

AC/2000/055

TRUTH AND RECONCILIATION COMMISSION

AMNESTY COMMITTEE

**APPLICATION IN TERMS OF SECTION 18 OF THE PROMOTION OF NATIONAL
UNITY AND RECONCILIATION ACT, NO. 34 OF 1995.**

PHILIP MAKWALE NYALUNGA 1ST APPLICANT

(AM 5299/97)

JOHN ITUMELENG DUBE 2ND APPLICANT

(AM 5310/97)

DECISION

The applicants apply for amnesty in respect of three (3) counts of murder, fourteen (14) counts of attempted murder, fifty (50) counts of malicious damage to property and unlawful possession of explosives.

Most of the victims save for those who suffered damages to their properties were represented by Mr Schultz and Mr Mbethe.

The applicants were members of the African National Congress and were attached to its military wing Umkhonto WeSizwe and received their military training in exile. They infiltrated the country in 1987 whereafter the 1st applicant became a member of an underground Unit in Vosloorus under the command of one Xolile Sam also known as Thabang.

A few months prior to the incident in question, the first applicant was informed by his commander Thabang that he would participate in an explosive operation. He also informed him that he had already selected the target and obtained the explosives to be used in the operation and that since neither the applicant nor himself possessed particular knowledge about the remote control device to be used in detonating the explosives obtained, the second applicant would be brought in to join the operation for this purpose.

Although the commander initially conducted reconnaissance alone, the applicant had subsequent thereto also accompanied him on more than one occasion to the target concerned, and had observed the movement of the police whose offices were situated in the NBS building, and their observation was that there were more police who were reporting between 7:30 - 8:30 than during any other time. The decision to plant the bomb next to the building was therefore based on that information.

On or about the 23rd October 1988 the commander who was in the company of the second applicant collected the first applicant at his home by car and they all drove to the first applicant sister's place in Witbank. The commander advised them that the bomb would be planted on the following day being a Monday the 24th October 1988.

Early the next day, they commenced assembling the bomb and the second applicant connected the remote control device to the bomb. Both applicants were then ordered to follow Thabang in a Mazda. Thabang was driving a Ford Cortina and the first applicant drove the Mazda. They followed him to the taxi rank in Witbank and observed Thabang leave the Cortina with a bomb inside it next to the building housing the police station. He then walked on foot from where the Cortina was left to the Mazda. Upon entering the car he instructed the first applicant to drive away.

They drove away from the taxi rank and a short while thereafter Thabang detonated the bomb by means of the remote control device. They heard the explosion but did not stop to observe.

The second applicant testified that in or about August or September 1988 he was requested by Thabang whom he knew to be commanding a unit in the East Rand to assist him in the assembling of a bomb which had to be used in order to bomb the Witbank police station. He was informed that his assistance was being sought mainly because of his peculiar knowledge in the assembling and installation of a particular remote control device to the bomb. His evidence with regard to how they came to be in Witbank and what they did there largely corresponded with that of the first applicant.

He further stated that he did not take part in any of the reconnaissance conducted in relation to the target, that when he participated in the operation he was under the command of Thabang and had acted on his orders as a disciplined MK operative.

Both applicants contended that it was part of the MK strategy to destroy apartheid operations on instructions and to attack those who operated them. The South African Police was regarded as such a target. They further contended that they both did not participate in the selection of the target and had at all times material hereto, acted under the instructions and command of Thabang.

The applications were opposed by the victims (Christima Veronica Masuku, Lucas Moela, Phineas Makola, Betty Makola, James Radebe, Christina Mthombeni, Buti Ntombela, Roeline Stiglingh, Max Sidney Golach, Stefanus F J Etsebeth, Philipus L Lombard, Natalie Coetzee, Cedric P Moela, Emmah Masuku, Wilhelmina Mabona, Simon Nkosi and Priscilla Nomvula), on the basis that the applicants did not comply with the

requirements of full disclosure. They submitted that the first applicant had in his written application stated that "thorough reconnaissance" of the target was made but that in his *viva voce* evidence had stated that he could not remember details such as whether or not there was a doctor's surgery or a furniture shop. This lack of detail, the victims contended amounted to lack of full disclosure. The victims further questioned the justification for planting the bomb at the place where and at the time when it was placed when there was a possibility of civilian casualty.

In our view none of the objections nullified the allegations of the first applicant that it was his commander who had selected the target and had conducted the initial reconnaissance; that the commander had prior to the first applicant's participation in the reconnaissance, advised him that he had already conducted reconnaissance; that his subsequent participation in the reconnaissance conducted in relation to the target was at the instruction of his commander and that under these circumstances it would be quite normal not to remember in great detail the many aspects of the reconnaissance conducted in relation to and concerning the target, and the lack thereof did not amount to non full disclosure nor can it be the basis on which to conclude that no thorough reconnaissance was conducted as alleged by the first applicant.

The decision to plant the bomb next to the NBS building which housed the Witbank police station was taken by Xolile Sam who was a commander of the operation and there is no evidence to controvert that. The applicants participated in the operations under the orders of their commander. Furthermore the reason why the bomb was planted at approximately 8:15 was based on the information obtained through reconnaissance conducted in relation to and concerning the target that most of the policemen reported for duty at 8:15 and left after 9:00 or 10:00.

The police were regarded as the legitimate targets and even though civilian casualty was foreseen and was considered unavoidable it was **bona fide** believed that the major casualties would be the police and that the attack was a legitimate political attack. Significantly it was never contended by any of the objectors that the ANC policy was in any way flouted during this incident.

The other objectors indicated that they were satisfied that the applicants had complied with the requirements of the Act (including the requirements of full disclosure) and were therefore not opposing the granting of amnesty.

The Act provides that amnesty shall be granted if the offence for which amnesty is sought is an act associated with a political objective as defined in the act.

Having regard to the totality of evidence, we are satisfied that the applicants were members of the ANC and were at all times material hereto acting under the instruction of Xolile Sam their commander.

The acts of the applicants were directed at the Witbank police station and were intended to further the interest of the ANC in their struggle against the State.

We are satisfied that the applicants have complied with the requirements of the Act (including full disclosure) and therefore hereby **GRANT** amnesty to each applicant in respect of the following offences;

1. Three counts of murder (Jacob Samuel Masuku, Elias Masina and Dina E. Moela);
2. Fourteen counts of attempted murder;
3. Fifty counts of malicious damage to property; and
4. Unlawful possession of explosives,

committed on the 24th October 1988 at or near the NBS Building in Witbank.

The committee as envisaged in section 22 of Act 34 of 1995 is of the opinion that, Christima Veronica Masuku, Lucas Moela, Phineas Makola, Betty Makola, James Radebe, Christina Mthombeni, Buti Ntombela, Roeline Stiglingh, Max Sidney Golach, Stefanus F J Etsebeth, Philipus L Lombard, Natalie Coetzee, Cedric P Moela, Emmah Masuku, Wilhelmina Mabona, Simon Nkosi and Priscilla Nomvula are victims in relation to the above offence and refers the matter to the Committee on Reparation and Rehabilitation for its consideration in terms of section 26 of the act.

SIGNED ON THE DAY OF 2000

JUDGE S KHAMPEPE

JUDGE N J MOTATA

JUDGE C DE JAGER