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 23 29 NOVEMBER 2012 PAGES 2389 TO 2492

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE

© REALTIME TRANSCRIPTIONS
29th November 2012

Marikana Commission of Inquiry
Rustenburg

Page 2389

1 [PROCEEDINGS ON 29 NOVEMBER 2012]
2 [09:33] CHAIRPERSON: The Commission resumes. Mr Bruinders, before we - is Mr Bruinders not here? Ms Barnes
3 -
4 MS BARNES: Mr Bruinders sends his apologies.
5 CHAIRPERSON: - you’re standing in for him.
6 MS BARNES: Indeed.
7 CHAIRPERSON: Or sitting in for him.
8 Yesterday Mr Mothibedi asked whether AMCU intended calling
9 the – I think it was the branch chairperson who had spoken
10 to Mr Mathunjwa on the telephone and made a report to him.
11 Mr Mathunjwa identified the person concerned and Mr
12 Mothibedi wanted to know whether you were intending to call
13 him and, if so, whether he'd get a statement and I told him
14 then that he would find out in the course of time. Well,
15 I’m hoping he can find out now. Have you decided whether
16 he's going to be called?
17 MS BARNES: Chair, I don't as yet have a
18 final instruction on that. I will attempt to obtain one
19 and revert as soon -
20 CHAIRPERSON: Yes, and as soon as you
21 have that instruction would you please communicate to Mr
22 Mothibedi or Mr Semenya, who is his leader, with that
23 tomorrow and will be returning in January and I conferred

Page 2390

1 information?
2 MS BARNES: We will.
3 CHAIRPERSON: Together with a copy of –
4 and if the answer is, you're going to call him, with a copy
5 of a statement so that they can prepare suitably. Thank
6 you.

7 MR BURGER SC: Chair, on the same subject
8 that you raised with my learned friend, you will remember
9 that we also had a debate about witnesses to be called. I
10 simply assume that those witnesses are not to be called and
11 I’ll ask the questions of Mr Mathunjwa, if I'm allowed to,
12 on the basis that they won't be called.
13 CHAIRPERSON: Before you make an
14 irrevocable assumption, perhaps we should ask Ms Barnes
15 whether the assumption will be correct. Ms Barnes, you
16 heard what Mr Burger said.
17 MS BARNES: Yes Chair, as I indicated
18 earlier, I don't yet have a final instruction in relation
19 to the further witnesses.
20 CHAIRPERSON: That means then, I take it,
21 that Mr Burger can at least pro tem assume that the
22 witnesses may not be called and may then cross-examine on
23 the basis of that assumption. That must be so.
24 MS BARNES: Yes, Chair.
25 CHAIRPERSON: Do the evidence leaders

Page 2391

1 wish to avail themselves of their right to cross-examine Mr
2 Mathunjwa first or are they prepared to stand back for the
3 moment for representatives of the parties?
4 CROSS-EXAMINATION BY MR MADLANGA SC: Mr
5 Chairman, commissioners, there are questions on just two
6 issues. Mr Mathunjwa, you mentioned that the protesters
7 were shot at by NUM officials/members and that two people
8 were killed. Do you know who the people that were killed
9 are? Can you give us names, please?
10 MR MATHUNJWA: No, I do not know them.
11 That's what I overheard.
12 MR MADLANGA SC: And if I were to suggest
13 that according to information that we have received, it
14 looks like nobody actually died, would you accept that or
15 not?
16 MR MATHUNJWA: I will take as you just
17 said.
18 CHAIRPERSON: Does that mean that you are
19 prepared to concede that though people may well have been
20 shot on the day in question, you've got no evidence to the
21 effect that any of those who were shot, died?
22 MR MATHUNJWA: That's correct.
23 MR MADLANGA SC: I will now take you to
24 the meeting that was attended by General Mpembe -
25 CHAIRPERSON: Mr Madlanga, before you

Page 2392

1 proceed, Mr Ntsebeza has raised his hand and turned on his
2 microphone.
3 MR NTSEBEZA SC: Mr Chairman, members of
4 the Commission, I crave your indulgence. I thought that
5 there was a matter that we could deal with rather very
6 quickly and that is the question of the application by the
7 families that I dealt with yesterday. I indicated to you -
8 CHAIRPERSON: Yes, I had received a
9 message, which presumably you may now wish to repeat to me
10 in open Commission so that we can then proceed with the
11 matter on the basis of what you're going to tell me.
12 MR NTSEBEZA SC: Indeed, indeed Mr
13 Chairman, and also if you could also address the families
14 themselves so that they shouldn't feel that they are not
15 being - they are being sidelined or if not.
16 CHAIRPERSON: Mr Madlanga, I take it you
17 won't mind your cross-examination being interrupted on this
18 point?
19 MR MADLANGA SC: Not by Mr Ntsebeza, Mr
20 Chairman, no.
21 CHAIRPERSON: There appears to be some
22 kind of delectus personae which I don't know [indistinct].
23 MR NTSEBEZA SC: Mr Chairman, we had
24 indicated yesterday that the families would be leaving
25 tomorrow and will be returning in January and I conferred
29th November 2012
Marikana Commission of Inquiry
Rustenburg

with my colleagues and Mr Burger, for instance, wanted to get on with the cross-examination of Mr Mathunjwa right away. I've got an opposed application in the High Court in Gauteng tomorrow morning and I have conferred with Mr Semenya and there's an indication that this application should rather be heard later on when everybody will have reflected on how to deal with it.

We have indicated that our preference would have been that we should move it today, but we understand that it should be dealt with later on and on that basis we are comfortable if the matter were dealt with in the first phase - that would be at a time when the families are back and we wouldn't mind the matter being dealt with on the 21st, failing the 21st of January 2013, failing that date, on the Thursday or Friday in that very first week of the Commission's resumption.

CHAIRPERSON: What you're asking for is that the application be heard on the 21st of January or the 4th or 5th of January. What is the reason for the alternative dates? Are you suggesting the families may not be back by the 21st?

MR NTSEBEZA SC: I've got engagements on the 20 - on the Tuesday and Wednesday and I was going to seek the indulgence of the Commission to excuse me on those two days.

CHAIRPERSON: Well, let's proceed on the basis that for the moment the application will be heard on the 21st January. If, for some reason, it's not possible to do it on that day, it can be done on a subsequent day reasonably close to the 21st which suits the parties and which you can discuss with your learned friends and arrange with them, but for the moment I think the way forward is for us to, provisionally at least, state that the application will be moved on the 21st January. And do you wish to say something in regard to - do you want to address some remarks to the families so that they can understand the reason for this and why, that following this procedure will in no way prejudice them and won't place them in any weaker position than they would otherwise be in and that their rights are being fully respected insofar as possible.

MR NTSEBEZA SC: Chairman, I think you are best placed to do that because I would do that anyway when we consult, but it would have much weight if it was coming from the Chair.

CHAIRPERSON: I take it that what I said a moment ago can be interpreted to them and I would hope that that would be sufficient in the circumstances. We will then proceed on that basis and, Mr Madlanga, you were cross-examining, you dealt with one topic. You said you had only one other topic to deal with.

CHAIRPERSON: Do you have the document, Mr Mathunjwa? It looks like it, yes.

MR MATHUNJWA: Yes it looks like this is the correct one.

MR MADLANGA SC: Volume - for colleagues it's volume F for Freddy, H342, thank you. Mr Mathunjwa, against line 13, against line 13 at page 22 the following appears and it's you speaking. "I mean, whether we go there or we don't go there but the lives will be lost according to the information we received from general." Am I correct that the reference to general there is a reference to General Mpembe?

MR MATHUNJWA: That's correct.

MR MADLANGA SC: Volume - for colleagues Am I correct also that grammatically, when you say lives will be lost, that is something that is definite, certain to happen?

MR MATHUNJWA: The manner in which the general was stating in the meeting.

MR MADLANGA SC: Before your view of what the general said, I just want to get an idea whether you accept that grammatically what I've just read to you which was said by you, that means something definite or something certain - lives will be lost.

MR MATHUNJWA: Yes, as I've said that based on that general who was telling us in the meeting that lives are, people are being killed, so that was my reference point that yes, people will still be killed.

MR MADLANGA SC: I have gone through the transcript looking for the part where the general makes that definite statement that lives will be lost. What I was able to find is at page 2 and there he says lives must - might be lost. Or in fact if I were to read what he says, he says "The operation has reached to a sensitive stage that we might be, we might go and lose more lives."

And this is against line 18, it starts at line 18 at page 2.

2. Do you see that?

CHAIRPERSON: He goes on to say, "We cannot lose -"

MR MADLANGA SC: Yes, that is so, that is so, yes. But you notice that he did not say lives will be lost, he said lives might be lost.

MR MATHUNJWA: That's correct, I was referring to that incident.

MR MADLANGA SC: We do know, of course,
29th November 2012  Marikana Commission of Inquiry  Rustenburg

25 any killing.
24 MR MATHUNJWA: I will distance myself to lawful.
23 MR SEMENYA SC: And as a leader you'll killings.
22 MR SEMENYA SC: That, as a leader, you could you please repeat your question again?
21 MR MATHUNJWA: I don't understand that, you also would reject unlawful killings?
20 MR SEMENYA SC: That, as a leader, you will reject any form of unlawful killings of human beings.
19 MR MATHUNJWA: I will condemn any killings.
18 MR SEMENYA SC: And as a leader you'll distance yourself from any form of killings that are not lawful.
17 MR SEMENYA SC: That, as a leader, you will reject any form of unlawful killings of human beings.
16 MR SEMENYA SC: And as a leader you will condemn, reject and distance yourself from any unlawful damage to property?
15 MR SEMENYA SC: No less than you do as a leader, am I correct?
14 MR SEMENYA SC: Of course, yes.
13 MR SEMENYA SC: It is correct.
12 MR SEMENYA SC: It will reject any form of unlawful injury caused to other people as well.
11 MR MATHUNJWA: I will condemn it across of AMCU, right?
10 MR MATHUNJWA: Can you repeat again?
9 MR SEMENYA SC: You will condemn it more if it is perpetrated by one of your members or members of AMCU, right?
8 MR MATHUNJWA: Yes.
7 MR SEMENYA SC: Especially if those killings are done by AMCU people, correct?
6 MR MATHUNJWA: Not only AMCU people, any person.
5 MR MATHUNJWA: Yes.
4 MR SEMENYA SC: In other words, you don't condemn a lawful killing but unlawful, that means that will be the case.
3 you're being asked is whether you condemn unlawful killings – in other words, you don't condemn a lawful killing but you condemn unlawful killings. That's the thrust of the question, you haven't answered it yet.
2 MR MATHUNJWA: If the Commissioner distinguishes between the killings using lawful and unlawful, that means that will be the case.
1 CHAIRPERSON: That's the question you were asked by Mr Semenya, you see. So I understand you to say you agree with that, you condemn unlawful killings, all unlawful killings, is that right?

20 CHAIRPERSON: Are you going to cross-examine first, or Mr Burger?
19 MR SEMENYA SC: Thank you, Chair.
18 CHAIRPERSON: Thank you, Mr Madlanga. Mr Mathunjwa, as a leader I take it you reject armed protest. MR MATHUNJWA: That's correct.
17 CHAIRPERSON: Are you going to cross-examine first, or Mr Burger?
16 MR SEMENYA SC: Thank you, Chair.
15 CHAIRPERSON: No, I'll go first this time, Chair and commissioners.
14 CROSS-EXAMINATION BY MR SEMENYA SC: Mr Mathunjwa, as a leader I take it you reject armed protest.
13 MR SEMENYA SC: You would actually condemn it where it happens, is that right?
12 MR MATHUNJWA: Not only for Lonmin, for motor vehicles belonging to Lonmin, you would reject and distance yourself from any unlawful damage to property?
11 MR MATHUNJWA: I will condemn it.
10 MR SEMENYA SC: I take it AMCU rejects armed protest as well, correct?
9 MR MATHUNJWA: That's correct.
8 MR SEMENYA SC: Will distance itself from any form of armed protest as a union, correct?
7 MR MATHUNJWA: That's correct.
6 MR SEMENYA SC: Will actually condemn any armed protest, particularly or especially relating to its members.
5 MR MATHUNJWA: I will condemn it across the board, irrespective whether it's an AMCU member or it's not an AMCU member, I will condemn it.
4 MR SEMENYA SC: Now I can safely accept that even AMCU rejects any forms of unlawful killing, as a union.
3 you're being asked is whether you condemn unlawful killings – in other words, you don't condemn a lawful killing but you condemn unlawful killings. That's the thrust of the question, you haven't answered it yet.
2 MR MATHUNJWA: Yes.
1 CHAIRPERSON: The point of the question is unlawful killings. If someone kills someone else in self-defence, if someone was attacking you and your life was in danger and you had to kill the other person to save yourself, defend yourself, that would be a lawful killing, provided certain other requisites were present. Now what you're being asked is whether you condemn unlawful killings – in other words, you don't condemn a lawful killing but you condemn unlawful killings. That's the thrust of the question, you haven't answered it yet.

1 [09:53] CHAIRPERSON: The point of the question is unlawful killings. If someone kills someone else in self-defence, if someone was attacking you and your life was in danger and you had to kill the other person to save yourself, defend yourself, that would be a lawful killing, provided certain other requisites were present. Now what you're being asked is whether you condemn unlawful killings – in other words, you don't condemn a lawful killing but you condemn unlawful killings. That's the thrust of the question, you haven't answered it yet.
11 MR MATHUNJWA: If the Commissioner distinguishes between the killings using lawful and unlawful, that means that will be the case.
10 CHAIRPERSON: That's the question you were asked by Mr Semenya, you see. So I understand you to say you agree with that, you condemn unlawful killings, all unlawful killings, is that right?
9 MR MATHUNJWA: Yes.
8 MR SEMENYA SC: Especially if those killings are done by AMCU people, correct?
7 MR MATHUNJWA: Not only AMCU people, any person.
6 MR SEMENYA SC: But you'll condemn it more if it is perpetrated by one of your members or members of AMCU, right?
29th November 2012
Marikana Commission of Inquiry
Rustenburg

Page 2401

1 any person’s property being damage, I’ll condemn it.
2 MR SEMENYA SC: And that would be true of AMCU as a union as well, it would condemn this damage to property, the torching of cars, et cetera, am I right?
3 MR MATHUNJWA: That’s correct.
4 MR SEMENYA SC: And I’m correct that as a leader you would support the functions of the police where they’re done within the parameters of the law, am I right?
5 MR MATHUNJWA: That is correct.
6 MR SEMENYA SC: And AMCU does accept the South African Police Service as the lawful law enforcer in the country, am I right?
7 MR MATHUNJWA: That is correct.
8 MR SEMENYA SC: And you would expect your members to obey lawful instructions by police officers, wouldn’t you?
9 MR MATHUNJWA: Yes, as a citizen of the country, yes.
10 MR SEMENYA SC: So when told, “Put your weapons down” by a police officer you expect them to comply?
11 MR MATHUNJWA: That’s correct.
12 MR SEMENYA SC: And when they don’t, you would look at that conduct with disapproval.
13 MR MATHUNJWA: That’s correct.

Page 2402

1 MR SEMENYA SC: If given a chance, you would communicate your disapproval to members where they are in disobedience to a lawful order, right?
2 MR MATHUNJWA: Would you please repeat again your question?
3 MR SEMENYA SC: You would, if given an opportunity, express your disapproval to your members where they are in disregard of a lawful order.
4 MR MATHUNJWA: Yes, that’s correct.
5 MR SEMENYA SC: In fact, when you look at your members in flagrant disregard of the laws of the country, you’ll speak against it, am I right?
6 MR MATHUNJWA: That’s correct.
7 MR SEMENYA SC: What you will not do is to excite them with political rhetoric that may lead to violence, am I right?
8 MR MATHUNJWA: Well, it depends where we are, where we are talking about.
9 MR SEMENYA SC: You’re not suggesting to us there are situations where you would use political rhetoric to excite them towards violence, are you?
10 MR MATHUNJWA: No, I’m not suggesting that.
11 MR SEMENYA SC: So I must be right that, as a leader, you would not use political rhetoric in a very explosive environment, am I right?

Page 2403

1 MR MATHUNJWA: That’s correct.
2 MR SEMENYA SC: And relating to matters labour, but I’m going to steer clear of the facts on this one, but I accept that as a leader you understand
3 MR MATHUNJWA: Yes.
4 MR SEMENYA SC: And bargaining often happens in boardrooms, am I right?
5 MR MATHUNJWA: Yes, it starts at the boardrooms.
6 MR SEMENYA SC: And they are always peaceful, aren’t they?
7 MR MATHUNJWA: Not really.
8 MR SEMENYA SC: Under the law, they’re always peaceful, correct?
9 MR MATHUNJWA: Under that context, correct.
10 MR SEMENYA SC: Okay. Now, I want to show you a video of the 13th of August 2012 and I just want to test with you whether what premise we have agreed on, is correct.
11 CHAIRPERSON: Have we seen this video already? If not, we must give it an exhibit number. If we have seen it, perhaps you can give us the exhibit number it
| Page 2405 | 1 | CHAIRPERSON: | Isn’t that a matter to be sorted out in re-examination if he’s asked questions which are unfair or - well, no, if they are unfair you can object and I’ll uphold the objection. If he’s asked questions which present an inadequate reflection of what he really would wish to say, that’s a matter which you can deal with in re-examination, so - |
| Page 2406 | 1 | of, her point is that that’s unfair, as I understand her objection, and I’m giving you an opportunity to reply to the objection. |
| Page 2406 | 2 | MR SEMENYA SC: | Chair, I propose rather to play the tape. I don’t concede the objection to be founded, through. |
| Page 2406 | 3 | CHAIRPERSON: | As far as I can recall this is quite a long tape. I don’t know whether you want the whole of it to be shown, Ms Barnes, just enough to apprise the witness of the context so that the questions that he’s asked can be approached by him with an appreciation of the context. Would that be a fair approach? |
| Page 2407 | 1 | were killed also. Have you seen that video? |
| Page 2407 | 2 | MR MATHUNJWA: | I could not recall whether I was here because some of the sessions I was not in attendance of the Commission. |
| Page 2407 | 3 | CHAIRPERSON: | But when you were being precognized before you gave evidence, were you not shown videos that had been seen here that you hadn’t seen because you weren’t here? |
| Page 2407 | 4 | MR MATHUNJWA: | No, no, no. |
| Page 2407 | 5 | CHAIRPERSON: | Mr Semenya, I suggest you proceed as you proposed, i.e. that is to say showing him the clip or enough of the clip to inform him of the context so that any questions you ask, that you propose asking, will not be based on or suffer from the defect that he’s not aware of the full context. |
| Page 2407 | 6 | MR SEMENYA SC: | Yes, Chair. Shall we play the video until the point where the crowd disperses? |
| Page 2407 | 7 | CHAIRPERSON: | And I take it, it won’t be necessary for there to be interpretation to slow things down because it’s already been shown and there has been interpretation at that stage. |
| Page 2408 | 1 | MR SEMENYA SC: | Thank you, Chair. Mr Mathunjwa, I’m sure you now have the context. |
| Page 2408 | 2 | MR MATHUNJWA: | Yes, through the Chairman, I’ve got to check whether is this video footage being played to the end because there was this issue that before it was not played accordingly, so I just want to find out for those that have watched it before, does it end there? |
| Page 2408 | 3 | MS BARNES: | It does seem to be the complete clip – the complete clip of the addresses, that is. |
| Page 2408 | 4 | MR MAHLANGU: | Am I right that you say this clip ends where it - |
| Page 2408 | 5 | MS BARNES: | This is the complete footage of the addresses. |
| Page 2408 | 6 | MR SEMENYA SC: | Mr Mathunjwa, do you now have the context? |
| Page 2408 | 7 | MR MATHUNJWA: | Yes, I have the context but I did ask a question through the Chairman, whether this clip is right at the end, since I never had privy to watch it – |
| Page 2408 | 8 | CHAIRPERSON: | Well, as I understand the way it works is, there was a discussion by the railway line where the general addressed the strikers and the strikers replied and he asked them to hand over their weapons, they declined, they said they wanted to go to the koppie and... |
that they would hand, as I understand it, they would hand
them over there after certain things had happened. And he
said no, no, he wanted the weapons at that point. That was
then the end of the discussion and they started walking off
in the direction of the koppie, in fact they went via the
informal settlement and something happened there but that’s
not, as I understand it, relevant to what we’re busy with
now. This is a complete clip, as I understand it - if I’m
wrong, I’ll be corrected - of the exchanges between the
general on the one hand and some of the strikers, I take it
the leaders of the strikers, on the other at the spot near
the railway line. And it ends with the end of the
discussion and the strikers moving off, we saw at the end
of the clip, moving off in the direction of the koppie. Of
course we know something else happened after that, but that
particular video, as I understand it, it’s a complete video
of what took place near the railway line. Is that correct,
Mr Semenyana?

CHAIRPERSON: Right. So that, I hope,
answers your question satisfactorily.

MR MATHUNJWA: Yes, sir.

MR SEMENYA SC: Now, Mr Mathunjwa, that’s
an armed protest, do you accept that?

MR MATHUNJWA: Yes.

MR SEMENYA SC: That is correct, Chair.

CHAIRPERSON: Right. So that, I hope,
answers your question satisfactorily.

MR MATHUNJWA: Yes.

MR SEMENYA SC: Now, Mr Mathunjwa, that’s
an armed protest, do you accept that?

MR MATHUNJWA: Yes.

CHAIRPERSON: Mr Mathunjwa, there is a
distinction, I think, which Mr Semenyana is making and I’m
not sure that you understand it, so perhaps I must try to
explain it to you. You say consistently that you condemned
violence or bloodshed. Mr Semenyana’s questions aren’t only limited to
the strike itself and also with the media briefing.

MR SEMENYA SC: I’m going to have to
press you, Mr Mathunjwa. Are you saying you said to SAfm -
I, as Mathunjwa, condemn this armed protest by some of our
members?

MR MATHUNJWA: If I was at SAfm or any
platform, I represent the organisation, I speak on behalf
of the organisation.

MR SEMENYA SC: Okay, now that you talk
in that capacity, did you say on SAfm – AMCU, for which I
speak, condemns members of AMCU who participate in armed
protest?

MR MATHUNJWA: Yes.

MR SEMENYA SC: So, too, that of the 16th
August 2012, right?

MR MATHUNJWA: Yes.

MR SEMENYA SC: By AMCU members, am I
right - at least some of them.

MR MATHUNJWA: You are wrong.

MR SEMENYA SC: At least some of them.

Am I wrong still?

MR MATHUNJWA: I won’t deny that, that
some were AMCU members.

MR SEMENYA SC: As a leader, have you
ever condemned the armed protest by some of the AMCU
members during this period?

MR MATHUNJWA: Yes, but also it needs to
be known that this strike was not the strike called by
AMCU. It was the workers themselves who were at the
strike.

MR SEMENYA SC: I have never seen any
document where you, as a leader of AMCU, is condemning this
armed protest. Where did that happen?

MR MATHUNJWA: There are instances where
I’ve been addressing workers in the mountain several times.

MR SEMENYA SC: I’m sure you’re not
saying to us that you told the workers, I condemn your
armed protest.
29th November 2012  
Marikana Commission of Inquiry  
Rustenburg

MR MATHUNJWA: Yes.

CHAIRPERSON: Now that the point has been clarified you may wish to proceed with your cross-examination.

MR MATHUNJWA: I might not have that recollection of the exact words as you are saying but I’ve got the recollection that we did denounce violence.

MR SEMENYA SC: Of course you understand I’m not addressing violence, right, so is your memory failing or you did not say so?

MR MATHUNJWA: The answer I’ve given is my best that I could recall.

MR SEMENYA SC: You have not even recorded anywhere condemning armed protest with the media publicity you have had over this matter, am I right?

MR MATHUNJWA: That is not true. In one of the media statements we said that we are the union that respects the Constitution of the country and also we abide by the peace.

MR SEMENYA SC: Mr Mathunjwa, I’m addressing you as the president of a union that was involved in the tragic loss of many lives, injury, damage to property, and I’m trying to understand whether you ever took a moment of saying to the AMCU members, I condemn your armed protest, that’s not how it’s done.

MR MATHUNJWA: Yes, we did, as I’ve said earlier on.

MR SEMENYA SC: And you did it in letters to management, as you earlier said.

MR MATHUNJWA: Yes, we did make correspondence to management.

MR SEMENYA SC: No, I’m not discussing whether that you made letters to management. I’m saying that condemnation is conveyed in the letters you say you took to management.

MR MATHUNJWA: I believe so.

MR SEMENYA SC: And your belief is well-founded, right?

MR MATHUNJWA: Yes.

MR SEMENYA SC: And you also say you condemned the conduct of armed protesters by AMCU in media briefings.

MR MATHUNJWA: We’ve condemned all forms of violence in the media.

MR SEMENYA SC: Now I’m sure you don’t want the Chairman to revisit the same subject. I’m talking about armed protest, I’m not talking about violence.

MR MATHUNJWA: Yes, we did condemn it.

MR SEMENYA SC: This is in what medium, SABC or SAFm or what? Where does that appear?

MR MATHUNJWA: We made many press briefings. It might be one of the press briefings that we had, I might not remember which one exactly but if we can go through to the media statements that we made, we’ll happen to find that.

MR SEMENYA SC: I invite you, when you do have some time, to get us that, Mr Mathunjwa. Do you see in that video footage General Mpembe pleading with the crowd to put their arms down?

MR MATHUNJWA: That’s correct.

MR SEMENYA SC: And you saw them walk away with their arms?

MR MATHUNJWA: What I saw before that, there was negotiations that was going on there.

MR SEMENYA SC: Did you hear my question?

MR MATHUNJWA: Loud and clear.

MR SEMENYA SC: Can I then ask you to answer it?

MR MATHUNJWA: I saw them moving.

MR SEMENYA SC: In flagrant disobedience to a lawful instruction to put their weapons down, correct?

MR MATHUNJWA: I’m not in the position, because there was negotiations going on.

MR SEMENYA SC: After the failed negotiation by the general that they put the weapons down, they just stood up in flagrant disregard of that lawful instruction, did you see that?

MR MATHUNJWA: As I’ve said earlier on, there was a negotiation and subsequent to that then there was a movement of the strikers.

MR SEMENYA SC: Can I take advantage of your presence on that stand to tell all AMCU members that this type of behaviour AMCU condemns and rejects?

MR MATHUNJWA: AMCU will say repeatedly that we condemn any form of violence, as stated before.

MR SEMENYA SC: No Mr Mathunjwa, my question is very specific. I beseech you, I plead with you that of all AMCU who are listening to you testify, they should know in no unequivocal terms that this AMCU rejects.

MR MATHUNJWA: I don’t understand the question, with respect.

CHAIRPERSON: I think the question is quite clear. Of course it’s whether you understand it, with respect, is not relevant to whether the witness does but what the question amounts to is this, are you prepared,
<table>
<thead>
<tr>
<th>Page 2417</th>
<th>Page 2418</th>
<th>Page 2419</th>
<th>Page 2420</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. sitting as you are at the witness table, giving an answer</td>
<td>1. problem with that.</td>
<td>1. MR SEMENYA SC: We can accept that you</td>
<td>1. tell them that you’re not going to take their request until</td>
</tr>
<tr>
<td>2. to be heard by a number of members of AMCU which may well</td>
<td>2. to be heard by a number of members of AMCU which may well</td>
<td>2. had an opportunity to at least say to our AMCU members on</td>
<td>2. and unless they put their arms down, correct?</td>
</tr>
<tr>
<td>3. be broadcast nationally and internationally and heard by</td>
<td>3. be broadcast nationally and internationally and heard by</td>
<td>3. the mountain, this, as a union we condemn armed protest -</td>
<td>3. I don’t have a</td>
</tr>
<tr>
<td>4. members of AMCU outside this auditorium – are you prepared</td>
<td>4. members of AMCU outside this auditorium – are you prepared</td>
<td>4. that opportunity you had, am I right?</td>
<td>4. recollection of that.</td>
</tr>
<tr>
<td>5. to condemn armed protest? I think that’s the question. I</td>
<td>5. to condemn armed protest? I think that’s the question. I</td>
<td>5. [10:53] MR MATHUNJWA: I’ve told the workers.</td>
<td>5. But this recollection</td>
</tr>
<tr>
<td>6. think that –</td>
<td>6. think that –</td>
<td>6. MR SEMENYA SC: That you denounce armed</td>
<td>6. thing, is it a failing memory or are you saying that’s the</td>
</tr>
<tr>
<td>7. MS BARNES: As long as he makes it clear,</td>
<td>7. MS BARNES: As long as he makes it clear,</td>
<td>7. protest at the koppie, that’s what you told them?</td>
<td>7. best way to avoid a question?</td>
</tr>
<tr>
<td>8. with - he referred to “condemn this” which was, I think -</td>
<td>8. with - he referred to “condemn this” which was, I think -</td>
<td>8. MR MATHUNJWA: We said we don’t want to</td>
<td>8. MR MATHUNJWA: Thats what I’m saying.</td>
</tr>
<tr>
<td>9. CHAIRPERSON: Yes.</td>
<td>9. CHAIRPERSON: Yes.</td>
<td>9. MR SEMENYA SC: Now you say I’m not going</td>
<td>9. MR SEMENYA SC: Now if you did tell them</td>
</tr>
<tr>
<td>10. MS BARNES: - particularly unclear.</td>
<td>10. MS BARNES: - particularly unclear.</td>
<td>10. to negotiate, please put these weapons down and thereafter</td>
<td>10. you are not going to speak to the employer unless they put</td>
</tr>
<tr>
<td>11. CHAIRPERSON: I may have been a bit harsh</td>
<td>11. CHAIRPERSON: I may have been a bit harsh</td>
<td>11. trust me, I’ll go speak to the employer.</td>
<td>11. their weapons down, they must clearly have disobeyed you.</td>
</tr>
<tr>
<td>12. when I said what I did about you but I hope the question is</td>
<td>12. when I said what I did about you but I hope the question is</td>
<td>12. MR MATHUNJWA: Not to say they disobeyed</td>
<td>12. MR MATHUNJWA: I don’t want to be</td>
</tr>
<tr>
<td>13. now clear – if that is the question, Mr Semenya.</td>
<td>13. now clear – if that is the question, Mr Semenya.</td>
<td>13. me because there was a message that I had to convey back to</td>
<td>13. speculative on that issue.</td>
</tr>
<tr>
<td>15. Chair.</td>
<td>15. Chair.</td>
<td>15. I did say the very same thing that you are asking me.</td>
<td>15. I inviting you to speculate, sir. I do know that they did</td>
</tr>
<tr>
<td>17. Can I take advantage of your evidence now and have you tell</td>
<td>17. Can I take advantage of your evidence now and have you tell</td>
<td>17. MR MATHUNJWA: Thats what I’m saying.</td>
<td>17. MR MATHUNJWA: That is correct.</td>
</tr>
<tr>
<td>18. members of AMCU, all of them, that you as the president of</td>
<td>18. members of AMCU, all of them, that you as the president of</td>
<td>18. MR SEMENYA SC: So your request was not</td>
<td>18. MR SEMENYA SC: So your request was not</td>
</tr>
<tr>
<td>19. AMCU, you condemn this type of armed protest?</td>
<td>19. AMCU, you condemn this type of armed protest?</td>
<td>18. heeded, am I correct?</td>
<td>19. heeded, am I correct?</td>
</tr>
<tr>
<td>20. MR MATHUNJWA: Yes, I don’t have a</td>
<td>20. MR MATHUNJWA: Yes, I don’t have a</td>
<td>19. MR MATHUNJWA: - was your first question</td>
<td>20. MR MATHUNJWA: - was your first question</td>
</tr>
<tr>
<td>21.</td>
<td>21.</td>
<td>20. before that?</td>
<td>21. before that?</td>
</tr>
<tr>
<td>22.</td>
<td>22.</td>
<td>21. MR SEMENYA SC: Then they disobeyed your</td>
<td>22. MR SEMENYA SC: Then they disobeyed your</td>
</tr>
<tr>
<td>23.</td>
<td>23.</td>
<td>request to disarm before you can even go and speak to the</td>
<td>23. request to disarm before you can even go and speak to the</td>
</tr>
<tr>
<td>24.</td>
<td>24.</td>
<td>employer?</td>
<td>24. employer?</td>
</tr>
<tr>
<td>25.</td>
<td>25.</td>
<td></td>
<td>25. MR MATHUNJWA:</td>
</tr>
</tbody>
</table>
29th November 2012

Marikana Commission of Inquiry
Rustenburg

25 killed. Now I invite you to look at slides 52, 53 and 54.

Yes, Chair. Well, I just want to lead in before I give him the actual slide, if I may. Mr Mathunjwa, shortly after that group we saw kneeling down on the footage, two police officers were killed. Now I invite you to look at slides 52, 53 and 54.

Now once the general was disobeyed, this was an occurrence that followed. Would you, as AMCU, condemn it?

Yes, we condemn it.

It is more reprehensible because the police were not part of the conflict at Marikana, am I right?

Yes, I believe it was between the employer and the employees.

And the police were mere intermediaries trying to have law and order restored, am I right?

I believe that was the position.

Chair, I will request that we play footage where Mr Mathunjwa is seen kneeling down addressing the group on the 16th August.

[VIDEO IS SHOWN]

Thank you. The transcription of what you say is on Exhibit OO9. Do you have that in front of you? I’m told, Mr Mathunjwa, you confirmed that the transcript is an accurate account of what you were saying, what you said, rather.

Yes, that was – that was played, that was myself.

I do not see anywhere there where you say that the crowd must please leave. Are you able to show it to us?

Yes, once.

Mr Mathunjwa: Yes, we're saying we're having the transcript where you speak after kneeling down. I don't see anything where you're saying to them they must leave there.

Mr SEMENYA SC: I do not see anywhere

MR MATHUNJWA: Yes, once.

MR SEMENYA SC: You're not saying you knelt twice, are you?

MR MATHUNJWA: Yes, once.

MR SEMENYA SC: And I'm saying we're having the transcript where you speak after kneeling down. I don't see anything where you're saying to them they must leave there.

CHAIRPERSON: The kneeling down reference appears to be on page 13 of Exhibit OO9, near the foot of the page, nine lines from the foot actually.

MR SEMENYA SC: Do you see the transcript?

MR MATHUNJWA: Yes, I see the transcript.

MR SEMENYA SC: I’m putting it to you that nowhere are you saying there that they must leave. Correct?

If I may allow to report, I’ll read here - [African language].
MR MAHLANGU: Where I’m reading I’m saying, “Let us avoid the bloodshed.”

MR MATHUNJWA: And to avoid the bloodshed, I was referring there that they must leave.

MR SEMENYA SC: Can I refer you to Exhibit MN, which is your statement – Mother Nellie, M for mother and N for North or whatever. And another N for Ngolwana.

MR MAHLANGU: Is that the witness statement, Joseph Mathunjwa?

MR MATHUNJWA: Yes.

CHAIRPERSON: Sorry – it’s NN, is it? N for nobody.

MR SEMENYA SC: Do you have the document?

MR MATHUNJWA: Yes, I do have my statement before me.

MR SEMENYA SC: Can I invite you to go to page 27? You’ll see paragraph 88 there.

CHAIRPERSON: No, before he looks at 88, shouldn’t he look at 91? Paragraph 91 on page 27 says, “I said to them that it was not necessary and that they must please leave the koppie.”

MR MATHUNJWA: Yes, I do see that.

MR SEMENYA SC: And do you see also at, against paragraph 88 you say, “I knelt down, I pleaded with them, I was on my knees holding a microphone. I said, comrades, it has already been decided, please leave this place.” Do you see that?

CHAIRPERSON: No, Mr Semenya, that passage refers to his return visit to the koppie and he gave – he said yesterday in his evidence that he made two speeches and the first one was televised or was recorded on video and has been transcribed but he said the second speech that he made when he returned was not – or he certainly hasn’t, there isn’t a video before us on it. I understood him to say it hadn’t actually been videoed but that he then gave us a summary in his evidence as to what he said. So the passage that you are putting to him is, it is a profoundly significant request you’re making, if you made it, that they must please leave the koppie. Do you agree at least with me?

MR MATHUNJWA: Yes, I do see that.

MR SEMENYA SC: All my pleading was to say that the people must leave to avoid the bloodshed.

MR MATHUNJWA: I’m putting to you that the reason it is not there is because you didn’t say it.

MR MATHUNJWA: I don’t agree with that.

MR SEMENYA SC: But you agree that it is a significant statement to avoid the bloodshed you expected?

MR MATHUNJWA: All what I was saying there was to avoid the bloodshed.

MR MATHUNJWA: No, but what I’m putting to you is, it is a profoundly significant request you’re making, if you made it, that they must please leave the koppie. Do you agree at least with me?

MR MATHUNJWA: I said it as I’m saying, that let’s avoid the bloodshed.

MR SEMENYA SC: I’m saying, Mr Mathunjwa, that telling them to leave the koppie would have been one of the most significant statements that you’ve told them, correct?

MR MATHUNJWA: As I’ve said, that is not a conclusive tape of what I was saying at the mountain.

MR SEMENYA SC: Telling them to leave the koppie would’ve been a very significant request to make to them, is that accurate?

MR MATHUNJWA: As you earlier stated that...
29th November 2012
Marikana Commission of Inquiry
Rustenburg

Page 2429
1 I’m going to take it back to the leaders to take it
2 further, then we will see where we take it. I do not have
3 the last say, comrade, but all of us united will be able to
4 move forward and bury this enemy, that is the employer, and
5 the enemy who is the oppressor. Amandla.” You see, after
6 kneeling down there is nowhere you say you are, it has
7 already been decided please they must leave that place, am
8 I correct?

Page 2430
1 MS BARNES: I think the witness may need
2 assistance to find the document.
3 MR MATHUNJWA: Yes, please.
4 MR SEMENYA SC: At the bottom of the page
5 I read to you from, “We are requesting you, brothers,
6 sisters, men, I am kneeling down, coming to you as
7 nothing.” Do you see that? Did you find the sentence I
8 read?
9 MR MATHUNJWA: Please repeat again to
10 confirm it?
11 MR SEMENYA SC: I’m reading with you the
12 sentence beginning, “We are requesting you, brothers,
13 sisters, men, I am kneeling down, coming to you as
14 nothing.” Do you see that sentence?
15 MR MATHUNJWA: Yes.
16 MR SEMENYA SC: “I say let us stop this
17 blood that NUM allowed this employer to let flow. We do
18 not want bloodshed but we want your problems to be solved
19 and get your salaries, comrade. You should benefit from
20 this platinum. We cry to traditional leaders that this
21 nation of God where He brought them in and heritage that
22 God put to them in order for his nation to benefit, they
23 get your salaries, comrade. You should benefit from
24 this platinum. We cry to traditional leaders that this
25 nation of God where He brought them in and heritage that
26
Page 2431
1 was not there once, I’ve been there twice, so that’s the
2 insert that I’m referring to.
3 MR SEMENYA SC: Yes, but you’re not going
4 to get away with that one, Mr Mathunjwa, because you told
5 us the kneeling happened only once and on your statement
6 you say you knelt and you told them – that’s the only point
7 you make about kneeling - that they must please leave this
8 koppie. It is not in the transcript.
9 MR MATHUNJWA: As I’ve said earlier on,
10 I’m still maintaining that I went twice and the media
11 decide, I’m not deciding for the media what they should
12 tell the world but I’m saying I was there. That was
13 myself, I addressed the workers twice.
14 MR SEMENYA SC: I see this is the thrust
15 of your evidence now. The media heard you say that to the
16 crowd at one occasion and when they saw you kneeling, they
17 said now he is asking them to leave. It is the media who
18 is manipulating the evidence.
19 MR MATHUNJWA: I’m not suggesting that,
20 I’m not controlling the media.
21 MR SEMENYA SC: Okay, I want to move away
22 from this but I’m going to argue that paragraph 88 of your
23 statement, it is an untruth, it is in your statement
24 because the media incorrectly described your conduct as a
25 plea to the people on the koppie to leave, when in fact it
<table>
<thead>
<tr>
<th>Page 2433</th>
<th>Page 2435</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>was not.</td>
<td>and I was thanked by Mr Kgote in my capacity as the</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>MR MATHUNJWA:</td>
<td>Can you repeat what you</td>
</tr>
<tr>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>said?</td>
<td>president by my intervention into this process.</td>
</tr>
<tr>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>MR SEMENYA SC:</td>
<td>I’m going to argue that</td>
</tr>
<tr>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>this statement you make against paragraph 88, it’s</td>
<td>You have quoted yourself</td>
</tr>
<tr>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>influenced by you taking, improperly, advantage of how the</td>
<td>in full, that’s what you said?</td>
</tr>
<tr>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>media had portrayed you as pleading to the crowd on the</td>
<td>MR MATHUNJWA: Yes and then I requested</td>
</tr>
<tr>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>koppie to leave, when you did not make that request.</td>
<td>further the meeting for the following day. The reason for</td>
</tr>
<tr>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>MR MATHUNJWA:</td>
<td>Depends on which occasion</td>
</tr>
<tr>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>MR SEMENYA SC:</td>
<td>is the conduct of the police on the 16th August, am I correct?</td>
</tr>
<tr>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>“critical,” what you –</td>
<td>MR MATHUNJWA: I understand the word</td>
</tr>
<tr>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>MR MAHLANGU:</td>
<td>Disapprove.</td>
</tr>
<tr>
<td>13</td>
<td>13</td>
</tr>
<tr>
<td>MR SEMENYA SC:</td>
<td>You are very critical of</td>
</tr>
<tr>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>the conduct of the police on the 16th August, am I correct?</td>
<td>“critical,” what you –</td>
</tr>
<tr>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>MR MATHUNJWA:</td>
<td>I was not negative to the</td>
</tr>
<tr>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>police but I was simply mentioning what happened.</td>
<td>police but I was simply mentioning what happened.</td>
</tr>
<tr>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>Prior to leaving the mine on the 16th you did hold the view,</td>
<td>MR MATHUNJWA: Okay, let me start now.</td>
</tr>
<tr>
<td>18</td>
<td>18</td>
</tr>
<tr>
<td>didn’t you, that the police did not act properly?</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>19</td>
</tr>
<tr>
<td>MR MATHUNJWA:</td>
<td>I was not negative to the</td>
</tr>
<tr>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>MR SEMENYA SC:</td>
<td>put it in your own words.</td>
</tr>
<tr>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td>Prior to leaving the mine on the 16th you did hold the view,</td>
<td>MR MATHUNJWA: In our debriefing in the</td>
</tr>
<tr>
<td>22</td>
<td>22</td>
</tr>
<tr>
<td>didn’t you, that the police did not act properly?</td>
<td>presence of the generals, no-one showed any objection to</td>
</tr>
<tr>
<td>23</td>
<td>23</td>
</tr>
<tr>
<td>MR MATHUNJWA:</td>
<td>that effect.</td>
</tr>
<tr>
<td>24</td>
<td>24</td>
</tr>
<tr>
<td>are you referring to?</td>
<td>MR SEMENYA SC: Mr Mathunjwa, did you say</td>
</tr>
<tr>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td>MR SEMENYA SC:</td>
<td>Your general impression</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page 2434</th>
<th>Page 2436</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>about the conduct of the police on that day when you left</td>
<td>MR MATHUNJWA: As I’ve said earlier on,</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>the mine, did you form a view that what they did, how they</td>
<td>the discussion was still continuing for the following day</td>
</tr>
<tr>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>did it, was proper?</td>
<td>where we committed we’ll meet at nine. And I even</td>
</tr>
<tr>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>MR MATHUNJWA:</td>
<td>I cannot generalise but I</td>
</tr>
<tr>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>can reflect to the instances where I was particularly</td>
<td>mentioned just now that even the generals present, three of</td>
</tr>
<tr>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>involved.</td>
<td>the generals never objected. They saluted me, they gave</td>
</tr>
<tr>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>MR SEMENYA SC:</td>
<td>Okay, now it is correct</td>
</tr>
<tr>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>you had assured the police the night before, i.e. the 15th</td>
<td>your overall impression that they also believed that</td>
</tr>
<tr>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>of August, that the protesters were going to lay their arms</td>
<td>tomorrow the strike will be over.</td>
</tr>
<tr>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>down 9 o’clock the following day.</td>
<td>MR SEMENYA SC: Should I repeat the</td>
</tr>
<tr>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>MR MATHUNJWA:</td>
<td>No.</td>
</tr>
<tr>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>MR SEMENYA SC:</td>
<td>Put it in your own words.</td>
</tr>
<tr>
<td>13</td>
<td>[11:59]</td>
</tr>
<tr>
<td>MR MATHUNJWA:</td>
<td>In our debriefing in the</td>
</tr>
<tr>
<td>14</td>
<td>presence of the generals who were present in the room,</td>
</tr>
<tr>
<td>15</td>
<td>General Annandale, General Naidoo, General Mpembe, myself</td>
</tr>
<tr>
<td>16</td>
<td>and management, Mr Kwadi, Mr Kgolle and the other white</td>
</tr>
<tr>
<td>17</td>
<td>gentleman who was present there, whom I don’t know his name</td>
</tr>
<tr>
<td>18</td>
<td>and myself with other members of the union, we reported to</td>
</tr>
<tr>
<td>19</td>
<td>them that the workers have said to us we have to return the</td>
</tr>
<tr>
<td>20</td>
<td>following day to discuss what the management have said face to face. That</td>
</tr>
<tr>
<td>21</td>
<td>was an ongoing process. In the very same debriefing in the</td>
</tr>
<tr>
<td>22</td>
<td>presence of the generals, no-one showed any objection to</td>
</tr>
<tr>
<td>23</td>
<td>tomorrow the strike will be over.</td>
</tr>
<tr>
<td>24</td>
<td>MR SEMENYA SC:</td>
</tr>
<tr>
<td>25</td>
<td>question for the third time? It’s a very simple one. Did</td>
</tr>
<tr>
<td>26</td>
<td>you tell them that the workers were going to lay their</td>
</tr>
<tr>
<td>27</td>
<td>arms?</td>
</tr>
<tr>
<td>28</td>
<td>MR MATHUNJWA:</td>
</tr>
<tr>
<td>29</td>
<td>no, because there was an ongoing discussion. I’ve said it</td>
</tr>
<tr>
<td>30</td>
<td>earlier on, I’ve answered that.</td>
</tr>
<tr>
<td>31</td>
<td>MR SEMENYA SC:</td>
</tr>
<tr>
<td>32</td>
<td>Why would General Mpembe know that there will be peace the</td>
</tr>
<tr>
<td>33</td>
<td>following day? He’s not part of the negotiations, he’s not</td>
</tr>
<tr>
<td>34</td>
<td>representing management. Where would he get that from?</td>
</tr>
<tr>
<td>35</td>
<td>MR MATHUNJWA:</td>
</tr>
<tr>
<td>36</td>
<td>saw the manner in which we presented the issues to the</td>
</tr>
<tr>
<td>37</td>
<td>workers and the response from the workers.</td>
</tr>
<tr>
<td>38</td>
<td>MR SEMENYA SC:</td>
</tr>
<tr>
<td>39</td>
<td>no, but general, where do you get that from, because it is</td>
</tr>
<tr>
<td>40</td>
<td>an incorrect depiction of what happened?</td>
</tr>
<tr>
<td>41</td>
<td>MR MATHUNJWA:</td>
</tr>
</tbody>
</table>
29th November 2012

Marikana Commission of Inquiry

Rustenburg

1. Each other.
2. MR SEMENYA SC: You're saying General Mpmbe formed an impression that they would lay down their arms after having listened to you address the crowd, correct?
3. MR MATHUNJWA: Not to lay down their arms but the strike, that's what I said.
4. MR SEMENYA SC: In any case I don't understand, Mr Mathunjwa, were they going to go to work with their arms?
5. MR MATHUNJWA: I think that is common, that they won't work with their arms.
6. MR SEMENYA SC: So General Mpembe must be right to say that it was stated that they will lay down their arms and go back to work, correct?
7. MR MATHUNJWA: Maybe that was his opinion to that effect, I cannot speak on his behalf.
8. MR SEMENYA SC: General Mbombo is very upset with you the following day, correct?
9. MR MATHUNJWA: I believed, because if you engage on what the employer is telling them, then they will decide from there how they return back to work. That's what we said. And I even mentioned that there are clips of the night of the 15th which confirms what I'm saying.
10. MR SEMENYA SC: Did the protesters tell you, tomorrow we are prepared to go back to work?
11. MR MATHUNJWA: I don't know.
12. MR SEMENYA SC: But you say so in your statement in that she says look, the police are spending a lot of money trying to bring this thing under control.
13. MR MATHUNJWA: The reason I'm saying this is because the Provincial Commissioner, she was not part of the debriefing of the 15th and the only persons that were introduced to ourselves that are in charge of the area was General Mpembe, whom I was reporting in terms of safety and security.
14. MR SEMENYA SC: In the debriefing of the 15th, the one you're talking about, did you personally form an impression that the workers were going to go to work the following day and disarm?
15. MR MATHUNJWA: For the fact that they were willing to invite us for the following day and to engage with them to convey what the management was saying, I hoped.
16. MR SEMENYA SC: Did you form an impression that the workers were going to go back to work the following day or not?
17. MR MATHUNJWA: I had hoped that the engagement will bear results, positive results.
18. MR SEMENYA SC: Is it accurate that you correctly, you didn't give that undertaking? The police

20. That's correct.
21. MR MATHUNJWA: I can answer by simply saying we can repeat those tapes where the workers were saying –
22. CHAIRPERSON: Mr Mathunjwa, you're not helping your case by not answering questions directly. You're asked a straight question, you must give a straight answer. There are a number of questions that you haven't answered directly. I'm sorry to interrupt you, Mr Semenya, but – the first question is, you were asked did you give, at the debriefing did you give an undertaking that the workers would hand down their weapons, hand over their arms and go to work the following day? Since now it's at night, they want to see us face to face and then we'll engage on what the employer is telling them. Then therefore they will decide from there how they return back to work. That's what we said. And I even mentioned that there are clips of the night of the 15th which confirms what I'm saying.
23. MR SEMENYA SC: Did the protesters tell you, tomorrow we are prepared to go back to work?
24. MR MATHUNJWA: I can answer by simply saying we can repeat those tapes where the workers were saying –
25. MR SEMENYA SC: Did you form an impression that the workers were going to go back to work the following day or not?
26. MR MATHUNJWA: I had hoped that the engagement will bear results, positive results.
27. MR SEMENYA SC: Is it accurate that you correctly, you didn't give that undertaking? The police
29th November 2012
Marikana Commission of Inquiry
Rustenburg

Page 2441

1 say you did. Do you admit you did it or do you say you didn't?

2 MR MATHUNJWA: Yes, I didn't make – I answered that.

3 CHAIRPERSON: Okay, that's a straight answer.

4 MR MATHUNJWA: Yes.

5 CHAIRPERSON: Next question. Do you say that the people at, the strikers at the koppie on the

6 Wednesday evening when you spoke to them, did not tell you that they would hand over their weapons at 9 o'clock the next morning, is that correct?

7 MR MATHUNJWA: Can you repeat that one again, Mr Chairman?

8 CHAIRPERSON: You said you never gave an undertaking that they would hand their weapons over on the following morning. The next question is, when you spoke to the workers on the Wednesday evening at the koppie did they say to you, we will hand our weapons over tomorrow morning at 9 o'clock?

9 CHAIRPERSON: No, right. The next question is, what they said to you, was that recorded?

10 MR MATHUNJWA: Yes, that's what was recorded.

11 CHAIRPERSON: Was it said in the presence of officials of the police?

12 MR MATHUNJWA: Yes, in the Nyala.

13 CHAIRPERSON: Which – yes, because you were in the Nyala with the police and they were standing in front with a loud hailer, is that right?

14 MR MATHUNJWA: With a camera.

15 CHAIRPERSON: Alright. So who was with you in the Nyala, which policeman?

16 MR MATHUNJWA: I think Mr Macintosh was there.

17 CHAIRPERSON: Okay.

18 MR MATHUNJWA: And then the other –

19 CHAIRPERSON: And other –

20 MR MATHUNJWA: - police officers that –

21 CHAIRPERSON: So did the police hear everything, or perhaps more accurately, were they able to hear everything that the strikers had said to you?

22 MR MATHUNJWA: Yes, they should.

23 CHAIRPERSON: So – and we can find out exactly what was said by looking at the tape again?

24 MR MATHUNJWA: Yes.

25 CHAIRPERSON: Right.

Page 2442

1 CHAIRPERSON: Thank you.

2 MR MATHUNJWA: Thank you.

3 CHAIRPERSON: So if you're correct in saying that the workers never said we will hand over our

4 weapons at 9 o'clock, the police knew that because they heard it when you heard it?

5 MR MATHUNJWA: Yes.

6 CHAIRPERSON: They heard what was said when you heard what was said, is that right?

7 MR MATHUNJWA: That's right.

8 CHAIRPERSON: Right. Then the next question is, if you had given the undertaking later that night at the debriefing to the police, how could the police have believed you if the police themselves had heard what the workers had said and what they hadn't said?

9 MR MATHUNJWA: That I don't know.

10 MR SEMENYA SC: Then you must help me jump this hurdle after that evidence. Can I invite you to look at paragraph 54 on page 16 of your statement? Do you see paragraph 54?

11 MR MATHUNJWA: Yes.

12 [12:19] MR SEMENYA SC: Second sentence, "We said that the workers had been receptive" – I'm reading from the third sentence - “We said that the workers had been receptive to the proposal that they return to work and that we would see them again in the morning to discuss the matter further." Do you see that?

13 MR MATHUNJWA: That's correct.

14 MR SEMENYA SC: But I thought I

Page 2443

1 understood you to say that the workers didn't say that in your presence and that of Mr Macintosh?

2 MR MATHUNJWA: It did, they said, "You come back the following day and discuss the matter further and then we can take it there how we return to work." I think even in the clip of the 15th you'll hear it, them saying themselves.

3 MR SEMENYA SC: I'm not talking about the clip, I'm saying in your statement you say the workers were receptive to your proposal that they go back to work.

4 MR MATHUNJWA: That is correct but you must read it further, you mustn't just stop it there. It says if we read it, 54, if you read it further, "They were receptive to the proposal that they return to work and that we will see them again in the morning to discuss the matter further," which is what I'm saying, that you must come tomorrow as we take this matter further and discuss how we return back to work.

5 MR SEMENYA SC: Did you make a proposal that they return back to work?

6 MR MATHUNJWA: The proposal was made by management. I was conveying the management's proposal.

7 MR SEMENYA SC: You went to management - to the koppie with management?

8 MR MATHUNJWA: I was conveying
29th November 2012
Mariknaka Commission of Inquiry
Rustenburg

 Tel: 011 021 6457  Fax: 011 440 9119
RealTime Transcriptions  Email: realtime@mweb.co.za

Page 2445

1 management's proposal to the workers on the mountain.
2 MR SEMENYA SC: And the workers said
3 “Yes, we are going to go back to work tomorrow?”
4 MR MATHUNJWA: And the workers responded
5 by saying, “Come back tomorrow morning at nine because it's
6 at night, we want to see you face to face and then we'll
7 discuss the matter further on how we should return back to
8 work.”
9 MR SEMENYA SC: Then explain to me what
10 you mean by them being receptive to the proposal to go to
11 work? What - what do you mean they were receptive to that
12 proposal?
13 MR MATHUNJWA: It's because they say come
14 back tomorrow and discuss the matter further.
15 MR SEMENYA SC: How can that, in the
16 world, convey that they are receptive to the proposal when
17 they just say, come back tomorrow?
18 MR MATHUNJWA: Can you repeat your
19 question again?
20 MR SEMENYA SC: You make the management
21 proposal. Management wants you to lay down your weapons,
22 go back to work and only then will they discuss your
23 requests and demands, correct?
24 MR MATHUNJWA: That's correct.
25 MR SEMENYA SC: You tell that to the

Page 2446

1 workers, am I right?
2 MR MATHUNJWA: That's correct.
3 MR SEMENYA SC: They say to you, no, it's
4 too late, it's night, come back tomorrow, we will take the
5 matter further.
6 MR MATHUNJWA: That's correct.
7 MR SEMENYA SC: And you write in your
8 statement that they were receptive to that proposal.
9 MR MATHUNJWA: Yes, you are correct.
10 MR SEMENYA SC: By what logic, I then
11 ask?
12 MR MATHUNJWA: I believe in dialogue, I
13 believe in engagement. So in an event when the parties
14 engage each other, there must be a solution to any
15 challenges that they are facing, so that's the reason that
16 I was saying that.
17 MR SEMENYA SC: Chair, would this stage
18 of my confusion be an opportune time for -
19 COMMISSIONER HEMRAJ: May I just, Mr
20 Semenya, please? Mr Mathunjwa, when you spoke with the
21 workers, the response that you got was not categorically
22 that we will put our arms down and return to work, it was
23 merely, come back tomorrow and we will talk.
24 MR MATHUNJWA: That's correct.
25 COMMISSIONER HEMRAJ: And was your

Page 2447

1 understanding that if you continued the talks the following
2 day, that they might put down their arms and return to
3 work?
4 MR MATHUNJWA: Yes, ma'am.
5 COMMISSIONER HEMRAJ: Yes, thank you.
6 CHAIRPERSON: Well, on that note we will
7 adjourn until 2 o'clock.
8 [COMMISSION ADJOURNS COMMISSION RESUMES]
10 want to announce at this stage that we understand that
11 there will be a meeting between the evidence leaders and
12 the representatives of the various parties tomorrow
13 afternoon to discuss a number of logistical and other
14 matters. So in the circumstances we'll be adjourning
15 tomorrow at 1 o'clock and we will resume on Monday at 10
16 o'clock, so to enable the parties to have the meeting to
17 which I've referred tomorrow afternoon.
18 Mr Mathunjwa, you're still under oath.
19 MR MATHUNJWA: Yes, I am.
20 CHAIRPERSON: Mr Semenya, do you have any
21 more questions for the witness?
22 MR SEMENYA SC: Yes, Chair, thank you.
23 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD):
24 Mr Mathunjwa, to the question by Commissioner Hemraj, you
25 said that you believed that the protesters might disarm the

Page 2448

1 following morning at 9 o'clock. Do you recall the answer?
2 MR MATHUNJWA: Yes.
3 MR SEMENYA SC: And your belief was
4 founded on them saying that they will take the matter
5 further tomorrow when you come back?
6 MR MATHUNJWA: That's correct.
7 MR SEMENYA SC: I want to put it to you
8 that only on that version, nobody would've held the view
9 that the workers were going to go to work the following
10 day. What's your reaction?
11 MR MATHUNJWA: That's not correct because
12 that was an ongoing engagement that they proposed. I
13 couldn't speculate what will be the outcome of that
14 engagement but there was an indication that once we talk,
15 they will think of how they can return back to work.
16 MR SEMENYA SC: Because from management
17 the proposal was that if they put their arms down and they
18 go back to work, there could be negotiation and to workers
19 saying to you that they will take the matter further
20 tomorrow, couldn't have given anybody optimism that that
21 problem will be resolved.
22 MR MATHUNJWA: I cannot pre-empt but I
23 was hopeful.
24 MR SEMENYA SC: And the truth is, what
25 General Mpembe will tell the Commission, that you did say
29th November 2012

Marikana Commission of Inquiry
Rustenburg

25 averted. You promised to go to the koppie at nine and the bath, according to you, there is a possibility of it being

MR SEMENYA SC: There is a pending blood

Your reaction?

MR MATHUNJWA: As I've stated earlier on, that the protocol that I was following, the only person who was introduced to myself that is in charge was General Mbombo, not Provincial Commissioner Mbombo.

MR SEMENYA SC: You don't say to General Mbombo, why are you upset with me, I've never made any promise to you, why are you looking to me for an answer?

MR MATHUNJWA: That's exactly what I'm saying, that the protocol was to report to General Mpembe, not to –

CHAIRPERSON: No, you're not answering the question. The question is, when General Mbombo was angry with you because you hadn't come at 9 o'clock as she understood you were going to come and arms weren't laid down at 9 o'clock, when she was angry, why did you not say to her, but I don't know what you're angry about, there was no undertaking that things would happen at 9 o'clock, all that was going to happen was that the matter would be discussed further? I think that's Mr Semenya's question.

MR MATHUNJWA: I think the reaction of North West Provincial Commissioner, he was angry that I made a commitment that I would speak to the workers at 9 o'clock. That's what I could recall, that's why he was angry that I was late – she, I beg your pardon.

MR SEMENYA SC: Even more profound, Mr Mathunjwa, because on your version, the first place you ought to have started in the morning at 9 o'clock is the koppie, not management. You knew what management wanted.

MR MATHUNJWA: That is not correct. The first place, I was to start with management at eight.

MR SEMENYA SC: To do what with management? They have told you what is the basis for further negotiation.

MR MATHUNJWA: There was a debriefing on the 15th, the evening of the 15th where we concluded that on the following day of the 16th I would start by reporting to them with regard to mine health and safety processes, hence then I started there.

MR SEMENYA SC: There is a pending blood averted. You promised to go to the koppie at nine and the

best thing you do is to speak about mine health and safety in the morning?

MR MATHUNJWA: Mine health and safety, it's a key issue to each and every worker. You cannot just proceed to work without being in compliance with mine health and safety because it's another way of avoiding fatality in the mines.

MR SEMENYA SC: No, but we know they hadn't agreed to go to work, so that can't be top of your agenda.

MR MATHUNJWA: The workers, they highlighted clearly that we must come the following day and then we will engage and then they will decide from there when they are returning to work. That was based on those premises that I introduced, in my debriefing, the issue of mine health and safety.

MR SEMENYA SC: If your version is correct, the first thing you would've done is to go to speak to the people on the koppie and said, as we discussed yesterday, the request of the employer is X, can we take the matter further? That's no reason to go to management.

MR MATHUNJWA: If the management, during the debriefing, had an objection they could have raised such but it was agreed that we will meet at 8 o'clock the following day.

no undertaking that things would happen at 9 o'clock, all that was going to happen was that the matter would be discussed further? I think that's Mr Semenya's question.

MR MATHUNJWA: I think the reaction of North West Provincial Commissioner, he was angry that I made a commitment that I would speak to the workers at 9 o'clock. That's what I could recall, that's why he was angry that I was late – she, I beg your pardon.

MR SEMENYA SC: Even more profound, Mr Mathunjwa, because on your version, the first place you ought to have started in the morning at 9 o'clock is the koppie, not management. You knew what management wanted.

MR MATHUNJWA: That is not correct. The first place, I was to start with management at eight.

MR SEMENYA SC: To do what with management? They have told you what is the basis for further negotiation.

MR MATHUNJWA: There was a debriefing on the 15th, the evening of the 15th where we concluded that on the following day of the 16th I would start by reporting to them with regard to mine health and safety processes, hence then I started there.

MR SEMENYA SC: There is a pending blood averted. You promised to go to the koppie at nine and the

best thing you do is to speak about mine health and safety in the morning?

MR MATHUNJWA: Mine health and safety, it's a key issue to each and every worker. You cannot just proceed to work without being in compliance with mine health and safety because it's another way of avoiding fatality in the mines.

MR SEMENYA SC: No, but we know they hadn't agreed to go to work, so that can't be top of your agenda.

MR MATHUNJWA: The workers, they highlighted clearly that we must come the following day and then we will engage and then they will decide from there when they are returning to work. That was based on those premises that I introduced, in my debriefing, the issue of mine health and safety.

MR SEMENYA SC: If your version is correct, the first thing you would've done is to go to speak to the people on the koppie and said, as we discussed yesterday, the request of the employer is X, can we take the matter further? That's no reason to go to management.

MR MATHUNJWA: If the management, during the debriefing, had an objection they could have raised such but it was agreed that we will meet at 8 o'clock the following day.
1 a question first? That looks as if he's coming in his own
2 car, is that right? If he came in his own car, that's his
3 second visit and if you've got - if there's a clip of his
4 arrival at the beginning, as it were, of his second visit,
5 do we not have a clip of his speech during his second
6 visit?
7 MS BARNES: Chair, he did take his own
8 car to the first visit. I believe that was the evidence
9 yesterday.

10 CHAIRPERSON: I'm wrong then, sorry.
11 Thank you for correcting me.

12 MR SEMENYA SC: Mr Mathunjwa, you can see
13 yourself on that clip, correct?
14 MR MATHUNJWA: Yes, I think I'm the one
15 facing the direction of the workers.
16 MR SEMENYA SC: More importantly, you are
17 speaking there with Mr Noki, do you see that?
18 MR MATHUNJWA: I can see Mr Noki is in
19 front of us.
20 MR SEMENYA SC: I thought you said in the
21 morning you don't know him.
22 MR MATHUNJWA: No. You said he's my
23 member.
24 MR SEMENYA SC: Are you serious?
25 MR MATHUNJWA: Repeat your question.

1 MR SEMENYA SC: I asked you specifically
2 to say that is Mr Noki who is talking at the railway road,
3 remember?
4 MR MATHUNJWA: Repeat your question
5 again?
6 MR SEMENYA SC: Do you recall us looking
7 at the video clips with Mr Noki addressing General Mpembe?
8 MR MATHUNJWA: Yes, I do.
9 MR SEMENYA SC: And do you remember
10 asking you that that is Mr Noki, right? And you said you
11 don't know him.
12 MR MATHUNJWA: Yes.
13 MR SEMENYA SC: And because it was on the
14 13th I said, "You have never spoken to Mr Noki at all?" You
15 said, "Never." Correct?
16 MR MATHUNJWA: On the 13th, on the 16th I
17 never spoke to Mr Noki.
18 MR SEMENYA SC: In fact you went better
19 and said you don't know him.
20 MR MATHUNJWA: Yes, I didn't know him.
21 MR SEMENYA SC: I have never asked you
22 whether you did know him before. You were very express
23 that you don't know Mr Noki because I was testing you
24 whether you condemned this armed protest. Do you recall
25 that piece of evidence?

1 CHAIRPERSON: It's slide 168.
2 MR SEMENYA SC: Slide 168, yes Chair.
3 [VIDEO IS SHOWN]
4 MR SEMENYA SC: Did you hear that, Mr
5 Mathunjwa?
6 MR MATHUNJWA: I did hear it. Could you
7 please repeat the last part of it?
8 MR SEMENYA SC: Certainly.
9 [VIDEO IS REPLAYED]
10 MR SEMENYA SC: And did you hear that?
11 MR MATHUNJWA: Yes, I did hear it.
12 MR SEMENYA SC: You were – he was
13 speaking next to you, right?
14 MR MATHUNJWA: Yes.
15 MR SEMENYA SC: A language you
16 understand.
17 MR MATHUNJWA: Xhosa. I'm a Zulu but I
18 did I understand.
19 MR SEMENYA SC: Saying, "We're going to
20 finish them off here," meaning the police, right?
21 MR MATHUNJWA: In that context maybe,
22 yes, he was referring to that.
23 MR SEMENYA SC: I suggest to you there's
24 no other context.
25 MR MATHUNJWA: I heard.
29th November 2012

Marikana Commission of Inquiry

Rustenburg

MR SEMENYA SC: And he's saying those police from the Eastern Cape must go back, otherwise they will never get back there, home. Is that right?

MR MATHUNJWA: Yes, I heard even the "Hippo," I don't know whether it was "home" or "Hippo."

MR SEMENYA SC: And that they're not going to leave the koppie, did you hear that too?

MR MATHUNJWA: Yes.

MR SEMENYA SC: So I will argue that the version you say that you told them to leave is untrue.

MR MATHUNJWA: I will dispute that.

MR SEMENYA SC: And the only reason you were almost certain that they were going to a bloodbath is because you knew that they would have told you in your presence that they're not going to leave that place at all.

MR MATHUNJWA: It's not correct because there was some engagement. This is the clip - there was another clip that I referred to that I have to - remember I went twice into that mountain.

MR SEMENYA SC: There is no stage at which the protesters tell you, we're going to go back to work, we're going to disarm. That's why you knew there will be a bloodbath.

MR MATHUNJWA: The protesters told me on the 15th at night, which is what I conveyed to the debriefing session.

MR SEMENYA SC: Sorry, told you what?

MR MATHUNJWA: On the 15th the workers, they have told us that we need to come back the following day at nine.

MR SEMENYA SC: No, but the proposition I'm saying, at no stage did they say to you, we are going to work, we're going to disarm. So the reason you anticipated a bloodbath must be because you knew they would attack the police.

MR MATHUNJWA: It's not because of that, it's because of the response that I got from management.

MR SEMENYA SC: But Mr Mathunjwa, tell me, when you see the police being frantic, the helicopters hovering, why don't you form a view that now this means the protesters will realise the urgency and disperse? Why did that thought not cross your mind?

MR MATHUNJWA: That's the reason I've mentioned earlier on that I made an example of a ram, that if the ram retreats doesn't mean that it's all lost.

MR SEMENYA SC: Please break down this idiom, you've used it too many times now. What has a ram got to do with backing up and my question?

MR MATHUNJWA: If I understand you well, you were saying at no stage I've never told the strikers to leave koppie. So I'm simply saying I did, I made an example of the ram.

MR SEMENYA SC: No, my question was a very specific question. Now that the police are frantic, now that the helicopters are hovering, why don't you form an impression that the protesters will realise and disperse? Why does that thought not cross your mind?

MR MATHUNJWA: It did cross my mind, hence I'm saying that if the ram moved backwards it doesn't mean that all is lost. That's what - that was the meaning I was saying, that they must leave the koppie.

MR SEMENYA SC: Did you anticipate there will be a bloodbath or did you anticipate the people will disperse when they see the force they are confronting?

MR MATHUNJWA: Can you repeat your question again?

MR SEMENYA SC: Was your impression that there will be a bloodbath or was your impression that with the protesters seeing the display of force, they will simply disperse?

MR MATHUNJWA: No, but for the first one when you were asking me that question, I did say that people will be killed - even in the media I’ve said it.

MR SEMENYA SC: That's precisely my point. Why don't you form a view that with all of this

hyperactivity, the result is going to be a dispersal? Why do you anticipate a bloodbath?

MR MATHUNJWA: Maybe I have to draw you back. If there was no co-operation from police, from Provincial Commissioner and the generals, no co-operation from management in this crucial time, surely that could be.

MR SEMENYA SC: I'm sure my colleagues will deal with this, about how management, what they did or did not do. The question I'm asking finally is, why don't you form an impression that one possible outcome from this will be the people dispersing, realising that they are confronting that display of force?

MR MATHUNJWA: I quite not understand your question, will you please repeat it?

MR SEMENYA SC: Instead of anticipating a bloodbath, why didn't you anticipate that the people on the koppie will realise it is better they disperse peacefully and there will be no bloodbath?

MR MATHUNJWA: I couldn't think on their behalf. All what I was doing, that was the best I could do by that time.

MR SEMENYA SC: If that's your best answer, can we move on? The evidence that General Mbombo would have gone for a torch - ANC torch-bearing ceremony, is an untruth, Mr Mathunjwa.
MR MATHUNJWA: Is it a question?
MR SEMENYA SC: I'm inviting your
response, yes.
MR MATHUNJWA: It is true that she went,
according to Mr Mpembe, that he went for ANC torch-bearer
ceremony with the Premier of North West. That's what he
told me.
CHAIRPERSON: I think you're getting into
trouble again, the confusion between he and she, which
doesn't exist in Zulu -
MR MATHUNJWA: I mean she.
CHAIRPERSON: It doesn't exist in Zulu,
as I understand it, which is a problem. The person who
went off to the ANC ceremony I think was the Divisional
Commissioner - the Provincial Commissioner who is a lady -
MR MATHUNJWA: My apology.
CHAIRPERSON: She went, is that right?
If you say "he" then we'll think you're talking about
General Mpembe where you mean General Mbombo, I think. Am
I right?
MR MATHUNJWA: Yes, my apologies. She,
went for the ANC torch-bearing ceremony.
MR SEMENYA SC: Should the need arise,
there will be evidence that General Mbombo went to visit
the police officer that was injured. What's your response?
MR MATHUNJWA: I cannot dispute. I'm
only responding of what I was told on the day.
MR SEMENYA SC: And if that fact is
established, there is no way General Mpembe could have said
that to you.
MR MATHUNJWA: As far as I could
remember, Mr Mpembe even attempted to phone her. He said
he's phoning, to call her, that we are at the JOC.
MR SEMENYA SC: Neither did General
Mpembe say to you that the Provincial Commissioner was the
one in charge.
[14:43] MR MATHUNJWA: Mr General Mpembe
introduced the Provincial Commissioner during the morning
and he told us that she is in charge of the operation.
MR SEMENYA SC: In fact, since being with
the generals, they have never saluted me. So you say
that's what General Mpembe did with you, salute?
MR MATHUNJWA: When?
MR SEMENYA SC: At least you say it in
your statement, I don't know when it is.
MR MATHUNJWA: Yes, in the debriefing,
that's what I said.
MR SEMENYA SC: General Mpembe will deny
that he ever saluted you.
MR MATHUNJWA: That is what I've observed, that's what I've seen.
MR SEMENYA SC: And when General Mbombo
said this will end today, she was referring to the people
going onto the kopjie, being armed, that today they will be
disarmed. That's the meaning she connoted, she conveyed.
MR MATHUNJWA: What I heard is that this
thing will finish today.
MR SEMENYA SC: No, but what I'm testing
with you is that you're giving it a sinister spin, aren't
you?
MR MATHUNJWA: I was saying that's what
she has said to us.
MR SEMENYA SC: So you can't refute that
she meant that they will be disarmed today?
MR MATHUNJWA: I don't know what she was
meaning by that.
MR SEMENYA SC: And you won't challenge
if she gave that type of evidence, correct?
MR MATHUNJWA: I won't challenge what, if
you may repeat?
MR SEMENYA SC: That connotation, if she
testified that that was what she meant.
MR MATHUNJWA: That will be her
interpretation but I was just simply saying what she told
us.
MR SEMENYA SC: Is it your evidence that
it was clear to you that the police had taken a decision to
kill?
MR MATHUNJWA: Can you refer me to my
statement, please?
CHAIRPERSON: I think counsel is
referring to paragraph 85 on page 26, am I right?
MR MATHUNJWA: I am, but Chair, the
witness does not need to -
CHAIRPERSON: Anyway, I've told him so we
can carry on.
MR MATHUNJWA: If you may repeat your
question?
MR SEMENYA SC: Paragraph 85, do you have
it?
MR MATHUNJWA: Yes, I do.
MR SEMENYA SC: I'm asking you, are you
serious that it was clear to you that the police were going
to kill?
MR MATHUNJWA: Yes, based on what was
happening, that was my conclusion.
MR SEMENYA SC: And not that the
protesters will disarm and disperse, that was not a
possibility?
MR MATHUNJWA: In my statement I think
| 1 | it's clear, I if may be allowed to read, I said in the - |
| 2 | what paragraph – I said that "The writing was on the wall" |
| 3 | as it was clear to me that the police were going to shoot |
| 4 | these people." I don’t see where it says the police will |
| 5 | kill these people. |
| 6 | MR SEMENYA SC: Are you serious? |
| 7 | MR MATHUNJWA: Yes, according to the portion that I’ve been referred to by yourself, 85, it |
| 8 | says, “Before going back to speak to the workers I had an interview with eTV. During the interview I said that there |
| 9 | was no co-operation from SAPS and no co-operation from management. The interviewer asked me, ‘What now?’ I said that |
| 10 | the writing was on the wall as it was clear to me that the police were going to shoot these people. I said that |
| 11 | it was out of my hands and that it was in God’s hands." |
| 12 | MR SEMENYA SC: They were going to shoot to kill? |
| 13 | MR MATHUNJWA: Come again? |
| 14 | MR SEMENYA SC: Were they going to shoot to kill, because I can only see you connoting one thing, that they were going to shoot to kill them. |
| 15 | MR MATHUNJWA: I cannot be in the position to interpret your interpretation on that. |
| 16 | CHAIRPERSON: Come on, Mr Mathunjwa, when you say the police are going to shoot them, surely you mean |
| 17 | the police are going to shoot them and there’s a distinct possibility they’ll be killed? |
| 18 | MR MATHUNJWA: They can be killed and others they cannot be killed. |
| 19 | CHAIRPERSON: All the shots mightn’t be fatal, but some at least are probably going to be fatal and a number of them are going to die. That’s what you meant, surely? |
| 20 | MR MATHUNJWA: Thank you, that’s it. |
| 21 | CHAIRPERSON: Now do we - Ms Barnes, can you tell us, is this eTV interview avaiable? If anything turns on it we can get it and see what exactly he said and in what context it was said. Is it available? |
| 22 | MS BARNES: No, we don’t have it at this moment. |
| 23 | CHAIRPERSON: I didn’t ask if you had it, I said is it available? |
| 24 | MS BARNES: We would have to find out. |
| 25 | CHAIRPERSON: I see. It might be - |
| 26 | MS BARNES: We’re having difficulty obtaining footage - |
| 27 | CHAIRPERSON: Yes, I know, we’ve encountered that problem before but I would imagine if this one was broadcast, there shouldn’t be a problem, particularly as the interviewee would presumably consent to |
| 28 | its being made available. |
| 29 | MS BARNES: Yes, we can certainly make enquiries, Chair. |
| 30 | CHAIRPERSON: Alright. |
| 31 | MR BUDLENDER SC: Chairman, I think there is - I think the clips that I showed at the commencement do have a short excerpt of Mr Mathunjwa predicting that people are going to be shot, that there may be deaths, but we’ll have to find that. I looked for it this morning, I don’t have it with me but there is a relevant clip on that first lot of extracts that were shown. |
| 32 | MR SEMENYA SC: Chair, can we – |
| 33 | MR BUDLENDER SC: We can find that. |
| 34 | MR SEMENYA SC: We can do it easier than that, Chair. Can I refer you to paragraph 87 of your statement? You say, “I then proceeded to the koppie, I told the workers that there was no-one to whom I could give a report of what the workers wanted. I pleaded with them. I said to them that if they do not leave the koppie the police were going to kill them.” |
| 35 | MR MATHUNJWA: That’s correct. |
| 36 | MR SEMENYA SC: So why are we dancing around shooting and people can be killed or not killed? |
| 37 | MR MATHUNJWA: I was referring to clause 85 and then the Commissioner corrected that, then I said it was for shooting and then I confirmed on 87 that yes, they will be killed. |
| 38 | MR SEMENYA SC: Now that we have established it, why was it not your prediction that the people will disperse instead? |
| 39 | MR MATHUNJWA: After this interview I went to the mountain, actually even before there, I asked two officers who were there, two black officers, that who was in charge of the operation and then they show me one white officer whom I told him that I had no co-operation from the JOC and then he said he will phone General Naidoo, I must wait for 15 minutes. |
| 40 | MR SEMENYA SC: That’s your best answer why you did not hold a view that the protesters might disperse, correct? That’s your best answer? |
| 41 | MR MATHUNJWA: No, I went to the koppie. I didn’t end there. After there was no response from General Naidoo I proceeded to the koppie. |
| 42 | MR SEMENYA SC: In fact, when we played that clip I should have made you listen closer because after the protester 6 says they’re going to finish them off, you are heard laughing there. |
| 43 | MR MATHUNJWA: That is not correct. |
| 44 | MR SEMENYA SC: But you don’t tell protester 6, please, you can’t use such inflammatory
29th November 2012
Marikana Commission of Inquiry
Rustenburg

25 convenient we'll take the tea adjournment. Tell me when
24 Mr Semenya, when it's
23 question? No -
22 CHAIRPERSON: Mr Semenya, when it's
21 end there.
20 management to come and address them. That was not just the
19 or - as they were talking, different workers. It might
18 earlier on, that people they were exchanging the platform
17 MR MATHUNJWA: Yes, as I was saying
16 MR MATHUNJWA: Yes, as I was saying
15 have been told that the police
14 earlier on, that people they were exchanging the platform
13 to work the following day, it is something you heard inside
12 Not from what they, the workers, had said to you whilst you
11 the Nyala?
10 were in the Nyala.
9 were in the Nyala.
8 going to kill the police, you don't go to the police and
7 concerned. When you hear the protesters saying they are
6 say, ladies and gentlemen, we've got a serious situation on
5 to work.
4 to work.
3 further and they, then they will see whether they go back
2 we have to come back tomorrow and take the discussion
1 it's convenient and we'll do so.

MR MATHUNJWA: I cannot speak on the
MR MATHUNJWA: I cannot speak on the
MR MATHUNJWA: I cannot speak on the
MR MATHUNJWA: I cannot speak on the
MR SEMENYA SC: I don't know what "yes"
MR SEMENYA SC: I don't know what "yes"
MR SEMENYA SC: I don't know what "yes"
MR SEMENYA SC: I don't know what "yes"

Tel: 011 021 6457 Fax: 011 440 9119
RealTime Transcriptions Email: realtime@mweb.co.za
<table>
<thead>
<tr>
<th>Page 2473</th>
<th>Page 2475</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 when these workers were talking, as you correctly said,</td>
<td>1 Burger, do you have any questions for the witness?</td>
</tr>
<tr>
<td>2 they were using the hailer. The police were also around</td>
<td>2 CROSS-EXAMINATION BY MR BURGER SC: Yes,</td>
</tr>
<tr>
<td>3 the area themselves, they could hear what those protesters</td>
<td>3 Chair. Mr Mathunjwa, my team and I represent Lonmin in</td>
</tr>
<tr>
<td>4 were saying.</td>
<td>4 this debate and you're a leader of a prominent trade union</td>
</tr>
<tr>
<td>5 MR SEMENYA SC: That's exactly the</td>
<td>5 at the Lonmin mine and so is NUM but you'll understand the</td>
</tr>
<tr>
<td>6 opportunity where you can say to General Mpmembe, “General,</td>
<td>6 questions I put to you is in order to assist the Commission</td>
</tr>
<tr>
<td>7 I have just heard now that the protesters are intent in</td>
<td>7 to come to the truth, you understand that?</td>
</tr>
<tr>
<td>8 finishing off, so you need to be extraordinarily careful</td>
<td>8 MR MATHUNJWA: Yes.</td>
</tr>
<tr>
<td>9 now.”</td>
<td>9 MR BURGER SC: In due course I may have</td>
</tr>
<tr>
<td>10 MS BARNES: Chair, with respect, Mr</td>
<td>10 to ask questions of NUM, it doesn't mean that Lonmin is</td>
</tr>
<tr>
<td>11 Semenya has led evidence to the effect that one protester</td>
<td>11 fighting with AMCU or with NUM, that's part of the process.</td>
</tr>
<tr>
<td>12 said something which he's given a particular interpretation</td>
<td>12 You understand that?</td>
</tr>
<tr>
<td>13 to, but not protesters.</td>
<td>13 MR MATHUNJWA: I understand.</td>
</tr>
<tr>
<td>14 CHAIRPERSON: You must reformulate the</td>
<td>14 MR BURGER SC: At the end of this inquiry</td>
</tr>
<tr>
<td>15 question, Mr Semenya.</td>
<td>15 we will make submissions to the Commission that there are</td>
</tr>
<tr>
<td>16 MR SEMENYA SC: Did the protesters</td>
<td>16 principally two reasons for this tragedy. I don't have to</td>
</tr>
<tr>
<td>17 understand what was communicated to them? Mr Mathunjwa?</td>
<td>17 burden you with the first reason but the second reason, we</td>
</tr>
<tr>
<td>18 MR MATHUNJWA: By whom?</td>
<td>18 will say, is to be found in the relationship between AMCU</td>
</tr>
<tr>
<td>19 MR SEMENYA SC: By this sixth protester</td>
<td>19 and NUM as at August 2012. That's my first debate I want</td>
</tr>
<tr>
<td>20 who was saying today they were going to finish them - was</td>
<td>20 to have with you. We have heard that SAFm debate on the</td>
</tr>
<tr>
<td>21 he understood by those he was addressing?</td>
<td>21 morning of the 15th when your trade union AMCU was accused</td>
</tr>
<tr>
<td>22 MR MATHUNJWA: I don't know but for them</td>
<td>22 by NUM of lying, in public. You remember that?</td>
</tr>
<tr>
<td>23 to hear, should they have heard what he was saying.</td>
<td>23 MR MATHUNJWA: Yes, I do remember that.</td>
</tr>
<tr>
<td>24 MR SEMENYA SC: And you did not hear any</td>
<td>24 MR BURGER SC: On that same occasion AMCU</td>
</tr>
<tr>
<td>25 of them saying no - no, that's not what you're going to do?</td>
<td>25 was accused of having killed two security officers on the</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page 2474</th>
<th>Page 2476</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 MR MATHUNJWA: No.</td>
<td>1 12th of August, you heard that?</td>
</tr>
<tr>
<td>2 MR SEMENYA SC: They said “Amandla.”</td>
<td>2 MR MATHUNJWA: Yes.</td>
</tr>
<tr>
<td>3 Those are all the questions I have, Chair.</td>
<td>3 MR BURGER SC: In fact it was said that</td>
</tr>
<tr>
<td>4 CHAIRPERSON: Mr Semenya -</td>
<td>4 this whole unrest was a ploy by AMCU to unseat NUM at</td>
</tr>
<tr>
<td>5 MR MATHUNJWA: I didn't hear the last?</td>
<td>5 Lonmin, do you remember that?</td>
</tr>
<tr>
<td>6 CHAIRPERSON: No, he's finished his</td>
<td>6 MR MATHUNJWA: Yes, I remember it.</td>
</tr>
<tr>
<td>7 questions and now Mr Burger is going to start, I think. Mr</td>
<td>7 MR BURGER SC: In fact NUM suggested that</td>
</tr>
<tr>
<td>8 Burger?</td>
<td>8 AMCU had promised the workers R12 500.00 per month, do you</td>
</tr>
<tr>
<td>9 MS BARNES: I think the witness is</td>
<td>9 remember that?</td>
</tr>
<tr>
<td>10 indicating that he didn't hear the last question.</td>
<td>10 MR MATHUNJWA: Yes.</td>
</tr>
<tr>
<td>11 CHAIRPERSON: Oh, I think the last</td>
<td>11 MR BURGER SC: And NUM had accused AMCU</td>
</tr>
<tr>
<td>12 question was simply, “I have no more questions.”</td>
<td>12 of intimidation during August 2012 in the events leading up</td>
</tr>
<tr>
<td>13 MR MATHUNJWA: I just want him to repeat,</td>
<td>13 to the 16th, do you remember that?</td>
</tr>
<tr>
<td>14 because I said “Amandla.” I don't know whether he was</td>
<td>14 MR MATHUNJWA: Yes, I could remember</td>
</tr>
<tr>
<td>15 expecting an answer from me or -</td>
<td>15 that.</td>
</tr>
<tr>
<td>16 CHAIRPERSON: Oh, well, he said</td>
<td>16 MR BURGER SC: That was, in this</td>
</tr>
<tr>
<td>17 “Amandla,” so have you got an answer to that? The</td>
<td>17 relationship, the stance adopted by NUM. Before I deal</td>
</tr>
<tr>
<td>18 suggestion is that after this man talked about finishing</td>
<td>18 with you briefly with the stance adopted by AMCU, can I ask</td>
</tr>
<tr>
<td>19 off the police, people round about said “Amandla” and there</td>
<td>19 you this? When you, as AMCU president, issue a media</td>
</tr>
<tr>
<td>20 was a sort of implied question mark at the end of it. So</td>
<td>20 statement, I take it you check the correctness of the facts</td>
</tr>
<tr>
<td>21 what answer do you want to give?</td>
<td>21 of that statement?</td>
</tr>
<tr>
<td>22 MR MATHUNJWA: No, that - it's a normal</td>
<td>22 MR MATHUNJWA: Yes, we do our level best</td>
</tr>
<tr>
<td>23 response in the mass meeting after you spoke, they usually</td>
<td>23 to record.</td>
</tr>
<tr>
<td>24 say “Amandla.”</td>
<td>24 MR BURGER SC: And when you go on</td>
</tr>
<tr>
<td>25 CHAIRPERSON: I understand that. Mr</td>
<td>25 national radio and the people listen to the debate, if you</td>
</tr>
</tbody>
</table>
29th November 2012

Marikana Commission of Inquiry
Rustenburg

then say things on the 15th August, I take it you as
president will make particularly sure that you do not
spread falsehoods, that what you say is, to the best of
your knowledge, true and correct.

MR MATHUNJWA: It would be our endeavour, correct.

MR BURGER SC: Yes. Now we know that
during August of this year you, as president of AMCU,
accused NUM of oppressing the workers, is that correct?

MR MATHUNJWA: Yes, I think I said
something like that.

MR BURGER SC: Yes. Mr -
MS BARNES: Chair, can I ask that the
audience perhaps be requested to just remain quiet and
respectful while the witness is giving his testimony?

MR BURGER SC: I'll do my best, Chair -
CHAIRPERSON: It seems a reasonable
request. I would expect people in the auditorium to remain
quiet. They are here so they can hear what's said, not so
they can participate or make comments of their own and if
anybody does make a comment or make a noise and is
identified, I'll instruct those concerned to evict that
person from the auditorium for the rest of the day, so
please behave. Carry on, thank you.

MR BURGER SC: Mr Mathunjwa, what I put
to you I get from exhibits before the Commission. I don't
give you the exhibit every time because it takes long but
if I have got it wrong, by all means challenge me and I'll
show you where you've said what I put to you. The second
thing you said about NUM was that they were "Rent-a-black"
- August 2012.

MR MATHUNJWA: That is not correct.

MR BURGER SC: Can I put it to you, if
you go to Exhibit O09, on page 6 of O09, this is your
speech at the koppie on the morning of the 16th of August.

MR MATHUNJWA: I would request assistance
on that.

MR BURGER SC: Yes, let me ask my
attorney to give you a hand on that. Page 6, the top of
the page is "Back, let it come, back." Do you have that
page? Now, is that the page, Mr Mathunjwa, which in the
middle has "President" and then you say "Africa's economy
is in white men's hands?" Is that the one?

MS BARNES: It's page 6 of the
transcript.

MR BURGER SC: I've paginated mine by
hand but I'll ask my attorney to assist you. Thank you
very much. Thank you very much. Do you have that page in
front of you?

MR MATHUNJWA: Yes.
<table>
<thead>
<tr>
<th>Page 2481</th>
<th>Page 2483</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. employer employed blacks.</td>
<td>1. statement? It says “Media release statement 14 August 2012.”</td>
</tr>
<tr>
<td>2. CHAIRPERSON: Yes, so you must have had</td>
<td>3. MR MATHUNJWA: Yes, I do have.</td>
</tr>
<tr>
<td>3. black people in mind who were employed in relatively top</td>
<td>4. MR BURGER SC: Page 2, last paragraph.</td>
</tr>
<tr>
<td>4. positions in Lonmin, would that be fair?</td>
<td>5. The statement reads, &quot;Without laying any blame to anyone,</td>
</tr>
<tr>
<td>5. MR MATHUNJWA: That would be fair, in</td>
<td>6. but it is important to state that we also suspect some</td>
</tr>
<tr>
<td>6. general.</td>
<td>7. sinister forces behind the situation. Before the report</td>
</tr>
<tr>
<td>7. CHAIRPERSON: Yes, now which people – now</td>
<td>8. about RDO’s demands, we learned that NUM started an</td>
</tr>
<tr>
<td>8. if top officials of Lonmin heard you saying that, who would</td>
<td>9. intensive campaign where they said ‘Reclaiming Lonmin</td>
</tr>
<tr>
<td>9. they think you were referring to?</td>
<td>10. back.’ This campaign is ongoing and it is even involving</td>
</tr>
<tr>
<td>10. MR MATHUNJWA: They would be referring to</td>
<td>11. top officials from the ruling party.” That’s referring to</td>
</tr>
<tr>
<td>11. blacks that are employed at the mine.</td>
<td>12. the ANC, is it?</td>
</tr>
<tr>
<td>13. about top positions, so it must be black positions – black</td>
<td>14. MR BURGER SC: Yes. And I read on,</td>
</tr>
<tr>
<td>14. persons employed by Lonmin in top positions, is that</td>
<td>15. “These top officials have been conducting mass meetings</td>
</tr>
<tr>
<td>15. correct?</td>
<td>16. with workers saying all bad things about AMCU and urging</td>
</tr>
<tr>
<td>16. MR MATHUNJWA: That is correct but not a</td>
<td>17. workers not to – to go back to NUM when those maybe is part</td>
</tr>
<tr>
<td>17. person, I was just saying blacks.</td>
<td>18. of the strategy and later blame AMCU for all the bad things</td>
</tr>
<tr>
<td>18. MR BURGER SC: Mr Mathunjwa, I’m sorry,</td>
<td>19. in order for AMCU to be portrayed as a bad union.” I</td>
</tr>
<tr>
<td>19. I’ll have to make a submission at the end that that answer</td>
<td>20. understood that to mean you call NUM a sinister force. Was</td>
</tr>
<tr>
<td>20. of yours is a less than reliable answer, that you know full</td>
<td>21. I wrong?</td>
</tr>
<tr>
<td>21. well to whom you refer and you make the statement on the</td>
<td>22. MR MATHUNJWA: If you read the very same</td>
</tr>
<tr>
<td>22. morning of a most inflammatory situation and now you’re not</td>
<td>23. statement you can see there is a full stop there,</td>
</tr>
<tr>
<td>23. willing to tell us who you referred to.</td>
<td>24. “situation full stop.” Then there’s a new sentence that</td>
</tr>
<tr>
<td>24. MR MATHUNJWA: As I’ve answered earlier</td>
<td>25. starts.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page 2482</th>
<th>Page 2484</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. MR BURGER SC: Yes.</td>
<td>1. MR BURGER SC: Yes, I’m not debating</td>
</tr>
<tr>
<td>2. MR HANABE: I’m sorry, what was your</td>
<td>2. grammar with you, I’m asking for a context. I’m saying I</td>
</tr>
<tr>
<td>3. reply?</td>
<td>3. read that, that you accuse NUM of being a sinister force.</td>
</tr>
<tr>
<td>4. MR BURGER SC: I’m still exploring the</td>
<td>4. Did I read it incorrectly?</td>
</tr>
<tr>
<td>5. relationship between AMCU -</td>
<td>5. MR MATHUNJWA: You have read like -</td>
</tr>
<tr>
<td>6. MR HANABE: Sorry, I’m asking -</td>
<td>6. that’s why I am saying that sentence finishes, there is a</td>
</tr>
<tr>
<td>7. MR BURGER SC: I’m still exploring the</td>
<td>7. full stop there, then start a new sentence. “Before the</td>
</tr>
<tr>
<td>8. relationship between the two unions in December this year</td>
<td>8. report about RDO demands” – comma – “we learned that NUM</td>
</tr>
<tr>
<td>9. in order to understand what role that played in the</td>
<td>9. started an intensive campaign.”</td>
</tr>
<tr>
<td>10. tragedy.</td>
<td>10. MR BURGER SC: Mr Mathunjwa, who were the</td>
</tr>
<tr>
<td>11. CHAIRPERSON: You mean in August this</td>
<td>11. sinister forces you were referring to here?</td>
</tr>
<tr>
<td>12. year.</td>
<td>12. MR MATHUNJWA: The very same sinister</td>
</tr>
<tr>
<td>13. MR BURGER SC: In August this year.</td>
<td>13. forces, it’s what I communicated to management when they</td>
</tr>
<tr>
<td>14. CHAIRPERSON: We haven’t got to December</td>
<td>14. were asking us about the march. We said surely there are</td>
</tr>
<tr>
<td>15. this year yet.</td>
<td>15. sinister forces around this and the management, they said</td>
</tr>
<tr>
<td>16. MR BURGER SC: I’m sorry. It feels like</td>
<td>16. they don’t know who is behind this. So I was also saying</td>
</tr>
<tr>
<td>17. December, Chair, but - and what I’m putting to you is what</td>
<td>17. the very same thing.</td>
</tr>
<tr>
<td>18. the perception of AMCU was, in public, of NUM and the next</td>
<td>18. MR BURGER SC: So do you refer to</td>
</tr>
<tr>
<td>19. thing I want to put to you is that you accuse NUM of being</td>
<td>19. sinister forces without knowing who they are?</td>
</tr>
<tr>
<td>20. a sinister force behind the whole situation.</td>
<td>20. MR MATHUNJWA: That’s what we wanted to</td>
</tr>
<tr>
<td>21. MR MATHUNJWA: That is not correct.</td>
<td>21. investigate, who was behind.</td>
</tr>
<tr>
<td>22. MR BURGER SC: Can I ask you to have a</td>
<td>22. MR BURGER SC: I’ll also make a</td>
</tr>
<tr>
<td>23. look at your press statement which you issued on the 14th of</td>
<td>23. submission that that answer is not reliable, at the end of</td>
</tr>
<tr>
<td>24. August? It’s Exhibit OO2 and if you go to page 2 of that,</td>
<td>24. the inquiry. The next thing that you said of NUM, as the</td>
</tr>
<tr>
<td>25. do you have that press statement? Do you have that press</td>
<td>25. president, is that they were using dirty tricks. Do you</td>
</tr>
</tbody>
</table>
29th November 2012

<table>
<thead>
<tr>
<th>Page 2485</th>
<th>Page 2486</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 accept that?</td>
<td>1 platinum.</td>
</tr>
<tr>
<td>2 MR MATHUNJWA: Did you find on the very same statement there?</td>
<td>2 MR BURGER SC: Do you want the Commission to understand that what you say here is that Lonmin was using dirty tricks on AMCU?</td>
</tr>
<tr>
<td>3 same statement there?</td>
<td>3 MR MATHUNJWA: I'm not suggesting that, but this is what I wrote here.</td>
</tr>
<tr>
<td>4 MR BURGER SC: It is somewhere in there.</td>
<td>4 MR BURGER SC: Mr Mathunjwa, we can read what you wrote. I thought I understood that. I'm now trying to get your gloss on what you wrote and what I'm asking you is, who do you accuse here of having used dirty tricks in labelling AMCU? Who did you refer to?</td>
</tr>
<tr>
<td>5 I'm testing your memory. Is it correct that you accused NUM in August 2012 of using dirty tricks?</td>
<td>5 MR MATHUNJWA: I mean at the mine, that were given organisational rights.</td>
</tr>
<tr>
<td>6 Mr MATHUNJWA: It could be so, I said, but –</td>
<td>6 MR MATHUNJWA: Mr Mathunjwa, AMCU has had limited organisational rights at Lonmin in terms of an agreement concluded on the 15th of December 2011, is that correct?</td>
</tr>
<tr>
<td>7 MR BURGER SC: Let me help you. Page 4 of that same statement, second paragraph. You say, “In conclusion, we want to call upon all stakeholders in the industry to accept the reality that AMCU is one of the major stakeholders that need to be respected, accommodated and learn to work with. Trying to sideline AMCU and using dirty tricks in labelling AMCU as a hard-line union which uses violence will not assist the situation.”</td>
<td>7 MR MATHUNJWA: I mean at the mine, that were given organisational rights.</td>
</tr>
<tr>
<td>8</td>
<td>8 limited organisational rights were never received or – from the silver platter. We had to declare the dispute as from 2010. If you can check the date when we started having those organisational rights, until such time we had the certificate to embark on a protected industrial action and further that, as AMCU, we never used the certificate. I kept on knocking to the management, senior management of Lonmin, that resulted into those organisational rights, whereas there were unions that have got less membership, I mean at the mine, that were given organisational rights.</td>
</tr>
<tr>
<td>9 MR MATHUNJWA: Those rights were then expanded in May of 2012 by way of an agreement called “An addendum to the limited organisational rights agreement between AMCU and Lonmin,” is that correct?</td>
<td>9 MR MATHUNJWA: I mean at the mine, that were given organisational rights.</td>
</tr>
<tr>
<td>10</td>
<td>10 limited organisational rights were never received or – from the silver platter. We had to declare the dispute as from 2010. If you can check the date when we started having those organisational rights, until such time we had the certificate to embark on a protected industrial action and further that, as AMCU, we never used the certificate. I kept on knocking to the management, senior management of Lonmin, that resulted into those organisational rights, whereas there were unions that have got less membership, I mean at the mine, that were given organisational rights.</td>
</tr>
<tr>
<td>11</td>
<td>11 limited organisational rights were never received or – from the silver platter. We had to declare the dispute as from 2010. If you can check the date when we started having those organisational rights, until such time we had the certificate to embark on a protected industrial action and further that, as AMCU, we never used the certificate. I kept on knocking to the management, senior management of Lonmin, that resulted into those organisational rights, whereas there were unions that have got less membership, I mean at the mine, that were given organisational rights.</td>
</tr>
<tr>
<td>12</td>
<td>12 limited organisational rights were never received or – from the silver platter. We had to declare the dispute as from 2010. If you can check the date when we started having those organisational rights, until such time we had the certificate to embark on a protected industrial action and further that, as AMCU, we never used the certificate. I kept on knocking to the management, senior management of Lonmin, that resulted into those organisational rights, whereas there were unions that have got less membership, I mean at the mine, that were given organisational rights.</td>
</tr>
<tr>
<td>13 MR MATHUNJWA: That’s the employer. I might I can continue, if you may allow me.</td>
<td>13 MR MATHUNJWA: I mean we find difficulty to get organisational rights in many of the mines in the industry of platinum, even though you may target – those are the dirty tricks that I’m referring to.</td>
</tr>
<tr>
<td>14 MR MATHUNJWA: Yes.</td>
<td>14 MR MATHUNJWA: I mean we find difficulty to get organisational rights in many of the mines in the industry of platinum, even though you may target – those are the dirty tricks that I’m referring to.</td>
</tr>
<tr>
<td>15 MR MATHUNJWA: I mean we find difficulty to get organisational rights in many of the mines in the industry of platinum, even though you may target – those are the dirty tricks that I’m referring to.</td>
<td>15 MR MATHUNJWA: I mean we find difficulty to get organisational rights in many of the mines in the industry of platinum, even though you may target – those are the dirty tricks that I’m referring to.</td>
</tr>
<tr>
<td>16 MR MATHUNJWA: Mr Mathunjwa, AMCU has limited organisational rights at Lonmin in terms of an agreement concluded on the 15th of December 2011, is that correct?</td>
<td>16 MR MATHUNJWA: I mean we find difficulty to get organisational rights in many of the mines in the industry of platinum, even though you may target – those are the dirty tricks that I’m referring to.</td>
</tr>
<tr>
<td>17 MR MATHUNJWA: That’s correct.</td>
<td>16 MR MATHUNJWA: I mean we find difficulty to get organisational rights in many of the mines in the industry of platinum, even though you may target – those are the dirty tricks that I’m referring to.</td>
</tr>
<tr>
<td>18 MR MATHUNJWA: Those rights were then expanded in May of 2012 by way of an agreement called “An addendum to the limited organisational rights agreement between AMCU and Lonmin,” is that correct?</td>
<td>18 MR MATHUNJWA: Those rights were then expanded in May of 2012 by way of an agreement called “An addendum to the limited organisational rights agreement between AMCU and Lonmin,” is that correct?</td>
</tr>
<tr>
<td>19 MR MATHUNJWA: I mean we find difficulty to get organisational rights in many of the mines in the industry of platinum, even though you may target – those are the dirty tricks that I’m referring to.</td>
<td>19 MR MATHUNJWA: Those rights were then expanded in May of 2012 by way of an agreement called “An addendum to the limited organisational rights agreement between AMCU and Lonmin,” is that correct?</td>
</tr>
<tr>
<td>20 MR MATHUNJWA: That’s correct.</td>
<td>20 MR MATHUNJWA: I mean we find difficulty to get organisational rights in many of the mines in the industry of platinum, even though you may target – those are the dirty tricks that I’m referring to.</td>
</tr>
<tr>
<td>21 MR MATHUNJWA: I mean we find difficulty to get organisational rights in many of the mines in the industry of platinum, even though you may target – those are the dirty tricks that I’m referring to.</td>
<td>21 MR MATHUNJWA: I mean we find difficulty to get organisational rights in many of the mines in the industry of platinum, even though you may target – those are the dirty tricks that I’m referring to.</td>
</tr>
<tr>
<td>22 MR MATHUNJWA: That’s correct.</td>
<td>22 MR MATHUNJWA: I mean we find difficulty to get organisational rights in many of the mines in the industry of platinum, even though you may target – those are the dirty tricks that I’m referring to.</td>
</tr>
<tr>
<td>23 MR MATHUNJWA: Those rights were then expanded in May of 2012 by way of an agreement called “An addendum to the limited organisational rights agreement between AMCU and Lonmin,” is that correct?</td>
<td>23 MR MATHUNJWA: Those rights were then expanded in May of 2012 by way of an agreement called “An addendum to the limited organisational rights agreement between AMCU and Lonmin,” is that correct?</td>
</tr>
<tr>
<td>24 MR MATHUNJWA: Those rights were then expanded in May of 2012 by way of an agreement called “An addendum to the limited organisational rights agreement between AMCU and Lonmin,” is that correct?</td>
<td>24 MR MATHUNJWA: Those rights were then expanded in May of 2012 by way of an agreement called “An addendum to the limited organisational rights agreement between AMCU and Lonmin,” is that correct?</td>
</tr>
<tr>
<td>25 MR BURGER SC: Those rights were then expanded in May of 2012 by way of an agreement called “An addendum to the limited organisational rights agreement between AMCU and Lonmin,” is that correct?</td>
<td>25 MR BURGER SC: Those rights were then expanded in May of 2012 by way of an agreement called “An addendum to the limited organisational rights agreement between AMCU and Lonmin,” is that correct?</td>
</tr>
</tbody>
</table>
MR BURGER SC: What does that mean? Help

MR MATHUNJWA: As far as AMCU is concerned we never had any toxic relationship with NUM. We – as you can look at those dates where we concluded those limited organisational rights, there was no incident from our side that is known of, that there is a toxic relationship. I cannot account to any person who decides to exercise his or her right and his decision or her decision in the matter that you are referring to.

MR BURGER SC: No, but Mr Mathunjwa, you were present at the kopje at midday on the 16th August when, in your presence, one of your delegates sang the song that we heard about yesterday, this NUM, how are we going to kill it, this NUM, we hate NUM. That was a toxic relationship, Mr Mathunjwa.

MR MATHUNJWA: I did explain the song yesterday. As you say, you were present. Yes. I heard you explaining the killing. How do you explain the idiom, “I hate NUM?” What does that mean – in Zulu or Xhosa?

MR MATHUNJWA: [Zulu/Xhosa phrase]

MR BURGER SC: What does that mean? Help me. I beg your pardon?

MR MATHUNJWA: I don’t like.

MR BURGER SC: Yes.

MR MATHUNJWA: Or I don’t want to associate with you.

MR BURGER SC: You say that’s not serious, that’s not literally meant?

MR MATHUNJWA: No, it’s a competition, as I explained yesterday.

MR BURGER SC: Mr Mathunjwa, this is a matter of life and death, this is not a competition. Have a look at Exhibit L. It doesn’t have to go onto the screen, I just want to show the witness this. Slide 101, this is a photograph taken the Tuesday before the Thursday when this song is sung. It’s a photograph of a NUM shop steward near the kopje. You’ve seen this?

MR MATHUNJWA: Yes.

MR BURGER SC: I put to you there was a toxic relationship between NUM and AMCU in August of 2012 at the time of this upheaval.

MR MATHUNJWA: I don’t agree with that.

MR BURGER SC: I wasn’t sure that I understood the answer to an earlier question of mine. Do you accept that on the 15th of August NUM wouldn’t even travel to the kopje in the same vehicle as AMCU?