

VOLUME I
IN THE SUPREME COURT OF SOUTH AFRICA
APPELLATE DIVISION

IN THE MATTER OF THE APPEAL OF

LOUIS LEO MTSHIZANA

. . . Appellant

and

THE STATE

. . . Respondent

RECORD OF APPEAL

Against an order of the Eastern Cape Division of the
 Supreme Court of South Africa dismissing Appellant's Appeal
 against the conviction and sentence by the
 Regional Magistrate's Court, Border, held at Alice.

Appellant's Attorneys:

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 & COLE,
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and

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Respondent's Attorneys

THE ATTORNEY GENERAL,
 GRAHAMSTOWN.

and

THE ATTORNEY GENERAL,
 BLOEMFONTEIN.

LOUIS LEO MTSIZANA

APPELLANT

versus

THE STATE

RESPONDENT

--- ooo ---

RECORD OF APPEAL

VOLUME I.

NB page 17
NB see page 20
page 41
page 22
page 22

S. v. Xoswona, vol. 1, p. 267. 1965

F False statements made does - in page
changed with page?

NB 156 - don't not
instruct me to attend
other towards letters.

LOUIS LEO MTSHIZANA

Appellant

versus

THE STATE

Respondent

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No. RC.10.63

Have finger-prints been taken? YES

Police Station ALICE

R.C.A.No. 10/9/63

CHARGE SHEET : REGIONAL DIVISION.

IN THE COURT OF THE MAGISTRATE.

For the Division of BORDER, held at ALICE

Before T.L. VAN ZYL, Esquire,

Magistrate for the said Division, on the 28th day of
October 1963.

10

THE STATE verses

LOUIS LEO MTSIZANA

Bantu male, 38 years, S A Born, Attorney of:

99 Frederick Street, Duncan Village, East London

(hereinafter called the accused),

charged with the offence of AS PER ATTACHED ANNEXURE
WHICH FORM PART HEREOF

The accused, being arraigned, pleaded NOT GUILTY

Judgment GUILTY

Sentence 2 years impr.

20

Bail pending the result of an appeal is fixed at R1000.

The conditions as regards reporting to the SAP
previously imposed, to remain unchanged.

Sgd. T.L. VAN ZYL

REG. MAGTE. 15/11/63

Sgd. T.L. VAN ZYL

Magistrate of Regional Division

18/11/63

FOR THE STATE: MR P.A.J. KOTZE

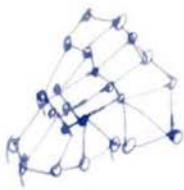
FOR DEFENCE: MR M.T. STEWART

30

INTERPRETER: MR M.R. PHILLIPS

Remd. 29/10/63

Sgd. T.L. VAN ZYL
REG. MAGTE.28/10/63



(2) I have then to repair for
giving work & repair for
letting be out the hall

ANNEXURE

THE STATE VERSUS LOUIS LEO MTSHIZANA
(HEREINAFTER REFERRED TO AS THE ACCUSED)

That the said accused is charged with the offence of ATTEMPTING TO DEFEAT OR OBSTRUCT THE COURSE OF JUSTICE: in that, on divers dates during the period the 19th June 1963 to 11th July 1963, and at (or near) Alice, in the Border Regional Division, the said accused did wrongfully and unlawfully and with intent to defeat and obstruct the due course of justice, induce and persuade 10 the persons mentioned in the attached schedule, the one, the other, more or all of them, falsely to inform a member of the South African Police that the information he/they had given in connection with a case under investigation against Archibald Mdingi, Honeyville Sikweyiya and others is false and not true and thus induced and persuaded the said persons to put false information in connection with the said case before the Police, and/or to prevent the persons mentioned in the attached schedule to give evidence for the State in 20 the case of the State versus Archibald Mding, Honeyville Sikweyiya and/or others who were then due to appear in the Regional Court for the Border Division at Alice on charges under the Provisions of Act 44 of 1950, read with sections 1 and 2 of Act 34 of 1960, as amended, induce and persuade the said persons, the one, the other, more or all of them, to refrain from giving evidence for the State in the case of the State versus Archibald Mdingi, Honeyville Sikweyiya and/or others and/or to refrain from telling the said Court the truth what 30 they know about the case against the said Mdingi and others and thus the said accused did commit the crime of attempting to defeat the due course of Justice.

SCHEDULE

1. Sonwaba Mtshemla
2. Lincoln Kakaza
3. Oswald Masumpa
4. Gladwin Mahasi
5. Mzwandile Sokupa
6. Mvuyo Jali
7. Deliza Salman
8. David Takane

CASE NO RC 10/63

10

DATE

IN THE MAGISTRATE'S COURT FOR THE REGIONAL DIVISION/DISTRICT
OF BORDER

HELD AT AJICE AND EAST LONDON

BEFORE: T.L. VAN ZYL

THE STATE VERSUS

LOUIS LEO MTSHIZANA

CHARGE: DEFEATING THE ENDS OF JUSTICE

PLEA: NOT GUILTY

FOR THE STATE: P.A.J. KOTZE

20

FOR THE DEFENCE: MR T. STEWART

INTERPRETER: M.R. PHILLIPS

TRANSCRIBER: S.E. DU PLESSIS

DATE OF COMPLETION:

(Typists)

THE STATE

VERSUS

LOUIS LEO MTSIZANA

STATE PROSECUTOR READS CHARGE.

ACCUSED PLEADS - "NOT GUILTY".

PROSECUTOR CALLS:

MZWANDILE SOKUPA. s.s.

PROSECUTOR. X.D.

Were you a student at Lovedale College at Alice?

--- Yes Sir.

10

On the 29th of May, 1963, were you arrested by the Police of Alice? --- Yes Sir.

Were you informed why you were arrested? --- Yes Sir.

What did the Police tell you? --- The Police told me that I was arrested because I was a member of a banned organisation.

BY COURT.

You were a member of what? --- Banned organisation, Sir.

20

P.P. CONTINUED.

Now did the Police warn you? --- No, Sir.

Now, did the Police give you the opportunity to make a statement if you wish to do so? --- Yes they gave me the opportunity, Sir.

Was that after you had been arrested? --- Yes it was after I had been arrested, Sir.

And did /

And did you prefer to make a statement? ---

Yes Sir, I preferred to make a statement.

Now, I now produce the statement which I'll read out to you in due course, please listen and then tell the Court if that is the statement you made to the Police? --- Yes Sir.

"Mzwandile Sokupa sworn states : I am a Bantu Male, 20 years of age and reside at c/o Mr J. Mackweza Meza, Willowvale.

I have been warned that I am not obliged to 10 make a statement and that what I say may be taken down in writing and used in evidence I make this statement freely and voluntarily and without having been influenced thereto, in my sound and sober senses.

I arrived at the Lovedale Institution Alice in January 1962 to do my form IV.

In June 1962 I was approached by Belemsi who informed me that I should join P.A.C. I at first refused but as Belemsi kept on I agreed.

On a Saturday in the morning I think it was 20 about 9 a.m. I was accompanied by Mrewetyana, Ludidi, and Nama we went towards Hostel B on our arrival the following were already there. Sikweyiya, Pokela, Makasi, Melamane, Nofemeele, Salman, Belemsi, Ngcepe, Nokele.

We all stood up and gave the salute, by raising the right hand and saying "Ilizwe lethu" Africa. Sikweyiya then told us that it would be useless to carry on with the meeting as the attendance was very poor.

After the June holidays on a Sunday Belemsi came and informed me that a meeting would be held at Domira, 30 I proceeded there and found the following persons present.

Sikweyiya/....

Mzwandile Sokupa

Sikweyiya, Pokela, Mtshemla, Andries, Sokupa, Ludidi, Makasi, Belemsi, Busakwe, Mzolo, Nama, Ngengebule, Takana, Salman, Melamane, Jali Masumpa. Faku, Nofemele, Kelem, Ngcene, Mretyana and Nokele while we were at Domira Sidzamba a student from Fort Hare arrived, Sikweyiya was already addressing the meeting.

Sikweyiya told us that we the Africans should concentrate on our studies, as we the Africans were going to fight the Europeans for our Freedom, that we would be assisted by the other Free African States, that we would 10 fight with arms, he did not say where the arms would come from. That Sobukwe was our leader.

Sidzamba was the next speaker, he informed the meeting that our leader Sobukwe was in prison but that he would be released in May 1963, that we the African people were oppressed and that we were going to fight the white people in 1963 for our freedom. I cannot remember everything that was said by Sidzamba, he spoke for quite a long time.

In 1963 I was again approached by Belemsi and 20 he informed me that as I had joined P.A.C. in 1962 I was to attend meetings otherwise I would be classed as a spy. I have not attended any P.A.C. Meeting in 1963, there was a general strike at the Lovedale Institution by the students in March 1963 and the majority of us were sent home, I also went home and did not return to finish my studies.

I have not paid the fee of 25c."

And then the statement was signed and sworn to. And I wish you to look at the statement and tell the Court whether this is the statement you made to the Police? 30
--- Yes.

BY COURT.

You say this is the statement? --- Yes.

PROSECUTOR /

Mzwandile Sokupa

PROSECUTOR. Continued.

Statement is handed in as exhibit "A", Your
Worship.

Now, is it correct that other persons were also
arrested for the same offence? --- Yes.

And on a previous date you appeared, you and the
other persons appeared in Court at Alice, Magistrates
Court? --- Yes.

And did you then instruct an Attorney to
appear for you? --- Yes, Sir. 10

Who did you instruct to appear for you? ---
I instructed Mr Mtshizana.

Is it the accused now before Court? --- Yes.

Do you remember the date when you instructed
him? --- Yes I do remember it.

What is the date? --- It was on the 19th of
June.

Nineteenth of June? --- Yes.

MAGISTRATE.

Was it this year 1963? --- Yes '63. 20

PROSECUTOR.

Where did it take place? --- It was here at
Court.

At the Court at Alice? --- Yes.

Now, when you instructed him were you alone with
him? --- No I was not alone, Sir.

Were there others present? --- Yes.

Now was there a conversation between you and the
accused then? --- No Sir.

Did he ask you anything. Did he ask you 30
whether you made a statement or anything like that on the
19th of June, 1963?---No he did not ask on that date, Sir.

Did you/...

Mzwandile Sokupa

Did you and others appear in Court when the case was remanded? --- Yes Sir.

Until when, do you remember? --- The case was remanded for the 1st of July.

First of July? --- Yes.

And did you then again appear in Court? --- Yes.

With the others? --- Yes.

Were Mogningi and Sogwili amongst the others? --- Yes.

10

On that day did you speak to the accused?

--- No he didn't speak to me.

Did you speak to him? --- No Sir, he spoke to us as his clients.

We must have more information in connection with this. Where, did you get together with the accused, you and the others? --- Yes.

Where was it, in or outside the Court house?

--- It was after the Court had adjourned, Sir.

After the Court adjourned? --- Yes Sir.

20

Was that after the case was spoked? --- Yes Sir. No Sir, it was not after the Court adjourned, it was after the Court was remanded for the next date.

Now, where did you gather with the accused? --- We gathered on the other side of the

Where did you gather with the accused? --- On the other side of the accused's box, Sir.

How many of you in the Court room here? --- Yes Sir.

How many of you gathered with the accused? --- I cannot remember the number, Sir.

30

Can you remember the names of some of them? ---

I can /

Mzwandile Skupa

I can remember some of the names Sir.

Please tell the Court the names? --- It was Charlie Masumpa and Nakazi Kakaza, Nofemela Mtshemla, Simanga Takani, I cannot remember the others, Sir.

Yes, What happened then? --- Mr Mtshizana asked us all of us who had made statements.

Did he indicate statements in connection with what? --- In connection with the cases Sir.

This case for which you had to appear in Court that morning? --- Yes Sir. 10

PROSECUTOR CONTINUED.

Yes, what else? --- He told us that we were to approach Sergeant Hattingh in order to change those statements and to tell him that all that we wrote on those statements was false.

Now to clarify this when he asked you who had made statements to the Police did you people indicate to him? --- I beg your pardon, Sir.

When he asked you who had made statements to the Police, did you tell him? --- Yes I told him, Sir. 20

And then what did he say? --- He told us that we have to change those statements.

Yes what else did he tell you? --- He told us to go to Sergeant Hattingh and change those statements.

Yes? --- Before the Court sits for the trial.

Yes? --- I cannot remember everything that he said.

Yes, Carry on what else happened? --- The case was remanded for the eleventh of July, Sir.

This year? --- Yes. 30

Yes? --- On the eleventh of July the case was withdrawn against nine of the accused persons.

Do you remember the names of the nine persons?

--- Yes I remember them Sir.

Can you please tell the Court? --- It was Mjali, Masumpa, Makazi, Kakaza, Sokufa Ludidi, Sokufa and Ludidi.

Sokufa and Ludidi? --- Yes Sir.

Ja? --- Somani, Msimla.

Ja? --- That's all Sir.

Yes and then what happened after the case had been withdrawn against nine persons? --- We went to the Police station, Sir. 10

Yes? --- And while we were waiting for a lift to Queenstown for the train.

Now who went to the Police station? --- Nine of us Sir.

Nine of you went to the Police station? --- Yes Sir.

Ja? --- Five of us went to Fort Beaufort and I and Mshimla and Kakaza remained at the Police station.

Ja? --- While we were waiting there Mr Mtshizana came. 20

MAGISTRATE.

Is that the accused? --- Yes Sir.

PROSECUTOR.

Ja? --- We approached him to give us advice Sir, because he was our legal representative for the case Sir.

Ja? --- The accused told us that we have to write letters to Sergeant Hattingh as soon as we reached our homes.

Ja? --- He also warned us not to reveal that fact because he said that he would deny it, Sir. 30

Ja? --- The car arrived and we went home.

While I was at home I wrote a letter on the nineteenth of June. The letter contained the fact that I, that that statement I had made to Sergeant Hattingh was false and that I was not going to give evidence at Court.

Now, is this the letter you wrote to Sergeant Hattingh? --- Yes Sir.

I hand in the letter, Your Worship, as exhibit "R".

Do you see that envelope attached to the letter? 10
--- Yes.

Is this the envelope in which you placed the letter and addressed it to Sergeant Hattingh?--- Yes.

Yes and then? --- On the 26th of July, I was re-arrested, and I came to Alice.

Ja? --- The case started on the 31st of July.

Ja? --- I did not give any evidence in that case, Sir, I gave evidence in the case which appeared on the 14th of August.

Is that in the case against some of the 20 accused who originally appeared with you? --- Yes Sir.

Now do you say that on the 1st of July, 1963, the accused told you to change your statements?---Yes Sir.

Did he tell you how you must change it? --- He said that we must tell Sergeant Hattingh that all that appeared in those statements was false.

Did the accused ask you what you said in those statements? --- No he didn't ask Sir.

Did you tell him what you said in the statement you made to the Police? --- I didn't tell him. 30

If he had asked you would you have told him? ---

Yes/....

Mzwandile Sopuka

Yes Sir.

Now on that occasion did he take any written statements from you? --- No Sir, he did not.

And did he ask you to make a statement in connection with the case on which you were charged? --- No he didn't ask me to make a statement, Sir.

Did he at any time before that date, that means the 1st of July, or after that date ask you to make a statement to him? --- No he never asked me to make a statement Sir. 10

And did he at any time ask you what you knew about the case against you and the other persons --- He never asked me Sir.

Now in the first instance you mentioned in the statement the leaders who were the leaders of the P.A.C. organisation or the other, some of them? --- It was Sikweyiya Kokela, Tambula, Ndingi, Zamba, Velemsi.

Did they all appear in Regional Court, were they found guilty as far as you know? --- Yes Sir.

Now, do you personally know why the case was withdrawn against you on the eleventh? --- No Sir. 20

On that occasion that is the eleventh were you given a rail warrant and a subpoena? --- Yes.

To come to Court on the 31st of July? --- Yes.

Now you say that after the accused had advised you to change to your statement, did you go to the Police? --- Yes I did go.

And did you tell the Policeman that you wish to change your statement? --- Yes Sir.

Who did you tell? --- Sergeant Hattingh. 30

Sergeant Hatting, was he the person investigating the case? --- Yes Sir.

What did/....

Mzwandile Sokupa

What did you tell him. Do you remember? ---

Yes I can remember Sir.

What did you tell him? --- I told him that I withdraw from that statement that I made on the 31st of May, Sir, because it was false.

Now if the accused had not persuaded you to do so would you have told the Police that? --- No Sir.

I just repeat; why did you write this letter exhibit "B" to Sergeant Hattings? --- I wrote that letter because I got advice from my Attorney Sir. 10

Who's your Attorney? --- It was Mr Mtshizana the accused Sir.

NO FURTHER QUESTIONS BY THE PROSECUTOR.

DEFENCE. XXD.

You were arrested on the 29th of May, 1963? --- No.

When were you arrested? --- I beg your pardon, Your Worship, I was arrested on the 29th, I did not understand the question, I did not listen properly. I thought the question was "When was I released". 20

And how many of others of you were arrested at the same time, approximately the same time? --- About twenty-four Sir.

Including Mdingi? --- Yes Sir.

Sokweya? --- No Sir.

Kokela? --- Yes Sir.

And where were you kept in gaol? --- At Fort Beaufort, Sir.

Were all of you in one cell? --- No Sir, we were not in one cell. 30

How many/....

Mzwandile Sokupa

How many cells did you occupy? --- Two cells.

How many were in your cell? --- I cannot remember the number Sir.

Approximately? --- Over ten Sir.

And the other cell about the same? --- Over fourteen Sir.

So that there would be at least more than twenty-four people amongst you in Fort Beaufort Gaol? --- Yes.

And did you see each other at meal times, when you were let out for exercise, did you mix together? --- I saw them Sir.

Did you know at that stage why you had been arrested? --- Yes.

And did you discuss your case with your fellow accused? --- No Sir.

Didn't you mention what you had been arrested for? --- I did mention it Sir.

And did they tell you what they had been arrested for? --- Yes. 20

And did you discuss the question of being members of Poqo? --- No Sir.

Why not? --- They told me that they were not members of this organisation Sir.

But you knew they were, didn't you? --- Yes I knew they were Sir.

Say so? --- No I didn't tell them.

Didn't you say that you can't deny this charge I know perfectly well you're a member? --- Yes.

And you talked about the fact of your membership didn't you, to them? --- No Sir. 30

Are you/....

June 6-21- this is what he said to
his co-counsel and not to appellant.

Mzwandile Sokupa

Are you trying to tell me that you stayed in gaol, charged with an offence of this nature and never discussed it with your friends who were there with you? --- I told them that I was arrested for being a member, Sir.

Did you discuss your defence, did you say what you were going to say in Court? --- No Sir.

What did they say, what was their defence going to be? --- They said that they would deny it sir.

Yes, but in what way, how would they deny it, what was their story going to be when they came to Court? --- They said that they would say that they never attended any meeting, Sir.

And what else were they going to say? --- They said that we must also deny it, Sir.

And did you agree to it? --- Yes I agreed to it.

I didn't hear the last word, what was the last bit you said? --- I, only for pretence

But you made them understand that you were going to say in Court that you have never attended any meetings? --- No Sir. 20

But that's what you have just said, you said that you have agreed for pretence, didn't you say that? --- Yes I did. 21

In other words you pretended to your fellow accused that when you got to Court you were going to say that you have not attended any meetings? --- Yes.

And they believed you? --- They believed it.

Yes? --- Yes Sir.

When did you make your statement to the Police? I think the date will be on the statement, your Worship exhibit "A"? --- Thirty first of May, Sir. 30

That's/....

Mzwandile Sokupa

That's two days after your arrest? --- Yes.

Did you tell your fellow accused that you have made a statement? --- No I didn't tell them.

So that they didn't know anything about the statement? --- No Sir.

Until when? --- The day Mr Mtshizana told us that we were to change our statements, Sir.

On what day was that? --- On the first of July, Sir.

At that stage you hadn't told anybody you had made a statement? --- I had not told them anything before the first, Sir, when I did mention it.

Where did you mention it? --- Here at Court Sir.

So that up to that time nobody except you and the Police knew that you had made a statement? --- Yes.

And you pretended that you were going to say in Court that you did not attend any meetings? --- Yes.

That was a lie, wasn't it? --- Yes.

To pretend like that? --- Yes.

Now in gaol did any of your fellow accused say that they had made statements? --- Yes, some of them told me, Sir. 20

And was that discussed by you prisoners generally? --- No Sir, it was not discussed.

Now when they said that they had made statements why didn't you tell them about your statement? --- I didn't want them to know that I had made a statement Sir.

Why not? --- I wanted to, I liked that Sir.

What was your reason? --- I didn't want them 30

to know/....

Mzwandile Sokupa

to know I had mentioned their names, Sir.

Why? --- I feared that they might cause 2
trouble.

Yes, you were afraid that if it became known
that you were a traitor to them you might get into
trouble? --- Yes Sir.

Is that why you retracted your statement as
soon as you could? --- Yes.

You were looking for an opportunity to withdraw
your statement because you were afraid? --- No Sir. 10

Were you pleased you made a statement?---
Yes Sir.

Although you were frightened? --- I was pleased
because I was on the side of the Police.

Why did that please you? --- Your Worship the
police told me that I would be released if I gave
evidence in Court.

When did they tell you that? --- The day I made
a statement.

But they didn't release you, did they? --- No 20
they didn't release me.

In fact they kept you locked up from the 29th
of May, until the eleventh of July, no the twenty ...
yes the eleventh of July, not so? About six weeks?
--- Yes.

So your statement hadn't helped you at all,
had it at that stage? --- No.

And you thought that you'd been let down by the
Police? --- Yes.

Now, these statements that the other people 30
had made that you talked about in gaol, was it decided
what should be done about them?--- It was not decided Sir.

What did/....

Mzwandile Sokupa

What did Mdingi have to say about it? ---

Mdingi told us that he had approached Mr Mtshizana Sir.

When was that? --- It was before the first of July.

Did he tell you when he had approached Mr Mtshizana, the accused? --- No he didn't tell us when.

I thought you said these statements were not discussed? When I mean that the statements were not discussed Your Worship, I mean that the contents of the statements were not discussed. } 10

But was it generally accepted that there were amongst you, people who had made statements to the Police? --- Yes Sir.

And that those statements implicated certain of you --- Yes.

That was known by all of you who were imprisoned at Fort Beaufort? --- Yes.

And that fact was discussed by you in prison at Fort Beaufort? --- No Sir.

Well then how did you know this? - Look you are 20 trying to say that you knew something which was never discussed. Now don't you think you'd better tell us the proper story? --- The statements were not discussed Sir.

You've already said that the contents of the statements were not discussed. I haven't challenged you on that. What I said is that it was known in the gaol at Fort Beaufort that statements had been made? --- Yes.

How was that known? --- Those that had made statements, Your Worship, mentioned that they had made statements. 30

Yes. And you understood from that, that those statements implicated certain of you, didn't you? --- Yes.

I did/....

line 27-30 - This happened in prison
and not told to appellant.

I did know Sir.

Did anybody ask to say did you mention my name in your statement, not you the other people? --- Yes they did Sir.

Didn't they say to a man well you made a statement did you mention me? --- Yes.

And the other man would say "Yes I did mention you" or "No I didn't mention you" as the case might be? --- Yes.

Isn't that so? --- Yes. 10

And then you would go to another man and you would say "Have you made a statement" and he'd say "Yes" and you would say "Well have you implicated me" or "Haven't you implicated me" and he would say "Yes" or "No" --- No I would say no, Sir.

You would say no. Well what happened about those statements.

I think Mr Interpreter if he speaks Xhosa and you translate to him, it might be better.

What was actually said about these statements? --- Those that had made statements said that they had mentioned others Sir. 20

Yes and those that had been mentioned were upset about it? --- Yes some of them were upset, Sir.

I'm sure they were because this was a serious charge, wasn't it? --- Yes.

And there was talk now of what was to happen? 27.

--- It was said that we must deny all knowledge, Sir.

Yes. That was while you were in gaol at Fort Beaufort? --- Yes. 30

Now, can you remember who said that in the gaol? --- Mdingi was one of them, Sir.

Yes. Who else? --- Others got it from

Mdingi/

Propose.

Shows the energetic fertility nature of
Sodas while.

Mdingi and spread it, Sir.

Yes. So that there were a number of your leaders saying to you in gaol "Now look you people who have made statements, you must deny those statements"?

Handwritten marks: a large bracket on the right side of the text above, and some scribbles.

--- Yes Sir.

And when Mr Mtshizana arrived there he was told that? --- I don't know Sir.

Handwritten marks: a bracket on the right side of the text above, and some scribbles.

Well if Mr Mtshizana says that he was instructed by Mdingi that your defence in regard to the statements was going to be a denial, that you had made the statements 10 freely and voluntarily, that would fit in with what you have said? --- Yes Sir.

Because that is what the accused says. The accused says that he first went to Fort Beaufort on the 30th of May and that he interviewed his clients again on the 19th of June, and that the main spokesman on the occasion of the 19th of June was Mdingi? --- Yes.

And Mdingi said that your defence in regard to the statements was that the statements were to be denied, that you were to say, you're going to say, that those statements were not freely and voluntarily made? --- Yes Sir.

Handwritten marks: a bracket on the right side of the text above, and the number "20" written vertically.

Do you agree that that was the case? --- That was not the case, Sir.

Well what was the case? --- Mdingi had told us that he had met Mr Mtshizana, Sir, and he told us that Mr Mtshizana said that we were to change all these statements before the date of the trial.

Yes? --- In order to avoid perjury, Sir.

Yes. Quite so. Do you know what perjury is?

Handwritten number "30" on the right margin.

--- Yes.

What is perjury? --- To withdraw from the truth Sir, which you have confessed to the Police and sworn to/....

line 1-12. Suggestion that they demand
to deny being made the statements
before they saw the appellant.

Mzwandile Sokupa

sworn to it Sir.

Yes. And you were told the message you got from Mdingi was if you want to avoid perjury, you must withdraw those statements? --- Before the Court sits for the trial Sir.

In other words your statements were not true, you must withdraw them? --- Well mine was true Sir.

I'm not talking about the contents of your statement what I'm saying is that the instruction you got was that you were to withdraw your statements before 10 the trial? --- Yes Sir.

And you got that from Mdingi? --- Yes Sir.

Now when did Mdingi tell you this? --- After I was arrested, Sir, I can't remember the date.

Yes. Now in gaol when you were trying to find out who had made statements and who had implicated others were any grounds advanced upon which you could withdraw your statements? --- No Sir, there were no grounds, Sir.

Did anybody say that there are certain grounds 20 upon which you can withdraw a statement? --- No Sir.

You were then one of the accused yourself?
--- Yes.

And you were being charged as the others were being charged? --- Yes.

Did you know what your position was as an accused? --- No Sir, I didn't know.

Did you know whether you could be forced to go into the witness box or not, as an accused person?

--- No I didn't know Sir.

30

Did you take steps to find out? --- No Sir.

Did you/....

Mzwandile Sokupa

Did you know whether the State could call you as a witness? --- No Sir.

Haven't anybody told you this? --- No Sir.

Nobody at any stage told you that you could be called by the State as a witness? --- No Sir.

Did you know that you were an accomplice, might be regarded as an accomplice? --- Yes.

Did you know what rights an accomplice has got as a witness? --- No Sir.

Did you bother to find out? --- No Sir.

10

Did you not tell anybody what you said in your statement? --- No Sir.

So that if you got an instruction from the accused in which he said to you, you must deny the contents of your statement or change your statement as you put it, he would not know what you'd said already? --- No Sir.

Why did you then write that letter? --- I wrote that letter because he was my attorney, Sir, and he advised me to do so.

20

Did you think his advice was sound? --- Yes. Sir, as a Lawyer Sir.

Yes. He might be a very good lawyer but in your case he obviously didn't know the facts, did he? --- No Sir.

Well did you think his advice was good? --- Yes Sir.

If you haven't told him what you've done, how could he advise you? --- He did not ask me to tell him what I had written on the statement, Sir.

30

Yes I know that, that's what I'm saying to you. What I'm saying to you is how could the accused possibly advise you if you had not told him what you had said in your statement? --- I don't know Sir.

No neither do I that's my difficulty with you/...

Mzwandile Sokupa

you. Were there a large group of you here? --- Yes Sir.

And in that group were people asking the accused what was to be done in regard to the statements which they had made? --- No Sir.

Well then please will you tell us what happened? --- On the first of July Mr Mtshizana asked all of his clients to appear before him, Sir. All those who have made statements and he told us that we must go to Sergeant Hattingh and change them and we went to Sergeant Hattingh and told him.

Yes? --- I told Sergeant Hattingh that all that was written on those statements was false.

Now I want to know what happened with Mr. Mtshizana. Is that all that was said? --- That's all I can remember, Sir.

Mr Mtshizana said here in the Court room, after the Court had adjourned, he wanted all those who had made statements? --- Yes.

And those of you who had made statements gathered in a group? --- Yes.

And he said you must now advise the Police or Sergeant Hattingh that you were changing your statements? --- Yes Sir.

Is that all the conversation? --- That's all I can.. that's all I can remember, Sir.

So that in your case at least you were getting legal advice in regard to facts which your Attorney did not know? --- Yes.

There were a number of you who said that you had been beaten by the Police, weren't there? --- I was not assaulted Sir.

Will you/...

10

15

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Mzwandile Sokupa

that the Police had no right to assault people.

Yes, or to get statements out of people by force, didn't they? --- Yes.

And you discussed all that in gaol too, didn't you? --- Yes.

Anything else you discussed in gaol in regard to the statements. Weren't there some of you who said you'd been taught what to say? --- No Sir.

Did nobody there, to your knowledge, ever say the Police told me what they wanted me to say in the statement? --- No Sir. Not that I can remember, Sir. 10

At any rate as far as you are concerned your withdrawal of your statement arises out of the fact that the accused said to you in the Court house here, said to a group of which you were a member, in the Court house here you must change your statements? --- Yes Sir. 11

Nothing else. he did nothing else as far as you are concerned? --- On the eleventh he advised us to write letters. 20

Was that the incident outside the Police station? --- Yes Sir.

Was he alone? --- Yes he was alone.

Was he on foot or in a motor car? --- He was standing next to his motor car, Sir.

Was there anybody in the motor car? --- No Sir.

Do you know the Attorney Mr Mkentani? --- Yes Sir.

Did you see him there? --- No.

Was he not present? --- No. 30

BY COURT.

What's the name? ---

DEFENCE/....

Mzwandile Sokupa

DEFENCE.

Mkentani, Your Worship, M-K-E-N-T-A-N-I.

DEFENCE CONTINUED.

Why was it necessary for you to write this letter if you had already spoken to Sergeant Hattingh?
--- I just wanted to make sure, Sir.

Why was it necessary to make sure? --- Because that was the advice that was given me by my Attorney, Sir.

Did you say to your Attorney "But I have already told Sergeant Hattingh, there is no need to write a letter? --- Yes. 10

And what happened? --- He told us that we had to write those letters, Sir, that is all I can remember, and we must not reveal the fact that he had given us this advice. *lll*

Is that all he said? --- That's all that I can remember, Sir.

Now when you told Sergeant Hattingh that you were changing your statement, did you give him any reason? --- I just told him that it was false, Sir. 20

Didn't he want to know on what grounds? --- No Sir. *Yes Hattingh*

And you gave no reason to him at all? --- No Sir.

NO FURTHER QUESTIONS BY DEFENCE.

PROSECUTOR X.X.D.

Now you said that the statement you made was the truth, was that the truth in connection with the case against/....

Mzwandile Sokupa

against Mdingi and others? --- Yes Sir.

Do you mean that the contents of this statement exhibit "A" now before Court is the truth, what you know about the case? --- Yes, that is the truth, Sir.

Is it correct that you people were locked up in groups in different cells in different gaols? --- Yes Sir.

Now, when the accused met you at the Police station, when he told you to write the letters, did he mention anything about the other five persons who were not present then? --- No, he didn't tell us, Sir. 10

Did he instruct you to do anything in connection with the other persons? --- No Sir.

Now in gaol what did Mdingi tell you about the accused? --- He told us that he had met Mr. Mtshizana, Sir.

DEFENCE.

Your Worship, if this is hearsay I must object to it, I don't know if my learned friend is going to call Mdingi. This is going to show consistency. 20

PROSECUTOR.

Edelagbare, ek sal die getuienes nie gely het nie, indien die verdediging op daardie punt gehammer het nie. Ek wil nie die Hof in duister hê nie. Die indruk wat die verdediging hier probeer skep is dat Mdingi daar sekere instruksies gegee het aan die mense en die getuie het by geleentheid probeer verduidelik hoekom Mdingi daardie instruksies gegee het en ek wil net hê die Hof moet 'n duidelike prentjie kry van wat daar gebeur het. Omdat die verdediging die hoorse getuie-nis uitgelok het. Edelagbare 30

uit/....

uit kruisverhoor as dit my beskeie verdienste
Edelagbare, dat die Hof hoort te weet hoekom sekere
dinge plaasgevind het.

DEUR HOF.

Ja

PROSECUTOR. Cont.

Ja wat het Mdingi gesê, what did Mdingi tell
you? --- Mdingi told us that he had met Mr Mtshizana
and he told us that we have to change those statements
and Mr Mtshizana had given him an assurance that we 10
would not, that we will not commit any perjury if we
change our statements.

NO FURTHER RE-EXAMINATION BY PROSECUTOR.

BY COURT.

Now when the accused told you, in Court it was
on the eleventh you said, to tell Sergeant Hattingh
that you withdrawn your statement were you then still
under arrest? --- Yes Sir.

But now when he told you to write a letter were
you then still under arrest? --- No Sir. 20

Now what was the object then, why did you write
the letter, you were no longer under arrest you were
not going to be an accused any more? --- I wrote that
letter because Mr Mtshizana told me to do so.

Did you know then that you were going to give
evidence for the State in that case? --- Yes Sir.

Is that also why you wrote that you were not
going to give evidence in Court? --- Mr Mtshizana told
me that I might not be forced to give evidence, Sir.

If you do what? --- ~~He~~ said I might not be 30
forced to give evidence at Court, Sir.

Was that a ... what led up to him telling you

that/....

Mzwandile Sokupa

that. Why did he say that to you? --- We asked him why the case was withdrawn against us, Sir.

Didn't the Police tell you? --- No Sir.

Didn't you realise then when the case was withdrawn against you that you didn't need the services of your Attorney anymore? --- No I did not know, Sir.

You thought this, this writing the letter was still in connection with your defence or was it in connection with the evidence you had to give? --- Because of the evidence I had to give, Sir.

10

PROSECUTOR CALLS.

LINCOLN KAKASA. S.S.

XD P.P.

You were a student at Lovedale Institution at Alice? --- Yes Sir.

For how many years? --- Since 1959, Sir.

Now during May, 1963, were a number of the students arrested for being members of Poqo organisation?

--- Yes Sir.

After your arrest were you warned, were you given an opportunity to make a statement in connection with the case where there was an allegation against you and others? --- Yes Sir.

20

And did you prefer to make a statement in connection with the case? --- Yes Sir.

I now read out the statement.

PROSECUTOR READS OUT STATEMENT.

PROSECUTOR CONTINUED.

Now this statement was signed. Will you please look at the signature, Is this the statement you made to the Police? --- This is the statement I made to the Police.

I hand/....

Lincoln Kakasa

I hand in the statement as exhibit "D".
According to this statement is it the truth what you
know about the P.A.C. activities at Alice?

BY COURT.

This is exhibit "C"?

PROSECUTOR.

"D" Your Worship.

COURT.

What is "C"?

PROSECUTOR.

10

Envelope.

COURT. Envelope.

PROSECUTOR. Yes Your Worship.

PROSECUTOR CONTINUED.

What is your reply, is this statement the truth
what you know about the case the case where Mdingi and
Sokweyena was charged? --- Yes Sir.

FILE

Now you were brought to Court, correct? ---
Yes Sir.

And other students also were brought to Court? 20
--- Yes Sir.

And did you instruct an Attorney to appear
on your behalf? --- He was engaged by my parents, Sir.
Who was that Attorney? --- Mr. Mtshizana, Sir.
Is it the accused now before Court? --- Yes.

And did you have discussions with the accused
in connection with the case? --- I did not speak to him
personally Sir, but he did speak to us.

When did he first speak to you? --- On the first
of July, Sir.

30

July, 1963? --- Yes.

Where/...

Lincoln Kakasa

Where did it take place? --- Here in the Court room, Sir.

How many of you, approximately how many of you were together when he spoke to you? --- Here were, there was a general confusion, there are, I can't be sure how many they were, Sir.

Now what did he say about the case? --- He asked if there were any who had made statements. He went on to say that had we made statements we were still entitled to change them.

10
NB

Ja? --- To the person who we made the statements to.

Ja. Just carry on.? --- After that on the same day we went to change our statements, Sir.

Ja. Tell me did you tell him, did you indicate to him that you made statements? --- Yes, we told him that we had made statements, Sir.

And did you tell him to whom you had made the statements? --- Your Worship, we told him that we had made statements to members of the C.I.D.

20

But tell us? --- I made a statement in Seymour Sir.

Now did he tell you what you must do about the statement you made to the Police? --- No he said that all of those of us who had made statements could change them.

Yes you could change them, what else did he tell you? --- And he said we must change them as soon as possible.

Did he tell you how you must change them? --- No he did not, Sir.

30

Yes and then? --- I did not hear anything

further/...

Lincoln Kakaza

further after that, Sir.

Yes, now what did you do about it, did you change your statement? --- Yes.

How did you change it, what did you do? --- I said that the first statement that I made false.

To whom did you say that? --- To Sergeant Hattingh.

Why did you tell Sergeant Hattingh that the statement you made was false? --- Mr. Mtshizana told me that I told us we are still entitled to change our statements. Sir, which I did.

10

Now why did you tell, now was that statement false? --- No the first statement was true, Sir.

Now then why did you tell the Police that the statements was false? --- Your Worship, I thought that by changing my statement the case may be withdrawn against me, all of us, Sir. He didn't add "those that had made statements".

And on the first of July, the case was remanded postponed until the eleventh of July? --- Yes Sir.

20

On the eleventh of July, 1963, you again appeared in Court? --- Yes.

And was the case withdrawn against you? --- Yes.

Against nine of you? --- Yes Sir.

And the others remained on the charge sheet? --- Yes Sir.

Mdingi and Sogwiyi was also charged, here in Court? --- Yes they remained in Court with the others, Sir.

Did you know why the case was withdrawn against you on the eleventh? --- After the case had been withdrawn, Sir, we were told at the charge office why.

Who told you? --- We were told by ... He just said "we were told why" he didn't say who "we were told by/...

Mzwandile Kakazi

by".

MAGISTRATE.

You were told why? --- Yes Sir.

Did he now say by who? --- We were told that on the 31st of July, Your Worship, we will give evidence in Court.

PROSECUTOR.

Who told you that? --- Sergeant Hattingh Sir.

Whether you, that you will give evidence for the State or the defence? --- He said that I must give 10 the evidence that was in that statement of mine.

And what happened then? --- We were given tickets and subpoenas.

Yes? --- Some went off with Sergeant Hattingh in his car, three of us remained behind.

What are their names? --- Sokupa and Mtshmla. I was the third one.

MAGISTRATE.

Sokupa and who? --- Mtshemla and myself.

PROSECUTOR.

20

Yes? --- While waiting we saw Mr Mtshizana go to the Charge Office, we were in the road near the Charge Office, and we told him what the situation was that we had been given tickets and subpoenas to appear to give evidence on the 31st.

Did you tell him that personally? --- Yes, I did.

Yes, and then? --- I asked him what must we do now. He told us that we could write a letter to Sergeant Hattingh, a registered letter, saying that our statements were false and we would not give evidence.

NB
30

Lincoln Kakaza

Ja? --- Mr Mtshizana left, Your Worship,
and we met the others in King Williams Town and passed
that information on to them.

Now who did you meet at King Williams Town?
--- Jali, Makasi, Takani, Sokupa, Salaman.

Mtshemla was in your company? --- Yes Mtshemla
was with me, Sir.

Sokupa was he also in your company? --- Yes.
You met Masumpa there? --- No I did not.

So you met the others, you met five of them 10
you met in King Williams Town.

Do you know Ludidi? --- Yes I know him.
You found him at the station? ---

DEFENCE.

The point is not in issue as far as the
defence is concerned, Your Worship, my learned friend
may lead on that information.

PROSECUTOR CONTINUED.

Now did you tell the persons you met at the
station what Mr. Mtshizana the accused had told you 20
about the letters? --- Yes.

You didn't find Masumpa there? --- No Sir.
He was not

Who gave him the message? --- No Sir, we did
not.

BY COURT.

Who's that? --- Masumpa, Your Worship.

Masumpa ? ---

Did Masumpa come by train? --- Yes Your
Worship. 30

PROSECUTOR CONTINUED.

And then what happened? --- When we got to

our/....

Lincoln Kakaza

our respective homes, Your Worship, we sent off these registered letters.

Ja? --- After some time we were re-arrested and brought here, and we were again charged, Sir.

Now, do you see that letter now before Court? Is this the letter you wrote to the Police? --- Yes Sir.

The letter is handed in as exhibit "E". Do you see that envelope attached to the letter? --- Is that the envelope in which you put the letter and sent it to the Police? --- Yes that is it. 10

Did you send it by registered post? --- Yes.

Did you were not persuaded by the accused to tell the police that the statement you had made to them..

DEFENCE.

Well, Your Worship with respect he hasn't said that he was persuaded by the accused to make a statement. My learned friend can't put words like that into his mouth.

PROSECUTOR.

Your Worship, I can put it in another way, if that would please my learned friend. 20

PROSECUTOR CONTINUED.

If you were not told, if you were not told by the accused to tell the Police that the statements you had made, the statement you had made to them was false, would you have done it? ---

DEFENCE.

I'm sorry, Your Worship, I must object, my record of the accused evidence was that he said his Attorney told those who had made statements that they could change them. The witness didn't put it any other than that. 30

PROSECUTOR.

Your/....

Lincoln Kakasa

Your Worship, I remember that, that I repeated my question on that same point. I am quite satisfied, Your Worship, with respect, that the accused, the witness did say that the accused told him that he must change the statement. That is on record, Your Worship (inaudible) To satisfy the defence.

COURT.

The witness said that he went to Sergeant Hattingh and told him that the first statement was false.

PROSECUTOR.

10

Yes Your Worship.

COURT.

I don't know whether he said that the accused told him to say that.

PROSECUTOR.

Your Worship he did say that.

COURT.

He told him to change the statement.

PROSECUTOR.

Yes Your Worship, and the, he first told the Court Your Worship that the accused advised him that he could change the statement and then later told the Court. (Court and Prosecutor speak at one time).

20

PROSECUTOR.

I beg your pardon, Your Worship.

COURT.

You better clear that point up first with the witness.

PROSECUTOR.

Yes must I repeat that question to the accused, to the witness then.

30

DEFENCE.

I suppose I can deal with it in cross-

examination/...

Lincoln Kakasa

examination, Your Worship, that my learned friend put his question in that form or I can deal with it in cross-examination.

PROSECUTOR. CONTINUED.

Now when the accused spoke to you on the first of July 1963, did he tell you what to do about the statement you made to the Police? --- Your Worship, he told us that we must change our statements as soon as possible because there is, the case was going to appear again on the eleventh.

N5

10

Now if he had not told you that you must change your statement would you have told the Police, would you have changed? --- I would never have changed it, Sir. Your Worship, Mdingi said to us that we must not give evidence in Court even although we had made statements.

Now if the accused have not told you to write this letter exhibit "E" would you have written it? --- I would not have written it, Sir.

In the first instance you were prepared to give evidence, to tell the Court what you know about the case against Mdingi and Sogwiya then under investigation? --- Are you referring to the eleventh nor or when Sir.

20

At any time before the eleventh? --- Your Worship, the next portion is only hearsay really, what Mdingi told him.

I will leave it there.

COURT.

The question was whether you in your own mind irrespective of what anybody said were you prepared or whether you give evidence when you made the statement or thereafter? --- Your Worship, if I was told to get into the witness box I would have told what I knew Sir.

30

RB

Lincoln Kakasa

PROSECUTOR CONTINUED.

In fact, at a later stage you were called by the State as a witness for the State? --- Yes Sir.

In the case, some of the accused who were charged with Mdingi and Sogwiyeya and the others? --- Yes Sir.

And did you give evidence for the State? --- Yes I did.

And did you tell the Court what you knew about the case against Mdingi and the others? --- Your Worship, 10 the cases were separate, Sir, I did not give evidence in the case, against Mdingi and others.

But were the persons against whom you gave evidence originally charged with Mdingi? --- Yes Sir.

And did you tell the truth, did you tell as far as you remember according to the statement you made to the Police? --- Yes Sir.

NO FURTHER QUESTIONS BY PROSECUTOR.

DEFENCE X.X.D.

Your Worship please, what is the date of that statement which he made to the Police. You may look at it if you like? --- If I remember correctly, Your Worship, I think it was the seventeenth of May. 20

When did you first see the accused in this case? --- I think it was the nineteenth of June, Sir.

Did you see him at Fort Beaufort before then at all? --- No I was not at Fort Beaufort, Sir.

Where were you kept in gaol? --- I was detained at Seymour.

Were the others there with you? --- Yes. 30

When did you first speak to Mdingi about

this matter/....

this matter? --- When we came to Court here, Sir.

Do you remember when that was for the first time? --- Your Worship, the first time I appeared in Court was on the fifteenth of May, I was arrested on the fourteenth, and I think Mdingi appeared for the first time on the twenty-seventh of May.

You were not the only person who made a statement? --- I was not the only one.

When did you first hear about others who had made statements? --- Those that I was detained with together, Sir, at Seymour, I heard from them. The others I only heard about here in Court, Sir. 10

And did you discuss your statement at Seymour with your fellow accused? --- No I did not.

Did you tell them that you had made a statement? --- Yes I said I had made a statement.

And did they tell you that they had made statements too, some of them at any rate? --- Yes.

Did you find out that you implicated each other in this thing? --- We did not discuss the contents of the statements, Sir, we just said that we had made statements. 20

Didn't the others know you'd mentioned them? --- Are you referring to the ones detained at Fort Beaufort or the ones who were detained with me, Sir.

The ones at Seymour at this stage? --- Those that I was detained with at Seymour I told them that I had implicated them, Sir.

Were they alarmed about this? --- No Sir.

Didn't they mind the fact that you have implicated them in a very serious charge? --- Your Worship, at that stage we did not know what the case against us was, 30

or what/...

Lincoln Kakasa

or what was going to happen, Sir. We did not know what was going to be done with our statements, whether that was the end of it or not.

And when you met the Fort Beaufort people did you find out that the same position applied with them, with some of them also had made statements? --- Yes we heard that others, that some of them had made statements, Sir.

Who told you? --- I can't remember who the person was, but some did make statements to a Magistrate, Sir. 10

But I want to know how you found that out, what were the circumstances with your finding that out? --- I told them that I had made a statement, Sir.

Who did you tell? --- Mdingi asked if I had made a statement and I said "Yes.

Now did he ask you what was in it? --- No all he asked if I had signed it, Sir.

I see, And was Mdingi going round asking people who'd made statements and who hadn't? --- Not that I can remember, Sir. 20

Were you the only one person he approached? --- I don't know.

Well it must have been one or the other, mustn't it, you must have been the only person or there must have been other people, is that all you know? --- I know that he asked me, Sir, I don't know anything about the others.

Where was that? --- We were here in Court in Alice, Sir. 30

Was this for the purpose of one of the remands? --- Well the case was remanded that day Sir.

And all the accused were present on that day? --- I can't say whether all were present, Your

Worship/...

Lincoln Kakasa

Your Worship, we did not all arrive at the same time.

Why was there that interest in the making of statements? --- Some said they had not made statements, Sir.

And others? --- Your Worship, it was said that those of us who had made statements, we would be injured, Sir.

Who said that? --- Sokweyiya and others, Sir.

Yes, who else? --- I can't remember. 10

I think he said and Kambula, I beg your pardon? --- I can't remember, Sir.

But there others? --- Yes Your Worship, there were others, there were a number of them who had not made statements.

Yes but I'm interested in the ones who had made statements. You say that you were told that those who had made statements would be injured? --- Your Worship, that is those who had not made statements. It was said that we who had would injure them who had not made statements. 20

Yes. Now I follow. Who said that? Sogwiyeaya you say? --- Well Sogwiyeaya did mention it, Your Worship, and others.

In fact, there was concern in the group over the fact that people had made statements implicating the others? --- Some were upset, Sir.

And they were trying to find a way out of this thing? --- It is quite possible that they tried to get themselves out of trouble, Sir. 30

Well it's the normal thing, isn't it you find a man has, has made a statement implicating you don't you first start thinking to yourself, well how can I get out of/...

Lincoln Kakasa

out of this now? --- Yes.

Now was any attempt made to explain your rights to you by any of the other accused. What your rights were as an accused were or as a possible accomplice?

--- Nobody explained my rights to me, Sir, apart from Mr. Mtshizana who said to us that we could change our statements if we wanted to, Sir.

Yes, but I'm talking about Mdingi particularly, what did he say? --- Your Worship, Mdingi said to us that we were not, we could not be forced to go into the witness box and give evidence even although we had made statements. 10

Did you ask why? How that came about? --- I don't know, Your Worship, I thought he may know all about it.

And you accepted that? --- Yes, I wanted to do what the others were doing.

You wanted to do what the others were doing. What were the others doing? --- Yes, we were to be released I wanted the whole lot of us to be released Sir. 20

Was there, I won't call it a discussion, but was there a feeling amongst the accused that if you all stuck together that you will probably come out of this case better? --- No nobody ever suggested that, Sir.

No, I'm not saying that, that somebody may stood up and made a speech to that effect, what I'm saying is, did you accused people feel that if you could get these statements out of the way, if you could change those statements. that possibly all of you might get off? --- Your Worship, it was said that if we did not confirm these statements nothing would happen. N.B. 30

That the statements by themselves were not valid? --- Your Worship, it was said that they, these statements/...

Lincoln Kakasa

Statements could not be used in Court if we did not confirm them.

I see, Now who said that? --- Mdingi was the one who told me about it.

And was it because of that you thought that if you got the opportunity you would do something about your statements? --- No, I thought, Your Worship, by coming to Court I would not go into the witness box.

You thought that would be sufficient to escape the consequences or for others to escape the consequences of your statement? --- Well that was Mdingi said to us, Sir. 10

Yes. Now you say the accused said to you that you could change your statement if you wished? --- Yes. ^{B NB}

Were you all in a group at that stage was he talking to a group generally or was he speaking to you specifically? --- Speaking to us as a group.

On what day was that? --- On the first of July.

First of July, Where did it take place? --- Here at Court, Sir. 20

Is that after the Magistrate had left the Court room? --- Yes.

What did the accused actually say on that day? --- Your Worship, he said that if we had made statements we were quite entitled to change them. ^{24 NB}

He didn't tell you you had to change your statements? --- He said that we must change them as soon as possible before the case was resumed, Sir. ²⁷

Is that after you told him who wanted to and who didn't want to? --- It might have been somebody else who said that these statements had been made, Sir. 30

He had no knowledge apart from the fact that

Lincoln Makasa

you were a member of a group, he had no knowledge that you had made a statement, did he? --- As his client, Your Worship, when he questioned us we told him that we had made statements.

Yes, did you tell him what was in your statement? --- I did not tell him what I had given in that statement, Sir.

So that he couldn't very well tell you, personally to change your statement when he did not even know what was in it, could he? --- But, Your Worship, 10
he told us to change them.

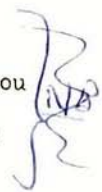
Well can you explain to me how a legal man can tell a witness to go and change a statement when he doesn't know what's in the statement. Do you think it
logical.

PROSECUTOR.

I don't know how this witness can answer how legal man acted, Your Worship.

I think that question must be put in another way to the accused, witness can understand. He's not 20
a legal man as far as I know.

DEFENCE CONTINUED.

Do you understand my question? --- Is it probable that a man with a legal training will tell you to go and change a statement when he hasn't even seen your statement or doesn't know what's in it. 

PROSECUTOR.

Your Worship, I must object to this question.

BY COURT.

I don't think, I dont think that the witness 30

must/...

must reply to this question.

DEFENCE.

As your Worship, please, I'll leave it for argument.

MAGISTRATE.

Let somebody else ... ? --- I'll leave it for argument if necessary.

DEFENCE CONTINUED.

Let's go back to this group. You say there was a group of people there? --- Yes. 10

And that group apparently were people who had made statements? --- Some had made statements, others had not but we were all clients of the accused, Sir.

So that the accused did the, the accused did not know who in the group had made statements and who hadn't --- He did not know beforehand who had made statements, Your Worship, but we did tell him who had made statements.

Now who is "we", Who told him? --- Your Worship, I don't know who the person was who voiced his opinion 20 to the Attorney, we were all there in a group.

Well, please tell us what was said? --- He was told that there were some who had made statements, Sir.

Now was anything mentioned as to the contents of the statements? --- Mr Mtshizana did not ask what had been written down in the statements, Sir.

What ... Was anything else said by somebody other than the accused? --- When we were all gathered there?

Yes we are talking about any other occasion? 30 --- Nobody had said what had been done, Sir. All what Mr. Mtshizana did, Your Worship, was to give us advice as to what to do.

Yes. And his advice was to the effect /...

Lincoln Kakasa

or was specifically that if you wanted to change your statement you could? --- Your Worship, first of all he told us that we were entitled to change our statements, then afterwards, he said we must change our statements before the eleventh, those who wanted to. No he did not say "those who wanted to". NB

Well look. He first of all said you were entitled to change your statements? --- Yes.

And then he said the statements must be changed by the eleventh? --- Yes. 10

And that is all he said? --- That is all Sir.

There was nothing else? --- I don't remember anything else.

Now do you, did you understand from that that you were being forced to change your statement? --- I did not think I was being forced, Your Worship, but it was what Mr Mtshizana told me to do.

Now if Mr Mtshizana had said you were not entitled to change your statement would you have done so? --- Well if he as my legal representative, Your Worship, he would have told me what to do. 20

If he had told you that you were not entitled to change your statement, would you have done so? --- I would not have.

And what he said to you was you had the right before the eleventh to change the statements? --- He said we must go and change our statements before the eleventh. NB

Because you have the right to do so? --- Yes. 29

Did you ask him how that right arose? --- No Your Worship, he knows the Law I don't know. 30

You accepted that as legal advice? --- Yes.

At that stage he was your Attorney? --- Yes.

And he was entitled to give you advice? --- Well/...

(30-32) This is against us!

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