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SAAKNOMMER: CC 482/85 **DELMAS**

1986-11-17/27

DIE STAAT teen: **PATRICK MABUYA BALEKA EN 21 ANDER**

VOOR: **SY EDELE REGTER VAN DIJKHORST**

ASSESSORE: MNR. W.F. KRUGEL

PROF. W.A. JOUBERT

NAMENS DIE STAAT: **ADV. P.B. JACOBS**
ADV. P. FICK
ADV. W. HANEKOM

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NAMENS DIE VERDEDIGING: **ADV. A. CHASKALSON**
ADV. G. BIZOS
ADV. K. TIP
ADV. Z.M. YACOOB
ADV. G.J. MARCUS

TOLK: **MNR. B.S.N. SKOSANA**

KLAGTE: **(SIEN AKTE VAN BESKULDIGING)**

PLEIT: **AL DIE BESKULDIGDES: ONSKULDIG**

KONTRAKTEURS: **LUBBE OPNAMES**

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(Bladsye 7627 - 7649)

MNR JACOBS: Ek vra dat ons uitstel. Hier is sekere aspekte wat opgeduik het in die argument waarop ek nie op hierdie stadium kan antwoord nie. Ek vra uitstel in hierdie geval dat ons behoorlik aspekte voor die Hof kan lê.

HOF: Waarna wil u uitstel?

MNR JACOBS: Ek het tot die 17de van hierdie maand, dit is Maandag oor 'n week, dan sal ons argumenteer.

HOF: Sal die uitstel help om u betoog te verkort of te verleng?

MNR JACOBS: Dat mag dit miskien verleng Edele. (10)

HOF: Wel dan het u baie min hoop om by my verby te kom.

MNR JACOBS: Edele dit is, die aspekte wat ons, dit is moeilik om vir 'n Hof te kan sê want daar mag, dit hang alles af van die vrae wat gevra word van die Hof, ek het gesien dat mnr Chaskalson het baie dae ekstra gegaan. Ons moet behoorlik ...

HOF: Ek dink nie ek het drie dae se ekstra vrae gevra nie.

MNR JACOBS: Maar daar het 'n bietjie tyd bygekom en ons moet dit aanvaar en ek moet, ek wil sinvol aan die Hof kan antwoord op die betoog van My Geleerde Vriend.

HOF: Mnr Chaskalson? (20)

MR CHASKALSON: I appreciate that My Learned Friend needs time, I think in the context of this case which has gone for so long a day or two cannot make any difference. The accused are obviously very anxious to know the outcome of the application but a day or two is not going to make any difference. I do hope that we will finish in time to make sure that a decision can be reached before 30 November and if there were any problems about that then I would ...

COURT: It is my clear intention that if there are any accused that are to be discharged they will be discharged before (30)

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the end of November.

MR CHASKALSON: Well My Lord then that being so I cannot object to an extra day or two. I have taken a long time and it is not, it is a very big record.

COURT: Yes. The case is then adjourned until 17 November 1986 at 09h00 at Delmas.

COURT RESUMES ON 17 NOVEMBER 1986.

MR JACOBS ADDRESSES COURT IN REPLY.

COURT ADJOURNS UNTIL 27 NOVEMBER FOR JUDGMENT.

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IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

CASE NO. CC.482/85

DELMAS

1986-11-27

THE STATE

versus

PATRICK MABUYA BALEKA AND 21 OTHERS

(10

J U D G M E N T

VAN DIJKHORST, J.: I intend delivering two judgments this morning. The first is on the application of the defence to strike out certain portions of the evidence and the second is on the application by the defence for the discharge of all the accused. I commence with the judgment on the striking out.

The defence applied for the striking out of various portions of the evidence led. The basis is the alleged irrelevance thereof. The evidence relates to acts of violence in various parts of South Africa ascribed by the State to the UDF. The (20) State case in the indictment, as amplified by further particulars, is that the UDF, organisations affiliated to it and organisations actively supporting it campaigned countrywide between 20 August 1983 and April 1985 - and the latter date was amended to July 1985 - against the Government's policy and legislation on structures of authority, in particular Black local authorities by means of propaganda, door to door visits, house meetings and mass meetings to condition and incite the Black masses around so-called day to day issues. This was done by civic associations assisted by workers, youth, (30)

women/....

women and student organisations who succeeded in inciting, organising, mobilising and/or politically indoctrinating the masses to such an extent that they proceeded to violence and/or intimidation against Black councillors, their property, State property and/or that general disorder occurred, etcetera. The defence requested further particulars and in its reply the State listed the places where violence, disorder and intimidation occurred after organising and mobilising by the organisations set out. Thirty-one areas are listed. In respect of some no evidence was led. In respect of others there was (10) evidence of violence but no evidence about which organisations were active there. In other instances there was evidence that various organisations were active, some of which were not listed in the further particulars or shown to have any connection with the UDF. The defence application is for a striking out of all evidence of violence etcetera in respect of all thirty-one areas.

The grounds for this application are that no nexus with the accused is shown to exist. Areas mentioned in the further particulars but in respect of which no evidence was led (20) obviously fall outside the scope of the application. I will not deal with them. The requirement of relevance of evidence for admissibility is set out in Section 210 of the Criminal Procedure Act of 1977. In the case of an alleged conspiracy evidence of acts done by others is admissible evidence against the accused on the basis of their being co-conspirators. It does not matter whether proof of their participation in the conspiracy is adduced before or after the evidence of acts by others alleged to flow from the conspiracy. But it is inevitable that there must be evidence linking the accused to (30)

the conspiracy and linking those acts by others to the conspiracy. Without such evidence the evidence of acts by other persons than the accused is irrelevant to the case and therefore inadmissible. At the end of the State case the accused can only be put on their defence on admissible evidence. It follows that the link between the evidence of acts by other persons and the accused has to be finally forged at close of the case for the prosecution. That is clear from R v MILLER 1939 AD 106 at 117, 123, and R v LEVY & OTHERS 1929 AD 312 at 327 / 8. This does not mean that the link must be (10) proved beyond reasonable doubt. That decision lies with the triers of fact at the end of the case. If evidence is prima facie relevant it is admissible. If there is prima facie evidence of a connection between the UDF and the named organisations and the disturbance in the thirty-one areas the evidence of the latter is prima facie relevant and therefore admissible.

A large number of witnesses were dispensed with by way of admissions on factual issues. In EXHIBIT AAS 3 the defence admitted that in 27 of the 31 areas in named periods incidents occurred. These "incidents" range from road obstruction to (20 arson and murder and are specified in respect of each area. Apart from those admissions we heard extensive evidence covering the length and width of South Africa. This application necessitates that the evidence in respect of each area be dealt with separately. I will follow the sequence and numbering of the further particulars. I preface my analysis with some general remarks.

The argument for the defence on this aspect consisted of 148 typed pages and that of the State of 50 pages. For the sake of brevity I will not refer to all the facts, documents (30

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and arguments. This does not mean that they have not been considered. Some weight can in my view be given to the fact that a pattern emerges when the incidents set out in EXHIBIT AAS 3 are studied. This pattern is that attacks were launched at councillors and their property, property of the local authorities - including the Administration Boards - other public property like schools and post offices, the police, their houses and police vehicles, public transport like buses and trains and that road barricades were erected. There is evidence that a large scale campaign was launched by the UDF(10) against the Black local authorities and that for this purpose vehement propaganda was disseminated against the system and the councillors who participated therein. I bear in mind that a document per se cannot prove its own origin at common law but the provisions of Section 69(4)(c) of the Internal Security Act 74 of 1982 are applicable to those charges which are founde on the Act. I do not go along with the defence argument that the section is not applicable to the UDF as it is allegedly not and "association of persons" as used in the definition of organisation but a front. The answer to this argument lies in the Interpretation Act no. 33 of 1957. I bear in mind that some documents though admissible against some accused are not admissible against other accused.

There is evidence that in its campaigns the UDF made use of its local affiliates. There is evidence that COSAS, an affiliate of the UDF actively campaigned against the Black education system with the full support of the UDF and that it also involved itself in broader issues of the community like Black local authorities. There is documentary evidence which prima facie indicates that COSAS is a revolutionary (30)

organisation/...

organisation and there is evidence which shows that COSAS is deeply involved politically. In those areas, therefore, where damage and disturbance conforming to the pattern mentioned above occurred and where there is an active UDF presence shown by its officials or its pamphlets or its affiliates or active supporters or by its own admission in EXHIBIT C110 I am not prepared to find that no link has been shown to exist between the damage and the UDF and through the latter with the accused, or some of them. Prima facie that evidence is relevant. In some instances, for example Soweto, Mamelodi and Seeisoville, (10) it was argued that the damage which is admitted and the disturbances might more probably be ascribed to the education issue and not to the UDF's campaign against Black local authorities. That may be but it would not render this evidence irrelevant. The nature and extent of the UDF's actions against the Black education system and its results are relevant evidence. Also if it concerns the actions of its affiliate COSAS. So is the UDF's attitude to the general situation on the education front. That general situation included boycotts, marches, stone throwing and other disturbances. (20)

On the basis set out above the evidence of violence, disturbances and damage in the following areas is prima facie relevant:

(1) Tembisa.

(3) Thokoza

(4) Khatlehong

(5) Tsakane

(6) Duduza

(8) KwaThema

(9) Soweto (30

(10) Alexandra

(11) Mankweng

(13) Daveyton

(14) Mamelodi. In this case there is evidence of a strong UDF involvement through accused no. 21. According to the evidence accused no. 21 is alleged to have admitted organising class and school boycotts.

(15) Attridgeville/Saulsville

(16) Huhudi. (10)

(17) Tumahole. In this case it was argued that it was neither admitted nor proved that TSO or TYCO were affiliated to or actively supported the UDF. There is, however, evidence that accused no. 20 told the witness IC17 that the UDF works closely with the leaders of the community of Tumahole (which is also evidenced by EXHIBIT AM 27) and that in this conversation the name of Mosepedi was mentioned (whom the defence put was Chairman of TCA) and there is evidence that accused no. 20 visited his (20) friend Vezile Dabi of TSO on 15 July 1984, the day of the disturbances. Prima facie TSO was behind the disturbances.

(18) Seeisoville

(19) Grahamstown

(20) Cradock

(21) Worcester

(22) Leandra, which is Leslie Black township. In this case it was submitted that there is no evidence that Leandra Action Committee was affiliated to (3

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the UDF. There is, however, evidence of a close working relationship. The witness IC19 says so and it is borne out by EXHIBIT T3 and EXHIBIT U(4)(a)(2).

(23) Graaff Reinet

(27) Somerset East

(30) Adelaide

(31) Thabong.

The following areas stand on a different footing:

(2) Ratanda. It is alleged that the Ratanda Civic Association and COSAS organised and that there was intimidation of Council members and damage to and destruction of dwellings from 22 March 1984 to 30 April 1984. That is the allegation by the State. The State relies on an admission of damage and unrest, which took place between 22 March 1984 and 30 April 1984 in EXHIBIT AAS 3 . There is an admission that the Ratanda Civic Association is affiliated to the UDF but only since October 1984. EXHIBIT AAS 2 . There is no evidence of activity of Ratanda Civic Association or COSAS in the area except in the EXHIBIT C110. EXHIBIT C110 covers the period from August 1984 to February 1985 which falls outside the period in which unrest occurred. There is no link between the unrest and the said organisations. EXHIBIT AX 14 , page 34, a document found in the possession of accused no. 16, is a notice of a meeting of the Ratanda Civic Representative Association of 1 August 1984 with an agenda. There is no evidence that it is the same organisation as the Ratanda Civic Association(:

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and it seems to relate to a committee meeting and not a mass meeting. This affords no evidence. The evidence of unrest and violence in Ratanda contained in the admission in EXHIBIT AAS 3 is struck out.

(7) Dunnotar. The State alleges that since February 1985 COSAS organised and that attacks were directed at policemen's houses. No evidence was given except admissions in a schedule of damage. No link was proved and this evidence is struck out.

(12) Enkangala. The State alleges that since September 1984 to February 1985 the Enkangala Civic Association organised and that intimidation, revolt and violence took place. No evidence at all was placed before the Court. There is therefore nothing to strike out and no order is made.

(24) Jansenville. The State alleges that during 1984 the Jansenville Youth Organisation organised and that intimidation, violence and revolt broke out. There was no evidence placed before this Court in support of these allegations and there is therefore nothing to strike out and no order is made.

(25) Noupoort. The State alleges that during 1984 the Noupoort Youth Organisation organised and that intimidation, violence and revolt broke out. There is an admission in respect of certain incidents but the required link has not been shown to exist. The evidence of the violence and unrest in Noupoort contained in the admissions in AAS 3 is struck out.

(26) Witbank. In respect of this area the State

alleges that during 1984 and to 1985 the Student Council Committee organised and that violence and revolt broke out. There is an admission that there was certain damage and violence but no evidence has been produced in relation to these events. The evidence of the violence, unrest and damage in Witbank contained in EXHIBIT AAS 3 is struck out.

(28) Cookhouse. The State alleges that during 1985, in the beginning of that year, the Cookhouse Youth Organisation organised and that intimidation, violence and unrest broke out and that a teacher was murdered. There is an admission in EXHIBIT AAS 3 of unrest, violence and serious damage. There was evidence led of an attack on the houses of Constables Baliwe and Vilazi on the night of 13 March 1985 by a group of more than 100 children who marched through the streets chanting "Viva Bpesal. Viva Comrades, Viva Cookhouse Youth Organisation, Viva Mandela", and singing that Tambo is leading soldiers in Angola and that Botha and Le Grange are dogs. There is no evidence about the acitivitie of the Cookhouse Youth Organisation or that it is affiliated to the UDF. The evidence of unrest and damage, including the admissions in EXHIBIT AAS 3 in Cookhouse is struck out.

(29) Bedford. The State alleges that during 1984 and 1985 Bedford Youth Congress and COSAS organised and that violence, unrest and intimidation broke out. Evidence was led of various incidents of unrest and there is an admission in EXHIBIT AAS 3 (

of unrest, violence and damage. There was also evidence of slogans painted on the wall of a beer hall in the township in Bedford but there is no evidence which organisations organised during the period in question and there was no evidence on the activities in Bedford of the Bedford Youth Congress, COSAS or the UDF. They cannot be linked to the violence, unrest or intimidation in Bedford. The evidence of unrest and damage, including the admission in EXHIBIT AAS 3, in Bedford is struck out.

There is some hearsay evidence on record for example about death threats to councillors in Worcester (if that is to be taken as proof of the truth and not merely as a reason given for resignation by councillors).The application by the defence was not directed against those portions of evidence, neither was it brought on the basis that it was hearsay. It will be an immense task to dissect those bits of evidence from the record and I will not do so until a specific application is brought in this respect. Suffice it to say that we will not take hearsay evidence into account.

I deal now with the application for discharge of the accused. At the end of the State case the defence applies for a discharge of all the accused on the basis that there is no evidence upon which a reasonable man might convict them. It was argued that in the absence of such evidence the Court has no discretion but is obliged to discharge the accused. That is not my view of Section 174 of the Criminal Procedure Act no. 51 of 1971. Once it is shown that there is no evidence upon which a conviction might be based the Court has a discretion

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to discharge an accused. It goes without saying that the Court, being a judicial body, will exercise that discretion judiciously and not capriciously. Despite the doubts expressed in S v HELLER 1964 (1) SA 524 (W) 542G and H and the contrary view held in S v MALL & OTHERS 1960 (2) SA 340 (N) 343B I hold that a Court would not act wrongly if that discretion is exercised against an accused where a deficiency in the State case may be amplified by evidence of the accused or other defence evidence. I find support for this view in R v KRITZINGER 1952 (2) SA 401 (W) 406 top and A, S v N.G. NAIDOO WLD 1 March 1965 Case 71/65 at page 12 (only partly reported in Prentice-Hall); R v HERHOLDT 1956 (2) SA 722 (W) 723B-D; S v MPETHA & OTHERS 1983 (4) SA 262 (C) 267H. A Court should, however, not refuse to exercise its discretion in favour of an accused where no grounds exist for the view that other evidence may amplify the State's case. Where there are a number of accused the Court must give due weight to the fact that the refusal of a discharge for this reason alone may bring about great hardship for a particular accused who may have to sit through a lengthy trial without any evidence against him being led. The State should not join a person as an accused if it has inadequate evidence against him, hoping that its case will be amplified by that of the defence. This is the law which I will apply in this application.

I am in full accord with the dictum of ROPER, J. in S v KRITZINGER supra at 406G that it is not expedient to give reasons as that would involve a discussion of the evidence and of the law and it is undesirable that I should commit myself to any expression of opinion upon these matters before the defence is entered upon. Yet in view of the length of

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this case it is fair that I set out shortly and broadly my line of reasoning. This approach might not necessarily be that of the Court at the end of the defence case when the Assessors have supplied their input and there has been further argument.

The State case involves proof of a conspiracy. That the State seeks to do by drawing inferences from proved facts. At this stage it is not necessary for me to decide whether those inferences are necessary inferences. If there is more than one inference possible from the same set of facts, one innocent, the other guilty, at the end of the case for the (10) State then that is the sort of evidence that should be referred to the triers of fact for decision as they might draw the inference for which the State contends. See S v COOPER & OTHERS 1976 (2) SA 875 (T) at 890. Those triers of fact are Judge and Assessors at the end of the case as a whole. In my view a reasonable man might find that the facts placed befpre is support the inference that the UDF's management was involved in a conspiracy or conspiracies as alleged. If no evidence to the contrary is adduced a reasonable man might conclude that those participating in the decision making process of the (20) UDF participated in this conspiracy. That would involve the management structures of all affiliates who were represented on its controlling bodies. For these reasons I hold that the accused who were part thereof have a case to answer on the charge of treason. There is evidence before Court upon which a reasonable man might find that there was an arrangement or understanding between UDF and/or its affiliates and AZAPO to work towards a common goal. It would not be fanciful to infer that that goal was the destruction of the local authority in the Vaal Triangle which might be found to be one of the (30)

aims/...

aims of the conspiracy if the latter is found to be proved. Those accused who on the evidence before us are alleged to be AZAPO members who actively worked against the Lekoa Town Council have a case to answer.

Apart from the above there is the participation of some of the accused in protest meetings and a protest march in leadership capacity which might be held to require an explanation. This also applies to accused who are not part of the management structure but who actively associated themselves with the leaders in propagating violence at certain meetings. (10 Counsel for the accused invited me to engage upon an evaluation of the credibility of certain witnesses. I decline to do so at this stage. Only in exceptional circumstances would this be done at the end of the case for the prosecution. This is not a case where such exceptional circumstances exist. I am not sitting alone but with assessors. To do so would mean that I anticipate their judgment on the facts. Of course in given circumstances this can be done, but not lightly. The main charge of treason and the alternative charges of terrorism (under Section 54(1) of Act) 74 of 1982) and subversion (under (20) Section 54(2) of that Act might notionally be bracketed together Prima facie evidence of a conspiracy on the charge of high treason, in the context of our case, will also entail prima facie evidence on the two alternative charges. But the charges of murder stand on a different footing. The State has to prove that each accused intended the deaths of the deceased. That intention need not be directed at the particular deceased but it must at least be shown that the accused contemplated that the death could result from their actions and recklessly proceeded therewith. It is not necessary that the accused (30)

had/...

had these particular deceased in mind. It would be adequate if their contemplation encompassed a group, for example the councillors or the Black local authorities. It is not enough for the State to show that the accused ought to have contemplated. That would bring the matter within the scope of one of the competent verdicts on the charge of murder, namely culpable homicide. If a prima facie case is made out on either the charge of murder or the competent verdict thereunder I should refuse an application for discharge.

Defence counsel strenuously contended that all the accused should be discharged on all the murder charges. In my view any accused who propagated violence against councillors or who was in a position of authority at a meeting where violence was preached against councillors and who did not repudiate it can be required to furnish an explanation, provided that meeting was close enough in time and place to the murder to draw an inference of a causal connection. In addition an explanation is in my view required of those accused who participated in setting up the protest march which contained a banner reading "Kill Mahlatsi and brothers". This also holds good for those accused who were part of the mob at the house of Councillor Ceasar Motjeane. Not only have the accused to be judged separately but also the murder charges. Whereas the general propagating of violence against councillors may cover all murder charges, their mere presence at the house of Councillor Motjeane does not. The matter goes further however. There is prima facie evidence that the riots in Lekoa were not spontaneous but were part of a plan against local authorities, the councillors and their property being the focus of attack. The question then to be answered

is who was behind it all. Prima facie the finger points to those organisations active in the area and their management. I need go no further than to say that prima facie at least they should have foreseen that threats against and incitement to kill councillors could lead to action against them by the mob, which could lead to their death.

The organisations involved are VCA, COSAS, AZAPO and Evaton Ratepayers Association. VCA is Vaal Civic Association. The people involved are the management structure and those actively assisting them during the period when (10) the incitement to murder occurred. In respect of those accused who were active in the area on 3 September 1984 but of whom the whereabouts and exact extent of their participation is not clear I refuse to exercise my discretion in their favour as it is likely that the defence evidence will clarify their movements and the possibility exists that they may be implicated on some of the counts of murder. This will not prolong the case and they will not suffer any hardship apart from the anguish of uncertainty, as they will be put on their defence on the charge of high treason and the other alternatives in (20) any event.

On the alternative charge under Section 13(1)(a)(v) of Act 74 of 1982 I find that where there is prima facie evidence of a conspiracy and of the involvement of an accused on the charge of treason it follows in the context of this case that the aims of the ANC have prima facie been furthered, speaking in general terms. It may be argued that the so-called aims set out in the amended indictment, paragraphs A to S, are not objects but the means to attain the objects. That argument need not be considered at this stage as the charge in (30)

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addition and principally refers to "Die oogmerke soos uiteengesit in die aanhef van die Akte van Beskuldiging" which is the illegal overthrow and/or endangerment of the government of the RSA.

I deal with some of the accused separately.

Accused no. 4, Mohapi Lazarus More. The State case as pleaded is that he identified with the aims of the UDF as a member of an organisation that actively co-operated with the UDF governing structure. It is alleged that he was a member of COSAS. There is no evidence of this. The sole evidence against him is that he was on the stage (a witness said he (10) was co-chairman) at the meeting on 19 August 1984 in the church of accused no. 3 and that he introduced accused no. 1 and accused no. 2 as speakers. He did not introduce accused no. 16 who made an inflammatory speech. He did not associate himself therewith and as there is no evidence that he organised the meeting or that it was called by a group of which he was a leader I do not think one can expect him to have repudiated the statements of accused no. 16 or of anybody else at that meeting. It was also put in cross-examination by accused no. 4's counsel that accused no. 4 was at the founding meeting (20) of the Vaal Civic Association on 9 October 1983. That in itself takes the matter no further. I do not think that the documents found in his possession sway the scale in favour of the State. I find that in the case of accused no. 4 no prima facie case has been made out.

Accused no. 12, Mkhambi Amos Malindi. The State case against this accused is that he co-operated to found the civic association VCA, that he participated in a mass meeting in September 1983 in the Roman Catholic Church, Small Farms, that he went to Johannesburg for guidance, and that at the VCA (30)

founding meeting he was a cheerleader. The further and better particulars of the State state that accused no. 12 was part of the management structure of the VCA which affiliated to the UDF and participated in the decisions; and that he participated in the acts set out in paragraphs 67 to 77 of the indictment. I will not summarise those acts. The evidence before Court is that he led the singing of freedom songs at the founding of the VCA on 9 October 1983, and furthermore that in 1982 two Mahlatsis spoke to him and accused no. 5, his brother, in the presence of somebody else and advised them against COSAS's path of violence. Furthermore certain admissions were made and that is that documents AU 1 to AU 12 were found in the house of accused no. 5 and no. 12 at 2176 Zone 13, Sebokeng. Counsel for the defence in the course of his address gave me the assurance that accused no. 5 would admit that these documents were in his possession. This assurance, which I accept, met the objection of the State that the discharge of accused no. 12 might entice accused no. 5 to ascribe possession of the documents to accused no. 12. I need therefore not deal with these documents. The facts are, therefore, that it has not been shown that accused no. 12 was in the management of the UDF or any of its affiliates and that it has not been shown that he was active in the period just before or on 3 September 1984. In my view he has no case to meet.

Accused no. 14, Pelamotse Jerry Thlopane. The case against this accused by the State is that on 9 October 1983 at the founding meeting of the VCA he was a cheerleader and made a speech, that since March 1984 he was an organiser of the COSAS Committee of the Vaal Area 13, and that in June

1984 he made a speech at the memorial service about police cruelty and that he popularised violence by youth. In further particulars it was blandly stated that he was the organiser of the Vaal Branch of COSAS. The further State allegations against him are approximately as I summarised when I dealt with accused no. 12. The evidence against accused no. 14 is that he led the singing of freedom songs at the founding meeting of the VCA on 9 October 1983. There is an admission before Court that he was the organiser of the Vaal Branch of COSAS and there are further admissions relating to numbers of documents of (10) which a number were written or compiled by him and quite a lot of others found in his possession also. These documents which were found in his possession show an active involvement by accused no. 14 in the period before and after 3 September 1984 in the Vaal area. Furthermore he is or was the organiser of the Vaal Branch of COSAS. Prima facie COSAS played an important role in the Vaal Triangle during and preceding the riots and in my view an explanation might be called for and I refuse to exercise my discretion in his favour.

Accused no. 18, Maxala Simon Vilakazi. There is virtually no evidence against this accused. (20) The State case is that he co-operated to found a civic association, the VCA, that he participated in the founding meeting on 9 October 1983 as cheerleader and furthermore that he attended a training course at the UDF in November 1983 as an activist of the VCA and that he listened to Radio Freedom. Apart from that the State allegations against him are roughly as I summarised when I dealt with accused no. 12. It was put in the cross-examination of witness IC8 by counsel for accused no. 18 that accused no. 18 was at the founding meeting of the VCA on 9 October (30

1983./....

1983. It was also put by counsel when cross-examining Mahlatsi that accused no. 18 was at a preparatory meeting for the meeting of 26 August 1984 and that he was appointed to draft a petition against the rents. Certain admissions were placed on record, namely that he was connected with the Vaal Action Committee which existed before the launching of the VCA and that in his possession were found EXHIBIT AZ 1 and AZ 2, two documents. It is clear from my summary that accused no. 18 was not on the management of any of the bodies to which I have referred. There is no evidence that he was active in (10) the area during the relevant period and in my view accused no. 18 has no case to meet.

Accused no. 22, Thabiso Andrew Ratsomo. The case against this accused is that he co-operated to found a civic association, the VCA, that he attended the founding meeting and was there elected Treasurer. There are a number of further allegations in the State documents, very few of which have been proved. It is clear from the evidence before Court that he was treasurer of the VCA since its inception. It was argued that he resigned in January 1984. The sole evidence is (20) that he said he was going to resign and this bit of evidence was disputed by the cross-examiner. There is some uncertainty whether this dispute concerned the venue where the statement was made or whether it concerned the fact of making the statement. In any event prima facie he was still on the executive of the VCA in September 1984, and even if he was not, if prima facie a conspiracy existed since 1983, he being on the executive of the VCA, would have to answer that. To these remarks has to be added that there was no evidence of activity of accused no. 22 in the Vaal Triangle after January 1984. (30

This/....

This brings me to the question whether those accused not shown to have been active in the Vaal Triangle during the months August and September 1984 should be discharged on the charges of murder set out in the indictment. The accused involved are accused no. 19, accused no. 20, accused no. 21 and accused no. 22. The defence relied on the principles set out in MACKENZIE v VAN DER MERWE 1917 AD 141 for the proposition that one conspirator cannot be held responsible for the acts of his co-conspirator unless he authorised them. The proposition is too narrow a statement of the principles laid down (10) by the Appellate Division in that case. The liability can also be based on instigation, instruction and aid, in addition to acual perpetration and authorisation. Furthermore an accused who intentionally helped create a climate which spawned the commission of the deed might, if he is not guilty of murder as the perpetrator, possibly be held guilty as an accomplice. Although the State has charged the accused in the alternative, if the conspiracy is proved the State could theoretically choose to ask not for a conviction of treason but on murder, though it is unlikely. Whether there is an adequate causal (20) link I need not decide at this stage.

Those accused who were not active in the Vaal Triangle during the period immediately before and on 3 September 1984 can only be linked to the murder charges on account of prima facie evidence of a conspiracy, and even then the link seems tenuous. It might, however, be argued that they should have foreseen that death of councillors could result from the conspiracy and that they are guilty of culpable homicide. I refuse to exercise my discretion in their favour. As stated previously this will not prolong the case and they will not (30)

suffer/....

suffer hardship because of it as they are put on their defence on the main count and alternatives in any event.

C.470 My conclusion is therefore as follows: Accused no. 4, M.L. More, no. 12 M.A. Malindi, no. 18 M.S. Vilakazi are discharged on all counts. A verdict of not guilty is entered. The application for discharge in respect of all the other accused is refused.

COURT ADJOURNS. COURT RESUMES.

MR CHASKALSON: As it pleases Your Lordship there are two matters which have arisen, one is a question of the date (10) of the remand and secondly there is the issue of a bail application. As far as the date of remand is concerned we would, it would suit us not to start immediately and after discussion with the State we would suggest 21 January as the date of resumption. As far as the bail application is concerned that is something which we will discuss with the State if necessary and come back to Your Lordship.

CASE REMANDED TO 21 JANUARY 1987 at 09h00.

DELMAS TREASON TRIAL 1985-1989

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