

tely I will personally not be at office tomorrow. So the first available date will be this coming Monday.

PROSECUTOR: Your worship the state wishes to ask your worship does your worship mean your worship is not physically here or your worship is accommodated by the other court.

COURT: No Miss Prosecutor, I am physically not at office due to medical reasons.

MR. CAMERON: Your worship could your worship give the parties a chance?

COURT: Yes.

(10)

PROSECUTOR: 25 July court 8, 8 o'clock in the morning.

COURT: Will the 25th of July be suitable for you Mr. Cameron?

MR. CAMERON: It is your worship.

COURT: You will be able to attend court at 8 o'clock in the morning.

COURT: Mr. Bruce please stand up? This matter is then postponed for further evidence to the 25th of July 1988. You are warned to appear that morning 8 o'clock at the same court. Do you understand?

ACCUSED: Yes I do.

(20)

COURT ADJOURNS UNTIL 25 JULY 1988 COURT RESUMES 25 JULY 1988

Appearances as before.

PROSECUTOR: The matter was postponed until today for further trial. Accused intends calling another witness.

COURT: Mr. Cameron?

MR. CAMERON: Thank you your worship. Your worship there is another witness. May the accused be seated?

COURT: Yes certainly Mr. Bruce, you may be seated.

NTATU MOTLANA d.u.o.

EXAMINATION BY MR. CAMERON: Dr. Motlana you are a medical doctor/...

(30)

doctor practising in Soweto? -- I am your worship.

Will you tell the court what your academic qualifications are please? -- I have got a Bachelor of Science degree from the University of FortHare and an M.B.Ch. from the University of the Witwatersrand your worship.

Where did you do your internship to qualify as a doctor? -- My junior housemanship was at Leviton Hospital in the Cape your worship.

How long have you been in general practice? -- It is now 30 years. (10

Dr. Motlana you practice at various places in Soweto, at various clinics and surgery. Can you tell the court very briefly about that? -- I do sessions your worship at a clinic, Kotle City Clinic, I have rooms in Meadowlands, in Diepkloof and in Dube. I also do voluntary service at the clinic called Witkoppen in Sandton.

Dr. Motlana you also hold a leadership roll in the wider community in South Africa. Can you tell the court briefly what your leadership experience is? -- Your worship I was involved with the African National Congress from age 18 until the organisation was banned. Then I was involved in the Black Community Programmes until that was also banned. Then the Community of Trend and for the past 11 years I have been the founder president of the Soweto Civic Association.

Soweto Civic Association was formed in 1977. -- It was your worship.

In response to the crisis which arose after the Soweto uprising in 1976. -- That is so your worship.

Dr. Motlana the defence has called you for two reasons. The

accused is being convicted of refusal to serve in the S.A.D.F. and he told the court that the reason why he refused was that the S.A.D.F. upholds a racist system. I would like to ask you firstly of your personal experience, your experience as an expert of racism in South Africa and then I would like to turn after that to the question of the broader community's attitude towards the S.A.D.F. Can we start with the first question. I would like to ask you whether you, as a medical doctor, and as a person practising and living in Soweto, can testify to the court about racism which you experienced in the system in South Africa. -- The (10 South African, your worship, I would like to say that the whole South African system, its legal system, health, is purely based on the racism we referred to. I can recall as a student and high school at university, as a houseman at Baragwanath, how that racism has permeated our educational system, which as you know, has been a scene of protest, of strikes. I myself resigned in 1956 and led out of Baragwanath at 18, we then called ourselves non-white doctors over the question of discrimination, over the question of racism.

Was that because of differential pay and differential service (20 conditions? -- Differential, mostly differential service conditions your worship where we found ourselves shut off from promotion, from access to specialist qualifications, I myself would have been a gynaecologist if it was not for that discrimination when we walked out, because at that time they paid a black doctor 60% of what they paid white doctors. But more than that, as far as the broader community is concerned, Baragwanath has been in the news recently because of that hospital where I trained, the bed occupancy has always been around 300% when the nearest hospital

to/...

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to Baragwanath, namely the South Rand Hospital, never had anything like a 50% bed occupancy. Let alone the General Hospital in town where wards are still closed because they have not got the patients, they have not got the nurses, they have not got the doctors.

Dr. Motlana when you speak of Baragwanath, do you speak with personal knowledge? -- I trained there your worship as a medical student, I worked there as a senior houseman, I speak from intimate personal knowledge. *not for nothing but that's all*

What are your daily connections with Baragwanath Hospital? Do you send patients there? -- I still send patients there your worship. *and* I still have to go there and check them up, *the doctor* and I know what is happening. (10)

Are you personally aware of the conditions of Baragwanath at the moment? -- *Thus an* I personally *of what the conditions there* am aware your worship.

Dr. Motlana you spoke about discriminatory service conditions when you were a doctor. Now that presumably has changed, presumably black and white doctors in Government service are not paid differently any more. -- They are not paid differently your worship. It took us almost 30 years of battle to have that corrected. (20)

But that have now been corrected? -- That has been corrected as far as the salary conditions are concerned, but there are very many other areas of discrimination which still persist. Housing for instance, travel allowances for the black doctors as oppose to what they give to the white doctors. Those discriminating conditions still persist.

Dr. Motlana you spoke a few moments ago about racism. Can you tell the court in one sentence of perhaps two, what you understand by racism? -- Racism I would say your worship is a condition,

a system in which the value of a man, his position in society, in the schools, in hospitals, is gaged purely, and I say purely, on the basis of the amount of melanon he has under his epidermis and also his original origin, ⁰if he is black, an African, he is ~~assumed~~, so many people assume that he must be a sub-species of the species homosapiens * and I know that in South Africa there was a lot of opposition to the ^{theory} ~~fury~~ of evolution, not because people believed in creation, but people simply could not accept that black people were of the same species as the Caucasians.

Dr. Motlana could you tell the court what the major ways are (10 in which attitudes based upon race, still effect the lives of most South Africans? Either in where they can living or their living conditions or in their civic rights. -- I think the most important aspects of that manifestation your worship would be in a series of laws that underpin the S.A. Constitution. I refer here to the Land Act which has allocated 87% of the land surface of our country for white occupation and ownership and only 13% to black ownership. I must refer here sir to the Constitution of the Land which makes no provision at all for black representation in Parliament and because blacks will have no influence whatever (20 on the legislators, there is no way that they can influence those discriminatory practices which are seen in such laws as the Group Areas Act, the Population Registration Act, which underpin discrimination in this country.

Thank you doctor. I would like to turn then to the second question which I want you to inform the court of your views. And that is the question of the S.A. Defence Force and as I said earlier, the accused has already been convicted of an offence of refusing to serve in the S.A.D.F. Could you tell the court please/... (30

please how the community in Soweto in so far as you are aware, and given the expertees to which you have testified, as regards the S.A.D.F. -- The S.A.D.F. your worship together I am afraid, with other security forces like the police, are regarded, have always been regarded, as an arm of Government intended to reinforce, to maintain, to support, that racist system I have referred to. There was a time for instance when the only crime that the police seemed interested in in a place like Soweto, would have been liquor, pass laws and possession of fire-arms. If you went to the police to report that your daughter had been raped or that (10) your house had been broken into, if you were lucky, they would turn up 36 hours later. Now a few years back that police duty was turned over to the army and the attitude of the army has changed dramatically because where as we were told that the police were there to maintain law and order in the townships and that the army was intended to protect and maintain the integrity of our borders against external aggression, suddenly we saw army units in the black townships. I can never forget my visit to New Brighton your worship where I found an army unit sitting atop an old abandoned beer-hall with machine-gun nests and a (20) nest of search lights which I was told they turn onto the township at night. In addition we are aware as black South Africans that outside every major black township like Soweto, Quamasho, New Brighton, there is an army base and we asked ourselves why this army base is not established along the Orange River, along the Limpopo or the Indian Ocean for that matter to protect our borders. In stead it seems that the army is out there to protect White South Africa from Black South Africa. And the only danger that White South Africa fears from Black South Africa, is that they/... (30)

they may claim their heritage, namely the right to vote. And that is what the army, your worship, I would maintain is perceived as an arm intended purely for the maintenance of white supremacy.

Dr. Motlana does the S.A.D.F. not play a purely law and order maintenance roll against elements in the townships who create trouble and engage in lawless conduct? -- I would deny that the army plays such a roll. If any proof was required it is the roll of the army of the recent and ongoing rent boycott, I can recall your worship sitting in my rooms and being rung up by one woman who says to me come and see what is happening in (10) Mafolo where the army has cordoned off a section of Mafolo village. The army, army units are going from house to house, evicting people and seizing their property.

That was a report made to you? -- That is right.

Yes. Dr. Motlana can we then turn to the last aspect which is connected to that. The court in sentencing the accused, depending on the statute, is entitled to take into account the needs and attitudes of the broader community. As far as your knowledge is concerned, can you tell the court what the attitude of the broader black community would be towards a person like the accused in this case, (20) who refuses to do service in the S.A.D.F.? -- Your worship the attitude of the community would be that the accused is indeed a hero, already among my friends the discussion of this case is one of great admiration for a young man who could take such a stand over such principle, have such a principled stand over the question of racism. They would find it most unjust that such a man should be sentenced for the kind of beliefs he hold, because many of them do believe indeed that the army is out there to maintain a racist structure in this country.

Thank/... (30)

Thank you doctor. Thank you your worship.

CROSS-EXAMINATION BY PROSECUTOR: You are a medical doctor, is that correct? -- I am your worship.

So legal matters would not really be your cup of tea, is that correct? -- It would not your worship.

Now you did mention something about Baragwanath not having any particular of special facilities, is that correct? Did I understand you correctly? -- No they do have special facilities. What I was talking about is the general attitude towards the black community in the general provision of services for the greater portion (10) of the population.

When you started off you mentioned something about a salary discrepancy between black and white doctors. To what time did you refer when you made that statement? -- When I was an employee at the hospital.

But when did you start being an employee at the hospital? -- 1957, 56 rather.

And today, today, there is not a difference between the salary of a white doctor and a black doctor, if of course they have exactly the same experience and degrees, is that correct? -- I have admitted (20) that your worship that I think it was four, five years ago when at last the S.A. Government did equalize the salaries, but I went on to say that other areas of discrimination unfortunately still remain.

But would you then not agree that over the years, starting from 1957 up to now, the lives of the black people in South Africa are less effected by racism than what it was for instance in 1957? Could you not agree to that? -- I would not.

Why not? -- I think one must concede that as far as some

aspect/...

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aspects of our lives are concerned, one would refer to some employment practices in the mines for instance, in health, in the increase of blacks in the civil service and so on and so forth. But those peripheral, peripheral, areas of our lives there have been some changes, but the racism we are talking about is entrenched in our constitution, in our other structures. The fact for instance that whereas in 1912, 1920 blacks actually had representation in Parliament, admitted by whites that we blacks had in fact lost political power over the years.

Would you not to a certain extent agree that racism goes both(10) ways, to a certain extent because a person is white, his life is negatively affected by the fact of being a white, the same as that some times happens with say a black person or an Indian or whatever, do you agree with that? -- Oh I agree entirely that you whites are not any free-er than other races because of the racism you maintain. In fact the struggle in South Africa is to free whites from racism.

And I am going to put it to you that for instance you are quite aware of the rent boycott in Soweto. You are aware of that, the rent boycott, the boycott in refusing to pay rent. -- Yes.

And refusing to pay water and electricity, you are aware of (20) that, is that correct? -- I am aware of that your worship.

Now I put it to you that if a white person is R10 behind with his rent or with his water and lights, the service would immediately be cut off whereas it went on, I just want you to say whether you are aware of this, that there are lots of people in the black townships that owe the board or the municipality there, more than thousands of Rands and still the services were extended. What do you call that? -- Let me address you in this fashion your worship that the white person who refuses to pay his electricity bill, will

indeed/... (30)

indeed deserve to be so punished because, let us take a hypothetical case of a resident of a little town called Verwoerdburg. The rates for electricity and water would have been determined by a council that the citizens, the good citizens of Verwoerdburg had elected, that council in the meeting that those good citizens would probably have attended, would then have decided on the rates they ought to pay for the improvement and maintenance of the streets and facilities in Verwoerdburg. In a place like Soweto or all of the black townships, there would have been a few years back an advisory council or no council at all, some official from the local authority would have determined what they should pay. (10

Have you ever been to such a meeting? -- Come again?

Have you ever been to such a meeting? -- Meeting?

Yes. -- No, no, no. I do not know, I think we understand each other.

No okay, I just want to put it to you that, or let me rather ask you, you say that what you feel your beliefs are the same or similar to that of the broader black community, is that correct?

-- That is correct.

Why is it then necessary that people are forced to stay away (20 when it is stay away day? If your fellow black men feel the same than what you do, why is it necessary on stay away day, that the black people force the people that wants to go and work to stay away and that it is not a spontaneous action? Why is that necessary if all the people, the black people, their beliefs are the same than what yours is? -- Your worship I had hoped to react to the question about the R10 for services. You stopped me.

But answer my question please? -- No please but I mean I was trying to explain to you why a black refuse to pay R10 for electricity and you stopped me in midway. I was going to show you that (30

it/...

it is because of lack of representation, lack of legitimacy that a counsel in Soweto has set those rates. The people refuse to pay rent because they say that the local authority in Soweto is unrepresented. They say that the law of the black local authority they were no part in the framing of that law ...

Now if you ... -- No please let me finish that, because it is important. It is important to understand why the people of Soweto refuse to pay rents, because there is in Soweto a counsel that was elected on a 6% poll through a law in whose framing they had no part. They therefore say that they demand a representative structure in Soweto that will set the rates at a level they can afford. Now I will go back to the second question you asked.

Now let me just, before I go to the following question. Now so the person is not prepared to pay the rents, is that right? -- That is right.

So therefore he wants the house, but he does not want to pay the rent, he does not move from out the house, he wants the house but he does not want the liabilities attached to the house. Now if you were the owner of a house, alright? And you hired the house or rented the house for say R200 a month, the tenant accepts the amount that you asks for the house. What will you do if that tenant refuses to pay the rent? Would you let him stay on there for ever and ever and ever? Or would you evict that person from the house and get another tenant? -- There is more to it than meets the eye your worship.

No just answer. -- No I mean if you put it like that, I would probably say to the tenant leave my house.

Of course. -- But Soweto is a difficult kettle of fish. Here the S.A. Government, the state, made itself into the biggest landlord outside Russia. They owned every housing unit in Soweto.

When/...

When they ... -- Please you must give me a chance to answer.

When you enter into an agreement, I mean you decide yourself you want to stay in a specific house and then you enter into an agreement, is that correct? -- That is right.

And when entering into that agreement, one knows what your liabilities are, etc. Is that correct? -- That is right.

And how come then all of a sudden thereafter, after you open-eyed entered into an agreement, now all of a sudden there are lots of atrocities involved, etc. and you are not prepared to pay the rent? -- Let us take one little instance in Orlando East where (10) the people moved in just before the Second World War. 1939. The houses were built for about £100.

Where did you get this information from? -- Oh I have got this information your worship. If you want it, your worship, I can produce it.

No I want, just answer my question, where did you get this information from? -- From archives, city counsel archives, in the Soweto counsel, they can tell you there, that there was an agreement that the rent would be something like 17/4 pence in the old currency. There was also an agreement that after 10 years (20) those house would revert to the ownership of the people. Your worship we can go round to, we could call old man who was one of the counsellors, Pogile, who will come here and tell you they have got evidence, they have got written information that the houses would become the property of the people who lived in there. Now the people are on strike your worship, if you want to know, do not refuse to pay rent just like that. They say that many of them who have lived in the house in Mafolo for instance for up to 15 years, have more than paid the loan from the National Housing

Commission, the loan of R450 which is the average for those houses built in Mafolo, Soweto. They said that they have paid it off and they say that they are willing to pay rates, water and electricity but they say they do not pay rent.

Now I just put it to you that I as a white person, if I do not pay my water and electricity account, and even if I am one day late, they will terminate my service and I will have to pay R25 to re-install the services, but if I am black they do not cut off your services and they would let the arrear amount grow and grow and grow and if need be, make amends in giving the person the opportunity (10) to pay off the arrear water and electricity. I am just putting it to you. Now you said that the attitude of the army can be described as the army to protect white South African against black South African for the maintenance

Can we keep this in?

COURT: I am sorry Miss Prosecutor, do you expect a reply from your previous statement?

PROSECUTOR: No your worship, I am just putting it to him. For maintenance as white supremacy. Have you ever been, have you ever served in the S.A.D.F.? -- Oh no, they would not let me.

How can you then say that, exactly what the attitude of the (20) S.A.D.F. is? -- When the S.A. Government puts their major basis opposite the entrance of black townships throughout the country, as they have in Diepkloof, as they have in Guguletu, as they have in New Brighton, there is only one conclusion that can be drawn for that, and when in any case during times of unrest the army is called out, when the army is supposed to protect us against the Cubans.

Are those the only places * - your worship at this point in time the state again request your worship to warn the crowd, who

apparently/... (30)

apparently cannot behave themselves and apparently have contempt for the court, that if they do behave with their making remarks and laughing whilst the state is busy, the state is not prepared to proceed. The court request your worship to warn them that they are in contempt of court if they proceed with this behaviour.

COURT: Thank you Miss Prosecutor. The court did not overhear any, certain remarks at this stage, but the court just like to appeal to the public again in order to maintain proper order in this court and to show respect for the court proceedings as such. Otherwise the court will be compelled to order that such person (10) who cannot keep up with proper behaviour inside the court, leave the court or otherwise be subjected to contempt of court. Thank you.

PROSECUTOR: Now the black townships, are those the only places where the S.A.D.F. render services? -- Where the S.A.D.F. render services?

No the black townships are those the only places where the S.A.D.F. render services to the community? -- I do not know your worship if I could answer that question.

Now I find it strange, if you are so up to date as to what (20) the services are of the S.A.D.F. and what sort of behaviour they make themselves guilty of, that you are not aware as to the other places where they do serve. Are you not aware for instance the flood disaster, the services that were rendered there to blacks and whites? Are you aware of that? -- Our problems your worship is the maintenance of a system based on racism.

I mean you are talking about all the bad deeds now of the S.A.D.F. Why do you not mention some of the good deeds of the S.A.D.F.? For instance the flood disaster and even in Lesotho?

Oh/... (30)

-- Oh I am aware your worship the news media have told us about the roll of the S.A.D.F. in flood relief.

But you do not believe it because you were told by the news media, is that correct? -- Oh I believe it must be true. I did not fly there.

But despite, what I do find very strange is that you only mention the bad things, but you are not prepared to accept the good things that the S.A.D.F. do. -- But your worship we are talking about the maintenance of racism.

But are you aware of the services that the army rendered in (10) Lesotho? -- Oh I am aware. I have heard that they are doing that kind of thing. I have heard that there was some young men who medically qualified for instance men and run some hospitals in Namibia. I have heard such stories. I will not deny that they do such services.

And what I do want to know, what about the blacks that serves in the S.A.D.F. and serves in the S.A. Police. What do you regard their attitude to be? Are they, do they have the same attitude as the whites or what is the position? -- The blacks who serve in the? (20)

In the S.A. Police and in the S.A.D.F. -- Oh I meet a lot of blacks who do serve in the S.A. Police, not many in the S.A.D.F. and over the 30 years that I have been in practice your worship, some of those people have been my patients and their attitude generally is one of incredible unhappiness with their roll in the police.

How did you assess that? -- Most of them your worship join the police because at the time when they could not move from Pampoenstroomfontein into urban areas and required influx control regulations/... (30)

regulations amended, they joined the police in order to get into Johannesburg and I am afraid, if you ask many of the police, a black policeman in the force today, they will tell you that they joined the police firstly because of unemployment and secondly because influx control confined them into the 'boendoes'.

They are not forced to stay in the S.A. Police. -- Let me just give you the third reason. The third reason that they are so unhappy, is that up to about 2, 3 years ago, a black major, and I have had patients who were majors in the police force, could not give orders to a constable who was white to enter the police (10) force three days before. Let me just finish. The constable could send the black colonel to go and buy him cigarettes and this is the kind of things you know, avert and open discrimination that takes place in the police force everywhere in this sick society, that makes the policemen so unhappy.

With how many police officers did you speak about their attitude and their beliefs in as far as their service in the S.A. Police is concerned. -- Your worship I am not going to claim that I did a macano kind of survey. All I can speak is from my own experience about my patients, about my friends who tell me (20) about how unhappy they are. I have not done a survey throughout the S.A. Police Force. I cannot claim that.

Surely then you would have to admit that what you outlined to the court, cannot be regarded as the broad line of beliefs? -- You asked me a specific question your worship and I was responding to your question in my own experience. I am telling about the policemen, senior black officers that I know.

How many do you know? -- Well I cannot give you account, over 30 years there must be many who come to me.

But you would agree there are thousands and thousands of black people serving in the S.A.D.F. as well as the S.A. Police? -- It would be very interesting if we ask a fellow like Schlemmer to go and talk to those men about their attitudes.

Would you agree .. -- I have not done it myself.

Would you agree that the amounts are vast, that people, black people, serve in the S.A.D.F. and also the S.A. Police, do you agree with that? -- Come again?

You would agree that the amount, the large amounts of black people are serving in the S.A.D.F. as well as S.A. Police, would (10) you agree with that? -- Oh I do agree, admit.

Yes. -- Yes.

So I put it to you then that what you have outlined to the court, can never be regarded as the broader view of all black people involved in South Africa. -- The broad view your worship, must be based on my own personal experience. I am not going to speculate. I am telling about people I know, who have made such remarks about both the army, but particularly the S.A.P.

You are a married man, is that correct? -- I am.

And I take it that you do expect to be protected against (20) criminals in your daily life? Is that correct? -- Oh I do.

Now who do you expect should give this protection? -- The police. The police certainly.

They should give you the protection? -- As a good tax payer.

So you want to bite the hand that feeds you? Hmmm? -- As as good tax payer your worship I expect the police to protect me.

Yes. And is that not the same as, the same position with the S.A.D.F. as well to protect your family from terrorists coming over the border? -- Oh yes, but particularly coming over the border.

I/...

- (30)

I do not expect an army based opposite my township. I expect them far away, near the border where the terrorists come from presumably.

But surely you are aware that lots of the terrorists coming over the border that they have bases in some of the townships? -- I do not know about that your worship, I do not know about their bases.

You have not read about that in the newspapers? -- Bases?

Yes. -- No I have not read about bases in the townships your worship. (10)

Not really bases, but homes where they stay, where they do their work, etc. -- Oh yes I have heard that there have been places where they were found.

Now surely then there should be protection in the townships as well? -- Yes your worship I agree.

And that should be rendered by the S.A.D.F. as well as the S.A.P.? Is that correct? -- When they do that kind of work your worship, presumably they will be welcomed in that kind of roll, but not as people who maintain our racist structure.

So would you in the end then agree that the S.A.D.F. is not (20 as bad as you want it to let it look from the outset? Taking all these other factors into account? -- On balance your worship I am afraid that the S.A.D.F. is regarded in the most adverse light. It is regarded I am afraid, as a unfriendly force, as a force intended purely for the maintenance of the structure of this country, which is racism.

And that is your personal view? -- And the view of many blacks with whom I come into contact.

Thank you your worship.

RE-EXAMINATION BY MR. CAMERON : NO QUESTIONS

NO FURTHER QUESTIONS

COURT: Mr. Cameron?

MR. CAMERON: Your worship there will be no more evidence in mitigation.

COURT: Thank you. Miss Prosecutor does the state wish to call any witnesses in regard to sentence?

PROSECUTOR: No your worship the state does not wish to call any witnesses.

MR. CAMERON: Your worship may this witness be excused please?

COURT: Yes certainly.

MR. CAMERON ADDRESSES COURT IN MITIGATION

(10)

PROSECUTOR ADDRESSES COURT ON SENTENCE

MR. CAMERON REPLIES

- SENTENCE -

The court must now consider an appropriate sentence in this matter. Sentence is always the most difficult part of any case. The seriousness of the offence, the interests of the community and the accused's personal circumstances should be considered, without over or under emphasizing any of these three aspects.

It is common cause that the reason for the accused's refusal to render service in the S.A. Defence Force, is based on his objection to the present political system. It is not the purpose or duty of this court to consider the political structure in South Africa, in the Republic of South Africa in any way. The duty of this court is to impose a sentence within the structure of the relevant act, based on the evidence before court. However, the court must point out that no state exists where the final authority is not vested in an organised defence force. The competence to apply an armed force in order to combat any armed resistance, and thereby securing the maintenance, securing and maintaining state security/... (30)

security, law and order results typical from the historical foundation of any state. In South Africa too, the state has the duty to protect all individuals by securing law and order. In that regard the state is competent to compel and prescribe to its subjects in order to compile an effective defence force.

On the other hand it is also the duty of the subject in return to respect the afore-mentioned claim by the state. That is the basis to the obligation to render service in the defence force. The intention of the South African state to protect state security and law and order, in favour of all its subjects, is clearly indicated in the relevant Defence Act no. 44/1957 as amended. The court just wishes to refer to inter alia section 3 sub-section 2 of the relevant act which reads:

"The South African Defence Force or any portion or member thereof may (a) at any time be employed (1) on service in defence of the Republic. (2) On service in the prevention or suppression of terrorism. (3) On service in the prevention or suppression of internal disorder in the Republic. (4) On service in the preservation of life, health or property or the maintenance of essential services." (20

The right by the State to compel a South African citizen to render service in the S.A. Defence Force was clearly recognised in several decided matters in the Supreme Court, inter alia S v. BAKER, S v DOYLE 1965 SA (1) 821 (Witwatersrand). Furthermore S v LOVELL 1972(3) SA 760 (A) and S v ESSOP 1973(2) SA 815 (T). Any exemption from national service should not result in the relevant legal objects of the State which includes state security and law and order to be compromised in any way.

The attitude by the accused and his motivation for refusing

to/... - (30)

to do national service, was carefully considered. However, such motivation leads to the compromise of the said legal objects of the State, general indulgence of such motivation can only lead to absurd results.

The accused has no objection against either serving in a Defence Force as such or being involved in a combat situation, but objects being involved in the South African Defence Force in particular.

The court has given careful consideration to the addresses by both the state and the defence as well as all evidence in this matter. The seriousness of this offence is stressed by the (10) Penalty Jurisdiction as set out in section 126(A) sub-section (1)(a) of the relevant Defence Act which reads as follows:

"Any person liable to render service in terms of section 22 or 44, who when called up, (a) refuses to render such service in the S.A. Defence Force shall be guilty of an offence and liable on conviction to imprisonment for a period 1 and a half times as long as the aggregate of the maximum of all periods of service mentioned in section 22 sub-section (3) or 44 sub-section (3) as the case may be during which he could otherwise in terms of those sections still have been (20) compelled to render service or for a period of 80 months whichever is the longer".

In this regard it was argued by the defence that the penalty as set out in the act cannot be regarded as obligatory of nature. The defence also referred to certain Supreme Court decisions. However, the court must carefully consider the intention of the legislation by looking at the ordinary meaning of the words and in particular the words 'whichever is the longer'. It is clear that due to the seriousness of the offence, the legislator intended

to prescribe the longest possible sentence as an obligation. A lesser sentence or a suspended sentence will counterfeit the purpose of the act. And the court studied the structure of the act very carefully in order to come to this decision, or this conclusion.

There are provisions for service in many non-combat sections of the army or the Defence Force. By rendering a service in any of such sections, the accused will have full opportunity to get his personal knowledge of what the real purpose of the defence force is, in perspective. In that way he will also do much better (1) service to the community of South Africa in stead of serving imprisonment for the relevant period of his national service. For that reason section 126(A) sub-section 7 of the said Act, provides as follows:

"Any person convicted in terms of sub-section 1(a) or 2(a) who before expiry of the term of imprisonment which he is serving in a notice signed by him, and directed to the Adj. General, states that he is willing to render service or to undergo training in terms of the Act, shall be exempted from serving the remaining portion of his sentence of impri- (20) sonment, provided he renders the service or undergoes the training for which he is liable in terms of the act, provided that if that person should at any time thereafter refuse to render any service or undergo any training for which he is liable in terms of the Act, he shall serve the said remaining portion of his term of imprisonment. Provided further that the Minister may determine that any part of the period of imprisonment which that person has served, shall be regarded as service or training which he has render or to undergo."

The consequences of serving imprisonment are in your own hands Mr. Bruce. You have the options as set out by the court to avoid it and still be a useful member of the public. The court has given consideration to your personal circumstances as set out in this court. However, as already pointed out, the court is bound to the Penalty Jurisdiction as set out in the act. It is also common cause that you refused to render any service whatsoever in the Defence Force prior to the commencement of your service as such. In that regard the court should consider the maximum period of service as set out in section 22(3) of the act.

ACCORDINGLY THE ACCUSED IS SENTENCED TO IMPRISONMENT FOR A PERIOD OF SIX YEARS.

Collection Number: AG1977

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PUBLISHER:

Publisher:- Historical Papers Research Archive

Location:- Johannesburg

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