

G.P.-S.

J 220

Saak No.

Case No.

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA
IN THE SUPREME COURT OF SOUTH AFRICA

(Appel) Afdeling)
Division)

AANSOEK/ILLIKWIJDE SAAK/PROVISIONELE SAAK
APPLICATION/ILLIQUID CASE/PROVISIONAL CASE

Elias Nkumbi

Applikant/Eiser
Applicant/Plaintiff

teen/versus

Die Staat

Respondent/Verweerder
Respondent/Defendant

Prokureurs/Attorneys

Applikant/Eiser
Applicant/Plaintiff

Webbers Newdigate

Respondent/Verweerder
Respondent/Defendant

P.G. Pretoria

Advokaat/Advocate

Applikant/Eiser
Applicant/Plaintiff

Respondent/Verweerder
Respondent/Defendant

Aard van Aansoek/Geding
Nature of Application/Claim

Verlof om te appelleer teen skuldigbevinding & vonnis

Ter Rolle Geplaas vir Verhoor op
Set Down for Hearing on

Voorgeleë op 25.10.82— Rabie H/RT.P.A.W.D. AlunAbel J. GemeisR. J. Rabie31/10/82

K-232-11-

RECEIVED
OF SOUTH AFRICA

- J U D G M E N T -

BY THE COURT: The accused were two Black males aged - according to the charge sheet 20 and 17 years of age. That was at the time of their arrest. They were standing trial on a charge of contravening SECTION 2 (1) (B) read with SECTION 1 of ACT 83/1967. The charge sheet is in Afrikaans and this is difficult to translate - I will read it out in Afrikaans, it reads as follows :

"DAT die beskuldigdes skuldig is aan 'n oortreding van ART.2 (1) (B) gelees met ART.1 van WET 83/1967, die wet op TERRORISME.

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Nademaal beskuldigde 1 aan die begin van die jaar 1979, en té/of naby SOWETO Swartwoongebied, Streekafdeling van Transvaal, wederregtelik- dit is beskuldigde 2, uitgelok, aangestig, beveel, aan hulp verleen het, aangeraai, aangemoedig of verkry het om opleiding te ontvang wat van nut sou kon wees vir 'n persoon wat die ingevaarstelling van die handhawing van wet-en orde poog.

En of nademaal die beskuldigdes 1 en 2, die een of die ander, of beide van hulle, gedurende die tydperk in die begin van 1969 tot omtrent 3 Augustus 1979, en te/of naby SOWETO Swartwoongebied, en/of ander plekke wederregtelik vir TIMOTHY MANDLA MASENYA, en /of MZWANDILE IKEFA, en/of ZOLA JOSEPH MBUNGE, en/of ERIC MSIMKULU SEMELE NGLOMU, en/of MONICA KUNENE, en/of LEONARD MASIKONDESI NTULI, uitgelok, aangestig, beveel, aan hulp verleen het, aangeraai, aangemoedig of verkry het, om opleiding te ontvang wat van nut sou kon wees vir 'n persoon wat die ingevaarstelling van wet en orde beoog.

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Nou derhalwe is die beskuldigdes skuldig aan 'n oortreding van ART. 2(1)(B) van WET 83/1967. "

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The Defence asked for FURTHER PARTICULARS, and these were furnished by the State. The Court will deal with the FURTHER PARTICULAR request and reply, immediately afterwards.

The Request for FURTHER PARTICULARS read as follows:-

" In order to enable each of the above-mentioned accused to prepare his defence adequately, and in order to enable each accused to plead properly to the charge, the following FURTHER PARTICULARS are required :-

(a) AD the alleged contravention of SECTION 2(1)(B) of ACT 83/1967. 10

1. Precisely when on each occasion at the beginning of 1979, is it alleged that ACCUSED No.1 (a) "uitgelok, (b) aangestig, (c) beveel, (d) aan hulp verleen het, (e) aangeraai, (f) aangemoedig, (g) verkry het" accused No.2 to receive training.

Reply : AD 1 The Precise times are unknown to the State.

2. In what manner on each occasion is it alleged that ACCUSED No.1 performed the acts referred to in paragraph 1 thereto? 20

Reply : Accused No.1 inter-alia provided accused No.2 with the photo-album depicting persons with firearms, and/or accused No.1 requested or incited or instigated accused No.2 to collect money and/or to go to Botswana for military training to become a soldier, and/or after training, to return to the Republic to fight and/or to inform accused No.2 that Black Education is of a poor standard, and/or that free schooling is provided in Botswana, and/or by 30

informing ACCUSED No.2, on approximately 1 August 1979 that they are to leave this Country.

3. Insofar as the State seeks to rely upon the written evidence in order to substantiate the allegations as written evidence, should be furnished.

Oral utterances made by accused No.1 should be set out insofar as possible, including the context in which the words were so uttered.

Reply : Statements by both accused are attached.

As far as oral utterances are concerned this is a matter for evidence. 10

4. Precisely where on each occasion, at or near the SOWETO Black are, did the alleged acts referred to above occur. A full and precise description of the places, including the addresses of any premises where such acts allegedly occurred, should be set out with sufficient clarity and detail to enable each accused to react thereto, and to prepare his defence and plea.

Reply : The exact occasions unknown to the State. 20

5. The exact period "Aan die begin van die jaar 1979" in which the alleged acts of accused No.1 took place, should be set out.

Reply: The exact period is unknown to the State.

- (b) 1. Which accused performed any of the acts alleged in relation to Mkefa, Mesenya, Nglomu, Nkuneneni, Mbunge and Ntuli ?

Reply: (a) Accused No.2, (b) Accused No.1 and 2,

(c) accused Nos.1 and 2. (d) Accused Nos.1 and 2, 30

~~(e) accused Nos.1 and 2. (f) Accused Nos. 1 and 2. 30~~

/ It...

It is further alleged that both accused acted in pursuance of a common purpose.

2. Precisely what acts did (a) Accused No.1 perform in relation to any of the above ? (b) Accused No.2 perform in relation to any of the above ?

Reply: The accused inter-alia invited , requested, instigated, or incited one or more of the persons to go to Botswana for military training, and/or to provide one or more persons with the photo-album, depicting persons with firearms, and/or by providing 10 one or more of the persons with the Freedom Songs record, and/or by promising financial assistance to one or more persons who leave the Country, and/or by enabling one or more of the persons to proceed to leave the Country, and/or by promising one or more of the persons scholarship apart from military training in Botswana.

Inter-alia one or more of the acts set out in(A) SUPRA.

3. In precisely what manner did accused No.1
 (a) "Uitgelok, (b) Aangestig, (c) beveel, (d) aan 20
 hulp verleen het, (e) aangeraai, (f) aangemoedig,
 (g) verkry het" persons referred to above to receive training.
4. In precisely what manner did accused No.2 (a) uitgelok,
 (b) aangestig, (c) beveel, (d) aan hulp verleen,
 (e) aangeraai, (f) aangemoedig, (g) verkry het" persons referred to above, to receive training.

Reply: Your AD. 3 and 4 - See 2(a) SUPRA.

5. On how many occasions between the beginning 1979
 until 3rd of August 1979, did (a) accused No.1, and 30

and (b) accused No.2 perform the acts: alleged in regard to the persons set out in the charge sheet?

Reply: At least on one occasion, the exact number of occasions are unknown to the State.

6. Precisely where on each occasion during alleged period it is alleged that such act was performed? The full and precise description of the exact place in relation to each occasion on which an alleged act was performed by accused No.1 or accused No.2, in regard to the alleged persons, should be set out. 10
AD. Your 6 reply : The exact location, locations, is/are unknown to the State.

7. The person - the precise manner in which accused No.1 or accused no.2 performed the alleged acts, should be set out.

Reply: See 2 (a) SUPRA.

8. Insofar as the State seeks to rely upon utterances in relation to any occasion during alleged period, the State should set out so far as is possible the alleged words used by each or both of the accused, including the context in which they were uttered. 20

Reply: This is a matter for evidence.

9. Insofar as the State seeks to rely upon documentary evidence in relation to the alleged acts performed by each or both of the accused, in respect of the persons alleged in the charge during the alleged period, and the documentary evidence in regard thereto, should be furnished.

Reply: All documents will be made available to the

~~defence at this office for inspection.~~ Arrangements 30

to have documents inspected, must be made timeously with this office.

10. The occasions, if any, when both the accused during the alleged period, performed any of the acts referred to in regard to the persons alleged in the charge sheet, should be set out. Dates for instance, joint acts occurred should be set out where possible. See a(2) or b(2) above, the exact dates are unknown to the State.

- (c) GENERAL: 1. When was each accused arrested? 10
 2. Where was each accused arrested? (3) Who arrested each accused. (4) In terms of what acts or law is each accused arrested. (5) Is it alleged that each accused was thereafter detained, if so, in terms of what act or law is it alleged each accused was so detained. (6) The period of detention in terms of the referred to in paragraph (5), should be set out accurately. (7) When is it alleged that each accused was released from re- of detention. (8) Where is is it alleged that the accused will be detained 20 after their detention? (9) In terms of what act or law are the accused presently detained? Since what date is it alleged that the accused were so detained? (10) Insofar as the state seeks to rely upon any documentary evidence in order to prove its case against the accused, such documents should be made available in order to enable each accused to his defence in order to curtail the duration of the proceedings. (11) Any written statement allegedly made by each, both of the accused should be furnished 30

in terms of act 51/1977. (12) The contents of any oral statements ought to be relied upon, sought to be relied upon by the State, in relation to this charge should be furnished including the witness to whom the said oral statement was made.

(1) to (9) There particulars are not necessary to prepare the defence or to plea.

(10) See (a) (3) and (b) (a)

(11) See (a) (3) above.

(12) The State is not prepared to provide you with this information. 10

Both the accused pleaded not guilty. Accused No.1's defence was conducted by ADVOCATE BASSLION, and accused No.2's defence was conducted by ADVOCATE MAILER, as instructed by P.E. Arnold.

In terms of SECTION 15 of the Procedure Act, the allegations were denied by both the accused, and the Court will now proceed with a summary of the evidence as far as possible. It will be very difficult to summarise the evidence altogether especially the cross-examination without rewriting the whole record. The Court will however try and summarise it as best as possible to bring out most of the evidence. This will however, only be possible, or it will only be possible to see the whole context if the whole record is referred to. 20

The first witness was MONICA KUNENE. She stated that she was a 17 year old Black Juvenile.

First of all the Court dealt with an Application - in terms of SECTIONS 153 (1) and (2) of the Procedure Act, for the proceedings to be held in camera. The Court will not sum-up the evidence in this regard, although in cross-

examination, in respect of this particular point, quite a lot of her evidence was dealt with. In evidence in chief she said that she knew accused 1 and 2, as they lived in the same street. During April 1979, she met accused No.2 in the street, near his residence. They then had a discussion about Botswana. Accused Nos.1 and 2 were brothers. She met accused No.2 on that occasion at the corner of the street, and the two of them were alone. Accused No.2 requested her to go to Botswana with him, and she then asked him when they should go and he said during January. She then said that 10 as there was still lots of time, they could finalise the matter during December. She was asked whether she was told why they should go to Botswana, and she said yes accused no.2 said to her they must go for training as soldiers. She then replied that there weren't any women as soldiers in Botswana and he then replied that she would get or be trained in First Aid. She told him that she would tell him during December what she intended doing. He also told her that Soweto was full of police and he didn't know why they were all there. He further said that he wanted to go to Botswana because 20 Soweto was full of police and he didn't know what they were doing there. She knew what was meant by First Aid but did not know what the purpose of it was. After some time she met accused No.2 again in the street - this was a number of weeks after the first discussion. Again only the two of them were present. They sat there and they spoke, and he then told her that she better go and think it over, the matter about going to Botswana. He then left her. Later on she again saw him and he told her that there was going to be a meeting. She asked him when the meeting was and he said it was going to be at 30

19h00 that evening. That was on the Friday evening. She told him however that she was attending bioscope that evening and that she did not know whether she would be at home. He then remarked whether she thought going to bioscope would be better than attending a meeting, she then went home. After some time he visited her at home, he then had a photo-album with him. She paged through it, and he then took it home. EXH.1 was the album which he had.

On the page marked 'A' the photos of accused No.2 and one Misikanyesi appeared that was on the third last page. 10 She did not know why accused No.2 showed her the album. Since then nothing occurred between the two of them. She went to the accused's house on many occasions, she saw a radio and a grammophone there or a record player and at one time she saw how it was used. She was there to buy atjar, that was something that you ate, and it was bitter. She found accused No.1 there, and said to her "Come and listen to this record" She then listened, it was a long-playing record. She couldn't remember whether there was a label on it. Only the two of them were there and she then listened to the music. 20 She then repeated some of the words in a foreign language, not English or Afrikaans, but in a Black language.

Accused No.1 picked out certain cuts to play to her - and whilst he did so they did not discuss the matter. She did not listen to any records at his house or any other occasion.

In cross-examination she said that she was arrested on the 4th of August 1979 on a Friday night at approximately 01h00 - and then she said yes it was on the 4th of August. She then described how she was arrested and how the police

CAME INTO HER HOUSE and how she was awoken by her mother. She was cross-examined up to lunchtime and when the Court resumed after lunch she was asked what she had done during lunch and whether she had seen any of the other witnesses and whether she was able to converse with them. She admitted that she was in their company in the morning but she denied that they discussed the case at all. She said that the only fact that she objected to was the fact that she was locked up. She was then, or her attention was drawn to the attendance of a police officer in Court 10 and she was asked whether she was scared of him. She said that she was scared of him because he was a policeman, and that she was scared of all policeman, but that he did nothing to her.

She was then asked whether she would want this policeman to leave Court, she said that she did not want him to leave Court. She was biting her lip and she admitted that she was blinking her eyes and that she was about to cry, and that she started crying. She was asked why she was crying or whether it was what the policeman did to her, and she said no it was not, because of what he did to her. 20

The case then stood down, and when she felt better afterwards, she was again asked whether she was scared of the policeman, and she said she was scared of all policeman. She was not scared on the 4th of August when she was arrested. She didn't know what they wanted her for. She had done nothing. She then said that she had a reason to be scared of the police, and one must fear the police, but not for anything she had done, as she was only generally scared of police. At Protea she said she was questioned by the policeman when they were alone. He asked her where she was staying and 30

she replied, and he asked her where she and Thobi - that is accused No.2 were going to, she denied and said she did not know of any place where they were going to, and he told her not to talk rubbish. He threatened her with assault and she then told him the police did not assault her. As a result of what the police did to her by taking her away from home and then starting to threaten her or doing nothing as far as she was concerned, she was upset, and just by going over it she says it was enough to make her cry.

First of all the police at Protea asked her where she and accused No.2 were going and she said nowhere. This policeman then got up from where he was sitting, he moved towards her and threatened to assault her, and then she started talking and she then told him. He also said that he was going to slap her in her face, and then she started talking. Yes she said, she was terrified, as he was a big man. When she started telling him, the policeman said to her "You are not telling me everything" and then she started telling him everything. Everything about accused No.2. He also asked her about accused No.1 on another occasion. 10 20

She was terrified she admitted when she told him, and she told him all this to avoid being assaulted. She said that she was prepared to tell him everything or anything to avoid assault, and the statement was then written down. She was only threatened three times that day.

She was in the witness box all day, and the case was then postponed to the next day when the cross-examination continued. When she saw her mother she did not tell her that she had been threatened with assault because she was too happy to see her mother. ~~She stuck to her story right through~~ 30

Notwithstanding the fact that she had been asked many times about it, that she had not been assaulted at all.

It was then put to her - it is better to put it this way - she was asked whether she knew Eric Nglomu and she said yes, she denied that he was ever her boyfriend, nor did he introduce her to accused No.1. She went to see accused No.1's sister Bella and then she went there on many occasions to buy atja. Then the accused's grandmother said that she must go in to see Della who was ill. She also knew Thabosile as put to her, and admitted that she was accused No.1's 10 girlfriend. She denied that she asked accused No.1 in February 1979 to be his girlfriend. She denied that she saw Thabosile about this, and she denied that she and Tabosile went to see accused No.1 about that, and she knew nothing about accused no.1's allegation that he said he didn't love her.

It was then put to her that she was telling a lot of lies or her evidence is a pack of lies, and she denied this. Accused No.1 said to her "Listen to this record" and he then put it on, yes it was right out of the blue that he said that to her. The record looked purple to her, she did not see the 20 cover she said, it was just lying on top of the other records. The one side she saw was purple, and that is the side he played, and she was quite sure that it was purple.

Then later in cross-examination she said she didn't say that he played only pieces out of the record, he in fact played the one side of the record. Whilst the record played he did not speak to her. She could remember she said some of the songs played to her and she repeated it in Zulu.

Then she said she was cross-examined why she didn't say this in evidence in chief, and afterward she said she could not — 30 —

reply because the advocate was trying to catch her out, because of lots of things.

She did not agree to go for military training to Botswana. Accused No.1 never spoke to her about Botswana and he never discussed any political or student affairs with her.

She was also cross-examined at length by Mr. Mailer, he went over a lot of the same questions asked by Mr. Basslion.

She admitted that she was kept in isolation all the time, and saw then only the police and the warders, and sometimes the Magistrate, and she was then questioned about her belief regarding her release, and she then said that she did not say the day before that her release depended on the Magistrate, and she said that because she says that the question was asked in a different way. She first of all said that she heard this from other people talking in the street, then she said it came to her whilst she was asleep the night before. 10

She said that the man who threatened her with assault did not say to her that she may not differ from her statement when giving evidence. She also admitted that she had no political potential. 20

In re-examination she said that the evidence she gave was about the facts which happened and she didn't give this evidence just to satisfy the police.

SOPHIA KUNENE was then called, she testified to the effect that she was the mother of Monica Kunene and said that she was born on the 10th of April 1962.

She was cross-examined to a great extent about this age of this witness. It was not necessary to deal with it. 30

IN THIS Judgment.

The next witness called by the State was ERIC NGLOMO. He said that he didn't know when he was born but that he was told that he was 17 years of age. He knew the two accused as they were both his cousins. He was then at the request of the State warned in terms of Section 204 of Act 51/1977. He said during the Easter week-end of 1979 he went to the house of his Grandmother for the first time. Now his grandmother was also the grandmother of the two accused. The two accused stayed with his grandmother. He arrived on the Saturday and left on the Sunday. He, at a later stage, went there again but he could not say how long after the Easter-weekend. He also went to visit his grandmother, both the accused were present, and she visited his grandmother for the week-end. He saw a recordplayer which was used. Dancing records and Freedom songs were played on this record player. He could hear what was sung and then he repeated various sentences in the Black language. Then he said he only heard the two songs, but he heard these on numerous occasions. This happened on the Sunday of the second visit. Accused Nos.1 and 2 were present with him. Accused No.1 played this record for him, and accused No.1 then told him that they had sung that song. Accused No.1 said that they were travelling in a bus and whilst doing so they sang it in the bus. He was then showed the album EXH.1 and he paged through it in Court. This album he saw on the third visit to his grandmother. He took a letter for his sister who lived at Zola at the time. His mother sent him with the letter as his mother wanted from this particular sister. He slept at his sister for the night and he returned on the Wednesday.

On his third visit he again saw the accused and he slept one night at his grandmother's place. When shown the album, he was told to page through it and to look at the photos as their photos were also in the album. First of all accused No.2 showed them the album and the second it was shown to him by accused No.1, and this all happened on the third visit. When accused no.2 showed him this photo-album for the first time he said that their photos were in the album. By that he meant, his photo and that of his friend. When accused no.1 showed him the album, there was no discussion. 10

Towards the end of Winter, he and accused No.1 were arrested in Brits, as they were walking along the road. The Monday when he came to his grandmother, accused no.1 was not present, and he then left to his sister Zola and he spent the night there. The Wednesday when he returned, to his grandmother, accused no.1 was present. He had returned from the soldiers at Lenz. This was on the third occasion. Accused No.1 told him then that he wanted to become a soldier. He however went to Lenz, and when he returned, he said that he did not succeed in his applicaiton. 20

Accused no.1 then said to him "come let's go to Botswana" Then he said that he should accompany accused 1 and 2 to Botswana. The purpose of going to Botswana would be to go to school to study. He then asked accused No.1 who would be paying schoolfees, whereupon accused No.1 said they would receive free education, and he further said at the same time you can join as a soldier. During the week they would be at school, and over the week-ends they would receive training as soldiers. He then asked accused No.1 how these soldiers looked and asked him whether they looked like the soldiers — 30 —

at Lenz. Accused No.1 then said to him no he would tell him along the road. He also told him not to tell the parents. He asked him why, and he said they must not tell them. He again asked him why shouldn't they tell their parents that they were going to Botswana to go to school, and he said no it is best not to tell them because they would feel bad. When all this happened, he and accused 1 and 2 were present. Accused no.1 then asked accused no.2 whether he was willing to come along, and accused 2 replied and said that he would be glad if they could all go. They all then left, first of all 10 they went to Orlando and there they looked for accommodation for the night. The people however refused them accommodation and they then went to a teacher and she said that she couldn't offer them accommodation for the night, but she gave them R5 as she said she knew how difficult it was for- to obtain sleeping accommodation for the night. She also gave them her address and said they must write to her.

After they left this house, he asked accused no.1 for how long they should still walk around before catching a train, and accused no.2 then said they should rather go home 20 to go and sleep for the night. This was agreed to by all of them and they went home and they slept. When they arrived home, they were asked where they had been, and accused no.2 replied and said they had gone with accused No.1 to Lenz.

The next morning accused no.1 said to his grandmother that accused no.2 and Eric were accompanying him to Lenz.

Thereafter the three of them left for the station. On arrival at the station, that is the railway station, accused No.2 said that he wasn't going along anymore. He then returned home. He

and accused no.1 then caught the train to the City. In the 30

City they alighted and accused no.1 said that he must wait there whilst he, accused No.1 went to his mother to ask for some money. Accused no.1 said that he would tell his mother that he needed money for a bush jacket. On his return, accused no.1 said that he was given R5 by his mother, as she did not have much money. He then suggested that they should go to Natalspruit to see his girlfriend and that they could sleep with her that night. They then went by bus to Natalspruit, and when they arrived at the girlfriend's house, the girlfriend's sister was asked by accused no.1 where 10 her sister Thani was. The sister then said that she was not there, and that she had married a while ago. Accused no.1 then said that he had not seen her for 18 months.

They then left for the Natalspruit Railway Station. There accused no.1 told him that they were now on their way to Bronkhorstspuit. On a farm where there is a school where they could sleep for the night. They didn't alight at Bronkhorstspuit, but in Pretoria. It was already after sunset at nighttime, and they took a bus to Marabastad. They alighted at Marabastad, where they caught another bus to another 20 location. At this location they asked for sleeping accommodation but the people refused to give them accommodation. They then saw a school and they went there. At the school they found two Black boys writing on a black board. Accused no.1 then asked these two boys whether they could sleep there, and the boys then left them there. The two of them slept there until the next morning and then they went to look for a bus stop. At the bus stop they met another man who accused no.1 asked where the Railway Station was, and then explained to them that they should get off at the other side of Brits and

that is where they would find a railway station. The man said that from that busstop they must take a taxi to Garankura, and at Garankura they should take another taxi to Smalltown, and from there another taxi to the town. On their arrival at Smalltown, accused no.1 sold one of the records for R3, they then caught a bus to Brits. At Brits they alighted, and here they met some girls. Accused no.1 enquired from them where the railway station was. The girls then said that they should accompany them and they asked them where they were going, and accused No.1 replied that they were on their way to school at Botswana. At the station, the police stopped them and they asked them for their reference books, they also asked them from where they came and what they were looking for in this particular town. Accused no.1 explained then that they came from home or from where they had fetched money to use for their schooling in Botswana. They asked accused no.1 for his reference book and he then said he didn't have it with him. They then, left him as he was a school child. They then took accused no.1 away and they left him there. 10

Whilst accused no.1 was away, he had a discussion with the girls and it was then suggested that he should go to the police station to obtain money from accused no.1 to go home. On arrival at the police station, the police found the photo album, EXH.1 and a long playing record, EXH.2 in his possession, and he was then locked up. The exhibits found in his possession were then identified, EXH.1 was a photo-album, and EXH.2 was a long-playing record, EXH.3 was a cover and EXH.4 was a record with a cover, EXH.5 was a 7-single record entitled Greece without a cover. Accused no.1 he said ~~carried the other luggage and he was requested by accused no.1~~ 20 30

to carry these. The record EXH.2 he saw for the first time at his grandmother's house on the second visit and that he heard then when it was played to him. The atlas EXH.6 he saw when accused no.1 used it to write down the names of the places where they should alight on their way to Botswana. After they had been locked up at Brits, the police from Pretoria fetched them and from there the police of Protea fetched them.

On the way to Botswana or to Brits, the accused no.1 told him where they were going. Accused no.1 said that they were going to train as soldiers and they would then come and fight for Soweto. He then asked accused No.1 whether they would soldiers as the soldiers at Lenz, and accused no.1 said no they would be soldiers of terrorists and they would come back to kill the Whites. 10

He was not going to school, in fact he had never been to school, and he was not working as he had been injured.

In cross-examination he said that he had met accused no.1 after Good Friday in 1979. He could however he said not remember quite well whether it was a good Friday or whether it was just a long week-end, but this was a long time ago, but it was definitely the long Easter week-end, and he thought it was on the Saturday of the week-end. He was asked whether he had seen his statement whether he had made it, and he said no, but he said that he said that he referred to the first, second and third visits in his statement. 20

He couldn't remember the date on which he made the statement, but it wasn't long after his arrest. He thought he was in custody since 1978. He didn't know the month but the people told him it was Winter and now it was Summer. 30

This witness started giving evidence on the 23rd of January 1980, and the case was then postponed until the 24th of January 1980, and the cross-examination - He was asked again in cross-examination the sequence of his arrival and his visits to his grandmother. This was a repetition of the evidence of the cross-examination the day before. He was again asked whether he saw his statement after his arrest and he was taken over the period of his arrest and when he made this statement again, he said that he remembered the day before and that he had now forgotten, but nothing he said 10 happened to him since the day before.

Not long after that he was asked again to repeat the whole sequence of his visit to his grandmother, then he said that he did not mention his mother or his sister the day before because he did not fully understand the questions.

He said that he saw some documents or pamphlets whilst at the house of the two accused and that he was shown these by accused No.2 and told that they were political papers. He didn't mention it previously because it slipped his memory. He said that he could not read he had never been to school. 20 He understood a little bit of English he said. Accused no.1 played the Freedom Songs to him on the second visit. Before playing the record, accused No.1 said to him that he must listen to the record, and that he would enjoy it, and at the time accused No.2 was present. Accused No.1 said that he and accused No.2 and other children sang the songs in the bus, and then he said he also said that the bus was stopped and the driver had to get out because they pushed him out and that they were singing Freedom Songs. They were passengers in the bus and they broke the windows of the bus and that was how 30

THEY - AND THEN he was driving the bus. They took the bus from the driver and accused No.1 then drove the bus, that is what accused no.1 told him.

Accused no.1 he said was not present when accused no.2 showed him the album, but at a later stage accused no.1 also showed him the album. After accused No.1 played the record and showed him the pamphlets, he left.

Both of them showed him the pamphlets. He was not here to tell untruths and he did not tell any lies. Then he said he admitted that he had told some lies.

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He was then for the third or fourth time taken over the sequence of - during which the record was played to him. He was asked about the colour of the label of the record and then he said it was blueish but as there was not much difference between the colour of blue and green in the Black language, he was asked to point out the colours, and he pointed out that it was green.

He did not want to become a Terrorist but that was a word that accused No.1 used. He never heard the word Freedom Fighter and that was not the word used by accused no.1. 20 He was then asked again about the sequence of events and then he started telling the whole story over again. That was from the time that they left the grandmother's house on the Wednesday-afternoon. He was then left to tell the whole story, and he told the whole story as he did in his evidence in chief.

He said that when they arrived home, after they had been to Orlando, accused no.1 enquired from accused No.2 where his friend was, and accused no.2 then said that - I just
~~want to go back to that - Accused 1 sent accused no.2 to~~

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tell his friend or to call his friend, and accused No.2 then left. And then accused no.2's friend came. Accused 1 then asked accused's 2's friend if he did not want to go and require education in Botswana, and the friend then said that he would see in the morning. The friend left and they went to sleep. The next morning when they woke up, accused 2's friend did not come as he promised, and accused no.2 then left to call his friend. He was away for a long time and then accused no.1 sent him to go and call accused no.2, and when he came back with accused no.2, accused no.1 asked 10 where his friend was. Accused no.2 said that his friend was no longer interested in leaving and that he would come next year. They then all left for the Kliptown Station, and at the station accused No.2 said that he was no longer leaving, and that was when he and accused no.1 boarded the train.

The girlfriend's name at Natalspruit was Thandi.

The cross-examination lasted all day, and the case was then postponed to the 25th of January 1980, on which day the cross-examination by Mr. Basslion proceeded. The Court will however stop at this stage, as it is almost twenty- 20 to-four, and we will proceed again from here tomorrow morning.

- COURT ADJOURNS -

ON RESUMING ON THE 25/7/80 :

JUDGMENT (Continued) BY THE COURT: When he returned this is now Eric Bglomo in cross-examination, he said that when he returned from his sister, accused no.1 was not there as he had gone to see a friend, but when he came back he called him and he and accused No.2 were together, he asked him - that is accused no.1 asked them, that is him and accused no.2, whether they wanted to go with him to Botswana for education. 30

He then repeated how he asked him who was going to pay for the schooling and then accused no.1 said it was a free school and that they were going to attend school free of charge and over the week-ends they were going to be engaged soldiers. He asked him what kind of soldiers they were or what he was talking about, and whether they were the soldiers like the soldiers at Lenz, but accused No.1 said he will not tell him now, he would tell him later, as there was still a long way to go. This gym he said was going to be in Botswana but he didn't know whether it was going to be at the school. 10

On the few occasions he was asked whether he would like to refresh his memory from his statement, and then when he said yes, the State was invited to hand him this statement. On all these occasions of course the State refused to oblige.

At Bronkhorstspuit, accused no.1 told him that, after he had asked him again what type of school they were going to, he replied that they will become soldiers to come and fight for Soweto against the Whites.

The friend of accused no.2, who he was referring to 20 was Msito, and he then added that they were going to be soldiers for terrorists. When he made this statement to the police, all he did was to write his name, as he was taught to write his name and that was the only thing he could write. He denied that he was mentally retarded. He said that nobody told him what was said, and that he would not just tell a story what he was told to obtain his release.

Accused No.2 was not the one who asked him to go for Military training but accused No.1 was the person.

Accused No.2 was the person who showed him the pamphlets, and

he said to him that these were the pamphlets for the Black Power. He did not mention Military Training. He did not see the police assault accused No.1, the police did not assault him and they were not assaulted, that is now at Brits. He was present all the time and he denied that either him or accused no.1 were assaulted by the police at Brits.

It was suggested to him that he was told this story, or this story was suggested to him by the police so that he should implicate accused no.1 and if he did not they would lock him up, and he said that they did not tell him anything to tell about accused No.1. 10

He said he gave the police all the information about accused nos.1 and 2 on the Friday night, and he couldn't say why they interrogated him further about the same matter. All he could say was he had to repeat everything again.

Accused no.1 didn't tell Msito about the unlawful purpose of going to Botswana, because he told him the same as he had told him, Eric. Msito also asked accused no.1 what kind of school they were attending, and as to what kind of soldiers they were going to be, and accused no.1 said they would become soldiers like any other soldiers, but the purpose was not disclosed. 20

The next witness was Leonard Ntuli, and as his evidence was discredited, the court decided that it would only be a waste of time to summarise his evidence.

It is also not necessary to sumup the evidence of Constable Nortjé. ^{Next} He was the person known as ^{Ntuli} Nonla

After cross-examination, it became clear that this witness was totally confused and the Court asked him at the end the following question : "Your evidence given in chief, 30

is it true ? Untrue or are you so confused that you do not know. His reply was "Yes I'm so confused that I do not know whether it is true or untrue." For this reason the Court decided not to summarise his evidence.

The following witness was ZOLA Maengi. He deposed that during 1978 he was at Garanbula school, and that he and accused No.2 attended the same school. He also knew accused no.1. During 1979 he was at another school, in Soweto, and accused No.2 didn't go to school at that time. He saw accused no.2 during July 1979 when he was on his way to school. They then spoke to one another and whilst conversing, accused no.2 asked him whether he wanted to go to Botswana with him. His words were "Wil jy saamgaan Botswana toe?" He then replied "No" as he was still at school. They visit one another occasionally, and one day when - whilst he was visiting accused No.2 accused No.2 played him a record. This was a political record. He said this because of the words on the record "We are angry for Africa" Accused no.2 also showed him an album on the same day and he said it belonged to accused no.1. At the time Mandla, Jerry, accused 1 and no.2 were together. He showed him the album, accused 2 did because his photo appeared in there, and he identified this album as EXH.1. He then pointed out accused No2's photo in this album. 10 20

Accused No.1 then said "Kom ons gaan, daar is 'n huis wat ons moet gaan bom" and they all then left. Whilst on his way to the shop at a later stage, he met accused no.1 again and also accused no.2 said to him or asked him whether he wanted to come across the border to Botswana and to become soldiers as Freedom Fighters. He met accused No.1 on the way 30

to the shop and accused No.1 asked him whether he didn't want to go to Botswana. He then told him that he was still at school and declined that.

When he met accused No.1 on his way to the shop it was during July 1979. He said that he was known as Zola. And he was known by that name at school. During 1976 he was the first person who was shot during the riots and everyone knew because his picture appeared in the papers. He was mixed up between accused nos.1 and 2 and he said at this stage it was only now that he realised who was referred to as accused no.1 and who was referred to as accused no.2. And he then said that he was attending school with accused no.2. Accused No.2 was known to him as Thobi, and he referred to accused No.1 as Zana. He was as all other witnesses, asked whether he knew the policeman sitting next to the prosecutor, and he said he did not know him. 10

MZWANDILE MKEFA was the next witness. He stated that he stayed at Dhlamini No.2 with his parents and that he was 18 years old. He knew both the accused as they live in the same Township with hi, During July 1979 he had been to the house of accused No.1 more than once. He went there to visit him and to listen to records. He once listened to a record there and he asked them if he could borrow some records. These were two long-playing records entitled "Heavyweight" and "Lie to me" Accused no.1 lent him the records, and accused-no.2 accompanied him out of the house. At the gate, accused no.2 asked him if he was not keen to go with them and he said well it could happen that he could go with them. Accused No.2 in fact asked him if he could go to Botswana with him , and he asked accused No.2 the reason for wanting him to go to — 20 — 30

Botswana, and accused No.2 then said that they are going for Military training and he then told accused No.2 that he wouldn't go with him for Military training as he was still pacing his studies, and accused no.2 then remarked 'you were still busy with your studies with your Bantu education after all, and he then told accused No.2 that Bantu education was better than no education, and that he would rather have a little education. It was then that accused No.2 returned and went into the house again. They had no further discussion. He only returned to the house when he returned the record, and they did not have a further discussion. 10

He was then referred in cross-examination to the policeman in Court, and he was asked whether he wanted him to leave the Court. He then said the policeman was in charge of the case, and that when this policeman was present in Court, he was not free and he would like him to leave. And the officer was ordered out by the Court. He then said further in cross-examination, that the prosecutor interrogated him and said that he was his attorney and that he was representing him, and that he must tell him anything what Thobi said to him and what happened during the time of his detention. 20 He then gave him the same statement as he gave in Court.

He told the Prosecutor about his treatment by the police and in detention, and that was also in his statement, namely that he was badly treated by the police, and the prosecutor questioned him about that.

He was only detained he said for 10 days, he was arrested on the Friday and he was released the next Friday. He knew 30

Lieut. Claassens, the police officer in charge of this case, and he said that Lieut. Claassen participated in his investigation. Lieut. Claassen also took part in the interrogation. At this stage Lieut. Claassen walked into the Court and he was then asked whether he would be happy with Lieut. Claassen's return in Court, and he said that he wouldn't be because he wouldn't feel free, and Lieut. Claassen was then ordered to leave the Court. He said the police possibly thought what he was saying in his statement was not the truth, because when questioning him and assaulting him, at the same time he made the statement, he was being slapped in the face, and whilst he was squatting, the policeman would tramp on his toe. Lieut. Claassen was furious with him at the time of the interrogation, and after his release he showed sympathy. He became concerned about his injuries. He was not told what the consequences would be if he told the Court about the assault. He did not know that he was going to give evidence. Then he said that the prosecutor told him that he was the prosecutor and he identified Mr. Hattingh, the prosecutor, in this case, and he identified a Mr. Theron and Mr. Claassen who assaulted him. He was falsely implicated by his co-detainees, in fact the police told him what accused no.2 accused him of, and then he made a statement. The police did not make suggestions to him. The police made him stand against the wall. He said that according to the allegations put to him by the police accused no.2 was supposed to have been recruited by him for training. He was not lying he said when he told the police that accused No.2 tried to recruit him.

and previously Protea, said that he played the long-playing record, EXH.2 and he made a translation of this which he handed in as EXH.C. He said he translated it from Zulu to Xhosa, and from ZULU and/or XHOZA to English, as these were the two languages used in this record.

He was attacked in Cross-Examination about his knowledge of the two languages, and about his qualifications as a translator. Hereafter MACDONALD CHITJA, a senior interpreter of the Johannesburg Magistrate's office acting as an interpreter, with 18 years experience as an Interpreter, 10 in South Sotho, Xhosa, Zulu, Tswana, deposed that he listened to the record and he looked at the translation EXH.C. He then went into the translations and he said that he was happy with that translation. He was also cross-examined about his ability to translate properly, and the Court did not find it necessary to summarise the cross-examination in this regard.

At this stage the State's case was closed, and Mr. Mailer applied for the discharge of the accused No.2. This was refused and the case was postponed till the 21st of 20 July 1980 for the defence case to start.

On that day ACCUSED NO.1 was called as a witness. He deposed that before his arrest he lived with his mother in Dhlamini no.1 Soweto. With his mother lived his grandmother, his sister and his brother. Accused No.2 was his younger brother. Before his arrest he was not employed. He left school during 1978 in December, he was then in Form 3, which he did not pass. He had to leave school as his mother could not afford to keep him at school any longer. He denied that he attempted to recruit accused No.2 to undergo training or 30

as alleged in the charge sheet. They never discussed amongst them training or undergoing training or politics.

MONICA KUNENE gave evidence, he knew from Dhlamini. She was a friend's girlfriend. He never tried to recruit her for training, nor did he discuss any politics with her. He denied that he played the record containing Freedom Songs for her. She was in her house when the record was being played. When she came to his house one day she found him busy playing the record. He also knew the witness Eric Ngloma who was his cousin. He told him that he intended joining the S.A. Army . This happened in 1979 but he did not know the date or the month. He had been trying for a long time to obtain employment, but he was unsuccessful, so he thought it would be a good thing if he could join the Army. 10

The photo-album, EXH.1, he did not show to Eric, nor did he play the record, EXH.2 to him. All he did was to play this record for himself. Accused No.2 never showed him any political documents. He never saw Eric reading. He never discussed any documents with him nor did he show him any documents, nor did he tell him that these documents were of a political nature. He denied that he attempted to recruit him and he denied that he ever told him that he intended going for training. He remembered the evidence given by Eric regarding the trip to Botswana. All that happened was that he told Eric that he was going to Botswana to his sister's place to attend school, whereupon Eric said that he also wanted to go with him. 20

Eric did not ask him about this school, nor did Eric ask him who would maintain him. He did not tell Eric that over week-ends they would attend gym to train as Freedom 30

Fighters. He denied that he told him that the soldiers he was going to be - not be like the South African Soldiers but like terrorists. He did not tell his mother that he was going for schooling, as she would not have allowed him to go. Accused No.2 was not going with him. Leonard Ntuli or Msito, he knew, but he was not supposed to come with him. He denied Eric's evidence about him asking Msito to go with him. He did not attempt to recruit Msito, for training. He knew Timothy Mandla and he was a friend of his, but he did not recruit him or incite him or do anything as alleged in the charge sheet. He also did not show him the album EXH.1 nor did he play him the record EXH.2, not did he discuss any political pamphlets with him. 10

Dada Nodengi, he also knew. He was a friend of accused No.2. He did not show him the album EXH.1, nor did he discuss any politics with him. Mswandile he also knew as he also was accused's 2's friend. He did not recruit him, nor did he play the record EXH.2 for him, nor did he show him the album, EXH.1. The record EXH.2 was his record and his property, he had it for about two years. The album EXH.1, was his friend's. He 20

had it he was sure for approximately four months before his arrest. His friend ~~lended~~ ^{lent} it to him as they used to borrow each other's books. He has never left South Africa's Borders, he had never been to Botswana nor did he tell any of the witnesses so, he was 21 years of age, his date of birth was the 29th of June, and he turned 21 recently. His father died many years ago, but he did not know when. He never had the intention of undergoing training in the Republic or in any other Country for the purposes other than the South African Army. 30

In cross-examination to Mr. Mailer he said that two of his sisters lived at home. At the time of his arrest accused No.2 was at school in Standard V. He had custody and control over EXH.1 and 2. That is accused no.1. On the record there were also love songs which had nothing to do with Freedom Songs. Some of the tracks are love songs and some are Freedom Songs. The clenched fist-sign on the photos is the Orlando Piriate's sign with the elbow bent. The BLACK POWER -sign is a clenched fist with a hand extended forward. The marked photo marked 'A' in exhibit 2 was 10 a photo of his brother accused No.2, and there was he giving the Orlando Pirate sign. It was a notorious sign in Soweto.

Accused No.2 did not know that he was going for any other reason but to go to his sister.

In cross-examination to the prosecutor, he said that his grandmother was the owner of the house, and that his mother, and brother's and sisters worked at the time. Samuel and Theopolus both worked, and Samuel had worked at Cruises for Lexington. He didn't know where Theopolus worked.

Sister Stella worked somewhere in the City in a 20 restaurant and she was the only sister working. At the end of 1978 five of them were at school - Watson, Cynthis, Watson is accused No.2, Sipo, Cynthis, Elizabeth and they were helped by the other brother's and sisters.

As a result of the fact that his mother had to pay for the other children at schools, their financial position became precarious. Two of the younger children started school in 1977, they were then 6 and 7 years old. Then he said he did not know how old they were but they were not older than ten.

Elizabeth and Cynthia started school in 1977. Sipo was the one who had to go to school and that is why he had to leave school, he was then under 8 he started in 1978. -- He knew Monica for a long time, as she was Jerry's girlfriend.

He was embittered towards his mother because he still wanted to study further, but he understood the position that she could not keep him at school because she could not afford it. He started looking for work in January 1979. He worked in Fordsburg at National Hut for R14 per week but as a result of the retrenchment of staff, he was sacked at a later stage. He looked for work at a bioscope in Fordsburg as well as at different shops, but he was unsuccessful, and then he applied for enlistment in the South-African Army at Lenz. He approached the Military Police, and they then said that he had to write to Pretoria, and he applied to Pretoria and he was very keen to join the Army. He received a reply and then they requested him to attend a test at Lenz. He did this test during November at Lenz.

Then he said he only received the result three months after he had decided to go to Botswana. Then he said again that he did the test the one day and the next day he was told that he wasn't successful, and only after he had heard that he wasn't successful did he decide to go to Botswana.

This was the 1st of August, he remembered it well. and he made a mistake when he said November. He didn't know for how long Monica was his friend's girlfriend, but he knew that in 1978, and she was his girlfriend until such time as she was arrested. There was never an association between him and Monica. She however tried to start an association with him, but he refused, this was in October 1978, and she had a grievance

against him because he refused to have anything to do with her.

He alleged, he said that Mandla gave false evidence as instructed by the Security police. It was suggested to him by the Security police and it was untrue.

He was then questioned about his brothers and sisters and he gave a total of nine. The record EXH.2 he bought from another man for R5 at the Kliptown Station. This was during April 1977, and he paid R5 for it. This man told him that this record contained Freedom Songs. He liked Freedom Songs because it was music. He liked all types of music. The labels as at present on this record were on at the time. This is an ordinary black record with a green circular label on either side, and on both sides it has "SPRINGBOK HITS OF THE YEAR - SERIES 3, VOLUME 2" and then it gives a number of songs; on the other side it is "SPRINGBOK HITS OF THE YEAR - Series 3, VOLUME 2" NBM 3492. These labels he said were on the record when he bought it, and according to that, the record contained Springbok Hits and when he played it he found that the contents did not agree with the contents as given on the two labels, and he couldn't give an explanation why these labels were pasted on the record. He didn't know whether this record was obtainable on the free market. At this stage he said he was tired and he wanted to sit down, and when cross-examined by the prosecutor about this, he said that he would refuse to answer any further questions until such time as he was allowed to sit down. He was allowed to sit down and then he started answering questions again.

He admitted that

Eric he says must have seen the album because he had possibly taken it himself. He did tell the Advocate that it was kept in the sideboard amongst other albums, but when he did so he possibly made a mistake. He forgot because he forgot. When he was asked to explain about the reason for forgetting, that is all he would answer. He was then questioned about the album, and the different pictures were shown to him.

The index he wrote up and that was certain songs which he - the titles of certain songs which he wrote in there. 10 He obtained these out of a book but this book got lost in the meantime. The owner of the book Vuzi, in fact asked him to write the index in on his behalf. He met Eric in 1979 for the first time, and his mother was the sister of his grandmother.

Eric stayed there three days before they left for Botswana. He admitted that they had this album since 1978, and he was then asked why he said he had it four months in his evidence in chief. He said he didn't know and then he said he had forgotten and when he was pressed for an 20 answer he said he forgot because he forgot, and that was the only answer he would give because he said a mistake is a mistake, and he couldn't explain why he in the first instance said he had it for four months.

On Wednesday night, before they left, Eric told him that he was accompanying him. He was prepared to carry Eric's cost or to pay for him on the trip to Botswana, because Eric asked him whether he would be prepared to do so. He was in Form 3, Standard 8, but he didn't pass, so he would have been away for at least 3 years in Botswana because he 30

wanted to pass his matric. He knew nothing about the Botswana Schools, but he heard that they were much better than the schools in South Africa. He grew up in Xhosa, and he also knew Zulu. He heard that they spoke Zulu in Botswana. He did not discuss the matter with Eric about who was going to finance his schooling in Botswana. He denied that they went to Orlando, the Wednesday afternoon and the Wednesday night to look for accommodation there. He also denied the evidence of Eric regarding the teacher who allegedly gave him R5.

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His grandmother was at home when they left on the Thursday morning, but he told her nothing, he just told her that he was going somewhere and he was coming back, and then he was asked why he was not prepared to give an explanation to the Court and he said well he was not prepared to give the Court any explanation because he did not want to.

At home he and accused no.2 were friends, but they never went around together. They took the train from Kliptown to Faraday and from there they went to Natalspruit. He denied that he went to see his mother to obtain money from her by saying that he wanted to buy a bushjacket. He said Eric was lying about this because he had been assaulted. The police at Protea gave him a fright.

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From Pretoria, on their way to Protea they were assaulted, and at Protea they were kept in different offices. He couldn't explain why his Counsel denied to Eric that they called at Natalspruit. He couldn't explain. Eric didn't take any clothes with him. Eric carried EXH.1 and 2 on their arrival at Brits, and he carried his clothing in a paper carrier. He took the record - EXH.2 with him, as he didn't want it

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to get lost. He only discussed this journey with Eric and with no one else. The names at the back of the atlas, EXH.6 he wrote on there during his journey. He took the album with him and he was going to give it back to Vuzi on his return from Botswana.

In re-examination he said he didn't know where the record - EXH.2, was made. He denied that he sold any records on the way as alleged by Eric to obtain money. He said he declined to answer the question of the prosecutor because he didn't remember what the question was. The advocate then 10 repeated the question to him, and then he said well what he was thinking about was something to do with the case but not with the question. The train to Pretoria went through Germiston and Natalspruit is near Faraday from where they travelled by bus. He said that the detention in terms of SECTION 6 affected him as he was in isolation on his own and he had no contact with any family except the police, and he was kept for two months. He was sick he said, he didn't have the necessary equipment for washing, he got liquid food, he didn't even read the newspaper, and he was not given that, and 20 it effected him mentally, and his memory was also effected as a result of that, isolation in detention.

ACCUSED NO.2 also gave evidence in his own defence. He stated that he was 18 years old, and he turned 18 on the 23rd of April 1980. Before his arrest he attended the Motlalane School in Dhlamini, and he was in Standard V. But for his arrest he should have been at school, and the month preceding his arrest, he was at school. He had no desire or reason to leave South Africa. He denied all the allegations as alleged in the charge-sheet. He knew Monica, he denied 30

that he told her or he asked her to become a nurse in Botswana. He did not invite, or assist the other witnesses to receive training in Botswana.

Accused No.1 did not invite him or solicit him, require him, or command him to undergo training in Botswana or anywhere. He was arrested on the 3rd of August 1979 and he was kept in isolation in terms of Section 6 for two months and one day. During that time he saw no one. Before that he had never been alone in the room for so long, and the isolation effected him badly. It disturbed his brains 10 and he did not get nourishing food. He was disturbed as he was used to get proper food at home. If released he would go back to school.

In cross-examination to Mr. Basslion, he said that accused no.1 did not at any stage attempt to recruit him for military training, and he never discussed any politics with him.

In cross-examination by the State, he was asked to recall all his brothers and sisters, and he did so and he named ten of them, including sister Tksie who was the 20 sister mentioned by accused No.1 as living in Botswana.

Then he was questioned about his allegation in his evidence in chief about his brains being disturbed, and he said this was because he was kept in the jail. Then he said he didn't know how to reply to the prosecutor, but he was disturbed because of the detention at jail. He denied that he in his evidence in chief alleged that he was disturbed because of the isolation in detention, so that he could have a reason should he find difficulty in his cross-examination. Nothing went wrong with his brains, 30.

and the only case that he had been detained in the jail, and that effected his brains, and the only trouble was that he had been detained.--He was then asked what his detention under Section 6. had to do was the charges against him. Then he said no he wasn't talking about Section 6 detention, he was talking about detention in jail.. He remembered he said that the case was postponed in Court No.17 for the first time, and that the same Prosecutor appeared, and that he was detained at the Fort after that. That was the first time he landed at the Fort, and he was then not under Section 6 anymore. 10

He repeated himself again., the detention in the Fort effected his brain and not SECTION 6, detention. He objected because he was called a terrorist at jail, he saw that on his little jail card, and he did not know what a terrorist was. His brains were to a certain extent effected in the place of detention, and it effected his memory. He could however, remember the things that happened, and then he said he could remember everything. Then he said he could not remember because he is sad, he couldn't see the smaller children anymore. 20

Accused No.1 he said left school in 1978 because his mother didn't have any money to send him to school. The sister living in Botswana her name was Tuksi. He didn't know where she lived, but he heard that she was living in Jerico. And he didn't know where Jerico was in which Country. He heard this from his brother Samuel. He didn't know that there was a Jerico in the Transvaal.

On the 4th of August 1979, Samuel and his mother were going to Jerico to go and visit his sister. He didn't know

what their address was because he had been arrested on the 3rd of August 1979. All they told him is that they were going to Jerico. This they said before accused No.1 had disappeared. Long before their arrest, this was mentioned by his mother and Samuel that they were going to visit his sister at Jerico. He did not know where his sister lived, and he was under the impression she had disappeared. He did not know whether she was married, but he heard from accused No.1 that she was married to one Radebe. He didn't know that he had a sister in Botswana. He didn't know whose atlas EXH.6 was, and then it was shown to him and he said it was his. The police asked him how many atlases were at home, he said he didn't know but he remembered two,- one belonged to accused No.1 and one belonged to him. He bought the atlas through the school. The atlas shown to him and which he claimed was his, was EXH.7. He was then shown the atlas and asked to look at the Index for the word "Jerico" and he then found it on page 17, where the prosecutor had made a red circle around it. He agreed that it was situated at the other side of Rustenburg, and that that was where his sister lived. 10 20

The Wednesday night he said accused No.1 was not there, and he didn't know where he was. He was busy washing. This particular evening, he was as before his disappearance the Wednesday night, he was at the soccer field, he left at 6 PM. - 18h00 and he returned at 8 PM. 20h00. He did not know where Eric was that evening. At 18h00 he was not at home, but when he returned at 20h00 Eric and accused No.1 were at home. He was in the kitchen where his grandmother was making coffee on the Thursday morning when accused No.1 came through the kitchen. Accused No.1 then said that they were going and

they

they were returning, and he saw accused No.1 leaving home. He told his grandmother and then he left. He was then accused by the Prosecutor of trying to adapt his evidence with the evidence of accused No.1 because at first he didn't say this, he said he did not see when accused No.1 left.

Whilst in detention he was visited by the Magistrate twice, and he told him that he wanted to see a doctor. He knew Monica for a long time, and it was possible that he met her during April 1979 in the street, but he denied that they ever spoke about Botswana.

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He denied that he and Leonard was then in the same company as Monica, but he admitted that both Monica and Leonard had been to his house many times. Monica always came to buy atja, and he said Monica was lying, he didn't see her at Protea. He didn't see that she was threatened or that she was told what statement to make. He shared the wardrobe with accused no.2 in the bedroom, and when he saw the album EXH.1 for the first time, accused No.2 was looking at it. He looked at it alone, whilst he was in the room and he then also went and he looked at the album whilst accused No.1 was looking through it.

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Accused No.1 didn't explain the different cuttings in the album to him. When he looked at the album, it was last year. They paged through the whole album and after that accused No.1 placed it in the drawer of the wardrobe. He never saw it again. Accused No.1 was busy looking at the album, and he just joined him and he also looked. He couldn't say whether accused No.1 was aware of the fact that he was also looking. He didn't sit down, he stood behind accused no.1.

He was asked to look at the mark page A in the album,

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and he then identified his own photo there, and he said that the man who appeared with him in the photo was Leonard Ntuli, and he did not know what his photo did in this particular album. This photo was taken last year during April. It was already taken before the Easter week-end. He didn't remember who the cameraman was, but the cameraman went past and they asked him to take the photo. At the time he and Leonard was together, were together and the photo cost them R1. He only took one photo and he didn't know how it landed up in the album. He had placed it on top of the wardrobe, and he didn't know how it was put in the album. 10

EXH.2, the record, accused No.1 played often, and at times he was present. Eric was never there when he was present, and when the record was played. He was never present when the record was played in the presence of Eric, and he was also never present when Monica heard the record. He only knew Eric since 1979, and he didn't remember whether it was over the Easter week-end. He wasn't aware of the fact that Eric couldn't have heard it. He was told he admitted, by accused No.1, that accused No.1 had gone to Lenz and that he told him that he applied to become a soldier. He was very enthusiastic of becoming a soldier, and he said that accused No.2 should continue his schooling and that he would assist him when he was a soldier. He denied that he ever played the record EXH.2 for Zola, and he lied regarding the fact that he allegedly asked him to accompany him to Botswana. He also denied that he showed Zola the album EXH.1, and he couldn't say why, for what reasons Zola was lying like that. He also didn't see him at the meeting at Regina Mundi. 20

~~NZWANDILE MKEFA visited him last year. He did not visit~~ 30

him often, but rather seldom. It was his custom to accompany him up to the gate when he left, but he had never spoken to him about going to Botswana, and he never mentioned the word 'Botswana' at all. He didn't show a pamphlet to Eric and on the 3rd August 1980 he was arrested. He didn't know since when accused No.1 had the record, EXH.2, he only heard but he never saw it when it was being played. He never played the record nor did he ever handle it. He only played the other records in the house, and he played all other records. He couldn't find the record EXH.2 amongst the other records. Accused No.1 had a lot of friends. He ~~id~~ not go with accused No.1 on the Wednesday night nor did he know anything about seeing a teacher. When accused No.1 said goodbye to her grandmother, he didn't see what he was carrying. He saw him walking but he didn't take notice of what he was carrying, nor what Eric was carrying. 10

Accused No.1 looked for work since April 1979.

In re-examination he said that he didn't know when the atlas was published and he had no personal knowledge where his sister lived. 20

This concluded the evidence on behalf of the Defence.

The State argued that the Court should accept the evidence of Monica Kunene, Eric Nglomu, Zola and Mzwandile, and asked the Court to reject the evidence of accused nos.1 and 2. The State motivated its application.

Mr. Basslion, on behalf of accused No.1, stated that the only witness implicating accused No.1 was Eric Nglomu, ^{as} and that Eric was an accomplice, the Court should in terms of the cautionary rule, look for corroboration for his evidence.

He alleged that there was no corroboration, and as a result 30

THE Court could not convict accused No.1 on the single evidence of Eric Nglomu.

He further argued that Eric's evidence should not be accepted due to the many contradictions in his evidence and the matter in which he gave his evidence, and that the Court should accept that his evidence was not acceptable and that it should be rejected as untrue and false.

He dealt with the evidence of Eric, and he also dealt with Monica's evidence and said that although she was not assaulted, she wanted to cry everytime when the interrogation was mentioned, and she should not be believed, and in any case she did not implicate accused No.1, whatsoever. All the other witnesses were assaulted and Zola was so badly assaulted that he lost an eye, or that his eye was damaged. Five out of the six witnesses admitted being assaulted, and accused No.1 said that his mind was effected by the confinement and treatment by the police. He asked the Court to accept the evidence of accused No.1 as the truth beyond a reasonable doubt, and he did not concede, and he could see no reason or no ground on which the Court could reject his evidence. 10 20

He then quoted a number of cases, regarding the cautionary rule and it is not necessary that the Court should repeat them here.

Mr. Mailer, on behalf of accused No.2, argued that the evidence of the State adduced in this matter was the worst evidence he had ever seen, or the weakest evidence he had ever seen in the State's case, or in a Criminal Case. He also said that the state attacked accused No.1 in cross-examination, whereas accused No.2's evidence wasn't attacked 30

that much. In the charge sheet he said it was alleged that accused No.1 recruited accused No.2, but no evidence to that extent was adduced by the State, and he referred to the Further Particulars, and then he gave a number of factors which the Court should take into consideration, in dealing with the charge against accused No.2. He said the demeanour of Monica should be taken into consideration - the fact that she wanted to cry. Her statement should be rejected, as she told a curious tale inherently improbable.

The first matter to be dealt with by the Court was the credibility of the State and the Defence witnesses.

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First of all the Court would like to deal with the evidence of the witness ERIC NGLOMU. He was a 17-year old uneducated Black juvenile who grew up on a farm in the vicinity of Wakerville. He was not very intelligent and had no schooling whatsoever. He could not read or write.

This witness was cross-examined for almost five days by a capable, or by capable Counsel well adversed in the art of cross-examination. He was expected to repeat the same answers over and over again, and if he made any mistakes, he was severely hauled over the coals. He was accused of lying many times. He was encouraged to admit that he was viciously assaulted in the interrogation by the Security Police. It was suggested that as a result of this, and the solitary confinement, he told a lot of lies with which he implicated accused Nos.1 and 2, so that he could save himself from prosecution by the State. When he was given the opportunity to relate his story in his own simple way, he was able to do so without any contradictions, and when he did so, he was however accused of repeating a version told or suggested to

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him by the Security Police, parrot-fashion.

The Court was satisfied that the cross-examination was grossly overdone, notwithstanding the fact that he was assaulted it was clear that his evidence was the truth beyond a reasonable doubt, and it was accepted by the Court as such.

The evidence of MONICA KUNENE, was also accepted as the truth beyond a reasonable doubt. She was also subjected to a prolonged attack in cross-examination. She was invited to admit that she was assaulted, but however much Counsel for the Defence encouraged her to claim that she was assaulted, she was adamant that she was not assaulted, although she had been threatened. Because she cried when she was required to recall the threats and the interrogation, it was argued that the Court should come to the conclusion that she had been assaulted and that she was not willing to admit it as she was scared of the security police. 10

She was given ample opportunity to admit that her evidence was untrue. She however, denied consistently that her evidence was false. The Court was satisfied that her evidence was the truth beyond a reasonable doubt,. In her evidence she did not implicate accused No.2 to a great extent, and if she was giving false evidence or if she was relating a false story suggested to her by the Police, it was unlikely that she would have implicated him to such a small extent. 20

The Court decided not to summarise or to take notice of the evidence of Leonard Ntuli, as he was discredited.

The evidence of Mandla was also not taken into consideration by the Court, as he was so confused that he could not distinguish between what was suggested to him and what 30

actually happened. The Court accepted the evidence of Zola as the truth. He deposed that he was assaulted and if he was willing to state that, and if he was not too scared to state that in an open Court, the Court would have expected him to have admitted that his evidence was untrue, as Mandla admitted.

Mzwandile Mkefa also denied that the Police told him what to say. He told the police also that he was assaulted and he was not scared to do so. It was unlikely that he would have been too scared to tell the Court that his evidence was not true, if it was so. 10

Accused No.1, when he gave evidence in chief, he had no difficulty in relating his story fluently. When it came to cross-examination, he however encountered difficulty in finding suitable answers. He was extremely arrogant and was not willing to answer questions at all times. He also objected to standing, and refused to answer questions if he was not allowed to sit down. The Court had to weigh up his evidence against that evidence, the evidence of Eric. He was willing, accused No.1, to go along with the evidence of Eric as long it did not implicate him. He denied strenuously the evidence of Eric which implicated him, or that portion of Eric's evidence which implicated him, he denied strenuously. 20 If they did not go to Orlando on the afternoon of the Wednesday, what object would there have been for Eric to fabricate this evidence. There would have been no sense in it at all. It would have also been senseless for him to have fabricated the evidence about the R5 which they obtained from the teacher in Soweto. It was unlikely that Eric would have had the intelligence to think up a story like that if 30

it didn't happen. It is also unlikely that the Police would have thought up a story like that to place in his mouth, because in fact the little sojourn to Orlando that afternoon, did not implicate accused No.1, it was just part of a story regarding their departure to Botswana, and if it didn't happen, it was unlikely that Eric would have sucked this out of his thumb. Similarly there would have been object in Eric alleging that accused No.1 went to his mother to obtain money with the ruse that he intended buying a bushjacket. It would have been senseless in him 10 adding this little story, if it didn't happen. We all knew that accused No.1 needed money for the trip because he didn't have money. It was likely that he would have gone to his mother to obtain money as that was the only source at that time from where he did get his money.

It was argued that as Eric was a single witness, and an accomplice, his evidence even if accepted by the Court, would not be enough to convict accused No.1 as a result of the principles to be reserved in respect of the cautionary rule. 20

Section 208 of the procedure act provides that a person could be convicted on the single evidence of one witness. The Court however took into consideration the principles laid down regarding the evidence of a single witness, and his evidence was approached with that in mind. The Court however came to the conclusion that his evidence was the truth beyond a reasonable doubt.

The Court referred to the many cases regarding the cautionary rule, and kept in mind the principles laid down in the cases quoted by Counsel for the Defence, as well as 30

as the principles outlined by the Learned Justice Leon as he expressed himself in the case of the State versus Masuka, and another 1969 Prentice Hall 8 to 10 N.P.D.

There he listed ten principles to be taken into consideration, and the Court kept these principles in mind at all times when dealing with the evidence of Eric. The Court looked for corroboration of his evidence, and the Court found sufficient corroboration for his evidence in the evidence of accused No.1, to satisfy the Court that his evidence was the truth.

Accused No.1 and Eric were the only people on this 10 trip to Botswana, and no one else.

Eric's evidence regarding the manner in which they left the house was supported by accused No.1 and accused No.2. Accused No.1 supported his evidence regarding the whole trip to Botswana, except that he differed in some instances where he was directly implicated by the evidence. Notwithstanding the fact that his Counsel in cross-examination put to Eric that accused No.1 would deny that they had gone to Natal-spruit, accused NO.1 repeated that story, when he gave evidence.

It was also alleged by accused No.1 that Monica 20 had a grievance against him because she wanted to become his girlfriend, but he admitted with the same breath that she all along had a boyfriend, and we have the evidence from Monica and the other witnesses, as well as accused No.2, that the person who actually dealt with Monica was accused No.2 and not accused No.1. The only time she ever implicated him, was when she gave evidence about the record being played. Otherwise she never implicated accused No.1 at all. So why he should like to come forward with the allegation that she had a grievance against him because she wanted to become

his girlfriend was not understood by the Court, because she showed no grievance towards him, because she didn't even implicate him, and he had to admit that she could have heard the record whilst she was at his house because he played it whilst she was there.

The evidence of accused No.1 was so unlikely and improbable that it could never be true. Here if one looked at his evidence regarding this album, EXH.1 it was actually ridiculous. He wants the Court to believe that he obtained this from a stranger, first of all he said he obtained it 10 four months before his arrest, then he admitted that he had it since 1978, and in this album of this strange man who didn't know accused No.2 at all, accused No.2's photo appeared. The only photo he had taken. and accused No.2 must have seen his photo in that album because he then looked in it. Accused No.1 carried this album with him to Botswana all the way, and if this album contained something which he was not interested in, it was unlikely they would have done so. It had nothing personal of his in there, the only things it had was these Black Power photos and the whole album just 20 had to do with the Black Power since 1976. Except for the one photo of accused No.2 and Leonard, the rest all - all other photoes were used to depict the BLACK POWER MOVEMENT and SWAPO in South West Africa. There was nothing of interest for accused No.1 and it was unlikely that if he had no interest in this album, that he would have carried it to BOTSWANA and intended looking after it for three years, so that he could give it back to Vuzi, a friend who never saw him since 1978, not since the day he left the album there, and then he was also the person who wrote up the index. 30

When questioned about it, he said he was invited by Vuzi to do so, and that the names of the songs which he recorded there, came from a book. Strangely enough whenever this witness had to give names and addresses, he had forgotten them.

The next portion of his evidence was so unlikely that it could never have been true, was his allegation that he was going to see his sister in Botswana.. He didn't even know where she was living. He didn't even know what her name was, or married name, and he didn't know where to find 10 her. Nor was he aware of the fact whether she would be prepared to accommodate him whilst he was receiving schooling in Botswana. It was unlikely that he could ever have thought that he would be able to trace her in the big Botswana, by just enquiring from house to house. It was more likely that he intended applying for refugee status and that he would receive free schooling whilst he trained as a soldier as suggested by him to Eric.

The record of FREEDOM SONGS was cleverly dismissed by him in his evidence that he played it for himself, and he 20 was just taking it along to Botswana as one of his possessions. The possession of the album, as well as the record of FREEDOM SONGS, show clearly that accused No.1 - what accused No.1's attitude was towards lawful Government in this Country. His loyalties clearly did not lie with this Government as claimed by him.

This is also clear from his attitude under cross-examination, although he tried to make out that he was just a loyal subject of this Country, it was clear, or it had come out clearly what his attitude actually was, under cross- 30

examination.

The evidence of accused 2 amounted to no more than a denial of the facts alleged by the State. Eric had no reason to fabricate what happened on a Wednesday afternoon just to implicate accused No.2. If he wanted to implicate him falsely, one would have expected him to have done it properly. Although accused No.2 was willing and prepared to go the previous afternoon and the evening, he had seconds for thoughts the next morning when he found that his friend refused to come along; he then as a result withdrew 10 at the station.

It was unlikely that all these witnesses, Monica Eric, Zola and Mzwandile would have gone out of their way to each add a little tale with a specific purpose of implicating accused No.2 falsely. There was absolutely no reason for them doing so. If it didn't happen, it was unlikely that each and every one of these witnesses were able to fabricate some evidence to implicate him, or to relate something formulated by the police. It was unlikely that the police would have been able to obtain all these witnesses to add 20 a little story, with the express purpose of implicating accused No.2. It was unlikely that they all would have been able to fabricate the little story against accused No.2 to save themselves from prosecution, and if they were used by the police to falsely implicate accused No.2, they surely would have made a better effort. It is unlikely that the police would have fabricated little bits of stories like this.

For these reasons, the evidence of accused No.1 and 2 was rejected by the Court as false and untrue and not

reasonably possibly true. 30

For the reasons given by the Court and the evidence on record, the Court came to the conclusion that the State proved beyond a reasonable doubt that they contravened Section 2 (1) (B9 read with Section 1 of Act 83/1967 as alleged in the third paragraph of the charge sheet.

I'll just read that one, it is :

"NADEMAAL die beskuldigdes 1 en 2, die een of die ander, of beide van hulle gedurende die tydperk die begin van 1979 to omtrent 3 Augustus 1979, té of naby SOWETO, die Swart woongebied of ander plekke, wederregtelik vir 10
TIMOTHY MANDLA MASENGA en/of MZWANDILE MKEFA en/of ZOLA JOSEPH MBUNGE, en/of ERIC MZIMKULU NGLOMU en/of MONICA KUNENE of LEONARD MASHINGANGESI NTULI uitgelok, aangestig, beveel of hulp verleen het, aangeraai, aange- moedig of verkry het om opleiding te ontvang, van nut sou kon wees vir die persoon wat die ingevaarstelling van wet en orde beoog. "

In this regard the Court found that they incited, Mzwandile Mkefa, Zola Joseph Mbunge, Eric Mzimkule Nglomu en Monica Kunene, and attempted to receive training which 20 could have put the order of this Country in jeopardy.

BOTH OF THEM ARE FOR THESE REASONS FOUND GUILTY AS CHARGED..

BOTH ACCUSED HAVE NO PREVIOUS CONVICTIONS.

MR. BASSLION ADDRESSES THE COURT IN MITIGATION OF SENTENCE ON BEHALF OF ACCUSED NO;1.

MR. MAILER ADDRESSES THE COURT IN MITIGATION OF SENTENCE ON BEHALF OF ACCUSED NO. 2.

- S E N T E N C E -

BY THE COURT: For purposes of sentence the Court took into consideration your youth, and the fact that you have no previous convictions, and the personal factors placed before the Court by your Counsel. The Court came to the conclusion that the minimum sentence as laid down by the Statute would suffice, as a result EACH ACCUSED IS SENTENCED TO FIVE YEARS IMPRISONMENT.

BY THE COURT: Proceed please Mr. Mailer ?

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MR. MAILER: Sir the Powers of Attorney still have to be filled in as well but this is merely a formality, the matter will be going to the Supreme Court obviously on Appeal, and the Notices of Appeal will be filed today. I therefore ask your leave to allow the Bail Application to be heard pending the fullfilment of these procedurable requirements ?

I ask you to allow the Bail Application to be heard sir ?

BY THE COURT: Yes thank you, I want to deal with Mr. Basslion. Have you got an application Mr. Basslion ?

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MR. BASSLION: Yes I have the same application sir, and I ask Your Worship's leave to bring the Bail Application , which should your Worship grant bail, it would obviously be subject to the Notice of Appeal, and Powers of Attorney being filed with the Clerk of the Court.

PROSECUTOR OPPOSES BAIL IN RESPECT OF BOTH ACCUSED.

(Onus on the Defence to prove that accused may be allowed on bail)

I must get the authority from the library unfortunately Your Worship, I was not prepared for this, I did

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not expect it.

BY THE COURT: Do you wish to adduce any evidence Mr. Basslion?

MR. BASSLION: Your Worship, I don't wish to adduce any evidence, but I intend argueing. Your Worship possible I believe Mr. Mailer does intend adducing evidence, and it may be advisable if that evidence is first led, and then we can all just argue at the same time.

BY THE COURT: You don't intend leading evidence ?

MR. BASSLION: Not leading evidence sir.

MR. MAILER ADDRESSES THE COURT.

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BY THE COURT: MY question to you is do you intend leading evidence ?

MR. MAILER : Yes I do sir, and I also said I liked your attitude in relation to my learned friend. I call accused No.2 sir. WATSON THOBILE NKUMBI, sworn states :

EXAMINED BY MR. MAILER : Watson, you are the accused No.2. in this case ? Is that correct ? --- Yes.

You have just turned 18 in April this year , is that correct ? --- Yes.

With whom have you lived all your life, Watson ? --- 20
With my grandmother.

Now it is common cause that you did not leave Soweto for the purpose of going to Botswana, is that correct ? ---
Yes.

It is also undisputed that on the morning that your brother, accused no.1 left, you in fact went to school ? ---
Yes.

Did you go to school? --- Yes, I did.

What standard are you now in ? --- Standard V.

And if you were to be allowed out on bail, to which— 30—

school would you go ? --- MANLEWENI is the name of the school.

Have you ever left the environments of the Transvaal in your life ? --- No sir.

Do you have a travel document at all in your possession ? --- No.

Has one ever been issued to you ? --- No, never.

Have you ever applied for one.

With whom have you lived in Soweto ? --- With my grandmother.

Correct, is that the woman who has been in court at all times throughout your trial ? --- Yes. 10

And does your grandmother still live at the same address? --- Yes.

I ask that the grandmother should leave the Court sir ? With your permission.

(grandmother of accused leaves the court)

Sorry sir, I didn't realise . Just in time I realised it. Now Watson when you say you live with your grandmother is this at the address disclosed in the evidence during your trial ? --- Yes. 20

And Watson where does your mother live ? --- She lives in Meadowlands.

And did you see your mother regularly before you were arrested ? --- Yes, do you mean the day of my arrest ?

Yes, and does your mother have constant supervision over you ? --- Yes.

As well as your grandmother ? --- Yes.

Now if His Worship were to release you on bail, would you undertake that in the event of your appeal not being successful to surrender your self in terms of the conditions

ATTACHING TO your bond ? --- Yes.

Are you keen to get back to school now ? --- Yes.

NO FURTHER QUESTIONS.

QUESTIONS BY MR. BASSLION: (On behalf of accused No.1)

Watson, where was accused No.1 living before the 3rd of August last year ? --- In Dhlamini.

At whose house ? --- At granny's house.

Is that together with you ? --- Yes.

Had he also been living there all his life ? ---

Yes.

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Do you know whether he sees his mother regularly ?

--- Yes we see our mother regularly, in fact what happens is we at times go to her where she lives, or she would come to home, that is where we live.

NO FURTHER QUESTIONS.

CROSS-EXAMINATION BY PROSECUTOR: You were detained without any bail being fixed until today ? --- Yes.

And you are aware of the fact that that was by order of the Attorney General? --- No.

And you were in fact, that is the Court's finding, quite prepared to leave the Country for Botswana until that Wednesday night, or even until that Thursday morning ? ---
I beg your pardon.

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You were in fact according to the evidence accepted by the Court, quite prepared to leave the Country for Botswana?
--- No, not prepared.

And that would have been done without a passport or travel document ? --- No.

Would it have been done with one ? --- But I know nobody in the outside Townships.

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Is the fact that you don't have the travel document or a passport stopping you from leaving the Country ? --- No.

Of course not, it is easy to get out of this Country through many places other than Border posts ? --- No.

Why do you say no ? --- Because I do not know any person abroad, and I do not know whom to go to when leaving this Country.

Why do you not live with your mother ? --- Well I do not, I'm staying with my grandmother.

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What is the reason for you not staying with your mother ? --- I know that I was brought up by my grandmother because my mother was working.

And your mother is staying approximately 8 kilometers from your grandmother ? --- Well I do not know how many kilometers.

It is a long distance isn't it ? --- That is so.

How often do you see your mother ? --- Saturdays and Sundays.

What constant supervision does your mother have over you ? --- I have never before done anything wrong, a thing which she did not approve of, therefore I am not able to tell but I know is that I don't do a thing against my mother's will.

So do you now say that you are not able to say what constant supervision she has ? --- Yes.

Your grandmother is a very old woman ? --- Yes.

What bail money do you have ? What money do you have for bail ? ---

~~Or what money is available ? --- Money of my own?~~

No what money is available, you want to pay bail ?

--- I don't have money of my own.

I'm asking you what money is available , you want to pay bail and I want to know what money is available ? ---
I do not know.

You have no idea ? --- Yes.

NO FURTHER QUESTIONS.

RE-EXAMINATION BY MR. MAILER: Now you said to my learned friend you don't know what constant supervision your mother gives. Do you see your mother regularly Watson ? --- Yes. 10

Does she advise on how to live from day to day ?

--- Yes.

If you didn't want to go to school anymore and she said to you you are to go to school, what would your attitude be ? --- I would go to school.

Yes, do you listen to your mother ? --- Yes.

Does she have control over you ? --- Yes.

And the point of the fact is that you have decided of your own not to go to Botswana at all is that correct ? ---
Yes. 20

So do you know how to get out of the Transvaal in order to get to any of the so-called places my learned friend referred to and leave the Country ? --- No.

Now you say that you have got no money, but if money were to be put up by your mother, and there were to be strenuous conditions attached to your bail bond, would you strictly adhere to these ? --- Yes.

Which is your nearest police station ? --- Moroko.

If the condition were to be attached that you were
to remain in the District of Johannesburg and not to leave 30

the Johannesburg District, would you comply with this ? ---
Yes.

And if His Worship were to say that you were to
report to the police daily, would you comply with this ? ---
Yes.

NO FURTHER QUESTIONS.

MR. MAILER: I call the accused's mother sir with your
permission ?

LUCKY VILIKAZI NKUMBI, sworn states :

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EXAMINED BY MR. MAILER: You are the mother of accused No.1
and accused No.2 in this matter, is that correct ? --- Yes.

Do you work? --- Yes, I do.

Where do you work? --- Prestige Cleaners.

Is that in town? --- Yes.

Now I understand that you live in the Meadowlands
Area, is that correct ? --- Yes.

And that your sons live together with their grand-
mother, your mother ? --- That is so.

Do you see your sons whilst you work before they
were arrested ? --- Yes, I used to. 20

Approximately how often a week? --- I used to go
to them on Saturdays.

And did you maintain contact with them during the
week? --- Not always.

Now were you satisfied with the arrangements
that they remain under the custody of your mother ? --- Yes.

Is she a woman who has a strong character ? --- That
is so.

--- Is she a strong personality ? --- Yes.

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In the sense that what is told to the youths, they will listen to ? --- Yes.

Has your child accused No.2 been a person who has been difficult to control ? --- No.

Is he obedient ? --- Yes.

And does he adhere to parental and grownup authority without much ado ? --- Yes

Now in the event of him being released on bail would you undertake also to see to it that he complies with the conditions attached to his bail bond ? --- That is so. 10

Would you see to it that he continues going to school ? ---Yes, I will but because I am not always with him , I will try my best.

Are you keen that he continues his study - studies? --- Yes.

Is there any male control over your sons at all? Is there any male figure who can control your sons at all ? --- Yes.

Who ? --- Samuel.

How old is he ? --- Samuel and Theolopus. 20

How old are they ? --- The other one was born in 1953, the other one in 1955.

And do they have sufficient capacity to control the behaviour of accused No.2? --- Yes, because he is in fact not a troublesome child.

And he adheres to control and discipline is that correct ? --- Yes.

NO FURTHER QUESTIONS.

MR. BASSLION: Mrs. Nkumbi, do you see accused No.1 Elias often? --- Yes that is so.

Before his arrest, how often had you seen him ? ---
Immediately prior to his arrest, I used to see him during
Saturdays and even during the week.

Now he is living with your mother together with
accused No.2 and other of your children? --- Yes.

Does your mother have any control over Elias ? ---
Yes.

Does he respect her ? --- Yes, he does.

Does he listen to her ? --- Yes.

Does accused No.1 listen to you ? --- Yes, he does. 10

And do you have control over him ? --- Yes, I do.

And does your mother have control over him? ---Yes.

Have you ever had any trouble at all with accused
No.1 Elias ? --- No, never ever.

Now what is his relationship with his two older
brothers, Theolopus and Samuel, the one that you said ? ---
It is quite alright.

Do they have control over him ? --- Yes, they do.

Where do they stay? --- They all stay with their
grandmother.

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NO FURTHER QUESTIONS.

CROSS-EXAMINATION BY PROSECUTOR: How do you know how well
accused No.1 and 2 are controlled if you don't stay with
them in the same house ? --- I do go there and I

You go there sometimes on Saturdays ? ---Every
Saturday and even during the week.

You go there every Saturday and you can't say what
the behaviour of both accused 1 and 2 is at the times that
you are not there ? --- No, even during the week.

Answer my question. I'm putting a proposition to
you ?

--- Well they would tell me at home if anything happened down by the two.

Yes exactly. Why aren't your children staying with you in the same house ? --- Because I am now staying with their step-father, I cannot stay with them, because he is not the father to them.

Why can't they stay with you ? --- Well they want to stay with their grandmother. In fact all of them.

Why, is the question ? --- According to our custom, really that is the practice.

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Do you have a daughter in Botswana ? --- Yes.
A girl in Bophuthatswana.

Not in Botswana ? --- No it is Bophuthatswana.

Did you speak to your mother about the fact that it was said here in court that accused No.1 had just left the house for Botswana ? --- No, I did not, I was just told that he just disappeared.

Yes. What bail money is available ? --- Well I'll see what amount is fixed.

What bail money is available please ? ---Well de- 20
pending on the amount you are fixing.

Please tell the Court is there anywhere any money available to pay for bail ? --- Yes.

Please tell the Court where it is and what the amount is ? --- I save it in my house.

Now please tell the Court again, what is the amount?
--- Well at present I can't tell because I don't count it every day, I just save it in my house.

Approximately what is the amount it isn't so
difficult. --- I just keep the money in the house, I don't 30

count it.

NO FURTHER QUESTIONS.

RE-EXAMINATION BY MR. MAILER: This amount that you keep in your house, even if it were your obligation to pay bail which it is not, it seems to be a misapprehension, would you be prepared to make whatever money you've got available available to accused No.2 for bail , or your children ? --- Yes I would do that.

And what is your salary per week? --- I am being paid per month - R79,24.

10

Does your husband also work ? --- Yes.

And does he support you ? --- Yes he does.

Now has accused No.2 stayed in the Transvaal, Johannesburg all his life ? --- Yes, he was born here.

And does he know any other place but Johannesburg ? --- No.

NO FURTHER QUESTIONS.

MR. MAILER: I call the grandmother sir.

LULU NKUMBI, sworn states :

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EXAMINED BY MR. MAILER: Now you are the grandmother of both accused in this matter, is that correct? --- Yes.

And where do you live ? --- Dhlamini.

Have you lived there for a long time? --- Yes.

And are you at home during the day and in the night ? --- Yes, I am.

And you have brought up accused 1 and 2 ? --- Yes

Are they your boys ? --- Yes they are in fact children to my daughter.

Yes but you regard them as your own children ? --- Yes. 30

Are you strict with them? --- Oh yes, very much.

And you see to it that accused No.2 goes to school?

--- Yes.

And you lay down the law at home ? --- Yes.

If you say they must be home by 6 o'clock, are they home by 6 o'clock ? --- What I'm saying, yes they must be there.

And they comply with your instructions ? --- Yes.

No.2 accused is he a young boy who readily accedes to your authority ? --- No, he does not at all exceed my authority he does exactly what I tell him to do. 10

I said does he accede to you ? --- Yes he will sit down and listen to what I am saying.

Has he ever left Johannesburg as far as you know ? If my learned friend please would stop interrupting me sir, it is really getting on my nerves?

PROSECUTOR OBJECTS.

MR. MAILER : Well it is disturbing me sir please ?

BY THE COURT: I hope you and the prosecutor will stop your .. and proceed you are like two school kids. 20

MR. MAILER: ---No, not at all, he never ever left the Transvaal.

Now do you undertake that in the event of him being granted bail that you will see to it that he complies with these conditions and listens to you ? --- Yes, I do.

You love these boys very much don't you ? --- Yes, in fact they listen to me.

NO FURTHER QUESTIONS.

CROSS-EXAMINATION BY MR. BASSLION: Does accused no.1 listen to you ? --- Yes.

--- Do you have full control over him ? --- Yes. 30

If you tell him not to do something, will he listen to you ? --- Yes, he will.

Does he always listen to you? --- Yes he never makes a mistake, they do in fact listen to me.

Now accused No.1 has also grown up with you since a young child ? --- Yes.

He has two older brothers who are also living with you, that is Samuel and Theopolus ? --- Yes.

Samuel and Theopolus are they responsible people?
--- Yes, they are. 10

Do they work at the moment ? --- Yes they do.

Do they have control over the two accused ? ---
Yes, in the sense that for instance if I tell them the elder ones, what my instruction is, then they in turn tell the two accused, the two accused will do exactly what I say.

If Samuel or Theopolus saw accused no.1 or no.2 doing something wrong and said to them 'Stop doing that it is wrong, you don't do things like that?' would they listen to them ? --- Yes, they will.

Have you ever had any trouble with accused No.1? --- 20
----- No, never ever.

Do you know of any occasion when accused No.1 has left the Republic of South Africa ? --- No, he never left.

If His Worship grants him bail, and there is certain conditions attached to the bail, would you be in a position to see that he complies with those conditions ? ---
Yes, I will.

Now it is common cause accused No.1 was not employed immediately prior to his arrest, nor was he at school? ---
Would you be able to care for him, provide for him and look
after

after him if he were released on bail ? --- Yes.

Is there any possibility that he might be able to return to school ? --- Yes, I can take him back to school because I do take them to school in fact.

NO FURTHER QUESTIONS.

CROSS-EXAMINATION BY PROSECUTOR: How was accused 1 going back to school ? ---

With the help of what ?

MR. BASSLION OBJECTS.

BY THE COURT: Proceed with the question, I think your objection is ridiculous. Proceed ? 10

CROSS-EXAMINATION (cont.) --- When what happens ? ---

When he is released on bail ? --- Is he not allowed to go back to school when he is released on bail?

Is there money to take him back to school? --- Well I'll make his brothers to bring money or make money available for him to go back to school.

Tell me who supplies the money to support this whole house where you stay with all the children ? --- Their mother does give us some money. 20

Is that all which is used in supporting the whole family ? --- I also get paid.

What, a pension? --- Yes pension.

How old are you now ? --- I was born in 1910.

You are 70 years old ? --- Yes.

Do you remember that Thursday when accused No.1 disappeared ? --- Yes, all he said is "Granny I'm coming back"

He just disappeared, he didn't even tell you that he is going anywhere ? --- No, he did not.

And you accepted that he is coming back ? --- Yes 30

because he had never told me lies before. I accepted it.

And you have no control over his going to Botswana ?

--- But he didn't tell me that he was going to Botswana.

Exactly, and the same goes for accused No.2, if he wants to go and he doesn't tell you he wants to go to Botswana, you can't control it ? --- Well if he does tell me that he is going to Botswana, I'll refuse him going to Botswana. And if they don't tell me, then I'll spent sleepless nights, because I'll be worrying, I'll even go to the police.

NO FURTHER QUESTIONS.

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RE-EXAMINATION BY MR. MAILER: Yes, you said you will go to the police. Now on the assumption that one of their conditions were that they report to the police, and they didn't do that, would you immediately notify the police of this ? ---Oh yes, definitely, if that is an order or a condition, I'll definitely see to it that they go there, or otherwise I'll go there myself.

Do you respect the law ? --- Yes, oh yes, I respect the law.

And you treat your duties as serious ? --- Yes, I'll take it very serious, in fact should I happen to make a mistake, I'll go immediately when I discover my mistake to go and explain it.

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NO FURTHER QUESTIONS.

BY THE COURT: Is that all the evidence you intend leading?

MR; MAILER: Thank you sir.

BY THE COURT: Mr. Prosecutor do you intend to tender any evidence ?

PROSECUTOR: Yes sir I consider it seriously tendering evidence.

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I can't do it now YOur Worship, it is 1 o'clock already.

BY THE COURT: I'm prepared to sit, I am not available at 2.

PROSECUTOR: In that case I cannot produce any evidence on the fact, I can only argue.

BY THE COURT: Haven't you got any evidence available ?

PROSECUTOR: I don't have the evidence available now.

I could not foresee that there will be such an application.

I can then only argue the point YOur Worship, that is all I can do.

BY THE COURT: Yes, you may then proceed Mr. Basslion? 10 .

MR. BASSLION ADDRESSES THE COURT ON BAIL. (on behalf of no.1)

MR. MAILER ADDRESSES THE COURT ON BAIL (on behalf of no.2)

PROSECUTOR ADDRESSES THE COURT ON BAIL.

PROSECUTOR OPPOSES THE APPLICATION FOR BAIL.

- COURT'S FINDING -

BY THE COURT: When considering a Bail Application pending Appeal, the Court took into consideration the principles laid down in the cases of THE STATE VERSUS PATEL, 1973 SA 565, WLD .

THE STATE VERSUS BUDLENDER, 1973 (1) SA 264 CPD. 20

THE STATE VERSUS MYARI, 1976 (3) 205, DC Local Division.

THE STATE VERSUS LULANE, 1976 (2) SA 204, NATAL,

and the general considerations laid down for bail in Political trials as laid down in the Budlender case, and the case of the State versus KETZ 1977 (1) SA 444, CPD, and the case of THE STATE VERSUS RUSSELL 1978 (1) SA 223, CPD.

The Court also considered the evidence led by the Defence on behalf of the accused. The evidence was that of accused No.2 who undertook to abide by the conditions laid down by the Court, and to attend school. 30

He had

He had already been out of school since the 3rd of August 1979 and it is now July 1980. It is unlikely that he would be able to pick up where he left off at this stage, in Standard V.

Now we have the evidence of the mother and the grandmother also that they claim that they were able to control both the accused. Both gave their assurances that they would see that the accused, if left out on bail abide by the conditions of the bail.

It was however clear that they couldn't control 10
the two accused. The grandmother where they stay is an old lady of 70 years of age. She walks with a stick, and it is unlikely that she would be able to control these two youngsters. They just tell her any story and she accepts it.

According to the evidence of Eric, they went on a Wednesday afternoon and they came back late at night, and she was satisfied when they told her that they came from Lenz. The next morning he just said, accused no.1 that he was going to come back, and he disappeared. It shows that there was actually no manner in which she could control them, and the 20
mother is not living at home, although she claims that they listen to her should they elect not to tell her anything, then she couldn't control them.

When accused No.1 left he said that he didn't want to tell his mother nor his grandmother, because they would have objected and would not have agreed to him going to Botswana, and the simplest thing for them would be just to leave and there would be nothing the grandmother nor the mother could do to stop them.

~~It is accepted by the Court that the two elder~~

brothers could control them, but they are both at work, and if accused No.2 elected to go to Botswana or to anywhere to Swaziland over the Borders, Zimbabwe, instead of going to school, his mother or grandmother or brothers certainly would not be in a position to stop him.

It is common cause, and this Court has heard it many times in this Court that it is easy to get across the Borders to all our Countries surrounding us, and the evidence showed that accused No.1 was able to get right to Brits from the afternoon before. The fact that they have no passports or accused No.1 had no passport, nor Eric, did not deter them from going to Botswana. The fact that they now have a sentence of five years imprisonment hanging over their heads, will clearly encourage them to leave the Country more so than when they had no sentence hanging over their heads. When they planned their trip in the first instance. 10

After considering the evidence and the principles laid down, the Court came to the conclusion that there was no merit in the application and -

THE APPLICATION FOR BAIL IS REFUSED. 20

- C e r t i f i c a t e -

We, the undersigned, hereby certify that foregoing is a true and correct transcript of the original evidence mechanically recorded.

TRANSCRIBERS:

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Mrs. C M Kotze. 365 Pages.

C. M. Kotze

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720

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