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CASE NO: 93/13246

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

GRIFPER VAN DIE NOODREGSREK
(WITWATERSRANDSE PLAASLIKE AFDDELING)
PRIVATREGSREK/PRIVATE DAG 17
1993-07-16
JOHANNESBURG 2000
(WITWATERSRAND LOCAL DIVISION)
REGISTRAR OF THE SUPREME COURT

In the matter between -

DABULA, NOVELA PAULINA

APPLICANT

and

THE MINISTER OF DEFENCE

RESPONDENT

FILING SHEET: APPLICANT'S REPLYING AFFIDAVIT

PRESENTED FOR FILING at JOHANNESBURG on this 15th day of
J U L Y 1993, by -

NICHOLLS, CAMBANIS AND SUDANO
Applicant's Attorneys
23rd Floor Kine Centre
41 Commissioner Street
2001 JOHANNESBURG

Ref: Mr V SITHOLE
Tel: 331 6919

/TO THE ...

TO THE REGISTRAR OF THE
ABOVE HONOURABLE COURT
JOHANNESBURG

AND TO:

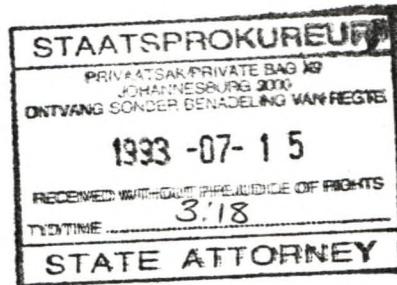
THE STATE ATTORNEY
Respondent's Attorney
888 Royal St Mary's Building
2001 JOHANNESBURG

Ref: G BOWEN/Various/92/P5/mp
Tel: 29 2961

RECEIVED A COPY HEREOF THIS
15 DAY OF July 1993

MW.

For: RESPONDENT'S ATTORNEYS



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CASE NO: 93/13246

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

In the matter between -

DABULA, NOVELA PAULINA

APPLICANT

and

THE MINISTER OF DEFENCE

RESPONDENT

REPLYING AFFIDAVIT

I, the undersigned,

HENRY VUSIMUZI SITHOLE

do hereby state under oath as follows:

- 1 I am an adult male candidate attorney with the firm of attorneys, named Nicholls, Cambanis and Sudano, who practise as attorneys at 23rd Floor Kine Centre, 41 Commissioner Street, Johannesburg, and who are also the attorneys for the plaintiffs in this matter.

2 The facts contained herein are both true and correct, and are within my own knowledge, unless it appears from the context to be otherwise.

3

3.1 I was not the deponent to the founding affidavit in this matter. I respectfully submit that the matters raised in the respondent's answering affidavit are of such a nature that I am in a better position to reply thereto than the applicant. It is apparent from the answering affidavit that most of the issues raised therein pertain to correspondence between the applicant's attorneys and the respondent's attorneys, as well as other matters which would not fall within the personal knowledge of the applicant in this matter.

3.2 Insofar as such matters do not fall within my own personal knowledge, I have attached to my affidavit an affidavit deposed to by the applicant in this matter.

4 I have read the answering affidavit filed by the respondent and now reply thereto as follows:

H.V.S.
AD

5 AD PARAGRAPHS 1 TO 3

I deny that the contents of the answering affidavit are both true and correct. The remaining allegations in these paragraphs are admitted.

6 AD PARAGRAPHS 5 TO 7

The contents of these paragraphs are admitted.

7 AD PARAGRAPH 8

7.1 I have no knowledge as to the reasons why members of 32 Battalion were present at Phola Park on 8 and 9 April 1992.

7.2 I respectfully submit that the actions of such members formed part of a continuous action carried out by the members of 32 Battalion. In this regard I attach the affidavit of PAULINA DABULA, as Annexure "A" hereto.

H.V.S. AD

8 AD PARAGRAPH 9

Save to add that the committee referred to in the answering affidavit indeed found that members of 32 Battalion perpetrated assaults on residents of Phola Park, I admit the contents of this paragraph.

9 AD PARAGRAPH 10

The contents of this paragraph are admitted, save to state that I have no knowledge of the advice which is referred to in this paragraph.

10 AD PARAGRAPH 12

The applicant deposed to the allegations in the founding affidavit under oath and therefore the contents of this paragraph are in dispute.

11 AD PARAGRAPH 14.1

It is correct that the words referred to in this paragraph were used by the applicant in her founding affidavit and in her particulars of claim. However, I respectfully submit that this observation would not

H.V.S
AD

assist the above Honourable Court in making an order in this matter, since it is a matter which would be clarified by evidence and which could be resolved in a pretrial conference.

12 AD PARAGRAPHS 14.2 TO 14.4

12.1 As far as the respondent seeks to portray the actions of the members of 32 Battalion as separate lawful operations, this is denied. I respectfully submit that their actions were carried out continuously.

12.2 I respectfully submit that -

12.2.1 even if it were true that there were two separate reasons behind the actions of the members of 32 Battalion, such different reasons in the circumstances should not be a bar to a consolidation of actions;

12.2.2 the reasons given by the respondent in these paragraphs are compatible with, and even support, the contention that the actions of

the members of 32 Battalion form part of one continuous operation.

12.3 The alleged conduct of the members of 32 Battalion was carried out over two consecutive days by a certain group of people acting with a common purpose, irrespective of whether or not some of them went home and returned the following day.

12.4 In this regard, I refer to the attached affidavit of PAULINA DABULA.

13 AD PARAGRAPH 15

Before dealing specifically with each subparagraph of paragraph 15 of the respondent's answering affidavit, I wish to put forward the following in an attempt to assist the above Honourable Court in coming to its decision in this matter:

13.1 So far, the vast majority of medical records and consents to examine hospital records and similar

H.V.S.

AD.

evidence pertaining to the plaintiffs in this matter have been furnished to the respondent.

13.2 I am still in the process of dealing and complying with the requests of the respondent's attorneys as set out in the letter dated 16 March 1993 [Annexure "HJL1" to the Respondent's Answering Affidavit] and I will continue to deal therewith until I have complied with all such requests.

13.3 Subsequent to the commission of enquiry, it was the understanding of the plaintiffs' attorneys that save for the matters wherein rape was alleged, all other matters would be settled. The plaintiffs' attorneys were therefore prepared to exchange information and documentary evidence in a less formal manner. However, when it became apparent that there may no longer be any prospect of settling the matter, the plaintiffs' attorneys became reluctant to furnish all the information which basically fell within the scope and nature of a reply to a request for further particulars for trial, and in some instances, tantamount to leading evidence before trial.

H.V.S

AD.

In this regard, I attach copies of requests for such information contained in letters sent by the respondent's attorneys to the plaintiffs' attorneys on 30 March 1993 under cover of a letter which is Annexure "HJL2" to the respondent's answering affidavit [Annexure "B" hereto].

13.4 In addition, I also attach the following:

13.4.1 Copy of a letter from myself to the respondent's attorney dated 16 March 1993, [Annexure "C" hereto].

13.4.2 Copy of a file note made by Ms NICHOLLS of a conversation which she had with Mr BOWEN of the respondent's attorneys dated 23 March 1993 [Annexure "D" hereto].

13.4.3 Copy of a letter from the respondent's attorneys to myself dated 31 March 1993 [Annexure "E" hereto].

13.4.4 A copy of a letter from myself to Mr BOWEN dated 6 January 1993 [Annexure "F" hereto].

H.V.S.

AD.

I respectfully submit that these documents speak for themselves. I also wish to state that I was always, and I still am, prepared to furnish such information to which the respondent is entitled.

13.5 It is very difficult in many instances to comply with the request of the respondent within a reasonable time, since Phola Park is a squatter camp and particularly as a result of the current unrest in Tokoza, it is very difficult to trace certain plaintiffs. In addition, most of the plaintiffs are illiterate and many of them unemployed. Often, some of them leave Phola Park for extended periods to find employment, all of which are problems relating to inadequate communication with them. It is respectfully submitted that this is also a factor which should be taken into account when the convenience of a consolidated trial is considered.

13.6 As part of its functions, the committee which inquired into the activities of 32 Battalion at the time in question, subpoenaed the medical

H. V. S.

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records from most hospitals in the area. As a result, many records were furnished which are totally irrelevant to the litigation in this matter. It was an awesome task for all parties present at the enquiry to distinguish the relevant documentation, and it is therefore quite conceivable that the respondent's attorneys would be in possession of irrelevant records. The respondent was represented at the committee and received some of these documents from the committee.

13.7 I respectfully submit that apart from the references to medical records, the majority of the objections raised by the respondent in paragraph 15 of the answering affidavit are matters relating to evidence and matters which could be resolved successfully during a pretrial conference. This is one example of where one pretrial conference for all plaintiffs, instead of thirty separate such meetings, could limit and refine the issues to the benefit of all parties.

13.8 I further submit that in its opposition to a consolidation of the different actions, the

respondent is placing some of the plaintiffs in a position to give evidence before their trials had even commenced. I further submit that the plaintiffs are not required to furnish all evidence and be ready for trial in order to be successful in this application.

14 AD PARAGRAPHS 15.1 AND 15.16

The documents referred to in this paragraph are not to hand yet. X-rays are with the hospital personnel and are available for inspection, for which consent has already been given. The post-mortem report in respect of the defendant's claim [GUSHA] has not yet been furnished to our firm and I informed the respondent's attorneys accordingly. However, I will do my utmost to obtain these documents as soon as possible.

15 AD PARAGRAPH 15.2

The consents referred to will be made available at the hearing of this application.

H.V.S. AD

16 AD PARAGRAPH 15.4 TO 15.8

In this regard I refer to paragraph 12 above, and reiterate the contents of this paragraph.

17 AD PARAGRAPH 15.9

I deny that this application is premature. The pleadings have been closed and limiting the issues can be achieved by a pretrial conference. I respectfully submit that there is no merit in the respondent's submission in this regard. I believe that separate trials may only lead to a repetition of correspondence, documents and the like.

18 AD PARAGRAPH 15.10

18.1 I admit that there were persons who seized the opportunity of the Phola Park incident to benefit therefrom, and that this finding was made by the committee. These persons are, however, not part of this application and will definitely not become plaintiffs in the future.

H.V.S.
AD

18.2 I respectfully submit that a failure to lay criminal charges does not bar a plaintiff from instituting civil action, nor is it a requirement to be successful in this application.

18.3 I further submit that a consolidation of actions would facilitate the process of determining which plaintiffs, if there are any such plaintiffs, who would not be entitled to relief.

19 AD PARAGRAPHS 15.11 TO 15.13

19.1 I admit that the respondent as well as the plaintiffs' attorneys received irrelevant medical documentation. In this regard, I refer to paragraph 12.5 above and the explanations contained therein.

19.2 It has never been the case that the persons referred to in these paragraphs of the respondent's answering affidavit (and the preceding paragraph 15.10 thereof) are plaintiffs.

19.3 Since the respondent has already pleaded to all the plaintiffs' cases pending in the Supreme Court, I respectfully submit that these references and allegations which are not relevant to the matter at hand are unnecessary and obstructive. I further submit that this information was placed before the above Honourable Court in an attempt to bolster the respondent's opposition to this application by exaggeration.

20 AD PARAGRAPHS 15.4, 15.17 TO 15.19

20.1 I respectfully submit that the respondent is seeking to lead evidence against the plaintiffs before their trials, in paragraph 15.4 of its answering affidavit.

20.2 I am in the process of compiling more accurate information as to the exact times of the incidents alleged, and reiterate that this is an issue which can be resolved in one pretrial conference. By having separate trials this

matter will not be resolved. In this regard I refer to paragraph 15.1 of the answering affidavit, where the respondent only complains of three replies to s 36(4) notices that have not yet been complied with. In respect of all other plaintiffs in this matter, replies have been furnished.

20.3 Insofar as there is still medical documentation outstanding, I will endeavour to furnish same to respondent's attorneys as soon as possible. I will attempt to hand as much documentation as is possible to the respondent's attorneys at the hearing of this application.

21 **AD PARAGRAPH 15.5.1**

The plaintiffs' attorneys no longer act for the fourth plaintiff, T F MOTLAUNG, and the notice of motion will be amended accordingly.

22 **AD PARAGRAPHS 15.15.2 TO 15.15.5**

22.1 Since I was unable to trace any of the plaintiffs referred to herein for purposes of answering to

the allegations contained in these paragraphs, due to the unrest situation in Tokoza, I was unable to trace the plaintiffs concerned, despite my efforts to do so.

22.2 In respect of the twenty-seventh plaintiff, [para 15.5.5 of Answering Affidavit], I wish to point out that Mr NOTISI's records do make reference to a "contused pneumothorax", which relates to his chest and lungs. I respectfully submit that if there is an error in this regard, it has been made in good faith. This aspect could be dealt with in an amendment to the plaintiff's particulars of claim.

23 AD PARAGRAPH 15.20

In this regard I refer to the affidavit attached hereto in support of the contention that the 32 Battalion members acted in one continuous action on 8 and 9 April 1992.

H.V.S.

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24 AD PARAGRAPH 15.21

I deny that each and every plaintiff's case necessitates an independent enquiry by the respondent. I submit that this would not even be the case if separate trials were held. I submit that no defendant is entitled to an independent enquiry of a plaintiff's case before trial. In this matter it would mean twenty-nine separate investigations before twenty-nine separate trials. This would only add to costs and cause both parties extreme inconvenience.

25 AD PARAGRAPH 16.1

25.1 At this stage I am unable to answer meaningfully to the allegations contained in this paragraph, since I have not read the ballistic report referred to.

25.2 I respectfully submit that this is a matter for evidence and argument. I further submit that it is not relevant to the question of a consolidation of action. The outcome of this specific matter will not be affected by a

consolidation of trials, nor will the defendant be inconvenienced.

26 AD PARAGRAPHS 16.2 AND 16.3

26.1 I respectfully submit that this paragraph in the respondent's answering affidavit amounts to a request for particulars and endeavours to cause the plaintiffs to lead evidence. The answers to these questions will not be resolved by holding separate trials.

26.2 I submit that a consolidation of trials and a pretrial conference in respect of the shooting, rape and assault incidents can resolve this issue. A pretrial conference can also be carried out in three phases to accommodate the separate nature of the assaults.

27 AD PARAGRAPH 16.4

27.1 It was never the case of the plaintiffs that the members of 32 Battalion moved through Phola Park in one consolidated group. I respectfully submit

H. V. S. AD.

that it does not follow, as suggested by the respondent, that because members moved in different groups and individually, they acted with several different purposes.

27.2 It is further submitted that the fact that there were different groups of soldiers who acted at different times does not imply that the causes of the action of the different plaintiffs are so different in nature that they may not be consolidated in one trial.

27.3 The objections raised in this paragraph are matters to be dealt with in cross-examination during a trial. In my respectful submission, a pretrial conference held in respect of the alleged assaults, rapes and shooting incidents can only assist in curtailing the costs and time. The different causes of action all arise from the fact that 32 Battalion members went to Phola Park for whatever reasons they may give. It is the case for the plaintiffs that the 32 Battalion members acted within the scope and course of their employment whilst they were at Phola Park on 8 and 9 April 1992. In many instances more

than one member of the battalion will be implicated by various plaintiffs. A consolidated trial will therefore save time.

28 AD PARAGRAPH 16.5

28.1 I submit that there is no merit in the argument put forward by the respondent in this paragraph. The disadvantage and inconvenience suffered by both parties would by far outweigh the benefits to be derived if evidence as to identification parades are led in separate trials. The evidence as to identification parades would in any event be led whether it is at separate or consolidated trials.

28.2 Furthermore, no criminal actions were instituted against any members of the 32 Battalion, whether or not charges were laid, and it is submitted that therefore not much can be said about the criminal charges, at least not to the extent that they should be considered in determining the question of having separate trials or consolidating trials.

H.V.S.

AD.

28.3 Therefore, it is my submission that any reference to such charges does not assist the respondent's case.

29 AD PARAGRAPH 16.6

29.1 In this regard I reiterate that I will continue my endeavours referred to hereinabove, to obtain this information.

29.2 In addition, I wish to add that during the proceedings before the committee, names of the different persons involved were not mentioned, but the respondent is in possession of the names of the members of 32 Battalion who may be implicated in this matter. At no stage were the plaintiffs' attorneys furnished with such information.

29.3 I further respectfully submit that the respondent's attempt to fragment the period during which the 32 Battalion members were at Phola Park into several different periods, as set

out in this paragraph, is artificial and does not assist the above Honourable Court.

29.4 It is respectfully submitted that the plaintiffs' case is against members of 32 Battalion, who were all present during the times as set out by the respondent in this paragraph.

30 AD PARAGRAPHS 16.7 AND 16.8

30.1 I respectfully submit that the arguments contained in these paragraphs are without merit. As stated hereinbefore, many of the plaintiffs will implicate the same members of 32 Battalion, and thus time will be saved by a consolidation of trials.

30.2 I further submit that the prediction of the vastness of the evidence is an exaggeration. I submit that one consolidated trial would adequately accommodate these issues.

H.V.S

AD.

31 AD PARAGRAPH 18

As submitted hereinbefore, the reasons behind the entry of Phola Park are not relevant for the purposes of this application. It is submitted that a rule 37 meeting in respect of one consolidated trial will not only resolve this question but also many other issues.

32 AD PARAGRAPHS 18.2 TO 18.4

32.1 It is denied by the plaintiffs that the actions of 32 Battalion on 8 and 9 April were different operations. It is submitted that the case for each plaintiff is that he or she was injured while the members of 32 Battalion were present at Phola Park for a fixed period of time, as I have stated hereinbefore.

32.2 The members of the 32 Battalion were present in Phola Park as part of one military operation conducted within the scope and course of their employment.

32.3 It is submitted that the actions of the members of the 32 Battalion on 9 April 1992 were a mere continuation and completion of the operation which was launched the previous day. It is therefore submitted that it should follow that any claims relating to assaults which occurred during that period are based on one cause of action since they were carried out by one battalion of soldiers over a fixed time.

33 In view of the foregoing, I respectfully disagree that similar fact evidence should be precluded from being led, particularly at this stage of the proceedings.

34 AD PARAGRAPHS 19.1 TO 19.3

I respectfully submit that the allegations contained in these paragraphs are repetitive and have been dealt with by the respondent in the answering affidavit, and I have dealt with these arguments in the preceding paragraphs.

H.V.S.

AD.

35 AD PARAGRAPH 19.4

It is admitted that the plaintiff elected to institute separate actions. However, in the process of doing so, the desirability of a consolidation of actions became apparent. I respectfully submit that the personal nature of each individual plaintiff's injuries is not a bar to a consolidation of action, since the paramount consideration is the convenience for all parties.

36 AD PARAGRAPH 19.5

I respectfully submit that the above Honourable Court will be in a position to make different cost orders in respect of different plaintiffs, as could be done, where for instance several plaintiffs in a motor-vehicle accident claimed against the insurer of the vehicle in question.

37 AD PARAGRAPH 19.6

I respectfully submit that a consolidation of actions rather than an individualization of different claims would encourage settlement. Once all the

documentation is evaluated for the purposes of trial, it is submitted that the issues could be limited to the extent that the parties could decide which trials may be settled and which trials not. This exercise in itself would save costs, particularly counsels' fees.

38 AD PARAGRAPHS 19.7 AND 19.8

In this regard I wish to point out that the defendant has relied on these defences in almost all the matters regarding this application, follow ... date of trial, the different aspects could be dealt with successfully, in my submission.

39 AD PARAGRAPHS 20.2 TO 20.3

I respectfully submit that different quantum by different plaintiffs, per se, are not a consideration for separate trials. I further submit that the considerations regarding quantum and the factors and evidence which would be taken into account by the above Honourable Court in determining same, which would involve the same exercise, whether separate trials are held or not.

40 AD PARAGRAPH 20.4

I respectfully submit that there is no merit in the argument that the respondent and plaintiffs would be prejudiced by the emotions of the plaintiffs' presence. This is not a criminal matter where the plaintiffs would be tried. In a consolidated trial it is conceivable that not all the plaintiffs would be at court on the same day and at the same time. These are also issues which could be arranged between the parties, since it is civil litigation and not a criminal trial.

41 AD PARAGRAPH 20.5

41.1 I respectfully submit that also in these arguments raised by the respondent there is no merit. I submit that a consolidated trial rather than individual trials would have the effect that certain evidence may be excluded, in respect of certain plaintiffs.

41.2 In this regard it must also be remembered that several plaintiffs would testify against, for

instance, only one member of the 32 Battalion. In this regard alone a consolidated trial would exclude an unnecessary of evidence and costs.

42 AD PARAGRAPHS 21.1 TO 21.3

In this regard I have already commented on the issues of costs and refer to the preceding paragraphs herein.

43 AD PARAGRAPHS 21.4 TO 21.6

I respectfully submit that these considerations raised by the respondent are not valid. It is precisely for the considerations and concerns raised in this paragraph that the plaintiffs wish to consolidate their actions.

44 AD PARAGRAPH 21.7

With regard to the allegations pertaining to peregrini the respondent has never issued notices for security of costs. This aspect could equally be dealt with in a consolidation of trials. I have no knowledge of any

plaintiffs who are unlawful immigrants, and to the best of my knowledge, none of the plaintiffs are illegal immigrants.

45 AD PARAGRAPH 21.8

45.1 I respectfully submit that there is no basis for the allegation that the plaintiffs' attorneys would not be able to realistically apportion the costs between party and party and attorney and client costs in the matters for all the plaintiffs, as alleged in the respondent's answering affidavit.

45.2 It would be convenient to all the parties if the plaintiffs's attorneys could deal with costs in a consolidated trial, in my submission. In this regard I refer to my submissions on costs made hereinabove.

H.V.S.

AD.

46 AD PARAGRAPHS 22.1 AND 22.2

46.1 The argument put forward by the respondent in this paragraph is without any merit. If separate trials were held, some of the respondent's witnesses would wait for long and unnecessary periods outside Court on many different occasions. I deny that the evidence of thirty plaintiffs would be confusing and would cause great inconvenience. On the contrary, it would be more convenient to deal with their evidence in one consolidated trial. It may be that many plaintiffs are excluded at that stage, precisely for the reason that the issues have been limited by the process of consolidation.

46.2 I further submit that a consolidated trial would have more time-saving benefits than separate trials. I respectfully disagree with the contention that it would make no difference whether thirty plaintiffs testify individually or in one trial, because the evidence of many witnesses would be avoided.

H.V.S.

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47 AD PARAGRAPHS 22.3 TO 22.6

With regard to these paragraphs I respectfully submit that the allegations contained therein have been dealt with in the previous paragraphs and any further comment thereon would amount to repetition.

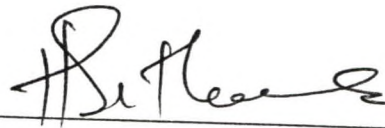
48 AD PARAGRAPHS 23 TO 24

48.1 I submit that the respondent has not shown that the claims of the individual plaintiffs depend on essentially, or are based on essentially, different factual questions. It is submitted that for the reasons set out above, and even on the respondent's own version, it has been shown that the plaintiffs' claims are essentially based on the same causes of action and for purposes of convenience, particularly for the costs and time to be saved, the plaintiffs' trials should be consolidated.

H.V.S

AD

49 I therefore submit that the application should be granted in favour of the applicant in terms of the notice of motion.



DEPONENT

THUS DONE AND SIGNED BEFORE ME AT JOHANNESBURG THIS 15th DAY OF JULY 1993, THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS DECLARATION AND CONSIDERS IT BINDING ON HIS CONSCIENCE.



COMMISSIONER OF OATHS
Ex Officio

AMANDA JOY DISSEL
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
709 MEDICAL ARTS BUILDING
220 JEPPE STREET, JOHANNESBURG
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In the matter between -

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APPLICANT

and

THE MINISTER OF DEFENCE

RESPONDENT

APPLICANT'S REPLYING AFFIDAVIT

I, the undersigned,

do hereby state under oath -

1 I am an adult male labourer, of Phola Park, Thokoza.
I am a plaintiff in this matter.

2 The allegations contained herein are both true and
correct, and unless indicated otherwise, are within my
own personal knowledge.

N. P. D
HWS AD 

3 I deny that the action of the members of 32 Battalion on 8 and 9 April 1992, formed part of separate operations conducted by the said members. Insofar as I am concerned and, according to my observation, the conduct of all the members of 32 Battalion who were present in Phola Park at that time, formed part of one continuous operation. I say so for the following reasons:

3.1 The members of 32 Battalion arrived on 8 April 1992 late in the afternoon. After some shooting incidents, the members of 32 Battalion in question entered Phola Park, which is a very large squatter camp, for reasons best known to themselves. This exercise required the members of 32 Battalion to be in the squatter camp for a very long time.

3.2 On the following morning - I am not sure of the time, but it was still very early, altercations took place between the members of 32 Battalion and some of the residents of the squatter camp.

3.3 Even though it is possible that some of the members of 32 Battalion left the camp, I

N. P. D
N. V. S AD

respectfully submit, in the circumstances it is more probable that some of the members of 32 Battalion remained in the squatter camp to complete their operations, during which some of the residents, including myself, were injured by the assaults perpetrated on us by the members of the 32 Battalion.

- 4 I respectfully submit that it would be to the advantage of the respondent and the plaintiffs in this matter if the actions of the plaintiffs were consolidated in one trial. A consolidation of trials would exclude the petition of witnesses appearing at different times and save costs.

Paulina - Dabula
D E P O N E N T

THUS DONE AND SIGNED BEFORE ME AT ~~JOHANNESBURG~~ ^{EDEN PARK} THIS DAY OF JULY 1993, THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS DECLARATION AND CONSIDERS IT BINDING ON HIS CONSCIENCE.

06089101 SGT.
M
(DWB RUNNERS)
COMMISSIONER OF OATHS
Ex Officio

H. V. S

AD.

G BOWEN / lu

29 March 1993

N.S. MEMANE / MINISTER OF DEFENCE

In respect hereof, kindly supply me with the following:-

- i. Is the Plaintiff married by way of a customary union or by way of a civil marriage ?
- ii. Is the Plaintiff able to identify any of her assailants ? If not, a description of her assailants is required in regard to height, race, general appearance etc. again with a view to identifying the individual members involved.
- iii. If photo's of her disfigurement are available, copies thereof are requested.
- iv. Was Plaintiff employed at the time of the incident ? If so, the nature of her employment and name of her employer is requested.
- v. Is any further detailed medical report available ? If so, a copy thereof is required.
- vi. Were the member(s) armed and if so what type of arms or implements were they ?
- vii. Was Plaintiff allegedly assaulted with any of these arms or implements, if any ?

H.V.S.

AD

30 March 1993

S.S. MAVIBELA / MINISTER OF DEFENCE

- i. Is Plaintiff able to identify any of his assailants ? If not, a description of the assailant or assailants is required in regard to height, race, general appearance, colour of hair, eyes and build.
- ii. Were his assailants armed and if so, what type of arms, if any, were involved in the assault ?
- iii. Is any further or more detailed medical report available, and if so, a copy thereof is kindly requested.
- iv. Where in Phola Park did the alleged incident take place ?

H.V.S

AD.

G BOWEN / lu

30 March 1993

T.W. DADA / MINISTER OF DEFENCE

- i. Is Plaintiff able to identify the member(s). If not, in respect of the appearance of the alleged member(s) which assaulted the Plaintiff, kindly advise as to the height, race, general appearance, colour of hair, eyes, and build of Plaintiff's assailants.
- ii. Were these assailants allegedly armed and if so, the nature of the arms is requested to be set out.
- iii. Was Plaintiff assaulted with any of the arms in the possession of his assailants or any other instrument(s) ?
- v. With regard to the claim for loss of earnings, Plaintiff is requested to provide:-
 - the name of his employer and in what capacity he was employed;
 - proof of loss of earnings by way of salary advise slips or statement of his employer is requested;
 - proof of absence from employment for the stated period is requested.
- vi. Where in Phola Park did the alleged assault occur ?
- vii. Is any further medical report available ? If so, a copy is requested.

H.V.S .

110 -

G BOWEN / lu

30 March 1993

M. NXINTO / MINISTER OF DEFENCE

- i. Is Plaintiff able to identify any of the member(s). If not, plaintiff is requested to indicate in regard to the identity of the alleged assailants information in respect of height, race, general appearance, colour of hair, eyes, build, etc. and to indicate whether or not the member(s) were armed, as well as what type of arms were carried.
- ii. Was Plaintiff assaulted with any of the arms or any other instrument(s) ?
- iii. In respect of the claim for disfigurement, Plaintiff is requested to indicate whether or not any photographs are available, and if so, kindly make copies thereof available.
- iv. Where in Phola Park did the alleged incident occur ?
- v. Is any further medical report available ? If so, a copy is requested.

H.V.S.

AD.

G BOWEN / lu

30 March 1993

S. DUBE (MSIMANGO) AND OTHERS / MINISTER OF DEFENCE

- i. Copies of the birth certificates and identification numbers of the three Plaintiffs is requested.
- ii. A copy of the birth and death certificate of Plaintiff's father is requested as well as her identity number.
- iii. How were the Plaintiffs parents married and a copy of the marriage certificate is requested. If married in a customary union, proof thereof is required.
- iv. Documentary proof of the average monthly income for the 12 month period preceding her death of the deceased is required. If employed, the name of her employer is requested.
- v. A consent to inspect the income tax file at the office of the Receiver of Revenue is required as well as the income tax number of the deceased.
- vi. The occupation of the Plaintiffs' father is requested as well as the name and place of his employer and income at the time of the incident.
- vii. Were the Plaintiffs' parents married or divorced at the time of the alleged incident ? If divorced, a copy of the divorce settlement agreement, if any, is requested.
- viii. Was deceased a member of any pension or provident fund ? IF so, the name thereof is required.
- viiii. It appears that in order to prove your claim actuarial report will be required. If such a report has been obtained a copy thereof is required. If not, kindly advise if you intend obtaining such a report.
- x. The state of health of the deceased with regard to life expectancy. Details are required.
- xi. A copy of the birth certificate and identity number of Plaintiffs' father is requested.

H.V.S.

AD

G BOWEN / lu

30 March 1993

T. PHIRI / MINISTER OF DEFENCE

- i. In respect of Plaintiff's claim for disfigurement, Plaintiff is requested to indicate whether or not any photo's are available and if so, to make copies of same available.
- ii. In respect of the claim for past loss of earnings, copies of documentary proof of Plaintiff's earnings is requested.
- iii. Plaintiff is also requested to indicate by whom and in what capacity he was employed.
- iv. Proof of his loss of earnings of R300-00 is requested.
- v. Proof of absence from employment for the stated period is required.
- vi. Is any further medical report available ? If so, a copy is requested.
- vii. Is Plaintiff able to identify the member(s) who allegedly assaulted him ? If not, information as to race, height, general appearance, colour of hair, eyes, build, etc. is requested.
- viii. Were the member(s) armed and if so, what was the type of arms or other implements ? Was Plaintiff assaulted with any army arms or other instruments ?
- viiii. Where in Phola Park did the alleged incident occur ?

H.V.C.

D.

G BOWEN / lu

30 March 1993

T. MOFOKENG / MINISTER OF DEFENCE

- i. Is Plaintiff able to identify any of the member(s) ? If not, plaintiff is requested to kindly provide information as to the appearance of the alleged member(s) by whom he was assaulted with regard to height, race, general appearance, colour of hair, eyes, build, etc.
- ii. Were the member(s) armed, and if so, what were the nature of the arms and was Plaintiff assaulted with any of these arms or other instruments ?
- iii. Is any other further medical report available and if so, a copy thereof is requested.
- vi. Where in Phola Park did the alleged incident take place ?

H.V.S.

AD.

C

The State Attorney
Royal St. Mary's Building
95 Eloff Street
JOHANNESBURG
2001

V.SITHOLE/dk

16/3/93

Dear Sirs,

RE : NTABAYINKHONJWA TUTU VELA AND OTHERS / MINISTER OF DEFENCE

We refer to your Notices of Intention to Amend the Defendant's Plea as well as to the telephonic conversation between writer hereof and your Mr. Bowen on the even date.

We confirm having advised the latter that we understood that all these matters except the rape cases will be settled by the Minister in due course.

You will remember that we have also agreed with your Mr. Bowen to suspend the further exchange of pleadings in this matter pending consultations with your client.

We have interpreted the service of the pleadings aforementioned as amounting to reneging this agreement.

We now request you to let us have firm settlement proposals not later than the 26th March 1993 failing which we will have no option but to enroll all these matters for trial.

We hope to hear from you soon.

Yours faithfully

NICHOLLS, CAMBANIS AND SUDANO

Per. V.SITHOLE

H.V.S.

AD

23/3/93

D

(1) to Mr Bowen State attorney.

Writing a long letter on wide of new.
Got to trace another drop.

Working into gigantic bureaucracy.

Never led him to believe a settlement

Never at any stage about to settle

Going to talk my client. No understanding

at any stage - never ever ever.

No question of settling

Writing a letter on each individual file

Go ahead in the normal fashion

Believe that quantities are way out.

Vast majority

will phone later re consent. Consolidate

into one trial is take

Rape. Assuming was a rape. Is in
denied. Is it in the course + scope.

Crazy in terms of Rule 34

Argued out factual dispute

Notwithstanding the dispute b/w The

parties

No prejudice to amendment

H.V.S

AD.

"GOVAT"

(011) 29-2961

FAX (011) 337-7180

Mr Bowen/mp

Navrae
Enquiries.....ROYAL ST. MARY'S GEBOU
ROYAL ST. MARY'S BUILDINGSEloffstraat 85
85 Eloff StreetJOHANNESBURG
2001REPUBLIEK VAN
SUID-AFRIKAREPUBLIC OF
SOUTH AFRICABy beantwoording verwys na
In reply please quote

No. 6641/92/P5

DIE STAATSPROKUREUR
THE STATE ATTORNEYPrivaatsak X9
Private BagJOHANNESBURG
2000

31 March 1993

NICHOLLS COMBANIS
P.O. Box 8694
JOHANNESBURG
2000

Dear Sir

PHOLA PARK CLAIMS / MINISTER OF DEFENCE

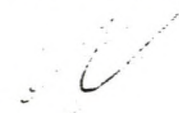
Your reference is Mr V Sithole

Your letter of 16 March 1993 refers.

Firstly it is correct that pleadings were held over pending my consultations with my client but it is denied that at any stage that any undertaking in regard to settlement was given. Consequently there can be no question of reneging on any "agreement" as you have alleged.

I am currently seized with investigation and consultation and to this end have also written to you under separate cover separately in regard to each individual claim.

Yours faithfully


G. BOWEN
For/STATE ATTORNEY

RECEIVED

H.V. S.

The State Attorney
Royal St. Mary's Building
44 Court Street
WINNENBURG
2001

BY HAND

Attention : MR.G.BOWEN

6641/92/P5/JC

V.SITHOLE/dk

6/1/93

Dear Sir,

RE : NKOSANA ALFRED MASXALA AND OTHERS / MINISTER OF DEFENCE

The telephonic conversation between writer herent and your Mr.Bowen on the even date refers.

We confirm having agreed to suspend the exchange of further pleadings herein pending the outcome of consultations with your clients regarding settlement of these matters.

We further confirm that we will not enroll these matters for trial, for a period of two months from date hereof.

Finally, we confirm having agreed that both sides will ignore the reference to the Minister of Law and Order wherever he is cited in the pleadings.

In the meantime, we undertake to furnish you with the outstanding medical records as soon as possible. Please note that our clients are very anxious that this matter be finalised as soon as possible. If we do not have a firm settlement offer within the two month period we intend setting these matters down for trial.

Yours faithfully

NICHOLLS, CAMBANIS AND SUDANO

Per.V.SITHOLE

H.V.S'

AD.

Collection Number: AK2702

Goldstone Commission of Enquiry into PHOLA PARK Records 1992-1993

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