

Judgement delivered this 18th. day of February, 1963.

25/63.

ROSENOW J.

The appellant was charged with contravening Sect. II (c) read with Sects. 3 (1) (a) (iv) and 12 (1) of Act 44 of 1950, and further read with Sects. 1 and 2 of Act 34 of 1960, further read with Proclamations II9 of 1960 and 83 of 1961. The gravamen of the charge is that the accused took part in the activities of an unlawful organization, viz. the P. A. C. in that he endeavoured to recruit certain persons to join this organization, and demanded subscriptions from these persons in that regard.

The accused was found guilty and sentenced to 18 months' imprisonment. The matter comes on appeal mainly on the ground that the charge has in fact not been proved.

There is ample evidence to prove that the accused endeavoured to recruit members for "POQO", and that he demanded subscriptions in that regard.

The real difficulties in this case is whether it has been proved that "POQO" is merely another name for the P.A.C..

JOSEPH NTHLAPO a detective Sergeant in the S.A.P., testified that he was attached to the Security Branch of the Force and attended meetings of political organisations. He explained that "POQO" was a Xhosa word meaning "something that stands alone". He had heard the word "POQO" used as referring to the P.A.C., both before the organisation was banned and thereafter.

CALEB MDZANNA, Senior Bantu Sergeant at Langa gives similar evidence. He indicated that the word "POQO" meant "only", and that the P.A.C. before it was banned used this word to illustrate that it was an organisation for the Black men only, He goes on to say that after the organisation was banned the word "POQO" survived, and when a person spoke about "POQO" it was realized that he meant P.A.C. Xhosi.

Sergeant ROUX a Detective Sergeant stationed at Langa, states that the A.N.C. can be distinguished from the P.A.C. in that they stood for "one man one vote", whereas the motto of the P.A.C. was "We stand alone" or "POQO". He had heard this word used at meetings of the P.A.C., and ~~after~~ also after the P.A.C. had been banned, by members of the P.A.C. and by other Bantu people in Langa.

HANNINGTON NDIKE stated that he had at one time been a member of the P.A.C., and that the organisation was also known as "POQO". However after the organisation was banned in 1960 he had nothing further to do with it. His evidence, in general, is not very satisfactory. He insisted that at the two meetings he attended the word "POQO" was never mentioned. He also at another ^{STAGE} remarked that he had been a member of ~~XHOSI~~ P.A.C. but did not know about "POQO".

The witnesses who testified to the fact that they were told to join "POQO" do not take the matter much further. RUBEN MANCIYA said at first that he knew/^{that} when "POQO" was mentioned they meant P.A.C. However, subsequently he states that he merely intended to explain the name, and that he did not know ~~that~~ when he was asked to join "POQO" that it meant he had to join P.A.C. GARRISON NQGUMA says he did not know what "POQO" meant at all, and that the accused did not explain it to him. GERRY WAYI's evidence is to the same effect. WARRANT OFFICER JOHNSON's evidence is, in so far as his evidence is relevant, hearsay in character. He says plainly that he was told by the people whom he interviewed that "POQO" now stands for P.A.C. WILLIAM NDONGENI states that when the accused asked him to join "POQO" he asked who or what is "POQO" and was told :- "Is there anyone who does not know about POQO ?" He does not know if there is any connection between "POQO" and P.A.C. PRECIOUS GALENI says that in March 1960, when there was a fight the name "POQO" was used in connection with the organisation African Congress. JACKSON KUMKANI knew of no connection between "POQO" and P.A.C.

The sum total of all the evidence before the court is that the accused attempted to recruit on behalf of "POQO", but did not explain who or what "POQO" was. The word "POQO" means in Xhosa "We stand Alone" and it was indicative of the aims of the P.A.C. and had been used extensively at all material times to describe the P.A.C.

It seems to me, however, that there is not sufficient evidence to prove that, after the banning of P.A.C., the organisation persisted under the name "POQO". The evidence is consistent with the position that after the Banning of the P.A.C., certain people utilised the name "POQO" previously associated with the P.A.C., to carry on activities with aims similar to that of the P.A.C. I cannot find that there is any proof before the Court that "POQO" is in fact an organisation at all much less that it is in fact the same organisation that was previously known as the P.A.C. The furthest that one can take the matter is that, on Sgt. CALEB MDZANNA's evidence, people spoke about "POQO" and thereby they meant P.A.C. I agree with the contention put forward by Mr. KIES that the fact that people spoke in this manner is no proof that what they said was true. I have to find ~~that~~ therefore that the charge has not been proved.

The appeal succeeds and the conviction and sentence are set aside.

THERON A.J. I agree.

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