

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(TRANSVAALSE PROVINSIALE AFDELING)

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SAAKNOMMER: CC 482/95

PRETORIA

1988-08-17

DIE STAAT teen :

PATRICK MABUYA BALEKA EN 21  
ANDER

VOOR:

SY EDELE REGTER VAN DIJKHORST en  
ASSESSOR : MNR. W.F. KRUGEL

NAMENS DIE STAAT:

ADV. P.B. JACOBS  
ADV. P. FICK  
ADV. H. SMITH

NAMENS DIE VERDEDIGING:

ADV. A. CHASKALSON  
ADV. G. BIZOS  
ADV. K. TEP  
ADV. Z.M. YACCOB  
ADV. G.J. MARCUS

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS :

LUBBE OPNAMES

VOLUME 440

(Bladsve 25 847 - 25 917 )

THE COURT RESUMES ON 17 AUGUST 1988

MR BIZOS: We have brought the judgments, we have three copies for your lordship and learned assessor and the state.

COURT: Yes, thank you.

MR BIZOS: As your lordship pleases. We were dealing with submissions as to why your lordship should not accept the evidence of Kuago. Kuago denied that he knew Peter Hlube at one stage. Your lordship will find that denial in volume 25 page 1 175 line 26 and I think even the state will not any longer contend that accused, the erstwhile accused no.4 (10 introduced accused no.1 acting as the chairman of the meeting. He then in relation to accused no.1, he suddenly says it was Hlube who introduced accused no.1 with the words.that he, accused no.1, was going to say a few words. Your lordship will find that evidence in volume 26 page 1 244 line 11 to line 13. He shows the inventiveness of an experienced but unreliable if not lying witness. When the contradiction is drawn to his attention he tries to go off on a tangent, does not come to terms with whether how could he have introduced someone that he did not know, if accused no.4 was the (20 chairman. He says yes, but Hlube did say something but goes away from his previous statement that Hlube introduced accused no.4 - I beg your pardon, accused no.1 having previously stated that it was accused no.4. Your lordship will find that this contradiction is put to him in volume 26 page 1 249 line 18 to page 1 250 line 14. He tries to explain the inexplicable, instead of merely saying I am sorry, I made a mistake, acknowledging that it cannot be explained; he tries to get out of it. Now his evidence that accused no.1 associated himself with the incitement to violence by (30 accused /..

accused no.16 and that he himself called on the audience to either listen to the songs or face the music and fight cannot be accepted. Firstly it seems to suggest that there was some song which called for a fight. Now we have already shown your lordship that there were no such songs at this meeting and Kuago himself conceded that there was only the hymn "Reabogo Morena" and what he did not hear at the end but from the other evidence "Nkosi sikelel' iAfrica". What song would he have referred to? We would submit that this again is a bit of contrived evidence unless of course an explanation is - (10 the explanation in relation to this is that enquiring further from the interpreter your lordship will recall that it was not really to fight but to face the music of some sort, to face the consequences of their actions. But be that as it may insofar as the witness' evidence was an attempt to show that accused no.1 advocated violence at the meeting it does not stand up to scrutiny but in any event the evidence in relation to what accused no.1 did not say, did not say this, was each one of the witnesses whose evidence I referred your lordship to earlier, that is accused no.3, accused no.2, accused (20 no.16, Mosepo Myesa, Mbatiyaswa and Mokate, all of them denied that accused no.1 said anything like that at the same references. When the improbability, the particular improbability was put to him on no less than three occasions and again there was no answer forthcoming and your lordship will see that he really evades the questions. At page - also volume 26, page 1 257 line 1 to line 22. The witness' evidence that Mosepo Myesa spoke at the meeting was also put in issue with him at volume 26 page 1 257 line 30 to 1 260 line 4. It was specifically put to the witness that it was Nnana, if I (30 remember / ..

remember the name correctly and not Myesa (Mkyesa, I beg your pardon. We were mispronouncing it during the state case until she came to give us the correct pronunciation) who spoke and it was put to him further that Nnana did not say what he attributed to Myesa. Myesa herself gave evidence that she did not speak at the meeting of the 19th but at the meeting of the 12th. Your lordship will recall that she said to the meeting what had transpired at the earlier meeting of the councillors on the 5th. Your lordship will find her evidence in volume 313 page 17 933 line 10 to 11 and again at 17 949 (10 lines 4 to 5. She too, Myesa, was supported by the other witnesses who gave evidence in relation to the meeting of the 19th on behalf of the defence. We would ask your lordship to find that the weight of evidence and the probabilities lie with the defence version and that Myesa did not speak on the 19th. It may well be, one may well ask well, why does he introduce Myesa. The answer may well lie that being a security police officer your lordship will recall that Myesa was the person that had been called, one of the persons that had been called to come and give an account of her (20 actions at the meeting of the 5th by the councillors. Your lordship will recall the notices on the administration board's letterhead, and it may well be that there was information about her. She was at the meeting, she was put in as a speaker. That would of course be a deliberate attempt to give wrong evidence. There is a more charitable explanation, that he confused Myesa with Nnana. If he could confuse Hlube with accused no.4, the erstwhile accused no.4, why couldn't he have confused Nnana with Myesa? Nnana did speak, she was vociferous in relation to the doings and non-doings of (30

the councillors but for good measure adding that there was a direct call for violence. We have addressed your lordship on the probabilities of accused no.16 not having advocated violence because of the subsequent non-conduct by the police in relation to him. We submit that equally some of those probabilities but possibly to a lesser extent because the period was shorter between the alleged incitement on the 19th and his arrest in September, either the 15th or the 23rd I do not remember precisely now - I think 15 September, the probabilities to a lesser extent apply to accused no.1. It is (10 common cause that Oupa Hlomoka, accused no.2, formally proposed that the businesses of councillors should be boycotted because the councillors had increased the rent, and that this motion was unanimously adopted by acclamation. We have no - Kuago conceded this despite the allegations in the indictment that it was accused no.16 who did it. Your lordship will find this concession in volume 26 page 1 252 line 18 to page 1 253. It cannot be - I will leave it open ended because it says line 52 which is a physical impossibility, we do not get such long pages, but it is from - on page (20 1 252 to 1 253. This was made abundantly clear by the witness in answer to your lordship that it was accused no.2 who did it, at page 1 253 line 9. The notion of formally putting the motion to boycott the business of councillors in respect of whom everyone had shouted "Amandla" after accused no.16 said that they should be killed, to then go through the business of formally moving a motion that their business should be boycotted sound bizarre. It is not only highly improbable in our submission, it is so ridiculous that it cannot possibly be believed. This is not something which we are (30

submitting/..

submitting for the first time. When this improbability was put to the witness he had no explanation for it and your lordship will find that at page 1 256 - also in volume 26, line 18 to line 28. Even when two completely contradictory statements are drawn to this witness' attention he brazenly tries to live with both of them. We will give your lordship but one example. With certainty he says the following:

"Do you recall whether or not accused no.2 said or asked that the councillors should resign from office.

Do you recall that? -- Yes, I do.

(10

Did he say that? -- Yes."

Your lordship will find that on page 1 202 line 1 to 4. If one compares this what is said at page 1 255 line 25 to 1 256 line 12 one cannot but come to the conclusion that this witness cannot be relied upon and I quote his evidence:

"Did he call on the councillors to resign? -- No.

You are sure of that? -- That is so.

Why are you sure of that? -- Because I remember pertinently that he did not utter those words to the effect that the councillors should resign.

(20

But you see your memory has changed since yesterday because you recall that I read to you what was attributed to accused no.2 in the Rand Daily Mail report AAQ.6 and I read it out to you this portion that you agreed that he said he petition the councillors to resign from office. -- No.

Well let me assure you that you agreed that this is what you said that this was said by accused no.2. Any explanation? -- If I admitted this then I will say I admitted it by mistake.

(30

Oh, any reason why your memory should have changed from yesterday to today? -- No reason.

No reason or is it perhaps the explanation that because of the circumstances under which you have been called to give evidence so long after the event you cannot really be sure of anything that you attribute to any particular accused? .."

The answer I submit with respect is revealing:

" -- Well, it can be like that."

Now how can one with the greatest respect in view of such a (10 concession, the court place any reliance upon the evidence of this witness? Not taken alone but with all the improbabilities, contradictions and other unsatisfactory features of the witness we submit that your lordship will not accept the evidence of this witness.

Now I want to turn to the credibility of IC.9 in relation.. It is submitted that the evidence of this witness having been denied by accused nos.2, 3, 16, Myesa, Mokate, Mbatiyaswa, Simanga, his evidence must be rejected and that of the accused and the defence witnesses be accepted. Again we do not say (20 it merely on the weight of numbers. This witness was called to corroborate the evidence of Kuago and we submit that the improbabilities that pertain to Kuago's evidence as set out in what we have already said about him are of equal application to his evidence, perhaps not to the greater extent as to whether anything should be done for the arrest of accused no.16 or the asking for an explanation or a confrontation with him because after all it was not his business, it was Kuago's. But there are further improbabilities in his evidence and above all he contradicts himself and he contradicts the evidence / ..

evidence of Kuago, he contradicts the contemporaneous published reports of Nkabindi and Raboroko. Although the late Mr Nkabindi was not available to give evidence the correctness of his report has been attested to by his colleague Mr Roboroko. I am sorry that I cannot give your lordship a reference but I do have a very distinct recollection that he said that he read the report at the time and we will give your lordship a reference to this effect. His evidence is inconsistent with the uncontradicted evidence as to what transpired at the meetings of 12th and 16th - I am sorry, (10 and 26 August 1984. During the application for his evidence to be heard in camera a description of his occupation was given. Your lordship will find that in volume 27 page 1 272 line 2 to line 15. One must assume that our absent learned friend Mr Hanekom who led him must have received that information from the witness himself. The clear implication was that he had gone to the meeting of 19 August 1984 for the express purpose for obtaining background information for the purposes of his work. His contradictory and confused evidence as to what precisely his work is should leave the court (20 with an uneasy feeling we submit that either he was not at the meeting at all or if he was, it was due to his association with Kuago and Moagi, the two security policemen operating in the Vaal triangle. A basis for this submission is to be found in his own evidence in volume 27 page 1 209 line 26 to page 1 291 line 7. Page 1 291 line 25 to page 1 292 line 5. And your lordship will find his reference of his association with Moagi in volume 29 page 1 378 line 28 to page 1 379. I am sorry, but the line did not come out in the typing although I am sure that I dictated it. (30



I want to pause here for a moment. There is a coincidence in this case that the three people giving the most damning evidence against the accused and the most direct evidence that violence was called for are the three people who are the drinking pals of Mr Moagi. That is Kuago, IC.9 and the interpreter Mr Masenya, about whose credibility we will also have quite a bit to say in due course. At this stage I need do no more than merely draw your lordship's attention to this coincidence.

The circumstances under which he came into the witness-box do not adduce confidence that he is telling the truth when he says that violence was advocated at the meeting of 19 August. He says that he made a statement in October 1984. Your lordship will find that in volume 27 page 1 290 line 6 to line 10. He was informed that he was required as a witness some 16 to 18 months after the event. The important date however is October 1984 when he made his statement. He says that he was making notes at the meeting of what speakers had to say openly for the purposes of writing a newsreport. Volume 27 page 1 292 line 16 to line 24. Page 1 293 line 23 to page 1 294 line 10. The next point is of considerable importance we would submit. That the notes that he had made at the meeting of the 19th were available to him in October 1984 when he made the statement. They were destroyed according to him only after a period of six months had lapsed from the time that he made the notes at the meeting. Volume 27 page 1 292 line 25 to page 1 293 line 3. Although the notes were available he did not refer to them before his statement was taken by Captain Kruger, nor did he mention the fact that there were notes to Captain Kruger because he says, (30

Captain / ..

Captain Kruger did not ask for them. Well, if Captain Kruger did not know about them he could hardly ask about them unless Captain Kruger knew that perhaps there could not have been any notes because we will submit that a fair inference to be drawn is that this person has close contact with the police. Your lordship will find that in the evidence of IC.9, volume 27 page 1 293 line 13 to line 22. He gives no satisfactory explanation we submit as to why he did not take the necessary steps to preserve the notes after October 1984. Well, it must have occurred to him that he was likely to (10 be called as a witness. This was put to him and an explanation, unsatisfactory explanation was given. We refer your lordship to volume 27 page 1 297 lines 15 to 18. The submission that it is highly improbable, that he was not taking notes, is supported by the affirmative assertion by Kuago that he and IC.8 were sitting together and that IC.9 was not making any notes. It is clearly and categorically stated by Kuago in volume 25, 1 171 line 24 to 31 and again at page 1 168 line 29 to page 1 169 line 1. Kuago says that the three of them were sitting together in the fourth row from the (20 back. Kuago, volume 25, 1 171 line 24 to line 31. The other..

COURT: Just give me that reference, sorry.

MR BIZOS: Kuago, volume 25, 1 171 line 24 to 31. The other IC.9, says that they were seated in the fourth row from the front and that they had actually split up and that there were approximately five people between them. IC.9, volume 27 page 1 294 line 11 to page 1 295 line 11. The notes according to IC.9 were being made in a manner in which people around him would have been able to see. IC.9, volume 27 page 1 293 line 23 to page 1 294 line 10. A contradiction was put to (30

IC.9 and he was unable to give any explanation for the contradictions, they were really contradictions rather than a contradiction on one point. Your lordship will find this evidence of IC.9, volume 28, page 1 348 line 3 to 9. And I submit by the time IC.9 came into the witness-box he must have known that Kuago had said that IC.9 was not making any notes and that the evidence that, or the suggestion that IC.9 was not there in his capacity that he held himself out to be must have become known to him, that is why he chose a different place. Kuago quietly told your lordship that they (10 were all sitting together in a particular place and there is no other reasonable explanation in my submission as to why IC.9 should want to separate himself from Kuago. On the probabilities had IC.9 gone there for the purpose that he assured your lordship that he did go, one would have expected him to go up to where Nkabindi and Raboroko were seated. The witness said that they are both well-known newspapermen and although he says that he did not see them there, he was unable to deny that they are well-known in the community as newspaper people, and he is unable to explain, reasonably (20 explain why he did not take this position. The evidence of IC.9, volume 28 page 1 319 line 21 to line 26. The existence or otherwise of the notes in the circumstances under which the witness made his statement is further confused by his having originally said that he made his statement in October 1984. He changes that to November but I do not want to make much of that, although it must be readily conceded that in itself it may be not a material contradiction that his evidence that the October meeting was only to clarify certain things and that the November meeting was for the purpose of (30

taking / ..

taking a statement and to sign it under oath raises the question: what was there to clarify in October? He personally destroyed his note book in which the notes said to have been taken at this meeting were contained during the period March to May 1985. Your lordship will find that in volume 27, page 1 296 line 19 to 30. Your lordship will recall the evidence of Kuago that he had not referred to his report when he, Kuago made his statement. Therefore there could not have been a report available to the investigating officer Major Kruger before they visited Kruger in (10 October 1984. What was there to clarify? IC.9 is unable to explain. Volume 27 page 1 296 line 19 to line 29. If the witness in fact had heard Tom Manthata, accused no.16, calling for the killing of councillors and the destruction of their property one must accept on the general probabilities that this would have been in the forefront of his report. If my memory serves me correctly Roboroko referred to it that it would have been a scoop to be able to report that a senior official of the South African Council of Churches had called for the killing of councillors. IC.9's recollection of (20 the opening paragraph of his report, his inability to remember what form this dramatic happening took in his report and his evasive answers as to whether he specifically mentioned that Manthata had done so is again consistent with these words being attributed to Manthata as an afterthought some time in 1985, the time after his arrest or shortly before it, and not at the time that the witness says that he made the report. This was specifically put to him. One would have imagined that a prostitution team if I may pay the compliment that they often pay me in their heads of argument and "betoog" (30

once it was suggested to this witness that this was an afterthought it would have been a matter that would have become admissible in order to rebut the allegation of recent fabrication from one or other of these persons, seniors at his place of work, to come along and say no, he did file this report but our policy is not to publish them as IC.9 said. I would suggest that no person was called because it did not happen, because common experience actually tells us that when public figures do make or are said to have made incautious remarks they are given the widest possible publicity by (10 his employer. This was specifically put at page - in volume 28 page 1 312 line 26 to page 1 313 line 21. According to his evidence he files his report the same day, on the Sunday. Your lordship will find that in volume 28 page 1 311 line 7 to line 13. He saw in the newspapers two or three days after the meeting reports of what had happened at the meeting. There was no mention in those newspaper reports of Manthata's incitement to murder and malicious damage to property. Volume 27 page 1 299 line 21 to page 1 300 line 6. Again in volume 28 page 1 310 line 16 to page 1 311 line 7. He says that (20 his report was not published because of his employer's policy not to publish incitement to violence. Volume 28 page 1 314 line 18 to page 1 316 line 1. I have already submitted that this was not the common experience of all of us, m'lord..

COURT: Well, your own witness said so. In respect of the stay-away in March he had certain information which it was not the policy to publish, that is Mr Raboroko and it was not published.

MR BIZOS: Because that may have..

COURT: Because it might incite or transgress the regulations.

(30

MR BIZOS /..

MR BIZOS: May I remind your lordship of Mr Raboroko's evidence in this regard? He said that it was because there were conflicting reports as to whether the..

COURT: That was one version. There was another version as well. He gave three versions of that I think, at least two.

MR BIZOS: Well then it may show that he is not entirely reliable in that regard but with the greatest respect I do recall that the gravamen of Mr Raboroko's evidence was that it the reason why he did not publish it was because there was uncertainty and they did not want to be seen to be taking (10 sides in this regard. I would submit that if the report was filed it was probably not published because it was a mundane report about protests in relation to rental increases and not a public figure calling for the use of violence against councillors. Having been described in the manner in which he was by counsel for the state it is passing strange that we had an admission from him at the end that the only political meeting that he covered in that capacity was the meeting of 19 August 1984. Your lordship will find that in volume 28 page 1 322 line 21 to line 26. Having regard to his sub- (20 sequent evidence it is even stranger that he should choose to go this meeting with Kuago and Letsele, both police officers; that the meeting of the 19th was the only one that he attended which was of a political nature or similar to the one of the 19th was made abundantly clear when he said that it was the only meeting that he attended as a reporter prior to and after the 19th of August 1984 in the Vaal triangle or the Witwatersrand or elsewhere even earlier when he was a social reporter. Your lordship will find that in volume 28 page 1 356 line 18 to page 1 357 line 22. We submit that his evasiveness (30

and / ..

and attempts to explain away obvious contradictions in his evidence is evidenced by his answers in relation to the contradictions, that he had filed a book full of reports and that he had heard the poem "Africa, Africa" at various similar meetings. The contradiction is an obvious one. When he was asked in his evidence-in-chief as to what sort of meeting was this poem recited at he had no difficulty in saying that they were certain types of meetings, clearly indicating that he attended them regularly. Your lordship will find that in volume 28, 1 356 line 25 to page 1 363 line 25. (10 In relation to the poem "Africa, Africa", and where he heard it in volume 29, page 1 358 line 7 to line 26. This should be compared to his evidence: When we file our report the next day we have meetings at which we are told why our reports have not been published. He also said that his notebook was full of reports and it was destroyed after a period. How does that square up when it comes to the test as to what meetings he has attended when he has to say that he only attended this meeting. Your lordship will find that in volume 27, page 1 296 line 7 to 18. The question that (20 arises in our submission and which has not been answered on his evidence is how it comes about that a person who gives a clear impression to have been a reporter at political meetings as well as a well-known political commentator only comes to have filed one report and to contradict his earlier evidence in relation to the nature of his work. The further question that arises is what reliance can there be placed upon the evidence of a man who is so mysterious and contradictory in relation to the nature of his work. There is of course the possibility that he attended the meeting merely as a (30 friend / ..

friend of Kuago and possibly for the purposes of picking up the background information which may have been relevant to his work. That would explain away many of the improbabilities in his evidence. His failure however to do so in his attempt to make it an official attendance and we may say parenthetically the only official attendance of his career as a political reporter, makes him in our submission a particularly dangerous witness who is capable of both fabricating and embroidering. If that is a possibility how can he possibly be believed in view of the considerable (10 body of other evidence to the contrary when he points to Manthata as having uttered the alleged words. A security police officer, Moage, is his friend of long standing and whom he sees regularly. Whilst he also happened to be investigating officer of chief witness against an earlier case against Manthata it is inconceivable that Moage as a security police officer would not from time to time have discussions about security matters with a person in the position of IC.9, who held himself out to be to the prosecutor to be a well-known political commentator. It is submitted that it is most (20 unlikely that IC.9 would have kept quiet about what he says he heard Manthata say at the meeting of 19 August 1984 from his friend Moage and it is unlikely that he would not have discussed with Moage the fact that he had gone to the security police to make a statement to Moage's colleagues or superiors as it is unlikely that the only contact that he had had with Moage was the serving of the subpoena by Moage on him and that even then there was no discussion. This is the first summary of his evidence which bristles with improbabilities in our submission and is to be found in volume 29 page (30



1 378 line 28 to page 1 384 line 15. The other person with whom the witness had dealings during this period is Mkhondo the then member of the security police and a councillor. Your lordship will find that in volume 29 page 1 382 line 16 to line 23. The same person who - this Mkhondo is the same person who intimidated accused no.3 shortly after the meeting of the 19th adds to the likelihood that he was closely connected with the police.

A number of the contradictions between him and Moage which would otherwise may not have been as important relate(10 to the ambivalence as to whether he publicly associated himself with Kuago or not. He says that he dissociate himself from his companions, changes his evidence that "we greeted people" and is of course contradicted by Kuago who says that they did nit become separated and we would ask your lordship to compare his evidence in volume 28 page 1 326 line 4 to line 31 and page 1 327 line 5 to line 30. And this is to be compared with the evidence of Kuago in volume 24 page 1 149 line 21 to 27 where he says that they came together and went into the church together and sat on the same pew. Kuago (20 volume 24 page 1 149 line 21 to line 27. To be compared with the evidence of IC.9 in volume 27 page 1 2 83 line 7 to 9 and volume 28 page 1 329 line 15 to line 16. Kuago says, and these contradictions are we submit of greater moment than some of the contradictions that the state has referred your lordship to in the defence evidence and then rhetorically asks your lordship which of the two versions is your lordship to believe. Kuago says that the church was opened at 13h30. On Kuago's version the church was open at 13h30 when he and his two companions arrived. This evidence is changed in (30

cross-examination where he says that at the time of the arrival the church was locked and that the Rev Moselane accompanied by Myesa came to open at 14h00. Your lordship finds that in Kuago's evidence, volume 25 page 1 175 line 9 to 16. This evidence is to be compared with his evidence in chief that at 13h30 he saw Myesa and accused no.2 making preparation for the meeting before it started. Your lordship will see that in volume 24, page 1 149 line 28 to page 1 150 line 30. This is to be compared further with his evidence under cross-examination that he saw Myesa for the first time at 14h00. IC.9 on the other hand says that the Rev Moselane came to open the church and was accompanied by Hlube whom he identified from a photograph. He went into the church and was among the first to enter. That your lordship will find in volume 28 page 1 329 line 19 to page 1 330 line 31. Furthermore he says that the priest went out again and Hlube remained behind. Moselane returned accompanied by Baleka, Manthata and More, the erstwhile accused no.4. Volume 28, page 1 331 line 10 to page 1 332 line 22. The evidence of the defence witnesses that neither Baleka nor More accompanied Moselane and Manthata when they came into the church and that there was no grand entry by a group of persons who were going to officiate and speak at the meeting cannot be rejected in view of their unsatisfactory and contradictory evidence, by Kuago and IC.9 in this regard. (10)

We submit that the contradictions between them have come about as a result of their wish to paint a picture that there was a state of excitement and not only that, but outright calls for violence. We submit that the evidence of Kuago was contrived in order to establish an adverse fact (30

against / ..

against the accused and that is why the contradictions between the two of them in these respects have come about. Your lord will find the contradictory evidence in this regard between - put to IC.9 in volume 27 page 1 295 line 5 to 10 and 1 294 line 18 to page 1 295 line 4. He contradicts himself and Kuago in relation to what accused no.16 was supposed to have said and done. If your lordship compares the evidence relating to the piece of paper your lordship will find it contradictory and we would refer your lordship to the evidence of IC.9 in volume 28 page 1 307 line 27 (10 to page 1 308 line 21. With Kuago, volume 25 page 1 208 lines 3 to 6. We submit that if the paper was torn up in the manner in which it has been alleged and that it should be considered as if it - it should have been burnt must have been a particularly dramatic gesture which could not be easily forgotten. IC.9 does not mention it in his evidence-in-chief nor does prodding to job his memory during cross-examination remind him of what happened. He only remembers it when it is put specifically to him, are not consistent with a satisfactory witness' evidence of so dramatic an incident. (20

Your lordship will find what we submit to be an unsatisfactory aspect of his evidence in this regard in volume 28 page 1 350 line 29 to page 1 351 line 25. The evidence in relation to the words on the banner, that they were: "No more rent hikes, away with councillors", to be found in volume 28, page 1 334 line 14 to line 24, is in substantial agreement with the words that were said to have been on the banner by Kuago in volume 24 page 1 150 line 10. "Away with councillors, no more rent hikes". The evidence of Hlomoka, accused no.2; Moselane, accused no.3; Manthata, accused no.16; (30

Myesa and Mokate and that there was only one banner at these meetings and that the banner that was up on the 19th was the same banner that was on the pulpit on 26 August 1984, was not in any way shaken. I will be giving your lordship the references of these witnesses in due course but let me continue in relation to the banner. The court saw EXHIBIT 40 in which the evidence of both Kuago and IC.9 will have been shown to have been incorrect, if the evidence that it was the same banner that was there on the 19th and the 26th.. The words "Away with town councillors" have at least some (10 affinity with the words attributed to Manthata that councillors should be killed. Once it was established that those words were not on the banner and both state witnesses say that they were they could only have been put there as a result of collusion between them to strengthen the case against the accused and more particularly accused no.16, Mr Manthata.

ASSESSOR: Which exhibit is this, Mr Bizos, please?

MR BIZOS: EXHIBIT 40 is the film if my memory serves me correctly. Your lordship will remember that Mr Harris actually focussed on that banner. Let me pause here for (20 a moment lest it be thought that this submission is based upon an incorrect premise. The only incorrect premise that there can possibly be is that there was one banner on the 19th which said "Away with councillors" and another was made between the 19th and 26th and put up on the 26th. Why on the state's thesis that this was a campaign against councillors should someone go and make a different banner for the meeting of the 26th and remove the very words which according to the state's case were the very purpose of the campaign which the accused are alleged to have conducted? It does not make (30

sense / ..

sense with the greatest respect and the issue arises, if they can put words on a banner, both of them, to similar effect in order to buttress up the state case why should they be believed when they say that certain accused expressly called for violence? IC.9 in our respectful submission is both confused and self-contradictory as to who presided at the meeting. In his evidence-in-chief he says that it was More, the erst-while accused no.4, and he describes him as the chairman of the meeting. IC.9, volume 27 page 1 283 line 2 to 4. This is again evidence which tallies with that of Kuago to be (10 found in volume 24 page 1 153 line 23 to line 28 and page 1 154 line 12 to 17. It has been established beyond any doubt that More was not the chairman, that Hlube was. The question again arises, how does it come about that two witnesses come to make the same fundamental error? The only reasonable conclusion is that their evidence was agreed on this wrong fact as a result of collusion. The evidence we submit cannot be explained away on the basis of mistaken identity and confusion between Hlube and More because the witness attributes different actions and functions to (20 Hlube and More, such as Hlube speaking after no.3 had spoken as in volume 25, page 1 191 line 30 to page 1 192 line 7, and then says that Hlube said that Baleka wanted to say a few words. In volume 26, page 1 1244 line 8 to 15. The obvious point that we are trying to make is that they say More did one thing and Hlube did another therefore it cannot be a simple question of mistaken identity. But having introduced Hlube he realises that this is inconsistent with the previous evidence and he then says that More introduced accused no.1 and Myesa, in volume 26 page 1 249 line 17 to (30

page 1 250 line 17. Both Kuago and IC.9 attribute calls for violence to Myesa. Her evidence and the evidence of a number of defence witnesses was that she did not speak at this meeting.

COURT: Did IC.9 give Myesa her name?

MR BIZOS: I think yes, m'lord.

COURT: Where?

MR BIZOS: Could I just go back, m'lord? May I go back to volume 24, 1 149. I do not know whether it is..(discussion in background) (10

COURT: We will take the adjournment now, you can look it up then.

MR BIZOS: As your lordship pleases, yes.

THE COURT ADJOURNS FOR TEA / THE COURT RESUMES

MR BIZOS: I must apologise to your lordship. I told your lordship that the witness had mentioned Myesa by name. I have looked at the record and I was wrong in that. The evidence is to the contrary in volume 27, page 1 288 line 19 to 21, but that search although it may explain that it was not Myesa has led me to an even more important contradiction which (20 I have missed, that whereas - which makes a point that your lordship will see that Kuago on volume 25 page 1 156, he mentions Mosepo Myesa at page 1 156 line 7 and identifies her as the woman that was on the platform and had helped earlier on, whereas IC.9 in volume 29 page 1 409, witness IC.9 says that the woman came from the audience and your lordship may recall that there was some discussion about the proportions and age of each of these two ladies. I do not know that it is sufficiently important for your lordship to decide having seen Myesa as to which one he was referring to, but I (30

submit/..

submit that is a contradiction. And we also took the opportunity of looking at the evidence of Mr Raboroko. I have not had occasion, I have not yet had an opportunity of seeing what contradictory evidence he gave, mentioned by your lordship, but the portion that I was referring to and I had in mind is to be found on page 361 - I beg your pardon, volume 361 page 20 738 lines 2 to 11. The question was:

"What would you have done if a person in the position of Mr Manthata had incited violence at this meeting against anybody? -- If a man of Mr Manthata's standing in (10 the community had asked that councillors should be killed it would have been a major story for the newspapers and I think it would have made headlines in all the newspapers. What I would have done was to get in touch with my office immediately with a view to phone in a story and tell them that Mr Manthata is capable of saying this and he is a man who is a prominent leader of the community.

Did you get in touch with your editor on that day, Sunday 19th or anyone in your office? -- No, I did (20 not. There was not any need for me to do so because the story that we were going to carry was not much of a punch story and by the time the meeting had elapsed we had passed the deadline already."

That is the evidence that I had in mind. IC.9 says that the Rev Moselane, accused no.3 said that he had held a meeting with councillors but that those have not proved fruitful. Volume 27, 1 298 line 9 to 11; volume 28, page 1 336 line 7 to 9. It is common cause that no such meeting took place and if that is so why would the Rev Moselane have said.. (30

COURT: Wasn't there a meeting where accused no.3 refused to have a week of peace or whatever it was called?

MR BIZOS: There had been a meeting with churchmen and certain councillors in order that they should have a week of common understanding.

COURT: Yes, something of the sort.

MR BIZOS: Something of the sort. I do believe that that was before the 19th but I did not understand that that was a meeting in order to settle the rent question, but it may be that some reference could theoretically have been done but (10 not in the manner in which the witness has put it, on the basis that there had been negotiations in relation to the rent. He denies further that the Rev Moselane had said that councillors were there for their own benefit. Volume 28, page 1 336 line 31 to line 1 337 line 16. This was contained in the Nkabindi report, AA.26 and we have already submitted to your lordship that the correctness of the report has been proved by a number of witnesses. Why would Nkabindi have incorporated those words in his report if in fact they were not uttered? It is however in relation to what Manthata (20 is supposed to have said, that the witness is at sixes and sevens both in relation to himself and the evidence of Kuago. He confidently attributes the use of the words "Amandla" to accused no.16 whereas the evidence is that the Tswana equivalent was used. Again not a big point but where your lordship is dealing with the words uttered by the accused one would have expected greater accuracy from reliable witnesses. Volume 28 page 1 348 line 10 to page 1 349 line 9. He emphatically denies that Manthata says that if residents were unhappy with the councillors they could elect others and further denies (30 that / ..



that the rentals were said to have been suspended elsewhere. Volume 28 page 1 351 line 27 to page 1 352 - I am sorry that I haven't got the line. And despite his positive assertion that these words were not uttered when it is put to him that Kuago admitted that these words were uttered his answer is well, he may have heard them. Volume 28 page 1 352 line 23 to line 30. He denies that there was any mention of elections when in fact it is common cause that there were at least in relation to the promises made by councillors before them. Volume 28 page 1 353 line 4 and I am sorry that again the end line was not typed in. Although it is specifically alleged in the indictment that Manthata called for the resignation of councillors the witness says that no call for their resignation was made. Volume 28, page 1 354 line 9 to page 1 355 line 5. This is not a question of mere memory. If the witness came to the witness-box to say that there was a call for the killing of councillors that would be inconsistent in his mind to the call for resignation. The weight of evidence and the allegations in the indictment are against him. In relation to the speech of Hlomoka, accused no.2 (20 we submit that he did not fare very much better. He says that he spoke in Sotho but it became common cause that he spoke in Zulu. Volume 29, page 1 394 line 24 to line 25. Again when one is being called upon to accept that certain words were used that the witness does not remember the language that was used by the accused..

COURT: Who spoke in Zulu?

MR BIZOS: No.2, m'lord. Once he forgets the language that a person spoke in and the words that are supposed to have been uttered by a person is the very crux of the evidence (30

what / ..

what reliance can be placed? He says further that he cannot remember whether accused no.2 called for councillors to resign. Did I give your lordship volume 29, page 1 394 line 24 to line 25, that is about the language and about the resignation of councillors, volume 29 page 1 936 lines 11 to 13..He cannot remember that he had said people, that is that accused no.2 said that some people would pay the rent for fear of being evited. Volume 29 page 1 936 line 16 to 19.

ASSESSOR: Is that possible - 1936, volume..?

MR BIZOS: 29. May I just check that?

(10)

ASSESSOR: Yes, I do not think so.

MR BIZOS: This is not - it is the..volume 29 contains the evidence of IC.9.

ASSESSOR: But the pages.

MR BIZOS: Oh, the pages? Oh, they have been transposed. Thank you for drawing attention - it must be..the 9 was transposed with the 3 I think. May I just check, please?

ASSESSOR: Well, it should be something like a 4 I think. It may be a 4 but not a 9.

MR BIZOS: May I just check on the notes and come back, (20

K1493

m'lord, they were handwritten notes and they may have been.. but it must be towards the end because..

ASSESSOR: Volume 29 goes from 1 374 to 1 924.

MR BIZOS: Yes, it must be just a transposition. I will just try to find - I do recall that I did it accused by accused. I will find the cross-examination about accused no.2 in a moment. I am sorry I cannot put my finger on it immediately but we will find it and give it to your lordship. The 3 and the 9 have been transposed - let me make absolutely sure.

ASSESSOR: 1 396 - that may be.

(30)

MR BIZOS / ..

MR BIZOS: Yes, because at 1 396, that the councillors should resign from office, I cannot remember that. Are you saying that he did not say it - Yes, that is what I am saying. That some people would pay the increased rental for fear of either being evicted or locked out, do you recall that - That I cannot remember. That is at 1 396, the 3 and the 9 had been transposed. I am sorry. So it will be 1 396 lines 11 to 13 and 1 396 line 16 to 19. Thank you for drawing my attention to it. He denies that accused no.2 moved a motion which was accepted as a resolution to boycott the business of the (10 councillors, 1 935 - 1 395 line 10 to 1 396 line 8 - they have again been transposed.

ASSESSOR: What was the reference to the words used, please Mr Bizos?

MR BIZOS: The language or the - the reference that I have given, in the Zulu I have given your lordship, it is 1 394. The witness cannot remember whether he said the councillors should resign..

ASSESSOR: Yes, alright - no, that is alright, thank you.

MR BIZOS: It is 1 396, yes. We submit that in relation (20 to accused no.1 the witness did not do much better either. He specifically denies that Baleka said anything in relation to the cost of living, unemployment insurance fund, to the general sales tax or that if the rent is increased that people would be robbed of their rights, all of which have been proved to have been said and confirmed by Raboroko in EXHIBIT AA.27. Your lordship will find that the evidence of IC.9 on this is to be found in volume 29 page 1 401 line 25 to 1 403 line 1. And Raboroko's evidence in volume 361 page 20 738 line 25 to page 20 739 line 4. The witness is at a loss to explain (30

the / ..

the possible conflict between his evidence and the contemporaneous report, volume 29 page 1 402 line 20 to line 23. He persists in his version despite the fact that he is contradicted by Kuago and the contemporaneous reports. Just by the way the witness does not know what AZANU stands for and what it represents. Your lordship will find that in volume 29 page 1 405 line 5 to page 1 406 line 19. Either way I submit that we of the defence have double marks in relation to this concession by the witness because either he is not a well-known political commentator or AZANU did not have any sort(10 of sufficient political presence to have even found itself by name as a co-conspirator in the indictment, correctly so, which will inure to the benefit of accused no.1 but we are not called upon to make a choice but merely to draw your lordship's attention that either way it is a remark of some significance.

Now these two witnesses are not to be believed in our respectful submission, not only for all those reasons that have been advanced but because they have been contradicted by the evidence of credible witnesses. I have the refer- (20 ences of the accused and the defence witnesses that have given evidence on these various issues. I know that it is going to be a lengthy and laborious task but unfortunately I know of now other way of dealing with it, unless..

COURT: Well, why don't you put it through the photostat machine and hand it up to us?

MR BIZOS: In handwriting?

COURT: Yes, it does not matter.

MR BIZOS: Will your lordship accept that?

COURT: Yes.

(30

MR BIZOS / ..

MR BIZOS: Well then could we have a little time, not necessarily the court time and then - we might even if we have time even manage to type them because I really feel that your lordship's time is too valuable to write down six pages of references.

COURT: If your handwriting is legible you need not type it out, it wastes the typist's time.

MR BIZOS: Could we then reserve this in relation to the meeting of the 19th and could I - we will write on top of each page in relation to which point each one of these (10 references relate to the meeting of the 19th so that your lordship does not have to - because it really will be a tremendous - will do that. We will discuss it later, perhaps we should type it.

COURT: Yes, you will feel like somebody reading the market report on the radio when you have read all these references.

MR BIZOS: Well, I could find that and also destroy it. We will do it that way, m'lord. Now I want to go on to the meeting of the 26th. Could we have a short adjournment because what has happened is that our record in our - the feeling (20 that it will help if we have the volumes out has become so assorted that it is counter-productive and we cannot really find the volumes that we do want and I do want to organise the material a little, m'lord so that I do not have to search..

COURT: How much time do you need?

MR BIZOS: About ten to fifteen minutes should be sufficient.

COURT: We will adjourn for fifteen minutes.

THE COURT ADJOURNS SHORTLY / THE COURT RESUMES

MR BIZOS: We are indebted to your lordship for the opportunity. I want to deal with the meeting of the 26th of August (30

1984 at Sharpeville and I have chosen to deal with the meeting of the 26th and coming back to the meeting of the 19th on the probabilities and certain other factors but let us start off where any argument on any particular point should really start and that is with the indictment. Your lordship will find this in sub-paragraph 7 on page 328 of the schedule - 37(7) on page 328. Now the indictment dismisses this meeting very briefly and very inconsequentially. We are told in sub-paragraph (vii) that an announcement was made at the meeting of the 19th that there would be a meeting next Sunday, (10 26 August 1984 and then sub-paragraph (vii) says the following:

"This meeting was held on 26 August 1984 at the church of the accused, Tebogo Geoffrey Moselane, at which the audience were incited and indoctrinated against the councillors and a call was made upon the meeting not to pay their rents. It was pointed out that some of the people had presumably already paid the higher rent.."

one does not know why that is alleged on the facts, but anyway -

"..and it was insinuated that if that had happened (20 it would fan the wrath of the people. At the meeting it was announced that the next meeting would take place on 2 September 1984 when a final decision would be taken regarding future action."

That is all that is said about this meeting in the indictment, then it goes on with sub-paragraph (viii) the meeting held on 2 September etc. Now the state must have forgotten what it failed to allege and I draw your lordship's attention that it does not allege what it tried to prove, that there was a conspiracy among the organisations in the Vaal; all (30

the / ..

the people including accused no.3 and no.2, to call for a stay-away, call for a march, all for the purposes of the grand design of the general preamble of each paragraph in furtherance of the conspiracy or conspiracies alleged. Now despite the lack of such an allegation the state has tried to bring the Sharpeville meetings in to correspond with the meeting of 26 August 1984 at Sebokeng, the meeting of 25 August in zone 13 in Sebokeng; the meeting of Boipatong on 26 August 1984, to bring it in together with the house meetings that were held prior to 26 August 1984, to really make them conspiratorial meetings. Well, no explanation has been furnished to your lordship as to why these very important decisions which the state asks your lordship now to find as a fact were not even alleged in the state's indictment where other matters are alleged. Your lordship will recall that this..

COURT: Is that correct? Doesn't the preamble and the main charge say that they conspired and then they did with the hostile intent and as part of the conspiracy act in the following manner and then about some 80 or 79 acts are set out?

(20)

MR BIZOS: Yes, m'lord.

COURT: Now isn't that what this refer to?

MR BIZOS: Ja, but I am merely saying is when trying to ascertain what happened at this meeting your lordship will look at the other specific allegations that are made in relation to the other meetings where your lordship is told what decisions were taken, who was present, who made the proposals.

COURT: It is clear that they did not have a witness on this meeting, because they did not lead a witness on this meeting.

MR BIZOS: Well, Hlube was in detention for ten months. (30

COURT / ..

COURT: Well, maybe there was no intention to call him or he did not speak.

MR BIZOS: It may be but..

COURT: I mean if they had the particulars they would have given at, looking at the rest of the indictment, so..

MR BIZOS: Looking at the rest of the indictment they would have given it, yes.

COURT: Well, where does the argument lead us?

MR BIZOS: Well, the argument..

COURT: For no witness was called in fact.

(10)

MR BIZOS: M'lord? No witness was called?

COURT: Yes.

MR BIZOS: But what your lordship has been asked to infer from a disputed statement made by Raditsela, supposedly had been made by Raditsela and from some tit-bits that are contained in the transcript that there were decisions at the meeting of the 26th to call for a stay-away and a march whereas the defence case is that there were no such decisions at the meeting of the 26th and we intend drawing to your lordship's attention the - to the evidence that there (20 were no such decisions at the meeting of the 26th and therefore the substratum of the allegation of a conspiracy between the people calling the meetings at Sharpeville with the people calling meetings elsewhere does not gel. Throughout the indictment the state tells your lordship that this was going to happen in the Vaal and more particularly in Sharpeville and I am going to try and establish to your lordship's satisfaction that on the evidence in relation to the meeting of the 26th there was no - not only was there no conspiracy, there was no consultation, there was no liaison even between (30

what / ..



what the people were saying at the meetings at Sharpeville with what was said elsewhere. The state favours the conspiracy theory and assuming that there was a conspiracy says that whenever there was any contact it must have been a contact for the purposes of furthering the conspiracy. What we are saying is that the facts show that on the 26th there was no liaison whatsoever between the people calling these meetings in Sharpeville and elsewhere which makes nonsense, in our respectful submission, of the allegation that what happened in the Caal was orchestrated by the UDF or the VCA or (10 anyone else. I want to make a suggestion in relation as to how we should handle some of these defence references and have your lordship's concurrence on it. We are unhappy about handing in pieces of paper with handwriting on them. What I would suggest subject to your lordship's concurrence is this that soon after the volume and they appear to be fairly up to date, of the argument becomes available that we write on top of the piece of the paper on page 25 167 add the following reference and we will give your lordship a loose piece of paper and we will give it to the state as well and we will (20 mark it - of it is page 25 057 we will mark it 57(a) and the next one 59(a) so that your lordship will be able to work at it at the same time if your lordship wants to look up the references and if we have your lordship's permission then we will go a little bit faster rather than read out the market reports as your lordship indicated. We will do it that way then.

COURT: Yes.

MR BIZOS: Now we do not have to go any further in order to disprove the state's theory of conspiracy than look at (30

EXHIBIT V.30. Your lordship will recall that this is an interview between Mr Kevin Harris and the Rev Moselane, accused no.3, and Peter Hlube. May I remind your lordship that it was common cause that there are no clicks or clacks or other noises in relation to this portion of the sound track of the interview so we have a continuous record. Now because Mr Harris could not understand the language he asks: "Could you just tell me what the final outcome of the meeting is?" - "The final outcome is that there should be (I will leave out the hesitations) - The final outcome is that (10 there should be actually in terms of the rental from next month there should not be, we should not pay the increase. That is one. Two, we should consult an attorney for his opinion on court interdict whether we can take the Lekoa town council to court. The third one is that there should be petitions that because Mohlatsi himself is the chairman, mayor, and he has said that he has not been asked to resign. Now there are wards in the township of which the people in the wards should now actually mitigate his work the said councillors in their wards to resign because that is how (20 they get elected, and that is why there should be a petition to petition them to resign. Now but the petition is going to be per ward."

Kevin Harris: "I see, the petitions will be passed around in the community now?" Answer: "Ja, and now the third thing is that two, three, let me just, let me just check on..let me.." and there is apparently something, an interjection that cannot be heard clearly. "Yes okay, carry on, yes."

COURT: That was an agreed interruption.

MR BIZOS: Yes, I have it here, it is 32 to 72 and perhaps (30

I overstated the position. It is on mine as well that it was an interruption on the basis - the note that I have is 37 to 72, it is really an inability to really make out, but let me concede that for a moment: "But yes okay, carry on, yes. The first point is that we pay the rent but we do not pay the rent increase, we pay our normal rent but we do not pay the increase. And the second thing that we call for the resignations of the community councillors and the other thing is that the people feel that there is a bottle store and other facilities under the control of the community coun- (10 cillors, the people want to know where is the money for that and how it is used. Well, the other thing is that we have to boycott their garages." Moselane repeats the word "garages". "Shops", Moselane repeats the word "shops", "and other facilities owned by them and the other thing which we raised today is that we have to make a petition, to run a petition. Draw a petition in response to what he said in the newspaper that he had been elected by the people and as result the people can tell him to resign. He can't..(Moselane interjects from time to time but what he says cannot be heard clearly) (20 ..any letter or anything to that effect, wa bona. That is why we are going to make a petition, and the other thing is that we are going to try to find out if there can be any loophole, if we can find any loophole in order to make court interdicts".

Kevin Harris: "Sorry, can you tell me briefly how this call came about, what rents are being paid and what the increase and um...". Moselane: "As far as we are concerned the increase is - they give very flimsy reasons. We have not really taken them all but one is that which the meeting (30

talk / ..

talk about today reason for increase, increase prices and maintenance cost which is not stipulated - what stipulated whatever it is, increased salaries." Kevin Harris: "For the councillors?" - "Vehicle costs and miscellaneous expenses, you know these are the increases." Kevin Harris: "Yes I understand that." "Erection of capital projects", says Moselane, "is explained hereunder. Now on the projects since the drought there are firms like Ferguson and Mat.. (something else, m'lord) which have done.." and then they talk about the retrenching and it is not really necessary (10 to read page 4 out. Kevin Harris: "Now the councillors have actually approved this..made there..is this right now this is the reaction of the community against this?" - "The community is reacting against this". Harris: "Can you tell me who the various..Peter, your name?" Peter: "Peter Hlube". Harris: "Hlube. And what are you on this?" - "Well, we are just a sort of steering committee simply because .." then: "people have called us an anti-rent committee. Ja, anti-rent committee" - and they laugh.

Now the laughter obviously is on the evidence because (20 it is a name given to them, that they themselves never really formed themselves in a committee and that sort of thing is corroborated because quite a bit was tried to be made on the interpretation of AN.15, one of the AN-documents that this was really part of the conspiracy. "You know that we are just concerned. In addition to this we have been trying to facilitate those workers' movement (says Hlube). They feel that this vehicle costs and miscellaneous expenses, they felt that these people are going to buy more vehicles which is going to be used by this people who demolish their shacks. (30

They say that it is unfair for the community councillors to increase their money and at the same time to be used as a weapon against them, you see." And Moselane says: "Which means that it is true that there is no increment in any form in terms of the government and their structures that does not militate against black people, even the tax you know is that we are paying for apartheid so any increase in terms of the workers is going to militate against them, to buy vehicles to demolish the shacks". Now that may be considered to be a most unfair comment on the reality of the situation (10 What your lordship is concerned with is whether the state has proved a conspiracy.

"Who was that man in the jersey, in the green jersey?" - "Oh he is one of the trade unionists, I forget his name unfortunately." Now how does one suggest that it is clear for us who have the transcript and saw the film that the probability is that Mr Harris wanted to know who Nkanase was because he had much to say. Your lordship will recall his rhetorical style. Now there is supposed to be a conspiracy on one suggestion among the trade unions and the church (20 and the UDF and the VCA and everything else and one trade unionist does not know the name of the other trade unionist. By the way how did this meeting come about - sorry - "By the way this thing came about.." and then Harris asks: "People from the community?" -- "Ja, from the community, all from different organisations. They just came together in order to see how .." what he says further cannot be heard clearly - "There was a consultation of the churches and the trade unions to see about this, so the church is looking from the one side and the labour.." then Hlube interjects while Moselane is (30 speaking / ..

speaking and what he says cannot be heard clearly.. "and the trade unions from the other side of the labour movement. So because he is in the labour, she is in the labour, the union and I am a priest." So this is now insofar as this is cryptic, what your lordship knows is that Peter Hlube was a trade unionist, Mosepo Myesa was a typist in a trade union and he is a priest, so we now elevate this into a conspiracy between the trade unions and the church. "Which union are you in?" - "Orange-Vaal General Workers' Union". "I see."

Together with her so the workers and the church came to- (10  
gether.?" - "Ja, we told them it should actually come out strong."

And then m'lord, "You do not have a copy of that?" and he says "I have got some here, you will get it", and then they have to go and fetch what has been identified as the rent increase.

Now this is a contemporaneous discussion, the authenticity of which cannot be seriously doubted. No-one suggested to Mr Harris or anyone else that this document was falsified or rather this sound track was falsified in any way. (20  
There was some suggestion that it was a copy. On your lordship's judgment on the admissibility of tapes it does not matter whether it is a copy or not, but falsification was not suggested. Where is the evidence that a decision was taken at this meeting that there should be a stay-away, that there should be a march, that there was liaison between VCA and them; that they worked with the UDF; that it was in furtherance of any other grand design. The defence witnesses told your lordship over and over again and they were cross-examined at very great length that a petition was being (30

prepared. They told your lordship over and over again that they hoped that the courts would come to their assistance in relation to the increase in rent. The state was actually asked by your lordship: are you going to make up your mind as to whether you are challenging, whether or not there was going to be a petition or not, because the defence is entitled to know before deciding how much further they have to take it. Well, we still do not know what the attitude of the state is but what is important, that once you have a contemporaneous recording to corroborate the evidence of Myesa (10 and accused no.3 that these meetings had their origin as a result of co-operation of labour and the church and in the further particulars laughingly the mass organisation which decided this was accused no.3 and Myesa where is the evidence that these meetings at Sharpeville were called as a result of any conspiracy for the grand designs alleged in the indictment. Now we know that accused no.2's speech, and I have already referred your lordship to it in EXHIBIT 31, V.31, is uninterrupted and I have already made the submission that if there was call for violence by accused no.16, accused no.2 (20 and accused no.1 at the meeting of the 19th how is it that there is no reference to it whatsoever here? If there was a decision by acclamation that councillors should be killed on the 19th as deposed by Kuago and IC.9 on behalf of the state why is there no reference to it whatsoever in the - either EXHIBIT V.31 or in EXHIBIT V.30? Now much time was spent on EXHIBIT V.31 in cross-examining witnesses as to what Jan Botha said or did not say and what he meant or might not have meant; whether there are notable interruptions or not but one thing is clear. There is no evidence from (30

the state to the contrary and the transcript shows beyond any doubt that whatever it was that Botha said or wanted to say was repudiated both by accused no.3, the Rev Moselane and by Hlube. Your lordship has a look that at the bottom of page 20 Mr Mkonase is busy suggesting how Sharpeville should be divided up into various wards for the purposes of circulating the petition. The evidence makes it quite clear that that is what that refers to. Then there are because of the interruptions on page 21 - it is not clear precisely what has happened there but Botha gives a significant .. (10 information at what was in fact happening. Until you have appealed to the court of law I wholeheartedly agree with that but as I talk we should have an alternative so that one thing that we know m'lord is that at the very dying moments of this meeting no alternative to the petition had been taken of legal action and a call for resignation had been suggested at this meeting. He says I agree, proceed with it, you have our support. All this must refer to the three resolutions that had been passed long before on the 12th. We are going to proceed with it. Now the thing is number one, there (20 is an issue we have been avoiding. After we have submitted the petition to the Italian and he says then we stop him telling him that on a set day his buses should not enter. What should then happen if the buses enter. Then there are interruptions and the reason for the interruption there is given by Mr Harris that this was making the otherwise leisurely meeting coming alive and he wanted to get him around the - went around the pole and he appeared to be trying to keep - your lordship will recall the evidence - trying to keep out of the way of the camera and he, Harris, moved in order (30



to get him. But what does the chairman say? He, Botha, always does this and there is disorder in the meeting as a result of the irrelevant issue that Mr Botha is trying to introduce him to the meeting and then the Rev Moselane says "Beloved of God, let us say order. We cannot just, everyone.." to suggest, obviously, that you have to keep within the ambit of the meeting. I too can come up with anything and then Botha says: We can't we spend one hour for a youthful thing and certain portion of the audience actually clap their hands in relation to that. Then: "We will ask the (10 people who know it to lead us. Our time now they should leave, we have put them..and any others would know it. Please come children of the people, please come this way then we can proceed, yes" and then they sing Nkosi Sikelel' iAfrika. Now reading that passage together with the rebuke by Father Moselane at an earlier page of a person who might be said to have tried to steer the meeting away from its purposes are proof - I will give your lordship the reference in due course are proof absolute that this was not a meeting at which decisions of that nature had been taken. At most it can (20 be said that Jan Botha had different ideas to the people that called this meeting and the people that were at the meeting and they told him where he was coming from.

THE COURT ADJOURNS FOR LUNCH

COURT RESUMES AT 14h00.

MR BIZOS : My lord, we were busy making submissions on the contents of EXHIBIT V31(a), which is the translation. I would ask your lordship to have a look at page 13.

COURT : V31, not V31(a). My V31 is a translation.

MR BIZOS : Then I am sorry, I was wrong.

ASSESSOR (MR KRUGEL) : The vernacular is V31(a).

MR BIZOS : I beg your pardon, then V31 page 13. Your lordship will see that at page 13 the Reverend Moselane, accused no. 3, deals obviously with the proposed legal action and therein(10) an unidentified male voice complains about the fact that people have to pay lodger's permits. They pay their lodger's permits, the landlord does not pay the rent and then the lodgers are kicked out as well and then although there are interruptions - there is an interruption, accused no. 3 says at the bottom of page 13 :

"Let us understand one another. Even though I do not know the law very well, but the law says that those people who have houses can insist. There is a probability of instituting a court interdict. It does not mean (20) that permit holders are left out in the lurch. It will embrace the whole Vaal. Every black person who resides here will benefit should we succeed." (Clapping of hands and shouting of Amandla from the audience.)

And then accused no. 3 says :

"Are you saying something, sir?"

And then a male voice says :

"Our feelings that we are not paying rent. If they are not able to agree we shall prove ourselves of being capable of fighting" (And then there is some applause.) (30)

Accused/...

Accused no. 3, the Reverend Moselane, says :

"Lêt us understand one another. (And there is a murmur from the audience.) Quiet. Let us not approach things emotionally. (And audience says yes.) Do not take things up just because you want to be known. Let us take things up knowing that there is someone who can rely on. Let us proceed. (Then there are interruptions)

This is the other portion that the state relies on in telling your lordship or submitting to your lordship that there was a decision at this meeting in common with the others to (10) have a stay-away and a march on the 26th. Mokgema says :

"Now, this child, when his father arrives from work, tells his father what he had been doing the whole day. Does it not mean that there is an informer in the family? (The audience says yes, it means there is) Now, to be about that. That is to say one thing only. That is on the day of the 3rd, these sneaks that will sneak out they sneak out to instal cables, others slept at the factory. It is not known how they slept. Others slept at work. Now, on that day in question these sneaks (20) will board the buses or these taxi's. All buses/taxi's will be stopped from coming in here. Only when this issue shall have been discussed with those in authority can they come to ferry going to work." (And then there is applause.)

. Then again the Reverend Moselane says that there is an attractive case.

Despite the denial of defence witnesses and despite the denial of the summing up of the meeting in exhibit, the exhibit that we have already dealt with, EXHIBIT V30, your (30) lordship/...

lordship is asked by the state to infer that there was a resolution to this effect passed on the 26th in furtherance of the conspiracy. With the greatest respect, there is just no evidence of it. These two references are explicable in a number of ways. The first thing to remember is that there was a decision on the 25th, that is the Saturday, in zone 13 that there should be a stay-away on the 3rd. That was a public meeting. We do not know who Mr Mokgema is or was or whether he was a member of any organisation. It is not Mokgema Mokgema. (10)

ASSESSOR (MR KRUGEL) : Mokofela Mokgema.

MR BIZOS : Mokofela Mokgema. I did not mean his name, although I accept it and I am indebted for the first name. When I said we do not know who he is, whether he belonged to any organisation, whether he possibly was at the meeting of the 25th or not or whether he had heard between the afternoon of the 25th and the 26th that a call for a stay-away had been made on the 3rd. It may well be that Mr Mokgema wanted to introduce this into the meeting of the 26th at Sharpeville, but what is equally clear is that he was ruled out (20) of order. Similarly ... (Court intervenes)

COURT : Where was he ruled out of order?

MR BIZOS : Because your lordship will see that Moselane, rules out of order the person who is referred to as an unidentified voice.

COURT : That is not Mokgema.

MR BIZOS : We do not know whether it is or is not. So, that I cannot reply explicitly on that reference, but let me say - I have already stated the position in relation to that person being ruled out of order. (30)

COURT/...

COURT : The question is whether the reference to 3 September was ruled out of order?

MR BIZOS : No, according to the tape it does not show to have been ruled out of order, except when Botha takes up the same issue and he is ruled out of order, because obviously Botha is referring to the same thing and he complains that no time is allowed - your lordship will recall the passage - let us spend an hour on this and then he is told ... (Court intervenes)

COURT : Time is up.

(10)

MR BIZOS : Time is up. Do not go into things that have no place here. So, taking the two together, what your lordship will be able to infer is that the message of 25 August 1985 at zone 13 was obviously circulating among certain people. I do not remember whether we have the evidence about the age of Mr Mokgema. We certainly know that Mr Botha is a young fire-brand who on the evidence is said to not have been a particularly sober person on previous occasions. Both the chairman, Hlubi and Moselane shut him up. On what basis in having regard to the direct evidence, that there (20) was no such decision on the 25th and once the tape recording with all the breaks shows that people that suggested it were - or at least one of them was shut up, on what basis can it be submitted that there was a decision in furtherance of a conspiracy? And there is another factor to be taken into consideration together with this. There can be no doubt that the decisions of the meeting are set out by Moselane on page 1 of V30. There is evidence that Harris asked the two persons who obviously played an important role and he was also interested in Mkwanazi, that whilst the (30) people/...

people were firing out and I stress whilst there was no opportunity for accused no. 3 to go and conspire with Hlubi to go and give Harris a wrong impression of what had been decided at the meeting. That both accused no.3 does not mention anything about these decisions and Hlubi similarly does not in what he has to say.

There is another important factor and that is that at the meeting of the 2nd it is common cause that a woman, if my memory serves me correctly it was Nana, but we will give your lordship the references in relation to it, stood up (10) and waved the piece of paper, the AN15 document and said "What do we say about this?" That document called for a stay-away on the 3rd. Once that fact is common cause ... (Court intervenès)

COURT : What was the answer to that question?

MR BIZOS : A divided audience. Your lordship will recall the evidence of accused no. 2 in particular that because the audience was divided he suggested a via media that people should gather in the church the next morning. We will give your lordship the references, but the point that I am (20) making at this stage is this. Would it have been necessary for anyone towards the end of the meeting of the 2nd to put up the pamphlet and say "What about this?" if the decision had been taken at the meeting of the 26th? The probabilities are obviously in favour of the defence version and destructive of the state's conspiracy theory.

The other is this, if such a decision was taken, why should it have been kept a secret from Harris? Your lordship will recall his evidence that probably every correspondent and cameraman and television reporter would have wanted to (30)

be/...

be there on the 3rd. We will in due course refer your lordship to the evidence that it took practically everybody by surprise. So, that in our respectful submission there is no basis for the suggestion that there was such a decision. Once there was not that decision, we would submit that your lordship will more readily accept the evidence that we will refer your lordship later to that there was no announcement that the meeting of the 26th at Small Farms that Sharpeville/Bophelong - there was no meeting at all and Boipatong had agreed to have similar resolutions in relation to the (10) march and the stay-away.

Whilst we are dealing with EXHIBIT 31, much was made of the statement recorded on page 10 where a correction to the translation has been - not a correction, where it was - where accused no. 3 conceded that the words "if they say" - if your lordship is with me at the bottom of page 10, just before the quote - "Therefore those buses are not helping us with anything." The accused has told your lordship and the witnesses said that they understood that if they say "Whether they burn it is not my responsibility, they are (20) not mine." Much has been made by the state in relation to this, that accused no. 3 was in difference as to whether there was violence or not and they coupled this with the supposed attitude of accused no. 3 as deposed in the evidence-in-chief of Major Steyn.

The impression that accused no. 3 must have given your lordship is that he is a hesitant and faltering speaker, even when he speaks in the vernacular as he spoke here. The evidence - your lordship will recall the way he gestures with his hand when he pauses, trying to get his meaning out. (30)

The/...

The evidence was that in the context in which he said those words, he was understood that those words were uttered as if the words "If they say" were understood by his audience. But, it is quite clear that in the rest of the transcript that accused no. 3 comes down against the use of violence and the evidence of the witnesses who were at this meeting all said that they understood him in that way. Your lordship will recall about the warning that he gives about people being punished by the law and the other references so that we would submit that once it has been established(10) that at the meeting of the 26th there was no such resolution for a stay-away, nor for a march, the whole notion of the conspiracy in the events of the - during the month of August.

The evidence that I have referred to of the defence witnesses, accused no. 2, accused no. 3, Mbatywa, Myeza and Mokati, will be furnished to your lordship on the basis - once the argument is typed as to where the passages that I have referred to are there. May I just in conclusion remind your lordship of what I have already indicated that Mrs Mokati could not possibly have said that "We spoke well (20) last week" on the 26th if violence had been called for on the 19th.

That is what was happening in Sharpeville. Before going to the events of the 2nd and the 3rd, we would like to show your lordship what was and was not happening in Sebokeng. Because again a comparison of the events will show that there was in fact no liaison between ... (Court intervenes)

COURT : Are we now doing the Sebokeng meetings?

MR BIZOS : The Sebokeng meetings, yes, up to the 26th and then we will deal with the events of the 2nd and the 3rd (30)

thereafter/...



thereafter, because we want to show the contrast.

The protest action against the rent increase at places other than Sharpeville is what we will be dealing with now.

Paragraph 71 of the indictment again with the usual preamble to be found on page 307 of the indictment, deals in the main with the content of the discussions held at the house of accused no. 10 during August 1984. Despite the allegations in the indictment and more particularly in the preamble, we would ask your lordship to note that apart from the pro forma allegations concerning conspiracy and (10) violence contained in the preamble, there is no suggestion whatsoever in relation to the details given of the actual discussion that violence was in any way considered, discussed or planned. So that the allegation that these house meetings were held for the purposes of endangering or attacking or destroying the lawful structures of authority or institutions or property or the human lives in this area, is completely negatived. There is no evidence for the state and the accused that gave evidence in relation to it and the defence witnesses that gave evidence in relation to it, have all (20) denied it.

We submit that this complete absence of any concern with violence is borne out in the evidence of the state witnesses on these meetings. The state witness who gave evidence in relation to these meetings, is the Reverend Mahlatsi who tells your lordship that on the evening of 16 August 1984 he received a visit from accused no. 10 to tell him that there was going to be a meeting in his, accused no. 10's house. There were approximately twenty people at this meeting including Oliphant, accused no. 8, accused no. 10, (30)

and/...

and Maruping. Accused no. 10 acted as chairman and said that the purpose of this meeting was to discuss the increase in rental. He said that the purpose of the meeting was to enable the VCA to help the community who were not satisfied with the rental. He was specifically asked whether any other goal was intended to be achieved and he said no, no other goal. He, accused no. 10, said that the people should make their dissatisfaction known to the meeting. That accused no. 8 then stated that they had elected the councillors but that the councillors were not doing their work in a proper way, because the rents were being increased. An unknown person at this meeting related an incident which had occurred at the meeting of councillors where people had been invited in connection with the increase in rental. By the way that one Sonny Mofokeng had a fire-arm in his hand. (10)

When this person stood up to speak, Mofokeng ordered him to sit. He then left the meeting fearing that there would be trouble. This was all that was said and discussed. It was arranged that they would again meet on 21 August 1984. (20) Your lordship will find all that - the reference is only one, I will give it in order to avoid - in volume 40, that is Mahlatsi's evidence, page 1 909 line 2 to page 1 912 line 11.

It was agreed at the meeting of 16 August that on 21 August the area committee of zone 7 would meet with the area committee of zone 3 on 23 August. At that stage there was not yet in existence an area committee for zone 3 and it was thus a loose group of people from zone 3 that met with the area committee of zone 7. Mahlatsi, volume 40 page 1 912 lines 17 to 29. (30)

The meeting took place at the house of accused no. 10 and was intended inter alia by Oliphant, accused no. 8, Maruping, Mrs Oliphant, Mahlatsi himself and his wife and accused no. 10. That is in volume 40 page 1 913 lines 1 to 10.

At this meeting accused no. 10 said that they had gathered again in connection with the rental. Thereafter Esau Raditsela arrived with Dorcas, accused no. 17 and Edith, presumably Lethlake. Mahlatsi, volume 40 page 1 913 lines 17 to 19.

According to Mahlatsi Raditsela said that people should (10) not be afraid of being arrested because the VCA worked just like a trade union. He also said that the Vaal Civic Association would help the people. He stated further that there should be a meeting on 26 August at the Roman Catholic Church Small Farms where the question of the rental would be discussed. Mahlatsi, volume 40 page 1 913 line 30 to page 1 914 line 26.

At this meeting it was stated that a councillor, one Majila was apparently not satisfied with the increase in rental and proposed that a petition be signed by the community to show their disapproval of the increase. Volume 40 (20) page 1 915 line 15 to page 1 916 line 21.

All those present at the meeting signed a blank piece of paper. The intention was that it would be taken to Majila who would then lay it before the other councillors with the result that there should not be an increase in rental. Mahlatsi, volume 40 page 1 919 lines 1 to 25.

The person known as Edith, according to Reverend Mahlatsi then stated that they ought to come together to pray with a view to getting the question of the rental out of the way. She then said that she requested everyone to come with (30) their/...

their wives to the meeting of the 26th, because on that day there would be an election held for a committee of women. It was agreed that everybody would bring his wife.

I am giving your lordship all these details because your lordship will assess the validity of the allegation in the preamble, that these meetings were conspiratorial meetings in order to overthrow the state by violence. Your lordship will find that in volume 41 page 1 919 line 26 to 1 920 line 12.

The other reason why we have done it this way is (10) because the state has said that we put one version in cross-examination and another version was put - deposed to by the witnesses. The only thing that I want to say in relation to that is that your lordship will recall that I put to this witness and I will give to your lordship later when we deal with the "betoog" that he concertinaed these meetings, but I was not going to take up too much time with it and put general matters to him. Rightly or wrongly we did not consider these matters of such grave importance as the state apparently considers it even at this late stage of the argu-(20) ment.

Accused no. 10 then gave a bundle of papers to Raditsela to be used for preparation of pamphlets. Volume 41 page 1 920 lines 13 to 29.

The witness Rina Mokoena and the Reverend Mahlatsi both testified about a meeting which was held for the purpose of planning the mass meeting on 26 August. Mahlatsi is specific as to the date of the meeting, namely 24 August. Rina Mokoena could not remember the date but was clear that it was a planning meeting for 26 August. Since both (30) witnesses/...

witnesses agreed that the meeting took place at the home of accused no. 17, it is assumed that they both speak in relation to the same meeting, because there is no evidence that any other meeting of the sort was held at the home of accused no. 17.

Mahlatsi described the meeting of 24 August 1984 as a private committee meeting. It was attended by himself, Rina Mokoena, accused no. 10, Mr and Mrs Oliphant, Edith Lethlake, accused no. 17, accused no. 7 and Esau Raditsela. Mathlatsi, volume 40 page 1 921 lines 2 to 24. (10)

The purpose of the meeting was to make preparations for the gathering of the 26th. More particularly it was to make preparation for the people who would speak as well as who would be chairman. Edith suggested that the chairman of the meeting of the 26th be chosen. It was decided that McCamel would be the chairman. It was also decided that the women would wear the uniform of the Vaal Civic Association. Accused no. 10 proposed that at the meeting of the 26th the zone 3 committee be elected. This was agreed. There was no decision as to who should be the candidates. (20)

This was left to the community to decide. It was also agreed that there must be posters for the meeting. The wording was left to Esau, as a person concerned with the printing. Mathlatsi, volume 41 page 1 922 line 3 to page 1 923 line 31.

It was agreed at that meeting that McCamel would speak and that he would make the choice of speakers. I emphasise this because it comes from state witnesses and is completely destructive of the state's suggestion that at this stage the policy of the VCA had changed and that McCamel was sidelined and Raditsela had for all practical purposes been - had (30)

become/...

become the top man. Volume 41 page 1 924 lines 8 to 20.

The witness was specifically asked whether any agreement was reached concerning the content of the speeches. He answered in the affirmative saying that it was said that the speakers must deal with the increases in rent and also the resignation of the councillors. When asked to clarify it, this latter aspect, he stated that the councillors must resign because they are using the people's money for their own purposes. Mahlatsi, volume 41 page 1 924 lines 21 to 31.

On 25 August accused no. 10 arrived at the house of (10) Mahlatsi and asked him to transport a loudspeaker as well as pamphlets in order to advertise the meeting for the next day amongst the community. On the morning of the 26th accused no. 10 and accused no. 8 as well as Mahlatsi made announcements over the loudspeaker inviting the inhabitants of zone 3 on behalf of the VCA to the Roman Catholic Church in connection with the increase in rentals. The announcement stated that those who were not satisfied with the increase should go to the meeting. It was also said that councillors were misusing the people's money. Mahlatsi, (20) page 1 925 line 8 to page 1 928 line 26.

The announcement over the loudspeaker included an appeal to the people to come and participate in the election of their own representatives. Reverend Mahlatsi, volume 43 page 2 054 lines 26 to 28.

Rina Mokoena also testified that the meeting was held for preparation for the meeting of the 26th. She said that this meeting took place at the house of accused no. 17 and was attended by accused nos. 7, 9, Mrs Oliphant, accused no. 17 and herself. Volume 37 page 1 700 lines 3 to 10. (30)

She/...

She was asked specifically whether any decisions were taken in connection with the topic that the speakers would deal with. She stated that it was decided that they would speak about the rental and the school fees. She said that the chief reason was to talk about their complaints and matters with which they were not satisfied. With regard to the councillors, she said that it was decided that they should step down because they were not doing their duty. Mokoena, volume 36 page 1 701 lines 17 to 31.

We submit that it is clear from all the meetings, (10) taking the state evidence alone, of the preparation that the principal cause for concern was the question of the increase in rent. Dissatisfaction with the councillors appears to have been directly related to the proposed increase. There is no suggestion whatsoever that the meetings would propagate violence in any way or that they were part of a plan to overthrow the state by violence.

The evidence of the state witnesses shows that these meetings arose out of a concern with the rent increase. The evidence of the defence is to that effect as well, but (20) let us stop with the evidence of the two state witnesses.

The state plucked out of the air all sorts of theories as to why the rent protest was on the 3rd of September. Some of them more fanciful ones were that 3 September was chosen because the tri-cameral parliament was going to sit there on that day and that is why preparations were made to have protest meetings and to have a stay-away and march on 3 September. One would have expected the state witnesses to say something like that, whilst this conspiracy was being hatched. None have said so. It shows the dangers of (30) plucking/...

plucking little sentences from documents. Your lordship will be referred to it by name and number in due course, but I remember it well. I think that the idea - that the state got the idea because it says somewhere it is significant that on the very day that parliament met, the people of the Vaal stayed away and had a march. Of course, the days do correspond - the dates, the times do correspond, but whilst these house meetings were taking place, the whole of the leadership except for accused nos. 19, 20 and 21, of the UDF, had been detained. The evidence is clear that that (10) is a fact which received considerable publicity. The state's allegation is that these house meetings were taking place in furtherance of a conspiracy hatched by the UDF. In the presence of these two state witnesses who attended these meetings, nobody appeared to be at all concerned about the detention of the leaders that were guiding them into these actions. They were discussing more mundane matters such as to find a venue and to persuade the Reverend McCamel to come and preside at the meeting. It only shows how easy it is to give a typist instructions with the greatest (20) respect to type the preamble before every paragraph and set out particulars in an indictment, than preparing the case for presentation to your lordship.

How this came about is explained clearly and there is no evidence to the contrary that there was no call by the UDF to do anything about the rent in the Vaal. August was - particularly the last ten days in August were hectic days for the UDF. They had spent a year preparing for the opposition of the elections in the coloured and indian houses. If my memory serves me correctly to be held on 22 and 28 (30)

August/...



August. That is what they were really concerned with during the period, not with what was happening with the R5,90 increase in the Vaal. Your lordship will recall the evidence of accused no. 6, if I remember correctly and/or accused no. 21 that everything else was really shelved at the July council meeting because of the imminent holding of the elections and that was one of the main planks for the formation of the UDF. The rest of the leaders and the opposition of that election put the rent increase in the Vaal very low down the agenda. It was not on the agenda (10) at all, but how it came about is explained by accused no. 10. When the proposed rent increase became known, there was some discussion between accused no. 10 and some of his neighbours, in the course of which the question was asked by one resident about what accused no. 10 was doing about the rent increase as far as he was the VCA representative in that area. As a result of this it was agreed that there should be a meeting at his house on 14 August 1984 to discuss this and discuss the formation of a committee in zone 3 which was intended to take up the problems of the residents. (20) Accused no. 10, volume 160 page 7 853 line 24 to page 7 855 line 13.

This proposed meeting had nothing to do with the furtherance of any conspiracy. Accused no. 10, volume 160 page 7 855 lines 14 to 19.

It is clear that the impetus for this meeting came purely from the proposed rent increase and the discussions which were generated by it in the neighbourhood. The affirmative evidence of accused no. 10 is that the UDF had nothing to do with the calling of these meetings. Accused no. 10, (30)

volume 160 page 7 858 lines 29 to 31.

Similarly it is clear also that it did not flow from any decision of the VCA. Accused no. 10, volume 160 page 7 865 lines 8 to 20.

Accused no. 10 invited his neighbours to the meetings of 14 August 1984 and at the same time also asked them to invite people whom they thought might be interested. Members of the VCA executive were then asked to do the same. Accused no. 10, volume 160 page 7 856 line 26 to page 7 857 line 8. (10)

It is clear from the evidence that there can be no suggestion that this house meeting or any other was intended to be a closed or conspiratorial meeting or a meeting or a session of that nature. In the result some twenty people turned up as the rent increase was an important issue. Accused no. 10, volume 160 page 7 857 line 9 to line 23.

At the meeting of 14 August 1984 accused no. 10 proposed at an area committee that an area committee be formed for zone 3. Accused no. 10, volume 160 page 7 858 lines 11 to 13.

The people present were keen on this with the view to (20) the obtaining of a clear mandate from the community to deal with the rent issue and the date of 19 August 1984 was suggested for the holding of this meeting where the area committee should be elected. Accused no. 10, volume 160 page 7 859 line 16 to page 7 860 line 1.

People present suggested that accused no. 10 should chair the meeting, but he himself proposed that the Reverend McCamel should do so. There was never any effort to side-step the Reverend McCamel, nor the view - nor in the view of accused no. 10 at least that Raditsela hijacked the (30)

VCA away from the Reverend McCamel. Accused no. 10, volume 160 page 7 860 line 2 to page 7 861 line 10 and again at page 7 862 lines 12 to 22.

I am just trying to find the exhibit that reported the meeting of 12 August - the meeting of the 12th if my memory serves me correctly was actually reported on the 14th.

It is not an AQ exhibit, that is where my mistake lay. It was a DA exhibit which was put in as part of the defence case. I will just check on that, but if my memory serves me well I think I can say that it was no coincidence (10)

that there was talk in Sebokeng about the rent increase and that something ought to be done about it. Meetings had been held on the 5th. It must by now have become fairly clear that there was dissatisfaction in relation to it. People must have been talking about it and if I am able to specifically refer your lordship to the publication of 14, then the newspaper publicity must obviously have had a truly concern and also an indication that something was being done. We have found one of the Rand Daily Mail, but it appears as if it was published on the 16th, this particular one. (20)

EXHIBIT DA10 was published on the 16th, but I think there was an earlier one.

ASSESSOR (MR KRUGEL) : Are you looking for the publication on 14 August?

MR BIZOS : I remember distinctly that there was evidence but I cannot place my finger on it.

ASSESSOR (MR KRUGEL) : DA1.

MR BIZOS : The Rand Daily Mail on the 14th. Once that was so, then it is not surprising that steps were being taken in Sebokeng, but what it does show is that where the VCA (30)

was/...

was at its strongest, it actually started tailing the people of Sharpeville, rather than leading them. There was no presence whatsoever of the VCA in Sharpeville and that is where there was a call for a protest which started during the week preceding Monday, the 12th.

The evidence is further that accused no. 8 came to the meeting because of his dissatisfaction with the announced rent increase as a result of which he approached Raditsela who worked near him in order to find out whether the VCA was doing anything about it. He was directed by Raditsela(10) to the house meeting at accused no. 10's home on the following day, that is 14 August 1984. Not surprisingly, the allegation that this meeting formed part of the implementation of a conspiracy and planning in order to incite the black masses of the Vaal Triangle to violence in order to lead to a violent revolution in the Republic, is strongly denied by accused no. 8. As far as he is concerned, he went to that meeting because he was anxious to discuss the problems which he and others were experiencing and that is all. Accused no. 8, volume 169, page 8 738 line 1 to page 8 749 (20) line 26.

The state has invited your lordship to make a finding that Raditsela played a leading role in all this. There can be no doubt that he was active on the 26th and that he was active on the morning of the 2nd and he was active on the 3rd. As one would have expected him as the vice-chairman of the organisation, but what is significant and which is destructive of the conspiracy theory of the state is that he had to be godet by accused no. 8 who was not at all active and had done nothing more in the past than attend (30) the/...

the launch of the VCA as a mere spectator. If these protests were as a result of an orchestrated conspiracy, one would have expected some evidence that as soon as the rent increases were announced and following on the state's version the instructions of the ANC and the general (conspiratorial) policy of the UDF, if Raditsela was the person that the state wants him to have been, one would have expected an immediate urgent meeting of the committee of the VCA at which carefully laid plans would have been made to sidestep McCamel, if the state's theory is correct and at which the area (10) representatives would be sent out, to say get the masses on the march. This is the time to raise the flag of the freedom struggle, if things were to happen the way the state presented its case to you, but that did not happen. Raditsela had heard about the attempt being made by a representative who incidentally and I hope he forgives me for this bit of criticism, who had been appointed a representative on 9 October 1983 and had taken no steps to form an area committee in his area and only did so when the question of the increased rental became an issue for himself and his immediate (20) neighbourhood.

COURT : Who is this now?

MR BIZOS : Accused no. 10. He was elected area representative of zone 3 at a general meeting - at the launch and he is the one who takes the initiative. Raditsela had obviously heard about it and when accused no. 8 invited - asked him what is this VCA that was going to look after our rights doing about it, he says accused no. 10 is calling a meeting at his house, you better go along and see what can be done.

Contrary to the state's evidence and we will in due (30)

course/...

course advance what we believe to be cogent reasons that where there is any conflict between Raditsela - I beg your pardon, between the Reverend Mahlatsi and defence witnesses, the defence witnesses should be accepted and the same goes for Rina Mokoena for reasons which we will advance in due course. Raditsela, Lethlake and accused no. 17 arrived there towards the end of the meeting but they did not participate in the proceedings. Raditsela was there to ascertain whether the persons like accused no. 8, to whom he had given accused no. 10's address, had attended the (10) meeting. Accused no. 10, volume 160 page 7 864 lines 1 to 17. Accused no. 8, volume 169 page 8 743 line 12 to page 8 744 line 12.

It was decided to announce the mass meetings with pamphlets. A resident Lucas Ndlovu volunteered to do this. Accused no. 10, volume 160 page 7 864 line 26 to page 7 865 line 7.

This pamphlet was printed at Mr Ndlovu's own expense. Accused no. 10, volume 160 page 7 881 line 1 to 9.

It had been originally decided that the mass meeting(20) should be held on August, 19th 1984 but although a venue for that date was sought, it could not be obtained. Volume 160 page 7 863 line 9.

In the "betoog" this was forgotten and much play was made of the fact that the evidence of the defence could not be wrong because to hold a joint meeting - to hold a general meeting was only decided later on, but we will refer your lordship to that.

On 16 August 1984 a second meeting was held. There were no people from outside zone 3 at this meeting. There was(30)

discussion/...

discussion about the efforts made thusfar to secure a venue and a working committee was elected. Accused no. 10, volume 160 page 7 865 line 21 to page 7 866 line 24.

On 20 August 1984 accused no. 10 saw Edith Lethlake in the train on the way to work and he related to her the problem that the zone 3 people were having in securing a venue for their meeting. Accused no. 10, volume 160 page 7 870 lines 14 to 21.

A third house meeting took place on 21 August 1984. Amongst those present was accused no. 15. This was the (10) one and only occasion on which he attended a house meeting. There was discussion of a petition at this meeting and a working group was formed, headed by a resident, Mr Selebalo who suggested a petition. Accused no. 10, volume 160 page 7 872 line 3 to page 7 873 line 27.

Accused no. 8, volume 169 page 8 751 lines 19 to 21.

The witness, erstwhile accused no. 18, Mr Vilakazi, volume 347 page 19 846 line 24 to page 19 847 line 3.

Much time was spent as to whether there was a bona fide attempt to start a petition or not. Let us assume that (20) one or other of these people actually sabotaged the attempt to have a petition. Let me repeat the words quoted by Mr Fick in this case "So what? What does it prove?" Other than that either people were not sufficiently interested or they thought that it was not a good idea or they may have had some objection to it in principle. How does it prove any conspiracy by these accused?

Also, it is not unknown that an idea is expressed, other ideas are then put forward as were put on the 26th and the thing falls by the way. I do not know whether the (30) time/...

time spent on this issue really was worthwhile or that it goes any way, either affecting the credibility of anyone adversely or that it proves any conspiracy.

At this meeting Edith Lethlake arrived and conveyed the offer from zone 7 area committee that zone 3 should share their venue on 26 August 1984. Accused no. 10, volume 160 page 7 870 lines 26 to 29 to page 7 871 lines 21 to 29. Accused no. 8, volume 169 page 8 748 line 21 to page 8 749 line 27.

On 23 August 1984 a fourth meeting was held at the house (10) of accused no. 10. A report was made concerning the petition and reasons given for the failure to draft it. The reference to the "betoog" where they say that it was merely a bluff is on page 132 of the "betoog".

We submit that the evidence of Mrs Oliphant was that it was a matter of inefficiency and in particular the fact that Mr Selebalo was not at home for the projected meeting of the petition committee. Accused no. 10, volume 160 page 7 874 lines 7 to 15. Mrs Oliphant, volume 329 page 18 808 line 1 to page 18 811 line 1. (20)

Vilakazi told your lordship who was on the committee that he did not go to the meeting because of his work commitments. Vilakazi, volume 437 page 19 847 lines 4 to 23.

There was no discussion about speakers for the mass meeting of 26 August. At that stage it was still hoped that the Reverend McCamel would chair the meeting, but if he was not available then accused no. 10 should do so. It was agreed that accused nos. 8, 10, Mrs Oliphant and the Reverend Mahlatsi would be the speakers. It was at that stage at the understanding that zone 3 people would meet in the morning (30)

and/...



and that the zone 7 meeting should take place in the afternoon. Something that turned out to be incorrect information on the later evidence. Accused no. 10, volume 160 page 7 874 line 16 to page 7 875 line 20. Accused no. 8, volume 170 page 8 750 line 19 to page 8 751 line 14.

The witness Oliphant has described how she and some of her neighbours approached councillor Mokoena when they heard of the proposed increase. He, Mokoena, said that he was going to take it up with the committee meeting of the councillors, but no response to the witness or her neighbours(10) was ever forthcoming from him. In these circumstances he came to the meetings at the home of accused no. 10. She testified that there were four meetings, although she was unable to specify the precise dates. She says, like many others did, that there was no discussions at these meetings concerning a conspiracy involving the ANC, the SACP, the UDF or the VCA to overthrow the state by violence. There was also no discussion about mobilising, politicising and conscientising the population of the Vaal to overthrow the state by violence and to make the country ungovernable. Oliphant, volume 328(20) page 18 767 line 2 to 18 770 line 20.

In its review of the evidence concerning these house meetings, beginning at page 129 of the "betoog" , the state details two meetings only, the basis upon the Reverend Mahlatsi recalled these. Although a great deal of neat picking can be done through the record in relation to the issue of whether there were two meetings or four and precisely what took place at which meeting, it is our submission that such an exercise is ultimately reletively fruitless and a tiresome process.

The real issue before your lordship is a determination(30)

in/...

in respect of these meetings of whether or not they are shown by the state to have taken place pursuant to a conspiracy of violence. We submit that there can be no doubt that this proposition has not only not been demonstrated, but proved to be completely without foundation and this is both on the evidence of the state witnesses and those of the defence and we are with the greatest respect at a loss as to what purpose is being served by the lengthy argument in relation to these meetings by state at this stage of the proceedings.

However, one or two of the paragraphs in the state's (10) argument purporting to reflect the evidence, do, however, call for comment. In "betoog" page 130 paragraph 3 the state says that there is evidence in volume 40 page 1 910 that accused no. 10 asked that people should vent their grievances concerning the increased rental so that the VCA could make use of it in the campaign against black local authorities. This is a distortion of the evidence actually given. What accused no. 10 said was that the VCA would try to help the community. There is no suggestion of it making use of the matter and certainly no reference to any campaign against (20) local authorities.

In paragraphs 74 subparagraph 4 and 74 subparagraph 5 of the indictment to be found on page 331, that is the preamble and 74(4) to be found on page 335 and 74(5) to be found on page 336, the state expressly alleges that the initiative - the preamble, I confused your lordship with the preamble on page 331. The preamble is in the standard form. Directly alleges that the initiative for the involvement of the zone 7 committee in the question of rental is to be located in decisions alleged to have been taken at the general council (30) meeting/...

meeting of the UDF on 4 August 1984 and your lordship will find that in the further particulars paragraph 38.1 and the emergency meeting held on 13 August 1984 by the zone 7 committee in consequence of the guidance and advice thus received. The report back on the UDF decision is alleged to have taken place on the same date, that is approximately 13 August 1984. Further particulars 38.2 and 38.3. Your lordship will find 38.1 on page 105 of the further particulars and 38.3 on page 107 of the further particulars.

We submit that again the evidence is shown to be completely destructive of these allegations. There is no state's evidence in support of the allegation that the rent issue was discussed and decisions taken at the UDF general council meeting on 4 August 1984. (10)

Direct evidence to the contrary has been furnished by accused no. 7 who was present at that meeting. He has testified that the rent increase in the Vaal was not discussed in any way, nor was there any discussion of the resignation of councillors, nor was there any evidence that the VCA should over the management of the township in the Vaal as alleged in these paragraphs of the indictment read with the further particulars. Again this is an illustration of evidence being - of allegations being made not supported in any way by the state evidence and denied completely by the accused. Accused no. 7, volume 201 page 10 490 line 12 to page 10 491 line 15. (20)

His evidence finds corroboration in that of Mr Chikane, accused no. 21 who is recorded in the register as having been present at this meeting. During the period June 1984 to July 1984 and up and until his detention on 26 August (30)

1984, he had no knowledge of any discussion in the UDF offices or at any UDF meetings of any pending rent increase in the Vaal Triangle. To his knowledge further, there had been no liaison between the UDF and anybody in the Vaal Triangle concerning the subject of what should be done about this pending increase. Accused no. 21, volume 300 page 17 035 line 14 to page 17 036 line 5.

The UDF national perspective is conveyed through the evidence of accused no. 20 that at the UDF national executive meeting in July 1984 the problems in the Vaal Triangle (10) were not discussed in any way. Accused no. 20, volume 284 page 15 561 lines 1 to 3.

The allegation that zone 7 committee acted on the advice and guidance of the UDF is further contradicted in the evidence of accused no. 9 who has testified that after the rent increase had been announced, the zone 7 committee held a meeting on 4 August 1984. It was decided that committee members should try to find out what different people in the community felt about this increase and to meet again on 11 August 1984. There was no report at this meeting about any advice from (20) the UDF or from any other body. Accused no. 9, volume 180 page 9 251 line 18 to page 9 252 line 20.

At the follow up meeting of 11 August 1984 it was reported that the people were not happy about the increase. Again there was no advice or suggestion from the UDF or anyone else. A decision was taken to hold a mass meeting for which pamphlets were to be prepared. Members of the zone 7 committee had to contribute to the costs of these pamphlets. The committee did not receive financial support from the UDF. Accused no. 9 and Edith Lethlake went to (30)

MARS in order to attend to the printing of pamphlets.

Accused no. 9, volume 180 page 9252 line 21 to page 9 257 line 7. Accused no. 7, volume 201 page 10 492 line 10 to page 10 495 line 2.

There is no truth in the allegation that accused no. 17 was to manipulate and incite the residents to refuse to pay the rent as alleged in paragraph 74(5)(iv). To be found on page 337 of the indictment.

That is denied by accused no. 7. Volume 201 page 10 495 lines 12 to 19. (10)

Paragraph 74(6) to be found on page 338 of the indictment alleges that a zone 7 committee meeting took place on 20 August 1984 at which Raditsela reported inter alia that he and accused no. 17 had propagated mass protest meetings around the various areas in the Vaal Triangle, that the action committee in zone 12 will hold a meeting on 25 August 1984 and that a mass protest meeting will take place as planned in co-operation with COSAS, so the allegation runs. There is no evidence from the state to the effect that this meeting took place. Two of the accused, alleged to have been (20) present at this meeting in the indictment, have testified that each of them - have testified and each of them has denied that such a meeting was held. Accused no. 9, volume 180 page 9 257 lines 8 to 10.

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Accused no. 7 also denies that such a meeting was held and testified that COSAS was never discussed at any zone 7 committee meetings and that they were not concerned with any meetings in other areas nor in particular was there any discussion about contact with people in zone 12 Sebokeng. Accused no. 7, volume 201 page 10 495 line 24 to page 10 496(30) line/...

line 10.

We submit that the absence of a co-ordinated initiative on the rent issue and also the absence of a conspiracy, is further borne out by the evidence that there was no contact between 7 and any other people in Sharpeville and generally that none of these things done by the zone 7 committee was in furtherance of a conspiracy or to bring about a violent revolution or in any way to endanger the maintenance of law and order or to further the objects of a banned organisation. Accused no. 7, volume 201 page 10 526 line 22 to page (10) 10 527 line 4.

I now deal with the joint meetings of zones 3, 7 and 24 August 1984. It is common cause that on 24 August 1984 there was a joint meeting of representatives of the zone 7 area committee and some of the zone 7 working group. Accused no. 10 testified that accused no. 9 also Mrs Ramakgula, his wife and Rina Mokoena were not present. Accused no. 10, volume 160 page 7 874 line 25 to page 7 876 line 20.

The absence of accused no. 9 is confirmed in his own evidence and he discovered that the meeting of 26 August (20) 1984 was to be jointly held with zone 7 when it was announced on that day. Accused no. 9, volume 180 page 9 257 line 11 to 14 and again at page 9-258 lines 8 to 25.

The recollection of accused no. 7 is that accused no. 9 and his wife were not present but that Rina Mokoena had arrived at the house in order to visit the Matlole family and not particularly for the purpose of attending the meeting. Accused no. 7, volume 201 page 10 497 lines 12 to 20.

Accused no. 7 had heard about the meeting that morning from accused no. 17. Accused no. 7, volume 201 page (30)

10 496 lines 18 to 28.

The purpose of the meeting was to see whether the zone 3 and zone 7 people would have a joint program because it had become known that ERPA was to use the venue in the morning. It was agreed that zone 3 and zone 7 would be jointly and the list of speakers was accordingly revised. It was also agreed that the Reverend McCamel should chair the meeting, if possible and failing him, it should be accused no. 6, alternatively accused no. 8. Accused no. 10, volume 160 page 7 876 line 21 to page 7 879 line 12. Mrs Oliphant, (10) volume 328 page 18 772 line 16 to 18 773 line 12.

In relation to the suggestion that there had been a deliberate attempt to sideline the Reverend Lord Mc Camel from the activities of the VCA the evidence again shows clearly that he was a unanimous first choice as chairman for the meeting of 26 August 1984. There was no objection to that. Accused no. 7, volume 201 page 10 498 line 3 to line 25.

Paragraph 71(3) alleges that there was caucussing, which is to be found on page 311 to 312, on what speakers were to say. The evidence is to the contrary. There was no dis- (20) cussion on this joint meeting as to whether at a joint meeting the people at the meeting were to be steered or directed in any particular course of action. Accused no. 10, volume 160 page 7 880 lines 9 to 18. Accused no. 7, volume 201 page 10 500 lines 3 to 5.

There was also no suggestion that a UDF speaker should be obtained for the mass meeting, nor was there any discussion about the fact that some UDF leaders had been detained a few days before the joint meeting. Accused no. 7, volume 201 page 10 500 lines 6 to 9. There was no representative(30)

from/...

from ERPA present at the joint meeting, but the offer of that organisation of the loan of the use of the loudhailer was conveyed. Accused no. 10, volume 167 page 8 537 line 12 to page 8 538 line 25. The loudhailer was indeed used to advertise the mass meeting on 26 August 1984 and pamphlets were also used. These announcements were from the point of view of the matters in issue completely neutral. There was no suggestion that people were to be directed towards any particular cause of action and no suggestion at all of violence was contemplated in any way whatsoever. (10)

Accused no. 10, volume 160 page 7 880 lines 19 to 30 and page 7 881 lines 15 to 24. The pamphlets advertised a morning meeting but this was corrected over the loudhailer when announcements were made. Accused no. 10, volume 167 page 8 535 line 21 to page 8 536 line 6.

I may say that a considerable amount of time was spent about the inaccuracies in some of the pamphlets. The evidence of inefficiency is not evidence of conspiracy. We will deal with some of the things that are said in the pamphlet calling for the stay-away on the morning of the 3rd in due course. (20)

I now want to go over to the meeting in zone 13 of 25 August. I am wondering whether your lordship would give us the opportunity of filling in a couple of references. It is almost time and we will try and make it up if your lordship wants us to, but it would be appreciated if we can, having finished with the house meetings - of the preparatory meetings if we take the adjournment now.

COURT ADJOURNS UNTIL 18 AUGUST 1988.



## **DELMAS TREASON TRIAL 1985-1989**

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