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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 49 15 FEBRUARY 2013 PAGES 5341 TO 5419

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 15 FEBRUARY 2013]
 2 [10:02] CHAIRPERSON: The Commission resumes. I
 3 understand, Mr Mpofo, you're now ready to proceed, is that
 4 correct?
 5 MR MPOFU: Yes, we are. Thank you very
 6 much for the indulgence.
 7 CHAIRPERSON: Pleasure. You're still
 8 under oath.
 9 MR MABUYAKHULU: Yes, Sir.
 10 CHAIRPERSON: Thank you. Yes, Mr Tip,
 11 are you ready to proceed with your cross-examination?
 12 MR TIP SC: I am, thank you, Mr Chair.
 13 Mr Mabuyakhulu, we were dealing yesterday afternoon, when
 14 we adjourned, with the last paragraph on page 1 of the
 15 statement that you made to the police – Exhibit XX6. Do
 16 you have it there?
 17 MR MABUYAKHULU: I've got it.
 18 MR TIP SC: Right, and just to ensure
 19 that you're back in the picture of what we were dealing
 20 with, you had said to the Commission yesterday that you
 21 confirmed the first sentence of that paragraph, namely that
 22 someone had come to the meeting on 11 August 2012, and had
 23 reported that on the previous day, the 10th of August,
 24 members of the NUM had shot members of AMCU, do you recall
 25 that?

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1 MR MABUYAKHULU: Yes.
 2 MR TIP SC: But the next sentence you
 3 indicated you had not made to the policeman, who took the
 4 statement, namely the one that is to the effect that after
 5 giving that news, somebody whom you could point out if you
 6 saw him, said that you should all go to the NUM office and
 7 ask them why they were shooting members of AMCU.
 8 MR MABUYAKHULU: No.
 9 MR TIP SC: I'm not certain what you mean
 10 by no. Are you saying that you didn't make that sentence
 11 as part of your statement, or are you saying that you did
 12 make it?
 13 MR MABUYAKHULU: I also mentioned
 14 yesterday that there was mention of this thing. I said so
 15 yesterday. I then said it was a decision of – as a result
 16 of the discussions there amongst the RDOs. Some of the
 17 people came with reports of what happened the Friday. A
 18 decision was then later made amongst us, the RDOs. The
 19 decision made was that we march to the NUM office to go and
 20 ask why they were forbidding the meeting between us and the
 21 employer. What I want to state, Mr Chairperson, is that
 22 the reason NUM office was to go and enquire as to why they
 23 were forbidding this meeting between us and the employer.
 24 Whether I could have said what appears in the statement
 25 here, I cannot say, because of my state of mind at the time

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1 of making the statement.
 2 MR TIP SC: Alright, well let's try and
 3 move on. As I understand what you are now saying, it is
 4 perfectly possible that you in fact did make the statement
 5 to the detective constable who came to see you on the 17th
 6 of August – that sentence that we're discussing. Do I
 7 understand it correctly?
 8 MR MABUYAKHULU: Yes.
 9 MR TIP SC: Alright, And I just want to
 10 underline this, because there are other reasons for us to
 11 accept that this was indeed part of your statement and
 12 there are two considerations I'm going to put before you
 13 for any comment that you might have. The first is that in
 14 the course of Friday, your counsel, Mr Mpofo, put certain
 15 propositions to Mr Zokwana. Mr Mpofo and I discussed where
 16 those propositions came from and he referred me to this
 17 paragraph in your statement as the source for those
 18 propositions, and it was clear that it was the entirety of
 19 the paragraph that he was relying on. And just to add to
 20 that, that was on Friday, and it was also conveyed to me
 21 that it was pursuant to a consultation that you had had
 22 with your legal team, including Mr Mpofo, on the Thursday
 23 evening. Do you recall that?
 24 MR MABUYAKHULU: I really do not
 25 understand exactly what it is that you're putting to me.

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1 MR TIP SC: Well, I'll repeat it just
 2 once. This paragraph that we are dealing with consists of
 3 two sentences. In the course of the proceedings on Friday,
 4 Mr Mpofo indicated that he relied on both sentences as
 5 being the paragraph that he had used to put certain
 6 propositions to Mr Zokwana. And just to highlight what it
 7 is that I'm saying, there was no indication from Mr Mpofo
 8 that the second sentence of this paragraph, the one we're
 9 dealing with, was to be excluded from what he had relied
 10 on. Are you able to comment on that?
 11 MR MABUYAKHULU: I do not remember
 12 whether that was put to me on Friday, but let explain this.
 13 As I said, there are certain things that I know that
 14 appears in the statement - 17th, but some of these things
 15 are contradictory. I have tried to explain to this
 16 Commission what the cause of this is, and there is also
 17 proof that I was not in the correct state of mind. That is
 18 my problem, Sir.
 19 MR TIP SC: Mr Mabuyakhulu, you've had
 20 the opportunity to consult on this, I'm just going to put
 21 the second aspect that I said I would put to you for your
 22 comment and then I'm going to move on. The second aspect
 23 is that yesterday, when your evidence was being led, Mr
 24 Mpofo drew the attention of the Commission to your
 25 complaint that certain paragraphs were not correct, and

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1 that you hadn't been in a good condition at the time that
 2 you made the statement on the 17th of August. Do you
 3 remember that?
 4 MR MABUYAKHULU: Yes.
 5 MR TIP SC: And in the course of that, Mr
 6 Mpofu identified three aspects of the statement that
 7 required some correction. Do you remember that?
 8 MR MABUYAKHULU: I do.
 9 MR TIP SC: And one of the paragraphs
 10 that was not identified in that way as requiring any
 11 correction, is the one that we are dealing with at the
 12 moment.
 13 MR MABUYAKHULU: I gave an explanation.
 14 I said this was discussed there, but it came from the
 15 general discussion that we had there. It was mentioned.
 16 MR TIP SC: That you would go to the NUM
 17 office because of this report that NUM members have been
 18 shooting AMCU members, is that what you're saying now?
 19 MR MABUYAKHULU: No.
 20 MR TIP SC: Alright.
 21 CHAIRPERSON: May I intervene and ask a
 22 question, Mr Tip? You say that someone came to the meeting
 23 on the Friday – that someone came to the meeting on the
 24 Saturday morning and said that the previous day, the
 25 Friday, members of AMCU were shot by members of NUM. That

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1 was said, is that correct?
 2 MR MABUYAKHULU: Yes, Sir.
 3 CHAIRPERSON: And then at the meeting it
 4 was decided that you would all go to the NUM office, we
 5 know that, don't we?
 6 MR MABUYAKHULU: That's correct.
 7 CHAIRPERSON: You say it was in order to
 8 ascertain why they had not wanted you to present your
 9 demands to Lonmin, is that right?
 10 MR MABUYAKHULU: That is correct.
 11 CHAIRPERSON: Now was it also a reason
 12 for going to the office to ask NUM people about the
 13 shooting? In other words, was it an additional reason –
 14 apart from talking to them about the wage demands and
 15 Lonmin, was it also the idea that they would be asked about
 16 the shooting, to explain their conduct in that regard.
 17 MR MABUYAKHULU: There was only reason
 18 when we left there.
 19 CHAIRPERSON: I see. And tell me, when
 20 you went to the NUM office, did you walk through the
 21 hostel?
 22 MR MABUYAKHULU: Yes, Sir.
 23 CHAIRPERSON: Now did you tell the
 24 policeman who took the statement that you walked through
 25 the hostel?

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1 MR MABUYAKHULU: Mr Chairperson, I don't
 2 remember whether I said this to him or not.
 3 CHAIRPERSON: But I take it one can
 4 accept that you must have done, because he wouldn't have
 5 known you walked through the hostel and you did walk
 6 through hostel and that's in the statement. It does look
 7 as if you told him, doesn't it?
 8 MR MABUYAKHULU: Yes.
 9 CHAIRPERSON: And you obviously must have
 10 told him that someone came to the meeting on the Saturday
 11 morning and talked about the AMCU members who were shot the
 12 previous day by members of NUM, because that happened and
 13 someone did come and say that, and the policeman wasn't in
 14 the meeting, so he wouldn't have known it, so you must have
 15 told him that. That seems fair to assume, isn't it?
 16 MR MABUYAKHULU: Possibly the policeman
 17 took down that which he regarded as important. I told him
 18 quite a number of things, up to three things. He might
 19 have written that which he regarded as being important.
 20 CHAIRPERSON: I see. So, you see, what
 21 puzzles me, is where would he have then got this statement.
 22 The statement was made that members of AMCU were shot by
 23 members of NUM. We then see the statement that Mr Tip's
 24 been asking you about – or rather the sentence that Mr
 25 Tip's been asking you about in the statement, quote, "After

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1 getting those news, a person whom I can point if I see,
 2 said we all go the NUM office to hear why they are shooting
 3 people of AMCU."
 4 MR MABUYAKHULU: Mr Chairperson, as I
 5 have said, I have explained this on several occasions, that
 6 I was firstly not in the correct state of mind, there was
 7 also the problem of language that we encountered with the
 8 policemen, I have been explaining this several times.
 9 CHAIRPERSON: That's an explanation. Mr
 10 Mpofu, do you want to say something?
 11 MR MPOFU: Chairperson, yes, I'll call it
 12 assistance, Chairperson, because I'm not sure if I'm
 13 entitled to object to a question put by the Chairperson,
 14 but –
 15 CHAIRPERSON: No, you ask, but you can
 16 draw to my attention the fact that the question I'm asking
 17 is one that I shouldn't be asking,
 18 MR MPOFU: Mr Chair, in seriousness, all
 19 I wanted to point out is the question the chairperson has
 20 put now, would be fair if the witness had denied making the
 21 statement. The witness has repeatedly said it's possible
 22 that he made the statement. Now, no that basis, I think we
 23 should accept – well, if I was Mr Tip, I would take the
 24 nice part that it's possible and say, well, then it means
 25 possibly you did – let's say you did, and then go on. If

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1 he said under no circumstances did I say this, then of
2 course, the chairperson would say, well, the policeman who
3 was not there, obviously couldn't have dreamt it up, but he
4 said it's possible and -

5 CHAIRPERSON: I'm not sure that it could
6 be called an objection properly so-called, even if being
7 directed at someone else's question, but of course
8 possibility is one thing, fact and probabilities are
9 another, but I've asked the questions, I've got the
10 answers, which may assist us to move further, so I don't
11 propose asking you any more questions on this point.
12 Please forgive me for having interrupted you. Please carry
13 on -

14 MR TIP SC: Thank you, Mr Chair, thank
15 you for the clarification and my thanks to Mr Mpofo also
16 for his guidance in how I should cross-examine. Perhaps I
17 should just say this, that I had listened very carefully
18 when the witness said that it was possible that he had made
19 the statement and then I prefaced the following - the next
20 propositions on the basis that I would wish to underline
21 the quality of what it was, and what I intend to do, and I
22 will put it now in that precise fashion is that we will, at
23 the end of the Commission hearing make a submission that it
24 is overwhelmingly probable that you in fact did make the
25 statement reflected - the statement reflected in the second

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1 a result of this report, several people spoke but no
2 decision was taken.

3 MR TIP SC: No decision was taken, but
4 was there any reaction?

5 MR MABUYAKHULU: Well, many people said,
6 this is just not right.

7 MR TIP SC: Well, let's just explore
8 that. Were people physically calm and simply saying that
9 this is not right and then they went on to discuss going to
10 NUM to make an enquiry about its interaction with Lonmin,
11 is that your evidence?

12 MR MABUYAKHULU: That is what happened,
13 yes.

14 MR TIP SC: Let me just ask you for a
15 little more detail, if you can give it to us. First of
16 all, the person who came and conveyed this news, can you
17 tell us anything about him?

18 MR MABUYAKHULU: That report from him,
19 because of the number of people who were there I would not
20 even be able to identify him today.

21 MR TIP SC: You had no idea who he was
22 and whether he was one of the leaders of that group, you
23 couldn't describe him, is that right?

24 MR MABUYAKHULU: The truth of the matter
25 is that in this strike we did not have leaders as such.

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1 sentence of this paragraph to the police officer who took
2 it and that he recorded correctly what you had said to him.

3 [10:22] MR MABUYAKHULU: I understand.

4 MR TIP SC: Well, thank you, but now let
5 us look at another aspect of the paragraph and here we will
6 rest on the sentence which you have confirmed and that is
7 somebody came to that meeting on the morning of the 11th
8 August and said, yesterday people were - of the NUM were
9 driving around in a Quantum and firing shots at members of
10 AMCU, correct, that's what you've said?

11 MR MABUYAKHULU: It was mentioned that
12 there is a Quantum, a Quantum that forcefully takes people
13 to work. Mention was also made of the shooting, the
14 shooting originating from that Quantum.

15 MR TIP SC: Yes, exactly and you've
16 repeated that the people of the NUM were also forcing
17 people to go to work at gunpoint and that is also something
18 that this person who came and addressed you on the 11th of
19 August conveyed to you.

20 MR MABUYAKHULU: That report was made,
21 yes.

22 MR TIP SC: And what was the reaction of
23 the people in the crowd, the 3,000 plus who were at that
24 meeting, to this information?

25 MR MABUYAKHULU: No decision was made as

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1 MR TIP SC: Well, Mr Mabuyakhulu, you've
2 spoken about leaders.

3 MR MABUYAKHULU: I said we elected people
4 that would talk when we arrived at the office, I did not
5 say these people were leaders of this strike.

6 MR TIP SC: So when I read in your
7 statement, the statement you've put into this commission,
8 phrases like our elected leaders, we should understand that
9 to mean something other than leaders, is that what you are
10 saying?

11 MR MABUYAKHULU: I was referring to the
12 people that we elected to represent us, not as leaders of
13 the strike as such.

14 MR TIP SC: No, that's fine. Alright, Mr
15 Mabuyakhulu, I want to stay with the principal topic. The
16 person who conveyed this information about NUM people
17 shooting AMCU people, that was a very important piece of
18 news, wasn't it?

19 MR MABUYAKHULU: According to the
20 reports, yes, it was important.

21 MR TIP SC: Yes, and did this person
22 indicate whether any AMCU members have been injured or even
23 killed as a result of what the NUM people were doing?

24 MR MABUYAKHULU: The report was that he
25 is injured.

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1 MR TIP SC: How many people were injured?
 2 MR MABUYAKHULU: I heard a report of 1
 3 person.
 4 MR TIP SC: Did this person convey to you
 5 when and where these shooting incidents had taken place?
 6 MR MABUYAKHULU: It was on the 3rd, it was
 7 late on Friday, but this was not in clear details.
 8 MR TIP SC: Now I want to go back to the
 9 question of the reaction of the people in the meeting. You
 10 were now told that one of your AMCU members has been
 11 injured as a result of a gunshot fired by NUM members
 12 driving around in a Quantum. Did that not produce great
 13 anger amongst those attending the meeting?
 14 MR MABUYAKHULU: The situation according
 15 to me was the same as on Friday, it was difficult because
 16 of the numbers of people to see what the attitudes of the
 17 people were.
 18 MR TIP SC: Were you angry?
 19 MR MABUYAKHULU: No.
 20 MR TIP SC: And the people in your
 21 vicinity at that meeting, they similarly were not angry as
 22 far as you are concerned, is that correct?
 23 MR MABUYAKHULU: I did not notice.
 24 MR TIP SC: And in the course of the
 25 debate that followed leading to the decision to go to the

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1 NUM office nobody got up to express anger about this report
 2 and what had apparently happened?
 3 MR MABUYAKHULU: There was according to
 4 me no change, the situation was as it was on Friday.
 5 MR TIP SC: And peaceful?
 6 MR MABUYAKHULU: Just as it was on
 7 Friday, there was no noise there.
 8 MR TIP SC: Now let me, before I go any
 9 further, point out that none of what you have said about
 10 this was put to the NUM witnesses who were present on the
 11 10th and 11th at the NUM office and in particular not to the
 12 branch chairperson who was travelling around in that
 13 Quantum during the night of the 10th of August.
 14 MR MABUYAKHULU: Let me explain this to
 15 you, Sir, there was no explanation that came from them,
 16 there was nothing that they told us. The only thing was
 17 when we met them there were the gunshots.
 18 MR MPOFU: Sorry, Chairperson, I don't
 19 want to interrupt, but that statement is not entirely
 20 correct, that none of this was put. One of the witnesses,
 21 I can't remember now, I think it was Gekilese, because I
 22 wasn't here for the cross-examination of Setelele. I put
 23 to him specifically that, or rather I'll paraphrase the
 24 question, I said, is it possible that the confiscation of
 25 the weapons that took place on the Friday was done in a

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1 peaceful manner, and the chair even said, well, it is
 2 possible but unlikely, as I was asking that question. I
 3 remember that specifically, so to say none of it was put to
 4 the witnesses, ja, it might not have been put in the
 5 details that were only received last week, that I concede,
 6 but I think it is putting it too high to say none of it was
 7 put to those witnesses.
 8 MR TIP SC: May I respond to that, Mr
 9 Chair?
 10 CHAIRPERSON: Yes, Mr Tip, what do you
 11 say to that?
 12 MR TIP SC: The –
 13 CHAIRPERSON: Before you answer can I put
 14 a question to you?
 15 MR TIP SC: Yes.
 16 CHAIRPERSON: What answers can this
 17 witness give on that point? An inference can be drawn, I
 18 suppose, from the fact that what was put was rather far
 19 removed from what's now being talked about, that's a matter
 20 of argument, but I'm not sure what answer one can expect
 21 for this witness to give, any answer he gives is going to
 22 take the point any further, you've got the material on
 23 record now which forms the basis of an argument. I don't
 24 see how you could take the matter any further by directing
 25 these questions to this witness, so it is not quite Mr

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1 Mpofo's point but it -
 2 MR TIP SC: Mr Chair, I appreciate that
 3 and I with respect, will not deal with the objection
 4 because I'm going to move on. It was a single proposition
 5 put in case there was a comment, but certainly not designed
 6 to elicit any response on the fact, so the response is
 7 there and I'm going to move on to something else, but
 8 before I do that, just for the record because this
 9 allegation of the NUM firing shots and forcing people to
 10 work at gunpoint has been made, for the record and it is
 11 not for comment from the witness, that those allegations
 12 are categorically denied by my client, by the NUM. I'm
 13 going to touch on one other aspect of the 10th and see
 14 whether you can assist us at all, and that is that the NUM
 15 has given evidence, it hasn't been challenged that in the
 16 course of the night of the 10th they had broadcast messages
 17 saying that they were opposed to the unprotected strike and
 18 that they encouraged people to go to work and that they
 19 assisted in many instances people who wished to go to work,
 20 to get there. Did you hear anything about that?
 21 MR MABUYAKHULU: I'm hearing it for the
 22 first time today.
 23 MR TIP SC: Alright, perhaps you can, let
 24 me ask you one last question on this paragraph in your
 25 statement to the police. You fairly acknowledged that that

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1 is a very important allegation that people of NUM were
 2 firing shots at members of AMCU, why did that part of the
 3 police statement not find its way into the statement that
 4 you placed before the commission?
 5 MR MAHLANGU: I'm sorry, Sir, with
 6 respect, if the question could be repeated?
 7 MR TIP SC: Yes, let me repeat it. The
 8 question is simply this and I just want to know whether
 9 there is any comment from you, Mr Mabuyakhulu, you've
 10 confirmed that the statement in the police, Exhibit XX6,
 11 the statement you made to the police that members of the
 12 NUM were sent to have fired shots at members of AMCU was an
 13 important allegation. We do not see any mention of it in
 14 the statement that you submitted to the commission being
 15 Exhibit BBB8. Is there any reason that you can give for
 16 that?
 17 MR MABUYAKHULU: I will explain that
 18 until I am finished, this statement, a lot is wrong in this
 19 statement, Mr Chair. I even gave an example - state my
 20 telephone number, it is wrong in the police statement. I
 21 have also reported to this commission that when this
 22 statement was taken down I wasn't at all right, I was in
 23 pain, resulting in, it is the question of the reason I've
 24 given, I cannot admit nor deny what appears in this
 25 statement because of the reasons I've given.

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1 MR TIP SC: Chair, again before I finally
 2 leave this aspect of the topic, in order also to ensure
 3 that the record is complete, Mr Mabuyakhulu, you'll
 4 remember that in the course of the questions from my
 5 learned friend, Mr Semanya, for the South African Police
 6 Service, he referred you to slide 16 in Exhibit L.
 7 MR MABUYAKHULU: Was it the one on TV?
 8 MR TIP SC: No, it is, have you got
 9 Exhibit L, otherwise I will just tell you what essentially
 10 it says.
 11 CHAIRPERSON: The statement which reads
 12 as follows, that, dealing with what happened on Friday, the
 13 10th of August, and the statement is then made, the area was
 14 patrolled with no concerned incidents, the next morning it
 15 was reported that two employees had been shot at the
 16 Wonderkop Stadium, and then it continues, casualties, two
 17 workers were wounded. That's the statement that was put by
 18 Mr Semanya, yes.
 19 MR TIP SC: Thank you, Chair. Mr
 20 Mabuyakhulu, do you recall that question being put to you
 21 and your attention being drawn to the police report that
 22 two people had been wounded during that night?
 23 MR MABUYAKHULU: Is it now the night of
 24 the 10th or the 11th?
 25 MR TIP SC: The night of the 10th.

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1 MR MABUYAKHULU: I got the report of
 2 about one person.
 3 [10:42] MR TIP SC: Right, I am just dealing with
 4 what the police recorded. Just for the record I don't
 5 really expect comment from you unless you can make it. In
 6 exhibit XX2 there are two statements which have been filed
 7 at pages 80 and 81 of that exhibit and these statements
 8 were made to the South African Police Service by persons
 9 who had been injured in consequence of gunshots fired
 10 during the night of the 10th of August, if I may, Mr Chair,
 11 just read one paragraph from each of the statements and let
 12 me tell you in advance, the purpose why I am doing this is
 13 merely to clarify that these are the only recorded
 14 instances of people who were injured and it is apparent
 15 from their statements that neither of them was injured by
 16 any gunshot fired by a member of the NUM. The first
 17 complainant is at page 80 of exhibit XX2, he is Mr
 18 Mtengwane and he says, "on Friday 10 August 2012 at about
 19 18:15 "I was walking towards Nkaneng, passing Wonderkop
 20 stadium when one of Lonmin's security twin cab opened fire
 21 at me, the cab is yellow with lights on top." And the
 22 second person to make a statement, that is at page 81 of
 23 exhibit XX2 is a Mr Dlomo and he says –
 24 CHAIRPERSON: There is a lot of Dlomo's
 25 you must just say Mr Bulelani Dlomo.

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1 MR TIP SC: Yes thank you Mr Chairperson.
 2 Bulelani Dlomo and he said the following about what
 3 occurred with him. "I only heard plus or minus 5 shots
 4 shooting from the crowd of people who were there, all from
 5 the Lonman security and I find myself on the ground and I
 6 found myself on the hospital and I was shot in the head by
 7 an unknown person." I have explained why I have drawn the
 8 attention of the commission to that, if you have any
 9 comment please make it. but otherwise we can move on.
 10 MR MABUYAKHULU: I would not be able to
 11 deny that. I only spoke of a report that I had heard, that
 12 is all.
 13 CHAIRPERSON: Mr Tip, for the purposes of
 14 completeness it should perhaps be pointed out that the
 15 previous statement to which you referred by Mr Mutimvane,
 16 which is at page 80. The deponent there, having referred
 17 to the incident where he was shot says, at the end of the
 18 third paragraph "The other guy is was walking with was also
 19 shot" and that person is clearly not Mr Bulelani Dlomo
 20 because the time and place is different, so it would appear
 21 that if these two affidavits are correct that three people
 22 were actually shot. Two at roundabout, shortly after
 23 18:15, by someone walking towards Nkaneng, passing
 24 Wonderkop stadium and then a third person, one Mr Dlomo,
 25 who talks about an incident which took place later on at

1 19:40 and the, I am not quite sure where Mr Dlomo's
2 incident took place but it must have been somewhere near
3 the Roland shaft I think. Anyway, it would appear that
4 this witness can't throw any light on it anyway, seeing for
5 the purpose of completeness you put two, I thought it only
6 correct that one should actually point out that there are
7 three persons that were allegedly shot.

8 MR TIP SC: Thank you, Mr Chair, in
9 respect of the first statement that of Mr Mtengwane, it
10 is nevertheless apparent that this was precisely the same
11 incident and that it was the twin cab that was involved in
12 the incident.

13 CHAIRPERSON: Well it might be the same
14 vehicle but it is not necessarily the same entity.

15 MR TIP SC: I was merely making the
16 observation that Mr Mtengwane fell where he was shot from
17 the twin cab, from the Lonmin vehicle and that the other
18 version that was walking with him was also shot. One
19 imagines it was the same incident. It was merely to
20 clarify that the reference to slide 16 doesn't lead to an
21 inference that might have been NUM people who have fired
22 shots.

23 CHAIRPERSON: The other point about that
24 being raised is in the logbook there is a reference to
25 another incident involving people being injured at that

1 time and that is a reference to two workers being assaulted
2 on their way to work. Page 23, it is a reference - the
3 entry is at 20h00 on the 10th. It reads "Two workers were
4 assaulted near the NUM offices, Wonderkop, on their way to
5 work. One doesn't know and certainly this witness can't
6 help us as to whether slide 16 refers to the 2 incidents
7 dealt with in the affidavits on pages 80 and 81 of XX2, or
8 whether it refers to something else. But I think with
9 respect we are wasting time raising this matter with this
10 witness because with the best will in the world he can't
11 help us.

12 MR TIP SC: No, quite right, Mr Chair,
13 but since that has been raised, I will just refer the
14 commission again in the interest of completeness to the
15 evidence that has been presented that two persons reported
16 at the NUM office that they had been assaulted and the NUM
17 members, in fact, saw to it that they were taken to Andrew
18 Saffi for treatment.

19 CHAIRPERSON: The only point I am making
20 is that we don't know what this reference in slide 16, to
21 what incident or incidents that refers and there is no
22 point in asking this witness. Maybe when Mr Semenya starts
23 leading his witnesses we might get some light on the point
24 but I think we are wasting good time now. I am partly
25 responsible for it so I won't take it any further than

1 that.

2 MR TIP SC: That is fully appreciated,
3 one unfortunately has to keep half an eye on the fact that
4 the press picks up reports of this kind and that they need
5 to deal with a full picture. I am leaving this topic
6 entirely as far as Mr Mabuyakhulu is concerned and I want
7 to move on to the events of the 11th August in the vicinity
8 of the NUM office now and what I wish to deal with there
9 and I am going to deal with it quite briefly because
10 evidence has been presented here by certain members of the
11 NUM who were in the office during that period. That
12 evidence hasn't been challenged and I am not going to
13 debate precisely what you say took place there in great
14 detail. I am going to put to you a few essential
15 propositions and you can deal with them if you would, as I
16 make them. The first is that evidence is being presented
17 to this commission that the march, the group of strikers of
18 whom you were part, the 3000 plus people went to the NUM
19 office, having deliberately decided that they would do so
20 with hostile intent that they were intent on dealing with
21 the members of NUM that they found there and to either take
22 over the office or to burn it.

23 MR MABUYAKHULU: No.

24 MR TIP SC: And that when they arrived in
25 the vicinity of the NUM office it was the group with which

1 you - of whom you formed part that in fact advanced in an
2 attacking manner.

3 MR MABUYAKHULU: No.

4 MR TIP SC: That stones were thrown by
5 them and that they shouted and inter alia they called out,
6 "there are these dogs," about certain of the NUM people
7 that were outside.

8 MR MABUYAKHULU: I am hearing that for
9 the first time.

10 MR TIP SC: And that they continued to
11 advance in an attacking manner and it was only when some
12 gunshots were fired from the side of some of the NUM
13 members that they retreated.

14 MR MABUYAKHULU: No.

15 MR TIP SC: And that this group was armed
16 with sticks, knobkerries, spears and perhaps pangas.

17 MR MABUYAKHULU: No.

18 MR TIP SC: We will argue that, that
19 version of the events should, with respect, be preferred by
20 the commission than the one that you have given.

21 MR MABUYAKHULU: I just want to explain
22 first of all about the arms. The situation was, Mr
23 Chairperson, the same as it was on Friday, the people who
24 went there were carrying sticks, but there were no knives,
25 pangas or spears or anything. If I may also say, Mr

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1 Chairperson, there was about 3000 people and there was no
2 way in which they could be chased by between 20 and 30
3 people if there was any fight. We had not gone there for
4 any purposes of fighting.

5 MR TIP SC: And the final proposition in
6 relation to this is that undisputed evidence has been given
7 here that nobody in that crowd gave any indication or said
8 anything to the effect that they had come there merely to
9 speak to members of the NUM.

10 MR MABUYAKHULU: As I explained
11 yesterday, Mr Chairperson, as we were coming down there
12 these people came from across the street and what we heard
13 was the shouts Karee, and then there was a gunshot and then
14 they spoke of a Bob and there was a gunshot, nobody heard
15 any sounds of explaining anything to those people and then
16 we started running away.

17 MR TIP SC: Mr Mabuyakhulu, I want to
18 deal, finally with the description that you have given of
19 the assault on you after you had run away from the vicinity
20 of the NUM office. You have here given considerable detail
21 about what you say befell you on that occasion. It hasn't
22 been possible for me to obtain full instructions in
23 relation to what you have said and in the circumstances I
24 am neither going to confirm nor deny what you have
25 described. I do though want to ask you in conclusion this,

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1 it seems that you didn't open an assault charge in respect
2 of that part of the incident, is that correct?

3 MR MABUYAKHULU: I did not go and lay a
4 charge against anybody, the only statement I made was a
5 statement I made to the police and thereafter made a
6 statement to my representative.

7 MR TIP SC: Alright, will make
8 submissions with relation to what should be done about that
9 incident to the commission in due course. Mr Chair, that
10 completes our questions.

11 MR BHAM SC: Mr Commissioner, I am going
12 to be about 30 to 35 minutes. Would you like me to comment
13 now, or after the adjournment?

14 CHAIRPERSON: The commission will take
15 the tea adjournment at this stage.

16 [COMMISSION ADJOURNS COMMISSION RESUMES]

17 [11:42] CHAIRPERSON: The commission resumes.
18 You're still under oath. You're going to cross-examine?

19 MR BHAM SC: I am. Thank you, Mr
20 Commissioner. Mr Commissioner, just to facilitate the
21 cross-examination, may I ask if you could open before you
22 the witness' statement to his lawyers which is BBB8.

23 CHAIRPERSON: Thank you.

24 MR BHAM SC: Thank you. Mr Mabuyakhulu,
25 do you have that statement in front of you?

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1 MR MABUYAKHULU: Yes.

2 MR BHAM SC: Thank you very much. In
3 paragraph 2 of that statements you comment with effect
4 regarding the RDO salary increase demand with reference to
5 the 9th of August 2012.

6 MR MABUYAKHULU: Yes.

7 MR BHAM SC: Thank you. Now, I'm going
8 to ask you a few questions about facts relevant to that
9 issue which precede the 9th of August 2012, and if there are
10 any questions which you can't deal with because you were
11 not involved in that, then please tell me as I go through
12 each of those questions.

13 MR MABUYAKHULU: I understand.

14 MR BHAM SC: Okay. You are aware, Mr
15 Mabuyakhulu, that on the 21st of June 2012 there was a
16 demand made for the first time which was communicated to Mr
17 Da Costa of Lonmin for a salary increase by RDOs to
18 R12 500.

19 MR MABUYAKHULU: I do not have or I'm not
20 aware of the date, but I have heard about that.

21 MR BHAM SC: Thank you. There was –
22 evidence will be led to the effect that on that day, on the
23 21st of June 2012, approximately 300 to 500 RDOs had marched
24 to Mr Da Costa's office which is in the career
25 administration block. Were you aware of that?

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1 MR MABUYAKHULU: I have heard about that.

2 MR BHAM SC: My question is slightly
3 different, Mr Mabuyakhulu. Were you aware at the time? In
4 other words on the 21st of June were you aware of that march
5 which had taken place to Mr Da Costa's office?

6 MR MABUYAKHULU: I have heard about that
7 at the shaft when they had already been there.

8 MR BHAM SC: And were you aware that they
9 would make a demand, communicate it to Mr Da Costa for an
10 increase of RBO salaries to R12 500?

11 MR MABUYAKHULU: Yes.

12 MR BHAM SC: When did you first become
13 aware of the demand that would be made for R12 500?

14 MR MABUYAKHULU: It was last year, though
15 I am not sure of the date or the month, but it was
16 certainly last year.

17 MR BHAM SC: Last year is an incredibly
18 long time. Was it around June, before June, after June?
19 I'm just trying to establish when you first became involved
20 or aware of that demand.

21 MR MABUYAKHULU: On my side I cannot
22 really say exactly when it was, but in the beginning when
23 they – there was this talks about RBOs wanting money and so
24 on, I have heard about that.

25 MR BHAM SC: Do you know how the figure

1 of R12 500 was arrived at? How was it calculated? What
 2 was the basis for asking for R12 500? Were you involved in
 3 any discussions?
 4 MR MABUYAKHULU: Yes.
 5 MR BHAM SC: Can you explain to us how
 6 the figure of R12 500 was arrived at?
 7 MR MABUYAKHULU: Yes.
 8 MR BHAM SC: Can you explain? I'm
 9 waiting for the explanation.
 10 MR MABUYAKHULU: The issue of money, that
 11 people were complaining or money or salary, it had started
 12 a long time ago in Karee but about the R12 500 it had
 13 started some time last year. That had started while we
 14 were still under NUM. If I remember very well, in the year
 15 2010 we had a meeting of all the RDOs. In that meeting
 16 there were proposals and suggestions and which were
 17 forwarded to NUM that NUM should go and request that our
 18 salaries be raised. The reasons behind that was that we
 19 were all working in Lonmin but there is a difference. The
 20 system that was being used there was not the same. At
 21 Karee when you work with the machine you would be alone but
 22 in other places you would be having somebody who would be
 23 helping you, and when it comes to the money or the salaries
 24 it would be the same. And that was bothering us at Karee.
 25 Why was the system different to the one that was being used

1 at Roland and Eastern? And that's how we came to bring
 2 about that demand and we had noticed that we were not
 3 receiving any response. Then in the year 2011 there was a
 4 strike in Karee. Then from there, there was a word or
 5 instruction from NUM that we should be dismissed and we
 6 were the members of NUM. We were dismissed and rehired and
 7 up to today still other people who were still at home. And
 8 at Lonmin my payslip states that I was hired in 2011 but it
 9 doesn't state the previous services and they were not paid
 10 out. And from there when we looked into our payslip there
 11 was no indication of any union that we belong to, and we
 12 did not know the reason behind that. From there we then
 13 sort of got out own union on the side. Doing that, that is
 14 where the problem started, and that is why we've been
 15 killed. I think now you have it clear if you wanted me to
 16 give you the whole history.
 17 CHAIRPERSON: Mr Mabuyakhulu, you haven't
 18 answered the question. The question as I understand it
 19 relates to where does the figure of 12 500 come from.
 20 Whose idea was it? What was it based on? Can you – if you
 21 don't know then it's simple. You can't tell us. But do
 22 you know where that figure came from, that demand of
 23 R12 500 as take home pay for RDOs?
 24 MR MABUYAKHULU: I heard about this 12.5
 25 last year and the reason behind that was that we were

1 working one person each without an assistant, and that is
 2 why we had asked for a raise to 12.5.
 3 MR BHAM SC: Mr Chairperson, just to give
 4 you an indication, I'm not going to ever ask questions
 5 where I don't believe the question has been answered. I'm
 6 not going to engage in a lengthy debate with the witness.
 7 We'll deal with that in argument. But it's quite clear
 8 that the very pointed that was asked hasn't been answered.
 9 I'll take the implication further later. I don't want to
 10 bog down the cross-examination by having an argument with
 11 the witness about that. Mr Mabuyakhulu, you say you had
 12 heard about the march of -
 13 CHAIRPERSON: Sorry to interrupt you.
 14 What you say is valid to this extent. If it's clear the
 15 witness understood the question and gave an answer that was
 16 an avoiding answer or an evasive answer then you could
 17 argue the point later, but sometimes there's a possibility
 18 the witness didn't understand the question, in which case
 19 the argument that you base, that you would seek to base it
 20 upon the failure to answer the question directly may fall
 21 flat.
 22 MR BHAM SC: I take your point, and I'll
 23 assess it as it goes along. Mr Mabuyakhulu, you say you
 24 were aware that a meeting had occurred, or there was a
 25 march on Mr Da Costa's office on the 21st of June 2012,

1 somewhere around that time.
 2 MR SEMENYA SC: Chair, on the record, my
 3 learned colleague is mistaken. It's not June, it's July.
 4 MR BHAM SC: No.
 5 CHAIRPERSON: I think Mr Semenya's
 6 correct.
 7 MR BHAM SC: The very first meeting was
 8 on the 21st of June. There were then subsequent meetings in
 9 July, so the first approach to Mr Da Costa is on the 21st of
 10 June, and you'll find that in paragraph 3.2 of Mr Da
 11 Costa's statement. Chronologically the first march on his
 12 office, so he will testify, was on the 21st of June 2012.
 13 There are subsequent meetings and I'll refer to them.
 14 CHAIRPERSON: Do you persist in the
 15 objection?
 16 MR SEMENYA SC: No.
 17 CHAIRPERSON: No. Objection is
 18 withdrawn. You can proceed.
 19 MR BHAM SC: Thank you very much. I also
 20 got my Junes and Julys mixed up from time to time but it's
 21 the 21st of June. During June 2012 there was this march of
 22 between 300 and 500 RDOs on Mr Da Costa's office and I've
 23 referred to that, and as I understood your testimony you
 24 were aware – you weren't at the march – but you were aware
 25 of that march.

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1 MR MABUYAKHULU: I have heard of that
2 march when I received a report at the shaft.
3 MR BHAM SC: And was the report a report
4 on the march itself or did it include a report of a meeting
5 which took place between Mr Da Costa and two
6 representatives of those who marched on his office?
7 MR MABUYAKHULU: The report I received
8 was that the RDOs had come together and they were talking
9 or discussing about money. As to when and how or where
10 they went I was not sure.
11 MR BHAM SC: Were you as an RDO informed
12 that Mr Da Costa had actually met with and engaged in
13 discussion with two representatives of those who had
14 marched on his office?
15 MR MABUYAKHULU: I'm hearing that for the
16 first time today.
17 MR BHAM SC: Okay. Were you – to the
18 best of your knowledge was there a report back to the RDOs
19 at Lonmin on what transpired in the meeting between Mr Da
20 Costa and the two representatives of the marchers?
21 MR MABUYAKHULU: On my side the last I
22 had met with Mr Da Costa which was also the first time I
23 was meeting with him was when he was talking about the 750.
24 He was saying there is money and that would be R750.
25 MR BHAM SC: Okay, thank you. Let me

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1 just understand it. Did you actually meet with Mr Da Costa
2 yourself?
3 MR MABUYAKHULU: Yes.
4 MR BHAM SC: When did you meet with Mr Da
5 Costa and where did you meet with Mr –
6 MR MABUYAKHULU: At RDOs we moved from
7 the compound to mining stone to meet with Mr Da Costa.
8 MR BHAM SC: And when did this occur?
9 MR MABUYAKHULU: I only went once. That
10 was the only meeting I have had with Mr Da Costa and that
11 is where he raised an issue of 750.
12 [12:02] MR BHAM SC: I understand it was – you
13 say you only met once. I'm trying to understand when that
14 meeting occurred and where it occurred and who else was
15 present at the meeting.
16 MR MABUYAKHULU: Maybe it was around
17 July. I'm not certain, but I remember it was at the mining
18 store where we had met with him with the RDOs.
19 MR BHAM SC: When you say we, can you
20 tell me who was at that meeting? Who was present there?
21 MR MABUYAKHULU: The RDOs from Karee.
22 MR BHAM SC: Can I ask you, because
23 certainly that is not consistent with Mr Da Costa's
24 statement, so I'm going to take you through a sequence of
25 the meetings he will testify to.

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1 COMMISSIONER HEMRAJ: Mr Bham, is this
2 perhaps not – is the witness not perhaps referring to an
3 occasion when Mr Da Costa actually addressed a group of
4 RDOs as opposed to a meeting of a couple of people? You
5 might want to just explore that.
6 MR BHAM SC: I'm going to do that and in
7 order to avoid any level of confusion, Commissioner, I'm
8 going to go through it chronologically, the different
9 meetings, because you're right. There may be – we may be
10 talking at cross purposes but I want to go through it
11 chronologically.
12 CHAIRPERSON: Before you do that I'd like
13 to ask a question. Were you at, were you at any time a
14 team leader of the RDOs or were you just an ordinary RDO?
15 MR MABUYAKHULU: No, I was just a member,
16 just an ordinary member, just a follower.
17 CHAIRPERSON: Thank you.
18 MR BHAM SC: You've already told us that
19 you're not aware of any report back to the RDOs and you
20 certainly hadn't heard any such report of the meeting
21 between Mr Da Costa and two members or representatives of
22 the RDOs on 21 June 2012 when the demand for a salary
23 increase for RDOs to R12 500 had first been made.
24 MR MABUYAKHULU: On my side I remember
25 just there was a group of five people who said that they

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1 had been called to a parade by Mr Da Costa and they had a
2 document with them where the issue of this money was
3 stated, and that is where we took a decision to go and see
4 Mr Da Costa.
5 MR BHAM SC: Are you aware, Mr
6 Mabuyakhulu, that on the 23rd – sorry, on the 2nd of July
7 there were five RDO representatives, the same not
8 accompanied by a march of any sort, but five RDO
9 representatives who had met with Mr Da Costa at his office?
10 Amongst the five were two of the representatives who met
11 with him on the 21st of June 2012.
12 MR MABUYAKHULU: I would not deny or
13 dispute that. I can't say whether they had gone there or
14 not. I am just stating what I know.
15 MR BHAM SC: I appreciate that. Were
16 there any report backs to the RDOs that you are aware of
17 from people who had met with Mr Da Costa telling the RDOs
18 what was discussed between them and Mr Da Costa?
19 MR MABUYAKHULU: I only remember the last
20 one that I had already spoken about where a document was
21 presented to the RDOs and a small amount of money was
22 stated there and that is when a decision was then taken
23 that we should go and meet Mr Da Costa. That's the one I'm
24 calling the last one. I am not sure as to whether there
25 had been other meetings subsequent to that or not.

<p style="text-align: right;">Page 5377</p> <p>1 MR BHAM SC: And was there any report 2 back to the RDOs that in these discussions which took place 3 on the 21st of June, the 2nd of July, the 23rd of July and 4 again on the 30th of July between Mr Da Costa and 5 representatives of the RDOs? The Lonmin position conveyed 6 to these representatives was that Lonmin would not and 7 could not negotiate salaries outside of the existing 8 collective bargaining structures.</p> <p>9 MR MABUYAKHULU: I'm hearing that for the 10 first time today.</p> <p>11 MR BHAM SC: Commissioners, if I could 12 just place one thing on record flowing from what Adv Hemraj 13 had said to me earlier. From Mr Da Costa's statement is 14 does appear that on the occasion when he met the RDO 15 representatives on the 23rd of July after that meeting he 16 had addressed a crowd of about 500 people where he 17 communicated that there would be an allowance, not the 18 amount, but that there would be an allowance. But the 19 question I had asked was whether there was any 20 communication of the discussions with the RDO 21 representatives and we've got the answer to that. So you 22 were never told then that there were discussions between 23 representatives of the RDOs and Mr Da Costa on various 24 occasions where Mr Da Costa explained to them why Lonmin 25 could not engage on the R12 500 demand, having regard to</p>	<p style="text-align: right;">Page 5379</p> <p>1 the morning shift of RDOs of the 10th of August did not go 2 down to work? 3 MR MABUYAKHULU: Was it on the 9th or the 4 10th? 5 MR BHAM SC: On the morning of the 10th. 6 MR MABUYAKHULU: I'm aware. I know that 7 they did not go down to the shaft. Their agreement was 8 reached on the 9th. We had taken advantage of the holiday 9 of the 9th and the agreement was that on the 10th we would 10 go and approach the employer. 11 MR BHAM SC: And consequently they would 12 not go to work. They wouldn't go report for duty on the 13 10th. They would march on the employer. 14 MR MABUYAKHULU: Yes. 15 MR BHAM SC: So the effect of what you 16 had decided on the 9th was that RDOs would not go to work on 17 the 10th but would march on the employer. 18 MR MABUYAKHULU: Yes. 19 MR BHAM SC: In paragraph 4 you then talk 20 about the march and you say that on your arrival at LPD 21 before you could reach the offices you were stopped by two 22 white men and some Lonmin security. You said they wanted 23 to know what your demands were and you then say, "Our 24 elected leaders told them what we wanted". Can you tell me 25 who those elected leaders were, who those people were that</p>
<p style="text-align: right;">Page 5378</p> <p>1 the existing collective bargaining structures? You were 2 never told of that and you're hearing about that for the 3 first time? 4 MR MABUYAKHULU: If that statement comes 5 from Mr Da Costa I'm hearing of it today for the first 6 time. 7 MR BHAM SC: When you deal in paragraph 2 8 of your witness statement with the meeting of 9 August 2012 9 you make reference to a discussion of the salaries of RDOs 10 which was dealt with at this meeting. You would agree with 11 me, without any difficulty, I would imagine, that the 12 R12 500 salary demand did not crop up for the first time on 13 the 9th of August. It had been dealt with before that. 14 MR MABUYAKHULU: Yes. 15 MR BHAM SC: Now, if you turn the page of 16 your witness statement, to paragraph 3, you're now dealing 17 with the 10th of August, paragraph 3 and 4. You see on the 18 9th at that stage it was not decided that we should go on 19 strike. It was only agreed that we would approach the 20 employer with a demand for a salary increase to R12 500 21 after deductions. In paragraph 4 you say on the 10th we 22 gathered at Wonderkop at 08h00 and decided to go and put 23 our demands to the employer. Now, there's just a couple of 24 questions I'd like to ask you about that. The first is 25 this – are you aware and were you aware at the time that</p>	<p style="text-align: right;">Page 5380</p> <p>1 you describe as elected leaders? 2 MR MABUYAKHULU: There's only one that I 3 can remember from amongst that group that was elected. 4 That is Boye. I know him because I was working with him. 5 MR BHAM SC: Okay. What you state in 6 paragraph 5 is going to be factually disputed so I'd like 7 to take you through it carefully. I understand you to say 8 that initially after you had met with the two white men and 9 Lonmin security they asked you what your demands were and 10 that they went into the – they, the Lonmin people went into 11 the Lonmin offices. I then understand you to say when they 12 returned and they didn't have an answer that they requested 13 you to choose five members of the group to go in and that 14 would be to go into the Lonmin offices. Do I understand 15 what you say in your statement correctly? 16 MR MABUYAKHULU: No, you're making a 17 mistake. 18 MR BHAM SC: Can you give me the sequence 19 of events then? Did – were there any representatives of 20 the RDOs who went into the Lonmin offices? 21 MR MABUYAKHULU: On the 10th we have 22 elected five people that would be representing us in 23 approaching the employer. Then when we arrived there 24 before we could reach the offices at LPD that's when we 25 encountered or we came across these two white men and the</p>

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1 security officers of the mine. They stopped us and we
 2 waited and sat down and the five that we had elected went
 3 ahead and met with them.
 4 MR BHAM SC: They met with whom?
 5 MR MABUYAKHULU: Met with the two white
 6 men and the security officers. From there the white men
 7 then left, went into, went inside. We waited for them for
 8 about an hour or more, I'm not sure, and after that they
 9 came back without an answer. Then from there we then took
 10 a decision that we are now going to approach the employer's
 11 offices because we know where they are. And when we
 12 arrived at the employer's offices we found the security
 13 officers on guard already and there was a danger tape
 14 cordoning off. I take it we all know the implications and
 15 understand the reason why there should be a danger tape.
 16 We respected that and we remained on the other side of the
 17 danger tape. Then the five that we have elected went and
 18 approached the security guards and spoke with them. From
 19 there they together with other security officers went
 20 inside.
 21 MR BHAM SC: Okay, that's the part I just
 22 want to get clear. When you say they spoke to the security
 23 guards did they speak to the security guards outside or did
 24 they go into the office?
 25 MR MABUYAKHULU: They were discussing or

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1 talking outside there with – actually with not the security
 2 guards but the two white men out there. The security
 3 guards were just on guard. Maybe they thought we were
 4 there to fight. I don't know.
 5 [12:22] MR BHAM SC: - but if I understand what
 6 you're saying now, at no stage did the five elected members
 7 or leaders, as you refer to them, go into the Lonmin
 8 offices, am I correct in that regard?
 9 MS SOMAGACA: Can you repeat the
 10 question, please?
 11 MR BHAM SC: Do I understand you
 12 correctly to say that at no stage did the five RDO elected
 13 members or leaders go into the Lonmin offices, itself?
 14 MR MABUYAKHULU: You do not understand
 15 me. I said that when we found the danger tape, the five
 16 that we had elected had went and approached and spoke to
 17 the two white men after which the five, together with the
 18 white men went inside the offices. And where we were
 19 standing, it was – we were facing the office, it was just
 20 outside the office. It was only the danger tape that was
 21 cordoning off and we were not standing far away.
 22 MR BHAM SC: The reason I asked that, and
 23 now I understand you correctly, is because Lonmin's
 24 witnesses will dispute your suggestion that the five RDO
 25 representatives went into the office. They'll say they

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1 didn't go into the office. At no stage did any of the RDO
 2 representatives go into the Lonmin office on that occasion.
 3 MR MABUYAKHULU: I understand what you're
 4 saying.
 5 MR BHAM SC: Would you like to comment on
 6 that?
 7 MR MABUYAKHULU: No, I don't have a
 8 comment on that.
 9 MR BHAM SC: And they will also say to
 10 you that Mr Graham StClare communicated to the RDOs that
 11 the Lonmin management would not engage in negotiations or
 12 discussion on wage matters outside of the collective
 13 bargaining structures.
 14 MR MABUYAKHULU: Then my question would
 15 be where did the papers or the documents come from that
 16 were given to us and we refused to accept them and we told
 17 them we were not learned, we can't read.
 18 MR BHAM SC: I'm not sure which papers
 19 you talk of, could you tell me about this?
 20 CHAIRPERSON: I think he may be referring
 21 to the Exhibit CCC4, which is an internal communiqué –
 22 MR BHAM SC: I'm going to refer to that.
 23 Sorry –
 24 CHAIRPERSON: That document was
 25 apparently brought out and read to them by Mr Sinclair I

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1 think, so perhaps you should clear that up, it may be that
 2 –
 3 MR BHAM SC: I'm going to do that. Are
 4 you aware that at that point in time the document which was
 5 handed up yesterday by Mr Tip, CCC4, was handed out on
 6 behalf of Lonmin?
 7 MR MABUYAKHULU: Then who was giving it
 8 out?
 9 MR BHAM SC: So you were aware of this
 10 notice – of this document on that day?
 11 MR MABUYAKHULU: I'm not sure I
 12 understand your question, but my question was the document
 13 that was given to us, where was it coming from?
 14 MR BHAM SC: I'm trying to understand
 15 which document you're referring to. Is it the document
 16 which is CCC4? Could you show that to the witness, please?
 17 This is the document that was given to you yesterday. Is
 18 that the document you're referring to?
 19 MR MABUYAKHULU: When we were there,
 20 there was a document that was presented there and we asked
 21 where is this document coming from, and we were told from
 22 the employer, and we said, but then how can the document be
 23 presented that comes from the employer, whereas the
 24 employer does not know us.
 25 MR BHAM SC: My question is simply this,

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1 the document you say was presented to you, is it that
 2 document that you've just been shown, CCC4?
 3 MR MABUYAKHULU: You see the document
 4 that was presented on that day, it was never opened. We
 5 never opened it, we never read it. When we were told
 6 there's a document from the employer, we didn't want to
 7 entertain it. We thought, because we are not learned, we
 8 cannot even read and if the employer did not know us or
 9 know of our presence there, where was this document coming
 10 from then?
 11 MR BHAM SC: Do I understand you to be
 12 saying that even though a document came out from the
 13 employer, you chose not to read it or look at it or
 14 understand its contents?
 15 MR MABUYAKHULU: Are you now agreeing
 16 with me that the document was from the employer?
 17 MR BHAM SC: It's a very simple question
 18 I'm asking. You say a document came from –
 19 CHAIRPERSON: He asked you a simple
 20 question, maybe you should give him a simple answer. Set a
 21 good example for him and future witnesses.
 22 MR BHAM SC: The question I'm simply
 23 asking is this, if a –
 24 CHAIRPERSON: His question. He says to
 25 you are you saying that the document came from the

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1 employer?
 2 MR BHAM SC: Yes.
 3 MR MABUYAKHULU: I'm saying that, because
 4 I heard you saying the employer did not know about the
 5 presence of the RDOs because you said the five did not go
 6 into the building, so now how did the employer know – how
 7 could he issue the document, if he did not know about the
 8 RDOs present.
 9 MR BHAM SC: The employer knew about the
 10 RDO presence, but there were no RDO representatives which
 11 went into the LPD offices, that's what I said to you.
 12 MR MABUYAKHULU: Did he know that the
 13 RDOs were demanding money?
 14 CHAIRPERSON: No, I think you must –
 15 MR BHAM SC: You must answer the
 16 questions, Ma'am.
 17 CHAIRPERSON: Give me an opportunity.
 18 I've allowed you to ask one question to clear up what I
 19 thought was a misunderstanding, but your function is to
 20 answer questions, not to ask them. So please remember
 21 that. Don't ask questions. If questions that are asked by
 22 Mr Bham are unclear, I will endeavour to obtain clarity for
 23 you, but in the meanwhile it's perfectly clear question,
 24 please answer it, and don't answer it by asking another
 25 question, answer it directly.

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1 MR MABUYAKHULU: Thank you, Chairperson.
 2 CHAIRPERSON: - question again, Mr Bham,
 3 maybe get a straight answer this time.
 4 MR BHAM SC: I've already said to you
 5 that Lonmin will say that there were no representatives of
 6 the RDOs who went into the office of Lonmin on that day.
 7 MR MABUYAKHULU: Okay, I understand.
 8 MR BHAM SC: And they certainly did not
 9 communicate to any RDO representatives that the union had
 10 told them not to talk to the RDOs. They will deny that
 11 they communicated to any RDO representative that they were
 12 told by the union not to talk to the RDOs.
 13 MR MABUYAKHULU: I hear you.
 14 MR BHAM SC: In paragraph 6 of your
 15 statement, you talk about what occurred after the LPD
 16 encounter. You say you returned to Wonderkop. You say it
 17 was then decided that in view of the fact that the employer
 18 did not want to speak to us, we would have to stop work
 19 until the employer was prepared to take us seriously. Now
 20 even at that stage, was there any report to the RDOs of the
 21 discussions that were held with Mr Da Costa on the 21st of
 22 June, on the 2nd of July, on the 23rd of July and on the 30th
 23 of July?
 24 MR MABUYAKHULU: We returned on the 10th
 25 without having received any report, no matter how small.

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1 MR BHAM SC: Thank you. Were you aware
 2 on the 10th that the work stoppage was an illegal work
 3 stoppage?
 4 MR MABUYAKHULU: Yes.
 5 MR BHAM SC: And were you informed, or to
 6 the best of your knowledge, was the RDOs, who were not at
 7 work, who had embarked on the work stoppage, informed that
 8 an interdict – a court interdict had been obtained
 9 declaring their strike illegal?
 10 CHAIRPERSON: - the interdict was only
 11 obtained in the afternoon, is that correct?
 12 MR BHAM SC: On the afternoon, yes.
 13 CHAIRPERSON: The meeting was in the
 14 morning, wasn't it? So there was no interdict yet when
 15 they had the meeting on –
 16 MR BHAM SC: I'm asking of it any time
 17 after the interdict had been granted. Maybe I have not
 18 been clear.
 19 CHAIRPERSON: Reformulate the question,
 20 but I think there was an answer that the interpreter was
 21 beginning to interpret, which we should hear.
 22 MR MABUYAKHULU: I hear that for the
 23 first time today.
 24 MR BHAM SC: Thank you, I have no further
 25 questions.

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1 CHAIRPERSON: Mr Bham, you are appearing
 2 for Lonmin and Lonmin filed some witness statements,
 3 including a witness statement from a Mr Debukwane, which is
 4 ZZ3 and in which he deals with the events of – in
 5 particular, of the Saturday, the 11th of August. Now, if
 6 Lonmin intends to call the witness, it would only be fair,
 7 I would imagine, for this witness to be given an
 8 opportunity to deal with what this witness is going to say.
 9 I mean you can't call your witness later, dealing with
 10 evidence he's given, which is conflict, to some extent,
 11 with his evidence, without giving him an opportunity to
 12 deal with it.

13 MR BHAM SC: You're absolutely right.
 14 Will you give me two minutes, Mr – we need not take an
 15 adjournment, will you give me two minutes, I just want to
 16 get it, then I'll put it to him. You're absolutely right.

17 CHAIRPERSON: Yes, well I'll give you –

18 MR BHAM SC: I'm going to get it now, and
 19 I'll put it to the witness.

20 CHAIRPERSON: While you're taking
 21 instructions, there's also another statement that I think
 22 has been filed, which is ZZ4 by Akanyang Julius Motlagewa.
 23 He also deals with those events, and I don't think it's
 24 appropriate – I've said it already, really, but I'll say it
 25 again, I don't think it's appropriate for Lonmin to seek to

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1 lead those witnesses without their version, insofar as it
 2 is contrary to - being put to them.

3 MR BHAM SC: You're absolutely right, I'm
 4 going to that right now, Mr Commissioner. May I just,
 5 before I put this, Mr Commissioner, just explain that these
 6 are not witnesses we had originally intended to lead, nor
 7 put statements in respect of, it was –

8 CHAIRPERSON: It is statements that
 9 Lonmin filed.

10 MR BHAM SC: If I can just finish what
 11 I'm about to say? It was as a result of requests made by
 12 the NUM that this has come about, but having said that, I'm
 13 going to read the statements so that the witness can deal
 14 with it. Mr Mabuyakhulu, in paragraph 7 of your witness
 15 statement – it's paragraph 7 of your witness statement, Mr
 16 Mabuyakhulu, you state that, "On the 11th at 9h00, we met at
 17 Wonderkop and we exchanged views. It was then decided that
 18 we should approach NUM and enquire from them why they had
 19 prevented the employer from engaging with us. The
 20 gathering then marched to the offices of NUM. We walked to
 21 the offices which are situated near the satellite police
 22 station. I was in the group immediately behind the front
 23 group. We certainly did not have violent intentions and
 24 none were discussed." Now a witness statement has been
 25 placed before you of Mr Sello Debukwane, and I'd like to

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1 refer you to that witness statement, commencing at
 2 paragraph 7, and I'm referring it to you in order to give
 3 you an opportunity to comment on that. It says – have you
 4 got the statement in front of you?

5 MR MABUYAKHULU: Yes.

6 MR BHAM SC: He says, "On the morning of
 7 Sunday, 11 August 2012 at approximately 09h00, the mass
 8 meeting commenced at the Wonderkop stadium." He says he
 9 did not participate in the mass meeting, but his
 10 instructions were to observe the mass meeting and report
 11 any unrest. He says he was standing about 100 metres away
 12 from the gathered crowd. He then says at approximately
 13 9h30, the crowd started singing and chanting and it
 14 appeared that the crowd was preparing to move to the NUM
 15 offices. He goes on to say, "At the time, I observed that
 16 some members of the marching crowd were carrying
 17 traditional weapons, such as stick and spears." He says he
 18 did, however, not observe any pangas or fire weapons. He
 19 then goes on to state in paragraph 2.10, and this is an
 20 important paragraph, having regard to what you stated. He
 21 says, "At approximately 9h40, both Mr Julius Motlagelu and
 22 I were informed by an informant that it was the intention
 23 of the crowd to march down to the NUM offices and to burn
 24 down the said offices. We were further informed that the
 25 motivating factor behind the crowd's decision can be

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1 attributed to the fact that the NUM was assisting it's
 2 members to attend work the previous day. Now that is
 3 stated in his witness statement, and I'm giving you the
 4 opportunity to comment on that."

5 [12:42] Sorry, before the witness comments on that,
 6 exactly the same statement is made and the same version is
 7 given in paragraph 2.8 of Mr Julius Motlagelu's statement,
 8 so I'm not going to repeat that, both of them were standing
 9 together and both of them were informed of exactly the same
 10 thing.

11 MR MABUYAKHULU: May I find out from you,
 12 this statement, this other statement that has been read
 13 besides mine, is that, which witness is that, is it the
 14 witness for the mine or for NUM or for RDOs?

15 MR BHAM SC: Both of them are witnesses,
 16 but both of them are employed as security guards at Lonmin
 17 and were employed in that capacity at that time.

18 MR MABUYAKHULU: I think as I'm seated
 19 here, I'm here to respond to what I have said in my
 20 statement and to stand by it, and I suppose the very same
 21 person or witness will also come and comment on his own
 22 statement, thank you.

23 MR BHAM SC: Thank you, Mr Commissioner,
 24 I have now given the witness an opportunity to comment on
 25 something which directly impacts on paragraph 7 of his

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1 witness statement, you've heard the answer and we'll deal
2 with that further in argument. Thank you, Mr Commissioner.
3 CHAIRPERSON: Ja, alright. Is there any
4 other counsel or party representative, LRC, anybody else?
5 Mr Budlender?
6 MR BUDLENDER SC: Your reserved your
7 rights, do you want to exercise them now?
8 MR BUDLENDER SC: Yes, we do, Chairman.
9 Mr Mojapelo will ask questions on behalf of the evidence
10 leaders.
11 CROSS-EXAMINATION BY MR MOJAPELO: Good
12 day, Mr Mabuyakhulu.
13 MR MABUYAKHULU: Good day.
14 MR MOJAPELO: Let's start on the meeting
15 of the 9th of August, the meeting on the public holiday, who
16 organised that meeting, was it AMCU or NUM?
17 MR MABUYAKHULU: The RDOs.
18 MR MOJAPELO: Okay, and amongst those
19 RDOs were there members of NUM and AMCU?
20 MR MABUYAKHULU: Yes.
21 MR MOJAPELO: Okay, and how did you know
22 about the meeting, how were you invited to the meeting?
23 MR MABUYAKHULU: I heard at the shop that
24 there was going to be an RDO meeting at Wonderkop.
25 MR MOJAPELO: Okay, you heard at the shop

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1 at your place of work, this is at the Karee shop?
2 MR MABUYAKHULU: Yes.
3 MR MOJAPELO: Okay, the shop stewards at
4 your place of work at Karee, were they present at the
5 meeting?
6 MR MABUYAKHULU: No.
7 MR MOJAPELO: Okay, in your statement you
8 speak about the leaders at the meeting, how were these
9 leaders elected?
10 MR MABUYAKHULU: We had met as RDOs and
11 during the meeting there we made some suggestions of the
12 names of people who could go and represent us ahead.
13 MR MOJAPELO: Okay, do you still remember
14 the names of the leaders?
15 MR MABUYAKHULU: I recall only the one,
16 the others I don't.
17 MR MOJAPELO: Okay, amongst those leaders
18 were there NUM people, NUM members?
19 MR MABUYAKHULU: I think they were there
20 because we had just elected from other places as well, we
21 had mixed them, others were coming from Karee, others from
22 Eastern.
23 MR MOJAPELO: Okay, and then you said in
24 your statement that the discussion was about the salaries
25 of the RDOs, ne?

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1 MR MABUYAKHULU: Yes.
2 MR MOJAPELO: Okay, was there any reason
3 why this salary issue was not taken to your respective
4 unions, that is NUM and AMCU?
5 MR MABUYAKHULU: Yes.
6 MR MOJAPELO: Okay, can you tell us why
7 was it not taken to, in the first place AMCU?
8 MR MABUYAKHULU: Firstly we know that
9 AMCU is still new at Lonmin, it had not reached the stage
10 where it could be involved in salary discussions.
11 MR MOJAPELO: Okay, let's go to the 10th,
12 you say in your statement that after, coming back from
13 negotiations with the employers, you decided to embark on a
14 strike.
15 MR MABUYAKHULU: Yes.
16 MR MOJAPELO: Was this decision to go on
17 strike supported by all the people at the meeting?
18 MR MABUYAKHULU: Yes.
19 MR MOJAPELO: Okay, were you aware that
20 NUM was communicating in the area that people should not go
21 on strike and go to work?
22 MR MABUYAKHULU: I'm hearing of it for
23 the first time today.
24 MR MOJAPELO: Okay, you've never had,
25 I'll continue to the next question. How was this decision

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1 to go on strike communicated to other workers who were not
2 present at the meeting?
3 MR MABUYAKHULU: I don't know how it
4 reached out to other workers, there were no names mentioned
5 there or people giving instructions to take out the
6 message. We only decided there as RDOs that we are now
7 sitting down and not going to work.
8 MR MOJAPELO: Okay, you are not aware
9 that NUM was assisting people to go to work?
10 MR MABUYAKHULU: I have heard of that.
11 MR MOJAPELO: Okay, was this issue that
12 NUM is transporting people to work ever discussed in any
13 meeting?
14 MR MABUYAKHULU: It just came up or it
15 was discussed on the meeting of the 11th.
16 MR MOJAPELO: Okay, this was the meeting
17 before the RDOs decided to go to the NUM offices?
18 MR MABUYAKHULU: Yes.
19 MR MOJAPELO: Okay, how did the RDOs, the
20 strikers in the meeting feel about the fact that NUM is
21 transporting people to work?
22 MR MABUYAKHULU: Repeat, please?
23 MR MOJAPELO: How did the strikers, the
24 RDOs at the meeting feel about the fact that NUM is
25 transporting people to work?

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1 MR MABUYAKHULU: In my observation
 2 everything was the same as at the 10th, nothing had changed.
 3 MR MOJAPELO: Was it one of the reasons
 4 to go to the NUM offices to ask them why are they
 5 transporting people to work?
 6 MR MABUYAKHULU: That was never passed or
 7 discussed.
 8 MR MOJAPELO: Are you telling this
 9 commission that the strikers were happy with the fact that
 10 NUM is opposing their own strike?
 11 MR MABUYAKHULU: I never saw any people
 12 being upset or being excited, the situation was just the
 13 same.
 14 MR MOJAPELO: Okay, I see it is already
 15 after one.
 16 CHAIRPERSON: It is one o'clock, what
 17 you're suggesting is, it is an appropriate stage to take
 18 the lunch adjournment?
 19 MR MOJAPELO: To take the lunch
 20 adjournment.
 21 CHAIRPERSON: Yes, we would like to see
 22 Mr Semenya and Mr Mpofo and Mr Budlender in Chambers at
 23 half past one, so we will adjourn the commission until two
 24 o'clock.
 25 [COMMISSION ADJOURNS COMMISSION RESUMES]

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1 [14:06] CHAIRPERSON: The Commission resumes. Mr
 2 Mabuyakhulu, you are still under oath. You are still
 3 cross-examining?
 4 MR MOJAPELO: Yes, Mr Chair.
 5 CHAIRPERSON: Mr Mojapelo, please
 6 proceed.
 7 MR MOJAPELO: Yes. Mr Mabuyakhulu, on
 8 the statement that is ZZ3, the statement of Debukwane, do
 9 you have it in front of you?
 10 MR MABUYAKHULU: Yes.
 11 MR MOJAPELO: Yes, Debukwane apparently
 12 is an employee of Lonmin, and paragraph 2.5, do you see
 13 paragraph 2.5, and 2.6? He says, "I was informed by
 14 certain informants that there was much unhappiness about
 15 NUM's intervention in this regard, and that a mass meeting
 16 had been called for the next morning on nine o'clock at the
 17 Wonderkop Stadium."
 18 CHAIRPERSON: I think you should explain
 19 to him that the NUM's intervention in this regard, is
 20 explained in paragraph 2.4, otherwise he won't understand
 21 what 2.5 says.
 22 MR MOJAPELO: Okay. Remember on the 10th,
 23 you went to – you had a decision to strike, to stop going
 24 to work.
 25 MR MABUYAKHULU: Yes.

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1 MR MOJAPELO: Then after that decision,
 2 NUM were escorting people to work.
 3 MR MABUYAKHULU: So I've heard.
 4 MR MOJAPELO: Yes, starting from
 5 paragraph 2.4 of this statement, Mr Debukwane says, "On the
 6 evening of the 10th of August NUM's stewards were escorting
 7 their members from Wonderkop hostel to the Roland Shaft in
 8 order to report for duty.
 9 MR MABUYAKHULU: So I've read it from the
 10 statement.
 11 MR MOJAPELO: Okay, and then in paragraph
 12 5, which I've already read, he says that there was
 13 unhappiness about NUM's intervention.
 14 MR MABUYAKHULU: You see, about this
 15 statement, I've already mentioned earlier that it is very
 16 difficult to comment on a statement that is not yours.
 17 MR MOJAPELO: Okay, let me just finish
 18 the last paragraph, then I'll give you an opportunity to
 19 comment. And he says, "I was informed that the purpose of
 20 the aforesaid mass meeting was to confront and challenge
 21 NUM at their offices situated close to Wonderkop Stadium as
 22 the NUM was not adhering to the no work embargo."
 23 MR MPOFU: Chair, sorry, Chairperson, I
 24 just want to make this remark, it's not an objection as
 25 such but it might turn out to be, I'll refrain from

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1 interfering with questioning on these statements, even when
 2 Mr Tip and other people use these statements, but I am not
 3 sure of the fairness, Chairperson, of putting to a witness
 4 something that is not even double, but maybe triple
 5 hearsay. What we have here is that Debukwane says that the
 6 informant informed him that somebody who was talking at the
 7 meeting was unhappy. I mean, it's so far removed from any
 8 semblance of being evidence that is it really fair to put
 9 it to a witness? We don't even know if Debukwane himself
 10 is coming, but let along the informant, let alone who
 11 informed the informant. I mean really, where are we going
 12 with – can a witness be expected to account for something
 13 said by a fourth person in the hearsay chain?
 14 CHAIRPERSON: The witness was at the
 15 meeting. He can either say that there was such a story
 16 going around, it's not true, or he can say the story was
 17 true. He's at the meeting, he is simply asked to comment
 18 on an allegation, admittedly a hearsay allegation, but an
 19 allegation that that was the purpose of the meeting to
 20 confront, to challenge NUM at their offices because they
 21 weren't adhering to the no work embargo. I'll allow the
 22 question. But the point you made is noted, that it is
 23 hearsay.
 24 MR MOJAPELO: Okay, Mr Mabuyakhulu, what
 25 are your comments about those allegations made by Mr

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1 Debukwane?

2 MR MABUYAKHULU: According to me, I never

3 saw any unpleasantness or people upset or RDOs being angry

4 or anything, all I saw was them singing, and that is all.

5 It was all – the situation was all the same, like on the

6 10th.

7 MR MOJAPELO: Okay, let's talk about the

8 11th now, the 11th of August, when you went to the NUM

9 offices, were you carrying a weapon yourself?

10 MR MABUYAKHULU: I was only carrying a

11 stick.

12 MR MOJAPELO: Okay, what was the purpose

13 of carrying a stick?

14 MR MABUYAKHULU: I got used to carrying a

15 stick from way back home, you see when you are singing that

16 song becomes more pleasant when you are carrying your own

17 stick. If you can see, other people were also carrying

18 tree branches, that is how pleasant the song becomes when

19 you are carrying a stick.

20 MR MOJAPELO: Were there any people

21 carrying sharp weapons like spears?

22 MR MABUYAKHULU: No, there was a lot of

23 people there but on my side, I did not even see one spear.

24 MR MOJAPELO: You say you were – the

25 crowd there was carrying only sticks and branches?

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1 MR MABUYAKHULU: Yes, that's what I saw.

2 MR MOJAPELO: Can I refer you back to the

3 statement of Debukwane, that is ZZ3, on paragraph 2.9

4 there, he states that "at that time I observed some members

5 of the marching crowds were carrying traditional weapons

6 such as sticks and spears."

7 MR MABUYAKHULU: You know if I were to be

8 given a chance to ask a question I would, but if you – I

9 would refer you back to one statement which was read here

10 before. You'd see that there would be some contradictions

11 between this statement and that statement that was read

12 before.

13 CHAIRPERSON: I think you must answer the

14 question. The question is, it appears that Debukwane, if

15 he is called to give evidence, and I take it he will be,

16 will say that members of the crowd, the marching crowd were

17 carrying traditional weapons such as sticks and spears. If

18 he gives that evidence, as far as sticks is concerned, it's

19 quite clear from what you told us he will be correct. If

20 he gives that evidence as far as spears were concerned, he

21 said some members of the crowd were carrying spears, will

22 that evidence be correct?

23 MR MABUYAKHULU: No.

24 MR MOJAPELO: I am sure you will agree

25 with the last part of the paragraph, he says, he did not

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1 observe any pangas or fire weapons.

2 MR MABUYAKHULU: Yes.

3 MR MOJAPELO: Okay, and then when you

4 approached the NUM offices and the members of NUM came out,

5 and then there was a – and then you, your crowd decided to

6 run away after you heard some shots. Is that correct?

7 MR MABUYAKHULU: It is not like that. We

8 never reached the NUM offices, up to today, I don't even

9 know where it's facing.

10 MR MOJAPELO: Okay, I didn't say you

11 reached, I said when you were approaching.

12 MR MABUYAKHULU: If it is like that, when

13 they fired shots, then we ran away.

14 MR MOJAPELO: Okay. Did the NUM members

15 ask what was the purpose of your visit or your approach to

16 the office?

17 MR MABUYAKHULU: No, we never talked or

18 had any discussion with the NUM members.

19 MR MOJAPELO: Okay, I don't have any

20 further questions for the witness.

21 CHAIRPERSON: Thank you. Mr Mpofo, do

22 you have any re-examination?

23 RE-EXAMINATION BY MR MPOFU: Yes, thanks,

24 Chairperson, a couple of questions. Mr Mabuyakhulu, when –

25 you've been questioned about the activities in Karee, of

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1 the RDOs, before August. Can you confirm that when you

2 marched, or during those marches to Mr Da Costa, did the

3 RDOs in Karee go as a group or did they only send the five

4 representatives?

5 MR MABUYAKHULU: On the day that I went

6 there, we had all gone there as RDOs.

7 MR MPOFU And despite the fact that you had gone

8 there as an entire group, rather than sending five

9 representatives would you agree with Mr Da Costa's

10 description that the meeting was cordial as there was no

11 trouble?

12 MR MABUYAKHULU: Yes.

13 MR MPOFU: And again on the 10th of August

14 when you wanted to go and table your demand of 12 500, is

15 it my correct understanding that you again went as a bigger

16 group of a couple of thousand people rather than simply

17 sending five people and that there was also no problem?

18 MR MABUYAKHULU: Yes.

19 MR MPOFU: Why did you prefer, it was put

20 to you that you could have simply sent your five

21 representatives which I suppose is true, but why did you

22 prefer to all go as a group?

23 MR MABUYAKHULU: It was hard for us to

24 send some delegation, we all decided to go, so that the

25 employer could see and realise that we are very serious

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1 about these money matters.
 2 MR MPOFU: Okay, now the next issue is,
 3 you can accept that the evidence suggests that at a
 4 particular point, there was some hostility or negativity
 5 towards the NUM. This was after your hospitalisation. My
 6 question is, whether before that march, you yourself
 7 observed any hostility towards the NUM from the part of the
 8 workers?
 9 [14:26] MR MABUYAKHULU: According to me NUM has
 10 never met with the workers and as far as I know we were all
 11 free. The NUM never can commit with the workers.
 12 MR MPOFU SC: The next issue is the – you
 13 were asked questions about whether – I’m sorry. We’re now
 14 dealing with the 11th, the meeting of the 11th in the
 15 morning. According to your evidence you say in your
 16 statement there was an exchange of views and in your
 17 evidence you explain that to mean that people were putting
 18 different issues on the table. But you were then asked a
 19 question I think yesterday, about whether were you able to
 20 hear everything that was said. Now, my question is this,
 21 accepting your evidence that there was no loud hailer and
 22 that kind of tool that was used how, how did the people who
 23 contributed to the exchange of views address the crowd?
 24 Did they stand on some kind of podium or what?
 25 MR MABUYAKHULU: No, there was no any

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1 type of a podium also that was used. All I remember is
 2 that that area, there were some pipes and so but everyone
 3 was on the ground and whoever wanted to voice their views
 4 would just stand up and address the crowd. You would just
 5 come forward next to those pipes but not on top of the
 6 pipes.
 7 MR MPOFU SC: Yes. The issue that I
 8 really wanted to come to is, accepting once again that you
 9 could not hear everything that was being discussed by the
 10 3 000 people, were you, from where you were sitting, able
 11 to hear all the contributions made by the people who were –
 12 I almost said on the podium – who were addressing the
 13 gathering?
 14 MR MABUYAKHULU: Some I could hear.
 15 MR MPOFU SC: Now, were you aware that –
 16 I’m asking you on another topic now. There were
 17 suggestions made that the trouble – I’m using a neutral
 18 word deliberately – the trouble that happened with the
 19 Quantum and all that on the 10th, I’m sorry to say with the
 20 Quantum because that almost suggests an answer, but what
 21 happened between the workers and various people and the
 22 shooting, that it may have been attributable to Lonmin
 23 security. Now, my question is this, were you aware that
 24 the NUM had proposed that Lonmin security and the NUM
 25 should work as a team on the 10th, as one team?

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1 MR TIP SC: Mr Chair, objection to the
 2 question.
 3 CHAIRPERSON: Oh, sorry.
 4 MR TIP SC: The basis of the objection is
 5 that there is no proper basis for this that there was an
 6 agreement between NUM and Lonmin that they would act as a
 7 joint security force and it appears that there is going to
 8 be some kind of suggestion that whatever Lonmin might have
 9 done was going to be in concert with whatever the NUM
 10 might’ve done. There’s no clear basis for the question in
 11 any event.
 12 CHAIRPERSON: Mr Bham?
 13 MR BHAM SC: I also object to the
 14 question. This is re-examination. There’s absolutely
 15 nothing that has come out within evidence or in cross-
 16 examination which lays any basis for this.
 17 CHAIRPERSON: What Mr Mpofo has to say in
 18 reply?
 19 MR MPOFU SC: Chairperson, the question
 20 that I’m relating to were asked by Mr Tip in cross-
 21 examination this morning, fortunately not even yesterday,
 22 and it was clear that the crux of those questions he went
 23 through various statements which suggested – including some
 24 of the victims’ – that there was a twin cab which – who was
 25 a Lonmin security twin cam, or twin cab, that was

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1 responsible. You remember the exchanged suggestion about
 2 the two people and the third one and so on. So the
 3 question about it not arising from cross-examination falls
 4 away. As far as Mr Tip’s issue about the basis is
 5 concerned, that there’s no basis for putting that proposal,
 6 he’s right but – and I chose, I use the word proposal –
 7 deliberately –
 8 CHAIRPERSON: Do I understand you to
 9 suggest there was an agreement?
 10 MR MPOFU SC: Yes, that’s - agreement,
 11 ja.
 12 CHAIRPERSON: - a proposal by NUM.
 13 MR MPOFU SC: Absolutely.
 14 CHAIRPERSON: That they and Lonmin should
 15 act together.
 16 MR MPOFU SC: Absolutely, and that is on
 17 -
 18 CHAIRPERSON: Now, what’s that based on?
 19 MR MPOFU SC: It’s based on page 78 of
 20 extract 2 where – yes, we’ve dealt with this. The last
 21 paragraph, paragraph 4, Chairperson, it’s an email from Mr
 22 Bongo to a whole lot of Lonmin people, including Etienne
 23 Hamman, Sinclair, Trollip and so on.
 24 CHAIRPERSON: Yes, Mr Tip, what do you
 25 say about that?

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1 MR TIP SC: Yes, may I respond – first of
 2 all the cross-examination that related to the introduction
 3 of the two statements concerning the, inter alia, the
 4 Lonmin security twin cab were made in the context of a very
 5 clear purpose which I identified before I went into it, and
 6 that was simply to deal with any misapprehension that might
 7 arise from the reference by Mr Semenya to slide 16 of
 8 exhibit L where there was a reference to two wounded, and
 9 the purpose was to dispel any inference that might be drawn
 10 that perhaps those two wounded were in fact the result of
 11 this alleged shooting from the NUM Quantum, and it was
 12 solely for that purpose. This email that we see on page 78
 13 has been dealt with previously and the very sentence that
 14 Mr Mpofo is now relying on was previously in the course of
 15 the debate with, with respect, yourself, Mr Chairperson,
 16 that there was a particular context in relation to the
 17 protection of workers and the facilitation of the capacity
 18 of those who wish to work to do so. And it is in that
 19 context that Mr Bongo included clause 4, security work with
 20 NUM as a team. Now, that is being extrapolated in the
 21 question that is now being put in re-examination in the
 22 specific context of the activities of the NUM personnel in
 23 the Quantum. That is how the question began where the
 24 hearsay evidence has been given that there were persons
 25 firing, NUM persons were firing from the Quantum, and Mr

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1 Mpofo as I understand the question and the rationale that
 2 he has now given for it is that somehow this phrase in this
 3 email is to draw some kind of common purpose between what
 4 Lonmin might've done in its vehicles and what NUM members
 5 are alleged to have done in their Quantum. And it's not an
 6 allowable proposition, with respect.
 7 CHAIRPERSON: Mr Mpofo? Perhaps you can
 8 reformulate your question to deal, to obviate any further
 9 objections, but the thrust of the question of course is the
 10 request from NUM that Lonmin security work with NUM as a
 11 key. That's the thrust of the question. Reformulate the
 12 question in a way that avoids the objection and then carry
 13 on.
 14 MR MPOFU SC: Chairperson, really, I'll
 15 just move on to something else. I think the – all I can
 16 say is that I agree with Mr Tip about what the purpose of
 17 the question was. Thanks.
 18 CHAIRPERSON: Ja, the point of course is
 19 I don't know if this witness can throw very much light on
 20 it. It is really relevant in the question of the mood of
 21 these various meetings, and that's probably been canvassed
 22 as thoroughly as it can be.
 23 MR MPOFU SC: Thank you, Chairperson.
 24 Now, Mr Mabuyakhulu, just moving to something else, you've
 25 also been referred extensively to Mr Da Costa's statement.

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1 Remember that?
 2 MR MABUYAKHULU: Yes.
 3 MR MPOFU SC: And I just want to take you
 4 through to certain passages of that statement and I'll ask
 5 you into whether Mr Da Costa's understanding of the
 6 situation accords with yours. The statement at 3.18 of Da
 7 Costa which is 0017, Chairperson, where Mr Da Costa says
 8 that, at the bottom, "They [meaning the RDOs] objected to
 9 dealing with the matter in this way because, so they told
 10 me, they did not want any union involvement in the matter".
 11 Does that accord with your understanding of the situation?
 12 MS SOMAGACA: That would be in page?
 13 MR MPOFU SC: Sorry, page 6, the top of
 14 page 6 of the statement, 3.18.
 15 MS SOMAGACA: Okay.
 16 MR MABUYAKHULU: Yes.
 17 MR MPOFU SC: In the next paragraph,
 18 3.19, Da Costa then says that your representatives went on
 19 to express a view that "trade union involvement would only
 20 be appropriate if the issue raised was one which affected
 21 the entire workforce". Was that also in accordance with
 22 your understanding of the situation?
 23 MR MABUYAKHULU: I don't understand that.
 24 MR MPOFU SC: Ja, sorry, I think maybe
 25 the interpretation was – even I didn't understand it. The

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1 simple question is whether one of the issues that informed
 2 the decision of the RDOs not to want union involvement was
 3 the fact that this matter only involved the RDOs and not
 4 the entire workforce, and whether the – Da Costa's
 5 understanding is the same of his or the RDOs'.
 6 MR MABUYAKHULU: Yes.
 7 MR MPOFU SC: Then if you look, jump over
 8 to 3.22 of Da Costa, he says somewhere there that, "They
 9 [once again they means RDOs] further told me that they did
 10 not wish to interrupt any production at Karee". Is that
 11 also in accordance with your understanding of the
 12 situation?
 13 MR MABUYAKHULU: Yes.
 14 MR MPOFU SC: Then jump again to 3.27 of
 15 Da Costa where he says in the middle, Chairperson and
 16 Commissioners, "I then pointed out to them that there was a
 17 two year wage deal which was still in place and that the
 18 next wage negotiations would be held towards the end of
 19 2013" as one of the issues that presumably were impediments
 20 to your request. Did you also understand the same?
 21 MR MABUYAKHULU: Yes.
 22 MR MPOFU SC: Then – okay, that's enough
 23 of Mr Da Costa. If you go to I think it was called –
 24 that's 4. There was this discussion with Mr Machepele
 25 about the statements that will be made by Mr Debukwane and

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1 Julius Motsogela. And we are told that these are witnesses
 2 that are going to be called by Lonmin. If you go to
 3 paragraph 5 of Julius Motsogela's statement, the last
 4 sentence, it says, "Mr Grant Sinclair [that's one of the,
 5 Mr Grant Sinclair, one of the Lonmin bosses] advised that –
 6 CHAIRPERSON: That should be Graham, it
 7 says Graham.
 8 MR MPOFU SC: Graham, it should be
 9 Graham.
 10 CHAIRPERSON: Graham.
 11 MR MPOFU SC: Yes.
 12 CHAIRPERSON: The security – very senior
 13 security person at Lonmin.
 14 [14:46] MR MPOFU: Yes, he is Graham, Graham
 15 Sinclair, yes, correct. If you look at page 78 for
 16 example, yes. Mr Graham Sinclair advised them, that is now
 17 your representatives, that wage related issues should be
 18 dealt with by the union representatives, not them, was that
 19 also what was reported to you?
 20 MS SOMAGACA: That will be in paragraph?
 21 MR MPOFU: Paragraph 5 of ZZ4.
 22 MR MABUYAKHULU: I hear this for the
 23 first time.
 24 MR MPOFU: Was it never reported to you
 25 as the group that the employer said you should bring your

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1 demands through the union?
 2 CHAIRPERSON: That's what he says, he
 3 says he hears for the first time now. It follows what's
 4 reported earlier, so I think you mustn't cross-examine –
 5 MR MPOFU: Because I think the question,
 6 I don't want to fight with the interpreter, the – I think
 7 that the example that the chair spoke about as to whether
 8 the witness understands the question or not, maybe, I don't
 9 know, maybe the Chair could, so that's a matter, accused of
 10 badgering. I am sue the Chair understands the proposition
 11 I am putting. If the Chair could put the question to –
 12 take it away from me.
 13 CHAIRPERSON: Okay, if there's a danger
 14 the witness doesn't understand the question, and there may
 15 be an argument based upon what he said through
 16 misunderstanding, perhaps you better clear it up.
 17 MR MPOFU: To dispel that, yes. Mr
 18 Mabuyakhulu, when – on the 10th, was one of the things that
 19 were reported to you by the representatives that the
 20 management's view was that your demands for R12 500 should
 21 be tabled via the union.
 22 MR MABUYAKHULU: It never came like that.
 23 MR MPOFU: Okay, how did it come?
 24 CHAIRPERSON: What did –
 25 MR MPOFU: He said, it did not come like

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1 that. So the follow up question is, then how did it come?
 2 CHAIRPERSON: Alright.
 3 MR MABUYAKHULU: The word that was given
 4 to us was that the employer says NUM said he should not
 5 negotiate with us or he should not talk to us. Then we
 6 sent them back to the employer to go and ask the employer
 7 then what should we do? Then the response was, let's do,
 8 or we can do what we see will help us.
 9 MR MPOFU: Thank you.
 10 MR MABUYAKHULU: Then we saw it necessary
 11 then to go down.
 12 MR MPOFU: Okay, thank you very much,
 13 that's good enough. Now, on the – you were also asked a
 14 question which you may not have understood, about your
 15 involvement or otherwise in the computation of the demand
 16 of R12 500. Now apart from – and what you gave and the
 17 Chairperson decides to assist you, what you gave was your
 18 understanding of the background and the origins of that
 19 demand. So put that aside. The question I want to ask you
 20 is, were you as Mr Mabuyakhulu, ever involved in the
 21 computation, in the calculation of the actual figure of
 22 R12 500? In other words, that it should be R13 000, not
 23 R10 000, but specifically R12 500. Were you one of the
 24 people who came up with that figure?
 25 MR MABUYAKHULU: The issue or the matter

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1 about the 12 500 I just got it around, it was doing some
 2 rounds, and that's how I got to hear about it that there
 3 were some meetings, RDOs had some meeting and then there
 4 was this issue of 12 500.
 5 MR MPOFU: Thank you. You've said in
 6 your statement many times that you were feeling that the
 7 employer was not taking your seriously, you wanted the
 8 employer to talk to you, in other places you wanted the
 9 employer to engage, that was the words that were used. Now
 10 the question really is, if the employer had talked to you
 11 and let's assume they said that they are not going to give
 12 to 12 500 but 11 000 or whatever it is. But if they had
 13 engaged with you would you have down tools on the 11th?
 14 CHAIRPERSON: - from cross-examination at
 15 all? I don't remember any question in cross-examination
 16 dealing with that matter.
 17 MR MPOFU: About the 12 500?
 18 CHAIRPERSON: Well, what they would have
 19 –
 20 MR MPOFU: Yes, well, Mr –
 21 CHAIRPERSON: - if the employer came back
 22 with a lower offer. That wasn't, I don't think that's
 23 covered in cross-examination.
 24 MR MPOFU: Okay, Chair, maybe not –
 25 CHAIRPERSON: I don't propose to allow

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1 that in re-examination.
2 MR MPOFU: Chair, I am not going to ask
3 the question further, but the aspect of the fact that their
4 real grievance was not being taken seriously, and all that,
5 was canvassed by Mr Bham, but I'll leave the question.

6 CHAIRPERSON: He is not persisting with
7 the question, so let's not debate it further.

8 MR MPOFU: Thank you Chair. Mr Semenya,
9 for the police, played some visuals for you, which were of
10 a group, which turned out to be a group of NUM people
11 coming back towards their office. In those visuals, did
12 you observe any pangas and spears?

13 CHAIRPERSON: Mr Mpofu, the problem I've
14 got, is I think the question is abandoned, but apart from
15 that, whether he observed pangas and spears is neither here
16 nor there. If there are pangas and spears visible, then we
17 can see them, we don't need him to tell us that he saw
18 them, or didn't see them as the case may be.

19 MR MPOFU: Ja but maybe you can see them,
20 Chair, but how are they going to get onto the record if I
21 don't put it through the witness?

22 CHAIRPERSON: No, if it's necessary, that
23 part of the video, well, firstly the video is already part
24 of the record, that's the first one. The second point is
25 if its relevant, and it forms the subject of argument, we

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1 MR MABUYAKHULU: I don't remember the
2 song. There were songs, even in different groups, there
3 were songs.

4 CHAIRPERSON: I see. Perhaps other
5 witnesses can tell us what sort of songs they were. Well,
6 thank you, Mr Mabuyakhulu, you are excused from further
7 attendance. The Commission will adjourn, until next
8 Wednesday, the 20th, at 10 o'clock, in accordance with an
9 agreement concluded between certain of the counsel and the
10 evidence leaders in chambers. We adjourn.

11 [COMMISSION ADJOURNED]

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1 can insert that video or clip as an attachment to the
2 electronic version of the report, and we can include it in
3 a DVD which will be put in, for the hard copy of the
4 report. We don't need this witness to tell us what he can
5 see or not see on the video.

6 MR MPOFU: Thanks, Chairperson. Mr
7 Mabuyakhulu, finally you've said again under cross-
8 examination that the situation or the, ja, the situation on
9 the 11th in the morning was similar to the 10th, now and I
10 suppose this also comes from the video, but let's get it
11 from you, would it be correct to say that apart from the
12 people that is described who were carrying sticks, and
13 others carrying branches of trees, did you also see people
14 who were carrying nothing?

15 MR MABUYAKHULU: Yes, there were those
16 who had nothing.

17 MR MPOFU: Thank you, Chairperson,
18 nothing further.

19 CHAIRPERSON: I have to ask you one
20 question. On the 11th, when the crowd marched towards the
21 NUM offices, carrying stocks, according to you, they were
22 singing songs, were they?

23 MR MABUYAKHULU: Yes.

24 CHAIRPERSON: What songs were they
25 singing?

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