

TRUTH AND RECONCILIATION COMMISSIONSECTION 29 - IN CAMERA

DATE: 28TH MAY 1998

NAME: MR MANDLAKE MBATHA

DAY 2

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CHAIRPERSON: I don't know whether the next witness is also represented by - have you indicated where and how you are going to accommodate Mr Frederich?

MS SEALEY: I have spoken to Mr Frederich. After we've called Mr Mbatha who is Miss van der Westhuizen's witness, the following witness will be Mr Peter Sebeko who is Mr Frederich's client.

CHAIRPERSON: Okay. Can we have progress please?

Mr Mandlake Mbatha, welcome. I just want to check  
whether the interpretation is getting through to your ears. Are you Mandlake Mbatha?

MR MBATHA: Yes, that is correct.

CHAIRPERSON: Okay. Before you testify I will ask Commissioner Sooka to swear you in.

MR MBATHA: I am Norman Mandlake Mbatha.

MS SOOKA: You may be seated.

MANDLAKE MBATHA: (sworn states)

MS VAN DER WESTHUIZEN: Mr Chairman, just before we begin with this witness I just wish to state that my initial reading

of the Act, I thought that or I was under the impression that if somebody applied for amnesty, that that amnesty application is actually confidential and that actually all questions relating to that amnesty application is reserved for when the person appears in his actual amnesty application. I stand to be corrected but that is what was my impression and which I also informed by my clients, and specifically Mr Mbatha although I did request him that if the Committee wants ask him questions he can answer but I just want to place that on record.

CHAIRPERSON: Thank you very much Madam van der Westhuizen. It is true that the contents of amnesty applications are confidential but that is why the Section 29 process is also a confidential one precisely because it is seeking to protect confidential information such as those as may be contained in amnesty applications.

As I indicated, part of the reason that the Investigative Unit hold investigative inquiries is to prepare for amnesty applications and as you will know the requirements for a successful application, one it is that a full disclosure must be made.

The Amnesty Committee relies on the Investigative Unit to provide it with a basis on which it can arrive at a conclusion that a full disclosure has been made. And therefore we do preliminary tests and the instrument we use is the process provided by Section 29, an *in camera* hearing, so that also the applicant in an

amnesty application should appreciate that full disclosure is necessary because once they come before us they are going to be asked to give evidence under oath and they commit themselves to a version.

If a version is therefore at variance with a version that they may give before the Amnesty Committee, the Amnesty Committee would be entitled to draw such adverse inferences as they may have to draw in the circumstances. So yes, the contents of his application are confidential but for purposes of a Section 29 ...[indistinct] whose entire evidence, if you look at Sub-Section 5 of Section 29, this information becomes confidential until the Commission decides to release it. And as I indicated it would never be released without resort to Section 30 where relevant enough ...[indistinct]

MS VAN DER WESTHUIZEN: Thank you Mr Chairman, that explains it for me.

CHAIRPERSON: Miss Sealey?

MS SEALEY: Good afternoon Mr Mbatha. Mr Mbatha, could you possibly explain to the Committee what your relationship is with Mr Khumalo, Mr Mbekiseni Khumalo, Mr Mzwaki Khumalo and Mr Mbekelele Khumalo?

MR MBATHA: I did not know them. I only got to know Khumalo on the day of his wife's funeral.

MS SEALEY: So the very first time that you met Mr Khumalo was on the 23rd of January 1993 when his wife Mrs Sebeth Khumalo was buried, is that correct?

MR MBATHA: Yes, that is correct.

MS SEALEY: Where did you meet him? Did you attend the funeral, is that where you met him?

MR MBATHA: Yes, that is correct. I had attended the funeral so as to see him as well. I only knew his surname but I did not know him.

MS SEALEY: Mr Mbatha, is it correct that you were then arrested on the day of Mrs Khumalo's funeral?

MR MBATHA: Yes, that is correct.

MS SEALEY: Could you possibly tell the Committee why you were arrested?

MR MBATHA: I would like to reserve answering that question because I had applied for amnesty in this regard.

CHAIRPERSON: Mr Mbatha, I appreciate that you might have been advised by your lawyer that you need not reply to questions which relate to your amnesty application. I however rule that the law permits us in an investigative inquiry of this nature to ask you questions even if they relate to your amnesty application. The ruling therefore is that you should answer all questions that are put to you, including questions that have relevance to your amnesty application. To be fair to you, let me draw your

attention to the provisions of Section 29 which provides for penalties and offences:

"Failure and/or refusal to reply to questions put to you during the course of an investigative inquiry such as this one is a criminal offence and is punishable on conviction by a period of imprisonment or a fine or such imprisonment and a fine"

In the circumstances I would urge you to reconsider your attitude. As I said the ruling is that you should reply to all questions including questions relevant to your amnesty application.

MR MBATHA: On the day of the Khumalo funeral I was arrested for killing Mr Segonjana.

MS SEALEY: Mr Mbatha, what were the circumstances surrounding the death of Mr Segonjana?

MR MBATHA: On that day when Mr Segonjana died we were on our way to the funeral to bury Mrs Khumalo and we were now in an ANC area. There was a group that blocked our way and a group of people fired at us. They shot at us and we tried some means of getting our way through, that is when I shot Mr Segonjana.

MS SEALEY: Mr Mbatha, when you were on your way to attending Mrs Khumalo's funeral, is it not true that the direct

route and the route that the funeral procession took to the graveyard was straight down Khumalo Street?

MR MBATHA: Yes, that is correct.

MS SEALEY: Then how do you explain the area in which Mr Segonjana was shot because that is not on Khumalo Street, it's actually in Extension one and it is at least two blocks away from the main Khumalo Street, so where - you said you encountered a crowd and you were in an ANC area, could you please explain how Mr Segonjana was part of that crowd that got shot when in actual fact if you were going to the funeral you would have been travelling down Khumalo Street and not in Extension one where the incident happened?

MR MBATHA: Mr Segonjana died after having left the houses at Khumalo Street and he went to the other side. And ourselves having been travelling in a vehicle, we drove faster so as to stop them ahead and as we took a turn we came across Segonjana in that area. I identified him as one of the people who had blocked our way to the funeral and then I shot him.

MS SEALEY: But at the time that you shot Mr Segonjana, was he armed?

MR MBATHA: Yes, he had a revolver.

MS SEALEY: Can you then explain the SADF and peace monitors were on the scene within seconds of the shooting and there was no revolver on the scene, can you explain that?

MR MBATHA: I have no assurance as to whether the police found a revolver on the scene or not. I left him with the revolver on the scene. I left the revolver behind, it was in his hand when I left. I don't know whether the police took it or not.

MS SEALEY: Mr Mbatha, when Mr Segonjana was shot, were you travelling in a vehicle or did you get out of the vehicle?

MR MBATHA: I got out of the vehicle, there were two of us, and I was the first one to get closer to him and I shot him and he delayed pulling his trigger and I shot him before he could.

MS SEALEY: Mr Mbatha, you are saying that Mr Segonjana was pointing a firearm at you when you actually at him? You managed to fire at him first if I understand you correctly.

MR MBATHA: Yes, that is correct.

MS SEALEY: Who else - you say two of you got out of the car, who was the second person that got out of the car with you?

MR MBATHA: It was David Numalo.

MS SEALEY: After you shot Mr Segonjana, what did you do then?

MR MBATHA: We went back into the car and drove away. We actually went back to Khumalo Street.

MS SEALEY: What happened once you were in Khumalo Street?

MR MBATHA: The one person who ...[intervention]

CHAIRPERSON: I'm sorry, can I just establish. Are you acting for him ...[indistinct]? I'm sorry, we may be falling foul of the

strict legal provisions. I think Section 29(5) makes it clear that only the witness and his or her legal representatives and members of the Commission need be present, I'm sorry.

MS SEALEY: I'll just repeat my question Mr Mbatha. I was just asking you what happened once you reached Khumalo Street?

MR MBATHA: When we got to Khumalo Street there was one car that was being pushed and it was one of the cars that was on its way to the funeral and the one driver that was in our vehicle got out and another one came in from the car that was being pushed.

As they were swopping cars and when this other person from the car being pushed came into our vehicle, that is when the police came and arrested us. I gave them my pistol when they arrested me and I also gave them my licence. And they found another two pistols from other people.

There is also one person more who they found in our vehicle and he did not realise that we were being arrested and he too was arrested, his name is Lucky Nkonza. He was not present when I shot at this person.

MS SEALEY: Mr Mbatha, you say that prior to the police stopping you, a car was stuck and your driver got out and another driver got in, who was the new driver that got into your car?

MR MBATHA: It was Bheki Klabi.



MS SEALEY: So at the time of the shooting of Mr Segonjana, Mr Bheki Klabu was not in the car, is that correct?

MR MBATHA: Yes, that is correct, he was not present.

MS SEALEY: The firearm that you used to shoot Mr Segonjana, was that a licensed firearm?

MR MBATHA: Yes, it was a licensed firearm.

MS SEALEY: Have you used this particular firearm, this licensed firearm of yours, have you used it in any incidences in Thokoza prior to this incident of the 23rd of January?

MR MBATHA: No, I had not used it before.

MS SEALEY: Have you ever borrowed this licensed firearm of yours to anybody else?

MR MBATHA: No, I had not borrowed it to anyone. If I went to work for example, I would leave it at home or in my locker should I say.

MS SEALEY: So the firearm, if it wasn't with you it was always locked in your locker somewhere, is that correct?

MR MBATHA: Yes, that is correct.

MS SEALEY: The reason I'm asking you those questions is that according to a ballistics report which was done by the investigating officer investigating a number of these cases related to the Khumalos, it would seem according to their ballistics report that the very same firearm that was used in the Segonjana killing has been positively linked, according to their ballistics

report, to other incidents in the township. What is your comment on that?

MR MBATHA: I am quite sure that I had not used it before but I don't know whether somebody may have had access to it in my locker. I was trying to raise money to buy myself a safe to keep the gun in. We have many lockers in the hostel, that is where I kept it. There are many of us in the hostel and therefore I would not be certain as to whether somebody else may have had a key and access to my locker so that they could use my gun but I had not seen anything thusfar.

MS SEALEY: The locker that you had at the hostel, what kind of lock was it, what kind of lock did it have on it?

MR MBATHA: It was just a small padlock.

MS SEALEY: You see what concerns me Mr Mbatha, is that for example on the 15th of January 1993 there was an incident in Mkwena Street in Thokoza where it is alleged a bakkie with unidentified men on the back drove along the street firing at pedestrians and as a result of this particular shooting a Mr Pule George Xobo and Mr Nxolisi Tango were both shot.

Mr Xobo unfortunately died during this incident and Mr Tango was shot in the side. Now according to the ballistics report, the bullet that they took out of Mr Xobo apparently matches your firearm, so I'm in a bit of a, if you say that he haven't actually used the firearm in any particular instance besides

the Segonjana incident, is there any explanation that you have as to how is it possible that the police managed to link this firearm to this incident?

MS VAN DER WESTHUIZEN: Mr Chairman, with all due respect, I think Mr Mbatha has already answered it just now, explaining about the locker and that maybe someone had access.

MS SEALEY: Mr Mbatha, it is then possible from your previous evidence then that somebody else could have taken the firearm from your locker and shot this person and then put the firearm back and you would have been unaware that it had been used, is that correct?

MR MBATHA: That is correct, it could have happened because there were over 10 people who stayed at the hostel.

MS SOOKA: Sorry, may I ask a question? Mr Mbatha, it's normal in terms of the use of firearms, that if you possess one the law actually requires that you yourself take responsibility for its safekeeping and as I understand it these things need to be locked up in gun safes. Now particularly in a situation like a hostel, are you telling me that all you did in terms of your own firearm is have that locked up in your locker?

MR MBATHA: Yes. If it was not on my person it would be in my locker. It would be possible that somebody may have taken it out of the locker and used it because even I myself did not trust

the locker. As I explained I was in the meantime trying to raise money to buy a safe.

MS SOOKA: Tell me, every single day, what is your practice when you lived in the hostel in terms of checking on your gun, did you go there every morning, did you pick up your gun, did you carry it with you, what time did you return it in the evening?

I'd like to know please.

MR MBATHA: I would check on it periodically if I wanted to check if it was still in the locker or not because there was no pressing need that I had identified, like an attack maybe at the hostel. There was nothing of the sort when I had the gun.

MS SOOKA: Were you ever questioned by the police in regard to the shooting of the persons, the two persons that Miss Sealey identified now?

MR MBATHA: The ones she was talking about where the bullets from my gun was linked?

MS SOOKA: Yes.

MR MBATHA: I have no knowledge. I once attended cases in Alberton but these were not pursued because they realised that I was not responsible.

MS SOOKA: Can you tell us a bit more about you once attended Alberton, were you subpoenaed, were you arrested, were you asked to come? Can you give us a little more information about these matters that you went to Alberton for?

MR MBATHA: I was told that my gun was linked. There was bullet that was supposedly linked to the scene, like my gun.

MS SOOKA: So, on what basis were taken to Alberton, did the police come and fetch you, did they serve a warrant on you or did they simply ask you to come to Court, can you tell us?

MS VAN DER WESTHUIZEN: Miss Madam, if I can just assist. If I'm not mistaken I think Mr Mbatha, he can clarify it. I think just think he was already in prison at that point in time.

MS SOOKA: I see. Could he answer that question then on the basis of your explanation?

MR MBATHA: They would fetch me from prison and take me to Alberton.

CHAIRPERSON: Miss Seroke?

MS SEROKE: You were in prison, did you leave your gun in the hostel?

MR MBATHA: The police already had it, they had confiscated it on the 23rd of January 1993.

CHAIRPERSON: Was it a licensed gun?

MR MBATHA: Yes.

MS SEALEY: Mr Mbatha, the incidences that I'm referring to where you say you don't have any knowledge, actually occurred in a two day period, on the 15th and the 16th of January 1993. I've already explained to you the first incident but the second incident also happened in Thokoza at 982 Ndebele Street and that is where

a certain gentlemen by the name of Supersonke Alebile was shot dead and again, according to the ballistics report the bullets that they removed from his body was connected to your firearm.

And also on the very same day there was an attack on the house of Thandi Mavuso who resided 815 Mdekane Street in Thokoza and during this particular incident Thandi Mavuso, one of her lodgers, Mr John Maluleka and her grandson Thumelo were all shot and one of the bullets that they found on the scene also matched your firearm.

Now I do understand that you are saying that you kept your firearm in the locker and anybody could have possibly had access to it but surely if you checked it from time to time, if a gun has been used, can you not tell that your firearm had been used?

MR MBATHA: I would not have been able to use that if the bullets that I had actually left in the gun were still there and I would not have used the gun for such purposes knowing that it was licensed. The people that you are mentioning are people that I do not know at all.

MR MBATHA: Mr Mbatha, why did you have a firearm in the first place? What made led you to purchase a, why did you apply for a licensed firearm, what was the reasons?

MR MBATHA: It was because we were attacked by ANC people and I decided that I should get a gun so that I could protect myself.

MS SEALEY: I think that's the point that I'd like to make, you bought a gun to protect yourself and yet it would seem that when you left the hostel you didn't take the firearm with you, you just left it in the locker. If you've purchased a firearm for your own protection, surely the best thing would be that when you leave the hostel that you would take the firearm with you in case you are attacked wherever you are going?

MR MBATHA: As I have already explained, I did not normally take it with me when I went out. I did not see a reason why I should always have it with me.

MS SEALEY: If that's the case Mr Mbatha, why would you take a firearm, you were attending a funeral, what would be the logic of taking a firearm to a funeral in that case if you didn't normally take it with you when you went out?

MR MBATHA: I had to carry to the funeral because I knew that as we were going to pass through an ANC area they might attack us because they had previously done this. In 1992 we were attacked by Mike Pama when we were going to a Uvusa rally.

CHAIRPERSON: Doctor Randera?

DR RANDERA: Mr Mbatha, can you just tell us, before your arrest in 1993, what was your work? I heard you say that you lived in the hostel, were you born in the East Rand, were you born in Thokoza or did you move to that area and once you moved there what was your work, what were you actually doing?

MR MBATHA: I was born in Nxutu. I came to Johannesburg because of work. I used to stay in Spruit in 1989 and 1990, I was in Klapo Section. I left the area for Thokoza because ANC people wanted to kill me. I had been informed by somebody that ANC members had held a meeting in the garage, that he had actually heard that the meeting had discussed my death because I was umZulu.

On the following morning, very early in the morning I fled in a car and went to Thokoza. I was welcome there and managed to stay there. In 1991, '92 and '93 I was staying in Thokoza.

DR RANDERA: So during those years did you have a job or were you doing some other work, in '92/'93.

MR MBATHA: I was working from 1986 until January 1993, right up until the time that I was arrested. I was working at Steiner Services.

DR RANDERA: Sorry, what services?

MR MBATHA: Steiner Services in Alrode.

DR RANDERA: I just want to come back to one point you made earlier on when you started, you said you did not know Mr Khumalo until the day of the funeral, I mean you had heard of him but you had no other link to him, is that right?

MR MBATHA: That is correct.

DR RANDERA: Thank you.

CHAIRPERSON: Do you have any further questions?



MS SEALEY: Mr Mbatha, you've just confirmed that the funeral was the very first time that you saw Mr Khumalo or that you'd met Mr Khumalo, so your reasoning for attending - what was your reason then for attending the funeral, was it because Mrs Khumalo was a high level IFP member or what was your reason for attending the funeral?

MR MBATHA: Mr Khumalo, I regarded him as a person in high authority in IFP which is the reason why I went to the funeral when the indunas told me that we should to the funeral.

MS SEALEY: So if I understand you correctly, the whole incident on the day of the funeral occurred due to the fact that there was a group of people who tried to prevent you or tried to block your way to the funeral, is that correct?

MR MBATHA: Can you please repeat the question?

MS SEALEY: On your way to Mrs Khumalo's funeral along Khumalo Street, you said there was a group of people of which Mr Segonjana was one of them who tried to prevent you from moving, well blocked your way on the road, is that correct?

MR MBATHA: That is correct.

MS SEALEY: So that is the reason for the shooting of Mr Segonjana, is that correct?

MR MBATHA: Yes, it was because they fired gunshots at us.

MS SEALEY: During the course of the funeral what car were you driving?

MR MBATHA: Initially I was walking on foot but at one section called Vergenoeg I had become tired and some people who were in a certain car said I could get in the car with them and I did so and we then proceeded. After a short distance, maybe about two or three minutes after I had got into the car this incident then occurred.

MS SEALEY: Could you possibly tell us if you remember what car that was? Do you remember the kind of car it was or the colour?

MR MBATHA: It was a red car.

MS SEALEY: The reason I'm asking you that Mr Mbatha is because you've clearly stated now that you only got into the car at Vergenoeg, because there are report from peace monitors that this particular car had been seen in the township earlier causing a number of problems. They weren't actually in the funeral procession but they were actually weaving in and out of the streets and allegedly intimidating people, so if we can just be very clear, you only got into the car at Vergenoeg, is that correct?

MR MBATHA: That is the truth.

MS SEALEY: If I could just ask you one more question I know you've already told us that you have no knowledge of these other incidents even though ballistics link your firearm to them. It's just the incident relating to the arson at Mrs Mavuso's house, that's in Indekani Street, you say you have absolutely no

knowledge of that particular incident but according to the police docket you are one of the people that they allegedly arrested for this incident, is this possibly the incident that you appeared in Alberton with? You were not the only person arrested, Peter Sebeko also known as Solomon Mbule and Mzwaki Khumalo and various other people were also arrested, is this perhaps the case you are referring to?

MR MBATHA: It is possible that it is these cases that you mention.

MS SEALEY: I have no further questions for this witness.

CHAIRPERSON: Any questions?

Mr Mbatha, I thank you for having come and we would hope that some of the answers that you have given us will assist us in trying to form a picture, specifically about all the things that were happening in the East Rand. You must understand our duty is a different one from that of the people who are responsible for your being in prison. There is a question that Miss Sooka wants to ask.

MS SOOKA: Can you tell me whether you regarded yourself as a member of the Khumalo gang?

MR MBATHA: I did not know of the Khumalo gang.

MS SOOKA: Are you aware of the fact that you are considered to one of the members of that gang?

MR MBATHA: They would actually be telling lies because I was not part of that gang. As I have explained, I first saw Mr Khumalo on the day of his wife's funeral.

MS SOOKA: Thank you.

CHAIRPERSON: Thank you Miss Sooka.

As I was saying Mr Mbatha, our function is not like the function of those who are responsible for your being in prison, quite the contrary in fact. Our function has the ironical consequence that we may actually get you out of prison if you have applied for amnesty in relation to the things for which you are in prison. The only requirement is that we should have a full disclosure of all the things for which a person applies for amnesty but then that is the function of another Committee, we are only assisting. We would hope that if you have any matters which you may think of between now and whenever which you think might assist us in our understanding those conflicts that resulted in so many lives being lost, resulted in you being in prison, you will find it possible in you to let us have the benefit of your information and knowledge so that we can continue to do our work in an effort to understand the past so that it should shape the future. As for now you are excused.

WITNESS EXCUSED