

reported further to have said, My Lord, "Let us show that we want freedom, so that other countries can come to our assistance. In South Africa there are no soldiers and we are the only soldiers that can defend South Africa. We are created by God, this is our country, and it is a lie that the Europeans were sent by God to bring civilisation to South Africa. I don't suggest that we must chase away Europeans, but we want to stay with them peacefully. The volunteers must obey their leaders." Now My Lords, in my submission this is definitely a violent speech. He prepared - he prepares the volunteers for the possibility of violence, and the last part of his speech where he says "I don't suggest we must chase away Europeans but we must stay with them peacefully", does not alter the meaning of this speech made by Ndimba.

In my submission, My Lords, Your Lordships will find at least that overt act No. 3, that is at page 14, has been proved, My Lords, and that this oath was administered to volunteers, and if the Court does find that the volunteers are what the Crown alleges that they are, then this overt act has been proved fully, My Lords, It has been proved by the evidence of not only the Crown witnesses, but also that of Nkalipi. My Lords, for that purpose Your Lordships will find that it has been proved by two witnesses, Mredlane and Nkalipi. Nkalipi was referred to the portion out of Mredlane's report, and that all the other evidence given by Gazo will then be used to prove his adherence and his hostile intent. In my submission, My Lord, the Accused

should be found guilty, especially if Your Lordships take into consideration the whole picture of the Eastern Province, a very well organised and active A.N.C. Branches, that they were - their officials also served on the Regional Committees and in the Cape A.N.C. And some of them even served on the National Executive, My Lord, that they knew the policy of the African National Congress, and that was a policy we say, advocating violence.

My Lords, my learned friend Mr. Liebenberg will address further argument to Your Lordships on this Accused.

COURT ADJOURNS.

COURT RESUMES.

MR. LIEBENBERG :

My Lords, I beg leave to hand in written Heads of Argument in the case of Ndimba. I shall be very brief with this Accused, My Lord. My submission is that as an active member of the conspiracy, he accepted the Congress - he accepted the communist analysis of the present state as capitalist; he propagated communist methods to achieve the overthrow of the present state; he aimed at the establishment of a communist state which he knew would involve violence against the present state.

My Lord, now in support of these submissions, I wish to rely on a few speeches, and I ask Your Lordships to ignore that first paragraph that I deleted, which relates to his possession of an issue of Liberation.

My Lords, I only refer to the speeches that he made. My learned friend Mr. Terblanche has dealt with the witnesses Thomas, Gazo and Segoni who testified to speeches made by him. My submission is that his propagation of communist theory is a straight forward down to earth lauding of Russia and China, of the communist system, advocacy of the overthrow of capitalism, by violence, and the establishment of a democratic government.

Now on the 16th May, 1954, at an A.N.C. Korsten meeting, he spoke about Russia and he mentioned Lenin who fought the capitalists and he spoke about Stalin and his role in the struggle for freedom, and he said that in Russia you wouldn't find any oppression, and then he was linking up the struggle in Russia with - the successful struggle in Russia against capitalism with the struggle of the people in South Africa. Then he goes on to say - five lines from the top of page 2, he says when you go to Russia you will not find oppression, what we want now is people to lead us to freedom, if we twelve million stand together. I submit that in the context there it looks as if he is joining the struggle in Russia with the struggle...

MR. JUSTICE RUMPF :

He may not have done it at all. Pages of speech may have been left out here.

MR. LIEBENBERG :

I can see that, My Lord, but let me then confine myself to the fact that he refers to Russia...

MR. JUSTICE RUMPF :

Well, we have gone through these speeches with Mr. Terblanche, haven't we? What I really want to know from you is this. In (c), page 1, you say he aimed at the establishment of a communist state. Assume that one could infer that from what he said in his speeches, - which he knew would involve violence against the present state. Is that an inference from these speeches and other speeches in which he dealt with violence, retaliation, hitting back? Not from communism as such.

MR. LIEBENBERG :

Yes, My Lord, this is an inference - Your Lordship will see specially from the speech on the 1st May, 1955, the one I mention on page 2, where he starts off bluntly by saying "I appeal to the oppressed people to believe in the communism system".

MR. JUSTICE RUMPF :

Yes, that we have got. Your real submission is that the inference here is that he knew that violence would be necessary, and his knowledge is inferred from his speeches. Shouldn't your submission here be that he aimed at the establishment of a communist state, and he advocated violence?

MR. LIEBENBERG :

He advocated, yes, My Lord...

MR. JUSTICE RUMPF :

To make it clear that it is not a knowledge which the Crown says he had because of his knowledge of communism.

MR. LI BENBERG :

Your Lordship will see that paragraph (b), there I made the submission that he propagated communist methods to achieve the overthrow. Now if one takes this speech on the 1st of May, it refers to the communist system, and then he says we want to abolish the capitalist government, and then he is perfectly aware according to the gist of the speech of the need for violent action because he speaks of bloodshed and the need for killing, and then when he comes at the bottom of page 2 to the need for changing the government to a democratic government, then I submit it is the communist type of state.

MR. JUSTICE RUMPF :

I don't want to suggest anything on (c), except that here again as it stands, I have some difficulty.

MR. LIEBENBERG :

My Lord, May I delete that last part of it...

MR. JUSTICE RUMPF :

"Which he knew would involve violence", delete that?

MR. LIEBENBERG :

Yes, My Lord, I think that would clarify the position.

MR. JUSTICE KENNEDY :

Do you say that he propagated the communist methods to achieve the overthrow of the state?

MR. LIEBENBERG :

Yes, that I submit is an inference to be

drawn from the fact that he lauds the communist system, and lauds the struggle in Russia...

MR. JUSTICE KENNEDY :

His knowledge of communism or China must of necessity be very little if his speech at Korsten on the 20th February 1955 is correctly reported. He refers to Chou-en-Lai who was sent to, presumably, Formosa.

MR. LIEBENBERG :

My Lord, I ignored that speech, I didn't mention that speech from which one must infer his knowledge, because my submission is that if his knowledge of communist theory - it may be very limited My Lord, but the few essentials that he does accept and propagate, in my submission, go so far as to show a knowledge on his part of a need for a violent revolution. If I start off with the first speech, where he speaks of Russia, of how Lenin fought the capitalists at the top of page 2, and Stalin, a man of courage who was arrested everytime he preached about freedom, and in Russia there was no oppression.

MR. JUSTICE KENNEDY :

Are your points there that Lenin fought capitalism and there was no oppression in Russia? How does that prove a knowledge of communism? Merely because you are against capitalism and against oppression?

MR. LIEBENBERG :

And because you show a knowledge of the struggle in Russia, My Lord, and then linking it up with

the other speech where he says "I appeal to you to believe in the communist system", then my submission is it goes a long way towards showing that he appreciated the need for the violent action to overthrow capitalism and establish a democratic government as he mentions in that speech.

MR. JUSTICE KENNEDY :

As I read this, if he has any knowledge of communism, it is fundamental in the extreme. You will have to convince me, Mr. Liebenberg, that he knew of any inherent violence, if that is portion of your argument now.

MR. LIEBENBERG :

My Lord, I cannot take it further than this, than to say that if he appeals to the audience to believe in the communist system and he speaks of their wish to abolish the capitalist government, and then the need to establish a democratic government, coupled with that reference to bloodshed and violent action, then I submit the picture is complete that he also accepted - My Lord, may I just repeat what I submitted this morning. Even if Your Lordships feel that this evidence doesn't go as far as to show a knowledge on his part of the ideological violence, then this evidence still has the value of showing what kind of state...

MR. JUSTICE RUMPF :

On the speeches you have quoted, he may or may not have a knowledge of communism, we don't know. What we do know from the speeches is that he says to the people that there is a country called Russia and there is

communism there, and that he likes that because there is no oppression. He also refers to China which is free and so on. Now that is a factual thing, and it takes the matter no further. So that really what you say is - well, according to the report he mentions the system, he says the communist government is a good government because it does what the people tell. I don't say he said that, but the words he said is "In - The communist government is doing what the people say". So that the highest you can take it is to say that he refers to Russia and China in favourable terms, and he recommends the system in Russia, and you may say - the Crown may say that he wanted violence from other speeches, but from his references to communism nothing can be inferred.

MR. LIEBENBERG :

As Your Lordship pleases. This is a good example of the position I tried to put to Your Lordship this morning. You might find that the evidence showing violence on his part is sufficiently proved without having to get over this hurdle of deciding whether this was ideological violence. That is all I can say, My Lord.

MR. TERBLANCHE :

My Lord, the next Accused I deal with is J. Nkampani, Accused No.26, and I beg leave to hand in the summaries, My Lord. My Lords, may I at the outset state that in this case the Crown is only relying

on the membership of the Accused and on meetings. There are no documents. His membership was, My Lord, that he was active in Congress affairs at Korsten, and he was active in the affairs of the A.N.C. From the end of 1954 he was a member of the Eastern Cape Regional Committee of the A.N.C. He was vice-chairman of the Korsten Branch of the A.N.C., and he was a member of the Executive Committee of the Korsten Branch during the period of the Indictment.

My Lords, and then the meetings. First I refer to Exhibit X.20, Accused spoke at the following meetings : The A.N.C. meeting held at Korsten on the 3rd January, 1954; and at the meeting of the 24th October, 1954; 7th November, 1954; that was a Congress of the People meeting. And then on the 3rd April, 1955, an A.N.C. meeting; and then the A.N.C. meeting of the 31st July, 1955.

Now the first meeting My Lords, I deal with, the meeting of the A.N.C. held at Korsten on the 14th February, 1954. Nkalipi, My Lord, was the chairman at this meeting, and I refer Your Lordships firstly to what he is reported to have said, My Lords.

MR. JUSTICE KENNEDY :

What is the significance of this meeting?

MR. TERBLANCHE :

My Lords, this is a meeting I have already dealt with under Ndimba,....

MR. JUSTICE RUMPF :

Well, this is what you say, that he was there and that he spoke last.

MR. TERBLANCHE :

Ndinba referred to the fact that in the Gold Coast and India they fought for their freedom and that in Kenya the Africans are also fighting for their freedom. Nkalipi is reported to have said, My Lord, at page 9538 : "These Dutch are now starting to hit people in the street. In Kenya the people are fighting for their freedom." There is a reference to Kenya and what is happening in South Africa.

Then I deal with the meeting of the A.N.C. at Korsten on 3rd October, 1954, My Lords. J. Jack was the chairman, the speakers were Nkampani, Nkalipi. Nkampani, the Accused, spoke after the Chairman but he spoke before Nkalipi. No particulars of his speech are recorded, of Nkampani's speech, My Lord. My Lords, and then the speech quoted there is that of J. Jack, My Lords, page 9904, lines 17 to 27. He is reported to have said, "The reason why we meet here is because we want freedom. We have long been trying for freedom. When the Europeans came into this country they took everything, wars have been fought but we were defeated. We have approached different governments asking them to relax in their unjust laws and treatment, but without any success. We have reached a stage where we are going to take the freedom from the government. In Kenya the authorities are using bombs against the Africans but they have no effect. The Kenya Africans struggle and the Chinese struggles are ours." Firstly, I submit My Lords, that that speech shows that they were going to fight an unconstitutional struggle, and

link their fight here, their struggle here, with that of the Kenya Africans and the Chinese people. Then he is also reported to have said that "People must not forget to buy the Inyaniso, like the Guardian, if Swarts should ban the Inyaniso, we have another name ready".

Now My Lords, Your Lordships know...

MR. JUSTICE RUMPF :

Do you want us to infer anything from - against the Accused, this statement by Jack that they must buy the Inyaniso?

MR. TERBLANCHE :

Yes, My Lord, Inyaniso has been put before the Court, My Lords, a portion of that was read into the record and Your Lordship's attention has been drawn to it. It is one of the bulletins that they had to read.

MR. JUSTICE RUMPF :

What inference must we draw against the accused?

MR. TERBLANCHE :

That he knew, My Lords, that they had to read Inyaniso, that is all.

MR. JUSTICE RUMPF :

Did he read it?

MR. TERBLANCHE :

No, My Lord, that I can't say.

MR. JUSTICE RUMPF :

How does it help us or him or anybody to know that he knew that somebody advocated - that somebody at a meeting said that you must read Inyaniso?

MR. TERBLANCHE :

My Lord, it is a bulletin...

MR. JUSTICE RUMPF :

I know that, but against the Accused, what inference is there against the Accused?

MR. TERBLANCHE :

Only the knowledge that that was one of the bulletins which the A.N.C. - this is an A.N.C. meeting, My Lords...

MR. JUSTICE RUMPF :

There is no evidence that he knew any of the contents of any of the Inyanisos either before this speech or after this speech. There mere that that he knew that they had to read it, how are we to use that against him?

MR. TERBLANCHE :

My Lords, I won't take that any further. I also wish to refer Your Lordships to Nkalipi's speech at page 9904/5, My Lords, where he says that - he attacked the Bantu Education Act, My Lords. That is all I wish to refer the Court to in that respect.

My Lords, the cross-examination on this meeting is at page 10090 - I am sorry, page 10009, and 10031. It was to the effect that the meeting lasted two and three wuarter hours and it is recorded ...

MR. JUSTICE RUMPF :

You have referred us to Nkalipi, to the fact that he attacked the Bantu Education Act. How do we use that against the Accused?

MR. TERBLANCHE :

My Lords ...

MR. JUSTICE RUMPF :

Unless you also have a reference to his knowledge that the attack on the Bantu Education Act was part of the whole Anti-Apartheid Campaign or the struggle as a whole.

MR. TERBLANCHE :

My Lord, that was one of the campaigns...

MR. JUSTICE RUMPF :

We know - unless we know that the Accused knew that, how is the reference to the Bantu Education to be held against him?

MR. TERBLANCHE :

My Lords, at this meeting he knew that one of the officials of his branch attacked the Bantu Education Act, and My Lords, all...

MR. JUSTICE RUMPF :

The Crown has no objection to that. The Crown says that this was part of a large campaign.

MR. TERBLANCHE :

My Lord, my submission is that these meetings were organised not just specially for the Bantu Education Act campaign, but these meetings were organised in their struggle generally, and that all the subjects mention there are subjects of which they take note in their generally strugg.e.

MR. JUSTICE RUMPF :

Yes, but even that, I take it, the Crown wouldn't quarrel with. The African National Congress had

campaigned - if the African National Congress had campaigned against a number of Acts as such, you wouldn't quarrel with that. So that even if he knew that half a dozen matters were dealt with at one meeting, that wouldn't interest you. Unless he also knew that this was part of the struggle to achieve the new state, not only directed at the Bantu Education, but to educate the people, to prepare them for mass action eventually.

MR. TERBLANCHE :

Well, My Lord, that I cannot show directly from this...

MR. JUSTICE RUMPF :

When I am asking you again. You see, I take it you wanted us to consider every one of your submissions. Now you have said apart from the speech to which you have referred us of Jack, you refer us to Nkalipi, and you say that he, Nkalipi, at this meeting attacked the Bantu Education Act. That is how you referred us to it. Then you go over to another point. Now my problem is, what must we do with that? Must we hold it against the Accused, that he heard Nkalipi say that they attacked the Bantu Education Act, and if so, in what manner?

MR. TERBLANCHE:

Just in the manner at the moment, My Lord, that they supported the campaign against the Bantu Education Act.

MR. JUSTICE RUMPF :

Who supported it? The Accused?

MR. TERBLANCHE :

I hold it against the Accused, My Lord, for the reasons given before, My Lord, that he was on this Executive, that that was a meeting arranged by his Executive, it was an arranged meeting, he was on the platform, he spoke. Therefore he was aware, My Lords, that they supported the Bantu Education Campaign, the campaign against the Bantu Education.

MR. JUSTICE RUMPF :

And what must we infer from that?

MR. TERBLANCHE :

That he took part in this campaign against the Bantu Education. And I further say, My Lords, I submit that he was aware that all these meetings were arranged with one purpose, and that is to mobilise and educate the people on their struggle.

MR. JUSTICE KENNEDY :

Where do you get that from?

MR. TERBLANCHE :

My Lord that is the evidence of Nkalipi, that these meetings were arranged for that purpose. I haven't got that reference here at the moment, My Lords, but I will get it for Your Lordships.

MR. JUSTICE RUMPF :

Did he say that Nkamponi knew that?

MR. TERBLANCHE :

No, My Lord.

MR. JUSTICE RUMPF :

We are not interested in Nkalipi at the moment, we are interested in Nkamponi.

MR. TERBLANCHE :

But my submission is, My Lord, that he was on the Executive, and if that is the evidence of Nkalipi, then Nkampeni would also have been aware of that.

MR. JUSTICE BEKKER :

But does it follow that what Nkalipi said, that every member of the Executive knew that?

MR. TERBLANCHE :

My Lord, my submission is that that is an inference to be drawn. There is no direct evidence, but in my submission that is an inference to be drawn. That as a member, he would know that.

MR. JUSTICE KENNEDY :

Well, of course he needn't know that, he may have been absent from a number of meetings. He may not have agreed with the majority of the Executive. You must prove knowledge.

MR. TERBLANCHE :

My Lord, my submission is this, that if he didn't agree, he wouldn't have carried on as a member of that Executive. My Lords, I can't take it any further than that.

My Lords, then Nkalipi gave evidence on this meeting at page 15718, and he said he did not recollect the meeting, but it can be so that J. Jack said what was reported, that the people should read Inyaniso, and that he Nkalipi, attacked the Bantu Education Act.

My Lords, may I at this stage too tell Your

Lordships that this Accused made very few speeches himself, his speeches are - if I may put it that way, not very effective. My Lords, it is very little that he said whenever he made a speech. He is not a person who made speeches often.

MR. JUSTICE RUMPF :

Where is the evidence that he didn't make many speeches?

MR. TERBLANCHE :

My Lord, it comes out of the meetings that he attended, that he didn't often speak.

MR. JUSTICE BEKKER :

The Crown proved very few speeches; he may have made many.

MR. TERBLANCHE :

Yes, My Lord, I'll put it that way. I am sorry if I gave the wrong impression. The Crown proved very few speeches of his own. And the Crown is therefore only relying on the fact that he attended these meetings, heard these other people speak, knew what was happening, and further that holding the positions which he did hold, in this very active Branch at Port Elizabeth...

MR. JUSTICE RUMPF :

Where is the evidence that this was a very active Branch?

MR. TERBLANCHE :

My Lord, it is proved by all the meetings that were held.

MR. JUSTICE RUMPF :

Do you mean active in relation to other

branches or generally active?

MR. TERBLANCHE :

Generally active, My Lord, in arranging meetings at which speakers ...

MR. JUSTICE RUMPF :

Do you mean active in regard to the arrangement of speeches at public meetings?

MR. TERBLANCHE :

In arranging public meetings, My Lords. And that a person in his position, holding the Executive positions and also being on the Regional Committee - the Eastern Cape Regional Committee of the A.N.C., would have known what was happening in his area, and would have had full knowledge thereof.

MR. JUSTICE KENNEDY :

Now I notice in the next two or three meetings, I have only glanced at them, you have said no particulars of his speech had been given in any of the cases. Now what must we infer from that, in regard to what went beforehand? That he was in agreement with what happened? That he associated himself with it?

MR. TERBLANCHE :

That he was in agreement and he assented to those speeches, My Lords, because that was an arranged meeting by the African National Congress on which he held an Executive position, and those speakers were arranged as speakers at those meetings, and he did not - there is no evidence to show that he dissociated himself from those speeches.

MR. JUSTICE KENNEDY :

I don't know, there may be. There is no

evidence to show that he associated himself at any rate.

MR. TERBLANCHE :

No, My Lord, but my submission is that from all the circumstances....

MR. JUSTICE KENNEDY :

Do you want us to infer? And yet you don't give us any particulars of what he said.

MR. TERBLANCHE :

My Lord, from all the surrounding circumstances.

MR. JUSTICE KENNEDY :

It is possible, I suppose, that if anything were said which might have suggested violence, that he got up and he said "I agree with you here in obtaining out freedom, but I don't agree if there is any violence to be invoked". If he had said that now, what would you say?

MR. TERBLANCHE :

If he said that, My Lords, that would be clear evidence that he dissociated himself from it.

MR. JUSTICE KENNEDY :

But we haven't got any evidence at all in regard to some of these meetings as to what he said.

MR. TERBLANCHE :

That is so, My Lord, but on the basis which we have already put to the Court, My Lord, as we see it, that these meetings are arranged by his Branch, he is on the Executive, he attends these meetings, he ...

MR. JUSTICE KENNEDY :

Do you want us to assume that every member of every Executive committee of every branch was in complete unanimity about everything that was to be said at a meeting to be held?

MR. TERBLANCHE :

My Lord, if they arranged for the speaker, then my ...

MR. JUSTICE KENNEDY :

Do we know that they arranged that?
In all cases?

MR. TERBLANCHE :

Yes, My Lord, from the evidence of Nkalipi. I'll give Your Lordships that reference at a later stage.

MR. JUSTICE KENNEDY :

Did they know what he was going to say?

MR. TERBLANCHE :

No, My Lord, that I can't say, that they knew beforehand what he was going to say.

MR. JUSTICE KENNEDY :

Yes, you see, I am just putting my difficulty, where we have no particulars whatsoever of what this Accused may have said at any particular meeting. You say it is a matter of inference.

MR. TERBLANCHE :

It is my submission My Lord that it is a matter of inference.

My Lords, may I turn to the next meeting. It is a meeting of the 28th November, 1954, Segoni was the witness. It is again an occasion on which Nkampani

spoke, but no particulars of his speech were given in evidence. My Lords, I there refer to the speech of Ntsangani and the speech of Solomon. Your Lordship will also see that at this meeting the evidence is that Nkampeni enlisted volunteers.

MR. JUSTICE RUMPF :

Was he chairman once at a meeting?

MR. TERBLANCHE :

My Lord, he was chairman at meetings.

MR. JUSTICE RUMPF :

How many meetings have we got that he was chairman of?

MR. TERBLANCHE :

My Lords, at page 7, there is one meeting...

MR. JUSTICE RUMPF :

That is a very moderate speech of Vanga.

MR. TERBLANCHE :

My Lord, one meeting at which he was chairman.

MR. JUSTICE BEKKER :

Well now, he didn't dissociate himself on what Vanga said. "We are not chasing Europeans away, It is better that we die fighting for freedom, rather than live under present conditions. We do not believe in bloodshed. We want to live in peace with the Europeans." Does anything turn on the fact that he didn't dissociate himself from that?

MR. TERBLANCHE :

But My Lords, that is a speech of Vanga.

MR. JUSTICE BEKKER :

On your line of argument he should have

dissociated himself from that. If he did not believe in that.

MR. TERBLANCHE :

Yes, My Lord, he should have.

MR. JUSTICE KENNEDY :

Because this speech was a moderate one. Or do you say it is not a moderate one?

MR. JUSTICE RUMPF :

As it stands. As we are obliged to do, just to go on what stands there, there might have been a lot more moderate stuff in between the lines, but we are only concerned with what we see.

MR. TERBLANCHE :

That speech is a moderate speech.

MR. JUSTICE KENNEDY :

If he had a violent attitude, as my Brother points out, would he not have turned around and said I don't agree with this, we do believe in bloodshed. I want to dissociate myself with this moderacy in our party.

MR. JUSTICE BEKKER :

Or this man is rather overstating the case, he is not quite right, that is not really our policy.

MR. TERBLANCHE :

My Lords, I don't think that one can go as far as that ...

MR. JUSTICE BEKKER :

Then why must we go as far as the Crown wants us to do in the other case?

MR. TERBLANCHE :

My Lords, it wasn't always openly advocated,

and if a person made a speech which was not violent, then there was really no reason to dissociate themselves from it.

MR. JUSTICE BEKKER :

Well, the other difficulty that you should consider is this. We do know that of the speeches proved in this case they only represent but a fraction of all the speeches that were made. What if it is suggested that in the light of all the speeches made, and in the light of speeches proved, the policy hasn't been clearly proved?

MR. TERBLANCHE :

My Lords, my submission is that the...

MR. JUSTICE BEKKER :

Or let me put it on a narrower basis. The knowledge of this Accused as to violence or otherwise hasn't been proved, because it may be argued, I don't know about the correctness of it or otherwise, it may be argued that he heard so many thousands of non-violent speeches, so many thousands of speeches where violence was condemned, that you can't hold it against him that he didn't dissociate himself when he did hear the odd violence spoken.

MR. TERBLANCHE :

My Lords...

MR. JUSTICE BEKKER :

Assuming that is suggested, how do you suggest we deal with it?

MR. TERBLANCHE :

I suggest, My Lord, that there is no evidence

that the other thousands of speeches that were not proved did not contain violence, that they were all non-violent speeches.

MR. JUSTICE BEKKER :

Should one not infer that if there had been violence the Crown would have made it its business to prove it?

MR. TERBLANCHE :

My Lords...

MR. JUSTICE BEKKER :

.... in the Crown letting go of an opportunity to prove violence if it can. That is your case.

MR. TERBLANCHE :

That is so, My Lords.

MR. JUSTICE BEKKER :

So the fact that the Crown hasn't produced a number of other speeches, does anything turn on that?

MR. TERBLANCHE :

My Lords, in my submission not.

MR. JUSTICE BEKKER :

Can't it at least be inferred that the thousands of other speeches were not violent speeches?

MR. TERBLANCHE :

My Lord, in my submission not.

MR. JUSTICE BEKKER :

Do you suggest it can be inferred that they were violent?

MR. TERBLANCHE :

No, My Lord, that I don't ask the Court

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to infer at all. My Lords, I don't want to waste the
Court's time

CASE REMANDED TO THE 14th FEBRUARY, 1961.

COURT ADJOURNS.

MR. TERBLANCHE

MR. TERBLANCHE: My lords, the accused Ndemba is not in Court. We've had a message that he missed the bus and is getting here by his own transport, and as far as the accused Levy is concerned the doctor will unfortunately not be available before Thursday in order to sign an affidavit. If that may stand over, my lords? 1
5

RUMPF J: Yes, we will proceed, Mr. Terblanche.

MR. TERBLANCHE: My lords, there is one correction I wish to make and that is yesterday I said that I thought that Nkalipi had given evidence in regard to the organising and convening of these meetings and speakers. I find, my lords, that it was Ntsangani who gave that evidence but he gave that evidence in regard to the meetings convened by the New Brighton Branch. 10

My lords, before continuing with the meetings I wish to make one further submission in regard to Nkampeni's membership of the Eastern Cape Regional Committee of the A.N.C. of which he was a member from the end of 1954. 15

My lords, Nkalipi at page 15683 to 4 stated that at this Eastern Cape Regional Committee they exchanged views with other branches, and they discussed matters such as Bantu Education, removals from Korsten and volunteers. My lords, it's my submission that over this period Nkampeni must have attended these meetings and that he had knowledge of what was said there 20
25

BEKKER J: Why do you say must have attended?

MR. TERBLANCHE: My lords, being a member for such a long period, from

BEKKER J: How many meetings did he attend, or must he have attended? 30

MR. TERBLANCHE: It's not stated, my lords, how often they met . . .

BEKKER J: Isn't that really conjecture? He may have been at all, he may have been at two or he may have been at one.

MR. TERBLANCHE: My lords, my submission is . . .

RUMPF J: From when to when was he a member?

MR. TERBLANCHE: From the end of 1954, my lords. Up to the end of the period - - that was what stated in evidence, from the end of 1954, my lords, he was a member.

BEKKER J: How many times did this body per year?

MR. TERBLANCHE: There is no evidence of that, my lords, as to how often they met.

KENNEDY J: It may have been a yearly convention.

MR. TERBLANCHE: It may have been, my lords.

KENNEDY J: At the most they may have had two or three meetings.

MR. TERBLANCHE: Yes, my lords.

KENNEDY J: At the most then they may have had two or three meetings. How can that imply that he had any knowledge of whatever happened at the Eastern Cape Regional Committee . . .

MR. TERBLANCHE: My lords, I cannot take it any further.

My lords, I have dealt with the first meeting on the 14th February, 1954, where Nkalipi spoke and attacked the Banu Education Act. Then I was going to deal with the meeting of the 28th November, 1954, page 3, my lords. The witness was Sogoni, one Qiko was the chairman, and the speakers were Nkampani, Ntsangani and Solomon. My

lords, there I rely on the speech of Ntsangani and the
speech of Solomon, and specially on a Call for Volunteers? 1

KENNEDY J: Is Solomon one of the co-conspirators?

MR. TERBLANCHE: No, my lord, he is not a co-
conspirator. He refers to the Bantu Education Act, and
then he says: "And ask them why they have handed over 5
Mission schools to the Government. The youths have taken
an oath that Dr. Verwoerd will enforce his education on our
dead bodies. Anything may happen to us." My lords, that
shows that they were determined to carry on unconstitutional
struggle against Bantu Education and that they realised 10
that it may be violent.

Then I pointed out to your lordships that
Nkampani enlisted volunteers at this meeting. Then the
speaker Solomon, my lords, I specially rely on the second
paragraph and portion of the third paragraph where he is 15
reported to have said, "I promise you that all the dead
bodies in this country have been noted. Instead of white
people forming friendship with Black people they are going
further with their evil spirits and all the time they are
building HELL for themselves." 20

KENNEDY J: On what basis is Solomon's evidence
to be used against the accused?

MR. TERBLANCHE: My lords, he spoke from the
platform at a meeting arranged by the African National
Congress. Nkampani was an Executive member of that 25
branch at Korsten and this person spoke from the platform.
Nkampani himself was present there and he spoke, although
no particulars of his speech were read in.

Then Solomon also said: "It was the aim of the
Europeans to divide and rule Africans so as to get willing 30

tools. We daily hear screams in the location when people
are being kicked and shot dead. The Europeans should bear
in mind that what they do to us will turn on them one day." 1

KENNEDY J: What does that mean?

MR. TERBLANCHE: My lords, that's a threat of
retaliation in my submission. 5

KENNEDY J: Retaliation of what?

MR. TERBLANCHE: Retaliation of what the Euro-
peans are doing.

KENNEDY J: What did he say the Europeans were
doing, or what do you say the Europeans did according to
this speech? 10

MR. TERBLANCHE: Well, he says "We daily hear
screams in the locations when people are being kicked and
shot dead", and he's talking about the Europeans, my lord.
"The Europeans should bear in mind that what they do to us
will turn on them one day". 15

KENNEDY J: I see, yes.

MR. TERBLANCHE: My lords, a portion of Nkampeni's
speech was read in by the Defence to the following effect:
Page 5, my lords, "Fellow Africans, we are going to go
further and boycott the English and Afrikaans language.
When an African goes to any shop and finds the salesman
speaking any of these languages that shop should be boy-
cotted. The Europeans look upon the Africans as baboons
and they shoot, saying they thought it was a baboon. 25
Africans, let us be united. The Dutch people have no
other plans to do but now they are left with guns. We
shall win the battle without arms but through unity."

Now, my lords, my submission is that that is in
accordance with the policy that through their unconstitu- 30

tional actions they put the Government in a position to use violence, and although they have no arms they will fight through unity - that is by mass struggle to bring about the conditions they want.

1

BEKKER J: Well, now, you may be right, but in the context - he's talking about coycoct - all branches must support the economic boycott which is our present weapon. Might the unity there not in the context refer to boycott rather than unconstitutional or extra-parliamentary action?

5

MR. TERBLANCHE: My lord, no, the Dutch people have no other plans but they are now left with guns, shewing again

10

BEKKER J: My difficulty is this, Mr. Terblanche. In this context can one say that what he had in mind is **what** you submit? Rather than the subject matter of boycott - botcott the shops - - in that lies our unity, that is our weapon.

15

MR. TERBLANCHE: My lords, if that is so, then there is no place there for the mention of guns, because in the boycott of a shop because they don't use the language they want - - there is no possible place for a reference to "their only plan would be guns. That is why I make that submission, my lords.

20

KENNEDY J: Might he just not say, "Well, the Europeans treated us like animals, they shoot us, but we'll retaliate by boycotting them", and indeed wasn't most of the meetings about boycotts? And I think at page 9801 you'll see that one of the first resolutions was to strengthen their economic boycott.

25

MR. TERBLANCHE: There was a lot of talk about boycotts and if I remember correctly, my lords, there is

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evidence that at that time certain businesses were in fact boycotted, but my submission is that talking purely - having this boycott purely in mind, then there was no reason to mention anything about the Europeans only having guns now. 1

KENNEDY J: But why not? He's contrasting it. 5
He says, "The Europeans shoot us, we will knock them down by boycotts; that is our weapon", and in fact they used that very word at that meeting. "Our weapon is boycotts; they've got guns, they shoot us".

MR. TERBLANCHE: But, my lords, in boycotting a business as they were doing at that time there was no shooting and in my submission there is no place there for the use of that expression by a speaker, in that context. 10

My lords, then I turn to the meeting of the 6th February, 1955; the witness was Mhedlane. Nkampeni spoke last at this meeting and no particular speech was given in his evidence, and I refer to the speech of Ndimba where he is reported to have said - - I dealt with this yesterday, my lords - - "On the 12/2/55 all the people must come here so then you must take the struggle of Kenya where they took the police rifles; recently the Kenya people took about 25 rifles from the police", and he said that people in Johannesburg they said the Europeans will take their souls but their dead bodies will left behind, same here in Port Elizabeth". 15 20 25

Now at 12/2/55 your lordships know was the date fixed for the removal in Johannesburg and my submission is that that is support for the Western Areas and it further shows that they realised that the resistance 30

there might lead to violence and is also an advocacy to use the same methods as are being used in Kenya.

KENNEDY J: And you put it on the general basis that although we have no particulars of what he said, and in point of fact it seems clear that he himself never uttered any violence, because if he had it would have been reported, that on the general basis of all the circumstances he has associated himself with this.

MR. TERBLANCHE: Yes, my lord, I put it on that basis, and I further wish to point out, my lords,

KENNEDY J: I think, Mr. Terblanche, we may take it that the act of any note read into the record of what Nkampani said means that he himself did not utter anything directly associating himself with what was said.

MR. TERBLANCHE: I think your lordships can accept that.

KENNEDY J: Yes.

MR. TERBLANCHE: My lords, I just further wish to point out that your lordships will know that it is not necessary that a person himself advocates violence in order to associate himself with violence.

RUMPF J: We know that.

MR. TERBLANCHE: My lords, I then deal with the meeting of the 17th April, 1955. Gazo was the reporter. J. Jack was chairman, and the speakers were Mkwai, Kepe and Nkampani. Again no particulars were given of Nkampani's speech. I refer your lordships to the speech by Jack, the chairman, where he said "Where there are capitalists, there is oppression, it is our intention to free all the people from oppression. Europeans alike, if war should break out tomorrow Strydom, Churchill and Eden will not take

part. The Congress of the People will be held in June 1
 where people of different races will meet to challenge
 the Government of this country; this will be the first
 meeting of its kind; this meeting will be held in Johan-
 nesburg, on that we are going to take over the Government."

It shows in my submission, my lords, support for 5
 the Congress of the People and they were going to carry
 on unconstitutional struggles in taking over the Government.
 And the speech of Mkwazi, my lords, where he said:

"There are Mau Mau in Kenya because people were
 denied education. It is said that people are going to be 10
 moved from Korsten. The freedom volunteers should force
 their way even if they are confronted with a gun, they
 must count the bullets in the gun."

Now, my lords, firstly my submission is that
 the reference to Education and the Mau Mau shows in which 15
 direction this speaker's mind was running in regard to the
 Bantu Education Act, and his reference also to the Freedom
 Volunteers and the removal of people from Korsten shows that
 he was comparing the people and the volunteers in their
 struggle and that that struggle may lead to violence. The 20
 reference to 'They must force their way even if they are
 confronted with a gun and they must count the bullets in
 the gun.'

BEKKER J: I'm a bit puzzled about what is
 meant by the words 'they must count the bullets in the gun'; 25
 what did he seek to convey?-- It seeks to convey to me
 that they must do whatever they are instructed to do even
 if they are confronted with armed force.

The cross examination on this meeting, my lords,
 is at page 10033. It was put to the witness that economic 30

boycott was one of the principle themes of this meeting. 1
 The witness agreed with that, and the following portion of
 L. Kepe's speech was read in by the Defence: "Because of
 their actions we are forced to hate the Europeans. The Bantu
 Education act will remain bad even if you decorate it".

My lords, I then deal with the meeting of the 12th 5
June, 1955; witness again Gazo. Jack was Chairman and the
 speakers were Matebela, Nkampani and Mqota. Nkampani spoke
 after Matebela and he is reported to have said: "God gave me
 the right to swear at the Dutchman. The Dutch people think
 that we are wasting time singing and talking in these 10
 gatherings, they are mistaken, we are going somewhere."

It shows, my lords, that he there associates
 himself with the gatherings and what is being done and
 said there.

Then the speech of Matebela . . . 15

KENNEDY J: Please repeat what you said; I didn't
 catch what you said.

MR. TERBLANCHE: I said, my lords, that that
 means in my submission that he associated himself with what
was being said and done at these meetings which he attended, 20
 by saying that the Dutch people think we are wasting time,
 singing and talking at these gatherings. They are mistaken,
 we are going somewhere.

KENNEDY J: Well, what do you say that means?

MR. TERBLANCHE: I say, my lords, that is 25
 association with what happened and what was said at the
 meetings which he attended.

KENNEDY J: In what way?

MR. TERBLANCHE: My lords,

KENNEDY J: We are going somewhere. 30

MR. TERBLANCHE: By these gatherings, my lords. They think we're wasting time, my lords, by these gatherings, but we are going somewhere - - in other words we are going to achieve what we want to achieve, by these gatherings.

Then the speech of Matebela, my lords, "The conference of the people has come and it is for everybody it is where laws will be formed to suit everybody, we are going to continue with this struggle to the last drop of our blood, this fight will spread in the whole world. We will not form the laws of this country next year, but on the 25th of this month, whether our enemies like it or not, nobody will rest in a big mansion built by our labour while we are still under oppression." Then he talks about the Queen, the Bantu Education Act, and he says, "We are going to fight for our country, if what happened in 1952 at New Brighton happens again, it will not be our fault."

My lords, that is a reference to the Riots in New Brighton in 1952, in my submission, and he foresees there - he expresses the opinion that if this happens and there is a possibility that it may happen, it will not be their fault. He is formulating the policy, my lords, expressed in other places, that the violence will come from the authorities.

BEKKER J: What is the significance of the 25th of this month - June 25th, 1955 - -

MR. TERBLANCHE: That is the Congress of the people, my lords, the 25th June, 1955.

BEKKER J: Yes.

MR. TERBLANCHE: The cross examination on this meeting is at pages 10010 and 10034. On the first page - that is 10010 - it was to the effect that the meeting lasted

2 $\frac{3}{4}$ hours and is recorded on 1 $\frac{1}{2}$ typed pages. At page 10034 1
it was suggested that when Matebela said 'We are going to
fight for our country, if what happened in 1952 at New
Brighton happens again, it will not be our fault', he
was referring to the Congress of the People and that
he was afraid that there would be a large number of 5
police there and that that might cause some form of dis-
turbance. The witness said he did not know what the
speaker was trying to say.

Even if that is so, my submission is that it
does not alter the submissions I've made; I still make 10
the same submissions.

I then deal with the meeting, my lords, of the
10th July, 1955, witness again being Gazo, and chairman
Nkampeni - that is the accused, my lords, and I think I
referred your lordships to this meeting yesterday and I 15
refer to the first portion of that meeting: "We are
not chasing the Europeans away. It is better that we
die fighting for freedom, rather than live under pre-
sent conditions. We do not believe in bloodshed; we
want to live in peace with Europeans!" 20

My lords, it is my submission that the speech
again expresses the same idea as expressed in many other
places, that although they do not believe in bloodshed
the possibility is there that in their struggle violence
may be used against them. 25

My lords, the cross examination is only in
regard to the length of the meeting and the number of
pages on which it was recorded.

Then, my lords, I deal with the meeting of the

24th July, 1955. The witness was again Gazo and chairman Mbelekana, and the speakers were Miss Jonas, Nkampeni, and Nogaya. My lords, Nkampeni spoke against Bantu Education and the necessity of boycotting schools, and the speech of Nogaya I refer to the portion where he refers to the Freedom Charter and he says "I want to tell those detectives that it is better to die through a weapon than through starvation." Again the same sentiment, my lords.

The Defence read in a portion of the Chairman's comments at page 9925 and a portion of a speech by one Pikoli and also a portion of a speech by one Tyalana, page 9926. And further cross examination on the length of the meeting and the number of pages recorded - Page 10010.

Now, my lords, I have made certain submissions there and I have referred to different meetings, which I submit support those submissions as I have dealt with them now. In these are also included the meetings which are charged as separate overt acts, page 11, and with which I will deal.

The first, my lords, is the meeting on the 13th March, 1955. With this meeting I have dealt fully yesterday when I dealt with Ndimba . . .

RUMPF J: What page is this?

MR. TERBLANCHE: Page 11, my lord.

RUMPF J: Where is Ndimba's speech in your Heads of Argument of yesterday?

MR. TERBLANCHE: Page 14, my lords, Ndimba's speech.

RUMPF J: What is the date of this meeting?

MR. TERBLANCHE: The 13th March, 1955, my lords.

RUMPF J: Does that appear on page 11? 1

MR. TERBLANCHE: Yes, my lords.

RUMPF J: Yes, thank you.

MR. TERBLANCHE: I dealt with this, my lords, under.....

BEKKER J: Well, it wasn't set out in Ndimba's reference
either. 5

MR. TERBLANCHE: No, my lords, but I dealt with it
fully, and especially with Mkaya. Your lordships will re-
member that this is the meeting in regard to which Gazo
and Mdlane gave evidence. It's the meeting at which the
Volunteer Oath was administered to the volunteers and 10
where it was confirmed by Nkampeni at pages 15712/21 and
15616, and where ^{Nkampeni} Nkampeni confirmed that to 'die fighting
as a volunteer' was contained in the pledge, but said that
meant that 'My days shall end on my natural death' still
being a volunteer. 15

My lords, Nkampeni spoke after Mkaya but particu-
lars of his speech were not given in evidence. The cross
examination on this meeting was to the effect that the
meeting lasted for 6 hours and twenty minutes, and recorded
on two pages. 20

KENNEDY J: In the Indictment you relied on Nogayi

MR. TERBLANCHE: Yes, my lord. That was the oath
that was read to the volunteers, and Nkalipe said that
the volunteers took the oath - about a hundred of them
that day, he thought. 25

My lords, I also wish to refer your lordships to
the speech made by Nkalipe at page 9906 where he explained
the function of a Congress of the People, and he referred
to the decision taken by the African National Congress

Conference to withdraw children from the schools on the 1st April and then to a speech by Mkwazi - that is the oath, my lords - and then to the speech of Matebela which was read in by the Defence, "Everybody in this country" at page 9908. . . . "Everybody in this country must be at home; let us go forward and defend our independence. Our organisation does not stand for Africans only but to all races in this country. Unless the world is free and the people are free nobody can be happy. I want everybody to know that we do not fight for Africans to take over the Government. . . ."

Again a reference to taking over the Government, my lords. It is my submission, my lords, that the accused was present when the oath was administered, he associated himself with that, and it would seem that he even recruited Freedom Volunteers at one meeting.

Then, my lords, the next one at page 12, the meeting of the A.N.C. Korsten on the 20th March, 1955; this meeting, my lords, I also dealt with fully yesterday when I dealt with Ndimba - that is at page 8 of the Summary of Ndimba, my lords. That's a mistake, my lords, I'm sorry. Yes, my lords, page 8 of Ndimba's Summary. I've also read there, my lords, the speech of Vunga and Ntsangani on which I also rely, and on which I also rely in this instance. Nkampani, the accused, spoke after Ntsangani, my lords, and this is what he is reported to have said: "The Dutch people are fools, freedom can never be stopped; this is our country, not the Dutch people's, their country is Holland where Jan Van Riebeeck came from. From 1914 to 1917 there was no Afrikaans language. English and American speaking people are the true people in South Africa. . . ."

My lords, here he expresses the same idea, that freedom can never be stopped, and that this is their country, not that of the Dutch people.

KENNEDY J: Mr. Terblanche, I take it this is also part 4 (3) (iii) of your Indictment?

MR. TERBLANCHE: 4(b) (3) . . .

KENNEDY J: 4 (B) (3); and in that you rely on something allegedly said by Ntsangani?

MR. TERBLANCHE: Yes, my lord.

KENNEDY J: Well, what is this portion on which you rely?

MR. TERBLANCHE: My lords, it is found at page 9702 line 4 to line 10, where he is reported to have said "In the new Africa we don't promise people happiness and before we achieve freedom blood will be shed. The mothers and fathers of sons and traitors need not worry about wearing mourning dress; the African Nation is going to act strenuously for it and achieve freedom. The African Nation in South Africa is going to act" that's a repetition, my lords.

And then the portion line 7 to 15 to line 17, "The S.A.C.P.O. organisation, the S.A.I.C. and the Congress of Democrats supports the A.N.C. decisions" and he also said, my lords, that Mr. Swart before he went overseas said that before the Africans achieve freedom there will be bloodshed."

KENNEDY J: Yes, now, there was some query about that. I think you set it out in paragraph 4 - this overt act.

MR. TERBLANCHE: That is so, my lords.

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