

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 185

Lukmos
—communications—

14 FEBRUARY 2014

TRANSCRIPT PAGES 22313 TO 22387

[PROCEEDINGS ON 14 FEBRUARY 2014]

2 **[09:06] CHAIRPERSON:** The Commission resumes. I

3 hope everybody has turned his or her cell phone off.

4 You are still under oath, Provincial Commissioner.

5 **MIRRIAM NOSAZISO ZUKISWA MBOMBO:** s.u.o.

6 **CHAIRPERSON:** Mr Mpofu.

7 **CROSS-EXAMINATION BY MR MPOFU (CONTD.):**

8 Thank you very much, Chairperson. Good morning, General.

9 **GENERAL MBOMBO:** Good morning, Counsel.

10 **MR MPOFU:** And Happy Valentine's Day to

11 you and all the ladies are wearing red today.

12 **GENERAL MBOMBO:** Thank you.

13 **MR MPOFU:** No, all the ones are wearing

14 red for Valentine's Day, thank you, including you, General.

15 **GENERAL MBOMBO:** Thank you.

16 **MR MPOFU:** And Commissioner Hemraj.

17 **CHAIRPERSON:** But are even the AMCU

18 ladies wearing red today?

19 **MR MPOFU:** Yes, it is just for today,

20 Chairperson. General, we were busy with what I am going to

21 argue was a missed opportunity of what in shorthand we shall

22 call the Mathunjwa mission, and just to recap, your

23 evidence is that you did not know that the Mathunjwa

24 mission was still active, correct?

25 **GENERAL MBOMBO:** Can you explain what you

1 mean by active?

2 **MR MPOFU:** Well, your impression – and we

3 now know with the benefit of hindsight that that impression

4 was wrong – was that the Mathunjwa mission, peace mission,

5 was finished and had failed, correct? By the time you

6 issued the instruction, that is.

7 **GENERAL MBOMBO:** Oh, that is correct,

8 yes.

9 **MR MPOFU:** And had you known that the

10 Mathunjwa mission was still on-going, it would have been

11 improper for you to issue that instruction if you had

12 known, correct?

13 **GENERAL MBOMBO:** That is correct. If I

14 knew, I would have waited.

15 **MR MPOFU:** Yes. Now I will then, I shall

16 show you later that you, either you actually knew that the

17 mission was still on-going, or that you ought to have known,

18 but that I will do later. You understand?

19 **GENERAL MBOMBO:** I hear you.

20 **MR MPOFU:** Also, just to round off one

21 issue, I accept that you have denied that you took into

22 account political considerations in ordering the operation,

23 correct?

24 **GENERAL MBOMBO:** I do not deny that. It

25 is not like that. That is not how I work, Mr Chairperson.

1 **MR MPOFU:** Okay –

2 **CHAIRPERSON:** In other words, you denied

3 it –

4 **MR MPOFU:** No –

5 **CHAIRPERSON:** - allegation was that you

6 took political considerations into account and you say

7 that is not true, so you denied the allegation. So he is

8 right the way he summarises it.

9 **MR MPOFU:** Yes, Chairperson, it is a

10 matter of language. I think what she means is not only do

11 I deny it, it is not so. It is just a language –

12 **CHAIRPERSON:** Alright.

13 **MR MPOFU:** Yes.

14 **CHAIRPERSON:** I think she is being

15 careful. She does not want to be seen to agree to things

16 unless she understands what she is agreeing to.

17 **MR MPOFU:** Yes. No, I thought –

18 **CHAIRPERSON:** It might be a ball from the

19 back of the hand or something –

20 **MR MPOFU:** Yes, no, later it could be

21 used against her. That is correct. Thank you, Chairperson.

22 But putting that denial aside, you do accept that if indeed

23 you had taken into account political considerations, that

24 would be grossly irregular and improper, correct?

25 **GENERAL MBOMBO:** That would have been the

1 case, Mr Chairperson, yes.

2 **MR MPOFU:** Thank you. And similarly if

3 you had taken into account other improper and ulterior

4 motives, which are not permissible in terms of police work,

5 it would also be grossly improper and irregular, correct?

6 **GENERAL MBOMBO:** That is so, yes.

7 **MR MPOFU:** Right, now just for clarity

8 sake, is it correct that this operation, although it

9 started as a local Marikana issue and grew to become a

10 provincial operation, that by the time of the massacre it

11 was a national operation, correct?

12 **GENERAL MBOMBO:** That is correct, Mr

13 Chairperson, because we had mobilised police officers from all

14 over the country.

15 **MR MPOFU:** Right, thank you. Also you do

16 accept that although your primary concern as the police was

17 the issue of peacekeeping, but the root cause of the

18 conflict there was the labour issue, or the wage dispute,

19 correct?

20 **GENERAL MBOMBO:** That is so, yes.

21 **MR MPOFU:** Okay, just for the record, it

22 took me about half a day to get that concession from the

23 National Commissioner.

24 **CHAIRPERSON:** You do not have to remind us

25 of that. We are fully aware of it.

1 **MR MPOFU:** Yes, thank you, Chairperson. I
2 withdraw the reminder. Okay, now going back to what we
3 were discussing yesterday, because of that it is self-
4 evident that the shortcut to resolving the whole situation
5 would have been to resolve the underlying issue, in other
6 words the labour issue, so that not only do you not have a
7 violent labour action, but you have no labour action at
8 all, if it is possible, correct?

9 **GENERAL MBOMBO:** Please repeat the
10 question.

11 **MR MPOFU:** I am saying I do appreciate
12 that the primary concern of the police was the peacekeeping
13 because this, although you and I have agreed that it was a
14 labour, the root cause was a labour issue, it was
15 unfortunately accompanied by some violence and that is why
16 you were involved, correct?

17 **GENERAL MBOMBO:** Yes.

18 **MR MPOFU:** That I understand. What I am
19 saying is that it was also the approach of the police that
20 the best way to deal with the situation would have been to
21 resolve the underlying issue, which was the labour issue as
22 between the two parties, labour and the employer, correct?

23 **GENERAL MBOMBO:** That was part of our
24 attempt, but it was not the reason why we were there.

25 **MR MPOFU:** Yes, no that I appreciate, but

1 you also appreciated that if the underlying issue was
2 resolved, that might remove the reason why you were there.

3 **GENERAL MBOMBO:** We had such a thought.

4 **MR MPOFU:** Yes, now it was also well – or

5 let me start with this. When you had your first encounter,

6 as it were, with Lonmin, they effectively misled you as to

7 what the real problem was. Is that correct?

8 **MR VAN AS:** I have to object to that, Mr

9 Chairman.

10 **CHAIRPERSON:** I do not see on what basis

11 you can object. He hasn't explained to us – he is put a

12 proposition and he is going to explain it to us.

13 **MR MPOFU:** Okay, maybe –

14 **MR VAN AS:** If he explains it, then –

15 **CHAIRPERSON:** Yes, so the objection was

16 premature.

17 **MR MPOFU:** Yes. Thank you, yes.

18 Alright, to circumvent that problem let me put it this way.

19 When you had your first encounter with Lonmin, you were told

20 that uppermost was a problem between NUM and AMCU, correct?

21 **GENERAL MBOMBO:** Yes, that is what they

22 were saying.

23 **MR MPOFU:** Yes, and secondly you were

24 told that Lonmin did not know who these people were, they

25 were faceless people who were not their employees, correct?

1 **GENERAL MBOMBO:** That is what they were

2 saying, yes.

3 **MR MPOFU:** And only later you learned

4 through your own interactions with the strikers that the

5 underlying issue was actually a wage dispute and their

6 request to be addressed or to talk to the employer,

7 correct?

8 **GENERAL MBOMBO:** Yes, that is what we

9 heard.

10 **MR MPOFU:** And in fact, I cannot remember

11 which one, but members of the police effectively had to

12 cross-examine the Lonmin people until such time that they

13 conceded that those people were there employees. I

14 remember, I think somebody said, "Well, if those are not

15 your employees, then where are your employees?", something

16 like that, which was a very good question.

17 **GENERAL MBOMBO:** There was such a talk.

18 We showed them some photos and they saw on the photos that

19 some of the strikers were their employees.

20 **MR MPOFU:** And then as I say through your

21 own direct interaction it was made abundantly clear to

22 SAPS, it was made abundantly clear, and repeatedly so, that

23 the protesters had one single demand and refrain, which was

24 to be addressed or to talk to the employer, "Umlungu,

25 Umqeshi," whichever term they used, but whenever you

1 interacted with them that was the constant refrain,

2 correct?

3 **GENERAL MBOMBO:** That is what I heard,

4 yes, Mr Chairperson.

5 **MR MPOFU:** In fact when the very first

6 encounter happened with the police, with General Mpembe – I

7 will not take you through the transcript, but you can take it

8 from me that about 10 times the strikers in interacting

9 with General Mpembe were saying two things; we are not

10 fighting, we want to talk to the employer. You are aware of

11 that? Or when General Mpembe was reporting to you did he

12 mention that?

13 **GENERAL MBOMBO:** I remember that, Mr

14 Chairperson.

15 **MR MPOFU:** And even on the following day,

16 that would be now the 14th, 15th, and even on the 16th

17 whoever was caring to listen, whether it was the police,

18 whether it was Mr Mathunjwa, whether it was Bishop Seoka,

19 they were making that same demand, we would like to be

20 addressed by the employer. You remember that? Or you are

21 aware of that?

22 **GENERAL MBOMBO:** I remember hearing that

23 from the police, yes.

24 **MR MPOFU:** Yes, and the evidence here of

25 both Mr Magidiwana and Mr Phatsha is that they felt that

1 the employer owed them that interaction, even if their
2 demand for R12 500 was not going to be met. In other words
3 even if it was just to explain or to say when it will come,
4 I think that is what Mr Magidiwana said. Are you aware of
5 that evidence, or that sentiment? But more importantly,
6 were you aware it around the time of the event?

7 **GENERAL MBOMBO:** I do not remember about
8 Mr Magidiwana's evidence.

9 **MR MPOFU:** Okay, fair enough. You did not
10 follow Mr Magidiwana's evidence in the media or here in the
11 Commission?

12 **GENERAL MBOMBO:** No.

13 **CHAIRPERSON:** But the general proposition
14 that counsel is putting to you is that the striker's
15 attitude was they wanted interaction with the employer,
16 they wanted the employer's representative, I think they
17 asked actually for the CEO, but had to come and speak to
18 them to negotiate with them, or engage with them in respect
19 of their wage demand. That is his question, I think.

20 **MR MPOFU:** Yes.

21 **GENERAL MBOMBO:** I was just saying, Mr
22 Chairperson, I do not remember about Mr Magidiwana's evidence,
23 but that is what the strikers said to the police.

24 **MR MPOFU:** Okay, thank you. Thank you
25 very much. And according to the – or let me put it this

1 way; so when Mr Mathunjwa – just going back to the
2 discussion that you had with me and with the Chairperson,
3 so when Mr Mathunjwa was then saying to you on the morning
4 of the 16th, “Yes, I have been wanting to go to the hill,
5 but the employer is refusing with the commitment to
6 negotiate and have ignored me,” as we have established
7 yesterday, armed with all the knowledge that you had about
8 this constant refrain and this singular demand, surely you
9 would have known that this was nothing new, this was part
10 of what the strikers had been asking for repeatedly,
11 correct?

12 **GENERAL MBOMBO:** You must remember, Mr
13 Chairperson, when I spoke to Mr Mathunjwa it is because of the
14 reports I got from the meetings, meetings of the 15th, which
15 I did not attend. I was told that the Lonmin management
16 was present in those meetings. When I got this explanation
17 I took it for granted it was a decision that was made with
18 Mr Mathunjwa having met the people that he had to meet
19 with.

20 **MR MPOFU:** Yes, okay, I understand that.

21 So you mean that because this whole mission had originated
22 on the 15th when Lonmin was itself present, you thought that
23 Lonmin must have made that commitment on the 15th? Is that
24 what you are saying?

25 **GENERAL MBOMBO:** I thought Mr Mathunjwa

1 is making this commitment after having come to an agreement
2 with the people he had to talk to. That is why yesterday I
3 explained that according to me this agreement of Mr
4 Mathunjwa, the way it was reported to me had no conditions,
5 was unconditional.

6 **MR MPOFU:** Yes, well even if that was true

7 - and I think we went through this again yesterday – even
8 if that is what you had initially thought, but now here was
9 Mr Mathunjwa telling you, using the word “commitment,”
10 saying that Lonmin is going back on its commitment to
11 negotiate, so as a person – I can understand that as a
12 person who was not there on the 15th you would have then,
13 you should have then thought well, that commitment must
14 have been made on the 15th. But you could not doubt that
15 there was such a commitment because he was telling you.
16 Even assuming that when it was first reported to you by
17 Mpembe or whoever else, you had mistakenly thought it was
18 unconditional. What do you say to that?

19 **GENERAL MBOMBO:** Mr Chairperson, I think I made
20 a mistake by not asking Mr Mathunjwa about this commitment.

21 **[09:26]** He was also supposed to tell me, say General, my
22 purpose of going to these people and talking to them at 9
23 o'clock depended on this and that and that.

24 **MR MPOFU:** But according to exhibit L
25 that is exactly what he did, General, that is the point I am

1 asking about this. He told you that the reason, you went
2 through that with the Chairperson, he told you that the
3 reason why when you confronted him, rightly so. Why have
4 you not gone to the hill or whatever words you used.
5 Then he says the reason is because Lonmin has gone back on
6 its commitment to negotiation. What else was he going to
7 tell you? And your response of that, you are not
8 interested. So what more do you expect from the man?

9 **GENERAL MBOMBO:** No, I am not sure if
10 you are putting it correctly.

11 **CHAIRPERSON:** Let's look at the slide
12 again and see whether his summary is correct.

13 **MR MPOFU:** 158, Chairperson.

14 **CHAIRPERSON:** Yes I remember the –

15 **MR MPOFU:** L 158.

16 **CHAIRPERSON:** Exhibit L, slide 158. Now
17 you did not put it quite correctly, Mr Mpofu, because what
18 it says in the last sentence of the second bullet is the
19 following. "Mr Mathunjwa responded by saying that he had
20 been at the Lonmin management offices from the early
21 morning and that they did not want to commit to continued
22 negotiations and that was the reason for him not addressing
23 the protestors."

24 **MR MPOFU:** But that –

25 **CHAIRPERSON:** No, but what it does not say

1 is that they agreed the previous night to commit to
2 continue negotiations and they were now reneging on that
3 commitment which was part of the point that you put to the
4 witness.

5 **MR MPOFU:** No, Chairperson, that is not
6 what I said to the witness. I said to the witness I can
7 understand that she would not know what commitment Mr
8 Mathunjwa was talking about and because she says, you must
9 remember, Mr Mpofu, that I was not in the meetings of the
10 15th. So I said well then you must have then or you should,
11 in fact I used the word should, you should have then
12 assumed that the commitment that Mr Mathunjwa is talking
13 about must have been made on the 15th in your absence. That
14 was the only reference to the previous night, yes. The
15 point I am making now is that Mr Mathunjwa said "and that
16 was the reason for him not addressing the protestors." The
17 thrust of the point I am putting now, Chairperson –

18 **CHAIRPERSON:** - that I summarised
19 correctly, but I do not know that it is – I do not that it
20 affects the thrust of the question that you are putting to
21 the witness. So I shall let you to proceed, I am just
22 commenting that I did not think your summary was entirely
23 correct. But I do not know that it is material for the
24 purpose of the point that you are putting. Carry on anyway.

25 **MR MPOFU:** Thank you, Chairperson. Yes,

1 I shall leave the record to speak for itself on this. The
2 point I am simply making now, General, is that the – you are
3 effectively saying well maybe Mr Mathunjwa should have
4 explained it more. I am saying to you what more do you
5 expect from him than saying what is already reflected in
6 L158 which is that after you asked him he responded by
7 saying that he had been at Lonmin's management offices from
8 the early morning. And that they did not want to commit to
9 continued negotiations and that was the reason for him not
10 addressing the protestors. It cannot be clearer than that.
11 And your response was that you are not interested
12 in that, according to your evidence yesterday.

13 **GENERAL MBOMBO:** Mr Chairperson, according to
14 me, I was still on the point that at 9 o'clock the people
15 would lay down their arms, that was not made clear to me
16 that was dependent on negotiations and laying down of arms
17 did not stop the process of the negotiations.

18 **MR MPOFU:** Thank you, but that cannot be
19 correct too, General. Remember that you, yourself, had not
20 placed your 100% faith in this so-called commitment of
21 Mathunjwa's, is that not correct?

22 **GENERAL MBOMBO:** Please explain the
23 question.

24 **MR MPOFU:** Yes you, yourself, either when
25 you were talking to General Mpembe or when you were talking

1 to the ad hoc meeting of the National Management Forum
2 anticipated that the Mathunjwa mission might not succeed.
3 Isn't that correct?
4 **GENERAL MBOMBO:** Why do you say so, what
5 did I say to indicate that?
6 **CHAIRPERSON:** I think Mr Mpofu's problem
7 is he has not put the thing quite correctly. Let me put it
8 to you correctly and I think the problem will disappear.
9 There were two apparent commitments. One was a commitment
10 by Mr Mathunjwa that he go there at 9 o'clock and speak to
11 the strikers. That was one commitment. I suspect that you
12 trusted him, you believed he would go at 9 o'clock, that
13 you put your faith in his commitment to go there at 9
14 o'clock. But the second commitment or so-called commitment
15 or possible commitment was that the strikers would lay down
16 their arms voluntarily. That was something that you did not
17 put your faith in 100% because you made an alternative
18 plan. You said to the management forum and to the media
19 conference later, you said they said they are going to lay
20 down their arms but if they do not, we will take further
21 action. So what Mr Mpofu is saying is as far as that
22 commitment was concerned the commitment, the so-called
23 commitment, that the strikers would lay down their arms,
24 you did not believe in that 100%. You thought it might
25 happen, you hoped it would happen, but you thought it also

1 a possibility that it will not happen and you planned to deal

2 with that possibility if it realised itself. That is

3 correct is it not?

4 **GENERAL MBOMBO:** That is correct, Mr

5 Chairperson.

6 **MR MPOFU:** Now apart from Mr Mathunjwa's

7 mission, you were aware that there was a separate peace

8 mission launched by Bishop Seoka, correct?

9 **GENERAL MBOMBO:** When I spoke to Mr

10 Mathunjwa I was not aware of Bishop Seoka, I only saw him,

11 that was the bishop, when he arrived at the JOC.

12 **MR MPOFU:** Yes and – yes I am just

13 paraphrasing, I know that it was later in the day, but what

14 I am saying is that were you aware that there was a separate

15 peace mission launched by the bishop?

16 **GENERAL MBOMBO:** I am not sure about that.

17 **MR MPOFU:** Well did the bishop not come

18 to you and say that he was from the hill and he needed

19 some co-operation at the point at which he says you were

20 rude and you have apologised to him and I can tell you on

21 his behalf that he accepts the apology. But the point I am

22 making now is he made you aware that he was trying to

23 assist somehow.

24 **GENERAL MBOMBO:** I do not believe that he

25 was making me aware that he was trying to assist with the

1 negotiations.

2 **MR MPOFU:** Well what were you and him

3 discussing at the occasion at which you may have been rude

4 to him or he may have gotten the impression that you were

5 being rude to him?

6 **GENERAL MBOMBO:** Except for him asking me

7 if I knew a certain reverend or Mr Mbombo and I told him

8 that I did not know such a person, I am just married to that

9 family. And the other thing that he said was he came to

10 get some water because it is hot on the hill, the people

11 there are thirsty. That is when I told him that my part

12 there was to maintain law and order.

13 **MR MPOFU:** Yes well the bishop's mission,

14 as it were, only had two elements and I am putting it to you

15 that he mentioned those to you. He was asked by the

16 protestors once again to facilitate discussions with

17 management, one, and two, to please assist in bringing some

18 water. And those are the issues that he outlined to you.

19 **GENERAL MBOMBO:** Mr Chairperson, what I know is

20 what I have just said.

21 **MR MPOFU:** And in any event even that

22 issue of water, according to the bishop, was for any

23 sensible person who wanted to win the confidence of the

24 protestors those were the kinds of things that should have

25 been attended to. But once again, you were not interested,

1 correct?

2 **GENERAL MBOMBO:** Because I did not have

3 the means to provide water, I did not have water as I was
4 there.

5 **MR MPOFU:** All right, I do not have the
6 reference now of the bishop's evidence.

7 **CHAIRPERSON:** Sorry, may I interpose with

8 something? I shall tell you what my impression is and if I am
9 wrong you must correct me. My impression is that by the
10 time the bishop came you'd made your decision and it was a
11 very critical moment for you, that you really wanted to get
12 on with the implementation of your decision because you
13 thought it was important for various reasons. When the
14 bishop came you found his visit, I suspect, something of a
15 distraction. You did not really have time to talk to him
16 because as far as you were concerned there were more
17 important matters that had to be dealt with. That, I
18 suspect, is why he got the impression you were being rude,
19 but your reaction really was that there were more important
20 things to think about and you were not really concentrating
21 on what he had to say because it was not important. Am I
22 correct in thinking that? I am sure you did not intend to be
23 discourteous, but that is the way it played out. Would you
24 agree with that impression or am I wrong?

25 **GENERAL MBOMBO:** Not fully, Mr Chairperson, it

1 is correct that he arrived at a crucial time, but if he had
2 made it clear to me that he came to see me, to talk about
3 this matter and come with the alternative way of looking at
4 this issue I would have considered that. And this was a
5 crucial time to me because I was being briefed by General
6 Annandale.

7 **CHAIRPERSON:** That reinforces my
8 impression that he did not make it clear to you. We are not
9 in the blame game at the moment, it is not considered there
10 was a plan. He did not make it clear to you that he was
11 coming effectively as a second person trying to make peace,
12 trying to solve the problem peacefully. And I take it if
13 you assume that here was a bishop of the church – was he
14 wearing his purple front and a dog collar? Did you see he
15 was a bishop?

16 **GENERAL MBOMBO:** I saw that is how he was
17 dressed, Mr Chairperson.

18 **CHAIRPERSON:** So here comes the bishop of
19 the church, if you had realised that he was saying look
20 here this is a serious matter. I am prepared to try to
21 help to solve this problem peacefully, give me a chance,
22 would you have listened favourably to him and given him a
23 chance?

24 **GENERAL MBOMBO:** That is exactly what I am
25 saying, Mr Chairperson.

1 **CHAIRPERSON:** You were actually grumpy,
2 if I can use that expression, with Mr Mathunjwa because you
3 felt he was obliged to go and convince the strikers to lay
4 down their arms and you felt he had let you down because he
5 had not done that. Is that right?

6 **GENERAL MBOMBO:** That is correct, Chairperson.

7 **CHAIRPERSON:** Now here was someone else
8 who had come along and if you had realised that he was
9 offering to do what you thought Mr Mathunjwa had not done
10 would you have availed yourself of the opportunity?

11 **GENERAL MBOMBO:** That is correct, Mr
12 Chairperson, I would have given him the opportunity if, but
13 instead he spoke about water, not even directing that to
14 me, but to the Lonmin people. That is when I said I do not
15 have the means to provide water.

16 **CHAIRPERSON:** As I said, I am not
17 interested in the blame game and who's to blame, but the
18 impression I get is – I may be wrong and if I am, I hope
19 I shall be corrected. The impression I get though is that
20 there was actually a misunderstanding, a failure of
21 communication. You were concentrating on the briefing you
22 were getting. You were concentrating on the operation that
23 was going to be launched. He was busy with something else
24 and you did not quite appreciate what he was offering. That
25 seems a fair summary of what happened.

1 **GENERAL MBOMBO:** That is so, Mr Chairperson,
2 but if he came directly to me with a direct proposal about
3 the matter that we are facing I would have considered it
4 otherwise.

5 **CHAIRPERSON:** To put the proposition
6 differently, if you had not been concentrating almost
7 exclusively on the briefing you were getting and you had
8 tried to find out exactly what he wanted to say the result
9 might have been different. But I am not, as I say, I am not
10 interested in blaming you or him, I am just trying to find
11 out what happened. Would you agree with the proposition I
12 put to you that if you had in fact not been engrossed in
13 listening with your full attention to the briefing you were
14 getting and you'd taken the time to find out what exactly
15 it was that the bishop wanted things might have been
16 different? Is that so?

17 **GENERAL MBOMBO:** Maybe that would have
18 been the case, but even at that time if the bishop wanted
19 me to know that there still time -

20 **MR MPOFU:** Yes, well okay. Well unlike
21 the Chairperson, I am interested in the blame game and I am
22 going to blame you. The issue is that once again you say
23 that just like Mr Mathunjwa, whom I demonstrated to you,
24 that Mr Mathunjwa was as explicit as can be as to the
25 reasons why his mission was being frustrated. But you said

1 he should have explained it further and we know that you
2 said that you were not interested. Now again it was
3 Mathunjwa's fault because he did not make it clear, now
4 again it is the bishop's fault that -

5 **CHAIRPERSON:** No, no, no I do not
6 understand her – in the end, I did not understand her to say
7 it was the bishop's fault. I put it in a neutral fashion
8 to her and I got the impression, if I am wrong I'd be
9 corrected again, I got the impression that she agreed with
10 me that -

11 **MR MPOFU:** Well maybe she did, but before
12 that she said if the bishop had been clear -

13 **CHAIRPERSON:** No but if she had not been
14 engrossed in what she was being told things would have been
15 different -

16 **MR MPOFU:** That is correct.

17 **CHAIRPERSON:** You know we are trying to
18 find out what happened without necessarily approaching it
19 looking for people to blame. It is important to get the
20 facts first and when you've got the facts you can then
21 decide whether anyone is to blame and who that person is.

22 **MR MPOFU:** Yes.

23 **CHAIRPERSON:** I am simply trying to, as
24 I have tried often before, to cut a way through the forest
25 for you to enable you to get on with your cross-

1 examination.

2 **MR MPOFU:** Thank you, Chairperson.

3 **[09:45]** Let's get the facts even before we say nobody is

4 to blame, yes. Okay, now if you go to the Bishop's

5 statement, which is exhibit M –

6 **GENERAL MBOMBO:** I have got it.

7 **MR MPOFU:** Paragraph 11 on page 3, this

8 was the evidence of the Bishop which was not challenged.

9 He says, "Mr Mokwena then told us that the workers could

10 not see Mr Farmer as he was either sick" – okay, I am

11 cutting, I am sort of, you must assume before that he had

12 made the request to Lonmin that they wanted to meet with

13 management. Then he says, "Mr Mokwena then told us that

14 the workers could not see Mr Farmer as he was either sick

15 and/or out of the country. We asked whether somebody in

16 his stead could please address the workers, to which there

17 was no clear response. We were then asked" – probably by

18 Mr Mokwena – "to accompany them to the Provincial Police

19 Commissioner and put our proposals" – in plural, and we

20 know that he had only two proposals, one was for the

21 negotiations and the other one was for the water – "since

22 the company was not prepared to meet with the workers. 12,

23 The Commissioner was particularly unfriendly, anxious and

24 uncooperative. I still believe that the final instruction

25 to take strong action at the hill was given at the point,

1 i.e. shortly after she left us and went back into the
2 command centre. After she left us there was frantic
3 movement in the command centre, followed by more
4 helicopters taking off in the air," and so on.

5 **CHAIRPERSON:** Sorry, Mr Mpofu, just
6 before you put the question finally, I cannot remember what
7 time did the Bishop speak to firstly Mr Mokwena and then
8 the Provincial Commissioner? That will be in an earlier
9 paragraph of the statement. Can we perhaps see that,
10 please?

11 **MR MPOFU:** No, Chairperson, we do not have
12 the time, but I think that around the time actually we
13 grappled, if the Chairperson remembers, we had to use
14 inferential reasoning, but at some point it was established
15 that the Bishop had been at the hill, I think we have a
16 photograph that places him at the hill at 13:40 or
17 thereabouts. So it must have been shortly, or let us say
18 half an hour, because he did not spend a lot of time in
19 the –

20 **CHAIRPERSON:** No, but do not answer the
21 question. Let us just go on.

22 **MR MPOFU:** Yes.

23 **CHAIRPERSON:** Can we see what we are
24 looking at the moment? Further on, next page.

25 **MR MPOFU:** Further on, okay.

1 **CHAIRPERSON:** Further on, I think it is

2 paragraph 12.

3 **MR MPOFU:** Yes.

4 **CHAIRPERSON:** Next paragraph, can we see

5 that? Yes, it is the next piece.

6 **MR MPOFU:** Yes, the pertinent –

7 **CHAIRPERSON:** “The Commissioner was

8 particularly unfriendly, anxious and uncooperative. I

9 still believe the final instruction to take strong action

10 was given at that point, i.e. shortly after she left us

11 and went back into the command centre.” The reason I asked

12 the time was we in fact know that the instruction had been

13 given before that because if the Bishop saw her after half

14 past 1, the instruction had already been given at the very

15 beginning of the meeting which started at half past 1. So

16 she had already given the instruction according to all the

17 evidence we have. The Bishop then on your reconstruction

18 of the time spoke to her after that and you could

19 understand how things were moving at that stage. But

20 anyway –

21 **MR MPOFU:** Yes, no I agree –

22 **CHAIRPERSON:** - is now clear to me

23 anyway.

24 **MR MPOFU:** Yes.

25 **CHAIRPERSON:** All he says about her is

1 she was particularly unfriendly, anxious and uncooperative.
2 The anxiety I think she admits to. The lack of cooperation
3 she also admits to, although she had given from her side her
4 explanation, and I am sure she came across as unfriendly as
5 well, but –

6 **MR MPOFU:** And rude.

7 **CHAIRPERSON:** Well, you can say that.

8 **MR MPOFU:** No, he said it.

9 **CHAIRPERSON:** You and I understand –

10 **MR MPOFU:** The Bishop said it in his
11 evidence, Chairperson.

12 **CHAIRPERSON:** And she has apologised. I
13 think it is an implied admission that she did not mean to be
14 rude and I am sure she is not normally rude, but on this
15 occasion that is the way it came across. But you can
16 understand –

17 **MR MPOFU:** Yes.

18 **CHAIRPERSON:** - in all the
19 circumstances –

20 **MR MPOFU:** And the Bishop has –

21 **CHAIRPERSON:** - why she came across the
22 way she did. Alright, so I think we sorted that out
23 between us –

24 **MR MPOFU:** Yes, that is correct,

25 Chairperson. I agree with you substantially. I think that

1 either it – it is one of two possibilities; it is either the
2 one that the Chairperson is putting, or maybe she came out
3 of the meeting to talk to the Bishop and went back, or
4 whatever, but it was around that time. I think –

5 **CHAIRPERSON:** No, I know, but the point
6 is we know that right at the beginning of the meeting she
7 said “We’re going to implement stage 3.”

8 **MR MPOFU:** Yes.

9 **CHAIRPERSON:** And she had already told the
10 National Commissioner that. So –

11 **MR MPOFU:** That is correct.

12 **CHAIRPERSON:** So if he came there after
13 20 to 2, then –

14 **MR MPOFU:** No, the decision was made.

15 **CHAIRPERSON:** - that particular bullet
16 was through the cathedral by that time.

17 **MR MPOFU:** Yes, and in any event – yes,
18 no, Chairperson, you’re quite right, because in any event,

19 Chairperson, you are even more right because the –

20 **CHAIRPERSON:** [Microphone off, inaudible]

21 **MR MPOFU:** Well, more right than you
22 think, Chairperson, because the clear impression is that
23 the decision even in the meeting on EE was really being
24 announced. It was not being made there. So the
25 Chairperson is correct. The decision certainly had been

1 made by the time she was talking to the Bishop. Thank you.

2 **MR WESLEY:** Sorry, Chairperson, if I could

3 perhaps assist, the photographs that Mr Mpofu is referring

4 to are GG1 and 2 and HH. They are Colonel Mere's

5 photographs. They are 14 hours and 40 minutes behind ETV

6 time, which takes the time of the photographs to

7 approximately 10 past 2.

8 **MR MPOFU:** Okay.

9 **CHAIRPERSON:** That makes the point even

10 stronger.

11 **MR MPOFU:** Yes.

12 **CHAIRPERSON:** That the Bishop came long

13 after –

14 **MR MPOFU:** The horse has bolted –

15 **CHAIRPERSON:** – the decision was taken –

16 well, I do not know about the horse had bolted, but the

17 point, because there were two decisions; the one was the

18 general decision to proceed to the tactical option, stage

19 3. The other decision was the timing of that. It was

20 always a decision that was there, that was going to be

21 implemented, but the actual decision that now the trigger

22 will be pulled, if one can put it – perhaps that is an

23 unfortunate image, I withdraw that – that now the horse

24 will be led out of the stable, to follow Mr Mpofu, that

25 decision was taken at 1:30 or shortly thereafter and the

1 Bishop arrived obviously after 10 past 2. So by that time
2 one can understand the anxiety and general attitude of the
3 Provincial Commissioner. Anyway, I think –

4 **MR MPOFU:** Yes, the point is made,

5 Chairperson.

6 **CHAIRPERSON:** Yes, the point is made.

7 **MR MPOFU:** Yes.

8 **CHAIRPERSON:** Sorry, I think we – as I
9 say together we solved the problem.

10 **MR MPOFU:** We have, thank you,

11 Chairperson.

12 **CHAIRPERSON:** So perhaps we can move on
13 to solve the next one.

14 **MR MPOFU:** Yes. The next problem – well,

15 it is not a problem as such, but while we are on the

16 statement, just for the sake of completion while we are on

17 the statement and to situate the issues, if we can just go

18 through paragraph 14 where the Bishop says, "As we are about

19 to leave to convey the message to the workers, an unknown

20 male person approached Mr Mokwena and whispered something

21 in his ear. Mr Mokwena immediately turned to us and said

22 to me, 'Bishop, you can no longer return to the hill.

23 The place has been cordoned off and is now a security-risk

24 zone,' or words to that effect." So I think that completes

25 the picture that the Chairperson and I were grappling with

1 here, coupled with the movement of helicopters and so on.

2 But the real point is this; here were two missed

3 opportunities at a peaceful outcome and both of those

4 peaceful missions were effectively botched on your hands.

5 The first one, the Mathunjwa one we have discussed. The

6 second one which one can literally say was Godsend, was the

7 mission of the Bishop and you, both of those people at

8 least independently accused you of being rude and

9 uncooperative. Have you got anything to say about that?

10 **CHAIRPERSON:** [Microphone off, inaudible]

11 we have gone over this rudeness point –

12 **MR MPOFU:** No, okay, forget the rude –

13 **CHAIRPERSON:** I think she admits if she

14 was rude or gave that impression, she has apologised. I

15 do not think there is any extra juice to be extracted from

16 this –

17 **MR MPOFU:** No, Chairperson –

18 **CHAIRPERSON:** - from the rudeness lemon.

19 I think you should move on to the next one.

20 **MR MPOFU:** No, Chairperson, I am not – the

21 reason why I told her that the Bishop accepts her apology

22 is because I am not castigating her for the rudeness. I am

23 merely making the point that two people independently who

24 do not even know each other that they are there, say the

25 same thing about her attitude. So I am afraid I have to put

1 it as they put it –

2 **CHAIRPERSON:** No, Mr Mpofu, by –

3 **MR MPOFU:** I am not expecting her to

4 apologise –

5 **CHAIRPERSON:** By implication she admits

6 that she gave an impression of rudeness, that is why she is

7 apologised. So you do not have to – to change the metaphor,

8 you do not have to flog that horse anymore, it is dead.

9 Can't we move on to another one?

10 **MR MPOFU:** You failed to cooperate with

11 two missions, two independent missions at creating a

12 peaceful solution yourself. Do you accept that?

13 **MR VAN AS:** Sorry, Mr Chairperson, Mr

14 Mathunjwa's mission, with respect, must be place in

15 context. If we have regard to exhibit OO13, which is the

16 transcript of the conversation –

17 **CHAIRPERSON:** Yes, no, no, that is a

18 different question. There is nothing wrong with the

19 question being asked and if you wish to apply, you did not

20 apply previously – you did, your counsel already cross-

21 examined the witness, but if you wish to ask further

22 questions flowing from the cross-examination that is now

23 happening or other cross-examination, you can make the

24 application at the appropriate time. But you cannot just

25 butt in, in the middle of Mr Mpofu's cross-examination. I

1 will not allow that. Mr Mpofu, please proceed.

2 **MR VAN AS:** [*Microphone off, inaudible*]

3 **CHAIRPERSON:** The objection is not a good

4 objection. The objection really is things must be put in

5 context. You can, if they can be put in context and should

6 be put in context, you can do that later by further cross-

7 examination. I am not going to allow you to stop Mr Mpofu's

8 point.

9 **MR MPOFU:** Yes. At least, General, it is

10 the version of the police that Mr Mathunjwa tried his level

11 best to achieve a peaceful solution, is it not?

12 **GENERAL MBOMBO:** I do not dispute that.

13 **MR MPOFU:** In fact in the police opening

14 statement there is even reference of how Mr Mathunjwa went

15 on his knees and so on. So the clear thrust of the police

16 opening statement is that Mr Mathunjwa was on a peace

17 mission.

18 **GENERAL MBOMBO:** I think that is so, yes.

19 **MR MPOFU:** Okay, Now the reason I am

20 putting all these questions, General, is because at the end

21 of the case when you are not here I am going to argue very,

22 very strenuously that your personal omission to cooperate –

23 to put it mildly – with both of those peace missions was

24 directly linked to the abandonment, for lack of a better

25 word, of interventions which could have prevented the

1 bloodshed, and the corollary of that is that had you acted
2 differently, the bloodshed would have been prevented and
3 that you are answerable for that, to that extent, that you
4 spurned those missions. Any comment?

5 **GENERAL MBOMBO:** I do not agree with you.

6 **MR MPOFU:** Okay, you yourself for
7 whatever reason never requested or demanded that Lonmin
8 should go and address the strikers, or that they should
9 negotiate with them, correct?

10 **GENERAL MBOMBO:** Yes, I personally no,
11 but I spoke to them and said they should do everything in
12 their power to try and find a solution.

13 **MR MPOFU:** And more specifically in the
14 recorded discussion between you and Mr Mokwena in JJJ192,
15 at no point do you say that they must go to the hill or
16 make arrangements to have a direct interaction with the
17 protesters, correct?

18 **GENERAL MBOMBO:** That is so, but as I have
19 already said, I wanted them to find a way in order to find
20 a solution according to their principles, how they solve
21 their labour issues.

22 **MR MPOFU:** On the contrary, you at the
23 very least acquiesced, or did not object when Mr Mokwena
24 indicated that they would not negotiate with the strikers.

25 **MR SEMENYA SC:** Can the question be

1 repeated? I could not follow.

2 **CHAIRPERSON:** Repeat the question again.

3 **MR MPOFU:** Okay, I shall –

4 **CHAIRPERSON:** I think he is referring to a

5 passage appearing on page 4 of exhibit JJJ192, but because

6 I have that page in front of me I followed the question.

7 Perhaps if you'd repeat the question so that Mr Semenya and

8 the witness can understand it.

9 **MR MPOFU:** Okay, no I am sure the witness

10 understands –

11 **CHAIRPERSON:** Well, Mr Semenya does not

12 understand it.

13 **MR MPOFU:** Yes, I shall help him.

14 **CHAIRPERSON:** Be courteous to him.

15 **MR MPOFU:** Yes. On the contrary, which

16 means the opposite of asking them to negotiate, you voiced

17 no objection when Mr Mokwena indicated that they would not

18 negotiate or talk to the workers, correct?

19 **GENERAL MBOMBO:** I do not remember, Mr

20 Chairperson, I just want to see the exhibit.

21 **CHAIRPERSON:** Look at page 4 of exhibit

22 JJJ192, starting at line 2.

23 **GENERAL MBOMBO:** I see it, Mr Chairperson.

24 **MR MPOFU:** And what is your answer now

25 that you have seen it?

1 **GENERAL MBOMBO:** Mr Chairperson, it was not
2 really my purpose to tell them what they should do. They
3 know what their workers wanted. I just wanted them to do
4 whatever it took, whatever they had to do, whether they had
5 to go to talk to the strikers, whether they had to get
6 someone else to do that, but I just wanted them to do
7 whatever would help.

8 **MR MPOFU:** Yes. Yes, General, I heard
9 you the first time. I am saying something different now.
10 I am saying – in fact I shall put it even stronger. It is one
11 thing to accuse you, as I have, of not having put any
12 pressure on management to talk to the workers, which we
13 have gone through. I am now accusing you of something worse
14 than that. I am saying you actually went along with their
15 decision not to talk to the workers.

16 **GENERAL MBOMBO:** I do not remember
17 agreeing with that, but –

18 **CHAIRPERSON:** No, no, he does not say that
19 you necessarily agreed. He says you went along with it,
20 which is –

21 **MR MPOFU:** Well, I agree, I shall say agree
22 now.

23 **CHAIRPERSON:** Alright, but –

24 **MR MPOFU:** I accept I did not say it
25 before, but I am putting that strongly, yes.

1 **CHAIRPERSON:** So before you get there,
2 before Mr Mpfu gets to the extra point can I just put
3 something to you? Page 4, exhibit JJJ192, this discussion
4 on the Tuesday afternoon between you and Mr Mokwena and
5 other senior people in from Lonmin. Mr Mokwena says, line
6 2, "We say we are not going to talk wages because there is no
7 reason for us to open wages." You see that?

8 **[10:05] GENERAL MBOMBO:** I see it, Chairperson.

9 **CHAIRPERSON:** Right, now you remember the
10 previous night, the Monday night, the Lonmin people had
11 told you they had a two-year agreement which would only
12 expire in 2013, I think October 2013. Remember they told
13 you that?

14 **GENERAL MBOMBO:** Yes, Chairperson.

15 **CHAIRPERSON:** They said they could not
16 understand how there could be a wage dispute because
17 there is a two-year agreement which was going to run until
18 October the following year. You remember that?

19 **GENERAL MBOMBO:** I remember that.

20 **CHAIRPERSON:** So when Mr Mokwena said to
21 you, "We say we are not going to talk wages because there is
22 no reason for us to open wages," you understood exactly
23 what he meant. He was referring to the two-year wage
24 agreement.

25 **GENERAL MBOMBO:** I think that is how I

1 understood him, yes.

2 **CHAIRPERSON:** Right, so what they were

3 saying is we are not going to talk wages, we are not obliged

4 to, we are not going to. That was his first point, right?

5 And then someone else who's described simply as "Lonmin"

6 but another senior person from Lonmin says, "And by the

7 way, with AMCU we do not have any collective bargaining

8 arrangements." Mr Mokwena says, "We do not have anything,

9 so we avoid legitimising illegal behaviour. That is our

10 position." I take it that means we are under pressure to,

11 or may be under pressure to negotiate with AMCU, that in

12 fact he said on the previous page but we do not have to go

13 there now. We are not going to do that; it is not something

14 that we have to do because AMCU have not got any rights to

15 participate in collective bargaining negotiations. Is that

16 the way you understood it too?

17 **GENERAL MBOMBO:** That is how I understand

18 it, yes.

19 **CHAIRPERSON:** So when Mr Mokwena says in

20 line 8, "That is our position," then it is quite clear what

21 he is saying; we are not going to negotiate about wages or

22 talk about wages because we do not have to because there is a

23 two-year agreement, and we are certainly not going to talk

24 to AMCU because they haven't got the right to a seat at the

25 bargaining table to discuss wages. Is that right?

1 **GENERAL MBOMBO:** That is how I understand

2 it, yes.

3 **CHAIRPERSON:** And the perception at the

4 time - which may have been wrong, but we will not go there at

5 the moment – the perception at the time was the strikers

6 were all really AMCU people and this was really an AMCU

7 engineered and provoked strike. Is that correct? That is

8 the way it was seen?

9 **GENERAL MBOMBO:** I think there was such a

10 perception, Mr Chairperson.

11 **CHAIRPERSON:** Yes, alright. So the

12 position of Lonmin was quite clear and you understood it.

13 But then he goes on to say, "We will not make any decision,

14 Commissioner, without asking your counsel and advice, so

15 that we do not compromise the integrity of police work

16 here." I must tell you, again this is a prima facie view,

17 I am putting it to you so you can deal with it, that seemed

18 to me to open the door to you a little bit to give you the

19 opportunity to say to them look here, I understand your

20 attitude in relation to wages and in relation to AMCU, but

21 we have got a serious law and order problem here, we have got

22 3 000 people, many of them armed with dangerous weapons,

23 we have got 10 – or you only knew about nine at that stage –

24 you've got nine dead people and we have got to stop this, and

25 it is quite clear to me, you could have said, that unless

1 you people are prepared to make some concession, to move
2 forward in some way, we are not going to be able to solve
3 this problem peacefully, and if you'd done that and said to
4 them, now look here, I know what you say, but for heaven's
5 sake and the sake of peace, cannot you just agree to talk to
6 the strikers themselves, you do not even have to talk to
7 AMCU, just talk to the strikers themselves, their
8 representatives, that may give us a chance to move the
9 thing forward peacefully. That I think is the criticism
10 that is going to be made against you. Whether it is right
11 or wrong I do not know yet because we have got to hear all the
12 evidence, but how would you respond to that criticism?

13 **GENERAL MBOMBO:** Mr Chairperson, I was of the
14 views that when they said this they were prepared to accept
15 protection from us if they wanted to go and talk to them.
16 It was not for us to tell the Lonmin people to go and talk
17 to their workers. That was their responsibility, but we
18 were there to protect them if they needed such protection.

19 **MR MPOFU:** General, the criticism
20 actually that the Chairperson is talking about is exactly
21 what I was coming to, and I will start with that and come
22 back to another point, and -

23 **CHAIRPERSON:** Sorry, before you do that -

24 **MR MPOFU:** Yes, Chairperson.

25 **CHAIRPERSON:** - it has been suggested to me

1 that it might be appropriate for us to take a comfort break
2 and you know, the witness particularly, she hasn't asked
3 for it but if you've ever given evidence as the witness is
4 doing you will understand the need for a comfort break
5 sometimes does arise, not only for the witness, but for
6 other people too. So let us take a comfort break now.
7 Let us try to be back within 10 minutes.

8 **MR MPOFU:** Thank you, Chairperson.

9 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

10 **[10:31] CHAIRPERSON:** The commission resumes. I
11 did say earlier, I did say yesterday in fact that we would
12 adjourn today at 12:30. I am informed that won't help the
13 person who asked me to adjourn at 12:30 because the plane
14 will still leave, be leaving earlier than I had thought.
15 So we are going to adjourn at 12:15 and so we shall take tea at
16 about quarter passed 11 and then run through until 12:15.
17 Sorry, they want tea at 11 o'clock, I see, alright. There
18 are apparently things planned for 11 o'clock as I do not
19 know about. So we shall take tea at 11 o'clock and we shall then
20 run through after tea till quarter past 12. By which time
21 presumably Mr Mpofu would have come to the end of his
22 cross-examination. You are still under oath Provincial
23 Commissioner. Mr Mpofu?

24 **MR MPOFU:** We live in hope, Chairperson.

25 **CHAIRPERSON:** I hope that my hopes will

1 not be disappointed.

2 **MR MPOFU:** Won't be dashed, yes, that is

3 correct, Chairperson. Yes, Commissioner remember, we were

4 at the place where I was saying that or rather I was

5 following up on the Chairperson's question, which is this.

6 That what Mr Mokwena was basically saying to you is, the

7 whole thing that he was saying, he was saying look we must

8 align our plans and so on and we must, we do not want to do

9 anything without talking to you, effectively he was saying

10 the two plans of Lonmin and the police must be aligned,

11 correct?

12 **GENERAL MBOMBO:** I remember him saying so

13 at a stage, yes.

14 **MR MPOFU:** And part of, two crucial

15 aspects of that alignment which I am going to canvas with

16 you, the first one is the one that the Chairperson raised

17 with you, part of that alignment was him giving you an

18 almost open, a blank cheque to say you must guide us on

19 what to do, you must advise us what to do because you do not

20 want the misalignment of the plans and the, on that the

21 emphasis is that that is an opportunity that you should

22 have used to say listen here, now that you are giving me an

23 invitation for us to align our plans here we go, you guys

24 make interaction with the strikers because that is what

25 they have been asking for and that will go a long way in

1 creating the conditions of peace as you and I established

2 this morning and you omitted to take that opportunity.

3 That is the nature of the criticism, do you have any

4 comment?

5 **GENERAL MBOMBO:** Maybe we should get

6 clarity how it came about that he said we should align the

7 plans. From what I remember that came about when they were

8 talking about distributing pamphlets. So the alignment of

9 plans was not about aligning everything that they thought

10 of doing or that they were supposed to do.

11 **MR MPOFU:** Alright now the path that I,

12 remember I said I am going to go as far as to say you agreed

13 with their decision not to talk? Now I am going to

14 demonstrate that part. Mr Mokwena, the Chairperson stopped

15 reading at line 9, around line 10 of page 4 JJJ192. Yes,

16 Chairperson stopped reading somewhere in the middle, I shall

17 read from we are not in that situation. It says, yes, "we

18 are not in that situation, nine people have died, and we are

19 not going to start talking to parties suddenly. We say yes

20 but you know these workers say they want money and that is

21 what AMCU is saying. So now it means they are taking over,

22 they are the leaders of that group and then you say, okay."

23 Do you see that?

24 **GENERAL MBOMBO:** I see it.

25 **MR MPOFU:** So that is what I am saying, it

1 was not just a mere fact of acquiescing or keeping quiet.

2 You actually, when he was emphasising the reasons why they

3 will not talk to the people you said that was okay.

4 **GENERAL MBOMBO:** I said so as it is

5 written on the statement.

6 **MR MPOFU:** Yes, and this was not okay

7 because according to the police as we know they would have

8 preferred a peaceful solution which would have started at

9 the root causes, in other words if there was interaction

10 between the two that may have dissolved the whole

11 situation, is that not correct?

12 **GENERAL MBOMBO:** That is so.

13 **MR MPOFU:** The second aspect of your, you

14 and I have established in the morning that the logical

15 thing would have been to solve the, let us call it the

16 labour issues or the HR issues and they talk and I accept

17 that you did not have to be involved in that so that the

18 security situation could be improved, correct?

19 **GENERAL MBOMBO:** That is so, yes.

20 **MR MPOFU:** But Lonmin, Lonmin had a

21 different view, Lonmin's view was that you must solve the

22 security situation first and the HR issues to follow. So

23 once again you had an opportunity to align the plan to say

24 no, no, no, no you must sort the HR issues and it will

25 improve the security situation and you failed to do so. Is

1 that a fair criticism?

2 **GENERAL MBOMBO:** Mr Chairperson, I said before

3 that I am not sure if I was the one to tell Lonmin people

4 what to do. Because even in the previous meetings we have

5 had, even the one on the 13th we indicated to them that we

6 all wish to find solutions to, to solve this problem, all

7 of us as we were there. At the time when I was talking to

8 them I was reminding them of the decisions taken in the

9 previous meetings, the meetings on Monday. Yes, maybe I

10 could have said do this, do that but the fact remains the

11 person who had a problem here is Lonmin. He had a problem

12 with their workers. We were there to try and maintain

13 peace and order.

14 **MR MPOFU:** Yes. I understand that,

15 General. I am saying to you we have agreed about the first

16 criticism where you agreed that they must not talk. I am

17 saying the second criticism is that you even agree to a

18 sequencing that was contrary to the police sequencing and

19 I shall take you through what they were saying. While your

20 view was that the HR situation must be sorted and then the

21 securities situation will be improved, this is what Mr

22 Mokwena said which is the exact opposite. Go to page 3 of

23 that document. He says, we can only start doing HR issues

24 when the security issue is sorted out, oh sorry, I am

25 reading against –

1 **CHAIRPERSON:** If it will help –
2 **MR MPOFU:** About 25, about line 25,
3 Chairperson. “We can only start doing HR issues when the
4 security is sorted out so that we do not confuse security
5 issues with HR issues. We have rejected quite a number of
6 positions and people indirectly trying to start
7 negotiating. AMCU you will notice their press statement,
8 so they have thrown stuff into the media to say oh we have
9 asked management to give everybody 12 000 now the media are
10 going to say but management then you must talk to AMCU and
11 SAPS Commissioner yes.” So once again you are agreeing
12 with something that is against your own professed belief as
13 to how things should be done. When you had a chance to say
14 no, no Mr Mokwena our approach as the police is this, you
15 sort out the HR issue by going to talk to those people and
16 by so doing that might defuse the security situation.
17 Which you and I have agreed, I am going to criticise you
18 again for, once again spending yet another opportunity to
19 ensure that peace prevails. Do you have any comment?

20 **GENERAL MBOMBO:** I do not agree with
21 that.

22 **MR MPOFU:** And yet the police version is
23 premised on the notion that the police were busy putting
24 pressure on Lonmin to engage with the strikers when that is
25 not the case, well at least as far you are concerned, we have

1 established that is not the case. Are you aware of any one
2 else who exhorted Lonmin to accede to the demand of the
3 workers to engage?

4 **GENERAL MBOMBO:** I once answered that
5 question before.

6 **MR MPOFU:** I am sorry if I am asking you
7 the same thing, but can you assist me what was your answer?

8 **GENERAL MBOMBO:** I said those were not my
9 personal words. But our discussion with Lonmin was based
10 on the fact that they had a responsibility of finding a
11 solution to the problem. I also know that all the people
12 were in meetings with General Mpembe, they also had the
13 same view and objective of finding a solution to this
14 problem.

15 **MR MPOFU:** Yes, but, General, surely you
16 will accept that it is not use making general statements to
17 the attended, we must all find solutions, I am prepared to
18 accept that you must have said words to that effect. But
19 the criticism I am directing to you is that it is no use
20 making those general statements, we must all find
21 solutions, here is a specific solution that presents
22 itself, there is only one demand made by the workers, we
23 want to engage, one. So you should have said well here is
24 an opportunity, golden opportunity for these people simply
25 to engage, not even to resolve according to Mr Magidiwana,

1 the whole issue of the 12 500 but simply he said, I can't
2 remember the words he used, just for recognition or their
3 dignity because he said this is our employer, we work for
4 them, why can they not just talk to us. Why can't they even
5 say we do not have the R12 500, this is how much we have
6 and so on and so on and you had a responsibility when that
7 opportunity presented itself to ensure that it happened.

8 **MR SEMENYA SC:** Chairperson, the record is
9 really replete with evidence of Lonmin saying they do not
10 intend to go and address the workers.

11 **MR MPOFU:** Yes, well we shall deal with that
12 when we cross-examine Lonmin, right now I am busy with the
13 police's responsibility to facilitate, is it not correct,
14 General, that one of your obligations as the police is to
15 facilitate communication?

16 **GENERAL MBOMBO:** Which I did, Mr Chairperson.

17 **MR MPOFU:** No. Well the, I am saying to
18 you, you have a duty as a police person to facilitate
19 communication. There are two conflicting sides and one of
20 those sides says for us the only thing that will get us out
21 of this quagmire is just to engage with the other side.
22 Isn't it your obvious duty to then say to the other side go
23 and engage with those people, then it is problem solved.
24 Otherwise what is facilitation of communication.

25 **GENERAL MBOMBO:** I think the endeavours

1 of the police in trying to talk to the Lonmin people was to
2 get Lonmin to do what was expected of them as the employer
3 or what the employees expected of them.

4 **MR MPOFU:** Yes and Lonmin made it clear

5 as Mr Semenya correctly points out at the beginning that
6 they did not want to do that and that is why I use the word
7 exhorting because it was upon you to then say that stance
8 is unreasonable, it is likely to lead to bloodshed,
9 especially when they were inviting you and say please do go
10 and engage to them and you failed to do that. Can we just
11 accept that?

12 **GENERAL MBOMBO:** Who were engaging me?

13 **MR MPOFU:** No, sorry maybe the question
14 wasn't clear. I am saying Lonmin having taken the initial
15 stance that because they had the wage agreement or whatever
16 reasons they gave they were not going to speak to the
17 workers. That you knew. Now on the 14th they say to you
18 please guide us, give us advise on what to do and you do
19 not say to them ah here's now a golden opportunity, the one
20 side has said they want to engage and the other side is
21 saying please guide us. So it is simple the guidance should
22 be engage the other side and then the problem is solved.
23 Isn't that a logical thing?

24 **MR VAN AS:** Mr Commissioner, Mr Chairman,

25 the witness has already indicated that Lonmin was trying to

1 coincide it is strategy in relation to the delivery of
2 ultimatums with the strategy of the police. It wasn't
3 Lonmin's - it shouldn't be drawn from this transcript that
4 what Lonmin asked the police to do was advise them how they
5 should go about dealing with their workers and with the
6 strike.

7 **MR MPOFU:** Can I respond, Chairperson?

8 No that is, I think Mr Van As is making a mistake. The
9 discussion about the dropping of the pamphlets did indeed
10 take place at a later stage. But the invitation for
11 guidance comes much earlier, on page 3 even where we are,
12 he says -

13 **CHAIRPERSON:** I think the answer is he is
14 entitled to ask the question. Entitled to ask the witness
15 how she understood what was said by Mr Mokwena.

16 **MR MPOFU:** Yes.

17 **CHAIRPERSON:** When Mr Mokwena comes he
18 can ask Mr Mokwena what he thinks. But I do not think
19 there is a basis for stopping him asking the questions. So
20 I think we should let him carry on.

21 **COMMISSIONER HEMRAJ:** General can I just
22 ask you, does SAPS have an official position as regards
23 matters between employers and employees involving
24 industrial action?

25 **GENERAL MBOMBO:** No, Mr Chairperson, I do not

1 remember us having such a thing.

2 **MR MPOFU:** I am sorry, Commissioner, I

3 heard the answer, I did not hear the question.

4 [10:50] **COMMISSIONER HEMRAJ:** The question was

5 whether SAPS has an official policy as regards matters

6 between employers and employees involving industrial

7 action.

8 **MR MPOFU:** Oh, okay. Alright, let us just

9 deal with that issue very quickly before I go to the

10 transcript, the one the Commissioner has raised. Can you

11 go to page 6 of the SAPS opening statement? Are you there?

12 Paragraph 15. Can you go to – oh, it is exhibit FFF9, page

13 6, paragraph 15. There SAPS is paraphrasing, as it were,

14 the prescripts, the standard operation procedures and

15 national guidelines and so on. You understand that,

16 General?

17 **GENERAL MBOMBO:** I see it.

18 **MR MPOFU:** Can you go – and they say one

19 of the functions that emanate from those prescripts viewed

20 as a whole is – can you go to 15.5? – is to facilitate

21 communication where there is task saturation and

22 complexities. You understand that to be a SAPS task,

23 correct?

24 **GENERAL MBOMBO:** That is so.

25 **MR MPOFU:** Thank you. Alright, now let us

1 go back to where we were. I want to take you to the very
2 opening paragraph of JJJ192. This is now in reference to
3 Mr Van As' issue. Mr Mokwena says that we, "Okay, you
4 wanted to see us; I wanted to see you. You also wanted to
5 see us," and so on, and then the Commissioner says, "Maybe
6 let me be first" –

7 **COMMISSIONER HEMRAJ:** Which line are we
8 at, Mr Mpofu?

9 **MR MPOFU:** Right at the beginning, from
10 line 1. Page 1, sorry. The meeting supposedly starts like
11 that. "You wanted to see us; I wanted to see you." "We
12 also wanted to see you, but you know, maybe let me be
13 first," this is the Commissioner. "One is about whilst we
14 are busy that side trying to plan in terms of what we need
15 to do, I need to check from your side what is the actions
16 that are in progress in terms of your thinking, your, in
17 terms of your policy arrangements and all that and that you
18 are busy doing. I was saying to Graham," presumably
19 Sinclair, "it is important that I get to understand because
20 whatever decisions you are making from that side, they
21 obviously have got an impact on what we are doing and that
22 is one of the main reasons why I needed to come to be
23 talking to you, but also tracking from the discussions that
24 we had last night," and so on. So it is not just about
25 pamphlets. The very reason for having this meeting was

1 this alignment of we need to know what you are doing so

2 that we can condition what we are doing. Isn't that

3 correct?

4 **GENERAL MBOMBO:** You must remember, Mr

5 Chairperson, that those decisions of them that I am talking about,

6 if they for instance want to go and talk or find someone to

7 go and talk, what part do they want us to play in that.

8 And secondly, as far as facilitative communication, it does

9 not mean that we get deep into the issues of the company.

10 The company does that as it is supposed to do, the way it

11 knows how to communicate with its people, and we do not

12 dictate to companies what they're supposed to say to their

13 employees.

14 **MR MPOFU:** Okay, look, alright, I am just

15 going to put it to you that you as a person, as evidenced

16 by this discussion not only failed to do exactly what you

17 say you should have done, which is to ask the management to

18 engage with the workers, but you went further and agreed

19 with them when they expressly said that they're not going

20 to do anything of that sort.

21 **GENERAL MBOMBO:** I do not agree with you.

22 **MR MPOFU:** And I also –

23 **CHAIRPERSON:** It is now 11 o'clock, but

24 unless you –

25 **MR MPOFU:** No –

1 **CHAIRPERSON:** Or just before 11.

2 **MR MPOFU:** Yes.

3 **CHAIRPERSON:** I was proposing, as I told
4 you, to take tea –

5 **MR MPOFU:** That is the right place. I was
6 moving to another –

7 **CHAIRPERSON:** But maybe you want to round
8 this point off finally before we take the adjournment?

9 **MR MPOFU:** Yes.

10 **CHAIRPERSON:** I do not want to interrupt
11 you in the middle of a point.

12 **MR MPOFU:** No, Chairperson, by putting
13 that proposition I was round it off. Thank you,
14 Chairperson.

15 **CHAIRPERSON:** We shall take the tea
16 adjournment at this stage. I understand it may take a
17 little bit longer than – is that right? – so I am not quite
18 sure when we are going to come back, but I think let us be
19 realistic, let us try to be back by 11:30. There is some –
20 it is a saint's day today, which apparently is being
21 celebrated.

22 **MR MPOFU:** Thank you, Chairperson.

23 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

24 **[11:39] CHAIRPERSON:** The Commission resumes.

25 Provincial Commissioner, you're still under oath.

1 **MIRRIAM NOSAZISO ZUKISWA MBOMBO:** s.u.o.

2 **CHAIRPERSON:** Mr Mpofu, do you have any

3 more questions for the witness?

4 **CROSS-EXAMINATION BY MR MPOFU (CONTD.):**

5 Yes, Chairperson. General, I am sorry, I told the

6 Chairperson that I had rounded off the point, but I am just

7 going to put one, two propositions to you in respect of

8 that point, and to make it quick I shall just read out what is

9 contained in FFF9, I think. Yes, sorry about that. The

10 first one is paragraph 22 of FFF9. It says that, "You will

11 hear," meaning the Commission will hear, "evidence that at

12 various stages the police service tried to encourage mine

13 management and labour representatives to engage in peaceful

14 negotiations, without involving itself in labour disputes."

15 You see that part?

16 **GENERAL MBOMBO:** I see it, Mr Chairperson.

17 **MR MPOFU:** And then at 44.3 in the middle

18 of that paragraph – oh well, let us read the whole thing.

19 "On Tuesday the 14th and Wednesday the 15th the police

20 continued trying to negotiate with the protesters to disarm

21 peacefully. They demanded to speak with Lonmin

22 management." And the important part, "Attempts were made

23 by senior police officers to persuade Lonmin management to

24 address the protesters. Lonmin management refused, saying

25 it was not prepared to engage protesters outside collective

1 bargaining structures," and so on. "They also labelled the
2 protesters as faceless." Okay, that had already happened.
3 I think the sequence of events is not entirely correct
4 there, but the point I want to put to you is that neither
5 yourself nor anyone else to your knowledge had actually
6 done what is alleged in this opening statement, which is to
7 persuade –

8 **MR SEMENYA SC:** Not correct, Chairperson. That
9 was exactly the evidence of General Mpembe.

10 **CHAIRPERSON:** You see, apart from that,
11 Mr Mpfu, in exhibit OO4 at pages 27 and 28 there is a
12 passage which is relevant here. In the middle of, at line
13 9, at lines 9 and 10 of page 27 of that exhibit it says,
14 "Parties speaking simultaneously proves difficult to
15 transcribe," but it is clear that General Mpembe had spoken
16 because at line 17, well the facilitator – let me read
17 that, the facilitator says at line 12, "Joseph, I am asking
18 you," that is reference to Mathunjwa, "you had a chance to
19 speak. Let Barnard speak," that is Mr Mokwena. "NUM has
20 had the chance. General has had the chance. Barnard, you
21 have the floor, please speak," and then Mr Mokwena then
22 says, "Our position, General," so he is replying to General
23 Mpembe, "is as Lonmin management our position is as
24 follows. We're willing to engage our employees within the
25 structures that are known" –

1 **MR MPOFU:** I am sorry, Chairperson, what
2 page?

3 **CHAIRPERSON:** Page 27.

4 **MR MPOFU:** 37?

5 **CHAIRPERSON:** 27 of 004.

6 **MR MPOFU:** No, then I have got the wrong –

7 **CHAIRPERSON:** So he is talking to the

8 General, so we do not know what is the – the bit that was

9 difficult to transcribe was inaudible, but clearly must

10 have included what the General said because he is addressing

11 the General. "Our position, General, is as Lonmin

12 management our position is as follows. We're willing to

13 engage our employees within the structures that are known,

14 in a very safe environment where there are no weapons, not

15 on the mountain. So we are willing to meet our employees

16 through their structures, through their leaders to discuss

17 any issues, not when they are armed, not when they are

18 actually outside the Lonmin property. So when the workers

19 are back, disarmed, tomorrow, tonight, through their

20 leaders we will meet them. That is our position. So we

21 are not against meeting, discussing issues with the

22 employees through their right structures. We are prepared

23 to do that." So that is – now there is a question I'd like

24 to ask before you carry on, if you will permit me.

25 **MR MPOFU:** Yes.

1 **CHAIRPERSON:** The question I'd like to
2 ask the Provincial Commissioner about, did General Mpembe
3 tell you either on the Wednesday night when he was speaking
4 to you on the telephone and you were at the management
5 forum, or the next morning on the Thursday, did he tell you
6 that that is what Mr Mokwena of Lonmin had said the
7 previous evening, the passage I have read?

8 **GENERAL MBOMBO:** He did not tell me
9 everything, Mr Chairperson.

10 **CHAIRPERSON:** Did he tell you some of
11 that?

12 **GENERAL MBOMBO:** But he did say they were
13 discussing with Lonmin management and the two presidents of
14 the unions and what they were promoting was to find a way
15 to solve this impasse.

16 **MR MPOFU:** Yes, well that is exactly the
17 point of my questioning –

18 **CHAIRPERSON:** I am sorry, can I just ask –

19 **MR MPOFU:** Sorry, Chairperson.

20 **CHAIRPERSON:** When Mr Mathunjwa told you
21 what he did on the Thursday, which you've told us about
22 that Lonmin are not committed to negotiating and so on, was
23 General Mpembe with you?

24 **GENERAL MBOMBO:** He was not far from
25 where we were standing, Mr Chairperson.

1 **CHAIRPERSON:** I see. Did Mr Mathunjwa in
2 effect refer to an undertaking or an alleged undertaking
3 which Lonmin had given the previous night on the Wednesday?
4 When he spoke to you on the Thursday did he – you know,
5 we have gone through the passage of what he told you. Now
6 did he in fact in effect say Lonmin have gone back on an
7 undertaking they gave us previously, yesterday, or words to
8 that effect?

9 **GENERAL MBOMBO:** I do not remember that,
10 Mr Chairperson. All I remember is when he said they delayed him,
11 they do not want to talk to him.

12 **CHAIRPERSON:** So you did not consider it –
13 well, it did not arise on the basis of what you understood,
14 according to what you've told us, did not arise that you
15 could have gone back to Lonmin and said look here, Mr
16 Mathunjwa says you people aren't prepared to negotiate,
17 you've gone back on what you've committed to do, whereas I
18 understand you said something last night in the presence of
19 General Mpembe. The occasion for you to do that did not
20 arise because you did not know what had been said the
21 previous night. Do I understand correctly?

22 **GENERAL MBOMBO:** Mr Chairperson, I did not know
23 Lonmin's decisions of the previous night. What I knew
24 about was the decisions of Mr Mathunjwa, which I learned
25 from General Mpembe.

1 **CHAIRPERSON:** Thank you.

2 **MR MPOFU:** Yes, thank you, Chairperson.

3 You see, that is exactly the problem that I have, General.

4 That is why I am saying the impression given in the opening

5 statement is incorrect and I shall try and explain. The only

6 suggestion that this might have been said is the inaudible

7 part that the Chairperson refers to, where he infers from

8 an answer, and quite frankly anything could have been said

9 and it might be what you have been saying to us, namely

10 that we must all find solutions, and that might have been a

11 response to that. All I am saying is that apart from that

12 inferential logic there is no direct evidence of anyone

13 persuading, as it is put here, of senior police officers

14 persuading Lonmin to go and engage with the strikers. We

15 know that you did not do it; you've explained why. I am now

16 talking about other people that they also did not do it.

17 What's your comment?

18 **MR SEMENYA SC:** Chairperson, I still raise the

19 same objection. The evidence, direct, given by General

20 Mpembe before this Commission is that he did.

21 **MR MPOFU:** Okay, well even if, well –

22 **CHAIRPERSON:** That seems to be borne out

23 by what appears at page 1 of exhibit OO4 where General

24 Mpembe says at line 18, "The request that we made to the

25 management is one, is that the way in which the operation

1 is moving now, is moving in a direction where we need an
2 intervention." So he refers to the fact that he had

3 already made a request to the management for –

4 **MR MPOFU:** Solution.

5 **CHAIRPERSON:** - an intervention.

6 **MR MPOFU:** Yes.

7 **CHAIRPERSON:** Because of the way things

8 were moving. So that supports the evidence he gave, or

9 tends to support the evidence he gave before this

10 Commission. But anyway, the point is very simply, you

11 can't put to the witness that General Mpembe did nothing if

12 the evidence is he did. Obviously from what she now tells

13 us she did not know much about what General Mpembe had said.

14 That is a different matter. But you can't put it as a fact

15 that General Mpembe did not do anything when the evidence is

16 that he did. You may argue later that that evidence is not

17 to be accepted - that is a different question - but you

18 can't put to the witness as a fact something which is

19 disputed and in respect of which there is contrary

20 evidence. So I suggest you – to use one of your phrases –

21 you take a step back, you reformulate the question, put a

22 question to the witness which Mr Semenya won't object to.

23 **MR MPOFU:** Okay, that is exactly what I am

24 going to do. Let's assume – we shall have that debate on

25 another day, so let us assume for argument sake now that

1 General Mpembe in that inaudible part said what is being
2 said by the Chairperson and Mr Semenya. Apart from him, do
3 you know of any other person who persuaded Lonmin to engage
4 with the workers?

5 **GENERAL MBOMBO:** Mr Chairperson, as far as I
6 know from the meeting we had with the National Commissioner
7 and the Lonmin people, we emphasise the importance of
8 Lonmin trying to find ways of dealing with this issue,
9 talking to their people in the way that they are supposed
10 to. I did not think that it was important for us to give
11 them details as to how they were supposed to do that. That
12 was not our job. Our job was to maintain peace and order.

13 **MR MPOFU:** No, General, there is one point
14 by point by point by point; there is one point. The people
15 wanted to engage with management, one point, and I am saying
16 that the police, do you know of any other policeman,
17 putting aside the question of General Mpembe, who persuaded
18 the people to engage with their workers, to go and talk to
19 the workers as the workers were demanding, one point?

20 **MR SEMENYA SC:** Chairperson, there is nobody who
21 persuaded anybody. The issue is whether there was an attempt.
22 There is no question that anybody persuaded Lonmin to go to
23 the hill. We know they did not go –

24 **MR MPOFU:** Yes, who exhorted –

25 **MR SEMENYA SC:** There were attempts –

1 **MR MPOFU:** Who exhorted, or made –

2 **CHAIRPERSON:** Tried to persuade –

3 **MR MPOFU:** Tried to persuade them to go

4 to – attempted, let us use the right word, according to Mr –

5 who attempted to persuade the people to go and talk to

6 their workers as they were demanding.

7 **GENERAL MBOMBO:** According to me, Mr

8 Chairperson, I have answered that question and said I personally

9 did not say so, but I mentioned that they have a right to

10 do whatever was in their power, and I think that General

11 Mpembe also tried in the meetings that he had with them.

12 **MR MPOFU:** Okay, maybe it is my fault; I

13 do not think you've heard my question. I am saying let us

14 take you out of the picture, because you've said you did not

15 do it. Do you understand that?

16 **GENERAL MBOMBO:** I hear you.

17 **MR MPOFU:** I am saying let us take Mpembe

18 out of the picture because we have had the debate, which

19 we shall have on another day. Do you understand that?

20 **GENERAL MBOMBO:** I understand that.

21 **MR MPOFU:** Do you know of any other

22 policeman who made attempts to persuade Lonmin to negotiate

23 or to address the protesters, apart from you and Mpembe?

24 **GENERAL MBOMBO:** I do not.

25 **MR MPOFU:** Yes, and therefore, and there is

1 no other evidence in front of this Commission, that is what
2 I was getting at. The statement that I read out to you
3 says "Attempts were made by senior police officers," in
4 plural, okay, "to persuade Lonmin management to address the
5 protesters," a specific thing, not to find solutions or
6 make interventions and so on, "senior officers to persuade
7 the Lonmin management to address the protesters." You have
8 no knowledge of that, correct?

9 **GENERAL MBOMBO:** As I am saying, Mr Chairperson.

10 **MR MPOFU:** Thank you. Okay, no I shall
11 leave that for argument. Now let us just go back to
12 something very quickly which we dealt with yesterday. I am
13 just going to ask one or two questions. Remember the
14 debate you and I had about the removal of the people who
15 had experienced the trauma of the 13th?

16 **GENERAL MBOMBO:** Removal of the people
17 with experience?

18 **MR MPOFU:** Yes –

19 **CHAIRPERSON:** No, no, who had the
20 experience, the people who had been involved on the 13th had
21 been traumatised, or possibly traumatised because of what
22 had happened on the 13th, removal of those people from
23 further participation. That is the point that Mr Mpofu is
24 now going to revert to.

25 **GENERAL MBOMBO:** Okay.

1 **MR MPOFU:** You remember that discussion?

2 **GENERAL MBOMBO:** I remember that.

3 **MR MPOFU:** Now would you agree that if

4 the initial suggestion of removing all the people who had

5 been involved in that operation had been carried out to its

6 logical conclusion, then General Mpembe himself would have

7 been a candidate for removal?

8 **GENERAL MBOMBO:** As I have said, I also

9 spoke to him as well, so as I said yesterday - that would

10 have applied to him as well, and as I said yesterday, these

11 people were given that chance and it is not our normal

12 practice to remove people from operations if they do not

13 show signs of not being able to continue with the

14 operation.

15 **MR MPOFU:** Right, okay. Now if, so

16 General Mpembe would have been a candidate for removal

17 simply on the basis that everyone who was involved on the

18 13th is being removed. Do you agree that you also got

19 reports from other people that he was emotionally affected?

20 **[11:59] GENERAL MBOMBO:** Yes, as I said I

21 received such a report from Colonel Vermaak. But when I

22 arrived at Lonmin he did not appear to be emotional, that

23 is when he was giving the report although he did not appear

24 to be emotional we had to ensure that he was alright.

25 **MR MPOFU:** And thirdly you were also

1 given a report that death threats had been made against
2 him, correct?

3 **GENERAL MBOMBO:** As you say, yes.

4 **MR MPOFU:** And fourthly, I do not know if

5 you were aware of this, if you're not let me know he

6 himself had made threats to arrest Lieutenant Colonel

7 Vermaak for intimidation?

8 **GENERAL MBOMBO:** I do not remember having

9 knowledge of that at that time.

10 **MR MPOFU:** Anyway, how many people were

11 taken for emotional assessment to see HW?

12 **GENERAL MBOMBO:** I would not be sure of

13 the figures but it was open to all the people who were in

14 the operation of the 13th. We did it likewise on the 16th.

15 **MR MPOFU:** No, General, please, if you

16 do not know the answer just tell me. The first that it

17 well, it may be open to them might well be so, how many

18 people actually went for emotional assessment?

19 **GENERAL MBOMBO:** I am not sure of the

20 figures.

21 **MR MPOFU:** So it could be anything, it

22 could be two, it could be 10, you do not know?

23 **GENERAL MBOMBO:** We can get that

24 information, Mr Chairperson.

25 **MR MPOFU:** Yes, can you please supply the

1 Commission with that information as well as the outcomes of
2 those assessments.

3 **GENERAL MBOMBO:** I will do that.

4 **MR MPOFU:** Did Colonel Merafe for example
5 go for that assessment?

6 **GENERAL MBOMBO:** I do not know, Mr Chairperson.

7 **MR MPOFU:** So, okay you do know that he
8 was there, emotionally affected?

9 **GENERAL MBOMBO:** I know that he was
10 present in the operation of the 13th.

11 **MR MPOFU:** That is not what I asked you.

12 Do you know that he was emotionally affected?

13 **GENERAL MBOMBO:** I am not sure about that.

14 **MR MPOFU:** Well that is what he says in
15 his statement, but we shall get to that later. Alright.

16 **CHAIRPERSON:** Mr Mpofu, I just want to
17 go back to a point you made earlier. You said that the,
18 general, I think it was your fourth reason in the number of
19 reasons you gave why he should have been removed from the
20 further participation in the operation. You said that he
21 had, wanted to know who made the threats and he, when
22 Colonel Vermaak wouldn't tell him, he threatened to open an
23 intimidation case against him. Now that is based on paragraph
24 12 of Colonel Vermaak's second statement which is exhibit
25 LLL8 and it is quite clear from 12, that paragraph, paragraph 12

1 that that threat, the threat that he was going to open an
2 intimidation case if it was made was made at Roots in the
3 subgroup that were discussing the events of the 13th –

4 **MR MPOFU:** Thank you, thank you,

5 Chairperson. Yes, do you, yes, thank you very much,

6 Chairperson. My apologies, General. Did you become aware of it

7 that week, I suppose after the event there was this kind of

8 altercation where General Mpembe threatened to, no not to

9 arrest, to lay a complaint of intimidation against Colonel

10 Vermaak?

11 **GENERAL MBOMBO:** I becomes aware of that

12 late after Vermaak had made a statement.

13 **CHAIRPERSON:** I do not quite understand

14 the relevance of that question because the point that you

15 were busy with was whether it would not have been sensible

16 to have removed General Mpembe from further participation

17 in the operation would include participation in the

18 operation on the 16th.

19 **MR MPOFU:** Yes, Chairperson.

20 **CHAIRPERSON:** Because of the traumatic

21 experiences that he had had on the 13th. So the fact that

22 several weeks later at Roots he allegedly threatened

23 Colonel Vermaak with an intimidation case wouldn't be

24 relevant in that regard, would it?

25 **MR MPOFU:** No, well, Chairperson, I mean

1 honestly I even apologised to the witness for making that
2 point as the fourth point. But I am entitled to ask now
3 that we know that it happened, whether it happened ten
4 years later, whether she knows about another altercation
5 between members of her staff.

6 **CHAIRPERSON:** I understand her to say
7 she did not know.

8 **MR MPOFU:** Yes.

9 **CHAIRPERSON:** So we can move on.

10 **MR MPOFU:** Yes, we are, Chairperson. Now where
11 I am going with this, General, is that from three, now that
12 the other one is eliminated, reason, there was reason
13 enough for the removal of Mpmembe not only from the scene
14 but also from his position as overall commander. Or let me
15 put it this way, let me put it this way. Had the original
16 plan of removing everybody who had been involved on the 13th
17 then you would have had to find another overall commander,
18 correct?

19 **GENERAL MBOMBO:** If he was unable to
20 continue.

21 **MR MPOFU:** Who called up General
22 Annandale to occupy the, whatever the position is, he seems
23 to have many positions?

24 **CHAIRPERSON:** Chief of staff –

25 **MR MPOFU:** And then he was Chairman –

1 **CHAIRPERSON:** Chairman of the JOCCOM.

2 **MR MPOFU:** Then he was second in command

3 then he was the deputy, then he was this and that.

4 **CHAIRPERSON:** Chief of staff means that

5 he was the deputy –

6 **MR MPOFU:** Why, Chairperson, where do we

7 get that?

8 **CHAIRPERSON:** Well that is the evidence I

9 think, the, from exhibit L we see that he, what his

10 functions were. That he was chief of staff, normally chief

11 of staff as I understand it is the deputy to the person

12 whose chief of staff he is, and he was the chairman of the

13 JOCCOM. That is what we know he was.

14 **MR MPOFU:** Okay. Do you understand that

15 in terms of the structures and the prescripts there is no

16 such thing as deputy overall commander?

17 **GENERAL MBOMBO:** But it does not prevent

18 us from having such a person assisting the overall

19 commander.

20 **MR MPOFU:** Do you accept that in the

21 prescripts there is no such position as deputy overall

22 commander, yes or no?

23 **GENERAL MBOMBO:** I agree.

24 **MR MPOFU:** Do you also accept that in the

25 prescripts there is no such thing as Chairman of the JOC?

1 **GENERAL MBOMBO:** There is a chairman of
2 the JOCCOM.

3 **MR MPOFU:** And who is normally –

4 **GENERAL MBOMBO:** It was supposed to be
5 General Mpembe.

6 **MR MPOFU:** Yes.

7 **GENERAL MBOMBO:** But General Mpembe has
8 got a right to ask anyone available that is working with
9 him.

10 **MR MPOFU:** Yes. So normally the person
11 who chairs the JOC is the person who is the overall
12 commander, correct?

13 **GENERAL MBOMBO:** That is normally the
14 case, yes. But anyone present can Chairperson.

15 **MR MPOFU:** Do you also accept that
16 normally you as Provincial Commander if you were to give an
17 important instruction in the whole JOCCOM set up that
18 instruction would be given to the person who's the actual
19 overall commander, normally?

20 **GENERAL MBOMBO:** I agree with you there.

21 **MR MPOFU:** And do you also accept that
22 normally the person, if you can go to exhibit EE please.
23 Would you agree that, oh sorry, alright, would you agree
24 that normally under paragraph 2 in that list of names which
25 is obviously put in some kind of hierarchy that after you

1 the name that one would expect is of the person who is the
2 actual overall commander, normally?

3 **GENERAL MBOMBO:** Mr Chairperson, I do not know
4 even here in the minutes we are supposed to use the
5 hierarchy levels.

6 **MR MPOFU:** Well can you see that in that
7 minute, in those minutes you are on top and right at the
8 bottom is, it is you and then it is the Major General then
9 it is the Brigadier, then it is the Colonel and then it is
10 legal services. So there is some kind of hierarchal
11 pecking order, would you agree?

12 **GENERAL MBOMBO:** I see it as it appears
13 in the minutes.

14 **MR MPOFU:** No, answer my question. Would
15 you agree that in the context of a JOCCOM when you are
16 present obviously your name would come on top. But that
17 normally the next in line would be the overall commander?

18 **GENERAL MBOMBO:** It was supposed to be
19 like that, yes.

20 **MR MPOFU:** Thank you.

21 **CHAIRPERSON:** It is nearly quarter past
22 12 when I said we have to adjourn. Would it be appropriate
23 for us to take the adjournment now till Monday morning 9
24 o'clock?

25 **MR MPOFU:** Chairperson, if I can just

1 round off this point?

2 **CHAIRPERSON:** Alright.

3 **MR MPOFU:** Just so that we finish with
4 this exhibit.

5 **CHAIRPERSON:** Yes, alright.

6 **MR MPOFU:** Thank you.

7 **CHAIRPERSON:** As long as you do it
8 fairly quickly.

9 **MR MPOFU:** I will, Chairperson, and to
10 make it quick. I shall just read out certain portions from
11 that exhibit and then I shall ask you the question. We've
12 already dealt with what is on paragraph 3 where the
13 provincial commissioner instructed Major General Annandale
14 to proceed with the implementation. The next one is
15 paragraph 4, "Major General Annandale informed the meeting
16 that the approach will be as follows," and then it goes on
17 and then you can go to the middle of the next page. Page
18 2, "Major General Annandale went through the following
19 checklists to ensure everything was in place and show
20 adequate batteries," and so on and so on. Then the next
21 page, "Major General Annandale instructed Lieutenant
22 Colonel Scott to ensure that all commanders are briefed
23 accordingly," and so on and then the big one at the bottom,
24 "Major General Annandale instructed Brigadier Pretorius to,
25 and Lieutenant Colonel Scott to report back to the JOC at

1 15:15 as he wanted, he wants the operation to commence at
2 15:30." Now there is no mention whatsoever of Major General
3 Mpmembe, would you agree that somebody reading this document
4 would gain or rather let me put it this way, would you
5 agree that normally the person who should be dishing out
6 instructions and receiving them from a person like you and
7 ensuring that this is done is the overall commander of a
8 particular operation normally?

9 **GENERAL MBOMBO:** That is so, Mr Chairperson.

10 **CHAIRPERSON:** Had been instructed in
11 paragraph 3, Major General Annandale had been instructed by
12 the Provincial Commissioner to proceed with the
13 implementation. So he was the appropriate person in the
14 light of her instructions to do what is recorded at the end
15 of the minutes. Is that not so?

16 **MR MPOFU:** Yes, well that a circular way
17 of –

18 **CHAIRPERSON:** That paragraph does not
19 take it any further, the fact that Brigadier, Major General
20 Annandale gave the instruction to Brigadier Pretorius and
21 Lieutenant Colonel Scott does not take it any further then
22 the passage in paragraph 3 where this witness instructed
23 Major General Annandale to proceed with the implementation.
24 So that is the point you have –

25 **MR MPOFU:** Yes, the cumulative –

1 **CHAIRPERSON:** It is not made stronger by
2 the fact that Major General Annandale then did, then acted
3 in accordance with what the witness had told him.

4 **MR MPOFU:** Yes, well, Chairperson –

5 **CHAIRPERSON:** You can concentrate, just
6 before we take the adjournment on what is said in the end
7 of the third paragraph, that is where, that is your stronger
8 point, is it not where Major General, sorry where the
9 Provincial Commissioner instructed Major General Annandale
10 to proceed with the implementation.

11 **MR MPOFU:** Yes, Chairperson, well I do not
12 completely agree with that, entirely agree with that. The
13 point –

14 **CHAIRPERSON:** Disagree with me or not is
15 of no concern to me, just carry on with your questions.

16 **MR MPOFU:** Well let me explain why. Let
17 me, I have to explain why so that we are on the same page.

18 **CHAIRPERSON:** I told you we have got a
19 time problem.

20 **MR MPOFU:** Yes.

21 **CHAIRPERSON:** May I suggest you make a
22 note, remember what you want to explain because we have to
23 adjourn now.

24 **MR MPOFU:** I do not want to come back –

25 **CHAIRPERSON:** We have to adjourn now.

1 So I am afraid you will have to come back to it on Monday.

2 Because we are now adjourning till Monday morning 9 o'clock.

3 **[COMMISSION ADJOURNED]**

