

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 23 29 NOVEMBER 2012 PAGES 2389 TO 2492

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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



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

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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

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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 Mpmembe –
 25 CHAIRPERSON: Mr Madlanga, before you

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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

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

8 We have indicated that our preference would have
 9 been that we should move it today, but we understand that
 10 it should be dealt with later on and on that basis we are
 11 comfortable if the matter were dealt with in the first
 12 phase – that would be at a time when the families are back
 13 and we wouldn't mind the matter being dealt with on the
 14 21st, failing the 21st of January 2013, failing that date,
 15 on the Thursday or Friday in that very first week of the
 16 Commission's resumption.

17 CHAIRPERSON: What you're asking for is
 18 that the application be heard on the 21st of January or the
 19 24th or 25th of January. What is the reason for the
 20 alternative dates? Are you suggesting the families may not
 21 be back by the 21st?

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

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

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

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

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1 MR MADLANGA SC: Thank you, Mr Chairman.
 2 I would now take you to Exhibit OO4, Mr Mathunjwa, and that
 3 is the transcript of the meeting of 15 August 2012 that was
 4 attended by you, General Mpenbe and a few other people, I'm
 5 sure you'd remember that. I'll take you to page 22 of that
 6 exhibit.

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

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

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

19 MR MATHUNJWA: That's correct.

20 MR MADLANGA SC: Am I correct also that
 21 grammatically, when you say lives will be lost, that is
 22 stating something that is definite, certain to happen?

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

25 MR MADLANGA SC: Before your view of what

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1 the general said, I just want to get an idea whether you
 2 accept that grammatically what I've just read to you which
 3 was said by you, that means something definite or something
 4 certain – lives will be lost.

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

9 MR MADLANGA SC: I have gone through the
 10 transcript looking for the part where the general makes
 11 that definite statement that lives will be lost. What I
 12 was able to find is at page 2 and there he says lives must
 13 – might be lost. Or in fact if I were to read what he
 14 says, he says "The operation has reached to a sensitive
 15 stage that we might be, we might go and lose more lives."
 16 And this is against line 18, it starts at line 18 at page
 17 2. Do you see that?

18 CHAIRPERSON: He goes on to say, "We
 19 cannot lose –"

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

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

25 MR MADLANGA SC: We do know, of course,

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1 that unfortunately lives did get lost but I was just trying
 2 to get an understanding of where your statement came from,
 3 did the general actually say that. So is it your
 4 understanding that he did say what you say, what you
 5 yourself say?
 6 MR MATHUNJWA: Yes, according to the
 7 statement that is what I was meaning.
 8 MR MADLANGA SC: Okay. No further
 9 questions, commissioners, thank you very much.
 10 CHAIRPERSON: Thank you, Mr Madlanga. Mr
 11 Semenya?
 12 MR SEMENYA SC: Thank you, Chair.
 13 CHAIRPERSON: Are you going to cross-
 14 examine first, or Mr Burger?
 15 MR SEMENYA SC: No, I'll go first this
 16 time, Chair and commissioners.
 17 CROSS-EXAMINATION BY MR SEMENYA SC: Mr
 18 Mathunjwa, as a leader I take it you reject armed protest.
 19 MR MATHUNJWA: That's correct.
 20 MR SEMENYA SC: And as a leader you
 21 distance yourself from any form of armed protest, am I
 22 correct?
 23 MR MATHUNJWA: That's correct.
 24 MR SEMENYA SC: You would actually
 25 condemn it where it happens, is that right?

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1 MR MATHUNJWA: Yes, I will condemn it.
 2 MR SEMENYA SC: I take it AMCU rejects
 3 armed protest as well, correct?
 4 MR MATHUNJWA: That's correct.
 5 MR SEMENYA SC: Will distance itself from
 6 any form of armed protest as a union, correct?
 7 MR MATHUNJWA: That's correct.
 8 MR SEMENYA SC: Will actually condemn any
 9 armed protest, particularly or especially relating to its
 10 members.
 11 MR MATHUNJWA: Yes, any kind of armed
 12 protest, we would condemn it.
 13 MR SEMENYA SC: And I take it as a leader
 14 you also would reject unlawful killings?
 15 MR MATHUNJWA: I don't understand that,
 16 could you please repeat your question again?
 17 MR SEMENYA SC: That, as a leader, you
 18 will reject any form of unlawful killings of human beings.
 19 MR MATHUNJWA: I will condemn any
 20 killings.
 21 MR SEMENYA SC: And as a leader you'll
 22 distance yourself from any form of killings that are not
 23 lawful.
 24 MR MATHUNJWA: I will distance myself to
 25 any killing.

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

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1 MR MATHUNJWA: Can you repeat again?
 2 MR SEMENYA SC: You will condemn it more
 3 if such unlawful killing is perpetrated by an AMCU member,
 4 a union to which you are the president?
 5 MR MATHUNJWA: I will condemn it across
 6 the board, irrespective whether it's an AMCU member or it's
 7 not an AMCU member, I will condemn it.
 8 MR SEMENYA SC: Now I can safely accept
 9 that even AMCU rejects any forms of unlawful killing, as a
 10 union.
 11 MR MATHUNJWA: It is correct.
 12 MR SEMENYA SC: It will reject any form
 13 of unlawful injury caused to other people as well.
 14 MR MATHUNJWA: Of course, yes.
 15 MR SEMENYA SC: No less than you do as a
 16 leader, am I correct?
 17 MR MATHUNJWA: Yes.
 18 MR SEMENYA SC: And as a leader you
 19 condemn, reject and distance yourself from any unlawful
 20 damage to property?
 21 MR MATHUNJWA: That's correct.
 22 MR SEMENYA SC: So when you see torched
 23 motor vehicles belonging to Lonmin, you would reject and
 24 condemn that type of conduct, am I right?
 25 MR MATHUNJWA: Not only for Lonmin, for

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1 any person's property being damage, I'll condemn it.

2 MR SEMENYA SC: And that would be true of

3 AMCU as a union as well, it would condemn this damage to

4 property, the torching of cars, et cetera, am I right?

5 MR MATHUNJWA: That's correct.

6 MR SEMENYA SC: And I'm correct that as a

7 leader you would support the functions of the police where

8 they're done within the parameters of the law, am I right?

9 MR MATHUNJWA: That is correct.

10 MR SEMENYA SC: And AMCU does accept the

11 South African Police Service as the lawful law enforcer in

12 the country, am I right?

13 MR MATHUNJWA: That is correct.

14 MR SEMENYA SC: And you would expect your

15 members to obey lawful instructions by police officers,

16 wouldn't you?

17 MR MATHUNJWA: Yes, as a citizen of the

18 country, yes.

19 MR SEMENYA SC: So when told, "Put your

20 weapons down" by a police officer you expect them to

21 comply?

22 MR MATHUNJWA: That's correct.

23 MR SEMENYA SC: And when they don't, you

24 would look at that conduct with disapproval.

25 MR MATHUNJWA: That's correct.

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1 MR SEMENYA SC: If given a chance, you

2 would communicate your disapproval to members where they

3 are in disobedience to a lawful order, right?

4 MR MATHUNJWA: Would you please repeat

5 again your question?

6 MR SEMENYA SC: You would, if given an

7 opportunity, express your disapproval to your members where

8 they are in disregard of a lawful order.

9 MR MATHUNJWA: Yes, that's correct.

10 MR SEMENYA SC: In fact, when you look at

11 your members in flagrant disregard of the laws of the

12 country, you'll speak against it, am I right?

13 MR MATHUNJWA: That's correct.

14 MR SEMENYA SC: What you will not do is

15 to excite them with political rhetoric that may lead to

16 violence, am I right?

17 MR MATHUNJWA: Well, it depends where we

18 are, where we are talking about.

19 MR SEMENYA SC: You're not suggesting to

20 us there are situations where you would use political

21 rhetoric to excite them towards violence, are you?

22 MR MATHUNJWA: No, I'm not suggesting

23 that.

24 MR SEMENYA SC: So I must be right that,

25 as a leader, you would not use political rhetoric in a very

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1 explosive environment, am I right?

2 MR MATHUNJWA: That's correct.

3 MR SEMENYA SC: And relating to matters

4 labour, but I'm going to steer clear of the facts on this

5 one, but I accept that as a leader you understand

6 bargaining by unions with employers, correct?

7 MR MATHUNJWA: Yes.

8 MR SEMENYA SC: And bargaining often

9 happens in boardrooms, am I right?

10 MR MATHUNJWA: Yes, it starts at the

11 boardrooms.

12 MR SEMENYA SC: And they are always

13 peaceful, aren't they?

14 MR MATHUNJWA: Not really.

15 MR SEMENYA SC: Under the law, they're

16 always peaceful, correct?

17 MR MATHUNJWA: Under that context,

18 correct.

19 MR SEMENYA SC: Okay. Now, I want to

20 show you a video of the 13th of August 2012 and I just want

21 to test with you whether what premise we have agreed on, is

22 correct.

23 CHAIRPERSON: Have we seen this video

24 already? If not, we must give it an exhibit number. If we

25 have seen it, perhaps you can give us the exhibit number it

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1 already has.

2 MR SEMENYA SC: We have seen it, Chair,

3 in the presentation. This is where – next to the railway

4 line.

5 CHAIRPERSON: We don't have to be given

6 the exhibit number now, you can proceed to show the video

7 clip and at some stage, perhaps after the tea adjournment,

8 the evidence leaders can give us the reference.

9 MR SEMENYA SC: Thank you, Chair.

10 [VIDEO IS SHOWN]

11 MR SEMENYA SC: Mr Mathunjwa, do you see

12 what we saw now? And I just want to confirm, you do hear

13 the clattering of weapons, correct?

14 MR MATHUNJWA: Yes.

15 MR SEMENYA SC: That, as the president of

16 AMCU, you will condemn, am I right?

17 MR MATHUNJWA: Yes, as I've answered

18 earlier on, that's correct.

19 MR SEMENYA SC: And some of these are

20 AMCU members, am I right?

21 MS BARNES: Chair, I'm sorry to interrupt

22 but if the witness is going to be asked questions about

23 this video, I think it's only fair that he be shown the

24 whole video so that he sees the full context. I'm not sure

25 that this witness has previously seen this video.

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1 CHAIRPERSON: Isn't that a matter to be
 2 sorted out in re-examination if he's asked questions which
 3 are unfair or – well, no, if they are unfair you can object
 4 and I'll uphold the objection. If he's asked questions
 5 which present an inadequate reflection of what he really
 6 would wish to say, that's a matter which you can deal with
 7 in re-examination, so –
 8 MS BARNES: I'm not sure that it could be
 9 properly dealt with in re-examination, Chair, this is –
 10 there's a particular context here and without the witness
 11 seeing the whole video, he's unable to appreciate that
 12 context.
 13 CHAIRPERSON: Let's find out whether he
 14 knows the context first, before we take the matter any
 15 further. Perhaps Mr Semenya can approach the case on that
 16 basis and once that aspect has been dealt with, we can then
 17 revisit your objection if you still persist in it. Mr
 18 Semenya, you've heard the point raised by Ms Barnes. Do
 19 you wish to deal with it?
 20 MR SEMENYA SC: I intend to ask the
 21 witness nothing beyond what the witness has seen.
 22 CHAIRPERSON: Her point is that if you
 23 ask him to comment on things that he's seen, inasmuch as
 24 he's only seen a few seconds of what happened and the
 25 context adds an extra dimension which he may not be aware

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1 of, her point is that that's unfair, as I understand her
 2 objection, and I'm giving you an opportunity to reply to
 3 the objection.
 4 MR SEMENYA SC: Chair, I propose rather
 5 to play the tape. I don't concede the objection to be
 6 founded, though.
 7 CHAIRPERSON: As far as I can recall this
 8 is quite a long tape. I don't know whether you want the
 9 whole of it to be shown, Ms Barnes, just enough to apprise
 10 the witness of the context so that the questions that he's
 11 asked can be approached by him with an appreciation of the
 12 context. Would that be a fair approach?
 13 MS BARNES: Indeed, Chair. There are –
 14 you know, this is the video in which the general addresses
 15 the protesters but then several of the protesters reply to
 16 the general. It will also be important that that is played
 17 so that the witness, I mean, the witness understands what
 18 happened. The witness was not present, I think that's
 19 common cause, on the day.
 20 CHAIRPERSON: Before we proceed let me
 21 ask the witness what I think is a necessary question. Have
 22 you seen the video of the exchange between General Mpembe
 23 and some of the strikers on the afternoon of the 13th next
 24 to the railway line, before the incident when two policemen
 25 were killed and two, or possibly three, of the strikers

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1 were killed also. Have you seen that video?
 2 MR MATHUNJWA: I could not recall whether
 3 I was here because some of the sessions I was not in
 4 attendance of the Commission.
 5 CHAIRPERSON: But when you were being
 6 precognized before you gave evidence, were you not shown
 7 videos that had been seen here that you hadn't seen because
 8 you weren't here?
 9 MR MATHUNJWA: No, no, no.
 10 [10:13] CHAIRPERSON: Mr Semenya, I suggest you
 11 proceed as you proposed, i.e. that is to say showing him
 12 the clip or enough of the clip to inform him of the context
 13 so that any questions you ask, that you propose asking,
 14 will not be based on or suffer from the defect that he's
 15 not aware of the full context.
 16 MR SEMENYA SC: Yes, Chair. Shall we
 17 play the video until the point where the crowd disperses?
 18 CHAIRPERSON: And I take it, it won't be
 19 necessary for there to be interpretation to slow things
 20 down because it's already been shown and there has been
 21 interpretation at that stage.
 22 [VIDEO IS SHOWN]
 23 CHAIRPERSON: [Indistinct] in the
 24 auditorium and the witness can hear it clearly.
 25 [VIDEO IS SHOWN]

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1 MR SEMENYA SC: Thank you, Chair. Mr
 2 Mathunjwa, I'm sure you now have the context.
 3 MR MATHUNJWA: Yes, through the Chairman,
 4 I've got to check whether is this video footage being
 5 played to the end because there was this issue that before
 6 it was not played accordingly, so I just want to find out
 7 for those that have watched it before, does it end there?
 8 MS BARNES: It does seem to be the
 9 complete clip – the complete clip of the addresses, that
 10 is.
 11 MR MAHLANGU: Am I right that you say
 12 this clip ends where it –
 13 MS BARNES: This is the complete footage
 14 of the addresses.
 15 MR SEMENYA SC: Mr Mathunjwa, do you now
 16 have the context?
 17 MR MATHUNJWA: Yes, I have the context
 18 but I did ask a question through the Chairman, whether this
 19 clip is right at the end, since I never had privy to watch
 20 it –
 21 CHAIRPERSON: Well, as I understand the
 22 way it works is, there was a discussion by the railway line
 23 where the general addressed the strikers and the strikers
 24 replied and he asked them to hand over their weapons, they
 25 declined, they said they wanted to go to the koppie and

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1 that they would hand, as I understand it, they would hand
 2 them over there after certain things had happened. And he
 3 said no, no, he wanted the weapons at that point. That was
 4 then the end of the discussion and they started walking off
 5 in the direction of the koppie, in fact they went via the
 6 informal settlement and something happened there but that's
 7 not, as I understand it, relevant to what we're busy with
 8 now. This is a complete clip, as I understand it – if I'm
 9 wrong, I'll be corrected – of the exchanges between the
 10 general on the one hand and some of the strikers, I take it
 11 the leaders of the strikers, on the other at the spot near
 12 the railway line. And it ends with the end of the
 13 discussion and the strikers moving off, we saw at the end
 14 of the clip, moving off in the direction of the koppie. Of
 15 course we know something else happened after that, but that
 16 particular video, as I understand it, it's a complete video
 17 of what took place near the railway line. Is that correct,
 18 Mr Semenya?
 19 MR SEMENYA SC: That is correct, Chair.
 20 CHAIRPERSON: Right. So that, I hope,
 21 answers your question satisfactorily.
 22 MR MATHUNJWA: Yes, sir.
 23 MR SEMENYA SC: Now, Mr Mathunjwa, that's
 24 an armed protest, do you accept that?
 25 MR MATHUNJWA: Yes.

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1 MR SEMENYA SC: So, too, that of the 16th
 2 August 2012, right?
 3 MR MATHUNJWA: Yes.
 4 MR SEMENYA SC: By AMCU members, am I
 5 right – at least some of them.
 6 MR MATHUNJWA: You are wrong.
 7 MR SEMENYA SC: At least some of them.
 8 Am I wrong still?
 9 MR MATHUNJWA: I won't deny that, that
 10 some were AMCU members.
 11 MR SEMENYA SC: As a leader, have you
 12 ever condemned the armed protest by some of the AMCU
 13 members during this period?
 14 MR MATHUNJWA: Yes, but also it needs to
 15 be known that this strike was not the strike called by
 16 AMCU. It was the workers themselves who were at the
 17 strike.
 18 MR SEMENYA SC: I have never seen any
 19 document where you, as a leader of AMCU, is condemning this
 20 armed protest. Where did that happen?
 21 MR MATHUNJWA: There are instances where
 22 I've been addressing workers in the mountain several times.
 23 MR SEMENYA SC: I'm sure you're not
 24 saying to us that you told the workers, I condemn your
 25 armed protest.

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1 MR MATHUNJWA: You might say that, but
 2 the message was quite clear that we are against any form of
 3 violence or bloodshed.
 4 [10:33] MR SEMENYA SC: Now Mr Mathunjwa, I'm
 5 going to ask the question again. You, as a leader, have
 6 you ever condemned this armed protest publicly?
 7 MR MATHUNJWA: Yes, we did.
 8 MR SEMENYA SC: Then I must ask the
 9 question again, where did you, as a leader, publicly
 10 condemn this armed protest by AMCU members, by some of the
 11 AMCU members?
 12 MR MATHUNJWA: On the SAfm we mentioned
 13 that we are against any form of violence and the letter,
 14 some of the letters that I communicated to management about
 15 the strike itself and also with the media briefing.
 16 MR SEMENYA SC: I'm going to have to
 17 press you, Mr Mathunjwa. Are you saying you said to SAfm -
 18 I, as Mathunjwa, condemn this armed protest by some of our
 19 members?
 20 MR MATHUNJWA: If I was at SAfm or any
 21 platform, I represent the organisation, I speak on behalf
 22 of the organisation.
 23 MR SEMENYA SC: Okay, now that you talk
 24 in that capacity, did you say on SAfm – AMCU, for which I
 25 speak, condemns members of AMCU who participate in armed

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1 protest?
 2 MR MATHUNJWA: We did say that we condemn
 3 any form of violence.
 4 MR SEMENYA SC: Now I don't want to argue
 5 later that you are being deliberately evasive. I'm going
 6 to repeat my question. Do you say in SAfm – I, speaking as
 7 the president of an organisation, I condemn the armed
 8 protest by some of the members of AMCU?
 9 MR MATHUNJWA: What I'm saying is what
 10 I've got recollection of, that we did denounce violence in
 11 any form.
 12 CHAIRPERSON: Mr Mathunjwa, there is a
 13 distinction, I think, which Mr Semenya is making and I'm
 14 not sure that you understand it, so perhaps I must try to
 15 explain it to you. You say consistently that you condemned
 16 violence. Mr Semenya's questions aren't only limited to
 17 violence. He's asking you about armed protests. So if
 18 someone goes into a public place with a group of other
 19 people to protest against something and he's in possession
 20 of a dangerous weapon which he brandishes around, that
 21 would be an armed protest even though no-one present may be
 22 hurt. So there may not be violence but there will
 23 nevertheless be protest accompanied by arms, weapons.
 24 That, I think, is the distinction that Mr Semenya is
 25 making. Do you understand the distinction? You nod your

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1 head, the answer is yes, I take it?

2 MR MATHUNJWA: Yes.

3 CHAIRPERSON: Now that the point has been

4 clarified you may wish to proceed with your cross-

5 examination.

6 MR SEMENYA SC: Thank you, Chair. Now do

7 you say in SAfm that I, as the president of AMCU, condemn

8 armed protest specifically and especially by my own

9 members?

10 MR MATHUNJWA: I might not have that

11 recollection of the exact words as you are saying but I've

12 got the recollection that we did denounce violence.

13 MR SEMENYA SC: Of course you understand

14 I'm not addressing violence, right, so is your memory

15 failing or you did not say so?

16 MR MATHUNJWA: The answer I've given is

17 my best that I could recall.

18 MR SEMENYA SC: You have not even been

19 recorded anywhere condemning armed protest with the media

20 publicity you have had over this matter, am I right?

21 MR MATHUNJWA: That is not true. In one

22 of the media statements we said that we are the union that

23 respects the Constitution of the country and also we abide

24 by the peace.

25 MR SEMENYA SC: Mr Mathunjwa, I'm

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1 addressing you as the president of a union that was

2 involved in the tragic loss of many lives, injury, damage

3 to property, and I'm trying to understand whether you ever

4 took a moment of saying to the AMCU members, I condemn your

5 armed protest, that's not how it's done.

6 MR MATHUNJWA: Yes, we did, as I've said

7 earlier on.

8 MR SEMENYA SC: And you did it in letters

9 to management, as you earlier said.

10 MR MATHUNJWA: Yes, we did make

11 correspondence to management.

12 MR SEMENYA SC: No, I'm not discussing

13 whether that you made letters to management. I'm saying

14 that condemnation is conveyed in the letters you say you

15 took to management.

16 MR MATHUNJWA: I believe so.

17 MR SEMENYA SC: And your belief is well-

18 founded, right?

19 MR MATHUNJWA: Yes.

20 MR SEMENYA SC: And you also say you

21 condemned the conduct of armed protesters by AMCU in media

22 briefings.

23 MR MATHUNJWA: We've condemned all forms

24 of violence in the media.

25 MR SEMENYA SC: Now I'm sure you don't

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1 want the Chairman to revisit the same subject. I'm talking

2 about armed protest, I'm not talking about violence.

3 MR MATHUNJWA: Yes, we did condemn it.

4 MR SEMENYA SC: This is in what medium,

5 SABC or SAfm or what? Where does that appear?

6 MR MATHUNJWA: We made many press

7 briefings. It might be one of the press briefings that we

8 had, I might not remember which one exactly but if we can

9 go through to the media statements that we made, we'll

10 happen to find that.

11 MR SEMENYA SC: I invite you, when you do

12 have some time, to get us that, Mr Mathunjwa. Do you see

13 in that video footage General Mpmembe pleading with the

14 crowd to put their arms down?

15 MR MATHUNJWA: That's correct.

16 MR SEMENYA SC: And you saw them walk

17 away with their arms?

18 MR MATHUNJWA: What I saw before that,

19 there was negotiations that was going on there.

20 MR SEMENYA SC: Did you hear my question?

21 MR MATHUNJWA: Loud and clear.

22 MR SEMENYA SC: Can I then ask you to

23 answer it?

24 MR MATHUNJWA: I saw them moving.

25 MR SEMENYA SC: In flagrant disobedience

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1 to a lawful instruction to put their weapons down, correct?

2 MR MATHUNJWA: I'm not in the position,

3 because there was negotiations going on.

4 MR SEMENYA SC: After the failed

5 negotiation by the general that they put the weapons down,

6 they just stood up in flagrant disregard of that lawful

7 instruction, did you see that?

8 MR MATHUNJWA: As I've said earlier on,

9 there was a negotiation and subsequent to that then there

10 was a movement of the strikers.

11 MR SEMENYA SC: Can I take advantage of

12 your presence on that stand to tell all AMCU members that

13 this type of behaviour AMCU condemns and rejects?

14 MR MATHUNJWA: AMCU will say repeatedly

15 that we condemn any form of violence, as stated before.

16 MR SEMENYA SC: No Mr Mathunjwa, my

17 question is very specific. I beseech you, I plead with you

18 that of all AMCU who are listening to you testify, they

19 should know in no unequivocal terms that this AMCU rejects.

20 MS BARNES: I don't understand the

21 question, with respect.

22 CHAIRPERSON: I think the question is

23 quite clear. Of course it's whether you understand it,

24 with respect, is not relevant to whether the witness does

25 but what the question amounts to is this, are you prepared,

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1 sitting as you are at the witness table, giving an answer
 2 to be heard by a number of members of AMCU which may well
 3 be broadcast nationally and internationally and heard by
 4 members of AMCU outside this auditorium – are you prepared
 5 to condemn armed protest? I think that's the question. I
 6 think that –
 7 MS BARNES: As long as he makes it clear,
 8 with – he referred to "condemn this" which was, I think –
 9 CHAIRPERSON: Yes.
 10 MS BARNES: - particularly unclear.
 11 CHAIRPERSON: I may have been a bit harsh
 12 when I said what I did about you but I hope the question is
 13 now clear – if that is the question, Mr Semenya.
 14 MR SEMENYA SC: It is the question,
 15 Chair.
 16 CHAIRPERSON: For the sake of good order
 17 you should repeat it, avoiding the problem that Ms Barnes
 18 referred to, so that there can be no misunderstanding, so
 19 that the witness can clearly understand the point you're
 20 trying to make.
 21 MR SEMENYA SC: I'll indeed do so, Chair.
 22 Can I take advantage of your evidence now and have you tell
 23 members of AMCU, all of them, that you as the president of
 24 AMCU, you condemn this type of armed protest?
 25 MR MATHUNJWA: Yes, I don't have a

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1 problem with that.
 2 MR SEMENYA SC: Please do.
 3 MR MATHUNJWA: I, Joseph Mathunjwa,
 4 president of AMCU, I condemn any form of armed protest.
 5 MR SEMENYA SC: I think the leader in
 6 that group was Mr Noki, do you know him? Did you know him?
 7 MR MATHUNJWA: No.
 8 MR MAHLANGU: No?
 9 MR MATHUNJWA: No.
 10 MR SEMENYA SC: Did you speak to Mr Noki
 11 on the 16th while you were at the koppie?
 12 MR MATHUNJWA: No.
 13 MR SEMENYA SC: Did you say to the people
 14 in the koppie, the leaders you were discussing, can I make
 15 it very clear to you, we as AMCU, we denounce armed
 16 protest?
 17 MR MATHUNJWA: I'll answer by saying
 18 those workers who were at the mountain were not AMCU
 19 members and the – I had no platform to say that because it
 20 was different unions which were there. I couldn't come and
 21 say what AMCU wants to say, inasmuch as I did say that we
 22 must avoid bloodshed. And furthermore, it was said by one
 23 of the strikers in the mountain that you don't see AMCU on
 24 the right hand side, you don't see NUM on the left hand
 25 side, we are united as workers.

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1 MR SEMENYA SC: We can accept that you
 2 had an opportunity to at least say to our AMCU members on
 3 the mountain, this, as a union we condemn armed protest -
 4 that opportunity you had, am I right?
 5 [10:53] MR MATHUNJWA: I've told the workers.
 6 MR SEMENYA SC: That you denounce armed
 7 protest at the koppie, that's what you told them?
 8 MR MATHUNJWA: We said we don't want to
 9 see the bloodshed and the violence.
 10 MR SEMENYA SC: Well, let's tell that, Mr
 11 Mathunjwa, the one way you avoid violence and bloodshed is
 12 to tell the people in the koppie, disarm and put your
 13 weapons on the ground.
 14 MR MATHUNJWA: In my recollection I think
 15 I did say the very same thing that you are asking me.
 16 MR SEMENYA SC: Now you say I'm not going
 17 to talk to the employer because this is not how we
 18 negotiate, please put these weapons down and thereafter
 19 trust me, I'll go speak to the employer.
 20 MR MATHUNJWA: I think I did say that.
 21 MR SEMENYA SC: And they disobeyed you?
 22 MR MATHUNJWA: Not to say they disobeyed
 23 me because there was a message that I had to convey back to
 24 the employer.
 25 MR SEMENYA SC: No – no, you say you did

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1 tell them that you're not going to take their request until
 2 and unless they put their arms down, correct?
 3 MR MATHUNJWA: I don't have a
 4 recollection of that.
 5 MR SEMENYA SC: But this recollection
 6 thing, is it a failing memory or are you saying that's the
 7 best way to avoid a question?
 8 MR MATHUNJWA: That's what I'm saying.
 9 MR SEMENYA SC: Now if you did tell them
 10 you are not going to speak to the employer unless they put
 11 their weapons down, they must clearly have disobeyed you.
 12 MR MATHUNJWA: I don't want to be
 13 speculative on that issue.
 14 MR SEMENYA SC: No, nor, fortunately, am
 15 I inviting you to speculate, sir. I do know that they did
 16 not put their weapons down. Is that factually correct?
 17 MR MATHUNJWA: That is correct.
 18 MR SEMENYA SC: So your request was not
 19 heeded, am I correct?
 20 MR MATHUNJWA: - was your first question
 21 before that?
 22 MR SEMENYA SC: Then they disobeyed your
 23 request to disarm before you can even go and speak to the
 24 employer?
 25 MR MATHUNJWA: If I could recall, your

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1 question was if I did – I don't know under which context
 2 were you saying that, then I responded by saying I don't
 3 want to be speculative.
 4 MR SEMENYA SC: No, Mr Mathunjwa, you've
 5 just told us that you told them that you will not take the
 6 request to the employer unless and until they put their
 7 weapons down.
 8 MS BARNES: No Chair, the witness said he
 9 didn't recall having said that. That was his answer.
 10 MR MATHUNJWA: That's correct.
 11 MR SEMENYA SC: I'll reformulate. If you
 12 had told them then, it is obvious from the subsequent
 13 events that they disobeyed you.
 14 MR MATHUNJWA: I did say before that I
 15 don't want to be speculative. That was my answer to you.
 16 CHAIRPERSON: My fellow commissioner, Adv
 17 Hemraj, has a different recollection of what the witness
 18 said from what Adv Barnes has said. It's now 11 o'clock, I
 19 suggest we take the short adjournment. During that time we
 20 ask those responsible for recording the proceedings to find
 21 that part of the evidence. The advocates can perhaps
 22 listen to it and we can have an agreed statement when we
 23 resume as to what exactly was said on that point and we can
 24 then proceed. We will take the short adjournment.
 25 [COMMISSION ADJOURNS COMMISSION RESUMES]

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1 [11:19] CHAIRPERSON: The Commission resumes.
 2 For the benefit of those who want to know about these
 3 things, we will be adjourning at 12:30 today and resuming
 4 at two. Were counsel able, during the adjournment, to find
 5 the passage of the evidence on the recording and is there
 6 now agreement as to what was said?
 7 MS BARNES: Yes, I believe so, Chair. It
 8 appears the witness answered in the affirmative and then
 9 also said that he couldn't recall, but perhaps Mr Semenya
 10 can simply proceed with his cross-examination.
 11 CHAIRPERSON: Mr Semenya?
 12 MR SEMENYA SC: Thank you, Chair.
 13 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD):
 14 Mr Mathunjwa, can I invite you to look at Exhibit L? Do
 15 you have it in front of you? Now perhaps I must lead by
 16 saying that shortly after –
 17 CHAIRPERSON: Sorry, before you carry on,
 18 you've asked him to look at Exhibit L. Now there are lots
 19 of slides in Exhibit L, is there a particular slide to
 20 which you wish to direct his attention?
 21 MR SEMENYA SC: Yes, Chair. Well, I just
 22 want to lead in before I give him the actual slide, if I
 23 may. Mr Mathunjwa, shortly after that group we saw
 24 kneeling down on the footage, two police officers were
 25 killed. Now I invite you to look at slides 52, 53 and 54.

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1 Now once the general was disobeyed, this was an occurrence
 2 that followed. Would you, as AMCU, condemn it?
 3 MR MATHUNJWA: Yes, we regret for such
 4 things. Yes, we condemn it.
 5 MR SEMENYA SC: It is more reprehensible
 6 because the police were not part of the conflict at
 7 Marikana, am I right?
 8 MR MATHUNJWA: Yes, I believe it was
 9 between the employer and the employees.
 10 MR SEMENYA SC: And the police were mere
 11 intermediaries trying to have law and order restored, am I
 12 right?
 13 MR MATHUNJWA: I believe that was the
 14 position.
 15 MR SEMENYA SC: Chair, I will request
 16 that we play footage where Mr Mathunjwa is seen kneeling
 17 down addressing the group on the 16th August.
 18 [VIDEO IS SHOWN]
 19 MR SEMENYA SC: Thank you. The
 20 transcription of what you say is on Exhibit OO9. Do you
 21 have that in front of you? I'm told, Mr Mathunjwa, you
 22 confirmed that the transcript is an accurate account of
 23 what you were saying, what you said, rather.
 24 MR MATHUNJWA: Yes, that was – that was
 25 played, that was myself.

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1 MR SEMENYA SC: I do not see anywhere
 2 there where you say that the crowd must please leave. Are
 3 you able to show it to us?
 4 MR MATHUNJWA: Yes, you don't see it
 5 accordingly but this is not the only clip. I believe after
 6 I knelt I did spoke to the workers, which I wonder why
 7 those clips are not before the Commission.
 8 MR SEMENYA SC: You're not saying you
 9 knelt twice, are you?
 10 MR MATHUNJWA: Yes, once.
 11 MR SEMENYA SC: And I'm saying we're
 12 having the transcript where you speak after kneeling down.
 13 I don't see anything where you're saying to them they must
 14 leave there.
 15 CHAIRPERSON: The kneeling down reference
 16 appears to be on page 13 of Exhibit OO9, near the foot of
 17 the page, nine lines from the foot actually.
 18 MR SEMENYA SC: Do you see the
 19 transcript?
 20 MR MATHUNJWA: Yes, I see the transcript.
 21 MR SEMENYA SC: I'm putting it to you
 22 that nowhere are you saying there that they must leave.
 23 Correct?
 24 MR MATHUNJWA: If I may allow to report,
 25 I mean to respond, I'll read here – [African language].

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1 MR MAHLANGU: Where I'm reading I'm
 2 saying, "Let us avoid the bloodshed."
 3 MR MATHUNJWA: And to avoid the
 4 bloodshed, I was referring there that they must leave.
 5 MR SEMENYA SC: Can I refer you to
 6 Exhibit MN, which is your statement – Mother Nellie, M for
 7 mother and N for North or whatever. And another N for
 8 Ngolwana.
 9 MR MAHLANGU: Is that the witness
 10 statement, Joseph Mathunjwa?
 11 MR MATHUNJWA: Yes.
 12 CHAIRPERSON: Sorry – it's NN, is it? N
 13 for nobody.
 14 MR SEMENYA SC: Do you have the document?
 15 MR MATHUNJWA: Yes, I do have my
 16 statement before me.
 17 MR SEMENYA SC: Can I invite you to go to
 18 page 27? You'll see paragraph 88 there.
 19 CHAIRPERSON: No, before he looks at 88,
 20 shouldn't he look at 91? Paragraph 91 on page 27 says, "I
 21 said to them that it was not necessary and that they must
 22 please leave the koppie."
 23 MR MATHUNJWA: Yes, I do see that.
 24 MR SEMENYA SC: And do you see also at,
 25 against paragraph 88 you say, "I knelt down, I pleaded with

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1 them, I was on my knees holding a microphone. I said,
 2 comrades, it has already been decided, please leave this
 3 place." Do you see that?
 4 CHAIRPERSON: No, Mr Semenya, that
 5 passage refers to his return visit to the koppie and he
 6 gave – he said yesterday in his evidence that he made two
 7 speeches and the first one was televised or was recorded on
 8 video and has been transcribed but he said the second
 9 speech that he made when he returned was not – or he
 10 certainly hasn't, there isn't a video before us on it. I
 11 understood him to say it hadn't actually been videoed but
 12 that he then gave us a summary in his evidence as to what
 13 he said. So the passage that you are putting to him is his
 14 summary of what he said on the second occasion, on the
 15 return visit which he said is not covered by the video clip
 16 and I think it's common cause that the passage you're now
 17 putting to him from the transcript is his first speech on
 18 his first visit. If I'm wrong on that, I'll be corrected
 19 but I have a clear recollection that that's so. So if
 20 that's correct, I don't think this is a fair question.
 21 MR SEMENYA SC: Chair, I'm also seeking
 22 clarity. I understood the witness to say he only knelt
 23 down once.
 24 CHAIRPERSON: Yes, no, he did say that.
 25 I heard him say it a minute ago but in the context he might

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1 have meant he only knelt once during the occasion of his
 2 first speech, you know. You didn't ask him how many times
 3 did you ever kneel on that day, on however many occasions
 4 you spoke – in which case he might've given a different
 5 answer. So the answer, I only knelt once, in the context I
 6 must confess I understood he meant he only knelt once on
 7 the occasion of the first speech, but I may have
 8 misunderstood. I don't want to hamper your cross-
 9 examination but I thought that to put the passage to him
 10 from the speech on the first occasion and then in relation
 11 to a passage in his statement where he talks about his
 12 speech on the second occasion, wasn't a fair question.
 13 That was the point that I put to you. I assume – perhaps
 14 you can step back a bit and re-approach the matter in a way
 15 that doesn't incur any objection from Ms Barnes or from me.
 16 MR SEMENYA SC: Mr Mathunjwa, I'm a
 17 little handicapped. I wasn't here yesterday and the day
 18 before. How many times do you kneel down addressing the
 19 people on the koppie?
 20 MR MATHUNJWA: Once.
 21 MR SEMENYA SC: So can we go back to
 22 paragraph 88, page 27. I don't see that you've said to the
 23 crowd that they must please leave that place, after
 24 kneeling down once.
 25 MR MATHUNJWA: All my pleading was to say

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1 the people must leave to avoid the bloodshed.
 2 MR SEMENYA SC: I'm putting to you that
 3 the reason it is not there is because you didn't say it.
 4 MR MATHUNJWA: I don't agree with that.
 5 MR SEMENYA SC: But you agree that it is
 6 a significant statement to avoid the bloodshed you
 7 expected?
 8 MR MATHUNJWA: All what I was saying
 9 there was to avoid the bloodshed.
 10 [11:39] MR SEMENYA SC: No, but what I'm putting
 11 to you is, it is a profoundly significant request you're
 12 making, if you made it, that they must please leave the
 13 koppie. Do you agree at least with me?
 14 MR MATHUNJWA: I said it as I'm saying,
 15 that let's avoid the bloodshed.
 16 MR SEMENYA SC: I'm saying, Mr Mathunjwa,
 17 that telling them to leave the koppie would have been one
 18 of the most significant statements that you've told them,
 19 correct?
 20 MR MATHUNJWA: As I've said, that that is
 21 not a conclusive tape of what I was saying at the mountain.
 22 MR SEMENYA SC: Telling them to leave the
 23 koppie would've been a very significant request to make to
 24 them, is that accurate?
 25 MR MATHUNJWA: As you earlier stated that

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1 you are handicapped because you were not here yesterday, I
 2 did say that and I even made a reference that if the ram
 3 retreats it doesn't mean that he's defeated, that I meant
 4 they must leave the koppie.
 5 MR SEMENYA SC: Please capacitate me now.
 6 Was it after your kneeling?
 7 MR MATHUNJWA: As I'm saying that is not
 8 – yes, after I whatsiname, I've knelt on the second time.
 9 MR SEMENYA SC: But on Exhibit OO9 there'
 10 still no ram you are talking about here, after kneeling.
 11 MR MATHUNJWA: You are correct, that's
 12 why I've mentioned that this clip is not a conclusive tape
 13 from the media. This is the first session when I visited
 14 the mountain. There is a second session when I visited the
 15 mountain.
 16 MR SEMENYA SC: Mr Mathunjwa, we know you
 17 knelt once, correct?
 18 MR MATHUNJWA: That is not disputed.
 19 MR SEMENYA SC: Now I'm saying the
 20 transcript reads – can I read it for you, at page one but
 21 last, about line 9 as the Chairperson indicated.
 22 CHAIRPERSON: That'll be page 13.
 23 MR SEMENYA SC: Page 13.
 24 MR MAHLANGU: In which exhibit?
 25 MR SEMENYA SC: OO9.

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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 should come closer too to resolve this matter. I appeal to
 24 you not to give NUM this opportunity to run and say AMCU
 25 made people to be killed in the mountain. I appeal to you,

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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?
 9 MR MATHUNJWA: According to the script
 10 that has been played you are correct but hence I'm saying
 11 this was a first address. There is a second address that
 12 the media hasn't provided here.
 13 MR SEMENYA SC: No, Mr Mathunjwa, I'll
 14 tell you where the sentence on page 88 comes from – I mean
 15 on page 27 of your statement, paragraph 88 comes from. You
 16 say after you were still kneeling, the media published
 17 widely that even the president of AMCU, Mr Mathunjwa, was
 18 kneeling down, begging the protesters to leave. That's
 19 where this sentence comes from in your statement, Mr
 20 Mathunjwa – when in fact you didn't say anything of the
 21 kind.
 22 MR MATHUNJWA: You are correct, the media
 23 people seek whatever they seek and they publish what they
 24 want to publish. Hence I'm saying I did say in my second
 25 address when I returned back to the mountain. Remember I

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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

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1 was not.

2 MR MATHUNJWA: Can you repeat what you

3 said?

4 MR SEMENYA SC: I'm going to argue that

5 this statement you make against paragraph 88, it's

6 influenced by you taking, improperly, advantage of how the

7 media had portrayed you as pleading to the crowd on the

8 koppie to leave, when you did not make that request.

9 MR MATHUNJWA: That is not true.

10 MR SEMENYA SC: You are very critical of

11 the conduct of the police on the 16th August, am I correct?

12 MR MATHUNJWA: I understand the word

13 "critical," what you –

14 MR MAHLANGU: Disapprove.

15 MR SEMENYA SC: You are very – can I use

16 the word "negative" about the conduct of the police on the

17 16th August.

18 MR MATHUNJWA: I was not negative to the

19 police but I was simply mentioning what happened.

20 MR SEMENYA SC: Okay, let me start now.

21 Prior to leaving the mine on the 16th you did hold the view,

22 didn't you, that the police did not act properly?

23 MR MATHUNJWA: Depends on which occasion

24 are you referring to?

25 MR SEMENYA SC: Your general impression

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1 about the conduct of the police on that day when you left

2 the mine, did you form a view that what they did, how they

3 did it, was proper?

4 MR MATHUNJWA: I cannot generalise but I

5 can reflect to the instances where I was particularly

6 involved.

7 MR SEMENYA SC: Okay, now it is correct

8 you had assured the police the night before, i.e. the 15th

9 of August, that the protesters were going to lay their arms

10 down 9 o'clock the following day.

11 MR MATHUNJWA: No.

12 MR SEMENYA SC: Put it in your own words.

13 [11:59] MR MATHUNJWA: In our debriefing in the

14 presence of the generals who were present in the room,

15 General Annandale, General Naidoo, General Mpembe, myself

16 and management, Mr Kwadi, Mr Kgotle and the other white

17 gentleman who was present there, whom I don't know his name

18 and myself with other members of the union, we reported to

19 them that the workers have said to us we have to return the

20 following day to take the discussion further and to decide

21 how are they going to go back to work or how are they going

22 to – to return back to work peacefully as per the

23 management request. And then we also requested the General

24 Mpembe what's his overall view. He said, he saluted me and

25 said yes, I'm sure that tomorrow the strike will be over

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1 and I was thanked by Mr Kgotle in my capacity as the

2 president by my intervention into this process.

3 MR SEMENYA SC: You have quoted yourself

4 in full, that's what you said?

5 MR MATHUNJWA: Yes and then I requested

6 further the meeting for the following day. The reason for

7 that was to discuss the issue of mine health and safety and

8 I did explain the term to the debriefing, that if workers

9 have been absent from work for a certain period they had to

10 go, an induction in terms of mine health and safety. Hence

11 that was the reason that I requested the meeting the

12 following day for management to tell me, if the workers

13 decide to return back to work, where they should report.

14 MR SEMENYA SC: You did not say to the

15 generals there that the workers will disarm at all? You

16 didn't say that?

17 MR MATHUNJWA: When the workers, they

18 were saying it at night, return the following day and

19 discuss what the management have said face to face. That

20 was an ongoing process. In the very same debriefing in the

21 presence of the generals, no-one showed any objection to

22 that effect.

23 MR SEMENYA SC: Mr Mathunjwa, did you say

24 or didn't you to the generals that the workers were going

25 to lay their arms down?

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1 MR MATHUNJWA: As I've said earlier on,

2 the discussion was still continuing for the following day

3 where we committed we'll meet at nine. And I even

4 mentioned just now that even the generals present, three of

5 the generals never objected. They saluted me, they gave

6 their overall impression that they also believed that

7 tomorrow the strike will be over.

8 MR SEMENYA SC: Should I repeat the

9 question for the third time? It's a very simple one. Did

10 you tell them that the workers were going to lay their

11 arms?

12 MR MATHUNJWA: My first answer, I said

13 no, because there was an ongoing discussion. I've said it

14 earlier on, I've answered that.

15 MR SEMENYA SC: Now just enlighten me.

16 Why would General Mpembe know that there will be peace the

17 following day? He's not part of the negotiations, he's not

18 representing management. Where would he get that from?

19 MR MATHUNJWA: I don't know. Maybe he

20 saw the manner in which we presented the issues to the

21 workers and the response from the workers.

22 MR SEMENYA SC: And you don't say to him,

23 no, but general, where do you get that from, because it is

24 an incorrect depiction of what happened?

25 MR MATHUNJWA: Maybe we don't understand

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1 each other.

2 MR SEMENYA SC: You're saying General

3 Mpembe formed an impression that they would lay down their

4 arms after having listened to you address the crowd,

5 correct?

6 MR MATHUNJWA: Not to lay down their arms

7 but the strike, that's what I said.

8 MR SEMENYA SC: In any case I don't

9 understand, Mr Mathunjwa, were they going to go to work

10 with their arms?

11 MR MATHUNJWA: I think that is common,

12 that they won't work with their arms.

13 MR SEMENYA SC: So General Mpembe must be

14 right to say that it was stated that they will lay down

15 their arms and go back to work, correct?

16 MR MATHUNJWA: Maybe that was his opinion

17 to that effect, I cannot speak on his behalf.

18 MR SEMENYA SC: General Mbombo is very

19 upset with you the following day, correct?

20 MR MATHUNJWA: That's correct.

21 MR SEMENYA SC: The people who were

22 supposed to be going to work, at least on your version, are

23 still on the koppie. Correct?

24 MR MATHUNJWA: That's correct.

25 MR SEMENYA SC: It was reason enough for

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1 her to be upset, would you agree?

2 MR MATHUNJWA: I don't know.

3 MR SEMENYA SC: But you say so in your

4 statement in that she says look, the police are spending a

5 lot of money trying to bring this thing under control.

6 MR MATHUNJWA: The reason I'm saying this

7 is because the Provincial Commissioner, she was not part of

8 the debriefing of the 15th and the only persons that were

9 introduced to ourselves that are in charge of the area was

10 General Mpembe, whom I was reporting in terms of safety and

11 security.

12 MR SEMENYA SC: In the debriefing of the

13 15th, the one you're talking about, did you personally form

14 an impression that the workers were going to go to work the

15 following day and disarm?

16 MR MATHUNJWA: For the fact that they

17 were willing to invite us for the following day and to

18 engage with them to convey what the management was saying,

19 I hoped.

20 MR SEMENYA SC: Did you form an

21 impression that the workers were going to go back to work

22 the following day or not?

23 MR MATHUNJWA: I had hoped that the

24 engagement will bear results, positive results.

25 MR SEMENYA SC: Is it accurate that you

Page 2439

1 did not form an impression that the workers will go to work

2 the following day?

3 MR MATHUNJWA: I believed, because if you

4 listen to some of the tapes of the 15th when we addressed

5 them, they did highlight that come tomorrow, let's engage

6 and see how we take this further and how we'll be returning

7 back to work.

8 MR SEMENYA SC: And that's what you

9 communicate to the generals?

10 MR MATHUNJWA: That's correct.

11 MR SEMENYA SC: So General Mpembe could

12 not have formed that impression from looking at you, it

13 would be from what you tell them.

14 MR MATHUNJWA: Also because the very same

15 management was also, I believe they were also there and

16 also General Mpembe was around the area.

17 MR SEMENYA SC: No, I don't understand

18 that answer. The impression that all the generals, the

19 evidence that all the generals will say is that you made an

20 undertaking that the workers were going to lay down their

21 arms and go to work the following day. Now I'm saying that

22 could only have been communicated by them to you, am I

23 correct?

24 MR MATHUNJWA: I still repeat myself.

25 The generals were present there. We reported back to them

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1 that the workers they have invited us to come back

2 tomorrow, the following day, the 16th. Since now it's at

3 night, they want to see us face to face and then we'll

4 engage on what the employer is telling them. Then

5 therefore they will decide from there how they return back

6 to work. That's what we said. And I even mentioned that

7 there are clips of the night of the 15th which confirms what

8 I'm saying.

9 MR SEMENYA SC: Did the protesters tell

10 you, tomorrow we are prepared to go back to work?

11 MR MATHUNJWA: I can answer by simply

12 saying we can repeat those tapes where the workers were

13 saying –

14 CHAIRPERSON: Mr Mathunjwa, you're not

15 helping your case by not answering questions directly.

16 You're asked a straight question, you must give a straight

17 answer. There are a number of questions that you haven't

18 answered directly. I'm sorry to interrupt you, Mr Semenya,

19 but – the first question is, you were asked did you give,

20 at the debriefing did you give an undertaking that the

21 workers would hand down their weapons, hand over their

22 weapons or put them down on the following morning at 9

23 o'clock. I think your answer is no, you didn't, but you

24 don't say that directly but am I understanding you

25 correctly, you didn't give that undertaking? The police

Page 2441

1 say you did. Do you admit you did it or do you say you
 2 didn't?
 3 MR MATHUNJWA: No, I didn't make – I
 4 answered that.
 5 CHAIRPERSON: Okay, that's a straight
 6 answer.
 7 MR MATHUNJWA: Yes.
 8 CHAIRPERSON: Next question. Do you say
 9 that the people at, the strikers at the koppie on the
 10 Wednesday evening when you spoke to them, did not tell you
 11 that they would hand over their weapons at 9 o'clock the
 12 next morning, is that correct?
 13 MR MATHUNJWA: Can you repeat that one
 14 again, Mr Chairman?
 15 CHAIRPERSON: You said you never gave an
 16 undertaking that they would hand their weapons over on the
 17 following morning. The next question is, when you spoke to
 18 the workers on the Wednesday evening at the koppie did they
 19 say to you, we will hand our weapons over tomorrow morning
 20 at 9 o'clock?
 21 CHAIRPERSON: No, right. The next
 22 question is, what they said to you, was that recorded?
 23 MR MATHUNJWA: Yes, that's what was
 24 recorded.
 25 CHAIRPERSON: Was it said in the presence

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1 of officials of the police?
 2 MR MATHUNJWA: Yes, in the Nyala.
 3 CHAIRPERSON: Which – yes, because you
 4 were in the Nyala with the police and they were standing in
 5 front with a loud hailer, is that right?
 6 MR MATHUNJWA: With a camera.
 7 CHAIRPERSON: Alright. So who was with
 8 you in the Nyala, which policeman?
 9 MR MATHUNJWA: I think Mr Macintosh was
 10 there.
 11 CHAIRPERSON: Okay.
 12 MR MATHUNJWA: And then the other –
 13 CHAIRPERSON: And other –
 14 MR MATHUNJWA: - police officers that –
 15 CHAIRPERSON: So did the police hear
 16 everything, or perhaps more accurately, were they able to
 17 hear everything that the strikers had said to you?
 18 MR MATHUNJWA: Yes, they should.
 19 CHAIRPERSON: So – and we can find out
 20 exactly what was said by looking at the tape again?
 21 MR MATHUNJWA: Yes.
 22 CHAIRPERSON: Right.
 23 MR MATHUNJWA: Thank you.
 24 CHAIRPERSON: So if you're correct in
 25 saying that the workers never said we will hand over our

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1 weapons at 9 o'clock, the police knew that because they
 2 heard it when you heard it?
 3 MR MATHUNJWA: Yes.
 4 CHAIRPERSON: They heard what was said
 5 when you heard what was said, is that right?
 6 MR MATHUNJWA: That's right.
 7 CHAIRPERSON: Right. Then the next
 8 question is, if you had given the undertaking later that
 9 night at the debriefing to the police, how could the police
 10 have believed you if the police themselves had heard what
 11 the workers had said and what they hadn't said?
 12 MR MATHUNJWA: That I don't know.
 13 MR SEMENYA SC: Then you must help me
 14 jump this hurdle after that evidence. Can I invite you to
 15 look at paragraph 54 on page 16 of your statement? Do you
 16 see paragraph 54?
 17 MR MATHUNJWA: Yes.
 18 [12:19] MR SEMENYA SC: Second sentence, "We said
 19 that the workers had been receptive" – I'm reading from the
 20 third sentence – "We said that the workers had been
 21 receptive to the proposal that they return to work and that
 22 we would see them again in the morning to discuss the
 23 matter further." Do you see that?
 24 MR MATHUNJWA: That's correct.
 25 MR SEMENYA SC: But I thought I

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1 understood you to say that the workers didn't say that in
 2 your presence and that of Mr Macintosh?
 3 MR MATHUNJWA: It did, they said, "You
 4 come back the following day and discuss the matter further
 5 and then we can take it there how we return to work." I
 6 think even in the clip of the 15th you'll hear it, them
 7 saying themselves.
 8 MR SEMENYA SC: I'm not talking about the
 9 clip, I'm saying in your statement you say the workers were
 10 receptive to your proposal that they go back to work.
 11 MR MATHUNJWA: That is correct but you
 12 must read it further, you mustn't just stop it there. It
 13 says if we read it, 54, if you read it further, "They were
 14 receptive to the proposal that they return to work and that
 15 we will see them again in the morning to discuss the matter
 16 further," which is what I'm saying, that you must come
 17 tomorrow as we take this matter further and discuss how we
 18 return back to work.
 19 MR SEMENYA SC: Did you make a proposal
 20 that they return back to work?
 21 MR MATHUNJWA: The proposal was made by
 22 management. I was conveying the management's proposal.
 23 MR SEMENYA SC: You went to management –
 24 to the koppie with management?
 25 MR MATHUNJWA: I was conveying

<p style="text-align: right;">Page 2445</p> <p>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</p>	<p style="text-align: right;">Page 2447</p> <p>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] 9 [14:03] CHAIRPERSON: The Commission resumes. I 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</p>
<p style="text-align: right;">Page 2446</p> <p>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</p>	<p style="text-align: right;">Page 2448</p> <p>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 Mpmembe will tell the Commission, that you did say</p>

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1 "Tomorrow we'll be happy because the protesters will lay
2 down their arms and they will go back to work." What's
3 your reaction?
4 MR MATHUNJWA: The reaction will be
5 saying that I never said that.
6 MR SEMENYA SC: And that's precisely why
7 General Mbombo was upset with you when 9 o'clock came and 9
8 o'clock passed and the people were still on the koppie.
9 Your reaction?
10 MR MATHUNJWA: As I've stated earlier on,
11 that the protocol that I was following, the only person who
12 was introduced to myself that is in charge was General
13 Mpembe, not Provincial Commissioner Mbombo.
14 MR SEMENYA SC: You don't say to General
15 Mbombo, why are you upset with me, I've never made any
16 promise to you, why are you looking to me for an answer?
17 MR MATHUNJWA: That's exactly what I'm
18 saying, that the protocol was to report to General Mpembe,
19 not to –
20 CHAIRPERSON: No, you're not answering
21 the question. The question is, when General Mbombo was
22 angry with you because you hadn't come at 9 o'clock as she
23 understood you were going to come and arms weren't laid
24 down at 9 o'clock, when she was angry, why did you not say
25 to her, but I don't know what you're angry about, there was

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1 no undertaking that things would happen at 9 o'clock, all
2 that was going to happen was that the matter would be
3 discussed further? I think that's Mr Semenya's question.
4 MR MATHUNJWA: I think the reaction of
5 North West Provincial Commissioner, he was angry that I
6 made a commitment that I would speak to the workers at 9
7 o'clock. That's what I could recall, that's why he was
8 angry that I was late – she, I beg your pardon.
9 MR SEMENYA SC: Even more profound, Mr
10 Mathunjwa, because on your version, the first place you
11 ought to have started in the morning at 9 o'clock is the
12 koppie, not management. You knew what management wanted.
13 MR MATHUNJWA: That is not correct. The
14 first place, I was to start with management at eight.
15 MR SEMENYA SC: To do what with
16 management? They have told you what is the basis for
17 further negotiation.
18 MR MATHUNJWA: There was a debriefing on
19 the 15th, the evening of the 15th where we concluded that on
20 the following day of the 16th I would start by reporting to
21 them with regard to mine health and safety processes, hence
22 then I started there.
23 MR SEMENYA SC: There is a pending blood
24 bath, according to you, there is a possibility of it being
25 averted. You promised to go to the koppie at nine and the

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1 best thing you do is to speak about mine health and safety
2 in the morning?
3 MR MATHUNJWA: Mine health and safety,
4 it's a key issue to each and every worker. You cannot just
5 proceed to work without being in compliance with mine
6 health and safety because it's another way of avoiding
7 fatality in the mines.
8 MR SEMENYA SC: No, but we know they
9 hadn't agreed to go to work, so that can't be top of your
10 agenda.
11 MR MATHUNJWA: The workers, they
12 highlighted clearly that we must come the following day and
13 then we will engage and then they will decide from there
14 when they are returning to work. That was based on those
15 premises that I introduced, in my debriefing, the issue of
16 mine health and safety.
17 MR SEMENYA SC: If your version is
18 correct, the first thing you would've done is to go to
19 speak to the people on the koppie and said, as we discussed
20 yesterday, the request of the employer is X, can we take
21 the matter further? That's no reason to go to management.
22 MR MATHUNJWA: If the management, during
23 the debriefing, had an objection they could have raised
24 such but it was agreed that we will meet at 8 o'clock the
25 following day.

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1 MR SEMENYA SC: And it is so important
2 that you stay at the management offices until midday, so
3 that to discuss mine safety.
4 MR MATHUNJWA: It's not that I was
5 sitting there, I was waiting for management and yes, the
6 mine health and safety I still repeat, it's fundamental for
7 any worker in any environment.
8 MR SEMENYA SC: Chair, may I ask we play
9 just one clip, it must be a second where Mr Mathunjwa is on
10 the koppie and discussing with the leadership there? We
11 will give it an exhibit number later.
12 CHAIRPERSON: Has it not been shown
13 before? The operators are ready to show it. Is this
14 something on the 16th or the 15th?
15 MR SEMENYA SC: On the 16th.
16 CHAIRPERSON: His first visit or his
17 second?
18 MR SEMENYA SC: I'm not sure but it won't
19 be relevant which –
20 CHAIRPERSON: Anyway, when he sees it
21 he'll be able to tell us. Yes, please proceed.
22 [VIDEO IS SHOWN]
23 MR SEMENYA SC: Hold it there. That is
24 you on that video –
25 CHAIRPERSON: Can I interpose and ask you

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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.

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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?

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1 MR MATHUNJWA: Yes, I did.
 2 MR SEMENYA SC: Now, why did you tell us
 3 that you don't know Mr Noki? That's my difficulty.
 4 MR MATHUNJWA: That is correct, by that
 5 time I didn't know, I didn't know him.
 6 MR SEMENYA SC: I'm going to argue that
 7 I'm being untruthful. I did not ask you whether did you
 8 know a Mr Noki that time. That was never a question. You
 9 made it blatantly clear you don't know who is Mr Noki until
 10 we play you the video now.
 11 MR MATHUNJWA: The fact of that you
 12 mentioned that do I know Mr Noki, the one who is speaking,
 13 I said no, but now in this instance you are asking me do I
 14 know Mr Noki. Because I've been to the mountain for the
 15 first time, they were there but I never spoke to him, I
 16 didn't know who was Mr Noki until such time they were
 17 talking that this is Mr Noki.
 18 MR SEMENYA SC: Anyway, I'll argue the
 19 point. Can I ask we play the clip where the protester is
 20 saying we're going to finish the police today? It would be
 21 slide 163 on Exhibit L.
 22 [VIDEO IS SHOWN]
 23 [14:23] [VIDEO IS SHOWN]
 24 MR SEMENYA SC: I think we're talking
 25 protester number 6.

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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.

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1 MR SEMENYA SC: And he's saying those
2 police from the Eastern Cape must go back, otherwise they
3 will never get back there, home. Is that right?
4 MR MATHUNJWA: Yes, I heard even the
5 "Hippo," I don't know whether it was "home" or "Hippo."
6 MR SEMENYA SC: And that they're not
7 going to leave the koppie, did you hear that too?
8 MR MATHUNJWA: Yes.
9 MR SEMENYA SC: So I will argue that the
10 version you say that you told them to leave is untrue.
11 MR MATHUNJWA: I will dispute that.
12 MR SEMENYA SC: And the only reason you
13 were almost certain that they were going to a bloodbath is
14 because you knew that they would have told you in your
15 presence that they're not going to leave that place at all.
16 MR MATHUNJWA: It's not correct because
17 there was some engagement. This is the clip – there was
18 another clip that I referred you to that I have to –
19 remember I went twice into that mountain.
20 MR SEMENYA SC: There is no stage at
21 which the protesters tell you, we're going to go back to
22 work, we're going to disarm. That's why you knew there
23 will be a bloodbath.
24 MR MATHUNJWA: The protesters told me on
25 the 15th at night, which is what I conveyed to the

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1 debriefing session.
2 MR SEMENYA SC: Sorry, told you what?
3 MR MATHUNJWA: On the 15th the workers,
4 they have told us that we need to come back the following
5 day at nine.
6 MR SEMENYA SC: No, but the proposition
7 I'm saying, at no stage did they say to you, we are going
8 to work, we are going to disarm. So the reason you
9 anticipated a bloodbath must be because you knew they would
10 attack the police.
11 MR MATHUNJWA: It's not because of that,
12 it's because of the response that I got from management.
13 MR SEMENYA SC: But Mr Mathunjwa, tell
14 me, when you see the police being frantic, the helicopters
15 hovering, why don't you form a view that now this means the
16 protesters will realise the urgency and disperse? Why did
17 that thought not cross your mind?
18 MR MATHUNJWA: That's the reason I've
19 mentioned earlier on that I made an example of a ram, that
20 if the ram retreats doesn't mean that it's all lost.
21 MR SEMENYA SC: Please break down this
22 idiom, you've used it too many times now. What has a ram
23 got to do with backing up and my question?
24 MR MATHUNJWA: If I understand you well,
25 you were saying at no stage I've never told the strikers to

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1 leave koppie. So I'm simply saying I did, I made an
2 example of the ram.
3 MR SEMENYA SC: No, my question was a
4 very specific question. Now that the police are frantic,
5 now that the helicopters are hovering, why don't you form
6 an impression that the protesters will realise and
7 disperse? Why does that thought not cross your mind?
8 MR MATHUNJWA: It did cross my mind,
9 hence I'm saying that if the ram moved backwards it doesn't
10 mean that all is lost. That's what – that was the meaning
11 I was saying, that they must leave the koppie.
12 MR SEMENYA SC: Did you anticipate there
13 will be a bloodbath or did you anticipate the people will
14 disperse when they see the force they are confronting?
15 MR MATHUNJWA: Can you repeat your
16 question again?
17 MR SEMENYA SC: Was your impression that
18 there will be a bloodbath or was your impression that with
19 the protesters seeing the display of force, they will
20 simply disperse?
21 MR MATHUNJWA: No, but for the first one
22 when you were asking me that question, I did say that
23 people will be killed – even in the media I've said it.
24 MR SEMENYA SC: That's precisely my
25 point. Why don't you form a view that with all of this

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1 hyperactivity, the result is going to be a dispersal? Why
2 do you anticipate a bloodbath?
3 MR MATHUNJWA: Maybe I have to draw you
4 back. If there was no co-operation from police, from
5 Provincial Commissioner and the generals, no co-operation
6 from management in this crucial time, surely that could be.
7 MR SEMENYA SC: I'm sure my colleagues
8 will deal with this, about how management, what they did or
9 did not do. The question I'm asking finally is, why don't
10 you form an impression that one possible outcome from this
11 will be the people dispersing, realising that they are
12 confronting that display of force?
13 MR MATHUNJWA: I quite not understand
14 your question, will you please repeat it?
15 MR SEMENYA SC: Instead of anticipating a
16 bloodbath, why didn't you anticipate that the people on the
17 koppie will realise it is better they disperse peacefully
18 and there will be no bloodbath?
19 MR MATHUNJWA: I couldn't think on their
20 behalf. All what I was doing, that was the best I could do
21 by that time.
22 MR SEMENYA SC: If that's your best
23 answer, can we move on? The evidence that General Mbombo
24 would have gone for a torch – ANC torch-bearing ceremony,
25 is an untruth, Mr Mathunjwa.

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1 MR MATHUNJWA: Is it a question?
 2 MR SEMENYA SC: I'm inviting your
 3 response, yes.
 4 MR MATHUNJWA: It is true that she went,
 5 according to Mr Mpembe, that he went for ANC torch-bearer
 6 ceremony with the Premier of North West. That's what he
 7 told me.
 8 CHAIRPERSON: I think you're getting into
 9 trouble again, the confusion between he and she, which
 10 doesn't exist in Zulu –
 11 MR MATHUNJWA: I mean she.
 12 CHAIRPERSON: It doesn't exist in Zulu,
 13 as I understand it, which is a problem. The person who
 14 went off to the ANC ceremony I think was the Divisional
 15 Commissioner - the Provincial Commissioner who is a lady –
 16 MR MATHUNJWA: My apology.
 17 CHAIRPERSON: She went, is that right?
 18 If you say "he" then we'll think you're talking about
 19 General Mpembe where you mean General Mbombo, I think. Am
 20 I right?
 21 MR MATHUNJWA: Yes, my apologies. She,
 22 she went for the ANC torch-bearing ceremony.
 23 MR SEMENYA SC: Should the need arise,
 24 there will be evidence that General Mbombo went to visit
 25 the police officer that was injured. What's your response?

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1 MR MATHUNJWA: I cannot dispute. I'm
 2 only responding of what I was told on the day.
 3 MR SEMENYA SC: And if that fact is
 4 established, there is no way General Mpembe could have said
 5 that to you.
 6 MR MATHUNJWA: As far as I could
 7 remember, Mr Mpembe even attempted to phone her. He said
 8 he's phoning, to call her, that we are at the JOC.
 9 MR SEMENYA SC: Neither did General
 10 Mpembe say to you that the Provincial Commissioner was the
 11 one in charge.
 12 [14:43] MR MATHUNJWA: Mr General Mpembe
 13 introduced the Provincial Commissioner during the morning
 14 and he told us that she is in charge of the operation.
 15 MR SEMENYA SC: In fact, since being with
 16 the generals, they have never saluted me. So you say
 17 that's what General Mpembe did with you, salute?
 18 MR MATHUNJWA: When?
 19 MR SEMENYA SC: At least you say it in
 20 your statement, I don't know when it is.
 21 MR MATHUNJWA: Yes, in the debriefing,
 22 that's what I said.
 23 MR SEMENYA SC: General Mpembe will deny
 24 that he ever saluted you.
 25 MR MATHUNJWA: That is what I've

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1 observed, that's what I've seen.
 2 MR SEMENYA SC: And when General Mbombo
 3 said this will end today, she was referring to the people
 4 going onto the koppie, being armed, that today they will be
 5 disarmed. That's the meaning she connoted, she conveyed.
 6 MR MATHUNJWA: What I heard is that this
 7 thing will finish today.
 8 MR SEMENYA SC: No, but what I'm testing
 9 with you is that you're giving it a sinister spin, aren't
 10 you?
 11 MR MATHUNJWA: I was saying that's what
 12 she has said to us.
 13 MR SEMENYA SC: So you can't refute that
 14 she meant that they will be disarmed today?
 15 MR MATHUNJWA: I don't know what she was
 16 meaning by that.
 17 MR SEMENYA SC: And you won't challenge
 18 if she gave that type of evidence, correct?
 19 MR MATHUNJWA: I won't challenge what, if
 20 you may repeat?
 21 MR SEMENYA SC: That connotation, if she
 22 testified that that was what she meant.
 23 MR MATHUNJWA: That will be her
 24 interpretation but I was just simply saying what she told
 25 us.

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1 MR SEMENYA SC: Is it your evidence that
 2 it was clear to you that the police had taken a decision to
 3 kill?
 4 MR MATHUNJWA: Can you refer me to my
 5 statement, please?
 6 CHAIRPERSON: I think counsel is
 7 referring to paragraph 85 on page 26, am I right?
 8 MR SEMENYA SC: I am, but Chair, the
 9 witness does not need to –
 10 CHAIRPERSON: Anyway, I've told him so we
 11 can carry on.
 12 MR MATHUNJWA: If you may repeat your
 13 question?
 14 MR SEMENYA SC: Paragraph 85, do you have
 15 it?
 16 MR MATHUNJWA: Yes, I do.
 17 MR SEMENYA SC: I'm asking you, are you
 18 serious that it was clear to you that the police were going
 19 to kill?
 20 MR MATHUNJWA: Yes, based on what was
 21 happening, that was my conclusion.
 22 MR SEMENYA SC: And not that the
 23 protesters will disarm and disperse, that was not a
 24 possibility?
 25 MR MATHUNJWA: In my statement I think

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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
 8 portion that I've been referred to by yourself, 85, it
 9 says, “Before going back to speak to the workers I had an
 10 interview with eTV. During the interview I said that there
 11 was no co-operation from SAPS and no co-operation from
 12 management. The interviewer asked me, ‘What now?’ I said
 13 that the writing was on the wall as it was clear to me that
 14 the police were going to shoot these people. I said that
 15 it was out of my hands and that it was in God's hands.”
 16 MR SEMENYA SC: They were going to shoot
 17 to kill?
 18 MR MATHUNJWA: Come again?
 19 MR SEMENYA SC: Were they going to shoot
 20 to kill, because I can only see you connoting one thing,
 21 that they were going to shoot to kill them.
 22 MR MATHUNJWA: I cannot be in the
 23 position to interpret your interpretation on that.
 24 CHAIRPERSON: Come on, Mr Mathunjwa, when
 25 you say the police are going to shoot them, surely you mean

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1 the police are going to shoot them and there's a distinct
 2 possibility they'll be killed?
 3 MR MATHUNJWA: They can be killed and
 4 others they cannot be killed.
 5 CHAIRPERSON: All the shots mightn't be
 6 fatal, but some at least are probably going to be fatal and
 7 a number of them are going to die. That's what you meant,
 8 surely?
 9 MR MATHUNJWA: Thank you, that's it.
 10 CHAIRPERSON: Now do we – Ms Barnes, can
 11 you tell us, is this eTV interview available? If anything
 12 turns on it we can get it and see what exactly he said and
 13 in what context it was said. Is it available?
 14 MS BARNES: No, we don't have it at this
 15 moment.
 16 CHAIRPERSON: I didn't ask if you had it,
 17 I said is it available?
 18 MS BARNES: We would have to find out.
 19 CHAIRPERSON: I see. It might be –
 20 MS BARNES: We're having difficulty
 21 obtaining footage –
 22 CHAIRPERSON: Yes, I know, we've
 23 encountered that problem before but I would imagine if this
 24 one was broadcast, there shouldn't be a problem,
 25 particularly as the interviewee would presumably consent to

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1 its being made available.
 2 MS BARNES: Yes, we can certainly make
 3 enquiries, Chair.
 4 CHAIRPERSON: Alright.
 5 MR BUDLENDER SC: Chairman, I think there
 6 is – I think the clips that I showed at the commencement do
 7 have a short excerpt of Mr Mathunjwa predicting that people
 8 are going to be shot, that there may be deaths, but we'll
 9 have to find that. I looked for it this morning, I don't
 10 have it with me but there is a relevant clip on that first
 11 lot of extracts that were shown.
 12 MR SEMENYA SC: Chair, we can –
 13 MR BUDLENDER SC: We can find that.
 14 MR SEMENYA SC: We can do it easier than
 15 that, Chair. Can I refer you to paragraph 87 of your
 16 statement? You say, “I then proceeded to the koppie, I
 17 told the workers that there was no-one to whom I could give
 18 a report of what the workers wanted. I pleaded with them.
 19 I said to them that if they do not leave the koppie the
 20 police were going to kill them.”
 21 MR MATHUNJWA: That's correct.
 22 MR SEMENYA SC: So why are we dancing
 23 around shooting and people can be killed or not killed?
 24 MR MATHUNJWA: I was referring to clause
 25 85 and then the Commissioner corrected that, then I said it

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1 was for shooting and then I confirmed on 87 that yes, they
 2 will be killed.
 3 MR SEMENYA SC: Now that we have
 4 established it, why was it not your prediction that the
 5 people will disperse instead?
 6 MR MATHUNJWA: After this interview I
 7 went to the mountain, actually even before there, I asked
 8 two officers who were there, two black officers, that who
 9 was in charge of the operation and then they show me one
 10 white officer whom I told him that I had no co-operation
 11 from the JOC and then he said he will phone General Naidoo,
 12 I must wait for 15 minutes.
 13 MR SEMENYA SC: That's your best answer
 14 why you did not hold a view that the protesters might
 15 disperse, correct? That's your best answer?
 16 MR MATHUNJWA: No, I went to the koppie.
 17 I didn't end there. After there was no response from
 18 General Naidoo I proceeded to the koppie.
 19 MR SEMENYA SC: In fact, when we played
 20 that clip I should have made you listen closer because
 21 after the protester 6 says they're going to finish them
 22 off, you are heard laughing there.
 23 MR MATHUNJWA: That is not correct.
 24 MR SEMENYA SC: But you don't tell
 25 protester 6, please, you can't use such inflammatory

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1 language, there's no police who are going to be killed
 2 here. Those who come from the Eastern Cape will happily go
 3 home after this operation.
 4 MR MATHUNJWA: It's only a clip that we
 5 are playing, it doesn't cover what other things that are
 6 said. As I'm saying clearly, that I did renounce violence,
 7 I did encourage the workers to leave that koppie, I did
 8 that. It might not be specific to that person but I did
 9 say that the people must leave the koppie.
 10 MR SEMENYA SC: You don't take the loud
 11 hailer, the point I'm making, you don't take the loud
 12 hailer from him and say, no – no, there are no police who
 13 are going to be killed here.
 14 MR MATHUNJWA: He was not the only one
 15 who was still talking. I think there were many workers who
 16 were continually talking there. And again, it must be
 17 reminded that I went back to the – I mean to the JOC,
 18 because that was the first address, so I had to go back to
 19 the JOC after they told me that I must go and call the
 20 management to come and address them. That was not just the
 21 end there.
 22 MR SEMENYA SC: Did you hear the last
 23 question? No -
 24 CHAIRPERSON: Mr Semanya, when it's
 25 convenient we'll take the tea adjournment. Tell me when

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1 it's convenient and we'll do so.
 2 MR SEMENYA SC: It may very well be, I
 3 think I'm at the tail end but it may very well be that it's
 4 an opportune time.
 5 CHAIRPERSON: We'll take the tea
 6 adjournment at this stage.
 7 [COMMISSION ADJOURNS COMMISSION RESUMES]
 8 [15:14] CHAIRPERSON: The Commission resumes. Mr
 9 Semanya?
 10 MR SEMENYA SC: Thank you, Chair.
 11 CHAIRPERSON: Mr Mathunjwa, it's my duty
 12 to advise, to remind you that you're still under oath.
 13 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD):
 14 Mr Mathunjwa, I'd made the statement that at no stage do
 15 you take the loud hailer and say to the crowd, "We are not
 16 going to be killing any police officers here."
 17 MR MATHUNJWA: Yes, as I was saying
 18 earlier on, that people they were exchanging the platform
 19 or – as they were talking, different workers. It might
 20 not, that I've said it to a specific person, but I did
 21 renounce violence.
 22 MR SEMENYA SC: I don't know what "yes"
 23 qualifies but I want to be very clear. At no stage do you
 24 say to the crowd, after they have been told that the police
 25 were going to be killed, at no stage do you take the loud

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1 hailer and say, "No – no, no police officers are going to
 2 be killed here." Correct?
 3 MR MATHUNJWA: I did renounce. It might
 4 not be that I'd never take a loudspeaker for that specific
 5 person but I did renounce violence at the mountain.
 6 MR SEMENYA SC: On the 15th when you were
 7 at the koppie you were inside the Nyala, correct?
 8 MR MATHUNJWA: Yes, that is correct.
 9 MR SEMENYA SC: You spoke inside the
 10 Nyala and left still inside the Nyala, correct?
 11 MR MATHUNJWA: Yes, we left from the
 12 Nyala and then to another vehicle.
 13 MR SEMENYA SC: So when the protesters
 14 were saying – or when you formed the view that they will go
 15 to work the following day, it is something you heard inside
 16 the Nyala?
 17 MR MATHUNJWA: Yes, it was when I was
 18 inside the Nyala and there was a police officer with a
 19 video camera inside.
 20 MR SEMENYA SC: So on that which is
 21 heard, there was no reason why the generals held the view
 22 that tomorrow the workers are going back to work, correct?
 23 Not from what they, the workers, had said to you whilst you
 24 were in the Nyala.
 25 MR MATHUNJWA: I cannot speak on the

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1 generals but what I know is that the workers, they said to
 2 us we have to come back tomorrow and take the discussion
 3 further and they, then they will see whether they go back
 4 to work.
 5 MR SEMENYA SC: This is my final question
 6 but perhaps my most important question as far as I'm
 7 concerned. When you hear the protesters saying they are
 8 going to kill the police, you don't go to the police and
 9 say, ladies and gentlemen, we've got a serious situation on
 10 our hands, the people you intend to disarm are intent in
 11 killing you? You're going to need to be very, very, very
 12 circumspect.
 13 MR MATHUNJWA: One, do you remember that
 14 I went to the JOC to report – remember we were given two
 15 protocols, labour relations was for the management and
 16 safety and security was for the police. So at the JOC
 17 there was no-one who was present that could take the
 18 message from us. And two, even though we arrived at the
 19 JOC, Mr Mzembe himself he came out of one of the – I don't
 20 know whether it's a boardroom or it's an operation room –
 21 and then he said to me, "As I explained in the morning, I'm
 22 not in charge of the operation, it's Madam Mbombo" and he
 23 said he will try to find him. As I've said earlier on,
 24 that according to Mr Mbombo – I mean according to Mr Mzembe
 25 he was at the JOC, I mean at the ANC ceremonial. And also

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1 when these workers were talking, as you correctly said,
 2 they were using the hailer. The police were also around
 3 the area themselves, they could hear what those protesters
 4 were saying.
 5 MR SEMENYA SC: That's exactly the
 6 opportunity where you can say to General Mpmembe, "General,
 7 I have just heard now that the protesters are intent in
 8 finishing off, so you need to be extraordinarily careful
 9 now."
 10 MS BARNES: Chair, with respect, Mr
 11 Semenya has led evidence to the effect that one protester
 12 said something which he's given a particular interpretation
 13 to, but not protesters.
 14 CHAIRPERSON: You must reformulate the
 15 question, Mr Semenya.
 16 MR SEMENYA SC: Did the protesters
 17 understand what was communicated to them? Mr Mathunjwa?
 18 MR MATHUNJWA: By whom?
 19 MR SEMENYA SC: By this sixth protester
 20 who was saying today they were going to finish them – was
 21 he understood by those he was addressing?
 22 MR MATHUNJWA: I don't know but for them
 23 to hear, should they have heard what he was saying.
 24 MR SEMENYA SC: And you did not hear any
 25 of them saying no – no, that's not what you're going to do?

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1 MR MATHUNJWA: No.
 2 MR SEMENYA SC: They said "Amandla."
 3 Those are all the questions I have, Chair.
 4 CHAIRPERSON: Mr Semenya -
 5 MR MATHUNJWA: I didn't hear the last?
 6 CHAIRPERSON: No, he's finished his
 7 questions and now Mr Burger is going to start, I think. Mr
 8 Burger?
 9 MS BARNES: I think the witness is
 10 indicating that he didn't hear the last question.
 11 CHAIRPERSON: Oh, I think the last
 12 question was simply, "I have no more questions."
 13 MR MATHUNJWA: I just want him to repeat,
 14 because I said "Amandla." I don't know whether he was
 15 expecting an answer from me or –
 16 CHAIRPERSON: Oh, well, he said
 17 "Amandla," so have you got an answer to that? The
 18 suggestion is that after this man talked about finishing
 19 off the police, people round about said "Amandla" and there
 20 was a sort of implied question mark at the end of it. So
 21 what answer do you want to give?
 22 MR MATHUNJWA: No, that – it's a normal
 23 response in the mass meeting after you spoke, they usually
 24 say "Amandla."
 25 CHAIRPERSON: I understand that. Mr

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1 Burger, do you have any questions for the witness?
 2 CROSS-EXAMINATION BY MR BURGER SC: Yes,
 3 Chair. Mr Mathunjwa, my team and I represent Lonmin in
 4 this debate and you're a leader of a prominent trade union
 5 at the Lonmin mine and so is NUM but you'll understand the
 6 questions I put to you is in order to assist the Commission
 7 to come to the truth, you understand that?
 8 MR MATHUNJWA: Yes.
 9 MR BURGER SC: In due course I may have
 10 to ask questions of NUM, it doesn't mean that Lonmin is
 11 fighting with AMCU or with NUM, that's part of the process.
 12 You understand that?
 13 MR MATHUNJWA: I understand.
 14 MR BURGER SC: At the end of this inquiry
 15 we will make submissions to the Commission that there are
 16 principally two reasons for this tragedy. I don't have to
 17 burden you with the first reason but the second reason, we
 18 will say, is to be found in the relationship between AMCU
 19 and NUM as at August 2012. That's my first debate I want
 20 to have with you. We have heard that SAfm debate on the
 21 morning of the 15th when your trade union AMCU was accused
 22 by NUM of lying, in public. You remember that?
 23 MR MATHUNJWA: Yes, I do remember that.
 24 MR BURGER SC: On that same occasion AMCU
 25 was accused of having killed two security officers on the

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1 12th of August, you heard that?
 2 MR MATHUNJWA: Yes.
 3 MR BURGER SC: In fact it was said that
 4 this whole unrest was a ploy by AMCU to unseat NUM at
 5 Lonmin, do you remember that?
 6 MR MATHUNJWA: Yes, I remember it.
 7 MR BURGER SC: In fact NUM suggested that
 8 AMCU had promised the workers R12 500,00 per month, do you
 9 remember that?
 10 MR MATHUNJWA: Yes.
 11 MR BURGER SC: And NUM had accused AMCU
 12 of intimidation during August 2012 in the events leading up
 13 to the 16th, do you remember that?
 14 MR MATHUNJWA: Yes, I could remember
 15 that.
 16 MR BURGER SC: That was, in this
 17 relationship, the stance adopted by NUM. Before I deal
 18 with you briefly with the stance adopted by AMCU, can I ask
 19 you this? When you, as AMCU president, issue a media
 20 statement, I take it you check the correctness of the facts
 21 of that statement?
 22 MR MATHUNJWA: Yes, we do our level best
 23 to record.
 24 MR BURGER SC: And when you go on
 25 national radio and the people listen to the debate, if you

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1 then say things on the 15th August, I take it you as
 2 president will make particularly sure that you do not
 3 spread falsehoods, that what you say is, to the best of
 4 your knowledge, true and correct.
 5 MR MATHUNJWA: It would be our endeavour,
 6 correct.
 7 MR BURGER SC: Yes. Now we know that
 8 during August of this year you, as president of AMCU,
 9 accused NUM of oppressing the workers, is that correct?
 10 MR MATHUNJWA: Yes, I think I said
 11 something like that.
 12 MR BURGER SC: Yes. Mr -
 13 MS BARNES: Chair, can I ask that the
 14 audience perhaps be requested to just remain quiet and
 15 respectful while the witness is giving his testimony?
 16 MR BURGER SC: I'll do my best, Chair -
 17 CHAIRPERSON: It seems a reasonable
 18 request. I would expect people in the auditorium to remain
 19 quiet. They are here so they can hear what's said, not so
 20 they can participate or make comments of their own and if
 21 anybody does make a comment or make a noise and is
 22 identified, I'll instruct those concerned to evict that
 23 person from the auditorium for the rest of the day, so
 24 please behave. Carry on, thank you.
 25 MR BURGER SC: Mr Mathunjwa, what I put

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1 to you I get from exhibits before the Commission. I don't
 2 give you the exhibit every time because it takes long but
 3 if I have got it wrong, by all means challenge me and I'll
 4 show you where you've said what I put to you. The second
 5 thing you said about NUM was that they were "Rent-a-black"
 6 - August 2012.
 7 MR MATHUNJWA: That is not correct.
 8 MR BURGER SC: Can I put it to you, if
 9 you go to Exhibit OO9, on page 6 of OO9, this is your
 10 speech at the koppie on the morning of the 16th of August.
 11 MR MATHUNJWA: I would request assistance
 12 on that.
 13 MR BURGER SC: Yes, let me ask my
 14 attorney to give you a hand on that. Page 6, the top of
 15 the page is "Back, let it come, back." Do you have that
 16 page? Now, is that the page, Mr Mathunjwa, which in the
 17 middle has "President" and then you say "Africa's economy
 18 is in white men's hands?" Is that the one?
 19 MS BARNES: It's page 6 of the
 20 transcript.
 21 MR BURGER SC: I've paginated mine by
 22 hand but I'll ask my attorney to assist you. Thank you
 23 very much. Thank you very much. Do you have that page in
 24 front of you?
 25 MR MATHUNJWA: Yes.

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1 MR BURGER SC: You see in the middle, the
 2 president I think is a reference to you and do you pick it
 3 up, "Africa's economy" - do you have that passage?
 4 MR MATHUNJWA: Yes.
 5 MR BURGER SC: "Africa's economy is in
 6 white men's hands who arrived here by boats. They're the
 7 ones who control our lives even today on how to live.
 8 Power" - and the employee says, "it is ours." Then you say
 9 "On top of that, what they do is they take our brothers and
 10 give them top positions. That is called rent-a-black in
 11 English. They rent people who are said to be educated,
 12 they're from universities, to come and oppress us. They
 13 work for the employers, they are the investors. Power."
 14 Who were you referring to there?
 15 MR MATHUNJWA: To the employer.
 16 [15:34] MR BURGER SC: Mr Mathunjwa, did you
 17 refer then to the gentlemen you interact with on a daily
 18 basis at Lonmin?
 19 MR MATHUNJWA: I was referring to the
 20 employer.
 21 MR BURGER SC: Mr Mathunjwa, listen to
 22 the question. Were you referring to there to the gentlemen
 23 you were referring to at Lonmin on a daily basis in your
 24 relationship with management?
 25 MR MATHUNJWA: I was referring to the

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1 employer -
 2 MR BURGER SC: Give me - eliminate,
 3 please. Give them a name?
 4 MR MATHUNJWA: Lonmin.
 5 MR BURGER SC: I know Lonmin. Give the
 6 person, the rent-a-black, a name please.
 7 MR MATHUNJWA: No, I didn't specify here
 8 who was the black person but I said Lonmin. I was
 9 referring to the employer, according to your question.
 10 MR BURGER SC: I know. Help us. Who did
 11 you have in mind?
 12 MR MATHUNJWA: I never had a name in
 13 mind.
 14 CHAIRPERSON: You didn't have Mr
 15 Phillimore or Mr Farmer in mind? I take it you didn't have
 16 Mr Phillimore or Mr Farmer in mind?
 17 MR MATHUNJWA: Yes, because I referred to
 18 the colour.
 19 CHAIRPERSON: No, Mr Phillimore, as I
 20 understand it, is white. Mr Farmer is white, is that
 21 right? They're both top officials in Lonmin.
 22 MR MATHUNJWA: Yes.
 23 CHAIRPERSON: You weren't referring to
 24 them?
 25 MR MATHUNJWA: I referring that the

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1 employer employed blacks.
 2 CHAIRPERSON: Yes, so you must have had
 3 black people in mind who were employed in relatively top
 4 positions in Lonmin, would that be fair?
 5 MR MATHUNJWA: That would be fair, in
 6 general.
 7 CHAIRPERSON: Yes, now which people – now
 8 if top officials of Lonmin heard you saying that, who would
 9 they think you were referring to?
 10 MR MATHUNJWA: They would be referring to
 11 blacks that are employed at the mine.
 12 CHAIRPERSON: Top positions, you talk
 13 about top positions, so it must be black positions – black
 14 persons employed by Lonmin in top positions, is that
 15 correct?
 16 MR MATHUNJWA: That is correct but not a
 17 person, I was just saying blacks.
 18 MR BURGER SC: Mr Mathunjwa, I'm sorry,
 19 I'll have to make a submission at the end that that answer
 20 of yours is a less than reliable answer, that you know full
 21 well to whom you refer and you make the statement on the
 22 morning of a most inflammatory situation and now you're not
 23 willing to tell us who you referred to.
 24 MR MATHUNJWA: As I've answered earlier
 25 on.

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1 MR BURGER SC: Yes.
 2 MR HANABE: I'm sorry, what was your
 3 reply?
 4 MR BURGER SC: I'm still exploring the
 5 relationship between AMCU –
 6 MR HANABE: Sorry, I'm asking –
 7 MR BURGER SC: I'm still exploring the
 8 relationship between the two unions in December this year
 9 in order to understand what role that played in the
 10 tragedy.
 11 CHAIRPERSON: You mean in August this
 12 year.
 13 MR BURGER SC: In August this year.
 14 CHAIRPERSON: We haven't got to December
 15 this year yet.
 16 MR BURGER SC: I'm sorry. It feels like
 17 December, Chair, but - and what I'm putting to you is what
 18 the perception of AMCU was, in public, of NUM and the next
 19 thing I want to put to you is that you accuse NUM of being
 20 a sinister force behind the whole situation.
 21 MR MATHUNJWA: That is not correct.
 22 MR BURGER SC: Can I ask you to have a
 23 look at your press statement which you issued on the 14th of
 24 August? It's Exhibit OO2 and if you go to page 2 of that,
 25 do you have that press statement? Do you have that press

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1 statement? It says "Media release statement 14 August
 2 2012."
 3 MR MATHUNJWA: Yes, I do have.
 4 MR BURGER SC: Page 2, last paragraph.
 5 The statement reads, "Without laying any blame to anyone,
 6 but it is important to state that we also suspect some
 7 sinister forces behind the situation. Before the report
 8 about RDO's demands, we learned that NUM started an
 9 intensive campaign where they said 'Reclaiming Lonmin
 10 back.' This campaign is ongoing and it is even involving
 11 top officials from the ruling party." That's referring to
 12 the ANC, is it?
 13 MR MATHUNJWA: That's correct.
 14 MR BURGER SC: Yes. And I read on,
 15 "These top officials have been conducting mass meetings
 16 with workers saying all bad things about AMCU and urging
 17 workers not to – to go back to NUM when those maybe is part
 18 of the strategy and later blame AMCU for all the bad things
 19 in order for AMCU to be portrayed as a bad union." I
 20 understood that to mean you call NUM a sinister force. Was
 21 I wrong?
 22 MR MATHUNJWA: If you read the very same
 23 statement you can see there is a full stop there,
 24 "situation full stop." Then there's a new sentence that
 25 starts.

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1 MR BURGER SC: Yes, I'm not debating
 2 grammar with you, I'm asking for a context. I'm saying I
 3 read that, that you accuse NUM of being a sinister force.
 4 Did I read it incorrectly?
 5 MR MATHUNJWA: You have read like –
 6 that's why I am saying that sentence finishes, there is a
 7 full stop there, then start a new sentence. "Before the
 8 report about RDO demands" – comma – "we learned that NUM
 9 started an intensive campaign."
 10 MR BURGER SC: Mr Mathunjwa, who were the
 11 sinister forces you were referring to here?
 12 MR MATHUNJWA: The very same sinister
 13 forces, it's what I communicated to management when they
 14 were asking us about the march. We said surely there are
 15 sinister forces around this and the management, they said
 16 they don't know who is behind this. So I was also saying
 17 the very same thing.
 18 MR BURGER SC: So do you refer to
 19 sinister forces without knowing who they are?
 20 MR MATHUNJWA: That's what we wanted to
 21 investigate, who was behind.
 22 MR BURGER SC: I'll also make a
 23 submission that that answer is not reliable, at the end of
 24 the inquiry. The next thing that you said of NUM, as the
 25 president, is that they were using dirty tricks. Do you

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1 accept that?

2 MR MATHUNJWA: Did you find on the very

3 same statement there?

4 MR BURGER SC: It is somewhere in there.

5 I'm testing your memory. Is it correct that you accused

6 NUM in August 2012 of using dirty tricks?

7 MR MATHUNJWA: It could be so, I said,

8 but –

9 MR BURGER SC: Let me help you. Page 4

10 of that same statement, second paragraph. You say, "In

11 conclusion, we want to call upon all stakeholders in

12 platinum industry to accept the reality that AMCU is one of

13 the major stakeholders that need to be respected,

14 accommodated and learn to work with. Trying to sideline

15 AMCU and using dirty tricks in labelling AMCU as a hard-

16 line union which uses violence will not assist the

17 situation."

18 MR MATHUNJWA: Yes, I see that one.

19 MR BURGER SC: Do I read that correctly,

20 that you saw NUM as one of the sinister forces?

21 MR MATHUNJWA: As I earlier on said, that

22 the sinister forces are referred to management, that this

23 is what has to be investigated. In this instance where you

24 are reading, I was reflecting to the employers that they

25 had to accept AMCU as a stakeholder in the industry of

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1 platinum.

2 MR BURGER SC: Do you want the Commission

3 to understand that what you say here is that Lonmin was

4 using dirty tricks on AMCU?

5 MR MATHUNJWA: I'm not suggesting that,

6 but this is what I wrote here.

7 MR BURGER SC: Mr Mathunjwa, we can read

8 what you wrote. I thought I understood that. I'm now

9 trying to get your gloss on what you wrote and what I'm

10 asking you is, who do you accuse here of having used dirty

11 tricks in labelling AMCU? Who did you refer to?

12 MR MATHUNJWA: I mean I was referring to

13 the industry and the stakeholders.

14 MR BURGER SC: Which is the industry who

15 will play dirty tricks on AMCU? The platinum industry?

16 MR MATHUNJWA: Yes.

17 MR BURGER SC: Oh. And who were the

18 stakeholders who were playing dirty tricks on AMCU in

19 August of this year?

20 MR MATHUNJWA: Not referring to August

21 but I was referring to the industry, platinum industry –

22 MR BURGER SC: I don't mind, July or

23 April.

24 MR MATHUNJWA: Okay.

25 MR BURGER SC: Who do you refer to here

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1 as the industry players who were playing dirty tricks in

2 labelling AMCU a hard-line union? Who were they?

3 MR MATHUNJWA: I was labelling – I was

4 referring to the platinum industry, the mines in the

5 platinum where we are organising.

6 MR BURGER SC: And then you said the role

7 players also. I'm trying to identify the role players.

8 Like I tried, without success, to identify the rent-a-

9 blacks, still don't know who they are. I'm now trying to

10 understand your evidence that what you really here were

11 referring to were industry players and I want to see who

12 those players are?

13 MR MATHUNJWA: It's the employer. If

14 maybe I can continue, if you may allow me.

15 MR BURGER SC: Yes.

16 MR MATHUNJWA: I mean we find difficulty

17 to get organisational rights in many of the mines in the

18 industry of platinum, even though you may target – those

19 are the dirty tricks that I'm referring to.

20 MR BURGER SC: Mr Mathunjwa, AMCU has

21 limited organisational rights at Lonmin in terms of an

22 agreement concluded on the 15th of December 2011, is that

23 correct?

24 MR MATHUNJWA: That is correct.

25 MR BURGER SC: Those rights were then

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1 expanded in May of 2012 by way of an agreement called "An

2 addendum to the limited organisational rights agreement

3 between AMCU and Lonmin," is that correct?

4 MR MATHUNJWA: That is correct.

5 MR BURGER SC: Where's the dirty trick?

6 MR MATHUNJWA: Let me assist here. Those

7 limited organisational rights were never received or – from

8 the silver platter. We had to declare the dispute as from

9 2010. If you can check the date when we started having

10 those organisational rights, until such time we had the

11 certificate to embark on a protected industrial action and

12 further that, as AMCU, we never used the certificate. I

13 kept on knocking to the management, senior management of

14 Lonmin, that resulted into those organisational rights,

15 whereas there were unions that have got less membership, I

16 mean at the mine, that were given organisational rights.

17 MR BURGER SC: Mr Mathunjwa, that is a

18 false answer. That is not what you refer to on page 4 of

19 your press report. Your press report deals with dirty

20 tricks in calling AMCU a hard-line union. It's got nothing

21 to do with recognition rights which you voluntarily

22 concluded with Lonmin.

23 MR MATHUNJWA: That's what I've said.

24 That was my answer.

25 MR BURGER SC: And we also know that

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1 because of this toxic relationship between NUM and AMCU at
 2 August of this year, NUM wouldn't even go in the same
 3 vehicle than AMCU to the koppie on the 15th, is that
 4 correct?
 5 MR MATHUNJWA: As far as AMCU is
 6 concerned we never had any toxic relationship with NUM. We
 7 – as you can look at those dates where we concluded those
 8 limited organisational rights, there was no incident from
 9 our side that is known of, that there is a toxic
 10 relationship. I cannot account to any person who decides
 11 to exercise his or her right and his decision or her
 12 decision in the matter that you are referring to.
 13 MR BURGER SC: No, but Mr Mathunjwa, you
 14 were present at the koppie at midday on the 16th August
 15 when, in your presence, one of your delegates sang the song
 16 that we heard about yesterday, this NUM, how are we going
 17 to kill it, this NUM, we hate NUM. That was a toxic
 18 relationship, Mr Mathunjwa.
 19 MR MATHUNJWA: I did explain the song
 20 yesterday. As you say, you were present.
 21 MR BURGER SC: Yes. I heard you
 22 explaining the killing. How do you explain the idiom, "I
 23 hate NUM?" What does that mean – in Zulu or Xhosa?
 24 MR MATHUNJWA: [Zulu/Xhosa phrase]
 25 [15:54] MR BURGER SC: What does that mean? Help

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1 me. I beg your pardon?
 2 MR MATHUNJWA: I don't like.
 3 MR BURGER SC: Yes.
 4 MR MATHUNJWA: Or I don't want to
 5 associate with you.
 6 MR BURGER SC: You say that's not
 7 serious, that's not literally meant?
 8 MR MATHUNJWA: No, it's a competition, as
 9 I explained yesterday.
 10 MR BURGER SC: Mr Mathunjwa, this is a
 11 matter of life and death, this is not a competition. Have
 12 a look at Exhibit L. It doesn't have to go onto the
 13 screen, I just want to show the witness this. Slide 101,
 14 this is a photograph taken the Tuesday before the Thursday
 15 when this song is sung. It's a photograph of a NUM shop
 16 steward near the koppie. You've seen this?
 17 MR MATHUNJWA: Yes.
 18 MR BURGER SC: I put to you there was a
 19 toxic relationship between NUM and AMCU in August of 2012
 20 at the time of this upheaval.
 21 MR MATHUNJWA: I don't agree with that.
 22 MR BURGER SC: I wasn't sure that I
 23 understood the answer to an earlier question of mine. Do
 24 you accept that on the 15th of August NUM wouldn't even
 25 travel to the koppie in the same vehicle as AMCU?

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1 MR MATHUNJWA: Yes, I've answered by
 2 saying if a person wants to exercise his or her rights, I'm
 3 not the one to determine that and therefore AMCU, we don't
 4 have any toxic relations.
 5 MR BURGER SC: Do you also accept that in
 6 view of the relationship between the two unions, Lonmin
 7 could never negotiate wages outside of the collective
 8 bargaining agreement?
 9 MR MATHUNJWA: Would you please repeat
 10 that one?
 11 MR BURGER SC: Because of the
 12 relationship between AMCU and NUM in August of this year,
 13 there was no room to negotiate on wages outside of the
 14 established structures, those collective agreements in
 15 place and those unions with collective bargaining power.
 16 You accept that?
 17 MR MATHUNJWA: No, I don't accept because
 18 AMCU had no bargaining rights at Lonmin.
 19 MR BURGER SC: No, that's correct and I
 20 agree with that. AMCU couldn't, couldn't negotiate on
 21 wages, is that correct?
 22 MR MATHUNJWA: That's correct.
 23 MR BURGER SC: Yes. And I think you
 24 accept that there was nowhere that NUM could negotiate with
 25 AMCU on wages, while AMCU didn't have the right to do a

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1 wage negotiation. They would have NUM on their doorstep
 2 immediately, you accept that?
 3 MR MATHUNJWA: I know that we wouldn't
 4 negotiate with the employer, hence we don't have those
 5 rights. And also I don't think also the employer cannot
 6 speak to NUM by that time in terms of negotiations.
 7 MR BURGER SC: Mr Mathunjwa, we don't
 8 have to go there because, as I understand the facts, NUM
 9 didn't try to speak to the employer on wages during that
 10 month, so let's not raise problems which do not exist.
 11 I've now addressed with you the relationship between the
 12 two unions at Lonmin during August. What I want to next
 13 just touch upon is –
 14 CHAIRPERSON: Mr Burger, I'm sorry to
 15 interrupt you. Would you perhaps like to touch on the next
 16 matter tomorrow morning at half past nine?
 17 MR BURGER SC: Indeed, sir, thank you.
 18 CHAIRPERSON: The Commission will adjourn
 19 till 9:30 tomorrow.
 20 [COMMISSION ADJOURNED]
 21 .
 22 .
 23 .
 24 .
 25 .

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