TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 22 28 NOVEMBER 2012 PAGES 2288 TO 2388

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE

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[PROCEEDINGS ON 28 NOVEMBER 2012]

28th November 2012

Marikana Commission of Inquiry

Rustenburg


Before we can proceed with the evidence of Mr Mathunjwa, are the six gentlemen who were here on Monday present? If so, can they please come forward?

MR MPOFU: Chairperson, it looks like they are not here. My attorney has just gone to make double sure outside but I expect it might be a transport problem.

CHAIRPERSON: Thank you. – haven't arrived yet, then we will – I was going to find out from Mr Budlender to what day he suggests we, on what day he suggests we should ask them to come back and I was then going to excuse them from further attendance. They'll obviously get witness fees again for coming today.

MR MPOFU: Yes.

CHAIRPERSON: And advise them to come back on a subsequent date.

MR MPOFU: Yes, we have already agreed - have you agreed?

MR MPOFU: We've agreed on the date, Chair, so we can do the formalities and then when they come they can just be advised.

CHAIRPERSON: What date have you agreed on?


CHAIRPERSON: Of January, very well.

That's acceptable, is it?

MR BUDLENDER SC: That's correct, Chair.

CHAIRPERSON: So when they come we will – perhaps even after the tea adjournment but if they want to go earlier, you know, they can be interposed, we can deal with that but we will do that when they're here. I understand you want to be excused, you have an important matter in another tribunal tomorrow?

MR MPOFU: That's correct -

CHAIRPERSON: Or sorry, in a tribunal tomorrow – this is not a tribunal.

MR MPOFU: In the tribunal, Chair.

CHAIRPERSON: The – yes, the top tribunal.

MR MPOFU: Yes.

CHAIRPERSON: Very well. Thank you, Mr Mpfou, we will excuse you.

MR MPOFU: Thanks Chair.

CHAIRPERSON: And presumably we will read in the media in due course about what happens to you tomorrow.

MR MPOFU: Thank you very much,
Mr Mathunjwa, you had a video taken of you approaching the koppie, which is the reference hill in the area. You were seen speaking to a rather large man in a sort of khaki-looking uniform with a helmet on. Did you see that?

Mr Mathunjwa: Yes, sir.

Chairperson: Yes, Mr Mathunjwa, you had a video taken of you approaching the koppie, which is the reference hill in the area. You were seen speaking to a rather large man in a sort of khaki-looking uniform with a helmet on. Did you see that?

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

1. MR BRUINDERS SC: I take it that when the rules were laid down at the JOC, you had no difficulty with those rules.
2. MR MATHUNJWA: Would you please repeat your question?
3. MR BRUINDERS SC: When the rules were laid down at the JOC, did you have any difficulty with those rules?
4. MR MATHUNJWA: Yes, I did have a difficulty with those rules.
5. MR BRUINDERS SC: What was your difficulty?
6. MR MATHUNJWA: Is to be escorted by the police to the koppie and not using our private vehicle to approach those workers.
7. MR BRUINDERS SC: And why was that a problem?
8. MR MATHUNJWA: I think it was a problem to me personally because it will be translated as if those workers are people who are not reasonable.
9. MR BRUINDERS SC: Why did you not want to give those workers the impression that you do not think that they were unreasonable?
10. MR MATHUNJWA: Because it was the first time I'll be meeting those workers, so I didn't have anything to do with whatever that was happening at the mine by that stage. So therefore I wanted to present myself as a neutral person who wants to hear what is really happening.
11. MR BRUINDERS SC: Could you persuade the SAPS to allow you to walk to the koppie, even as we heard there, with them coming with you?
12. MR MATHUNJWA: No, couldn't.
13. MR BRUINDERS SC: So how did you get to the koppie?
14. MR MATHUNJWA: Then we had to board one of the Nyalas.
15. MR BRUINDERS SC: And is that how you got to the koppie?
17. MR BRUINDERS SC: And when you got to the koppie, where did you address the workers from?
18. MR MATHUNJWA: Inside the Nyla.
19. [09:56] MR BRUINDERS SC: We're now going to play just the clip of your address and we don't need it interpreted. I would like you to have a look at it and then ask you a few questions afterwards. 
20. MS PILLAY: Mr Chairperson, if I may just mention for the purposes of the record that the clip which was just shown, clip 38 is Exhibit BB2 in the exhibit list and the current one, I think it's clip – we need to see clip 41, is Exhibit BB5 on the list.
21. CHAIRPERSON: I was actually going to ask you to give us those details after we'd seen the clip, but thank you for giving it to us now.
22. MR BRUINDERS SC: We, too, are indebted to Ms Pillay who's doing a sterling job here on the exhibits.
23. CHAIRPERSON: I don't know that it's fair to limit it just to the exhibits front but nevertheless, if that's the way you want to do it, I won't fight you.
24. [VIDEO IS SHOWN] MS PILLAY: And I think 40, clip 40 is BB4.
25. [VIDEO IS SHOWN] CHAIRPERSON: Before we proceed, can I just ask Ms Pillay a question to which I don't think she can give us the answer now but she may be able to give us later. I take it that that clip we saw, we have seen already and when we saw it, we received a translation from the interpreter which is obviously transcribed. So we'd be grateful if, after tea, you can give us the references of the transcripts to the interpreter's translation of the speeches we've just seen on the clip.
26. MS PILLAY: I will be able to do that.
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1 CHAIRPERSON: I'm sure you will, thank
2 you. Sorry, Mr Bruinders, you can proceed with your
3 evidence-in-chief.
4 MR BRUINDERS SC: The references are at –
5 it's the transcript of the 20th November 2012 and it runs
6 from, Mr Chaskalson introduces it at page 1810 and it
7 continues through to page 1823.
8 CHAIRPERSON: Thank you, Mr Bruinders.
9 Ms Pillay, you won't have to give us the information after
10 all. You'd better check it just to make sure it's right.
11 MR BRUINDERS SC: We insist, Chair. Mr
12 Mathunjwa, the first clip that we saw, do you confirm that
13 it is an accurate recording and shows fairly accurately
14 what happened between you and those SAPS officials just
15 before you went to the koppie?
16 MR MATHUNJWA: That's correct.
17 MR BRUINDERS SC: And the clip – do you
18 confirm that the second clip that we saw, which is when you
19 addressed the strikers from the Nyala, do you confirm that
20 that is an accurate recording of your address to the
21 strikers?
22 MR MATHUNJWA: That's correct.
23 MR BRUINDERS SC: The interpretation of
24 what you said is to be found in English at pages 1811 to
25 1823 of the record of the 20th November. Do you have a copy

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

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1 are animals.
2 CHAIRPERSON: So are elephants.
3 MR BRUINDERS SC: So you say strikers
4 came up to the Nyala?
5 MR MATHUNJWA: That's correct.
6 MR BRUINDERS SC: Could you tell how
7 many?
8 MR MATHUNJWA: Inasmuch I couldn't
9 recall, but there were more than three.
10 MR BRUINDERS SC: And was there then a
11 conversation between those people, the three or more
12 strikers who came up to the Nyala, and you?
13 MR MATHUNJWA: Yes. I mean they
14 responded from the message I'd given, which I gave to them.
15 MR BRUINDERS SC: Chair, there's a
16 recording of that exchange and we'd like to play it and
17 this, I'm afraid, will have to be interpreted for our
18 benefit.
19 CHAIRPERSON: Ms Pillay will give us the
20 exhibit number in due course.
21 MR BRUINDERS SC: Correct. It's a new –
22 sir, I suspect Ms Pillay will give us a new number.
23 CHAIRPERSON: Because I have
24 [indistinct].
25 MS PILLAY: Chair, the number is 006.

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

MR MAHLANGU: We don't want to see him here, together with his police.

MR MAHLANGU: I'm sorry, Chair, if it could be played back again? It's not very clear.

MR MAHLANGU: It sounds as if the word is either "pusa" or "kuza". If it's "pusa" then it means he is drinking together with his police, that is why we don't want him here.

CHAIRPERSON: "Pusa" or "kuza," you said if it's "pusa" it means he's drinking with his police.

MR MAHLANGU: Yes.

CHAIRPERSON: If it's "kuza" what does it mean?

MR MAHLANGU: If it's "kuza" it's that he is reprimanding them together with his police.

MR BRUINDERS SC: I see Mr Mathunjwa shaking his head. Do you have a comment, Mr Mathunjwa?

MR MAHLANGU: Mr Mathunjwa says it's not clear, if they could play it back again.

MR MATHUNJWA: Maybe if I could be allowed, maybe I will be able to assist in this interpretation.

MR MAHLANGU: The sound here is very bad, it's not at all clear what he's saying. He says what I'm talking about – if it could be replayed again?

MR MAHLANGU: That is what I am talking about, we don't want him here.

MR MAHLANGU: That is what I am talking about, we don't want him here.

MR MAHLANGU: If it could be repeated once more.

MR MAHLANGU: Here he's saying, if I build a house and there is misunderstanding between me and my wife, I leave my wife and I go out and I get another wife.

MR MAHLANGU: You go and get another wife.
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once more?

[VIDEO IS REPLAYED]

MR MAHLANGU: We hear that it is AMCU that is – we that it is AMCU, it’s you that are coming with help, we hear it’s you, the people that are locked up inside there. Please come back to us tomorrow at nine. Come and talk to us as you are talking to us now. The people from the NUM have – just repeat again?

[VIDEO IS REPLAYED]

MR MAHLANGU: Please proceed a bit, ja.

The word “babu”, it’s not a complete word. It’s said the people from the UDM and then something. I’m getting – NUM, the people from NUM, not UDM.

[VIDEO IS SHOWN]

MR MAHLANGU: It ended up again at the same point, where it says the people from the NUM, “babu” – that word is not complete. Does it end there?

[10:36] MR BRUINDERS SC: I think we move on to the next speaker now who responds, I think that’s the next clip.

[VIDEO IS REPLAYED]

MR MAHLANGU: I just want to draw the Chairman’s attention to the fact that the last, very last sentence was a word that is incomplete. It says, the people from NUM “babula” and it’s not a complete word.

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

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they have “babu” – that word “babula”, “babula” cannot be inferred to have any meaning. It could be –

MS PILLAY: Mr Chairperson, if I understand, Mr Dos Reis says that the clip ends at that point.

CHAIRPERSON: That was clear to us. It ended in the middle of a word.

MR MAHLANGU: It ended in the middle of a word, Mr Chairperson, I’m a bit afraid to give an exact meaning. I could infer what it was but it’s not complete.

CHAIRPERSON: Can we move on to the next –

MR BRUINDERS SC: The next clip, yes.

CHAIRPERSON: Is that clip ready to be played to us?

MR BRUINDERS SC: Yes.

CHAIRPERSON: Do we have to have another exhibit indication?

MS PILLAY: Chair, this clip would be O07.

CHAIRPERSON: Thank you.

[VIDEO IS SHOWN]

MR MAHLANGU: Mr Chairperson, may I ask one of the other interpreters to come? It’s Maputo Shangaan that is being spoken here. Mr –

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CHAIRPERSON: Certainly. Have we sworn this Maputo Shangaan interpreter in?

MR MAHLANGU: Yes.

CHAIRPERSON: Yes, alright, so he can take your place and interpret the – is this clip going to be in Shangaan?

MR MAHLANGU: It’s in – it’s Maputo Shangaan.

CHAIRPERSON: Maputo Shangaan, thank you.

MR MAHLANGU: Maybe it could be played in the meantime, from the beginning –

CHAIRPERSON: Is the Maputo Shangaan interpreter ready to hear it?

MR MAHLANGU: He’s on his way.

CHAIRPERSON: Well, we’d better wait for him to come before it’s played because otherwise he’ll have trouble, representatives of all – go, just play it again, people of the AMCU, we workers at the mine, while always in trouble, representatives of all – go, just play it again, anyway, he’s arrived.

[VIDEO IS SHOWN]

MR MAVHUNDA: We say that the people from NUM have “babu” – that word “babula”, “babula” cannot be possibly Limpopo? dialect spoken in Mpumalanga, would that be correct, and

MR MAHLANGU: It is so.

CHAIRPERSON: Thank you.

MR BRUINDERS SC: Chair, you will have noticed that, unlike my colleagues, I refrain from a linguistic role here. I know nothing about any of these languages including English, I might add.

CHAIRPERSON: We’ll swear in an interpreter to interpret your questions too then.

MR BRUINDERS SC: But there are other clips, yes, so we can play them.

CHAIRPERSON: The interpreter I think has now arrived. I don’t know whether he came from Maputo but anyway, he’s arrived.

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MR MAVHUNDA: All the workers plus the people of the AMCU, we workers at the mine, while always in trouble, representatives of all – go, just play it again, the last portion?

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1. the time, don't come at a later stage.
2. [VIDEO IS SHOWN]
3. MR MAVHUNDA: Repeat it.
4. [VIDEO IS REPLAYED]
5. MR MAVHUNDA: You cannot come and address us without seeing you. Repeat it please?
6. [VIDEO IS REPLAYED]
7. MR MAVHUNDA: He's speaking 140, which I cannot understand what does it mean.
8. CHAIRPERSON: There seem to be some people in the auditorium who understand it because they think it's funny and are laughing but I don't know that we need delay any further in trying to decipher what that is. Perhaps you can just interpret the next section and possibly after the adjournment we could come back to it.
9. So I think carry on with the recording and we'll have a gap that you can’t interpret and perhaps after tea when you’ve consulted the experts in the audience, you can tell us.
10. [VIDEO IS SHOWN]
11. MR MAVHUNDA: What he’s saying, that don't take a photo of mine. A photo, don’t take a photo – yes, of me.
12. [VIDEO IS SHOWN]

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1. MR MAVHUNDA: The words said, it is your president but he said don’t take a photo of me.
2. [VIDEO IS SHOWN]
3. CHAIRPERSON: I thought I heard the English word “recognise” but I may I have misheard.
4. MR MAVHUNDA: I don't, I didn't –
5. MR MAHLANGU: It could be replayed.
6. MR MAVHUNDA: Replay it, please?
7. [VIDEO IS REPLAYED]
8. MR MAHLANGU: What he’s saying here is that if you are the member of the NUM, we wouldn’t listen to you because it’s long that we have been dealing with you. If it’s you, that is the NUM members, who are speaking to us, we are not seeing you. We would like to see you the following day, that is about 9 o'clock. We can – it is late, it’s in the evening, we cannot see you, it will be better that you should come back tomorrow so that we could see you at about 9 o'clock in the morning the following day. We would like to see you face to face while you are busy addressing us. You shouldn't come and address us being into the vehicle that we could not see you. We would love to see you face to face while addressing us. It's too fast, would you play it again please, slowly, that I could understand?
9. [VIDEO IS REPLAYED]

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1. MR MAVHUNDA: We would like to see you outside so that everybody could see you, not remain into the vehicle or the car. I'm just asking you that it will be better that you come the following morning so that we could see you in person. He says thank you, that is “siyabonga nakensa” in Shangaan.
2. MR MAHLANGU: If the very last piece could be played that was in Xhosa again?
3. [VIDEO IS SHOWN]
4. MR MAHLANGU: We will now hand over to the comrade so that we get back the report that we had brought to you. We will come back about the request that you have given to us. Somebody says, "Power" and then he says viva to the workers, viva. Again a repetition of viva to the workers, viva. Be strong, be strong, viva to the workers, viva. The workers, I am going to start by – we want to work with AMCU because as we are seated at this place here, it’s about we want money. I’m sorry, if the last piece could again be repeated?
5. [VIDEO IS REPLAYED]
6. MR MAHLANGU: The reason we are seated here is because we want money, and then something is being said that doesn’t sound very clear. There’s a lot of screaming here that’s making it not clear what he is saying. The speaker is using, he’s just screaming, there's a sound behind it that makes the voice very unclear.
7. [10:46]
8. MR MAHLANGU: I'm sorry, Mr Chairperson,
9. it’s really not clear what he’s saying here. He says we are here because of money and then he says the whole thing is about ripe, we want to say one thing only and that is –
10. [VIDEO IS SHOWN]
11. MR MAHLANGU: He says, we want to say one thing, that we want money. The whole thing is just ripe. What they are here for is ripe. It’s ripe, yes, the only thing we want to say is that we want money.
12. CHAIRPERSON: Is that the end of the clip?
13. MR BRUINDERS SC: That is the end of that clip. There’s another one –
14. CHAIRPERSON: It seems an appropriate stage to take the tea adjournment. The Commission will adjourn for the tea adjournment.
15. [COMMISSION ADJOURNS COMMISSION RESUMES]
17. Yes, Mr Bruinders? Oh sorry, Mr Mathunjwa, it’s my duty to remind you that you’re still under oath. Mr Bruinders?
18. EXAMINATION BY MR BRUINDERS SC (CONTD):
19. Thank you, we were at the point where there was a clip,
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25 permission to talk to your leaders tomorrow at nine, that
24 refusing to go back to work but you want to be given
23 we take this matter back to the employer, that you are not
22 what you were saying. We are asking your permission that
21 leaders, you have spoken, you have spoken, we have heard
20 you. It's only a fool that can say he did not understand
19 things that the employer would want to say, we would ask the
18 together proceed forward. Power. If there's any other
17 personally whilst the sun is shining, so that we can
16 tomorrow, so that we come tomorrow and talk to you
15, that's OO8. Thank you.
14 F-U-S-I Mohale. The next one is Tembinkosi Mtjo. Mlambisa
13 Sethembele with an “s”, Sethembele Ntakana, Fusi Mohale,
12 Lungani Mabotyana, the –
11 Mr Mmusi, are you able to help us in
10 if the six gentlemen who were here on Monday are here again
9 are here.
8 Mr MMUSI: Mr Chairman, I understand they
7 that regard?
6 MR MAHLANGU: As we have been talking
5 that, to the police that all the vehicles that are here,
4 they should go away, but that when you come tomorrow at
3 nine you can come with them but for the moment our request
2 is that, as you are leaving now, please go with them so
1 that we see them tomorrow. Thank you, comrades, thank you.

1 employer is wise enough, he would not deny you that
2 request. I think this is the way that is taking us
1 forward, but what I'm asking from you, my fellow South
4 Africans, is that we should persevere. The name of AMCU
5 has been dirtied, it has been made dirty throughout the
6 world, in the whole South Africa – world - in the whole
7 South Africa, that it is AMCU that is killing people. I am
8 making a request to you people that, my plea to you is that
7 such things should not happen again. I am not, by so
6 saying, that as you are seated there that you are killing
5 people, because the stories that are being spread inside
4 the country and outside the country is that this union has
3 come to kill people. My plea to you, comrades, is that you
2 give me a chance so that we go back to the employer to talk
1 to him, not to act stupid, so that tomorrow - until

1 another clip about to be played to Mr – or for us.

1 stage for me to do something I should have done when we
2 resumed after the tea adjournment, that's to ask Mr Mmusi
3 if the six gentlemen who were here on Monday are here again
4 today, so we can advise them that they can leave, hopefully
5 receive their witness fees before they go and come back on
6 the 21st of January. Mr Mmusi, are you able to help us in
7 that regard?
8 MR MMUSI: Mr Chairman, I understand they
9 are here.
10 CHAIRPERSON: [Indistinct] gentlemen here
11 before us. Can we have their names, please?
12 MR MAHLANGU: Lungani Mabotyana,
13 Sethembele with an “s”, Sethembele Ntakana, Fusi Mohale,
14 F-U-S-I Mohale. The next one is Tembinkosi Mtjo. Mlambisa
15 Thokotokwana.
16 CHAIRPERSON: Gentlemen, we won't be
17 needing your evidence today and in fact you are excused
18 from further attendance – you're still subject to the
19 subpoena but you're excused from further attendance until
20 the 21st January. Please be here on the 21st of January
21 next year at 9AM. In the meanwhile you're excused. You
22 can obviously stay in the auditorium if you wish but before
23 you go home I suggest you ask the officials for your
24 witness fees for coming today. If you need a letter or if
25 you need letters to show your employers - your employer, I
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21st of January, I'm sure the evidence leaders will be
able to assist you in that regard. Thank you, you may go
now. Yes, you don't have to go – you can stay in the
auditorium and listen to the evidence if you wish. Mr
Bruinders, I take it you've reached paragraph 51 of the
exhibit that was handed in yesterday, Exhibit NN, is that
correct?

MR BRUINDERS SC: That's correct. That's
the statement.

CHAIRPERSON: Yes.

MR BRUINDERS SC: Yes.

CHAIRPERSON: You've also indicated that
there might be further clips later, do I understand you
correctly?

MR BRUINDERS SC: Correct.

CHAIRPERSON: May I ask, if it's
possible, in order to shorten proceedings if, in respect of
future clips you're going to hand in, it might be possible
to – perhaps during the lunch adjournment – to arrange for
a transcript to be prepared of what's said in English,
possibly agreed with the interpreter, so that we're able to
proceed at a reasonable rate in regard to this evidence.
It may not be possible this time, today, but it would be
helpful I think for the future and also obviously this

applies to everybody, in respect of subsequent witnesses
called by any of the parties.

MR BRUINDERS SC: Yes, I don't think that
there'll be any clips of this nature. You'll hear in a
moment where these particular clips come from but obviously
we'll do our best to shorten the proceedings by talking to
the interpreter. Thank you, Chair. Mr Mathunjwa, we have
this morning listened to a number of recordings of the
exchanges between some of the strikers and you, and you and
the strikers, not so?

MR MATHUNJWA: That's correct.

MR BRUINDERS SC: How were those
exchanges recorded?

MR MATHUNJWA: In the last clips?

MR BRUINDERS SC: Yes.

MR MATHUNJWA: Those were my recordings.

MR BRUINDERS SC: And how did you record
that?

MR MATHUNJWA: I used my cell phone to
record it.

MR BRUINDERS SC: Commission, just for
your purposes, the recording on the cell phone was
downloaded onto a CD, which is what we have been listening
to.

[11:42] CHAIRPERSON: If anyone has any doubts
about the accuracy of the recording, you'll make the
original - the original cell phone or mobile phone
recording is still available?

MR BRUINDERS SC: It is and, ironically,
it's a much better – it's much better sound than the CD
recording. Mr Mathunjwa, can we – before we leave the
recording – ask you this. Do you confirm that that
recording that we listened to or those recordings we
listened to of those exchanges, that they are accurate?

MR MATHUNJWA: Yes, I confirm that.

MR BRUINDERS SC: At the end of your
exchange with the strikers' leaders who came out of the
mass of strikers to talk to you, at the end of that what,
in a nutshell, did you understand them to say to you?

MR MATHUNJWA: I understand that they
following day they were prepared to engage with what the
employer was saying and also hinting that they are prepared
even to go to work, to return to work.

MR BRUINDERS SC: What was it that the
employer was saying at that stage when you addressed the
strikers on the koppie on the evening of the 15th?

MR MATHUNJWA: I think I will ask you to
repeat the question for the interpreter to be able to try
to interpret what you've just said, please.

MR BRUINDERS SC: I'll try my best. You
said that you understood that the strikers were prepared to
engage on the following day with what the employer was
saying, do you recall that?

MR MATHUNJWA: Yes, I do recall.

MR BRUINDERS SC: By the time you
addressed the strikers on the evening of the 15th, what was
it that the employer was saying?

MR MATHUNJWA: The strikers, they started
by recording that they were shot at –

MR BRUINDERS SC: Forgive me, I didn't
make myself clear. My question was, what was it that the
employer, Lonmin, was saying at the time you went to speak
to the strikers?

CHAIRPERSON: Mr Bruinders, to save time,
he already said it and it's in paragraph 40 of Exhibit NN,
which he's already confirmed to be correct. So I don't
think we have to waste time on it, unless there's some
qualification he wants to introduce.

MR BRUINDERS SC: There is and perhaps I
should just refer him then to paragraph 40. If you go to
paragraph 40 of your statement and read it, is that what
the employer was saying by the time you went to the koppie?

MR MATHUNJWA: Yes, that's correct.

MR BRUINDERS SC: And that is, 'Workers
renounce violence and return to work peacefully and then
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MR BRUINDERS SC: Why did you ask that?

MR MATHUNJWA: That's General Mpembe. I should believe that,

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that maybe that video had a transmitter to the JOC where

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

MR BRUINDERS SC: I want you to tell us

what happened in your debriefing with Lonmin, please.

MR MATHUNJWA: We debriefed Lonmin that

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

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

discuss what Lonmin has told us and further that they will

think how then they will return back to work.

MR BRUINDERS SC: When you say that they

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

do you mean?

MR MATHUNJWA: I mean if they agree with

the message from Lonmin.

MR BRUINDERS SC: Did you ask anything of

Lonmin that evening?

MR MATHUNJWA: Yes. During that

debriefing Mr AB Kgotle responded very positively by, in

person, thanking myself as President of AMCU for my

intervention in this situation and also they were convinced

that the following day the strike will be over. And

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

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

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

MR MATHUNJWA: That was Jomo Kwadi and AB

Kgotle, which they were present, and the other gentleman –
a white gentleman, I don't recall what was his name.

MR BRUINDERS SC: Can I just ask you

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

MR MATHUNJWA: Which address, if I may

ask?

MR BRUINDERS SC: The address you made

earlier that evening at the koppie.

MR MATHUNJWA: Yes, inside the Nyala

taking all the discussion.

MR BRUINDERS SC: Do you know whether

that video footage that was being filmed and recorded,

whether that was relayed to some other point where the SAPS

were watching it?

I believe that.

The paragraph reads as

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

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

general. The second was labour relations, that will be

under the care of management represented by Mr Kwadi and Mr

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

these people separately in relation to these two issues.”

MR BRUINDERS SC: Did you report to the

SAPS?

MR MATHUNJWA: Yes, on our way back

during the debriefing, we did.

MR BRUINDERS SC: Did you report back to

Lonmin?

MR MATHUNJWA: Yes, indeed.

MR BRUINDERS SC: What did you say to

both of them?

MR MATHUNJWA: Firstly, we reported the

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

and we further stated that the workers are willing that we

can meet them the following day in order further the

discussion. We also mentioned that even we have to be

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

face. And they said, responded, represented by General

Mpembe, by giving us a salute.

MR BRUINDERS SC: Who gave the salute?

MR MATHUNJWA: It was dark. It was at

night, I would say.

MR BRUINDERS SC: When you left the

koppie, where did you go to?

MR MATHUNJWA: We'd gone back to the

place called JOC.

MR BRUINDERS SC: Why did you go back to

the JOC?

MR MATHUNJWA: That was per the

instruction or the protocol that was said that we have to

return back for the debriefing.

MR BRUINDERS SC: And that you deal with

in paragraph 52 of your statement, not so?

MR MATHUNJWA: That's correct.

MR BRUINDERS SC: Now, will you please

read paragraph 53 into the record?

MR MATHUNJWA: The paragraph reads as

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

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

general. The second was labour relations, that will be

under the care of management represented by Mr Kwadi and Mr

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

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

face. And they said, responded, represented by General

Mpembe, by giving us a salute.

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

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

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

1. MR MATHUNJWA: No, that is not true.
2. MR BRUINDERS SC: Did Mr Kwadi return?
3. MR MATHUNJWA: Yes indeed, he returned.
4. MR BRUINDERS SC: When he returned, what did he say to you?
5. MR MATHUNJWA: He called us into one of the offices – I think on my left, on the passage. As we were inside the office he said he doesn’t have good news for us.
6. MR BRUINDERS SC: Did he tell you what the bad news was?

1. MR MATHUNJWA: No, we just spoke about the situation of violence and the strike only. We limited to that effect.
2. MR BRUINDERS SC: Did you ask him for anything, apart from his phone number?
3. MR MATHUNJWA: No, only the cell phone exchange that was –
4. MR BRUINDERS SC: Mr Seedat has made a statement in which he says that in an exchange with you on the 16th, you asked him to give AMCU a seat at the bargaining table and you would, if that was given, bring an end to the violence. What do you say about that allegation?
5. MR BRUINDERS SC: Did Mr Kwadi return?
6. MR MATHUNJWA: Yes indeed, he returned.
7. MR BRUINDERS SC: When he returned, what did he say to you?
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6. MR BRUINDERS SC: Did he tell you what the bad news was?
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1. MR MATHUNJWA: To me they were reneging from their previous commitment and they have already went to the workers and communicated the very same commitment from their side and for them today, in the morning, to change it – I felt that I was betrayed, we were betrayed as a union.

2. MR BRUINDERS SC: Did you tell Mr Kwadi how you felt?

3. MR MATHUNJWA: Yes, I did, sir.

4. MR BRUINDERS SC: Did you ask Mr Kwadi whether management might reconsider reneging on the promise that it had made on the 15th?

5. MR MATHUNJWA: Yes, indeed and I reminded the same management that you set a precedent yourself to engage with these workers. By then the very same two year agreement was still existing but you were able to engage the workers outside the very same agreement that today you are committed to. Therefore you have to go back to your management and relook at your decision which -

6. MR BRUINDERS SC: Sorry, I beg your pardon?

7. MR MATHUNJWA: It ended up by myself

8. MR BRUINDERS SC: Which indeed he returned back to their team.

9. MR BRUINDERS SC: You say Mr Kwadi returned to his team?

10. MR MATHUNJWA: That's correct.

16. MR BRUINDERS SC: You say it happened to yourself. Then I kept on asking, who are you, who are you?

17. MR MATHUNJWA: It was very harsh to And they responded by saying that is not important, what is important, you made a commitment to your workers that you will be at the mountain at 9 o'clock. And then I explained to him and he said – and she said that I'm late. I said I'm not late, I've been delayed by the management who is reneging, who has somersaulted from their commitment and then he said he doesn't care about that, the point is I made a commitment to the workers.

18. MR BRUINDERS SC: How did that telephone exchange between the two of you end?

19. MR MATHUNJWA: It ended up by myself giving to, back the cell phone to the owner which is Mr Barnard Mokwena. Then I said to him, I really don't appreciate the manner in which you have treated me.

20. MR BRUINDERS SC: What did you – what did you mean when you said to him you didn't appreciate the manner he spoke to you, or treated you, I beg your pardon?

21. MR MATHUNJWA: By giving me a phone, not even telling me who is the person who is on the phone.

22. MR BRUINDERS SC: What was his response?

23. MR MATHUNJWA: There was no response, he just received his cell phone and he went back where he was coming from.

24. MR BRUINDERS SC: Where did you go after that?

25. MR MATHUNJWA: Then we left to the JOC.

26. MR BRUINDERS SC: Whom did you meet?

27. MR MATHUNJWA: General Mpembe and General Annandale and General Naidoo and a female officer who was, who was there.

28. MR BRUINDERS SC: You say there was a woman there as well?

29. MR MATHUNJWA: Yes.

30. MR BRUINDERS SC: Who was that?

31. MR MATHUNJWA: After the introduction I happened to know that this was the North West Provincial Commissioner.

32. MR BRUINDERS SC: And was that Provincial Commissioner Mbombo?

33. MR MATHUNJWA: That's correct.
MR BRUINDERS SC: So after the introductions, who spoke?

MR MATHUNJWA: Mr or General Mpembe, he spoke first that Provincial Commissioner Mbombo, he is the one that is taking over the operation here, so therefore he's no longer a person in charge of the operation.

MR BRUINDERS SC: Who is no longer in charge?

MR MATHUNJWA: The person who is no longer in charge is General Mpembe.

MR BRUINDERS SC: Did the Provincial Commissioner speak?

MR MATHUNJWA: Yes, indeed. He greeted us and then he started saying he doesn't like people who are not committed, I made a commitment to the workers that I will be there at 9 o'clock, which I failed. Then I tried to explain to her what was the reason, she said she's not interested to that effect. Then I said, I responded that I didn't like the manner in which she treated me when we were engaging with her through the cell phone and she responded also by saying I was not happy with yourself for not being committed.

MR MAHLANGU: Are you speaking of a she or a he?

MR BRUINDERS SC: She.

MR MATHUNJWA: She repeatedly, saying she's interested to that effect. Then I said, I responded by explaining to her the reason of us being late. He said he's not interested.

MR MAHLANGU: Mr or General Mpembe, he's no longer a person in charge of the operation. So therefore I didn't know you, the Provincial Commissioner confirm that she was now in charge of this operation?

MR MATHUNJWA: Indeed, because I said to her I didn't even know you. The only persons that were introduced to ourselves was General Mpembe who was in charge and also Annandale, so therefore I didn't know you, what you were in charge. That was the protocol that was submitted or introduced to us yesterday. Then he confirmed that yes, indeed she is the one that she is in charge of the operation as now on and then he further said this, we are late, the Sunday is hot, this thing must finish today.

MR BRUINDERS SC: Did you tell her that you'd encountered a new problem that morning which was Lonmin reneging on its promise made by the day before?

MR MATHUNJWA: Indeed, I tried to explain to her the reason, as I've said earlier on, tried to tell him the reason of us being late. He said he's not interested.

MR BRUINDERS SC: When you told her that there was this problem that emerged on the morning of the 16th, what did she say?

MR MATHUNJWA: She repeatedly, saying that I mean that is not – in other words it's not her business. What she's interested in is that, the commitment that I've made yesterday that I was to meet the workers at 9 o'clock.

MR BRUINDERS SC: Did the Commissioner and you talk about what to say to the strikers on the koppie?

MR MATHUNJWA: Yes, after I've tried to explain the reason for being late, that management is no longer committed to its previous night's commitment, she said to me I have to put this way, in a nice way to the workers.

MR BRUINDERS SC: Then I responded by saying I won't do that, I will tell the truth, I will tell the workers the truth what happened.

MR BRUINDERS SC: What was the outcome of your – that meeting with the SAPS generals that morning?

MR MATHUNJWA: Since there was no progress and then, I then requested transport, I said to her since there's no way forward, no-one's listening to anyone, so please provide me with the transport to proceed to the koppie.

MR BRUINDERS SC: Why did you want to go to the koppie?

MR MATHUNJWA: The workers yes – the previous night, they requested us to return back and the SAPS, during the debriefing we mentioned that, which they were quite aware that we were to return back to workers. Was transport arranged for you to go to the koppie, by SAPS?

MR MATHUNJWA: After we requested the transport we waited for a few minutes and then General Mpembe responded by saying there is no transport available.

Then I walked around the building, I noticed about three of the Mercedes Vito minibuses parked. Then I returned back to him and saying I saw three vehicles that were used yesterday when we were going to the koppie, there are vehicles available parked behind the building.

MR BRUINDERS SC: And what did he do about your mentioning to him that there were vehicles, you saw there were vehicles available?

MR MATHUNJWA: He responded by going around the building and indeed he mentioned that there are three Vitos, he will go and find out about them. On his –

MR BRUINDERS SC: Sorry – I beg your pardon.

MR MATHUNJWA: On his way back he told us that those Vitos, they had no keys. Some of the drivers they took the keys to one of the stations.

MR BRUINDERS SC: When he told you there...
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were no keys, what did you say?

MR MATHUNJWA: Then I responded by saying there is no transport today because the President of NUM is not present but yesterday when he was present, there was transport available for everyone. And then I said to him fine, I will use my private car to get to the mountain.

The only thing I'm requesting from yourselves, it's security protection. Indeed, he made us wait and he spoke to another gentleman who was not in the uniform but he was also having a gun on his waist. And then we waited, we waited, we waited until we decided that we have to leave because there's no security available for us to escort us back to the koppie.

MR BRUINDERS SC: When you got to the koppie, what did you see?

MR MATHUNJWA: I will say even before we reached the koppie, when we leave the JOC you could see the movement of police carrying assault rifles, you can see the Hippos starting, idling, you can see the movement around the area.

MR BRUINDERS SC: The movement of what?

MR MATHUNJWA: I mean of police vehicles, not even - I'm not suggesting that they were taking in a direction but around the area, you can see the police carrying rifles.

MR BRUINDERS SC: You say this is what you noticed at the JOC already?

MR MATHUNJWA: This is what I noticed on the JOC before we left to the koppie.

MR BRUINDERS SC: Was that different to what you'd seen at the JOC the day before?

MR MATHUNJWA: Yes, because before I used to see the police carrying Coca-Cola cold drinks, chatting to one another, drinking cold drink, one's got his own six pack around, I mean -

MR BRUINDERS SC: Could you tell whether there were more policemen around on the 16th at the JOC than there were on the 15th?

MR MATHUNJWA: Inasmuch as I could - I cannot say because the 15th it was a little bit dark but definitely on the 16th you could see, I mean a lot of vehicles which could easily fill the football pitch, if I would say that.

MR BRUINDERS SC: When you got to the koppie did you see the SAPS?

MR MATHUNJWA: Yes, when we arrived at the koppie, yes, there were Nyalas, there were SAPS.

MR BRUINDERS SC: How big would you say the SAPS presence was at the koppie when you got there on the 16th the first time?

MR MATHUNJWA: It was quite recognisable.

MR BRUINDERS SC: Did you then go to the strikers on the koppie?

MR MATHUNJWA: Yes, I proceeded from the JOC straight to the koppie.

MR BRUINDERS SC: How close did you get to the strikers on the koppie?

MR MATHUNJWA: Very close.

MR BRUINDERS SC: What was the atmosphere like when you got there the first time on the 16th?

MR MATHUNJWA: The atmosphere was calm.

MR BRUINDERS SC: Did you talk to the strikers?

MR MATHUNJWA: Yes.

MR BRUINDERS SC: Chair, there is a recording of the – well, frankly, I'm actually confused about this because I thought that it was a recording of the first address at the koppie but it might be the second address. I think it was played here last week, possibly a bit longer. It was also part of the SAPS presentation.

I've always understood that to be the first address by Mr Mathunjwa at the koppie. There was then a second address later. We've actually called for that footage because we couldn't find it anywhere. We thought it was always here but we learnt it wasn't here. There's some confusion now it seems –

CHAIRPERSON: Perhaps the evidence leaders can help us to remove the confusion. Looking at Ms Pillay, I don't know whether she can help us.

MS PILLAY: Chair, the clip that AMCU seeks to play is CC7. It was a clip that was showed by Mr Chaskalson last week.

CHAIRPERSON: Yes.

MS PILLAY: Yes.

CHAIRPERSON: Yes, but now the point that Mr Bruinders makes is that, as I understand, Mr Mathunjwa addressed the crowd, the workers, twice on the 16th and what he wants to know is were both, were clips of both addresses to the strikers shown at the previous hearing? If you can't help us, perhaps Mr Wesley can because I think he was involved with Mr Chaskalson in editing and presenting the video about what happened on the 16th at the koppie.

[12:42] MS PILLAY: Chair, can we revert on that question, just have a look at it over the lunch break and then revert on that issue?

CHAIRPERSON: Yes. Yes, I can certainly remember the second address, a very powerful address, you know, when he got on his knees and pleaded with the people.

Whether the first address was shown, I'm afraid I can't
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1 CHAIRPERSON: Now the footage in relation to the first footage we saw, that was of course interpreted to us at the time and its translation is in the transcript. So we don't have to have it interpreted again.  
2 MR BRUINDERS SC: No.  
3 CHAIRPERSON: Do you want to show it again or – do we have to see it again?  
4 MR BRUINDERS SC: Yes, I think it's important –

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1 quarter to two.  
2 [COMMISSION ADJOURNS  COMMISSION RESUMES]

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

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1 be interpreted, we just want to show it.  
2 CHAIRPERSON: Yes, I see. Alright.  
3 Well, thank you, well then proceed then with the witness's evidence-in-chief.  
4 MR BRUINDERS SC: Thank you and then, Chair, just one last – obviously we reserve our right to produce the footage of the second address, if and when that does appear.  
5 CHAIRPERSON: That reservation is noted.  
6 Mr Mathunjwa, you are still under oath to tell the truth.  
7 Mr Bruinders, I assume you have further questions.  
8 MR BRUINDERS SC: Yes, I do.  
9 EXAMINATION BY MR BRUINDERS SC (CONTD):  
10 Mr Mathunjwa, when did you get to the koppie on the first occasion?  
11 MR MATHUNJWA: That was round about 12 or after 12.  
12 MR BRUINDERS SC: And when you got there, I think you already said you were fairly close to the strikers and did you then address them?  
13 MR MATHUNJWA: Indeed, we addressed them.  
14 MR BRUINDERS SC: I'm going to ask you to look at a clip of your address and there are a few questions I’d like to ask you about that afterwards. The clip does not need to be interpreted, Mr Interpreter.
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<tr>
<td><strong>CHAIRPERSON:</strong> Mr Pillay, will this be</td>
<td><strong>MR MATHUNJWA:</strong> I think here the</td>
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<td><strong>MS PILLAY:</strong> That's right, Chair, O09.</td>
<td>interpretation is not quite accurate because when you read</td>
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<td><strong>MR BRUINDERS SC:</strong> Thank you. We now ask</td>
<td>in Zulu, it translates something different, this, but it</td>
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<td>that the clip be played.</td>
<td>does say yes, people they have to return to work.</td>
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<td>[VIDEO IS SHOWN]</td>
<td><strong>CHAIRPERSON:</strong> Can I ask a question about</td>
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<td>[14:11] [VIDEO IS SHOWN]</td>
<td>that? Part of the problem is that we haven't got internal</td>
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<td><strong>MR BRUINDERS SC:</strong> Mr Mathunjwa, we've</td>
<td>quotation marks indicating what Lonmin said. So if you</td>
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<td>just watched your address, the first one at the koppie</td>
<td>take it about halfway down in the English, &quot;We will take it</td>
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<td>after 12 on 16th August 2012, not so?</td>
<td>to the leaders. That's why yesterday we came back and told</td>
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<td><strong>MR MATHUNJWA:</strong> That's correct.</td>
<td>you, you got excited, that we should come back and talk.</td>
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<td><strong>MR BRUINDERS SC:</strong> Do you confirm that</td>
<td>After we finished talking with you yesterday, as different</td>
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<td>that is an accurate recording of your address?</td>
<td>unions, when we arrived in the morning we were just told,</td>
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<td><strong>MR MATHUNJWA:</strong> That's correct.</td>
<td>then we asked where were other organisations, where were</td>
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<td><strong>MR BRUINDERS SC:</strong> How hard was it for you</td>
<td>other leaders because the matter's still in progress, they</td>
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<td>to go back there after the disappointment of that morning</td>
<td>said&quot; – now I suspect that what we need is quotation marks</td>
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<td><strong>MR MATHUNJWA:</strong> It was very difficult,</td>
<td>after the words &quot;they said,&quot; so that it goes – I'm not</td>
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<td>very hard.</td>
<td>saying this is so but this is my impression, I want to know</td>
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<td><strong>MR BRUINDERS SC:</strong> Why do you say that?</td>
<td>whether you agree with it or if I'm on the wrong track –</td>
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<td><strong>MR MATHUNJWA:</strong> The reason is, I took the</td>
<td>they said, &quot;It is not our business that other leaders are</td>
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<td>commitment very seriously that management committed to it,</td>
<td>there. What we're saying is, there's nothing like</td>
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<td>to the nature of the situation that had been televised</td>
<td>increment we're going to discuss with NUM – I mean AMCU –</td>
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<td>through media, printing media, and again as from our last</td>
<td>what we're saying is, the workers should go back to work,</td>
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<td></td>
<td>if they do not go back to work police must take control.&quot;</td>
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<tr>
<td><strong>MR BRUINDERS SC:</strong> Can I read to you in</td>
<td><strong>Is that bit that I read, is that what Lonmin – what you</strong></td>
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<td><strong>MR BRUINDERS SC:</strong> Can I read to you in</td>
<td>said Lonmin said or is that what you yourself were saying?</td>
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<td><strong>MR BRUINDERS SC:</strong> Can I read to you in</td>
<td>You understand the point I'm putting to you?</td>
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<td><strong>MR BRUINDERS SC:</strong> Can I read to you in</td>
<td><strong>MR MATHUNJWA:</strong> Thank you very much,</td>
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<td><strong>MR BRUINDERS SC:</strong> Can I read to you in</td>
<td><strong>CHAIRPERSON:</strong> Have I got it right or am I</td>
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<td><strong>MR MATHUNJWA:</strong> What page is that?</td>
<td>wrong?</td>
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<td><strong>MR BRUINDERS SC:</strong> It's page 10 of the</td>
<td><strong>MR MATHUNJWA:</strong> Yes, you are going right.</td>
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<td>transcript – sorry, page 10 of the exhibit, towards the</td>
<td><strong>CHAIRPERSON:</strong> So where should the</td>
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<td>foot of the 10th page.</td>
<td>quotation marks which indicate the beginning of what Lonmin</td>
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<td><strong>MR MATHUNJWA:</strong> Yes, I've got it. Would</td>
<td>said, where should they be inserted and where should the</td>
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<td>you please repeat your question?</td>
<td>quotation marks be inserted indicating the end of what</td>
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<td><strong>MR BRUINDERS SC:</strong> I've read the extract</td>
<td>Lonmin says? You see otherwise it doesn't make sense. I'm</td>
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<td>to you and I wanted to know whether you agree that that is</td>
<td>sorry to interrupt you, Mr Bruinders, but I'm trying to be</td>
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<td>what you said?</td>
<td>helpful.</td>
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<td><strong>MR MATHUNJWA:</strong> Again, would you please</td>
<td><strong>MR BRUINDERS SC:</strong> Yes, you – appreciated,</td>
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<td>read that extract for me, sir?</td>
<td><strong>CHAIRPERSON:</strong> Where do the quotation</td>
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<td><strong>MR BRUINDERS SC:</strong> You say, &quot;What we are</td>
<td>marks fit in?</td>
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<td>saying is that workers should go back to work. If they do</td>
<td><strong>MR MATHUNJWA:</strong> I think just before &quot;AMCU&quot;</td>
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<td></td>
<td>– I don't know whether – just after &quot;AMCU. &quot; What we are</td>
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<td>saying is that –</td>
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| | **CHAIRPERSON:** Or "what."
| | **MR BRUINDERS SC:** Ja, before the word "what" |
| | **MR MATHUNJWA:** I think – thereby control – |

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Page 2356
1 MR BRUINDERS SC: Yes.

Page 2357
1 should address their grievances.

Page 2358
1 just watched. I'm confining myself only to what we've just
2 seen, is that right there towards the end of your address
3 you ask that the bloodshed be stopped.
4 MR MATHUNJWA: I said we have to avoid
5 the bloodshed.

Page 2359
1 MR MATHUNJWA: Yes, I do recall.
2 MR BRUINDERS SC: And do you remember
3 what the words of the song are?
4 MR MATHUNJWA: Yes, I do recall the name,
5 the words.

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21 MR HANABE: Can I maybe repeat again?
22 MR MATHUNJWA: Can I maybe repeat again?
23 MR HANABE: So he says it's a metaphor which is also in Zulu. He says it's [Zulu phrase] which is a metaphor. It doesn't mean literally killing of a person.
24 MR MATHUNJWA: Can I maybe repeat again?
25 MR HANABE: So he says it's a metaphor which gave, made an example – [Speaking Xhosa] – made an example.
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MR BRUINDERS SC: Who's not allowed to enter the operation room?

MR MATHUNJWA: That was the female officer who was stationed, who was posted there.

MR BRUINDERS SC: Did you get hold of Commissioner Mbombo at the JOC at that time?

MR MATHUNJWA: No, we didn't get hold of her. Subsequent, General Mpembe walked out from the joint operations centre which is where I refer as a boardroom and then he started by addressing us, saying that he's not in charge, as he earlier explained, that the person who is in charge of the area is the National Provincial – sorry, the Provincial Commissioner Madam Mbombo. I therefore requested him that we would like to talk to her. He responded by saying she's not around, she left to an ANC torch-bearing ceremony with the Premier of North West. Then I said but she was the one who was very harsh on me earlier on that day, how can he just left? Then General Mpembe, he said to me okay, I will try to make a phone call. Indeed, he moved away from me with his cell phone.

He went and he went and he went. He never came back. He went and he went and he went. He never came back. He went and he went and he went. He never came back. He went and he went and he went. He never came back. He went and he went and he went. He never came back.

MR BRUINDERS SC: Did you try and get hold of anybody else from Lonmin?

MR MATHUNJWA: Yes indeed, I – since I had a number that I got from Mr Seedat earlier in the morning then I phoned Mr Seedat, advising that this is the challenge that I'm facing, management doesn't want to talk to me and he responded by saying he's not party to these processes, he doesn't make any commitment but he will try. I think we can take the short afternoon adjournment at this stage. The Commission will adjourn.

[COMMISSION ADJOURNS COMMISSION RESUMES]

Before the evidence-in-chief continues, I just want to say that during the adjournment we received copies of an application which is to be moved at some stage in the future on behalf of the families. I take it that copies have been served – perhaps "served" is the wrong word – have been made available to the other parties who may or may not wish to respond to the papers, to the application and if they got them and we got them, I take it I must give them at least until Monday to respond. So I'm just saying that because that may be relevant for those who wish to move the application at some stage. Mr Bruinders, would you like to continue with the evidence-in-chief?

MR BRUINDERS SC: Thank you.

MR NTSEBEZA SC: Mr Chairman, it would have been the desire of the families to be present when the application is moved. Without committing any of our colleagues to anything, we got a sense that we would have received some measure of opposition to that application from my colleagues representing the SAPS. Adv Semenya, who is the leader of that group, phoned me during the course of the day and indicated that if we were to move the application – we are not seeking to lead the evidence, assuming that you know, we were successful, we wanted to move the application – and his sense was that, look, if we could do it tomorrow morning then he would be, he would have been in a position to deal with it. I don't think it would be appropriate to interrupt the case of AMCU to – I was...
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proposing to allow NUM to lead their evidence next after
AMCU –

MR NTSEBEZA SC: Subject to –

CHAIRPERSON: And as I see it, you understand I’m expressing prima facie views for your benefit so you can deal with them, not necessarily now but subsequently – it would be more appropriately dealt with thereafter. But the point I was making is, I only got the papers now and I assume that if there are parties who wish to oppose, they may wish to file papers in response and that was the only point I was making, but I’m not minded to allow the application to be heard tomorrow, subject of course to what you’re going to say to me now, for the reason I indicated.

MR NTSEBEZA SC: Thank you, Chairman. We would really appreciate an indulgence from everybody if we were to move the application tomorrow but of course it will depend on whether the parties want to file opposing papers or just argue on whatever we – the reason that we were keen that it should be dealt with this side of Friday is because the families - for all sorts of reasons including the fact that it is now festive season, it’s going towards the time when they will have to prepare for the festive season and all of that – have indicated that this coming Friday, end of November, will be the last day at which they will be here and they – until January. So the only time they will be returning will be in January and as and when, therefore, we move the application, they would have loved to be here to hear the application, what it is that is being said, which is why we thought that we could move the application and then the question of them leading evidence, whether in phase 1 or phase 2, will strongly – as you will have seen in the papers – we’ll strongly argue for it being heard as part of phase 1. That will be as and when, when they lead evidence. The main aim of the moving of the application will be to see to what extent the Commission, subject to argument, would be persuaded by some of the things that are key and which we canvass in the papers. I’ve spoken, or at least we have spoken to Mr Burger who would obviously be the one to cross-examine Mr Mathunjwa hereafter and he is not –

CHAIRPERSON: Pardon me for a moment, Mr Ntsebeza. Would someone please go and speak to the person making a noise outside and tell him to stop and if he doesn’t, something will happen to him.

MR NTSEBEZA SC: I’m advised that it doesn’t appear, subject to the Commission, as though there is resistance to the – from AMCU, from Lonmin and from SAPS that the application can be moved tomorrow, tomorrow morning.

have experienced, that we can’t find no generals and no management, this is the situation that we are facing and the management has reneged from its commitment and the SAPS, you can’t meet any senior officials of the SAPS.

MR BRUINDERS SC: Mr Mathunjwa, what did you decide to do, given the situation at that time where you couldn’t find a Lonmin person to speak to, couldn’t find a senior SAPS person to speak to?

MR MATHUNJWA: I spoke to the branch committee and amongst ourselves and I explained what we are experiencing and subsequent to that, trying to list what has happened – the SAPS are nowhere to be found, management is not willing to engage with AMCU and therefore it reminded me what was said in the meeting of the 15th whereby Mr Mokwena, who said something in the effect that the police will go to the mountain and do their job, so all those things came to my mind, that really we are facing a very serious situation.

MR BRUINDERS SC: What did you expect might happen?

MR MATHUNJWA: I feared for the worst.

MR BRUINDERS SC: What was decided that you would do?

MR MATHUNJWA: Then we decided to go back to the mountain, to the koppie.
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MR BRUINDERS SC: Why was it decided that you would go back to the koppie?

MR MATHUNJWA: We have to give the workers or the strikers the feedback, but before that, I made an SMS to the generals, General Mpembe and General Annandale and Xolani Gwala and perhaps for management, I don't quite remember, I'm not looking at my statement but I did make some effort.

MR BRUINDERS SC: At paragraph 84 you record what your SMS was, not so?

MR MATHUNJWA: Paragraph what?

MR BRUINDERS SC: 84.

CHAIRPERSON: Yes and the same SMS is quoted in paragraph, in slide 186 of the SA Police Service presentation, Exhibit L. That is General Annandale's reply.

MR MATHUNJWA: Yes, that's the SMS I sent.

MR BRUINDERS SC: And will you read it?

MR MATHUNJWA: Yes, it reads as follows.

"Since no person is available to give feedback to, we are going back to the employees to inform them no-one is available. We have tried our best without co-operation from anyone. Let peace prevail."

MR BRUINDERS SC: What was General Annandale's response?

MR MATHUNJWA: I saw the SMS saying that Annandale there.

MR BRUINDERS SC: You say in paragraph 85 that before you get to the koppie you had an interview with eTV?

MR MATHUNJWA: That's correct.

MR BRUINDERS SC: And where was that?

MR MATHUNJWA: That was there by the koppie.

MR BRUINDERS SC: And what was the conclusion that you had reached which you conveyed to the eTV interviewer?

MR MATHUNJWA: I conveyed almost the same message, that there was no co-operation that I received from management, either the SAPS. It was eTV that was interviewing myself and then I further said the writing is on the wall, as it was clear to me that the police were going to shoot these people.

MR BRUINDERS SC: Why was it clear to you that the police were going to shoot the strikers?

MR MATHUNJWA: I mean, firstly, when we were from the koppie, from the first session of the report, we went back to the JOC to give a report back and there was no-one available from the SAPS that could receive the information from the strikers. And also you could see the environment was getting busier and busier with regard to police movement and you can see some helicopter flying and that was the reason, and also during that interview you can see the SAPS, those wearing black berets and what, they were coming in numbers.

MR BRUINDERS SC: After your eTV interview did you go to the koppie?

MR MATHUNJWA: Yes, I mean when the eTV asked me what's next, what will I do, I said to them it's out of my hands, it's in God's hands, so I don't have any control of the situation, it's in God's control now. And then I was also being interviewed by Al Jazeera, also I conveyed almost the same message to them and then I proceeded to the group of police there which were two black officers, on who was a little bit light in complexion which looked senior when you look at the shoulders and then I asked who was in charge of the operation. And then he showed me one police officer, a white police officer which I cannot recall him but is saw earlier on he was sitting there.

MR BRUINDERS SC: What did you say to him?

MR MATHUNJWA: Yes, I explained to him the challenges that I faced, that I couldn't meet the Provincial Commissioner at the JOC and, or other SAPS senior officials, so there's no co-operation. And then he said okay, wait, I will call General Naidoo. He let me wait for about 10 minutes, 15 minutes. Indeed I did wait and then there was no response until that 15 minutes or so lapses.

MR BRUINDERS SC: Did you then go to the koppie?

MR MATHUNJWA: Yes, then I proceeded to the koppie.

MR BRUINDERS SC: Did you speak to the strikers at the koppie?

MR MATHUNJWA: Yes, I spoke to the strikers at the koppie.

MR BRUINDERS SC: What did you say to them?

MR MATHUNJWA: I told them that no-one was coming to receive what you told us, or no-one to be addressed. There was no general, there was no management. MR BRUINDERS SC: What else did you say to them?

MR MATHUNJWA: Would you please repeat that?
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1 MR BRUINDERS SC: What else did you say to them?
2 [15:38] MR MATHUNJWA: I told them that they are going to be killed, they are going to be shot at, let them leave this mountain and disperse, and further made an example of a ram, that when the ram retreats it’s not that he is failing or he’s been defeated but it’s just to get more energy and when it comes back, it will hit hard. So therefore by leaving this kopje and returning back to your places, is not that you are defeated. You just retreat and to re-strategise.
3 MR BRUINDERS SC: Is there anything else that you said to them?
4 MR MATHUNJWA: Yes, I mentioned that by going, by retreating is not that you will lose. And I mentioned again and again that they must leave this kopje.
5 MR BRUINDERS SC: Mr Mathunjwa, did any of the strikers on the kopje speak to you or to the rest of the strikers?
6 MR MATHUNJWA: Yes. After my, after I had delivered that message to them, some of the strikers came forward.
7 MR BRUINDERS SC: What did they say?
8 MR MATHUNJWA: They said they are not going to attack or kill anyone. They will sit here, that will be only the police will come and kill them but they will never attack any police. And then they also thanked me that you’ve done a very good job, we’ve seen you trying with no assistance, with no police around you escorting you, so we thank you for that but for now, we ask you to leave the place. They said they wanted to talk to their employer and the employer never came. Then they say they will sit here.
9 MR BRUINDERS SC: Did you leave? Did you leave?
10 MR MATHUNJWA: Yes, eventually I got into the car and I drove a few metres, then I stopped again. If I recall, I said to the comrades in the car, we cannot leave these workers, they are going to be killed so we can’t just leave them. At the same time while I was still waiting, they were waving, the workers were waving to me that I must leave.
11 MR BRUINDERS SC: When you left, did you notice any of the strikers on the kopje, were there any of them who started leaving?
12 MR MATHUNJWA: Ja, let me just finish before that one. As I was trying to say to the comrades in the car, let’s not leave these workers because I see they’re going to kill them, one of the comrades in the car responded by saying if we are all killed, who’s going to...

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MR BRUINDERS SC: What did they want?

MR MATHUNJWA: They stopped me, like showing the direction to go back but I proceeded and I stopped and then they asked me where I'm going. I said "I'm leaving" and they said "Who are you?" I explained myself, who I am. They said, they went back to one of the black Jeeps which has GP registration with dark windows.

There were occupants inside but which I couldn't see, but behind them there was a lot of contingents of police. Some of them pulled out from their Combis with their rifles and they kneeled facing our car. That was very traumatic but then they went to that Jeep for quite some time and then they came back, they said "Yes, you are union officials, you may leave."

MR BRUINDERS SC: Did you then leave the area?

MR MATHUNJWA: Then we leave the area just behind the koppie, I think it's Marikana.

MR BRUINDERS SC: Did any of you in the car receive a telephone call while you were on your way out?

MR MATHUNJWA: Yes. After we crossed the railway line and then after you cross the railway line, turn to your right, there's like a curve, the road is bending and then after we took the straight line then the phone rang to one of the comrades who was inside the car and then he received the phone and he reported to me that this phone is telling them that the police are killing the workers.

MR BRUINDERS SC: I'm not going to ask you anything –

MR MOTHIBEDI SC: Sorry, Mr Chairman, in order to inform us what evidence is going to be led in this regard, can we be informed who the person, the name of the comrade is referred to and whether such a person, is he going to make a statement? Is he coming to testify?

CHAIRPERSON: The question is who is the branch chairperson who was called and who allegedly told your colleague in the motor car that the police were telling the workers? Can you remember who the branch chairperson was?

MR MATHUNJWA: Yes, he is Mr Jombo.

CHAIRPERSON: And based on what you understand, was he the person who made the statement which you've just reported to us, namely that the police were killing the workers?

MR MATHUNJWA: Yes, that's correct.

CHAIRPERSON: Does that satisfy you?

MR MOTHIBEDI SC: If Mr Jombo is going to be called or not?
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1 suffered following the massacre that took place at Lonmin.
2 However, we would like the employer to afford the workers
3 the same opportunity. We should note the danger of forcing
4 people to report back to work in light of their
5 psychological trauma and the safety implications of these
6 workers reporting back to work today. As AMCU, we propose
7 an urgent meeting with management during the course of the
8 day to discuss this matter and its implications. Yours in
9 social justice, Mr Joseph Mathunjwa, President.”
10 MR BRUINDERS SC: We have no further
11 questions, Mr Mathunjwa.
12 CHAIRPERSON: The Commission will adjourn
13 until 9:30 tomorrow morning.
14 [COMMISSION ADJOURNED]
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