

Case No. RC C 295/63

Exh X

H.
M.

BHALANI AMAGAMA NAMAKELI AMASHA. AMANQE AZI AMADALA

Umfula ugwele, akuwelwa ngapa.
Nozwa ngathi.

Owenu, *
Mvimbi.



Jitwany Holene
363 Gladu
P.O. Moroka.
Jhb

Same Address
30th March 1965

Dear Sir

1. Re Embley's Case:

The three people arrested are still in goal. According to the latest information received one of them was separated from them on the very day of arrest and was kept alone at Auckland Park Police Station whilst the other were kept at the Fort. This character ^{who} was kept separately Joseph Momo is quite a fishy character. He joined the team at the beginning of 1961, promising all and sundry that he would give them pass-ports to Ethiopia for further training. Nobody showed any interest, then he joined the Liberal Party. I was approached about this later action and I advised the team manager to ignore him for good. To my surprise on the day of arrests he was again with the team. It is quite obvious that this is a questionable character and anything can be expected from him. The day the case came up which is the 21st of May — not April as reported in the press. I can't understand why he was separated from others.

2. The Hodi Assistant Team Manager was picked up on the road of March and the Zala assistant team manager

II

Was picked up on the same day as well with documents
 on their possession. I do not know the nature of the documents but
 what I learnt is that the Tashi District Manager had letters
 from the Association and the ~~Local~~ ^{Zala} Assistant Manager, was
 picked up with letters from the same source though in
 addition and in fact what ~~was~~ ^{had} the ~~same~~ skin to his house
 was a letter they had intercepted from a friend of his in
 Janganyika.

The Assurance Secm Manager has also been picked
 up with documents. The West Wind regional Captain has
 been picked up for a personal theft case.

The Skin has slipped up their line throughout and
 people who were otherwise not known before have been raided.
 I have certain observations to make with regard to this mail if
 will recommend accordingly: (a) When letters ~~are~~ ^{come} through with
 the Ewasaland post mark the addresses are checked ~~at~~
 the post offices especially at the Townships and those houses
 then raided. In fact letters take about seven to ten days

III

before they come at their destinations which makes are suspect that they are intercepted probably opened and copied (as happened in the Ben Jurok case). There has been gross negligence with most of our players here. Instead of them leaving addresses of other people whom they were at H.Q. they only supplied pseudo-names with their proper addresses thus leaving themselves open to such dangers. (C). They talk too much. They are comradial and very unrevolutionary in their behavior i.e. secrecy or the lack of it. They can't do as agents

Please desist forthwith from sending letters through Jersalip addresses until you have been supplied with case numbers which are safer comparatively. Stop sending magazines, newspapers, bulletins etc., these people leave them lying around and they are the greatest danger. They are what "Father Minor" referred to as "Documents from Ghana."

The Most significant fact is that our chaps are not revolutionary. Documents are left lying around in their homes and in their pockets. They underestimate the efficiency

IV

of skins. Now when this suits happen they stand on roof tops
 hollowing "informers!!!" whereas there is gross negligence and
 looseness of tongues amongst themselves.

To remedy all this I have advised them to
 maintain tight security measures and not enlist players
 as freely as we used to. Intelligence must work on each
 and every new applicant before acceptance. They should no
 longer hold gatherings. They should meet players as small
 groups or individually. But the Machinery remains the same
 and everything is still required of them as before.

There is a dirty, stinking, character besmirching campaign
 against Mr PARSON. The facts leading to it are these
 (i) We have withdrawn recognition of the Jabulani team.
 It was formed by people from Zala who did not
 want to respect their local leaders. Even most of the
 members in this team are from Zala and were
 by being told a pack of lies into losing confidence
 faith in their local management, by people who do not
 want to be led by others. Since there is a

team in Zala probably constituted and fully functioning, they, and affiliates to it. These people thought I had tried to show them the essence of unity, maintain that he got all this through personal hatred. But if I were to permit such a state of affairs I would be creating a bad precedent i.e. as soon as a man does not like the face of his manager he would hop into the next Township and establish his own team. These people in order to destroy me dubbed me an informer, exploiting the sensitiveness of our people towards strains.

It is quite clear from reports I have been getting of the local intelligence that even the man I appointed as my captain believes these things. On the 23rd of March I met my captain at his place of employment at one p.m. when he "krocker off" I led him to a "Ghesa Nyama" nearby where I discussed with him matters generally in our locality. As we were discussing some people walked in when I was just about to let him read the letter note I had received that day. The man jumped up and dashed

The work I had done through sheer hardwork and complete selflessness is being destroyed. I would not like new areas to be affected by the "skin mania" so I have today met the West Rand and advised them to elect a full region. They are from henceforth going to be independent. They are ~~doing~~ comparatively doing far better than the central complex. They shouldn't at all be drawn into this seething cauldron of hatred and personal clashes which ~~abundance~~ seems to be our disease. They will write to you as soon as they have established their ^{club} ~~team~~ management which will be early next week. I have appointed the White City team manager to busy himself with the East Rand with a view of granting it early independence as soon as they are on a proper footing.

I will show this letter to the local Federal Head and before posting it and then set around and wait for your word. I would not like to continue office unless you say so though I will never ^{the struggle} abandon _{at this stage.}

One has to view this thing open mindedly such accusations happen in all revolutions and innocent blood is sometimes ^{swilt} ~~spilt~~. But should anybody ~~use~~ use gangster tactics against me or should I have reason to believe that my life is in any way in danger I will move first and crush such individuals. THE POSITION IS JUST THAT SERIOUS.

To pin it up on this issue the self-styled "Station" Manager got a visit from the skins one night last week and escaped when they were about to arrest him. One story has been passing around is that they found letters in his position. The second story is that they found a pangol. The third story is that they found a slinger. It is quite obvious that a lot of lies are being passed around by him, to the extent that the truth becomes ^{obscure} ~~obscure~~. But what I do know ^{that} from the manner in which these people ~~are~~ raid you you can't escape and my guess is he might have been raided and some damage taken as the case was with most of us. Through the

Goodrice decided to leave home in case they come back to collect him, guessing that he may not get sympathy from me should telling these stories to start. And he is one of the leaders of this campaign of character blemishing. Such characters are unpredictable please handle them with extreme caution when they come to you and please don't meet any body. If you don't know a person send him back to where he comes without fear or favour. Its quite obvious that S.B. has been there, as you will see from the enclosed (letter).

Please reply immediately

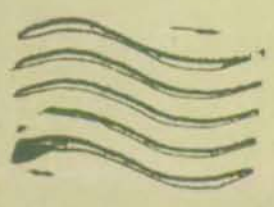
Yours

Football Club Manager
Wid.

P.S.

You'll understand why I don't send you a note for me.

Hand writing



Mr Lewis B. Miller,
PO Box 556,
Munro.
Wid.

Wednesday
21th March THE STAR

Special

THE THINGS THEY SAY

13000 lbs already changed
its name to The Night
Club.—Dr. Vorster.

They most undervalued that
despite attempts made to
make out that the United
Party supports them their
greatest enemy in South
Africa is the United Party
—Sir de Villiers Graaff

The Government's actions
are being supported by the
Opposition.—Dr. Vorster.

Se

DR. VE.
late
which may
Dr. Veer.
Subject deli
bers Graaff
Government
of the 100

Same Adress.

16th, January 1963.

(1)

It is a matter of vital importance that each and every hall that has sent its lists of digits to the night club without having paid its subs and levies must do so as early as possible.

The night club is ~~with-~~ faced with the most and difficult position in assessing matters that are arising from time to time .

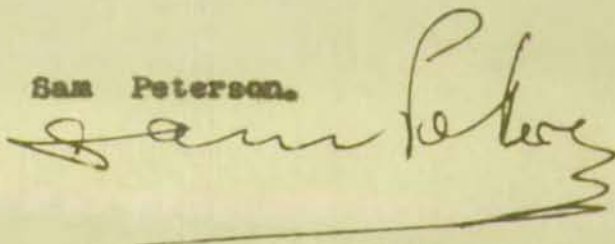
We are therefore unable to attend and straighten up certain urgent matters that are entireley affecting the halls in particular.

It is our urgent wish therefore that you will make your utmost endeavours to keep ip to your promises, marshalling your halls and lastly to adhere to the instructions as mentioned above.

In view of the task that lie ahead of us, I wish to remind you once more that no administration at the Night club can continue without digits and essential requirements such as monies etc.

Halls must realise that it is their responsibility to keep the night club moving. Remember that the various Cinema Proprietors will always be responsiblet to see that all the necessary instructions are being carried out without any waste of time.

Sam Peterson.



1-5

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

In the matter of :

THE STATE vs. JAIRUS NTSOANE

APPELLANT'S HEADS OF ARGUMENT.

I.

The learned Magistrate erred in holding that the furnishing of false names was a general rule but the furnishing of false addresses was an exception (page 173), in that :-

324/5

- a) There is no evidence as to the code address which was in use as at the 21st January 1963, the date on which Exhibit 'W' was posted;
- b) The only direct oral evidence on the addressing of letters to members of the banned Pan Africanist Congress was given by Leborro at pages 86 and 122. In terms of instructions given to him on the 2nd March 1963 false names and addresses were to be used and these were handed in to the head office at Maseru;
- c) The evidence of Cynthia Lichaba (pages 35-44) that only a false name and the correct address was in use as at the 29th March 1963 is vague and contradictory and cannot be accepted;

d) In terms of Exhibit 'Z', page 1, para. 4,

have
members were to use false names and addresses;

page 122, para. 4
e) Ex 'X' - para. 4 - *was used to change names*
- addresses as well as add. p. 92 -
This is - 29/3/63. e) / ...

- they use "name & address" - surely it means
use a new false name & new false address. Only both in plural of

e) It is therefore submitted that on the probabilities the name and address on Exhibits 'X', 'W' and 'A' are false and that they were not addressed to or intended for the accused; alternatively, the State has failed to prove ^{what} the system used by the said unlawful organisation.

III

The learned Magistrate erred in holding

note: by 99/100
 that the accused's evidence was totally false and untrue and that there was no possibility at all that it may be true (page 176), in that :-

p 330

a) The accused's explanation as to how he came into possession of Exhibits 'U' and 'V' (pages 99/100) was corroborated by Mrs. Scott (pages 120-122). *- these are the two publications written by Chiketa, he was employed by the Gov. of East Rhodesia.*

b) The accused denied that he was a member of the Pan Africanist Congress (page 103) and further denied that he understood the contents of Exhibit 'W' (page 101). If he was a member and knew and understood the contents of Exhibit 'W' it is submitted that he would, on the probabilities, have destroyed it. His conduct in keeping it and his reasons for keeping it are *quite consistent with an innocent state of mind.*

c) (i) The accused's evidence that he opened the letter to ascertain the name of the sender is not improbable. *- it is also clear from Ex W that there was no address - the back of it*

(iii) Says was to other addresses - quite reasonable
 d) / ...

- d) The accused's conduct in opening the letter although not customary everywhere is a practice in the locations (page 114). *— probably because it is in a place where it is not usual to have letters sealed to be opened*
- e) The fact that the accused said he saw Leballo's and Molefe's pictures on the front page of the "Star" on the 25th March and after his arrest (page 117) indicates his truthfulness as a witness.

f) (i) The accused's negligence in failing to return Exhibit 'W' to the Post Office is not inconsistent with his innocent possession of

To
 (ii) letter was not inspected by him & probably due to neglecting it as it was not added to the cc. - this is the probable cause for his neglecting it.

Exhibit 'W'. *— Had 4 witnesses at 15/2 who would be able to testify that he intended to take it back but forgot (1100-101) who lost it forgot to take a letter!*

g) The accused's statement to Detective Sergeant Nienaber (page 8) is consistent with his

— the papers were in the door.
 innocence, and his denial that the letter was intended for him. *It is of the nature of a letter to be returned.*

(h) There are no material conflicts in his evidence & it is in the way of his case.

It is therefore submitted that the accused's evidence should in all the circumstances have been accepted. *Even if he was negligent that is not sufficient. His grave knowledge of his evidence suggest truth.*

~~11.~~ 11.

The learned Magistrate erred in holding that Exhibit 'Y' proved that the accused was an office-bearer of the Pan Africanist Congress (page 175) in that :-

a) Exhibit 'Y' was admitted as evidence as prima facie proof of its contents in terms of Section 12(4)(c) of Act No. 44 of 1950 as amended, but such prima facie proof is

rebutted in the following manner :-

12(4) c is a rodent department from which evidence is State with to rely - suit a document, the author of which is not produced to verify or its content or meaning. b) (1) Paragraph 1 of Exhibit 'Y' refers to the arrest of three persons, two of whom were kept at the Fort and the third, Joseph Mano, at Auckland Park;

(ii) Detective Sergeant Posthumus (pages 22/23)

stated that he arrested Mano and two others at Mdeni Location and that Mano was kept at Auckland Park whilst the other two were detained at Marshall Square. There is no evidence of the other two, if they are the same persons, having been detained at the Fort. There is furthermore no evidence that any or all of them were members of the Pan Africanist Congress.

Is the Imp. H. to some part in it referred to Y. They be other

It is a matter of a company name does not prove that Mano a member of A.P.C. - that other was

Should have called Mano, 2 others - at this stage there is a gap

(iii) It is submitted that the evidence does not

prove that Mdakane was the Zola Assistant Team Manager or that he was a member of the Pan Africanist Congress, in that :

(a) Paragraph 2 refers to the arrest of the Zola Assistant Team Manager on the 22nd March 1963;

(b) Sergeant Posthumus arrested John Mdakane on the 23rd March 1963 at Zola (pages 23/24). He stated that he found P.A.C. documents and a letter from Tanganyika in his possession. The nature of these documents was never disclosed to the court; and cannot say they were PAC documents.

(c) Don't Para 2 talks of letters from the Assoc. not documents. some papers? a letter from Tanganyika has been identified. not that it had been found in the papers

(c) In terms of paragraph 2, the Zola

but in terms of Post. evidence
a letter was found Mankane
possession - not that it had
been intercepted.

But p24 does not know if it was
from Tanganyika - not sure but it
is one of these kinds

* In fact the ~~Post. evidence~~
~~to the State and its head.~~
30th Mar 1963 - not sure - just
arrested - the 22/23 March
(p307)

Posthumus is not the
number of police force
remove at this stage

Assistant Team Manager was arrested
on the 22nd March 1963 and the police
had intercepted a letter from Tanganyika
addressed to him. Sergeant Posthumus
stated that he made no other political
arrests on the 22nd or 23rd March 1963
(page 24) but there is no evidence that
persons other than Mankane were not
arrested on a political charge by other
members of the police force on that date.

(d) (i) Exhibit 'Y' does not prove that

the accused was the Thladi Assistant
Team Manager or a member of the
Pan Africanist Congress in that the
accused was arrested on the 23rd
March 1963 at Thladi (Posthumus,
Nienaber and accused), and not on
the 22nd as stated in paragraph 2;

(ii) Posthumus made no other arrests
at Thladi during the period alleged
but there is no evidence that
other members of the police force
did not make similar arrests at
that time; (p307)

(iii) There is no evidence that the
Thladi Assistant Team Manager lived
in Thladi, and it would appear that
The Jabulani Team Manager was
arrested in Zola. (Page 29);

(R.v. Blom, 1939 A.D. 188).

(c) The first evidence given
by Sgt Posthumus, 24th 30th
Mar at least 3 other persons
were arrested on the night
of 22/23 March 1963 - it is
submitted that Enj could
have referred to such persons
if Enj is dated the 30th
March 1963 - Sec 12(1) - proof of the letter
is proof that it was sent to
the accused.

(f) The I.M. arrived in
holding at p 329 that it was
PAC policy that persons arrested
in a case should try to help to
to be held in that area & accordingly
evident - adopting the process of
elimination - he did. It is also
submitted that evidence
was to be localized that is - evidence
that leadership was subject to the same verification

Witness Joseph Mpinga who was
from Zola was arrested at
Hafelo (p307) & Paul Mole who was
from Naledi - Zola was arrested
in Diophloot (p298).

(199) From the following given by Post. ~~the~~
clear that persons who lived in the area
where arrested - IV. / ...

IV.

The two charges read with the further particulars and all the evidence do not prove that the accused was either a member of or that he carried on any of the activities of the unlawful Pan Africanist Congress.

note: on 2nd charge in "activity" is proved all was done in a request to do certain thing

V.

a) The accused was charged with having contravened Sections 3(1)(a)(i) and 3(1)(a)(iv) of Act No.44 of 1950, it being alleged that he -

- (i) became or continued to be an office-bearer, officer or member of the unlawful Pan Africanist Congress;
- (ii) took part in the activities of the unlawful Pan Africanist Congress.

b) Section 3(1)(a) envisages four separate types of offence.

c) Inasmuch as the evidence necessary to prove the first charge involved proof of the second charge the charges were unlawfully split.

R. v. Johannes, 1925 T.P.L. 782;

R. v. Kuzwayo, 1960 (1) S.A. 340 (A.D.);

R. v. Theron, 1960 (3) S.A. 331 (T); 63(2) 575

Gardiner & Lansdown, 6th Edition, Vol. 1, p.297;

Section 382 of Act No.56 of 1955.

(e) In the circumstances it is submitted that the accused should have been convicted on either of the said charges but not on both.

(d) In fact there is no evidence of the accused having taken part in any activity of the unlawful organization. He should not be convicted on either charge. VI. / ... the

VI.

Sentence:

a) Inasmuch as the two offences were committed with the same intent they should have been treated as one for purposes of sentence.

b) Inasmuch as the learned Magistrate took into account that the accused had no previous convictions and that he had been in custody for six months awaiting trial (page 183) he should not have sentenced the accused to the maximum period of imprisonment provided by his jurisdiction.

c) The learned Magistrate erred in holding that the accused could not be reformed and should have suspended a portion of his sentence.

d) The learned Magistrate erred in sentencing the accused on the basis that he was answerable and responsible for all the utterances, policies and programmes of the Pan Africanist Congress.

JOHANNESBURG.

31st December 1963.

SAME ADDRESS.
30th March 1963

Dear Sir,

1. Re: EMDENI CASE:

The three people arrested are still in gaol. According to the latest information received one of them was separated from them on the very day of arrest and was kept alone at Auckland Park Police Station whilst the others were kept at the Fort. This character who was kept separately Joseph Mano is quite a fishy character. He joined the team at the beginning of 1961, promising all end sundry that he would give them passports to Ethiopia for further training. Nobody showed any interest, then he joined the Liberal Party. I was approached about this later action and I advised the team manager to ignore him for good. To my surprise on the day of arrests he was again with the team. It is quite obvious that this is a questionable character and anything can be expect from him the day the case comes up which is the 21st of May - not April as reported in the press. I cant understand why he was separated from others.

2. The (Tladi Assistant Team Manager) was picked up on the 22nd of March and the (Zola assistant team manager) was picked up on the same day as well with documents on their possession. I do not know the nature of the documents but what I learnt is that the (Tladi Assistant Manager) had letters from the Association and the Zola assistant Manager was picked up with letters from the same source though in addition and in fact what led the skins to his house was a letter they had intercepted from a friend of his in Tanganyika.

(The Munsieville Team Manager) has also been picked up with documents - "New Age". The West Rand sub-regional captain has been picked up for a personal theft case.

The Skins have stepped up their raids throughout and people who were otherwise not known before have been raided. I have certain observations to make with regard to this and I will recommend accordingly: (a) When letters come through with the Basuto-land post mark the addresses are checked at the post offices especially at the Townships and those houses then raided. Infact letters take about seven to ten days before they arrive at their destinations which makes me suspect that they are intercepted probably opened and copied (as happened in the Ben Turok case). There has been gross negligence with most of our players here. Instead of them leaving addresses of other people when they were at H. Q. they only supplied pseudo-names with their proper addresses thus leaving themselves open to such dangers. (b) They talk too much. They are emotional and very unrevolutionary in their behavior i.e. secrecy or the lack of it. They can't do as agents.

Please desist forthwith from sending letters through Township addresses until you have been supplied with Box Numbers which are safer comparatively. Stop sending magazines, newspapers, bulletins etc., Those people leave them lying around and they are the greatest danger. They are what "Elethu Mirror" referred to as "Documents from Ghana."

The most significant fact is that our chaps are not revolutionary. Documents are left lying around in their homes and in their pockets. They underestimate the efficiency of skins. Then when this raids happen they stand on roof tops hollowing "informer!!! whereas there is gross negligence and looseness of tongue amongst themselves.

To remedy...../2.

281
(2)

To remedy all this I have advised them to maintain light security measures and not enlist players as freely as we used to. Intelligence must work on each and every new applicant before acceptance. They should no longer hold gatherings. They should meet players as small groups or individually. But the Machinery remains the same and everything is still required of them as before. (7)

There is a dirty, stinking, character besmirching campaign against MY PERSON. The facts leading to it are these (1) We have withdrawn recognition of the Jabulani Team. It was formed by people from Zola who did not want to respect their local leaders. Even most of the members in this team are from Zola and were led by being told a pack of lies into loosing confidence or faith in their local management, by people who do not want to be led by others. Since there is a team in Zola properly constituted and fully functioning they must affiliate to it. These people though I have tried to show them the essence of Unity maintain that I do all this through personal hatred. But if I were to permit such a state of affairs I would be creating a bad precedent i.e. as soon as a man does not like the face of his managers he would hop into the next Township and establish his own team. These people in order to destroy me dubbed me an informer, exploiting the sensitiveness of our players towards skins. (8)

9 It is quite clear from reports I have been getting of the local intelligence that even the man I appointed as my captain believes these things. On the 23rd of March I met my captain at his place of employment at one p.m. when he "knocks off" I led him to a "chesa Nyama" nearby where I discussed with him matters generally in our locality. As we were discussing some people walked in when I was just absent to let him read the latest note I had received that day the man jumped up and dashed for his dear life. He had been jumpy throughout our discussions. It would appear the S. B. blitz locally has shaken him. But I had never imagined his cowardice and stupidity would have led him into acting in the manner in which he did. I immediately learnt thereafter that he had left for H. Q. Yesterday I learnt that he had come back. I arranged to meet him with no avail. I learnt from reports I received from individuals that the character besmirching campaign has gathered new momentum. Some of the yarns they spin are very imaginative. They can only be manufactured by warped and stunted minds. The danger is like minds believe these stories or ordinary people would not like to take a chance with such leadership. I think the damage done on my character is serious as such I can never serve or enjoy true confidence all round though I am prepared to contribute as much as I can to the struggle I think I can never serve freely. As a result till you advise me I will only do those thing which I deem as urgent and only when I am approached. The work I had done through sheer hardwork and complete selflessness is being destroyed. I would not like new areas to be affected by this "skin mania" so I have to-day met the West Rand and advised them to elect a full region. They are from henceforth going to be independent. They are comparatively doing far better than the central complex. They shouldn't at all be drawn into this seething cauldron of hatred and personal clashes which seems to be our disease. They will write to you as soon as they have established their club management which will be early next week. I have appointed the White City team manager to bussey himself with the East Rand with a view of granting it early independence as soon as they are on a proper footing. (9)

I will/30. *Handwritten signature*

(3).

I will show this letter to the local Federal Head before posting it and then sit around and wait for your word. I would not like to continue office unless you say so though I will never abandon the struggle at this stage. One has to view this thing open mindedly such accusations happen in all revolutions and innocent blood is sometimes spilt. But should anybody use gangster tactics against me or should I have reason to believe that my life is in any way in danger I will move first and crush such individuals. THE POSITION IS JUST THAT SERIOUS.

(10)

To finish up on this issue the self-styled Jabulani Manager got a visit from the skins one night last week and escaped when they were about to arrest him. One story has been passing around is that they found letters in his position. The second story is that they found a panga. The third story is that the found a stengun. It is quite obvious that a lot of lies are being passed around by him to the extend that the truth becomes obscure. But what I do know is that from the manner in which these people raid you you cant escape and my guess is he might have been raided and some documents taken as the case was with most of us. Through his cowardice decided to leave home in case they come back to collect him, guessing that he may not get sympathy from me started telling these stories to others. And he is one of the leaders of this campaign of character besmearing. Such characters are unpredictable please handle them with extreme caution when they come to you, and please dont meet anybody. If you dont know a person sent him back to where he comes without fear nor favour. Its quite obvious that S. B. has been there, as you will see from enclosed cutting

see p 28-30
D.L.H.

(11)

Please reply immediately.

Yours

Football Club Manager

Witz.

P.S.

You will understand why I let someone write for me.

Hand writing

Case No. RC C 295/63

283
Exh "AA"

Umfula ugwele, akuwelwa ngapa.
Nozwa ngathi.

Owenu,

*

Mvimbi.

Mr. Sitweng Molene,
363, Gladia
P.O. Maseka

J.H.B.

Case No. re C-295/63

284
Exh "BB"

The original of Lunder's letter
is original of Exh's "Y" and "Z"

IN THE MAGISTRATE'S COURT FOR THE REGIONAL DIVISION OF
THE SOUTH TRANSVAAL, HELD AT JOHANNESBURG.

CASE NO. C 295/63.

THE STATE versus JAIRUS UTSOANE.

REASONS FOR JUDGMENT.

The Accused appeared before me on two charges of Contravening Section 11(c) of the Suppression of Communism Act No. 44 of 1950 as amended.

He pleaded not guilty to both counts was found guilty and was sentenced to 3 years imprisonment on each count.

He has now appealed against both the convictions and the sentences.

The Court found the following facts to have been proved.

1. The Pan Africanist Congress (hereinafter referred to as the P.A.C.) was declared by the Government to be an unlawful organisation indefinitely as from 8th April, 1960.
2. Thereafter the P.A.C. went underground and continued with its activities with its headquarters at Maseru in Basutoland.
3. The accused was a member of office bearer of the P.A.C. during some undetermined portion of the period mentioned in the charge.
4. The accused carried out various activities of the P.A.C. in a capacity as an Assistant Branch Chairman of the Tladi Branch of the P.A.C.

The reasons in finding these facts to have been proved/...

proved are fully set out in the judgment delivered by me in Court see pages 163 to 176 of the typed record.

In reply to the points raised specifically in the notice of appeal I comment as follows:

PARAS 1, 2 and 3:

The reasons for rejecting the accused's explanation and for the other findings are dealt with in my judgment in Court referred to above.

PARA 4:

The defence allege that the two charges preferred against the accused constitute a splitting of charges. This argument was not raised at the trial and has now been raised for the first time. - 162/3

In my opinion there has not been a splitting of charges. The fact that a person may be a member or an office bearer of the P.A.C. does not of necessity mean that he is an active one or that as such he of necessity takes part in an activity or activities of the P.A.C. or carries on in the interest or indirect interest of the P.A.C. an activity or activities in which it was or could have been engaged during the said period. A man can agree to become the Chairman of a branch and yet not personally take an active part such as recruiting new members collecting money and arms etc. Each of the active office bearers had some of these duties specifically allocated to him.

Then too a European who under the constitution (Exhibit A) may not become a member of the P.A.C. and consequently is also not eligible for appointment as a committee member may nevertheless take part in or carry out the activities of the P.A.C. A recent example is that of the Revd. Blaxall who pleaded guilty to such a charge.

The section in question quite clearly makes provision for two separate and distinct offences and consequently they can be charged separately.

In PARAS 5 and 6 the sentence imposed is criticized. The reasons for imposing this sentence were given by me in Court and appear on pages 183 and 184 of the typed copy of the record.

I am satisfied that any normal person who reads and studies the aims, objects and the propaganda of the P.A.C. as set out in the documents handed into Court as Exhibits in this case will be unable to disagree with my comments.

In many cases two counts are treated as one for the purpose of sentence but in these particular circumstances I, after carefully considering the points raised by Counsel in his plea for leniency and after considerable thought, decided to impose the sentences which I did.

- But sentence passed immediately. Did not even appear to decide

O.G. GUSH
REGIONAL MAGISTRATE.

[Faint handwritten notes at the bottom of the page, mostly illegible.]

IN THE REGIONAL COURT FOR THE DISTRICT OF SOUTH TRANSVAAL

HELD AT JOHANNESBURG.

In the matter between:

THE STATE

- and -

JARIUS NTSOANE.

NOTICE OF APPEAL.

BE PLEASED TO TAKE NOTICE that the abovenamed accused hereby notes an appeal to the Transvaal Provincial Division of the Supreme Court of South Africa against the conviction and sentence imposed upon him in the Regional Court, Johannesburg, on the ^{15th} (26th ^{May 1964} August, 1963.) The grounds of appeal are as follows:-

1. THAT the learned magistrate erred in rejecting the accused's explanation as to how he came into possession of Exhibit 'W'.
2. THAT the learned magistrate erred in holding that the finding of Exhibit 'W' in the accused's possession proved that the accused was an office-bearer, officer or member of the Pan Africanist Congress as alleged in Count 1.
3. THAT the learned magistrate erred in holding that the finding of Exhibit 'W' in the accused's possession proved that the accused carried on in the direct or indirect interest of the Pan Africanist Congress an activity in which it was engaged as alleged in Count 2.
4. THAT the learned magistrate erred in holding the accused was guilty of both the offences

with/...

with which he was charged in as much as the charging of the accused on two counts involved a splitting of the charge.

5. THAT the learned magistrate should in all the circumstances of the case have treated the two offences as one for the purpose of sentence, and accordingly erred in passing separate sentences on each count.
6. THAT taking account all the circumstances the sentence passed on the accused was excessive and creates a sense of shock, more particularly in view of the fact that the accused had no previous convictions and had been in custody awaiting trial for a period of five months.

DATED AT JOHANNESBURG THIS 5th DAY OF SEPTEMBER, 1963.

RUTH HAYMAN
HAYMAN & ARONSOHN
Attorneys for the Accused.
205 NATIONAL MUTUAL BUILDING.
MARKET & RISSIK STREETS.
JOHANNESBURG.

TO THE CLERK OF THE COURT
JOHANNESBURG.

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

In the matter of :

T H E S T A T E

vs.

JAIRUS NTSOANE

Appellant

APPELLANT'S HEADS OF ARGUMENT.

I.

The learned Magistrate erred in holding that the furnishing of false names was a general rule but the furnishing of false addresses was an exception (pages 173 and 324/5), in that :-

- a) There is no evidence as to the code address which was in use as at the 21st January 1963, the date on which Exhibit 'W' was posted;
- b) The only direct oral evidence on the addressing of letters to members of the banned Pan Africanist Congress was given by LEBORRO at pages 86 and 122. In terms of instructions given to him on the 2nd March 1963 false names and addresses were to be used and these were handed in to the head office at Maseru;
- c) In terms of Exhibit 'Z', page 1 para. 4, members were to have used false names and addresses;
- d) The evidence of CYNTHIA LICHABA (pages 35-44)

that / ...

that only a false name and the correct address was in use as at the 29th March 1963 is vague and contradictory and cannot be accepted;

- e) It is therefore submitted that on the probabilities the name and address on Exhibits 'X', 'V' and 'A' are false and that they were not addressed to or intended for the accused; alternatively, the State has failed to prove what system was used by the said unlawful organisation.

II.

The learned Magistrate erred in holding that Exhibit 'Y' referred to the accused and proved that he was an office-bearer of the Pan Africanist Congress (pages 175-6 and 330), in that :-

- a) Exhibit 'Y' (of which Exhibit 'Z' is a copy) was admitted as evidence as prima facie proof of its contents in terms of Section 12(4)(c) of Act No.44 of 1950 as amended, but such prima facie proof is rebutted in the following manner :-
- b) (i) Paragraph 1 of Exhibit 'Y' refers to the arrest of three persons, two of whom were kept at the Fort and the third, Joseph Mano, at Auckland Park;
- (ii) Detective Sergeant POSTHUMUS (pages 22/23) stated that he arrested Mano and two others at Mdeni Location on the 6th March, and that Mano was kept at Auckland Park whilst

the other two were detained at Marshall Square. There is no evidence of the other two, if they are the same persons, having been detained at the Fort. There is furthermore no evidence that any or all of them were members of the Pan Africanist Congress;

(iii) It is submitted that the evidence does not prove that MDAKANE was the Zola Assistant Team Manager or that he was a member of the Pan Africanist Congress, in that :

(a) Paragraph 2 refers to the arrest of the Zola Assistant Team Manager on the 22nd March 1963;

(b) Sergeant Posthumus arrested a JOHN MDAKANE on the 23rd March 1963 at Zola (pages 23/24). He stated that he found P.A.C. documents and a letter from Tanganyika or one of those lands in his possession - the nature of these documents was never disclosed to the court and it cannot be said that they were P.A.C. documents;

(c) In terms of paragraph 2 of Exhibit 'Y' the Zola Assistant Team Manager was arrested on the 22nd March 1963 and the police had intercepted a letter from Tanganyika addressed to him. Sergeant Posthumus stated that he made no other political arrests on the 22nd or 23rd March 1963 (page 24) and there is

evidence that at least three persons other than Ndakane were arrested on a political charge by other members of the police force on that date

(page 307); *the document was found in their possession.*

(d) (i) Exhibit 'Y' does not prove that the accused was the Thladi Assistant Team Manager or a member of the Pan Africanist Congress in that the accused was arrested on the 23rd March 1963 at Thladi (Posthumus, Nienaber and accused); and not on the 22nd as stated in paragraph 2;

(ii) Posthumus made no other arrests at Thladi during the period alleged but there is evidence that other members of the police force made similar arrests at that time (page 307);

(iii) There is no evidence that the Thladi Assistant Team Manager lived in Thladi, and it would appear from the further evidence given by Posthumus that persons who lived in one area were on occasion arrested in other areas, e.g. the Jabulani Team Manager was arrested in Zola (page 29); whilst JACOB MPIANE who came from Evaton was arrested at Mofolo

(page 307), and PAUL MASHA who came from Naledi and Zola was arrested in Diepkloof (page 298).

(e) The further evidence given by Sergeant Posthumus (pages 293-317) proves that at least three other persons were arrested on the night of the 22nd/23rd March 1963 and it is submitted that Exhibit 'Y' could have referred to such persons.

(f) The learned Magistrate erred in holding at page 329 that it was P.A.C. policy that persons resident in one area should only belong to the branch in that area and accordingly erred in adopting the process of elimination he did. It is alternatively submitted that even if membership was to be localised, there is no evidence that leadership was subject to the same qualification.

(R. v. Blom, 1939 A.D. 188).

III.

The learned Magistrate erred in holding that the accused's evidence was totally false and untrue and that there was no possibility at all that it may be true (pages 176 and 330), in that :-

a) The accused's explanation as to how he came into possession of Exhibits 'U' and 'V' (pages

99/100) was corroborated by Mrs. Scott (Pages 120/122).

- b) The accused denied that he was a member of the Pan Africanist Congress (page 103) and further denied that he understood the contents of Exhibit 'W' (page 101). If he was a member and knew and understood the contents of Exhibit 'W' it is submitted that he would, on the probabilities, have destroyed it. His conduct in keeping it and his reasons for keeping it are consistent with an innocent state of mind.
- c) (i) The accused's evidence that he opened the letter to ascertain the name of the sender is not improbable.
- (ii) It is also clear from Exhibit 'W' that there was no address on the back of it.
- d) The accused's conduct in opening the letter, although not customary everywhere, is a practice in the locations (page 114).
- e) The fact that the accused said he saw Leballo's and Molefe's pictures on the front page of the "Star" on the 25th March and after his arrest (page 117) indicates his truthfulness as a witness.
- f) (i) The accused's negligence in failing to return Exhibit 'W' to the Post Office is not inconsistent with his innocent possession of Exhibit 'W'.
- (ii) *The accused intended to take it back but forgot (pages 100-101).*

- (iii) The letter was not important nor was it addressed to the accused, and this is the probable reason for his neglecting it.
- g) The accused's statement to Detective Sergeant Nienaber (page 8) is consistent with his innocence and his denial that the letter was intended for him.
- h) There are no material conflicts in his evidence and it has the ring of truth to it.

It is therefore submitted that the accused's evidence should in all the circumstances have been accepted.

IV.

The two charges read with the further particulars and all the evidence do not prove that the accused was either a member of or that he carried on any of the activities of the unlaw^{-ful}/Pan Africanist Congress.

V.

a) The accused was charged with having contravened Sections 3(1)(a)(i) and 3(1)(a)(iv) of Act No.44 of 1950, it being alleged that he -

- (i) became or continued to be an office-bearer, officer or member of the unlawful Pan Africanist Congress;
- (ii) took part in the activities of the unlawful Pan Africanist Congress.

b) / ...

b) Section 3(1)(a) envisages four separate types of offence.

c) Inasmuch as the evidence necessary to prove the first charge involved proof of the second charge, the charges were unlawfully split.

R. v. Johannes, 1925 T.P.D. 782;

R. v. Kuzwayo, 1960 (1) S.A. 340 (A.D.);

R. v. Theron, 1960 (3) S.A. 331 (T);

Gardiner & Lansdown, 6th Edition, Vol.1, p.297;

Section 382 of Act No.56 of 1955.

d) Inasmuch as there is no evidence of the accused having taken part in any activity of the unlawful organisation, the learned Magistrate should not in the circumstances have found that the accused was actively engaged in the work of the unlawful organisation (pages 176 and 330), and erred in convicting him on the second count.

e) In the circumstances it is submitted that the accused should have been convicted on either of the said charges but not on both.

VI.

Sentence:

a) Inasmuch as the two offences were committed with the same intent they should have been treated as one for purposes of sentence.

b) Inasmuch as the learned Magistrate took into account that the accused had no previous convictions and that he had been in custody for six months awaiting

trial (page 183) he should not have sentenced the accused to the maximum period of imprisonment provided by his jurisdiction.

c) The learned Magistrate erred in holding that the accused could not be reformed and should have suspended a portion of his sentence.

d) The learned Magistrate erred in sentencing the accused on the basis that he was answerable and responsible for all the utterances, policies and programmes of the Pan Africanist Congress.

N.D. //

(c) If succeed to exte year he is only guilty of the 1st Count. the sentence must be altered to 2 yrs & not 2 1/2. May: - sentence gave 6 mths off a cell the sentence Acc. on 15th May & application for a writ in each count. whole of

JOHANNESBURG. application must now be applied to court 1.
8th September 1964.

IN THE REGIONAL COURT FOR THE DISTRICT OF SOUTH TRANSVAAL.
HELD AT JOHANNESBURG.

In the matter between:

THE STATE.

and

JAIROS NISOANE.

NOTICE OF APPEAL.

BE PLEASED TO TAKE NOTICE that the abovenamed Accused hereby notes an Appeal to the Transvaal Provincial Division of the Supreme Court of South Africa against the conviction and sentence imposed upon him in the Regional Court, Johannesburg, on the 15th May, 1964. The grounds of appeal are as follows:

1. THAT the learned Magistrate erred in rejecting the Accused's explanation as to how he came into possession of Exhibit "W".
2. THAT the learned Magistrate erred in holding that the finding of Exhibit 'W' in the Accused's possession proved that the Accused was an office-bearer, officer or member of the Pan Africanist Congress as alleged in Count 1.
3. THAT the learned Magistrate erred in holding that the finding of Exhibit 'W' in the Accused's possession proved that the Accused carried on in the direct or indirect interest of the Pan Africanist Congress an activity in which it was engaged as alleged in Count 2.

4. THAT the learned Magistrate erred in holding the Accused was guilty of both the offences with which he was charged in as much as the charging of the Accused on two counts involved a splitting of the charge.
5. THAT the learned Magistrate should in all the circumstances of the case have treated the two offences as one for the purpose of sentence, and accordingly erred in passing separate sentences on each count.
6. THAT taking account all the circumstances the sentence passed on the Accused was excessive and creates a sense of shock, more particularly in view of the fact that the Accused had no previous convictions and had been in custody awaiting trial for a period of five months.

DATED at JOHANNESBURG this 15th day of MAY, 1964.

RUTH HAYMAN
Hayman & Aronson,
Attorneys for the Accused,
205 National Mutual Building,
41 Rissik Street,
P.O. Box 7390,
JOHANNESBURG.

TO THE CLERK OF THE COURT,
JOHANNESBURG.

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**SOUTH AFRICAN INSTITUTE OF RACE RELATIONS, Security trials Court
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