

9. Admissibility of documents

- (i) Construction of s. 69(4). 103 - 107
- (ii) Admissibility at common law of docs. with UPF logo 108 - 9
- (iii) Propaganda material (written or speeches) is always executory. 110.
- (iv) Admissibility of Secretariat on basis of 1023's evidence 112 - 115

10. Policies of BC organisations: relevant to Tom Mann material

112 - 138.

11. ANC Policy

139 - 169

BLACK LOCAL AUTHORITIES

THE STRUCTURE OF THE JUDGEMENT IN SO FAR AS IT DEALS WITH THE ISSUE OF BLACK LOCAL AUTHORITIES IS AS FOLLOWS:

1. Opposition by the UDF to the Black Local Authorities was a matter of principle.
 - Exhibit A1 170
 - Exhibit D1 para 10 170
 - Exhibit T17 170
 - Exhibit T2 171
 - Exhibit F 171
 - Trevor Manuel's circular of April 1984. 171
 - Exhibit T27 (2) (exhibit C60) which was written after consultation with accused no. 19. 171

 - Exhibit T25 (1) which was written in January 1985 by accused no. 19. The conference referred to had apparently not yet been held. 172

2. Throughout its existence the UDF called for the destruction of the BLA. This is shown by the following:
 - (i) Accused no. 19 said that the policy of the UDF was to make the BLA unworkable. 172

 - (ii) It was part of the freedom struggle to get rid of the BLA. 172

 - (iii) The UDF had no policy to set up alternative local government structures. 172

 - (iv) Professor Mahomed's speech of 27 November 1983 (Exhibit C23: Page, 5). 173

 - (v) The TIC had a workshop on the BLA at Kagiso in November 1983. 173

 - (vi) The UDF had a workshop on the BLA at Daleside in April 1984. The report on this workshop says that the next task was to destroy the BLA and strengthen the Civics. 173

- (vii) The NEC had workshops on the BLA. See exhibit E1 paragraph 6.1.6.3. 174
3. The Daleside conference is stressed in the judgment, and in particular:
- (i) Exhibit U(4)d which refers to the events of 1976 when the administration offices were burnt down and councillors were forced to resign. 174
- (ii) The film, the Fifth Offensive, which dealt with the struggle of partisans in Yugoslavia and which was presumably violent. 174
4. The UDF linked current issues and problems to the BLA in its attack upon them. See for example exhibit A1. 174
5. The UDF made attacks upon the BLA without contemplating the setting up of alternative structures. It was intent upon destroying the existing system and not upon improving the lot of blacks at local level. 175
6. The UDF received reports from the Civics on their activities against the BLA. This continued after the November elections. Written reports were required. Attacks were made upon councillors ad hominem and this created a climate of rejection and hatred against them. 175
7. In exhibit CA17 the UDF in a press statement referred to councillors as "canon fodder". 176
8. Despite widespread riots and the declaration of a State of Emergency the UDF sought to increase pressure on the BLA. This is illustrated by:
- (i) Exhibits T21 which is the Border secretarial report for the period 18 November 1984 to 15 February 1985 in which it is said that the BLA will be under focus at the April 1985 NGC. It also says that workshops have been arranged in the Transvaal to organise united strategies to resist the BLA. In this regard he rejects the evidence of accused no. 21 who said that the statement was incorrect.

- (ii) A press statement on 9 January 1985 calling for the resignation of the BLA - exhibit AM66. 177
- (iii) A press statement of 11 January 1985 praising councillors who had resigned - exhibit AM67. 177
- (iv) A press statement of 23 January 1985 which attacked the Municipal Police who had been brought in to control the unrest - exhibit AM68. 177
- (v) A statement of 23 January 1985 in which the UDF blamed the BLA for the economic crisis - exhibit W8. 177
- (vi) The report of the Western Cape UDF which was adopted and formed part of its published papers in which it was said : "We salute our people and we will continue to ensure that the influence of such structures over our people's lives is challenged. Wherever possible we will mobilise mass action against these community councils, management committees and the tricameral parliament itself." - Exhibit C138. 178
- (vii) Exhibit T25 which shows that the same attitude prevailed in the Transvaal. 179
- (viii) Exhibit T25 which is a secretarial report to the NGC. 180
- (ix) The NGC statement made in regard to the scrapping of the BLA in exhibit C102. 180
- (x) The NGC minutes of April 1985 - exhibit AAA10. 180
- (xi) The evaluation of the UDF campaign against the BLA as contained in exhibit C110. 180

The general conclusion is that the BLA were attacked maliciously as a means of mobilising the masses and fanning the flames of their anger. "When the eruption came, as it inevitably had to, the UDF rejoiced in its successes and gloried in its victory."

Education:

1. Complaints mentioned in evidence about SRC's etc. were not substantial enough to warrant a boycott. 186
2. Broad objectives of peoples education first spelt out in December 1985 at conference of SPCC, but it had surfaced earlier as documents show. 186
Basis of linkage between peoples education & peoples power + linkage with SRC's. Relevant through its indictment 187/8.
3. Capitulation of DET on SRC's was in May 1984. 188/189
New communication structure established referred to in Oct 1984
4. Fuss was due to UDF campaigning & UDF mobilisation. Youth brought onto the streets. Inevitable that riotous conduct & clashes with police would ensue. Cycle of deaths, ^{funerals} ~~funerals~~ etc. 190
5. UDF's attitude to youth is that they are indispensable to the liberation struggle. 190
 - (i) Notes made by accused no 20 191
 - (ii) UDF declaration pledged to mobilising students under UDF banner 191
 - (iii) ET. C9. Shows UDF not only inspired but in hand youth organisations. Denial by Accd 19 that UDF formed any youth organisations must be rejected 192
 - (iv) Minutes of joint national secretariat shows involvement with youth issues 192
 - (v) Prof. Makorod's speech to AZASO youth on 4 July 1984. 192

(vi) Exhibits C1 and J3: Speeches to NEC refer to COSAS & AZASO. Goal to swing balance of forces in our favour. Need to take up education as a broad political issue "Country-wide"

194

(vii) Paper by Lucille Meyer (ET 7), probably delivered at November 1984 meeting of NEC, deals with youth in the democratic movement.

194

(viii) ~~Sec~~ Secretariat Report ^(to April 1985, N6C) refers to need to situate the education struggle within the overall strategy of Challenging the State. Affiliates showed great weight behind Education Charter Campaign

195

(ix) Resolutions passed at April 1985 N6C and August 1983 Council Show support for student struggles - So too, does ET C. 46 (C. 114)

196-197

(x) AZASO is a revolutionary organisation supporting the ANC. Refer to evidence of IC 12, Fourth annual congress on 5 July 1984 attended by Accd. 19 & 20, Dancing with AX 47's at women's evening. Refer to exhibits v 11, v 11B, and v 11C. In Tugloog office of AZASO a message from the ANC was found (AB 62). Refer also to Exhibit ABA 63, C 47, C 143, 3rd Annual Congress + panel discussion there, ET W 14 which contains Marxist speech by Annetleen Heerden, ET W 15 found with Accd. No 22, ET AE 10, etc.

197-200

(XII) Casas was, according to LL 23, a progressive
organisation used by the ANC to further
secession. Vehemently anti-Boer. NOT
averse to violence. Public statements seen
against background of events in townships
amount to incitement and/or condonation
of violence & secession. It was a F.C.
organisation. It was Marxist / Socialist.
It was against the councillors.

- (XII) Cases "form part of the UBF task force in the liberation struggle and which was whole-heartedly supported by the UBF" 202
- (XIII) At death of SOYCO on 31 July 1983, No 19 played an active role. "The address on its founding and spoke at its launch" 203
- (XIV) Manukony Youth Congress sent a message of support to the UBF
see AB38 203
- (XV) The UBF was the motivating force in the formation of committees of parents and students (and some teachers) to bypass existing parents committees 203
- (XVI) Direct evidence of UBF involvement in the school's boycott which we accept was that of W/o Du Toit and Capt Loos that Chelone told them he would encourage scholars to boycott classes till their demands were met 204
- (XVII) Re 'progressive' education - one can read "based on the Freedom Charter". That is how the term was interpreted in those circles 206
- (XVIII) Re Ex 65 and AB18 - Newton does not find an instruction to dampen the over-heated youths. The masses must be exhorted to support the scholars and students 207

(XIX) Esh AB19 - Memo drawn by 19. "From UDF and COSAS". No 19's explanation that it refers to getting students back to classes "is nonsense" 208-210

(XX) UDF did not express itself openly in favour of the boycotts. Yet indirectly it did. Never clearly publicly expressed disapproval of the scholars struggle. 210

(XXI) Release on CS3 - "a UDF report". (This was found in the TIC office and was not known to any of the accused - it is a UDF letterhead) 211

(XXII) Release on Esh C24 - a speech of Prof Mohamed "delivered probably at the beginning of 1986" 211-212

(XXIII) Release on CS3, a memorandum from No 19 to show "UDF's manipulation of the youth for its own ends" 213

(XXIV) "Relevant education" - "The only explanation we can think of is that the claim for relevant education is geared to advance the freedom struggle" 215

6.a) Conclusion - The documentation "inevitably leads to the conclusion that the UDF regarded the scholars, students and working youth as its focus in the freedom struggle and supported, directed and

manipulated them to that end" (having considered the evidence of No 16, 19, 20, 21, Hondshorne, Dongor, Duncan, Buthezi, Nkomo and Motlone)

215-216

b) The issue was the Black education system which the UDF wanted to destroy and replace with another. The means of doing it was action by the pupils themselves.

216

c) This does not mean that UDF speakers did not at times call for an end to the school boycott:

a) 16 Feb 84 - Prof Mahomed at Mbandjulu (and UoZI)

b) 7 April 84 - Press statement by UoZI (Ech DA 27)

d) School boycotts & disruptions were a continuation of s 52(3)c of Act 74 of 1982

gatherings and protest marches were a continuation of GN of 30 March 1984

"It was inevitable that the police would act. They were duty bound. Violent confrontations were inescapable"

217

e) No answer that COSAS "orchestrated all this" - UDF came out in full support and never spoke out against COSAS's revolutionary statements'

"We conclude that the UDF welcomed the disturbances and violence as a means of mobilising the youth in the freedom struggle"

217-218

ATTORNEYS, NOTARIES AND CONVEYANCERS

WEBBERS

YOUR REFERENCE

Third Floor
Allied House
Cor. West Burger &
Maitland Streets
Bloemfontein 9301
Telegrams "Alpha"

Telephone (051) 301340
Fax (051) 308987
Docex 6, Bloemfontein
P.O. Box 501
Bloemfontein 9300

OUR REFERENCE

Henry James Newdigate, B.A. (Stell.), B.C.L. (Oxon.)
Matthys Andrius Johannes Snyffert B.Juris (UOFS)
David Rea Sameul, B.Com. (UPF), LL.B. (UOFS)
Colin Gillies, B.Com. LL.B. (UOFS), LL.D. (Leiden)
Daniel Gerhardtus Roberts, B.Juris (Potch), LL. B. (UOFS)
Mark Frederick Webber, B.Com LL.B. (Natal)
Lienis Peter Molyneaux, B.Com. LL.B. (Rhodes)
Eugène Holtzhausen, D.Proc. (UOFS)
Assisted by:
Catharina May Dreyer, B.A., LL.B. (UOFS)

FACSIMILE TRANSMISSION

COVER PAGE

NUMBER OF PAGES TO FOLLOW THIS PAGE None

TO: Bell Dewar & Hall

FAX NO. 011-838-5385088

YOUR REF: Mr. Dixon

DATE _____

MATTER: Appeal Matliger v The State

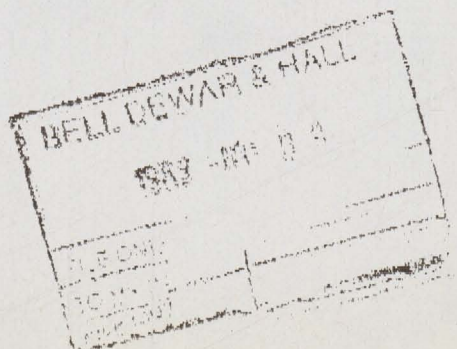
I have seen the Dist. Registrar who has shown your 2 letters of today to the C.J. He has advised that the Registrar send a faxed letter via him to Jacobs asking him to explain that his heads will be filed by 10⁰⁰ November - his reply to go to C.J.

FROM: _____

OUR FAX NO (051)308987

OUR REF: H.J. Newdigate

TIME: _____



PLEASE CONTACT US IMMEDIATELY SHOULD ALL THE PAGES HEREOF NOT BE RECEIVED

BELL, DEWAR & HALL

ATTORNEYS, NOTARIES AND CONVEYANCERS

Your reference

Our reference Mr Dison/FS
13379

JUTON BUILDING

Telephone (011) 838-8830

Telefax (011) 838-5088

Telex 4-88122 SA

Docex 71

Johannesburg

2000

South Africa

3 October 1989

The Attorney-General
of the Transvaal
1st floor, Prudential Building
28 Church Square
Pretoria

By Hand - Urgent

Dear Sir

Case No: 152/89 : Appeal : G P Malindi & 10 Others v The State

1. In the course of its judgment of the 25th September 1989 directing that special entry number 1 be heard in limine, the Appellate Division said :

"A consideration ... is the fact that some of the appellants are serving sentences of imprisonment. If their convictions are to be set aside, that should be done at the earliest stage possible."
2. Our Bloemfontein correspondents accordingly enquired of the Registrar of the Appellate Division whether a date for the hearing of the appeal on special entry number 1, as ordered by the Appellate Division in its judgment, could be allocated during the final term of this year. Our correspondents informed the Registrar that if this were possible, we would do everything we could to co-operate with you to achieve that end.
3. Our correspondents were advised late yesterday afternoon by the Registrar of the Appellate Division that the Chief Justice would allocate the 27th November 1989 for the hearing, if the State's heads of argument could be filed by not later than Friday the 10th November 1989.
4. We are able to file our heads of argument by Friday the 13th October 1989 and have advised the Registrar accordingly. This means that you would have at least four weeks after receiving the appellants heads within which to file your heads of argument.
5. We have been advised by counsel that the appellants heads of argument will cover substantially the same grounds as those which were advanced in support of the application for the hearing in limine.

6. Please advise us, and the Registrar of the Appellate Division, as a matter of urgency, whether you have any objection to these proposals.

Yours faithfully



BELL DEWAR & HALL

c.c. The Registrar, Appellate Division
c.c. Mr P Jacobs SC

RESERVATION OF QUESTIONS OF LAW

1. Does the phrase 'prima facie ^{proof} (^s) of the content^s' in Section 69(4) of the Internal Security Act 74 of 1982 means prima facie proof of the ~~content~~? ^{truth of the contents?}

✓ Judgment: p105

α α
L

2. Are tape recordings and video tapes admissible in evidence in the absence of proof or their originality and their ^{provenance} ([^]) and authenticity?

✓ Judgment: pp287 - 290

α

3. To what extent and for what purpose can reliance be placed upon documents for the purposes of the common law charge of treason but which are only admissible by virtue of the provisions of Section 69(4) of Act 74 of 1982?

✓ Judgment: pp102 - 103

α

4. Assuming the admissibility of documents for the purposes of the common law charges, to what extent can reliance be placed upon documents admitted by virtue of the provisions of Section 69(4) of Act 74 of 1982 which -

(?) (a) do not relate to the period of the indictment;
(b) were not adduced as part of the State's case?

5. To what extent and for what purpose may reliance be placed upon documents said to contain 'propaganda

material' in the absence of proof of originality of such documents and to what extent may these be relied upon as constituting executive statements in execution of a conspiracy?

Judgment: p110

6. To what extent may reliance be placed upon documents which on their face are said to emanate from the ANC but in respect of which there is no proof of originality to prove policy, aims and objectives of the ANC and can such documents be used as proof of the executive statements by a conspirator?

Judgment: pp112 and 115

7. Is the UDF an 'association of persons' for the purposes of Section 246 of the Criminal Procedure Act 51 of 1977?

Judgment: p104

8. Are documents admissible in respect of the common law offences by virtue of their admission under Section 69(4) of Act 74 of 1982 in the absence of an allegation that the Accused were members, officers or active supporters of the ANC?

Judgment: p113

9. Are documents admissible which bear the UDF logo or which are ostensibly issued by the UDF or an affiliate of the

Jacobs on UDF on all points

⑦ - Must argue the Arrest
Was UDF responsible, directly or
indirectly

Credibility of persons other
than accused.

Wants to see special entries first

Vaal

Wants to hear Bizos

Sexton

Bizos - Chesterton.

The pillars of the judgment on the Vaal side of the case wnt violence are:

- 1) The stayaway, in order to be effective has to be coerced
- 2) The march would inevitably lead to confrontation and spill over to violence.

IN DIE HOOGGEREGSHOF VAN SUID-AERIKA
(APPEL AFDELING)

In die saak tussen:-

GCINUMUZI PETRUS MALINDI
TSIETSI DAVID MPHUTHI
NAPHTALI MBUTI NKOPANE
TEBELLO EPHRAIM RAMAKGULA
SEKWATI JOHN MOKOENA
SERAME JACOB HLANYANE
THOMAS MADIKWE MANTHATA
HLABENG SAM MATLOLE
POPO SIMON MOLEFE
MOSIUOA GERARD PATRICK LEKOTA
MOSES MABOKELA CHIKANE

Eerste Petisionaris
Tweede Petisionaris
Derde Petisionaris
Vierde Petisionaris
Vyfde Petisionaris
Sesde Petisionaris
Sewende Petisionaris
Agtste Petisionaris
Negende Petisionaris
Tiende Petisionaris
Elfde Petisionaris

en

DIE STAAT

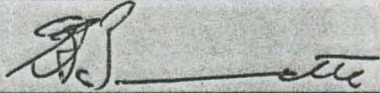
Respondent

In re: THE STATE v PATRICK MABUYA BALEKA & OTHERS
(TPA - SAAK NO CC 482/85)

DIE STAAT SE KENNISGEWING OM DIE PETISIE TE BESTRY

AAN SY EDELE DIE HOOFREGTER VAN DIE BOVERMELDE AGBARE HOF

Aangebied vir liasering:


DIE PROKUREUR-GENERAAL VAN
TRANSVAAL Adv.D.B.BRUNETTE SC
KANTOOR VAN DIE
PROKUREURGENERAAL
1ste vloer
Prudentialgebou
Mutualstraat
Pretoria
Verw. Adv. P.B. JACOBS SC

Tel. 325-3780

A.D. 11/89

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA
(APPELAFDELING)

In die saak tussen:-

GCINUMUZI PETRUS MALINDI	Eerste Petisionaris
TSIETSI DAVID MPHUTHI	Tweede Petisionaris
NAPHTALI MBUTI NKOPANE	Derde Petisionaris
TEBELLO EPHRAIM RAMAKGULA	Vierde Petisionaris
SEKWATI JOHN MOKOENA	Vyfde Petisionaris
SERAME JACOB HLANYANE	Sesde Petisionaris
THOMAS MADIKWE MANTHATA	Sewende Petisionaris
HLABENG SAM MATLOLE	Agtste Petisionaris
POPO SIMON MOLEFE	Negende Petisionaris
MOSIUOA GERARD PATRICK LEKOTA	Tiende Petisionaris
MOSES MABOKELA CHIKANE	Elfde Petisionaris

en

DIE STAAT

Respondent

In re: THE STATE v PATRICK MABUYA BALEKA & OTHERS
(TPA - SAAK NO CC 482/85)

PETISIE

INGEVOLGE APPELAFDELING REEL 13 OM RIGLYNE MET BETREKKING TOT DIE
LOOTSING VAN DIE APPEL

DIE STAAT SE KENNISGEWING OM DIE PETISIE TE BESTRY

NAMENS DIE RESPONDENT

NAMENS DIE PETISIONARISSE

Die Prokureur-generaal van
Transvaal
Kantoor van die
Prokureur-generaal
1ste vloer
Prudentialgebou
Mutualstraat
Pretoria
Verw. Adv. P.B. Jacobs SC
Tel. 325-3780

Bell Dewar & Hall
Ismael Ayob & Partners
Priscilla Jana &
Associates

10de Vloer Aegis
Insurance House
Commissionerstraat 91
Johannesburg
Verw. Mnr. Dison
Tel. 8335665

Webbers
3de Vloer, Allied House
H/v West Burger & Maitland strate
Bloemfontein
Verw. Mnr. H.J. Newdigate
Tel. 308987

A.D. 11/89

GELIEWE HIERMEE KENNIS TE NEEM DAT DIE RESPONDENT VAN VOORNEME IS OM DIE PETISIE INGEVOLGE APPELAFDELING-REEL 13 TE BESTRY EN WEL OP DIE VOLGENDE GRONDE:

1. Die twee tersaaklike spesiale inskrywings leen hulle vanwee die komplekse aard van die feitemateriaal in hierdie saak nie daartoe om in isolasie bereg te word nie:

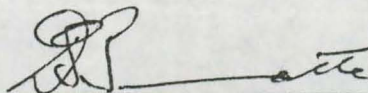
(a) Die U D F se MILLION SIGNATURE CAMPAIGN (MSC) vorm 'n integrale deel van dié organisasie se bedrywighede en die daad van onderskrywing van dié kampanje deur die geleerde assessor kan nie beoordeel word sonder 'n insig in die totale strategie en bedrywighede van die U D F soos dit gemanifesteer het uit die getuienis tot op die stadium van die afsetting van die genoemde assessor nie - bedrywighede wat met eerbied as bewese bevind is deur Sy Edele die Verhoorregter. Dit volg daarom dat bylae A tot die petisie nie as oorkonde beskou kan word vir doeleindes van beregting van dié twee spesiale inskrywings nie.

(b) Die Agbare Hof sal geroepe wees om te beoordeel, nie alleen of die verrigtinge onreëlmatig of met die reg strydig was nie, maar ook of die Petisionarisse benadeel was daardeur al dan nie. Dit is met eerbied ondenkbaar dat so 'n beslissing gemaak kan word sonder 'n beoordeling van die saak in sy geheel.

(c) Die waarskynlikheid dat die Hof hom aan die einde van die dag sal bevind in 'n situasie waar verdere inligting geverg word ten einde 'n sinvolle beslissing te kan maak is uit die aard van die saak oorweldigend, met respek.

(2) Sou die oorwegings geopper onder punt een (supra) stand hou sal dit onbillik wees teenoor die Staat, slegs verdragend werk en ook 'n kostedupliserende effek inhou.

(3) 'n Aansoek soos die onderhawige is regtens nie geoorloof nie.



DIE PROKUREUR-GENERAAL VAN TRANSVAAL
ADV D B BRUNETTE SC

PRETORIA
1989-03-29

Collection Number: AK2117

Collection Name: Delmas Treason Trial, 1985-1989

PUBLISHER:

Publisher: Historical Papers Research Archive, University of the Witwatersrand

Location: Johannesburg

©2016

LEGAL NOTICES:

Copyright Notice: All materials on the Historical Papers website are protected by South African copyright law and may not be reproduced, distributed, transmitted, displayed, or otherwise published in any format, without the prior written permission of the copyright owner.

Disclaimer and Terms of Use: Provided that you maintain all copyright and other notices contained therein, you may download material (one machine readable copy and one print copy per page) for your personal and/or educational non-commercial use only.

People using these records relating to the archives of Historical Papers, The Library, University of the Witwatersrand, Johannesburg, are reminded that such records sometimes contain material which is uncorroborated, inaccurate, distorted or untrue. While these digital records are true facsimiles of paper documents and the information contained herein is obtained from sources believed to be accurate and reliable, Historical Papers, University of the Witwatersrand has not independently verified their content. Consequently, the University is not responsible for any errors or omissions and excludes any and all liability for any errors in or omissions from the information on the website or any related information on third party websites accessible from this website.

This document forms part of a collection, held at the Historical Papers Research Archive, University of the Witwatersrand, Johannesburg, South Africa.