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IN THE SUPREME COURT OF SOUTH AFRICA  
(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO. 3464/86

1986.05.28

BEFORE THE HONOURABLE MR JUSTICE GOLDSTONE

In the matter between:

THE KRUGERSDORP RESIDENTS ORGANISATION  
AND FOUR OTHERS

First Applicant

and

THE MINISTER OF LAW AND ORDER  
AND TWO OTHERS

First Respondent

ON BEHALF OF THE APPLICANTS:

ADV J. BROWDE, S.C.  
ADV. D.A. KUNY, S.C.  
ADV. J. STRAUSS  
ADV. J.H.A. MUNNIK

ON BEHALF OF THE FIRST  
AND SECOND RESPONDENTS:

ADV. P.A. HATTINGH, S.C.  
ADV. J.C. LABUSCHAGNE  
ADV. B.W. BURMAN  
ADV. J.J. WESSELS

ON BEHALF OF THE THIRD  
RESPONDENT:

ADV. J.H. COETZEE, S.C.  
ADV. Q. PELSER

LUBBE RECORDINGS (JOHANNESBURG)

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COURT RESUMES ON 1986.05.28:AUBREY MPOPETE: s.u.o.

CROSS-EXAMINATION BY MR WESSELS: (Continued) Mr Mpopete, is your identity number 5413020? -- That is correct, My Lord.

Well, yesterday afternoon I got details from the police of your previous convictions. I just want to put it to you. Would you please confirm or deny if it is not correct? -- On 25 November 1973 were you convicted in Krugersdorp for house breaking and theft. You received five cuts, sorry, eight cuts? -- Yes, My Lord. (10)

On 13 November 1973, also in Krugersdorp, again for housebreaking and theft, 18 months imprisonment? -- That is correct, My Lord.

It seems that I made a mistake. The first one looks like 25 April 1973. -- It can be like that.

Then, on 2 June 1976, you were found guilty of malicious injury to property and you got six months' imprisonment and three years were suspended? -- That is correct, My Lord.

What are you supposed to have done during this incident? -- I had broken window panes. (20)

Of a shop? -- Of a house.

Of a house? Was this connected to unrest or not? -- No.

I see. Right, on 27 September 1977 and at Roodepoort you were found guilty of housebreaking and theft and you received a sentence of four years' imprisonment. -- Yes.

On 8 July 1980 you were sentenced in Boons for being in possession of stolen property and you received a sentence of R50 or 50 days. -- That is correct, My Lord.

On 10 September 1982, you were found guilty in Krugersdorp on a charge of assault and you were sentenced to R60 or 90 (30)

days/



days imprisonment. -- Yes. \*

On 21 October 1982 at Krugersdorp, you were found guilty of receipt of stolen property, and you were sentenced to R800 or 18 months' imprisonment. -- I know that.

On 27 November 1984 you were found guilty of possession of dagga in Krugersdorp and you were sentenced to R60 or 60 days? -- I know that conviction.

On 21 May 1985 at Krugersdorp you were found guilty of assault and sentenced to four months' imprisonment. -- I know that conviction. (10)

And then on 21 May 1985 at Krugersdorp, you were found guilty of malicious injury to property and sentenced to R90 or 90 days. -- Yes, I acknowledge it.

And you had this conviction for theft for which you are in prison at the moment. Is that correct? -- Yes.

Now, in all these matters, in how many of these matters did you plead not guilty? -- Of breaking the windows and of assault I pleaded guilty.

You pleaded guilty on two of these charges? -- It is on three charges where I pleaded guilty. (20)

So, three out of the 11 you pleaded guilty, the others you pleaded not guilty. -- Yes.

So, on 8 occasions you denied the charges against you. Did you give evidence in those matters? -- Yes, I did.

And your evidence was rejected on each occasion? -- Yes.

Now, Mr Mpopete, on this particular day, 9 December 1985, you did not go to Mashigo's house, he came to your house. Is that correct? -- He first of all came to me and from my place then we went to his.

You did not go alone to his home? You both went there (30)

after/

after he had come to you? -- Yes, we both of us went there.

Yes, did he tell you, at the stage when he came to you, that his raincoat had been stolen the previous evening? -- Yes.

Did he know or suspect who had stolen his raincoat? -- I shall take it that he had more or less known who had stolen the raincoat, because at the house where they were, where the raincoat got lost, it was only those people who were there and after they left, then he discovered that his raincoat was missing. So, then he had the notion that it should these people who have taken his raincoat. (10)

Yes, and did he come to you to get assistance from you in recovering his raincoat? -- In other words, I shall say he had come to ask for assistance as to the recovery of his raincoat, because the people whom he knew and suspected that they were the people who had stolen the raincoat, are a rough element in the township. They are known for their being a rough type of people.

COURT: Can I just ask one question? One thing I do not follow. You say Mashigo came to your house first? -- He came in the morning, yes, My Lord. (20)

Yes, now, why did you then go to his house? -- My Lord, he was going back to his house to go and change to the uniform which they use at work, they wear at work, to put on his private clothes, because he had already decided that he was no more going to work for the day.

MR WESSELS: Did you work at that stage? -- I was on off duty on that day. I was also employed at Sterkfontein.

So, you did not go to his home to visit him? -- On that day?

Yes. -- My Lord, he first came to my house that we should (



go and fetch his raincoat. Then he said may we first of all go to his house that he must change over the uniform he was wearing.

Yes?

COURT: Just answer the question. You did not go to his house to visit him? You went to his house because he wanted to get changed? -- Yes, My Lord.

MR WESSELS: And it was believed that more than one person may have stolen the raincoat. Was there a gang? Is that correct? -- They were three. The other two are brothers, and the other (1) man does not live at that house where we were supposed to go and look for the raincoat.

Now, what did you do between six and ten in the morning when you got together until the afternoon until you went to try and retrieve the raincoat? -- We went there to go and fetch the raincoat. When we got there, they told us the raincoat is at their friend's and their friend has gone to work. He will knock off some minutes past five. Then Mashigo suggested and said to me: Let us go to the home of these people's friend where the raincoat is. It might be that we (20) find that he is still home. He has not left for work as yet, and if we find that he has not left for work, then we can get the raincoat from him.

Did you go there then? -- Yes, we did.

Did you find him there? -- No, we did not.

So, then you returned to somewhere to wait for him to come back the evening or the afternoon. Is that correct? -- Then from there Mashigo lost his patience and sort of lost his temper and said: These people might be are trying to kick me around about my raincoat. I better go and report the matter (30)

at/

at the police.

I see. So, did you report the matter at the police? -- We went to the charge office.

Did you report the matter to the police? -- Yes, we found a CID there in the office, who said to Mashigo, as Mashigo was talking to him: What you could do first, is to go to this man's home and get the raincoat from him and if he does not hand it over to you, it is only then that we will take action.

Yes, and then? -- From there Mashigo was now satisfied that he has reported the matter to the police and that he will (1) get his raincoat back and then he said we should go to the hospital to go and see one of his friends who was at the hospital, who was there because he was injured. He was a patient at the hospital.

Did you and Mashigo go to the house of the person who had stolen the raincoat at all after you had been to the police station? -- At that stage that Mashigo was shot, that was the time that we were now going to the house of the man where, from whom we were told we would get the raincoat.

I see. All right. And did Mashigo drink at all that day?(2) -- Yes, we did drink on that day.

Did you drink with him? -- Yes.

And were you intoxicated? -- Meaning drunk?

Yes. -- No, I was not intoxicated, but I felt only that excitement of having taken a bit of liquor.

You felt the excitement of having taken liquor? -- Yes.

Yes, and Mashigo, was he drunk at all? -- He was not drunk, to say that he was drunk and he did not have his senses with him. He was just in that mood of a man who has taken, he has drunk some liquor.

(30)

And/



And he was angry that his raincoat had been stolen. Is that correct? -- Is the question referring at the time when we were going to that house to fetch the raincoat, or that time when he was now shot.

At the time, just before he was shot, when you were going to retrieve the raincoat, was he angry at that stage? -- He was not angry. I saw him in his normal moods, quite settled seeing that he had already reported the matter to the police.

Yes, but he had not yet retrieved the raincoat? -- No, he had not found, got it as yet. We had not as yet reached that (1) house.

Yes, and he was annoyed that he had to go to all this trouble to retrieve his raincoat that was stolen? -- I did not know what was in his mind. I did not know what he was thinking at that time.

All right. Was he annoyed at any stage, or angry at any stage that you can recall, about his raincoat having been stolen? -- Yes, there is that time.

This person that you were going to retrieve the raincoat from, was he also one of the rough persons that you mentioned (2) before. You mentioned three of them earlier. Now you were going to go to one. Was he one of the three rough ones? -- Yes.

And did you anticipate that he might deny having stolen the raincoat? -- The witness is putting up a question. He is saying, to question to refer to him in particular, was he?

Well, firstly, him. Tell me, did he anticipate that this person may deny having stolen the raincoat? -- He was thinking nothing as far as that was concerned. I was merely going as a person who was accompanying the deceased. (30)



COURT: Why did he want, why did he need company? -- He was in need of company in case that occasions arise where they might want to fight him, in this that, seeing we were two, he was with somebody else, they would be perhaps scared to fight him.

MR WESSELS: And then I must assume that both you and him contemplated a possible fight? -- Yes, as we know what type of people they are and as they are well known in the township what type of people they are.

Are they dangerous people? -- They are people who believe in fights and they are people who are always involved in fights. (10)

Yes, and they do not only fight with their hands, they fight with weapons, knives and sticks, do they not? -- Yes.

Yes, and I suppose the wise thing to do is, if you are going to confront such dangerous characters, is to arm yourself. -- Does the question say that when you go to such type of people, you should be armed?

Well, in this particular case you knew that you were going to confront dangerous people that fight with knives and sticks? -- Yes. (20)

And did you not think it is wise to get a weapon yourself? -- Does the question say knives or weapons?

Weapons. -- No, we did not get that in mind.

How do you know Mashigo did not have it in mind? -- He could have told me that I should also take something if ever he had in his mind that he was going to fight.

Well, how were you going to fight people that are armed with your hands? Surely you cannot do that? -- We were not going there to fight. We had gone to look for the raincoat.

Yes, I know you did not go to fight, but you anticipated (

the/



the possibility of a fight? -- Even if a fight could be there, but we were not fighting.

Pardon? -- 'We were not fighting.

You were not fighting? Would you not have defended yourself in a fight with these people? -- We were going to run away. We would see that we run away.

I see. So, if you were going to run away, why did Mashigo need you to come with him to run away on his own? -- Perhaps he had thought it wise to take me along with him, so that I could be a witness to whatever danger that might befall (1) him.

COURT: No, but look, you said that he wanted you to, he asked you to come in case they wanted to fight him. -- Yes, I said that.

Yes, well, then what would happen if they did fight him? What would you do? -- I could still get out, run to someone for help if they would have surrounded him with the intention of hurting him..

MR WESSELS: You are a good man to have on your side in a fight, are you not? You are a good fighter? -- No, I am not a (2) fighter.

Yes, you have got two previous convictions for assault? -- Yes.

Yes. Did you ever see Mashigo in possession of a dagger? -- I have not seen that he had a dagger.

You see, Mr Mpopete, I want to put to you that you and Mashigo went to retrieve this raincoat. You anticipated a fight and at least Mashigo was armed with a dagger. -- That is what you will say. I do not know. I had not seen a knife.

How much did Mashigo drink? -- It could have been about (30

six beers that we consumed.

Quarts? -- Yes, quarts.

And would that be, that both you and him consumed or only him? -- Both of us.

COURT: Six each or six together? -- Six together, My Lord.

MR WESSELS: Mr Mpopete, I want to put to you that Mashigo was in an aggressive mood. -- What would have made him aggressive?

Perhaps both the fact that he had taken liquor, a considerable amount of liquor and the fact that his raincoat had been stolen from him and he was going to retrieve it now. (1)  
-- We went there in the morning. Then why could he not have consumed some liquor in the morning when going there, if ever he wanted to consume liquor, because was going to retrieve his raincoat. He could have done it in the morning.

Yes, Mr Mpopete, you are trying to avoid answering my questions. You went there just before he was shot and at that stage he was in an aggressive mood, was he not? -- By the time Mashigo was shot, it is the time when we were still going to that house. We had not yet reached that house.

Yes. The liquor made him aggressive? -- I did not see (2)  
him aggressive. A person who is aggressive will not hide it to you when you are walking with him and I do not think you could even hide his intent of what he was going to do at that house.

And I want to put to you that he had drunk more than what you are saying and he was drunk. -- I do not know as to what limit was he drunk. In any case, the state of being drunk of people differ from one person to the other.

You two were excited and in the mood for a fight, were you not? -- No.

(30)

Now/



Now, while you were walking down the street, were you walking right next to Mashigo? -- Yes, we were walking together.

So, if Francina Molane drove past you, she should have seen both you and Mashigo being together? -- Does this mean that to see us, that who we are? To see us by recognising who we are?

COURT: Listen, do not ask Counsel questions. Just answer the questions that are put to you, understand? -- It is because, My Lord, I did not understand what the Counsel says in the (10) question.

It is a very simple question that was put to you, that the person driving the motor car could see the two of you walking together. Do you not understand that question? -- She saw two people. She could see two people walking there.

Yes, that is the question that was asked. Yes, Mr Wessels?

MR WESSELS: As Your Lordship pleases. Did Mashigo tell you what he was going to talk about when he waved her down? -- Yes, he said to me, when he waved her down, it is a person who (2) has not been coming to work. Now, he would like to go and have a word with her.

You also worked with her, or rather worked at that stage? -- I was also employed at the mental hospital. They are nurses. I am not a nurse. I was a general labourer.

You knew her? -- Yes, I have already known her.

Why did you not go with him when he went up to her? -- Firstly, I am not used to her. Well, I knew here in any case, and secondly, Mashigo said to me: Wait for me. I would like to talk to that lady. (30)

Did/

Did Mashigo not get inside her car to talk to her? -- He opened the door and only got into the car with half his body.

At this stage you were close to the police van or the landrover that was parked there? -- No, I was a little bit further away.

Well, how far were you from the police van? -- I could say, say the police van was here, the witness box here, this is the police van, then I could have been outside here in the corridor.

COURT: 25 paces.

(10)

MR WESSELS: As Your Lordship pleases. Did you not see a policeman approach the police landrover with two youths that he had arrested? -- No, I did not. Or perhaps that time I did not see what was happening and it might be the time that I was facing towards the direction that Mashigo was walking.

Did you see policemen at the landrover at that stage? -- Yes, at the time when now Mashigo was talking to Francina Molane, I turned my eyes towards the landrover. That was when I saw the police there.

How many policemen did you see at the landrover? -- Two. (20)

What were they doing? -- They were standing just as I am standing.

I want to put to you that one policeman approached the landrover accompanied by two youths that he had arrested and the other one was standing at the landrover. Two girls, the youths were two girls. -- And what about the other policeman.

The other policeman was standing at the landrover. -- Well, that part of it I did not see. Perhaps it was at the stage when I was still concentrating on Mashigo going to that lady.

(30)

Court/



COURT: Can I just ask you, did you say yesterday, I am not certain, that there were people under arrest in the landrover?  
-- Yes, there were people in the landrover.

How many people? -- I could not count them, but there were more than four or five.

Did you not hear Mashigo shout out to somebody whilst he was at the motor car? -- No, that I did not hear.

Did you hear the policeman talking to Mashigo before he started walking to the vehicle of Mrs Molane? -- No, I did not hear. (10)

Did he talk to Mashigo at all whilst walking towards him?  
-- What I saw was, when he was walking towards Mashigo at the car of Mrs Molane, what I saw then was that it was after having pulled him by the shoulder that he spoke to him. That is when I actually saw both the men talking.

Are you saying that Mashigo was unaware of the policeman until the policeman grabbed him from behind? -- That is what it appeared to me.

And then the policeman was behind Mashigo and he held him from the back? -- The witness is demonstrating by holding the Interpreter from behind and turning him, that is how the policeman held Mashigo and Mashigo turned and they both of them looked at each other in the face.

The policeman pulled him out of the car, is that what you are saying? -- Mashigo was not actually inside the car. It was only half his body that was in the car. By pulling him I do not actually say he was pulling him out of the car. He was actually pulling his body out.

Yes, all right, and then they started struggling? -- They spoke a bit, though I did not hear what they were speaking. (30)

Then/



Then Mashigo wanted to pull himself loose from the policeman. Then the policeman knocked him with his fist on the chest.

Did Mashigo not grab hold of the policeman? -- It was after the policeman had knocked Mashigo that I saw Mashigo touching the policeman, grabbing hold of his hand and then the policeman did not hit him any longer.

Yes, was he able to contain the policeman? -- The other hand of the policeman was all the time holding Mashigo where he was, where he held him for the first time. Mashigo held the other hand of the policeman. (10)

Did Mashigo not grab the policeman by his body or his clothing? -- That came into being when they started pulling at each other, that Mashigo grabbed the policeman by his body and the policeman also held Mashigo, grabbed Mashigo by his body.

Did Mashigo hit the policeman at all? -- No, he did not hit the policeman at any stage.

And did they then fall down? -- Yes, they did.

Yes, and did they then wrestle on the tarmac? -- After already having fallen down?

Yes. -- Mashigo, as they fell down, the policeman fell on top of Mashigo and then the policeman was struggling as to get up, but to get up holding Mashigo, to pull him up with him.

Is that the full answer? Mashigo did not fall down as a result of the blow that he was struck? -- What happened was that the policeman was dragging Mashigo to the van and Mashigo was also dragging himself not to go to the van and as they were now on the fork, on the pavement there, then at that stage I think Mashigo lost the ...

He tripped, you say he tripped on the pavement? -- He tripped on the pavement. (30)



On the kerb stone? -- Yes, and then he fell.

I see. All right, and when the policeman got up, did he pull Mashigo up with his two hands? -- Yes, he held him with both his hands.

So, the policeman got up first and then pulled Mashigo up? -- Yes.

And then, were they now standing with the policeman holding onto Mashigo? -- Yes.

And was Mashigo holding the policeman? -- He did not actually hold him so as to hold him. The witness is (10) demonstrating that he pushed him so as to get himself loose from the policeman.

Yes, and did he succeed in getting loose from the policeman? -- Yes, he did succeed.

Yes, all right, and then they were standing facing each other? -- Yes.

And what happened then? -- The policeman was always advancing towards Mashigo, wanting to catch hold of Mashigo, and the witness is saying and demonstrating that then Mashigo was keeping on hitting at the hands of the policeman that the (2) policeman should not be in a position to hold him.

I see. And then after that? -- It was at this stage that what I saw, I seemed as though the policeman was tired, Mashigo was also tired and it was at this stage that I saw the policeman, the other policeman who was at the van, going towards the, next to the passenger seat, coming with that gun, taking that gun out.

Yes? So, you say the policeman and Mashigo was tired. Did they then just stand facing each other? -- Yes, they were standing facing each other and the policeman was always trying (3)

to advance towards Mashigo, Mashigo also retreating a little bit backwards and as they were breathing, they were breathing heavily.

You could see that clearly? They were breathing heavily?  
-- Yes, I could see by the movement of the body of the soldier, one could see if somebody is breathing heavily.

And the second one, did he run towards the policeman with the gun, or did he walk? -- The one who had the gun?

Yes, the one that brought the gun? -- He was walking fast to take the gun. (10)

This is a shotgun? Is that correct? -- Shotgun?

Shotgun. -- How do you mean a shotgun?

It is called a shotgun. -- It is a long one.

A long one? Do you know how that gun is cocked? -- What do you mean by cocking?

By putting a cartridge in the bridge? -- No, I do not know.

Well, there is a piece of wood half way between where the trigger is and the front of the barrel. Is that so? -- Yes.

And you cock it by pulling that piece of wood backwards (2) and forwards? Did you see him, did you see any of the policemen do that? -- No.

When the policeman that fired the shot, took hold of the shotgun, was he holding Mashigo or was Mashigo standing free?  
-- No, when he received the gun, he was not holding Mashigo.

How far were they apart? -- From the end of the witness box up to this here.

COURT: About two paces.

MR WESSELS: As Your Lordship pleases. And then, in what manner did the policeman then handle this gun? Tell us (30)  
precisely/



precisely. -- The witness is showing and saying he was holding where I am holding.

COURT: Waist height.

MR WESSELS: Waist height. Did he bring it up quickly to his waist?

COURT: He indicates that he took it from the other policeman and immediately pointed it and fired.

MR WESSELS; As Your Lordship pleases. And where was Mashigo's hands at this stage? -- The witness is demonstrating and says he was just standing and showing that his hands were (10 downwards, standing as a man who is now astonished as to, is this man coming to shoot or what is he going to do?

And he was facing right in front of the policeman? -- Yes, they were facing each other.

Was there any reason for the policeman to act so quickly, to take the gun and directly bring it up to his waist and fire the shot? -- Yes, I take it perhaps he was annoyed. He was annoyed in this that this person is pushing him to and fro and he wants to take him to the van and this man is now giving him trouble. That might be the type of actions that annoyed him, (11 annoyed the policeman.

At this stage, had a crowd not formed round the two of them? -- There had not been that many people who were there to witness this episode. There could have been between 15, 12, somewhere around there.

COURT ADJOURNS FOR TEA.

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COURT RESUMES:AUBREY MPOPETE (still under oath)CROSS-EXAMINATION BY MR WESSELS (continued)

Mr Mpopete if you describethe people who had gathered there as quite a crowd gathered around Mashigo and the said policeman, would that be a correct description.

COURT: Sorry, you are putting who said that?

MR WESSELS: No My Lord I put it if it is said, would it be a correct description? -- No that wouldn't.

Mr Mpopete as far as you are concerned there is no (10) reason whatsoever for the policeman to advance on Mashigo and grab him as he did is that correct? -- I do not know what the reason could have been.

Do you know Daniel Phule? -- It might be that I know him by seeing him but not knowing that he is known as Daniel Phule, or I might know him by the other name.

Yes, you remained there until the ambulance left? -- I stood a little bit far after away for after he had fired the shot at Mashigo he fired the warning shot in the air that we should disperse and I stood a bit far away until (20) the ambulance came.

How far away did you stand approximately? -- It was not that much far away but it was a bit further on, I cannot estimate here I do not know this place it is the first time I come here.

Is it further than from where you are to the back hall? -- Yes it is further away.

But could you see clearly? -- Yes.

Did you not see another person being put in the ambulance, another person that was injured being put in the (30) ambulance/



ambulance when it left? -- "No I didn't.

If that had happened would you have seen another person being put in the ambulance? -- That person being loaded just there?

Yes, with Mashigo? -- Yes I could see, I would be in a position to see.

So you say that didn't happen? -- Yes it is not like that, I did not see the other person being put into the ambulance.

You see there will be evidence that after Mashigo was (10) shot a crowd had gathered, a big crowd and stone-throwing started by the crowd on the police? -- No it is no such a thing.

The ambulance arrived about fifteen minutes after the incident? -- Yes it can be that much length of time.

Yes and whilst the ambulance men were trying to render assistance to Mashigo the stone-throwing continued? -- No there is no such a thing.

Did the ambulance men not try and assist Mashigo? -- they took him, put him into the ambulance and they drove (20) off.

I want to put to you that while they were attending to him one of the ambulance was hit by a stone? -- No there is no such a thing.

Yes and this stone thrower was subsequently shot with birdshot by the police and arrested? -- No I don't know those things.

Yes, have you ever made a statement regarding this incident to the police? -- No. I remember there came two but it was after some time and the other one said to me he (30)

was/

was an Adjutant.

Yes?

COURT: And did you make a statement? -- Yes.

MR WESSELS: How did it come about that you made an affidavit to the applicant? -- The wife to Mashigo said to me that she wanted to take steps as regards this incident and that I shall have got to be the witness and that is how I came into the picture.

Did she tell you what steps she was going to take? -- Steps of laying a charge, laying a charge against the man (10) who killed her husband.

A charge with the police? -- That she wanted to go to an attorney.

Oh, to an attorney. Right, did you then go to an attorney and make an affidavit? -- Yes I did go to the attorney.

My Lord may I show the affidavit to the witness?

COURT: Do you want the original?

MR WESSELS: Not necessarily My Lord, it is signed, I have a copy. Do you have a copy there?

COURT: Page 69, the last page you want, page 69. (20)

MR WESSELS: Yes My Lord. Is that your signature? -- Yes up here.

And is this the affidavit that you made to the attorney? -- Yes.

And before you signed it did you read the affidavit or was it read to you through an interpreter? -- Yes it was read to me.

Was it read to you by an interpreter? -- Yes.

And was it correct? -- Yes.

In every detail? -- It was read to me, it seems to (30)

me/



me that as it was read to me there were certain aspects of the affidavit that I had denounced and said it was not what I had said.

I see, and did they then change it? -- I do not know.

Well when they read it to you and you told them that there were certain parts that were not correct what did they do about it? -- The person who was reading the affidavit to me said to me he would rectify those parts, I say..

COURT: Who was that person?-- I don't know that person.

Was it a man or a woman, a White or a Black? -- It (10)  
was a man.

White man? -- No.

Are you talking about the interpreter? -- There was a  
Black man.

But was he the person who was reading it in your name?  
--That person was reading to me in Setswana Your Lordship.

MR WESSELS: Was there another person who took the oath,  
who took your oath? -- Yes it was a White woman.

And was she present when the interpreter read it to you,  
read the statement to you? -- That White woman asked me as(20)  
to whether can I read and I said yes and I did read but  
I did not understand the English language very well.

Well what did you read? -- I just read the statement  
and I signed it.

You read the statement but you don't understand English  
too well and then it was interpreted to you, not so? -- Yes  
that's so.

And then you understood it? -- Yes I did understand.

And were then pieces that were interpreted to you that  
weren't correct? -- Yes there are certain pieces that I (30)

realised/

realised were not correct.\*

Did you point that out to the interpreter and to the attorney? -- I pointed out to the interpreter.

And the attorney, did she sit there and overhear this? -- I told the interpreter I do not know as to whether did that, or could that White woman hear.

Yes, did the interpreter not say anything to the White woman? -- They did finally talk, I do not know what they were talking.

Did the interpreter not say to the White woman you (10) say that there are certain portions that are not correct? -- It can be possible that he told her because they took the statement again and looked at it.

Well why do you say it can be possible, you were there weren't you? -- They speak very deep language, I do not understand that deep language.

What language did they use? -- English.

You understand English don't you? -- Yes here and there.

And often when I asked a question you started replying before the interpreter even interpreted to you today in (20) court is that so? -- Yes but I say I hear here and there.

All right so they looked at it, did they change anything in the affidavit, or the statement at that stage? -- Not at that time, I did not see them alter anything anywhere, it's already typed.

So at that stage you signed it? -- Yes.

And you swore it was the truth? -- Yes as I told the interpreter that here and there some aspects in the affidavit it's not true then he said to me he would rectify that.

Later? -- He said to me I shall rectify it, that's (30)

all/



all what he said to me, I shall rectify it.

Yes Mr Mpopete, in view of your criminal history I take it that you understand the importance of signing a statement? -- Yes.

And if you sign a statement and there is anything in that statement that is not correct it will be used against you at some later stage? -- Yes it's true it's like that, that is why I said to him here and there and here and there it's not correct for I knew that it would be used against me at a later stage. (10)

Yes, then why did you not refuse to sign it until such time as he rectified it? -- I trusted that he would rectify those irregularities that is why I signed.

Please read your affidavit and if there is any portion that you don't understand ask the interpreter to interpret it to you and then point out to me which portions in this affidavit are not correct. -- Paragraph 3 on page 2 where it says on Monday I visited Roy Mashigo. I did not visit Roy Mashigo, Roy Mashigo came to me.

Okay? -- Now I cannot see what is written here on paragraph 5. (20)

How do you mean you cannot see? -- The typing is not clear that one can read it.

I'll give you another copy. Just ignore the writing and the markings thereon please. -- On page 4 paragraph 11, the last line starting from one but last line after the full-stop, the capital letter "I", "It could have been that the said policeman let him go." The policeman did not let him go he broke loose from the policeman that is incorrect.

Sorry, are you saying that he broke loose from the policeman/ (30)

policeman is correct? -- Yes he pushed the policeman so that he should set himself free.

But Mr Mpopete that is not in accordance with your evidence today, in your evidence today you said that the policeman pulled him up, there was no breaking loose at that stage?

MR STRAUSS: Maybe my recollection is wrong but as I remember his evidence, I haven't got a note, he said that he broke loose and then they were standing a few paces apart at the stage when they were breathing heavily, but he did (10) break loose My Lord.

MR WESSELS: But that was at a later stage, this portion refers to the time when they were on the ground and getting up.

MR STRAUSS: But it was immediately thereafter that he broke loose.

COURT: As I understand it this was immediately before the shooting.

MR WESSELS: No My Lord it says here "In their wrestling they moved into Dalinjebo Street where the said Mashigo (20) apparently managed to break free from the grip of the said policeman and get up", and that "get up" shows that that was at the stage when they were on the ground and his evidence here today was they were on the ground, the policeman got up and pulled Mashigo up. So I'm suggesting to you Mr Mpopete that your explanation is inconsistent with your evidence? -- His breaking loose from the policeman, he broke loose from the policeman when they were already on their feet.

Yes, precisely and your affidavit is inconsistent (30)

with/



with your evidence, can you explain that? -- It is as I'm saying that this is one of the mistakes that I have been showing telling the person about.

All right, read on please. -- Here that it says quite a crowd had gathered around the said Mashigo..

That is paragraph 15, page 67, yes? -- There I did not say that, this inconsistent with what I had said. I had said there was a number, about fifteen people, I didn't say a crowd.

Just carry on. -- Page 68 paragraph 21 there it says(10) I estimate that about between half an hour to an hour elapsed. I did not say an hour but I said half an hour.

Okay? -- Those are the mistakes I pointed out.

Yes, the rest of the affidavit is correct? -- Yes.

Now I want to place on record that whilst you read the affidavit you did not seem to require any assistance from the interpreter in understanding the affidavit, is that correct? -- Yes because here I understand, it is not such a high-flown English with big bombastic words.

Very well look at page 66, paragraph 13. It says (20) there "This policeman took the gun and shot the said Mashigo who at that stage was still standing at more or less the same place where he had stood when he got up after freeing himself from or being freed by the said policeman", that is not accurate, not so? -- Oh yes, this is a mistake here.

Yes how many police vehicles arrived on the scene? You can just look at me for the moment and forget about the affidavit? -- There arrived one landrover which was the same, alike as the one that had been there.

Is that and the ambulance the only vehicles that (30) arrived/

arrived? -- The landrover<sup>a</sup> together with the ambulance did not arrive on the scene simultaneously at the same time.

Yes but were they the only vehicles that arrived on the scene? -- There arrived an ambulance, then a white Combi, also then followed, and it was at the stage when photographs were taken.

That Combi was also, it was a police Combi? -- I don't know whether it was policemen or not I was standing at a distance.

The people who took the photographs, were they from the(10) Combi? -- Yes it is because it was quite conglomerated there, it was quite a mixture.

They weren't from the landrover? -- Even those from the landrover it seemed as though they were also taking photographs.

You haven't told us about this white Combi before.-- Yes it's because I remember now that that Combi did come.

Yes, Mr Mopopete did you go to Francina Molane to ask her for a statement regarding this incident? -- After Mashigo's wife told me that she would like to take steps (20) I went to Francina Molane and said to her that the wife to the deceased wants to take an action and that she says that I shall have got to be a witness in this matter as I was there when the whole episode took place. I said to her then you also will have got to come in and be witness because at the time that this happened, was to happen was that he was talking to you.

Were you accompanied by anyone? -- Yes I had gone there with another boy, well I regard myself as a boy.

What is the name of this other man? -- Mantununu. (30)



I he also known as Serge? -- Yes.

Now what was his involvement in the matter? -- His involvement in the matter is as a result of him being a member of KRO, KRO is an association that does help in the township in this difficulty that a man might find himself in.

I see, are you a member of KRO? -- No.

Was Mashigo a member of KRO? -- No he was not a member.

What do you know about KRO? --KRO are a people that does help in certain aspects concerning the life of the people in the township, for instance in the incident of trying (10) to uplift, upgrade the buildings in the townships, to renew this and the other building in the township, or one or the other of the structures in the township they assist us in that being done by request being taken, the request to the authorities, to the relevant authorities concerned.

Is this what you heard in the township? -- Yes.

Do you know who the members are of KRO? -- I do not know all of them.

Well how do you know? -- I know Serge, these others I do not know their names but they are people I just see. (20) I know them by seeing them.

You don't know any other, do you see any other member of KRO in court? -- As I say tht some of the people are the people I see going about is Serge, then I presume that the other members of KRO, for instance this gentleman to sit here as I have seen him (points at Mr Dlamini).

Mr Dlamini? -- Seeing him at certain times with KRO I also concluded that he is a member of KRO.

Did you tell the family of Mashigo that you should all go to the police and that you'll make a statement to the (30)

police/

police to have this policeman charged for killing Mashigo?

-- That we must go and put a statement to the Mashigo family?

No that you should all go to the police and make a statement as to what happened so that the policeman concerned can be charged? -- When you said that we should all go to the police to whom are you embracing the word "all".

COURT: Did you suggest then that anybody should go to the police? -- No I've never brought about such a suggestion, this is an opinion that came from his wife. (10)

MR WESSELS: Did his wife suggest that you go to the police? -- She said she is going to the attorney and I shall have got to be a witness because I was with her husband.

Well did you not say to her let's go to the police and have the man criminally charged? -- No I never said that.

Why not? -- For what reason would I be saying such things?

I beg your pardon? -- For what reason shall I say these things.

Did you not want to see that this person who had (20) killed your friend should come to justice and be found guilty of killing him unlawfully? -- His wife had said, had already said that she wants to get the attorneys and I knew then that finally this policeman will land in court and it was therefore not necessary for me to involve myself in bringing my suggestions into her suggestions.

Mr Mpopete would it be correct to say that there is no love lost between you and the police? -- Yes I do not like them.

Yes for certain. Mr Mpopete I want to put to you that (30)

Mashigo/



Mashigo was killed by the policeman when he attacked the policeman with a knife? -- He has never attacked the policeman on the day I was with him, on the day and the time this episode happened I didn't see such an incident take place.

And I'm suggesting that you are not telling the truth because you want to get the police in trouble? -- No it's not like that.

CROSS-EXAMINATION BY MR PELSER: No questions.

RE-EXAMINATION BY MR COETZEE: No questions.

NO FURTHER QUESTIONS

(10)

MR LABUSCHAGNE: My Lord would it be convenient at this stage to hand up a photograph to Your Lordship taken at St Peters' school.

COURT: Yes, thankyou.

MR LABUSCHAGNE: It may be convenient as tomorrow is inspection in loco, it is by consent My Lord that I hand it up but I think it is EXHIBIT 25.

MR STRAUSS: My Lord this is the only, that's all the witnesses on that incident, the next witness is a totally different incident. I am in Your Lordship's hands but (20) but I have some reservations as to whether one should call him now because he won't be cross-examined until probably Wednesday next week.

COURT: Yes, well it may be more convenient then to.. How do you feel Mr..?

MR WESSELS: My Lord I have no objection whatsoever.

COURT: Mr Pelser?

MR PELSER: I have no objection.

COURT: It's probably more convenient, rather not, otherwise it will mean holding, he will give some evidence now and (30)

then/

then only continue next week.

MR LABUSCHAGNE: Yes I don't think My Learned Friend could finish even his evidence in chief at this stage.

COURT: Yes very well the Court will adjourn until Monday is that corect? And an inspection will be held tomorrow and Friday?

MR LABUSCHAGNE: Could we provisionally adjourn until Friday, we may finish the inspection, I don't know, on Thursday.

COURT: Yes well we can let the recording people know (10) in good time but we won't be sitting at all tomorrow is that correct.

MR LABUSCHAGNE: Certainly not tomorrow.

COURT: Yes very well then, the Court will adjourn then until tomorrow morning in Krugersdorp.

COURT ADJOURNS TO 28 MAY 1986 FOR INSPECTION IN LOCO

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