

**AC/2000/053**

**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.**

**KHULULEKANI LAWRENCE MBATHA 1ST APPLICANT**

**(AM 3363/96)**

**WALTER SMILES 2ND APPLICANT**

**(AM 3364/96)**

**DECISION**

The first applicant is seeking amnesty for:

"Instructions to throw hand grenade on the 24<sup>th</sup> May 1993" at Kimberley and the victims Ezekiel Lebogang Mokone (killed) and Jeane Nel (injured).

The second applicant states:

"On the 24<sup>th</sup> May 1993 I threw a hand grenade into a crowd at the Trust Bank Centre, Kimberley". He continues to state that one person was killed and others were severely or slightly injured. He also states: "Hand grenade was directed at the Bophuthatswana Representative and at the Station Commander of South African Police".

As can be seen from the aforementioned the applicants do not clearly state the acts, omissions or offences in respect of which amnesty is sought. It may be in the interest of clarity to state that the following facts were common cause at the hearing:

- (a) That a hand grenade was thrown at the Trust Bank Building in Kimberley.
- (b) That the date of the occurrence was the 25<sup>th</sup> May 1993 and not the 24<sup>th</sup> May 1993.
- (c) That as a result of the explosion of the grenade Mr Ezekiel Mokone was killed and Mr Jeanne severely injured.
- (d) That 40 other people sustained injuries.

It is also clear from the evidence that the perpetrators didn't intend to kill or injure the specific victims. The hand grenade was intended to explode in the foyer of the Trust Bank Building where

other people (if present) might have been injured. The grenade was, however, deflected and exploded outside the building, killing and injuring the people referred to.

After the incident two persons, Mr Siphon Moses Mbaqa and Mr Darlington Nkosinathi Nkohlhla, were charged and found guilty of culpable homicide in respect of the killing of Mr Mokone, attempted murder of Major Uys, the station commander of the South African Police and the illegal possession of the hand grenade.

The committee will now deal with the application of the first applicant. For purposes of our decision we will accept that Mr Mbatha intended to ask for amnesty for all offences flowing from his involvement with the throwing of the hand grenade on the 25<sup>th</sup> May 1993.

The offences occurred under the following circumstances:

The ANC Youth League and Cosas organised a march from Galeshewe, Kimberley to the Trust Bank Building in the centre of Kimberley city on the 25<sup>th</sup> May 1993. The purpose of the march was to hand over memoranda of protest to the Bophuthatswana consulate who had their offices in the building and to the S.A. Police. This march took place after the Peace Accord had been signed by the ANC and the then government and after the negotiations which resulted in the constitution had resumed. Permission was requested to hold the march but the Police at Kimberley were not prepared to grant the request and the representative of the United Nations, Mr Adriana Cassandra, and the chairperson of the Northern Cape Peace Committee, Adv. Jeanne Nel was called upon to mediate. The Police informed Mr Cassandra and M E Nel that the march will not be allowed unless the leadership of the Youth League and Cosas ensured that the march would be peaceful. Cassandra and Nel thereupon met Mr Steenkamp, the leader of the ANC in the Northern Cape and Mr John Block, the chairperson of the ANC Youth League who gave the required insurance that the march will be peaceful and properly marshalled. Permission for the march was thereupon obtained on condition that it will throughout be under the observation of the U.N. and the Peace Committee.

Mr Lawrence Mbatha, the first applicant in the present application, was at that stage the regional Commander of M.K. in the Northern Cape.

As commander he had discretionary powers to act in circumstances where no direct instructions from his seniors could be obtained. In evidence he conceded that Mr Steenkamp and Mr Block, who were members of the ANC civilian leadership, were regarded as his seniors and that he took instructions from them.

According to Mr Mbatha he picked Mr Smiles up at a place commonly known as Tickey Stop in Kimberley and he, Smiles and the driver of the car in which they were travelling drove towards the place known as Small O.K. where he and Smiles got out of the car, and joined the marches. Mbatha testified that at that time he instructed Smiles that after the last memorandum has been submitted and the marchers were moving away, he should throw a hand grenade through the sliding door.

The memoranda were handed over and the marchers were preparing to move away. At that time according to Mbatha Smiles threw the hand grenade. It struck a security guard in the face rolled back exploded and killed Mr Ezekiel Mokone, a co-member of the ANC and wounded several other people.

The above is a short summary of Mr Mbatha's version of the events on the 25<sup>th</sup> May 1993 up to the explosion.

After the explosion several members of the ANC were detained. In the end Mr Darlington Nkosinathi Nkohla and Mr Moses Sipho Mbaqa were charged and convicted of the very same offences for which the present applicants now apply for amnesty.

Their convictions were largely based on the evidence of a witness, Mr Thembinkosi Steven Ngoele and a alleged confession of the second mentioned accused Mr Nkohla.

While the above trial was in progress the two applicants in the present amnesty applications approached the legal representatives of the two accused referred to above. Mr Smiles informed them that he was the guilty party and an affidavit was drawn up containing the confession. There was an attempt to hand the affidavit to the police, but they declined to accept it and proceeded with the trial. Neither Lawrence Mbatha nor Smiles gave evidence at the trial to contradict the evidence presented by the State. The latter evidence was accepted and the accused Mbaqa and Nkohla were convicted.

The first applicant acted as a member of a known political organisation. According to him he acted as regional commander of M.K. and within the scope of his express or implied authority and that the act was directed against the Bophuthatswana government and the S.A. Police.

It may also be argued that he believed on reasonable grounds that he was acting in the course and scope of his duties and within the scope of his express or implied authority.

It is however clear that the act was not committed in the execution of an order on behalf of or with the approval of his organisation. On the contrary the local leaders of the ANC who he considered to be his seniors gave the assurance to the Peace Committee that the march will be a peaceful event. Furthermore, the throwing of the grenade took place while the local chairperson of the ANC Youth League who the applicants regarded as their senior, was asking the marchers to disperse peacefully.

Under the circumstances the first applicant could never have been under the impression that he was acting within the scope of his authority. He was in fact acting contrary to the express undertakings given by his organisation. Any bona fide belief that he was acting within the scope of his authority is further contradicted by his behaviour after the event. He did not report to his seniors about the event, which, if it was carried out within the policy of the organisation, would surely have been approved by them.

In view of the foregoing amnesty is **REFUSED** to the first applicant. The committee does not find it necessary to deal in detail with the evidence of the first applicant except to put on record that his evidence was not satisfactory on all aspects.

The application of the second applicant remains to be dealt with. This applicant made various statements which was placed before the committee. Viz.:

(a) His application for amnesty

(b) An affidavit by him dated the 27<sup>th</sup> September 1993

(c) A statement made on the 8<sup>th</sup> June 1996 to Representatives of The Truth Commission

(d) A transcription of the evidence given by him before the Human Rights Violation Committee at Kimberley on 12<sup>th</sup> June 1996.

(e) A further statement by him to representatives of the TRC dated 14 August 1996.

Apart from the foregoing the second applicant's oral evidence before this committee was transcribed and appears on pages 265 - 406 of the record of the amnesty hearing.

This applicant contradicted himself more than he corroborate himself. He was in deed an unreliable witness but at the end of the day the committee still had to answer the question: why would a person admit to an offence that he didn't commit? One could speculate on many possible answers. The committee, however, could not ignore a probable answer which the applicant himself supplied in his statement dated the 8<sup>th</sup> June 1996 to representatives of the TRC, who we don't believe influenced him in any way.

He started off by saying that he did not attend the meeting at all and only heard on the radio about the hand grenade explosion. He then continues:

"I did not pay attention to the incident at all until I long after was contacted by major Lawrence who asked me to volunteer as the person who threw the hand grenade at the venue.

We were both members of the ANC and I knew him before hand. I joined the ANC Marshall structure in 1990.

Lawrence said it was necessary to have perpetrator or volunteer to this incident, but he never told me specifically why.

He spoke of money and as I had a hard time I agreed. Sometime after I was taken to a lawyer, Rodney Isaacs who had prepared an affidavit where I confessed to be the person who threw the grenade at the venue.

I don't remember what was written in the affidavit and I was just asked to sign it. Afterwards Rodney Isaacs, the lawyer, took me to the police station, but I was kicked out without any interrogation.

The police has never since confronted me with the case.

I have a witness who can testify that I was not on the venue that day, his name is Boy Oliphant. I don't know his address but I can find his house. I never took any further notice of the matter and Major Lawrence never paid me anything".

Smiles tried to explain why he made this statement. He said that he didn't trust the people of the TRC who visited him and requested a statement from him. During his evidence he often explained that he didn't reveal the full truth in his statement of the 27<sup>th</sup> September 1993 because he didn't want to implicate his leader, Major Lawrence Mbatha. We find it strange that if he in fact did not trust the representatives of the TRC that he would voluntarily and out of his own accord tender information that would implicate his leader if that information had not element of truth.

On the evidence presented the committee is not satisfied that a full disclosure had been made and which one of Mr Smiles's versions if any reflects the truth.

Amnesty is therefore **REFUSED**.

We recommend that Mr. Mokone's relatives who fall within the category of victims as defined in the act and Mr Jeanne Nel and Mr. Cassandra be declared victims for the purposes of Act 23 of 1995.

SIGNED AT CAPE TOWN ON THIS THE DAY OF

NGOEPE J

DE JAGER S.C.

KHAMPEPE Ms