

IN DIE HOOGGEREGSHOF VAN SUID-AFRIA

(TRANSVAALSE PROVINSIALE AFDELING)

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SAAKNOMMER: CC 482/85

PRETORIA

1988-09-06

DIE STAAT teen :

PATRICK MABUYA BALEKA EN 21
ANDER.

VOOR:

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

NAMENS DIE STAAT:

ADV. P.B. JACOBS ..

ADV. P. FICK

ADV. H. SMITH

NAMENS DIE VERDEDIGING:

ADV. A. CHASKALSON

ADV. G. BIZOS

ADV. K. TIP

ADV. Z.M. YACCOS

ADV. G.J. MARCUS

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS :

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Verd
(2 volumes)

THE COURT RESUMES AFTER LUNCH

MR BIZOS: I have the references m'lord, to accused no.3's evidence that I promised your lordship in relation to the meeting of 16 August. In chief volume 230, 12 202 line 6, 12 211 line 23 and under cross-examination volume 238, 12 648 line 19 to 12 663 line 9 and when the councillors called on him at his house in order to show how bad the relationship between the two sides were, volume 232, page 12 309 line 6 to 12 312 line 21. In volume 241, the cross-examination, 12 799 line 2 to 12 801 line 11. I have been(10 asked to discharge certain duties as negotiorum gestio for my learned friend Mr Chaskalson. Greenfield's case, the All England Law Reports reference is 19..

COURT: Just a minute, I will have to go back now. Yes, I have got it, thank you.

MR BIZOS: It is 1973 3AELR 1 050. I will now deal with accused no.16.

COURT: Is that the meeting of 19 August?

MR BIZOS: Yes. Your lordship will find the basis upon which the state seeks to hold no.16 responsible in "betoog", (20 430 to 444 and also additional submissions in "betoog" made orally in volume 428 page 25 047 line 4 to 25 050. Now in relation to the meeting of 19 September 1984 your lordship will find the submissions in our argument at volume 439 page 25 804 line 10 to 25 805 line 24. Further references will be found in our argument in volume 439 of the argument and as far as the credibility of the witnesses are concerned your lordship will find it in volume 440 of the argument. I do not want to repeat that the weight of evidence is clearly on the side of accused no.16 - of the three accused and eleven (30 witnesses/..

witnesses and the probabilities of what happened thereafter particularly at the meeting of the 26th. The state in its "betoog" in paragraph 4.36.5, 4.36.8, 4.36.9, 4.36.10 submits that what accused no.16 said is improbable. It also says in 4.36.8 that he went to the Vaal with a preconceived plan to discredit councillors without any basis. It quotes some passages but we submit that there is no warrant for your lordship to reject no.16's evidence and no serious criticism can be advanced against no.16's evidence when he says that this was not a speech that he made for the first time. He (10 had certain general themes in relation to these matters - your lordship will find that in volume 276, 15 044, 22-28 and also in cross-examination in volume 282, 15 403 line 7 to 15 406 line 1. The small extracts taken by the state in the "betoog" out of context of the speech as a whole, far from showing that what accused no.16 said he said was improbable. It shows that indeed he was being consistent with himself and that the criticisms amount to nothing more than quibbles in our submission.

The submission in paragraph 4.36.6 on page 442 of the (20 "betoog" that he must have drawn up the little piece of paper the piece of paper on which the rents were and said that they should be burned has been denied by the dozen or so witnesses and we submit that Koago and IC.9 contradict each other any way and they cannot be relied on to the contrary. The criticism to which each one of the witnesses was put when they denied that the meeting was emotionally charged and set out to this witness at 444, paragraph 4.36.13 is not well-founded for the reasons we have already advanced; that if somebody gets up and shouts: we will not pay the increased rent (30

it /..

it may be interpreted as an emotionally charged meeting as people say "Amandla" and for others it will be nothing more than that they were worried and this is how they behaved. It is not the sort of basis in our respectful submission on which witnesses are believed or disbelieved. The state seeks to draw some credit for its case because the accused went to the Vaal on the 4th, on the evidence given by Simanthata he is an employee of the South African Council of Churches, he had to go there, there is no adverse influence to be drawn.

The fact that the church considered the question in the Vaal a matter in which it had a concern is evidenced by the fact that the synod adjourned and the bishop and a number of others attending it went to the Vaal in order to see what was happening and to pray for peace to return to the township on the 3rd itself. We do not understand what point the state seeks to make against accused no.16 by suggesting that there was something ontowards or some adverse influence was to be drawn from his visit to the Vaal. There is evidence from McCamel and others and the accused himself that the church has made somebody available for the humanitarian work. I have the references but I am sure that your lordship recalls that and that it is not necessary. The question that your lordship asked me yesterday in relation to the liability of the accused under the Terrorism Act should your lordship find that those words were uttered, it would appear that incitement to violence is in sub-paragraph (4) of the section in terms of which the alternative is charged theoretically this..

COURT: Is that section 54..

MR BIZOS: Section 54(1) to be read with A to D(iv): (30

"incites/..

"incites, instigates, commands.." etc. But I submit that your lordship cannot find the facts proved for the reasons that we have advanced previously. Of course as far as the AZAPO allegation is concerned and there is no evidence that he was a member of AZAPO, the probabilities are clearly in his favour for the reasons we set out in volume 439 page 25 774 line 12 to page 25 775 line 15. Your lordship will recall those submissions.

As far as the circumstances under which he came to be temporarily present at the launch of the VCA, a fact which (10 the state seeks to rely on in "betoog" volume 431 page 22 257 line 30 to 25 261 line 26 does not avail the state for the reasons advanced in our argument in volume 435 page 25 574 line 30 to page 25 575 line 1. Your lordship will recall that not only has he denied that he was a member, but Mabaso gave evidence, and the other acts (indistinct), so that as far as the Vaal case is concerned there is no basis in our respectful submission for holding Mr Manthata, accused no.16 responsible for anything. The other basis upon which the state seeks to hold him responsible on these charges (20 is his being the secretary of the Soweto civic association although it is part of the general UDF case or one of the affiliates, we have decided to make the submissions in this regard at this stage. The first allegation is that he attended the UDF Transvaal region as a delegate, representing the Soweto civic association and the only evidence that the state tendered in that regard is EXHIBIT AAS.4 page 17; it is the admission on the..but your lordship will recall that on his own evidence he attended the meeting of 21 May 1983 where the idea of the United Democratic Front was being (30 discussed/..

discussed. His attention at this meeting was by chance and for a brief period. He had not been invited to the meeting and he did not represent anybody. They were passing a book around and he signed it. Your lordship will find that in his evidence in volume 275, page 15 008 line 5 to 15 009 line 14.

The state has submitted lengthy argument to your lordship in paragraph 4.5 page 430 of the "betoog" and subsequent pages that Mr Manthata, accused no.16's version about the Soweto civic association's affiliation to the UDF or non- (10 affiliation to the UDF is improbable. We submit that this is a question of perception and that no valid criticism can be advanced in relation to the accused's credibility. The state in relation to this tries to get double points so to speak. It says that he cannot be believed because look at the evidence of Motlana who says that there was an affiliation and look at his evidence that says there was no affiliation. Well, it only goes to show how I submit honest men may differ about their perceptions of matters because this was not a conflict between them in the witness-box, this (20 was a conflict between them at meetings of the Soweto civic association and it is in our respectful submission to the credit of both Dr Motlana and Mr Manthata that they were able to have this different point of view and each one of them defending his perception, but one can hardly say that because they had these different perceptions one of them is untruthful. It does not make sense. According to the perception of Mr Manthata the SCA should not become bogged down by any form of political or ideological stands and that it should work with whatever people were prepared to work (30

with / ..

with it and he says that this was his reason for - that he resisted all attempts by AZAPO becoming involved. Your lordship will find this in volume 275, 15 001, 21 to 15 012 line 3. Dr Motlana testified that this attitude had existed within the SCA ranks before the advent of the UDF. Until the question of the UDF came to the fore there was an attitude of evenhandedness to the ideological commitment of people. Dr Motlana, 417, 24 433 2 to 5. The evidence is clear that no.16, Mr Manthata, that when the national forum of the United Democratic Front came into the picture that (10 Dr Motlana, Sebidi and no.16 debated whether the SCA should become associated with either body. Volume 275, 15 009 16 to 28. Although, and this is the evidence of Dr Motlana although accused no.16's attitude was one of maintaining the earlier attitude of non-affiliation, Dr Motlana and others thought that they should affiliate. 417, 24 432, line 27; 24 433, line 29. We submit that Dr Motlana very fairly told your lordship that he thought that after his attendance of the UDF launch in Cape Town there would have been an automatic affiliation with some sort of small fee and a (20 letter confirming it having to be sent. Volume 275, page 24 432, 19 to 24. Motlana was not the only one from the SCA to attend the UDF meetings, this is no.16, 275, 15 011, 12 to 14. The accused's position was they did not attend this meeting on behalf of the SCA because they had not been properly authorised. Volume 275, 15 011, 14-16. He believed that a formal decision by the SCA had to be taken. volume 275, 15 137 line 10. He says that his colleagues on the SCA had different views to his, volume 275, 15 012, 24 to 15 013 line 6. His evidence, no.16's, is that there was (30

never / ..

never a formal decision to affiliate to the UDF until some time during October 1984. We know in fact that this was 14 October 1984 and that even this, he being the secretary and apparently the formalist in the group made it subject to ratification by the annual general meeting. Your lordship will find that in volume 275, 15 011, 17-20 and 15 012, 3-10 So we really had to perceptions. Some thinkin that the SCA was properly affiliated, others not. Some thinking that de facto that was the position and Mr Manthata, accused no. 16, thinking thinking de iure that that was not so. Be that (10 as it may, it is no ground for the criticism of the accused as a witness. Accused no.16's evidence is supported by the minutes which have been placed before your lordship and the minutes were explained by accused no.16 in volume 275 page 15 013 line 17 to 15 014 line 22. The letter which is EXHIBIT AX.14 is then written. Your lordship will find reference to that in 275, 15 016, 20-22. The state takes the accused to task in the "betoog", 4.19 at page 434 that he could not explain why it was necessary to state in the letter that it was now to affiliate officially. There is much (20 cross-examination in volume 275, page 15 017 and subsequent pages where we submit accused no.16 defends his position and there is no reflection on his credibility. There is also evidence that some of the branches actually affiliated and this also made it difficult to read the register as to whether the persons at the regional meetings represented the SCA itself or a branch which had affiliated independently. Again from 4.7 of the "betoog" onwards there are various paragraphs criticising the accused as a witness on this issue and for the same reasons we submit that they are not (30

valid / ..

valid criticisms. The conclusion that is reached in the "betoog" in order to try and make a submission discrediting no.16 is that he denies that they were present at this meeting. A proper reading of the record will show that in his view legally they were not properly representing the SCA which we submit is a proper attitude to take.

We have dealt with some of the other criticisms in our argument, in volume 439 page 25 774 line 28 to 25 775 line 1. Similarly the evidence that he, although he was invited to, he refused to serve on the national forum. His further(10 evidence of his non-affiliation policy - your lordship will find that in volume 275, 15 017 line 28 to 15 018 line 21. He did not want to join AZAPO because he felt that he could deal with local affairs, volume 275, 15 018 lines 22 to 27. This question of the affiliation raises an interesting question. We assume that your lordship will have no difficulty whatsoever in finding that he was not a member of a management structure of AZAPO. He was the secretary of an organisation which the UDF and his own chairman say was affiliated. He himself was consistent throughout this (20 period that there was no de iure affiliation. Now what does one make of this, m'lord? First of all we would ask your lordship to draw an inference against the state that it can hardly be said that there was a conspiracy to overthrow the state by violence to which the Soweto civic association was a party, a conspiracy which had to be kept deeply under raps for fear of discovery and at the same time the active secretary of the organisation was questioning the very affiliation itself. It hardly makes sense m'lord, on the state's basis. As far as the personal position of accused no.16 (30

is concerned we submit that your lordship insofar as it may be of any importance in the final outcome of this case as to whether or not he was a member of a management structure we submit that he has done enough both before this case started and during the course of this case to show that he was neutral on this issue and that he did not in fact consider himself a member of a management structure of an affiliated body. But of course even if your lordship finds him to be a member of such a body we submit for the reasons advanced that, on his own evidence, the volume of evidence (10 from other leading personalities in other affiliates, that he was not party to any conspiracy. So although the state makes heavy weather in relation to this matter, we submit with respect that your lordship will not draw any adverse inference or find any adverse fact proved by it. The credibility of accused no.16 is also attacked in the "betoog" page 430, paragraph 4.1, because he was not prepared according to the state to admit or deny whether he considered himself a part of the liberation struggle. We quote the accused's evidence to your lordship in volume 277 page 15 074 line 21(20 to 29 in which he says that it depends what you mean by liberation struggle. This was not the first time the cross-examiner and a witness were operating from a different premise.

But m'lord, far from the witness not answering the question he finished up saying and I quote:

"But if by liberation you mean the desire to free this country of racism, a desire to free this country from apartheid as I have already said, that the problems cannot be solved within the apartheid society."

In paragraph 4.2 on page 430 we submit that the evidence (30

of the witness as to what he understands by "liberation movement" is not a valid criticism of his evidence. Your lordship will see the evidence that no doubt the state alludes to at volume 227 page 15 098 line 15 to 15 099, line 10. It is also submitted by the state that accused no.16 concealed certain aspects of the civic association's involvement on the education issue. The bold submission is not supported by the evidence. The SCA's involvement was set out fully by the witness in volume 274, page 24 961 line 28 to 14 975 line 26. Without any evidence attempts were made to (10 force the witness to make admissions in relation to school boycotts and the education crisis in Soweto in respect of which there was no evidence. His answers were final and the answers have been corroborated to a very large extent in the general evidence given by Dr Motlana and Dr Hartshorne eventually that practically all adults that were known were very anxious to send their children back to school contrary to the suggestions made by the state during the course of its cross-examination and argument. Doubt is cast in the "betoog" page 432 paragraph 4.11 about the accused's answer in relation to the (20 relationship between the SCA and COSAS and the whole basis of this is on a misinterpretation we submit on AX.14 page 10 which projects that a discussion should take place as to what sort of SRC should really be striven for. The meeting however never took place according to the evidence. The evidence or rather the suggestion by the state that there was close co-operation between COSAS and the SCA is negative by the strained relationship that there was between COSAS and is evidenced by the incident in which Dr Motlana was involved in volume 274, 14 969, 26; 14 970 line 17. (30

ASSESSOR: What was the volume again, please?

MR BIZOS: 274. This evidence of course was confirmed by Dr Motlana himself when he gave evidence. At the same reference your lordship will see the evidence of accused no.16 that they were all anxious for the children to go back to school.

The fact that both the witness Dr Motlana and the whole committee contrary to what is submitted on page 432 of the "betoog", the defence version we submit finds support in document WW.74 page 5 referred to by the witness in volume (10 274, 14 963, 12 to 19 and 278, 15 153 lines 21 to 30. -We submit that the number of documents which were put to the accused during the course of cross-examination such as AB.17 and AB.20 do not really support the submissions made, criticising accused no.16 as a witness. We would submit therefore that on the matters on which Mr Manthata put the state case in issue, the weight of evidence, the probabilities, the facts and circumstances of the case clearly show that he has not committed any of the offences that he has been charged with and we similarly ask that he be found not guilty and (20 discharged.

I now want to return to the Sebokeng accused and the next person is Mr Malindi, accused no.5. In the indictment he is said to have worked on the Vaal action committee and promoted the creation of the Vaal civic association. Your lordship will find that at page 278, that he took an active part in the meetings, in the meeting held in September 1983 page 289; it is also alleged that he attended a meeting with a certain Amos Mazondo of the Soweto civic association, 282. That he took an active part at the meeting of 9 October (30

1983 at which the Vaal civic association was founded; 287. That he attended a training programme in November 1983, page 297. Distributed pamphlets concerning the meeting of 25 August 1984; pages 342 to 343. That he spoke at the meeting of 25 August, page 348. That he attended a gathering at Small Farms on 3 September 1984, was one of the leaders of the march which left from Small Farms and who was amongst a group of people who killed councillor Dipoko. Of course your lordship will recall that there was no evidence at all about that and in fact he was put some number of kilo- (10 metres away by the state witnesses, away from Dipoko. 355, 356 and 359. He is further alleged to have been a part of the conspiracy and to have been part of the management structure of the VCA. It is in the further particulars, 81 to 82. It is common cause that he was connected with the Vaal Action Committee and that was admitted in AAS.4 page 17. He has testified in detail as to the circumstances in which he came to support the activities of the Vaal action committee leading the launch of the Vaal civic association. It is submitted that the evidence establishes clearly the (20 absence of a conspiratorial basis of unlawful purpose of such activities. Your lordship will find that in volume 435 page 25 540 to 25 546. Your lordship will recall this evidence about holding a survey - holding a survey as to whether a civic association was needed or not. Hardly a conspiratorial matter.

The allegation referred to in 28.2. No evidence was led by the state in support of this allegation and no reliance is placed on the allegation in the state's concluding submissions. That is in relation to the taking (30

part at the meeting held in September in 1983. In relation to the allegation made that he attended the meeting, there is no evidence and no reference is made in the state's concluding submissions. Insofar as the meeting of 9 October he was said to have been one of the leaders of the singing of the launch of the VCA by IC.8. The Rev McCamel remembers him as being present but could not be certain as to whether or not he was on the platform. McCamel does not suggest that no.5 was the leader of the singing. No.5 denied that he was the lead singer and has testified that he arrived (10 towards the end of the launch. Your lordship will recall that he came to a wedding in Pretoria, that was not seriously put in issue. He is corroborated by other witnesses and the finding of fact that your lordship want to make is that he did not play any meaningful part at this meeting and certainly did not become a member of the structure of the VCA in the Vaal.

As far as attending the programme in November 1983, no evidence was led by the state in support of this allegation and it has been dropped from the concluding submissions (20 by the state. In regard to the allegation that he distributed pamphlets concerning the meeting of the 25th of August he has testified concerning the meeting, attendance of that meeting. He has denied that he participated in handing out pamphlets. He has denied also that he spoke at this meeting there is no evidence from the state concerning it and no reference has been made to it in the state's concluding submissions. It is common cause that he spoke at the meeting of 26 August. This has been canvassed fully in the argument and we submit that the version deposed to by the numerous (30

defence witnesses should be accepted and that deposed to by Masenya and Mahlatsi and Rina Mokoena insofar as it is in conflict with that version, it should be rejected. There is no allegation that he made the suggestion of a violent action to take place at the meeting of the 26th and we submit that his version, that he heard the resolutions at the previous meeting, that he did not take any instructions from Raditsela and that he suggested the stay-away but that it was taken over to a suggestion of a march by someone else should be accepted. As far as the allegation of the morning meet- (10 ing, we submit that the evidence of IC.8 be rejected as to his position as should be the evidence of IC.8 that he was anywhere near Motjeane's house.. In favour of the version deposed to by Mr Malindi, accused no.5 that he only joined the march near Masenkeng, that he remained on the march until it was dispersed.

We have encountered a problem which we do not know what.. we have not had an opportunity of resolving it and we have not really had an opportunity of discussing it with the state. Oh, it apparently has been resolved whilst I have been on (20 my feet, m'lord, but it has not yet been discussed by the state. We had some trouble finding the tapes. There are two passages, the one say: I did not take any official part in the march at all, but at page 10 818 in volume 206, 10 818 where Mr Malindi is recorded as having said the following:

"Did you join as a marcher or as a marshall? -- I joined the march as one of the people who were marching although when I arrived there I was enthusiastic to assist as a marshall.

You were enthusiastic, but did you do anything (30
about / ..

about it?"

Then the answer recorded is:

"I ended up being a marshall".

What it should read according to the tape that we have just listened to is:

"No, I did not. I ended up being a marcher."

COURT: I am sorry?

MR BIZOS: The question is:

"You were enthusiastic, but did you do anything about it? -- No, I did not.." (intervenes) (10

COURT: When was this? What date was this?

MR BIZOS: 24 April 1987.

COURT: And when was it, before or after teatime?

MR BIZOS: It is at the end - only about six pages from the end of the volume. It says, the tape actually says "v.m." it may have been a Friday, but we will show it to the state.

COURT: Yes, go ahead.

MR BIZOS: It is I submit a bona fide error between a marcher and a marshall in the circumstances, but we went to check it and there is also that he was not taken up as (20 having contradicted himself, because earlier on he said that he was just an ordinary marcher.

COURT: Well, I have spoken before about this, that the record should be corrected as we go along, not ex post facto.

MR BIZOS: Yes.

COURT: So will you see to it that you and the state agree on the correct record. If you do not I will ask for my book to come, to see what I wrote down.

MR BIZOS: As your lordship pleases. We will give the tape to the state and they can listen to it. The allegation (30 that /...

that the accused is a part of the management structure of the VCA, there is no basis for making such an allegation, there is no evidence that he was elected to the committee of the VCA or its launch and that there is also no evidence that he at any stage became a member of any VCA structure such as an area committee or anything else. He was not part of the management structure of the VCA. It is also clear that he never attended any meetings of the general council, so that in our respectful submission your lordship will have to with the greatest respect deal with the accused no.5 Malindi (10 only on what he himself did and there is no basis of any vicarious responsibility. Before dealing with the things that he said to have done and related to this question of whether or not he was in any structure, because it is somewhere alleged a number of times that he was a member of COSAS, on other occasions that he was in the Vaal youth congress and we submit that much time was spent in relation to this without any basis of allegation in the...

COURT: My book is at home, it does not help us much. Just go ahead. (20

MR BIZOS: We will be indebted if your lordship could confirm that. Many allegations are made but what we want to submit to your lordship is that the Vaal youth congress did not in fact come into existence.

COURT: Haven't you dealt with this before?

MR BIZOS: No, m'lord, I did not. I said that I would but then I switched to Sharpeville instead of carrying on with the.. The allegation on page 297 of the indictment where accused no.5 is described as a member of COSAS and the Vaal youth congress, an active supporter of the VCA. So here, m'lord (30 they / ..

they make him a tripartite type of person, that he has three capacities. Well, we submit that there is no evidence to support any of those. Then the allegation on page 342 alleges that the meeting of the 25th of August was attended by members of the organisation existing in the Vaal and VCA is naturally mentioned, COSAS is mentioned, AZANU is mentioned FEDSAW is mentioned and the Vaal youth congress. And on page 343 of the indictment the accused is alleged to have delivered an address as the leader of the launching committee of the Vaal youth congress. He is also alleged to have (10 distributed pamphlets as a COSAS member. - The VYC is also alleged to have indoctrinated people. On page 354.

Now on the evidence it is clear that during the period of the indictment one could not be both a member of COSAS and a member of a youth congress which only goes to show with respect the confusion in the state's mind in relation to these matters. IC.8 could not have been telling the truth when he told your lordship that he was approached and told that the Vaal youth congress (VYC) would be a branch of COSAS. Volume 16, page 728, 14 to 730, 7. He was asked (20 according to IC.8 to become a member of the executive advisory board but both accused no.5 and accused no.13 mentioned by IC.8 deny this. Your lordship will find that in volume 243 page 12 963, 5 to 7. The evidence on which the state relies to prove the existence of the Vaal Youth Congress are a number of photographs referred to by Brig Viljoen in volume 64, page 3 395. This has been explained that it came about at this funeral because a banner was needed so that foreign organisations so to speak, were not the only ones present. This is to be found in the evidence of Poonyang in volume (30

423, 24 771 line 8 to 24 774 line 30. It goes to show on what ad hoc basis young people consider themselves to have formed or not formed organisations but it certainly does not present any evidence that there was an organisation in existence. Certainly not one affiliated to the UDF. There is also evidence of a banner at the anti-election meeting of 27 November 1983 and your lordship will recall that pieces of paper was stuck on this banner obviously done for some other purpose with the name of Bophelong youth congress, with pieces of paper stuck on the banner. Your lordship will find (10 that in volume 208, 10 965 to 29. No.5 denied that he any knowledge of the existence of this youth congress. 208, 10 955 lines 3 to 10. Of course this evidence is borne out, the correctness of his evidence that he did not know about it is borne out by EXHIBIT AN.4. Your lordship will recall that that is the letter addressed to "Dear Comrade" and it is sent off to address of the Bophelong youth congress. Your lordship will recall - sorry, sent off, it is not addressed to the Bophelong youth congress on the envelope as it would presumably have been if accused no.5 had known of such an (20 organisation but the envelope which is attached to AN.4 is addressed to the Bophelong youth association. Of course one may say well that these names were interchangeable when there was talk about these associations, but it does in fact is to corroborate the position that there was just a lot of loose talk about it. Defence witnesses who were taken by obvious - attempted obvious surprise by the state like Mahotsi and Namane who were for the first time asked in cross-examination whether they knew of such an organisation in their area, said that they did not. Mahotse in volume 350, the page must be.. (30

I have got 2 033 line 20 to 23 and Namane also 350 but the pages must be wrong, I am sorry, I may have to correct them if I can. The contents of the letter AN.4 acknowledging that a steering committee formed to work towards the launch of the Vaal youth congress no longer existed and that the letter invited people to a meeting to revive groups on 9 June 1984 shows in our submission that the organisation did not exist. EXHIBIT AR.4 is to a similar effect, which is corroborative of what the witnesses have said. The witnesses, Vilakazi, accused no.10; Mokoena, accused no.6; Mphuthi, accused (10 no.7; Ramakgula, accused no.9, have all denied that they had ever heard of the existence of such an organisation. No.13's evidence is instructive that he was invited by Bhamzile Sitho and that nothing came of it, in volume 243, 10 296, 7 to 21; and this whole question was put to no less than eleven defence witnesses by the state. I have the names and the references but I do not think that I should bother your lordship with them; all of whom denied that such an organisation existed.

MNR JACOBS: Edele, om my geleerde vriend te help met sy betoog dat hy nie later kom nie. Ons het die band gaan (20 speel en dit is korrek soos mnr Bizos dit hier in die hof gestel het. Die bewoording wat daar in volume 206, 10 818 voorkom op die sesde reëltjie, ek neem dit af van mnr Bizos se nota hier, die woorde wat daar in elk geval staan is:

"No, I did not, m'lord. I ended up being a marcher."

Dit is dan die korrekte bewering wat daar gemaak word.

MR BIZOS: As your lordship pleases. Had the state not relied on it we would not have found the mistake.

Your lordship will recall the evidence that the question of youth congresses came about as a result of COSAS not (30 wanting / ..

wanting people who finished up at school, and that is no.5's evidence in 205, 10 741 to 10 742 line 10. I have the other references in the lengthy cross-examination that has been addressed - the constraint of time does not allow me to go into it in any further detail but I merely want to make the submission that Mr Malindi, accused no.5, was not on any management structure. And if he is to be held responsible for anything it would have to be not for what anyone else might have done but what he himself did or did not do.

Although it was not in the indictment it is common cause (10 that he was a speaker at the ERPA meeting of 26 August 1984. It is submitted that the evidence of Rina Mokoena will be dismissed out of hand that he called for the killing of councillors at this meeting. Your lordship will take into account that - I beg your pardon, that calls were made, that calls were made at this meeting. And it is common cause that he spoke at this meeting at the request of Raditsela and that his meeting was entirely neutral and insofar as any attempt was made by Rina Mokoena to make him a speaker representing any sort of organisation, that that evidence should be (20 rejected. The anti-election rally of 27 November 1983, and it is significant that so much has been heard about the anti BLA campaign that this meeting is not - does not form part of the indictment. He admitted that he was carrying placards which apparently is the function of young people but we submit that that does not prove that he was party to any conspiracy. There is no allegation in the indictment in relation to the meeting of 19 February 1984 and this is of some importance because the fact that he was put at this meeting and thereafter IC.8 corrected himself has been (30

missed by the state and we ask your lordship to ignore that bit of the evidence of the state. As far as the funeral of 23 September is concerned, again not pleaded, it is common cause that he was present at this funeral but not in the indictment and nothing turns on it in our submission. There is nothing to show that accused no.5 had any knowledge of the alleged goals of the UDF to overthrow the state by violence. He played an active role in the affairs of the Vaal action committee, attended a number of meetings of the Vaal civic association and participated in the march. There is however, no evidence to show that he did this in the execution of any unlawful conspiracy and insofar as the state case against him depends upon the proof of his adherence to such a conspiracy, we submit that the state has failed to produce any evidence. As far as the charges brought against him in his personal capacity there is no evidence that he himself committed any unlawful act or participated in the commission of any unlawful acts alleged in the indictment. He spoke at the meeting of the 26th and suggested that the resolution taken the previous day should be taken at this meeting. As a result of the rhetorical question by Mrs Mokoena as to what should be done, that was not the calling for an unlawful act. We have already submitted that IC.8 cannot be believed when he places him at Motjeane's and we go as far as to say that even for the purposes of argument your lordship assumes the correctness of IC.8 being a spectator at that situation does not make him guilty of anything. We then turn to accused no.6, Mr Mokoena. Your lordship will recall that my learned friend Mr Tip argued his case to your lordship. I merely want to summarise the position/..

position that the allegations are that a meeting of the VCA and ERPA was held in his house on 8 July 1984, in relation to which inter alia a million signature campaign blitz was discussed. At 333 to 334, that he was secretary of the Evaton rate payers' association and attended UDF general council meetings, Transvaal region, on his behalf. Further particulars page 7. No.6 was part of the conspiracy to overthrow the government and that he was on the management of ERPA, an affiliate of the UDF and took part in discussions, planning and organisation. Further and better particulars, (10 page 81 to 82.

It is common cause that accused no.6 was the secretary of the Evaton rate payers' association. There is an admission to this effect in AAS.4 page 24. The evidence establishes that a decision was taken at a public meeting on 6 November 1983, that ERPA should affiliate to the UDF. In fact nothing happened until 30 June 1984 when accused no.6 attended the general council meeting. He attended a second meeting on 14 July 1984. He has denied that these meetings formed part of a conspiracy or to plan violent revolution. It is (20 submitted that his evidence must be accepted. May we add your lordship's question to our learned friends that if they are going to say that he was responsible for anything that the UDF did, shouldn't they have shown your lordship what it was that was discussed at the UDF meetings that he attended and in the absence of any evidence as to what was discussed, nothing can be taken any further. And then before his attendance accused no.6 at the UDF general council meeting, he and others of ERPA combined with members of the zone 7 area committee enjoined to conduct a protest (30
against / ..

against the Rabotape festival. The evidence shows that this was carried out entirely peacefully and would have served as a demonstration to the Lekoa community that these two organisations believed that protest could be conducted peacefully. The double purpose of the festival of course was also of some significance, the 80th birthday of Evaton, something that Mr Mokoena felt very strongly about, that the property was likely to be taken away.

The only further instance of co-operation between ERPA and the VCA before the events of 3 September 1984 was in relation to the conduct of the Million Signature campaign. This was carried out peacefully and far from there being any conspiracy between ERPA and the VCA, your lordship will recall the contents of EXHIBIT T.19 page 2, in which the chairman of the VCA complains that the chairman of ERPA had on two occasions not responded to an invitation to take part in the million signature campaign. Your lordship will find that in volume 442, page 26 031 line 12 - sorry..yes.. I am sorry, m'lord, oh that is the argument. Yes, of course m'lord, this is referred to in the argument at page 26 031 line 12 to 26 032 line 29. It is submitted in general that the evidence establishes that the contact that accused no.6 had with the UDF and the VCA was a non-conspiratorial one and completely innocent and that it conclusively establishes that accused no.6 was not party to the conspiracy alleged and that the evidence is destructive generally of the state case that there was a conspiracy towards, all affiliates of the UDF were a party. Then as far as the meeting of 26 August 1984 is concerned, my learned friend argued that matter fully before your lordship and what its purpose was (30

and / ..

and I do not intend referring to it any further save to make the submission that it does not prove anything and we recall to your lordship's memory that although it was a critical week for the UDF they did not bother about the rest of its leadership or anything else.

Then the post 3 September, the meeting at the offices of the Rev Chikane. Rev McCamel stated that accused no.6 was present at the meeting of 7 September and he gives the names of the people who were present and it was arranged that a further meeting should take place at which no.6 suggested that the VCA should set its house in order. This is to be found at volume 35, 1 590 line 7 to 1 592 line 14. At volume 36, page 1 642 line 17 to 30. Again this meeting does not form part of the indictment, it does not form any of the charges against the accused. It is not relied on by the state in the written portions of its "betoog" and these meetings are pleaded as conspiratorial meetings when in our submission on the evidence of both the Rev McCamel and accused no.6, they were for no other purpose than for rendering assistance. Your lordship will find that in volume 187 page 9 734 line 2 to 9 736 line 18. As far as the funeral of 23 September 1984 is concerned McCamel stated that accused no.6 was the master of ceremonies at the funeral. At this funeral according to McCamel a speech originally attributed to accused no.1 was made which caused feelings to run high. As a result McCamel approached no.6 in his capacity of the master of ceremonies to stop the speech and this was done. McCamel accepted that it was possibly that of Sipho as already referred to, but accused no.6 clearly states that it was Sipho and we will give your lordship the reference to (30

that /...

that in volume 187, page 9 740 line 1 to 9 746 line 8.

The general submissions that we make in relation to accused no.6, that even though he was the secretary of the rate-payers' association in Evaton and even though it was affiliated to the UDF there is no evidence as alleged by the state that accused no.6 encouraged any violent conduct, or that he collaborated with the UDF to make South Africa ungovernable. There is no evidence at all to show that the accused had knowledge of the alleged goal of the UDF to overthrow the state by violence or that he committed any act which constituted an offence. I submit that the state has not shown that he was party to any alleged conspiracy or conspiracies nor did he in his personal capacity perform any act which falls under the ambit of any of the charges brought. (10

Then we turn to accused no.7. The allegations are that he was a member of the VCA's zone 7 committee. Page 295, and that he attended a number of meetings. On 19 February, indictment 303 to 304, he was present at the joint meeting of zone 3 and 7 on 24 August to plan a meeting of 26 August 1984. 3.11 to 3.12 of the indictment. He was present at a meeting of zone 7 area committee on 5 July 1984 - 3.32 to 3.33. He was present at the joint 7/ERPA meeting on 8 July 1984 to discuss the million signature blitz. 3.33 to 3.34 of the indictment. He attended a general council meeting of the UDF on 4 August 1984, 3.35 of the indictment; he attended an emergency meeting on the zone 7 area committee in respect of the rent increase, page 336. He attended a zone 7 area committee on 20 August 1984, 3.38. He reported on the UDF meeting on 4 August 1984 to the zone 7 committee; further particulars, page 105. He attended a training course at (20

Daleside from 27 to 29 April 1984, 306, and that he was party to the conspiracy to overthrow the government and was part of the management structure so it is alleged of the VCA. Further and better particulars, 81 to 82. It is common cause that he was present at the meeting of the Roman Catholic Church on 19 February 1984 when the zone 7 area committee was elected. IC.8 testified that no.7 made a speech concerning the rental and higher bus fares. He allegedly stated that we must boycott the higher rent and higher busfare and we must fight for our rights. He did not say how the boycott would be (10 executed but left it to the people to think about. Nor did he specify how the high busfares or rents are to be fought. Your lordship will find this at page 766 line 1 to 14.

The witness McCamel also stated that the accused was present at the meeting early in 1984. Although he was not able to recall precisely when or precisely what was said by each speaker, he said that the meeting encouraged the people of zone 7 to be part of the Vaal civic association. It was also stated at the beginning of the year there have been problems concerning school children who had failed and that (20 the people of zone 7 had come together and had approached the schools with these problems that had arisen. They had finally come to an arrangement with the principals of the schools and the children were taken back. 1 548 line 19 to 1 549, line 15. This is of McCamel.

We submit that accused no.7 has given a full account of the origins of the zone 7 area committee and how he came to participate in this meeting on 19 February. Consistently with the evidence of the Rev McCamel, traced his committee from out of his successful handling of school problems. (30

Accused no.7 denied that he spoke about boycotting high rents or boycotting high bus fares. It is submitted that this just did not arise at this meeting and that insofar as there is a conflict between the evidence of accused no.7 and IC.8, that of no.7 should be preferred. The accused was elected as the vice-chairman of the zone 7 committee and an account has been given of what the zone 7 committee did, none of which in our respectful submission is consistent with any conspiracy to overthrow the state or make the country ungovernable. As far as the UDF meetings are concerned (10 he was present at two meetings on 14 July 1984. The other was on 4 August. He denied that any question of the Vaal rents arose in any way at all at this meeting, so there is no evidence that he attended this meeting in pursuance of any conspiracy or that any conspiratorial talk was taking place at this meeting. And the anti-rent meetings, he denies that he reported back on the general council meeting on 4 August 1984 or that there was a meeting on 28 August 1984 as alleged. It is common cause that he attended the joint meeting or zone 3 and 7 on 24 August 1984. It is clear (20 we submit on all the evidence that there was nothing else discussed except the meeting of 26 August for the purpose of protesting the proposed increase of the rent. Although accused no.7 admits that he was present at the meeting of the 26th, attendance at this meeting or any of the happenings at that meeting do not constitute any offence upon which any of the accused, particularly no.7 can be found guilty of on this indictment.

Accused no.7 was present at the planning meeting of 2 September 1984; according to his evidence nothing happened (30

at that meeting of any conspiratorial nature. A number of defence witnesses have given evidence so we have already referred your lordship to that. There is no allegation in the indictment or the further particulars that no.7 participated in the march. There was also no evidence that accused no.7 had indeed participated. This was the position up to the point where accused no.7 elected to give evidence in his defence, although I had put in cross-examination the number of people who had not been placed on the march by the state witnesses, no.7 was not one of them but when (10 he gave evidence he placed himself there. Despite the complete absence at that stage of any suggestion of the record that he was present at any stage of this march, accused no.7 volunteered that he was present in the course of his evidence-in-chief. We submit that it must be appreciated that the decision to testify was a function of the particular understanding of the place on which the march and the structure of the charges brought against the accused generally and himself in particular. Needless to say if the case which accused no.7 and his co-accused had to meet was that (20 an association with the march per se was unlawful or constituted an offence, then his decision to testify and to disclose his limited participation in the march might well have been different. The evidence shows that after setting off the march, accused no.7 returned shortly thereafter to look to the safety of his bicycle and that he only joined the march in the vicinity of the post office. Although his participation was limited in this way, accused no.7 did not seek to dissociate himself from the march and endorse fully its purposes which was to protest the rent increase. (30

Then / ..

Then in relation to the April workshop, the evidence was that he was there for only a short while; he thought that it would be only for one day. EXHIBIT U.4 is the document which really deals with it. We are not unmindful of the complaint by the state that people come late and they leave early but of course that may be part of life where conferences a whole weekend and you happen to be a chicken seller that has to sell your chickens on Saturday morning or a dry-cleaning collector and you have to give people their dry-cleaning for the week-end. We submit that there is no (10 evidence to establish the averment that the accused has knowledge of the alleged object of the UDF to overthrow the state by violence or that he encouraged violent conduct or that he collaborated with the UDF to make South Africa ungovernable. The most that can be said is that he gave support to the activities of the VCA which appeared to him to be lawful and we submit that he had good grounds for that belief. There is nothing to suggest that he had any reason to believe that he would make himself guilty of treason or some other offence by doing so. We submit that your (20 lordship will have no hesitation in finding that accused no.7 was not party to the alleged conspiracy or conspiracies and that he committed no act charged in the indictment either in the execution of the alleged conspiracy or in his personal capacity. He submit that he should be found not guilty and discharged.

On the probabilities as a whole, if he was the untruthful witness that the state would have your lordship believe or that the accused and the defence witnesses were in the absence of any evidence, would he have put himself on the (30

march in the manner in which he did, and if my memory serves me correctly there was no..

COURT: That is now the third time you have argued that point, Mr Bizos. I took it down the first time. You argued that exact point a number of days ago. I wrote it down.

MR BIZOS: I am sorry, I did not remember that. And if my memory serves me correctly further that there was no evidence that he actually attended the meeting of the 26th but again it is evidence of his belief that he was doing nothing wrong, that he admitted that he was at that meeting (10 Now I submit that the criticisms of accused no.7's evidence in the "betoog" are not particularly relevant or carry any weight and I submit that your lordship will accept his evidence.

Despite the speed with which I have tried to do what I thought I would do, it looks as if the time is near. I think that my learned friend Mr Chaskalson will want to address your lordship.

COURT: Well, you want to deal with how many more accused yourself? (20

MR BIZOS: I will deal with all except 19, 20 and 21.

COURT: Go ahead.

MR BIZOS: As your lordship pleases. The next accused is Mr Nkopane, accused no.8. The specific allegations made against accused no.8 in the indictment are: that he attended two meetings at the house of Vilakazi during August 1984; page 308 to 309. He assisted in the advertising of the meeting held on 26 August 1984. Opened the meeting, acted as chairman thereof and was elected as the area committee representative on that occasion. Your lordship will find (30 that / ..

that on pages 295, 312, 347, 352 of the indictment. He was present at Small Farms on the morning of 3 September 1984; page 355. It is not specifically alleged that he took part in the march. Paragraph 77, sub-paragraph 9, page 356. He was present at the UDF general council meeting, Transvaal on 4 August 1984. Further particulars page 105. He was part of the conspiracy to overthrow the government and part of the management structure of the VCA. Further and better particulars, pages 81 to 82. The evidence in relation to this. It is common cause that accused no.8 attended some of the house meetings held at accused no.10's home. As has already been submitted these meetings were concerned with issues such as the rent increase and the formation of the zone 7 committee and there is no suggestion in the evidence of either state or defence witnesses that a conspiracy of violence came under discussion at all. Accused no.8 has denied any such purpose and has testified that he came to attend this meeting so often referred to by Raditsela to whom he had gone to enquire about the VCA's attitude to the coming rent increases. Other than the fact that accused no.8 had attended the launch of the VCA on 9 October 1983 there is no suggestion whatsoever that he took part in any of its activities from that date until the issue of the rent increase led him to his house meetings. In relation to the meeting of 26 August 1984 accused no.8 assisted in publicising the meeting on the morning of the 26th by means of a loudspeaker which was mounted on a vehicle. The meeting itself was opened by Mahlatsi with a prayer and thereafter accused no.8 was asked by Raditsela to act as chairman of the meeting. According to Mahlatsi accused no.8 introduced(30

the meeting by saying that they had gathered together concerning the increase in rental with which the community was dissatisfied. He then called on the speakers according to the list of speakers which had been handed to him by Raditsela. your lordship will find that in Mahlatsi, 1 938 line 28 to page 1 939 line 5 and again page 1 938 line 13 to 22. Your lordship will recall that Masenya gave evidence about this meeting and what he said about accused no.8. I do not intend summarising that again, your lordship will find it in Masenya page 591 line 19 to page 592 line 24. (10

Your lordship will recall that at that stage no violence at all was attributed to accused no.8 but thereafter and elsewhere Masenya ascribed the call for violence to accused no.8. The averment as to what the accused is alleged to have said at the meeting appear in sub-paragraph 3 of page 347 of the indictment. There is no suggestion that he propagated violence at this meeting and again we submit that this is yet another example of the allegations of violence having come ex post facto the drawing of the indictment. We submit that the defence version of what took place at the meeting (20 should be accepted for the reasons that we have already advanced for your lordship to disbelieve Masenya, and accept the evidence of the battery of witnesses that have given evidence on behalf of the defence. It is common cause that accused no.8 was elected chairman of the zone 3 committee which was formed at this meeting. As far as what happened early in the morning of the 3rd, the evidence already submitted that the evidence of IC.8 should be rejected in the view of the accused's denial that he spoke either inside or outside about violence. We submit that the finding that (30
ought / ..

ought to be made in this is that accused no.8 spoke briefly outside the hall in support of the call for discipline. That was made by Raditsela outside, he and accused no.8 not having been inside but having been outside, supervising the making of placards. This call for discipline was in accordance with the planning discussions which were held the previous day, 2 September, at which discussions accused no.8 had been present. I have a note from my learned friend Mr Tip that accused no.8 testified that he was outside the hall engaged in the preparation of placards. Although this was (10 contested by the state at the time that he gave his evidence, it has since been accepted and forms part of the concluding submissions in relation to accused no.8 in the handwritten submissions made by the state. The evidence of IC.8 that accused no.8 was one of the leaders of the march has been disputed. It should be noted that Rev Mahlatsi puts himself near the front of the march and did not see accused no.8 and we submit that that conflict of fact should be resolved in favour of accused no.8. There is no evidence that accused no.8 attended the meeting of the UDF general council (20 meeting of the Transvaal on 4 August 1984 or at any other meeting. Accused no.8's association with the Vaal association, VCA, is referred to for the first time in August 1984. There is nothing to indicate that he had knowledge of the alleged goals of the UDF to overthrow the state by violence or that he was in any way party to such conspiracy. His involvement arose solely out of the rent protests and he only became a committee member of the VCA at the meeting of 26 August 1984, and there is no evidence to support the state's case that accused no.8 was party to the alleged conspiracy (30

or

or conspiracies and insofar as his guilt depends upon proof of those allegations, he is entitled we submit to an acquittal. In regard to the portion of the case which seeks to hold him liable on the grounds that ..(reads very fast and indistinctly) in his personal capacity, the evidence does not establish that he committed any of the specific offences with which he has been charged in the indictment. We submit therefore that accused no.8 is entitled to an acquittal.

I have notes in relation to the inaccuracies in the "betoog" in relation to the credibility of what the state (10 says about him. I do not know whether your lordship wants to continue, that I should give your lordship these notes at this stage?

COURT: I suggest you put that on paper and have it typed. You are going to hand in in any event a lot of your argument in writing. That is merely textual criticism of the "betoog".

MR BIZOS: Of the betoog, yes. As your lordship pleases.

I will now turn to Mr Ramakgula, accused no.9.

The allegations against him is that he was present and participated in the meeting of the VCA on 9 October 1983, (20 on page 287 of the indictment. He was elected as an area committee representative of the VCA during December 1983, 295. He made a speech at the meeting held on 19 February 1984, 303. He attended the joint meeting of 24 August between zone 3 and zone 7, pages 311 and 312. He attended three meetings of the zone 7 committee in which various matters were discussed. Pages 332, 336 and 338. He was present at the meeting of the VCA in August 1984 at which there was a report back from the UDF meeting. Further particulars, page 106. He is alleged to have been part of the conspiracy and part of (30

the management of the VCA. Further particulars, 81 to 82. It is common cause that he was present at the launch of the VCA. He gives reasons for attending it, because he had problems and he thought that these would be discussed. He became involved in the successful action to have pupils readmitted to school in zone 7. He denies that his involvement with the VCA was as a result of any conspiracy or the furtherance of any violent objective. We would ask your lordship to note that in its concluding submissions the state has lost sight of the fact that accused no.9 became (10 a member of the zone 7 committee, apparently this fact did not loom large in the state's view of the case against accused no.9. It is submitted that this is an understandable attitude since such involvement does not amount to anything of consequence as far as the law is concerned. The only evidence that accused no.9 was present at the joint meeting of zone 3 and 7 on 24 August 1984 comes from Rina Mokoena. It is submitted that this evidence must be rejected and that of the other witnesses including accused no.9 be accepted to the effect that he was not at this meeting (20 and did not know that it was taking place. Accused no.9 has confirmed that he was present at the meeting of the zone 7 committee on 4 August 1984 at which the rent increase was discussed but he specifically denied that there was any report back at this meeting of any advice from the UDF or any other body. Again it may be noted that none of these allegations nor the evidence concerning them is reflected in the final submissions by the state concerning accused no.9. As far as the march is concerned, there is no allegation that accused no.9 was on the march at the stage that it was put (30

to the state witnesses that he was in fact one of the leaders. There had been no evidence that he was a participant in the march. It is submitted that the defence evidence on this aspect should be accepted, being that accused no.9 as the leader of the march proceeded past the lane that leads to the house of Motjeane, intending to proceed to Houtkop in order to take up the matter of the rent increase with the authorities there. There is no allegation that accused no.9 spoke at the meeting of 26 August 1984. The statement made in the course of the state's argument that (10 he had spoken at this meeting is wrong and we would refer your lordship to volume 431, page 24 246 line 7 to 9. The evidence shows that accused no.9 attended the launch of the VCA, was at the zone area committee and attended certain meetings. We submit that it is not suggested that he himself made any calls for violence or participated in any way in any violent activities. Although he was at Small Farms on the morning of 3 September 1984 and set out the march from there, the evidence is that he did not participate in any acts of violence and that he was not present or partici- (20 pated in any way in the murder of Motjeana and/or Matabidi. There is no evidence to show that the accused knew of the alleged conspiracy involving the UDF and/or the ANC to overthrow the state by violence or that he gave his support to such a conspiracy. And we submit that he was not party to any conspiracy or conspiracies, nor has he committed any offence which is cognisable on this indictment and on the evidence. Similarly, we submit that unjustified criticisms have been made of his evidence but as your lordship has suggested we will reduce these to writing and let your (30

lordship/..

lordship have them.

I now turn to accused no.10. The allegations against Mr Vilakazi are that he was present at the launch of the VCA on the night of 9 October 1983 and was elected as the representative of zone 3. Indictment, 288, 289. He held two meetings at his house during August 1984, 308, 309. He attended a joint meeting of zones 3 and 7 on 24 August 1984, 311. He was present and spoke at the meeting of 26 August 1984, 349. He was elected to the committee as assistant-secretary of the VCA, zone 3 area committee; 352(10 I am sorry, the allegation is not assistant secretary, he was elected to the committee. The evidence is that he was - he was part of the conspiracy, it is alleged that he was part of the conspiracy to overthrow the government in that he was part of the management structure of the VCA which affiliated to the UDF and participated in discussions, planning and organisation. Further particulars, 81 to 82. It is common cause that he attended the VCA meeting..

COURT: The launch?

MR BIZOS: The launch on the 9th. He has denied that he (20 attended the launch and coming part of the executive, or that he was in any way adhering to a conspiracy for the purpose of bringing about violence. The evidence shows clearly that accused no.10 was not in any way involved in organising towards the launch of the VCA. Will your lordship excuse accused nos.7 and 9?

COURT: Certainly - both of them?

MR BIZOS: Both of them, yes. In relation to the speech at Bophelong, although not part of the indictment against the accused, it is common cause that accused no.10 went (30

with / ..

with the Rev McCamel to Bophelong in October/November 1983 in order to speak at the public meeting called at which the Bophelong area committee was formed. The Rev McCamel and accused no.10 shared the platform on this occasion but on no uncertain terms denied that he was in any way involved in a conspiracy or any endeavour to bring about violence. It is submitted that no.10's position cannot be distinguished from that of the Rev McCamel. It is common cause that accused no.10 attended a UDF meeting at Port Elizabeth as one of the representatives of the VCA. He reported back (10 to the VCA to the effect that the meeting had been concerned about the referendum and election concerning coloureds and Indians. Your lordship will recall that a final decision was not taken and affiliates were asked to express their opinion. We would submit that far from suggestion any conspiracy which would have been communicated to the mind of the accused or taken any instructions from the UDF, the decision at Port Elizabeth must have endorsed his belief that his organisation remained independent of the UDF on the basis on which the affiliation was decided on shortly after (20 the inaugural meeting on 9 October 1983. The house meetings, the matter of the house meetings which were held at the home of accused no.20 had been canvassed in full in the course of the argument. We submit that the overall effect of this evidence is that accused no.10 organised these meetings in response to the rent increase and not in furtherance of any conspiracy, or the object of bringing about violence. It is clear on the evidence that the violence was not discussed at these meetings, house meetings and that planning to bring about violence did not take place. The joint meeting of (30

zones 3 and 7. It is again common cause that accused no.10 was present at this meeting of 24 August and it was similarly submitted that nothing was said at this meeting about a conspiracy or any unlawful object or the planning of violence. Meeting of 26 August 1984. It is common cause that accused no.10 was present and spoke at this meeting and that the speech given by him is incapable of supporting the inference that it was made in furtherance of a conspiracy or with a view to promoting violence. It is common cause that at the conclusion of the meeting, that accused no.10 was elected (10 assistant-secretary to the zone 3 area committee... The evidence discloses further that this committee met during the following week when the proposed meeting of 2 September 1984 was considered and discussion took place concerning the discipline during the march and the memorandum to be handed in to the officials at Houtkop. Your lordship will find that evidence not previously referred to in volume 161, 7 936 lines 5 to 17. Accused no.10 believed that the march was intended to be peaceful and would proceed to Houtkop to deal with the rent increase issue and the suggestion made (20 by the state that he deliberately absented himself from the Vaal triangle during the days leading up to the day of the march itself is without foundation. With the UDF, the meeting of the UDF after 3 September 1984, accused no.10 was present at the meeting held on 4 September 1984 at the home of accused no.6. Rev Frank Chikane was present.. He had come to see the situation for himself in relation to the assistance needed. Volume 161, 7 942 line 10 to 7 944 line 26. A decision was taken that the pamphlets should be issued calling on people to be calm and to call a meeting. 7 944 (30

line / ..

line 27, 7 945, line 10. In the result EXHIBIT AN.15.3 produced but found to be unsuitable and destroyed and pamphlet AN.15.7 was then distributed. 7 948 line 5 to 7 952 line 6.

May I pause there for a moment? The destruction of this equivocal pamphlet in our respectful submission and the printing of another without the words which were thought to be equivocal, is strong evidence against the state's suggestion that the post 3rd violence was incited by the VCA or anything that any of the accused had to do with. Your lordship will recall that the evidence of the destruction was (10 given by accused no.6. We have not been able to find anywhere in the record that accused no.6 was challenged in that evidence. The meeting which had been intended for 9 September 1984 was ultimately not held because of the banning order handed out on the very day, volume 161, page 7 958 line 22 to 7 960, line 2. In relation to the lessons to be learned and marches, the effect of marches, your lordship may recall that either on the 9th or the following day a march of some 7 000 to 9 000 took place in Tumahole in which a memorandum was handed over. The police assisted the leaders to hand (20 over the memorandum and the thousands dispersed peacefully after their purpose had been achieved.

ASSESSOR: Was it a march? I do not think so.

COURT: Was it not a gathering

ASSESSOR: It was a gathering.

COURT: Sort of a rally.

MR BIZOS: My impression is that the evidence says that the people marched there but I may be wrong. It will be dealt with under Tumahole and we will have a specific reference to that. My memory is that - but I cannot..but also leaving (30

aside / ..

aside our different memories in this regard, it also shows that this question of the memorandum is not so foreign to the eminds of people in the Vaal and the Rand as the state would have us believe. The fact that the UDF provided assistance in this manner after the events of 3 September does not give rise to a process of ex post facto reasoning that if the UDF was responsible for the violence and accused no.10 was party to the process giving rise to such violence. His evidence may be compared with the evidence of accused no.19 who has testified that he heard about the events of (10 3 September 1984 and the day thereafter and that he was shocked. He had not known of plans or meetings at the end of August or of anyone in the UDF being consulted about these. He was not aware of any plan to which the UDF was party to attack councillors and we refer your lordship to the evidence of 19, volume 251, 13 458 line 10 to 13 460 line 9.

Similarly, we have to make certain submissions in relation to the submissions made in the "betoog", but what what I do want to say orally here is this, that we submit (20 that accused no.10 was a good witness who gave evidence under difficult circumstances. The lengthy cross-examination that I have referred to already, but with the greatest respect that your lordship suggested to him that he should have foreseen the chaos, also that his evidence that there would be no chaos and that the board was going to take over was an afterthought; also that he must have known that the march was unlawful and he was expected to debate UDF documents for some five of the eleven days that he was in the witness-box, about which he had no personal knowledge and when he (30

tried / ..

tried his best, he was either stopped or told that he was making lengthy speeches. We would concede that at times he was verbose but that is to be expected in our respectful submission if a witness is examined in that fashion.

COURT: Could you give me these references, please?

MR BIZOS: Could I have your lordship's..

COURT: No, I get the impression from what you put that I cross-examined him for five days and I really cannot remember that.

MR BIZOS: No, I did not say that your lordship did that (10 for five days but your lordship did participate in his questioning over a considerable period.

COURT: Yes well, give me the references later, please.

MR BIZOS: As your lordship pleases. I will do that m'lord. We submit that the evidence shows that accused no.10 played an active part in the affairs of the VCA. He never however preached violence because he had to go to conduct a seminar. On the 3rd he was not at the meeting nor was he - sorry, he was not at the meeting, the planning meeting of the 2nd, the stay-away or the march on the 3rd. We submit that his (20 evidence that he had no knowledge whatsoever of any UDF object to overthrow the state if there was any, nor that he encouraged conduct to make the South African government ungovernable. South Africa ungovernable.

We submit that although accused no.10 admittedly was on the management structure of an affiliate, it has not been shown that he was party to any conspiracy or conspiracies, nor has he been shown to have committed any act which is an unlawful act or within the ambit of this indictment.

I will deal with the position of Mr Mokoena, accused (30

no.11. The specific allegations made against Mr Mokoena are that on 15 August 1984 there was a meeting at his home and the Boipatong residents' committee was formed and that he was elected secretary. That is at page 315. On 22 August 1984 there was a further meeting at no.11's house. 316. Accused no.11 was the chairman of the mass meeting on 26 August 1984 and read the resolutions. Page 317, 318. He came to the square in Boipatong on 3 September 1984 with placards to lead and control the masses who had gathered there. 354, 355. He is said to be party to the conspiracy(10 because of his membership of the management structure of the VCA. Further particulars, 81 to 82. The only witness who was called by the state to give evidence against no.11 was Mhlope. We submit that the overall effect of his evidence was to destroy the state's case that planning for violence took place. Then there are the meetings of the 15th and 22nd August 1984. It is common cause that accused no.11 was there and that the meetings were at his home. For the purposes of saving time these meetings have been dealt with in our argument by my learned friend Mr Tip in volume (20 443, page 26 077 line 8 to page 26 083 line 15. It is clear from the evidence given that there was no discussion at these meetings which was capable of being interpreted as indicating the existence of any conspiracy or conspiracies pleaded by the state and it is clear also that there is no discussion about organising the masses for the purposes of violence or any other thing unlawful. There is a request from Mr Lekota if he could leave the court for a short while.

COURT: Certainly.

MR BIZOS: Then we have the meeting of 26 August. There (30
is / ..

is a small number of differences between Mohape on the one hand and the accused no.11 and the defence witnesses on the other concerning the proceedings at this meeting. One of the differences is precisely how the decision to take the march arose. Reasons have already been furnished to your lordship as to why the version of Mr Mokoena, accused no.11 should be accepted on those differences and that of Mohape should be rejected. Over and above these differences, it is however clear from the evidence of both state and the defence that this meeting was not held in pursuance of any (10 conspiracy or conspiracies alleged in the indictment and that violent action did not form any part of the subject matter of the meeting. Your lordship will find the analysis of the disputes and the reasons why we submit your lordship should resolve the issue in favour of the defence, at volume 443 page 26 083 line 16 to page 26 090 line 19.

We then turn to the events of 3 September 1984. In the course of the week following 26 August, accused no.11 was invited by Edith Letlhake to a meeting of 2 September which she attended. He took part in the planning of a (20 peaceful march and the drawing up of a memorandum for submission to the authorities at Houtkop. Argument has been submitted concerning the details of the averment of 3 September 1984 in Boipatong. It is common cause we submit that on the evidence, that both the state and the defence witnesses that the march was intended by the organising committee to be peaceful, that the violence which broke out when a small group of youths stoned the police vehicle at the square was not intended and that the committee members were not in a position to bring it to an end. It is (30

common cause also that the committee members were not in a position to bring it to an end. It is common cause also that the committee members were powerless in respect of the violence at the home of Mphondo. For the reasons advanced in their argument it is submitted that the evidence of Mohape and accused no.11 went into other scenes of violence in Boipatong, that they should be rejected. Argument, volume 443 page 26 090 line 27 to page 26 107 line 10.

Then the relationship of the "structure " in Boipatong, and the VCA and the UDF. During the course of argument (10 your lordship's attention was drawn to the fact that there is an admission that the Boipatong residents' committee was a committee of the VCA. There is however no evidence as to when any formal relationship was concluded. Clearly before the formation of the Boipatong residents' committee on 15 August 1984, there had been no connection between accused no. 11 and the VCA. Thereafter the connection is detailed in the evidence and consist of approaches made to Raditsela for assistance concerning pamphlets and the provision of a speaker at the meeting of 26 August 1984. Other than the(20 attendance of accused no.11 at the meeting of 2 September 1984 there is no further practical relationship. Accused no.11 did not attend any committee meetings of the VCA, properly understood, nor did he attend any committee meetings of the UDF. There is no basis on which to conclude from his evidence that accused no.11 participated in the management of the affairs of the VCA, nor particularly is there any basis on which to infer that there existed a conspiratorial connection between them. Your lordship will find this further developed in the argument in volume 443 (30

page 26 074 line 4 to page 26 077 line 7. Accused no.11 has testified that he acquired EXHIBIT A.1 containing the declaration and working principles of the UDF. It cannot be inferred from this that there existed a conspiracy or that he came to know of any such conspiracy. Accused no.11 has testified also that he participated in the million signature campaign and put posters for a UDF youth rally. This he did in his personal capacity several months before the Boipatong residents' committee was formed. No adverse inference we submit can be drawn from these facts. Accused no.11 and youth organisations.

The unsuccessful efforts of accused no.11 to establish a youth organisation in Boipatong and his attendance at the Wilgespruit youth seminar formed no part of the indictment against accused no.11. It is clear from the evidence that the involvement of accused no.11 in the youth movement did not amount to anything material or anything of a lasting nature. It is clear too that no connection whatsoever can be drawn between this involvement and the organisation of the anti-rent march of 3 September 1984 and the events of that day. Your lordship will find this in argument, volume 443, page 26 063 line 27 to page 26 069 line 14. The general submissions that we make in relation to Mr Mokoena, accused no.11, are the following. That his involvement in the events which are the subject matter of the indictment started in August 1984 when the rents were increased. His interest was directed to the local issues of rents in Boipatong. According to the witness who gave evidence against him there was nothing conspiratorial about the meeting, no plans to do anything wrong and the Boipatong residents' committee / ..

committee which was established at that time was not concerned with the notion of overthrowing the state by violence or making the country ungovernable. There is no evidence at all to show that accused no.11 was aware of the alleged goal of the UDF to overthrow the state by violence or that he participated in any conspiracy to do so.

We would submit that had it not been for the admission there would in fact not have been any evidence that the Boipatong "structure" would have been connected with the..

COURT: And had it not have been for the admission probably somebody would have been called to prove that fact. One (10) cannot say.

MR BIZOS: It is possible of course, yes.

COURT: So it goes either way.

MR BIZOS: It cuts both ways but what I am really leading up to is I was not really going to give no.11 any praise for the admission being made. It was really introductory to this, m'lord, that even if it is established that there was this link between the structure in Boipatong and the VCA what would your lordship make of it because of the very (20) limited contact that there was between the affiliate and this body some two weeks before the matter blew up in the Vaal and that sole concern was the protesting of the increased rent. And may I say in self-defence to the last remark, the state had obviously forgotten about the admission. We cannot be sure but anyway don't let me become sidetracked at this time of the day, because they did not rely on it in the.. Then the state seeks to hold him liable for the acts committed by him in his personal capacity; it has not produced any evidence to show that he himself committed any unlawful (30)

act / ..

act. We submit therefore that there is no reason for accused no.11 to be convicted on any of the...We submit similarly that the criticisms that have been offered of him as a witness were actually dealt with by my learned friend Mr Tip during the course of his argument and there is no reason to disbelieve this witness.

Now I wish to deal with Mr Nkoli, accused no.13. He is criticised at some length and we have notes that there are misquotations, wrong conclusions and wrong inferences and misinterpretations of his evidence but we will reduce (10 that to writing, m'lord and let your lordship have it. The allegations made against accused no.13 are that he made a speech at the meeting of 9 October 1983; 287. Was present at the gathering at Small Farms at 3 September 1984. 355; was one of the leaders of the march, 356; and was part of a conspiracy to overthrow the government in that he was on the management structure of the VCA. Further particulars, pages 81 to 82. The only witness to give evidence against the accused is IC.8. According to the evidence of this unsatisfactory witness, accused no.13 tried to persuade (20 him to join the Vaal youth congress during February 1983. IC.8, 728, 14 729 line 28. There is no averment in the indictment concerning this attempt at recruiting. It does not form part of the charge against accused no.13. In any event it is submitted that this evidence must be rejected and that the evidence as a whole overwhelmingly establishes that the Vaal youth congress was never established as we submitted when dealing with the case in relation to accused no.5, Mr Malindi. According to IC.8, accused no.13 (Mr Malindi) was one of the leaders of the singing of the (30 freedom/..

freedom songs at the launch of the VCA on 9 October 1983. IC.8, page 740 line 9, 741, line 17. He also says that he spoke at the meeting on 9 October 1983 calling upon young people to join COSAS and saying that the time had come for them to take over from the older people who had not been successful. IC.8, page 746, line 22; 747, line 1. His evidence was that he was not even in the Vaal triangle on the date of the launch of the VCA. There is no suggestion from any other witness that he was present and no suggestion that he took part in the singing of songs or that he made the speech as alleged by IC.8. The evidence of accused no.13 that he was not present, was not challenged in cross-examination by state counsel. In the course of cross-examination it was not suggested to accused no.13 that he had acted as a marshall. In this regard it is relevant that accused no.13 was not present at any of the meetings where planning for this march took place. He was not a member of any VCA area committee and there is no basis upon which he would in the normal course of events have been requested to act as a marshall. According to IC.8 accused no.13 helped to line up persons in preparation for the march, was one of the leaders of the march and asked him to act as a marshall to control people on the sides. IC.8, page 778 lines 18 to 20, page 780 lines 1 to 20. No.13 denied that he was asked to - that he asked IC.8 to act as a marshall. In any event, the evidence will tend to show that accused no.13 was concerned with good order on the march. It is submitted however that the evidence of accused no.13 must be accepted that he was a mere participant in the march. No.13 squarely denied that he left the march to go up to the lane to Motjeane's

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house. Substantial reasons I submit have been advanced why IC.8 should be disbelieved. The credibility of IC.8 has not been similarly attacked - I beg your pardon, of accused no.13 had not been similarly attacked. He was not in a position to say whether or not accused no.13 was aware of the damage done to the ticket office of the VTC which was described by him. The fact that any damage at all was done by the marchers is in dispute. Your lordship will see IC.8 783, line 27 to 784 line 17.

We would submit with respect that this witness was a (10 good witness who was not in any way shaken. No sufficient reasons have been advanced as to why he should be disbelieved. It is submitted that he has not been shown to have been a member of any management structure, nor insofar as he took part in the march is there any evidence to show that accused no.13 had knowledge of the alleged goal of the UDF to overthrow the state by violence, or that he agreed to participate in the conspiracy to achieve any such goal. The disputed evidence of IC.8 is so unreliable that it cannot be put onto the scale in our respectful submission in comparison (20 to that of no.13. There is no evidence that accused no.13 committed any unlawful acts himself or participated himself directly in the commission of any unlawful act. The mere fact that he was on the march from Small Farms is insufficient to establish even prima facie that he committed in his personal capacity any of the offences specified in the indictment. We submit that he should be found not guilty and discharged.

We have nothing to say about accused no.14 in view of the blank page handed in by the state in relation to him. (30

The one is Mr Hlanyane, accused no.15. Your lordship will recall that this is one of the witnesses, one of the accused who has not given evidence and the allegations against him are that he was elected to zone 3 committee, representative on 26 August 1984; 352. He was present at the gathering at Small Farms on the morning of 3 September 1984; 355. He was one of the leaders of the march, 356. As with the majority of the Vaal accused..

COURT: What was your first reference that he was on the zone 3 area committee?

(10)

MR BIZOS: 352, m'lord.

COURT: Thank you.

MR BIZOS: As with the majority of the Vaal accused, the case against accused no.15 is based on the averment that he was on the management structure of the VCA and in this way became part of the conspiracy to overthrow the government and that this was in conjunction with the UDF conspiracy. Further particulars, pages 81 to 82. It is common cause that he was present at the meeting at the Roman Catholic Church on 26 August where he was elected treasurer of the zone 3 committee. He was only present at one of the house meetings preceding it. The evidence of accused no.10 was that none of these house meetings was there any discussion or planning of violence or about a conspiracy or about the UDF. The same holds true in respect of the meeting of 26 August 1984. In the course of all this, the state has not been able to establish an answer to the question: where was it supposed to have happened that accused no.15 became aware of the conspiracy of violence and decided to adhere to this conspiracy? He was in the management structure for

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a week and a day when violence broke out. This question of course remains unanswered in respect of the other accused as well but it is even more definite in the shape of the fact that it remains unanswered when posed in respect of accused no.15. He was present at Small Farms on the morning of 3 September. The evidence of accused no.8 is that he and accused no.15 was together in the process of the placard writing, for reasons already mentioned we submit that the evidence of IC.8 that accused no.15 was on the platform together with Raditsela in the hall should be rejected. (10

The other state witness Mahlatsi says that he would have seen accused no.15 had he been on the platform with Raditsela but he saw no other person on the platform. On the assumption that if he went into the witness-box to give evidence which of the two versions would he have to deny. Volume 43, 2 086 line 13 to 21 to 2 088 lines 2 to 6.

The only evidence on record concerning accused no.15 thereafter is that of the Rev Mahlatsi who says that when he fled the march at the intersection after he heard shots he came across no.15 in the veld who told him that he too (10 had fled as a result of the fighting and that they then went home. Volume 41, 1 972, line 21 to 30. Of course this tells many words about the voracity of the state case whether we take it on the basis of IC.8 or Mahlatsi. If in fact this was going to be a murderous march to which no.16 according to IC.8 was party because he was on the platform, what it is that made both Mahlatsi and accused no.15 flee when a couple of shots were fired by Caesar Motjeane some hundred yards away from a spot that they could not see. It was put to Mahlatsi that accused no.15 would say that he saw Mahlatsi (30

in / ..

in the vicinity of Hunter's garage after the march had been dispersed by the police. Volume 44, page 2 110 lines 5 to 11.

COURT: Sorry, 44, page..?

MR BIZOS: 2 117, m'lord, 5 to 11. Of course that is consistent with the accused's case that there was nothing to be done save to get in a peaceful way to Houtkop. Accused no.15 has not testified at all but accused no.8 has testified that Mahlatsi remained part of the march which continued to Houtkop after the intersection. Volume 171, 8 833, 18 to 26. Accused no.8 also testified that he saw Mahlatsi after(10 the march had been dispersed. 171, 8 840 lines 18 to 21. There appears to be no direct evidence concerning accused no.15's participation in the march. The effect of what was put to Mahlatsi nevertheless applied, that the defence position is that he was on the march and remained on it until the moment of dispersal by the police.

There can be no question that accused no.15 associated himself with the march and that the evidence shows that he was present during the planning meeting of 2 September 1984. Again that was the case that was put up by the accused to (20 rebut what the state had alleged. Everything that accused no.15 could have said, has been said by other witnesses both in relation to the house meetings, in relation to the meeting of the 26th of August in relation to the 2nd September early Sunday morning meeting and what happened both inside and outside the hall. There is therefore, there was therefore no good reason for him to give evidence and that the dictum of TROLLIP J and TRENGOVE J previously referred to squarely covers the situation in relation to accused no.15. We submit that there is no evidence to show that he had (30

any knowledge of the alleged goals of the UDF to overthrow the government by violence or that he agreed to participate in the achievement of such a goal.

The evidence concerning his attendance at the meeting of 26 August and his presence at Small Farms prior to the march and thereafter when the march dispersed does not link him with the alleged conspiracy. We submit that he has not committed any act personally which would have made it possible for your lordship to return a verdict of any guilt in relation to any of the counts. (10

The next person is Mr Matlole, accused no.17. The allegations against him in the indictment are that he was present and participated in the meeting of 9 October 1983 at which the Vaal civic association was founded. He was elected a member of the area committee of the VCA in zone 7. In the indictment it is alleged that the election took place in December 1983, page 294; in the subsequent particulars it is alleged that the election was on 19 February 1984..

COURT: 1983? (20

MR BIZOS: 1984.

COURT: 19 February?

MR BIZOS: 19 February 1984. The one alleges that it was three months, in December, three months after the launch and the other five months later.

COURT: What is that reference?

MR BIZOS: 304, February. That he collected signatures for the million signature campaign at the meeting of 19 February, 303; that he attended a training programme during the period 27 to 29 April 1984; 306; he attended meetings of (30

the / ..

the zone 7 committee on 5 July 1984, at page 332. 8 July 1984, 334; 8 July 1984 and 20 August 1984 concerning rentals and arrangements for the holding of the mass protest meeting on 26 August 1984 during which accused no.17 indicated his willingness to persuade people not to pay the rent and a meeting on 20 August 1984 at which it was reported that accused no.17 had travelled around the Vaal triangle, attended house meetings and propagated the holding of mass protest meetings by residents to protest against the rent; that he attended UDF meetings held in Johannesburg during (10 1984, being general council meetings in Johannesburg; he attended joint meetings at zone 3 and 7 of the VCA on 24 August 1984 at which plans were made for the holding of the mass meeting and various tasks were allocated to committee members. Your lordship will find all that at pages 311 to 313. That he was present and that he spoke at the mass meeting of 26 August 1984. 346 to 352. He was present at the gathering at Small Farms on 3 September 1984 and was one of the leaders of the march which led from Small Farms, 355 to 356. He went with other activists to the UDF offices on (20 4 October 1984. Prior to that visit they had called on Bishop Tutu to tell him about the events..

COURT: Is it 4 October?

MR BIZOS: 4 September. Did I say October? I beg your pardon. He went with other activists to the UDF offices on 4 September 1984. Prior to that visit they had called on Bishop Tutu to tell him about the events in the Vaal. He evaded arrest with the assistance of UDF activists as alleged. I have a note that accused no.13 had made a doctor's appointment for 18h00 on the basis that he would have to (30 wait / ..

wait in the waiting room anyway. If your lordship grants him leave he might make it this evening.

COURT: Yes, he is welcome to leave. We have passed him in any event.

MR BIZOS: As your lordship pleases. Yes, I am sure that - I hope he leaves with a lighter heart. I was I think telling your lordship that the allegation against him is that accused no.17 evaded arrest with the assistance of UDF activists. He was said to have been part of the conspiracy to overthrow the government in that he was on the management structure (10 of the VCA. Further particulars, 81 to 82. As your lordship knows he was not called as a witness. I have already indicated to your lordship the reasons, that there was a reason for it and referred your lordship to the evidence of accused no.7. If your lordship wants the reference again, I have it readily available in volume 200, page 10 445 line 8 to 10 447 line 9. And that was not disputed by the state.

It is common cause that he attended the meeting of 9 October 1983, the launch. Other than having attended there is no suggestion that he played any role in it. (20

MNR JACOBS: Mag ek met verlof net iets sê? Ek verstaan dat beskuldigdes 19, 20 en 21 moet voor 'n sekere tyd by die gevangenis wees en dat dit hulle etes en al daardie goed gaan raak. Ek weet nie of daar reëlings getref is nie en ek dink hulle is alreeds laat, edele, of ons nie iets dan kan doen nie.

HOF: Ons sal dan maar ophou as ons klaar is met beskuldigde nr.17.

MR BIZOS: As your lordship pleases. In relation to the election of the zone 7 committee, it is common cause that (30
having /..

having been elected as treasurer on the zone 7 committee on 19 February 1984 I submit that there is nothing in the conflict as to whether it was August or February. Although he was supposed to collect signatures for the campaign, there is no evidence that any signatures were collected. Daleside seminar, m'lord, in April 1984. No.7 has testified that he attended the seminar together with accused no.17 and that both of them left in the course of the Saturday morning. There is no other evidence concerning accused no. 17's participation in this workshop and it has been sub- (10 mitted with respect of accused no.7 that there is no evidence that the workshop and the discussion thereat had any impact on the activities of the VCA thereafter. Meetings of the zone 7 committee. Before the election of this committee on 19 February the evidence shows that accused no.17 was one of those who took part in the negotiations with school authorities in relation to the school dispute at the time. In respect of house meetings, the state places reliance on the attendance of accused no.17 at the meeting held at accused no.10's home. This was the occasion at which (20 accused no.17 accompanied Raditsela. It has been dealt with fully in argument m'lord, the house meetings and it is submitted that nothing of consequence in respect of accused no.17 flows from it. There has been no evidence from the state that accused no.17 at any meeting of the zone 7 committee indicated his willingness to persuade people to pay rent and that he had reported that he had travelled around the Vaal triangle propagating the holding of mass protest meetings. This averment has been dealt with specifically by accused nos.7 and 9. They denied that this happened. (30

Joint meeting of zones 3 and 7. It is common cause that accused no.17 attended this planning session. There is no suggestion that this participation - that his participation was in any way different from the others, hence the submissions already made apply equally to accused no.17.

The meeting of 26 August. Your lordship must be familiar with Rina Mokoena, Mahlatsi and Masenya up to now and the battery of witnesses that have given evidence, the confused nature of the evidence and the matter was fully debated and we submit with the greatest respect that the whole of that (10 meeting clearly indicates that the balance of probabilities favours the accused's version and that no violence was called for and that certainly in view of the contradictory evidence of Masenya in particular and Mokoena in relation to him, no finding of fact can be made. He has called numerous witnesses to deny that he did any wrongdoing at this meeting. It is common cause that on 3 September 1984 accused no.17 took - it is only about another three pages m'lord.

COURT: Yes.

(20

MR BIZOS: It is common cause that he took part in the march on 3 September. The only matter of dispute between the state and the defence in relation to this is whether or not accused no.17 was one of the leaders of the march. We have dealt with it in argument m'lord. It is submitted that the acceptable evidence before court establishes that accused no.17 was not a leader ultimately. This in itself is not of great consequence since there is not in any event any evidence that accused no.17 led the march up the lane to Motjeane's house or that he was present at the house at any time. The

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attitude/..

attitude of accused no.17 towards this march is reflected in the evidence concerning the remarks made by him in the yard at Small Farms before the march set off, in the course of which accused no.17 called for good behaviour and for the march to be slow enough to accommodate the elderly people who were taking part.

The UDF general council meetings. The state relies on accused no.17 being present at two UDF general council meetings. These are evidently the same ones testified to by accused no.6 who squarely denied that they form part of the (10 conspiracy of violence. There is no reason why accused no. 17 should come away with a different impression. The meeting with the Rev Chikane, post 3 September. There was no evidence that accused no.17 was with McCamel and Radit-sela when they went to Johannesburg on 4 September to see the Rev Chikane. On their way they also saw Bishop Tutu to tell him what happened at the Vaal. On this occasion Bishop Tutu had asked whether he should arrange a meeting with Dr Koornhof to discuss the question of the increased rental but the view of the Vaal people was that such a (20 meeting was not opportune at that stage because there was still so much confusion in the area. This is the evidence of the state witness McCamel in volume 35, page 1 583, line 10 to 1 584 line 22.

There is no other evidence in the post 3 September to suggest that he was responsible for any wrongful act. In relation to the evasion of arrest there is no evidence concerning any attempt to arrest accused no.17 or any evasion of such arrest by him with the assistance of UDF activists as alleged in the indictment. In any event we do not find (30 anything/..

anything in the final submissions of the state relating to this.

The conversation with Mtunzi. Your lordship will recall this is a conversation over the fence with his neighbour. Reference is made in the concluding submissions by the state to the conversation in which accused no.17 allegedly said that Mtunzi would regret it if he did not join the UDF. This does not form part of the indictment and it is submitted that the terms of the conversation was so nebulous and undirected that no significance whatsoever can be attached to it. (10

We submit therefore that in relation to the finding of facts your lordship will rely on the other evidence that has been given by other witnesses who have said whatever accused no.17 might have been in a position to say and although he was on an area subcommittee of the VCA and therefore may be deemed to be one of the people in the management structures that is referred to in the indictment, there is no evidence that he ever became aware of the alleged secret agenda of the UDF that the state has argued about, nor he knew of any plan to make the country ungovernable. (20

We submit therefore that the dictum of their lordships TROLLIP J and TRENGOVE J should be applied to him, that in the absence of any evidence to support the allegations in the indictment he should be found not guilty and discharged.

COURT: Is that the end of accused no.17?

MR BIZOS: 17's argument.

COURT: Yes, in view of the problem that has arisen as far as the three accused are concerned, we can no longer continue. I had hoped to finish this part of the argument. I think it is advisable that the accused hear what counsel say on (30

their / ..

their behalf and it is a pitty that we are now running overtime. I have now sat for an hour and a quarter more than the usual time and I grant you a further hour tomorrow morning to finish your argument.

MR BIZOS: Yes, I only have 22 to do, m'lord..

COURT: Well, there are three other accused that has to be dealt with tomorrow.

MR BIZOS: My learned friend Mr Chaskalson will be doing that.

COURT: That has to be dealt with tomorrow morning. (10

THE COURT ADJOURNS UNTIL 7 SEPTEMBER 1988.

DELMAS TREASON TRIAL 1985-1989

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