

on which any publication as defined in the Suppression of Communism Act, 1950, is prepared, compiled, printed or published;

- (e) any place or area which constitutes the premises on which any public or private university, university college, college, school or other educational institution is situate;
- (f) any place or area which constitutes the premises of any superior or inferior (10) court as defined in the Criminal Procedure Act, 1955 (Act No. 56 of 1955), except for the purpose of -

- (i) applying to a magistrate for an exception to any prohibition in force against you under the Suppression of Communism Act, 1950;

- (ii) attending any criminal proceedings in which you are required to appear as an accused or a witness; (20)

- (iii) attending any civil proceedings in which you are a plaintiff, petitioner, applicant, defendant, respondent or other party or in which you are required to appear as a witness;

- (3) communicating in any manner whatsoever with any person whose name appears on any list in the custody of the officer referred to in section 8 of the Suppression of Communism Act, 1950, or in respect of whom any prohibition under the Suppression of Communism(30) Act, 1950, or the Riotous Assemblies Act, 1956 (Act No.

17 of 1956), is in force;

- (4) performing any of the following acts, that is to say -
- (a) preparing, compiling, printing, publishing disseminating or transmitting in any manner whatsoever any publication as defined in the Suppression of Communism Act, 1950;
 - (b) participating or assisting in any manner whatsoever in the preparation, compilation, printing, publication, dissemination or transmission of any publication as so defined; (10)
 - (c) contributing, preparing, compiling or transmitting in any manner whatsoever any matter for publication in any publication as so defined;
 - (d) assisting in any manner whatsoever in the preparation, compilation or transmission of any matter for publication in any publication as so defined;
 - (e) (i) preparing, compiling, printing, publishing, disseminating or transmitting in any manner whatsoever any document (which shall include (20) any book, pamphlet, record, list, placard, poster, drawing, photograph or picture which is not a publication within the meaning of paragraph (4)(a) above); or
 - (ii) participating or assisting in any manner whatsoever in the preparation, compilation, printing, publication, dissemination or transmission of any such document,
- in which, inter alia -
- (aa) any form of State or any principle (30) or policy of the Government of a State

-4-

is propagated, defended, attacked, criticised, discussed or referred to;

(bb) any matter is contained concerning any body, organization, group or association of persons, institution, society or movement which has been declared an unlawful organization by or under the Suppression of Communism Act, 1950, or the Unlawful Organizations Act, 1960; (10)

(cc) any matter is contained concerning any organization contemplated in Government Notice No. R. 2130 of the 28th December, 1962, as amended by Government Notice No. R. 1947 of the 27th November, 1964; or

(dd) any matter is contained which is likely to engender feelings of hostility between the White and the non-White inhabitants of the Republic of the Republic of South Africa; (20)

(f) giving any educational instruction in any manner or form to any person other than a person of whom you are a parent;

(g) taking part in any maneer whatsoever in the activities or affairs of any organization contemplated in Government Notice No. R.2130 of the 28th December, 1962, as amended by Government Notice No. R. 1947 of the 27th November, 1964;

(5) receiving at the said residential premises any (30) visitor other than -

(a)/...

-5-

- (a) a medical practitioner for medical attendance on you or members of your household, if the name of such medical practitioner does not appear on any list in the custody of the officer referred to in section 8 of the Suppression of Communism Act, 1950, and no prohibition under the Suppression of Communism Act, 1950, or the Riotous Assemblies Act, 1956, is in force in respect of such medical practitioner; (10)
- (b) (i) your mother, Angelina Sobukwe;
(ii) your mother-in-law, Katy Mathe;
(iii) your brothers, Charles and Ernest Sobukwe;
(iv) your sister, Florence Rebeiro;
(v) your sisters-in-law, Hilda Africa and Gertrude Mathe.

Nothing in this notice shall debar you from allowing your wife and children to reside with you at the said residential address or to visit you (20) at any time.

Given under my hand at Cape Town on this 12th day of May, 1969.

MINISTER OF JUSTICE

NOTE.

The Magistrate, Kimberley, has in terms of section 10(1)(a) of Act No. 44 of 1950 been empowered to authorise exceptions to the prohibitions contained in this notice.

THE UNIVERSITY OF WISCONSIN

MADISON, WISCONSIN 53706

AFRICAN STUDIES PROGRAM. March 4, 1970. 1450 VAN HISE HALL,

Mr. R.M. Sobukwe,
6 Naledi Street,
Galeshewe Village,
Kimberley, South Africa.

Dear Mr. Sobukwe:

Since Crawford Young's letter to you in February there have been favourable developments in our budgetary situation(10) and I am delighted to be in a position to offer you immediate financial support, if you see your way clear to come to this University for work on a Ph.D.

We have the means to pay you at a rate of \$500 per month from now until the end of the 1970-71 academic year (terminating in June 1971). During the next three months your duties would be solely assisting us prepare for a summer institute in Afro-American and African studies which we will be holding here this year for college teachers who want to increase their ability to teach courses concerned with (20) African and Afro-American studies. During July and August we would want you to teach one of the courses offered at this Institute and would pay you at a rate of \$1,220 per month. From September 1970 to June 1971 you would have no duties of any kind and would receive a fellowship from this African Studies Program for \$340 per month, out of which you would have to pay in-state tuition of \$263 per semester or (\$59.00 per month). This is the maximum that can be paid on a fellowship at this University. Your salary for July and August added to this gives an average of \$500 per month (30) from July 1970 to June 1971. We expect by June 1971 you would have support from other sources in the University -- such as a teaching or research assistantship in the Department of/...

-2-

of African Languages and Literature or a National Defense Education Act Fellowship -- for which you are not eligible at the moment because the deadline for these competitions (January 15) is now past.

We have worked out arrangements for your fare to this country and will be in touch about that shortly.

The fellowship portion of this offer is contingent on your admission to Graduate School here, but that is almost certainly assured once the forms Crawford Young sent you come in. The chairman of the Department of African Languages and (10) Literature tells me they would enthusiastically admit you, and on the basis of your vitae the admissions secretary of Graduate School informs me she thinks you will certainly be admitted once the application forms, official transcripts or diplomas, and letters of recommendation are in her hands. However, your work for us in developing materials for the summer institute from now until June, and your teaching in the institute during the summer are not in any way dependent upon admission to the Graduate School, so I would encourage you to make plans to come here as soon as convenient and (20) not wait for notification of admission to Graduate School.

If you are able to accept this offer I will be writing you covering details of what your duties in that connection with the summer institute would be.

Let me say that the members of our African Studies Program are delighted that there is a possibility you will be coming to this University. We very much hope you will be able to accept this offer.

Sincerely,
(sgd) Marvin P. Miracle.

Chairman: African Studies Program.

MPM/fy

Amount: R2.05

OVERSEAS TELEGRAM - BUITELANDSE TELEGRAM

WORDS	DATE	CODE TIME	Kimberley
24	16	1230	16.III.70

TO:

PROFESSOR LYNDON HARRIES
DEPARTMENT OF AFRICAN LANGUAGES AND LITERATURE,
UNIVERSITY OF WISCONSIN, MADISON, WISCONSIN 53706

GLAD TO ACCEPT OFFER LETTER FOLLOWING
ROBERT SOBUKWE

SIGNATURE OF SENDER: Sgd. R.M. SOBUKWE.

Address: 6 Naledi Street, Galeshewe, Kimberley.

Telephone number (if any) 2373.

Telegraphic address: Interior.

In reply please quote:

No. 48531/68

REPUBLIC OF SOUTH AFRICA.

DEPARTMENT OF THE INTERIOR,

Communications to be
addressed to the
SECRETARY FOR THE
INTERIOR.

Private Bag 114,
PRETORIA.

13.5.1970.

Mr. R.M. Sobukwe,
6 Naledi Street,
Galeshewe Village,
KIMBERLEY.

Sir,

I wish to refer to your application for a South African passport and regret to inform you that the Honourable the Minister of the Interior is not prepared to authorise the issue of a passport in your favour.

The deposit of R200.00 and the passport fee of R3.00 paid by you will be refunded to you in due course.

Yours faithfully,

(sgd)

for SECRETARY FOR THE INTERIOR.

6 Naledi Street,
Galeshewe Village,
KIMBERLEY,
23rd May, 1970.

The Secretary,
Department of the Interior,
Private Bag 114,
PRETORIA.

Dear Sir,

re : APPLICATION FOR AN EXIT PERMIT. (10)

I acknowledge receipt of your letter dated 13.5.1970
Reference Number 48531/68.

In the circumstances I beg to apply for an Exit Permit
and would appreciate it greatly if I could be granted such
exit permit as soon as possible to enable me to join the
Graduate School at Wisconsin on the 22nd June, 1970.

Yours faithfully,

(sgd) R.M. SOBUKWE.

6 Maledi Street,
Galeshewe Village,
KIMBERLEY,
26th May, 1970.

The Secretary,
Department of the Interior,
Private Bag 114,
PRETORIA.

Dear Sir,

re : APPLICATION FOR AN EXIT PERMIT: (10)
R.M. SOBUKWE.

Further to my letter dated 23rd May, 1970,
I wish to advise that I am booked to leave Johannesburg
on the 18th June 1970 and shall, therefore appreciate
it greatly if I could have the Exit Permit some days,
before then.

Yours faithfully,

(sgd) R.H. SOBUKWE.

REPUBLIC OF SOUTH AFRICA.

In reply please quote

No. 48531/68.

DEPARTMENT OF THE INTERIOR,

Private Bag 114,

PRETORIA.

3.6.1970.

Mr. R.M. Sobukwe,
6 Naledi Street,
Galeshewe Village,
KIMBERLEY.

(10)

Sir,

I acknowledge receipt of your letter dated 26th May, 1970 and enclose herewith an application form for a permanent departure permit.

Please complete the form according to the instructions printed thereon and forward it to this Department together with 2 passportsize photographs of yourself and R2.00 in cash or postal orders.

The following additional documents are also required:

- (a) Documentary proof that permanent residence has (20) been granted to you by the country you intend emigrating to.
- (b) Documentary proof that you are no longer restricted to the Magisterial district of Kimberley. (Only documents furnished by the Department of Justice will be accepted).

Please note that the Department will under no circumstances consider your application without the documents requested in paragraph 2 above.

Yours faithfully,

SECRETARY FOR THE INTERIOR.(30)

6 Naledi Street,
Galeshewe Village,
KIMBERLEY,
8th June, 1970.

The Secretary,
Department of Justice,
Union Buildings,
PRETORIA.

Dear Sir,

RE : APPLICATION FOR PERMIT TO LEAVE THE REPUBLIC (10)
OF SOUTH AFRICA PERMANENTLY ; R.M. SOBUKWE.

I have applied for what is commonly termed an exit permit, and have been informed by the Secretary of the Interior to obtain from your Department a document to the effect that I am no longer restricted to the Magisterial district of Kimberley.

May I please, therefore, request that you provide me with such a document, for the purpose stated above, to enable me to fly to the United States of America on the 18th June, 1970 as I have to commence duties on the 20th June, 1970. (20)

Yours faithfully,

(sgd) R.M. SOBUKWE.

6 Naledi Street,
Galeshewe Village,
KIMBERLEY,
10th June, 1970.

The Secretary for the Interior,
Department of the Interior,
Private Bag 114,
PRETORIA.

Dear Sir,

RE : APPLICATION FOR PERMIT TO LEAVE THE REPUBLIC (10)
OF SOUTH AFRICA PERMANENTLY.

In reply to your letter dated 3.6.1970 Ref. No. 48531/68,

I forward herewith:

- (a) The application form duly completed and sworn to,
- (b) Passport photographs (two) ,
- (c) A Postal Order for R2.00.

The American Consulate, at my request, is sending the document required in (a) of your letter of above date.

I shall forward the letter from the Department of Justice when I receive it. (20)

Yours faithfully,

(sgd) R.M. SOBUKWE.

P.O. Box 2155
Johannesburg, South Africa.

December 14, 1970.

Secretary for the Interior,
Republic of South Africa,
Private Bag 114,
PRETORIA.

Dear Sir,

With reference to your letter of June 24, 1970 concerning Mr. Robert Sobukwe, I wish to inform you that the(10) Consulate General is now prepared to issue visas for permanent residence in the United States to Mr. Sobukwe and his family.

Sincerely yours,

LaRue R. Lutkins
American Consul General.

CG:LRLutkins:lav 12/14/70

In reply please quote:

MJ.21

REPUBLIC OF SOUTH AFRICA.

Ministry of Justice,
Union Buildings,
PRETORIA.
24.6.1970.

Mr. R. Sobukwe,
6 Naledi Street,
Galeshewe Village,
KIMBERLEY.

(10)

Sir,

With reference to your letter dated the 8th June, 1970, addressed to the Secretary for Justice, and by direction of the Honourable the Minister of Justice I wish to inform you that your application for the relaxation of the notices in force against you under the Suppression of Communism Act, 1950, to enable you to leave the country, has been refused.

Yours faithfully,

(20)

Van Wyk.
(sgd) PRIVATE SECRETARY.

6 Naledi Street,
Galeshewe Village,

Reference No. 48531/68

KIMBERLEY.

24th August, 1970.

The Secretary,
Department of the Interior,
Private Bag, 114,
PRETORIA.

REGISTERED EXPRESS

Dear Sir,

RE : APPLICATION FOR PERMIT TO LEAVE THE (10)
REPUBLIC OF SOUTH AFRICA PERMANENTLY.

I refer to your letter of the 3rd June, 1970.

I am entitled to have my application for a departure permit considered by you and you are required by law to give a decision on my application.

Please furnish me with your advice within 10 (TEN) days from the date hereof.

Yours faithfully,

(sgd) R.M. SOBUKWE.

18th December, 1970.

REGISTERED.

The Honourable the Minister of the Interior,
PRETORIA .

Dear Sir,

I act for Mr. Robert Mangaliso Sobukwe of 6 Naledi Street, Galeshewe Village, Kimberley.

My client applied to the Secretary for the Interior for the issue to him of a departure permit in terms of Section 5 of the Departure from the Union Regulation Act, (10) 1955 (Act No. 34 of 1955) and has informed the Secretary for the Interior that he intends to leave the Republic of South Africa permanently.

The Secretary for the Interior has informed my client that he requires documentary proof that he is no longer restricted to the Magisterial district of Kimberley and that under no circumstances would he consider my client's application without certain documents requested in paragraph 2 of the letter dated 3rd June 1970 from the Secretary to my client. (20)

My client thereafter approached the Secretary for Justice to relax the restriction confining my client to the magisterial district of Kimberley but this application was refused by the Minister of Justice.

My client thereupon wrote to the Secretary for the Interior on the 24th August 1970, in which letter he stated that he was entitled to have his application for a departure permit considered by him, and the Secretary was required by him to give a decision on his application. The Secretary was requested to furnish his advice to my client within (30) 10 days of the date of that letter.

On the 10th September 1970 the Secretary wrote to my client/...

18th December, 1970.

REGISTERED.

The Honourable the Minister of the Interior,
PRETORIA .

Dear Sir,

I act for Mr. Robert Mangaliso Sobukwe of 6 Naledi Street, Galeshewe Village, Kimberley.

My client applied to the Secretary for the Interior for the issue to him of a departure permit in terms of Section 5 of the Departure from the Union Regulation Act, (10) 1955 (Act No. 34 of 1955) and has informed the Secretary for the Interior that he intends to leave the Republic of South Africa permanently.

The Secretary for the Interior has informed my client that he requires documentary proof that he is no longer restricted to the Magisterial district of Kimberley and that under no circumstances would he consider my client's application without certain documents requested in paragraph 2 of the letter dated 3rd June 1970 from the Secretary to my client. (20)

My client thereafter approached the Secretary for Justice to relax the restriction confining my client to the magisterial district of Kimberley but this application was refused by the Minister of Justice.

My client thereupon wrote to the Secretary for the Interior on the 24th August 1970, in which letter he stated that he was entitled to have his application for a departure permit considered by him, and the Secretary was required by him to give a decision on his application. The Secretary was requested to furnish his advice to my client within (30) 10 days of the date of that letter.

On the 10th September 1970 the Secretary wrote to my client/...

The Honourable the
Minister of the Interior.

18th December, 1970.

client that the matter was receiving attention and that a further communication would be sent as soon as circumstances permit. No further communication has been received by my client.

By reason of the attitude of the Secretary as expressed in his letter of the 3rd June 1970 and his failure to communicate further with my client, my client considers that the Secretary has refused to issue such departure permit. (10)

I enclose herewith copy of letter from the American Consul General addressed to the Secretary for the Interior to the effect that the Consulate General is prepared to issue visas for permanent residence in the United States of America to my client and his family. My client intends to depart with his wife and family from the Republic of South Africa permanently and to avail himself of the offer of permanent residence in the United States of America.

In terms of Section 5(ii) of the aforesaid Act, I hereby appeal to you on behalf of my client against such refusal on the part of the Secretary. I shall be pleased to receive your decision in this matter by not later than the 20th January 1971. (20)

Yours faithfully,

RAYMOND TUCKER.

REGISTERED.

28th December, 1970.

The Honourable the Minister of Justice,

PRETORIA.

Dear Sir,

I act for Mr. Robert Mangaliso Sobukwe of 6 Naledi Street, Galeshewe Village, Kimberley.

My client has applied for the relaxation of the Notices in force against him under the Suppression of Communism Act of 1950 to enable my client to depart from the Republic of South Africa permanently. On the 24th June, 1970, your Private Secretary informed my client that the application had been refused. (10)

It is my client's opinion that your refusal to permit him to leave the area of Kimberley to enable him to depart from the Republic of South Africa permanently, is unlawful in that it has the effect of depriving him of his right to leave this Country.

I am instructed by my client to furnish you as I hereby do, with 30 days notice of my client's intention to apply to the Supreme Court of South Africa for an order compelling you to permit my client to leave the area of Kimberley with the object of departing permanently from the Republic of South Africa, and for the costs of the application. (20)

Unless your permission is received by not later than the 30th January 1971, the application will be launched without further notice.

Yours faithfully,

RAYMOND TUCKER.

In reply please quote:

MJ 11/7

MJ 21.

REPUBLIC OF SOUTH AFRICA.

Ministry of Justice,
Union Buildings,
PRETORIA.
30.12.1970.

Mr. Raymond J. Tucker,
P.O.Box 7571,
JOHANNESBURG.

(10)

Dear Sir,

RE : MR. ROBERT MANGALISO SOBUKWE.

The Honourable the Minister of Justice has instructed me to acknowledge receipt of your letter dated the 28th December, 1970, and to inform you that the contents thereof have been noted.

Yours faithfully,

(sgd) Van Wyk.

(20)

PRIVATE SECRETARY.

B.22

Ministry of the Interior,

Private Bag 9048,

CAPE TOWN.

1st March, 1971.

Dear Mr. Tucker,

I am directed by the Honourable Theo Gerdener, M.P., Minister of the Interior, to acknowledge receipt of your letter dated 18th December, 1970, and to inform you that the issue of a permit to Mr. R.M. Sobukwe in terms of the (10) Departure from the Union Regulation Act, No. 34 of 1955, as amended, to leave the Republic, has been approved. The permit will in due course be forwarded to you by the Secretary for the Interior.

Yours faithfully,

(sgd)

PRIVATE SECRETARY.

Mr. Raymond J. Tucker,
P.O.Box 7571,
JOHANNESBURG.

Registrar of the Supreme
Court of South Africa.
Transvaal Provincial Division.
4.5.1971.

IN THE SUPREME COURT OF SOUTH AFRICA
(TRANSCAAL PROVINCIAL DIVISION)

In the matter between : -

CASE NO : 482/71 M.

ROBERT MANGALISO SOBUKWE

Applicant

AND

THE MINISTER OF JUSTICE

Respondent

(10)

RESPONDENT'S ANSWERING AFFIDAVIT

Received copy of Respondent's Answering Affidavit
on this the 4th day of MAY, 1971.

(sgd) M. SEYMORE

APPLICANT'S ATTORNEY,
c/o Messrs. Segal & Seymore,
301, J.B.S. Building,
Bureau Lane,
PRETORIA.

FILED BY: STATE ATTORNEY.

(20)

IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

In the matter between : -

CASE NO.: 482/71 M.

ROBERT MANGALISO SOBUKWE Applicant

AND

THE MINISTER OF JUSTICE Respondent

RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

PETRUS CORNELIUS PELSER

do hereby make oath and say : -

(10)

1.

I am the Minister of Justice of the Republic of South Africa, the Respondent in this application. I have read the Applicant's founding affidavit with its annexures and I wish to reply thereto as follows : -

2.

I admit paragraphs 1, 2 and 3 of the Applicant's founding affidavit.

3.

AD PARAGRAPH 4 : -

(20)

(a) I am the Minister of State who has been entrusted by the legislature with the enforcement and implementation of the provisions of the Suppression of Communism Act No. 44 of 1950, as amended. After having duly satisfied myself that the Applicant was likely to advocate, advise, defend or encourage the achievement of any of the objects of communism or any act or omission which was/...

was calculated to further the achievement of any such objects, I duly issued on the 12th of May 1969 the notice, of which Annexure "A" to the application is a copy, and caused it to be served on the Applicant.

- (b) In terms of the said notice I prohibited the Applicant until the 31st May, 1974, from, inter alia, absenting himself from the area comprising the Kimberley Municipality.
- (c) Save as aforesaid, I admit paragraph 4 of the Applicant's founding affidavit.

4.

(10)

AD PARAGRAPHS 5, 6, 7, 8, 9, 10 & 11 : -

I do not dispute the correctness of the allegations set forth in paragraphs 5, 6, 7, 8, 9, 10 and 11 of the Applicant's founding affidavit.

5.

AD PARAGRAPHS 12 & 13 :-

I admit paragraphs 12 and 13 of the Applicant's founding affidavit.

6.

AD PARAGRAPH 14 : -

(20)

I am not in a position either to admit or deny the allegations set forth in paragraph 14 of the Applicant's founding affidavit, but I do not dispute the correctness thereof for purposes of this application.

7.

AD PARAGRAPH 15 : -

I admit paragraph 15 of the Applicant's founding affidavit.

8.

AD PARAGRAPHS 16 & 17 :-

(30)

I do not dispute the correctness of the allegations set forth in paragraphs 16 and 17 of the Applicant's founding affidavit/...

affidavit.

9.

AD PARAGRAPH 18 : -

Save for denying the correctness of the opinion as expressed in Annexure "K" to the application, namely, that my refusal to permit the Applicant to leave the area of Kimberley to enable him to depart from the Republic of South Africa permanently was unlawful in that it had the effect of depriving him of his rights to leave the Republic, I admit paragraph 18 of the Applicant's founding affidavit. (10)

10.

AD PARAGRAPH 19 :-

I admit paragraph 19 of the Applicant's founding affidavit.

11.

AD PARAGRAPH 20 : -

I deny the correctness of the allegation set forth in paragraph 20 of the Applicant's founding affidavit. The fact that the Applicant has succeeded in obtaining a departure permit to leave the Republic of South Africa permanently, merely entitles him to leave the Republic in terms of Section 2 of the Departure from the Union Regulation Act No. 34 of 1955, as amended, at a port as defined in section 30 of the Admission of Persons to the Union Regulation Act No. 22 of 1913, as amended, but does not confer on the Applicant any right to proceed from the area comprising the Kimberley Municipality to any such port until the 31st day of May 1974 as provided for in my said notice (Annexure "A" to the Application). While my notice or any extension of the period mentioned therein is of full force and effect the Applicant has in law no right to absent himself from the area comprising the Kimberley Municipality for the purpose of proceeding to any such port for the purpose of leaving the/...

(20)

(30)

the Republic permanently. I submit that the legislature was fully aware of the provisions of section 10 of the Suppression of Communism Act No. 44 of 1950, as amended, when it enacted sections 2 and 5 of the Departure from the Union Regulation Act No. 34 of 1955, as amended. I also submit that the legislature was consistent with itself in enacting these two Acts which in my submission, are not inconsistent or repugnant and can be so construed, as they should be construed, as to give full force and effect to each one's provisions.

12.

(10)

AD PARAGRAPH 21: -

I challenge the correctness of the submissions made by the Applicant in paragraph 21 of his founding affidavit. I also deny that the Applicant has in the circumstances a right to leave the Republic of South Africa and that the exercise of my discretionary powers resulted in a frustration of Applicant's alleged right.

WHEREFORE I pray that it may please the above Honourable Court to dismiss the application with costs.

(sgd) P.C. PELSER. (20)

I certify that the Deponent has acknowledge to me that he knows and understands the contents of this Affidavit.

SIGNED and SWORN to before me at Cape Town on this the 30th day of April, 1971.

(sgd) J.T. KRUGER
COMMISSIONER OF OATHS.

CAPACITY: Member of Parliament.

AREA : Prinshof Constituency.

940/71/C1
JBSR/OK.

REPUBLIC OF SOUTH AFRICA.

IN THE SUPREME COURT OF SOUTH AFRICA
Transvaal Provincial Division

22nd June 1971.

In the matter of -

First Application:

<u>ROBERT MANGALISO SOBUKWE</u>	Applicant	
and		
<u>THE MINISTER OF JUSTICE</u>	Respondent	(10)

Second Application:

<u>SHANTAVOTHIE NAIDOO</u>	Applicant
and	
<u>THE MINISTER OF JUSTICE</u>	Respondent

JUDGMENT.

MYBURGH, J.: At the request of the parties and by reason of similarity of dispute the two applications were heard together. The applicant in the first and second applications will respectively be referred to as "Sobukwe" and "Naidoo".

Sobukwe applies for an order - (20)

- "1. Directing the respondent to permit the applicant to leave the Magisterial District of Kimberley and to travel to Jan Smuts Airport to enable the applicant to embark on an aircraft leaving the Republic of South Africa pursuant to the departure permit granted in terms of the Departure from the Union Regulation Act No. 34 of 1955, as amended;
2. That the respondent pay the costs of this application;
3. Allowing other or alternative relief." (30)

Naidoo/...

Naidoo applies for a similar type of order on the facts of her restriction notice and departure permit.

The respondent opposes the granting of the orders sought.

The facts on which the applications are founded are not in dispute.

Both applicants are South Africans by birth.

Sobukwe is presently confined to the magisterial district of Kimberley in terms of a notice issued by the respondent on the 12th May, 1967, in terms of Section 10(1)(a) of the Suppression of Communism Act No. 44 of 1950 as amended.(10)

The relevant part of the notice is the following:

"TO : ROBERT MANGALISO SOBUKWE,

ROBBEN ISLAND.

NOTICE IN TERMS OF SECTION 10(1)(a) OF THE
SUPPRESSION OF COMMUNISM ACT, 1950 (ACT NO.
44 of 1950).

WHEREAS I, PETRUS CORNELIUS PELSER, Minister of Justice, am satisfied that you are likely to advocate, advise, defend or encourage the achievement of any of the objects of communism or any act or omission (20) which is calculated to further the achievement of any such objects, I hereby, in terms of section 10(1)(a) of the Suppression of Communism Act, 1950 (Act No. 44 of 1950), prohibit you for a period commencing on the date on which this notice is delivered or tendered to you and expiring on the 31st day of May, 1974, from -

(1) absenting yourself from -

- (a) the residential premises situate at No. 6 Naledi Street, Galeshewe, Kimberley, at (30) any time except during the period commencing at six in the forenoon and ending at six

in/...

in the afternoon;

- (b) the area comprising the Kimberley Municipality."

The discretion given the respondent is created by Section 10(1)(a) of Act No. 44 of 1950, which reads:

"10. Certain persons may be prohibited from being within defined areas. -- (1)(a) If the name of any person appears on any list in the custody of the officer referred to in section eight or the Minister is satisfied that any person - (10)

- (i) advocates, advises, defends or encourages the achievement of any of the objects of communism or any act or omission which is calculated to further the achievement of any such object; or
- (ii) is likely to advocate, advise, defend or encourage the achievement of any such object or any such act or omission; or
- (iii) engages in activities which are furthering or may further the achievement of any such (20) object,

the Minister may by notice under his hand addressed and delivered or tendered to any such person and subject to such exceptions as may be specified in the notice or as the Minister or a magistrate acting in pursuance of his general or special instructions may at any time authorise in writing, prohibit him, during a period so specified, from being within or absenting himself from any place or area mentioned in such notice or, while the prohibition is in force, communicating with any person or (30) receiving any visitor or performing any act so specified:

Provided that no such prohibition shall debar any person from communicating with or receiving as a visitor any advocate or attorney managing his affairs whose name does not appear on any list in the custody of the officer referred to in section eight and in respect of whom no prohibition under this Act by way of a notice addressed and delivered or tendered to him is in force."

Sobukwe, who is academically well qualified, has been invited to teach and study in America and the Government of the United States of America has accorded to him and his (10) family the right of permanent residence. He states in his affidavit that "upon careful consideration I have decided to leave the Republic of South Africa permanently and to take my family with me and live in the United States of America."

On the 23rd May, 1970, after his application for a passport had been refused, he applied to the Secretary for the Interior for a departure permit in terms of Section 5 of the Departure from the Union Regulation Act No. 34 of 1955. According to the correspondence the Department of the Interior initially took up the attitude that it would only grant the (20) departure permit upon proof that the restrictions imposed on him in terms of the Suppression of Communism Act had been lifted. Permission for a departure permit has, however, subsequently been granted.

After the respondent had been informed of Sobukwe's intention to leave the Republic permanently he refused to relax the restriction order to enable him to depart from the Republic. I quote the letter of refusal in full:

With reference to your letter dated the 8th June, 1970, addressed to the Secretary for Justice, and by (30) direction of the Honourable the Minister of Justice

I wish to inform you that your application for the relaxation of the notices in force against you under the Suppression of Communism Act, 1950, to enable you to leave the country, has been refused."

From the wording of this letter it appears that the respondent was fully aware of the fact that, on his reading of the Act, the refusal would have the effect of frustrating Sobukwe's intention of leaving the Republic permanently. The respondent's reason for refusal is to be found in the discretion given him in order to carry out the purpose of the (10) Act, namely, the suppression of communism. In my view of the facts it cannot be validly argued that the respondent did not apply his mind to the issue after he had become aware of Sobukwe's intention of leaving the Republic permanently.

*Case file
Sobukwe
1970*

Naidoo is presently subject to various restriction notices in terms of Section 10(1)(a) of the Suppression of Communism Act. The notice dated 19th December, 1968, is relevant to these proceedings. It is operative until the 31st December, 1973, and contains inter alia the following:

"NOTICE IN TERMS OF SECTION 10(1)(a) OF THE SUPPRESSION (20) OF COMMUNISM ACT, 1950 (ACT NO. 44 OF 1950)

WHEREAS I, PETRUS CORNELIUS PELSER, Minister of Justice, am satisfied that you engage in activities which are furthering or may further the achievement of the objects of communism, I hereby, in terms of section 10(1)(a) of the Suppression of Communism Act, 1950 (Act No. 44 of 1950), prohibit you for a period commencing on the 31st day of December, 1968, and expiring on the 31st day of December, 1973, from -

- (1) absenting yourself from the magisterial (30) district of Johannesburg.

Naidoo/...

Maidoo has been offered entry facilities into the United Kingdom with the right to seek employment. She is desirous of availing herself of this offer and leaving the Republic permanently. The applicant was given permission in terms of Section 5 of Act No. 34 of 1955 to depart from the Republic permanently. On the 10th February, 1971, the respondent was informed that such permission had been granted. On the 2nd March, 1971, the following reply was given by the respondent: *M⁸32*

"Re : MISS SHANTIEVATHE NAIDOO. (10)

With further reference to your letter of the 10th February, 1971, and by direction of the Honourable the Minister of Justice, I wish to inform you that the Minister has decided not to change his previous decision."

The previous decision referred to was a refusal to lift the restrictions to enable Naidoo to depart permanently.

The contention on Naidoo's behalf that the respondent did not apply his mind to the issue after he had become aware of her intention to depart permanently is for the same reasons that I gave in Sobukwe's case not valid. (20)

The respondent states in his answering affidavits in both applications, that he is entrusted with the enforcement and implementation of the Suppression of Communism Act and that in both instances he duly issued the respective notices after he had satisfied himself on the matters provided for in the Act. He denies that his refusal to lift the restrictions to enable the two applicants to leave the Republic permanently is unlawful.

We have been addressed at some length on the position at common law of freedom to emigrate. (30)

In Halsbury "Laws of England" (3rd Edition) Volume 7

(pages 293 to 294) the authors state the common law of England as follows:

"All persons except such as one under sentence of imprisonment or outlawry may enter or leave the realm at any time by land or sea."

In paragraph xxiv, Chapter V, of "De Jure Belli Ac Pacis Libri Tres" Grotius described the principles of freedom of emigration. I quote from Kelsey's translation (Carnegie Endowment Edition):

"Here the question is commonly raised, whether it (10) is permissible for nationals to withdraw from their state without permission.

We know that there are peoples among whom such withdrawal is not permissible, as the Muscovites; and I do not deny that a civil society can be formed on such terms, and that such a custom may receive the force of agreement. The withdrawal of individuals, on the contrary, seems a different matter, just as it is one thing to draw water from a river and another to conduct the stream into a canal. Tryphoninus says: (20) 'Each has the unrestricted right to choose his own state.' Cicero in the speech For Balbus praises the law that 'no one is forced to remain in a state against his will', and calls "each man's power to retain or to abandon his right the foundation of liberty'.

Yet here also we must observe the rule of natural justice which the Romans followed in putting an end to private associations, that a thing should not be permitted if it is contrary to the interests of society. 'Always, in fact,' as Proculus rightly says, 'it is (30) the custom to observe, not what is to the interest of

an individual associate, but what is to the interest of the association.' Moreover, it will be to the interest of the civil society that the national do not withdraw if a heavy debt has been contracted, unless the national is prepared to pay his share at once; likewise if war has been undertaken because of confidence in numbers, and especially if a siege threatens, unless the national is prepared to furnish an equally capable substitute to defend the state.

With the exception of these cases, it is to be (10) believed that peoples consent to the free withdrawal of their nationals, because from granting such liberty they may experience not less advantage than other countries."

In Chapter XI of "De Jure Naturae et Gentium", Pufendorf deals with the ways in which a person may cease to be a subject. The following passage in paragraph 3 of this chapter illustrates the general approach to the freedom to emigrate. (Translation by C.H. and W.A. Oldfather):

Yet since it is usually of some value to a state(20) to know the number of its citizens, everyone who is going to leave a state should feel it obligatory, or at least honourable, to give notice of his departure, unless, perhaps, he has good reason to think that the state is not concerned whether or not it know when a citizen leaves its territory. But the express consent of the state will have to be secured by such as have assumed a special office, especially if it be for a stipulated term, as in the case of such as are on a commission or an expedition, or engaged in any other (30) task which they undertook by a special agreement.

A man's departure should also be timely, and when it is not to the special interest of the state that it should not take place. To illustrate his point Grotius, Bk.II, chap.v, § 24, advances the following instances:

If a heavy debt has been contracted, unless the national is prepared to pay his share at once; likewise if war has been undertaken because of confidence in numbers (or in the bravery of certain citizens), and especially if a siege threatens, unless the national(10) is prepared to furnish an equally capable substitute to defend the state."

At common law the freedom to emigrate is subject to certain exceptions and not available to all persons. The exact extent of the limitation is not clear.

The provisions of the Departure from the Union Regulation Act No. 34 of 1955, in my view, replace the common law by clear and unequivocal language.

Section 2 of the Act provides as follows:

"2. Departure from the Union without passport or permit or at a place other than a port prohibited. - (20)

No person shall leave the Union for the purpose of proceeding to any place outside the Union -

- (a) unless he is, at the time when he leaves the Union, in possession of a valid passport or a permit;
- (b) except at a port, unless his passport or permit bears an endorsement, or he is in possession of a document issued to him by a person authorized thereto by the Minister of the Interior, to the(30) effect that authority has been granted to him

by/...

by the said Minister or a passport control officer referred to in section 30 of the Admission of Persons to the Union Regulation Act, 1913 (Act No. 22 of 1913), to leave the Union at a place other than a port, and for such purposes and during such period as may be set forth in that endorsement or document."

Section 5 of the Act is also relevant to the issues under consideration:

"5. Permit to leave the Union. - (1) The Secretary (10) for the Interior or any person authorized thereto by the said Secretary, may issue to any person over the age of sixteen years who applies therefor in the form prescribed by the said Secretary and who pays the fee prescribed therefor, a permit to leave the Union: Provided that the said Secretary or any person authorized by him as aforesaid shall issue such a permit to any person who satisfies him that he intends to leave the Union permanently."

It was submitted on behalf of the applicants (20) that the respondent was in law not entitled to use his discretionary powers to prevent the applicants from leaving the Republic permanently pursuant to their respective departure permits, a right given them in terms of the Acts.

CENTLIVRES, C.J. in R. v. Sachs, 1953(1) S.A. 392, dealt with the interpretation of statutes which gives the executive power to invade the liberty of individuals in the following terms on page 399:

"He submitted that such statutes should be subjected to the closest scrutiny of courts of law whose function(30) it is to protect the rights and liberties of the individual.

Courts of law do scrutinise such statutes with the greatest care but where a statute under consideration in clear terms confers on the executive autocratic powers over individuals courts of law have no option but to give effect to the will of the Legislature as expressed in the statute. Where, however, the statute is reasonably capable of more than one meaning a court of law will give it the meaning which least interferes with the liberty of the individual." (10)

The words "any person" in the proviso to Section 5 of Act No. 34 of 1955 read with the "permit" in Section 2 of the Act cannot, in my view, be given an absolute or literary meaning. *permit. ^ clear - 95 why?*

It was submitted on behalf of the applicants that there is no prohibition on the right of a person to leave the Republic permanently if he has been given a departure permit save in the case of imprisonment by sentence of a court of law or a debtor restrained by order of court.

We have been referred to a number of Statutes which (20) limit the movement of persons within the Republic.

By reason of the absolute wording of the Suppression of Communism Act and the resultant discretion given the respondent, a restriction notice relating to a particular place or area in terms of the Act is in relation to a departure permit placed on the same footing as a court order of imprisonment. A person who is subject to such a restriction order is in the sense used in the phrase "freedom to emigrate" not a free person. The restrictions imposed on the applicants were done by proper and recognised process of law. The (30) departure permits do not confer on the applicants any right to/..

to absent themselves from their respective restricted areas.

It was submitted that by the use of the words "change within the Republic" in the definition section of the Act the legislature had a territorial limitation in mind and intended to control communism only within the Republic. With this submission I agree. A person who is active in bringing about a communistic "change within the Republic" need not necessarily have to be within the Republic to bring about such a change. He can, in my view, in any of the modes described in the Act bring about a change within (10) the Republic whilst he is outside the Republic. The respondent, therefore, cannot be faulted for what he did on account of the territorial limitation of the evil hit at by the Act.

In the alternative we have been asked to make a declaratory order that the applicants are lawfully entitled to avail themselves of their respective departure permits. Such a declaratory order involves the same considerations as are in issue in the orders prayed for in the notice of motion with which I have dealt in this judgment.

In the result both applications are dismissed with costs(20) allowing fees for two counsel.

(sgd) A.P. MYBURGH.
JUDGE OF THE SUPREME COURT.

I agree.

(sgd) S. Bekker.
JUDGE OF THE SUPREME COURT.

I agree.

(sgd) J.F. Marais.
JUDGE OF THE SUPREME COURT.

IN THE SUPREME COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

CASE NO. M. 483/71

PRETORIA TUESDAY the 22nd day of JUNE, 1971;

BEFORE the Honourable Mr. Justice BEKKER

and the Honourable Mr. Justice MARAIS

and the Honourable Mr. Justice MYBURGH

In the matter between:

ROBERT MANGALISO SOBUKWE

Applicant

and

(10)

THE MINISTER OF JUSTICE

Respondent

=====

HAVING on the 2nd day of JUNE, 1971 HEARD MR. MAISELS Q.C.
with him MR. WENTZEL of Counsel for the applicant and
MR. JOUBERT S.C. with him MR. GROSSKOPF of Counsel for the
respondent and having read the Notice of Motion;

THE COURT RESERVED JUDGMENT.

THEREAFTER, on this day,

THE COURT ORDERS:

THAT the application be and is hereby (20)
dismissed, with costs including the fees of two Counsel.

BY THE COURT,

(sgd) N.E.J. EHLERS
ASST. REGISTRAR.

SEGAL & S

/JHC.

IN THE SUPREME COURT OF SOUTH AFRICA
(APPELLATE DIVISION)

In the matter of the application of:

ROBERT MANGALISO SOBUKWE Appellant

and

THE MINISTER OF JUSTICE Respondent

NOTICE OF APPEAL

BE PLEASED TO TAKE NOTICE that the Applicant (now called "The Appellant") hereby notes an appeal to the Supreme Court of South Africa (Appellate Division) (10) against the whole of the judgment and order for costs of Myburgh J. (in which Bekker J. and Marais J. concurred) delivered on 22nd June, 1971 in the Transvaal Provincial Division of the Supreme Court of South Africa.

DATED AT JOHANNESBURG THIS 5th DAY OF JULY 1971.

(sgd) R.J. TUCKER.

APPELLANT'S ATTORNEY,
RAYMOND TUCKER,
203 Maritime House,
Loveday Street,
JOHANNESBURG. (20)

ISRAEL SACKSTEIN & SIMON,
Cuthbert's Building,
Maitland Street,
BLOEMFONTEIN.

TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT,
BLOEMFONTEIN.

AND TO/...

AND TO: THE REGISTRAR OF THE SUPREME COURT
OF SOUTH AFRICA,
(TRANSVAAL PROVINCIAL DIVISION)
PRETORIA.

AND TO: THE STATE ATTORNEY

Received copy hereof this day
of July, 1971.

(sgd)
THE REGISTRAR OF THE SUPREME
COURT OF SOUTH AFRICA (10)

Received copy hereof this day
of July, 1971.

STATE ATTORNEY.

Registrar of the
Supreme Court of S.A.
(Transvaal Provincial
Division)

7.7.1971

CERTIFICATE OF REGISTRAR

I, the undersigned, hereby certify that the
aforegoing is a true and correct transcription of the
record filed in this office in the matter between:-

	<u>SHANTAVOTHIE NAIDOO</u>	1st Appellant
and	<u>ROBERT MANGALISO SOBUKWE</u>	2nd Appellant
and	<u>MINISTER OF JUSTICE</u>	Respondent

REGISTRAR

TRANSVAAL PROVINCIAL DIVISION

CERTIFICATE

I, the undersigned, hereby certify that the
aforegoing is a true and correct transcription of the
proceedings in the matter of:

	<u>SHANTAVOTHIE NAIDOO</u>	1st Appellant
and	<u>ROBERT MANGALISO SOBUKWE</u>	2nd Appellant
and	<u>MINISTER OF JUSTICE</u>	Respondent



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