

The PAC/Kgosana trial

The first group of documents consist of bound records of the trial R v Synod Madlebe, and others, case R 313/60. This case was heard in the Regional Court, that is the division of the magistrates court with more severe punitive powers, following on the 1960 demonstrations in Capetown - the march on Capetown, and the general strike. The trial was commonly known as the Philip Kgosana trial, after the name of accused no 6 who was accepted as the most prominent of the leaders of the demonstration during the period March and April 1960 in Capetown, and he was the principal accused. Most of the accused were members of the Pan Africanist Congress, belonging to the Langa or Nyanga branches, or the Cape Western Regional branch of the PAC. At least one member of the accused, Kaleb Mase, no 22, was an old member of the ANC, and it never became clear, either during the trial or afterwards, why he had been charged with the others. The reason I mention this is to explain my participation in the trial. One of the slogans of the PAC at that time was 'No bail, no defence, no fine'. By no fine, they meant that if a fine was imposed they would instead serve a sentence in gaol. So this trial was unusual for a PAC trial in that similar trials held in Jo'burg of prominent PAC members did not have defence counsel appearing. These trials were very brief: the accused refused to accept the jurisdiction of the courts on the grounds that they were Africans being charged by laws made by whites and for the benefit of whites. But as far as the Capetown PAC trial was concerned, because there was one ANC member involved in it he asked for counsel - and at that stage I had appeared since commencing practice on 1957 in a number of cases involving members and supporters of the ANC, as well as other anti apartheid organisations. Kaleb Mase asked me to appear for him, and once I had seen him a number of the other accused also asked for counsel. The breakdown of those accused who were represented appears on the first page of the bound volume of the court transcript.

It

Court transcript of Philip Kgosana trial

From page 1 of the official record, it can be seen that a large number of the accused defended themselves, and that originally there were to be 2 lots of defence counsel - ie myself, and Mr B.A. Graebner. In fact Mr Graebner dropped out, and I took over his accused - that is Kaleb Mase - and I appeared for at least a dozen of the accused. One of the results of my appearing was that the trial did not last the comparatively short time of half a day or so which the other PAC trials lasted for, and in fact it dragged on for several months - not because I myself prolonged it, but because it became a full length defended trial, and those of the accused who represented themselves went in for very extensive cross examination and argument, quite frequently following to some extent the style that I myself had adopted.

The second page of the record simply says 'The charges are put to the accused, and all the accused plead not guilty to the charges. Then there are various addresses to the court - although the actual content of these was excluded. Normally, only the record of the evidence is kept, together with all statements from the presiding magistrate. I might mention that the magistrate was a regional court magistrate, that is a civil servant who had worked his way up, usually having been a public prosecutor first, then becoming an ordinary magistrate, and then, having taken a BA LLB degree (a minimum of 5 years) he would then be entitled to sit on what was then called the regional district of the magistrate's court, which gave him jurisdiction to impose penalties of up to 3 years. So these were usually (and this man (Mr Burgerin particular) the more experienced magistrates. He also sat on his own - a single judge paid by the state.

The public prosecutor in this case was a barrister who worked full time for the attorney - general, ie working full time in handling prosecutions and appeals on behalf of the state. At this time South Africa was still nominally a monarchy, hence the state was referred to as 'The Crown'.

The prosecutor, Mr Kaft, was English speaking, although also fluent in Afrikaans. His father was a well known senior magistrate in the Cape, and he had been appearing on behalf of the attorney general for a number of years. This was a very big case for Kaft to handle as the events had acquired a certain international significance, and he obviously worked very hard on the preparation of his case. The personal relationship between Mr Kaft and myself was always very reasonable. The magistrate was rather of the benign school. He had the reputation for being a 'convictor', a rather tough magistrate when it came to conviction and sentence, but a man of some erudition, very patient, and with rather a benevolent manner in court. There were never any fiery exchanges, and the atmosphere never got very tense in the sense of there being personality conflicts, and the drama was played out at very great length, and at times became very tedious for all concerned.

The interesting part of the address made by accused no 6, Philip Kgosana, was that he followed the general policy of the PAC in objecting to the jurisdiction of the court. He spoke - in English - for about 10 or 15 minutes. Philip Kgosana came from Pretoria, and generally used English in all his public addresses, because he did not speak Xhosa very well, which was the language of most of the Africans in Capetown, and he did not use an interpreter in court. The address was briefly recorded in the press at the time, but unlike other addresses made by people like Sobukwe and other leaders of the PAC, it received very light press coverage, made very little impact in the court room at the time, partly because the magistrate very benignly indicated that he had heard the application, and rejected it.

Much of the other comment made by the magistrate is self explanatory. Some of it is technical, referring to the very complex charge sheets which were used in indictments of this kind. The accused were charged basically with conspiring to incite a number of unspecified Africans in the W Cape to contravene the Pass Laws. The basis of the evidence was two fold:

- (1) Documents found on the persons or premises of the accused

by the police at the time the police took them into custody, which would have been fairly soon after the events at Sharpeville and at the beginning of the general strike in Capetown.

Some of the documents contained lists of PAC members. There were some membership cards, and by virtue of this documentary evidence, coupled with evidence of special branch members about the programme, policies and activities of the PAC, was to provide evidence for the conspiracy and the link of the individuals accused with that conspiracy.

(2) In addition, and this is what took up most of the time, a number of African detectives gave evidence of records they had made at public meetings of speeches by PAC members. I have copies of these speeches as transcribed, and furnished to me by the prosecution.

The first evidence given was evidence of policemen about the arrests of the accused and the docs they claimed to have found on them. By and large this evidence did not occupy much time, although it is interesting to see some of the points raised by the unrepresented accused on their own behalf in the cross examination of police witnesses. Looking through the early passages of the record, I see that I made a number of addresses to the court in connection with what appears to be a number of different matters. One of them (bottom of p 3) contains a record of some of the things that I said, and seems to be an application based on the fact that most of SA - including Capetown - was still under a state of emergency, and that in those circumstances a trial was futile, because whatever the decision of the court, the accused were being held under emergency regulations, and even if the accused were to be acquitted by the magistrate, they would still find themselves in custody. In making this statement I did not expect the magistrate to decide that he was not therefore prepared to continue with the trial, but I wished to highlight for himself and the public, the point made to me by the accused, that it was ridiculous to hold a trial according to normal rules of procedure when all the due processes of law in the country had been suspended.

The trial in fact proceeded. An interpreter was present throughout, and could be whites or Africans. I might add that when white interpreters were present, the unrepresented accused often complained that the interpretation was not accurate. The statement of Accused no 6 is recorded here, and I think it is important to pay special attention to it. Further to his

plea of not guilty, he made a statement commencing on p 14 to the effect that it was his contention that he would not get a fair trial. There were objections by the public prosecutor, some unease was expressed by the court, but Kgosana was allowed to continue, and from p 16 onwards his statement is recorded. This was quite an impressive statement in that it represented a clear rejection of the right of South African courts to stand in trial over Africans in political cases of this kind, an argument which was more fully developed by Nelson Mandela later. Of the witnesses who gave evidence, the first one was Huggett, a plain clothes member of the security police; the second was Andrew Jansen, an ordinary constable who was also a well known rugby player. He was particularly disliked by the accused. One of the accused had lost an eye in circumstances unconnected with the case, and he claimed in a statement to me that this particular witness had been unusually aggressive and had threatened to remove his remaining eye.

None of this was in a legal sense relevant to the evidence given, and would not therefore be reflected in the record. I might mention in passing that in all these trials there was a huge hidden background of material relating to the circumstances of arrest, treatment of the accused, general background information, rumour, and hard information about the police, which for reasons of legal relevance, or for tactical reasons, was not manifested at the trial; and one must always remember that for trials in SA the official record contains only that information that either the defence, the prosecution, or the court, wish to have placed on record.

Then there was further evidence given by police witnesses. They like to give evidence early on, partly so that they can be relieved to carry on with their ordinary work, otherwise they would have to hang around the court waiting for other witnesses whose evidence would be extensively cross examined. The most important of the police witnesses was Sauerman, who was then a detective constable (p82). He was the senior public operative of the Special Branch in Capetown at that time, and was well known to all concerned with anti-apartheid activities. He used regularly to attend meetings himself, take part in raids, and was generally an instantly identifiable figure with anyone associated with radical protest movements.

He was now in charge of the investigation into the PAC. He took part in the negotiations with Philip Kgosana outside the magistrates court on March 30th, the day when it was said that 30,000 Africans marched into the centre of Capetown. I myself saw the crowd, and I would put the estimate at lower, but it was certainly a huge crowd, and they poured into the street outside the police station and magistrates court in Capetown, about 300 yards from Parliament. The police were clearly incapable of controlling them by force, and had the crowd wanted to it could have easily taken over Parliament or any of the public buildings in the centre of Capetown.

In his evidence, Sauerman claims, as I recall, some of the credit for persuading the crowd to disperse without there being violence or any other incident. The reason for the dispersal of the crowd is a matter of some controversy: supporters of the African protest claim that their leaders had been betrayed by a promise that they would be met either by the Minister of Justice, or somebody senior in Government service, who would discuss the claims that the Pass Laws be suspended. In fact the next morning the country awoke to a state of emergency, the leaders were all arrested, and as far as is known, no such interview ever took place.

After Sauerman's evidence, we come to the evidence of the African detectives, the first of whom was Lennox Jubase (p123). He refers to typescripts of notes he recorded at a number of meetings, and these were put in as exhibits. The record in fact does not contain the contents of these, but merely refers to them, and as I mentioned earlier, most, if not all of these exhibits, I have. After the witnesses had given their evidence-in-chief, they were cross examined by myself and by some of the unrepresented accused. The cross examinations were quite rigorous, because clearly the prosecution case depended primarily on the words used by the individuals accused at these meetings - in these speeches where they were alleged to have incited people to disobey the Pass Laws. The strategy of the defense was to discredit these witnesses on the basis that their note taking ability was so incomplete, so unreliable, and so open to error, as not to be worthy of credence in a court of law. I might mention that the defence was in a difficult position in that many of the accused did not wish to give evidence denying that they had said the things attributed to them,

although they often objected very strongly to the formulations as recorded by the police. So our approach was to try and subject this evidence to such serious criticism that the whole case would collapse, and it would not be necessary for the accused to go into the witness box.

The case against Philip Kgosana was naturally very much stronger than the other accused, as there were a number of witnesses able to testify to the speech he had made on March 21st, and the police had a copy of the speech which he had, I think, given to them shortly afterwards at an interview. The evidence of the African witnesses was very extensive, and we looked to material on the face of the notes themselves, showing words and sentences which had been corrected and crossed out, often in different coloured ink, which clearly indicated subsequent reconstruction. We traced the record of the notebooks, who had access to them, how the typescripts were made, and cross examined on why there were discrepancies between one version and another, and why the records always got more elegant in appearance and language, and frequently more incriminating in relation to the accused. In addition, I subjected the witnesses to dictation tests in court, whereby I read out to them, at an extremely slow speed, a sample speech, and then cross examined them on what they managed to get down. Despite great agitation on the part of the accused who thought I was going far too slowly, each one of the tests proved to be devastating to the witnesses, who on average managed to get down c. 20 per cent of what was read out, and quite frequently got the sense completely wrong, sometimes leaving out important negatives, and sometimes recording things that simply had not been said at all. The result of these tests, coupled with extensive cross examination the part of the other accused, coupled also with cross examination by a colleague of mine at the bar at Capetown named Haddard - a combination of all this completely demoralized the crucial witnesses, and indirectly demoralized the prosecution. At least one of the police witnesses claimed in court that he had changed his notes while in the prosecutors office, implying that he had done so at the instigation of the prosecutor. The prosecutor indignantly denied this, and this led to the witness's evidence being rejected in toto - that is, it was rejected by the prosecutor himself.

The trial dragged on until the end of the year when, as was customary

there was a break during the Xmas holiday period.

I had made repeated requests that bail be allowed to the accused, and in fact bail was at last granted, the accused having been in custody since the beginning of April, the trial having gone very badly for the prosecution. In fact Philip Kgosana and a number of the other leading members of the accused jumped their bail, escaping I think to Lesotho. At the resumption of the trial, there were a number of postponements while the police attempted to recapture them. All the time I was putting pressure on the prosecution and the court to either proceed with the trial, or to drop the charges - I can recall saying that the trial without Kgosana was like playing Hamlet without the Prince. This was a bit of a pun at the time as Kgosana's first name was Philip, and he was popularly known as Prince Philip. Eventually, the trial collapsed, the prosecutor I think asked leave to abandon the prosecution - which was granted with the concurrence of the court, and the accused were found not guilty.

I notice that the evidence of Sauerman is contained in more than one place, and it might be that the crucial evidence - historically - is to be found at the end of the record. The whole of Vol 2 (Green book) is his evidence, and this is historically the most interesting part of the record. I remember when he gave his evidence, he clearly felt some considerable pride. On one occasion his young son had come along to court to see him give evidence. His son had then enrolled at a newly established naval college, he was wearing a blazer with the badge of this college on it, and this was clearly a big occasion for both father and son, and the press carries fairly extensive accounts of his evidence.

Amongst the loose documents pertaining to the trial are the following:

It 1

Example of a dictation test with the various versions indicating where things were omitted, added, or misrepresented by the witness

It³ 2

Statements written at my request for my use as defence counsel early on by some of the accused. I must have received more statements than this - I seem to recollect that the police confiscated some some years later.

It 3

An important document - a copy of the speech made by Philip Kgosana at the launching of the PAC anti Pass Law campaign on the morning of March 20 1960. This speech was supposed to have established Kgosana as a leader. I think he was chosen primarily by Sobukwe, partly because he had shown he was a good orator, partly to protect the leading personalities of the PAC in the Cape, and partly, because he was an outsider - that is he was from Pretoria but a student for a short time at the University of Capetown - and therefore somebody who would be acceptable to all PAC groupings in the W Cape. He seemed to have prepared his speech in writing. I can't recall the exact origin of this document that I had. I have marked on it 'Kgosana's speech 20-3-60. This is a copy rather than the original, but I am satisfied that that this represents a reliable version of the speech he made on the eve of the campaign. Clearly, as the speech itself indicates, the main line was laid down by Sobukwe in the form of final instructions.

It 4

Another interesting document. This is the record of an interview between Sauerman and Philip Kgosana on 21st March, that is the day of the shootings. I think this interview was given before the shootings at Sharpeville had occurred or become known. What is interesting in the interview is the willingness of Kgosana to give full information about the leadership of the PAC, and the willingness of Garson and Ndlovu to implicate himself as Vice Chairman of the Executive Committee of the Cape Regional Section of the PAC. The Secretary of Culture, Nana Mohomo, was in fact a student at the University of Capetown who slipped into exile on the eve of the campaign. He was also from the Transvaal, and in fact had done much more to found and organise the PAC in the Cape than had Philip Kgosana who had emerged as a leader, or who perhaps had had leadership thrust upon him at a very late stage. I was rather struck at seeing the contents of this interview because members of the ANC rather than the PAC had learnt over the years never to make statements to the police which could later be used as evidence even if they were about well known matters - and at the time I made a mental comparison reflecting that no ANC person, simply as a matter of routine, would have answered the questions of Sauerman in this way.

It⁵

Another important group of documents. These were the exhibits used as the foundation of the prosecution's case, purporting to be transcripts of notes taken by various African detectives at public meetings of the PAC during the previous year. It will be noted that most of the meetings had no direct connection with the Anti - Pass campaign. Nevertheless, they contain material in my opinion of very great interest, indicating the mood, sentiments and arguments used by the speakers. I should mention that we were at pains during the trial to establish that these records were totally unreliable. Nevertheless, treated with caution, I think they provide fairly reliable accounts of the general tenor and atmosphere, together with a number of specific arguments used at these meetings. The items recored would tend to be what the detectives themselves felt represented the the gist or the highlights of what was said, allowing for the fact that the detectives could only get down perhaps one sentence in every 4 or 5. Subject to these cautions, I think that this is a useful source, reliable as an indicator of general content or mood, unreliable in relation to detail of formulation.

It⁶

A letter sent o me by one of the accused, Lawrence Mgweke, who had fled the country with Kgosana. He was one of the few middle aged man amongst the accused. They were mostly in their early 20's, and I formed the impression at the time that he was an experienced political worker. I think in fact that he belonged to the CP in the period when it was legal, and had subsequently been a member of the ANC - although not a prominent one during the period that I was closely associated with the ANC, ie from the early 1950's onwards. He wrote 2 letters to me - the first from Lonfon, and this one from Nigeria. His main request was that I I visit an address in Nyanga, and report to him - I think this was his wife's address, and he said he hadn't heard from her for quite a while. As things stood at that time, it was quite impossible for for me to go to this address - it was both illegal and highly dangerous, and it would have been unwise for me , as a lawyer who had appeared at the trial, to be corresponding with an accused person who had jumped bail: this would have made further bail applications by myself much more difficult. There is a further letter from Mgwebe, dated *Hen 7*. Addid Abbaba 2-8-61. This would have been written to me , like my previous letter, at my chambers in Capetown, and almost certainly the letters

would have been intercepted and copied by the security police - which would mean that his request at the foot of the letter - to be addressed to Mr L.I. Tseli- would have been communicated as effectively to the police as it was to me.

It⁸

A summary of what was probably my argument at the close of the prosecution case for the discharge of the accused on the grounds that they had no case to meet, and this included references to the evidence in particular of the African detectives. The application was granted, and I think this was after the prosecution had said that it was not pushing the matter.

It⁹

A key which was used by the defence for the evidence as it related to the different accused. This would not have been a police or a court document, but would have been copied out probably on the basis of my notes for purposes of the defence's argument.

It¹⁰

Consists of duplicates of further particulars to the charge furnished by the prosecution. The procedure was for the accused to be arrested and informed of the charge under which they were arrested, in very general terms, and then before being brought before the court for trial or indictment, to be furnished with a written charge or indictment. This would specify the charge, the section under which the charge was being brought, the date and place at which they were alleged to have committed the incitement, and who they were alleged to have conspired with. The request for further particulars is a tactic that the defense is entitled to use in order to get a better idea of the exact nature of the charge the accused could expect to meet. Basically, these further particulars referred to various documents and speeches.

It¹¹

A request by me to the accused who wished to leave Capetown if they were granted bail during the long adjournment. to indicate where they wished to go. Nor,ally one of the conditions of bail is that the accused reports

regularly to a local police station.

It 12

A thick heavy notebook used by Eddie Haddard, my colleague for a while during the trial - I have marked the page where his notes begin in relation to the trial. It is dated 29-9-60, which would indicate the date when he got involved in the trial, and several of the pages that follow contain little observations that he made - which, I think, are rather difficult to interpret for somebody not involved in the trial.

It 13

Miscellaneous. Various pieces of information given to me or noted down by the accused when visiting them at the Roeland St Remand Prison in Cape-town, probably during the early part of the trial.

It 14

A copy in my hand writing of a detention order made against one of the accused while he was being held in remand. This Detention Order was made under the Emergency Regulations, and formed the basis of an application I made during the trial not to proceed with the trial as long as the Emergency lasted. This would appear to be a standard form of DO, and I have left the name blank, and attached to it is a brief summary of the points I would have made as the basis for my argument in court.

It 15

Related to other documents on this trial. The last column seems to refer to reporting times when bail had been granted. The numbers in the first column do not refer to the numbers of the accused at the trial, but could possibly refer to some numbers attached to their original documents of arrest. I am not sure what the middle paragraph is all about.

It 16 Put with item 2

Contains further statements prepared by three of the accused at a fairly early stage of the trial, giving me some information about themselves. The biographical information should be of special interest to researchers

who might want background information on the accused. These three items are detached from the others and they have my initials at the top, with a date. The reason for these marking is that these documents were taken from me by the police on the last occasion when I was raided, and the only occasion when my chambers were openly searched. These were amongst the documents taken from my possession by the police, and subsequently returned to me. I might say that I protested vigorously at the time about them going through my files and taking communications made to me by my clients, which were privileged by law, and they literally laughed at me and said, 'We are the judges now'.

Folder 31

Pan Africanist Congress Trial
June-December 1960

31/1-31/20