

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

Pule Hendricks

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COMMISSIONER: Mr Sidaki we have one more witness. I don't think I can manage two more witnesses this afternoon but I think we should proceed with Mr Hendricks but I think at this stage we should accept that we - unless we are going to be sitting here very late that we won't hear the evidence of Ms Sefali so if you call your witness. I gather you are going to lead Mr Hendricks.

MR SIDAKI: Madam Chair, Mr Arendse had approached me to ask to mention that he would like if we could wrap up by four o'clock and I suspect Mr Hendricks might take longer than 30 minutes.

COMMISSIONER: I am just worried about our agenda, having spent a couple of days working on notice 12 and missed our timeframes. My sense would be that we should proceed with Mr Hendricks and if we need to put questioning for Mr Hendricks after we heard his evidence-in-chief, I know it is a very hot place to be and it is Friday afternoon, but I am concerned if we don't proceed we will actually and this is important evidence, we are going to be under pressure. What is the view of counsel, Mr Arendse?

MR ARENDSE: Madam Commissioner I think we could probably lead Mr Hendricks and perhaps leave any questions; Mr Masuku will be asking questions, if any. Then I was going to ask if we could all agree if we could not start next week a half an hour, an hour even earlier and then try and make up Madam Commissioner.

COMMISSIONER: Your views on that, the LRC?

MS MAYOSI: No difficulties with that suggestion.

COMMISSIONER: I think that - yes, this is as a gathering storm and this is going to involve more and more time but I think that is the way to go, so I think we think that we should have Mr Hendricks now and then any questions that follow we might have to ask him to return, which is inconvenient for him, but I think it is the only way we can go and then Monday morning anyway we are doing the inspection of the TMC in Goodwood at half past eight and then we'll commence here at 11 o'clock. I just wanted to warn members of the press, I don't know how many members of the press are still here but we have distinct space constraints at the TMC and I am not sure how many members of the press are going to be accommodated. I think we have been told that there is a maximum of 13 people, which is pretty well close to the number we have when we just have the legal representatives. We will obviously be providing a report on the TMC visit in due course and there will also be evidence from the TMC manager during the course of the coming weeks but we will commence here at eleven and then maybe we will

say that we will commence at 09:15 on the following mornings next week and then perhaps you know on some days we may have to sit late. I know for the second and third - or sorry, it is now the fourth and fifth week, the weeks when we are having the SAPS evidence, the proposal has been that we would also sit till five most days to ensure that we can try and cover all the ground we need to cover. Is that possible, Mr Arendse?

MR ARENDSE: That is possible Madam Chair. I will have to rearrange my cricket and football meetings.

COMMISSIONER: Hopefully by then you won't be having to rush back to type questions for your witnesses. Okay, good. Alright well could we call Mr Hendricks then Mr Sidaki?

MR SIDAKI: Madam Chair just to state that Mr Hendricks is legally represented by Mr Buurman. I shall be leading Mr Hendricks' evidence and Mr Buurman will deal with the application for condonation.

COMMISSIONER: Mr Buurman that really need not detain us very long. As you can see we are grateful for you having gone to the effort of putting in the application for condonation. Advocate Pikoli and I had considered it and had granted it. It is important evidence and we are very grateful for you facilitating Mr Hendricks' evidence being put before the Commission but given the time of the afternoon I don't think we are going to give you much airtime.

MR BUURMAN: Mr Arendse has agreed not to oppose the application.

COMMISSIONER: Thank you, and thank you again for the efforts you put to make this evidence - to ensure this evidence gets put before the Commission. Mr Sidaki do you know what - firstly has Mr Hendricks had explained to him the nature of the public proceedings? Have you explained that to him Advocate Buurman?

MR BUURMAN: Indeed Commissioner.

COMMISSIONER: And he has no difficulty with his name being made public and his evidence being made public or should we traverse that properly?

MR BUURMAN: He goes along with that.

COMMISSIONER: Do you understand English Mr Hendricks or are you going to testify in isiXhosa?

MR HENDRICKS: isiXhosa.

COMMISSIONER: So perhaps the first thing, Mr Sidaki, we just need to confirm the issue of publicity please. Would you just put that on record and then Advocate Pikoli will swear him in.

MR SIDAKI: Mr Buurman has just confirmed.

COMMISSIONER: I understand that, but given the sensitive nature of this evidence I would prefer it were on record.

MR SIDAKI: Mr Hendricks you are aware that you are going to be presenting your evidence in this public hearing which is attended by members of the community and will be publicised, correct?

MR HENDRICKS: Yes.

MR SIDAKI: And you don't have an objection to your name being publicised, correct?

MR HENDRICKS: Correct.

COMMISSIONER: Thank you.

PULE HENDRICKS: (Sworn States)

MR SIDAKI: Mr Hendricks, are you going to speak in isiXhosa or in English?

MR HENDRICKS: isiXhosa.

MR SIDAKI: I am going to ask you to please speak slowly and then wait for translation to take place and then you can answer the questions.

MR HENDRICKS: Thank you.

EXAMINATION BY MR SIDAKI:

Now Mr Hendricks you reside at D-section in Phambili Crescent in Khayelitsha, correct?

MR HENDRICKS: That is correct.

MR SIDAKI: Now is it correct that during March 2012 you were involved in a vigilante incident in Khayelitsha for which you were arraigned in the Western Cape High Court?

MR HENDRICKS: That is correct.

MR SIDAKI: You were charged with murder in case number 62 of 2012 in the High Court, correct?

MR HENDRICKS: That is correct.

MR SIDAKI: And you were convicted; you were convicted for murder?

MR HENDRICKS: Yes that is correct.

MR SIDAKI: I think there is a problem with the translation Madam Chair.

INTERPRETER: Can you hear us now?

MR SIDAKI: Mr Hendricks were you convicted of murder?

MR HENDRICKS: Yes, I was accused of murder.

MR SIDAKI: Yes but were you found guilty of murder?

MR HENDRICKS: No. I was only sentenced for kidnapping and not murder.

INTERPRETER: He says he was found guilty for kidnapping and not for murder.

MR SIDAKI: Now the incident took place in March 2012 that led to the murder where there had been a robbery on the day in E-Section in Khayelitsha, correct?

MR HENDRICKS: That is correct.

MR SIDAKI: Who was robbed on that day?

MR HENDRICKS: It is a young person I know that lived in D-Section.

MR SIDAKI: Now please explain to the Commission how did it come about that that person was robbed?

MR HENDRICKS: This person was robbed early in the morning around five by three guys, three people. One of my friends witnessed it happening and when he was witnessing this he called us. He were inside. He asked us to come out. We also came out to see.

MR SIDAKI: So you were at your home?

MR HENDRICKS: No I was not at home. I was at a friend's place.

MR SIDAKI: Yes, and you were called out to a robbery that was taking place outside?

MR HENDRICKS: Yes, we were called by one of our friends who was with us in the house.

MR SIDAKI: So you went out and what happened?

MR HENDRICKS: We managed to get one of the robbers. We got one of the robbers, because there were three of them and then we started asking questions.

We asked him where his friends lived, the ones that he was with. He then informed us that they all lived in V-Section in Site B. He said Site B in V-Section. We then told him that “the person you robbed, we know him and we are going to take you to her house.”

MR SIDAKI: Now this alleged robber that you caught, was it a young man, an older person? Can you describe him?

MR HENDRICKS: He was not young. He was our age. He was our age. We then took him to the house of the person that they had robbed. When we got to this house we knocked and the mother of that house opened the door and this child inside was crying.

MR SIDAKI: So who was crying inside the house?

MR HENDRICKS: It is the girl.

MR SIDAKI: The girl that had been robbed?

MR HENDRICKS: Yes.

MR SIDAKI: Yes, and what happened then?

MR HENDRICKS: Thereafter the father of this girl came out. He then asked where the things were that they had robbed from the daughter, and this thug told them that the things were with two guys who ran away that went to Site B.

MR SIDAKI: What had been robbed from her? Do you know?

MR HENDRICKS: I think it was her ID book, her wallet and cell phone that was taken from her.

MR SIDAKI: Yes and so he said the robbed items were with his friends that had fled, and then what happened?

MR HENDRICKS: Then the father of this girl took his car and took all of us to Site B so that this guy can point these two robbers out. We then took this guy, we put him in the car and went to Site B. In Site B he kept pointing at the wrong houses. He kept pointing at the wrong houses because the places he was pointing at were not the correct places where the stuff was. We kept going on to different shacks in Site B. The shacks this guy kept pointing out, we would knock there and then we would find that there was someone that was sleeping. We would come back and then ask him again and then he would say “no, let’s go to S-Section”, also another shack-area. He kept on doing the same thing until the father of this girl was tired of it. He then said: “let’s return back to D-Section. Maybe when we get there this boy will tell us where these things are.” When we got to D-Section there were already a lot of people outside.

MR SIDAKI: So when you returned to D-Section did you return to the girl’s home?

MR HENDRICKS: Yes we returned back to this girl’s house. When we got there outside there were residents of the area. It was quite a lot of them so the father of this girl said: “Let’s take this boy out of the car boot.”

MR SIDAKI: So as you went to look for the other suspects was the suspect that was caught, was he kept in the boot of the girl’s father’s car?

MR HENDRICKS: No at that time he was inside the car. At that time he was inside the car because he had to point the house, but it is only when we went back to D-Section that we put him in the boot.

MR SIDAKI: Why was he put in the car boot?

MR HENDRICKS: It was done out of anger because the father of the girl that was

robbed was getting very angry because this boy was playing the fool with him.

MR SIDAKI: Now when you returned to the girl's home, you say there were lots of community members who had gathered there. Why had they gathered there? Do you know?

MR HENDRICKS: Yes the community members wanted to see the person that robbed this girl because the mother of the girl was there and she was waiting at the house while we went to Site B.

MR SIDAKI: Yes, so you returned to the home and the suspect was let out of the car boot. What happened then?

MR HENDRICKS: The father of this girl, we told him that "there are so many members of the community; you can't keep on assaulting this guy; you must call the police, because it was us that had apprehended this guy", and then this father said that he would call the police. After that we left and we left this guy, this robber with the father of this girl and the community members.

MR SIDAKI: Now who called the police?

MR HENDRICKS: I think it is the mother of this girl that called the police while we were still on our way to Site B.

MR SIDAKI: And so you left the suspect with the girl's father and you and your friends left, correct?

MR HENDRICKS: Yes that is correct.

MR SIDAKI: What happened thereafter?

MR HENDRICKS: After that we went back to our homes and then around eight o'clock the next day we met again at the same house that we were in the night before. I then heard from my friend, he told me that the guy we apprehended the night before the community members had assaulted him and killed him. I then said: "Guys, if the police come to arrest us we must just tell them that we told the father to call the police, so he would be the one that is guilty."

MR SIDAKI: Yes, what happened thereafter?

MR HENDRICKS: It was a Saturday but we were arrested on a Monday morning. The police came and arrested us.

MR SIDAKI: Yes and you were charged; you appeared at Khayelitsha Magistrate's Court and eventually you appeared in the High Court, correct?

MR HENDRICKS: Yes we ended up in the High Court.

MR SIDAKI: Now why had you gone around looking for the other suspects, having chased the one suspect, why did you go around and look for other suspects instead of turning this suspect over to the police?

MR HENDRICKS: It is because we were looking for that girl's ID and her other things. We thought that this guy would point us to the other two and then we could just get the ID and the other things that they have robbed and then we would have left him there and gone back to our home.

MR SIDAKI: Having not found the other suspects and having not recovered the stolen items, why did you not just drive this captured suspect to the police station and hand him over to the police?

MR HENDRICKS: At that time everyone was very angry because he had made all of us look like fools and if we took him to the police station we weren't going to get back what we wanted. That is why we put him in the boot.

MR SIDAKI: So why didn't you allow the police to do their investigations and follow up? Why did you decide to do things yourselves?

MR HENDRICKS: At that time we could not go to the police station because the police station is far, because we were in D-Section, so that is why we decided to go to that girl's house. That is why we went to that girl's house to tell them what had happened.

MR SIDAKI: Yes, but you could have driven to the police station with the girl's father?

MR HENDRICKS: Yes we could have done that, but all that the father wanted at that time were the daughter's belongings. He was not thinking about the police station.

MR SIDAKI: Do you know how the deceased was killed?

MR HENDRICKS: Yes I do know how he was killed. He was killed with the lid of a drain.

MR SIDAKI: And where in relation to the girl's home was he killed?

MR HENDRICKS: Not far from the girl's house. It was just across the road opposite this girl's house.

MR SIDAKI: Now I noticed Mr Mvabaza that you are physically disabled. You walk on crutches. Were you disabled at that time also?

MR HENDRICKS: At that time I did not have crutches. I got the crutches only when I returned back from Pollsmoor.

MR SIDAKI: You were injured subsequently to this incident?

MR HENDRICKS: No. I got injured in Pollsmoor.

MR SIDAKI: Yes, after this incident had taken place?

MR HENDRICKS: Yes.

MR SIDAKI: Mr Mvabaza, I would like you to explain to the Commission why in the circumstances - do you not think that in circumstances that you have described where someone has been robbed that the suspect should be turned over to the police?

MR HENDRICKS: I just thought that if we will call the police this guy was going to be arrested and put in the police cells and we were not going to recover the things that we were looking for, and that is why we never thought of the police station. We decided to go and find the things ourselves.

MR SIDAKI: But the police's work is to investigate crimes and solve them and recover items. Did you not believe in that process?

MR HENDRICKS: Okay, an issue with the police, it takes too long with the police. In the location we don't believe in them because when you take such things to the police station you must have enough evidence. That is what I can say. How can I say this now? What I can say is that the police take too long.

MR SIDAKI: You said that the police had been called on that occasion. Do you know if they ever arrived at the scene or not?

MR HENDRICKS: Yes we were told that a police van had come through, but all they saw or discovered there were just community members standing around. The police that gave evidence in court said that yes, they did arrive at the scene. They got out of the police van. They saw the community and they asked what was happening but they did not see anything and he went back to his police van and

then he went to fetch his colleague in Harare. When he returned from Harare to fetch his colleague he found that this person - the suspect was killed with the lid of a drain.

MR SIDAKI: Now you spoke about your belief that you know the police don't seem to do anything if you report crimes but can you not take this up with the Community Policing Forums?

MR HENDRICKS: I don't even know the Community Policing Forum.

MR SIDAKI: And are there any street committees in your area that you know of?

MR HENDRICKS: Yes there are street committees.

MR SIDAKI: Could you not take this up with them so that they raise the issues with the police on your behalf?

MR HENDRICKS: Are you talking about the time when this incident was taking place or after this incident had taken place?

MR SIDAKI: Well on both occasions.

MR HENDRICKS: The problem is the street committees were also there at that time.

MR SIDAKI: Were there part of the committee members that were gathered at this girl's house?

MR HENDRICKS: Yes they were there with the community members.

MR SIDAKI: Thank you Madam Chair. I have nothing further.

NO FURTHER QUESTIONS BY MR SIDAKI

COMMISSIONER: Thank you Mr Sidaki. Mr Arendse do you want to postpone your questioning or if it is very quick perhaps we can do it now?

MR ARENDSE: Advocate Masuku ... (intervention)

MR MASUKU: I can take two minutes or the five minutes that are there I think we can finish with this witness.

COMMISSIONER: (indistinct - no microphone)

MR MASUKU: Yes. Actually I don't think I have any questions. There is really nothing that ... (intervention)

COMMISSIONER: I should just confirm that we do have the full - both the record of the proceedings in the High Court and the judgement in the High Court before the Commission in relation to this particular case.

MR ARENDSE: Madam Chair there was just one aspect that I asked Advocate Masuku to get clarity on.

CROSS-EXAMINATION BY MR ARENDSE:

It appears as if when the police came on the scene the witness said the community were standing around and it appeared that it was one policeman who then went back and came back with another and then saw that the suspect had been killed with the drain. I just wanted clarity, the first time when firstly was it just one policeman and secondly when that policeman was there was the suspect then still around with the community standing around him and when he then returns with his colleague is the suspect now - has he now been killed?

COMMISSIONER: Did you hear that question Mr Hendricks? Could you answer it?

MR HENDRICKS: We were told that this policeman heard over the radio that something was happening in D-Section. The policeman heard over the radio that there was something happening in D-Section. He says that when he got there he

saw community members just standing around. He then asked what was happening and the community members said nothing was happening. After that he said that after he heard from the community members that nothing was happening he left and went to Makhaya or Makhaza or something like that. He said that when they came back with the colleague then they found this robber this suspect was killed. He was laying there. He had been hit with a drain, the lid of a drain.

NO FURTHER QUESTIONS BY MR ARENDSE

COMMISSIONER: Thank you very much Mr Hendricks. We are very grateful to you for having made yourself available to the Commission.

MR HENDRICKS: Thank you.

COMMISSIONER: And we have now asked all the questions that we want to ask of you so you need not come back and you may stand down as a witness now.

WITNESS EXCUSED

COMMISSIONER: Thank you. That brings us to the end of the proceedings for this afternoon, Mr Sidaki.

MR SIDAKI: We still have Pharie Sefali. It is clear that we will have to see if we could accommodate her at another time.

COMMISSIONER: Yes, we will revisit our hearing schedules. We will be issuing rulings in relation to the timing of questions for next week and a revised hearing schedule so that we know where we are.

MR SIDAKI: If the Commission could just thank Ms Sefali for having availed herself today.

COMMISSIONER: Yes, thank you. Thank you, Ms Sefali, very much for having been here. I apologise that we haven't reached your evidence this afternoon but Mr Sidaki will be in contact with you over the next week or so. We have three more weeks where we are going to be hearing evidence here at this hall. Thank you, and so we will adjourn and the proceedings will commence again at this hall at eleven o'clock on Monday with a prior inspection in loco at the Closed Circuit Television Cameras in Goodwood. Thank you very much.