

# 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 132      11 SEPTEMBER 2013      PAGES 14049 TO 14054



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<p style="text-align: right;">Page 14049</p> <p>1 [PROCEEDINGS ON 11 SEPTEMBER 2013]  2 [10:11] CHAIRPERSON: The Commission resumes.  3 I'm sorry we're starting late but we had various  4 housekeeping matters and discussions in chambers. Before I  5 ask the evidence leaders to say something there's something  6 my colleague, Commissioner Hemraj, wishes to place on  7 record.  8 COMMISSIONER HEMRAJ: Chairperson, it is  9 with regard to the point made by Mr Chaskalson yesterday  10 that the videos were juxtaposed of the protester making the  11 unfortunate speech and Mr Mathunjwa and in your reply you  12 said that it might have been influenced by some transcript  13 that you might have seen. Now the transcript that's in  14 evidence is 009. The first page of which is the transcript  15 of the speech by the protester and then the next page  16 starts with Mr Mathunjwa's speech. I don't know whether  17 this transcript is the one that you had access to or  18 whether it was the one that was commissioned by the  19 evidence leaders. So you might, Colonel Scott, have a  20 different transcript that you're referring to. The second  21 point I want to make is that when one looks at the video  22 that you were referred to of the protesters speech, at the  23 very end of the video just as the protester finishes  24 speaking Mr Mathunjwa takes the microphone away from him  25 and then the video stops abruptly. I wanted to place on</p>	<p style="text-align: right;">Page 14051</p> <p>1 And this process may take some time because it may involve,  2 well it will involve the comparison of several hard drives,  3 external or other. If there are differences in the  4 documents they contain, each of the documents which is  5 different will have to be compared, if they're the same the  6 process will be quicker. But in any event there's a large  7 process to be undertaken. I can indicate that Colonel  8 Scott's version of the SAPS master hard drive has – well  9 the index lists 247 items. Now many of those are EXC or  10 operation document, operation files but many of them are  11 files which have to be read or studied or reviewed. And so  12 under the circumstances we propose that the cross-  13 examination of Colonel Scott should be postponed until we  14 have had an opportunity to do the job properly, to identify  15 any problems which we think may exist. And enable us to  16 put those problems, if they exist, to Colonel Scott and to  17 our colleagues so that we can all be clear about what the  18 position is and there can be no unnecessary dispute. So  19 under the circumstances our proposal is that the matter  20 should stand down until Monday of next week.  21 CHAIRPERSON: Monday the 16th?  22 MR BUDLENDER SC: Monday the 16th in order  23 for us to obtain the materials which the SAPS will give us,  24 to study them and to see what is to be made of them. If,  25 of course, there are any developments in the meantime in</p>
<p style="text-align: right;">Page 14050</p> <p>1 record, I don't what the witness or counsel will make of it  2 but I just needed to have that clarified on the record.  3 CHAIRPERSON: Before you reply, if you  4 want to reply I must remind you you're under oath.  5 COLONEL SCOTT: Understood, Commissioner.  6 CHAIRPERSON: Mr Budlender, are you going  7 to say something now or?  8 MR BUDLENDER SC: Mr Chair, I will thank  9 you. Chair, we have had undertaken our first review of the  10 copy of what I would call Colonel Scott's version of the  11 SAPS hard drive. Colonel Scott's Master, if I can call it  12 that which we know has been estranged over time as  13 documents have been added and removed. There are a number  14 of documents and other – well certainly documents on that  15 which we hadn't seen before and there are other files which  16 we believe we haven't seen before and that has raised  17 questions about other material which we need to see in  18 order for the cross-examination of Colonel Scott to be  19 properly completed.  20 We've had a discussion with our colleagues  21 representing the SAPS, we have indicated the material we  22 would like to see in order to prepare properly, to compare  23 the relevant documents, compare the hard drives and so on  24 and they, as one would expect, have been completely co-  25 operative in assuring us that they will be made available.</p>	<p style="text-align: right;">Page 14052</p> <p>1 relation to the timing we will let you know and you will be  2 able to make such decision as you think fit. But at this  3 stage we ask that the matter be postponed until Monday the  4 16th for further examination of the materials which have  5 been produced and which will be produced by the South  6 African Police Service.  7 CHAIRPERSON: Yes, now you've spoken  8 about those materials, I understood you to say in chambers  9 when we discussed this matter that you were also in the  10 process of asking SAPS to obtain explanations from Captain  11 Nel and other persons in regard to the non-provision of  12 videos in the matters covered in cross-examination  13 yesterday. I take it that will also be attended to and  14 that information will also be required for the purpose of  15 the continued cross-examination of this witness possibly  16 and obviously cross-examination of other persons as and  17 when they appear. That's also correct isn't it?  18 MR BUDLENDER SC: That is correct, Chair,  19 we have formally requested our colleagues to make  20 available to the relevant statements which were identified  21 during the course of yesterday and we understand they are  22 already in the process of working on that. That's also  23 work which can be done during the time when we're  24 adjourned, if you agree to the adjournment which we  25 propose.</p>

1 CHAIRPERSON: Yes, Mr Semenya, is there  
 2 any comment you wish to make in regard to the postponement  
 3 application?  
 4 MR SEMENYA SC: Chair, just to say that  
 5 as has been practise we have undertaken to provide all the  
 6 material. It seems to us to be the most prudent way of  
 7 collating all objective evidence and it is compiled and it  
 8 is decent it would make further cross-examination of  
 9 witnesses a lot simpler. And also will facilitate our  
 10 ability to give any response of any discrepancies that may  
 11 result from that examination. So we support the  
 12 application.  
 13 CHAIRPERSON: Thank you, Mr Semenya.  
 14 Anyone else here representing any of the parties wish to  
 15 comment on the application? Yes.  
 16 MR SHOZI: Chair, we have no objection to  
 17 the request for a postponement.  
 18 CHAIRPERSON: Thank you. Yes.  
 19 MR MASEBE: For NUM we will abide the  
 20 decision regarding the request for the postponement.  
 21 CHAIRPERSON: Thank you.  
 22 FEMALE SPEAKER: Chairperson, we have no  
 23 objection.  
 24 CHAIRPERSON: Thank you. Well in the  
 25 circumstances, in the absence of any opposition, it's

1 clearly a well motivated application. There's a clearly  
 2 good reason for the postponement. I'm sorry that we will  
 3 lose time by postponing now until Monday, if Monday is the  
 4 day on which can continue. But it may well be that, as has  
 5 been said, that actually the cross-examination will be  
 6 shortened not only of this witness but perhaps of other  
 7 witnesses as well. And ultimately it may lead to a  
 8 substantial reduction in time used, although at first sight  
 9 it may appear otherwise. The Commission will now adjourn  
 10 and the sittings will be postponed until Monday the 16th  
 11 at 9:30am.

[COMMISSION ADJOURNED]

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