

J.L. Mkentane.

DEFENCE CONT.

Can we go now to the, the eleventh that is the day the, certain of the accused were freed, freed from the charge, the charge was withdrawn against them. Were you in Court that day also? --- I was in Court that day also your Worship.

Now after Court were you present with the accused? --- I was present with the accused for most of the time.

Where did you go? --- Both here in Court and after Court. 10

Where did you go? --- After Court.

Yes? --- After Court we first of all saw, saw the accused there in the dock there and then he went out and saw the parents of some of the accused.

Yes? --- Then he picked me up in front of the Court house and we went up to Dr. Ntshona above the railway line there for lunch.

Yes? --- From there he came down to the Police station to sign off.

Let me get one thing clear, while you were at Ntshona's did accused leave Ntshona's and leave you there? --- No, No. 20

Was he there with you all the time? --- He was there with me all the time.

And you say from there you went down to the Police station? --- To the Police Station.

Do you know what for? --- He had gone there to sign off. He is under a ban and he has to sign off whenever he leaves a place for East London.

Now at the Police station, where were you? --- 30

He left/...

J.L. Mkentane

He left me in the car.

Were you sitting in the car? --- Sitting in the car yes.

Did you get out of the car? --- No I didn't Your Worship.

And did he then go inside? --- He went inside.

Did you see any of the accused there on that occasion? --- No Your Worship, outside the Police station there is a hedge on either side. I mean there is a hedge on this side of the Police station between the actual station itself and the road. 10

That is between you and the station there is a hedge? --- There is a hedge yes.

And could you see past the hedge? --- No not past the hedge, I don't know what happened inside.

And as far as you were concerned outside did any of the accused come to the car? --- No nobody came to the car.

It has been said by, I think at least one of the accused that three of them came to, when I say the accused I mean the State witnesses who were accused in the other charge, let me put it this way. Three of the State witnesses came to Mtshizana the accused in this case, at a point near the back of the motor car that you were sitting in and had a discussion with him, did that happen? --- No that didn't happen, Your Worship. 20

If it had happened would you have seen it? --- I would have seen it.

And did you leave the Police station in the accused's car? --- In his car, Your Worship. 30

Where did he take you? --- He took me to the garage down here, at Auto Services where my car was.

In which/....

J.L. Mkentane

In which direction going where? --- That's East London direction, the last garage, the last garage.

Is it the last garage in town, the one on your right as you are going out? --- That's the garage yes.

And he left you there? --- He left me there, I picked up my car.

Did you travel back to Middledrift? --- No I reside at Fort Hare really.

I see? --- Yes I went back to Fort Hare.

NO FURTHER QUESTIONS BY DEFENCE.

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PROSECUTOR X.X.D.

Did you write a letter to the Regional Prosecutor at East London in connection with this case, the case against the accused? --- Yes I did.

What for? --- I was asking first for a charge sheet and for the date and venue for the trial.

Why? --- This case, this particular case?

This case? --- Because at the time I was the acting Attorney for the accused.

Until when were you acting Attorney? --- Until yesterday morning. 20

Until yesterday morning? --- Hm.

Did you withdraw? --- Yes.

Why? --- Because from the paper it became evident that I had to give evidence.

So you in the first instance, you assisted in arranging for his defence? --- Pardon.

You assisted him in arranging for his defence? --- Yes.

And did you discuss the case with him? --- Naturally yes I did. 30

What defence did you discuss with him? --- What witness....

DEFENCE/....

J.L. Mkentane

DEFENCE:

Your Worship this reply is of course privileged I dont know if the witness wishes to give it or if the client whose privilege it is, wishes it to be disclosed but prima facie it is privileged and then unless my learned friend can show that there has been a waiver he is not entitled to lead this evidence.

PROSECUTOR CONT.

As your Worship pleases, I wont press the point.

Now on the first of July, 1963, were you 10  
appearing for some of the accused? --- First of July?

Pogo case, yes? --- Yes.

What were their names? --- Sipo Ngele was one of them and Ngushu was another, I forget his first name, Gushu.

His first names, yes? --- And Magam was another.

Yes? --- They were three I was appearing for on my own behalf.

And others? --- No.

Didn't you appear for seven accused Mr Mkentane? 20  
--- At the trial yes.

At the trial? --- Hm.

Did you have any discussion with Sipo Ngele?

--- Sipo?

Sipo Ngebe? --- Yes Ngebe?

Yes the first name you mentioned. What is the name? --- Negele, Sidwell Ngele, yes.

On that day did you have a discussion with him?

--- Yes.

What? --- I asked him some or other things about 30 his own defence, whether they have made State...

About his defence? --- Yes, about whether

they/....

they had made statements or not.

And did you have any conversation with the accused on that occasion, on that day, the first of July?  
--- The first of July?

Yes? --- Yes, we were together in the dock....

Did you have any conversation with him? ---  
The, I don't understand.

Did you have, speak to the accused? --- Of course I did we were together all along the line.

Yes what did you tell him or what did you say 10  
to him on that day? --- In connection with?

With anything? --- Oh!

DEFENCE.

I object Your Worship. It is not a fair question.

PROSECUTOR.

I beg your pardon Your Worship, I don't understand my learned friend's objection.

DEFENCE.

My learned friend is apparently asking for every word that passed between two Attorneys who appeared in 20  
Court on the same day representing various clients.

PROSECUTOR.

Your Worship, I'm asking this question to find out whether this witness is able to remember what happened that day. That is the reason why I'm asking this question.

BY COURT.

(Speaking too softly)

PROSECUTOR CONT.

What did you tell him if you did tell him 30  
anything? --- I must point out, Your Worship, to the Court that Mr Mtshizana was not only a colleague in the defence but he was also a personal friend of mine, we

could/....

J.L. Mkentane

could have discussed anything that day.

What did you discuss? --- Anything.

Can you remember anything about? --- Yes, we could have discussed the weather.

Anything else? --- Oh! The defence of the case.

Anything else? --- We could have discussed ...

You could have discussed? --- Yes.

What did you discuss that is what I want to know? --- Well I couldn't remember what we could have discussed on that day in particular. 10

You are now telling the Court that you could have discussed, I want to know what you did discuss? --- I'm not sure what we discussed.

You cannot remember? --- No. That is right.

And did he say anything to you; did he tell you anything? --- He told me lots of things.

I beg your pardon? --- He told me lots of things.

Yes can you remember any of these things? --- I think so.

What? --- Well he told me that he was getting 20 trouble with his car.

Anything else? --- And he must have told, I think, I remember him asking for a couple of girls around the place.

Mr Mkentane why do you say he must have? --- I mean it is the type of line that we always follow with them.

Yes but why do you say, he must have? --- We always do.

Did he say that? --- Yes. 30

And then why do you say he must have? ---

DEFENCE.

Your Worship, I must object to this line of cross-examination.

COURT.

The witness is very vague, the witness is he sort of putting things as it, things that normally happened, that should have happened, he doesn't say what did happen.

*2/12/88*

DEFENCE.

But he's asked to recall details of a whole conversation which took place in July and it is now November. I have an authority for this Your Worship, I would like to ..... 10

PROSECUTOR.

I did not ask this witness to tell anything in particular, to tell the Court the whole story, the whole discussion, I asked him to tell the Court some- thing he can remember.

DEFENCE.

Your Worship, may I quote my authority? It is the judgment in the appeal of Siwisa and others, it is an extract from the judgment which I obtained from the shorthand writer when I left Grahamstown. It refers to questions by the Prosecutor asked in that case when Siwisa was asked if he could remember the details of the charge sheet and it reads like this: "Now when you appeared in Court on the 10th. that is five days ago the charge sheet was read over to you, is that correct? The answer is yes. Will you please repeat what was read over to you? And the reply is well it is hard to remember now what was read over to me. And the Prosecutor then says "Dennis Siwisa will you please repeat what was read over to you" and the witness 20 30

says/....

J.L. Mkentane

says "Well I did not write it down and it is hard to remember". And this is the comment of His Lordship Mr Justice O'Hagan on this type of cross-examination "A number of rather badgering questions on this entirely pointless subject followed". And he then deals with the charge sheet and says that it is complicated and one need not necessarily remember everything. One's memory isn't compartmented. And His Lordship goes on and says that page 153 an aggressiveness towards the first appellant is shown when he gives the answer "I do not know who organised that meeting". The Prosecutor says "You don't know then say it". And this witness is being subjected to, subjected with respect, to the same type of pointless cross-examination. Does it matter whether these people discussed the car or whether they didn't. Does it matter whether they discussed girls or whether they didn't. What does matter is the charge and if he is going to be cross-examined in this respect he must be cross-examined in regard to the charge.

PROSECUTOR.

Your Worship talking about aggressiveness, will my learned friend please recall yesterday when he stood up and right up and insulted the witness that he is a liar, Your Worship.

BY COURT. (inaudible) you are not cross-examining the Counsel now, you are cross-examining the defence witness.

PROSECUTOR.

As Your Worship pleases. Am I entitled, Your Worship to ask the witness about what happened that day.

BY COURT.

Yes Mr Prosecutor, you must accept the witness's answer because it is something sort of irrelevant to the charge.

PROSECUTOR/....

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PROSECUTOR/....

K.L. Mkentane

PROSECUTOR.

Yes Your Worship, if the witness say that he cannot remember what was said I am satisfie , I will be satisfied and I won't pursue this matter any further. But then he must say it.

BY COURT.

Proceed with your cross-examination, Mr Prosecutor.

PROSECUTOR CONT.

Can you remember what was said between you and the accused on that day? .... 10

DEFENCE.

Your Worship can I ask please that the witness put his questions specifically in regard to what I think with respect, that is the way the question should be put. Can you remember what was said between you and the accused in regard to the motor car or the girls or whatever he wants to put. But where the witness says we are personal friends we are co-attorneys, we are together in Court and naturally we talk about all sorts of things. Is he expected now to remember all the details? 20

BY COURT.

I think that objection is reasonable, you are to proceed more specific about your questions.

PROSECUTOR.

Your Worship, if I'm not entitled to ask a question ....

BY COURT.

The question is not of being entitled its the question of being more specific.

PROSECUTOR.

30

I can't be more specific, Your Worship.

Did/....

J.L. Mkentane

Did you have any discussions with your clients that day? --- On the first yes.

Whilst the accused had discussions with his clients? --- Yes.

Could you hear what his clients told him? --- Not when he saw them at the back of the hall when I wasn't there.

So there was discussions between the accused and his clients you couldn't hear? --- Over there yes, I had my clients over there.

10

The question is there was a discussion between the accused and his clients you couldn't hear? --- Yes.

Did you hear Mdingi saying anything on that day in connection with the case against him? --- On the first yes.

What did he say? --- Over there he said "Mfundisi" referring that to the accused "Some of us have made statements to the Police, and we have been forced to do that, others have made confessions, can you explain our legal rights as far as that is concerned".

20

And then did the accused reply? --- Yes.

What did he say? --- He said to them No. 1, you are not forced, nobody have the right to force you to make a statement and if it is true that you have been forced to make statements then you must tell the investigating officer about it, Sergeant Hattingh, that is the position.

You must tell? --- Yes.

Not you could tell? --- No, go and tell him.

Was the words he used that you must tell him or that you could tell him? --- If it was a condition of if, if you made statements which was forced out of you, you must tell Sergeant Hattingh.

So the words he used was "must"? --- Must yes.

Not could/....

J.L. Mkentane.

Not you "could" tell him? --- Must.

Did you hear, let me rather put it to you in Court, the accused told the Court a that he advised them they could tell the Police? --- Well I don't know.

You don't know? --- What I heard is what I deposed to.

You see when the State witnesses testified to the effect that he must tell the Police it was denied in cross-examination? --- What I heard is what I deposed to.

Did he say anything else you can remember? --- 10  
He told them their legal rights as accomplices.

What did he tell them? --- He told them that they were accomplices, their right to elect giving evidence.

Ja? --- Nobody would force them to make evidence, they had an election to make.

Ja ... you see the accused was asked what he told the witnesses and he didn't say anything about making accomplices? --- Well I don't know.

DEFENCE.

Your Worship he did, he did Your Worship, yes he 20  
did.

PROSECUTOR.

I cannot remember it Your Worship, then I'll ask  
at this stage to be apologised, I'm sorry.

PROSECUTOR CONT.

What did he tell about accomplices, just repeat it?  
--- He told them that they must remember they are  
accomplices.

Yes? --- And as such they are not forced to make  
statements.

Yes? --- They can elect.

Yes/...

J.L. Mkentane.

Yes? --- They can elect to make statements.

Anything else? --- Not that I can remember.

And on that date did Mdingi say anything? ---

Pardon.

On the eleventh of July were you present when the case was withdrawn against some of the accused? --- Yes I was present.

And was Mdingi in Court? --- Yes he was.

Did Mdingi say anything on that occasion, on the eleventh of July? --- No on the eleventh of July, I 10 cannot remember so clearly what Mdingi said it is, it is possible he said more or less what he said on the first occasion, I cannot remember.

Now can you remember, you keep on saying this its possible, its possible, its also the same story, the same attitude of the accused when he gave evidence. Now the question is did he say anything about writing letters? --- About writing letters.

Yes or did he say anything about the case on the eleventh? --- No the reason is this that on the day, on 20 the, on the first, Mdingi as the spokesman of the others said "What happens if Sergeant Hattingh does not want to hear our troubles". It is then that the accused then.

To who did he say that --- Hm.

To whom did he say that? --- To the accused.

And did the accused reply to it? --- Yes.

What did he say? --- He said to them "If then 7 Sergeant Hattingh doesn't want to entertain your version now ...

Yes? --- You could then write to him letters under 30 registered cover.

Did the accused say anything else? --- Not that I remember.

You/.....

33

J.L. Mkentane.

You see the accused told the Court he didn't speak to any of the accused on that occasion on the eleventh?

--- On the first I'm talking about.

I'm talking about the eleventh now, I'm questioning you about the eleventh? --- No ...

BY COURT.

( Speaking too soft) .. talking about the first.

PROSECUTOR.

But I specifically mentioned the eleventh.

BY COURT.

10

Yes but then you put the question about, reference to the eleventh and then the witness (inaudible) on the first.

WITNESS.

Yes.

BY COURT.

About the 11th not on the eleventh. That was the accused's evidence.

PROSECUTOR.

On the eleventh did Mdingi say anything? --- On the 20  
eleventh I, other than saying that I think more or less the same ground was covered, I cannot be specific.

Did Mdingi speak to the accused on the eleventh?

--- Yes he did.

Did you overhear the conversation between them?

--- No I didn't.

Did the accused speak to Mdingi? --- Yes he was speaking to them all.

Where all of them? --- Well the doctor ....

On the 11th? --- Yes all those that were there, 30  
They had already been separated those that were, that the State had withdrawn against that had been seated here and there was a Sergeant Hattingh and others there who  
didn't/....

J.L. Mkentane.

didn't want us to go anywhere near them.

And did you stay in Court all the time, on the eleventh until the accused left the Court or were you outside? --- We went out, they went down to the back of the hall then we went out, when they were going into the lorries we went right .....

Who went out first you or the accused? ---And the accused in this case.

I beg your pardon? --- Myself and the accused in this case, we went out together. 10

After the prisoners have been taken away or before? --- No we left them in the well of the Court down there.

And do you remember the occasion when the Sergeant Hattingh spoke to the accused? --- Where?

In the Court? --- With the accused then, with the accused in this case?

Yes? --- No I do not remember that.

You don't remember it? --- No.

Do you remember the accused saying when he was told that those people are State witnesses. Do you remember 20 the accused saying he didn't know it? --- I don't remember that.

You don't remember it. You see it is, it was not disputed when Sergeant Hattingh testified to that fact.

DEFENCE.

Your Worship, I don't want to interrupt my learned friend but can I explain none of the other witnesses to whom the accused is alleged to have spoken gave evidence of him speaking to them at all. The fact that I didn't put it specifically to Sergeant Hattingh is a matter for argument. Had the witnesses said that the accused came over and spoke to them then possibly

J.L. Mkentane

my position would have been different, I, its just that I don't want time wasted on, on a thing which is really a matter of argument.

PROSECUTOR CONT.

Did you see Sergeant Hattingh in Court that day?

--- Yes yes.

Did you see him speaking to the accused? ---

No I didn't see him speak to the accused.

Did you (inaudible) people against whom the case was withdrawn seated over there? --- Hm, correct Hm. 10

And **was** the accused in here with the others?

--- We were sitting at the Attorneys desk.

Doing what? --- First of all we had to apply when the State withdrew against those, we had to apply and argue the question of bail.

Yes? --- The different amounts that had been allowed in bail.

Yes? --- And we were busy in consulting and arguing about that.

Yes and did you attend to your clients? --- 20  
That day yes.

Whilst the accused was busy with his? ---  
I think so.

Is it possible that the accused could have gone over to the other ... the State witnesses, without you seeing him? --- Well I don't know as was saying they were sitting over here. If he crossed over I may have had my back to him I didn't see him, speak to them.

Is it possible that he could have gone over?  
Well I don't exclude the possibility. 30

Now what time did you leave the Court room, the Court house on that day with the accused in his company?---  
Well I couldn't specifically, but it was long after twelve.

And what/....



J.L. Mkentane

About what time? --- It could have been half past twelve, it could have been twenty to one, I'm not sure, I could not be sure.

And where did you go to from the Court house?

--- We were standing outside here he was consulting with parents of some of the accused.

From there where did you go to? --- From there we went into his car.

Where did you go to then? --- Dr. Ntshona's place.

And when did you leave his place? --- Dr. 10  
Ntshona's place?

Yes? --- It must have been after two already.

Between two and three or after three? ---

No it could be between two and three.

Where did you go to then? --- The Police station.

Did you accompany him to the Police station?

--- Yes.

Why? --- He was driving me in his car, I left mine in the garage.

NO FURTHER QUESTIONS BY PROSECUTOR.

20

NO RE-EXAMINATION BY DEFENCE.

BY COURT.

Didn't you say in your evidence in chief that the accused after Court he picked you up somewhere?

--- That is an accused, an accused he was defending.

Which street? --- Here just in front of the Court.

(Inaudible)....? --- Yes.

Case remanded to East London for 1/11/63.

DEFENCE/....

Mabuya Mdingi

On 1/11/1963

DEFENCE CALLS.

MABUYA MDINGI S.S.

DEFENCE X.D.

Were you one of the accused in the trial at Alice which has been referred to, in these proceedings?

--- Yes Sir.

And were you convicted and are you at present at Fort Glamorgan gaol? --- Yes Sir.

And have you noted an appeal against your conviction? --- Yes Sir. 10

Is your appeal still be heard? --- That is correct Sir.

And were you at the time of your arrest a student at Fort Hare College? --- Yes Sir.

Did you see the accused in this case, Mtshizana, while you were in gaol at Fort Beaufort awaiting your trial? --- Yes Sir.

Do you remember what date that was? --- About the 28th or 29th of May this year Sir. 20

Had he been sent to you as far as you knew by your parents? --- Yes.

And did you discuss your, the charge that was then pending against you? --- Yes.

Did you see him again after that? --- Yes Sir.

When was that? --- In Court at Alice on the nineteenth of June of this year.

You didn't see him between those two dates? --- I'm not quite sure Your Worship, but I think he did come to see me early in June. 30

Now when you were in gaol were there others

of the/....

Mabuya Mdingi

of the awaiting trial prisoners with you in the same gaol? --- Yes.

Was there any discussion among you in regard to statements or confessions which had been made? --- Yes.

What was the nature of those discussions, what did you find out? --- We found out that there were people who had made statements Sir, some had made statements to the Police and others to the Magistrate. These people alleged that they had been forced by the Police to make these statements. Your Worship, some said 10 that they had in their statements they had said that they were, that they took part or they were present at meetings of the P.A.C. and that they were members of the P.A.C. Your Worship, these people said that they had made these statements they were forced to make these statements and they wanted to know how they could overcome this difficulty because those statements would be used in Court. We all came to an agreement to ask our legal representative how to overcome this problem. NB

And did you ask your legal representative? --- 20 On the nineteenth of June yes, on the first of July, I beg your pardon.

Now did you think that what you have been told was true, did you think that people had actually been forced to make statements? --- I believed that they had been forced, Sir.

Did you yourself actually give evidence before the Magistrate at Alice to the effect that you personally had been assaulted by the Police? --- Yes I did.

Now when you saw your Attorney, the accused 30

in this/....

M. Mdingi

in this case on the first of July, where was that? ---  
In the Court room at Alice.

Was this after the Magistrate had left the  
Court? --- Yes.

What happened on that occasion? --- After the  
Court had adjourned, Your Worship, we spoke to our  
Attorney and asked what we could do, on the first of  
July, yes Sir.

Now just before you go on, did I understand you  
to say to Mr Interpreter, that you called your Attorney? 10  
--- Yes that is correct Sir.

Now how many of the ... you were there? ---  
The whole group, Sir.

Approximately how many? --- Between thirty -  
five and forty, Sir.

Yes? --- We informed our Attorney that there  
were some of his clients who had made statements.

I think Mr Interpreter, if he could face His  
Worship when he speaks? ---We told him that some of  
his clients had made confessions to the Magistrate and 20  
others to the Police, and our Attorney was told that  
these people had been forced to make these statements,  
that they did not make them freely and voluntarily, Sir. NB

Now who were actually doing the speaking who  
told the ...? --- I was the speaker Sir.

Yes? Go on? --- I asked him what we, what were  
we to do with these statements because they were going  
to be produced in Court. Your Worship, our legal rep-  
resentative informed us that anybody who made a state-  
ment, being forced to make a statement had the legal 30  
right to withdraw such statement. I then asked him if  
a person could be forced to be a State witness. He told  
me that anybody who was an accomplice could not be forced to be  
a State/....

M. Mdingi

a State witness. And if a person was called into the witness box, the Magistrate would explain his rights to him. And if, when the Magistrate warned him saying he could either give evidence or not, if a person did not wish to give evidence then he would be charged together with the other accused. I then asked him, in the event of us going to the, those who had made statements going to the investigation officer and wanting to withdraw them, if he refused to withdraw them what could one do in that case. He then said those could be, those who wanted to could write letters to the investigating officer, registering such letters saying they wish to withdraw and that the receipts of such registered letters could be produced. 10

Just before you leave that point. When these, question of these statements was discussed was any lists used or made by the accused, by the accused in this case? --- He had a list of all the accused in that case, Sir.

And did he want to know who had made statements? --- And he had a list of his clients, Your Worship, 20 and he asked who had made statements to the Police and those who had made statements to the Police or to the Magistrate, he ticked them off and those who were amongst his clients.

Yes and then you were going to say something else, you were going to say after, after there was this discussion about the registered letters what happened then? --- We were taken to the Charge Office and those who had made statements went to the investigating officer to withdraw their statements. The investigating officer 30 refused to withdraw these statements.

Yes, do you know that of your own knowledge or have you just heard that? --- Yes I heard that from the others.

I just/....

M. Mdingi.

I just, I just want from you what you know yourself. Just so that I can clarify your position in relation to your fellow accused in that case. Were you one of the two Fort Hare Students? --- Yes, Sir.

And are you some years older than the majority of the accused who were from Lovedale? --- Yes Sir.

What course are you taking at Fort Hare or were you taking at Fort Hare? --- B.S.C. - 3.

Is that your third year, third year? --- Third year B.S.C. yes. 10

NO FURTHER QUESTIONS BY DEFENCE.

PROSECUTOR X.X.D.

Now you remember when you gave evidence in the case against you and the others? --- Yes Sir.

And you remember that the Prosecutor then asked you what you knew about Poqo? --- I was never asked that question Sir,

You remember that the Prosecutor asked you what you knew about the P.A.C. - Pan Africans Congress? --- I was never asked that question, Sir. 20

Do you remember that the Prosecutor asked you whether you had discussed this ca.... that case in the gaol? I have got a copy of the record Mr Mdingi? --- I don't remember being asked that question, Sir.

I put it to you that that question was asked to you, do you deny it, do you want to deny it, or do you admit? --- I do not deny or admit it, Your Worship, I, all I can say is I do not remember being asked that question.

Did you say anything in your evidence about a discussion of the case in the gaol? --- I never mentioned that. 30

Can you explain why not because that is of/....

M. Mdingi.

of importance to the case? --- I was told to answer questions that I was asked. I beg your pardon, I was answering questions that we were asked of me.

Do you remember when you gave evidence in chief?

--- Yes.

And you were given the opportunity to tell the Court what you knew about the case against you? --- I was led by my legal representative, Your Worship.

I ask you the question again, were you given the opportunity to tell the Court what you knew about the 10 case against you and others? --- No Sir.

Do you admit that you were then represented by an Advocate? --- Yes.

And do you now say you were not given the opportunity to tell the Court everything what you knew about that case? --- Your Worship, I was not told to stand in the witness box and tell my story. I did tell my story through questions that were asked me by my legal representative.

Do you remember when you gave evidence in 20 connection with the assault on you at Alice before the Magistrate, Mr Moller? --- Yes I remember that.

And you remember that you called Sidzame to corroborate your story? Sizambe Your Worship S I D Z A M A --- Yes.

And do you remember that the Magistrate then rejected your story because of the contradiction between the stories, your story and Sidzama's story? --- I remember that the Magistrate did not accept that story.

Now today you repeat the story, that same story 30 which was rejected before? --- Yes.

Now I wish to repeat this question. Do you

remember/...

M. Mdingi.

remember denying that you discussed the case with any of the other accused whilst you were detained in gaol?

DEFENCE:

..... a reference to that in the record please, I understood him to say that he had a copy of the record, I have one as well.

PROSECUTOR.

I am not referring to any of the papers, Your Worship, I haven't got a copy of the record before me.

DEFENCE.

10

Well I have one here, Your Worship, perhaps my learned friend would like to see it and give us the reference.

PROSECUTOR.

Your Worship, I think I am not questioning this witness on one specific page of the, he can say if he remembers or if he does not. I think the question is fair enough for him to answer.

BY COURT.

Yes but the witness should be asked about the fact as that is not part of the evidence in this case.

PROSECUTOR.

As your Worship pleases, then I will try and frame my question another way, Your Worship.

When you gave evidence in the case against you, did you deny that you discussed the case with the others in gaol?

DEFENCE.

Your Worship, with respect he must first be told whether or not the question was put to him to deny/... 30



M. Mdingi.

deny. I have the record before and so far I haven't been able to find any record of my learned friend putting a question like that to this witness. I may be wrong which is why I asked him for the record. It is no good asking this witness to deny something which may never have happened. If my learned, the record is here my learned friend is perfectly free to make use of it. If he can find the passage here then he can put his questions specifically in fairness to the witness.

BY COURT.

10

It seems to me you have to, if you want to question the witness about anything that happened at that trial, must be based on facts.

PROSECUTOR.

As your Worship pleases.

I will try to frame my question another way, Your Worship. On that occasion when you gave evidence, were you asked whether you had discussed the case in gaol whilst you were detained? --- I was not asked that question Sir.

You were not asked that question. Now when did you see your Attorney, the accused now before Court for the first time in connection with the case? --- I am not sure of the exact date but it is the 28th or the 29th of May, Sir. 20

Could it be the 30th of May? --- No.

I've got a copy of that register Mr Mdingi and I shall read that to the defence. A certified copy of the register from the gaol. The 30th of May 1963, the attorney was with you at gaol at Fort Beaufort, do you remember that? Do you remember that? --- I remember his coming Your Worship but we were in Court on the 27th of 30

May/...

M. Mdingi.

May, Your Worship, and the accused came to see me after that.

If you are not sure of the date why did you first deny that you that he did visit you on the 30th when I put it to you? --- To the best of my recollection, Your Worship, it was one or two days after the day we were in Court.

And did he visit you after that? After the 30th of May, 1963? --- Early in June, yes.

Do you remember the date? --- No I don't Sir. 10

Did he say anything during the second, during the second visit, during June, 1963 I'll give you the date on the fifth of June. Did you have a discussion with your Attorney, the accused then? --- He asked me if anything had happened to me between his last visit and this visit on the fifth, Sir.

Anything else he asked you? --- And he took the names of those people who wanted him to defend them, Sir, and the addresses of their respective parents.

Who supplied the names? --- I did. 20

Can you remember the names you supplied? --- Kambula, Sidzamba, Makaula, Mjulum, Mjoli, Melamani, those are the names I remember the day he came to me Sir. He then asked me where Takane and Jali were.

Ja? --- I think he was briefed to appear for them also, Sir.

Ja? --- We told him that Jali was in Fort Beaufort and Takane was in Seymour.

How did you know that? --- We were arrested together Your Worship, and we were in the same case and we asked 30 each other.

How did you know that Jali was at Fort Beaufort and Takane ...? --- They said so on the 27th of May, in

Court/...

M. Mdingi.

Court, Sir. Jali said he was detained in Fort Beaufort and Takane said he was detained in Seymour.

And did you mention any other names to him? --- Those are the only names I can remember, Sir.

And on that day that is the fifth of June, 1963, did you dis... discuss the assault with the accused. The assaults on the witnesses, on the, on the accused? --- I told my attorney when he came on his first visit, Sir.

What did you tell him? --- I told him that on the twentieth of May, Sergeant Hattingh came to fetch me from the gaol in Fort Beaufort and took me to the Charge Office at Fort Beaufort. At the Charge Office he told me that I must admit that I was a member of P.A.C.

Now come to the Point. Did you tell the accused anything about the assaults on the persons who had made statements? --- I did not tell him about them, Your Worship, they told him, they told him themselves.

When? --- On the first of July the accused asked the accused in that case.

Ja? --- Whether their statements had been made freely and voluntarily. 2)

And did anybody reply to that? --- All those who had made statements told him that they had not made these statements freely they had been forced to. MK

Now tell the Court who told him that they had been forced to make the statements? --- Mtshemla said he had been assaulted, had been assaulted by Constable van Heerden. Makaula said he had been forced by Crossby Mbotshelwa and Sergeant Hattingh.

Ja, anything else? --- And the others said that they had been led in their statements and that they were threatened. 30 NB

I asked you the names who told the accused that they/...

M. Mdingi.

that they had been assaulted or threatened or forced to make statements. You have given the Court two names can you give any other names? --- Nofemela, Kakasa, Saliman, Mjoli, Simanga.

Ja? --- And Jali.

Ja? --- Those are the names I remember, Sir.

Are these the people who told the accused that they had made statements not freely and voluntarily? --- There were more than that, Sir, that said so.

Would you be surprised to hear that Simanga, Sipo 10 Simanga, appeared in Court, defended by Mr. Smalberger, Advocate Smalberger, and he admitted that he made his statement freely and voluntarily.

DEFENCE.

Your Worship is the evidence of that, is my learned friend going to use that as did discrediting this witness.

PROSECUTOR.

This is my, this the purpose of my questioning Your Worship.

DEFENCE.

20

Is he going to say that because that witness was defended by Advocate Smalberger and appeared in Court and said his statement was freely and voluntarily made that he did not say to this witness on another occasion his statement was false, if so the man must be called to give the evidence himself and to say why.

BY COURT.

Not speaking into microphone.

PROSECUTOR.

As Your Worship pleases. Now I put it to you/... 30

M. Mdingi.

you that Simanga was never defended by the accused. He was not defended by him? --- That is correct.

Is it correct? --- Your Worship, Simanga's name was taken by the accused Your Worship, and was written down on the list but when the case came before Court Simanga was not defended, not represented by the accused.

Yes, then he didn't make any statement to the accused, in your presence? --- No Sir.

Then why did you first tell the Court that he was amongst the persons who told the accused that he had made a statement to the Police? --- Your Worship after the Court had adjourned on the first of July all the accused gathered together, called the accused in this case and asked how they could overcome the problem of having made statements to the Police and to a Magistrate.

You say all the accused who then appeared in Court? --- All of them Your Worship, not only Mr Mtshizana's clients.

Will you be surprised to hear that that Mr Attorney, Mr Mkentane testified in Court in this case against the 20 accused that whilst the accused was gathering with his clients he gathered with his clients. Can you explain that? --- That is correct. Your Worship, when Mr Mkentane had completed his discussions with his clients he went and stood alongside Mr Mtshizana, the present accused, and all Mr Mkentane's clients gathered with Mr Mtshizana's clients and listened to what Mr Mtshizana had to say.

What happened to Mr Burls' clients, he also appeared in Court that day, isn't it? --- Your Worship Mr Burls' clients were not consulted in Court. They were also 30 together with Mr Mtshizana's group.

Do you remember their names? --- Dalasile and Ludidi, Skelm, Oliphant and Simalo.

And Simanga? --- Yes.

Now/...

M. Mdingi

Now you say its the first time, today is the first time you are the first person telling me that Mjoli made a statement to the Police. I don't know anything about it. Can you tell the Court more about the statement made by Mjoli, do you know anything about it?

--- Your Worship, Mjoli told me that when they were arrested at Lovedale about six or seven of them were taken to the Charge Office and were told to make statements there.

Did he say whether he made a statement? ---

He did make a statement after he had been led into it Sir.10

Did he say that? --- Yes.

When did he say that? --- In the gaol at Fort Beaufort.

Did he repeat that, did he repeat that? --- Yes.

Did he repeat the fact that he made a statement?

--- I would say he repeated it Your Worship, because he was amongst those who wanted to withdraw their statements.

Now do you remember what the accused told you people when you gathered with him on the first of July 1963? --- He replied to my questions, Your Worship, 20 Your Worship his reply to my first question was that anybody who had been forced to make a statement had the right to withdraw such statement if he is not prepared to stand for it.

DEFENCE.

If it was not voluntarily made, Mr Interpreter.

WITNESS.

Yes if a person had made a statement not freely and voluntarily Sir, that such person had the right to go to the investigating officer and withdraw such a statement, 30 if he did/....

M. Mdingi

if he did not wish to adhere to it in Court.

PROSECUTOR CONT.

Now I want to put three questions to you and I would like to know if you see any difference in any of them. The first is "must go", the second is "could go" and the third "had the right". Now the question is did he state that different meanings to you? --- If I say if, when he said to me you "must go" a person has no choice. If I say "you could go" it means that you have the right to choose whether to go or not to go. 10

And had the right to go, is the right, is that the same as "you could go"? --- As far as I'm concerned the "right to go" and "could go" mean the same thing.

Now will you be surprised to hear that Mr Mkentane, an attorney, testified in Court in this case that the accused told the persons that made the statements, that they must go and change their statements.

DEFENCE.

Your Worship, my recollection of Mr Mkentane's evidence under cross-examination was that that reply was 20 conditional upon the question. He started off I remember him using that phrase which struck me. He started off by saying that the present witness Mdingi asked this question of what is the position in the circumstances mentioned and the accused said if that is the position you must go. In evidence in chief my recollection of Mkentane is that he said they had the right to go.

BY COURT.

I remember that Mr Mkentane was asked the question again and under cross-examination certain, as far as he 30 can recollect, remember the word "must" was used.

DEFENCE/....

M. Mdingi

DEFENCE.

Yes, may I refer to my notes, Your Worship, under cross-examination my note reads as follows: On the first I heard Mdingi say Mfundisi some of us have made statements to the Police which we have been forced to make, others have made confessions. He said you cannot be forced to make statements. If you made statements which have been forced out of you you must tell Sergeant Hattingh. And then he replied to the next question he said "I heard what I deposed to" meaning 10 what I deposed to in evidence in chief. He told them their legal rights as accomplices they could not be forced and could not be forced to give evidence, is my note, could not be forced.

BY COURT.

(Inaudible) He said ??? He had .... that accused told his clients that they must go and see Sergeant ...

DEFENCE.

Oh yes, Your Worship, that is the evidence of the 20 State witnesses too. That he said they were entitled to change, two I think or three of the State witnesses said they were entitled to change their statements and if they wish to they must go to Sergeant Hattingh. The thing must be good in its context in this respect.

PROSECUTOR.

May I proceed Your Worship.

BY COURT.

Yes.

PROSECUTOR CONT.

30

Now will you be surprised to hear that the State, a witness for the defence Mr Mkentane told the Court that the accused told the people who made statements that they

must/....



M. Mdingi

must go? --- That does not surprise me Sir.

Did you hear that? --- The position is this Your Worship, Mr Mtshizana has said those of you who have made statements you must go and withdraw them otherwise they will be used in evidence in Court, Sir.

You say that you had the position of accomplices, you have discussed the position of accomplices with the accused? --- Yes.

Did you discuss it, personally? --- I wasn't the only one Sir, all of us did. 10

Were you the spokesman? --- Yes, I was the spokesman.

Now what do you understand by an accomplice? --- Your Worship, my knowledge of an accomplice is somebody who is an accessory to something.

Ja? ---

Ja? --- That is my definition of an accomplice, Sir.

Now how did you know at the time that you were charged under the same charge and the same evidence? ---

INTERPRETER.

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Repeat the question please.

PROSECUTOR CONT.

How did you know at the time that you people who were represented by the accused was charged under the same charge and the same evidence? --- We did not know the details of the charge Sir. Your Worship, when our legal representative appeared in an application for bail he stated that we had been in detention for a long time and that we were still, we still had not been informed of the charge against us, except, of the details of the charge against us, except the fact that it was alleged that we were members of an unlawful organisation. . 30

And I/....

M. Mdingi

And I took it then, Your Worship that we were all under the same charge as being members of an unlawful organisation.

Now who started this discussion about accomplices, you or the accused? --- From me, Sir.

Now how did you at the time know that you were an accomplice or anybody else who appeared with you? --- Your Worship, I as the spokesman asked that if those who had made statements, is it possible that their statements could be used in evidence against us.

As State witnesses? --- Yes Sir.

10

And did you point it out to the accused, that those people could be used as State witnesses? --- I didn't mention any names, Your Worship, I asked him if it was possible that those who had made statements, made statements could be used as State witnesses against us.

Was that before he made the enquiries who had made the statements? --- He had already made enquiries, Sir.

Do you remember appearing in Court on the eleventh of July 1963 on the same charge? --- Yes.

On that day the charge was withdrawn against nine of the accused persons? --- That is correct.

20

After the charge was withdrawn did the nine persons gather with the other accused or were they separated from them? --- They were seated on one side by themselves.

And were you present when Sergeant Hattingh walked up to the accused and told him he is not allowed to speak to those persons, and then the accused...? --- I was present.

You see the position is the accused walked

30

up to/....

M. Mdingi

up to them to speak to them and Sergeant Hattingh interfered and he said "You are not allowed to speak to them they are now State witnesses", and then he turned away from them? --- I was present, Sir.

And he told Sergeant Hattingh, "But I didn't know that they are State witnesses". Do you remember that? --- Yes I heard him say so.

You see the accused deny all this. Are you sure that you are telling the truth? --- I am telling the Court what I know, Sir.

10

NO FURTHER QUESTIONS BY PROSECUTOR.

DEFENCE.

Do you remember at any stage being asked in the trial, in your own trial whether you had discussed the case with anybody else in gaol? --- I was not asked that question, Sir.

And did you get instructions when you were first interviewed or when you were interviewed just before the trial in regard to the general defence in so far as assaults were concerned, did you give any instructions 20 to the accused in this case in regard to assaults. As soon as you became aware of the fact that people had been assaulted or forced to make statements? --- Your Worship some of his clients did say on that day that they had been forced to make statements, that they had been assaulted.

NO FURTHER RE-EXAMINATION BY DEFENCE.

BY COURT.

Who said that those who made statements must go and withdraw because these statements might be used against/....

M. Mdingi

against others? --- The position is this, Your Worship, he said if you are not prepared to ... The accused said so. If you are not prepared to adhere to your statements, you must go to Sergeant Hattingh and withdraw them, Sir.

Did he also say because they might be used against others? --- Because they were implicating themselves and others, Sir.

You said something just now which I noted here I want to make certain whether I heard you correctly. You said the accused said those of you who wish .... who 10 made statements and still wish to stand by them must go and withdraw them because they will implicate others? --- We were asking Mr Mtshizana what is the position about people who have made statements to the Police or to the Magistrate and in so far because we are fearing, we are concerned that in these statements these people were implicating themselves and also they were also implicating other people. Now Mr Mtshizana advised us and he said, we have got the legal right to go and withdraw statements if we had not made those statements 20 freely and voluntarily. And he said if we were, if we were are not prepared to stand by those statements we must go and withdraw them. We must go to the investigating officer and withdraw them.

Yes thank you its quite clear now.

DEFENCE CASE

COURT CALLS.

GERHARDUS ARNOLDUS HATTINGH. V.O.E.

U het gesê in die laaste verhoor dat die beskuldigdes teen wie die saak teruggetrek was op die 30 elfde Julie? --- Ja Edelagbare.

In twee groepe vervoer was na King Williams Town toe? --- Ja Edelagbare.

Nou/....

G.A. Hattingh.

Nou kan jy my sê watter groep het jy vervoer het jy by Peddie verby gegaan of? --- Ja Edelagbare.

Weet jy wanneer, hoe laat dit was toe die dagvaardings en die spoorwegorders uitgereik was? --- Edelagbare, dit was, dit was na twee uur om en by drie uur of oor drie.

U weet nie presies hoe laat dit was? --- Nee, Edelagbare, maar ek het, daar was twee van die, van die persone wie se, wie se eiendom nog op Fort Beaufort gewees het, met die gevolg laat ek het nie van Alice af direk King Williams Town gery nie, ek het eers Fort Beaufort getrek, 10 gery, daar is ek vir 'n geruime tyd opgehou en daarvandaan af na Peddie toe ....

Maar ek stel net belang aan van hoe laat jy op Fort Beaufort weg is? --- Op Fort Beaufort, dit moet hier ongeveer vier uur, tussen vier en half vyf gewees het, Edelagbare.

Is dit hoe laat jy eers daar weg is? --- Dit is eers toe ek daar weg is, Edelagbare.

Van Alice af, ek sê van Fort Beaufort? --- Ja ek is vooroëf as dit van Alice af weg, Edelagbare, dit is van Alice af is ek omstreeks drie uur daar weg, Edelagbare.

Ongeveer drie uur van Alice af weg. Weet jy toe waar die ander drie beskuldigdes was daardie oomblik wie nie saam met jou gery het nie? --- die, Edelagbare, as ek korrek onthou, nadat nadat hulle terug na die klagte kantoor, het ons eers stasie toe gegaan en toe het ons die groep op verdeel in twee, en toe's ons, toe's ek met die eerste groep met my groep weg en die ander groep is af na die Polisie stasie toe. Ek kan nie sê waar hulle was. 30

Het jy hierso van die Landdros kantoor af gery met jou groep? --- Nee, Edelagbare, ek is, ons het

na die /...

G.A. Hattingh.

na die Hof verdaag het ons almal na die, Klagte kantoor toe geneem en daar het ons die groepe die wat weggegaan het tronk toe, het ons daar vandaan af gestuur en die ander het by ons agter gebly.

Ja maar jy se die ander drie is eers na die Polisie stasie toe van hier af voor jy weg is? --- Ja, Edelagbare, ek het gese dat ons het hulle eers na die stasie toe geneem om hulle, om hulle kaartjies te neem en daar het ons toe die groepe toe gedeel. Ek is met my groep weg Fort Beaufort toe en die ander groep is terug na die na die 10 klagte kantoor toe, Edelagbare.

En jy se jy, jy is van die stasie af weg, kan dit voor drie wees? --- Dit is moontlik, Edelagbare, ek kan nie spesifiek se dit moes drie uur gewees het, dit was of 'n bietjie voor drie of 'n bietjie na drie, Edelagbare.

GEEN VERDERE VRAE NIE.

PROSECUTOR ADDRESSES COURT.

DEFENCE ADDRESSES COURT.

JUDGMENT RESERVED.

APPLICATION FOR BAIL.

20

DEFENCE.

The features raised by the State in the previous applications were that the, there was a fear that the accused would tamper with State witnesses, well that fear of course has now been removed completely and the other one was the fear that he might abscond and as so often happens in these case, reference was made to Wolpe and Goldreich, I must say I don't follow why they, they

Mentioned/....

DEFENCE.

mentioned those two because they escaped from gaol. They didn't escape while they were on bail. They always mention when opposition is raised for bail application.

The accused, Your Worship, at the moment I understand is under a ban. He's confined to the Magisterial area of East London, so that it is very easy for him to comply with any conditions which Your Worship may choose to impose in regard to, to reporting to the Police or making himself available or anything of that sort. He can't go out of East London in any event and I submit that in view of the direction of their Lordships in Grahamstown that the case should be brought off this month on the 28th and not any later otherwise the indication was that the Supreme Court itself would grant bail. I may say, Your Worship, that the stand taken there by His Lordship Mr Justice O'Hagan when I argued, the application was that this is a professional man and he's suffering in two ways he's suffering firstly because he's in gaol as a suspected prisoner which of course is fair, nobody can't object to that but in addition his business is without him, and his Lordships attitude was that that sort of thing can only go on for so long and it must be stopped in fairness to the accused. I make the application on those grounds. Bail I presume would be fairly substantial, I don't propose to suggest an amount but I do say there is no real fear that the accused will abscond.

STAATSAANKLAER.

Edelagbare ek wil net meld dat my inligting is dat die beskuldigde reeds voordat die saak 'n aanvang geneem het aansoek gedoen het vir borg by sy, die Landdros geweier het en die saak is op appel geneem. 30

Die aansoek is reeds in Hooggeregshof van die

Oostelike/....

M. Mdingi .

Oostelike afdeling verhoor Edelagbare. My geleerde vriend het genoem dat Beleefde Regter O'Hagan gese het, maar ek verneem daar het ook 'n ander Beleefde Regter gesit op die Hof, ek het, om daardie aansoek te verhoor, Edelagbare, hy het ongelukkig nie gemeld wat die Beleefde Regter Jennett gese het in die saak nie. Ek wil net aanvoer, Edelagbare, dat (onduidelik) bestaande die appel, die appel in die Hoogsgeregshof, nie gehandhaaf is nie. Dat beskuldigde nog reeds in hegtenis is. Ek kan nie nou vir 'n verder grond, as grond vir my teenstand van die aansoek noem die feit 10 dat die beskuldigde moontlik die Staatsgetuienis sal aam nie maar ek voel, noem wel, Edelagbare, dat die Staat nog steeds voel dat die beskuldigde nie sal kom indien hy om uitspraak in die saak verhoor nie, omdat hy die moontlikheid van die skuldig bevinding kan voorsien en ek noem Edelagbare die beskuldigde is 'n persoon wat beperke is op gese is. My geleerde vriend het dit genoem as 'n fiet wat aantoon dat die beskuldigde in Oos-London sal bly. Maar daar is beperkings gestel op die beskuldigde gele, Edelagbare, en ek het getuienis onder eed, verklarings onder 20 eed dat die beskuldigde nie daardie beperkings nagekom het nie.

DEUR HOF.

Hoekom het hy dan nie aangekla word nie dat hy kan voorkom.

STAATSAANKLAER.

Hy het die saak sal ncu ingeskryf word sodra die Hof verdaag, sal hy aangekla word daarvoor. Hy sal in Hof verskyn, daarvoor Edelagbare.

DEUR HOF.

Is dit nou iets wat heeltemal afsonderlik is van hierdie saak.

30

STAATSAANKLAER/..



STAATSAANKLAER.

Ja, ek noem dit Edelagbare, net om my geleerde vriend se argument dat die fiet dat die beskuldigde perkings bevel opgele is, daaromtrent dit 'n grond is dat hy nie kan weggaan nie van Oos Londen af nie maar dit het, ek noem dit net Edelagbare om aan te toon dat die beskuldigde nie noodwendig 'n man is wat daardie bevel sal gehoorsaam nie. Ek wil ook by the name wat my geleerde vriend genoem het Wolpe en Heriek noem, Wolpe en Goldreich, name noem van ander persone wat 'n soortgelyke daade gepleeg het, 10 ek dink Hamel is een van hulle, ek meen Botse is 'n ander van hulle, en ek noem tog Edelagbare dat die Staat se ... voel dat indien beskuldigde op borg uitgelaat word hy sodanige persoon is dat hy die land sal verlaat, Edelagbare en moontlik nie na sy verhoor sal kom nie sy uitspraak sal kom handhaaf nie.

BY COURT.

I don't know, I feel that in this particular case the accused have been tried, the evidence have been placed before Court that can't be interfered with and that this 20 particular case should not be mixed up with other cases at the same time and that the position as to whether bail should be granted in this particular case be decided on the facts (inaudible) .....

and as far as the case is gone now, the defence is perfectly entitled to ask for bail and I grant the application. The question is on fixing an amount. I should like to get guidance from the Prosecutor perhaps the defence .....

Fix the amount after two o'clock.

STAATSAANKLAER.

Edelagbare, die Hof gee my die geleentheid om die Hof toe te spreek aangaande die bedrag van borg wat

vasgestel/.....

vasgestel moet word, ek waardeer dit Edelagbare. Ek het reeds te kenne gegee Edelagbare, een van die grondes waarom die Staat borg opponeer is omdat die Staat bevrees is dat die beskuldigde die land sal verlaat en nie sy verhoor tot die einde sal kom staan nie, Edelagbare.

Dit is wel waar Edelagbare, dat die saak teen die beskuldigde een is van dwarsboming van die gereg of poging daartoe nie van politieke aard nie, maar dit is tog ook waar, Edelagbare, volgens berigte, en ek maar nou hierdie, ek wil nie melding maak hoorsê getuienis 10 hier nie wat die Polisie my meegedeel het, en wat hulle vermoed teen die beskuldigde nie. Maar ek wil wel meedeel Edelagbare berigte wat van die koerant verskyn daar wel politieke organisasies is of organisasies wat belang stel in politieke verrigtinge in Suid Afrika, wat belang stel in die beskuldigde se welskyn in hierdie saak (nou ter sprake en in geen ander saak nie, in hierdie saak, Edelagbare. Daar is wel organisasies wat fondse aangebied het vir sy geld, vir sy verdediging in hierdie saak. En dit, het ek nie uit die duim.gesuig nie, en as die 20 hof my sal toelaat sal ek berig geles wat in die koerant verskyn het. Dit het verskyn in die Evening Post van die negentiende Oktober, 1963, wat as volg geles, die hoof onskrif wat in groot swart letters staan "World body offers aid to prisoner secretary in East London, I think E.L. Your Worship stands for East London. East London - a Crowd of East London an african Attorney was called to the East London airport this week to meet Mr Peter Bennison a British Advocate who is an Executive Secretary of the Amnesty International. This is the organisation 30 that work with political and religious freedom everywhere including communist lands. Your Worship, en ek dink hierso, Edelagbare dat die beskuldigde se geen die poging tot dwarsboming van die gereg, en die beskuldigde hoegenaamd geen verband het met godsdienstige verrigtinge, alleenlik kan meld sover die beskuldigde aangaan politikal/...

politikaal. "The London Lawyer who is also former Justice. The British section of the International commission of Jurist was on his way from Cape Town to Durban. The Attorney in whom he showed interest is Mr Louis Leo Mtshizana, 38 years, who is due to be tried at Alice on October the 28th, on a charge of Defeating the Ends of Justice. The Friends Observer - Mr Bennison questioned the African Attorney's clerk Mr Mquotsi about his employers circumstances. About the allegations against him and about other cases brought against him in 10 the past year or two by the Police. Mtshizana who was detained for more than a month under the no-trial Act appeared in Court in Alice on Tuesday, he was remanded in custody at Seymour. Mr Bennison assured the clerk that Amnistry International would help Mtshizana to the best of its ability in the short time available. He said if there were financial difficulties Amnistry International should be notified, the organisation would try to send an observer to the trial. Mtshizana was ... ek skeur daar 'n beriggie, ek laat deel daarvan oor omdat myn 20 insiens nie hier te sprake is nie en ek nie die Hof nie uit vrye wil daarentrent wil verander nie. Mr Bennison will fly back to Europe early next week and has been investigating the circumstances of some political prisoners and their families. He attended the opening day of Pretorius sabotage trial and was then present at some of the hearings of the Blackwell case". Your Worship Mr Dennis Brutus the former Port Elizabeth coloured teacher in Johannesburg at present in hospital and Port Elizabeth called on Mr Brutus. Mr Bennison is 30 also treasurer of the International Association of (indistinct) lawyers. On his way he talked with South African standing in the ... Ek kan nie verder uitmaak nie. Dit is sover as dit die saak betref, Edelagbare. Ek haal dit aan om te beklemtoon Edelagbare, dat daar instansie is wat belang stel in hierdie beskuldigde, nie weens die aanklag/.

aanklag wat teen hom aangebring is in hierdie Hof nie maar om sekere aktieweite waarin hy deelneem. Dit is daarom Edelagbare, wat die koerant verwys na "political" en religious".

Ek voel dus, Edelagbare, dat indien 'n bedrag van borg vasgestel word in hierdie saak, dit nie noodweendig die beskuldigde sal wees wat die bedrag sal betaal nie, maar dat Oorsee liggame hom sal bystaan om die bedrag te vind. Derhalwe voel ek, dat die beskuldigde indien 'n klein bedrag vasgestel word, mag 10 'n sodanige bedrag vir hom 'n verlies wees maar vir Internasionale organisasies mag dit geen verlies wees nie. Hulle mag mense wees wat met miljoene werk waar hulle fondse vandaan kom weet ons nie.

As die radio berigte korrek is, is daar vandag in die geval van James Kantor wat ook 'n prokureur is, in Johannesburg 'n soortgelyke beskuldigde, borg geweier waar hy borg aansoek, aansoek gedoen het om borg verskyn op 'n klagte wat hulle noem "political charges". As die radio berig reg is wat ek na geluister het, 20 Edelagbare is 'n soortgelyke aansoek geweier deur 'n ander persoon gedoen, Leonard Bernstein. Daar is die beslissing, die geval van Walter Sisulu, wat skuldig bevind is on borg uitgelaat is hangende appel. Dit het vir hom en die mense wat hom ondersteun het niks beteken het om ses duisend rand te verbeur nie om sy vryheid te kry om voort te gaan, ten minste of, om hom uit die tronk te hou. Hy is ook van die sogenaamde "political offenders".

Daar is die geval van George Pike wat in Kaapstad 30 op 'n groot bedrag borg uitgelaat is wat ontvlug is maar, oor die naby die grens, in Bechuanaland gekeer is deur die Polisie. Ek voel dat, met respek, Edelagbare, dat waarom weet ek nie, daar 'n intense belangstelling is oor 'n politieke/....

'n politieke agtergrond van die beskuldigde, of 'n Gods-  
dienstige agtergrond van die beskuldigde, is daar 'n  
intense belangstelling van organisasies oorsee. En ek  
vra die Hof met respek om dit in aanmerking te neem by  
vasstelling van die bedrag wat oorweeg word om beskul-  
digde uit te laat. Ek wil voorstel Edelaagbare, die  
bedrag wat hier vasgestel word vandag nie 'n klein  
bedraggie sal wees nie maar 'n groot bedrag en ek wil  
sonder huiwering voorstel dat 'n bedrag van ses duisend  
rand (R6,000.00) in Walter Sisulu se geval verbeur kan 10  
word, self dit in die beskuldigde se geval ook kan  
gebeur en ek vra die Hof om nie 'n lae bedrag te oorweeg nie.

DEFENCE.

Your Worship if there was any connection  
between what my learned friend has said the accused I  
could understand the argument he has put forward, of  
course there isn't any at all.

That newspaper cutting does not say that the  
accused has contacted the organisation concerned that he  
has any interest in the organisation concerned or that 20  
he even knows that it exists. I myself was telephoned  
by Mr Bennison one Friday evening I think about two or  
three weeks ago and was asked if funds were required  
for the accused's defence, not for any other purpose.  
I was asked if I wanted to look to that organisation  
for payment of my fees and I said that as this affected  
the accused's professional status I have discussed the  
matter with my Bar Council and was acting pro amico, so  
that the matter has ended. There was no suggestion  
from Mr Bennison that that organisation or any other 30  
organisation would make any other payments other than  
fees to me personally.

The fact that it is a political organisation I  
don't deny. Why it is interested in this case I don't know  
but/....

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