

should respond to this call as a command. Then I was told the next day I will be removed to another place in Swaziland. Indeed the next day I was removed by Stanley. When we got to this place Stanley took out writing paper and he told me how to build cells."

In a second statement made before a magistrate on June, 10th 1978, accused no. 5 puts the lid on the paragraphs quoted above from his first statement dated June, the 8th. In this second statement, no. 5 says:

"I have mentioned a certain Stanley. His name is Mabizela. He lives in Swaziland. At a later stage Themba told me the name of the organisation he was working for. He said it was the African National Congress. Stanley Mabizela is one of the top people of the A.N.C. and he had instructed me to get places in the Township Soweto in Johannesburg - preferably semi-detached houses - so that they could keep their trained men in those houses. Themba told me finally that these people who are leaving the country are going out for military training. That is all." (10)

Accused no.5 goes on to say in his first statement, paragraph 15:

"When we were through with that he told that when I get back to Johannesburg I should ^{try and} get a typewriter and a stencilling machine. Then he explained that they would want to take me out of what I was doing then. As he is explaining that is part of what they would like me to start on.

16. There is somebody in fact who will give me full instructions on this new angle. His name is General, (30 but unfortunately this General is not available at the

moment. He will only be available at the end of the month and in future whenever I get to Swaziland that is the only man I will have dealings with.

17. He parted that day, then he came back next time and he told me that part of my work will be to try to organise places for their trained men preferably semi-detached houses. Then I must get these people to understand and except these people fully."

I have come to the end of paragraph 17 and I interpose (10 to say from this second statement it is quite clear that the "trained" men referred to are those referred ^{to} in the second statement, that is men who had undergone military training outside the Republic and who had or were to return to Johannesburg. I continue with the extract from the statement of accused no. 5, paragraph 18:

"Both the families of the semi-detached houses shall be aware of their presence, so that they could be persuaded to open up a wall to make a door between the houses and then camouflage the door with wardrobes. (20 So that when the police will come and raide the houses then these people could escape easily through the other house. He further told me that this breaking up of the wall would be done by their own builders."

The statements clearly show that no.5 and Themba and Mandla Langa (paragraph 11) agreed to get sister Bookhalane, accused no. 4, to organise the so-called "streaming in of people from Port Elizabeth" to Johannesburg. Mandla Langa undertook a trip to Port Elizabeth and reported what he had done in Port Elizabeth (paragraph 12). We know from the second statement that the people referred to were leaving (30 the Republic to undergo military training and to return to

Soweto where, in terms of the second statement, Exhibit Z, no. 5 had to obtain housing for them in the manner described.

The Defence argument is that only at a very late stage did no. 5 learn what Themba and Stanley Mabizela were doing, but from paragraph 7 of the first statement it is clear that very shortly after no. 5 had met Themba he, no. 5, knew that he was assisting people to leave the Republic and as the two statements are to be read together and are in fact indivisible, it is clear that no. 5 knew what the purpose was of their leaving the Republic. (10

We know by now that Themba had requested no. 5 to help sending people out of the country. Then he took a trip to Swaziland where he met one of the men he had initially been introduced to at Park Station by Themba. He was then (in Swaziland) instructed to take over from Themba because Themba had other work to do. From this it is clear that accused no. 5 by this time was fully aware of what was going on and he in fact confirmed this in his second statement when he said:

"Themba told me finally that these people who are (20
leaving the country are going for military training."

So far the first requirement of the offence has been met because it has been proved that no. 5 knew that the men were leaving for military training and he was in fact assisting and organising for their departure from the Republic, and for their accommodation in Soweto upon their return. If this finding is sound then - to my mind - he was in fact aiding persons to undergo military training. From paragraph 11 of Exhibit Y it is clear that accused no. 5 was a party to the arrangements made by sister Bookhalane, accused no. 4, who was to handle the so-called "streaming in of people to (30
Port Elizabeth".

It is however open to the accused to prove that his actions would not have one or more of the effects set out in Section 2(2) of Act 83 of 1967 - see S.v. Moadira, 1978(4) S.A. 110 and see Volume IIIA page (xi) of the record of this case where this case is quoted.

It is clear from the statement of accused no. 5 that he went to Swaziland for a second time. He says in paragraph 13 of his second statement (the final line):

"Then I got a message from Mandla Langa through Themba that I was wanted again in Swaziland." (10

After a while he complied with this order. By this time no.5 had - to my mind - become an active assistant to Themba and was carrying out orders in regard to the movement of men between the Republic and outside countries for a purpose well known to him and, secondly, he was fully involved in plans to obtain housing for the military trained men who were to return. In this respect it must be borne in mind that no. 5 had met Stanley Mabizela in Swaziland. He knew that Mabizela was one of the so-called "top men" in the African National Congress. Mabizela then taught him the working of the cell system (paragraph 14) and also told him that part of his work would be to organise housing for their trained men. The housing was to consist of "semi-detached houses" (statement 2) and in terms of paragraph 18 of the first statement; (20

"He told me that part of my work will be to try and organise places for their trained men, preferably semi-detached houses. Then I must get these people to understand and except these people fully."

Paragraph 18: "Both the families of the semi-detached houses shall be aware of their presence so that they could/.... (30

could be persuaded to open up a wall to make a door between the houses and then camouflage the door with wardrobes, so that when the police will come and raid the houses then these people could escape easily through the other house.

He further told me that this breaking up of the wall would be done by their own builders."

It is by now clear that it was the trained ^{men} referred to who would return to Soweto and who were to be housed as set out above. (10)

We know that they would be

- 1) A.N.C. members,
- 2) who had received military training, and
- 3) who would be returning to the Republic, and
- 4) would be housed by him in accordance with Mabizela's instructions.

From what has been set out above regarding the statements, it is clear from the statements that the accused would not have been able to prove beyond reasonable doubt that his acts would not have had one of the results set out in Section 2(2) in (20 the Republic or in any part of it. In other words, to my mind the statements of the accused prove that he had aided other persons to undergo training for the purpose of using it or causing it to be used to commit any act likely to have any of the results referred to in Sub-section (2).

The Court comes to the conclusion that the two statements read together as they should be, consist of a confession on the main count. If this finding is sound, then, before there could be a conviction in terms of Section 209 of the Act, the State must present evidence confirming the confession (30 in a material respect, alternatively, prove the commission

of the offence by means of evidence aliunde. The State called the following witnesses:

Volume V (Pages 215 - 223) : JOHN AUBREY MEISENHEIMER:

During 1977 he was the officer in charge of the population registration office in Johannesburg. One of his tasks was to deal with all application forms for obtaining passports in the case where those forms were not properly completed. He states that on the 17th of November, 1977, he received a telephone call from Sergeant Hamman of the Security Police, Johannesburg who requested him to be on the lookout for some (10 young people from Port Elizabeth who would try and obtain passports.

On the same day a group of ten people applied for passports. They were referred to the witness by a member of his staff because the application forms were not properly completed. The application forms were accompanied by two photographs of each applicant. The witness compared the photographs with the face of each applicant and he was satisfied that the photographs were those of the respective applicants. (20

All the application forms were handed back to the applicants and the witness retained one photograph of each applicant. The ten photographs are displayed on Exhibit L.

The witness identified the photographs on Exhibit L as being the photographs of the persons who had applied for passports and as being the photographs he had retained.

The application forms were not before the court. The witness stated that he specifically took note of the reason supplied on the application form of each applicant as to why they wanted to go to another country. He says that the (30 reason given by each applicant was "a visit".

He states that after he had returned these forms to the applicants he never saw the forms again. He telephoned Sergeant Hamman who collected the photographs from him.

In cross-examination the Defence wanted to know how the witness could be so sure about the identity of these persons. The witness explained the procedure he followed to ascertain the identity of the applicants. The Court is satisfied that the witness could not have made a mistake taking into account the procedure he followed.

He was also questioned as to how he knew that they were from Port Elizabeth. The witness said that he did not know that they were from Port Elizabeth but that they had Xhosa surnames which were unusual to him.

Mr. Meisenheimer impressed the Court as a responsible and honest person and a reliable witness and moreover an independent one. There is no reason for him to give false evidence. He has no interest in the matter. He did not contradict himself. There is no evidence to rebut the version given by this witness and the Court accept his evidence as being correct, reliable and truthful. (20

(At PAGE 226) The State further called sergeant Hamman who confirms the evidence of the previous witness in regard to the fact that he telephoned Meisenheimer and that he collected the photographs displayed on Exhibit L from him.

He states that on the 22nd of November, 1977, at about 3:45 a.m., he, accompanied by other policemen, went to the house of accused no. 5 in Diepkloof, Johannesburg.

In the bedroom of accused no. 5 whose wife was in bed, he arrested three persons who were hiding in a wardrobe between some clothing. The door of the wardrobe was closed and he opened it when he discovered the three persons hiding there/..... (30

there. The names of the three persons he arrested are Duma Harrison Mkalipi - whose photograph appears on Exhibit L as no. 3 - Mtutuzeli Manxiwa who is listed on page 15, no. 30 and page 34 no. 30 on the Further Particulars, and one Lungisile Tafie. The evidence of this witness was not placed in issue in cross-examination and the Court accepts his evidence.

Hamman's evidence is of importance because he arrested Duma Mkalipi under the circumstances testified to. Duma Mkalipi had applied for a passport. His photograph appears as no. 3 on Exhibit L. (10

Sergeant Muller of the South African Police, Johannesburg testified to the effect that he accompanied Sergeant Hamman and other police officers to the house of accused no. 5. In a room of this house he arrested the following persons: Mojalifa Uinqi - Further Particulars page 15 no. 49, page 30, no. 49. The witness also identified the photograph of this person on Exhibit L: Nosomi Booii - page 14 no. 20 and page 33 no. 20.

Sicelo Lutywantsi - page 15 no. 20 and page 33 no. 20.

Themba Gcina - Page 14 no. 11, page 29 no. 11 and page 33 no. 11. The witness also identified his photograph on Exhibit L. (20

Thandisa Maqungo - page 15 no. 37 and page 34 no. 37. The witness stated that accused no. 5 and his wife had also been arrested on that morning but that they were released on the same day.

The evidence of this witness was not contested in cross-examination and the Court accepts his evidence.

The photograph of Mojalifa is no. 49 on Exhibit L.

Themba Gcina is no. 11 on Exhibit L. (30

The evidence of Sergeant Hamman and Muller thus shows that/..

that three of the persons arrested at the house of accused no. 5 had applied for passports stating their purpose as "a visit".

A factor also to be taken into account is the circumstances under which they were arrested, that is in hiding, for which no explanation has been given.

The Defence made an admission which is contained in Exhibit M regarding the identity of the persons whose photographs appear on Exhibit L:

- "1. That the names appearing on each photograph on Exhibit L is the name of the person whose photograph appears below or next to it. (10
2. That these persons whose names appear on exhibit L, are persons whose names appear in the Further Particulars, namely whichever number appears above or on the side of each photograph is the number given to that person in the Further Particulars."

I turn to Volume III - Page 267:

The State called Heide Gcina who is the mother of Mkululi Philip Gcina also known as Samora. His photograph appears as no.47 on Exhibit L. She states that he was attending school at Kwazakele and that he was in Std. 9. He left her house during October 1977, without telling her. Since that day she has never seen him again neither has she heard anything from him. (20

No questions were put to this witness in cross-examination and the Court accepts her evidence.

Miriam Ndongeni - Volume III, page 265 - stated that she is the mother of Themba Duma Gcina who lived with her at her house. He stopped attending school in May, 1977 when he was in Std. 9 at the Newell High School in New Brighton. (30

He left her house during November 1977 without telling her and she knows of no reason why he left. She identified his photograph as no. 11 on Exhibit L. She stated that she had no knowledge that he partook in shows. I interpose to point out that he was one of the persons who was arrested at the house of accused no. 5.

No questions were put to this witness and the Court accepts her evidence.

Nontombi Agnes Mekgoe - Volume I page 119 - told the Court that she resided at Orlando East, Johannesburg. (10
Accused no.5 is her uncle.

She is not sure of the date or the month but she says it was towards the end of 1977 that accused no.5 came to her house. He told her that he had strangers who had arrived from Port Elizabeth and that they were actors who would act in a show. He asked her to accommodate these strangers for three days because his wife was not at home. The witness agreed to do this. Accused no. 5 brought two boys and two girls to her house. The girls only had handbags in their possession and the boys had no luggage at all. (20

The following day another girl arrived who said that she knew the other four persons who were at the house of the witness and she also stayed at this house.

After three days they all left her house.

She knew the names of these five people and she also pointed out their photographs to the police who had shown her a book containing several photographs - Exhibit G.

She identified those persons as being:

1. Mlamli Namba - No. 35 on Exhibit L.
2. Nomance Charles - No. 45 on Exhibit L. (30
3. Mojalifa Uinqi - No. 49 on Exhibit L.

4. Thobeka Mjuleni - No. 71 on Exhibit L.

5. Zodwa Zini - No. 73 on Exhibit L.

These persons' identity was admitted by the Defence. Their photographs appear on Exhibit L, being photographs of persons who had applied for passports. The person No. 3 above, Uinqi, had been arrested by Sergeant Muller in the house of accused no. 5.

The evidence of this witness was not disputed in cross-examination. The Defence enquired from her whether she was aware of the fact that accused no. 5 was an advisor (10 of the show "The Unfaithful Wife". The witness said that she was not. The Court accepts the evidence of this witness.

At this stage I must point out that four of the persons referred to by Agnes were brought to her house by accused no. 5 and one turned up on his own.

It is significant that:

1. they had no luggage and
2. all five applied for passports.

This to my mind puts the lie to the line taken by the Defence and advanced to Agnes by No.5 that they were in Soweto to (20 take part in a play.

The State also called the parents of the five persons referred to by Agnes. They are the following:

1. Griffiths Namba who is the father of Mlamli Namba. He is employed as an inspector by the bus company Bay Passenger Transport in Port Elizabeth. He says that his son was born on the 8th of June, 1959, and he lived with him at the house of the witness. Mlamli attended the Masimbambane school in Kwazakele and he had passed Std. 7.

He says that his son disappeared from his house during (30 February, 1978, whilst still attending school. His son left without/..

without telling him and some of his clothing and belongings are still at the house of the witness. He said he received a letter from his son but he did not know where it had been posted. He threw the letter away. He says that while in Port Elizabeth his son did not partake or act in any shows.

The Defence endeavoured to show that the witness could not say if his son acted in shows at school. The witness said that this son never mentioned anything to him about shows.

The Court accepts the evidence of this witness.

I must point out that Namba said in evidence that his (10) son had left in February, 1978, but he was somewhat uncertain about the date. We know from Meisenheimer's evidence that this youngster turned up in Johannesburg to apply for a passport in November, 1977, and Agnes testified that Mlamli Namba was brought to her house by accused no. 5 towards the end of 1977. The witness is clearly mistaken about the date when his son left home, but to my mind this does not affect the reliability of his evidence.

Secondly, Samuel Charles - Volume VII page 256 - testified to the effect that he is the father of Nomama Charles who (20) was born in November, 1959. She lived at home and attended the Kwazakele High School. She was in Std.8 but she did not write the final examination at the end of 1977. He says in cross-examination that it was possible that she did not write this examination because of the school boycott in 1977.

He was not sure whether his daughter disappeared from his house but he thought it was round about March, 1978. She left his house without telling him that she was leaving and since then he has not heard anything from her. There are still some of her clothing and belongings at his house. (30)

In cross-examination he conceded that it was possible that/..

that she acted in shows without his knowing about it. The Court accepts his evidence which was not disputed.

Thirdly, Darlington Dumelo Uinqi - Volume VII page 258 - states that he is the principal of the Loyiso High School in New Brighton. He is the father of Majalifa Romeo Uinqi who was born on the 6th of October, 1958. He lived with him and was doing Std. 7 at school during 1977. He disappeared from his house during October, 1977 without telling the witness that he was leaving. He only took some of his clothing with him. He was informed that his son had (10 been arrested in Johannesburg.

These facts were not disputed by the Defence and the Court accepts his evidence.

Fourthly, Charlie Mjuleni - Volume VII page 249 - testified that he was the father of Thobeka Mjuleni who was living with him in Port Elizabeth where she was attending school. During October 1977, she was in Std. 8 and still attending school when she left his house without telling him. Since then he had not seen her neither did she contact him. He states that he did not know whether his daughter partook (20 in shows. He identified her photograph on Exhibit L. His evidence was not attacked in cross-examination and is accepted by the Court.

Fifthly, Cyril Zini testified that he is the father of Zodwa Zini who was born in 1960. She lived at home with him. During 1977 she was at school in Std. 9. She left his house on the 17th of October, 1977 without telling him. He has never seen her since that date, neither has he heard anything from her. He says that his daughter did not partake in any shows. (30

The witness was not cross-examined and the Court accepts

his evidence.

To sum up so far:

A. Meisenheimer's evidence shows that applications for passports were made by persons whose identity is not in dispute. The reason given on the application form was "a visit" to countries unspecified by the witness.

B. The two policemen Hamman and Muller's evidence shows the circumstances of the arrest of at least three of these children who had applied for passports in the presence of no. 5 in his house in unexplained circumstances. (10

C. Agnes Mekgoe's evidence shows that five persons arrived at her house without luggage - all were brought by accused no. 5, one arrived on his own and we know that all five applied for passports.

D. Finally, there is the evidence of seven parents of children who had applied for passports.

E. This shows that these children had all for no apparent reason disappeared from Port Elizabeth from their homes whilst still at school and without telling their parents what they had planned to do, or where they were going to. In addition (20 we know that none of these children returned home.

F. Also, none of the parents was aware of any of the children having had any interest in taking part in shows.

G. We know from No. 5's statement that sister Bookhalane, accused no. 4, had to serve as a link for the children who arrived in Johannesburg ex Port Elizabeth, and we know from his statement seen in its proper context that the aim was to send them ^{out} for military training.

No. 4 in turn admitted that she had sent a telegram to Eric Ngeleza addressed to P.O. Box 139, Orlando - see (30 Exhibits A and B.

Accused no. 5 has admitted that he was the registered owner of Post Box 139, Orlando, that it was registered in his name and that the box was opened by the police with a key belonging to accused no. 5. This proves at least that accused no. 4 tried to make contact with no. 5 in Johannesburg.

The Defence argument is that Agnes' evidence proves that the children were in Johannesburg to take part in a show because no. 5 had told her so. It needs to be pointed out that this is a statement made by no.5 in his own favour, (10 and it bears no weight. Furthermore, the evidence regarding the children seen in its totality, does not bear out the line taken by the Defence in cross-examination that they were in Johannesburg or had gone there for the purpose of taking part in a show.

We know from the statements of accused no. 5 to the magistrates, Exhibits Y and Z, that special attention was given by himself, Themba and Mandla Langa to aid children from Port Elizabeth to leave the Republic for military training. In view of what we know from the contents of no. 5's statements (20 and in view of points A to G set out above, the question now arises whether any other reasonable inference can be drawn from the evidence summarised than that these children were aided by no. 5 (and for that matter by no. 4) to leave the Republic for military training.

From the above it is clear that the Court is called upon to rely on circumstantial evidence. In J.C.Ferreira's work STRAFPROSES IN DIE LAERHOWE, Second Edition, page 583, the learned author states as follows:

"Omstandigheidsgetuienis. Die feite in geskil hoef nie (30 noodwendig deur direkte getuienis bewys te word nie.

Omstan=/.....

Omstandigheidsgetuienis is getuienis waaruit die hof 'n afleiding kan maak ten opsigte van 'n punt in geskil alhoewel dit nie die betrokke punt op 'n direkte manier kan bewys nie. Waar met omstandigheidsgetuienis te doen gekry word, is dit telkens die funksie van die hof om die waarde daarvan te bepaal. In R.v. Blom, 1939 A.D. 188, het Hoofregter WATERMEYER neergelê wat by die oorweging van dié tipe getuienis in ag geneem moet word. Op bladsy 202 sê die Regter:

(10)

'In reasoning by inference there are two cardinal rules of logic which cannot be ignored:

- 1) the inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.
- 2) The proved facts to be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct.' (20

Hierdie reël is deur die volgende dictum in R.v. De Villiers aangevul, 1944 A.D. 493 op bladsy 508 tot 509:

'The Court must not take each circumstance separately and give the accused the benefit of any reasonable doubt as to the inference to be drawn from each one so taken. It must carefully weigh the cumulative effect of all of them together and it is only after it has done so that the accused is entitled to the benefit of any reasonable doubt which it may have as to whether the inference of guilt is the only inference which can reasonably be drawn. To

put the matter in another way, the Crown must satisfy the Court not that each separate fact is inconsistent with the innocence of the accused, but that the evidence as a whole is beyond reasonable doubt inconsistent with such innocence.'

A note at the foot of page 584 reads as follows:

"Na dieselfde beginsel is in Mtembu, 1950(1) S.A. 67 Appèlhof verwys:

'A trier of facts is not obliged to isolate each piece of evidence and test it by the test of reasonable doubt.' (10

(Sien ook Hlongwane, 1959(3) S.A.337 A.D.,
Dhlomo, 1961(1) Prentice Hall H.54 A.D.,
Ressel, 1968(4) S.A. 224 A.D.)"

The learned author goes on to say:

"Met goedkeuring is ook in die saak verwys na die volgende stelling van Best: Evidence, Vyfde uitgawe, paragraaf 298:

'Even two particles of circumstantial evidence though each taken by itself, weigh but as a feather, join them together you will find them pressing on the delinquent with the weight of a mill-stone.' (20

Besonder leersaam in hierdie verband is ook Appèlregter MALAN se opmerking in R.v. Mlambo, 1957(4) S.A. 727 Appèlafdeling op 738:

'In my opinion there is no obligation upon the Crown to close every avenue of escape which may be said to be open to an accused. It is sufficient for the Crown to produce evidence by means of which such a high degree of probability is raised

that/.

that the ordinary reasonable man, after mature consideration, comes to the conclusion that there exists no reasonable doubt that an accused has committed the crime charged. He must in other words be morally certain of the guilt of the accused' and there is a note: sien ook Rama, 1966(2) S.A. 395 A.D., Screech, 1967(2) S.A. 407 Oos-Kaap."

The learned author continues:

"In elke geval waar ons 'n sogenaamde feitlike vermoede voor hande het, het ons met omstandigheidsgetuienis (10 te doen waaruit die hof 'n afleiding kan maak. Die een gevaar waarteen gewaak moet word, is om afleiding met spekulاسie te verwar. In S.v. Cooper word verklaar, 1976(2) S.A.875 (T) op 888:

'When triers of facts come to deal with circumstantial evidence and inferences to be drawn therefrom they must be careful to distinguish between inference and conjecture by speculation. There can be no inference unless there are objective facts from which to infer the other (20 facts which it is sought to establish. In some cases the other facts can be inferred with as much practical purposing as if they had been actually observed. In other cases the inference does not go beyond reasonable probability, but if there are no positive facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture.'"

Bearing in mind the definition given by Ferreira of what (3C circumstantial evidence is and applying the principles laid

down in the cases quoted by the author, and bearing in mind the evidence set out above under points A to G, seen in its totality, and taking into account the defence which was advanced and which has been rejected by the Court, coupled with the failure of the accused to testify and to give an explanation, the Court is satisfied that the inference of guilt is consistent with all the proved facts, and that the proved facts exclude every other reasonable inference.

The question now arises whether circumstantial evidence⁽¹⁰⁾ can serve as corroboration of a confession as required by Section 209 of the Criminal Code. In R.v. Sikosana, 1960(4) S.A. 723 A.D. at page 729C, VAN DER HEEVER, J.A., is reported to have said the following: (I quote from page 729 paragraph C)

"The danger of innocent persons freely and voluntarily confessing their guilt in connection with crimes which either they did not commit or which were in fact not committed by anyone is no doubt slight. As a result of accumulated experience however, different safeguards have been devised in different countries to provide for what must be exceptional occurrences, namely confessions by unbalanced individuals to being guilty of crimes which they never committed. Our practice in this regard has been codified in Section 286(2), presently Section 209 Act 59 of 1977. I find there no limitation placed upon the kind of evidence which may adequately confirm the confession or proof aliunde the commission of the offence charged. Proof of either or both of these factors may be purely circumstantial, but may conceivably be so utterly conclusive as to be far

more satisfactory than the testimony of a person who purports to have been an eye-witness. In this case we apart from the disappearance of Maria and her abduction by appellant at night evidence of appellant's conduct which he strenuously denied and which is, in relation to his confession, aliunde."

And at the bottom of the same page the learned Judge went on to say: (Page 729)

"If one puts aside far-fetched conjecture it ^{seems} to me that the circumstantial evidence in this case consist= (10) ing of so many probative factors, all pointing in the same direction, leads one irresistably to the conclusion that the appellant's planned and executed the removal of an unwanted wife."

To my mind the confession of accused no. 5 is corroborated by the circumstantial evidence. The Court finds that accused no. 5 aided the following persons whose names are listed in the Further Particulars, namely

No. 3 - Duma Mkalipi

No.11 - Themba Gcina

No.35 - Mhlamli Namba

No.45 - Nomama Charles

No.49 - Majolefa Vinqi

No.71 - Thobeka Mjuleni and

No.73 - Zodwa Zini to leave the Republic for military training - which training would be of use to any person intend= ing to endanger the maintenance of law and order.

Upon such proof as was held in S.v. Mdingi, 1979 (1) S.A.309 A.D.:

"The accused is burdened with the onus of proving beyond reasonable doubt that he did not aid such other

person/.....

person to undergo such training for the purpose of using it or causing it to be used to commit any act likely to have any of the results referred to in Sub-section (2) in the Republic, or any portion thereof."

The accused failed to rebut the onus. Thus his guilt stands proved on the main count. The State however called two witnesses who gave direct evidence regarding the alleged involvement of accused no. 5 with persons leaving the Republic for military training, namely Harry Sipamla and Sandile Tali.

HARRY SIPAMLA lives in Diepkloof, Soweto, Johannesburg. (10)
He is well educated for a man of his background, having passed Std. 10 and having done B.Sc I. He testified that he knew accused nos. 5 and 6. Accused no. 5 was a friend and accused no. 6 was what he referred to as a "home boy". It is clear from his evidence that this term shows that Harry felt much closer to no. 6 than to no. 5 because of this relationship referred to by himself. He regarded no. 6 "as being his younger brother".

In October, 1977, accused no. 5 visited Harry at the latter's house in the company of three young men. One was (20) introduced by no. 5 as his nephew Sicelo Ngeleza (see Further Particulars page 15 no. 33, page 30 no. 33 and page 34 no. 33). No. 5 and three young men stayed at Harry's house for about two hours visiting. Accused no. 5 said they were from Port Elizabeth and in Johannesburg for a holiday.

The fact of this meeting was confirmed in cross-examination. It was put to the witness that no. 5 told him that the boys were in Johannesburg to take part in a play called "The Rubbish Bin". This he denied.

A week later Harry and no. 5 met again. Harry's (30) evidence is that on this occasion no. 5 told him that the

three youngmen were due to go overseas for training and that they were from Port Elizabeth.

Cross-examined on this point he said that no. 5 had told him that they were going for military training. This Harry said after he had refreshed his memory from a note book, Exhibit H, after he had given his evidence in chief. The criticism levelled at Harry by the Defence on this point is to my mind greatly, if not altogether, negatised by the fact that we know that Sicelo Ngeleza did in fact apply for a passport. The other basic point about his evidence is (10 the warning he gave accused no. 6. In this regard Harry's evidence is that he warned accused no. 6 against no. 5 after Harry had met no. 6 at his (Harry's) house. He warned no. 6 that no. 5 was involved in politics and no. 6 would be in danger of arrest.

In cross-examination it was conceded that this warning had been given.

The Defence seriously criticised the evidence of Harry in that Harry had warned no.6 alone (against arrest) and had not done so in regard no. 5 who was his friend. This (20 criticism to my mind loses sight of the fact that Harry and no.6 both come from the same district, namely Herschel, he considered him as a "home boy" and as a younger brother. In addition it would have been rather strange for Harry to warn no. 5 against himself. The probabilities are that soon after no. 5 had first introduced the three young men to Harry, the latter became aware of the political activities of no. 5. There are contradictions in the evidence of this witness and I have approached his evidence with caution. He was at ease in the witness-box and created the impression that he was (30 reluctant to testify against friends. But when he was

attacked/...

attacked in cross-examination and it needs to be said that he was extensively and thoroughly cross-examined, he came out with particulars which he at first did not furnish in examination in chief.

Whilst I do not consider him to be the best of witnesses, the hard core of his evidence to my mind remained intact inasmuch:

- 1) That he was visited at his home by accused no. 5 and three young men - one of whom was Sicelo Ngeleza;
- 2) it is clear from other evidence that Sicelo was one (10 of those who later applied for a passport.
- 3) That he warned accused no. 6 against the activities of no. 5.

Finally, Harry's evidence is corroboration for the statements of accused no. 5 to the magistrates in regard to what the actions of no. 5 were with reference to aiding persons to leave the Republic for military training.

SANDILE MATHEWS TALI is the other witness whose evidence is to be considered. He is 21 years of age, slight of build. He told the Court that he was awaiting trial on a count of (20 murder. He knows accused nos. 1, 3, 5 and 6.

I think it is advisable to refer at this early stage to an incident in court regarding this witness. At a certain stage of the proceedings, shortly after cross-examination had started, I noticed that the witness seemed weak and was sweating profusely. I asked him whether he would like to sit down and whether he was tired. He replied that he was ill and had not taken pills which had been prescribed for him. I was not sure that the witness was able to continue and adjourned the court so that he could be examined by the (30 district surgeon. This was duly done and the district

surgeon/..

surgeon later gave evidence that Tali was in fact acutely ill from tuberculosis. In view of this the witness stood down from February, the 8th until March, the 21st. These facts have to be borne in mind when examining the evidence of this witness - chiefly on account of the fact that on the day he first appeared in court he was extremely ill and this fact was unfortunately not timeously known to the court.

His evidence mainly concerned accused no. 1. In view of no. 1's changed plea I do not propose to deal with his evidence as to how he met no. 1 in November, 1977. He freely admitted that his memory was vague in regard to that meeting and what was said there. He was sharply attacked in cross-examination on this point but in view of his condition and the lapse of time since the meeting, I do not think that the criticism levelled at him is entirely justified. (10

He told the court that after his arrest on the murder charge, he was placed in Section D.4. He shouted for water. A prson in the cell next to him - one Greeves - replied that he (Tali) would only get water the next morning. The next morning he met Eric whom he identified in court as accused no. 5 and Gray whom he identified as no.3. This was in the bathroom. Accused no. 5 introduced himself. No.5 asked the witness what he had been arrested for and was told. Accused No. 5 asked him whether he "wanted to be one of the comrades" and Tali said he would. Accused no. 3 remarked that he (no.3) was fortunate that he had been arrested with his leader, no.5. No. 5's reaction to this remark was to confirm what no.3 had said. (20

At a later stage when doing exercises in the yard, accused no. 5 told Tali that should he (Tali) be released on bail/.. (30

bail he should go to house no. 5113, Kwazakele, Port Elizabeth. No. 5 said that he was sure that he (no. 5) would be acquitted in his case and Tali should go and look for him (no. 5) there. No. 5 said if he was not at this house, Tali should board a removal truck and get a lift to Johannesburg. Upon arrival there, he should go to Orlando East where he should enquire about Eric Ngeleza who was a boxer. Should Tali arrive there he (no. 5) would make out a passport for Tali and Tali would then be accompanied to Swaziland by an old lady.

Upon arrival in Swaziland, Tali should enquire about (10 the Roman Catholic School and ask for Stanley Mabizela. The latter would see that Tali underwent military training. After completing the training, he would return and take over the country.

In chief he testified that nothing was said about an organisation, but under cross-examination he said that no. 5 claimed to be a leader in the A.N.C.

Tali reported to a warder, Sergeant Bosch, and at a later stage the police obtained a statement from him.

When cross-examined Tali did not contradict himself (20 materially regarding the incident at the gaol. He did however add materially to particulars he had given in examination in chief.

Tali was criticised because he had not asked no. 3 what no. 3 had done. But Tali gives an acceptable explanation of why he had not done so, namely that he thought that no. 3 might take exception or might be offended if he, Tali, did ask (see page 877).

He was also criticised in cross-examination for not having referred to terrorist activities in his examination (30 in chief. This is however not so. At page 197 of the record

the following appears: (Line 12)

"Q. Was anything said about any organisation? —
No, except that he said there were some terrorists
in the Transvaal.

Q. Who said so? — No. 5."

When weighing the evidence of the witness, one should bear in mind firstly the state of his health on the day when he first testified, and also the fact that he was subjected to a most searching and thorough cross-examination by able counsel. (10

A factor not to be lost sight of is that in his account of what took place between himself and no. 5 in gaol, he gives a wealth of detail — also in regard to matters in Johannesburg and Swaziland — details which to my mind, Tali could have learnt in no other way than from accused no. 5 in person.

Moreover, Tali's evidence is corroborated by the facts contained in the statements of accused no.5.

In spite of the criticism which may be levelled at the evidence of Tali, I feel that on the basic facts of his (20 testimony he was not shaken and I regard him as a truthful witness in regard to those facts.

The admissions made by accused to these two witnesses support the circumstantial evidence which has already been referred to which shows that, apart from the accused's confession, he is a person who took an active part in sending persons out of the Republic for military training.

In view of what I had said above in regard to the circumstantial evidence and to the direct evidence, accused no. 5 is FOUND GUILTY ON THE MAIN COUNT. (30

ACCUSED NOS. 1, 2 and 4 HAVE NO PREVIOUS CONVICTIONS.

ACCUSED no. 5 ADMITS PREVIOUS CONVICTION.

BY MR. ALEXANDER IN MITIGATION:

Your Worship, what shall I say will have reference to the nature of the offences of which the accused have been found guilty.

COURT: I am sorry, Mr. Alexander, perhaps I should call on the Prosecutor first, whether he has any remarks?

I omitted to do so - (interrupted)

MR. ALEXANDER: Yes sir, it may help us considerably if we (10 know his attitude.

PROSECUTOR ADDRESSES COURT IN REGARD TO SENTENCE.

MR. ALEXANDER: Your Worship, my learned friend, as usual, has been more than fair and I trust that what my learned friend says on behalf of the State will impress the court as reflecting knowledge by the authorities of the full circumstances of the crime. That knowledge - as many as we all know - extends to facts which perhaps have not been placed before the court, but does reflect an approach and an attitude by those who advise my learned friend. The court will not (20 likely disregard so weighty a recommendation as made by my learned friend.

In fact sir, on the facts of the case I would submit that there is full reason for the court to exercise a measure of leniency[?] especially in regard to accused nos. 1 and 4 whom I shall deal with first.

I am in no way attempting to minimize the gravity of this offence of terrorism because the mischief which the Statute aims to combat is selfevident, it affects the tranquility of the country, it affects law and order. The (30 fact that a sentence is prescribed which starts with a minimum

of 5 years is an indication of how seriously the legislature regard contravention of the main count. Nevertheless, awful power is placed in Your Worship's hands or spare the court in giving expression to a sentence must draw upon its own sense of justice of fashion, of fairness and understanding as opposed to the clinical exercise of rendering a verdict which is a matter based simply on assessment of facts.

I must appeal to your Worship to exercise a measure of mercy where your hands are tied by the legislature in having (10 to impose a minimum sentence of 5 years, and one which we know by regulation of the Minister of Justice in terms of the Prisons Act is excluded from the provisions of remission.

This I can assure your Worship is my own experience in these matters, I think it is wellknown in any case and that being so, sir, is not the case which the judicial officer sometimes has in mind as a sentence may be reduced by administrative methods; this is a case where the full sentence will have to be served.

Secondly sir, the Court cannot but have regard to the (20 fact that each of the accused has been already in custody for a period of a year. That normally would entitle them to consideration by a court in an ordinary matter. It is regretably not a factor which Your Worship can take into account in attempting to reduce a minimum sentence, but it certainly is a factor which Your Worship has to consider whether their sentence should be more than the minimum sentence.

The personal factors - accused no. 1 and no. 4 - are unusual. Before differentiating between them, Your Worship has heard in the evidence that there were other people who (30 motivated those in Port Elizabeth to go and leave the country.

Certain/.....

Certain names have been mentioned in the evidence. I ask the court to find that the main instigators of this departure from the city not either ^{accused} no. 1 or accused no. 4, rather people appear to have played a far more prominent part, the names of Mandla had been heard quite often, it certainly appears in the statements of these two accused. The name of Sam Kulathi, Thembiso, Manwabisi and the woman Portia all appear to have played far more active roles in selecting these children than either accused no. 1 or accused no. 4. (10

What I am saying sir, in no way attempts to minimize their guilt because that is a fact of the verdict. But the Court cannot but heed the situation that it existed in the townships in 1977 of unrest, of distress, leading to a movement amongst the student population of boycott of schools, ^{an}unnatural and unhealthy situation which provided very fertile ground for the planting of this type of unlawful seed. FACT of life that - in my submission at least - that if it were not for the degree of unrest in the townships, whatever the reasons may be and I am not commenting on that, (20 one doubts whether these children would have been moved to leave the country (faulty recording).

And one then, sir, must view the situation as not being in the case of either accused isolated from the trend in the society in which they lived. I would venture the thought that they are swept up by a trial of which they are a part. It is sad indeed for a young man of 23, like accused no. 1, a young man of obvious intelligence, ^{should} get himself involved in a matter like this where his whole life is ruined for he will be very much older when he comes out. All the (30 opportunity that should be there for a young man of such brightness/...

brightness will be denied him, and that is indeed a very heavy punishment.

We know that in his case, sir, he is serving a sentence at the moment. It is not a previous conviction and that is why it hasn't been proved but the Court is aware that he has been detained at Hankey. The Court should know that he was sentenced to one year's imprisonment arising out of some event at the time of the student disturbance in 1977.

What we do know, sir, from his statement that what he did himself in the way of recruiting seems to have been (10 somewhat minimal. As I read the evidence, sir, there were only three people according to his statement whom he personally recruited and those are the people known as Cobra, Vivi and Pagamisi. This appears from his statement. But all the others who he mentions and whom he assisted appeared to have been recruited by others. Your Worship will recall that in dealing with the evidence of Kukulayi and Nombelulu, the part of accused no. 1 appears to have been secondary to those who had incited them to go. In fact he had very little to say, if Your Worship will recall the evidence. (20 It appears that everything had been said already by Portia or Marwabisi or Sam Kulathi.

What he appears to have done, sir, as I see his part, is to have collected money because he was the treasurer of the Students Council and that money was clearly allocated to these people to go from Port Elizabeth to the Reef.

I am not saying - and I am sure the Court doesn't understand me to say - that I am suggesting that he is free of moral guilt. On the contrary his guilt is there, but he he does not appear to have been the main instigator. We (30 know sir, despite lame efforts made by an accused to get

out of his problems, that in fact full cooperation was offered to the police at a very early stage. We know that confessions were taken and Your Worship has been too long on the bench to hold against an accused the fact that he is misguided enough to try and excogitate himself out of a situation of his own making and I am sure the Court will not do that.

But I ask the Court to look at the objective fact that in truth he did cooperate and undoubtedly must have been of assistance to the police in unravelling this crime. (10

I can't - unlike my learned friend - make very much of the fact that he pleaded guilty, because it was in the face of a necessity. The odds were stacked against him, but there is at least a point sir, trial was thereby reduced in length, he threw in the towel and at the same time throws himself on the mercy of the Court. Your Worship has this awful power now to decide what is to become of him.

The Court will have regard to the public interest which requires that people be deterred. The Court will have regard to the principle of punishment that the offender (20 must be punished. At the same time Your Worship is well aware of that classic dictum in the Appellate Division:

"The concomitant of justice is not a sledge-hammer but mercy".

Your Worship has this power to give this man some chance to come out, after a long time, nevertheless take a place in society. One often wonders, sir, if one was drawn into the world which these people lived in, if I were Black, in a situation of unrest, whether one could say "There but ^{for} the grace of God go I". I ask the Court to bear that in mind that these are unhappy times which lead to unhappy conse= (30 quences.

As far as accused no. 4 is concerned, sir, the tragedy is even greater. There is a woman, now aged 36, whom as the Court has heard is a qualified nursing sister who has taken her diplomas both in general nursing and ⁱⁿ midwifery, occupied a responsible position at the day hospital at Kwazakele. A woman who married some 5 years ago, is a mother of a little girl of 5.

COURT: Sorry, married for how long? — She had been married some 5 or 6 years, she is the mother of a child of 5. The personal tragedy is greater because since her (10
detention over a year ago her husband has lost interest in her; she tells me that she doesn't even know the whereabouts of this child or who is looking after this child and I find that very distressing. One wonders, in her case, what made her do what she did. We know as a fact that she was approached by a man called Mandla; he sent a telegram with a code which indicated that certain people received by her would be forwarded up to Johannesburg, but what I don't find, sir, in her evidence is any indication that she personally incited these people to go. (20

There are some 8 people mentioned by her in her statement and it is quite clear on reading of the statement that these people had all been recruited by somebody else, she received money in order to buy them railway tickets. Now Your Worship will see that why I have coupled accused no. 1 and no. 4 together, because the assistance that they appeared to have rendered was giving of some financial aid to people who had already been recruited.

In her case too she cooperated with the police, almost immediately upon her arrest and she too has pleaded guilty, (30
albeit at a late stage in the case, but recognising that

there/.....

there is no point to prolong the trial when her guilt becomes clear. That is a factor taken into account in her favour.

I suggest, Your Worship, that these facts and doubtless many others which I am not aware of, are known to my learned friend for the State and that is why in his experience which is extensive in this type of case - possibly the most experienced Prosecutor as I know in this whole division in this type of case - and make a recommendation as he has done for the guidance of Your Worship. I believe so that (10 the Court would have to find exceptional reason to disregard a request or a suggestion of that nature.

I ask the Court - bearing in mind that these people have been in custody for so long - that it would not lie in the face of justice to send these people to gaol for 5 years and no longer.

I come now to the case of accused no.2.

Accused no. 2 Your Worship knows has pleaded guilty to the least offen^{sive} of the three charges and why it is the least offensive is because it is the Statute which allows (20 the Court to suspend the sentence. Were the Court to require any authority on such a matter sir, I would merely refer you to the recent judgment in the Appellate Division of the S.v. Mothibi, 1977(3) page 823, judgment of His Lordship Mr. Justice CALVERT at page 830 when he is dealing with the contravention of Section 11(a) which is the one we are concerned about. And he deals with the requirement that the imprisonment for a period of not less than one year, not exceeding 10 years which^{as} Your Worship knows is in the Statute, and he says: (30

"The type of acts which are hit by the Section cover,
which/...

which can be hit are unlimited. They cover a large field and that may be such as to constitute a minor contravention of the Statute, or it may be such as to constitute a major contravention. The minimum punishment provided is one year. That sentence could, in an appropriate case, be suspended."

My learned friend asked the Court to suspend her sentence. Here again I say that there is good and abundant reason at this stage even on the evidence to show that accused no. 2 is very small fry indeed. In fact sir, the only evidence (10 that we have, with the exception of the discredited witness Molifi, is her own statement which showed that she too again was approached by somebody else and she tells me that she was approached by this person Nomwabisi of whom we've heard a great deal who was a friend from the township a man about her age, he is a bit older, he was 27 and he reflected again the same type of thing, there are people who want to go, will you please help them. One thing she never agreed to do and the State accepts that, is to send these people off for military training. But there were people (20 who wanted to leave the township for good reason or bad reason. She as a young woman decided to help them and there were two people, again not approached by her because they were brought to her and those two were helped to leave and then Your Worship will recall that there was this rather unfortunate incident with the three young men involved in the shooting of the policeman on the bus after the Sobukwe funeral.

They were brought to no. 2 accused by the man called Patrick who didn't give evidence in the case but has been (30 referred to as one of those responsible for the shooting, but he/...

he was the brother of one Gideon who was a very close friend of the accused. And because of this friendship the one thing led to another and of course one shouldn't allow people to get away, especially after a serious offence like that, you didn't help them, but at times blood is thicker than that and my learned friend for the State accepts that her degree of guilt is such that it obviously not likely to carry a repetition. It is quite obvious to me that my learned friend would not have recommended the sentence he does if he had any fear whatsoever that accused no. 2 (10) were to rest again. Your Worship will bear in mind that she too had been in custody for a year. She is at the moment 26½ and in her case it is also a situation of idle hands because she was trying to become a nursing sister and was waiting for quite a long time to be accepted, and not working. So possibly her not being a case of being idle she would not have been so receptive to improper suggestions made by these people.

COURT: Was no. 1 when arrested, was he still a student or what was he doing? Or was he out of work? -- Well, (20) Your Worship, he is a qualified student in the sense that if the schools had been open, he would have been a student and if the schools were not open and therefore he wasn't. Because at that stage I have a note, I think he was in Std.9 if I am not mistaken.

What I have been asked to convey to you sir, on behalf of both the women is that they are deeply regretful for what they had done. And I mention this sir, not out of any maudlin ideas that because you say you are sorry that excuses all, but the Court may well accept that as a fact that after one year (30) incarceration they have learnt the error of their ways and in the/..

the case of accused no. 4 she will have a longer time to learn the error of her ways.

We ask the court to give accused no. 2 a chance and to suspend entirely, sir, the period of imprisonment. I would say that the Court has a duty to perform to the public. Your Worship - in my experience of this Court - is fair enough, human enough to know that mercy does not bring contempt, mercy will earn respect. I ask this Court to put itself in the position that the justice that we administer in this case will be respected by those who are here to listen. Mercy has its part to play in that. (10

I come now, sir, to accused no. 5. What my learned friend had said cannot be gainsaid. His involvement on his own statement is clearly graver than that of accused no. 1 who (faulty recording). He was a person on his statement who sent the man Mandla who found out, it seems, accused no. 4 and he received on Your Worship's verdict 7 people. Not 75 where the case started but 7. In fact he went to Swaziland and met Stanley Mabizela but it does not in my submission prove that thereby he is a big cog in the machinery. (20 He may have been intended to be, but Your Worship obviously must regard him in a graver light than that of the other accused. Nevertheless, that is not to say that the Court is thereby required to exhort this jurisdiction. There are many gradations between five and ten.

I would say, sir, in my respectful submission that there are far more serious cases that had come before the Regional Court where jurisdiction was extended than this case involving accused no. 5. I can think of cases in the Supreme Court where the minimum sentence has been given for far graver offences than this. I have own in my own experience with (30

a man who actually placed a explosive device on a petrol tanker in the Leopardsvlei Railway Station which had it gone off would have eliminated that part of the West Rand. Fortunately it didn't go off but that was an act of terrorism yet his Lordship - because it was a young man, again a misguided young man - gave him the minimum sentence, 5 years and this was last year.

There have been cases of people who had come back and inflicted harm. In this case fortunately there is no evidence to suggest that any of the people who was sent across have returned to do harm. In fact the one person who went there liked it so little that she came back and obviously didn't do any harm. (10)

Your Worship takes into account the age of a man which in the case of accused 5: 42, married for a long time and he has got two grownup children, aged 16 and 13. He had a very good job as an insurance consultant at the time and one wonders, Your Worship, why a man of obvious intelligence, of remarkable lucidity, gets himself involved in a situation such as this. One can only equate (20) in my view that the situation on the Reef was very much the same as in Port Elizabeth. The feelings were running high, people getting themselves swept up and emotions lead to their downfall because downfall is certainly graceless. Nevertheless, sir, there would be in my submission the extreme sort of case, one of actual acts of terrorism which would warrant this Court going to the maximum of jurisdiction.

Bear in mind sir, if I may ask you that he too has been in custody for a year. Bear it in mind sir, in spite of his participation that his cooperation with the police (30) extended from the moment of his arrest and the night of his arrest/..

arrest according to the evidence, he was taken hither, thither and yond to help the police and undoubtedly did and he too was misguided enough to try and question that and then gets run out of lies, if I can use that phrase. But sir, he too in his case would not be misplaced, not that I am asking Your Worship nor can I to equate him with the other accused because the facts are that much more against him. But nevertheless sir, it is an appalling thing where a man of 42 with a relatively clean record is now faced.. end of his life, for at least 5 years and (10 probably more. He is no different, sir, I believe from many others who are not before the Court. He too had to be approached, sir. He is not the arch instigator, he was approached, approached at that level. In fact sir, if you come to think of it that all he did on the evidence was to send away 7 people, so his involvement could not have been as great as otherwise perhaps imagined. To that extent he warrant some element of compassion.

The matter rests now in Your Worship's hands.

COURT: Thank you, Mr. Alexander. The Court will adjourn (20 now for a while to consider sentence. I shall try to be ready within about half to three-quarters of an hour, but I cannot guarantee that..(interrupted)

MR. ALEXANDER: No, of course.

COURT ADJOURNS.

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COURT RESUMES:S E N T E N C E

We have come close to the end of what has been an extended trial and I am faced with the onerous task of trying to impose a just and proper sentence.

In approaching this duty I can do no better but to quote the opening remarks of his Lordship, the Judge President of the Eastern Cape, Mr. JUSTICE CLOETE, in the case of the S. v. Dofu and 12 others, Case No. CC 15/78, Grahamstown on the 18th of May, 1978, a matter of public violence where (10 the learned Judge President said:

"I have given careful and anxious consideration to the sentences which I should impose upon you. The imposition of sentence in criminal cases is always an unpleasant duty which the Court has to perform. That duty becomes the more unpleasant and painful when the Court has to sentence young people like you who are now before the Court convicted of serious crimes. It is not only an unpleasant duty but it is a very difficult one and at the outset of my remarks I want to say that (20 you are indeed greatly indebted to your counsel for what he has done and said on your behalf. He said, and he has done thoroughly everything that could have been said and done on your behalf in this case. Now in passing sentence the principles of our law require that I should take certain considerations into account. Broadly speaking there are four aspects with which I have to deal and which I have to give consideration to.

The first is the crime itself which requires an assessment and an evaluation in relation to the society (30 in which we live and our system of criminal law, and

an/....

an assessment of the peculiar facts relating to the commission of the crime. The second of these is the interests of society, the society in which we live. Because the courts have been created and exist in an ordered society in order to administer to justice on behalf of the people who live in that ordered society, and the Courts are required to give effect to the things of outrage of the society in which the crime has been committed because the ordered society in which we live condemns criminal actions as they are defined (10 by our substantive criminal law, and in order to avoid the people taking the law into their own hands or matters into their own hands, we as a civilised community deal with the commission of crimes through channels of the Courts of Law. In this there is an element of retribution which has to be taken into account because the society requires retribution and this is not to be equated with revenge or the meting out of vengeance. Then the interests of society require the sentence imposed to be related to ensure (20 that the accused persons sentenced will not repeat the crime or any similar crime.

Then the punishment must be directed to act, or calculated to act, as a deterrent to others who might intend to commit or be tempted to commit a similar crime. Society in which we live as an ordered society must be protected against the wrongdoers, criminal acts by wrongdoers, by removing them from society if that should be necessary and that is where imprisonment comes in. So that imprisonment is not designed only (30 as a punitive measure but also a protective measure to society/..

society until the criminal who has been sentenced is in a position to return to the ordered society. The third principle which the law requires me and the Court to take into account is the individual himself who is to be sentenced, and this requires that I should give careful consideration as I have done since the adjournment to the personal circumstances of each one of you. Your counsel has referred to the decision in the S.v. Scheepers, 1977(2) S.A. 154 where the principle was laid down as follows in the (10 Appellate Division:-

'It is an established principle of our law that, in regard to punishment there should be individualization. Not only must the nature of the offence be taken into account and the interests of the public protected, but the interests of the offender should also be cared for and in the process of individualization sociological circumstances, punishment experience factors, the prospects of rehabilitation and other relevant circumstances which surround the individual (20 cannot be lost sight of.'" ^{this}

I shall keep in mind judgment in approaching the matter of sentence in the instant case. In dealing with the four accused I propose to follow the sequence in which Mr. Alexander addressed the Court, namely to deal first with accused nos. 1 and 4, then with no. 2 and finally with no. 5.

In doing so I shall bear in mind everything that has been said on behalf of all of you by your able counsel. I have made full notes of his address on sentence. Should this matter go on appeal I shall request that his address (30 be typed because, as I have said, I shall bear in mind everything/..

thing he has said on behalf of each one of you. But time precludes me from repeating all that has been said.

I shall also bear in mind the remarks of the Public Prosecutor, Mr. Crouse, namely that he is not pressing for more than a suspended sentence for accused no. 2 or for more than the statutory minimum for accused nos. 1 and 4.

I am bound to give the most earnest consideration to these remarks of the Prosecutor but I am of course not bound by it - as is clear from the judgment of the Judge President of the Transvaal in the case of the S.v. Breytenbach. (10

The personal factors of accused no. 1 are as follows: no. 1 was 21 at the time of the commission of the offence, he is a first offender although at the present moment he is serving a sentence. He has been in custody for over a year. He used to be a student and had been at school but due to the state of unrest in the Townships was at the time not attending school. He was however a very active member of the Port Elizabeth Students Representative Council (P.E.S.R.C.) and in fact he was a committee member and handled the finances of the P.E.S.R.C. (20

The part played by accused no. 1 in the commission of the offence was fully set out in my reasons for judgment and I do not propose to repeat them here. I consider it an aggravating factor that no. 1, a young man correctly described by his counsel as a young man of above average intelligence, had misused his position on the P.E.S.R.C. to aid him in the commission of a most serious offence. His actions were well planned and extended over a considerable period. He had enough time to reflect. He played a considerable part in the unlawful activities. (30

It is true that during the trial he pleaded guilty but

it /.....

it is equally true that he did so at a time when the odds were stacked against him.

The crime committed by accused no. 1 as by accused nos. 4 and 5 falls within the category of crimes against the State and, in the words of the learned Mr. Justice CLOETE in the case quoted at page 4 of the typed record of the judgment:

"It is a fundamental principle in any organised society that authority and orderliness should prevail in that society and the people of that society are entitled to expect to be allowed to live in peace, in harmony and unmolested." (10

Taking all the factors into account, taking all the circumstances into account accused no. 1 is sentenced to 9 YEARS IMPRISONMENT.

Accused no. 4 is 33 years of age. She has been in prison for a year. She is a qualified nursing sister and was working as such at the time of her arrest. She is married and has a child 5 years old. Since her arrest her husband and child have disappeared. It is clear that she has been very hard hit by the fact of her arrest. (20

It is also clear that Mandla approached her to assist in the unlawful activities into which she was drawn. Accused no. 5 also played a considerable part in getting her to play her role in sending young people to Johannesburg with the final destination some foreign country. Her participation in the offence has also been fully set out in my judgment and need not be repeated here.

She is a mature woman of intelligence. She was not prevailed upon to act in the manner she did and played her part quite willingly. (30

In all the circumstances she is sentenced to 8 YEARS IMPRISONMENT.

Accused no. 2 was 25 years old at the time of the commission of the offence. She is single, was unemployed and at the time trying to be accepted for training as a nursing sister. She has been in custody for over a year, she is a first offender.

It is stated that both she and accused no. 4 are deeply regretful over their participation in the offence. She has been found guilty on the second alternative count. (10 In terms of S.v. Mthibe, 1977(3) S.A. 823 at 830, the Court is entitled to suspend the whole of her sentence. I do not think that justice will be done if I do so. She is sentenced to THREE YEARS IMPRISONMENT of which two years are suspended for 5 years on condition that during that time she does not commit the same offence or any offence involving the safety of the State.

Accused no. 5 is 42 years old. He is married and has two children aged 13 and 16. He had a good job as an insurance consultant in Johannesburg. He is a man of (20 intelligence. He has a previous conviction which is unrelated to the present offence. He has been in custody for over a year. It has been stated that he cooperated fully with the Police.

The role played by accused no. 5 has been fully dealt with in my judgment and it need not be repeated here. He was described as one of the "top men" in the A.N.C. and although others such as Mandla were above him at the start, on his own statements he was advanced in the organisation as he went along - in all probability because of the satisfactory (30 manner in which he carried out his duties.

He underwent training himself in Swaziland and the whole case shows that he was a very able and willing organiser. I would describe him as the king-pin in that part of Soweto where he was in charge of operations. He certainly had a remarkable hold over those who worked with or under him.

He is sentenced to 10 YEARS IMPRISONMENT.

--ooOoo--

MR. ALEXANDER: Your worship, in the case of accused no.4 it is the intention to note - I am sorry, excuse, no. 2 - (10 an appeal against the sentence imposed. I am aware that the question of bail only arises once such notice has been lodged, but on the basis that that will be done immediately, I would apply for a suitable bail to be fit by Your worship and in regard to the fact that she has been in custody this length of time and that there is no suggestion that we are aware of that she will not answer to her sentence if her appeal should fail.

COURT: Have you any remarks on the matter, Mr. Prosecutor?

PROSECUTOR: Sir, I have discussed the proposition with (20 the investigating officer and the State opposes the application of bail.

COURT: On what grounds?

PROSECUTOR: Sir, the information I have from the Police is that they are of the opinion that the accused would not stand her trial if she is let out on bail.

COURT: Is that based... ?

PROSECUTOR: Could I have a short adjournment to consider.. I only asked them (Court speaking simultaneously - inaudible) We haven't discussed it.

COURT: You can well appreciate that I would need something
more/..

more than that in order to be able to.. (interrupted)

PROSECUTOR: I just want to clarify the position, then can I... (incomplete).

COURT ADJOURNS.

COURT RESUMES:

PROSECUTOR: The State has considered the position regarding the bail of accused no. 2. We have now come to an agreement that bail could be fixed in the amount of R500 and the accused to report on the first day on which she is out on bail at the Kwazakele Police Station between 6 and 8 in the evening (10 and thereafter on every Monday - (interrupted)

COURT: On the first day of her release?

PROSECUTOR: She is to report on the first day she is released and after that - (interrupted)

COURT: Could it not be the first day after her release? If she were released this afternoon, she would have to report this evening..(interrupted)

PROSECUTOR: Or the first day after her release then, sir, as the Court pleases. Every Monday, Wednesday and Sunday of every week between the hours 6 and 8 p.m. (20

COURT: Did you say, Mr. Prosecutor, that this has been agreed between yourself and the Defence?

PROSECUTOR: That is correct.

MR. ALEXANDER: I might note that there are notices of appeal drawn up and ready for lodging. They are about to be signed by all the accused who are appealing. They should be lodged with the Clerk of the Regional Court.

COURT: There is a Clerk of the Regional Court appointed locally.

MR. ALEXANDER: In Humansdorp?

COURT: Yes. And as a matter of fact I asked the magistrate

whom /..

whom I saw in the passage here to keep someone available should you be able to meet these requirements this afternoon.

MR. ALEXANDER : Yes well, we are able to do so, sir.

COURT : He is available.

MR. ALEXANDER : I thank you, sir.

COURT : Accused no. 2, stand up please. Bail is fixed on your behalf in the amount of R500 cash. In addition to the ordinary conditions on the bail bond which will be read out to you by the magistrate before whom you will enter this bail bond.. rather this bail, you are to report (10) at the Kwazakele Police Station between 6 and 8 in the evening after the first day of your release and thereafter every Monday, Wednesday and Sunday between the same hours. Now if you are released this afternoon, then you will have to report tomorrow evening between 6 and 8. Tomorrow is Thursday. This will mean that you will then again have to report on Sunday and thereafter on Monday, Wednesday and Sunday between the same hours. The conditions will remain in force until your appeal has been heard and of course your release this afternoon is subject to the handing in of a (20) Notice of Appeal to the local Clerk of the Court. There is a Clerk of the Regional Court appointed locally. Thank you, you may sit down.

-----oOo-----

TRANSCRIBER'S CERTIFICATE

I, the undersigned, hereby certify that the foregoing is a true and correct transcription of the original audible evidence recorded by means of a mechanical recorder in:

THE STATE v. M. KALAKO + 5 OTHERS

Kurtman

Transcriber
(Pages 906 - 977)

LUBBE RECORDINGS

--ooOoo--

PREVIOUS CONVICTIONS

AGAINST

ERIC BANGANI NGELEZA

PORT ELIZABETH

(Extract from the Criminal Record Book).

Office of the Magistrate.

Case No.	Accused (Name under which convicted.)	Crime (of which convicted)	Date of conviction	Date of sentence	Place where con- victed	Sentence	Remarks
419653/73	Eric Ngeleza	Theft-by false pretences-cash-obtained to pay for an electric cable R568	19-2-74	19-2-74	Oriando	6 months imp.	suspended for 3 years on condition accused is not convicted of theft forgery or fraud committed during period of suspension further that the accused re-fund the amounts of R283 to Vincent Dlemini and R285 to Herbert Nkabinde. Both these amounts are to be paid in at the Clerk of the Court Oriando on or before 28.2.74

A true extract.

The accused having, been informed that it appears that _____ was convicted of the crimes above stated, and upon being called upon to admit or deny the convictions, declares:-

Place: _____

Date: _____

Clerk of the Court.

MAGISTRATE.

876

EXHIBIT "A"

ADMISSION IN TERMS OF SECTION 220 OF ACT 51 OF 1977

1. Accused No.4 admits that the telegram and contents thereof annexured marked "A" to the further particulars of the 7th December 1978 (Page 21 of the Charge) was sent by her to the person indicated therein as the addressee, namely one Eric Nqeleza on the 8th February 1978.

2. The original telegram referred to is annexed hereto as Exhibit "B".

'A'

SIDWELL

EXHIBIT "B".

Amount: 30c

POST OFFICE TELEGRAPHS

312

Sent

Class	Office of origin	Words	Date	Time
		10	8	12.25

581585

1225

22

TO: ERIC NGELEZA
BOX 139
ORLANDO 1804

POSTING FILMS WEDNESDAY

FROM: FEZIWE FEYA.

Not to be telegraphed	<u>SIGNATURE OF SENDER:</u> (SGD.) F.F.	<u>ADDRESS:</u> 27 Dubu Street, N.B.
	<u>NAME IN BLOCKLETTERS:</u> FEZIWE FEYA	Telephone No. ---

N.B. - The Department is not liable for losses incurred through incorrect transmission, delay or non-delivery of telegrams. Indistinct handwriting can cause delays and incorrect transmissions.

EXHIBIT "C"

IN DIE STREEKHOF VIR DIE STREKAFDELING VAN DIE OOS KAAP
GEHOU TE PORT ELIZABETH

In die saak van

DIE STAAT

teen

- (1) UPPINGTON MZWANADODA KHALAKO
- (2) SYLVIA KOLEKA FOLEY
- (3) GRIEVES MTUTUZELI TIMNIE
- (4) JOSEPHINE BHOROLANE
- (5) ERIC BANGANI NGELEZA
- (6) SIYALO WEAVER MAGCAI

MAGTIGING INGEVOLGE ARTIKEL 234(2)(a) VAN WET NO. 51 VAN 1977

Ek, EDWARD CHARLES HELLER, Prokureur Generaal van die Oos Kaapse Afdeling van die Hooggeregshof van Suid-Afrika magtig en gelas hiermee, in terme van artikel 234(2)(a) van Wet No.51 van 1977, die voorlegging in bovermelde strafregtelike verrigtinge (waar bo-gemelde persone verskyn as beskuldigdes in die Streekhof op n aan-klag van O/A 2(1)(b) van Wet 83 van 1967 met alternatiewelike aan-klagte) van n oorspronklike telegramvorm afgestuur deur beskuldigde No.4 in Port Elizabeth aan beskuldigde No.5 in Johannesburg en wat lui "Posting films Wednesday".

GEGEE onder my hand op hierdie 16DE dag van NOVEMBER 1978.

(GET.) E.C. HELLER
PROKUREUR GENERAAL

(ENVELOPE)

A.3

EXHIBIT "D"

4/2673

STAMP

R1,50

Kigeugeu
Precis Octavia

TANZANIA

MR. SIYALU MDIULI
2593 ZONE 2
DIEPKLOOF
JOHANNESBURG

482

Sis Thandy

I am safe this end hoping and wishing all of you the same. Remembrance forces me to take a pen and dot these consolation. Love never gives up, and it's faith, hope and patience never fails. Even if I'm far from you this doesn't mean I have forgotten you but means some lot of remembering and love which you have showed to me. The only sought is that don't panic, stay with determination of what will happen not very far, theres no easy way to freedom but hope we will manage to reach it. I will again write you while at school. We will be opening on the 1st September. Flying next month to Cuba. Here more from the brother. Greet all, tell them I'm missing them. Only loneliness which plays with me. Ndiniphupa daily. Alute Continua! Victory is Certain!

LOYISO (NUNU)

but please remember there are many ways to kill a cat. We should suffer both sequences but determently and being dedicated. Theres no more turning away. Aluta continua!

Viva to all.

LOYISO (NUNU)

I can be happy if you can send somebody whom I know this side but should be a student.

N.B. Be careful for everything, not to inform anybody,

I'm still keeping good under the frustrating conditions of this place. I really don't know whether you received my letter which was posted early June. I couldn't do otherwise. I felt like writing but now surprised by quiteness.

I'm still waiting for my scholarship, but I'm confused because I feel lonely without having relative. There are even lots of fun going on to the unknowns that's why I asked you to send me some few clothes, mainly underwears, shoes and jeans while I'm still waiting for you. I don't know whether you have changed, or maybe conditions are worse for you.

I stated clearly on that letter and even explained everything. Whenever you are to explain something official for me or even if you come this side and be interviewed don't forget that you are my uncle and I have no parents. I have said this purposely avoiding some problems which may recently need a lot of explanation and tribalism.

Where are my parents? I hope you are still passing my best regards to them. Ndiphupa Kabi sometimes and that worries me especially when I don't know what's happening at home. Hope you will explain everything to Sister Thandy. Greet all at home.

984

Esch. "F"

Envelope

esch. "G" + "H"

REFER TO ORIGINAL
COURT RECORD

BOY

EXHIBIT "K"

MAGABAZANE JACOB KHUMALO; Swartman, 38 jaar, P.N. 184 9537, 2389 Diepkloof, Zone 2, Soweto.

1.

VERKLAAR: Ek is n volwasse swart man en woon te bostaande adres. Ek is oek bekend as Booi Khumalo.

2.

Ek is werksaam by die Johannesburg Munisipaliteit te Selby. Ek vee die strate.

3.

Ek ken vir Weaver Magcai. Ek ken hom slegs by die naam van Weaver. Ek weet dat hy saam met sy suster, Thandi, wie n onderwyseres is, gewoon het.

4.

Ek sien Weaver vir n geruime tyd nie meer nie. Dit mag twee jaar wees dat ek hom nie meer sien nie. Ek weet nie waar hy is nie.

5.

Ek weet nie waar hy gewerk het nie. Ons het mekaar slegs van sien geken. As ons bymekaar op straat verby geloop het, het ons mekaar altyd gegroet. Ons was nie maats nie.

6.

Ek kan nie onthou wanneer dit was nie, maar dit was lank terug, het ek Weaver een oggend raakgeloop terwyl ek op pad na my werk was. Weaver het toe met my gepraat oor jong mans. Ek het nie notisie geneem oor wat hy gepraat het van die jong mans nie.

7.

Ek het toe aan Weaver gesê dat ek wil niks met jong mans te doen hê nie.

8.

Ek weet nie waarom Weaver met my gepraat het oor jong mans nie. Ek het ook nie belang gestel in Weaver se gesprek nie, en het toe aangeloop na my werk.

(Get.) M.J.KHUMALO

2.

9.

Dit is al wat ek kan sê.

10.

Ek verstaan die inhoud van hierdie verklaring en begryp dit. Ek het geen beswaar teen die aflê van die voorgeskrewe eed nie. Ek beskou die voorgeskrewe eed as bindend vir my gewete.

SOWETO.

JOHANNESBURG.

1979.01.10. : 05h20

(GET.) JACOB KHUMALO.

GETUIE:

(Get.) ? LUIT.

Ek sertifiseer dat die verklaarder erken dat hy ten volle op hoogte is met die inhoud van hierdie verklaring en dit begryp. Hierdie verklaring is beëdig voor my te Soweto, Johannesburg en die verklaarders se handtekening is in my teenwoordigheid daarop aangebring op 10 Januarie 1979.

(Get.) M.J. VERCUIL

KOMMISSARIS VAN EDE.

SOWETO

JOHANNESBURG.

79/01/10.

KANTOOR NR. 505, SANLAM GEBOU,
STRANDSTRAAT, PORT ELIZABETH.
AMPHALWE REPUBLIEK VAN SUID-
AFRIKA EN DIE GEBIED SUIDWES
AFRIKA.

(33) SICELE NAELEZA



(35) MHLAMKI NAMBA 988



(47) MKUKUKI PHILIP GCINA



(12) MALANI



(43) ZODWA



(71) THOBKA NTULENI



(69) MAJOLIFA ROMEO VINCI



(11) DUMA THOMAS GCINA



(3) DUMA HARESEN MKALIPi



(45) NOMAMA CHARLES



EXHIBIT "M"

ADMISSIONS (8/2/79: 12.45 PM.)

- (1) THAT the names appearing at each photograph on Exhibit L is the name of the person whose photograph appears below or next to it.

- (2) THAT these persons whose names appear on Exhibit L are persons whose names appear in the further particulars, namely whichever number appears above or on the side of each photograph - is the number given to that person in the further particulars.

EXHIBIT "N"

REFERENCES (SEE EXH. "L" AND "M")

- 33 - Page 15, 31 & 35.
- 35 - Page 15, 35.
- 47 - Page 15 & 35.
- 72 - Page 16 & 35.
- 73 - Page 16, 35.

- 71 - Page 16, 35.
- 49 - Page 15, 31, 35.
- 11 - Page 14, 29, 34.
- 3 - Page 14, 29, 34.
- 45 - Page 15, 35.

Esch. "P"

Refer to Original Court Record.
(X-Ray Plate)

EXHIBIT O.

.....
FIRST FOLD HERE KUNJO LA KWANZA HAPA

Sender's name and address: STEMBISO MKUZANGWE
BOX 2239 DAR-ES-SALAAM
TANZANIA

An air letter should not contain any enclosure: If it does it will be surcharged or sent by ordinary mail.

Issued by the East African Posts and Telecommunications Corporation

SECOND FOLD HERE KUNJO LA PILI HAPA

.....
TO: MRS. CYNTHIA NTOZINI
496 Ferguson Road
New Brighton
PORT ELIZABETH
SOUTH AFRICA
SOUTHERN AFRICA

P.O. Box 2239
DAR-ES-SALAAM

Dear Sisi,

As far as health is concerned, we are still in a perfect salubrity. Sisi, I've been trying to communicate with you but I can see that its difficult because I've'nt received any epistle from you.

Sisi I hope you are alright there in P.B. and I hope also everybody is hundred percent okay. Please be strong, recover from the illness which you suffering from.

I have friends where are they? Tell them that I am still okay. I hope you'll write back.

I am

Yours sincerely son

STEMBISO.

MOTHER RECEIVED THIS LETTER ON THE 28TH OF JUNE, WEDNESDAY 1978.

VELILE GIDRON MATSHA, states:-

I am an adult male, residing at 6469 Kwazakale, Port Elizabeth. I am employed as an Invoice Clerk by Messrs. Lennons Ltd, Fairclough Street, Korsten, Port Elizabeth - Works Number 35402.

On 11/3/78 I attended the funeral of the Late Robert Sobukwe at Graff-Reinet. I went by private car and returned to Port Elizabeth during the night on Saturday Sunday. When I returned to the house I found Lungile and Patrick (23, P.13) at home.

Patrick told me that they are preparing to leave the R.S.A. They then left the house and went to Kholeka Foley's place. On Monday I went, also went to Kholeka's place when I returned from work. I sent a child to call Kholeka and she came to me and I asked her when my brother (Patrick) was leaving. She said that they are arranging for funds to pay for the trainfare.

On Thursday I met Mziwamadoda and asked him when the boys are going to leave and he said that they are going to leave on Sunday. He then asked me if I did not wish to go for military training, I said that I was working for my family and that I am not prepared to go for military training. He said that he and Kholeka would arrange for my trainfare.

On Friday evening I met Kholeka near her home. I then asked her if they had found the money for the boys trainfare and she said that they are waiting for Monwabisi to bring the money. She then asked me if I did not wish to go for military training and I told her that I do not wish to go for training. I asked her where my brother was and she said she had got place for them to stay at Zwide.

I know and understand the contents of this affidavit which was sworn to and signed by me. I have no objection to taking the prescribed oath. I consider the prescribed oath to be binding on my conscience.

(Sgd.) V.G. MATSHA.

I certify that the deponent has acknowledged that he knows and understands the contents of this declaration which was sworn to before me and the deponent's signature placed thereon in my presence.

PORT ELIZABETH: 4/7/1978.

(Sgd.) S/A/O. SCHEEPERS
COMMISSIONER OF OATHS.

Bostaande geneem deur my.

(Get.) S/A/O SCHEEPERS.

Om 11.25 vm/m. op 25 / 4 / 1978

en te

PORT ELIZABETH in die distrik van PORT ELIZABETH

voor my W. DE WAAL LUBBE

Addisionele/Assistent Landdros in die teenwoordigheid van

J.M. TYOBOKA

(hierna die tolk genoem) as tolk en nie-

mand anders nie verskyn:

MZANADODA KHALAKA

(hierna die verklaarder genoem)

oënskynlik by sy volle verstand en nadat hy behoorlik gewaarsku is dat hy nie verplig is om enige verklaring hoegenaamd af te lê nie maar dat as hy n verklaring sou aflê, dit neergeskryf sal word en later teen hom as getuienis gebruik kan word, verstrek hy die volgende antwoorde op onderstaande vrae:

Begryp u die waarskuwing wat so pas aan u gegee is? JA

Verlang u nogtans om n verklaring af te lê? JA

Begryp u dat u nou in die teenwoordigheid van n landdros is, dat u niks het om te vrees nie en dat u met vrymoedigheid kan praat?

Is u deur enige persoon aangerand of gedreig met die doel om u te beïnvloed om n verklaring af te lê? NEE

Is u deur enige persoon aangemoedig om n verklaring af te lê? NEE

Is daar enige bloftes aan u voorgehou ten einde u te beïnvloed om n verklaring af te lê? NEE

Is u op enige ander wyse beïnvloed om n verklaring af te lê? NEE

Verwag u enige voordele as u n verklaring aflê? NEE

Het u vantevore n verklaring van dieselfde aard afgelê en, indien sel, wanneer en aan wie? NEE

Waarom verlang u dan om die verklaring te herhaal? H.V.T.

Wanneer is u in hegtenis geneem? 17/3/78

Hierna lê die verklaarder onderstaande verklaring vrywillig af welke verklaring in sy teenwoordigheid in sy eie woorde ten tye van die aflegging daarvan neergeskryf word, sonder dat enige vrae

Ek het in Desember maand begin om mense vir Militêre opleiding te werf. Hulle het toe Sewe(7) gekry. Drie van hulle het per trein vertrek terwyl 4(Vier) per motor gery het.

Ek ken vir Temba en Vuyunsju, die ander ken ek nie.

Die Vier(4) het saam met Sam Kulati gery en hy is van Johannesburg. Die 7 het daarin geslaag om na ander lande te gaan vir militêre opleiding.

Later het ons Nokalola ook weggestuur. Ons het haar saam met Portia van Johannesburg gestuur.

Portia het weer teruggekom na die Baai om ander te kom haal. Sy het toe saam met Fukulayi Manbulela, Tambeja, Stembiso Noqkayi na Johannesburg toe.

Diè het ook na ander lande gegaan vir militêre opleiding. Later het Mandla van Johannesburg hier gearriveer/toe ek hom ontmoet het was hy saam met Malefetse. Hulle het vir my en Mabisi Sonabo by Frasers gekry. Malefetse het Mandla aan Manwabisi voorgestel en gesê hy kom van Johannesburg. Mandla het ons gesê Konana het hom van Johannesburg hierheen gestuur om te kom verduidelik hoe mense gekontak moet word wanneer hulle mense werf. Vanaf Frasers het ons 'n geleentheid per motor in Rhodes se kar gekry. Op pad huistoe het ons Besa en sy vriend gekry en hulle 'n geleentheid gegee.

Ons is almal na Avenue A toe waar ons almal afgeklim het. Bisa en sy vriend is toe weg na Kwazakele toe en ons het by Centenarysaal omgedraai en na Manwabisi se huis gegaan. By Manwabisi se huis het Mandla vir ons gesê hy gaan King William's Town toe. Hy het verder gesê ons moet om 7 uur by New Brighton stasie wees waar hy ons sal sê hoe om mense weg te stuur.

Ons sewe uur was ons by die stasie gewees maar ons kon hom nie daar kry nie.

Die volgende dag is ons na Malefetse se huis waar ons gehoor het dat Mandla vertrek het.

Collection Number: AD2021

SOUTH AFRICAN INSTITUTE OF RACE RELATIONS, Security trials 1958-1982

PUBLISHER:

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