

COMMISSION OF INQUIRY INTO ALLEGATIONS OF POLICE INEFFICIENCY IN
KHAYELITSHA AND A BREAKDOWN IN RELATIONS BETWEEN THE COMMUNITY
AND POLICE IN KHAYELITSHA PHASE ONE

Malwande Msongelwa

Date: 28 January 2014

Source: Pages 534-553 of Commission transcript

COMMISSIONER: Good afternoon and just again a reminder, the people don't need to keep their jackets on if they are finding it particularly hot. Ms Mayosi you are going to lead two witnesses this afternoon I understand.

MS MAYOSI: Yes Madam Chair.

COMMISSIONER: Okay and are both witnesses understand that these are public proceedings and have no objection to their identity being made public?

MS MAYOSI: That is so.

COMMISSIONER: And their evidence as well?

MS MAYOSI: Yes.

COMMISSIONER: And are the witnesses going to testify in English or isiXhosa?

MS MAYOSI: In isiXhosa.

COMMISSIONER: Okay excellent.

MR PIKOLI: Molo sisi. (isiXhosa)

INTERPRETER: The witness is going to take the oath.

MALWANDE MSONGELWA: (Sworn states)

INTERPRETER: The witness has been sworn in.

EXAMINATION BY MS MAYOSI:

Do you agree that the things on the statement ... (intervention)

MR MASUKU: It would seem somehow we have not - it doesn't appear that the questions that were sent for these for the two witnesses that are coming, I think the things for the three witnesses and I think it may well be; it is because we did not realise that there had been an amended hearing plan for those statements and there was a shifting of things in that.

COMMISSIONER: These are supplementary witnesses if you recall we had a group of supplementary witnesses that would be inserted. I think you do have the statements before you, do you?

MR MASUKU: Yes we do have the statements before us.

COMMISSIONER: You have the statements, shall we deal with the question of issues of questioning after each witness, you can indicate what sort of time you want unless Ms Mayosi wants to object to that. Ms Mayosi - well I mean they haven't put in questions so it is - these are your supplementary witnesses aren't they?

MS MAYOSI: Yes they are Chair.

COMMISSIONER: And I know that you are going to be very irritated if we permit them permission to question but could we at least here what the questions are

before you object?

MS MAYOSI: I think it would be wise to hear what the questions are first because there are issues of preparing witnesses and all of that.

COMMISSIONER: I understand that and I think that - so let's just take advice. It may be that they - that SAPS feels that there is nothing of particular material issue here that they need to pursue but we will hear the witness in chief first. Thank you.

MR MASUKU: Thank you, thank you Commissioners.

MR ARENDSE: (indistinct)

COMMISSIONER: Sorry just say that again?

MR ARENDSE: I do recall now that when it was indicated last week that some supplementary witnesses would be interposed. Whether we would have an objection and I think I am on record as saying that we would not, subject to us having an opportunity to ask questions if leave is granted by, but certainly we have not prepared any statement and if the amended hearing plan came through on Saturday or Sunday then I would have missed the insertion of these witnesses into the plan.

MS MAYOSI: Chair, the names of these witnesses were on the notice 11 that came through on Friday indicating that all questions for witnesses whose names were on that notice were due sometime this week so the names were on the Friday notice.

COMMISSIONER: I also think that the bundle of supplementary statements was circulated last week actually. In my sense Mr Arendse subject to your views is that we hear the evidence-in-chief. These are two community witnesses. Once we have heard the evidence you know we can hear from you as to what your proposals are and then we can hear what Ms Mayosi's approach to those proposals are. Would that make sense?

MS MAYOSI: That is in order chair.

COMMISSIONER: Okay and evidence leaders - Ms Bawa you are happy with that procedure? Good. Well let's go on that basis. We will hear the evidence and then we will hear from Mr Arendse what his comments are.

MS MAYOSI: Ma'am do you agree to give your details and your name in the public?

MS MSONGELWA: Yes I agree.

MS MAYOSI: Do you live in Makhaza in Khayelitsha?

MS MSONGELWA: Yes that is correct.

MS MAYOSI: The area you live in, which police station is it under?

MS MSONGELWA: Under Harare Police Station.

MS MAYOSI: Do you live in an RDP house with water and electricity and a toilet inside?

MS MSONGELWA: Yes that is correct.

MS MAYOSI: Are you a member of the SJC?

MS MSONGELWA: That is correct.

MS MAYOSI: What do you do at the SJC?

MS MSONGELWA: I am a community advocate.

MS MAYOSI: What do you do in this job? What is your job description?

MS MSONGELWA: We do door to door visits in our community in Khayelitsha. We run workshops in the community.

MS MAYOSI: What made you join the SJC?

MS MSONGELWA: Because I wanted to know my rights better as a member of the Khayelitsha community who was not aware of my legal rights and anyone else that does not know their rights who lives in Khayelitsha to know.

MS MAYOSI: There is an incident that you mentioned in your statement. This incident took place on the 3rd of September 2011. Can you explain to this Commission about that incident?

MS MSONGELWA: Yes I will. The 3rd of September there was a child's birthday who was turning one. It was in my street in my area where I live. Around eight o'clock in the evening the kids party was finished and then it was now an adults' party. While at that party Ninini came. Ninini told me that there was a dead person at the bus stop and she wasn't sure whether it was Andisiwe who is a younger brother to me or who it was. She did not know whether it was maybe another guy who is called Face who is also a thug who is in the area. She asked me to go to the bus stop to identify whether it was my brother. We then went to the bus stop and while we were still on our way there we heard gunshots. We then ran and turned back. We got home. We knocked in my brother's shack. When we arrived there it was his girlfriend that opened. We asked where was Andisiwe. She also said she has been looking for him and she could not find him. We went to the back. We went to Thuso's shack who is my older brother. We woke him up. He woke up. We told him that there was a dead person that was found by the bus stop. They are not sure if it is not our brother. As we were going to the front of our house we saw Face knocking at our door at home and therefore we knew that whatever had happened had happened to Andisiwe. We then went to the bus stop with Face and he was telling us that Andisiwe is at the bus stop and he is dead. We went to the bus stop. When we got to the bus stop there were community members there and other people that were the party that came after us and also one of my friends was there. She accompanied us. When we got to the bus stop at the front there was nobody and then Face left us and went to the bus stop at the back where there was grass. He then showed us behind the bus stop where there were houses and there was grass, and at this time the time is about two o'clock at night. We asked him what happened and he said he did not know but he just saw his body there. We asked him why was he there in that area at two o'clock and he could not tell us. He just said that he just - he was going around to buy himself drugs. We asked him: "How did you see him in that place?" After that we called the police. The police took their time. They did not come.

MS MAYOSI: Who called the police?

MS MSONGELWA: I am the one that called the police.

MS MAYOSI: Which number of the police did you call?

MS MSONGELWA: I called 10111. The police did not arrive. There were other members of the community who were also calling. There must have been three of us that called and the police did not arrive. On that day we had attended free genders' workshop. That was General Ndlovu at that workshop. He had given us his cell phone number that if there is no response at the police station we should contact him on that number and he would quickly do something to help us. Really we made contact with him. We could hear that he was sleeping at home, but it was

not even ten minutes and then the police arrived. When the police came / arrived, they stood at a distance. They did not come where we were. They opened the window of the van. They stayed a while and then we were asking ourselves why are the police not coming to us because they can see a crowd of people, but they were - they stopped their car very far from where we were. Did they want us to go to them? So they yelled asking what had happened and we asked them: "Why don't you come and see for yourselves what had happened. Why are you asking us where you are standing?" They started shouting at us telling us that they will just go. They don't care about that, because we should go to them. As the community we were still standing there. Eventually they came out of the car and came to us. There were two of them. When they came to us they asked what was happening. We told them that there was a dead body there behind the bus stop. After that they went to him and they looked at him and saw that he was stabbed.

MS MAYOSI: What were they wearing, were they wearing gloves?

MS MSONGELWA: They were not wearing gloves. They asked who stabbed him. We told them we did not know. We told them that Face is the one that showed us where his body was and Face immediately when we were calling the police he vanished. We did not see him again. They asked where Face lives. We told them that he lives in the same street. They then asked us to go with them to Face's house and they went with my brother. We all went to Face's house with the police. When we got to Face's house we found that he was not there. They asked where else they could find him. We told them we did not know. We went back to the scene by the bus stop. That is where they took a statement from me. They took a statement from my brother and they asked us who were we suspecting of this incident. We just kept on insisting that it was Face that saw him and more information could be found if they asked Face. We were given a case number by Detective Davids. He then told us that whatever we hear, we should contact them and they will also try to investigate on their side. If we find Face we must inform him to go to the police station because the police are looking for him. After two days Face came to our house and he was talking to my brother Thuso and then Thuso came him money to go to the police station. Face came back the same day with the police. The police also came to our house. They asked to meet my brother outside and they were telling him that Face does not - he is not guilty. They could not find him guilty of this act. Thereafter we never saw the police. The last time we spoke to them they said they were still investigating. Thereafter there were rumours of what had happened. We were hearing these rumours from the community but there was nothing that told us to go to the police station.

MS MAYOSI: Did you ever hear anything or feedback from the police?

MS MSONGELWA: No we never even saw them again.

MS MAYOSI: I want to go back to ask a few questions. Are you saying you were at a house where there was a party of a child?

MS MSONGELWA: Yes that is correct.

MS MAYOSI: Is the bus stop close-by to this house?

MS MSONGELWA: Yes.

MS MAYOSI: How close is that bus stop from that house? Is it at a distance you can walk on foot?

MS MSONGELWA: Yes that is correct. It is the bus stop that we use as the community.

MS MAYOSI: As you were walking on foot to the bus stop were the lights on in the street?

MS MSONGELWA: No there are no lights. It is very dark.

MS MAYOSI: Are you saying that after you got home and Face arrived and Face went with you guys to the bus stop you were asking Face a lot of questions such as “where we you, Face, how did you come to see this?” Were you suspecting him?

MS MSONGELWA: Face is a very - he is a notorious thug in our area and he never gets arrested. He breaks into people’s houses. The police always apprehend him but then they drop him in another section. He uses drugs a lot.

MS MAYOSI: When you found Andisiwe did you find him shot?

MS MSONGELWA: No he was not. He was stabbed.

MS MAYOSI: You said that as you were on your way to the bus stop you heard gunshots. Do you know who was shot?

MS MSONGELWA: No we never heard who got shot. When we got back - when we went back to the bus stop because we had run away, by the time we went back the second time there was no-one in sight.

MS MAYOSI: How far is the police station from the bus stop where you found the body of Andisiwe?

MS MSONGELWA: We do not have a police station in Makhaza. We go to Harare. When you go to Harare from our area you take a taxi, you will take about 20 to 25 minutes. You drive past a lot of sections of Khayelitsha.

MS MAYOSI: That means you can’t walk on foot?

MS MSONGELWA: Definitely not.

MS MAYOSI: When you call the police how many minutes or hours did it take for the police to arrive?

MS MSONGELWA: The police arrived after two hours because at this time we had called General Ndlovu. They came and then after that we were doing up and down with them until it was daylight. Some people were on their way to work.

MS MAYOSI: Did the police arrive maybe at about four?

MS MSONGELWA: Yes, that would be correct.

MS MAYOSI: How long did it take for the police to arrive after you called General Ndlovu?

MS MSONGELWA: They took about ten minutes.

MS MAYOSI: Which police station is General Ndlovu stationed at?

MS MSONGELWA: I am not sure which police station he is stationed at.

MS MAYOSI: So you are saying the police arrived. They did not want to come out of the car. They just sat in the car?

MS MSONGELWA: Yes they did. They just stopped there and sat inside the car until we asked them why they were in the car, why were they not coming to where we were because that is where the problem was, so that they could and see what was going on. They then asked us why were we not going to them to tell them what our problem was.

MS MAYOSI: So how did you feel about this when the police was saying these things to you?

MS MSONGELWA: I was angry.

MS MAYOSI: Did they come and go to his body and look?

MS MSONGELWA: They first asked us what had happened. We told them that there was a dead person behind the bus stop. Then they went to him and that is where they looked at him there.

MS MAYOSI: They looked under his shirt?

MS MSONGELWA: Yes, he was not covered. They just looked under his clothes.

MS MAYOSI: When the police were with you and Thuso, you were going to Face's house?

MS MSONGELWA: Yes we were going to Face's house.

MS MAYOSI: Did they leave the body there?

MS MSONGELWA: Yes they left the body like that, yes, they left the body just like that.

MS MAYOSI: Who did they leave the body with?

MS MSONGELWA: They left it with the community members. There were community members who were there. They took myself and my brother Thuso and they left the body there.

MS MAYOSI: Were any of the police left behind?

MS MSONGELWA: No. We went with the both of them.

MS MAYOSI: Did they cover his body?

MS MSONGELWA: No they did not cover his body. They did not even barricade the area.

MS MAYOSI: They did not barricade the area where their tape shows it is a crime scene?

MS MSONGELWA: That is correct. They just left it like that.

MS MAYOSI: Now how long did it take to get to face's house?

MS MSONGELWA: We got to Face's house. They told us to wait outside and they went and knocked themselves. They discovered Face was not there and they asked us where we thought he could be. We told them we don't know. We then went again with them to the bus stop.

MS MAYOSI: What did they do when they arrived at the bus stop?

MS MSONGELWA: At the bus stop they went back to where the body was. I am sure they must have called their car to come and fetch the body.

MS MAYOSI: What happened after?

MS MSONGELWA: They took statements from both Thuso and I and then they waited with us as there were other community members also waiting until a car that came to fetch the body arrived and all this while they had not covered the body.

MS MAYOSI: What was this time when they were taking this body?

MS MSONGELWA: It was after seven.

MS MAYOSI: So you mean Andisiwe was laying there all the time?

MS MSONGELWA: That is correct.

MS MAYOSI: When they went back after you had been to Face's house they started taking a statement from you and your older brother. Did they do any investigations to the people that were around asking them what they had seen?

MS MSONGELWA: No they did not ask anybody. They only took a statement from myself and my brother Thuso. There is no-one of the community that they

approached to get a statement.

MS MAYOSI: Did you tell them, the police, that you suspected that he was stabbed on the scene?

MS MSONGELWA: Yes we told them that he was stabbed. Even when they looked at him they also agreed that he was stabbed. Even when we got the documents to claim for insurance and do a death certificate we went to the police station to fill in those forms. Detective Davids there at the police station when they checked the docket that he had used Andisiwe's docket was not there. It also took some time for him to come back for Andisiwe's docket. We were told that he is off duty and we had to wait to him before the form can be filled.

MS MAYOSI: What I wanted to ask, while they were there at Face's house after they came back they took only a statement from you and Thuso. What I want to know, did they do any investigation to see whether there was a weapon laying around that had stabbed Andisiwe?

MS MSONGELWA: No they did not look and they did not find anything.

MS MAYOSI: So you are saying they came back two days later after Face had been to the police station? They came to your house at home?

MS MSONGELWA: No they did not even come to our yard. They were outside of our gate and then they asked for Thuso.

MS MAYOSI: Who asked for Thuso?

MS MSONGELWA: The police van has got those lights, so when we checked they asked for Thuso and then Thuso went to them and spoke to them and they were outside the yard. It is Thuso that came back afterwards to give us feedback and they told him that they released Face because he was not guilty. They did not come to the house.

MS MAYOSI: (isiXhosa)

MS MSONGELWA: That is correct. They did not come to the house.

MS MAYOSI: Why didn't you or your family not go back to the police to get clarity or feedback as to what was going on with Andisiwe's investigation?

MS MSONGELWA: It is because the police do not care about people. They don't care about what happens to a person. The police don't care. All they are concerned about is that when it is reported that there are drugs they come out even with ten cars to come and search for the drugs because they know and sometimes they get what they get and the police don't care about people. They don't even care if you are injured. They come and they don't even touch you with their hands. They don't even help you when an ambulance hasn't arrived. They just stay inside their cars to wait for an ambulance. They don't even try to help you as a person.

MS MAYOSI: Are you saying this as a first time experience or is it something you have heard?

MS MSONGELWA: No it is general things that I have seen.

MS MAYOSI: Do you trust the police?

MS MSONGELWA: I don't trust them.

MS MAYOSI: What do you think the police could do to improve the relationship between you and your family and the community and them?

MS MSONGELWA: If they could build trust again with the community, the police,

they should attend community meetings to try and build relationships with the community members because in our areas no-one trust the police. When the police appears there people think of a lot of ways of how could I take this police person or sometimes a lot of people they get injured or they get robbed and they don't report cases because they know that the police will not take care of their cases and they will not be solved. Nothing will happen to them. So the people are also at risk of the people. If the police arrived at your house looking for somebody they get there and they assault you. They don't even ask you if you are that person that they are looking for.

MS MAYOSI: Are there any other solutions or recommendations that you could give to this Commission that could improve the relations between the police and Khayelitsha community?

MS MSONGELWA: Yes, the police first of all if our police stations if they could reduce the distance where the police station is supposed to be or should be. They should also look at the resources that they are using. The computers police are using, they are very old computers. The equipment that they are using is not enough. One police for example has a lot of dockets. So we should also try to understand why they are so corrupt; are they getting paid enough money; is it a lot of work, maybe they are under pressure. Are they educated; are they trained well, because sometimes when they write statements what you are saying to them is not what they write on their statements. A lot of people write their own affidavits when they go to the police station because the police they don't write what you are saying. Perhaps if they can go to more training even if they had been to school, but they could get help from training. They could also check their workload.

MS MAYOSI: So while we are sitting here according to your knowledge was anyone ever arrested for Andisiwe's death / murder?

MS MSONGELWA: Not at all. No-one was arrested. There is not even a slight chance that someone was arrested.

MS MAYOSI: I want to ask again, because a lot of people are asked again if you don't go to the police how do you think the police will help you?

MS MSONGELWA: (no audible answer)

MS MAYOSI: Why has your family never followed up on this case?

MS MSONGELWA: That is because we did not want to continue to waste our time to go to the police station when the police don't even remember that case maybe, because you find that the police have forgotten about that case. They might have to find the docket, because if they had not forgotten about it, they would still be coming over through at our house from time to time to ask whether we have not heard anything or just maybe give us feedback as to what is happening. All of this happened in 31 Section. It did not happen anywhere else so they could come to the area to check or investigate so we did not want to continue going to the police station and hurt ourselves knowing that nothing is going to happen.

MS MAYOSI: I have no further questions Madam Commissioner.

COMMISSIONER: Thank you Ms Mayosi. Mr Arendse (indistinct)

MR ARENDSE: Thank you Madam Commissioner. I don't - we don't have any questions, just perhaps to put something on record and also request the case number and it sounds like the Harare Police Station, the case number, and we

know that the investigating officer sound like Inspector Detective Davids. If we can get those details and perhaps do a follow-up. Then just to say on record that what was described by the witness today is totally unacceptable. This is so far the most egregious example of police insensitivity and incompetence where there is a crime scene; there is a body. It is not cordoned off. No evidence is taken for purposes of forensic analysis. It is really a bad case, so as the representatives for the police we feel for the witness and her family as to what happened and it is this kind of conduct of the police that doesn't belong in any civil society. So we will look into the matter once we get the case number and the docket and if necessary - well, we will share it with Ms Mayosi and with the evidence leaders and if anything comes out of there, report back to the witness and I am not sure whether it is going to be necessary to recall her because quite frankly there doesn't seem to be any questions we would want to ask her. Thank you.

NO CROSS-EXAMINATION BY MR ARENDSE:

COMMISSIONER: Thank you Mr Arendse and I am sure that Ms Mayosi would be very happy to share with you the docket number so the Commission would certainly like to have a look at this docket and pursue it. I think I can speak on behalf of Advocate Pikoli and myself. We see this in a light similar to the way that you have expressed, a similar light. Are there any questions that you have got? No? Go ahead Ms Bawa.

CROSS-EXAMINATION BY MS BAWA:

Do you remember if they took any photographs of the crime scene?

MS MSONGELWA: No the people that took photographs are the people that came to fetch the body.

MS BAWA: Are you still living at the same house you lived at in 2011?

MS MSONGELWA: Yes.

MS BAWA: Do you still have the same cell phone number?

MS MSONGELWA: Yes, I still have it.

MS BAWA: Okay, if somebody wanted to contact you would they be able to do relatively easily?

MS MSONGELWA: Yes, they would.

MS BAWA: I have no further questions.

NO FURTHER QUESTIONS BY MS BAWA

COMMISSIONER: Any further questions Ms Mayosi that you would like to follow-up on?

MS MAYOSI: No I have no questions, Madam Chair.

NO RE-EXAMINATION BY MS MAYOSI

COMMISSIONER: Alright, thank you very much (indistinct). We are very grateful to you, thank you.

MS MSONGELWA: Thanks.

WITNESS EXCUSED