

# Marikana: Hof weier bevel oor geld vir regs-koste

## Hanti Otto

'n Dringende aansoek in die hof om die staat te dwing om die regskoste van oorlewendes en gearresterdes van die Marikana-voorval tydens die Farlam-kommissie se ondersoek te dek, het misluk.

Regter Joseph Raulinga het gister in die hooggeregshof in Pretoria bevind dat die applikante nie as beskuldigdes voor die Farlam-kommissie, wat die voorval ondersoek, staan nie.

Die groep het die hof verlede week versoek om die regering te dwing om hul regskoste tydens

die kommissie-ondersoek te dek.

Die respondente is pres. Jacob Zuma en Jeff Radebe, minister van justisie.

Die Farlam-kommissie ondersoek die dood van 34 stakende mynwerkers tydens botsings met die polisie en veiligheids-wagte in Marikana op 16 Augustus

verlede jaar, asook die dood van tien mense die vorige week.

Adv. Dali Mpofu, die aansoekers se regsverteenvoerder, het vroeër aan die hof gesê die slagoffers en mense wat gearrester is, is aanvanklik deur ses advokate by die kommissie verteenwoordig. Weens 'n geldte-

kort is net een oor.

Sedert Augustus 2012 het regsverteenvoerders van die koste uit hul eie sakke betaal, maar vir die huidige fase van die verrigtinge, wat glo tot einde Oktober en waarskynlik langer sal aanhou, is geen geld meer vir die slagoffers se regspan beskik-

baar nie, het hy aangevoer.

Raulinga het bevind dat die Regshulpraad daar is vir mense wat in strafsake gearrester is.

Daar is geen skade vir die applikante nie omdat hulle nie beskuldigdes is nie, maar getuies.

“Die hof kan nie die Regshulpraad se beleid verander nie.”

Die hof kan ook nie aan die kommissie voorskryf wat om te doen nie, het die regter gesê.

Hy het bygevoeg dat niks die partye keer om die aangeleentheid buite die hof op te los nie.

Mpofu het gesê die applikante wil in die konstitusionele hof teen die uitspraak appelleer.

# No state funding for Marikana lawyers

THE Pretoria High Court has dismissed an application for an order that would compel the state to fund legal representation for the victims of the Marikana shootings.

“I agree with the state that the application cannot succeed,” Judge Joseph Raulinga said yesterday.

“I need to say that nothing prevents the parties from settling this matter outside the courts.”

Dali Mpfu, who has been acting for the wounded and arrested Marikana miners at the hearings of the Farlam Commission of Inquiry, brought the application for state funding of the mineworkers’ legal team.

Miners and their families packing the courtroom grunted in disapproval when Raulinga made his ruling.

“They [the applicants] say the

separation of powers is not implicated in this matter. I disagree,” the judge said.

“The duty of determining how public resources are to be drawn upon ... lies at the heart of the executive.”

He said he could grant the order only if there were proof of unlawfulness, fraud or corruption.

“I do not find any in this case.”

It was the prerogative of the executive to decide how to fund commissions, he said.

Mpfu asked the judge when the typescript of the judgment would be available so that he could bring an urgent application in the Constitutional Court.

He said the application was urgent in that it would have implications for the commission.

Raulinga said he would do his best to make sure that the typescript was available “as soon as possible”.

On Thursday last week Mpfu told the court the miners who had been wounded and arrested at Marikana last year were entitled to legal representation at the state’s expense.

He told the court that the miners’ legal team had not received payment between June and October, and that the commission was unlikely to finish its work by its extended deadline of October 31.

The commission is investigating

the deaths of 34 striking mine-workers, shot by the police at Marikana, in North West, on August 16, and the deaths of 10 people in strike-related violence the previous week.

On Monday Mpfu provisionally withdrew from the inquiry pending the outcome of the high court application.

Two other parties participating in the commission — the Legal Resources Centre and the families of the miners killed — also provisionally withdrew. — *Sapa*

**‘Nothing to stop parties settling outside courts’**



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# The Times

## Government must pay legal costs of Marikana families

**O**N AUGUST 23 last year, when President Jacob Zuma announced the establishment of a commission of inquiry to investigate the terrible events at Marikana earlier that month, he said it was imperative that all the affected parties co-operate with the commission “so that the truth can be uncovered about what really happened”.

Today, less than a year later, the credibility of the Farlam Commission of Inquiry hangs in the balance because of a protracted dispute over who will foot the bill for the legal costs of the families of the miners who were killed and injured in August last year.

On Monday, Advocate Dali Mpofu’s team, representing the wounded and arrested miners, became the first to withdraw pending his high court application for the state to fund his clients’ defence. They were followed by three other sets of lawyers, including those of the Association of Mineworkers and Construction Union.

**‘Untenable that poorly paid miners are left to twist in the wind’**

Yesterday, the Pretoria High Court dismissed Mpofu’s application on the basis that — barring evidence of unlawfulness — the determination of how public funds should be spent fell squarely within the ambit of the executive. Critically, the judge noted that “nothing prevents the parties from settling this matter outside the courts”.

This is precisely what should happen. Instead of forcing Mpofu to approach the Constitutional Court for redress, the government needs to step in now and commit itself to paying for the legal costs of the miners and their families.

The commission has been dragging on for far longer than intended and is unlikely to meet its extended deadline of October 31. In the interim, legal costs are soaring. It is untenable that the bill for police lawyers is being paid for by the state, while poorly paid miners and their representatives are left to twist in the wind.

While the question of who should settle Amcu’s legal bill is moot, it is clearly in the interests of justice for the state to pay the costs of the Marikana victims.

# Court vetoes Marikana funds

ILSE DE LANGE

THE High Court in Pretoria has dismissed an urgent application by advocate Dali Mpofu for the State to fund the legal representation of 270 miners at the Marikana Commission of Inquiry.

Judge Joseph Raulinga dismissed the workers' application for temporary state funding, pending the outcome of an application to declare government's refusal to fund their legal representation at the commission unconstitutional.

The mineworkers sought an order to compel the justice and constitutional development minister and Legal Aid SA to provide them with the legal aid on the same basis as the

**DISMISSED:** *State off the hook – until refusal proven unconstitutional*

aid provided to state parties.

The Marikana Commission of Inquiry was established in October last year to investigate incidents at the Lonmin mine in Marikana during August 11-16 last year, which led to the deaths of 44 people.

The commission was supposed to present a report to President Jacob Zuma in February this year, but the deadline has been extended until end October.

Although emergency funds of R2.6 million were paid in the past to the legal team of the workers

and a funder had apparently promised a further R2 million, the workers said the funds have not yet been received.

They said their legal representatives had to pay the costs out their own pockets.

Raulinga said the commission was an investigative body which reported to the president and was not entitled to take any action as a result of its findings.

It could not be elevated to the status of a court of law.

He said there was no proof of un-

lawfulness, fraud or corruption and the court could not interfere with the executive function of allocating funds for legal aid.

The court was also not entitled to change the policy of the Legal Aid Board and could only do so if it declared the Act unconstitutional, he said.

"I'm of the view that they are not entitled to such legal representation at state expense in the present case.

"The right to legal aid is not absolute.

"The applicants do not appear be-

fore the commission as arrested, detained persons. They are witnesses.

"The Marikana Commission does not determine rights," the judge said.

He said the interim relief sought by the miners would further have the effect of final relief, as it was unlikely that the money could be recovered, should their main application fail.

Raulinga however made it clear that nothing prevented the parties from settling the matter out of court.

# Legal teams have paid for victims from their own pockets, says Mpofo

## STEVEN TAU

THE millions of rands spent to represent the families of mineworkers killed during last year's labour unrest in Marikana since the start of the Farlam Commission came from the pockets of the legal representatives, advocate Dali Mpofo told *The Citizen* yesterday.

Mpofo and his team temporarily withdrew from the commission early this week due to financial constraints. "We had spent a lot of money on petrol, accommodation, food, and our attorneys who have

**Snip** 'We had spent a lot of money on petrol, accommodation, food, and our attorneys who have been doing a lot of administration work.' - Mpofo.

been doing a lot of administration work. The amount of money spent on accommodation amounted to more than R500 000," Mpofo said.

The president of the Association of Mineworkers and Construction Union (Amcu), Joseph Mathun-

jwa, said they were fully behind Mpofo's decision. "If the state is serious about finding out the truth about what happened in Marikana, they need make funds available to Mpofo and his team."

The Benchmark Foundation said the state must financially support needy parties at the commission. Chairman Bishop Jo Seoka said it was unforgivable that there has been lack of financial support for the mineworkers.

"Financial support has only been extended to a select few," he said.