

Marikana miners plan to march over funding

Katlego Moeng and Sapa

MINEWORKERS arrested and wounded during strike-related unrest at Marikana last year want to hold a peaceful march after they suffered a blow in the Constitutional Court yesterday.

The Constitutional Court yesterday dismissed their urgent appeal for legal funding.

Dali Mpofo, legal representative for the miners, told the Farlam Commission of Inquiry about the plans yesterday as the commission of inquiry into the massacre resumed its hearings in Centurion, Gauteng.

“They want legal representation at the state’s expense,” said Mpofo.

He indicated that the march would most probably head to the Union Buildings in Pretoria.

Scores of miners filled the auditorium in Centurion as Mpofo reported back to the commission on the decision of the Constitutional Court.

The court bid was the latest attempt by the survivors and families of victims, together with the Association of Mineworkers and Construction Union (Amcu), to force the state to pay the lawyers representing them at the commission.

They had asked the court for leave to appeal a decision of the Pretoria High Court last month, which dismissed an urgent attempt for an order compelling President Jacob Zuma, Justice Minister Jeff Radebe and Legal Aid SA to fund the affected families.

This was while it awaited a final decision by the court – which is yet to be heard.

Zuma, Radebe and Legal Aid SA had argued that existing policies did not provide for funding lawyers in commissions of inquiry.

In its ruling, the Constitutional

Court said it was also not willing to pre-empt the review before the high court. In addition, the top court made it clear it would not meddle with the executive’s power to allocate limited resources.

According to the court, the Bill of Rights explicitly entitles someone to

claim state-funded legal representation in three instances only and the applicants did not fall into any of these categories.

The court also found that reliance on section 34 of the Constitution, which guarantees legal representation in legal disputes, did not hold weight as the commission did not involve a legal dispute in a court.

Zuma had initially mandated that the inquiry would start in October last year and finish by March this year. However, this was extended to October after several delays.

The miners and their families had initially secured funding from a non-governmental organisation for the first six months.

Following yesterday’s decision, Amcu president Joseph Mathunjwa said: “The struggle continues. We will go back to our constituency and map a way forward.”

He said no date had been set for the review process in the high court.

Mathunjwa added that, for the truth to be unearthed, the state must provide the funding to lawyers.

After reporting back to the commission, Mpofo requested that they be excused.

“Until there is funding on the table, our participation is withdrawn,” he said.

The miners, Mpofo, SA Council of Churches president Anglican Bishop Joe Seoka and Mathunjwa then left the proceedings.

Retired judge Ian Farlam said the commission would continue.

DA to ask Zuma about legal fees

BALDWIN NDABA

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THE DA has vowed to pressure President Jacob Zuma to make funds available for the legal fees of the Marikana massacre survivors.

DA parliamentary leader Lindiwe Mazibuko's pledge came after the survivors suffered another court defeat when the Constitutional Court yesterday rejected their urgent appeal to force the government to pay for their legal fees during the Farlam Commission of Inquiry into the Marikana massacre.

The mineworkers made an urgent appeal to the Constitutional Court after the Pretoria High Court turned down a similar application.

The high court ruled that the courts could not be expected to determine where the government should spend its money.

Chief Justice Mogoeng Mogoeng, in a unanimous ruling, said the application for leave to appeal should be dismissed because there were no reasonable prospects of success in relation to challenging the dismissal of the application for interim relief in the high court, "and because it is not in the interests of justice to grant leave in the particular circumstances of this case where the disputed issues still have to be determined in the main review application".

Reacting to the outcome, the miners' attorney, Muzi Msimang, said he would report back to the miners for feedback.

"The Constitutional Court ruled on a technicality. The ruling effectively means that we should go back to the high court to argue on the main application. But our view is



that the high court's finding had already made a ruling on the main application. We would go around (in) a circle..."

They would inform the commission about the ruling.

"We will also be talking to our clients, who have already indicated that, without funding, we should not partici-

pate in the proceedings."

Bishop Joe Seoka, of the Marikana Support Group, said he was disappointed with the outcome.

"They (miners) expected the Constitutional Court to be compassionate to their arguments. They are going to be very angry.

"On Friday, the people expected the commemoration to be plagued with violence but it turned out to be a very peaceful memorial," Seoka added.

Mazibuko said she would write to Zuma to prevent the stalling of proceedings at the hearings.

"It remains completely unacceptable, however, that the Department of Justice cannot expand its budget to accommodate the legal fees of the victims of the Marikana massacre without being instructed to do so.

The SAPS and platinum miner Lonmin, the other two participants in the hearings, had sufficient legal representation.

"Denying the mineworkers' right to legal representation will taint the credibility of this commission," Mazibuko added.

She would write to Zuma and Minister of Justice and Constitutional Development Jeff Radebe "to request that the Justice Department make funds available for legal representation of the Lonmin mineworkers, and that this is done without delay", she said.

How policeman died

NORTH West deputy police commissioner General William Mpembe told the Farlam Commission of Inquiry yesterday how his colleague Warrant Officer Tsietsi Monene was killed by striking miners at Marikana.

About five men armed with pangas and knobkerries had attacked Monene, Mpembe testified.

Mpembe was being cross-examined by Takalani Masevhe, for Monene's family.

A second officer, Sello Lepaku, was also killed in the attack.

Masevhe asked how Mpembe and other officers managed to escape the attackers, as they were close to Monene.

"Monene was closer (to the

miners) than the other officers," Mpembe replied.

Masevhe asked why Mpembe had not ordered the other officers to shoot at the attackers to save Monene.

"It's not an easy instruction to say 'fire'," said Mpembe.

"In such circumstances, members can use their own discretion."

Mpembe said mineworkers had intended to attack the police as they had refused to hand over their weapons when he asked them to.

The miners said they needed the weapons to protect themselves against members of the National Union of Mineworkers, but no NUM members were present during the attack on Monene, Mpembe stated. - Sapa

Leaders must work to lure investors after Marikana

MINING

Kuseni Dlamini

LAST week's peaceful commemoration of the Marikana massacre was, by and large, a key moment in the country's attempts to stabilise and normalise the industrial relations climate in the local mining industry.

Returning the mining industry to an irreversible state of normalcy and stability is key to unlocking sustained high and inclusive job-creating economic growth for the country and its people. The stability of the local mining industry is key to the country's growth and development projects, which can best be advanced through a globally competitive mining industry.

Bold and unifying leadership is key to stability in the mining industry. It needs to be explicitly and actively demonstrated, on a sustained and consistent basis, by business, labour and government leaders for the sake of the industry and country alike.

Its absence can have fatal consequences, as we saw at Marikana last year. Its presence can be a powerful and positive force for peace and unity among workers, which is key to productivity and efficiency in the workplace, which, in turn, are key to the global competitiveness of our mining industry and the country at large.

Now is the time that effective and unifying leadership should be unleashed to stabilise and take the mining industry and the country forward. Now is the time to stop apportioning blame and unite around a common and compelling vision of the future for the industry.

Point scoring to advance narrow sectional or organisational interests is not what South Africa needs at this stage.

The opportunistic attempts to score political points and jostle for votes in next year's election on the back of last year's unfortunate events at Marikana can be more revealing about the calibre of political parties and leadership that we have. Mature and unifying leadership is required across all sectors of our society.

What is further required is an unequivocal restoration of faith and confidence in the local mining industry as an attractive investment proposition. South Africa has the world's largest endowment in mineral resources but does not have the largest share of global capital expenditure in mining. It should. However, this requires

deliberate efforts and actions to build and retain global investor confidence.

The country's lower share of global mining investment is largely due to a deficit in global investor confidence in the local mining industry, which is not an insurmountable challenge.

This can and must be addressed. It is an area of opportunity requiring concerted and united effort to turn around. Other mining-intense economies elsewhere in the world are jostling for position to attract and retain global mining investment.

Decisive and resolute steps are required to elevate South Africa's position as an attractive investment location of choice. Marikana will remain an indictment in the conscious of the new South Africa. We must learn the lessons and move beyond it.

One of the things that are and should be taken for granted in any democracy is the right of workers and citizens to march and protest peacefully and freely without the fear of violence and death. That must be part of our national value system.

I strongly believe that the prevalent negative investor sentiment towards the local mining industry can and must be turned around.

The efficacy of the social partnership that should underpin modern industrial relations in modern democratic societies was tested to the limit and came out wanting at Marikana on August 16 last year. That should not have been allowed to happen.

We should all say: never, never again will workers be set up for mowing down like they were at Wonderkop last year.

There is no reason to justify the loss of innocent lives as witnessed at Marikana.

The easiest thing of all is to apportion blame. The most difficult thing is to accept responsibility. No one at the Farlam commission of inquiry into Marikana has thus far accepted responsibility and apologised to the families who lost their loved ones or to the nation at large.

It is crucial to look and move forward. South Africa has paid and will continue to pay the price if negative investor sentiment is not addressed through an effective and well-orchestrated strategy championed by leaders across all sectors of society.

I strongly believe that the prevalent negative investor sentiment towards the local mining industry can and must be turned

around. How? First, we need confidence-building measures to reassure local and foreign investors alike.

This should not just be about superficial positive talking up of the local industry. It must be about substantive engagement and lobbying of local and international investor communities to prioritise the local mining industry in their capital allocation decisions. South Africa's mining industry has massive potential to attract and retain massive inflows of foreign investment.

Second, South Africa is, in the broader scheme of things, a very attractive and compelling emerging market in which to invest. It has world class regulatory institutions and a globally esteemed money market, according to the World Economic Forum. South Africa suffers from a perception deficit which, luckily, can be addressed through concerted strategic thinking and action by leaders from business, labour and the government.

Third, we need to elevate building and maintaining investor confidence to a national strategic priority around which all should rally. This requires a systematic and sustained focus and effort built on a

MARIKANA A YEAR LATER

clear and well-articulated strategy, not just once-off events or once-off statements.

Fourth, there is a need for substance to prevail over form in the partnership between the government and business. The tendency to meet only or mainly during crisis situations and issue nice press statements of commitment to working together is neither adequate nor helpful in fully unlocking durable solutions to our pressing national problems and challenges.

We need a new type of engagement underpinned by mutual trust and confidence that should be projected at all times by all parties even when they are not together. The need for strategic alignment of

approaches between the government, business and labour to position South Africa as an investment location of choice is more important today than ever before. Bickering on small issues may cost us dearly on the bigger issues.

There is a need to craft a fine and reasonable balance between sectional interests and the wider national economic interest which, I dare say, should prevail above all else. The first year after Marikana should be used to position the industry and country for greatness underpinned by global competitiveness and high trust in the local mining industry.

To the extent that the industry lingers on the low trust trajectory, the extent to and speed at which it can recover from the Marikana massacre is likely to be limited at best or non-existent at worst. South Africa needs a robust mining industry that can be a magnet for the attraction and retention of local and foreign investment to propel the country's growth, development and prosperity for generations.

Kuseni Dlamini is the former head of Anglo American South Africa.

No funds for Marikana lawyers

KATLEGO MOENG

THE survivors and families of victims of the Marikana massacre suffered another blow yesterday when the Constitutional Court dismissed their urgent appeal for legal funding.

The court bid was the latest attempt by the survivors and families, together with the Association of Mineworkers and Construction Union, to force the state to pay the lawyers representing them at the Farlam Commission of Inquiry, which is investigating the events that led to 44 deaths a year ago.

They had asked the court for leave to appeal a decision of the High Court in Pretoria, which dismissed an urgent attempt for an order compelling President Jacob Zuma, Justice Minister Jeff Radebe and Legal Aid SA to fund the affected families.

This was while it awaited a final decision for a review of the state's decision not to pay the miners' costs by the high court.

Zuma, Radebe and Legal Aid SA argued that existing policies did not provide for funding of lawyers at a commission of inquiry.

In its ruling yesterday, the Constitutional Court said it was also not willing to pre-empt the review before the high court.

In addition, the top court made it clear it would not meddle with the executive's power to allocate limited resources.

According to the court, the Bill of Rights explicitly entitled someone to claim state-funded legal representation in only three instances and the applicants did not fall into any of these categories.

The court found that a reliance on section 34 of the constitution, which guarantees legal representation in legal disputes, did not hold weight as the commission did not involve a legal dispute in a court but was established to uncover the truth about the Marikana tragedy.

State has moral duty to help the Marikana families

IT NOW seems increasingly unlikely, after yesterday's Constitutional Court ruling, that the courts will order the government to foot the bill for the legal costs incurred at the Farlam Commission of Inquiry by the families of the 44 people, mostly miners, killed at Marikana last year.

Last month, the Pretoria High Court dismissed advocate Dali Mpofu's application for a temporary order to this effect on the basis that — barring evidence of corruption or other illegality — the determination of how public funds should be spent fell squarely within the ambit of the government.

Yesterday, the Constitutional Court dismissed the Marikana families' appeal, largely on technical grounds.

Noting that it was not well-equipped to deal with urgent applications, the court said it would not be in the interests of justice to overturn the judgment of the Pretoria court because the application for a review of the decision by the minister of justice and by Legal Aid SA not to pay the families' costs had yet to be heard by the high court.

While the miners' families scurry about for alternative sources of funding for their counsel the matter goes back to the high court.

All of this is so unnecessary. In its ruling last month, the high court noted that "nothing prevents the parties from settling this matter outside the courts". This is where the government is failing the victims of Marikana and the public at large.

Just because there is no legal framework compelling it to do so does not mean that the state is not morally bound to foot the miners' legal bill. It is paying the lawyers of the police witnesses at the commission — surely it is in the interests of justice for it to pay the victims of the police shootings as well.

When he instituted the commission President Jacob Zuma promised that it would get to the bottom of the Marikana tragedy. He must now put his money where his mouth is.

Nothing prevents government from footing legal bill

Marikana funding bid blow

Katlego Moeng

MARIKANA massacre survivors and families of the victims suffered another blow yesterday as the Constitutional Court dismissed their urgent appeal for legal funding.

The court bid was the latest attempt by the survivors and families, together with the Association of Mineworkers and Construction Union (Amcu), to force the state to pay the lawyers representing them in the Farlam Commission of Inquiry, which is investigating the tragedy that led to 44 deaths.

They had asked the court for leave to appeal against a decision of the Pretoria High Court last month, which dismissed an urgent attempt for an order compelling President Jacob Zuma, Justice Minister Jeff Radebe and Legal Aid SA to fund the affected families.

The court's final decision is yet to be heard. Zuma, Radebe and Legal Aid SA had argued that existing policies did not provide for funding lawyers in commissions of inquiry.

In its ruling yesterday, the Constitutional Court said it was also not willing to pre-empt the review before the high court. It also made it clear it would not meddle with the executive's power to allocate limited resources.

The miners and their families had initially secured funding from a non-governmental organisation for the first six months. Now, lawyers representing them are hoping a potential sponsor will agree to giving them long-term funding.

"The final decision of the possible donor will be made by tomorrow [today] and I will know at the end of business whether the answer is yay or nay," the commission chairman, retired judge Ian Farlam, said. – Additional reporting by Sapa

Miners withdraw from Farlam Commission after State funding denied

MINERS arrested and wounded during strike-related unrest in Marikana last year want to hold a peaceful march, the Farlam Commission of Inquiry heard yesterday.

Dali Mpofu, for the miners, said this came after the Constitutional Court dismissed their application to

have the State fund their legal team.

He indicated that the march would most probably head to the Union Buildings in Pretoria.

Scores of miners filled the auditorium in Centurion as Mpofu reported back to the commission on the Concourt decision.

SA Council of Churches president Anglican Bishop Joe Seoka and Association of Mineworkers and Construction Union (Amcu) president Joseph Mathunjwa were present.

After reporting back to the commission Mpofu requested that they be excused.

“Until there is funding on the table, their participation is withdrawn,” he said.

The miners, Mpofu, Seoka, and Mathunjwa then left.

Retired judge Ian Farlam said the commission would continue.

North West deputy police com-

missioner General William Mpembe would be cross-examined.

He gave evidence several months ago but his cross-examination was put on hold as Mpofu tried to get funding for his team.

The commission is investigating the deaths of 44 people during

strike-related unrest at Lonmin Platinum’s mining operations in Marikana, North West, last year.

Thirty-four people died there on August 16 last year, when police fired on them. Ten people, including two police officers, were killed in the preceding week. – Sapa

DA to fight for miners' legal fees

'Court failed Marikana survivors'

BALDWIN NDABA

THE DA has vowed to put pressure on President Jacob Zuma to reconsider his decision not to pay the legal fees of the Marikana massacre survivors.

DA parliamentary leader Lindiwe Mazibuko's pledge came after the massacre survivors suffered another defeat yesterday when the Constitutional Court rejected their urgent appeal to force the government to pay for their legal fees during hearings of the Farlam Commission of Inquiry into the Marikana massacre.

The mineworkers made an urgent appeal to the Constitutional Court after the Pretoria High Court turned down a similar application.

The high court ruled that the courts could not be expected to determine where the government should spend its money, but the workers disagreed.

The workers had hoped the Court would rule in their favour.

Chief Justice Mogoeng Mogoeng, in a unanimous ruling, said the

application for leave to appeal should be dismissed because there were no reasonable prospects of success in relation to challenging the dismissal of the application for interim relief in the high court, "and because it is not in the interests of justice to grant leave in the particular circumstances of this case where the disputed issues still have to be determined in the main review application".

Reacting to the outcome, the miners' attorney, Muzi Msimang, said he would report back to the miners for feedback.

"The Constitutional Court ruled on a technicality. The ruling effectively means we should go back to the high court to argue on the main application.

"But our view is that the high court's finding had already made a ruling on the main application.

"We would go around in a circle. It is like a dog wagging its tail. We are going to the commission and report back the finding of the court. We will also be talking to our clients who have already indicated that,

without funding, we should not participate in the proceedings.

"This is what we are going to tell the commission," Msimang said.

Bishop Joe Seoka of the Marikana Support Group said he was disappointed with the outcome.

"They expected the Constitutional Court to be compassionate to their arguments. They are going to

be very angry. On Friday, the people expected the commemoration to be plagued with violence, but it turned out to be a very peaceful memorial," Seoka said.

Mazibuko said she would write to Zuma to prevent the stalling of proceedings at the hearings.

"It remains completely unacceptable, however, that the Department

of Justice cannot expand its budget to accommodate the legal fees of the victims of the Marikana massacre, without being instructed to do so.

"Both the South African Police Service and Lonmin Platinum Mines, the other two participants in these hearings, have sufficient legal representation.

"Denying the mineworkers' right

to legal representation will taint the credibility of this commission.

"I will write to President Jacob Zuma and the Minister of Justice and Constitutional Development, Jeff Radebe, to request that the Justice Department make funds available for legal representation of the Lonmin mineworkers without delay," Mazibuko said.

Infighting tarnishes Marikana tragedy

THE ANNIVERSARY last Friday of the killing of 34 miners in Marikana went well but revealed a number of fault lines in our society. The divisions remain, and run deep.

Commemorations of this nature, or any commemoration for that matter, should be used to unite the nation rather than to divide it. The presence of diverse political parties at the event should be applauded but in the same vein it was regrettable that some chose to use the event to score political points rather than to heal the still fresh wounds of that tragedy.

The absence of the ruling party and the National Union of Mineworkers (NUM) did not help either. It is a measure of maturity that the ruling party has reprimanded its North West formation for the insensitive remarks it made about the commemoration. The ANC in North West snubbed the event and accused the Marikana Support Group, which organised the event, of being illegitimate. I agree with the pronouncements of its mother body that no one should seek to determine how people should mourn nor should people contest the ownership of the right to mourn.

This was a national tragedy and the nation, which includes all South Africans, should be allowed to mourn and remember it. A lot of work on the unity front still needs to be done on Marikana. These commemorations will be annual and it cannot be every year we will see the bitterness and some of the politicking we saw this year. That does not bode well for national healing and reconciliation. Without pre-empting its findings, I do hope that when the Marikana commission finishes its work, it will recommend how South Africa should remember this dark day that blighted our canvas of democracy and that government, like in all national commemorations, will provide leadership – and be allowed to do so.

But Marikana should not just be about the past. The killing of workers in the area is worrying. The miners who died last year did not die to have more of their colleagues killed – and this time by fellow workers. They died for a living wage. It is a desecration of their memory, I submit, that miners are visiting violence upon each other. Their suffering does not discriminate on the basis of the colour of their T-shirts. Whether it is red or green, their payslips have one colour and they are all subjected to the same inhumane living conditions characterised by hostels with filthy toilets.

For this reason, it does not make sense for NUM and the Association of Mineworkers and Construction Union members to be fighting each other. Indeed, their killing each other does not raise their wages. So, when I hear that miners are intimidating each other by going around demanding to see payslips to see who belongs to which union, I ask myself: who benefits from this intimidation and harassment? It certainly can't be the workers. I implore the leadership of both unions to find peace between themselves and to work towards the advancement of the miners' interests. They have bigger battles to fight and should be wary of being used to fight what are essentially not workers' battles. I am a man of the cloth but I do know that unionism is primarily about workers standing together to improve their situation and to help others.

It is saddening that though the Lonmin mine has committed to pay for the education of the deceased miners' children, the situation at Marikana has not changed. Just a few days ago, we read in the media that the mine has missed its housing target for workers. A representative of our church took a tour of the area and the report he brought back is not encouraging. Safety is still an issue. The living conditions are terrible. Men are still cramped in hostels like sardines and the ablution facilities are filthy. Lonmin and the mining industry have to show commitment to improving the living conditions of miners. We cannot afford to have Marikana replicating itself elsewhere.

A framework for normalising and improving our mining sector already exists. Deputy President Kgalema Motlanthe, a veteran unionist himself, brokered an agreement in June that involved unions and the mining industry. The agreement clearly spells out the role of government, the industry and the unions. The government must improve the regulatory environment, ensure compliance, improve human settlement and speed up reform of the migrant labour system.

Ultimately, it is the implementation of the agreement that will prevent a Marikana happening again. We owe it to the miners who perished on August 16 last year.

● *Pastor Ray McCauley is the senior pastor of Rhema Bible Church and co-chairman of the National Religious Leaders Council.*

ANC shows the middle finger to Marikana victims

CALLOUS. Petulant. Scandalous. Proof of the contempt with which our government and ruling alliance regard the citizens of this country if they're not loyal party members.

These were the words that came to mind when I watched the commemoration of the Marikana Massacre last Friday and noticed the absence of the South African president, the deputy president of the ANC, the minister of safety and security, the minister of labour, the commissioner of police, the leadership of the biggest trade union federation and of the former liberation movement.

I was anticipating public outrage in the media on Saturday and Sunday at this cruel disregard of the victims, their families and the survivors of that history-changing

Pale Native

By Max du Preez

event near Rustenburg a year ago. There was no outrage. It was as if it was simply normal behaviour. Have we all become immune to the insults to our fellow citizens' humanity?

Marikana was the first massacre of civilians by police in the post-apartheid era. It will forever stand as a day drenched in blood next to Sharpeville and Boipatong. Thirty-four mineworkers died there. The mineworkers demanded better wages and living conditions. We saw

the almost indiscriminate mowing down of workers on our television screens.

We know now that some of the workers were shot in the back by policemen. We saw evidence that some were executed in cold blood away from the main killing field.

We know that most of the dead workers were from elsewhere in the country; "migrant workers" as we still call that ugly colonialist and apartheid practice of taking workers from their homes and families to work on the mines and in the industries in the cities. We know they were all black.

The media have shown us the desperate circumstances under which those workers lived around the mine: rows and rows of shacks with limited or no water, electricity

and sewerage systems. This was not supposed to happen 19 years after we cast off the shackles of apartheid and white domination and became a liberated nation and an open democracy.

Marikana was the day we as a nation got our final warning to wake up to the realities of the poor and underpaid: if we don't do something drastic, we will see more blood spilled and we will see our stability and development drain like water in the sand.

More than six out of 10 voters have voted repeatedly for the ANC since 1994 because they promised freedom, dignity and fairness to the former oppressed.

And now these very same leaders show the dead, their families, the wounded and the traumatised of

Marikana a thick middle finger by refusing to attend the national commemoration of this tragedy?

Like spoilt children they stayed away just because they didn't organise the event. Cosatu and the National Union of Mineworkers, once the undisputed champions of the workers, didn't attend because a rival trade union was now the top dog at Lonmin.

The SACP, the so-called vanguard of the class struggle, was absent. The president and his cabinet ministers found something else to do.

No wonder the nation's rabble rouser-in-chief, Julius Malema, was treated as a hero by those who did attend.

"The ANC today is all about power, not the people," a union organiser, Teboho Masiza, told a New

York Times reporter as he listened to local preachers offer prayers for the dead.

"They are supposed to be here to listen to the problems of the people of South Africa. But they are nowhere to be seen. They only look after themselves."

Jacob Zuma and his cabinet and fellow ANC leaders knew early enough that new union, Amcu, was going to be the main player at the commemoration. The Amcu president made it clear that government representatives would be welcome and 20 seats were reserved for them on the stage. Zuma's office and representatives of his ministers in charge of mining and police could have negotiated a way in which their attendance would be dignified and safe. The most hated man at the

mine, Lonmin chief executive Ben Magara, did attend and speak, and he was listened to and not attacked.

The now suspended general secretary of Cosatu, Zwelinzima Vavi, not only stayed away from the memorial, but staged his own sensational media conference in Joburg at the very same time as the Marikana ceremony.

The ANC in North West's statement said it all, even though it was criticised by Luthuli House: the commemoration had been "organised by an illegitimate team" and therefore the ANC wouldn't attend. They're not our dead, so why should we care, is what I read into it.

That is the Zuma-ANC for you: a party that behaves like it is the state itself. If you're not with them, they'll treat you like the enemy.

ConCourt dashes miners' hopes

No guarantee of representation paid for by the state

JOHANNESBURG — An application to compel the state to fund the legal costs of miners wounded and arrested in the Marikana shootings last year was dismissed by the Constitutional Court yesterday.

“The application for leave to appeal is dismissed,” said Chief Justice Mogoeng Mogoeng.

He said the Constitutional Court was not well-equipped to deal with urgent matters in general.

“Where an appeal relates to a temporary order, this difficulty becomes even more acute.”

The legal costs relate to the Farlam Commission of Inquiry, which is investigating the deaths of 44 people during strike-related unrest at Lonmin Platinum’s mining operations in Marikana last year.

A number of miners were wounded in the shootings and/or arrested afterwards. Attempts to get the state to pay for their legal representation at the Farlam commission have failed so far.

Mogoeng referred to the ruling by the high court in Pretoria that dismissed the urgent application by the miners’ legal team several weeks ago.

“There is indeed no fraud or corruption claimed here, and the high court’s finding that there was no unlawfulness either, is a conclusion that must be treated with deference in an appeal against an interim order.”

Mogoeng said the Bill of Rights made only three provisions that explicitly entitled someone to claim legal

PRETORIA — Miners arrested and wounded during strike-related unrest in Marikana last year want to hold a peaceful march, the Farlam Commission of Inquiry heard yesterday.

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“They want legal representation at the state’s expense,” said Mpofo.

He indicated that the march would most probably head to the Union Buildings in Pretoria.

Scores of miners filled the auditorium in Centurion as Mpofo reported back to the commission on the decision of the Constitutional Court.

SA Council of Churches president Anglican Bishop Joe Seoka and Association of Mineworkers and Construction Union president Joseph Mathunjwa also attended the proceedings.

After reporting back to the commission, Mpofo requested that they

representation at state expense.

“One provides that a child has the right to have a legal practitioner assigned to him or her by the state at state expense in civil proceedings affecting the child, if substantial injus-

be excused. “Until there is funding on the table, their participation is withdrawn,” he said.

The miners, Mpofo, Seoka, and Mathunjwa then left the proceedings.

Retired judge Ian Farlam said the commission would continue.

North West deputy police commissioner General William Mpembe would be cross-examined.

He gave evidence several months ago but his cross-examination had been put on hold as Mpofo tried to get funding for his team.

The commission is investigating the deaths of 44 people during strike-related unrest at Lonmin Platinum’s Marikana mine in the North West province, last year.

Thirty-four people — almost all striking mine workers — were killed in Marikana on August 16, 2012, when police fired on them.

In the preceding week, 10 people, including two police officers, were killed. — Sapa.

tice would otherwise result.

“Another is that everyone who is detained has the right to have a legal practitioner assigned to him or her by the state at state expense, if substantial injustice would otherwise result.

“The third is that every accused has a right to a fair trial, which includes the right to have a legal practitioner assigned to him or her by the state and at state expense, if substantial injustice would otherwise result. These do not apply here.”

Muzi Msimang, for the miners, said the legal team was disappointed and would go back to the high court in Pretoria to argue on the main application for funding.

“The court ruled on a technicality and said the high court ruling was interim and does not therefore warrant an appeal,” he said.

The Constitutional Court did not consider the merits of the case. The miners’ legal team would not participate in the commission until funding was resolved, he said outside the court.

SA Council of Churches president Bishop Joe Seoka, who had been supporting the miners, said the decision would anger the workers.

“They assured us of a peaceful [memorial] last week Friday, hoping that the nation would be listening. This sends out a message that the state does not care.”

The miners collected cash among themselves after Friday’s commemorations a year after the unrest in Marikana, Seoka said.

“They handed a bucket full of cash to me and said if no one was willing to fund the legal expenses, they would do it themselves.”

— Sapa.

Marikana: Weiering van staatshulp ‘nie verkeerd nie’

Philip de Bruin

“Die amper onbehoorlike getal senior advokate by die kommissie van ondersoek (na Marikana) omskep die kommissie in ’n lawwe sirkus.”

So het adv. Johan Kruger, direkteur van die Sentrum vir Grondwetlike Reg, gister op die

uitspraak in die konstitusionele hof gereageer waarin ’n aansoek van die slagoffers se families geweier is vir ’n bevel dat die staat hul advokate moet betaal.

“Die kommissie staan onder die leiding van ’n baie bekwame appèlregter (regter Ian Farlam) en die kommissie se doel is om uit te pluus wat op die dag van

die slagting ’n jaar gelede gebeur het – nie om nou al noodskadebeheer vir moontlike siviele eise teen die polisie of die Lonmin-groep te hanteer nie.”

Die families het reeds in die hooggeregshof in Pretoria met ’n soortgelyke aansoek ’n bloutjie geloop en het toe by die konstitusionele hof geappelleer.



Wat sê jy?

Stuur ’n SMS na **45571**

Dié hof se regters het egter gister gesê hulle kan nie fout vind met die hooggeregshof se bevinding dat die howe nie die staat se werk mag oorneem om te besluit oor die besteding van

staatsgeld nie. Boonop voldoen die slagoffers aan geen van die drie vereistes waarvolgens regshulp deur die staat verpligtend is nie. Een daarvan is dat die aansoeker ’n kind moet wees.

Nog een is as ’n aangeklaagde in ’n strafsak nie geld het vir ’n regsverteenvoerder nie.

Die regters het bygevoeg dat

’n amptelike hersieningsgeding van die families oor die kwessie van regshulp aan hulle is nog hangende en hul uitspraak gister moet op geen manier vertolk word asof hulle dié hersieningsaansoek vooruit loop nie.

Kruger het gesê met gister se uitspraak kan regtens geen fout gevind word nie.

“Om eerlik te wees, vind ek dit belaglik dat meer as 20 advokate vir drie van die rolspelers optree. Wat my betref, belemmer hulle net die werk wat die kommissie moet doen. Boonop is Farlam heeltemal daartoe in staat om die families by te staan en te sorg dat hulle nie benadeel word nie.”

Mogoeng dismisses Marikana miners' bid for legal funding

JOHANNESBURG: An application to compel the State to fund the legal costs of miners wounded and arrested in the Marikana shootings last year was dismissed by the Constitutional Court yesterday.

Chief Justice Mogoeng Mogoeng said the Constitutional Court was not well equipped to deal with urgent matters in general. "Where an appeal relates to a temporary order, this difficulty becomes even more acute."

The legal costs relate to the Farlam Commission of Inquiry, which is investigating the deaths of 44 people during strike-related unrest at Lonmin Platinum's mining operations in Marikana, North West, last year.

Referring to a Pretoria High Court ruling which dismissed the urgent application by the miners' legal team several weeks ago, Mogoeng said: "There is indeed no fraud or corruption claimed here, and the high

court's finding that there was no unlawfulness either, is a conclusion that must be treated with deference in an appeal against an interim order."

Mogoeng said the Bill of Rights made only three provisions that entitled someone to claim legal representation at State expense to prevent substantial injustice: for a child, for a detainee, and that every accused had a right to a fair trial. "These do not apply here."

Muzi Msimang, for the miners, said the legal team would go back to the high court in Pretoria to argue on the main application for funding.

"The court ruled on a technicality and said the high court ruling was interim, and does not therefore warrant an appeal."

The miners' legal team would not participate in the commission until funding had been resolved. – Sapa

Marikana funds hope

ABRAM MASHEGO AND SAPA

AN ANNOUNCEMENT into possible funding for lawyers representing miners in the Marikana Commission of Inquiry will be made today.

The issue of funding led to advocate Dali Mpofu and his team, who represent the miners in the commission, provisionally withdrawing from the inquiry.

Commission chair Ian Farlam said the Constitutional Court judgment dismissing an urgent application by Mpofu seeking to compel the state to fund the legal costs of the victims, was not the end.

"I have been informed that there is a possible donor. The donor will decide tomorrow whether or not to fund Mpofu's team."

Meanwhile, North West deputy

police commissioner Gen William Mpembe told the commission yesterday how his colleague was killed by striking miners in Marikana.

"There were about five of them who attacked Monene," Mpembe testified. "They had pangas and knobkerries."

He was being cross-examined by Takalani Masevhe for the family of slain WO Tsietsi Monene who was hacked and shot to death.

A second officer, Sello Lepaku, was hacked and stabbed to death.

The miners said they needed the weapons to protect themselves against members of the NUM, Mpembe told the commission.

"It is not correct to say that NUM was going to attack. Members of NUM were not even present," Mpembe said.

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COURT — NO TO LEGAL FEES!

Mpofu says miners will march to Union Buildings

By MFUNDEKELWA MKHULISI
THE Marikana Commission of Inquiry will continue without the participation of the injured and arrested miners.

This comes after the Constitutional Court yesterday dismissed their application to force government to pay their legal fees.

Commission chairman, retired Judge Ian Farlam, said the inquiry will have to continue even though Advocate Dali Mpofu said his clients had instructed him to withdraw until funding was made available.

Mpofu also said the miners were planning to march to the Union Buildings in Pretoria.

After addressing the commission, Mpofu, the miners

and Amcu President Joseph Mathunjwa left.

Farlam earlier said that a potential funder was likely to make a decision today on whether to help the injured and arrested miners or not.

Anglican Bishop Joe Seoka expressed his disappointment over the fact that the application was dismissed.

"Today's decision sends the message that nobody

cares," he told *Daily Sun* outside the court in Joburg, adding that the miners had told him they would try and get their own funding as they wanted the inquiry to succeed.

Chief Justice Mogoeng Mogoeng said the Constitutional Court is not well equipped to deal with urgent matters.

He was referring to Mpofu's urgent application to overturn the North Gauteng High Court ruling that dismissed an earlier application for

state funds.

Mogoeng said the courts don't have the power to give orders to government on how to use state resources.

Meanwhile, a fundraising initiative was yesterday launched to collect donations for the legal fees of the miners.

Called Citizens4Marikana, the fund was established by Pretoria-based law firm Nkome Attorneys.

Marikana miners 'must get funding'

TRUTH: BOTH SIDES OF THE STORY MUST BE HEARD

» **If the commission is to do its work, it must ensure there is enough money.**

Yadhana Jadoo & Steven Tau

The presidency would have to intervene in the funding crisis of lawyers representing injured and arrested Marikana miners at the Farlam Commission of Inquiry.

This is to make sure the truth into the tragedy is uncovered, Professor Shadrack Gutto of the Centre for African Renaissance Studies said yesterday.

He was commenting on the Constitutional Court's dismissal of an application by the legal team to have the state fund the case of the miners.

"If people are not represented

properly, they will decide not to attend the hearings and then the commission will remain just a hearing for the police and not the victims. If the presidency wants the commission to do its work, then it has to ensure there is adequate funding," he said.

SA Council of Churches president Bishop Jo Seoka said the next step was "very simple" if there were no prospected funders. The "victims" of the "massacre" were prepared to "take to the streets" to help collect funds for their legal team, Seoka said. "At the Marikana (one-year anniversary) on Friday they (the miners) already raised a lot of money. "They took a collection at the commemoration as a gesture to send a strong message that if the state is not willing to support us we will take this upon ourselves to get the money..

"The workers are saying the truth must be known and we want the truth to be told. It would appear the state is not concerned about the national perception of

the commission."

Sapa reported a potential donor was also "still deciding" on whether to fund the legal team.

"The final decision of the possible donor will be made today (Tuesday)," commission chairman, retired Judge Ian Farlam, said.

Attorney Henry Msimang also for the miners said if interim funding was secured, lawyers would have to engage the commission and "sit down with them to establish who the funder is and what are the terms".

A funder would have to make clear their terms and conditions and only if it was favourable and their clients were happy then the legal team would probably proceed.

"It's not a question of funding as such it's a question of principle that we must put across.

"If you want the commission to come out with the truth, everyone who participates in that commission must be fully armed."