

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

In the matter of:

T H E S T A T E

versus

THE NATIONAL HIGH COMMAND AND OTHERS

---

NOTICE OF APPLICATION TO QUASH THE INDICTMENT  
IN TERMS OF SECTION 167 OF ACT 56 OF 1955

---

BE PLEASED TO TAKE NOTICE that before pleading to the indictment, NELSON MANDELA, WALTER SISULU, DENNIS GOLDBERG, GOVAN MBEKI, AHMED MOHAMED KATHRADA, LIONEL BERNSTEIN and RAYMOND MHLABA, who have been charged jointly as Accused No. 1, and individually as Accused Nos. 2 to 8 respectively, as well as Accused Nos. 11 and 12, will apply to the above Honourable Court on the 29th day of OCTOBER, 1963, for an Order in terms of Section 167 (1) of Act No. 56 of 1955, quashing Counts 1, 2 and 3 of the indictment on the grounds that the charges as framed in the said counts are calculated to prejudice or embarrass them in their defence, more particularly, in that:-

1. AD COUNT 1:

- (a) The count, read with the further particulars, does not comply with the provisions of Section 315 of Act 56 of 1955 and is calculated to prejudice and embarrass the Accused in the conduct of their

defence, in that it does not set forth the offence, or offences, with which they have been charged in such a manner and with such particulars as are reasonably sufficient to inform them of the nature of the charge, and the manner in which the offence or offences are alleged to have been committed, and more particularly in that the State has failed to furnish a proper and sufficient reply to Paragraph B of the Request for Further Particulars which was made on behalf of the Accused.

(b) The averments in the charge as particularised are contradictory in that:-

(i) It is alleged in the preamble to Count 1 that the Accused engaged in a course of conduct during the period the 27th JUNE, 1962 to the 11th JULY, 1963, whilst in Annexure "A", which sets out the acts alleged to have been committed by the Accused pursuant to the course of conduct, the period covered is from the 10th AUGUST, 1961 to the 5th AUGUST, 1963.

(ii) It is alleged in the preamble to Count 1 that offences were committed at RIVONIA and MOUNTAIN VIEW, in JOHANNESBURG and at TRAVALLYN in the District of KRUGERSDORP, whilst in Annexure "A", which sets out the acts alleged to have been committed, it appears that none of the acts which

the Accused are alleged to have committed, took place at RIVONIA, MOUNTAIN VIEW or TRAVALLYN.

- (iii) It is alleged in sub-paragraph (i) of Count 1, as amplified by the Further Particulars thereto, that the Accused committed all the acts set out in Annexure "A", whilst in sub-paragraph (ii) of the same count, it is alleged that the said acts were committed by persons other than the Accused.
- (c) In the count, read with the Further Particulars thereto, reliance is placed on acts which are alleged to constitute sabotage, but which were committed prior to the date on which Act No. 76 of 1962 came into force.
- (d) The count charged<sup>s</sup> the Accused with sabotage by way of a conspiracy (to commit the acts set out in Annexure "A" to the Indictment) and, at the same time, alleges that the Accused themselves committed the said acts.
- (e) The count, read with the Further particulars thereto, refers to and relies on six different types of conduct which are alleged to constitute sabotage, and yet the State has failed and refuses to inform the Accused of the acts which are alleged to have been committed by them and to constitute such conduct.

(f) The count includes irrelevant and extraneous allegations which do not affect the criminal responsibility of persons accused with sabotage. More particularly, the allegation that the acts set out in Annexure "A" were "preparatory to, and in facilitation of, guerilla warfare in the Republic of South Africa, coupled with an armed invasion of, and a violent revolution in, the said Republic, all of which, in terms of their conspiracy, were actively planned and envisaged on a military basis and with hostile intent, in order to disturb, impair or endanger the independence and safety of the Republic of South Africa," have no relevance to the charge and are embarrassing.

(g) The count seeks to hold the Accused responsible for acts which are not identified in the charge and are not specified in the further particulars thereto.

2. AD COUNT 2:

(a) The count, read with the Further Particulars, does not comply with the provisions of Section 315 of Act 56 of 1955, and is calculated to prejudice and embarrass the Accused in the conduct of their defence, in that it does not set forth the offence, or offences, with which they have been charged in such a manner and with such particulars as are reasonably sufficient to inform them of the nature of the charge, and the manner in which the offence

or offences are alleged to have been committed, and more particularly in that the State has failed to furnish a proper and sufficient reply to Paragraph C of the Request for Further Particulars which was made on behalf of the Accused.

(b) The averments in the charge as particularised are contradictory in that:-

(i) It is alleged in the preamble to Count 2 that the Accused engaged in a course of conduct during the period the 1st JULY, 1961 to the 11th JULY, 1963, whilst in Annexure "A", which sets out the acts alleged to have been committed by the Accused pursuant to the course of conduct, the period covered is from the 10th AUGUST, 1961 to the 5th AUGUST, 1963.

(ii) It is alleged in the preamble to Count 2 that offences were committed at RIVONIA and MOUNTAIN VIEW, in JOHANNESBURG and at TRAVALLYN in the District of KRUGERSDORP, whilst in Annexure "A", which sets out the acts alleged to have been committed, it appears that none of the acts which the Accused are alleged to have committed, took place at RIVONIA, MOUNTAIN VIEW or TRAVALLYN.

(c) The count seeks to hold the Accused responsible

for acts which are not identified in the charge and are not specified in the Further Particulars there-  
to.

(d) The State alleges in the Charge as particularised that there is no difference between the conspiracy, concert and common purpose charged in Count 2, and the conspiracy, concert and common purpose charged in Count 1 and yet, ex facie the Indictment, the conspiracy charged in Count 2 is alleged to have commenced on the 1st JULY, 1961, whilst the conspiracy charged in Count 1 is alleged to have commenced on the 27th JUNE, 1962.

(e) (i) It is not clear whether the State intends to prove that the acts alleged to have been committed by the Accused were calculated to further the achievement of all the objects of communism, as defined in Section 1 (ii) of Act No. 44 of 1950, or only those objects which are defined in sub-sections (a), (b), (c) and (d) of Section 1 (ii) of the said Act.

(ii) The Indictment, as particularised, does not allege how the acts set out in Annexure "A" were calculated to further the achievement of all the objects of communism as defined in Section 1 (ii) of Act No. 44 of 1950, alternatively, of all the objects set out in sub-sections (a), (b), (c) and (d) of

Section 1 (ii) of the said Act.

3. AD COUNT 3:

(a) The count, read with the Further Particulars, does not comply with the provisions of Section 315 of Act 56 of 1955 and is calculated to prejudice and embarrass the Accused in the conduct of their defence, in that it does not set forth the offence, or offences, with which they have been charged in such a manner, and with such particulars, as are reasonably sufficient to inform them of the nature of the charge, and the manner in which the offence, or offences, are alleged to have been committed and, more particularly, in that the State has failed to furnish a proper and sufficient reply to Paragraph D of the Request for Further Particulars which was made on behalf of the Accused.

(b) It is alleged in the body of the Count that the campaign against laws was planned and envisaged in terms of the conspiracy referred to in Counts 1 and 2, but:-

(i) In Paragraph 7 of the Further Particulars to the Indictment, it is alleged that the campaign was agreed to prior to the said conspiracy;

(ii) Ex facie the indictment the conspiracy in

Count 1 started at a different time to the conspiracy referred to in Count 2.

(c) It is alleged in Paragraph 5 (i) of the Further Particulars to the Indictment, that the conspiracy relied on in Count 3 is the same as the conspiracy relied on in Counts 1 and 2, but at the same time:-

(i) it is alleged that the conspiracy had an additional object which implies that there was more than one agreement;

(ii) it appears from the indictment that the conspiracy relied on in Count 1 commenced at a different time to the conspiracy relied on in Count 2.

4. WITH REGARD TO THE INDICTMENT AS A WHOLE:

(a) The State alleges that the same conspiracy is common to all three counts, yet:-

(i) the period of the conspiracy is not alleged to have been the same in each of the counts, and

(ii) The objects of the conspiracy are not alleged to have been the same in each of the counts.

(b) The /



- (b) The State has charged the Accused with three distinct offences, but relies on a conspiracy which is said to be the same in each of the three counts, and which, if this were so, should constitute one offence, and not three offences.
- (c) The State relies on acts which are alleged to have been committed by the AFRICAN NATIONAL CONGRESS and the COMMUNIST PARTY OF SOUTH AFRICA, but has failed and refuses to inform the Accused, of the persons who are alleged to have represented these associations in committing such acts.
- (d) (i) The State has charged seven persons jointly as Accused No. 1, which is not competent in terms of Act No. 56 of 1955.
- (ii) The allegation in the Indictment that the persons charged as Accused No. 1 were members of a specific association is contradicted by Paragraph A.1 of the Further Particulars to the Indictment, which avers that the NATIONAL HIGH COMMAND, THE NATIONAL LIBERATION MOVEMENT, THE NATIONAL EXECUTIVE COMMITTEE OF THE NATIONAL LIBERATION MOVEMENT, and UMKONTO WE SIZWE are different associations.
- (iii) The body of the Indictment makes no reference to acts alleged to have been committed

by the NATIONAL HIGH COMMAND, THE NATIONAL LIBERATION MOVEMENT, THE NATIONAL EXECUTIVE COMMITTEE OF THE NATIONAL LIBERATION MOVEMENT or UMKONTO WE SIZWE, and there is accordingly no foundation for the presumptions created by Section 381 (7) of Act No. 56 of 1955, on which the State apparently relies.

(iv) The Indictment does not set forth with sufficient particularity the basis on which, and the reasons for which, the persons charged as Accused No. 1, are alleged to be liable for the acts of the NATIONAL HIGH COMMAND, THE NATIONAL LIBERATION MOVEMENT, THE NATIONAL EXECUTIVE COMMITTEE OF THE NATIONAL LIBERATION MOVEMENT and UMKONTO WE SIZWE and, more particularly, the State has failed to furnish a proper and sufficient reply to paragraph A of the Request for Further Particulars which was made on behalf of the Accused.

DATED at JOHANNESBURG, this 27th day of OCTOBER, 1963.

JOEL JOFFE,  
ATTORNEY FOR ALL THE  
ACCUSED, except for  
Accused Nos. 9, 10 and 13,  
2nd Floor,  
Provident Assurance House,  
Commissioner Street,  
JOHANNESBURG.

TO:

THE REGISTRAR OF THE ABOVE  
HONOURABLE COURT, PRETORIA.

AND TO:

THE ATTORNEY-GENERAL FOR THE TRANSVAAL,  
PALACE OF JUSTICE,  
PRETORIA.

Received copy hereof this  
28th day of OCTOBER, 1963  
at

ATTORNEY-GENERAL FOR THE  
TRANSVAAL.

**Collection Number: AD1844**  
**State vs Nelson Mandela and 9 Others (Rivonia Trial)**

***PUBLISHER:***

*Publisher:- Historical Papers Research Archive*

*Location:- Johannesburg*

©

***LEGAL NOTICES:***

**Copyright Notice:** All materials on the Historical Papers website are protected by South African copyright law and may not be reproduced, distributed, transmitted, displayed, or otherwise published in any format, without the prior written permission of the copyright owner.

**Disclaimer and Terms of Use:** Provided that you maintain all copyright and other notices contained therein, you may download material (one machine readable copy and one print copy per page) for your personal and/or educational non-commercial use only.

People using these records relating to the archives of Historical Papers, The Library, University of the Witwatersrand, Johannesburg, are reminded that such records sometimes contain material which is uncorroborated, inaccurate, distorted or untrue. While these digital records are true facsimiles of paper documents and the information contained herein is obtained from sources believed to be accurate and reliable, Historical Papers, University of the Witwatersrand has not independently verified their content. Consequently, the University is not responsible for any errors or omissions and excludes any and all liability for any errors in or omissions from the information on the website or any related information on third party websites accessible from this website.

This document is part of a collection held at the Historical Papers Research Archive, The Library, University of the Witwatersrand, Johannesburg.