

FUNERAL SERVICE



Maj Gen (Ret) Mxolisi Edward Petane

★ 02 AUGUST 1958

✝ 21 SEPTEMBER 2017

Family



defence
Department of
Defence
REPUBLIC OF SOUTH AFRICA



MXOLISI PETANE – TRIBUTE TO A HERO

Mxolisi Petane died on 27 September 2017. During his lifetime he was a friend, comrade, political commissar, a hero of our people, a soldier of their army, uMkhonto we Sizwe; and, when victory had become certain, he became a Major-General in democratic South Africa's National Defence Force.

During September 1987 we walked together up the stairs leading from the holding cells in the Cape Town Supreme Court to Court No.1. He was charged with terrorism. The state would allege that he had placed a car bomb outside a shopping centre in Parow. During his apprehension he had also shot a policeman. He was facing an almost certain death sentence. His best chance of survival seemed to be to assuage the undisguised hostility that judges had previously shown towards accused in his position. Instead of doing so he whispered to me *"I am a soldier of MK! I want you to claim prisoner of war status!"*. Such a claim had become a political priority of the ANC after it acceded to the Additional Protocol 1 to the Geneva Conventions (1977). Lusaka agreed that Mxolisi's case would be a fitting one to raise the issue.

When he was asked to plead to the charges Mxolisi refused to do so. With quiet dignity he explained that the indictment in the matter of the State v Petane failed to disclose that it was an apartheid State. It ruled South Africa's people through the barrel of a gun. It used terror to frighten them into submission to white majority rule. The state and its judicial arm were the terrorists. Their so-called "law" and their hangman in Pretoria were weapons of terror, not justice. He was a soldier of MK. He would not allow himself to be labeled as a terrorist by apartheid's legal process. He did not recognize the jurisdiction of an apartheid court. He requested the judge to consider and rule on his plea for prisoner of war status. The court did so.

At first the prosecutors smirked at his claim. However, when they realized its enormity they brought their most experienced state advocate (and a gaggle of "legal experts") into the case. International support for Mxolisi's case was provided, *inter alia*, by Professor Kader Asmal (then at Trinity College Dublin), the Max Planck Institute (Germany). Professor Richard Falk (USA), and acting Prime Minister Evans (Australia). Emissaries and journalists from all over the world descended on the court for the trial. The claim was news as far afield as China.

In law the claim could never succeed. No apartheid judge could ever admit that the state and its judiciary were illegal, and that the ANC were legally justified in resorting to armed conflict to overthrow the regime. However, the issue was not one of law, but of politics and legitimacy. Neither the court nor the regime were able to address their own illegitimacy satisfactorily. Though the judge did not concede what Mxolisi alleged, namely that MK (in the words of the Geneva Protocol), were *“fighting against a racist regime in the exercise of a people’s right to self-determination as enshrined in the UN Charter;”* few people in the civilized world would agree with the judge. Mxolisi seized the political space in court that the regime had afforded the ANC and used it successfully to further the struggle for the liberation of our people. Whereas the state had attempted to label him as a terrorist, he became a hero and showed who the real terrorists were.

Before he left South Africa for military training in 1976 Mxolisi had learned about the Freedom Charter. He had absorbed its principles and stood for them throughout his life. He realized then that the ANC was the only organization that could further the Charter’s program. The organization therefore became his political home. A year after his imprisonment on Robben Island he wrote me saying that he had met many of his comrades there. They were regrouping, and taking the

struggle forward. Minister Mapisa-Nquakula pointed out at his funeral in Gugulethu that Mxolisi's legacy must not be undermined.

It remains the duty of our people to regroup, stand up, and ensure that our leaders implement the principles he stood for. Only when they do so will we be able to say with a clean conscience and a good heart, "Hamba Kahle Qabane!".

MICHAEL DONEN SC

(Michael Donen is an Advocate at the Cape Bar. He represented Major-General Petane in the case reported as *S v Petane* 1988 (3) SA 51 (CPD))

Petane outwitted apartheid regime, which saved him from hangman

Michael Donen SC

MOXOLISE PIETANER died on September 27, 2017. During his lifetime he was a friend, comrade, political commissar, a hero of our people, a soldier of their army, umkhonto we Sizwe, and, when victory had become certain, he became a major-general in democratic South Africa's National Defence Force.

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Protocol), were "fighting against a racist regime in the exercise of a people's right to self-determination as enshrined in the UN Charter", would agree with the judge.

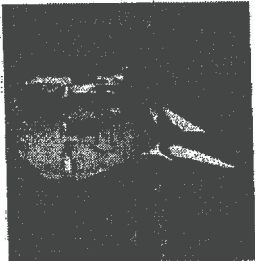
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The ANC became his political home. A year after his imprisonment on Robben Island he wrote to me saying that he had met many of his comrades there. They were regrouping, and taking the struggle forward. Minister of Defence and Military Veterans Nosirwe Maphisa-Nqakula pointed out at his funeral in Gugulethu that Mxolisi's legacy must not be undermined.

It remains the duty of our people to regroup, stand up, and ensure that our leaders implement the principles he stood for. Only when they do so will we be able to say with a clean conscience and a good heart, "Hamba Kahle Qobus!"

● *Donen is an Advocate at the Cape Bar. He represented Major-General Petane in the case reported as State v Petane 1989 (3) SA 57 (CPD).*



MICHAEL DONEN SC

through the barrel of a gun. It used terror to frighten them into submission to white minority rule.

The state and its judicial arm

Groundbreaking case that changed history

Michael Bagraim

I WRITE as an attorney who has always been interested in court cases involving prisoner-of-war status. During 1987, as a young attorney and having just opened a fledgling legal practice, I became incredibly interested in a case *State versus Petane* (Reference 1988 (3) SA 51 CPD).

This case was groundbreaking for many reasons, but in particular because Petane was arrested on charges of terrorism against the apartheid state. The defences raised by Mxolisi Petane's advocate, Michael Donen, was a claim for prisoner-of-war status.

The claim was unique, and certainly an affront and a major challenge to the machinery of the evil apartheid state. Donen bravely grabbed that brief to defend prisoner Petane throughout the year.

Petane was a principled cadre and a man of his word. He refused to deny what he had done and strongly defended the reasons for the necessity of his deeds.

Ably defended by Donen, Petane was able to push the liberation Struggle to another level. Many of the lawyers in South Africa were in awe of this bravely fought defence.

It should be noted that Donen took on this case for little or no reward, and much to the destruction of his own law practice.

He knew how conservative the legal profession was, and he understood that taking on a case of this nature would alienate many of the attorneys who were briefing him and intended to brief him in the future.

Despite this, Donen poured his heart and soul into this unique defence knowing full well that he was taking on the might of not only the iron-clad prosecution, but also the judiciary at the time.

Many years later, I befriended Donen and was intrigued to hear the inside story and the preparation that went into the defence.

Sadly, I was never to meet the brave and principled Petane, who passed away last week.



MAN OF HIS WORD: Major-General Mxolisi Petane defended the reasons for the necessity of his deeds. PICTURE: ETIENNE CREUX

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ABLY DEFENDED BY DONEN, PETANE WAS ABLE TO PUSH THE STRUGGLE TO ANOTHER LEVEL. MANY LAWYERS WERE IN AWE

South Africa should do more to study the story of Petane and his unique legal defence, and how the case laid the groundwork for the recognition of the Struggle as being not a terrorist struggle but a struggle for liberation.

Some of the interesting stories of this case would fascinate the public who thirst for more information from the early days of the Struggle. For instance, Govan Mbeki, who was the Umkhonto we Sizwe commander-in-chief, was supposed to testify in mitigation for Petane. Donen went to meet Mbeki in Port Elizabeth.

Unfortunately, due to the enormous risks involved, it was decided not to expose Mbeki to the cross-examination.

History tells us that Petane was able to avoid the death sentence due to this unique defence, and in fact went on to become the inspector-general of the SANDF.

The hard-and-fast friendship between Donen and Petane continued until Petane's untimely demise.

Donen qualified to become family of Petane when he was asked to speak in Petane's place at his father's funeral.

Donen and Petane went on to celebrate the circumcision of Petane's son in Gugulethu last year, and Donen regularly met Petane and his wife.

I have been an avid listener to many other interesting stories about the prisoner-of-war status defence, and I believe that it is appropriate for modern-day scholars of the Struggle to investigate Petane's defence more fully.

As an aside, it is interesting to note that Ramesh Vassen, who was Petane's attorney at the time, and Donen were friends and this relationship went from strength to strength because of the Petane trial.

We have an incredibly rich and interesting history in South Africa, and we seem to have lost sight of some of those early principals which, in turn, led to our democracy.

● *Michael Bagraim is a practising managing partner of Bagraims Attorneys.*



GREATER GOOD: Advocate Michael Donen took the case for little or no reward, much to the destruction of his law practice. PICTURE: MICHAEL WALKER



Govan Mbeki and Michael Donen – Port Elizabeth December 1987

WEEKEND FOCUS

Portrait of conviction

SPECIAL REPORT by DALE LAUTENBACH, Political Staff

THE conclusion this week of the trial of a trained member of *Umkhonto we Sizwe*, the armed wing of the African National Congress, provided a rare insight into the thinking of a young man who was a candidate to Spear of the Nation.

A combination of court privilege and the uncompromising commitment of 29-year-old Mxolisi Edward Petane resulted in the set of details about his life in South Africa which readers have precious little access.

Petane was sentenced to a total of 17 years' imprisonment on conviction of terrorism and two counts of attempted murder. He admitted planting a bomb outside the Dions Shopping Centre in Parow in July last year. The device was not intended to explode, he said, but to be a psychological weapon. Its message to the security forces was get out of the townships and guard places like shopping centres where the ANC has the wherewithal to place this sort of bomb.

In the course of the trial Petane revealed his biography to the court, refusing as the judge Mr Justice J H Conradie put it, "take the cheap way out".

Petane claimed throughout that he was a soldier, a trained explosives expert, political commissar and deputy commander of an *Umkhonto we*

Sizwe unit. While the judge obviously did not accept this in the eyes of the law, he accepted Petane's self-perception saying that considering himself a soldier he appeared prepared to stand up for his convictions and take the consequences.

That seemed to set the tone of court proceedings during which Petane stood by his convictions in a proud but not beligerent manner. During judgement he sat attentively in the dock in a black zippered jacket bearing the ANC logo and when the court adjourned did he leap to his feet with three clenched-fist salutes and a resounding shout of "Victory or Death We shall win".

The following week in a witness box to give evidence in mitigation of his sentence he said:

"Since this is my last opportunity to speak I would like to express my appreciation of the course of this trial to my position as a soldier of *Umkhonto we Sizwe* and to my Lordship for your sensitivity and that of the members of the Bench."

Petane, born in Steenberg, but moved by forced removal to Guguletu, left South Africa to join the ANC in 1977.

The months before his decision to depart had been a painful experience by his own account.

"I first experienced the cruel and ruthless tyranny of this regime during the 1976-77 riots."

He described the violence which met the initially peaceful demonstrations against the "Interior Bantu Education" and the "unequal skirmishes" between "defenceless schoolchildren with stones and dustbins" against hippos, teargas and live ammunition.

He realised too that the conflict was not one of black versus white, but of oppressor versus oppressed and he paid tribute to the white doctors who treated their lives and their jobs in treating those wounded by the police.

"I was convinced beyond any reasonable doubt by the government's actions that it must be replaced by another government — one that has been elected by the majority of the people with an explicit mandate to rule in the interests of all people."

He was introduced to the Freedom Charter with its "number and objective solution to the country's constitutionalised problems" and decided that an organisation with this kind of approach to this country's future naturally became my political home."

Early in 1977 he left for Botswana, where he joined the ANC. Via Zambia, he reached Angola where he received general training in guerrilla warfare and political instruction. At the end of that year he and about 60 other figures left for the Soviet Union for further training at Shirwanah, a camp in the Ukraine.

"Here 20 of us specialised in military engineering — in other words explosives — until 1978."

During the trial and after some complicated evidence about the manufacture of home-made bombs using a combination of pedestrian materials and what military equipment was available, Petane was asked whether he considered himself an explosives expert.

"Yes, sir," he replied, smiling.

BACK in Southern Africa in 1978, Petane was deployed from Angola to Mozambique and back to Angola again where he worked in air defence. By mid-83 he was in Zambia for training in trade unionism. He used these new skills with the SA Congress Trade Unions in Gaborone, Botswana, until late 1984 when he was arrested and deported back to Zambia.



ABOVE: MR Charlton and Mrs Evelyn Petane: Their only son, African National Congress member Mxolisi Edward Petane, was sent to prison for 17 years this week.
"Seventeen years is seven years," was the cry from the woman who gathered around Mrs Petane and her daughter Cindy outside the court after sentence was passed.
Petane's 88-year-old grandmother pressed a handkerchief to her eyes.
"Come, come," cajoled the woman and Mrs Petane pressed a comforting hand against her mother's cheek.
Petane's advocate, Mr M.

Charlton Doreen, argued in mitigation of sentence that Petane's character was such that he might well make a contribution to his country.
"Yes, my own feelings are that he is likely to," replied Mr Justice J H Conradie.
Petane's mother went further. Is she proud of him? She laughed, shook her

head and was almost embarrassed by her responses.
"Too much."
Stepping to embrace the small woman and wish her goodbye, Mr Doreen's tall figure dwarfed her. "Thank you, thank you," she said. "You've worked so hard ... you're number one."
Picture: WILLIE de Klerk, The Argus.

FUNERAL PROGRAMME OF THE LATE MAJOR GENERAL (RET) MXOLISI EDWARD PETANE ON 7 OCTOBER 2017

MAJOR GENERAL (RET) MXOLISI EDWARD PETANE: MMS, MMB, ST C (ARMY)

"A PEACEMAKER, A RECONCILER, A FREEDOM FIGHTER AND MENTOR"

PART ONE

MC Col (Rev) M.P.K. Masemola

Mxolisi Edward Petane was born on the 2nd August 1958 in Retreat, Cape Town. Due to the Apartheid Government policies of forced removals and implementation of the Group Areas Act, his family was moved to Gugulethu in the 1960's.

- **Opening Prayer** - Col (Padre) A. Burt
- **Hymn/Choir**
- **Reading of Psalm** - Col (Rev) A. Mothopeng
- **Obituary** - Family Member
- **Family Speaker** - Family Member
- **Community Member**
- **Tribute by Children** - Children
- **Military Speaker** - C SANDF
- **Hymn/Choir**
- **Minister of Defence and Military Veterans** - MOD
- **Scripture Reading** - Cpln T.J. Mara
- **Sermon** - Cpln Gen J.A. Jamangile
- **Hymn/Choir**
- **Benediction** - Cpln D. Mpisana
- **Announcement of Names of the Pall Bearers**

PART THREE

- **Reading of Committal** - Chaplaincy
- **Vote of Thanks** - Family Member
- **Benediction** - Chaplaincy

He went to the following schools: Sokhanyo Lower Primary, Vuyane Higher Primary, Nompumelelo Secondary (then called "Roma", a Roman Catholic School) and finally ID Mkiye High School. It is at Roma where he met his wife, Zimasa and became involved in student politics. He participated in the Students' Uprisings in Cape Town which began on the 11th of August 1976.

It was also during this time that he met with the current Lt Gen Norman Yengeni, Tony Yengeni, Ntsikelelo Magwa, Hapi Magqwashu and James Ngculu to join the ANC underground, under Lumko Huna and Mountain Qumbela who are currently late. This group was later joined by Johnny Seutloadi and others from Cape Town. The group code-named itself, "The Big Game" for underground purposes and political objectives. The group held its meetings at Lovers' Lane Forest in Gugulethu, NY78, in those days.

Mostly, the work of this group was centred around the reading of underground literature and distribution of pamphlets. Major General Mxolisi Petane was central in organising Father Dick from Roman Catholic Church, who readily acceded to the request to use the church facilities to print and produce our pamphlets. The "Big Game" unit was active in many underground activities, especially in the agitation and propaganda activities of the ANC in Gugulethu.

After repeatedly persuading Comrade Lumko Huna to allow the Unit to leave the country: the unit became impatient. It was at this moment that an opportunity arose to leave the country. Vondela Landingwe and Ghost Ndindwa assisted to organise a car to leave the country. They also assisted to provide the group with food, which was useful and handy for the long journey to Johannesburg. Given that the group had now been provided with a car, none of the unit members could drive! Again, it was Major General Mxolisi Petane who organised his friend, Zolile "Zorro" Masamanzi from NY38 to drive the car to Johannesburg. Zorro left us in Johannesburg and returned back to Cape Town. Thus the journey to exile began.

Major General Mxolisi Petane left South Africa in a group of five (5) – himself (Mxolisi), Ntsikelelo Magwa, Hapi Magqwashu (Plato), Mkhanyisi Maphuma and James Ngculu. They travelled by train from Johannesburg to Zeerust and then took a bus to the village known as Dinokana. From there, the unit took its march to the borders of Botswana, arriving in Lobatse at night. The group hitch-hiked from Lobatse, a distance of about 67km to Gaborone in Botswana. The group then went to the ANC house in Bontleng, where it was welcomed by Major General (ret) Keith Mokoape and Snuki Zikalala to the ranks of Umrkhonto we Sizwe.

After a brief stay at the United Nations High Commissioner for Refugees in Botswana, the group was flown by the ANC leaders to Lusaka and then on to Luanda, Angola. It was then sent to the transit camp known as the Engineering Camp. It was here that the unit joined many other young South Africans from the length and breadth of South Africa. It is also here that the group interacted with the leaders of the ANC, like the Late President OR Tambo, Duma Nokwe, Mzwai Piliso, Joe Modise and the veterans of the Luthuli Detachment.

After a long wait, the entire group, except a few who remained for a variety of reasons, departed the Engineering camp by bus to the south of Angola in the Benguela Province. The group finally reached the Nova Katengue camp. It was also here that training began in earnest. Major General Mxolisi Petane and his group were all deployed to Company 2, in Platoon 4. It was also in Nova Katengue where they were trained by the Cubans and by the cadres of the Luthuli Detachment.

After six months, their Detachment was christened as the June 16 Detachment by the Late President OR Tambo. It was also here where the final orders and oath were given to this Detachment. The group had completed their training and was preparing to vacate the camp for the next arriving group and was rejoined by Lt Gen Yengeni, "alias Whitey" Major General Mxolisi Petane was sent to the Soviet Union to further his training at Perevalno, where he specialised in military engineering.

After some stay in Angola during 1983, Major General Mxolisi Petane was deployed to work with SACTU in Botswana. Due to a number of reasons in 1984, he was withdrawn from Botswana and returned to the camps. Whilst there, Major General Mxolisi Petane returned to Lusaka on instructions of the Late Chris Hani to prepare for his deployment inside South Africa.

He was put in a unit under the command of Brigadier General Bongani Jonas, as the commissar of the unit. They were known as the "Basil February Unit" in honour of the Wankie veteran who fell in Zimbabwe. This unit was involved in many MK operations in Cape Town. Soon the unit was to suffer casualties. Billy Holiday (alias, Norman Petersen) was cornered in a fierce battle in New Crossroads and was killed. Billy Holiday acquitted himself well in that battle which took his life. Other members were arrested, including Major General Mxolisi Petane. Perhaps, what distinguished him in the annals of MK history is that he was the first MK soldier who demanded to be treated according to the Geneva Conventions. The Geneva Convention Protocol of 1977 states that Freedom Fighters should be treated as Prisoners of War and therefore should not be subjected to torture or regarded as terrorists. He was sentenced to 17 years of imprisonment on Robben Island, despite the Geneva Conventions.

Major General Mxolisi Petane's defiant attitude and conduct in court, resulted in an ANC Branch in Khayelitsha, being named after him (the Mxolisi Petane Branch).

On his release, Major General Mxolisi Petane was involved in building ANC Branches in the Western Cape. He did this work until the advent of the 1994 elections for freedom, where after Major General Mxolisi Petane integrated in the SANDF.

In the National Defence Force, he occupied many positions, among others:

As Senior Staff Officer Operations at Western Province Command;

As Commandant of the SA Army College;

As Director Planning at the Joint Support Division; And as a Defence Advisor to the United Kingdom.

His last position in the SANDF was that of Inspector General of the Department of Defence. Major General Mxolisi Petane spearheaded the establishment of the SADC Defence Inspectorate Working Group. He also played a significant role in diplomatic relations between South Africa and SADC Countries.

Major General Mxolisi Petane has the following qualifications:

A Certificate in Credit Control;

Diploma in Community and Nation Building;

Defence Management Programme;

A Bachelor in Social Science, and a Masters in Management.

Major General Mxolisi Petane dedicated all his life and all his energy for the ideals of the ANC and the People of South Africa.

May he find eternal peace, understanding that in his life, he was loyal to the end.

Major General Mxolisi Petane served his country with zeal, diligence and honour. He was awarded long service and meritorious medals eg 10, 20, 30 years medals and MMS, MMB etc.

Major General Mxolisi Edward Petane leaves behind his loving wife, Zimasa Petane and two (2) children, Refloe and Zweil who was named after his Late grandfather Zweilbanzi. As well as two (2) grandchildren: Sitha and Canzi.

MAY HIS SOUL REST IN PEACE - HAMBA KAHALE HLATI, LISA, JAMBASE, MSUTHU, CANZI,
LALA NGOXOLO QHAWWE LAMAQHAWWE