IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION).

CASE NO.: 2395/74. PRETORIA,

11th NOVEMBER, 1974.

ZWELIBANZI RAMALINGA COOPER	1st Applicant
ALIMAL RAMALINGA COOPER	2nd Applicant
NTOMBENHLE CYNTHIA SHANGE	3rd Applicant
JACOB MYEZA	4th Applicant

and

THE MINISTER OF POLICE	1st Respondent
THE COMMISSIONER OF THE SOUTH AFRICAN POLICE	2nd Respondent

J U D G M E N T

TRENGOVE, J.: This application concerns five persons, Lindiwe Mbandla, Sathasivan Cooper, Revabalan Cooper, Mosioua Lekota and Muntu Myeza, who were arrested at Durban on or about the 25th September, 1974, and are presently being detained at Pretoria by members of the Security Branch of the South African Police, under the provisions of the Terrorism Act, 1967 (Act No. 83 of 1967). I shall hereafter refer to this Act simply as "the Act".

The first applicant is the father of the detainee (10) Lindiwe Mbandla, the second applicant is the father of the detainees Sathasivan Cooper and Revabalan Cooper, the third applicant is the fiancé of the detainee Mosioua Lekota and the fourth applicant is the father of the detainee Muntu Myeza.

The applicants have brought this application on a

certificate or urgency. In prayers (2) to (6) of the notice of motion they claim an order -

"2. That the Respondents be interdicted and restrained for the duration of the detention under Section 6 of the Terrorism Act No. 83 of 1967 from either directly or indirectly through their own actions or those of any one under the command or control of one or other of them from -

(a) (i) assaulting;

(ii) interrogating, or in any manner, other than that prescribed or permitted by law;

(iii) employing any undue or unlawful pressure on;

(iv) subjecting any form of unlawful duress on:

(b) (i) Lindiwe Mabandla, the son of the First Applicant;

(ii) Sathasivan Cooper and Revabalan Cooper, the sons of the Second Applicant;

(iii) Mosiuoa Lekota, the fiancé of the Third Applicant;

(iv) Muntu Myeza, the son of the Fourth Applicant.

3. That the evidence of -

Lindiwe Mabandla;

Sathasivan Cooper;

Revabalan Cooper;

Mosioua Lekota;
Muntu Myeza;
the detainees on whose behalf and for whose benefit this application is brought, be taken on affidavit or commission or by interrogatories by a person or persons who in terms of the provisions of sub-section (6) or (7) of Section 6 of the Terrorism Act No. 83 of 1967 is or are entitled to access to them, appointed by the Court.

4. That pending the filing of such affidavits or other evidence obtained in the manner set out in 3 above, a rule nisi be issued operating as an "interim" interdict pending the final determination of this application.
5. Other or alternative relief;
6. Ordering the Respondents to pay the costs."

The application is founded upon allegations of maltreatment, by certain members of the Security Branch, of the detainees concerned. The allegations are said to have been made by the detainee, S. Cooper, to a Mr Chetty, an attorney of Durban, during the course of a consultation at Pretoria on the 22nd October, 1974. The allegations, and the circumstances under which they are alleged to have been made, are contained in an affidavit deposed to by Mr Chetty. Mr Chetty states that he was instructed by S. Cooper, prior to his detention, to prosecute an appeal against a conviction against him on a charge of assault. The appeal was set down for hearing in the Natal Provincial

Division on the 29th October, 1974. On or about the 11th October, Mr Chetty learnt that S. Cooper had been arrested and that he was being detained under the Terrorism Act. Mr Chetty then applied to the Security Branch for permission to interview S. Cooper in order to obtain instructions from him as to the prosecution of his appeal. This application was granted and on the 22nd October, 1974, he had a discussion with S. Cooper at the Old Compol Buildings, Pretoria, in the presence of two members of the Security Branch, Major Stadler and Lieutenant Fourie. I shall (10) have to refer to Mr Chetty's account of this discussion in some detail at a later stage. The gist of his evidence is that S. Cooper told him that he and certain other detainees, whose names he mentioned, were being brutally assaulted by members of the Special Branch. He described the nature of the alleged assaults in some detail and instructed Mr Chetty to make an application to court to stop these assaults on himself and on the other detainees. Mr Chetty then passed on this information to Mr Justice Postma and Mr P.A. Pillay, attorneys of Durban, who (20) were acting for some of the detainees mentioned by S. Cooper, and they, in turn, communicated with the applicants who then decided to bring this application as a matter of urgency.

The application was set down for hearing on Thursday, the 7th November, 1974. The papers were served on the respondents at 3,45 p.m. on Wednesday, the 6th November, 1974. But despite this, the respondents have managed, in the short time available, to prepare and file no less than twenty-nine affidavits, running into some one hundred (30) and forty pages, in opposition to this application. The deponents of the respondents, consist of the commanding

officer of the Security Branch at Pretoria; certain police officers, members of the security police, who interrogated the detainees concerned; the magistrate who, on two occasions, during the period 20th October, 1974, to 1st November, 1974, visited each of the detainees in private in terms of the provisions of Section 6(7) of the Act; a private medical practitioner, who holds an appointment as a part-time district surgeon and who, at the request of the police, examined the detainees medically, from time to time. (10)

I shall, at a later stage, have to refer to certain of these affidavits in some detail. For present purposes, however, it will suffice to say that the evidence tendered on behalf of the respondent, amounts to a categorical denial of any maltreatment of the detainees by the police. The respondents not only deny all the allegations of assaults upon the detainees, they also deny that S. Cooper gave Mr Chetty any information whatever about any such alleged assaults, on the occasion of their consultation at Pretoria on the 22nd October, 1974. (20)

I come now to the merits of the application. It is obvious from what I have already said, that there are at least two important disputes of fact on the affidavits, namely (a) whether S. Cooper complained to Mr Chetty about assaults by the police upon the detainees and, if so, (b) whether there is any truth in these allegations. Counsel for both parties are agreed that it is not possible for this Court to resolve these disputes of fact on the affidavits.

Mr Coaker for the applicants, has conceded that (30) the applicants have not made out a case for final relief at this stage. He has submitted, however, that the

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applicants have made out a case for an order in terms of paragraph 3 of the notice of motion, namely, that the evidence of the detainees concerned be taken on affidavit or commission or by interrogatories, by some person, who is entitled to have access to them under the provisions of Section 6(6) and 6(7) of the Act and an order under paragraph 4 of the notice of motion, directing that pending the filing of such affidavits or such other evidence, and the final determination of this application, a temporary interdict restraining and interdicting the (10) respondents in terms of paragraph 1 of the notice of motion.

In developing this submission, Mr Coaker pointed out that one of the peculiar features of this case was that the persons most affected by the conduct complained of, namely the detainees, have not been heard because the applicants are precluded by the provisions of Section 6(6) of the Act from communicating with them. He contended, however, that Section 6(6) still left it open to the Court to make an order of the kind sought in paragraph 3 (20) of the notice of motion and he urged the Court to make such an order because, so it was argued, it was most desirable that the detainees should be heard for if the allegations of maltreatment were false, that should be made known as soon as possible and, on the other hand, if there were some substance in the allegations, that could be investigated. In the meantime the detainees were entitled to the protection of the Court. Mr Coaker further submitted that the applicants had made out a *prima facie* case for an interim interdict and the balance of (30) convenience, he said, was also clearly in their favour.

Mr Preiss, for the respondents, contended, on the

other hand, that the application should be dismissed because the applicants had failed to make out a prima facie case on the facts. He emphasized that the applicants based their case almost entirely on Mr Chetty's affidavit, which, he submitted, has been completely discredited by the evidence tendered on behalf of the respondents.

There the main question for consideration is whether the applicants have made out a case for a temporary interdict and, on this issue I shall adopt the approach outlined in the well-known case of Webster v. (10) Mitchell, 1948(1) S.A. 1186 (W) as modified and explained in the case of Gool v. Minister of Justice and Another, 1955(2) S.A. 682 (C). In Webster v. Mitchell,(supra) Clayden, J., said at page 1189:

> "From the Appellate Division cases to which I have referred I consider that the law which I must apply is that the right to be set up by an applicant for a temporary interdict need not be shown on a balance of probabilities. If it is "prima facie (20) established though open to some doubt", that is enough .... The use of the phrase "prima facie established though open to some doubt" indicates I think that more is required than merely to look at the allegations of the applicant, but something short of weighing up the probabilities of conflicting versions is required. The proper manner of approach I consider is to take the facts set out by the applicant, (30) together with any facts set out by the respondent which the applicant cannot

dispute and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief at a trial. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown on the case of the applicant he could not succeed in obtaining temporary relief, for his right, prima facie established, may only be open to "some doubt". But if there is mere contradiction, or unconvincing explanation, the matter should be left to trial and the right be protected in the meanwhile, subject of course to the respective prejudice in the grant or refusal of interim relief."

And in Cool v. Minister of Justice and Another, (supra) Orilvie Thompson, J., (as he then was) made the following observations, with reference to the above passage, at page 688:

"With the greatest respect I am of the opinion that the criterion prescribed in this statement for the first branch of the inquiry thus outlined is somewhat too favourably expressed towards the applicant for an interdict. In my view the criterion on applicant's own averred or admitted facts is: should, not could, the applicant on those facts obtain final relief at the trial. Subject to that qualification, I respectfully agree that the approach outlined in Webster v.

Mitchell, supra, is the correct approach for ordinary interdict applications."

In following this approach in the instant case, I have also had regard to the fact, as I shall indicate later, that the applicants have not filed any replying affidavits nor have they sought a postponement to enable them to do so.

I now turn to Mr Chetty's affidavit which, as I have already remarked, is the cornerstone of the applicants' case. Mr Chetty states, in his affidavit, that when he arrived at the Old Compol Building in Pretoria on the 22nd October, 1974, for his interview with S. Cooper, he was told by Major Stadler that only the appeal could be discussed with the detainee. He accepted this. He says that he then saw S. Cooper in the presence of Major Stadler and another person, who was sitting at a desk at the far end of the room in which the consultation was held. It is not disputed that this person was Lieutenant Fourie. However, Mr Chetty goes on to say that he spent about two and a half hours taking instructions from S. Cooper and that during this period Major Stadler occasionally left them to attend to other matters. The disclosures about assaults upon detainees were made to him during the periods when he and S. Cooper were alone, as he put it. He gives a description of the manner in which the information was communicated to him in paragraph 21 of his affidavit. This paragraph reads as follows:

> "The information given to me by the said S. Cooper was given to me hurriedly sometimes in whispers and sometimes in gestures. He was agitated and very concerned both in regard to his own future detention as well as the others.

He made it clear to me that he feared that the assaults that he complained of would continue until the end of his detention unless steps were taken to stop those in control of him and the others from treating them in any unlawful manner."

The information imparted to Mr Chetty in the manner so described, is set out in paragraphs 9 to 13 of his affidavit. These paragraphs read as follows:

"9. During the periods Sathasivan Cooper and I were alone he said to me "They are many detainees who are being brutally assaulted by members of the Special Branch". He mentioned the following names:

Lindiwe
Revabalan
Nkomo
Manziwe
Muntu and
Lekota.

The persons mentioned by name by him are known to me. Their full names are:-

Lindiwe Mabandla
Revabalan Cooper
Nkwekwe Nkomo
Manziwe Mbewa
Muntu Nyesa and
Mosious Lekota.

10. He said that the ones most severely assaulted were Lindiwe and Revabalan

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Cooper, his brother. That there could not walk. That Revabalan Cooper's knee was "busted". That pencils were inserted between the joints of Revabalan Cooper's fingers and his hands were then squeezed. That a tennis ball was pressed with force on the stitches of a wound on Revabalan Cooper's leg. That Manziwe Mbewa said that he was "cracking up" and "he could take it no longer". (10)

11. He said Revabalan Cooper was seriously assaulted in Durban. That Revabalan made a complaint to the Police in Durban. That one, "Commissioner" Schroeder or "Commissioner" Kriel at the Bluff in Durban was aware of such assaults.

12. He said that he himself was assaulted in Pretoria by members of the Security Police. They punched him severely whilst he was against a wall. They grabbed him by the lapels of his jacket and shaken. That he was severely punched in the region of his abdomen and chest. That he was kicked when he was on the floor of the room in which he was being interrogated. He pointed to the person who was sitting on the desk on the far side of the room as one of the persons who had assaulted him. He did not (20) (30)

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know the person's name. He thought that the reason for the assaults on him was that the Security Police wanted him to make a statement. That he had made two statements which he had not signed and which were rejected. They wanted him to make a third statement and that he feared that they would continue to assault him. He said that he believed that the others would also be assaulted until they made such statements.

13. He then instructed me to make an application to Court to stop the assaults on himself and the other persons mentioned. He said that there were certain other persons detained who were not being ill-treated or assaulted."

This then is the evidence of maltreatment on which the application is based.

As pointed out earlier on, the respondents deny that any information of alleged assaults upon detainees was or could have been communicated to Mr Chetty during the consultation on the 22nd October and they also say that if such reports were in fact made, they are in any event entirely false and devoid of any truth whatsoever.

I therefore pass on to the facts set out in the affidavits filed on behalf of the respondents which bear upon these issues, which the applicants either cannot dispute or have elected not to dispute in any replying affidavits. I refer in this regard to the evidence,

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tendered on behalf of the applicants, relative to the circumstances under which the consultation on the 22nd October was held. There is firstly the affidavit of Major Stadler. He states that before the interview began he warned Mr Chetty, in the presence of Lieutenant Fourie and S. Cooper, that they should confine their discussions to the appeal case and that they should speak clearly, audibly and in the English language only. During the ensuing interview S. Cooper was seated at the head of one of the tables in the office, Major Stadler and Mr (10) Chetty sat on opposite sides of that table, while Lieutenant Fourie was seated at another table in the office. Major Stadler says that during the consultation, he had to leave this office on two occasions for about two to four minutes at a time and on each occasion he instructed Lieutenant Fourie to take his place at the table, which he did. He further says that when Mr Chetty first came into the office, he greeted S. Cooper and enquired how he was keeping. Cooper replied: "I am quite well". S. Cooper and Mr Chetty then proceeded to discuss the appeal, speaking (20) audibly and distinctly. S. Cooper made no allegations of assaults upon detainees in his presence.

Lieutenant Fourie, in his affidavit, states that the size of the office in which the consultation was held, is 18 feet by 15 feet. At the commencement of the consultation, he took up his position at a table about 8 feet from the table at which Major Stadler, Mr Chetty and S. Cooper were seated. He kept Mr Chetty and S. Cooper under close observation throughout the entire consultation. From where he was sitting he could hear exactly what they (30) were discussing and observe clearly what they were doing. On the two occasions that Major Stadler left the office, he

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took his place at the table and he continued to keep a particularly close watch on both Mr Chetty and S. Cooper. He emphatically denies that S. Cooper made any complaints to Mr Chetty about assaults upon himself or any of the other detainees.

I pause here to point out, once again, that no replying affidavits have been filed on behalf of the applicants, nor have they sought a postponement to enable Mr Chetty to reply to the affidavits by Major Stadler and Lieutenant Fourie insofar as they relate to the circumstances under which the consultation was held. On the papers before me the statement, that Major Stadler told Mr Chetty and S. Cooper to conduct all their discussions in the English language and to speak clearly and distinctly and audibly has not been challenged, nor has it been disputed that Lieutenant Fourie was seated at a table not more than about eight feet from where Mr Chetty and Cooper were discussing the appeal and that he joined them at their table on the occasions when Major Stadler had to leave the office.

Although the issue of whether the allegations of maltreatment, deposed to by Mr Chetty, were in fact communicated to him at this consultation, cannot be decided finally on the papers before the Court, I have very grave doubts and serious reservations, in view of the circumstances which prevailed at the time, whether any such communication could have been made to Mr Chetty.

The office in which the consultation was held was a relatively small room. Major Stadler and Lieutenant Fourie attended the consultation with the express purpose of ensuring that the discussion between Mr Chetty and S. Cooper was confined to the appeal case. That being

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so, it is highly probable that both Major Stadler and Lieutenant Fourie would have taken great care to keep both Mr Chetty and S. Cooper under constant and close observation. According to Mr Chetty's affidavit, S. Cooper gave him a fairly comprehensive and detailed account of the alleged assaults upon the detainees and it must have taken S. Cooper quite some time to impart this information to him, particularly if it occurred in the manner described by Mr Chetty. There is, furthermore, the uncontradicted evidence that S. Cooper had been instructed to (10) communicate with Mr Chetty only in the English language and to speak distinctly and audibly. Lieutenant Fourie was within earshot throughout the whole conversation. In these circumstances, it seems to me to be highly unlikely that if S. Cooper had communicated the details of the alleged assaults to Mr Chetty "hurriedly, sometimes in whispers and sometimes in gestures", as Mr Chetty says, that this would have escaped the notice of a vigilant security officer. If S. Cooper spoke clearly, distinctly and in English, as he had been instructed to do, (20) Lieutenant Fourie would have heard what he was telling Mr Chetty, and if he had made the alleged disclosures, Lieutenant Fourie would undoubtedly have intervened, and, on the other hand, if S. Cooper had dropped his voice, and had spoken in whispers and communicated by means of gestures, this too would most probably not have passed unnoticed. Having regard particularly to the nature of the interview and the special precautions which were taken to control the scope of the discussion, it seems to me to be inherently improbable that the information of the (30) alleged maltreatment of the detainees, on which the applicants now rely, could have been conveyed to Mr Chetty

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during the course of his consultation with L. Cooper and in the manner deposed to by him and Mr Chetty does not claim to have received this information from any other source or in any other manner. In coming to a conclusion, I have had due regard to the fact that Mr Chetty is an officer of the Court and that, on the evidence before me he appears to be a responsible and an independent witness.

However, I do not intend disposing of this dispute simply on the basis of the above conclusion. It is still necessary to consider whether there is any other (10) evidence of maltreatment of the detainees, for such evidence may lend support to Mr Chetty's testimony. The applicants themselves, placed no such corroborative evidence before this Court. I turn, therefore, to the affidavits submitted on behalf of the respondents, for there may be evidence in these affidavits supporting the allegations made by Mr Chetty. I do not, however, intend to canvass the evidence of the police officers and members of the Security Branch in detail for, as I explained earlier on, their evidence, in effect, amounts to an emphatic denial (20) of any maltreatment or unlawful interrogation of the detainees. It must be mentioned, though, that the respondents' case is not simply based on a mere contradiction or a bare denial of the applicants' allegations.

I refer firstly to one or two paragraphs in the affidavit of Brigadier Geldenhuys, the Commanding Officer of the Security Branch of the Police at Pretoria. He states that on the morning of the 15th October, 1974, after the detainees had been transferred to Pretoria from Durban, he called the members of the interrogating (30) team to his office and told them that according to his experience persons detained under the Act often have

instructions to bring fictitious charges of assault against the police, presumably to embarrass them. I pause here to say that there is no evidence, and I do not understand Brigadier Geldenhuys to suggest that there is, that the detainees in the instant case received any such instructions. However, Brigadier Geldenhuys states that he then specifically warned his officers to avoid any possible incidents so as not to expose themselves to the risk of any allegations of assault or unlawful methods of interrogation. He also instructed them to keep an (10) accurate record of the exact dates and times of interrogation of each of the detainees. There is evidence that a record was kept of the exact dates and times of interrogation of the respective detainees as well as the names of the interrogating officers in each instance. This information has been placed before the Court on affidavit. As a further precaution against the possibility of unfounded allegations of assault the medical officer attending the jail in Pretoria, was requested, on the instructions of Brigadier Geldenhuys, to visit the detainees as (20) often as possible for the purpose of examining them medically for any signs of assault or maltreatment.

There is evidence that the detainees were visited from time to time by Mr Van de Venter, the Deputy Chief Magistrate of Pretoria and by Dr Groenewald, the medical officer to whom I have just referred. They have both made affidavits about their visits to the detainees. Their evidence has, of course, not been admitted by the applicants, nor have the detainees themselves had the opportunity of expressing their views thereon. I nevertheless attach considerable(30) importance to their testimony, for I regard them both as independent and responsible persons.

Mr Van de Venter, the Deputy Chief Magistrate of Pretoria, states that he was assigned the duty of visiting the detainees, in private, in compliance with the requirements of section 6(7) of the Act. He visited and had interviews with each of them, in private, on two occasions, prior to the institution of these proceedings, namely on the 25th October, 1974, and again on the 1st November, 1974. He told each of the detainees what the purpose of his visit was and he kept notes of complaints or other matters raised by them on these occasions. (10) Complaints were brought to the notice of the Chief Magistrate of Pretoria and he, in turn, submitted written reports thereon to the Secretary for Justice and the Commissioner of Police. Mr Van de Venter states that except in two instances, to which I shall presently refer, none of the detainees made any complaints to him of assaults or any other form of maltreatment by the police. He also says that on the occasion of these visits he found no visible signs of any assaults upon any of the detainees, nor did any of them appear to him to suffer from emotional (20) stress or mental exhaustion.

Dr Groenewald states that he is a general practitioner in private practice and he also holds an appointment as a part-time district surgeon. He was approached by the Department of Prisons, at the request of the Security Branch of the Police, to carry out daily medical examinations of each of the detainees, but, owing to pressure of work, he was only able to visit them about once a week. He says, however, that he examined all the detainees upon their arrival in Pretoria. None of them had any (30) complaints at that stage, nor did he, on that occasion, find any signs of assaults or physical injuries upon any of

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them. With the exception of Lindiwe Mabandla, he examined all the detainees on subsequent occasions, prior to the institution of these proceedings and none of them ever complained to him of any assaults upon them, nor did he, during his medical examination of these detainees, discover any signs of bodily injuries or of mental fatigue. At the specific request of the respondents, he also examined the detainees on Thursday morning, the 7th November, 1974, the day of the hearing of this application, and he then made a further affidavit, dealing with his findings on this occasion. He says that on this occasion two of the detainees claimed that they had been assaulted; the others had no complaints of maltreatment and he, Dr Groenewald, did not find any medical evidence of any such maltreatment.

It will be recalled that according to Mr Chetty's evidence, S. Cooper gave him the names of seven detainees who had allegedly been assaulted by the police. At the risk of being repetitive, I propose now to examine with the evidence of Mr Van de Venter and Dr Groenewald relative to each of the detainees specifically referred to in Mr Chetty's affidavit.

I come first to the evidence concerning S. Cooper himself. According to Mr Chetty this detainee gave him a detailed account of how he had been assaulted by the police when he was interrogated. He also says that this detainee pointed to Lieutenant Fourie, as one of the officers who had assaulted him at his interrogation. I mention in passing that this is denied by Lieutenant Fourie, who states in his affidavit that he saw S. Cooper for the first time on the 22nd October, 1974, on the occasion of his consultation with Mr Chetty. Furthermore,

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there is evidence, on affidavit, that S. Cooper was only interrogated on the 19th October, 1974, and that the police officers involved were Captain Welman, Lieutenant Kruger and Lieutenant Schoeman. According to this evidence, the allegation that he was assaulted, inter alia, by Lieutenant Fourie, cannot be correct.

However, I want to refer to the evidence of Mr Van de Venter relating specifically to S. Cooper. Mr Van de Venter states that when he visited S. Cooper on the 25th October, 1974, he complained of having been assaulted (10) by the security police on the 19th October, 1974, that is the day on which he was interrogated. This was then reported to the Secretary for Justice and the Commissioner of Police. On the 30th October, 1974, the Chief Magistrate was advised by the Commissioner of Police, that the complaint was being investigated and that the dossier would be submitted to the Attorney General for consideration, as soon as the investigations were completed. In this connection, the respondents have also filed an affidavit by Lieutenant Colonel Basson of the (20) Criminal Investigation Department, who states that he received instructions from the Commissioner of Police to investigate this complaint. Pursuant thereto, he interviewed S. Cooper on the 4th November, 1974, in connection with this complaint and he also took a statement from him. The relevant portion of this statement, which is annexed to Lieutenant Colonel Basson's affidavit, reads as follows:

> "On the 25th of October, 1974, I was visited by the Magistrate, Mr Van de (30) Venter. I informed the magistrate that I was assaulted by members of the

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security police by whom I was interrogated on Saturday, the 19th October, 1974, at Compol Building, Pretorius Street, Pretoria. I was in fact assaulted by Captain Welman and another officer, but I only made the complaint to the magistrate in anticipation that this type of behaviour will stop. I do not see any purpose in having the matter further investigated and wish the police to take no further action in the matter. I sincerely wish that this type of behaviour would cease in future."

Lieutenant Colonel Basson further said that although he asked this detainee for details of the alleged assault, he was unable to furnish him with any particulars and he intimated that he did not want to have the complaint investigated any further. However, not withstanding this, Lieutenant Colonel Basson obtained a statement from Captain Welman and from a number of other witnesses who denied that S. Cooper had been assaulted. Lieutenant Colonel Basson said that he intended submitting the dossier to the Attorney General.

Mr Van de Venter also visited S. Cooper on the 1st November, 1974, and he then had no complaints whatever. On this occasion, he recorded that S. Cooper made the following remarks during this visit:

"I am supposed to be writing "Introduction to the Theory of Law" with the University of South Africa some time during this month. I want to know if I will be allowed to write it. On Tuesday, 22nd October, Major Stadler told me I would

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Get a Bible and I have not yet received it."

Then there is the evidence of Dr Groenewald. He examined this detainee, together with all the other detainees and he refers specifically to the examination on the 6th November, 1974. He found no signs of any injuries, nor did S. Cooper complain to him of any injuries or assaults. He also examined him on the 7th November, 1974, and once again found no injuries, nor did S. Cooper have any such complaints. Dr Groenewald said that as far as he could determine, there was no medical history of (10) any injuries concerning this detainee.

To sum up then, the evidence of Mr Van de Venter and Dr Groenewald relating to S. Cooper, is as follows: He made one complaint about an alleged assault on the 25th October, 1974. There were no visible signs that he had been assaulted. Dr Groenewald, during the examinations of this detainee, did not on any occasion find any signs to support such an allegation, nor did the magistrate notice any signs of assaults or injuries on the occasion that he visited this detainee. What is more, on the 1st (20) November, 1974, he had no complaints and on the 4th November, 1974, when his complaint was being investigated, his attitude, according to Lieutenant Colonel Basson, the investigation officer, was that he did not wish to proceed with the matter. Finally, on the 6th November, 1974, when he was again examined medically, he had also no complaints at all.

I I now turn to the detainee, R. Cooper. Mr Chetty states in his affidavit that S. Cooper told him that his brother, R. Cooper, was one of those who had been (30) most severely assaulted, so much so that, as a result of the assault, he was unable to walk. Mr Chetty's

information, as I have already mentioned, was that this detainee's knee was "busted", pencils were inserted between the joints of his fingers and his hands were then squeezed, a tennis ball was pressed with force on the stitches of a wounded leg and he had also been severely assaulted in Durban. According to the respondents' affidavits, this detainee was interrogated on the 21st October, 1974, by Captain Welman, Lieutenant Fourie, Lieutenant Nel and Adjudant Officer Taylor.

If the above were a true and correct description (10) of the effect of the alleged assaults upon this detainee, the injuries would almost certainly have been noticeable on the occasion when the detainee was visited by the magistrate and examined medically by the district surgeon.

Mr Van de Venter says that he visited and interviewed this detainee on the 25th October, 1974. He then had no complaints whatever, nor did Mr Van de Venter notice any injuries or signs of assault. However, when Mr Van de Venter visited him a week later, namely on the 1st November, 1974, R. Cooper then made the following complaint: (20)

> "I was assaulted on the 21st October, by Mr Taylor of the Security Branch. That happened since I have been detained here."

If R. Cooper had been so seriously assaulted on the 21st October, 1974, that he could not walk, he would surely have complained to the visiting magistrate on the 25th October, 1974, and the magistrate would undoubtedly have noticed that he had been injured. And yet Mr Van de Venter says that he saw no signs of any assaults or injuries on R. Cooper. (30)

Dr Groenewald also found no indications of assaults or of injuries upon this detainee when he examined him. He

examined him medically when he arrived here from Durban. He then found no signs of any assaults, nor did R. Cooper, on that occasion, make any complaints to him of having been assaulted. Dr Groenewald says that he also examined this detainee again on the 31st October, 1974. He then complained of ear-ache, a cough and tuberculosis, but he made no mention whatsoever of any injuries, nor did Dr Groenewald notice any. He says that the detainee walked about in his cell and there were no signs whatever of any leg injuries. Dr Groenewald saw him on the 7th (10) November, 1974, he still had no complaints and again there were no signs of any injuries. There was nothing wrong with his knees, he was able to bend them quite freely and with ease. Thus, save for the complaint to the magistrate on the 1st November, 1974, about an alleged assault on the 21st October, 1974, there is no other evidence that R. Cooper had ever been assaulted or that he had sustained any of the injuries allegedly described to Mr Chetty by S. Cooper.

S. Cooper and R. Cooper were the only detainees (20) who made complaints of alleged assaults to the visiting magistrate. There are, however, two other detainees, who made complaints of alleged assaults to Dr Groenewald. The first of these is Lindiwe Mabandla, the son of the first applicant. According to Mr Chetty's affidavit, S. Cooper told him that this detainee was one of those who had been most severely assaulted and that as a result of the assault, he too could not walk. There is evidence that this detainee was interrogated on the 21st October, 1974, by Captain Heysteck, Lieutenant Visser and Adjudant (30) Officer Taylor.

Mr Van de Venter visited and interviewed this detainee

on the 25th October, 1974, and on the 1st November, 1974. On both occasions, he had no complaints at all. Dr Groenewald states, in his first affidavit, that he did not again examine Lindiwe Mabandla after the first medical examination of the detainees upon their arrival in Pretoria. However, at the request of the respondents he examined him on the 7th November, 1974. On this occasion the detainee complained that he had been kicked in the ribs by the security police on the previous day, that is the 6th November, 1974. Dr Groenewald says that he found no (10) signs of any bruising in the region referred to by the detainee. Dr Groenewald says that the area appeared to be tender, but when he compressed the detainee's thorax, the latter experienced no pain, as Dr Groenewald expected him to do if he had been assaulted as alleged. Dr Groenewald says that in view of the detainee's reaction to compression of his thorax, he was of the opinion that the detainee had not sustained "any bruising worth mentioning", to use Dr Groenewald's words.

With regard to this detainee, I must also mention (20) that there is evidence that the first applicant, his father, endeavoured to obtain permission from the Security Branch to see the detainee. After three unsuccessful attempts to get in touch with the Special Branch in Pretoria, he sent them a telegram on the 4th November, 1974, seeking such permission. There is also evidence, in the affidavit of Major Schoon, that at 11,30 a.m. on the 6th November, 1974, that is, before notice of these proceedings had been given to the Special Branch, the authorities in Pretoria advised the Special Branch at Umtata telegraphically (30) that permission had been granted to the first applicant to see his son.

.../

If this is so, it seems to me somewhat improbable that the police would have assaulted this detainee on the 6th November, 1974, in the manner described by him.

However, be that as it may, this complaint does not lend support to Mr Chetty's statement that S. Cooper complained to him, inter alia, that this particular detainee had been severely assaulted at some time prior to the 22nd October, 1974, and that he was unable to walk as a result of the assault. According to Dr Groenewald the complaint related to an assault on the 6th November, 1974. It (10) seems to me that if the detainee had been assaulted prior to the 22nd October, 1974, in the manner deposed to by Mr Chetty, he would in all probability have complained either to Mr Van de Venter and Dr Groenewald and it is most likely that they would have noticed that he had been hurt. The evidence is that no such complaints were made to them, nor did they at any stage notice any signs of such an assault.

I next come to Manziwe Mbewa. This detainee is not represented in these proceedings. He had no complaints about maltreatment when he was visited by Mr Van de (20) Venter on the two occasions already referred to. On the 1st November, 1974, Mr Van de Venter recorded that the detainee said:

"Onder artikel 6(1) as ek klaar 'n verklaring gegee het, sal ek aangehla word."

He is not specifically mentioned in Dr Groenewald's first affidavit, but as I pointed out, Dr Groenewald said that he examined all the detainees prior to the 6th November, 1974, and none of them complained to him (30) of any assaults, nor did he find any indications that they had been assaulted. Dr Groenewald, however, also

examined/...

examined this detainee on the 7th November, 1974. He says that on this occasion the detainee alleged that he had received a blow on his left ear on the 29th October, 1974. Dr Groenewald said that he had in fact examined him on the 31st October, 1974, and he had then found a small perforation of the eardrum, but he says that there was no sign of any trauma and he found no trace of any blood in his ear which he would have expected to find had it in fact a traumatic perforation. There is, therefore, some doubt as to whether this detainee had been assaulted (10) on the 29th October, 1974, as alleged by him. In this connection I also point out that he made no complaint to the magistrate, who visited him on the 1st November, 1974, about any such assault. In any event, on this evidence, S. Cooper could not have mentioned his name to Mr Chetty as one of the detainees who had been assaulted, because the complaint deposed to by Dr Groenewald relates to an assault which is alleged to have occurred about a week after Mr Chetty's consultation with S. Cooper.

There are three further detainees who are alleged (20) to have been mentioned to Mr Chetty, by S. Cooper, as having been assaulted. As far as these detainees are concerned, the evidence on behalf of the respondents is that they never made any complaints of assaults or maltreatment to the visiting magistrate or the district surgeon, nor did they at any stage observe any indications that these detainees had been assaulted by anyone.

The first is Muntu Myeza. He was interrogated by Lieutenant Kruger, Lieutenant Schoeman and Adjudant Officer Botha on the 19th October. He had no complaints (30) about assaults and on the two occasions when he was visited by Mr Van de Venter, according to Mr Van de Venter's

record/...

record of the interview on the 1st November, 1974, the detainee is alleged to have said:

"I want to know what the purpose of section 6(1) is. For how long can I be detained and what other recourse to justice we have. Are we like people who are awaiting trial or as prisoners who have been convicted. What privileges are we entitled to if we are not prisoners. I have been getting a running stomach and I have been dizzy. I saw doctor yesterday. You visited us last week and again today. Is that in compliance with the Act. I want something to read - in English."

Dr Groenewald does not refer specifically to this detainee in his first affidavit, but it can be inferred from his affidavit that he examined him along with all the other detainees. However, Dr Groenewald refers to him by name in his affidavit relating to his examination of the detainees on the 7th November, 1974. He also examined him on that date. He had no complaints about assaults or injuries and simply told Dr Groenewald that stomach trouble, from which he had been suffering, had cleared up.

Then there is Nkwekwe Nkomo. He was visited by and had interviews with Mr Van de Venter on the 25th October, 1974, and again on the 1st November, 1974. He had no complaints whatever. Finally there is Mosioua Lekota. Mr Van de Venter visited this detainee on the two occasions already referred to. He interviewed him and on both occasions he had no complaints. Dr Groenewald examined him medically. The last examination was on the 7th November. He also had no complaints about any

assaults, nor were there any signs of assaults or injuries found to be present by the doctor.

Now can it be said that this evidence lends any support to Mr Chetty's testimony? As I see it, the affidavits of Mr Van de Venter and Dr Groenewald can be relied on by the applicants only to the extent that they establish that both S. Cooper and R. Cooper complained to the visiting magistrate about alleged assaults, in all other respects Mr Chetty's testimony is discredited. The applicants have of course not had the opportunity of (10) replying to these affidavits and without access to the detainees concerned, who may or may not support Mr Chetty's allegations, they cannot really do so. As stated previously, Mr Chetty's account of the complaints made to him, seems to me to be inherently improbable, in the light of the affidavits of Major Stadler and Lieutenant Fourie, and the affidavits of Mr Van de Venter and Dr Groenewald have not altered that impression in any way.

Inasmuch as the applicants base their case on Mr Chetty's evidence, they are, of course, relying entirely(20) on hearsay evidence of maltreatment. But it has been held that in this type of proceeding, that does not necessarily render such evidence inadmissible. The fact that the evidence relied on is hearsay, may however, depending on the circumstances of the particular case, affect the weight of such evidence, and therefore, in considering whether a prima facie case has been made out, the Court will often look for corroborative evidence.

This will be a convenient stage at which to refer to the two cases quoted by Mr Cooker in support of his (30) submissions. The first of the cases, to which he made special reference, is the case of Cosschalk v. Rossouw,

1966/...

1966 (2) S.A. 476 (C.P.D.). In this case the applicant had been arrested and detained in terms of section 215 bis of the Criminal Procedure Act, 56 of 1955, as amended. A week after his arrest his wife, Mrs Ruth Gosschalk, was permitted to have an interview with him at the Caledon Square Police Station. After this interview, and on the same day, Mrs Gosschalk made an urgent ex parte application on behalf of her husband, in which she, inter alia, sought much the same type of relief as the applicants in the present case. Her affidavit in support of the (10) application was founded not only on what was told to her by the applicant, but also on what she herself had observed of his condition. One of the arguments advanced by the Counsel for the respondent, in opposition to the application for a temporary interdict, was that much of the evidence in Mrs Gosschalk's affidavit was based on hearsay and was therefore inadmissible. This argument was rejected by Corbett, J. (as he then was). The learned judge remarked that in this type of proceeding that does not necessarily render such evidence inadmissible. (20) The learned judgde, however, also pointed out that a substantial portion of Mrs Gosschalk's evidence was, in any event, based on her own observations. At page 487 of the judgment the learned judge said:

> "It is true that much of Mrs Gosschalk's affidavit is based upon hearsay, but in this type of proceeding that does not render it inadmissible. In fact, under the circumstances, it could hardly be otherwise. Moreover, a substantial (30) portion of her evidence is based upon her own observations."

I refer also to this case in another context. The learned judge, in that case, did not attach much weight to the affidavits filed by the visiting magistrate and district surgeon but it is clear that he did so because their evidence related to visits to the detainees, which had taken place after a temporary interdict had already been in operation for some days. The position in the instant case is, of course, entirely different because the evidence of Mr Van de Venter and Dr Groenewald, relates mainly to visits and medical examinations which (10) occurred before these proceedings had been instituted against the respondents.

I refer also to the case of Esrop v. Commissioner of Police, which was heard in this court on the 29th October, 1971, when Mr Justice Margot granted a temporary interdict. Now, it is quite clear in the judgment in that case and I do not consider it necessary to refer to the relevant passages in the judgment, that the learned judge there came to the conclusion that a prima facie case had been made out because in addition to any hearsay evidence (20) advanced on behalf of the applicant, there was additional evidence which afforded substantial corroboration of the hearsay evidence, and on that basis the learned judge came to the conclusion that a prima facie case had been made out. Now in the instant case, the applicants rely entirely upon hearsay evidence of alleged maltreatment and, as I have endeavoured to indicate, there is little or no corroboration of that evidence in the affidavits submitted on behalf of the respondents.

In considering what weight should be attached (30) to Mr Chetty's evidence at this stage of the proceedings, I also bear in mind that Mr Chetty has stated that the

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information of maltreatment on which the applicants rely, had been imparted to him "hurriedly, sometimes in whispers and sometimes by means of gestures". In these circumstances Mr Chetty may well have misunderstood or misconstrued what S. Cooper was endeavouring to convey to him. Bearing in mind that the evidence of Mr Van de Venter and Dr Groenewald has not been admitted by the applicants, the evidence relative to the treatment of the detainees may be summed up as follows: there is no evidence other than Mr Chetty's testimony, that any of the (10) detainees mentioned by him had been assaulted prior to the account which S. Cooper is alleged to have made his complaint to Mr Chetty. There is only evidence that S. Cooper and R. Cooper made complaints to the magistrate that they had, as at that date, been assaulted. There is also evidence, to which I have already referred, that three of the detainees may have been assaulted after that date. I refer in this connection to the evidence of Dr Groenewald concerning complaints by Lindiwe Mabandla, Manziwe Mbewa and Mosioua Lekota. I do not propose repeating my (20) comments in connection with this evidence. The complaints do not relate to assaults alleged to have occurred prior to the relevant date and they amount to no more than complaints of alleged assaults which may or may not on investigation be substantiated, but they do not form part of the basis of the case presented by the applicants against the respondents. It is also significant that there is no evidence at all to corroborate the allegations that Lindiwe Mabandla and Revabalan Cooper had been so seriously assaulted and had sustained such serious injuries (30) that they were unable to walk. It also appears from the evidence of Mr Van de Venter and Dr Groenewald that none of

the/...

the detainees, except S. Cooper and R. Cooper, made any complaints of maltreatment and Dr Groenewald found no indication of any assaults upon any of the detainees up to the 6th November, 1974.

Now, although it is impossible for the Court, at this stage, to say where the truth lies and whatever view a court may eventually take of the evidence of Mr Van de Venter and Dr Groenewald, the position at the moment is their evidence, as it stands, cast very serious doubts upon the applicants' allegations of maltreatment of the detainees. It may possibly be that after a full investigation of the allegations, the applicants may eventually be able to prove that the detainees had been maltreated. That is a matter upon which I express no opinion whatever. On the information presently before the Court however, the applicants have, in my judgment, failed to establish a sufficiently strong case to warrant, in accordance with the principles set out earlier in this judgment, the granting to them of the interdict sought. Even if it could be said that the applicants have established some prima facie case for relief, such a case would, in my view, still be open to very serious doubts.

Despite this conclusion, I must still consider whether the applicants are entitled to the relief sought under paragraph 3 of the notice of motion. As already mentioned, Mr Cooker submitted that section 6(6) of the Act still left it open to the Court, to make an order of the kind sought in paragraph 3 of the notice of motion.

Section 6(6) of the Act provides:

"No person, other than the Minister or an officer in the service of the State acting in the performance of his official duties/...

duties, shall have access to any detainee, or shall be entitled to any official information relating to or obtained from any detainee."

Relying on a dictum of Trollip, J.A., in one of the three majority judgments in Schermbrucker v. Klindt, N.O. 1965(4) S.A. 606 A.D. at page 627, Mr Coaker contended that this Court could order the evidence of the detainees to be taken on affidavit or commission or by interrogatories, by the Registrar of this Court or by a magistrate who (10) is entitled to visit the detainees under the provisions of section 6(7) of the Act.

In the case of Schermbrucker v. Klindt, (supra) the issue which the Appellate Division had to decide was whether the Transvaal Provincial Division had the power in terms of Rule 9(a) (Transvaal) to order a person detained, under the provisions of section 17 of Act 37 of 1963, for interrogation, to appear personally before it for the purpose of giving viva voce evidence. In a majority decision, the Appellate Division came to the (20) conclusion that the Court had no such power.

Section 17(1) of Act 37 of 1963 authorised the arrest and detention for interrogation of certain suspects. Section 17(2) of that Act provided:

"No person shall, except with the consent of the Minister of Justice or a commissioned officer as aforesaid have access to any person detained under sub-section (1): provided that not less than once during each week such person shall be visited (30) in private by the magistrate or an additional magistrate or assistant

magistrate/...

magistrate of the district in which he is detained."

Now in view of provisions of section 17(2) the Appellate Division decided, as I have stated, that the Transvaal Provincial Division could not, in terms of its own Rules, compel a detainee to appear personally before the Court for the purpose of giving viva voce evidence.

In the course of his judgment, Trollip, J.A., made the following observations (page 627):

"It is also appropriate to conclude that the fact that Rule 9(a) could not have been successfully invoked in the present case, does not necessarily mean that the Court's jurisdiction to deal effectively with the allegations of ill-treatment of the detainee was thereby frustrated. "The vital process of justice" could have continued despite that obstacle, because there were other means at the Court's disposal to meet the situation, and the availability of such alternatives does, in my view, militate against any impelling necessity to give Section 17(1) a strained construction merely to allow the free operation of the particular procedure under Rule 9(a). For instance, the Court, if it had been asked, might have ordered the detainee's evidence to be taken on affidavit or commission or by interrogatories, if necessary by the magistrate who is entitled under section 17(2) to visit him; and if there was a conflict

between his and the respondent's testimony, the Court might have granted the applicant appropriate interim relief pending the hearing of the matter after the detainee had been released from detention ...."

Now, Mr Preiss, on the other hand, submitted that section 6(6) was a complete bar to this Court receiving any statements taken from persons detained under section 6(1) of the Act. Mr Preiss argued that such statements would fall within the ambit of the words "any official information relating to or obtained from any detainee" as used in section 6(6). He contended that there was a vital difference between the provisions of section 17(2) of Act 37 of 1963, which was considered in the Schermbrucker case (supra) and the provisions of section 6(6) of Act 83 of 1967, because under the said section 17(2) there was no restriction upon any disclosure of information obtained from detainees provided the person taking such statements, had the right of access to the detainees. But, so Mr Preiss's argument went, even if this Court were to direct that the magistrate who was entitled to visit the detainees under section 6(7), take statements from the detainees, he would, in any event, be precluded by reason of the restrictions in section 6(6) of the Act, from disclosing such information to the Court.

Thus, the question for consideration is whether the statements taken from detainees pursuant to an order under paragraph 3 of the notice of motion by a magistrate, having access to them under section 6(6), would fall within the ambit of the words "official information relating to or obtained from any detainee." The words "official information" are not defined in the Act.

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In construing this section, I propose adopting the approach suggested by Ogilvie Thompson, J.A., (as he then was) in the case of Rossouw v. Sachs, 1964(2) S.A. 551 (A.D.) at page 563, where he said:

"I accordingly conclude that in interpreting section 17 this Court should accord preference neither to the "strict construction" in favour of the individual indicated in Dadoo's case, supra, nor to the "strained construction" in favour of the Executive referred to by Lord Atkin in Liversidge's case, supra, but it should determine the meaning of the section upon an examination of its wording in the light of the circumstances whereunder it was enacted and of its general policy and object."

Now, in terms of section 6 of the Act and particularly sub-section (6) thereof only certain persons are entitled to have access to a detainee, namely the Minister or "an officer in the service of the State acting in the performance of his official duties." It seems to me to be clear from this section that an "officer of the State" is entitled to have access to the detainee, only if he does so "in the performance of his official duties". And, in my view, it follows from this that if an officer of the State were to approach a detainee, in the performance of his official duties, in order to obtain information from such detainee, the information so obtained would be regarded, for the purposes of section 6(6), as official information, to which no person, also the applicants and the Court, would be entitled. The words "or shall be entitled to any official information relating to or

obtained /

obtained from any detainee" were probably inserted in section 6(6) the gap which had been left open in section 17 of Act 37 of 1963. I have come to the conclusion that even if the Court had the power to request a magistrate to take statements from the detainees on affidavit or on commission or by interrogatories, the magistrate would by virtue of the provision of section 6(6), not be entitled to disclose information so obtained to this Court or to the applicants. That being so, there would be no purpose whatever in making the order sought in paragraph 3 of (10) the notice of motion.

In the result the applicants, in my judgment, have failed to make out a case for a temporary interdict against the respondents and an order under paragraph 3 of the notice of motion.

Mr Coaker submitted that if I were to come to the aforementioned conclusion, that the application should be postponed sine die rather than be dismissed. He said that if the application were postponed, the question of the costs could then stand over and the application (20) could then at some future date, after the release of the detainees, be reconsidered should the applicants then decide to proceed with the matter. I have considered that submission, but I have come to the conclusion that if at some future date the applicants wish to obtain relief similar to that presently sought, they institute proceedings afresh. In my view there is no reason why this application should not be dismissed with costs. It has been agreed between Counsel that the costs would include the costs of two Counsel. (30)

I accordingly make the following Order:

The/...

JUDGMENT.

The application is dismissed with costs, such costs to include the costs of two Counsel.

DOCUMENT DETAILS:

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