

TRUTH AND RECONCILIATION COMMISSION

SECTION 29 HEARING

"IN CAMERA"

DATE: 27-05-1998

NAME: THEMBA ZIMO

TULANI MALABA

HELD AT: JOHANNESBURG

DAY 1

CHAIRPERSON: Good morning ladies and gentlemen, the time now is a quarter to ten. This is a Section 29 investigative enquiry, which in nature and in terms of the Act, is a private and a closed hearing.

I believe that the witnesses who are going to be testifying, have been given indications that they are required to be here and appear today.

I understand that they have legal representatives. I need to be satisfied from the very word go, that we are all aware that in terms of the Act, only people who are going to be testifying and members and staff of the Commission need and are permitted to be here.

So before we even begin with whatever we are going to do today, I want to be satisfied that only people who will be testifying because they have been called and subpoenaed to do so,

and their legal representatives and members of the staff and Commissioners, are present here today. Is that the position?

MS SOOKA: There are policemen who are in charge of those people who are in custody, and I suppose they would need to be accommodated.

CHAIRPERSON: Yes, that then seems to be clearing that. We should have started at nine o'clock, but it appears - well, I was late because my flight from Cape Town is late. I have been indicated to that certain applications will be made this morning and I would therefore assume that this is the appropriate time that they should be made so that we can deal therewith.

Perhaps before we do so, let me introduce the members of the Panel. On my left is the Deputy Chairperson of the Human Rights Violations Committee, Ms Yasmin Sooka. She is a Commissioner and she works from the Johannesburg office. To my immediate right is Ms Seroke, Joyce. She is a Committee member in the Human Rights Violations Committee, she works from this office.

On my extreme right, and I can tell you it has nothing to do with his politics, is Dr Fazel Randerera, who is the Commissioner in charge of the Johannesburg or Gauteng office, and he is also a member of the Human Rights Violations Committee. That is your Panel. There will be people who will be assisting us and those

will be placed on record as and when the Attorneys of record are placing themselves on record as well, Attorneys and or counsel.

Can we then first have Attorneys and Counsel placing themselves on record and then those who are going to be assisting the Commission placing themselves on record accordingly.

MR FRIEDRICH: For purposes of the record, my name is Hanro Friedrich, I appear on behalf of Obet Gadebe and Albert Malaba.

MS VAN DER WESTHUIZEN: I am Amina van der Westhuizen, and at this stage I am appearing on behalf of Mr Mbekiseni Khumalo, Mbekelele Khumalo, Mzwaki Khumalo, Nicholas Jamani and I still need to take instructions from Mr Sebeko. I also appear on behalf of Mr Manlakwe Mbatha.

MR GAMPE: Thank you, for purposes of this record my name is J.S. Gampe, I represent Mr Themba Zimo.

MS SEALEY: I am Sally Sealey and I will be asking the questions, questioning the witnesses.

MR NDLOSI: I am George Ndlosi, the Investigator for the case.

MS SOOKA: Chair, could I just indicate that the Attorney for Tulani Malaba has telephoned and has indicated that he is on his way. Then in terms of two of the clients that Ms Van der Westhuizen represents, Mbekelele Khumalo and Mzwaki Khumalo, they were present the last time at this hearing and they were in fact warned to appear, but they have not as yet arrived today.

Earlier on in a conversation Ms Van der Westhuizen indicated that they had not been served with their subpoenas. They have in fact been served with their subpoenas and when the matter was postponed, they were clearly informed of that fact. I place that on record.

CHAIRPERSON: Thank you Ms Sooka. Are there any applications?

MR FRIEDRICH: Honourable Commissioners, yes there are. I wish to place on record that late yesterday afternoon my two clients visited me at my office. They said that they want to give me a mandate to act on their behalf.

It was the first time that I have heard of this investigation, I have not been placed in possession of any of the record that will be the subject of this investigation. I would therefore move for an application for a postponement.

I have spoken to Commissioner Sooka earlier this morning. She has indicated to me that the Commission would wish to proceed before the end of June. I am quite willing to get a postponement before the end of June. I would therefore place on record my clients will not be served, their interests will not be served if I should continue today. I would like to apply for a postponement.

MS VAN DER WESTHUIZEN: Mr Chairman, if I may ...

MR FRIEDRICH: Friedrich.

CHAIRPERSON: I just want to get it again, when did you get instructions to appear?

MR FRIEDRICH: Only yesterday afternoon Mr Chairman.

CHAIRPERSON: And you say you have not been able to consult?

MR FRIEDRICH: No.

CHAIRPERSON: Did you get instructions from your clients or from - I just want to get the history of it, because I understand that at the last hearing at which a postponement was sought, and I think the basis then if I am correctly informed, was that the lawyers were going to be representing particular clients in this matter, were actually going to be representing some clients also at the Shell House hearing and that seemed to form the basis for the postponement.

It seems to me there had always been representation. Are you saying you are not the person that was representing them at that stage?

MR FRIEDRICH: No.

CHAIRPERSON: Where did you get your instruction from, I am just trying to get to know how it came that you were instructed and you were not able to consult like for instance yesterday and this morning?

MR FRIEDRICH: Honourable Commissioner, what happened was this, I am currently busy with a big fraud trial. I have not been involved with any TRC hearings thus far.

I have also not been informed of this investigation, the first time I have heard of it was yesterday afternoon when the two clients of mine came to my office.

I am not aware of what happened during the previous proceedings, I am oblivious to it. I am however, able to say today that they came to me complaining that they felt that their interests would be best served if I act on their behalf and that I was instructed to do so and that I was instructed to ask for a postponement so that I would be able to act on their behalf.

That is basically the gist of it.

CHAIRPERSON: Do I understand that you have not been able to consult yesterday and today, because you are involved in that fraud trial?

MR FRIEDRICH: Correct.

CHAIRPERSON: So that even if I said for instance, let's say the Panel was inclined to say we give you the next four hours for you to look into the issues, you must prepare and we are ready to begin at two o'clock, or even tomorrow, do I understand you to be saying that you are not available on that basis?

MR FRIEDRICH: That is quite correct. I have also been informed that it is quite voluminous work that we are talking about here, and that I will need some time for preparations.

CHAIRPERSON: It is an investigation really, it is not a trial. It is not an enquiry, there are no findings that are going to be made. It is an investigative enquiry.

You are here just to look into your client's interest and I am sure this Panel would be inclined if it becomes clear that in the course of the investigation, your clients are going to be seriously prejudiced because there are certain documents and certain issues that you would like to canvass, we would be prepared to be granting periodical adjournments for you to be able to familiarise yourselves.

I am just giving an indication that there is going to be disinclination on the part of this Panel to grant a postponement. I think I must make that very clear.

If your basis for coming here was that you are coming because you are not prepared, you have not prepared yourself, and you would not even make yourself available within the next 24 to 48 hours, then we have a serious problem. I just want to place that on record.

If all that you came here for, was simply to say I am not available during the days and there are two days for which this matter has been arranged, and the only time that I will be

available is as and when it suits your diary, then we have a problem. I must make it clear that we have got 8 000 Attorneys in this country, 1 200 Counsel and I am quoting minimums, and where we have clients who were represented, the last time that we were here, and I am not able to hear why they are now being represented by you on the basis that you are indicating, then we have a problem.

Maybe you need to take instructions as to why so that we have it on record. Why is it that they were represented and arrangements been made with that Attorney, that today is going to be the day on which they come and be with us here for purposes of us proceeding and now that they come and show up you, and I am not blaming you, and I don't want to prejudice them, but I need to know for purposes of this record, why they only come up today with you when they were represented by an Attorney or by a lawyer with whom arrangements for a postponement were made to today's date.

Do you want to take instructions or are you able to tell us and place it on record why it is that you are appearing and not the other Attorney?

MR FRIEDRICH: I would first like to take instructions in this regard.

CHAIRPERSON: Maybe we should arrange that you should take instructions and whilst you take instructions, we could hear the other applications.

If we could adjourn just for a minute or two in order to enable for Mr Friedrich to get a room where he can take instructions. Mean while we could proceed with hearing the other matters.

MS SOOKA: George, could you assist Mr Friedrich and his clients in terms of a room?

CHAIRPERSON: Is it Miss ...

MS VAN DER WESTHUIZEN: Van der Westhuizen.

CHAIRPERSON: Van der Westhuizen.

MS VAN DER WESTHUIZEN: Mr Chairman, initially in this matter I was instructed by Mr Mbekiseni, Mbekelele and Mr mzwaki Khumalo. I have actually seen them some time ago in relation to also their, especially Mr Mbekiseni's application for reparation and other matters relating to the TRC.

CHAIRPERSON: Are those the people who are not before us?

MS VAN DER WESTHUIZEN: Mr Chairman, there are in fact two people not here, Mr Mbekelele Khumalo and Mr Mzwaki Khumalo, who I was told by the brother and father, Mr Mbekiseni that they said that they have not, or correction, Mr Mbekelele Khumalo apparently said that he did not receive a subpoena. I don't know whether he was here the previous time.

As to Mr Mzwaki Khumalo, who is the son of Mr Mbekiseni Khumalo, his father could not, well he does not know whether he did in fact receive a subpoena since he said that his son is not residing with him and that he has been informed that his son is in Natal.

Those are the three people that I initially received instructions from. The last date was in fact, I was in fact busy with the Shell House amnesty applications which was set down for two consecutive weeks.

I represent Mr Nicholas Jamani and Mr Manlakwe Mbatha in their respective amnesty applications before the TRC and in fact received Legal Aid instructions for them.

After I became aware of this investigations and all the people involved, or who were requested to appear before this Commission, I contacted Mr Mzizi from the IFP and informed him that I am representing the three Khumalo's, but that it came to my attention that the rest of the people are also implicated in this investigation or required to testify and he then requested me to assist, to also assist these people, the other, referring to Mr Jamani, Mr Gadebe and Mr Malaba and Mr Sebeko, and it was on that basis that I actually informed this Committee that I will also be representing those people.

I was in fact not told by Mr Mzizi who was going to put me in funds in this matter. I have discussed the matter of the

financial situation with Mr Mbekiseni Khumalo who at the very last moment indicated that he will not be able to pay for an Attorney.

I can just also state that ...

CHAIRPERSON: Excuse me Ma'am, when you say he is not going to be able to pay for an Attorney, we are to understand that he will not be able to pay for an Attorney at the rates required by the Attorney, he is not unable to be represented on the basis of the Legal Aid, because the Legal Aid would in any event be able to pay for him. Do I understand the position to be that?

MS VAN DER WESTHUIZEN: It is indeed so, but I also wish to add on behalf of Mr Mbekiseni Khumalo, that I had a discussion with him in relation to a postponement. He personally feels that he wants to proceed with this enquiry and said that if needed, he feels that he can represent himself in this matter, so I wish to place that on record that he is willing to continue on his own.

As regarding the Legal Aid as such, Mr Chairman, my office made some enquiries from I don't know it is a clerk of mine, regarding the situation about Legal Aid. From this office of the TRC she could not get any response as to what the situation would be.

I however, we only finished last Friday with the hearing of the so-called Shell House amnesty application. On Monday I made enquiries myself and discovered that the maximum tariff

that is allowed for a legal representative is R550-00. I tried to establish whether that is per person that the legal representative represents, or whether it is for the hearing, the whole hearing as such, which I am still under the impression that it is only the fee for the day that is available.

I indicated to the Commission that if that is the maximum fee available for the day, I am not prepared to appear at that fee.

CHAIRPERSON: So what are you asking for Ms Van der Westhuizen?

MS VAN DER WESTHUIZEN: I have not consulted properly with Mr Jamani as well as Mr Manlakwe Mbatha because they are detained in prison and it means, it obviously involves consultations at a prison, which will take up a lot of time as such.

I have consulted with Mr Mbekiseni Khumalo. I still, the position regarding Legal Aid is still not clear to me and I have no indications from the Commission what the situation would be, should these people apply.

CHAIRPERSON: I think the question of Legal Aid has nothing to do with the Commission, I think it was properly indicated that when once it becomes clear that it is a Legal Aid matter, then that is the route that you should follow, the Legal Aid Board.

Now, I would like to understand, is the position therefore that if it becomes clear on all enquiries that your funding would

be at a Legal Aid tariff, you are not available, whether or not you have consulted?

MS VAN DER WESTHUIZEN: If it is at a maximum of R550-00 per day, I am not available and I am talking about R550-00 for the whole day. I don't know whether they take it per individual applicant, I don't know what the situation is.

CHAIRPERSON: May I just enquire, when you did representation at the Shell House matter, how were you funded there?

INTERPRETER: Chairperson, the speaker's microphone is not on.

MS VAN DER WESTHUIZEN: Mr Chairman, that was also through Legal Aid, but the situation is that apparently there is a difference between Section 29 enquiry as well as between an amnesty application and then also I was informed that depending on the number of people that you represent, a special arrangement can be made, but which does not necessarily apply to Section 29 investigations.

Furthermore for Section 29 investigations, as far as I understand it, I stand to be corrected, there are no fees for preparations, consultations or any additional fees except the R550-00.

CHAIRPERSON: So, taking the worst case scenario and that is that you would be funded at the rates that you say your initial

indications are that you would be funded at, do I understand you to be saying you are not available?

MS VAN DER WESTHUIZEN: I have said earlier on, at the maximum rate of R550-00 ...

CHAIRPERSON: No, Ma'am, I don't want, I don't know the rates, I am assuming in your favour that that is the position. I just want to know what the bottom line is.

If that is so and it is not something that I can assist you with because I think it is not a pursuit that the Panel should do, it is something that legal representatives ought to be doing with the relevant authorities before they come to representation.

I think that is the first thing that anyone who takes instructions, usually seeks to investigate and establish and confirm.

If it is so for purposes of an application for a postponement, if it is so for instance if I were to give you time, two hours to now make sure by telephones and faxes, and you were to establish at the end of the two hour period, that indeed that is all, that is the rate at which you are going to be funded, do I understand you to be saying as I think I heard you say earlier, you are not available on that basis?

MS VAN DER WESTHUIZEN: If it indeed is instruction per person that I represent, I am available, provided that I am given

time to take proper instructions from Mr Jamani and Mr Manlakwe Mbatha as the matter proceeds.

CHAIRPERSON: That is a separate issue Ma'am, I just want to ask to have the record clear on the funding.

Are you saying if on the funding it becomes clear after you have made your enquiries, and I think the Panel would be prepared to give you an hour or so to make sure what the position is, if it becomes clear that on the funding you are going to be given, the rates that you were indicating to us, are you not available?

MS VAN DER WESTHUIZEN: In that instance, I am available.

CHAIRPERSON: You are available?

MS VAN DER WESTHUIZEN: Indeed so.

CHAIRPERSON: At the rates that have been indicated, R550-00 per person?

MS VAN DER WESTHUIZEN: Then I am available.

CHAIRPERSON: But what was your query Ma'am, I got the impression that you said you are not available at the Legal Aid tariffs?

MS VAN DER WESTHUIZEN: Mr Chairman, then there must be a misunderstanding. Let me put this clear, as I understand it the maximum that the legal representative on Legal Aid tariff can get per day, before this Section 29 hearing, is R550-00.

I have made it clear that I am not prepared to appear at that rate.

CHAIRPERSON: That is the one I am asking about. I want the record to be clear. If it turns out that that is the rate at which you would be funded, you are not available?

MS SOOKA: Mr Chair, I wonder if I could be of assistance. It seems to be that what the legal representative was saying was that if the rate was R550-00 per day, for all the people she represents, then she is not available, but if it is at per individual, and then she is paid separately for each of the clients she claims to be representing, then she would be available.

MS VAN DER WESTHUIZEN: Thank you Ms Sooka, that is indeed the position.

CHAIRPERSON: That is the separate issue. You then say but you still would need to consult with some of your clients?

MS VAN DER WESTHUIZEN: With the two people who were detained in prison, Mr Jamani and Mr Manlakwe Mbatha as we proceed.

CHAIRPERSON: You would be able to proceed with those in relation to which you have consulted?

MS VAN DER WESTHUIZEN: That is indeed so.

CHAIRPERSON: So, as I understand it for you, you would need time during which to clarify what the position is with regard to Legal Aid funding?

MS VAN DER WESTHUIZEN: That is indeed so.

MS SOOKA: Chair, I wonder if I may enquire. Do you represent Mr Sebeko as well?

MS VAN DER WESTHUIZEN: Not at this stage. I have initially been asked to also assist him, but I have not consulted with him or taken instructions from him, so I don't know what his requirements would be.

MS SOOKA: Surely you indicated on your letter to us, that you represented the two people that you want to consult with today. In the time that has elapsed since then, can you put on record why you have not consulted with the two people concerned?

MS VAN DER WESTHUIZEN: The reason for that is that I have no funding. I didn't know whether any funds would be coming forth.

MS SOOKA: Surely at the time when you indicated to us that you represented them, there had been discussions with the relevant people about where that funding was going to come from, because the basis on which I agree to postpone these proceedings, was to enable you to have an opportunity to consult with your clients, and put yourself in a position to represent them ably here.

I am now being told, at the day we postponed to, that you still need to consult with some of those clients. Could you please indicate why you didn't take that up front?

MS VAN DER WESTHUIZEN: I have already given my reasons for not consulting with them, and I will take it no further than that.

CHAIRPERSON: Ms Van der Westhuizen, I would assume that being asked as we are asking you, may have the effect of being irritating. And I am sure as a lawyer you know, that when sometimes you ask questions it is not because you didn't hear the answer the first time, sometimes you ask a second, third, fourth time because you want absolute clarity on an issue.

I can't force you to repeat yourself if you are an Officer of the court, but I am sure when Ms Sooka wanted you to place on record the aspect about why there has been no consultation, there has been more by way of seeking clarity than by way of endeavouring to irritate you.

You can be sure no one wants to irritate you. Certainly when I do ask you to repeat yourself, it is an endeavour to be able to say look, I am now clear, clearer than I thought I was.

If we could just conduct, I know it is a very sticky thing you know, you represent your interest, we represent the interest of the Commission which is you know, constraint by time and capacity and even now by rented space, that is why we are cramped into this little room, because we are giving away space because we have deadlines to meet.

MS VAN DER WESTHUIZEN: Mr Chairman, maybe it came across not as it intended to be. The matter of the fact is that I did not consult with them specifically regarding this Section 29 applications. Up till the very last moment, I was hoping that some funds would be forthcoming from some of the people required to testify as such.

Only on Sunday it became clear to me that there would be absolutely no funds, there would be no funds from the clients themselves to refer to them as such.

CHAIRPERSON: Are there any further applications that we should hear?

MR GAMPE: Thank you Mr Chairman. I don't think you have finished the matter of Mr (indistinct)

CHAIRPERSON: Are you Counsel at his instructions?

MR FRIEDRICH: No, I am not.

CHAIRPERSON: Is that the position?

MR GAMPE: My apologies Mr Chairman, I don't seem to be following maybe the question.

CHAIRPERSON: I was asking if you, yourself are representing anyone, and if you are, whether you are seeking to make any application for a postponement or whether you are just waiting for us to start the ball rolling and do what we said we were going to do today?

MR GAMPE: As it pleases the Chairman. I do not have any application to make Mr Chairman, at this stage. I surely am prepared to proceed with the matter if necessary, but then if the matter is going to be postponed, so do it please the Commission.

There is only one thing that I need to put on record here, Mr Chairman, that I am not aware of any application for amnesty by Mr Zimo. I have spoken to Mr Mantatha to find out if the Act do make any provision for condemnation should an application for amnesty, if the application for amnesty was not launched.

MS SOOKA: Actually he has made an application for amnesty and we do have that on record. It could be made available to you at some stage if he doesn't have any record of it.

CHAIRPERSON: Mr Friedrich, if I pronounce your surname wrongly, please bear with me.

MR FRIEDRICH: I have been instructed as follows: they have been shown rather large file or files with regard to the work of this investigation.

They subsequently spoke to other, I don't know whether they are applicants or witnesses, and they thought that the previous Attorney would not be able to act on their behalf and serve their interests properly during this investigation, due to the voluminous work that this investigation will entail.

They therefore came to me, feeling that I will be able to have more time to spend with them individually and that they will be best served. That is the instructions that I have been given.

CHAIRPERSON: Do we have an indication as to when this awareness on their part came?

MR FRIEDRICH: Apparently during consultations with the previous Attorney. I have not been given dates, I have not been given times. Apparently it is during the course of time when this happened.

CHAIRPERSON: We will obviously need time to consider this and we will therefore adjourn for half an hour in order for us to be able to give an indication which way we want to go.

DR RANDERA: Chairperson, I wonder if I can also ask Mr Friedrich in the time that we are adjourning, to give very serious consideration to your earlier proposal, that we not postpone this investigation at the latest beyond tomorrow.

If you can please consider that.

MS SOOKA: Sorry Chair, and also if the Attorney Ms Van der Westhuizen, could actually clarify precisely what the Legal Aid rates are so that she can conclude whether or not she represents those clients or not.

CHAIRPERSON: In which event therefore, perhaps we need a longer time to adjourn. I am inclined to - can we adjourn for five

minutes and then we will indicate what time next, you know, we adjourn. I just want to confer with my fellow Panellists.

COMMITTEE ADJOURNS

ON RESUMPTION:

CHAIRPERSON: You are here in a representative capacity. Can you place yourself on record.

MR MADASA: Yes, that is correct Mr Chair.

CHAIRPERSON: Full names Mr Madasa.

MR MADASA: My full names are Zwelethu Lukanyeso Madasa.

CHAIRPERSON: And you represent?

MR MADASA: Tulani.

CHAIRPERSON: Malaba?

MR MADASA: Malaba.

CHAIRPERSON: Malaba? And are you ready to proceed?

MR MADASA: I am not ready Mr Chair.

CHAIRPERSON: Well, the time that you come in Mr Madasa, is a clear indication that you are not ready. Do you have any application to make?

Maybe you will make your application separately. We have taken note of your presence. Do you want to make an application for a postponement on the basis that you are not ready or on any other basis?

MR MADASA: That is correct Mr Chair. Mr Chair, I was approached by the TRC with a view to represent Mr Malaba, but I

was informed that another legal representative, Adv Nobanda was approached earlier on.

CHAIRPERSON: Mr Madasa, I don't want to interrupt you. Maybe you are listening to the translation in your ear, that is why you are keeping on pausing, just assume that everyone of us is understanding you and you can just carry on.

MR MADASA: Thank you Mr Chair, I was getting confused.

CHAIRPERSON: Ms Seroke has quickly noticed that.

MR MADASA: I say Mr Chair, a colleague of mine, Adv Nobanda was initially requested to represent Mr Malaba.

Apparently she had become unavailable, then I was approached at a late hour and I agreed to represent him, but even after I had agreed, there was correspondence between the TRC people and Adv Nobanda, because they were trying by all means to get her available because Mr Malaba thought that because they had consultations at length with Adv Nobanda, he preferred to be represented by her.

But this week it became apparent that she could not be available, then that is why I made myself available today. I didn't have any meaningful discussions with Mr Malaba.

CHAIRPERSON: When did you learn that Ms Nobanda is not available and that you would have, in spite of your client's preference for Ms Nobanda, you would have to step into the bridge?

MR MADASA: Mr Chair, some time last week I was told that there was a possibility that I could take over, but I am saying it was not clear whether Adv Nobanda would not be available, even this week. But today I was informed that in fact she would not be available at all, so I stepped in.

But I am saying it was not my first time to hear, to learn about that today, but the matter was hanging on until today.

CHAIRPERSON: Sally, do you have anything to say?

MS SEALEY: Mr Madasa is quite correct. We had been speaking and postponing with Adv Nobanda and then when I spoke to Mr Madasa this morning, Adv Nobanda had actually informed him that he was due to appear on the 29th and that was the date that he had diarised, and not today.

CHAIRPERSON: Do you have anything more to say Mr Madasa?

MR MADASA: On that basis Mr Chair, I would request more time, but I am not aware as to the availability of the Committee, so I am in the dark as to the dates and times that are available.

CHAIRPERSON: And you were told that we start at nine o'clock?

MR MADASA: No, I was not specifically told Mr Chair.

CHAIRPERSON: Oh, I see. Thank you Mr Madasa.

This is an application for a postponement by several representatives of several of the witnesses who had been subpoenaed to come and appear at this investigative enquiry.

In the main, the applications are for a postponement on two bases, the first basis is that legal representatives have not been properly instructed and not fully instructed and therefore will not be able to serve their clients' interest in the best tradition of their profession if they were to be plunged into representing their clients today or at the present moment.

A great deal of the witnesses are represented by Van der Westhuizen and Associates, a firm of Attorneys which is represented by this hearing by Ms Van der Westhuizen. Her approach is two fold, firstly that she needs to be clear as to whether the tariff and the maximum thereof which is available, is per person or is in fact for the day irrespective of the number of persons that she would be representing.

She also has indicated that for some of the persons that she represents, she has consulted but for some she has not had sufficient time to consult.

The other application is by Mr Friedrich who tells us that those clients of his who were otherwise represented and with whom arrangements had been made by the TRC with their erstwhile representatives, have now approached him whilst involved in a fairly big criminal matter, to represent them and since he has not had neither time, not opportunity to be aware of the issues, either today or at any time during the days for which this matter has been set down, he craves the indulgence of this

Panel for a postponement to a date to be arranged during which he would be in a position to represent his clients as best as he can.

Mr Friedrich has not dealt with the question of funding and I assume that he doesn't have problems at that level. Certainly he has not made the funding of his case, the basis for a postponement.

Mr Gampe, for those for whom he appears is ready and able to proceed and therefore his position does not get affected by the present proceedings.

Latterly Mr Madasa has come in and has put his position as that of one who has just received instructions and would therefore seek and crave the indulgence of this Panel for further postponements to enable him to consult with his clients.

These proceedings have been set down for three days, today, tomorrow and Friday. They come at a time when the Commission is constraint for time and is constraint also for capacity.

We are wearing thin both in terms of human resources and in terms of time. We have deadlines to meet and we disinclined to grant postponements. The last time that a postponement was granted in was granted on firm understanding that today and tomorrow and on Friday the matter would proceed.

Indeed I have been given correspondence emanating from certainly the firm of Van der Westhuizen & Associates, a confirmation by agreement is indicated that these matters will be postponed till today's date for hearing.

This letter was written on the 8th of May 1998 and purpose to come from Van der Westhuizen & Associates. It was faxed at 15H05 to this office and was received on the same date.

Between that date and today's date ... (tape ends) ... that this matter would be proceeding, but she has in fairness to her, indicated that she was trying to find out from her clients the extent to which they would be able to carry representation by her at tariffs other than those indicated by the Legal Aid Board, and at the last moment she was told no funds would be forthcoming from families or from friends or relatives of the people subpoenaed, when earlier it had become apparent those relatives and or friends, might possibly be able to assist with funding beyond the limits and constraints put by the Legal Aid Board.

Far from it be it for us to quarrel with Madam Van der Westhuizen, but it seems to the Panel that the position should have been clarified much, much earlier certainly from the point of view from the Legal Aid Board. Whilst we do not want to prejudice the interest of the applicants, certainly the witnesses who had been subpoenaed, we must emphasize that whilst this is not a trial or a disciplinary hearing or a hearing in relation to

which findings are going to be made, legal representation is necessary to the extent that potential prejudice might arise then if there were no legal representations, unfair questions may be put to the witnesses and all related issues.

It is not for me to decide why legal representation should be afforded in investigations. I think it is in keeping with our constitution and is in keeping with notions of fairness, but with all rights, those must be limited and be balanced with other rights.

It would be unfair to others for instance who are ready and able to proceed that this matter should be unduly delayed, but what is more, legal representatives may be present and may place on record the rights that they reserve to petition for instance at a later date, the Commission for a hearing on aspects which they think were unfairly dealt with at the time of the investigative enquiry.

It has therefore been the decision of the Panel that we should adjourn this proceedings until two o'clock during which time we will proceed and between now and then, we will afford those representatives who are still wanting to determine what needs to be determined in terms of funding, in terms of whether or not there are contingency measures they can make to be available on the basis that they can reserve their rights on issues that they would like to raise at a later stage, but that the

proceedings should not be hampered, seeing that this is not a trial or an enquiry in relation to which findings would be made.

For those who are able and ready to proceed, like Mr Gampe, we would suggest that we should adjourn until half past eleven, during which time, we will take that evidence from his clients.

So the position finally is that with regard to Mr Gampe, the proceedings will be adjourned till half past eleven, from which stage we will take depositions from his clients.

Two o'clock we will assemble to proceed with the rest and at that stage, we will be advised by the legal representatives what their options have been. I just want to say it is a decision we have taken with a great deal of reluctance and one which we have considered against the backdrop of prejudice to the people who have been subpoenaed, but we are also of the view that the prejudice is potential rather than real and is not the one that cannot be taken care of by a presence of a legal representative who will reserve his or her rights to issues which they may wish to petition the Commission for a further hearing at a later date on the basis that they want to raise issues that they could not have raised because they had not been fully instructed.

We will adjourn as indicated and we will resume with Mr Gampe at half past eleven.

COMMISSION ADJOURNS

ON RESUMPTION:

CHAIRPERSON: We proceed with the hearing. Before we proceed, I will ask that the witness should be sworn in and I will ask Dr Randerer to swear the witness in.

THEMBA ZIMO: (sworn states)

CHAIRPERSON: Mr Gampe, is there any submission that you want to read into the record, or is your client ready merely to take questions from those who will put questions to him?

MR GAMPE: Thank you Mr Chairman, there are no submissions to be made at this stage, however, Mr Chairman, I wanted to enquire exactly what is the purpose of a Section 29 enquiry and what is the Commission trying to achieve as a result of the questions which will be put to Mr Zimo, seeing that he has made an application for amnesty?

CHAIRPERSON: I will not presume to say it is exhaustive to say what the purpose is, but it is an information gathering exercise. It is an exercise in establishing under oath the versions that have been given and it is also to check whether in fact there has been a full disclosure in the amnesty application.

That is why your client is being asked to take an oath because whatever he says in this application, is going to be taken into account at the amnesty application and he therefore will have

to commit himself to a version, therefore it is important that he should understand that what he says here, he should not take lightly.

It is an investigation also and therefore questions will be put to him that will seek to indicate to him that there are things in relation to the matter for which he has applied for amnesty, which he has not mentioned, which in the light of our investigations he ought to mention, or ought to have mentioned in which event he has an opportunity with legal representation to refute or confirm such incidents as may be put to him, which either do not appear in his amnesty application or would have had to be amplified by request for further particulars and a reply thereto. That is the entire, it is a genuine information gathering exercise.

Also to assist him, because some of the things he may have forgotten when he did his amnesty application, but when he is now questioned on the basis of an investigation that has been done, he would then be able to say, oh by the way, you know, or this is actually what happened and qualify whatever the investigators and the leaders of evidence put to him.

MR GAMPE: Thank you Mr Chairman. Sally?

MS SEALEY: Good morning Mr Zimo. Mr Zimo, if you could first tell us how you became involved with the Khumalo gang.

MR ZIMO: I was working at the Khumalo Driving School at Nqutu and it was discovered that Khumalo had taken people's money at Nqutu and at the time he had sold his cars and I was forced to leave Nqutu because I had many enemies as a result of that.

MS SEALEY: When you left Nqutu, where did you go?

MR ZIMO: I left Nqutu for Thokoza and on arrival, I could not get a job and the one job that I am used to is driving, and nothing else.

Mbekelele Khumalo, that is Mbekiseni's brother had taxi's at the time and I was working for him, driving his taxi's. I was driving the Taxi's between Thokoza and Alberton and Khumalo also later on bought himself one kombi and he called upon me to come and drive his taxi, myself as a person under whom I grew up.

I was surprised when Khumalo said he was being attacked and on arrival at his homestead I did not see any attack taking place. In 1993 Khumalo's wife had died, that is Mzwaki's mother. There was a night vigil on that particular day and I had come back from the rank, taxi rank and Mr Khumalo brought along some firearms and he brought along a young man with whom we were supposed to go to the Ngema Section in Katlehong.

We took the AK47's with bullets and we went to Ngema Section and Tulani Malaba told us to stand outside and he went into the garage. The homestead was a shibeen, some people were taken out of the garage and he instructed us to get inside. On getting inside I realised that the people that we were taken to, did not have guns, they were not armed and there was no indication that they were fighting and I had to rush to the house, because I was told that these people are dangerous, they are shooting, but on arrival they were children and women.

I saw no reason to start shooting. I had to do something, I cut off the telephone wire in the dining room and shot at the television set in the dining room, using my AK47 and as I was walking out of the house, there was Zweli Ncamalo, Tulani Malaba and Zweli Nkozi who was standing at the door at the time. Gunshots were fired and I don't know who fired, but I later learnt who fired the shot. On asking Tulani later who fired the shot, he said he only shot at a speaker.

Nicholas Jamani later on indicated that he was the one who had shot. I confirm this because his gun, he said, did not have bullets. We then went back to Bashine Sambo at another house, that is where we checked as to whether the guns were still okay, and at the time when I was shooting the TV in the dining room, my gun lost its spring and the spring remained in the house. It

was then difficult for us to go back to the house for the spring of the gun. We then went back to Mr Khumalo in Thokoza.

On our way back, gunshots were fired and my gang returned fire until we arrived in Thokoza and then we indicated to Mr Khumalo that we had shot. Mr Khumalo wanted to know from me as to whether I did fire as well and I said yes, but I did indicate to him that my gun got broken. I didn't indicate to him that I shot at a television, but I indicated to him that I had a problem with the gun.

He started shaking and thanking, shaking the people's hands and thanking them for the job that they had done. We were supposed to shoot at ANC victims in Thokoza and we told him that we had run out of bullets.

Khumalo, we all ran into the house again and guns were loaded. Because I was not in favour of what was happening, I did not find it easy to do and decided to return home. There was one Khumalo boy who was leaving the house and I asked for a lift from him and on that particular evening things happened at Ngema Section.

MS SEALEY: Mr Zimo, can I just ask you this particular instant, this is the instant that happened in Ngema Section. Is this the instant that you are currently serving a sentence for?

MR ZIMO: Yes, that is true.

MS SEALEY: Mr Zimo if I could also just take you back, you originally said that you worked for Mr Khumalo in Nqutu and then you came to Thokoza and you started working for him here in Thokoza. You said originally you worked as a driver. How did it happen that you became involved in these other incidents if you just worked for him as a driver?

MR ZIMO: I was also surprised myself of how he got me involved in politics, because I was just working as a driver. When he told me what to do, because he was feared, he would tell me what to do and I will do it because I was also afraid of him. My family was also afraid of him. Nobody was safe, everybody feared him.

He told everybody what to do. That is how I got involved in his business.

MS SEALEY: Mr Zimo, can you also explain why was the Ngema Tavern chosen, what actually happened which led to Mr Khumalo asking you to attack the Tavern or the shibeen, what actually happened before that?

MR ZIMO: Mr Khumalo was a person who did not tell the truth in most instances, because originally he had given me and Tulani an instruction to kill Mzwaki's mum. I did not like doing that and I refused to do so.

I asked him in detail why he was doing this and he said Mzwaki's mother was involved in a lot of stories. I did not like

this, I was saddened by it, but I did not tell Khumalo because I was afraid that he might actually ask the gang to kill me because his gang was quite a dangerous pack.

In most instances his cases if they were reported to the Police, they were not pursued, so we were afraid of him. He took Mzwaki's mother and took her to Tembisa. On subsequent days, we heard that she had been shot and we were surprised and we thought maybe he had arranged another gang to kill Mzwaki's mother. I then assumed that because he had originally wanted her dead, that is what had happened.

But then in the township it was assumed that people who had killed Mzwaki's mother, were ANC people and then he said these other boys, Peter and Mzwaki should go and shoot around the ANC areas.

MS SEALEY: Why was the Ngema Tavern chosen specifically?

MR ZIMO: I do not have certainty about that, but Tulani told me that Khumalo had shown him where the people or his opponents were. I did not have information that these people were in Ngema, I did not know the area well.

Tulani directed us because he had earlier been there with Khumalo who had shown him the area. He showed us where Mr Khumalo had originally pointed out to him.

MS SEALEY: Apart from your involvement in the Ngema Tavern shooting, you have also given a statement in regard to the

assassination of Mr Sam Ntuli. Can you explain your involvement in what led to the assassination of Mr Ntuli?

MR ZIMO: It was a well known story in the area. Sam Ntuli was alleged to be disturbing the activities of Khumalo in the area and he would arrange ghost laws and then Khumalo would not be able to operate his taxi's. Khumalo told me to report to him the whereabouts of Sam Ntuli and I purported to be looking for him and I was constantly questioned if I had seen him because we lived in the same area.

During that time, Sam Ntuli disturbed the operation of the taxi's and I was also arrested for hijacking which was a false charge because I was not involved. I was however acquitted of the case because I had actually been asked to provide transport for these people who were going to Brakpan.

MS SEALEY: Mr Zimo, you said when you gave this statement, you said that you attended a meeting at Mr Khumalo's house where the killing of Mr Ntuli was discussed.

Could you perhaps tell us who else was present at that meeting?

MR ZIMO: At that meeting, there was Mbekelele, Mbekiseni and Mapula Malaba as well as Obet Gadebe, as well as Nicholas Jamani. Tulani Malaba was also present. It was decided that Sam Ntuli was a disturbance, he would organise strikes for people not to go to work. He was disturbing the operations and he was

responsible for a lot of things in Thokoza, therefore he would have to be killed.

MS SEALEY: Mr Zimo, you have already told us that they requested you to actually find out where Sam was. What else did they ask you to do, were you involved in any other way in terms of the planning, the planning of the assassination of Sam Ntuli?

MR ZIMO: They requested me to seek out two cars for them. These were found. A 2.8 Cressida and a van, a Toyota HiLux. Those were stolen from Alberton from the Checkers Centre.

We gave them those cars and thereafter I was arrested in 1991 and Sam Ntuli was subsequently killed. I was released from prison in 1992. It was in August although I don't remember the date.

MS SEALEY: Mr Zimo, you also have made in your statement, you said if you hadn't been arrested you would have been the driver of the vehicle, is that correct? If you hadn't been arrested in - before the assassination, you were arrested before Sam was killed.

You said in your statement that you were actually requested to drive one of the vehicles that was going to be used, was that correct?

MR ZIMO: That is correct.

CHAIRPERSON: What statement are you referring to Ms SEALEY?

MS SEALEY: The statement that he has made in the docket, the Sam Ntuli docket. He mentions the fact that he was going to be the driver.

CHAIRPERSON: Very well.

MS SEALEY: After you were released Mr Zimo, you then made some enquiries about what happened to the vehicles that were used, the vehicles that you had stolen for the assassination. What were you told?

MR ZIMO: I was told that they had used the Cressida when they were assassinating Sam Ntuli, whom they shot at Khumalo's Street and then they burnt the Cressida thereafter.

I was just thankful that I had not participated in this event.

MS SEALEY: Mr Zimo, is there anything else that you would like to tell us in regard to the Ntuli matter or have we covered everything, your knowledge, of the Ntuli matter?

MR ZIMO: I don't know of any other thing, except for what I have already explained here.

MS SEALEY: Mr Zimo the next matter I would like to question you on, is the attack on the Mahlala Store in Thokoza.

Perhaps you could just explain to us your involvement in that and the reason for the attack on the Mahlala Store, the shop that is in Thokoza.

MR ZIMO: The Mahlala shop is nearby my home. Khumalo, Mbekelele and Mzwaki and Zweli, they actually did not appreciate

to see people standing in crowds or outside the shop. I don't know what had happened on that day, but he told me that a van was required, a white van. I am not sure how to explain this, but on that day Khumalo issued an instruction that his opponents were at Mahlala's Supermarket and he was not of the idea that people should be standing outside the shop because there was war in the location.

A white Toyota HiLux van with registration number YBX which had also been stolen from Alberton, was taken. Mzwaki, Mbekelele and Khumalo as well as Nicholas Jamani got onto that van and it was decided that the supermarket was going to be attacked.

We left Khumalo's house in Mdagane, we proceeded to Madondo Street. On nearing the bar, I was told to remain and proceed to Nyatsi Street. I went into Tsabalala Street and parked in Nyatsi Street and they proceeded to the (indistinct). I thereafter heard gunshots. They returned and they got onto the van and then we proceeded to the hostel in Kutuza and got into Mbekelele's Khumalo's house. Mbekelele and myself as well as the others went to Mahlala Shopping Centre.

Khumalo then said that people from Phola Park had done this deed. There was nothing that I could do about that. People actually asked him who was responsible for the shooting, and he said it was the ANC gang.

The injured people were taken to hospital and we also left the scene and went to Mbekelele's house.

MS SEALEY: Mr Zimo, you are saying that after the attack on the Mahlala Store, Mr Khumalo and everybody left and then they came back later, and then told people on the scene that this in fact, they were actually attacked by people from Phola Park, is that correct?

MR ZIMO: Yes, that is correct.

MS SEALEY: Mr Zimo, I would also like to ask you about an incident that happened in 1992 and that is the ...

CHAIRPERSON: Can I just ask a question, a follow on. When you say they left, did they leave the township and if they did so, for how long were they away?

MR ZIMO: I do not quite understand the question, can you please repeat?

CHAIRPERSON: I understand your evidence to be that after the attack, Khumalo and the other people whom you have mentioned, left and they came back and when they came back they said this attack had come or had emanated from Phola Park, suggesting that it was by others, other than IFP aligned people.

Now, when you say they left, how long did they leave, was it a day or hours or did they come back the same day to say that...

MR ZIMO: After the attack, the Madondo Street and Khumalo Streets are close, are nearby and Mbekelele stayed in Khumalo Street and it wasn't a long distance from the scene.

We actually left the van at Duduza and returned to the supermarket.

MS SEROKE: Would it have taken them maybe an hour or more or less than an hour?

MR ZIMO: About 15 minutes.

MS SEALEY: Mr Zimo, if I can perhaps ask you about an incident that happened in 1992 and that is the shooting of Vusi Tsabalala.

Firstly, did you know who Vusi Tsabalala was at that time?

MR ZIMO: I knew Vusi at the time. We grew up together. Vusi continued schooling whilst I did not. I went into the driving business.

After a while he launched an ANC branch in our street. As time went on, we also in the Section supported the ANC, but I am not sure how that emanated, but I think now that Khumalo and them were responsible for initiating the violence in Thokoza.

When Sam Ntuli died, Vusi was supposed to take up his position. Khumalo and his gang and others who were high in authority were not of the idea that Vusi should take up this position, they were against this.

They then decided that Vusi should be killed. There were a lot of people in Thokoza who were involved in this and the Town Council, some people were also involved because Vusi was initially from the Town Council of Thokoza. He actually got out of that building, Khumalo came to me and told me that I should stand outside the Town Council.

When Vusi emerged from the Town Council, he talked to me and asked me when I had been released from prison. I could not tell him that he shouldn't get onto the taxi. Vusi got into the taxi. There was a car behind me and when he tried to pay, I said he shouldn't pay. When he got off the taxi, Mbekelele's van chased him and I proceeded to Thabazimbi.

On my return, I found out that they had shot Vusi.

CHAIRPERSON: Dr Randera?

DR RANDERA: Mr Zimo, let me just get some clarification here. When Ms Sealey asked you in the beginning where you met Mr Khumalo you said you met him in Nqutu right, that you worked for him there and then you came to Thokoza, and now you are telling us that you grew up with Vusi Tsabalala.

Were you born in the East Rand yourself and then went to KwaZulu Natal or did you grow up in KwaZulu Natal?

MR ZIMO: There was an area when I explained before, when Khumalo opened his driving school I was here in Thokoza and he

told me that I should go and become a Driving Instructor in Nqutu. He spoke to my parents about this and they agreed.

We left the East Rand with my belongings and went to Nqutu.

DR RANDERA: Thank you, that clarifies that. Now my other question is that you keep talking about his gang, Mr Khumalo's gang. Were you not part of that gang yourself?

MR ZIMO: At the Khumalo homestead, there would be a lot of people, his gang in the house. Because I would come to the house to bring the day's takings from the taxi business and they would all be there, carrying guns. I was not part of the gang as such.

DR RANDERA: Sorry Mr Zimo, just clarify for me, earlier on when you were asked about Mr Sam Ntuli, you were asked who was in the house okay, and you remembered everybody's name and you were part of that group that talked about the killing of somebody.

Were you only included in those discussions because you were a driver, because that is what I want to understand, here is discussions going on about killing somebody. You are telling us that you are not part of the gang, that you are a driver, but yet you are part of the planning that takes place when somebody else's life is being discussed.

The same applies with Vusi Tsabalala, you were present when these discussions took place. Again, were you there just as a sort of innocent driver or were you part of the gang? I mean you go into the Ngema Tavern with AK47's and you say, you shoot a television set, but people died in that Tavern, did they not?

Were you part of the gang or were you not part of the gang?

MR ZIMO: I was not part of the gang that killed people. I was surprised when they actually mentioned or involved me in this business. I was afraid of them, when they asked me to do something, I would do it. Also because of the fact that they were not arrested, they would not be charged, people would report cases at the Thokoza police station, but these were never pursued, so if they told me to do something, I would do it because I was also afraid, scared and when I grew up, I respected Mr Khumalo. I did not know that he would later on involve me in such matters.

MS SEROKE: In other words, you did not view yourself as a killer, you were not part of the gang but just a driver who was trusted, that when something was being planned, you would also be present?

MR ZIMO: Yes, that is how I will put it because in many instances they would involve me, but I was not really a part.

When they told me something, I would not refute it because I knew the kind of people they were. There was nothing that I could say. I was told to stop driving the taxi by some people in the township, but if I were to stop they will assume that there was something that I was up to.

On one particular instance, I refused to drive the kombi. On that same evening the kombi was burnt down and I was suspected of being involved in that business and I told them that I wasn't involved in the burning down of the kombi, but nevertheless I was suspected of being involved in that incident.

MS SEROKE: In Khumalo's opinion, you were part of the gang, is that not so?

MR ZIMO: I think he assumed that he would use me because he knew about my family and he knew that they would not say anything as I also explained to my family that my situation was now dangerous. I was at risk. My mother told me not to run away because if I did, they would be after me and hunt me down.

Because I had a family, my own children and my wife, if I had run away, they could come and attack my family, so I did not run away.

CHAIRPERSON: Dr Randera?

DR RANDERA: Mr Zimo, just clarify one more thing for me before you go on.

Twice now, or maybe even three times when you have talked about Mr Ntuli and Mr Tsabalala and the reason why he was removed, you have talked about how Mr Khumalo thought or felt the reason for taking him out was to, because he was planning stay away's and therefore preventing, at least that is what I understood you implied, preventing Mr Khumalo from doing his business.

Is that what you are meaning that it was really because it was an obstacle to Mr Khumalo's business that Mr Ntuli and Mr Tsabalala were killed, that it had nothing to do with the political conflict between the ANC and the IFP?

MR ZIMO: In our area there were only IFP people residing there. If you were an ANC member you would be killed or you would have to leave the area.

If you left the area, your house would either be occupied by them. Vusi and Sam Ntuli had a political conflict with him because they had complained about paying rent as well as a lot of other issues that they had talked about.

The marches, stay away's, were organised by Sam Ntuli, but I was never involved in those things, I did not care about them.

DR RANDERA: Thank you.

CHAIRPERSON: Before you proceed, Mr Zimo, I indicated at the beginning of the proceedings that the purpose of this

proceedings is to gather information from you. I would like you in fairness to you, to regard whatever you say here as evidence.

Evidence that is given under oath and therefore is valid evidence that will be challenged by others about whom you are talking here, evidence in relation to which they would take issue with some of the things you say. If for instance they are of the view that you are trying to white wash yourself at their expense, and evidence in the end, all of which will be made available to the Amnesty Committee, when they consider the evidence which will be placed before that Committee as and when your amnesty application will be considered.

It is therefore important that you should bear this in mind. I am not the one being legally represented as you are, to tell you how you should give your evidence. I hear what you say, I hear even the reasons why you say, as I understand you, you were a reluctant member of that gang, but I would simply say you must take into account that your evidence which you depose to here, will be looked into by members of the Amnesty Committee, when your amnesty application comes for consideration.

Therefore you may well be advised that you should also endeavour to give evidence that will be understood by the Amnesty Committee, from the point of view of making ... (tape ends) ... and the way to do it would be for them to understand why for instance if as you claim, you were not a member of this

SECTION 29 HEARING

TRC/GAUTENG

gang, but somebody who just went around, you are involved in the planning of murders, in the execution of murders and you come back and the next time there is a murder, you are also there, you are not just a driver, you actually carry firearms with you like when you were carrying this AK47, springs get lost, you shoot things and whatever. All of that, is not the conduct of a person who is just a bystander, but I hear your explanations. I just wanted you to have that at the back of your mind.

Sally?

MS SEALEY: Mr Zimo, if I can just go back just ask you a few more questions on the Vusi Tsabalala murder.

Who is the person, you say in a statement that you made when you were in Zonderwater prison, which you made to the Detectives about Sam Ntuli's murder, you also mentioned in that statement something about Vusi Tsabalala.

You mentioned that Obet Gadebe came to fetch you at Mbekiseni's house. Who is Obet Gadebe?

MR ZIMO: He is one of the people who are here this morning. He is the one working at the Thokoza Town Council.

MS SEALEY: Is it Obet Gadebe that came to fetch you on that day at Mbekiseni Khumalo's house? On the day that Vusi was killed?

MR ZIMO: If I still remember very well, he used to have a brown Honda Ballade. This is the vehicle that he parked at the Thokoza Town Council premises.

MS SEALEY: When Mr Gadebe came to Mbekiseni's house, what did he tell you about Vusi, was it then that you made a plan that Vusi was going to be killed, or did you know about the plan to kill Vusi, Mr Tsabalala?

MR ZIMO: Yes, I knew about the plot to kill Vusi. I also knew the people, as I explained before the Committee here, that it was difficult for me to tell a person what was going to happen, because if you were to divulge a plan, the person would actually go to the people and tell them that you are the one that informed him about the plot to kill him.

CHAIRPERSON: Has your question been answered?

MS SEALEY: No.

CHAIRPERSON: Please answer the question Mr Zimo, and please Sally insist on your questions being answered when they are not answered.

The first question to you was, was it Gadebe who came to fetch you before the whole discussion of Vusi Tsabalala's killing?

The first question is about fetching, was it Obet, not whether he was travelling in a brown Ballade, or whatever, was it Obet Gadebe who came to you to fetch you?

MR ZIMO: Yes, that is correct.

CHAIRPERSON: The second question is, when he came there, had you known about the plan to murder Vusi Tsabalala or was it discussed only after he had come to fetch you?

MR ZIMO: I already knew about the plot to kill Vusi Tsabalala and following an instruction, I was instructed as to what to do. I did what I did, because I was afraid of these people.

CHAIRPERSON: In order to register properly, shall we say this, I think we have put on the table the question of why you were part of that gang, why you did the things that you did, and we are not even giving judgement as to whether it is acceptable or not, you were afraid of them, you were part of them. I think now just concentrate on what happened.

We are accepting the background, you were there, whether or not you regarded yourself as part of the gang or not, that is immaterial for purposes, I think now, so that the thing can be streamlined, just tell us facts. This happened, this did not happen, I know this, I didn't know about this.

Sally?

MS SEALEY: You say that Mr, you knew about the plan beforehand to kill Mr Tsabalala. What was your role, what did you have to do, what was your part in the assassination of Mr Tsabalala, what did you personally have to do?

MR ZIMO: My part was to get him into the taxi, they knew where he was going to alight and I was supposed to drop him at

Ndebele Section and they were to shoot him shortly after he had alighted from the taxi.

MR NDLOSI: Mr Zimo, you said they came to fetch you from the taxi rank and did not clarify who came to fetch you from the taxi rank on the day of the murder of Vusi Tsabalala and also you said to us there were people who were travelling with another vehicle, I think you said it was a van, following you after you have taken Mr Vusi Tsabalala and then you didn't mention all their names. You said it was Khumalo, Mbekelele and so on.

Could you clarify that point for us please?

MR ZIMO: There were other people involved here, it was Obet Gadebe, Mbekelele Khumalo, Mbekiseni Khumalo and Tulani Malaba.

CHAIRPERSON: Mkatshu, was he there also?

MR ZIMO: Yes, he was also involved. Just a moment Mr Chairperson, there is something that I would like to explain here before this Commission. The discovery that we wanted to apply for amnesty, Mr Mzizi came to the TRC, they strongly reprimanded me and they threatened to kill me about these revelations and Mr Mzizi told the Sun City authorities to transfer me to another prison.

Since then, I was not at ease. That is why sometimes I am not in the position to divulge the names of all the people who

were involved, because I was not at ease when they came to the prison.

CHAIRPERSON: I think we are taking note of that and we will take note of that Mr Zimo. Dr Randera?

DR RANDERA: Chairperson, I wondered just for the record, whether Mr Zimo could tell us the full names of Mr Mzizi and who is this Mr Mzizi that he is talking about.

MR ZIMO: Abraham Mzizi and Nqunu, I don't know his name, he is an induna at the hostel in charge of the Penduga area. They went to my home and told people that the IFP people wanted to kill me in prison so that authorities were requested to take me to the Cullinan prison.

They indicated that they did not like the TRC, we should not dare go to the TRC. First of all, we phoned Mr Mzizi and indicated to him that we had a problem, we wanted to see him, so he came to the Johannesburg prison. We explained to him what problems we had and indicated to him that since I was arrested, nobody came to pay me a visit.

He said we should not apply for amnesty at the TRC because they were not in agreement with the TRC, they were going to bring their own forms which we would have to fill in and that took a very long time, and they did not come as promised. They did not come as promised. Mr Mzizi gave us about R100-00 and say we should not say anything.

I conferred with Tulani Malaba in prison about this and I indicated that my decision is that I am going to invite the press and tell them about the problem that we had. They came for the second time, and he was in the company of Nqunu and they still continued to say that they did not like the idea of the TRC, we are going to die and the IFP people are going to kill us, and they went to my family and said the same thing.

I said, I am serving a sentence here for nothing, I did not kill a person, I know nothing.

MS SEROKE: Who is Abraham Mzizi, what is his position in the community?

CHAIRPERSON: Mr Zimo, I want to assure you that the Commission will leave no stone unturned to make sure that we intervene in the process of your intimidation by others.

If needs be, we will have to look into the whole question of your protection. I would ask you specifically to give full instructions to your lawyer about this aspect and that the lawyer must communicate with us during the course of these following two, three days, so that we can take this matter with the highest authorities possibly in this country. We cannot have people in parliament, making laws when they act like thugs during the night and as lawmakers during the day.

Please therefore confer with your Attorney, give him full instruction on this aspect and I can promise you, we will leave no

stone unturned to make sure that you are protected, but what is more, that those who are engaged in this process, cannot pretend to be part of a decent and civilized society.

MR ZIMO: Thank you very much Mr Ntsebeza.

MR NDLOSI: Mr Zimo, with the Commission allaying your fears then, could you now clarify the names of the people who were present, the first question is who were the people who came to you at the taxi rank and told you to go and pick up Mr Vusi Tsabalala and the second one, who are the people you were with in the kombi, the third one, who were the people following you, they were using another vehicle. I just want the names of those people, thank you?

MR ZIMO: People who are implicated here, are the people involved in the same Sam case. Their names as Mbekelele Khumalo, Mbekiseni Khumalo, Mzwaki Khumalo, Albert Mkatshu, Obet Gadebe, he resides in Dawn Park.

CHAIRPERSON: Now, you are asking who are those who fetched you, who are those who travelled with you in the car and who are those who followed in the car that was following the car in which you were travelling.

If you are able to firstly, who came to fetch you? Who travelled with you in the car, in the kombi and who were those that were in the other car that was following the kombi, if you are able to remember?

MR ZIMO: There were two cars, the Honda Ballade, belonging to Obet Gadebe and a van, that is Khumalo's van.

People in the Honda Ballade was Obet Gadebe, Albert Mkatshu and in the van were Mbekelele Khumalo, Mbekiseni Khumalo and Mzwaki Khumalo. In the kombi it was myself and Tulani Malaba.

MR NDLOSI: Earlier on you said that Mr Khumalo was receiving orders from above. Could you please mention people who were giving Mr Khumalo instructions or other orders to actually complete those missions?

MR ZIMO: Everything that they did, that is Khumalo and his brother and others, they received orders from Ms Gertrude Mzizi and Abraham Mzizi.

MR NDLOSI: With the first incident of Ngema, you say that it was unclear to us that you went with Khumalo to Ngema or you only went with Tulani to Ngema because you mentioned Zweli Tsamane and others at a later stage, when you were getting out of the house, if I am not mistaken.

Were those people with you when you went to Ngema or were they behind, did they follow after, what is the story there?

MR ZIMO: After the instructions were issued that people should be killed at Ngema in a Tavern, it was indicated that Tulani knows the place, that he pointed out earlier on during the day and it was said that we should be careful because they are armed.

We then went there, myself, Thembinkosi Buthelezi who was not found when we were arrested, and Nicholas Jamani and Tulani Malaba, the four of us. We then went to Ngema and we did not go straight to Ngema because we first went to Bashine's place and he too was also involved in our case, but it was later on set aside.

We were instructed to carry our guns carefully. Khumalo's instruction was that we should shoot everybody because these people were dangerous. I was surprised because when we went to Ngema, there were people drinking and they were not armed as according to Mr Khumalo.

I tried to get into the house and on getting into the house, I discovered children and women and I shot, there was not need to shoot at the time.

MR NDLOSI: You also mentioned that after the incident of Ngema, you saw that Khumalo was a bad man and you decided to go back to Natal, if I am not mistaken and there is a person who was working for Mr Khumalo, who was also a driver and then you left with that person. How did you come back again?

MR ZIMO: Are you referring to that same day?

MR NDLOSI: I think you were talking about the fact that after having realised that Mr Khumalo was a bad person, then you left in the company of another man to Natal.

MR ZIMO: I didn't say that we went to Natal. In stead there was this one guy who was leaving Khumalo's place, going to Mbekelele Khumalo on the other street.

MR NDLOSI: Thank you.

MS SEROKE: (no translation)

MR GAMPE: If I may clarify Mr Chairman, I think what Mr Zimo said was because of that incident, he wanted to run away but he was scared that people would follow him.

CHAIRPERSON: Yes, that is how I understood the evidence as well, thank you for the clarification Mr Gampe.

MR ZIMO: The following day there was to be a funeral. Mr Khumalo's wife was to be buried. I had told myself that I was not going to attend the funeral and announcements were made that everybody residing in Penduga had to go to the funeral, failing which the entire family would be wiped out.

They had said that Mr Khumalo's wife should not be buried alone, but should be buried with other women in our Section. I decided to go to the funeral because of that. People were shot in the street, on the way to the funeral.

MR NDLOSI: In a view of trying to get other members of the gang, you also mentioned Thembinkosi Buthelezi, Bashine Sambo and also Mbulale Mbisa, something like that, were they members of the same grouping as you or not?

MR ZIMO: Bashine Sambo was a person who involved us in this matter and he said he was going to accompany us. Sis Toto, I don't know her surname, but she also comes from Thokoza, they once organised a march in the township in 1992, the march was organised against Mr Khumalo complaining about him shooting his children for no apparent reason.

Mr Khumalo did not take well to this matter and he started saying that Sis Toto should be shot. Mr Mblalu Mbiza's in-law, brother-in-law was also involved here, I think his name is Makibela Sebeko.

MR NDLOSI: Mr Zimo, thank you Mr Zimo. I also wanted to know as to whether you still remember the names of the other people who would at the time of going to kill people, or abduct people, who were they? I am referring to people that you regarded as members of the group?

MR ZIMO: There were people like Peter, Cupano, Benini, Fanelo, these are people who were Mr Khumalo's neighbours. People like Cupano, Benini and the others. I do not quite remember the names of the others.

Some came from right inside the hostel, people like Manlakwe Mbatha and Zweli, Nicholas Jamani, these were not township residents. They were asked at a meeting at the hostel, they were instructed to go to Mr Khumalo was going to give them instructions.

MR NDLOSI: In the Sam Ntuli case, you have also explained that you were told that if you see him, you should report, who told you that?

MR ZIMO: Everybody, including Mbekiseni Khumalo, Obet Gadebe. These were people who were very proud of having involved themselves in the case of Sam Ntuli in the township.

MR NDLOSI: One other thing that you have indicated here is that in the meeting that was held when the planning was to take place to kill Mr Ntuli, you say here Mbekelele, Mbekiseni, (indistinct), Obet, Tulani, Nicholas were also present. Are these the only people who were present or were there others whom you cannot remember or whom you are afraid of mentioning their names?

MR ZIMO: As I have explained that I have not divulged certain names because of the problems that I have already indicated.

Meetings that were held to discuss Sam Ntuli, were held in different places. Gertrude Mzizi and Mr Mzizi himself would come together and often times we would hold meetings at Mr Mzizi's place. When people from their organisation was arrested, money was organised from those meetings at his place.

CHAIRPERSON: Can I just indicate that we should take a lunch break now and resume at two o'clock. We will adjourn until two and there will be lunch that is served.

I understand it is lunch time.

COMMITTEE ADJOURNSON RESUMPTION:

CHAIRPERSON: Thank you Mr Friedrich?

MR FRIEDRICH: Mr Chairman, I am available, we can go ahead. I would just like to place on record, should any piece of documentation be placed before any of my clients, I would like to have some time to discuss it before they answer the questions.

CHAIRPERSON: Ms Van der Westhuizen?

MS VAN DER WESTHUIZEN: Mr Chairman, we managed to get hold of a certain Mr Peter Hall at the Legal Aid offices with whom we discussed the fees.

He however said that we must formally apply, which we did, we obtained also the TRC's assistance in that regard. We have not yet received anything formal back from the Legal Aid Board, but on the basis of what Mr Hall told my office earlier this morning, I am prepared to continue this afternoon.

CHAIRPERSON: Mr Madasa, what is your position?

MR MADASA: I am ready to proceed Mr Chair.

CHAIRPERSON: I see. Sally, do you have an indication how long we are going to have with Mr Gampe's witnesses or clients?

MS SEALEY: At least another 30 minutes with Mr Zimo and Mr Gampe is only representing Mr Zimo.

CHAIRPERSON: Mr Zimo only?

MS SEALEY: Yes.

CHAIRPERSON: And do we have - whose clients next you would like to call because in view of everything that has been said, I was of the view that if we know more or less how many and who we are going to deal with, then we should release the others for purposes of them going to do thorough, more thorough consultation so that we can proceed only with the people that we, that have to be here for purposes of taking evidence from them.

MS SEALEY: After we have finished with Mr Zimo, we would like to call Tulani Malaba and that is Mr Madasa's client, and then we would then, tomorrow we would like, we have actually set out a schedule which we have actually given to the legal representatives, and we would then, the only problem is that today we expected to deal with four people, but due to what has been happening, I suspect that we will only manage to deal with the two.

CHAIRPERSON: Are you saying, when are you intending to - how late are you intending to sit?

MS SEALEY: I think that is basically up to how long the Commissioners would like to sit here, I think we would like to get a decision.

CHAIRPERSON: Well, I would like us to sit as long as we have to, certainly we would like to sit until five o'clock so that we can deal with as many people as we can.

MS SEALEY: In that case I think then possibly we can possible also either deal with, if we have finished with Mr Malaba, the next two people on the list are Mr Jamani and Mr Manlakwe Mbatha. Those were the original people which we had set down for Wednesday.

And then for tomorrow ...

CHAIRPERSON: No, I am interested in only today for the moment, because I would like to release, to be able to say those who need not be here, because you already are dealing with matters and you would be able to deal with matters, not necessarily in terms of your schedule but certainly for the greater part thereof, then they should be released.

Mr Friedrich and Ms Van der Westhuizen, in view of the leader of evidence's input to you, do you wish to say anything?

Mr Madasa, you are ready to proceed?

I am just thinking that it would not be in the best interest of any legal representatives to sit and wait a turn which might not come, when realistically we know that this is how far we can go.

MR FRIEDRICH: I have just got one point of concern Mr Chairman, and that is should any evidence be led whilst myself or Ms Van der Westhuizen is not present, and it may implicate any of our clients, what the position might be then.

CHAIRPERSON: You see, the provision for Section 29's is that if during an investigation which is what this is, or a hearing, a

client is implicated, then before a finding can be made, to the detriment of that client that is what Section 30 says, then an opportunity is given to the implicated person, either to make return representations or to recall the particular witness for purposes of cross-examination which in terms of the Act, will be limited cross-examination.

So, there is provision, it would be a different thing if this was a public hearing held in terms of Section 29, in other words where people were subpoenaed to attend because Section 29 provides for people to be subpoenaed as witnesses to attend.

But then it was a public enquiry because the law, and certainly administrative law rule considerations are that you cannot allow that sort of prejudice to go untested at the time that it is being made. This is a closed hearing, all the evidence you know, collected is confidential until the Commission releases it or decides to release it. It won't release it until an opportunity has been provided to those persons implicated to their detriment, especially in view of a finding that might be made.

MR FRIEDRICH: Thank you for clearing that up, thank you.

MS VAN DER WESTHUIZEN: Mr Chairman, if the evidence leader can just indicate, she mentions that Nicholas Jamani might follow after Mr Malaba, if I can just get an indication whether it might be today.

CHAIRPERSON: If we break at five, it obviously would be today, would that be?

MS SEALEY: I think there is a possibility of him being called today.

CHAIRPERSON: Are your offices in the vicinity?

MS VAN DER WESTHUIZEN: It is.

CHAIRPERSON: Are there (indistinct) offices that for instance you could find and establish say at half past three or at four o'clock whether or not your client is needed?

MS VAN DER WESTHUIZEN: Mr Chairman, I am actually very close by, but I would like in the mean time to take the opportunity to rather consult with my client.

CHAIRPERSON: To consult, excellent. Shall we then say for the purposes of how we are going to be dealing with the matter, all legal representatives and their clients, who do not have to be here because their particular clients are not being led in evidence are excused for all sorts of purposes, including consultation and that we will call evidence as and when we dispose of witnesses who are currently being examined?

I am indebted to all of you ladies and gentlemen.

THEMBA ZIMO: (still under oath)

CHAIRPERSON: George?

MR NDLOSI: Thank you Mr Chairperson. We stopped when we were requesting you to name all the people you considered to be members of Mr Khumalo's gang?

MR ZIMO: The ones that I know of was Peter, Cupano, Benini.

CHAIRPERSON: Can I just clear something, this gentlemen ...

MR NDLOSI: It is Mr Malaba.

CHAIRPERSON: Your client?

MR NDLOSI: Mr Madasa's client.

MR ZIMO: Peter, Cupano, Benini, Manual ...

CHAIRPERSON: Maybe I should first establish, I am sorry to intervene like this. Is your client comfortable that he should continue in Mr Malaba's presence.

MR GAMPE: May I just establish that Mr Chair.

CHAIRPERSON: If he feels that he should be alone, then the law allows that, Mr Malaba can come as and when the occasion arises for him to.

MR GAMPE: Thank you, can I speak to my client quickly off the record.

CHAIRPERSON: Yes.

MR GAMPE: Thank you Mr Chairman, Mr Zimo says he can proceed in the presence of Mr Malaba.

CHAIRPERSON: Very well.

MR ZIMO: The people involved in the Khumalo gang was Peter, Cupano, Benini. I have forgotten some of the names, but one of

them is Tammy Madlengisa as well as Fanuel as well as Mzwaki, Mzwaki, Jamani, Tulani Malaba, Mbekelele, those are the people I still remember.

MR NDLOSI: The Peter that you are talking about, Peter Spebo?

MR ZIMO: Yes, that is so.

MR NDLOSI: There is one other thing that we would like to know about Peter, does he have another name?

MR ZIMO: I only know that one of Peter.

MR NDLOSI: When you explained earlier about Mr Sam Ntuli's death, if I quote you correctly you said we took the vehicles, who else do you mean?

MR ZIMO: Tulani Malaba.

MR NDLOSI: Thank you.

MS SOOKA: Mr Zimo, I would just like to know when you were involved with Mr Khumalo, driving his taxi's, and then subsequent you became involved in some of the activities around the gang, for example the planning of Sam Ntuli's assassination and the shooting of Mr Tsabalala, were you ever paid for any of these incidents, were you ever paid for these kinds, for these incidents?

MR ZIMO: I received my normal salary as a driver. Sometimes I would not even get paid at all.

MS SOOKA: Mr Zimo, in the statement that is in the Sam Ntuli docket, the statement that you gave when you were still at

Zonderwater, you gave a statement in relation to the planning around Sam Ntuli's assassination, you also said that one of your tasks was that when you drove the taxi, to gather information for Mr Khumalo.

What type of information did you gather?

MR ZIMO: He had told me that if I go to the rank, I should inform him of who was talking about him, who was planning an attack on him.

I did not take this seriously because the entire community of Thokoza was dissatisfied about him.

MS SOOKA: So you never actually, you never reported back to him on any of the information you heard in the taxi's?

MR ZIMO: There would be rumours here and there about plots to kill him or to bomb his house and I would tell him that this is what people were saying.

Even school children were wanting to attack him, but they never carried out these threats.

MS SOOKA: But when Mr Khumalo heard these threats, did he then carry out attacks against the people that you mentioned to him?

MR ZIMO: I would not specify who said what because sometimes it would be passengers in the taxi, I would just tell him that certain passengers in a taxi said this and that and he will

certainly brush those off. At that time he had already started attacking people.

Sometimes I wouldn't know who he was attacking, because sometimes he, Mzwaki and Mbekelele would on their own, go and attack people in the night.

MS SEALEY: Mr Zimo, have you heard of cases for example where taxi drivers in Thokoza deliberately drove taxi's of passengers into the hostels, are you aware of any of those incidents?

MR ZIMO: Yes, I have heard of it. I is not what I heard really, but it is something that actually happened in the township, that there would be specific taxi's that would be chosen and they would be actually directed to go to the hostel.

MS SEALEY: Were you yourself ever involved in driving people into the hostel?

MR ZIMO: No, I have never taken anybody.

MS SEALEY: Mr Zimo, also in your statement that you made in regard to the Sam Ntuli assassination, you also mentioned that a certain police, you yourself witnessed a certain policeman hand over two firearms to Mr Khumalo, to Mbekiseni Khumalo. Do you remember that in your statement?

MR ZIMO: No, I don't remember.

CHAIRPERSON: You may not remember that you said that in your statement, but do you remember an incident in which a

person such as was named by the leader of evidence, was given firearms by a policeman, and if you know who that policeman is, who the policeman was?

Do you understand what I am saying? The question was do you remember mentioning that in your statement, and you said you don't remember and I understand you to be saying you don't remember you yourself mentioning it in your statement.

That doesn't mean that you don't know the event. I am interested and I am sure the leader of evidence would be interested to know, whether you recall an event now that it has been mentioned to you, an event in which a policeman gave firearms or a firearm to a person with the name of Khumalo? If so, when that happened, and who that policeman was who handed those firearms to this person, Khumalo?

MR ZIMO: I don't remember.

CHAIRPERSON: Mr Gampe?

MR GAMPE: Thank you Mr Chairman, I just wanted to know in which paragraph of the statement do you refer to that incident, Mr Chairman?

CHAIRPERSON: Sally?

MS SEALEY: I will give you the right paragraph, if you can just give me a minute.

Sorry Mr Zimo, I have actually made a mistake, it is actually when you were interviewed, do you recall when the TRC

investigators came to visit you at the prison. Do you remember a white man coming to visit you by the name of Mr Piers Pigou?

MR ZIMO: Yes, I remember.

MS SEALEY: According to a statement that Mr Pigou gave us, what he wrote up about what you said, he said that you had told him that you had some knowledge about a certain policeman who had given two firearms to Mr Khumalo.

MR ZIMO: I don't really remember.

MS SEALEY: Do you have any knowledge of where Mr Khumalo got his firearms from?

MR ZIMO: The firearms used by Mr Khumalo, I cannot really say where he received them from because I didn't know where he got them from.

MS SEALEY: Mr Zimo apart from the incidents that we have mentioned to you for example the Sam Ntuli assassination, the killing of Mr Tsabalala and the attack on the Mahlala Store and the Ngema Tavern, were there any other incidents that you yourself were involved in with Mr Khumalo and the rest of his gang?

MR ZIMO: No, there are none.

MS SEALEY: Mr Zimo, you were not, in your earlier evidence you mentioned that there were areas of Thokoza where if you didn't belong to the IFP, or if you were not Zulu speaking, you

were told to leave the area. Were you ever involved in forcing people out of their homes in the Thokoza area?

MR ZIMO: No.

MS SEALEY: Are you aware of people that were involved in that, for example are you aware whether Mr Khumalo was actually involved in forcing people out of their homes?

MR ZIMO: I only know of incidents where houses were burnt. If they burnt the house or they threw a hand grenade at the house, the person would be forced to flee.

In most instances people fled on their own accord.

CHAIRPERSON: When you say on their own accord, that is when they were either attacked with hand grenades or their houses were burnt? They were pressured to leave because their houses were either being burnt or they were being hand grenaded, is that what you are saying?

MR ZIMO: Mr Ntsebeza, people like Tami Madlengisa would be announcing over the speakers that if a person wasn't an IFP member, they would have to leave the area, otherwise they would burn their house or bomb the house.

Then people would leave because this actually did take place.

MS SEALEY: Mr Zimo, were you ever, for example there have been cases where the community was forced to pay money over to

the Khumalo's or even over to members of the IFP, were you ever involved in that?

MR ZIMO: Yes.

MS SEALEY: Can you tell us how that worked, how did you get money out of the community?

MR ZIMO: I was not the one responsible for doing this. People like Gertrude Mzizi and Khumalo would meet and issue an order that each household should pay R75-00 or R100-00 for IFP membership cards.

Some monies would be collected to bail some people out of jail and some would be collected to buy weaponry.

MS SEALEY: Mr Zimo, also when people, you say that people were often intimidated to leave their houses, what happened to the furniture and their belongings once they left the house?

MR ZIMO: If somebody had been chased out of the house, people will take that furniture from that household and actually take it and possess it.

MS SEALEY: Are you aware of Mr Khumalo collecting electrical goods and taking them to the pawn shop in Alberton?

MR ZIMO: Yes, things like television sets. Cupano, Peter and Tami Madlengisa would collect these and transport them in Mr Khumalo's house, and sell them to the pawn shop in Alberton.

MS SEALEY: Mr Zimo, I have just found the - previously I asked you about the, your knowledge about whether you had

witnessed a certain policeman giving firearms to Mr Mbekiseni Khumalo and I have just found the report, when you spoke to Mr Pigou who used to be an investigator with the TRC.

If I can just read you the portion of the report and then you can tell me whether you remember. It says Themba witnessed a certain Buthelezi from Nyoni Park, the Unrest and Violent Crime Unit, give two Z88's to Mr Mbekiseni Khumalo. Do you, does this help you to remember anything?

MR ZIMO: Yes, it does. I don't understand how Mr Piers put this. I told him about a van that had been shooting in Mahlala. I actually identified the van, the van was taken to the police station, but the following day the van was at Mr Khumalo's house again.

MS SEALEY: You are saying that you told Mr Pigou about a van and not about firearms, is that what you are saying?

MR ZIMO: I think he made an error when writing because the only thing that I mentioned about Buthelezi was that I informed them about the van that was responsible for the killing of the people in Mahlala.

MS SEALEY: Mr Zimo, were you a member of the IFP?

MR ZIMO: Because of the situation in the township, you could not not be a supporter. I paid membership fee, but I was never issued with a card, therefore I was assumed to be a member of the IFP.

MS SEALEY: Mr Zimo, if I can just go back on one aspect of your evidence in regard to Mr Sam Ntuli. Your evidence is that you gave the Khumalo's and the rest of the people at the meeting information as to where Mr Ntuli could be found.

Can you tell us what is your knowledge of a lady by the name of Ms Gugu Mzizi, what was her relationship to Sam and how did you know her?

MR ZIMO: Gugu Mzizi used to stay in 144 Mazimuwu Street, I was in 128 of the same street. She was Sam Ntuli's girlfriend.

Obet and Albert Mkatshu received information from Gugu, they would enquire about his whereabouts. They told me that they had used her to call him.

MS SEALEY: You are saying that Mr Gadebe and it is Mafulela, Mr Malaba, they told you that they had used Gugu to get information on Sam, is that correct?

MR ZIMO: Yes, that is correct. Another person who told me this, was Nicholas Jamani.

MS SEALEY: Do you have any idea what happened to Gugu Mzizi?

MR ZIMO: Yes, once I was in prison I got information that Gugu had been shot and died.

MS SEALEY: Do you have any idea as to who killed Gugu Mzizi?

MR ZIMO: The information that I have was that obviously the people who were using her actually, were the ones that must have or could have shot her.

MS SEALEY: But you yourself don't have any personal knowledge of her killing?

MR ZIMO: No, I don't have any knowledge.

MR NDLOSI: Mr Zimo, you have referred here to an incident where you spoke about the Sam issue, yourself and Nicholas. Would you please tell us what Nicholas told you about this matter?

MR ZIMO: Nicholas is a person who is not scared of talking. He takes pride in doing things like killing a person and talking about it.

MR NDLOSI: You have not answered me correctly. You did not tell me exactly what you discussed or what he told you about this incident, the Sam Ntuli incident?

MR ZIMO: After we were arrested, he told me that they shot Sam Ntuli and they are not troubled in the township any more.

MR NDLOSI: You have also spoken about that is in your statement in your docket, the Sam Ntuli statement, it transpires that you were given an instruction to monitor Mr Sam Ntuli and Gugu Mzizi. In which way were you supposed to monitor him?

MR ZIMO: This is what I have just explained, that they said I should report about his whereabouts and the places that he used to patronage for drinking.

I used to see him at Peter Twala's shibeen in Katlehong and I would go back to tell him that Sam is at that particular place, and when they went there for him, they would not find him.

MR NDLOSI: You have also indicated here that there is somebody who informed you about Gugu's death, who was that?

MR ZIMO: The person who informed me is my co-accused, Nicholas Jamani and my family also informed me that Gugu was shot, leaving behind a two month old baby.

MR NDLOSI: Did he not explain as to who killed her?

MR ZIMO: He told me that Inkabi, and these are the people going around shooting people.

MS SEALEY: Mr Zimo, if I could just ask you a couple more questions. What was Mr Khumalo's relationship with the police in Thokoza and with other police in the area, for example with the Murder and Robbery Unit and the police that were based at Nyoni Farm?

MR ZIMO: Let me explain here. With reference to the violence in Thokoza, it is known that the police there were fond of money, Khumalo had money. He used to give money to these people.

The residents of Nyoni Park would also bring some sacks filled with sand, to guard him against attackers. He had a

machine with which he made bullets in his homestead, he used to make the bullets himself and he would bribe the police.

MS SEALEY: Mr Zimo, when you were arrested for the attack on the Ngema Tavern, where were you arrested?

MR ZIMO: I was arrested at my place where I was sleeping.

MS SEALEY: After you were arrested, were you taken to Mr Khumalo's house or were you taken straight into custody?

MR ZIMO: Would you please repeat the question.

MS SEALEY: When you were requested, did the police immediately take you to the police station, or did they take you to point out other people or did they take you to the Khumalo house, what happened when you were arrested?

MR ZIMO: On arrest, Mr Malaba with police came and some members of the Brixton Branch also came, they knocked and the door was open and they indicated to them that they wanted me.

I was in my bedroom and they told me to put on my clothes, searched were conducted in the room, they didn't find anything. They took me into a kombi, that is where I found Nicholas Jamani. We then drove to Khumalo's place, they got into the house and they took Jamani, my co-accused and went to Mr Khumalo's next door, where they found some AK47's.

They found some bullets and guns at Mr Khumalo's place and they took us all including Mr Khumalo. They took us to

Benoni, at (indistinct), where we were locked up and we were called one by one from our cells.

Khumalo indicated to us that we were not going to say anything about him, because we know nothing, and that was my chance to make sure that he too is arrested.

I tried to indicate to the police that he is the one involved, seeing that guns were also found at his place, but we don't know how Mr Khumalo was let loose.

MS SEALEY: Was it only Mbekiseni Khumalo that was arrested, not Mzwaki or Mbekelele?

MR ZIMO: I think I must have forgotten to mention them, it was Mbekiseni, Mzwaki and Mbekelele.

MS SEALEY: So all three Khumalo's were arrested with you. What weapons were found in the Khumalo house?

MR ZIMO: They found AK47's and bullets and 303 and two Z38's.

MS SEALEY: Was that in Mr Khumalo's house or were the AK47's found in the neighbour's house?

MR ZIMO: These AK47's were found at the neighbours and the 303 and the Z38 together with a sack full of bullets were found in Mr Khumalo's house. These were confiscated and taken to Benoni.

One other person that we went for was Tulani Malaba Mkatshu who we didn't find at his place in Masingo Street.

MS SEALEY: Mr Zimo when you appeared in court, who appeared in court with you? Were any of the Khumalo's also in court with you when you appeared in court for this case?

MR ZIMO: Yes, they did appear in court on the same case. I include Mr Khumalo in my statement to the fact that he is the one who gave us guns to go and shoot at Ngema and he also instructed Tulani who was the one who knew where to take us, and I indicated to the Magistrate that I wanted to make a statement with him in Alberton, and the Chief Magistrate asked me verbally and he indicated to me that there was no need for me to make a statement with him, after which I heard police telling Mr Khumalo about what I was discussing with the Magistrate.

I tried to get hold of some people who were enlightened about this, asking them to assist me so that I could write a letter to the Attorney General, to state this case. We indeed wrote a letter, but after some time I was called to Benoni in connection with this very same letter.

Khumalo was informed about this letter that I wrote to the Attorney General, but I denied knowledge of any letter written to the Attorney General.

MS SEALEY: Eventually when the case was finished, it was yourself, Mr Tulani Malaba and Mr Jamani, you were the three people that were convicted for the Ngema Tavern incident, is that correct?

MR ZIMO: Yes, that is correct.

MR NDLOSI: Mr Zimo, in your statement you have also indicated that you were once arrested and incarcerated for 12 months. Why is it that when you were released, you did not go back to Nqutu?

MR ZIMO: Nqutu is not my home. I was taken by Mr Khumalo here at my place, Thokoza and taken to Nqutu where I was to assist him in his driving business, and after that he ran away with people's money, fled, and therefore I had to come back.

MR NDLOSI: Was there no any other place to which you could flee because in your statement you have indicated that on being released from prison, you went to Khumalo. Were there no other place to which you could flee?

MR ZIMO: There was no other place, because I left prison without money and the only thing that I can do, is driving. Those were the people who could help me find a job driving a taxi.

MS SEALEY: We have finished our questions, thank you.

CHAIRPERSON: Dr Randera, are there any questions that you would like to put to the witness?

DR RANDERA: Chairperson, can I just put a few questions to Mr Zimo.

CHAIRPERSON: Very well.

DR RANDERA: Mr Zimo, I just want to take you back to the advice that in fact the Chairperson gave you with regard to the

intimidation and threats that took place by Mr Mzizi and the other people who visited you in prison.

Somewhere in this file we have a newspaper clipping in fact, where you and I think Mr Malaba spoke to the City Press, you didn't mention the names in that article, but I think that takes us back to 1996. You have been in prison since 1996, has anything happened to you since that time, has anybody come to threaten you, have you been beaten up, any of those sort of things happen to you?

MR ZIMO: One of the problems that I also experienced is that on leaving Johannesburg, Mr Mzizi said they should take me to Zonderwater in Cullinan and after a few days, some people came and they said yes, they have learnt that I wanted to commit suicide, and they said to me actually as I was listening to that and thinking about it, the following day I learnt that another prisoner had hung himself in prison.

Mr Pigou also came to me and asked me about this, and I indicated to him that that was not my intention to kill myself, I know nothing about the intention to commit suicide.

DR RANDERA: No but, nothing, no harm has come to you in the last two years whilst you have been in prison, am I right or wrong? Since you made a statement to the newspapers?

MR ZIMO: A number of things happened.

DR RANDERA: Has any harm come to you Mr Zimo, yes or no?

MR ZIMO: Yes, that is correct, something did happen in many different ways, because Manlakwe himself at the time when Mzizi came to the prison, he said he did not apply for amnesty to the TRC, but I am the one who made the TRC application.

Mzizi then instructed them that they should kill me in prison. I therefore did not leave my cell. At night, I cannot remember exactly what date it was.

DR RANDERA: Mr Zimo, it is okay, I think you have covered my question. Can I go on to my next question.

This concerns Mrs Khumalo, the late Mrs Khumalo. We have, it is alleged that in fact Mr Khumalo himself was responsible for her death. Were you party to any discussions where you can throw some light on this or do you think it is the comrades, the ANC comrades who killed her?

MR ZIMO: One thing that I am certain of, is that Mzwaki's mother according to my knowledge was killed as a result of Mr Khumalo himself because Khumalo once said to myself and Malaba that we should kill Mzwaki's mother and I flatly refused. Tulani was not very pleased about this himself and after some time, Mzwaki's mother was taken to Tembisa, Mbekelele and Nicholas Jamani involved.

And after a short while we were told that Mzwaki's mother were killed, and rumours were spread the ANC comrades are the ones who abducted her from Tembisa and killed her.

DR RANDERA: So Mr Khumalo asked you to kill Mrs Khumalo at one stage?

MR ZIMO: Yes, that is correct.

DR RANDERA: I just want to move on Mr Zimo, again there is some allegation that in that period, 1991 to 1993 you have of course mentioned Mr and Mrs Mzizi but there is an allegation that Mr Themba Khoza brought weapons to Mr Khumalo's home and exchanged weapons with members of the gang. Do you have any recollection of that, or any real knowledge pertaining to that?

MR ZIMO: I heard about Themba Khoza's story when I came back from the taxi rank, where I saw Malaba parked at Mr Mzizi's house where guns were being distributed.

But I personally did not see that happen.

DR RANDERA: Mr Zimo, I want to just take you back to what the Chairperson said earlier on why we are having this enquiry, it is an investigation, so I hope you won't rule me out because in some ways these are, my next questions are fairly broad.

You have given us some information about how the gang was involved in both taxi violence as well as the killings that took place at the Tavern. Certainly in the two years of the life of the Commission, we have also had many other statements from that same period, concerning young women who were abducted and raped and also people who were killed on the trains, what we came to know as the train violence, the killings on the trains.

Do you have any personal knowledge of either of these situations?

MR ZIMO: No, I don't have any knowledge to that effect.

DR RANDERA: Thank you. My last question Chairperson, Mr Zimo, Ms Sealey asked you early on about the arrest, your arrest and also the arrest of the Khumalo's.

Clearly only certain people are sitting in prison and you are one of those people, where as other people are sitting outside prison, perhaps that makes you an angry person.

But my question is really related to the fact that you have made statements to the police, concerning these instructions that were given to you by Mr Khumalo and yet this person remains free. I am asking for a perception rather than fact here, can you give your idea as to why you think the Khumalo's are still free?

Is it just to do with money as you said, money and bribery as you mentioned earlier on? Are there other issues involved here?

MR ZIMO: I also got a shock because I understand that if a person gives you a gun with instructions to use it, on being arrested, the person who gave you the instructions, is the one who should be arrested first.

The Khumalo story really gave me a shock, he would be arrested earlier and released at around eleven or any time. I did not quite understand that. The very same case that landed us in

prison, is a case that directly implicated him. The Judge also wanted him in this case, but he didn't come up. That is why I am saying that he bribes the police.

DR RANDERA: Thank you.

CHAIRPERSON: Ms Seroke?

MS SEROKE: Mr Zimo, at the time, or should I say when it was said that you threatened to hang yourself in jail, did you perhaps see any ... (microphone off)

MR ZIMO: I discovered that Mr Mzizi went to my home to say that I wanted to kill myself. That was not my intention really, this also gave me a shock. They were spreading rumours that I wanted to kill myself, and that was not my intention.

I also indicated that I solve whatever problems I was facing, hanging was really not the alternative.

MS SEROKE: Did you not imply that Mr Mzizi had his own people in jail who would kill you and later on argue that you hanged yourself?

MR ZIMO: Yes, there were people, his people, people like Bekhi Caba, he is also involved in the death of Mr Khumalo's wife, he is in Boksburg prison now. Mr Mzizi used to visit him and tell him about my having applied for amnesty at the TRC and they are the ones who orchestrated the story that I wanted to hang myself.

MS SEROKE: At the time when Khumalo said that you and Mr Malaba should go and kill his wife, did he give you reasons as to why you should kill her?

MR ZIMO: I can explain here. Mzwaki's mother did not like the idea of what Mr Khumalo was doing.

She would literally shed tears and finally she said she was leaving Khumalo. One day he literally beat her in front of us and after that, he said Mzwaki's mother had all information about him, and this might land him in prison.

MS SEROKE: As he was saying that, what was Mzwaki doing when his father was saying that his mother should be killed, was he there?

MR ZIMO: Yes, Mzwaki was present, but really there is no difference between Mzwaki and his father. That is why people are also complaining about him in the township.

MS SEROKE: It also transpires that all of these people were working for Khumalo and they would use traditional medicine to make them strong and invincible. Did you ever see such a thing happening, did you ever see a person's body parts being amputated after being killed?

MR ZIMO: I did see such things happening, but I did not know where these body parts came from. It looks like Khumalo and his gang were using these parts to concoct medicine.

CHAIRPERSON: Thank you Ms Seroke. It remains for me to thank Mr Gampe and you particularly Mr Zimo, for having agreed and been willing in spite of everything else that you have indicated to us earlier on, to come and testify.

The nation is engaged in an experiment in terms of which we seek to heal the past, and the formula which the nation has adopted, is to endeavour to get to know and make known the motives and perspectives of persons who were involved for whatever reasons, in the perpetration of gross violations of human rights.

There is an assumption which the Commission in terms of its mandate has made, that that process for the very reason that it exposes the truth about our past, will cause our society to be always constant of this horrors and seek to find ways and means of making sure that these things should never happen in the future, and that our children should grow up now in a society that has been normalised and infused with a human rights culture, in which people can relate to each other as people.

So your willingness in spite of everything that has been done and said to you, by Mzizi and others, to come here, is something that I must commend and I am speaking on behalf of this Panel. I would hope that we should succeed also in making sure that your safety is guaranteed as well as that you are kept in

a correctional services facility, that is going to make your stay as comfortable as possible. Thank you. Ms Sealey?

MS SEALEY: Thank you. I think all that we need now is to call Mr Tulani Malaba as our next witness.

MR GAMPE: Can I be excused for now?

CHAIRPERSON: Mr Gampe, you are excused.

WITNESS EXCUSED.