

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

13

CASE NUMBER: 30/76.

PRETORIA.

THE STATE
versus
JOSEPH MDLOKENG AND SIX OTHERS

VOLUME 13
(Pages 554 - 583)

LUBBE RECORDINGS (PRETORIA)

VOLUME 13

THE COURT RESUMES AT 2 P.M. ON THE 6th APRIL, 1976.

ABEL KHAME: still under oath:

FURTHER EXAMINATION BY MR VAN JAARSVELDT: After you visited Botswana for Tiro's funeral, did you go to Botswana again? -- Yes.

How many times? -- I went three times to Botswana.

I want you to tell me about the visit during the festive season in 1974. -- I went to Botswana on Christmas day. (10)

With whom? -- With a friend of mine, Oupa Nkuna, with his vehicle. We booked in at the President Hotel - he booked in at the President Hotel. I went to stay at Mrs Sitwyolo's house.

During your stay there, did you meet Tato Bereng? -- I did. Yes, he stayed at the house.

Did you know him beforehand? -- Yes.

From where? -- I knew him since 1971.

Is it a him or a her? -- Her, it is a woman.

Was she also a member of TRAYO? -- She was not (20)
a member of TRAYO but an ad hoc member of NAYO.

Did she ever attend TRAYO meetings? -- I cannot remember well.

Tell us about your meeting with her in Botswana. -- We stayed together at Mrs Sitwyolo's house. On Boxing Day the girl with whom I was, Danice Dhlamini, returned back to the Republic. I remained in Botswana.

Did you have any discussions with Tato Bereng? -- Yes, I did.

Tell us about these discussions. -- What I can (30)
remember is that Tato told me how she left here to Botswana/...

Botswana and she left here being a member of the National Delegation which left to Botswana.

Did she say why she left the Republic? -- Yes. She told me that she had written a paper about youth leadership which was later taken by the police. She then left, being afraid she would be arrested by the police.

Did she tell you where she was staying there in Botswana? -- Yes, she told me that before she went to stay with Mrs Sitwolo, she was staying with other refugees in Botswana. (10)

Did she say whether she got along with them? -- She told me that the first few months she had a quarrel with the leaders of the refugees in Botswana and then she left them.

Did she tell you why she had a quarrel with the leaders? -- She told me that she was not satisfied about the treatment of the refugees in Botswana.

Did she mention the name Bokwe Mafuna? -- Yes.

What did she say about him? -- She told me that the delegation found that Bokwe had a scheme of liberation. (20)

Did she elaborate on that? -- She refused to tell me what the scheme of liberation meant.

Did she say who were the members of the delegation? -- She refused to tell me.

Did you have any further negotiations with her while you were in Botswana? -- Yes, we stayed together, we were living together.

I understand that, but can you tell us about the discussions? -- Yes, on Christmas Saturday we went to the President Hotel where I met another chap named Domeka. (30)

Was Thato Bereng with you? -- Yes, she was still with/...

with me.

What were the discussions about? -- We were speaking about Black consciousness. Then Domeka told me that he had heard in South Africa Black consciousness does not agree with Marxism, that it was a foreign concept, that Black people could not follow it.

After that did you leave Botswana? -- Yes.

Did you go to Botswana again during March, 1975? -- I did, yes.

Was that during the Easter week-end? -- Yes. (10)

Did you again meet Thato Bereng? -- I did.

Tell us what happened on that occasion. -- I was with my friend, that is Thato's previous husband. He wanted to get married to another woman. To do that, he should first have to get a divorce from Thato. I was speaking to Thato about the divorce case.

BY THE COURT: Very interesting.

MR VAN JAARSVELDT: Did you have any discussions with Thato?

BY THE COURT: Please, not about divorces, I do not want to hear about that. -- Yes, I did. (20)

MR VAN JAARSVELDT: Tell us about them. Not about the divorce. -- Thato told me that she was - Thato said that we were prepared to get married while people are fighting for liberation.

Yes? -- And she also mentioned if we were interested to fight for our freedom, that Mozambique was a place which we could use to fight.

Did she elaborate on this fight? -- She said that we are preparing to get married, people are thinking about liberation. If we are interested in that, there is (30)

a/...

a place Mozambique is offering a place where people could be trained to fight for liberation.

Did she say what sort of training? -- No.

Did you not ask her what sort of training? -- I did not. I did not have much interest in what she was saying.

Did she say anything about any other topic except on divorces? -- The main thing of our visit during March was of her husband to speak to her about their affairs, so I did not have much chance to speak to her.

Did she give you anything to take back to the (10) Republic? -- No.

Did you meet Harry Mngwekhulu on your visit? -- Yes.

Did you have any discussions with him? -- We did not have discussions, but we met at the President Hotel. He also invited us to Lobatsi Hotel where there was a party where we should have met at 8 o'clock. We did not arrive.

Did you bring anything back from Botswana on your return to South Africa? -- No.

I am subject to objection, M'Lord. Were tapes ever handed to you? -- No. (20)

Quite sure about that? -- Yes.

Were tapes ever played at your meetings, TRAYO meetings? -- Yes, they were.

What kind of tapes? -- The first tape which was played was a speech of Malcolm X.

Can you tell us about this speech of Malcolm X?

BY THE COURT: Let us first find out where was this played to you? -- At accused No. 1's house.

MR VAN JAARSVELDT: And who was present? -- Myself, accused No. 1, accused No. 2, accused No. 4 and (30) Evodia.

And/...

(1)
(2)
(3)

(1) And who played the tapes? -- Accused No. 1.

Do you know where the tapes came from? -- I heard they came from Thato.

Who said so? -- Accused No. 1.

Now tell us about the first tape you mentioned just now about Malcolm X. Can you tell us what were the contents of the tape? -- What I can remember is that Malcolm X spoke about the theory of revolution and that evolution is based on land. Economically viable land and that Black Americans cannot speak about revolution because they (10) do not have a country, they do not have land.

Anything else? -- It is all what I can remember.

Any other tapes? -- Other tapes were of Martin Luther King.

What was that about? -- He spoke about Black Americans must fight for equal rights and that they can achieve that by non-violent means.

Tell us about the - were there any other tapes? -- Yes.

Tell us about the other tapes. -- Another one was excerpts of a book of Nkruma on Africanism. (20)

Tell us more about that tape's contents. -- That Africa should unite as a Black state and should consider liberation. Not of one part but of the whole. That is all that I can remember.

Do you know why these tapes were played at accused No. 1's house? -- No explanation was given.

Was it a TRAYO meeting? -- Yes.

An official TRAYO meeting? -- I will not say it was an official meeting, but all the people who were present were members of TRAYO. (30)

Do you know what happened to these tapes? -- Yes, accused/...

(2) accused No. 2 took one.

Which one did he take? -- He took tape 2.

Yes? -- I am sorry, tape 3.

BY THE COURT: Now which is tape 3 and which is tape 2 and which is tape 1? I haven't got them. -- Tape 1 is Malcolm X, tape 2 is Martin Luther King, tape 3 is the one of excerpts of Nkruma.

What did - which did No. 2 take? -- He took tape 3. Tape 1 was taken by Evodia. I do not remember what happened to tape 2. (10)

MR VAN JAARSVELDT: Did they say what they would do with these tapes? -- It was said that I would be the person to keep the tapes.

Yes? -- Then those people whom I mentioned, took them from me, they borrowed them from me.

(3) Did you ever come in contact with accused No. 3? -- Yes.

When did you meet her? -- 1974.

How did it come that you met her? -- It was a fund raising party of SASO which we had gone to. (20)

Did she ever talk to you about Botswana or to any of the group of TRAYO? -- Not what I can remember.

Do you know if any of the accused ever went to Botswana? -- No, I cannot remember.

Did you attend TRAYO meetings regularly? -- Not all of them.

Just explain. Did you attend more of their meetings or less of their meetings as far as you can - were you a more frequent member or infrequent member of TRAYO? -- It is a difficult question because I do not know how many TRAYO meetings were held. (30)

Would/...

Would you call yourself an active member of TRAYO?

-- In a way, yes.

Was military training ever mentioned in your presence by anyone? -- No.

Did anyone ever speak about a cell system that should be incorporated in South Africa? -- No.

THE COURT ADJOURNS. THE COURT RESUMES.

ABEL KHAME: still under oath:

FURTHER EXAMINATION BY MR VAN JAARSVELDE: Did you make a statement to the police? -- I did, yes. (10)

Did you swear to its contents? -- I did, yes.

That is roughly on the 11th September, 1975? -- Yes.

Did you make this statement to Sergeant Smit? -- Yes.

Were you detained while making this statement? -- Yes.

For how long? -- Three days.

Did you sign the statement? -- Yes.

I would like to show you this statement. Would you be able to recognise it? -- That is the statement.

I wish to hand it in as EXHIBIT N. Do you agree with me that the version you gave in court today is quite (20) different from the version contained in this statement? -- Yes, because some of the things in the statement are things which I was told by the police.

M'Lord, I do not know if it is necessary to indicate the deviation. I will give the Defence a copy of the statement made by the witness. I hand you this statement. Do you recognise it? -- I do, yes.

And do you agree with me that it is in your own hand? -- Yes.

M'Lord, I unfortunately only have the one copy (30) of that statement. I will try to let photostats be made

of/...

important
↓

myt of interview

of it and give the Defence a copy as well.

BY THE COURT: EXHIBIT O.

MR VAN JAARSVELDT: That is correct. The same applies here as far as the deviations are concerned.

BY THE COURT: Well, you had better just ask him if it differs and if so why, because I do not even know that it differs yet.

MR VAN JAARSVELDT: Do you agree with me that that statement also differs from the statement you gave in court today? -- The things written here in this statement, (10) are also some of the things which the police read out from statements made by other people. Then Sergeant Smit took something, some parts out of this statement and made that statement which is handed in in court.

*right
of
statement*

Were you forced to listen to their version, the police version and make your statement according to theirs? -- Yes.

In what way? -- They told me that my freedom from being detained depends on whether I would make an acceptable statement.

CROSS-EXAMINATION BY MR ALLAWAY: I would like to (20) deal with Wilgerspruit, the meeting at Wilgerspruit. As I understand the evidence thus far, that meeting was held towards the end of May, 1974. -- There were two meetings held at Wilgerspruit.

(W)

I am speaking of one that was held towards the end of May, 1974, beginning of June, 1974, at which accused No. 1 was elected the president of NAYO. Now, you said that you were concerned with organising the transport for that meeting. -- Yes.

And at the time that that meeting was held, (30) accused No. 2, at the commencement of the meeting, was the/...

the president of which organisation? -- TRAYO.

Of the Transvaal organisation. Who was at that stage the president of MAYO? -- Mathe Diseko.

I understand he was a banned person. -- Yes.

I understand from the accused / ^{who} were present at that meeting, that Mathe Diseko in fact was at the meeting and addressed the meeting. -- Yes.

And according to my instructions, I do not know whether you remember this, he in fact opened the meeting. -- I was not present at the opening of the meeting (10) as I came on Saturday night after work.

I think you said in your evidence you spoke about Saturday. -- Yes.

Is that when you in fact arrived yourself? -- Yes.

I want to show you an exhibit in this case, it is EXHIBIT 10(k). My Learned Friend has told me that this document which is in handwriting, we have referred to thus far as being EXHIBIT 10(k). May I just check this please? It is not marked yet. It is a document which I have in handwriting, it was certainly part of the contents (20) of the envelope, EXHIBIT 10 and we then proceeded to enumerate those exhibits as EXHIBIT 10(a) through the letters of the alphabet. It does seem, however, that there is some sort of .. (inaudible) .. what was in the handwriting has not been given an independent 10 alphabet existence and what I have referred to thus far as EXHIBIT 10(k) is in fact not .. (inaudible) .. handwriting. What is 10(k) as at present marked is a document headed "Background" and it is a typed document comprising some two pages. So what I put to a former witness, it (30) was the witness Vusi Sithole, was in fact I put to him what/...

what is in handwriting. May we with respect call this Exhibit 10(k)(a) or 10(k)(1)?

BY THE COURT: Which document are you referring to now? I am not quite certain.

MR ALLAWAY: That is the handwritten document.

BY THE COURT: But hasn't that been given an exhibit number now, M or something?

MR ALLAWAY: No, this is part of Exhibit 10.

BY THE COURT: It hasn't been put in by the State separately? (10)

MR ALLAWAY: The State put it in an envelope Exhibit 10 as found by the police and then .. (intervenes)

BY THE COURT: It is not one of these to which we referred in the last 10 minutes?

MR ALLAWAY: No, those are statements made by the witness.

BY THE COURT: I thought maybe that was what you were referring to.

MR ALLAWAY: May we mark it with your permission either Exhibit 10(k)(1) or 10(k)(a) whichever is acceptable?

BY THE COURT: Well, make it 10(kk). (20)

MR ALLAWAY: As M'Lord pleases. I would like you to take your time in the witness-box and just read what is in this document, EXHIBIT 10(kk). Just the first two pages. Take your time. Have you had an opportunity of reading that document, EXHIBIT 10(kk)? -- Yes, I have written there on the first two pages.

That is what I wanted you to read. Now, you said that at this Wilgerspruit meeting, accused No. 1 spoke about sport on the Saturday night. -- Yes.

Does what you have read as being EXHIBIT 10(kk), (30) does it have any reference to what he spoke about on that evening/...

evening? -- It seems so, yes.

And can you remember whether anybody else was on the platform or formed part of the discussions on that subject that night? -- Yes, I remember Harold Pongola.

Do you know what his occupation was? -- Yes, a sports reporter.

For what journal or newspaper? -- Daily Mail.

Is that the Rand Daily Mail? -- Yes.

I will tell you why I am asking this: one of the State witnesses, the witnesses called by the State, (10) had said - his name was Sithole - he has told His Lordship that that Saturday night at the Wilgerspruit meeting No. 1 addressed the meeting on the subject of communism and its advantages to society. Do you agree or disagree with his evidence? -- Disagree.

And what is more, he said that this discussion on communism started on the Saturday afternoon at Wilgerspruit, went through the Saturday night and then was resumed again on the Sunday morning. Have you any comment to make about that evidence? -- It is not true because accused No. 1 (20) read from that paper and Harold Pongola and Mr Pharisane who was the president of BPC.

Mr Pharisane, yes. And what happened on the Sunday morning as far as you can remember? What was dealt with on the Sunday morning? -- I think we were playing soccer that morning.

Yes, I think there was a game put on, but do you remember any report back on the Sunday morning on commissions? -- Before the election there were commissions.

Can you recall when the elections took place on (30) the Sunday? Was it in the afternoon or in the morning? --

I/...

I do not remember the time, but it was before we had our lunch.

Well, I suppose the congress ended after the elections.

-- Yes.

To give these people time to get back to their places of home and work on Monday. -- Yes.

Were you there on the Saturday morning by any chance?

-- No.

What time did you arrive? -- I stopped working at one o'clock. I arrived there at about 3 o'clock. (10)

Did your job require you to work on Saturday morning?

-- Yes.

Now dealing with this organisation TRAYO that you spoke about, would you agree or disagree with evidence that TRAYO was an organisation that was working in the open? It did not work in secret. -- Yes.

And if there was evidence that the meeting for example at Wilgerspruit that I have been talking about, that was an open meeting, there was nothing secret about it, would you agree with that or not? -- It was an (20) open meeting.

Were you in any way connected with the executive of TRAYO? I am merely asking you that, I am not suggesting it, I am enquiring. -- No.

I take it you could not tell His Lordship about TRAYO's financial circumstances or status? -- No, I cannot.

You mentioned the rally in connection with Prelimo.

-- Yes.

As I understand it, SASO planned to have nation-wide rallies on the 25th September, 1974. Can you confirm (30) that or not? -- Yes.

On/...

On a point of exactitude, that is correctness, would you agree or disagree that it was not a pro-Frelimo rally, it was a Viva Frelimo rally .. (inaudible - both speaking simultaneously) .. -- The papers said pro-Frelimo.

BY THE COURT: Well, if you say Viva Frelimo, you mean long live Frelimo. It certainly cannot be anti-Frelimo.

MR ALLAWAY: I think, M'Lord, one version was it means well done, Frelimo - for what it is worth. Anyway, the point I am driving at is this, you know, don't you, that the Minister of Justice banned the rallies held (10) under the auspices of SASO and BPC? -- Yes.

And is what you are saying this, that although SASO asked TRAYO to hold a rally for Frelimo, TRAYO decided not to do it? -- Yes.

And as far as you know, was TRAYO in any way affected by the wording of the ban or can't you help His Lordship on that? -- It was not held because SASO used TRAYO's name to get the hall and after that the person in charge refused to give the hall.

TRAYO had nothing further to do with it. -- Yes. (20)

This gentleman, Professor - he was the man who came in as the chairman of the finance committee, you mentioned Moko. -- Moko.

What was he a professor of? -- It is a nickname.

Oh, I see. Not a professor of economics. -- No.

BY THE COURT: You might as well ask what Oupa was an Oupa of.

LAUGHTER

MR ALLAWAY: Now just to get the background to your detention, you have given evidence that you were (30) detained on a certain day. When was it? You said you

made/...

made your statement which is EXHIBIT N, on the 11th September, 1975. When in fact were you detained by the police? -- On the 9th.

Who was it who actually took you away from where you were at the time you were detained? -- I do not know, but it was a White captain.

And then were you taken to John Vorster Square, where you came into contact with Detective Sergeant Smit? -- Yes.

And Captain Cronwright. -- Yes. (10)

Now, you told us you were released after you had signed EXHIBIT N. -- Yes.

Do you remember the actual date of your release? -- On the 11th.

Were you ever re-arrested? -- I was on the 9th February, this year.

BY THE COURT: When did you say when were you released?

MR ALLAWAY: On the 11th September. -- I am sorry, I was not re-arrested on the 9th, but on the 8th February this year. (20)

On the 8th February you were re-arrested. Where were you taken? -- John Vorster.

Did you see Captain Cronwright after you were detained then? -- Yes.

Were you told what the reason was for your re-detention? -- Yes.

Who told you that? -- Captain Cronwright.

What did he tell you? -- The conditions of my release was that I should report every Friday at John Vorster Square from January. (30)

So were the conditions of your release that you should/...

should report at John Vorster Square every Friday from January, 1976? -- Yes.

And what did he say about this? Did he say you had not reported? -- I failed to report because I was sick for a week.

Did you tell him that? -- I did.

Did he accept your explanation? -- He said no, I am making plans to run away.

Were you making plans to run away? -- No, if I wanted to, I could have been long ago. (10)

BY THE COURT: Well, I will just interject something here, it seems that you are right about that because look what happened to the witness on Friday who was supposed to be here on Monday; he is nowhere to be found at the moment apparently.

MR ALLAWAY: In any event, were you then detained by Captain Cronwright? -- Yes.

Did he tell you under what legislation or under what legal position you were being detained after that? -- No.

And at the time when you were first detained, (20) that is in September, 1975, were you informed then as to the basis that is the reason for your detention? -- I was not actually told but when I came there they told me that I am a member of Marxist cells and so on.

A member of the Marxist cells. And did you think it had to have something to do with being detained under the Terrorism Act? -- I was told that I can be charged on the Terrorism Act and also about things which other people said about me. He told me that he could detain me on the Terrorism Act on the basis of what other people had (30) told him.

And/...

*with
interrogation*

And I take it from your reading of information in the paper, etc., did you know that Captain Cronwright, as long as he took the right steps, had the power to do that? -- Yes.

In other words you could be detained indefinitely. -- I was told so also.

Who told you that? -- The captain told me.

Now, when you were first called to the witness-box here to give evidence, you told His Lordship that you did not want to give evidence because there were things (10) in the statement which was different from the truth. -- Yes.

And then you stood down from the witness-box. -- Yes.

I remember that was some time last week. -- Thursday last week.

Were you given an opportunity in the intervening time of making any further statement? -- Yes.

And I do not want to know what is in that statement, but did you make such a statement? -- I did, yes.

To whom did you give that statement? -- Captain Cronwright took it. (20)

Was it in his handwriting or yours? -- I, in my handwriting.

How many pages do you think it comprised? -- I did not count the page numbers.

And when you say that he took it, was he present when you wrote it? -- No, he was not.

You handed it to him? -- He took it from me now before I came into court.

And during that time I take it you were still under detention. -- Yes. (30)

Who was it who gave you information or told you what other/...

other people were alleged to have said about you? -- Captain Cronwright, whilst I was making the statement, they had some statements before them which they were reading from.

They were reading from? -- Reading from.

And you say whilst you were making your statement, that is your original statement, EXHIBIT N, made on the 11th September, 1975? -- Yes.

Did this also happen whilst you were writing out your handwritten statement, EXHIBIT O? -- Sergeant (10) Smit.

Did that then, I see. Were you allowed to look at these statements from which they were reading? Or did they just read from them? -- No, they just read from them.

How did these two gentlemen behave towards you when they were doing this? Were they polite and affable or were they - did they behave differently from that? -- Like people who were saying that I was guilty.

People who had come to a fixed conclusion about your participation? -- Yes. (20)

I suppose when you said no, that is not true, they made it quite clear that they did not believe you? -- Yes, when I deny something then they say I do not want to speak.

How long did this process go on for, of you trying to maintain one story and of them saying no, that is not true, we do not accept it? -- Two days and the third day morning.

Two whole days and the third day morning starting from what time in the morning on the first day? -- From 8 o'clock in the morning when they come in, up to the afternoon at about half past three. (30)

Was there a pause for lunch? -- Yes.

And/...

And after you had finished at 3,30 in the afternoon, where were you taken? -- Taken to the cell.

Did you stay in the cell on your own or were there other prisoners in the cell with you? -- Alone.

And did that continue for two days, as you have indicated, and the third morning? -- Yes.

Did you have any exercise in that time? -- I did not even have time to wash.

Did you have any reading matter? -- No.

How did you feel in the circumstances? -- (10)
Depressed.

THE COURT ADJOURNS.

THE COURT RESUMES AT 10 A.M. ON THE 7th APRIL, 1976.

ABEL KHAME: still under oath:

FURTHER CROSS-EXAMINATION BY MR ALLAWAY: I was questioning you yesterday about the circumstances under which the two statements, EXHIBITS N and O had been taken and just for the record I would like you to tell His Lordship, I take it that from the time you left court yesterday (20) until this morning you have been in detention in police custody. -- Yes.

I want to go back to the circumstances under which your statement was taken. Do you remember the name of a man called Pitout, a police officer? P-i-t-o-u. -- No.

After you had been taken in by the police in September, 1975, were you ever brought into an office where accused No. 2 was? -- Yes.

And I understand that you were brought in to where No. 2 was, by Captain Cronwright. -- Yes. (30)

Now, if accused No. 2 has to give evidence in this case/...

*accused 2's
version*

case, he will tell His Lordship that he could here people shouting at you in the office where you were being questioned. What I want to ask you is this, did the police shout at you? -- They did, yes. They did shout at me.

And when Cronwright brought you to the place (that is Captain Cronwright) where accused No. 2 was, what happened there? -- He asked me whether I knew accused No. 2.

That exactly accords with what I have got on accused No. 2's instructions here. "Ken jy daardie man?" -- Yes.

I do not want to lead you, I want you to tell (10) His Lordship. -- Then he told No. 2 to tell me what they would do to me if I refuse to write a statement which they want me to write.

Did Captain Cronwright also say in Afrikaans: "Groet hom, groet jou vriend." -- Yes.

Yes, carry on. -- Then No. 2 told me that they assaulted him to write what he has written.

In what language did accused No. 2 speak to you? -- Sotho.

That too exactly accords with my instructions (20) here. What happened then? -- Then I was taken back to the room where I was kept.

Was any reference made to the cannon? -- What is a cannon?

BY THE COURT: Exactly what I want to know too.

MR ALLAWAY: A man called a big cannon upstairs, Lieutenant Visser. -- I cannot remember that.

Because according to my instructions Captain Cronwright told accused No. 2 to tell you about the big cannon up there, being a reference to Lieutenant Visser. (30) Do you remember that or not? -- I do not remember.

I/...

I want to deal with your evidence now as opposed(?) to what happened to you whilst you were a guest of the Security Branch. I only want to ask you about the playing of these tapes. You mentioned that there were three tapes.

-- Yes.

And you said that a person called Evodia was present.

-- Yes.

I just want to suggest to you that Evodia was not a member of TRAYO. -- She was not an affiliated member.

And you said, this is what you said in your (10) evidence, this was a TRAYO meeting, not an official TRAYO meeting, but all the persons who were present were members of TRAYO. -- I said most of them were members.

And when you say it was not an official meeting, are you saying it was a TRAYO meeting at all or do you assume it was a TRAYO meeting because three of the people who were there and yourself were members of TRAYO? -- I say that because most of the people who were present, were members of TRAYO.

Just to deal with the tapes, according to my (20) instructions, that is tape No. 2, which was the tape apparently of - made by a person who was speaking was called Martin Luther King. That tape advocated change by non-violent methods. -- Yes.

And you knew, I take it, that Martin Luther King was in fact an American Negro? -- Yes.

Who was also concerned with promoting the philosophy of Black consciousness in America? -- Yes.

And his whole standpoint is that changes and attitudes towards Black people should be brought (30) about by non-violent, that is peaceful and detente means.

--/...

-- Yes.

As I understand it the tape in which Malcolm X spoke, Malcolm X said look, talk is no good, you have got to take action and you have got to take bloody revolution. -- No, he put it in this way that Black Americans haven't got land. And his theory of revolution was that all where there was revolution people were looking for land.

In any event, these were two different viewpoints, one stated by Malcolm X and one stated by Martin Luther King. -- Yes. (10)

And I suggest to you that after these tapes were played, there was a discussion amongst the people present in which they talked about the tapes. -- Yes.

As a matter of interest of Black people who were concerned with politics in South Africa. -- Yes.

And if the accused have to testify about this, I suggest and I would like you to tell His Lordship whether this is correct or not, I suggest that what resulted from the playing of the tapes, was nothing more than an exchange of views about what had been heard. -- I will agree, (20) yes.

I suggest to you that no one present was in favour of taking violent or revolutionary means, that is resorting to violence, to achieve a better state of affairs for the Black people in South Africa. -- Yes.

RE-EXAMINATION BY MR VAN JAARSVELDT: No questions.

MR INTERPRETER: M'Lord, the witness indicates that he wants to ask a question. M'Lord, I would like to point to the Court out on my statement there are some things which were written by me and others which were written by Sergeant Smit. If I can get the exhibits back, I can show them/... (30)

then to the Court.

MR ALLAWAY: We have had photo copies made of these documents overnight. Would it assist Your Lordship if we handed Your Lordship a photo copy?

BY THE COURT: Yes.

WITNESS: I agree that the statement, EXHIBIT N, was written from the statement, EXHIBIT O. Now there are many things in EXHIBIT N which are not in EXHIBIT O and also many things in EXHIBIT O which are not in EXHIBIT N.

MR ALLAWAY: I do not want to interrupt the witness, (10) but if it will assist Your Lordship, what we have done is on EXHIBIT O is to co-relate in marginal blocks the paragraphs and if we can give those to Your Lordship now it might help Your Lordship to corelate the two documents. If one takes EXHIBIT O, it starts on page 13, the first paragraph in EXHIBIT N is in fact the first paragraph of EXHIBIT O. The second paragraph starts with the words 'I started' - I am sorry, the second paragraph is not in at all. The second paragraph says "I have been informed that I am in the presence of a Commissioner of Oaths (20) and that an investigation is being instituted .." that is not in EXHIBIT O. Paragraph 3 starts with the words "I started" and finishes up with the words "employed there". Paragraph 4 starts with "My involvement" and finishes up with the words "was explained verbal" - "invited me to a TRAYO meeting ... and was explained verbal". 5 then starts and ends with the words "Black cultural values." Then 6 starts with the words "At another meeting," goes over to the next page and finishes up with "Putswane - Community Dev." Then 7 starts (30) "In our meeting it was decided" and ends up at the words "Mabelle/...

"Mabelle Reginald". Then what is crossed out in EXHIBIT O is not in at all in EXHIBIT N, it involves pages 14 and 15. Then paragraph 8 starts with the words "I would like to move" on page 15 and proceeds through to the "Pro-Frelimo Rally". Then the next is paragraph 9, there are many variations, omissions and things like that. Then on page 16 the sentence starts "Then somewhere along" which is all scratched out, does not appear in EXHIBIT N. Then paragraph 10 starts with the words "Because the message that" and ends up with the word "illegally". (10) 11 is "The report back through to the words "for future usage". Then the words "At stage got information" through to the words "Botswana illigally" is omitted and 12 starts "In Oct. 1974" and ends up with "Christmas holidays". 13 starts with "When I entrained for Botswana" and ends up on the next page. If Your Lordship would like we could put a .. (intervenes)

BY THE COURT: Mr Allaway, before we go any further, let me make one thing perfectly clear. I have been fairly patient throughout this trial, I think. The witness (20) is now neither under cross-examination nor under re-examination. On the basis that he wanted to address me on some thing or other, I do not want to start all over again. As far as his evidential value for the State is concerned, it is worth nothing because the State has discredited him. Now why must I sit and listen to all this?

MR ALLAWAY: All we are trying to do, we are trying to help Your Lordship.

BY THE COURT: No, you are not helping me at all (30) because I am not even going to read his evidence.

MR/...

(X)

MR ALLAWAY: I see. Well, then obviously what we thought would be of assistance/^{to}Your Lordship is not going to be of assistance.

BY THE COURT: Why must I bother about a witness whom the State has discredited themselves?

MR ALLAWAY: With respect, we shall indicate why.

Because it is our contention and we shall be arguing this presently, that there has been an investigational system in this case which, to say the least, is curious. You have had various witnesses .. (inaudible) .. (10)

in detention and otherwise who have given evidence along lines which show - let us be careful in our choice of words - a curious system of investigation. Witnesses have said that people have - policemen have said to them, so and so said this. We will establish that so and so could not have said this because it was never in a statement which the police have got.

BY THE COURT: I do not need the witness to tell me that. I can listen to argument and read for myself.

MR ALLAWAY: I have no doubt that what is on the witness's mind is the possibility of a prosecution for perjury, and the only reason why we are trying to give these paragraphs references is if it will help Your Lordship to hear what he wants to tell you. (20)

BY THE COURT: Well, it is not going to help him to tell me what happened to him, I am not here to listen to a charge of perjury.

MR ALLAWAY: Yes, but at the end of the State case, although the State has discredited this witness, M'Lord may find some validity in the submission that much of what he has told Your Lordship is in fact correct. (30)

That/...

That is why, with no disrespect, one ought to hear him out. It does not follow that just because he made a previous inconsistent statement that one puts a blue pencil through all his evidence. It may very well be that there are curious .. (intervenes)

BY THE COURT: Are you now going to cross-examine the witness further or do you want me to .. (intervenes)

MR ALLAWAY: No, M'Lord.

BY THE COURT: What I really want to know from you is what right do you have to be on your feet? (10)

MR ALLAWAY: Only in an endeavour to help Your Lordship.

BY THE COURT: I do not need help in this regard, I am not completely stupid.

MR ALLAWAY: We have done overnight for your assistance a comparison of paragraphs. I did not know what this witness was going to say today. If Your Lordship does not want that sort of assistance, I shall sit down. Thank you, M'Lord.

BY THE COURT: Do not try to be impertinent.

MR ALLAWAY: I am not trying to be impertinent, but (20) if Counsel tries to be helpful it is a little disconcerting to be told that one is being impertinent.

BY THE COURT: I will take an adjournment and I want to see Counsel in my chambers.

THE COURT ADJOURNS. THE COURT RESUMES.

ABEL KHAME: sworn states:

BY THE COURT: Seeing that Counsel for the Defence and I are both suffering from the same disease, namely the 15th day of the trial, I think that after 15 days of listening to evidence of this type, anybody is inclined to get (30) a little bit impatient. The witness was under

cross-examination/...

cross-examination and there was no re-examination. Then he volunteered or asked whether he could make a statement. I thought it was going to be a statement which was going to be short and pithy. Apparently it involves EXHIBITS N AND O, his own written statement and the subsequent statement written in the handwriting of Detective Sergeant Smit. Apparently he must have shown you the variations between those two. I can assure him I realise what he wants to explain to me, but Learned Counsel for the Defence no doubt will address me in that regard at the end of the (10) case. These exhibits are before me, I can look for myself and see how they have been altered or added to or varied, if they had been altered or added to or varied and he need not bother about telling me, I shall look at it myself. But as far as his evidence is concerned, as far as the State is concerned, the State has discredited him. I do not mean discredited him in the sense that he as a person has been discredited, but I mean that the State has put itself in the position where it can no longer rely on his evidence, because what is sometimes called (20) declaration as a hostile witness by the State, results in the State being completely unable to rely on the evidence of that witness. What the State in effect has done, is to say well, although we have called him, we will not and cannot rely upon his evidence because of two conflicting statements he has made. So as far as the accused are concerned, the State cannot rely on his evidence at all. Defence on the other hand may be able to rely on some of his evidence on the basis that it is in favour of the accused. As far as his own person is concerned, there (30) is nothing I can do in that regard, because I am concerned with/...

with the accused before me and not with him, as it were.
Does he follow that? -- I do.

Now is there anything else you wish to say? -- No.

Have you anything further to say, Mr Allaway?

MR ALLAWAY: No, M'Lord.

BY THE COURT: Was I correct in what I said, Mr Van Jaarsveldt?

MR VAN JAARSVELDT: That is correct, M'Lord.

BY THE COURT: You have discredited him.

MR VAN JAARSVELDT: That is correct. (10)

BY THE COURT: So as far as the State is concerned, I can put a blue pencil through his evidence.

MR VAN JAARSVELDT: As Your Lordship pleases. M'Lord, we call the next witness, Mpakama Mbete. (No. 14). My Learned Colleague will lead his evidence.

MR BRATHWAITE ADDRESSES THE COURT - has been brief by the witness's father to appear for him should he refuse to give evidence or should he require legal advice.

FURTHER DISCUSSION IN THIS REGARD BY THE COURT AND MR BRATHWAITE. (20)

MPAKAMA MBETE:

(37) BY THE COURT: Before he takes the oath, is there anything he wants to say in regard to giving evidence or not giving evidence? -- I have been in detention for 195 days under Section 6 of the Terrorism Act. I was detained at the University of the North on September 25.. (intervenes)

Wait a bit, wait a bit, I am not here now to hear a history. You can talk to Counsel in a minute. -- I beg Your pardon?

I say you can talk to Counsel in a minute. I am (30) not here to hear the history at this stage. All I am asking you/...

you is are you objecting to take the oath or aren't you?

-- Yes.

~~That~~ That is all I want to hear from you, nothing further; I do not want the whole history. -- At this stage, Your Worship .. (intervenes)

No, no, no, no, no, please, if you talk to Your Worship you go to the Magistrate's Court. -- All I want to say, Your Worship .. (intervenes)

Allright, just a minute. Mr Van Jaarsveldt, I think Mr Brathwaite should be entitled to see the witness (10) and you will have to talk to Mr Brathwaite and then we will have to settle this in terms of the authorities. You can find out - I do not want a long political speech here, I am here to settle a trial, not to listen to political speeches about detention and otherwise. That is why I do not wish to hear the witness. He can talk to you and Mr Van Jaarsveldt and then you can try and resolve the issue. If you cannot, then I shall have to - you can call upon me to decide the issue, because I was about to hear, I think, the beginning of a long (20) speech which has nothing to do with this case at all. So I will adjourn and you can discuss it with Mr Van Jaarsveldt and with the witness and then Mr Van Jaarsveldt can decide whether he still wants to call the witness or not and if he does want to, then you can address me in terms of that case if you would like, and if you do not mind, I would like to have that case in the meantime.

THE COURT ADJOURNS. THE COURT RESUMES.

MR SWANEPOEL: M'Lord, the State calls the witness now before the Court, Mpakama Mbete. (30)

MPAKAMA MBETE: sworn states: (English)

MR BRATHWAITE: At this stage I must just mention that/..

that I have in terms of the director of the Court consulted with the witness in the presence of the representative of the Attorney-General, Mr Van Jaarsveldt, and the witness indicated that he would refuse to give evidence.

BY THE COURT: Will you please talk up a little bit, the acoustics are very bad here and the machine is not taking up what you are saying.

MR BRATHWAITE: I have consulted in the presence of Mr Van Jaarsveldt, the representative for the Attorney- (10) General, with the witness and the witness has indicated that he will refuse to give evidence.

BY THE COURT: Is that correct? Are you going to refuse to give evidence? -- Yes.

MR SWANEPOEL: Asks the Court to warn the witness in terms of Section 212 of the Code.

THE COURT WARNS THE WITNESS IN TERMS OF SECTION 212 OF THE CRIMINAL CODE.

BY THE COURT: In other words, the State is entitled to ask, if you refuse to give evidence, that I commit (20) you to jail for 12 months. You understand that, don't you? I am not going to do that now, but I am just warning you that that is the position and that it can be done. I do not propose doing it now, because certain legal aspects have arisen. The first is the question of whether or not you are entitled to legal representation to which you would otherwise be entitled if it were not for the provisions of the particular Act under which this trial is being conducted. I will require legal argument from the State as to your rights to be legally (30) represented. Mr Brathwaite has appeared on your behalf today/...

today. The position is somewhat uncertain because of the provisions of the Act under which the accused are charged, whether you are entitled to legal representation or not, as I have said, it has been held by the Appellate Division that in normal cases you would be entitled to legal representation, but there is a bit of a difficulty in the present case, because of the provisions of the particular Act and that will have to be argued and I am not prepared to deal with it summarily and out of hand without hearing argument. I shall therefore let the (10)
matter stand over until Friday to allow Mr Brathwaite on your behalf and Messrs Van Jaarsveldt and Swanepoel on behalf of the State to present proper legal argument as to what your particular rights are or are not. Do you understand that? -- Yes, I do.

In the circumstances, Mr Allaway, I am afraid you are going to be a bit on the side-line until Friday because this question has to be determined once and for all.
MR ALLAWAY: No, it is obviously a matter of complexity and importance and we shall observe the proceedings (20)
with great interest.

BY THE COURT: Yes, well, I shall also observe it with great interest. I suppose it is best to settle this question once and for all for all time now, because you may have similar difficulties arising in the future.

MR VAN JAARSVELDT: That is correct. In the near future as well.

BY THE COURT: Let us settle everything by Friday and see what the position is.

THE COURT ADJOURNS.

(30)

Collection Number: AD2021

Collection Name: Security trials, Court records, 1958-1982

PUBLISHER:

Publisher: Historical Papers Research Archive, University of the Witwatersrand, Johannesburg, South Africa

Location: Johannesburg

©2017

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.

This collection forms part of the archive of the South African Institute of Race Relations (SAIRR), held at the Historical Papers Research Archive, University of the Witwatersrand, Johannesburg, South Africa.