

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 62 12 MARCH 2013 PAGES 6524 TO 6634

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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



<p style="text-align: right;">Page 6524</p> <p>1 [PROCEEDINGS ON 12 MARCH 2013] 2 [09:41] CHAIRPERSON: The commission resumes. Mr 3 Magidiwana, you're still under oath. I understand you have 4 more questions in cross-examination? 5 MR TIP SC: I do, Chair. Thank you. We 6 concluded yesterday on the basis that I would cause a video 7 to be shown which gave a better sense of the gap that we 8 have spoken about, between the front and the rear views. 9 CHAIRPERSON: Is this video likely to 10 cause distress to anybody in the auditorium? 11 MR TIP SC: No it won't. 12 CHAIRPERSON: Good. Whilst it's coming 13 on screen. Just for the record it has been shown 14 previously and I might as well just give the path again. 15 It is SAPS/EHD/videos/20120816/112MTS. 16 [VIDEO SHOWN] 17 MR TIP SC: I've paused just at the point 18 that, that's very close to the picture, the still to which 19 we referred yesterday is part of this video, it's taken off 20 it, but what one can see very clearly, Mr Magidiwana, is 21 the, what I call the wing of the rear group, do you see 22 that? 23 MR MAGIDIWANA: Yes, I can see. 24 MR TIP SC: Just play it to the end, 25 thank you.</p>	<p style="text-align: right;">Page 6526</p> <p>1 MR TIP SC: Anything further? 2 MR MAGIDIWANA: Nothing further. 3 MR TIP SC: Well, Mr Magidiwana, the, 4 this is the first that we have heard of delivery vehicles 5 coming to the koppie and there is no record of any of 6 those. But let me just put this footage in context. This 7 was filmed during the course of Mr Mathunywa's address, do 8 you agree? 9 MR MAGIDIWANA: I think so, yes. 10 MR TIP SC: And it happens shortly after 11 this Bishop Seoka was there and he told the commission that 12 one of the particular requests that were made to him was 13 that he should please organise some food and water for the 14 people on the koppie because they are so hungry and 15 thirsty. 16 MR MPOFU: Chairperson, that's not the 17 evidence of the Bishop. 18 CHAIRPERSON: What is the last bit, what 19 is the objection about? 20 MR MPOFU: Because there were, they 21 wanted food and water because they were so hungry and 22 thirsty, the Bishop never said that. He actually said he 23 would bring them the food the following day. 24 MR TIP SC: Mr Chair, Mr Mpofu, is 25 overlooking a detail here. The request was made, the</p>
<p style="text-align: right;">Page 6525</p> <p>1 [VIDEO SHOWN] 2 Yes, thank you. What, there are a few aspects of 3 this that I would like to traverse with you, Mr Magidiwana. 4 The first is that the gap which is a broad gap or band of 5 veld between the front group and the rear group has now 6 been shown to you quite fully. Agree? 7 MR MAGIDIWANA: I agree with you. 8 MR TIP SC: And having now seen the full 9 extent of it, I will give you another opportunity to 10 comment if you would like to, on the proposition that I put 11 to you yesterday that that gap really defined the 12 difference between the rear group, the people on the rocks 13 and the koppie and the front group, those sitting to the 14 left of the screen. 15 MR MAGIDIWANA: The explanation I give 16 is, over there a person choose where he wanted to sit. 17 Another explanation is to allow vehicles that would come 18 from time to time bringing food, bread and such, it would 19 get into that opening space, not in front of us and it 20 would stop there, the bread would then be shared amongst 21 the people and then it would move away. As you can also 22 see in the back group there is also an opening there were 23 people allowed some opening space so that during the 24 singing people could move up and down and there would be 25 not congestion.</p>	<p style="text-align: right;">Page 6527</p> <p>1 Bishop was unfortunately he said not in a position to 2 immediately provide food and water. 3 CHAIRPERSON: Have you got a, look we've 4 got a transcript. We have got a reference to the 5 transcript which would put the matter beyond doubt. You 6 have this particular recollection, Mr Mpofu has another one 7 - relevant transcript reference. Perhaps if possible you 8 could move onto another matter. Back to this when the 9 transcript reference has been found. 10 MR TIP SC: Chair - 11 CHAIRPERSON: Good. 12 MR TIP SC: I'm merely putting on record 13 because I'm very confident of my recollection here that the 14 Bishop explained to the leadership to whom he was 15 addressing, speaking that he is unfortunately from 16 Pretoria, he hadn't brought food and drink. So it wasn't a 17 matter of the request wasn't made, it was that his capacity 18 to deliver then and there was limited. But we'll get the 19 references on that. 20 COMMISSIONER HEMRAJ: Mr Tip, my 21 recollection was the same as yours and the Bishop said that 22 he would see what he could do about the request. 23 MR TIP SC: Thank you, thank you 24 Commissioner. 25 MR MPOFU: Thank you. Chairperson,</p>

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1 that's not the point with respect. The point is not that
 2 the Bishop said that he would see the request the following
 3 day.
 4 CHAIRPERSON: But they said they were so
 5 hungry.
 6 MR MPOFU: The point exactly, that they
 7 wanted water because they were so – in those terms.
 8 CHAIRPERSON: We can, any time we can
 9 check that on the transcripts.
 10 MR MPOFU: As the -
 11 CHAIRPERSON: Let's not waste time
 12 debating it. Comparing one, possibly faulty memory against
 13 another. Let Mr Tip carry on.
 14 MR MPOFU: Thank you, Chairperson.
 15 MR TIP SC: Thank you, Chair. Mr
 16 Magidiwana, the aspect that I want to traverse and I must
 17 apologise perhaps I should have identified before the
 18 footage was played and that concerns a matter that, Mr
 19 Ngalwana, traversed with you, you will recall that he
 20 showed you some footage and some stills of the rear group
 21 and he said to you that what is to be seen is that they are
 22 dressed more casually, more lightly, that there are not any
 23 weapons to be seen. That the mood is different. Do you
 24 recall that?
 25 MR MAGIDIWANA: I remember him saying

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1 that, yes.
 2 MR TIP SC: Yes, and incidentally, I
 3 already have with the assistance of my colleague a
 4 reference to the - day 12 Bishop Seoka gave evidence and
 5 there's a transcript of what was said at page 1359.
 6 CHAIRPERSON: Someone has got that on the
 7 computer, we can look at page 1359 but can you do it now or
 8 do you want to deal with another point first while it's
 9 been found?
 10 MR TIP SC: Perhaps I could just complete
 11 this point and -
 12 CHAIRPERSON: Yes.
 13 MR TIP SC: Mr Magidiwana, forgive us for
 14 just interrupting the flow of your evidence. My apologies
 15 for that. You recall, you say you recall, Mr Ngalwana,
 16 putting those features to you and perhaps as, as this
 17 footage was being displayed you would also have seen that
 18 the rear group which was principally the group that was
 19 filmed showed a similar picture of being relatively lightly
 20 clad, of being light in mood and light in weaponry.
 21 MR MAGIDIWANA: I don't know whether it
 22 would be necessary for me to explain this again, Mr
 23 Chairperson, because I have already explained in the past.
 24 MR TIP SC: Yes, I would be grateful if
 25 you would, if you don't mind.

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1 MR MAGIDIWANA: I had said people, the
 2 people who are dressed heavily were, did so because it was
 3 cold in the morning.
 4 MR TIP SC: Yes, alright we've been
 5 through that explanation, that was debated with you by, Mr
 6 Ngalwana. I'm not going to repeat it. I want to move onto
 7 this aspect. The front group that we see to the left at
 8 the time of Mr Mathunjwa's speech is it so that you were in
 9 that front group?
 10 MR MAGIDIWANA: Yes, Sir.
 11 MR TIP SC: And had you been in that
 12 front group for most of the morning, do you recollect, at
 13 what time did you join that group more or less?
 14 MR MAGIDIWANA: I do remember yes.
 15 MR TIP SC: Yes won't you tell us?
 16 MR MAGIDIWANA: I arrived early morning.
 17 MR TIP SC: And did you then join the
 18 front group from early in the morning?
 19 MR MAGIDIWANA: In the early morning when
 20 I arrived I went to the group up there in the mountain.
 21 When the sun came up, more people arrived as it is and then
 22 there was singing that started. I then joined in the
 23 singing, I went to the singing. After every speech that
 24 was made, after people had talked people would resort to
 25 singing and so on.

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1 MR TIP SC: Can you assist us a little
 2 further please. Just give us an indication of
 3 approximately what time then did you join the front group,
 4 was it 8 o'clock in the morning, 9 o'clock, 10 o'clock?
 5 MR MAGIDIWANA: Sir, I did not have a
 6 watch on that day.
 7 MR TIP SC: But the sun was well up, was
 8 it, we were well into the morning when you joined the front
 9 group?
 10 MR MAGIDIWANA: I said when the people
 11 arrived there and they started singing, that was when I
 12 went down - anybody who felt like would stand up there, go
 13 to where the singing was taking place.
 14 MR TIP SC: Let me move on, Mr
 15 Magidiwana. Can I request you please to turn to slide 160
 16 of exhibit L.
 17 MR MAGIDIWANA: 160.
 18 MR TIP SC: Right, Mr Magidiwana, you see
 19 on the screen there and you have exhibit L in front of you.
 20 MR MAGIDIWANA: I see it, yes.
 21 MR TIP SC: This is a slide which you
 22 have seen before and you see the front group there which,
 23 now with the red circle around it, just to identify it
 24 clearly, you see that?
 25 MR MAGIDIWANA: These are the people who

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1 are singing.

2 MR TIP SC: Can I call them the front

3 group?

4 MR MAGIDIWANA: Well I, that I don't

5 know.

6 MR TIP SC: Well whether we call them the

7 front group or the singing group you were in that group at

8 that time, is that correct?

9 [10:01] MR MAGIDIWANA: Yes.

10 MR TIP SC: Now can you explain to us why

11 that group moved from being in front of the people on the

12 koppie, to being positioned directly opposite a police

13 Nyala, Nyala number 6, which you see on that slide with the

14 yellow square, rectangle around it, do you see that?

15 MR MAGIDIWANA: Now you only see it now

16 that it is appearing on paper here, sir. That is why I

17 said if you would go to that place it would become more

18 clearer to you. Because people were not stationary, they

19 were singing and then moving that way and so on.

20 MR MADLANGA SC: Commissioners,

21 Chairperson, there is a part that was not translated. He

22 said [African language] which means then you would how far

23 apart the two spots or places are. Yes.

24 CHAIRPERSON: Thank you.

25 MR TIP SC: Thank you, Mr Interpreter, do

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1 you confirm that?

2 MR MAHLANGU: If counsel could repeat

3 again, Sir, because I understood him to say, going to that

4 place would make it much more clearer to you. The layout

5 of the place.

6 MR MADLANGA SC: He did use the word

7 [African language] and that conveys what I have said. If

8 perhaps Commissioner Tokota, Mr Mpofo could also be asked?

9 CHAIRPERSON: Mr Tokota concurs, I don't

10 know whether Mr Mpofo -

11 MR MPOFU: I do the same. I do too.

12 CHAIRPERSON: Thanks.

13 MR MAHLANGU: Commissioner, I explained

14 the difference, the difference is in the word [African

15 language] because it also means how clear it is and it also

16 means how -

17 MR MPOFU: No, that would be [African

18 language] which is a C, he says [African language] is a Q

19 which means the distance.

20 MR MAHLANGU: Oh, thank you.

21 MR TIP SC: I'm indebted to everyone for

22 that input. Perhaps I could just ask this question, Mr

23 Magidiwana, when you talk about how far the one place is

24 from the other place, what are you referring to? What are

25 the two places?

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1 MR MAGIDIWANA: I'm talking of the

2 distance between the hippos at, the Nyala that you

3 mentioned and the people that you see there.

4 MR TIP SC: Yes, alright. Well let me

5 just ask you to turn for a moment to slide 152, also of

6 Exhibit L. You will see I'm sure, Mr Magidiwana, that that

7 was evidently taken on the 16th of August but sometime

8 earlier than what we see in slide 160 and I say that

9 because quite clearly there are less people to be seen on

10 the koppie and in the front group, do you agree?

11 MR MAGIDIWANA: Okay.

12 MR TIP SC: Thank you. Now I want to,

13 you are seeing that the front group is in front of all the

14 people on the koppie, more or less in the middle of the

15 extent of that group, do you agree?

16 MR MAHLANGU: Is this now on 152, Sir?

17 MR TIP SC: 152 still. Do you agree, Mr

18 Magidiwana?

19 MR MAGIDIWANA: Yes, they are crouching

20 just slightly in front.

21 MR TIP SC: Yes, alright. Now I want to

22 go back to slide 160 and what is clearly evident when one

23 compares those two slides is that the front group has moved

24 as group from the position of being more or less in the

25 middle of, well the position that we see in slide 152 let

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1 me put it shortly, to being opposite the Nyala number 6?

2 MR MPOFU: Sorry Chairperson, just for

3 clarity, is Mr Tip suggesting that we know the sequence in

4 which those two photos were taken? If he is saying they

5 have moved from one the other.

6 MR TIP SC: I am suggesting that, Mr

7 Chair, and that is why I took the witness through the

8 position on slide 152 which is that there are less people

9 and that more people had arrived by slide 160 and that is

10 sufficient for my question unless there is an objection to

11 it. There is an objection I believe, what is it?

12 MR MPOFU: Well it is that firstly,

13 Chairperson, the mere fact that the one picture is taken

14 from further than the other does not necessarily mean that

15 it was taken earlier or later or that it has more or less

16 people, you know. So I think there has got to be some

17 basis of establishing the sequence of the photos before you

18 can say it was movement from A to B. Because it could be

19 from B to A or whatever.

20 MR TIP SC: Mr Chair, let me just say in

21 addition, I have put -

22 CHAIRPERSON: Can I just put this to you?

23 MR TIP SC: Yes.

24 CHAIRPERSON: This point that my

25 colleague, Commissioner Hemraj has just put to me, and that

<p style="text-align: right;">Page 6536</p> <p>1 is it relevant for your purposes which photograph was taken 2 first? What appears from the photographs is that at one 3 stage the, what you call, the front group was in one 4 position in relation to the other group and in the other 5 photograph they were in another position in relation to the 6 other group. If that is all you need for the purposes of 7 your question then we don't have to decide which came 8 first. If on the other hand it is important for you to 9 show the one is before the other, then we will have to go 10 into the point Mr Mpofo makes. Prima facie there is 11 nothing to show when slide 152 was taken and he is right in 12 suggesting that it's possible that it was taken after slide 13 160. But if it's not relevant for the purpose of your 14 question, we don't have to go there.</p> <p>15 MR TIP SC: It's, I can put the next 16 proposition without that detail, although I do want to add, 17 Chair, that slide 152 shows Nyala number 6 in position. 18 Slide 160, I beg your pardon?</p> <p>19 CHAIRPERSON: I think you mean the other 20 way round. I think 160 -</p> <p>21 MR TIP SC: No.</p> <p>22 CHAIRPERSON: Shows the Nyala in position 23 and -</p> <p>24 MR TIP SC: Slide 152 shows Nyala 6 in 25 position.</p>	<p style="text-align: right;">Page 6538</p> <p>1 MR MPOFU: Yes. 2 CHAIRPERSON: Then we don't have to waste 3 time on it. 4 MR MPOFU: Thanks, Chairperson, yes I 5 will be happy if this question is rephrased in that manner. 6 I will be happy. Not they moved from this to that. 7 MR TIP SC: Mr Magidiwana, let me, let me 8 just clarify something with you. Please just go back to 9 152. I'm not going to dwell on this endlessly, but I do 10 wish to be allowed to make my point on the basis of what we 11 see. 152, you see the position of the front group? 12 MR MAGIDIWANA: I see both, yes. 13 MR TIP SC: And is that where it was when 14 you joined it, when you joined that group on the morning of 15 the 16th of August? 16 MR MAGIDIWANA: No, they were not there, 17 Sir. 18 MR TIP SC: Where were they? 19 MR MAGIDIWANA: I said people came at 20 different stages, I then said the people who were then 21 seated there when, the position is people who then wanted 22 to join the singing would then move from the big group to 23 where the singing was taking place. Those that were tired 24 of singing would remain there and those that went for the 25 singing and got tired of singing would then revert back to</p>
<p style="text-align: right;">Page 6537</p> <p>1 CHAIRPERSON: I see, okay alright. 2 MR TIP SC: Is there any objection to 3 that also, I believe. 4 MR MPOFU: Yes, both slides show the 5 Nyala in exactly the same place, if we are talking about 6 the same Nyala. 7 MR TIP SC: Yes. 8 CHAIRPERSON: That's the point Mr Tip is 9 making. 10 MR TIP SC: Yes. 11 CHAIRPERSON: The point is the Nyala was 12 already there when both pictures was taken. 13 MS MPOFU: Alright. 14 CHAIRPERSON: The question is whether it 15 is important to know what the sequence was, which one came 16 first. If it's important to know then possibly the 17 question would be put on the basis that if one assumes that 18 or something of that kind. 19 MS MPOFU: Ja. 20 CHAIRPERSON: But if it's not important, 21 what is simply important is at one stage the group was in 22 one position in relation to the other group and at another 23 stage in another position. 24 MR MPOFU: Yes. 25 CHAIRPERSON: If that's all he needs -</p>	<p style="text-align: right;">Page 6539</p> <p>1 the group. 2 MR TIP SC: Yes, revert back to the rear 3 group? 4 MR MAGIDIWANA: Yes, the ones who were 5 tired. 6 MR TIP SC: Alright, well that doesn't 7 answer my question about where the group was but let me 8 just go back to the question that I asked you initially, 9 can you enlighten us at all as to why that group came to be 10 in front of the Nyala number 6? 11 MR MAGIDIWANA: I said to you earlier, 12 Sir, if you look at it on the paper here it doesn't look 13 clear but if you could go to that place, then you would be 14 able to see what the distance is between where they are and 15 the Nyala. 16 MR TIP SC: Mr Magidiwana, the point is 17 that the group is in line and opposite the Nyala. It 18 doesn't matter how far it was. Do you agree with that? 19 MR MAGIDIWANA: These people were not 20 stationary, Mr Chairperson, they would go past there 21 singing and then would come back. As they were passing the 22 photo was then taken. 23 MR TIP SC: Mr Chair, we will leave that 24 for evidence by the SAPS. They have an inscription on that 25 and if they have anything to say, they can in due course.</p>

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1 I want to move on to something else. Mr Magidiwana, you
 2 have been photographed, videoed by the police who say that
 3 you were at the koppie on 15 August 2012 as well. Do you
 4 recall that?

5 MR MAGIDIWANA: I have already said I am
 6 not, I don't remember going there on that day, the 15th.

7 MR TIP SC: What you told the commission
 8 was that you weren't in a position to deny it but that you
 9 don't recall it and I just -

10 MR MAGIDIWANA: Yes.

11 MR TIP SC: I want to raise with you
 12 something that happened on the 15th to see whether that jogs
 13 your recollection and that is the arrival of Mr Zokwana and
 14 of Mr Mathunjwa on the evening of the 15th, do you remember
 15 that?

16 MR MAGIDIWANA: The question was, Sir?

17 MR TIP SC: Do you remember that?

18 MR MAGIDIWANA: That one about Mathunjwa
 19 and Zokwana, I wasn't there.

20 MR TIP SC: Are you familiar with the
 21 song that I will call, Kill the Num song?

22 MR MAGIDIWANA: Yes, I know that song.

23 MR TIP SC: And is it a song that you
 24 have sung before?

25 MR MAGIDIWANA: I can sing it even for

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1 you right now.

2 MR TIP SC: Yes, I'm sure you can but I
 3 just want to know whether you have sung it before and in
 4 particular I want to know, well let me stop there. Have
 5 you sung it before?

6 MR MAGIDIWANA: Yes.

7 MR TIP SC: And in particular on the 16th
 8 of August, you sang that song?

9 MR MAGIDIWANA: Yes.

10 MR TIP SC: Now I want to show you two
 11 video clips, Mr Magidiwana. I want to show the singing of
 12 songs.

13 MS PILLAY: Chair, before Mr Tip moves to
 14 the next clip, I think we should record that the initial
 15 clip shown by Mr Tip, the equivalent of that clip is CC12,
 16 Exhibit CC12.

17 CHAIRPERSON: Before we move to the clip,
 18 you have said you have sung that song before and you have
 19 said you sang it on the 16th August. Can't you remember
 20 other occasions when you sang it, before the 16th of August?

21 MR MAGIDIWANA: The question is well?

22 CHAIRPERSON: When. Can you remember,
 23 before the 16th of August when you sang that song?

24 MR MAGIDIWANA: I think I must
 25 misunderstood when I was asked did I sing it before, that's

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1 when I said to him I can sing it to him even today. I
 2 understood him to say had I sang it before.

3 CHAIRPERSON: Yes, no I understood you to
 4 be asked whether you sang it on the 16th and you said yes.
 5 Did you sing it before the 16th as well?

6 MR MAGIDIWANA: Not before then, there
 7 was nowhere where I sang it.

8 CHAIRPERSON: Thank you.

9 MR TIP SC: Right, we are going to show
 10 two short video clips. I think, Mr Chair, that these have
 11 not been shown before. The one we are about to see, the
 12 path to the discovered documents is
 13 SAPS/EHD/videos/20120816/102mts.

14 CHAIRPERSON: How many clips are you
 15 going to show?

16 MR TIP SC: I'm going to show two, they
 17 are both very brief.

18 CHAIRPERSON: Ms Pillay, will have to
 19 give them exhibit numbers I presume?

20 MR TIP SC: Yes. It may be convenient
 21 for me just to give the second path immediately which is
 22 SAPS/EHD/videos/20120816/123mts.

23 [10:21] MS PILLAY: Okay, clip 102 would be EEE13
 24 and the second clip would be EEE14.

25 MR TIP SC: Right, if we are going to

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1 have EEE -

2 CHAIRPERSON: - give us any warning, you
 3 say the first one is just a path but is there, sorry you
 4 were talking about the path in the SAPS hard drive. Sorry,
 5 I misunderstood for a moment. Is it necessary for me to
 6 give any warning to people in the auditorium?

7 MR TIP SC: No, no need at all.

8 [VIDEO SHOWN]

9 MS PILLAY: Chair, I apologise, may I
 10 just correct, this clip is an exhibit already. It's
 11 Exhibit CC7.

12 CHAIRPERSON: [inaudible].

13 MS PILLAY: That's right, EE13 will be
 14 second clip. It's Exhibit CC7 and I will confirm in a
 15 moment if the second clip has also been marked already.

16 MR TIP SC: Oh, alright. We are just
 17 going to rewind this and you will tell us if you see
 18 yourself on this video clip, Mr Magidiwana.

19 [VIDEO SHOWN]

20 MR TIP SC: Yes?

21 MR MAGIDIWANA: The witness confirms that
 22 he appears on the video.

23 MR TIP SC: Yes, and do you also see that
 24 you are, your clapping your hands there and clapping your
 25 hands with considerable vigour. Your very enthusiastic

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1 about this song it seems.

2 MR MAGIDIWANA: That is correct, Sir.

3 MR TIP SC: Yes, alright. Let us just

4 play it through to the end. I want to go straight on now

5 to the second clip.

6 [VIDEO SHOWN]

7 MR TIP SC: Yes, now did you see yourself

8 on that clip also, Mr Magidiwana?

9 MR MAGIDIWANA: I don't know, but I am

10 supposed to be appearing.

11 MR TIP SC: Yes, we will focus in on you

12 shortly but you can see yourself there with your green

13 sweater top and your red towel, correct?

14 MR MAGIDIWANA: That's correct, Sir.

15 MR TIP SC: And is it correct that again

16 we hear the kill the NUM song being sung?

17 MR MAGIDIWANA: That is so, Sir.

18 MR TIP SC: Can you tell us when in

19 relation to Mr Mathunjwa's speech that clip was taken?

20 MR MAGIDIWANA: I think this photo, this

21 was taken on the 16th.

22 MR TIP SC: Yes, it was. May I suggest

23 and I wasn't there, and I have no clear basis to put it

24 other than what I have seen, that it seems that that may

25 have been at the end of the addresses when people were

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1 getting up and moving around and clashing their weapons and

2 singing the song. Might that be correct?

3 MR MAGIDIWANA: Singing as well, yes.

4 Singing as well, they were standing up in an order to sing

5 to continue what they had been doing for a long time.

6 MR TIP SC: Yes, I specifically wanted

7 just to ask whether it might be correct that that was after

8 the address by Mr Mathunjwa had come to an end. Would you

9 be able to say yes or no, perhaps?

10 MR MAGIDIWANA: It was after his speech.

11 MR TIP SC: Now what I particularly want

12 to draw your attention to on this clip, Mr Magidiwana, is

13 that you are now clashing together two weapons.

14 MR MAGIDIWANA: Yes.

15 MR TIP SC: Now you will recall that you

16 were previously shown some footage by Mr Ngalwana and you

17 had two weapons on that occasion, do you remember that?

18 That was a different occasion, you were then on the koppie

19 itself. You were among the rear group.

20 MR MPOFU: Sorry, Chairperson, I just

21 lost my attention. Did Mr Tip say clashing or holding two

22 weapons?

23 MR TIP SC: I'm quite happy to say

24 holding for my purpose, thank you.

25 MR MAGIDIWANA: That is so.

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1 MR TIP SC: And do you remember that you

2 were asked a number of questions about where the second

3 weapon came from because you had initially said that

4 throughout the day you had only had a knobkierie with you?

5 MR MAGIDIWANA: I asked from another one,

6 from another person.

7 MR TIP SC: Yes, that's the explanation

8 you gave. You said that you had picked it up from someone

9 else and you were then asked about what happened with that

10 second weapon. It was a [African language] and you said

11 well as soon as the song came to an end you put it down.

12 MR MAGIDIWANA: That is correct, after

13 singing I gave it back to the owner I had been tired of

14 singing.

15 MR TIP SC: And then you were asked about

16 whether that was the only occasion on that day that you had

17 two weapons in your hands, do you recall that?

18 MR MAGIDIWANA: I remember that.

19 MR TIP SC: Including, Commissioner

20 Hemraj and the Chairperson.

21 MR MAGIDIWANA: I remember.

22 MR TIP SC: And they, I can give the

23 reference to the transcript which is page 6901 through to,

24 I beg your pardon 6091 to 6092 and you were asked very

25 specific questions, Mr Magidiwana, whether that was the

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1 only occasion on the 16th that you had another weapon in

2 your hands and you said unequivocally yes, that was the

3 only occasion. Do you remember that?

4 MR MAGIDIWANA: Yes.

5 MR TIP SC: But now we see you in a

6 different video clip sitting with the front group also on

7 the 16th and again you have two weapons in your hands.

8 MR MAGIDIWANA: Yes, the question is it

9 was only on the 16th that I had two weapons.

10 MR TIP SC: Mr Magidiwana, I'm not going

11 to bounce backwards and forwards with this. I'm going to

12 read you what you said on the previous occasion.

13 MR MPOFU: I'm totally confused, I hope

14 the witness is not as well. The question, I'm not sure

15 whether it is being suggested that what has been shown now

16 was a different occasion to the one that was put by Mr

17 Ngalwana.

18 CHAIRPERSON: That is being suggested.

19 MR MPOFU: Well then the basis for that

20 has to be laid, Chair.

21 CHAIRPERSON: I think it has been laid

22 already, you will find.

23 MS MPOFU: Well, it can't just - merely

24 just because it's a different clip. It could be the same

25 occasion. I'm not saying the same clip, I'm using the

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1 exact words deliberately. Is it being suggested it's a
 2 different occasion to the one that Mr Ngalwana referred to?
 3 If it is then the basis must be laid.
 4 CHAIRPERSON: Okay, let's hear what Mr
 5 Tip has to say in response to your point.
 6 MR TIP SC: The questions to which I
 7 refer, these pages of the transcript related different
 8 occasion where Mr Magidiwana was seen sitting on the
 9 koppie, on a rock with his legs stretched out and it's an
 10 entirely different occasion from him sitting here in the
 11 front rows of the front group at the time of the addresses.
 12 MR MPOFU: Well, Chairperson, that can't
 13 be correct for the following reason, if one looks at the
 14 bottom of 6091, Mr Ngalwana says so let's be clear and so
 15 on in saying and he says, doing the clicking with them. In
 16 other words unless we can show that there is another
 17 occasion where the so called clicking was done then it's
 18 the same occasion that we are talking about here.
 19 CHAIRPERSON: Yes, my recollection is
 20 these questions Mr Ngalwana asked, relates to the occasion
 21 where he was on the koppie, on a rock. What we are now
 22 looking at is an occasion when he was on the plain as it
 23 were, on the flat ground as part of the front group, not on
 24 the koppie, not on the rock.
 25 MS MPOFU: Doing the clicking.

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1 CHAIRPERSON: Two pictures that we are
 2 concerned with.
 3 MS MPOFU: Well can we shown both of
 4 them, Chair, to stop the debate?
 5 CHAIRPERSON: That seems a fair request,
 6 Mr Mpofu.
 7 MR TIP SC: Yes, Mr Chair, we will have
 8 to get the reference but, and I'm quite happy to see if we
 9 can't do that. Unfortunately, Mr Ngalwana is here, perhaps
 10 we can do that shortly but I just want to respond to one
 11 thing immediately. Mr Mpofu is now drawing attention to
 12 the fact that Mr Magidiwana was on that occasion also
 13 making clicking sounds. That is what I put initially. He
 14 said well you are putting clicking or holding, I said for
 15 my present purposes it's sufficient if it's holding but
 16 actually it was during the singing of the song.
 17 CHAIRPERSON: Yes.
 18 MR TIP SC: And he was clicking.
 19 CHAIRPERSON: Mr Mpofu is busy with a
 20 different point.
 21 MR TIP SC: Yes?
 22 CHAIRPERSON: Mr Mpofu, you are trying to
 23 establish that his evidence that he only had two weapons
 24 one occasion when he borrowed one from his neighbour.
 25 There was only one occasion where he had two weapons, that

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1 is what he said earlier. You are trying to show that, and
 2 that related you say to an occasion you say when he was on
 3 the hill, on a rock. You now want to show to him that that
 4 evidence was not correct because there is another clip that
 5 shows him with two weapons on the plain as it were, away
 6 from the koppie, away from the rock with the front group
 7 and Mr Mpofu says you have got to establish that in fact
 8 the whole basis of this cross-examination is correct i.e.
 9 there were two places where he had two weapons.
 10 MR MPOFU: Doing the clicking.
 11 CHAIRPERSON: No, no never mind the
 12 clicking, I mean I don't understand he suggests that he for
 13 some reason other than clicking had two weapons in his
 14 hands on two separate occasions.
 15 MS MPOFU: No.
 16 CHAIRPERSON: But anyway it may well be
 17 that that point doesn't have to be pursued further. But
 18 the main point, Mr Mpofu made is as I have put it to you,
 19 repeated to you and I think Mr Mpofu would agree with me on
 20 that, but that's his point. You have got to show there
 21 were two places, two weapons and he says two clicking's and
 22 they say that's been drawn to my attention, what exhibit is
 23 this? It's been drawn to my attention that EEE6 photos 6
 24 seems to show a still taken from this particular video
 25 clip.

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1 MS PILLAY: Actually the cross-
 2 examination that you referred to, Mr Tip, is in relation to
 3 this exhibit. When photo 6 of this Exhibit EEE6 is put to
 4 the witness.
 5 CHAIRPERSON: And that does seem to be on
 6 the plain as it were as opposed to on a rock on the koppie.
 7 So Mr Mpofu is right to insist before you proceed with this
 8 cross-examination that it be established either actually or
 9 presumptively as it were that there were two separate
 10 occasions and if it was established presumptively it's not
 11 going to help us very much.
 12 MR TIP SC: No, no quite so, Mr Chair.
 13 May I suggest we, there is no immediate reference
 14 identifying the video footage unfortunately in the
 15 transcript. May I pursue that and clarify it because I
 16 agree of course that if we are looking at the same picture
 17 well then there is no point to be made. There is no doubt
 18 about that. May I just as a practical suggestion say this,
 19 subject to clarification of this point, I have no further
 20 questions for this witness. That I conclude my cross-
 21 examination with the rider that if, that I will clarify it
 22 if there is a point to be made I will ask for a recall and
 23 that the cross-examination -
 24 CHAIRPERSON: Let's see if there is other
 25 cross-examination, how long it takes. If necessary you may

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1 have to try to do what has to be done during the tea
2 adjournment.

3 MR TIP SC: We will.

4 CHAIRPERSON: And then if the cross-
5 examination, the other cross-examination doesn't take us to
6 tea, we may have to take an early tea adjournment. But
7 anyway let's see what the future holds for us in respect of
8 that.

9 MR TIP SC: Great.

10 [10:41] CHAIRPERSON: Due to cross-examine the
11 witness next, or wishes to cross-examine the witness next.
12 Is there any cross-examination from the side of Lonmin? Mr
13 Motau do you have questions for the witness?

14 CROSS-EXAMINATION BY MR MOTAU SC: Yes
15 Chair we do. Mr Magidiwana, you told us that on or around
16 the 10th or the 11th of August you got wind of the fact that
17 the RDOs had taken a decision to go on strike, you
18 remember?

19 MR MAGIDIWANA: It is so.

20 MR MOTAU SC: And if I understood your
21 answer to the question that was asked by my learned friend
22 Mr Tip you say the 10th of August was the last occasion on
23 which you reported for work, correct?

24 MR MAGIDIWANA: It is so, yes.

25 MR MOTAU SC: And I take it that at the

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1 same time when you got wind of the fact that the RDOs had
2 taken a decision to go out on strike you also got wind of
3 the fact that it was in support of their demand of a salary
4 increase of R12 500 after deductions?

5 MR MAGIDIWANA: It is so, yes.

6 MR MOTAU SC: And you told the commission
7 that the RDOs appealed to other workers like yourself who
8 were non RDOs to join the strike, correct?

9 MR MAGIDIWANA: Exactly.

10 MR MOTAU SC: And can I ask when people
11 were asked to join the strike was there any specific action
12 which was requested of them to do?

13 MR MAGIDIWANA: Yes.

14 MR MOTAU SC: What were they requested to
15 do?

16 MR MAGIDIWANA: That all the employees of
17 Lonmin should demand money from Lonmin.

18 MR MOTAU SC: And you say this is the
19 request that you got wind of at least on the 10th?

20 MR MAGIDIWANA: It is so yes.

21 MR MOTAU SC: And am I correct then to,
22 in understanding your evidence to be that as at the 10th the
23 request was that non RDO employees should also join the
24 strike to demand the same amount as that which was or that
25 which would be paid to the Lonmin if, sorry to the RDOs if

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1 Lonmin accreted to the strike, am I correct?

2 MR MAGIDIWANA: It is correct.

3 MR MOTAU SC: And you told us yesterday
4 that you also heard that two employees were shot and
5 killed, remember?

6 MR MAGIDIWANA: It is so.

7 MR MOTAU SC: Can I ask whether in
8 relation to that incident were you informed that that was
9 the incident that occurred near the NUM office?

10 MR MAGIDIWANA: It was alleged that they
11 were attacked along the road.

12 CHAIRPERSON: Along which road?

13 MR MAGIDIWANA: The road at the hostels,
14 refers to it as the compound.

15 CHAIRPERSON: Is that also the road that
16 leads to the NUM offices?

17 MR MAGIDIWANA: Yes, but it is quite a
18 distance from the office.

19 MR MOTAU SC: Can I assume that from what
20 you heard this was a separate killing or killings from that
21 which the strikers alleged occurred near the NUM offices?

22 CHAIRPERSON: I can't see how he can
23 answer this. As far as we know from what he's told us so
24 far, he only heard of two killings. Now you're trying to
25 establish if the two killings were different from two other

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1 killings which ex hypothesi he hadn't heard about. So I'm
2 not quite sure how he can answer that in any meaningful
3 way. So if that question is calculated to confuse I
4 suggest you reformulate it.

5 MR MOTAU SC: Let me reformulate the
6 question. Sir, in terms of these two killings that you had
7 heard about did you or were you told who had inflicted
8 those killings?

9 MR MAGIDIWANA: What I heard was that
10 these were members of NUM.

11 CHAIRPERSON: The killings were done by
12 members of NUM, is that what you saying?

13 MR MAGIDIWANA: Those that killed the
14 workers were said to be members of the NUM.

15 CHAIRPERSON: Thank you.

16 MR MOTAU SC: Thank you, Chair. Mr
17 Magidiwana, then let's go back to the time when the appeal
18 was made. Can I assume that when the RDOs appealed to the
19 non RDO workers to join the strike they also requested that
20 they must show solidarity in support of that strike?

21 MR MAGIDIWANA: That is it, yes.

22 MR MOTAU SC: Was there no request that
23 the employees should also show their solidarity by going
24 and joining others at the koppie?

25 MR MPOFU: Chairperson, I don't know if

<p style="text-align: right;">Page 6556</p> <p>1 that question is justified. If it's still about the 10th, 2 there was no koppie to talk about. 3 CHAIRPERSON: I know, I know. Well let's 4 see what answer the witness gives but the question perhaps, 5 in abstract is definitely unobjectionable. Of course what 6 we've heard so far is the decision to go to the koppie was 7 only taken subsequently. But if that's, the witness I 8 think would be able to deal with the subtleties of that, 9 particularly due to the fact if he wasn't there. 10 MR MOTAU SC: Chair, can I just indicate 11 I am not necessarily linking the issue to - 12 CHAIRPERSON: Sorry, Mr Motau, what Mr 13 Mpofu is about is something that is irrelevant. The 14 evidence indicated that the decision to go to the koppie 15 was only taken after this shooting at the NUM office and 16 only because the stadium is now locked. So that before 17 that there was, it would seem no question of any one going 18 to the koppie and there's no suggestion that any one was at 19 the koppie. So if you ask a question about people being 20 asked to go to the koppie prior to the march to the NUM 21 office, then it's a question which might confuse the 22 witness. So I think that Mr Mpofu, is correct. Is that 23 right, Mr Mpofu? 24 MR MPOFU: That's correct. 25 CHAIRPERSON: Alright.</p>	<p style="text-align: right;">Page 6558</p> <p>1 MR MOTAU SC: At the koppie? 2 MR MAGIDIWANA: I could see there were 3 people there. 4 MR MOTAU SC: And you didn't know why 5 people were going there? 6 MR MAGIDIWANA: I knew. 7 MR MOTAU SC: What was the reason for 8 people to gather there? 9 MR MAGIDIWANA: Things about meetings and 10 so on, discussions take places in the stadium but the 11 stadium was locked then and that is the reason. 12 MR MOTAU SC: When did you first notice 13 that the employees were gathering at the koppie? 14 MR MAGIDIWANA: I started, I think for 15 the first time it was about the 13th. 16 CHAIRPERSON: No the question, what was 17 the question, he says I started I think on the 13th. 18 Started what? 19 MR MOTAU SC: Chair, the question was 20 when did he notice for the first time that the workers were 21 gathering - 22 CHAIRPERSON: Oh so he started noticing, 23 yes I see. 24 MR MOTAU SC: Yes. So you knew as at the 25 13th that the reason why they were gathering at the koppie</p>
<p style="text-align: right;">Page 6557</p> <p>1 MR MPOFU: Thank you, Chair - 2 CHAIRPERSON: Bear that in mind when you 3 formulate the question. 4 MR MPOFU: I couldn't have put it better, 5 Chair. 6 CHAIRPERSON: Sorry. 7 MR MPOFU: I couldn't put it better than 8 that, Chair. 9 MR MOTAU SC: Let me split the questions 10 into two. Mr Magidiwana, we know at some stage a decision 11 was taken by the workers to gather at the koppie, correct? 12 MR MAGIDIWANA: That I wouldn't know, I 13 don't know that. 14 MR MOTAU SC: So you never got wind of 15 the fact that at some stage the workers or the protesters 16 took a decision to gather at the koppie? 17 MR MAGIDIWANA: No. 18 MR MOTAU SC: So when you went to the 19 koppie on the 16th you just went there without knowing that 20 there had been a decision to gather at the koppie? 21 MR MAGIDIWANA: That's right. 22 MR MOTAU SC: And you just assumed that 23 maybe by luck you may find people gathered there, in fact 24 the protesters having gathered there? 25 MR MAGIDIWANA: Where now, Sir?</p>	<p style="text-align: right;">Page 6559</p> <p>1 was because the stadium had been locked, is that correct? 2 MR MAGIDIWANA: Yes. 3 MR MOTAU SC: So you must have been aware 4 that the reason why they were gathering at the koppie with 5 effect from the 13th was or had to do with the strike, sorry 6 strike related activities, am I correct? 7 MR MAGIDIWANA: Yes. 8 MR MOTAU SC: Did you get to establish 9 what the reason was about the strike that caused them to 10 gather there or why were they gathering there? 11 MR MAGIDIWANA: No, I did not. 12 MR MOTAU SC: Was it important to you to 13 keep yourself abreast of any developments in relation to 14 the strike? 15 MR MAGIDIWANA: It is so. 16 MR MOTAU SC: And can I assume that you 17 ensured that on a daily basis you get an update about the 18 developments regarding the strike? In other words what had 19 happened, what progress had been made and so forth and so 20 forth? 21 MR MAGIDIWANA: It was not necessary to 22 go about making such inquiries, people were talking freely 23 there as they were going passed, what was happening. 24 MR MOTAU SC: But you had an interest in 25 knowing about the developments of the strike?</p>

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1 CHAIRPERSON: He heard, people walked
 2 passed, they talked about, so he didn't have to ask anybody
 3 -
 4 MR MOTAU SC: If the, Chairperson, can
 5 just bear with me, I did hear the witness and -
 6 CHAIRPERSON: Please proceed with your
 7 question.
 8 MR MOTAU SC: Yes and I'm pursuing a
 9 particular line. Mr Magidiwana, I take it that you were
 10 interested in finding out about the developments of the
 11 strike.
 12 MR MAGIDIWANA: It is so, yes.
 13 MR MOTAU SC: And as a result, Mr
 14 Magidiwana, I take it that you then find out on a day to
 15 day basis what had transpired, let's say for example on the
 16 13th, the 14th, the 15th etcetera, am I correct?
 17 MR MAGIDIWANA: Yes.
 18 MR MOTAU SC: And, Mr Magidiwana, when Mr
 19 Ngalwana asked you in relation to the demand of R12 500 and
 20 his question was the following, he said, well you
 21 considered the demand of R12 500 to be the right demand.
 22 MR MAGIDIWANA: It is so.
 23 MR MOTAU SC: Yes and your answer was
 24 that is correct.
 25 MR MAGIDIWANA: Yes.

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1 MR MOTAU SC: Mr Magidiwana, we know that
 2 as at the 10th of August 2012 you personally had not put up
 3 a demand to Lonmin that you be paid an amount of R12 500
 4 after deductions, correct?
 5 MR MAGIDIWANA: Should I speak?
 6 MR MOTAU SC: Yes, Mr Magidiwana.
 7 MR MAGIDIWANA: You mean up to today?
 8 MR MOTAU SC: As at the 10th of August
 9 2012 being the point at which you got wind of the fact that
 10 the RDOs had taken a decision to go on strike.
 11 MR MAGIDIWANA: Ja no, it is so.
 12 MR MOTAU SC: So when did you for the
 13 first time, Mr Magidiwana, decide that as, Mr Magidiwana, I
 14 now want Lonmin to pay me R12 500 after deductions.
 15 MR MAGIDIWANA: The day all the Lonmin
 16 workers decided to tools, to put tools down and not go to
 17 work and demanded this money.
 18 [11:01] MR MOTAU SC: When was that, let me tell
 19 you why I'm saying that. We know from your statement that
 20 when the strike commenced, not everyone supported the
 21 strike, that's why other employees told you they were
 22 stopped from going to work. Hence I'm asking you the, what
 23 do you mean by saying you started to associate yourself
 24 with the demand when all the Lonmin employees took a
 25 decision to down tools.

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1 MR MAGIDIWANA: Sir, I think it was on
 2 the 10th, that was the last day that I went to work, when
 3 the Lonmin workers made this demand and decided they were
 4 not going to work that was when the decision was made.
 5 MR MOTAU SC: And at that stage the
 6 demand for R12 500 had already been put on behalf of the
 7 RDO and Lonmin had rejected that demand?
 8 MR MAGIDIWANA: That I don't know Sir,
 9 that I don't know.
 10 MR MOTAU SC: Mr Magidiwana, you want the
 11 commission to believe that as at the 10th when you got
 12 involved or in fact when you decided that you are going to
 13 stop to report for work you had no idea that the amount of
 14 R12 500 had already been demanded and that Lonmin had
 15 responded to that demand?
 16 MR MAGIDIWANA: Yes.
 17 MR MOTAU SC: And, Mr Magidiwana, when
 18 the employees were gathering at the koppie -
 19 CHAIRPERSON: Are we moving onto another
 20 point?
 21 MR MOTAU SC: Yes.
 22 CHAIRPERSON: So perhaps it's appropriate
 23 for us to take the adjournment so as to Mr Tip can try to
 24 trace the - the Commission will take the adjournment.
 25 [COMMISSION ADJOURNS COMMISSION RESUMES]

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1 [11:49] CHAIRPERSON: The commission resumes. I
 2 hope that while we were busy with housekeeping arrangements
 3 in chambers you were able to find the clip that you wanted,
 4 Mr Tip?
 5 MR TIP SC: The position is that we'll
 6 have no further questions for, Mr Magidiwana.
 7 CHAIRPERSON: Mr Motau, you were still
 8 busy with your cross-examination. Mr Magidiwana, you're
 9 still under oath, to tell the truth, the whole truth and
 10 nothing but the truth. Mr Motau, please proceed.
 11 MR MOTAU SC: For a second I thought the
 12 Chairperson, called him Mr Makarapa.
 13 CHAIRPERSON: Wouldn't have done that.
 14 MR MOTAU SC: No I'm glad, I'm glad the,
 15 Chair, did not. Mr Magidiwana.
 16 CHAIRPERSON: I can see he's not wearing
 17 a helmet.
 18 MR MOTAU SC: Yes. Mr Magidiwana, just
 19 before the tea adjournment you had told us about the fact
 20 that you first noticed that the protesters were gathering
 21 at the koppie on the 13th of August 2012, you remember that?
 22 MR MAGIDIWANA: Yes.
 23 MR MOTAU SC: And can I assume that, and
 24 you can correct me if I'm wrong or if you don't know, Can I
 25 assume that one of the reasons for the employees gathering

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1 at the koppie was to show solidarity and support for the
2 strike?

3 MR MAGIDIWANA: Yes, it is so.

4 MR MOTAU SC: And as I understand it, it
5 is quite important for the workers to show unity and
6 solidarity in order to ensure that the strike succeeds, am
7 I correct?

8 MR MAGIDIWANA: That is true.

9 MR MOTAU SC: And as I understand it if
10 there are employees who are going to work at the time when
11 the strike is underway their actions may be viewed as
12 calculated to undermine the strike, am I correct? Let me
13 just add something, and I assume that's the reason why a
14 decision was taken or why other employees were stopped from
15 going to work.

16 CHAIRPERSON: No you're asking two
17 questions now. It's never a good idea to ask double
18 questions because then you don't know which half of the
19 question the answer relates to. Ask the question -

20 MR MAGIDIWANA: The first question again?

21 MR MOTAU SC: Mr Magidiwana, the decision
22 or the actions of employees who go to work whilst the
23 strike is underway can be perceived as action which is
24 intended to undermine the strike, am I correct?

25 MR MAGIDIWANA: It is so, yes.

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1 MR MOTAU SC: And in fact to put it in
2 the words of your counsel, my learned friend, Mr Mpofu,
3 when he was cross-examining Mr Zokwana he put the following
4 to him, he said anybody who seeks to undermine the strike
5 or do something that is calculated to make it fail is seen
6 by the strikers as being provocative and I take it you
7 associate yourself with that proposition, correct?

8 MR MAGIDIWANA: It is so, yes.

9 MR MOTAU SC: And can I then take it that
10 that is partly what informed your decision to stop going to
11 work? Once you heard that the RDOs had decided to go on
12 strike, correct?

13 CHAIRPERSON: I'm not sure what that
14 question means. His realisation that that was the
15 perception, his realisation that going to work would
16 undermine the strike, there's various possibilities. The
17 question seems to me to be ambiguous. I wouldn't like to
18 have to answer it if I was giving evidence.

19 MR MOTAU SC: Let me break it down, Mr
20 Magidiwana. I take it that your decision to stop going to
21 work was precisely because you did not want to be viewed by
22 other employees as going to work with the purpose of
23 undermining the strike? Am I correct?

24 MR MAGIDIWANA: The decision I made was
25 my own and I decided to take part because I know how

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1 difficult this people worked, they actually work like fools
2 and get very little money.

3 MR MOTAU SC: So your decision that you
4 made not to go to work was because you sympathised and
5 empathised with the fact that they worked hard like fools
6 and they were paid very little, am I correct?

7 MR MAGIDIWANA: That is so.

8 MR MOTAU SC: And these are the RDOs, am
9 I correct?

10 MR MAGIDIWANA: It is so.

11 MR MOTAU SC: So when did it become about
12 yourself, because we know that now the decision was taken
13 because you sympathised and empathised with the RDOs, when
14 did it become about yourself?

15 MR MAGIDIWANA: I became happy when the
16 decision was made that all the workers had to be paid this
17 amount, even those working outside the shafts are entitled
18 to getting that money.

19 MR MPOFU: I'm sorry he said, [African
20 Language].

21 MR MAHLANGU: Anybody employed by the
22 mine [African Language] refers to the mine and it's also
23 used for the shafts, the insides. May I just get.

24 MR MAGIDIWANA: I'm referring to the
25 people that are working inside the mine underground.

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1 MR MOTAU SC: And, Mr Magidiwana, in
2 relation to what you then observed on the 13th with the
3 protesters gathering at the koppie, are you able to tell us
4 how long would those gatherings last, in other words when
5 would they start and when would they end?

6 MR MAGIDIWANA: That place had become, it
7 had become part of a place where the workers were staying.

8 CHAIRPERSON: Before you go further with
9 this point. You were busy with a point a minute ago, that
10 I wanted to ask something about. If I can go back to that.
11 You said, if I wrote down what you said correctly, that you
12 became happy when the decision was made that all the
13 workers employed by the mine underground should be entitled
14 to get the money. Now when was that decision made?

15 MR MAGIDIWANA: When was the decision
16 made?

17 CHAIRPERSON: Ja. You said you were
18 happy when that decision was made. I want to know when was
19 that decision made.

20 MR MAGIDIWANA: The decision was made at
21 the time a call was made upon the others to support the
22 RDOs in demand of this R12 500.

23 CHAIRPERSON: Did you also want R12 500?

24 MR MAGIDIWANA: That is including us.

25 CHAIRPERSON: You were previously earning

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1 less than the RDOs weren't you? You was doing this very
 2 hard job that the RDOs were doing, you were earning less
 3 than the RDOs weren't you?
 4 MR MAGIDIWANA: Underground, Mr
 5 Chairperson, there is no job that is not difficult.
 6 CHAIRPERSON: Yes, but you are -
 7 MR MAGIDIWANA: The difference is that
 8 the job that I was doing was such that I would not be
 9 sprayed with water for the whole day until the end. But it
 10 is so equally dangerous.
 11 CHAIRPERSON: Was it fair though that you
 12 should get the same amount as the RDOs did? Previously you
 13 got less than the RDOs didn't you?
 14 MR MAGIDIWANA: Yes sir. The money that
 15 I received was the same as theirs. Is the same as theirs.
 16 CHAIRPERSON: Are you saying that your
 17 salary or your wages to be accurate, that the wages you got
 18 before the strike were exactly the same as the wages of the
 19 RDOs?
 20 MR MAGIDIWANA: I was getting more then
 21 5000, 5000 and something. I believe, Sir, that they were
 22 also getting some 5000 and something.
 23 CHAIRPERSON: So is the position that you
 24 don't know for certain that you were getting the same as
 25 the RDOs or did you know that you were getting the same?

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1 What was the position?
 2 MR MAGIDIWANA: We were getting the same,
 3 Mr Chairperson.
 4 CHAIRPERSON: Before the strike?
 5 MR MAGIDIWANA: Before the strike yes.
 6 CHAIRPERSON: I see, thank you. I must
 7 confess that I thought that you gave different evidence
 8 earlier. But if what you now say is correct then it won't
 9 be challenged by Lonmin and if it is not correct then I
 10 take it, it will be.
 11 COMMISSIONER HEMRAJ: Can you perhaps
 12 tell us on what date this became known that the decision
 13 which was originally in respect of the RDOs now extended to
 14 all the workers that worked underground?
 15 MR MAGIDIWANA: The strike as I've
 16 mentioned, I heard on the 10th that the RDOs are on strike.
 17 Again on the 11th I heard that the strike is now everybody's
 18 at Lonmin.
 19 COMMISSIONER HEMRAJ: Thank you.
 20 MR MOTAU SC: Chairperson, just two
 21 aspects flowing from the Chairperson's remark. I had
 22 initially, speaking for myself had understood, Mr
 23 Magidiwana, to earlier have said that what he was earning
 24 and what the RDOs were earning is a separate, sorry was
 25 different. But secondly I did not explore this aspect and

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1 it would be unfair of me to put questions to him based on
 2 an aspect that I did not interrogate.
 3 CHAIRPERSON: You could get instructions
 4 of course. I thought that he said that he didn't get the
 5 same as the RDOs, he got less and when he was asked well
 6 how come now you were getting the same I understood him to
 7 say no, no I wasn't going to get the same because the taxes
 8 they pay were less. Which I thought was a bit improbable
 9 and I was going to interrogate that, him on that further or
 10 that issue further. But anyway it's a matter that
 11 presumably can be looked at. But perhaps I should put it
 12 to him. Mr Magidiwana, I understood you to say previously
 13 that you didn't expect to get more, sorry to get the same
 14 as the RDOs that you in fact had got less than the RDOs
 15 before the strike but that when you, if you got 2000, if
 16 you got 12500 you would still be getting less than the RDOs
 17 because the RDO's tax would be less than yours. So that
 18 was my understanding of what you said? Did I understand
 19 you correctly or did I misunderstand?
 20 MR MAGIDIWANA: Sir, you understood me,
 21 Sir. but you might have made a mistake, I said the amount
 22 that we would then receive may not have been the same
 23 depending on the deductions that are being made. I also
 24 mentioned that I said that I did not expect to get
 25 something, but I did not expect to get less after

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1 deductions, less than 10 000.
 2 CHAIRPERSON: To get less?
 3 MR MAGIDIWANA: I did not expect to get
 4 after deductions something less than 10 000.
 5 CHAIRPERSON: I thought that the demand
 6 was for 12 500 after deductions, in other words take home
 7 pay of 12 500, is that not correct?
 8 MR MAGIDIWANA: The workers demanded 12
 9 500, Mr Chairperson.
 10 CHAIRPERSON: Was that take home pay or
 11 12 500 before deductions?
 12 [12:09] MR MAGIDIWANA: That would have depended,
 13 Mr Chairperson, on what deductions that person has,
 14 policies and all such things, but I personally did not
 15 expect a take home of less than 10 000.
 16 CHAIRPERSON: So you were effectively
 17 striking for a take home pay of approximately 10 000?
 18 MR MAGIDIWANA: I went on strike to be
 19 paid R12 500.
 20 CHAIRPERSON: Why did you mention the
 21 figure of 10 000?
 22 MR MAGIDIWANA: I would have been happy
 23 to receive say 20 000, but the strike was, according to me,
 24 I wanted something in excess of R10,000.
 25 CHAIRPERSON: I put the point to you.

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1 Can you please proceed, Mr Motau.
 2 MR MOTAU SC: Mr Magidiwana, can I just
 3 read you paragraph 3 of Exhibit BBB8, being the statement
 4 of Mr Mabuyakhulu, who testified before you and he told the
 5 Commission the following. He says, "At that stage it was
 6 not decided that we should go on strike. It was only
 7 agreed that we would approach the employer with the demand
 8 for a salary increase to R12 500 after deductions." And
 9 when I asked you questions earlier, you recall when I
 10 started, I also asked you about the demand of the RDOs and
 11 the fact that you then identified yourself with that demand
 12 of R12 500 after deductions. Remember, I specifically used
 13 those words, R12 500 after deductions, which you admit.
 14 Now do I understand you to be saying that your demand was
 15 separate from that of at least RDOs, because they were
 16 demanding R12 500 after deductions and you were striking
 17 for an amount of around R10 000 after deductions?
 18 MR MAGIDIWANA: Yes, Sir, I would have
 19 been satisfied, had the employer mentioned that he was not
 20 in a position to pay this amount, but he did – he did not
 21 then say so. Did not cry about the amount that we wanted.
 22 I said to you I would have been satisfied to get something
 23 in excess of R10 000, but the position here is that the
 24 employer did not mention that it was unable to pay us that
 25 amount.

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1 MR MOTAU SC: But Mr Magidiwana, that
 2 cannot be correct, because you recall I also told you that
 3 the demand of R12 500 after deductions, had already been
 4 put to the employer by the RDOs and Lonmin had responded or
 5 reacted to that demand.
 6 MR MAGIDIWANA: When Lonmin responded, I
 7 don't know anything about it. I was not there. I don't
 8 know this thing.
 9 MR MOTAU SC: So what you in fact want
 10 the Commission to believe is that when the RDOs asked you,
 11 and by you I mean employees who were non-RDOs, they did not
 12 disclose to the rest of the work force that that demand had
 13 actually been put to Lonmin. Lonmin had responded
 14 negatively to it and that is why they're deciding to go on
 15 strike.
 16 MR MAGIDIWANA: I'll repeat again, the
 17 reason the workers went on strike was because of this
 18 money. The employer, now the employer did not respond.
 19 MR MOTAU SC: Mr Magidiwana, surely you
 20 are aware that you're not answering my question. Can I
 21 please ask you to answer the question.
 22 MR MAGIDIWANA: How do you want me to
 23 respond to your question, Sir?
 24 MR MOTAU SC: By listening to the
 25 question and give the answer that is warranted.

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1 MR MAGIDIWANA: If you can just repeat
 2 the question.
 3 MR MOTAU SC: What you are telling this
 4 Commission is that the RDOs simply asked other workers to
 5 join the strike. They stopped others from going to work,
 6 without telling those workers that the demand of R12 500
 7 after deductions had already been put to Lonmin. Lonmin
 8 had responded thereto and that is why they're going out on
 9 strike.
 10 MR MPOFU: Chairperson, sorry, you know I
 11 let this go the first time around, because I didn't want to
 12 interrupt my learned friend, but perhaps he could enlighten
 13 all of us as to when on his version this rejection was made
 14 or communicated or whatever. And maybe to assist, what I
 15 know for a fact is that in the June/July episode with Da
 16 Costa it would seem that there was either a direct or an
 17 implied rejection the sense that they gave a different
 18 amount. But apart from that –
 19 CHAIRPERSON: I think you may have a
 20 better point, Mr Mpofo and that is as far as I can remember
 21 the evidence, on the 10th the RDOs were sent away on the
 22 basis that we can't deal directly with you in respect of
 23 the wage demands. Hence other things happened or so it is
 24 alleged other things happened –
 25 MR MPOFU: Happened in the Unions or –

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1 CHAIRPERSON: Whatever, ja. So I'm not
 2 sure that the evidence indicates that there was an outright
 3 rejection of the demand that was put orally on the 10th. So
 4 if that's your objection, I uphold it, but I'm not happy
 5 with your objection as you phrased it.
 6 MR MPOFU: Well, I have not finished,
 7 Chair, I was coming to that, but between what you said and
 8 what I said that is the objection.
 9 CHAIRPERSON: I understand your point, Mr
 10 Mpofo. I'm not sure it would be fair, Mr Mpofo, that the
 11 evidence actually indicates that the employer in terms
 12 rejected the demand. The attitude according to the
 13 evidence was, we can't deal with you. We can go through
 14 the Unions. I think that's the evidence so far. If that's
 15 so, the basis on which the question you're currently
 16 putting is not sound.
 17 MR MPOFU: The Chairperson will recall
 18 that there are two stages to this. The first stage is the
 19 interaction with Mr Da Costa -
 20 CHAIRPERSON: Related to Karee. There
 21 were interactions at the Karee Mine and then – in July.
 22 There was then a meeting on the 10th, I think it was, at the
 23 stadium, which now involved everybody, all the shafts, all
 24 the mines. And we're concerned with what happened
 25 thereafter. So I think the question you want to put

<p style="text-align: right;">Page 6576</p> <p>1 requires some reformulation to avoid those obstacles that 2 are presently in its way. What Mr Mpofu really is raising 3 is the information, I think we would require before we can 4 know whether the question is a fair one. What are you 5 relying on for the assertion that the demand was rejected, 6 number 1, and that rejection, number 2, that that rejection 7 was conveyed to the workers, because those two things 8 surely would have to be established before the question can 9 appropriately be asked.</p> <p>10 MR MOTAU SC: If I may proceed, Chair? 11 What I was trying to outline earlier, is that there are two 12 stages to this process. The one is the interaction between 13 the Karee RDOs and Mr Da Costa where the demand of R12 500 14 after deductions was put. Lonmin responded to that demand 15 by granting employees discretionary allowances and those 16 were the entire RDOs. And that is the aspect I was dealing 17 with when I was talking or in my interaction with this 18 witness. If I did not make it quite clear, let me do that.</p> <p>19 CHAIRPERSON: Make it clear. And the 20 point is of course that then – a whole group of miners went 21 on – now from all shafts, RDOs of all shafts went on the 22 10th to the headquarters of Lonmin and Marikana and 23 presented the offer. They were asked to give it in 24 writing. They said they were illiterate. They couldn't 25 give it in writing. And according to the evidence we have</p>	<p style="text-align: right;">Page 6578</p> <p>1 you further, but if you're going to take the witness 2 through the various stages in a way which avoids the 3 objections that had been raised, then go ahead.</p> <p>4 MR MOTAU SC: Mr Mabuyakhulu, sorry, Mr 5 Magidiwana, in all fairness, what I should have indicated 6 to you is that the initial interactions between Lonmin and 7 Mr Da Costa was a demand by the Karee RDOs for a salary 8 increase of R12 500 after deductions. Lonmin considered 9 that demand and responded to it by granting a discretionary 10 allowance. And that allowance was to be paid or it would 11 be payable to all the RDOs. But can I understand, at the 12 time when you took the decision to join the RDO strike, 13 were you aware of that information?</p> <p>14 MR MAGIDIWANA: I did not.</p> <p>15 MR MOTAU SC: And we know then that on 16 the 10th there was a march to the LPD offices. Did you find 17 out about that march?</p> <p>18 MR MAGIDIWANA: What I heard on the 10th 19 is that RDOs were making a demand for an amount of R12 500. 20 That is what I heard.</p> <p>21 MR MOTAU SC: And that is the demand of 22 R12 500 after deductions?</p> <p>23 MR MAGIDIWANA: The workers were talking 24 of an amount of R12 500. Nothing was mentioned about that 25 and that what will happen to it.</p>
<p style="text-align: right;">Page 6577</p> <p>1 so far, they were then sent away on the basis, we can't 2 negotiate with you. We go through the Unions. So I'm not 3 aware of any evidential material before us at this stage, 4 indicating that the demand was in terms rejected or that 5 that demand, now on behalf of the RDOs of all the mines 6 which fall under the Lonmin umbrella, or if there was such 7 rejection, that it was communicated in any way to the 8 workers. And that's the problem with the questions you 9 want to ask.</p> <p>10 MS MPOFU: Chairperson, in addition to 11 that, Mr Motau's questions specifically dealt with the 12 second example, because he cross-referred to Mabuyakhulu's 13 statement which says, at that stage it was not decided we 14 should go on strike blah-blah-blah. At that stage – it's 15 on paragraph 2 of Mr Mabuyakhulu's, starts on the 9th of 16 August. So it's clearly not a Karee thing that he was 17 talking about.</p> <p>18 MR MOTAU SC: May I now proceed with the 19 answer that I was proposing to give to the Chair, earlier? 20 There are various stages to the demands. The one relates 21 to the Karee RDOs and Lonmin's response thereto, that's 22 quite correct. And I had indicated that, let me clarify 23 with this witness and I'll take him through the various 24 stages. I'm aware that the ambit –</p> <p>25 CHAIRPERSON: I don't want to interrupt</p>	<p style="text-align: right;">Page 6579</p> <p>1 MR MOTAU SC: You will agree with me that 2 you don't know of any evidence which indicates that the 3 initial demand of R12 500 which had been communicated to 4 Lonmin on behalf of the Karee RDOs ever changed?</p> <p>5 MR MAGIDIWANA: I didn't hear anything 6 like that.</p> <p>7 MR MOTAU SC: Now can I ask you in 8 relation to your own demand of R12 500, this amount of R12 9 500, did it include or exclude the sleeping out allowance?</p> <p>10 MR MAGIDIWANA: That question of yours, 11 Sir, the workers were demanding money, an amount of R12 12 500. Whether what was done or said about it, they demanded 13 an amount of R12 500.</p> <p>14 [12:29] CHAIRPERSON: But you haven't answered 15 the question. The question is, what was the demand the 16 demand for 12 500 plus the sleeping out allowance or was 17 the demand for 12 500 which included the sleeping out 18 allowance? That's the question, I think. There was a 19 demand that you were striking in support of.</p> <p>20 MR MAGIDIWANA: The sleeping out 21 allowance was something that had been there. It has been 22 in existence, Mr Chairperson. The workers were demanding a 23 wage, a salary amounting to 12 500.</p> <p>24 CHAIRPERSON: Does that mean that you 25 were wanting – you wanted 12 500 as your wages and the</p>

<p style="text-align: right;">Page 6580</p> <p>1 sleeping out allowance wasn't part of the wages, it was 2 something else? Is that what you're saying? 3 MR MAGIDIWANA: Yes. 4 MR MOTAU SC: So the sleep out allowance 5 was going to be over and above the R12 500? 6 MR MAGIDIWANA: Yes, if the employer did 7 not cry, if he did not say he was unable to. 8 MR MOTAU SC: Mr Magidiwana, on the 13th 9 of August AMCU representatives went to meet with Lonmin and 10 that was the national organiser and the general secretary 11 of AMCU. Did you know about that? 12 MR MAGIDIWANA: I have no idea. 13 MR MOTAU SC: In fact, I'm just going to 14 read to you part of the opening address on behalf of AMCU, 15 which was made in front of this Commission and I'm going to 16 need you to comment on it. Commencing in paragraph 22 of 17 AMCU's opening statement, where they talk about the events 18 of Monday, the 13th of August 2012, they say the following 19 occurred. "In the morning Mr Kwadi of Lonmin telephoned Mr 20 Mathunjwa to inform him that there had been violence at 21 Lonmin over the weekend and to ask Mr Mathunjwa to 22 intervene. AMCU sent a delegation of two officials to 23 Lonmin to find out what happened and to try and help stop 24 the violence. They say the delegation comprised of the 25 national organiser and the general secretary. The</p>	<p style="text-align: right;">Page 6582</p> <p>1 MR MAGIDIWANA: No, I did not. 2 MR MOTAU SC: If you had heard about 3 that, would your response have been different, speaking for 4 yourself personally? 5 MR MAGIDIWANA: Like what for instance, 6 Sir? 7 MR MOTAU SC: Would you have returned to 8 work and set up processes to engage Lonmin? 9 MR MAGIDIWANA: To leave out what I had 10 actually wanted? 11 MR MOTAU SC: But Mr Magidiwana, Lonmin 12 was not saying abandon what you wanted. They said, let 13 there be a process by which you engage in terms of what you 14 want, but not at the Koppie. I would not have given the 15 slightest problem, Sir, if he had come to us to say whether 16 he is putting in the money or when the money will be made 17 available and so on. I would have decided to go to work 18 the following morning. 19 MR MOTAU SC: So according to what you're 20 saying, if Lonmin had sent a representative to the Koppie 21 to say to you, let us engage, but not at the Koppie, let us 22 set up a process by which your demand will be assessed and 23 evaluated, you would not have agreed, because you say that 24 the employer in that same vein ought to have told you 25 whether they're putting the money or when are they going to</p>
<p style="text-align: right;">Page 6581</p> <p>1 delegation did the following. They met with AMCU 2 Rustenburg and Karee branch committees. They asked Mr 3 Mokwena whether they could speak to the strikers on the big 4 Koppie. Mr Mokwena said, the Koppie was a security zone, 5 but they could go if they thought it was safe. The 6 delegation went to the big Koppie. The strikers told them 7 that they had gathered on the Koppie after they were shot 8 at when they marched. They asked to the delegation to put 9 to management their R12 500 demand. The delegation met 10 with Lonmin management later. They conveyed the strikers' 11 demand. Lonmin told the delegation to tell the strikers 12 that Lonmin would not engage with them while they are on 13 the Koppie, but they would if they returned to work." Can 14 I just stop there. When you went to the Koppie on the 16th 15 or even at an earlier stage, which according to your 16 evidence you say you did not go to the Koppie, did you get 17 to find out or were you told that the strikers' demand had 18 been conveyed to Lonmin and Lonmin had responded to it. 19 MR MAGIDIWANA: I had explained to you, 20 Sir, what I heard, I told you, is that the workers' demands 21 was that they wanted R12 500. How the employer responded 22 to that, I did not hear. 23 MR MOTAU SC: So you never got to find 24 out that Lonmin's position was that it was not prepared to 25 engage with the strikers while they're at the Koppie?</p>	<p style="text-align: right;">Page 6583</p> <p>1 deposit the money, correct? 2 MR MAGIDIWANA: I am saying Sir, and 3 said, look, gentlemen, the money will be put in on such and 4 such a day, I would have had no problems. If he asked us 5 to go to work, I would have done so. 6 CHAIRPERSON: You're not answering the 7 question. I think to be fair, because you didn't 8 understand. The proposition being put to you by counsel 9 for Lonmin is that Lonmin had said, if the strikers on the 10 Koppie go back to work, then Lonmin will be prepared to 11 discuss with them whether they would give them extra money 12 and give them the R12 500 they were asking for. In other 13 words, the words used are, Lonmin would engage with them on 14 the demand. Not would accede to the demand and pay the 12 15 500. So what you're being asked is, if you had been told 16 on the 16th that the Lonmin's attitude is, leave the Koppie. 17 Go back to work and we would then start talking to you 18 about whether we would give you the 12 500, what would your 19 attitude have been? That's the question. 20 MR MAGIDIWANA: That I would not have 21 entertained. 22 MR MOTAU SC: Thank you, Mr Magidiwana. 23 So it is quite clear that the attitude of the protesters – 24 at least – let me confine it to yourself. It is quite 25 clear that your attitude was absent being told when are you</p>

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1 going to get the money, you are not prepared to engage in
2 any process which is a – which was going to allow for
3 engagement, persuasion and alike.

4 MR MAGIDIWANA: That is exactly so.

5 MR MOTAU SC: Then let's move on to
6 another aspect, now that we have established that. In the
7 AMCU opening statement the following is stated. "The
8 delegation communicated Lonmin's counter offer to the
9 strikers. Is it your evidence that you never got to find
10 out about these developments?

11 MR MAGIDIWANA: What date are you
12 referring to, Sir?

13 MR MOTAU SC: This is the 13th and
14 remember when I pre-phrased the question I said, between
15 the 12th and up to the 15th when you say you went to the
16 Koppie, did you get to find out about those developments?

17 MR MAGIDIWANA: On the 13th I did not come
18 to hear that.

19 MR MOTAU SC: Between the 14th and the
20 16th?

21 MR MAGIDIWANA: I did not hear it.

22 MR MOTAU SC: But you've made it quite
23 clear to you that even if you had heard it, your view would
24 have been the same as the response that was given by the
25 people who were there when that counter offer was

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1 delivered, because in terms of AMCU's opening statement,
2 when the counter – when Lonmin's counter offer to the
3 strikers were communicated, they, the strikers –

4 CHAIRPERSON: Lonmin – I didn't
5 understand that Lonmin made a counter offer. Lonmin simply
6 said, if you leave the Koppie and you go back to work, we
7 will then engage with you. It's not an offer which was
8 capable of acceptance and thereby become a contract. So
9 the response might be a better word, but a offer is
10 certainly the wrong word?

11 MR MOTAU SC: Yes, no, Chair, I'm must
12 apologise.

13 CHAIRPERSON: Okay.

14 MR MOTAU SC: I'm trapped in the language
15 of what I'm reading, as AMCU's opening statement and I
16 didn't want to make any adjustments to it.

17 CHAIRPERSON: I understand it. It is
18 calculated to lead to confusion. If you simply stick to
19 the words, they're mistakenly used.

20 MR MOTAU SC: I'm indebted to the Chair.
21 So in terms of the opening statement of AMCU, the
22 delegation communicated Lonmin's position to the strikers
23 and they say, they, the strikers responded by saying that
24 they would stay on the Koppie until management came there
25 to address them and engage with them over their demand for

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1 a wage increase. And I assume that from your evidence that
2 you had given earlier, if you had been there and you had
3 had those deliberations, that would have been precisely how
4 you would have responded as well, correct?

5 MR MAGIDIWANA: Yes.

6 MR MOTAU SC: And we now know that
7 engagement, at least according to you, does not mean a
8 process by which Lonmin was suggesting to the parties that
9 they must get off the Koppie, go back to work and let a
10 process be set up. That's not engagement according to you,
11 because according to you engagement was, the employer must
12 come to the Koppie, tell you when are you going to get the
13 money and when are they going to deposit the money,
14 correct?

15 MR MAGIDIWANA: Yes.

16 MR MOTAU SC: If the Chair can just bear
17 with me? Well, Chair, I'm instructed to ask the question
18 whether in your view or in terms of what you got to
19 establish on the 16th when you went to the mountain, did you
20 get to establish whether that view that you hold was also
21 shared by the other strikers who were at the Koppie?

22 CHAIRPERSON: I'm not exactly sure what
23 view are you talking about in this question that you're
24 instructed to ask. Perhaps you should ask those giving you
25 instructions, what they mean?

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1 MR MAHLANGU: I have the same problem,
2 Chair.

3 MR MOTAU SC: Oh no, Chair, thanks. I
4 must apologise, I think the instruction was quite clear. I
5 misunderstood it. Mr Magidiwana, can I just understand
6 whether did you get to establish whether the other strikers
7 who were on the Koppie, held the same position that they
8 would not get off the Koppie until they received the money?
9 In other words, in similar terms as you had expressed it?

10 MR MAGIDIWANA: Yes.

11 MR MOTAU SC: Those you instruct me are
12 happy with the question, Chair and the response.

13 CHAIRPERSON: Okay.

14 MR MOTAU SC: Now Mr Magidiwana, I'm
15 going to ask you a separate aspect and I'm going to test
16 your knowledge. And maybe I should start by saying or just
17 putting the following to you. We know that as at the 16th
18 of August, at least about 10 deaths had occurred and that
19 those deaths were associated with the strike, correct? We
20 all know that, you got to find out as well, correct?

21 [12:49] MR MAGIDIWANA: [No audible reply].

22 CHAIRPERSON: You haven't answered yet,
23 Mr Magidiwana. The question is, by the 16th when you went
24 to the Koppie, did you know that 10 people had already died
25 in the Marikana area and that their deaths were all related

<p style="text-align: right;">Page 6588</p> <p>1 in some way or other to the strike. That's the question. 2 MR MAGIDIWANA: I did not have that 3 knowledge. 4 MR MOTAU SC: Well, Lonmin had that 5 knowledge at that stage and what Lonmin also knew was the 6 fact that the strikers were armed with sharp and dangerous 7 weapons, such as spears, pangas and assegai? 8 MR MAGIDIWANA: I understand. 9 MR MOTAU SC: And you know that according 10 to the evidence which SAPS intends to present, there were 11 certain firearms which SAPS say were confiscated from its 12 members and these were confiscated by the strikers. 13 MR MAGIDIWANA: I do not know that 14 MR MOTAU SC: And in fact you were also – 15 you were shown, you recall, a slide and a video by Mr 16 Ngalwana of one of the strikers on the 16th, who was in 17 possession of a firearm. You recall that? 18 MR MAGIDIWANA: I saw that. 19 MR MOTAU SC: And the proposition that I 20 want to put to you, Mr Magidiwana, is a very simple one. 21 That it was unreasonable to expect Lonmin to go and 22 negotiate at the Koppie with the strikers under those 23 circumstances. 24 CHAIRPERSON: The difficulty is that the 25 witness, as I understand, didn't know about the</p>	<p style="text-align: right;">Page 6590</p> <p>1 number of whom were in possession of dangerous weapons. 2 Was that an atmosphere conducive to appropriate 3 negotiations in relation to wages? 4 MR MAGIDIWANA: If Lonmin had taken steps 5 timeously, this result would not have happened. 6 MR MOTAU SC: Well, let's test that. If 7 Lonmin had taken steps earlier, this would not have 8 happened? 9 MR MAGIDIWANA: Yes. 10 MR MOTAU SC: Can I clarify that. If 11 Lonmin – should I understand that evidence to mean the 12 following? The initial demand was by the Karee RDOs. If 13 Lonmin had agreed or acceded to the Karee RDOs demand in 14 July, none of this should have happened, is that what you 15 mean? 16 MR MAGIDIWANA: I don't know about the 17 matter of Karee. 18 MR MOTAU SC: So you see, Mr Magidiwana, 19 it's very – 20 MR MAGIDIWANA: What I'm saying, Sir, is 21 the following, that if the employer had come up and said to 22 us, this is what I'm putting on the table. I'm putting 23 this on the table. This would not have happened. It 24 wouldn't have been necessary for so many people to be 25 killed.</p>
<p style="text-align: right;">Page 6589</p> <p>1 circumstances. Unless you're asking him for his opinion 2 now, you know now that the facts have been conveyed to him, 3 in which case I'm not sure a concession from him about the 4 reasons or otherwise would help us very much to deal 5 without terms of reference. But you put a whole series of 6 propositions to him and he says, I didn't know about them. 7 I don't know where this final question or proposition takes 8 you against the background of professed ignorance by him in 9 respect of the fact that you earlier put to him. I won't 10 stop you asking the question, but I'm not sure it's going 11 to help much. 12 MR MOTAU SC: Yes, Chair, I think that's 13 a fair comment by the Chair, because the conclusion to be 14 drawn from the fact is really the issue that we can debate 15 with the Commission. If the Chair can just – 16 CHAIRPERSON: Let me ask a question that 17 relates to what you were going to ask. The people on the 18 Koppie on the 16th, a number of them anyway, were in 19 possession of dangerous weapons, weren't they, pangas, 20 bush knives and spears and so forth? 21 MR MAGIDIWANA: That is correct. 22 CHAIRPERSON: Was it reasonable, do you 23 think, to expect Lonmin to come to the Koppie, to engage in 24 negotiations about wages in circumstances where they were 25 dealing with 3 000 people, a number of whom, significant</p>	<p style="text-align: right;">Page 6591</p> <p>1 MR SEMENYA SC: Sorry, I thought the 2 answer was that the police would not have shot anybody? 3 MR MAGIDIWANA: No. 4 MR MPOFU: Actually it is what Mr Semenya 5 says and more, but the witness said that the people would 6 not have been killed and the police would not have killed 7 anybody. 8 CHAIRPERSON: Maybe – it's 1 o'clock, we 9 could take the lunch adjournment, but before we do this, 10 let me just put a question. I think I know what the 11 witness may be trying to say, but I may be wrong. When you 12 said, if Lonmin had taken steps timeously, problems would 13 have been avoid. What kind of steps did you envisage them 14 taking and when did you envisage it to be taken? 15 MR MAGIDIWANA: Actually, Mr Chairman, if 16 your child is hungry and he wants food, you take cognisance 17 of what the child is saying that the child is hungry. You 18 don't set the dogs on the child to be bitten up by the 19 dogs, because of being hungry. 20 CHAIRPERSON: I understand that, but you 21 said if they acted timeously, do you mean if they had acted 22 before the people went to the Koppie on say, the 10th, when 23 there was a march to the Lonmin offices or are you 24 referring to some later time? 25 MR MAGIDIWANA: From the time the</p>

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1 operators decided not to go to work, demanding this money,
 2 Lonmin should have realised then, Chairperson, to say money
 3 is what I should give the people.
 4 CHAIRPERSON: And you're saying Lonmin
 5 should have taken steps before the people went to the
 6 Koppie?
 7 MR MAGIDIWANA: That is so.
 8 CHAIRPERSON: I think there's a little
 9 bit more clarity. Perhaps we can resume the discussion at
 10 half past 1. We've lost some time today because of
 11 discussions we had in chambers on housekeeping matters and
 12 I'm concerned that we shouldn't waste time unduly, so we'll
 13 resume at half past one. You wanted to say something?
 14 MR MPOFU: Yes, Chairperson, like Mr
 15 Motau, I'm also instructed to cry, to use the words of the
 16 witness, about the shortness of the time. In other words,
 17 if we had not been pre-warned –
 18 CHAIRPERSON: Yes, yes, I understand
 19 also. You did indicate to me privately that your – the
 20 problem in relation to your client's health or something –
 21 MS MPOFU: Yes, yes, Chairperson.
 22 CHAIRPERSON: A short lunch adjournment
 23 can cause difficulties for him. Alright. We'll resume at
 24 2 o'clock.
 25 MS MPOFU: Thank you, Chairperson.

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1 [COMMISSION ADJOURNS ARBITRATION RESUMES]
 2 [14:05] CHAIRPERSON: The Commission resumes. Mr
 3 Magidiwana, you're still under oath. Mr Motau you're still
 4 cross-examining.
 5 MR MAGIDIWANA: s.u.o.
 6 CROSS-EXAMINATION BY MR MOTAU SC (CONTD.):
 7 Thank you, Chair. Mr Magidiwana, just before the lunch
 8 adjournment you gave evidence that if Lonmin had acted
 9 timorously what happened would not have happened. Is that
 10 a correct reflection of -
 11 MR MAGIDIWANA: Yes.
 12 MR MOTAU SC: And can I just ask you to
 13 give us the precise time or date by when you say Lonmin
 14 should have acted timeously?
 15 CHAIRPERSON: - he did that just before
 16 we adjourned in answer to a question I gave. He said
 17 before the people went to the koppie. And you remember the
 18 evidence says the people went to the koppie on the 11th
 19 which was a Saturday and the evidence also is that there
 20 was a march of RDOs who spoke to Lonmin on the 10th, so I
 21 would imagine that it's clear from what he's told us that
 22 by timeously he means before they went to the koppie. In
 23 this case from a from a factual point of view means on the
 24 10th.
 25 MR MOTAU SC: Mr Magidiwana, are you

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1 happy that I can work with the 10th as being the date when
 2 you say Lonmin should have acted timeously?
 3 MR MAGIDIWANA: Yes Sir.
 4 CHAIRPERSON: What we have to bear in
 5 mind in this context to save time is the RDOs weren't
 6 carrying sharp weapons on the 10th.
 7 MR MOTAU SC: Mr Magidiwana, as I
 8 understand it the demand on the 10th of August was only
 9 that of the RDOs at that stage because you told us the
 10 appeal happened thereafter for the other workers, the other
 11 non RDO workers to join the strike. Am I correct?
 12 MR MAGIDIWANA: Yes, it is so, Sir.
 13 MR MOTAU SC: So what you are saying is
 14 if Lonmin had acted timeously that can only mean that if
 15 Lonmin had accepted the demand by the RDOs on the 10th the
 16 result you're saying going to the koppie for example would
 17 not have occurred. Correct?
 18 MR MAGIDIWANA: It is so.
 19 MR MOTAU SC: But I don't understand how
 20 that would have resolved your issue because you were not
 21 part of the RDOs demand as at the 10th. You told us you
 22 want the money and you still want it even now. So an
 23 intervention on the 10th would not have resolved your
 24 demand. Do you understand, Mr Magidiwana?
 25 MR MAGIDIWANA: I can hear what you are

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1 saying, Sir, but I want to clarify it to you. The way in
 2 which in fact I was going to be benefitted or being
 3 assisted was only when those people would have got what
 4 they wanted or their demand. Perhaps if they had got that
 5 money I would in fact quit the work I was doing and then
 6 try and get a job where there was a lot of money.
 7 MR MOTAU SC: Can you just take it one
 8 step at a time? I'll come back to you, to the second
 9 aspect. We agree that hypothetically speaking if the
 10 demand had been acceded to on the 10th that would not have
 11 included yourself but it would only have included the RDOs.
 12 MR MAGIDIWANA: It was going in fact to
 13 affect or include me in a way because I was going to be
 14 happy if those people had got money.
 15 MR MOTAU SC: Yes, and I understand that
 16 you say you could have potentially benefitted if the RDO's
 17 salary was increased because you could then have applied
 18 for the job or the position of an RDO. Correct?
 19 MR MAGIDIWANA: Yes, I was going to try
 20 all means and do everything in my power to stop doing this
 21 kind of work and do that kind of work because even though
 22 it is the kind of work that is hard.
 23 MR MOTAU SC: Can I assume that that
 24 benefit would also have accrued to others, I mean that
 25 potential benefit? In other words, can I assume that the

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1 others as well could have seen it as a potential benefit
 2 because there was a chance that they could then strive to
 3 work hard and apply for the RDO positions because they
 4 would have been earning the higher salary?
 5 MR MAGIDIWANA: It is so, Sir.
 6 MR MOTAU SC: Alright let's just deal
 7 with something else then. Mr Magidiwana, you know that
 8 eventually negotiations were held which resulted in the
 9 amendment of the wage agreement, correct?
 10 MR MAGIDIWANA: When was that?
 11 MR MOTAU SC: That was after the 16th.
 12 CHAIRPERSON: It was actually on the 18th
 13 September 2012.
 14 MR MAGIDIWANA: What in fact I heard
 15 after I had regained my consciousness was that the employer
 16 was going to pay the money which in fact I never saw done.
 17 MR MOTAU SC: And there were negotiations
 18 that took place and those negotiations did not take place
 19 at the koppie. Do you know that?
 20 MR MAGIDIWANA: I used to see on TV that
 21 the negotiations were held at the stadium but the problem
 22 was that the television at the hospital in fact was in
 23 mute, it had no volume, so I don't even know what was being
 24 said there.
 25 MR MOTAU SC: And, Mr Magidiwana, the

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1 point that I'm putting across to you is the following, That
 2 the - if you take into account the fact that the
 3 negotiations never occurred at the koppie you'll agree with
 4 me that that is a similar position which Lonmin was saying
 5 to the employees let there be engagement in proper
 6 structures, proper premises but not at the koppie.
 7 MR MPOFU: Sorry Chairperson, I think the
 8 question is maybe too broad. My learned friend must
 9 indicate whether under the rubric of proper structures he
 10 also includes the delegation as it was called and the South
 11 African Council of Churches.
 12 MR MOTAU SC: No the point of my question
 13 is the fact that there was union delegation oh sorry these
 14 were delegations by the various unions that were there -
 15 CHAIRPERSON: Mr Mpofo's point is that
 16 the agreement that was concluded on the 18th of September
 17 was admittedly concluded between Lonmin and Unions but
 18 there were also people present who were described as the
 19 delegates who were presumably non-unionised employees and
 20 though they weren't signatories to the event I think it's
 21 clear, I'm not sure whether we've had this evidence yet,
 22 but we presume we take judicial notice of it that the South
 23 African Council of Churches through Bishop Seoka and others
 24 played an important role in facilitating the ultimate
 25 agreement. Now the point put to you is it's not quite fair

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1 to say to the witness look here, look what happened later.
 2 When the unions were involved the matter was settled
 3 because that's not a complete account of what happened.
 4 What happened was firstly the thing took place under the
 5 shadow of the terrible events that took place over the week
 6 from the 9th to the 16th, secondly there was input by way of
 7 facilitation from this Council of Churches and thirdly also
 8 as parties to the agreement were the non-unionised workers
 9 through the delegation. So if you put all those to the
 10 witness it's a fair question. Absent those I'm afraid it
 11 falls short of being a helpful question to illicit a
 12 helpful answer.
 13 MR MOTAU SC: Yes, Chair, the point is
 14 taken. Let me deal with another aspect. Mr Magidiwana, I
 15 don't understand your evidence to be that if hypothetically
 16 speaking Lonmin had agreed to pay the RDOs their demand of
 17 R12 500 after deductions on the 10th of August 2012, all
 18 other employees who were non-RDOs would have followed your
 19 example which you say you'd have followed i.e. they would
 20 not have gone on strike in demand of that same amount and
 21 that they would also want to work hard and aspire to apply
 22 for the RDO position. Am I correct?
 23 MR MAGIDIWANA: Sir, I'm saying if then
 24 that work where the people would be working and dripping
 25 water every time means even though it was like that -

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1 MR MPOFU: Sorry, I'm sorry, Chairperson,
 2 I'm sorry Mr Hanabe it's just for consistency, what the
 3 witness has said was earlier translated by Mr Mahlangu as
 4 they worked throughout being sprayed with water so that's
 5 with the consistency of the record, I think we should use
 6 that.
 7 MR HANABE: Okay thank you very much
 8 Senior Counsellor we will continue using that very word.
 9 If then doing this kind of work that was hard where you are
 10 being sprayed on with water means still though you are
 11 doing it you would get more money then it would mean that I
 12 would venture, yes I would venture them to go and do that
 13 kind of work though I know very well that it is a hard job.
 14 MR MOTAU SC: But, Mr Magidiwana, my
 15 question is -
 16 MR HANABE: Sorry, sorry Counsellor.
 17 MR MOTAU SC: Yes but my question is a
 18 different one. I'm saying you are not saying that everyone
 19 else would have followed the same path as you.
 20 MR MAGIDIWANA: I think that when a
 21 person goes to work all he wants is money.
 22 MR MOTAU SC: So what you're saying is
 23 had that happened everyone else would have had no reason to
 24 strike because RDOs would have been earning a higher
 25 amount of money and everyone else would have seen an

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1 opportunity to apply for higher positions and as a result
 2 that's why you say what happened would not have happened.
 3 MR MAGIDIWANA: Any person who would feel
 4 like doing so would go and want to do in fact the kind of
 5 work that is done by the operators.
 6 MR MOTAU SC: And you don't know how many
 7 people would have wanted to do that correct?
 8 MR MAGIDIWANA: I don't know the number
 9 thereof. I mean how many they are but what I'm sure of is
 10 that everyone wants money.
 11 MR MOTAU SC: I appreciate the fact that
 12 everyone wants money but you don't know how many RDO
 13 vacancies would have become available after that, correct?
 14 MR MAGIDIWANA: Yes.
 15 MR MOTAU SC: And you also don't know how
 16 many people would have been prepared to make the sacrifice
 17 of working this hard job that you are describing?
 18 [14:25] MR MAGIDIWANA: I don't know how many
 19 they are but what I'm sure of is that everybody wants
 20 money.
 21 MR MOTAU SC: Mr Magidiwana, I agree with
 22 you. Everyone wants money that's as far you can take the
 23 evidence but you can't assist this Commission to the extent
 24 of determining what else would people do in pursuit of the
 25 money that they wanted. You can't tell us how far they

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1 would be prepared to go, correct?
 2 MR MAGIDIWANA: No Sir, I'm telling you
 3 if every early morning, Sir, were to lift up these small
 4 bottles and I would earn on that and in fact upon
 5 discovering or realising that on picking up in fact this
 6 television there's more money of course I would have to go
 7 there to lift up so that I could also benefit or get money.
 8 MR MOTAU SC: Let me just try and
 9 conclude this because I think we've had a discussion and I
 10 think I understand your answer. The proposition that I'm
 11 putting to you and perhaps we can conclude it on that
 12 aspect if you agree. That view can only properly and
 13 correctly reflect your position. You cannot say how the
 14 remainder of the workforce would have received that
 15 information and how they would have reacted to it, correct?
 16 MR HANABE: I didn't get the question if
 17 you clarify about the information, Counsel?
 18 MR MOTAU SC: If that had occurred, I
 19 mean the example that you're giving you only apply it to
 20 yourself, Mr Magidiwana, you can't say that everyone else
 21 in that situation would have reacted the same way as what
 22 you say would have been your reaction had that happened,
 23 correct?
 24 MR MAGIDIWANA: I am saying something,
 25 Sir, that I believe makes sense that if a person feels like

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1 his needs are going to be met then he will go to that kind
 2 thing.
 3 MR MOTAU SC: If the Chairperson could
 4 just bear with me. Thank you, Chair, I've got no further
 5 questions for the witness.
 6 CHAIRPERSON: Thank you. Who wishes to
 7 cross-examine next. Is there anyone else in the parties
 8 who wishes to cross-examine? AMCU?
 9 MR MOSIKILI: Chair I would like to
 10 cross-examine on behalf of AMCU.
 11 CHAIRPERSON: On behalf of AMCU.
 12 MR MOSIKILI: Yes Chair.
 13 CHAIRPERSON: I'm not sure that I have
 14 your name -
 15 MR MOSIKILI: Yes Chair, for the record
 16 Chair -
 17 CHAIRPERSON: If you've given it to me
 18 before I apologise for having forgotten it but please give
 19 it to me and spell it.
 20 MR MOSIKILI: I haven't put my name on
 21 the record Chair, yes my name is Tebogo T-E-B-O-H-O.
 22 CHAIRPERSON: TE?
 23 MR MOSIKILI: BOHO, surname is Mosikili,
 24 M-O-S-I-K-I-L-I.
 25 CHAIRPERSON: Thank you Mr Mosikili. Are

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1 you an advocate or an attorney?
 2 MR MOSIKILI: Chair, I'm an attorney.
 3 CHAIRPERSON: I see. Mr Attorney
 4 Mosikili, please proceed with your cross-examination.
 5 CROSS-EXAMINATION BY MR MOSIKILI: Thank
 6 you Chair. Mr Magidiwana, as indicated I represent AMCU in
 7 this Commission. Mr Magidiwana, I wanted to talk just
 8 briefly about the singing at the koppie on the 15th in
 9 particular. Mr Magidiwana, I am aware that you have
 10 already testified that you did a lot of singing at the
 11 koppie in particular you did sing the song [African
 12 language].
 13 MR MAGIDIWANA: Yes, I did sing that
 14 song, even now, do you want me to sing it for you?
 15 MR MOSIKILI: No that will so not be
 16 necessary.
 17 CHAIRPERSON: In fact we've got NUM
 18 people here it might be dangerous so I suggest you don't
 19 sing it.
 20 MR MAGIDIWANA: Okay.
 21 MR MOSIKILI: I think we've already seen
 22 you on the video singing the song in any event.
 23 MR MAGIDIWANA: Yes.
 24 MR MOSIKILI: And on my reading of the
 25 video I mean you appear to be singing the song with ease,

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1 with no difficulty to the lyrics.
 2 MR MAGIDIWANA: It is so.
 3 MR MOSIKILI: Can I then take it that on
 4 that video as we saw it earlier today it is not your first
 5 time singing that song on that video.
 6 MR HANABE: You mean the witness?
 7 MR MOSIKILI: Indeed.
 8 MR MAGIDIWANA: I have long been singing
 9 that song.
 10 MR MOSIKILI: Can you then maybe confirm
 11 that I mean what you say can you confirm that you sang that
 12 song earlier that day before that morning?
 13 MR MAGIDIWANA: Yes, at dawn. In the
 14 early morning I sang that song and other songs were sung
 15 and that one also would be sung repeatedly, the very same
 16 song.
 17 MR MOSIKILI: Okay thank you just to put
 18 it into context, Mr Magidiwana, you sang this song way
 19 before the AMCU leaders got to the koppie, is that correct?
 20 MR MAGIDIWANA: Yes they heard from us as
 21 we were singing that song.
 22 MR MOSIKILI: Thank you. Mr Magidiwana,
 23 did everyone sing the song? By everyone I mean both you
 24 and AMCU members.
 25 MR HANABE: Do you mean NUM and AMCU

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1 members?
 2 MR MOSIKILI: NUM and AMCU members ja.
 3 MR MAGIDIWANA: All the workers sang that
 4 song.
 5 MR MOSIKILI: Okay thank you. And then,
 6 Mr Magidiwana, on a different point did you at any stage on
 7 the 16th see any of the workers trying to cut the tyres of
 8 the Nyala?
 9 MR MAGIDIWANA: No.
 10 MR MOSIKILI: My last question to you Mr
 11 Magidiwana, you might have been asked this question I'm
 12 sorry to repeat this question, did you at any stage see Mr
 13 Noki or a gentleman known as Mambush carrying a gun?
 14 MR MAGIDIWANA: I never seen him.
 15 MR MOSIKILI: Thank you no further
 16 questions, Chair.
 17 CHAIRPERSON: Any other representatives
 18 of the parties wish to ask questions?
 19 MR HANABE: Sorry, excuse me, Sir.
 20 MR MAGIDIWANA: There is a question you
 21 asked me regarding the song that had something to do with
 22 NUM what was the reason for you to ask me about that?
 23 MR MOSIKILI: Mr Chair, I don't know how
 24 to respond to this. I just wanted to establish that that
 25 song was sung by everyone irrespective of which union they

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1 belonged to.
 2 MR MAGIDIWANA: Oh thank you.
 3 CHAIRPERSON: No other representatives of
 4 parties wish to ask questions? I think Ms Lupuwana you're
 5 going to ask questions on behalf of the evidence leaders is
 6 that correct?
 7 MS LUPUWANA: Thank you Chairperson. For
 8 the record my name is Lupuwana spelt L-U-P-U-W-A-N-A.
 9 MS LUPUWANA: Chairperson, with your
 10 leave I'm going to ask the question in Xhosa whereupon they
 11 will be interpreted and then the witness will answer.
 12 CHAIRPERSON: I don't know that you need
 13 my leave but insofar as you've asked for it I give it to
 14 you.
 15 MS LUPUWANA: Thank you.
 16 CROSS-EXAMINATION BY MS LUPUWANA: Sir,
 17 we have already greet each other in the morning.
 18 MR MAGIDIWANA: It is so, Ma'am.
 19 MS LUPUWANA: During the strike were you
 20 a member of any union and if it is so which union was that?
 21 MR MAGIDIWANA: Yes I was a member of the
 22 union.
 23 MS LUPUWANA: Which union.
 24 MR MAGIDIWANA: It was AMCU.
 25 MS LUPUWANA: You said the RDOs asked

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1 other workers who were not RDOs to support them isn't it,
 2 and the answer was it is so. Is there any amongst the
 3 leaders of the RDOs who explained to the other workers
 4 about this kind of a strike which is called an unprotected
 5 strike especially about the consequences which may result
 6 that includes being dismissed from work?
 7 MR MAGIDIWANA: There was no one.
 8 MS LUPUWANA: You spoke about the workers
 9 who were stopped from going to work, what I want to know is
 10 did these workers want to go to work and they were stopped?
 11 MR MAGIDIWANA: Ma'am, what I can say to
 12 you is that at work there are different shifts so those
 13 ones who were working the morning shift never went to work
 14 and those in fact who were supposed to report for work that
 15 shift in fact they heard about that and in fact they
 16 decided not to go to work as well.
 17 MS LUPUWANA: Sir, let's then go to the
 18 day of the 16th where in fact Mr Mathunjwa persuaded you, he
 19 begged you to leave the mountain and he said that a
 20 decision was made where you were going to be killed, we
 21 even saw that on the video so what you're saying, as we
 22 also him kneeling down begging you, you say you didn't
 23 believe him and the answer by the witness was "it is so."
 24 The other thing I want to know is how was the mood there on
 25 the 16th? I want to know from you how was the situation

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1 there because in fact when I looked at the video there were
2 many police officers there and amongst them were the POP
3 police officials who were wearing or putting on their hats
4 and also those who were putting on their bonnets and so
5 berets and in fact and so are the ones who are with dogs
6 and also on horses. So I want to understand from you how
7 was the situation there?

8 MR MAGIDIWANA: The situation of the
9 workers was a very good one. They were just singing. They
10 were singing the songs, cultural songs according to their
11 different cultures, where in fact they came from and if
12 ever there would be someone singing song in Sesotho every
13 would follow and if there would be another one singing in
14 isiXhosa everyone then would follow and it was like people
15 were happy. They were celebrating.

16 CHAIRPERSON: Is the song "Let's kill the
17 NUM" is that a cultural song?

18 MR MAGIDIWANA: I want to explain to you
19 this song about NUM sang because when it was sang or it was
20 said that how can you call this NUM it didn't mean a
21 literal killing with the hand. In fact it meant like how
22 can we bring it to an end because amongst us there were
23 also some people who were the members of NUM.

24 CHAIRPERSON: I understand but what I
25 mean is - what I asked you was is it a cultural song?

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1 controversial evidence, but just for the sake of the
2 witness.

3 CHAIRPERSON: Sounds like good advice.
4 MS LUPUWANA: Did you get the question,
5 Sir, did you hear the question?

6 CHAIRPERSON: What I'm saying to you, Mr
7 Mpofo seems to be giving you good advice. To ask a whole
8 string questions in one, isn't helpful for an altogether
9 intelligible answer from the witness. So he suggests you
10 break down your questions into segments that are more easy
11 to handle, that are easier to handle.

12 MS LUPUWANA: I'm saying to you, Sir,
13 that you – it was said that there were people in fact who
14 had been harassed on the 10th, so that they could not go to
15 work.

16 MR MAGIDIWANA: Can I answer?

17 MS LUPUWANA: Yes.

18 MR MAGIDIWANA: I personally don't know
19 about that.

20 MS LUPUWANA: It was said that on the 12th
21 three people were killed and two of them were the security
22 officials at Lonmin and the other one in fact was on duty,
23 it was late in the afternoon.

24 MR MAGIDIWANA: I, Ma'am, also don't know
25 about that.

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1 MR MAGIDIWANA: The other songs were but
2 this particular one was not but in fact it emanated from
3 something.

4 MS LUPUWANA: What I mean to you, Sir, is
5 as Mr Mathunjwa was saying that indeed the situation was
6 bad there at the same time there were many police officers
7 there, the ones with the beret there were a lot of Nyalas
8 at the same time and you said that in fact you didn't
9 believe what he said. So are you saying that you didn't
10 see it they way he was seeing it, Mr Mathunjwa?

11 [14:45] MR MAGIDIWANA: I didn't – I never – I
12 personally never saw it the way in fact he was saying it.

13 MS LUPUWANA: Sir, you will then forgive
14 me about that, because in fact you said there were some
15 intimidation starting going on, on the 10th and there were
16 three people who were killed on the 12th. And that on the
17 13th there were police officers in fact who were killed and
18 we also saw that on the 14th there was this person in the
19 morning who was killed and we saw this open wound on the
20 cheek.

21 MR MPOFU: Chairperson? Sorry,
22 Chairperson, it's not really an objection. If I could just
23 appeal to my learned colleague to break down the questions,
24 because she has now put something like seven or eight
25 propositions. I do understand that this is not really

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1 MS LUPUWANA: But you heard about that,
2 correct?

3 MR MAGIDIWANA: As I am saying that some
4 other things, I see them on the video clips.

5 MS LUPUWANA: It was said that on the 13th
6 two police officers were killed and one was badly injured.
7 Did you hear about that?

8 MR MAGIDIWANA: Yes, I heard about that
9 in the news.

10 MS LUPUWANA: And it was said again on
11 the 14th behind the Koppie that there was that man who was
12 killed and on the cheek in fact he had that open wound.

13 MR MAGIDIWANA: Hence, I'm saying that
14 some of these things I saw them on the video clips and on
15 the documents.

16 MS LUPUWANA: So then upon listening and
17 hearing all the things I've been saying about the incidents
18 that occurred, you mean now when Mr Matunja comes to you
19 and he tells you that a decision has been taken and you are
20 going to be killed, are you saying that you didn't believe
21 him? I mean, Sir, after all these things that I have
22 explained to you and Mr Mathunjwa then arrived and said, a
23 decision has been made.

24 MR MAGIDIWANA: I never believed Mr
25 Mathunjwa. In fact I even saw the way in which the workers

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1 were sitting, further that they were happy and I never
 2 believed Mathunjwa. I never believed that what he was
 3 saying was true. I believed that he just wanted us to go
 4 back to work and eventually we were not going to get the
 5 money.
 6 MS LUPUWANA: Sir, I really sympathise
 7 with any employees who are complaining about low salaries.
 8 My only problem is the dangerous weapons that you heard
 9 they were carrying there on the Koppie. My question is now
 10 then about this, what I'm trying to understand is about
 11 these dangerous that you were carrying and we have heard
 12 about the other witnesses who had already testified. What
 13 they said is, they were carrying these weapons because they
 14 wanted to defend or protect themselves from NUM. Do you
 15 agree with them in what they are saying?
 16 MR MAGIDIWANA: What I'm going to say, in
 17 fact I will not be referring to another person. I will be
 18 talking about myself. When I'm carrying a stick and going
 19 to a place that has people, I have to carry a stick. I
 20 don't know then about another person.
 21 MS LUPUWANA: I agree with you, Sir, that
 22 when a man in fact goes out, he carries a stick. That is
 23 normal. But these one of these sharp weapons or objects
 24 that we see, I think it's in slide 121, do you see those
 25 pangas and those iron objects, sharpened iron objects that

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1 were carried on the mountain – it's slide 121 of Annexure
 2 F.
 3 MR MAGIDIWANA: I can see them.
 4 MS LUPUWANA: It's not normal when you
 5 leave the house to carry weapons like this, isn't it?
 6 MR MAGIDIWANA: When a person is carrying
 7 his own object - if a person is carrying an object that
 8 he's keeping in his house, in fact I wouldn't have asked
 9 that question - that person, because the assegai, in fact I
 10 believe, I think that the President himself also carries
 11 it.
 12 MS LUPUWANA: Now you are disappointing
 13 me. Yes, I understand then about the stick, but this one,
 14 it's not normal when you leave the house and carry weapons
 15 like these?
 16 MR MAGIDIWANA: And also what I heard
 17 that there were workers in fact who were killed by NUM.
 18 Perhaps these people were carrying these weapons in case if
 19 those people in fact were to appear or emerge there, that
 20 it was – it was not going perhaps to be easy for them. It
 21 was not going to be easy for them to kill these people just
 22 like this. So it was the way in which in fact they had
 23 prepared themselves.
 24 MS LUPUWANA: Since the date of the 11th
 25 NUM never went to the Koppie. You were there alone and

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1 together with the – just yourselves together with the
 2 police officers.
 3 MR MAGIDIWANA: No, I don't know that.
 4 MS LUPUWANA: Sir, these weapons are
 5 really bothering me. It's true then that you had nothing
 6 against the police. All you wanted, was the employer?
 7 MR MAGIDIWANA: It is so.
 8 MS LUPUWANA: It's also true that the
 9 police in fact had nothing against you. All they wanted is
 10 that you put your weapons down and stop gathering there
 11 illegally on that mountain.
 12 MR MAGIDIWANA: They never said that.
 13 MS LUPUWANA: Who?
 14 MR MAGIDIWANA: The police.
 15 MS LUPUWANA: Are you saying that you
 16 were not aware that the police wanted you to put down the
 17 weapons and that you were supposed to leave that place,
 18 because in fact you were not allowed to be there?
 19 MR MAGIDIWANA: The police officers never
 20 said that, no.
 21 MS LUPUWANA: You mean you never even
 22 heard that all the police wanted was that you put down your
 23 weapons?
 24 MR MAGIDIWANA: I've never heard of it.
 25 MS LUPUWANA: What did you think the

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1 police wanted there on the Koppie, because in fact your
 2 problem was between you and the employer?
 3 MR MAGIDIWANA: Okay. I said that the
 4 police, in normal cases when they are – people are on
 5 strike, they usually stand at the back or behind. I
 6 thought the police were there for that reason or to do
 7 that.
 8 MS LUPUWANA: So when the police
 9 officials usually walk behind the people who are on strike,
 10 do they also deploy a barb wire in the manner in which they
 11 did or they wanted to do?
 12 MR MAGIDIWANA: Even the very same way, I
 13 didn't know that they were going to use it against us. In
 14 fact I was just looking at those things as they were there.
 15 MS LUPUWANA: What I'm saying in fact, in
 16 normal instances where there is a strike we see the police
 17 officials walking slowly behind the marchers. It is not
 18 normal that the police in fact would deploy barb wire
 19 against the marchers.
 20 MR MAGIDIWANA: No, then when it comes to
 21 the issues of the strike, those are the things in fact I
 22 would see on TV, according to the witness. I wouldn't see
 23 in fact everything, but they would cut it and then they
 24 would move to another – perhaps aspect on TV. And I've
 25 never seen that with my eyes. I've never come across it

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1 personally.

2 CHAIRPERSON: Ja, but where do you watch

3 TV?

4 MR MAGIDIWANA: I also have a television

5 there at home. In fact there are two of them.

6 CHAIRPERSON: This is before the 16th?

7 MR MAGIDIWANA: Yes.

8 CHAIRPERSON: Did you watch television

9 from the 9th to the 16th?

10 MR MAGIDIWANA: Yes, I used to watch it.

11 CHAIRPERSON: And you say you've seen

12 strikes on television, so I take it you watch the news

13 bulletins, do you?

14 MR MAGIDIWANA: Yes, I do watch the news.

15 CHAIRPERSON: So during the period from

16 the 10th to the 16th, you saw news bulletins which contained

17 footage relating to what was happening at Marikana?

18 MR MAGIDIWANA: The one in fact that I

19 watched and saw on the news is that in fact, incident of

20 the 13th, I saw it in the news.

21 [15:34] CHAIRPERSON: The Commission resumes. Mr

22 Magidiwana, you're still under oath.

23 MZOXOLO MAGIDIWANA: s.u.o.

24 CHAIRPERSON: But before you are

25 questioned further by Ms Lupuwana, Mr Chaskalson, I believe

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1 you wish to say something about phase 2.

2 MR CHASKALSON SC: I do, Mr Chair. After

3 a lot of haggling between the parties we finally have a

4 timetable for phase 2 on which I think there is general

5 consensus. We've reached this stage on several occasions

6 before and the timetable hasn't been honoured. So on this

7 occasion we would like the Commission to make it a formal

8 ruling of the Commission. We've distributed copies to the

9 parties and to the Commissioners, and unless anybody

10 objects, I would ask you, Mr Chairperson, to make that

11 timetable a formal ruling for the purposes of phase 2.

12 CHAIRPERSON: It seems to me to be a fair

13 and practical arrangement, particularly regard being had to

14 the fact that we only have an extension in respect of

15 evidence until the end of May and for writing the report

16 till the end of June, and these time limits are, I think,

17 that have been set out are I think practical, and in the

18 circumstances I make that a ruling of the Commission.

19 MR CHASKALSON SC: Thank you, Mr

20 Chairperson.

21 CHAIRPERSON: As far as may be necessary,

22 my fellow Commissioners agree. Mr Magidiwana, you're still

23 under oath, and Ms Lupuwana, you're still cross-examining.

24 You gave him a bit of homework to do during the tea

25 adjournment. I don't know if he had the opportunity to do

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1 it.

2 MR MPOFU: Sorry, Chairperson, there's a

3 stalemate now because the homework was of course subject to

4 my discussion with Ms Lupuwana. We've had a discussion, so

5 I'll leave it to her to whether she wants to pursue the

6 homework, or deal with the matter as it is dealt with in

7 B16.

8 CROSS-EXAMINATION BY MS LUPUWANA (CONTD.):

9 Chairperson, we have looked at page 16 if annexure B, and

10 my learned friend has told me where the fence is supposed

11 to be ending in relation to annexure EEE14.1. If you look

12 at the photo – sorry, I'm going to revert to Xhosa. Can

13 you see these three kraals in the picture, and one also on

14 the left here which looks smaller, and the one on the right

15 in fact which looks bigger?

16 MR MAGIDIWANA: I can see all of them.

17 MS LUPUWANA: Behind this kraal that I

18 said it's a big kraal, there are these houses which are in

19 fact four in number. Can you see that?

20 MR MAGIDIWANA: Yes.

21 MS LUPUWANA: After that there are these

22 houses that are in a block form here in the picture. Can

23 you see that?

24 MR MAGIDIWANA: These look, they look

25 like shacks.

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1 MS LUPUWANA: Yes, I see they are

2 shanties, but if you can see the form, or the way in which

3 they are in a way like in the form of a block, because

4 there is a first one where we see that brown shanty, the

5 second row, and the third row where we see that yellow

6 shanty, and the other one where we also see the shanty on

7 the right-hand side which is brown in colour.

8 MR HANABE: And the answer by the witness

9 is, "Yes."

10 MS LUPUWANA: What your counsel says in

11 fact was that the fence itself was ending on the first

12 block. As we see that there is a kraal and that those

13 shanties there in the first block, in fact what he says is

14 that it ends here on the first block.

15 MR MPOFU: Chairperson, if I may explain

16 that, what Ms Lupuwana is saying is correct, but just so

17 that there's no ambiguity. What I was showing her is that

18 the fence that is depicted on B16, that is drawn on exhibit

19 B16, ends where those, what she calls the blocks are

20 starting. So what happens thereafter can be established

21 from the witness, as she's seeking to do, but the fence

22 that's on B16 certainly ends I think at the first or second

23 corner of what she calls the first block, which is where

24 you see the people who are beginning to go inside, ja.

25 MS LUPUWANA: You, then Sir, where do you

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1 say this fence ends?
 2 MR MAGIDIWANA: Indeed, this fence ends
 3 here.
 4 MR HANABE: And he's pointing with a
 5 finger on this picture, Commissioner.
 6 MS LUPUWANA: Okay Sir, what kind of wire
 7 fence is this? Because sometimes we usually see that kind
 8 of fence like when there are those lines made of wire.
 9 Sometimes you find that kind of wire fence that is like in
 10 a net form, which is different from those lines.
 11 MR HANABE: Or the strings, that the
 12 senior counsel is referring to.
 13 MS LUPUWANA: Then describe it to us; how
 14 is this kind of fence that is there in Nkaneng.
 15 MR MAGIDIWANA: That kind of wire in fact
 16 is that one which has those wires which are sharp, which
 17 are cutting, not the razor one but they are cutting and the
 18 way in which it is made in fact, it is congested.
 19 MR MPOFU: I think subject to what Ms
 20 Lupuwana has to say, he's describing spikes, the kind of
 21 wire that has spikes.
 22 MR HANABE: Thank you very much, yes, the
 23 spikes.
 24 MS LUPUWANA: Yes, then but it's not a
 25 net, but it's in a way which I was describing it, it is

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1 strands.
 2 MR HANABE: And the answer by the witness
 3 is, "Yes."
 4 MS LUPUWANA: So these wires that have
 5 spikes, the one that you said they are like congested, the
 6 way in which they are made, are you saying that they are in
 7 way of a line where another one comes after another,
 8 straight line?
 9 MR MPOFU: Parallel.
 10 MS LUPUWANA: They are parallel and they
 11 are running across.
 12 MR NGALWANA: Horizontally.
 13 MS LUPUWANA: As you have explained that
 14 now these wires, the manners in which then they are in
 15 line, when you say they are congested, can you tell us the
 16 distance between one line and the other?
 17 MR MAGIDIWANA: In certain parts of it
 18 you can try and go in through it, but in other parts you
 19 cannot even push through your head.
 20 MS LUPUWANA: Where you're saying other
 21 parts of it you can try and go through, you mean when you
 22 press it down so that you can go through?
 23 MR HANABE: He says –
 24 MR MAGIDIWANA: Yes, that's what you can
 25 do, and then go to the other side. Then if it has to

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1 happen like that, then another person also will have to
 2 help you so that he can then pull it up so that you can be
 3 able to go through.
 4 MS LUPUWANA: Meaning then that starting
 5 from where this fence ends to when you go down then the
 6 left where this picture ends, then in this part there is,
 7 on the right-hand side there is no fence there?
 8 MR MAGIDIWANA: Yes, in that place there
 9 is no fence there. The only fence that you can see are
 10 those ones which are in fact surrounding the shanties, or
 11 belonging to people.
 12 MS LUPUWANA: Clarify that then to us,
 13 Sir. Let's go to the photo there at the corner on the
 14 right-hand side.
 15 MR HANABE: He wants to know, to
 16 understand if you mean this other side.
 17 MS LUPUWANA: Yes.
 18 MR MAGIDIWANA: Yes, can you repeat the
 19 question again?
 20 MS LUPUWANA: There at the corner where
 21 these shanties we see start, we see there are about five
 22 shanties.
 23 MR NGALWANA: Chairperson, for the sake
 24 perhaps of clarity on the record, because it's not quite
 25 clear which corner is being referred to, can my learned

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1 friend indicate that it's EEE14.1 at the bottom right-hand
 2 corner?
 3 MS LUPUWANA: The photo then I'm
 4 referring you to is exhibit EEE14.1, the one that has a
 5 helicopter propeller. Behind then these shanties we see a
 6 small path that leads to the veld. On the left corner of
 7 this block that I've referred you to, there is then small
 8 path that leads there to the veld.
 9 MR MADLANGA SC: To the left of that last
 10 block of houses. To the left of the houses that are right
 11 at the corner, at the bottom right corner of the – to the
 12 left of those houses.
 13 MS LUPUWANA: Then after this one we see
 14 another small path, another one in fact between these two
 15 shanties, the yellow one and the brown one. Can you see
 16 that in the picture?
 17 MR MAGIDIWANA: I can see it.
 18 MS LUPUWANA: On the left side then of
 19 this block can you also see that other narrow path that
 20 leads to the veld?
 21 MR MAGIDIWANA: Which one is it?
 22 MS LUPUWANA: We had started, Sir, with
 23 the first block that is at the corner. That was the first
 24 one. The second one was the small path that goes through
 25 there. It leads to the veld, and after that we could see

<p style="text-align: right;">Page 6624</p> <p>1 that there are other shacks. We see a yellow and a brown 2 one. Then after that you can see there's also another road 3 on the left, when you look, it passed through there and 4 leads to the veld, on the left-hand side of this yellow 5 shack.</p> <p>6 MR MAGIDIWANA: Yes, I can see it.</p> <p>7 [15:54] MS LUPUWANA: As you look at these narrow 8 paths, if the person is able to leave or go out using them, 9 and at the same time the person can come back using the 10 same small paths, isn't it?</p> <p>11 MR MAGIDIWANA: It is so.</p> <p>12 MS LUPUWANA: Sir, we can see when we 13 look at this picture that there are people in fact who are 14 moving there in the picture, starting from where you said 15 the fence ends and there at this corner where this picture 16 ends.</p> <p>17 MR MAGIDIWANA: Yes.</p> <p>18 MS LUPUWANA: In all people then are able 19 to leave Nkaneng, using the small paths that I've shown 20 you, to go to the veld and also those who want to come 21 back, they can also come back and use, or walk on those 22 small paths.</p> <p>23 MR MAGIDIWANA: Yes, on the other paths 24 that are on this other side.</p> <p>25 MR HANABE: But he's pointing at the</p>	<p style="text-align: right;">Page 6626</p> <p>1 The place in fact where most of the people live or stay is, 2 and also where there is electricity, is this one in fact 3 which is not appearing on this picture.</p> <p>4 MS LUPUWANA: I've heard it then, Sir. I 5 can hear you, what you are saying, Sir. I was saying 6 instead of going to where there was danger, where there 7 were police officers who had guns, would it not have been 8 better if you had moved to the small paths that I showed 9 you and where also there is an entrance which leads to 10 Nkaneng?</p> <p>11 MR MAGIDIWANA: Nothing was better.</p> <p>12 MS LUPUWANA: I'm just asking if then you 13 had walked on the paths that I have shown you, was there 14 anything in fact that were to prevent you from in fact 15 arriving, or going to your house?</p> <p>16 MR MAGIDIWANA: If I'm not being pursued 17 or chased, yes I can arrive there, but after a long time.</p> <p>18 MS LUPUWANA: As you see me asking these 19 questions, the reason is because the police officers say 20 they took these pictures at about 2 minutes to 4. The 21 second picture then, which is exhibit EEE14.2, was taken 22 after 16:00, perhaps at 16:03. If you look at exhibit 23 EEE14.2, can you see that in fact the photos are similar 24 because there you see there is that yellow shack and a 25 brown one?</p>
<p style="text-align: right;">Page 6625</p> <p>1 right side, he says a person can go on them, walk on them 2 to go and then come back.</p> <p>3 MS LUPUWANA: In fact, what I wanted to 4 bring to your attention is that thing that you said the 5 police had blocked the road with the barbed wires on the 6 way in fact you wanted to go through. Instead then of 7 going to the direction of the police when you go to 8 Nkaneng, can you in fact instead of going to that side 9 where these police officers who tried in fact to deploy 10 barbed wire against you, in a way of trying to run away or 11 avoid the police, don't you think it would have been better 12 to walk instead on those two paths that I've shown you, 13 instead of going on that other side of the small kraal?</p> <p>14 MR MAGIDIWANA: If you are already here 15 near the kraal, it will be too far for you to be able to 16 reach this place [he's pointing at the picture] if you are 17 from here, [and the picture, he's pointing at the kraal.]</p> <p>18 MS LUPUWANA: So then, Sir, didn't you 19 see perhaps it would have been better for you to rather 20 walk a long distance rather than going to the police who 21 had guns with them and who wanted to surround you, and 22 where in fact there was danger?</p> <p>23 MR MAGIDIWANA: This place that is 24 depicted in this picture is a place in fact which has been 25 built recently. It is called New Stands there at Nkaneng.</p>	<p style="text-align: right;">Page 6627</p> <p>1 MR MAGIDIWANA: I can see.</p> <p>2 MS LUPUWANA: I'm saying that that's the 3 reason why I was asking, because I can see there are people 4 who are moving there, walking. Can you zoom on EEE14.2? 5 Bigger. Perhaps you can see that there, like there are 6 people who are walking there?</p> <p>7 MR MAGIDIWANA: I don't know whether they 8 were just walking or they were running.</p> <p>9 MS LUPUWANA: Whether they were walking 10 or running, but as you say perhaps they were either going 11 to Nkaneng or leaving Nkaneng, but they're at that spot, or 12 the place. There are also others who are in the veld. Can 13 you see them?</p> <p>14 MR MAGIDIWANA: Yes, I can see them.</p> <p>15 MS LUPUWANA: The others are inside there 16 in Nkaneng?</p> <p>17 MR MAGIDIWANA: Yes, I can see them.</p> <p>18 MS LUPUWANA: Hence I asked, would it not 19 have been better if you had done like these people did and 20 ran away from the police and then enter Nkaneng here below?</p> <p>21 MR MAGIDIWANA: There was nothing that 22 was better.</p> <p>23 MS LUPUWANA: Commissioner, I wonder then 24 if it's not an appropriate time to adjourn? I'm going to 25 tackle another aspect.</p>

<p style="text-align: right;">Page 6628</p> <p>1 CHAIRPERSON: Yes, how long will the 2 other aspect – I know it's difficult to predict, but how 3 long is the other aspect likely to take? 4 MS LUPUWANA: Not too long. 5 CHAIRPERSON: I was proposing to sit 6 until quarter past 4 in the hope that thereby we give you 7 an opportunity to conclude your cross-examination – 8 MS LUPUWANA: Thanks, Chairperson. 9 CHAIRPERSON: But if we are at quarter 10 past 4 and you haven't finished, then we'll adjourn until 11 tomorrow morning. 12 MS LUPUWANA: Let's just finish this 13 quickly. There's something I want to be clear. How many 14 times were you actually shot by the police? 15 MR MAGIDIWANA: Shot by many different 16 places by the police. 17 MS LUPUWANA: By having looking at your 18 medical report, Sir, I don't know if your representative 19 has handed this in – 20 CHAIRPERSON: It hasn't been handed in 21 yet, but perhaps we can hand them in now and get it over 22 with. It saves you having to do it in re-examination, Mr 23 Mpofo. 24 MR MPOFU: Yes, Chairperson, and give it 25 an exhibit number. It's been organised. Perhaps you can –</p>	<p style="text-align: right;">Page 6630</p> <p>1 MS LUPUWANA: The wound appearing on this 2 document on your thigh, do you see that? On the right-hand 3 side. 4 MR MAGIDIWANA: Yes, I see it. 5 MS LUPUWANA: The doctors indicate this 6 is an exit wound and not an entrance wound. 7 MR MAGIDIWANA: Where is the entrance 8 wound? Where did it enter? 9 MS LUPUWANA: It looks as though it was 10 penetrated on the left-hand thigh and exited on the back. 11 What I mean is that you were not shot twice on the thigh, 12 but the one is an entrance and the other wound is where the 13 bullet exited. Sorry - 14 CHAIRPERSON: Yes, I'm sorry, Mr 15 Mahlangu, I thought it was the other way around, unless 16 the, what is written is incorrect. If one looks at the 17 exhibit, it looks as if what is described as the entrance 18 wound is on the right side of the sketch, on the rear, as 19 it were, and if one looks at the left-hand sketch, the same 20 wound is depicted, also on the – this is now a picture of 21 the witness facing the artist, as it were, and there the 22 gunshot wound is depicted as an exit wound. So it would 23 appear, if the legend on this document is correct in 24 relation to that gunshot wound, that it entered from behind 25 and exited from the front.</p>
<p style="text-align: right;">Page 6629</p> <p>1 CHAIRPERSON: Shall we call it EEE15? 2 MR MPOFU: Yes, Chairperson. 3 MS LUPUWANA: I also had a look at your 4 statement and your evidence when you were led by your 5 counsel. When you mentioned that you were shot by a bullet 6 on your thigh, on the left-hand side, I take it that is the 7 wound that is appearing on your thigh? 8 MR MAGIDIWANA: Yes. 9 MS LUPUWANA: You also mentioned that you 10 were shot on the left-hand side, indicating your elbow. 11 MR MAGIDIWANA: Yes. 12 MS LUPUWANA: You also indicated you were 13 shot on your ribs, indicating on the left-hand side. 14 MR MAGIDIWANA: Yes. 15 MS LUPUWANA: I also realise that they 16 shot you on the bottom side on your pelvic area. 17 MR MAGIDIWANA: That is so. 18 MS LUPUWANA: When I compare this with 19 the medical report, the exhibit EEE15.1, I see there's a 20 wound that penetrated your abdomen. There's another one on 21 the left-hand side, indicated as your pelvic area. 22 MR MAGIDIWANA: It is so. 23 MS LUPUWANA: Also indicating quite a big 24 wound on your left elbow. 25 MR MAGIDIWANA: It is so.</p>	<p style="text-align: right;">Page 6631</p> <p>1 MS LUPUWANA: That's what I meant, 2 Chairperson. What I was trying to convey is that there was 3 one shot, except that the bullet entered on one side of the 4 thigh and then exited on the other. 5 MR MPOFU: No, Chairperson, with great 6 respect, even in the Xhosa version of that question it was 7 put in exactly the opposite of what the Chairperson has 8 put, in other words my learned colleague said that the exit 9 was behind, whereas the Chairperson is suggesting that the 10 entrance is behind. So I think that just needs to be 11 clarified here. 12 CHAIRPERSON: This is what the doctor 13 wrote, unless his writing is so bad, but that's certainly 14 what the doctor wrote, isn't it? That the entrance wound 15 is depicted as having come from the rear and the exit wound 16 is depicted as having been in the front. 17 MS LUPUWANA: Yes, Chairperson, that is 18 it. What I'm actually saying here is that both these 19 wounds were by the same bullet, the one entering the body 20 and the one exiting on the other side, not two different 21 bullets. 22 MR MAGIDIWANA: There is this side 23 [indicates on the left-hand side]. You're saying on the 24 left-hand side, not so? There's one bullet that entered 25 there. On the right-hand side [indicating the thigh] there</p>

<p style="text-align: right;">Page 6632</p> <p>1 are two wounds.</p> <p>2 [16:14] CHAIRPERSON: I'm sorry to interrupt.</p> <p>3 I'm not sure that I'm following correctly. As I understand</p> <p>4 the sketch, the thigh wound entered from behind, that is on</p> <p>5 his right thigh at the back, and exited at the front, still</p> <p>6 on the right side obviously of the thigh.</p> <p>7 MS LUPUWANA: Yes.</p> <p>8 MR MAGIDIWANA: Do I understand that the</p> <p>9 bullet entered my thigh on the right-hand side and exited</p> <p>10 on the back of my left thigh?</p> <p>11 CHAIRPERSON: As it appears from the</p> <p>12 sketch, is the bullet entered your thigh on the right side</p> <p>13 at the back and came out on the right side at the front.</p> <p>14 MR MAGIDIWANA: Oh, I see.</p> <p>15 MS LUPUWANA: We're trying to find out</p> <p>16 more about this journalist, the one you referred to as a</p> <p>17 Rastafarian, the one who was present when you were shot in</p> <p>18 –</p> <p>19 CHAIRPERSON: I think we must adjourn and</p> <p>20 perhaps we should move on to the journalist tomorrow</p> <p>21 morning?</p> <p>22 MS LUPUWANA: No –</p> <p>23 CHAIRPERSON: Unless it's going to take a</p> <p>24 couple of minutes.</p> <p>25 MS LUPUWANA: I'm almost finished.</p>	<p style="text-align: right;">Page 6634</p> <p>1 estimate.</p> <p>2 MR MPOFU: Yes, if you want it in days or</p> <p>3 in weeks – no, I'm joking, Chairperson. I think by</p> <p>4 lunchtime I should be over, Chairperson. Ja, or between</p> <p>5 tea and lunchtime. Thank you, Chairperson.</p> <p>6 CHAIRPERSON: And the police are</p> <p>7 proposing to call their first witness after that –</p> <p>8 MR MPOFU: Immediately –</p> <p>9 CHAIRPERSON: And they would like to know</p> <p>10 when they must get the national commissioner here so she</p> <p>11 can start giving evidence.</p> <p>12 MR MPOFU: Yes, I think it will be safer</p> <p>13 if they just come in the morning, Chairperson.</p> <p>14 CHAIRPERSON: Alright, on that optimistic</p> <p>15 note from Mr Mpofo, we'll take the adjournment until 9:30</p> <p>16 tomorrow morning.</p> <p>17 [COMMISSION ADJOURNED]</p> <p>18 .</p> <p>19 .</p> <p>20 .</p> <p>21 .</p> <p>22 .</p> <p>23 .</p> <p>24 .</p> <p>25 .</p>
<p style="text-align: right;">Page 6633</p> <p>1 CHAIRPERSON: Almost, alright.</p> <p>2 MS LUPUWANA: Let us just look at slide</p> <p>3 167 of exhibit L. Is that not the person you're referring</p> <p>4 to?</p> <p>5 CHAIRPERSON: Well, there are a number of</p> <p>6 people on that one. Do you mean the –</p> <p>7 MS LUPUWANA: The gentleman, Chairperson,</p> <p>8 who looks like a Rastafarian –</p> <p>9 CHAIRPERSON: The gentleman with what</p> <p>10 looks like a black T-shirt –</p> <p>11 MS LUPUWANA: Yes, Chairperson.</p> <p>12 CHAIRPERSON: And what looks like a</p> <p>13 camera at his hip. Is that the person you're referring to?</p> <p>14 MS LUPUWANA: Yes, he's holding a camera.</p> <p>15 MR MAGIDIWANA: Yes, this is the person.</p> <p>16 MS LUPUWANA: Thank you, Chairperson, and</p> <p>17 that is all.</p> <p>18 CHAIRPERSON: I take it, Mr Mpofo, you'd</p> <p>19 like to do your re-examination tomorrow.</p> <p>20 MR MPOFU: Yes, I would, Chairperson.</p> <p>21 Thank you very much.</p> <p>22 CHAIRPERSON: I know it's difficult to</p> <p>23 predict, but how long do you anticipate more or less it's</p> <p>24 likely to be? I won't hold you to it, because I can't, but</p> <p>25 I'm sure you can give me what is at this stage a bona fide</p>	

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