

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Appeal No. : A12/2004

In the appeal between:

LEON THOMAS PEACOCK First appellant

HERCULES MICHAEL VILJOEN Second appellant

ALLEN RAUTENBACH Third Appellant

and

THE STATE Respondent

CORAM: RAMPAL J *et* MATSEPE AJ

HEARD ON: 28 NOVEMBER 2005

JUDGMENT BY: RAMPAL J

DELIVERED ON: 19 JANUARY 2006

[1] The three appellants were convicted in the Bloemfontein Regional Court on 26 March 2003 despite their pleas of not guilty in respect of the first charge of sabotage. The next day on 27 May 2003, they were sentenced as follows:

*The first appellant was sentenced to 8 (eight) years

imprisonment of which 3 (three) were conditionally suspended for 5 (five) years. *The second appellant was similarly sentenced. *The third appellant was sentenced to 5 (five) years imprisonment of which 3 (three) years were conditionally suspended for 5 (five) years. The condition imposed on them, was that they should not be found guilty of the contravention of section 54(3) of the Internal Security Act No. 74/1982 committed during the period of suspension.

[2] In the second place the first appellant was also convicted on his plea in respect of the second charge which was the unlawful possession of an unlicensed firearm in contravention of section 2 of the Arms and Ammunitions Act No. 75/1969. He was sentenced to a fine of R1 000,00 or 30 (thirty) days imprisonment which was wholly suspended for 4 (four) years.

[3] In the third place the first appellant was convicted in respect of the third charge – the unlawful possession of ammunition in contravention of section 36 of the Arms and Ammunitions Act No. 75/1969 despite his plea of not guilty. He was sentenced to 12 (twelve) months imprisonment.

[4] In the forth place the first appellant was further convicted despite his plea of not guilty in respect of the forth charge – the unlawful possession of automatic ammunition in contravention of section 32(1)(b) of the Arms and Ammunitions Act No. 75/1969. He was sentenced to 2 (two) years imprisonment which was

conditionally suspended for 3 (three) years.

[5] In terms of section 280(2) Act No. 51/1977 the trial magistrate directed that the one year term of imprisonment imposed in respect of the third charge, should run concurrently with the sentence imposed in respect of the first charge.

[6] The three appellants now come to this court on appeal against their convictions and sentences in respect of the first charge of sabotage. In addition to this the first appellant was also aggrieved by the sentences meted out as regards the second, the third and the fourth charges. Therefore he also appeals against these sentences.

[7] The version of the prosecution as to the merits was narrated by several witnesses, amongst them Etienne Crouse, George Werner Smith, Eduard Johannes Gagiano, Marthinus Petrus Janse van Vuuren, Leon Jacobus Burger, Petrus Johannes Swart, Jo-Anne Meiring, Elizabeth Maria Johanna Britz, Johan Dirk Venter, Evans Kane, Mxolisi Ernest Sono and Naude Viljoen.

[8] Crouse testified that he lived in Port Elizabeth. He was a sergeant and an intelligence officer of the Port Elizabeth commando. He knew the appellants from Murraysburg. One day in September 2000 he was accompanying Frikkie Potgieter from Port Elizabeth to Bloemfontein. On their way they stopped over on a certain farm in the Addo district at the request of Potgieter. There he met the first appellant.

- [9] He recognised the first appellant. He had previously met him on a few occasions in the past. They used to meet at right-wing political meetings. The meetings were organised by the Afrikaanse Weerstand Beweging. On the farm at Addo the first appellant told them about a certain plan. The first appellant told him that an alliance of right-wing political groupings was plotting a coup. The groupings were busy trying to get certain military vehicles and tanks namely ratels and olifanttenks, in order to execute the coup d'état. Drums of diesel were already stored up at strategic places in the country. The first appellant added that he was doing exegesis of certain writings for the AWB. At that stage he understood that the plan of the appellants was a defensive strategy.
- [10] During or about October 2001 he attended a meeting held at Murraysburg. The first appellant had invited him to the meeting. The meeting was convened by the first appellant. On his arrival there, he met the second appellant and the third appellant. They were introduced to him by the first appellant. About fifteen people attended the meeting. The first appellant presided over the proceedings. Among others Werner Smith and Martin van Vuuren and certain members of the neighbouring army commandos. The purpose of the meeting was to eliminate the traitors among the right-wingers and to forge a bond of loyalty among the members. The first

appellant urged the people to stand up for the rights of the whites and to prepare for the war, because the blacks were planning an uprising against the whites.

- [11] During December 2001 he attended another meeting at Murraysburg. He was invited to the meeting by the first appellant. The meeting formed a military structure called “Die saak”. The first appellant led the meeting. He was the main speaker. Present at the meeting were the first appellant, the second appellant, the third appellant, Werner Smith, Martin van Vuuren, Eddie Gagiano, Frikkie Potgieter and others. The membership was exclusively white and christian. The first appellant asked the meeting to vote on the question whether the biblical prophecy should be hastened or not. The members were opposed to the idea of hastening the prophecy. The first appellant believed that the bombing of the Vaaldam was an act revealed and sanctioned in the Bible. The first appellant also gave him a computer disc which he asked him to study. It contained writings of Siener van Rensburg. In addition he gave him a copy of a document called martial law and a copy of a document described as oath of loyalty. The press statement was supposed to be released after the bombing of the Vaaldam and sent to organisations such as the Klu Klu Klan in America and the New Christian Crusade Church also in America. The first appellant undertook to explain finer details of the plan at the next meeting. At the same meeting

ranks were allocated. The first appellant and Eddie Gagiano bestowed the ranks on the members, for instance the first appellant was a commodore, the second appellant a chaplain, the third appellant a sergeant, Werner Smith a commander, Martin van Vuuren a battle general, Eddie Gagiano a general strategist and he Crouse a major.

[12] The oath of loyalty akin to the Blood River Vow of 16 December and the code of martial law were presented, read and signed. The night of terror was also discussed. The first appellant believed that “die nag van verskrikking” would dawn upon the country the day the former state president, Dr. N.R. Mandela, or the current state president, Thabo Mbeki, died. On that night of terror the blacks would rise up against the whites in this country, appropriate their property and wipe them off the landscape. The first appellant warned that the traitors would be killed by a certain G. The night of terror had its origin in the theory of the writer called Siener van Rensburg. From time to time passages were quoted from the book of this writer and the Bible. The writer’s theory was reconciled with the biblical prophecies.

[13] During February 2002 the organisation held another meeting at Murraysburg. The venue of the meeting was a place called “M & D Huide” occupied by the first appellant. The third appellant was staying on the same premises with the first appellant. He was invited by the first appellant to attend the meeting. The first appellant, the second appellant, the third appellant, Werner Smith, Martin van Vuuren, Frikkie Potgieter also attended the meeting.

He presented the intelligence plan which was accepted. The organisation's meeting was about taking active actions to realise the objectives of the movement.

[14] The first appellant told the members that the plot had been hatched in this country. Such a deed, the first appellant said, would make Osama Bin Laden's attack of September 11 in the USA look like child's play. The targeted groups were blacks, coloureds, indians, jews and jingoes. One by one the members were then called into an office where they were interviewed by the first appellant in the presence of the chaplain, the second appellant. The purpose of the interview was to select the elite corps who would execute the envisaged plan, the act of terror. He was selected and placed in the same unit with the first appellant and the second appellant. The first appellant tasked him to ascertain where the organisation could find 200 kg of C4 explosives and some time delaying devices, rifle silencers and survival kit to mention only a few military things.

[15] Early in March 2002 the first appellant and the second appellant paid him a visit at his residence in Port Elizabeth. He reported to the two that he could not find a place where the required C4 explosives could be found. Instead he found a place in Simonstown where PE4 explosives could be obtained. The first appellant then told him that the wall of the Vaaldam was going to be blasted by group A. The aim was to cripple the economy by cutting the water supply to the

reef, disrupting the industry, infrastructure and electricity and causing loss of human life. He was told that the factories in the vicinity of the Vaaldam would be rendered inoperative for a period of four years after the act of terror.

[16] At the end of it all there would be so much chaos, starvation and poverty in the country that it would bring about the night of terror. The night of terror would bring about a civil war between whites and blacks. The objective of the organisation was to restore white government in political power in this country. The eventual end of the night of terror would be the overthrow of the black majority government. During such visit the first appellant anointed him as the holy warrior. The driving force of the organisation was religious in character.

[17] On 20 March 2002 he attended a meeting at Murraysburg - only he and the first appellant were present. The first appellant gave him the finer details of the plan. It entailed the blowing of the wall of the Grootdraaidam with explosives so that its water could flood the Vaaldam. The destruction of the floodgates of the Vaaldam by means of explosives would drive the nail in the coffin. The first appellant informed him about a crack in the wall of the Vaaldam and that explosives would be inserted in the crack and detonated, causing the floodwater from the Grootdraaidam to flow into the Vaaldam.

[18] The destruction of the Vaaldam would attract the attention of the emergency service providers, the army and the police. The attack on the Vaaldam would keep all these agencies so involved in the rescue operation at the Vaaldam that it would create a opportunity for other right-wing organisations or groupings to carry out a coup d'état. After the breakdown of the wall of the Vaaldam the warriors would retreat to the P.K. le Rouxdam. The saboteurs, who were supposed to participate in the Vaaldam operation, were the first appellant, the second appellant, the third appellant, Martin van Vuuren and Crouse himself.

[19] On 21 March 2002 the first appellant, the third appellant and Crouse went to the shooting range at Murraysburg to test their weapons. The first appellant and the second appellant could not find the ammunition behind the shooting range. The first appellant suggested that they leave Murraysburg for Bloemfontein at midnight so that their departure could be less conspicuous. The first appellant didn't intend going back to Murraysburg after the Vaaldam operation. At midnight they set out in two vans to Bloemfontein. The first appellant, the second appellant, the third appellant, Crouse, the first appellant's wife and his two sons travelled together. They arrived in Bloemfontein the next morning before sunrise.

[20] In the evening of Friday 22 March 2002, he attended a

meeting behind the chicken-run at the residence of the first appellant's parents in law at Bloemspruit in Bloemfontein. At this meeting were the first appellant, the second appellant, the third appellant, Martin van Vuuren and Crouse. The explosives were discussed. The seven day covenant was adopted and the Vaaldam operation plan was presented. The main speakers were the first appellant and the second appellant. See exhibit K for their speeches. The group slept in Bloemfontein that night.

[21] The next morning on Saturday 23 March 2002 they drove away from Bloemfontein to Parys. The first appellant paid for his fuel. They bought food from a shop in town at Parys. From there they proceeded to a small plot on the outskirts of the town some distance from the Vaaldam. The farm was owned by a certain Chris van Zyl. They slept there in the guest house.

[22] The next day, Sunday 24 March 2002, they with the exception of Mrs. Peacock, travelled to the two dams on a reconnaissance mission. They first travelled a long distance to Grootdraaidam at Standerton. The first appellant explained the plan as to how the damwall was to be shot. They drove right up to the wall where they stopped, alighted and inspected the floodgates. There was a discussion concerning the blasting of the damwall.

[23] On the same day the group of seven drove away from the Grootdraaidam to the Vaaldam. On their arrival there Van Vuuren showed him a small hill outside the terrain of the Vaaldam where Crouse would have to take up his position as the sharp-shooter during the operation. From the hill they moved on to the terrain of the dam. They turned at the gates of the camping site. They did not reach the wall. From there

they returned to Parys.

[24] On Monday 25 March 2002 the first appellant sent Van Vuuren and the third appellant out to the mine to look for explosives. They came back empty handed. The objective of acquiring explosives was unattained. They reported back to the group that evening that security measures on the mines were very tight and that there was an intensive monitoring of their movement by the police. Van Vuuren told the meeting that because it was impossible to obtain the explosives and that because his wife was ill, he no longer wanted to go on with the operation. The meeting resolved to let him go. The first appellant gave Van Vuuren a computer disc to deliver to the newspaper, Die Volksblad, in Bloemfontein. The first appellant warned Van Vuuren to wipe off his fingerprints from the computer disc before he delivered it to the said newspaper. The delivery was supposed to be clandestine. The newspaper was not supposed to know the identity of the person who delivered the computer disc.

[25] That evening the members were ordered to have their weapons ready in the light of the report that the police were closely monitoring their movements. The first appellant commenting on such reports vowed to shoot his family dead first and then himself rather than to surrender if members of the South African Police Service should attack them on the farm that particular night.

[26] The next morning on Tuesday 26 March 2002, the first appellant gave Van Vuuren R100,00 for fuel back from Parys to Bloemfontein. When Van Vuuren drove away the rest of the warriors remained behind. Later that evening the first appellant's wife suggested to the meeting that the group should rather choose another target instead of the Vaaldam. But the first appellant's dismissive reaction was that such a suggestion was out of question. He stressed that he was not prepared to break the vow he had made before God. He

was determined to go on with the plan to destroy the Vaaldam.

[27] On Wednesday 27 March 2002 the first appellant accompanied by his wife and two sons drove away from the farm saying to the group that he was going to get the explosives, a task which the third appellant and Van Vuuren should have performed, but failed. Later on the first appellant went back to the farm with no explosives, but a welding torch. That evening the first appellant anointed the group and the weapons. In turn the second appellant anointed the first appellant and his weapons. The first appellant produced the maps and the photographs of the Vaaldam and directed the group to study them thoroughly because the maps had to be destroyed. On the instructions of the first appellant Crouse burned the maps and the photographs afterwards. The farm owner, Van Zyl, was so frightened when he saw the firearms and the ammunitions in the guest house that he told the group he wanted nothing illegal on his farm. Every evening since the Bloemfontein meeting a religious devotion service was held. That evening the devotion service was quite ritualistic. It was, after all, supposed to be the last of the seven services before the symbolic deed – the bombing of the Vaaldam.

[28] The next morning on Thursday 28 March 2002, the police raided the guest house on the farm, arrested the group and

seized their equipment, ammunition, flags, survival kits, right-wing literature, computer discs and weapons. Among these were German flags. The police task force consisted of Captain P.J. Swart, Superintendent Sevenster and Captain Alexander among others. The three were senior detectives. Crouse was a marine officer and a registered informer for the military intelligence, in other words he was a military agent. In the military intelligence there was an officer who acted as his handler. He was tasked to maintain constant contact with the first appellant in order to keep the South African National Defence Force abreast with what Peacock's group was planning to do. After every meeting he compiled an intelligence report which he submitted to the South African Defence Force. His mandate included the identifying of the leadership elements of the group and the monitoring of the activities of the group. As an intelligence agent he was not paid but reimbursed for his operational expenses. He did not create an opportunity for the group to commit the crime. He did not commit or promote the commission of the offence.

[29] Smith corroborated Crouse testimony on material facts. He testified that he lived in Bloemfontein. In July 2001 the first appellant telephoned him. They met in Bloemfontein. The first appellant requested him to do reconnaissance about the enemy forces on the northern and western borders of the country and to do an estimate of the costs relating thereto. He gave the information to the crime intelligence. He was an undercover agent of the military intelligence. His mandate was to spy on right-wing groupings. He was mandated to monitor the first appellant.

[30] In August 2001 he attended a meeting at Gariepdam. He was invited by the first appellant. He travelled to the meeting with a certain Van Vuuren. He met the second appellant there. He presented his cost estimate of R100 000,00 for the border operation. Among the speakers were the first appellant, Koos du Plessis, Mike du Toit and Hennie Erasmus. The discussion revolved around the plans of the whites to deal with the black enemy forces on the borders. Although some speakers were militant, the majority advocated a defensive strategy as opposed to the offensive strategy. The night of terror would have two phases - the defensive phase prior to the enemy attack and the offensive phase subsequent thereto. At the meeting there was an undercurrent discord between the southern group and the northern group.

[31] In September 2001 he attended another meeting held at a guest house in Bloemfontein. The first appellant chaired the meeting. The first appellant invited people to the meeting. The first appellant assured the members who came from the Free State, the Eastern Cape and Kwa Zulu Natal that God would protect the "boerevolk". The night of terror was discussed. Certain passages from the Bible and particularly Joël 2 were stressed and the prophesy of Siener van Rensburg was highlighted. Van Vuuren was present at the meeting.

[32] In October 2001 he and Van Vuuren visited the first appellant at Murraysburg for pleasure. They went down there for the fun of hunting jackals. During their visit Mike du Toit called the first appellant to let him know that Lourens du Plessis had been arrested and that he wanted all his people to be warned to get rid of all the illegal stuff in their possession, such as explosives, ammunitions and weapons. As a result of that call the first appellant shifted huge quantities of ammunition to a shooting range where he buried them away. Besides the concealed ammunition, the first appellant gave him approximately 600 rounds of ammunition for an R1 rifle. During that hunting expedition he met the second appellant again and the third appellant for the first time.

[33] In November 2001 he attended a meeting at Murraysburg. He was invited by the first appellant. The first appellant, the second appellant, the third appellant, Crouse, Smith, Van Vuuren, Magiel Richard and Steyn Smit attended the meeting. The continued existence of the southern group, in other words the Eastern Cape, Northern Cape and the Free State, and loyalty were two issues discussed. It was resolved that the southern group should continue to exist and the members were asked to be loyal to the cause. The north and south were disunited.

[34] In December 2001 he attended a meeting of the southern group. The meeting was once more convened by the first appellant. It was attended by the first appellant, the second appellant, the third appellant, Crouse, Smith, Van Vuuren, Gagiano

and Frikkie Potgieter. The main point of discussion was whether the southern group should switch over to the military action. The idea was debated. Various persons such as Van Vuuren, Potgieter and the first appellant spoke in favour of the idea. In the end the group resolved to switch over to the military action. In addition the first appellant and the third appellant felt and proposed that the prophesy should be quickened. The rest of the members were not in favour of such an idea. The copies of martial law were circulated, signed and returned to the first appellant. The purpose of doing so was to inform the members more about the military action and to warn traitors that betraying the movement would be regarded as treason, punishable by death. The ranks were designated to the members.

[35] On their way back to Bloemfontein Van Vuuren told him that the first appellant had tasked him to do reconnaissance at the Vaaldam with the aim of blowing it up later and that Gagiano had to go to the power station at Muldersdrift for the same purpose. He also learned from Van Vuuren that the first appellant had given him R700,00 for the purpose of buying fuel in connection with the reconnaissance at the Vaaldam.

One day he accompanied Van Vuuren to the Vaaldam. Doing reconnaissance entailed buying topographic maps and aerial photographs which depicted the whole area of the Vaaldam. In addition they took photographs of all the strategic points around the targeted dam. He took the photographs. On their way back Van Vuuren called the first appellant and informed him that the Vaaldam reconnaissance had been done. The first appellant then

ordered them to proceed to Glen Harvey near Potchefstroom on a similar mission. They were unable to do so because they did not have enough money for fuel.

[36] In February 2002 he attended a meeting at Murraysburg. The meeting was convened by the first appellant. It was attended by the first appellant, the second appellant, the third appellant, Crouse, Smith, Van Vuuren, Frikkie Potgieter and Jaco Theron. The first appellant and Van Vuuren drove away from the venue of the meeting. On their return Smith learned from Van Vuuren that Van Vuuren had handed maps and the photographs to the first appellant.

[37] The next day the first appellant and the second appellant interviewed the members one by one during the course of the meeting. The military action consisted of four operational units, A – D. Each member had to choose a unit or a plan. He did not know what each plan really entailed. He told the first appellant and the second appellant that he was not in favour of the idea of blowing the Vaaldam up since innocent people would be hurt. The first appellant responded by telling him that if he was 80% successful with his first plan, it would not be necessary to blow the Vaaldam up. The night of terror was due to come during March 2002 according to the first appellant. It was resolved that the survivors of the night of terror would have to come together at Gariepdam in brown military uniform. The third appellant was at the

meeting. A Sunday meeting took the form of a public worship led by the first appellant. He refused to sign the oath of loyalty on that particular Sunday. But he had already signed it two days earlier. He recruited Van Vuuren as an informer and introduced him to the crime intelligence.

[38] Van Vuuren testified that he lived in Bloemfontein during 2001/2002. He was a member of the 32 Battalion at one stage. He knew the appellants. He knew the prosecution witnesses Crouse and Smith. His evidence corroborated the testimonies of these two witnesses in several material respects. The first appellant received a call from Mike du Toit to let him know that the security police had searched and arrested Lourens du Plessis. Subsequent to the conversation the first appellant made a number of calls to inform the people about the developments in the north. After doing so the first appellant and the third appellant took out a trunk full of an assortment of ammunition from the first appellant's room. They emptied the trunk, sorted out ammunition, packed it into plastic bags, placed it into three 5 litre ice-cream buckets, removed it to the local shooting range and buried it there. He and the first appellant did so. Only the legal ammunition remained at the first appellant's place of residence.

[39] He was mandated by the first appellant to do the reconnaissance about the Vaaldam. The second appellant was present when the mandate was given to him. He told Smith about his task on their way back to Bloemfontein. Later he and Smith did travel to the Vaaldam in January 2002. He was an undercover agent. They took photographs, drew up the plans and made notes. Once they were back in Bloemfontein he called his handlers. They came to his house and they took photographs of all the

material he had collected about the Vaaldam. The photographs were taken in his house. The first appellant told him about the small crack in the wall of the Vaaldam. I deem it unnecessary to summarise the evidence of the remaining state witnesses, but the evidence was by no means insignificant.

- [40] The first appellant, Peacock, also testified. He testified that he studied theology, among others, at the University of the Free State. He did military training in 1981. He was a member of the Volksfront. He was invited to present religious speeches at the political rallies of the AWB. He worked for Kirkwood Securities in the Eastern Cape. Before the national elections in 1994 the right-wing political groupings in the country were deeply concerned about what they perceived as the threatening danger. Among this groupings were the Volksfront, Herstigte Nasionale Party, Konserwatiewe Party en die Afrikaanse Weerstand Beweging and certain Israeli groupings. They formed a co-ordinating right-wing political structure called an action committee in Port Elizabeth. He became the secretary of the action committee.

The 1994 political events were a great setback to him. He regarded them as treason. So much hatred was unleashed that the members of the right-wing groupings wanted to resort to violence to achieve their objectives. However, he

did not associate himself with violence though he was opposed to the dramatic political change which happened in 1994. He supported the ideology of separate development.

[41] He was a member of Kirkwood Commando. His reading of the Bible, the writings of Siener van Rensburg, the writing of Johanna Brand together with a military document called "Opfor" convinced him that a night of terror was coming. He believed that a plot was being hatched in this country in collaboration with foreign countries such as Angola, Mozambique, Zimbabwe and Lybia to drive all the whites out of this country. This was referred to as the snake from the north according to the prophecy of Siener van Rensburg. According to the prophecy of Johanna Brand the night of terror would start in Johannesburg. The martial law and the oath of loyalty were the brain-child of the first appellant and the second appellant. After the meeting which was held in November 2001 he realised that the majority of the members were militant, he and the second appellant decided to find a way of deterring their religious, but militant members, from embracing the violent strategy. The martial law was intended to foster discipline.

[42] One day, seemingly in 2001, he met Lourens du Plessis at Mosselbay. Du Plessis came from Thabazimbi in Limpopo. He was the leader of the northern group of right-wing political structures. Du Plessis asked Peacock, the first appellant, to

mobilise the right-wing sympathisers in the Eastern Cape. He actively intensified his mobilisation drive as requested. At the time he was still the secretary of the action committee. He gave a feed-back at a meeting held at Lichtenburg in June 2001. He reported that the southern group was interested in a defensive, but not offensive strategy. According to him the defensive strategy focussed on protecting the white folk against the black enemy forces.

[43] At a joint meeting held at Gariepdam in October 2001, a sort of a split between the northern right-wing group and the southern right-wing group surfaced. The two groups did not officially cut off ties at Gariepdam. The southern group subsequently held a separate meeting where it resolved to break away from the northern group. Since then, therefore, he was no longer a member of the northern group.

[44] The fundamental difference between the group of Lourens du Plessis and the group of Leon Peacock was that the northern group had planned to take the country over before the night of terror and in so doing, hasten the prophecy and ignite civil war. The southern group was opposed to the take-over. The night of terror was a punitive act willed by God (omdat die volk nie geluister het nie). It was impermissible to anticipate or quicken such a godly plan by human intervention. The southern group believed that the enemy forces must first launch the offensive. The whites

must endure pain of the night of terror first before they can rise up and fight back in order to defend themselves against the enemy forces rampant in the streets murdering on a large scale in order to take over everything.

- [45] He regarded himself as a reasonable, moderate right-wing. He regarded as aggressively violent any person with a plan to blow up the Vaaldam. Blowing the Vaaldam would be an act of great magnitude which would make the September 11 attack of the Twin Towers in the USA look like child's play. He made that statement at Parys. He used that analogy as a strategy to discourage or to persuade the militants of his group from going ahead with their plan. He did not hatch such a plan. He was not in favour of the idea of hastening the prophecy.

The testimony of the second appellant is substantially the same as that of the first appellant. He too did not plan to blow up the Vaaldam. They wanted to prevent it. Here lies the critical divergent point between their evidence and that of the third appellant.

- [46] Despite their pleas and their testimonies the appellants were found guilty. The trial court found that the appellants were guilty of conspiracy to blow the wall of the Vaaldam with explosives in contravention of section 54(3) of the Internal Security Act No. 74/1982. On appeal before us it was

contended on behalf of the three appellants that the trial magistrate erred in reaching the aforesaid verdict regarding the actions of the appellants.

- [47] Mr. Bandjes first contention was that the appellants were wrongly convicted for their thoughts. This is a very lame submission. There is overwhelming evidence that the appellants were prosecuted for their actual deeds and not mere thoughts. For their deeds they were prosecuted. For their deeds they were convicted. The reasoning for this finding will become apparent as I closely examine the facts. It suffices at this juncture to reaffirm the well-known principle that our law criminalises no thoughts.

The idea of blasting the Vaaldam with explosives was the brain-child of the first appellant. Not only did he conceive the idea, but he also tirelessly propagated it wherever he went. He incited others to embrace that idea and galvanised them into action.

- [48] “The proper approach in a criminal case is to consider the totality of the evidence, that is to say to examine the nature of the state case, the nature of the defence case, the probabilities emerging from the case as a whole, the credibility of all the witnesses and to ask oneself at the end of all this, whether guilt has been established beyond a reasonable doubt.” **S v MATTIODA** 1973 (1) PH H 24 (NPD)

at 49; **S v SINGH** 1975 (1) SA 227 (NPD) at 228 G – H; **S v RADEBE** 1991 (2) SACR 166 (TPD) at 182 H.

The three state witnesses namely Crouse, Smith and Van Vuuren were paid police informers. Although they were such witnesses whose testimonies always has to be approached with caution, it must also be borne in mind that the exercise of caution should not be allowed to displace the exercise of common sense. **S v SAULS AND OTHERS** 1981 (3) SA 172 (AD) at 180 E – H.

- [49] The ingredient of caution in the judicial treatment of the testimony of a police informer demands that there be some corroboration of an informer's testimony on material facts. However, corroboration of a trap is not an absolute imperative – **S v NCANANA** 1948 (4) sa 399 (ad) p. 405 – 406 per Schreiner JA.

Upon critical analysis of the evidence of the aforesaid police informers I found that each of them gave evidence in a frank, polite and natural way. They narrated their stories in a logical, systematic and trustworthy manner. There were no major contradictions on material facts. Of course there were minor discrepancies here and there. But such discrepancies as there were did little to detract from their credibility. They mutually corroborated one another in several material respects. In addition to the mutual corroboration their

harmonious version was by and large extrinsically corroborated by the appellants themselves. **REX v ZAHLAN & ANOTHER** 1951 (1) PH H69 (AD).

[50] Moreover, it must be readily appreciated that Crouse did not know that Van Vuuren was an informer. The converse also holds true. Van Vuuren did not know that Crouse was an informer. The result of their common ignorance was that they were spying against each other, unaware that they, as secret agents, were serving the same principal for precisely the same cause. This is a significant factor which adds the fortifying feature to their mutual corroboration and individual trustworthiness.

[51] In the first place I deal with the case for and against the first appellant. The first appellant approached Smith here in Bloemfontein in July 2001. He recruited Smith to become a member of his right-wing political organisation. The first appellant and not Smith initiated the first contact. The first appellant gave Smith a task. The first appellant met Crouse at Addo in September 2001. The impression I get was that the first appellant approached Crouse through Potgieter. He obviously recruited Crouse as well. The first appellant and not Crouse probably initiated the first contact. The first appellant convened several meetings, invited Crouse, Smith and Van Vuuren and chaired those meetings. He mobilised right-wing sympathisers in the south. He urged people to

prepare for civil war according to Crouse. At a Gariepdam meeting the first appellant acted as an intermediary between the southern group and the northern group. He bestowed military titles upon the members. He volunteered to provide the members with finer details of the plan of terror. The purpose of the plan was to cripple the economy and to harm the civilians.

- [52] The first appellant interviewed the members to determine the role each member could play, under which plan or unit in the furtherance of the Vaaldam plan. He distributed the martial law, the oath of loyalty, the vow and the media statement. He made the infamous chicken-run speech at Bloemspruit. He declared himself the holy warrior and the commodore of the group. He sent a spy, Van Vuuren, to the Vaaldam to obtain strategic information necessary for the execution of the plan. He sent Gagiano on a similar errand to Muldersdrif. He ordered the spy, Crouse, to acquire explosives. He also ordered Van Vuuren to do some spying on Glen Harvey. He generously gave money to his spies to defray certain operational costs relating to the Vaaldam mission. He visited Crouse and told him about the Vaaldam plan.

After the arrest of Lourens du Plessis he disseminated information to his right-wing members and warned them to get rid of all their illegal possessions such as explosives, arms and ammunitions.

[53] The first appellant sold his family possessions, removed his sons from school and led his selected operatives on a long trip to Parys, closer to the target, the Vaaldam. He paid for the guest house accommodation of the group. He drove from there to Grootdraaidam and then to the Vaaldam where he identified strategic spots, points or places. Every evening a religious devotion was held at Parys. During these services the first appellant frequently psyched the group to understand the magnitude of their mission and assured the group that the Vaaldam operation had the blessing of God. He sent Van Vuuren and the third appellant out to get explosives from the mines. After their abortive mission he set out to look for the explosives himself. Although he also failed, he did not abandon the plan to blow the Vaaldam off. From this it can be reasonably inferred that this right-wing group had an alternative plan B to fall back on in order to destroy the Vaaldam by means other than the explosives. More compelling evidence than this to show that the first appellant was the ring-leader is hard to find.

[54] The first appellant did not deny the prosecution's evidence that his group had a plan to blast the wall of the Vaaldam. However, he claimed that such a destructive plan was hatched by the militant elements within the right-wing organisation. He was a moderate man who was trying his utmost to persuade the militants to renounce violence, to

abandon the offensive strategy and to embrace the defensive strategy.

[55] The version of the first appellant is, in my view, beyond reasonable doubt false. He was the secretary of an action committee, a militant co-ordinating right-wing organisation at one stage. He had contact with the leader of the northern group. The right-wing grouping which supported or stood for the offensive strategy of the boerevolk struggle to regain control of the country and its government. He and nobody else told Crouse about the Vaaldam plan. He openly trumped up support for the blasting operation.

According to the first appellant he made the informers sign the group's martial law, to take an oath of loyalty and to make a vow in order to deter them from going ahead with their Vaaldam plan. He also told them about the cracks in the wall of the Vaaldam for precise the same deterrent purpose. Contrary to the first appellant's claim those rituals and information could not have been intended for the alleged purpose. Instead they were intended to encourage commitment to the cause of violence. There was even a threat to kill those who betrayed the cause.

[56] As the leader the first appellant refrained from frankly telling his followers that the idea of blowing up the dam was offensive and therefore irreconcilable with the objectives of their group. There is no doubt on my mind that when the first appellant led his followers from Murraysburg to Parys the group was in the offensive mood and not in the defensive mood. The evidence shows that nobody wanted to have the

plan of terror executed more than the first appellant did. He readily rejected his wife's suggestion to reconsider the matter. When Smith withdrew or broke off and thereby disassociated himself with the violent and destructive plan, the appellant was relieved and happy. Smith was apparently regarded as a traitor. Now if the first appellant was a moderate and peaceful leader, he claimed he was, he would have encouraged his group to see virtue in Smith's stance. But instead he disliked Smith, because as he saw things, Smith set a bad example which could jeopardise the realisation or execution of the common plan. He feared more of his operatives might also chicken out. In my view, the first appellant was not a peacemaker committed to the defensive strategy. He was a violent troublemaker committed to the offensive strategy.

[57] The first appellant alleged that Van Vuuren was the most militant member of the group. He was the forefront exponent of the offensive drive. However, it was the first appellant and not Van Vuuren who led the heavily armed group from Murraysburg to Bloemfontein where Van Vuuren joined them. In Bloemfontein the first appellant was again in the forefront of things. He made a highly inflammatory speech spiced with some selected biblical passages. Van Vuuren was in the background.

[58] Among others, the first appellant said:

“Ek weet nie almal het sekerlik aan hierdie situasie gedink, maar dit, op hierdie stadium voel dit vir my asof ons, ons nie net besig is met ‘n klein dingetjie in ‘n klein landjie hier in Suid-Afrika nie. Hulle het gedink die Twin Towers storie sou die Derde Wêreldoorlog aangebring het, ek wil volgens die profetiese lyn amper vir julle die versekering gee dat hierdie die Derde Wêreldoorlog gaan en kan begin.”

“... ons slaan die groothandel wat van die tien grootste wêreldmaatskappye is, aandele markte gaan tuimel, hulle gaan inmekaar wetter, die dollar gaan seerkry, die rand gaan obviously totaal en al vernietig wees, so dit wat ons mee besig is kan op hierdie potensiaal baie groter wees as wat ons in ons gedagtes dink en selfs na ons sukses bereik het.”

“Niks word uitgestel nie, dit is hoekom ons begin vandag met dag 1 van die gelofte en as ons die gelofte die sewende keer afgelê het moet ons op ‘n plek wees waar ons kan doen.”

“Ons moet kyk hoe breek die ding, want dit is belangrik en ek wil nie hê julle moet julle gaan vasry in ‘n groot gemors nie. Kyk as julle weet wat het ons gedoen ons gaan nie terug nie, ons kan nie terug nie.”

[59] The aforesaid quotations from the first appellant’s chicken-run speech underlined his violent, offensive and militant disposition which perfectly matched the contention by Mr. Pretorius, that the first appellant was the mastermind of the Vaaldam plan. What is even more telling against the first appellant’s version is that when Van Vuuren, the most troublesome and militant warrior according to the first appellant, withdrew the first appellant did not call off the planned mission, because its kin-pin was gone. Van Vuuren or no Van Vuuren, the remaining members of the group were determined to see to it that the mission was accomplished come what may. They had reached a point of no return.

[60] It was expected by the group following the first appellant's announcement during the course of the chicken-run speech that Crouse would not be with the group to witness the violent collapse of the Vaaldam wall. The point I am making here is that the first appellant did not see any of the three secret agents, Smith, Crouse or Van Vuuren, as a *sine qua non* of the execution of the plan. The mission could be accomplished with or without them.

[61] If the mere idea the first appellant had, was exploited, developed, driven and promoted by the secret agents, as Mr. Bandjes strenuously argued, then the appellants would at least have gladly abandoned the Vaaldam plan when its prime architect, Van Vuuren, pulled out. They did not. Implicitly they owned up the violent plan. Independently they were in the offensive mood. Their determination was in keeping with the first appellant commandative remark:

“Niks word uitgestel”

[62] The first appellant lies in court that he postponed the conferring of military ranks or titles on the members of their group as well as his lies to Captain Swart that they were to buy property are factors which must be taken into account together with the corroborative evidence of the police informers. I am convinced that the informers committed no crime. They lacked the requisite criminal intent to blow up the Vaaldam with the explosives. Had the first appellant's journey to Parys been prompted by such noble and innocent motive to persuade, they would be criminals to have change

of heart, he would probably have said so to Captain Swart. It would have been in the forefront of his mind, but it was not. It was not because it was false. It was an after-thought fabricated to deceive the trial court. The first appellant hardly informed the third appellant, the young man he regarded as his son, about what he and the second appellant were really up to, as they now allege, to prevent the blasting of the Vaaldam. The massive body of credible evidence suggests that the first appellant was not at all opposed to the destructive plan but actively masterminded and supported it. I accept the evidence that he was the proponent of the notion of hastening the prophecy. His denial is also false.

[63] The second appellant's version is identical to that of the first appellant. In a nutshell his defence was that he accompanied the group from Murraysburg to Parys in order to persuade the militant warriors to drop the Vaaldam plan. But despite his alleged good intentions he never advised Crouse and Van Vuuren that it was unwise and wrong to go on with the blasting plan. Instead he led them all the way to a farm within a striking range of the target. His claim that he wanted to convince them by means of gestures or signs and not words, makes no sense at all. Generally speaking it is easier for a person to understand a spoken word than to decipher or to deduce the meaning of a sign language.

[64] The third appellant was unaware of such silent signs or quiet

diplomacy allegedly employed by the first and second appellants. As far as the third appellant was concerned, he was under no false impression that the ultimate purpose of the journey of hundreds of kilometres was to have the Vaaldam blasted. He had no illusions about it. He was not under the impression that the appellants travelled that considerable distance closer to the targeted dam, just to convince only two members of the selected operatives, to carry the plan no more out. Throughout the long journey he knew there was only one planned mission and that was to blow the Vaaldam up. The version of the third appellant strongly militates against the version of the second appellant and indeed of the first appellant. It clearly corroborates the version of Crouse and Van Vuuren. That much is beyond any doubt.

- [65] The third appellant now puts up the defence that what he intended doing was practically impossible because they did not have explosives and enough manpower. In this regard I had a look at **R v DAVIES AND ANOTHER** 1956 (3) SA 52 (AD) at 64 A – B where Schreiner JA observed as follows after a lengthy and thorough analysis of the law relating to the concept of absolute impossibility *vis-a-vis* relative impossibility:

“To sum up, then, it seems that on principle the fact that an accused's criminal purpose cannot be achieved, whether because the means are,

in the existing or in all conceivable circumstances, inadequate, or because the object is, in the existing or in all conceivable circumstances, unattainable, does not prevent his endeavour from amounting to an attempt.”

Therefore, this judgment is no authority for the argument raised by the third and indeed the first appellant that it was impossible for them to blow up the Vaaldam given the means they had at the time of their arrest.

- [66] The allegation of the second appellant that he, like the first appellant, was under the domineering influence of Van Vuuren, failed to impress the trial court. I was also not impressed at all. The amazing feature of the second appellant’s version, is that when Van Vuuren withdrew from the group, the second appellant just like the first appellant, did not quit. Instead he remained on the farm. He waited there the next day well knowing that the first appellant was driving out to find the explosives which Van Vuuren and the third appellant had failed to obtain the previous day. If the version of the second appellant was true he would have confronted the first appellant about his ambivalent behaviour. After all he and the first appellant did not need any explosives as they now claim. The only legitimate inference that can be drawn from the second appellant’s conduct following the withdrawal of Van Vuuren, is that neither he nor the first appellant were there to discourage anyone from blasting the Vaaldam. He anointed the first appellant at

Parys, a place from which they could act. The primary question that has to be determined is whether the version of the second appellant was reasonably and possibly true given the role he had played and all the peculiar circumstances of this case. According to the trial court, the answer was in the negative. That finding was correct.

[67] Mr. Greyling contended before us that the court below erred in rejecting the second appellant's version and convicting him. He submitted that there existed a reasonable doubt that the second appellant conspired with the first appellant to blast the Vaaldam. According to counsel there was a reasonable possibility that the first appellant never discussed the blasting of the Vaaldam with the second appellant. I have to stress that whatever I said about Crouse, Smith and Van Vuuren during my evaluation of the first appellant applies equally well to my evaluation of the second appellant. The role of the second appellant was not merely a supportive function. He and the first appellant were co-owners of a business enterprise. There was regular contact between them at a business level, social level and political level. He attended several meetings at the invitation of the first appellant. He was deeply involved when the military ranks were conferred on the members. He executed that duty with the appellant and Gagiano. He was designated as the chaplain. He and the first appellant interviewed the members of the group.

[68] These two events showed that the second appellant wielded significant authority within their organisation. When Smith expressed the concern that the Vaaldam operation would lead to loss of innocent human life, the second appellant had nothing to say about it. A prominent leader and a spiritual leader for that matter of a non-violent organisation with defensive objectives would have spoken out against the obviously violent plan. He would have shared the concern of

Smith. The second appellant did not. He and the first appellant induced the members of the group to sign the martial law, to take the oath of loyalty and to make the vow.

[69] He and the first appellant travelled together to Port Elizabeth to visit Smith. During such visit the first appellant told Smith about the Vaaldam plan. The second appellant probably knew about the plan by then. It is unlikely that the first appellant would have informed a junior member like Smith but kept his spiritual leader, his right-hand man and senior confidante in the dark about such a serious plan. The probabilities are quite compelling that the second appellant already knew about the Vaaldam plan before he set out to Port Elizabeth with the first appellant. The second appellant did not condemn the plan, nor distance himself from the violent plan of terror.

[70] The second appellant did not challenge the northern group at Gariepdam when that group advocated the abandoning of the defensive and reactive military strategy and advocated the adoption of the pro-active and offensive military strategy. He said he believed in the Bible. However when he was referred to a passage in Ephesians where God reconciled the Jews and the Gentiles, he responded that he did not believe what the apostle Paul wrote. He incurred the expenses and embarked on a journey to Bloemfontein where he met Van Vuuren. He did not use that opportunity to derail

the Vaaldam plan by talking to Van Vuuren. He made no attempt to hinder let alone to prevent the execution of the plan. He could have frustrated the whole plan by simply stopping the journey from Murraysburg to Bloemfontein or by pulling out as Smith had done.

[71] The following passages from his Bloemfontein speech demonstrate just how much the second appellant was involved.

“ Julle manne moet nou sê waarheen ons gaan. As ek reg is in die geskiedenis elke slag as daar ‘n gelofte afgelê was, was daar sukses behaal en die Almagtige het sy deel gedoen. Tydens die Tweede Boere-oorlog was daar nie ‘n gelofte afgelê nie, dit is die rede waarom die dinge so geloop het. Hierdie is ‘n groter storie as die Boere-oorlog, dit is ‘n groter storie as enige ander situasie, so ons sal moet ‘n gelofte aflê en sal daardie gelofte moet hou na die tyd ook, want die volk het nooit by die gelofte gehou nie en die leiers van die volk het hulle ook nie gesteur daaraan nie. So hierdie gelofte gaan ons aflê vir sewe dae lank en dan stap ons die paadjie met alle vertroue en met alle eer aan die Almagtige, so kom ons lê hom af.”

“As deel van hierdie boervolk bloei ons harte vir ons broers, susters en hulle kinders, daarom moet ons ons harte versterk en onderneem om vir en namens hulle in te tree en die daad by die woord te voeg. Ons besef dat optrede vir ons gaan veg en ek erken dat ons nie hierdie stryd sonder U uitgestrekte regterhand kan betree en oorwinning en vryheid daar te stel nie.”

“Met hierdie erkenenis strek ons ons arms na U toe en roep U aan in ons benoudheid, want ons vyande is veel en die daad moeilik, daarom strek o Vader u regterhand uit oor hierdie seuns van u, versterk ons in hierdie stryd en gee aan ons die insig, wysheid en krygsmenskap wat ons nodig sal hê, want sonder U toetrede sal die stryd nie oorwin kan word nie.”

“Almagtige Vader indien een van ons hier vandag omkom, sterf in hierdie stryd, dat dit deur U hand plaasvind en nie deur ons vyande nie.”

“Ons verklaar dus plegtig onder eed en voor U aangesig vandag dat indien U gee dat die daad met sukses afgehandel word”

[72] These passages prove beyond any shadow of doubt that the second appellant actively incited the group to carry on with the plan. He described the planned operation as an event of great magnitude – greater than any other military situation ever seen in this country. He prayed for the success and not failure of the operation. He realised that some members of his group might perish in that planned military offensive. There was virtually nothing prohibitive or deterrent in both his speech or prayer as set out in exhibit K. In my view, the magistrate’s finding that the second appellant acting with a common purpose with others conspired to destroy the Vaaldam with explosives, was correct.

[73] The second appellant’s evidence that had he known that Van Vuuren was a secret agent, he would never have befriended him was a further nail in the coffin. His further journey from Bloemfontein to Parys and his subsequent expedition to the

Vaaldam itself strengthen the prosecution's evidence that he was on the criminal mission to execute the plan of terror and not to prevent it. At the time the appellants were arrested they had gone far beyond the phase of inciting and the phase of conspiring. By then they were operating on a higher sphere of execution.

[74] The argument by Mr. Greyling that exhibit K constituted inadmissible evidence, falls to be rejected outright. No such point was taken on behalf of the second appellant at the trial. Moreover such an issue was not one of the grounds of the second appellant's appeal. I deem it unnecessary to particularise the role of the secret agents. Suffice to say that I hold the firm view that Van Vuuren's actions went no further than affording the appellant an opportunity to commit a crime as contemplated in section 25(2)(a)(ii) Act No. 51/1977. The second appellant's argument in this regard has no substance. The denial of the second appellant that he saw the parallel between the destruction of the Vaaldam and the vision of Siener van Rensburg, was false. Implicit in the role he has played as a whole, is the inescapable inference that the idea of anticipating the prophecy had his tacit backing. Therefore, I am inclined to confirm his conviction.

[75] The argument that the second appellant was busy with acts of preparation and not acts of execution at the time of his arrest, if of no consequence. It must be kept in mind that the

definitive scope of section 54(3) is so wide that the mere incitement, conspiracy or attempt to commit an act of sabotage is as good as the act of sabotage itself. In other words, an attempt to commit sabotage is tantamount to the actual act of sabotage. There are four distinct ways in which the provisions of the section may be violated as set out in section 54(3) namely (i) any act, (ii) attempt (iii) conspiracy and (iv) incitement. The fact is that the minimum benchmark conduct which constitutes the statutory crime of sabotage is an incitement of one person by another to commit a certain act with the specific intent, for instance, by disrupting the orderly supply of water in order to endanger the health and safety of the general public. Whether the second appellant was busy with acts of preparation or acts of execution, is irrelevant, because to get to that stage he had already gone beyond the minimum benchmark of the offence, namely: the incitement phase. The conspiratorial phase was also an already accomplished fact. He and his fellow conspirators were on the threshold of destroying or at least damaging the dam.

- [76] The third appellant knew that it was wrong to blow up the wall of the Vaaldam with explosives. Despite his knowledge he made no attempt to distance himself from the group. He was very excited about it. He was unaware that the first appellant and the second appellant wanted to prevent the plan. The alleged overtures by his senior co-accused did not

alert him that the plan was to be abandoned. His understanding was quite correct. I have already found that the first and the second appellant did not have any genuine intentions to prevent the blasting of the dam. He took the vow under the impression that the blasting of the Vaaldam was the common plan of the entire group including the first appellant and the second appellant. He was part of the group that attended meetings convened by the first appellant. He was anointed as a sergeant and a holy warrior. He travelled with the group to Parys via Bloemfontein. He went on an expedition of the Vaaldam. He and Van Vuuren visited a certain mine to get explosives. He remained attached to the group even after Van Vuuren had gone away. This is understandable. He did so because he and his co-appellants did not consider it impossible to execute the plan without Van Vuuren.

- [77] On behalf of the third appellant and the first appellant Mr. Bantjes contended that it was physically impossible for the group to blow up the wall of the Vaaldam, because they did not have the explosives and enough manpower to do so. In their heads of argument these two appellants correctly made a concession:

“2.14 Appellante neem deeglik kennis van die feit dat **Artikel 54(3)** van die **Wet op Binnelandse Veiligheid, Wet 74 van 1982** ‘n sogenaamde ‘pogingsmisdaad’ insluit – met

ander woorde die blote poging om so 'n misdaad te pleeg word gedek deur die bogenoemde wet en stel 'n misdaad daar wat strafbaar is met dieselfde straf asof a persoon aan die hoofdaad van sabotasie skuldig bevind is.”

This submission is indeed correct.

[78] The rest of their contention is an academic exercise which is not germane to the real issue in the instant case. If we accept, as we should, firstly, that there was incitement of the secret agents and others by one or two or all of the appellants and secondly that there was a conspiracy by the three appellants at least to blow up the Vaaldam, then the crime of sabotage has been proven. We need to look no further than the conspiracy phase of the common criminal enterprise. The mere conspiracy to blow up the Vaaldam with explosives was already sufficient to satisfy the definition of the crime of sabotage in terms of section 54(3) Act No. 74/1982. Lack of resources to attain the contemplated plan is not the real issue. The crux of the matter is the criminal disposition of the conspirators. It cannot be reasonably argued that it was objectively impossible for the appellants to destroy the Vaaldam at all. The group was heavily armed with many lethal military weapons and massive quantities of ammunition. Therefore, the group was at least capable to cause some extensive structural damage if not destruction of the dam.

[79] Mr. Bantjes also argued that the appellants believed that God would provide them with some miraculous means and supernatural powers to break down the dam-wall. In developing this argument further he contended that the appellants were convinced from a religious point of view and not from a realistic point of view that they could demolish the wall of the Vaaldam like the walls of Jerigo were broken down according to the Bible. This submission is fallacious. Had the appellants been actuated by such fanatic and religious convictions, then they would not desperately have tried to get explosives; then they would not have been so heavily armed and dangerous; then they would not have gone out of their way to obtain the maps and to take photographs of the Vaaldam; and they would not have panicked and concealed their illegal ammunition when they heard about the security police raid on Lourens du Plessis. No horns, symbols or trumpets were found in their possession, but lethal military weapons.

[80] These pieces of evidence cumulatively and convincingly portray the appellants as militant political right-wing operatives who were determined to carry out their offensive operation at all costs. They knew the illegality of their activities. They were not so fanatical that they believed their actions were perfectly lawful. They fully appreciated the consequences of their common plan and reconciled such consequences with their actions. They conspired together;

they worked together; they travelled together and prayed together with a common purpose for the realisation of their common criminal plan. In my view, they were not religious fanatics who pinned their hope on some heavenly miracle or supernatural intervention to break the dam-wall down. They intended to physically demolish the dam by actual human action, if not by explosives then by other means unknown to us. The *maxim nullum crimen sine lege* has no room in the instant case.

[81] In my opinion the actions of each of the appellants fall squarely within the prohibitive ambit of section 54(3) even though they were arrested before they could blast the dam with any explosives. As regards the conviction the court below came to the correct conclusion. I am therefore inclined to confirm the conviction of each of the three appellants in respect of the first charge.

[82] The sentencing of an offender is first and foremost a matter that falls within the discretion of a trial court. The court seized with an appeal, as we are, is not at liberty to interfere. Such a court can only interfere if the sentence is shockingly inappropriate or if there was a material misdirection on the part of the trial court. **S v SILIMELA** 1999 (2) ALL SA 619 (CPD).

In the exercise of such discretion, a trial court has wide

judicial powers. Firstly, in deciding which factors should influence the court in determining a appropriate measure of punishment and secondly, in determining the weight to be attached to each factor taken into account. **S v KIBIDO** 1998 (2) SACR 213 (SCA) at 216 g – h per Olivier JA.

[83] To start with, the personal circumstances of the first appellant. He was 42 years old. He passed matric. He dropped out at university. He was a proprietor of a canvass enterprise at Murraysburg. He is a married man. His wife is a teacher. She is currently unemployed. He is the father of three dependent minor children aged 15 years old, 9 years old and 1 year old. These children and their mother presently stay with their maternal grandparents on a plot at Bloemspruit. The first appellant's parents-in-law are both 78 years old. They are indigent. They live on pension. They are sickly persons. His biological father died on 19 April 2003. His biological mother is also indigent and struggles to make ends meet. Apparently all these people were dependent on the first appellant for their necessities of life in one way or the other. The first appellant is a first offender. He has been in custody for 477 days. He is currently out on bail. The court below regarded him as a good human material.

[84] As regards the first appellant Mr. Bantjes contended that the court below under-emphasized the offenders' personal

circumstances. If his contention is correct, then the court below misdirected itself. He submitted that a suspended sentence in respect of each of the four charges on which the first appellant had been convicted, would have been an appropriate sentence. But Mr. Pretorius disagreed. He contended that the court below under-emphasized the gravity of the offence and overemphasized the first appellant's personal profile. If this contention is correct, then the court below misdirected itself. A material misdirection, be it a misdirection as contended for by counsel for the first appellant, or a misdirection as contended for by counsel for the state, calls upon us to interfere.

- [85] The trial court did not spell out the first appellant's personal circumstances as I have done here. However, the magistrate stated that he took into account the personal circumstances of the three accused as placed before him. Mr. du Plessis was a seasoned magistrate. He probably took into account, among others, the following mitigating factors in favour of the first appellant: that he was 42 years old; that he was the breadwinner with extended family dependants; that he was a first offender and that he was in custody for 477 days. What weight he attached to all the mitigating factors, which he took into account, was a matter for his discretion. In my view, the mitigating factors in this instance were not as mitigating as to overshadow the aggravating factors. More about the aggravating factors,

below.

[86] As regards the second appellant Mr. Greyling contended that the trial court erred by failing to take the personal circumstances of the second appellant into account while considering an appropriate sentence. In addition to this, counsel contended that the trial court also erred in finding that the role played by the second appellant was just as blameworthy as the role played by the first appellant. However, Mr. Pretorius again disagreed. He still contended that the court below overemphasized the personal circumstances of the second appellant and under-emphasized the seriousness of the crime.

[87] I turn now to the personal profile of the second appellant. The second appellant was 54 years old. He studied law at the University of Port Elizabeth where he obtained a B-Juris degree. He served articles as a candidate attorney. He also studied theology. He at one time became a pastor of the Christian Crusade Church. He farmed on a certain farm at Hexvallei in the district of Worcester in the Western Cape. He abandoned farming after the death of his father. He was an ex-member of the Afrikaanse Weerstand Beweging. He moved to Murraysburg from Worcester where he became a court sheriff. He had no wife or dependants. He was a first offender. He had been in custody for 477 days. He is currently on bail. The court below regarded him as a good

human material.

[88] As in the case of the first appellant the trial court did not spell out the personal profile of the second appellant. However, the personal circumstances were taken into account. An experienced trial court, such as the one we are dealing with, would have taken into account, among others, the following points as mitigating factors: that the second appellant was 54 years old; that he was a first offender and that he was in custody for 477 days. Precisely which facts he treated as mitigating factors and what weight he attached to such factors, was entirely his discretion. Bearing in mind the aggravating factors present in this case, I am of the opinion that the trial court over-emphasised the mitigating factors in this regard. More about the aggravating factors will follow.

[89] The appellants have been found guilty of conspiring with other persons to blow up the Vaaldam with explosives with the common purpose, in other words common intent to interrupt, impede or endanger the storage, generation, distribution, rendering or supply of water in the RSA. The possible consequences of such an act of sabotage are frightening. I shudder to think of the devastating adverse impact of such a criminal plan on the citizens and the economy of the country as a whole. The form of *mens rea* here present was undoubtedly *dolus directus*.

[90] The appellants have expressed no remorse. Remorse is a fundamental ingredient of the rehabilitative process of an offender. A remorseless offender has no insight into his wrong. Unless an offender appreciates his mistake, any contention that he is rehabilitable, is hollow. Apart from being remorseless, the first appellant and the second appellant still persisted before us with their ridiculous version that they disapproved of the offensive plan; that they went along the entire journey in order to persuade or to convince their militant fellow members by silent signs and not spoken words as to how ill-conceived, unattainable and impractical the whole plan was. None of them could give any sound answer as to why they played dumb. This is a typical case where the interests of the general public strongly surge forward and demand for effective protection against men so dangerous. The offence we are here dealing with was in fact aimed at indiscriminately jeopardizing the interests of the society in general. Undoubtedly the sequence of events the under cover agents had witnessed in this province and in the Eastern Cape Province a while ago had been the result of carefully co-ordinated planning with the first appellant, the one who had devised the plan of terror.

[91] The retributive and deterrent elements of sentence strongly shift to the forefront and the rehabilitative element to the background in a case of this magnitude. The offence was planned over a long period. The group was indoctrinated

that the black majority government in collaboration with the Jews, Indians, coloureds and the so-called jingoes, in other words Afrikaner traitors, was planning to eliminate “die boerevolk”. The propaganda was disseminated that the government was behind the spade of farm murders in the country. The state witnesses were given specific tasks, for instance, to obtain explosives, photographs and plans of the Vaaldam.

[92] The appellants were a small faction which was part of a bigger group whose political objective was to destabilise the country economically, militarily and otherwise in order to achieve their unlawful aim, namely the restoration of the purely white sovereign boerevolkstaat. Secret meetings and tiny cadre units are extremely difficult to police. They travelled under cover of darkness; they used various cellular phones; they confiscated cellular phones of the subordinates and they mooted out an idea of a secret simcard and threatened to kill traitors.

[93] The motive of the appellants was nothing else but high treason. The foundation of the entire plan was deep racial hatred and sheer racism. By means of selective and distorted mixture of religion and politics the appellants thrived to create a new legal order - a pure white government; a white separatists political dispensation; a lily white state in which there would be no room for blacks, jews, jingoes or

any non-believer. The appellants misused the Bible and distorted its religious teachings to draw analogies and to find justification for the controversial writings of Siener van Rensburg, Johanna Brand and other white supremacists. Counsel for the State argued, in my view correctly so, that the use of the Bible by the first appellant and the second appellant to sugar coat a plan so evil and criminal, was not supposed to be regarded as a mitigating factor.

- [94] The effect of this right-wing uprising is far reaching for our young democracy. It polarises the nation. On the one hand there are people who sympathise with the right-wing groupings and give them logistical support, for instance, arms, ammunition and sanctuary. The harbouring of criminals impedes effective policing. The right-wing activists solicit support by citing and politicising a number of issues, such as the incidents of crime especially the farm murders, the perceived inequitable affirmative action, the perceived destruction of the Afrikaans language and so on and advance these sort of issues as reasons for the establishment of a separate and autonomous Afrikanerstaat, an exclusive white state for white purists. Given the high crime rate, the rising unemployment of whites, the illegal acts of land dispossession against the white landowners in Zimbabwe and the official support of such campaign by the government over there, the right-wing cause finds fertile ground among the conservative whites. All these and

perhaps more issues heighten the political esteem in which right-wing activists are held and earn them sympathy among the ordinary and conservative Afrikaners. Such sympathetic sentiments by the ordinary people are then politically exploited by the ultra right-wing organisations to gain support for the sabotage campaign. The court cannot allow right-wing villains to project themselves as martyrs and thereby become heroes.

- [95] On the other hand the right-thinking citizens loose respect for the armed national forces on account of the right-wing activities, actions or false propaganda, all of which are aimed at undermining their loyalty, capabilities and efficiency. They create the false impression, the perception that the armed national forces in sinister cahoots with the democratic government were pursuing a clandestine agenda to victimise, marginalise and exterminate the white minorities. The government has recently abolished the farm commando system precisely because the system has been seriously manipulated and abused by the right-wing prophets of doom. The abolition has left the farming community exposed to violent attacks by the general criminal elements. The right-wing distortion of the truth has sewn seeds of mistrusts between whites and blacks. That is a regrettable state of affairs. It hampers the programme of national reconciliation. The appellants had contact with the right-wing northern group alleged to have been behind the series of explosions

in Soweto on 30 October 2002 where many lives were endangered and a mosque extensively damaged. The court must punish the saboteurs preventatively in an endeavour to curtail repeat of acts of sabotage similar to those of Soweto.

[96] The appellants with their commendable clean records are not rehabilitable in my view. Their political views on the world, and the global race relations clearly demonstrated that their claims that they have discarded their right-wing views and that they have terminated their membership of right-wing organisations, are not genuine claims. No significant weight must be attached to such claims as mitigating factors. The first appellant and the second appellant were involved in the AWB for a few years. Although they were religious to a certain extent, the submission by Mr. Bantjes that they were so fanatic about their cause that they did not realise the illegality of their actions, is devoid of any merits. There is no religious fanaticism here to serve as a mitigating factor. However, there is evidence to show that the appellants themselves were victims of a misguided and discredited political ideology. That must certainly be taken into account as a strong mitigating factor.

[97] Having considered the personal profile of each appellant, their individual involvement, the interest of society and the gravity of the crime, I could find nothing to justify the submission of the defence that the sentence imposed on any

of the appellants was shockingly severe. On the contrary I am inclined to agree with counsel for the State that the sentence imposed on the first appellant and the second appellant was so disturbingly lenient that no court on the facts could reasonably have imposed it, regard being had to the seriousness of the offence.

- [98] As regards sentence, therefore, the three appellants never had any reasonable prospect of success on appeal. It is evident that the aggravating factors exceedingly overshadow the mitigating factors in respect of each of them. I am inclined to agree with the principal submission by counsel for the State that the court below over-stressed the personal circumstances of the appellants. The sentences handed down in connection with the first charge were very disproportionate to the gravity of the crime and the wide spectrum of the interests of society. Therefore, I would dismiss the second leg of the appeal for the reduction of all the sentences in respect of all the charges. The maximum sentence for sabotage is 20 years imprisonment. That gives one an idea of the seriousness of the offence of which the appellants have been convicted. Mr. Bantjes could cite no authority in support of his plea for wholly suspended sentences. In my view, such a sentence would be an unbalanced, unfitting and inappropriate punishment for the offence so serious.

[99] The question which now arises is whether a proper case has been made out for the increase of the sentence in respect of the first appellant and the second appellant. The State had conceded that a distinction has to be made between the third appellant and his two co-appellants. He was relatively young. He was clearly under the domineering influence of the first and the second appellants. The submission by Mr. Greyling that a distinction ought to have been made between the second appellant and the first appellant holds no water, in my view. Like the first appellant the second appellant was an active ringleader and not a mere passive follower or an observer. His Bloemspruit speech puts the matter beyond doubt. As I see it the marginal differences in the roles played by the second appellant and the first appellant does not justify any differentiation between them as far as sentence is concerned. In this regard the trial court was correct.

[100] In the instant case the notice of respondents' intention to apply for the increase of sentence, was served on the attorney for the first appellant and the third appellant, Mr. F.J. Retief of the lawfirm Webbers on 14 November 2005. It would seem the same notice was also served on counsel for the second appellant, Mr. J. Zietsman on the same day, it seems, although Mr. Greyling and not Mr. J. Zietsman appeared for the second appellant. I say it seems the notice was served on the lawyers on the day in question, because I could find no written proof or acknowledgement of service.

The notice was signed by Mr. Pretorius, counsel for the State on 14 November 2005. It was filed with the Registrar on the same day. It was filed with the Registrar simultaneously with the respondents' heads of argument. The appeal was enrolled for hearing on Monday 28 November 2005. The notice was filed two weeks prior to the date of hearing.

[101] Mr. Bandjes argued *in limine* and Mr. Greyling supported him that the notice was defective since it had not been served on the trial magistrate, Mr. W.A. du Plessis. A similar situation arose in **REX v COETZER** 1937 TPD where on p. 222 Greenberg J as he then was remarked:

“I do not propose to lay down a hard and fast rule that the Court will require in every case that such notice should be given, but it seems to me desirable in most cases that an appellant should be warned that an increase of sentence will be asked for, and that the magistrate should be notified, so that he can give his reasons for imposing the sentence which the Crown says is insufficient.”

The passage was quoted with unanimous approval in **REX v SWANEPOEL** 1945 AD 444 on p. 451. In that case the bench of the appellate division consisted of seasoned judges, namely Watermeyer CJ, Tindall JA, Greenberg JA, Schreiner JA and Davis AJA. The increased sentence by a provincial division was set aside on the grounds that the requisite notice had not been served on the magistrate who had imposed the sentence. The original sentence was

restored.

[102] In **S v DU TOIT** 1979 (3) SA 846 (AD) at 855 H Rumpff CJ stated:

“Vanselfsprekend sal hierdie Hof nie ligtelik oorgaan om 'n vonnis te verswaar nie, selfs al sou hierdie Hof bevind dat hyself 'n swaarder vonnis as die opgelegde vonnis sou opgelê het.”

The procedural rule of practise which has its fons of origins in section 309(3) Criminal Procedure Act must have been observed in all its facets before an increase of sentence can be duly considered.

[103] Although the sentence was increased in **S v DU TOIT** *supra* and in **S v MASILELA** 2000 (1) SACR 571 (WLD) the issue which confronts us here did not arise there. In the former, as in the case of **S v KIRSTEN** 1988 (1) SA 415 (AD) the court was called upon to decide at what point in the appeal process an appellant was entitled unilaterally to withdraw his appeal subsequent to the date of set down.

For practical and equitable consideration it is desirable to have a written intimation by the Director of Prosecution that the court would be asked to consider increasing the sentence served on the appellant and the trial magistrate as soon as practically possible after the filing of a notice of set down. The facts in **S v KELLERMAN** 1996 (1) SACR 78

(CPD) demonstrate this procedure very well.

[104] In the instant case it is apparent *ex facie* the director's written intimation that such notice was never served on the trial magistrate. The practical consequence of the omission is that we, sitting in the appellate mode, were deprived of the input of the very court that imposed the sentence we are now urged to increase. We shall never know which way the magisterial contribution would have gone and to what extent it would have persuaded or influenced our thinking on the issue.

[105] Although the sentence imposed by the magistrate was disturbingly lenient and shockingly inappropriate, we are bound by the decision in **R v SWANEPOEL** *supra*. We cannot as a result of such misdirection alone, which ordinarily justifies interference by this court to correct an injustice, invoke our inherent discretionary powers to interfere with such sentence to the detriment of the appellants by imposing a stiffer sentence. To do so would be seen as an attempt to circumvent the procedural omission or pitfall in the prosecutions case. In my view, the omission cannot be remedied without doing an injustice to the appellants. If I am wrong in reaching this conclusion, then I take solace in the knowledge that I shall have erred in favour of the subject. The point *in limine* was well taken. Therefore I am inclined to uphold it. This court is not entitled to

increase the sentence imposed on the appellants in the circumstances of this case.

[106] I turn now to the final issue. It is evident from what I have previously said about the appellants that they are very dangerous persons. In view of their unrepentant and militant attitudes, they still pose a serious threat to the internal security of the country. The interest of the nation as a whole demands that they be declared unfit to possess firearms. Such a declaration is necessary to assure the general public that the courts will not let lethal weapons to remain in the hands of dangerous individuals. The underlying idea is a relentless attempt by the courts to protect society. The court below erred in finding that they were not unfit. Such a finding cannot be allowed to stand.

[107] Accordingly I make the following order:

107.1 The appeal of all the appellants in respect of the first charge fails *in toto*. The convictions and the sentences are confirmed.

107.2 The appeal of the first appellant in respect of the second, the third and the fourth charges fails. The sentences are confirmed.

107.3 The respondent's application for the increase of the

sentences in respect of the first charge, in other words sabotage, fails. The original sentences stand.

107.4 The finding of the magistrate that the appellants were not unfit to possess firearms is hereby set aside.

M.H. RAMPAL, J

I concur.

T.V. MATSEPE, AJ

On behalf of first and third appellant:

Adv. B.L. Bantjes
Instructed by:
Webbers
BLOEMFONTEIN

On behalf of second appellant:

Adv. P.J.J. Zietsman
Instructed by:
The Legal Aid Board
BLOEMFONTEIN

On behalf of respondent:

Adv. D.J. Pretorius
Instructed by:
Director Public Relations
BLOEMFONTEIN

/sp