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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 115   25 JULY 2013   PAGES 12206 TO 12214

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1 [PROCEEDINGS ON 25 JULY 2013]

2 [10:07] CHAIRPERSON: The Commission resumes. We

3 have resumed somewhat later than usual because we were told

4 that the evidence leaders were having a meeting and we were

5 asked to only start once they were ready. Before we

6 proceed, we have, since we last sat, lost another jurist

7 who made an important contribution to our constitutional

8 jurisprudence, and that's former Chief Justice Pius Langa.

9 I would like us to stand and observe a minute silence in

10 his memory.

11 Thank you. Mr Madlanga, is there anything you

12 wish to tell us about the matters that stood over from

13 Monday? Or is Mr Budlender going to address us? Which of

14 the evidence leaders is going to deal -

15 MR MADLANGA SC: Mr Budlender, as I

16 indicated last time, Mr Chairman –

17 CHAIRPERSON: Will address us on the way

18 forward?

19 MR MADLANGA SC: Yes.

20 MR BUDLENDER SC: Thank you, Chair. As

21 members of the Commission will remember, on Monday we stood

22 down until today for the reason that we wished to see what

23 the outcome would be of the attempts to obtain interim

24 funding for the arrested and injured persons, for their

25 legal representation, until the Constitutional Court has

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1 decided whether to grant leave to appeal and, if so,

2 whether to uphold the appeal, or the contemplated appeal.

3 The purpose of standing down till today was to establish

4 whether interim funding was available. If so, the

5 immediate problem would fall away. If not, the Commission

6 would then be asked to deal with the application for

7 postponement and decide the matter.

8 We have established, and one of the reasons we

9 were late, for which I apologise, we have established that

10 one of the potential funders has a meeting of its board

11 tonight. There are still other prospects, I understand,

12 which are being investigated. We've been advised that

13 other applications have been made, and under the

14 circumstances it seems to us that it would be prudent to

15 stand the matter down further until Monday, and on Monday

16 one of two things would happen; either by then the interim

17 funding will have been obtained, in which case the problem

18 falls away, at least in the interim period, until the

19 Constitutional Court has made its decision. Alternatively,

20 the interim funding will not have been obtained by Monday,

21 in which event we would propose that the Commission decide

22 the application for postponement, make a decision on that

23 matter.

24 With regard to that aspect, the legal team for

25 the accused – for the injured and arrested people are not

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1 here today, and we would ask that the Commission direct

2 that the secretary writes to them, advising that if by

3 Monday the funding issue has not been resolved, the interim

4 funding issue has not been resolved, the Commission

5 proposes to hear further submissions on the application for

6 a postponement, and to decide the application for a

7 postponement, and they are invited to be here to reply to

8 whatever submissions are made in that regard.

9 So in short, Chair, we propose firstly that the

10 matter stand down until Monday morning at 9:30 to hear

11 whether the application for interim funding has been

12 successful. Secondly, we propose that if by then the

13 application for interim funding has not been approved, the

14 Commission should then hear further submissions and decide

15 the application for a postponement, and we propose thirdly

16 that the Commission should direct the secretary to inform

17 the legal representatives of the injured and arrested

18 persons that in the absence of interim funding, the

19 application for a postponement will be heard, decided on

20 Monday, and they are invited to be here to reply to

21 whatever submissions are made in that regard.

22 CHAIRPERSON: Mr Budlender, is there

23 anything further you wish to say?

24 MR BUDLENDER SC: No, nothing further,

25 Chair.

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1 CHAIRPERSON: I think last time, on

2 Monday you indicated that the attitude of the evidence

3 leaders to the postponement application was something that

4 would also stand over. So I take it that that's still the

5 position, and previously there was no opposition from those

6 present who took a stance, parties who took a stance to the

7 postponement application, but that situation might alter,

8 there may be opposition on Monday. That's something that

9 obviously Mr Mpofu and his team must bear in mind. Is that

10 correct?

11 MR BUDLENDER SC: That is so, Chair, and

12 it would be helpful, with respect, if this was specifically

13 drawn to their attention, that they should not assume that

14 it will not be opposed on Monday because that may not be

15 the case.

16 CHAIRPERSON: We will direct that such a

17 letter be sent. One of the other matters that obviously

18 must be dealt with is we must ask them to tell us what the

19 situation is in relation to the proposed application to the

20 Constitutional Court, whether it's been filed and what the

21 situation is in that regard.

22 MR BUDLENDER SC: That would be very

23 helpful, Chair.

24 CHAIRPERSON: Mr Bizos, while we were in

25 chambers awaiting word that the evidence leaders were

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1 ready, you came to see us and you indicated you wish to
2 make a statement to the Commission. Is that correct?
3   MR BIZOS SC: - permission I would like
4 to hand in a copy – I'm sorry that we do not have
5 additional copies, but those can be made, but with your
6 permission I would like to read out the statement of the,
7 setting out the attitude of the LRC.
8   CHAIRPERSON: You're going to read it out
9 now?
10   MR BIZOS SC: If I may, Mr Chairman.
11   CHAIRPERSON: Yes, please do.
12   MR BIZOS SC: Yes, "We, the LRC, are
13 concerned about maintaining public confidence in the
14 effectiveness and credibility of the inquiry, which would
15 be seriously eroded by repeated postponements. We and the
16 clients who we have represented remain committed to
17 ensuring that the conditions under which miners live and
18 work, and the processes that led to the tragedy that
19 unfolded are thoroughly and impartially investigated.
20 Accordingly we support efforts that are currently being
21 made to ensure that adequate resources are made available
22 to facilitate appropriate legal representation of the
23 parties before the Commission. It is of the greatest
24 importance that justice is seen to be served by the
25 Commission that is mandated to investigate all the causes

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1 of the tragedy. We must reiterate our concern that once
2 the Commission resumes, it should proceed with its task and
3 complete its work as expeditiously as possible. At this
4 stage we must place on record that in accordance with the
5 instructions of our clients we'll no longer be appearing
6 before the Commission or participating in its proceedings
7 until the issue of funding of legal representation of the
8 parties concerned has been resolved. We wish to assure the
9 Commission of our commitment that once this issue has been
10 satisfactorily resolved, we will once more be available to
11 participate in these proceedings and to support the work of
12 the Commission in terms of the instructions of our
13 clients."
14   CHAIRPERSON: Thank you, Mr Bizos. Mr
15 Semenya, is there anything you wish to say on behalf of
16 your clients? What is the attitude of Lonmin to the
17 application made by the evidence leaders?
18   MR SHOZI: Chair, members of the
19 Commission, thank you. We endorse the request to stand
20 down fully. Thank you.
21   CHAIRPERSON: The Human Rights
22 Commission?
23   SPEAKER: Thank you, Chair. As indicated
24 on Monday, the Human Rights Commission would support a
25 stand down to Monday in the hope that the efforts to secure

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1 interim funding will be successful. This is in line with
2 our support for the process to continue only if it is
3 inclusive and responsive and procedurally fair, and we
4 believe that all efforts that could be made to ensure the
5 return of the parties and the resolution of the funding
6 question on an interim basis would certainly be something
7 the Human Rights Commission would support.
8   CHAIRPERSON: I see. Thank you. Mr Tip
9 for NUM?
10   MR TIP SC: Chair, the position taken up
11 by the evidence leaders is in our respectful view logical
12 and consistent and we support it.
13   CHAIRPERSON: Thank you. Ms Manasi, is
14 there anything that you wish to say? Masevhe, sorry.
15 Forgive me for getting the name wrong. Ms Masevhe, is
16 there anything you wish to say?
17   MS MASEVHE: Chairperson, we'll abide the
18 decision of the Commission.
19   CHAIRPERSON: Thank you. Mr Gumbi?
20   MR GUMBI: Chairperson, on behalf of
21 Lieutenant Baloyi and the Lepaaku family, we'll abide by
22 the decision of the Chairperson.
23   CHAIRPERSON: Mr Mosikili, I understand
24 you are here on behalf of SERI. Is that correct?
25   MR MOSIKILI: Indeed, Chair. I –

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1   CHAIRPERSON: Do you wish to say – no,
2 SERI, I'm not quite sure what the role of SERI is at the
3 moment because you were instructing counsel on behalf of
4 AMCU and I think the families. Is that correct?
5   MR MOSIKILI: That's the position, Chair.
6   CHAIRPERSON: So, and they've withdrawn,
7 but you're still here, anyway, to say something on behalf
8 of SERI.
9   MR MOSIKILI: Chair, indeed that's the
10 position. I only came here to advise the Commission of our
11 current position, which is still that both the families and
12 AMCU will not participate up until the whole funding
13 problem has been resolved for the arrested and the injured,
14 Chair, therefore I cannot participate or share any views in
15 terms of the proposal by the evidence leaders, Chair.
16   CHAIRPERSON: Thank you. Is there any
17 other party who is represented today who wishes to say
18 something in regard to what is before us at the moment?
19   SPEAKER: Yes, Mr Chairperson, our
20 instructions are that we still support the proposal by the
21 evidence leaders.
22   CHAIRPERSON: Thank you very much. In
23 the circumstances it would seem that to be consistent with
24 the stance that we adopted on Monday, that before we
25 consider the postponement application as such, we should

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1   wait to see at least until Monday what is the result of the

2   endeavours to obtain interim funding on behalf of those of

3   the injured and arrested parties. So in the circumstances

4   the order we make is that the sitting of the Commission

5   will be adjourned until Monday, but also as I said, a

6   letter will be sent by the secretary to the legal team

7   representing the injured and arrested parties along the

8   lines suggested by Mr Budlender in the remarks that he

9   made. So we will adjourn until 9:30 on Monday.

10   [COMMISSION ADJOURNED]

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