

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 22 28 NOVEMBER 2012 PAGES 2288 TO 2388

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 28 NOVEMBER 2012]
 2 [09:36] CHAIRPERSON: The Commission resumes.
 3 Before we can proceed with the evidence of Mr Mathunjwa,
 4 are the six gentlemen who were here on Monday present? If
 5 so, can they please come forward?
 6 MR MPOFU: Chairperson, it looks like
 7 they are not here. My attorney has just gone to make
 8 double sure outside but I expect it might be a transport
 9 problem.
 10 CHAIRPERSON: Thank you. – haven't
 11 arrived yet, then we will – I was going to find out from Mr
 12 Budlender to what day he suggests we, on what day he
 13 suggests we should ask them to come back and I was then
 14 going to excuse them from further attendance. They'll
 15 obviously get witness fees again for coming today.
 16 MR MPOFU: Yes.
 17 CHAIRPERSON: And advise them to come
 18 back on a subsequent date.
 19 MR MPOFU: Yes, we have already agreed -
 20 CHAIRPERSON: Perhaps in their absence –
 21 have you agreed?
 22 MR MPOFU: We've agreed on the date,
 23 Chair, so we can do the formalities and then when they come
 24 they can just be advised.
 25 CHAIRPERSON: What date have you agreed

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1 on?
 2 MR MPOFU: 21st January.
 3 CHAIRPERSON: Of January, very well.
 4 That's acceptable, is it?
 5 MR BUDLENDER SC: That's correct, Chair.
 6 CHAIRPERSON: So when they come we will –
 7 perhaps even after the tea adjournment but if they want to
 8 go earlier, you know, they can be interposed, we can deal
 9 with that but we will do that when they're here. I
 10 understand you want to be excused, you have an important
 11 matter in another tribunal tomorrow?
 12 MR MPOFU: That is correct -
 13 CHAIRPERSON: Or sorry, in a tribunal
 14 tomorrow – this is not a tribunal.
 15 MR MPOFU: In the tribunal, Chair.
 16 CHAIRPERSON: The – yes, the top
 17 tribunal.
 18 MR MPOFU: Yes.
 19 CHAIRPERSON: Very well. Thank you, Mr
 20 Mpofo, we will excuse you.
 21 MR MPOFU: Thanks Chair.
 22 CHAIRPERSON: And presumably we will read
 23 in the media in due course about what happens to you
 24 tomorrow.
 25 MR MPOFU: Thank you very much,

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1 Chairperson.
 2 MR BUDLENDER SC: Chairperson, could I
 3 just record what the understanding is between us so that
 4 we're all on the same page and the other parties are also
 5 aware? The arrangement which we've come to is that Mr
 6 Mpofo will provide us today with the names of three
 7 witnesses whom he proposes to call. They deal with – one
 8 of them deals with the events of scene 1, one deals with
 9 the events of scene 2 and the third deals with the events
 10 right through from the 9th to the 16th. The first statement
 11 will be provided to us and we'll pass it on to the other
 12 parties by Friday.
 13 MR MPOFU: Ja.
 14 MR BUDLENDER SC: The other two
 15 statements will be provided by close of session on, close
 16 of business on Tuesday.
 17 MR MPOFU: Or earlier.
 18 MR BUDLENDER SC: Or earlier. So we will
 19 then all know what those three – and of course they'll be
 20 distributed in the usual way. We'll all then know what to
 21 anticipate.
 22 CHAIRPERSON: I take it you confirm that?
 23 MR MPOFU: I confirm, Chair, and the
 24 other part I think we've think with, that the subpoenas
 25 then would be provisionally withdrawn until the 21st.

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1 CHAIRPERSON: No, no, no, I'm not
 2 prepared to do that. I indicated to you that they'd remain
 3 on subpoena, they will be told – they'll be excused –
 4 MR MPOFU: Yes.
 5 CHAIRPERSON: - and be told to come back
 6 on the 21st January. Of course it may be that when the
 7 three witnesses to whom you refer give evidence –
 8 MR MPOFU: That's the point.
 9 CHAIRPERSON: It may appear that it's not
 10 necessary for these gentlemen to come back –
 11 MR MPOFU: That's the –
 12 CHAIRPERSON: - and give evidence
 13 themselves because the witnesses you've chosen cover the
 14 whole area that has to be covered.
 15 MR MPOFU: That's correct, sir.
 16 CHAIRPERSON: But that's something we'll
 17 only know about later on.
 18 MR MPOFU: No, that's fine, Chair. I
 19 just wanted, just for your own edification, Chair, to say
 20 yes, that's part of it. The other part of it is that of
 21 course our preference is, assume the three witnesses don't
 22 cover or satisfy the evidence leaders, of course the first
 23 thing is that they should come to us and we might close
 24 that gap and if we don't then obviously they're free to do
 25 whatever they want to do.

<p style="text-align: right;">Page 2292</p> <p>1 CHAIRPERSON: Yes, but what is already 2 clear – because I indicated it from the beginning – is that 3 provided you are minded to lead any witnesses from your 4 group, as it were, who have been subpoenaed by the evidence 5 leaders, you will be afforded the opportunity to do so. I 6 won't allow the evidence leaders, although they – to 7 override that, and they've already indicated they have no 8 intention of overriding that. 9 MR MPOFU: Thank you, Chair. 10 CHAIRPERSON: So that's no longer an area 11 of dispute. 12 MR MPOFU: No, it's not in issue. 13 CHAIRPERSON: Mr Mathunjwa, you are still 14 under the oath that you took yesterday. 15 JOSEPH VUSI MATHUNJWA: Yes, sir. 16 CHAIRPERSON: Mr Bruinders? 17 EXAMINATION BY MR BRUINDERS SC (CONTD): 18 Thank you. Good morning, Mr Mathunjwa. 19 MR MATHUNJWA: Good morning. 20 MR BRUINDERS SC: Mr Mathunjwa, we 21 stopped short yesterday afternoon of your going to the 22 koppie and addressing workers on the late afternoon of 15 23 August 2012, you remember that? 24 MR MATHUNJWA: Yes, I do remember. 25 MR BRUINDERS SC: What I propose to do</p>	<p style="text-align: right;">Page 2294</p> <p>1 [VIDEO IS SHOWN] 2 CHAIRPERSON: There are two points. One, 3 the sound isn't very good. Perhaps something should be 4 done about the sound so we can hear it. Second – and the 5 witness can hear it too – and secondly, I take it this 6 relates to Wednesday the 15th? 7 MR BRUINDERS SC: That is so, this is the 8 Wednesday the 15th just before he goes to the koppie. 9 CHAIRPERSON: Can we have it again? Play 10 it again, Sam, from the beginning, with clearer diction 11 this time. 12 [VIDEO IS SHOWN] 13 MR BRUINDERS SC: Mr Mathunjwa, you had a 14 look at that? 15 MR MATHUNJWA: Yes. 16 MR BRUINDERS SC: And I hope that you 17 could hear a little bit better than I could as to what 18 people were saying there. 19 MR MATHUNJWA: The sound, there was a lot 20 of noise but I could. 21 MR BRUINDERS SC: Let me start off by 22 asking you this. Why was there that interaction between 23 you and those SAPS officials? 24 MR MATHUNJWA: The SAPS wanted us to 25 board these Nyalas as we were going to address the workers.</p>
<p style="text-align: right;">Page 2293</p> <p>1 now is to have video footage of your visit to the koppie 2 played but I'm going to – I'm going to limit it to two 3 clips and here I'm addressing myself to the Commission. 4 The first clip concerns your interaction with SAPS officers 5 before you go to the koppie and the second clip is your 6 actual address. Those are the only two clips I'm going to 7 play. Commission, they don't need to be interpreted. We 8 do, I think, have a – we do have, I think it was played and 9 interpreted in the transcript. I simply want him to see 10 it. I want him – 11 CHAIRPERSON: If it's already been played 12 and interpreted it doesn't have to be interpreted again. 13 The question is whether it has to be played again but if 14 it's a short clip, a reasonably short clip and it would be 15 helpful to orientate the witness to give his evidence then 16 I take it neither of my colleagues will wish to overrule me 17 when I say we'll allow you to do it. 18 MR BRUINDERS SC: Thank you. 19 CHAIRPERSON: You can carry on. 20 MR BRUINDERS SC: Sir, you'll be shown 21 the clips. There are two clips, Mr Mathunjwa, you'll be 22 shown them, they won't be interpreted and then there are a 23 few questions I'd like to ask you at the end of that. Is 24 that in order? 25 MR MATHUNJWA: I'm ready.</p>	<p style="text-align: right;">Page 2295</p> <p>1 So we were trying to persuade them that we are not in the 2 position, we don't want to get into those Nyalas, we want 3 to approach the workers face to face and address them. 4 MR BRUINDERS SC: Why did you prefer to 5 walk to the koppie and face, as you put it, the strikers 6 face to face? 7 MR MATHUNJWA: Those are the workers, are 8 human beings. I don't see any danger to approach them. 9 MR BRUINDERS SC: You – in the clip we 10 see you speaking to a rather large man in a sort of khaki- 11 looking uniform with a helmet on. Did you see that? 12 MR MATHUNJWA: Yes, I did. 13 MR BRUINDERS SC: Who was that? 14 MR MATHUNJWA: If I'm not mistaken, it's 15 Macintosh. 16 MR BRUINDERS SC: We can't hear what – 17 CHAIRPERSON: I'm sorry to interrupt you, 18 Mr Bruinders. As far as I can recall, the gentleman with 19 the helmet looked to me like an African gentleman. Next to 20 him was someone, I think without a helmet, who looked like 21 a white policeman. Obviously Macintosh – if Macintosh is 22 the one you spoke you, it would seem that he was the one 23 without the helmet, unless I saw wrongly. You want to know 24 the name of the, I take it the black gentleman who was 25 wearing a helmet, is that right?</p>

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1 MR BRUINDERS SC: No, I want to know the
 2 name of the large white man that he was speaking to.
 3 CHAIRPERSON: I take it the witness now
 4 knows what you want, so give us the answer.
 5 MR BRUINDERS SC: You said it was
 6 Macintosh?
 7 MR MATHUNJWA: Yes.
 8 MR BRUINDERS SC: We can't hear what you
 9 are saying there. Can you recall what the exchange was
 10 between the two of you?
 11 MR MATHUNJWA: The exchange, if I could
 12 recall, was more suggesting to him that, I mean we need to
 13 proceed to those workers and to approach them face to face
 14 without being transported by these Nyalas or Hippos.
 15 MR BRUINDERS SC: Why did those officials
 16 insist that you travel in the Nyalas to the koppie?
 17 MR MATHUNJWA: Then I have to take you a
 18 little bit back to the JOC. When we arrived at the JOC
 19 when we were from LPD meeting, we met General Mpembe and
 20 other generals who laid down the rules of how to approach
 21 koppie. One of the rules was, no-one is allowed to use his
 22 or her private vehicle. Two, there will be an escort that
 23 will be provided to us to approach koppie. And three, we
 24 will be under the supervision of the SAPS. Those were the
 25 bases.

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1 MR BRUINDERS SC: I take it that when the
 2 rules were laid down at the JOC, you had no difficulty with
 3 those rules.
 4 MR MATHUNJWA: Would you please repeat
 5 your question?
 6 MR BRUINDERS SC: When the rules were
 7 laid down at the JOC, did you have any difficulty with
 8 those rules?
 9 MR MATHUNJWA: Yes, I did have a
 10 difficulty with those rules.
 11 MR BRUINDERS SC: What was your
 12 difficulty?
 13 MR MATHUNJWA: Is to be escorted by the
 14 police to the koppie and not using our private vehicle to
 15 approach those workers.
 16 MR BRUINDERS SC: And why was that a
 17 problem?
 18 MR MATHUNJWA: I think it was a problem
 19 to me personally because it will be translated as if those
 20 workers are people who are not reasonable.
 21 MR BRUINDERS SC: Why did you not want to
 22 give those workers the impression that you do not think
 23 that they were unreasonable?
 24 MR MATHUNJWA: Because it was the first
 25 time I'll be meeting those workers, so I didn't have

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1 anything to do with whatever that was happening at the mine
 2 by that stage. So therefore I wanted to present myself as
 3 a neutral person who wants to hear what is really
 4 happening.
 5 MR BRUINDERS SC: Could you persuade the
 6 SAPS to allow you to walk to the koppie, even as we heard
 7 there, with them coming with you?
 8 MR MATHUNJWA: No, couldn't.
 9 MR BRUINDERS SC: So how did you get to
 10 the koppie?
 11 MR MATHUNJWA: Then we had to board one
 12 of the Nyalas.
 13 MR BRUINDERS SC: And is that how you got
 14 to the koppie?
 15 MR MATHUNJWA: Yes, that's how.
 16 MR BRUINDERS SC: And when you got to the
 17 koppie, where did you address the workers from?
 18 MR MATHUNJWA: Inside the Nyala.
 19 [09:56] MR BRUINDERS SC: We're now going to play
 20 just the clip of your address and we don't need it
 21 interpreted. I would like you to have a look at it and
 22 then ask you a few questions afterwards.
 23 MS PILLAY: Mr Chairperson, if I may just
 24 mention for the purposes of the record that the clip which
 25 was just shown, clip 38 is Exhibit BB2 in the exhibit list

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1 and the current one, I think it's clip – we need to see
 2 clip 41, is Exhibit BB5 on the list.
 3 CHAIRPERSON: I was actually going to ask
 4 you to give us those details after we'd seen the clip, but
 5 thank you for giving it to us now.
 6 MR BRUINDERS SC: We, too, are indebted
 7 to Ms Pillay who's doing a sterling job here on the
 8 exhibits.
 9 CHAIRPERSON: I don't know that it's fair
 10 to limit it just to the exhibits front but nevertheless, if
 11 that's the way you want to do it, I won't fight you.
 12 [VIDEO IS SHOWN]
 13 MS PILLAY: And I think 40, clip 40 is
 14 BB4.
 15 [VIDEO IS SHOWN]
 16 CHAIRPERSON: Before we proceed, can I
 17 just ask Ms Pillay a question to which I don't think she
 18 can give us the answer now but she may be able to give us
 19 later. I take it that that clip we saw, we have seen
 20 already and when we saw it, we received a translation from
 21 the interpreter which is obviously transcribed. So we'd be
 22 grateful if, after tea, you can give us the references of
 23 the transcripts to the interpreter's translation of the
 24 speeches we've just seen on the clip.
 25 MS PILLAY: I will be able to do that.

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1 CHAIRPERSON: I'm sure you will, thank
2 you. Sorry, Mr Bruinders, you can proceed with your
3 evidence-in-chief.
4 MR BRUINDERS SC: The references are at –
5 it's the transcript of the 20th November 2012 and it runs
6 from, Mr Chaskalson introduces it at page 1810 and it
7 continues through to page 1823.
8 CHAIRPERSON: Thank you, Mr Bruinders.
9 Ms Pillay, you won't have to give us the information after
10 all. You'd better check it just to make sure it's right.
11 MR BRUINDERS SC: We insist, Chair. Mr
12 Mathunjwa, the first clip that we saw, do you confirm that
13 it is an accurate recording and shows fairly accurately
14 what happened between you and those SAPS officials just
15 before you went to the koppie?
16 MR MATHUNJWA: That's correct.
17 MR BRUINDERS SC: And the clip – do you
18 confirm that the second clip that we saw, which is when you
19 addressed the strikers from the Nyala, do you confirm that
20 that is an accurate recording of your address to the
21 strikers?
22 MR MATHUNJWA: That's correct.
23 MR BRUINDERS SC: The interpretation of
24 what you said is to be found in English at pages 1811 to
25 1823 of the record of the 20th November. Do you have a copy

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1 of that in front of you?
2 MR MATHUNJWA: Yes, I do have.
3 MR BRUINDERS SC: Have you as yet had an
4 opportunity to establish for yourself whether you are
5 satisfied that the English translation or interpretation is
6 reasonably accurate?
7 MR MATHUNJWA: Although I just received
8 it this morning but I concur that it's fairly accurate.
9 MR BRUINDERS SC: What was the essence of
10 your message in that address to the strikers?
11 MR MATHUNJWA: Was for the strikers to
12 return back to work and hence to lay down, if they've got
13 any weapons with them.
14 MR BRUINDERS SC: After you address and I
15 think there might even have been another one after yours,
16 did the strikers actually talk to you?
17 MR MATHUNJWA: Yes, after my address
18 there was a response from the strikers.
19 MR BRUINDERS SC: And how did that take
20 place?
21 MR MATHUNJWA: They came to the Impala
22 and then – the Nyala, sorry, Nyala/Impala/nyamazana –
23 Nyala, okay. My apology to that one.
24 MR MAHLANGU: I was just going to say
25 that he's making a mistake because both Nyala and Impala

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1 are animals.
2 CHAIRPERSON: So are elephants.
3 MR BRUINDERS SC: So you say strikers
4 came up to the Nyala?
5 MR MATHUNJWA: That's correct.
6 MR BRUINDERS SC: Could you tell how
7 many?
8 MR MATHUNJWA: Inasmuch I couldn't
9 recall, but there were more than three.
10 MR BRUINDERS SC: And was there then a
11 conversation between those people, the three or more
12 strikers who came up to the Nyala, and you?
13 MR MATHUNJWA: Yes. I mean they
14 responded from the message I'd given, which I gave to them.
15 MR BRUINDERS SC: Chair, there's a
16 recording of that exchange and we'd like to play it and
17 this, I'm afraid, will have to be interpreted for our
18 benefit.
19 CHAIRPERSON: Ms Pillay will give us the
20 exhibit number in due course.
21 MR BRUINDERS SC: Correct. It's a new –
22 sir, I suspect Ms Pillay will give us a new number.
23 CHAIRPERSON: Because I have
24 [indistinct].
25 MS PILLAY: Chair, the number is OO6.

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1 It's the audio clip of the responses of the miners to Mr
2 Mathunjwa's address on the 15th August 2012.
3 CHAIRPERSON: Thank you. What is OO5?
4 MS PILLAY: OO5, Chair, is the audio clip
5 of the meeting of the 15th of August 2012.
6 CHAIRPERSON: Is that not already before
7 us?
8 MS PILLAY: No, it's not yet. It was –
9 CHAIRPERSON: Alright.
10 [10:16] MS PILLAY: For the benefit of the
11 parties, this clip was included in the bundle of new AMCU
12 documents that were distributed two days ago.
13 [VIDEO IS SHOWN]
14 MR MAHLANGU: Somebody is speaking in
15 Fanagolo. If it could be replayed again, I've got it where
16 it says –
17 [VIDEO IS REPLAYED]
18 MR MAHLANGU: We are having all this, we
19 are having the spears because they are shooting at us.
20 [VIDEO IS SHOWN]
21 MR MAHLANGU: I will request again for it
22 to be played back.
23 [VIDEO IS REPLAYED]
24 MR MAHLANGU: That is the problem. The
25 problem is about Zokwana. We don't want to see him here.

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1 [VIDEO IS SHOWN]
 2 MR MAHLANGU: There was just a small
 3 piece that was skipped, if it could be taken back again.
 4 [VIDEO IS REPLAYED]
 5 MR MAHLANGU: We don't want to see him
 6 here, together with his police.
 7 [VIDEO IS SHOWN]
 8 MR MAHLANGU: I'm sorry, Chair, if it
 9 could be played back again? It's not very clear.
 10 [VIDEO IS REPLAYED]
 11 MR MAHLANGU: It sounds as if the word is
 12 either "pusa" or "kuza". If it's "pusa" then it means he
 13 is drinking together with his police, that is why we don't
 14 want him here.
 15 [VIDEO IS SHOWN]
 16 CHAIRPERSON: "Pusa" or "kuza," you said
 17 if it's "pusa" it means he's drinking with his police.
 18 MR MAHLANGU: Yes.
 19 CHAIRPERSON: If it's "kuza" what does it
 20 mean?
 21 MR MAHLANGU: If it's "kuza" it's that he
 22 is reprimanding them together with his police.
 23 MR BRUINDERS SC: I see Mr Mathunjwa
 24 shaking his head. Do you have a comment, Mr Mathunjwa?
 25 MR MAHLANGU: Mr Mathunjwa says it's not

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1 clear, if they could play it back again.
 2 MR MATHUNJWA: Maybe if I could be
 3 allowed, maybe I will be able to assist in this
 4 interpretation.
 5 [VIDEO IS REPLAYED]
 6 MR MAHLANGU: The sound here is very bad,
 7 it's not at all clear what he's saying. He says what I'm
 8 talking about – if it could be replayed again?
 9 [VIDEO IS REPLAYED]
 10 MR MAHLANGU: That is what I am talking
 11 about, we don't want him here.
 12 [VIDEO IS SHOWN]
 13 MR MAHLANGU: Talking about what I am
 14 saying, they don't take into consideration. I want to
 15 build my home.
 16 [VIDEO IS SHOWN]
 17 MR MAHLANGU: If it could be repeated
 18 once more.
 19 [VIDEO IS REPLAYED]
 20 MR MAHLANGU: Here he's saying, if I
 21 build a house and there is misunderstanding between me and
 22 my wife, I leave my wife and I go out and I get another
 23 wife.
 24 [VIDEO IS SHOWN]
 25 MR MAHLANGU: You go and get another wife

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1 with whom there would be understanding.
 2 [VIDEO IS SHOWN]
 3 MR MAHLANGU: A wife with whom one will
 4 understand and that is the reason we do not want Zokwana.
 5 [VIDEO IS SHOWN]
 6 MR MAHLANGU: We do not want Zokwana, we
 7 want the people that come from AMCU. We want the people
 8 from AMCU to come back tomorrow and we talk to them. If
 9 this last piece would again just be repeated?
 10 [VIDEO IS REPLAYED]
 11 MR MAHLANGU: Even if they could come
 12 together with the police. To there –
 13 [VIDEO IS REPLAYED]
 14 MR MAHLANGU: Even if they would come
 15 back with the police or the soldiers we –
 16 [VIDEO IS REPLAYED]
 17 MR MAHLANGU: Even if they can come with
 18 the police and the soldiers, we will talk to them and then
 19 we will go back –
 20 [VIDEO IS SHOWN]
 21 MR MAHLANGU: The way in which he spoke
 22 to us, we don't to see him, Zokwana should go away together
 23 with his police. Again this last piece, if it could be
 24 played again.
 25 [VIDEO IS REPLAYED]

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1 MR MAHLANGU: This is not very clear. If
 2 that could be played back again, I'm sorry.
 3 [VIDEO IS REPLAYED]
 4 MR MAHLANGU: Because – Zokwana must go
 5 away because he is only filling up his tummy, he's filling
 6 up his stomach. We have been listening to what you have
 7 been saying. If he could come back tomorrow we will listen
 8 to what you were saying. Come back tomorrow. Come back
 9 tomorrow as AMCU – and the last, the last piece again once
 10 more?
 11 [VIDEO IS REPLAYED]
 12 MR MAHLANGU: This is not very clear, if
 13 it could be played again?
 14 [VIDEO IS REPLAYED]
 15 MR MAHLANGU: If you could reverse it
 16 once more?
 17 [VIDEO IS REPLAYED]
 18 MR MAHLANGU: Even if you can come back
 19 tomorrow together with the police, we are not fighting. We
 20 are not fighting if they are not fighting us. We are not
 21 fighting. We do not want this Zokwana from now on. We do
 22 not want Zokwana from now on. Somebody is starting by
 23 saying, "Power." Repeated again and the crowd screams from
 24 the background, it's ours, power is ours. Speaking in
 25 Sesotho, workers – if this last piece could be repeated

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1 once more?

2 [VIDEO IS REPLAYED]

3 MR MAHLANGU: We hear that it is AMCU

4 that is – we that it is AMCU, it's you that are coming with

5 help, we hear it's you, the people that are locked up

6 inside there. Please come back to us tomorrow at nine.

7 Come and talk to us as you are talking to us now. The

8 people from the NUM have – just repeat again?

9 [VIDEO IS REPLAYED]

10 MR MAHLANGU: Please proceed a bit, ja.

11 The word "babu", it's not a complete word. It's said the

12 people from the UDM and then something. I'm getting – NUM,

13 the people from NUM, not UDM.

14 [VIDEO IS SHOWN]

15 MR MAHLANGU: It ended up again at the

16 same point, where it says the people from the NUM, "babu" –

17 that word is not complete. Does it end there?

18 [10:36] MR BRUINDERS SC: I think we move on to

19 the next speaker now who responds, I think that's the next

20 clip.

21 MR MAHLANGU: I just want to draw the

22 Chairman's attention to the fact that the last, very last

23 sentence was a word that is incomplete. It says, the

24 people from the NUM "babula" and it's not a complete word.

25 It's not a complete word. Yes, he says the people from NUM

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1 they have "babu" – that word "babula", "babula" cannot be

2 inferred to have any meaning. It could be –

3 MS PILLAY: Mr Chairperson, if I

4 understand, Mr Dos Reis says that the clip ends at that

5 point.

6 CHAIRPERSON: That was clear to us. It

7 ended in the middle of a word.

8 MR MAHLANGU: It ended in the middle of a

9 word, Mr Chairperson, I'm a bit afraid to give an exact

10 meaning. I could infer what it was but it's not complete.

11 CHAIRPERSON: Can we move on to the next

12 –

13 MR BRUINDERS SC: The next clip, yes.

14 CHAIRPERSON: Is that clip ready to be

15 played to us?

16 MR BRUINDERS SC: Yes.

17 CHAIRPERSON: Do we have to have another

18 exhibit indication?

19 MS PILLAY: Chair, this clip would be

20 OOT.

21 CHAIRPERSON: Thank you.

22 [VIDEO IS SHOWN]

23 MR MAHLANGU: Mr Chairperson, may I ask

24 one of the other interpreters to come? It's Maputo

25 Shangaan that is being spoken here. Mr –

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1 CHAIRPERSON: Certainly. Have we sworn

2 this Maputo Shangaan interpreter in?

3 MR MAHLANGU: Yes.

4 CHAIRPERSON: Yes, alright, so he can

5 take your place and interpret the – is this clip going to

6 be in Shangaan?

7 MR MAHLANGU: It's in – it's Maputo

8 Shangaan, yes.

9 CHAIRPERSON: Maputo Shangaan, thank you.

10 MR MAHLANGU: Maybe it could be played in

11 the meantime, from the beginning –

12 CHAIRPERSON: Is the Maputo Shangaan

13 interpreter ready to hear it?

14 MR MAHLANGU: He's on his way.

15 CHAIRPERSON: Well, we'd better wait for

16 him to come before it's played because otherwise he'll have

17 to interpret something he hasn't heard which might be

18 difficult, whatever language it's in. While we're waiting,

19 can I ask you this? Is this the last clip that you're

20 going to show because if there's another clip which

21 requires interpretation from isiXhosa or Fanagolo then we

22 can proceed with that now, just while the Maputo Shangaan

23 interpreter is being fetched. I take it Maputo Shangaan is

24 a Tsonga dialect spoken on the Mozambique side or rather –

25 on the Mozambique side of the border as opposed to the

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1 dialect spoken in Mpumalanga, would that be correct, and

2 possibly Limpopo?

3 MR MAHLANGU: It is so.

4 CHAIRPERSON: Thank you.

5 MR BRUINDERS SC: Chair, you will have

6 noticed that, unlike my colleagues, I refrain from a

7 linguistic role here. I know nothing about any of these

8 languages including English, I might add.

9 CHAIRPERSON: We'll swear in an

10 interpreter to interpreter your questions too then.

11 MR BRUINDERS SC: But there are other

12 clips, yes, so we can play them.

13 CHAIRPERSON: The interpreter I think has

14 now arrived. I don't know whether he came from Maputo but

15 anyway, he's arrived.

16 [VIDEO IS SHOWN]

17 MR MAVHUNDA: All the workers plus the

18 people of the AMCU, we workers at the mine, while always in

19 trouble, representatives of all – go, just play it again,

20 the last portion?

21 [VIDEO IS REPLAYED]

22 MR MAVHUNDA: We say that the

23 representatives who are here, we will not agree with

24 actually because we don't come to an agreement together.

25 Once you are their leader, you should come on – arrive at

<p style="text-align: right;">Page 2312</p> <p>1 the time, don't come at a later stage. 2 [VIDEO IS SHOWN] 3 MR MAVHUNDA: Repeat it. 4 [VIDEO IS REPLAYED] 5 MR MAVHUNDA: You cannot come and address 6 us without seeing you. Repeat it please? 7 [VIDEO IS REPLAYED] 8 MR MAVHUNDA: 140? 9 [VIDEO IS REPLAYED] 10 MR MAVHUNDA: He's speaking 140, which I 11 cannot understand what does it mean. 12 CHAIRPERSON: There seem to be some 13 people in the auditorium who understand it because they 14 think it's funny and are laughing but I don't know that we 15 need delay any further in trying to decipher what that is. 16 Perhaps you can just interpret the next section and 17 possibly after the adjournment we could come back to it. 18 So I think carry on with the recording and we'll have a gap 19 that you can't interpret and perhaps after tea when you've 20 consulted the experts in the audience, you can tell us. 21 [VIDEO IS SHOWN] 22 MR MAVHUNDA: What he's saying, that 23 don't take a photo of mine. A photo, don't take a photo – 24 yes, of me. 25 [VIDEO IS SHOWN]</p>	<p style="text-align: right;">Page 2314</p> <p>1 MR MAVHUNDA: We would like to see you 2 outside so that everybody could see you, not remain into 3 the vehicle or the car. I'm just asking you that it will 4 be better that you come the following morning so that we 5 could see you in person. He says thank you, that is 6 "siyabonga nakensa" in Shangaan. 7 MR MAHLANGU: If the very last piece 8 could be played that was in Xhosa again? 9 [VIDEO IS SHOWN] 10 MR MAHLANGU: We will now hand over to 11 the comrade so that we get back the report that we had 12 brought to you. We will come back about the request that 13 you have given to us. Somebody says, "Power" and then he 14 says viva to the workers, viva. Again a repetition of viva 15 to the workers, viva. Be strong, be strong, viva to the 16 workers, viva. The workers, I am going to start by – we 17 want to work with AMCU because as we are seated at this 18 place here, it's about we want money. I'm sorry, if the 19 last piece could again be repeated? 20 [VIDEO IS REPLAYED] 21 MR MAHLANGU: The reason we are seated 22 here is because we want money, and then something is being 23 said that doesn't sound very clear. There's a lot of 24 screaming here that's making it not clear what he is 25 saying. The speaker is using, he's just screaming, there's</p>
<p style="text-align: right;">Page 2313</p> <p>1 MR MAVHUNDA: The words said, it is your 2 president but he said don't take a photo of me. 3 [VIDEO IS SHOWN] 4 CHAIRPERSON: I thought I heard the 5 English word "recognise" but I may I have misheard. 6 MR MAVHUNDA: I don't, I didn't – 7 MR MAHLANGU: It could be replayed. 8 MR MAVHUNDA: Replay it, please? 9 [VIDEO IS REPLAYED] 10 MR MAHLANGU: What he's saying here is 11 that if you are the member of the NUM, we wouldn't listen 12 to you because it's long that we have been dealing with 13 you. If it's you, that is the NUM members, who are 14 speaking to us, we are not seeing you. We would like to 15 see you the following day, that is about 9 o'clock. We can 16 – it is late, it's in the evening, we cannot see you, it 17 will be better that you should come back tomorrow so that 18 we could see you at about 9 o'clock in the morning the 19 following day. We would like to see you face to face while 20 you are busy addressing us. You shouldn't come and address 21 us being into the vehicle that we could not see you. We 22 would love to see you face to face while addressing us. 23 It's too fast, would you play it again please, slowly, that 24 I could understand? 25 [VIDEO IS REPLAYED]</p>	<p style="text-align: right;">Page 2315</p> <p>1 a sound behind it that makes the voice very unclear. 2 [10:46 3 [VIDEO IS SHOWN] 4 MR MAHLANGU: I'm sorry, Mr Chairperson, 5 it's really not clear what he's saying here. He says we 6 are here because of money and then he says the whole thing 7 is about ripe, we want to say one thing only and that is – 8 [VIDEO IS SHOWN] 9 MR MAHLANGU: He says, we want to say one 10 thing, that we want money. The whole thing is just ripe. 11 What they are here for is ripe. It's ripe, yes, the only 12 thing we want to say is that we want money. 13 CHAIRPERSON: Is that the end of the 14 clip? 15 MR BRUINDERS SC: That is the end of that 16 clip. There's another one – 17 CHAIRPERSON: It seems an appropriate 18 stage to take the tea adjournment. The Commission will 19 adjourn for the tea adjournment. 20 [COMMISSION ADJOURNS COMMISSION RESUMES] 21 [11:22] CHAIRPERSON: The Commission resumes. 22 Yes, Mr Bruinders? Oh sorry, Mr Mathunjwa, it's my duty to 23 remind you that you're still under oath. Mr Bruinders? 24 EXAMINATION BY MR BRUINDERS SC (CONTD): 25 Thank you, we were at the point where there was a clip,</p>

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1 another clip about to be played to Mr – or for us.
 2 CHAIRPERSON: Ms Pillay?
 3 MS PILLAY: It's OO8, Chair. Just to be
 4 clear, Chair, OO6 is clip 12, OO7 is clip 14 and OO8 is
 5 clip 15. That's from the latest AMCU documents.
 6 CHAIRPERSON: The latest one is clip
 7 number?
 8 MS PILLAY: This is clip 15.
 9 CHAIRPERSON: 15, that's OO8. Thank you.
 10 [VIDEO IS SHOWN]
 11 MR MAHLANGU: We want to talk to you face
 12 to face so that the employer, to make a decision as to how
 13 long, how much time we're going to give the employer. We
 14 want to know the truth before leaving here, that we are
 15 going to get it. If it – that you are going to get it – if
 16 it not be so, never. I am through. The word "power" is
 17 repeated in Zulu, in Xhosa and Shangaan and in Sotho.
 18 Forward with the right of the workers, forward. Our
 19 leaders, you have spoken, you have spoken, we have heard
 20 you. It's only a fool that can say he did not understand
 21 what you were saying. We are asking your permission that
 22 we take this matter back to the employer, that you are not
 23 refusing to go back to work but you want to be given
 24 permission to talk to your leaders tomorrow at nine, that
 25 we determine the way forward. I believe that if the

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1 employer is wise enough, he would not deny you that
 2 request. I think this is the way that is taking us
 3 forward, but what I'm asking from you, my fellow South
 4 Africans, is that we should persevere. The name of AMCU
 5 has been dirtied, it has been made dirty throughout the
 6 world, in the whole South Africa – world - in the whole
 7 South Africa, that it is AMCU that is killing people. I am
 8 making a request to you people that, my plea to you is that
 9 such things should not happen again. I am not, by so
 10 saying, that as you are seated there that you are killing
 11 people, because the stories that are being spread inside
 12 the country and outside the country is that this union has
 13 come to kill people. My plea to you, comrades, is that you
 14 give me a chance so that we go back to the employer to talk
 15 to him, not to act stupid, so that tomorrow - until
 16 tomorrow, so that we come tomorrow and talk to you
 17 personally whilst the sun is shining, so that we can
 18 together proceed forward. Power. If there's any other
 19 thing that the employer would want to say, we would ask the
 20 police to bring us back to you but I think it has been
 21 cleared in your ears that we have heard you as workers, you
 22 have spoken to our ears. I see another leader coming
 23 forward here. I see another leader coming forward, I think
 24 he wants to say something but we are going to ask him to be
 25 brief because the time is against us. As you all know,

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1 comrades, that there are some people here who are in charge
 2 of us. I thank you. Somebody is speaking in Fanagolo.
 3 And the thing I want to say now, we are making a plea to
 4 you that when you come back here tomorrow – if the last
 5 piece would be again repeated?
 6 [VIDEO IS REPLAYED]
 7 MR MAHLANGU: As we have been talking
 8 here, we want to proceed forward. We – our request is
 9 that, to the police that all the vehicles that are here,
 10 they should go away, but that when you come tomorrow at
 11 nine you can come with them but for the moment our request
 12 is that, as you are leaving now, please go with them so
 13 that we see them tomorrow. Thank you, comrades, thank you.
 14 We thank you. We thank you, we will do as you have said,
 15 our leaders. Amandla, power. The same word is repeated in
 16 Tsonga and Shangaan, mathemba, power. The last person to
 17 have spoken is, we thank you, "mena ngwazi." "Ngwazi" is
 18 actually referred to, the former king of the Zulus,
 19 Seshaka.
 20 MR BRUINDERS SC: Thank you. Mr
 21 Mathunjwa, the –
 22 CHAIRPERSON: Mr Bruinders, is that the
 23 last clip that you're going to give us this morning?
 24 MR BRUINDERS SC: For now, yes.
 25 CHAIRPERSON: Perhaps this is a suitable

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1 stage for me to do something I should have done when we
 2 resumed after the tea adjournment, that's to ask Mr Mmusi
 3 if the six gentlemen who were here on Monday are here again
 4 today, so we can advise them that they can leave, hopefully
 5 receive their witness fees before they go and come back on
 6 the 21st of January. Mr Mmusi, are you able to help us in
 7 that regard?
 8 MR MMUSI: Mr Chairman, I understand they
 9 are here.
 10 CHAIRPERSON: [Indistinct] gentlemen here
 11 before us. Can we have their names, please?
 12 MR MAHLANGU: Lungani Mabotyana,
 13 Sethembele with an "s", Sethembele Ntakana, Fusi Mohale,
 14 F-U-S-I Mohale. The next one is Tembinkosi Mtjo. Mlambisa
 15 Thokotkwana.
 16 CHAIRPERSON: Gentlemen, we won't be
 17 needing your evidence today and in fact you are excused
 18 from further attendance – you're still subject to the
 19 subpoena but you're excused from further attendance until
 20 the 21st January. Please be here on the 21st of January
 21 next year at 9AM. In the meanwhile you're excused. You
 22 can obviously stay in the auditorium if you wish but before
 23 you go home I suggest you ask the officials for your
 24 witness fees for coming today. If you need a letter or if
 25 you need letters to show your employers - your employer, I

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1 take it, in each case is Lonmin – that you are required on
 2 the 21st of January, I'm sure the evidence leaders will be
 3 able to assist you in that regard. Thank you, you may go
 4 now. Yes, you don't have to go – you can stay in the
 5 auditorium and listen to the evidence if you wish. Mr
 6 Bruinders, I take it you've reached paragraph 51 of the
 7 exhibit that was handed in yesterday, Exhibit NN, is that
 8 correct?
 9 MR BRUINDERS SC: That's correct. That's
 10 the statement.
 11 CHAIRPERSON: Yes.
 12 MR BRUINDERS SC: Yes.
 13 CHAIRPERSON: You've also indicated that
 14 there might be further clips later, do I understand you
 15 correctly?
 16 MR BRUINDERS SC: Yes.
 17 CHAIRPERSON: May I ask, if it's
 18 possible, in order to shorten proceedings if, in respect of
 19 future clips you're going to hand in, it might be possible
 20 to – perhaps during the lunch adjournment – to arrange for
 21 a transcript to be prepared of what's said in English,
 22 possibly agreed with the interpreter, so that we're able to
 23 proceed at a reasonable rate in regard to this evidence.
 24 It may not be possible this time, today, but it would be
 25 helpful I think for the future and also obviously this

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1 applies to everybody, in respect of subsequent witnesses
 2 called by any of the parties.
 3 MR BRUINDERS SC: Yes, I don't think that
 4 there'll be any clips of this nature. You'll hear in a
 5 moment where these particular clips come from but obviously
 6 we'll do our best to shorten the proceedings by talking to
 7 the interpreter. Thank you, Chair. Mr Mathunjwa, we have
 8 this morning listened to a number of recordings of the
 9 exchanges between some of the strikers and you, and you and
 10 the strikers, not so?
 11 MR MATHUNJWA: That's correct.
 12 MR BRUINDERS SC: How were those
 13 exchanges recorded?
 14 MR MATHUNJWA: In the last clips?
 15 MR BRUINDERS SC: Yes.
 16 MR MATHUNJWA: Those were my recordings.
 17 MR BRUINDERS SC: And how did you record
 18 that?
 19 MR MATHUNJWA: I used my cell phone to
 20 record it.
 21 MR BRUINDERS SC: Commission, just for
 22 your purposes, the recording on the cell phone was
 23 downloaded onto a CD, which is what we have been listening
 24 to.
 25 [11:42] CHAIRPERSON: If anyone has any doubts

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1 about the accuracy of the recording, you'll make the
 2 original - the original cell phone or mobile phone
 3 recording is still available?
 4 MR BRUINDERS SC: It is and, ironically,
 5 it's a much better – it's much better sound than the CD
 6 recording. Mr Mathunjwa, can we – before we leave the
 7 recording – ask you this. Do you confirm that that
 8 recording that we listened to or those recordings we
 9 listened to of those exchanges, that they are accurate?
 10 MR MATHUNJWA: Yes, I confirm that.
 11 MR BRUINDERS SC: At the end of your
 12 exchange with the strikers' leaders who came out of the
 13 mass of strikers to talk to you, at the end of that what,
 14 in a nutshell, did you understand them to say to you?
 15 MR MATHUNJWA: I understand that they
 16 following day they were prepared to engage with what the
 17 employer was saying and also hinting that they are prepared
 18 even to go to work, to return to work.
 19 MR BRUINDERS SC: What was it that the
 20 employer was saying at that stage when you addressed the
 21 strikers on the koppie on the evening of the 15th?
 22 MR MATHUNJWA: I think I will ask you to
 23 repeat the question for the interpreter to be able to try
 24 to interpret what you've just said, please.
 25 MR BRUINDERS SC: I'll try my best. You

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1 said that you understood that the strikers were prepared to
 2 engage on the following day with what the employer was
 3 saying, do you recall that?
 4 MR MATHUNJWA: Yes, I do recall.
 5 MR BRUINDERS SC: By the time that you
 6 addressed the strikers on the evening of the 15th, what was
 7 it that the employer was saying?
 8 MR MATHUNJWA: The strikers, they started
 9 by recording that they were shot at –
 10 MR BRUINDERS SC: Forgive me, I didn't
 11 make myself clear. My question was, what was it that the
 12 employer, Lonmin, was saying at the time you went to speak
 13 to the strikers?
 14 CHAIRPERSON: Mr Bruinders, to save time,
 15 he already said it and it's in paragraph 40 of Exhibit NN,
 16 which he's already confirmed to be correct. So I don't
 17 think we have to waste time on it, unless there's some
 18 qualification he wants to introduce.
 19 MR BRUINDERS SC: There is and perhaps I
 20 should just refer him then to paragraph 40. If you go to
 21 paragraph 40 of your statement and read it, is that what
 22 the employer was saying by the time you went to the koppie?
 23 MR MATHUNJWA: Yes, that's correct.
 24 MR BRUINDERS SC: And that is, "Workers
 25 renounce violence and return to work peacefully and then

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1 Lonmin would engage with their grievances.”

2 MR MATHUNJWA: That's correct.

3 MR BRUINDERS SC: Did you, after you had

4 – I beg your pardon, just one more question. The second

5 last person that we heard on the clip, who was that?

6 MR MATHUNJWA: It's one of the strikers.

7 MR BRUINDERS SC: After you completed

8 that exchange with the strikers and said to them that you

9 were going to leave, what time was that?

10 MR MATHUNJWA: It was dark. It was at

11 night, I would say.

12 MR BRUINDERS SC: When you left the

13 koppie, where did you go to?

14 MR MATHUNJWA: We'd gone back to the

15 place called JOC.

16 MR BRUINDERS SC: Why did you go back to

17 the JOC?

18 MR MATHUNJWA: That was per the

19 instruction or the protocol that was said that we have to

20 return back for the debriefing.

21 MR BRUINDERS SC: And that you deal with

22 in paragraph 52 of your statement, not so?

23 MR MATHUNJWA: That's correct.

24 MR BRUINDERS SC: Now, will you please

25 read paragraph 53 into the record?

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1 MR MATHUNJWA: The paragraph reads as

2 follows: “The debriefing was about two issues, the first

3 was safety and security, that will be under the care of the

4 general. The second was labour relations, that will be

5 under the care of management represented by Mr Kwadi and Mr

6 AB Kgotle. It was made clear that we should report to

7 these people separately in relation to these two issues.”

8 MR BRUINDERS SC: Did you report to the

9 SAPS?

10 MR MATHUNJWA: Yes, on our way back

11 during the debriefing, we did.

12 MR BRUINDERS SC: Did you report back to

13 Lonmin?

14 MR MATHUNJWA: Yes, indeed.

15 MR BRUINDERS SC: What did you say to

16 both of them?

17 MR MATHUNJWA: Firstly, we reported the

18 issue of security, that we went well, we were well received

19 and we further stated that the workers are willing that we

20 can meet them the following day in order to further the

21 discussion. We also mentioned that even we have to be

22 accompanied by the police, but they want to see us face to

23 face. And they said, responded, represented by General

24 Mpmembe, by giving us a salute.

25 MR BRUINDERS SC: Who gave the salute?

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1 MR MATHUNJWA: That's General Mpmembe.

2 MR BRUINDERS SC: Why did he do that?

3 MR MATHUNJWA: It's after he was asked by

4 our general secretary what is his overall impression about

5 the feedback from the mountain and he said he's very

6 positive that tomorrow the strike will be over.

7 MR BRUINDERS SC: Did you, when you –

8 sorry, I beg your pardon. To who, from Lonmin, did you

9 speak when you debriefed Lonmin?

10 MR MATHUNJWA: That was Jomo Kwadi and AB

11 Kgotle, which they were present, and the other gentleman –

12 a white gentleman, I don't recall what was his name.

13 MR BRUINDERS SC: Can I just ask you

14 this? Your address was recorded by the SAPS, not so?

15 MR MATHUNJWA: Which address, if I may

16 ask?

17 MR BRUINDERS SC: The address you made

18 earlier that evening at the koppie.

19 MR MATHUNJWA: Yes, inside the Nyala

20 there was a police officer with a video camera which was

21 taking all the discussion.

22 MR BRUINDERS SC: Do you know whether

23 that video footage that was being filmed and recorded,

24 whether that was relayed to some other point where the SAPS

25 were watching it?

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1 MR MATHUNJWA: I should believe that,

2 that maybe that video had a transmitter to the JOC where

3 there is a – what do they call it – operational centre.

4 MR BRUINDERS SC: I want you to tell us

5 what happened in your debriefing with Lonmin, please.

6 MR MATHUNJWA: We debriefed Lonmin that

7 what the workers were asking from us, that we have to

8 return back at 9 o'clock when it's daylight in order to

9 discuss what Lonmin has told us and further that they will

10 think how then they will return back to work.

11 MR BRUINDERS SC: When you say that they

12 should think about how they would return back to work, what

13 do you mean?

14 MR MATHUNJWA: I mean if they agree with

15 the message from Lonmin.

16 MR BRUINDERS SC: Did you ask anything of

17 Lonmin that evening?

18 MR MATHUNJWA: Yes. During that

19 debriefing Mr AB Kgotle responded very positively by, in

20 person, thanking myself as President of AMCU for my

21 intervention in this situation and also they were convinced

22 that the following day the strike will be over. And

23 subsequent to that, then I made a further request to them.

24 The only request that I requested was as follows, that I

25 would like to meet with them at 8 o'clock the following

<p style="text-align: right;">Page 2328</p> <p>1 day, the reason being I want the management to advise me if 2 the workers happened to agree to return back to work, where 3 are they supposed to report. And then I further explained 4 that what I mean by that, because of the fact which maybe 5 they might not be conversant with the processes at the 6 mine. If the workers, they were off duty for quite some 7 time, they had to follow mine health and safety processes 8 in terms of the induction. So that was the reason I 9 requested that meeting for the following day, which then 10 was agreed, for that meeting was to get the response from 11 them in terms of where the workers should report. 12 MR BRUINDERS SC: At the end of the 13 evening of the 15th, after you'd spoken to strikers on the 14 koppie and had your debriefing at the JOC with both SAPS 15 and Lonmin, how did you personally feel about an end to the 16 strike and the violence the next day? 17 MR MATHUNJWA: I was very much 18 optimistic. 19 MR BRUINDERS SC: And why was that? 20 MR MATHUNJWA: That was because of the 21 response from the strikers themselves. 22 MR BRUINDERS SC: When you refer to the 23 response of the strikers, are those the responses that we 24 heard on that recording that we listened to earlier this 25 morning?</p>	<p style="text-align: right;">Page 2330</p> <p>1 requested one of the security to call Mr Kwadi and to 2 advise him that we have arrived and then the said security 3 responded by saying he doesn't know Mr Kwadi. Then I kept 4 on begging until such time he went inside and at a later 5 stage then we were allowed to proceed inside the building. 6 MR BRUINDERS SC: Did you get to see Mr 7 Kwadi? 8 MR MATHUNJWA: Yes, as we arrived at the 9 foyer Mr Kwadi came. 10 [12:02] MR BRUINDERS SC: What did he say to you? 11 MR MATHUNJWA: In actual fact he greeted 12 us, then I – we greeted back and then I advised him that we 13 are here as per yesterday's discussion. And then he said 14 to me they – in actual fact I asked what's really 15 happening. He said no, there is a briefing, SAPS briefing 16 – 17 MR BRUINDERS SC: Could I ask you to stop 18 there? Why did you ask what's going on? 19 MR MATHUNJWA: The reason I asked what 20 was going on is because there was a large presence of 21 members of National Union of Mineworkers wearing their T- 22 shirts at the foyer. 23 MR BRUINDERS SC: What did Mr Kwadi say 24 was going on? 25 MR MATHUNJWA: Then he responded that</p>
<p style="text-align: right;">Page 2329</p> <p>1 MR MATHUNJWA: That's correct. 2 MR BRUINDERS SC: Can we now please move 3 on to the morning of 16th August 2012. Did you go to 4 Lonmin that morning? 5 MR MATHUNJWA: Yes indeed, we went to 6 Lonmin. 7 MR BRUINDERS SC: What time did you more 8 or less get there? 9 MR MATHUNJWA: That was about 20 past 10 eight but the time that I committed to was 8 o'clock. 11 MR BRUINDERS SC: Are you saying you were 12 late? 13 MR MATHUNJWA: In a nutshell, yes. 14 MR BRUINDERS SC: Why was that? 15 MR MATHUNJWA: The reason, we left very 16 late the previous night and also I was driving all the way 17 from Mpumalanga. 18 MR BRUINDERS SC: Where did you go to at 19 Lonmin on the morning of the 16th? 20 MR MATHUNJWA: We went to offices which 21 are called LPD offices. 22 MR BRUINDERS SC: When you got there, 23 what did you do? 24 MR MATHUNJWA: As we arrived there, there 25 was a contingent of security outside the building. We then</p>	<p style="text-align: right;">Page 2331</p> <p>1 there is a media briefing but it's for the SAPS. And then 2 I asked him why then, what does NUM want here if it's a 3 media briefing for the SAPS and while we, AMCU, we are not 4 being called? And then he responded by saying no, this 5 media briefing again is for the SAPS. 6 MR BRUINDERS SC: Forgive me, I missed 7 that. You wanted to know what about AMCU? 8 MR MATHUNJWA: I said why AMCU is not 9 being invited. The reason I've asked that is because I saw 10 NUM was present there and then he responded again by saying 11 no, this media briefing is for the SAPS. 12 MR BRUINDERS SC: Did you participate at 13 all in that media briefing that morning? 14 MR MATHUNJWA: No, I was not party to it. 15 MR BRUINDERS SC: Did anybody from AMCU 16 participate in that briefing? 17 MR MATHUNJWA: No-one from AMCU 18 participated. 19 MR BRUINDERS SC: Let's go back to your 20 exchange with Mr Kwadi. What else did you ask him? 21 MR MATHUNJWA: That was only that. Then 22 the second thing that I've asked him was that we are here 23 because we want to respond, as we spoke last night, what we 24 should convey to the workers with regard to the reporting 25 processes.</p>

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1 MR BRUINDERS SC: What did Mr Kwadi
2 answer?
3 MR MATHUNJWA: He responded by saying
4 he's still going to consult with the management and then I
5 asked him why should he consult with the management because
6 they were given an opportunity last night. For him it's
7 just to tell me where the workers should report.
8 MR BRUINDERS SC: Were you surprised that
9 he said to you that he'd talk to management first?
10 MR MATHUNJWA: Yes, I was surprised
11 because I thought maybe it's what they already spoke about.
12 It was not a major issue, the issue of safety.
13 MR BRUINDERS SC: What was your
14 understanding the evening before, after you and Mr Kwadi
15 had had the debriefing?
16 MR MATHUNJWA: The understanding was for
17 me to report to that LPD offices and receive the
18 instruction of where the workers will report after they
19 left the koppie.
20 MR BRUINDERS SC: After this question and
21 answer by Mr Kwadi, did he do anything?
22 MR MATHUNJWA: Yes, he proceeded to his
23 caucus with his management.
24 MR BRUINDERS SC: For how long was he
25 away?

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1 MR MATHUNJWA: It was quite a long time,
2 it would say maybe over 40 minutes or so.
3 MR BRUINDERS SC: While he was away did
4 you see Mr Mohamed Seedat?
5 MR MATHUNJWA: Yes, I happened to see Mr
6 Mohamed Seedat.
7 MR BRUINDERS SC: And who is he?
8 MR MATHUNJWA: He is a director of
9 Lonmin.
10 MR BRUINDERS SC: How did you know who Mr
11 Seedat was?
12 MR MATHUNJWA: I happened to know Mr
13 Seedat because he was the head of BHP Billiton, I think he
14 was the COO of BHP Billiton years back.
15 MR BRUINDERS SC: When you saw him there
16 while waiting for Mr Kwadi, did the two of you speak to
17 each other?
18 MR MATHUNJWA: Yes indeed, we did speak.
19 MR BRUINDERS SC: What did you say to
20 each other?
21 MR MATHUNJWA: One of the things was
22 about the situation at Marikana, which he said he's not
23 party to it and then subsequent to that then we exchanged
24 the numbers, cell phone numbers.
25 MR BRUINDERS SC: Apart from that, did

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1 you talk about anything else with Mr Seedat that morning?
2 MR MATHUNJWA: No, we just spoke about
3 the situation of violence and the strike only. We limited
4 to that effect.
5 MR BRUINDERS SC: Did you ask him for
6 anything, apart from his phone number?
7 MR MATHUNJWA: No, only the cell phone
8 exchange that was –
9 MR BRUINDERS SC: Mr Seedat has made a
10 statement in which he says that in an exchange with you on
11 the 16th, you asked him to give AMCU a seat at the
12 bargaining table and you would, if that was given, bring an
13 end to the violence. What do you say about that
14 allegation?
15 MR MATHUNJWA: No, that is not true.
16 MR BRUINDERS SC: Did Mr Kwadi return?
17 MR MATHUNJWA: Yes indeed, he returned.
18 MR BRUINDERS SC: When he returned, what
19 did he say to you?
20 MR MATHUNJWA: He called us into one of
21 the offices – I think on my left, on the passage. As we
22 were inside the office he said he doesn't have good news
23 for us.
24 MR BRUINDERS SC: Did he tell you what
25 the bad news was?

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1 MR MATHUNJWA: Yes, the bad news was
2 simply saying the management is no longer committed to
3 their commitment and then they do have a two year agreement
4 in place.
5 MR BRUINDERS SC: When he said management
6 was no longer committed to their commitment, what
7 commitment was he referring to?
8 MR MATHUNJWA: He was referring to the
9 commitment made by the management from the meeting of the
10 15th of August 2012 at LPD whereby the management made a
11 commitment that once the workers renounce violence, leave
12 arms and return back to work peacefully, the management
13 will engage to their grievances.
14 MR BRUINDERS SC: Now, yesterday we
15 listened to the recording of the meeting of the 15th, do you
16 remember that?
17 MR MATHUNJWA: Yes, I do remember.
18 MR BRUINDERS SC: And when you talk about
19 the commitment given on the previous day, is that the
20 commitment given by Mr Mokwena at that meeting?
21 MR MATHUNJWA: That is correct.
22 MR BRUINDERS SC: When Mr Kwadi gave you
23 the bad news, were you surprised?
24 MR MATHUNJWA: I was actually agitated.
25 MR BRUINDERS SC: Why?

<p style="text-align: right;">Page 2336</p> <p>1 MR MATHUNJWA: To me they were reneging 2 from their previous commitment and they have already went 3 to the workers and communicated the very same commitment 4 from their side and for them today, in the morning, to 5 change it – I felt that I was betrayed, we were betrayed as 6 a union. 7 MR BRUINDERS SC: Did you tell Mr Kwadi 8 how you felt? 9 MR MATHUNJWA: Yes, I did, sir. 10 MR BRUINDERS SC: Did you ask Mr Kwadi 11 whether management might reconsider reneging on the promise 12 that it had made on the 15th? 13 MR MATHUNJWA: Yes, indeed and I reminded 14 the same management that you set a precedent yourself to 15 engage with these workers. By then the very same two year 16 agreement was still existing but you were able to engage 17 the workers outside the very same agreement that today you 18 are committed to. Therefore you have to go back to your 19 management and relook at your decision which - 20 MR BRUINDERS SC: Sorry, I beg your 21 pardon? 22 MR MATHUNJWA: Which indeed he returned 23 back to their team. 24 MR BRUINDERS SC: You say Mr Kwadi 25 returned to his team?</p>	<p style="text-align: right;">Page 2338</p> <p>1 North West Provincial Commissioner. 2 MR BRUINDERS SC: You say it happened to 3 be the North West Provincial Commissioner. Did she 4 introduce herself when you took the phone? 5 MR MATHUNJWA: Firstly, she never 6 introduced herself, she was just rude, very rude to me. 7 MR BRUINDERS SC: What was the tone of 8 her voice? 9 MR MATHUNJWA: It was very harsh to 10 myself. Then I kept on asking, who are you, who are you? 11 And they responded by saying that is not important, what is 12 important, you made a commitment to your workers that you 13 will be at the mountain at 9 o'clock. And then I explained 14 to him and he said – and she said that I'm late. I said 15 I'm not late, I've been delayed by the management who is 16 reneging, who has somersaulted from their commitment and 17 then he said he doesn't care about that, the point is I 18 made a commitment to the workers. 19 MR BRUINDERS SC: How did that telephone 20 exchange between the two of you end? 21 MR MATHUNJWA: It ended up by myself 22 giving to, back the cell phone to the owner which is Mr 23 Barnard Mokwena. Then I said to him, I really don't 24 appreciate the manner in which you have treated me. 25 MR BRUINDERS SC: What did you – what did</p>
<p style="text-align: right;">Page 2337</p> <p>1 MR MATHUNJWA: That's correct. 2 MR BRUINDERS SC: And did he come back to 3 you? 4 MR MATHUNJWA: Yes, they come back – they 5 came back with the same position and also with Mr Barnard. 6 MR BRUINDERS SC: So when you talk about 7 Mr Barnard, is that Mr Barnard Mokwena? 8 MR MATHUNJWA: That's correct, Mr Barnard 9 Mokwena. 10 MR BRUINDERS SC: When they returned, did 11 Mr Mokwena say anything to you? 12 MR MATHUNJWA: Nothing much, except that 13 Mr Mokwena handed over a cell phone to myself. 14 MR BRUINDERS SC: I take it you took the 15 cell phone from him and put it to your ear? 16 MR MATHUNJWA: That's correct. 17 MR BRUINDERS SC: Who was on the other 18 end of the line? 19 MR MATHUNJWA: He said to me there is a 20 person who wants to speak to me and then I asked him who is 21 that person but he never told me who she or he was. 22 MR BRUINDERS SC: Well, who came on the 23 line when you put the telephone to your ear? 24 MR MATHUNJWA: Then I spoke to this 25 person. As we spoke to this person, it happened to be</p>	<p style="text-align: right;">Page 2339</p> <p>1 you mean when you said to him you didn't appreciate the 2 manner he spoke to you, or treated you, I beg your pardon? 3 [12:22] MR MATHUNJWA: By giving me a phone, not 4 even telling me who is the person who is on the phone. 5 MR BRUINDERS SC: What was his response? 6 MR MATHUNJWA: There was no response, he 7 just received his cell phone and he went back where he was 8 coming from. 9 MR BRUINDERS SC: Where did you go after 10 that? 11 MR MATHUNJWA: Then we left to the JOC. 12 MR BRUINDERS SC: Whom did you meet? 13 MR MATHUNJWA: Well, there was General 14 Mpembe and General Annandale and General Naidoo and a 15 female officer who was, who was there. 16 MR BRUINDERS SC: You say there was a 17 woman there as well? 18 MR MATHUNJWA: Yes. 19 MR BRUINDERS SC: Who was that? 20 MR MATHUNJWA: After the introduction I 21 happened to know that this was the North West Provincial 22 Commissioner. 23 MR BRUINDERS SC: And was that Provincial 24 Commissioner Mbombo? 25 MR MATHUNJWA: That's correct.</p>

<p style="text-align: right;">Page 2340</p> <p>1 MR BRUINDERS SC: So after the 2 introductions, who spoke? 3 MR MATHUNJWA: Mr or General Mpembe, he 4 spoke first that Provincial Commissioner Mbombo, she is the 5 one that is taking over the operation here, so therefore 6 he's no longer a person in charge of the operation. 7 MR BRUINDERS SC: Who is no longer in 8 charge? 9 MR MATHUNJWA: The person who is no 10 longer in charge is General Mpembe. 11 MR BRUINDERS SC: Did the Provincial 12 Commissioner speak? 13 MR MATHUNJWA: Yes, indeed. He greeted 14 us and then he started saying he doesn't like people who 15 are not committed, I made a commitment to the workers that 16 I will be there at 9 o'clock, which I failed. Then I tried 17 to explain to her what was the reason, she said she's not 18 interested to that effect. Then I said, I responded that I 19 didn't like the manner in which she treated me when we were 20 engaging with her through the cell phone and she responded 21 also by saying I was not happy with yourself for not being 22 committed. 23 MR MAHLANGU: Are you speaking of a she 24 or a he? 25 MR BRUINDERS SC: She.</p>	<p style="text-align: right;">Page 2342</p> <p>1 that I mean that is not – in other words it's not her 2 business. What she's interested in is that, the commitment 3 that I've made yesterday that I was to meet the workers at 4 9 o'clock. 5 MR BRUINDERS SC: Did the Commissioner 6 and you talk about what to say to the strikers on the 7 koppie? 8 MR MATHUNJWA: Yes, after I've tried to 9 explain the reason for being late, that management is no 10 longer committed to its previous night's commitment, she 11 said to me I have to put this way, in a nice way to the 12 workers. 13 MR BRUINDERS SC: Then I responded by 14 saying I won't do that, I will tell the truth, I will tell 15 the workers the truth what happened. 16 MR BRUINDERS SC: What was the outcome of 17 your – that meeting with the SAPS generals that morning? 18 MR MATHUNJWA: Since there was no 19 progress and then, I then requested transport, I said to 20 her since there's no way forward, no-one's listening to 21 anyone, so please provide me with the transport to proceed 22 to the koppie. 23 MR BRUINDERS SC: Why did you want to go 24 to the koppie? 25 MR MATHUNJWA: The workers yes – the</p>
<p style="text-align: right;">Page 2341</p> <p>1 MR MATHUNJWA: Sorry, it's she, by the 2 way. 3 MR BRUINDERS SC: Did the Provincial 4 Commissioner confirm that she was now in charge of this 5 operation? 6 MR MATHUNJWA: Indeed, because I said to 7 her I didn't even know you. The only persons that were 8 introduced to ourselves was General Mpembe who was in 9 charge and also Annandale, so therefore I didn't know you, 10 what you were in charge. That was the protocol that was 11 submitted or introduced to us yesterday. Then he confirmed 12 that yes, indeed she is the one that she is in charge of 13 the operation as now on and then he further said this, we 14 are late, the Sunday is hot, this thing must finish today. 15 MR BRUINDERS SC: Did you tell her that 16 you'd encountered a new problem that morning which was 17 Lonmin reneging on its promise made by the day before? 18 MR MATHUNJWA: Indeed, I tried to explain 19 to her the reason, as I've said earlier on, tried to tell 20 him the reason of us being late. He said he's not 21 interested. 22 MR BRUINDERS SC: When you told her that 23 there was this problem that emerged on the morning of the 24 16th, what did she say? 25 MR MATHUNJWA: She repeatedly, saying</p>	<p style="text-align: right;">Page 2343</p> <p>1 previous night, they requested us to return back and the 2 SAPS, during the debriefing we mentioned that, which they 3 were quite aware that we were to return back to workers. 4 MR BRUINDERS SC: Was transport arranged 5 for you to go to the koppie, by SAPS? 6 MR MATHUNJWA: After we requested the 7 transport we waited for a few minutes and then General 8 Mpembe responded by saying there is no transport available. 9 Then I walked around the building, I noticed about three of 10 the Mercedes Vito minibuses parked. Then I returned back 11 to him and saying I saw three vehicles that were used 12 yesterday when we were going to the koppie, there are 13 vehicles available parked behind the building. 14 MR BRUINDERS SC: And what did he do 15 about your mentioning to him that there were vehicles, you 16 saw there were vehicles available? 17 MR MATHUNJWA: He responded by going 18 around the building and indeed he mentioned that there are 19 three Vitos, he will go and find out about them. On his – 20 MR BRUINDERS SC: Sorry – I beg your 21 pardon. 22 MR MATHUNJWA: On his way back he told us 23 that those Vitos, they had no keys. Some of the drivers 24 they took the keys to one of the stations. 25 MR BRUINDERS SC: When he told you there</p>

<p style="text-align: right;">Page 2344</p> <p>1 were no keys, what did you say?</p> <p>2 MR MATHUNJWA: Then I responded by saying</p> <p>3 there is no transport today because the President of NUM is</p> <p>4 not present but yesterday when he was present, there was</p> <p>5 transport available for everyone. And then I said to him</p> <p>6 fine, I will use my private car to get to the mountain.</p> <p>7 The only thing I'm requesting from yourselves, it's</p> <p>8 security protection. Indeed, he made us wait and he spoke</p> <p>9 to another gentleman who was not in the uniform but he was</p> <p>10 also having a gun on his waist. And then we waited, we</p> <p>11 waited, we waited, we waited until we decided that we have</p> <p>12 to leave because there's no security available for us to</p> <p>13 escort us back to the koppie.</p> <p>14 MR BRUINDERS SC: When you got to the</p> <p>15 koppie, what did you see?</p> <p>16 MR MATHUNJWA: I will say even before we</p> <p>17 reached the koppie, when we leave the JOC you could see the</p> <p>18 movement of police carrying assault rifles, you can see the</p> <p>19 Hippos starting, idling, you can see the movement around</p> <p>20 the area.</p> <p>21 MR BRUINDERS SC: The movement of what?</p> <p>22 You said you can see the movement, the movement of what?</p> <p>23 MR MATHUNJWA: I mean of police vehicles,</p> <p>24 not even – I'm not suggesting that they were taking in a</p> <p>25 direction but around the area, you can see the police</p>	<p style="text-align: right;">Page 2346</p> <p>1 the 16th the first time?</p> <p>2 MR MATHUNJWA: It was quite recognisable.</p> <p>3 MR BRUINDERS SC: Did you then go to the</p> <p>4 strikers on the koppie?</p> <p>5 MR MATHUNJWA: Yes, I proceeded from the</p> <p>6 JOC straight to the koppie.</p> <p>7 MR BRUINDERS SC: How close did you get</p> <p>8 to the strikers on the koppie?</p> <p>9 MR MATHUNJWA: Very close.</p> <p>10 MR BRUINDERS SC: What was the atmosphere</p> <p>11 like when you got there the first time on the 16th?</p> <p>12 MR MATHUNJWA: The atmosphere was calm.</p> <p>13 MR BRUINDERS SC: Did you talk to the</p> <p>14 strikers?</p> <p>15 MR MATHUNJWA: Yes.</p> <p>16 MR BRUINDERS SC: Chair, there is a</p> <p>17 recording of the – well, frankly, I'm actually confused</p> <p>18 about this because I thought that it was a recording of the</p> <p>19 first address at the koppie but it might be the second</p> <p>20 address. I think it was played here last week, possibly a</p> <p>21 bit longer. It was also part of the SAPS presentation.</p> <p>22 I've always understood that to be the first address by Mr</p> <p>23 Mathunjwa at the koppie. There was then a second address</p> <p>24 later. We've actually called for that footage because we</p> <p>25 couldn't find it anywhere. We thought it was always here</p>
<p style="text-align: right;">Page 2345</p> <p>1 carrying rifles.</p> <p>2 MR BRUINDERS SC: You say this is what</p> <p>3 you noticed at the JOC already?</p> <p>4 MR MATHUNJWA: This is what I noticed on</p> <p>5 the JOC before we left to the koppie.</p> <p>6 MR BRUINDERS SC: Was that different to</p> <p>7 what you'd seen at the JOC the day before?</p> <p>8 MR MATHUNJWA: Yes, because before I used</p> <p>9 to see the police carrying Coca-Cola cold drinks, chatting</p> <p>10 to one another, drinking cold drink, one's got his own six</p> <p>11 pack around, I mean –</p> <p>12 MR BRUINDERS SC: Could you tell whether</p> <p>13 there were more policemen around on the 16th at the JOC than</p> <p>14 there were on the 15th?</p> <p>15 MR MATHUNJWA: Inasmuch as I could – I</p> <p>16 cannot say because the 15th it was a little bit dark but</p> <p>17 definitely on the 16th you could see, I mean a lot of</p> <p>18 vehicles which could easily fill the football pitch, if I</p> <p>19 would say that.</p> <p>20 MR BRUINDERS SC: When you got to the</p> <p>21 koppie did you see the SAPS?</p> <p>22 MR MATHUNJWA: Yes, when we arrived at</p> <p>23 the koppie, yes, there were Nyalas, there were SAPS.</p> <p>24 MR BRUINDERS SC: How big would you say</p> <p>25 the SAPS presence was at the koppie when you got there on</p>	<p style="text-align: right;">Page 2347</p> <p>1 but we learnt it wasn't here. There's some confusion now</p> <p>2 it seems –</p> <p>3 CHAIRPERSON: Perhaps the evidence</p> <p>4 leaders can help us to remove the confusion. Looking at Ms</p> <p>5 Pillay, I don't know whether she can help us.</p> <p>6 MS PILLAY: Chair, the clip that AMCU</p> <p>7 seeks to play is CC7. It was a clip that was showed by Mr</p> <p>8 Chaskalson last week.</p> <p>9 CHAIRPERSON: Yes.</p> <p>10 MS PILLAY: Yes.</p> <p>11 CHAIRPERSON: Yes, but now the point that</p> <p>12 Mr Bruinders makes is that, as I understand, Mr Mathunjwa</p> <p>13 addressed the crowd, the workers, twice on the 16th and what</p> <p>14 he wants to know is were both, were clips of both addresses</p> <p>15 to the strikers shown at the previous hearing? If you</p> <p>16 can't help us, perhaps Mr Wesley can because I think he was</p> <p>17 involved with Mr Chaskalson in editing and presenting the</p> <p>18 video about what happened on the 16th at the koppie.</p> <p>19 [12:42] MS PILLAY: Chair, can we revert on that</p> <p>20 question, just have a look at it over the lunch break and</p> <p>21 then revert on that issue?</p> <p>22 CHAIRPERSON: Yes. Yes, I can certainly</p> <p>23 remember the second address, a very powerful address, you</p> <p>24 know, when he got on his knees and pleaded with the people.</p> <p>25 Whether the first address was shown, I'm afraid I can't</p>

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1 remember. Well, perhaps I must as the question, do we know
2 that the occasion when he got on his bended knees and
3 pleaded with the people, was that the first or the second
4 address or did he do it both times?
5 MR BRUINDERS SC: Yes, I've always
6 understood that when he went – we think he went on his
7 knees both times but the powerful image of him going on his
8 knees, we always understood was the second address but if
9 you watch –
10 CHAIRPERSON: [indistinct] I must say.
11 MR BRUINDERS SC: Yes, but if you watch
12 the video clip that we saw here about a week or so, 10 days
13 ago, it appears as if – that's what confuses me, is I
14 always thought that was the first address but it appears as
15 if the two run into each other and it might just be that we
16 should take the lunch adjournment now to clear this up.
17 I'll tell you why –
18 CHAIRPERSON: I was going to suggest that
19 too. It seems to me that it's obviously a pivotal part –
20 MR BRUINDERS SC: Yes.
21 CHAIRPERSON: - of his evidence and
22 obviously, I mean you can't leave this and go on to
23 something else because it's, the point arises at this point
24 in the evidence. So it's now quarter to one, let's adjourn
25 till quarter to two. The Commission will adjourn till

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1 quarter to two.
2 [COMMISSION ADJOURNS COMMISSION RESUMES]
3 [13:51] CHAIRPERSON: The Commission resumes. Mr
4 Bruinders, do we know now or rather do you know now, or
5 will we shortly know, what the position is in relation to
6 the videos of the two speeches which the witness made on
7 the 16th of August?
8 MR BRUINDERS SC: I do. The confusion
9 has been cleared. The video footage that we've seen here,
10 taken by the SAPS, is footage of the first address. So the
11 fact that he goes down on his knee or knees in that
12 footage, doesn't mean it's the second address. That is
13 footage of the first address. That is what we intend to
14 play now and then also after that there was footage of the
15 responses of some of the rock drill operators on strike at
16 the koppie and that's quite important because it's
17 important for the full picture.
18 Commissioners, what we don't have – and it
19 appears that nobody does – is video footage of the second
20 address and it appears that the only place that we might be
21 able to get this is from raw footage taken by some of the
22 media houses. That won't delay us, we'll continue and
23 he'll give evidence about that address, oral evidence here
24 today. If we find it, we'll seek leave to introduce it at
25 that stage.

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1 CHAIRPERSON: Now the footage in relation
2 to the first footage we saw, that was of course interpreted
3 to us at the time and its translation is in the transcript.
4 So we don't have to have it interpreted again.
5 MR BRUINDERS SC: No.
6 CHAIRPERSON: Do you want to show it
7 again or – do we have to see it again?
8 MR BRUINDERS SC: Yes, I think it's
9 important –
10 CHAIRPERSON: Look, I don't want to
11 dictate to you how you present your case, obviously you
12 must present it as you consider will be most effective.
13 MR BRUINDERS SC: Correct. -
14 CHAIRPERSON: But we have got time
15 constraints.
16 MR BRUINDERS SC: We do, we're very aware
17 of that, Chair. We have a – in fact what we have here is a
18 transcript which, it starts off being the transcript in –
19 it's the interpretation or the translation by the
20 interpreter and there are a few mistakes there, we've tried
21 to correct it as best we could. We'll hand that up. We
22 don't suggest that everybody agrees with it. That's what
23 we say the corrected version should be.
24 CHAIRPERSON: Yes.
25 MR BRUINDERS SC: So it doesn't need to

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1 be interpreted, we just want to show it.
2 CHAIRPERSON: Yes, I see. Alright.
3 Well, thank you, well then proceed then with the witness's
4 evidence-in-chief.
5 MR BRUINDERS SC: Thank you and then,
6 Chair, just one last – obviously we reserve our right to
7 produce the footage of the second address, if and when that
8 does appear.
9 CHAIRPERSON: That reservation is noted.
10 Mr Mathunjwa, you are still under oath to tell the truth.
11 Mr Bruinders, I assume you have further questions.
12 MR BRUINDERS SC: Yes, I do.
13 EXAMINATION BY MR BRUINDERS SC (CONTD):
14 Mr Mathunjwa, when did you get to the koppie on the first
15 occasion?
16 MR MATHUNJWA: That was round about 12 or
17 after 12.
18 MR BRUINDERS SC: And when you got there,
19 I think you already said you were fairly close to the
20 strikers and did you then address them?
21 MR MATHUNJWA: Indeed, we addressed them.
22 MR BRUINDERS SC: I'm going to ask you to
23 look at a clip of your address and there are a few
24 questions I'd like to ask you about that afterwards. The
25 clip does not need to be interpreted, Mr Interpreter.

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1 CHAIRPERSON: Ms Pillay, will this be
 2 OO9?
 3 MS PILLAY: That's right, Chair, OO9.
 4 MR BRUINDERS SC: Thank you. We now ask
 5 that the clip be played.
 6 [VIDEO IS SHOWN]
 7 [14:11] [VIDEO IS SHOWN]
 8 MR BRUINDERS SC: Mr Mathunjwa, we've
 9 just watched your address, the first one at the koppie
 10 after 12 on 16th August 2012, not so?
 11 MR MATHUNJWA: That's correct.
 12 MR BRUINDERS SC: Do you confirm that
 13 that is an accurate recording of your address?
 14 MR MATHUNJWA: That's correct.
 15 MR BRUINDERS SC: How hard was it for you
 16 to go back there after the disappointment of that morning
 17 when Lonmin reneged on its promise, to speak to the
 18 strikers?
 19 MR MATHUNJWA: It was very difficult,
 20 very hard.
 21 MR BRUINDERS SC: Why do you say that?
 22 MR MATHUNJWA: The reason is, I took the
 23 commitment very seriously that management committed to it,
 24 to the nature of the situation that had been televised
 25 through media, printing media, and again as from our last

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1 debriefing we had a very good hope that on the 16th the
 2 strike will be addressed and workers would return
 3 peacefully back to work, and to receive the news that
 4 management is not longer committed, it was a very difficult
 5 time for me.
 6 MR BRUINDERS SC: Can I read to you in
 7 English a passage from your address and then I'd like to
 8 ask you a question about that? You are recorded to have
 9 said, "What we are saying is that workers should go back to
 10 work. If they do not go back to work, police must take
 11 control. Do not rush to answer. Do not rush to answer."
 12 That's what you said, isn't it?
 13 MR MATHUNJWA: What page is that?
 14 MR BRUINDERS SC: It's page 10 of the
 15 transcript – sorry, page 10 of the exhibit, towards the
 16 foot of the 10th page.
 17 [14:31] MR MATHUNJWA: Yes, I've got it. Would
 18 you please repeat your question?
 19 MR BRUINDERS SC: I've read the extract
 20 to you and I wanted to know whether you agree that that is
 21 what you said?
 22 MR MATHUNJWA: Again, would you please
 23 read that extract for me, sir?
 24 MR BRUINDERS SC: You say, "What we are
 25 saying is that workers should go back to work. If they do

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1 not go back to work, police must take control. Do not rush
 2 to answer."
 3 MR MATHUNJWA: I think here the
 4 interpretation is not quite accurate because when you read
 5 in Zulu, it translates something different, this, but it
 6 does say yes, people they have to return to work.
 7 CHAIRPERSON: Can I ask a question about
 8 that? Part of the problem is that we haven't got internal
 9 quotation marks indicating what Lonmin said. So if you
 10 take it about halfway down in the English, "We will take it
 11 to the leaders. That's why yesterday we came back and told
 12 you, you got excited, that we should come back and talk.
 13 After we finished talking with you yesterday, as different
 14 unions, when we arrived in the morning we were just told,
 15 then we asked where were other organisations, where were
 16 other leaders because the matter's still in progress, they
 17 said" – now I suspect that what we need is quotation marks
 18 after the words "they said," so that it goes – I'm not
 19 saying this is so but this is my impression, I want to know
 20 whether you agree with it or if I'm on the wrong track –
 21 they said, "It is not our business that other leaders are
 22 there. What we're saying is, there's nothing like
 23 increment we're going to discuss with NUM – I mean AMCU –
 24 what we're saying is, the workers should go back to work,
 25 if they do not go back to work police must take control."

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1 Is that bit that I read, is that what Lonmin – what you
 2 said Lonmin said or is that what you yourself were saying?
 3 You understand the point I'm putting to you?
 4 MR MATHUNJWA: Thank you very much,
 5 Chairman.
 6 CHAIRPERSON: Have I got it right or am I
 7 wrong?
 8 MR MATHUNJWA: Yes, you are going right.
 9 CHAIRPERSON: So where should the
 10 quotation marks which indicate the beginning of what Lonmin
 11 said, where should they be inserted and where should the
 12 quotation marks be inserted indicating the end of what
 13 Lonmin says? You see otherwise it doesn't make sense. I'm
 14 sorry to interrupt you, Mr Bruinders, but I'm trying to be
 15 helpful.
 16 MR BRUINDERS SC: Yes, you – appreciated,
 17 Mr Chair.
 18 CHAIRPERSON: Where do the quotation
 19 marks fit in?
 20 MR MATHUNJWA: I think just before "AMCU"
 21 – I don't know whether – just after "AMCU." What we are
 22 saying is that –
 23 CHAIRPERSON: Or "what."
 24 MR MATHUNJWA: Ja, before the word "what"
 25 I think – thereby control –

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1 MR BRUINDERS SC: Yes.

2 CHAIRPERSON: Mr Bruinders, would you

3 like to carry on with your questioning?

4 MR BRUINDERS SC: I'd like to carry on

5 but perhaps let me – let me move away from the difficulty

6 of the lack of punctuation here, but what was your message

7 essentially to the workers, strikers on the koppie that, in

8 that address?

9 MR MATHUNJWA: My address to the workers

10 was saying, workers disperse, return back to work - if I

11 heard quite correctly your question.

12 MR BRUINDERS SC: Yes, that's what I

13 asked. Now, what I – and was that your answer? That was

14 the message?

15 MR MATHUNJWA: That was the message.

16 Reason being, is after the disappointment that I received

17 from the poli – I mean from management.

18 MR BRUINDERS SC: Why, on that afternoon

19 and your first address, why do you ask them to go back to

20 work?

21 MR MATHUNJWA: Firstly, one will recall

22 that the issue was about these workers who were on strike

23 and the commitment of the management and the management is

24 no longer committing to its commitment and therefore I had

25 to report back to them and try to advise which way they

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1 should address their grievances.

2 MR BRUINDERS SC: And do you advise them

3 how they should address their grievances?

4 MR MATHUNJWA: Indeed, I did advise.

5 MR BRUINDERS SC: What was your advice?

6 MR MATHUNJWA: I advised them that there

7 is CCMA processes that, if the employer fails to address

8 their grievances, we can lodge a dispute and therefore if

9 there's no agreement reached between the parties there will

10 be a certificate of non-resolution that will be issued by

11 the CCMA. Therefore workers will engage into a protected

12 industrial action.

13 MR BRUINDERS SC: Why did you give this

14 advice, despite the fact that management had reneged on the

15 commitment?

16 MR MATHUNJWA: This was to give the

17 strikers the hope that it's not all lost. The very same

18 demands that they have can be pursued further within other

19 structures of labour relations.

20 MR BRUINDERS SC: Towards the end of your

21 address you ask that people stop the bloodshed, do you

22 remember that?

23 MR MATHUNJWA: Which address was – for

24 the Friday or for the 16th in the morning?

25 MR BRUINDERS SC: The addressed you've

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1 just watched. I'm confining myself only to what we've just

2 seen, is that right there towards the end of your address

3 you ask that the bloodshed be stopped.

4 MR MATHUNJWA: I said we have to avoid

5 the bloodshed.

6 MR BRUINDERS SC: What is AMCU's stance

7 on violence by striking workers?

8 MR MATHUNJWA: We are against any form of

9 violence.

10 MR BRUINDERS SC: What does AMCU say

11 should happen to people who are found to have committed

12 violence crimes during a strike?

13 MR MATHUNJWA: Any person who breaks the

14 laws of the country, surely the law must take its course.

15 MR BRUINDERS SC: At the beginning of the

16 clip we saw, a few minutes ago, there's an address – there

17 is an address by, I think it is your national organiser, is

18 that correct?

19 MR MATHUNJWA: Yes.

20 MR BRUINDERS SC: And that's Dumisane

21 Nkalitshani?

22 MR MATHUNJWA: Yes, that's correct.

23 MR BRUINDERS SC: Now he appears to,

24 early in his address he appears to sing a song, you recall

25 that?

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1 MR MATHUNJWA: Yes, I do recall.

2 MR BRUINDERS SC: And do you remember

3 what the words of the song are?

4 MR MATHUNJWA: Yes, I do recall the name,

5 the words.

6 MR BRUINDERS SC: And what are the words?

7 MR MATHUNJWA: [Speaking Zulu]

8 MR MAHLANGU: It is translated as "How

9 can we kill NUM?"

10 MR BRUINDERS SC: Now, did you hear that

11 at the time?

12 MR MATHUNJWA: Yes, I was there.

13 MR BRUINDERS SC: Did you, after your

14 address, speak to Mr Nkalitshani about this?

15 MR MATHUNJWA: Come again?

16 MR BRUINDERS SC: Did you, after your

17 address – after your address was over, did you speak to Mr

18 Nkalitshani about that?

19 MR MATHUNJWA: Yes indeed, I spoke to

20 him.

21 MR BRUINDERS SC: Why did you talk to

22 him?

23 MR MATHUNJWA: I spoke to him advising

24 him that this song, it might be interpreted in the wrong

25 way by others.

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1 MR BRUINDERS SC: And what did you advise
 2 him to do about the singing of the song?
 3 MR MATHUNJWA: To refrain from singing
 4 it.
 5 MR BRUINDERS SC: After your address –
 6 MR MATHUNJWA: Sorry, can I say
 7 something?
 8 MR BRUINDERS SC: Of course, you may.
 9 MR MATHUNJWA: In the actual fact, by
 10 this song in this instance of singing out this song, it's a
 11 metaphor. It doesn't mean literally killing of a person.
 12 It talks about the competition, so that's how – [Speaking
 13 Zulu] – a metaphor. Thank you.
 14 MR BRUINDERS SC: Mr Interpreter, you've
 15 just interpreted from Zulu into Xhosa. Could you also
 16 interpret into English, please?
 17 MR HANABE: In fact he says that it's for
 18 people who might not understand isiZulu, it might be
 19 something like a proverb because of the competition that is
 20 there.
 21 MR MATHUNJWA: Can I maybe repeat again?
 22 The song, in this instance it's a metaphor – [Speaking
 23 Zulu] – in Zulu. Metaphor in Zulu – [Zulu phrase].
 24 MR HANABE: He says it's a metaphor which
 25 is also in Zulu. He says it's [Zulu phrase] which is a

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1 metaphor, according to him.
 2 MR MATHUNJWA: Which doesn't mean
 3 literally to kill, it's just about the competition.
 4 CHAIRPERSON: It may have been intended
 5 to be a metaphor but - the people who originally wrote it
 6 may have intended it to be a metaphor but the people who
 7 sang it may have intended it not to be a metaphor but may
 8 have intended it to be taken literally and the people who
 9 heard it might also have thought, particularly if they were
 10 NUM members, that the words were literally intended and not
 11 just metaphorical language. Isn't that so?
 12 MR MATHUNJWA: It could be. That's the
 13 reason, Mr Chairman, that I spoke to the comrade that he
 14 should refrain from singing such songs for the same reason.
 15 Thank you. And again even in our cultures where we do
 16 things, we've got several songs that we sing in many
 17 instances. A Xhosa person can sing, there's a song by
 18 Xhosa people or one of the artists – [Speaking Xhosa] – so
 19 all those things can be interpreted in many ways but it
 20 doesn't mean literally that we'll never ever go to KwaZulu.
 21 So there are many songs that we normally sing but not
 22 necessarily mean that we have to take someone's life.
 23 MR HANABE: So he says that in our
 24 cultures there are many songs that are sung and he also
 25 gave, made an example – [Speaking Xhosa] – made an example

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1 about I will never go to KwaZulu because that is where my
 2 mother died, but that was not – that is not a literal
 3 meaning, if maybe you are to give it a direct translation
 4 of the song but it's metaphorical, in other words,
 5 metaphoric.
 6 [14:51] MR BRUINDERS SC: Now Mr Mathunjwa,
 7 moving away from music, after the address was over did some
 8 of the strikers on the koppie take the opportunity to
 9 speak?
 10 MR MATHUNJWA: Yes indeed.
 11 MR BRUINDERS SC: Did more than one
 12 speak?
 13 MR MATHUNJWA: Yes, I recall more than
 14 one.
 15 MR BRUINDERS SC: What was the thrust of
 16 what they were saying?
 17 MR MATHUNJWA: They were simply saying
 18 would you please go back and all the employer in order for
 19 the employer to address them, and further they did say that
 20 they're quite aware that the employer might not have, their
 21 demand of R12 500,00 but if the employer will come and
 22 engage with them for the process how to end up receiving
 23 such 12 500, so therefore we ask you again to go and tell
 24 the employer that we ask him to come and address us.
 25 MR BRUINDERS SC: Commissioners, we're

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1 now at paragraph 76 of the statement. Can I ask you to
 2 tell the commissioners where you went when you left the
 3 koppie?
 4 MR MATHUNJWA: After we left the koppie
 5 we went to the place called JOC.
 6 MR BRUINDERS SC: Why did you go there?
 7 MR MATHUNJWA: That was the protocol that
 8 we were given, that the issue of security should be
 9 reported into the SAPS, SAPS.
 10 MR BRUINDERS SC: When you got to the
 11 JOC, who did you ask to see?
 12 MR MATHUNJWA: When we arrived at the JOC
 13 we wanted to see the Provincial Commissioner, Madam Mbombo.
 14 MR BRUINDERS SC: Why did you want to see
 15 her?
 16 MR MATHUNJWA: It's because early on the
 17 day we were informed and she confirmed that she's in charge
 18 of the operation.
 19 MR BRUINDERS SC: Did you want to see her
 20 because she was in charge, to report to her?
 21 MR MATHUNJWA: That's correct.
 22 MR BRUINDERS SC: Did you find her there?
 23 MR MATHUNJWA: No. We waited and then we
 24 found there was a female officer who was next to the
 25 operation room and then after we waited some few minutes

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1 then we requested to knock inside and ask for Commissioner
 2 Mbombo, which she said she's not allowed to enter – I mean
 3 the room or the boardroom or the operation room.
 4 MR BRUINDERS SC: Who's not allowed to
 5 enter the operation room?
 6 MR MATHUNJWA: That was the female
 7 officer who was stationed, who was posted there.
 8 MR BRUINDERS SC: Did you get hold of
 9 Commissioner Mbombo at the JOC at that time?
 10 MR MATHUNJWA: No, we didn't get hold of
 11 her. Subsequent, General Mpembe walked out from the joint
 12 operations centre which is where I refer as a boardroom and
 13 then he started by addressing us, saying that he's not in
 14 charge, as he earlier explained, that the person who is in
 15 charge of the area is the National Provincial – sorry, the
 16 Provincial Commissioner Madam Mbombo. I therefore
 17 requested him that we would like to talk to her. He
 18 responded by saying she's not around, she left to an ANC
 19 torch-bearing ceremony with the Premier of North West.
 20 Then I said but she was the one who was very harsh on me
 21 earlier on that day, how can he just left? Then General
 22 Mpembe, he said to me okay, I will try to make a phone
 23 call. Indeed, he moved away from me with his cell phone.
 24 He went and he went and he went. He never came back.
 25 MR BRUINDERS SC: Did you try and get

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1 hold of somebody from Lonmin?
 2 MR MATHUNJWA: After then, I phoned Mr
 3 Jomo Kwadi, which he did receive my call. I explained to
 4 him that we are here, we would like to give the response
 5 from the strikers and he said okay, he wants to consult
 6 with the management. Then we dropped the phone. He came
 7 back again, he phoned me plus-minus five minutes and he
 8 advised me that that feedback, I must give it to the police
 9 or the general there. Then I reminded him that the
 10 protocol was, the issue of safety and security was for the
 11 SAPS and the issue of labour relations was for the
 12 management. However, the very same SAPS whom you are
 13 referring me to, are nowhere to be found. Then he said
 14 okay, I'll come back to you.
 15 MR BRUINDERS SC: Did he come back to
 16 you?
 17 MR MATHUNJWA: Indeed, he phoned me back.
 18 MR BRUINDERS SC: When he did, what did
 19 he say?
 20 MR MATHUNJWA: He said to me the
 21 management is not prepared to meet with me.
 22 MR BRUINDERS SC: How did you respond to
 23 that information?
 24 MR MATHUNJWA: Then I responded by
 25 saying, "Are you insane?" And then I continued and saying

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1 to him, "What substance have you taken? Can't you take a
 2 glass of water in order to be sober?"
 3 MR BRUINDERS SC: What did he say?
 4 MR MATHUNJWA: He never responded and
 5 then he switched off the phone.
 6 MR BRUINDERS SC: Did you try and get
 7 hold of anybody else from Lonmin?
 8 MR MATHUNJWA: Yes indeed, I – since I
 9 had a number that I got from Mr Seedat earlier in the
 10 morning then I phoned Mr Seedat, advising that this is the
 11 challenge that I'm facing, management doesn't want to talk
 12 to me and he responded by saying he's not party to these
 13 processes, he doesn't make any commitment but he will try.
 14 CHAIRPERSON: I think we can take the
 15 short afternoon adjournment at this stage. The Commission
 16 will adjourn.
 17 [COMMISSION ADJOURNS COMMISSION RESUMES]
 18 [15:18] CHAIRPERSON: The Commission resumes.
 19 Before the evidence-in-chief continues, I just want to say
 20 that during the adjournment we received copies of an
 21 application which is to be moved at some stage in the
 22 future on behalf of the families. I take it that copies
 23 have been served – perhaps "served" is the wrong word –
 24 have been made available to the other parties who may or
 25 may not wish to respond to the papers, to the application

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1 and if they got them and we got them, I take it I must give
 2 them at least until Monday to respond. So I'm just saying
 3 that because that may be relevant for those who wish to
 4 move the application at some stage. Mr Bruinders, would
 5 you like to continue with the evidence-in-chief?
 6 MR BRUINDERS SC: Thank you.
 7 MR NTSEBEZA SC: Mr Chairman, will you
 8 bear with me to say something just about on what you have
 9 said?
 10 CHAIRPERSON: Of course.
 11 MR NTSEBEZA SC: Mr Chairman, it would
 12 have been the desire of the families to be present when the
 13 application is moved. Without committing any of our
 14 colleagues to anything, we got a sense that we would have
 15 received some measure of opposition to that application
 16 from my colleagues representing the SAPS. Adv Semenya, who
 17 is the leader of that group, phoned me during the course of
 18 the day and indicated that if we were to move the
 19 application – we are not seeking to lead the evidence,
 20 assuming that you know, we were successful, we wanted to
 21 move the application – and his sense was that, look, if we
 22 could do it tomorrow morning then he would be, he would
 23 have been in a position to deal with it.
 24 CHAIRPERSON: I don't think it would be
 25 appropriate to interrupt the case of AMCU to – I was

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1 proposing to allow NUM to lead their evidence next after
 2 AMCU –
 3 MR NTSEBEZA SC: Subject to –
 4 CHAIRPERSON: And as I see it, you
 5 understand I'm expressing prima facie views for your
 6 benefit so you can deal with them, not necessarily now but
 7 subsequently – it would be more appropriately dealt with
 8 thereafter. But the point I was making is, I only got the
 9 papers now and I assume that if there are parties who wish
 10 to oppose, they may wish to file papers in response and
 11 that was the only point I was making, but I'm not minded to
 12 allow the application to be heard tomorrow, subject of
 13 course to what you're going to say to me now, for the
 14 reason I indicated.
 15 MR NTSEBEZA SC: Thank you, Chairman. We
 16 would really appreciate an indulgence from everybody if we
 17 were to move the application tomorrow but of course it will
 18 depend on whether the parties want to file opposing papers
 19 or just argue on whatever we – the reason that we were keen
 20 that it should be dealt with this side of Friday is because
 21 the families - for all sorts of reasons including the fact
 22 that it is now festive season, it's going towards the time
 23 when they will have to prepare for the festive season and
 24 all of that – have indicated that this coming Friday, end
 25 of November, will be the last day at which they will be

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1 here and they – until January. So the only time they will
 2 be returning will be in January and as and when, therefore,
 3 we move the application, they would have loved to be here
 4 to hear the application, what it is that is being said,
 5 which is why we thought that we could move the application
 6 and then the question of them leading evidence, whether in
 7 phase 1 or phase 2, will strongly – as you will have seen
 8 in the papers – we'll strongly argue for it being heard as
 9 part of phase 1. That will be as and when, when they lead
 10 evidence. The main aim of the moving of the application
 11 will be to see to what extent the Commission, subject to
 12 argument, would be persuaded by some of the things that are
 13 key and which we canvass in the papers.
 14 I've spoken, or at least we have spoken to Mr
 15 Burger who would obviously be the one to cross-examine Mr
 16 Mathunjwa hereafter and he is not –
 17 CHAIRPERSON: Pardon me for a moment, Mr
 18 Ntsebeza. Would someone please go and speak to the person
 19 making a noise outside and tell him to stop and if he
 20 doesn't, something will happen to him.
 21 MR NTSEBEZA SC: I'm advised that it
 22 doesn't appear, subject to the Commission, as though there
 23 is resistance to the – from AMCU, from Lonmin and from SAPS
 24 that the application can be moved tomorrow, tomorrow
 25 morning.

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1 CHAIRPERSON: Can I suggest that when,
 2 after we adjourn this afternoon, other parties who may have
 3 other views – there may not be any with other views – if
 4 other parties have other views, if they'd please
 5 communicate them to Mr Madlanga and he can then report to
 6 us what has been reported. Mr Mothibedi, you're standing
 7 in for - or you're Mr Semanya's right hand man in this
 8 Commission – have you any comments you wish to make?
 9 MR MOTHIBEDI SC: Mr Chairman, on this
 10 aspect, may we revert tomorrow morning?
 11 CHAIRPERSON: So Mr Ntsebeza, can we
 12 leave it for the moment and can Mr Bruinders carry on with
 13 his evidence-in-chief, with your permission?
 14 MR NTSEBEZA SC: With mine and your
 15 permission, Chair.
 16 CHAIRPERSON: Alright, Mr Bruinders,
 17 fortified by that, can you carry on?
 18 MR BRUINDERS SC: Mr Madlanga, you said
 19 before the break that you'd got hold of Mr Seedat
 20 telephonically. Did he come back to you?
 21 MR MATHUNJWA: No, he never returned my
 22 call.
 23 MR BRUINDERS SC: What did you do next?
 24 MR MATHUNJWA: Then I met with the branch
 25 committee and explained to them the frustration that we

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1 have experienced, that we can't find no generals and no
 2 management, this is the situation that we are facing and
 3 the management has reneged from its commitment and the
 4 SAPS, you can't meet any senior officials of the SAPS.
 5 MR BRUINDERS SC: Mr Mathunjwa, what did
 6 you decide to do, given the situation at that time where
 7 you couldn't find a Lonmin person to speak to, couldn't
 8 find a senior SAPS person to speak to?
 9 MR MATHUNJWA: I spoke to the branch
 10 committee and amongst ourselves and I explained what we are
 11 experiencing and subsequent to that, trying to list what
 12 has happened – the SAPS are nowhere to be found, management
 13 is not willing to engage with AMCU and therefore it
 14 reminded me what was said in the meeting of the 15th whereby
 15 Mr Mokwena, who said something in the effect that the
 16 police will go to the mountain and do their job, so all
 17 those things came to my mind, that really we are facing a
 18 very serious situation.
 19 MR BRUINDERS SC: What did you expect
 20 might happen?
 21 MR MATHUNJWA: I feared for the worst.
 22 MR BRUINDERS SC: What was decided that
 23 you would do?
 24 MR MATHUNJWA: Then we decided to go back
 25 to the mountain, to the koppie.

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1 MR BRUINDERS SC: Why was it decided that
 2 you would go back to the koppie?
 3 MR MATHUNJWA: We have to give the
 4 workers or the strikers the feedback, but before that, I
 5 made an SMS to the generals, General Mpembe and General
 6 Annandale and Xolani Gwala and perhaps for management, I
 7 don't quite remember, I'm not looking at my statement but I
 8 did make some effort.
 9 MR BRUINDERS SC: At paragraph 84 you
 10 record what your SMS was, not so?
 11 MR MATHUNJWA: Paragraph what?
 12 MR BRUINDERS SC: 84.
 13 CHAIRPERSON: Yes and the same SMS is
 14 quoted in paragraph, in slide 186 of the SA Police Service
 15 presentation, Exhibit L. That is General Annandale's
 16 reply.
 17 MR MATHUNJWA: Yes, that's the SMS I
 18 sent.
 19 MR BRUINDERS SC: And will you read it?
 20 MR MATHUNJWA: Yes, it reads as follows.
 21 "Since no person is available to give feedback to, we are
 22 going back to the employees to inform them no-one is
 23 available. We have tried our best without co-operation
 24 from anyone. Let peace prevail."
 25 MR BRUINDERS SC: What was General

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1 Annandale's response?
 2 MR MATHUNJWA: I saw the SMS saying that
 3 they are always available where we met earlier on and that
 4 was not correct because we were there, there was no
 5 Annandale there.
 6 MR BRUINDERS SC: You say in paragraph 85
 7 that before you get to the koppie you had an interview with
 8 eTV?
 9 MR MATHUNJWA: That's correct.
 10 MR BRUINDERS SC: And where was that?
 11 MR MATHUNJWA: That was there by the
 12 koppie.
 13 MR BRUINDERS SC: And what was the
 14 conclusion that you had reached which you conveyed to the
 15 eTV interviewer?
 16 MR MATHUNJWA: I conveyed almost the same
 17 message, that there was no co-operation that I received
 18 from management, either the SAPS. It was eTV that was
 19 interviewing myself and then I further said the writing is
 20 on the wall, as it was clear to me that the police were
 21 going to shoot these people.
 22 MR BRUINDERS SC: Why was it clear to you
 23 that the police were going to shoot the strikers?
 24 MR MATHUNJWA: I mean, firstly, when we
 25 were from the koppie, from the first session of the report,

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1 we went back to the JOC to give a report back and there was
 2 no-one available from the SAPS that could receive the
 3 information from the strikers. And also you could see the
 4 environment was getting busier and busier with regard to
 5 police movement and you can see some helicopter flying and
 6 that was the reason, and also during that interview you can
 7 see the SAPS, those wearing black berets and what, they
 8 were coming in numbers.
 9 MR BRUINDERS SC: After your eTV
 10 interview did you go to the koppie?
 11 MR MATHUNJWA: Yes, I mean when the eTV
 12 asked me what's next, what I will do, I said to them it's
 13 out of my hands, it's in God's hands, so I don't have any
 14 control of the situation, it's in God's control now. And
 15 then I was also being interviewed by Al Jazeera, also I
 16 conveyed almost the same message to them and then I
 17 proceeded to the group of police there which were two black
 18 officers, on who was a little bit light in complexion which
 19 looked senior when you look at the shoulders and then I
 20 asked who was in charge of the operation. And then he
 21 showed me one police officer, a white police officer which
 22 I cannot recall him but I saw earlier on he was sitting
 23 there.
 24 MR BRUINDERS SC: What did you say to
 25 him?

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1 MR MATHUNJWA: I explained to him the
 2 challenges that I faced, that I couldn't meet the
 3 Provincial Commissioner at the JOC and, or other SAPS
 4 senior officials, so there's no co-operation. And then he
 5 said okay, wait, I will call General Naidoo. He let me
 6 wait for about 10 minutes, 15 minutes. Indeed I did wait
 7 and then there was no response until that 15 minutes or so
 8 lapses.
 9 MR BRUINDERS SC: Did you then go to the
 10 koppie?
 11 MR MATHUNJWA: Yes, then I proceeded to
 12 the koppie.
 13 MR BRUINDERS SC: Did you speak to the
 14 strikers at the koppie?
 15 MR MATHUNJWA: Yes, I spoke to the
 16 strikers at the koppie.
 17 MR BRUINDERS SC: What did you say to
 18 them?
 19 MR MATHUNJWA: I told them that no-one
 20 was coming to receive what you told us, or no-one to be
 21 addressed. There was no general, there was no management.
 22 MR BRUINDERS SC: What else did you say
 23 to them?
 24 MR MATHUNJWA: Would you please repeat
 25 that?

<p style="text-align: right;">Page 2376</p> <p>1 MR BRUINDERS SC: What else did you say 2 to them? 3 [15:38] MR MATHUNJWA: I told them that they are 4 going to be killed, they are going to be shot at, let them 5 leave this mountain and disperse, and further made an 6 example of a ram, that when the ram retreats it's not that 7 he is failing or he's been defeated but it's just to get 8 more energy and when it comes back, it will hit hard. So 9 therefore by leaving this koppie and returning back to your 10 places, is not that you are defeated. You just retreat and 11 to re-strategise. 12 MR BRUINDERS SC: Is there anything else 13 that you said to them? 14 MR MATHUNJWA: Yes, I mentioned that by 15 going, by retreating is not that you will lose. And I 16 mentioned again and again that they must leave this koppie. 17 MR BRUINDERS SC: Mr Mathunjwa, did any 18 of the strikers on the koppie speak to you or to the rest 19 of the strikers? 20 MR MATHUNJWA: Yes. After my, after I 21 had delivered that message to them, some of the strikers 22 came forward. 23 MR BRUINDERS SC: What did they say? 24 MR MATHUNJWA: They said they are not 25 going to attack or kill anyone. They will sit here, that</p>	<p style="text-align: right;">Page 2378</p> <p>1 tell the story? And then by those words, then I had to 2 leave and coming back – 3 MR BRUINDERS SC: Sorry, Mr Mathunjwa, 4 before you answer an earlier question I asked, can I come 5 back to something you just said and that is, why were you 6 so convinced that people were going to get killed? 7 MR MATHUNJWA: I mean, one, the 8 Provincial Commissioner who said to us this thing must end 9 today. Subsequent to that, the very same Provincial 10 Commissioner is not available to meet with us to report the 11 feedback from the mountain. Two, or three, the management 12 reneged from its commitment and subsequent to that the very 13 same management is no longer willing to meet with us. And 14 again I reminded myself of the words that were said on the 15 meeting of the 15th whereby Mr Mokwena, saying they will get 16 the police to go and do their job there in the mountain. 17 So based on those facts it was clear to me that yes, the 18 decision has been taken that these workers are going to be 19 killed. 20 MR BRUINDERS SC: When you left, what did 21 you notice about the police presence at the koppie? 22 MR MATHUNJWA: We noticed there were 23 those vehicles with barbed wires around there and also the 24 number of police that has increased, according to what I've 25 observed.</p>
<p style="text-align: right;">Page 2377</p> <p>1 will be only the police will come and kill them but they 2 will never attack any police. And then they also thanked 3 me that you've done a very good job, we've seen you trying 4 with no assistance, with no police around you escorting 5 you, so we thank you for that but for now, we ask you to 6 leave the place. They said they wanted to talk to their 7 employer and the employer never came. Then they say they 8 will sit here. 9 MR BRUINDERS SC: Did you leave? Did you 10 leave? 11 MR MATHUNJWA: Yes, eventually I got into 12 the car and I drove a few metres, then I stopped again. If 13 I recall, I said to the comrades in the car, we cannot 14 leave these workers, they are going to be killed so we 15 can't just leave them. At the same time while I was still 16 waiting, they were waving, the workers were waving to me 17 that I must leave. 18 MR BRUINDERS SC: When you left, did you 19 notice whether any of the strikers on the koppie, were 20 there any of them who started leaving? 21 MR MATHUNJWA: Ja, let me just finish 22 before that one. As I was trying to say to the comrades in 23 the car, let's not leave these workers because I see 24 they're going to kill them, one of the comrades in the car 25 responded by saying if we are all killed, who's going to</p>	<p style="text-align: right;">Page 2379</p> <p>1 MR BRUINDERS SC: Now Mr Mathunjwa, you 2 were going to answer an earlier question of mine which was, 3 when you left did you notice any of the strikers leaving as 4 well? 5 MR MATHUNJWA: Yes, I mean because it was 6 a large group of workers there, as many papers are saying, 7 thousands and thousands of workers were there. Yes, I did 8 notice the movement right at the back, that there was a 9 movement of people. 10 MR BRUINDERS SC: Towards? 11 MR MATHUNJWA: Others they – what should 12 I, I should say west and others east. 13 MR BRUINDERS SC: Now you said earlier 14 that you had stopped and your comrades had persuaded you 15 that you shouldn't stay but should go, do you remember 16 that? 17 MR MATHUNJWA: Yes, I do remember it. 18 MR BRUINDERS SC: Did you then leave by 19 car? 20 MR MATHUNJWA: Yes. 21 MR BRUINDERS SC: After you left, did you 22 encounter any police? 23 MR MATHUNJWA: Yes. When I left the 24 koppie, behind the koppie I was stopped with a large 25 contingent of police.</p>

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1 MR BRUINDERS SC: What did they want?

2 MR MATHUNJWA: They stopped me, like

3 showing the direction to go back but I proceeded and I

4 stopped and then they asked me where I'm going. I said

5 "I'm leaving" and they said "Who are you?" I explained

6 myself, who I am. They said, they went back to one of the

7 black Jeeps which has GP registration with dark windows.

8 There were occupants inside but which I couldn't see, but

9 behind them there was a lot of contingents of police. Some

10 of them pulled out from their Combis with their rifles and

11 they kneeled facing our car. That was very traumatic but

12 then they went to that Jeep for quite some time and then

13 they came back, they said "Yes, you are union officials,

14 you may leave."

15 MR BRUINDERS SC: Did you then leave the

16 area?

17 MR MATHUNJWA: Then we leave the area

18 just behind the koppie, I think it's Marikana.

19 MR BRUINDERS SC: Did any of you in the

20 car receive a telephone call while you were on your way

21 out?

22 MR MATHUNJWA: Yes. After we crossed the

23 railway line and then after you cross the railway line,

24 turn to your right, there's like a curve, the road is

25 bending and then after we took the straight line then the

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1 phone rang to one of the comrades who was inside the car

2 and then he received the phone and he reported to me that

3 this phone is telling them that the police are killing the

4 workers.

5 MR BRUINDERS SC: I'm not going to ask

6 you anything –

7 MR MOTHIBEDI SC: Sorry, Mr Chairman, in

8 order to inform us what evidence is going to be led in this

9 regard, can we be informed who the person, the name of the

10 comrade is referred to and whether such a person, is he

11 going to make a statement? Is he coming to testify?

12 CHAIRPERSON: The question is who is the

13 branch chairperson who was called and who allegedly told

14 your colleague in the motor car that the police were

15 telling the workers? Can you remember who the branch

16 chairperson was?

17 MR MATHUNJWA: Yes, he is Mr Jombo.

18 CHAIRPERSON: And based on what you

19 understand, was he the person who made the statement which

20 you've just reported to us, namely that the police were

21 killing the workers?

22 MR MATHUNJWA: Yes, that's correct.

23 CHAIRPERSON: Does that satisfy you?

24 MR MOTHIBEDI SC: If Mr Jombo is going to

25 be called or not?

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1 CHAIRPERSON: Well, maybe we'll find out

2 in the fullness of time. Mr Bruinders?

3 MR BRUINDERS SC: May I continue, Mr

4 Chair? May I continue with my evidence-in-chief? I'm not

5 going to ask you anything more about the 16th. What I would

6 like to ask you is, after the 16th, did strikers go back to

7 work?

8 MR MATHUNJWA: No, no strikers as far as

9 I know that reported for duty.

10 MR BRUINDERS SC: What happened in the

11 days immediately after the 16th at the koppie?

12 MR MATHUNJWA: My recollection and the

13 information that I received is that the workers returned

14 back to the koppie.

15 MR BRUINDERS SC: So the strike didn't

16 end on the 17th, 18th, 19th or even 20th of August?

17 MR MATHUNJWA: No, it didn't end, it

18 continued.

19 MR BRUINDERS SC: And while it continued,

20 where did the striking workers gather?

21 MR MATHUNJWA: I was informed that they

22 gathered around the very same place which they used to

23 gather.

24 MR BRUINDERS SC: Which is that?

25 MR MATHUNJWA: Which - that is the

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1 koppie.

2 MR BRUINDERS SC: Were you as – or AMCU –

3 involved in negotiations to bring an end to the strike?

4 MR MATHUNJWA: Yes, we were party.

5 MR BRUINDERS SC: Who was involved in

6 those negotiations?

7 MR MATHUNJWA: The parties that were

8 involved, it was ourselves, AMCU, National Union of

9 Mineworkers, UASA, Solidarity and a workers' delegation and

10 then the CCMA as a facilitator and the management also.

11 MR BRUINDERS SC: Who was this workers'

12 delegation?

13 MR MATHUNJWA: They were the workers

14 delegated by the strikers, were a part of the strikers.

15 MR BRUINDERS SC: And this delegation,

16 during the course of the negotiations, from whom did they

17 take and obtain mandates?

18 MR MATHUNJWA: Their mandate was from the

19 strikers themselves.

20 MR BRUINDERS SC: Did NUM or AMCU

21 represent the strikers in those negotiations?

22 MR MATHUNJWA: No, the strikers

23 represented themselves because they had a delegation.

24 MR BRUINDERS SC: Those negotiations

25 ultimately led to an agreement between the parties

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1 negotiating at the CCMA, not so?

2 MR MATHUNJWA: That's correct.

3 CHAIRPERSON: Is it correct that

4 representatives of the churches, including Bishop Seoka,

5 also played a role in facilitating a settlement? Would

6 that be correct?

7 MR MATHUNJWA: Yes, they were present but

8 however, they didn't sign any documentation.

9 CHAIRPERSON: No, no, the question I

10 asked you was, did they play a role in facilitating the

11 settlement?

12 [15:58] MR MATHUNJWA: Yes, they did.

13 MR BRUINDERS SC: In your answer to the

14 Commissioner, to the Chair, you talked about signing. What

15 was signed?

16 MR MATHUNJWA: That was an agreement

17 related to the demands of the strikers.

18 MR BRUINDERS SC: May we hand up copies

19 of the agreement, commissioners?

20 CHAIRPERSON: I take it there's no

21 objection. Ms Pillay will give us the next exhibit

22 designation.

23 MS PILLAY: Chair, it's OO10.

24 CHAIRPERSON: Thank you.

25 MR BRUINDERS SC: Now, the agreement is

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1 called Addendum to Category 3 to Category 9 Substantive

2 Wage Agreement, not so?

3 MR MATHUNJWA: That's correct.

4 MR BRUINDERS SC: And the last page, page

5 3 of that agreement has the signatures of the

6 representatives of the parties to the agreement, not so?

7 MR MATHUNJWA: That's correct.

8 MR BRUINDERS SC: And we can tell from

9 the last entry on that page, it reads "On behalf of the

10 delegates duly authorised."

11 MR MATHUNJWA: That's correct.

12 MR BRUINDERS SC: And it was then also

13 signed by the other parties you mentioned, namely the

14 company, that's Lonmin, AMCU, NUM, Solidarity and UASA,

15 correct?

16 MR MATHUNJWA: That's correct.

17 MR BRUINDERS SC: Mr Mathunjwa, could

18 this tragedy have been avoided?

19 MR MATHUNJWA: I believe so, that it

20 could have been avoided.

21 MR BRUINDERS SC: How do you say it

22 might've been avoided?

23 MR MATHUNJWA: I would just refer to my,

24 before I answer the question, to the comment that I made

25 when this agreement was signed, which was – there was media

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1 coverage – I said I sign this agreement with great

2 disappointment because what we are doing today is what we

3 should have done before.

4 MR BRUINDERS SC: And what did you mean

5 by that?

6 MR MATHUNJWA: I mean if management could

7 have been engaging with these workers as they were asking,

8 we could have avoided this massacre because ultimately

9 that's what we did.

10 MR BRUINDERS SC: Then can I, through

11 you, just hand up one last document? Chair, it's a letter

12 dated 20 August by Mr Mathunjwa to Lonmin. It's at page

13 392 of AMCU's bundle.

14 CHAIRPERSON: That'll be Exhibit OO11.

15 MR BRUINDERS SC: Do you have a copy of

16 it in front of you, Mr Mathunjwa?

17 MR MATHUNJWA: Yes, letter dated the 20th

18 of August 2012.

19 MR BRUINDERS SC: Was this a letter sent

20 by AMCU to Lonmin?

21 MR MATHUNJWA: That's correct.

22 MR BRUINDERS SC: And could you read out

23 the second paragraph, please?

24 MR MATHUNJWA: It says, "AMCU. We

25 reiterate our position against any unlawful and unprotected

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1 strike. We also reiterate our position, as should be well

2 known to management, that we have never been part of

3 organisation of the strike underway. Having said that" –

4 MR BRUINDERS SC: Mr Mathunjwa, for my

5 purposes for this question, that's enough for my purposes,

6 you can stop there. I have no further questions.

7 CHAIRPERSON: I think it only fair you

8 should let him read out paragraphs and 4, 5 and 6 for the

9 purpose of those in the auditorium and in the wider

10 audience who were interested in this matter, see what he

11 said in those paragraphs.

12 MR BRUINDERS SC: Mr Mathunjwa, it seems

13 that I couldn't put a stop to you. Will you read out the

14 rest of the letter?

15 MR MATHUNJWA: Second paragraph, "Having

16 said that and in light of the incident of the 16th August

17 2012, we appreciated the call by the President of the

18 Republic to declare this week as a week of mourning. We

19 plead with management to allow this whole week for the

20 unions to attend to get people back to work and to withdraw

21 the ultimatum issued, forcing the workers to report back to

22 work today or face dismissal. We regard this action as

23 very harsh and inhumane in the circumstances. We note that

24 the company had taken their management to attend

25 psychological counselling as a result of a trauma they

1 suffered following the massacre that took place at Lonmin.
2 However, we would like the employer to afford the workers
3 the same opportunity. We should note the danger of forcing
4 people to report back to work in light of their
5 psychological trauma and the safety implications of these
6 workers reporting back to work today. As AMCU, we propose
7 an urgent meeting with management during the course of the
8 day to discuss this matter and its implications. Yours in
9 social justice, Mr Joseph Mathunjwa, President."

10 MR BRUINDERS SC: We have no further
11 questions, Mr Mathunjwa.

12 CHAIRPERSON: The Commission will adjourn
13 untill 9:30 tomorrow morning.

14 [COMMISSION ADJOURNED]

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