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Public Hearing Transcripts - Thematic - Assassination - RTJRC06.03 (NHIF Building) (Political Assassinations)

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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON TUESDAY, 6TH MARCH,
2012, AT NHIF BUILDING**
(Thematic Hearing on Political Assassinations)
(Sitting-In-Camera)

PRESENT

Gertrude Chawatama	-	The Presiding Chair, Zambia
Ahmed Farah	-	Commissioner, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Patrick Njue	-	Leader of Evidence

(The Commission commenced at 9.50 a.m.)

(Opening Prayer)

Mr. Patrick Njue: Commissioners, this is witness No.21 on our programme for today being the 6th of March, and we are ready to proceed.

The Presiding Chair (Commissioner Chawatama): On behalf of the TJRC, I welcome the commissioners, the staff of the Commission and especially our first witness. We apologize for having taken a bit of time. We had issues that we needed to sort out and we are now ready to start. We welcome you. We are here for your benefit. We want to ensure that you are as comfortable as possible. The reason why we are holding this session in camera is because of the request by you to be heard in private. Sometimes depending on the testimony, even as commissioners, we may make a decision that we may prefer to hear somebody in camera. We would like to honor requests which are made by people who are participating in this process.

(The Presiding Chair (Commissioner Chawatama) introduced herself and other Commissioners)

There is another commissioner who will join us here. Her name is Commissioner Margaret Shava and she is from Kenya.

The people you see around the room are all employed by the Commission. They took an oath and that oath that they took means that they cannot disclose any of your testimony in part or in whole. Everything remains with the Commission. The recordings that you see whether the camera or the HANSARD, is for the benefit of the Commission. We have heard hundreds of Kenyans throughout and we are going to write a report. When we write our report, we want it to be accurate so we will be reminded of what you have said

through the video or the HANSARD recordings. You will not see yourself on TV. This is the possession of the Commission.

We are mindful of the fact that we do not want to risk your life and even risk our lives as well. So, please, be as comfortable as possible. You will be led by the Leader of Evidence today and he will ask questions after you have given your testimony and then we will also make observations or ask questions. Do you have any questions on what I have said so far?

Mr. Jacob Ndagwa Masikhe: It is not really a question, just to appreciate the fact that I came here very willingly to share with you what I have for the benefit of the task ahead of us. I think I have met you once. You saw me with the statement takers in Kakamega. So I am familiar with you.

The Presiding Chair (Commissioner Chawatama): Excellent, it is always nice to have a familiar face. Sometimes it helps us in settling down and being comfortable. At any time, if you feel that you need to have a break, please let us know and we will facilitate that.

Mr. Patrick Njue: Good morning, once again. Please, for the record tell us your names and what you do for a living.

Mr. Jacob Ndagwa Masikhe: My name is Jacob Ndagwa Masikhe. Currently I am an Executive Director of an NGO called Sustainable Initiatives in Africa based in Busia County.

Mr. Patrick Njue: Welcome, Mr. Ndagwa, to this morning sitting. Commissioners, this is a witness whose presentation we have just shared with you. Yesterday, there was a mention of a name of one Mr. Okondo. Mr. Jacob Ndagwa seated with us today happened to be the Personal Assistant of the same Mr. Okondo. Without pre-empting your statement, I know there is that brief that you had prepared for us, which I would now ask you to present after which we will be asking you questions.

Mr. Jacob Ndagwa Masikhe: I want to present the little I can remember concerning two deaths that happened when I was serving as a PA in Hon. Okondo's office between 1989 and 1992. I do not know whether I should go further to tell about myself or I go to the testimony straightaway.

The Presiding Chair (Commissioner Chawatama): I think you can go straight to telling us your testimony. Maybe you start from about page 2.

Mr. Jacob Ndagwa Masikhe: I will begin by saying that in 1986, I was a teacher in Eldoret. That is where I met the late Bishop Alexander Kipsang Muge. He was such a fiery preacher. He was a man who always championed the rights of the poor and the downtrodden in the society. Apparently, I also have a soft spot for that; I love fighting for the people who are down trodden. So we did share a lot in common. Although I was a Catholic and working in a Catholic school, I would sneak out and go to ACK church just to listen to his service.

In 1989, I joined Mr. Okondo as a PA. Having worked in Eldoret where the Bishop was and having been a teacher of history, I happened to have a lot of knowledge about what was going on in the wider region of Rift Valley. By 1990, to my recollection, we had a lot of impunity in this country to unprecedented levels. This was impunity in terms of crackdown on perceived dissidents by the Government at the Nyayo House Torture Chambers. There was massive land grabbing and grabbing of private property especially in the North Rift area which has very fertile land.

I would take you back by saying that by 1990, there was a lot of grabbing so you find that even in the Cabinet, we had Ministers who were opposed to impunity. They were a few and many were for impunity. Those who were against impunity were always marked and isolated to be bad people. My boss was one of them. Another Minister I can remember was the late Dr. Robert Ouko. Those two were always having problems in the Cabinet. I remember my boss raising certain issues about his colleagues; the two Ministers who were very much for impunity and all that. I will mention two names; one was Honorable Biwott and the other Professor Saitoti.

At one time Professor Saitoti was the Minister for Finance and there were times an MP would go out of his way to solicit for funds to develop his constituency. The money had to come through the Treasury before it could be relayed to the constituency for development programmes. On a number of occasions, my MP would go to there to get the funds for his constituency but when the funds came to the central kitty, it was channeled to projects elsewhere without consulting him. Prof. Saitoti did that on several occasions. One of the occasions I am aware of, was the Kshs110 million which was meant to go and develop the fishery sector in Budalangi but was rechanneled to the building of the Ngong-Isinya Road in Kajiado North Constituency. That brought a rift between my MP and the Minister for Finance.

On 16th of February, 1990, we went to console the family of the late Robert Ouko at their Loresho home with my boss. We reached there and found people seated. At about 11.00 a.m., the President arrived with his entourage. I remember I saw three gentlemen who were with him; the late Hezekiah Oyugi, PS Internal Security, the then Nakuru DC Jonah Anguka and Mr. Kanyotu, the Director of Special Branch. However, it was a large group. The President entered the house and at the far end corner was Mrs. Christabel Ouko and the other corner was the mother of Ouko. The President bent down to say *pole* to the widow but instead the wife grabbed the President by the neck and began to cry on him. She was telling him: "Give me my husband! Give me my husband". It was so emotional. She was in tears, "Give me my husband! Tell me where my husband is". It took a few seconds then the President's security disentangled the widow from the grip and the President stood up. There were cameras there but nothing has been shown to date. I saw it with my own eyes and it still rings a bell.

The President was very embarrassed in that scuffle. Before he came in, those who were inside the house were asked to come out of the house. When the President entered, we

followed so we were seeing that act because we were looking at it. He entered first and we followed.

Being that embarrassed, he asked the family to accompany him and they went upstairs to a study room. It was him, the Ministers, the PSs and senior Government officials. Some of us who were small were not allowed to go there, so I remained in the sitting room.

Five minutes later, they all came down. We all went into our cars and drove off. In the car, my boss used to take the back seat. I looked at him and he was very pensive. He did not utter a word. We drove to Loresho through Parklands and then we reached a point and he said: “Ndagwa, do you see this compound? Look at that gate. That is where they shot my friend Pio Gama Pinto”. He was very emotional, almost at the verge of crying. Then he said, “The people who have killed Ouko could be the same people who killed Pio Gama Pinto because they have covered up their tracks in such a manner that the truth may never come out”. He was speaking with a lot of emotion. He spoke for about 15 minutes without stopping. I did not interfere, I was just listening. He was talking of, “I am tired of this Government; a Government that kills its people with such impunity”. He spoke and spoke about the Government and said, “I fear for my own life”.

I asked him why and he said, “Because Ouko and I were the only two people in the Cabinet who were against massive corruption. So, now that Ouko is dead, I think I am next. I fear for my life”. We talked until we reached town. He drove to the office at Community at the Ministry of Labour and then he told me, “Ndagwa, I am not seeing anybody. If there is anything to be handled, handle it. I want to be in the office alone. I am so disturbed”. He went into the office the whole day. He did not see anybody and he did not come out. He came out at around 5.00 p.m. From around noon to 5.00 p.m., he did not see anybody. He was just to himself in the office.

From that time, I knew that Ouko’s killers must have been within the Government circles. He added something, he said, “The killers of Ouko would not be discovered because it is pointing at the Government which I fear cannot investigate itself”. That is the much I can say about Ouko’s death.

Let me move on and talk about Muge’s death. As earlier mentioned, I was a teacher in Eldoret and I used to visit the church. I had met him at one time and the secretary of education in the diocese, Mr. Enock Opuka, who was my former teacher at Sigalame. Through Opuka, I met the Archbishop. At least I was able to shake his hand. I was now in the Ministry of Labour as a Personal Assistant. One of my duties was public relations and communications. At times, I could represent the Minister in political functions especially in the constituency. More so, I could go and organize, meet the people and tour for the MP in the urban areas where our voters were. Eldoret was one of those towns. I remember I had come from Eldoret to the office; therefore, I was closer to Eldoret because it was a town I had been plucked out from. The Minister one time came and told me, “Ndagwa, you know what? There is a big problem I am having. They want to kill Muge and they want to kill him while in Busia. Why on earth do they want to kill Muge while in Busia? I am a bit disturbed”. Maybe I can see that Muge was the acting bishop

of Katakwa Diocese. That is the present day Teso which was by that time in Busia where Okondo was the KANU Chairman. If Muge was to die in Busia, Okondo as the KANU Chairman was answerable. So he was worried.

Secondly, I want you to understand that Kenyans have different aptitudes to certain issues. Luhyas in particular fear bloodshed. We associate bloodshed to curses. For somebody to kill somebody around you, we really fear. Therefore, Mr. Okondo was so apprehensive about Muge dying in Busia. He asked me: What do we do about it? We discussed the two of us and we knew Muge by character was a man who could not be scared by anybody. So, how do we save him? That was the problem. We knew very well that these people were very dangerous and if they wanted to kill him, they would kill him in Busia. So how could we save Muge? Mr. Okondo could not face Muge and tell him his life was in danger because he was a Minister in a Government that was planning to kill him. Therefore, we were in a very difficult situation. We agreed between us that the best thing to do is to scare him. Tell him, "Do not come to Busia. If you come to Busia, you will die". We were, however, also wondering whether he would fear because he was a fearless person. It was a gamble. We agreed that the Minister organizes a political rally in Busia where he was going to throw those words to the whole country Muge inclusive. The rally was properly covered by the press. Just as we feared, Muge took the threat head on. He said, "If you are threatening me, I am coming. Let me see what you are going to do". He did not know that Mr. Okondo was not the one behind it. He thought it was Mr. Okondo threatening him. He did not understand the whole scenario. He said he would come to Busia and even fixed the date to be 14th August which was a Tuesday. The Press was there, "He is coming, let Okondo dare and kill him". The enemies of Muge began to plan to kill him.

On 13th August, Monday, I left for Busia. We had planned to visit the President's home at Kabarak on Thursday 16th. I was going to Busia because we had planned to have a planning meeting to take people from Busia District to Kabarak. Mr. Okondo knew Muge would be going to Busia on 14th and he said, "I cannot go for that meeting because it may bring a showdown. Now that I am the point of reference there, if I appear there, the same day it would not be nice. He told me to go and represent him in that meeting as he remained in Nairobi. We were all apprehensive about what would happen. So I went to Busia on 13th and slept there.

On the morning of 14th August at around 9.00, Muge came to town. He was very heroic. In fact, he was carried shoulder high for about a kilometre. The people were so many. There was a very large crowd up to the St. Stephen's ACK Church, Busia. What disturbed me was that the whole thing had taken a political dimension. I even saw Mr. Okondo's enemies in Bunyala Constituency in large numbers hovering around Muge. It was now a contest between Mr. Okondo and the world, so to speak.

When I saw those guys there, I went away. So, between 9.30 a.m. and 11.00 a.m., the bishop was in Busia Town, saying mass in the church. I had gone to do other things. When I came back, I was told that Muge had left and that he would return at around 11.00 a.m. The meeting that he was supposed to have attended that morning was pushed

to 2.00 p.m., because of that meeting; to give room to Muge to finish his business. So, at 2.00 p.m., we began our meeting in the Municipal Hall, Busia, which was chaired by the DC, Mr. Aduor. We met for about an hour. At 3.00 p.m., the Police Superintendent, Mr. Patrice Mwatee, came to the hall and summoned the DC. They went outside and talked for about a minute or two and came back. I could see some change of face on the DC. I noticed that change of face. He then came and told us: "Ladies and gentlemen, I am sorry. The meeting has been postponed indefinitely. We will call you another day."

We all left. He did not explain what had happened but it did occur to me that something must have happened to the Bishop. I did not expect that somebody would really want to kill the bishop, a man of God. Personally, I was not as worried as the Minister was. The Minister was very worried all through. For me, I was wondering: "Who can kill a bishop?" At around 3.30 p.m., I was so relaxed. I went to a bar to take some beer. I took some beers up to around 9.00 p.m. I was spending the night at a friend's place, a Mr. Charles Ndanyi. He works with the Ministry of Home Affairs currently. We went to the house towards 9.00 p.m., and switched on the radio. The news bulletin was there: Muge is dead!

I was done. I knew Muge so well. I had been following the story about Muge. So, they have really done what they said they were going to do, I wondered. I almost collapsed. I became very sober. The beer in my head just evaporated. I thought very fast. What should I do? How is the Minister now in Nairobi? I rushed out and went to a public telephone booth. At the time, there were no mobile phones. I called his Karen home. "Mzee, have you heard the news?" He replied: "Ndagwa, I am done!" He was speaking with a shaky voice. "Ndagwa, I am totally finished. My political enemies have finished me. Can you come to Nairobi immediately?" That was about 9.20 p.m. There were no buses to Nairobi.

So, I took a taxi from Busia to Kisumu. I got the last Akamba Bus at around 11.00 p.m. and boarded it. By 7.00 a.m., I was at his Karen home. I found a pale man. He was so disturbed. He was almost your age. You could see a man of age looking so pale. I felt for him. We sat down and compared notes. Things were not working out. The Press was really on him, bashing him. The Press had even coined a description for him – that he had a loose tongue. They even drew the cartoon of a man who was tied by his tongue, and who had fallen down. It was a bad week for Mr. Okondo.

He told me: "Ndagwa, I am not coming to the office. Take charge of everything that may arise, you and the PS. Let the PS handle official matters, handle political matters. If there is anything that is beyond you, please, call me or drive in and we share. Do not talk to the Press."

So, I came to the office. I was so worried. That was the longest week I have ever witnessed. In between, Mr. Okondo received a telephone call from the President, who told him not to resign. People from all over were prevailing upon Mr. Okondo to resign. The President told him: "Do not resign." He even asked some Ministers to give him encouragement. So, they were telling him: "That was a passing cloud. Do not resign."

Those were the days of impunity. Mr. Okondo kept on telling people “I will not resign” just to appease them but he told me: “Ndagwa, I am going to resign.

So, on Saturday, he came to the office, packed his bags and went home. On Monday, he called me at around 11.00 a.m., to go to Karen. He gave me a note to take to Kenya Broadcasting Corporation. He resigned on 20th March. According to me, Mr. Okondo did not kill Muge. Somebody else did. According to me, Mr. Okondo had not resigned because Muge had died. He resigned because he felt betrayed. He felt betrayed because somebody whom he trusted and thought was his friend had betrayed him at the 11th Hour. Why did he feel so? He had personally stumbled on information about Muge’s death, at very high level around State House. Therefore, he knew that Muge’s killers must have come from State House. He also knew that he was very close to the powers that were at that time, as a Minister.

I will take you back. The President and Honorable Okondo were friends, way back in the 1960s when both of them were in KADU. They and other people jointly formed KADU. Mr. Okondo was the Executive Officer of KADU when Moi was the Chairman of KADU. Around 1971/72, the President felt a very serious challenge. We had a clique of people who did not want him in office. I call them the “KANU mafia.” These people tried all avenues to have him off the Office of the Vice-President on many occasions.

So, during that time they found him, he was bankrupt. At that time, the Kiambu mafia controlled the banking industry in this country. So, word went round: “Do not bail him out.” So, they filed a Motion in Parliament of bankruptcy against the Vice-President, so that he could be declared bankrupt and lose his seat as the Vice-President. Luckily enough, Mr. Okondo was the Executive Chairman of the Kenya Commercial Bank – the Government bank, which the Vice-President owed money.

So, according to Mr. Okondo, one Saturday evening, the Vice-President drove into his home in Karen and told him: “Bw. Okondo, I am done. I have tried all ways to bail myself out but I have failed. The Motion is in Parliament and it will be discussed on Tuesday. Indeed, I am bankrupt. Is there a way in which you can help me with a loan from your bank?” They discussed the matter and agreed that Mr. Okondo would help out the Vice-President.

Mr. Okondo wrote a personal cheque to clear the loan balance for the Vice-President and asked Miss Gathoni Mungai, who was a senior banker in the bank. He summoned her to his home at around 11.00 p.m. He gave her the cheque and told her to go and bank it that same night. Reason? By Tuesday, it should have been cleared, so that the Vice-President would have no loan with the bank. This was done. This information was corroborated by Gathoni Mungai herself. Later on, in 1997, I was a news correspondent. She was a publisher of a magazine, to which I used to contribute. So, she asked me to write a story about Mr. Okondo, when Mr. Okondo had died. Mr. Okondo died in 1996. In the process of writing the story, she confided in me.

So, that is how close Mr. Okondo became to the President. He had saved him at the 11th hour. Indeed, the President also paid back to him in a number of occasions. There were times when Okondo would appear to be losing in elections but somehow, he would go through, courtesy of the powers of the President. So, it was a symbiotic relation. Now to come and mess up Mr. Okondo to that degree, it hurt Mr. Okondo so much. That was why Mr. Okondo resigned. He told me that he could not sit in the same Cabinet with those people who had made him look that bad in the eyes of the whole world.

Mr. Okondo was my boss. I loved him so much. Having been made to appear so bad, it pained me. I took time to find out what really happened. If Mr. Okondo did not kill Muge, who did? So, I took my time to go to Eldoret more than once just to find out from people what really happened. I discovered startling information, which could also be corroborated by other people to make it firm. It was said that his car was trailed by vehicles right from Kakamega Golf Hotel up to the scene of the accident at Kipkaren. It was alleged that the occupants of the car that trailed him were Special Branch officers.

Secondly, it was said that there were two vehicles that were involved – the lorry and the trailer. The trailer was parked facing Eldoret. The lorry came from Eldoret. It was carrying milk. That was the lorry which crushed into the car. I was made to understand that both of them were stage-managed. Muge was a very fast driver and fairly impatient. That was his character. So, they knew that once they had a trailer in a certain position and the car began to overtake, because he was very impatient, he would be between the trailer and oncoming lorry. That was what happened. It was properly stage-managed. So, he was crushed and pushed behind the trailer and into the ditch to the left.

The third thing I discovered was that the Bishop Muge did not die at the scene of the accident. In the vehicle, there were four people – two ladies and two men, whom I think are still alive. One of the men is from Nambale Constituency. If you can get those people, they will tell you. The bishop never died of the accident. I was told that one of the people who were in that lorry came out with a pistol and pumped a bullet in his neck. The family of the bishop can corroborate this because they looked at him before they buried him. He had a bullet wound in the neck. The question is: “Who were those people?” They said that he was an old driver. Where did he get the gun from?

I also discovered that those people were APs, who were drivers of the late Ismail Chelang’a, the DC of Uasin Gishu District then. They were the ones who did it. Where that lorry came from, it had a driver by the name of Omukuba. He was a Bunyore young man. He was the driver but a few days to the accident, he had been sent on leave. That was what I discovered. However, later on, he was charged for causing an accident and sentenced to seven years imprisonment. What is interesting here is that this guy, although he was not involved...

(There was a technical hitch)

The Presiding Chair (Commissioner Chawatama): I am so sorry...

Mr. Jacob Ndagwa: I was saying that I was able to make a follow up and discover a few developments. I wanted to unravel the mystery and know what really happened because it was a very interesting scenario. So, I was saying that the gentleman called Omukoba was not anywhere near the scene of accident but he was the one who was charged and sentenced to seven years imprisonment.

The other interesting scenario was that the case was heard in a Senior Resident Magistrate's (SRM) court and that magistrate, after sentencing Omukoba for seven years imprisonment, was promoted from the SRM position to Judge of the High Court. We found that to be an abnormal promotion because in the Kenyan system, from SRM, one becomes Principal Magistrate, Chief Magistrate and then Judge of the High Court. So, to skip the two positions and be promoted to Judge of the High Court is suspicious.

The third thing is that Mr. Okondo used to have a political name, which he used in politics – Omukoba – which means “the captain” in our mother tongue. The guy who “killed” Muge was Omukoba. So, we were wondering why they had to bring the two related things. Was there somebody who said: “This guy is called Omukoba, let us look for Omukoba to kill, so that we link the two names together?” This was a coincidence.

After the death of the bishop, and after Mr. Okondo's resignation, the President summoned him to State House. Mr. Okondo told me that he gave him a proper dressing down. He told him: “You are a coward. Why did you have to resign?” Mr. Okondo told him: “That was out of my principles.” The President was not happy about Mr. Okondo's resignation.

The people who were involved should have gotten scared that with Mr. Okondo's resignation, he would spill the beans one day. So, they began to work on how to eliminate him, so that he could also go with whatever he knew about Muge's death. We began to see systematic planning to eliminate Mr. Okondo. The District Commissioner Chelang'a, who was in Uasin Gishu District then, whom I mentioned earlier, was posted to Busia District – Mr. Okondo's home district – as Senior DC. The first feared encounter was that he became very close to the Minister. In fact, he would not like to have an event with the Minister being away. He became so close that Mr. Okondo became suspicious.

I want to tell this Commission that the Ministers we have in this country have their own informers in very high offices. That is what I discovered in politics. They are always informed on what goes on around their lives. So, somebody should have tipped Mr. Okondo and told him: “Take care. This guy has been posted there for a purpose. Be very careful.” So, he shared that with me. He said: This gentleman has a mission. We should be very careful with him.” So, whatever he was doing, we were very suspicious. He tried all he could. I think he thought that Mr. Okondo was easily yielding.

After that, he began to flirt with Mr. Okondo's political enemies in the constituency. He did a lot of damage to Mr. Okondo. So, Mr. Okondo got infuriated. He used his political connections within the system to have Chelang'a removed from Busia. Chelang'a was transferred from Busia to Nakuru as Deputy PC. Due to his connections in Government,

he served as Deputy PC for only two weeks, after which he was promoted to be the Provincial Commissioner, Rift Valley Province. So, he was the Rift Valley PC for some time.

On 31st August, 1991, I was called and told: “Your boss is at the Nairobi Hospital. He is very sick.” We went there to see him. He was really sick. He could hardly speak. Again, we were told that there was a move, to have Mr. Okondo die that night at the Nairobi Hospital. The doctor who was seeing him, whom I do not want to mention by name, had been asked to eliminate him. Mr. Okondo told me and his wife: “Get me out of here. That doctor is going to finish me.” So, the first thing we did was that we changed the doctor. We removed the doctor who was there and brought on board the late Dr. Mungola.

On that same night, Mr. Okondo left the hospital very sick. We took him to Karen. So, Dr. Mungola was able to treat him while in Karen. However, given his condition, on Monday we prepared and he flew out of the country to London; from his house, and not Nairobi Hospital. So, you can see how dangerous it was. He was diagnosed with cancer of the duodenum. That was what killed him eventually.

He came back in October and he was looking for ways of how to exit the KANU Government. Later on, Chelang’ a was also, in my opinion, eliminated. He died in an air crash. In my opinion, it must have been a way of eliminating him in order...

You know, in Government, when you are used to do dirty things, you eventually end up being dirty. They will also eliminate you in the same way. So, I am sure that they also wanted to get rid of him with all that he knew. We also read in the newspapers at one time that in the white car that came for the late Dr. Ouko, Chelanga’s name featured. So, there were so many dirty things he was involved in. So, eventually, he was also eliminated in 1997 air crash.

In conclusion, I want to say that I got fed up with KANU deeds. It was too much with impunity. At one time, I shared with my boss, the late Okondo: “Why can you not dump this party? This party has done you a lot of harm.” Okondo refused to resign not because he did not want to but because he did not know which party to join. As a person, he attributed the problems of this country to two major tribes – the Luo and the Kikuyu. At that time, the two main political parties that existed were FORD-ASILI under Matiba, who is a Kikuyu, and FORD-KENYA, under Oginga, who was a Luo. So, he did not want to join either of them. So, he was in a quandary. He did not like KANU. He did not like FORD-ASILI. So, he was just there in the middle.

No wonder that in 1992, when he wanted to defend his seat, he chose PICK of John Harun Mwau, which was an unknown party. It was because he did not like any of those three parties. He lost. So, by February, 1992, I got fully fed up. My boss refused to dump KANU. So, I resigned from my position because I could not see myself serving in a Government that was so dirty. So, I resigned earlier on and joined FORD-KENYA. In the election of December, 1992, I and my former boss were in opposing sides. We had a lot of dirty politics in that election but that still cannot make me not to come out and say

what I knew about the man I so admired. I am saying that if Bishop Muge was murdered, it was not by Okondo. It was by somebody else.

Thank you very much for listening to me.

Mr. Patrick Njue: I thank you as well, Mr. Jacob Ndagwa, for that testimony which we listened to; it was like a story I found to be almost like a movie. I will ask you only one question. Why would Okondo, as much as he was a KANU chairman, seem to be sort of dissenting in those days?

Mr. Jacob Ndagwa: I cannot say that he was a dissident as it were. It was only that he was not a corrupt leader. He was never corrupt. If he was may be, to a very small degree. So, in a Government that was full of people who were corrupt, he was like isolated. That is what I can say but regarding him being a dissident, he was not a dissident. In KANU, if you became a dissident, you would be fired the next day.

The other thing I can add about his character is that he was a performer. In KANU, if you were smart in terms of performance, you became an enemy of other people in this country in those days. They did not like performers. Just look at people like the late Dr. Robert Ouko. Those who were performers were never darlings of the system because they would outshine the others.

Mr. Patrick Njue: You have also talked of the two ladies and the gentleman who were with him in his car at the time of the accident. Do you have the names of the person you said hailed from Nambale?

Mr. Jacob Ndagwa: I do not have it but I can get it. Give me your telephone number. I will call you back today and give you the names.

Mr. Patrick Njue: I have no further questions. Thank you for coming and for testifying today.

Presiding Chair your witness...

The Presiding Chair (Commissioner Chawatama): Thank you very much. I will ask Commissioner Farah if he has any questions for this witness.

Commissioner Farah: No, I do not have any question because his writer-up is very clear. The sequence of events on what happened is narrated clearly. So, I do not have any question.

The Presiding Chair (Commissioner Chawatama): Commissioner, Dinka.

Commissioner Dinka: Thank you very much, Jacob. When you were Personal Assistant to Honorable Okondo, how old were you?

Mr. Jacob Ndagwa: I was between 29 and 32 years old.

Commissioner Dinka: How old was he?

Mr. Jacob Ndagwa: He was born in 1924, which means he was about 66 years old.

Commissioner Dinka: But he had this kind of very close relationship with you at that time? Normally, older people, even if you were their Personal Assistant, if you are too young, they do not normally tell you their secrets like this.

Mr. Jacob Ndagwa: Thank you very much for that question, Commissioner. I was involved in his political campaigns from 1979, when I did my first voting. I voted for him. In 1986, I was elected the Secretary of Bunyore Welfare Association in Eldoret, which was a political organ that campaigned for him.

Finally, Honorable Okondo had one character. If he found that you were good, he would just like you. He had confidence in me. In fact, I enjoyed working with him so much. Despite his wealth, experience and whatever, he had confidence in me.

Commissioner Dinka: For the other question, have your writer-up in front of you. I just got it. I have not read so much of it. On the third page, the fourth paragraph, the last sentence says: "Remember the notorious land grabbers came from outside Nandi land...Incidentally, their spokesman was Bishop Alexander Muge..." "Whose spokesman was he?"

Mr. Jacob Ndagwa: Thank you very much. I missed this point out. Thank you for reminding me. What I was trying to say was that there was a lot of that feeling in the Nandi people about land grabbing in the North Rift. I want to explain this from a historical perspective. Between Independence and 1980 or so, a lot of people from the Central Province acquired land in the former Kenya White Highlands, which is Uasin Gishu, from the colonialists when they left. According to the Nandi, especially, they felt that it was their right to get that land back, instead of it going to outsiders. During that time, the then Vice-President, now retired President Moi, sat with his hands folded up as outsiders came in to acquire the land meant for the Nandi people, which made them to be very bitter with him as a person.

However, being their own person, they gave him total support. When it came to his own regime, in the 1980s and the 1990s, the Nandi people saw that there was, again, a land grabbing wave. This time round, it was not the Kikuyu people taking the land but it was the elite members of the Tugen and Elgeyo communities. Retired President Moi is a Tugen and former Minister Biwott is an Elgeyo. To illustrate my point, you find that there was even some land that was hived off Uasin Gishu District and transferred to Elgeyo District, something that the Nandi people felt so bad about. The reason was to move that land to Elgeyo District, so that it could be grabbed easily.

It is that kind of situation that was really boiling in Nandi land. So, when the then President formed a committee to go round to hear the views of the people, they went to Eldoret Municipal Hall. That was where the Nandi people poured out their grievances to the committee, of which Biwott was also a member. Saitoti was the chairman. Other Ministers were also members. So, the Nandi people poured out all their grievances. Who did that? It was the late Bishop Muge.

Commissioner Dinka: So, he spoke for the Nandi people?

Mr. Jacob Ndagwa: Yes.

Commissioner Dinka: In your presentation, it looks as if he was speaking for the land grabbers.

Mr. Jacob Ndagwa: No, he was speaking for the Nandi.

Commissioner Dinka: Okay. My last question is, you, as his confidant, he trusted you. Instead of going to a baraza and saying “If you come here, you will be killed”, why could he not send somebody to quietly talk to the Bishop? The bishop actually died believing that Okondo had killed him.

Mr. Jacob Ndagwa: I wish that idea did come to us at that time. I must say that if we were wiser at that time and we had used that approach, it would have been better but it did not come to us. It was an oversight. I wish we did that.

Commissioner Dinka: To me, it seems that it was not helpful to Muge because you guys predicted properly at that time that Muge would definitely defy you and come over. So, if this man was over 60 years old, and an experienced politician who knew what was going on in this country; being a Cabinet Minister, it was a little bizarre for him to say: “Muge, you come, I will get you”, which left that doubt in the minds of the people. Even when you look at the literature on Muge’s death and so on, you find that Okondo was responsible for his death.

Mr. Jacob Ndagwa: Politicians are strange people. In most cases, many politicians want to do things which may put them above the normal person. Truly, if we had your mind at that time, it would have changed the situation. It is true that those utterances contributed to something. They created an opportunity for his enemies to kill him. As far as that is concerned, we did contribute to it.

What I want to add to my written report is that when Okondo was being bashed by the Press, at one time two things happened when the Minister for Energy, Mr. Biwott, visited the home of Muge in Eldoret; the wife chucked him out and told him: “Do not come here to shed crocodile tears.”

Secondly, Mrs Muge told the Press to stop bashing Okondo as the murderer of Muge because the family of Muge knew who had killed Muge. Those were her own words as

captured by the Press. They can be found. Those words were spoken by Mrs. Muge at home. It was from that time that the Press began going slow on bashing Okondo. Prior to that, Okondo was the heat.

Commissioner Dinka: So, for our benefit, your testimony is to the fact that Muge was killed by Special Branch officers who came from the truck. Again, you said that the driver of the truck was the driver of the OCPD also?

Mr. Jacob Ndagwa: He was the driver of the DC.

Commissioner Dinka: He was a driving a Land-Rover or something for the DC. Trucks, especially the old ones, are not as automated as the big trucks that you have today. It is very difficult for someone who is not a true truck driver to drive one. Even the driving licence grades are different from those for vehicles like Four Wheel Drive (4WD). It is not easy to accept the proposition that it was the driver of so-and-so, who used to drive not a truck but a 4WD vehicle like Land-Rover and so on, which was driving this truck.

The second thing is that as the bishop was trying to overtake a trailer, he hit the other car. It could have been a normal accident; how would the truck driver coming from that other direction know that the guy is coming from there and he was going to get him? It is very difficult. It is a kind of an assumption, unless you really tell us the people who told you this in Eldoret when you went to check the story, who are still alive and whom we can get hold of and try to find out the truth from them. How did they know? Were they in the police? Were they in the Special Branch?

Mr. Jacob Ndagwa: Thank you for your observation, Commissioner. I would say that to get to the root of this matter, we need to corroborate it from two sources. One is Mrs. Muge herself. Is it true that the body of the bishop had a bullet wound on the neck? If it is true, then the issue of the accident is ruled out. Secondly, can we get any survivor of the accident to corroborate this story? As I said, there are three people who survived the accident, and they are still alive.

Commissioner Dinka: Were they in the car with the bishop?

Mr. Jacob Ndagwa: Yes, two ladies and a gentleman. They are available. So, we can get to them. If we do, they will give first hand testimony as to whether they were involved directly in the accident or not.

Thank you.

Commissioner Dinka: Was any autopsy done on the body of Bishop Muge?

Mr. Jacob Ndagwa: To my recollection, yes. The body was at Lee Funeral Home. It was done. I am sure the Government did an autopsy. I am sure the records can show that but do not forget that those days people could write falsehoods to suit the situation.

Commissioner Dinka: I hope you will be able to give the names and addresses of those people who were in the Bishop's car?

Mr. Jacob Ndagwa: I will.

Commissioner Dinka: Thank you very much.

The Presiding Chair (Commissioner Chawatama): The questions that I wanted to ask you have been asked by Commissioner Dinka. You knew the Bishop well and I wondered why you did not intervene, but you have answered that. Can you remember the exact words that Mr. Okondo uttered as he tried to scare him in order to save his life? If not the exact words but the gist of what was said.

Mr. Jacob Ndagwa: He told the Bishop never to step in Busia and if he did, he would never come out alive.

The Presiding Chair (Commissioner Chawatama): The words themselves were quite strong even if it was a way of scaring somebody.

You said that you used your links in Eldoret and discovered interesting facts. Do you know how soon after the death you used your links to discover these interesting facts?

Mr. Jacob Ndagwa: It was about three or four months. It was between October, 1990 and January, 1991.

The Presiding Chair (Commissioner Chawatama): Could you describe for us the mood when you escorted Mr. Okondo and the former President at the Late Ouko's house? What were the people saying?

Mr. Jacob Ndagwa: The mood was very sombre. People were so touched. Mr. Ouko was a performer and non-controversial. The death was a big surprise. He was a hard working man and a defender of the system. Ouko's death was preceded by his disappearance. He had disappeared for about four or five days. Then something also happened. When the President came from the USA, he held some rallies around the country; I think one was in Nyeri, Nyahururu or Kakamega. In one of those rallies, which I attended in Kakamega, he mentioned something about Kenya's peace being at stake and that as the President, he could not allow that to happen even if it meant sacrificing one person for the sake of Kenya. I remember such words said either in Kakamega or Nyahururu.

When we drove back to Siaya, the Minister was wondering what had happened that had necessitated the President to be so furious. It only came to occur to him that those words could have been implying what was to happen. When it happened, the truth began to come out and there were rumours of how they differed in USA. We were able to place things in the right perspective.

The Presiding Chair (Commissioner Chawatama): Do you recall the name of the Senior Resident Magistrate who later became Judge of the High Court?

Mr. Jacob Ndagwa: I knew her from Eldoret. She was called Roselyne Nambuye.

The Presiding Chair (Commissioner Chawatama): Welcome Commissioner Shava. I had warned the witness that you would walk in.

We have no more questions. Leader Evidence, step down the witness and give us a few minutes before you call in the next witness.

Mr. Patrick Njue: Presiding Chair, before we go, if you could indulge me, can we admit the statement from the witness?

The Presiding Chair (Commissioner Chawatama): Admitted as prayed.

Mr. Patrick Njue: Thank you.

(The Commission temporarily adjourned at 11.00 a.m.)

The Presiding Chair (Commissioner Chawatama): Leader of Evidence!

Ms. Leah Nyambeki: Presiding Chair, Commissioners, our next witness is John Chemweno who is No.22 on the programme for today.

The Presiding Chair (Commissioner Chawatama): Let me also welcome the witness.

(The Presiding Chair (Commissioner Chawatama) introduced herself and other Commissioners)

I want to welcome you to today's hearings. You requested and we obliged that you be heard in camera because you have information that you wish to share with the Commission. We appreciate that it is information that cannot be said in public. There is some sensitive information that can be shared with us in such a forum. All these people around you are employed by the Commission and they are here to ensure that your testimony flows and that we keep a record of the same. They are under oath and are not allowed to disclose what they have heard in this room today. That also applies to us. We want to ensure that your safety is maintained. So, please feel comfortable and be relaxed. I can see that you have brought somebody with you. Would you like to introduce the person?

Mr. John Chemweno: He is my lawyer, Mr. Mengich.

The Presiding Chair (Commissioner Chawatama): There is a way in which we speak through lawyers, so you can turn the microphone around.

Mr. Andrew Mengich: My name is Andrew Mengich, and I am an advocate of the High Court of Kenya. I have known the witness for quite a number of years. I happened to have been part of his defense team when he was facing some charges by the Government of Kenya over an issue that he is going to present shortly. So, we are pleased and happy for you to have given us this opportunity for him to present his case.

The Presiding Chair (Commissioner Chawatama): Counsel, we welcome you to today's hearings and we do encourage witnesses to come because we want to be as transparent as possible and we also want witness to be comfortable. One way of being comfortable is for their lawyer to be present. I do not know whether you have looked at our rules.

Mr. Andrew Mengich: Yes.

The Presiding Chair (Commissioner Chawatama): Excellent. Therefore, you understand our process very well.

Mr. Andrew Mengich: Precisely.

The Presiding Chair (Commissioner Chawatama): Thank you. You are most welcome and I am sure from time to time if he wants to speak to you or you want to speak to him, we will stop and allow you to consult with your client but we also hope that the testimony will run smoothly. So, we will allow the Leader of Evidence to lead the witness and ask questions or clarifications and then the Commissioners in turn will ask your client some questions or clarifications. That is how we are going to proceed. If there are any concerns at any time, please, let us know.

Ms. Leah Nyambeki: Could you kindly introduce yourself and what you do?

Mr. John Chemweno: My name is John Kipchoris Chemweno; I am an ex-Inspector of Police, Criminal Investigation Department (CID) photographic section.

Ms. Leah Nyambeki: You are before the Commission today because of a statement that you recorded earlier with us. Could you kindly take us through that?

Mr. John Chemweno: Commissioners, I was called about two weeks ago to come and give a statement in Eldoret.

Ms. Leah Nyambeki: Could you kindly state to us what you recorded?

Mr. John Chemweno: I was told to talk about the late Crispin Odhiambo Mbai. I can state that on 17th September, 2003, I was requested by the Provincial Criminal Investigation Officer (PCIO) then, Mr. Kabila, that the Commissioner of Police wanted me to join the team for an investigation at Kilimani Police station. That day one suspect called Collins Ketore Kilel was to give a confession.

Ms. Leah Nyambeki: Could you please repeat the name of the suspect?

Mr. John Chemweno: The name of the suspect was Collins Ketore Kilel. The Superintendent of Police called Mwaniki came to my office when I was acting as OC Photographic Section...

The Presiding Chair (Commissioner Chawatama): You are an officer, so you know and I am sure you have even appeared in courts, we want the right record so that we are able to follow. So, we are writing what you are saying, so move a little bit slowly.

Mr. John Chemweno: The PCIO Nairobi Area sent SP Mwaniki and we went to Kilimani together with him. On reaching Kilimani, I was shown the man who was in charge of the investigation at that time, Mr. Mwaringa, Deputy PCIO Nairobi Area. I started arranging to shoot the filming of the said suspect. After shooting the film on that day, I prepared a tape which was taken to the Commissioner of Police. At that time, the Commissioner of Police was Mr. Edwin Nyaseda. On 18th September, 2003, the second suspect was arrested. His name was Moses Mbuthe Gitogo. On 19th September, 2003, the suspect was again filmed as he confessed at Kilimani and a tape was prepared and taken to the Police Commissioner, Police headquarters.

The Presiding Chair (Commissioner Chawatama): Was he filmed for confession or conviction?

Mr. John Chemweno: It was for confession. I was filming the confession and another inspector, Mr. Mwaringa who was in charge of investigations was the one who had taken the statement from the suspects. On 20th September, 2003, a third suspect was arrested. His name was Karume Otieno. The confession for Karume was taken on 22nd September, 2003. I prepared a tape and it again went to the Police Commissioner's Office, Police headquarters. From 22nd to 25th September, 2003, we were doing interrogation for more leads from the suspects.

There was one day, I do not remember the exact date but I think it was on 26th September, 2003, we went to Parliament Police Station to request for the office of the former Member of Parliament for Kamukunji, Mr. Norman Nyagah. By then he was the Chief Whip. They did not allow us. They totally refused and we had to write in the Occurrence Book at Parliament Police Station. The person who was leading that was Inspector Boaz Opeto. During our interrogation with the suspects who were all from Kawangware, we proceeded to Kawangware and they showed us where they met before going to the house of the late Dr. Crispin Odhiambo Mbai. We went to Kawangware towards Satellite where they said that they met with Mr. Norman Nyagah. We came to Adams Arcade stage where they said they waited. They said that they were three of them but one of them was still at large. I still remember one name because it has been long, that is, Gabbow. He went to Tanzania and we had not apprehended him.

At Adams Arcade, those people showed us where they sat and the watchman, who was the first suspect, showed us where they sat. He directed us to the house of the late. On

reaching the house of the late, that is the time, I knew that those were the real killers of the late Crispin Odhiambo Mbai. They showed us how they operated from the house. On reaching the house of the late on 26th, I was so much puzzled when they told us how they acted when they entered the house of the late that afternoon. We told them: "Please, just do what you did." They demonstrated exactly what they did. That day, I concluded in my heart and said that those were the real persons who killed the late.

The first suspect said that he was taken to Ngong Hills Hotel and met certain people whom he would not name. He told us that he will never say who they were. He only mentioned the former Member of Parliament, Honorable Nyaga. That is why I said earlier that we went to Parliament because we wanted to know exactly where those people met. He told us that after meeting at Ngong Hills Hotel, they went to the office of Norman Nyaga in Parliament. The suspect called Collins Ketore was the one who used to work as the watchman at the compound of the late Crispin Odhiambo Mbai. So, he had access to all places. The suspect also said that he was actually taken to Norman's office by Honorable Joseph Nyaga, the Minister for Co-operative Development and Marketing. He was the one who introduced him to Mr. Norman Nyaga.

During our investigations, I had access personally to the Commissioner of Police, who used to call me and ask how the progress was getting on. I used to have a cordial relationship with even the PCIO, Nairobi Area, Mr. Kabila, and the entire team. So, there was no suspicion of leakage and whatever.

Your honours, I received a call from the Commissioner. He told me that somebody was to come and see me on 26th. It was that evening after coming from Kawangware. A journalist from *The Standard* newspaper, David Makali, came to my residence. By then I used to stay at Kasarani Police Station. He told me that he had spoken with the Commissioner and wanted to inquire about what I knew about the late. I went with him to my house. He wanted the confession of Otieno Karume. He listened and followed the proceedings and told me, please, let me go and make one copy of it. Since I had access to the Commissioner and he was the one who actually told me that he was sending somebody, I gave him the tape.

On Sunday 28th, they published the verbatim report of the tape. The headline was "*Mbai Killer Confesses*." On 29th at Pangani Police Station, the Flying Squad Office, where we had gone to set our base, I got a call from the PCIO, Nairobi Area, asking me to write a statement because they suspected that what was on the newspaper was the verbatim report of the tape. Remember that the tape was already with the Commissioner of Police at the headquarters.

After that, I was arrested and taken to Langata Police Station. On 30th, I wrote a statement. On 1st October, 2003, I was taken to court with David Makali and charged with the theft of that video tape. On 2nd October, I was served with a letter of interdiction from Service. From that day, I was actually in and out of court. I was again charged for assault of the same three suspects who were now in court and charged with the murder of the late. They said that I was the one who made them to confess about the murder of the

late. The case was at Nairobi Law Courts. I was charged with other six police officers, but my charges were more than theirs. I was the real suspect for beating those suspects. Through God's mercy, after battling all the way through, our case was heard and it was found that we did not have any connection with the murder of the late Mbai. During our investigations, many cover-ups were coming up all the time. The Commissioner of Police was somehow bitter with what was happening. There was a lot of interference. My being taken to court was just a cover-up of this case at that particular time. The charge of assault was to cover this case of the murder of the late professor. The case came to a close and they did not find any charges against my friend, David Makali and I, and we were released. I was also acquitted for the charge of assault.

After that, the five police officers were reinstated. It is only me who was removed from the police service. They said that I was unfit. I cannot remember right now the names of the other police officers, because it has been long and they have gone to various places. If this Commission wants to have their names, I think they can get them at the CID Headquarters, where we all belonged to.

They sent me a letter to show why I should not be removed from the service, to which I replied. Even before I replied to the letter, they said: "Please, you go." I have those letters here. One was from the Police Headquarters dated 3rd August, 2006. It was addressed to No.230593, Inspector John Chemweno. This was through the Director of Criminal Investigation Department (CID). It read: "Removal from service." Normally, with the Police standing orders, you do not have to question. You just write what they tell you to write and I did that. I said that I adhered to the rules. The reply that I got read: "Removal from service." That was the end of everything.

Your honours, the murder of the professor touched me very much. That is because what the suspects said was exactly true. I am standing before this Commission to tell you exactly what those people said. It was the truth and nothing but the truth. The only problem which came was the cover-up, I think from the politicians. Whenever a certain name was mentioned, some people would make a lot of noise.

I was a dedicated police officer. I was promoted on merit in 1995. The work that I was doing was excellent. In 1997, again, I was among the police officers who were promoted on merit. In 2000, I went to the Kenya Police College for an Inspectorate course. After that incident of the late, I was taken to join those police officers who were there. I had a very cordial relationship with the Commissioner. He got even the slightest evidence. By then the Prime Minister was the Minister for Public Works. The investigation team said that the Prime Minister wanted to know and so, we had various groups of interested parties who were there. There was the Prime Minister and Assistant Commissioner of Police who was in charge of intelligence at CID Headquarters, who had his own team. There was also the PCIO who had a link with the Commissioner at all times. Even during the day, I used to get calls from the Commissioner himself and he would tell me: "Please, see so-and-so. Go and see Mr. Okonya who was in charge of intelligence at the CID Headquarters." So, there was a lot of interference in that case at that time.

Your honours, my conclusion is that if the killers of the late are not brought to book, then our country is heading nowhere. In 1969, I was still a very young boy when I heard about the Minister, Tom Mboya, who was shot in Nairobi. Again, it happened when Dr. Robert Ouko was killed. By then, I was at the GSU Headquarters. The GSU officers went to Kisumu, Kibera and Mathare and beat up people. When it came to the case of that doctor, it was very painful to me. Even when joining the investigation at that time, we wanted to know who were responsible. But after getting those people, some people wanted to hide it. I gave out that tape out of trust for the Commissioner. I also wanted Kenyans to know what was happening. I still remember that particular day, on 14th, when the late was shot. The Prime Minister, who was a Minister then, went to the balcony of Nairobi Hospital and cried. He said: "These people must be brought to book." When we inquired about the people who were at Ngong Hills Hotel, they refused to tell us. They said that they would be finished. They said that they knew only one person. They stuck with only Norman Nyaga. They said that they would not mention the other people, because they would be finished if they did so.

Maybe, God used me. Many people were sacked from the Government. I will read the Bible before I make my own conclusion. The book of Zachariah 8:16-17 says:-

"These are the things you are to do. Speak the truth to each other and render true and sound judgment in your courts. Do not plot evil against your neighbour and do not love to swear false. I hate all these, declares the Lord."

Your honours, after the police served me with the removal letter, I went to the police headquarters and my file under the pension scheme. They paid me and up to now, I get only Kshs10, 000 every month as pension. Right now, I am approaching 50 years and have a family. My children were in an academy by that time. I had to remove all of them from the academy and take them to public schools. Right now, I do not have anything to support them. The Kshs10, 000 cannot sustain them.

Ms. Leah Nyambeki: I want to thank you so much for the information that you have given us.

Commissioners, I just have a few questions. At the beginning, you stated that you were called on 17th to join the investigation. Why were you specifically the person who was called and what role were you to play in that investigation?

Mr. John Chemweno: Your honour, I stated earlier that I am a professional police photographer. I do video as well as still photography. My duty on that particular day was to go and record the confession on video.

Ms. Leah Nyambeki: You informed us that in the course of your investigations on three separate occasions, you were able to film three suspects who had been arrested for the murder of Dr. Mbai. Could you kindly give us an overview of what it is that they stated that was recorded?

Mr. John Chemweno: The three suspects stated that they were hired by the watchman, who is the first suspect, to go to the house of Odhiambo Mbai and eliminate him. At that time, they did not tell us the reason. They were only to finish him. I do not remember, but those people were caught in Kawangware. We went to Kawangware where they used to meet at a cobbler's shop. We were following this issue carefully. If they said that they went to this and that place, we had to go there. On the last day, when they indicated that they met in Adams Arcade, it made me conclude that what they were saying was accurate.

Ms. Leah Nyambeki: You have also told us that you received a call from the Commissioner of Police on 20th informing you that there was someone who was coming to see you. Did he tell you who this person was or what the purpose of this person's visit was going to be?

Mr. John Chemweno: Your honour, he told me: "Somebody is coming to see you. Just tell him what you know."

Ms. Leah Nyambeki: You also mentioned that one of the suspects had mentioned the name of a former Member of Parliament, Mr. Norman Nyaga, and that you went to Parliament, but you were not able to see him. Did you succeed at any later date to get a statement from him, as one of the persons mentioned?

Mr. John Chemweno: Your honours, on that particular day, I think 26th, we went to Parliament Police Station and told the officer who was on duty that we wanted to get in. He said: "No. We do not allow people to enter Parliament just anyhow." So, we had to seek for permission from the Serjeant-at-Arms of Parliament and we wanted to get in and he refused. We had to write in the Occurrence Book that we had been denied entry. The Serjeant-at-Arms told us to first seek permission from the Speaker. That did not happen.

Ms. Leah Nyambeki: After recording your statements, can you kindly take us through the process of video recording and how they are stored after the recording is done?

Mr. John Chemweno: Your honours, as I stated earlier, the first confession was taken at Kilimani on 17th. Then on 19th, I took the second confession. I took the third confession on 22nd from the suspects. During all this time, the Commissioner of Police was in communication with me. Their confession was done on tape. I produced a tape which was taken to the Commissioner. Another one was taken to the PCIO, Nairobi Area. A third tape was to go the intelligence service at CID headquarters. That was, Okonya's office at that time. I used to keep the camera in our operation room, which was at Pangani Flying Squad Office. It was actually secure and we did not have any suspicion that somebody would take it.

Ms. Leah Nyambeki: Could you, please, kindly explain to the Commission how it is that you had this particular tape in your house; the one that you shared with the journalist?

Mr. John Chemweno: On that particular day, 26th, we had come from Kawangware very late hours, around 9.00 p.m. There was a lot of traffic jam on that day and we had to use Forest Road up to Kasarani, where I stayed. Before I arrived at my house, I got that call from David Makali who told me that he was coming to see me. Earlier, the Commissioner of Police had told that somebody was coming to see me. So, I had the tape on the said suspect, Karume Otieno, on that particular day.

Ms. Leah Nyambeki: You also told us that you were acquitted against all the charges, but you were still dismissed from the police force. What was the reason for your dismissal?

Mr. John Chemweno: Your honours, in the Chief Magistrates Court Nairobi this case was No.2438 of 2003. This was Public Prosecutor versus me and my co-accused...

The Presiding Chair (Commissioner Chawatama): Sorry, witness. I believe the question is the reason for your dismissal meaning: What reason did the police service give for your dismissal? Did they give you any reason, dismissed you on public interest or breaking a law or rules?

Mr. John Chemweno: Your honor, this is the letter for removal from the service where it has stated:-

“I have been directed to forward to you this letter dated 20th August, 2006, from the Commissioner of Police informing you of your removal and last working date as 4th September, 2006.”

They just removed me. In the first place, another letter requesting me to show cause says:-

“The Commissioner of Police has directed that you show why you cannot be removed from public service as provided for.”

On answering, your honor, I was promptly removed from service and nothing else.

Ms. Leah Nyambeki: Commissioners, I would, at this point, like to request that the documents he has referred to be admitted as part of the records of the Commission.

The Presiding Chair (Commissioner Chawatama): The documents are so admitted as prayed.

Does counsel have any concerns to raise for the admission of these letters?

Mr. Andrew Mengich: I just consulted the lead counsel a while ago and we have agreed on what should happen. Our issue was that those are confidential documents and *per se* are not available for use in such forums. But we have agreed that copies can be supplied as requested by the Commission.

The Presiding Chair (Commissioner Chawatama): Yes, and we will look after them. We have received some materials in the past and we have a way of... We will need them if we are to come up with recommendations that will have some meaning.

Mr. Andrew Mengich: Thank you.

Ms. Leah Nyambeki: Commissioners that is all I had. I will hand over the witness to you for any further clarification.

The Presiding Chair (Commissioner Chawatama): Commissioner Farah, do you have any questions?

Commissioner Farah: Yes, a little. John Kiptarus Chemweno, thank you very much for the good presentation you have given us in camera. But I have a few questions to ask you to clarify some matters. I want to repeat that the deceased's three names were...? I know Dr. Mbai is the surname. Give me the three names, please?

Ms. Leah Nyambeki: It is in the programme.

Mr. John Chemweno: Your honor, Dr. Chrispin Odhiambo Mbai.

Commissioner Farah: Okay, thank you very much.

Was he a doctor?

Mr. John Chemweno: Yes, he was a doctor, your honor.

Commissioner Farah: And what was his work?

Mr. John Chemweno: At that time, he was the Chairman.

Commissioner Farah: Chairman of what?

Mr. John Chemweno: Devolution Committee at the Bomas of Kenya.

Commissioner Farah: Chairman of the Devolution Committee at the Bomas?

Mr. John Chemweno: Yes.

Commissioner Farah: Thank you very much. Now let us come to the suspects. The first suspect arrested was known as Mr. Collins Kiptore Kilel?

Mr. John Chemweno: Yes.

Commissioner Farah: And what was he? Was he the gateman? Was he the watchman you were talking about?

Mr. John Chemweno: Yes, your honour.

Commissioner Farah: The watchman of Dr. Mbai?

Mr. John Chemweno: The watchman of that compound.

Commissioner Farah: The estate?

Mr. John Chemweno: That estate.

Commissioner Farah: Was he one of those watchmen who were going round the estate or was he on duty at the gate?

Mr. John Chemweno: Yeah, he was the one... Not at the gate; he used to even clean the vehicles for that...

Commissioner Farah: Patrol?

Mr. John Chemweno: For that...

Commissioner Farah: For that estate?

Mr. John Chemweno: Yes, your honor.

Commissioner Farah: And the estate was called "Adams Arcade"?

Mr. John Chemweno: I think that was the name, your honour. It is near Adams Arcade, just within Woodley Estate.

Commissioner Farah: Okay. And so, that is the guy you arrested first and, on his confession, he mentioned three others?

Mr. John Chemweno: Yes, your honor.

Commissioner Farah: One is called Mr. Otieno Karume?

Mr. John Chemweno: Yes, your honor.

Commissioner Farah: And the other one was Moses Mbuthe Kithoko?

Mr. John Chemweno: Yes, your honor.

Commissioner Farah: And the third one was somebody by the name Mr. Gabbow?

Mr. John Chemweno: The third one, Gabbow, was not arrested.

Commissioner Farah: Because he is at large?

Mr. John Chemweno: He is still at large up to now.

Commissioner Farah: Now, just confirm to me the ethnicity of these four fellows. Kilel Kiture is from what tribe?

Mr. John Chemweno: He is a Luhya.

Commissioner Farah: And Otieno Karume?

Mr. John Chemweno: He is a Luo.

Commissioner Farah: Moses Kithoko?

Mr. John Chemweno: He is a Kikuyu.

Commissioner Farah: Not a Kamba?

Mr. John Chemweno: No, your honour.

Commissioner Farah: Okay; and Mr. Gabbow?

Mr. John Chemweno: Gabbow is a Luhya.

Commissioner Farah: Not a Somali?

Mr. John Chemweno: Not a Somali, but he said the mother of Gabbow is somebody from Mozambique.

Commissioner Farah: Good. The then Police Commissioner was Mr. Nyaseda?

Mr. John Chemweno: Yes, your honor.

Commissioner Farah: Was he the Police Commissioner even the day when you were being sacked from the police force in 2006?

Mr. John Chemweno: No, your honour. Immediately after my arrest, I think it took about six months. That is when Nyaseda was sent away.

Commissioner Farah: Okay. Mr. Kavila was the Provincial Criminal Investigation Officer (PCIO), Nairobi area?

Mr. John Chemweno: Yes.

Commissioner Farah: And what were the other... Now, you were the only cameraman recording a video of the evidence. Who were the investigators and interrogators?

Mr. John Chemweno: Your honour, the interrogators were officers from the Flying Squad, Pangani.

Commissioner Farah: How many were they?

Mr. John Chemweno: We used to have two vehicles. They were over 12.

Commissioner Farah: Twelve of them? And they were the ones doing the interrogation?

Mr. John Chemweno: Yes, your honour.

Commissioner Farah: Yours was just only to film?

Mr. John Chemweno: My duty was only to film.

Commissioner Farah: Upon completion of all the filming, why did you retain the videos? I mean, the videos would normally go, as a group, you hand over the evidence to the PCIO. Is it not?

Mr. John Chemweno: Your honour, all the films were in our office at the CID Headquarters.

Commissioner Farah: Yes.

Mr. John Chemweno: Only that tape of that particular day that I said, we came from Kawangware late in the night and when I got that directive from the Commissioner of Police that somebody was coming to see me on clarification...

Commissioner Farah: Yes, but did he specifically tell you: "Somebody from *The Standard* was coming to you; please, hand over the video to him?"

Mr. John Chemweno: No; your honor, I said that I handed over this tape when Makali asked me what I know about the case, and he had asked me specific questions which were already in that tape. When I took him to my house and I showed him, he listened from what was happening there, it became exactly what he wanted.

Commissioner Farah: Yes, but what I am asking is, in police...

Mr. John Chemweno: Of course, I know, your honor, what you are trying to ask...

Commissioner Farah: What I am driving to is, in police rules and regulations, anything which has been taped – like we are doing now here with your testimony – is confidential and, therefore, what you should have, perhaps, done to that man – even if he was sent by the Police Commissioner – is to converse with him, but not to release the tape. Therefore, what he did was that, he printed in *The Sunday Standard* verbatim of whatever was

contained in the film. Is there any rule that you transgressed in that thing that later on is, perhaps, the reason they used to sack you or dismiss you from the service?

Mr. John Chemweno: Your honor, I said that I gave him the tape, but we had to.

Commissioner Farah: He kept it himself?

Mr. John Chemweno: Your honor, I said that I had to.

Commissioner Farah: Yes.

Mr. John Chemweno: I think, your honors, in that particular day, I said here that the Commissioner of Police was incensed because of what was happening, and he actually told me: "Please, somebody is coming to you" and how do I refuse to hand over the tapes and he is the overall boss? He was the one even telling the PCIO to come and get me from the CID Headquarters to go and film this thing from Kilimani area in the first place. So, I had directives from the Commissioner.

Commissioner Farah: So, it is your saying that you understood the Commissioner to be telling you to actually release all the information?

Mr. John Chemweno: Yes, your honor.

Commissioner Farah: Good. My last question is; do you think, therefore, that this was a trap set for you? Or, do you think that this directive given to you by the police was later used to really play around with the whole case and dismissing it and, therefore, making you what you call a...

Commissioner Chawatama: A scapegoat?

Commissioner Farah: Yes. Thank you, Judge!

Mr. John Chemweno: Your honor, that might be, but the Commissioner would have gotten the information even without me handing over those things to him.

Commissioner Farah: Yeah, that is why I am saying that the Commissioner could have easily even given that information through other people to Makali without referring him to you. The reason why you were called to see that man was that, perhaps, he is a conduit of a scapegoat to really...

Is that your feeling? Is that your understanding? That is what I am asking.

Mr. John Chemweno: Yes, your honor. I mean here that the man who was killed was a Luo; the Commissioner of Police was a Luo; the man in charge of Flying Squad was a Luo and the man in charge of intelligence at CID Headquarters was a Luo. Okay, here is somebody not near them, but they work together.

Commissioner Farah: So, my other question is, your understanding is that since Dr. Mbai was in charge of the Devolution Committee and there were some people who did not want devolution brought into the Constitution, he was to be got rid of. Is that correct?

Mr. John Chemweno: Yes, your honour.

Commissioner Farah: Now, Norman Nyagah, the person mentioned by the suspects was from PNU and also from those who did not want the devolution?

Mr. John Chemweno: Yes, your honour.

Commissioner Farah: The others refused to mention their names.

Mr. John Chemweno: Totally; they did not want.

Commissioner Farah: Why then do you think a set of Luo officers, who belong to the school of thought of Dr. Mbai, would now come for you?

Mr. John Chemweno: Your honour, this was a normal duty and the only person who was more experienced in handling that equipment at that particular time was me. So, I did not wish to say that there was something of such a manner. But I was on a normal duty.

Commissioner Farah: Agreed. In your reflection at that particular time you were working for the police, how do you rate the police at that time? Was there a lot of corruption?

Mr. John Chemweno: Your honour, police corruption is still there.

Commissioner Farah: I mean at that time.

Mr. John Chemweno: At that particular time, your honour it was not very much from where I used to work.

Commissioner Farah: And why do you think Nyaseda was later on relieved of his duties as Police Commissioner, in your opinion?

Mr. John Chemweno: After 2008, we met with Nyaseda at KICC. Everybody was actually on my side telling me: "Chemweno, we are sorry for what happened to you." Even if I walk along the street right now, whenever I meet all those people, everybody tells me; "Sorry Chemweno for what happened. But what you did, you stood firm."

In my opinion, Mr. Nyaseda was sent packing because of Odhiambo Mbai.

Commissioner Farah: This particular case?

Mr. John Chemweno: Nothing else; it did not happen because of corruption or whatever else; it was because of this particular case. Your honour, if I say, it is an opinion, the PCIO, Nairobi Area, Mr. Kavila and the then Minister, Dr. Murungaru, were very bitter. I wish I had taped him from *The Standard* or all the media houses. He could be seen mentioning my name. He was very agitated for what we did, even the Commissioner of Police. So, he is the one who actually sacked Mr. Nyaseda. He sent him packing because of what we did.

Commissioner Farah: When was Nyaseda Sacked?

Mr. John Chemweno: I do not remember, probably in 2004. That is when Nyaseda was sent packing.

Commissioner Farah: But as far as you are concerned, your cases went on and most of them were dismissed. You were relieved of your service from the police force in 2006; two years after Mr. Nyaseda went?

Mr. John Chemweno: Yes, your honour.

Commissioner Farah: That was a different Police Commissioner?

Mr. John Chemweno: That was Maj-Gen. Ali.

Commissioner Farah: Why were you not reinstated like the other officers who were...

Mr. John Chemweno: It is because of what they wrote back to me and said: "You have been removed from the police service under public interest."

Commissioner Farah: Thank you very much, Andrew. I have no further questions.

The Presiding Chair (Commissioner Chawatama): Ambassador, do you have any questions?

Mr. John Chemweno: I can still tell you that at that particular time, we were very many police officers. Take my case in particular. You are charged for a theft and three months down the line, you are again charged for assault. We were six, and that statement from the accused said that I was the one who was making attempt to confess and to reveal all this.

Commissioner Farah: Thank goodness to your lawyer. He fought for you hard and your case was dismissed.

Mr. John Chemweno: So, your honour, we want the truth from this Commission.

Commissioner Farah: No, we do not doubt that. We are just clarifying issues. Nobody doubts that what you are saying is the truth and nothing but the truth.

Mr. John Chemweno: Okay.

The Presiding Chair (Commissioner Chawatama): Ambassador, any questions?

Commissioner Dinka: Mr. John Kiptarus, thank you very much for your testimony. I just have two questions to clarify matters for my own understanding. Why was it that Mr. Nyagah wanted to have Mr. Mbai killed? Why particularly Mr. Nyagah? Is it personal or political? What is it? You must have seen the statement from the tape. That is why I am asking you.

Mr. John Chemweno: Your honour, we tried as much as we could to find out why he was killed, but they just told us that Nyagah only wanted him eliminated. It was not only Norman Nyagah; there were other people whose names they did not want to mention.

Commissioner Dinka: Mr. Nyagah was an Honourable Member of Parliament at that time. Is that right?

Mr. John Chemweno: Yes, your honour.

Commissioner Dinka: Who is the guy who pulled the trigger from among the three or the four?

Mr. John Chemweno: Your honour in the Kenyan style, I can tell you that it is normally like this. When suspects are apprehended and one is away, they normally put the blame on the runaway person. So, from that time, we do not know. But when we told them to demonstrate from the house how far the man who was shooting was, they said “He was not far; it was at close range.” That is why the late did not die in that place. So, I know that the assassin was Karume.

Commissioner Dinka: I have asked that question because unless Dr. Mbai’s body was shot at by more than one revolver, say with 20 bullets, the killer must be one or the shooter must be one.

Mr. John Chemweno: Yes, your honour.

Commissioner Dinka: Why would Mr. Nyagah need four people? Why would he need more evidence against himself? Why can he not send just one person who was going to kill him? For example, the person who had the best opportunity to do so was the guard.

Mr. John Chemweno: According to what actually happened, it was like this. Mbuthe who was a *matatu* conductor – and the vehicle they used to run away was the *matatu* of Mbuthe – Karume and Kaboo, who are the two who entered the house...

Commissioner Dinka: Kilel?

Mr. John Chemweno: Kilel was outside.

Commissioner Dinka: Doing?

Mr. John Chemweno: Doing cleaning!

Commissioner Dinka: I see. Okay.

Mr. John Chemweno: Your honour, before that, because you wanted to add a clarification, Kilel said that he made sure that the gate to that compound of Mbai was open. So, he was just outside somewhere wiping the vehicle of the late Mbai.

Commissioner Dinka: I now come back to your case. You said that the Commissioner telephoned you and said; “Somebody is coming to see you for some clarification. Talk to him.” How did you know that he meant the tape?

Mr. John Chemweno: I said...

Commissioner Dinka: How did you know that, with this kind of a code word, he meant you give this tape to that guy?

Mr. John Chemweno: I mean this way. *The Standard* Newspaper Editor, Makali, when he came in, he asked me questions which were in that tape. So, after I showed him the confession – and he listened – he found it to be the one. So, that is the time he told me: “Please, let me go unearthen a tape out of this.” By bad luck, he went and produced it verbatim as it is, and that is how I was...

Commissioner Dinka: You are a very senior police officer; you were an inspector at that time. Could you not have called the Commissioner back after this man came and asked you for the tape if he actually meant for you to give the tape? That is number one.

Secondly, in the police system – in any bureaucracy, there are protocols for confidentiality; who has access to it? How would you make it available to anybody? How long should I say confidential and so on? In this case, for senior police officers that have the documentation – like you did – is there not a protocol that you should follow when someone – even your boss – asks you to have access to this thing or make it available to somebody else?

Mr. John Chemweno: I said these are directives. When your overall boss has said, it is final. Secondly, your honour, I was the in charge. So, I could not follow any other orders from anybody else because my boss was away. So, I was the in charge. And then, your honour, there was a problem during our investigations. There were many interruptions...

Commissioner Dinka: Between?

Mr. John Chemweno: Coming from politicians and whatever; all the quarters.

Commissioner Dinka: To you or who to?

Mr. John Chemweno: To the entire team.

Commissioner Dinka: I see.

Mr. John Chemweno: Yeah.

Commissioner Dinka: I can understand your difficulty once the Commissioner of Police talks to you. But my question about the protocol – even if the Commissioner of Police calls – a senior individual like yourself, should you not have stuck with protocol and said; “This is the rule”? Could you not advise him as your boss?

Mr. John Chemweno: Your honour, I am sorry to say here that the man who was killed was a Luo; the Commissioner of Police was a Luo; the in charge of the Flying Squad was a Luo; the in charge of intelligence was a Luo and, here, there are politicians who were putting pressure on these people. They wanted to know what was wrong or what was happening.

Commissioner Dinka: Then how come Dr. Odhiambo’s death or assassination was not finally resolved? Nobody has addressed it, as his assassin or killer?

Mr. John Chemweno: Your honour, it is a difficult question, but to you, you are somebody from far. This is Kenya and the truth must be told. What is happening in Kenya is hard for Kenyans. So, I am very sorry to say that this is a problem that started from 1964, coming to 1969, 1990 and this is 2003, with the same people; the same tribe and the Kenyan Government. Who is there? When the Government...

(Mr. Mengich broke down)

Commissioner Dinka: Sorry, I can understand. Take your time. Relax! Do you think there is some improvement now in this kind of situation? If a situation like this happened, would it be more formally and fairly handled?

Mr. John Chemweno: Your honour, we pray that the recommendations from this Commission will save this country the way South Africa is doing; we forget and live as brothers and sisters.

Commissioner Dinka: Thank you very much, Andrew. I have no further questions.

The Presiding Chair (Commissioner Chawatama): Commissioner Shava, do you have any questions?

Commissioner Shava: Thank you very much, Madam Presiding Chair. Mr. John Kiptarus Chemweno, first of all, I would like to say – as my colleague has said – that you have spoken as a witness of truth. I, as a Kenyan, can understand the pain and frustration when you are telling us your testimony and I think that it has been very brave of you and a service to Kenya and Kenyans to come forward and say what you know about what happened. Most of the things that I wanted clarified have already been clarified. So, I do not have many questions for you.

I would just like to know from your own view... I remember the time that Dr. Mbai was killed there were all sorts of allegations about why he had been killed. Was it, as you said before, for political reasons because of the issue of devolution? There were also allegations at that time that it was some sort of crime of passion. You have described to us very well, and now I understand better that it was in the compound where Dr. Mbai lived. We also know that Norman Nyagah was a neighbour. Norman Nyagah was supposed to have jumped over the fence to try and come and help or something like that. Then there were allegations that he might have been involved because of some sort of crime of passion scenario. What is your own view; is it both things, is it some of them or is it one of them?

Mr. John Chemweno Your honour, in my own view, we have a hotel called “Ngong Hills”, where it is said that certain people met and we have the issue of devolution at Bomas of Kenya. So, after our own look, I do not have any reason to say it was passion or whatever, because these people did not reveal the reason. That is what I know.

Commissioner Shava: In your view, the way you said it, is it that these suspects refused to disclose the other people who met Norman Nyagah at the Ngong Hills Hotel? Do you know how many they were? Do you know why the suspects would be so adamant that they would not reveal the identities of those people?

Mr. John Chemweno: Your honour, according to the suspect – this is the watchman now – he met three people at Ngong Hills Hotel and he did not even want to have their names mentioned. They said only; “we met and we were given some money.” I do not remember how much money he was given at that time for them to go to Kawangware and get those people.

Commissioner Shava: So, he met three people; that would be Norman Nyagah and two other people?

Mr. John Chemweno: Yeah, he told us that they were three people. I still remember he mentioned about three people.

Commissioner Shava: Okay. Finally, what happened? All this time you, were in and out of court, which you can also see as part of the interference in the investigation. Was anybody ever charged? What happened with this information that was clearly there in the tapes?

Mr. John Chemweno: Your honour, the three suspects were acquitted. There was no sufficient evidence for them to be charged with the murder. That was the end of everything.

Commissioner Shava: I know I said that was my last question, but just a final question. From what I infer from what you are saying with a lot of feeling about the history of political assassinations in this country, a lot of prominent Luo people have been assassinated, including Dr. Mbai. At the time of the assassination, you have pointed out that a lot of people with the power to resolve the mystery and to bring people to justice were themselves Luo. So, why did it not happen? Why was it never resolved when there seems to be that political will to resolve it simply because, as you pointed out, of the history? Even the Prime Minister himself was very passionate about the whole issue. Why were they unable to resolve it?

Mr. John Chemweno: The Luo were trying as much as they could to bring these people to book, but what made this thing to fail was that the Minister of State for Provincial Administration and Internal Security was Murungaru, the Prosecutor was Philip Murgor and then there was the High Court. So, things were not going the way they should have. So, that is why it went that way. The Luo did not have access to justice through the State and Prosecution.

Commissioner Shava: Of course, you are talking about the time before power sharing; you are talking about the NARC regime.

Mr. John Chemweno: This is 2003. This Government was still new. It was NARC by then. Everybody was put at the right position at that time. There was no justice done to the late Mbai.

Commissioner Shava: Thank you very much, Mr. Chemweno. On behalf of the Commission and my own behalf I would like to salute your courage. Many times when people are faced with challenges, many people will not choose to do the right thing. You chose to do the right thing and I really salute you for that. You have come here to share with us your experience and what it has cost you.

What is it that you want in terms of justice for yourself? You talked about Dr. Mbai, but earlier on you talked about the difficulties that you were facing having been dismissed in this manner. What would you like this Commission to do to help you?

Mr. John Chemweno: Your honour, I am born again. I can say God used me in this particular case for it to stop forever on our land. I am a father. I have children. Even yesterday when I came here...

(The witness expressed pain)

The Presiding Chair (Commissioner Chawatama): We thank you for coming. It is a good thing to be born again. It is a good thing to fear the Lord. Wisdom comes from the

fear of the Lord. We appreciate what you are going through and to a large extent how you were treated. I personally understand where you are coming from. The Commission was set up for people such as yourself for you to come and speak.

Mr. John Chemweno: I am sorry.

The Presiding Chair (Commissioner Chawatama): That is fine. Do not worry. Say a prayer.

Mr. John Chemweno: Your honour, yesterday when I came from home, Marakwet, my children had come for half term. I have four children in secondary school. All of them escorted me to the first stage. Since they know that I went through problems...As father I felt bitter that they were escorting me to come to Nairobi where they used to stay with me. They wished me a good *safari*. If these people could have dismissed me even without paying me Kshs10,000 still it would be fine because I know I had not done anything wrong. They pay me just Kshs10, 000 every month as pension and yet it is not sufficient even to pay my children's school fees.

When I went for a discharge certificate, I faced a rough time. The person who was in charge of administration at the police headquarters at that time was somebody ruthless. He wrote on the certificate, "Removal", which is not good. After some persuasion he wrote "Retired". That, at least, has some meaning.

So, your honour, I am suffering. I have children and I love them so much. I wish that this Commission recommends for me... If the police saw that I was not in a position to work in that place, they ought to have taken me to another department. I am crying because of my children. When they took me to the bus stage they were fighting for my bag and to me that was a sign of a lot of love towards me. On Saturday, I am having a *harambee* for my children. I called relatives to come and assist me. Let me pray that this Commission will do something good. May God, bless you all.

The Presiding Chair (Commissioner Chawatama): Thank you very much. You spoke with a lot of passion and conviction. As you were talking about your children I said you must be an excellent daddy. Did the Commissioner ever deny sending the reporter to you?

Mr. John Chemweno: Nobody asked me, your honour.

The Presiding Chair (Commissioner Chawatama): There is a question that Commissioner Margaret Shava asked you and your response was that the Luos tried as much as they could to see that the issue of the killing was resolved. Do you think by the Commissioner talking to you and giving you permission to talk to this reporter, it was one of the ways that they tried to set out what really happened?

Mr. John Chemweno: Your honour, I do not really know why the Commissioner chose to send that person to me. Maybe he wanted to have it known in public that something

had been done or something was being eaten somewhere. He was the one who had all the intelligence from various sources. They used to have press briefings and so on.

The Presiding Chair (Commissioner Chawatama): Can you remember the date you went to Parliament?

Mr. John Chemweno: It was on 26th in the afternoon. We will check between 25th and 26th. I remember it was on a Friday. We wrote on the Occurrence Book. The person who wrote that was Inspector Boaz Obeto with whom we worked.

The Presiding Chair (Commissioner Chawatama): Were you ever called as a witness in the case of the three suspects?

Mr. John Chemweno: No, I was not. We were in the same court with the suspects.

The Presiding Chair (Commissioner Chawatama): Are you aware of the people who were involved in the investigations whether they were called as witnesses before the court?

Mr. John Chemweno: I do not remember because during that time my phone was being monitored all the time and I had to mention in court that my life was in danger. The Chief Magistrate then, Muchelule noted that. Some people from the NSIS would follow me. They wanted to know what was happening.

The Presiding Chair (Commissioner Chawatama): Do you know whether or not the tapes you took were ever produced before court?

Mr. John Chemweno: There was no officer who could have produced the tapes before court. I was the only one in custody of those tapes. There is a tape which is verbatim and it is with the prosecution at the High Court in Nairobi. The other tapes, I left them at the CID Headquarters. I do not know if they are still there.

The Presiding Chair (Commissioner Chawatama): The other six people you were charged with for assault, were they part of the investigations team.

Mr. John Chemweno: They are officers we used to work with. After the acquittal everybody went his way. I returned to Marakwet where I belong.

The Presiding Chair (Commissioner Chawatama): Your testimony is very clear and easy to follow. There are findings that this Commission will make not only on your case, but other cases that we have heard. Counsel needs to avail to us all court documents. If there are names of people who have certain evidence we want, we will require that. Please leave your contacts with the Leader of Evidence.

Mr. Mengich, we have heard from your client. What would your prayer have been in terms of the wrongs as you see them that may have been done on your client in brief? I do not want long submissions.

Mr. Andrew Mengich: Thank you, Chair. I must admit this is my first time to appear before a commission of this nature. I have been part of this process, having known this gentleman for more than ten years now. It was very disheartening how we fought hard in court to ensure that he does not get a bad record. In spite of putting up a very spirited defence and ensuring that all and sundry would know that my client had been vindicated of all the allegations, it came as a surprise to all of us that the police force whom he dedicated service would just do a letter without any reason.

My recommendation is that the police force... There are reforms going on in the police force and we hope the Police Standing Orders will be reviewed. You cannot interdict somebody, make him go through the court process and when he is absolved from wrong doing he receives a letter.

Secondly, at the time he was dismissed from the force, we had the option of going to the same court, but we realized that fighting with the State is not an easy task. It is bad that it happened to him, but he is not the only one. We have defended him and instead of him being reinstated to service he was sacked. Something else has to be done so that those who serve in the force are accorded some good send off in spite of what happens. They risk a lot, including their lives and families. When the trial was going on we actually requested for security.

My final prayer is for those who cannot defend themselves. As part of your recommendations you should consider legislation that will ensure that reparations are made. At the end of the day, we may not win all of us. We may avoid this in court, but the gentleman is still suffering. It could be part of your recommendations that these people be recognized and compensated. I want to believe that had he not given that tape, the truth could never have been known. As we go forward we pray that this Commission eventually transforms this country. The structures of this country are known. He said that all the other officers were Luos, but you realize that even if you have ten Kalenjins in the system, it is not the people who run the system. It is the structures that have been put in place. We pray that you recommend that there is equality among all the tribes and fairness in decision-making.

Lastly, there should be a mechanism to challenge such decisions. Somebody cannot just write a letter which condemns you to a life of poverty. There is no way you can appeal to a Commission and you are told that you are not wanted and because of that letter you cannot get any employment, especially as a police officer. We are going to comply as per the documents you have requested. We will avail all of them. I will consult to know if there are other people. I am sure there are so many people who are willing to volunteer and give more information. If, in the case of Mbai there is need for the matter to go back to court, I think we now have an independent Directorate of Public Prosecutions. If he

can get adequate assurance that the case can be an inquest or something of that nature that can still be done. We have systems that are now functional.

The Presiding Chair (Commissioner Chawatama): Suppose you were asked that despite this taking place and despite that provision in the Act, but looking at what your client was going through and leniency was exercised what sort of decision would have been a bit more acceptable taking everything into consideration and also accepting that there is a provision that was violated?

Mr. Andrew Mengich: What normally happens is that even in normal employment, when it is found that you have violated law that should not be used to justify that you are a criminal. It happened yes, but we went through the court system and he was acquitted. He should have been taken back and given a contract so that at the end of it the same contract is not renewed. At least that would have been a win-win situation for everyone.

The Presiding Chair (Commissioner Chawatama): Warnings; say, first warning, second warning and so on.

Mr. Andrew Mengich: Precisely.

The Presiding Chair (Commissioner Chawatama): We have observed that people are very quick to dismiss. It really should be the last option. There are many other options that can be exercised.

We would like to thank both of you. We pray that the *harambee* goes well for the children and God makes a way for you and your family, Mr. Chemweno.

(The Commission adjourned temporarily)

The Presiding Chair (Commissioner Chawatama): We welcome you to today's thematic hearings on assassinations.

(The Presiding Chair introduced the panel)

Mr. Makali, you opted that you should be heard in camera and that is why we are here. We welcome you and we want you to be as comfortable as possible. If you have any question you could ask us before we proceed.

Mr. David Makali: Thank you very much for inviting me. I do not have any particular questions.

The Presiding Chair (Commissioner Chawatama): If you feel you need a little bit of rest or there are concerns that you wish to rest, we can always order that the cameras be shut and then continue. This is your time.

Ms. Leah Nyambeki: Commissioners, the witness before you is Witness No.23, Mr. David Makali. Could you kindly for record purposes introduce yourself and state what you do?

Mr. David Makali: I am David Makali. I am a journalist. Essentially, I write. I am currently the director of an organization called Media Institute which examines media performance and publishes a media review that looks at how the media is doing its work. I also write. I am a columnist for the Star and I write weekly. I also do political analysis for Citizen TV on current political developments regarding the succession.

Ms. Leah Nyambeki: Could you clarify to the Commission whether or not you recorded a statement with us?

Mr. David Makali: No, I have not recorded any statement. I have just honoured an invitation to appear.

Ms. Leah Nyambeki: It is my belief that the invitation was with regard to the thematic hearing that we are apparently having on political assassinations and there is information regarding the death of Dr. Crispin Mbai which you may have. Could you kindly take us through that?

Mr. David Makali: Well, I accepted to come and testify essentially because at the time Dr. Mbai was killed, I was in active journalism. I was the Managing Editor of the *Sunday Standard*. We published a story that related to the investigations into that murder, particularly regarding the suspects who had been arrested by police and were under interrogation. We got access to information that we thought was of public interest regarding those investigations which we published. There was a lot of public and Government reaction to that story that put us at the centre of the investigations at that moment. They did not go well to the extent that we ended up being charged ourselves with publishing that report. I do not know if you want me to go through what we got and what we published. Perhaps, that is what would be important. And that is what I thought I needed to come and put forth.

In a nutshell, Dr. Mbai was killed, I think, on 14th September in a very sort of political tense period. The Bomas Constitution Conference was going on in which Dr. Mbai was the Chairman of the Devolution Committee which was really at the centre of the controversies around the new Constitution which was being written. The controversy was around the devolution of executive power between the President and the Prime Minister in the Constitution that was being written. Around that time, there was a vacancy in the office of the Vice-Presidency. So, those two things seemed to create a bit of tension in the country. There were suggestions on who should be appointed Vice-President to succeed Wamalwa Kijana who had just died and there were discussions on devolution of power to create the position of Prime Minister which when the Kibaki administration took over had been part of the agreement that when they form the Government they would create the position of Prime Minister which would be given to the LDP wing that had joined NAC to form the Rainbow Coalition. When Kibaki became President, that promise or

proposal became contentious and went into the Constitution review process and became an issue whether or not they should create that position. That tension went to Bomas and became a political question on whether devolution should include divesting some of the powers of the executive to the Prime Minister.

So, Dr. Mbai became a central person in that process because he was handling that critical matter as the chairman. When he was killed in the course of the heated discussions at Bomas, it was a national issue. Our paper began reporting it as soon as it happened.

The murder was on 14th. The Government ordered for investigations to be undertaken. There was a lot of uproar over the killing. The investigations went on for two weeks. Our reporters were following the investigators like in any story. Our crime reporters were on the beat and we would get stories of different developments as to how the investigations were going on until somehow it began to emerge that there was progress initially on the suspects, that the police had caught up with some of the suspects who would actually have committed the murder and they were under interrogation. It was about 25th of September when I first heard that they had interrogated these suspects and they had confessed to the murder. However, somehow the next day, some sources within the same investigations through our reporters would say that that story had changed again so that the investigators were no longer following what the suspects had confessed. The confession was being retracted and the suspects were being sort of led to another line by the same investigators.

So, there seemed to be within the investigation team a division on what sort of line should be taken by the police. The first account was that these guys had said that they had been hired by a certain politician to go and kill Dr. Mbai, but that line seemed to have upset some people within the investigations or higher up and they said that could not be true. So, they had to find another line of thinking or motive and it was an attempted robbery which had gone foul. So, when those sorts of indications began coming in from the investigations, I got a bit curious and I got onto the story myself to find out what was happening and in my position as the Managing Editor, I would talk to the reporters and they would give me what was happening. I would try to corroborate it with my sources independently and with the police to see whether what they were saying was true. I would talk to the police spokesman who was my friend because I was in college with him. I spoke to the Commissioner. He would not be available on most cases but occasionally he would pick my call and he would not answer my question. He would deflect it to somebody else. Eventually, I got into the information that there were interviews that had been recorded. At first, I asked the spokesman whether in fact it was true that these guys had confessed. He told me no and that he cannot talk about that because that was still with the investigating team and unless they filed a formal report, he could not comment on it in his official capacity. So, I talked to the Commissioner and asked him why it was that these people had confessed and they were not being prosecuted or taken to court to be charged so that the investigations could proceed; it was two days after they had confessed. He said no, he had not had the formal report and they were compiling the final report and when he had it he would go public with the findings because there was a lot of

public pressure as well. So, I let it pass until 27th September and I made a couple of calls to him and he would not respond. So, finally somebody called me from the police headquarters and told me that he was calling from the Commissioner's office. He said that I could get the information I wanted from somebody else. He told me to call this person if I wanted any further information.

So, I called the person via the number that they had given me. I asked him whether he was on these investigations and that I had talked to the Commissioner and he had referred me to him. I asked him whether we could meet. He said yes and we met and he was co-operating. He gave me the stuff that they had recorded. We went and looked at it. The interrogation had been done in camera. We went through it and it looked to me that there was substantive information that needed to go to the public. So, I got a copy of the tape and went back to rewrite the story from that interrogation which went to the public. Once we published the story, the Government was not particularly happy. So, they came over to interview us. They said they wanted to establish how we had gotten the information. So, they invited us to go to the CID headquarters to explain. Their intention of course was to suppress the information. So, this is the story that we had published. I made one copy. It was the edition of September 28th, 2003 with that lead story – “*Mbai Killers Confess*”; this was basically a verbatim extract of what was on the police tapes of the interrogation. It was basically a reproduction of the proceedings. This is the story but the questions and answers bit goes on. So, the story went on from the cover and it was a summary and then the verbatim Question and Answer taken straight from the interrogation with the police. I mean the fact that people were there on camera talking and this was a police tape and people who were interrogating them were police officers and we had sources from the police we thought we could establish the veracity of the information and so we published it. The next day the police came for us. They had us arrested and then we went to the CID headquarters. They said they wanted to find out some things on how we got information. So, they interrogated us and finally they ended up charging me with some contemplated offences. They wanted to charge me with treason but some of them said that would not work. They wanted to charge me with publishing alarming information contrary to Section 106 of the Penal Code. It did not work. They locked me up for two days. Eventually on the third day, they took me to court and they charged me with theft of a Government tape worth Kshs500 which was really like a joke because the issue was not theft but the information that we had published. However, after one year of prosecution, I was acquitted of the offence with the magistrate finding that no theft would have occurred in the circumstances because the information that I had was essentially public information that the police had in their custody. That is it.

In a summary that is what happened. In the content of the story, the suspects detailed how they had been contracted by somebody and hired to go and do a job. They met in Kawangware on the first day. On the second day they were recruited to go and do that job. They narrate how they met in Kawangware and how they went on the next day, and how they gathered themselves and eventually travelled in a *matatu* and went all the way to Dr. Mbai's house. They got out and found him in the sitting room. He was sitting alone in his living room and when he saw them coming, he greeted them and said, “Can I help you?” One of them said that they had been sent and then he pulled out a gun. Dr.

Mbai then jumped up to try to fight them off and threw a stool at them. A scuffle ensued and the three of them managed to shoot him and then they left. The same *matatu* they had used had now dropped people and come back; it did not have people and it was waiting there. So, they got in and drove off. So, the police followed up this trail of events and arrested them.

My belief is that those suspects actually killed Dr. Mbai. I have no doubt in that. A week later after our reporting they were charged but the trial did not proceed because the courts argued that the evidence had been extracted under duress and so it could not hold. On that basis there was no file. So, they were released and nobody has ever been charged with the murder as far as I can tell. However, the circumstances and the nature of the confessions which I have no doubt must have been extracted perhaps with some torture, it seemed to me that they knew something or they actually committed that murder. The happy part of it is that when I was locked up in Parklands Police Station I found them there, which was very strange. They locked me in a cell and in the next morning when talking with other inmates there, they began telling me that they killed another guy but they did not know who this guy was. We were just told to go and that there was a job. So, I was very curious because these were the guys I had written about and now we were in the same cell by coincidence. They told me they were on a killing mission. Since that was a confession they made to me in the environment of criminals, they also knew I was there as a thug or something and they were just chatting. So, I believe they were the guys who did it but now why and how no prosecution has ever been undertaken, I have really not understood.

The Presiding Chair (Commissioner Chawatama): Leader of Evidence, do you have any questions for this witness?

Ms Leah Nyambeki: I have a few questions. At the time when this act was committed, you were the Managing Editor. How were the normal Press briefings, given the magnitude of this case at the time?

Mr. David Makali: You know the police would hustle the police investigators all the time about how far they had gone with the investigations. I do not recall whether there were regular briefings on a daily basis or on anything, but our reporters were always following the investigators. There was a team of about 13 policemen involved in this work and our reporters were following them and they had all their contacts. So, they would be following on what had happened because we were reporting the story on a daily basis. I suppose the Police Commissioner addressed the Press in a formal Press conference once or twice but most of the information would come from the spokesman of the police, King'ori Mwangi.

Ms. Leah Nyambeki: You had informed us that you had communication with the Commissioner of Police from time to time. How would you describe that relationship between yourself and the Commissioner?

Mr. David Makali: No, we were not very personal. It was based on my official position so to speak. I would access him by virtue of my office and my level. On the spokesman,

we were charming to one another because we had been classmates at one time. So, there was a certain rapport between us, and we would discuss things. If there were things he could not discuss with me he would say he could not. So, the Police Commissioner would know that. Then I would step up my inquiry just to know what was happening.

Ms. Leah Nyambeki: Now, when you received a call from this person in the office of the Commissioner of Police, did you think this person was acting under the direction of the Commissioner?

Mr. David Makali: I suspected so. You know, I had to believe it; I think he never left me with his name. He called me back and it was on a landline. He asked me: *Wewe ni Makali?* I replied in the affirmative and then he told me: “We are returning your call and Commissioner *amesema upige hii* number if you want more information.” So, I thought he was a busy man and maybe he did not want to talk to me about it. At first, I did not know really what information I would get. It was like he was deflecting me to something if I want to get more and it was strange because he would have told me to talk to the spokesman, Kingo’ri. So, we knew in our work we could get information through different ways. Somebody can leak information to you because they want you to have it and they cannot get to your information desk. So, I took it and ran with it in order to see how far it went.

Ms. Leah Nyambeki: Did you know the person you were directed to beforehand?

Mr. David Makali: When we met, we recalled that we had met at some point. My friend who was a lawyer had met with us before but we had not been engaged as such at a work level. I had met him at a lawyer friend’s place; the friend of mine is called Donald Kipkorir. We had met in his office. When we finally met, we recognized each other but it was not in relation to this at all.

Ms. Leah Nyambeki: Could you tell us the name of the person you were directed to?

Mr. David Makali: My co-accused was Mr. John Chemweno.

Ms. Leah Nyambeki: So, when you met him and established that he was somebody you knew beforehand... Would you say that when you were talking to him it appeared to you that he had direction that he was to speak to you on matters that you were seeking?

Mr. David Makali: I think he had in detail. In my initial inquiry, he seemed like he was expecting my call because there was no push to get to me. I said, “Could we meet?” and asked him a couple of things and we agreed to meet within two hours. When we met we discussed everything.

Ms. Leah Nyambeki: You said that you went and talked with the gentleman and left and came to get a copy of the tape?

Mr. David Makali: No, I did not leave. I stayed with it. After we began viewing the tape, I stayed throughout the review. He then made a copy which I needed now because we could not sit down and write notes and this was such a grave matter in case there would be denials or any consequences of that story being published.

Ms. Leah Nyambeki: So, just to be clear, he made a copy of the tape that he had but did not give you the original?

Mr. David Makali: No, he did not give me the original.

Ms. Leah Nyambeki: I would like to request to have the documents admitted.

The Presiding Chair (Commissioner Chawatama): No objection.

Mr. David Makali: Do you want the smaller one or the bigger one?

Ms. Leah Nyambeki: All of them.

Mr. David Makali: Okay. This is a copy of the judgment in our case. We went into trial and I was charged with Chemweno because it had been established that I had been in communication with him. That was how I got the tape from him. In our defence, the court of course established we had been in communication. The tape was produced by the police to verify that what had been published was accurate. So, the issue was whether it was right or whether it was stolen or not but the magistrate dismissed the theft matter and had his own findings whose copy I would like to produce. There was no prosecution or any suspects arrested or tried for the murder. We kept following up the story and a lot of information kept coming out. There seemed to be a cover up because a lot of people were implicated. There were political undertones to the murder and the suspects' first line of confession was that they had been hired and the person who had hired them was a politician; it turned out that this politician was the one who also helped Dr. Mbai. So, it became very confusing. Why would he have been behind it and a lot of issues were left pending, but again the police themselves identified somebody who was the actual suspect who shot Dr. Mbai, besides the ones who had confessed. There would be occasion where our reporters would say that the police had found him but they were facilitating his escape. So, the riddle kept going on and we kept following the story. So, we did not understand why the police were not coming to arrest and charge the suspect, if indeed there was no political motive or nobody had sponsored them. That suspect ran off and went to Tanzania. We kept track and he escaped and went to Tanzania when the police were laying ambush to arrest him in Kawangware. So, we followed him up to Tanzania and there is a story by our reporter, who went all the way to where he was in Tanzania, and he was hiding in some mines there and he eluded our reporter. Of course, we could not arrest him but we were just trying to expose the police for their incompetence – the fact that they were not doing a good job. That is what I have put here. I think I will put that so that it goes together.

The Presiding Chair (Commissioner Chawatama): The documents are admitted as prayed.

Mr. David Makali: They make reference to what transpired, the reporting that we had on it and our tracking him to Kilimanjaro and so forth.

Ms. Leah Nyambeki: Thank you Chair. I do not have any further questions.

The Presiding Chair (Commissioner Chawatama): Ambassador, do you have any further questions for this witness?

Commissioner Dinka: Thank you, Mr. Makali for your testimony. Did you know Dr. Mbai?

Mr. David Makali: No, I did not know him personally.

Commissioner Dinka: But in a number of jurisdictions, advanced publicity of cases about to go to trial usually prejudices the case of the prosecutor. I do not know whether yours is the same. Why did you publish it in detail like this on something that was about to go to trial?

Mr. David Makali: Okay; I am aware of that and we took precautions. Even in our publishing, we did not disclose names of the suspects so that we did not prejudice their case. We took precautions to eliminate all the people who were adversely mentioned in the interrogations, including the politician who was identified by the suspects to have organized or recruited them. We did not even include the names of the suspects, even though we had them. We were weighing the value of keeping the information confidential against the innocence of the suspects and the public interest, which was intense and some progress needed to be reported about how the investigations were going; there was no progress forthcoming and our decision to go public with the information was prompted by the emergence of information that there was an attempt to cover up those investigations. So, in my view, the bigger public interest was to be served by disclosure.

Commissioner Dinka: My last question is: In the tape that you had access to, I believe that the three suspects had fingered somebody who had sent them, a senior politician or a big man. Have you or any of your reporters succeeded in interviewing him?

Mr. David Makali: Yes, after we published that story, there were attempts to reach him; we were saying he had been mentioned; they had mentioned a politician. So, consequently we tried to put it to him that he was the one who was being referred to here as the godfather and MP from Nairobi and he was very violent. In fact, he threatened our reporters and said “dare you repeat it.” He became very hostile after that not only to our reporters but to any Press inquiries. He went to Parliament and somewhere and threatened to sue anybody who would name him adversely. He became very hysterical about any association of him with that crime.

Commissioner Dinka: So, you have been successful in interviewing him?

Mr. David Makali: Of course, basically that was his way of denying it because we would put it to him and he would respond with that hostility; he would say that he should not be asked about it.

Commissioner Dinka: Now, in your experience as a senior journalist, people who behave like that when you ask them several questions, how do you assess them? Are they clever or what?

Mr. David Makali: We get such responses and in my career, I have had people who threaten you because they think they will intimidate you and stop you from publishing. So, in a reaction like that one would give a very incriminating response; this matter was of intense public interest. If you are suspected, it would be in your interest to calmly clear the air about it rather than intimidate those who are pursuing the truth. So, I found that very strange. Even though it was not me, I would say that, that was incriminating; he did not want to answer inquiries but he was very suspect from the way he behaved.

Commissioner Dinka: So, to your knowledge, the police have just closed the file on Dr. Mbai's killing?

Mr. David Makali: Yes, as far as I can tell, the matter was dropped from court because of claims of torture in extracting information. The police never did anything. In fact, for a long period they kept saying that if anybody had information, the file was open and one could take it to the police; but there was no deliberate and aggressive pursuit of the criminals by the police after that.

Commissioner Dinka: Thank you. I have no further questions.

The Presiding Chair (Commissioner Chawatama): Commissioner Shava, do you have any questions?

Commissioner Shava: Mr. Makali, I want to ask you a question based on the fact that you, by your own statement, have done a lot of investigations into this case despite your senior level. Our information is that the senior politician named was Norman Nyagah, who was at the time the Chief Whip of Parliament; this was at the time when we had the NARC Government and we were not in a power sharing Government. The Government was in total control and Norman Nyagah was a Chief Whip. Is that the politician that you are talking about?

Mr. David Makali: Yes, that is the politician who was said to have been the one who had hired those suspects. There was a discrepancy in the description, I must observe. These suspects were not very exposed. They looked like normal thugs and people who are hired on small missions. In their confessions, they described the politician as that Mheshimiwa of Kamukunji; the one who wears the godfather. So, the description of a

Nairobi MP only fitted Nyagah; whenever it was put to them whether he was the one, they would say yes. To me, they were referring to him and I have no doubt that it was him.

Commissioner Shava: So, for the identification for my colleagues who are not Kenyans a godfather is a big hat, which this gentleman wears. The information that we have about the planned meeting that took place at Ngong Hills Hotel, which is just down the road from Adams Arcade, which is next to Woodley, where the murder took place, is that at that meeting there was this politician, Norman Nyagah; there were also two, or perhaps three other people. Do you know the names of those other people?

Mr. David Makali: I have never really figured out those.

Commissioner Shava: Even if you are not quite certain, do you have any indications as to who they might have been?

Mr. David Makali: No; I do not have any clue as to who they could be apart from the guy who ran to Tanzania, the one who was also the leader and who was always associated with Nyagah; he was the guy who was the leader of the team. So, I do not know anybody else.

Commissioner Shava: So, the guy who ran off to Tanzania was associated previously with Nyagah?

Mr. David Makali: Yes, in fact, they say he was the contact guy, and he was a thug. At that time, Nyagah had an image of an abrasive politician, associated with political party activities, mobilization and a bit of the thuggery that went on between the parties; he was the organising secretary of DP. He was a very aggressive politician. The Nairobi operatives normally have people who carry out their activities and that man was said to have been one of his operation boys.

Commissioner Shava: Thank you. I have no further questions.

The Presiding Chair (Commissioner Chawatama): Thank you. You will excuse me if I ask you questions which you have already answered, because I am trying to do a lot of things. Would it be right to assume that this killing was politically motivated?

Mr. David Makali: I see that as the only explanation because...The preferred motive, even the context in which it happened and the circumstances around how it was committed, these chaps seemed to be on a clear mission to kill him and I cannot ascribe any other motive to that execution. There was a lot of heat generated; somebody may have wanted to teach them a lesson or to stop something. We actually agonised a lot about it; even trying to get the suspect and the politician who seemed to have organized; there were neighbours and then the politician was the first person to rescue him and take him to hospital. When I tried to put all these together it was difficult to find out why, but at the end, only a political motive seemed to hold some water.

The Presiding Chair (Commissioner Chawatama): At the time you were going to meet your co-accused, as you call him, were you prepared for the Commissioner, especially the fact that you received the tape? Was that something that you were prepared for?

Mr. David Makali: I expected that I should have some revealing information. In fact, I thought that it was a transcript because we had been filing reports to the Commissioner or to the officer in charge of the Provincial Investigations office and the District Criminal Investigations Officer (DCIO). So, I expected that he would probably have some written report that was going to the Commissioner about their findings only to find that it was raw footage of the investigations. I do not need to explain.

The Presiding Chair (Commissioner Chawatama): Is this MP who was mentioned still alive?

Mr. David Makali: Yes, he is but he has gone quiet, which is very uncharacteristic of him. I have not heard of him for the last five years.

Commissioner Dinka: Is he still an MP?

Mr. David Makali: No; he lost.

The Presiding Chair (Commissioner Chawatama): Now that you have spoken to us and we have done a lot of research and investigations on this particular issue, in order to bring a closure to it, what would be your recommendations to the Commission, speaking as a Kenyan and a person who had a stint in prison and also appeared in court, and the fact that the matter really took place above all?

Mr. David Makali: I always had a lot of empathy for the family because after the reporting of this matter, it became something very personal. I knew the wife Margaret and we talked. She could come to court when we were being prosecuted, basically trying to help to resolve the murder and it was very disappointing that there were acquittals and there were no further investigations. Somebody seemed to have stepped on those investigations for reasons which I do not understand, either because of the political names which were cropping up; but for a crime which was so grave and was in the public eye, I still think investigations were never done thoroughly.

There can be some final pursuit of truth in that matter. I do not think a comprehensive effort was made and if it was, something interfered with it in due course to avoid or prevent the proper conclusion of the investigations. I would think that they would need to revive those investigations. I would also think that, perhaps, a public inquest into that matter would be useful to close it because I think the people who were involved or had something to do with it, investigators or suspects, the information can still be revived.

The Presiding Chair (Commissioner Chawatama): And personally, because you also went through what you went through believing that what you were publishing was public

interest and you were convinced that a wrong had been done, what would you want the Commission to recommend at a personal level for all that you went through? Is there something or you are just happy that you did what you did?

Mr. David Makali: For me, if justice is done in the interest of the family that would be adequate. Those are just things I do in the course of my duty; I know they are professional hazards. It was very humiliating to be charged with theft and that was the intention of the Government. Really, to be charged with theft of a Government tape worth Kshs500 as a Managing Editor was career-destroying and it puts a black spot on your career that you have been convicted of an offence of theft. Luckily, I was never convicted. I am okay; I have no hard feelings. Those are the days of the things we did.

Perhaps, my co-accused is the guy I always felt bad for because I think he was sacrificed by a very intolerant lawyer because the truth is that the information was in public interest. If we did anything that was offensive to Standing Orders, the fact that he was acquitted by court should have been sufficient for his interdiction to be reversed and for him to be reinstated. If there would be justice to extend, it would be to him because he has suffered higher consequences by being part of it.

The Presiding Chair (Commissioner Chawatama): According to our investigations, there was a suggestion that there were some frustrations with the investigators themselves and they decided to use this opportunity to expose. Do you see that as a possibility or what you have now said, the fact that he was sacrificed by intolerant employers?

Mr. David Makali: My view is that the position of the Commissioner to leak that information, looking back, I think it was his own way of setting himself free from what was happening. My analysis is that the Commissioner was under pressure. He was the Commissioner and he was going to take responsibility for something he did not believe in. When he saw that there were many forces at play in the investigations and the cover up was imminent, his only way of acquitting himself at the personal conscience level was to let this out and hope to change the course because there was political interference in that investigations. The team was being compromised or being given instructions to generate certain results which he was not comfortable with. So, there was no way that Chemweno was going to stand in court and say it was the Commissioner of Police who told him to do that. I do not want to make reference to the Commissioner of Police because that would have been a breach of our professional obligations because it would have been embarrassing to the Commissioner that he was the one who set it out.

The Presiding Chair (Commissioner Chawatama): On a lighter note, I get the impression that you may have wanted to be charged on a more serious offence befitting the office of the Managing Editor and you were so insulted that the only thing they could charge you with was theft.

Mr. David Makali: There are some professional offences you can be charged with which are more edifying.

The Presiding Chair (Commissioner Chawatama): That you could have lived with!

Mr. David Makali: The charge itself did not speak of the professional end of it; just theft. Ordinary theft! You would have to explain what it was. I had been charged before with other offences, defamatory stuff and contempt of court and those I hold and stand with them. They are on my record and I am not embarrassed about it but to be charged with theft is rather small.

The Presiding Chair (Commissioner Chawatama): Just to make your life a bit more difficult or the charge more unacceptable, it is actually defined as “theft is dishonestly appropriating property belonging to another with the intention of permanently depriving the owner of such property”. It would not have stood in any court! Does that comfort you?

Mr. David Makali: Yes! I was glad and relieved that we were acquitted as it restored ourselves.

Commissioner Farah: Mr. Makali, I want your personal opinion. Here, the police did a terrible job under the direction from up there. Why did the court not do the same? Why did the court do a wonderful thing when everything else was terribly pro-establishment?

Mr. David Makali: Why did they not play ball by jailing them?

Commissioner Farah: Then you appeal?

Mr. David Makali: I think that the magistrate was sympathetic to the original issue at hand which was that somebody had been murdered here and the police and everybody would have wanted to see justice in the initial case. So, to try and prosecute us superficially when the original sin had not been dealt with would have been aggravating injustice and I think the magistrate was alive to that fact; that they were trying to divert attention and run off with something that was minor while leaving the initial crime unattended. I was surprised! That was quite independent at the time because there was a lot of pressure on the Judiciary.

Commissioner Farah: In your opinion, do you think our Judiciary has changed? Do you think our police force has also changed?

Mr. David Makali: The police force has not changed in that they are very vindictive and there are a few people who would stand straight on issues. Most are not! There is little change that has happened there. The Judiciary I think has changed a bit. There is fundamental change in terms of people finding that there is more space. The change is with regard to pressure from the Government but, at the individual level, morality, ethics are still issues because the same souls who were there still occupy those courts.

Commissioner Farah: I have no further questions, thank you!

The Presiding Chair (Commissioner Chawatama): We have immensely enjoyed listening to you and we thank you for making yourself available. What you have said to us and what it has done is like we have a jigsaw puzzle and there are so many pieces that have just fallen into place and the picture is almost complete.

Thank you and have a good day!

Ms. Leah Nyambeki: Madam Chair, I just want to make one final clarification before we stand down the witness. Mr. Makali, could you please tell us if you have a copy of the tape that you received from Mr. Chemweno?

Mr. David Makali: I do not have a copy of that tape; I have checked with my advocates. We had a copy on the file but we have been unable to locate it. But if I come across it, I will be quite happy to submit it. The prosecution definitely has it on file.

Commissioner Farah: I have one last question, please. This business of robbery gone sour or a crime of passion; both did not hold water.

Mr. David Makali: They did not hold water. We tried to find out about that crime of passion line but there was not much forthcoming on it. It did not yield much on our line of inquiry. The motive of robbery gone sour also did not hold because if you look at the details, the tracks of the execution, they go very far and they did not seem to relate to aiming to loot or steal. It seemed to be a very weak link even though the watchman said that he knows that the man has money, but it did not occur. It did not also occur on the interrogation on camera. There was not anything like that featuring.

The Presiding Chair (Commissioner Chawatama): You better run!

Mr. Kwatenge, we welcome you back to this in camera hearing. We decided that we will have in camera hearings in your case and not public because we felt that some of the evidence that you have is sensitive and we did not want to expose you to any danger. We also wanted to be free to ask the questions that we would want to ask and that is why we are here minus the public. Everybody here works for the Commission and they have taken an oath and they will not in any way reveal what they hear. It is a serious offence within the Commission; one we do not treat lightly. So, be comfortable. We heard part of your testimony yesterday but today we will engage with you as Commissioners.

Commissioner Shava: Please give us guidance on how we can most effectively use our time.

The Presiding Chair (Commissioner Chawatama): We want to proceed thus; we will start with Commissioner Dinka.

Commissioner Dinka: Yesterday you mentioned about five cases of assassinations; in the case of Bishop Muge you named Mr. Okondo. Mr. Okondo made the statement in

Busia that “if you come, you will not go back alive” or something to that effect and yet, the Bishop went. What do you think Mr. Okondo meant?

Mr. James Lando Kwatenge: I think he wanted the attention of the President who was his boss.

Commissioner Dinka: Was he intending to have him killed?

Mr. James Lando Kwatenge: No!

Commissioner Dinka: That is what I wanted to clarify! In the Ouko case, you mentioned about “*mwalimu amelia kama mbuzi inachinjwa*” what is that? What does that mean?

Mr. James Lando Kwatenge: Those prominent Luos told Ouko that if they were seen with him in public, then they would be contaminated the way he was contaminated. So, he had to get rid of everybody but by coincidence, one employee made a party there, Selina Were. So when they were having a drink with friends at the servants’ quarters, she heard commotion outside. Then she went out and Ouko went expecting to meet the prominent Luos. But he met a different group of people and not the people he was expecting. So, when he tried to run away, he was held and when he tried to shout, that is why – Ouko was a teacher and that is why they called him *mwalimu* – she said that he had cried the way a goat makes noise when you hold it.

Commissioner Dinka: She was describing how he reacted when they held him. Do you have an idea who those people were?

Mr. James Lando Kwatenge: Security people!

Commissioner Dinka: How do you know?

Mr. James Lando Kwatenge: I know that there was somebody called Francis Omwenga who was the Head of Special Branch in Kisumu County and he used to work with my father. That is the presentation I had made before the Parliamentary Select Committee. When I told him they were looking for those people to arrest them, he told me, “*Serikali ni mbaya, unaifanyia kazi na inakuruka*” meaning that “this Government is bad. You work for it, but when things get hot, it is you who suffers.” That is the District Security Committee of Kisumu saying that they would arrest them.

Commissioner Dinka: At one point, you are talking about the Minister jumping onto a tractor saying: “Take me to Kisumu!” How can a tractor take him to Kisumu which is very far?

Mr. James Lando Kwatenge: What happens is that the Minister for Foreign Affairs is a member of the Kenya Intelligence Security Committee and so he undergoes some security training. So, when he saw the so-called accident near Kericho, it occurred to him that there was an attempt to kill him. So, he jumped onto the next vehicle available,

which was a tractor. He wanted to go to Kisumu because if he was admitted in any hospital in Kisumu it was easy to find him. Kisumu was his home base and it is bigger than Kericho in size.

Commissioner Dinka: So, what happened? The tractor went, but how did he get to Kisumu?

Mr. James Lando Kwatenge: He went in the tractor and reached Kisumu where he was admitted at the Aga Khan Hospital. I told the Parliamentary Select Committee that I had a feeling that the driver was dead and when the investigators together with the PSC went to his home, they were shown his grave, meaning he was killed because of the conversation he held with him between Kericho and Kisumu.

Commissioner Dinka: And Acting Inspector Wajakoya, you say that he intercepted President Moi's telephone conversation with Biwott where they were discussing Ouko. How did you know that?

Mr. James Lando Kwatenge: Wajakoya was a colleague. He is now a professor in the US. He became Prof. Oloo after running away. When he was here, he was an acting inspector.

Commissioner Dinka: And he told you this?

Mr. James Lando Kwatenge: No, he told an inspector called - I will remember the name as we go on.

Commissioner Dinka: How do you know that he took one of the recordings of that conversation to the British High Commissioner?

Mr. James Lando Kwatenge: Within the intelligence, we used to have the normal flow of intelligence and there were other types where you could say "do not quote me". We were even briefed to be careful with his people after he surfaced in London and his story became public. I knew it before it became public.

Commissioner Dinka: You think we know some of the story, we do not really know that much. You jumped from that to Ouko being taken to Nakuru State House. He is already in Kisumu, who brought him from Kisumu to Nakuru State House?

Mr. James Kwatenge: Actually, it is the DC's vehicle in Nakuru which was brought so that he could recognize it and board, but when he tried to get in he saw strange people. There was rumour going round that a helicopter was involved. I tried to find out whether it was true but the two inspectors, Wekesa and Kinyanjui told me that they could neither confirm nor deny. But, definitely, he was taken from Kisumu to Nakuru.

Commissioner Dinka: You mentioned that he went to Kisumu and was admitted to Aga Khan Hospital. Did they take him from there?

Mr. James Lando Kwatenge: No, it was a few days later. This is a second episode because when he saw the road accident, he knew that his life was in danger and he was trying two ways.

Commissioner Dinka: So, he went to Kisumu and got himself admitted to Aga Khan?

Mr. James Lando Kwatenge: Yes and after being discharged, that is when he organized to meet his tribesmen at his home in Kisumu. There were no witnesses. They were saying if they were seen with him, they would be as contaminated as he was. So, there were double agents. It was a trick to make sure that nobody saw them picking him up.

Commissioner Dinka: So, he was either driven or flown to Nakuru?

Mr. James Lando Kwatenge: From his compound, he was driven away in a convoy of vehicles, but he was killed within State House and my colleagues were there.

Commissioner Dinka: Who actually brought him to State House?

Mr. James Lando Kwatenge: You know State House is hallowed grounds or something.

Commissioner Dinka: It is a protected ground!

Mr. James Kwatenge: Yes, for something like a discharge of a bullet within the State House, it is a very serious matter. Usually within the State House - I think Commissioner Farah knows that – we have several security personnel operating independently and also co-ordinating. We have Special Branch, military and all sorts of people there but among the Special Branch, there were those two people. Once a bullet in discharged there, all formations will try to find out what went on. When they tried to find out, that is when they were told that it was *Mheshimiwa* who had died and the way he had died.

Commissioner Dinka: But they did not see him going in and with whom he went in?

Mr. James Lando Kwatenge: The State House is big. If they would not have heard the sound of the bullet, then they would not even have known that he was there.

Commissioner Dinka: You also mentioned even the person who shot him in front of the President. You also got that from Kinyanjui?

Mr. James Lando Kwatenge: Yes, Kinyanjui and Wekesa.

Commissioner Dinka: Are they alive?

Mr. James Lando Kwatenge: I am not sure about Kinyanjui but in those days when somebody told you a sensitive thing, you had to swear that you would not disclose because his life would be in danger. I had sworn never to disclose to anybody. So when I

gave this evidence to the PSC, I rushed to Misikhu where Wekesa came from to try and talk to him and explain the circumstances that made me change my mind. I was shown his grave. I was told that next to Turkwell Gorge, there is a place called Marich, there is a dry river bed, he had an accident there and he died. I have never met Kinyanjui so I do not know whether he is alive or dead, but Wekesa came from Misikhu next to Webuye.

Commissioner Dinka: So you never met Kinyanjui after that?

Mr. James Kwatenge: After I left service I have never met him.

Commissioner Dinka: If someone has questions on Ouko you ask and then I will ask about Masinde.

Commissioner Shava: I have one question with regard to Dr. Ouko. You say that he was supposed to meet his fellow clansmen and there was supposed to be no witnesses. Then you said that this was a trick to make sure that there were no witnesses when he was being abducted. So who was playing the trick? Who organized the meeting with the clansmen and what was the purpose of the meeting?

Mr. James Kwatenge: The Minister wanted to meet those people so that they would tell the President that what he was hearing was not what was happening. But in those days, if you were contaminated, anybody walking with you would also be contaminated. So, they used this trick to tell him that his employees may be paid by the Special Branch to tell the Government that they were there. He trusted them and that is why he dismissed his security and gave his employees some financial bonus and told them to go. He made sure the family... The idea of him being alone in the compound was his so that when the Luos came they would not find him with anybody. But he did not know that the purpose was that when they went, they did not want witnesses to see him being taken away.

Commissioner Shava: So what you are saying is that it was Dr. Ouko's intention to meet his clansmen. The idea of sending away all the staff came from clansmen and not from Dr. Ouko.

Mr. James Lando Kwatenge: From his clansmen and he agreed.

Commissioner Shava: So, he was not the originator of that idea?

Mr. James Lando Kwatenge: No, because they insisted that "if one of your employees sees us, they would report to the Special Branch. So, let us discuss what we will tell the President in the absence of any other person", but it was a trick.

Commissioner Shava: So, what you are saying is that the clansmen were in collusion with those who abducted and killed Dr. Ouko?

Mr. James Lando Kwatenge: Correct!

Commissioner Shava: Do you know any names of some of those clansmen?

Mr. James Lando Kwatenge: Three names come to mind; there is Anguka – I am very sure of Anguka because of the heavy coverage that Mr. Sang... When you read the intelligence, there was nothing to indicate it but when I talked to my colleagues, they told me so. Anguka was there. Then there was Oyugi and Omwinga. Omwinga is not from their tribe. He is a Kisii but being the Head of the Special Branch in the area, and the way I used to talk to him through the police radio telephone, he sounded very worried when I told him “*Afande, nasikia wale waliohusika watashikwa*” meaning those who participated and Omwinga used to work with my father and he would tell me: “Mtoto, wa rafaiki yangu---“ The way I used to talk to him, he used to be a very worried man and later I was transferred to Iten as Deputy District Intelligence Officer. I also tried to inquire around from people and they said that when those things started, he locked himself in the house. He used to be a very worried person.

Commissioner Shava: Thank you, I have no further questions on that matter.

Commissioner Farah: Sang was with the CID; he was not with the Special Branch.

Mr. James Lando Kwatenge: The Sang you are referring to is different because you are talking of the former Director of CID and he is in the small arms or whatever.

Commissioner Farah: Yes!

Mr. James Lando Kwatenge: No, in fact, the Sang you are talking about, at that time, he was in Kiganjo and he was my course officer when I was a cadet inspector. Later, he joined us in Nakuru as our OCPD and later became the PPO, Rift Valley. That is his namesake!

Commissioner Farah: Okay, now I understand, and Rono?

Mr. James Lando Kwatenge: There are two Ronos; there is one Rono who was the Deputy Director of Intelligence when Sang was being transferred out of Nakuru and there was another Superintendent Rono who was coming in as the District Special Branch Officer, when Sang was being promoted to be Deputy Provincial---

Commissioner Farah: I get it now! So the sequence of events; on the night of the picking up of Robert Ouko from his home, where was his wife?

Mr. James Lando Kwatenge: His wife was in Nairobi. According to my understanding, Ouko deliberately wanted to be alone. So, whether the wife was in Nairobi by design or default, I do not know. But I think if she would have expressed a need to go to the Koru home, I am sure Ouko would have told her “no” because he was meditating or something.

Commissioner Farah: The whole family was apprehensive at that time since he was relieved of his duties? Do you think the family would have abandoned him if he wanted to meet clansmen? I am sure he would have met the clansmen in the presence of his wife.

Mr. James Lando Kwatenge: There is that school of thought that he was relieved of his duties. That is why I was saying one of the best witnesses here was the Permanent Secretary, Ministry of Foreign Affairs, because he would be in a position to know whether he had been relieved of his duties or not. However, from my findings, he was not relieved of his duties. Among the people who discovered that he had disappeared were the people at the airport where he was to represent Kenya somewhere. You know if he had been relieved of duties, he would not have been able to represent Kenya elsewhere. At the time of his disappearance, he was to lead a delegation out of the country and you know a suspended Minister could not have done so. From my investigation, I got the impression that he was not relieved of his duties.

Commissioner Farah: Therefore, he did not lead that delegation?

Mr. James Lando Kwatenge: People were waiting for him at the airport to lead the delegation. However, they realized he was nowhere to be seen. That is when the concern was raised as to where he was.

Commissioner Farah: So, the planners of his murder knew he was going to lead a delegation. We can say that when he was told to go to his Koru home he must have been given leave even if he was not relieved of his duties.

Mr. James Lando Kwatenge: One of the planners was Mr. Oyugi. So, being the Permanent Secretary in the Office of the President, what you have just said must be right.

Commissioner Farah: Who was the Permanent Secretary, Ministry of Foreign Affairs?

Mr. James Lando Kwatenge: Amb. Bethuel Kiplagat.

Commissioner Farah: On the night of him being picked up, having sent his workers off, Selina was partying when they came; they struggled with him and that is why Selina heard him crying like a goat. She also saw him being picked and taken away?

Mr. James Lando Kwatenge: She saw that. I do not understand why she did not take any action. But you know partying may include taking alcohol.

Commissioner Farah: What time was that?

Mr. James Lando Kwatenge: At night.

Commissioner Farah: Was it 8.00 p.m., 9.00 p.m. or midnight? What time was it?

Mr. James Lando Kwatenge: If I were to be given that job to do, it would be around midnight.

Commissioner Farah: Just before midnight. Therefore, how long does it take to travel from Koru to Nakuru?

Mr. James Lando Kwatenge: Less than six hours.

Commissioner Farah: If he was taken from Koru...

Mr. James Lando Kwatenge: By daybreak he would be there.

Commissioner Farah: Mzee normally used to wake up at 5.00 p.m. to read the newspapers. You say they did not take him directly. There was a struggle and he broke his leg.

Mr. James Lando Kwatenge: You are right. During his last moment on earth, he was weeping, crying and beseeching the President that he had no intention of overthrowing him. Both of his legs were broken. He was crying beseeching the President saying you are my friend. Mr. Biwott was so furious that he took a pistol and shot him dead.

Commissioner Farah: How did Biwott get there because they did not pick him? The people who picked him were Anguka.

Mr. James Lando Kwatenge: He was waiting for them there.

Commissioner Farah: The people who picked him were Anguka and...

Mr. James Lando Kwatenge: It was not Anguka. Anguka was to be there that night, but he was not there. They used Anguka's official vehicle to pick him. He thought it was Mr. Anguka who was in his vehicle, but there were security personnel. That is why he tried to run away and they grabbed him.

Commissioner Farah: So, he was really picked by security personnel?

Mr. James Lando Kwatenge: Yes.

Commissioner Farah: All these other people you mentioned were not there? Maybe they were in State House?

Mr. James Lando Kwatenge: Maybe they were also in State House because they had planned in such a way that there was nobody on the scene. When they went to pick him, he thought it was Mr. Anguka with his security personnel. But when he saw there were only security men, he tried to run away. He was overwhelmed and they forced him into the vehicle.

Commissioner Farah: Now comes my one million dollar question, as an intelligence officer who is very bright, I do not want you to speculate, but state facts. Be accurate. What was the intention at the time he was being picked up? Was their intention to finish him? Was their intention to punish him? You said his two legs were broken and in a fit of fury, somebody fired and that was the end of his life? What was the intention for the Mzee to see the man? What was the ultimate intention?

Mr. James Lando Kwatenge: A decision had been made to take him to the next world. If things would have worked out well, they had planned to finish him through a road accident around Kericho. So, even if they would have come and not found him they still would have organized another...

Commissioner Farah: Even if this had failed, they would still have organized another way of taking him to the next world?

Mr. James Lando Kwatenge: Yes.

Commissioner Farah: Thank you. I have no further questions.

Commissioner Dinka: You served in Nakuru? So you must know Mr. Anguka who was the District Commissioner there.

Mr. James Lando Kwatenge: I worked with Mr. Anguka for three months.

Commissioner Dinka: Do you remember the make and colour of his car?

Mr. James Lando Kwatenge: Japanese-made, beige in colour. It was a Toyota or a Datsun. I am not sure.

Commissioner Dinka: Selina said she saw a white or beige car outside. That was the colour of his car?

Mr. James Lando Kwatenge: Yes, that was the colour of his car.

The Presiding Chair (Commissioner Chawatama): On the issue of his security; what puzzles me is how they would find it so easy to leave him. It did not really matter what explanation was given for the privacy because in the end they would have to be the ones to account. Do you know whether or not his security personnel were in the know of what was going to happen? Do you know whether they were ever questioned and the kind of explanations they gave as to why they left him unattended?

Mr. James Lando Kwatenge: I would say this as somebody who attended the VIP protection course. Although I was never allocated a VIP to protect, we used to mix with those people. These politicians are just like us. They have their secret lives. You may find that if the VIP, let us say, wants to go to Koinange Street, he would dismiss the security. The literature I read during my stay there when I was collating and disseminating

intelligence was that a person like Tom Mboya had wanted to kill Kenyatta. Then the person who was sent to kill Kenyatta went and disclosed and he was given more money. He was to meet Tom Mboya. I just want you to understand the picture of how security operates. So, when he came from Mauritius, he asked this person what happened that he was not able to kill Mzee when he was abroad. When they were going to meet, he dismissed the security so that he could meet the person alone. Those are the scenarios that we found ourselves in. When they have some things that they would not want somebody to know they dismiss their security detail.

Commissioner Dinka: On page 7 of your statement, again, you are talking about Kwajakoya the person who did the tapping of the telephone of the President. Now here he comes, a friend of Masinde Muliro to advise him not to split the FORD party. He says: "Do not split the FORD party. Once FORD takes over power then you will be able to tell the country what had happened." What does that mean?

Mr. James Lando Kwatenge: Wajakoya went to London with the aim of taping the discussions between Biwott and President Moi. Wajakoya wanted FORD to take over, so that he comes out in public to disclose the contents of the Ouko tape. In those days, we did not have mobile phones. We used to have landline. He took a gamble. He reached Masinde Muliro through phone. He knew he was being monitored. So, he talked to Masinde Muliro. When FORD party was divided into two, Masinde wanted to put it together. Wajakoya wanted to tell him what you are doing was a good thing because they were waiting for them to succeed. Since our boys knew about that, they sent somebody to follow him and try to find out what Wajakoya knows. If he could not find out, from facial expression, you could tell if somebody has good or bad news. So if you suspect anything you can tip an air hostess and if...

Commissioner Dinka: I will now address myself to the issue of the air hostess. So, Wajakoya was hoping that FORD party would take over power remain united and then he can release the tape. So, what ethnic community does he come from?

Mr. James Lando Kwatenge: Wajakoya is a Luhyia from the Maragoli sub-tribe.

Commissioner Dinka: So, he is from the same tribe as Muliro. You said that Muliro believed that Wajakoya could be trusted and he told him that he would be going to London for a meeting and they could meet at a certain hotel in London. Did this Wajakoya go there?

Mr. James Lando Kwatenge: Wajakoya was based in London. At that time, he was based in London.

Commissioner Dinka: Wajakoya took him out on the open space. They discussed together many issues. They even came together in the same plane?

Mr. James Lando Kwatenge: He came back with Muliro in the same plane.

Commissioner Dinka: What airlines was it?

Mr. James Lando Kwatenge: I do not know.

Commissioner Dinka: You were saying that this man got this air hostess to collaborate with him.

Mr. James Lando Kwatenge: They used Kenya Airways. You know Kenya Airways was a parastatal and even some of the employees there were monitoring things for us.

Commissioner Dinka: So, the air hostess gives him a drink which was poisoned and he died on the plane?

Mr. James Lando Kwatenge: He died on arrival. There was a rumour that Biwott was connected to his death, but in this instance, Biwott was innocent.

Commissioner Dinka: He died at the national airport on arrival?

Mr. James Lando Kwatenge: Yes, he died as he was checking in.

Commissioner Dinka: How did you get this information? Did Wajakoya give it to you?

Mr. James Lando Kwatenge: I am trying to remember the name of this inspector who told me. When we could have a lot of intelligence and I was supposed to summarize it, I was given a free hand to talk to anybody on whatever. In the process, I would ask so many questions to various people and they would not know where the border was. They used to take me for a drunkard who had no interest in anything. So, when I would ask a question they would just think he is just asking because he wants to summarize the whole thing.

Commissioner Dinka: Do you remember the name of the hostess?

Mr. James Lando Kwatenge: It was never disclosed.

Commissioner Dinka: But the person who told you was an inspector?

Mr. James Lando Kwatenge: Yes. He was among the team of Nyayo torture chamber.

Commissioner Dinka: So, he knew from the planning side or how did he get this information?

Mr. James Lando Kwatenge: He comes from the same sub-tribe with Wajakoya. They were friends. They attended a course for foreign language with Wajakoya. So, they were so close. I do not know why I have forgotten his name, but I will remember.

Commissioner Farah: You said that Dr. Robert Ouko and President Moi were such great friends. Who was sleeping in whose house if they were two great friends?

Mr. James Lando Kwatenge: Whenever President Moi would go to Kisumu, he would spend more time at Ouko's private residence at Koru than he would spend at State Lodge in Kisumu.

Commissioner Farah: Thank you. I do not have any further questions.

The Presiding Chair (Commissioner Chawatama): I do not have any question. I think it is quite clear. So, we move to Salat.

Commissioner Dinka: You are talking about Mr. Isaac Salat who was an MP. He had no children?

Mr. James Lando Kwatenge: He had children. I said he died without leaving a political heir.

Commissioner Dinka: So, that takes care of my question because then you come and say Biwott in retaliation started organizing one of the late Salat's sons. This Kipkalya Kones, the man who took over his seat, you said he was practicing firearms in order to kill Salat?

Mr. James Lando Kwatenge: From Uganda.

Commissioner Dinka: But why would he kill Salat if he has taken over?

Mr. James Lando Kwatenge: What happened is that Kipkalya Kones became the area MP and a Minister. So, when Biwott was arrested because of Ouko, he was dropped from the Cabinet. The President appointed Kipkalya Kones as the Minister of State in the Office of the President. So, he became the tribal chief and he started establishing his own powerbase dismantling Biwott. Biwott went to the ground and looked for one of the sons to groom. The post of Minister of State, Office of the President is a very busy job; you do not get time to go to your constituency. So, when he went to the constituency at the general election, he found everybody was singing his praises. So, there was only one way to stop him; through death.

Commissioner Dinka: In other words, he was saying that it was possible to kill the possible successors?

Mr. James Lando Kwatenge: Yes, because Salat was the son to Isaac Salat and when elections were to be called Salat was to be elected as a Member of Parliament and he wanted to continue being a Member of Parliament. So, the best option was to kill Salat so that he continues being the Member of Parliament.

Commissioner Dinka: So, his house was raided and you found that there was no firearm. But one month later, Salat died.

Mr. James Lando Kwatenge: Yes. He was shot with the same AK47 rifle that was predicted.

Commissioner Dinka: But the weapon had not been discovered in the house?

Mr. James Lando Kwatenge: No. It was only through postmortem that it was established that he was killed by a bullet fired from an AK47 rifle.

Commissioner Dinka: Has anybody been arrested?

Mr. James Lando Kwatenge: No.

Commissioner Dinka: And Kones was not questioned?

Mr. James Lando Kwatenge: No. He died in an air accident.

Presiding Chair (Commissioner Chawatama): You said who died?

Mr. James Lando Kwatenge: It was Kipkalya Kones.

Mr. Patrick Njue: Mr. Kwatenge, how did you come about this information about Salat?

Mr. James Lando Kwatenge: There is a rank in police and army called Staffing Officer. It is a small cabinet for the provincial boss. I was a staffing officer, but in special branch we call them Desk Officer. I was Desk Officer in charge of criminal activities and tribal tensions. Since it was an intelligence report that dealt with criminal activities, it passed through my desk.

Commissioner Dinka: This Dr. Fred Masinde is he a political actor or was he just there for the election of 1997? Before that, was he in politics?

Mr. James Lando Kwatenge: He was not known.

Commissioner Dinka: Who paid him money to step down during that election?

Mr. James Lando Kwatenge: What happened is that Nairobi was an opposition zone. It is only in Westlands where we had Amin Walji. In 1992, Mr. Muraya became the Member of Parliament. KANU was trying to spread its wings in Nairobi; when Muraya became an MP, Honorable Fred Gumo appealed and won. So, there was a by-election. There were three things that Fred Masinde suffered. He was financially crippled because he spent so much in general election. So, he was broke. He was reaching out to his political friends to assist him financially. That is when KANU came in. They gave him money and offered to make him an ambassador of Sweden if he could agree to step down. He called a press conference after being given money and stepped down. A team of young Turks from FORD Kenya, including Raila and Mukhisa Kituyi visited him at

his house near Nakumatt Junction. They talked to him to reverse that decision. Again, he called a press conference and said that only a fool could not change his mind. Since he was not a fool, he decided to change his mind and he will contest. The intelligence people told the President that he was going to win. That is why he was given hostile surveillance. This hostile surveillance involves following him with three vehicles. The first one was Peugeot 505 whose number plate was something like 505. He was coming out of his house and the accident occurred near the City Mortuary. When the accident happened, they took the number of the vehicle. I remember talking to a Luo who was in charge of that case at Kilimani Police Station. They checked the registration of the vehicle and found that it was somebody from Mumias, but I knew that he used to have other number plates. When it happened that way, there was a second vehicle of good Samaritans. These “good Samaritans” took him to hospital and applied a laced handkerchief on him. So, he died when he arrived there.

There is one thing that happened that time and it has never happened again. The police sent a group of people I think it was even photographed by *the Daily Nation* who went at the scene of accident with brooms and water to wash the blood. That is something that has never happened in Kenya. That was the only time. Within a week’s time the former President Moi was addressing a public rally meeting in Kakamega and he said if Fred Masinde stuck with KANU, he would still be alive.

Commissioner Dinka: Do you know which hospital they took him to?

Mr. James Lando Kwatenge: No.

Commissioner Dinka: You just said that “good Samaritans” took him to hospital?

Mr. James Lando Kwatenge: Yes.

Commissioner Dinka: But they must have taken him to some place? Where was his body found?

Mr. James Lando Kwatenge: In the City Mortuary. When he died he was just declared dead. There is this mentality with Kenyans that when a vehicle has a slight dent it kills people. So, what they do, looking at the three accidents; the Minister’s accident in Kericho and Masinde’s accident near City Mortuary. So, they just scratch you a bit and then take you to the hospital. I hope the Kenyan Commissioners understand what I mean.

Commissioner Farah: You said when he was involved in an accident; the same people got him out of the vehicle. He was bleeding in the nose. Another vehicle came and stopped. People came out of it; they tried to stop his nose bleeding with a handkerchief. This handkerchief was laced.

Mr. James Lando Kwatenge: Yes.

Commissioner Farah: Going back to what happened in 1993, you were an inspector then, you said that you were drunk and shouted “Kibaki and DP hoyeee”?

Mr. James Lando Kwatenge: Let me explain. I walked into a trap. This is what is called in law “agent provocateur”. I was in charge of criminal activities and inter-tribal tensions in Nakuru and you know in Molo we had Kikuyus versus Kalenjins. My mother is a Kikuyu from Nyeri. I am sorry to say that even right now I am pro-Kibaki, so whenever we were talking they could say “*mjomba wako*” referring to Kibaki. When I was recommended for promotion to Chief Inspector, somebody got annoyed and shouted that “*Moi na KANU!*” and I reacted and said “*Moi wenu hatakuwa na pay slip by February*”. Meaning by February, Moi will be out of job. But when February came, it was me who was out of a job.

Commissioner Dinka: We have finished all the assassination cases that you have mentioned and also your own case, what do you expect from the Commission?

Mr. James Lando Kwatenge: I think I jumped the gun because you have just told me what I wanted to say. It has come to my notice that when NARC Government took over that some special branch officers who were sacked during Moi’s time; their files are missing. The then Assistant Minister for Justice wrote a letter that I should be reinstated if the circumstance under which I was dismissed was what I had stated. He wrote to the Commissioner and told him to confirm if that is the circumstance that led me to be sacked. He recommended that I should be reinstated. That is when our files were taken away. But giving the National Security Intelligence Service (NSIS) their due respect, I understand that some people were sacked over things that are of a security nature like say somebody sending intelligence to foreign bodies. So, they decided to confiscate the files of all the people who were sacked so that if you search them you will not come across some information. I am not concerned, but I understand that there were some people who were selling intelligence to foreign embassies and that was reflected in their files. So, NSIS felt that for the national security, which I appreciate as a trained intelligence officer, but the Attorney-General would write to the Director of Intelligence to verify that it is true that I got drunk and shouted “*Kibaki Hoyee*”. The Attorney-General knows the legal aspect of doing that after confirming those facts.

The person who sacked me acted in *ultra vires*. He had no power to sack an inspector. According to the Ministry of Justice if my case is to be confirmed that way the letter is to be declared null and void and I should be reinstated. I have been away for 19 years. There is a rule in the police which is “over 50 years rule” if the Attorney-General verifies that he can reinstate me on paper then give me my backlog then I be retired in public interest because for 19 years I have never used a firearm; I might be a dangerous person. If I can be given the backlog and then be given the medals that I rightly deserve, it would be okay with me. The Maj-Gen will tell you that soldiers regard medals more than ranks.

Commissioner Farah: It is true that in dictatorship many bad things happen. In democracies we have checks and balances and most of the bad things are eliminated. That does not mean that even in democracies bad things do not happen. What I was only

cautioning you about is one thing, maybe as an intelligence officer you know, intelligence officers are not left on their own. You cover each other. Every intelligence officer knows that there is somebody somewhere at the back, therefore, in the personal file, and you have just alluded that there are some officers were sacked because they were proved to have been selling intelligence information to embassies, those cases are clear. For your case, although you were drunk and it was only one incident are you sure that in that follow up you may also have been noticed for something else? I am just speculating. If you think you were a forthright officer and you were diligently doing your duties and you followed the rules then that is okay and the matter can be pursued. Sometimes, the people who were watching you could have done something to an innocent person just because they do not want him. So, it is a double edged sword. So, just search your soul and tell the Presiding Chair that you were absolutely different from the others.

Mr. James Lando Kwatenge: I was recruited into the police force on 27th November, 1982. In February, 1988, I was back in Kiganjo for an inspector's course. That is a period of five and a half years. I was employed in November, 1982 and in February, 1988 I went to attend and inspectors' course. The following five years, I acted as the Deputy District Sepcial Branch Officer in Mandera. I was the substantive Deputy District Special Branch Officer.

The Presiding Chair (Commissioner Chawatama): Sorry, I do not want to stop you, but we heard that yesterday and it is in our records. As the General was saying, if your file comes out through a recommendation you should be able to defend yourself. We take it that the recommendations for all the other persons are for the Commission to look further into all these assassinations. We also understand that.

We thank you very much for making time to come and speak to us. We have our next witness and we do not want to lose her. We have been free and you have also been free. You look more relaxed than yesterday and your testimony has really flowed and we are very happy. We thank you.

Mr. Patrick Njue: Thank you Presiding Chair. He has a concern which I thought he could raise on record. I believe you can guide us on the way forward.

The Presiding Chair (Commissioner Chawatama): The staff would know what do. So they will show you the Chief Executive Officer (CEO) and then we will know what to do.

We thank you very much; you have given it to the right person because I am also part of these decisions. So, we will see you and thank you more sincerely. We will take care of you and we will also take care of ourselves.
Thank you.

Are you willing to proceed?

Mr. Patrick Njue: Yes Presiding Chair.

The Presiding Chair (Commissioner Chawatama): We would like to welcome you to these hearings. I will begin by introducing the panel before you.

(The Presiding Chair introduced fellow Commissioner and herself)

We are here this afternoon at your request that you be heard in camera. The people you are seeing around you are all employed by the Commission. The equipment you see here is owned by the Commission and it will serve the purpose of recording only for the use of the Commissioners. After we finish the hearings we will come up with a report. It is important that we have a record because we have heard testimonies from a lot of Kenyans and when we make our findings and recommendations, we want to be sure on what we have heard. So, what you see being recorded is for our benefit and you will not see it on the national television and anywhere else.

We will start with the Leader of Evidence guiding you and asking you questions. H will then pass you over to us and we will then ask you questions, make observation or comments. We want you to feel as comfortable as possible, if you have come with somebody, we would like you to introduce that person you have come with before you proceed.

Sister Naula Brangani: This is Mr. Mbuti Githinji; he was the lawyer representing the family of Father Kaiser and also the Catholic Bishops Conference of Kenya. I thought it good to inform him that I would be making statements here.

The Presiding Chair (Commissioner Chawatama): Counsel, we would like to welcome you to these proceedings. I do not know whether this is your first experience of the TJRC.

Mr. Mbuti Githinji: Thank you Presiding Chair and Commissioners. I have had some experiences before, but not with the TJRC. It is the part of hearing I have been advising the judges on the working and mechanisms of the TJRC. I was also advised and took part in the past introduction of the TJRC, through the Kenya Human Rights Commission. I have also taken part in a number of Commissions, including the Waki Commission. I am an International Criminal Court (ICC) Counsel and I have investigated a few cases. Currently, I am acting for part of the victims.

My background with the Church is that, I worked with Father Kaiser before and after his death. I also did his inquest and we published a book, recording his activities before his death. I think that is my take.

The Presiding Chair (Commissioner Chawatama): Thank you. We welcome you both as counsel and as a witness. I am sure at some point we will call on you to maybe just say one or two things.

We want to make everybody as comfortable as possible. We hope that you are comfortable and if you have any questions to ask, you can ask. If you want us to stop at

any time to take a little break, please do inform us and our counsel here will be able to consult. You will be able to consult our counsel whenever you want to, if you feel a bit uncomfortable and if you want to speak to somebody unfamiliar to you, please do that and our counsel is also free to send you a little notes from time to time so that these proceedings go on smoothly.

We are here for your comfort and we are here for you.
Thank you.

Mr. Patrick Njue: Thank you for that, Presiding Chair. May be to begin, Sister, we invite you to formally introduce yourself. First for the record purposes, please tell us your names and what you do for a living.

Sister Naula Brangani: My name is Naula Brangani; I am an Isles Citizen I have been here in Kenya since 1980. I have worked in Kenya formerly as a teacher for 18 years and I have been working for the Association of Catholic Sisters of Kenya, Justice and Peace Commission. It was in that capacity that I got to know Father Kaiser quite well. Just briefly before that, it was a single occasion but most of those 18 years, I was the chairperson of the co-ordination of Catholic Justice and Peace Commission.

Currently, I am in Loreto Msongari as the Sister in charge. I think all these years I was hoping that every day to the surprises that come our way... Every day there is something new like what caused accidents recently. I think every day we deal with issues of the community which are over hundred.

That is basically what I am doing at the moment.

Mr. Patrick Njue: Very well Sister. In your acquaintance with the late Father Kaiser, you said that you remained close to him for how many years?

Sister Naula Brangani: It was from 1993 or 1994 to the day he died. That was about six years.

Mr. Patrick Njue: About six years. What would you say about him in terms of his character, as a person?

Sister Naula Brangani: He was a very courageous man. He was one of the few courageous men I had met. He was afraid at one occasion and he could say: "Yes, I am afraid, but I have to speak." I think sometime before he died he could say: "I got a chance in 1998 and 1999, I did not speak, I did not push it enough, I went to the Bishops with a number of people, but I could not do more. Now, that I have got a chance so I have to speak, I must follow up this matter because too many people are suffering."

So, I found him a very courageous man. On the issue of the pastoralists, he was more concerned with those people to the extent that he realized that they were suffering from land deals and the rape of girls. I think 16 girls had come forward before he died to say

that they had been raped. He was kind of very disturbed about that. In fact, he felt that something must be done.

He was basically highly intelligent and very thoughtful. Any time he could come to the office, he requested secretaries to type something he got from a book here or a photocopy of a book there. He was courageous and thoughtful.

Mr. Patrick Njue: When you said that he was concerned about his people and issues that were affecting them like land and rape. What people were these and from what part of the country?

Sister Naula Brangani: He landed at Maela Camp and went up to Kisii. I think then his eyes were opened at the suffering of people at Maela Camp. They were about 30, 000 people and certainly 18, 000 people were there. But, by the time he left some of them had been dispersed. I know about 12, 000 people's conditions were horrific. I think he found that the system of trying to identify them was full of injustices. I think that started and then after the end of Christmas in 1994, he was shifted by the Bishop to Kilgoris. He said one day that he moved "out of the frying pan into the fire".

I know it because I visited him and the first thing he did was to talk about going to houses. The first thing I was familiar with was land and evictions and all that. But he showed me that the people had been evicted again. I think he joined the Catholic's Justice and Peace Commission as one of the Commissioners and that way he got to know about the people who had been evicted and those who brought their cases to him.

So, those are some of the land issues. He took a lot of interest in issues dealing with land to assist the people who were evicted.

Mr. Patrick Njue: Was that the last station where he worked and that is where he met his death?

Sister Naula Brangani: He was in Lolgorian, the tourist Mission, and he was the Priest in Charge. I think he was called by the nuns to give his opinion as the Priest in the Diocese. And many people including myself were asking: "Who do you think would be good to be the next Bishop?" I did not know those priests very well. Anyway, he was called over to give his opinion and it was that weekend that he was killed. He was gun-murdered in Naivasha. So, it is not the place. I do not think, from the evidence that he was murdered at the spot, but it was that weekend that he was murdered, the 24th August.

Mr. Patrick Njue: Closely coming to what you have said, do you not think that this is where he was murdered? I want us to get to the activities that led to his killing. Perhaps, his counsel said the activities. Do they also occur to you?

Sister Naula Brangani: Why not? I think the basic issue would be land. He talked about a lot of land grabbing in Mara; and he raised the issue up to the President himself. There

was a lot of land grabbing in the Mara and people were being evicted and suffering from that evictions. I am trying to think about something else.

Can I ask Mr. Githinji to add?

The President and one of his sons... One thing that I am certain about is, a group of people came and said that they had bought land as a group, but only to find that the President and his son had taken the land, at a place called Kichwa Tembo, that land was also taken. Some of these were names to be me, but more names will be coming. When he came to Nairobi he was disturbed. Then I told him, you know what, you cannot deal with these issues yourself, you better go to the Kenya Human Rights, and they are the ones who deal with land issues. Lawyers deal with rape issues; you cannot manage this by yourself. Or, you can go to the World Bank or to big bodies to say, that is when something has to be done and these people have to be stopped. So, it was that way that I got to know him.

I was in Maela with him for two weeks. I opened the eyes of the sisters' and we organized to take two weeks in turn to stay in the camp because women were complaining that men were going into their camp at Maela. That is how we got these issues and the children's issues as well.

We organized the two sisters at time to be staying in the camp. So, my turn came and it was my time to organize the coming in and out. For the time I stayed there, it was pretty bad; people were stealing the rations as well.

Father Kaiser then went to the Government; at that time we were going to Nakuru to get something done about those issues and he put them in writing, and brought in a number of documents to pass to Mr. Muthi Githinji and to other lawyers and to different people and anybody who could help. So, as you know Loligorian is very far away and there is nothing much you could do over there. When you come to Nairobi you could work out how to move these documents and get the case taken up and know who to approach. As we said, I knew it could be twelve years of injustice and peace. I knew people whom we were dealing with in different issues. I felt I could go and ask: "Who is the best person to apply to here?"

Mr. Patrick Njue: May be for the record, when was Father Kaiser killed.

Sister Naula Brangani: It was on 24th August, 2000.

Mr. Patrick Njue: In the year 2000. Before this date, for how long had you met him personally?

Sister Naula Brangani: I was in Maela at that time and it was in 1994. That was the first time I really met him.

Mr. Patrick Njue: Before 24th August, 2000.

Sister Naula Brangani: On the 3rd of August, 2000; he came to my office and he wanted to know whether the Njonjo Commission was dealing with land issues. He felt if he had a chance of getting those issues dealt with. So, he had papers with him for those land issues. Then he was taking his niece, Kondole, to the Airport that day.

Another thing that he was keen on - I would say is the newspaper cutting of Honorable Julius ole Sunkuli versus Florence Sambae bringing a court case against Mr. Sunkuli for rape. Now we searched and he was very keen on getting him blocked. He felt that if he is convicted of rape, he will not get entrance to America. He said, "Something has to be done." He was upset because a lot of girls were coming to him reporting about rape cases. He said, "This has to be stopped and something has to be done."

Mr. Patrick Njue: Sister, you have said that you have a conviction that Father Kaiser was not killed in Naivasha.

Sister Naula Brangani: It was my own thinking but the back of that pick-up was covered with blood. How could one kill himself and go to the back of the pick-up? I do not think that is possible. The man asked about the story of the dust, but it was not dust. Even the Government pathologist, the man who did the forensic investigation or whatever it was; he said: "This looks like blood." He took something and tried to wipe out, but the whole side... We also took 24 photographs that morning and one of the front sides of his car was covered with dark green paint. It seemed that they had rammed up against the something. I put up those photographs and presented them to the court and they told me, do not worry, we will follow up and tell you. With all these wonderful and superior equipment, we will tell you what it is. But they never did anything about it, the report came back blank.

The front of the car was damaged and there was damage on both sides and it had not been damaged before. We checked up and it looked like somewhere that night he had been in a problem or with conflict with somebody. What I knew was that the inside of the car was stains of blood on the floor. The floor was covered with a lot of window panes and pieces of glass fallen on the floor. And, outside on the ground, there was no glass at all. The window glasses were raised. How could he push his car? Somebody must have pushed that window in!

The moment I arrived that morning at Naivasha, the policeman by the name Kimeto, showed me where there was a truck and said: "Look, there is another car." He showed me the dust and said: "There is another car there." He said that there was another police lady called Nelly Luaala and they were there that morning. I arrived later but they said, five minutes too late, the body had been taken down the road. We were a number of us. Then in the court itself, Mr. Githinji got up in court...It was kind of a tiny part of it... There about three or four pieces on Father Kaiser's head. There was some kind of evil spirit or something like that because there was lots of blood, so it did not make sense to me. I would ask Mr. Githinji to go through that part or wherever.

Mr. Patrick Njue: You continue and finish first.

Sister Naula Brangani: Okay. It just did not seem to be real. His body was too neat. Then there was a bed, was it really that Father Kaiser could make a blanket. If he wanted to sleep at the side of the road, he would have not put blankets there; there was even a bed spread. It was ridiculous, knowing what kind of a guy Father Kaiser was. That was like following the Cow Boy films. He was modern; he was not copying the gentleman type that is the number of things that are there.

I brought the ruling with me here. Can I present the ruling to you?

Mr. Patrick Njue: On the 3rd August, 2000, when you last met him before his death; had he confided to you that he had any threats?

Sister Naula Brangani: Yes. It was not only that day but even earlier on. He told me that game ranchers had warned him that: "Do not go out there." They told him: "We have been told to shoot you on sight and say that you refused to give up your rifle." That was definitely one of the messages. They said they had been told to shoot him on sight. He was anxious and afraid.

He was worried and he had talked to the Law Society of Kenya. Earlier on there was another time that he was worried again because that time they wanted to deport him. I think between the Parish and other centres overseas and at home, that time when they wanted to deport him. He rang and said that he was afraid to come back and if he could be rescued. At the Bishop's house in Ngong, they threatened him with deportation and said that they could put him in an aeroplane and off he could go and never come back.

The threats were constant. He told me that he could get the threats through the window in the Mara. It seemed something used to be following him and he felt there was something suspicious. I think there was a number which I cannot remember. I think it was the Akiwumi Commission where he was told that he can never get away with naming the name of the President. I think everybody was aware of this situation; he was told, he could not do that and get away with it. But somebody had to do something. So, he was aware.

Mr. Patrick Njue: Are there any particular names that he gave to you. Did he ever mention names as you were conversing?

Sister Naula Brangani: No. I cannot say that he said that he named names like Sunkuli. The name like Sunkuli is something that he could have problems with. He knew he was in danger with him, but I do not think he ever thought that he could actually be in problems from the President.

I think the other person whom he thought he would have never had problems with was Mr. Ole Ntimama because of the evictions in the Mara. He really had problems with him at the time of Maela.

Mr. Patrick Njue: The next question sister would be talking of the documents that you came with today. I do not know whether you have any statement that he had written on what you have talked about.

Sister Naula Brangani: No. I just wrote notes.

Mr. Patrick Njue: We will still refer to those documents that you are going to share with us like the court ruling.

Sister Naula Brangani: I am sure you have seen the court ruling which is very well done. There have been five or six books published so far. This one he wrote it by himself. Can I give it to you? I know you are busy, but you may find time to read it.

The Presiding Chair (Commissioner Chawatama): Thank you very much. We appreciate.

Sister Naula Brangani: This one is just out, you will see it on the Los Angeles' time. It is very good reading it. It flows and he has done his good research. Mr. Mbuti has read it as his lawyer. But I just thought you can see some background that I could cover.

Mr. Patrick Njue: Presiding Chair, I pray that these documents be admitted as part of the Commission's record.

That is all from me, Presiding Chair.

The Presiding Chair (Commissioner Chawatama): Thank you very much. Commissioner Shava, any questions please?

Commissioner Shava: Thank you Presiding Chair. I do not have so many questions, but I am conscious that, perhaps, for yourself and for Commissioner Dinka, you may not understand the references to Maela and all that was happening there. So, I was wondering whether sister would, perhaps, give a bit of a background; why Maela came out. If there were tensions and if so, why they were there?

Sister Naula Brangani: I mentioned the Minister called ole Ntimama. I think it is straight enough. I think he was inciting or jumping up the Maasai in that area - that is how it was anyway - because after a number of years, the Kikuyu and members of other ethnic communities had moved to that area. At one stage I heard that there were some title deeds and evictions. The Kikuyus had bought land from the Maasai and had started small farming and they seemed to be going on nicely and there were inter-marriages and everything else.

But then suddenly, when it was approaching elections, they said that these people have to move out. About 30,000 people were evicted. The first thing they noticed were cattle rustling which was normal and people were okay with that. But then hundreds of warriors appeared at the Enoosupukia shopping centre few miles from Naivasha. They were

evicted and had to move six kilometres into the little town called Maela. Then the first people arrived there and they were housed in one-room huts.

I think my experience of Kenya, this is a nation of women, men and boys in the streets put together; it was a terrible thing on them. Some of them could not get rooms and it was one room so they moved to the football field. A few tanks were put up in that football field where the Catholic Mission was.

At one time they tried to evict those as well so that they do not publicly humiliate anybody especially people from abroad. But the BBC channel covered the story. But, Father Kaiser and another priest went there in July, 1993, and found him as a chaplain. So, he is the one who started to take UNDP there and the Government agencies resurfaced. There was a lot of pain because there seemed to be collusions between the UNDP and the local people. Mr. Githinji is familiar with that story.

Some of the food was stolen en-route and that is where Father Kaiser spent his time and then on the Christmas eve the Government sent in vehicles and people were told they were going to the promised land and that they were going to be given land, but they were actually dropped in the middle of the night all over the place. Some of them really suffered trauma and Father Kaiser was put under arrest that night.

He had been inactive that morning and he should have been arrested but he said look, I will get help. He said: "Go to the Bishop or go to the World Bank, or tell the American Embassy that I have been arrested and probably I could be killed tonight. So, I rang immediately and they said, we have noted. That is what we found out later. So, the evictions happened and Maela was kind of emptied.

Kaiser was captured and was tied up and he was dropped at the roadside in Naivasha. Then they had to get something to tell the world and to the newspapers. So, basically Maela was a concentration camp. I remember I tried to bring in food and they said: "You cannot go in here." I asked: "Is this a prison or a concentration camp?" I told them: "This is not prison, it is a public place, why can I not bring in food, and these people have already starved for a few weeks here?"

Each time I really got trouble getting in and dropping food, clothes and things like that. But Maela was bad news.

Commissioner Shava: Sister Naula, why in your view, did the FBI not do anything? It was unusual; they had heard political assassinations, with the death of Dr. Robert Ouko, saw Scotland Yard coming in. The seriousness of the occurrence showed why the Scotland Yard and the FBI came in. Why do you think they did not come up with any results?

Sister Naula Brangani: In my personal opinion, there was a team sent... I like her and the fellow called Tom Graney and they seemed not to be working, but the top boss was a person called William Colbert who was the brains behind it. But anyway, he had been

working with the CID and the Kenyan Intelligence Services to extradite the terrorists from Kenya.

Remember the American Embassy was bombed two years before. Even Kaiser was killed in August and in that September, I know people who were taken back to America to be witnesses to the bombing. That trial was going on at the time. So, it is my belief that when the FBI sleuths came who were all open, I was like a child with them. They told me: "This is this and that is that." For the two days, I visited that after two days. I had kept them in touch with what was going on and all the rest. They knew so much.

I think when they saw what was going, they saw it was heading to Sunkuli, the Minister for Internal Security and most likely with the approval of President Moi, who Father Kaiser threatened to bring to the Hague. He had publicly threatened and said: "He was behind land grabbing." I think they felt that they should close the door on that. He did not die of a cold or flu; it was not an accident, so the only way they thought to close the matter was to pursue suicide. That would be my view.

I remember some time back Barnes Jockey, I think she was to go - she was just sent - I do not think they would have tolerated the FBI coming and saying that it is the President of the country who was behind all this or the Minister for Internal Security. They said Sunkuli was a favorite for a future President, I said that may be true but I do not know. He was definitely friendly with Moi and Moi appreciated them.

There are so many errors in the Report and so much lack of follow up. They should have known that they did a survey on the ground at Maela and Naivasha and they could not find any bullets. Everything pointed that he had been killed somewhere else and, if he was killed somewhere else, he could have not walked there. They would have known that he was murdered. There was much of this evidence there. They never came to defend themselves before court. I think when I saw their report I was so angry. They presented the report and I was invited to the Kenya Bishops Conference. They presented it in a special hearing before they went public. They told us that they will give us a copy each but they did give us one copy. I asked them whether they had gone for fingerprints; they passed the question down the board. They said: Oh, no, the gun was too old and rusty.

So, there were four things which did not make sense to me and I was kind of upset and the Bishop was asking question. But it was not a presentation at all. When I saw that report in the afternoon when I got into my hands, I was really distressed about it. You know we are teachers but I would have accepted a Former Four student--- It was badly presented, they just seemed to have got any document and put them together, it was not signed. It had an FBI crest on the front. That is the only way, and they conveniently put a behavioral analysis unit report at the back which they said was more consistent with suicide. But that was put in front of the document but in the middle it could not have made sense and it had no conclusion.

So, they never concluded the report, whoever the head of the FBI was, the top men never wrote their conclusion. They just left the behavioral report and one section of the FBI. I

understand the behavioral analysis of one section of the FBI--- So; they did not come to court to defend their report. Mr. Githinji and I were ready for them.

Commissioner Shava: Thank you, Sister Naula for that. I do not have any more questions.

The Presiding Chair (Commissioner Chawatama): Commissioner Farah, do you have any questions for the witness?

Commissioner Farah: Yes. Why did the FBI buy the suicide theory?

Sister Naula Brangani: I do not think they bought it. I think they sold it! The Kenyan police came up with the murder theory at the beginning and the Kenyan police have never completed their report up to this day. Somewhere half way through - I do not think they have completed the report - they left the FBI to take over.

Like I was telling Commissioner Shava, I think it was because they thought going high, they could not say that it was flu or pneumonia, you could not find the body having flu, so it was not sickness nor was it an accident. There was no other crash or something like that. So, the only thing they could do was to have that case closed because they saw they were in danger of being put out if they went too high. So, they had to come up with suicide.

Even Dr. Ouko's case was suicide even though it was thrown out. So, that was the only way they would have had to close the case.

Commissioner Farah: How about this other theory which was rejected by the court. That he was suffering from some mental illness; from disease and therefore, he may have taken his life. That might have lead to his death. Where did this also come from?

Sister Naula Brangani: I think his sister, Kalisa, had said something to the effect that he had been - she was asked whether he had been sick in the past - she said that in the past, he was put in hospital in New York. Now on that story, I had to read her book and it is very well thought of book. He actually challenged the director of Mary Hill Congregation. He had telexed money there and there was some deviation in his sexual behaviour there. So, he was very angry and he could adopt a friend whom he could call culprit. So, he told him "this Kaiser fellow is crazy. Take him in." He told me that he had agreed to go in as long as he could. So, he said, if you go then well, the two of us will go.

I do not think whether the director went but Kaiser found himself put in the psychiatric evaluation or something. But they did not do anything like that. There was something which was said that he could have been depressed.

I think I appreciate that, after being here for a number of years, and when you see the foot and the toes, and you are here in the place and there is nothing, your mind could flash and you say: Oh gosh! I cannot take this." Something could cross your mind. I think I could agree with that. He was a little bit depressed for a week or two.

But I never found him ever - I remember I said that I would keep him under watch. Listen to what the Bishops were saying. Two Bishops called in and said: "We do not recognize this description of Kaiser."

Now, Dr. Njenga, a well known psychiatrist here was called. I think Mr. Githinji actually called the ropes from under his feet. He booked his American par and one of the principals of the American par. They said, you cannot write a report about somebody you have never met. So, there is no way I can write a report about anybody I have never talked to. You cannot do that, he did not go to his doctors, he did not go to his family, he did not go to - I was interviewed by him and I was disturbed because they had already decided suicide by Dr. Njenga. I asked, what is all this about?

He said, oh, he could not have come from the Game Park, Kaiser he broke up and cracked and committed suicide. I said this is ridiculous nonsense; the Priest is used to all this and he is used to other people's spine and all these. I think the magistrate was very well in order in her ruling she totally brushed that case aside.

Commissioner Farah: So, he was involved in the Maela and Transmara land issues between the Kikuyus who bought land from the Maasai and also the Kisiis who were evicted?

Sister Naula Brangani: The Maela land issue would be more between Maasai and Kikuyu. It fuelled conflict between the two tribes. There were Kurias on the other side. Kurias border Kisii and Maasais on one side.

Commissioner Farah: Thank you very much. The way he was discovered, it shows he was killed somewhere else and brought there. It is not the first case. We also dealt with another case of a CID officer was found on top of one of the bridges here towards Kiambu in his car. It seemed he was killed somewhere else and dropped on that spot. So, those things were normal those days. I think that is not the spot where he was killed.

Sister Naula Brangani: Personally, I do not think so. Anyway, he would talk himself.

Commissioner Dinka: Father Kaiser mentioned to you that one of the rangers cautioned him not go hunting because they were given instructions to kill him on sight. Did he ever mention to you who gave him that instruction?

Sister Naula Brangani: I was given two names. That was for Douglas and Richard. These were southern English name. I could not say with accuracy which was the year.

Commissioner Dinka: Thank you.

The Presiding Chair (Commissioner Chawatama): Not only are we tasked to listen to witnesses, but we are also tasked to make recommendations of our findings and come up with a report. In this particular case, when you knew that you were coming to speak to us, what came to your mind? How would you like Father Kaiser's case be concluded? Would

you recommend for further investigation, so the truth would come out? What do you expect from us?

Sister Naula Brangani: I think we need to erect a monument at Naivasha Town in his honour so that we do not forget what he did for the community in Trans Mara District.

Maureen Odere in her ruling said that this case should be further investigated. She asked five questions which to date beg for answers. She said Father Kaiser did not commit suicide as initially alleged. He was murdered or culpable homicide. She gave out the ruling, and she suggested four people be further investigated. One of them is Francis ole Kantai, a former Catholic Justice and Peace worker of father Kaiser. The other one was a relative of ole Sunkuli. His name is ole Kutun. The others were Kulpasal and Suya.

It was very clear that their behaviour at the time of his death did not add up. There was a magazine missing at the time of his death. There were a number of irregularities. It is in the ruling here. This is what she said towards the end of the pages. You can see it for yourselves. Nothing has ever been done. That ruling was given in August, 2007. We are in April, 2012. Nothing has been done. No action or further investigation has been done. Lawyers and Catholic Peace and Justice have been to the Attorney General. With us, the case would be followed. Valuable witness like Florence Sampei has never been investigated. We thought she knew how this murder was planned.

So, we would like that investigation done. We would like to see the FBI come back and finalise their investigation. No ballistic report was ever given at the inquest. We would like that report brought back. We believe American Government still holds it and any other evidence. The FBI is still holding evidence belonging to this case. So, we would like those followed up. I suppose on a deeper level, I can ask why was the case not followed up? The Attorney General Amos Wako, I think would have been one of the people holding the key to unlock the mystery behind this heinous murder.

If we really believe in democracy and truth, why this case should take that long? How many murder cases have been on his desk and nothing has been done about them? We know of J.M. Kariuki and others have been blocked somewhere. I think it is in the Constitution. Why does the system allow one such as the Attorney General to block cases? We do not seem to get past the Attorney General. Does the Chief Justice have a role to play in these cases? Can he intervene and tell the AG: "Look if you are not doing your job, let me do it for you, or let me help you." The new Attorney General is a good man. Could there be a link between those three tough men? These murders have caused so much pain to families. One of the lawyers defending ole Sunkuli was the DPP Keriako Tobiako. I understand that when that report is presented to him, he is reluctant to act on it.

I would urge him to voluntarily step down, so that this case can be handled by somebody else. This case of Kaiser must be concluded. We do not want to be taken round in circles. A man who spent his late night and early morning trying to defend Sunkuli or everybody else against father Kaiser, I cannot see him acting independently on this case.

Three years ago nobody listened to us. We went to court several times, but we could not even be heard. The Government could not listen to us. In 2003, when the NARC Government took over, we got an opening. For four years, there was a court case. I went there to listen to it, but it was a waste of time. You notice that magistrate tried to do her notices; it was actually another system of ordeal. Note taking could come in. The investigation system to me is not clear, we got very little help. Many time we had to bring our witness. We really had trouble getting witness and paying for them a place to put up. I think that whole system could be relied on.

We were told no stone would be left unturned. The trouble is the stones have become very heavy to turn and so many things have happened. You know the masses have been well covered. Three years ago, I counted nine people who died under questionable circumstances. For example, Prof. Nyanja, who was a very crucial witness died through a car crash. The driver in the other car died two days later mysteriously. So, we feel it is important to note some of these stones are unturned. The last thing I will say is that it is sad that Ministers are now being taken to The Hague accused of crime against humanity. These cases are giving our country a bad image abroad. The impression being created is that we are unable to handle our issues.

I know a person like Mr. Githinji is well placed to conduct investigations here, but there lacks political will. It is not that they are not able, but they have no will to do so.

Sorry, I talk too first.

The Presiding Chair (Commissioner Chawatama): My father said that I talk too much and I should finish all my arguments in court. May be that is why I became a lawyer. I still talk too much.

Counsel, maybe, we can allow you five minutes. It has been a long day. I do not know what you would wish to add to what has been said.

Mr. Mbuti Githinji: Maybe, I should ask Sister to explain one very significant issue which goes to the root of the death of Father Kaiser. That is the hearing of the Akiwumi Commission, because she was there, and father Kaiser made a statement that seems to have met a very serious reaction from then the former DPP.

Sister Naula: Father Kaiser had tried to get to this Akiwumi Commission about the clashes. At that stage, it was about Maela clashes. The Commission was sitting in Trans Mara District. He went there to talk on behalf of the victims of clashes. He was not warmly welcomed by the Commission as I would have expected. They were not friendly to him. So, he was kind of a bit a rude. He was pushed at one stage to say who was behind the clashes. He told them that he was a visitor in this country. He was not a Kenyan citizen. They pleaded with him to tell them who was behind the clashes and they promised to protect him. He told them that the President of Kenya was behind the clashes in the Mara.

At that stage, there was commotion in the room. There were loud consultations and people were making telephone calls. So, a counsel shot up and said he was representing the President of Kenya. He quoted some articles of the Constitution that prohibits a sitting President to be adversely mentioned in court. So, he pleaded with the Commission to expunge what Father Kaiser had said from the records.

Justice Akiwumi said it was okay. He directed all the journalists not to cover that in their records and that it was not to be made public. So, Mr. Harun Ndubi, who was a lawyer for the victims tried to bring it up. He said the President must protect his people. He wanted the President to intervene and stop these clashes because people were suffering. In fact, he wanted to raise the issue in the High Court. So, that was the end of that story.

He was afraid of the witnesses. We 11 of us would all go together, but he was quiet scared.

The Presiding Chair (Commissioner Chawatama): Counsel, was it a law that the President could not be adversely mentioned or was it the fact that when one is President, you would not be able to take him to court anyway?

Mr. Mbuthi Githinji: In this country, it is like a norm that nothing adverse shall be mentioned of the President.

But unfortunately then Kaiser had his evidence. He was not used to keeping information in his possession. So, he mentioned it. The tribunal, of course, was informed. However, the representative of the Attorney General insisted it must be expunged from the records and it was. But it was significant in that this one of the many issues that kept on rising. The fact that Father Kaiser could challenge the authority and the President, sent cold shivers in some people.

The next part is what sister has mentioned about his threat to go to the Hague, whether he meant the ICJ or the current Hague under the Rome Statute, it must have sent some scares upstairs. This is because the issue that he was taking to the ICJ, included corruption, grabbing of land and violation of the rights of the women, as sister has said. So, those were issues that were not taken very lightly.

I would like to mention just something about the FBI because I think that is a very crucial issue. This is an organization that was expected to do a good job. But you have to understand the history. The history is that the FBI was already carrying out some investigations in this country. This also came out in the inquest of brother of Father Kaiser and also the manner in which the Attorney General handed over a Kenyan case for investigation by the FBI.

You would find in record that part of the request came from the Ambassador of the United States of America. But there was also a Congress and House of Representatives request that the case must be investigated. The FBI had an obligation to make a report.

They had to patch up something and make a report by 15th December, 2000. So, there were circumstances that were not fully explained, why the FBI would take a case from Kenya. There were expectations that if they do, they would do a very good job. But they would not do, because already they needed sympathy of the Kenyan Government because they were investigating the bomb blast.

The other issue that arose, especially with respect to the FBI is that they were not familiar with the Kenyan territory in terms of individuals they came across. Again, you find in the report they said how friendly the police were. These are the police officers who the magistrate said were unwilling to investigate. Two, verdicts came from this investigation the police said we do not find suicide. We find a case that needs an inquest. The FBI as the sister has said approached the case from a behavioural point of view. They said: "This man is behaving very oddly. He must have committed suicide."

Basic presumption in law, I am sorry, your ladyship, I do not want to talk law, but the basic principle is that you cannot presume suicide. You must always move from murder to something else. That was the approach adopted by Kenya Police until September, 2000. So, the police were on the right track. But when the FBI came, a small committee was formed. They started finding some faults, something that would be an issue of behaviour. That is how the concept of suicide came, looking into his history, and the statement they had taken from the sister, they came across the event of 1980. They said suicide.

However, all circumstances explained, the then only Kenyan psychiatrist showed he himself was not sure it was suicide. He said: I did not have enough information to come to the conclusion that it is suicide. However, this is the report that is adopted by FBI. Now the pathologist was more interesting. Our pathologist would not finish his evidence in Naivasha. He did not make a conclusion in his written report that it was suicide. However, in court, and I believe under pressure, he said it was suicide. Then, from there, he took off, he went to Australia. He did not finish his evidence. I am sure the General knows the significance of the gun and the ballistic report. The ballistic report from Kenya was missing.

The Director of Criminal Investigations himself said, a ballistic report is very important, I did not find one. However, immediately the FBI came, they took the gun. They went and did the examination on the gun. They did not bring back the ballistic investigation report. So, this is the way the FBI and our Kenyan police messed up with its investigation. The FBI with their technology went to Naivasha. They brought the metal detectors to try and establish whether a gun was used in Naivasha. There were no pellets. This was a shot gun. None at the scene, none in his body, none in his head despite the fact they used a metal detector of the highest sensitivity covering a radius of about 100 metres. So, the conclusion is that the body was also shot elsewhere and brought there.

I have a lot of things to say, but I would like to say the FBI with all the technology ruled out any possibility that he shot himself in Naivasha. So, if he did not shoot himself in Naivasha, he must have been shot elsewhere. We concluded in our inquest by a finding

and that is now conclusive that this was homicide. So, the issue now of cause death whether it was suicide or not has been cleared by the court. The court indicated the only issue remaining is identification of those responsible. It identified people who should be investigated. One is in the USA, a catechist, who lived with Kaiser in the same house and who was used to trace his movements in what has become a very important, 96 hours before death. That is there.

The other important people the court said should be investigated are the relatives and friends of the hon. Minister. I leave it to you and to other people to ask the question: What would be the interest of the relative of the Minister linking Father Kaiser? There was a tendency to kill him. I have nothing to say because we are before a court of law. But a further investigation will reveal something more important.

I have my recommendations to make. Under the current Constitution, Article 35, the public has a right of access to information. One very crucial file, the file of Father Kaiser kept by the Special Branch, what does it show? The man who followed him, a special branch officer was the first to die. The evidence before the tribunal or before the court was he followed Kaiser during the last days. Some of the questions he asked: Where does he keep his shot gun? What information has he got to take to The Hague? Those are very pertinent issues. The file of Father Kaiser must be found.

I may sound optimistic that it would have evidence. If it does not have, then that is also an indictment to the Government.

I also have another very important recommendation to make that in the process an independent investigation must be done. As the sister had indicated, we have a misfortune. We were seated with a counsel who was defending one of the suspects, just as we were seated there, he was appointed the DPP. He just changed tables and brought another counsel. I do not impute any ill motive on him, but as we have seen I think it is important for people even with the slightest interest to disqualify themselves. I am not making issues in this tribunal, but I am just indicating that legal sanity requires a very independent person deal with the matter. Unfortunately, he is the one now directing the police. I have many more things to say, maybe, we shall in due time put up a memorandum and give to the tribunal in good time. Thank you very much.

The Presiding Chair (Commissioner Chawatama): Thank you, counsel. Your recommendations are definitely very weighty, but weighty in a nice way not weighty in a bad way. They do not weigh me down, I do not know about the other Commissioners. Definitely, the rules of natural justice would demand that the DPP disqualifies himself totally and somebody independent, I think even it is somebody from outside then would have to step in.

It will not be fair and justice needs to not only be done, but seen to be done. I think that is what we accept in our circles.

I think one of the things that I would like to ask of you; I do not know whether or not you made any submissions before the court. So, could we have sight of those submissions,

and possibly any other documents that you may have submitted to the court that will be helpful. We look forward to your memo that will assist us greatly.

We are so sorry that we kept you for a very long time and that you had to leave to go and have lunch, when we came out in search of you. But you will be happy to know that we are starving. We have not risen at all. We have had tea and that is it nothing to accompany that, because we wanted to make sure that we heard you and we did not delay you any longer. But we are so glad that you came. Thank you very much, for your testimony this afternoon.

Counsel, thank you very much for your help and we look forward to hearing, especially more on recommendations and your submission and other documents that will help us.

Commissioner Shava: I just like to say as the Presiding Chair has said, thank you both very much for your testimony. I would like to also laud you on your persistence and the fact that you have not given up. We have moved from a stage in this country, where I remember when I was a young law student, where we were told that Julie Ward murdered herself, shot and burnt herself. So, it is becoming progressively more difficult for people to impede justice by making up those kinds of ridiculous statements and submissions. Your work and the documents you have given us, the books will help.

We just want to assure you that we will play our part. This Commission is not afraid. This Commission wants to see truth and justice become a way of life in this country. So, we thank you for your contribution to the process and just to assure you that we will play our part as well. Thank you.

The Presiding Chair (Commissioner Chawatama): Now we have developed that habit. I said you want to say something you said no, but I knew that you wanted to say something. This is what happens when a team has stayed together for a long time and you understand one another. All the same, I will look in this direction and find out---

Sister Naula Brangani: I want to thank you very much for your courage. At least, our voice will be heard. We just pray and hope you will not be hacked. Thank you very much, indeed.

The Presiding Chair (Commissioner Chawatama): This marks the end of thematic hearings on assassinations. We stand adjourned until tomorrow for other matters. We would like to thank the Leaders of Evidence and all who have worked tirelessly and have gone with us this afternoon, and our witnesses, of course, in order to make our hearings possible. We have had two counsels today and that has been so helpful. Thank you very much.

(The Commission adjourned at 5.00 p.m.)

