

COMMISSION OF INQUIRY INTO THE RIOTS AT
SOWETO AND OTHER PLACES IN SOUTH AFRICA.

CAPE TOWN.

WHOLE SESSION.

20TH JUNE 1977.

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THE COMMISSION RESUMES ON 20TH JUNE 1977.

NOEL LINDA MUTLANE STILL UNDER OATH:

DR YUTAR: My Lord and Gentlemen Assessors, the police and I have had a rather busy weekend. We have, as directed by Your Lordship, made enquiries about SAP 39600. The driver of that van is in attendance and I shall put to this witness what he will say. Secondly, My Lord, I have got the docket where Mr Damane was a complainant and on the recall of Damane I shall indicate to you why the Senior Prosecutor declined to prosecute. And thirdly, My Lord, Your Lordship (10 will remember the evidence of Mrs Sikunana who alleged that she was shot at point blank range by a policeman. I shall lead expert evidence as to the direction of the wound and how it was caused, the probable cause of that wound.

CHAIRMAN: The witness was?

DR YUTAR: Sikunansi. That was the witness who alleged that she was shot at point blank range by a policeman holding a rifle, and you will also remember she produced a bullet that had been removed, from her.

CHAIRMAN: Yes. (20

DR YUTAR: Mr Mutlane, I think we can go very quickly. I still want to deal with the events of the 27th of December, 6 o'clock when you heard a commotion outside. Incidentally, this man Pho who was listed as witness No. 12, is he a neighbour of yours? -- He stays with me in the same house.

Oh, so he is a personal friend of yours? -- Well, we work together at one place.

Right. And Mr Vanqa? -- Mr Vanqa is my neighbour.

Is your neighbour a friend of yours? -- Yes.

And this Jimmy Kula, his proper name is Samuel, isn't it, (30 but he is known as Jimmy Kula? -- I don't know that person.

Maybe/...

Maybe I know him by sight.

He is the one that came to the rescue of Mr Damane and removed him after he had been attacked. -- I remember that person.

And he was there with you that afternoon, that morning?

-- Yes.

And he was the one who removed Damane to hospital by car after the police refused to take him to hospital? -- Yes.

And he was there with you, Mr Kula? -- Yes.

Right. Now, very briefly, in your summary, and I (1C accept it as summary, you say this that "the migrants started attacking and we ran away". -- Yes.

Was that the whole incident that morning at 6 o'clock? -- No.

I mean at 6 o'clock. I know you go on to what happened at 8 o'clock. -- Yes.

By the way did the police that morning at 6 o'clock, did they support the migrants? -- I would not go so far as to say the police assisted the migrants, at that stage, because I first saw the police just when I was near Mr Damane's dairy. (2C

Now, Mr Mutlane, I want to suggest to you in all seriousness that you have not been frank with the Commission or your have been deliberately untruthful in three important respects. -- As far as I am concerned I am telling this Commission what actually happened.

Now, first of all on Friday afternoon you said you were not armed with a stick. -- Well, this thing took place on a Monday.

CHAIRMAN: No, no. On Friday afternoon when you gave evidence you said that on that Monday you were not armed with a stick. (3C -- I said when I left the house I was not armed.

DR YUTAR: Now, I will read to you what Pho said in a statement. He will be called; if he is not, I will call him. This is what he said: "I was standing outside my house with Noel Mutlane and Vanqa. We were armed with sticks." What do you say to that? -- I came out unarmed. When I saw the migrants I then went to my car and it was parked outside my house. I then opened the car, took out a stick and armed myself with it.

That is what Pho said. Now I will read you what Vanqa says. "Ek, Pho en Mutlane was gewapen met kieries". Right (10) at the very beginning. -- Does he say that when I went out of the house I was armed or does he merely say we were outside there, armed with sticks?

Pho says "I was standing outside my house with Noel Mutlane and Vanqa. We were armed with sticks". Standing outside the house. -- If he refers to the stage when I took possession of the stick from the car, then he is right.

I won't go on with that. Then you go on in your summary, I accept it is a summary. "The migrants started attacking, we ran away. I turned and saw Vanqa fall and Pho standing (20) near him. I saw the police, heard shots, saw that Pho had dropped, must have been shot by the police." Now, are you sure it was Pho who was dropped, shot by the police? Pho had dropped. -- I must clarify this. I never said that I ran away and looked behind and saw Mr Vanqa lying down. What I actually said was this that I was the last one to run away with Mr Pho and Vanqa ahead of me, and when I got more or less between Mr Damane's dairy and the shop, I saw Mr Pho with Mr Vanqa lying down, and Pho was armed with a stick and a stone in his hand. (30)

All I want to know is this, the summary, is this correct?

"Saw/...

"Saw the police, heard shots, and saw that Pho had dropped. He must have been shot by the police". Is that correct? -- It was Mr Vanqa who was lying down. I saw the police at the same time, shots were fired, some of the bullets just flew over my head. I went up to Mr Pho and asked him what had happened to Mr Vanqa.

You still have not answered my question. Did you see that Pho had dropped, he must have been shot by the police? -- I never saw Mr Pho fall or saw him lying down. He was on his feet all the time.

(10)

So this summary then is wrong? "Pho was dropped and he must have been shot by the police". -- That is absolutely wrong. I never said Mr Pho was lying down.

Right. Well, I want to put it to you that Pho never fell at all and Vanqa had fallen. -- Correct, it is Vanqa who had fallen.

And Vanqa had not been shot. -- Quite, I agree.

Yes. In fact he just fell? -- Yes.

Now, I want to tell you that far from your taking no part in the incident on the morning of the 27th at 6 o'clock, you, Pho and Vanqa actually advanced on six migrants who were armed with sticks and who were approaching you. -- I deny that.

And I will read to you what Vanqa says. "Ongeveer 6.50 op die 27ste Desember 1976 was ek buite my huis. Ek het onder die bome langs my huis gestaan. Mnr Pho het voor sy huis se deur gestaan, ongeveer 15 tree van my af. Mutlane het ook voor Pho se huis gestaan. Ek het buite my huis gestaan en kyk na 'n groep Bantoes met wit doeke om diekop wie in ons rigting aangekom het vanaf die rigting vandie enkel kwartiere. Die groep was ongeveer ses mans. Toe die groep my nader het ek gesien dat hulle gewapen is met bottels, pangas en plastiese bottels/...

(30)

bottels met 'n vloeistof wat soos petrol gelyk het daarin." Now listen very carefully to the next few lines. "Ek, Pho en Mutlane was gewapen met kieres. Ons drie het na die groep geloop en vir hulle gesê om pad te gee. Die ses mans het geloop en na ongeveer tien minute het 'n groep van ongeveer 50 Bantoemans uit dieselfde rigting na ons gekom. Toe het die groep ons genader en hulle het klippe na ons gegooi." What do you say to that? -- When I came out these six men were already running away. I did not go up to them, nor did Mr Pho. If Mr Vanqa had at any stage advanced and chased (10) the men, he must have done so before I came out, because I never saw that.

I am not going to question you further on that. I have put it to you. I come now to the third aspect, and that is the incident of Mr Damane.

CHAIRMAN: This now happened some time later?

DR YUTAR: A little later, about 8 o'clock, yes, and that is where you made the allegation that you spoke to the policeman in the van to go and help Damane and they refused and you said you took his number and you gave the Commission the (20) number of the van. -- Yes.

And that is where you also make the serious allegation against the police that in some way or other the police was siding with the migrants or assisting them. -- I did not say that the police sided with the migrants. All I said is that the police refused to help Mr Damane.

And they refused to take him to the hospital? -- That is what I say.

And Mr Kula took him to hospital in his car? -- Mr Kula took Mr Damane to his own car, that is Mr Damane's car. (30)

And with that took him to the hospital? -- Yes.

Now/...

Now I want to read to you what Jimmy Kula says, the man who actually assisted Damane. I shall read the whole thing, so that I shall not be accused of taking it out of context. "On the 27th day of December 1976, at about 10 o'clock I was with other people of my neighbourhood guarding the Bacas who were fighting with the residents of the township of Nyanga. Then the Bacas came towards us and we fled and the complainant was found leaving, having been in his dairy at Nyanga. He was attacked and assaulted by the Bacas. I can't be able to identify the suspects again, because (10) there were too many." Now listen to this: "The riot squad police dispersed them (that is the Bacas) and I removed him to the charge office at Guguletu. An ambulance was phoned, that is by the police, and the complainant was then removed to the Groote Schuur hospital where he was treated." So the police did in fact disperse the migrants and did arrange for his removal by ambulance to hospital. And one other thing, the driver of that SAP ...(Chairman intervenes)

CHAIRMAN: Before you get to that, what do you say about that evidence? If that evidence is to be given, what would you (20) say? -- I agree that at the stage when the policeman drew my attention to Mr Damane and said "There is your friend" I looked and saw that one of the migrants was still assaulting Mr Damane, who was then lying down, and this migrant had given me his back at that stage, and the same policeman fired a shot and as a result of that shot, the man who was still assaulting Mr Damane, fled from the spot. That being the case then, I say I agree that the police did something to disperse the attackers.

DR YUTAR: And at the time that Damane was being assaulted (30) by the migrants, did you hear the police fire many shots? --

One/...

One or two shots were fired by the police at the stage when there was only one man left assaulting Mr Damane. There were no shots fired when Mr Damane was attacked by more than one man.

MR NGO: Just one question, please. The other Bacas, you say there was one Baca left. Now the others, who dispersed the others? Did they leave on their own or were they dispersed by somebody? -- I do not know what caused the others to move away from Mr Damane.

DR YUTAR: Then I would like to add this, that Mr Kula who (10) said that it was the riot squad police who dispersed the migrants, that he made his statement the very next day when things must have been very fresh in his mind. He made the statement on the 28th of December at nine o'clock in the morning, 24 hours later. I want to put this to you that the driver of the police van, SAP 39600, will deny emphatically your allegation (a) that they refused to assist Damane, that they did not prevent the migrants attacking him, and that they refused to take him to hospital. And he will also deny that anybody used the words "laat hom vrek". What (20) do you say to that? -- I will stick to my original evidence. This is not a hearsay story but facts that I saw with my own eyes.

Then just to round off Mr Vanqa also says that - inter alia that on that morning and I quote from his statement: "Ek het baie polisiepatrollies te Nyanga gesien en gemerk dat hulle vegtendes altyd probeer keer en uitmekaar uit jaag." That is your friend, Vanqa. -- I am not going to change my evidence. I agree with them that there were police in Nyanga during the days of the unrest, but I stick to my (30) original evidence.

And/...

And finally, with reference to what I may call the Russell/United Nations document under the heading "Mr G V, he was shot by the riot police while trying to protect an elderly man." Mr Pho is the man there involved, and he says this, and I will read from his statement. Here in the statement it says: "As we fled from those attacking us, an elderly man who was with us slipped and fell. I turned to help him,"he was being decent. "These attackers drew back but then some riot police arrived from behind our attackers and then one of them shot at me. I was hit in (10) the neck and the stomach." He says: "When I waved to the police, I heard a shot and saw that I was bleeding at the left arm, on my stomach and private parts and neck." To that effect you agree. Then he goes on and I quote three short passages. "If it is said that the police came behind the attackers, it will not be true. There were no policemen in the vicinity when the attack started". What do you say to that? -- When these first six men attacked us, there were no police. On the second attack, there were no police as well. I only first saw the police when I was about to (20) pass Mr Damane's dairy. I saw them for the first time.

Second quotation: "I did not observe any killings and/or burnings by the South African Police. I did not at any time see them helping the attackers or migrants". -- I support him there. I did not see the police help the migrants at any stage. Only I say I saw the police when I was to pass Mr Damane's dairy.

And finally: "After I arrived home from the attack (that is the attack on Damane) I saw that members of the South African Police talked to the attackers." "I saw members of the South African Police talk to the attackers, who then (30) dispersed in the direction of the single quarters." -- After

Mr Pho had been shot we went back to my house to find out what the position was with my family who were locked up in my house, and at that stage I saw the police talk to the crowd, that is the attackers, the single men. After that I noticed the migrants move towards their houses.

Mr Mutlane, does Pho still stay with you? -- Yes.

So he is available to come and testify. In fact his name is given on the list as a witness. I have no further questions, thank you. -- He is on holiday now.

MR POTASH: I have no further re-examination, thank you. (10)

MR MALHERBE: Mr Mutlane, when Mr Damane was being assaulted by the migrants, how many of the residents, your side, were there? Could you go and assist them or why didn't you residents go and assist him? -- When I spoke to the policeman about the attack on Mr Damane, the policeman made a sign with his gun that I must move one side, to the residents' side, and there was quite a big crowd of the residents, watching the attack at that time. So I crossed the road onto their side.

But now I don't follow you. If there were lots of residents around, why did the residents allow Mr Damane to be (20) beaten up? -- Well, although I cannot swear to this, because it is hearsay, I was told that the reason why the people did not go over to the spot where Mr Damane was being attacked, was that they had been told earlier by the police to move onto the residential side of the location.

That was before Mr Damane had been attacked? -- I heard them talking amongst themselves at the stage when I joined them, after having seen the attack on Mr Damane, and had been directed by the policeman to cross over to their side of the road. So I heard them talk about this. (30)

Mr Damane's dairy, is that in Emms Drive? Is it? -- It is/...

is situated off Emms Drive.

So just between Swelitsia - the block between Swelitsia Street and Emms Drive, that is Mau-Mau, that is the Mau-Mau married or residents quarters, is that right? -- You speak of Mau-Mau, that portion of the location is far away from me. I stay in the old location, in other words at the beginning of Emms Drive.

Now, whilst the police - whilst Mr Damane was being assaulted by the migrants, did the police shoot at the residents, not at the migrants, but at the residents? -- I (10) did not see that.

MR NGO: Tell me, Mr Mutlane, I put a question to Mr Damane while the police were at the corner of the school, Walter Teka and Liwa, were there people, he said no, there were no people at all. Now you tell us that.... -- There were people there.

So the presence of the police on that corner was to stop the residents from coming over. Is that? -- I cannot go so far as to say that their purpose was to prevent the residents from crossing over. All I say is that I came along running, (20) spotted the police at that corner, saw the residents to one side. Why they did not cross, I do not know.

So you are sure that there were a number of residents on that side of the road? -- Yes, I am sure of that.

Mr Mutlane, how many single quarters, to the best of your knowledge, were destroyed between that period, that is 26th and 27th, more or less? -- I am sorry, I cannot give an estimate.

Were they few or would you say many? -- I do not know.

But to your knowledge, were there any houses destroyed, (30) single quarters destroyed? -- I cannot tell this Commission which/...

which houses belonging to the bachelors had been destroyed.

I am talking about the single quarters near the Jabulani Centre, you know, where it says Jabulani. -- It may be that there are houses which were damaged in that vicinity, but I am not certain of this. I stay some distance away from there. I stay near the ...(inaudible)

Thank you.

CHAIRMAN: Thank you.

NO FURTHER QUESTIONS.

MR POTASH: Mr Commissioner, I have no further witnesses. (10)

Dr Yutar indicated that he wished to recall Mr Damane. I don't know whether he wishes to do it now. My difficulty with Mr Damane is that although I told him that he would be required here this morning, I was informed this morning that he is coming, but he is not here yet. The Commission will remember that he has a dairy and he is going back to hospital. I was told that he had to attend to his own affairs. So in order to assist Mr Damane could I suggest that if he is here, we call him at 2 o'clock. Is that in order?

CHAIRMAN: We can call him any time he is available. Whenever (20) he is available we can break into the evidence, and call him.

MR POTASH: Thank you, Mr Commissioner. Could I stand down now, and Mr Bozalek will now lead evidence.

CHAIRMAN: Yes.

DR YUTAR: My Lord, will this be a convenient hour to adjourn, before we call the next witness?

CHAIRMAN: We can make the adjournment fifteen minutes.

DR YUTAR: Yes, thank you.

THE COMMISSION ADJOURNS.

(30)

THE/...

THE COMMISSION RESUMES.

CHAIRMAN: That is No. 16 on the list that I have got.

Is that correct?

MR BOZALEK: That is correct.

ALFRED NDAMANE: DULY SWORN, STATES (THROUGHINTERPRETER)

MR BOZALEK: Mr Commissioner, due to a practical difficulty, I don't have the copies of this witness's statement. I will be able to furnish it after the early ... (intervenes)

CHAIRMAN: I have got a copy.

MR BOZALEK: Yes, well, that is the summary.

(10)

CHAIRMAN: Oh yes.

MR BOZALEK: I am speaking of the longer one, but I do have now seven copies of the statements proper or my notes of the following three witnesses.

CHAIRMAN: But not of this one?

MR BOZALEK: This one not yet, Mr Commissioner, I will be able to supply that probably after lunch.

May I continue?

CHAIRMAN: Yes.

MR BOZALEK: Mr Ndamane, you are a 68 year old widower and pensioner and you are the father of five children, is that correct? -- Correct.

(20)

Now, you worked for 28 years for the firm called Sam Newman and you retired late last year. Is that correct? -- Yes.

Now, on the afternoon of the 25th of December 1976, I understand that in the afternoon you saw children being chased by migrant workers from the hostel area. Is that correct? -- That is correct.

I am going to ask you to describe what you saw that afternoon, but before I do, will you confirm that you live at E 1717, Swelitsia Drive, Nyanga East? -- Yes, that is my correct address.

(30)

Will/...

Will you tell the Commission what you saw then on the afternoon of the 25h of December? -- I saw some young boys go into the premises of the bachelors at the bachelors' quarters. Shortly after they had entered, I saw them come out running, being chased. They scattered into two groups and the bachelors also scattered into two groups. They had white cloths on their heads.

Alright. After this incident, what did the residents - your fellow-residents, what did they do? -- The residents summoned a meeting. (10)

What was the purpose of this meeting? -- The purpose was to try and make peace between the residents and the Bacas.

Were you present at this meeting, and if so, can you tell the Commission what happened? -- I was present at that meeting.

MR MALHERBE: Where are we now? At what time are we now?

MR BOZALEK: It was, as I understand it, late in the afternoon on the 25th. -- We, the residents, decided that we should send three men as a delegation to the charge office.

Yes, and what happened thereafter? -- Just at that stage, while we were still discussing that issue, a police van arrived. A policeman said "it does not help, you may go to the police station. This work is ours." (20)

Yes? -- A second policeman said: "It does not help. It is your children. If you do not stop them tomorrow there will be damage."

Alright. That night, can you describe what you experienced? -- There was a fight that night.

Did you personally see that fight? -- I was there present.

What time was that at? -- Between 8 and 7. (30)

Is it correct that the night was relatively peaceful? --

I/...

I will say the night was relatively quiet because we chased them away, and they ran away.

I would like to take you now to the following day, the 26th of December, in the afternoon. I would like you to describe what happened that afternoon. -- In the afternoon, after three clashes we spoke to these men that we must make peace. We sent out five men and they also brought forward five men. The five men had to discuss the affairs being the creation of peace.

Yes? -- Shortly after our five men came back to the meeting they had with the other five, we were ordered by the police to go back to our houses and at the same time there was some shooting. (10)

Before you carry on to describe that, I want you to confirm, is it correct that your house is closest, the closest street to it, is Sixth Avenue, and you were in that general vicinity that afternoon? -- Yes, that is correct.

Now, these police which you speak about, where did they come from? -- I saw the police arrive at Jackson's Place.

I want you to specify which street they arrived in? -- That is in the Sixth Avenue. (20)

And were they driving in vans, if so, how many? -- The ones who entered Jackson's Place were not in a van.

When they originally came, did they come in vans? -- Yes, although I did not see where the vans were parked.

Alright, carry on with what you saw. -- I was just outside my yard in front when I saw Jackson come out from his house, badly held by the police, and they just flung him over to the bachelors.

Sorry, before you carry on, what is Jackson - do you know Jackson's full name? -- He is Jackson Gishi, residing at/... (30)

at N 1722.

Did you see how the police got hold of him? Will you tell the Commission how that happened? -- I do not know what happened in Jackson's house. All I know is that the police came out of his house, holding him and they just flung him over to the bachelors.

What happened then? -- Then the bachelors assaulted him.

How did you - were they wearing any distinguishing clothes and how many of them were there? -- They had white blankets or something and white doeks on their heads. (10)

How many of them were there? -- At least they were five in number.

So you say the police flung your neighbour, Mr Gishi, to the workers? -- Yes.

How did the migrants then assault him? -- One had a long bayonet. Some of them were armed with axes. That is all I noticed.

Now, what did the police do while Mr Gishi was being assaulted? -- The police moved away whilst he was being attacked and they came over to my house in company of the other migrants and these migrants threw a bomb at my house. (20)

Yes, carry on. -- I threw a stone, trying to help Mr Gishi, when I heard a gunshot. Just at that stage something struck me on my right arm.

Was that a buckshot? -- (I did not confirm this to the witness but he says of his own, he says yes. - by interpreter)

Who did you throw that stone at, or who were you trying to throw that stone at? -- I was throwing the stone at Mr Gishi's attackers.

What happened after you were hit in the arm? -- I looked around to see where the bullet came from and I saw a van stopped behind/.... (30)

behind me. I noticed a policeman seated on the boot of that van.

Is that the bonnet? -- I meant to say on the bonnet.

Yes, carry on. What did you do then? -- I went up to them .

Yes? -- And I asked this question: "Have you come to intervene or have you come to kill us? There is my house, been bombed and it is burning." There was no reply?

In other words you were asking for help? -- Yes.

What did the police do then? -- They did nothing. (10)

What happened to your house? -- My house was completely burnt down and there were children inside. That is why I did not run away.

Now when you were hit by this on your wrist, did you get the impression that you had been directly shot at or was this a stray shot? -- I gained the impression that I was just struck by a stray bullet, because if they intended to kill me they would have shot me straightaway.

What happened to Mr Gishi? -- He died.

Could you see - did you see if the police were able to (20) stop the migrants who threw the petrol bomb at your house? Can you give an opinion as to that? -- They could have stopped them.

Mr Commissioner, I have no further questions of this witness, but I think at this stage to clear up any possible misunderstanding, as regards the short statement which the Commission has, that is just the summary of the notes which I took and also the statements, the four statements which the Commission will have before it just now, in regard to this witness and the others..... (intervenes) (30)

CHAIRMAN: These that have been given to us, those are of the three/...

three witnesses to follow.

MR BOZALEK: Yes, sir. I just wanted to say that these were taken under difficult conditions and I cannot say to the Commission they are correct in every single detail. They were not taken with a view to their being tested. I think they must rather be seen as indicating the general direction of the witnesses' evidence.

CHAIRMAN: Yes.

DR YUTAR: My Lord, here too I don't propose to canvass the whole background, that has been done already. Just one (10) or two questions.

CHAIRMAN: Partly it is about the same situation of the asking of a meeting to make peace.

DR YUTAR: That is right, as testified to by Mr Ndesi.

Mr Ndamane, this Jackson Gishi that you speak of, is the husband of Liziwe Elsie Gishi? -- Yes.

From whom we have a statement and her evidence, or rather a portion of her statement is quoted in the Russell/United Nations document under the heading of "Mrs G of Swelitsia, Nyanga. Police shot in her house and let the migrants burn (20) it down." -- I am not in a position to express an opinion about somebody else's statement.

No. -- I confine myself with my own statement.

Now, I am not going to worry about the 25th, but as far as the 26th is concerned, do you know that the police advised the residents that the migrants wanted to make peace? You don't know? -- I know nothing about that.

And do you in fact - and do you know that in fact peace was made? -- I know nothing about that.

And according to Mr Ndesi youths from Guguletu broke (30) the peace by coming to Nyanga and arousing the youth of Nyanga.

We/...

-- We were in different areas of the location, with Mr Ndesi. So I do not know what took place at the spot where he was.

I am just putting the background to you. And that afternoon between 3.30 and 5.30 in particular there was an awful lot of trouble in Nyanga. -- I agree.

It was not only confined to the house or the row or houses where you stayed. -- I agree.

In fact there were about 5 000 Blacks involved over a wide area. -- I agree, there were very many people that afternoon. How many there were exactly I cannot say. (10)

And the police were so hard-pressed trying to separate the warring factions that their attention and action were divided to five separate spots in a wide area. -- I agree that there were many policemen.

And in fact the police were so hard-pressed and that was the one occasion when they fired the most shots, 430 in number. -- At whom were these shots fired?

They were not fired at any one section in particular, they were fired in order to keep the factions apart. They were mostly fired in the air. -- I don't understand this. (20)

Let me put it to you like this: Although the police fired as many as 430 shots, they admit responsibility for the shooting of only four people. -- I have given my evidence. I have no reply to this. You better ask me something fresh. (Laughter)

And eleven others unfortunately died "as gevolg van kap- en meswonde". -- I agree that some of the victims were chopped and others stabbed.

Now, did you know that this Jackson had six children? -- I know that he has many children and it is possible that he had six. (30)

And/...

And you cannot say whether or not those six children took part, whether they took part in the rioting? -- I do not know.

Now, what exactly did you see as far as Jackson is concerned? Where were you and what did you see? -- Jackson's house is just directly opposite mine.

Opposite or next to? -- (Interpreter: I did not convey this, the witness says of his own: Next to.) Opposite one another.

MR MALHERBE: Could the witness - I am rather confused (10)
exactly where his house and that of Mr Gishi was. Could the witness perhaps on one of these maps indicate where the .. Mr Interpreter, there is a copy of the plan.

DR YUTAR: Mr Interpreter, there is a copy of the plan. Would he try and pinpoint where you stay? -- Where about is Sithandatu Street?

There it is. -- Where about is my lane? (The witness has made a cross where his house is situated on this map).

MR MALHERBE: And then Mr Gishi's house?

DISCUSSION ABOUT THE SPOT ON THE MAP, not in microphones. (20)

VOORSITTER: Dit is die getuie se woning volgens die regsgeleerde, en dan is daar 'n blok wonings langs en die oorledene, Gishi was woonagtig in hierdie blok. Dit is dan nou òf oorkant hom òf langs hom, dit hang af in watter verhouding dit is. Hierdie ja, dit is die getuie se blok waarin hy woon en dit is die oorledene, Gishi, se blok. Dit is daar waar die laan is tussenin. (Opposite the lane)

MR NGO SPEAKING XHOSA.

MR BOZALEK: Mr Ndamane, is it correct that Mr Gishi's house is in the block which is opposite your block, but closer (30)
to the Swelitsia side, the Swelitsia Drive side? Is that
correct/...

correct? -- Yes.

So you are not in the same block of four semi-detached houses, or are you? You and Mr Gishi. -- No.

And is your block and Mr Gishi's block those which are closest to Sixth Avenue, in other words the first block? -- Yes.

Thank you, sir.

DR YUTAR: Now, what exactly did you see? -- I saw Mr Gishi being taken out of his house by the police. (10)

How? -- They dragged him like a dog and threw him over to the migrants.

At that stage was he still alive? -- Yes.

How do you know? -- I was not far from him. I could see him very well.

Could you see that he was still alive? -- Yes, in fact he put up a resistance.

You saw that? -- Yes.

Well, Lieutenant Jordaan is going to deny your evidence on this point, and he is going to testify inter alia as (20) follows, and I would like to read it to you. "Aangesien die gevegte en brandstigting so hewig was, so baie Bantoes daarby betrokke was, en die gevegsgebied groot was, was die toestand oor die algemeen uiters chaoties, en kon beseerdes en gewondes nie sonder tydsverloop afgevoer word nie. Daar moes na beseerdes tussen die huise gesoek word en ek het ook die Bantoes oor die luidspreker versoek om gewondes en dooies na diestrategie te dra, waar hulle opgelaaie kan word. Daar was slegs gevuur op persone wat betrokke was by die brandstigting en gevegte en nie andersins nie." Have you anything to say to that? -- (30)

I am not prepared to make comments about somebody else's statement.

Did/...

Did you hear the police over the loudspeakers make this request? -- No.

You did not. I have no further questions.

MR MALHERBE: I just want to clear up one point. Mr Ndesi deposed to the peace that was made with the migrants, and if I understood him, that was 10 o'clock on the morning of the 26th, 10 o'clock on Boxing Day morning. Do you know of that peace? -- I know nothing about that.

Now, I take it that residents that he represented inter alia, with two others, and the migrants were represented by (10) three, now which group of migrants, or rather which group of residents did Mr Ndesi then represent if you know nothing about it? -- He must have been further down, near Mau-Mau, at that stage. I personally know nothing about that peace-making.

Well, it was not - your house is between Sixth Avenue and Fifth Avenue, is that correct? -- Yes.

And as I understood it the peace talks, indaba, took place between Fourth Avenue and Third Avenue, which is not so far away from you. -- Was that held between Fourth and the Third? (20)

Yes, as far as I know. -- I know nothing about peace talks which was held between Third and Fourth Avenue. The peace I know about is the one I mentioned in my evidence-in-chief when we sent out five men.

Now, to which migrants did those five men go or with which migrants did those five men want to talk to? -- We sent out five men from my side to go and speak to the migrants who were in Sixth Avenue.

Oh I see, so they were on the other side. Thank you.

MR NGO: You say earlier in your statement that children entered (30) the single quarters. What were the children going to do in the single/...

single quarters? -- I do not know what the children went there for, besides the presumption I have and that is they must have gone to a shebeen.

CHAIRMAN: To do what? -- To go and throw out the beer.

MR NGO: Do I take it that, if that assumption of yours is correct, the children were busy destroying shebeens? -- Yes, you are right.

So you also assume that these children who entered these single quarters, went there to go and destroy these shebeens? -- Yes. (10)

To your knowledge, were any of these single quarters destroyed by the children or by the residents? -- I beg your pardon.

To your knowledge were any of the single quarters burnt down, destroyed or damaged by the children or the residents? -- Some single quarters buildings were destroyed by fire set alight by the children.

Thank you.

MR MALHERBE: I still can't understand one thing. Where did they - you say that they threw Mr Gishi to the migrants. (20) Now, where were the migrants when they threw Mr Gishi to them? -- The migrants were there inside the yard. At the stage when the police came out with Mr Gishi, and put him over to the migrants, the other migrants got a chance and set his house alight at the same time.

So they were in fact in the yard opposite your house? -- Yes.

Now are you sure that the police did not - it would appear now that the police did not pull Mr Gishi very far? -- No.

And are you sure that with all those people around and the confusion Dr Yutar was talking about, that in fact the (30) police pulled Mr Gishi out? It could not be the migrants that pulled/...

pulled Mr Gishi out before they set his house alight? -- I am positive in that Mr Gishi was brought out of his house by the police, handed over to the migrants.

Now, you are not aware of this, you say, but a few hours earlier, not far from you, the police were in fact, the evidence of Mr Ndesi is that the police were in fact instrumental in trying to make peace between the migrants and the residents lower down in Swelitsia Drive. Now, why would the police - to me it is rather inconceivable that the police would do what you say they did a few hours later. Are you sure that (10) - there were lots of people around and there was confusion and people running around - did you hear that the police pulled the man out of the house or did you see the police pulling the man out of the house? -- This is no hearsay evidence but a fact that I saw with my own eyes.

MR NGO: Was Mr Gishi's house not on fire by the time? -- Not at the stage when he was brought out.

MR SONN: You said that you and Mr Gishi were friends, is that correct? -- Yes.

And now you tell us that a friend of yours had been dragged (20) out of his house by the police. -- Yes.

Now listen to my question: Have you any idea why the police would drag a man who is inside his house out? -- I have no idea. As far as I know the policemen is there to help the public.

MR MALHERBE: That is right, that is what worries us.

MR SONN: Now that is the point that worries one, because the police are there to help the public and here you say the police came along, a man who was doing absolutely nothing is inside his house, the police come along and they drag him out (30) and throw him to the migrants to assault. -- That is my evidence.

What/..

What you say, that is strange. Do you agree with that?

-- That is exactly what I want to know how it came about.

MR NGO: Tell me, before that happened, when last did you see Mr Gishi alive? -- I had been with him the whole day.

Did you see him entering his house? -- Yes, I did.

How long was it before the police dragged him out? -- He was not long in his house when the police came and dragged him out.

When he entered his house, did he run into his house or perhaps - when you saw him enter the house, or was he just (10) walking into his house? -- (Interpreter: I have not finished conveying this, the witness said: We were all running).

MR MALHERBE: Now Mr Gishi ran into his house. Where did you run to? -- I walked in the street in the passage immediately in front of the house.

You did not go into your house? -- (Interpreter: I did not convey this question, the witness says: No).

Now, were there other people around in that lane at the time? -- There was not a single one.

Nobody else but you and Mr Gishi? -- People had run away. (20)

So when the police - where did the police come from? -- They came out in Sixth Avenue.

Right. So you say at that stage there was nobody there but then the police arrived and when the police arrived there were migrants standing around, outside the house, in the yard, to whom the police handed over Mr Gishi. Where did they all come from? -- The police came when we were running. They came together with the migrants. I saw them go into Mr Gishi's place, saw them come out with him.

Now would you say that they were chasing Mr Gishi? -- (30) No, I will not say that. We were running away from the migrants.

CHAIRMAN/...

CHAIRMAN: How far were you ahead of the migrants? -- They were not very far away from behind.

And the police? -- The police as well, were not very far behind.

When you arrived at the house, how far were they then from you? -- I did not run to the house.

Where did you go to? -- I ran along the street.

Did you not run to your house? -- No.

Where were you standing when you saw Mr Gishi run into his house? -- (This sentence comes straight framed by the witness) I was standing in the road about 15 yards away from his house. (This 15 yards comes from the witness). (10)

And how far were the migrants then away from you? -- Which ones now? The ones which attack or the rest?

The ones that were chasing you? The ones that you ran away from. -- They took another road and left me alone.

How far is your house from Mr Gishi's house? In yards? -- I do not know.

More or less than 15 yards? -- I think the distance is a little more than 15 yards, between myself and that of Mr Gishi. (20)

And how far were the migrants away at that stage? -- They were not far. Anyway they left me alone and took the other way.

15 yards, that is the only difference between you? Are you sure they were not going to attack you? -- No, they were further than 15 yards away from me.

How can you, when you are only 15 yards away from him, from Gishi's house, how could you be certain that they would not attack you, that they would attack his house? -- They in fact threw stones at me. Then they left me alone. (30)

You/...

You stood your ground, you did not go into your house?

-- My house was on fire at that time.

MR MALHERBE: Your house was on fire and they were throwing stones at you? -- Yes.

So there must have been a lot of confusion at that stage. Are you still sure that it was the - now who were leading, were the police running in front and the migrants behind them, or were the migrants in front and the police behind them?

-- (Interpreter: I did not convey this question to this witness. He says of his own that the police were in front.) (10)

CHAIRMAN: Now, were you running away from the police or from the migrants? -- I could not have been running away from the police, because I regarded them as my helpers.

MR MALHERBE: So at what stage did you then decide, despite the fact that your house was on fire, you must have been looking at your house, you must have been looking at the stones that were falling near you, did you then investigate and make sure that in fact Mr Gishi was being pulled out of his house by police and not by somebody else? -- I am sure. I saw this thing happen. (20)

MR NGO: Were there any other people you saw being pulled out by the police? -- No.

So Mr Gishi was the only person you saw being pulled out? -- Yes.

DR YUTAR: May I just cover one aspect?

CHAIRMAN: Yes.

DR YUTAR: Are you by any chance a member of the Nyanga Residents Action Committee? -- No, I am not.

And to whom did you for the first time tell this story of Mr Gishi being dragged out by the police? -- There is nobody else other than the time when I made my statement to the/... (30)

the attorney.

How did the attorney come to know of your existence? --
The Action Committee wanted all those whose houses had been
destroyed by fire.

And who approached you? -- That is exactly what I want
to know too, because it is only the Action Committee which
summoned us.

Who of the Action Committee spoke to you? -- One Oscar
spoke to me. I do not know the names of the others.

Is it Oscar Mpetha? -- Yes. (10)

And did you tell Mr Mpetha what you have now told this
Commission about Gishi being dragged out? Did you? -- No,
I did not.

Why not? -- We had no discussion whereby you could have
touched on that point.

And did you not tell him anything that you saw that day?
-- I did tell him of some of the things I saw that day, but
did not mention to him that I saw Mr Gishi being brought out
by the police.

That is perhaps the most important part of your account. (20)
-- I never told him about that.

Can you give any reason ... (intervenes)

CHAIRMAN: Did you tell him that you have a neighbour or
you had a neighbour, a very good friend, who is dead now?
His house was also burnt? -- I told him that my neighbour's
house was burnt, but did not go further to tell him that
he was brought out by the police.

Did you tell him that he was dead? -- He was dead. (By
interpreter: He was dead, the witness says, without me conveying
the question to him). (30)

Did you tell him he was dead, otherwise the Action Committee
may/...

may not know of his house that was burnt? -- I did not think of that. I thought perhaps they know about it.

DR YUTAR: But you will agree, that is the most important part of your statement to which you profess to be an eye-witness and no-one else? -- I am just beginning to have no replies to this question.

I have no further questions.

CHAIRMAN: Have you any further questions as a result of the questions that have been put, Mr Bozalek?

MR BOZALEK: No, I have no further questions, thank you. (10)

CHAIRMAN: There is one other matter I wanted to touch upon. On Christmas day the youths had been across to the single quarters and there had been trouble there? -- Yes.

Such trouble that you thought it was necessary to talk about peace? -- Yes.

Did you know any of the children who had been there? -- I did not know a single one of them.

Did you know any parents of any child who was there? -- As I say I did not know a single child, it is obvious that I did not know the parents. (20)

It is not so obvious to me, because of what I am going to ask you now. While you were talking about peace the police arrived. Is that correct? You talked to the police? -- We did not talk to the police. Instead we ran away and we were ordered to go into our houses.

Did the police who arrived there while you were talking say to you that it was no good going because if your children went on doing this there would be great damage the next day? -- Yes, they did.

Now when did they say that to you? -- On Saturday afternoon. (30)

And/...

And I asked you while you were talking about peace, did the police come there and did you talk to the police? Did you or didn't you? -- I am a bit confused because on a Sunday we sent out two men - five men to go over to the migrants....
(intervenenes)

No, I am not talking about that and you know I am not talking about that. I am talking about Christmas day. You decided to send a delegation to the charge office. -- We decided to send some people to the police station that day.

And then the police van arrived there, is that correct? (10)
-- (Interpreter: I am not through with this and the witness says yes.)

And you spoke to the police there? -- We did, yes.

And one of them said something which I - yes, alright. He said: "The work is ours but you can go to the police, to the charge office if you want to." Correct? -- Yes.

And a second one said: "It is your children. If you donot stop them there will be damage tomorrow". -- Yes.

What did you do about that warning by the police? -- We did nothing. (20)

Is that the actions of a man who really wanted peace, who knows that the children have attacked across the street, and he is then told by the police that he must stop his children, and he does nothing about it? -- I say we did nothing.

You held another meeting the next day, didn't you? -- No.

Yes, you did. You decided to send 5 people to go and talk peace. -- Yes, but that was on a Sunday. I had forgotten about that.

What did you think your five people were going to say when you had not spoken to your children? -- In my opinion the five(30) men would go to the migrants. We would talk to the children about/...

about their deeds and reprimand them.

Did you ever talk to them and reprimand them? -- Very many times.

Did you on that Christmas Day, that is the Saturday? You said no. Is that correct? -- We had no chance to talk to them on Saturday.

Didn't you think that on Sunday morning, before holding your next meeting, you should talk to them now? -- We never thought of that. Things were bad, the situation was very bad down there. (10)

I want to tell you, you see, one of the things this Commission has to do is to find out why these things happened, why there were riots, and it seems quite clear, one thing at least seems clear, that is that the children went across to the single quarters on the Sunday afternoon. Although told to do so their parents did not admonish them that day and there is evidence that the next day when peace had already been made, a group came from Guguletu and the children of Nyanga joined them and went across. Have you anything to say to that? -- No, I have nothing to say. (20)

Thank you, you may go.

NO FURTHER QUESTIONS.

CHAIRMAN: The Commission adjourns until two o'clock.

THE COMMISSION ADJOURNS.

THE COMMISSION RESUMES.

RECALLED:

ZEPHANIA SONGEZILI DAMANE: SWORN, STATES (THROUGH INTERPRETER)

DR YUTAR: My Lord, the witness here recalled is Mr Damane.

My learned friend Mr Potash who led him is here.

CHAIRMAN: Yes.

DR YUTAR: Mr Damane, I just want to explain to you why Michael who was arrested, why the senior Prosecutor declined to prosecute him. Now, this unfortunate incident, the assault on you, happened on the 27th of December. -- Yes. (10)

And very fairly the police have recorded they could not take a statement from you because you were unconscious, or rather they put it here "he can't speak because of the injuries he sustained in general." But on the 14th of January 1977 the police who wanted to prosecute Michael, again asked you: "Now, can you tell us what Michael did?" and this is what you said.

CHAIRMAN: That is the police?

DR YUTAR: The investigating officer. You also mentioned Bantu Male Michael of Newlands Single Quarters, Nyanga, as (20) one of the people who was in the company of the assailants. This is a Black Policeman and I am reading exactly as he wrote it here. "He cannot be able to say actually what he did, because he said he became unconscious during the attack." Then again on the 1st of February the police again asked you, because they wanted to take action against this man, and they record this: "The complainant was seen on the 1st of January at 1.15 and a further statement has been obtained from him as to what the suspect Bantu Michael did". -- The 1st of January?

The 1st of February. "But complainant can't be (30) specifically sure what actually the suspect did to him" and then/...

then you signed the following statement. I don't want to remove it from the docket, but is that your signature? -- I think this is my signature.

And this is what you said to the police and signed it. I will read the whole statement: I am the complainant in this case. On the date this incident occurred I saw Rantu Male Michael among the people who attacked me. I don't know what weapon was he possessing but he also assaulted and I can't also say on which part of the body did he assaulted me." So you were not able to say exactly what he did, but in (10) fairness to all parties, I must tell you that there are two further statements in this docket and I am prepared to make it available to your attorney to see of two migrants who admitted they were fighting on Saturday, the 25th of December, but had been warned by the police to stay in, this is on the 26th of December and on the 27th of December both of them were in their room with Michael, and therefore you must be mistaken when you say Michael was one of those who were among your assailants. And there is a statement by Michael himself who is supported by his two witnesses. (20)

CHAIRMAN: That he was with them?

DR YUTAR: That he was with the two migrants. Then of course there is the statement of Jimmy Kula. Remember when I asked you in all fairness to the police what more could they have done, seeing that after you pointed Michael out they arrested him, your answer was: "Well, they should have protected me". Do you remember that? Do you remember that, Mr Damane? And Mr Kula who took you to the police station says amongst other things that "The riot squad police dispersed them (that is the (30) migrants) and I removed him (that is you) to the charge office at/...

at Guguletu." -- I do remember saying that the police could have protected me.

I am making the docket available to my learned friend. I have no further questions.

CHAIRMAN: Have you any questions, Mr Potash?

MR POTASH: I have no further questions, Mr Commissioner. I would like to have an opportunity of looking at the docket. I don't want to keep Mr Damane unduly.

CHAIRMAN: I think the next witness can testify meanwhile and then - you have not got the next witness, or have you? (10)

MR POTASH: I have no more witnesses, Mr Commissioner.

INTERPRETER: The witness says, My Lord, that there is one thing here he does not quite understand. It is alleged that Michael was removed and locked up by the police. He says there was no such thing.

CHAIRMAN: No, I don't think it was said that Michael was removed and locked up.

DR YUTAR: No, he was pointed out by the witness and the police arrested him, opened the docket, and eventually the Senior Public Prosecutor declined to prosecute him. -- (20) Exactly on that point. I pointed this man Michael to the police but they never took him. They left him alone there.

CHAIRMAN: But does that matter? They say they did, they investigated the matter and there was no prosecution because of the evidence. -- I understand.

The witness will stand down and the next witness will now be called.

DR YUTAR: My Lord, may I ask my learned friend, Mr Bozalek, who has just furnished me with a copy of the last witness's statement. The last witness could be called on an important allegation against the police. I have got the statement now, (30)

My/...

My Lord, and a copy has been made available to the Commission.

CHAIRMAN: Which one?

DR YUTAR: Alfred Ndamane.

RECALLED:

ALFRED NDAMANE: STILL UNDER OATH:

DR YUTAR: Mr Ndamane, tell me, who approached the house of Mr Gishi? -- The police including the migrants went to Mr Gishi's house.

Were they running? -- Yes.

And how many were there altogether? -- I noticed two (10)
policemen.

Two policemen and how many migrants? -- Five migrants
assaulted Mr Gishi.

With what? -- Some of them had axes and the other had
a bayonet, I don't know whether it was a bayonet or a panga,
something of that nature.

And did you do anything? -- I was just about to throw
a stone when I was shot on my right arm and the stone dropped
out of my hand.

I am going to read to you paragraphs 13 and 14. "At (20)
about 4 p.m. I went in front of my house when I saw two
White policemen come walking towards me. They walked straight
into the house of my neighbour, Mr Quati Gishi, and re-
appeared pulling a protesting Mr Gishi. The migrants were
already in that yard and the police threw him to the crowd
and about four migrants then began to hit him. Two of them
had axes and one had a sword. The police walked away. I
was about 10 yards away when I saw this happening." I have
nothing further to ask.

MR BOZALEK: My Lord, I just want to refer again to my earlier (30)
remarks, that these statements were not definitive and then to
refer/...

refer you to the margin where at a later consultation I made notes of the fact that Mr Gishi had attempted to throw a stone.

CHAIRMAN: Yes.

MR BOZALEK: That is all.

CHAIRMAN: Nothing further you wish to add?

MR BOZALEK: No thank you, My Lord.

CHAIRMAN: The witness may go, thank you.

NO FURTHER QUESTIONS.

MR BOZALEK: Mr Commissioner, my next witness is Mr Mordecai (10)
Mtila.

MORDECAI MTLILA: DULY SWORN, STATES

MR BOZALEK: Mr Mtila, you are 29 years old and you live at E 17 26, Swelitsia, Nyanga East? -- Correct.

You have lived there since 1964 with your parents? -- Correct.

And you work as a labourer for S.A. Board Mills (Pty) Ltd. and you have done so for 11 years? -- Yes.

Now, is it correct that your home is on the residents' (20)
side of Sixth Avenue ? -- Yes.

And your house lies opposite the crèche on the migrants' side? -- Yes.

Well, if I remember correctly not quite opposite? -- Yes.

And your house is in the first block of houses closest to Sixth Avenue? -- Yes.

And it is approximately, would it be correct to say, a 100 yards from Swelitsia Drive? -- I don't know the yards.

Now, I would like you to describe to the Commission the events which you saw taking place on the afternoon of the (30)
26th of December in the vicinity of your home, starting from
when/...

when you saw some police vans coming along Sixth Avenue. --

On the 26th of December 1976 some police vans came down. They came down from the bus terminus, went down to Sixth Avenue.

At the time of the arrival of these police vehicles, we, the residents, were there facing the migrants and at the same

time we, the residents, were armed as well as the migrants.

The police in those police vans intervened, trying to put a stop to the trouble. In doing so the police ordered us, the

residents, to go back to our houses. We obeyed the police orders by going back to our houses and entered our yards. (10)

From the residents the police moved over to the migrants and gave the same warning to them in that they should return to

their houses, but the migrants did not go home. Two of the

police vehicles drove down Swelitsia Drive and went as far

as the new blocks of flats occupied by the migrants. The

other one drove down Sixth Avenue, right behind Mr Siboya's shop.

Is that Sakkiesdorp Road? -- Yes.

So where were you standing at the time? -- I stood inside my yard. (20)

What separates your yard from the road? -- My yard is surrounded by wire fence plus a hedge.

Could you see over the hedge? -- Yes.

Carry on. You saw the police vans going in these directions?

-- The next thing I saw was that a police van was driving between the crèche and the single men's bungalows, coming towards

Sixth Avenue. Looking carefully on this van, I noticed a policeman seated on the bonnet of this vehicle. I looked at

him, observed him carefully when I saw him make a sign of this nature towards the migrants who were at the migratory (30)

residential place. The policeman looked slightly behind,

as/...

as I now demonstrate and did this, as I now demonstrate with his hand, looking behind.

Where exactly were the migratory workers? -- The migrants were then behind them.

How many approximately? -- There were very many of them.

Were they wearing any distinctive form of clothing? -- They had white cloths on their heads and some white sheets or something of that nature on their bodies.

Please carry on. -- When this policeman noticed that I was watching him, he then pointed his gun towards myself and (10) fired a shot. In this yard where I stood when I saw all these things, between myself and the hedge was a car belonging to my brother. That was inside the yard, and the bullet fired from the gun of that policeman hit my brother's car. On hearing this bullet land on my brother's car, I became weak inasmuch as I had to crawl back to the house, managed to get inside the house and locked it from the inside.

That bullet did not actually hit you? You were not shot yourself? -- No, I was not struck.

Was there anyone in your house with you? -- Inside the (20) house was my uncle.

Alright. Please carry on. What happened then? -- After closing the door, locking it from the inside, I looked through the window of this house and saw a number of men dressed similarly to the migrants. I had seen Elias.

Yes? -- They passed this window, came to the door, to the kitchen door, and began kicking it. When the kitchen door would not give in, they then came to the front door. I again saw them pass the diningroom window. With that I went into the bedroom. On noticing that the front door was (30) giving in, getting opened, I slipped into the bedroom, went in/...

in to the back room window which faces the toilet. I opened the window and jumped through it. I went inside and hid myself in the toilet and closed the door behind me of course. I heard whilst I was in the toilet that they had gained entrance through the front door. I heard some noise inside the room, but I stayed in the toilet.

I just want to ask you a question. What did you do with the door of the toilet when you went to hide in there? Did you close it or open it? -- I opened the door and stood behind it.

(10)

So the door was not shut? -- No, it was not.

Alright. Please carry on. -- I stayed there in that toilet until the end of the fight.

When you came out, what was the position as regards your house? -- I came out of the toilet at a stage when our house was on fire.

And was your house completely destroyed? -- Yes.

Just to go over some points in your evidence, when you say vans, can you describe more specifically the police vehicles? -- These police vehicles were all white Landrovers. (20)

When you saw the police and the migrant workers advancing, is it correct they were coming from the direction of the migrant workers' quarters, directly towards the residential area? -- Yes.

What precisely were you doing when the policeman levelled his weapon at you and fired? -- I was standing and looking at them.

I have no further questions.

MR POTASH: Sorry, Mr Commissioner, if I could just mention at this stage, I have perused the docket in connection with Mr Damane and I have no further questions to put to him. Could (30)

I/...

I ask that Mr Damane be excused at this stage? I will convey it to him.

CHAIRMAN: Will you convey it to him?

MR POTASH: I will convey it to him. May I also be excused? Thank you.

DR YUTAR: Mr Mtila, you will agree that the events of that Sunday afternoon, the 26th of December, was the worst outbreak over that particular weekend? -- I agree.

I don't think you will dispute the figures of the police that there were close on 5 000 Blacks divided into two sections, fighting each other over a wide area? -- I don't know that. (10)

And Lieutenant Jordaan will tell the Commission that he was in charge of a platoon consisting of only 33 policemen who acted only on his orders. -- I follow what you say.

And he will tell the Commission further that the fighting was so severe and so widespread that he had to divide his men into five sections in order to try and halt the wholesale massacre that was taking place there. -- I follow.

So that in no one section were there more than 7 policemen combatting these forces. -- All I am saying is this that there was a great number of police. (20)

A great number of police? How many police? -- On the three vans there were three policemen in the back of the van and two in front.

Now, I think you will also agree there was a terrific noise there, shouting and screaming? -- I agree.

Was it possible for one man to hear what the next man was saying? -- Yes.

And the police will tell the Commission that it is part of the training of the riot police that in such a situation where/... (30)

where their orders cannot be heard, they make signs to each other. -- I understand the suggestion, but I say they fired shot.

Yes, they fired an awful lot of shots that day, 430. And, Mr Mtila, is it just not possible that the sign which perhaps the one policeman was making to another, you mistook as a sign of beckoning the migrants to follow up? -- From the direction where the policeman had beckoned I did not see other policemen, instead I saw the migrants.

And what sign exactly did you see? -- The policeman (10) did this with his face, head, face turned towards the back. He turned his head slightly to the back onto his righthand side and then gave a sign with his right arm as I now demonstrate.

A sweep from the back to the front. -- That is right.

Now even though you did not see the police there, he might have been beckoning his own men to follow him up. -- I say he was beckoning the migrants and not the police. I did not see any police from that direction.

Did you know that the militant youth were responsible for the trouble the previous day? -- No, I do not know that. (20)

Do you know that on this day in question, Sunday, the 26th of December, the police advised the residents that the migrants wanted peace and the police arranged peace? Did you know that? -- I do not know that.

But you very fairly did say in your statement, your evidence, that the police, and they say they were acting in terms of that peace agreement, told the residents to go home and told the migrants to go home. -- Although the police went to the migrants and spoke to them, telling them to go back home, the migrants never went back, instead it (30) was the police who drove down towards the new bungalows.

Well/...

Well, Mr Ndesi who gave evidence last week said that peace was made and that militant youths from Guguletu arrived, aroused the youth of Nyanga and started the trouble, the fighting all over again. Do you know that? -- I never saw the children in Sixth Avenue.

Then Mr Ndesi said that after the children started all the trouble again, the police arrived and through loudspeakers warned the residents to go home, used teargas and fired shots. -- No teargas was ever thrown in Sixth Avenue, instead bullets were fired from the guns. (10)

By the police? -- By the police.

Shooting directly at the residents? -- Yes.

Aiming to hit them and kill them? -- Yes.

There must have been an awful lot of Black people killed then, shot? -- I don't know.

Well, they fired an awful lot of rounds. There was a lot of firing going on. -- Yes.

And a lot of people should have been shot dead then, on your account. -- As I have indicated in my evidence that I hid myself in the toilet, I did not see people being shot down. (20)

In the light of your evidence would you be surprised to hear that only 3 people were shot dead by the police that day, the whole day? Only three. -- I personally did not see a single person being shot.

One last question: Can you give any reason why the police who tried to bring these warring factions together and ordering both sides to keep to their own sides and bearing in mind that the residents obeyed their orders and as you say the migrants did not obey their orders, why the police should then assist those who did not obey their order to shoot those who obeyed/...

obeyed their order? -- That is exactly what I wanted to know.

It does not make sense though? -- It certainly does not give sense.

No further questions.

MR BOZALEK: I have no re-examination.

MR MALHERBE: Why do you say here in your statements, in your evidence you said that during the previous night, that is Christmas night, people had gathered on both sides of Sixth Avenue? Why was that? -- That facing, one party facing the other, took place in the afternoon, not at night. (10)

CHAIRMAN: The question is why did it take place? -- I came from work when I noticed the migrants standing there across the road.

MR MALHERBE: Weren't you there? Weren't you there on Christmas Day? -- I came from work.

Did you work on Christmas Day? -- Yes.

And when you got there you found the poeple lined up there, is that what you are saying? -- I came out ten o'clock from work and found the people lined up in the manner I have described. (20)

Did that surprise you? -- Yes.

Were you totally unaware that almost that whole month there had been sporadic problems between the migrants and the residents? -- I knew about that.

And also that some migrants had been killed by the residents or the youth, and some youths or the residents had been killed by the migrants? I mean the two sides had committed killings on one another. -- I did not know that.

You did not know that? -- No.

Did you know that prior to Boxing Day certain houses had been set alight in Nyanga? -- No, I did not know. (30)

You/...

You did not know? -- No.

So as far as you are concerned nothing had happened, nothing strange had happened in Nyanga the whole of December? -- I was not staying in Nyanga before these disturbances. I came to stay there at the time of these disturbances.

When did you come to stay in Nyanga? What date? -- On the Christmas day.

MR NGO: Are you Mr Mordecai Mtila? -- Yes.

Your statement said that "I have lived at E 17 26 since 1964". Is that a mistake? -- Yes, that statement is quite correct. I started staying there in 1964, but personally was not staying there. (Laughter). (10)

Please explain, Mr Mtila, before we get ideas. What do you mean? -- I was staying there by 1964 already, but now and again I would go away with my work.

MR MALHERBE: Now, where were you in December 1976, last year? Where did your work take you? -- I stayed in Bellville.

The whole of December? -- No.

Now, where did you stay the week before Christmas? -- I stayed in Bellville, but occasionally came back. (20)

And when you got back occasionally, didn't they tell you that there had been sporadic fighting, killing, houses set alight? -- They did.

So you knew about it? -- Yes.

So why did you deny just now and said you knew nothing about it? -- I said I did not know a thing, simply because I was told by other people.

Now, on that afternoon of the 26th, you are sure that before the police arrived there was no serious trouble? -- I wouldn't know of that because I was not there earlier in the day. I only came out of work at ten o'clock. (30)

And/...

And that was ten o'clock on Boxing Day? -- Yes.

Now you see in your statement you said: "During the previous night people had gathered on both sides of Sixth Avenue." -- I have already indicated in my evidence that I came back occasionally.

No, but you know, make up your mind, because you have just told us two minutes ago that you only arrived at ten o'clock and that you don't wish to depose and did not depose to anything that you did not have personal knowledge of. -- I am answering the question put to me now. (10)

That time did you arrive? -- I do not know.

Now, how do you know that approximately 3 o'clock a convoy of police vans drove along Sixth Avenue? -- I was there in the afternoon.

Weren't you there in the morning? -- No.

But how can you say then during the morning of the 26th both sides remained in these positions, no violence took place, save for some minor like stone-throwing? -- I got up early in the morning from Nyanga and went to work.

So were you there at all in the afternoon of the 25th? (20)
-- 26th?

No, 25th. No, you said you got up early in the morning of the 26th, that is what you say, and you went to work.--
Yes.

That morning you got up early and you went to work? -- Yes.

I don't follow you, because you said that you stayed - the week before Christmas you stayed at Bellville and you only got back in Nyanga the morning of Boxing Day, the 26th. That is what you said? -- I was not there on the day when there was fighting. I came back in the morning. (30)

Now what morning is that, the morning after the fight? --

I/...

I came at the stage when the two parties were facing one another.

Now, was that in the morning or was that in the afternoon?
-- These things took place some time back, I cannot now remember.

Right . But you can remember that the police beckoned, you can remember that there were no policemen or vehicles behind them when they beckoned and you can remember that nothing serious happened until the police came. All that you can remember. -- Yes, I was there. (10)

That was not a long time ago? -- Those things took place in the afternoon.

CHAIRMAN: When was the first time after they took place that you were asked to make a statement? How long afterwards? -- I do not know, I cannot say after how many days after these things had happened that I made my statement.

When was the last time you made a statement about this?
-- The statement dated the 26th was made here in Cape Town in a certain flat, here in the Cape, B P Flat.

MR SONN: When was it made? What date? Was it made on the 26th? -- I have forgotten the date. (20)

Was it in that month? -- I do not know the month. I cannot say in which month did I make the statement.

Are you a member or have you heard about the Residents Action Committee? -- I am not a member of that action. In fact it is the first time for me to hear of it now.

Tell me, you told us or you had made us to believe that on the occasion when these two factions, the migrants on the one side and the residents on the other, the migrants on the one side of the road and the residents on the other side of the road, when they were standing there and the police van came/.. (30)

came up and they said now you must all go home, at that time you did not see a single child around. You did not see children? -- I saw the grown-ups and young children.

There were children among the grown-ups? -- Yes.

What do you mean by young children? Would you say they were ordinary primary school children, children still going to the primary school or were they big children? -- These children I refer to were the size of children who attend primary schools. Generally when such young children see a European it is their common tendency to come forward to listen (10) to what the European says.

Did you at any time hear about children that went across to the migrants' homes and damaged them? -- I never heard of that.

At any time did you know or did anybody mention that children damaged shebeens? -- Yes, I heard of that.

Now when about did you hear about that? Was it roundabout the 25th, 26th? -- I heard of that on the 25th of December.

Thank you.

CHAIRMAN: Where did you hear of this on the 25th? -- I heard (20) people talking about it in the bus.

You heard nothing amongst the people there in Nyanga about it? -- I occasionally heard people talk about that, but I never took notice of it.

On the 25th? -- I heard about it in Nyanga as well on the 25th of December.

MR SONN: Did you at any time see or hear about migrants' houses that were burnt down? -- I was at the bus terminus when I saw some of the migrants' bungalows on fire.

You saw them on fire? You saw them burning? -- Yes. (30)

CHAIRMAN: What day was that? -- That was on the 25th of

December/...

December.

MR SONN: But you have just told us now, a few minutes ago, that you saw nothing, you heard nothing, now you have seen everything. You have seen the children burning - you have seen homes burning. -- Yes, I was at the bus terminus when I saw the single men's hostel on fire.

MR NGO: What were you doing at the bus terminus? -- I waited for a bus.

What bus? -- The Bellville South bus.

Did we have buses in the location on the 25th, 26th and 27th, coming right into the location to the terminus? My question is, were there any buses coming into the location on the 25th, 26th and the 27th? -- Firstly the reply is I waited and waited and I saw a taxi. I took the taxi and I got the buses on the other side of the bridge. (10)

Now let me put this question to you: Were there any taxi's at the bus terminus on the 25th, 26th and on the 27th? -- I saw that single taxi only.

Thank you.

CHAIRMAN: Thank you. (20)

NO FURTHER QUESTIONS

MR BOZALEK CALLS:

LONGMAN TONO: DULY SWORN , STATES (THROUGH INTERPRETER)

MR BOZALEK: Mr Tono, you are 57 years old, you are married with four children, and you live at E 1593, Swelitsia, Nyanga East? -- That is correct.

Is it correct that you are employed as a cleaner ...

(intervenes)

MR MALHERBE: What witness is that before we....?

MR BOZALEK: I will come to that. You have been employed as a cleaner at Tygerberg Hospital? -- Yes. (30)

You/...

You have been working, previously you worked at Karl Bremer Hospital, before being transferred? -- Yes.

And you have held this job for 21 years? -- Yes.

Now, whereabouts is your house? -- My house is situated near Sihlanu Avenue.

That is Fifth Avenue, correct? -- Yes.

And is it correct that your house is in the last block before Fifth Avenue? -- Correct.

And is it correct that it is three blocks down, three house blocks down from Swelitsia Drive? -- Correct. (10)

Further, in that last block of houses, yours is the third from the road? -- From the road, yes, mine is the third one.

Next to you on your righthand side - the last house in that block on the Sixth Avenue side is Mr Mtombeni's house, your neighbour? -- Correct.

There is a lane in front of your house? Passage? -- Yes.

And in this passage a little further up towards Sixth Avenue is a shower block? -- Yes.

MR MALHERBE: Is that the one you showed us? (20)

MR BOZALEK: That is the one I showed you, sir, and Mr Commissioner as well.

Now, is it correct that on Boxing Day, that is the 26th of December, you were part of a crowd of residents standing on the residential side of Sixth Avenue. Sorry, Swelitsia Drive. -- Yes.

Swelitsia Drive? -- Yes.

Describe to the Commission what you saw from approximately 11 o'clock in the morning onwards. -- Am I correct that the Boxing Day was on a Sunday? (30)

Yes, I think you are correct. The day after Christmas.

-- We/..

-- We stood just off the road that morning near Swelitsia.

Yes? -- We stood there until some time in the afternoon. While standing there I saw a soldiers' vehicle which the peopled called a Landrover. When this vehicle neared us, shots were fired from it. We then ran away. I followed the lane which runs from Swelitsia towards my house. When nearing the showers a certain young boy or a young man ran past me, and at the same time I saw a van, Landrover, which approached from Sixth Avenue and drove past. When this vehicle left someone shot this little boy who had just passed me from that vehicle. (10)

This van, was this van coming down the path between, the passage between Sixth Avenue and Fifth Avenue? -- Yes.

Between the houses? -- Yes.

Carry on, please. -- Yes. This little boy was shot and he fell and I went past him.

Yes, carry on? -- Just as I passed this little boy who had fallen down as a result of the bullet, I noticed my neighbour, going to his house. I also made for my house.

Which neighbour is this now that you are referring to? -- (20)
One Lawrence.

Lawrence who? -- Mtombeni.

Carry on, please. -- I went to my house as I said, went into the house and again looked through the window. I noticed that this vehicle pulled up next to my gate.

Were there many people inside your house? -- Very many.

Were they all known to you? -- I knew the grown-ups who were about eleven in number, and there were also children whom I did not know.

What were all these people doing in your house? -- Having (30)
seen the situation outside, I did not question the people.

Carry/...

Carry on, please. You saw the police van come outside.
-- Two policemen, soldiers, alighted from these vehicles at the back and they went to the house nextdoor to mine.

That is Mr Mtombeni's house? -- Yes. I could hear, not see, could hear that they kicked the door open. After some time that they had gained entrance in Mtombeni's house, I heard a gunshot from that house. I thought that the shot was fired because he, Mtombeni, wanted to run away and perhaps they were threatening him.

What did you see next? -- They came out with him with (10) one policeman on either side of his body, holding him. They came right through his front gate, went round to the Landrover. Having got there behind the Landrover, I noticed them beckoning. I drew the impression that they must have been beckoning for another vehicle which was to take Mtombeni to the hospital.

Did you say hospital or police station? -- Police station, I beg your pardon. From the direction where the policemen beckoned, I saw some migrants, some three migrants coming along. On the arrival of these three migrants the policemen (20) let go Mr Mtombeni, whom they held fast.

Were these migrants wearing any distinctive form of clothing? -- Some white - they had white cloths on their heads and some white sheets over their bodies.

You saw the police let go of your neighbour and then? -- Yes. Just as the policemen let go the grip the first blow inflicted was on his head with an axe.

Who performed that blow? -- One of the three migrants.

Carry on, please. -- As a result of that blow inflicted with an axe on his head, he, Mtombeni, fell inside my yard. (30) He got up from that spot, staggered further, fell for the second/...

second time at my doorway. It was there that he was again chopped until he stopped screaming. Whilst all this was taking place the two policemen who had brought him out, were standing near the Landrover watching all this. After these migrants had finished him at my doorway, one of them said: "Leave him alone, we have finished him". Then after this was said they three migrants turned and picked up stones and threw them at the house.

Whose house? -- At my house.

Yes? -- After throwing some stones I heard one of (10)
the migrants say: "Where is that petrol-bomb?" Soon there-
after a petrol-bomb came through the window.

Yes. -- My wife who was then inside the house took some water and put out the petrol-bomb. They collected some papers, set them alight, through them inside the house. Then the curtains caught alight. Then, after the curtains caught alight, these three migrants went back to the Landrover and joined the two policemen. After the three migrants had gone and joined the two policemen near the Landrover, one of the two policemen came into my yard, right up to the door (20) just where the man was lying, and then he kicked my door, kicked it three times. I held that door fast from inside. When the door wouldn't open, he then went back to the Landrover. On hearing the Landrover starting, the engine running, I looked through the window and I saw it drive away.

How had you been seeing things before this? -- I don't appreciate that.

You say that you were barricading or you were holding the door. How were you managing to see things also? -- The window is not far from the door. (30)

Yes, and so? -- Because of these things I now and again
looked/...

looked through the window and then came back again to hold the door.

Whilst the migrants were trying to set your house on fire, the police was still outside, I take it. -- Yes, they were there outside, watching.

Whilst the one policeman kicked your door, where was the other that you referred to? -- His friend stood outside there near the Landrover.

What happened to your neighbour, Mr Mtombeni? -- After the Landrover and the police and everybody had gone away, (10) Mtombeni crept through the opening I had in my yard towards his house.

This child you referred to earlier who was shot, was he in your vision before he was shot? -- At the time the child was shot I was moving towards him, the child.

What was the child doing before he was shot? -- He was also running away from Swelitsia Drive.

Is it correct that earlier in the morning both sides had dispersed and gone home for a while? -- It is correct that before lunch both sides were dispersed and each side (20) went back to their houses.

No further questions, My Lord.

CHAIRMAN: Will this be convenient to adjourn until half past nine tomorrow morning?

MR BOZALEK: That is convenient, sir.

THE COMMISSION ADJOURNS.