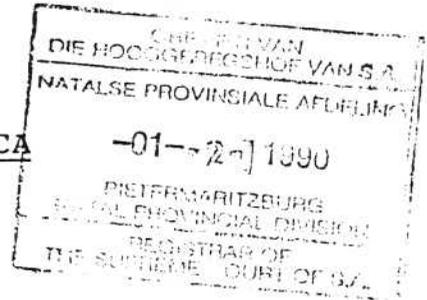


IN THE SUPREME COURT OF SOUTH AFRICA

NATAL PROVINCIAL DIVISION.



Case No. 230/90

In the matter between :

CHIEF MHLABANZIMA MAPHUMULO

Applicant.

and

THE MINISTER OF LAW AND ORDER

First Respondent.

THE COMMISSIONER OF SOUTH AFRICAN
POLICE

Second Respondent.

CHIEF BANGUBUKHOSI MDLULI

Third Respondent.

APPLICANT'S FOUNDING AFFIDAVIT.

I, the undersigned, CHIEF MHLABANZIMA MAPHUMULO, do hereby
make oath and say :

1.

I :

(a) / ...

A handwritten signature in black ink, appearing to be 'M. M. M.' with a flourish.

A handwritten signature in black ink, appearing to be 'A. G. H. (C.O.)'.

- (a) am the applicant herein ;
- (b) am an adult male, a Tribal Chief duly appointed as such with jurisdiction over the Maphumulo Tribal Authority in the Magisterial District of Mpumalanga, near Pietermaritzburg ;
- (c) reside in the Table Mountain Reserve, Maqongqo Area and my office is located at 206 Pietermaritz Street, Pietermaritzburg ;
- (d) am the President of the Congress of Traditional Leaders of South Africa.

2.

The first respondent is THE HONOURABLE THE MINISTER OF LAW AND ORDER :

- (a) who is cited herein in his official capacity as such and in his representative capacity as the Minister of State in charge of and in control

of/...



AFH (C.O.)

of the Police Force for the Republic of
South Africa ;

- (b) of care of The State Attorney (Natal),
3rd Floor, Sangro House, 417 Smith
Street, Durban.

3.

The second respondent is THE COMMISSIONER OF THE
SOUTH AFRICAN POLICE :

- (a) who is cited herein in his official
capacity as such ;
- (b) care of The State Attorney (Natal), 3rd
Floor, Sangro House, 417 Smith Street,
Durban.

4.

The third respondent is CHIEF BANGUBUKHOSI MDLULI,
a Tribal Chief for the KwaMyavu Tribal Authority,
which is located near Table Mountain Reserve, in

the/...



MSH (C.O.)

all reasonable steps within his power to prevent any members of his tribe and under his control from perpetrating any of the acts mentioned in paragraph (a) above

(d) why further or alternative relief should not be granted

(e) why such of the respondents as oppose this application should not be ordered to pay the costs thereof jointly and severally, the one paying, the others to be absolved

(f) directing that paragraphs (a), (b) and (c) operate as an interim interdict until such time as this application has been finally decided.

② *leave granted to applicant to file supplementary affidavits
Application to file
on or before the 25th February.*

THAT the respondents' opposing affidavits be filed on or before the 30th day of March 1990 and the applicant's ~~replying affidavits~~ by the day of 1990.

AND/...

AND TAKE NOTICE FURTHER THAT the affidavit of the applicant and the supporting affidavits to the applicant's affidavit annexed hereto, will be used in support thereof.

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY.

DATED at DURBAN this 31st day of JANUARY 1990.


.....
APPLICANT'S ATTORNEY.

MLABA, MADE & PARTNERS,
Applicant's Attorneys,
506 G.D. Centre,
10/12 Albert Street,
DURBAN.

c/o
~~CALICE~~ & ASSOCIATES
360 Loop Street,
Pietmaritzburg.

/IS.

12.

Due to the urgency of this application, I do not propose to traverse in detail all the various criminal activities which have resulted in the breakdown of law and order, save to say that should that become necessary, I seek the indulgence of this Honourable Court to be permitted to file further supplementary affidavits, or adduce viva voce evidence at trial.

13.

It is common knowledge in my area that the third respondent has apparently decreed that he intends to rid the area of all persons who are not active supporters of Inkatha and particularly those who are supporters of the United Democratic Front (UDF).

14.

On Friday 26 January 1990, my Deputy Chief, ALBERT MADLALA, informed me that a blue Kombi came to my area. Two White policemen were in the vehicle in the company of several Blacks, Special Constables or "bloms", as they are commonly called. They were accompanied by one of our residents, a MR. THOMAS

GCABASHE/...

14/11 (C.O.)

GCABASHE, who is an Inkatha Chairman in the area.

15.

The said GCABASHE was also wearing a camouflage uniform and balaclava in an attempt to hide his face.

16.

The said vehicle then drove to an area known as Echibini, but did not go to my tribal office which is on the way to Echibini. I point out that it is customary for strangers coming into the area to first report at the tribal office.

17.

One of my Councillors, a MR. WILSON MKHIZE saw the Kombi and drove behind it. The said MKHIZE could see the said GCABASHE pointing out houses to the special constables. When MKHIZE tried to approach the vehicle, the White constable would move the Kombi in order to prevent MKHIZE from identifying the occupants.

18.

The Kombi then proceeded to C.J. MAPHUMULO's shopping complex where some of the local youths were standing

around/...

 *AMH (C.O.)*

around because there was an ongoing boycott by residents of my area of the said shopping complex.

19.

The youths saw GCABASHE enter C.J. Maphumulo's shop still dressed in the camouflage and balaclava. He emerged shortly thereafter, having changed into civilian clothes and without the balaclava.

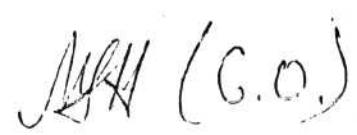
20.

GCABASHE was escorted out by C.J. MAPHUMULO, who was carrying a gun in his hand and GCABASHE walked off to the nearby workshop of his brother, SABELO GCABASHE. It was easy to identify GCABASHE, despite the fact that he was wearing camouflage and balaclava because of his bodily features and his gait.

21.

The Kombi containing the White constables and the special constables thereafter went back to patrol the area. They started assaulting youths and demanded from them firearms and were also wanting to know from them what their political affiliations were.

22/...



22.

When news reached schoolchildren that the police and special constables were questioning children and assaulting them, the children caused an early closure of the school in order to get home.

23.

On Saturday 27 January 1990 I was telephoned in Pietermaritzburg at my office by COUNCILLOR MKHIZE and COUNCILLOR MAPHUMULO and informed that special constables in the company of police were attacking the youths, searching houses, stopping vehicles in the area and were generally conducting themselves in a high-handed manner.

24.

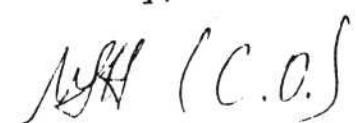
It was approximately 4 p.m. then and I decided to go the Bishopstowe Police Station to determine what was happening and as to why the policemen were attacking the inhabitants falling under my tribal authority and further as to who had called in these policemen.

25.

An Indian police officer and another constable by the name of CELE who was on duty, informed me that



they/...



they did not know.

26.

Whilst I was at the Police Station, a White officer appeared from outside in the company of a Black special constable. The Black special constable pointed me out to the White constable and said I was the Chief of the area.

27.

The young White constable was arrogant and said that he did not care a damn about me.

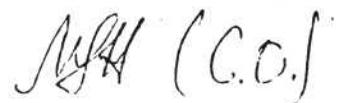
28.

I reminded the officer that he was a Peace Officer and that he should control his tongue and his mannerism. Constable Cele intervened and asked me to ignore the White constable.

29.

I left the Charge Office being assured by the police officers on duty that they would look into the matter.

30/...



30.

On Sunday 28 January 1990 at about 11 a.m., I was at the Tribal Courthouse, when an Induna by the name of BHEKUYISE MAPHUMULO of the Emboyi Ward reported to me that he saw a Kombi with two White constables wearing camouflage and a number of special constables known as "bloms" and that they were tying a tube around a youngster's face and were, moreover, assaulting him. I later discovered the identity of the boy who was being assaulted as being one DOCTOR MDU NGCOBO, whose affidavit I have filed evenly herewith. A number of other youngsters also came and reported to me that they were being assaulted.

31.

I immediately telephoned my attorney, MR. KWENZA MLABA in order to get him to intervene and contact the Divisional Commissioner of Police. This was at approximately 1 p.m. on Sunday 28 January 1990.

32.

At about 3 o'clock on Sunday about 5 youths came to me to say that the police were still attacking the

people/...

MT
MT (C.O.)

people. I tried telephoning Mr. Mlaba, but could not contact him and I thereafter telephoned Mrs. Anna Skelton at Lawyers for Human Rights, Pietermaritzburg, to try and enlist her help.

33.

The following day, Monday 29 January 1990, we were attacked by the Manyavus, who are a tribe of Zulus living near our area and under the chieftainship of the third respondent.

34.

My office immediately contacted the police and Police Constable van Rensburg was sent down.

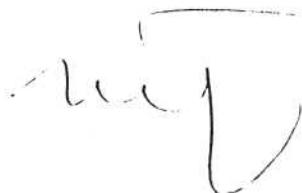
35.

When the said VAN RENSBURG arrived, he found the Manyavus in our territory fully armed.

36.

He persuaded them to leave and to disperse, but in actual fact they did not disperse, but remained as a group at Mathondo Ngcobo's Beer Hall.

37/...



37.

I informed Constable van Rensburg that the Manyavus would not leave and would return immediately the police left the area to try and launch another attack.

38.

Constable van Rensburg suggested that a meeting between myself and the third respondent be held immediately.

39.

I took his advice and I went straight to Bishopstowe Police Station and held discussions with the Station Commander there.

40.

The Station Commander promised to contact the Magistrate of the District, Mr. Webber and see if a meeting could be arranged but he informed me that he was hesitant about contacting the third respondent, since he was not a very co-operative person.

41/...

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[Handwritten signature: NPH (C.O.)]

41.

I am still awaiting the holding of the said meeting.

42.

On Monday 29 January 1990, when I returned from the Bishopstowe Police Station, I was informed that the Manyavus had killed ZIBONELE DLADLA and that immediately I had left to go to the Police, they had launched another attack. I was further informed that the Manyavus had burnt down approximately TEN (10) houses and that a number of houses had been damaged.

43.

I was further informed that MATHONDO NGCOBO was seen driving his bakkie and toting a gun and further that the people who had burned down the houses were in fact transported by him.

44.

I went to my Tribal Court and found approximately 3000 to 4000 people gathered there. They had come to the Tribal Court in order to escape the burning and the looting which had been taking place.

step

45/...

Step (C.O.)

45.

As I was addressing the people who had gathered at the Tribal Court in order to pacify them, three police vehicles arrived from the Riot Unit.

46.

They informed me that they wanted to search my people for firearms. I cautioned them that this in their present mood and the present circumstances, would not a very prudent thing to do.

47.

A White officer from the Riot Unit whose name I do not know, tried to address the people, informing them that they must co-operate with the police and that they should trust them.

48.

The people informed the police that they did not trust them, as the police in the company of special constables, had been assaulting and conducting a reign of terror in the area since Friday 26 January 1990. They further informed the police that two people had already died and, moreover, that the police had not taken any action against the Manyavus.



49/...

AGH (C.O.)

49.

As the Riot Police officers were addressing the crowd, a vehicle drove up from which emerged a White officer who was dressed in khaki shorts and was in the company of another police officer, DLOMO. They informed us all that they were from the Special Branch and that they agreed with me that under the present circumstances, the Riot Unit should not search the people who had gathered there. The officer who had previously insisted on searching the people, heeded the advice and drove off.

50.

At about 6 p.m. the police ordered the people to go back to their houses and informed me that they would provide protection to them. However, to our surprise, the police did not stand guard near the area, but instead, all of them retired to Mathondo Ngcobo's Beer Hall.

51.

Many of the residents of the area have now fled the area in fear of further attacks from the police and the Manyavus. I bring to the attention of this Honourable Court that some of my Councillors have also gone into hiding, fearing further attacks and I



have/...

NGH (C.O.)

have therefore been unable to obtain supporting affidavits from them. They will, however, be available to give viva voce evidence at the trial of this matter.

52.

I have been left with the distinct impression that the inhabitants of my area are being dispossessed of their weapons in order to facilitate attacks upon them by the third respondent's impis who are permitted openly to carry their weapons with impunity.

53.

We are all fearful of the return of the third respondent's impis supported by the special constables and the police.

54.

It is clear from what I have already stated that the third respondent's wards have taken the law into their own hands and are unlikely to desist from their unlawful actions and activities in the light of the assistance being rendered to them by the special constables and the police.

15/1

55/...

15/1 (C.O.)

55.

It is my respectful submission that there has been a total breakdown of law and order in my area. There is every likelihood that the violence, assaults, killings, lootings and damage to property and other unlawful and criminal activities will escalate unless the relief sought by me in these proceedings is granted.

56.

I have no alternative other than to apply to the above Honourable Court for the relief which I seek.

57.

In view of the obvious bias exhibited by the special constables and the police officers who have been seen in their company in favour of the third respondent's wards; the confidence of my people in the South African Police has been seriously and tremendously eroded. It is my respectful submission that this confidence can only be restored if the South African Police behave in an impartial manner.

58.

As the Tribal Chief of the area, I am anxious to

liej

see/...

N.H. (C.O.)

see the restoration of law and order in my area and for the police to resume their proper role of maintaining and preserving the same. It is my further respectful submission that the only manner whereby this can be done is by the grant of the relief sought by me in these proceedings.

59.

In the event of the refusal of this application, the safety, security, lives and property of my wards and myself will be placed in severe jeopardy.

60.

On the other hand, the grant of the relief sought by me is unlikely to cause any grave or substantial prejudice to any of the respondents.

61.

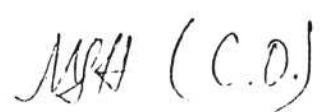
I accordingly respectfully submit that the balance of convenience clearly favours the grant of the relief sought by me.

62.

Further attacks upon the persons and property of my wards and myself are, in my belief, imminent and



likely/...



likely to take place at any time. I further submit that I will not be afforded substantial redress by a hearing in due course. I accordingly respectfully submit that this application is a matter of urgency and humbly crave leave of the above Honourable Court to hear the application as such and to dispense with the forms and services provided for in the Rules of Court.

63.

I submit that I have the necessary locus standi as Tribal Chief to launch an application on behalf of my wards. I further point out that on 5 December 1989 a Commission of Enquiry appointed by the Congress of Traditional Leaders of South Africa and chaired by a Senior Advocate, commenced hearing evidence relating, inter alia, to the causes of the violence in our area. It was at this Commission that we were advised to seek an interdict in order to secure the relief which we seek.

64.

I shall endeavour to cause the papers in this application to be served on the respondents prior to the hearing thereof.

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65/...

[Handwritten signature] (C.O.)

