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G.P.A.

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In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(APPELLATE DIVISION
AFDELING)

APPEAL IN CRIMINAL CASE
APPEL IN STRAFSAK

D. J. C. WOOD

Appellant.

versus/teen

THE STATE

Respondent.

4111 McHardy & B.
Buchanan & Berman

Appellant's Attorney
Prokureur van Appellant

Respondent's Attorney
Prokureur van Respondent

A.G. (C.T.)

Appellant's Advocate W.E. Cooper S.C. Respondent's Advocate H.J. Klem
Advokaat van Appellant D. van Rensburg Advokaat van Respondent

Set down for hearing on
Op die rol geplaas vir verhoor op

(C.P.D.)

Booth, Holmes, Corbett, JJA.
Cooper - 9.47 - 10.15, 10.40 - 10.50.
Klem - 10.15 - 10.40.

C.A.U.

At the Court dismisses
the said appeal.

Judgment per
Booth
20/75

Registration

IN THE SUPREME COURT OF SOUTH AFRICA
(APPELLATE DIVISION)

In the matter between:

DONALD J. C. WOOD

Appellant

and

THE STATE

Respondent

Coram: BOTHA, HOLMES et CORBETT, JJ.A.

Heard: 26 November 1975.

Delivered: 28 November 1975.

J U D G M E N T

BOTHA, J.A.:-

The appellant was convicted by a regional magistrate of a contravention of section 11 (h) read with section 9 (1) of the Suppression of Communism Act, 1950, as amended, and of a contravention of section 11(1)

read.../2

2.

read with section 10(1) of the said Act as amended, and sentenced to fourteen days imprisonment, both counts being taken as one for purpose of sentence. An appeal against his conviction to the Cape Provincial Division was dismissed in respect of both counts, but the whole of the sentence imposed upon the appellant was suspended on certain conditions. Appellant was, however, given leave to appeal to this Court against his conviction on the first count only.

In that count it is alleged that on 20 July 1973 and at 26 Dublin Road, Woodstock, Cape, the appellant did wrongfully and unlawfully contravene section 11 (h) of Act 44 of 1950 in that he did attend a social gathering in contravention of a notice duly delivered to him in terms of section 9 (1) of the said Act. The sole question in this appeal is whether it has been shown that the appellant had on the date and at the place alleged attended a "gathering" as defined in

section.../3

section 1 (1) of the said Act as -

"Any gathering, concourse, or procession in, through or along any place, of any number of persons having, except in the case of any gathering contemplated in sub-paragraph (ii) of paragraph (e) of sub-section (1) of section five or paragraph (b) of sub-section (1) or (3) of section nine, a common purpose, whether such purpose be lawful or unlawful."

The notice served upon the appellant was issued by the Minister under section 9 (1) of the Act, as amended, which reads as follows -

"(1) Whenever the Minister is satisfied that any person engages in activities which are furthering or are calculated to further the achievement of any of the objects of communism, he may, by notice under his hand addressed and delivered or tendered to that person, prohibit him from attending, except in such cases as may be specified in the notice or as the Minister or a magistrate acting in

pursuance.../4

4.

peruance of his general or special instructions may at any time expressly authorize -

(a) any gathering; or

(b) any particular gathering or any gathering of a particular nature, class or kind,

at any place or in any area during any period or on any day or during specified times or periods within any period".

By the notice served upon the appellant he is prohibited, for a period set out in the notice, from attending, inter alia -

"(1) any gathering contemplated in paragraph (a) of the said section 9(1); or

(2) any gathering contemplated in paragraph (b) of the said section 9(1), of the nature, class or kind set out below:

(a) any social gathering, that is to say, any gathering at which the persons present also have social intercourse with one another;

(b)

(c)".

It is common cause that during the evening of 20 July 1973 - i.e. during the period set out in the notice - and at the place alleged in the first count, the appellant was engaged in a game of contract bridge in a room with three other persons. The crisp question is whether the coming together of those four persons constituted a "gathering" as defined for the purposes of the Act. The fact that the four persons in question were engaged in playing contract bridge at the time seems to indicate that they had come together or were together for a common purpose, but in so far as the notice served upon the appellant was issued under section 9(1)(b) of the Act to prohibit his attendance at "any social gathering" that consideration is irrelevant, by reason of the words "except in the case of any gathering contemplated in paragraph (b) of sub-section (1) or (3) of section nine" in the

definition.../6

definition of "gathering" in section 1 (1). Those words were inserted in the definition of gathering by section (1) of Act 76 of 1962, and do not affect the question to be decided in this appeal as they relate solely to the purpose of the persons gathered together.

In Sachs vs. Swart, N.O. 1952 (2) P.H., K. 137 (T) the Transvaal Provincial Division, in an action brought for inter alia, declaring void for vagueness a notice under section 9 (1), held that notwithstanding the use of the phrase "of any number of persons" in the definition of "gathering" in section 1 (1) of the Act, for there to be a "gathering" in terms of the Act, a considerable number of persons must be present.

In S. vs Arenstein, 1964 (4) S A 697 (N) and S. vs. Naicker, 1967 (4) S A ²¹⁴ (N) the Natal Provincial Division held, on the other hand, that to constitute a "gathering" for the purposes of the Act it was not

necessary.../7

necessary for a considerable number of persons to be present. In S. vs. Brutus, 1964 (1) P.H., H 128 (T), and Dudley vs. Minister of Justice, 1963 (2) S A 464 (A D) at p. 469 (H) there are obiter dicta to the effect that two persons are sufficient to constitute a gathering. In neither of those cases was any reference made to the decision in Sachs' case (supra).

In the Afrikaans text, which is the signed text and which must as such be given effect to, "byeenkoms" is, in so far as is relevant, defined as -

"enige byeenkoms, toeloop of optog, deur of langs enige plek van enige aantal persone wat, behalwe in die geval van n byeenkoms wat in paragraaf (b) van sub-artikel (1)..... van artikel nege beoog word, n gemeenskaplike doel voor oë het, wetsy so n doel wettig of onwettig is."

The definition in section 1 (1) of the Act cannot be regarded as defining the word "gathering" or "byeenkoms". It purports to do no more than to include within the ambit of "gathering", for the purposes of the Act, "any gathering, concourse or procession of any number of persons," provided that in relation to certain gatherings, such persons have a common purpose. It is still necessary to determine what the word "gathering" or "byeenkoms" ordinarily signifies.

The meaning assigned to "gathering" in the Oxford Dictionary is a bringing together or a coming together of people, also a meeting or assembly. In the Imperial Dictionary the meaning given is "that which is gathered together as (a) a crowd; an assembly; specifically applied to a number of persons assembled to witness a competition....", while in Webster's Dictionary the meaning is given as "a coming together of people in a group as for social, religious or political

purposes".

It may thus be that the word "gathering" ordinarily signifies a coming together of a number or a group of persons, but the addition of the words "of any number of persons" to the words "any gathering" seems to eliminate the requirement of a coming together of a particular number or a group of persons. The Afrikaans word "byeenkoms", which is defined in the Afrikaanse Woordeboek as "samekoms", is a word of wider import, and does not necessarily require the coming together of a particular number of persons.

In any event, the word "gathering" or "byeenkoms" must be construed in the light of the words "of any number of persons" or "van enige aantal persone" which follow it. The word "any" is, according to the Oxford Dictionary the indeterminate derivative of one, an or a, and means "whichever, of whatever kind, of whatever quantity".

Quantitatively it means a quantity or number however large

or small. In the "Afrikaanse Woordeboek" the meaning of "enige" is given as "een of ander; watter ook al". Judicially the word "any" has been defined as a word of very wide import, "and prima facie the use of it excludes limitation" (Clarke-Jervoise vs. Scutt, 1920 (1) Ch. D., 382 at p. 388). In Hayne & Co. vs. Kaffrarian Steam Mill Co. Ltd., 1914 A D 363, INNES, C.J. said at p. 371 -

"In its natural and ordinary sense 'any' - unless restricted by the context - is an indefinite term which includes all of the things to which it relates. A qualification applied to 'any' of a certain class must necessarily affect each and all of that class".

In Rex vs. Hugo 1926 A D 266 the learned Chief Justice at p. 271 said -

"'Any' is, upon the face of it, a word of wide and unqualified generality".

It is true that according to the Afrikaanse

Woordeboek the word "aantal" means "n onbepaalde getal of ongetelde hoeveelheid, gewoonlik aansienlik baie".

In the light of the meaning of the word "enige" or "any" the words "enige aantal" or "any number" can, however, only mean any number large or small, without qualification and clearly not only as "gewoonlik aansienlik baie". The "Handboek van die Afrikaanse Taal" defines "aantal" as "n onbepaalde getal". "Enige aantal" can therefore only mean "enige onbepaalde getal".

The words "a number of persons" may be capable of meaning a considerable number of persons, as suggested by counsel for the appellant, but the words "any number of persons" - the words in the definition of "gathering" - are not capable of that meaning, though it may include within its scope a considerable number of persons.

Although the word "vehicle", for instance, includes within its scope a motor lorry, it is not capable of that meaning.

As a matter of pure semantics, therefore, it seems to me that the definition of "gathering" or "byeenkoms" does not require for the constitution of a gathering the coming together of a considerable number of persons, but of any number from two upwards.

Counsel for the appellant, relying on the judgment in Sachs' case (supra), contended, however, that in view of the fact that "gathering" was defined as a "gathering, concourse, or procession of any number of persons", and that the words "concourse" and "procession" are words ordinarily signifying the presence of a considerable number of persons, the word "gathering" must also, in accordance with the ejusdem generis-rule, or, as it is also known, the cognoscitur a sociis-rule, be construed or restricted as signifying the coming together of a considerable number of persons. According to that rule a word of wider import, when used with words describing species of the same genus, must be so

restricted in its signification as not to include anything outside that genus. (Director of Education, Transvaal vs. McCagie and Others, 1918 A D 616 at p.623).

In order to apply the principle one has to find some common quality or common denominator which is common to each of the words referred to by which the meaning of the word of wider import may be restricted. (Cf. Colonial Treasurer vs. Rand Water Board; 1907 T S 479 at page 484,) or as it has also been put in Alli vs. Pretoria Municipal Council, 1908 T S 1120 at p. 1124 -

"It must be possible to ascribe the special words to some one genus before the general words can be limited in their meaning to things of the same genus. Otherwise any restriction of the literal meaning of the general words would be founded not on principle but on caprice."

In the present case it was contended that the special words "concourse" and "procession" in the

definition.../14

definition of "gathering", are species of the same genus, viz. a coming together of a considerable number of persons, or that the quality or denominator common to both of them is the presence of a considerable number of persons, and that the meaning of the more general word "gathering" should accordingly be restricted to embrace only gatherings at which a considerable number of persons are present.

It is not necessary for the purposes of this judgment to determine the exact meaning of the words "concourse" or "procession", but I shall assume that they describe species of the same genus, viz. events at which considerable numbers of persons are present. On this assumption counsel's submission would have been of considerable force if the words "of any number of persons" had not, in the definition of "gathering", qualified the words "gathering, concourse or procession".

By those words, however, the words "concourse" and "procession" are deprived of their common quality or common denominator, and there is nothing by which the meaning of the word "gathering" can be restricted.

Even if the presence of a considerable number of persons is still necessary for the constitution of a "concourse" or "procession" for the purposes of the definition of gathering, one cannot, in the face of the qualifying words "of any number of persons" restrict the ordinary meaning of the word "gathering" or "byeenkoms" to "gatherings" or "byeenkomste" at which a considerable number of persons are present.

It would in any event be extremely difficult, if not impossible, to determine what "a considerable number of persons" would have to be for the purpose of constituting a "gathering" as defined. To hold that a "gathering" as defined can be constituted only by the

coming.../16

coming together of a considerable number of persons would be to substitute uncertainty for certainty, and the object of section 9 (1) of the Act may well be defeated. The same difficulties do not apply in relation to a "concourse" or "procession" for there are other characteristics by which a concourse or procession may be identified.

The object of section 9 (1) of the Act is clearly to enable the Minister to prevent certain persons from furthering the achievement of any of the objects of communism. It is difficult to conceive how such persons could achieve the objects of communism if they were to attend a gathering where a considerable number of persons are present, but not if they were to attend a gathering where one person less than a considerable number of persons are present.

It was not contended that the gathering

which..../17

which the appellant was charged with having attended,
 was such a casual or spontaneous gathering or such a
 chance meeting as is referred to in Arenstein's case
 (supra) at pages 701-2.

For the reasons mentioned the appeal cannot
 succeed and is dismissed.

D.H. Botha.
 D.H. BOTHA, J.A.

HOLMES, J.A. }
 CORBETT, J.A. } Concur.

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26-11-1975 1402

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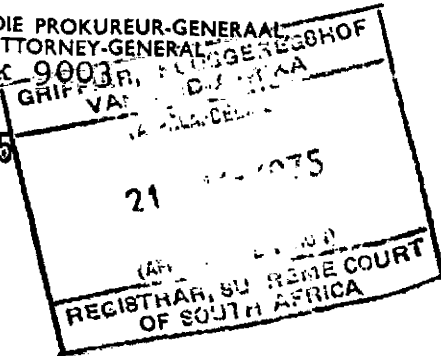
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DEPARTEMENT VAN JUSTISIE—DEPARTMENT OF JUSTICE
REPUBLIEK VAN SUID-AFRIKA—REPUBLIC OF SOUTH AFRICA

KANTOOR VAN DIE PROKUREUR-GENERAAL
OFFICE OF THE ATTORNEY-GENERAL
Privaatsak 9003R, APPÈLHOF
KAAPSTAD

18-11-1975


Die Griffier
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Posbus 258
BLOEMFONTEIN
9300



D.J.C. WOOD TEEN DIE STAAT

U saak No. 26/75 het betrekking.

Agt. afskrifte van die respondent se hoofde van argument gaan hiermee aan u.


(Mej.) J.C.M. ROSSOUW
HOOFKLERK VAN DIE PROKUREUR-GENERAAL

IN THE SUPREME COURT OF SOUTH AFRICA
APPELLATE DIVISION

In the matter between

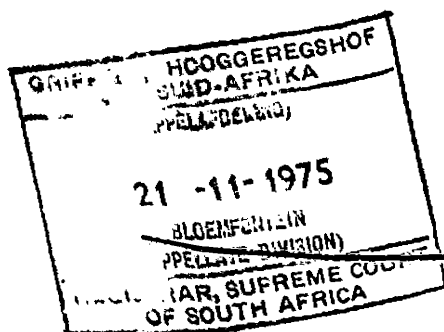
D.J.C. WOOD

(Appellant)

AND

THE STATE

(Respondent)



RESPONDENT'S HEADS OF ARGUMENT

1. The question to be decided is whether the Appellant attended a "gathering" within the meaning of Section 9(1) of Act 44 of 1950.

2. It is common cause that the Appellant, at the place and time in question, was engaged in a game of contract bridge together with 3 other persons.

~~3. The word gathering or "byeenkoms" is defined as follows in~~

Section 1 of Act 44 of 1950 in the Afrikaans text which is

signed:

"enige byeenkoms, toeloop of optog in, deur
of langs enige plek van enige aantal persone
wat n gemeenskaplike doel voor oë
het, hetsy so n doel wettig of onwettig is."

4. It is respectfully submitted that 4 people so congregated
does constitute a gathering of "enige aantal persone" as
contemplated by the Act.
5. In order to establish the intention of the Legislator as to
the number of persons required to constitute a gathering, one
is not required or permitted to look beyond the wording of
the definition because it is cast in clear and unambiguous
terms namely any number more than one.

-
6. Words must be given their ordinary meaning:

"Aantal" means "onbepaalde getal of ongetelde
hoeveelheid."

(i) Die Afrikaanse Woordeboek Deel I.

(ii) Die Korrekte Woord - H.J.J.M. van der Merwe. P.9.

(iii) Groot Woordenboek der Nederlandse Taal - Van Dale

p. 23.

(iv) H.A.T. Handwoordeboek van die Afrikaanse Taal P. 8.

Thus the word "aantal" designates a number not precisely determined.

The words "enige aantal" therefor clearly indicate any number not precisely determined.

It is submitted that a meaning must also be given to the word "enige" and if this is done the intention of the legislator becomes even clearer.

The legislator therefor clearly intended to include any number from two to ad infinitum. The legislator expressly used terms to include a wide range varying from a small

number to a large number. In interpreting its wording the court should not depart from the express and unambiguous language used.

7. In several decisions our courts have also held that the above interpretation should be followed, and that 2 persons or more do constitute a gathering.

See: S.v. Arenstein 1964(4) SA p. 697 (N)
ad p. 699 - 702
(4 people)

S.v. Njongwe 1972(2) SA p. 903 (E)
(5 people)

S.v. Naicker 1967(4) SA p. 214 (N)
ad p. 218 F - 220 A.
(5 people)

See also the following obiter dicta:

Dudley v. Minister of Justice
1963(2) SA p. 464 (AD)
ad p. 469 E - H.

S.v. Brutus 1964(1) P.H. H.128 (T)

ad. p. 307.

S.v. Bennie 1964(4) SA p. 192 (E)

ad p. 196 C - D

S.v. Cheadle 1975(3) SA p. 457 (N)

(7 persons).

8. It is submitted that in Sachs v. Swart N.O. 1952(2) P.H.

K.137 (T) it was wrongly decided that "enige aantal persone"

means a considerable number of persons. This decision was

considered and overruled by the later decisions of S.v.

Arenstein and S.v. Naicker (supra).

It is also submitted that the decision in Sachs v. Swart

N.O. should not be followed because it was decided before

the definition of "gathering" was amended by Section 1 of

Act 76 of 1962 to include gatherings where the attendants

are not required to assemble with a common purpose.

9. It is submitted that if the interpretation in Sachs v. Swart

~~N.O.~~ is followed, it will be impossible for a court to say

how many persons do constitute a considerable number, and to

draw a numerical dividing line between a considerable number

and less than a considerable number.

10. Finally it is submitted that, should it be necessary to have

reference to the purpose of the Act, that too is indicative

of "any number" to be construed as "two or more".

H.G. KLEM
ADVOCATE FOR RESPONDENT

/AE

D.J.C. WOOD VERSUS THE STATE

RESPONDENT'S LIST OF AUTHORITIES

1. Die Afrikaanse Woordeboek Deel I.
2. Die Korrekte Woord - H.J.J.M. van der Merwe p.9.
3. Groot Woordenboek der Nederlandse Taal - Van Dale - p.23.
4. H.A.T. Handwoordeboek van die Afrikaanse Taal - p.8.
5. S.v. Arenstein 1964(4) SA p.697 (N) ad. p. 699 - 702.
6. S.v. Njongwe 1972(2) SA p. 903 (E).
7. S.v. Naicker 1967(4) SA p. 214 (N) ad p.218F - 220A.
8. Dudley v. Minister of Justice 1963(2) SA p.464(AD)
ad. p.469 E - H.
9. S.v. Brutus 1964(1) P.H. H.128 (T) ad. p.307.
10. S.v. Bennie 1964(4) SA p.192 (E) ad. p. 196 C - D.
11. S.v. Cheadle 1975(3) SA p.457 (N).

H.G. KLEM
ADVOCATE FOR RESPONDENT