

as you've told the Court, about two meetings, the one with the three men, and the other meeting with the two girls.

PROSECUTOR: Sir, if I remember the witness' evidence correctly sir, he referred to three meetings with accused no. 5.

COURT: What three were they?

PROSECUTOR: First his meeting accused no. (Interruption)

MR. ALEXANDER: I'm sorry sir, it's completely my misunderstanding, my learned friend is quite right, there are in fact three incidents, and I must beg your pardon for having put another proposition to you. The first meeting was when accused no. 5(10) came to your house, correct? -- Yes.

When he was with the three boys. -- Yes.

Then you met him in the street and you spoke about the three boys. -- Yes.

And then on another occasion, which is the third occasion, you met him again with the two girls, when he told you they came from Port Elizabeth. -- Yes.

Now, when I referred to two events, I really overlooked that there were three and I want to ask you whether those were the only three occasions on which you had dealings with accused no. 5? -- Does that mean before he came here to Port Elizabeth? (20)

Yes, your personal dealings with him. -- Yes.

There is no room for any doubt about that? -- No.

Your memory is absolutely clear that it was only on those three occasions that you met? -- Yes.

And the last meeting was the occasion with the two girls. -- Yes, that was the last occasion.

You are quite clear? -- Yes. (30)

Now, when you refer to the two girls in the

statement, your notes, which you do, you then go on on a page which you have not marked incidentally, and I'm going to read to you what it says. You have referred to the two girls, it goes on as follows: "A short while after..." (interruption)

PROSECUTOR: With all due respect sir, I object to that.

MR. ALEXANDER: Of course I'm entitled to the question.

COURT: Can I hear the objection?

PROSECUTOR: Sir, my objection is that before my learned friend can cross-examine on the page which is not marked by the witness, he must first establish from the witness if, (10) in fact, he read from that specific note in refreshing his memory.

MR. ALEXANDER: Your Worship, the whole note in question, not only the part that's underlined, deals with the whole question of the (interruption)

COURT: May I see the book? The pages of this book are not numbered. Is there any objection to my numbering them?

MR. ALEXANDER: No sir, if you'll be (SIMULTANEOUS TALKING)

COURT: (INAUDIBLE) -- No I have no objection, your Worship. (20)

I'll number each page with a red number and I'll draw a line round the red number. I'm hoping that this will make reference a little bit easier, and I must also stress that I'm not reading what I see in the book. I have marked this book up to Page 31. There are some pages, between 1 and 31 there are some blank pages. Now, in order for myself to get into the picture what did you mark this morning in the book, did you use a red pen at all? -- I used that yellow pencil.

Oh, you used the yellow one which was loaned to you by junior Counsel. I'm just trying to find that spot. (30) This is marked on Page 28. Is there any objection to my reading

it out, or reading it for that matter?

MR. ALEXANDER: Perhaps not at this stage sir, because I haven't referred (interruption)

COURT: I haven't read it but the yellow marking is on page 28.

MR. ALEXANDER: I haven't read it, I haven't even dealt with it.

COURT: Would you, I wonder would Mr. Bowman not please mark it in the manner that he has marked (his other stuff) by drawing a line right over it.

MR. ALEXANDER: Now, I base my claim to cross-examine on the (10) contents of page 29 sir, which follows on page 28, on this basis stated in Hoffman at Page 315, that the cross-examiner may see such parts, quoting now from MICHAEL, an additional Magistrate, Johannesburg, "... as refer to the subject matter of the suit or afford a test of the accuracy or the reliability of the entry to which, the witness has referred." As I read it out your Worship will clearly see, in my submission, that that does refer to the subject matter of what we are investigating. If the Court is satisfied that it is relevant in that sense, then I submit I am entitled to cross-examine (20) the witness on it.

COURT: Do you want to be heard further, Mr. Prosecutor?

PROSECUTOR: No sir.

COURT: The objection then is overruled.

PROSECUTOR: The only problem I have, sir, is that the witness was asked to mark a certain portion (interruption)

COURT: One moment please (INAUDIBLE) you can go on.

MR. ALEXANDER: Your Worship, I'd rather not delay the proceedings any longer. I'm not going to persist with this, I'm going to ask the witness something else. (30)

COURT: Yes, it's clearly on record that I haven't

stopped you.

MR. ALEXANDER: No, no, your Worship has never stopped me.

COURT: In that case I must, of course, withdraw my ruling which says that the objection was overruled, the objection by the Prosecutor. It does not come up now.

MR. ALEXANDER: No-no sir, only on the point that I dealt with a moment ago, that is the reference to page 29.

COURT: Reference to page? .

MR. ALEXANDER: Twenty-nine which I thought I was going to use, but I've decided I'm not going to prolong the matter by going (10) after this. Now, what I want to ask you is this, did you when you went to the Protea police station, were you told anything about no. 5 accused when you got there? -- Like what?

I don't know, I'm asking you whether you were told anything about him? -- No.

You are quite clear about that? -- Yes.

Was there any question at all of his being a person whom the police thought of as a particular class of person? -- I do not remember, your Worship.

Well you should remember, it was in January of (20) this year. -- I do not remember such a thing your Worship.

You see, I'm now going to ask your permission for to refer to Page 27 of your notes, and it wouldn't be necessary sir, for the witness to be excused, if the Court will read what's on Page 27 as the basis of the submission that this is relevant to the matter which we are investigating.

COURT: Are you satisfied, Mr. Prosecutor?

PROSECUTOR: I would like to read it as well sir, after the Court.

COURT: "Reported at..." (interruption) (30)

MR. ALEXANDER: I'd rather sir, that the witness didn't hear

it, I'd rather you read it (interruption)

COURT: Oh, I'm sorry, sorry, sorry. I've read page 27. I think the Prosecutor would like to see it himself.

WITNESS IS GIVEN PERMISSION TO SIT DOWN.

PROSECUTOR: Sir, my objection is that I do not deny that the portion reflected on page 27 is not relevant to the case, but my objection is this that it has not been established which pages the witness refreshed his memory from. My submission is, sir, that if it is established that the witness read page 27 when refreshing his memory, obviously I cannot object to cross-(10) examination regarding that. That is my only objection.

COURT: I understand it, I'll hear Mr. Alexander.

MR. ALEXANDER: Your Worship, I'm not going to argue the matter, I'm just going to show the witness and ask him when he refreshed his memory yesterday at Court, whether he read from page 27 onwards.

COURT: That will solve your problem?

PROSECUTOR: That is correct.

MR. ALEXANDER: Did you read from page 27 onwards? -- No I did not read page, on page 27. (20)

Why not? Why start in the middle of page 28, which is the yellow marked part, when the story starts on page 27? -- I was referring to the portion about military training.

Yes, but why not read the whole note if you want to refresh your memory? -- I was referring concerned with that portion.

All right, now your Worship, on that point I still say that I'm entitled to cross-examine because I may see such parts as refer to the subject matter of the ^{suit} feud (30) or afford a test of the accuracy of the reliability of the

entry to which the witness has referred, in other words I can look at other aspects to see whether it has any bearing on the part to which (interruption)

COURT: That's, you are reading from Hoffman?

MR. ALEXANDER: Hoffman at Page 315 the same sub-paragraph.

COURT: Mr. Prosecutor?

PROSECUTOR: Could we adjourn for lunch sir, it's twenty to two.

COURT: I would prefer to finish this witness before we adjourn. (10)

PROSECUTOR: As the Court pleases sir.

COURT: Unless the position is that you want to go and search for authority. Mr. Alexander, can you give me any indication how long you're still going to be?

MR. ALEXANDER: A few minutes, sir.

COURT: A few minutes. In that case I think we should sit through, unless the Prosecutor wants time to (interruption)

MR. ALEXANDER: Sir, I've been wrong in Law many times, but I've never understood a limitation of this sort that my learned friend wants to impose upon me, cross-examining on this (20) (interruption)

COURT: No-no, no, he will not impose it upon you sir, if it will be done I will do so, but I want to be fair to the Prosecutor. If he needs authority for his argument and if he wants an adjournment for that purpose I'll give it to him, but I'm not going to start a lunch adjournment now.

PROSECUTOR: Sir, I will not pursue the objection, I'll leave it at that.

COURT: Thank you, then you may proceed.

MR. ALEXANDER: I want to read to you what appears on Page 27. (30)

"Reported at Protea and told three White policemen that I

know W. Magcai as a home boy."

COURT: I don't think that needs the interpreter, you follow that don't you? -- I wrote it, your Worship.

MR. ALEXANDER: "And explained that concerning a question of E. Ngeleza as an informer." Who wrote that? -- (Witness answers) I wrote it.

What does that mean?

COURT: I'm sorry, the reply is not on record. -- The reply was in the affirmative your Worship, I wrote that.

MR. ALEXANDER: "We only talked about it because there was a (10) rumour that any person with a 'phone is an informer." Did you write that? -- I think I've answered that.

COURT: No, answer again. -- I wrote it, your Worship.

MR. ALEXANDER: And you wrote this after coming back from the Protea police station. -- Yes.

And it suggests to me that there must have been some question asked about Eric Ngeleza, who is accused no. 5, as being an informer? -- Yes.

Now you remember that? -- Yes, I remember it clearly. (20)

"That's a class of person who is an informer."
A class of person who is an informer (SIMULTANEOUS TALKING)
-- I did not know what you meant by "class" then, but I remember that.

Why didn't you come out with it when I asked you? -- I was not sure what you meant by "class", your Worship.

Oh I see. Now what is this talk about him being an informer? -- When I was being cross-questioned by the police at Protea the question was asked, "Is it true that Eric Ngeleza is an informer, seeing that he has a 'phone?" (30)

Then any person who has a telephone would be

regarded as an informer by the police? -- I do not know.

Now, I'm only going to put to you that your version of being told by number 5 that these men were on training, or military training is denied by him. If necessary, he will deny that he ever used even the word "training" to you, much less "military training." He will say they said to you exactly what he said to the last witness, that these people had come up from Port Elizabeth to take part in a show, and that one of the persons who was with him the time he spoke to you, a man called Mlamli, was a man he then later took to the (10) house of the last witness, I beg your pardon I shouldn't have said the last witness, that was Jacob Kumalo, it was the witness, what's her name, Agnes Magcai.

COURT: Nontombi Agnes Magcai, the lady with the hat.

MR. ALEXANDER: Yes.

COURT: I'm sorry to interrupt, but I want accused No. 6 not to sit talking, as he does so he looked to me as if he were trying to draw the attention of the witness himself, stand up no. 6. Your Counsel, senior Counsel who is assisted by junior Counsel, and I am sure that they will also tell you that you (20) must not try to communicate with a man who is in the witness box. I'm not saying that that is what you did. I'm putting on record that you looked directly at the witness, you said something, you were not speaking to No. 5. My impression was that you were trying to get in touch with the witness. I am warning you not to do it. Should it be established that you do that, I will hold you for contempt and I shall punish you for it. Is this clearly understood?

ACCUSED NO. 6 INAUDIBLE.

COURT: Thank you very much, you may now sit down. I'm (30) sorry for the interruption sir, but I watched accused no. 6

for about ten minutes before I became sure of what he was trying to do. The Court has sufficient problems to deal with. I want you please to behave yourself properly. If the other accused can do it and find it easy to do it, then you No. 6, and when I speak to you it is customary to stand up, if the others can behave themselves properly I think it could be well within your province to do likewise. You have my permission now to sit if you want to sit.

MR. ALEXANDER: Thank you sir.

(BELT 47 ends at phase 82, rest of belt blank)

(10)

BELT 48 begins:

MR. ALEXANDER: Accused no. 5 will also, if called upon, deny that he ever told you that the two girls or anybody else were coming back to take over the government. As far as accused no. 6 is concerned (interruption)

COURT: Can we have his reply to the last question? -- Well I've told the Court what he said. If he denies it then it is his own case.

MR. ALEXANDER: If your Worship will just bear with me one moment, I just want to confirm (INAUDIBLE) As far as accused (20) no. 6 is concerned, he will admit that there was an occasion when you said to him that he should be careful of accused no. 5 in connection with political involvement. No. 6 cannot recall at this stage what the nature was of his reply to you, but he does not deny that his reply may have been what you said it was.

COURT: Mr. Alexander, I trust that we are not now heading for a conflict of interests (FAULTY RECORDING)

MR. ALEXANDER: No sir, the mere fact that a person may say (t0) one accused "I warn you about no. 5 politically" doesn't (30) mean that that, there is any proof (interruption)

COURT: I fully appreciate that, but I'm raising the question, sorry, there is somebody to see me for a second, I'm raising the question so that it doesn't come upon us unexpectedly.

MR. ALEXANDER: I can only give the Court my assurance that we are not aware of any conflict of their (interruption)

COURT: Thank you sir, I'm quite satisfied.

MR. ALEXANDER: That concludes my cross-examination sir, almost coinciding, I hope, with the time for lunch.

NO FURTHER QUESTIONS.

(10)

RE-EXAMINATION BY PROSECUTOR: NO QUESTIONS.

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COURT: Mr. Prosecutor, I would prefer to adjourn for a day. Have you a very special reason to go on?

PROSECUTOR: Sir, I have no objection to remand till tomorrow sir. There is only one request, however, I would like to put to the Court and to Counsel, of course, and that is a request, if possible, to start the Court at half past eight tomorrow morning. The witness, sir, is also, the witness whom I intend calling is also required in Port Elizabeth.

(20)

FURTHER DISCUSSION RE REMAND.

COURT: Will the accused get up please? The case is remanded until tomorrow, that is the 7th of February.

CASE IS REMANDED UNTIL 7th FEBRUARY, 1979 (BELT 48/25)

BELT 48/60:

COURT: Start again.

PROSECUTOR: There are three witnesses, sir, who are from Johannesburg who have already given evidence. I just want to make sure, sir, that these witnesses won't be needed because I would like ^{to have} them going back (interruption)

(30)

COURT: Well, I have excused them one by one, so they are free to go.

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CASE RESUME ON 7/2/79 AT 8.45 A.M.

COURT TO PROSECUTOR: Yes Mr. Prosecutor? -- Sir, with the permission of the Court sir, I would like to proceed with the evidence of the witness, Kuzalo, who stood down yesterday sir because of the problem he had with the interpreter.

We have finished with Harry Sepanla? -- That is correct sir.

Allright, let the witness come forward then? What was his name again? -- Jacob Kuzalo sir.

Jacob Kuzalo? -- That is correct. Sir, we now have ... (10)
(intervention)

And we have an interpreter. I just want the gentleman's name.

COURT TO INTERPRETER: Interpreter, what is your name? -- Ishmael Male.

Mr. Male, I understand that you are an official interpreter attached to the staff of the magistrate at Johannesburg. Is that correct? -- Yes.

I take it that you have been sworn in as an interpreter? -- Yes.

Thank you very much. We have this ruling here, or rather (20)
this method that if you would kindly sit as close as you can to no. 1, that will ensure that if you can hear the witness, the accused will also be able to hear him, so would you kindly interpret into that (indistinct) over there and I want this microphone to be turned towards the witness, because should a controversy arise about what is being said, then we will have the sulu on the table as well.

COURT TO MR. ALEXANDER: Now Mr. Alexander, you will remember that in chamber yesterday I said to you in the presence of Mr. Bowman and Mr. Crous, I made the suggestion that the evidence of this man should start de novo. If you feel that this is not right, then please tell me so. (30)
If you feel that we can do it that way, then that is how we will proceed.

-- I discussed this aspect with my learned friend for the State, and we are agreed that so far as his formal identification of himself is concerned, that would not have to be repeated. That could stand on record sir. It cannot be disputed and it is not material.

Yes, okay, thank you.

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JACOB KUMALO, sworn states (through interpreter)

FURTHER EXAMINATION BY PROSECUTOR

Mr. Kumalo, when you gave evidence yesterday you told the Court that you knew accused no. 6? -- Yes your Worship. (10)

And you also told the Court that during the year 1977 you met accused no. 6 in a street in Disphloef, Sowetu? -- Yes.

Now can you tell the Court, what discussion, if any, you had with accused no. 6 on that particular occasion? -- Your Worship, there was no discussion. Discussions which were there, just that he asked me about the names of children and I said I did not know.

When you say that he asked you about the names of children, did he refer to any specific persons or persons or groups of persons, or what names was he referring to? -- No, he was asking me, he was not asking me a group of people. (20)

But if you say that ... (intervention)

COURT: Who was he asking about? What children was he referring to? -- Well, he did not mention any names.

PROSECUTOR: Mr. Kumalo, I just want to try and clarify this. Accused no. 6 met you and according to your evidence, he asked you if you knew any names? -- He asked me about the children, not about the names of the children.

Was there any reference made as to which children? -- Your Worship, what brought me here to court inside here, a statement was taken from me in Pretoria, that is a Police Station in Sowetu, and it was said (30) that he met me and he said something to me about the children, and I said I know /

know nothing about the children.

Yes, I understand that Mr. Kumalo, but apart from the fact that the Police spoke to you when they obtained your statement, can you recall what accused no. 6 spoke to you about or asked you on the occasion that you refer to when you met him in the street? -- Your Worship, I was fetched from my house because of what accused no. 6 said to the Police on the paper in writing that I knew something about ... (intervention)

COURT: No, no, wait a minute. -- And I said I did not know, I did not know anything about the children.

You are not now talking of an occasion when you and no. 6 and (10) the Police were together? -- No, I was the only one and I was taken by the Police, that is the Pretoria Policemen.

PROSECUTOR: No, I understand that Mr. Kumalo that the Police came to your house and after they spoke to you they obtained a statement from you at the Pretoria Police Station? -- Yes.

If necessary we will get to that at a later stage. I just want to understand your evidence before I conclude. Let us just take you back a bit. Did you meet accused no. 6 in a street in Diepkloof, Soweto during 1977? -- We met your Worship, but I have forgotten about that now because he is not my friend. I was not used to him. (20)

Now when you say you have forgotten, are you saying that you did not meet, or are you saying that you cannot recall what took place when you met? -- I have forgotten what was said.

Did you in fact speak to each other on that occasion? -- Your Worship, we spoke to each other, but not much. He asked me about the children and I said I did not know anything.

Mr. Kumalo, can you recall what accused no. 6 asked you about the children? -- He did not ask me. He just said: Do you know anything about the children? And I said I did not know anything about the children.

Mr. Kumalo, have you any other names? -- Yes, Booi, that is (30) my home name.

COURT: Your home name? -- Yes.

Do you mean by that, that that is the name by which your people call you at home? -- Yes your Worship, that is the name by which I am called at home and by other people.

PROSECUTOR: Mr. Kumalo, how did accused no. 6 address you when he spoke to you? What names were used, if any? -- I will answer your Worship. Well, it is the same thing if you are living together, that is in one place. You see, this man took me as a man used to him because we live in the same area.

If you say this man are you referring to accused no. 6? --
Yes, I refer to no. 6. (10)

Yes, and how did he address you?

COURT: How did he call you? -- It is the same thing if I know your name or I do not know you ... (intervention)

Mr. Kumalo, I think I have had enough nonsense from you. Listen carefully. We are not playing games. The Prosecutor is dealing very gently with you. I propose to do the same and I am going to ask you one single question, one question only. -- Yes your Worship.

How did accused no. 6 call you, how did he address you when he spoke to you? In other words, did he say to you Booi, or did he say Mr. X, or did he say XYZ, how did this man call you when he spoke to you? (20)
-- He called me by the name "Booi".

Please proceed?

NO FURTHER QUESTIONS BY PROSECUTOR

COURT ADJOURNS FOR A FEW MINUTES

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COURT RESUMES

CROSS-EXAMINATION BY MR. ALKANDINE

You told the Court that at a certain time you were taken to the Protea Police Station? -- Yes your Worship.

Can you remember when that was? This year or last year? -- In (30)
this month, January.

Not this month, you mean last year? -- This year.

And you said that you were shown a statement that was supposed to have been made by accused no. 6? -- Yes.

And what you were told about is that in that statement there was something about children? -- Yes.

You were asked whether you know anything about accused no. 6 and children? Is that right? -- That is so.

You told the magistrate a moment ago that you then told the Police that you knew nothing about the children? -- Yes.

I take it that was a true answer that you gave to the Police? (10)
-- Yes your Worship.

Now they were asking you in January 1979 about something that happened a long time ago? -- No, I do not know.

The Police were asking you about an incident that had happened a long time before January 1979? -- They were asking about something that happened long ago.

They were saying to you that it had happened a long time ago?
-- That I agree with.

You said you did not remember the incident? -- I do not know
... (indistinct) (20)

You do not even remember meeting the man to talk about him?
-- No, I do not remember. I have forgotten (indistinct) long ago.

When you say it was in 1977 that you met him, could ^{it} have been earlier than 1977? -- I do not know.

You told my learned friend, the Prosecutor, also that you have forgotten what was said? -- Yes.

And that is a true answer? -- Yes your Worship.

Because after all as you said this man was not a friend of yours? -- He was not my friend.

You only knew him by sight casually? -- By living in the same (30)
area.

You certainly did not know his name? -- I did not know his name.

So therefore when you made a statement to the Police, you could not have used his name? -- It was a person I am used to seeing. I did not know his name.

Yes, therefore you could not have used his name when you made your Police statement? -- Well, it was written on the papers.

You mean what was written in your Police statement had a name on it? -- Yes.

But you did not give that name because you did not know it? (10)
-- Yes.

Did you tell the Police that you did not know the name of this man? -- I told them.

And you were never called to an identification parade? -- No, I was never called to an identification parade.

And you told the Police that you never remembered the incident? -- I do not know of it any longer.

The question is did you tell the Police you did not remember the incident?

COURT: What incident would this be? (20)

MR. ALEXANDER: The one to which he has been referring in evidence sir. Just to make it quite clear, the meeting with accused no. 6.

COURT: There are a number of members of the public in the court. Who are they?

MR. ALEXANDER: One is a Policeman sir in the brown jacket. I do not know about the others.

COURT: The one with the glasses?

(?)
PROSECUTOR: That is a member of the Security Police.

COURT: I see, but they are bringing little parcels in and I have placed an embargo on that. That man who came in here had a parcel. Mr. (30)
Nabona, just get him into the Court. I am sorry to interrupt.

MR. ALEXANDER: I understand sir.

COURT: Proceed Mr... (sentence incomplete)

MR. ALEXANDER CORRIEUS: You told the Police that you did not know anything about the meeting with accused no. 6? -- No, I do not know anything about that. What I know about is about the children. That was my statement.

The question is, you have already told the Court that you told the Police that you know nothing about this incident which is the meeting together with accused no. 6? You said that today? Is that true? -- I do not understand well. (10)

You told the Court today that when the Police took you to Pretos, you were shown a statement supposed to have been made by accused no. 6. You said you know nothing about children?

COURT: You said today when the Police took you to Pretos ... (intervention)

MR. ALEXANDER: You were shown a statement allegedly made by ... (intervention)

COURT: You were shown a statement?

MR. ALEXANDER: Allegedly made by accused no. 6.

COURT: Made by no. 6. Yes?

MR. ALEXANDER: He said he knew nothing about the children.

COURT: This is the witness?

MR. ALEXANDER: The witness.

COURT: You said?

MR. ALEXANDER: He knew nothing about the children.

COURT: You know nothing about the children. Mr. Alexander, my query is just this, and it is only a query, is that what the witness said or did he say he did not know the names of the children?

MR. ALEXANDER: Oh no, he said it this way sir. "I know nothing about the children and I said I did not know about any child". (30)

COURT: Alright ... (intervention)

MR. ALEXANDER: Evidence in chief sir.

COURT: Now I have written down your question which is a rather long one, and would you break it up or shall I do it?

MR. ALEXANDER: No sir, I will carry on. You said today in chief that you were taken to the Pretoria Police Station? -- Yes your Worship.

There you told us that you were shown a statement that was supposed to have been made by accused no. 6?

COURT: No, I am afraid I must interrupt again. You see, you now referred to examination in chief, and what you are putting to him now is what came out in cross-examination? (10)

MR. ALEXANDER: Oh no, this is in chief sir. I am referring to his evidence in chief, not in cross-examination.

COURT: How did he say in chief that ... (intervention)

MR. ALEXANDER: Sir, he said it twice. We have a very clear note of this.

COURT: Now, I am not going to ... (intervention)

PROSECUTOR: He did refer to the statement.

COURT: That he was shown a statement?

PROSECUTOR: That is correct.

COURT: It is my mistake. Would you please carry on? You were taken to the Police Station and shown the statement. Please carry on sir? (20)

MR. ALEXANDER CONTINUING: You then said ... (intervention)

COURT: No, he has not replied ... (inaudible, interpreter in microphone) ...? -- Yes your Worship.

MR. ALEXANDER: You then told the Court that you told the Police that you knew nothing about the children? -- Yes.

You told me in cross-examination when I started that that ^{years} answer of. to the Police was true? -- It was the truth because I took a statement from the Police.

COURT: Just a minute. It was the truth because?

MR. ALEXANDER: I took a statement from the Police. Do you mean that (30) because the Police told you there had been an incident between yourself and

no. 6 concerning children, you assumed that that was true? -- It is the truth your Worship because they are the legal men.

COURT: They are what? -- Legal men.

MR. ALEXANDER: So because the Police told you what had happened, you agreed? -- I agreed because they are legal men.

But you told the Police that you know nothing about the incident? -- I said I did not know anything.

You did not know the name of the man? -- I do not know the man's name.

Do you think he knows your name? -- He knows my name. (10)

He has never spoken to you before this day that you have been referring to? -- No, he has never spoken to me.

You have never met him to talk to at all. You only know him by sight in the township?

COURT: No, those are two questions.

MR. ALEXANDER: You never knew him before this day?

COURT: Which day, today?

MR. ALEXANDER: No, the day in question sir, some time, whenever it was in 1977 or earlier? -- I did not know him.

You have never spoken to him before the day that you are (20) giving evidence about? -- No, I am not used to him. I found his name on the statement because we are neighbours or live in the same area.

COURT: Will you just repeat that answer? -- I know him because we are neighbours or we live in the same ... (intervention)

I know him because we are neighbours and? -- Live in the same area.

And we live in the same area.

MR. ALEXANDER: But you live in some 6, I think, and he lives in some 5 of Diepkloof. Is that right? -- I am not living in some 6. I live in some 2. (30)

I beg your pardon. I beg your pardon.

COURT: /

COURT: You live in zone? -- 2.

MR. ALEXANDER: Did the Police say to you that according to a statement that no. 6 had made, that he knew you? -- Well, he should have said that he knew me because my name is on the statement from the Police.

The question is did the Police say that ... (intervention)

COURT: No. 6 should have said that he knew me for I saw his name or your name? -- Oh, my name appears on the statement, Beoi Kumalo.

No. 6 should have said that he knew me for I saw my name in the statement. Is that what he is saying? You saw your name, Beoi Kumalo? -- Yes. (10)

MR. ALEXANDER: And because that name was in the statement, you thought he knew you? -- He knew me.

How do you know he knows you? -- I saw his name in the statement.

COURT: I saw his name? -- Name in the statement.

I saw his name in the statement? -- In the statement yes.

MR. ALEXANDER: And your name as well? -- The name Beoi Kumalo was in the statement and when the Police came to me by night they said: We have come to look for Beoi Kumalo.

COURT: That is yourself? -- That is myself. (20)

MR. ALEXANDER: When they asked you did you ever remember meeting accused no. 6, you said you did not remember meeting him? -- I do not remember.

But you have told us three times today that you told the Police you did not remember meeting accused no. 6 and talking about the children? -- I will ask this Court your Worship. I have nothing further to say.

COURT: I must advise you that you are obliged to answer counsel's questions. If you would like to sit down, you can tell me so. I will allow you to sit, but counsel is fully entitled to cross-examine and I must ask you to not only pay attention, I am not saying that you are not paying attention, but I must ask you, I want to ask you to reply to these questions. (30)

Also, counsel is entitled to put the same question a number of times and in a number of different ways. The only concession I can make to you, if you want to sit down, you can tell Mr. Interpreter and you will be allowed to sit down. -- Well I can still stand on my feet your Worship.

Thank you.

MR. ALEXANDER: When the Police told you there is a statement by accused no. 6 where he says you spoke to him about the children, you told the Police that you did not know anything about that? -- Yes, I agree to that.

If that was true, your answer, then today you know nothing at all about ever meeting accused no. 6 to talk about children? -- I have (10)
forgotten that your Worship.

You cannot remember ever meeting him in the street in 1977 or any other year? -- Well, I have not seen this man for some time your Worship.

You cannot ever remember discussing children with him? -- It was not a discussion. He is just a man who asked me if I knew anything about children and I said I did not know.

But you have already told us that you told the Police you had forgotten the incident and that was a true answer? -- That was my answer from Protea. (20)

And it was true? -- That answer was the truth because I could not argue with men of the law.

You mean they told you it happened and you agreed it happened? -- Yes.

But in truth you did not remember that it had happened? -- I did not remember.

So what you are telling us today is what the Police told you to say and not what you yourself really remember? -- Oh, that I agree with.

Which Policemen told you what had happened? -- That Policeman is not here. (30)

Do you know his name? -- No, I do not know his name.

A white Policeman or a black Policeman? -- He was a white Policeman, a white man.

Do you know where he came from, where his station was? -- P.R., here, Port Elizabeth.

The only Policeman I know of who had come up from Port Elizabeth to that area, was Warrant-officer Schepers. Does that name suggest anything to you? No, I am sorry, it was Lieutenant du Plessis? -- He is the man who was here yesterday.

The man who was here yesterday? -- Yes.

Now perhaps you can just help us there, can you remember how (10) this man ... (inaudible, interpreter in microphone)...? -- I know him.

Would you recognise him?

COURT: Counsel, no. 6 apparently wants to draw your attention to something.

MR. ALEXANDER: Thank you sir. Would you recognise him if you saw him again? -- A man who fetched me at home I can not forget. I know him.

Does the name Verkuil mean anything to you, Lieutenant Verkuil? -- Between them. It is between them. They were two.

I think the only other question I have to ask you is that it was the Police who said to you then that the accused had greeted you as (20) Booi. You do not remember anything like that? -- I was greeted by a Policeman. It is the Policeman who said to me: "Booi".

It was never the accused who greeted you as Booi? -- When he greeted me your Worship, we were not used to each other and we used to greet each other by our hands. We did not call each other by names.

Now in case it may be necessary accused no. 6 will deny that he ever met you to speak to and least of all about any of the incidents you refer to? -- Well, he can deny it because I also received these letters from men of the law.

NO FURTHER QUESTIONS

(30)

RE-EXAMINATION BY PROSECUTOR

I would /

I would like to put one question through the Court firstly.

COURT: Any questions?

PROSECUTOR: Yes, I would like to put a question through the Court...

(intervention)

COURT: Oh I see, I thought you said a question to the Court. What is this question sir?

PROSECUTOR: Sir, it is just regarding the education of the witness.

COURT: Please go ahead?

PROSECUTOR PROCEEDS: Mr. Kumsalo, why did you leave school at standard 1?

-- Your Worship, I left school because my parents were working for farmers, (10) white farmers.

Where did you grow up? -- On the farm.

And when did you go and reside at Diepkloof in Soweta? --

My parents left Volksrust and they went to Johannesburg.

COURT: In what year, can you remember? -- My parents left the farm in 1946.

PROSECUTOR: And were you living in Diepkloof some 2 from then? -- No, we are from Alexandria.

When did you go and live in Diepkloof? -- 1962.

So how long have you known accused no. 6 by sight? -- Oh, (20) the time, about six years.

Did you know where his house was? -- I knew the house by sight.

Did you know where he was employed at all? -- No, where he worked I did not know.

Now Booi, many questions were put to you regarding the obtainment of your statement, the fact that other statements were shown to you, what the Police had said, etcetera? -- Yes.

Now what I want you to do is to get about the statements, how you came to make a statement, and what the Police told you, etcetera. (30)

-- Yes your Worship.

Sir, /

Sir, before I continue my re-examination sir, I just want to clarify one aspect. I would need a short adjournment for that sir.

COURT: Will you need a short adjournment?

PROSECUTOR: That is correct.

COURT: Yes, that is granted.

COURT ADJOURNS

---oO---

COURT RESUMES

COURT: Mr. Interpreter, please tell the witness that he is still under oath. -- Yes your Worship. (10)

PROSECUTOR CONTINUES: Mr. Kumalo, I think you told the Court that you knew where accused no. 6 lived in zone 2, Diepkloof? -- Yes your Worship.

Did you know any of the people who stayed with him in that house? -- I know his sister.

COURT: What is her name? -- Thandi.

Thandi who? -- No, I do not know her surname.

PROSECUTOR: How did you know what the name of the sister was?

MR. ALEXANDER: Your Worship, may I intervene and ask the Court to decide whether this arises out of the cross-examination?

PROSECUTOR: Yes, I submit it does. (20)

COURT: I think the question of names came up, the questions of names came up in regard to the children.

MR. ALEXANDER: That was in chief sir, but not (inaudible, Court and Mr. Alexander speaking simultaneously) who lived in the accused's house.

COURT: Ja, Mr. Prosecutor, I think that this question does not arise out of - I must say though Mr... (intervention)

PROSECUTOR: Sir, can I just argue this before the Court ... (intervention)

COURT: Yes, I want to just say something else. Mr. Alexander, I must say that in view of the somewhat prolonged re-examination, I was going to give another opportunity at cross-examination. Whether that would (30) solve any problem at all, I do not know, but I will have to listen to the

Prosecutor /

Prosecutor first because he wants to argue this particular point. I will hear you Mr. Prosecutor?

PROSECUTOR: Sir, the position is sir that the witness was asked as to if he knew the name of accused no. 6. There was also cross-examination on the point of how well he knows him, if he was a friend of his, etcetera. My submission is sir that this is very relevant to those questions that were put in cross-examination.

COURT: Mr. Alexander?

MR. ALEXANDER: Your Worship, those questions were asked by my learned friend in chief, not by me in cross-examination. He asked of the witness whether he knew the accused, he asked him whether he was a friend of his, he asked him ... (intervention) (10)

COURT: Did you not touch on that in cross-examination?

MR. ALEXANDER: Yes sir, but this was raised in chief. It was not a matter which I raised in cross-examination unconnected with evidence in chief, and had this been a relevant point to my learned friend's evidence in chief or the questioning in chief, he would have asked him in chief and he never did so about whether he knew who lived in the accused's house.

COURT: Yes, I think I will sustain the objection Mr. Prosecutor.

PROSECUTOR: As the Court pleases. (20)

COURT: Excuse me, before continuing, I must say however, should I find it necessary, I will put a number of questions myself and this may well be one of them. I do not know, I will see. I will see how things progress. I say this at this early stage because I have quite a number of questions to put to this witness, but I am not going to put them until after re-examination.

PROSECUTOR CONTINUES: Mr. Kusaló, in cross-examination you said that you did not know the name of accused no. 6? -- Yes your Worship.

What did you mean by that? Did you mean that you did not know his full name, his surname or his first name? What is the position? (30)
-- I do not know his name nor his surname.

Apart from greeting accused no. 6 as you told the Court, had you ever spoken to him? -- No, I was not used to him of speaking to him.

COURT: I did not hear that? -- No, I was not used to speaking to him.
No, I was not used to speaking to him? -- Yes.

Mr. Interpreter, would you move up the microphone a little bit towards you and give it a bit of a turn as well, no, no, towards your own mouth, towards yourself, some more, that's right, thank you.

PROSECUTOR: But the question is not if you were used to speaking to him. The question is did you ever speak to him? -- No, I was not used to speaking to him. (10)

Mr. Kuzale, did you ever have any discussion with anybody regarding young men?

MR. ALEXANDER: Your Worship, I am not aware of any questions, either in chief or in cross-examination which dealt with young men.

COURT: Children?

MR. ALEXANDER: Children sir, but not young men.

COURT: With that qualification Mr. Prosecutor, please rephrase?

PROSECUTOR: Did you ever have any discussion with anybody regarding any children or young men?

COURT: No, no, I cannot allow you to add that ... (intervention) (20)

PROSECUTOR: Then I withdraw the last portion young men.

COURT: Rephrase? Did you ever have any discussion with any children?

PROSECUTOR: No, did you ever have any discussion with anybody regarding children? -- No, your Worship, there is nobody that I talked to concerning the children. I found my statement from that man.

COURT: I do not follow that. This is the question. Did you ever have any discussion with anybody regarding any children? -- No.

Is your answer no? -- No.

PROSECUTOR: Did you at any stage say to anybody that you did not want anything to do with children? (30)

COURT: /

COURT: That is a leading question, is it not? Is that not a leading question?

PROSECUTOR: As the Court pleases. I will leave it there sir. Mr. Kuzalo, is it correct that you made a statement to the Police in Johannesburg on the 10th of January ... (intervention)

COURT: Mr. Mabona, did you make a statement to the Police where?

PROSECUTOR: At the Police Station at Johannesburg.

COURT: At the Police Station, Johannesburg?

PROSECUTOR: On the 10th of January?

COURT: 10/1/79? (10)

PROSECUTOR: That is correct.

COURT: Just a minute please. -- I made a statement, I forget the date. It was at Protea.

Police Station? -- Yes, Protea Police Station.

PROSECUTOR: Was this statement taken down in writing? -- Yes.

Was it read over to you at all? -- It was written for me and it was read back to me.

COURT: It was written for me? -- It was written for me.

It was written for me and what else? -- And read back to me.

And read back to me. (20)

PROSECUTOR: And were you satisfied with the contents of the statement after it was read over to you? -- I was satisfied because it was read to me by a white man.

COURT: Mr. Prosecutor, are you heading for discrediting the witness?

PROSECUTOR: That is correct sir.

COURT: Will you just hang on a second please. What is the section ... (intervention)

MR. ALEXANDER: Section 190 sir, 1-9-0.

COURT TO INTERPRETER: Mr. Mabona, there must be another black book. Bring me the other one. There must be another one there. (30)

COURT TO PROSECUTOR: Mr. Prosecutor, then I would suggest that you follow faithfully /

faithfully from now on the requirements of Section 190 subsection (2) which reads as follows:

"Any party who is called a witness who has given evidence in any proceedings, may after such party or the Court has asked the witness whether he did or did not previously make a statement with which his evidence in a set proceedings is inconsistent, and after sufficient particulars of the alleged previous statement to designate the occasion when it was made, may have been given to the witness, prove that he previously made a statement with which such evidence is consistent". (10)

I would venture to suggest that the next step to be taken, if this is what you propose to do, is to ask him whether he did or did not previously make a statement with which his evidence in the set proceedings is inconsistent. Now if you do not agree with what I have said, I will hear you on the point.

PROSECUTOR: Sir, what I am busy with now sir, is to firstly establish that the witness made a statement; secondly sir, to identify when and where he made the statement.

COURT: I think that comes later. You have established that he has made a statement. (20)

PROSECUTOR: That is correct sir.

COURT: You now have to establish whether it is inconsistent with what he has told this Court, and after that you must give sufficient particulars of the alleged previous statement to designate the occasion when it was made, having been given to the witness, and then after that you can prove that he previously made a statement with which his evidence is inconsistent, but whatever way you proceed, I think in view of the questions which you have already put, it now becomes imperative, if you want to discredit him, to ask him whether or not he has previously made a statement with which his evidence today is inconsistent. (30)

PROSECUTOR: That is correct sir, but my submission is I must first

identify /

identify that statement.

COURT: Allright, proceed.

PROSECUTOR: As the Court pleases. Mr. Kumalo, after the statement was read over to you, did you sign it? -- They said I must sign it.

COURT: The question is something different. Did you sign the statement after it was read over to you? -- I signed your Worship.

PROSECUTOR: Is this the statement, Exhibit H?

COURT: That will be exhibit no.?

PROSECUTOR: H sir.

COURT: Sorry, we will skip I and J. It will be Exhibit K. Hand (10) it up to me please? -- Yes, this is the statement, J. Kumalo, there it stands.

Exhibit K.

PROSECUTOR: Sir, it is my submission sir that the statement which has now been identified with the witness as the statement which he made to the Police, is inconsistent sir with his evidence in Court, and with the permission of the Court I would like to put the statement to the witness.

COURT: Any comment at this stage Mr. Alexander?

MR. ALEXANDER: No, he can put it to him sir. I see no problem about my learned friend putting whatever portions he wants to put to the witness, to (20) prove if he can, that the statement is inconsistent with the testimony. That is all he can do sir, is to prove what is *ex facie* the document and the evidence ... (inaudible).

COURT: Mr. Prosecutor, is it your contention that there is a serious discrepancy between what is contained in that document and what the witness has said in Court?

PROSECUTOR: That is correct sir.

COURT: I want to refer in this regard to a matter of S. v. Skatsha. This is a matter which went on automatic review from the Law Courts at Port Elizabeth. The reference is no. 784195 dated the 18th of December (30) 1978, and on this record His Lordship Mr. Justice T. Stewart made the

following /

following remarks for the guidance of the magistrate. I quote:

"Die verrigtinge is bekrachtig. Nag ek egter twee leidrade
gees

(1) Die omstandighede waaronder dit van die aanklaer verweg
word dat hy die feit sal openbaar dat 'n Staatsgetuie van
sy verklaring afgezyk het, blyk uit Rex v Steyn, 1954 (1)
S.A. 324. Appellhof op bladsy 357, naamlik:

'Where there is a serious discrepancy between the
proof... and what he says on oath at the trial'.

Dan moet hy:

(10)

(a) dit aan die Hof openbaar en tensy daar geesle redes
vir die teendeel is;

(b) dit aan die Verdiediging bekend stel. Hy kan ook

(c) die getuie diskrediteer.

Hierdie reëls geld as daar in bejagrike opsigte
afgezyk word en nie slegs wanneer die getuie heeltemal
van sy verklaring afzyk nie".

This is the end of the quote from the note made by the learned Judge in the
case of R. v Bickels. The heading in Rex v Steyn supra reads as follows.

I quote:

(20)

"When statements are procured from witnesses for the purpose
that what they say shall be given in evidence in a law suit
that is contemplated, these statements are protected against
disclosure until at least the conclusion of the proceedings
which would include any appeal or similar steps after the
decision of the Court are first instants. This protection
against disclosure applies in both civil and criminal trials.

Rex v H. 1952. S.A. 344 T overruled; where there is a
serious discrepancy between the proof of a crown witness and
what he says on oath and at the trial, the Prosecutor must
direct attention to this fact that unless there is special
(30)

and /

and cogent reason for the contrary, make the statement available for cross-examination".

I go on to say that on page 337, Greenberg, J.A. said the following:

"One other matter remains to be mentioned. In his reasons the learned Chief Justice said:

"Disclosure must be left to the discretion of the Attorney General or his deputy. The Prosecutor stands in a special relation to the Court and where there is a serious discrepancy between the proof of a crown witness and what he says on oath at the trial, the Court has the right to expect that the Prosecutor will, of his own motion, direct attention to the fact and, unless there is special and cogent reason to the contrary, make the statement available for cross-examination. I may say that this is the almost invariable practice of prosecutors in this colony". (10)

I go on to say a passage to the same effect appears in the reasons of Beadle, J:

"And my impression is that the same applies in the Court of the Union. In my opinion the proper administration of justice requires that this practice should be invariable and not almost invariable and I say this in the hope that the duty to observe it will be carried out by every prosecutor". (20)

His Lordship then ended his remarks by saying: "The appeal is dismissed".

In view of the authority which I have quoted, I have come to the conclusion that the Prosecutor is entitled to discredit the witness, but not to cross-examine him. He has not been declared a hostile witness. You may discredit him though.

PROSECUTOR: As the Court pleases. Can I just have the statement air? (30)

COURT: I would suggest Mr. Prosecutor, that the statement now be

read /

read out so that first of all the Court can know what is in the statement and so that I can myself see where the alleged discrepancies lie.

PROSECUTOR: As the Court pleases. Your statement reads as follows - that is Exhibit K sir. "Ek is 'n volwasse swart man en woon te bestaande adres (die adres wat gegee is, is 2389 (onhoorbaar)). Ek is ook bekend as Bodi Kumalo. Ek is werksaam by die Johannesburg Munisipaliteit te Selby. Ek vee die strate. Ek kan vir Weaver Magoai. Ek kan hom slegs by die naam van Weaver. Ek weet dat hy saam met sy suster, Thandi wie 'n onderwyseres is, gewoon het.

COURT: I must interpose to say that whoever took the statement (10) should take a few lessons in Afrikaans. The prefix is "wat", not "wie".

PROSECUTOR: Soos die Hof behaag Edelagbare. "Ek sien Weaver vir 'n geruime tyd nie meer nie. Dit mag twee jaar wees dat ek hom nie weer sien nie. Ek weet nie waar hy is nie. Ek weet nie waar hy gewerk het nie. Ons het mekaar slegs van sien geken. As ons bymekaar op straat verbygeleef het, het ons mekaar altyd gegroet. Ons was nie mees nie". I am reading now from page 2 sir ... (intervention)

COURT: You must read the full statement.

PROSECUTOR: Yes sir, I would just like to refer specifically to the next paragraph marked paragraph 6 sir, on page 2. "Ek kan nie onthou wanneer (20) dit was nie, maar dit was lank terug, het ek vir Weaver een ooggand reakgeleef terwyl ek op pad na my werk was". -- Yes your Worship.

Is that what you told the Police? -- The Pretoria Police Station.

COURT: You have not replied to the question. Is that what you told the Police, not where did you tell it to them, is that what you told the Police? -- Yes your Worship.

PROSECUTOR: "Weaver het toe met my gepraat oor jong mans". -- Yes your Worship.

If you say yes is that what you told the Police? -- Yes (30) your Worship.

"Ek het nie netisie gemaak oor wat hy gepraat het van die jongmans nie". -- Yes your Worship.

"Ek het toe aan Weaver gesê dat ek wil niks met jong mans te doen hê nie". -- Yes your Worship, that is so.

"Ek weet nie waarom Weaver met my gepraat het oor jongmans nie. Ek het ook nie belang gestel in Weaver se gesprek nie en het toe aangeloop na my werk". -- That is so your Worship.

"Dit is al wat ek kan sê". -- Your Worship, that is where I ended.

COURT: The document goes in as Exhibit? (10)

PROSECUTOR: K sir.

COURT: K. Do you need it Mr. Alexander? Yes Mr. Prosecutor?

PROSECUTOR: Were you asked to take the oath when this statement had been taken from you? -- I was sworn in your Worship.

COURT: Well, were you prepared to swear to the truth of that statement? -- I swore your Worship.

Were you prepared to swear? Were you willing? -- I was willing.

Is this statement in the form of an affidavit?

PROSECUTOR: That is correct. (20)

NO FURTHER QUESTIONS

FURTHER CROSS-EXAMINATION BY MR. ALEXANDER

You used the phrase that "they said I must sign the statement"? -- And I signed.

What do you mean when you said "they said I must sign it?" -- I had to sign because the legal man said I must sign.

That is after you had said that you had no knowledge of this particular discussion with accused no. 6? -- I had already said so.

So what is contained in the statement is not true? -- I will not know your Worship. (30)

You do not remember anything about the events that you spoke

of in the statement? -- Your Worship, I remember the beginning and the end of the statement. I do not know what happened inbetween.

in
Now the events, other words all you could tell the Police in truth about was your name and address. Is that all? -- My name and my adress, that was all.

Nothing else in the statement is something that you know about. It is what you were told? -- That is what I was told.

And that is what you did not know about? -- I did not know anything about it.

NO FURTHER QUESTIONS

(10)

COURT: Mr. Prosecutor, whatever steps are to be taken in regard to the evidence of this man is left in your hands. I am not going to make any particular order at all.

AANKLAAR: Mr. die Konstabel, sluit hom toe in die selle asseblief?

PROSECUTOR ASKS FOR A SHORT ADJOURNMENT FOR NEXT WITNESS

MR. ALEXANDER: (Inaudible).. witness he has in mind to call, I have already discussed our attitude towards any evidence of Lieutenant Verkuil. If my learned friend intends calling him to prove that he took a statement from the last witness, then that fact has already been established in the sense that the witness said he took an oath in making the statement, and that doubtless(20) is relevant to any other steps that may be taken against the witness. If on the other hand, it is now sought to call Lieutenant Verkuil to discredit the witness on a collateral matter of credibility for example, whether or not he told him to sign the statement, that in our submission is relevant to the present proceedings.

COURT: May I say Mr. Alexander that I think your objection is perhaps a little bit premature, is it not?

MR. ALEXANDER: No, that is why I merely wanted to say it now sir so that my learned friend should know the basis on which we would object, because it could be to prove the fact of the statement then, I cannot really ... (30)

(intervention)

COURT: Was this statement taken by Mr. Verkuil?

MR. ALEXANDER: Yes sir.

COURT: Well, may I make this remark Mr. Alexander. To my mind this witness has been discredited. He has made two conflicting statements. To my mind furthermore it has got nothing further to do with us.

MR. ALEXANDER: That is our view sir, that if he in fact is discredited on the strength of two inconsistent statements which are before the Court and there is no doubt about that, then the evidence of Lieutenant Verkuil on this issue is not relevant to the present proceedings.

COURT: I will end by what I have to say in the following manner. (10)

If it is intended to prosecute this witness, then quite obviously Mr. Verkuil will be a witness in that case, but I cannot prescribe to the Prosecutor whom to call and who not to call, neither do I think I can deal with an objection until such time as the need for an objection arises, so I am afraid at this ... (intervention)

MR. ALEXANDER: No, I know sir. The only reason is because I have discussed it with my learned friend and we are anxious to save time sir in this matter.

COURT: So am I, and I must stress again I cannot prescribe to the Prosecutor whom to call, when to call, and I can only deal with that issue (20) once Mr. Verkuil is in the witness box.

MR. ALEXANDER: Ofcourse, I understand sir.

COURT: Yes Mr. Prosecutor?

PROSECUTOR CALLS:

SANDILE MATTHEW TALI, sworn states (through interpreter)

EXAMINATION BY PROSECUTOR

You are twenty-one years of age? -- Yes your Worship.

You are at present a awaiting trial prisoner in the North End Jail Prison, Port Elizabeth on a charge of murder? -- That is correct yes your Worship. (30)

When were you arrested? -- September.

Which /

Which year? -- 1978 your Worship.

Are any of these accused known to you? -- Yes your Worship, some of them are known to me.

You see there are numbers on the accused's docks? -- I see the numbers yes. No. 1, no. 3, no. 5 and no. 6.

Where do you know accused no. 1 from? -- I know him from Kwazakele at Njoli.

COURT: Is that no. 1? -- That is no. 1.

Please repeat that reply? -- I know him from Kwazakele at Njoli. (10)

Is that Njoli Street or Njoli Plain or Njoli Square? -- In the area of Njoli.

But Njoli is a street, and there is also an Njoli Square? -- I know him from the house next to the street your Worship.

PROSECUTOR: Do you know him well or only by sight? -- I know him well. He attended school at the Sec.

At what? -- Sec your Worship. That means Kwazakele Secondary School your Worship.

How before you were arrested last year, did you have any discussions with accused no. 1 at all? -- Yes, I had when I met him at Mzimaha's shop. (20)

Is that in Kwazakele? -- Yes.

When was that? -- That was during November 1977.

COURT: Did you say November 1977? -- Yes your Worship.

Was that shop still standing at the time? -- Yes, it was still standing.

Had it not yet been burnt down? -- It had not been burnt down. When I was arrested it had not been burnt down your Worship.

PROSECUTOR: And what discussion did you have there? -- He asked me about Zakele Jonas, Mzimkulu Mtyimase (intervention) (30)

COURT: Is that one person? -- Yes, Mzimkulu Mtyimase your Worship, is

one person, it is the name and the surname.

And Zakele Jonas is one person? -- Yes.

Allright.

PROSECUTOR: Yes and then? -- He asked me about Zakele and Ntyimse and I said I did not know them.

COURT: You did not? -- Know them.

Her or him? -- Them your Worship.

Them?

PROSECUTOR: Yes? -- I then asked him why he asked me about Zakele and Mzimkulu. He said Mzimkulu and Zakele had left, they had left the R.S.A. (10)
He then asked me if I did not want to go away. I then said no, I was still working.

Did he say go away where? -- Yes, I asked him where I should go to. He then said to the place where the others have gone.

Did you ask him what place? -- Yes, I asked him what place. He then said in Afrika. Your Worship, I then asked him what was being done there. He said people going there are trained. They are trained for military training.

COURT: Is this now no. 1? -- Yes.

PROSECUTOR: Yes? -- He said you are being trained of handling the (20)
Bazuka.

Did you know what the Bazuka was? -- No, I did not know what it was your Worship, but he then explained it to me and he said it was a 9 mm.

Did he say what it was? -- Yes, he said it was a weapon with which we could fire. He said if I was interested inleaving I should go to the third street from Nencoba's place to a man by the name of Greaves Timi.

Did you know this man, Greaves Timi? -- I did not know him. I had never seen him. Because I was working I never went to that place and I took that off my mind. (30)

You did not go to which place? -- I did not go to Greaves'

place /

place your Worship.

Did accused no. 1 say what these people would do after they had received the training you have referred to? -- He said they will come back and take over this country, South Africa.

So you were arrested on the present charge and ^{you} were placed in the North End prison? -- Yes, that is correct.

In which section were you placed? -- D4.

Were you alone in a cell or with others? -- I was alone.

Were there other cells adjoining yours or not? -- Yes, there were. (10)

Did anybody speak to you after you had been placed in this cell? -- Yes, I called out for water your Worship.

Who did you want the water from? -- From the white man.

Is that the prison warden? -- I thought he was still in front of my door your Worship.

What happened then? -- A voice, ^{from no. 8} then came out, it was Greaves. He said I should go to sleep. I would get the water the following morning.

COURT: A voice of no. 8?

PROSECUTOR: No, from no. 8? -- From no. 8 your Worship.

COURT: Do you mean cell no. 8? -- I was in cell no. 7, he was in cell no. 8, your Worship. (20)

He said what? -- He said I should go to sleep. The white man was not going to open now. They would open the following morning.

PROSECUTOR: How did you know it was accused no. 3 who addressed you? -- After I had shouted or called out for this water, he asked who I was and I said I was Sandile.

Did you see him when he asked you who you were? -- No, I could not see him. I only heard his voice.

Could you establish where the voice was coming from? -- I asked where he was. He said he was next to me. He then asked why I was arrested and I told him. He then said he was Boet Gray. His actual name (30)

is Graves, but he is generally known as Gray.

Yes, and that? -- He then said at call no. 6 there were three men. He said the men's names were Pils, George and Simon. At call no. 5 he said it was Hyattum Siyavu.

COURT: Spell please? -- H-y-a-t-u-m-a-l, that is the first name your Worship, the surname S-i-y-a-v-u.

PROSECUTOR: Was anything said by the man who claimed to be Gray, why he was there? -- He said that the thing he had done is the thing that he had been arrested for and that we would talk in the morning during the exorcising time. (10)

Yes? -- (Inaudible) the Lieutenant who goes about looking at your water, how conditions are. Then we were taken out, washed our faces, preparing ourselves for a meal. We were looked up for a short time whilst the cleaners are going to clean the place.

Did you meet anybody when you were taken out your cell that following morning? -- Yes, I met Nrio and Gray your Worship.

Who were they? -- No. 5 is Nrio your Worship.

And Boat Gray you are referring to? -- The Gray I am referring to is accused no. 5.

Now where did you meet them? -- I met them in the morning when we were washing our faces. (20)

Did you speak to each other? -- Boat Nrio greeted me and he then told me that he was Nrio Kgelessa.

Is that no. 5? -- Yes.

When did he tell you that now? -- The day of my arrival.

COURT: May I interrupt for a moment sir, please. I am now speaking on belt no. 56, phase 1 and I place the following on record that on belt 55 I switched off the machine for a while in order to speak to the gentlemen who interpreted in this Court in selu. I did so at phase 15. I then forgot to switch on the machine again. After a while I did switch it on and only then did I realise that quite a bit of the evidence would not be /

be on record. I have now made on belt 55 the following note: Type only up to phase 15. I am requesting the Prosecutor now to either cover everything after phase 15 again, or read into the record the notes that have been made. I personally would prefer that the witness would be examined again from that phase so that the record itself will be complete. There is now a bit of evidence on belt 55, but I should like that to be ignored after phase 15. I am taking the belt out and I put belt 56 on, my remarks are now on belt 56, if you could take it there and go through the evidence of this witness again, then the record will be complete. If there is any objection to this method then please let me know. (10)

MR. ALEXANDER: We think, with respect, it would be better for the witness to say his evidence again, rather than to reading our notes.

COURT: Thank you. I could have done it from my notes, but I did not keep my notes so fully, that this could work out. I am sorry about this, but this machine is a trying business at the best of times and I am unfortunately very fallible in the operation of this dreadful, infernal contraption. If I knew better adjectives I would have used them as well.

PROSECUTOR CONTINUES: Mr. Tali, I must take you back on your evidence. You told the Court that you met accused no. 3 and no. 5 the following morning?

-- Yes. (20)

And you told the Court that you met them in the bathroom?

-- Yes.

I do not want to confuse you, that is now the first meeting you had the following morning with accused 3 and 5 in the bathroom? -- Yes that was the first time.

Now will you kindly proceed and tell the Court what happened in the bathroom and further on? -- No. 5 then asked me why I was arrested and I told him. He said he could help me in this case of mine, but he could not.

Is that on the occasion when he introduced himself to you? (30)

-- Yes.

Allright, yes, continue? -- He then asked me as to whether I did not want to be one of the comrades. I said I wanted to.

Where was accused no. 3 when no. 5 asked you this? -- We were all in the bathroom your Worship. He then said we would further our talks again. The exercising time was almost finished up.

Yes, and then? -- We were then locked up in our different cells.

Now I just want to cover one aspect which I do not think we have recorded. In the bathroom on the occasion when you met accused no. 3 and 5, I think you said that - was anything said by accused no. 3 on that (10) occasion? -- Yes, he said he was fortunate in being arrested together with his leader.

Did you know who he was referring to then? -- Yes, I knew, because we were only three in the bathroom. Your Worship, no. 5 then confirmed that and said no. 3 was not lying, that was the truth.

But did you know who accused no. 3 was referring to as being his leader? -- Yes, I knew because whenever I spoke he would look at no. 5 and no. 5 would reply.

You say you were then locked up in the cells? -- Yes.

And a later stage you were again released from the cells? (20)

-- Yes, we were released for the 2 o'clock exercises.

What happened then? -- He conversed with me and said should I get bail on this case ... (intervention)

Who is the he who you are referring to? -- No. 5.

Where did he speak to you then? -- In the yard where we were exercising.

said I
Yes? -- He should go to house no. 5113.

Where? -- Kwazakale. I should go and look for him there because he was sure he was going to be acquitted in his case.

Yes? -- He said should I not find him at no. 5113, he said (30)
I must go to this removal truck and ask for a lift and go to him at

Johannesburg at his house Orlando East.

Yes, and then? -- Arriving there I should enquire about Eric Ngelesu who was a boxer. He said on arrival there he would make out a passport for me and in the company of an old lady I would go to Swaziland. He would give me a letter as well. On arriving at Swaziland, I should enquire about the Roman Catholic School and ask for Stanley Mapiwela, M-a-p-i-w-e-l-a. He is the person who sees that I go forward to the training place.

Do you know what training? -- He said it was military training. After completing the training, we would come back and take over (10) this country.

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

Who said so? -- No. 5.

Now Mr. Tali, did no. 5 only speak to you on this one occasion, or was it during the period you were detained in prison? -- He spoke to me all the time I was detained in prison your Worship.

And after accused no. 5 spoke to you about these things which you have related to the Court in your evidence, did you do anything about this? -- Yes, I met Sergeant Bosch and told him about what no. 5 had said. (20)

Did Mr. Bosch do anything with you after you had told him that? -- Yes, he took me to the Lieutenant.

And was a statement eventually obtained from you by the Police? -- Not on the same day, but in due course they arrived and obtained a statement from me.

Mr. Tali, while you were in custody, did you make any notes at all? -- No, I made no notes.

Did you hand any paper to the Police at all when you were interviewed? -- Yes.

What paper was that? -- It is the piece of paper in which (30) it said the terrorists were in the Transvaal.

You said that you knew accused no. 6? -- Yes, I know no.

6.

Where did you see him, where do you know him from? -- I saw him at the North End Prison.

Was he detained in the same section D4 that you were in or not? -- When I arrived there I was informed he was at further charge.

Was he at any stage placed into the same section that you were in? -- I stayed for a long time hearing about him and it was said he was at the further charge.

NO FURTHER QUESTIONS

(10)

PROSECUTOR: Before cross-examination sir, I forgot to supply the Court with the reference of this witness sir. The number of the witness is no. 69 on pages 16, 31 ... (intervention)

COURT: Just hang on a second. He is no. 69?

PROSECUTOR: On page 16 sir and also on page 31, also on page 34 sir, no. 69.

NO FURTHER QUESTIONS

MR. ALEXANDER: Your Worship, will readily understand that an extensive consultation will have to be held with all the persons involved by this witness.

(20)

COURT: I fully appreciate that. It is now almost a quarter to one. What would you suggest for a resumption? I think I sum the position up correctly if I say that it is now on the dot a quarter to one and the Defence team need some time to consult and this will be a considerable time and the lunch hour will fall into it as well. In these circumstances then so as not to have witnesses and members of the Court hanging around needlessly, this case will be adjourned until 8.30 tomorrow, that is the 8th of February.

CASE THIS REMANDED TO THE 8TH OF FEBRUARY 1979

—o—

(30)

CASE RESUMES

S.M. Tali, sworn states (through interpreter)

COURT: For the record, I am starting on bail 57 at phase 1 and the witness Tali whom I have numbered the witness no. 7, is now continuing his evidence. Mr. Prosecutor, I think you were through with the witness, weren't you?

PROSECUTOR: That is correct sir.

COURT: Now is there anything you wanted to put before cross-examination started?

PROSECUTOR: Please sir, I just want to refer to the further particulars page 31 sir. (10)

COURT: You say page?

PROSECUTOR: Page 31 sir.

COURT: Page 31? Yes, I have got that.

PROSECUTOR: The witness is numbered 69 on that page sir. Sir, I neglected to add in when I had certain additions added to the further particulars sir, although I wrote it down in my particulars, I neglected to request that further particulars regarding this witness should be added.

COURT: I do not quite follow. Do you mean that you should have given further information in regard to him to the Defence?

PROSECUTOR: That is correct. (20)

COURT: Do you propose to do so now?

PROSECUTOR: That is correct.

COURT: Has this been written out?

PROSECUTOR: Sir, it is just four words that I just wish to have added in.

COURT: Is there any objection to this being done? Must those words be entered on page 31?

PROSECUTOR: That is correct sir.

COURT: Sandile Tali during or about November 1977.

PROSECUTOR: Sir, I just want added to that, at Maimtsha's shop in Kwazakale. (30)

COURT: Spell the name?

PROSECUTOR: M-a-i-n-t-s-h-a-s-s sir.

COURT: Maimtsha's Shop.

PROSECUTOR: In Kwazakole.

COURT: Kwazakole?

PROSECUTOR: That is correct.

COURT: Mr. Alexander, have you any objection to this?

MR. ALEXANDER: No sir.

CROSS-EXAMINATION BY MR. ALEXANDER

Mr. Tali, in 1977 you were working I understand? -- Yes. (10)

What were you doing? -- I was working for William Hunt.

As what? -- As a grease boy.

And how long had you been working there? -- I worked there for ten months.

Before then had you been at school? -- Yes, before then I was at school, but I left school in 1972 after my father's death.

And from '72 until the time you started working, what were you doing? -- I was working.

As what? -- I was a grease boy.

COURT: Can the accused hear what he is saying? -- They say no your Worship. (20)

Would you move across then Mr. Interpreter please.

MR. ALEXANDER: Now which school had you been at up till 1972? -- Aron Gqadu.

Where is that?

COURT: Sorry, would you spell that? -- G-q-a-d-u your Worship.

MR. ALEXANDER: Where is that school? -- That school is in Kwazakole.

So from 1972 till 1977 you were working? -- Yes.

Just before I leave your school, which class were you in when you left? -- I left school at standard 6. (30)

COURT: Before passing standard 6? -- Before passing standard 6. ^{yes} your Worship.

MR. ALEXANDER: And ofcourse you carried on living in this area I take it, of Kwazakale for the five or six years? -- Yes.

And when the trouble started in 1976 and 1977 I take it you kept yourself away from that? -- Yes, I kept away from it. When it was said that we should not go to work, I would get up early and go to work.

That is a very courageous and proper thing for you to do because after all most of the disturbances were due to the children who were still at school. Is that not so? Isn't that so? -- Yes.

And you had nothing to do with these people at school? -- No, I had nothing to do with them. (10)

In fact you were a working young man and all the people who were making the trouble were scholars? -- Yes.

And you have never concerned yourself with political movements in this country, have you? -- No.

You have never let it be known that you sympathise with the feelings of any particular class of person in the country, have you? -- No.

You have no interest whatsoever in politics? -- I have none.

And I am sure you have very proper ideas that if people wanted to overthrow this government unlawfully, that that would be a very wrong thing in your mind? -- Yes. (20)

That is why ofcourse on your evidence when these fearful revelations were made in the prison, you went off to Sergeant Bosch to tell him all about it? -- Yes, that is so.

You did not think perhaps that by assisting the Police it may stand you in good stead in your pending murder trial? -- No, I did not think that.

You did this if I might put it this way as a public spirited man? -- I did it sir because politics are not discussed in a government place. (30)

COURT: In a what place? -- In a government place your Worship.

MR. ALEXANDER: You mean you went to Sergeant Bosch because in a jail, a government place, you should not talk about politics. Is that what you are saying? -- Yes.

COURT: This might well explain a vast lack of knowledge on the part of any person about what goes on in a jail, in a government place such as a jail.

MR. ALEXANDER: Yes, I can understand your sense of disgust that a jail is being used for discussing politics and that is why you must go and tell Sergeant Bosch about it. Is that right? -- Yes, that is so.

It is the fact that it was said in a jail that upset you? (10)
-- Even outside, but I never heard of it outside jail your Worship.

You never heard of it outside the jail? -- I have never heard it, although I was told that there were people holding meetings in the location.

But as I understand your evidence, the fact that it happened in the jail and concerns you, was something unique, it was special, and that is why you went to Sergeant Bosch? -- Yes, that is so.

This is the very first time you had been brought into contact with political movement as it were? -- Yes.

But that is not so. That is not so, because on your evidence(20) accused no. 1 had come to you at the shop of Msintsha and spoken political things to you if your evidence is true? -- Yes, I met him on my way to the shop.

And he spoke politics to you? Did he? -- I did not think that he was talking politics. I thought that he wanted me to go away as he had said.

As you have told us the young men who had gone over into Africa would come back and take over the government by force? Is that correct? -- Yes.

You did not think that was politics? -- I never had the (30)
matter get settled into my mind your Worship.

I am going to put it to you it was very much worse than politics. It is warfare, and what I would like to ask you is why didn't you rush to somebody then to tell them about warfare is your story is true? -- It is because at that time he was not staying in one place. He was being sought because he had stopped good children from attending school.

What has that got to do with your going to report the matter to the Police? Can you answer that question? -- Repeat it please.

The fact that this man, I assume you mean accused no. 1, was being sought by the Police, is any reason for you not to go and report (10) to the Police what he was supposed to have said to you? -- I was being held by my work mostly and I forgot about it.

You forgot about warfare and people coming back into this country to overtake the government by force, you forgot about it? -- I knew that they would never enter this place because the government was watching.

That is not the point. You say you forgot about it? -- Yes.

But that is not true. You did not forget about it. You even remembered the names of two men whom you do not know at all? Zakele (20) Jonas, Mziakulu Mtyimse. What do you say to that? You have not forgotten at all? -- I will say I forgot because... (intervention)

But you have not forgotten. You even remember the names of two men whom you did not even know, so how can you say you forgot about it? -- I have seen Zakele and Mtyimse your Worship.

When was that that you have seen them? -- At Mziaksha's shop.

When did you see them? -- They stay at the shop your Worship. The shop belongs to their uncle.

Was that after you had spoken to no. 1 at the shop or before (30) that you knew about it? -- I knew that before I spoke to no. 1.

But /

But then why did you lie to him? Why did you lie to him, because according to your evidence he asked you whether you knew these two men and you said that you did not know them? -- No, he asked if I knew where they were and I said no.

Oh no, he asked you about these two people and your evidence is: "I said I did not know them". -- I know them. What he asked was to whether I knew where Zakele and Mtyimse were and I said no.

Is your evidence wrong when you said you told him that you did not know them? -- No, what I meant is that I did not know where they had gone to, but I knew them. (10)

And when had you last seen them? -- I last saw them in 1976.

Now you say that no. 1, as I understand your evidence, was being sought by the Police? -- Yes.

How did you know that? You had nothing to do with the political movement. I am curious about how you knew? -- Because people who stopped people from attending school were being sought for by the Police.

But how did you know that accused no. 1 stopped people from attending school? -- I heard that from Jack Adams.

According to you he was speaking to you quite openly at the shop in the middle of Kwazakele? Isn't that right? -- Yes. (20)

He did not take you behind the - and speak in private. He is speaking at a shop, (inaudible) shop? -- It was in front of the shop.

Where everybody could see him? -- I would not say everybody saw him, but people were moving up and about.

Yes, and the Police could have seen him? Isn't that so? -- But the Police were not, at that time, they were not moving frequently around in that street.

And plainclothes policemen? -- I do not know.

Ofcourse you do not know. Now you tell the Court that you knew accused no. 1 very well? Was that right? -- Yes. (30)

How well did you know him? -- He came along with Jack Adams

at my house to my brother your Worship.

When was that? -- Oh, I do not remember.

Have you ever spoken to him apart from that? -- No, I did not speak to him. I went out. I attended to my own affairs.

He has never come to visit you? -- No, he has not come to visit me.

You have never gone to visit him? -- No.

You have never been out in a group of people where he was a member? Correct? -- That is correct yes.

You have never even spoken to him? -- I spoke to him for (10)
the first time near Mxistsha's place.

No, but before then you had never spoken to him? -- Before then I had not spoken to him.

So how can you say you knew him well? -- I know him well
because he used to come to the house and at times I would see him ⁱⁿ the street
in the company of Jack Adams.

But that does not mean to say you know him well. It means you know who he is but not that you know him well? -- No, I did not know him well.

So your evidence when you said you knew him well is also (20)
incorrect? Is that right? -- What I meant to say was I did not know him well.

Your answer was that you knew him well. Is that true or false? -- What I meant is that I did not know him well.

Why did you tell the Prosecutor you knew him well if it is not true? -- The word well, I did not know that it meant that if I said I knew him well we grew up together.

Why did you say you knew him well if it is not true? -- I meant to say I knew him.

Now a man whom you do not know well, whom you have never (30)
spoken to in your life before this day, not comes along to you at the shop.

Is that right? -- I was on my way to the shop. I had been sent to the shop.

I am not interested who sent you. I am putting it to you that a man who has never spoken to you before in your life now speaks to you at the shop. Is that right? -- Yes.

And there were people around at the time he spoke to you? -- No, there were no people around.

But you have already told His Worship a moment ago that there were people near the shop and in front of the shop? -- They were moving about in the street. (10)

And I take it people were going in and out of the shop? -- Yes.

And he did not say to you: Come behind in the alleyway where I want to talk to you very privately? -- No, he never said so. We were next to the gate far from the door.

Where people come in and out all the time on the way to the shop? -- Yes, when people entered and came out of the shop I saw them.

Yes, and they had to pass by you where you were at the gate? -- Some did but the majority did not your Worship.

COURT: Mr. Alexander, when in your cross-examination you reach a stage where you would be going on to another aspect of the case, would you kindly indicate to me because I want at that time to take a short adjournment. (20)

MR. ALEXANDER: Yes, now can I just finish this aspect sir?

COURT: You can do that, I would not like to interrupt you when you are going ^{on} to a different ... (intervention)

MR. ALEXANDER: No, no, I am still on the one ... (intervention)

COURT: Neither am I hurrying you in this.

MR. ALEXANDER: No, I understand sir. I will just finish this aspect and then I will let - it may take a little while, but not too long. Now I want to know what was the first thing he said to you when he spoke to you? (30)

-- He asked me where Zakele was.

And what else? -- I then said to him I did not know where Zakele was.

Yes, is that all he asked you? -- He asked me where Zakele was and I said I did not know.

Is that all he asked you? -- No, that is not all.

What else did he ask you? -- He asked me if I did not want to be a member of the Comrades.

He asked you whether you wanted to be a member of the Congress? -- Comrades. (10)

Comrades, sorry. Member of the Comrades. Yes, what else did he ask you? -- I then said to him I did not want to be a member and I asked him further what was meant by Comrades your Worship.

I see, what else did you ask him? What else did he tell you?

-- He asked me if I wanted to go away and I said yes, but the trouble with me was that I was working.

You said yes but the trouble was that you were working? --

Yes.

And what else did he say to you? -- He then said if I wanted to go away I should go to a third street from Nonceba's place and I should ask about Boet Gray. (20)

Now is that the whole conversation you had with him on that occasion? -- No, I asked him what was being done there, and he said training was taking place.

Is that all he said? -- I asked him how the training was performed and he told me it was military training.

Yes, and what else? -- People were training to come back to this country and take it over.

Is that all? -- I left him because I was sent. I told him that we would see each other again. (30)

Just before we take an adjournment, I want to ask you two

questions. /

questions. That is all he said to you? -- Yes.

You remember it clearly? -- Yes your Worship.

As I understand your evidence when he said why don't you go and join this man, Zakele, who has left the country to go to Africa, you said: Yes, I would like to, but I am working at the moment? -- Yes, that is so.

Now what I would like you to think about during the adjournment, perhaps you can ... (inaudible, not in microphone). You lawful abiding person who has got nothing to do with politics and with this sort of thing whatsoever? -- Yes, that is so. (10)

Are now given a proposition to leave the country, train yourself to come back to take over the government by force, and you say: Yes, but I cannot because I am working at the moment? -- Yes, that is so.

How do you come to agree to that if you are the sort of man you make yourself to be? -- I need not speak to him but I knew I would go nowhere.

You mean you lied to him? -- Yes, I lied to him when I said I would be leaving.

Are you normally a liar?

COURT: Is that a ... (intervention) (20)

MR. ALEXANDER: Very well sir.

COURT: I do not want a reply to that.

MR. ALEXANDER: Allright. Perhaps this might be convenient sir if you want to take a short adjournment.

COURT ADJOURNS

---oO---

COURT RESUMES

COURT: Interpreter, please tell the witness that he is still under oath. -- Yes.

MR. ALEXANDER CONTINUES: We had reached the stage where you agreed (30)
that you had lied to him when you said that you would go, but that was not

true /

true? -- Yes.

Now when the Prosecutor asked you in chief about this, your evidence was different, which I will put to you. You said that the accused no. 1 asked you if you wanted to go away? -- Yes.

That is the exact words he used? -- Yes.

Is that right? -- Yes.

And your answer in chief is that "I said no, I am working"?

-- Yes.

That is different from what you have told us now. Your answer now is "Yes, I would like to go, but I am working", which is quite (10) different from "No, I am not going because I am working". Do you agree? -- Yes your Worship.

Which version is then true, what you said yesterday in chief or what you say now under cross-examination? -- All I am telling the Court is the truth your Worship.

Which version is the truth? Did you say "no, I am not going" or did you say "yes, I am going" or "I would like to go but I am working"? -- I answered yes I would go, but I was working.

That means your evidence yesterday was not correct? -- It was correct. (20)

How can it be correct? -- It is correct in this respect that I said I wanted to go, but I was working.

That is exactly the opposite of what you said in evidence yesterday. I am asking you again. Which version is true, what you told the Court yesterday or what you say today? -- That is all true your Worship.

It is all true. Very well. Now if you said to him, yes, I would like to go, but the trouble is I am working, what do you think you were going to do if you had gone? -- He had told me that we would go for training.

Is that what you had in mind to do if you had not been (30) working? -- Even if I was not working I would not go. I was trying to get

him /

him away from me your Worship.

Why didn't you tell him you were not interested? -- I did not want to dissuade him from his intentions your Worship.

Why not? -- When he said so I thought he said so with a meaning your Worship.

So? You are a big boy? He is no friend of yours? You could have said: "I am not interested"? Why didn't you? -- I never thought of telling him.

It is such an obvious thing I suggest. Do you agree, it would have been obvious to have said so? -- Yes, I agree, but I never thought of it. (10)

So in fact you went further and you asked what is this Zakele doing? Where has he gone to? Is that right? -- No, I do not know a Zakele your Worship.

But didn't you ask where Zakele had gone to? -- Yes, I asked and he said he had gone for training.

Why did you think it was necessary if you were not interested, to ask where Zakele had gone?

COURT: No, it is Zakela.

MR. ALEXANDER: Zakela, I am sorry your Worship. -- It is because I had not been seeing him your Worship. (20)

COURT: Seeing who? -- Zakele.

MR. ALEXANDER: And all he said was it was in Africa? -- Yes, he said he was in Africa. They have gone to train.

In Africa, when you were talking, didn't you ask him which country? -- No, I did not ask him.

I see, and he said to you as I understand your evidence if you wanted to go away into Africa, if you were interested to go away into Africa, then if you changed your mind, then you would go to this man called Greaves? -- Yes, that is so. (30)

That is all he said to you? -- He said when I got to Greaves then /

then I should tell him that I also wanted to go to that place.

To which place? -- To Africa.

You did not mention that part in your evidence in chief? That you should tell Greaves that you wanted to go to that place in Africa? Why didn't you mention that if it was said? Are you sure it was even said or are you just imagining this? -- I am sure it was said.

Why did you leave it out? -- I forgot.

You mean your memory is not very good? -- I thought I had made mention of it.

When did you first make a statement in this matter about (10)
what was supposed to have happened in November 1977? -- I do not remember but it was sometime last year in 1978.

Was it in December month or November month, October, or when? -- Round about December.

I see. Alright.

COURT: The witness has been in the witness box for a long time. Mr. Interpreter, please tell him or ask him whether he would like to sit? -- Yes your Worship.

Put that small chair in there. Tell him too that if he wants a drink of water, he must express his wish and it will be supplied. (20)
I think you can give him a glass of water anyway. I think he is a bit tired. -- No, I am not tired.

That is fine. Put that glass of water there. Should he need it ... (intervention)...? -- But I am not well your Worship.

What is wrong with you? I say this because the witness is clearly in a sweat? What is wrong with him? -- I do sweat your Worship and then I am coughing.

You have been kept in custody, not so? -- Yes your Worship, I was taken to the doctor but I have forgotten my medicine.

Mr. Alexander, will you be busy for some time still with the (30)
aspect with which you are dealing now?

MR. ALEXANDER: Well sir, I have got quite a long way to go.

COURT: I mean with this one aspect?

MR. ALEXANDER: Probably not long on that particular aspect sir, before I progress.

COURT: Because my suggestion will be this. If you are not going to be long and I am not curtailing your cross-examination, if you are not going to be long with that aspect with which you are busy now, I would want the witness to stand down and to get medical attention. He does not look well to me. He has been sweating for quite a while and you can see it on his face even now. If he is not well and if he has medicine which he should take and which he has not got with him, then I think it will be unfair to continue with him. What are your opinions on the matter? (10)

MR. ALEXANDER: Let me just then conclude this matter if I may sir?

COURT: Please do.

MR. ALEXANDER CONTINUES: Why did you not go back or go to the see man Greaves? -- I did not have an opportunity. I am working.

Does that mean that you would have gone to see Greaves if not for the fact that you were working? -- Yes, I would have gone but I never gave it a thought to do so.

Why would you have gone if you had no interest to go into Africa? -- I was just taking no. 1 away from myself your Worship. (20)

I beg your pardon? -- I was taking no. 1 away from myself.

But then you say you would have gone to see Greaves if not for the fact that you were working. Is that correct? -- Yes, that is correct, but I never gave it a thought your Worship.

Then why did you have it in your mind that you might have gone to see Greaves ... (inaudible, interpreter in microphone)...? -- It is because I had to look for this place I was going to and I forgot about it.

But isn't he the man who is supposed to tell you what to do if you are interested? -- Yes, according to no. 1. (30)

So it is not correct when you told the Court today that you

simply /

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