

(1) (A)

MR. REES CALLS CASE

MR. SOGGOT ADDRESSES COURT: M'lord, my learned friend Mr. Pitman and I have already indicated to our learned friend and to Your Lordship that as our instructions in this matter have been withdrawn, we would formally ask Your Lordship leave to excuse ourselves.

COURT: I would like you to remain within the precincts of the Court. Who is the spokesman amongst the Accused? Are you Sathasivan Cooper? --- Yes. I speak for myself. I wish to ask for your recusal. This morning I instructed my attorney that he should withdraw the brief of Counsel acting for me, because it has become increasingly evident that you have become guilty of prejudging the issues. Disliking the processes of this Court, the fourth Counsel to argue before you this morning on a fundamental matter so important in this case, as to prejudice my co-accused and I. I wish to place the following facts before this Court. I was arrested at my residence in Durban around midnight on the 25th September last year, and charged on one count under the Riotous Assemblies Act the next day. On the 27th September I was informed that I would continue to be detained in comunicado and without any privileges until I made a statement to the satisfaction of the Commissioner of Police. On the 11th October I was informed that I was being detained under Section 6(1) of the Terrorism Act. On the 14th October I was brought to Pretoria gaol. During my detention I was brutally assaulted and subjected to abusive treatment by members of the Security Branch, some of whom are present in this Court today. I laid a complaint of assault with the visiting magistrate, and at an identification parade at Compol Building I indicated my assailants up to that stage.

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An application was made to the Pretoria Supreme Court by my mother and the next of kin of other detainees, restraining the police from using such measures during interrogation. This failed in every aspect despite the affidavit of my attorney, to whom I had indicated the unlawful methods being utilised by the Security Branch. On the 31st January this year I was taken out of solitary confinement for the first time, and appeared with eleven others in the Pretoria Magistrate's Court, charged under the Terrorism Act. On the 7th February we were each served with an indictment running 10 into some 81 pages, in the grille of the Pretoria Magistrate's Court, where we were assaulted by members of the Security Branch.

The thirteenth accused was brought to the Pretoria Magistrate's Court on the 11th February, a further 24 pages were added to the indictment. On the 12th March we appeared in this Court, and were assaulted in full public view after the case was remanded. Right in this Court we have been photographed and filmed, and our people detained in the public gallery. Just yesterday I was assaulted by two White 20 policemen, Nos. 39059 and 34672. On Tuesday 21st April the Charge Sheet was amended and the case adjourned to the 5th May. On that day to the 7th May this Court heard argument from Counsel representing us on an application compelling the State to supply Further Particulars, after two sets of Requests for Further Particulars were served on the State, and the State had replied in a slipshod and contemptuous manner. On the 21st May, after judgment had been delivered a few days earlier compelling the State to supply Further Particulars, the matter was adjourned to the 30 9th June. From the 9th June to the 11th June, argument was

heard / ...

heard on an application to quash the indictment. The matter was postponed to the 23rd June for judgment.

On this day the Prosecutor pre-empted judgment being delivered by announcing a withdrawal of all charges against Accused 12 and 13, and separate trials for Accused 8 and 10, and new charges against the rest of us together. It was declared by the Prosecutor that after agreement was reached with the Defence, dates would be agreed upon. On the 27th June each one of us was served with a new indictment in prison, and formally remanded in the Pretoria Magistrate's Court to the 4th August to this Court. Although no agreement was reached between the prosecution and the defence on the question of the dates, and it appears that the Judge-President has imposed this date and we, the most important persons here must just bow down to his wish to our embarrassment and prejudice. 10

On the 24th July a Request for Particulars was served on the State. To this a reply was received on Saturday the 2nd August, although attorneys' offices are not normally open for usual business on Saturdays. This was just one of many 20 ruses utilised by the State to thwart us in our defence preparations. On Monday the 4th August, the Court ordered that Counsel argue on Wednesday the 6th, either for an order compelling the State to supply Further Particulars, or quashing the indictment or pleading to the charge sheet. Your remarks on this Monday were misdirected in the extreme, and showed the initial signs of prejudging the case. I have always assumed that justice required the audi alteram partem rule, but it was quite clear that our side of the matter was not being listened to. In fact I got the 30 impression that you were being highhanded and you were forcing

our / ...

our Counsel into an untenable position of arguing the matter on the 6th August. It was made clear by you that you had no - I quote your own words "sympathy for us". You felt that our request for an adjournment of two weeks to consider the State's reply was not - I quote you again - "bona fide". Yet Defence Counsel had only just received the reply, and had just glanced through them. The State had taken two weeks to answer our Request, and surely our taking two weeks to consider and study their Reply was not unreasonable, especially in view of the vague and embarrassing nature of the indictment and particulars supplied. The State has been investigating our movement since its inception, and the Security Branch has a "Swartmag" division. We have been in detention now for almost eleven months, and we are not in such a hurry to get ourselves convicted. I might add that I was served with a banning and house arrest order on the 2nd March 1973, and I assumed my activities were under police surveillance up to then, because they certainly were up to the date of my arrest. All of a sudden now the Court sees the urgency of getting this matter over with, and this is cause for great suspicion. It is no fault of ours that the matter is dragging, it is due entirely to the attitude of the State, which has displayed crass incompetence in this matter. I do not know the charges that I am supposed to meet, I am sure the State as well does not know the charges, or it would have expedited matters long ago, and served a simple charge sheet from the onset. And, as is well known, the State has been bumping all along.

As I indicated earlier, the State has served us individually with new indictments, but not with individual Replies to our Request for Particulars, and our attorney has

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been hard pressed to make copies available to us, which are as yet incomplete. In any event I don't see why we should be bearing the State expense and labour, for they have brought us to trial.

Now on Monday you showed a surprising attitude by referring to the withdrawn indictment and the particulars therein. There is a new indictment before this Court, Case No.254 /75. I may emphasise that there is only one indictment before this Court, there is only one request for further particulars before this Court, and there is only one 10 reply by the State before this Court. In your eagerness to get on with this case, these factors are being confused with the previous matter which was Case No.243/75, and you saw fit to pass value judgment on our bona fides, and made it categorically clear where your sympathy lay, with the State. Yesterday you went further and considered our request for particulars to be frivolous - to quote you again - and you ordered a notice to be served on the State yesterday, and that the matter be argued today. This is prejudicial to us in our defence at this very important stage in the 20 proceedings, and by making the pronouncements that you have on the last two occasions since this matter came to Court, I have serious doubts about your impartiality.

By forcing our Counsel to argue when they are ill-prepared to do so at this stage, you are prejudging us at a most critically vital stage in the proceedings. We are facing a charge under a capital offence, and you are harrying and hurrying us, when we are not clear on the charges against us. This attitude of yours could only be to our detriment. Yet you claim that the indictment is a 30 straightforward one, and that probably the State has been too

generous / ...

generous in supplying us with too many particulars, when you yourself saw fit to compel them to supply these in the previous matter. There is only one set of particulars of 48 pages at present before this Court.

Previously 13 of us faced a conspiracy count dating from the 1st December 1968 to the 31st October 1974, and five alternative counts. Now nine of us face a conspiracy count dating from the 31st July 1971 to the 30th September 1974, and twelve additional counts. I have serious misgivings about your being able to disabuse yourself of your conclusions, which are prejudicial to our interests in getting a fair trial. There is the maxim that justice must not only be done, but must be seen to be done, and I have the fear that this shall not be if you continue presiding, and should you decide not to recuse yourself, I would like an adjournment to the 25th August 1975 to instruct my attorney to brief Counsel to argue your recusal.

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COURT: You say you spoke on your own behalf? --- That is correct.

Now, tell me, did you see the Request for Further Particulars? --- I have glanced through it.

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Are you in a position to pass judgment on the quality of the Request for Further Particulars? --- Yes.

And what is your impression, are they requests bordering on the frivolous, or do you think that they are from a legal point of view very good and justified Requests for Further Particulars? --- I feel those Requests are entirely justified in the circumstances.

Now what is your qualification to be able to express a view on that, from a legal point of view? --- Well, utilising what has been said in a previous case, where you

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yourself / ...

yourself were sitting, and where you yourself saw fit to order the State to supply certain particulars, these are essentially being repeated in relation to the charges that we are facing right now.

So it is on that basis that you bring your complaint? --- No, it is not the only basis, in addition to what I have said.

Are you not keen to have this matter expedited? --- I would like to see the matter expedited but not to my detriment.

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What do you say about your Counsel who have withdrawn from the case? --- Well, I instructed my attorney this morning as I said earlier to withdraw brief of Counsel.

And if I am not prepared to give a postponement are you in a position to continue and to handle the case yourself? --- Well I would like an adjournment to the 25th so that I can instruct my attorney to get Counsel to argue.

But you have already heard your attorney tell the Court that he consulted forty Counsel before he was able to get the Counsel that he in fact got? --- That was at that stage of the proceedings, which was an entirely different matter.

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All right you can go back. No. 2 Accused, what do you say about your Counsel withdrawing from the case?

NO. 2 ACCUSED. J.E.L. MYEZA: I wish to have it placed on record that I am the Second Accused, and I concur with Accused No.1 in what he has said.

COURT: Your name is Justice Edmund Lindane Myeza? --- That is right. I find myself in an unfortunate position where I have to withdraw the services of my Counsel, and on the same note I want to stress that I am completely satisfied with my Counsel in the execution of their duty of representing me

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in this Court. However, I am withdrawing my Counsel for the reasons I shall now proceed to state. Yesterday, the 6th August, an order was made by this Court compelling my Counsel to argue on an application to deliver further particulars or to quash the indictment or to plead the indictment. I firmly believe that my Counsel will not be able to carry out my instructions and the instructions of my co-accused, because they have not had sufficient time to prepare themselves in this regard, and will therefore not ... (Court intervenes)

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If I may interrupt you at this stage, when did you last see your Counsel on the further particulars? --- I beg your pardon?

When did your Counsel last speak to you on the request for further particulars? --- Like all the other Counsel I have not been able to speak to my senior Counsel.

But when did you last speak to your Counsel about the request for further particulars? --- On Friday.

Friday when, last Friday? --- Last week.

And before then? --- I haven't got the details .. (Court 20 intervenes)

Well just give me roughly an idea of when you spoke to your Counsel about the further particulars? --- Which Counsel?

The Counsel who represented you in this case up to a few minutes ago? --- I last saw them on Friday.

And before that? --- On a number of days prior to that.

Well just give me an idea when was the second last occasion when you saw him about the further particulars? --- The Monday, and on a number of other days.

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And what instructions did you give them about the request / ...

request for further particulars? --- The instructions were that the particulars that were delivered on the State were delivered. (sic)

Did you tell him to request these further particulars or did he decide to request the further particulars? --- I decided.

Does that account for the fact that they are as they are? --- How are they?

Well you heard what No.1 Accused said, that I suggested that they bordered on the frivolous, the Request for Further Particulars? --- After I have finished reading what I am reading it shall be clear how ..(Court intervenes) 10

No, but I just want to get clarity(Court and witness speaking simultaneously - inaudible) was it his own decision to bring that request, or did he carry out your instructions? --- This is one of the reasons why I am bringing this particular matter before this Court, because this Court is not hearing me in the person of my representative in this Court, and I regard what Your Lordship is saying as being trying to confuse me or turn me from saying what I want to say. 20

No, no, ...(witness intervenes) --- I request that.. (Court intervenes)

If you will only just reply to a very simple question that I am putting to you, is your Counsel pressing for the particulars on your instructions or did the Counsel himself decide ..(witness intervenes) --- On my instructions as I said.

Yes, carry on. --- I have the impression that my Defence Counsel is being bulldozed in this Court.

He is what? --- Being bulldozed. I am facing charges under the Terrorism Act ..(Court intervenes) 30

Let / ...

Let me just ask you this, are you also keen that the matter should be expedited? --- I am keen, but not to my detriment. I am facing a maximum penalty of death and a minimum sentence of five years' imprisonment if and when this Court finds me guilty on the indictment facing me, therefore what the allegations against me - I beg your pardon - therefore it is imperative for me to know precisely what the allegations against me are, and it is of utmost importance to me that the advocates I have appointed in this matter exhaust to the maximum their abilities in representing me. 10 I have sufficient reason to believe that they will not be able to do this because of the tremendous pressure that is being made to bear upon them. My fellow-accused and I are going to suffer great prejudice if this trial is allowed to go on without a remedy. My co-accused and I are already prejudiced because of yesterday's order. This Court seems to be in a great hurry to get on with the case whether we are prejudiced or not. I want to trace the events of the past ten months to illustrate what I have said. I was arrested on the 25th September 1974 last year in Durban. I choose 20 not to burden this Court with what transpired during the four months before my co-accused and I were made to appear before a Court. I was kept in solitary confinement and incommunicado. I was assaulted and subjected to the most inhuman treatment I have ever known or heard of by the Security Police. For four months I lived under the worst conditions of existence, and this Court which today appears to be in a great hurry to try me, never lifted a finger to intervene. This Court wants to compel us to proceed with a case despite repeated protestations that we are not ready 30 because our preparations for our defence have been frustrated

by / ...

by an indictment we consider to be vague and embarrassing.

After being detained for a total of 128 days in solitary confinement under Section 6(1) of the same Act under which I am charged, I was brought to Court late in the afternoon of the 31st January. Twelve of us appeared before the magistrate on that day, we were remanded in custody until the 7th February in the same Magistrate's Court. On our instructions our attorney applied for a further remand to the Magistrate's Court, the Magistrate refused our application, and said that the Supreme Court would grant us any reasonable remand that we might ask for. The case was remanded to the 1st March in the Supreme Court, this Court. On the 11th February one more person was added to the charge, there were then thirteen of us. Today there are nine of us. Between the 7th February and the 12th March, we engaged Counsel and served the first set of the Request for Further Particulars on the State on the 7th February 1975. On the 12th March when we appeared for the first time in the Supreme Court, the State furnished us with Further Particulars twelve days after the initial Request for Further Particulars. I want to point out here again that the fact that we were furnished with further particulars on the day that we appeared in Court was no coincidence, because as it shall be evident, the State more often than not supplied further particulars on the days we appeared in Court. If it was not the further particulars then the State did some things to the indictment which cast a different light on the entire case. This always happened only a few hours before the Court sat on the days that we appeared in Court. This meant that we could not consult with our Counsel as we are kept in prison. However, the Court granted us the original

postponements / ...

postponements we asked for, and the difficulties were obviated. The prosecution, however, invariably opposed whatever applications for postponement we made. On the 12th March the case was remanded to the 21st April, a request for further and better particulars was served on our behalf on the State on the 25th March 1975. The State replied to that request for further particulars 19 days later, that was on the 17th April, a Thursday afternoon. This meant that we could only see, let alone consult with our Counsel, the further and better particulars for a day and a half before we appeared in Court. Previously we could consult with our attorneys on Saturdays, but we have since been informed that we can only consult with our attorneys ..(Court intervenes)

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COURT: At that particular moment what could you tell your Counsel about the further particulars, if they are vague, must you tell your Counsel that they are vague, or is your Counsel not capable of deciding that himself? --- Counsel I have employed to utilise their professional ability.

Yes, and what is your qualification to be able to be able to tell him, that makes you entitled to require that he should consult you? --- Because I am the person that is facing a charge, and what I have to say about the charge is purely ..(Court intervenes)

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But he is the person to decide on the technicalities of the charge, and now you tell me that you told him what particulars to ask for? --- There may be a necessity for him to decide on the technicalities, but not the facts. And since we have been informed by the prison authorities that we can only consult with our attorneys during the weekdays only and even then only up to 4.15 p.m., this arrangement

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impedes / ...

impedes our progress in our preparations terribly. On the 21st April, like I said before, something happened to the indictment, the indictment as this Court is aware was amended, that effectively threw a totally different light on the entire case. However, the Court ..(Court intervenes)

Just pause there for a moment, was the new indictment based on new facts or was it based on the old facts but framed differently? --- After I have finished, that point shall be clearly illustrated.

You answer that question you say when you have finished? --- Yes.

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Very well. --- However, the Court granted us the reasonable postponement we asked for to consider the further and better particulars. The case was remanded to the 5th May 1975. On the 25th April a Notice of Application to Deliver Particulars failing which to quash the indictment in protest was served on the State. The result was that the prosecution rushed to us a twenty-page document which was dated the 1st May. Again this was two and a half days before we appeared in Court. However, we were still embarrassed in our preparation for our defence, and on Monday the 5th May we proceeded with our application to deliver particulars failing which to quash the indictment. For three days the application to deliver particulars was argued and countered by the defence and prosecution respectively. At the end of the three days the Court adjourned to the 21st May to await the decision on the application. The judgment was handed down in this regard on the 16th May 1975. The effect of the judgment was that the prosecution was ordered to deliver a considerable amount of particulars that had been requested.

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Did / ...

Did you read through that judgment? --- I have it here.

But did you read it? --- I read it.

Did you find it very biased against you? --- I am coming to that judgment.

Yes? --- On the 21st May 1975 the prosecution promised to deliver the particulars that had been ordered, which was done on the 22nd. The case was again remanded to the 9th June 1975, and at this stage, on the 22nd May 1975, an application for bail for all of us, the accused, was made to the Attorney-General for leave to apply for bail, in this Supreme Court. The application was turned down in the words of the Attorney-General that - and I quote him - "he is unable to accede to our request". We are appealing to him, some of us going into the eleventh month in gaol. On the 9th June an application to quash the indictment was argued, and on the 11th June Your Lordship adjourned the Court, and I quote "to consider my reasons why this indictment is vague". The Court was adjourned to the 23rd June 1975, however, we never heard what Your Lordship's reasons were, because the prosecution withdrew the indictment before the judgment was delivered. Charges were unconditionally withdrawn against two of the accused, and two more other accused were charged separately under this same Act. On the 27th June we were presented with a new indictment which is now before this Court. On the 21st July a Request for Further Particulars was furnished to the prosecution, a Reply to that request was served on us on Saturday the 2nd August, but effectively on Monday the 4th August. It should be noted that the State took two weeks to reply to our request, and only supplied the reply technically 48 hours but in reality only minutes before the Court sat. This is the trend that has been

recurring / ...

recurring and which I have referred to earlier. The judgment by Your Lordship on the application for the delivery of the particulars on the previous indictment, had a number of things to say about further particulars and the request thereto.

Well what have you in mind? --- I choose to refresh my memory, I choose to quote a few excerpts from Your Lordship's judgment. On one question this was said: "a bona fide attempt should be made by the prosecution to furnish such particulars to overcome the difficulty of the accused".

Now do you find that a bit biased against you, for 10
making that type of remark? --- Your Lordship, I did indicate earlier on that I shall come to the discussion of Your Lordship's judgment, and if Your Lordship will allow me to go on without intervening, then what I am saying on this judgment shall become clear. And of another question Your Lordship had this to say: "I regret to say that in the present case no attempt was made to pay attention to the chronological order of events in some instances or to categorise the replies to the request for further particulars with the result that the Court was put to great inconvenience 20 by having to correlate such further particulars as were given with the request". And of another question Your Lordship had this to say: "Strong criticism was levelled against the State for the vague and imprecise manner in which particulars were supplied, which particulars, according to the defence, broadened and clouded the issues instead of limiting them. And of a particular request, Your Lordship had this to say: "This reply is wholly inadequate", and of another "no complete reply appears to have been given to this request" and yet of another, Your Lordship had this to say: "It does 30 not appear from this reply that the prosecution made any

serious / ...

serious attempt to furnish the particulars of the facts it intends to prove against the accused. M'lord, the previous indictment was withdrawn. That indictment does not exist as far as we are concerned. The indictment we are facing is the present one, with 13 counts and nine accused, not the one that had 13 accused, five alternative counts and five organisations involved. Whether or not the number of organisations and persons or accused has been reduced is immaterial to us, because it is on this indictment that if we are convicted, we shall face a minimum of five years' imprisonment and the maximum of capital punishment. Your Lordship said the present indictment is simple and straightforward, but we think otherwise. Otherwise, it is Your Lordship who will pass final judgment on this case. I view it in a very serious light that Your Lordship can say that this indictment is simple and straightforward, when no argument has been forwarded by our Counsel. We have been unable to consult with our Counsel and give them instructions on the reply to our request for further particulars. This is so because they have not been given sufficient time to apply their minds to this particular aspect of the case. We regard this application as of great importance to us, and the fact that the Court has ordered that the Advocates prepare and present an argument on the further particulars within such a short space of time is placing us, the accused, in grave prejudice. Your Lordship has said that our questions in the Request for Further Particulars are frivolous, but we firmly believe that we have not asked any unnecessary questions, and that we are entitled to a reply to those questions. Also the questions we have asked are questions that even your Lordship had ordered the prosecution to supply us with in the

previous / ...

previous indictment, and here, what I have been saying about Your Lordship's previous judgment on the application to deliver further particulars becomes relevant. It is strange that Your Lordship now says that our questions are frivolous, more so because argument has not been forwarded on those particular questions in this particular indictment. Your Lordship is of the opinion that the indictment is based on the same facts and that we know what those facts are, and we therefore cannot be taken by surprise during the actual trial. Your Lordship has also ruled that the previous indictment was withdrawn because the State supplied too many particulars. However, I want to aver that the prosecution has not begun to give us the facts. There is amongst other things a lot of documentation that was brought to our notice previously which has not been brought to our notice this time. I know for a fact that a lot more was withheld then in the torture chambers called Compol. I know this because I have been to Compol, and at some stage I was kept there for a whole week at a stretch. It is also strange that Your Lordship adopts the attitude that the previous indictment was withdrawn because of the questions we asked, when Your Lordship himself said that the particular indictment was vague. That in itself is sufficient to show that the questions we asked for were reasonable and fully justified. It strikes me as odd ... (Court intervenes)

The State furnished particulars as a result of the order that I made? --- Your Worship, or is it Your Lordship?

Yes. --- When the State supplied the particulars that were ordered, it is then that we made an application to quash the indictment.

Yes, but have you forgotten that the State replied

that / ...

that you want the information all over again? --- Based on this particular indictment?

Based on this case, have you forgotten what the answers were? --- We haven't forgotten ..(Court intervenes)

The request, that you want them over again in this case? --- That particular indictment itself was confusing.

That is why I made an order. --- Precisely.

And the State complied with the order, but in its fairness it gave you very much more than was required for the purposes of the order? --- In our opinion the State did not comply with Your Lordship's order, that is why we made an application to quash the indictment. It strikes me as odd now that the indictment we never understood can be used as a basis for ordering our advocates to proceed to argue without having had sufficient time to prepare. 10

But isn't there a difference between facts and an indictment, an indictment is a document which must be construed, but a fact is something different. A reply to your request for further particulars gives you facts? --- Your Lordship, I am compelled at this stage to state that what facts were given previously are not the same facts we have been given, previously we were told we incited people, and this time we are told another thing, we have been told we intimidated them and something like that. Those are not the same. 20

On that point, if the State says that you addressed - not you personally, but one of the accused addressed a meeting and made certain remarks which were likely to have a certain effect, and the prosecutor tells you what the speech was, don't you think the request is frivolous when you ask: who heard the remarks, what effect did it have on that person? 30

Your / ...

--- Your Lordship made a specific order in that regard ..(Court intervenes)

Yes but I am asking you a specific question? --- I am replying to that question.

Well apart from that order, I am talking about the new questions that have been asked now? --- What is the question again?

Don't you regard the following question a frivolous question: if I say you made a speech and in the speech you incited your hearers to do something, isn't the request frivolous if you ask who heard the speech, what effect did it have on that person? --- Your Lordship that question was asked, and it has not been argued yet, and Your Lordship is already making a ruling ...(Court intervenes)

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No, I am merely giving you the opportunity to tell me whether it is a frivolous question or not? --- That is not frivolous in any respect.

Why do you say it is not frivolous? --- Because on the basis of any one of those facts ..(Court intervenes)

If the speech is likely to have a particular effect on the hearers, why must the prosecutor be asked what effect did it have on the hearers? --- We are entitled to know a number of things, who were the hearers and where was this, and a number of things.

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But why do you say you are entitled to know that, if you address a meeting and it is a particular meeting, why must the prosecutor tell you who attended the meeting?

--- I must state at this stage that I have chosen to ask for an adjournment.

No, but just answer the question, you say you are entitled to a reply now I am asking you why? --- I have

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chosen / ...

chosen to ask for an adjournment to appoint Counsel who are going to argue this particular - or this application I am making right now.

Yes, well I am only challenging your statement, so you say you can't reply to it, you want Counsel to go into it?

--- This particular letter will become clear as I go on.

We never knew or understood what the case was the prosecution was proposing to make against us previously, and that position has not been remedied up to now. Previously we asked for no more time than was absolutely necessary to prepare and acquaint ourselves with the reply to our request for further particulars, and we have not been unreasonable in this particular instance. We have not been able to see the particulars to the charge until Tuesday. Our lawyers are not allowed into the prison on Saturdays, and the prosecution served these particulars on Saturday. The prosecution supplies only one copy of particulars, which means that before we can receive a copy it has to be photocopied - three copies rather, not one - to enable each of the accused to have a copy, since we are kept in single cells in prison. This is deliberate on the part of the prosecution, because when we are given the charge sheet each one of us receives a copy of the charge sheet. This Court has ordered that our Counsel present their argument today for the reasons I have said, I believe that they are not in a position to carry out this duty successfully, and that if I allow them to proceed my fellow-accused and I will suffer great prejudice. I have no option therefore, but to apply for the recusal of the Judge presiding in this case, and that this Court grant me sufficient time to appoint Counsel to execute the judicial process of this application.

What / ...

What do you call sufficient time? --- To the 25th of this month.

Why do you think you will have Counsel by the 23rd August? --- 25th.

Well why do you think you would be able to get Counsel by the 25th August? --- Because I have no reason to believe why I cannot.

But last time you couldn't get Counsel? --- That was that time, last time, this is this time.

Did you not ask for a postponement on that basis that you couldn't get Counsel? --- The precise argument for the address made to the Court by our attorney was that we could not proceed with the case because - pause - 10

You couldn't get Counsel? --- Because we were unable to get Counsel.

Yes, anything else you want to say? --- That is all I have to say.

Have you made up your mind that you don't want the Counsel that acted for you in this matter? --- I have informed Your lordship of that. 20

No. 3 Accused?

NO. 3 ACCUSED: My name is Mosiqua Lekota - Mostua Gerard Patrick Lekota. I speak on my behalf. May I just indicate that in the process of talking I may be using the word "we" all the time, merely because it is the normal thing in the Black community but I am speaking on my own behalf.

COURT: Yes? --- I wish to move at this stage that Your Honour withdraw from this matter, at least at this stage. Your Lordship has already made statements which renders us accused prejudiced. On Monday the 4th August, that is 30 this year, Your Lordship indicated that we had quantities,

indeed / ...

indeed piles of information to enable us to prepare our defence and meet the charges that we are facing. There was an implicit suggestion by Your Honour that the information we had was adequate to enable us to prepare our defence. It was obviously in reference to the information we had received from the State whilst still facing the original indictment. But I wish to state that the indictment we are facing now is entirely new, even the charges there, the periods that are mentioned by the State there and so on.

The indictment might be new, but what happened to the facts that were disclosed in the previous case, did that also disappear with that indictment? --- May I point out to Your Lordship at this stage that in fact I am not arguing on the facts of the indictment per se, I was merely touching on that as a point. The point that I am making is that Your Lordship has already made prejudgment, if I may call it that, or perhaps statements which are invariably to influence the particular decisive applications that we are going to make at this stage of the matter.

Do you think it is a prejudged decision to say that the facts that were disclosed under the previous indictment still exist? --- In that relation may I make this observation, and I consider it very significant, that in fact in May we applied for particulars, we argued here in Court, Your Lordship granted that we be supplied with particulars, the State then in its own fashion tried to supply the particulars ordered by the Court. When subsequently we came here and our defence introduced a motion to quash, I heard here Your Lordship rather sanctimoniously admonish the Counsel for the State that "I could never have ordered such a silly thing". I do not know at this stage, having not seen my Counsel for

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the last five days, whether in fact the State has now complied with that or not. I do not even know whether Counsel is satisfied or not.

What You say you haven't seen your Counsel for the last five weeks? --- Five days.

Oh, five days. --- Your Lordship, at that stage, when our defence introduced a motion to quash, Your Lordship indicated that in fact the State had not complied with the order. At this stage, Your Honour, what if the State has not as yet complied with those questions that were put to them to comply with, because even when we argued to quash, they had not complied with them at that stage. We do not know now of course, and I am not saying that they have not complied with them as yet, but Your Lordship did indicate that you were not satisfied with their manner of reaction, with their manner of replying, what you have subsequently ordered. We do not know now whether they have, but if and when we discover they have not, and Counsel moves that we want more particulars because they have not, in view of the statement that Your Lordship made on Monday that we had just about more than enough information, I do not see Your Lordship reversing that, it is on record now, we can not, as the defendants in this case, reverse it, we cannot change it. It is there as a fact. I wish to go further ..(Court intervenes)

If I understand you correctly, your point is that because they did not have sufficient information on the first indictment which was quashed, for the same reason they haven't got sufficient information today? --- I am not saying they do not have sufficient information, I merely say that the information that you found that we were entitled to, they

have / ...

have not supplied. And today before we even had a look at the particulars supplied, we don't know whether they complied with that or not, I do not know, I cannot say that Your Lordship has not gone through that, but supposing we are not satisfied, supposing we say they did not, Your Lordship has already ruled that in fact we have got more than enough information, that we have received it.

Well that is my work, that is why I am here, I receive applications? --- But then that is a prejudgment, Your Honour, what if we are not satisfied, this renders us prejudiced, we can then not come here and argue and anticipate to get a fair judgment. That is the point I am making. 10

But what would you call a fair judgment, if a ridiculous question is asked, if I decide in your favour it is a very good reply and if it is against you it is an unfair judgment? --- I would have looked forward to Your Lordship perhaps waiting to see our reaction. If we said to Your Lordship we are not happy with the particulars supplied thus far, then I would have expected that Your Lordship would say: well present your problem, let me deal with it, but now before we even ... (Court intervenes) 20

I cannot decide the case on whether the particulars make you happy or not, I have got to look at the particulars and see whether they are legitimately asked for? --- But we may point out some of the things that Your Lordship may not have been aware of.

Just give me an illustration, such as what? --- Excuse me?

Such as what, now what can you tell me that I am not aware of? --- Thank you. Your Lordship has indicated that 30

the / ...

the indictment we are facing now is basically the same as the original indictment. It may be as a matter of fact, that the facts relating to that indictment and this indictment are the same, but the same questions that we had asked for in the previous indictment were not answered to, and that even now it has not been replied to. In that case, if Your Lordship hadn't made that ruling, at least that statement ..
(Court intervenes)

But it is another indictment, it may be framed in such a way that that reply is not necessary, why do you think 10 that the prosecutor withdrew the charge, just to repeat the thing again? --- Your Lordship, I think I have merely lived one life, and I don't think that on the questions that the prosecution could have answered this way in the previous indictment, that they could answer it differently, it does not change, I still remain the same man. If they have got to give particulars and they fail to give them in the previous indictment, they are still the same because I only have one life, not two lives.

But I cannot understand your argument, because, you 20 see the attitude is that because the first indictment was withdrawn, we must forget about the facts that were set out in the first indictment, but now you hammer on the question that because they did not give sufficient particulars on the first indictment, for the same reason now I must accept they did not give sufficient particulars in the second indictment? --- I cannot get it right in my mind as to how would the Court say the State has not supplied me with sufficient particulars today, and then tomorrow, simply because they have changed the indictment, therefore the 30 Court must say no, you have got enough particulars. Because
it / ...

it is clear it is on record, that in fact the State failed to meet Your Lordship's order, it failed. May I just go on and indicate at least at that stage, at the time when we were supposed to receive our judgment on the question of quashing Your Lordship never indicated once that in fact we had more than enough information. What Your Lordship did there was to order the State to supply us with particulars, which purely indicates that the State did not in fact supply us with enough particulars. May I go further ... (Court intervenes)

Have you forgotten now that the State did supply 10
particulars after the order, and that was why when the State got into a quandary that the State gave you so much particulars that it was confusing really what the case is? — Once again Your Lordship is saying it now, I have already indicated my argument, may I just say that I am not here really to argue on the merits of whether we have got enough particulars or not, I am merely pointing out the discrepancy that has taken place on the part of Your Lordship. Secondly, Your Lordship indicated again on Monday that now at this stage Your Lordship had no sympathy for us. Obviously I 20
have nothing to quarrel about .. (Court intervenes)

I did not say that, I said that originally I had a lot of sympathy but they are really jeopardising that sympathy they are really wasting time in a case which must be started, because we have been trying since January to try and get this case started. — But what I have to say is we have nothing against Your Lordship's sympathy, we really have no quarrels against it, but the point is that we believe in our innocence, in the final analysis we are not looking forward to getting an acquittal purely on the basis of sympathy, but now, when 30
Your Lordship made that statement on Monday, the impression

that / ...

that we got was now that Your Lordship has been sympathetic in the beginning in relation to the order you made, now Your Lordship was just going to force us to go on with the case whether we were ready or not.

I must rectify that, correct that impression that you have, I said that originally when the case started, it was a summary trial, I don't know if you know what a summary trial is, usually there is a preparatory examination, in the preparatory examination you are placed in the position to know exactly what the case is that the State is bringing against you, with a summary trial it means that you have to come here and hear for the first time what the State's case is. For that reason the Court is sympathetic to a request for further particulars because the Court feels that an accused person must know what the case is that has been preferred against him. But if that sympathy is exploited and the person tries to get a postponement every time because the Court is sympathetic and wants to help, then I merely indicated that they will lose that sympathy, in other words, they will not get an order ordering the further particulars if they start asking silly questions. That is the position if I might put it in its true perspective? --- Well, this is how it was put the other day - perhaps I did not - I really do not - pause -

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Well if I didn't put it that way, then I must correct it, that is what I intended? --- I do accept it as you put it now anyway, but the point I am trying to make here is that Your Honour has already pronounced on the question of particulars for us, and I want to indicate that when we asked for particulars initially, Your Lordship indicated to the State and asked the State to say now what is terroristic

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about / ...

about a particular meeting, about attending a particular meeting, you could go there and expel a tea boy or something, is that terroristic. Perhaps, I think I am more or less using Your Lordship's exact words. The State did not do that. Now I am facing the second indictment, the State is still telling me that I am a terrorist or a conspirator, because I went to the third G.C. of the South African Students Organisation. It is the same fact, the same point that Your Lordship confronted the State with, it came back directly to me, I have got my particulars here right now ..(Court intervenes) 10

Yes, but I haven't forgotten the point, if it applies in this case, then I use it, if it does not apply I forget about it. --- Anyway, subsequent to that, my other point is that yesterday, the 6th August, Your Lordship referred to our latest request for particulars as frivolous. Well I did not really argue on the merits or demerits of that, but I don't think the connotations of that statement of Your Lordship's statement at that stage did not really satisfy me, they are not palatable or pleasant. How can we then come to Your Lordship and say we don't have enough information, how do we come to Your Lordship and say we are not happy about the information, it is not enough, because Your Lordship has already said now that your questions are frivolous. I am sure Counsel for the defence are properly qualified men, proper professional men who really know their duty, I don't think that they just ask the questions for the sake of asking the questions. And I don't think that Counsel for defence whom I consider to be properly qualified, would just waste their time replying to those questions now, like they did. At this stage I wish to observe that we have been awaiting trial 20 30

for / ...

for the last ten months. In fact effectively we have been awaiting trial on trial for about six months now. After five of those six months ..(Court intervenes)

But that is why I am complaining, that is why I want the case to go on. --- After five of those six months when the State withdrew its indictment, when it did not have the proper indictment before the Court, we never heard Your Lordship complaining about that, we never heard anything about what about the prisoners, what is happening to them, you are keeping them in gaol and so on. Because the State even refused us bail. But your Lordship never raised a finger about it. It is quite significant therefore that yesterday apparently Your Lordship should accuse our defence of keeping us in gaol.

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Well because firstly, I was sympathetic to a request for further particulars originally I gave you every opportunity to ask for further particulars, but I didn't intend to create the situation where you could ask just for anything just to get postponements. --- Certainly we don't want to misuse that, we are not suggesting that, Your Honour, all we are saying is that if we are entitled to anything, may we be allowed to ask for it. But if and where Your Lordship has already made rulings like this, it is virtually impossible for us to move the applications that we may be preparing to move now, because if we move those applications then Your Lordship has here already pronounced on them, it is impossible for us to get an objective decision out of it, that is if there is anything left of objectivity really.

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Yes, but you see it is also my duty to see that you don't waste time, if you ask a legitimate and valid question then it is my duty to listen to that question and to see

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whether / ...

whether we are entitled to a reply, but if I see that you ask nonsense, just to waste time, it is my duty to see that you don't ask nonsense and that the case goes on. --- I agree with that, Your Honour, but some of us are fathers here we have got children to support ..(Court intervenes)

Well that is why I assist, if they ask nonsense I tell them that they are asking nonsense, and we get on with the trial? --- Obviously we would never really fool around, we have got families to support, we have got children to support, and we did not come here out of our own accord, we did not ask to come here. We want to get rid of this, we want to get through with the business, but obviously we would not just waste time for the sake of wasting time. And I am sure that this is why the questions that we ask should be viewed in a serious light, they are serious questions for us. Finally, I wish to say that at this stage, I feel personally that in view of this order that I have already indicated and many others that perhaps some of the remaining accused will point out, I feel that Your Honour ought to withdraw from this matter, that is if we are to get fair judgment, on the particular applications that we might make. Thank you.

No. 4 Accused.

NO. 4 ACCUSED: My name is Maitshe Nchaupe Aubrey Mokoape. I also wish to inform Your Lordship that I wish to be placed on record. However, I think most of the points that I would have loved to enumerate have been exhausted by my colleagues, my brother accused. In the circumstances, therefore, I wish it to be noted that I concur with what my brother accused 1, 2 and 3 have said in this matter, with respect to your recusal and withdrawal from this matter, especially the hearing that we are about to place before the Court, for an order / ...

order to compel the Court to supply further particulars or to quash the indictment. I wish just to make a little point here, that it really strikes me as odd that Your Lordship should say in this present matter, that in the last matter we had been supplied with too many particulars, when Your Lordship saw fit at that time during that last hearing, to order the State to give particulars.

Perhaps you do not follow the position clearly. When I say the State gave too many particulars, you will recall that during argument I asked the State about that. The question was, what were the activities - in what activities you people participated, and then the State went and gave particulars as to in what affairs of these organisations you people participated, and one of the particulars given was that you attended some meeting at some place where a domestic matter was discussed, and then I asked Counsel for the prosecution what that had to do with terroristic activities, and then it transpired that the State gave a lot of particulars relating to that sort of thing, and the attitude I then adopted was that you people are now left in an embarrassing position because you don't know whether the prosecution is going to use that to prove a case against you and you won't know how to prepare your defence. It was in that respect that I said the State gave far too many particulars, which really created an embarrassing situation. --- Well I suppose what you are saying here is that the State gave too many particulars which were not required ..(Court intervenes)

Yes, that is right. --- But failed to give the particulars which were ordered by Your Lordship, because this came to a point where the State was in fact forced to withdraw its indictment because it had failed to comply with

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