

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 57 01 MARCH 2013 PAGES 6081 TO 6134

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 01 MARCH 2013]
 2 [10:19] CHAIRPERSON: The Commission will resume.
 3 I take it your documents are now ready, are they?
 4 MR NGALWANA: Yes, thank you, Chair, and
 5 thanks for the indulgence.
 6 CHAIRPERSON: Alright, very well. Then
 7 we can commence. You're still under oath.
 8 MZOXOLO MAGIDIWANA (CONTD.): Yes.
 9 CHAIRPERSON: And you can continue now
 10 with your cross-examination.
 11 MR NGALWANA: Thank you, Chair. There
 12 was some doubt yesterday as regards whether the videos that
 13 we had shown had been discovered. I understand now that
 14 the evidence leaders can confirm that they have discovered
 15 and have been distributed to the parties.
 16 MS PILLAY: Chair, we can confirm that
 17 the videos were discovered by SAPS. Exhibit EEE5 is new
 18 material, 15 November 2012\New Stuff from SAPS for
 19 distribution121115\Videos Captain Nel 15 August\M2U00216
 20 and 217, and exhibit EEE6 is SAPS external hard
 21 drive\Videos\15 August 2012\034.mts, and these were all
 22 distributed at least by November last year.
 23 CHAIRPERSON: Thank you, Ms Pillay. Mr
 24 Ngalwana, you can now continue with your cross-examination.
 25 MR NGALWANA: Thank you, Chair. While

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1 we're still dealing with rat and mice, may I hand up some
 2 exhibits, Chairperson? These are photographs to which I
 3 shall refer. They have been taken pretty much from the
 4 video footages and converted into still photographs.
 5 CHAIRPERSON: If it can be given an
 6 exhibit number, what is the next exhibit number, Ms Pillay?
 7 MS PILLAY: Chair, I apologise, the two
 8 video clips are EEE4 and EEE5. So this bundle would be
 9 EEE6.
 10 CHAIRPERSON: Thank you. It's a bundle
 11 of photographs. I see there are eight photographs and
 12 they've been separately numbered, so it will be easy to
 13 refer to. Yes, please proceed.
 14 MR NGALWANA: Thank you, Chair.
 15 CHAIRPERSON: Well, maybe just wait for
 16 your learned friends to have their copies.
 17 CROSS-EXAMINATION BY MR NGALWANA (CONTD.):
 18 I take it everyone now has a copy of the exhibit. Mr
 19 Magidiwana, yesterday you were somewhat unsure as regards
 20 to identity of the person on the first photo. You see the
 21 front page of the exhibit that's just been handed to you?
 22 MR MAGIDIWANA: I can see it.
 23 MR NGALWANA: Are you now in a better
 24 position to confirm that that is indeed yourself?
 25 MR MAGIDIWANA: Yes, I can see it.

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1 MR NGALWANA: Yes, I know you can see it.
 2 Can you confirm that that is you?
 3 MR MAGIDIWANA: Yes.
 4 CHAIRPERSON: I just want to interpose, I
 5 made a mistake a minute ago. I said exhibit EEE consisted
 6 of eight marked photographs. It's actually nine. So I
 7 want to correct that. Yes, please proceed, Mr Ngalwana.
 8 I'm sorry about that interruption.
 9 MR NGALWANA: So the person in photo 1 of
 10 EEE6 is indeed yourself, Mr Magidiwana?
 11 MR MAGIDIWANA: Yes.
 12 MR NGALWANA: The police will lead
 13 evidence that that was taken on the 15th of August 2012,
 14 which was a Wednesday. Will you dispute that?
 15 MR MAGIDIWANA: I don't remember ever
 16 going there on the 15th.
 17 MR NGALWANA: Yes, I know you do not
 18 remember, but if someone else does remember, would you be
 19 in a position, or you wouldn't be in a position to dispute
 20 that?
 21 MR MAGIDIWANA: I wouldn't know that.
 22 MR NGALWANA: [Repeats question in Xhosa]
 23 MR HANABE: You say you don't remember
 24 whether you were there or not, isn't it? And the answer is
 25 yes.

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1 MR NGALWANA: [Speaks in Xhosa]
 2 MR HANABE: Someone will come here and
 3 testify and say that you were there on the 15th. That
 4 person remembers that. If then you don't remember and
 5 another person will come and say he remembers that, then
 6 you cannot dispute it when a person who was there says you
 7 were there on the 15th because you don't say you were not
 8 there. All you are saying is that you don't remember ever
 9 being there.
 10 MR MAGIDIWANA: I hear you.
 11 CHAIRPERSON: What is your answer to the
 12 point?
 13 MR MAGIDIWANA: I don't dispute what he's
 14 saying.
 15 MR NGALWANA: So we can take it that you
 16 were there on the 15th?
 17 MR MAGIDIWANA: I really don't remember
 18 on the 15th.
 19 MR NGALWANA: We know that; you've said
 20 that. [Speaks in Xhosa]
 21 MR HANABE: But you said you cannot
 22 dispute it if someone can come and say you were there on
 23 the 15th. Correct?
 24 MR MAGIDIWANA: It is so.
 25 CHAIRPERSON: The problem of course is

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1 the person hasn't come and said it yet. I mean he's
 2 entitled to say if someone comes and says it, I don't
 3 dispute it or I may not dispute it, but surely until that
 4 person has come and said it, then there's no admission that
 5 he makes that a witness who may not come, or may not
 6 withstand cross-examination when he does come, how can he
 7 be expected to admit something in those circumstances?
 8 MR NGALWANA: Yes, that is why I was
 9 careful to say the police will lead evidence to say –
 10 CHAIRPERSON: Yes, that's certainly how
 11 you put it, but what I'm saying to you is you can't then
 12 say he now admits he was there, in effect, because he does
 13 admit he was there. He says if you've got evidence that
 14 proves I was there, then I obviously won't be able to deny
 15 it, but further than that I don't think he takes it. But
 16 again I think you've made the point and it's more a matter
 17 for argument from now on, I think.
 18 MR NGALWANA: Thank you, Chairperson.
 19 May I direct your attention, Mr Magidiwana, to photos 2 and
 20 3 of the exhibit? Are you able to hazard a guess what date
 21 that was?
 22 MR MAGIDIWANA: These photos look like
 23 those of the 16th.
 24 MR NGALWANA: What makes you so certain?
 25 MR MAGIDIWANA: Because the photos where

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1 I saw myself, this is how I was sitting.
 2 MR NGALWANA: And what was the occasion
 3 when you were sitting on – is this on the koppie?
 4 MR MAGIDIWANA: Yes.
 5 MR NGALWANA: And what was the occasion?
 6 MR MAGIDIWANA: I don't remember what
 7 occasion it was, but I was sitting.
 8 MR NGALWANA: If I suggested to you that
 9 it was during the time when Mr Mathunjwa was addressing you
 10 on the first occasion, would you be in a position to
 11 dispute that?
 12 MR MAGIDIWANA: I cannot dispute that
 13 because he also is not appearing in this picture.
 14 MR NGALWANA: Ja, okay. May I direct
 15 your attention to photos 4 and 5? Are you able to hazard a
 16 guess, or express a certainty as regards what date those
 17 photographs depict, or the events of which date those
 18 photographs depict?
 19 MR MAGIDIWANA: Yes, I can tell, because
 20 this one is clear.
 21 MR NGALWANA: Yes, how is it clear?
 22 MR MAGIDIWANA: It was on the 16th.
 23 MR NGALWANA: How is it clear that it
 24 was?
 25 MR MAGIDIWANA: What I really observed is

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1 this person who is holding this paper where 12 500 is
 2 written, and by then it is at the time Mr Mathunjwa was
 3 speaking.
 4 MR NGALWANA: Was that placard only
 5 displayed on the 16th of August 2012 at the koppie?
 6 MR MAGIDIWANA: Can you please repeat?
 7 MR NGALWANA: [Repeats question in Xhosa]
 8 MR HANABE: Are you saying that this
 9 placard which was held in this picture, was it only held on
 10 the 16th or were there any other days where this placard was
 11 held?
 12 MR MAGIDIWANA: I saw it on the 16th.
 13 MR NGALWANA: So you saw it on the 16th,
 14 but you cannot dispute that it may have been present on
 15 other days?
 16 MR MAGIDIWANA: I cannot dispute that,
 17 because on the other days I was not present, but the day on
 18 which I saw it was on the 16th.
 19 MR NGALWANA: May I direct your attention
 20 to photo 6? It has throughout been your evidence that the
 21 weapon you carried was a knobkierie. Correct?
 22 MR MAGIDIWANA: Yes.
 23 MR NGALWANA: May I ask the video -
 24 because there is a video footage that corresponds with this
 25 photograph – to be played? This would have been on the 16th

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1 of August.
 2 [VIDEO RECORDING PLAYED]
 3 MR NGALWANA: We're trying to zoom into
 4 where the witness would have been seated. Can you
 5 recognise yourself in that –
 6 MR MAGIDIWANA: Yes, I recognise myself.
 7 MR NGALWANA: At some stage there will be
 8 a footage showing you carrying not just one – can I take
 9 you back to photo 6? If you look closely at the insert,
 10 you see there is a bigger photograph and on it is - shall I
 11 call it superimposition, for lack of a better term – of a
 12 smaller photograph which shows you. Do you see you are
 13 carrying two things there?
 14 MR MAGIDIWANA: Yes, I can see that, and
 15 I remember what had happened.
 16 MR NGALWANA: So when you earlier told
 17 the Commission that you were carrying a knobkierie, that
 18 was not correct, was it? On the 16th.
 19 [10:39] MR MAGIDIWANA: Taking other person's
 20 weapon and use it in order to make a rhythm when there's
 21 singing is different from when you take your own weapons
 22 and go with them because especially when one is tired of
 23 clapping.
 24 MR NGALWANA: And I take it you expect
 25 the Commission to believe that explanation?

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1 MR MAGIDIWANA: I don't dispute that that
2 time I was holding two objects and using them to make a
3 rhythm, or to clap with them, especially being someone
4 else's weapon, but when I left the house I was only
5 carrying one weapon.
6 MR NGALWANA: Why did you find no need –
7 or let me put the question this way. Did you tell your
8 lawyers this detail when the statement was prepared?
9 MR MAGIDIWANA: I never told them about
10 that, and if I were to tell them everything that had
11 happened there, perhaps a book or a volume would have been
12 written in that regard.
13 MR NGALWANA: [Speaks in Xhosa]
14 MR HANABE: What you are holding there
15 with your right hand is a sharp object, isn't it?
16 Sharpened iron.
17 MR MAGIDIWANA: Yes, it was a sharpened
18 iron.
19 MR NGALWANA: Just to wrap up this point,
20 so whether this was a sharpened weapon belonging to someone
21 else or not, it was untrue when you told the Commission
22 repeatedly in your evidence that on the 16th at the koppie
23 you only had one – shall we call it a weapon? – which was
24 a knobkierie.
25 MR MAGIDIWANA: As I said that in the

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1 manner in which you are putting it, however there is a
2 difference because when I left home and went there I only
3 had one weapon, and because I was at some time clapping
4 hands and was tired, then I used someone's weapon then to
5 make a rhythm, or to clap with the weapons, and that's
6 where the difference lies.
7 MR MPOFU: Sorry, the witness said
8 something else. He said [speaks in Xhosa].
9 MR HANABE: I said so when I started,
10 that "Even though I was tired of clapping hands," and then
11 some videos also were shown.
12 MR NGALWANA: Of course you could have
13 simply put your knobkierie down and used your hands to
14 clap, not so?
15 MR MAGIDIWANA: Sir, there is something
16 that you must take into cognisance. When you are singing,
17 sitting in a certain place and that there is rejoicing, so
18 the hands get hot and then you get tired as well and you
19 take someone else's thing and then use it then to make the
20 rhythm, or to clap. Then if I was not clapping, then how
21 could there be a sense in the song?
22 MR NGALWANA: Are you done?
23 MR MAGIDIWANA: Talk. I'm done.
24 MR NGALWANA: You must accept that it
25 requires even marginally a greater effort to pick up two

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1 weapons, use them to clap, than it does to use your hands?
2 MR MAGIDIWANA: What efforts are those?
3 MR NGALWANA: I'm not going to answer
4 that question.
5 MR MAGIDIWANA: Please, Sir, answer me,
6 because I'm also answering your questions.
7 MR NGALWANA: You could of course have
8 taken another knobkierie or a stick if you had to use
9 weapons to clap, not a "incula," not so?
10 MR MAGIDIWANA: Sir, I was not going to
11 kill anyone with that weapon, then I had to take it the
12 next, just next to me and then use it to make rhythm or to
13 clap with it.
14 MR NGALWANA: Very well. May I ask for –
15 well, may I ask you to turn to photo 9?
16 COMMISSIONER HEMRAJ: Before you do that,
17 Mr Magidiwana, can I just ask you, was this the only stage
18 on the 16th that you would have been in possession of two
19 weapons?
20 MR MAGIDIWANA: Yes, that is the only
21 place.
22 COMMISSIONER HEMRAJ: For the purposes of
23 making the clicking sound?
24 MR MAGIDIWANA: Yes.
25 COMMISSIONER HEMRAJ: Thank you.

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1 CHAIRPERSON: Did you give the sharpened
2 iron back to the person from whom you had taken it after
3 you [inaudible] –
4 MR MAGIDIWANA: Yes.
5 COMMISSIONER TOKOTA: Do you know what is
6 the name of that person to whom you gave back the weapon?
7 MR MAGIDIWANA: No, I don't know his
8 name, but I remember him in the photo. He even is holding
9 it and then next to me and pointing it at me.
10 CHAIRPERSON: Was that the only occasion
11 on that day when you had two weapons in your hands?
12 MR MAGIDIWANA: Yes.
13 MR NGALWANA: Are you sure about that?
14 MR MAGIDIWANA: I am sure. If there was
15 any other occasion you can say so.
16 MR NGALWANA: So let's be clear. You're
17 saying the time at which you were sitting at the koppie, as
18 we observe on this photograph, that's the only occasion on
19 which you were carrying two weapons?
20 MR MAGIDIWANA: Doing the clicking with
21 them.
22 MR NGALWANA: And that is the only
23 occasion on which you were carrying two weapons?
24 MR MAGIDIWANA: Yes.
25 MR NGALWANA: Sitting on the koppie?

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1 MR MAGIDIWANA: Yes, Sir.
 2 MR NGALWANA: So when you stood up you
 3 gave the weapon back and there was no other occasion on
 4 which you carried two weapons?
 5 MR MAGIDIWANA: I said there was never
 6 such an occasion. I said if you are aware of any other
 7 occasion, you can say so.
 8 MR NGALWANA: And if I show you another
 9 occasion, you will admit that what you've just said was
 10 untrue?
 11 MR MAGIDIWANA: Show me.
 12 MR NGALWANA: Look at photo 9. Look at
 13 the insert.
 14 MR MAGIDIWANA: I can see it.
 15 MR NGALWANA: You are carrying two sticks
 16 there, or two weapons.
 17 MR MAGIDIWANA: Are you really looking
 18 closely here? When you look here, are you really having a
 19 closer look? Are you seeing that my left hand I'm carrying
 20 a stick, but my other arm or hand is on the other side?
 21 MR NGALWANA: What I put to you is you
 22 are carrying two weapons.
 23 MR MAGIDIWANA: These weapons are carried
 24 by the man who is standing next to me, but then they are
 25 protruding and they are near, or close to me. It is the

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1 one who's holding them and even looking at me.
 2 MR NGALWANA: You expect the Commission
 3 to believe that?
 4 MR MAGIDIWANA: No, then Sir, you can
 5 continue in whatever way in which you continue, but I'm
 6 explaining to you as to how they are then protruding. Then
 7 if that person then was on my right-hand side, I would then
 8 understand what you are saying.
 9 MR NGALWANA: Where is this person that
 10 you're referring to who's carrying these two weapons,
 11 protruding?
 12 MR MAGIDIWANA: I don't know, because
 13 many people that I see there in the picture I have not seen
 14 them again. I am walking on with the crutches, so many
 15 people I have not met or seen them.
 16 MR NGALWANA: The question wasn't put
 17 with as much clarity as it should have. What I'm asking is
 18 on this photograph, where is this person on the photograph
 19 who you're saying is carrying the weapons that are
 20 protruding?
 21 MR MAGIDIWANA: He is standing right next
 22 to me, but with a bowed head.
 23 MR NGALWANA: You mean the one to your
 24 left?
 25 MR MAGIDIWANA: Yes.

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1 MR NGALWANA: You're saying this person
 2 is carrying the weapons that are protruding in front of
 3 you?
 4 MR MAGIDIWANA: He is the one, because I
 5 am a bit in front of him and the thing that is closer in
 6 fact to me is his weapon.
 7 MR NGALWANA: Just look at the photograph
 8 below where you are. You see the big photo? It's a
 9 magnified version of your image in the higher photo.
 10 MR MAGIDIWANA: I see it.
 11 MR NGALWANA: Having regard to that
 12 magnified photograph, do you still persist that the person
 13 who's carrying those weapons is the one who is to your left
 14 in the higher photograph?
 15 MR MPOFU: No, Chairperson, I'm sorry,
 16 what weapons are we talking about? Can Mr Ngalwana explain
 17 where the, apart from the stick, where this other weapon
 18 and what it is?
 19 CHAIRPERSON: - take it to be an
 20 objection?
 21 MR MPOFU: Yes, Chairperson, well –
 22 CHAIRPERSON: What's the objection?
 23 MR MPOFU: Well, it is that the plural
 24 "weapons" is used and we're not told which weapons are
 25 referred to. You can't just say "weapon." There's no such

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1 thing as a weapon, Chairperson. It's either he says it's a
 2 stick, a gun, a rocket, or whatever it is.
 3 MR NGALWANA: I'm referring to the
 4 weapons on the image, Chairperson.
 5 CHAIRPERSON: Well, what counsel wants,
 6 Mr Mpofo says what weapons are you talking about. He seems
 7 to think that you can't see two weapons on the photograph,
 8 so he wants you to describe what exactly you are referring
 9 to, in the interest of enabling the witness to understand
 10 what the question is. So I think the question could be
 11 perhaps clarified a bit.
 12 MR NGALWANA: Mr Magidiwana, the two
 13 instruments that you are carrying in that photograph – or
 14 let me put it this way. The two instruments that appear in
 15 that photograph, are you still persisting that it is not
 16 you who are carrying those two instruments, but rather the
 17 person who appears to your left in the bigger photo?
 18 MR MAGIDIWANA: All that I see myself
 19 carrying in this picture is a stick.
 20 MR NGALWANA: Are you carrying one or two
 21 instruments in that photograph?
 22 MR MAGIDIWANA: I'm saying all that I see
 23 myself carrying is one stick.
 24 CHAIRPERSON: It's quite clear from the
 25 main photograph that you are carrying something in your

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1 left hand. Would you agree with that?

2 MR MAGIDIWANA: Yes.

3 CHAIRPERSON: Now if you look to the left

4 of your left hand, one can see another hand, particularly

5 in the enlargement, and there appears to be a stick being

6 held in that hand. Would you agree with that?

7 MR MAGIDIWANA: No.

8 COMMISSIONER HEMRAJ: Does not your right

9 hand with the green sleeve appear also in that insert, Mr

10 Magidiwana? It's part of the green sleeve and then a red

11 item above it. Isn't that your right forearm?

12 [10:59] MR MAGIDIWANA: What I see on my left

13 hand is that I have clenched a fist.

14 COMMISSIONER HEMRAJ: Yes, we're talking

15 about to the right, on the right hand, the right hand, part

16 of the green sleeve and then a red item above it. Do you

17 see that? Do you see that, Sir?

18 MR MAGIDIWANA: I see it.

19 COMMISSIONER HEMRAJ: The person on the

20 left of you is wearing a blue garment, different colour to

21 the garment you're wearing.

22 MR MAGIDIWANA: Yes.

23 COMMISSIONER HEMRAJ: It can't be any

24 part of his hand or arm that's in the photograph. Isn't

25 that right? Isn't that right, Mr Magidiwana?

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1 MR MAGIDIWANA: On my left side it is the

2 hand which I have clenched a fist, [and then he's saying]

3 on this other side then I'm carrying a stick.

4 COMMISSIONER HEMRAJ: So are you saying

5 that in that insert, what appears to be your right forearm

6 is not in fact your right forearm?

7 MR MAGIDIWANA: Yes, the forearm is

8 visible there, it's appearing but it's like I have clenched

9 a fist, like this [as the witness has indicated.]

10 COMMISSIONER HEMRAJ: Yes, thank you.

11 MR NGALWANA: Mr Magidiwana, we're

12 nearing teatime and I'd like to remind you, perhaps

13 something to sip on, remember what the Chairperson told you

14 yesterday about the importance of telling the truth?

15 MR MAGIDIWANA: In other words, are you

16 saying I'm not telling the truth?

17 MR NGALWANA: Yes, but the fact, the

18 point is, you remember what the Chairperson told you about

19 the importance of telling the truth?

20 MR MAGIDIWANA: I remember him saying

21 that.

22 MR NGALWANA: You do yourself no favours

23 by not telling the truth. It doesn't help you to deny the

24 undeniable, and I put it to you that it's pretty clear from

25 that footage, that photograph, that you are carrying two

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1 instruments; that when you said the only occasion on which

2 you were carrying two weapons was when you were sitting on

3 the koppie on the 16th –

4 MR MPOFU: No, Chairperson, he can't ask

5 the question like that. It's changing from instruments to

6 weapons in the same breath. That's, you know, not being

7 genuine with the witness.

8 CHAIRPERSON: Mr Ngalwana, if you might

9 be able to keep the same terminology throughout the

10 question, it would be a more elegant way of putting the

11 question.

12 MR NGALWANA: Yes, thank you, Chair.

13 It's pretty clear, Mr Magidiwana, that when you said in

14 your evidence throughout that there was only one occasion

15 on which you were carrying two instruments and that was

16 when you were sitting on the koppie on the 16th of August

17 2012, was incorrect.

18 MR MPOFU: No, Chairperson, I'm going to

19 object again. The witness has never said anything about

20 carrying two instruments. He said there was only one

21 occasion where he was carrying two weapons. So he can't

22 put something that the witness did not say. You can say

23 whatever you want to say, but don't say the witness said

24 it.

25 MR NGALWANA: Mr Magidiwana, it's pretty

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1 clear that when you said - and I'm going to round this up -

2 when you said earlier that there was only one occasion on

3 which you were carrying two weapons was when you were

4 sitting on the koppie on the 16th, was incorrect.

5 CHAIRPERSON: What do you say?

6 MR MAGIDIWANA: I said to the counsel

7 that he must then mention the occasion that he is aware of.

8 CHAIRPERSON: Alright, well let's leave

9 that for the moment. Let's turn to something else. If you

10 look at that, the inset photograph, we see your left hand,

11 it looks like your thumb up, holding an instrument. Is

12 that correct? You see your green sleeve. You see that?

13 MR MAGIDIWANA: This thing that looks

14 like a stick, is this not on my other side? Am I the one

15 then carrying it?

16 MR MPOFU: Chairperson, sorry, just

17 again, I'm sorry to interrupt, with the interpretation.

18 The interpreter is quite right, but I need to emphasise

19 that the word that is used for stick, meaning the kerie,

20 and the word that the witness used, "ikuni," which is like

21 a log or a piece of –

22 MR HANABE: A twig, sorry. In fact it's

23 a twig.

24 MR MPOFU: Twig, yes, that's a better –

25 MR HANABE: I'm sorry, Commissioner.

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1 MR MPOFU: Ja, he says the thing that
2 looks like a twig.
3 MR HANABE: Yes.
4 CHAIRPERSON: Thank you, but anyway,
5 that's not strictly relevant to what I was dealing with.
6 In your left hand you are holding something. Do you agree?
7 You can see the green sleeve and you can see your thumb and
8 you are holding something. Is that correct? I'm talking
9 about your left hand.
10 MR MAGIDIWANA: Yes, I can see this thumb
11 which is up on my other hand, but the other one –
12 CHAIRPERSON: I haven't come to the other
13 one yet. Let's talk about your left hand first. In your
14 left hand we see your thumb up and you are holding an
15 instrument of some kind. Whether it's a weapon or just a
16 long rod, or whatever, I'm not concerned with. You are
17 holding something which is a longish stick or instrument of
18 some kind. That's correct, isn't it?
19 MR MAGIDIWANA: Yes.
20 CHAIRPERSON: Now let's look at your
21 right hand. We can see your right hand, can we not?
22 MR MAGIDIWANA: Yes, I can see it.
23 CHAIRPERSON: We can see your green
24 sleeve of your right arm.
25 MR MAGIDIWANA: Yes.

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1 CHAIRPERSON: There is an object in your
2 right hand, is there not?
3 MR MAGIDIWANA: No.
4 CHAIRPERSON: Are you and I looking at
5 the same picture?
6 MR MAGIDIWANA: Yes, we are looking at
7 the same picture.
8 CHAIRPERSON: Well I suggest that while
9 you are sipping the drink that Mr Ngalwana talked about,
10 during teatime, you also look again at that picture and we
11 ask you again about it after tea.
12 MR MAGIDIWANA: It is fine.
13 CHAIRPERSON: We'll take the tea
14 adjournment at this stage.
15 [COMMISSION ADJOURNS COMMISSION RESUMES]
16 [11:29] CHAIRPERSON: The Commission resumes.
17 You're still under oath, Mr Magidiwana.
18 MZOLOLO MAGIDIWANA (CONTD.): Yes.
19 CHAIRPERSON: Did you look at the picture
20 during the tea adjournment?
21 MR MPOFU: Chairperson, if I may, with
22 the cooperation at least of Mr Ngalwana, what we did was,
23 because it became clear that the version that we all, or at
24 least that we have and the witness, is unintelligible. So
25 we arranged that the computer, one of the assistants, will

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1 be taken to the witness, because Mr Ngalwana and I at least
2 have a view about what you can see when that is done.
3 Thank you.
4 CHAIRPERSON: Is it yet to be done? Has
5 it not been done yet?
6 MR MPOFU: No, we thought it would be
7 done in proper fashion.
8 CHAIRPERSON: Alright.
9 MR MPOFU: Thank you, Chair.
10 CHAIRPERSON: You heard what Mr Mpofo
11 said. Would the computer please be taken to the witness so
12 that he could see the –
13 MR NGALWANA: Yes, Chairperson, what we
14 propose is Mr Lubbe is going to show the Commissioners the
15 still photograph and then will show the witness and then
16 the legal representatives.
17 CHAIRPERSON: Can you now see what I was
18 talking about?
19 MR MAGIDIWANA: This is a twig.
20 CHAIRPERSON: Well, never mind the twig.
21 You denied that you had an object in your hand. Do you now
22 concede that there was an object in your hand?
23 MR MAGIDIWANA: Because there was chaos
24 there, perhaps in the process then it broke and when we
25 look there at the tip thereof, it is Y-shaped and that is

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1 not how an iron object, which is "incula," is shaped.
2 CHAIRPERSON: We're not talking about
3 that. Just concentrate on the question I'm asking you.
4 MR MAGIDIWANA: It's not a weapon. That
5 was not a weapon.
6 CHAIRPERSON: Don't waste our time on
7 irrelevancies. The question I asked you was, do you now
8 concede that there is an object that you were holding in
9 your right hand?
10 MR MAGIDIWANA: Yes, in this picture it
11 is clear.
12 CHAIRPERSON: I understand that. Now
13 what is that object?
14 MR HANABE: Commissioner?
15 CHAIRPERSON: What is that object?
16 MR HANABE: What is that object? Okay.
17 MR MAGIDIWANA: It is a twig.
18 CHAIRPERSON: Thank you. You said
19 something broke off. Can you repeat that answer and
20 elaborate so we can follow it?
21 MR MAGIDIWANA: All I'm saying was that
22 because there was that chaos there, it might have happened
23 that in the process it broke off, and when you look at that
24 object, it is Y-shaped. On the other side it is skew, and
25 it seems like on the other side it is not that long, and

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1 that is not how a sharpened iron is shaped, because a
 2 "incula" is sharp; at the end there's a sharp point.
 3 CHAIRPERSON: Mr Ngalwana, do you want to
 4 take the point further?
 5 CROSS-EXAMINATION BY MR NGALWANA (CONTD.):
 6 Just in one respect, Chair, thank you. So Mr Magidiwana,
 7 you're saying this object that you're holding, that you now
 8 admit you are holding on your right hand, broke off?
 9 MR MAGIDIWANA: Yes, it is an object that
 10 broke off.
 11 MR NGALWANA: So what we see in the
 12 picture is not the entire, is not the whole instrument that
 13 you had previously, because you're saying it broke off?
 14 Something broke off –
 15 CHAIRPERSON: Again with the word
 16 "instrument." I think you should use a more neutral word
 17 than that.
 18 MR NGALWANA: I thought "instrument" is
 19 more neutral than "weapon" –
 20 MR MPOFU: No –
 21 CHAIRPERSON: No, no, "instrument"
 22 indicates something that you've got –
 23 MR MPOFU: Manufactured –
 24 CHAIRPERSON: - you're using to do
 25 something with, whereas if you're just carrying a broken

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1 branch, an object –
 2 MR MPOFU: Chairperson, you used –
 3 CHAIRPERSON: "Object" is a better word –
 4 MR MPOFU: You used "object." The
 5 Chairperson –
 6 CHAIRPERSON: That's the word I used
 7 before.
 8 MR MPOFU: Yes.
 9 CHAIRPERSON: So you like it, Mr Mpofo.
 10 Alright, well let's hope Mr Ngalwana will like it too.
 11 MR NGALWANA: Are you, with your
 12 trammelled memory, are you able to remember what object
 13 broke off from the object we see in the picture?
 14 MR MAGIDIWANA: There it is close to the
 15 kraal.
 16 MR NGALWANA: Yes, I understand that.
 17 What I'm asking is what broke off from the object we see in
 18 the picture? You said it broke off.
 19 MR MAGIDIWANA: It is a branch.
 20 MR NGALWANA: Very well. I now move on
 21 to a different point.
 22 CHAIRPERSON: Before you move on, can I
 23 just – my colleague Adv Hemraj wants to ask you a question.
 24 COMMISSIONER HEMRAJ: When would you have
 25 come into possession of this branch, as you call it?

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1 MR MAGIDIWANA: I said because of the
 2 chaos that was at that stage, and further the fact that
 3 water was being sprayed on us and that we were being fired
 4 with teargas, it could have happened that during the
 5 process then I leaned, or held on to the branch, because
 6 there next to me was a tree.
 7 COMMISSIONER HEMRAJ: What were you going
 8 to do with it?
 9 MR MAGIDIWANA: I was not going to do
 10 anything, but on that day it was bad, we were being
 11 assaulted. It is the day on which we were dying.
 12 COMMISSIONER HEMRAJ: Thank you, Mr
 13 Magidiwana.
 14 CHAIRPERSON: Well, you can now move on
 15 to your next point, unless you want to stay with this one
 16 for a bit, but I think it's been taken as far as it could
 17 be taken.
 18 MR NGALWANA: Yes.
 19 CHAIRPERSON: If it's been taken anywhere
 20 at all.
 21 MR NGALWANA: Both the point and I are
 22 exhausted, Chair, on this issue. Mr Magidiwana, you will
 23 recall – correct me if I'm wrong – that in your evidence-
 24 in-chief either yesterday or two days ago, I think it was
 25 yesterday, you testified when asked the question to the

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1 effect that most, or many people in your group, what type
 2 of, shall we say objects they were carrying, you said
 3 sticks. You remember that?
 4 MR MAGIDIWANA: I remember that.
 5 MR NGALWANA: You in fact had been asked
 6 whether there was anyone, you saw anyone or there was
 7 anyone carrying a gun.
 8 MR MAGIDIWANA: Yes, I remember when I
 9 was asked about that.
 10 MR NGALWANA: You remember your answer?
 11 MR MAGIDIWANA: Yes, I still remember the
 12 answer.
 13 MR NGALWANA: You said no.
 14 MR MAGIDIWANA: Yes, I said no, I don't
 15 know him.
 16 MR NGALWANA: Cast your eye again on that
 17 photograph 9. You see the person next to you, to your
 18 left, in a, what seems like a blue navy sweater.
 19 MR MAGIDIWANA: Yes, I can see him, Sir.
 20 MR NGALWANA: What's he carrying?
 21 MR MAGIDIWANA: This person is holding a
 22 spear and a sharpened iron.
 23 MR NGALWANA: And the person immediately
 24 behind you, can you see that person?
 25 MR HANABE: Behind who?

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1 MR NGALWANA: Behind you.

2 MR MAGIDIWANA: What is protruding here

3 is a stick, but the other that is on the other side is not

4 clear to me as to whether it was a twig or one of the

5 branch in those trees.

6 MR NGALWANA: If a witness suggested that

7 it is in fact a sharp weapon, would you be in a position to

8 dispute that?

9 MR MAGIDIWANA: Sir, what I'm saying is

10 that I see, but it is not clear to me as to whether it is a

11 twig or a spear or a sharpened iron. It is not clear to

12 me.

13 MR NGALWANA: If you look at the person

14 two persons from you, or rather shall we say three, in a,

15 it looks like a brown sweater with a towel or something

16 wrapped around, who's looking directly into the picture, do

17 you see that? The person who's last to the right-hand side

18 of the photo.

19 MR MAGIDIWANA: Yes, I can see him.

20 MR NGALWANA: Do you see where the yellow

21 arrow is pointing?

22 MR MAGIDIWANA: Yes, it's point

23 downwards.

24 MR NGALWANA: What is it pointing at?

25 MR MAGIDIWANA: Unless a computer can be

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1 brought, because this is not clear, I cannot clearly see

2 it.

3 MR NGALWANA: Look at the insert below

4 the yellow arrow.

5 MR MAGIDIWANA: It seems like it's a

6 firearm, Sir.

7 MR NGALWANA: You say it seems like. It

8 is a firearm, is it not?

9 MR MAGIDIWANA: Oh.

10 MR NGALWANA: [Speaks in Xhosa] You must

11 agree with me that it is a firearm.

12 MR MPOFU: Chair, I don't know if my

13 learned friend is giving evidence now.

14 CHAIRPERSON: - it's a question he's

15 asking. It's a question that's being asked, the kind of

16 question you could ask -

17 MR MPOFU: No, it's a statement, he says

18 -

19 CHAIRPERSON: He said "You must agree

20 with me." The witness will say I don't agree with you or

21 he'll say I do. I don't think there's anything wrong with

22 the question. I disallow the objection. Carry on.

23 MR NGALWANA: You must agree that that is

24 a firearm, not so?

25 MR MAGIDIWANA: No, I can agree with you,

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1 Sir, because I also can see it seems like a firearm.

2 MR NGALWANA: In fact, to uncloud your

3 vision, we'll play - may I ask for the footage, it's an Al

4 Jazeera footage that was played, showing the protesters,

5 shall we say - let me use the witness's word - dashing at

6 the police line, and one of them firing at the police on

7 the 16th of August 2012.

8 [VIDEO RECORDING PLAYED]

9 MR NGALWANA: No, I don't think it's the

10 correct footage, Chairperson. It's the one of, it's an Al

11 Jazeera footage, and there is a voiceover on it.

12 MS PILLAY: It's EEE3.4.

13 MR NGALWANA: Thank you, Ms Pillay.

14 That's not the one either.

15 MS PILLAY: Chair, for the purposes of

16 the technician, it's EEE3.4, ENCA, "South Africa seeks to

17 understand Marikana massacre."

18 [VIDEO RECORDING PLAYED]

19 MR NGALWANA: That's not the correct

20 footage either, Chairperson.

21 MS PILLAY: I think it's further on, Mr

22 Ngalwana, if you let that clip play. What you're looking

23 for is towards the end of the clip.

24 MR NGALWANA: If you can continue playing

25 it.

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1 [VIDEO RECORDING PLAYED]

2 CHAIRPERSON: He's seen it several times.

3 I don't know why he'd have to see it again. Is this the

4 passage you're looking for or is it -

5 MR NGALWANA: No, it isn't, Chairperson,

6 with respect.

7 CHAIRPERSON: It isn't?

8 MR NGALWANA: It's not.

9 CHAIRPERSON: So perhaps you could move

10 on to another point and then we're stopping at 1 o'clock,

11 as you know, today, and I don't know how long you'll be, if

12 you are not finished by 1 o'clock. If you finish your

13 cross-examination by 1 o'clock, when we resume on Monday

14 morning you presumably would have found the tape and you

15 can then put it to the witness.

16 MR NGALWANA: I shall, thank you,

17 Chairperson. Mr Magidiwana, towards the - or rather,

18 alright. Okay. Towards the end of your evidence

19 yesterday, and correct me if I'm wrong, I heard you to say

20 when Mr Mathunjwa addressed you on the first occasion -

21 because as we've established, there is no record of the

22 second occasion, when Mr Mathunjwa addressed you on the

23 second occasion - you testified that he said, among other

24 things, that the employer had said he was going to send the

25 police to kill you on the koppie. Do you remember saying

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1 that?

2 MR MAGIDIWANA: I remember it, Sir.

3 MR NGALWANA: You were there that day and

4 you heard it yourself; it's not hearsay?

5 MR MAGIDIWANA: I was in front, Sir; I

6 heard it for myself. He was even kneeling.

7 MR NGALWANA: Are you sure he kneeled on

8 the first occasion?

9 MR MAGIDIWANA: On the first occasion he

10 was sitting. In the first occasion they all first sat and

11 the other one went to pass out urine. The one who had gone

12 to urinate then came back. Then it was suggested by the

13 workers that, "We will not be able to hear clearly, can you

14 please go to the police officers and borrow a loudhailer so

15 that we can all hear." Then a fatality that happened at a

16 later stage had not yet happened by then.

17 MR NGALWANA: Well, this travels far

18 wider than my question calls for. The question was that

19 you recall, do you recall your evidence in which you said

20 on the first occasion Mr Mathunjwa said the employer had

21 said they were going to send the police to kill you on the

22 koppie. That's all.

23 MR MPOFU: That was not his evidence,

24 Chairperson.

25 CHAIRPERSON: - the question, he said

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1 yes. So that makes it his evidence if he agrees to what's

2 being put to him as a question. So I don't think it's a

3 good objection. I think let Mr Ngalwana carry on.

4 MR MPOFU: No, Chairperson, with great

5 respect, I think what Mr Ngalwana is confusing is the

6 clarification that the Chairperson gave, which showed that

7 the statement might have even been made on both occasions,

8 when you went to OO9. It was not from the witness that it

9 was said on the first occasion, but –

10 CHAIRPERSON: I must confess that what Mr

11 Mpofo says coincides with my recollection, that the witness

12 said this was said on the second occasion and it was

13 challenged, and so forth, and then I pointed out that – and

14 you at that stage suggested that it had been recorded and

15 that was later clarified it hadn't been recorded, but then

16 I quoted from the exhibit which showed that it had been

17 said on the first occasion, but I don't remember the

18 witness himself confirming that he heard it on the first

19 occasion. As far as I can recall, he didn't deal with that

20 topic in his evidence, but I'm not sure – ja, so as far as

21 we can recall that the witness didn't say that he heard Mr

22 Mathunjwa say that on the first occasion. I also think he

23 didn't say he didn't hear him say it on the first occasion.

24 I don't think that topic was dealt with, but perhaps you

25 can revisit it shortly to avoid confusion, because if you

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1 want to extract an answer that you can use in argument

2 later, it's best to make sure there's no confusion when the

3 question is asked.

4 MR NGALWANA: It's fine, Chair. I

5 thought I asked a new question. Chairperson, I propose to

6 revisit the video that we unsuccessfully tried to play, so

7 that we can close that chapter and then move on.

8 CHAIRPERSON: Are you giving me the

9 assurance that when we revisit it, we will successfully see

10 it?

11 MR NGALWANA: I am given the assurance –

12 CHAIRPERSON: Okay, it's a hearsay

13 assurance, but never mind, we'll carry on.

14 MR NGALWANA: Thank you, Chair.

15 [VIDEO RECORDING PLAYED]

16 MR NGALWANA: Mr Magidiwana, that is your

17 group, I put it to you, as depicted in photo 9. Would you

18 dispute that?

19 MR MAGIDIWANA: I don't dispute it.

20 MR NGALWANA: The person who is two or

21 three persons behind you in photo 9, I put it to you, is

22 the person who is shown on the video, shooting at the

23 police. Would you dispute that?

24 MR MAGIDIWANA: There are people who were

25 in front in fact who had already passed, who had gone,

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1 because even in this picture, though he looks like, it

2 looks like he's next to me, in fact he's not next to me

3 because I'm right in front of him.

4 MR NGALWANA: But you do not dispute that

5 he is carrying a gun, he is shooting at the police, and he

6 is part of your group?

7 CHAIRPERSON: That's is three questions

8 in one. Perhaps you should put them one by one because

9 otherwise you won't get an answer that will be of much

10 value to you later on.

11 MR NGALWANA: Thank you, Chairperson.

12 You do not dispute that this person who's shooting at the

13 police is part of your group?

14 MR MAGIDIWANA: I don't dispute, Sir,

15 because I can see that he's among us.

16 MR NGALWANA: So when you said in your

17 evidence that you didn't see anyone, or you knew of no-one

18 holding a gun, that wasn't correct, was it?

19 MR MAGIDIWANA: Which I will answer him.

20 Sir, what I want to say to you is that as this is appearing

21 in the picture, in fact I've already gone past this person,

22 and it was at the time the police were shooting at us and

23 he was shooting back at that stage. I didn't see it at

24 that stage, but I just saw it in the video and that was

25 between the two Nyalas.

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1 MR NGALWANA: You cannot dispute that he
2 is shooting in the direction of the police.
3 MR MAGIDIWANA: Sir, I don't deny it,
4 though I, on that day I never saw anyone shooting, but I
5 only saw it on the videos that he was shooting, because on
6 that day I was also fleeing.
7 MR NGALWANA: Mambush, that's a pet name,
8 isn't it?
9 MR MAGIDIWANA: Whether Mambush is his
10 pet name or not, but that is how I know him, but I only
11 heard in this Commission that he's also Noki, but when I
12 was told that I was lying next to Mambush, I was told here
13 then that that person is in fact Noki.
14 MR NGALWANA: The point is, you knew Mr
15 Noki. You knew Mambush.
16 MR MAGIDIWANA: Yes, I knew Mambush.
17 MR NGALWANA: How long had you known him?
18 MR MAGIDIWANA: I knew him when I first
19 arrived there and in the soccer games he was referred to
20 Mambush, though I didn't know his real name.
21 MR NGALWANA: Was he an RDO?
22 MR MAGIDIWANA: That I do not know as to
23 whether he was one.
24 MR NGALWANA: You gave evidence in which
25 you said, when you were asked why did you go with this

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1 group, that was the Mambush group, you remember that
2 question?
3 MR MAGIDIWANA: Yes, I still remember it.
4 MR NGALWANA: Your answer was, "Because
5 they were singing and they were saying we mustn't run as we
6 hadn't done anything." Remember that?
7 MR MAGIDIWANA: I'm still saying it.
8 MR NGALWANA: Pressed, you then said the
9 person who said that was Mambush.
10 MR HANABE: Can you clarify?
11 MR NGALWANA: When asked who said that,
12 you said that was Mambush.
13 MR MAGIDIWANA: It is so.
14 MR NGALWANA: So you obeyed an
15 instruction that Mambush gave. You didn't act of your own
16 volition.
17 MR MAGIDIWANA: Yes, I did what the
18 workers had said there. It is clear that the police in
19 fact were after him. It's also clear that if I'd never
20 been part of their group, then I would never have been
21 shot.
22 MR NGALWANA: You say you did what the
23 workers said.
24 MR MAGIDIWANA: Yes.
25 MR NGALWANA: What I'm saying to you is

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1 you did what in particular Mambush said.
2 MR MAGIDIWANA: Yes, then.
3 MR NGALWANA: Well, let me tell you what
4 else Mambush said. He said, "These hippos," referring to
5 Nyalas, "would not leave this place and will die, and you
6 will all die today." He was saying this to police
7 negotiators who were not carrying any gun or posing any
8 threat to them, who were inside a Nyala.
9 [12:09] MR NTSEBEZA SC: Chair, can we just get a
10 sense from – since Mambush is my client in a sense, to
11 indicate that whether this question is being put to the
12 witness on the basis that there will be evidence that will
13 be led to that effect?
14 CHAIRPERSON: I assume the answer to
15 that, yes we'll hear from Mr Ngalwana, but you will recall
16 that that is put in slide 192, what was said and what is
17 contained in the question, is set out in slide 192, but
18 you've asked a question of your learned friend and I'm sure
19 he'll give you the answer.
20 MR NGALWANA: Yes, Chair. The evidence
21 will also be - Mr Magidiwana, are you listening?
22 MR MAGIDIWANA: I'm listening, Sir.
23 MR NGALWANA: - that Mambush also told
24 the police negotiators who were inside the Nyala, he was
25 standing outside the Nyala, told them, "We must sign a

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1 paper so that the world can see how we will kill one
2 another today."
3 MR MAGIDIWANA: Before I answer, can I
4 ask a question from you, Sir? That which Mambush said, did
5 he say it to the employees or to police officers?
6 MR NGALWANA: You know the answer to
7 that, don't you?
8 MR MAGIDIWANA: It's because, Sir, I'm
9 hearing that from you, that's why I'm asking then if he was
10 saying that to the workers or was he saying that to the
11 police.
12 MR NGALWANA: What difference would it
13 make?
14 CHAIRPERSON: It doesn't matter for you
15 to know that. What you're being asked about is did
16 Mambush, or Mr Noki, say that. Why do you have to know
17 whether it is suggested he said it to the workers or to the
18 police? The question related to whether he said it.
19 Anyway, let's see how Mr Ngalwana responds.
20 MR MAGIDIWANA: I personally never heard
21 him.
22 MR NGALWANA: Yes, of course you didn't
23 hear him because – well, let me ask you this. The evidence
24 of the police will be that the negotiators asked for five
25 leaders of the protesters to step forward so that they can

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1 talk to them, or negotiate with them. You cannot dispute
2 that, can you?

3 MR MAGIDIWANA: I cannot dispute what you
4 are saying, Sir.

5 MR NGALWANA: That Mambush was one of the
6 five leaders who stepped forward.

7 MR MAGIDIWANA: I saw Mambush when he
8 went there, but he was called by police officer through a
9 loudhailer.

10 MR NGALWANA: You weren't one of the five
11 leaders, were you?

12 MR MAGIDIWANA: No.

13 MR NGALWANA: You've testified earlier
14 that you were on the koppie on the 16th on the occasion of
15 Mr Mathunjwa's address, on both occasions.

16 MR MAGIDIWANA: Yes, Sir.

17 MR NGALWANA: Now numerous protesters,
18 including Mr Noki, Mambush, addressed the workers. You
19 recall that?

20 MR MAGIDIWANA: I remember some of the
21 things that were said by the workers there.

22 MR NGALWANA: One of them, or at least
23 one of them said – it's a very short excerpt, so I shall
24 read it – "These police, if they claim," I'm reading a
25 translation, I think it's CC18, Chairperson, if I'm not

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1 mistaken – Ms Pillay will correct me if I'm wrong. He's
2 depicted as protester 6 addressing the crowd on slide 168
3 of exhibit L. Can we show the witness slide 168? Who is
4 that person?

5 MR MAGIDIWANA: I saw this man there, but
6 I don't know his name.

7 MR NGALWANA: Among other things he said,
8 "These police, if they claim that they have safety, they
9 must go and apply safety to that white man or boss who sent
10 them here. They must leave us here," meaning the police,
11 "They must leave us here and bring this white man or boss.
12 We do not leave this place without what we want. You must
13 leave immediately. A police officer from the homelands, if
14 he or she was fetched to come here, will be left here. He
15 or she will not enter that hippo," to which there appears
16 to have been an uproarious laughter. He then finishes off
17 by saying, "We will finish them here. They must leave
18 here."

19 MS PILLAY: Chair, can I just indicate
20 the transcript and translation of this address is in OO9.

21 MR NGALWANA: Thank you, Ms Pillay. You
22 heard his words? That you heard?

23 MR MAGIDIWANA: Yes, I heard that and the
24 fact that the people had laughed and the fact that at first
25 when he started his speech he was saying nice things and

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1 that at the end, being old, he said something that made no
2 sense, that was foolish, being old.

3 MR NGALWANA: Being an elder, was he one
4 of the five leaders?

5 MR MAGIDIWANA: I saw him whilst he was
6 seated and he then stood up whilst others were busy
7 speaking. He took it from them and said whatever it is
8 that he said. He snatched it from them.

9 MR NGALWANA: That's a tangential answer.
10 You said you saw Mambush approaching the police Nyala when
11 he was called by the negotiators, with four other men?

12 MR MAGIDIWANA: I witnessed, I observed
13 that, and I also saw that the police by then were calling
14 out loud through the loudhailer.

15 MR NGALWANA: What I'm asking you is
16 whether this old man at slide 168 was one of the five men
17 who went there to the police, together with Mambush.

18 CHAIRPERSON: Presumably one of the four
19 men who went with Mambush, because presumably if five went
20 and Mambush is one, then it would have been four people who
21 went with Mambush. Is that right?

22 MR NGALWANA: Thank you, Chair, my
23 arithmetic has never been a strong point.

24 MR MAGIDIWANA: I don't remember as to
25 whether he went there, but what I can remember was when he

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1 was talking through the megaphone, the loudhailer.

2 MR NGALWANA: If I say to you that you
3 will not leave this place and you will die here today,
4 that's a declaration of war, isn't it?

5 MR MAGIDIWANA: Did you hear what I said
6 initially?

7 MR NGALWANA: Please answer my question.

8 MR MAGIDIWANA: I don't know, Sir.

9 MR NGALWANA: Are you refusing to answer
10 my question?

11 MR MAGIDIWANA: I'm not refusing, Sir. I
12 said I don't know how I can answer your question.

13 MR NGALWANA: [Speaks in Xhosa]

14 MR MAGIDIWANA: Sir, in the way in which
15 you are talking, no fight was ever directed to the police.
16 However, it was the police who killed the people. During,
17 when there's a fight, each and every person pleads.

18 MR NGALWANA: May I ask the interpreter
19 to interpret my question so that it becomes clear that the
20 witness is doing everything in his power not to answer my
21 question. The question was, [Speaks in Xhosa]

22 MR HANABE: I'm saying is it isiXhosa
23 because I want you to hear me. If I say to you, Mr
24 Magidiwana, you are not going to leave hear, you are going
25 to die here –

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1 MR MPOFU: No, Chairperson, I'm sorry, I
 2 really don't want to interrupt but if that presumes to be
 3 quoting protester 6, then it's misleading because protester
 4 6 never said nothing about dying.

5 MR NGALWANA: I'm not quoting protester –
 6 CHAIRPERSON: I don't think it's intended
 7 to be a quotation from protester 6, is it? Is it intended
 8 to be Mambush –

9 MR MPOFU: Perhaps I have the – okay.
 10 CHAIRPERSON: It's a quotation, I think,
 11 from what Mr Noki said, which is referred to in slide 192.

12 MR NGALWANA: [Speaks in Xhosa]
 13 MR HANABE: Let me repeat, if I say to
 14 you, you are not leaving here, you are going to die here,
 15 let us sign a paper so that the whole world can see how we
 16 kill one another today, in other words, I am declaring a
 17 war, isn't it?

18 MR MAGIDIWANA: If that which Noki has
 19 said to the police officer, he had come back to the workers
 20 and would have told the workers about it, then we would
 21 have known about it. That was between him and the police
 22 officers, which in fact happened because eventually he was
 23 killed and the police officer remained, or he stayed alive,
 24 isn't it?

25 MR NGALWANA: Are you saying the police

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1 and Mr Noki killed each other?

2 CHAIRPERSON: He isn't saying that -
 3 MR MAGIDIWANA: You're saying that –
 4 CHAIRPERSON: He isn't saying that. He
 5 said at the end of it all Mr Noki was dead and the police
 6 were alive. So he's not saying what you put to him. I
 7 think you must withdraw the question and reformulate it
 8 correctly.

9 MR NGALWANA: Chairperson, I heard him in
 10 Xhosa saying "babulalana," which means we kill one another,
 11 so I just wanted to be clear that that's what he meant.

12 MR NTSEBEZA SC: Mr Chairman, I really
 13 want to be objecting to questions that are put by my
 14 colleague. It's a very unfair way in which he's putting
 15 questions. For instance, we have here a still of protester
 16 number 6, and I would have been fooled into thinking that
 17 the question that was put to him was premised on what is
 18 alleged to have been said by number 2, protester number 6,
 19 which is why my learned friend next to me, Mr Mpofo, has
 20 said, you know, protester number 6 had never said what he
 21 was saying.

22 CHAIRPERSON: Mr Ntsebeza, the problem
 23 will be solved I think if we were now shown slide 192, and
 24 the questions were asked against the backdrop of that
 25 slide.

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1 MR NTSEBEZA SC: Yes, Chair. But what
 2 I'm saying further than that is that if my learned friend
 3 is going to act both as interpreter as well as – I mean
 4 what he hears and he must indicate that that is not what
 5 has been interpreted, but not to proceed on the basis that
 6 the answer that he's getting is the wrong answer because –

7 CHAIRPERSON: No, you're quite correct.
 8 He can't ask questions based on his interpretation –

9 MR NTSEBEZA SC: Yes.
 10 CHAIRPERSON: - if it differs from the
 11 interpreter's.

12 MR NTSEBEZA SC: Indeed, Chair.
 13 CHAIRPERSON: He must indicate if his
 14 interpretation, that he disagrees with the interpreter.
 15 No, I uphold what you say on that. At any rate –

16 [12:29] MR MPOFU: Chairperson, sorry, to save
 17 time, let's have one series of objections. What the
 18 Chairperson is that this will be clarified by 192, is
 19 actually not the case. It's actually been further
 20 compounded because when he then went to 192 he put in one
 21 sentence things that according to 192 happened two hours
 22 apart.

23 CHAIRPERSON: Yes, yes, I understand
 24 that, but the point made by Mr Ntsebeza was if you have a
 25 picture of protester 6 and you then say did somebody say

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1 something, then the impression might be created that you're
 2 suggesting that protester 6 did it. That impression is
 3 removed if the picture that's shown is a picture of Mr
 4 Noki. That's the only point. So anyway, I think we've
 5 debated this, I think, hopefully we've now worked out a way
 6 forward which will not confuse the witness, not be unfair,
 7 and will produce meaningful answers.

8 MR NGALWANA: Chairperson, both
 9 objections have absolutely no foundation. We've wasted
 10 five minutes of –

11 CHAIRPERSON: No, the first objection,
 12 which I've upheld, was that if you put something on the
 13 basis of your interpretation of the witness, which differs
 14 from that which is being given to us by the official
 15 interpreter, you should indicate that. That's clearly a
 16 good objection and I've upheld it already. Now we won't
 17 have any further argument about it. The second point I
 18 made was not an objection really, it flowed though from the
 19 point that – sorry, what Mr Ntsebeza said wasn't really an
 20 objection, but what he said was it was misleading to have a
 21 picture of protester 6 on the screen when what was being
 22 put was what somebody else had said, and I said that was a
 23 fair point and that's why we now have a picture of Mr Noki.
 24 So let's not argue about these matters further; let's just
 25 get on with the matter.

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1 MR NGALWANA: Can I just make this one
 2 point, Chair? It's not an argument. My difficulty is the
 3 Chairperson, with respect, has somewhat of a small handicap
 4 inasmuch as he might not be as proficient in Xhosa as some
 5 of us are, and I asked my question in Xhosa. It was then
 6 interpreted into English. There was nothing wrong with the
 7 interpretation, and perhaps a facetious remark which I
 8 hesitate to make is that we have, if you like, a
 9 epigrammatical expression in Xhosa that says "isiXhosa
 10 stologwa," which means you can't really interpret Xhosa.
 11 Anyway, Chair, let me phrase the question in English.
 12 CHAIRPERSON: - one point. If you
 13 disagree with something the interpreter said, about basing
 14 your question on a slightly different interpretation, that
 15 should be made clear so that those like myself, who I
 16 regret to say have no proficiency in isiXhosa at all, will
 17 be able to understand what's happening. Right, we
 18 understand that. Let's proceed on that basis and we won't
 19 waste any more time.
 20 MR NGALWANA: Yes, we understand, Chair.
 21 The trouble is I don't disagree with the interpretation;
 22 it's Mr Ntsebeza who does. But let me move on. I want to
 23 give you an opportunity, Mr Magidiwana, to set the record
 24 straight. Are you saying – and I want your honest answer –
 25 are you saying that Mambush and the police killed one

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1 another?
 2 MR MAGIDIWANA: I'm not saying they
 3 killed each other. I'm saying in whatever it is they said
 4 that they were going to kill each other, that which is said
 5 that the two of them were saying, it means that really what
 6 he said indeed happened because eventually he, Mambush,
 7 died. This has nothing to do with the workers. That was a
 8 discussion between the two of them and was never at a later
 9 stage conveyed to the workers, or said to the workers.
 10 MR NGALWANA: Yes, for now I'm only
 11 talking about Mambush and his relationship with the police.
 12 I have taken you to slide 192 of exhibit L.
 13 MR MAGIDIWANA: The relationship, Sir,
 14 between the police and the workers was whatever it is that
 15 the police want to say, they would say it through a
 16 loudhailer, but this particular one I never heard it
 17 because it was just between the two of them.
 18 MR NGALWANA: On the occasion when the
 19 men, a number of men were naked in the open, you were
 20 present, were you not?
 21 MR MAGIDIWANA: 16th, were people naked on
 22 the 16th?
 23 MR NGALWANA: I'm not talking about
 24 dates. I'm talking about an event.
 25 MR MAGIDIWANA: No.

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1 MR NGALWANA: Now you haven't quite
 2 answered my question, and I'm afraid I must get an answer
 3 to this question.
 4 MR MAGIDIWANA: I said no, Sir.
 5 MR NGALWANA: It's a different question.
 6 MR MAGIDIWANA: Which is that different
 7 question? Please tell me.
 8 MR NGALWANA: [Speaks in Xhosa]
 9 MR HANABE: If I say to you, you are not
 10 going to leave here, that you are going to die here –
 11 MR MAGIDIWANA: Who then said that, Sir?
 12 MR NGALWANA: I am saying that now to
 13 you. [Speaks in Xhosa]
 14 MR HANABE: If I say to you, you are not
 15 going to leave here, but that you are going to die here –
 16 MR MAGIDIWANA: I will die here for
 17 having done what?
 18 CHAIRPERSON: I think the problem is that
 19 the counsel hasn't finished his question yet. I suggest
 20 you listen to the question to the end and then answer.
 21 Like, if I say this to you, then he's going to ask you
 22 something that follows from that. You haven't given him a
 23 chance to do that yet. So let him complete his question
 24 and then answer it.
 25 MR MAGIDIWANA: Okay.

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1 MR MPOFU: Sorry, Chairperson, if maybe
 2 through the Chair we can inquire, I see the witness is
 3 stretching the injured elbow, whether he's okay. I don't
 4 even know how far we are, or we have 20 minutes to go, but
 5 –
 6 CHAIRPERSON: Yes, I see you're flexing
 7 your left elbow. Are you in discomfort or experiencing
 8 pain at the moment?
 9 MR MAGIDIWANA: It's just a cramp that
 10 usually happens to me once in a while. It usually happens
 11 to me.
 12 CHAIRPERSON: How long does it last?
 13 MR MAGIDIWANA: Since the time I got
 14 injured.
 15 CHAIRPERSON: No, no, you say it happens
 16 to you from time to time, you have this cramp. How long do
 17 you have the cramp for? Presumably the cramp goes away
 18 after some time.
 19 MR MAGIDIWANA: I don't know whether it
 20 is the veins or muscles that are stretching out, because
 21 usually whenever it happens my arm doesn't function. It
 22 just becomes numb.
 23 CHAIRPERSON: You actually haven't
 24 answered the question –
 25 MR MAGIDIWANA: My hand –

1 CHAIRPERSON: For how long do you
 2 experience this numbness and this discomfort?
 3 MR MAGIDIWANA: I'm not in a position to
 4 tell as to the exact time, as to when it stops, but
 5 whenever, it can stop at any time.
 6 MR NGALWANA: Perhaps we should ask him
 7 whether it causes him any discomfort that requires a short
 8 adjournment, Chairperson?
 9 CHAIRPERSON: You ask him that question.
 10 MR NGALWANA: [Speaks in Xhosa] Does it
 11 cause you any discomfort?
 12 CHAIRPERSON: Well, if that's the Xhosa,
 13 I could have asked it in Xhosa myself.
 14 MR MAGIDIWANA: Yes, you really will
 15 never, I don't get comfortable then with this elbow because
 16 it also affects my neck. Indeed I don't become comfortable
 17 if it affects my neck.
 18 CHAIRPERSON: I don't want the witness to
 19 have to answer questions under a disadvantage, and it's
 20 already nearly between 20 to and quarter to 1; we were
 21 going to adjourn at 1. If you extract answers from him on
 22 which you want to found an argument later, you may find the
 23 argument raised on the other side that the witness wasn't
 24 himself because of the discomfort he was experiencing. So
 25 it might be sensible for us to take the adjournment now.

1 It's unfortunate we lose a bit of time, but otherwise we
 2 might obtain answers that in fact can't really be relied on
 3 later. So we'll take the adjournment now –
 4 MR NGALWANA: Chair, before we do, I was
 5 rather hoping to finish this, at least this line of
 6 questioning –
 7 CHAIRPERSON: No, but the point is you
 8 finish the line, you get answers that you want to use later
 9 in argument and you then be met with the argument that you
 10 can't rely on the answers because the witness wasn't
 11 himself, he was distracted by the pain. So it's an attempt
 12 to save time which actually may waste time. So I overrule
 13 your objection and we will adjourn until 10 o'clock Monday
 14 morning.

[COMMISSION ADJOURNED]

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