

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 58 04 MARCH 2013 PAGES 6135 TO 6235

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 04 MARCH 2013]
 2 [10:09] CHAIRPERSON: The Commission resumes.
 3 You're still under oath.
 4 MR NGALWANA: Thank you, Chairperson and
 5 members of the Commission. May I just remind you again of
 6 the importance of telling the truth. I've asked you on
 7 previous occasions to be candid with this commission and
 8 tell us that you were on the koppie on the 15th to which
 9 your response was you don't recall being at the koppie on
 10 the 15th. The South African Police Service will lead
 11 evidence that places you firmly at the koppie on the 15th
 12 August 2012. Do you want to reconsider your answer in that
 13 regard or do you persist in saying that you were not - you
 14 do not recall having been at the koppie on the 15th August
 15 2012? Perhaps before you answer that question can I say
 16 this, if you do know that you were in fact at the koppie on
 17 the 15th but you don't say so the Commission will be none
 18 the wiser about the true events of that day from your
 19 perspective.
 20 MR HANABE: The Commission will?
 21 MR NGALWANA: The Commission will be none
 22 the wiser, in other words the Commission will not get to
 23 the bottom of the truth as regards what happened on the
 24 koppie on that day the 15th. And that's because none of us
 25 will be able to ask you questions that will elicit an

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1 informative answer about the events of that day if you say
 2 categorically that you were not there on that day. And if
 3 in fact you were there on the 15th and you deny that you
 4 were there and it is discovered that you were in fact there
 5 and could have shed light on the events of the 15th you then
 6 would have committed perjury. Do you now want to
 7 reconsider your answer? Were you or were you not at the
 8 koppie on the 15th August 2012?
 9 CHAIRPERSON: Before you answer the
 10 question I'd like to add something extra. You've seen the
 11 video clip of the 15th with someone whom you concede seems
 12 to be you. Now having seen that video clip of what was
 13 happening on the 15th has perhaps helped to jog your memory?
 14 You say you couldn't remember before but when you saw the
 15 video clip did that perhaps jog your memory and help you to
 16 remember what happened on the 15th which you previously
 17 couldn't remember?
 18 MR MAGIDIWANA: No, it did not remind me.
 19 CHAIRPERSON: Is it correct to say then
 20 that you still can't remember anything, you still can't
 21 remember being on the koppie on the 15th August?
 22 MR MAGIDIWANA: Yes.
 23 MR NGALWANA: Mr Magidiwana, the police
 24 will also lead evidence, this is now a separate point from
 25 the evidence that you were in fact at the koppie on the

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1 15th, we shall lead evidence that not only places you on
 2 the koppie on the 15th but also places you there with two
 3 weapons. Would you care to comment?
 4 MR MAGIDIWANA: I need those things to be
 5 brought forward.
 6 MR NGALWANA: Well let me ask you a
 7 direct question. It's a different question from the one
 8 I've just asked you about whether or not you were there on
 9 the 15th. Do you persist in your version that the only time
 10 that you were carrying two weapons was when you were seated
 11 on the 16th of August 2012 at the koppie and that you had
 12 borrowed the, they call it [African language] from the
 13 person who was seated next to you?
 14 MR MAGIDIWANA: I'm still persisting in
 15 that, I'm still saying it.
 16 MR NGALWANA: You persist that that is
 17 the only occasion that you had those two weapons?
 18 MR MAGIDIWANA: If there was any other
 19 occasion then you can prove or show it.
 20 MR NGALWANA: Well what would your
 21 response be if the police presented such evidence?
 22 MR MAGIDIWANA: It is clear, Sir, because
 23 the only weapon that was taken from me was a stick and that
 24 happened at the time I was holding it and I was lying down.
 25 MR NGALWANA: I'm not sure I understand

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1 your answer. Are you saying that if the police were to
 2 present evidence placing two weapons, in other words
 3 placing you on the scene on the 15th or on any other day
 4 other than the 16th with two weapons that you would still
 5 persist that you were not holding two weapons?
 6 MR MAGIDIWANA: It is so.
 7 MR NGALWANA: Even if it is
 8 incontrovertible evidence?
 9 MR MAGIDIWANA: I said, Sir, show it to
 10 me so I can see it.
 11 MR NGALWANA: But your answer to the
 12 question of whether or not you were carrying two weapons on
 13 the 15th cannot depend on whether the police can produce
 14 evidence. You know whether or not you were carrying two
 15 weapons on the 15th.
 16 MR MAGIDIWANA: But it's something that
 17 is coming from you.
 18 MR NGALWANA: So I take it you -
 19 CHAIRPERSON: Sorry, can I just interrupt
 20 for a moment? The point is this, if there is evidence led
 21 by the police to the effect that you were on the koppie on
 22 the 15th with two weapons or any other day apart from the
 23 16th with two weapons will that evidence be correct or
 24 incorrect? - cannot depend upon anything else, either it's
 25 true or it's not true. If they lead that evidence would it

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1 be correct or would it be incorrect?
 2 MR MAGIDIWANA: What I know is in fact
 3 what happened on the 16th. The day I remember is what
 4 happened on the 16th but anything that happened on the other
 5 days I have no knowledge about such events or things.
 6 MR NGALWANA: Are you saying you have no
 7 knowledge of whether or not you were carrying weapons, two
 8 weapons on a day other than the 16th or are you saying
 9 categorically that you were not carrying any two weapons on
 10 any day other than the 16th?
 11 MR MAGIDIWANA: I don't know, Sir, how
 12 you want me to explain it because what I said is I don't
 13 remember ever going there to the mountain except the 16th.
 14 On the -
 15 CHAIRPERSON: I'm sorry to interrupt.
 16 You still haven't answered my question. My question was if
 17 there is evidence led by the police or anybody for that
 18 matter that you were there with two weapons on any day
 19 other than the 16th will that evidence be true or false?
 20 Will it be correct or incorrect?
 21 MR MAGIDIWANA: That will not be true.
 22 MR NGALWANA: Okay, so it is clear now
 23 that you categorically deny that you were there on the 15th
 24 and that you were carrying two weapons on the 15th.
 25 MR MAGIDIWANA: I said to you, Sir, if

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1 you have such evidence you must present it because I know
 2 nothing about what you are saying.
 3 MR NGALWANA: Okay well now you seem to
 4 be reverting back to pleading ignorance. Perhaps this will
 5 jog your memory, Chair we beg leave to hand out some
 6 exhibits, these have already been discovered in the police
 7 external hard drive on my instructions -
 8 CHAIRPERSON: Will this be exhibit EEE7?
 9 MS PILLAY: That's correct, Chair, EEE7.
 10 COMMISSIONER HEMRAJ: Mr Magidiwana, is
 11 there anything at all that impedes your memory of what
 12 might have happened on any of the days preceding the 16th?
 13 MR MAGIDIWANA: The reason why I'm saying
 14 that is that I don't recall ever going there except on the
 15 16th because I also remember all the occurrences or what
 16 happened on the 16th.
 17 MR NGALWANA: Sir, you are not answering
 18 the question as directed to you but the question that was
 19 asked is there anything that impedes your memory that
 20 causes you not to remember ever being there besides the
 21 16th?
 22 MR MAGIDIWANA: I think earlier on when I
 23 was talking I gave an answer so I don't know what kind of
 24 answer you want me to give.
 25 MR NGALWANA: And what was your answer?

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1 MR MAGIDIWANA: I am saying I don't
 2 recall ever being there on the 15th. The day that I
 3 remember very well is the 16th. The 16th the whole day.
 4 MR NGALWANA: Sir, still you have not
 5 answered my question but yet let us proceed. May I direct
 6 your attention to the first page of exhibit EEE7? The
 7 police maintain that that photograph was taken on the 15th
 8 of August. You will see a yellow arrow in the top
 9 photograph which seeks to depict where you are standing.
 10 And the photograph below that is a blown up version, albeit
 11 blurred that shows you clearer than the top photograph.
 12 Can you dispute that that is you in the photograph?
 13 Perhaps if you focus more on the lower photograph.
 14 [10:29] MR MAGIDIWANA: That's what I am looking
 15 at.
 16 MR NGALWANA: You recall that the top you
 17 were wearing, the sweater, was a green sweater written UZZI
 18 or U-Z-Z-I.
 19 MR MAGIDIWANA: Yes, I remember that was
 20 what I was wearing on the 16th.
 21 MR NGALWANA: Can you make out at least
 22 the U and part of the Z in the lower photograph on the
 23 chest of your sweater?
 24 MR MAGIDIWANA: It seems like the other
 25 letters - it looks like a Z, but there is a person in fact

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1 who is standing in front that it cannot be clearly seen.
 2 MR NGALWANA: So you accept that that is
 3 a UZ on the chest of that green sweater.
 4 MR MAGIDIWANA: Yes, I agree,
 5 MR NGALWANA: You also accept that the
 6 sweater you were wearing at least on the 16th was a sweater
 7 that was green, the same colour as this and written UZZI on
 8 the chest.
 9 MR MAGIDIWANA: Yes on the 16th that is
 10 what I was wearing.
 11 MR NGALWANA: The police's evidence will
 12 be that on the 15th you were wearing the same sweater.
 13 MR MAGIDIWANA: No.
 14 MR NGALWANA: Can you dispute that if
 15 assuming that you were - no let me put it this way. Can
 16 you dispute that on this photograph that is indeed you?
 17 Forget the date, that is the evidence that the police will
 18 lead later. Can you dispute, that on this photograph that
 19 is indeed you, in as much as you have now accepted that you
 20 were wearing a sweater with the UZZI and you can clearly
 21 see UZ on that photograph. Can you dispute that, that is
 22 you?
 23 MR MAGIDIWANA: I don't know.
 24 MR NGALWANA: Mr Magidiwana, the truth
 25 again. I think you need to be reminded of telling the

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1 truth. You have accepted here that the green top you were
 2 wearing on the 16th was emblazoned with four letters, UZZI
 3 and that that top was green, pretty much like the one we
 4 see in the picture. That is correct, isn't it?
 5 MR MAGIDIWANA: Yes, the top or the
 6 sweater I was wearing was green in colour.
 7 MR NGALWANA: Ja not just green, this
 8 particular shade of green.
 9 MR MAGIDIWANA: Yes, it was this
 10 particular shade.
 11 MR NGALWANA: It was in fact this
 12 particular sweater.
 13 MR MAGIDIWANA: It was like this.
 14 MR NGALWANA: It was this.
 15 MR MAGIDIWANA: That's why I am saying I
 16 am not sure because if I look at the bottom I see there is
 17 a sight of jeans that is appearing and together with a shoe
 18 that seems to be cream or I was not wearing this kind of
 19 shoe.
 20 MR NGALWANA: Very well.
 21 MR MAGIDIWANA: A shoe like this and a
 22 jean.
 23 MR NGALWANA: Would you turn the page of
 24 that same exhibit. With your untrammelled vision and your
 25 un-obscured view can you now dispute that that is indeed

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1 you in the picture?
 2 MR MAGIDIWANA: But the face is mine, it
 3 is my face.
 4 MR NGALWANA: Can you see the first two
 5 letters U and Z and the red blanket.
 6 MR MAGIDIWANA: Yes, I can see.
 7 MR NGALWANA: You say it is your face.
 8 MR MAGIDIWANA: Yes.
 9 MR NGALWANA: You are not suggesting that
 10 it is your face that has been super imposed on someone
 11 else's body, do you?
 12 MR MAGIDIWANA: No, that was never done.
 13 MR NGALWANA: So, then you are saying
 14 that is in fact you?
 15 MR MAGIDIWANA: Yes, that is me.
 16 MR NGALWANA: You can see, I am quite
 17 sure that you are not carrying a knobkierie there, alone or
 18 only. Can you dispute that protruding from your left hand
 19 is what appears to be an object other than the knobkierie
 20 that you say you've been carrying.
 21 MR MAGIDIWANA: Yes, it is clear that it
 22 is something that is carried which I am not sure whether it
 23 is an iron bar.
 24 MR NGALWANA: Will you dispute when the
 25 police lead evidence that says that is in fact a sharpened

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1 rod, you call it a bar, a sharpened bar or sharpened iron
 2 bar.
 3 MR MAGIDIWANA: I never carried an iron
 4 bar, a sharpened iron bar.
 5 MR NGALWANA: No?
 6 MR MAGIDIWANA: I never carried an
 7 sharpened iron bar but the day which I remember where I
 8 carried a sharpened iron bar was only on the 16th and I had
 9 taken it from someone.
 10 CHAIRPERSON: Now what we see here on
 11 this photograph, did you ever possess an instrument of that
 12 kind that looks like that, even if it is during the
 13 relevant period in August last year, did you possess an
 14 instrument that looks like that?
 15 MR MAGIDIWANA: That's why I am saying
 16 that I don't remember ever carrying such an object. I can
 17 see it in this picture though I don't remember what object
 18 it was.
 19 CHAIRPERSON: Did you ever have in your
 20 possession apart from the 16th which, we are not talking
 21 about that, did you ever have in your possession an
 22 instrument that looked like that.
 23 MR MAGIDIWANA: This is confusing me
 24 because what I remember, the day I remember in fact is the
 25 16th.

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1 CHAIRPERSON: Ja but that is not an
 2 answer my question. I know you said you had an implement
 3 in your hand on the 16th, but what I am asking you is
 4 something different. Did you at any stage in the period
 5 from say the 9th of August to the 15th of August have in
 6 your possession and implement or instrument of that kind
 7 such as we see on that photograph?
 8 MR MAGIDIWANA: It is clear in this
 9 picture that I am carrying something, I am holding
 10 something.
 11 MR NGALWANA: Yes, I understand that, but
 12 you say you can't remember. That's why I am asking you can
 13 you remember at any stage from the 9th to the 15th having
 14 had in your possession an instrument of that kind.
 15 MR MPOFU: Chairperson, can we stick with
 16 object at this stage.
 17 CHAIRPERSON: An object of that kind.
 18 Can you ever recall during the period of the 9th to the 15th
 19 of August having had in your possession an object of the
 20 kind you see on the photograph.
 21 MR MAGIDIWANA: I see in this picture
 22 that I am carrying something but I am really confused. I
 23 can see, I am hearing it here but I don't as to how I
 24 carried it, because I don't even have such an object.
 25 MR NGALWANA: Mr Magidiwana, you called

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1 it an iron bar or an iron rod, you said [African language].
 2 MR MAGIDIWANA: Yes, I said it seems like
 3 it is an iron bar. I didn't say it is in fact an iron bar,
 4 I said it seems like it is one.
 5 MR NGALWANA: If it is one you will
 6 accept that [African language] is a weapon?
 7 MR MAGIDIWANA: In your own way then I
 8 can accept, but I don't think it is weapon.
 9 MR NGALWANA: You don't think an iron rod
 10 shape like this is a weapon?
 11 MR MAGIDIWANA: No.
 12 MR NGALWANA: It is not a dangerous
 13 weapon.
 14 MR MAGIDIWANA: No.
 15 MR NGALWANA: Okay. If you flip over the
 16 page, Mr Magidiwana, you will see pretty much the same
 17 image and so will the forth page. The police will lead
 18 evidence that this was not only the 15th of August but that
 19 you were carrying a sharpened iron rod, you call it an iron
 20 bar, the police will confirm that it was in fact a
 21 sharpened iron bar.
 22 MR HANABE: Are you saying, Counsel, not
 23 only on the 15th.
 24 MR NGALWANA: Yes this is not, we will
 25 lead evidence that not only was this picture taken on the

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1 15th but also that on the 15th he was on the koppie carrying
 2 a sharpened iron rod.
 3 MR MAGIDIWANA: Can I answer?
 4 MR NGALWANA: Go ahead.
 5 MR MAGIDIWANA: If it was a sharpened
 6 iron bar, I cannot lie. I don't know where I got it from
 7 or to whom I took it, from whom I took it, but according to
 8 my observation here it looks like an iron bar.
 9 MR NGALWANA: Right.
 10 CHAIRPERSON: An iron bar is a dangerous
 11 weapon. You can do a lot of damage with an iron bar can't
 12 you?
 13 MR MAGIDIWANA: No then maybe it is like
 14 that, Sir.
 15 CHAIRPERSON: I don't know what that
 16 answer means. Would you accept that if it is an iron bar
 17 you can do a lot of damage with an iron bar if you hit
 18 someone on the head with it? Would you accept that?
 19 MR MAGIDIWANA: Yes, I accept that.
 20 CHAIRPERSON: You therefore accept that
 21 it is a dangerous weapon?
 22 MR MAGIDIWANA: Yes.
 23 MR NGALWANA: Alright. Would you
 24 consider Mambush to have been a brave man?
 25 MR MAGIDIWANA: Clarify.

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1 MR NGALWANA: Was he a coward or was he
 2 brave?
 3 MR MAGIDIWANA: I don't know.
 4 MR NGALWANA: Would you consider yourself
 5 a coward or a brave man?
 6 [10:49] MR MAGIDIWANA: I consider myself a
 7 coward.
 8 MR NGALWANA: Would you consider yourself
 9 a weak man or a strong man?
 10 MR MAGIDIWANA: I then don't know as to
 11 how I am as to whether I am weak or not perhaps according
 12 to the way you are looking at me you can consider me weak
 13 or otherwise, I don't know.
 14 MR NGALWANA: You know very well that I'm
 15 not talking about appearances. I'm talking about your
 16 character.
 17 MR MAGIDIWANA: No then if you put it
 18 that way I am a coward.
 19 MR NGALWANA: You've answered that
 20 question, I'm asking you a different one.
 21 MR MAGIDIWANA: Which question are you
 22 asking?
 23 MR NGALWANA: Would you consider yourself
 24 a weak man or a strong man?
 25 MR MAGIDIWANA: I consider myself a weak

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1 man.
 2 MR NGALWANA: You are a man aren't you?
 3 Not as opposed to being a woman, I'm talking about since
 4 you are a Xhosa man you would have gone to circumcision
 5 school. I'm going somewhere with this Chairperson if
 6 you'll indulge me.
 7 CHAIRPERSON: Isn't he a Momvana, do they
 8 have circumcision? That's something you can look at it
 9 MR NGALWANA: I'm giving him the
 10 opportunity to answer that question, Chairperson.
 11 MR MAGIDIWANA: I am not a man, I'm a
 12 young man.
 13 MR NGALWANA: So I take you haven't gone
 14 to circumcision school then.
 15 MR MAGIDIWANA: It is not like that. I
 16 am circumcised. A man is an old man who is a head of house
 17 and a person like me is a young man and a boy is someone
 18 who has never been to initiation school.
 19 MR NGALWANA: Thanks for the lecture.
 20 Would you consider yourself the sort of young man who when
 21 the going gets tough would run away?
 22 MR MAGIDIWANA: The one who runs away
 23 when it's tough. It is so, when it is tough you have to
 24 flee. You cannot persevere under something that is tough.
 25 MR NGALWANA: So you're not the sort of

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1 young man who perseveres?
 2 MR MAGIDIWANA: No, I'm not that type of
 3 young man.
 4 MR NGALWANA: You're not the sort of
 5 young who would stand his ground for what he wants,
 6 believing it to be rightfully his?
 7 MR MAGIDIWANA: If then that thing that
 8 is rightfully mine is the right thing then in that sense I
 9 can stand my grounds but if it is something that is not
 10 right and something I cannot stand against then I just
 11 leave it.
 12 MR NGALWANA: Well you considered the
 13 demand for R12 500 to be a right demand not so?
 14 MR MAGIDIWANA: Indeed and even now I
 15 still want it, in fact very much.
 16 MR NGALWANA: So you would stand your
 17 ground in demanding the 12 500 because you believe it to be
 18 rightfully yours?
 19 MR MAGIDIWANA: I can stand and then
 20 speak if the circumstances are compelling especially when I
 21 want such a demand.
 22 MR NGALWANA: And when someone or people
 23 stand in your way to your getting the 12 500 that you
 24 believe to be rightfully yours are you saying you'll simply
 25 walk away?

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1 MR MAGIDIWANA: In the way in which you
 2 are putting it that's what happened and it happened that
 3 the people died and died and that is what made me want it
 4 even more as I still want it.
 5 MR NGALWANA: Well and if the employer
 6 refuses what then?
 7 MR MAGIDIWANA: The employer never said
 8 he is refusing. It's only that never came to the workers.
 9 What I saw is that we were then destroyed by the police.
 10 MR NGALWANA: You're not answering my
 11 question. You're saying you will persist in the R12 000
 12 because people have died for it, I'm paraphrasing, I'm
 13 saying to you if the employer refuses what then?
 14 MR MAGIDIWANA: I will sit down and not
 15 go to work just as in the manner in which we did.
 16 MR NGALWANA: You know of course that
 17 that would be the quickest way to your losing your job not
 18 so?
 19 MR MAGIDIWANA: But then it is better to
 20 lose employment being many mine employees rather than
 21 losing a job being one person standing alone.
 22 MR NGALWANA: You held a different view
 23 earlier in your evidence in chief.
 24 MR MAGIDIWANA: Yes my view had to be
 25 different at the time I was giving evidence but now I have

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1 just answered the question that you just posed.
 2 MR NGALWANA: Do you remember what view
 3 you held in your evidence in chief?
 4 MR MAGIDIWANA: You can tell me.
 5 MR NGALWANA: Well you have just told the
 6 Commission that you held a different view then than you
 7 hold now so surely you must know what the different version
 8 was earlier.
 9 MR MAGIDIWANA: I'm saying then you can
 10 tell me.
 11 MR NGALWANA: What is the difference
 12 between your version now and your version then about the
 13 fear of losing your job?
 14 MR MAGIDIWANA: There are many things
 15 that I said earlier on. It's not just one thing.
 16 MR NGALWANA: Specifically about the fear
 17 of losing your job.
 18 MR MAGIDIWANA: It was the thought of
 19 going home that if I were to go home and that the people
 20 would - if it happened that people go back to work what I
 21 said was that now the fear would be that the fact that I'm
 22 remaining at home would cause me to lose employment alone
 23 which is being one.
 24 MR NGALWANA: But you were as much at
 25 risk of losing your job if you went home as you were if you

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1 joined and supported an unprotected strike, not so?
 2 MR MAGIDIWANA: It is not the same thing.
 3 MR NGALWANA: But on both occasions you
 4 lose your job.
 5 MR MAGIDIWANA: If the employer had said
 6 I am firing you and then he would get rid and throw away
 7 all the documents and say I am employing other people then
 8 it could have been like that but if then the employer just
 9 remained there - there is then still hope that he will come
 10 back. Yes there is still that hope that the employer then
 11 will come back to us.
 12 MR NGALWANA: I next want to take you
 13 back to where we left off on Friday. Perhaps Chairperson
 14 if this is the convenient time to adjourn.
 15 CHAIRPERSON: - quarter past 11, because
 16 we only started at 10 o'clock.
 17 MR NGALWANA: Oh okay.
 18 CHAIRPERSON: If there's a particular
 19 reason why you want an earlier adjournment I'll consider it
 20 but that was my plan.
 21 MR NGALWANA: No I'll continue,
 22 Chairperson.
 23 CHAIRPERSON: We started slightly after
 24 10 anyway but I won't use that against you.
 25 MR NGALWANA: Thank you, Chair, I'm

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1 indebted to the Chairperson and the Commission. Well
 2 before I go there can I come back to this recurring theme
 3 of your presence at the koppie on a particular date? We
 4 dealt with the 15th, we dealt with the 16th. Would you deny
 5 having been on the koppie on the 14th August 2012?
 6 MR MAGIDIWANA: No, no, no I can dispute
 7 that.
 8 COMMISSIONER TOKOTO: Sorry, Mr Ngalwana,
 9 before you go to the 16th or the 14th can you look at photo
 10 number five? That with three I think, yes. Let's start
 11 with three. I take it you admit that person depicted there
 12 is you. That person is pointed out on the top photograph
 13 but it's clearer on the photograph - you see that, this we
 14 have agreed now is an iron rod, that iron rod which is
 15 appearing on this previous photo, you're still carrying it
 16 there, do you see that?
 17 MR MAGIDIWANA: I can see it.
 18 COMMISSIONER TOKOTO: That there the
 19 stick, a knobkerrie protruding on the right hand side is
 20 that your knobkerrie?
 21 MR MAGIDIWANA: It is mine.
 22 COMMISSIONER TOKOTO: It also appears in
 23 photograph number five.
 24 MR MAGIDIWANA: Yes, it is appearing.
 25 MR NGALWANA: Thank you Commissioner. So

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1 Mr Magidiwana, you appear, correct me if I am wrong, to be
 2 denying rather emphatically your presence on the koppie on
 3 the 14th than you did the one of the 15th, correct?
 4 MR MAGIDIWANA: No, no, no I don't agree.
 5 MR NGALWANA: What don't you agree with?
 6 MR MAGIDIWANA: What you are saying.
 7 MR NGALWANA: You don't agree that you've
 8 denied emphatically your presence on the koppie on the 14th
 9 than you did on the 15th?
 10 MR MAGIDIWANA: No, I disagree.
 11 MR NGALWANA: I think the nuance is lost
 12 here.
 13 CHAIRPERSON: I think he may not
 14 understand the subtlety of the point you're putting and I
 15 wonder whether the effort expending in trying to convey it
 16 to him will be rewarded. Perhaps you can approach the
 17 point from a different angle.
 18 MR NGALWANA: Yes no let me move on,
 19 Chairperson, thank you. The police, Mr Magidiwana, will
 20 place you firmly on the koppie on the 14th of August during
 21 the performance of the rituals. Will you be in any
 22 position to dispute that if incontrovertible evidence is
 23 placed before the Commission?
 24 [11:09] MR MAGIDIWANA: No show that thing.
 25 MR NGALWANA: No we will. I'm asking you

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1 that when we do will you still persist that you were not at
 2 the koppie on the 14th?
 3 MR MAGIDIWANA: No I was never there.
 4 MR NGALWANA: So you will dispute it
 5 despite evidence.
 6 MR MAGIDIWANA: I'm saying I was never
 7 there.
 8 MR NGALWANA: You will say that despite
 9 evidence showing the contrary?
 10 MR MAGIDIWANA: I am saying I was not
 11 there on that day.
 12 MR NGALWANA: Let's start with, this is
 13 the first part of the evidence, it's in phases. Can I take
 14 you to page six of the EEE7, documents that you have in
 15 front of you? You will see in the bottom photographs it
 16 appears to be naked persons or on the left hand side of the
 17 photograph, bottom left, can you see that?
 18 MR MAGIDIWANA: Yes I can see.
 19 MR NGALWANA: There is another group on
 20 the other side of that beaten track, a group standing
 21 there. Can you see that?
 22 MR MAGIDIWANA: I can see these people
 23 who are wearing clothes.
 24 MR NGALWANA: The police allege that that
 25 is when the rituals were taking place. Are you in a

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1 position to dispute that?
 2 MR MAGIDIWANA: I don't know about that,
 3 I was not there.
 4 MR NGALWANA: So you cannot dispute it.
 5 MR MAGIDIWANA: I'm saying I don't know
 6 about it, I was not there as to whether, what they were
 7 doing I wouldn't know.
 8 MR NGALWANA: May I ask you to turn the
 9 page to page seven? You will see it is now some 25 minutes
 10 later than the first photograph. If you look at the top
 11 photograph do you see the group that is huddled at, or
 12 higher, almost close to the intersection of the two beaten
 13 paths?
 14 MR MAGIDIWANA: I can see all these
 15 people who are here as seated.
 16 MR NGALWANA: The police will show that
 17 that is the group that participated in the ritual and that
 18 you were present in that group. If you look at the
 19 photograph which is almost an insert below, the yellow
 20 arrow is pointing at where you are seated in that group.
 21 No we cannot see your face but will you dispute that that
 22 is indeed you?
 23 MR MAGIDIWANA: No, no, no this is not
 24 me.
 25 MR NGALWANA: Can I ask you to turn to

<p style="text-align: right;">Page 6159</p> <p>1 page eight of that same document? If you cast your eye in 2 the lower photograph is the image not clearer that that is 3 you? 4 MR MAGIDIWANA: This is not me. 5 MR NGALWANA: Do you see the red blanket? 6 MR MAGIDIWANA: It seems like this is not 7 even a blanket, is this not a T-shirt? 8 MR NGALWANA: Do you see the green 9 garment below the red blanket? 10 MR MAGIDIWANA: No this is not green. 11 MR NGALWANA: What colour would you give 12 it? 13 MR MAGIDIWANA: It seems like it's 14 yellowish. 15 MR NGALWANA: Yellowish. 16 MR MAGIDIWANA: Like almost yellow. 17 MR NGALWANA: The colour below the red or 18 maroon? You say - 19 MR MAGIDIWANA: Yes. 20 MR NGALWANA: I thought I was colour 21 blind. Can I ask you to turn to page nine? In the lower 22 photograph does that still appear yellow to you? 23 MR MAGIDIWANA: This which is depicted here looks 24 exactly like the one which we were looking at before. 25 MR NGALWANA: Are you looking at where</p>	<p style="text-align: right;">Page 6161</p> <p>1 MR NGALWANA: Whether the top garment is 2 a T-shirt or not what colour is it? 3 MR MPOFU: Chairperson, I know I'm not an 4 interpreter but the interpreter is struggling with the 5 colour that has been described as [African language] and I 6 think I've looked at the evidence leaders and we agree that 7 it means it looks paler. Ja so [African language] is to 8 fade as it where or ja maybe faded would be better than 9 what Mr Ngalwana says. 10 CHAIRPERSON: Before, just before we take 11 the tea adjournment let's finish this point before we take 12 the tea adjournment, finish this point, repeat your 13 question, listen carefully to the translation. If you 14 don't agree with the translation let's get an agreed 15 translation before the witness answers because we'll go 16 around and around in circles and we'll never have our tea. 17 MR NGALWANA: Thank you Chair. What 18 colour you say is faded or - 19 MR MAGIDIWANA: Yes it is faded. 20 MR NGALWANA: Faded unless I don't know 21 my colours doesn't strike me as a colour. 22 MR MAGIDIWANA: That is why I'm saying 23 that it's because the colour itself is confusing me and in 24 fact it's not what I was wearing. 25 MR NGALWANA: It's closer to red isn't</p>
<p style="text-align: right;">Page 6160</p> <p>1 the yellow arrow is pointing? 2 MR MAGIDIWANA: That's where I'm looking 3 at. 4 MR NGALWANA: And you persist that the 5 lower, call it a garment is not green but yellow. 6 MR MAGIDIWANA: I don't know exactly the 7 colour but it looks brighter. 8 MR NGALWANA: Perhaps the next photograph 9 might help put things in perspective. Would you turn to 10 page 10? Do you see the lower photograph where the arrow 11 is pointing? 12 MR MAGIDIWANA: I can see it. 13 MR NGALWANA: Does the lower garment 14 still look yellow to you? 15 MR MAGIDIWANA: I asked if this red thing 16 that is appearing is not a T-shirt. 17 MR NGALWANA: The answer is no but you 18 haven't answered my question. 19 CHAIRPERSON: The question doesn't relate 20 to the red garment, sorry, the question doesn't relate to 21 the red garment it relates to the lower, what appears to be 22 the lower garment and the question is what is the colour of 23 that. 24 MR MAGIDIWANA: I don't know exactly what 25 colour it is but it looks bright.</p>	<p style="text-align: right;">Page 6162</p> <p>1 it? 2 MR MAGIDIWANA: Because then I had a red 3 towel are you trying to say then that this was me? 4 MR NGALWANA: That colour which you say 5 is faded is closer to red is it not? 6 MR MAGIDIWANA: Yes. 7 MR NGALWANA: The answer to your question 8 is yes. Although I'm not - I shouldn't be answering your 9 questions is yes. 10 MR HANABE: Which is exactly what I was 11 saying that his answer to you is yes, I said it - 12 MR MAGIDIWANA: Can you repeat it so that 13 as I'm saying yes you must tell me what is it that I'm 14 saying yes to? 15 MR NGALWANA: It appears the witness 16 doesn't remember his own question to me but perhaps - 17 CHAIRPERSON: Perhaps this is - well 18 maybe we shouldn't leave his point hanging in the air. 19 Let's sort it out before we go. If you look at the 20 photograph, that is the lower photograph of exhibit EEE7.10 21 you'll see there's an arrow pointing to someone who appears 22 to have two garments. 23 MR HANABE: Is it page 10 Commissioner, 24 this exhibit? 25 CHAIRPERSON: Yes.</p>

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1 MR HANABE: Page 10.
 2 MR MAGIDIWANA: I can see it.
 3 CHAIRPERSON: Okay now what colour would
 4 you say is the top garment?
 5 MR MAGIDIWANA: It's red.
 6 CHAIRPERSON: And the lower garment?
 7 MR MAGIDIWANA: The one at the bottom is
 8 the one that is not quite clear. I don't really know the
 9 colour thereof.
 10 CHAIRPERSON: It looks like that's
 11 greenish but it seems to have what looked like yellowish
 12 tones to it as well, would you agree with that?
 13 MR MAGIDIWANA: That's why I said that
 14 it's also confusing me because it looks like yellow.
 15 CHAIRPERSON: It looks like greenish with
 16 yellow tones. Would that be fair?
 17 MR MAGIDIWANA: Yes.
 18 CHAIRPERSON: I think we've all earned a
 19 cup of tea including you Mr Magidiwana.
 20 [COMMISSION ADJOURNS COMMISSION RESUMES]
 21 [11:53] CHAIRPERSON: The commission resumes. Mr
 22 Magidiwana, you are still under oath?
 23 MR NGALWANA: Sir, I'm asking you just
 24 listen carefully what I'm about to say, what I'm about to
 25 ask you? We have been here before but unfortunately as in

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1 many instances I did not get a clear answer. If I say to
 2 you, that you are not going any where you are going to die
 3 here, I am going to finish you off here that will be a
 4 declaration of war on you, not so?
 5 Are you declaring war if I say to you, you are
 6 not going to leave here, you are going to die here? Let us
 7 sign a paper so that the whole world can see how we kill
 8 each other today. I will be issuing a challenge by making
 9 a challenge by that isn't?
 10 MR MAGIDIWANA: I said to that question
 11 you asked that the right person to answer it, is the person
 12 who uttered those words because I never heard such a thing
 13 being said.
 14 MR NGALWANA: You are not answering the
 15 question sir. I just want to be patient with you because
 16 this issue is really important. I want your view I'm not
 17 talking about Mambush, I'm talking about myself and you.
 18 I'm saying If I say to you, you are not going anywhere, you
 19 are going to die here, let us sign a paper me and you, so
 20 that the whole world can see how the two of us, meaning
 21 myself Mariana and you Magidiwana kill each other. By so
 22 doing I'll will be challenging you. Forget now about
 23 Mambush I'm just talking about me and you, if then I say
 24 such or I utter such words that would mean I am challenging
 25 you isn't it?

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1 MR MAGIDIWANA: No it is not so Sir.
 2 MR NGALWANA: we do not consider that a
 3 declaration of war on you.
 4 MR MAGIDIWANA: I can't agree to fight
 5 with you whereas we have never quarrelled.
 6 MR NGALWANA: You are being evasive. I'm
 7 not talking about the reason to fight, I'm saying to you
 8 that I'm going to kill you here. Is that not a challenge?
 9 MR MAGIDIWANA: No.
 10 MR NGALWANA: Even if I then say I'm
 11 going to finish you off here, leave here is that not a
 12 challenge?
 13 MR MAGIDIWANA: No "eish" it is not.
 14 MR NGALWANA: The problem sir – No sorry
 15 I am not going to comment.
 16 CHAIRPERSON: How much further do you
 17 want to take this point, he seems to have dug his heels in
 18 the sand, and set his position in the concrete. I'm not
 19 sure that you are going go persuade him to a different
 20 view.
 21 MR NGALWANA: Thank you, Chair.
 22 CHAIRPERSON: You may find a way of
 23 dealing - using our time more profitably, but if you can
 24 take another point.
 25 MR NGALWANA: Thank you chair, we shall

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1 argue of course with reference to this sort of answer among
 2 others, about the evasiveness of the witness. When Mr
 3 Mathunjwa addressed you at the koppie, you testified that
 4 he knelt he went on his knees and pretty much begged you to
 5 leave the Koppie and go home is that not so?
 6 MR MAGIDIWANA: Yes.
 7 MR NGALWANA: But you did not leave did
 8 you?
 9 MR MAGIDIWANA: People spoke they gave
 10 the reasons why they did not leave.
 11 MR NGALWANA: You yourself, didn't leave
 12 did you?
 13 MR MAGIDIWANA: Yes.
 14 MR NGALWANA: And the reasons you
 15 advanced was as I recall that you were waiting for an
 16 employer to come and address you on your demands not so?
 17 MR MAGIDIWANA: Yes.
 18 MR NGALWANA: But the employer had made
 19 it clear that it was not prepared to negotiate with RDOs
 20 not so?
 21 MR MAGIDIWANA: Where?
 22 MR NGALWANA: Didn't the employer say
 23 there was a two year wage agreement that was in place and
 24 that it wasn't prepared to negotiate outside that two year
 25 agreement?

<p style="text-align: right;">Page 6167</p> <p>1 MR MAGIDIWANA: I never heard about that.</p> <p>2 MR MOTAU: Chairperson, the members of</p> <p>3 the commission if I may just correct one thing from what Mr</p> <p>4 Ngalwana is putting, the position by the employer was that</p> <p>5 they are not going to negotiate with the RDO's outside of</p> <p>6 the Collective Bargaining Structure. So if that question</p> <p>7 can be properly put?</p> <p>8 CHAIRPERSON: The question was actually</p> <p>9 wrongly formulated, as far as I can recall, the point about</p> <p>10 two year agreement was actually made by the NUM shop</p> <p>11 stewards at various meetings that were spoken about. And I</p> <p>12 do not recall any evidence to the effect that Lonmin put</p> <p>13 the point and based their refusal on that ground. So I</p> <p>14 think the question should be reformulated to meet those</p> <p>15 points.</p> <p>16 MR MPOFU: Chairperson, just to add the</p> <p>17 further point is that even if, even if that had happened –</p> <p>18 the gist of the question is that this was communicated to</p> <p>19 the employees. And if that is what has been put –</p> <p>20 CHAIRPERSON: The witness has denied that</p> <p>21 so the problem falls away – but Lonmin's counsel was</p> <p>22 concerned because the impression was being created about</p> <p>23 Lonmin, which he did not agree with. Lonmin's stance as I</p> <p>24 recall was we are not prepared to negotiate with people at</p> <p>25 least they give up their arms, and we are not prepared to</p>	<p style="text-align: right;">Page 6169</p> <p>1 point, Chair. The employer had conveyed to people at the</p> <p>2 koppie, not so, that the employer was not going to come and</p> <p>3 address you?</p> <p>4 MR HANABE: You mean the employer sent</p> <p>5 two people?</p> <p>6 MR NGALWANA: Well Mr Mathunjwa conveyed</p> <p>7 to members on the koppie, on that day, the 16th that the</p> <p>8 employer was not coming.</p> <p>9 MR MAGIDIWANA: No, I never heard that</p> <p>10 being said.</p> <p>11 MR NGALWANA: Well you appear to have</p> <p>12 selective memory, Mr Magidiwana, may I take you to I think</p> <p>13 I was corrected it is 009 or 0009 is it double 009, which</p> <p>14 is an exert or a transcription of Mr Mathunjwa's address.</p> <p>15 I take you in particular to - as mine is not paginated</p> <p>16 three pages from the back, in other words the third last</p> <p>17 page. Where the employees is written in bold, and there's</p> <p>18 it is ours with an exclamation mark that is written along</p> <p>19 side that, do you see that?</p> <p>20 CHAIRPERSON: Nobody has ever ascertained</p> <p>21 whether he can read, and even if he can read I doubt if he</p> <p>22 can read something in English. Of course it is available</p> <p>23 in isiXhosa on the left hand column. But perhaps before</p> <p>24 you ask him whether he can see something in English on a</p> <p>25 written document you should ascertain whether, A he can</p>
<p style="text-align: right;">Page 6168</p> <p>1 negotiate on the Koppie.</p> <p>2 MR MPOFU: Outside.</p> <p>3 CHAIRPERSON: We negotiate in an office</p> <p>4 and we negotiate with representatives?</p> <p>5 MR MPOFU: Correct.</p> <p>6 CHAIRPERSON: And there was also a point</p> <p>7 about the Collective Bargaining Structures – that was their</p> <p>8 stance as I indicate it, as I remember that.</p> <p>9 MR MPOFU: Thank you chair.</p> <p>10 CHAIRPERSON: But anyway the witness</p> <p>11 doesn't know anything about that, so your point doesn't</p> <p>12 even rise.</p> <p>13 MR NGALWANA: Thank you, Chair, my</p> <p>14 learned friend for Lonmin is quite right, the position was</p> <p>15 that Lonmin was not prepared to negotiate outside the</p> <p>16 Collective Bargaining.</p> <p>17 CHAIRPERSON: I think that may be</p> <p>18 relevant to the point that I think you're making, is that</p> <p>19 Mr Mathunjwa reported that he tried to get - he had spoken</p> <p>20 to the employer, and my recollection is it seemed clear</p> <p>21 from what he had to say, that the employer was not coming</p> <p>22 and if they stayed there'll be very drastic consequences</p> <p>23 which he then outlined, which I take it, is the direction</p> <p>24 which you are trying to move.</p> <p>25 MR NGALWANA: Well that's precisely the</p>	<p style="text-align: right;">Page 6170</p> <p>1 read and B whether he can understand in English. But it is</p> <p>2 not material to the point you are trying to make or</p> <p>3 anything.</p> <p>4 MR MPOFU: Sorry Chairperson, sorry Mr</p> <p>5 Ngalwana, also this was raised two days ago also, so that</p> <p>6 the witness is not deliberately misled or confused, the</p> <p>7 last two questions were asked about the second Mathunjwa</p> <p>8 visit, it must be made clear that this –</p> <p>9 CHAIRPERSON: I'm quite sure that any</p> <p>10 misleading would not be deliberate so I don't think that is</p> <p>11 an issue.</p> <p>12 MR MPOFU: Fair enough.</p> <p>13 CHAIRPERSON: But the point you make is</p> <p>14 correct but what is now being put is a transcript of what</p> <p>15 was said on the first occasion, and it is in fact now</p> <p>16 common cause that the second speech wasn't recorded. So</p> <p>17 they probably said to some extent at least, some of the –</p> <p>18 MR MPOFU: Similar, thank you.</p> <p>19 MR NGALWANA: Thank you, Chairperson.</p> <p>20 Can you read – I take it you can read, Mr Magidiwana?</p> <p>21 MR MAGIDIWANA: Yes, I can read.</p> <p>22 MR NGALWANA: I take it you can read the</p> <p>23 English Language and understand it?</p> <p>24 MR MAGIDIWANA: No, it is not like that I</p> <p>25 don't know it.</p>

<p style="text-align: right;">Page 6171</p> <p>1 MR NGALWANA: If - you can read English? 2 CHAIRPERSON: If he can read he can read 3 the isiXhosa and the English is just the translation of the 4 isiXhosa. He would say, let's get back to the original 5 text and not mess around with the translation. If that 6 were his attitude it would not be unreasonable would it? 7 MR NGALWANA: Thank you, Chair. Well I 8 shall read in English and the translation will be done in 9 Xhosa, it is along side the English version anyway. 10 MR MAGIDIWANA: It is also mixed with 11 isiZulu. 12 MR NGALWANA: That is fine you can 13 understand it surely, can't you, you can understand a mix 14 of Zulu and Xhosa both being Nguni Languages can't you? 15 MR MAGIDIWANA: You can then - but I am 16 not familiar with Zulu that is where I will miss, I will 17 not understand. 18 MR NGALWANA: Well you just try. 19 CHAIRPERSON: Isn't the way to do it, the 20 interpreter can read - counsel will read the English 21 translation, the interpreter then can put to you what was 22 said by Mr Mathunjwa in the original Xhosa, Zulu language 23 that he spoke, and if there is something you do not 24 understand about the Zulu part you can raise that and then 25 you will be helped with that.</p>	<p style="text-align: right;">Page 6173</p> <p>1 will also not go to work, I will sit there until he comes 2 back here again. 3 MR NGALWANA: But Mr Mathunjwa has just 4 told you that the employer is not talking about R12 500. 5 So you must accept that it is unreasonable of you to expect 6 the employer who said categorically according to Mr 7 Mathunjwa, that he's not talking about R12 500 to come and 8 address you on the very issue that he says he's not talking 9 about. 10 MR MAGIDIWANA: Yes it was like that. We 11 had to wait as employees because they were tired of working 12 for peanuts. 13 MR NGALWANA: You're not answering my 14 question. 15 MR MAGIDIWANA: What do you want me to 16 say? 17 MR NGALWANA: I am not talking about R12 18 500 with these people who are sitting there. I have not 19 yet finished asking my question. I am not going to talk 20 about R12 500 with these people. This was Mr Mathunjwa 21 talking, telling the workers what he was told by the 22 employer. You were there you heard the words of Mr 23 Mathunjwa. I see you're nodding so I take it that's a yes. 24 MR MAGIDIWANA: Yes, I heard it. 25 MR NGALWANA: When the employer says I'm</p>
<p style="text-align: right;">Page 6172</p> <p>1 MR MAGIDIWANA: Yes, I understand. 2 MR NGALWANA: Right Mr Mathunjwa says, 3 "Comrades what I bring to you is that we heard that 12 000 4 is needed." Do you understand that part? 5 MR MAGIDIWANA: Yes. 6 MR NGALWANA: We hear that the employer 7 is not talking about that? 8 MR MAGIDIWANA: Can you repeat? 9 MR NGALWANA: We hear that the employer 10 is not talking about that, in other words about the R12 11 500? 12 MR MAGIDIWANA: Oh. 13 MR NGALWANA SC: You understand that? 14 [12:13] MR MAGIDIWANA: I hear you. 15 MR NGALWANA: That being so why would the 16 employer come to the koppie to address you, well let me 17 phrase it this way. If the employer is not talking about 18 the R12 500 demand as Mr Mathunjwa is reporting to you on 19 what reasonable basis can you expect the employer to come 20 to the koppie and address you on that issue of R12 500? 21 MR MAGIDIWANA: Can I answer? 22 MR NGALWANA: Well I asked the question 23 so please answer. I'm talking about you, I'm not talking 24 about workers, you in person. 25 MR MAGIDIWANA: I also decided that I</p>	<p style="text-align: right;">Page 6174</p> <p>1 not going to talk about R12 500 then there is no reason for 2 the workers to wait for an employer - the employer to come 3 and address them about the R12 500. 4 MR MAGIDIWANA: Also but the reason here 5 is clear. I said they are working hard and they are tired 6 of working for peanuts and that the employer must come to 7 us and talk to us. We are employees and he is our employer 8 so let him come to us so that we can go back to our 9 employment. He never came. 10 MR NGALWANA: Yes because he said he 11 wasn't going to talk to you about R 12 000. Why should he 12 come? 13 MR MAGIDIWANA: The employers also said 14 that - the employees also said they are not going back to 15 work, they are going to sit in that place. We are going to 16 sit in that place. 17 MR NGALWANA: Okay then Mr Mathunjwa 18 issues a gruesome warning. He says, addressing the crowd 19 of which you were a part, "the life of a black person in 20 Africa is so cheap," I'm in the second last page, the 21 middle of the page, sort of two thirds of the way down. 22 Has my learned friend found the page? 23 CHAIRPERSON: Thank you. 24 MR NGALWANA: He continues "they will 25 kill us, they will kill and finish us and get others to put</p>

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1 them and pay them these salaries that do not do anything in
 2 the black person's life." There can be no doubt he's
 3 talking about the employer there, not the police because
 4 police don't employ anyone as normally. He then says "that
 5 would mean we were defeated but capitalists will be the
 6 ones who win, but we have a way that you showed us that
 7 here is the way to go." Then he kneels down and begs you to
 8 stop this blood. He says "we do not want bloodshed but we
 9 want your problems to be solved and get your salaries." Now
 10 despite this warning, despite the employer having said he's
 11 not going to discuss R12 500 with you, still you remained
 12 on the koppie. That was not a reasonable thing or prudent
 13 thing to do was it?
 14 MR MAGIDIWANA: That thing was very
 15 prudent because what was right for the employer was for him
 16 to come to the employees or the workers and tell them that
 17 if you are not going back to employment then I'm going to
 18 dismiss you instead of the world to be destroyed because of
 19 employment.
 20 MR NGALWANA: Your mike is still on are
 21 you done?
 22 MR MAGIDIWANA: I am done.
 23 MR NGALWANA: Sir, the employer says I'm
 24 not coming and the employees are saying we are not going
 25 back to work. Mr Mathunjwa says "leave here, if you don't

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1 leave there will be bloodshed." He says "the life of a
 2 black person which is so cheap."
 3 MR MAGIDIWANA: It really turned out that
 4 way.
 5 MR NGALWANA: You have at least two
 6 reasons to leave the koppie, the one is that the employer
 7 is not going to talk about R12 500. The other is "if you
 8 don't leave the koppie there will be bloodshed."
 9 MR MPOFU: Mr Chairperson, I'm sorry
 10 Chairperson, sorry that's another misleading question.
 11 This has now moved from the employer is not talking, he's
 12 not going to and my learned cannot subtly change the
 13 tense of what he was quoting.
 14 CHAIRPERSON: I think you must put the
 15 quotation in the words of the original quotation and not
 16 change things.
 17 MR NGALWANA: Thank you, Chair.
 18 Regarding the R12 500 Mr Mathunjwa said the employer is
 19 saying "I am not talking about the R12 500" that is the
 20 first reason, the first reason for you not to sit there and
 21 wait for the employer. The second reason Mr Mathunjwa who
 22 is the leader of the workers he goes down on his knees
 23 saying "leave here and if you don't leave there will be
 24 bloodshed." Clearly he's talking about black person because
 25 he said "the life of a black person is cheap." Is that not

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1 the other reason for you to leave the koppie?
 2 MR MAGIDIWANA: I repeat, Sir, the reason
 3 why after that, Mr Mathunjwa, we did not leave, in fact the
 4 employees said let the employer come and then talk to us
 5 about this. We are not leaving this place because we are
 6 not working for you, we have been employed by the employer
 7 so then, Sir, I don't know what you want me to do.
 8 CHAIRPERSON: Sorry can I interrupt,
 9 sorry. In his second address to you what did Mr Mathunjwa
 10 say?
 11 MR MAGIDIWANA: When he came for the
 12 second time he said the situation is bad.
 13 CHAIRPERSON: Go on. Why was it bad?
 14 MR MAGIDIWANA: A decision was made
 15 regarding you. You are going to be killed here.
 16 CHAIRPERSON: Now did you not believe
 17 him? He had been to see the employer. Between his first
 18 address and his second address he'd been to see the
 19 employers, did you not believe him when he said that
 20 there's a decision that you would be killed?
 21 MR HANABE: What, first the witness said
 22 earlier on Commissioner he said "I did not believe him in
 23 fact in what he said." By the way the employees or the
 24 workers never even wanted to involve the unions.
 25 MR MAGIDIWANE: Yes that was also said to

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1 him that to go back to the employer, we are not going to
 2 leave this place, we are not going back to the employment
 3 in which he thinks we must go back to.
 4 CHAIRPERSON: But he told you that there
 5 had been a decision that you'd be killed.
 6 MR MAGIDIWANA: It was when he said that,
 7 when he said a decision was taken that the workers - when
 8 Mr Mathunjwa told us that we are going to be finished off
 9 here they said we are not going anywhere, we would rather
 10 die here. Because we don't know that a person who wants
 11 money is going to be killed, but we are not leaving this
 12 place.
 13 CHAIRPERSON: Did you think you might
 14 die? Did you believe him when he said there'd been that
 15 decision?
 16 MR MAGIDIWANA: I never believed that.
 17 CHAIRPERSON: Did you not think you might
 18 die at all?
 19 MR MAGIDIWANA: No I never thought about
 20 that.
 21 CHAIRPERSON: What reason did you have to
 22 think that what Mr Mathunjwa had told you in this regard
 23 was incorrect?
 24 MR MAGIDIWANA: Because it was said in
 25 black and white that - it was said clearly in fact that no

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1 unions will be involved and that the employer is the one
 2 that wanted to go there and address the employees. That is
 3 then that I saw that in fact what Mathunjwa was saying not
 4 true.
 5 [12:33] CHAIRPERSON: You running a big risk
 6 because if Mathunjwa was right that the decision had been
 7 taken to kill you, then you would be still in danger of
 8 being killed that afternoon.
 9 MR MAGIDIWANA: No I didn't see it that
 10 way, but I realised that eventually when there was that
 11 which was happening, which was not good, it is then that I
 12 said here then are the words which were uttered. What
 13 Mathunjwa said is really happening now.
 14 CHAIRPERSON: Proceed, Mr Ngalwana.
 15 MR NGALWANA: Thank you, Chair. So
 16 subsequent events you must accept prove Mr Mathunjwa to
 17 have been correct in his warning to you not so?
 18 MR MAGIDIWANA: Yes.
 19 MR NGALWANA: So reasonably speaking
 20 you're not believing Mr Mathunjwa was not reasonable was
 21 it? With the benefit of hindsight.
 22 MR MAGIDIWANA: There is a reason.
 23 MR NGALWANA: And what reason is that?
 24 MR MAGIDIWANA: Because the main Union in
 25 fact that represented the employees in fact was untruthful

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1 particularly at the time the employees were putting forward
 2 their demands.
 3 MR NGALWANA: Are you blaming Mr
 4 Mathunjwa for that?
 5 MR MAGIDIWANA: Yes I also, I blamed him
 6 because he is also one of the Unions. It could have been
 7 that he was also the head speaker by the employer.
 8 MR NGALWANA: The main Union that you
 9 spoke about was that the AMCU or the NUM?
 10 MR MAGIDIWANA: Yes it is NUM.
 11 MR NGALWANA: So Mathunjwa was the
 12 President of AMCU?
 13 MR MAGIDIWANA: Yes.
 14 MR NGALWANA: You couldn't blame him for,
 15 irrespective of the allegation that you made NUM could you?
 16 MR MAGIDIWANA: I am saying is also like
 17 those who wanted us to go back to work and that eventually
 18 we would lose employment and not even get at the end the
 19 money.
 20 MR NGALWANA: Oh, Mr Mathunjwa -
 21 COMMISSIONER HEMRAJ: Mr Magidiwana after
 22 Mr Mathunjwa's second visit there was no other line of
 23 communication opened with the employer okay.
 24 MR MAGIDIWANA: There was a way to talk
 25 to the employer. I don't know how he was thinking but

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1 that's how I personally think.
 2 COMMISSIONER HEMRAJ: You weren't
 3 awaiting the return of any other person who gone off to
 4 speak with the employer on your behalf.
 5 MR MAGIDIWANA: No one was accepted
 6 according to Mathunjwa who had left.
 7 COMMISSIONER HEMRAJ: No according to
 8 you, the strikers you weren't expecting anyone else to
 9 return at that stage with words from the employer after Mr
 10 Mathunjwa's second visit?
 11 MR MAGIDIWANA: The only person that I
 12 left there at the time I had gone to eat is only the
 13 Pastor, he's the person who was there when I left.
 14 COMMISSIONER HEMRAJ: You talking about
 15 Bishop Seoka.
 16 MR MAGIDIWANA: I don't know his name but
 17 I just saw him and then went away.
 18 COMMISSIONER HEMRAJ: But he never
 19 returned, he never returned.
 20 MR HANABE: When he say went away, means
 21 himself.
 22 COMMISSIONER HEMRAJ: Well the Bishop
 23 didn't return?
 24 MR MAGIDIWANA: I don't recall him coming
 25 back on that day.

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1 COMMISSIONER HEMRAJ: Thank you.
 2 MR NGALWANA: Mr Magidiwana, there is of
 3 course a third reason for you to have left the Koppie when
 4 Mr Mathunjwa issued this warning and you gave that reason
 5 earlier on this morning albeit it in a different context,
 6 although in a different context, in a different context,
 7 but before we go there let's take you back to your evidence
 8 in chief. You were asked a question by my learned friend
 9 about the clicking of weapons and you were asked what you
 10 observed. As a follow up question to you as well you
 11 explained that you disobeyed the clicking of weapons
 12 because it was a form of clapping. The follow up question
 13 was did people welcome Mr Mathunjwa with aggression? Do
 14 you remember what your answer was?
 15 MR MAGIDIWANA: Yes, I remember the
 16 answer.
 17 MR NGALWANA: You said people were happy
 18 not so.
 19 MR MAGIDIWANA: Yes.
 20 MR NGALWANA: People were happy because
 21 Mr Mathunjwa had come to address them, tell them about the
 22 latest.
 23 MR MAGIDIWANA: Yes, yes.
 24 MR NGALWANA: Now if you are happy for Mr
 25 Mathunjwa to come does it make sense to you that the person

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1 about whose presence you are happy, no let me start again.
 2 If you are happy that Mr Mathunjwa had come to address you
 3 does it make sense to you that you should distrust that
 4 same person you were happy to see come to address you?
 5 CHAIRPERSON: I think the word you
 6 looking for is disbelieve.
 7 MR NGALWANA: Thank you, Mr Chairman.
 8 Let me start again. You said people were happy to have Mr
 9 Mathunjwa come and address them.
 10 MR MAGIDIWANA: Yes.
 11 MR NGALWANA: It doesn't make sense then
 12 you must agree, that you would disbelieve someone you were
 13 happy to see come to address you, does it?
 14 MR MAGIDIWANA: It has then to be like
 15 that not to make sense then to you Sir, because of the pain
 16 people were going through and where they were seated and
 17 then in such a situation then when someone like Mathunjwa
 18 appeared then they knew or believed that now things are
 19 fine, things are going well.
 20 MR MPOFU: No sorry the witness said
 21 [African language].
 22 MR HANABE: Sorry I didn't hear him
 23 correctly. That one seems then about to be fine.
 24 MR NGALWANA: If you had such high hopes
 25 in the emergence of Mr Mathunjwa it doesn't make sense for

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1 you to disbelieve him, to disbelieve what he tells you.
 2 MR MAGIDIWANA: The reason I say that
 3 disbelieve is because the people in fact did not want
 4 Mathunjwa, they wanted the employer and the fact that they
 5 didn't, they didn't believe in fact because the person they
 6 expected did not come.
 7 MR NGALWANA: But you were happy to see
 8 Mr Mathunjwa come.
 9 MR HANABE: You mean him personally or
 10 the whole group?
 11 MR NGALWANA: Ja him and the entire
 12 group.
 13 MR MAGIDIWANA: Yes.
 14 MR NGALWANA: Simple point Mr Magidiwana
 15 is if you were happy to see Mr Mathunjwa come it doesn't
 16 make sense for you to disbelieve the very person you are
 17 happy to see come to address you.
 18 MR MAGIDIWANA: What I am saying, Sir,
 19 was that because we did not in fact want Mathunjwa, we
 20 wanted the employer, then upon seeing Mathunjwa we were
 21 happy because there was someone that we at least were going
 22 to send there, but even though he was also told that the
 23 employer should come there, but so that then we could go to
 24 work.
 25 CHAIRPERSON: After he left did the

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1 workers, the koppie there where you were, did they discuss
 2 what he said?
 3 MR MAGIDIWANA: Yes.
 4 CHAIRPERSON: Who spoke?
 5 MR MAGIDIWANA: It's the workers.
 6 CHAIRPERSON: I take it they didn't all
 7 three thousands of them didn't talk, so it must have been
 8 someone specifically spoke.
 9 MR MAGIDIWANA: The reason why I am
 10 saying it was, they were talking, because I think, what I
 11 am thinking is if people are two or three, those people are
 12 many.
 13 CHAIRPERSON: Sir I am not disputing it
 14 with you, I am just trying to get clarity. Did any of the
 15 leaders of the group speak to you, address the group after
 16 Mr Mathunjwa were gone?
 17 MR MAGIDIWANA: The person who spoke to
 18 us on that day was a worker by the name of Mambush.
 19 MR NGALWANA: What did Mambush say? Is
 20 this after Mr Mathunjwa left?
 21 MR MAGIDIWANA: Yes.
 22 MR NGALWANA: What did Mr Mambush say, he
 23 is Mr Noki isn't he, what did Mambush, Mr Noki say?
 24 MR MAGIDIWANA: You must know that in the
 25 position in which we are it is not nice at all. We want

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1 our rights, we want money so that we can feed our children.
 2 If there's employees who can come forward and then comment
 3 as to what we should do then they should come. Thirteen
 4 men then came forward even though I don't know their names,
 5 but they spoke. They were saying in this place where we
 6 are seated we are not leaving, we are not going to leave
 7 before this employer comes and address us and tell us what
 8 he has. We can only leave after we know what in fact is
 9 there for us, what we have. So if then he is not coming we
 10 are going to wait and then those chimneys, the big ones,
 11 then there won't be any smoke in those big chimneys because
 12 we are, it is to - that there is a smoke coming out of
 13 those big towers or chimneys.
 14 CHAIRPERSON: Was anything else said?
 15 MR MAGIDIWANA: Yes, there were many
 16 other things but I don't remember others, some of them.
 17 CHAIRPERSON: Did anybody discuss what Mr
 18 Mathunjwa had said in his statement, that a decision has
 19 been made, that you would be killed and therefore you must
 20 leave the koppie. Was that discussed at all?
 21 MR MAGIDIWANA: The decision that was
 22 taken was that no one is leaving until the employer comes
 23 to that place and that if the employer is not coming we are
 24 not going anywhere, we are going to sit there.
 25 CHAIRPERSON: Yes I understand that, but

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1 you haven't answered my question. Was anything said about
2 what Mr Mathunjwa had stated, namely that there had been a
3 decision taken that you would be killed?
4 MR MAGIDIWANA: No one said we going to
5 be killed here let us flee, no one said that.
6 CHAIRPERSON: Did everybody stay after Mr
7 Mathunjwa had spoken and left or did some people who were
8 on the koppie leave?
9 [12:53] MR MAGIDIWANA: It is them because on
10 that day people were busy going up and down.
11 CHAIRPERSON: I understand that, but
12 after Mr Mathunjwa had spoken and then there would be these
13 further addresses, firstly by Mr Noki and thereafter by the
14 other people you mentioned, did everybody stay or did some
15 people leave?
16 MR MAGIDIWANA: There are some who left
17 after Mathunjwa had left because they saw the barbed wire
18 being deployed and they said that this thing now has
19 started.
20 CHAIRPERSON: Yes, please proceed.
21 MR NGALWANA: Thank you, Chair. What
22 thing had started?
23 MR MAGIDIWANA: Is the killing of the
24 people.
25 MR NGALWANA: Had anyone been killed that

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1 day by the police at that stage?
2 MR MAGIDIWANA: It is when people were
3 being encircled as if they were Springboks and they said
4 this thing that Mathunjwa said is now starting.
5 MR NGALWANA: I take it your answer to my
6 question is no? My question was have the police on that
7 day, the 16th, at the time they were putting up the barbed
8 wire had they killed anyone on that day?
9 MR MPOFU: Mr Chairman, I am sorry I
10 don't want to be pedantic but this is very crucial
11 evidence. The Springbok was not mentioned. The word that
12 was used was [African language], which a more generic, who
13 are not animals.
14 CHAIRPERSON: Animals yes, now that we've
15 got that correct we can carry on.
16 MR NGALWANA: In the greater scheme of
17 things that is such an insignificant, that's why I didn't
18 raise that issue.
19 CHAIRPERSON: See it is a good thing to
20 strive for it, let's just carry on.
21 MR NGALWANA: Thank you Chair. I take it
22 your answer to my question which was by the time the police
23 put up the barbed wire on the 16th of August 2012 they
24 haven't killed anyone?
25 MR MAGIDIWANA: Anyone then, a

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1 reasonable, any reasonable person could have seen that the
2 intention was to kill because as they were deploying it
3 they were staying on the side [African language] and the
4 others at the same time were putting on those big things
5 that I don't know what to call them or what they are
6 called. It is then that it was cleared that there will be
7 deaths now.
8 CHAIRPERSON: No but some people actually
9 said Mathunjwa was right, they then believed Mathunjwa
10 finally, that he was correct, that what he said was going
11 happen was going to happen, is that right?
12 MR MAGIDIWANA: Yes, after that thing
13 happened, after we were shot people then believed that what
14 Mathunjwa said was in fact true.
15 CHAIRPERSON: I understood you to say
16 that they said that when the barbed wire started being
17 unrolled, as you were being boxed in like animals.
18 MR MAGIDIWANA: Yes what people didn't
19 want was to be encircled, it was then that they saw that no
20 they should flee to Nkaneng, and the other thing they
21 didn't know after the encircled element what was going to
22 happen, as to whether they were going to be thrown into the
23 bakkies or the vans. It is then that they decided they
24 should leave then that place.
25 CHAIRPERSON: I understood you to say

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1 earlier, but when the barbed wire started being unrolled
2 the people then said that they realised that Mathunjwa was
3 right, that there was decision to kill you people. Who was
4 going to kill you?
5 MR MAGIDIWANA: The police officers were
6 in front of us.
7 CHAIRPERSON: So why did you run towards
8 the police who were in front of you? They were the ones
9 that you thought were going to kill you.
10 MR HANABE: Can you repeat, Commissioner.
11 CHAIRPERSON: Who is asking me to repeat
12 the question, the Interpreter or the witness? If you
13 thought that the police were going to kill you, the police
14 were in front of you, why did you run towards them in their
15 direction, you make it easier for them to kill you because
16 you were then closer?
17 MR MAGIDIWANA: We never in fact
18 confronted or went to the police. They are the once in
19 fact who closed the path at the way in which we were going
20 to walk.
21 CHAIRPERSON: The fact is you were going,
22 you were going towards them, they were in front in you, you
23 going towards them, you were reducing the distance between
24 them and you.
25 MR MAGIDIWANA: No, it is not like that,

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1 Sir.

2 CHAIRPERSON: I see, well at that note we

3 will take the lunch adjournment.

4 MR MAGIDIWANA: People were walking on

5 the narrow path which was leading to the broad one that is

6 leading Nkaneng.

7 CHAIRPERSON: On this point I think we

8 take the lunch adjournment.

9 MR HANABE: Chair, are we back at 1.30 or

10 2.00.

11 CHAIRPERSON: Two o'clock because we've

12 got people coming who talk to us about the move or the

13 possible move and the investigation being done in that

14 regard. So we will be seeing them at lunchtime so we

15 better make it two o'clock.

16 [COMMISSION ADJOURNS COMMISSION RESUMES]

17 [14:09] MR NGALWANA: - members of the

18 Commission. You must accept then that there did come a

19 time during that afternoon of the 16th August 2012 when you

20 began to believe Mr Mathunjwa. As you've testified you

21 said when the police put barbed wire you then believed that

22 the killing is going to start, something to that effect,

23 correct?

24 MR MAGIDIWANA: Yes.

25 MR NGALWANA: So the reasonable thing to

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1 do then would have been to leave the koppie not so?

2 MR MAGIDIWANA: That was what was

3 supposed to be done according to what you said but the

4 workers had been expecting the employer about the question

5 of money.

6 MR NGALWANA: No, you said Mr Mathunjwa

7 warned you that if you don't leave there's going to be

8 bloodshed.

9 MR MAGIDIWANA: I agree with you, Sir, he

10 said so.

11 MR NGALWANA: So when the barbed wire was

12 rolled out you then believed Mr Mathunjwa?

13 MR MAGIDIWANA: Yes about the bloodshed.

14 Yes.

15 MR NGALWANA: Why didn't you then leave

16 because the bloodshed was about to happen according to your

17 belief?

18 MR MAGIDIWANA: As I was saying, Sir, I

19 was on my way out when they closed the road. They then

20 started spraying us with water. We turned away from the

21 direction in which we were going, turned the other way, we

22 turned towards the kraal and that is exactly where they

23 managed to close us up that we could not go out.

24 MR NGALWANA: There were numerous

25 directions through which you could go to leave the koppie.

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1 MR MAGIDIWANA: It's only the two that we

2 decided, if you know of any other road then you can tell

3 me.

4 MR NGALWANA: Then I take you to slide

5 L191.

6 MR MAGIDIWANA: I'm looking at it.

7 MR NGALWANA: Do you see where the Nyalas

8 are stationed in a straight line?

9 MR MAGIDIWANA: Yes, I can see them.

10 MR NGALWANA: That is where the barbed

11 wire was deployed, correct?

12 MR MAGIDIWANA: Yes.

13 MR NGALWANA: You in your words dashed in

14 that direction, correct?

15 MR MAGIDIWANA: Yes.

16 MR NGALWANA: Do you know what dash

17 means?

18 MR MAGIDIWANA: I have explained earlier,

19 Sir, that we were told not to run but to go - to walk

20 whilst the singing is going on, we were encouraged to sing

21 not running.

22 MR NGALWANA: Do you know what to dash

23 means?

24 MR MAHLANGU: Should I be right in saying

25 that to dash is by going there fast?

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1 MR NGALWANA: Yes.

2 MR MAGIDIWANA: We started running only

3 when they started spraying us with water. We turned around

4 the kraal and in doing so they had already gone on the

5 other side of the kraal in front of us.

6 MR NGALWANA: Did you tell that to your

7 lawyers, that the reason you started running was because

8 water was being poured on you?

9 MR MAGIDIWANA: No, I did not.

10 MR NGALWANA: Why not?

11 MR MAGIDIWANA: Because there are so many

12 things that I had to explain.

13 MR NGALWANA: It is an important aspect

14 of your version.

15 MR MAGIDIWANA: It is important, yes.

16 MR NGALWANA: And so you must accept that

17 you should have told your lawyers about it.

18 MR MAGIDIWANA: As you are asking me

19 questions now, Sir, is it not true that you ask the same

20 things today and then some other day you ask other things

21 that you did not ask the day before?

22 MR NGALWANA: In your statement you say

23 the trigger for dashing was the deployment of barbed wire.

24 MR MAGIDIWANA: Is it not true that on

25 certain days you ask the same things and not ask everything

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1 on the same day, others you ask later.
 2 MR NGALWANA: It is irrelevant, I'm not
 3 going to answer your questions. Please answer my question.
 4 In your statement you say the trigger for your dashing in
 5 the direction of Nkaneng was the deployment of barbed wire.
 6 Now you say under oath that it was because the police shot
 7 water at you. One of them is incorrect, which one is it?
 8 MR MAGIDIWANA: Only you know that there
 9 is no truth in what I'm saying. There was spraying of
 10 water which made us turn and towards the road that would
 11 lead us to Nkaneng.
 12 MR NGALWANA: Which version, Mr
 13 Magidiwana, should the Commission believe? Should the
 14 Commission believe that you dashed because barbed wire was
 15 deployed, or should it believe that you dashed after you
 16 were sprayed with water?
 17 MR MAGIDIWANA: What I am saying now,
 18 Sir, is it the first time that you are hearing this?
 19 MR NGALWANA: Which version must the
 20 Commission believe?
 21 MR MAGIDIWANA: What I am telling this
 22 Commission are things that happened there.
 23 MR NGALWANA: So in other words you
 24 refuse to pin your colours to the mast.
 25 MR MAGIDIWANA: I am pinning, Sir, to

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1 where I actually fell there along the road where I died.
 2 MR NGALWANA: So you're refusing to
 3 answer my question.
 4 MR MAGIDIWANA: In answering your
 5 question -
 6 MR NGALWANA: I want you to answer my
 7 question, which version is the correct version?
 8 MR MPOFU: Chairperson I'm sorry. Mr
 9 Ngalwana he must clarify this question. If he's suggesting
 10 that the dashing that is being referred to in the statement
 11 is synonymous to the running in reference to the water then
 12 he's right that there is an inconsistency but if it is not,
 13 or rather he must lay the basis to say that is the same
 14 thing. Otherwise there is no inconsistency, he's just
 15 wasting time.
 16 CHAIRPERSON: What do you say to the
 17 objection Mr Ngalwana?
 18 MR NGALWANA: Chairperson my learned
 19 friend should refrain from -
 20 CHAIRPERSON: No, no, no that's not an
 21 answer to an objection. When he does that I get cross with
 22 him, I'm cross with you too now, don't do that. When you
 23 have objection you've got to answer it, the same applies to
 24 him, it applies to you too. Just answer the objection. If
 25 you've got a good answer I'll disallow the objection, if

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1 you haven't I'll allow it.
 2 MR NGALWANA: Chairperson, the witness
 3 says on the hand, well in his statement he dashed in the
 4 direction of Nkaneng and that dashing was triggered by the
 5 deployment of barbed wire. Now he says he dashed because
 6 water was sprayed on them.
 7 MR MPOFU: No that is not true, Mr
 8 Ngalwana.
 9 MR NGALWANA: My true thinking is which
 10 version of -
 11 MR MPOFU: What the witness said is that
 12 -
 13 CHAIRPERSON: Mr Mpofo please behave
 14 yourself. He's still busy addressing us, when he's
 15 finished I'll give you an opportunity -
 16 MR MPOFU: Thank you very much.
 17 CHAIRPERSON: - to reply, it's your
 18 objection, he's got a right to reply.
 19 MR MPOFU: I apologise, Chairperson.
 20 MR NGALWANA: All I'm asking him is which
 21 version must the Commission believe. Did he dash because
 22 there was a barbed wire put up or did he dash because water
 23 was sprayed on him?
 24 MR MAGIDIWANA: I will explain this to
 25 you how this thing happened because they were singing,

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1 whilst they were singing we were walking along the smaller
 2 path which would have led us to the main path that leads to
 3 the Nkaneng settlement. Before we reached the road the
 4 Casper that was pulling the last barbed wire then started
 5 putting on speed to close the gap that was open where we
 6 were going to go through to reach the road. It was at that
 7 stage when we reached the gap that they had closed that's
 8 at the time the water was sprayed and the people then
 9 started rushing to go beyond the kraal. After the spraying
 10 of the water the people would once again come together and
 11 continue with the songs they were singing. When they
 12 appeared on the other side of the kraal that was when the
 13 firing started. I went past that place, I don't know how I
 14 managed to between two people who had guns and were
 15 shooting. As I was looking ahead of me there were others,
 16 many who were shooting and that is where I fell. You will
 17 not know what it is exactly and what I have now explained
 18 that you don't understand so clear.
 19 MR NGALWANA: I shall move on. I
 20 referred you to slide L191.
 21 MR MAGIDIWANA: I'm looking at it.
 22 MR NGALWANA: There is a path that runs
 23 across or in front of the two koppies in parallel to the
 24 Nyala barbed wire line.
 25 MR MAGIDIWANA: I see it yes.

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1 MR NGALWANA: It joins up with another
2 path across it.

3 MR MAGIDIWANA: Where is it meeting, Sir?

4 MR NGALWANA: Between the two koppies
5 there is a path that runs there down towards the kraal.

6 MR MAGIDIWANA: There are quite a number
7 of paths visible on this slide, which one exactly is it?

8 MR NGALWANA: Look at the path that runs
9 across from 330 metres past 80, it runs across towards the
10 bottom of that picture.

11 MR MAGIDIWANA: I see that one, yes.

12 MR NGALWANA: Then there is a path that
13 crosses it. Do you see that?

14 MR MAGIDIWANA: I see it, yes.

15 MR NGALWANA: You dashed, your group led
16 by Mr Mambush dashed towards where that pole is, do you see
17 where the pole is? Where 80 is if you look behind there's
18 a yellow arrow that points both ways, slightly to the left
19 of that arrow you will see -

20 MR MAGIDIWANA: Going towards the pole?

21 MR NGALWANA: Yes, in the vicinity of
22 that pole. That's where you dashed for the first time.

23 MR MAGIDIWANA: Where was the barbed wire
24 at that time?

25 MR NGALWANA: You dashed in that

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1 direction towards that pole, near that pole for the first
2 time when the barbed wire was being deployed. Now why did
3 you not go through where the wire was to be deployed? Is
4 there any path near that pole going in the I suppose the
5 westerly direction?

6 MR MAGIDIWANA: May I ask for permission
7 that the former interpreter comes because I understand
8 better?

9 [14:30] CHAIRPERSON: I don't think that's
10 necessary. I understand the problem with the present
11 interpreter's interpretation which I understand is of a
12 very high standard, but I will speak to my co commissioner,
13 Adv Tokota, whose himself a Xhosa linguist and get his
14 views on that. Mr Tokota who is himself a Xhosa linguist
15 seems to have no problem with Mr Mahlangu's interpretation.
16 Mr Mahlangu, you're also Xhosa linguist.

17 MR MAHLANGU: My - is Xhosa.

18 CHAIRPERSON: Amongst your many other
19 accomplishments what, do you say about this request?

20 MR NGALWANA: I would rather not comment
21 on the request but say perhaps where there is a need we may
22 assist, Mr Chairman.

23 CHAIRPERSON: Yes, I think that's the
24 answer. Mr Mahlangu, I don't want to insult him by sending
25 him away because as far as I know there is no problem with

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1 his interpretation. If there are nuances of meaning and so
2 on where there is disagreement, we have the advantage that
3 we have Mr Mpofo who speaks isiXhosa and Adv Madlanga as
4 well and Mr Tokota. So if there are points upon which,
5 yes, and Mr Ngalwana respect by leaving him out, so if
6 there is any points upon which there may be differences
7 about the interpretation I'm sure these four gentlemen will
8 assist us to get the right interpretation.

9 MR MAGIDIWANA: I do not understand his
10 Xhosa so well, his Xhosa is not that strong.

11 MR NGALWANA: I don't think he is
12 referring to me, Chairperson.

13 MR MAGIDIWANA: No, I'm referring to the
14 interpreters.

15 MR NGALWANA: May I continue -

16 CHAIRPERSON: With the previous
17 interpreter there were arguments about the correct
18 interpretation, so I don't think that there is any reason
19 to change. As I said if there are problems and something
20 that the witness can't understand he can explain it, if
21 they have difficulty with the interpretation with the four
22 gentlemen to whom I've referred, I think it should be
23 brought to my attention, and I'm sure they'll do so, so
24 let's carry on as we are at the moment.

25 MR MPOFU: Chairperson, I accept the

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1 assignment that the chairperson has given us. What I do
2 want to say is that my inclination would have been to
3 listen to what the witness' reference is and I also accept
4 Mr Mahlangu's interpretation, it is not necessarily
5 incorrect but I do think that there are some subtle
6 differences between the other interpreter whose original
7 language is Xhosa, and maybe the witness is more
8 comfortable with him. Mr Mahlangu, as it happens is a
9 multi linguist, much more than the other interpreter, but I
10 think when it comes to this particular language the witness
11 prefers the other interpreter.

12 CHAIRPERSON: Of course it is a bad
13 principle, a bad precedent to allow witnesses to dictate
14 who should be the interpreter, but one of the things that
15 influenced me to make this ruling I did was that when the
16 previous interpreter was interpreting there were also
17 arguments about points of language and nuances and so on.
18 So, anyway we fortunately have a safety net with the four
19 of you, gentlemen, who will help us if there is a problem
20 and if the witness has a problem he can tell us so. Let's
21 carry on.

22 MR MAGIDIWANA: Thank you.

23 MR NGALWANA: Mr Magidiwana, just turn to
24 slide 209, perhaps this will, 209.

25 MR MAGIDIWANA: I'm looking at it, Sir.

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1 MR NGALWANA: Can you indicate where
 2 Nkaneng is?
 3 MR MAGIDIWANA: Towards the place where
 4 there is one shack, that is in the northerly direction
 5 where, next to where the N is.
 6 MR NGALWANA: So in other words in the
 7 direction of where the N depicting north is, is that
 8 correct?
 9 MR MAGIDIWANA: Yes, that's the road
 10 leading to Nkaneng.
 11 MR NGALWANA: Now I take you back to
 12 slide 191. Do you see where the lamp, I don't know whether
 13 it is a lamppost or it is a post of some kind, if you look
 14 at the number, if you look at the line in yellow, well, the
 15 number, it is written 80 metres, there is an arrow pointing
 16 across the page, do you see that, the yellow arrow, the
 17 small yellow arrow next to 80 metres?
 18 MR MAGIDIWANA: I can see it, yes.
 19 MR NGALWANA: Now to the left of that
 20 arrow, in the direction of the 100 metres you'll see there
 21 is a little lamppost there.
 22 MR MAGIDIWANA: I see it, yes.
 23 MR NGALWANA: You can see that post?
 24 MR MAGIDIWANA: I can see it, yes.
 25 MR NGALWANA: Do you deny that you

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1 attempted to dash in that direction?
 2 MR MAGIDIWANA: That is, if I may use the
 3 word, nonsense.
 4 MR NGALWANA: Can I just try, before I go
 5 on to the next question just orientate ourselves here? At
 6 209, that path that runs across the page –
 7 MR MAGIDIWANA: I see it –
 8 MR NGALWANA: - passed the top of the
 9 kraal –
 10 MR MAGIDIWANA: Yes, that is the road
 11 from Marikana.
 12 MR NGALWANA: And then continues towards
 13 the N sign depicting north.
 14 MR MAGIDIWANA: That is correct.
 15 MR NGALWANA: And you're saying that is
 16 the path to Nkaneng?
 17 MR MAGIDIWANA: Yes.
 18 MR NGALWANA: If you go to slide 191, the
 19 path that runs between the two koppies towards the crawl,
 20 that is the same path as defined in 201, leading to
 21 Nkaneng, not so?
 22 MR MAGIDIWANA: That is the road, yes.
 23 MR NGALWANA: Alright, now going back to
 24 that lamppost on 191, you're saying, you're denying that
 25 you crossed in the vicinity of that lamppost, is that

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1 correct?
 2 MR MAGIDIWANA: Who said we went past
 3 that post?
 4 MR NGALWANA: The police say you
 5 attempted to dash there, are you denying that?
 6 MR MAGIDIWANA: I said I'm going to
 7 explain to you as I've said earlier, I explained to you if
 8 there is something you don't understand. Where the 80
 9 metres is and at the end of the yellow, towards the right
 10 hand side there are people on top there, those people came
 11 down the hill whilst the barbed wire was being deployed,
 12 the people were then moving. As you see the smaller road
 13 is pointing at the road, it looks like a footpath at the
 14 end of the line marked by 330, this is where the people
 15 turned off to go and join at the main road. As the hippos
 16 were standing there straight it pulled in front -
 17 MR MPOFU: Sorry, when you say [African
 18 language], it means deviated from that straight path?
 19 MR MAGIDIWANA: Yes, indicating towards
 20 the right.
 21 MR NGALWANA: I don't see where you are
 22 referring to.
 23 MR MAGIDIWANA: Do you see the white
 24 arrow, that is the one with 330 metres where it starts,
 25 towards the N, I'm referring now to the other side of that

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1 white, where there is a hippo between the N - there is a
 2 hippo in front.
 3 MR NGALWANA: Continue?
 4 MR MAGIDIWANA: That is where the turning
 5 of the barbed wire that was being pulled was then directed
 6 towards the kraal, and the reason for the deviation was
 7 that they had realised they were heading in that direction.
 8 It was at this place that I've indicated that they started
 9 spraying us with the water. The people then left there
 10 heading westwards, as he indicates, that is towards the
 11 number 191 which indicates the slide, and from there they
 12 turned towards the road, the road that would have led them
 13 to Nkaneng settlement. That's when they appeared, that the
 14 police was at that stage near and then the shooting
 15 started. That was just when we turned across the kraal.
 16 Let me further explain to you that the road that leads
 17 towards the kraal starts from the veld there where the
 18 cattle are grazing, but it comes to meet with the road that
 19 leads towards Nkaneng. That is why I am saying these are
 20 the only two roads that we could use towards Nkaneng, which
 21 was then closed by the police.
 22 MR NGALWANA: None of which answers my
 23 question. Are you denying –
 24 MR MAGIDIWANA: How should I respond to
 25 the question?

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1 MR NGALWANA: Are you denying that your
 2 group, the front group, you yourself said you were the
 3 front group, are you denying that the front group sought to
 4 dash in the direction of that lamppost?
 5 MR MAGIDIWANA: We took the way in which
 6 we showed you, if it was as you say there could have been
 7 people on the other side of the fence. What we tried to do
 8 was to go through the opening which still was there but the
 9 hippo was too fast and then came in front of us and closed
 10 the opening.
 11 MR NGALWANA: Shall I take it you deny
 12 that your group sought to dash towards the lamppost?
 13 MR MAGIDIWANA: Then they would have gone
 14 past there.
 15 MR NGALWANA: So you're denying my
 16 proposition?
 17 MR MAGIDIWANA: Yes.
 18 MR NGALWANA: I take you to slide 198.
 19 Do you see where that lamppost is?
 20 MR MAGIDIWANA: I'm looking at 198, hey?
 21 MR NGALWANA: Yes, do you see where that
 22 lamppost is?
 23 MR MAGIDIWANA: I can see it, yes.
 24 MR NGALWANA: It is the same lamppost as
 25 the one in 191.

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1 MR MAGIDIWANA: Yes, that is true, it is
 2 that post.
 3 MR NGALWANA: Do you see where the front
 4 group is trying to go?
 5 MR MAGIDIWANA: I can see it very
 6 clearly.
 7 MR NGALWANA: Is it not close to the
 8 lamppost?
 9 MR MAGIDIWANA: No, it is not close.
 10 MR NGALWANA: Is that group not trying to
 11 dash past that post?
 12 MR MAGIDIWANA: The pole is under the
 13 upper side, we are on the lower side.
 14 MR NGALWANA: Is that group not
 15 attempting to dash past that post?
 16 MR MPOFU: Sorry, Chairperson, once
 17 again, I don't want to be pedantic but the proposition that
 18 was put to the witness was that they were dashing towards
 19 the post and now he is being asked whether the dashing past
 20 the post.
 21 MR NGALWANA: Can you see that the front
 22 group is dashing in the direction of that post and past it?
 23 MR MAGIDIWANA: No, the position is,
 24 these people are not near the pole, they're on the other
 25 side of the vehicle. If the person in front wanted to go

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1 that way he could have gone straight to the pole and went
 2 through.
 3 MR NGALWANA: Mr Magidiwana, if you look
 4 at the slide, 191, the path that leads, that you say leads
 5 to Nkaneng is nowhere near that lamppost, is it?
 6 MR MAGIDIWANA: That's correct, it is far
 7 from the post.
 8 MR NGALWANA: And therefore you wouldn't
 9 reach that path that you say is going towards Nkaneng by
 10 going in the direction of the lamppost.
 11 [14:50] MR MAGIDIWANA: What I'm saying, I am
 12 saying what you are putting to me cannot be true, say
 13 something else.
 14 MR NGALWANA: Well, it is pretty clear,
 15 that if you are going in the direction of that lamp post
 16 and seeking to go past it you are leaving the road that you
 17 say, or the path that you say is leading towards Nkaneng
 18 behind you, or to your left.
 19 MR MAGIDIWANA: This road, as you can see
 20 when you look at slide 191 and you look to the mountain,
 21 you are a bit past the pole that you have mentioned.
 22 CHAIRPERSON: Well, the problem I've got
 23 with the proposition you're putting is that it is difficult
 24 sometimes to interpret accurately, but if you look at 198,
 25 what you see is the group of people who appear to be

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1 passing, going along in the direction which is the left of
 2 the pole, following the direction they were going and
 3 between them and the pole is at least the widths of the
 4 Nyala and it is difficult to see from the photograph what
 5 the distance was between the pole and Nyala. If we then go
 6 back to 191, you'll see that there is a path which you've
 7 pointed out which is, again if one is facing Nkaneng I
 8 suppose, with one's back to the koppie, while we talk about
 9 the left side, there is a path some distance to the left
 10 from the pole. Now how that relates to firstly the width
 11 to the Nyala, secondly the distance between the Nyala and
 12 the pole on the one side and then the widths of the group
 13 of people, isn't quite clear. So I think just to say that,
 14 if you'll look at 198 the people who were going towards the
 15 pole without having regard to the facts as I've mentioned,
 16 could lead to misunderstanding and possibly confusion on
 17 the part of the witness.
 18 MR NGALWANA: May I refer him, Chair, to
 19 a slide that seems to show this much clearer and that
 20 you'll find at 160.
 21 MR MAGIDIWANA: I can see it, yes.
 22 MR NGALWANA: When you and your group
 23 dashed in the direction of that pole or in that vicinity
 24 you were not on that path that runs across, past the kraal,
 25 were you?

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1 MR MAGIDIWANA: If the question could be
 2 repeated again?
 3 MR NGALWANA: Well, let me rephrase it.
 4 You moved from where there is an intersection here at the
 5 bottom of the two koppies.
 6 MR MAGIDIWANA: Which one, slide 160?
 7 MR NGALWANA: You moved from slightly the
 8 left to the right of that intersection.
 9 CHAIRPERSON: Sorry to interrupt you,
 10 that is the right as facing in Nkaneng?
 11 MR NGALWANA: The right facing Nkaneng,
 12 what he says.
 13 CHAIRPERSON: Yes, yes.
 14 MR NGALWANA: And so to get to the
 15 vicinity of that pole you would have had to cross the path
 16 in front of you. I'm not talking about the path that you
 17 say leads to Nkaneng, I'm talking to the path that runs
 18 across the two koppies, are you with me?
 19 CHAIRPERSON: You're referring to the
 20 path which has got a group of people on it, you have a red
 21 circle around them?
 22 MR NGALWANA: The one, Chair.
 23 MR MAGIDIWANA: I can see the people in
 24 the red ring, yes.
 25 MR NGALWANA: And that is the group in

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1 which you were.
 2 MR MAGIDIWANA: Yes.
 3 MR NGALWANA: And that is the Noki's
 4 group.
 5 MR MAGIDIWANA: It was a group of workers
 6 and not Noki's or Mambush's group.
 7 MR NGALWANA: Mambush was in that group.
 8 CHAIRPERSON: If we're looking at –
 9 MR MAGIDIWANA: I must intervene here and
 10 stop because this is not good, this was a group of workers
 11 and not a group belonging to Mambush.
 12 CHAIRPERSON: The point I want to make
 13 was that according to the legend, if one calls it that,
 14 that picture was taken at 10:56 in the morning, so it helps
 15 us to work out where the paths are and the pole is, but it
 16 doesn't help us at all in relation to the movements of the
 17 [inaudible] and so forth at 15:40 in the afternoon.
 18 COMMISSIONER HEMRAJ: And the one, I have
 19 a difficulty with 198, it wasn't the evidence that that was
 20 their first approach and that they back after that, so it
 21 is not part of the final approach around the kraal.
 22 MR NGALWANA: And that is absolutely
 23 correct, Commissioner.
 24 CHAIRPERSON: And then if one looks at
 25 200 with the yellow arrow, I take it one must assume that

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1 if they were at the end of the arrow they then went
 2 backwards in the direction of, presumably in the westerly
 3 direction, I take it, the north is correctly marked, went
 4 to the westerly direction for some distance and then turned
 5 and then went back in an easterly direction, possibly a
 6 north easterly direction, as we see that being the
 7 direction of that yellow arrow on 200, is that correct?
 8 MR NGALWANA: That is correct, Chair,
 9 that is the second attempt.
 10 CHAIRPERSON: It is maybe an idea to take
 11 the tea adjournment now so that you can get your bearings
 12 on that. I must tell you during the tea adjournment there
 13 is some matter we have to attend to, so we will be probably
 14 only back at about half past three, but we will take the
 15 tea adjournment now.
 16 [COMMISSION ADJOURNS COMMISSION RESUMES]
 17 [15:28] CHAIRPERSON: The Commission resumes,
 18 you're still under oath.
 19 MR NGALWANA: Yes, thank you, Chair. Mr
 20 Magidiwana, it will be the police's evidence that your
 21 group dashed in the direction of the police line near that
 22 lamppost and that there is no path leading to Nkaneng in
 23 that direction. That was the first attempt, would you care
 24 to comment?
 25 MR MAGIDIWANA: That is a lie.

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1 MR NGALWANA: If you look at slide 160 of
 2 Exhibit L, your group was in fact standing where there is,
 3 I can see the time, never mind the time, this is used for
 4 just bearings, your group was standing to, if you treat the
 5 intersection as an X, the lower intersection nearest to the
 6 two koppies, your group was standing on the lower side of
 7 the X.
 8 MR MPOFU: I'm sorry, Chairperson, is the
 9 evidence going to be that the group was at that stage
 10 standing, in other words it was stationed and if that
 11 evidence is going to be led then it must be made clear,
 12 because from the picture of course we can't tell.
 13 MR NGALWANA: The evidence of the police
 14 will be that you moved from the lower part of, whether it
 15 is described as the X, and –
 16 CHAIRPERSON: Sorry to interrupt you, the
 17 legend 198 says, the protestors approached information
 18 which implies motion.
 19 MR NGALWANA: Thank you, Chair, I'm alive
 20 to that. What I'm saying, Mr Magidiwana is, and the
 21 evidence will be from the lower side of that X, if you are
 22 with me, where there is a more, what is it, a bare surface
 23 of the soil, it is more barren than the rest, you dashed
 24 from that position in the direction of that pole where
 25 there is no path leading to Nkaneng, to what you say is

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1 Nkaneng to your left.
 2 MR MADLANGA SC: Mr Chairman,
 3 Commissioners, just a matter of clarity, I'm not sure what
 4 my learned colleague is referring to by the lower side of
 5 X. Yes, I'm not sure whether the lower side is exactly
 6 where that group circled in red is, or whether that's
 7 beyond the X, the intersection that is more to the right
 8 but below the path or road that comes from the extreme
 9 right of the page. I'm not sure where that lower side is.
 10 MR NGALWANA: That's exactly as my
 11 learned friend has presumed it to be. It is not in the
 12 direction of where the red oval shape is, but below that on
 13 the other side of the intersection.
 14 CHAIRPERSON: In fact I'm not
 15 understanding properly, by the other side of the
 16 intersection do you mean if one puts one's finger on the
 17 oval and one moves it right –
 18 MR NGALWANA: Yes –
 19 CHAIRPERSON: - down, along that path,
 20 you then come to a cross road?
 21 MR NGALWANA: Yes.
 22 CHAIRPERSON: And then does one continue
 23 moving one's finger along the continuation of the path
 24 that's been coming on from the oval?
 25 MR NGALWANA: No, Chair, once one reaches

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1 the intersection, then one veers on the inside and that's
 2 where the group would be moving from to dash towards the
 3 pole.
 4 CHAIRPERSON: I'm not sure what the word
 5 "inside" means in that context. I know it is difficult
 6 sometimes to express these things in languages easy to
 7 follow, that's why I talked about putting my finger on the
 8 –
 9 MR NGALWANA: Can I take it, Chair,
 10 slowly –
 11 CHAIRPERSON: Sorry –
 12 MR NGALWANA: - to help myself in the
 13 process as well –
 14 CHAIRPERSON: Be patient with me, take it
 15 slowly, we can't -
 16 MR NGALWANA: If we take our finger and
 17 put it in the oval in the red, shall we call it oval, where
 18 the group is, and move our finger rightwards along the path
 19 to the intersection, at the intersection then follow
 20 neither path but go in between them below.
 21 MR MPOFU: Chairperson, sorry, I'm trying
 22 to follow this. I think what's confusing here is that
 23 below –
 24 CHAIRPERSON: Sorry, let's go back to the
 25 intersection.

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1 MR MPOFU: Yes.
 2 CHAIRPERSON: Put a pencil point at the
 3 intersection.
 4 MR MPOFU: Correct.
 5 CHAIRPERSON: Now you can either go
 6 straight upwards or you can go straight downwards.
 7 MR MPOFU: Yes, but –
 8 CHAIRPERSON: Or you can go to the right
 9 or left or you can go diagonally towards the 1056 at the
 10 bottom right hand corner. Now explain it, following those
 11 alternatives, can you tell us where in this group - after
 12 we had it at the intersection?
 13 MR NGALWANA: It is in the quadrant going
 14 towards 1056, Chair, close to that intersection.
 15 MR MPOFU: Ja, Chair, all I'm saying if
 16 this helps, the problem, when you say below, if you go
 17 right to the mountain now we know the elevation, so below
 18 would mean one thing, but the –
 19 CHAIRPERSON: That's why try I to
 20 eliminate it the way I did.
 21 MR MPOFU: Yes, but on the page below is
 22 something else.
 23 CHAIRPERSON: I don't like the word
 24 below, that's why I've tried to put it in more precise, in
 25 possibly more neutral language.

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1 MR MPOFU: Yes.
 2 CHAIRPERSON: If you're happy with the
 3 way your colleague explained it in a response to my
 4 questions, then we can carry on.
 5 MR NGALWANA: Has the witness seen the –
 6 CHAIRPERSON: No, no, as I understand it,
 7 you moved your pencil or your finger or whatever is, from
 8 the cross roads in the direction of 10:56. So –
 9 MR MPOFU: It is at the beginning of that
 10 –
 11 CHAIRPERSON: Ja, at the bottom, the
 12 white 10:56, at the bottom right hand corner.
 13 MR MPOFU: Alright.
 14 CHAIRPERSON: It is rather tedious, but
 15 one has got to tie these things down firmly. So when
 16 you're showing the counsel, has the witness seen this,
 17 because he is the most important person here?
 18 MR MAGIDIWANA: This was shown to me, Mr
 19 Chairperson, the witness.
 20 MR NGALWANA: It is the quadrant with the
 21 white 1056 at the bottom left, - the right hand corner that
 22 we are talking about, but the position is in that quadrant
 23 at the beginning, next to where the intersection is, for
 24 the lack of a better word, is it clear to the witness,
 25 that's the important thing?

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1 CHAIRPERSON: We've showed him, so
 2 perhaps we can proceed and if he gets stuck he will raise
 3 it with the interpreter or the panel of assistant
 4 interpreters and we'll eventually get it right.
 5 MR NGALWANA: Thank you, Chair.
 6 MR MAHLANGU: Counsel seems to be
 7 speaking of an intersection, I'm not clear which part of
 8 this is now the intersection. Is it where the two roads
 9 meet?
 10 MR NGALWANA: Yes. No, but has he has
 11 seen it, he has been pointed now to the points that I'm
 12 talking about.
 13 MR MAGIDIWANA: This has been shown to
 14 me.
 15 MR NGALWANA: Now the police evidence
 16 will be that the group, your group among which was Mr Noki
 17 and yourself of course, when it dashed it dashed from that
 18 position towards where that lamppost is, to the left hand
 19 side of that lamppost. Would you care to comment?
 20 MR MAGIDIWANA: I am still saying what
 21 you're saying to me is not the truth, if you could come up
 22 with something else.
 23 MR NGALWANA: You were not on that path
 24 that leads to Nkaneng when you dashed at the police line.
 25 MR MAGIDIWANA: Can you see the pole

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1 which you earlier about and directed me to on this slide?
 2 First we were in line with that pole, as it is right now we
 3 were on the lower side and it is on the upper side of us.
 4 There are two other roads that are not very clear, it
 5 indicates on the left hand side of the red oval. There is
 6 the main road, the big road that we left behind us which
 7 goes straight to Nkaneng.
 8 MR NGALWANA: Yes?
 9 MR MAGIDIWANA: There is the road on
 10 which we appear on the slide here.
 11 MR NGALWANA: It is this road on which we
 12 are walking?
 13 MR MAGIDIWANA: Yes, he indicates it on
 14 the slide.
 15 MR NGALWANA: No, I don't see that.
 16 MR MAGIDIWANA: He indicates where the
 17 red oval is.
 18 MR NGALWANA: I -
 19 MR MAGIDIWANA: I'm under cross-
 20 examination. As you proceed further then there is the road
 21 that would be in front of us as we were going.
 22 MR NGALWANA: Where are you headed, I'm
 23 not with you at all?
 24 MR MAGIDIWANA: The workers were singing,
 25 walking, as they were walking they started towing, pulling

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1 the barbed wire. We can see, it is so clear that we were
 2 far away from where the wire was being pulled.
 3 MR NGALWANA: Mr Magidiwana, that 1056,
 4 I'm not talking about what happened at 1056 in the morning.
 5 I'm simply using that slide for bearings. I'm saying your
 6 group, that group which is in the oval red, at the time
 7 when it dashed at the police line it wasn't there, it was
 8 where it was indicated to you now. It then dashed from
 9 where it has been indicated to you across the path that
 10 runs there, leaving the path to Nkaneng according to you on
 11 their left and headed towards the direction of the pole.
 12 MR MAGIDIWANA: That is what I'm saying,
 13 it is not true, please come up with something else.
 14 MR NGALWANA: You are not saying at that
 15 time, at the time that you dashed at the police line you
 16 were walking on the road that goes to Nkaneng.
 17 MR MAGIDIWANA: I said we were along the
 18 smaller road that meets the main road that leads to Nkaneng
 19 from Marikana.
 20 MR NGALWANA: But you were not on the
 21 main road to Marikana.
 22 MR MAGIDIWANA: I don't know how you want
 23 me to explain it to you, Sir.
 24 MR NGALWANA: You were not on that main
 25 road that leads to Nkaneng past the kraal.

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1 MR MAGIDIWANA: I said, Sir, and I don't
 2 know what you expect me to say, that we were in the smaller
 3 road which if one travels it, it meets the main road that
 4 leads to Nkaneng past the kraal. What else do you want me
 5 to say, Sir?
 6 MR NGALWANA: Why didn't you join the big
 7 road to Nkaneng from that spot that I indicate to you
 8 earlier?
 9 MR MAGIDIWANA: It is clear that is where
 10 the Nyala started closing the road which we were to use.
 11 MR NGALWANA: No, that's not correct.
 12 MR MAGIDIWANA: It is so.
 13 MR NGALWANA: At the time you dashed the
 14 hippos were still around the pole, they were nowhere near
 15 the main path.
 16 MR MAGIDIWANA: No, no, we will keep on
 17 arguing about something that I'm telling you is not so.
 18 MR NGALWANA: In fact slide 197, Mr
 19 Magidiwana, it shows clearly from where you started when
 20 you dashed.
 21 MR MAGIDIWANA: 197 shows?
 22 MR NGALWANA: It shows clearly where you
 23 moved from.
 24 MR MAGIDIWANA: Where?
 25 MR NGALWANA: The yellow arrow or

<p style="text-align: right;">Page 6223</p> <p>1 whatever that colour, the gold arrow shows clear the 2 direction in which your group was going, it is not on that 3 main path.</p> <p>4 MR MAGIDIWANA: No, that is not true, 5 Sir, unless you say something else I'm still saying it.</p> <p>6 MR NGALWANA: Are you saying you were on 7 that main path?</p> <p>8 MR MAGIDIWANA: On the smaller road, the 9 main road is the one that comes from Marikana straight to 10 the shack settlement.</p> <p>11 MR NGALWANA: But you were not on that 12 road as you were dashing.</p> <p>13 MR MAGIDIWANA: But it is clear from this 14 road that we had to deviate from the small road in order to 15 reach the other road.</p> <p>16 MR NGALWANA: No, you were not on the big 17 road that comes from Marikana towards the shacks. Yes, you 18 were not on that main road.</p> <p>19 MR MAGIDIWANA: No, not on that road.</p> <p>20 MR NGALWANA: That road was to your left, 21 more to your back according to the sketch.</p> <p>22 [15:48] MR MAGIDIWANA: The sketch shows clearly 23 here that we had gone past the pole as we were there, but 24 as time went on we left, moving away from where the 25 electric pole is.</p>	<p style="text-align: right;">Page 6225</p> <p>1 golden arrow and you just move it up slightly towards the 2 right you will see that the arrow, a path crosses the arrow 3 and that path, if you continue to the right into the right 4 top corner, directly to the right top corner of the 5 photograph, you'll see the path crosses another path and 6 then it goes to what looks like between the two koppies. I 7 suspect that that is the path you're talking about.</p> <p>8 MR MAGIDIWANA: That is the road I am 9 referring to, yes.</p> <p>10 MR NGALWANA: I am completely at sea, 11 Chairperson. I still can't, my eye sight is not very good.</p> <p>12 CHAIRPERSON: Do you see at the bottom is 13 the golden arrow, put your finger at the, - do you see on 14 the screen, do you see the golden arrow, at the bottom of 15 the golden arrow which is actually higher up on the slide 16 than part of the head, put your finger on the bottom of the 17 golden arrow and move it slightly towards the right, you'll 18 see that there is a path which is traversed by the arrow. 19 Now at the point where the arrow and the patch coincide, 20 move your finger to the right but in the direction of the 21 top right hand corner of the slide. That, as I understand 22 it, is the path and it goes between the two koppies and I 23 understood the witness to say that that's correct.</p> <p>24 MR MAGIDIWANA: That is the road I am 25 referring to, Mr Chairperson.</p>
<p style="text-align: right;">Page 6224</p> <p>1 MR NGALWANA: You talk about a small path 2 that you were on.</p> <p>3 MR MAGIDIWANA: Yes.</p> <p>4 MR NGALWANA: Where is that path on this 5 map?</p> <p>6 MR MAGIDIWANA: That is the old road 7 which comes and joins what is now known as the main road 8 from Marikana.</p> <p>9 MR NGALWANA: I don't want to be unfair 10 to you, because perhaps it doesn't show on slide 197. Is 11 there any other slide of Exhibit L where that small road is 12 depicted?</p> <p>13 MR MAGIDIWANA: Yes, there is.</p> <p>14 MR NGALWANA: Which slide?</p> <p>15 MR MAGIDIWANA: Showing slide 200, yes.</p> <p>16 MR NGALWANA: Yes, where?</p> <p>17 MR MAGIDIWANA: Do you see the path that 18 leads between the two mountains?</p> <p>19 MR NGALWANA: Well, perhaps we should do 20 this one way, if the witness could be permitted to mark it 21 on his script so that the Commission can see and we can see 22 and all the parties can see where he is saying this path 23 is, Chairperson?</p> <p>24 CHAIRPERSON: I think I can follow him, 25 if you put your finger on the bottom of that arrow, or</p>	<p style="text-align: right;">Page 6226</p> <p>1 MR NGALWANA: Is it the road that runs 2 past the kraal?</p> <p>3 MR MAGIDIWANA: Yes.</p> <p>4 MR NGALWANA: You are not saying you were 5 on that road? Is that the main path –</p> <p>6 MR MAGIDIWANA: I don't understand you?</p> <p>7 MR NGALWANA: You say you were not on 8 that road? You talked about a small road, the road, if 9 that's the road you're talking about, that's the main path 10 to Nkaneng, according to you.</p> <p>11 MR MAGIDIWANA: Yes, but do you see the 12 smaller road that leads to that big one?</p> <p>13 MR NGALWANA: Oh, that's the one I'm 14 waiting for you to show me.</p> <p>15 MR MPOFU: Chairperson, sorry, if you 16 can, just to alleviate to the train of this questioning, it 17 would seem that the questioner is talking about the first 18 approach and the witness is dealing with the second 19 approach, so we'll never, the roads will never meet quite.</p> <p>20 MR MAGIDIWANA: I've always been talking 21 about the first approach.</p> <p>22 CHAIRPERSON: 200 shows the second 23 approach, that's Mr Mpofo's point.</p> <p>24 MR NGALWANA: Well, that's where the 25 witness took me. I asked him, where –</p>

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1 CHAIRPERSON: If you look carefully at
 2 the, I don't whether this is literally or metaphorically a
 3 dwaal spoor, if you look carefully at the foot of that
 4 arrow and you move your pen slightly or pencil slightly to
 5 the left there appears to be a faint path which goes all
 6 the way to the left hand side of the slide and of course at
 7 that that time it would appear to have been blocked or
 8 certainly at some stage it would appear to have been
 9 blocked by the barbed wire, but by the time the second
 10 approach took place, of course it was blocked by the barbed
 11 wire but at some stage earlier, when the barbed wire was
 12 still coming down as it were, that would have been opened.
 13 So there is a faint path which runs from, on slide 200 from
 14 the foot of the golden arrow to the left hand side of the
 15 page. I don't know whether that's what he is talking
 16 about. Maybe he should be asked.
 17 MR MAGIDIWANA: If that question could
 18 again be, what was said could be repeated, Sir?
 19 CHAIRPERSON: I'll try again. Mr
 20 Interpreter, can you please show him the foot of the golden
 21 arrow, not the head of the arrow but the foot of the golden
 22 arrow? Now if you put your pen there or finger there, at
 23 that spot and you move it slightly to the left, eventually
 24 it goes past where the barbed wire fence was, but the
 25 barbed wire fence was at some point not there and if you go

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1 on you'll see there is a faint path which runs all the way
 2 from the foot of the golden arrow to the left hand side of
 3 the page. Is that the path you're talking about?
 4 MR MAGIDIWANA: There is the one that
 5 crosses that one, yes.
 6 MR NGALWANA: Mr Chairperson, it is very
 7 important that we get this right, certainly for my sake
 8 because I have no clue what the witness is describing. I
 9 could move on to something else to give him the opportunity
 10 overnight to draw what small path he is talking about and
 11 we'll start there tomorrow morning.
 12 MR MAGIDIWANA: No, I have no reason to
 13 be looking at this because I know this.
 14 CHAIRPERSON: Mr Magidiwana, I –
 15 MR MAGIDIWANA: - to look at it.
 16 CHAIRPERSON: I understand you know it,
 17 but we want to understand what you're saying and we've only
 18 been there once or twice and there are a number of paths
 19 and it is quite important for Mr Ngalwana's argument that
 20 we be quite clear what you're saying and what path you're
 21 referring to. Now I know you know what path you're
 22 referring to. So that's why we look at this photograph,
 23 slide 200 and you'll see there are a number of paths we can
 24 see on the photograph.
 25 MR MAGIDIWANA: Yes, it is, yes.

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1 CHAIRPERSON: Alright, now we're trying
 2 to see which path you're talking about when you talked
 3 about the little path.
 4 MR MAGIDIWANA: It is the one on which
 5 the arrow appears, that is the small road.
 6 MR NGALWANA: On the first approach,
 7 Chairperson, this is very important, I'm not talking about
 8 the second approach.
 9 CHAIRPERSON: And if you go back to 194,
 10 you'll see the first approach what amounts to a yellow
 11 arrow. The arrow I was talking about is the golden arrow,
 12 but there is a yellow arrow, that's the first approach. If
 13 you look very carefully at that photograph you'll see there
 14 is what looks like a faint path going to the left and side
 15 of the photograph. Now one doesn't want to put words in
 16 the witness' mouth but if he could perhaps show us or show
 17 the interpreter because he could explain it in the kind of
 18 language he has been using, the first path he talks about,
 19 the little path, that would probably help us.
 20 MR NGALWANA: Can he put a pencil through
 21 it and just show by drawing a line, bearing in mind we are
 22 talking about the first approach next to that pole, we are
 23 not talking about the second approach. He said there is a
 24 small path on which they were. I want him to show us where
 25 that path is?

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1 CHAIRPERSON: I take it you understand
 2 the path that I was referring to, the faint little path
 3 which runs from the foot of the golden arrow to the left
 4 hand side of the page, now if that's what the witness shows
 5 the interpreter can tell us.
 6 MR NGALWANA: I don't understand, Chair,
 7 and I don't see it, so I would like to see the witness
 8 drawing a line on that path.
 9 CHAIRPERSON: Well, if you look at 200
 10 and you look at the foot of the golden arrow, now the foot
 11 of the golden arrow, remember, is where the first approach
 12 took place, and you move your pencil leftwards, through
 13 what was later the barbed wire, you'll see there is a faint
 14 path going all the way to the left hand side of the page.
 15 You must be able to see that. Do you want me to repeat it?
 16 Now is that the path, Mr Interpreter, that he is showing?
 17 MR MAGIDIWANA: That is the road, yes.
 18 CHAIRPERSON: Can you see it?
 19 MR NGALWANA: In other words behind the
 20 cars parked here, behind those cars,
 21 MR TIP SC: Mr Chair, very helpfully, the
 22 technician has drawn a red line on a path and if that's the
 23 path that you're describing –
 24 CHAIRPERSON: He is trying to describe
 25 the path and the witness said it is the path. The only one

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1 that doesn't see it is Mr Ngalwana, but hopefully now that,
 2 - he says he is colour blind, but it is red - is now moving
 3 along it.
 4 MR MAGIDIWANA: What happened is, we came
 5 from up, we came down straight, singing, we came down, now
 6 the pole, we left it above us on the side. As counsel is
 7 saying, we were going towards the police. At that stage
 8 the pole would then have been behind us.
 9 MR NGALWANA: Yes, but judging by where
 10 the police says you dashed from –
 11 MR MAGIDIWANA: They are lying.
 12 MR NGALWANA: I haven't asked my
 13 question. Judging by where the police says you dashed
 14 from, if you were headed towards Nkaneng in a large group
 15 of about 200 people it makes sense that you would have
 16 joined the big path that goes to Nkaneng and leave the
 17 police line alone. Why didn't you do that because there
 18 was no Nyala blocking that path at that time?
 19 MR MAGIDIWANA: I'm trying to fix this
 20 thing but it doesn't come right, I can understand what you
 21 are saying now.
 22 MR NGALWANA: Well, why didn't you take
 23 the big path? That would have avoided the police to your
 24 right.
 25 MR MAGIDIWANA: Don't you see that the

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1 road was being blocked here, Sir?
 2 MR NGALWANA: It hasn't been blocked yet.
 3 MR MAGIDIWANA: That's why I told you
 4 earlier before the closing of the road the workers were
 5 going around there, coming down singing.
 6 MR NGALWANA: Mr Magidiwana, I'm going to
 7 say this for the last time. You chose what you say is the
 8 narrow road which brings you in line with the police line,
 9 instead of joining immediately with the wider main path
 10 that you say leads to Nkaneng. The police was deploying
 11 barbed wire to the right of that path, the big path. On
 12 your own version you chose to go directly where that barbed
 13 wire was being deployed, instead of taking the big path or
 14 the wider path which avoids the barbed wire.
 15 MR MAGIDIWANA: It is not as you say,
 16 unless you can put it in some different manner. I
 17 definitely cannot agree with you when you say something
 18 that did not happen.
 19 MR NGALWANA: If I misrepresented your
 20 evidence your lawyer would have objected. Your evidence
 21 is, the police was deploying barbed wire in front of you.
 22 MR MAGIDIWANA: Yes, the police deployed
 23 the barbed wire in front of us, but whilst the police were
 24 deploying this barbed wire in front of you there was on
 25 your left side the main, the big road.

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1 MR NGALWANA: There was no police with
 2 barbed wire on the road at that time.
 3 MR MAGIDIWANA: How did it come to the
 4 kraal?
 5 MR NGALWANA: You're running in front of
 6 me, I haven't reached the kraal as yet. I'm speaking of
 7 the first occurrence.
 8 MR MAGIDIWANA: What stopped us then from
 9 going towards those police during that first time? I'm
 10 listening.
 11 [16:08] MR NGALWANA: If you say the police put
 12 the barbed wire, the answer is, Sir, please respond to my
 13 question, I'm answering yours. You say the police deployed
 14 the barbed wire in front of you, they closed up to where
 15 that pole is. I showed you the pole, you went past,
 16 slightly past that pole. At that time the main road was
 17 still not blocked by the police, it wasn't closed by the
 18 police.
 19 MR NGALWANA: But if you wanted to go to
 20 Nkaneng at the time why did you not make use of that road
 21 before it was closed?
 22 MR MAGIDIWANA: I like your Xhosa, it is
 23 very clear.
 24 MR NGALWANA: I wanted to understand,
 25 Sir, that at the time before the barbed wire was deployed

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1 the workers were signing there, not at all thinking that
 2 they would be attacked by the police. The police then
 3 started deploying the barbed wire. When they started
 4 deploying the barbed wire you said yourself that it came to
 5 you what Mathunjwa was saying could be true and that was an
 6 opportune time for you to take the main road, get out of
 7 the place without any problems, is it not so?
 8 MR MAGIDIWANA: I will repeat the same
 9 thing again, I've been saying the same thing over and over
 10 again. The majority of them started moving away when the
 11 barbed wire was deployed, but it did not help much because
 12 the hippo then put speed and closed the place towards the
 13 crawl. We then turned around the crawl to another road and
 14 that road was also blocked.
 15 MR NGALWANA: The difficulty,
 16 Chairperson, is the witness is talking about the second and
 17 third incident, I'm talking about the first incident. The
 18 kraal hasn't come into play at all where I am, you know I
 19 said this and I will say it for the last time, let me –
 20 CHAIRPERSON: Would you like to approach
 21 the matter again tomorrow morning at half past nine?
 22 MR NGALWANA: I was hoping to put it to
 23 bed but, Chair, perhaps I should take your advice.
 24 CHAIRPERSON: I hear that the way things
 25 are going we're never going to get anywhere with this. We

1 will now take the adjournment until 9:30 tomorrow morning.

2 [COMMISSION ADJOURNED]

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<p style="text-align: center;">A</p> <p>able 6135:25 6230:15 absolutely 6212:22 accept 6142:2,5 6147:6 6147:8 6148:16,18,19 6148:20 6173:5 6179:16 6191:18 6194:16 6201:25 6202:3 accepted 6142:19 6143:1 6181:5 accomplishments 6200:19 accurately 6209:24 add 6136:10 6167:16 address 6166:16 6169:3,14 6172:16,20 6173:8 6174:3 6177:9 6177:18,18 6179:2 6182:21 6183:2,4,9 6183:13 6184:17 6185:15 6186:7 addressed 6166:3 addresses 6187:13 addressing 6174:18 6197:14 adjourn 6154:14 ADJOURNED 6235:2 adjournment 6154:19 6161:11,12 6191:3,8 6213:11,12,15 6235:1 ADJOURNS 6163:20 6191:16 6213:16 admit 6155:11 Adv 6200:13 6201:3 advanced 6166:15 advantage 6201:2 advice 6234:23 Africa 6174:20 African 6135:10 6137:12 6147:1,6 6161:5,7 6183:21 6188:12 6189:3 6205:17 afternoon 6179:8 6191:19 6212:17 aggression 6182:13 ago 6170:5 agree 6142:4 6156:4,5 6156:7 6161:6,14 6163:12 6165:4 6167:23 6183:12 6192:9 6232:17 agreed 6155:14 6161:14 agreement 6166:23,25 6167:10 ahead 6148:4 6198:15 air 6162:18 albeit 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