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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 115 25 JULY 2013 PAGES 12206 TO 12214



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[PROCEEDINGS ON 25 JULY 2013]

- [10:07] CHAIRPERSON: The Commission resumes. We
- have resumed somewhat later than usual because we were told
- 4 that the evidence leaders were having a meeting and we were
- 5 asked to only start once they were ready. Before we
- proceed, we have, since we last sat, lost another jurist 6
- 7 who made an important contribution to our constitutional
- jurisprudence, and that's former Chief Justice Pius Langa. 8
- 9 I would like us to stand and observe a minute silence in

his memory. 10

11 Thank you. Mr Madlanga, is there anything you 12 wish to tell us about the matters that stood over from

Monday? Or is Mr Budlender going to address us? Which of 13

the evidence leaders is going to deal -14

15 MR MADLANGA SC: Mr Budlender, as I

indicated last time, Mr Chairman -16

17 CHAIRPERSON: Will address us on the way

18 forward?

19 MR MADLANGA SC: Yes.

20 MR BUDLENDER SC: Thank you, Chair. As

members of the Commission will remember, on Monday we stood 21

22 down until today for the reason that we wished to see what

23 the outcome would be of the attempts to obtain interim

24 funding for the arrested and injured persons, for their

25 legal representation, until the Constitutional Court has

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- decided whether to grant leave to appeal and, if so, 1
- whether to uphold the appeal, or the contemplated appeal. 2
- 3 The purpose of standing down till today was to establish
- 4 whether interim funding was available. If so, the
- 5 immediate problem would fall away. If not, the Commission
- 6 would then be asked to deal with the application for
- 7 postponement and decide the matter.

8 We have established, and one of the reasons we 9 were late, for which I apologise, we have established that

one of the potential funders has a meeting of its board 10

tonight. There are still other prospects, I understand, 11

12 which are being investigated. We've been advised that

- other applications have been made, and under the
- 13
- 14 circumstances it seems to us that it would be prudent to 15
- stand the matter down further until Monday, and on Monday
- 16 one of two things would happen; either by then the interim
- 17 funding will have been obtained, in which case the problem
- 18 falls away, at least in the interim period, until the
- 19 Constitutional Court has made its decision. Alternatively,
- the interim funding will not have been obtained by Monday,
- 21 in which event we would propose that the Commission decide
- 22 the application for postponement, make a decision on that
- 23 matter.
- With regard to that aspect, the legal team for

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25 the accused – for the injured and arrested people are not

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- here today, and we would ask that the Commission direct
- that the secretary writes to them, advising that if by
- 3 Monday the funding issue has not been resolved, the interim
- 4 funding issue has not been resolved, the Commission
- 5 proposes to hear further submissions on the application for
- 6 a postponement, and to decide the application for a
- 7 postponement, and they are invited to be here to reply to
- 8 whatever submissions are made in that regard.

9

So in short, Chair, we propose firstly that the 10 matter stand down until Monday morning at 9:30 to hear

11 whether the application for interim funding has been

12 successful. Secondly, we propose that if by then the

13 application for interim funding has not been approved, the 14 Commission should then hear further submissions and decide

the application for a postponement, and we propose thirdly

16 that the Commission should direct the secretary to inform

17 the legal representatives of the injured and arrested 18

persons that in the absence of interim funding, the

19 application for a postponement will be heard, decided on

20 Monday, and they are invited to be here to reply to

21 whatever submissions are made in that regard.

22 CHAIRPERSON: Mr Budlender, is there

23 anything further you wish to say?

24 MR BUDLENDER SC: No, nothing further,

Chair.

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CHAIRPERSON: I think last time, on

Monday you indicated that the attitude of the evidence

3 leaders to the postponement application was something that

4 would also stand over. So I take it that that's still the

position, and previously there was no opposition from those

6 present who took a stance, parties who took a stance to the

7 postponement application, but that situation might alter,

8 there may be opposition on Monday. That's something that

9 obviously Mr Mpofu and his team must bear in mind. Is that

correct?

11 MR BUDLENDER SC: That is so, Chair, and 12 it would be helpful, with respect, if this was specifically 13 drawn to their attention, that they should not assume that 14 it will not be opposed on Monday because that may not be

CHAIRPERSON: We will direct that such a letter be sent. One of the other matters that obviously must be dealt with is we must ask them to tell us what the situation is in relation to the proposed application to the Constitutional Court, whether it's been filed and what the situation is in that regard.

22 MR BUDLENDER SC: That would be very

23 helpful, Chair.

the case.

24 CHAIRPERSON: Mr Bizos, while we were in chambers awaiting word that the evidence leaders were

14

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CHAIRPERSON:

MR SHOZI:

down fully. Thank you.

SPEAKER:

Commission?

CHAIRPERSON:

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Semenya, is there anything you wish to say on behalf of

Commission, thank you. We endorse the request to stand

your clients? What is the attitude of Lonmin to the

application made by the evidence leaders?

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                                                                                                                         Page 12212
    ready, you came to see us and you indicated you wish to
                                                                       interim funding will be successful. This is in line with
    make a statement to the Commission. Is that correct?
                                                                   2
2
                                                                       our support for the process to continue only if it is
3
           MR BIZOS SC:
                                - permission I would like
                                                                   3
                                                                       inclusive and responsive and procedurally fair, and we
4
    to hand in a copy - I'm sorry that we do not have
                                                                   4
                                                                       believe that all efforts that could be made to ensure the
                                                                   5
5
    additional copies, but those can be made, but with your
                                                                       return of the parties and the resolution of the funding
6
    permission I would like to read out the statement of the,
                                                                   6
                                                                       question on an interim basis would certainly be something
7
                                                                   7
                                                                       the Human Rights Commission would support.
    setting out the attitude of the LRC.
8
           CHAIRPERSON:
                                 You're going to read it out
                                                                   8
                                                                               CHAIRPERSON:
                                                                                                      I see. Thank you. Mr Tip
9
                                                                   9
    now?
                                                                       for NUM?
10
           MR BIZOS SC:
                                If I may, Mr Chairman.
                                                                   10
                                                                               MR TIP SC:
                                                                                                 Chair, the position taken up
11
           CHAIRPERSON:
                                                                   11
                                                                       by the evidence leaders is in our respectful view logical
                                 Yes, please do.
12
                                                                       and consistent and we support it.
           MR BIZOS SC:
                                Yes, "We, the LRC, are
                                                                   12
                                                                   13
13
    concerned about maintaining public confidence in the
                                                                               CHAIRPERSON:
                                                                                                      Thank you. Ms Manasi, is
14
    effectiveness and credibility of the inquiry, which would
                                                                   14
                                                                       there anything that you wish to say? Masevhe, sorry.
    be seriously eroded by repeated postponements. We and the
                                                                  15
                                                                        Forgive me for getting the name wrong. Ms Masevhe, is
15
    clients who we have represented remain committed to
                                                                       there anything you wish to say?
16
                                                                   16
                                                                   17
17
    ensuring that the conditions under which miners live and
                                                                               MS MASEVHE:
                                                                                                    Chairperson, we'll abide the
18
    work, and the processes that led to the tragedy that
                                                                   18
                                                                       decision of the Commission.
                                                                   19
19
    unfolded are thoroughly and impartially investigated.
                                                                               CHAIRPERSON:
                                                                                                      Thank you. Mr Gumbi?
                                                                                                  Chairperson, on behalf of
20
    Accordingly we support efforts that are currently being
                                                                   20
                                                                               MR GUMBI:
21
    made to ensure that adequate resources are made available
                                                                       Lieutenant Baloyi and the Lepaaku family, we'll abide by
                                                                   21
22
    to facilitate appropriate legal representation of the
                                                                   22
                                                                       the decision of the Chairperson.
23
    parties before the Commission. It is of the greatest
                                                                  23
                                                                               CHAIRPERSON:
                                                                                                      Mr Mosikili, I understand
24
    importance that justice is seen to be served by the
                                                                   24
                                                                       you are here on behalf of SERI. Is that correct?
25
                                                                   25
    Commission that is mandated to investigate all the causes
                                                                               MR MOSIKILI:
                                                                                                    Indeed, Chair. I -
                                                      Page 12211
                                                                                                                         Page 12213
    of the tragedy. We must reiterate our concern that once
                                                                   1
                                                                              CHAIRPERSON:
                                                                                                     Do you wish to say - no,
2
    the Commission resumes, it should proceed with its task and
                                                                       SERI, I'm not quite sure what the role of SERI is at the
3
    complete its work as expeditiously as possible. At this
                                                                       moment because you were instructing counsel on behalf of
4
    stage we must place on record that in accordance with the
                                                                   4
                                                                       AMCU and I think the families. Is that correct?
                                                                   5
5
    instructions of our clients we'll no longer be appearing
                                                                              MR MOSIKILI:
                                                                                                    That's the position, Chair.
                                                                   6
                                                                              CHAIRPERSON:
6
    before the Commission or participating in its proceedings
                                                                                                     So, and they've withdrawn,
7
                                                                   7
                                                                       but you're still here, anyway, to say something on behalf
    until the issue of funding of legal representation of the
                                                                   8
                                                                       of SERI.
8
    parties concerned has been resolved. We wish to assure the
9
                                                                   9
    Commission of our commitment that once this issue has been
                                                                              MR MOSIKILI:
                                                                                                   Chair, indeed that's the
10
    satisfactorily resolved, we will once more be available to
                                                                   10
                                                                       position. I only came here to advise the Commission of our
11
    participate in these proceedings and to support the work of
                                                                   11
                                                                       current position, which is still that both the families and
12
    the Commission in terms of the instructions of our
                                                                   12
                                                                       AMCU will not participate up until the whole funding
    clients."
13
                                                                   13
                                                                       problem has been resolved for the arrested and the injured,
```

on Monday, the Human Rights Commission would support a stand down to Monday in the hope that the efforts to secure consider the postponement application as such, we should

Thank you, Mr Bizos. Mr

Chair, members of the

The Human Rights

Thank you, Chair. As indicated

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Thank you. Is there any

Thank you very much. In

Yes, Mr Chairperson, our

Chair, therefore I cannot participate or share any views in

other party who is represented today who wishes to say

something in regard to what is before us at the moment?

instructions are that we still support the proposal by the

the circumstances it would seem that to be consistent with

terms of the proposal by the evidence leaders, Chair.

CHAIRPERSON:

CHAIRPERSON:

SPEAKER:

evidence leaders.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 12214 wait to see at least until Monday what is the result of the endeavours to obtain interim funding on behalf of those of the injured and arrested parties. So in the circumstances the order we make is that the sitting of the Commission will be adjourned until Monday, but also as I said, a letter will be sent by the secretary to the legal team representing the injured and arrested parties along the lines suggested by Mr Budlender in the remarks that he made. So we will adjourn until 9:30 on Monday. [COMMISSION ADJOURNED]	
- R	As we will be the formatty to	

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