

TRUTH AND RECONCILIATION COMMISSION

HUMAN RIGHTS VIOLATIONS

QUESTIONS AND REPLIES

SECTION 29 INQUIRY

DATE: 11.12.1996 NAME: SOLOMON SIFUNSA

CASE: JOHANNESBURG

DAY 3

10

CHAIRPERSON: Are you Mr Solomon Sifunsa?

MR SIFUNSA: Yes.

CHAIRPERSON: Could you state your name for the record, please? We need to - Mr Sifunsa, can you hear me now?

MR SIFUNSA: Yes.

CHAIRPERSON: You are going to talk in Zulu?

MR SIFUNSA: Yes.

CHAIRPERSON: Every time you talk will you please make sure that your mike is switched on. You press the red button to do that.

20

We are very glad that you in fact had come to attend the Section 29 hearing before us today. It is **in camera** and the Commission will at its discretion decide when the contents of the hearing will be divulged. You are entitled to have a legal representative assisting you. I understand that that is what Mr Jordaan's function is going to be. Before you begin your evidence, I am going to ask Ms Seroke to swear you in, please.

SOLOMON SIFUNSA: (Duly sworn, states).

30 CHAIRPERSON: Mr Jordaan, will you place on record the reasons for your presence here.

MR JORDAAN: Madam Chair, indeed, I confirm, Kurt Grobbelaar SECTION 29 HEARING

TRC/GAUTENG

Jordaan of the firm as mentioned before, that I appear on behalf of the witness to assist him in this investigation before you.

CHAIRPERSON: Could I ask whether you intend handing out a statement again in respect of your client?

MR JORDAAN: Madam Chair, not in the case of this witness.

CHAIRPERSON: And you are not making any allegations against Fanie Molapo as in the previous case?

10 MR JORDAAN: Madam Chair, indeed there are going to be allegations by this witness, and these allegations are going to be the same as previously.

CHAIRPERSON: Do you wish to place them on record again or shall we just assume that they remain the same? I would prefer that you actually put them on record again.

MR JORDAAN: Madam Chair, indeed, it is the case that the witness in various improper manners have been influenced, threatened and similar actions have been taken against him, in order to influence him, to make statements, that he had
20 been told what to say, to incriminate people falsely, and that for a considerable time he had been kept imprisoned, contrary to the legal process, without being taken before a Court, charged and without having any access to the rights allowed by the Constitution, to him. Such as a legal representative, contact with his family and appearance before a Court, et cetera.

CHAIRPERSON: As I have said in the previous matter, and I will place this again on record, that you will use the appropriate forum to deal with the matter and that we await
30 receipt of affidavits from your client dealing with this matter, so that we ourselves may institute an internal inquiry around this matter. However, having disposed of

that, I am going to ask your client whether he has any opening statement to make.

MR SIFUNSA: Yes, Madam Chair, there is something I would like to say.

CHAIRPERSON: You may proceed.

MR SIFUNSA: I was at work working at Macs Motors. At about one o'clock Capt Molapo arrived and his police. They took
10 me in the Kombi and drove to the forest next to Barberton.

Right then they said they will not release me until I tell - I am instructed to say what I have been instructed to say. They told me about the death of Enos Mazibuko and Julius Nkosi and they told me, they instructed me in some things to say at the court of law. They took me to Louws Creek. At Louws Creek they told the police that I had no right to contact anybody, or I should not have any visitors, or even family should get in touch with me. When I asked for the telephone to get in touch with my attorney,
20 they told me that I wasn't allowed to do that, that I had no right whatsoever to contact anyone.

They kept instructing me to memorise, for me to memorise some things to say. They took me to Barberton. When we got to Barberton they told me what to say to the magistrate. They said they will release me and I can go back home. I did as instructed, and after that they took me to Middelburg. That is where I was detained. From Middelburg they took me to Malelane. All this time my family had no idea of my whereabouts. On Wednesday they
30 told me they were taking me to court and they found out my father was already there with the attorney. They told my father that I did not want any legal assistance and my father questioned that, why didn't I want any legal

assistance.

SECTION 29 HEARING

TRC/GAUTENG

4

S SIFUNSA

I insisted, I told my father that I wanted a legal assistant, I wanted an attorney, because they were adamant, they told me to say things that they say I should say.

CHAIRPERSON: You are not meant to listen to the translation. The translation is in fact being relayed to us and I notice that you in fact, are waiting so that you
10 can continue speaking. We will get the translation.

MR SIFUNSA: He spoke to the prosecutor, I am not too sure if he was the prosecutor and he was telling him that we are not supposed to get any bail. Right then our attorney applied for bail and we were granted bail. The second appearance the case was withdrawn and that was it. That was the end.

CHAIRPERSON: What were you told to memorise, please?

MR SIFUNSA: They said I shall say Enos and Julius gave us tyres to burn people and that did not happen.

20 CHAIRPERSON: Did you at any stage, immediately at those proceedings inform the Court or any magistrate or any police officer, that in fact you had been kept and that you had been told that you should say these untruthful things?

MR JORDAAN OBJECTS: Madam Chair, at this stage I wish to inform you that the situation is exactly as in the case of the previous witness. Exactly the same senior officers had been involved in this matter as well.

CHAIRPERSON: ... (Microphone not switched on - indistinct) ... your client place that himself on record.

30 MR SIFUNSA: What am I supposed to say?

CHAIRPERSON: I have asked you a question, Sir. Did you at any stage once you had been released and you had come to court, inform the magistrate firstly, that you had been

detained without any recourse to any legal representative,

SECTION 29 HEARING

TRC/GAUTENG

5

S SIFUNSA

two, that you had been told to say these untruthful things?

What did you do about that?

MR SIFUNSA: I told that to my attorney, I told my attorney that. I never talked to the magistrate myself.

CHAIRPERSON: Can you tell me for how long you were detained without any access to your family or any legal
10 representative?

MR SIFUNSA: I was detained for seven days.

CHAIRPERSON: Did you make a confession to a magistrate?

MR SIFUNSA: Yes, I did make a confession to the magistrate. When we were promised to be released. So Enos and Julius and Sipedi could be arrested.

CHAIRPERSON: ... (Microphone not switched on - indistinct) ... when you made this confession, the magistrate would have filled out a form and asked you certain questions. Can you tell me whether you remember the magistrate asking
20 you whether you made this confession freely and voluntarily?

MR SIFUNSA: I made this confession according to Mr Molapo's instructions, because he had ... (intervention).

CHAIRPERSON: I am not asking you that question. I am asking you and I want you to listen very carefully. You made this confession before a magistrate. Is that correct?

MR SIFUNSA: That's correct.

CHAIRPERSON: At the time when you signed it, the magistrate would have asked you certain questions. The
30 first one would have been do you know and understand the contents of the document. What was your response?

MR SIFUNSA: I did not understand then because I was so much troubled by Mr Molapo.

CHAIRPERSON: Did the magistrate ask you the question, yes or no?

SECTION 29 HEARING

TRC/GAUTENG

6

S SIFUNSA

MR SIFUNSA: Yes.

CHAIRPERSON: What was your response?

MR SIFUNSA: I did tell the magistrate that Mr Molapo instructed me to say this.

CHAIRPERSON: Did you tell the magistrate that?

10 MR SIFUNSA: Yes.

CHAIRPERSON: Was an interpreter present at the time?

MR SIFUNSA: Yes, there was.

CHAIRPERSON: So there could have been no misunderstandings about what you were trying to say.

MR SIFUNSA: Yes, there would have not been any mistakes.

CHAIRPERSON: The magistrate would have then asked you whether you had been assaulted, and what was your response?

MR SIFUNSA: I said I was not assaulted.

20 CHAIRPERSON: The magistrate would have then asked you whether you had made the statement under duress. What was your response?

MR SIFUNSA: I told the magistrate that I was not forced to do anything, because I was instructed, I was doing according to, whatever I was doing, was according to Mr Molapo's instructions.

CHAIRPERSON: Thank you very much. I want to refer you to your statement. Could you hand Mr Sifunsa that statement?

30 Could you ask Mr Sifunsa if he could look at the signature and respond as to whether that is his signature or not on the documents?

MR SIFUNSA: This is my signature.

CHAIRPERSON: And this document was signed before the magistrate.

MR SIFUNSA: Yes, because Mr Molapo had said I should say this and that to the magistrate.

SECTION 29 HEARING

TRC/GAUTENG

7

S SIFUNSA

CHAIRPERSON: You have just told us that right at the beginning you told the magistrate that you were signing, because this is what Mr Molapo had told you to say.

MR SIFUNSA: Yes.

CHAIRPERSON: Now if you signed this under any kind of
10 duress, the magistrate would know that, he would sign that.

MR SIFUNSA: Yes.

CHAIRPERSON: Would you now proceed to deal with that statement.

MR JORDAAN: Madam Chair, may I just for the purposes of the record make it very clear, I see that the statement shown to the witness ... (microphone not switched on - indistinct) ...

CHAIRPERSON: ... (Microphone not switched on - indistinct) ... that you made a statement before the magistrate.

20 MR JORDAAN: Madam Chair, indeed, just as in the case of the previous witness, but it once again indicates how the matter was dealt with by your investigating officer, Mr Molapo. Because if you look at the statement that was shown to the witness it was not the proper form that was taken before the magistrate. I indeed obtained a copy of that on the occasion and it is not the statement that is being shown to him now, because it is a misleading fact now. This is not the correct statement. (END OF TAPE 4 - SIDE B).

30 CHAIRPERSON: ... because of the allegations made by your previous client. You are aware of the fact that there is a form that the magistrates complete when these kinds of confessions are made in front of them. They usually relate

to voluntariness, to the question of duress, to the question of assault. I intend, at the recall of your clients, dealing specifically with the confession that was made

SECTION 29 HEARING

TRC/GAUTENG

8

S SIFUNSA

before the magistrate. So at this point I will note for the record that the document that was shown to Mr Sifunsa is an earlier one that was signed ... (Speaker's microphone not
10 on).

Sorry. I have taken note of what you have said and I will subpoena the magistrate who took this confession and I will subpoena **duces tacem** so that we have a copy of the form that he signed, relating to the voluntariness of the document. I have noted the fact that the document that we have, I think, shown your client now, is the one that was not signed before the magistrate. This is the one signed, I think before the earlier confession, and that we will obtain a copy of the document that was in fact signed by
20 the magistrate. Unless you have one with you, which we can then have a look at and show to your client.

MR JORDAAN: Madam Chair, the first point which I would like to make to you, and it is just summarily overseen all the time, the whole action sketched here before you, through the testimony of Mr Molapo has arisen again. He is sitting in the audience and he hears that you, Madam Chair, asks the witness about this so-called admission/statement. He knows what it looks like, but he just slips in this wrong statement, the other statement to the attention of
30 the witness, and this is purely the intention of misleading the witness and the Commission. It is a shock to me that he does it in such a blatant manner, in a sitting of the Commission.

The second point. The second point which I would like to make is that the original document is without any doubt not by subpoena **duces tacem** possible to be obtained here, because it will be the first time in the history of this

SECTION 29 HEARING

TRC/GAUTENG

9

S SIFUNSA

country, that I hear a magistrate will keep this document with him, because it is handed over to the investigating officer and the person who is in possession of that document is Molapo.

CHAIRPERSON: ... (Microphone not switched on - indistinct) ... to the document itself, and whether in fact that was properly signed before him, and whether in fact he properly asked your client the questions relating to voluntariness, will be the magistrate. I have noted what you have said and I have indicated to you that there will be an inquiry.

I find that it is a problem that we don't have the original document in our possession. I have thought that we would have had that on record. That certainly is a problem. But I would also want to ask your client whether that statement signed before the magistrate differs materially from the one which was shown to him by my investigating officer right now.

MR JORDAAN: Madam Chair, I don't know how the witness is going to reply to this, because up to this very day the witness as well as myself, have been kept in the dark with regard to the statements which he is supposed to have made.

I have until now not received a copy of the statement which has been shown. I don't know whether he knows what the content is. I don't know what the content is. The same applies to the previous witness, Malomane, because I don't have a copy of his statement, which was also a warning statement.

CHAIRPERSON: ... (Microphone not switched on - indistinct)
... show both Mr Jordaan and his client the statement that
you now showed him. Will you show Mr Sifunsa a copy of
that statement, please.

SECTION 29 HEARING

TRC/GAUTENG

10

S SIFUNSA

MR JORDAAN: Madam Chair, it seems as if I have to be
misled again. I am given a document which starts with
document 3, where there clearly should be a cover page.

10 The rest of the story is sketched, but it is again not made
available to me or to the witness, and I don't, with all
respect, know how I should reply to this. (Speaker's
microphone not on).

MR STEENKAMP: Madam Chair, maybe I can make a suggestion.
I think it is in the interests of Mr Jordaan and his
client, I think it will only help the Commission if at all
possible, I see Mr Jordaan has a copy of the full document.

It will assist him and his client, if possible. I can't
see the reason for that if he can give us a copy of the
20 confession to save everyone time and money, of the
confession. It is an open document. It is a court document.
He has a copy of the court document. No, he has a copy of
the original. So I think if I can put a request in ...
(microphone not switched on - indistinct) ...

CHAIRPERSON: Yes, but I would also want to say that I
think that it is in the interests of getting clarity on
this matter, that we postpone this hearing until tomorrow.
So that we recall Mr Sifunsa and that you get a copy of the
original document that was sworn to before the magistrate,
30 that that be handed over to Mr Jordaan and his client, so
that we can be assured of the fact that there are no
discrepancies. It is in the interests of justice, so that
his client can have a fair opportunity to respond to that.

Mr Jordaan?

MR JORDAAN: Madam Chair, I think that is a good proposal.

My problem is, I am being confronted just as in the previous case, with Molamone, by various pages of a statement which had been made, which up until now, I have never had any

SECTION 29 HEARING

TRC/GAUTENG

11

S SIFUNSA

insight into. I would also request further that more than
10 one statement had been made before the magistrate. I would
request that all the statements be made available to me. I
think it is really not just to question the witness, if
neither him nor I have an idea of the statements. I have
copies of some of the statements made before the
magistrate, but these things were made by some of the
prosecutors after I had told the Attorney-General that they
refuse to make these statements available to me, and I
myself am in the situation that I don't even know whether I
have all the pages of the document. I have the sight
20 documents only, of one document.

CHAIRPERSON: We will postpone this matter until tomorrow
morning. That once we have dealt with the other two
witnesses tomorrow, that we will recall Mr Sifunsa. I would
suggest that we give Mr Jordaan a copy of the - that he
keep the copy of the document which is presently the one in
our possession and that all other statements be made
available to him, and I would ask that between you and
Fanie, Andre, that we obtain a copy of the original
confession, which was placed before the magistrate, so that
30 his client may have a look at it and that we can continue
in respect of that matter. Thank you.

Mr Sifunsa, I am postponing your subpoena hearing
until tomorrow, so as to obtain the copies of all the

documentation which was placed before the magistrate and which in fact was contained in the docket relating to this matter. So that you may have access to it, so that we may properly continue with your questioning. I will remind you that you are still under oath and that you are not to discuss the matter with any of the other witnesses who are

SECTION 29 HEARING TRC/GAUTENG

12

S SIFUNSA

appearing before us. You may now leave. Thank you.

10 CHAIRPERSON: Could we just deal with this matter of Mr Sipithi Malaza?

MR STEENKAMP: Madam Chair, I have spoken to Mr Mabone. He said we can take it, the Commission can take it that Mr Malaza is excused at this stage officially. He will deal with his commanding officer and will phone him, but from the side of the MEC himself, this person is released to testify tomorrow officially.

CHAIRPERSON: Thank you.

MR STEENKAMP: He asked me to tell you that.

20 CHAIRPERSON: Mr Jordaan, would you like me to call Mr Malaza in, so we can deal with that on record, and extend the subpoena until tomorrow? Or will you deal with that with your client? I would rather prefer officially that we call him in and warn him that the subpoena remains over and held over until tomorrow.

MR JORDAAN: I have no objection against this, Madam Chair.

CHAIRPERSON: Sir, would you please state your name for the record?

MR MALAZA: Vincent Sipithi Malaza.

30 CHAIRPERSON: Mr Malaza, you have been subpoenaed in terms of Section 29 to appear before this **in camera** hearing of the Truth and Reconciliation Commission. Unfortunately we were not able to deal with your matter today. We understand

that there were pressing matters which you yourself were personally engaged in. We have contacted the MEC for Safety and Security, Mr Steve Mabona and have arranged that he will deal with your commanding officer to make sure that you are available to be present here tomorrow. We will accordingly hold over the subpoena until nine o'clock tomorrow morning. I will ask that you make sure that you appear.

10 MR MALAZA: I understand. I wanted to appeal that was it not possible that you contact the provincial commander of the internal security, because the Minister for Safety and Security does not deal with police matters.

CHAIRPERSON: We will certainly do so immediately afterwards, so that we can make sure that your presence is smoothed over and that you are available to be here. We will do that immediately this hearing is over. I will remind you that you are not to speak to any of the other witnesses who have been subpoenaed here, and that you appear at nine o'clock tomorrow.

20 MR MALAZA: Thank you.

CHAIRPERSON: Thank you. ... (Microphone not switched on - indistinct) ...

MR MALAZA: Can I mention something?

CHAIRPERSON: Yes, certainly.

MR MALAZA: My provincial commander is Supt Deetlefs, my immediate commander is Supt Maropeng. Unfortunately I don't have the telephone number of my provincial commander.

30 CHAIRPERSON: What we will do, is we are in touch with the security section and the office staff will be able to obtain that and deal with that.

MR MALAZA: I will be pleased, thank you.

CHAIRPERSON: Thank you. You may leave. Mr Jordaan, what we will try and do tomorrow, I suggest, is start with Mr

Malaza so that - it might well be that it lasts the whole morning. Then we will call the next person who is Mr Sifunsa and there is another person after that, Mr Nkosi. Will that be in order with you?

MR JORDAAN: ... (Microphone not switched on - indistinct) ...

CHAIRPERSON: But I don't anticipate that the last three
SECTION 29 HEARING TRC/GAUTENG

14

10 will be very long.

MR STEENKAMP: Ja, I don't think they will be very long.

MR JORDAAN: Mr Sifunsa and Mr Molamone as well as Mr Walters, my only trouble is, I have even spoken to Mr Peter Brits of the Legal Aid Board on Monday afternoon again. Then he said most probably the Legal Aid will pay my own travelling allowances as well as my staying over allowances, but up until now I didn't receive anything on paper yet from them. That was after numerous calls. I think Adv Steenkamp can confirm with you how many
20 applications I have filled out, how many times I have asked them what is the situation and they just up until Monday afternoon refused. They told me it is not their mistake that I must travel all the way here. Later Mr Brits said okay, most probably they will pay me out but I have asked him then also to give me that on paper, but up until now I haven't received anything. Now Adv Steenkamp just told me that I must then ask yourself whether then I must put in a
30 claim for that tomorrow here by the Commission itself.

CHAIRPERSON: You have completed, all your clients have
30 completed proper legal aid applications in respect of this inquiry?

MR JORDAAN: Yes, in fact, and I have got the instructions too to appear on their behalf, but with a written notice on

top "no travelling or subsistence or money to be paid for food and so on, will be paid in connection with that".

CHAIRPERSON: You see, in respect of Capt Walters, I don't think there is going to be a problem, because he is a former State employee, and Mr Brits will know that in respect of him; I think the Legal Aid tariff will cover him. Of course in respect of hours I would need to just check who is going

SECTION 29 HEARING

TRC/GAUTENG

10

15

to pay that. What I suggest we do is, I will find out from Mr Brits what the problem is tomorrow morning, and if necessary then we will reimburse you ourselves, on receipt of your claim. But we will certainly clear up where the problem is, by tomorrow.

MR JORDAAN: Thank you.

COMMISSION ADJOURNS

20

30

10 SECTION 29 HEARING

TRC/GAUTENG

