

Were you in a cell alone or with somebody else? -- Alone.

Was each one of you in his own cell? -- Yes.

At the end of that day what happened? Did you all go - were you taken together again back to the prison? -- Yes.

And did you talk to each other? -- Vuyo Baleni looked as if he was worried. We did not speak. We merely looked at him.

In any way did you discuss about the facts of the case, the facts of what happened you know, with meetings and so on last year at Healdtown? -- At prison? (10)

No, in the car. -- No.

Did anyone of you say: look here, can you remember that occasion and so and so said this? -- No.

That is the first day, that accounts for the first day, that is last Thursday. What happened to you on Friday? -- I was taken alone.

By whom? -- By Mr Nombewana.

Anything he said to you in the car? -- No.

Do you know whether Sinxo, Baleni and Ngaki came back to court on Friday? -- I did not again see them. (20)

Have you seen them since then? -- No, I have still not seen them since.

Have you seen any other persons who you know to be detained since last Friday? -- I saw somebody who I saw for the first time.

Yes, who is that? -- Pansi.

Where was he? -- On Tuesday when I was sentenced to 30 days' imprisonment.

You saw him on that day? -- Yes.

For the first time? -- Yes. (30)

Let us leave that for a moment. When you were in the car with/...

with Vuyo Baleni, Sinxo and Ngaki you say that you said that you were afraid to give evidence. Is that correct? -- Yes.

Now why were you afraid to give evidence? -- What worried me was the word a-g-a-i-n-s-t, against.

What worried you about that word? -- To give evidence against the accused.

What worried you? Because according to you you are going to tell the truth when you come to court and so what happens and you are going to be released thereafter. -- After this I decided not to give evidence. (10)

Because of the word 'against'? -- Yes.

Seeing that you were asked to give evidence in a trial in which you saw somebody stabbing a person dead, would you be afraid to give evidence if you were asked to give evidence in such a case? There you have the word 'against' also. What is your answer? You said yes? -- I say yes.

BY THE COURT: Then you added the rider, what about the word 'against' also.

MR SKWEYIYA: Let me just check what my question was. Your reply was yes. Was it because you say yes, you will (20) be afraid because in other words even in such a case there will be a word 'against', you would have to give evidence against somebody. -- Yes.

So is your attitude then that you would be afraid to give evidence against any human being irrespective of the crime which that human being has committed because of the word 'against'? -- Crime is a different case.

Well, stabbing somebody is a crime, man. Isn't it a crime? -- Yes.

Without a reason, of course. What would make you (30) then to be afraid in such a case to give evidence? -- (No reply)

What/...

What is your reply? -- (No reply)

You cannot reply to that? -- No.

What is your difficulty about replying to that? -- (No reply)

Because you have the difficulty why you would be afraid.
-- It is because you are talking about crime and crime is irrelevant to this case.

You said you could not reply to my question before you made this comment. Now I asked you what was difficult about replying to my question. -- (No reply) (10)

You can't reply again. You can't reply again. Is that the position? -- Leave the word 'crime' out and ask about politics.

Look here, in terms of South African law, you know, the law under which these 5 accused are charged, it is a crime to take up arms and go and - I mean to advise or accept to undergo training with the view of coming back and fighting in this country. You yourself in fact you know, say that you knew that you had been doing something illegal. Is that not what you said yesterday? -- Yes. (20)

You knew it was a crime whatever you were doing. Isn't that what you conveyed? -- You conveyed it a crime.

What you thought perhaps? -- (No reply)

You cannot reply to that? -- No.

On Monday you said, if I am correct, anyway, you were brought to court here on Monday, Tuesday and on Wednesday. I take it that you were brought to court on Wednesday alone. Is that correct? -- Yes.

I am sorry, I meant to say on Tuesday, not Wednesday, Tuesday, the day before yesterday. You were brought to court on your own on that day? -- Yes. (30)

And/...

And you remained below here. Is that correct? -- Yes.

And you say you saw Tamy Nyati on that day. Is that correct? -- No.

When did you see Tamy Nyati? -- I did not see Tamy Nyati.

BY THE COURT: He said he saw Pansi.

MR SKWEYIYA: I am sorry. You say you saw Pansi. When did you see Pansi for the first time? -- This was my first time.

When? -- On Tuesday.

Did you know that Tamy Nyati was called to give evidence? Pansi, I am sorry. Did you know that Pansi was called (10) to give evidence? -- Yes.

And you also knew that you had been called to come and give evidence. -- Yes.

And you knew that if you give evidence, you will be released. Is that correct? -- Yes.

You then came into court the day before yesterday and I observed you come into court, you walked in looking from side to side more or less slowly and entered the box. Is that correct? -- Yes.

And the Interpreter was then asked - he swore you (20) in and he asked you to take the oath. Is that correct? -- Yes.

And you remained silent for some time and you sort of, after a few moments, raised your right hand and without raising your hand right up, but just halfway with the two fingers sticking out, you know, in a V-sign, and you said yes I am taking the oath. Is that correct? -- Yes.

You were then asked these questions: M'Lord, I may have missed one or two of the questions. You were asked whether you were detained in terms of Section 6 of the Terrorism Act and you said yes. Do you remember that? -- Yes. (30)

And you were asked the date on which you were arrested.

You/...

You mentioned the 2nd January, 1976. And you were then asked where you were arrested and you said at home. Remember that?

-- Yes.

And you were asked where and you said 'At P.E. where I reside with my parents'. Is that correct? -- Yes.

You were asked whether they were present when you were arrested; you said yes. And it continued that way. The next question was were you interested in politics when you first went to Healdtown and your reply to that was 'no'. Do you remember that? -- Yes. (10)

The next question was: 'Did you ever join any organisation while you were at Healdtown'.

BY THE COURT: The next question was: 'Did you become interested in politics at Healdtown'. His answer to that was no as well.

MR SKWEYIYA: I did not get that one. Thank you, M'Lord.

And is the next question then this one: Did you ever join any organisation whilst at Healdtown' and your reply was yes. Is that correct? And then you were asked what organisation and you said SASM. -- Yes.

Now, when you gave evidence here earlier on today, (20) you mentioned that at Healdtown you were a member of the IOTT and you were also a member of the Students Christian Movement. Is that correct? -- Yes.

Could you tell the Court why, in the first place, do you regard IOTT and SCM to be organisations? -- Movements.

What is the difference? -- In my presumption organisation is something political and movement, cultural.

Did you do English at school? -- Yes.

You were in Form 5. Is that correct? -- Yes.

And it was in the last month before you write (30) exams. Is that correct? -- Yes.

And/...

And you say that you did not regard the Students Christian Movement as/an organisation, when you use the English word 'organisation'? Is that what you are saying? -- Yes.

Anyway, let us carry on. What made you to mention SASM in particular? You could have mentioned that you were in IOTT or SCM. -- I told you that I regarded SASM as an organisation.

Fair enough. The next question put to you was: 'What does it stand for' and your reply was 'Black consciousness' full stop. Is that what you said? -- Yes. (10)

Well, I am adding the full stop, I am sorry.

BY THE COURT: Yes, his reply was it stands for Black consciousness.

MR SKWEYIYA: You were asked about the letters, what the letters SASM stand for and you said what the word SASM stood for. You were asked about how you joined SASM and then you used the word 'recruit'. 'I was recruited on the 19th September' without mentioning the year. Could that have been last year? -- Yes.

Do you know what happened on the 15th June last year (20) at Healdtown whilst you were there? -- No.

Is Afrikaans one of your subjects? -- Yes.

Did you write Afrikaans exams in June? -- Yes.

And did you write - do you like Afrikaans, I mean to say the subject? -- Yes.

Did you write exams as a subject in June last year? --Yes.

Can you remember when you wrote extra Afrikaans? -- No.

Is extra Afrikaans different from ordinary Afrikaans? -- It is still Afrikaans.

Any reason why it is called extra Afrikaans? -- (30)
Extralising it.

BY THE COURT: I do not know what that word means. What do you mean when you say you are extralising it? Just get extra lessons and write the same exam or is it a different exam, different course? -- It is to upraise marks.

Upraise marks. Everybody writes the same exam. Is that so? -- Yes.

MR SKWEYIYA: Anyway, the next question after you had said when you joined SASM, was - no, I am sorry, when you answered to the question as to how you joined SASM, you were asked by whom - I am sorry, M'Lord, my colleague has here (10) the next question as to who recruited you. That was the next question. Do you remember that? -- Yes.

And at that stage you mumbled something in Xhoza I think it was. Is that correct? -- Yes.

What is it that you mumbled? -- I said I do not want to be here.

And what did you mean by that? -- I said I did not want to give evidence.

But why? Why? Why didn't you want to give evidence?

BY THE COURT: No, he said he did not want to give (20) evidence.

MR SKWEYIYA: Yes, he said he did not want to give evidence. I am asking him now: why did you not want to give evidence? -- As I said before, I was afraid.

When precisely on that day had you decided - firstly, let me ask this question - I withdraw that one. When you came that day to court had you made up your mind whether you were going to give evidence or not? -- Yes.

When you came to court you still had made up your mind that you were going to give evidence. Is that correct? (30) -- No.

BY THE COURT: The first question was in the alternative. Had he made up his mind whether he was going to give evidence or not and he said yes, he had made up his mind.

MR SKWEYIYA: Had you made up your mind to give evidence or not? -- I had made up my mind not to give evidence.

Why didn't you tell the person who called you downstairs that look here, I am not going to give evidence - from the cells down here. -- I did not want to.

You did not want to tell that person? -- Yes.

What was your intention then? -- I wanted him to see that I do not give evidence. (10)

You wanted what? -- I wanted him to see for himself, without my telling him. The captain who took me there.

But why couldn't you just tell him? You could tell him: I am not going to give evidence, I am not going up. Why couldn't you do that? Did you want to come and perform here in court? Is that what you wanted?

MR ENGELBRECHT: M'Lord, I think that is unfair. The witness did not perform in court.

BY THE COURT: It is a legitimate question to ask him if he wanted to come and perform in court. Yes, carry on. (20)

MR SKWEYIYA: What is your reply to that question? -- Would you repeat it?

BY THE COURT: Counsel says did you want to come and perform here in court? -- Yes.

MR SKWEYIYA: Give a picture why did you want to perform? -- The reason, I did not know why I was not charged.

Is that why you wanted to perform? -- Yes.

And you of course refused to give evidence that day. -- Yes. (30)

And the law was then explained to you and it was interpreted/...

interpreted to you besides being read in English which you understand and you decided that I do not care whatever provisions the law may be, I am not going to give evidence. I am now talking about the day before yesterday, Tuesday. Is that correct? -- Yes.

You were prepared to go now to be sentenced and go back to jail. -- Yes.

Before you changed your mind to give evidence, weren't you looking forward to being released from detention after you had given your evidence? -- I do not quite follow you.(10)

Before you changed your mind and decided not to give evidence, weren't you looking forward to being released from detention? -- No.

BY THE COURT: Do you understand the question? At the time when you had agreed to give evidence, were you looking forward to being released after giving your evidence? -- Yes.

Did you continue in that state of mind that you were looking forward to being released after you had given evidence? -- At what stage?

Before you decided not to give evidence. -- Yes, I (20) thought I would give my testimony and then be released.

MR SKWEYIYA: Yes, you were looking forward to being released. Is that correct? -- Yes.

You were then sentenced to one month imprisonment. -- Yes.

And you then were taken away of course. Were you then taken back to the cells below. Is that correct? -- Yes.

In the cell below who did you see there? -- I saw the sergeants that were there.

Who are those sergeants? -- Sergeant Nicholson and the Coloured sergeant. (30)

Did you speak to them? -- No.

Did/...

Did they speak to you? -- No, the captain told them that I had been sentenced.

Well, you may not understand the next question. Did you think that if you are a convicted prisoner, in other words you are to serve a sentence, your position would be different to that which obtained until you gave evidence here the day before yesterday? -- I do not quite follow.

BY THE COURT: What Counsel is trying to put to you is that you had now made your position different by refusing to give evidence, you had made your position different. -- I (10)
did not know this.

MR SKWEYIYA: Do you know what happens to people who are sentenced? -- Yes.

What happens to them? -- They work.

Outside and inside, is that correct? -- Yes.

And very few visit towns on certain days of the week. --
Yes.

You knew this after you had been sentenced. -- Yes.

And you also knew, I take it, that under Section 6 of the Terrorism Act, you are not allowed visitors as such, (20)
you are at the mercy of the man detaining you, he can allow you if he wants to, it is not as of right. You knew that. --
Yes.

Did you feel that you were in a better position after being sentenced for one month, that you could go out and be seen by your mother, your parents and your friends? -- No.

You were then transported to prison. Who transported you to prison? -- The captain.

Alone? -- Yes.

Did any discussion take place between the two of (30)
you? -- No, he did not talk.

That/...

That continued, you arrived at jail. -- Yes.

Then you got off there. -- Yes.

What happened after you arrived at jail? What happened after you arrived at the Grahamstown Prison? -- He told the authorities there that I had been sentenced to 30 days.

Then what happened? -- I was taken through to a changing room and put on prison garb, taken through to another cell. It was very cold there.

I am sorry, before you come to the next thing. Were there no cool days before Tuesday this week when you were in (10) detention? Didn't you get cold in the cells? -- The cells are not the same.

Was the cell into which you were put different from the one which you had occupied before you came to court? -- Yes.

In what respect? What was different? -- They are so much colder whilst in the others it was better, you had your own clothes.

But the prison clothes you are given and as many blankets as you want. Is that correct? Whether you are detained under Section 6 or you are taken to this cell, you could get (20) a number of blankets. -- I do not know that.

Were there any blankets in the cell into which you went in? -- Yes.

How many? -- Five.

And they were thick blankets, is that so? -- No.

But there were 5 all the same. -- Yes.

How many blankets did you have in the cell which you occupied I presume before you were brought to court on Tuesday morning? -- Six.

And what happened then? You were taken to a (30) different cell now, there are 5 blankets there, you are wearing/...

wearing prison garb. What happened? -- A pair of trousers on and a short-sleeved shirt.

What happened? -- I got very cold. The windows are not closed. I had a change of mind.

Because of the cold? -- I cannot withstand the cold.

Did you change your mind because of the cold? -- Yes, and then the hard labour which I was promised to do.

What did you understand by hard labour? Had anyone said anything to you here in court about hard labour when you were sentenced? -- No. (10)

What do you mean by hard labour then? -- To work hard.

So you changed your mind because firstly of the cold and secondly because of you would have to work hard. Is that correct? -- Yes.

Anything else? Any other reason? -- No.

M'Lord, may this be a convenient stage for Your Lordship to adjourn?

BY THE COURT: This man is in jail and until you are finished with him he is going to stay in jail. Do you want him to stay in jail over the week-end? Because I understand (20) you and Mr Kies want to adjourn now and only resume on Monday.

MR SKWEYIYA: Yes, M'Lord.

BY THE COURT: Well, if you think it is fair to keep him in jail for the remainder of your cross-examination, until the remainder of your cross-examination is completed, then I will accede to your request for an adjournment, but if you can complete your cross-examination, I think you ought to. I have the power in terms of the Section to remit portion of the sentence if the accused person does change his mind and does give evidence and it is my intention, subject to what (30) the Deputy Attorney-General might say, it is my intention to remit/...

remit the remainder of his sentence the moment his evidence is finished. Now, in effect you are asking that he be kept in jail for Friday, Saturday, Sunday and Monday.

MR SKWEYIYA: It is impossible for me to finish today. As I explained it in the morning, the only consultations we have had on his evidence .. (intervenes)

BY THE COURT: I accept what you say, you do not have to explain yourself. If you tell me it is impossible to finish, I accept that.

FURTHER DISCUSSIONS ABOUT THE APPLICATION FOR AN ADJOURNMENT. (10)

BY THE COURT: Mr Interpreter, please explain to this witness that unfortunately circumstances are such that the trial cannot resume tomorrow.

MR ENGELBRECHT: Asks the Court to consider suspending the month or at this stage the remittance of the sentence.

BY THE COURT: Yes, I have the power of course to sentence him again. Tell the witness that in the light of the events which he has heard now, I remit the remainder of the prison sentence to which he was sentenced. That means that so far as (20) that sentence is concerned, he no longer has to serve it.
-- I appreciate that.

I do not know what his position is in regard to his detention in terms of Section 6 of the Terrorism Act and the remission of the sentence which I imposed on him, the remission of the balance of the sentence which I imposed on him, does not affect that situation. Furthermore I must warn him now that the remission of the balance of the sentence does not mean that he is entitled to refuse to give evidence when he is again called on Monday morning without again (30) running the risk of a further sentence, because that will then/...

then be a fresh contravention of the same Act. -- I understand.

The Court will adjourn until 9,30 on Monday morning.

THE COURT ADJOURNS.

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