

IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

CASE NO. _____/62.

IN RE:

WALTER MAX SISULU

Applicant

versus

THE ACTING ATTORNEY-GENERAL
OF THE TRANSVAAL

Respondent

TO THE HONOURABLE THE JUDGE PRESIDENT AND THE OTHER THE
HONOURABLE JUDGES OF THE ABOVE HONOURABLE COURT.

PETITION.

The Petition of

WALTER MAX SISULU

humbly sheweth that :

1.

YOUR PETITIONER is WALTER MAX SISULU, a general
agent, residing at No. 7372 Orlando West, Johannesburg.

2.

THE RESPONDENT is the ACTING ATTORNEY-GENERAL OF
THE TRANSVAAL.

/ 3. YOUR ...

3.

YOUR PETITIONER was arrested on the 10th day of January, 1962, at or about 11 a.m. in Market Street, Johannesburg, by Warrant Officer DIRKER, who is attached to the Security Branch of the South African Police. At the time of his arrest Your Petitioner was not informed of the cause of the arrest, but was told that there was a warrant for his arrest which he could see at "The Grays", the headquarters in Johannesburg of the said Security Branch.

4.

YOUR PETITIONER was taken to "The Grays" and was kept there until about 3.30 p.m. on the same day. While there he was interrogated regarding matters not forming part of the charge presently preferred against him. Your Petitioner refused to answer the questions asked of him. At approximately 3.30 p.m. Your Petitioner was shown a warrant of arrest for the first time and this warrant related to a charge of fraud, alternatively a contravention of Section 15(n) of Act No. 67 of 1952.

5.

YOUR PETITIONER was thereafter taken to the police cells at Marshall Square, Johannesburg. On the following day, the 11th January, 1962, Warrant Officer DIRKER visited Your Petitioner at Marshall Square and informed him that he was being charged with fraud, alternatively a contravention of Section 15(n) of Act No. 67 of 1952. Your Petitioner asked to what events this charge related and was informed that it was for "altering a document".

/ At

At the same time Your Petitioner asked the said Warrant Officer DIRKER why he had not yet been brought before a Court and the said DIRKER replied : "I am going to deal with you Sisulu, and it will not be very long before I break your neck. You will submit. You will not get bail, and what is more I am investigating another charge against you for furthering the aims of a banned organisation".

6.

ON THE 12th day of January, 1962, Your Petitioner was taken to the Magistrate's Court, Johannesburg, and the Prosecutor produced to the Magistrate an Order dated 11th January, 1962, issued by the ACTING ATTORNEY-GENERAL OF THE TRANSVAAL, in terms of Section 103 big of Act No. 56 of 1955, a certified copy of which is attached hereto marked Annexure "A" and to which Your Petitioner begs leave to refer. In terms of the said Order Your Petitioner may not be released on bail or otherwise before the expiration of a period of twelve days after the date of his arrest. Your Petitioner was accordingly remanded in custody until the 22nd January, 1962, without any evidence being led.

7.

YOUR PETITIONER¹ is not aware of the exact nature of the evidence which the State intends producing against him on the above charges but believes that the charge relates to the issuing of a temporary document to him in terms of Section 3(2) of Act No. 67 of 1952.

/ s. YOUR ..

9.

YOUR PETITIONER states that he has a good defence to the charge laid against him and denies that he has committed a fraud or that he has been guilty of a contravention of Section 15(a) of Act No. 67 of 1952. More particularly Your Petitioner wishes to draw the attention of the ^{above}/Honourable Court to the following :

- (a) During , 1961, Your Petitioner was arrested and charged with failing to produce a reference book as required by Act No. 67 of 1952, and was convicted on this charge, in the Magistrate's Court, Johannesburg, and sentenced to a fine of R30.00 which he duly paid.
- (b) Subsequent thereto Your Petitioner applied for a reference book at the Native Affairs Department, Johannesburg, and was issued with a temporary document which Your Petitioner believes to have been issued in terms of Section 3(2) of Act No. 67 of 1952.
- x (c) In making his application aforesaid Your Petitioner informed the clerks at the Native Affairs Department, whose names are to him unknown, that he was not aware of his National Identity number and the said clerks told him that any number could be filled in and then corrected later. Your Petitioner did not fill in a number, but left it to the clerks to fill in such number on his behalf. Your Petitioner also did not fill in his address on the document. Subsequently Your Petitioner found his National Identity number and presented it to

/ the

the clerks at the Native Affairs Department who themselves altered the number on the aforementioned document and initialled and rubber-stamped the alteration.

- (d) During December, 1961, Warrant Officer DIRKER of the Security Branch seized this document from Your Petitioner and it is no longer in Your Petitioner's possession.

9.

YOUR PETITIONER states that there are no grounds for believing that his continued detention is necessary in the interest of the safety of the public or the maintenance of public order, or that his release from custody would be against the interest of the safety of the public or the maintenance of public order. In this regard Your Petitioner wishes to draw attention to the following facts :

- (a) Your Petitioner is a well-known Non-White leader who has lived continuously in Johannesburg for more than twenty years.
- (b) Your Petitioner's arrest referred to in paragraph 8(a) hereof was effected by the said DIRKER although the offence with which Your Petitioner was charged is not an offence normally dealt with by the said Security Branch. After his arrest Your Petitioner was released on bail in an amount of R16.00 and no order under Section 103 bis of Act No. 56 of 1953 was issued.

/ (c)

- (c) When the document referred to in paragraph 8 was seized as alleged in sub-paragraph (d) thereof the amendment to the identity number had already been made and must have been obvious to the said DIRKER. The said DIRKER is well aware of Your Petitioner's home address at which Your Petitioner resided during December, 1961, and January, 1962, and is also well aware of the address of the office at which Your Petitioner works. Nevertheless no effort was made to arrest Your Petitioner until the 10th January, 1962.
- (d) Your Petitioner has for many years been banned from attending gatherings under Act No. 44 of 1950. During , 1961 Your Petitioner was arrested after attending a social gathering and charged with a contravention of the said Act. He was granted bail in the sum of R50.00 and no order was issued under section 103 bis of Act No. 56 of 1955. Your Petitioner remained at liberty while the charge was pending. The said charge was withdrawn on or about the 10th January, 1962, and has never been proceeded with.

10.

YOUR PETITIONER respectfully submits that the discretion conferred upon the ATTORNEY-GENERAL by Section 103 bis of Act No. 56 of 1955 may only be exercised in those cases where the offence in respect of which a person has been arrested relates to the safety of the public or the maintenance of public order.

/ Your

Your Petitioner submits further that the offences with which he is presently charged do not fall in this category and that accordingly the ACTING ATTORNEY-GENERAL has not appreciated the nature of the discretion conferred upon him and has not properly exercised that discretion.

In the circumstances Your Petitioner respectfully submits that the ACTING ATTORNEY-GENERAL has exceeded the discretionary power vested in him and/or that the order issued by the ACTING ATTORNEY-GENERAL is so grossly unreasonable as to show that he has not applied his mind to the matter.

11.

YOUR PETITIONER states that he has no reason whatsoever to interfere with any person who may be a State witness nor has he any intention of absconding and he is fully prepared to attend Court to face trial.

12.

YOUR PETITIONER is able to comply with any conditions which may seem just to the above Honourable Court and is able to report to the South African Police at Orlando where he resides.

13.

IN THE CIRCUMSTANCES Your Petitioner humbly submits that this Honourable Court is entitled to declare the order issued by the ACTING ATTORNEY-GENERAL to be invalid and of no force and effect and to release Your Petitioner on bail.

/ WHEREFORE

WHEREFORE Your Petitioner prays that it may please the above Honourable Court to grant an order :

- (a) Declaring the Order issued by the ACTING ATTORNEY-GENERAL in terms of Section 103 bis of Act 56 of 1955 and dated the 11th day of January, 1962, to be invalid and of no force and effect.
- (b) Admitting Your Petitioner to bail on such terms and conditions as to the above Honourable Court may seem just.
- (c) Other or alternative relief.

AND YOUR PETITIONER AS IN DUTY BOUND WILL EVER HUMBLY PRAY.

DATED at JOHANNESBURG this 15th day of JANUARY, 1962.

VERIFYING AFFIDAVIT.

I, the undersigned, WALTER MAX SISULU, do hereby make oath and say that each and every allegation contained in the foregoing Petition is true and correct to the best of my knowledge and belief.

(Sgd.) W. M. Sisulu

SWORN to at JOHANNESBURG this 15th. day of JANUARY 1962

/ by

by the Deponent who has acknowledged that he knows
and understands the contents of this Affidavit.

BEFORE ME,

COMMISSIONER OF
OATHS.

ORDER IN TERMS OF SECTION 103 BIS
OF ACT 56 OF 1955.

In terms of Section 103 bis of Act 56 of 1955,

I, Rudolf Werner Rein, Acting Attorney-General
of the Transvaal hereby order that

WALTER MAX SISULU

who has been arrested on a charge of having committed the
offence of Fraud alternatively contravening Section 15(n)
Act 67 of 1952 as substituted by Section 24 of Act 79 of
1957

shall not be released on bail or otherwise before the
expiration of a period of twelve days after the date of
his arrest.

Signed at PRETORIA this 11th day of January, 1962.

(Signed) R.W. Rein

11-1-1962.

Acting Attorney-General

Rubberstamp:

Certified a true copy of the original

(Signed) illegible

Clerk of the Court, Johannesburg.

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