

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 117 31 JULY 2013 PAGES 12232 TO 12241



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1 [PROCEEDINGS ON 31 JULY 2013]
 2 [09:32] CHAIRPERSON: The Commission resumes.
 3 I'm sorry we're starting late, but we, there were various
 4 important role players who were caught in traffic jams and
 5 delayed in other ways, which is why we're only starting
 6 now. When we met last time I indicated that I had been
 7 informed that there is a possible funder who may well be
 8 able to provide the funding which is sought, and I said
 9 that the answer as to whether the funder concerned would be
 10 able to and would be prepared to make the funding available
 11 should be known by yesterday. Yesterday I was informed
 12 that that estimate which I'd been given as to the time by
 13 which the decision would be known was too optimistic and
 14 accordingly, though the possibility still exists, but we do
 15 not know yet whether the decision will be favourable or
 16 not.
 17 As you all know, this counsel chamber is not
 18 available to us on the first Monday of the month and we
 19 will not be sitting this coming Monday. I understand that
 20 we will have an answer one way or the other as to whether
 21 this funding will be available before we resume on Tuesday,
 22 and we adjourn now until Tuesday. For the reasons which I
 23 gave on Monday, which still apply, it's clearly appropriate
 24 that this matter should stand down then until we know
 25 definitively one way or the other whether this possible

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1 funder will be able and prepared to make the funding
 2 available that is being sought. An adjournment until
 3 Tuesday will of course lead to the loss of further days,
 4 sitting days, which is regrettable, but there is a lot of
 5 work which all those involved with the Commission can
 6 usefully do during that period, documents to be studied,
 7 and things of that kind. So the time will not in fact be
 8 wasted. In the circumstances the order I make is that the
 9 sittings be adjourned until Tuesday morning at 9 o'clock.
 10 Sorry, I've been informed that I've been precipitate in
 11 fixing the time for our resumption, that it will be 9:30.
 12 There are practical logistical reasons why that's
 13 preferable than 9 o'clock. So I'll alter what I said in
 14 relation to that.
 15 But before we formally adjourn, there's something
 16 I'd like to say publicly in this last sitting of the
 17 Commission in the presence of Adv Madlanga, the leader of
 18 our evidence leaders. As everybody knows, he's been
 19 appointed a member of the Constitutional Court. We had
 20 hoped that things could be arranged in such a way that he
 21 could stay with us until the end of the Commission and only
 22 take up his new duties after that, but for reasons that I
 23 can quite understand, the Chief Justice obviously wants him
 24 there as soon as he can get him because of the valuable
 25 contribution that he knows still Adv Madlanga will be able

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1 to make. We are grateful to him for the very valuable
 2 contribution which he has made to the work of the
 3 Commission, from which we will continue to benefit until
 4 the end of our labours, and we not only wish him well in
 5 the work that he is to do on the Constitutional Court; we
 6 have a selfish motive for doing that because we know that
 7 the whole country will benefit from the work that he does,
 8 not only in the judgments that he will be writing, but also
 9 in the other contributions he will make to the work of that
 10 court. So I can't say we release him, because that will be
 11 inaccurate, but we send him to the Constitutional Court
 12 with our best wishes and our congratulations, and in the
 13 confident anticipation that we will all benefit from the
 14 work that he will do on the Constitutional Court. My
 15 colleague, Commissioner Hemraj, not only concurs in what I
 16 say, but wishes to deliver a separate concurring judgment
 17 of her own. Commissioner Tokota merely concurs, without
 18 his additional judgment.
 19 COMMISSIONER HEMRAJ: Mr Madlanga, it's
 20 been such a privilege and a pleasure to work with you at
 21 such close quarters, not only as an advocate and a jurist;
 22 we've come to know you as an amazing human being and you
 23 take our very best wishes and prayers with you as you take
 24 up this post. We really wish you the very best.
 25 CHAIRPERSON: We are fortunate today that

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1 not only do we have the leader of the SAPS team with us, we
 2 also have the chairman of the General Council of the Bar of
 3 South Africa, Mr Semenya. I take it you want to say
 4 something also on this sad but happy occasion for the legal
 5 profession in South Africa.
 6 MR SEMENYA SC: Chair, thank you very
 7 much. I think I'm in good company to just relate to us a
 8 very brief story. Typical of the man he would come to me
 9 and say we were thinking that what you plan on bringing the
 10 Minister, but he would say this with deep humility and
 11 gentleness and sensitivity and I would resist the plea, but
 12 he'd be dead forthright and make sure that that will
 13 happen, and he would use the expression – and mind you, I
 14 say it no higher than this. But, but, he'd continue, to
 15 come to the same conclusion, I say this because we can take
 16 it that Mbuyiseli will bring to that court the courage to
 17 stand to power if circumstances require it. I've seen him
 18 also insist on integrity in the work of the Judicial
 19 Service Commission. He would probe every candidate whose
 20 disciplinary record looked remotely opaque, but he also
 21 will be going to that court without need for any education
 22 on matters of equality. He has a deep sense of the values
 23 the Constitution wants to espouse about dignity, and as a
 24 colleague I'm confident, speaking for the Bar, that he will
 25 add to the rich embroidery of the jurisprudence that court

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1 has now become known worldwide, and we wish you, Adv
 2 Madlanga, all the best, and we are confident that you will
 3 do the nation proud. Thank you, Chair.
 4 CHAIRPERSON: Thank you, Adv Semenya. I
 5 was going to ask whether anyone else wishes to say
 6 something. I see Mr Bizos has turned on his microphone.
 7 Yes, Mr Bizos?
 8 MR BIZOS SC: Yes.
 9 CHAIRPERSON: What do you wish to say?
 10 MR BIZOS SC: That I knew this young man
 11 as a clerk to Adv Kruger at 836 Innes Chambers, and Judge
 12 Kruger now in the Free State was my junior in a number of
 13 cases, and the young man came with his master, as they were
 14 then known – I think the appellation has now changed, but
 15 he was a very hard worker, even as a pupil when he popped
 16 in from time to time even in cases that I was not involved,
 17 very keen to discuss matters, and I think that many of us
 18 realised in that group, the Maisels Group, one of the most
 19 senior members of our profession, that we had a star young
 20 man in our midst. Congratulations; you've reached the top
 21 and I'm sure that you will serve the country well. We
 22 [inaudible] for such a long time.
 23 CHAIRPERSON: Yes, thank you, Mr Bizos.
 24 Mr Madlanga – Mr Budlender would like to say something
 25 first before we give you the right to reply, which you may

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1 or may not wish to exercise.
 2 MR BUDLENDER SC: I'd like to claim
 3 [inaudible] which I don't want to repeat all that has been
 4 said, all of which is true. All I want to say is on behalf
 5 of the evidence leaders is that it's been a great privilege
 6 and a pleasure for us to serve under the leadership of
 7 Mbuyiseli Madlanga. I think the qualities which I will
 8 always remember are his wisdom, his integrity, his decency
 9 as a human being, and his ability to build consensus
 10 without sacrificing principle. Those are very good
 11 qualities for a judge of the Constitutional Court, and I
 12 think I can speak for all of us when I say while we will
 13 miss his presence here, it is genuinely a matter to be
 14 looked forward to that we will be appearing before him in
 15 the Constitutional Court and that when we appear there, we
 16 will see him on the bench. Nothing can give one greater
 17 pleasure and hope, and nothing could give one greater
 18 confidence in a just outcome. Thank you, Chair.
 19 CHAIRPERSON: Is there anyone else who
 20 wishes to say anything? Mr Tip?
 21 MR TIP SC: Thank you, Chair. On behalf
 22 of NUM I would like to endorse and align ourselves with the
 23 eloquent tributes that had been paid to our colleague, Adv
 24 Madlanga, this morning. Our experience of him has been
 25 largely confined to the period of the sitting of the

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1 Commission, and throughout we have found Mr Madlanga to be
 2 precisely as others have described; firm, effective,
 3 polite, and of absolutely unimpeachable impartiality in the
 4 way that he has dealt with us as an entity sitting in these
 5 proceedings, and we likewise wish him great success when he
 6 moves tomorrow to Braamfontein and we share the confidence
 7 that others have already voiced concerning the contribution
 8 that he will doubtless make as a justice of the court. We
 9 wish him well. We appreciate the chance to add our voice
 10 to these tributes.
 11 CHAIRPERSON: Anyone else? Anybody else
 12 wish to say anything? No, well then Mr Madlanga, you have
 13 the right to reply. You do not have to exercise it if you
 14 do not wish, but there's no duress or compulsion, but do
 15 you wish to say something in reply to what's been said?
 16 MR MADLANGA SC: Thank you, Mr Chairman,
 17 Commissioners. This is quite a touching moment. If it
 18 were not for the fact that I know Ish and Geoff better, I
 19 would have said that the words they have said have been
 20 said because – to use my children's language – they are
 21 sucking up because both of them are without doubt amongst
 22 the few who appear frequently before the Constitutional
 23 Court. But because I know them better, I know they are
 24 quite sincere and it is for that reason that what they have
 25 said is quite touching. Of course I have known Ish for

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1 years and years, but I say I know Geoff very well, but
 2 before the Commission I think the closest encounter he and
 3 I had had was when he appeared before the Constitutional
 4 Court when I was acting there, and then more recently we
 5 were opponents in a matter in Grahamstown, but that didn't
 6 really make me to get to know him. I have come to know him
 7 quite closely at the Commission.
 8 [09:52] George, I must say I was pleasantly surprised to
 9 hear that you still remember where you first met me. I
 10 would not have thought you'd still remember, and I must
 11 say, I'm very happy to hear that you still remember – I was
 12 not just one of several pupils who passed in front of your
 13 eyes. Thank you very much. I appreciate that, and I
 14 appreciate your kind words. Thank you for that.
 15 I must add of course that at the time I met you,
 16 pupilled under Judge Albert Kruger, you were already known
 17 to me as one of the leading human rights lawyers, or
 18 leading lawyers in the country. So it was a great pleasure
 19 for me to have had the opportunity to work with, if not
 20 under you, when you led my master, Albert Kruger.
 21 Let me also take this opportunity to thank the
 22 rest of the colleagues in the Commission. I got to know a
 23 number of you, of course in varying degrees, but I got to
 24 know quite a number of you. I'm thankful to have met you
 25 and thank you that you made our task - a difficult one, but

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1 you made it easy for us to wade through the waters, as it
 2 were, and of course I must thank all the members of my
 3 team, the evidence leaders. Thank you for the support you
 4 gave me. Thank you for the education each and every one of
 5 you gave me. Each and every one of you had their own
 6 attributes and strengths and so on, and each and every one
 7 of you stood their ground when that became necessary. It
 8 was not always smooth sailing; I must embarrass Geoff and
 9 say that on one occasion we had to take a very difficult
 10 decision, and of course I'm paraphrasing but I'm sure he'll
 11 remember what I'm talking about, and Geoff said this is not
 12 a democracy; he will live with whatever decision I take and
 13 if no agreement is reached amongst the lot of us, I should
 14 just tell everybody what it is I think should be done. I'm
 15 sure he remembers well, but I'm happy to say that
 16 fortunately on that occasion I did not have to become their
 17 dictator.

18 The staff of the Commission, I am very grateful
 19 to them as well, each and every one of them, for their
 20 contribution and support, and last but not least, you, Mr
 21 Chairman, and your two co-Commissioners, I want to also
 22 thank you from the bottom of my heart. You made my task as
 23 the leader of the evidence leading team so much easier and
 24 though a tough one, but so much enjoyable, or that much
 25 enjoyable. I already knew you, Mr Chairman, and Adv

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1 Tokota. I only got to know Commissioner Hemraj here, but I
 2 must say I really enjoyed what I got to see of Commissioner
 3 Hemraj as well. I wish you, Commissioners, and all the
 4 participants in the Commission all the best in the road
 5 that lies ahead. Thank you very much.

6 CHAIRPERSON: Thank you, Mr Madlanga.
 7 The Commission will now adjourn, as I said earlier, until
 8 Tuesday morning at 9:30.

9 [COMMISSION ADJOURNEED]
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