would be able to provide for their defences.

15. WHEN your Petitioners were brought to Court on the 23rd September 1963, there was neither an attorney nor any Counsel present to represent any of them and they did not consider that they were themselves sufficiently capable or prepared to conduct their own defences.

16. AT the commencement of the proceedings the Prosecutor addressed the Court and requested the learned Judge to direct that the trial be held behind closed doors in terms of section 156 (4) of the Criminal Procedure Act. He advanced certain reasons for this application, and the learned Judge after hearing his submissions asked your

Petitioners whether they had any objections to such a procedure being adopted. Your first, third, fourth and seventh Petitioners objected to the trial being heard behind closed doors, your fifth and sixth Petitioners did not wish to say anything until they had consulted a legal adviser in that regard, and your second Petitioner left the matter in the hands of the Court. The learned Judge, thereupon allowed the application in the following terms:-

"I am satisfied that if this matter were to be tried in open Court as ordinary criminal cases are done, there is not only the likelihood but a very strong probability that the interests of the State would be harmed. The interests of the individual are subservient to the interests of the State which is paramount. In the circumstances I order that this trial be held in camera!"

17. The question of your Petitioners legal representation then arose for consideration, and your Petitioners were informed that none of the persons to whom they had written or with whom the Prisoners Friend had communicated were able or prepared to undertake the defence on their behalf. These facts were placed before the said Judge, who after considering the matter directed that the trial proceed forthwith, and called upon your Petitioners to plead. He directed the Registrar, however, to communicate with Attorneys Pitje and Bhoolia and also with the Defence and Aid Fund in order again to ascertain whether arrangements could be made for their defence, and stated that if such persons were prepared to undertake the defence they would be allowed to make arrangements and Counsel, when appointed,

would be given certain consideration should he apply for any such consideration.

18. YOUR Petitioners were called upon to plead to the charge, but your first Petitioner elected not to plead, and a Plea of not guilty was then entered. Your second Petitioner also elected not to plead, but when told by the learned Judge that he was compelled to plead, he pleaded not guilty. Pleas of not guilty were entered on behalf of your third and fourth Petitioners, and in respect of your fifth and sixth Petitioners, who elected not to plead before legal 10 advice had been taken, pleas of not guilty were entered. Your seventh Petitioner did not wish to plead until he had obtained legal advice, but after an exchange between himself and the learned Judge, the latter stated that the question of whether the case was to proceed then or be postponed was a matter for his discretion and that your seventh Petitioner should not query the law. The learned Judge however stated, that it seemed to him that your seventh Petitioner was endeavouring to delay the proceedings. In the circumstances he would not hear them any further on the question of 20 representation and accordingly entered a plea of not guilty in respect of your seventh Petitioner.

19. AFTER the luncheon adjournment on that day, your Petitioners were informed by the said Judge, who had apparently been so informed by the Registrar, that the Defence and Aid Fund had been contacted and were not prepared to handle the matter, attorney Pitje was not prepared to appear at such short notice, and attorney Bhoolia had given a similar reply. In the circumstances the trial proceeded, 30 but the said Judge stated that should your Petitioners at a later stage be able to make the necessary arrangements for

their defence, he would re-consider the position. At the end of the days hearing your Petitioners were also informed that attorney Carlson was not prepared to undertake their defence.

20. YOUR Petitioners in these circumstances were unable to take any further steps to arrange for a defence. The trial thus proceeded with your Petitioners being unrepresented and continued until the 1st October 1963 during which period the State led the evidence of twenty-four witnesses and all the accused gave evidence in their defence. The record of the evidence runs into 299 pages and the Judgment into 22 pages and there was, in addition, a considerable number of documentary exhibits admitted in evidence. 10

21. AFTER your Petitioners had been convicted, three of them (namely the second, fourth and fifth Petitioners) wrote letters dated the 4th October 1963 to attorney Pitje. Copies of the said letters are hereunto annexed marked "B" and "C" respectively. Your Petitioners have been advised that in response to these letters the said Attorney Pitje, who was unable or unprepared to act in the matter, handed the letters to the Defence and Aid Fund which organisation had, as already mentioned previously, declined to act in the matter. Your Petitioners are now informed that the Committee of the said Defence and Aid Fund gave the matter its careful consideration, re-considered its previous decision, and agreed to assist your Petitioners in regard to the question of a possible appeal against their convictions and sentences. 20 20 30

The said Fund on the 21st October 1963 instructed attorney J. Joffe to obtain a copy of the record, to interview your Petitioners in order to obtain statements, 30

and to consider the question of proceeding with an appeal against the convictions and sentences.

22. As will appear more fully from the Affidavit of the said attorney Joffe annexed hereto marked "D", he immediately instructed his Pretoria Correspondent to obtain a copy of the record of the trial, and was advised by the said correspondent that the Registrar required to know the reason for which the said record was required. On the following day the said Joffe wrote a letter to the Registrar, a copy of which is annexed to his Affidavit, requesting 10 permission to obtain sight of the record, and he was advised the following day that it would be permissible for him to obtain a copy of the record. He thereupon communicated with the shorthand writer and ordered the record as a matter of urgency.

The first portion of the record was received by him on the 1st November 1963, and thereafter during November, a second portion of the record was furnished to him. The remaining portion of the record was, however, received by him only on the 3rd December 1963, but none of 20 the documentary exhibits were furnished and he has not to date received them.

On the 4th November 1963 the said attorney Joffe consulted with your Petitioners for the first time, and your Petitioners would respectfully point out, that this was the first occasion on which they had consulted with a legal representative since the date on which the indictment was served on them. At this stage it was already too late for your Petitioners to make an application for leave 30 to appeal, or for leave to reserve any questions of law, more than fourteen days having elapsed from the date on which they were convicted and sentenced.



As appears from the two letters being annexures "B" and "C" hereto, it is clear that your Petitioners were at all times anxious that the proceedings should in some manner be reviewed, but your Petitioners were naturally ignorant of the exact procedure to be followed, the legal intricacies thereof, and the time limits which applied. The fact that no application had until that stage been brought before the Court was certainly no fault of your Petitioners.

23. Your Petitioners' said attorney, Mr. J. Joffe, 10 was only instructed by the Defence and Aid Fund after the 14 time limits for noting an appeal and for the reservation of questions of law had already elapsed, but your Petitioners respectfully submit, that having received his instructions he acted as expeditiously as possible in obtaining a copy of the record, obtaining statements from your Petitioners, and in taking the necessary steps to make the necessary application for condonation which is now being sought in this Petition.

Your Petitioners are advised, and it will appear 20 from the Affidavit of the said Joffe, that on the 5th December 20 1963 the said Joffe instructed Counsel with a copy of the record to consider the question of an application for condonation.

24. Your Petitioners however, submit, that in bringing this application for condonation, their representatives have acted expeditiously as was reasonably possible in the circumstances, having regard particularly to the length of the record and the fact that it was only possible to commence work thereon after the 3rd December 30 1963. 30

25. YOUR Petitioners submit that the failure to make the application for leave to appeal and leave to reserve questions of law within the time limits prescribed was not occasioned through any fault of theirs, and they submit further that their rights in regard to the said applications should not, in the circumstances, be allowed to be prejudiced.

26. YOUR Petitioners make the following submissions in regard to the merits of the application for leave to appeal and to reserve questions of law, as set out in the Notice of Application being annexure "A" hereto. 10

27. A Special questions of law reserved:-

(i) Section 11(b) ter:

It is submitted that the enactment of retrospective penal legislation of so drastic a nature as Section 11(b) ter of Act No.44 of 1950 which was enacted in Section 5 of Act No.37 of 1953, represents a radical departure from the ordinary and usual principles of our criminal law and that the legislature should, therefore, if it intended the legislation to have retrospective effect have enacted it in the clearest possible terms. It is submitted that this Section is ambiguous and is not clearly retrospective since it is not explicitly stated that it is to be retrospective in its effect, but simply that "at any time after the commencement of this Act" leaving it uncertain as to whether this means the commencement of the Principal Act (No.44 of 1950) which came into operation on the 25th June 1950 or the amending Act No.37 of 1953. It is submitted that in the light of the ambiguity which exists and the presumption against retrospectivity, the learned Judge should have held that the alleged conduct of your 20 20 30 30

Petitioners was not covered by the said Section 11(b) ter. In fact, at no stage in his Judgment, did the learned Judge even consider the possibility that this section might not be retrospective in its operation.

(ii) Section 12 (6) (b):

Your Petitioners submit that the meaning of section 12(6) (b) of act No.44 of 1950, which was relied upon by the state in order to establish the jurisdiction of the above Honourable Court to try your Petitioners is not clear, and that a reasonable doubt existed as to whether the above Honourable Court in fact had jurisdiction. In this regard your Petitioners say that the words:-

" also at any place where the accused happens to be"

in the said section are vague and uncertain in their meaning, and have regard to the fact that your Petitioners were all arrested outside the jurisdiction of the above Honourable Court, and in fact outside the Republic of South Africa and brought into the jurisdiction of the above Honourable Court in custody and against their will, it is uncertain as to whether the above Honourable Court had jurisdiction to try your Petitioners.

B. Sentence :

Your Petitioners respectfully say, that a sentence of twenty years each in addition to the previous sentence of two years each passed on all of them (with the exception of your second petitioner), is a grossly excessive and unreasonable sentence notwithstanding that the learned Judge found that the safety and the security of the State would have been threatened by the alleged proposed conduct of your Petitioners.

Your Petitioners would respectfully refer the above Honourable Court to the fact, that the Regional Magistrate in imposing a sentence of two years imprisonment on them (with the exception of your second Petitioner) on the 2nd April 1963, felt obliged to impose the maximum sentence of two years imprisonment for that offence for the very same reasons which motivated the learned Judge to impose a sentence of twenty years imprisonment.

Reference was made during the course of the trial in the above Honourable Court to the trials of your 10  
Petitioners which was held in the Regional Court in April 1963 and to the sentences imposed upon your Petitioners (with the exception of the second Petitioner) in that Court, and for this reason your Petitioners submit that they are entitled to refer the above Honourable Court to the Judgment of the said Regional Magistrate in passing the said sentences of two years imprisonment, a copy of which Judgment is hereunto annexed marked "E". Your Petitioners submit that the above Honourable Court in imposing a sentence of twenty years imprisonment should have had regard to the previous sentence 20  
imposed on your Patitioners (with the exception of the second Petitioner), but that it failed to do so.

Your Petitioners would further point out that the sentences imposed on them by the above Honourable Court was excessive more particularly, in that, at the time at which the alleged conduct took place such conduct did not constitute an offence, but that it was only made an offence by subsequent legislation which purported to be retrospective in its operation, and your Petitioners therefore submit, that in so far as an assessment of their criminal 30  
responsibility is concerned, the fact that their alleged

conduct did not constitute an offence at the time it was carried out is a relevant and material factor which the learned Judge should have taken into consideration when imposing sentence.

C. Regarding your Second Petitioner :

The position of your second Petitioner is different from that of your other six Petitioners in so far as your second Petitioner is from Nyasaland, having been born there, and is not a South African. The onus rested on the State to prove beyond reasonable doubt that your second Petitioner was or had been resident in South Africa. In your second Petitioner's submission, the State failed to establish more than that your second Petitioner had been in South Africa and had attempted to obtain permission to remain and work in South Africa, but that he had been unsuccessful in his attempts to obtain such permission. In this regard your second Petitioner respectfully refers to the following evidence:-

- (a) The witness G.S. NIEUWOUDT which appears from line 10, page 33 of the record to line 20 of page 35 of the record which portion of the record your second Petitioner annexes hereto marked "F".
- (b) The evidence of F.B. SMITH which appears from pages 243 to 246 of the record, which portion of the record your Petitioner annexes hereto marked "G".
- (c) The evidence of your Second Petitioner himself, and in particular :-
  - Page 225, lines 21 - 31
  - " 226, lines 1 -12 and 21 - 32
  - " 227, lines 1 - 19

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Page 230, lines 24 - 27

" 231, lines 31 and 32

" 235, lines 1 - 8

" 237, line 10 - 16

" 243, lines 1 - 7

Your second Petitioner Further submits that even if it is held that the State established that he did at some time work in the Republic, it has not established that he was resident within the Republic as required by section 11(b) ter. Your Petitioner further submits that the said learned Judge in dealing with this question failed to give full and proper consideration to the question of your second Petitioner's residence in the Republic, and that a reasonable prospect exists that an Appeal Court might hold that the state had not established the necessary residence qualification on the part of your second Petitioner sufficient to obtain a conviction against him in terms of the said Section. Your Petitioner annexes hereto marked "I" the relevant extracts from the learned Judge's Judgment appearing on pages 12, 13 and 19 thereof.

28. IN order to avoid unnecessary delay and unnecessary expense, your Petitioners would respectfully request the above Honourable Court, should it be disposed to grant condonation as prayed for in this Petition, to hear argument on the application for leave to Appeal and for leave to reserve questions of law, at the same time as hearing this application.

WHEREFORE your Petitioners humbly pray that it may please the above Honourable Court to grant an Order:- 30

- (a) Condoning the late noting by them of an Application for leave to Appeal and for

Leave to Reserve Questions of Law in the terms and on the basis set out in annexure "A" to this Petition;

(b) For leave to file a Notice of Application in the form set out in the said annexure "A" to this Petition;

(c) Other or alternative relief;

AND YOUR PETITIONERS AS IN DUTY BOUND WILL EVER HUMBLY PRAY.

10

TO : THE REGISTRAR  
OF THE ABOVE  
HONOURABLE COURT

(Sgnd) HENRY FAZZIE  
FIRST PETITIONER

(Sgnd) JAMES CHIRWA  
SECOND PETITIONER

(Sgnd) MATTHEWS MAKHALIMA  
THIRD PETITIONER

(Sgnd) MAWELL MAYEKISO  
FOURTH PETITIONER

(Sgnd) ERNEST MALGAZ  
FIFTH PETITIONER

(Sgnd) JACK NDZUZO 20  
SIXTH PETITIONER

(Sgnd) ALFRED KHONZA 20  
SEVENTH PETITIONER

BEFORE ME: (Sgnd) ?

COMMISSIONER OF OATHS

ATTORNEY, CAPE.

30

30

VERIFYING AFFIDAVIT

I, the undersigned,

HENRY FAZZIE

do hereby make oath and say:-

- 1. THAT I am the first Petitioner in this matter. 10
- 2. THAT I have read the foregoing Petition and annexures, and the facts therein are within my knowledge and to the best of my knowledge and belief true and correct. 10

(Sgnd) HENRY FAZZIE

The deponent has acknowledged that he knows and understands the contents of this Affidavit. 20

THIS SIGNED AND SWORN TO AT ROBBER ISLAND ON THIS THE 27TH DAY OF DECEMBER 1963, BEFORE ME

(Sgnd) ? 20

---

COMMISSIONER OF OATHS  
ATTORNEY, CAPE.

30

30



10 CENT STAMP

VERIFYING AFFIDAVIT

I, the undersigned,

JAMES CHIRWA

do hereby make oath and say:-

- 1. THAT I am the second Petitioner in this matter. 10
- 2. THAT I have read the aforegoing Petition and annexures, and the facts therein are within my knowledge and to the best of my knowledge and belief true and correct. 10

(Sgnd) JAMES CHIRWA

The deponent has acknowledged that he knows and understands the contents of this Affidavit. 20

THUS SIGNED AND SWORN TO AT ROBBERN ISLAND ON THIS THE 20  
27TH DAY OF DECEMBER 1963, BEFORE ME:

(Sgnd) ?  
COMMISSIONER OF OATHS  
ATTORNEY, CAPE.

10 CENT STAMP

VERIFYING AFFIDAVIT

I, the undersigned,

MATTHEWS MAKHALIMA

do hereby make oath and say:-

- 1. THAT I am the third Petitioner in this matter. 10
- 2. THAT I have read the foregoing Petition and annexures, and the facts therein are within my knowledge and to the best of my knowledge and belief true and correct. 10

(Sgnd) MATTHEWS MAKHALIMA

20

The deponent has acknowledged that he knows and understands the contents of this Affidavit.

20

THUS SIGNED AND SWORN TO AT ROBBER ISLAND ON THIS THE 27TH DAY OF DECEMBER 1963, BEFORE ME:

(Sgnd) ?  
COMMISSIONER OF OATHS  
ATTORNEY, CAPE.

130

30

VERIFYING AFFIDAVIT

I, the undersigned,

MAXWELL MAYEKISO

do hereby make oath and say:--

- 1. THAT I am the fourth Petitioner in this matter. 10
- 2. THAT I have read the foregoing Petition and annexures, and the facts therein are within my knowledge and to the best of my knowledge and belief true and correct. 10

(Sgnd) MAXWELL MAYEKISO

The deponent has acknowledged that he knows and understands the contents of this Affidavit. 20

THUS SIGNED AND SWORN TO AT ROBBER ISLAND ON THIS THE 27TH DAY OF DECEMBER 1963, BEFORE ME: 20

(Sgnd)           ?  
COMMISSIONER OF OATHS  
ATTORNEY, CAPE.

10 CENT STAMP

VERIFYING AFFIDAVIT

I, the undersigned,

ERNEST MALGAZ

do hereby make oath and say:-

- 1. THAT I am the fifth Petitioner in this matter. 10
- 2. THAT I have read the aforegoing Petition and annexures, and the facts therein are within my knowledge and to the best of my knowledge and belief true and correct. 10

(Sgnd) ERNEST MALGAZ

The deponent has acknowledged that he knows and understands the contents of this Affidavit. 20

THUS SIGNED AND SWORN TO AT ROBBER ISLAND ON THIS THE 27TH DAY OF DECEMBER 1963, BEFORE ME: 20

(Sgnd) ?  
COMMISSIONER OF OATHS  
ATTORNEY, CAPE.

10 CENT STAMP

VERIFYING AFFIDAVIT

I, the undersigned,

JACK NDZUZO

do hereby make oath and say:-

- 1. THAT I am the sixth Petitioner in this matter. 10
- 2. THAT I have read the foregoing Petition and annexures, and the facts therein are within my knowledge and to the best of my knowledge and belief true and correct. 10

(Sgnd) JACK NDZUZO

The deponent has acknowledged that he knows and understands the contents of this Affidavit. 20

THUS SIGNED AND SWORN TO AT ROBBERN ISLAND ON THIS THE 27TH DAY OF DECEMBER 1963, BEFORE ME: 20

(Sgnd) ?

COMMISSIONER OF OATHS  
ATTORNEY, CAPE.

10 CENT STAMP

VERIFYING AFFIDAVIT

I, the undersigned,

ALFRED KHONZA

do hereby make oath and say:-

1. THAT I am the seventh Petitioner in this matter.
2. THAT I have read the foregoing Petition and annexures, and the facts therein are within my knowledge and to the best of my knowledge and belief true and correct.

18

(Sgnd) ALFRED KHONZA

20

The deponent has acknowledged that he knows and understands the contents of this Affidavit.

THUS SIGNED AND SWORN TO AT ROBBERN ISLAND ON THIS THE 27TH DAY OF DECEMBER 1963, BEFORE ME:-

(Sgnd) ?

COMMISSIONER OF OATHS

ATTORNEY, CAPE.

30

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

In the matter between:-

<u>HENRY FAZZIE</u>	No. 1	
<u>JAMES CHIRWA</u>	2	
<u>MATTHEWS MAKHALIMA</u>	3	
<u>MAXWELL MAYERISO</u>	4	
<u>ERNEST MALGAZ</u>	5	
<u>JACK NDZUZO</u>	6	10
<u>ALFRED KHONZA</u>	7	10
	APPLICANTS	
- and -		
<u>THE STATE</u>	RESPONDENT	

---

NOTICE OF APPLICATION

- A. For the Reservation of questions of Law in terms of section 366 (1) of Act No.56 of 1955, as amended;
- B. For Leave to Appeal in terms of section 363 (1) of Act No.56 of 1955, as amended; 20
- BE PLEASED TO TAKE NOTICE that application will be made on a date to be fixed with the Respondent for the following relief arising out of the convictions of and sentences imposed upon the above-mentioned applicants in the above Honourable Court by the honourable Mr. Justice Theron on the 30th September 1963, and the 1st October 1963.

- A. IN RESPECT OF ALL THE APPLICANTS 30
1. For questions of law to be reserved for the consideration of the Court of Appeal in terms of section 366 (1) of act no.56 of 1955, as amended, in that - 30

(a)

The allegations made against the applicants which formed the basis of the charge in terms of Section 11(b) ter of Act 44 of 1950, as amended, related to the period 27th July 1962 to the 18th January 1963, which was prior to the enactment of the abovementioned section which was enacted in section 5 of Act No.37 of 1963, signed by the State President on the 1st May 1963, and Gazetted in the Government Gazette No.488 of the 2nd May 1963. 10

The questions of law reserved is whether the provisions of the abovementioned section 11(b) ter are of retrospective effect so as to render the applicants liable for acts committed prior to the enactment thereof. 10

(b)

The applicants were arrested in Bulawayo Southern Rhodesia, were brought into the jurisdiction of the above Honourable Court while in custody and were charged in respect of acts alleged to have been committed at Da-bra-zid Ethiopia, a place outside the Republic and out of the jurisdiction of the Transvaal Provincial Division of the Supreme Court of South Africa, in terms of section 12 (6) (b) of Act No.44 of 1950. 20 20

The questions of law reserved is whether the provisions of the abovementioned Section 12(6) (b) are sufficiently clear and explicit in their terms so as to provide the above honourable Court with jurisdiction to try the applicants. 30 30



B

IN RESPECT OF ALL THE APPLICANTS  
(with the exception of applicant No.2) ||

For leave to appeal against the sentence of twenty years imprisonment imposed upon each of the above-mentioned applicants on the grounds that such sentences were in the circumstances excessive and unreasonable, having regard particularly to the following facts:-

- (i) That the applicants had already been charged with and convicted of the offence of leaving the Republic without a valid passport or permit in terms of section 2 of Act No.34 of 1955, and were each sentenced to the maximum of two years imprisonment imposable in respect thereof; 10 10
- (ii) The Regional Magistrate in imposing the above-mentioned sentence of two years imprisonment was motivated by the fact that the applicants had left the Republic for the purpose of undergoing military training.
- (iii) section 11(b) ter, under which the applicants stood charged before the above Honourable Court, was only enacted after the commission of the acts which the applicants were alleged to have committed, but purported to be retrospective in its operation; 20 20
- (iv) The applicants were arrested outside of the Republic, and there was no evidence that they would necessarily have returned to the Republic and make use of the training and the information which they were alleged to have undergone and acquired. 30 30

C.

IN RESPECT OF APPLICANT NO."2"

For leave to appeal against his conviction and sentence on the abovementioned charge under section 11(b) ter read with Section 12(6) of Act No.44 of 1950, as amended, on the following grounds:-

- (i) That the state failed to prove beyond reasonable doubt that the said applicant No.2 was or had been resident in the Republic as required by Section 11(b) ter;
- (ii) as regards the sentence of twenty years imprisonment imposed upon him on the grounds 10 set out in Paragraph B above, but excluding sub-paragraphs (i) and (ii).

-----

ANNEXURE " B "

4 x 63

appeal for Review

G.M. Pitje Albrecht Building,  
corner President & Fraser Street,  
JOHANNESBURG.

Dear Sir,

We were sentenced to twenty years (20 yrs)  
by the Transvaal Supreme Court. 10

It being alleged that we underwent  
training of military nature with the aim of carrying out  
the objects of a banned organisation, the "African National  
Congress". We intend taking the matter on review on the  
ground of gross irregularity in the proceedings, and we  
should be pleased if you would kindly call to see us  
immediately you receive this letter.

Yours faithfully,

JAMES CHIRWA AND

MAXWELL MAYEKISO 20

Our Jail No.9121/63

James Chirwa

6901/63 Maxwell Mayekiso

ANNEXURE " C "

4 x 63

appeal for review

G.M. Pitje

Albrecht Buildings

cor. President Fraser Street

JOHANNESBURG.

Dear Sir,

I have been sentenced on the 1st October 1963, for a period of twenty years imprisonment. ①①

In this case I have been charge under the Suppression of Communism Act of 1950 with undergoing training of military nature with the aim of furthering the objects of a banned organisation the "African National Congress". I will be very pleased Sir, if on receiving this letter you will call in this prison immediately because I wasnot satisfied by the Court proceedings and the way the case was being handled, I have been sentenced in the Transvaal Supreme Court on the above date, so I want the proceedings of my case to be reviewed. 20

Yours faithfully,

ERNEST MARGAS

My jail number is 6902/63

ANNEXURE " D "

IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

In the matter between:-

<u>HENRI FAZZIE</u>	No.1	
<u>JAMES CHIRWA</u>	2	
<u>MATTHEWS MAKHALIMA</u>	3	
<u>MAXWELL MAYEKISO</u>	4	
<u>ERNEST MALGAZ</u>	5	
<u>JACK NDEUZO</u>	6	10
<u>ALFRED KHONZA</u>	7	10
	APPLICANTS	

- and -

<u>THE STATE</u>	RESPONDENT
------------------	------------

A F F I D A V I T

I, the undersigned,

JOEL GOODMAN JOFFE

do hereby make oath and say that :- 20

1. I am an attorney of the above Honourable Court practising as such at 2nd Floor, Provident Assurance House, Corner Simmonds and Commissioner Streets, Johannesburg. 20

2. On the 21st day of October 1963, I was instructed by an organisation known as Defence and Aid Fund of Johannesburg to obtain a copy of the record of the trial of the abovementioned applicants, to interview and obtain statements from the said applicants at Leeukop Prison, and to consider the question of making application for leave to appeal 30

against their convictions and sentences by the above Honourable Court on the 30th September 1963 and 1st October 1963.

3. I immediately communicated with my Pretoria correspondent, an Attorney N. Levy of the firm of Austin and Goudvis, and instructed him to obtain a copy of the record. I was informed by him that the Registrar's office was reluctant to furnish the record and wished to know the reasons for the request for the record. I thereupon addressed a letter dated the 22nd October 1963, a copy of which is hereunto annexed, to the Registrar of the above Honourable Court, and in response to this letter was informed on the 23rd October 1963 that it would be in order for me to obtain a copy of such record. 10

I thereupon immediately telephoned Mrs. Viljoen, the person in charge thereof, and requested her to let me have a copy of the record at her earliest convenience as a matter of urgency. 20

4. On the 1st November 1963, I received the first portion of the record. 20

5. On the 4th November 1963, I attended at Leeuwkop Prison, district Bryanston, where I interviewed the abovementioned applicants and obtained statements from them.

6. During the course of November I received a second portion of the record but on the 20th November 1963, not having received the balance of the record, I telephoned the said Mrs. Viljoen, who promised to furnish me with the balance of the record by the end of that week. 30

7. The last portion of the record was received by me only on the 3rd December 1963 but none of the documentary exhibits were at any stage furnished to me. On the 5th December 1963 I instructed Counsel with a copy of the record and the statements which I had obtained from the applicants, and requested him to consider the advisability of proceeding with an application for condonation of the late noting of an application for leave to appeal, and with an application for leave to appeal. 10

8. Owing to extreme pressure of work I felt unable to continue to handle this matter myself and for this reason requested the said Defence and Aid Fund to relieve me of the matter and to obtain the services of another firm of attorneys, since I felt that it would be in the interests of the applicants if the matter was handled by another firm of attorneys who had the time and the staff to deal with the matter.

9. On the 7th December 1963, I was informed that attorney Nat. Bregman, the present attorney in this matter, was prepared to act. 20

(Sgnd) J.G. JOFFE

SIGNED AND SWORN TO at JOHANNESBURG this 19th day of DECEMBER 1963, the Deponent having acknowledged that he knows and understands the contents of this affidavit, before me :

(Sgnd (E. Singer))

COMMISSIONER OF OATHS

ATTORNEY - TRANSVAAL.

22nd October 1963.

The Registrar of the Supreme  
Court of South Africa,  
Transvaal Provincial Division,  
Palace of Justice,  
PRETORIA.

ATTENTION MR. EHLERS.

Dear Sir,

RE: THE STATE VERSUS H. FAZZID,  
J. CHIRWA AND 5 OTHERS

I wish to advise that I have been instructed  
to act on behalf of the accused in this matter with a view 10  
to applying for the conviction and sentence to be set aside.

I understand that for security reasons you  
are reluctant to provide me with a copy of the record which  
I must obviously obtain before I can take the necessary  
steps.

I am unaware of any basis upon which I can  
be prevented from perusing the record or obtaining a copy  
thereof, and I would ask you as a matter of the greatest 20  
urgency to let me know whether or not I can have immediate  
sight of the record, and if not, what legal basis you have 20  
for denying me access to the record.

Yours faithfully,

(Sgnd) J.G. JOFFE

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ANNEXURE " E "

JUDGMENT OF REGIONAL MAGISTRATE

IN RE :

THE STATE VERSUS HENRY FAZZIE

SENTENCE :

Tell the accused the offence of which they are convicted is a fairly serious one. It is punishable by imprisonment for a maximum period of two years. It is one of a class of offences relating to maintenance of law and order and the protection of the State generally. Judging by ~~the~~ maximum penalty and by the evil consequences of a contravention which it must be assumed that the Legislature envisaged, it seems to me clear that the Court are obliged to regard this offence as a serious one. The Court in fixing punishment in this case takes into consideration the serious nature of the offence, the circumstances under which it was committed and the degree of deliberation shown and it has come to the conclusion that they are not entitled to a suspended sentence in this case. I do not think a lenient sentence would deter them in this case. Some of the accused, we have just heard - that is by way of Major Van Niekerk, admitted to him that they were members of the league of the A.N.C., which is a banned organisation, that they left the Republic for specific purpose, that is they underwent military training including instruction in sabotage at a Camp in Ethiopia. It has also been revealed here in evidence that they were trained in handling firearms, bombs, hand grenades, radio equipment and camouflage.

This evidence as a whole reveals without a doubt that the accused's main object was to do this Government in the Republic harm, to overthrow it, that is the only conclusion that one can come to and to overthrow it by unlawful means.

-----The-----/

the only conclusion that one can come to and to overthrow it by unlawful means. The deliberate and defiant manner in which the accused committed the offence is in itself an aggravated circumstances, for it was shown that there was a very carefully, impertinent and premeditated scheme upon which they had embarked. How else is the seriousness of contraventions of this nature to be impressed upon wrong doers unless it is visited with punishment that will eter them in some way or another. The accused should be made to realise that we are living under trying circumstances 10 and that these laws are specially designed to maintain law and order. They must be taught to abide by these laws, otherwise anarchy would reign.

There can be no doubt that the accused's actions are of a kind calculated to inspire alarm. They manifest without a doubt a mischievous disposition.

It is also clear that defiance of the law in this manner is the surest way to tyranny and destruction, if they were allowed to continue as they are doing now.

In determining the accused's sentence the 20 Court has to take everything into account, everything that would adversely affect them. Many people now a days seem to think that they type of offenders should receive preferential treatment, because of its political nature. I do not think so.

I would be making a ridicule of the law if I treated your crime in this instance leniently. The whole country is riddled with this sort of thing. One is only to look in the Press to see confirmation of this. I conceive it the duty of the Court to punish with severity occurrences such as these, which ought not to take place. If you choose 30 to continue in this fashion then you must not complain when the law steps in and treats you harshly.

Each of you two (2) years imprisonment.

ANNEXURE " F "

EXTRACT OF EVIDENCE G.S. NIEUWOUDT

FROM LINE 10, PAGE 33 OF THE RECORD

TO LINE 20 OF PAGE 35 OF THE RECORD.

Kan die twee saam gemerk word as 1M? Ek handig u 'n tweede stel vingerafdrukke in wat u ook van speurder konstabel Delport ontvang het. --- Ek het dit ontvang.

10

En het u dit ook vergelyk met die rekords in u kantoor? ---- Ek het Edelagbare.

10

En wat het u gevind ? ---- Ek het gevind dat dit identies is met 'n sekere persoon se vingerafdrukke.

Wat is die naam van die persoon ? ---

James Chirwa.

Nou die informasie wat u daar het, deur wie word dit verstrek? ---- deur die persoon vrywillig, indien hy aansoek doen om 'n bewysboek of 'n herkenningbewys.

Nou wat was in hierdie geval aan die persoon uitgereik? ---- 'n Herkenningbewys. // *Heuser*

20

Nommer?--- X 83024, uitgereik te Benoni op die 17de April 1961. | *Heuser*

20

waarom is aan hom 'n erkenningbewys uitgereik? ---- Hy is nie in die Republiek van Suid Afrika gebore nie. *System*

Onder watter omstandighede kan 'n persoon so 'n erkenningbewys aan hom uitgereik kry? --- - Indien hy werkzaam is in die Republiek, met permissie.

Werkzaam en woonagtig?--- Werkzaam en woonagtig.

*What is the case number to check for ???*

30

U het geen portret op daardie?---

30

Ongelukkig nie.

Kant dit gemerk word 2 L, beide dokumente.

Die oorspronklike word nie ingehandig nie. //

DEUR DIE HOF: Dan moet die oorspronklike net gewys word aan Beskuldigde No.2.

BESKULDIGDE 2: Waar is my kiekie?

DEUR DIE HOF: Daar is in hierdie geval nie 'n foto aangeheg nie, omdat dit nie 'n Bewysboek was nie, maar dit was slegs 'n herkenningsbewys wat aan hom gegee is.

MNR. TERBLANCHE: Edelagbare, mag ek net sê, daar was oorspronklike 'n kiekie, die kiekie het verlore gegaan - is dit reg Mnr. Nieuwoudt? ---- Dit is reg. 10 10

DEUR DIE HOF: Sê aan hom die kiekie het verlore gegaan. Daar was oorspronklik 'n kiekie aan, maar die het verlore geraak.

ACCUSED NO.2: (through interpreter) Before this is put in, may I ask something of your Lordship? He speaks English.

BY THE COURT: (to accused No.2)

Yes what do you want to ask? ---My question is this my Lord because I have been here before many times like I said when I was at the Regional Court. I am foreign and they refused to give me a passport to work in the Republic of South Africa. So I was arrested for passport, and they sent me to Benoni, Modder Deep. I believe this paper is for Modder Deep. 20 20

It was issued in Benoni ...-- Yes.

Now the question is have you any objection to this document being used as an exhibit- the original to remain with the witness because it is part of his documents that he requires, but a photograph of it will be put before me. Have you any objection to that course being taken? --- Yes for the photo I have got objection, 30 30

because I know a person who has a pass document from the Pass Office they put photographs on the paper.

Yes but now I am told that the photograph that was on that document is now missing. have you any objection to the document being placed before me as an exhibit --- No I don't know for that, how it can put right now sir, because I am one from outside I think sometime I can just ... I don't know what I can say about this document.

You see the document is put in for the purposes 10 of identifying a person's fingerprints. ---- Yes I know about the fingerprints is mine and that I put right, they 10 take plenty fingerprints when I was in jail. When they sent me to jail when they arrested me at the Pass Office, to need a passport to work in the Republic.

Yes. So you have no objection to the document?

---- No I have no objection. *what does he really know? what can he say*

Yes very well. (to Mr. Terblanche) You may use the photostatic copy.

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ANNEXURE " G "

EXTRACT OF EVIDENCE F.B. SMITH

FROM PAGE 243 TO 246 OF THE RECORD

FREDERICH BERTY SMITH, declares under oath:

BY THE COURT: Do you know the accused with the label on him No.2? ---- I don't know him personally, but I have seen him before.

Now would you tell me your occupation? --

I am the Nyassaland Government Representative stationed in 10  
Johannesburg.

And what functions do you perform? --- One 10  
of the functions I perform is the issuing of identification documents to the people - the Nyassas and Northern Rhodesians who are returning to the Federation.

Do you have anything to do with them when they come into the Republic?--- Nothing at all, unless they report and ask for help.

And when they leave to go back to Nyassaland, 20  
what documents do you give them? ---- well, before they are permitted to leave .... before they will issue them with a ticket at the railway station, I issue them with a Form 2  
of identity. A certificate of Identity. This is a copy of the type of thing that I issue (Form shown to Court)

Then who furnishes the information that you insert thereon? ---- The clerk who interviews the person and he satisfies himself from documents that he can produce, or from the information he can give about the Country and the area as to, and he can satisfy himself that 30  
he is a Nyassa and he comes from the part of the country.

And do you then see the person himself?---

I don't personally, not on every occasion. 30

Ye.,

Yes, now accused No.2, Chirwa, has asked that you be called as a witness. I am going to ask him to put questions to you if you will just reply to his questions?  
 ---- Yes my Lord.

EXAMINATION BY ACCUSED NO.2

The question I'm here for is this, when I travelled to go through to Nyassaland, where I get passport to go through?---- where did you get it?

The paper, where I get it?--- You got the Identity Certificate which identifies you as a Nyassa from my office. 10  
 10

ACCUSED NO.2 No further questions.

BY THE COURT TO WITNESS: Do you know when he left this country ?--- He was issued with a permit on the 23rd of June, but the date that he actually left I could not say.

23rd of June 1962 ?---- 1962

Do you know whether he was employed in South Africa at all, prior to leaving ?---- I couldn't say whether he was employed or not. 20

EXAMINATION BY ACCUSED NO.2 (cntd)

I was in regional Court you hear my charge withdrawn because I'm Nyassaland. Now you sent me back to Nyassaland in (?) ville where I come from, where my father and my family are. so when they discharged me one of the C.I.D. this man who sending me home, these people, before I went out from Stokkies, they arrested me again. They say I was coming here. I was not coming to South Africa, I was coming to Bechuanaland, I'm a Nyassa. So I want to ask you a favour. I got a right to come to try here when I'm a Nyassa. I was not arrested here, when they chase me away from this country?--- I can't say how he did get here. 30  
 30

--- YES---/

Yes, so the thing I think what you can do, I want to ask you to take me back to Hastings Banda in Nyassaland. That I want to ask you my Lord?--- Yes, well I'm afraid its outside my power now.

BY THE COURT: Yes, its outside his power. He says he can do nothing against the law of the land or the authorities in control ?--- Okay.

EXAMINATION BY ACCUSED NO.2 (Contd)

When you go out from inside here, because 10  
I don't know yet how these people are going to charge, you  
must remind those people at home where I am in Imbmamba. 10  
I believe if you try, one of them will know where I come  
from. (Explains his tribe and village to Mr. Smith)?---Yes.

I have sometnings because I don't know how  
long I'm going to be here? I've got some of my luggage into  
this jail here, which I have with me. I think you can do  
your best to come to reply to get those things to send to  
my father at home? --- Permission granted.

CROSS-EXAMINATION BY MR. TERBLANCHE (Contd.)

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Mr. Smith would it have been at all necessary  
for Chirwa to obtain a certificate of Identity from the 20  
Government of Tanganyika, for his travels after you gave  
that?--- To go to his home? No.

No, or is it necessary for him at all to  
obtain a Certificate of Identity from Tanganyika if he wanted  
to come back again or go to Bechuanaland?--- Well, as  
far as I'm aware, they have no authority to issue him  
with one.

But he could have obtained it in his own 30  
country? ---- He could.

MR. TERBLANCHE : No further questions.

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END OF DEFENCE FOR ACCUSED NO.2



ANNEXURE " H "

EXTRACTS OF EVIDENCE OF JAMES CHIRWA

PAGE 225 LINES 21 - 31

Yes, you have said that before. You are a Nyassa and you don't belong to this country?----Yes.

Therefore you say the allegations that are made in the Indictment don't apply to you ? --- Yes, and I was not arrested here, that is why I are use. I was arrested in Bulawayo on my way to Bechuanaland Protectorate 10 to see my stepmother. So there I was arrested, so that's why I refuse today to say I can't attend to this Court, because in Regional Court was the same case, who was here without passport. So I was discharged in Regional Court. The Magistrate in Regional Court he said "James Chirwa ....

PAGE 226, LINES 1 - 12 and 21 - 32

You are discharged in this case, and go home we don't want to see you no more here in South Africa". So I find myself here again in this Court. What for Sir? -- I want to know? 20

Is that all you want to say? --- Yes, that's all I want to say my Lord. Have I got right to be to this Court today in South African Court, where I am now.

Anything else? --- No I think if (same words) can give me the answer.

I want to hear your evidence as to what you say. There are State witnesses who say that you lived in South Africa, you left South Africa to go and train.

LINES 21 - 32

BY MR. TERBLANCHE TO COURT : He was charged in the Regional Court for leaving the Republic without a passport. He was found not guilty on that charge because he was a Nyassa and there was some sort of arrangement

I think, where they could leave with certain documents.  
Yes, and he couldn't obtain a passport from South Africa,  
as he wasn't a citizen.

Yes my Lord, and he was found not guilty. Now  
he seems to think there's the same charge against him?---  
Oh, he knows. He knows it's not the same charge.

BY THE COURT TO ACCUSED: Yes, anything else to say? ---  
No, I think I'm stop when you say that, when you say I am  
a liar, and some second question - because when I lived 10  
in South Africa, here, I lived in South Africa because I---

PAGE 227 LINES 1 - 19 10

was arrested in Pass Office, and they say I am  
foreign, I can't get pass in pass office, right in pass  
office and they send me to jail. To the one who pass those  
chommies here into Court ---- who went into this box  
where I am standing now. He show me the same pass which  
one was writing me into jail, I was inside in Modder Bee.  
I never go to pass office to ask a pass.

Yes? --- Yes, now that's why I say to this 20  
case to day, I don't like to stay here to this Court. I  
am a foreign I regret to say. So I want to ask of you My 20  
Lord if I would have shine to this case today, so South  
African today because I'm arrested, the people they want  
to take me big cities I know South Africa, and the day I  
was want pass into the pass office, I was foreign. Today  
I'm sitting in South Africa because I am arrested in  
Bulawayo. I want to know about that too.

No, you are not a citizen of South Africa,  
and its not being contended that you are, but did you go 30  
from here to Abyssinia? --- No Sir, I never go there.

PAGE 230 - LINES 24 - 27 30

-- CROSS---/

CROSS-EXAMINATION BY MR. TERBLANCHE (Contd.)

When did you come to the Republic first?  
The first time that you came to the Republic? -- No, I forget that when I was here, but I remember I been here first, I go back home. I think after six months I go back home.

PAGE 231, LINES 31 and 32

The passport which one I take from South Africa was not passport. This was just a piece of paper which they give ....

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PAGE 235, LINES 1 - 8

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CROSS-EXAMINATION BY MR. TERBLANCHE (Contd)

Now tell me when did you leave the Republic to go to Nyassaland? ---- I don't really know which day I leave the Republic.

The month and the year will do ? --- The month I don't know, maybe it was between May or June or so on. I don't know.

20

Which year ? --- 1962.

PAGE 237 LINES 10 - 16

Tell me did you work in the Republic? --- No, I can't say actually I was working in the Republic because I was working just somewhere in farms.

*For how long? where?*

You did work in the Republic ? --- Yes I think so, because I was collect the money.

*Amount? Period?*

*All this is probably vague*

Where did you work ? ---- That I can't say because they never register me.

PAGE 243, LINES 1 - 7

But you come to the Republic - for what purpose ? --- Because I saw my father can't afford to stay in Nyassaland. So I was here in Republic. I find out when they refused to give me pass to work, so I

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decided to go home.

Why did you come to the Republic if you're a businessman in Nyassaland? --- That was not enough for me and to feed my family too. It was a small farm.

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ANNEXURE " I "

EXTRACTS OF JUDGMENT RE: THE STATE VERSUS  
HENRY FAZLIE AND 6 OTHERS

EXTRACT FROM PAGES 12 AND 13

The important feature of Accused No.2's identification card is, that he no doubt must have given the authorities the information that he was born in Johannesburg, because so it is endorsed. He is in fact a Nyasa, born in Nyasaland, but he admits that he came to South Africa where he received a document to which I shall refer later, to establish whether he was resident in South Africa. I have asked myself the question, although the matter was not investigated in evidence, why he should have said that he was born in Johannesburg. It is a probability that he knew he would not be given a passport as a Nyassaland resident, and therefore elected to say that he was born in Johannesburg, but however that may be, it does not really matter. He was given an identification card, or passport, call it as you wish, dated the 7th August 1962. It too is date stamped by the Consul of Ethiopia at Nairobi, but in his case it was given, that endorsement was made, on the 8th August 1962. That seems to confirm the evidence of the witnesses here, who said that accused No.2 remained behind at Dar-es-Salaam; that they proceeded to Nairobi, where in Nairobi on the 7th August all their passports were endorsed by the Ethiopian Consul to allow them access and entry into Ethiopia; that because one man stayed behind, accused No.2 joined them, and in fact there is evidence by Jantjies, I think, that accused No.2 told him that he came up by plane. That is proved by his own evidence, also the flight dossier that has been handed in here, of his ticket.

EXTRACT FROM PAGE 19

In regard to accused No.2, who has asked me to make it clear to him why he should be here, as he is a Nyasa. well, the law says that as he was a person who was in South Africa and left here to go and take training outside, for the purposes set out in the indictment, he is as guilty as those who live here permanently and are domiciled here. And again I say I find it difficult to understand why he should have obtained a passport with the information given, no doubt by him, that is the evidence that we have, that he was born in Johannesburg. 10

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- 374 -  
A F F I D A V I T

I, the undersigned LIZZIE MANGE (formerly Khonza born Ngqabe) do hereby make oath and say:-

1. I reside at 121 Ferguson Road, New Brighton, Port Elizabeth, have been resident there since June 1962. Prior to that my address being 179 Ferguson Road, New Brighton, Port Elizabeth.
2. ALFRED KHONZA is my son of my former marriage. The father of the said Alfred Khonza being deceased.
3. I last saw my son Alfred Khonza in Port Elizabeth during April 1961. Since I last saw my son in Port Elizabeth I have not heard from him.
4. I have heard rumours to the effect that my son has been sentenced to serve a term of imprisonment for a period of two years but I am not aware as to the nature of the charge or where he was tried.
5. I have received no letter from my son since he left Port Elizabeth and I have received no communications from the Authorities that my son was to be tried in the supreme Court on the 23rd September 1963.
6. Letters which have been addressed to my old address at 179 Ferguson Road, New Brighton, have been re-directed and received by me through the post at my new address.

Her mark : K

Thumprint:

SIGNED AND SWORN TO BEFORE ME AT PORT ELIZABETH THIS  
21ST DAY OF DECEMBER, 1963, THE DEPONENT HAVING ACKNOWLEDGED  
THAT SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS  
AFFIDAVIT.

(Sgnd) E. DE VILLIERS  

---

COMMISSIONER OF OATHS  
ATTORNEY, CAPE.

10 CENT STAMP

- 375 -  
A F F I D A V I T

I, the undersigned,

RHODA MALGAS

do hereby make oath and say:

1. I reside at Block 45 EL, New Brighton, Port Elizabeth. I am married to Jack Malgas who is a pensioner.
2. I am the mother of Ernest Malgas who is presently serving a term of imprisonment at the Leeuwkop Farm Prison in the Johannesburg District. 10
3. The last time that I saw my son was on Sunday the 10th day of June, 1962. He told me then that he was leaving to go to work on the mines in Johannesburg. He left the house on that Sunday and I did not see him again after that date.
4. During May, 1963, I received a letter from him written from the Pretoria prison advising that he had been sentenced on the 2nd April, 1963, to a term of imprisonment of two years. I attach hereto the original letter received from my son which is marked "A". 20
5. I replied to this letter and addressed it to the address appearing thereon.
6. During the first week of November, 1963, I received a letter from Attorney Joffe in Johannesburg advising that my son had been sentenced to 20 years imprisonment. This was the first intimation that I had of any further sentence being imposed on my son.
7. That subsequent to the receipt of this letter, I 30  
received a parcel of clothing from the prison authorities at Leeuwkop containing the following items belonging to my son Ernest:-  
-- 1 BROWN--/



1 Brown Leather lumber jacket,  
1 Khaki shirt  
1 Pair Green Gaberdine Trousers  
1 Pair Brown shoes  
1 Pair Brown socks  
1 Black belt.

8. The only other letter received by me from my son subsequent to the letters annexed marked "A" hereinbefore referred to, was a letter dated 5th November, 1963, addressed from the Leeuwkop Farm Prison which was received by me during the first week of December, 1963. I attach hereto 10 the original letter marked "B".
9. I received no notification whatsoever of the fact that my son was to be tried in the Supreme Court on the 23rd September, 1963.

(Sgnd) R. MAIGAS

SIGNED AND SWORN TO BEFORE AT PORT ELIZABETH, THIS 23RD DAY OF DECEMBER, 1963, BY THE DEPONENT WHO ACKNOWLEDGES THAT SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS 20 AFFIDAVIT.

(Sgnd) ?

COMMISSIONER OF OATH

ATTORNEY, CAPE  
CAPE PROVINCE.

10 CENT STAMP

ERNEST MALGAS  
NO. 6902/63.  
PRETORIA PRISON,  
BOX 410,  
PRETORIA.

Dear Mama,

Ndisa pila, ndinqwena nani nkwentle impilo  
apo ekhaya.

Kwituba lenyanga ezilishumi elinanye ndingekho 10  
ningandazi apo ndikona. Ndiya kholwa ukuba beni cinga  
ukuba andisapili.

Ndipilile akukhonto, ndilapha e Pretoria  
ndigwetywe iminyaka emibini. Ndigwetywe ngomhla we 2.4.63.  
Impahla yam ndiyinikele igqweta ukuba maliyitumele.

Enye yayo indaka, uze uyitumele e Dry Klener,  
uyi gcine kakuhle. Nincede nindazise ngotata omkhulu  
ukuba upila njani. Nithathe u Jubi paya kutata omkhulu  
nimse esi kolweni. 20

Nincede ningamyeki nimse esikolweni. Nincede  
nani nindazise ukuba nipila njani apo ekaya. Undibulisele  
kubantakwethu nako dade.

Unike u Merver I address yam ukuze andibalele,  
unike no Mapula, 72 Kwaza. Undibulisele ku rodi.  
Undibulisele ku outi sali. Umxelele ukuba ayigcine  
kakuhle I motor yam.

well mama mandime apo ngobanzi unouliso.  
Ndim squokwana Malgas.

30

To : Roder Malgas,  
Blok 45, E1,  
New Brighton,  
Port Elizabeth.

ERNEST MALGAS 4206/63  
LEEUEWKOP FARM PRISON,  
P.O. BRYANSTON,  
JOHANNESBURG,  
TRANSVAAL.  
5.11.1963.

My dearest Mother,

When I was in Pretoria Prison, I had an opportunity to write to you and I do trust you received my letter although I have not had a reply from you. I have now been transferred to Leeuwkop prison. You will probably have read in the newspapers, that I got a further charge under the sabotage law, and that my Sentence has now been increased to twenty-two years. I do not know how long I will be in this prison because, we have been warned that convicts do not stay very long in this gaol because it is really a depot where convicts from all over the country are brought for classification. There are four classes of convicts, depending on the seriousness of the offence which they have committed. I and many other political convicts are classed under 'D' which is the lowest class. I have the privilege to buy some toilet requisites (eg. soap, toothpaste and brush) once a month; and I am also privileged to write ( and receive ) one letter in six months. Life is difficult in prison, but I am trying my best to bear it and I wish you and the rest of the family do not worry yourselves too much about me. How are my brothers and sisters getting on. I think about them very much and I do hope that they are in good health and that they are happy. I hope you have by now received my bag which I sent from Pretoria. It should be given with my love to Adolphus and the clothing in it should be given to him too.

I am making arrangements to send the rest of my property to you, and you will deal with it as you think fit. How is my young son? He must be growing steadily into a man. I am eager that he should go to school as soon as he reaches the right age.

I have already explained that I may be some months only in this prison as it is a Depot, so you must not be surprised when my next letter to you is written from a different prison. However, I shall always make it my duty to keep in touch with you even if the privilege is given once after six months. But I shall give you the smallest news about myself so that you should not remain anxious. I do hope also that you will give me as much news about yourselves when you do write. Please send me some money (Not more than R4-00) so that I can buy the few things that one is privileged to buy.

Give my best regards to the family and all my friends. I wish you all a very happy Christmas and I wish you well in the New Year.

I am your devoted son,

(signed) ERNEST.

To :

Mrs. Rhoda Malgas  
Block 45 E1,  
New Brighton,  
PORT ELIZABETH Cape.

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

Ex parte application of -

HENRY FAZZI and six others Applicants

versus

THE STATE Respondent

CORAM: THERON, J. On 21.2.1964

D

THERON J.

In this case I have come to the conclusion that I should, in terms of section 366(1) of Act 56 of 1955, reserve questions of law which I shall enunciate presently, and also to grant leave to appeal, which I shall specify in more detail presently.

In regard to all the accused in terms of section 366(1) I reserve the following question of law for consideration by the court of appeal. The first is whether the provisions of section 11(b) TLR OF Act 24 of 1950, as amended, are of retrospective effect, so as to render the accused liable for the acts committed prior to the enactment of this Act. The second question of law reserved is whether the provisions of section 12(6)(b) of the act are sufficiently clear and expressive in terms so as to provide this Court with jurisdiction to try the Accused.

20

In regard to Accused Nos. 1, 3, 4, 5, 6 and 7, leave to appeal is granted in terms of section 363 of the Act on the question of sentence only, namely, the ground being whether in respect of each of these accused the sentence in all the circumstances of the case is not unduly severe or excessive.

30

In regard to Accused No.2 only, I grant leave to appeal on the following grounds : whether the State proved beyond all reasonable doubt that Accused No.2 was or had been resident in the Republic of South Africa as required by section 11(b) Ter of the Act.

I need not stress it but I should mention it to avoid any possibility of mistake or confusion, that in regard to this accused, too, leave is granted to appeal against the sentence.

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

PRETORIA, Friday the 21st day of February, 1964.

Before the Honourable Mr. Justice Theron.

In the application of :

- |                    |               |    |
|--------------------|---------------|----|
| HENRY FAZZIE       | 1st Applicant |    |
| JAMES CHIRWA       | 2nd Applicant |    |
| MATTHEWS MUKHALIMA | 3rd Applicant |    |
| MAXWELL MAYEKISO   | 4th Applicant | 10 |
| ERNEST MALGAZ      | 5th Applicant |    |
| JACK NDZUZO        | 6th Applicant |    |
| ALFRED KHONZA      | 7th Applicant |    |
| and                |               |    |
| THE STATE          | Respondent.   |    |

Having on the 13th day of February, 1964,  
 heard Mr. Festenstein J.A., with him Mr. Kuny, of Counsel  
 for the applicants and Mr. Terblanche, of Counsel, for the  
 State and having read the Application for leave to Appeal  
 against the convictions and sentences imposed upon the  
 applicants at Preteroria on the 1st October, 1963, by the  
 Honourable Mr. Justice Theron,

THE COURT RESERVED JUDGMENT.

THEREAFTER, ON THIS DAY,

THE COURT ORDERS:

That leave be and is here-  
 by granted to applicants Nos.1, 3, 4, 5, 6 and 7 to  
 appeal to the Appellate Division of the Supreme Court on  
 the question of sentence only, namely the ground being  
 whether in respect of each of these applicants the  
 sentence in all the circumstances of the case is not  
 unduly severe or excessive.

That leave be and is hereby granted to Applicant No.2 to appeal to the Appellate Division of the supreme Court on the ground whether the State proved beyond reasonable doubt that he was or had been resident in the Republic of South Africa as required by section 11(b) ter of Act 44 of 1950, as well as against the sentence.

THE COURT RESERVES the following questions of law for consideration by the Appellate Division in regard to all the applicants:

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Firstly, whether the provisions of section 11(b) ter of Act 44 of 1950, as amended, are of retrospective effect so as to render the accused liable for the acts committed prior to the enactment of this Act.

Secondly, whether the provisions of section 12(6)(b) of the act are sufficiently clear and expressive in terms so as to provide this Court with jurisdiction to try the accused.

20

BY THE COURT

(Sgnd) N.E.J. EHLERS  
ASSISTANT REGISTRAR

Vorster and Prinsloo,  
P.O. Box 1167,  
PRETORIA.

30



TRANSCRIBERS CERTIFICATE.

We, the undersigned, hereby certify that the foregoing is a true and correct transcript to the best of our ability, of the evidence recorded by mechanical means in the case of

THE STATE vs. HENRY FAZZIE & OTHERS.

PAGES 1 - 159

  
\_\_\_\_\_  
S. VILJOEN.

PAGES 160 - 325

  
\_\_\_\_\_  
A.H. VERMEULEN.

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