

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 259

21 JULY 2014

PAGES 32641 TO 32770



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1 [PROCEEDINGS ON 21 JULY 2014]
 2 [09:34] CHAIRPERSON: The Commission resumes at
 3 this side. I don't know what's happening at the other
 4 side. I was told that everything was up and running. It
 5 doesn't look like it. Could someone please communicate to
 6 the other side to tell them to please turn their microphone
 7 on and the camera? Something appears to be happening. And
 8 then there's no witness. I can see Mr X. Can we hear him?
 9 Would you remind him he's under oath, and if he responds
 10 we'll know the microphone's working.
 11 MR X: [s.u.o. through interpreter]
 12 MR MAHLANGU: Confirmed, Chairperson.
 13 CHAIRPERSON: Ms Barnes.
 14 CROSS-EXAMINATION BY MS BARNES: Yes,
 15 thank you, Chair. Good morning, Mr X. I represent AMCU in
 16 this Commission of Inquiry and I'm going to ask you a few
 17 questions.
 18 MR X: I understand.
 19 MS BARNES: Chair, the first document
 20 that I'm going to refer to needs to be made a new exhibit.
 21 It's the supplementary affidavit of Mr Mathunjwa. I
 22 believe that everybody is in possession of copies of it.
 23 CHAIRPERSON: I can't find it in my book,
 24 but fortunately Ms Pillay is here, so she can tell us. We
 25 certainly received it. I can't remember if we gave it an

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1 exhibit number.
 2 MS PILLAY: Chair, this is a new exhibit.
 3 It hasn't been marked as yet.
 4 CHAIRPERSON: Alright, so my memory on
 5 this occasion was correct. AAAAA3.
 6 MS BARNES: And Chair, for the record, if
 7 that –
 8 CHAIRPERSON: Sorry, while we are busy
 9 with housekeeping, have you got any other exhibits you want
 10 to hand in?
 11 MS BARNES: No, Chair, that's it.
 12 CHAIRPERSON: Alright, okay. So you can
 13 carry on then.
 14 MS BARNES: If that could be described
 15 for the record as the supplementary affidavit of Mr
 16 Mathunjwa dated the 11th of July 2014. There is also an
 17 earlier –
 18 CHAIRPERSON: I've written it in my book
 19 as the supplementary affidavit of Mr Mathunjwa dated 11
 20 July 2014.
 21 MS BARNES: Thank you, Chair. Now Mr X,
 22 you've testified that Mr Mathunjwa went to the koppie on
 23 the evening of Tuesday the 14th of August 2012 and that he
 24 said certain things to you and to the other strikers. Mr
 25 Budlender – sorry, can I just finish? It's not much

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1 longer. Mr Budlender has cross-examined you on this, he's
 2 asked you questions about this and I'm not going to repeat
 3 what he has said.
 4 MR X: Yes, Ma'am.
 5 MS BARNES: I simply need to draw your
 6 attention to the fact that Mr Mathunjwa has deposed to an
 7 affidavit in which he responds to what you say in this
 8 regard. I believe that Mr Mathunjwa's supplementary
 9 affidavit has been made available to you. Is that right?
 10 MR X: Yes, Ma'am.
 11 MS BARNES: I'm not going to take you
 12 through the affidavit in any detail. I'm simply going to
 13 summarise what Mr Mathunjwa says and ask you to comment if
 14 you wish. First, Mr Mathunjwa says that he did not go to
 15 the koppie or to Marikana at any time on the 14th of August
 16 2012. Would you like to comment?
 17 MR X: I'm saying he was there,
 18 Chairperson.
 19 MS BARNES: Secondly Mr Mathunjwa says
 20 that he did not phone Mr Nzuzza using his phone or anybody
 21 else's phone on the 14th of August 2012. Mr Mathunjwa says
 22 that he didn't even know who Mr Nzuzza was at the time.
 23 MR X: He knew him.
 24 MS BARNES: And thirdly, on the evening
 25 of the 14th of August 2012 Mr Mathunjwa was in fact

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1 travelling from Pretoria back to Witbank where he lives,
 2 which is in the opposite direction from Marikana. You may
 3 comment if you wish.
 4 MR X: I can't hear the question. You
 5 say?
 6 MS BARNES: I'm saying that on the
 7 evening of the 14th of August 2012 Mr Mathunjwa was in fact
 8 travelling from Pretoria back home to Witbank where he
 9 lives, which is in the opposite direction from Marikana.
 10 If he were to travel from Pretoria to Marikana it would
 11 have been in the opposite direction.
 12 MR X: I'm saying he was there,
 13 Chairperson. Mr Mathunjwa appeared in the news on 404 on
 14 that day, his car appears there. He is in the news on that
 15 day.
 16 MS BARNES: I'm afraid you're wrong, Mr
 17 X. There's no footage indicating that Mr Mathunjwa was at
 18 Marikana or at the koppie on the 14th of August. There's no
 19 such footage.
 20 MR X: It appears on the TV on the day he
 21 was [inaudible, speaking simultaneously with interpreter].
 22 He was driving in that van of his.
 23 MS BARNES: If I might just finish the
 24 third proposition that I'm putting to you, and this is that
 25 Mr Mathunjwa had his cell phone with him while he was

<p style="text-align: right;">Page 32645</p> <p>1 travelling from Pretoria to Witbank and he made a number of 2 calls to people close to him, such as his son and his 3 pastor. 4 MR MAHLANGU: I am not sure of the 5 question. If you could repeat for me, please? 6 MS BARNES: I'm saying to Mr X that while 7 Mr Mathunjwa was travelling from Pretoria to Witbank on the 8 evening of the 14th of August 2012, he had his cell phone 9 with him and he used it to make a number of calls to people 10 close to him, such as his son and his pastor, and all of 11 this, Mr X, is borne out by objective evidence, being Mr 12 Mathunjwa's cell phone records and the cell site analysis 13 thereof. 14 MR X: I deny that. He could have left 15 his phone in Witbank whilst he was at Marikana. 16 MS BARNES: It will be shown in the 17 affidavit which you've either read or has been explained to 18 you, that that is not possible; Mr Mathunjwa had his phone 19 with him during that evening and he used it to make a 20 number of calls to people that are close to him. 21 MR X: I hear you say so but I'm saying 22 Mathunjwa was there on the 14th. 23 MS BARNES: So Mr X finally we will argue 24 that Mr Mathunjwa's affidavit together with the objective 25 evidence established that he could not have been at the</p>	<p style="text-align: right;">Page 32647</p> <p>1 one. I think you should put them separately to the 2 witness. 3 MS BARNES: Sorry, the first point was if 4 there was any grain of truth in those allegations they 5 would have been made earlier. 6 MR X: It's the truth that I was telling. 7 There were two other people who spoke after Mathunjwa's 8 statement. Mambush spoke and what he said was that you 9 cannot keep two bulls in the same kraal. He said one of 10 those bulls would be left dead. Also Kaizer spoke, he 11 said, Kaizer said those policemen who have been fetched 12 from the Eastern Cape to come and kill us black people 13 would be left there. Nothing such as this could be 14 mentioned in your presence when you are a leader of the 15 group, you don't allow such things to be said. Mambush was 16 left there and the police had left. During a fight, Mr 17 Chairperson, one party loses and another one wins. 18 MS BARNES: Yes, Mr X, what you said now 19 has got absolutely nothing to do with the question that I 20 put to you. I put it to you that the allegations you made 21 on Thursday about Mr Mathunjwa which I've just referred to 22 are false. 23 MR X: I'm saying it's the truth that I'm 24 telling you. 25 MS BARNES: And are another example of</p>
<p style="text-align: right;">Page 32646</p> <p>1 koppie on 14th of August 2012 and that your evidence in this 2 regard is false and must be rejected. 3 MR X: He appears on the video, appears 4 there on the 14th. 5 MS BARNES: Now Mr X, on Thursday last 6 week, which was the 17th of July 2014, you said a number of 7 things, but I'm going to refer to two things in particular. 8 You said that on the 16th of August 2012 Mr Mathunjwa was 9 canvassing for members and you also said that Mr Mathunjwa 10 said, you said that on the 14th of August 2012 Mr Mathunjwa 11 said that NUM should be killed. 12 MR X: Yes, it is so, Chairperson. 13 MS BARNES: Now you have never made those 14 allegations before, Mr X. They're not in either of your 15 statements. You didn't make them in your evidence-in- 16 chief. The first time you've ever made those allegations 17 is last Thursday in this Commission. 18 MR X: Chairperson, I had forgotten some 19 of the things. 20 MS BARNES: Well, I put it to you, Mr X, 21 that if there was any grain of truth in those allegations 22 you would have made them earlier. I put it to you that 23 those allegations are false and that this is yet another 24 example of you fabricating evidence as you go along. 25 CHAIRPERSON: That's three questions in</p>	<p style="text-align: right;">Page 32648</p> <p>1 you making up evidence as you go along in this Commission. 2 MR X: I don't agree with that. 3 CHAIRPERSON: Are you going to ask him 4 about the AMCU form that he signed, or is it not a matter 5 you're going to deal with? 6 MS BARNES: No, Chair. 7 CHAIRPERSON: Do you mind if I ask about 8 that? I think you told us at one stage of your evidence 9 that a number of you, including you, filled in application 10 forms to join AMCU when you were on the koppie. Is that 11 correct? 12 MR X: Yes, Sir. 13 CHAIRPERSON: And when was that? What 14 day was that? Was that when Mr Mathunjwa came on the 15 Tuesday night, or was it on the Wednesday or the Thursday? 16 When was it? 17 MR X: This happened on the 14th when he 18 spoke of Taozela. Chairperson, Taozela said – Taozela is 19 the person who said "Here we don't want NUM, everybody must 20 join AMCU. NUM is not wanted on the mountain." 21 CHAIRPERSON: Yes, I see. 22 MR X: That was the day on which Twala 23 was killed on the 14th. 24 CHAIRPERSON: Yes, did you fill in your 25 form, this form that was handed to you?</p>

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1 MR X: I did, Chairperson.
 2 CHAIRPERSON: What happened to the form?
 3 Did you give it back to the person who gave it to you?
 4 MR X: Yes, I did not keep it. The
 5 person who gave me that form kept it.
 6 [09:54] CHAIRPERSON: And who was that?
 7 MR X: I don't know what his name is but
 8 I would be able to identify him if I was to see him.
 9 CHAIRPERSON: I see, and the date that
 10 you filled in the form was that on the form?
 11 MR X: I don't know whether he filled in
 12 the date or not, Mr Chairperson.
 13 CHAIRPERSON: I see, thank you. Did you
 14 fill in the form yourself apart from the dates which may
 15 have been filled in by the other person, have you filled
 16 the form in yourself?
 17 MR X: That person did not ask me to
 18 sign, Chairperson. I told him my number and the kind of
 19 job that I'm doing. I said to him I'm an RDO.
 20 CHAIRPERSON: So you filled in part of
 21 the form yourself, is that right?
 22 MR X: I don't remember signing that
 23 form.
 24 CHAIRPERSON: No, I'm not asking you
 25 about signing, did you fill in some of the details

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1 yourself?
 2 MR X: No, I did not fill it in. The
 3 membership of AMCU then appeared on my salary slip for two
 4 months after I had filled in that form.
 5 CHAIRPERSON: Yes, I see, thank you. Mr
 6 Mathibedi, sorry, I mustn't ask Mr Mathibedi, I could ask
 7 Mr Yates. I did ask the evidence leaders to ask Lonmin to
 8 please give us copies of the forms, if there were any,
 9 which they received in respect of persons who had applied
 10 to join AMCU at the time that we're busy with and requested
 11 that deductions be made from their wages to be paid to AMCU
 12 and not any other union. Did you receive that request?
 13 MR YATES: Mr Chair, to my knowledge not
 14 yet, but I will check up on it and I will get back to you.
 15 CHAIRPERSON: I would like to see if
 16 there were any forms that were presented to Lonmin during
 17 the period from, say the 10th of August to the start on the
 18 16th, by persons who just joined AMCU and wanted the
 19 relevant deductions to be made in favour of AMCU. I would
 20 like to see those forms and I particularly would like to
 21 see who the people were and what the dates on the forms
 22 were.
 23 MR MPOFU: Chairperson, -
 24 MR BUDLENDER SC: Chair, may I just say
 25 that we have requested, I'm sure Mr Yates hasn't seen it

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1 but it has been requested from the Lonmin legal
 2 representatives.
 3 MR MPOFU: Chairperson, if I may just
 4 take advantage of the discussion, because this might
 5 coincide with a request which I was going to make. If I
 6 may enquire from either Mr Yates or Mr Budlender, whether
 7 the request covers what I was intending to ask for which is
 8 specifically the union deduction history of this particular
 9 witness, for the relevant period, for any union.
 10 CHAIRPERSON: I'm sure Mr Yates has heard
 11 that and will see to it that that's complied with also.
 12 Tell me, Mr X, were you the only one in respect of whom a
 13 form was filled in or did a number of your colleagues on
 14 the koppie also did what you have done and joined AMCU
 15 there, while on the koppie and requested for deductions to
 16 be made from their salaries be paid with AMCU?
 17 MR X: There were many of us, Mr
 18 Chairperson.
 19 CHAIRPERSON: Alright, sorry, Ms Barnes, I
 20 interrupted your cross-examination, I hope it didn't
 21 interfere with the points that you wish to make from now
 22 one?
 23 MS BARNES: No, not at all, Chair. If we
 24 could please have Mr X's supplementary statement up on the
 25 screen, that's Exhibit LLL26, paragraph 39? Halfway

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1 through that paragraph, Mr X, you state the following, "As
 2 Mathunjwa was leaving we were busy dancing, singing and
 3 chanting."
 4 CHAIRPERSON: Sorry, it would be fair, Ms
 5 Barnes, I think you should point out to the witness that's
 6 what's being talked about in this paragraph is Mr
 7 Mathunjwa's second visit on the first day of the 16th,
 8 because I see the paragraph begins, "Mr Mathunjwa returns
 9 for the second time," etcetera, but I think to be fair to
 10 him you should indicate what it is what's being talked
 11 about, so he will understand the substance of what you're
 12 going to put to him.
 13 MS BARNES: Yes, I'll do so, Chair. Mr
 14 X, you're referring here to the second time that Mr
 15 Mathunjwa came and spoke to you and the group of strikers
 16 on the 16th of August 2012.
 17 MR X: This was the 16th in the morning
 18 and he came later again.
 19 MS BARNES: Yes.
 20 CHAIRPERSON: Ms Barnes is talking about
 21 when he came back later, not the first time but the second
 22 time.
 23 MS BARNES: Do you understand, Mr X?
 24 MR X: Yes, I do, I do.
 25 MS BARNES: And then halfway through that

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1 paragraph you say, "As Mathunjwa was leaving we were busy
 2 dancing, singing and chanting when it came to my attention
 3 that the police had started deploying barbed wire and some
 4 of the persons at the koppie were leaving without any
 5 hindrance in whatever direction they went." So what you're
 6 saying there, Mr X, is that as Mr Mathunjwa was leaving
 7 after his second address to the crowd, the crowd was
 8 dancing, singing and chanting. Do you see that, do you
 9 maintain that?

10 MR X: That happened after Mathunjwa had
 11 left, while Mathunjwa was there Mambush said, you can't
 12 keep two bulls in the same kraal and also Kaizer spoke and
 13 Kaizer said, those policemen who are black policemen and
 14 have come from that area, that Transkei, to come and kill
 15 us here, we are going to finish them up here. Kaizer is
 16 from flag staff and he works at the Roland Shaft.

17 MS BARNES: Yes, Mr X, if you could
 18 perhaps just focus on what I'm putting to you, what I'm
 19 interested in is, your statement and only this, that as Mr
 20 Mathunjwa was leaving the crowd was singing, dancing and
 21 chanting.

22 MR X: It is so.

23 MS BARNES: Now we will argue, Mr X, that
 24 it is false and that the objective evidence shows that.

25 CHAIRPERSON: Before you go on, let me

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1 ask him a question. You say, you talk about the crowd
 2 dancing, singing and chanting and you say, this was as Mr
 3 Mathunjwa was leaving, is that correct, as he was going
 4 away the dancing, singing and chanting began, is that what
 5 you say?

6 MR X: There was singing, going
 7 leftwards, one side and then moving again to the other
 8 side.

9 CHAIRPERSON: It was as he was leaving,
 10 that's correct, isn't it?

11 MR X: Yes, Chair.

12 CHAIRPERSON: Now, Ms Barnes, you say the
 13 objective evidence indicates something else, is that, I
 14 take it you're referring to some video. Have you got a
 15 video you can show him?

16 MS BARNES: Chair, I don't propose to
 17 play the videos because they have all been played in this
 18 Commission previously. I simply propose putting the
 19 objective evidence –

20 CHAIRPERSON: But you know to be fair, I
 21 don't know how he can deal with this, you know you tell him
 22 there is objective evidence, he doesn't know what to check.
 23 He has made a statement, if you're going to endeavour to
 24 confront him with objective evidence that proves he isn't
 25 telling the truth, then I think it is fair to him if he can

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1 see it. If it is not ready to show it now, I take it
 2 you've got some other matter you're going to deal with in
 3 your cross-examination. We could take the first comfort
 4 break a bit earlier than usual and you could then find the
 5 video material to show him after that, if that will be
 6 convenient for you?

7 MS BARNES: Yes, Chair, this is really
 8 the last topic I'm dealing with, I just didn't think it
 9 necessary to play videos that have been played repeatedly
 10 in the Commission.

11 CHAIRPERSON: No, I understand that,
 12 we've seen them but the witness hasn't, so it is not fair
 13 to the witness to say him, there is objective evidence that
 14 contradicts you and he doesn't have a chance to see it and
 15 doesn't know where it is. He might have to say something
 16 about it.

17 MS BARNES: Well, we put it to him that,
 18 for example people were walking away slowly, you know I
 19 could simply put the facts but perhaps we could take the
 20 adjournment now and I can –

21 CHAIRPERSON: Alright, -

22 MS BARNES: - consider that.

23 CHAIRPERSON: Alright, we'll take a short
 24 adjournment at this stage as this is the first comfort
 25 break, 15 minutes.

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1 [COMMISSION ADJOURNS COMMISSION RESUMES]

2 [10:31] CHAIRPERSON: The Commission resumes.
 3 During the adjournment I spoke to an executive of Lonmin
 4 who's undertaken to make certain forms available to us.
 5 Remind the witness please that he's under oath. Ms Barnes
 6 are you ready now to show the objective evidence to the
 7 witness?

8 MS BARNES: Chair, it turns out that Mr
 9 Mpfu is going to be dealing with this and related topics
 10 and is going to be playing the same footage for those
 11 purposes and so rather than playing the videos twice we'll
 12 leave this topic in the capable hands of Mr Mpfu. And
 13 that concludes our cross-examination, Chair.

14 CHAIRPERSON: Thank you. We will see how
 15 capable your hands are in the course of the next few hours.

16 MR MPOFU: Today, Chairperson.

17 CHAIRPERSON: To the end of tomorrow.

18 MR MPOFU: No well, Chairperson, we'll
 19 discuss that in chambers. Good morning, Mr X.

20 MR X: Good day, Sir. You're looking
 21 good today, I see you're wearing a tie. Okay, so you were
 22 converted yesterday.

23 MR X: Yes, I was converted yesterday.

24 CHAIRPERSON: Judging by the number of
 25 ties in the chamber today there are quite a lot of people

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1 who belong to some or other denomination.
 2 MR MPOFU: Thank you, Chairperson. So
 3 what happened, Mr X, I thought, according to your Inyanga,
 4 you were not supposed to wash for the duration of your
 5 evidence.
 6 MR X: Mr Chair, I'm doing away with
 7 muti, I'm now going to this.
 8 MR MPOFU: I see, so because of that
 9 between the 19th of June and yesterday, so you say you
 10 washed yesterday, mercifully.
 11 CHAIRPERSON: He had a wash this morning
 12 as well.
 13 MR MPOFU: But your inyanga also told
 14 that when you testify here you must wear that black jacket,
 15 that one you haven't discarded. Apart from your conversion
 16 yesterday, correct?
 17 MR X: Mr Chair, if you are wearing a tie
 18 you have to wear a jacket.
 19 MR MPOFU: Yes, but is it correct that
 20 your inyanga had said that you must the jacket for the
 21 duration of your evidence here?
 22 CHAIRPERSON: You been wearing the same
 23 jacket, I think, unless it's a very similar one. You have
 24 been wearing the same jacket all the time you've been
 25 giving evidence. It's a brown jacket, not a black one and

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1 it may be that it's the jacket you're most comfortable in
 2 and particularly like to wear if you're wearing a tie but
 3 you have been wearing the same jacket. That's right isn't
 4 it?
 5 MR X: Yes, I've been wearing the same
 6 jacket.
 7 MR MPOFU: And my question is that
 8 according to the instructions of the inyanga before your
 9 conversion yesterday?
 10 MR X: That is so yes, Sir.
 11 MR MPOFU: Okay so you are still
 12 following those instructions from the inyanga.
 13 MR X: Yes I'm still following his
 14 instructions.
 15 MR MPOFU: I see. So you're still
 16 following the instructions of the inyanga and you're also
 17 following Jesus Christ?
 18 MR X: I converted yesterday, Mr Chair.
 19 MR MPOFU: Okay, it is still early.
 20 MR X: I switched over, converted to an
 21 eternal Inyanga which is God.
 22 MR MPOFU: Yes, that I understand. But
 23 I'm saying according to your evidence you are still
 24 following the eternal inyanga and the other one is not
 25 eternal, the mortal one.

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1 MR X: I am now with the eternal God,
 2 inyanga.
 3 MR MPOFU: Oh, okay so have you passed
 4 the good news to Magogo?
 5 MR X: Yes, Sir.
 6 MR MPOFU: When did you tell Magogo that
 7 the concert is over?
 8 MR X: I told the Magogo when I was
 9 praying yesterday in church.
 10 MR MPOFU: Oh you were at church
 11 yesterday.
 12 MR X: Yes, Sir.
 13 MR MPOFU: Okay since your conversion who
 14 bought you the tie?
 15 MR X: I bought it myself.
 16 MR MPOFU: Where did you buy it?
 17 CHAIRPERSON: Mr Mpofo, is this cross-
 18 examination going to help us? Are we going to have a
 19 chapter in our reports answering and dealing where he
 20 bought his tie and who bought it for him or whether he
 21 bought it himself?
 22 MR MPOFU: Yes, Chairperson, we are going
 23 to have a chapter in our report dealing with muti and the
 24 belief in muti. That's what I'm dealing with right now.
 25 CHAIRPERSON: Oh well you must carry on

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1 for the moment, you realise it's your time you're using.
 2 MR MPOFU: Yes, thank you. Where did you
 3 buy the tie?
 4 MR X: In Cape Town.
 5 MR MPOFU: Yesterday?
 6 MR X: Yes, Sir.
 7 MR MPOFU: When did you get back from
 8 Cape Town?
 9 MR MATHIBEDI SC: Sorry, Chair, I think
 10 this line of questioning may have a bearing where Mr X, you
 11 know the movements of Mr X which I think is not – for
 12 security reasons it's not –
 13 MR MPOFU: Chairperson, I can assure Mr
 14 Mathibedi I will be very careful not to disclose any
 15 location.
 16 CHAIRPERSON: I'm doubtful about the
 17 relevance of the questions, but Mr Mpofo assures me there
 18 are and it's time he's using so I haven't got a problem
 19 with that. Where exactly he bought the tie in Cape Town
 20 isn't likely to reveal his whereabouts in any dangerous or
 21 risky fashion, so I think the question can be asked.
 22 MR MPOFU: Thank you, Chairperson and
 23 that was not even the question.
 24 That was not the question anyway the question is
 25 when did you get back from Cape Town, Mr X?

<p style="text-align: right;">Page 32661</p> <p>1 MR X: I don't know the time because I do 2 not have a watch. 3 CHAIRPERSON: I think what Mr Mpofu wants 4 to know is did you come back yesterday or today. 5 MR X: Today. 6 MR MPOFU: Okay thank you. Thank you, 7 Chair. All right we are going to deal with – I'm just 8 going to spend, in order to save time, in order to save 9 time in this cross-examination I'm going to just deal with 10 some preliminary issues with you, Mr X. And to save time I 11 also have to put the cross-examination in its perspective 12 and in doing that I'm going to do something unconventional 13 which is to tell you where my cross-examination is going 14 ultimately. At the end of the case I'm going to argue that 15 your evidence lacks credibility and that it is because of 16 the manner in which you've given and the things that you've 17 said that your evidence is irretrievably destroyed to the 18 point of non-existence, in such a way that we're going to 19 ask the Commission not to believe anything you say if it is 20 disputed. Do you understand that? 21 MR X: Mr Chair, I'm not going back on 22 what I said, I'm prepared to say it in court, a court which 23 is capable of differentiating between winter and summer. 24 MR MPOFU: Oh I see. Oh you intend to 25 give the same evidence in court.</p>	<p style="text-align: right;">Page 32663</p> <p>1 you have converted you are going to speak the truth. 2 CHAIRPERSON: No he said he has spoken 3 the truth – 4 MR MPOFU: That's exactly what he said. 5 It was not properly translated, I'm just helping the 6 translator. 7 CHAIRPERSON: Mr Interpreter, what do you 8 say about that – 9 MR MPOFU: [African language]. 10 MR OGIRANA: Yes, he said I'm telling the 11 truth now, straight and I'm not mistaken. 12 MR MPOFU: So the question is if you are 13 saying you are going to speak the truth now it's correct 14 that now that you have converted you are from now on going 15 to be talking the truth, correct? 16 MR X: Sir, I have been telling the truth 17 and I'm continuing to tell the truth. I didn't change 18 anything. 19 MR MPOFU: So why did you say you are 20 going to speak the truth now? 21 MR X: Sir, I am still telling the truth. 22 MR MPOFU: Okay. Another reason why 23 we're going to argue that your evidence should be discarded 24 is that your motives are seriously questionable and I'll 25 deal with it later. Any comment?</p>
<p style="text-align: right;">Page 32662</p> <p>1 MR X: Yes I would, yes if it is the 2 decision of the Commission that I go to court I will. 3 MR MPOFU: Okay. We're also going to 4 argue and I won't dwell on this because Mr Budlender put a 5 similar proposition to you that even in the unlikely event 6 that anything you said was true it is embroiled with so 7 many layers of lies that it cannot be separated out. 8 MR X: There is no lies in what I'm 9 saying. I am telling the truth. When I came into this 10 Commission I took an oath to tell the truth. 11 MR MPOFU: And we will argue that 12 actually what Mr Budlender was saying to you is correct 13 because more than 90% of what you say on the relevant 14 issues is false. 15 MR X: Sir, it is the court that can 16 decide that I'm telling lies, but I'm saying I'm telling 17 the truth. 18 MR MPOFU: And it's not too late, Mr X, 19 now that you found the Lord yesterday you might want to 20 consider the fact that having sworn to speak the truth 21 under oath and lying is a sin. 22 MR X: Mr Chair, I'm telling the truth. 23 I'm not mistaken about what I'm saying, this is straight, 24 straight and the truth. 25 MR MPOFU: Okay so from now on now that</p>	<p style="text-align: right;">Page 32664</p> <p>1 MR X: Just repeat the question please. 2 MR MPOFU: One of the reasons we are 3 going to premise our submission which I've explained to you 4 that your evidence should be discarded as whole that your 5 motives for giving evidence are questionable. 6 MR X: Mr Chair, I do not have any 7 motive, I'm telling the truth just like Mandela or I am 8 Mandela. 9 MR MPOFU: You are Mandela. 10 MR X: Yes. 11 MR MPOFU: Well while we are on the 12 subject of you being Mandela – 13 CHAIRPERSON: I understood him to say, by 14 implication at least, that he's like Mandela surely. 15 MR MPOFU: No, Chairperson, please I 16 understand the language spoken by the – that's why I had to 17 confirm with him you are Mandela and he says yes. So I 18 don't know how we can change that evidence of his. That's 19 exactly what he says. He said it, it was interpreted and 20 then I confirmed it in a further question for your benefit, 21 Chairperson. He said yes. You just said you are Mandela, 22 correct? 23 MR X: I'm saying just like Tata Mandela 24 says. 25 MR MPOFU: So you are now changing,</p>

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1 taking advantage of the Chairperson's lack of understanding
2 of Xhosa.

3 MR X: When I'm saying I'm Mandela, we
4 know that Mr Mandela passed away, so when I'm saying I'm
5 Mandela I mean I'm telling the truth, just like Mandela.

6 MR MPOFU: I see.

7 CHAIRPERSON: Mr Mpofu, you know the
8 distinction between a metaphor and a simile, it's sounds as
9 if he's saying he's using metaphorical language but not
10 using simile. We don't have to have that translated to him
11 because he won't understand it unfortunately.

12 MR MPOFU: I do, Chairperson, but anyway
13 –

14 CHAIRPERSON: I'm sure you understand it
15 but I'm saying he won't.

16 MR MPOFU: Ja, no, no I accept.
17 [10:50] I'm just saying this is not a big issue. The
18 issue – well, it is in a way. Ja, one of the, that brings
19 us to one of the reasons why we're going to say your
20 evidence should be discarded, because you have delusions.

21 CHAIRPERSON: Just explain to the witness
22 what the delusions are so he can answer the question –

23 MR MPOFU: It's been explained –

24 CHAIRPERSON: - in a helpful fashion.

25 MR MPOFU: Oh, what they are, yes. Well,

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1 the first one is that you are Mandela.

2 MR X: I'm saying "like Mandela," Mr
3 Chairman, I'm not saying I am Mandela.

4 MR MPOFU: Well, you're changing your
5 evidence, but the record will speak for itself. But when
6 it came to your membership of the committee of 15 you did
7 not say you were like a member, you were a member, correct?

8 MR X: Mr Chair, I'm not Mandela. Mr
9 Mandela died [inaudible, speaking simultaneously with
10 interpreter] turned back. I'm only saying I'm telling the
11 truth, just like Mr Mandela. I'm not Khumeni. I'm saying
12 I'm telling the truth like Mr Mandela.

13 CHAIRPERSON: Yes, but Mr Mpofu moved on
14 from that point. He put another point to you. He said you
15 said that you were a member of the committee. You didn't
16 say you were like a member of the committee. That's the
17 point he put to you. What do you say to that?

18 MR X: Yes, Sir.

19 MR MPOFU: Yes, well that's another
20 delusion because it has been demonstrated, and I will get
21 to it; I'm simply now just situating my cross-examination.
22 It has been demonstrated that you were not a member of that
23 committee.

24 MR X: I was a member.

25 MR MPOFU: Also another delusion was the

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1 fact that you were a member of the group of five that went
2 in to discuss with management on the 10th. That's a
3 delusion because again you were not a member of that
4 committee.

5 MR X: Mr Chair, it's Mr Mpofu who was
6 not at the time office on the 10th. I was there.

7 CHAIRPERSON: Do I understand that you
8 were one of those who went into what has been called the
9 time office, I think, on the Friday the 10th to speak to the
10 representatives of Lonmin about the wage demand? Were you
11 one of those who went into the building with the others to
12 talk to the Lonmin people about the wage demand?

13 MR X: Yes, Sir. I'm one of them.

14 MR MPOFU: Another delusion is the one
15 that Ms Barnes and Mr Budlender dealt with, which is that
16 you saw Mr Mathunjwa at the mountain on the 14th. That's a
17 delusion because it did not happen.

18 MR X: Mr Chair, Mr Mathunjwa did go
19 there. I'm not mistaken and I'm not changing what I said.

20 MR MPOFU: Another delusion is the
21 evidence which you gave to the Chairperson that you filled
22 in, or were assisted to complete AMCU forms on the 14th of
23 August 2012. That also did not happen.

24 MR X: Mr Chair, the union was being
25 joined on the mountain. That is where we joined AMCU.

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1 MR MPOFU: Another delusion is the fact
2 that you said that there was a black and a white sheep,
3 sometimes turning into a goat –

4 CHAIRPERSON: No, no, no, Mr Mpofu, I
5 don't think that's fair. The reference to goats, that was
6 in the statement which he said was taken by the Shangaan-
7 speaking policeman and if you understand it's easy for a
8 non-Xhosa speaker to confuse a box with "boks," namely
9 goats. So his evidence was that that bit about the goats
10 was a mistake of the person who took the statement, which
11 if it was taken by a Shangaan-speaker one can understand.
12 But the goat point obviously is correct, but I don't think
13 it's fair to cross-examine him about the goats because
14 that, there's a linguistic explanation for that.

15 MR MPOFU: Well, Chairperson, you might
16 accept that explanation. I don't. You can't force me to
17 accept it. The –

18 CHAIRPERSON: You can't put it to him as
19 a fact. You can put it to him that that's what you
20 contend, but the way you put it to him was as a fact and –

21 MR MPOFU: Ja, that's exactly what I'm
22 saying, that it was sometimes referred to as a goat. It
23 was, that's a fact.

24 CHAIRPERSON: Come on, Mr Mpofu, you're
25 Xhosa-speaking, you know how – what is the Xhosa word for a

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1 goat?

2 MR MPOFU: iBhokhwe.

3 CHAIRPERSON: What?

4 MR MPOFU: Bhokhwe.

5 CHAIRPERSON: And what's the Xhosa word

6 for a box?

7 MR MPOFU: A box? No, it has nothing to

8 do with a box, Chairperson. It's – no, it's a sheep,

9 "igusha." He did not mistake a goat for a box, he mistook

10 a goat for a sheep. That's where the problem is,

11 Chairperson, but I think maybe stay out of it for now,

12 Chairperson. I'm just saying to him that at some stage the

13 two – let me put it this way; at some stage the two sheep

14 which are referred to in your statement, in another

15 statement are referred to as two goats. Correct?

16 MR X: Mr Chair, I explained this that

17 the man who was taking the statement, we did not understand

18 each other as far as the language goes.

19 MR MPOFU: Okay, well just to clarify you

20 and the Chairperson, the statement is AAAA8 and just to

21 show you that there's no confusion about the box, you say

22 there, "One of the sons told us that the muti will prevent

23 the bullets from connecting with our body and he displayed

24 a test on the box" - correct?

25 MR X: Yes.

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1 MR MPOFU: So there's no confusion there.

2 That's consistent with your other statement. No, I'm

3 saying, Mr X, on that part we agree, you and I agree,

4 that's what you said in this statement to the Shangaan-

5 speaking person, and it's also what you said to the Xhosa-

6 speaking person. So there's no confusion about the box.

7 MR X: Yes, Sir.

8 MR MPOFU: Thank you. Then you go on and

9 you say, "which he did ritual on it as well as two goats."

10 Bhokhwe.

11 MR X: The rituals?

12 MR MPOFU: Yes, the rituals.

13 MR X: No. Mr Mpofo, let's tell the

14 truth here. Mr Mpofo, I'm saying the gentleman who took

15 the statement wrote wrong things there. We did not

16 understand each other.

17 MR MPOFU: Okay, look, okay, I'm just

18 being distracted actually into a path that I was not

19 following with this box and goats and sheep. But now that

20 we are on that path, maybe let's follow it. It is correct

21 that you – when the Shangaan-speaking person was taking

22 your statement from you and when you realised that there

23 was a language problem, then you called for a Xhosa

24 speaker, correct?

25 MR X: Yes, Sir.

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1 MR MPOFU: So the problem was solved?

2 MR X: Yes, Mr Chair, Mr Ngqoko did

3 arrive.

4 MR MPOFU: And all that the – that

5 correction of the situation where the Xhosa speaker was

6 brought happened before you signed the statement, correct?

7 MR X: Mr Chair, I don't remember if I

8 did sign whilst I was with the first gentleman, but I did

9 in fact sign also with Mr Ngqoko.

10 MR MPOFU: Okay, fine, if you don't

11 remember you don't remember, but you would accept that the

12 likelihood is that if you complained about language and

13 then they brought a person who speaks your language, it

14 would have been only after that that once those language

15 problems have been resolved that you'd be asked to sign the

16 statement, correct?

17 MR X: Yes, Sir. Yes.

18 MR MPOFU: And then, so that is this

19 statement. Then the first statement was taken by Ngqoko

20 himself, so again there was no language problem there about

21 language.

22 MR X: Yes, Sir.

23 MR MPOFU: And the third statement was

24 taken with the involvement of Mr Mathibedi, and again there

25 was no problem there, the supplementary statement.

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1 MR X: No, there was no problem, language

2 problems.

3 MR MPOFU: Okay, so on all three

4 statements that we are dealing with, the first one because

5 it was taken by Ngqoko himself, second one because although

6 it started by being taken by a Shangaan-speaking, that

7 problem was resolved, and the third one, which was done

8 with the help of Mr Mathibedi, on all those statements

9 there was obviously then no language problem.

10 MR X: Mr Chair, there was no problem

11 with the last two statements, but the first one, yes there

12 was a problem there because we did not understand each

13 other.

14 MR MPOFU: Yes, I understand the first,

15 and then, but it was resolved.

16 MR X: Yes, it was resolved by bringing

17 in a Xhosa-speaking person.

18 MR MPOFU: Yes. So then in respect of

19 all three statements there was no language problem

20 ultimately.

21 MR X: There was only one statement that

22 had a problem, the first one, but there was no problem with

23 the subsequent two statements.

24 MR MPOFU: Yes, okay, Mr X, I don't want

25 to waste time on this. So let's forget about the two

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1 statements in respect of which there was no problem. Now
 2 I'm saying in the statement, the one where there was a
 3 problem initially, that problem was resolved because they
 4 brought a Xhosa speaker. That is your evidence.
 5 MR X: Yes, Sir.
 6 MR MPOFU: Thank you. So from now on we
 7 don't want to hear about the – a goat is a goat now.
 8 MR X: Excuse me, Mr Chair, goat is
 9 "ibhokhwe" in Xhosa. Is that not so? And a sheep in Xhosa
 10 would be "igusha." That was the mistake when that man
 11 wrote there "goat." We did not understand. There was a
 12 language problem when I mentioned this word.
 13 MR MPOFU: Okay, I'm not going to go
 14 around this with you. I think we've made it clear that
 15 that problem was solved. In that same statement - you
 16 remember you said that you joined AMCU for two months?
 17 MR X: I joined AMCU, the joining in took
 18 one day, but the deductions were made over a period of two
 19 months, which was R90 for an RDO. There is a copy of that
 20 AMCU probably membership.
 21 MR MPOFU: You joined AMCU after the
 22 strike, correct?
 23 MR X: I joined AMCU whilst I was on
 24 strike. I joined it on the mountain.
 25 MR MPOFU: So if anyone says you joined

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1 AMCU after the strike they would not be telling the truth?
 2 MR X: That person would be making a
 3 mistake. The membership of AMCU went to the time office
 4 after we had returned back to work.
 5 [11:10] We all joined AMCU in one day, the processing of
 6 the membership could have happened later because of the
 7 large numbers or the workers who joined.
 8 MR MPOFU: Okay, Chairperson, so that we
 9 don't have to come back to the issue of the statement, in
 10 that statement, after the language problem was resolved you
 11 also said that, I'm reading from AAA8, Chairperson,
 12 paragraph 7. You also said that, "On the 12th there were
 13 two security officers attacked and killed whereby one of
 14 them was cut on his chin and tongue and this piece of flesh
 15 was taken together with his blood, put inside a plastic bag
 16 and also ashes from him as he was burnt to ashes." Yes -
 17 MR X: Mr Chair, that gentleman was taken
 18 out of the car.
 19 MR MPOFU: No, -
 20 MR X: Even if the Commission can look at
 21 that video, that man was cut.
 22 MR MPOFU: Okay, we're going to come to
 23 the man who was cut. I am saying your statement says that
 24 after, what you've now described as the cutting, that also
 25 ashes from him as he was burnt to ashes.

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1 MR X: Mr Chair, what was taken there was
 2 pieces of his flesh and his blood.
 3 MR MPOFU: You know, Mr X, I'm also going
 4 to argue that what you are doing is very cruel to the
 5 families of some of the people who were deceased, because
 6 you are telling lies and they are very eager to have
 7 closure and to find out what happened to their loved ones.
 8 MR X: Mr Chair, that gentleman was cut
 9 and the statement of the people who washed the body say
 10 that part of his tongue and chin were cut.
 11 CHAIRPERSON: Can I, sorry, can I ask you
 12 a question about that? In the –
 13 MR X: If there is no truth in what I'm
 14 saying I will argue that in court.
 15 CHAIRPERSON: Alright, I would like to
 16 ask you a question. Exhibit AAAA8 is the statement that
 17 you say was taken by the Shangaan speaking policemen who
 18 made a mistake about the goats. Was that, that's according
 19 to your evidence. Was that the only mistake in that
 20 statement?
 21 MR X: The other mistake is the mention
 22 of ashes, I never mentioned ashes.
 23 MR MPOFU: Yes, but as we know all these
 24 mistakes, whether there was one or two or a thousand, they
 25 were resolved once the Xhosa speaking was brought, that's

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1 your evidence?
 2 MR X: Yes, the person was conversant
 3 with my language who is Xhosa, just as I am, was brought
 4 in.
 5 MR MPOFU: Ja, now the point I'm making
 6 to you is, seeing that that problem was resolved I was
 7 simply saying what you are doing is unfair and cruel
 8 because Ms Fundi wants to know what happened to her husband
 9 and if you, the same person who was able to assist her, in
 10 one statement you say that he was only cut, which as we
 11 know is the objective evidence, and –
 12 MR MATHIBEDI SC: Sorry, Chair, which
 13 part is the witness not telling the truth, I mean if that
 14 can be put to him it will be helpful.
 15 MR MPOFU: Okay, it is the part where you
 16 say, also ashes from him as he was burnt to ashes, that is
 17 not the truth.
 18 MR X: Repeat, what did you say?
 19 MR MPOFU: Your lawyer was asking me to
 20 explain which part –
 21 CHAIRPERSON: No, he, hasn't got a
 22 lawyer, he is a witness called on behalf of the police and
 23 Mr Mathibedi is not his lawyer as I understand it, but
 24 anyway Mr Mathibedi who was with you when you made your
 25 supplementary statement, he objected and said that, he

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1 asked that Mr Mpofo indicate clearly what statement in your
 2 statement that was taken earlier involved the Shangaan
 3 policemen, what statement of that was incorrect? I
 4 understand you to concede that that statement, the one that
 5 was taken involving the Shangaan speaking policemen, is
 6 incorrect in at least two respects. Firstly in talking
 7 about the goats and secondly in saying that ashes were
 8 taken from the policemen whose chin and tongue were cut.
 9 Sorry, I beg your pardon, I got that wrong, that
 10 ashes were taken from the chin and tongue of the security
 11 official who was killed on the Sunday morning. The
 12 statement says, "On 12/08/2012 there were two security
 13 officers attacked and killed, whereby one of them was cut
 14 on his chin and tongue and his piece of flesh was taken."
 15 Now that refers to Mr Fundi, and then the sentence
 16 continues, "with his blood put inside a plastic bag and
 17 also ashes from him as he was burnt to ashes." Now that
 18 part about the ashes and he has been burnt to ashes is not
 19 correct because that's not what happened to Mr Fundi, it
 20 happened to the other security officers. Am I correct in
 21 saying that?
 22 MR X: Mr Chair, I'm saying there were
 23 two security people there, I did not know their names, one
 24 was moved from the car, the other one was not and no ashes
 25 were taken there. It is pieces of flesh and blood that was

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1 taken.
 2 CHAIRPERSON: The statement which was
 3 taken involving the Shangaan policemen which makes the
 4 allegation that ashes were taken from the security officer
 5 whose chin and tongue were cut, that part about ashes been
 6 taken is not correct in the statement, is that correct?
 7 MR X: No, that is not correct.
 8 MR MPOFU: Ja, so that's the point I was
 9 making that, the point I was simply making is that it is
 10 not correct and not fair on the families if you give
 11 contradicting accounts about what happened to their loved
 12 ones.
 13 MR MATHIBEDI SC: Sorry, Chair, before
 14 the witness answers, sorry, Mr X? Sorry, before the
 15 witness answers, what is the contradictory account that the
 16 witness is giving?
 17 MR MPOFU: Okay, in one state I would ask
 18 -
 19 CHAIRPERSON: Mr Mpofo, the question is a
 20 bit imprecise, if you don't, if you'll forgive my -
 21 MR MPOFU: No, I -
 22 CHAIRPERSON: The position is that he is
 23 not giving contradictory accounts now, your point is that
 24 in the statements he made there are contradictory accounts,
 25 because the one talks about ashes and the other one

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1 doesn't. You in fact, your contention is that according to
 2 his evidence a Xhosa speaker was involved in regard to that
 3 statement before it could -
 4 MR MPOFU: Ja, that thing is irrelevant,
 5 Chairperson.
 6 CHAIRPERSON: And the witness at one
 7 point said that that a problem arose because the Shangaan
 8 speaker was, - I think all the evidence you need on that
 9 point is on record, you could -
 10 MR MPOFU: Yes -
 11 CHAIRPERSON: - possibly proceed to the
 12 next point.
 13 MR MPOFU: Thank you, Chairperson. Yes,
 14 but I want to emphasise that according to his evidence this
 15 whole Shangaan thing is a red herring, it was resolved, so
 16 I don't even think we should mention it now because you say
 17 it was resolved, and mentioning it again just revives it
 18 from the dead. Now another, you saw, another contradiction
 19 which is also not fair in the same way is that you also
 20 contradict yourself about what happened to the flesh and
 21 blood that you're talking about. Here and in this
 22 statement you said that you saw the blood being mixed with
 23 muti, correct?
 24 MR X: Mr Chair, these things were taken
 25 to the Nyala.

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1 MR MPOFU: Yes, I know that, I'm asking
 2 you about your evidence, Mr X. Did you personally with
 3 your two eyes see the human tissue being mixed with muti or
 4 not?
 5 MR X: Yes, they were put on something
 6 there on the mountain and burnt, and then they were mixed
 7 with the muti.
 8 MR MPOFU: In your presence, you saw
 9 that?
 10 MR X: There were bottles there.
 11 MR MPOFU: Yes, all this happened in your
 12 presence, you saw it with your own two eyes?
 13 MR X: Yes, they were mixed.
 14 MR MPOFU: Mr X, you're not answering -
 15 CHAIRPERSON: The question is, we know
 16 you told us they were mixed. What Mr Mpofo wants to know
 17 from you now is whether mixed in your presence, did you see
 18 it happening because you were there, looking at it when it
 19 took place? That's your question, Mr Mpofo?
 20 MR X: Yes, I saw it with my eyes.
 21 CHAIRPERSON: Well, I'm going to argue at
 22 the end that that is a lie and a fabrication, one of your
 23 embellishments and to base that I am going to use your
 24 statement, AAAA1.2, paragraph 13 thereof, Chairperson,
 25 where you gave your first account about this incident, or

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1 at least one of them, I'm not so tedious about the second
 2 one. You said and this is a statement that was taken by
 3 Nxopo, so there was no problem here, correct?
 4 MR X: Yes, Chair.
 5 MR MPOFU: In that statement you say
 6 about the same incident, the blood and human tissues were
 7 handed to one of the Sangomas by Bhele.
 8 MR X: Repeat the question? Bhele cut
 9 the security.
 10 MR MPOFU: Okay, that's fine, that was at
 11 the scene. When you got to the mountain who gave the human
 12 tissue to the sangoma?
 13 MR X: The people who gave a report back
 14 on the mountain is Xolani and Mambush and those are the
 15 people who handed over these things to the sangoma.
 16 MR MPOFU: So Bhele's involvement, - I'm
 17 sorry, Mr X.
 18 MR X: That plastic was not heavy, they
 19 were not helping each other to carry that plastic, it was
 20 not heavy.
 21 MR MPOFU: Ja, that's not my question, Mr
 22 X, who gave the plastic to the sangoma, simple question?
 23 MR QGIRANA: Mr X is asking the question
 24 to be repeated?
 25 MR X: This plastic was put on the ground

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1 next to the sangoma.
 2 MR MPOFU: By whom?
 3 MR X: It is Bhele who was doing the
 4 cutting and put the pieces of flesh in the plastic.
 5 MR MPOFU: Mr X, please answer the
 6 question, it is a simple question. You have explained that
 7 Bhele cut the person, so that's why I said, let's leave the
 8 scene now. Who had the plastic and then you said it was
 9 Mambush and Xolani. Now I'm saying to you, who gave, of
 10 those three people that you've mentioned or anybody at that
 11 mountain, who gave the plastic to the sangoma?
 12 [11:30] MR X: When we got to the mountain, Mr
 13 Chair, the plastic bag was put on the ground, that's the
 14 plastic bag that Bhele had, or was carrying, and the
 15 sangoma took it from where it was put.
 16 MR MPOFU: Alright, so then that answer
 17 is that no one handed the plastic to the sangoma, it was
 18 just put down, correct?
 19 MR X: The plastic was carried by Bhele
 20 on the way to the mountain, Bhele, the person who was doing
 21 the cutting.
 22 MR MPOFU: Okay, Chairperson, I'm -
 23 CHAIRPERSON: Mr Mpofu is asking you a
 24 different question.
 25 MR MPOFU: Yes.

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1 CHAIRPERSON: Let me repeat his question
 2 to you. What he says to you is this; he says no one
 3 therefore handed the plastic to one of the sangomas. Is
 4 that correct? That's his question.
 5 MR X: The plastic was put down on the
 6 ground at the mountain and the sangoma took it.
 7 CHAIRPERSON: So does that mean that no
 8 one handed the plastic to one of the sangomas?
 9 MR X: No, I don't remember that, Mr
 10 Chair.
 11 MR MPOFU: Well, you see, Mr X, I have
 12 said to you that what you are doing is cruel to the
 13 families, but it's also cruel to the people, the protesters
 14 that you have been, whose names you've been banding about
 15 in this Commission.
 16 CHAIRPERSON: I think you must explain
 17 why before you expect him to -
 18 MR MPOFU: Yes, because just in an
 19 example of this questioning that the Chairperson and I have
 20 been giving, what you have said before in your previous
 21 statement and what would have been written about in
 22 newspapers is that Bhele handed the human tissue to the
 23 sangoma. Now you are saying nobody did that, which means
 24 that you would have been unfair on, infringing on the
 25 rights of a person who is now viewed in a particular way by

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1 the community.
 2 MR X: It is like that, Mr Chair, Bhele
 3 put the plastic bag on the ground in front of the inyanga.
 4 Does Mr Mpofu mean handing, physically handing it over and
 5 putting it in the Sangoma's hand? No, he did not do that.
 6 MR MPOFU: Well, the record will show
 7 that previously, or rather not even the record, the
 8 statement will show that you said that it was handed over
 9 and the record will also show that when I asked you to name
 10 the person who did it, you did not do so and now you are
 11 changing it. I asked you several times; I said I
 12 understand what you're saying but even if it was put on the
 13 ground, by whom was it put, and you did not identify
 14 anybody and you just went back to who cut the person. But
 15 anyway -
 16 CHAIRPERSON: Just wait, the witness -
 17 sorry, what is your answer?
 18 MR MPOFU: Sorry, sorry, Chair.
 19 MR X: Mr Chair, Xhosas are hard-headed
 20 people. I'm explaining what I'm explaining to the
 21 Commission and I'm not changing it. I will explain it
 22 later in court if I have to.
 23 CHAIRPERSON: I've already said I don't
 24 approve of people in the chamber making noises, laughing,
 25 making comments. If that sort of thing happens again I'll

<p style="text-align: right;">Page 32685</p> <p>1 ask people to leave. I don't want to do that because I'm 2 sure everybody here wants to hear the evidence, but please 3 behave. It's very disturbing. It's difficult for us to 4 follow the evidence. If there are distractions of the kind 5 I've referred to it makes it more difficult, so please 6 cooperate with me. 7 MR MPOFU: Yes, thank you, Chairperson. 8 Insofar as it was at my expense I understand – 9 CHAIRPERSON: Mr Mpofu, the evidence on 10 this point is on the record. I think you can move on to 11 another point. The record will speak for itself. 12 MR MPOFU: Yes, thank you, Chairperson. 13 So we'll come back to the hard-headedness of Xhosa. So you 14 say that Xhosas will deny something that even if they know 15 that it is true? Is that correct? 16 MR X: What is Mr Mpofu saying? 17 MR MPOFU: No, you were insulting me. 18 You said that Xhosas are stubborn or hard-headed and they 19 will deny something even if it is true, and that's why I'm 20 not understanding what you are saying. 21 MR MATHIBEDI SC: Sorry, Mr Chairperson – 22 CHAIRPERSON: Two points, did you say 23 that? What exactly did you say about the hard-headedness 24 of Xhosas? 25 MR MPOFU: Well, I've just put the</p>	<p style="text-align: right;">Page 32687</p> <p>1 something else? I think – 2 MR MPOFU: No, Chairperson, I – 3 CHAIRPERSON: I take it you want to reply 4 to the criticism of you, but then we can move on. 5 MR MPOFU: That's exactly what I'm doing, 6 Chairperson. Mr X, I want to assure you that I respect you 7 and I'm asking you these questions in a respectful manner, 8 deliberately. All I was saying was that what you have said 9 now is a deviation – 10 MR X: Sorry, Sir. As far as this 11 respect issue goes, Mr Chair, Mr Mpofu started asking me 12 about the tie; that is where I realised that he is not 13 showing respect. I could deduce from those questions about 14 the tie that this is the way it is. 15 MR MPOFU: Okay, Mr X – 16 CHAIRPERSON: Sorry, Mr Mpofu, I was 17 proposing to take tea adjournment at quarter to 12, so when 18 you've reached a convenient stage we'll do that. 19 MR MPOFU: Yes, let me just round off 20 this point, Chairperson. Mr X, the only reason that I 21 asked you about your tie is because a few days ago you gave 22 evidence – and I will refer you to it – that the reason 23 that you are wearing that jacket is because your inyanga 24 had said you must wear it throughout the evidence. I'll 25 refer you to that part.</p>
<p style="text-align: right;">Page 32686</p> <p>1 question, Chairperson – 2 CHAIRPERSON: No, no, I'm asking the 3 witness, I'm not asking you. I'm asking the witness. 4 MR X: Mr Chair, Mr Mpofu is disputing 5 what I'm saying. He is Xhosa, I'm also Xhosa. What I'm 6 saying is a Xhosa person will deny something that he knows. 7 MR MPOFU: Okay, so that applies to you 8 as well. 9 MR X: Sir, a Xhosa can just deny 10 something that he knows. 11 CHAIRPERSON: Yes, so which Xhosa person 12 are you referring to? Is it Mr Mpofu you say who's doing 13 that, or is it you? Is it both of you? 14 MR X: Chair, the argument is between me 15 and Mr Mpofu. We are both Xhosas. 16 MR MPOFU: And we both suffer from this 17 thing of denying something that we know is true, correct? 18 MR X: Mr Chair, I'm not changing from 19 what I said. Mr Mpofu is giving me a hard time here. He 20 wants respect, but he does not give me respect. I should 21 get respect from him as a labour practitioner. Mr Mpofu is 22 a bigger person than me, it can also mean older person. I 23 must get respect from him if he wants respect from me. 24 MR MPOFU: Okay, Mr X, I can just – 25 CHAIRPERSON: May I suggest we move on to</p>	<p style="text-align: right;">Page 32688</p> <p>1 MR X: Mr Chair, any Xhosa-speaking 2 person will see what Mr Mpofu is doing and questions he's 3 asking show no respect. He doesn't respect me first, 4 although he's a lawyer. 5 MR MPOFU: Okay, now just to round off 6 this point before we take the break, you remember that you 7 said to the Chairperson that the mixing of the human tissue 8 and the muti is something you observed with your own two 9 eyes? 10 MR X: That is what happened, Mr Chair; 11 there were also sheep that were used to make a screen there 12 at that place where the rituals were taking place. 13 MR MPOFU: Yes. No, I know about the 14 sheep. We'll get there. I'm saying do you remember that 15 you said to the Chairperson that the mixing of the human 16 tissue with the muti is something that you observed with 17 your own two eyes? I'm just taking you back so that we 18 leave this issue of respect. 19 MR X: Yes, those were done. 20 MR MPOFU: So in the statement that I 21 referred you to this is what you say about that. "We were 22 told that the human tissues and blood are going to be mixed 23 together to make a much stronger muti by the sangoma." Can 24 you see – 25 CHAIRPERSON: [Inaudible, speaking</p>

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1 simultaneously with witness]
 2 MR X: I saw that, I saw this being done,
 3 Mr Chair, and we were told why it was being done, but I saw
 4 it.
 5 MR MPOFU: You were told whilst or after
 6 it was done?
 7 MR X: Mr Chair, that was the mention
 8 that these things would be mixed so that we do not turn
 9 back. When we attack the police we should go forward.
 10 MR MPOFU: So in Xhosa [African
 11 language]. Is that correct? No, you have to say that in
 12 English, Mr Interpreter.
 13 MR QGIRANA: In Xhosa you said you were
 14 told after it had been done. Is that not so?
 15 MR X: Yes, Sir.
 16 MR MPOFU: Yes, even that is against what
 17 you're saying in your statement. You say in your
 18 statement, "We were told that the human tissues and blood
 19 are going to be mixed together to make much stronger muti
 20 by the sangoma." I'm not going to belabour the point. I'm
 21 simply saying that your version of what you say in the
 22 Commission and what you said in the statement AAAA8 and
 23 what you say in AAAA1.2 are not the same. That's all I'm
 24 saying.
 25 MR X: Mr Chair, what I mention in my

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1 statement is the same as what Mr Mpofu is saying.
 2 MR MPOFU: And just before we take the
 3 break, all I'm saying, Mr X, I'm raising these things not
 4 just to show you the differences. The big point I'm making
 5 is that what you are doing by contradicting yourself on
 6 these important issues about which some family members
 7 would like to have closure, you are actually creating more
 8 questions than answers and that is unfair and cruel on
 9 them. That's all I'm saying.
 10 MR X: Mr Chair, what I'm saying is that
 11 that man was mutilated, pieces of flesh were eaten by the
 12 people there, and I'm not changing now, I can mention that
 13 later in court. Where was these pieces of flesh going to?
 14 What was going to happen to them?
 15 [11:50] If what I am saying is not the truth the court
 16 will decide what was going to happen with these pieces of
 17 flesh.
 18 MR MPOFU: Thank you. Chairperson, we
 19 can take the break.
 20 CHAIRPERSON: We will take the tea
 21 adjournment, quarter of an hour.
 22 [COMMISSION ADJOURNS COMMISSION RESUMES]
 23 [12:17] CHAIRPERSON: The Commission resumes. Mr
 24 Interpreter, would you please remind the witness he is
 25 still under oath and thereafter Mr Mpofu will continue with

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1 his cross-examination.
 2 MR MAHLANGU: Confirmed, Chairperson.
 3 MR MPOFU: Thank you, Mr X.
 4 CHAIRPERSON: We took longer to come back
 5 than you thought we would, but we had some housekeeping
 6 matters to attend to in Chambers.
 7 MR MPOFU: I'll take that into account,
 8 Chairperson. You also said that, or let me put it this
 9 way. The mistakes that you say were in that statement, are
 10 those the only mistakes that you can remember?
 11 MR X: In which statement, Sir?
 12 MR MATHIBEDI SC: Sorry, Chair, I think
 13 the question is unfair to the witness, it is very vague.
 14 CHAIRPERSON: I'm sure you can make the
 15 question a bit more precise so that the witness can deal
 16 with it adequately. I understand the question, I'm not
 17 sure if the witness does.
 18 MR MPOFU: Yes, the witness has just
 19 asked me a question to clarify and I'm busy doing that.
 20 I'm talking about the statement which there was initially a
 21 language problem and then it was resolved when they called
 22 a Xhosa speaker.
 23 CHAIRPERSON: The statement about the
 24 goats, where you say you didn't mention goats, you say that
 25 is a mistake. You also said there was a mistaken in that

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1 statement relating to ashes, the ashes were taken from the
 2 person whose tongue and chin had been cut, that that is a
 3 mistake. Is there any other mistakes?
 4 MR X: No, I can't remember.
 5 MR MPOFU: Now let's then go to the, now
 6 that we know that there were no other mistakes let's go to
 7 the sentence after the one that, on AAAA8, on the second
 8 page, the end of paragraph 7, you said the flesh and blood
 9 were mixed with muti and we all licked it, so, that's not
 10 what I want to question you about. Now after that you then
 11 say, this happened every time when a person is attached and
 12 killed whereby his blood was collected and mixed with muti
 13 and licked.
 14 MR X: I had explained that, Chairperson.
 15 I said the first person who took the statement from me,
 16 there was this language, there was a misunderstanding,
 17 there was only one person whose body parts were taken, it
 18 is the security officer only.
 19 CHAIRPERSON: So it follows therefore
 20 that the sentence that Mr Mpofu read you, the last sentence
 21 in paragraph 7 of Exhibit AAAA8 is incorrect, is that
 22 correct?
 23 MR X: No.
 24 CHAIRPERSON: I'm sorry, I understood you
 25 to say that only once when a person was attached and killed

<p style="text-align: right;">Page 32693</p> <p>1 was his blood collected and body parts taken and so forth. 2 Now the sentence that Mr Mpofo is asking you about reads as 3 follows, "This happened every time when a person is 4 attacked and killed whereby his blood was collected and 5 mixed with muti and licked," every time when a person is 6 attached, is that correct or is that not? 7 MR X: No, that was a mistake, 8 Chairperson, that's a mistake, Chairperson. 9 MR MPOFU: But the issue really that I'm 10 emphasising is that it goes to the impact of this on the 11 families of the people who died unfortunately, because the 12 impact of that statement would be that for the family of 13 Langa, the family of Fundi, the family of Mabebe, the 14 family of Monene, if they read that sentence – 15 MR MATHIBEDI SC: Sorry, Chairperson, 16 what impact does it have on those families and it's – 17 MR MPOFU: No, Chairperson, I don't want 18 my cross-examination to be interrupted unnecessarily. 19 CHAIRPERSON: Well, Mr Mpofo, please – 20 MR MPOFU: That's exactly what I'm doing– 21 CHAIRPERSON: If there is an objection I 22 have to listen to it. It may be irritating your cross- 23 examination – 24 MR MPOFU: It is not an objection, it is 25 a question.</p>	<p style="text-align: right;">Page 32695</p> <p>1 don't know where the word repeat comes from. 2 CHAIRPERSON: I didn't stop you, I just 3 said I don't know if it has to be, I wouldn't say you 4 couldn't – 5 MR MPOFU: Well, I don't know – 6 CHAIRPERSON: I'm endeavouring to repeat, 7 explain your point to Mr Mathibedi so that he will 8 understand it and then I then asked you whether I explained 9 it correctly. 10 MR MPOFU: Mr X, I'm saying that if the 11 families of, the families that I've read out, Langa, 12 Mabebe, Mabelane, Monene and any other families whose 13 people were allegedly killed or attached by the strikers, 14 if they read this sentence which says, this happened at the 15 time when a person was killed and attacked and killed 16 whereby his blood was collected and mixed with muti and 17 licked it will be reasonable to believe that that also 18 happened to their loved ones? Do you understand that? 19 MR X: The families understood, 20 Chairperson, my explanation that the first person who took 21 the statement, there was this language difficulty between 22 him and me, that we did not understand each other. 23 MR MPOFU: Yes, but also the families 24 were also here when you said that problem was subsequently 25 resolved, correct?</p>
<p style="text-align: right;">Page 32694</p> <p>1 CHAIRPERSON: No, I understood it to be, 2 is it an objection by Mr Mathibedi? 3 MR MATHIBEDI SC: It is an objection. 4 CHAIRPERSON: Well, what is it? 5 MR MATHIBEDI SC: The first objection is 6 that Mr Mpofo does not hold instructions on behalf of the 7 Fundi and the Langa families and for him to say that it has 8 got impact without them having told him, I think it is not 9 proper, Chairperson. 10 CHAIRPERSON: I don't think that's a good 11 point, Mr Mathibedi. What Mr Mpofo was trying to say, I 12 think to be fair, I think that's unfair for you to put it 13 that way, I think you've already did say it, was that he 14 was suggesting to the witness that if he gives evidence 15 about the killing of Mr Langa and Mr Fundi, that his 16 evidence in regard to their killings is mixed up with 17 things that are false, it makes it very difficult for those 18 families to understand what exactly happened because they 19 don't know what part of the witness' narrative in relation 20 to the killings of those two people is accurate or not 21 accurate, so I think that is Mr Mpofo's point. I'm not 22 sure at this point if it has to be repeated every time but 23 that is the point that you've made, Mr Mpofo, is it not? 24 MR MPOFU: Well, Chairperson, it is not 25 repeated, you know I'm raising a new point altogether, I</p>	<p style="text-align: right;">Page 32696</p> <p>1 MR X: The only human parts that were 2 taken were from that security person, Chairperson, no other 3 person's parts were taken. 4 MR MPOFU: You also go and say that the 5 human tissue or let me put it this way, this was before 6 your conversion, so at the time you believed in muti, at 7 the time of August 2012, correct? 8 MR X: The muti does work if one follows 9 the instructions correctly. 10 MR MPOFU: Yes, and you still believe 11 that even in your Christian garb? 12 MR X: I have now chosen God, 13 Chairperson. 14 MR MPOFU: Yes. 15 MR X: I have now chosen one that does 16 not have to revive, that is always there permanently. 17 MR MPOFU: Yes, but in 2012 you 18 participated in all these rituals voluntarily because at 19 that stage you had not seen the Lord? 20 MR X: That is correct, Chairperson, I 21 was still a believer in that. 22 MR MPOFU: Yes, now you say in that 23 statement, "I also undergone rituals and licked the muti 24 mixed with human tissues and blood as I was afraid for my 25 life." Is that correct?</p>

<p style="text-align: right;">Page 32697</p> <p>1 MR X: Could you repeat the question, 2 Sir?</p> <p>3 MR MPOFU: You say in your statement – 4 CHAIRPERSON: Repeat the question, I 5 think you should repeat the whole, you must read the whole 6 sentence because it is perhaps important to the witness to 7 have the whole sentence, but certainly put it to him again.</p> <p>8 MR MPOFU: Alright, Chairperson, okay, 9 I'm dealing with the one specific thing but it is fine. 10 The sentence that I'm reading says, "I had also undergone 11 rituals and licked the muti mixed with human tissues and 12 blood as I was afraid for my life, as everyone was forced 13 to join and to support everything decided at the meeting." 14 MR X: These were the decisions on the 15 mountain, Chair, yes.</p> <p>16 MR MPOFU: No, what I'm saying is that 17 what I just read out to you is false because you just 18 testified that you participated voluntarily, because you 19 believed it at that stage.</p> <p>20 MR X: What is it that you are saying, 21 Sir?</p> <p>22 MR MPOFU: I'm saying, Mr X, what is 23 written in this statement that you participated, because 24 you were afraid for your life, is false. It is false? 25 MR X: On the mountain you could not</p>	<p style="text-align: right;">Page 32699</p> <p>1 MR MPOFU: Your evidence, Mr X, suggests 2 that if indeed the majority of the people at the mountain 3 did not become part of the 500, then it means nobody forced 4 them, it was voluntary.</p> <p>5 MR X: Yes, I understand you, I 6 understand.</p> <p>7 MR MPOFU: Yes, I know you hear me but do 8 you agree that they weren't?</p> <p>9 MR X: I hear you.</p> <p>10 MR MPOFU: Yes, but do you agree? 11 MR X: Just repeat the question so that I 12 can explain it clearly?</p> <p>13 MR MPOFU: You said you hear it, what did 14 you hear?</p> <p>15 MR X: I wanted to, before agreeing, to 16 know exactly which part of the sentence do I agree to.</p> <p>17 MR MPOFU: That the people who were part 18 of the rituals were, had enlisted thereto voluntarily? 19 MR X: The decision was that people who 20 were to be turned into men at that time, who went there did 21 not really believe and some were not very convinced but 22 they did however go. They came in their numbers after 23 realising that the muti does indeed work, that we were not 24 being able to, we were not, the police were not able to 25 shoot.</p>
<p style="text-align: right;">Page 32698</p> <p>1 dispute anything because what Kauzela said to everyone – 2 Kauzela was saying everyone who was on the mountain should 3 join the AMCU and this was after the death of Mr Twala.</p> <p>4 MR MPOFU: Ja, we'll come to that, you 5 contradicted yourself on the [inaudible, simultaneous 6 speaking]. All I'm saying to you for now is, your evidence 7 is that, in fact your evidence is that even from the 11th 8 the people who did not believe in muti did not enlist or 9 become or rather did not become part of the group upon whom 10 rituals were performed.</p> <p>11 MR X: I remember saying it.</p> <p>12 MR MPOFU: And in fact your evidence is 13 that the majority, if that evidence is to be believed the 14 majority of the people did not believe in muti and did not 15 participate in it, correct?</p> <p>16 MR X: It is so.</p> <p>17 MR MPOFU: According to you on the first 18 day only 500 people participated or volunteered to be part 19 of the ritual saga.</p> <p>20 MR X: Yes, Sir.</p> <p>21 MR MPOFU: So therefore the majority of 22 those people, when they chose not to participate were not 23 forced by anybody at that stage, correct? 24 MR X: It was because of, - if you could 25 just repeat the question?</p>	<p style="text-align: right;">Page 32700</p> <p>1 MR MPOFU: Yes, but they did so 2 voluntarily, whether it was the first –</p> <p>3 MR X: Yes, yes, on their own, yes.</p> <p>4 MR MPOFU: Thank you, and therefore your 5 evidence that says that you underwent these rituals and 6 licked the blood and all that, as you were afraid for your 7 life, it is false?</p> <p>8 [12:37] MR MATHIBEDI SC: Sorry, Chairperson, if 9 one has a look at paragraph 2, the second – sorry, 10 paragraph 3, the second line reads as follows, "As I was 11 afraid for my life as everyone was forced to join the 12 strike and to support everything decided at the meeting" –</p> <p>13 CHAIRPERSON: Yes, Mr Mpofo read that to 14 the witness.</p> <p>15 MR MPOFU: I did read it. I'm still 16 dealing with this, but I'm coming to that, Mr Mathibedi. 17 The part that you did those things because you were afraid 18 for your life was false, correct?</p> <p>19 MR X: It was the truth. It is true.</p> <p>20 MR MPOFU: So is it true that it was 21 voluntary for everybody; it's also true that you did it 22 because you were afraid for your life? Those two things 23 together are going to be true? 24 MR X: Things that were being done by 25 other people, I could not differ from what they were doing.</p>

<p style="text-align: right;">Page 32701</p> <p>1 MR MPOFU: But if you did not do it like 2 all the other 2 500 people, nobody would have forced you? 3 MR X: I would have died. 4 MR MPOFU: So the other 2 500 who did not 5 participate in the rituals, plus-minus, were they killed? 6 MR X: Some of these people were not even 7 on strike at that time, they were in their places. We 8 joined in big numbers on the 14th. 9 MR MPOFU: So is your evidence now that 10 the 500 who participated in the rituals, that was everybody 11 who was at the mountain at that stage? 12 MR X: Some did not have money, because 13 one had to have some money in order to join the rituals. 14 They were still trying to get money? 15 MR MPOFU: And those who had money, there 16 were none who had money but did not participate because 17 they did not believe? 18 MR X: Sir, people who did not go there 19 did not have money. They had to have money in order to go 20 there. 21 COMMISSIONER HEMRAJ: Mr X, you've told 22 us that you were part of the committee that made the 23 decisions. 24 MR X: Yes, Ma'am. 25 COMMISSIONER HEMRAJ: At the time you</p>	<p style="text-align: right;">Page 32703</p> <p>1 was making is this – 2 MR X: If you could repeat the question 3 that I've just asked you to? 4 MR MPOFU: No, I've withdrawn the 5 question. 6 MR X: No, no, no, I want that question. 7 I want the question. 8 MR MPOFU: Don't worry, there's plenty of 9 questions coming, Mr X. I'm saying to you that according 10 to your statement there were people who did not participate 11 in the muti rituals not because they did not have money, 12 not because they were threatened by anybody, but simply 13 because they did not believe in muti. 14 MR X: That was in their hearts. 15 MR MPOFU: Ja, but it was also in your 16 heart. You knew that that was the reason why they did not 17 participate, correct? 18 MR X: Some people did not have money. I 19 did not ask them for their reasons of not participating. 20 MR MPOFU: Yes, I'm giving you the 21 benefit of the doubt that some did not join because they 22 did not have money. I'm saying on top of that there were 23 those who did not join because they do not make use of 24 muti, to your knowledge. 25 MR X: I don't have knowledge – what was</p>
<p style="text-align: right;">Page 32702</p> <p>1 participated in that decision making, were you still afraid 2 for your life at that time as well? 3 MR X: It was after I consumed the muti, 4 I did not care at that time. 5 COMMISSIONER HEMRAJ: I'm sorry, I don't 6 understand that. 7 MR X: I am saying at the time – at the 8 time, I'm saying – 9 MR MAHLANGU: If you'd just repeat the 10 question again? 11 COMMISSIONER HEMRAJ: Yes, you said that 12 you were part of the decision making process and I just 13 wanted to know that whether you were afraid for your life 14 at the time you were partaking in those decisions? 15 MR X: There was no, I did not have any 16 fear at that time. 17 COMMISSIONER HEMRAJ: Yes, thank you. 18 I'm sorry to have interrupted you. 19 MR MPOFU: Thank you, Commissioner. And 20 in fact the answer that you've just given to Commissioner 21 Hemraj is also false because according to your evidence you 22 joined the committee before the sangomas were even fetched. 23 MR X: You're saying, Sir? What are you 24 saying? 25 MR MPOFU: No, never mind. The point I</p>	<p style="text-align: right;">Page 32704</p> <p>1 the question again? 2 MR MPOFU: You heard the question. I'm 3 saying to you, I'm giving you the benefit of the doubt that 4 there was a group of people who might not have joined or 5 enlisted because they did not have money. But I'm saying 6 to your knowledge on top of that there were those who did 7 not join because they do not believe in muti. 8 MR X: I don't understand the question. 9 MR MPOFU: Were there people who to your 10 knowledge did not participate because of the reason that 11 they did not believe in muti? 12 MR X: People did not have money. 13 MR MPOFU: Okay, just to save time I'm 14 just going to take you to the – 15 MR X: People who don't have money can't 16 have money. 17 MR MPOFU: - your statement AAAA1.2, 18 paragraph 9 where you say, "It was agreed" – towards the 19 end, Chairperson - "It was agreed that only the committee 20 and makarapas were people who'd perform the rituals from 21 the sangoma, not everybody, because some do not make use of 22 muti." 23 MR X: I mean, Sir, some people did not 24 believe at the time in the use of muti, but were later 25 convinced that the muti does work after it had been proven.</p>

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1 MR MPOFU: Yes, but even that evidence
 2 shows that it was voluntary, another group only joined once
 3 they had seen on the 12th that the muti has worked. So that
 4 is further proof that it was voluntary; people would make
 5 up their minds according to their belief [inaudible,
 6 speaking simultaneously with interpreter].
 7 MR X: If you could repeat the question
 8 again, Sir?
 9 MR MPOFU: Let's move on. The people who
 10 were at the hill, at the koppie, had come voluntarily as
 11 well. Nobody forced anyone to go to the koppie, correct?
 12 MR X: They came there because they
 13 realised there was, people were dying.
 14 MR MPOFU: Sir, I'm talking about the
 15 11th. The people who participated in the strike and who
 16 came to the koppie did so voluntarily.
 17 MR X: They went there because they were
 18 interested in the money.
 19 MR MPOFU: Yes, because they were earning
 20 a little amount in their salaries, correct?
 21 MR X: Yes, Sir.
 22 MR MPOFU: So they went voluntarily.
 23 MR X: Yes.
 24 MR MPOFU: Yes, so then let's go through
 25 Mr Mathibedi's passage. You say, after you said you were

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1 afraid for your life you say, "Everyone was forced to join
 2 the strike and support everything decided at the meeting."
 3 That's also false, correct? It's false, correct?
 4 MR X: Where does that appear, Sir?
 5 MR MPOFU: I'm reading from your
 6 statement. I'm saying –
 7 MR X: I first want to know exactly where
 8 Mr Mpofo is referring to.
 9 MR MPOFU: Okay, it's AAAA8, at the
 10 bottom, or rather the first sentence of paragraph 8. You
 11 can read, you are able to read English, correct?
 12 MR X: Yes, I hear you. I understand
 13 you.
 14 MR MPOFU: Do you know how to read
 15 English?
 16 MR X: I can read English, yes.
 17 MR MPOFU: Yes, so you are not
 18 illiterate.
 19 MR X: Yes, Sir.
 20 MR MPOFU: Yes, right. Now that we've
 21 put that aside, I'm reading to you at paragraph 8. The
 22 part I'm reading I had read the sentence and emphasised the
 23 first part about fearing for your life. We've finished
 24 with that now, and I'm saying now that you and I have
 25 agreed that people were there voluntarily because they

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1 wanted better wages, then the suggestion that everyone was
 2 forced to join the strike and to support everything decided
 3 at the meeting must be false.
 4 MR X: The decisions were being made
 5 there, Chairperson, when we went to the time office on the
 6 10th a decision was made that we were going to close the
 7 nightshift on the 11th.
 8 MR MPOFU: Okay –
 9 MR X: The forced that [inaudible,
 10 speaking simultaneously with interpreter] there was no mass
 11 meeting in which people were told this was going to happen.
 12 MR MPOFU: Okay, let me put it this way.
 13 You yourself joined the strike of your own free will
 14 because you wanted better wages, correct?
 15 MR X: Yes.
 16 MR MPOFU: And that situation obtained,
 17 or was true for the other thousands of the people who were
 18 there, correct?
 19 MR X: I don't understand this question.
 20 MR MPOFU: Okay, I'll leave that for
 21 argument, Mr X.
 22 CHAIRPERSON: People who went to the time
 23 office on the Friday the 10th, were they all RDOs?
 24 MR X: They were RDOs and some other
 25 unemployed people. I did not count. It was not only RDOs,

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1 Chairperson.
 2 CHAIRPERSON: The unemployed people
 3 couldn't join the strike because they weren't working.
 4 MR X: They were there. There were many.
 5 MR MAHLANGU: He uses the word "over."
 6 CHAIRPERSON: No, no, I understand that.
 7 What I was asking you about, if someone isn't employed he
 8 can't join a strike because if you join a strike it means
 9 you withhold your labour.
 10 MR X: Yes, it is so, Chairperson.
 11 CHAIRPERSON: Are you saying the people
 12 who went on Friday the 10th to the time office were
 13 strikers, so people who were withholding their labour, and
 14 they were all RDOs, were they? They were accompanied by
 15 other people who weren't employed at all?
 16 MR X: Yes, Chairperson.
 17 CHAIRPERSON: All the people who went to
 18 the time office on the 10th had been at a mass meeting in
 19 the stadium beforehand. Is that so?
 20 [12:57] MR X: Yes, they were there, but also
 21 joined by others who were not present.
 22 MR MPOFU: Okay, Mr X, I was still
 23 listing the reasons why I'm going to say at the end to the
 24 Chairperson and the Commissioners that your evidence should
 25 be discarded as a whole. The next topic in that regard or

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1 the next reason that I'm going to advance for making that
 2 submission is that and I'm putting this in the kindest
 3 possible way, it will also that you are in a bad mental and
 4 emotional state.
 5 MR X: You are insulting me, Mr Mpofu. I
 6 was saying I beg for your respect, your respect.
 7 CHAIRPERSON: I think you must explain to
 8 him on what basis you –
 9 MR X: Can you talk to a mad person? Mr
 10 Mpofu, are you saying you can talk to a mad person, you are
 11 insulting me.
 12 MR MPOFU: And to support that submission
 13 I will use your own words that you have used in this
 14 Commission.
 15 MR X: I am asking, Mr Mpofu, can you
 16 talk to a mad person.
 17 MR MPOFU: Well out of respect for you I
 18 won't answer that question. I'm talking to you now.
 19 MR X: I'm still asking can you talk to a
 20 mad person.
 21 CHAIRPERSON: Mr Mpofu – but you did ask
 22 a vague question and I said I thought you should give the
 23 basis upon which you made the allegation to the witness so
 24 he can deal with it.
 25 MR MPOFU: I didn't ask any question,

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1 Chairperson. I did not ask any questions. I was going to
 2 give him reasons why – I have not any question, I don't
 3 know how it can be vague when I have not asked it.
 4 CHAIRPERSON: The question before you
 5 said you'd give reasons was vague, but I understood you to
 6 be - to go on to elaborate why precisely you made the
 7 statement. I see it's now 1 o'clock perhaps you can do
 8 that after the adjournment. Unless you have a particular
 9 reason for wanting to do it now.
 10 MR MPOFU: I just want to ask one aspect,
 11 Chairperson. Is it true that you have had some severe head
 12 injuries?
 13 MR X: There's nothing like that, you are
 14 not a doctor. You never searched my head.
 15 MR MPOFU: Is it true that during your
 16 testimony you suffered from some dizziness?
 17 MR X: What disease?
 18 MR MPOFU: Dizziness, not disease.
 19 MR X: Everybody suffers that, everybody
 20 suffers that at one or the other time.
 21 MR MPOFU: So it happened.
 22 MR X: You see that you said to me that
 23 I'm a mad person is already an insult. There's no respect
 24 in that, Mr Mpofu.
 25 MR MPOFU: During your evidence did you

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1 suffer from mental exhaustion?
 2 CHAIRPERSON: Mr Mpofu, I think we'd
 3 better take the adjournment now. I get the impression that
 4 you're tired, I'm not quite following what you're putting
 5 to the witness. When we resume, I want to resume in half
 6 an hour because we lost half an hour before – we'll start
 7 at say twenty five to two and then he will be refreshed and
 8 I'm sure he will understand what you're putting to him.
 9 MR MPOFU: Thank you, Chairperson.
 10 [COMMISSION ADJOURNS COMMISSION RESUMES]
 11 [13:38] CHAIRPERSON: The Commission resumes.
 12 Please remind the witness he's still under oath.
 13 MR X: Yes, Mr Chairperson, I want to
 14 tell the truth, but Mr Mpofu hurt my feelings by saying I'm
 15 mad.
 16 MR MPOFU: Okay, Mr X.
 17 MR X: Yes, Sir.
 18 MR MPOFU: I was told during the break
 19 that the question that I put to you was not interpreted in
 20 the manner in which I meant and I will try and rephrase it.
 21 MR X: About the insult by you?
 22 MR MPOFU: No that's what I'm trying to
 23 explain. I did not listen to the interpretation, but
 24 somebody who understands the language has pointed out that
 25 the question might have been interpreted in a particular

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1 way. So I will rephrase it so that you can understand that
 2 I did mean to insult you.
 3 MR X: Mr Chair, that was an insult. Mr
 4 Mpofu said I'm mad. What I am saying is he thinks I am a
 5 mad person –
 6 CHAIRPERSON: What I want to explain to
 7 you is this, I understand the position. Mr Mpofu did not
 8 intend to call you mad. He asked you a question in English
 9 and we understand that the way it was interpreted, it's not
 10 suggested the interpreter made a mistake, but the way it
 11 was interpreted conveyed to you the impression that Mr
 12 Mpofu was suggesting you're mad. I understand him now to
 13 say that he did not intend that and I assume he actually
 14 would apologise to you in the sense that your feelings were
 15 hurt and you felt insulted because you thought that he was
 16 accusing you of being mad. Am I putting it correctly, Mr
 17 Mpofu.
 18 MR MPOFU: Ja, Chairperson, a bit more
 19 generous, but it's okay.
 20 CHAIRPERSON: Now I want to say something
 21 else. I didn't Mr Mpofu to be suggesting you were mad. If
 22 I had understood him saying that I would have called him to
 23 order and disallowed the question. If I had understood
 24 that he was insulting you I would have made him withdraw
 25 the question because I don't allow any counsel who appears

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1 before me in any courts in which I sit or in commission to
 2 insult witnesses.
 3 MR MPOFU: Okay, Mr X, do you accept that
 4 you were reacting to the interpreted version of my
 5 question?
 6 MR X: Mr Chair, Mr Mpofu used words or
 7 sentiments to the effect that was I ever – have I ever
 8 sustained an injury on my head and that I did not have a
 9 brain. I'm giving this evidence for the police about the
 10 people who died at Marikana because I am mad. I want to
 11 hear that in court, Mr Chairperson.
 12 MR MPOFU: Okay, let me put it this way,
 13 Mr X, you know, you've heard about psychological
 14 counselling or psychiatric treatment.
 15 MR X: I've never been mentally ill.
 16 MR MPOFU: No I accept that, Mr – I
 17 expected, Mr X, that that would be your answer. I'm simply
 18 asking you, you have heard in your work or in your
 19 experience people who are sent for psychological treatment
 20 and even if they are not mad as you put it, but simply
 21 because they might have some emotional or mental
 22 disturbance for a particular reason.
 23 CHAIRPERSON: I think you had better
 24 avoid the word mental, it conveys to him the idea you're
 25 suggesting something, but I don't believe you to be –

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1 MR MPOFU: I'm using it advisably,
 2 Chairperson. It should be clear just now.
 3 CHAIRPERSON: I'm just concerned what
 4 he's understanding you to be saying, that's my point. Have
 5 you heard that people sometimes have emotional problems and
 6 they go and see a psychologist and the psychologist gives
 7 them counselling and treatment in order to help over the
 8 emotional difficulties. Have you heard about that?
 9 MR X: Yes I hear about those things, Mr
 10 Chair, but I've never suffered such a fate, but Mr Mpofu
 11 said I am mad. I do not have a brain because I'm giving
 12 evidence on behalf of the police, about people who were
 13 killed on the mountain.
 14 MR MPOFU: And sometimes those people –
 15 MR X: I said earlier on to Mr Mpofu we
 16 should respect each other and that's my stance.
 17 MR MPOFU: And sometimes those people who
 18 undergo –
 19 CHAIRPERSON: Mr Mpofu, he's still
 20 speaking.
 21 MR X: If someone has done wrong to
 22 another they should apologise otherwise the tension that is
 23 created will continue and I'm not changing my story. Mr
 24 Mpofu is old, he is an old man, he is old.
 25 MR MPOFU: Okay and sometimes those

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1 people who undergo psychological treatment is because –
 2 CHAIRPERSON: Mr Mpofu, sorry before you
 3 carry on, what he said to you is he was very insulted and
 4 upset by your questioning and he expects you to apologise,
 5 not that you necessarily did it on purpose, but he expects
 6 you to apologise for the previous insult and so on that he
 7 experienced. It might be sensible to extend a hand of
 8 apology towards him. You may find your cross-examination
 9 will proceed more smoothly after that.
 10 MR MPOFU: No, Mr Chairperson, I did not
 11 insult the witness.
 12 CHAIRPERSON: You didn't understand what
 13 I said. I didn't say you did anything intentionally. I
 14 said if he understood himself to be insulted and he's
 15 feelings were hurt, if I may say this, the gentlemanly
 16 thing to do will be to apologise for that effect, for his
 17 having got that impression even though you never intended
 18 it. And if you do that then you may find your cross-
 19 examination will proceed more smoothly.
 20 MR MPOFU: Can I just put a few
 21 questions? Insofar as you say that you've heard about
 22 people undergoing psychological treatment you understand
 23 that sometimes happens when they've experienced traumatic
 24 events or have seen horrible things?
 25 MR X: Mr Chair, Mr Mpofu said I am mad,

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1 I don't have a brain. I was once injured on my head, he's
 2 not a doctor, he's insulting. We are going to discuss this
 3 in court and I am not going back on my word. So this truth
 4 that I'm telling the Commission I'm telling the court I am
 5 mad.
 6 MR MPOFU: Mr X, please answer the
 7 question. To your knowledge -
 8 MR X: How can I answer the question if
 9 I'm mad person?
 10 CHAIRPERSON: Mr Mpofu, you haven't taken
 11 my advice. The witness has now got what constitutes a kind
 12 of a mental block to receiving your questions because he's
 13 obsessed by this idea that you've accused of him being mad.
 14 MR MPOFU: No Chairperson, he's just
 15 evading the questions.
 16 CHAIRPERSON: No, no I don't think so.
 17 My -
 18 MR MPOFU: I've explained to him that it
 19 was the interpreter and not me.
 20 CHAIRPERSON: I know what you've maybe
 21 explained to him, I'm not sure he understands it. Anyway
 22 if you don't want to take my advice I can't force you to do
 23 it. I've just expressed my views as gently but as strongly
 24 as I can.
 25 MR MPOFU: Thank you. Mr X, my question

<p style="text-align: right;">Page 32717</p> <p>1 is very simple to you. Insofar as you know that sometimes 2 people undergo psychological treatment is it sometimes 3 because they have witnessed some gruesome events and 4 unseemly things? 5 MR X: Mr Chair, I will respond to Mr 6 Mpfu's questions in court now. I do not have answers for 7 him because he insulted me. 8 CHAIRPERSON: Repeat the answer again, I 9 didn't hear the first part. 10 MR X: I think I will respond to Mr 11 Mpfu's questions in court. He insulted me and I do not 12 have answers for him. 13 CHAIRPERSON: What do you mean you'll 14 respond in court, you're not in court at the moment, you're 15 appearing before a commission and you're here to give 16 evidence before the Commission, to help the Commission to 17 make certain findings about what happened at Marikana on 18 the 9th or 10th till after the 16th of August. I don't know 19 what's going to happen later in court if you give evidence 20 in court, but we here in the Commission will not have the 21 benefit of anything you may say later in court. You have 22 to tell us now. 23 MR X: Mr Mpfu said I don't have a 24 brain, I'm mad. This gentleman insulted me. 25 CHAIRPERSON: I've explained to you at</p>	<p style="text-align: right;">Page 32719</p> <p>1 answered that way to Mr Mathibedi. 2 MR QGIRANA: Chair, I also mentioned 3 emotional. 4 MR MPOFU: Yes, and you'll remember that 5 I also deliberately, when this whole thing started, used 6 the word emotional or mental. But can you go to page 32029 7 if you say you don't remember? It's day, about the 3rd of 8 July, day 254 at line 13. 32029, Chairperson. 9 CHAIRPERSON: Thank you. 13 you say. 10 MR MPOFU: Yes 13. After you had 11 complained about mental exhaustion there was an adjournment 12 and the Chairperson said, the Chairperson says, I'm 13 starting at line 10 "The Commission resumes, Mr Mathibedi 14 are you in a position to report on what is to happen now?" 15 And then he says, only after he has consulted with you, 16 "Thanks, Chair. Chair, due to the bereavement in Mr X's 17 family we ask that this matter be postponed until the 14th 18 because he's not in a proper fit and mental state to" I 19 suppose he meant to be able to proceed with the proceedings 20 today because of the emotions that he's undergoing." You 21 said you don't remember, do you remember now Mr Mathibedi 22 saying that? 23 MR X: I remember that. 24 [13:58] It's just that I had a death in the family. When 25 you have a death in your family you mourn, that you don't</p>
<p style="text-align: right;">Page 32718</p> <p>1 the beginning – 2 MR MPOFU: Sorry, Chairperson - 3 CHAIRPERSON: I've explained to you 4 already that I didn't understand him to be insulting you, 5 but I understand also that you thought he was insulting 6 you. I also told you that if I had thought that he was 7 insulting you I wouldn't have allowed him to do so. So I 8 understand you think he insulted you, I don't think he 9 intended to do so, but clearly what he did had the effect 10 of insulting you. But let's just put that aside, he said 11 he didn't intend to insult you, he didn't intend to say you 12 were mad, it only came out that way in the interpretation. 13 So let's proceed on that basis that he didn't intend to do 14 that and he didn't intend to insult you even though you 15 felt that you were. 16 MR MPOFU: Did you at any stage during 17 the proceedings tell Mr Mathibedi that you were not in a 18 proper and fit mental state to proceed? 19 MR X: Repeat the question please. I do 20 not remember. I do not remember saying that, Mr Chair. 21 CHAIRPERSON: Mr Semenya? 22 MR SEMENYA SC: I think again maybe it's 23 a question of interpretation. It is not a mental issue, 24 it's not an [African language] thing, it is an emotional 25 disturbance. Because of his emotional disturbance he has</p>	<p style="text-align: right;">Page 32720</p> <p>1 go into and mix with crowds of people. 2 MR MPOFU: Yes, all I'm trying to say is 3 that when you said you're not in a proper fit and mental 4 state to proceed, you did not feel insulted, correct? 5 MR MATHIBEDI SC: Sorry, Chairperson, I 6 think it should be put in the whole context because I said 7 because of the emotional status. I did not just leave it 8 there and hang it. 9 CHAIRPERSON: You haven't read the whole 10 of what Mr Mathibedi said. Could you please translate this 11 to him, saying this is what Mr Mathibedi said. "Due to 12 bereavement in Mr X's family we ask that this matter be 13 postponed to the 14th because he is not in a proper fit and 14 mental state to be able to proceed with the proceedings 15 today, because of the emotions that he's undergoing and 16 also because tomorrow according to his culture we have a 17 situation where rituals have to be performed." 18 MR MPOFU: You remember it now? 19 MR X: I remember. 20 MR MPOFU: Yes, and we can accept, the 21 Commission can accept that Mr Mathibedi does not know what 22 you had to do according to your culture, that you must have 23 told him that. 24 MR X: How am I going to tell Mathibedi 25 that Mr Chair, when we do not meet? I don't have a phone.</p>

<p style="text-align: right;">Page 32721</p> <p>1 MR MPOFU: Ja. No, fair enough –</p> <p>2 CHAIRPERSON: Sorry to interrupt. I</p> <p>3 think the point that's being made really is this word</p> <p>4 "mental state," this phrase "mental state" was used by Mr</p> <p>5 Mathibedi, that's where Mr Mpofu gets it from, and Mr</p> <p>6 Mathibedi clearly never ever intended to insult you.</p> <p>7 MR X: Mr Chair, I don't understand this</p> <p>8 question asked by Mr Mpofu.</p> <p>9 MR MPOFU: No, it's asked by the</p> <p>10 Chairperson.</p> <p>11 CHAIRPERSON: I'll repeat what I said.</p> <p>12 What I said to you was this; Mr Mpofu got this phrase</p> <p>13 "mental state" from what Mr Mathibedi said and Mr Mathibedi</p> <p>14 clearly never ever intended to insult you by using that</p> <p>15 phrase.</p> <p>16 MR MPOFU: And the question is, do you</p> <p>17 accept that Mr Mathibedi did not intend to insult you?</p> <p>18 MR MATHIBEDI SC: Chairperson –</p> <p>19 MR X: Mr Chair, Mr Mpofu should not make</p> <p>20 an example about a funeral that led to the adjournment of</p> <p>21 the Commission. What he's saying here is that I'm mad. He</p> <p>22 is insulting me.</p> <p>23 CHAIRPERSON: Mr Mathibedi, you turned</p> <p>24 your light on. You want to say something. Perhaps you can</p> <p>25 help us out of this impasse at which we now are.</p>	<p style="text-align: right;">Page 32723</p> <p>1 emotional. That I think is where the witness perceived the</p> <p>2 insult.</p> <p>3 MR MPOFU: No.</p> <p>4 CHAIRPERSON: And so –</p> <p>5 MR MPOFU: No, if something happened</p> <p>6 because of the other, that's must be conjunctive,</p> <p>7 Chairperson. That's logically so.</p> <p>8 CHAIRPERSON: No, no, come on, no –</p> <p>9 MR MPOFU: It can't be [inaudible,</p> <p>10 speaking simultaneously] –</p> <p>11 CHAIRPERSON: No, no –</p> <p>12 MR MPOFU: - because means it is as a</p> <p>13 result of, it doesn't mean or, which is disjunctive.</p> <p>14 CHAIRPERSON: It means –</p> <p>15 MR MPOFU: But let's not get –</p> <p>16 CHAIRPERSON: No, the distinction is</p> <p>17 between equivalence and conjunction. The phrase used by Mr</p> <p>18 Mathibedi was [inaudible] mental state because of emotion.</p> <p>19 MR MPOFU: No, it was said causative –</p> <p>20 CHAIRPERSON: In other words emotions –</p> <p>21 MR MPOFU: It was causative.</p> <p>22 CHAIRPERSON: No, well let's not argue</p> <p>23 about grammar and the meaning of words.</p> <p>24 MR MPOFU: Ja.</p> <p>25 CHAIRPERSON: Because I modestly think my</p>
<p style="text-align: right;">Page 32722</p> <p>1 MR MATHIBEDI SC: Chairperson, what I</p> <p>2 wanted to state was that, you know, the word "mental state"</p> <p>3 should be used in the context in which I used it on that</p> <p>4 day. It should not be used in isolation.</p> <p>5 MR MPOFU: Yes, I'm –</p> <p>6 MR MATHIBEDI SC: So I think,</p> <p>7 Chairperson, I don't think it's correct and fair to say,</p> <p>8 you know, Adv Mpofu got that from me. I mean he's not</p> <p>9 using it in the context in which I used that.</p> <p>10 MR MPOFU: No, Chairperson, honestly, I</p> <p>11 don't even want to get involved with this debate any</p> <p>12 further. When I raised this I deliberately – the record</p> <p>13 will show – used both the words "mental state" and</p> <p>14 "emotional state," and that's exactly because I wanted to</p> <p>15 cover this eventuality. I used the two words that Mr</p> <p>16 Mathibedi had used, which are in that paragraph, because of</p> <p>17 his emotions and so on –</p> <p>18 CHAIRPERSON: No, the trouble is he</p> <p>19 really used the word "mental state" as a synonym for</p> <p>20 emotions, so if you read it "mental state because of the</p> <p>21 emotions."</p> <p>22 MR MPOFU: Yes.</p> <p>23 CHAIRPERSON: You used the two</p> <p>24 conjunctively, "emotional and mental," which implies that</p> <p>25 the word "mental" means something other than purely</p>	<p style="text-align: right;">Page 32724</p> <p>1 knowledge is better than yours on the point.</p> <p>2 MR MPOFU: Well, not on this point –</p> <p>3 CHAIRPERSON: But anyway let's –</p> <p>4 MR MPOFU: Not on this point at least,</p> <p>5 Chairperson.</p> <p>6 CHAIRPERSON: Alright, well at least I'm</p> <p>7 modest –</p> <p>8 MR MPOFU: You said because of –</p> <p>9 CHAIRPERSON: Yes, yes –</p> <p>10 MR MPOFU: That can never by</p> <p>11 disjunctive –</p> <p>12 CHAIRPERSON: Anyway, so –</p> <p>13 MR MPOFU: - under any circumstances,</p> <p>14 even from the Queen herself.</p> <p>15 CHAIRPERSON: Alright, let's not spend</p> <p>16 further time on what really is a nonsense point.</p> <p>17 MR MPOFU: Well, Chairperson –</p> <p>18 CHAIRPERSON: You've got [inaudible] –</p> <p>19 MR MPOFU: Chairperson, with the greatest</p> <p>20 respect, I'm not going to be insulted neither by a witness</p> <p>21 or anybody else. I'm making a point here that says that</p> <p>22 the word is used – he says "in his mental state can proceed</p> <p>23 with the proceedings today because of the emotions he's</p> <p>24 undergoing." Therefore the two must be interrelated.</p> <p>25 That's just simple logic –</p>

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1 CHAIRPERSON: It must be interrelated if
2 they're regarded as equivalent.
3 MR MPOFU: Yes.
4 CHAIRPERSON: But let's not debate that
5 matter further. You've got a witness who's insulted.
6 You've got a witness who's digging his heels in and appears
7 to be unwilling to answer your questions because he feels
8 insulted and he feels you haven't made proper amends to
9 him. Now that's a situation you've got to deal with and I
10 suggest you deal with it in the gentlemanly manner I
11 suggested.
12 MR MPOFU: No, for now I was dealing with
13 the objection, Chairperson, which came through Mr
14 Mathibedi. Mr X, you have also testified that you are
15 anxious about your family, correct?
16 MR X: I'm talking about, I was talking
17 about journalists, or media people who went to my home,
18 took photos of my home. Those journalists are from King
19 Williams Town. Mr Mpofu is from that place. What do they
20 want? What do these journalists want? Mr Mpofu has now
21 met his match; he met me.
22 MR MPOFU: Ja, okay. Ja, I think I'm
23 also suffering from the same thing. I'm saying, Mr X, the
24 – well, let's just go, this discussion between you and Mr
25 Mathibedi was about the funeral. You remember?

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1 MR X: There was a death in my family.
2 My sister died, she was buried on Thursday.
3 MR MPOFU: So there was a funeral on that
4 Thursday at your home?
5 MR X: Yes.
6 MR MPOFU: What's the name of the
7 deceased?
8 CHAIRPERSON: No, no, no, no, come on.
9 If you get the name of the deceased it indirectly indicates
10 who he is and I've made a ruling and governed in any event
11 by what the Director of Witness Protection –
12 MR MPOFU: Okay, fair enough,
13 Chairperson.
14 CHAIRPERSON: You've got to withdraw that
15 question.
16 MR MPOFU: Just the first –
17 CHAIRPERSON: Otherwise I'll disallow it.
18 MR MPOFU: What's the first name of the
19 deceased?
20 CHAIRPERSON: I don't think you want
21 that. I think if you get the first name of the deceased
22 then people can put one and one together and get five. So
23 I won't allow the first name either.
24 MR MPOFU: Okay. Can you give the first
25 name of the deceased to Mr Mathibedi and he will transmit

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1 it to me tomorrow?
2 MR MATHIBEDI SC: Sorry, Chairperson –
3 MR X: How does this law work, Mr Chair?
4 Why am I here? I'm put in this place where I am for a
5 certain reason. Now why should I give the name of this
6 person? Mr Mpofu is disrespecting my home, my household.
7 This gentleman is disrespectful, disrespectful towards my
8 home.
9 CHAIRPERSON: Mr Mathibedi, you wanted to
10 say something.
11 MR MATHIBEDI SC: Chairperson, what's the
12 relevancy of the name to the issues that has to be
13 determined by the Commission?
14 CHAIRPERSON: What is the relevance, Mr
15 Mpofu?
16 MR MPOFU: The relevance I because my
17 instructions are that there was no such funeral,
18 Chairperson. It's obvious where I'm going and I've
19 obviated the concern about security, which you legitimately
20 raised, Chairperson, by saying that the name should be
21 given to the lawyers and myself, so I don't see any basis
22 for that objection, Chair.
23 MR MATHIBEDI SC: Chairperson, is the
24 person who gave Mr Mpofu instruction, is he going to
25 testify or make an affidavit about that? We don't even

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1 know who that person is.
2 CHAIRPERSON: Are you asking me or asking
3 Mr Mpofu?
4 MR MATHIBEDI SC: Through you, Mr
5 Chairman.
6 MR MPOFU: Depending on the answers,
7 Chairperson, if the witness persists and Mr Mathibedi wants
8 me to call the person then I will. I'll call the whole
9 village, but the point I'm making – okay, let me ask
10 another question. Mr X, didn't you say it was a child who
11 had died?
12 MR X: It was a child who was born
13 [inaudible, speaking simultaneously with interpreter] we're
14 not of the same age so I'll refer to her as a child.
15 MR MPOFU: What is the age of the child?
16 MR X: Mr Chairperson, this question of
17 Mr Mpofu does not make sense. There's no sense in that
18 question, how old I am, when I was born and so on. I'm
19 here to talk about what we are meant to talk about in this
20 Commission.
21 CHAIRPERSON: Mr Mpofu, it strikes me
22 that –
23 MR X: What is that going to help us, the
24 age of the deceased person, who he or she was?
25 CHAIRPERSON: Mr Mpofu, it strikes me

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1 that if you are making an assertion that there wasn't a
 2 funeral then you should produce the evidence by way of
 3 affidavit or something first before one expects the witness
 4 to answer the question. The way we worked in this
 5 Commission so far is first if a statement of fact is made
 6 from the bar to – don't shake your head, it is correct. If
 7 a statement of fact is made from the bar it is expected
 8 that an affidavit is to be put before the Commission
 9 indicating that the proposition can be put to the witness.
 10 It's not correct to say I'll put the proposition to the
 11 witness and depending on the answer the witness gives I
 12 will then produce an affidavit supporting what I say.
 13 That's totally different from the way we've been running
 14 the Commission up to now and I have no intention of
 15 changing what we've done so far.
 16 MR MPOFU: I did not put any proposition,
 17 Chairperson. I'm simply asking a question. The
 18 proposition that I was giving to you was in response to the
 19 objection of Mr Mathibedi. For now I'm asking questions.
 20 I've not put any proposition to the witness yet. I'm going
 21 to, and when I do that I will take what you've said into
 22 account. What was the age of the deceased?
 23 CHAIRPERSON: What relevance is that, Mr
 24 Mpofo?
 25 MR MPOFU: Chairperson, I've already

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1 explained in response to Mr Mathibedi that my case is that
 2 this witness is lying to the Commission, which is, that's
 3 the relevance. It's called credibility, and –
 4 CHAIRPERSON: I'm aware of that.
 5 MR MPOFU: Ja, now –
 6 CHAIRPERSON: But normally if you put a
 7 factual allegation to a witness to impugn the witness's
 8 credibility –
 9 MR MPOFU: I've not put anything to him.
 10 I simply had asked him a question. That's what I've been
 11 saying and I'm saying it again. I've not put any
 12 proposition to him yet. When I get there you can tell me –
 13 CHAIRPERSON: The witness then by
 14 implication answered your questions. When you asked the
 15 age and you suggested there was talk of a child, he then
 16 said, "Well the person who died was younger than I am."
 17 That was the answer he gave.
 18 MR MPOFU: Yes.
 19 CHAIRPERSON: Which I interpreted to mean
 20 it wasn't necessarily a minor, the person wasn't
 21 necessarily a minor but was someone who was younger than
 22 the witness is –
 23 MR MPOFU: And that's exactly the point
 24 I'm clarifying. If the person is two years old then you
 25 now it's a minor. If the person is 22 then we know it's

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1 not. That's exactly the point.
 2 CHAIRPERSON: Now what's the relevance of
 3 that?
 4 MR MPOFU: Well, if he answers – you just
 5 said he answered the first question. It's the same
 6 question. It's really, it's arising from his answer. How
 7 can it suddenly become irrelevant?
 8 CHAIRPERSON: Well, I'm not sure that the
 9 previous question was relevant, but what is the relevance?
 10 Can you explain to me what the relevance is?
 11 MR MPOFU: No, that's fine, Chairperson.
 12 CHAIRPERSON: Well, then I disallow the
 13 question. You can proceed with something else.
 14 MR MPOFU: Okay, well it seems that it's
 15 not relevant whether or not you lied to the Commission, so
 16 we'll deal with other lies. Or rather that you lied in
 17 that respect.
 18 MR X: If this, must we pursue the dead,
 19 probably the death certificate, death document shall be
 20 fetched from home. Mr Mpofo is not going to go on with
 21 this idea, saying that he wants that should be done with my
 22 household.
 23 MR MPOFU: Okay, thank you. That's good.
 24 We'll arrange that it be done with Mr Mathibedi.
 25 MR MATHIBEDI SC: Chairperson, I think Mr

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1 Mpofo can't bind me on something with –
 2 MR MPOFU: No, the witness –
 3 MR MATHIBEDI SC: - to the findings of
 4 this Commission.
 5 CHAIRPERSON: The witness made an offer,
 6 which I understood Mr Mpofo to accept and he suggested that
 7 the implementation of the accepted offer could be done
 8 through you. That's not binding you to do anything, but I
 9 think the problem has now been – can be put back on the
 10 table and we can carry on with something else.
 11 MR MPOFU: Thank you, Chairperson.
 12 MR MATHIBEDI SC: Chairperson, with due
 13 respect, even if the witness has made an offer but I still,
 14 you know, persist with my objection that it is irrelevant
 15 for the purpose of the workings of this Commission.
 16 CHAIRPERSON: I've already disallowed the
 17 question because Mr Mpofo wasn't prepared to tell me why it
 18 was relevant, but the witness then made an offer which Mr
 19 Mpofo accepted and it seemed an appropriate mechanism for
 20 implementing the accepted offer was through your good
 21 offices, but if you're not prepared to provide your good
 22 offices I'm sure someone else will.
 23 MR MPOFU: Thank you, Chairperson. The
 24 last reason that I'm going to suggest that your evidence
 25 should be rejected as a whole is that your evidence,

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1 although we have spent almost a month of the Commission's
 2 time on it, is irrelevant as to the terms of reference.
 3 [14:18] And that you have been brought here just as a
 4 public relations exercise without being able to assist in
 5 any of the questions to be answered.
 6 CHAIRPERSON: But that sounds like an
 7 argument, it doesn't like a question in respect of which
 8 the witness can give an answer.
 9 MR MPOFU: No.
 10 CHAIRPERSON: He doesn't know what the
 11 terms of reference are, he doesn't know what we're busy
 12 with, I don't know that he can answer the question.
 13 MR MPOFU: No, -
 14 CHAIRPERSON: It may be a point that you
 15 can advance later on, but if it is not a question then why
 16 did you put it for?
 17 MR MPOFU: It is just a question, when
 18 you say to a witness, Chairperson, I'm going to argue at
 19 the end that, whatever, then you put it for the reason that
 20 the witness must then comment. It was not a question -
 21 CHAIRPERSON: Mr Mpofo, no, no, you and I
 22 are in agreement with the -
 23 MR MPOFU: Yes.
 24 CHAIRPERSON: But if you put to the
 25 witness, I am going to argue that your evidence doesn't

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1 help the Commission it is irrelevant, how do you comment,
 2 the witness can't be expected to comment unless he knows
 3 what the terms of reference are, whether the knows what's
 4 relevant for the question. That's why I said you can't
 5 expect a meaningful answer from him.
 6 MR MPOFU: Which you must accept I'm
 7 going to put to him, Chairperson, I'm saying, well enough
 8 that I when I put a proposition I must support it, and
 9 that's what I am just about to do. Mr X, -
 10 MR X: Is Mr Mpofo saying that, Mr Chair.
 11 MR MPOFU: Mr X, the -
 12 CHAIRPERSON: Yes, Mr Mpofo says he is
 13 going to tell you why he says your evidence is irrelevant
 14 and he is then going to ask you comment and I said he must
 15 explain it to you, why he says your evidence isn't relevant
 16 and he says he'll do that.
 17 MR X: And I am saying, Mr Chair, I will
 18 mention this in court. Mr Mpofo should talk about
 19 something else, not this thing that he is talking about, I
 20 can't understand what he is saying.
 21 MR MPOFU: Yes, I'm going to help you.
 22 This Commission, the main event which triggered this
 23 Commission are the events of the 16th of August. That is
 24 the event that is known as the Marikana massacre, by
 25 others, not me. Now when it comes to that it is also true

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1 that other deaths, ten deaths that occurred before that day
 2 are also part of what the Commission has to examine, and
 3 the Commission has to find out whether the deaths of those
 4 people firstly was caused by the police in an unjustified
 5 manner. I'm paraphrasing, or whether it was caused by, or
 6 whether it was caused by Lonmin, or whether it was caused
 7 by the NUM or whether it was caused by AMCU and -
 8 CHAIRPERSON: Doesn't it also say, or the
 9 strikers?
 10 MR MPOFU: It does not.
 11 CHAIRPERSON: Or any other person?
 12 MR MPOFU: No, it doesn't, 1.6 says, it
 13 does not. It says, the one that is mistakenly being
 14 referred to now is 1.6 and it says, "The conduct of
 15 individuals in lose grouping in cementing and/or otherwise
 16 promoting a situation [inaudible] whether directly or
 17 indirectly." Now, unlike 1.1 up to 1.5 were the parties
 18 that I've mentioned, the four parties that I've mentioned
 19 are specifically mentioned as having been liable, as it
 20 were, for the tragic event which was defined in the
 21 preamble, it is distinguishable from this and that's why I
 22 left out that part, but anyway be that as it may, I'm now
 23 going to demonstrate to you that as far as the relevant
 24 parts of the terms of reference are concerned you have
 25 nothing whatsoever to contribute.

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1 CHAIRPERSON: I'm sorry, Mr Mpofo, are
 2 you suggesting that the events from the 10th onwards, no,
 3 let me - Are you suggesting that the events from the 10th
 4 to the 15th aren't relevant? This witness is testifying
 5 about what happened on the 10th or what he says happened on
 6 the 10th, he is testifying on what happened on the 11th or
 7 what he says on the 11th, the 12th, he describes the
 8 killings of the security officers, if he was there, he is
 9 telling us what he saw and the. If the evidence is not
 10 believed in the matter, that's a different matter, we are
 11 not concerned with that at the moment. Telling us what
 12 happened on the Sunday night when someone was killed at K4,
 13 what happened on the Monday morning when Mr Langa was
 14 killed, what happened later on the 13th when there was an
 15 incident involving the police and the strikers near the
 16 railway line. He is telling us about what happened on the
 17 koppie, all the way through to the 16th. Now those are
 18 matters that we've been looking at intensely since we
 19 began, since the inspection in loco in October 2012 and we
 20 started hearing evidence in November. Now are you
 21 suggesting that the evidence he is giving on those matters
 22 is not relevant?
 23 MR MPOFU: Chairperson, then maybe you
 24 didn't understand my proposition. The proposition I put to
 25 the witness is that at the end of the case I am going to

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1 argue that the month long testimony that he has given has
 2 been a monumental waste of time, because on the events
 3 about which he testified and I'm going to explain why,
 4 actually the rest of my cross-examination is going to be
 5 based on what I'm saying now. On the relevant events which
 6 are contained in the terms of reference he has nothing to
 7 contribute to answer those questions and that will be
 8 either because as I will show now, he was not present when
 9 they happened, which I will go through, or those in which
 10 he might have been present, he cannot be believed and in
 11 fact there is a possibility that he was not present at all.
 12 That's what I, the rest of today and tomorrow and the rest
 13 of my cross-examination, am going to concentrate on. I was
 14 simply laying the basis upon which I will make that
 15 argument at the end of the case.

16 CHAIRPERSON: So obviously his evidence,
 17 if believed is relevant, your question, your argument will
 18 be and I can understand the argument, your argument will
 19 be, his evidence can't be believed because in respect of
 20 many of the events you will say he clearly wasn't there and
 21 in respect of certain of the other events he either wasn't
 22 there or his evidence is devoid of truth, there isn't a
 23 grain of truth in his evidence and therefore his evidence
 24 should be disregarded by the Commission. In order to
 25 decide whether to have regard to his evidence or to

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1 disregard it, we will have to decide questions of
 2 credibility and we'll be assisted presumably, in deciding
 3 those questions of credibility by the answers you get from
 4 him from now on the issues that you're going to cross-
 5 examine -

6 MR MPOFU: Partly, yes -

7 CHAIRPERSON: - from now until the end of
 8 tomorrow, alright?

9 MR MPOFU: I concede that, Chairperson,
 10 partly it is a question of credibility but I'm saying for
 11 the most it is because he did not observe, as I will show,
 12 or he was not there, but I -

13 CHAIRPERSON: Well, that's also
 14 credibility. Yes, of course, if someone says I was there
 15 and I saw something and he wasn't, that's a credibility
 16 question.

17 MR MPOFU: Yes, fair enough.

18 CHAIRPERSON: Alright.

19 MR MPOFU: I'm saying even on, there is
 20 another category where even on his own version which I will
 21 deal with, so that's not a matter of credibility. I will
 22 just show in cross-examination that even on his own version
 23 he was not, he is unable to assist the Commission. Let me
 24 make one example. Mr X, -

25 CHAIRPERSON: - make examples to me -

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1 MR MPOFU: No, I'm not saying to you -

2 CHAIRPERSON: If you want to put a
 3 proposition to him that he can answer, go ahead, but if you
 4 want to put a proposition that he can't answer, then don't.

5 MR MPOFU: No, I'm putting it to him,
 6 Chairperson, when I say I'll make an example I'm not saying
 7 to you. Mr X, let's start on the 16th. On that day you
 8 cannot assist the Commission about things that happened at,
 9 you cannot assist the Commission about things that happened
 10 at scene 2 where people were killed in the koppie that is
 11 behind the big one, correct?

12 MR X: I can. I can assist.

13 MR MPOFU: Okay, I'm sure maybe we, in
 14 fairness to you maybe you don't understand the question.
 15 There were, on the 16th there were 34 people who died.

16 MR MATHIBEDI SC: Sorry, Chairperson,
 17 there are a number of koppies, I think if the witness could
 18 be referred to a particular koppie then that could be of
 19 assistance.

20 MR MPOFU: That's exactly what I did, but
 21 I'll do it again.

22 CHAIRPERSON: I think he is, and I take
 23 your point but I think he is busy completing his question.
 24 I think let's wait to see when he has completed his
 25 question whether there is an area of uncertainty that we

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1 didn't raise with him before the witness is expected to
 2 answer.

3 MR MPOFU: Yes, thanks, Chairperson. I
 4 did mention it but I'll take Mr Mathibedi's advice and make
 5 it clearer. Mr X, when it comes to the 16th you are not
 6 able to assist the Commission about the events that
 7 happened at koppie 3 which is the koppie that is behind the
 8 big one where after the first shooting of people another 16
 9 or so people were killed, is that correct?

10 MR X: Yes.

11 MR MPOFU: So on that day -

12 MR MATHIBEDI SC: Sorry, he did not
 13 interpret everything, please.

14 MR QGIRANA: If the question can be
 15 repeated?

16 MR MPOFU: Yes, I'm going to repeat the
 17 question, Mr X, it looks like there was a portion left out
 18 by the interpreter. I was saying, Sir, that as far as the
 19 16th, the portion of the Commission's mandate refers to the
 20 16th of August, you are unable to contribute anything in
 21 respect of the deaths that occurred at koppie 3 which is
 22 the koppie behind the big koppie where you were gathering.

23 MR X: The answer to that part of the
 24 question, yes, I have a contribution to make. On that day,
 25 Mr Chair, there were gentlemen who were talking before the

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1 police came. One gentleman said there cannot be two bulls
 2 in one kraal. That gentleman said, if those police are
 3 here to remove us from this place they will remain here or
 4 else it will be us, the strikers who will remain here. The
 5 second speaker said these police officers who were brought
 6 in from the Eastern Cape to come and kill us, we're being
 7 black and they are also black, they will remain here.

8 MR MPOFU: Okay, Mr X, -

9 MR X: Can Mr Mpofu please explain to me
 10 his statement, two bulls cannot be in one kraal, what does
 11 that mean?

12 CHAIRPERSON: No, no, no, the witnesses
 13 are here to answer questions, not to ask questions of
 14 counsel. It is counsel's job to ask questions and to
 15 accept the rulings given by the chair and it is the
 16 witness' duty to answer the question. You can't ask Mr
 17 Mpofu questions, I'm afraid. He can ask you, so I disallow
 18 your question.

19 MR X: Okay, Mr Chair, thank you.

20 MR MPOFU: Okay.

21 MR MATHIBEDI SC: Sorry, Chairperson, -

22 MR MPOFU: Now, - oh, I'm sorry.

23 MR MATHIBEDI SC: I don't want to
 24 interject in the cross-examination but I think it will be
 25 of assistance, great assistance to the witness, I mean if

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1 he can be shown the various koppies and also be told that
 2 there are two shootings.

3 CHAIRPERSON: Yes, I think I can tell him
 4 that. Mr X, listen to me carefully, listen to me
 5 carefully. I'm going to try to make Mr Mpofu's questions
 6 clear to you. The evidence is that on the 16th of August
 7 there were at the afternoon, from just before four o'clock
 8 onwards there were two places where the police, in fact
 9 there were more than two, but there were two main places
 10 where some strikers were killed by members of the police
 11 service. Before that, during the day there were
 12 communications between or exchanges between police
 13 negotiators and a Nyala and some of the leaders of the
 14 strikers and various things were said on both sides. Later
 15 Mr Mathunjwa came twice and spoke to the strikers and
 16 Bishop Seoka also came and spoke to the strikers. After Mr
 17 Mathunjwa left the second time a wire barrier was uncoiled
 18 from some wire trailers which were pulled by Nyalas, police
 19 vehicles and after that at the first scene a number of
 20 strikers were killed by police fire.

21 [14:38] That's what we call scene 1. Some of the
 22 strikers then ran away and went to another koppie which was
 23 behind the big koppie on which you people have been
 24 gathering. Some of the police went there and a number of
 25 those strikers also were shot by members of the police

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1 service and that's what we call scene 2. Mr Mpofu put to
 2 you, you can't help us in relation to what happened at
 3 scene 2, because you don't know anything about that and you
 4 agreed.

5 MR X: Mr Chair, I can contribute in
 6 saying that we were attacking those police officers.

7 CHAIRPERSON: No, you've given us
 8 evidence about what happened earlier as I understand it,
 9 more or less up to scene 1. I say more or less because
 10 there is an area of uncertainty about that, but what Mr
 11 Mpofu put to you and you agreed with him, was, you can't
 12 tell us anything about scene 2 and I think we must now let
 13 him put to you what else he says you can't help us on and
 14 you can then give us your reaction to that.

15 MR MPOFU: Thank you, Chairperson. Yes,
 16 Chairperson, in the interest of time I was going to move on
 17 to scene 1 that the witness is clearly eager to talk about,
 18 because it is common cause that there was no suggestion
 19 that he can assist us when it comes to scene 2, so there is
 20 no point in -

21 CHAIRPERSON: Yes, he appears to be not
 22 understanding where you're going to.

23 MR MPOFU: Yes, that's what -

24 CHAIRPERSON: And Mr Mathibedi made a
 25 valid point, that in fairness he should be given a picture

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1 of what was going on and I tried to do that.

2 MR MPOFU: Let's save time, Chairperson.
 3 Now we'll argue at the end that you can't help with scene
 4 2, but, so let's, - let's look at scene 1 which is the
 5 other part of what happened on the 16th, so let's go there.
 6 Firstly, let's start with what you've just said now and
 7 which Ms Barnes dealt with in the morning. Your evidence
 8 is that what you've just described now happened after Mr
 9 Mathunjwa left, namely where Mr Noki said, you know two
 10 bulls in one kraal and where the person known to the
 11 Commission as protestor number 6, said that the policemen
 12 will be finished there, is that your evidence?

13 MR X: Protestor number 6 at -

14 MR MPOFU: No, forget about number 6, the
 15 person who according to you now and this morning, said
 16 these policemen from the homelands will be finished here,
 17 all that happened after Mr Mathunjwa left, correct?

18 MR X: He was there, Mr Chair.

19 MR MPOFU: No, I'm saying, Mr X, let's
 20 understand it well, -

21 MR X: Mr Chair, Mr Mathunjwa was there,
 22 the police officers are educators, let them produce the
 23 necessary videos. If you people are saying my evidence is
 24 false, let us get the relevant videos, let's not beat about
 25 the bush.

<p style="text-align: right;">Page 32745</p> <p>1 CHAIRPERSON: That argument is not for 2 you to argue, you're just here to answer questions, but 3 what you were saying to Mr Mpofu is that the, when Mr 4 Mathunjwa was still there, now you've told us about two 5 things being said, one about the two bulls and one about 6 the policemen from the Eastern Cape, were both of those 7 said when Mr Mathunjwa was still there or was only one of 8 those things said when Mr Mathunjwa was still there? 9 MR X: He was still there, Mr Chair. 10 CHAIRPERSON: Both of those things were 11 said or only one of them? 12 MR X: He was there when these things 13 were said, these people who said these things were standing 14 on that side where Mr Mathunjwa was. 15 CHAIRPERSON: Alright, thank you. 16 Perhaps we can take the tea adjournment now and we can 17 carry on after tea, at three o'clock I hope? 18 MR MPOFU: Thank you, Chairperson. 19 [COMMISSION ADJOURNS COMMISSION RESUMES] 20 [15:09] CHAIRPERSON: The Commission resumes. 21 Please remind the witness he's still under oath, and Mr 22 Mpofu will then continue with his cross-examination. 23 MR X: [s.u.o. through interpreter] 24 MR NTJINGILA: Confirmed, Mr Chair. 25 CROSS-EXAMINATION BY MR MPOFU (CONTD.):</p>	<p style="text-align: right;">Page 32747</p> <p>1 MR MPOFU: So who spoke first? Was it Mr 2 Noki or the man from Flagstaff? 3 MR X: They spoke, both of them. Noki 4 spoke and saying the same words that I'm saying now. 5 MR MPOFU: And then the other gentleman 6 added what you have also said? 7 MR X: Noki said they can't have two 8 bulls in the same kraal; if those police came here to us 9 they will either remain there dead or flee. Kaizer said 10 these policemen that are from Eastern Cape who are also 11 black people, we'll finish them here. 12 MR MPOFU: Okay, according to you the 13 other thing, apart from those two things which happened 14 after Mr Mathunjwa left, the other thing that happened is 15 that the strikers were singing up and down. 16 MR X: By the time those words were said 17 Mr Mathunjwa was still there. Then it came back to our, 18 where we were, then carry on singing, going up and down. 19 MR MPOFU: Yes, that's the part I'm 20 really interested in. So after he had left and after Mr 21 Noki had spoken, then the strikers were singing up and down 22 in front of the koppie, correct? 23 MR X: Yes, Sir. 24 MR MPOFU: And I will show you the 25 pictures at another stage. The singing up and down, I'm</p>
<p style="text-align: right;">Page 32746</p> <p>1 Chairperson, yes, there is another urgent point which I'll 2 explain later, which I was going to interpose but maybe let 3 me finish with this portion. 4 CHAIRPERSON: Interpose? 5 MR MPOFU: I'm saying it's a separate 6 point which I was going to interpose because I have to do 7 it today, but I'll try and finish this one so that it's not 8 all over the show. Thank you very much, Chairperson. Mr 9 X, I'm saying to you – okay, I want to ask the same 10 question differently. What in your version happened after 11 Mr Mathunjwa left when it was made clear that you were not 12 going to leave the koppie? Mr Interpreter, after Mr 13 Mathunjwa left. 14 MR X: I've already explained that the 15 police arrived. Mambush he went to the police when they 16 started uncoiling the wire. He came back to us - he asked 17 why were they uncoiling the wire. He came back to us. He 18 attacked the police who followed him, going to the police, 19 doing what they were saying, both of them, the other one 20 saying that you cannot keep two bulls in the same kraal, 21 the other one have to flee away and the other one saying 22 that those police that are coming from the Eastern Cape 23 will be left there. That gentleman who was saying that is 24 still alive, he's from Flagstaff, his name is Kaizer. He's 25 working at Rowland Shaft. He is an RDO.</p>	<p style="text-align: right;">Page 32748</p> <p>1 sure you can't remember, it could have been four or five 2 times, how many times, if you can? 3 MR X: I don't remember clearly, but it 4 was more than two times. We were signing, going this side, 5 going this side, going this side, going this side. 6 MR MPOFU: Yes, okay, thank you. Yes, 7 and after this up and down and up and down and up and down, 8 then at what stage did you see the Nyala that was uncoiling 9 wire? 10 MR X: The Nyala started from the side 11 where there were electric pylons, moving towards the kraals 12 that were there. 13 MR MPOFU: And according to your 14 evidence-in-chief that what you are now describing of the 15 Nyala going towards the kraal is depicted in slide L198. 16 Is that correct? 17 CHAIRPERSON: I think we'd better see it 18 so the witness can give us a focussed answer. 19 MR MPOFU: This is what you are 20 describing. You're saying that shows you when you were 21 going towards the kraal. That's correct? According to Mr 22 Mathibedi's – well, according to the evidence you gave to 23 Mr Mathibedi. 24 MR X: Yes, it's like that. 25 MR MPOFU: But that can't be true because</p>

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1 that Nyala's wire is still coiled.
 2 MR X: Sir, [inaudible, speaking
 3 simultaneously with interpreter] so that I can see. That
 4 Nyala does not end there.
 5 MR MPOFU: No Mr X, it's not a video,
 6 it's a photo which was shown by Mr Mathibedi to you and you
 7 said that is the time when it was going to the kraal.
 8 MR X: This photo I saw it when the
 9 [inaudible, speaking simultaneously with interpreter] I do
 10 not know if the police have put in cameras on that stage
 11 because that's what I saw it live, happening on the 16th.
 12 Even what I said has been said by Mambush and Kaizer. I
 13 don't know if they took it on video camera or what, but if
 14 they say what I'm saying is lies, even Mr Mathibedi, it's
 15 been a long time since I last met him; I don't know, he
 16 didn't show me a photo. I don't know even if he's got the
 17 photo.
 18 MR MPOFU: No Mr X, I'm saying to you -
 19 if I was misrepresenting Mr Mathibedi he would have told me
 20 by now. I'm saying that when you gave evidence Mr
 21 Mathibedi showed you this picture and you confirmed that
 22 this is what was happening with Mambush in front. This is
 23 what was happening as the Nyala was going towards the
 24 kraal. That's what you said to Mr Mathibedi.
 25 MR X: Yes.

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1 MR MPOFU: Now I'm showing you that that
 2 evidence cannot be correct because that Nyala's barbed wire
 3 is still coiled.
 4 MR X: That video that Mr Mathibedi
 5 showed me we are already on our way towards the kraal. I'm
 6 asking you to proceed and show the video and show the
 7 people that I'm talking about, are they not there?
 8 MR MPOFU: Well, Mr X, I'm not going to
 9 go around the same issue with you. What Mr Mathibedi
 10 showed you was exactly this photo, not a video.
 11 MR X: We are being depicted on that
 12 video going towards the police, going to attack the police.
 13 That's the video that has been shown, and the police
 14 defended themselves by shooting.
 15 MR MPOFU: Okay. You were even asked, I
 16 think it was Commissioner Hemraj when this picture was
 17 shown, to try and indicate where you were. You remember
 18 that?
 19 MR X: No, I can't point at myself there
 20 because I'm not depicted in that picture.
 21 MR MPOFU: You're not visible; you're
 22 further back?
 23 MR X: I'm not at the back, I'm there
 24 next to those people who are next to that wire, because I
 25 was not at the back, I was nearer to the kraal.

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1 MR MPOFU: Alright, we'll come back to
 2 that. In any event, when the shooting that you heard
 3 happened, it was before you yourself had reached the kraal,
 4 correct?
 5 MR MATHIBEDI SC: Sorry, Chairperson,
 6 sorry, Mr X, which shooting is Mr Mpofu referring to,
 7 Chairperson?
 8 MR MPOFU: Yes, thank you, Chairperson.
 9 You have testified that, you had only testified about one
 10 shooting. You said that as you were proceeding there some
 11 people who were in front fell down. You remember that?
 12 MR MATHIBEDI SC: Chairperson, I think
 13 the witness -
 14 CHAIRPERSON: Mr Mpofu, the trouble is
 15 the word "shooting" could really mean one shot. What you
 16 really mean is a volley or a fusillade, I think, when the,
 17 you know in eight seconds a lot of shots were fired and
 18 people fell down. So I'm not sure whether either a volley
 19 or a fusillade as opposed to a shooting, which could be
 20 singular, can be conveyed in Xhosa. I imagine it can be,
 21 but perhaps you can put it like that then I think the
 22 ambiguity falls away.
 23 MR MPOFU: Yes.
 24 CHAIRPERSON: And the point you want to
 25 make can be made more clearly.

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1 MR MPOFU: Yes, Chairperson, I'll
 2 rephrase. Thank you, Chairperson. When the group of
 3 people that you said were shot down was shot, wherever they
 4 might have been, you yourself had not yet reached the
 5 kraal. Is that correct?
 6 MR X: I've turned around and fled. If I
 7 had reached the kraals I could have been left there also.
 8 MR MPOFU: Yes, no, I understand that.
 9 CHAIRPERSON: It seems to me as if you
 10 were agreeing with Mr Mpofu, you say if you reached the
 11 kraal you might have been shot. So it seems to follow from
 12 that that you hadn't yet reached the kraal yourself before
 13 the volley of fire took place and a number of people were
 14 shot. Is that correct?
 15 MR X: Yes.
 16 MR MPOFU: Right, now according to the
 17 police there is a - and you are saying when these people
 18 were shot they were trying to get in front of that Nyala?
 19 MR X: Yes.
 20 MR MPOFU: Yes, therefore what I'm going
 21 to argue is that from that evidence, those two pieces of
 22 evidence, 1, that you yourself had not yet reached the
 23 kraal, and 2, the fact that those that you say were shot -
 24 those shots happened and they were trying to get in front
 25 of that Nyala which we know is Nyala number 4.

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1 [15:29] MR MATHIBEDI SC: Chairperson, I think if
 2 Mr Mpofo could clarify at this stage that he's referring to
 3 what is it that the police wanted.
 4 MR MPOFU: No, no, no I don't know,
 5 Chairperson, what the police are doing, the witness only
 6 testified – that's why I made it very clear, I'm talking
 7 about the situation where he says people were shot down.
 8 So what they were firing is irrelevant. The point is –
 9 CHAIRPERSON: Shot down then it sounds as
 10 if live ammunition was fired.
 11 MR MPOFU: Well I don't know,
 12 Chairperson. If that's what the witness explained. They
 13 might have been shot with birdshot or – what is happening,
 14 what happened. That's not the point I'm conducting, I'm
 15 simply saying the witness – there are two things that we
 16 agree on. When the number, the group of people were shot
 17 he had not reached the kraal, two, according to him when
 18 those people were shot they were trying to get in front of
 19 Nyala number 4. Those are the only two things that we have
 20 established so far.
 21 MR X: They were passing the Nyala they
 22 were not trying to come in front of it. They were passing
 23 in front of it.
 24 MR MPOFU: Yes and the police were trying
 25 to prevent that. I'm sorry Mr X, we spoke at the same

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1 time. You can finish your answer.
 2 MR X: They were passing in front of the
 3 Nyala. If you can play the video, carry on you'll see us
 4 that we've already passed the Nyala going towards the
 5 police to attend there.
 6 MR MPOFU: No that's fine, there will be
 7 a video of that nature. The only thing I'm establishing
 8 with you now is or with you is according to the police and
 9 indeed it's almost common cause because even according to
 10 other witnesses that I called there was indeed a situation
 11 where the strikers were trying to beat the Nyalas. I think
 12 the Chairperson called it a race to the kraal and indeed
 13 the police fired some shots to prevent that from happening.
 14 That's common cause.
 15 MR X: Yes there's some kraals there in
 16 front. At this moment the people is standing still, but if
 17 you can play the video forward you'll see that there are
 18 some kraals in front there. I would like to explain it,
 19 make it clear in this evidence I'm giving here that the
 20 police were going to kill them. We were attacking,
 21 killing them there, I need to be clear as night and day.
 22 And the police were defending themselves. Mr Mpofo can go
 23 and think of other means of – because I'm not changing what
 24 I'm saying.
 25 CHAIRPERSON: No that's not an answer,

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1 don't tell Mr Mpofo what he can do, you just answer the
 2 questions then we'll get through this much quicker.
 3 MR MPOFU: And I'm going to argue that it
 4 would seem that if you were there that the incident which
 5 scared you to run away is what the police call incident 2.
 6 And – sorry, Chairperson.
 7 CHAIRPERSON: If you're going to tell him
 8 what he's –
 9 MR MPOFU: Okay if you go to L195 the
 10 incident 2 is described as follows. "Protestors' second
 11 attempt before the kraal POP engages from right and left
 12 flanks with less than legal force, the POP armoured
 13 vehicles attempt to move past the kraal to form a
 14 dispersion line." You can ignore that last part. I'm
 15 simply saying that the incident which you have described
 16 where you're saying there was indeed shooting as people
 17 were trying to outpace Nyala 4 seems to correspond with
 18 incident 2. Do you understand that?
 19 CHAIRPERSON: Mr Mpofo, there is
 20 something wrong here. You read out, the text you read was
 21 from incident 3. What are you actually referring to,
 22 incident 2 as we have it on 195 or incident 3?
 23 MR MPOFU: Well 2, Chairperson, I'm
 24 specifically –
 25 CHAIRPERSON: You didn't read that

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1 because you read about attempting to move past the kraal,
 2 to form a dispersion line and you read about engaging from
 3 right and left flanks, that's all part of incident 3.
 4 MR MPOFU: Yes okay sorry –
 5 CHAIRPERSON: If you want - you'd better
 6 read him the correct -
 7 MR MPOFU: No I appreciate that, thank
 8 you, Chairperson, I'm indebted to you. Incident 2 which
 9 corresponds with your evidence so far says "Protestors'
 10 second attempt before the kraal POP engages with less than
 11 lethal force, Nyala 4 cuts off advance the second time."
 12 Thank you, Chairperson. We agree so far. Okay maybe let
 13 me -
 14 CHAIRPERSON: The trouble appears to be
 15 that exhibit L contradicts itself. In 195 it talks about
 16 four incidents and in the narrative and slides thereafter
 17 it only talks about three incidents. And the account of
 18 incident 3 includes the volley or the fusillade and the way
 19 they put it in 195 that is what they call incident 4. So
 20 there's a bit of confusion caused by the police obviously
 21 changing their minds while they were drafting exhibit L.
 22 But in order to avoid confusion you'd better put it
 23 precisely.
 24 MR MPOFU: Yes, Chairperson. Okay forget
 25 about whether incident one or two or three or four, all I'm

<p style="text-align: right;">Page 32757</p> <p>1 saying is that the shooting which you described which 2 caused you to run away from it all seems to be the shooting 3 which happened before the kraal and as the protestors were 4 trying to outpace Nyala 4. 5 MR X: Mostly the people who fell down 6 and the people who went past the front of Nyala and passed 7 with the others who came back and ran away Mambush is the 8 one who got injured because he was right in front. 9 MR MPOFU: Yes that's fine, but once that 10 happened and you ran away you never saw anything that 11 happened thereafter, correct? 12 MR X: In connection with what? 13 MR MPOFU: Mr X, we're still talking 14 about the events that happened in and around the koppie. 15 I'm saying whatever happened, obviously many things 16 happened after you escaped, but what I'm saying is that 17 once you being shot, well never shot you, ran away that was 18 your last involvement, observation of what happened there 19 at that scene, correct? 20 MR X: Yes, I heard it from the people 21 the following morning because it was too hard there, people 22 being shot at and killed, it was too hard to be there. 23 CHAIRPERSON: Mr X, I want to ask you a 24 question. 25 MR X: It's been too long we're talking</p>	<p style="text-align: right;">Page 32759</p> <p>1 was the power station and on your left-hand side was the 2 kraal. Is that correct? 3 MR X: Yes, it is. 4 CHAIRPERSON: And then there were the 5 Nyalas which had wire trailers behind them and the first 6 one started near the power station and started uncoiling 7 the wire, did you see that? 8 MR X: Yes. 9 CHAIRPERSON: And the evidence says that 10 when it had uncoiled its wire the second Nyala started 11 uncoiling its wire. 12 MR X: The Nyala that was uncoiling the 13 wire it was one that was going towards the kraal. There 14 was still a space there and there were people who passed 15 before the kraal, they were going towards the police. I 16 explained this clearly when I was asked about it. 17 CHAIRPERSON: Yes, I understand that and 18 just before that Nyala got to the kraal do you say the 19 police fired at the strikers, is that correct? 20 MR X: Yes. 21 CHAIRPERSON: And what happened then? 22 MR X: It was very difficult. People 23 were shot at and they died, they were going towards the 24 police, but they didn't hit the police. They were going to 25 kill them.</p>
<p style="text-align: right;">Page 32758</p> <p>1 about the same thing, about people being shot, about people 2 being killed. Yes I can say it's us, we didn't warn or 3 reprimand each other from refraining from what we were 4 doing. We didn't question those guys who were saying those 5 words that they can't have two bulls in the same kraal or 6 we're going to finish the police there. What Mr Mpofu is 7 asking me is too much. He's asking time and again. I 8 heard at a later stage that somebody had killed an animal 9 and after we'd been warned that we must not kill any animal 10 we heard that somebody had killed the – that is someone who 11 didn't hear the instruction because we were instructed not 12 to kill. 13 CHAIRPERSON: Can I ask him a question 14 at this stage? Sorry. What did he say, can I ask him a 15 question? 16 MR X: There was a hare that was killed 17 that day. 18 CHAIRPERSON: Yes, yes I understand. 19 What is being said was the reason the muti didn't work was 20 because somebody disobeyed the instructions and killed a 21 hare or a rabbit. That's in evidence as we've heard. So I 22 want to ask you something else? You people were standing 23 of the koppie facing the police when these were said that 24 you've told us about, about the bulls and the police from 25 the Eastern Cape and so on. And on your right-hand side</p>	<p style="text-align: right;">Page 32760</p> <p>1 CHAIRPERSON: Was that when Mambush was 2 shot? 3 MR X: Yes, it was that time. 4 CHAIRPERSON: Was that the time just 5 before the Nyala with the wire approached the kraal? 6 MR X: Yes. 7 MR MPOFU: Thank you very much, Chair. 8 CHAIRPERSON: Sorry can I ask one more 9 question with your permission, Mr Mpofu? 10 MR MPOFU: Yes. 11 CHAIRPERSON: Was that when you ran away? 12 MR X: Yes, I already ran away. I ran 13 away, it was too hard. People were dying, I ran away. 14 CHAIRPERSON: At what stage did you run 15 away? How far was the Nyala from the kraal when you ran 16 away? 17 MR X: It was not very far when we came 18 back and we were many, I saw the one in front of me turning 19 around and I also turned around and ran away. 20 [15:48] Because the person who was next to me, in front 21 of me, was a guy with dreadlocks, Rastafarian. He was 22 there, he turned around and I followed him. 23 CHAIRPERSON: [Microphone off, inaudible] 24 also know from the evidence that at some stage, round about 25 that time the police water cannon started spraying water</p>

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1 towards the strikers. Had that happened yet when you ran
2 away?

3 MR X: I was still around at that time.

4 MR MPOFU: Yes, thank you. Anyway, to
5 cut a long story short, on the basis of this evidence that
6 you've just given, having established earlier that you
7 cannot assist the Commission with scene 2, I will also
8 argue that you cannot assist the Commission in respect of
9 scene 1. In other words you add nothing to the Commission
10 about the events of the 16th that took place –

11 CHAIRPERSON: I think to be fair you've
12 got to explain to the witness what you mean by scene 1 –

13 MR MPOFU: Yes, yes. No, fair enough,
14 Chairperson. Chairperson, can I – I'll come back to this.
15 I have to –

16 CHAIRPERSON: You asked that question.
17 You've got to explain –

18 MR MPOFU: No, I was not asking the
19 question –

20 CHAIRPERSON: If you want to ask the
21 question a bit later on and deal with something else
22 first –

23 MR MPOFU: Yes.

24 CHAIRPERSON: Because I think you said
25 you want to do something before the end of the day,

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1 obviously you must do it now then.

2 MR MPOFU: Yes, thank you, Chairperson.
3 Mr X, I won't go through – you remember Mr Budlender
4 leading you about the fact which shows that you were not a
5 member of the committee of 15, the pictures that show that?

6 MR BUDLENDER SC: Sorry –

7 MR MPOFU: Okay, sorry, before you
8 answer, just to pre-empt the objection; when Mr Budlender
9 was suggesting that you were not a member of the committee
10 of 15.

11 MR X: He doesn't know what brought me to
12 the mountain. He was not in the mountain. I was there, I
13 was one of the committee. He was not there in the
14 mountain. I was there.

15 MR MPOFU: Yes, and Mr Budlender showed
16 you the picture which I will call up now, which is AAAA25,
17 and he also showed you AAAA34. I will show you both
18 pictures.

19 CHAIRPERSON: I think we had a coloured
20 version of this photograph, which is much easier –

21 MR MPOFU: Yes.

22 CHAIRPERSON: In fact we had the two
23 together. We had the Daily Maverick picture on the left in
24 colour and then on the right was a picture taken about four
25 minutes later by Colonel Mere.

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1 MR MPOFU: Yes, let's go to 34 –

2 CHAIRPERSON: I think that's the one we
3 want. Perhaps Mr Budlender can tell us what that is.

4 MR MPOFU: Can we go to 34? Yes, that's
5 the one where, which Mr Budlender had numbered to make it
6 easy for you.

7 CHAIRPERSON: It's the Marinovich
8 picture.

9 MR X: I would like to know that is it
10 clear now to Mr Mpofo that on the 16th the police, we were
11 attacking them to kill the police?

12 MR MPOFU: Ja, it is.

13 MR X: Because you are going back to A
14 and yet you are far in front.

15 CHAIRPERSON: Ja, he's now moved on to
16 another point. I think he's going to get back to that
17 point tomorrow. What he's now showing you is the
18 photograph that Mr Budlender showed you which was taken on
19 the 15th, that's the Wednesday, the day before the killings,
20 taken just before half past 5 in the afternoon and it shows
21 quite a lot of strikers on the koppie and in the foreground
22 there's a group of people in a circle who it's suggested I
23 think that they're the committee and you in fact yourself
24 said that you were the person who is described as number 4
25 in that photograph. You see the 4 at the top, arrow going

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1 down, the point in the arrow touching someone's head and
2 you told us that was you. Am I correct?

3 MR X: Yes.

4 MR MPOFU: Okay, then the next picture in
5 that series shows number 4 now standing up.

6 CHAIRPERSON: Mr Mpofo, I think that's an
7 unfair way to begin a question. The other picture, Colonel
8 Mere's picture taken about four minutes later –

9 MR MPOFU: A few minutes, like five
10 minutes.

11 CHAIRPERSON: - is of someone standing
12 up. The evidence leaders have put the number 4 onto it,
13 but the witness you'll remember denied that that was indeed
14 the person who was 4 in the earlier picture.

15 MR MPOFU: Yes, that's exactly what –

16 CHAIRPERSON: So I think you must
17 reformulate the question to avoid the –

18 MR MPOFU: Number 4 standing up, that's
19 true, I said that he – my next question was you have said
20 that the person called number 4 in the first picture is
21 you, but the other one standing as number 4 in the other
22 picture is not you.

23 MR X: I want to explain to the
24 Commission that when a person is mad, to be tested that
25 he's mad he's given a bucket of water that, which has got a

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1 hole underneath, if the person carries the bucket and the
 2 water spill on him, he doesn't realise that he's getting
 3 wet, then that is proof enough that that person is mad.
 4 What Mr Mpofo is doing is just like that. He said that I
 5 was mad before, now he's repeating the same questions that
 6 I've already answered before.
 7 MR MPOFU: Mr X, I want to put to you
 8 that –
 9 CHAIRPERSON: No, Mr X, Mr X, Mr Mpofo
 10 left that mad point. He's now busy with something else.
 11 It is true he's asking you a question you were asked
 12 before. He's asking you a question Mr Budlender asked you,
 13 but as is his right, he's trying to approach it from a
 14 slightly different angle. Would you indicate the different
 15 angle to the witness?
 16 MR MPOFU: Yes, I think, Chairperson, it
 17 should be called a madness point, but be that as it may.
 18 Mr X, I want to shortcut this by saying that we're also
 19 going to argue, as Mr Budlender suggested that those
 20 numbers 4s are the same person.
 21 MR X: What I'm saying, I'm not changing
 22 my statement. I could have read what the police are
 23 saying. The police are defending themselves. Mr Mpofo
 24 just wants that the police may be seen as the offenders.
 25 His question that he is asking me may –

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1 MR MPOFU: Yes, I understand.
 2 MR X: - give any meaning out of them,
 3 and get any meaning out of –
 4 MR MPOFU: Okay, okay, I'll try to be
 5 better tomorrow. I also want to show you the next picture
 6 in that series. Chairperson –
 7 CHAIRPERSON: Mr Mpofo, it's now 4
 8 o'clock and I wonder whether you're really going to get any
 9 value –
 10 MR MPOFU: I will, Chairperson, if you'll
 11 allow me please, a few minutes, it is important.
 12 CHAIRPERSON: A few minutes?
 13 MR MPOFU: Yes.
 14 CHAIRPERSON: The witness is tired. You
 15 know something, if the witness is tired and you get a
 16 concession out of the witness, or apparent concession, it
 17 may not count for much at the end because the other side
 18 will argue he was tired at the time and you can't value –
 19 MR MPOFU: Chairperson, the witness did
 20 not say he's tired. I'm asking for a few minutes –
 21 CHAIRPERSON: So I'm telling you he looks
 22 tired to me –
 23 MR MPOFU: I'm asking for a few minutes.
 24 As I explained earlier, there's somebody who cannot be here
 25 tomorrow –

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1 CHAIRPERSON: Alright, I'll give you a
 2 few minutes, but few as in not many.
 3 MR MPOFU: We go to picture 34, the next
 4 one. Go back, Craig. Yes, now that person numbered number
 5 4 is again the same person who was in the other two
 6 pictures, in our submission. You see the person numbered
 7 number 4?
 8 MR X: Yes, I can see him.
 9 MR MPOFU: And that gentleman is, his
 10 name is Mr Devana Madumbe, and Mr Madumbe, if I can get the
 11 camera, is here and he's still wearing that same top that
 12 he's wearing in those photos.
 13 CHAIRPERSON: Is he going to give
 14 evidence later that he's the person, or perhaps make an
 15 affidavit to that effect?
 16 MR MPOFU: Yes, an affidavit,
 17 Chairperson. But if it's disputed then we'll call him. Mr
 18 Madumbe is –
 19 CHAIRPERSON: I'm sorry, let's ask the
 20 question; do you know the gentleman who stood up? For
 21 those who are going to read the record later, a gentleman
 22 stood up and he appeared to be wearing a top which
 23 resembled the one in the photograph. I can't say it's the
 24 exact same one, but it certainly resembles it. Do you know
 25 him at all? Have you ever met him before? Before you

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1 answer the question, did the television camera show him to
 2 you so that you could see him on the screen in front of
 3 you?
 4 MR MPOFU: To the witness.
 5 MR X: I don't know, I don't understand
 6 what Mr Mpofo is saying and that person, I don't know
 7 [inaudible, speaking simultaneously with interpreter] they
 8 just took anyone and told him to wear a jersey that
 9 resembled the one that is in the photo and that person, the
 10 complexion is not the same.
 11 CHAIRPERSON: Sorry, you've really
 12 answered my question. You don't know that gentleman. Is
 13 that right?
 14 MR X: No, I don't know him.
 15 MR MPOFU: Thank you. Mr Madumbe –
 16 CHAIRPERSON: Before you move on –
 17 MR MPOFU: I'm sorry, Chairperson –
 18 CHAIRPERSON: Look at the photograph
 19 that's on the screen now. You see the person who's got the
 20 4 above his head; is that you?
 21 MR X: No, that is not me. I don't know
 22 that person.
 23 CHAIRPERSON: And you can't tell us
 24 whether it's the gentleman who's standing up there, because
 25 you say you don't know him.

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1 MR X: No, I don't know him. I can't say
2 I know him. I don't know him.

3 MR MPOFU: Yes, thank you. Okay, the
4 last question then in that series is you can't dispute if
5 Mr Madumbe says that that is him on all those three
6 pictures that I've shown you, you can't dispute that?

7 MR X: What I'm saying is that Mr Mpofu,
8 I don't know what you are saying. What I'm asking him to
9 do is to go back to those photos and videos of the 16th so
10 that he can hear or see those guys [inaudible, speaking
11 simultaneously with interpreter]. I'm not changing what
12 I'm saying. I say the police are innocent. We were
13 attacking the police. We were killing the police –

14 CHAIRPERSON: The pictures we're looking
15 at were taken from – do me a favour, Mr X, just keep quiet
16 while I'm talking. The picture we're looking at were taken
17 from 21 minutes past 5 till just after half past 5 on the
18 15th of August, that's to say the Wednesday, the day before
19 the shooting. By half past 5 on the Thursday 34 people
20 were dead. These pictures were taken on the Wednesday
21 afternoon. I understand you to say you're not in the two
22 pictures taken by Colonel Mere above which the number 4
23 appears. That's correct, is it not?

24 MR X: I don't know that person's name.

25 MR MPOFU: Yes.

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1 CHAIRPERSON: But you say that you're the
2 number 4 in the other picture, the one Mr Marinovich took,
3 which is on the left of the two pictures that you were
4 shown a minute or so ago. That's correct? You say you're
5 4 in Mr Marinovich's picture, but you're not 4 in these
6 other two pictures that Colonel Mere took. That's your
7 evidence?

8 MR X: Yes, if you'd see the place that
9 we are standing in, in this photo, it's not the same as
10 where we were in that other photo, and where you are
11 standing, other guy will stand up and go to urinate and
12 come back. What Mr Mpofu is asking me, I don't understand.
13 It doesn't give any sense.

14 MR MPOFU: Okay, Mr X, we'll continue
15 tomorrow. So far we have established that you cannot
16 assist the Commission with scene 1 on the 16th or scene 2
17 on –

18 CHAIRPERSON: You don't have to comment,
19 Mr Mpofu. You don't have to make it – you are pre-empting
20 my function to announce that we'll adjourn now till 9
21 o'clock tomorrow morning.

22 MR MPOFU: Ja. No, Chairperson, yes, no
23 I wanted to [inaudible, speaking simultaneously with
24 interpreter] Chairperson.

25 [COMMISSION ADJOURNED]

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