

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 132

11 SEPTEMBER 2013

PAGES 14049 TO 14054



© REALTIME TRANSCRIPTIONS

64 10th Avenue, Highlands North, Johannesburg
P O Box 721, Highlands North, 2037
Tel: 011-440-3647 Fax: 011-440-9119 Cell: 083 273-5335
E-mail: realtime@pixie.co.za
Web Address: <http://mysite.mweb.co.za/residents/pak06278>



<p style="text-align: right;">Page 14049</p> <p>1 [PROCEEDINGS ON 11 SEPTEMBER 2013] 2 [10:11] CHAIRPERSON: The Commission resumes. 3 I'm sorry we're starting late but we had various 4 housekeeping matters and discussions in chambers. Before I 5 ask the evidence leaders to say something there's something 6 my colleague, Commissioner Hemraj, wishes to place on 7 record. 8 COMMISSIONER HEMRAJ: Chairperson, it is 9 with regard to the point made by Mr Chaskalson yesterday 10 that the videos were juxtaposed of the protester making the 11 unfortunate speech and Mr Mathunjwa and in your reply you 12 said that it might have been influenced by some transcript 13 that you might have seen. Now the transcript that's in 14 evidence is 009. The first page of which is the transcript 15 of the speech by the protester and then the next page 16 starts with Mr Mathunjwa's speech. I don't know whether 17 this transcript is the one that you had access to or 18 whether it was the one that was commissioned by the 19 evidence leaders. So you might, Colonel Scott, have a 20 different transcript that you're referring to. The second 21 point I want to make is that when one looks at the video 22 that you were referred to of the protesters speech, at the 23 very end of the video just as the protester finishes 24 speaking Mr Mathunjwa takes the microphone away from him 25 and then the video stops abruptly. I wanted to place on</p>	<p style="text-align: right;">Page 14051</p> <p>1 And this process may take some time because it may involve, 2 well it will involve the comparison of several hard drives, 3 external or other. If there are differences in the 4 documents they contain, each of the documents which is 5 different will have to be compared, if they're the same the 6 process will be quicker. But in any event there's a large 7 process to be undertaken. I can indicate that Colonel 8 Scott's version of the SAPS master hard drive has – well 9 the index lists 247 items. Now many of those are EXC or 10 operation document, operation files but many of them are 11 files which have to be read or studied or reviewed. And so 12 under the circumstances we propose that the cross- 13 examination of Colonel Scott should be postponed until we 14 have had an opportunity to do the job properly, to identify 15 any problems which we think may exist. And enable us to 16 put those problems, if they exist, to Colonel Scott and to 17 our colleagues so that we can all be clear about what the 18 position is and there can be no unnecessary dispute. So 19 under the circumstances our proposal is that the matter 20 should stand down until Monday of next week. 21 CHAIRPERSON: Monday the 16th? 22 MR BUDLENDER SC: Monday the 16th in order 23 for us to obtain the materials which the SAPS will give us, 24 to study them and to see what is to be made of them. If, 25 of course, there are any developments in the meantime in</p>
<p style="text-align: right;">Page 14050</p> <p>1 record, I don't what the witness or counsel will make of it 2 but I just needed to have that clarified on the record. 3 CHAIRPERSON: Before you reply, if you 4 want to reply I must remind you you're under oath. 5 COLONEL SCOTT: Understood, Commissioner. 6 CHAIRPERSON: Mr Budlender, are you going 7 to say something now or? 8 MR BUDLENDER SC: Mr Chair, I will thank 9 you. Chair, we have had undertaken our first review of the 10 copy of what I would call Colonel Scott's version of the 11 SAPS hard drive. Colonel Scott's Master, if I can call it 12 that which we know has been estranged over time as 13 documents have been added and removed. There are a number 14 of documents and other – well certainly documents on that 15 which we hadn't seen before and there are other files which 16 we believe we haven't seen before and that has raised 17 questions about other material which we need to see in 18 order for the cross-examination of Colonel Scott to be 19 properly completed. 20 We've had a discussion with our colleagues 21 representing the SAPS, we have indicated the material we 22 would like to see in order to prepare properly, to compare 23 the relevant documents, compare the hard drives and so on 24 and they, as one would expect, have been completely co- 25 operative in assuring us that they will be made available.</p>	<p style="text-align: right;">Page 14052</p> <p>1 relation to the timing we will let you know and you will be 2 able to make such decision as you think fit. But at this 3 stage we ask that the matter be postponed until Monday the 4 16th for further examination of the materials which have 5 been produced and which will be produced by the South 6 African Police Service. 7 CHAIRPERSON: Yes, now you've spoken 8 about those materials, I understood you to say in chambers 9 when we discussed this matter that you were also in the 10 process of asking SAPS to obtain explanations from Captain 11 Nel and other persons in regard to the non-provision of 12 videos in the matters covered in cross-examination 13 yesterday. I take it that will also be attended to and 14 that information will also be required for the purpose of 15 the continued cross-examination of this witness possibly 16 and obviously cross-examination of other persons as and 17 when they appear. That's also correct isn't it? 18 MR BUDLENDER SC: That is correct, Chair, 19 we have formally requested our colleagues to make 20 available to the relevant statements which were identified 21 during the course of yesterday and we understand they are 22 already in the process of working on that. That's also 23 work which can be done during the time when we're 24 adjourned, if you agree to the adjournment which we 25 propose.</p>

<p style="text-align: right;">Page 14053</p> <p>1 CHAIRPERSON: Yes, Mr Semenya, is there 2 any comment you wish to make in regard to the postponement 3 application? 4 MR SEMENYA SC: Chair, just to say that 5 as has been practise we have undertaken to provide all the 6 material. It seems to us to be the most prudent way of 7 collating all objective evidence and it is compiled and it 8 is decent it would make further cross-examination of 9 witnesses a lot simpler. And also will facilitate our 10 ability to give any response of any discrepancies that may 11 result from that examination. So we support the 12 application. 13 CHAIRPERSON: Thank you, Mr Semenya. 14 Anyone else here representing any of the parties wish to 15 comment on the application? Yes. 16 MR SHOZI: Chair, we have no objection to 17 the request for a postponement. 18 CHAIRPERSON: Thank you. Yes. 19 MR MASEBE: For NUM we will abide the 20 decision regarding the request for the postponement. 21 CHAIRPERSON: Thank you. 22 FEMALE SPEAKER: Chairperson, we have no 23 objection. 24 CHAIRPERSON: Thank you. Well in the 25 circumstances, in the absence of any opposition, it's</p>	
<p style="text-align: right;">Page 14054</p> <p>1 clearly a well motivated application. There's a clearly 2 good reason for the postponement. I'm sorry that we will 3 lose time by postponing now until Monday, if Monday is the 4 day on which can continue. But it may well be that, as has 5 been said, that actually the cross-examination will be 6 shortened not only of this witness but perhaps of other 7 witnesses as well. And ultimately it may lead to a 8 substantial reduction in time used, although at first sight 9 it may appear otherwise. The Commission will now adjourn 10 and the sittings will be postponed until Monday the 16th 11 at 9:30am. 12 [COMMISSION ADJOURNED] 13 . 14 . 15 . 16 . 17 . 18 . 19 . 20 . 21 . 22 . 23 . 24 . 25 .</p>	

<p style="text-align: center;">A</p> <p>abide 14053:19 ability 14053:10 able 14052:2 abruptly 14049:25 absence 14053:25 access 14049:17 added 14050:13 adjourn 14054:9 adjourned 14052:24 14054:12 adjournment 14052:24 African 14052:6 agree 14052:24 appear 14052:17 14054:9 application 14053:3,12 14053:15 14054:1 asking 14052:10 assuring 14050:25 attended 14052:13 available 14050:25 availables 14052:20</p> <hr/> <p style="text-align: center;">B</p> <p>believe 14050:16 Budlender 14050:6,8 14051:22 14052:18</p> <hr/> <p style="text-align: center;">C</p> <p>call 14050:10,11 Captain 14052:10 certainly 14050:14 Chair 14050:8,9 14052:18 14053:4,16 Chairperson 14049:2,8 14050:3,6 14051:21 14052:7 14053:1,13 14053:18,21,22,24 chambers 14049:4 14052:8 Chaskalson 14049:9 circumstances 14051:12,19 14053:25 clarified 14050:2 clear 14051:17 clearly 14054:1,1 collating 14053:7 colleague 14049:6 colleagues 14050:20 14051:17 14052:19 Colonel 14049:19 14050:5,10,11,18 14051:7,13,16 comment 14053:2,15 Commission 14049:2 14054:9,12 commissioned 14049:18 Commissioner 14049:6 14049:8 14050:5 compare 14050:22,23 compared 14051:5 comparison 14051:2</p>	<p>compiled 14053:7 completed 14050:19 completely 14050:24 contain 14051:4 continue 14054:4 continued 14052:15 copy 14050:10 correct 14052:17,18 counsel 14050:1 course 14051:25 14052:21 covered 14052:12 cross 14051:12 cross-examination 14050:18 14052:12 14052:15,16 14053:8 14054:5</p> <hr/> <p style="text-align: center;">D</p> <p>day 14054:4 decent 14053:8 decision 14052:2 14053:20 developments 14051:25 differences 14051:3 different 14049:20 14051:5 discrepancies 14053:10 discussed 14052:9 discussion 14050:20 discussions 14049:4 dispute 14051:18 document 14051:10 documents 14050:13 14050:14,14,23 14051:4,4 drive 14050:11 14051:8 drives 14050:23 14051:2</p> <hr/> <p style="text-align: center;">E</p> <p>enable 14051:15 estranged 14050:12 event 14051:6 evidence 14049:5,14,19 14053:7 examination 14051:13 14052:4 14053:11 EXC 14051:9 exist 14051:15,16 expect 14050:24 explanations 14052:10 external 14051:3</p> <hr/> <p style="text-align: center;">F</p> <p>facilitate 14053:9 FEMALE 14053:22 files 14050:15 14051:10 14051:11 finishes 14049:23 first 14049:14 14050:9 14054:8 fit 14052:2 formally 14052:19 further 14052:4</p>	<p>14053:8</p> <hr/> <p style="text-align: center;">G</p> <p>give 14051:23 14053:10 going 14050:6 good 14054:2</p> <hr/> <p style="text-align: center;">H</p> <p>hard 14050:11,23 14051:2,8 Hemraj 14049:6,8 housekeeping 14049:4</p> <hr/> <p style="text-align: center;">I</p> <p>identified 14052:20 identify 14051:14 index 14051:9 indicate 14051:7 indicated 14050:21 influenced 14049:12 information 14052:14 involve 14051:1,2 items 14051:9</p> <hr/> <p style="text-align: center;">J</p> <p>job 14051:14 juxtaposed 14049:10</p> <hr/> <p style="text-align: center;">K</p> <p>know 14049:16 14050:12 14052:1</p> <hr/> <p style="text-align: center;">L</p> <p>large 14051:6 late 14049:3 lead 14054:7 leaders 14049:5,19 lists 14051:9 looks 14049:21 lose 14054:3 lot 14053:9</p> <hr/> <p style="text-align: center;">M</p> <p>making 14049:10 MASEBE 14053:19 master 14050:11 14051:8 material 14050:17,21 14053:6 materials 14051:23 14052:4,8 Mathunjwa 14049:11 14049:24 Mathunjwa's 14049:16 matter 14051:19 14052:3,9 matters 14049:4 14052:12 microphone 14049:24 Monday 14051:20,21 14051:22 14052:3 14054:3,3,10 motivated 14054:1</p> <hr/> <p style="text-align: center;">N</p> <p>need 14050:17</p>	<p>needed 14050:2 Nel 14052:11 non-provision 14052:11 NUM 14053:19 number 14050:13</p> <hr/> <p style="text-align: center;">O</p> <p>oath 14050:4 objection 14053:16,23 objective 14053:7 obtain 14051:23 14052:10 obviously 14052:16 operation 14051:10,10 operative 14050:25 opportunity 14051:14 opposition 14053:25 order 14050:18,22 14051:22</p> <hr/> <p style="text-align: center;">P</p> <p>page 14049:14,15 parties 14053:14 persons 14052:11,16 place 14049:6,25 point 14049:9,21 Police 14052:6 position 14051:18 possibly 14052:15 postponed 14051:13 14052:3 14054:10 postponement 14053:2 14053:17,20 14054:2 postponing 14054:3 practise 14053:5 prepare 14050:22 problems 14051:15,16 PROCEEDINGS 14049:1 process 14051:1,6,7 14052:10,22 produced 14052:5,5 properly 14050:19,22 14051:14 proposal 14051:19 propose 14051:12 14052:25 protester 14049:10,15 14049:23 protesters 14049:22 provide 14053:5 prudent 14053:6 purpose 14052:14 put 14051:16</p> <hr/> <p style="text-align: center;">Q</p> <p>questions 14050:17 quicker 14051:6</p> <hr/> <p style="text-align: center;">R</p> <p>raised 14050:16 read 14051:11 reason 14054:2 record 14049:7 14050:1,2</p>	<p>reduction 14054:8 referred 14049:22 referring 14049:20 regard 14049:9 14052:11 14053:2 regarding 14053:20 relation 14052:1 relevant 14050:23 14052:20 remind 14050:4 removed 14050:13 reply 14049:11 14050:3 14050:4 representing 14050:21 14053:14 request 14053:17,20 requested 14052:19 required 14052:14 response 14053:10 result 14053:11 resumes 14049:2 review 14050:9 reviewed 14051:11</p> <hr/> <p style="text-align: center;">S</p> <p>SAPS 14050:11,21 14051:8,23 14052:10 SC 14050:8 14051:22 14052:18 14053:4 Scott 14049:19 14050:5 14050:18 14051:13 14051:16 Scott's 14050:10,11 14051:8 second 14049:20 see 14050:17,22 14051:24 seen 14049:13 14050:15,16 Semenya 14053:1,4,13 SEPTEMBER 14049:1 Service 14052:6 shortened 14054:6 SHOZI 14053:16 sight 14054:8 simpler 14053:9 sittings 14054:10 sorry 14049:3 14054:2 South 14052:5 SPEAKER 14053:22 speaking 14049:24 speech 14049:11,15,16 14049:22 spoken 14052:7 stage 14052:3 stand 14051:20 starting 14049:3 starts 14049:16 statements 14052:20 stops 14049:25 studied 14051:11 study 14051:24 substantial 14054:8 support 14053:11</p> <hr/> <p style="text-align: center;">T</p>
--	---	--	---	---

take 14051:1 14052:13
takes 14049:24
thank 14050:8
 14053:13,18,21,24
think 14051:15
 14052:2
time 14050:12 14051:1
 14052:23 14054:3,8
timing 14052:1
transcript 14049:12,13
 14049:14,17,20

U

ultimately 14054:7
understand 14052:21
understood 14050:5
 14052:8
undertaken 14050:9
 14051:7 14053:5
unfortunate 14049:11
unnecessary 14051:18

V

various 14049:3
version 14050:10
 14051:8
video 14049:21,23,25
videos 14049:10
 14052:12

W

want 14049:21 14050:4
wanted 14049:25
way 14053:6
week 14051:20
we're 14049:3
 14052:23
We've 14050:20
wish 14053:2,14
wishes 14049:6
witness 14050:1
 14052:15 14054:6
witnesses 14053:9
 14054:7
work 14052:23
working 14052:22

Y

yesterday 14049:9
 14052:13,21

0

009 14049:14

1

10:11 14049:2
11 14049:1
16th 14051:21,22
 14052:4 14054:10

2

2013 14049:1
247 14051:9

9

9:30am 14054:11