

# Sobukwe asks court to let him leave SA

STAFF REPORTER

**JUDGMENT** was reserved in the Pretoria Supreme Court yesterday in an application in which the former leader of the banned African National Congress, Mr. Robert Sobukwe, and an Indian woman, Miss Shantie Naidoo, asked for an order allowing them to use exit permits granted by the Minister of the Interior.

The application was heard by Mr. Justice Bekker, Mr. Justice Marais and Mr. Justice Myburgh.

Mr. I. A. Maisels, Q.C., for the applicants, told the court they were at present under house arrest as a result of banning orders served on them by the Minister of Justice, Mr. Pelsler. Mr. Sobukwe's banning order restricted him to the Kimberley municipal district and he was under house arrest between 6 pm and 6 am. Miss Naidoo was confined to the Johannesburg magisterial district.

Both had been granted exit permits to leave the country but could not use them because the Minister of Justice was not prepared to relax the banning orders.

On June 24 Mr. Pelsler informed Mr. Sobukwe that he was not prepared to relax the ban in order to allow him to travel from Kimberley to Jan Smuts Airport in order to leave the country.

Mr. Sobukwe was applying to leave South Africa with his family to take up an invitation to teach in America. The American Government had also offered him permanent residence. Miss Naidoo had permission to enter Britain to seek work. She was jailed last year when she refused to give evidence for the State in the trial of 22 Africans on charges of terrorism.

Mr. Maisels pointed out that the applicants were entitled to the exit permits in terms of the

relevant Act, if they could satisfy the Minister of the Interior that they intended leaving the country permanently.

He submitted that the Minister of Justices' refusal to allow Mr. Sobukwe to use his exit permit was unlawful.

The Minister of Justice was frustrating the common law right of South African citizens to leave the country vested in terms of the Union Regulation Act of 1955.

"The Minister is using his powers to restrict Sobukwe to Kimberley for another purpose. He is guilty of an abuse of his powers because he has misconceived them," Mr. Maisels submitted.

At the same time the Minister of the Interior was obliged in terms of the relevant Act to grant exit permits to the applicants. This was a case of one Government department working against another.

"We have the Gilbertian situation where one department has given the right to go and another frustrates this right. This makes nonsense of the Act of 1955."

## RESTRICTION

In his argument, Mr. C. P. Joubert, SC, who appeared for the Minister of Justice, said the fundamental right of a person to leave the country had been restricted by legislation making it an offence to leave without a passport or an exit permit.

The so-called Common Law right was subject to qualification and was not absolute. A person's rights to move both outside the country and within its borders was restricted by both common and statutory laws.

In any event, the applicants' "Common Law rights had been swept away" by the banning orders served on them. They were restricted to certain districts and were therefore not "free burgers".

Yesterday's hearing was attended by representatives of the American and British Consular corps. Several Africans were also among the small crowd which attended the hearing. Neither of the applicants was in court.

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