

LIFE ESIDIMENI ARBITRATION

**HELD AT: EMOYENI CONFERENCE CENTER, 15 JUBILEE ROAD,
PARKTOWN, JOHANNESBURG**

DATE: 25 JANUARY 2018

5

DAY 6 SESSION 1 – 4.

BEFORE ARBITRATOR, JUSTICE MOSENEKE

10

WITNESSES:

MS QEDANI MAHLANGU

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SESSION 1

ARBITRATOR JUSTICE MOSENEKE: Thank you. You may be seated. Good morning, Ms Mahlangu.

MS QEDANI MAHLANGU: Good morning, Justice Moseneke.

5**ARBITRATOR JUSTICE MOSENEKE:** Ja. Do you swear that the evidence you are about to give will be the truth and nothing but the truth? And if so, please raise your right hand and say, “So help me God.”

MS QEDANI MAHLANGU: So help me God.

QEDANI MAHLANGU (duly sworn states)

10**ARBITRATOR JUSTICE MOSENEKE:** Very well. Before we start with the cross-examination, any Counsel who would like to let us know of any thing we do not know? No? No. Advocate Crouse.

CROSS- EXAMINATION BY ADV LILLA CROUSE: Morning, Justice.

ARBITRATOR JUSTICE MOSENEKE: Good morning.

15**ADV LILLA CROUSE:** Morning, Ms Mahlangu.

MS QEDANI MAHLANGU: Morning, Counsel.

ADV LILLA CROUSE: Ms Mahlangu, we have listened to you for two days, and I am going to try to give my impression of what you have said. I am going to try not to repeat what I have said. So if you could just try to help us with the shortest possible answer. Is it correct that you are not a medical person?

MS QEDANI MAHLANGU: Yes, it is correct.

ADV LILLA CROUSE: It is correct that you also not a lawyer?

MS QEDANI MAHLANGU: Yes, I am not a lawyer.

ADV LILLA CROUSE: You are a politician, is that right?

5**MS QEDANI MAHLANGU:** Yes, I am.

ADV LILLA CROUSE: And you have been so for very long.

MS QEDANI MAHLANGU: Absolutely correct.

ADV LILLA CROUSE: With also established that you, like other politicians you say, do not read all emails, is that right?

10**MS QEDANI MAHLANGU:** Can you please repeat your question?

ADV LILLA CROUSE: Yes, you told us you, like all other politicians, do not read all emails that are sent to you, is that right?

MS QEDANI MAHLANGU: I said it is impossible to read each and every document that is sent [intervenes]

15**ADV LILLA CROUSE:** Ma'am, the easy answer is just yes or no. So could you just say– we know what you said. It is typed. It is on the record. Let us not waste time. We know what you say. So do you agree with me you, like the other politicians to say, do not read emails, all the emails?

MS QEDANI MAHLANGU: It is impossible to read the document before my desk at
20the time.

ADV LILLA CROUSE: So your answer is yes?

MS QEDANI MAHLANGU: It is impossible to read every document that comes before my desk.

ADV LILLA CROUSE: Ma'am, it is going to be a very long day. Is your answer
5yes?

MS QEDANI MAHLANGU: It is impossible to read every document comes before
my desk.

ADV LILLA CROUSE: Justice, can I ask that the witness answers the question,
please?

10**ARBITRATOR JUSTICE MOSENEKE:** Well, ja. Well, the answer is she is not
able to read all emails that come on her desk [indistinct - cross-talking]

ADV LILLA CROUSE: Then it is going to be a very long day if [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Let me hear the question again [indistinct -
cross-talking]

15**ADV LILLA CROUSE:** So is it true that you, like other politicians, do not read all
the emails that are sent to you? Yes or no?

MS QEDANI MAHLANGU: It is impossible, Justice.

ARBITRATOR JUSTICE MOSENEKE: Ja. [Indistinct 00:03:24] fair the answer is
yes. Yes, it is impossible. I cannot recall emails.

ADV LILLA CROUSE: And when you get emails with questions, you refer them to the Department.

MS QEDANI MAHLANGU: Yes, I refer them to the HOD to deal with it as a competent person.

5**ADV LILLA CROUSE:** And you blindly rely on your people in the Department for what they tell you.

MS QEDANI MAHLANGU: Correctly so.

ADV LILLA CROUSE: And you have no regard to the emails while you are ill.

MS QEDANI MAHLANGU: When I am booked off by the doctor for medical
10reasons and I do not know how will I would not supposed to be at work [intervenes]

ADV LILLA CROUSE: Just yes or no, Ma'am.

MS QEDANI MAHLANGU: When I am booked off I am booked off and I am not at work and I was really sick.

ADV LILLA CROUSE: My question is do you read emails when you are ill?

15**MS QEDANI MAHLANGU:** I was off ill.

ADV LILLA CROUSE: You are not answering the question, Ma'am. Please answer the question. Is it correct that when you are ill you do not read emails? Just yes or no.

MS QEDANI MAHLANGU: When I am ill I am ill. If I am hospitalised I am hospitalised. I do not know how can I have a computer or a phone when I am in a hospital or I am at home.

ADV LILLA CROUSE: I am assuming that you say no.

5**MS QEDANI MAHLANGU:** It is impossible to do work when you are not well.

ADV LILLA CROUSE: Ma'am, after you are better, you also do not regard to the emails that you have received while you were ill, is that so?

MS QEDANI MAHLANGU: In the political office, people [intervenes]

ADV LILLA CROUSE: Just yes or no, Ma'am.

10**MS QEDANI MAHLANGU:** ...people in your office would have access to your documents and they will be able to deal with those even in your absence.

ADV LILLA CROUSE: Yes, that is not an answer to my question, Ms Mahlangu. It is going to be a very long day if I have to ask you a question more than once. Can we assume that that when you are better, after your illness, you also do not read the
15emails that that came in after, during your illness?

MS QEDANI MAHLANGU: I endeavour to go through all my– I endeavoured at the time to go through all my correspondence to the extent that it was possible.

ADV LILLA CROUSE: So the email that was to you while you were ill with all the concerns, did you read that after you were better?

20**MS QEDANI MAHLANGU:** Yesterday , Justice, I did indicate that I do not remember the email for the reasons I stated yesterday. I also indicated through you

, Justice, that I would have– I remember that the issues were raised in the meeting and they were discussed.

ADV LILLA CROUSE: You have not answered my question, Ma'am. The question is can be assume that you did not read the email that was sent to you with all Dr Mosenogi's problems while you were ill, that you did not read that email after you were better?

MS QEDANI MAHLANGU: Because I do not remember the emails. What I remember is the meeting discussing the issues that are purported to have been raised in the email.

10**ARBITRATOR JUSTICE MOSENEKE:** Well, it is a fair question, Ms Mahlangu. The question is after you had recovered, did you read Mr Mosenogi's email?

MS QEDANI MAHLANGU: Justice [intervenes]

ARBITRATOR JUSTICE MOSENEKE: We know you were not well when it arrived, but after that, did you read it?

15**MS QEDANI MAHLANGU:** Justice, I did indicate yesterday, I do not remember seeing the email and my answer still stand today. I do not remember seeing the email. What I remember, the contents of what is said to have been– a mail to have been sent to me, I– it was– those issues were raised in the meeting, and we dealt with those issues.

20**ARBITRATOR JUSTICE MOSENEKE:** Your answer is Ms Mahlangu does not remember the email.

ADV LILLA CROUSE: I want to put it to you that your evidence yesterday was that you did not read it because you were ill.

MS QEDANI MAHLANGU: But I have repeated several times that I do not remember the contents of email. First of all, it was a– it is claimed to have been sent to me when I was not well. At that time, I was discharged on the 5th, on the 6th I was home, and I went to Chris Hani Baragwaneth to do an MRI on that day.

ADV LILLA CROUSE: That is not an answer to my question, Ma'am. Yesterday your evidence is you did not read it because you were ill.

MS QEDANI MAHLANGU: The answer I just gave now, Counsel, is my answer.

10**ADV LILLA CROUSE:** Okay. You also testified yesterday that you have a total open door policy, is that right?

MS QEDANI MAHLANGU: Absolutely correct.

ADV LILLA CROUSE: And that you are on a friendly disposition.

MS QEDANI MAHLANGU: Excuse me?

15**ADV LILLA CROUSE:** You also testified that you are of a friendly disposition.

MS QEDANI MAHLANGU: Yes, that is true.

ADV LILLA CROUSE: And that you carry no personal blame for what went wrong in this marathon project, is that right?

MS QEDANI MAHLANGU: I cannot carry a personal blame when I woke
20[intervenens]

ADV LILLA CROUSE: Just yes or no, Ma'am, please. Just [intervenes]

MS QEDANI MAHLANGU: Justice, through you, I cannot carry a personal blame when I worked in government as an elected official and I think there is a distinction between that, because in the position I held, I was elected to be in the legislator. 5From there on, I get appointed by the Premier to be the executive. It cannot be correct that now I must carry– I must talk about a personal responsibility. I carried a responsibility and authority government.

ARBITRATOR JUSTICE MOSENEKE: You have got an answer. “I carry responsibility a public official, as a politician but not personally.” That is how I 10understand the answers and you can decide whether you want to pursue that or not, Counsel.

ADV LILLA CROUSE: My question to you is, is that your evidence, and if you could answer with a yes or no, that you carry no blame for what has happened here other than political blame?

15**MS QEDANI MAHLANGU:** Counsel, I have indicated that what happened is regrettable. Beyond any words can express how I feel.

ADV LILLA CROUSE: But it is not your doing. That is your testimony, is it right?

MS QEDANI MAHLANGU: So and I will continue to say that no one planned that anyone is going to die during this process.

ADV LILLA CROUSE: Ms Mahlangu, my question is do you– for the last two days it has been your testimony that you carry no blame other than the political responsibility, is that right?

MS QEDANI MAHLANGU: I take– I will continue to take political responsibility to the extent that I resigned and I lived public office because of that.

ADV LILLA CROUSE: Yes, Ma'am, I know that you are a politician and I am a lawyer and I need short answers and you need to talk a lot. So but let us do what we do in arbitration. Is it– Did I understand your evidence correct that you did nothing worthy of blame? That is your testimony for the last few days.

10**MS QEDANI MAHLANGU:** Justice, I continue to say I took political responsibility, and leading public office I thought it was remorseful enough to demonstrate my [intervenes] my regrets.

ADV LILLA CROUSE: Do you have any moral blame, Ma'am?

MS QEDANI MAHLANGU: Pardon?

15**ADV LILLA CROUSE:** Do you have any moral blame in this?

MS QEDANI MAHLANGU: Since this– since the events started in September, particularly looking at the number of deaths, I have struggled a lot.

ADV LILLA CROUSE: My question is do you carry any moral blame?

MS QEDANI MAHLANGU: I am not sure what you mean, what you are implying
20[intervenes]

ADV LILLA CROUSE: So why did you answer the question if you do not understand it?

MS QEDANI MAHLANGU: Can you please ask a question that I probably I can understand? English is not my first language by the way.

5**ADV LILLA CROUSE:** Yes, neither is it mine, Ma'am. Did you do anything wrong in this project, is that what you are saying?

MS QEDANI MAHLANGU: I did my utmost best. When I found out people died, I approached the ombudsperson and everything else that comes after that. I did my best to try and [intervenes]

10**ARBITRATOR JUSTICE MOSENEKE:** Well, the question is a little bit more pointed than that, Ms Mahlangu. It is in your conduct, is there anything that you identify as blameworthy, in other words, where you did something that you want to carry blame for? That is what Counsel is trying to get it. To say [intervenes]

MS QEDANI MAHLANGU: Sorry, sorry, sorry, Justice.

15**ARBITRATOR JUSTICE MOSENEKE:** Yes. Counsel is asking that is there anything for which you will carry blame, given all these events? And she says aside from the political accountability which you have rightly and correctly assumed, is there any deed or action on your part which when you think again, you accept that it was– attracts the blame?

20**MS QEDANI MAHLANGU:** In taking political responsibility , Justice, my belief is that it is the realisation on my part that a lot has gone wrong. That is the blame I am

taking, simply because, and again, I would like with your indulgence, the constitution, sorry, the Public Finance Management Act which governs the relationship between or what is supposed to be done by politician and what is supposed to be done but official, it is clear and very distinct. So my responsibility is broader deliver and to oversee government policy is implemented. The implementation side from A to Z, it is the sole responsibility and duty of the public servants who are employed competent with the appropriate skills.

ARBITRATOR JUSTICE MOSENEKE: With the benefit of hindsight, are there any things that you would do differently? It is the same question. I am just using 10 different words.

MS QEDANI MAHLANGU: Probably would have— yes, I would have done things differently.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

ADV LILLA CROUSE: So just to cap, and if you could answer this just with a yes or no, you have no [intervenes]

MS QEDANI MAHLANGU: Excuse me, Counsel.

ADV LILLA CROUSE: Just let me finish, please. You carry no personal blame in all of this, is that right?

MS QEDANI MAHLANGU: Counsel, once again, I cannot carry a personal blame 20 [intervenes]

ADV LILLA CROUSE: Just yes or no, Ma'am.

MS QEDANI MAHLANGU: I was– I was– I served in a public office and I assume the political responsibility and I cannot carry personal blame because I was not working for my personal self.

ADV LILLA CROUSE: So your answer is no, you do not carry.

5**MS QEDANI MAHLANGU:** I do not carry personal blame [intervenes]

ADV LILLA CROUSE: Thank you.

MS QEDANI MAHLANGU: However, I carry the political respon– blame simply because of the position I had the time.

ADV LILLA CROUSE: Yes, because you are the MEC. You get paid to do
10something, is not that so?

MS QEDANI MAHLANGU: Because I am elected official, yes.

ADV LILLA CROUSE: And you get paid to do that.

MS QEDANI MAHLANGU: Yes. Yes, absolutely.

ADV LILLA CROUSE: Because if you were not paid to do something, the
15department could just report to the Premier, is not that so? So you have a function.

MS QEDANI MAHLANGU: And my functions are defined by legislation.

ADV LILLA CROUSE: Just yes or no, Ma'am. I will ask you what your functions are [intervenes]

MS QEDANI MAHLANGU: My functions are defined by legislation, Counsel.

20**ADV LILLA CROUSE:** So you say you have a role to play.

MS QEDANI MAHLANGU: As in defined by the legislation.

ADV LILLA CROUSE: Yes. And your job is probably more than to present budget is that you have not prepared yourself.

MS QEDANI MAHLANGU: Budgets are prepared by the chief officer under the leadership of the HOD.

ADV LILLA CROUSE: Yes, my question to you is, Ma'am, please listen to the question, your job is probably more than that.

MS QEDANI MAHLANGU: Can you please elaborate?

ARBITRATOR JUSTICE MOSENEKE: More than what, Counsel?

10**ADV LILLA CROUSE:** Your job is probably more than to present budgets in the legislator that has been prepared by other people, is that so?

MS QEDANI MAHLANGU: The responsibility of any politician is defined in different legislation; to oversee implementation of government policy and to ensure that things going according to plan and if they do not [intervenes]

15**ADV LILLA CROUSE:** So the answer is yes, Ma'am.

MS QEDANI MAHLANGU: ...and if they do not, then you work with the official to improve those things.

ADV LILLA CROUSE: And your job is probably more than to appear before the Premier's budget meeting [intervenes]

MS QEDANI MAHLANGU: Yes, it includes engaging stakeholders and going to public meetings.

ADV LILLA CROUSE: Yes, and your job is probably also more than just receiving reports, is that so?

5**MS QEDANI MAHLANGU:** Yes, to engage with the public.

ADV LILLA CROUSE: And it would be fair to say that the Premier allocated to you the area of Gauteng Health.

MS QEDANI MAHLANGU: Absolutely.

ADV LILLA CROUSE: Thank you. And it would be fair to say that it is yours to
10policy and norms and standards.

MS QEDANI MAHLANGU: Yes, to oversee those processes. Yes.

ADV LILLA CROUSE: What does the act says, Section 25.1 of the national
[intervenes]

MS QEDANI MAHLANGU: I do not have that in front of me.

15**ADV LILLA CROUSE:** Surely you– [indistinct 00:16:45] that you only role as
having been described, you would have looked at that fiction many times, and you
have been referring to it now. What does it say?

MS QEDANI MAHLANGU: I do not have it in front of me, Counsel. I am sorry.

ADV LILLA CROUSE: I will read it to you.

“The relevant member of the executive Counsel must ensure the implementation of national health policy, norms, and standards in his or her province.”

Surely you know of this article since you have been quoting the legislation from for 5me all morning.

MS QEDANI MAHLANGU: Yes, must ensure through you , Justice, it does not mean that the MEC should run the department. It means that [intervenes]

ADV LILLA CROUSE: I am not suggesting that. I just want to know why is not that he did not know of that article.

10**ARBITRATOR JUSTICE MOSENEKE:** From where did you read, Counsel, sorry.

ADV LILLA CROUSE: Section 25 of the National Health Act.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

MS QEDANI MAHLANGU: I am not following you, Counsel. I am lost, honestly.

ARBITRATOR JUSTICE MOSENEKE: Are you aware of provisions of Section 25
15of the National Healthcare Act?

MS QEDANI MAHLANGU: I am aware of the provisions of different legislation about the role of politicians in respect of [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Ja, but this specific one which was read to you now, you are surely obviously aware.

20**MS QEDANI MAHLANGU:** Yes, I am aware. Yes, I am aware, Justice.

ARBITRATOR JUSTICE MOSENEKE: Okay. Questions and will follow then [indistinct - throat clearing 00:18:18] on that provision. Counsel.

ADV LILLA CROUSE: Thank you, Justice. Now, when I said to you that your role is policy and national norms and standards, you took issue with the word “implement.” You still taking issue with that word?

MS QEDANI MAHLANGU: Yes, implementation does not mean that personally I must do it.

ADV LILLA CROUSE: Well, nobody suggested that, Madam. Why are you taking issue with that word?

10 **MS QEDANI MAHLANGU:** That is what you are implying, Counsel.

ADV LILLA CROUSE: How can I imply anything if I read to you what the act? I think you are implying things, Ma’am. So why are you taking issue with that word?

MS QEDANI MAHLANGU: I am saying my responsibility in line with the legislation is to ensure that government policy is implemented.

15 **ADV LILLA CROUSE:** So you do not implement policy. You do not implement norms and standards.

MS QEDANI MAHLANGU: I oversee the implementation of those policies and norms and standards.

ADV LILLA CROUSE: So the wording of the act has got no effect on you.

20 **MS QEDANI MAHLANGU:** It does, absolutely.

ADV LILLA CROUSE: Okay. Now policy will probably depend on legislation, would you agree?

MS QEDANI MAHLANGU: Yes, it derive from legislation, some from white paper, some from green papers.

5**ADV LILLA CROUSE:** Yes, and also the general government policies like white papers, for instance.

MS QEDANI MAHLANGU: Yes, I [intervenues]

ADV LILLA CROUSE: A white paper is a very important your job description, would you not agree?

10**MS QEDANI MAHLANGU:** Yes, I did say that white paper, green paper, all of those policies.

ADV LILLA CROUSE: And your implementation must also be informed by international law.

MS QEDANI MAHLANGU: Absolutely.

15**ADV LILLA CROUSE:** And then we know about the constitution, do we not?

MS QEDANI MAHLANGU: Yes, we do.

ADV LILLA CROUSE: And we know that you are also, in terms of Section 125 of the Constitution, must together with the Premier implement provincial legislation and implement national legislation. Do you agree?

20**MS QEDANI MAHLANGU:** Yes.

ADV LILLA CROUSE: And you would also probably know about your duties, know about that?

MS QEDANI MAHLANGU: Yes, I do.

ADV LILLA CROUSE: The Executive Members Ethical Act.

5**MS QEDANI MAHLANGU:** Actually, I was part of the committee in Parliament when that legislation was drafted.

ADV LILLA CROUSE: So that is binding on you as well.

MS QEDANI MAHLANGU: Yes, I do know that.

ADV LILLA CROUSE: And you– presumably, you are not paid to be an MEC, to
10go and campaign for three months, is that so?

MS QEDANI MAHLANGU: Political work is part and parcel of what you– it is part and parcel of our work. And being a politician, when it is campaign or political work related for your respective party, all politician go and do their political work on the ground.

15**ADV LILLA CROUSE:** So you say we can pay you for three months to do MEC work in Health while a marathon project gets people killed and you can go for three months, from May to July in 2016, and go and campaign.

MS QEDANI MAHLANGU: Counsel, through you , Justice, political work as part and parcel of what elected work [intervenes]

20**ARBITRATOR JUSTICE MOSENEKE:** Well, let us take it in two bits. The first bit is did you go campaigning in May and July 2016?

MS QEDANI MAHLANGU: Yes, they were– we were preparing for local government elections.

ARBITRATOR JUSTICE MOSENEKE: The answer is yes. Very well, we have got that part. The second part is why did you do it was a marathon project was under way? That is what Counsel has asked you. I have just broken it in two parts.

MS QEDANI MAHLANGU: Justice, the Department is run by the head of Department. Heads of department and all civil servants are not politicians, and there is a distinction in that and the law is very clear on that. When politicians are out campaigning, doing political work of any kind, civil servants responsibility is to continue to do the work. And that is really the answer. So whether the MEC is present or whether the Minister is around or not, civil servant paid as professionals to do the work that [intervenes]

ARBITRATOR JUSTICE MOSENEKE: I know you are quite– you sound convincing of the general. Counsel is asking you why did you go away campaigning for three months when a marathon project was under way.

MS QEDANI MAHLANGU: In between I was doing government work, Counsel.

ADV LILLA CROUSE: You see, you told the Ombud that you are campaigning to queue three months, May, June, and July.

MS QEDANI MAHLANGU: Yes, I did say that.

ADV LILLA CROUSE: Yes.

MS QEDANI MAHLANGU: [Indistinct - cross-talking 00:23:05]

ADV LILLA CROUSE: So that is true.

MS QEDANI MAHLANGU: May just I had that, and I also further said to the Ombuds[sic] that in between I will do government work. If you notice the day I went to Cullinan, it was in July, and the election were held on 3 August. So in between, I did have meetings and I will go to the Department. It is not absolutely correct that throughout the time I was not doing government work.

ADV LILLA CROUSE: Can I read to you – this is ELAH 128, you can have that in front of you [intervenes]

MS QEDANI MAHLANGU: Yes, I have read the transcript.

10 **ADV LILLA CROUSE:** Yes, Ma'am, can I please refer you ELAH 128, page 12 of ELAH 128. Do you see that?

MS QEDANI MAHLANGU: Yes, I am [intervenes]

ADV LILLA CROUSE: Are you on page 12? On the left-hand side there is numbering. Can you go to number 15 on the left-hand side? You say:

15 "So as in the [intervenes]"

ARBITRATOR JUSTICE MOSENEKE: You mean bottom, counsel, or left-hand side?

ADV LILLA CROUSE: Left-hand side, Judge, on page 12.

ARBITRATOR JUSTICE MOSENEKE: You mean 12 or 54?

ADV LILLA CROUSE: Yes, that is the page, Judge, line 15. Do you see the number 15 on the left-hand side of the page?

MS QEDANI MAHLANGU: Yes, yes, I am there.

ADV LILLA CROUSE: And it says:

5 “As at and from me, June, July to be exact, I was busy
 campaigning. I was not like in the Department.”

Did you say that?

MS QEDANI MAHLANGU: Counsel, as I said [intervenes]

ADV LILLA CROUSE: Just did you say that, Ma'am?

10**MS QEDANI MAHLANGU:** Counsel, as I said through you , Justice, that for
 instance, this is sentences some of them are in complete and I would like to say on
 record , Justice, the answer I have just given now that yes, indeed we were doing
 political work because it was local government election, but in between that I was
 attending meeting and I was doing certain things. On the 1st of July, as I said in the
15previous cross questioning then I went to Cullinan in the evening to try and look at
 the concerns that were being raised.

ADV LILLA CROUSE: Ma'am, did you say this?

 “From June, May [indistinct - cross-talking]”

 Can I just finish, please? Did you save from May, June, July [indistinct - cross-
20talking]

MS QEDANI MAHLANGU: There is no reason for the Counsel to be shouting at me.

ADV LILLA CROUSE:

“...to be exact I was busy campaigning.”

5Did you say that?

MS QEDANI MAHLANGU: I said more than that which is what I have just said— added now.

ARBITRATOR JUSTICE MOSENEKE: Yes. There are again two parts to it and again we both—, you and Counsel have to go calmer so that we can get to the 10investigation, the enquiry rather. The first part is, is the record accurate it what it reflects? That is the first part. Lawyers do that all the time. Is that correct? Then the next then become what is the explanation or what is the qualification if any. So let us collapsed the two. The first enquiry is did you say that that appears in the transcript?

15**MS QEDANI MAHLANGU:** In part it is true and I would like to elaborate.

ARBITRATOR JUSTICE MOSENEKE: Ja, but it is fine. She will get there. You will get that opportunity to elaborate.

MS QEDANI MAHLANGU: But it is impo— Justice, through you, it is important that— in politics, yes or no answer is not going to help me because I am not used to be the 20yes or no answers. And if I am being asked here to come here to present my evidence and I am being confined to yes and no, it disarms me in order for me to

explain because there is a context into this, not only a context this evidence that on a particular day during those election, I would have gone out to go to the Department to do Department for work, even it was that night.

ARBITRATOR JUSTICE MOSENEKE: Well, that [indistinct 00:27:28]. We can do sit this way. First, did you say what appears there? We already have an answer which is yes [intervenes]

MS QEDANI MAHLANGU: I said yes in part.

ARBITRATOR JUSTICE MOSENEKE: Two, is it all that you said or [intervenes]

MS QEDANI MAHLANGU: I said I did say yes.

10 **ARBITRATOR JUSTICE MOSENEKE:** ...did you qualified it then or you qualifying now?

MS QEDANI MAHLANGU: I qualified it then and I am still qualifying now, Justice.

ARBITRATOR JUSTICE MOSENEKE: So before that hearing you did say that– you did qualify as you are qualifying this statement now.

15 **MS QEDANI MAHLANGU:** Yes, Justice.

ARBITRATOR JUSTICE MOSENEKE: So the transcript is inaccurate?

MS QEDANI MAHLANGU: There are errors in the transcript and I have gone through it a number of [intervenes]

ARBITRATOR JUSTICE MOSENEKE: So the transcript has failed to hold your 20qualification?

MS QEDANI MAHLANGU: Yes. Yes, Justice.

ARBITRATOR JUSTICE MOSENEKE: There is your answer, Counsel.

ADV LILLA CROUSE: Thank You, Justice. The very next sentence. Did you say the very next sentence?

5 “I was not like in the Department.”

MS QEDANI MAHLANGU: I am not sure [intervenues]

ADV LILLA CROUSE: You do not know whether you said that sentence or not?

MS QEDANI MAHLANGU: But I am still saying to you that there are errors in the recordings of this transcript.

10**ADV LILLA CROUSE:** Yes. Ms Mahlangu, I understand what you are saying. Now please understand what I am asking. Did you say, “I was not like in the Department”?

MS QEDANI MAHLANGU: I was not doing departmental work full– on full-time basis.

15**ADV LILLA CROUSE:** Who told you to go and campaign?

MS QEDANI MAHLANGU: It is my political responsibility as a politician.

ADV LILLA CROUSE: Who told you to go and campaign during the marathon project?

MS QEDANI MAHLANGU: In every election, all politicians are on ground doing
20political work because I am not a civil servant.

ADV LILLA CROUSE: Who told you to go and do political campaigning while
[intervenes]

MS QEDANI MAHLANGU: All MECs [intervenes]

ADV LILLA CROUSE: Let me just finish, please – while there is a marathon
5project and people dying, who told you to do that?

MS QEDANI MAHLANGU: Through you , Justice, first of all, I did not know that
people were dying. Secondly, we were doing political work which happens
throughout and when it is election time, at a particular time all politicians get
involved, including the opposition. We are doing political work. So there is nothing
10amiss or nothing wrong with me to having been on the ground doing political work,
at the same time continuing to work with the HOD to oversee what I was working in
the Department. I do not have to be physically there for me to understand what is
going on because I will talk to the HOD frequently.

ADV LILLA CROUSE: Okay, my question is still not being answered. Who told
15you to go and do political campaigning during that period?

MS QEDANI MAHLANGU: We are political parties. So each and every political
party has its own structures and means of [intervenes]

ADV LILLA CROUSE: And your structure, Ms Mahlangu, who told you to go?

MS QEDANI MAHLANGU: I am a member of the African National Congress.

20**ADV LILLA CROUSE:** Who told you to go?

ARBITRATOR JUSTICE MOSENEKE: Counsel, by “who told you to go,” you mean, “Who gave you permission”?

ADV LILLA CROUSE: Maybe I should ask it that way around.

ARBITRATOR JUSTICE MOSENEKE: Ja.

5**ADV LILLA CROUSE:** Did somebody give you permission or instruct you to go?

MS QEDANI MAHLANGU: But I am a politician and I belong to a political party, and there are elections that are in place and my responsibility, amongst others, including to serve the public and the responsibility that I had been consigned to is to also do political work.

10**ADV LILLA CROUSE:** Yes. Ma’am, I am not getting to the right answer. Did you just out of yourself decide, “I will go there, there, and there” or did somebody tell you to go and do campaigning?

MS QEDANI MAHLANGU: It is our political party’s responsibility.

ADV LILLA CROUSE: You are not answering the question. I will leave it there.

15**ARBITRATOR JUSTICE MOSENEKE:** Well, let me recast the question. You need anybody’s permission to go and do political work? Did you have to ask the Premier who is your immediate superior, did you have to ask anybody? In other words, by what authority or leave to you go and do your political work? Or is the answer you do not need anybody’s permission? It is something that you are entitled to do.

20**MS QEDANI MAHLANGU:** Justice, as I was saying that– the reason why I was qualifying the statement is that as much as we were doing political work, every

politician, ruling party and opposition, we continue to do government work alongside those political activities that we are engaging in.

ARBITRATOR JUSTICE MOSENEKE: There is your answer, Counsel.

ADV LILLA CROUSE: Justice, that might be an answer but it is not the answer to my question but I will– Ms Mahlangu, I am going to leave it there and I am going to just say that you were obstructive in not answering [intervenues]

ARBITRATOR JUSTICE MOSENEKE: [Indistinct – cross-talking 00:31:59] will be open to you to argue that and I am here, I am watching demeanour, response, and preparedness to answer questions. All those are relevant in evaluating credibility.

10 **ADV LILLA CROUSE:** Yes. Thank you, Justice.

ARBITRATOR JUSTICE MOSENEKE: You may proceed, Counsel.

ADV LILLA CROUSE: Ms Mahlangu, the cancellation of the Life Esidimeni contract, was that an executive position?

15 **MS QEDANI MAHLANGU:** Yes, with manage– remember, Counsel, on Monday through you , Justice, I made a presentation on where the process has started from the 2014 [intervenues]

ADV LILLA CROUSE: [Indistinct - cross-talking 00:32:31] Ms Mahlangu, believe me, I have listened to everything you said. I have read everything you said. My question to you is just a simple question. Was it an executive decision?

20 **MS QEDANI MAHLANGU:** It was a Premier’s committee budget decision.

ADV LILLA CROUSE: Sorry?

MS QEDANI MAHLANGU: It was a PBC decision.

ADV LILLA CROUSE: Would that be an executive decision?

MS QEDANI MAHLANGU: Yes, it is an executive decision.

ADV LILLA CROUSE: And in terms of Section [intervenes]

5**MS QEDANI MAHLANGU:** It is a subcommittee decision, a committee which has been– it is not the executive Counsel but it is a subcommittee that deals with budget matters.

ADV LILLA CROUSE: And the decision that you are referring to that was taken by the budget commission, that was to cancel the Life Esidimeni contract.

10**MS QEDANI MAHLANGU:** Counsel, through you , Justice, the context I have given in answering this question that we– all government departments in Gauteng are asked to go and look for savings because the revenues have gone down and there were challenges with the economy and all of that and therefore, go back and look for savings. Not only on Life. It was– I presented the different items of what
15the savings were going to come from in the respective services that the Department was running.

ARBITRATOR JUSTICE MOSENEKE: Well, the question was whose decision– Was at a decision of the Premier’s budget committee? That is [intervenes]

MS QEDANI MAHLANGU: But I– we have dealt with those issues , Justice, from
20Monday that when I explained that the process starts with the PBC. The PBC says, “If you look at the presentation,” and I think it may be important for me to take the

arbitration through the budget, that the presentation we made in the budget process and also the subsequent presentation, it seem like the things we have sa– that are contained in the presentation are not being understood. Because it is really clear in the first presentation , Justice, which is made to the budget committee on the–
5excuse me, let me make reference [intervenes]

ADV LILLA CROUSE: [Indistinct - cross-talking 00:34:29]

MS QEDANI MAHLANGU: ...on the 13th of November.

ADV LILLA CROUSE: Ms Mahlangu, I am sorry [cross-talking] to interrupt to interrupt you but I will get there.

10**MS QEDANI MAHLANGU:** Counsel, Counsel, Counsel, Counsel, through you , Justice, may I finished the point, please?

ARBITRATOR JUSTICE MOSENEKE: Yes, you are under cross-examination [intervenes]

MS QEDANI MAHLANGU: Yes, may I just [intervenes]

15**ARBITRATOR JUSTICE MOSENEKE:** Counsel's primary role, an important role is to ask and pose the questions, and we have to be guided by the questions that she poses. We cannot have a generic discussion about everything [intervenes]

MS QEDANI MAHLANGU: Absolutely.

ARBITRATOR JUSTICE MOSENEKE: ...we must respond to specific issues. Now
20if the answer requires a document, you have to indicate that in a way that clear that will not give is locked up into a document which is not relevant to the question that

Counsel is asking. As you would imagine, it is a commonsensical thing. Otherwise we would be all over the show.

MS QEDANI MAHLANGU: I am with you, Justice.

ARBITRATOR JUSTICE MOSENEKE: Are you with me? So I am listening to you now. Why do you think we ought to see the document presented before the Premier's budget committee?

MS QEDANI MAHLANGU: Because first of all, the presentation made on the 13th November 2014 by the Department of Health to the budget committee has no reference of the cost-cutting measures that we subsequently submitted to. That is the first point to note and I said that on Monday. Secondly– but the presentation is there. Secondly, the present– subsequent presentation submitted, taking into account the comments of the budget committee made on the 26th of November, talks about a cost-cutting. And what are those? These other items that I would have outline in my statement on Monday.

15 **ARBITRATOR JUSTICE MOSENEKE:** Are those documents in the ELAH file you give us?

MS QEDANI MAHLANGU: Yes, they are, Justice.

ARBITRATOR JUSTICE MOSENEKE: Very well. There probably will be questions on as and at the time. For now, the question is narrow. Where was the 20 decision made? Was it made at the Premier's budget committee? The answer could be, "No, not there" or "Yes, it was made there [intervenes]"

MS QEDANI MAHLANGU: Justice [intervenes]

ARBITRATOR JUSTICE MOSENEKE: I think that is where we are. Otherwise we are going to be [vernacular 00:36:44]. We will be all over, crossing field after field. So listen to the question and let us try and keep to the question. And when it comes 5to time were you think you have to refer to the documentation, please, talk to me about it. Let us understand why it is relevant. Counsel.

MS QEDANI MAHLANGU: But , Justice, [vernacular 00:37:11]

ARBITRATOR JUSTICE MOSENEKE: [Vernacular 00:37:12] Mr Interpreter, [vernacular]. The witness has just asked to speak in isiZulu. Justice, while 10arrangements are being made to get the interpretation, we have raised the concern that we would like to get as much nation as it is possible from the witness. And the concern which was raised was that it would appear that the objection to her referring to documents put in some way limit the answers which she wants to give to this hearing. And I would really implore upon you , Justice, that the witness as and 15when she finds it necessary to give an explanation was referenced documents, she should be allowed to do so. The main point is that the witness should be given an opportunity to respond to questions.

ARBITRATOR JUSTICE MOSENEKE: Is that a test in law to refer to documents willy-nilly or is the test always relevant?

20**ADV PATRICK NGUTSHANA:** The question is relevance. It is indeed correct. The point which am trying to submit to you , Justice, the question having been raised, the witness appears to be limited to the– is only limited to give an answer in

the form of a yes and no. That having been done, with the witness wants to give an explanation to that answer, it is indeed correct that she must refer to documents which are relevant. And Justice will not be able to make that determination of relevance unless the witness has been granted that opportunity. So relevance can only be determined after an explanation having been made [intervenues]

ARBITRATOR JUSTICE MOSENEKE: Is it your view that the witness is not being given opportunity to explain she wants to refer to a document?

ADV PATRICK NGUTSHANA: Indeed so, Justice. So that becomes very unfair and limiting to the witness because it can only be determined that reference to that document does not assist in answering the question. But that determination can only come after the witness has been given an opportunity. So I really request [intervenues]

ARBITRATOR JUSTICE MOSENEKE: I do not understand. Just put your finger on objection, what is the legal objection you are raising?

15 **ADV PATRICK NGUTSHANA:** That the witness should be given a fair opportunity to respond to questions by making reference to documents which are relevant to the answer.

ARBITRATOR JUSTICE MOSENEKE: To any document?

ADV PATRICK NGUTSHANA: Relevant documents.

20 **ARBITRATOR JUSTICE MOSENEKE:** And who decides when the document is relevant?

ADV PATRICK NGUTSHANA: You can decide the relevance once reference has been made.

ARBITRATOR JUSTICE MOSENEKE: Do you have anything [indistinct 00:40:54] to say [indistinct - cross-talking] additional to that?

5**ADV PATRICK NGUTSHANA:** Nothing further, Justice.

ARBITRATOR JUSTICE MOSENEKE: Would you proceed please?

ADV LILLA CROUSE: Thank you, Justice.

MS QEDANI MAHLANGU: Justice, sorry. [Vernacular 00:41:03]

ARBITRATOR JUSTICE MOSENEKE: [Vernacular.

10**MS QEDANI MAHLANGU**

[Through Interpreter]

ARBITRATOR JUSTICE MOSENEKE: Okay, let us give the interpreter and opportunity.

INTERPRETER: Justice, may I please explain that I came in here willingly so that I can be able to assist in the process, to assist in this enquiry so that the families can
15have closure eventually but I find myself in a very difficult situation, Justice. I was working as an MEC, elected through a political process. The questions that are posed to me are very technical questions and they are no politicians in South Africa cannot understand those things that are happening.

When I respond to questions, I am instructed to say, “yes,” or “no.” I am not sure if
20that will help assist this process in fulfilling the objective of my being here. And I am making a humble request, Honourable Justice, that I am prepared to ask[sic] all

questions which are relevant to my role as a political principle but– as a politician but those issues, administrative issues, I cannot response[sic] to those issues with authority because those are not the things that I am doing on a daily basis.

ARBITRATOR JUSTICE MOSENEKE: Okay, mami, I think there are two parts to what you have just said. The first is do you feel that you are being prevented from explaining context?

MS QEDANI MAHLANGU: I feel like I am being constrained because– and I feel I am being constrained. And secondly, that I am being asked questions that are beyond my role as a politician.

ARBITRATOR JUSTICE MOSENEKE: No, they are two parts of it. We will come to the kind of questions but for starters, have not you had ample opportunity to explain context every time you were asked to do so? [Indistinct - cross-talking]

MS QEDANI MAHLANGU: Yes, I have been given that opportunity but from time to time, I sense that when I tried to explain, “No, we do not need long answers. We do not,” and in– as a politician, yes or no answer [vernacular 00:45:00], Justice. [Vernacular] in an environment where I have to be and it is my first time [vernacular 00:45:06] on my own. [Vernacular 00:45:16] a document on my own. Yet, [vernacular 00:45:21] correctly so [vernacular]. And both– those who have passed on, those who are still alive and including the fact that if there is even a state attorney [vernacular 00:45:33]. So I feel myself [vernacular 00:45:44] and disempowered and I think I am not able to really be the person that I am if I got the

proper support through the legal team and have representatives sitting in this meeting with the authority.

ARBITRATOR JUSTICE MOSENEKE: Okay, mami, as I have said they are two issues, right. On the first issue, it is a matter of judgement whether or not you are given adequate opportunity to explain. And I think I have been very patient to make sure you get opportunity for context and every time you need to explain, you have asked me and you continue to ask me, and that should not be a problem. But the second question, here it is. It is the question of relevance. It is a legal consideration and a commonsense consideration. One cannot say everything all the time to a question that says, that possibly could be answered with a short answer. So the way we work, I could not possibly ask you whether it is a warm day and you say, “Ja, [vernacular 00:46:59],” and go on along that route. My duty is to make sure that your answers are relevant to the fact that we are trying to probe and establish. So I sit between you and counsel. Counsel May not ask you unfair questions and must give you a fair opportunity to answer. Every time she says yes or no does not mean you are necessarily bound to say yes or no but it would help. It would get us to the point more precisely. So in short, I am here to protect you as a witness but to protect all parties and make sure that there is fairness in the ability to probe the facts and fairness for you to be able to answer but that does not mean you could answer everything or it must be things which are relevant to what– to the probe that we are having. And to judges that? It is there presiding [indistinct 00:48:10] of fact. An arbitrator, a judge, an umpire must decide whether or not the facts are relevant to the enquiry or not. So I really would like to plead with you, so

too with Counsel, to make sure that we make progress, i.e. listen to the question and provide an answer and in the language that you choose. Indeed you could switch to English any time, isiZulu any time but it must remain relevant and something that will be able to advance the facts to be established in arbitration. Is there anything else you want to say before I continue examination?

MS QEDANI MAHLANGU: Yes, Justice. I had raised an issue about my legal– my ability to prepare and read everything on my own without legal assistance, which has really a hamstring me because as much as I try to read each and every document, it is impossible to remember all of the time because it has been a lot of information that I had to consume.

ARBITRATOR JUSTICE MOSENEKE: [Vernacular 00:49:17]. Interpreter, when I speak in isiZulu, you must interpret for everybody else who does not speak isiZulu.

INTERPRETER: Yes, Justice.

ARBITRATOR JUSTICE MOSENEKE: [Vernacular]

INTERPRETER: There is nothing that compels you to answer all the questions if you cannot remember.

ARBITRATOR JUSTICE MOSENEKE: Your duty [vernacular 00:49:49]

INTERPRETER: You must respond by saying you do not remember if that is the case.

ARBITRATOR JUSTICE MOSENEKE: [Indistinct 00:49:57] unfortunately, Counsel is limited by relevance like you. If the question is relevant she is entitled to ask it

which means that you have to answer it. And if you do not know the answer you say so but there is no limit to the questions that Counsel may ask except that they must be relevant and you must be given a fair opportunity to answer the question. What you may not do is to refuse to answer the question. You must have an answer, yes or no, or an explanation. I think I have done my best to talk about the law of evidence and how to lead evidence in an inquiry. Is there anything else you want to ask me before I turn to Counsel?

MS QEDANI MAHLANGU: Okay, maybe , Justice, you will deal with this later [intervenes]

10 **ARBITRATOR JUSTICE MOSENEKE:** And you talk to me all the time. I am here also for your interests.

MS QEDANI MAHLANGU: Okay, thank you, Justice.

ARBITRATOR JUSTICE MOSENEKE: And to protect you if you have a concern but you also must stay relevant and you must refer and cite documents and/or evidence that only answers and focuses on the question that has been raised.

MS QEDANI MAHLANGU: Okay, thank you very much, Justice.

ARBITRATOR JUSTICE MOSENEKE: I hope this is your last day. So if we work together [intervenes]

MS QEDANI MAHLANGU: I hope so too.

20 **ARBITRATOR JUSTICE MOSENEKE:** If we work together, we should be able to get to the end of [indistinct - microphone disturbance 00:41:22]

MS QEDANI MAHLANGU: Thank you, justice.

ARBITRATOR JUSTICE MOSENEKE: Counsel, you heard the exchange. Is there anything you want to say?

ADV LILLA CROUSE: Nothing, Justice.

5**ARBITRATOR JUSTICE MOSENEKE:** Nothing you want to say. Very well. Is there any Counsel wants to say anything? Very well.

ADV DIRK GROENEWALD: Justice, I am tempted just to make the following comment. The witness is requesting special protection from this tribunal based on the fact that she is a politician and the fact is that we are all equal under the law and
10should be treated equally. And I would just like to make that point. Thank you, Justice.

ARBITRATOR JUSTICE MOSENEKE: Well, the point has been made but it is a self-evident point. I thought what the witness was saying was the politician, she would require to put a political context to some of the answers and I think that is not
15entirely unfair. Equal we are, and that is the point you made but in a political position, there might be more words to be used than in the legal profession.

MS QEDANI MAHLANGU: Thank you, justice.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

ADV LILLA CROUSE: Thank you, Justice. If I could get back to my question that I
20asked 20 minutes ago. The question is was the cancellation of the Life Esidimeni contract an executive decision?

MS QEDANI MAHLANGU: It is– Justice, again, may I beg for your indulgence as I explained on Monday with the process started [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Before you answer, what you mean by “executive decision,” Counsel?

5**ADV LILLA CROUSE:** In terms of Section 140 of the Constitution, it says an executive decision must be in writing. It must be signed by the Premier countersigned by the MEC.

ARBITRATOR JUSTICE MOSENEKE: Ja, you must make that clear to the witness so that she is not caught by surprise.

10**ADV LILLA CROUSE:** Yes.

ARBITRATOR JUSTICE MOSENEKE: Was it an executive decision is contemplated Section 139 of the Consti– 149 of Constitution?

MS QEDANI MAHLANGU: No, it was not , Justice, and I did explain that is a budget subcommittee which is chaired by the Premier which looked at the budget
15presentation done by Health and said, “You need to go back and look for cost containment.” Then the subsequent presentation made on the 26th of November respond to the issues which have been raised in that and thereafter, what is raised by the Department of Health, is factored in the budget processes for the coming financial year.

20**ADV LILLA CROUSE:** Was this a decision with legal consequences?

MS QEDANI MAHLANGU: I am not following.

ARBITRATOR JUSTICE MOSENEKE: [Indistinct – cross-talking 00:53:50]
decision [indistinct]

ADV LILLA CROUSE: Yes [indistinct - cross-talking]

ARBITRATOR JUSTICE MOSENEKE: The decision to terminate.

5**ADV LILLA CROUSE:** Yes.

ARBITRATOR JUSTICE MOSENEKE: Okay.

MS QEDANI MAHLANGU: Decision to terminate Life Esidimeni, Selby, and also to look at all the other cost containment measures that we needed to take.

ADV LILLA CROUSE: Ms Mahlangu, my question is very simple. Was the
10decision to terminate Life Esidimeni a decision with legal consequences?

MS QEDANI MAHLANGU: The consequence is that you cancel the two contracts I am referring to, Life Esidimeni and Selby Park.

ADV LILLA CROUSE: Would that have legal consequences?

MS QEDANI MAHLANGU: I do not understand the question. I am not a lawyer
15[intervenes]

ARBITRATOR JUSTICE MOSENEKE: No, but was the decision one that would have legal consequences– that would bind other people or that would relationship– legal relationships with other people. If you make a decision to terminate contract the consequences would be the obligation between the two parties end.

20**MS QEDANI MAHLANGU:** Absolutely.

ARBITRATOR JUSTICE MOSENEKE: So Counsel is asking was the decision one that had legal consequences?

MS QEDANI MAHLANGU: Yes, we ended a contractual relationship with Life as well as with Selby Park Clinic Group.

5**ADV LILLA CROUSE:** So the answer is yes. Now, if it had legal consequences and it was an executive decision, should the Premier and you not have put it in writing and signed it in terms of Section 140 of the Constitution?

MS QEDANI MAHLANGU: No, but, Counsel, the executive Counsel deals with very brought issues in its agenda on a– once a month and the subcommittees of
10executive process issues which finally getting to the executive Counsel. Issues relative to administrative nature of the contracts and all of those are dealt with by the heads of Department with the relevant officials initially be Department, and the Premier’s office from time to time when requested, the legal unit if it is legal matters, and so forth will assist the relevant department to deal with the matters that they
15require support on.

ADV LILLA CROUSE: My question is should it not ha been countersigned between the Premier and you [intervenes]

ARBITRATOR JUSTICE MOSENEKE: And “it” here Counsel means the decision to terminate the contract.

20**MS QEDANI MAHLANGU:** Remember , Justice, the reason why explaining the roles of responsibilities, once you made abroad a decision based on cost as I [00 56:53] stipulated here, the operational issues which means you are cancelling the

contract and everything is related to that, the heads of Department or responsible and they report to the members of the executive Counsel being the MEC.

ADV LILLA CROUSE: Ms Mahlangu, do you understand the relevance of section 140 of the Constitution that says:

5 “Executive decisions with legal consequences must be in writing and it must be signed by the Premier and countersigned by the executive.”

Do you understand that section?

MS QEDANI MAHLANGU: Yes, I do understand.

10**ADV LILLA CROUSE:** My question is then simply should this cancellation of the contract not have been dealt with in terms of that section?

MS QEDANI MAHLANGU: Ever since I have been the executive Counsel from 2004, I do not remember an instance where the executive Counsel discusses a– it is presented about cancellation of the contract. I do not remember such.

15**ADV LILLA CROUSE:** So is it your answer that you do not think it is necessary or is it you answer that this section 140 just have no use in our society?

MS QEDANI MAHLANGU: But I am sure the state attorney, colleagues, can answer better. I really do not have any– my understanding is what I have answered , Justice, and I think it is suffice [intervenes]

ARBITRATOR JUSTICE MOSENEKE: [Indistinct - cross-talking 00:57:50]

question is whether at the Premier budget committee you took the decision to cancel Life Esidimeni or was that decision taken at another level?

MS QEDANI MAHLANGU: Justice, the sequence of events, and really pleading that we follow through that, and I know you said I must not explain much but it is important because this is not an isolated decision, Life Esidimeni on its own. The context is there is budgetary constraints. Everybody must go back to your Department savings for us to be able to continue to deliver service optimally across society was using the minimum that we have. On the basis of that, the Department of Health goes back, looking at a number of items, and Life Esidimeni is one such. So I did not know how else to explain what I am trying to explain then that because I do not have any other answer or no explanation beyond what I have been saying, Justice.

ARBITRATOR JUSTICE MOSENEKE: Ja, but listen [indistinct 00:58:]. I must plead with you now. It is this simple. It is counsel is try– Let us go step by step. Section 140 of the constitution – do you have a copy of the Constitution in front of you? [intervenes]

MS QEDANI MAHLANGU: I had it. It is in my bag [? 00:59:04]

ARBITRATOR JUSTICE MOSENEKE: ...requires that a decision which has legal effect must be taken by the Premier, it must be reduced into writing, and must be countersigned by you, the MEC responsible for the particular department. We know from your evidence that not happen.

MS QEDANI MAHLANGU: Yes.

ARBITRATOR JUSTICE MOSENEKE: So the natural question is why was this decision not done under section 140? Now the answer may be because the actual binding decision was done somewhere else or by somebody else or if it was done 5by you in the Premier, section was not followed. So what is the answer?

MS QEDANI MAHLANGU: The answer is , Justice, that ever since I have been in executive Counsel, contractual matters are never been present before the Counsel for the exco to take a decision. So I am not sure exactly– Ja, that I am saying [intervenes]

10**ARBITRATOR JUSTICE MOSENEKE:** Why? Because are done by heads of department?

MS QEDANI MAHLANGU: But because they are done in each respective department.

ARBITRATOR JUSTICE MOSENEKE: Counsel, that appears to be your answer

15**ADV LILLA CROUSE:** Said you, Justice. Did you establish a provincial health Counsel in terms of section 27 of the National Health Act?

MS QEDANI MAHLANGU: Yes, we had a– I have, Counsel.

ADV LILLA CROUSE: Who was the chairperson of that Counsel?

MS QEDANI MAHLANGU: It is myself.

20**ADV LILLA CROUSE:** How often do you set?

MS QEDANI MAHLANGU: It used to be myself as the MEC for health.

ADV LILLA CROUSE: Are often did you said?

MS QEDANI MAHLANGU: [Indistinct] I do not know. I do not have my diary but we met I think once a quarter.

5**ADV LILLA CROUSE:** Did you discuss disclosure of Life Esidimeni any and the moving of the patients at the provincial health Counsel?

MS QEDANI MAHLANGU: I do not remember. I do not have the agenda of those meetings. I do not remember.

ADV LILLA CROUSE: Should it not have been discussed in this Counsel?

10**MS QEDANI MAHLANGU:** I am not sure, Counsel.

ADV LILLA CROUSE: No, you are the only person who can tell us. Would it not have been the political responsible thing to do to discuss this decision at the provincial health Counsel?

MS QEDANI MAHLANGU: I do not– I do not think so but as I am saying I do not
15know exactly. I do not have the agenda of our meeting but I do not remember this matter being discussed. What I [indistinct] remember... oe...

ADV LILLA CROUSE: My question to you is not have been the political responsible thing to do to discuss disclosure of Life Esidimeni at the provincial health Counsel?

20**MS QEDANI MAHLANGU:** I am not sure actually because , Justice, maybe let me answer.

ARBITRATOR JUSTICE MOSENEKE: Yes.

MS QEDANI MAHLANGU: In terms of the constitution, I think schedule– on the powers and functions of provinces, remember the health services, municipalities are responsible for animal health if I am not mistaken, National is responsible for policy norms and standards that. The rest of the services and they look at [indistinct 01:02:27] at national, and the provinces responsible for running the health, the entire health system. So what municipalities would do is by implication saying they run clinics, they had run those clinic as been delegated by the provincial government. So and ordinarily you would have someone, when I say in our team, we have a district official represent, those people located in the five districts: Ekurhuleni, Tshwane, Sedibeng and all of that who sits on the committee but they work directly with the relevant people in municipalities in ensuring that the clinic that they have been delegated to run, they run smoothly. So that is the– I am not sure– the reason why am struggling to understand the relevance of discussing that question, the issue with municipalities would be the relevance [intervenes]

ARBITRATOR JUSTICE MOSENEKE: What does a provincial do? What are its powers and purpose?

MS QEDANI MAHLANGU: The provincial health Counsel?

ARBITRATOR JUSTICE MOSENEKE: Yes.

MS QEDANI MAHLANGU: It is to discuss– I think– oh, no, wait. I cannot really recall it now but it is to discuss the running of the whole system and to ensure that the clinics are run smoothly, and sometimes we will complement resources in terms

of employment of staff but the bulk of the resources are provided by the provincial government.

ARBITRATOR JUSTICE MOSENEKE: Will choose the provincial health Counsel?

MS QEDANI MAHLANGU: It is myself– it is the MEC of health, sorry. Yes.

5**ARBITRATOR JUSTICE MOSENEKE:** The question is was not prudent proper to deal with the termination of the Life Esidimeni contract at the provincial health Counsel? That is what the question is.

MS QEDANI MAHLANGU: But, Justice...

ARBITRATOR JUSTICE MOSENEKE: I am not saying you should or should not
10do it. I am just explaining the question to you again.

MS QEDANI MAHLANGU: But my answer was– the answer I was giving earlier on about the roles and responsibilities in accordance with this schedule of the constitution and the responsibilities thereof, and may I really big to explain that
15seconds that cancellation of contracts, be it administrative issue, yes, the implication of that would be factored into our discussion as to ensure that in clinics
and all the service that are delivered, including in the NGOs, municipalities and
Counsellors are aware of what would have been happening. So in that context,
maybe we should– it should have been discussed there so that Counsellors and
officials are aware that NGOs are doing work working with this. But I think there
20has been that interaction with the respective municipalities.

ARBITRATOR JUSTICE MOSENEKE: Thank you. [Indistinct 01:05: 06] an answer. Your thinking on second thought, it should have been discussed there. Counsel.

ADV LILLA CROUSE: And one would have expected a politician of your seniority and having being the MEC of health before would have realised this earlier, would not we?

MS QEDANI MAHLANGU: Well, I am not sure about the— about the— about that in specifically. Ja.

ADV LILLA CROUSE: Ja, you want to be asked political questions. I am asking you political questions now, MEC. Should not have thought of that before today?

MS QEDANI MAHLANGU: Maybe.

ADV LILLA CROUSE: I would have said that the answer to that cannot be a “maybe.” That is just irresponsible I will argue. What you say to that? Are you going to answer the question?

15 **ARBITRATOR JUSTICE MOSENEKE:** And the question is it is it responsible?

ADV LILLA CROUSE: The answer cannot be “maybe.” It is irresponsible to not have done this before

ARBITRATOR JUSTICE MOSENEKE: That is the proposition put to you. It is put to you that it is irresponsible not to have thought about it and done it before.

20 **MS QEDANI MAHLANGU:** Maybe yes, maybe no.

ADV LILLA CROUSE: I will leave the answer at that, Justice. I will argue on that. Was there a provincial consultative body as set out in section 28 of the National Health Act?

MS QEDANI MAHLANGU: Can you please repeat your question?

5**ADV LILLA CROUSE:** Yes, have you established a provincial consultative body as is your duty in section 28 of the National Health Act?

MS QEDANI MAHLANGU: [Indistinct 01:07:03] I think it is called a stake folder– stakeholder forum or something like that.

ADV LILLA CROUSE: Do you have that?

10**MS QEDANI MAHLANGU:** Yes, it is– it does– it has– it has been existing ever since I have been around.

ADV LILLA CROUSE: Do you chair of those meetings?

MS QEDANI MAHLANGU: And I remember we had one meeting. We discussed in NHI and then I cannot remember what else was discussed in that 15meeting. It was– what was it? Ja, I remember that meeting we held and I think we discussed issues related to NHI and [intervenes]

ADV LILLA CROUSE: So you remember one meeting of the provincial consultative body?

MS QEDANI MAHLANGU: A meeting was supposed to be held once a year if I am 20not mistaken.

ADV LILLA CROUSE: And you remember such meeting?

MS QEDANI MAHLANGU: I think so. I cannot– I cannot recollect at this moment how many of those meetings were held.

ADV LILLA CROUSE: Was the closure of Life Esidimeni ever discussed at these meetings?

5**MS QEDANI MAHLANGU:** No, it was not.

ADV LILLA CROUSE: Should it not have been discussed at these question mark

MS QEDANI MAHLANGU: I do not think so.

ADV LILLA CROUSE: And why do you say so?

MS QEDANI MAHLANGU: Because I– Jus– Counsel, I do not– at the time when
10we took the decision and as I said, in respective– the answers I have been giving
throughout was that work was– the work we were doing in respect of to the
transferral of the patients from the Life Esidimeni to the NGOs, it was an internal
departmental work and that officials in my understanding working with the range of
stakeholders, including an important stakeholder in this instance being with families
15through the family committees that was established. So when you are dealing with
the matters of [indistinct] simply about concluding the contractual issues and then
the next phase will be then you go to the stake folder[sic] for them to say how do
you strengthen the community. But during the implementation, I think it would be
inappropriate to start engaging and mobilising stakeholders, yet it will be important
20to mobilise stakeholders once you completed that and say how do we strengthen
the services and ensure that every stakeholder in the community is involved.

ADV LILLA CROUSE: Thank you, Ms Mahlangu.

ARBITRATOR JUSTICE MOSENEKE: So in fact you are saying it was not– you did not think it was necessary to take at the provincial consultative body.

MS QEDANI MAHLANGU: It before the conclusion of all the processes.

5**ARBITRATOR JUSTICE MOSENEKE:** Yes.

MS QEDANI MAHLANGU: Yes.

ADV LILLA CROUSE: Thank you. Ms Mahlangu, I will interrogate you on that issue at a later stage when I speak about consultative processes, but your answer suffice for now is as a senior politician, you did not think you need to speak to them.

10**MS QEDANI MAHLANGU:** I said before, before we concluded the processes.

ADV LILLA CROUSE: Are you aware of the Minister of health’s presentation in Parliament on what he called the “mental health patient strategy”?

MS QEDANI MAHLANGU: I heard about it.

ADV LILLA CROUSE: It was in February 2017.

15**MS QEDANI MAHLANGU:** I was not around. So ...

ADV LILLA CROUSE: Yes. I want to just put to you one issue that he raises. I will deal with this document extensively, but when he said in his speech – maybe I can take you there. It is ELAH 8-4, ELAH 84. Have you got the document in front of you?

20**MS QEDANI MAHLANGU:** No, I do not have it. Okay.

ADV LILLA CROUSE: Do you have the document ELAH 84 in front of you?

MS QEDANI MAHLANGU: Ja, ja.

ADV LILLA CROUSE: The heading reads, “Minister Aaron Motsoaledi address on Life Esidimeni mental health patient strategy in Parliament,” and it is dated 23 February 2017. Do you see that?

MS QEDANI MAHLANGU: Yes.

ADV LILLA CROUSE: If you go down, these numbers on your left hand side on the first page. Do you see number 35 on your left hand side?

MS QEDANI MAHLANGU: Yes.

10 **ADV LILLA CROUSE:** Do you see the paragraph starting just before that number, “At the national level...”?

MS QEDANI MAHLANGU: Ja, ja.

ADV LILLA CROUSE: Could you read that paragraph, yes?

MS QEDANI MAHLANGU:

15 “At the national level we have a min/max [? 01:11:55] which in the case of health is called the national health Counsel. Like all minmac, it consists of Minister as chairperson and all MECs, HODs...”

Ja.

20 **ADV LILLA CROUSE:** Years, could you just read the

?

MS QEDANI MAHLANGU:

5 “Back in addition and different from other minmac, it also has a
surgeon general from the South African military health
services and representatives from Salga. It is therefore a
statutory body. When they are huge undertakings in health or
elsewhere that may affect the health, the NHC sits and even
go into recess to interrogate issues. It did so with the FIFA
10 2010. It did so before the president launched the huge ACT
campaign to test the 15 million South African in 2010. It did so
with Ebola in 2014.”

ADV LILLA CROUSE: Can you read the next paragraph, please?

MS QEDANI MAHLANGU:

15 “I want to state here today that the issue of moving of mental
health patients in Gauteng, which clearly falls within the
categories I have mentioned above, never came to the
national health Counsel dealt with like all other major events.”

ADV LILLA CROUSE: Is the Minister correct to say that this should have been
20discussed at that meeting?

MS QEDANI MAHLANGU: Well, I am not sure exactly in what sense because the agenda is our minmac are determined by the Minister.

ADV LILLA CROUSE: Yes, but [intervenes]

MS QEDANI MAHLANGU: And the agenda as of minmacs then discussed the prior that by HODs and the director general.

ADV LILLA CROUSE: Okay [intervenes]

MS QEDANI MAHLANGU: And furthermore– may I really explain? The director general convenes technical meetings with HODs and as you had seen, the director-general and HOD were working together in December 2015 relating to issues of Life Esidimeni.

ADV LILLA CROUSE: Okay. Can I ask you this? If the Minister was not aware of that Goody have placed it on the agenda?

MS QEDANI MAHLANGU: The reason why I did not place the matter on the agenda– no, the minister asked the men placed on the agenda because both of us at the time did not anticipate that they were going to be such consequences after [indistinct 01:14:10] was cancelled. Simply that is an honest and genuine answered.

ADV LILLA CROUSE: Okay. I just want to know about you now. We will get to the Minister. You did not think it necessary to place [intervenes]

MS QEDANI MAHLANGU: Because I had no reason [intervenes]

ADV LILLA CROUSE: Let me just finish, please, Ms Mahlangu. You did not think it necessary to place the closure of Life Esidimeni before such an important such an important statutory body?

MS QEDANI MAHLANGU: First of all, as I continued to say that the issue is, as I said my primary presentation on Monday that I had no reason to worry that information given to me was incorrect and the decision for the execution will result in to the consequences that we are dealing with today. So as a result of that, I did not present the matter to the NHC and, ja.

ADV LILLA CROUSE: To which MEC now?

10 **MS QEDANI MAHLANGU:** To the NHC.

ADV LILLA CROUSE: Oh. Oh. So you did not think that it is necessary that somebody was a little more insight and perhaps somebody with a little objectivity should interrogate your decision and the implementation thereof?

MS QEDANI MAHLANGU: I am not sure what you mean when you talk about a
15 little bit more insight [intervenes]

ADV LILLA CROUSE: Should somebody not have advised you on this?

MS QEDANI MAHLANGU: But I am saying to you, Counsel, the director general, Precious Mathuso, and Barney Selebano, the HOD then, we were working together in my understanding. So both of them are qualified medical practitioners.

ADV LILLA CROUSE: Yes. My question to you is, MEC, there is a statutory body that the Minister of health think is a relevant body to assist, and you did not seek its assistance.

MS QEDANI MAHLANGU: Because I was not aware of the problems which finally came into— result in to what we are dealing with today.

ADV LILLA CROUSE: Okay, I am going to take you just a little bit back. When the decision was taken, you did not seek the counsel.

MS QEDANI MAHLANGU: Excuse me?

ADV LILLA CROUSE: When you took the decision you did not seek this statutory body's counsel.

MS QEDANI MAHLANGU: But the cancellation of contract in every problems relating to the day-to-day operation of [indistinct 01:16:32], that is not discussed in any political forum. That forum to discuss policy matter. Normally, the typically[sic] agenda when I was sitting in those meeting , Justice, it will be issues of— what you call this, the NHI implementation and progress report to that. It will be how clinics are being aligned cross the country and all of that. It will be issues relating to NHLS particularly because of the problems that and costing exercise that was being looked into and models to get NHLS to function properly. It will be the top priorities that Minister is concerned about in terms of making sure that the essentials relating to the running of the systems, those would be presented. And I can go on the agenda but the agenda, it is a standard agenda more or less. From time to time, of

course during the Ebola it would add an item on the Ebola but the item is more than standard that is reporting largely by national, and provinces are participating in that.

ARBITRATOR JUSTICE MOSENEKE: Of course, former MEC, the big question— this question is as you know, the minister things you ought to have brought this to the national health Counsel. Do you share that view?

MS QEDANI MAHLANGU: justice, if I had the information I have now are then in September 2016, I would have had a discussion with the Minister. Even on the morning when we had this discussion with the Minister before our formal meeting, I said to him— he said, “Qedani, what is happening? I see this matter on the newspaper. And what is happening?” And I explained to him. And he says, “So what are you doing about that?” And I explained. Then he says, “I will assist you.” That is the discussion we had with the Minister on this matter.

ARBITRATOR JUSTICE MOSENEKE: When was this?

MS QEDANI MAHLANGU: That was on the 14th of September when we were before— before the meeting we had to discuss the Nelson Mandela Children Hospital.

ARBITRATOR JUSTICE MOSENEKE: But before we lose our way, because Counsel dictates the line of questions, is the minister thinks you ought to have brought it to the National Health Counsel. Let us just wrap that up and move on. You obviously think differently, do you question mark

MS QEDANI MAHLANGU: No, I do not think differently but the context is this, Justice. If I had known, I had the fact that now have been revealed to the public, I

would have. My understanding that I had a good relationship with the Minister. I could raise issues with him upfront and telephonically every day. So I had no reason to hide any information from anybody.

ARBITRATOR JUSTICE MOSENEKE: Look at the examples in that paragraph 5 you have just read. The minister thinks the Counsel could be helpful in a futuristic way. In other words, it is a place where you say, “Oops, what happened?” It is a place where you say, “Oh, this is how we ought to take precautions.” You get his point? Look at the paragraph you have read. He thinks the Counsel must be used to prevent Ebola, to anticipate the World Cup and the problems that might come 10 around it, and so on and so on. So it is a body that ought to look at the future. And you are saying to us, “Well, now that I know a mess-up occurred, I should have taken to the national health Counsel.”

MS QEDANI MAHLANGU: Hindsight , Justice, is best science. That when you reflect on matters that I should– I could have and it is already late. And I think it is 15 important to really say that and I said if I had the facts that I have now, we could have done things differently. If I were to turn the clock, I would have done things differently. And I think that is important.

ARBITRATOR JUSTICE MOSENEKE: If you knew the risks you would have taken it to the national health Counsel.

20 **MS QEDANI MAHLANGU:** Yes, absolutely and I would have also taken needs to the executive Counsel to ask for that this administrative matter which is likely to

have such risks, let it be discussed in the executive Counsel. I would have ta– I would have done that.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

ADV LILLA CROUSE: Thank you, justice. Part of political leadership is to consult widely. Do you agree?

MS QEDANI MAHLANGU: Yes, indeed.

ADV LILLA CROUSE: And you would agree with me on these instances that we have now dealt with, you did not even use the statutory structures to consult.

MS QEDANI MAHLANGU: But because I did not anticipate the outcome that we finally had.

ADV LILLA CROUSE: So, Ms Mahlangu, what you are saying is, “I had no insight because I did not want to ask other people’s views.” Is that what you are saying?

MS QEDANI MAHLANGU: But, Counsel, when you run a Department, and because I was not new in service or I did not come out of high school or primary school and a hop into the job, so I understood how to run the services of the period of time. And those basis, I understood that what we were trying to do had no intention of [indistinct 01:21:38] negative consequences. But in the benefit of hindsight, clearly probably be done things differently. And that is what I am saying, justice.

ADV LILLA CROUSE: What I am putting to you is that you did not consult as you should have before you made the decision.

MS QEDANI MAHLANGU: Before making the decision, the consultation probably could have been– have a thorough discussion with the Minister and have a formal something in writing. Yes, that I agree.

ADV LILLA CROUSE: And speak to experts in the field but we will get to that. I just want to put it to you by not using these statutory bodies that we have now dealt with, you did not act as a political leader should have acted.

MS QEDANI MAHLANGU: I disagree with you because I did not have the information I hope now.

ADV LILLA CROUSE: Let us continue. You offered three reasons for this marathon project, is that correct?

MS QEDANI MAHLANGU: I offered three reasons for the broader cost savings that we were dealing with, including Life Esidimeni.

ADV LILLA CROUSE: And could we just establish these three reasons? Were you considering them at the time when you make decision or were they thought of later on?

MS QEDANI MAHLANGU: But I said that in my statement on Monday, Counsel.

ADV LILLA CROUSE: Well, can you please answer my question? Was those three reasons thought of at the time of making the decision or were they thought of later on?

MS QEDANI MAHLANGU: Think they were part and parcel of decision-making.

ADV LILLA CROUSE: Can I ask you again? With those three reasons thought of the time of making the decision or were they later on [intervenes]

MS QEDANI MAHLANGU: They were part of the decision-making and the process.

5**ADV LILLA CROUSE:** Thank you very much. Now, I am going to deal with these three reasons just very quickly. My learned friend for Section 27 has dealt extensively with the economic reason, the cost cutting issue. Would you say that is the most important reason?

MS QEDANI MAHLANGU: The reasons were deinstitutionalisation, cost saving
10which applied in the other areas including Life, and the issues consistently raised by the auditor general with evergreen contracts, yes.

ADV LILLA CROUSE: My question to you – were the cost issue foremost in your mind?

MS QEDANI MAHLANGU: All of them were foremost in my mind because you do
15not get a clean aud– you do not deal with the issues raised by the AG, you are not going to get a clean report or an unqualified report.

ADV LILLA CROUSE: Are you correct in that?

MS QEDANI MAHLANGU: Pardon?

ADV LILLA CROUSE: Are you correct to say they were all three equally important
20you?

MS QEDANI MAHLANGU: They were important in the decision-making. Not– these were not my personal issues, were issues daily dealing with as a collective in the departments.

ADV LILLA CROUSE: You see, the first time that this issue was raised was on 5 your version with the budget committee told you to go back and look for cost savings, is that so?

MS QEDANI MAHLANGU: Yes, in presentation number two on the 26th of November.

ADV LILLA CROUSE: Yes. So if you were thinking of the other issues, you would 10 have raised them yourself. It was only when the cost issue came up that you sort of this plan, is not that so?

MS QEDANI MAHLANGU: We sort of this contract along with the other things that I presented.

ADV LILLA CROUSE: I am just merely trying to establish whether the cost issue 15 was important one for you.

MS QEDANI MAHLANGU: All of them were important.

ADV LILLA CROUSE: Okay. Let us go there. You had already told us that the idea of cancelling Life Esidimeni contract was that the bulk of the patients would go to hospitals and not to NGOs, is that right?

20 **MS QEDANI MAHLANGU:** Yes, that is what I was briefed by the officials.

ADV LILLA CROUSE: And you already told us that these hospitals' cost per day per mental healthcare user it would be six times that of Life Esidimeni.

MS QEDANI MAHLANGU: Because those mental healthcare users would be taken to those hospital. After assessment by medically qualified personnel, they would have determined that they do not need to go to any place but other than the places they were sent to.

ADV LILLA CROUSE: You are looking in your crystal ball decide most of the patients it will go to hospital but the hospitals will say, "No, they do not need to be there." Is that what you are saying?

10**MS QEDANI MAHLANGU:** No, but you are twisting my words. You are asking me about the cost at for instance, Weskoppies and Sterkfontein, and am answering you on this cost that when you take someone, and again am going to repeat an example. If I go and get treated with flue at a clinic, I do not know how much it costs, but probably it is likely to cost this than 500– this then R200. If I go and get
15treatment for to, here at [Indistinct 01:26:30] which is just next door, I am going to pay R1500 or so because of the calibre of people who are going to see me at a Central Hospital viz a vie when I go at a clinic level. So that is what we are dealing with here in terms of the cost associated. With those mental health users would have been transferred to a Central Hospital like Weskoppies as well as Sterkfontein
20because they are teaching a platform but also, you have a lot of senior police and doctors and nurses in those hospitals.

ADV LILLA CROUSE: Ms Mahlangu, you are saying I am turning around to words but if you just answer my question, they would be an opportunity for this. My question to you was merely you said yesterday that mental clear health the user at these hospitals will cost you six times more then it would have cost Life Esidimeni. 5Is that what you said yesterday?

MS QEDANI MAHLANGU: But that is what the Counsel said and I was responding [intervenes]

ADV LILLA CROUSE: And you agreed.

MS QEDANI MAHLANGU: ...to that and I am explaining the context of my answer.

10**ADV LILLA CROUSE:** Yes, so if [intervenes]

MS QEDANI MAHLANGU: ...that the treatment– Counsel, the treatment, and it is important that this context be explained and explained over again, treatment in Sterkfontein and Weskoppies are not clinics. They are not NGOs. They are a training platform. They have senior doctors and nurses there. So when a person is 15treated there, the cost associated with the calibre and qualification and expertise of those individuals.

ARBITRATOR JUSTICE MOSENEKE: Of course we could say yes, it cost more to treat the patient at Sterkfontein, but here is the reason. And I think that is what you really are saying, is it not? It is obvious.

20**MS QEDANI MAHLANGU:** Yes, I am [indistinct - cross-talking] Sorry, justice.

ARBITRATOR JUSTICE MOSENEKE: No problem. The answer is yes, it cost more but there is a reason for it and the reason is this.

ADV LILLA CROUSE: So logically, if you take the patience from Life Esidimeni and you put the bulk of them in these hospitals at six times the cost, it is not going to be cheaper.

MS QEDANI MAHLANGU: But, remember, Counsel, if you want to provide quality care and in that assessment of the medically qualified professionals who would assist those patients or those mental healthcare users, excuse my error, and then said, “These ones need to go to these hospitals and be looked after by the hospitals, and those who need less intensive clear or much more vigorous– intensive care,” not ICU in that sense, “would need– can be in the hospital in a section may be managed by the NGO,” I do not know. Remember, I do not make these decisions. These decisions are made by the relevant clinicians and the qualified medical people.

ADV LILLA CROUSE: Yes, my proposition to you is just simple. If you take one person and you put it in a hospital, you pay six times more for him and you take six persons and you pay six times more, then you pay what you have paid for 36 people in the first hospital. So it is not a cost-cutting measure.

MS QEDANI MAHLANGU: And there is a context to that [intervenes]

ADV LILLA CROUSE: Yes, I will accept that, Ma’am. We are just on the cost now. So you agree with it, that could not have been a cost-cutting measure.

MS QEDANI MAHLANGU: But the answer should always be seen in the context I am explaining it, Counsel.

ADV LILLA CROUSE: Yes. Let us try my context of the questions now. You also had to do renovations to hospital, is not that so?

5**MS QEDANI MAHLANGU:** Years, yes, that was planned and [intervenes]

ADV LILLA CROUSE: And that is cost that you would have had to incur.

MS QEDANI MAHLANGU: Yes, those costs were incurred, yes, and they were planned [intervenes]

ADV LILLA CROUSE: Yes, so it is not a cost-cutting measure.

10**MS QEDANI MAHLANGU:** But you are improving the quality of places of where the mental healthcare users must be.

ADV LILLA CROUSE: Yes. And you told us that the idea was to absorb the staff of Life Esidimeni.

MS QEDANI MAHLANGU: Yes, that was what I was made to understand and that
15is what I would have agreed to.

ADV LILLA CROUSE: Yes, and that was a noble idea but that is not a cost-cutting measure, is not it?

MS QEDANI MAHLANGU: So what were we supposed to do with the staff, Ma'am?

ADV LILLA CROUSE: No, I am asking you the questions. So if you could just answer the question please [indistinct - cross-talking]

MS QEDANI MAHLANGU: You are saying that taking staff, absorbing staff from Life into the Department in different programs that cost saving? So not sure what exactly we should have done? Should not we have left an outside?

ARBITRATOR JUSTICE MOSENEKE: No, I think the drift of the questions are the purpose of the programme was to cut costs, and Counsel is going through item by item to test whether you would have saved money or spend more money. I think that is the debate.

10**MS QEDANI MAHLANGU:** Justice [intervenes]

ARBITRATOR JUSTICE MOSENEKE: So the next question is if you had reabsorbed of the workers you would not have saved unemployment costs. And what is your response to that?

MS QEDANI MAHLANGU: I do not know how much money was saved because I 15am no longer in the system. With the financial year ended I was not in the system. So I cannot answer how much exactly. Did the Department save money or not? But I know in the 2015/16 financial year, I think there was a 20 or R30 million or so that the savings that we realised that there beyond that, I would not know exactly how much when the financial year ended in 2016– in 2017 when I was no longer in 20the Department.

ADV LILLA CROUSE: Ms Mahlangu, it does not take a brain surgeon to realise if Life Esidimeni are paying for this staff and you will not take over their staff, that you are not saving cost for yourself. You are incurring cost. Do you agree with that?

MS QEDANI MAHLANGU: We are incurring cost of but we are also the jobs.

5**ADV LILLA CROUSE:** Well, you could have predicted the jobs by not think the contract.

MS QEDANI MAHLANGU: Counsel, through you , Justice, the assumption Counsel is making, and I think it is important I could be given an opportunity to explain this, the very same jobs that the Counsel is talking about at Life, those
10employees had no benefits by the way and they are only get benefits– their benef– a lot of people who work in private companies do not get benefits. So in actual fact, their quality of jobs improved once they were absorbed by government and that is important to factor that in this equation when we are having this discussion.

ADV LILLA CROUSE: So was that one of the things that you took into
15consideration when you took the decision?

MS QEDANI MAHLANGU: No, no, no, there is not one of the things [indistinct - cross-talking] the thing wires we took into consideration was to make sure that the workers are not left in the lurch without protecting them because they have families.

ADV LILLA CROUSE: I am just trying to find out what your thought processes was
20at the time of the cancellation.

MS QEDANI MAHLANGU: No, I would not be able to trace my thoughts back then, Ma'am. I do not have my notes so I will not be able to trace them back.

ADV LILLA CROUSE: Well, then we will work with logic. We know if we have the patience in Life Esidimeni, you do not have to pay six times per patient in the hospital, you agree?

MS QEDANI MAHLANGU: It depends.

ADV LILLA CROUSE: Will you also agree it would be necessary to make renovations to the hospitals?

MS QEDANI MAHLANGU: It was necessary to make renovations in the hospital because we need to have— we need to renovate of those wards in any event.

ADV LILLA CROUSE: It would not have been necessary to employ Life Esidimeni staff.

MS QEDANI MAHLANGU: We need more workers. So in probably would have employed those workers in one form or the other because we are running short of nurses and doctors.

ADV LILLA CROUSE: Well, I want to put it to you that logic dictates on what I have said so far, that it was not a cost saving mechanism.

MS QEDANI MAHLANGU: Well, as I said , Justice, that answer probably can be given better by my comrade who would probably come here and present – she would probably give a better sense of the issues relating to the specificities of this matter but at the moment I cannot.

ARBITRATOR JUSTICE MOSENEKE: Yes, while we are there, Counsel, you have alerted immediately that we are going to require her to speak to the budget and in particular, the line item expenditure. Before I forget, was that– I do not know if I was loud enough. Have you managed to find, alert the MEC current that she will be asked to tell us about the expenditure of the R190 odd million that appeared on the budget is being put NGOs related to mental healthcare users?

ADV PATRICK NGUTSHANA: Justice, as part of the preparations for the MEC, those are the matters which will be present at all these proceedings. And it will– it is a matter which will then be entered as and when it should be given the platform to come before these proceedings.

ARBITRATOR JUSTICE MOSENEKE: Very well. To save time, I do not want to come and say, “I did not anticipate this. I do not have my papers with me.” That is why I am taking the precaution.

ADV PATRICK NGUTSHANA: Thank you, Justice.

15 **ARBITRATOR JUSTICE MOSENEKE:** Thank you. Would you proceed, please?

ADV LILLA CROUSE: Thank you, Justice. Well, on the logic side of it, it could not have been a cost cutting measure. Now my question to you is have you done a cost analysis before making this decision?

MS QEDANI MAHLANGU: Oh, my apology, Counsel. I think that officials worked on those details and [intervenes]

ADV LILLA CROUSE: I am talking to you as the political head, the political leadership that must give guidance. Did you ask for a cost analysis to be done?

MS QEDANI MAHLANGU: I think they did it. I am not sure exactly.

ADV LILLA CROUSE: My question is did you ask for cost analysis to be done?

5**MS QEDANI MAHLANGU:** I think it somewhere in the documents. I do not know exactly which one but I am sure they did it. I think so.

ADV LILLA CROUSE: You are not answering my question, Ms Mahlangu, please. Did you ask for it to be done?

MS QEDANI MAHLANGU: Counsel, what I know is what I have presented in my
10statement and I think this is document I was talking to yesterday. Just give me two
seconds. The files are submitted yesterday– oh, ja, this one, which– the ELAH 132
on the document I was referring to which has a list of project manager, who
appointed the project manager. If you go for instance at page 4, and I wanted to go
back to the page which I think I am referring to it for the third time, so this would
15have been the cost details that I would have been exposed to wind that officials
were presenting. And on the basis of that, of course the discussion would have
been had and how do we deal with such issues. And so page 4, I think that
information is appropriate and because some of them is for the previous financial
year. It has been audited and get a information that is correct.

20**ARBITRATOR JUSTICE MOSENEKE:** Let me– help– can you help me
understand this slide on page 4?

MS QEDANI MAHLANGU: So what it is simply saying , Justice, that through you, that the budget– what would– was happening actually with the Department, and this is in keeping with the issue I have been raising of the difficulties with the budget and the cost overruns because in the Department of health, you cannot say no to people with regard to services. So whether this money or not, you have to give the services. So in this instance, the department budgets for R194 million but the actual expenditure is 209.

ARBITRATOR JUSTICE MOSENEKE: And this is for Life Esidimeni only question mark

10**MS QEDANI MAHLANGU:** Yes, this is for Life Esidimeni only. And that stretches across the different financial years. In 203– 213– 2012/2013, the budget is 203, 203 million. Then the actual expenditure is 224. And the 2013/14, the budget is 213 million and the actual expenditure is 23 4 million. In 2014/15, the budget is 251 million and the expenditure is R323 million. So as– the reason why I am coming
15back to this issue is to demonstrate over and over again the challenges faced by the Department of Health. The cost overruns, not only on Life Esidimeni, but across all services that are being run. You can look at the Steve Biko. You can look at Charlotte and whatever else. So when all is said and done, if indeed government says continue to run the Department on this basis, all other departments will cease
20to exist.

ARBITRATOR JUSTICE MOSENEKE: Let us talk about 2015/2016.

MS QEDANI MAHLANGU: Yes, justice.

ARBITRATOR JUSTICE MOSENEKE: The overrun seems to have been reversed and actual expenditure kept at 176 million as against 265.2 million budgeted. Do I understand this slide well?

MS QEDANI MAHLANGU: You are understanding it correctly, justice.

5**ARBITRATOR JUSTICE MOSENEKE:** What would you– that expenditure actuals so much.

MS QEDANI MAHLANGU: I think one of the things if I am not mistaken, and I am speaking under correction here because I do not have the actual facts before me, what my understanding is, remember, we were talking about a reduction per annum
10of that Life legislated that they should reduce the number of mental healthcare users every year by a certain number, and in the previous years, they would not be doing so. Instead, they would be making sure that people stay and want to have more mental healthcare users so that the budget– what they then get is more [indistinct] budget.

15**ARBITRATOR JUSTICE MOSENEKE:** So this is the impact of the 20% bed reduction program, is it?

MS QEDANI MAHLANGU: I think it is the 20% and I think there was a weekend– the weekend visits to families were really encouraged during this time. Previously, and when the mental healthcare users were going home, Life was supposed to
20indicate those in their books. But before they were managed properly, they were not doing those. I think that is the issue. I may not be hundred percent accurate

with figures and I think probably the colleagues [indistinct] presenting the statement bring those details into [intervenes]

ARBITRATOR JUSTICE MOSENEKE: So your Department was doing good progress in reducing actual expenditure, was it?

5 **MS QEDANI MAHLANGU:** That is when we started in 2015/16. We only started in 2015/16.

ARBITRATOR JUSTICE MOSENEKE: And for the year that you started [intervenes]

MS QEDANI MAHLANGU: That 15/16, justice.

10 **ARBITRATOR JUSTICE MOSENEKE:** You saved nearly, what, 80 million or 90 million.

MS QEDANI MAHLANGU: Justice, in the 15/16 [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Yes, the 2015 to the 16 financial year, you saved 90 million in actuals but that is the same here that you make the decision to
15 terminate.

MS QEDANI MAHLANGU: Yes, yes, yes, justice. It will fall into the March 2016 finance– year, calendar year.

ARBITRATOR JUSTICE MOSENEKE: And if he had shown patience, the next year would the actuals have dropped? In other words, if you kept continuing with
20 the 20% bed reduction program.

MS QEDANI MAHLANGU: Probably, and as I am saying, the actuals, because I think the colleagues in Health will be able to deal with that in the 16/ 17 because probably the best budget that will give you a true reflection is the 16/17 which started on the 1st of July because that is with the actual effect of what the Department were doing [intervenens]

ARBITRATOR JUSTICE MOSENEKE: So, former MEC, you had this under control, did not you? The numbers were going down and the discharges were now be more tightly monitored by your Department.

MS QEDANI MAHLANGU: Justice, please do not take a word I am saying in– I said to you subject to the facts from the Department as to what is attributable actually to this 176.

ARBITRATOR JUSTICE MOSENEKE: Yes, we will ask.

MS QEDANI MAHLANGU: Yes, what I am saying I think from what I remember from my memory, this could be one of those reasons but the actual information could come from the Department itself.

ARBITRATOR JUSTICE MOSENEKE: Ja, but I mean, you know where I am going [intervenens]

MS QEDANI MAHLANGU: Ja, ja, ja.

ARBITRATOR JUSTICE MOSENEKE: It is not complicated. I am just saying if you had kept the 20% bed occupancy reduction at Life Esidimeni, the probabilities are that the actuals would have continued to drop.

MS QEDANI MAHLANGU: Ja, probably.

ARBITRATOR JUSTICE MOSENEKE: I am just looking at the graph, I mean, the slide that you referred us to.

MS QEDANI MAHLANGU: [Indistinct] yes, and I am saying probably [indistinct].
5Yes.

ARBITRATOR JUSTICE MOSENEKE: Ja. It coincides with Dr Mkatshwa's evidence. So it is quite consistent. This graph is consistent with Dr Mkatshwa's evidence that the numbers were indeed reducing, and the 20% bed occupancy reduction was seemingly less and less expenditure. And the question you can
10sense yourself coming why not wait for a year or two or three and move into accelerated marathon project?

MS QEDANI MAHLANGU: But, just as, as I said in my present– in my different answers that we did not anticipate that the outcome of the decision will be that and I continue to say the challenges that the Department was faced with that, and I am
15talking “was” because of the past, were really, really genuine and real. So as I said, when benefit– hindsight is always the best– how better to think better as to what you could have done better. So that is my response.

ARBITRATOR JUSTICE MOSENEKE: Okay. I will leave it there. I mean, that is what Counsel is asking about cost saving. I am just saying on the graph you have, I
20mean, the slide you have shown us, the bed reduction program was yielding results because you spending, you saved 90 million in the first year. Mr Mosenogi, Dr Selebano, certainly Dr Makatshwa, they all decried that exhilaration that started,

that really went fast from May, and say that is and what caused the stampede and the rush displacement of patients into NGOs, and if this had been kept, lives would have been saved. What is your comment about that? Do you agree with that?

MS QEDANI MAHLANGU: But , Justice, no, I agree with you but and then I also want to give you a context as I have been continuously saying. When you are given information, you agree to this. The colleagues go– the colleagues– the civil servants are they go and do the work. They come back, give the impression that things are going okay. So you have got no reason to believe that consequences will be this and then the outcome will be the negative consequences and we are dealing with today.

ARBITRATOR JUSTICE MOSENEKE: Ja, but you and me are quite senior now, and we are looking with hindsight. [Vernacular 01:46:27]

MS QEDANI MAHLANGU: Yes, yes, yes no, I am with you, justice.

ARBITRATOR JUSTICE MOSENEKE: Ja, and we are quite senior. I mean, that is not a critical thing. I am sitting and saying what went wrong? I listen to the evidence. Dr Makatshwa empathetic [? 01:46:43] for instance, if there was no accelerated marathon project, cost would have been reduced gradually and maybe you would have even afford to buy them out, he says in his evidence. And I look at this slide, which I have not seen uncle now, you had made a saving of nearly 90 million on actuals. So should not they have been more patience and give it a year or two or three [intervenes]

MS QEDANI MAHLANGU: In hindsight, yes.

ARBITRATOR JUSTICE MOSENEKE: Everybody would have been saved, is it not?

MS QEDANI MAHLANGU: In hindsight, yes.

ARBITRATOR JUSTICE MOSENEKE: Jobs would have been saved. Patients would have lived and we would not be here.

MS QEDANI MAHLANGU: In hindsight, Justice, yes.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

ADV LILLA CROUSE: I am just going to die up this graph that you have not referred us to. Is that the only [intervenes]

10**ARBITRATOR JUSTICE MOSENEKE:** Is that a graph or a slide, Counsel? The last time I was in a mathematics class I think graphs looked a little different.

ADV LILLA CROUSE: Maybe I need an interpreter, justice. The cost in the document that you have just referred us to, was that only cost that you look at is to make the decision as a cost saving measure?

15**MS QEDANI MAHLANGU:** We looked at all aspects in the Department. If you go to the presentation on ANNEXURE... It is not in this file.

ADV LILLA CROUSE: Mr Mahlangu, before we go to another document, let me just clarify what I am asking you and then, if you feel it is necessary, we can go there. In so far as Life Esidimeni is concerned, was that the figures that you were
20looking at?

MS QEDANI MAHLANGU: Across the board what we are supposed to save is R700 million.

ADV LILLA CROUSE: Can ask my question again?

MS QEDANI MAHLANGU: Yes.

5**ADV LILLA CROUSE:** In so far as Life Esidimeni is concerned – this table that the Justice has just heard you to all that you referred us to - were that was the only figures that you have?

MS QEDANI MAHLANGU: I am not sure. Probably.

ADV LILLA CROUSE: Maybe if you can just stop fiddling and listen to my question
10then you can get the [intervenes].

MS QEDANI MAHLANGU: No, I am listening to you, Counsel. I am.

ADV LILLA CROUSE: My question to you is a straightforward question. This is look at me while I am speaking to you.

ARBITRATOR JUSTICE MOSENEKE: Counsel, that is fine. That is fine. Look at
15me, stop fiddling and so on, let us give the witness a little break there. Okay you asked a question. Her duty is to answer the question and some Judge said not to look at you. Very well. Please ask the question.

ADV LILLA CROUSE: The question was insofar as Life Esidimeni, with those in the table that you have just referred us, was that the only figure that you had in front
20of you?

MS QEDANI MAHLANGU: I do not know at this moment whether they were any other figures. I just have to refresh my mind.

ADV LILLA CROUSE: Thank you. Now, could I then ask you my initial question before you referred us to that table? Did you personally ask for cost analysis to be done prior to taking the decision?

MS QEDANI MAHLANGU: That the officials in the Department of Health are very competent. I think we had a Health economist in the CFO office. So I do not know the actual— I think they would have done an exercise. I just had to get information. So, ja.

10 **ADV LILLA CROUSE:** Ms Mahlangu, please, I have asked this question many times and somehow, you are not answering it. My question to you is you personally, did you ask for a cost analysis to be done?

MS QEDANI MAHLANGU: Counsel, I had been out of the system at least close to a year now and I do not have access to Life information from the Department of Health, which will give me information now and this and this and that. If I had known the questions you were going to ask about those things specifically, I would have endeavoured through my Counsel to get that information before you so that I can answer you.

ARBITRATOR JUSTICE MOSENEKE: I thought the question, former MEC, was at the time of decision-making, had you made a cost analysis other than what appears on this slide? I think that is the question.

MS QEDANI MAHLANGU: Justice, I think it was done but I am saying as am sitting here now, I cannot remember that document and exactly what. So but I am sure if the colleagues from Health can– and I am sure they will find something like that but I remember something of that kind but I do not know exactly where is that because I do not have– I am not active, live in the system.

ARBITRATOR JUSTICE MOSENEKE: I understand. You cannot remember now about you think most probably it had been done.

MS QEDANI MAHLANGU: You should have been done, yes.

ARBITRATOR JUSTICE MOSENEKE: Ja.

10**MS QEDANI MAHLANGU:** Yes, I think it was done.

ARBITRATOR JUSTICE MOSENEKE: There is your answer, Counsel.

ADV LILLA CROUSE: Would you agree with me that you may an informed decision without a proper cost analysis?

MS QEDANI MAHLANGU: Yes, of course.

15**ADV LILLA CROUSE:** And as a political leader you will have asked for that, would you not?

MS QEDANI MAHLANGU: Yes, I would have.

ADV LILLA CROUSE: And you would have looked at the figures, would you not?

MS QEDANI MAHLANGU: Yes.

20**ADV LILLA CROUSE:** So we can accept that you have seen a cost analysis.

MS QEDANI MAHLANGU: I am saying to you, Counsel, if you look at the slides, I think it is page 62 on the cost saving, on the— at the ELAH 132, there it talks about inward looking savings, outward looking, revenue funding, potential saving, and risks, effect, impact versus indirect, it talks about those things in all the items that were identified as part of the cost saving. So this short presentation would be informed by a thorough analysis that would have been done in the office of the CFO because they are, you had a lot of competent people. Again, if you want details of that, I am sure if I had it that day that you were going to ask this information, I would have gotten access to it and be able to answer you.

10 **ADV LILLA CROUSE:** My question to you is more in line of Life Esidimeni. Before you cancelled this contract, did somebody look and say, “It has cost us so much preparation but now if we go there, to Weskoppies it will cost us so much. To employ the start up cost this much.” Was that ever done?

MS QEDANI MAHLANGU: I think so but, Counsel, again, I do not have that information before me and I do not have access to those documents.

ADV LILLA CROUSE: Okay. Now, as a responsible politician and to give leadership, you would have looked at it if that was done.

MS QEDANI MAHLANGU: Yes, I think I looked at it but I do not have access for you. When I left in government, Counsel, as a matter of fact, I handed over everything to government because I no longer have a duty to be carrying government information. So if indeed I was telling government, I would have said to you are probably go to look at my office and to look somewhere else. So that is

really the truth. I do not have that information but I remember something of that— that was— we had a discussion of— with the HOD and the CFO around those issues.

ADV LILLA CROUSE: So the Health Advance Institute, very expensive report, saying Life Esidimeni is good. Money, good value for money.

5**MS QEDANI MAHLANGU:** I think that the HAI this report was part and parcel of that work done by the Health economics in the Department under the leadership of the CFO.

ADV LILLA CROUSE: So you would have had regard to that as well.

MS QEDANI MAHLANGU: I think they took all of those issues into consideration. 10As I am saying, the final product of the Department from what the HAI would have said, it will be including those issues.

ADV LILLA CROUSE: You personally it would have taken that into account?

MS QEDANI MAHLANGU: But it cannot be personally. Government decisions are not made by individuals and I want to continue to make this point. There is no one 15person and say, “Now we do this.” If you look at the budget , Justice, that I shared with you yesterday, the 184 million you are talking about, look at the number of signatures there. None of them is my signature. It is the Chief directorate responsible budget. It is this the Chief directorate responsible for this. It is the CFO, and it is the HOD and DDG, which is Dr Letbethe. None of those signatures 20is mine simply because of the hierarchy in government in making decisions. It cannot be correct that all the time you, you, you. It cannot be. That is a collective

decision. Indeed, that is how government work. And this is my true and honest answer, justice.

ADV LILLA CROUSE: Are you saying that you did not provide leadership and say to them, “Hey, are we not really taking the good value for money and changing it to something else”?

MS QEDANI MAHLANGU: With that those discussion, Counsel.

ADV LILLA CROUSE: Oh, okay. Justice, I see is that it is past now the time.

ARBITRATOR JUSTICE MOSENEKE: It is the time but I think you do have an answer. The answer is if I had access to my documents I would have checked and known of the financial exercise and two, decisions are collective. I think that is the answer. We will have to move on after tea. We are going to take the adjournment now and we resume at 12 o'clock.

LIFE ESIDIMENI ARBITRATION

HELD AT: EMOYENI CONFERENCE CENTER, 15 JUBILEE ROAD, PARKTOWN, JOHANNESBURG

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SESSION 2-1

20**BEFORE ARBITRATOR –JUSTICE MOSENEKE**

WITNESSES:

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SESSION 2

ARBITRATOR JUSTICE MOSENEKE: You may be seated, you are still under your previous oath Ms. Mahlangu.

15 **MS. QEDANI MAHLANGU:** Yes, Justice, I am aware.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

ADV. ADILA HASSIM: Thank you Justice Moseneke. Ms. Mahlangu, I am now going to move your 2nd reason for closing Life Esidimeni and that is the

institutionalization. You referred to in your statement that you were doing this for acceptable international practice. You remember saying that?

MS. QEDANI MAHLANGU: Yes.

ADV. ADILA HASSIM: What did you understand under acceptable international practice?

MS. QEDANI MAHLANGU: That mental healthcare users will be taken to communities. Mental healthcare users will be located within communities likely run by NGOs in an environment that is constrained.

ADV. ADILA HASSIM: Did you do research on that?

10 **MS. QEDANI MAHLANGU:** Pardon?

ADV. ADILA HASSIM: Did you do research on the acceptable international practice?

MS. QEDANI MAHLANGU: I didn't do it personally and I think the officials looked at a number of aspects.

15 **ADV. ADILA HASSIM:** Do you know what aspects they looked at?

MS. QEDANI MAHLANGU: I think the template that they used to look at the NGO in my understanding is that template talks to the fundamental quality of the infrastructure as well as – yah, let me leave it there.

ADV. ADILA HASSIM: Have you asked the World Health Organization for any assistance?

20

MS. QEDANI MAHLANGU: I think I remember talking to Professor Freeman about that because the province will not do it directly. It will have to work with the Department of Health, the national as a appropriate body that lies with multi-lateral bodies like the WHO.

5**ADV. ADILA HASSIM:** Ms. Mahlangu, let us just clarify. These questions that I asking you now, it is not expose factors. It is not speaking to Professor Freeman after the deaths have occurred. At the time of taking this decision, have you spoken to the World Health Organization what is best practice?

MS. QEDANI MAHLANGU: Personally, I would not speak to the WHO because
10the HOD working with the Director General and appropriate officials at national level would do such engagement.

ADV. ADILA HASSIM: As the political head that is responsible and wants to take the right decision, did you encourage this to happen?

MS. QEDANI MAHLANGU: Yes, I assume that was happening because we said
15we want to comply with the norms and standards and that really talks to the issues that are in the NGO.

ADV. ADILA HASSIM: Encourage and assume are 2 different verbs in my understanding. You say that you assume that they have done. I asked you if you encouraged them to do that?

20**MS. QEDANI MAHLANGU:** Yes, I encouraged them.

ADV. ADILA HASSIM: Can you remember saying that to them?

MS. QEDANI MAHLANGU: That is a long time ago Counsel.

ADV. ADILA HASSIM: Did you see any report of best practices shown to you?

MS. QEDANI MAHLANGU: No, I didn't see any.

ADV. ADILA HASSIM: Should you as a political head take an informed decision
5not have seen that?

MS. QEDANI MAHLANGU: I am not sure exactly where you are leading to but if
probably you are saying we didn't look at best practices in implementing this project,
I would say in practical sense, I don't remember that being done, but I remember
having a conversation with Professor Raktman (sp) and I think he suggested that
10the best community mental health programs will be in Italy if I am not mistaken. I am
speaking under correction. And we were going to send a team there just to look at
how it works, vis-a-vie it comes with some of the NGOs that have been established
by the provinces.

ADV. ADILA HASSIM: Sorry Ms. Mahlangu, was that before you took the decision
15that you want to send a team to Italy.

MS. QEDANI MAHLANGU: I think the discussion that we had with him was in
2017. And remember Counsel, I bed your indulgence please. That in 20 – when we
were busy doing this work, my impression was that, when the province was busy
engaging this work, my understanding was that the province was already
20implementing community mental health programmes, were more than 5000 people
were already in the respectable NGO. And I had no reason to worry that more than
500 people were already in the NGOs, that there was something to be worried

about. So, the discussion with Professor Rakgtman (sp) really happened after the – it was in August to be exact.

ARBITRATOR JUSTICE MOSENEKE: But Counsel really, if you want to know international best practice, it is well documented be us. So, where are we going now?

ADV. ADILA HASSIM: I am just trying to establish what was before them when they took the decision. With respect Justice, that is an important consideration.

ARBITRATOR JUSTICE MOSENEKE: What I am saying is that the content of deinstitutionalization is properly recorded before us. Both international and national level, we know what the requirements are. They have been canvased quite clearly. I suppose the difference question is whether this witness apprised herself of those requirements. I want to see the distinction. Rather asking hr the terms, we know what they are, they are fixed and she can't changed them. The only question is whether she knew what they were, one. Two, did she apply her mind when she made the decision, thanks. In other words, she can't be the expect on the content. It is independently before us. Very well.

ADV. ADILA HASSIM: Could I then ask you, have you applied your mind on norms and standards on best practice?

MS. QEDANI MAHLANGU: Applying my mind in the sense of looking at them to the greatest of detail, the answer is no.

ADV. ADILA HASSIM: Thank you.

MS. QEDANI MAHLANGU: No, if you look at page 7 of ELLA3132 of the document I submitted. You will see on page 7, 3.3 to be exact, that the project team that was established was led by Mr. Moseneke the chief director. And that it continues to describe his profile and his responsibility. It also says that Dr. 5Manamela was appointed to deputize him as a director of mental health. And further on the document says that the project team members were appointed by the head of department [indistinct]

ARBITRATOR JUSTICE MOSENEKE: I just said to the witness in IsiZulu that you are galloping. Just allow me to get to where you are.

10**MS. QEDANI MAHLANGU:** It is ELLA132, page 7.

ADV. ADILA HASSIM: Ms. Mahlangu, we will get to the fact of the plan like everything.

MS. QEDANI MAHLANGU: Counsel-

ADV. ADILA HASSIM: I am just looking at the time that you made the decision.

15**MS. QEDANI MAHLANGU:** Counsel, can I please answer your question in this manner that I preferred to answer so that you can get your response.

ADV. ADILA HASSIM: Justice, could I just ask that the witness, point her answer to the time that the decision was made and not coming here as when the plan was established please.

20**ARBITRATOR JUSTICE MOSENEKE:** Counsel would like to know what considerations you made at the time the decision was made?

MS. QEDANI MAHLANGU: Justice, through you, I understand the question, but I need to answer it. Let me answer it through the manner that -

ARBITRATOR JUSTICE MOSENEKE: Okay, proceed. Answer, let's listen.

MS. QEDANI MAHLANGU: The answer to the question, the 1st part is as follows: 5that there is a project team of well-qualified people here. There is psychiatrists, there is medical doctors, there is nurses, there is colleagues from the infrastructure, there is HR, there is CFO, there is the communications teams and legal, including supply chain. These individuals are duly appointed by the head of department as you see in this document. So, my answer to Counsel is, the expertise of the 10individuals, names are part of the project team. I had full confidence in them. But they know what they are doing with all the things of norms and standards because if you are a mental health specialist, you will know what the norms and standards are, as well as any other requirements that you need to understand. If you are an orthopaedic specialist you understand your responsibilities.

15**ARBITRATOR JUSTICE MOSENEKE:** You have answered, you have said here is the team, here are the people who know the filed and I did not have to be an expert myself.

MS. QEDANI MAHLANGU: Absolutely.

ARBITRATOR JUSTICE MOSENEKE: Okay, Counsel.

20**ADV. ADILA HASSIM:** Thank you Justice. The team was not appointed prior to you making the decision. And I am at the stage of making the decision, not at the implementation stage, I just want to make that clear. You said you are the political

head, you are not part of the implementation of the plan. So, I am testing you on the premises as the political head. So, please let us leave that plan at the moment. I want to know at the time of making a decision. Was it an informed decision from your side?

5 **MS. QEDANI MAHLANGU:** Yes, I think it was informed because again, I worked with a lot of specialists. People who are expertise in public health, medical doctors, nurses and all of those. My assumption is they know what they – they tell me something, I should believe them because they are competent people and they have got skills in the area.

10 **ADV. ADILA HASSIM:** One of the things of this deinstitutionalization to work is that there should be an upscaling of community service, do you agree?

MS. QEDANI MAHLANGU: Yes, and I answered earlier. Justice through you that Gauteng health had already started with the community upscaling at the time I came into the picture.

15 **ADV. ADILA HASSIM:** And I presume that it would have then been very important for you to upscale the NGOs?

MS. QEDANI MAHLANGU: The department was already doing it even before I arrived.

ADV. ADILA HASSIM: So important that you would refer to it in your budget
20 speech no doubt.

MS. QEDANI MAHLANGU: Yes, of course. My budget speech if you procure to know is drafted by asking the different units to give input to the people I work with in my office to draft the speeches. On the basis of that then the speech is drafted, finalized and I go to the legislature and I present the budget speech.

5**ARBITRATOR JUSTICE MOSENEKE:** But of course, the core question former MEC is community-based treatment of mental healthcare users required you to upscale the capacity of NGOs, I think the answer there is plainly yes, isn't it so?

MS. QEDANI MAHLANGU: Yes, the answer is plainly yes.

ARBITRATOR JUSTICE MOSENEKE: But you said it in your budget speech
10yourself.

MS. QEDANI MAHLANGU: Yes, absolutely Justice.

ARBITRATOR JUSTICE MOSENEKE: Counsel, you have got an answer.

ADV. ADILA HASSIM: Thank you. Could I refer you to ELLA134 and ELLA135 which is the budget speeches respectively of 2014/2015 and 2015/2016. Could you
15please show me where in the budget speeches you speak about upscaling NGOs in order to better the mental healthcare users community service?

MS. QEDANI MAHLANGU: But I wouldn't remember my budget speech off-hand. I have not perused it.

ADV. ADILA HASSIM: Please look at it.

20**MS. QEDANI MAHLANGU:** So, I must take over an hour to read the speech?

ADV. ADILA HASSIM: Will it take that long? We can leave this issue.

MS. QEDANI MAHLANGU: Can you please refer me to the section, if it is not there, it is not there? But please refer me to it. These speeches I made them in different financial years and I can't remember at the top of my head which page and in what document. I thank you are being unfair Counsel.

5**ADV. ADILA HASSIM:** You said to me in the earlier questions, of course you refer to it in your budget speeches, was that not your answer?

MS. QEDANI MAHLANGU: But I assume you had read the speech and you know what you are asking me.

ADV. ADILA HASSIM: Madam, I am not under oath to speak the truth, you are.

10**MS. QEDANI MAHLANGU:** Justice, maybe may I request to address -

ARBITRATOR JUSTICE MOSENEKE: Yes, madam. Let us make progress there. We have to get on with this and get to the facts. Counsel, do you know the passage you want to refer the witness?

ADV. ADILA HASSIM: It's not in there that I could find, I was hoping the witness
15will find it.

MS. QEDANI MAHLANGU: So, I am being misled Justice.

ARBITRATOR JUSTICE MOSENEKE: I beg your pardon.

MS. QEDANI MAHLANGU: She is misleading me.

ARBITRATOR JUSTICE MOSENEKE: No, we can't go there. Counsel says here
20is your budget speech. Show us the part where you dealt with NGOs. We are not at the stage of misleading. I don't see you misleading, I don't think Counsel would not

and they are not misleading. So, let's not throw accusations around. The question is here is your budget speech, it is in the budget speech. It may be in or it may not be in.

ADV. ADILA HASSIM: I don't want to be unfair to her. I will get her the opportunity still after lunch and then if she finds anything in there Justice, then we can deal with that.

ARBITRATOR JUSTICE MOSENEKE: Yes, we will defer the question, you read it and then come with an answer. But sadly, we are not in the game of misleading wither way.

10**ADV. ADILA HASSIM:** My learned friend referred you to ELLA124 yesterday, can you remember? That is the National Health Policy Framework and Strategic Plan. Do you remember that?

MS. QEDANI MAHLANGU: Yes, I remember that.

ADV. ADILA HASSIM: Can you please go to page 23 of that?

15**MS. QEDANI MAHLANGU:** I am sorry Counsel, I was not attentive enough, you said ELLA how much?

ADV. ADILA HASSIM: ELLA124.

ARBITRATOR JUSTICE MOSENEKE: 124, thank you.

ADV. ADILA HASSIM: And I am referring to page 23 thereof.

20**MS. QEDANI MAHLANGU:** Okay, what?

ADV. ADILA HASSIM: Page 23 paragraph 1 I am going to refer you to.

ARBITRATOR JUSTICE MOSENEKE: Again I must ask Counsel, paragraph?

ADV. ADILA HASSIM: Paragraph 1 Justice, page 23.

ARBITRATOR JUSTICE MOSENEKE: Much appreciated, thank you.

5**ADV. ADILA HASSIM:** My learned friend has taken you through this yesterday.
Have you got page 23?

MS. QEDANI MAHLANGU: I can't find it.

ADV. ADILA HASSIM: Can somebody please help the witness to find it? The
page numbers is at the bottom of the page.

10**MS. QEDANI MAHLANGU:** There is no page numbers here. It is not here.

ARBITRATOR JUSTICE MOSENEKE: My ELLA124 also does not have page 23.

ADV. ADILA HASSIM: Give the judge that one. Justice, we are just giving you
another copy that was handed in earlier with page numbers.

ARBITRATOR JUSTICE MOSENEKE: I see, I am grateful, thank you.

15**ADV. ADILA HASSIM:** Are you aware of this policy framework?

MS. QEDANI MAHLANGU: Page 24?

ADV. ADILA HASSIM: I am going to refer to page 23 but can I just ask you, have
you got page 23 in front of you?

MS. QEDANI MAHLANGU: Yes, I have.

ADV. ADILA HASSIM: And do you know this policy?

MS. QEDANI MAHLANGU: Yes, I do.

ADV. ADILA HASSIM: And we know that in terms of the Mental healthcare act, you must give leadership to implement this policy. Do you agree with that?

5**MS. QEDANI MAHLANGU:** Yes.

ADV. ADILA HASSIM: Now, look at the policy, it says by 2020. Do you see that? Page 23 madam, paragraph 1, just before paragraph 1, it says by 2020.

MS. QEDANI MAHLANGU: Page 23 there is this diagram, so it is page 2, the next page.

10**ARBITRATOR JUSTICE MOSENEKE:** Can somebody help her, it looks like that or have you found it?

MS. QEDANI MAHLANGU: This is 24 of this document.

ARBITRATOR JUSTICE MOSENEKE: Somebody will bring it to you now, there is staff employed to make your life a little easier. Could somebody give the witness my
15version. Aviwe

MS. QEDANI MAHLANGU: Thank you Justice.

ADV. ADILA HASSIM: Thank you, do you see there community mental health services will be upscaled?

MS. QEDANI MAHLANGU: Yes, please proceed. Page 23.

ADV. ADILA HASSIM: I see you are throwing documents around, I am not sure why?

MS. QEDANI MAHLANGU: I am giving someone that I am with who is not a liar, the document. The previous budget speech to go through them whilst I am sitting here so that at lunch time, I have a sense to remember what would have happened.

ADV. ADILA HASSIM: Thank you.

MS. QEDANI MAHLANGU: That is what I am doing.

ARBITRATOR JUSTICE MOSENEKE: We do have ushers around if you want something moved around. Just raise your hand, Obakeng and Aviwe will be available to help you.

MS. QEDANI MAHLANGU: Sorry Justice, my apology. I have never been in this kind of setup before. So, I apologize.

ARBITRATOR JUSTICE MOSENEKE: It is not acceptable to throw things around. They are here and they are employed to facilitate the proceedings for all of us including you. So, if you need anything, you need water or you need whatever, just let us know and they will run around to move documents when you need.

MS. QEDANI MAHLANGU: Thank you Justice and my apologies.

ARBITRATOR JUSTICE MOSENEKE: Thanks, Counsel.

ADV. ADILA HASSIM: Thank you Justice. On page 23, by 2020 and then paragraph 1, community mental healthcare services will be upscaled. Do you see that?

MS. QEDANI MAHLANGU: Yes, I do.

ADV. ADILA HASSIM: To match recommended national [indistinct], do you see that?

MS. QEDANI MAHLANGU: Yes, I do.

5**ADV. ADILA HASSIM:** And to include 3 competence, you see that?

MS. QEDANI MAHLANGU: Yes, I do.

ADV. ADILA HASSIM: Can you read the 3 competence please?

MS. QEDANI MAHLANGU: Community residential care including assisted living and group homes, day care services and outcare including general health out care
10patients in PAC and specialist mental healthcare support.

ADV. ADILA HASSIM: Could you please read the next paragraph?

MS. QEDANI MAHLANGU: These community mental health services will be developed before further downscaling of psychiatrist hospital can proceed in accordance to the {interjects}

15**ADV. ADILA HASSIM:** Just stop there please. So, that part of the policy document goes directly against the decision that you have made. Would you agree?

MS. QEDANI MAHLANGU: Not necessarily Counsel, because and the reason I was going back to the appointment of the project team and the calibre of the project team members is at the core of what you are asking, that is point number 1. Point
20number 2 and I have said repeatedly and I would like to repeat that Gauteng would have involved, would have started the community mental healthcare services and

programmes, long before I came. For instance, in bullet 2, day care services, I was informed through you Justice that there is a very beautiful day care services somewhere in the Western, is it the North or East of Tshwane and that is in the township. And I think another one in Johannesburg. And I was told that those day 5care services are the best modelled to look into. So, those things as far as I know from what I have been told by the officials who are very competent as you see the lease and many others that are not on this list who said day care services exist already in the province, we must just upscale those and the out patients services, in the project team you will see Justice, there are people who are called chief directors 10from the respective regions and their role is to look after clinic when it says PHC, it talks about primary healthcare facilities. So, that is an intention because you have got to have a relationship between what is being said here in the policy and the people who participated in the project team in order to meet what is being said there in the policy.

15 **ADV. ADILA HASSIM:** Yes, now what the policy says is let us stop until we are sure everything is right. Did you interrogate that when you took the decision?

MS. QEDANI MAHLANGU: That is not my understanding, the policy as far as I know, I think Prof. Freeman can answer better. But from what I understood, if the policy had said let us stop, Gauteng would not have started even before I came to 20start the community mental healthcare. Secondly, my understanding of the community mental health services is that there are developmental, you are not going to seat and wait for 2020 to start with community mental healthcare. You will start gradually. Hence, the beginning, I don't know where Gauteng started, they said

they have got more than 5 years. When they started, it was that process of being gradual and developmental to build the capacity of the NGOs. That is what I understood and that is what I have been informed. And I think that has not been in conflict with the policy.

5ARBITRATOR JUSTICE MOSENEKE: But the core question surely, you must stop until you have well and adequately resourced community-based facilities, isn't it so? You can't roll out 2 NGOs that don't have the capacity to provide the care, can you, may you? Or the policy allows you to do that?

MS. QEDANI MAHLANGU: The policy says as far as I with, I am saying, if the intention of the policy was to say don't do anything, I don't think Gauteng even before I came in would have started doing that. My understanding is and again I am not a policy expert. As I said Prof. Freeman, this is his unit at national, he can give a better answer. The understanding of community developmental approach in delivering service is really the realization that you are not going to achieve everything at one go but you do it gradually. Hence, when the Gauteng team said to me, we have been doing this for a while, we have got better understanding for this. I have got no reason to disbelieve that.

ADV. ADILA HASSIM: Can I just –[interjects]

ARBITRATOR JUSTICE MOSENEKE: Yes, you showed more concern about you knew or did not know. I am saying, it is a matter of policy. If you look at the document on the page on page 23 -

MS. QEDANI MAHLANGU: Yes, I am looking at it Justice.

ARBITRATOR JUSTICE MOSENEKE: It warns that your community-based facilities must be fit for purpose.

MS. QEDANI MAHLANGU: I do not disagree with that Justice.

ARBITRATOR JUSTICE MOSENEKE: No, you cannot disagree.

5**MS. QEDANI MAHLANGU:** But furthermore Justice, I think it is important to say that when the team in Gauteng says to me, we have been doing this, there are centres of excellence in their view. I have no reason to doubt that because these are professionals.

ARBITRATOR JUSTICE MOSENEKE: Yes, well, you are at a different point now. 10The 2nd part is, did you believe them and I am not probing that. I was just saying for the Ms. Mahlangu, a policy requires the NGOs to be ready and to be fit for purpose. The law could not possibly say a policy could not say send them there even if they are not ready.

MS. QEDANI MAHLANGU: No, it was not the intention of the policy.

15**ARBITRATOR JUSTICE MOSENEKE:** Yes, indeed. Counsel.

ADV. ADILA HASSIM: Can I just make sure that I understand you correctly Ms. Mahlangu? What you are saying is it wasn't necessary for me to look at this policy because I knew everything was right. I could cancel Life Esidimeni, is that what you are saying?

20**MS. QEDANI MAHLANGU:** I don't know when you say I didn't look at the policy. I know about the policy, the policy exists. Over and above that there are officials

whose core responsibility and professional responsibilities are to make sure that the policy gets implemented.

ADV. ADILA HASSIM: But what you are saying is, let me just rephrase that. You are saying, yes, I looked at the policy but the policy has already been implemented in Gauteng. So, it will serve to cancel Life Esidimeni. Is that what you are saying?

MS. QEDANI MAHLANGU: Yes, we can say that.

ADV. ADILA HASSIM: Thank you. Can you just read the last sentence before paragraph 2?

MS. QEDANI MAHLANGU: This includes capacity development for users, service users, their families to provide appropriate self-help care led services for example as community healthcare workers.

ADV. ADILA HASSIM: Do you have any community health workers employed in Gauteng?

MS. QEDANI MAHLANGU: Gauteng has more than 5000 community health workers, I think. I don't know exactly the number but there is a lot.

ADV. ADILA HASSIM: And what are their job description?

MS. QEDANI MAHLANGU: It is to work with communities and to link communities with the services in the clinic.

ADV. ADILA HASSIM: With mental health?

MS. QEDANI MAHLANGU: They are part of the services when they go to different NGOs, that is part of their work.

ADV. ADILA HASSIM: Where they mental healthcare community health workers?

MS. QEDANI MAHLANGU: But we would not have appointed – there is no specific community health workers for this and that discipline. Community health workers deal with all aspects of health related issues. I don't remember any province that has got specific mental healthcare workers that are only looking at only mental health. I am not aware of that.

ADV. ADILA HASSIM: Are you aware of the White Paper of the rights of people with disabilities in the implementation matrix 2015 to 2030?

MS. QEDANI MAHLANGU: Broadly, I am aware but I don't know the nitty gritty of the policy.

ADV. ADILA HASSIM: Can you remember when it became a white paper?

MS. QEDANI MAHLANGU: I am not sure, I will be lying to you.

ADV. ADILA HASSIM: Did you have regard to this when you took the decision?

MS. QEDANI MAHLANGU: Yes, we took into account all government policies.

15 **ADV. ADILA HASSIM:** I am not talking about we, I am talking about you. You are the politician, you must give guidance.

MS. QEDANI MAHLANGU: No, this is we. There is no you. There is no decision that is made by one person because even if the Department of Health is run by Qedani, then that will be a disaster. Society will really be a failure.

20 **ADV. ADILA HASSIM:** It seems as though there already has been.

MS. QEDANI MAHLANGU: No, the point that I am making Counsel, can I please make the point. There is no politician who individually can say this must happen and everything else happen tomorrow. Things are not individualized in government. It is a team, yes, led by a politician. But it is a team of people from the politician to a cleaner to a clerk and everybody else. That is part of the process and it depends where the decision needs to be taken and by who.

ARBITRATOR JUSTICE MOSENEKE: But you see former MEC. The point that Counsel I understand to be making is that the constitution and other law requires you to act in accordance with law and lawful policy.

10 **MS. QEDANI MAHLANGU:** Yes, absolutely.

ARBITRATOR JUSTICE MOSENEKE: So, when you do act collectively or individually, you must act lawfully.

MS. QEDANI MAHLANGU: Absolutely.

ADV. ADILA HASSIM: So, the question is therefore inevitable. Did you have regard to law or policy that has been put to you before you acted? That is where the question comes from. Because that you act collectively I understand. You have explained it quite well. But that the law binds you, is beyond contestation. So, she is asking, did you have regard to the law and or police?

MS. QEDANI MAHLANGU: Yes, Justice, I took regard to the law.

20 **ADV. ADILA HASSIM:** And in terms of this White Paper, what did you have regard to?

MS. QEDANI MAHLANGU: I wasn't involved in social development specifically, so I wouldn't know the nitty gritty of that law.

ADV. ADILA HASSIM: One of the things this White Paper says is when you are implementing policy, you look through a lens of the constitution of human rights, 5 don't look to money, you look to human rights. What do you say to that?

MS. QEDANI MAHLANGU: Yes, that is correct.

ADV. ADILA HASSIM: And how did you implement that?

MS. QEDANI MAHLANGU: If you look at ELLA 132 in that file. For instance, there is an annexure that talks about stakeholder engagement and stakeholder 10 engagement that is in annexure 16 in this. It is very clear. You will see that the HOD would have been involved in engaging with a number of stakeholders. So, and those engagements where and by the way. We were very conscious in making sure that there is a discussion with relevant stakeholders to take part in the processes and consult with the department, there was further consultation that was done.

15 **ADV. ADILA HASSIM:** Ms. Mahlangu I think we are going across purposes. My questions to you is just about at the time of taking this decision, how did you think about the human rights rather than money?

MS. QEDANI MAHLANGU: but when you take a decision Counsel, the decision we took, there was no one who anticipated that the outcome would be what it is 20 right now. And yes, you think about the risk that is associated that the possible risk whatever, and we do everything in accordance to what the team would have told me that this risk we are preventing, this is a risk, this is what we are trying – how we are

going to prevent it. So, at no stage for instance, if I had probably I don't know what is the right English word. If I had foresight that [vernacular]

ARBITRATOR JUSTICE MOSENEKE: The interpreter must come down because I am not going to interpreter, certainly not for free.

5**MS. QEDANI MAHLANGU:** If I had foresight Justice, I would have probably anticipated the risks and the possible outcome, but I did not have. And I think that is fair to say.

ARBITRATOR JUSTICE MOSENEKE: Okay, there is the answer.

ADV. ADILA HASSIM: Thank you Justice. Ms. Mahlangu I want to tell you that we
10are talking about the time that you made the decision. There is a law that says you will look at policy, all the policies, do you agree with me?

MS. QEDANI MAHLANGU: Yes, I do agree with you.

ADV. ADILA HASSIM: What you are actually saying is yes, there is a law that I
15through. That can never be a defence.

MS. QEDANI MAHLANGU: But I am struggling to understand honestly because you want me to answer the way you want me to answer. And when I give you the answer which I think it is appropriate and then you continue to want me to answer the way you want and I am not going to change my answer Counsel.

20**ADV. ADILA HASSIM:** Yes.

ARBITRATOR JUSTICE MOSENEKE: Okay, let's try this madam because we need to make progress and move on here. This has been a very long arbitration hearing. Counsel says in effect there has been breaches of human rights in the treatment of mental healthcare users when the Marathon project was implemented.

5The law requires you to have regard to human rights. When you plan and when you implement, did you have regard to human rights when you planned and implemented the Marathon Project. That is in essence the question as I understand it. In other words, it is a veiled accusation that you breached human rights in the way you planned and the way you implemented. And that is the point that you have

10to meet because you are a creature of the constitution, an MEC is contemplated in and is created by the constitution. So, you are bound by human rights. Did you have regard the that when you planned and when you implemented? That is really the question.

MS. QEDANI MAHLANGU: Justice, once again as I said that at the planning

15phases, in my understanding all the cautious and the relevant legislation were considered and looked into. The 2nd answer part to the question is did we violate human rights? Now I know human rights were violated and it was not intentional. That is important and again I want to go back to what I said. If I had foresight of what was going to happen maybe I would have seen [vernacular]

20**INTERPRETER:** If I was a prophet Justice, I would have had foresight.

ARBITRATOR JUSTICE MOSENEKE: But if you have heard the gist of it: I am not a prophet, if I were a prophet I would have sensed out what was likely to happen

in the future, but I don't have that capacity and I therefore could not have anticipate the violation of human rights of mental healthcare users.

ADV. ADILA HASSIM: Madam, I will argue about that later. Have you had regard to the 2010 public service regulations before you took the decision?

5**MS. QEDANI MAHLANGU:** All the legislation as I said in my statement on Monday that those regulations were taken into account.

ADV. ADILA HASSIM: You did? What in those regulations did you take into account?

MS. QEDANI MAHLANGU: All regulation roles and responsibilities in this and that
10individual, the roles of the people employed and so forth.

ADV. ADILA HASSIM: In making the decision about Life Esidimeni, what did you take into consideration?

MS. QEDANI MAHLANGU: I don't have the specific section in the law, maybe you can remind me if you have Counsel?

15**ADV. ADILA HASSIM:** Yes, did you have any regard to the National Development Plan of 2012 when you made the decision?

MS. QEDANI MAHLANGU: The NDP, yes, that is government policy and if you look at the presentation -

ADV. ADILA HASSIM: Yes madam, what in the plan did you have regard to?

20**MS. QEDANI MAHLANGU:** The NDP is very broad, it talks about community health workers related to health, it talks about what is this here now?

ADV. ADILA HASSIM: Does not both those instruments also talk about consulting before one takes a decision?

MS. QEDANI MAHLANGU: But consultation if you look at this bundle I referred to, they called us and consulted and I am not sure what you mean by not consulting. 5Probably the consultation may not have been enough and I would agree that the consultation was not wide enough, I will take that point. But consultation did happen.

ADV. ADILA HASSIM: But consultation happened after the fact, it was a done deal according to the minutes. Isn't that so?

10**MS. QEDANI MAHLANGU:** In 2015, the HOD was engaging with all stakeholders in one of the emails we were discussing I think yesterday Justice about a meeting that was taking place on the Monday back and forth and all of that. That stakeholder meeting with section 27 and SADAG if I am not mistaken, that was part and parcel of those engagements that the department was involved in. So, I am not sure, I 15would have been part of some of those meetings and subsequently, in any other meeting that I was available to attend, I definitely did attend.

ARBITRATOR JUSTICE MOSENEKE: I thought you would meet the point Counsel is making that activity occurred once it was announced cancellation of the contract had been done.

20**MS. QEDANI MAHLANGU:** From what I know Justice [interjects]

ARBITRATOR JUSTICE MOSENEKE: This is what Counsel says, she wants you to respond to that belated cancellation, I mean consultation.

MS. QEDANI MAHLANGU: From what I have seen in these documents, the engagement with some of the stakeholders had been happening as early as, I think in March 2015 or so. I will just have to peruse over lunch the exact section.

ARBITRATOR JUSTICE MOSENEKE: Former MEC, was that not consultation with the bed reduction, with the 20% reduction? Exchanges then were focused on a policy of province or health in province?

MS. QEDANI MAHLANGU: I just need to check over lunch Justice and come back to you. It is in one of these documents, I will get back to you.

ARBITRATOR JUSTICE MOSENEKE: Okay, Counsel you go ahead. Your answer is, I need to check.

ADV. ADILA HASSIM: Thank you Justice. I will take you through the various time periods still. You said one of your statutory duties was also to take into consideration international instruments, isn't that so?

MS. QEDANI MAHLANGU: Yes.

ADV. ADILA HASSIM: Now, at the time of making this decision, what international instruments did you consider?

MS. QEDANI MAHLANGU: Well, I don't have them in front of me and I didn't bring any of them because I didn't know you were going to ask me.

ADV. ADILA HASSIM: Did you at all look at the convention on the rights of persons with disabilities?

MS. QEDANI MAHLANGU: My understanding is that the government adopted that convention as well as the convention on women and children and those every policy on government, those must be taken into consideration because South Africa rectified those conventions.

5**ADV. ADILA HASSIM:** I agree with you and I am asking you, did you take into consideration at the time of taking this decision?

MS. QEDANI MAHLANGU: Yes, I think so but I do not have the specific clause and what exactly in which section of the planning that is supposed to be.

ADV. ADILA HASSIM: Yes, you see this convention says that there will be full
10 participation, isn't that so? Did the mental healthcare use this before he made this decision? Have any right to full participation?

MS. QEDANI MAHLANGU: I wouldn't know.

ADV. ADILA HASSIM: You are the one that knows.

MS. QEDANI MAHLANGU: I wouldn't know.

15**ADV. ADILA HASSIM:** And it says here that you will closely consult before making this decision.

MS. QEDANI MAHLANGU: But Counsel, it can't be through you Justice that every decision government makes on every issue that you consult everybody. And I would like to clarify and I am talking in general terms. And even this process -

20**ARBITRATOR JUSTICE MOSENEKE:** By everybody you mean stakeholders, those affected by the decision.

MS. QEDANI MAHLANGU: Yes, you consult to the extent that consultation is possible and you will consult and you may not agree with that consultation. So, if Counsel had raised those questions with me yesterday, on Monday when I left and said I want you to look at this and that, I would have come with appropriate answers. This is what we did and this is where it is reflected, but on the top of my head Justice, I can't remember those.

ARBITRATOR JUSTICE MOSENEKE: Sure, I understand. Speaking from one public official to another, that is what you and I have been until I retired last year. Let me – at Waverley, the families of the mental healthcare met you and you availed yourself be went to the meeting, you remember that?

MS. QEDANI MAHLANGU: Yes, I did Justice.

ARBITRATOR JUSTICE MOSENEKE: Before the implementation, you remember?

MS. QEDANI MAHLANGU: Yes, I think it was January 26th if I am not mistaken.

15**ARBITRATOR JUSTICE MOSENEKE:** Yes. And I sat here listening to one family member after another and they talk about that meeting in their evidence and tell us how explicit they were in their opposition to the plan that is where also the family committee ultimately was formed and they say you never listened to them because the Project proceeded. So, talking about consultation with stakeholders, the
20question must surely and asked, why didn't you think their views were important and worth listening to, not experts, I mean family members.

MS. QEDANI MAHLANGU: Going to the meeting with the families Justice, it was a conscious effort on my part to ensure that this consultation. And in that meeting, yes, concerns were raised and we agreed that a family committee is established. And we also agreed that I shared my number in public in the meeting and we also agreed that I said in the meeting that each and every one of the person who took my number, if they had any concern or whatever, they can call me directly. And I also said when calling me and I said to them, they must be involved, the family committee must be involved in looking at the different places where their loved ones were supposed to have gone. And I said if you are unhappy about the places that the officers will take you to, please call me and inform me that is the case indeed so that I can attend to that. That is what I would have undertaken and sat in that meeting Justice. So, when I did not get a call to say MEC we went to this place and we are not happy about XYZQ, can you please intervene. I assumed based on the reports I was being given that indeed things were going according to plan.

ARBITRATOR JUSTICE MOSENEKE: That is a bare minimum, as a political leader and also an executive in our state. People on the ground speak to you directly, amongst other things they asked for a list of NGOs so that they can go and see what they are, where they are and what they offer. We know now as fact that never happened.

MS. QEDANI MAHLANGU: Justice, I asked the officials to share the information with the families. Hence, I said go with them to these suggested places because on that day I did not have a list with me but the officials had. And I said to them, go to

these places with your officials. If you are not happy, please call me then I can be able to intervene.

ARBITRATOR JUSTICE MOSENEKE: But when you left the meeting, you certainly where of the firm view that they were opposed to the Project, isn't it?

5**MS. QEDANI MAHLANGU:** I was of the firm view that they had genuine concern and those concerns in my view by assuring them that they must go and take part in the decision-making of choosing the places, I thought that I was giving hem their comfort. Clearly, in hindsight -

ARBITRATOR JUSTICE MOSENEKE: Sorry, please. But clearly thinking of a
10whole range of principles came to mind to me when we get to the evidence, they get to the leader of the province on health and they make claim their opposition. But let us go a little further MEC. After that, there is evidence before that of marches and memoranda and you are aware of that?

MS. QEDANI MAHLANGU: Yes, I am aware of that Justice.

15**ARBITRATOR JUSTICE MOSENEKE:** Why didn't we listen to our people when they expressed such deep concerns? Why didn't you sit up, you were part of the liberation struggle, you there representing our people and they complained and were unhappy. Why didn't you listen to them?

MS. QEDANI MAHLANGU: Justice, I fully agree with the sentiments that you are
20raising. And I would like to say once again, if I had benefit of hindsight that I have today, I would have done things differently because I trusted people and I trusted that when I have gone to a meeting and assured families, I assured them that when

they have issues, they should call me directly. I did not give them my PATIENTS''s number and I thought that it would be comfort enough that even if they send a please call me right, and I think it is important Justice.

ARBITRATOR JUSTICE MOSENEKE: I am having a one-to-one with you, 5comrade to comrade. I want to know why, didn't you at least listen to people on the ground, not SADAG, not all the people whom you thought had an agenda, but ordinary, vulnerable South Africans who said to you this is dangerous and they turn out to be right and their families do die. So, I just ask that question, but why didn't you listen to them?

10**MS. QEDANI MAHLANGU:** Justice, again, I want to say with the benefit of hindsight, I could have done things differently because as I said I assumed that the assurance that I had given to the families to call me and also to assure them that they can go to the NGOs and get when the inspection is done to go to those NGOs. When they were dissatisfied, they must come back to me.

15**ARBITRATOR JUSTICE MOSENEKE:** What about the marches madam, what about the memoranda. Again, not people who might have an agenda political. Just family members that come to you and say and they come to you because you are the highest in the hierarchy and they say stop this move, it doesn't happen. They never know the NGOs, and when the people are taken to the NGOs, they are not 20ready to receive the patients and the patients die. So, that question will always hang around. Why didn't you in your political accountability listen to the people and forget about all the other organizations?

MS. QEDANI MAHLANGU: Justice, at all times, I thought I made myself available. And when I say, I give people my number and in many instances, I would have resolved a lot of issues with people each time they raised concern with me on the number that I was giving them because I have never taken a call and someone raised an issue and I distanced those things. But as I am saying, I should have behaved differently and I apologize and again I am sorry as I did to say on Monday.

ARBITRATOR JUSTICE MOSENEKE: Because we have to confront that. When we face a crisis and we are a serious people and here is one of them where we could have followed the principle of accountability in our – not only accountability, responsiveness. That is part of our long struggle and I don't see it here. I look and look, I have removed my lawyer hat for a Ms. Mahlangu, I have looked and looked. I don't see responsiveness to the pain of the people. And look where we are now. Sorry Counsel I upset your cross-examination but I needed to have this exchange with the former MEC so that she can know exactly where I come from. You should have listened at least to our people, let alone anybody else. Please proceed.

ADV. ADILA HASSIM: Ms. Mahlangu, just to wrap up this. Before this decision professional yours was taken to close Life Esidimeni, you did not have any consultation or whatsoever, family. Stakeholders, do you agree?

MS. QEDANI MAHLANGU: Sorry, can you repeat your question.

ADV. ADILA HASSIM: Yes, before taking this decision to close Life Esidimeni, you didn't follow consultative process as you should have done in terms of our international law and in terms of our government policies.

MS. QEDANI MAHLANGU: I think the consultation process was not extensive. That point I agree.

ADV. ADILA HASSIM: No, you had no consultation. You took this decision before consulting anybody. Maybe you tried to consult on the implementation but before taking the decision, you didn't take consultation at all.

MS. QEDANI MAHLANGU: Consultation was maybe not enough, that I agree. I take the point that it was not enough -

ADV. ADILA HASSIM: No madam, I am not saying that it was not broad enough. I am saying there was no consultation prior to taking the decision.

10 **MS. QEDANI MAHLANGU:** I have given you the answer Counsel.

ADV. ADILA HASSIM: Do you agree with me?

MS. QEDANI MAHLANGU: I am saying the consultation was not broad enough and I would like to leave it at that.

ADV. ADILA HASSIM: Well, let us just pinpoint this then. Before you took the 15 decision, you didn't have any consultation.

MS. QEDANI MAHLANGU: I think I did answer Counsel that the consultation was probably not broad enough and I take that point and I have already said I am sorry and I apologize.

ADV. ADILA HASSIM: You see, you are not answering my question and I don't 20 know why you are running away from it. The question is merely you didn't consult when you took the decision.

MS. QEDANI MAHLANGU: We did not consult enough Counsel.

ADV. ADILA HASSIM: Yes, thank you. Now, in terms of international law, did you have a look at the 1991 UN Principles on the protection of persons with mental illness and the promotion and mental health?

5**MS. QEDANI MAHLANGU:** I don't have a copy of that as I said, for everything that happens in government department, all conventions and regulations are taken into account.

ADV. ADILA HASSIM: So, you took that into account before you made the decision? Is that what you are saying, you can say no, you can say yes, you can
10say I don't know.

MS. QEDANI MAHLANGU: I don't know.

ADV. ADILA HASSIM: You don't know. Good, one of the principles in that which I hope as a responsible politician you would have taken note of is that there must be enough resources for mental health facilities. Would you say you adhere to that?

15**MS. QEDANI MAHLANGU:** I am sure that the budget of the department would say this is just mental health, this is Life Esidimeni as reflected in this that government at all material times they, whatever was budgeted for, there was always over expenditure and it is in black and white in the document and I think I would have highlighted those issues in my presentation on Monday.

20**ADV. ADILA HASSIM:** We are talking about the time you took the decision hey.

MS. QEDANI MAHLANGU: In 2015, yes. The document that I kept referring to, it talks about the years struggling from 2011- 2015/16.

ADV. ADILA HASSIM: So, international obligation on you, if there is not enough resources to downscale from Life Esidimeni, you shouldn't take that option. Would you agree with that?

MS. QEDANI MAHLANGU: But the resources where there but resources are not an infinite in terms of availability. Resources are confined based on what treasury can give. And I think it is important Justice for me to state this point that whatever resources you get, you have got to utilize them to the extent possible in keeping with different prescripts and legislation. And on the basis of that and that is why continuously, and I said to Justice early when I was saying the point about the budget. The continuous overruns of the budget in the department of health is in keeping with the principle that you cannot turn away anybody from giving healthcare simply because of budget constraints. Yes, as much as that principle is accepted but in some instances resources really do become a constraint to the extent possible as the law says a government indeed will take decisions in keeping with that principle.

ARBITRATOR JUSTICE MOSENEKE: You know Ms. Mahlangu, I have heard evidence, not only from you, from your other colleagues, Dr, Silibano, Dr. [indistinct] in part. And I accept the burden of Gauteng Health and we have heard evidence about how the department has always been under budgetary restraints. And for good reason, it attracts many people wat beyond any other province and you had a difficult task. I think the point made is the point that it is just as good as the need for

deinstitutionalize. What I am struggling with as and when a decision was taken to go ahead, you will agree with me, we didn't take the reasonable and possible steps to avert harm.

MS. QEDANI MAHLANGU: I thought those we had gone past Justice cps I have said if we were to do things differently, to do them now knowing what I know, we could have done things much more differently and taken different decisions and that I fully agree with you,

ARBITRATOR JUSTICE MOSENEKE: Here is the point, that harm was not caused by budgetary constraints as you rightly point out. It was caused by execution, negligence, unreasonable and reckless execution. It is really what caused it. So, it really wasn't money here because we know 190 million was budgeted for instance for this implementation. So, I just wanted to say I fully acknowledge the budgetary stress. I don't understand the implementation and I don't see the connection there between that and the money. And you may want to respond to that.

MS. QEDANI MAHLANGU: Justice I will not disagree with you and because in my statement I said if for instance the Project was implemented differently, the outcome probably would not be sitting here today. That I agree with you and I have no contestation with that. So, and again even the issues of resources, yes, there are constraints, but we are compelled by law to provide services whether there is money or not. That is why there is continuous overruns. But we must take reasonable steps. I agree with you, I have no contestation of the point whatsoever.

ARBITRATOR JUSTICE MOSENEKE: No, thank you. I misunderstood you there and I thought the budget could be in the way of proper implementation.

MS. QEDANI MAHLANGU: No, I am not. Execution went wrong Justice and I have said that a couple of times.

5**ARBITRATOR JUSTICE MOSENEKE:** Sure, thank you. Counsel.

ADV. ADILA HASSIM: Ms. Mahlangu, I am still at the time of taking this decision. You knew that the policy said can't guidelines ahead until you have upscaled, is that right?

MS. QEDANI MAHLANGU: The policy doesn't [interjects]

10**ADV. ADILA HASSIM:** Let us just – I will get to the question. Disagree with me, you have already said you know about the policy that you must upscale, isn't that so?

MS. QEDANI MAHLANGU: Counsel, if I were to answer the question, the policy says yes, when I arrive in health, the department of health had already started in
15implementing community mental health. So, what will I be saying?

ADV. ADILA HASSIM: Okay, can I move on. The International instruments says you must resource if you want to downscale, do you agree with that?

MS. QEDANI MAHLANGU: The officials when I arrived in health I was told more than 5000 mental healthcare users are already with the NGOs.

ADV. ADILA HASSIM: Okay, so what you are telling us, you took this decision on the undertaking to close Life Esidimeni on that there was enough NGOs and hospitals where the people could go?

MS. QEDANI MAHLANGU: Because they had already started the work of the institutionalization.

ADV. ADILA HASSIM: So, you agree with me that, that was your understanding?

MS. QEDANI MAHLANGU: Yes, that was my understanding.

ADV. ADILA HASSIM: There were no warning bells on that issue?

MS. QEDANI MAHLANGU: No.

10**ADV. ADILA HASSIM:** Could you please go to your statement, your Annexure B that you handed in the 1st day. Annexure B to your 1st statement.

MS. QEDANI MAHLANGU: I am getting there.

ADV. ADILA HASSIM: It is in the smaller file of the 2. Go to page 6, the numbers is at the bottom, right hand corner. Do you see that?

15**MS. QEDANI MAHLANGU:** Yes, I do.

ADV. ADILA HASSIM: You say this is the decision that was taken. Do you see that?

MS. QEDANI MAHLANGU: Yes.

ADV. ADILA HASSIM: Do you agree with me. And your saving that you say in the 201st, it says item and under item it says Life Esidimeni, do you see that?

MS. QEDANI MAHLANGU: yah.

ADV. ADILA HASSIM: Then the next column says final notice to be issued in December to begin the termination of the beds starting 2015. Do you see that?

MS. QEDANI MAHLANGU: Yes, I see that.

5**ADV. ADILA HASSIM:** And that is the decision that you say?

MS. QEDANI MAHLANGU: I [interjects]

ADV. ADILA HASSIM: Just yes or no and then you can explain. Let us just get an answer please.

MS. QEDANI MAHLANGU: Justice, if I can say. Remember when I said can I take
10you through the document and you kept on saying no you can't take through the document. And I think this is exactly the point that if I want to – if I had taken you through the document to explain myself with this document, it would be better because you are asking me a question in isolation with a broader what this presentation was all about.

15**ADV. ADILA HASSIM:** No, I am not asking this, Ms. Mahlangu you have explained this to us and we really read and prepare everything you give us. I am just asking you to direct correctly that is what it says there.

MS. QEDANI MAHLANGU: Can you please repeat your point?

ADV. ADILA HASSIM: Could you read under Inward looking savings, could you
20read what it says? Please read it.

MS. QEDANI MAHLANGU: Final notice to be issued in December to begin with termination over the issue of beds starting in 2015.

ADV. ADILA HASSIM: Yes, so what you are saying there is in December 2014, you will terminate and you will start -

5**MS. QEDANI MAHLANGU:** No Counsel.

ADV. ADILA HASSIM: Which December are you referring to?

MS. QEDANI MAHLANGU: Justice may I please take the meeting through the presentation because this is appropriately incorrect. The cost containment measures are part and parcel on how departments must perform in order to try and
10make sure that the budget there is cost effectiveness in running of government. And this things must be seen in totality. Yes, now we are discussing Life, specifically, but it must be discussed in totality. What do I mean by that? What is being said here that in 2014 you go to the budget process that effect of the budget process, that what has been discussed in 2014 will be effected in the 2015/2016 budget. What
15this point that Counsel is talking about, it simply says we go to the budget committee in 2014, we submit the supplementary presentation which is this and then thereafter the department has to go back and say so how do we work backwards to ensure that the budget is finally approved because there is timelines by treasury. By this time we should have submitted this and that document. That is
20all what this is saying. The contract was I think Life was only informed, I don't know exactly when but you should then have the contract date cancellation. They were notified, I think 6 months before the termination of the contract.

The contract was not cancelled in 2015. So, your interpretation is wrong here.

ADV. ADILA HASSIM: No, I am not the saying that the contract was cancelled in 2014 madam. I am saying that it says final notice to be issued in December, is that not what it says?

5**MS. QEDANI MAHLANGU:** Final notice of what?

ADV. ADILA HASSIM: I don't know, it is your document that you are explaining.

MS. QEDANI MAHLANGU: But that is what I am explaining.

ADV. ADILA HASSIM: Okay, let us just move on. Let us look at under potential savings there. Do you see what it says?

10**MS. QEDANI MAHLANGU:** Yes.

ADV. ADILA HASSIM: And what does it says under potential savings.

MS. QEDANI MAHLANGU: 20% of under 251 per annum.

ADV. ADILA HASSIM: Yes, and the 251 million per annum, that refers to all the beds at Life Esidimeni, isn't that?

15**MS. QEDANI MAHLANGU:** Pardon?

ADV. ADILA HASSIM: Madam, the 251 million refers to what you were paying for Life Esidimeni, isn't that so?

MS. QEDANI MAHLANGU: But if you go down and you look at the actual amount that they are talking about, 251 is the total budget. But if you look students
20the bottom, the savings for that year that is being talked about is the 50 million rand.

ADV. ADILA HASSIM: Yes, because it is only talk to 20%.

MS. QEDANI MAHLANGU: But the 20% of this is the 50 million.

ADV. ADILA HASSIM: Yes, so 20% is what you wanted to save. So, your plan before the budget meeting, the next one, was only to reduce 20% of Life Esidimeni's costs. Do you see that?

MS. QEDANI MAHLANGU: But for the financial year be the contract is cancelled and actual and actualized.

ADV. ADILA HASSIM: Please look at what your own document says madam.

MS. QEDANI MAHLANGU: But I am looking at the document.

10**ADV. ADILA HASSIM:** Yes, it doesn't say cancelling. It says we will take away 20%. Isn't that what the document says?

MS. QEDANI MAHLANGU: No, potential says. That is what it is talking about.

ADV. ADILA HASSIM: Yes, in the next financial year, that is what it says, okay.

MS. QEDANI MAHLANGU: Okay, I will leave that to your own interpretation but
15that is not my understanding of what we are saying here.

ADV. ADILA HASSIM: Okay, we will still go there. Can you please go to the risks which you could before the committee? Could you please read the risks?

MS. QEDANI MAHLANGU: The departmental institution may not have adequate capacity to absolve patients from Life Esidimeni.

ADV. ADILA HASSIM: Hmm, that must have been news for you seeing that your document says this and the department says they were enough, so what do you do with this?

MS. QEDANI MAHLANGU: And then if you go to the documents that I think some 5of them are in the different bundles that we have that demonstrate the readiness -

ADV. ADILA HASSIM: Yes, madam we will get to that.

MS. QEDANI MAHLANGU: No Counsel -

ARBITRATOR JUSTICE MOSENEKE: Sorry, I have to come in there. Again, this is a question and answer session. I would like the Counsel to repeat the question 10and I will ask the witness to answer it.

ADV. ADILA HASSIM: Thank you Justice. At the time of taking this decision, would you say it is according to this document? It says there is a significant risk that the department would not have adequate capacity to observe 20% of Life Esidimeni's patients. What do you say to that?

15**MS. QEDANI MAHLANGU:** No, the 20%, where did you get that? It says that the department is not – departmental institution might not have adequate capacity to absolve patients from life Esidimeni. It is not talking about the 20% and I would like to go, to take it to the presentations and reports thereof. Because -

ADV. ADILA HASSIM: Madam I would like -

20**MS. QEDANI MAHLANGU:** No, Counsel.

ARBITRATOR JUSTICE MOSENEKE: Would it tell us what the presentation would show us and then we would go to the detail? I just want to know, the presentation would provide which answer?

MS. QEDANI MAHLANGU: Give me a Ms. Mahlangu Justice please.

5**ARBITRATOR JUSTICE MOSENEKE:** Yes.

MS. QEDANI MAHLANGU: Okay, the document on page 8 which is ELLA132 right, that document talks about the Project, it clearly talks about the department not having enough beds to accommodate the Life Esidimeni and in this document, they may bothers, this is the latest I could lay my hands on. that talks about the 3
10identified psychiatric institutions, as well as the different NGOs

ARBITRATOR JUSTICE MOSENEKE: Where are you reading from, page 8?

MS. QEDANI MAHLANGU: From page 8 Justice. The identification of hospitals, that is 41., point number 2, the identification of NGOs, point number 5, it talks about renovations in the respective hospitals. So, I will confine myself to these 4 points
15because whatever document you read in the department there has to be relationship with another document. It may not all be in one set of documents. If indeed I knew the line of questions, I would have prepared the document in that context.

ARBITRATOR JUSTICE MOSENEKE: No, but I would like to understand 4.2
20answers which question?

MS. QEDANI MAHLANGU: I am saying 4.1 for instance Counsel is raising an issue on page 161, the slide presentation on the budget. That the risk identified said the department may not have adequate beds in the hospitals and we have been through that I my presentation on Monday. And further, because of that then she says the department was not ready, and I am saying to her, in looking at this satellite presentation you must also go back to this document that I am referring to now that says yes, there is identification of hospital by the Project team that may have been reflected on page 7, Furthermore, on Item .2. the identification of NGOs, item number 5 talks about renovations.

10 **ARBITRATOR JUSTICE MOSENEKE :** So, you are saying when the slide says there I no extra capacity for mental healthcare users, it is something that must be looked at in relation to page 8?

MS. QEDANI MAHLANGU: Yes, and all other presentations and documents.

ARBITRATOR JUSTICE MOSENEKE: And that subsequently, and that is your 15point, subsequently, your technical staff told you that there is capacity, that is the point that you are raising?

MS. QEDANI MAHLANGU: That is the point that I am making. And do you remember Justice, sorry to interject. You identify the risks and then you go back and you look at how do you mitigate the risks in ensuring those and we have enough 20space in the NGOs , as well as in the hospitals concerned.

ARBITRATOR JUSTICE MOSENEKE: Okay, following that answer, you look for instance, 4.1. Let s look at some detail. Hospitals have to plan for staff members in the newly renovated wards. So, that depended on renovation.

MS. QEDANI MAHLANGU: And the HR issues, there is a plan on HR which I 5spoke about this in the annexure.

ARBITRATOR JUSTICE MOSENEKE: And then Veskoppies and then there is – they appointed, 136, 24 and 27 staff members from LE.

MS. QEDANI MAHLANGU: That is Annexure 20.

ARBITRATOR JUSTICE MOSENEKE: Annexure 20.

10**MS. QEDANI MAHLANGU:** Yes.

ARBITRATOR JUSTICE MOSENEKE: So, you say that they would have employed people ready to anticipate the reception of the patients?

MS. QEDANI MAHLANGU: Yes, remember this is information I am being given by competent team.

15**ARBITRATOR JUSTICE MOSENEKE:** Yes, you and me know now that this was never implemented right?

MS. QEDANI MAHLANGU: Yes, Justice.

ARBITRATOR JUSTICE MOSENEKE: You were told then that, but that plan was not implemented?

MS. QEDANI MAHLANGU: That is what I am trying to say Justice that as a benefit of hindsight, if you are given something in black and white with the competent people and everything looks like it is right, and I am seating here and I am being cross-examined, what should have – when all signs say that no, but, we are okay and the risk is identified, we are attending to it.

ARBITRATOR JUSTICE MOSENEKE: But look at 4.2, mental health services team from both province and district identify the NGOs, okay. Then together with the engineers in the department of infrastructure, you need to assess to suitability of the NGOs infrastructure. Let's stop there. Now we know all that was hopelessly inadequate, isn't it? That is what is written on paper and you say that is what you knew. But now we know that never happened. Okay, let's move on. Many new NGOs were identified as many of the existing NGOs would not cope with the added number of patients, can you see that?

MS. QEDANI MAHLANGU: Yes, I see that Justice.

ARBITRATOR JUSTICE MOSENEKE: So, you were told then already that new NGOs were identified because the existing ones would not cope and with the added numbers of patients. So, at least that was told to you. Most if the identified NGOs were disqualified during the process due to lack of resources and know how. I will stop there, but this is the report that you say would have told you the state of play.

MS. QEDANI MAHLANGU: Not only that Justice, I just can't find the other document, I will source it as well that would have said the NGOs, I think it is and one of the presentation, I will get it for you now. The list of NGOs, when those

where disqualified, which NGOs were added in the process, I will find the document and I will point it to you now.

ARBITRATOR JUSTICE MOSENEKE: But before we go to that document, we know also former MEC that the renovations were not done.

5**MS. QEDANI MAHLANGU:** In the hospitals?

ARBITRATOR JUSTICE MOSENEKE: Yes.

MS. QEDANI MAHLANGU: Yes, that is why I remembered Justice, I said initially my understanding was we were going to take most mental healthcare users to hospitals but when they changed, more patients were taken to NGOs rather than to
10hospitals.

ARBITRATOR JUSTICE MOSENEKE: And we know now that even in this report, despite this report the NGOs that they took people ultimately in the words of this report, lacked resources and know-how, isn't it?

MS. QEDANI MAHLANGU: Yes, that is what the report says.

15**ARBITRATOR JUSTICE MOSENEKE:** In the report they say they disqualified, they lacked resources and know-how and they still contrary to what you say you knew, they still send people to those NGOs, isn't it?

MS. QEDANI MAHLANGU: Yes.

ARBITRATOR JUSTICE MOSENEKE: And your case is that they thoroughly
20misinformed you?

MS. QEDANI MAHLANGU: Justice, if you look at the presentation for instance, if you look at the transportation plan and you look at the placement plan and you look at co the NGO budget we went through it yesterday, and you look at the post-placement support and all of that and the staff members from Life as well as 5receiving of patients from the different hospitals. So, I think you have this bundle probably you can go through it and look at the issue. That is why I am saying, if you have this information at your disposal, yes, you worry but these people know and they identify the risk and they are attending to it as it were in respective of that.

ARBITRATOR JUSTICE MOSENEKE: You see, you and I know and agree now 10that this plan was worth nothing, that is why people died. The remaining question is why didn't you know? And I think the is what informs most of your answers. Why didn't you see the red lights, and this is really where Counsel was when we got down this route? Again, a very long interruption. Counsel.

ADV. ADILA HASSIM: Thank you Justice. Ms. Mahlangu, my position is I am 15testing you as a political person, not on the implementation. The document and I want you to please pay attention to page 1 of Annexure B to your papers. It says it was the 26th of November 2014, that was at the time it took the decision, do you agree?

MS. QEDANI MAHLANGU: In December 2014, that is where the presentation to 20the budget committee.

ADV. ADILA HASSIM: You have referred the honourable Justice Moeseneke was a document that was altered after the extension and it is dated August 2016. I am

just getting both facts on. So, what I am telling you, that is part of the implementation. I am asking, at the time that you took the decision, you were told on page 6, a 20% reduction and we are not sure whether there is enough capacity and yet you took the decision.

5 **MS. QEDANI MAHLANGU:** No Counsel and I think I have answered the question.

ADV. ADILA HASSIM: Okay, so are you saying it wasn't a 20% reduction or are you saying there wasn't capacity?

MS. QEDANI MAHLANGU: The 20% in this regard relates to the amount of money that you are going to save?

10 **ADV. ADILA HASSIM:** Yes, but how do you save 20% of 100% if you take all the patients away?

MS. QEDANI MAHLANGU: Yes, but we were talking about, remember we were talking about the 1st financial year, the decision, the cancellation, in think, I don't know, it was effective from I think September 2015 that would have been 6 months
15 into the financial year if I am not mistaken. It should have been.

ADV. ADILA HASSIM: Are you saying Ms. Mahlangu that there was never a decision taken the only 20% of the beds would be reduced?

MS. QEDANI MAHLANGU: But 20% was already in existence, it was not something new.

20 **ADV. ADILA HASSIM:** Is that what you are saying, are you standing by that?

MS. QEDANI MAHLANGU: No, I am saying tm 20% was already, I found it when I got into the department, what we are talking anybody the-

ADV. ADILA HASSIM: I am going to differ with you. Please go to ELLA126.

MS. QEDANI MAHLANGU: Which one is that?

5**ARBITRATOR JUSTICE MOSENEKE:** The 20% reduction of beds was inducted only in 2014/2015.

ADV. ADILA HASSIM: 2015.

ARBITRATOR JUSTICE MOSENEKE: So, you say that was the 1st time it was inducted? The witness says no, it was there before then.

10**ADV. ADILA HASSIM:** Do you see ELLA126?

MS. QEDANI MAHLANGU: Yes, I do.

ADV. ADILA HASSIM: Can you read the date on it? Do you agree that is the 11th of March 2015 and it is addressed to the manager director of Life Esidimeni?

MS. QEDANI MAHLANGU: Yes, I can see that.

15**ADV. ADILA HASSIM:** And it says the purpose, can you read the purpose of the letter?

MS. QEDANI MAHLANGU: Is so the communication to provide Life Esidimeni learning decision taken for reduction of beds from 2015/16 financial year.

ADV. ADILA HASSIM: Can you read the introduction? Let us take the discussion,
20can you read that?

MS. QEDANI MAHLANGU: Yah.

ADV. ADILA HASSIM: Please read the discussion

MS. QEDANI MAHLANGU: Following the meeting chaired by the MEC in February 2015, the MEC advised Life senior managers on the decision to reduce 5Life beds and discuss the challenge of costs to continue funding the contracted care and that the beds need to be reduced as soon as possible by further 20% by April 2015. The department together with Life has developed a plan to reduce that.

ADV. ADILA HASSIM: So, this is the 20% reduction letter after your November meeting, do you agree?

10**MS. QEDANI MAHLANGU:** Counsel, let us look at the dates when this letter is signed and look what it says.

ADV. ADILA HASSIM: 2015.

MS. QEDANI MAHLANGU: But it says the beds must be reduced by 20% 2015 in April and that is ne month, in one month.

15**ADV. ADILA HASSIM:** And that is not sufficient you say.

MS. QEDANI MAHLANGU: But it doesn't make sense.

ARBITRATOR JUSTICE MOSENEKE: I should mention on both Counsel and witness on the time we are spending on tis

ADV. ADILA HASSIM: Could I just take you to ELLLA -

ARBITRATOR JUSTICE MOSENEKE: You have to help me Counsel and tell me the significance of this in the whole scheme of things?

ADV. ADILA HASSIM: Justice, what we are suggesting is that there was really no plan and this is what we are trying to show the decision was taken irrationally.

5**ARBITRATOR JUSTICE MOSENEKE:** The 20% reduction plan is not in dispute, it existed whether it started in 2014, 2013 or 2015, it was there. That was the modus of cost containment. And that modus changes drastically somewhere to termination. That debate I understand but do you know whether it was in a year or 2 or 3, it is something that maybe we should not be spending so much time on.

10**ADV. ADILA HASSIM:** Yes. Could I please refer the witness to ELLA135. Now that is a budget speech that you made 3 months later, would you agree with me. It is a copy of your budget speech.

MS. QEDANI MAHLANGU: I have not read it so I don't know exactly what it says, I forgot now.

15**ADV. ADILA HASSIM:** Don't worry I will take you to the appropriate part.

ARBITRATOR JUSTICE MOSENEKE: Well, there is minutes before the lunch break

ADV. ADILA HASSIM: It will be very quick; might I finish this point Justice.

MS. QEDANI MAHLANGU: Which one?

20**ARBITRATOR JUSTICE MOSENEKE:** Yes, certainly. But that would also mean you have to give me some medication of how much more time you need.

ADV. ADILA HASSIM: It is going much slower than I anticipated.

ARBITRATOR JUSTICE MOSENEKE: Very, very slowly.

ADV. ADILA HASSIM: And I am struggling to get short answers Justice. I was hoping to be finished by 3 but I don't think I will be finished.

5**ARBITRATOR JUSTICE MOSENEKE:** No blame at all. I just want to understand our way forward. It is quite important, also in relation to Professor [indistinct]. So, all of those things come into play but also awaiting time for the rest of your colleagues. All of those things are vital. It has been a long hearing, so I would like to urge all of us to zoom into the big issues because we really have to get there now. So, it is a
10concern that I am expressing to you, you all Counsel. We need to get – [vernac], so your idea is you probably need to run up to around 3.

ADV. ADILA HASSIM: It started off as that I don't think I will be finishing before 4ish or even longer Justice.

ARBITRATOR JUSTICE MOSENEKE: Okay, at some point we need to keep that
15longer all the time.

ADV. ADILA HASSIM: Ms. Mahlangu, could you please move to page 25, ELLA
135 page 25, page numbers are at the right-hand bottom, do you see that?

MS. QEDANI MAHLANGU: Yes.

ADV. ADILA HASSIM: In the middle of that page, do you see that?

20**MS. QEDANI MAHLANGU:** Yes.

ADV. ADILA HASSIM: It say with regard to Life Esidimeni, can you read that?

MS. QEDANI MAHLANGU: With regards to Life Esidimeni department has already commenced with the reduction of number of beds by 20% in the 15/16 with the view to end the arrangement at the end of 16/17 financial year.

ADV. ADILA HASSIM: Is that right?

5 **MS. QEDANI MAHLANGU:** Remember I said to you, the 20% in my understanding, this was emphasis of what was already existing in the department. So, the 20% was already there and the 16/17, that is why in the budget I was pointing to you Counsel, you will see the number of budgets coming down to 176 million.

10 **ADV. ADILA HASSIM:** And the idea, was it ever that it would last for 5 years?

MS. QEDANI MAHLANGU: Pardon?

ADV. ADILA HASSIM: Was the idea ever that the Life Esidimeni contract would be finalized in a 5-year period?

MS. QEDANI MAHLANGU: I was not aware of that.

15 **ADV. ADILA HASSIM:** Could you please go back to ELLA126, you see introduction, just read the 2nd part.

MS. QEDANI MAHLANGU: This is a letter written by the HOD that I was not party to.

ADV. ADILA HASSIM: But the HOD is your -

20 **MS. QEDANI MAHLANGU:** But he didn't consult me in the letter, so he wrote the letter. So, I think it is best you ask him.

ADV. ADILA HASSIM: But it is implement, isn't it. Just read the last paragraph under introduction last year.

MS. QEDANI MAHLANGU: And this was communicated through the strategic plan of 2013-2020.

5**ADV. ADILA HASSIM:** Last year the discussions between the mental healthcare directorate started with planning and reducing the bedding occupancy by 200 beds by the end of March 2015 and on a yearly basis for the next 5 years, is that right? And this was communicated through the mental health strategic plan. Nothing is said here that we are not going ahead with t20% beds, do you agree?

10**MS. QEDANI MAHLANGU:** But I am saying this is a communication between the HOD and Life that he never communicated with me. So, I did not know what the HOD was communicating, vis-a-vie, the processes of government which he was party ton what he communicated to..

ADV. ADILA HASSIM: And it is clear that he didn't understand the process to be
15otherwise either.

MS. QEDANI MAHLANGU: I am not sure what is your point COUNSEL.

ADV. ADILA HASSIM: Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes, thank you. We are going to do the usual. We are going to resume at 2:30 as always and sadly going to see this long
20ass, Counsel is still busy so that we can at least finish that part of the cross-examination. We are adjourned.

SESSION 3

ARBITRATOR JUSTICE MOSENEKE: Thank you, you may be seated. Ms Mahlangu, you are under your previous oath to tell the truth. Counsel.

MS. QEDANI MAHLANGU: Maybe before we go there Justice. You asked the question earlier and I would like to come back to that question if it is possible.

ARBITRATOR JUSTICE MOSENEKE: Yes, it is possible, and you may.

MS. QEDANI MAHLANGU: You asked me that people marched and people came to the department to present memorandums and I would like to speak to that with your permission.

10 **ARBITRATOR JUSTICE MOSENEKE:** Yes.

MS. QEDANI MAHLANGU: Because I thought you asked a very important question which deserve a decent answer. Firstly on the 16th of February 2016 I received a memorandum and I think its contents, or this is ELAH, excuse my, I need to refer to the file for everyone to follow. ELAH132, and that is page 115.

15 **ARBITRATOR JUSTICE MOSENEKE:** Yes.

MS. QEDANI MAHLANGU: The memorandum was presented and I received the memorandum on the 16th of February and as it will be procedural, will follow in government, then I asked the HOD that we must respond to the issues raised by the people who had marched to come to the office, and on page 116 Justice is the comprehensive response which looks at the, talks about the purpose of what this memorandum is here, the background of that and then it goes to the discussions

relating to the matter concerned, but the section I would like to read for the record, for instance and the memorandum is comprehensive and I am trying to save time and just getting to specifics and because the question you asked I thought that were important and deserve to be given a comprehensive answer, and I would like to read paragraph 2 on page 118. It said:

“The department had developed project plan led by the project manager whose task is to ensure the involvement and participation of project team, the family and other stakeholders and also to ensure that the progress is being evaluated and monitored on weekly basis.”

And I think that is important to note and of course there are other details, important issues by families. They are also related there and just further to say and the HOD would have signed this letter on the 11th of March 2016 after receiving it. I refer to after the 16th. Just further that there was a second memorandum that was sent to the department and there is a comprehensive response to that which is on page 120 of the bundle of documents we are looking into. The purpose, and I would like to read that for the record, to submit the responses on the memorandum handed over to the department by the family members of the mental health care users admitted in Life Esidimeni facilities on the 9th of June 2016, and of importance Justice, I would like to take you to page 122. All the aspects are important, but I am trying to save time. Page 121:

“Upon issuing the notice to Life Esidimeni on ending the contract relationship, the family meetings were held. The first meetings were chaired and directed by the

MEC for health and leadership and later by the project leaders. The intention plan, the implementation and evaluation plans were presented in these meetings.”

Further that, in the last paragraph before the title in the memorandum, below are the responses to the memorandum raised by the participants who had brought the memorandum to the department. First of all their concerns and there is a blow by blow for every concern raised. I would like to read the response to some of the concerns, and I am not going to go to everyone of them. First of all on moving patients without alerting families. The response at the time of the department said:

“The department has engaged the family of the Life Esidimeni mental health care users at all facilities. Firstly as a mandate to Life Esidimeni Managers as one of their indicator on monthly basis, and then plans formal departmental meeting as follows. Waverley on the 29th of June 2016. Randfontein Complex on the 30th of January and Baneng on the 13th of February 2016. The meeting resolved to have a committee which I would have reflected on when I was presenting in previous engagement. Have committees that will work with the department. Thereafter the committees from the first two facilities establish one committee.”

Right. Then we go to their loved ones had been at Life Esidimeni for a long time, and again there is a comprehensive response and I would like to read this on record:

“This is a contravention. The department took care of mental health care users through the contract relationship with Life Esidimeni for over 36 years. This is in contravention with the Mental Health Care Act and the South African policy

framework and also with the auditor general prescripts on procurement processes. The department paid all users in Life Esidimeni and the department noted that the services are no longer affordable, and opted to a better manageable resources at an affordable cost.”

5The next stop is:

“The department repeatedly lie to the families.”

That is a topic.

ARBITRATOR JUSTICE MOSENEKE: Just allow me to interrupt you. We are not seeing the document for the first time. It is in the ELAH documents.

10**MS. QEDANI MAHLANGU:** Yes.

ARBITRATOR JUSTICE MOSENEKE: And we canvassed it with Dr Manamela and Dr Selobano. Very nice answers.

MS. QEDANI MAHLANGU: Yes, I am getting to that Justice. Please indulge me for just a minute.

15**ARBITRATOR JUSTICE MOSENEKE:** Ja. So we have this on record already. We have gone through it before.

MS. QEDANI MAHLANGU: But I thought it is important to put it on record in my own words. Can I just go to this point, that the team for instance, this is my last point ... [interjects]

20**ARBITRATOR JUSTICE MOSENEKE:** Yes.

MS. QEDANI MAHLANGU: And I will make the sentence conclusion that paragraph 13.1 on page 12 of the same file ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Yes.

MS. QEDANI MAHLANGU: Says:

5“*Two medical officers appointed at the review board and work at LE facilities. That time they were delegated to assess the patients to the two Life Esidimeni facilities. All patients were assessed before discharged to the hospitals and NGO’s and also when received in the hospitals and later into the NGO’s by the delegated medical officers from the review board and the districts.*”

10My conclusion therefore Justice, is this. This evidence, this information is presented to me in couple of meetings. The memorandums are responded to by competent official and ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: We have to listen to the witness. That is just so obvious. Please.

15**MS. QEDANI MAHLANGU:** It is presented to be by medically qualified officials and of course now I know that the information was not correct, I was misled and that is the point I want to make Justice, and put it on record, and there is evidence, yes you said you have it, but I thought I need to bring it on record that indeed all along whatever information I am being given, this is what is suggested, and I had no
20reason to believe anything else other than what the officials I was assigned to work with were given.

ARBITRATOR JUSTICE MOSENEKE: Yes, and it was compiled by Dr Manamela who probably got staff to compile it and now we know you do not believe what they told you. I do not believe what they said, because so many people died.

MS. QEDANI MAHLANGU: Yes, of course.

5**ARBITRATOR JUSTICE MOSENEKE:** They are trauma, despite every line they say it is all fine. Everybody is happy. The families are happy. Patients are happy. We are doing the right thing, but we are agreed, and thanks I am happy that you are agreed with us that this is reporting on paper which is blatantly false. But I understand this is what you were given MEC, that is the point you are making.

10**MS. QEDANI MAHLANGU:** Yes, absolutely Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes, okay. Thank you. Counsel?

ADV. LILLA CROUSE: Thank you Justice. I trust I can have 20 minutes longer now to cross-examine. Ms ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Do what you have to do Counsel.

15**ADV. LILLA CROUSE:** Thank you.

ARBITRATOR JUSTICE MOSENEKE: There is only one thing. I thought about it again over lunchtime, and that is to all Counsel. I read the arbitration agreement again. Unlawfulness of the conduct of state officials is not in dispute. Is that metered? The negligence and recklessness of the conduct of state officials is
20admitted, and the quotation of death and the fact that the deaths were not caused naturally is admitted. So both, all those elements of ... [inaudible] have been

admitted in the arbitration agreement. Let us just always keep that in mind in our cross-examinations, and that always goes to relevance. So I am going to be quite tight to try and get us there. We must finish the evidence tomorrow and be left with a few political principles so that we can bring this thing to an end. I am quite
5determined to that. All those issues have been admitted and we know what is in dispute. Basically is the content of equitable redress. We have got to keep that constantly in mind as we carry on, and I wish I had said it much, much earlier to everybody else, but that is the situation. We have to go to what matters most equitable redress. Counsel?

10 **ADV. LILLA CROUSE**: Justice, could I just have a moment?

ARBITRATOR JUSTICE MOSENEKE: And closure is still in, I mean the parties specifically recorded that these proceedings and the evidence and the facts and opinions ought to help them to find closure. So that is one big component.

ADV. LILLA CROUSE: Yes.

15 **ARBITRATOR JUSTICE MOSENEKE**: Of this arbitration, which makes it an arbitration ... [inaudible] and yet it is still an arbitration.

ADV. LILLA CROUSE: Yes.

ARBITRATOR JUSTICE MOSENEKE: Very well, you may proceed.

ADV. LILLA CROUSE: Thank you Justice, I am working on closure, because the
20 true facts are necessary for closure.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV. LILLA CROUSE: If I may?

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV. LILLA CROUSE: Ms Mahlangu, I see from the letter that you wrote to the Ombud that you went to Dubai. Is that right? Just before the report came out.

5**MS. QEDANI MAHLANGU:** The final report came out, I had gone to Dubai during December on January 2015.

ADV. LILLA CROUSE: Can I take you to the report, ELAH13, 131a.

MS. QEDANI MAHLANGU: 13 what?

ADV. LILLA CROUSE: Yes, this is your letter to ... [interjects]

10**MS. QEDANI MAHLANGU:** It is 13 what?

ADV. LILLA CROUSE: 131a. I am not making anything of that, I just want to ask you a question on it. Do you see it? Paragraph 2.2.

MS. QEDANI MAHLANGU: Wait a bit, oh sorry. ELAH12.

ADV. LILLA CROUSE: 131a, paragraph 2.2.

15**MS. QEDANI MAHLANGU:** Hm.

ADV. LILLA CROUSE: Do you see it?

MS. QEDANI MAHLANGU: 131a?

ADV. LILLA CROUSE: Yes.

MS. QEDANI MAHLANGU: Ja, sure.

ADV. LILLA CROUSE: Page 2, paragraph 2.2.

MS. QEDANI MAHLANGU: Ja.

ADV. LILLA CROUSE: Do you see that? It says you returned on the 10th of January 2017 from Dubai. Is that right?

5**MS. QEDANI MAHLANGU:** Yes, it is.

ADV. LILLA CROUSE: Were you there on holiday?

MS. QEDANI MAHLANGU: But what is the relevance of the question?

ADV. LILLA CROUSE: You do not want to answer it, no it is fine. I just want to know were you there for long?

10**MS. QEDANI MAHLANGU:** But what is the relevance of the question?

ADV. LILLA CROUSE: The relevance is you are the MEC for health, people are dying and you are going on holiday. That is what I want to know. So it is relevant in my submission.

MS. QEDANI MAHLANGU: Through you Justice, I do not see the relevance of
15the question. Honestly. In South Africa there is holidays every December and I do not think it is appropriate to, and I took my duties very seriously.

ARBITRATOR JUSTICE MOSENEKE: Ja.

MS. QEDANI MAHLANGU: So I do not think it is appropriate.

ARBITRATOR JUSTICE MOSENEKE: I am not sure where that is going to take
20us to Counsel. You have to persuade me to that is going to take us somewhere.

ADV. LILLA CROUSE: Well, we know that ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: In the arbitration.

ADV. LILLA CROUSE: Yes. Justice, we know this witness was in hospital and she did not do her duties then. We know she has been campaigning and she has not been doing her duties. Now we see all in all there is a holiday as well, and I just want to know did she take her duties seriously?

ARBITRATOR JUSTICE MOSENEKE: Ja.

MS. QEDANI MAHLANGU: My last day at work Justice ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: I think it is frankly Counsel it is ... [inaudible]. I do not, I do not want to know where the witness holidayed and ... [interjects]

ADV. LILLA CROUSE: Alright. Unfortunately it was Dubai.

ARBITRATOR JUSTICE MOSENEKE: Yes. I know Dubai is sensational.

ADV. LILLA CROUSE: Yes, absolutely.

15**ARBITRATOR JUSTICE MOSENEKE:** But this is not a state capture enquiry. We do not really have to go there at all Counsel.

ADV. LILLA CROUSE: Thank you Justice. Do you know Ms Nancy Hliwai, the honourable MEC for social development in the Eastern Cape?

MS. QEDANI MAHLANGU: MEC who?

20**ADV. LILLA CROUSE:** Nancy Hliwai.

MS. QEDANI MAHLANGU: I do not know a surname like that.

ADV. LILLA CROUSE: Do you know who the MEC of social ... [interjects]

MS. QEDANI MAHLANGU: Do you mind to spell ... [interjects]

ADV. LILLA CROUSE: Development in ... [interjects]

5**MS. QEDANI MAHLANGU:** Do you mind to spell the surname?

ADV. LILLA CROUSE: Do you know who the MEC for social development in the Eastern Cape is?

MS. QEDANI MAHLANGU: No, I do not.

ADV. LILLA CROUSE: You see, what I find strange is that in the Eastern Cape at
10the same time, Life Esidimeni's frail care centres were in the same arbitrary and
unreasonable manner targeted, and I just want to know do you have any
explanation why these two processes were running in tandem?

MS. QEDANI MAHLANGU: I do not have jurisdiction over other provinces. I am
not a national minister, and I was at the time the MEC for health in Gauteng. I do
15not have an answer to that.

ADV. LILLA CROUSE: You do not know of any behind the scenes interference?

MS. QEDANI MAHLANGU: In the Eastern Cape?

ADV. LILLA CROUSE: Both. Gauteng and Eastern Cape.

MS. QEDANI MAHLANGU: I do not know what ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Was your decision a result of some external interference, in your decision making?

MS. QEDANI MAHLANGU: I do not understand what type of interference.

ARBITRATOR JUSTICE MOSENEKE: External to yourself or to the department, were there any interested parties who influenced you in your decision? The answer may be no or yes, but that is what the question is.

MS. QEDANI MAHLANGU: The answer is definitely no, but also just to say what I have explained consistent with my Monday explanation, that is the process that how things work in Gauteng. Any other thing, I would not know anything about it.

10 **ADV. LILLA CROUSE:** You see, Dr Morgan Makwasha has testified here that his reason why he thought the Life Esidimeni contracts were cancelled, was because the Life Esidimeni is a subdivision of a listed company that does not have the appropriate BEE credentials. Did that play any role in your decision?

MS. QEDANI MAHLANGU: Not at all, and I do not know where that comes from
15 actually.

ADV. LILLA CROUSE: Okay. You did not say to Andrew Petersen at one of the meetings, calling him aside, saying to him you must stay away from white people?

MS. QEDANI MAHLANGU: My conversation through you Justice. My conversation with Peter to be exact, I remember he came to a meeting with Section 2027, with SASO and Peter was representing the family members, and I said to him ...
[interjects]

ARBITRATOR JUSTICE MOSENEKE: Sorry, are you talking about the same person? You are talking about Mr Petersen.

ADV. LILLA CROUSE: Andrew Petersen.

ARBITRATOR JUSTICE MOSENEKE: The pastor?

5**ADV. LILLA CROUSE:** Yes.

MS. QEDANI MAHLANGU: Yes.

ARBITRATOR JUSTICE MOSENEKE: Are you talking about the same person?

MS. QEDANI MAHLANGU: Yes, I think so.

ARBITRATOR JUSTICE MOSENEKE: It is the same person?

10**MS. QEDANI MAHLANGU:** I think it is the same person, and the conversation I had with him was about the church and I discovered that he goes to Methodist church and I said we are going to the same church, and I even said to him why do you not come to me as I had suggested that we must form a committee meeting so that we can have a conversation together with the families and have a meeting, and
15I again gave him my number and subsequently we were having a conversation with Peter, I cannot remember sms or what, even my officials trying for us to set up a meeting with the family committee. That is the conversation I remember having with Peter.

ARBITRATOR JUSTICE MOSENEKE: The allegation is that you told him stay
20away from white people. I think you must deal with that.

MS. QEDANI MAHLANGU: But Justice, there is a lot of hearsay and South Africa is a multi racial country and I believe that every South African belongs to the, this country belongs to all of us, black and white.

ARBITRATOR JUSTICE MOSENEKE: But former MEC, did you talk about white people to him?

MS. QEDANI MAHLANGU: No, I did not Justice.

ARBITRATOR JUSTICE MOSENEKE: No, you did not.

MS. QEDANI MAHLANGU: I asked him a question why do you not arrange a meeting to meet with me, because you have my number and we talk about church issues related to Methodist.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

ADV. LILLA CROUSE: Thank you Justice. So he is lying if he said you said ...
[interjects]

MS. QEDANI MAHLANGU: Well, I do not know. That is what I remember. My recollection.

ADV. LILLA CROUSE: So you could have said that?

MS. QEDANI MAHLANGU: Pardon?

ADV. LILLA CROUSE: You say you do not remember saying that. Is it possible that you could have said that?

MS. QEDANI MAHLANGU: No, but Counsel I am saying my conversation with Peter was what I am explaining to you.

ADV. LILLA CROUSE: I am just trying to establish whether he is lying or not.

MS. QEDANI MAHLANGU: Well, that is up to you Counsel to decide, honestly.

5**ADV. LILLA CROUSE:** If I go to Annexure A to your first papers, on the third page about.

ARBITRATOR JUSTICE MOSENEKE: Did you make it clear that Mr Petersen was here testifying.

ADV. LILLA CROUSE: Yes, I did.

10**ARBITRATOR JUSTICE MOSENEKE:** In the witness box under oath and made the allegation. It was not an extra cathedra kind of statement. It was made here in this hearing under oath.

ADV. LILLA CROUSE: Yes.

ARBITRATOR JUSTICE MOSENEKE: Ja. Okay.

15**ADV. LILLA CROUSE:** Thank you. I see that in your Annexure A that you attach on ... [interjects]

MS. QEDANI MAHLANGU: Is it the ELAH132?

ADV. LILLA CROUSE: No, it is the statement that you handed in with annexures on the first day.

20**MS. QEDANI MAHLANGU:** Okay.

ADV. LILLA CROUSE: I see on page 5 thereof, the heading. Can you read that for us? You see the heading?

MS. QEDANI MAHLANGU: No, no I am still, my document ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Is that the statement of Ms Mahlangu?

5**ADV. LILLA CROUSE**: Judge, it is on page 5. It is just a heading page.

MS. QEDANI MAHLANGU: Is it a statement I tabled here?

ADV. LILLA CROUSE: It is Annexure A to your first affidavit. It looks something like this.

MS. QEDANI MAHLANGU: The budget presentation?

10**ADV. LILLA CROUSE**: Yes.

MS. QEDANI MAHLANGU: Okay.

ADV. LILLA CROUSE: You have that?

MS. QEDANI MAHLANGU: Yes, I do.

ADV. LILLA CROUSE: Can you read that heading?

15**ARBITRATOR JUSTICE MOSENEKE**: The one that starts with radical economic transformation?

ADV. LILLA CROUSE: Yes. Ja.

ARBITRATOR JUSTICE MOSENEKE: Okay.

MS. QEDANI MAHLANGU: Okay.

ADV. LILLA CROUSE: Do you see radical economic transformation?

MS. QEDANI MAHLANGU: Ja.

ADV. LILLA CROUSE: Is that the heading that you chose?

MS. QEDANI MAHLANGU: No, but this is government policy.

5**ADV. LILLA CROUSE:** I am asking is that the heading that you chose Ms
Mahlangu.

MS. QEDANI MAHLANGU: Through you Justice. The templates are given when
department are asked to go and present. So I do not choose government policy.
We decide, and this is the radical economic transformation is the Gauteng
10government policy that is being, we took a decision in 2014 that is going to run till
2019. So it is a government policy.

ADV. LILLA CROUSE: In 2017 in July, 20th of July to be precise, Mr Cyril
Ramaphosa had the following to say about this radical economic transformation. If
you can just listen and say whether you agree. He said that:

15“*Radical economic transformation and white monopoly capital are a new narrative
which PR firms use as capture, language for state capture.*”

That is what he says. Do you agree with that?

MS. QEDANI MAHLANGU: Well, I do not know what the Deputy President, why
he made that statement. This is a Gauteng government policy decision on radical
20economic transformation and every department pursues and follow what Gauteng
government ... [interjects]

ADV. LILLA CROUSE: So he says those two terms are used by PR firms for state capture.

MS. QEDANI MAHLANGU: Through you Justice, I think I would not be able to interpret what the Deputy President would have meant.

5**ADV. LILLA CROUSE:** Okay, and he continues and I just want this as the last what I am going to say.

ARBITRATOR JUSTICE MOSENEKE: What is the source of the statement?

ADV. LILLA CROUSE: It is his speech to the Gordon Business Institute Justice. It is well published.

10**ARBITRATOR JUSTICE MOSENEKE:** And the date?

ADV. LILLA CROUSE: It is on the 20th of July 2017.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV. LILLA CROUSE: He said that what radical economic transformation rather means, is that our country's resources must be used to the interest of our people, 15particularly the poor and it means management by capable, honest and accountable people. Would you agree with that statement?

MS. QEDANI MAHLANGU: Yes.

ADV. LILLA CROUSE: Now my argument is going to be that in the conduct of taking this decision you were not capable, because you did not make an informed 20decision.

MS. QEDANI MAHLANGU: Well, that is the subject for your conclusion Justice. I would not be able to make a decision on that.

ADV. LILLA CROUSE: And I will also argue that you were not honest in what you knew and what you did not know, and my learned friend has taken you to task for 5the previous two days on that.

MS. QEDANI MAHLANGU: Well, that is up to you to decide. I came here honestly and truthfully. I have been taking an oath every day since I was sitting here, so help me God, and I think I have done my best in telling things to the extent that I remember.

10**ADV. LILLA CROUSE:** Yes.

MS. QEDANI MAHLANGU: And to the best of my ability.

ADV. LILLA CROUSE: And I am also going to argue at the end of the day that you have not shown accountability.

MS. QEDANI MAHLANGU: Well, if I had not shown accountability through you 15Justice, I will still be employed and I will still be whatever, and I am a student consciously so because I decided to fall on my sword and I think that I have taken political accountability and I am here to support the arbitration process, to answer and give information to the extent that I can contribute to what finalisation of the report.

20**ADV. LILLA CROUSE:** Madam, if you go to that annexure before you, page 100 thereof, reading maximisation of own revenue.

MS. QEDANI MAHLANGU: The 100 of the ... [interjects]

ADV. LILLA CROUSE: Yes, of Annexure A.

MS. QEDANI MAHLANGU: Of the original number?

ADV. LILLA CROUSE: No, 100. At the bottom of the page.

5**ARBITRATOR JUSTICE MOSENEKE:** 100 of Annexure A.

MS. QEDANI MAHLANGU: I am saying there is two 100's. 100 in the number of slides and there is a 100 in the page whatever.

ADV. LILLA CROUSE: The heading is maximisation of own revenue. Do you see that?

10**MS. QEDANI MAHLANGU:** Yes, I do.

ADV. LILLA CROUSE: You refer there to McKenzie and work that you want them to do. What is that?

MS. QEDANI MAHLANGU: The document says the model of ... [inaudible] with McKenzie at their risk is being investigated, and the overall objective is to release
15the cash to be used for other priorities, initiative, enhancing cash monitoring and planning capability. So it says to be investigated and as to whether it was done or not, that can be ... [interjects]

ADV. LILLA CROUSE: What did you mean by that?

MS. QEDANI MAHLANGU: McKenzie has been involved in assisting, because
20they are one of the consulting companies in the world that has specialised in health

care particularly and many other things and one of the things they do very well, was to assist organisations and I know that they have assisted Russia, they have assisted different companies with stabilising the health care system in terms of finances. So as to what exactly the details of this, the Department of Health can be in a position to deal with that, but I do not see any relevance of that actually to this.

ADV. LILLA CROUSE: Did you have any contact with them whatsoever?

MS. QEDANI MAHLANGU: I know the McKenzie colleagues very well.

ADV. LILLA CROUSE: I see. Can I just take you to your budget speech of ELAH134.

10 **MS. QEDANI MAHLANGU**: Ja, sure.

ADV. LILLA CROUSE: Have you got it?

MS. QEDANI MAHLANGU: Yes, I do.

ADV. LILLA CROUSE: 2014/2015.

MS. QEDANI MAHLANGU: Yes, and the page?

15 **ADV. LILLA CROUSE**: I see the pages are not numbered, but you can go to the third page from the start. It has got a heading in the first quarter of the page, stabilising equipment.

MS. QEDANI MAHLANGU: Priority three?

ADV. LILLA CROUSE: Ja, you see that?

20 **MS. QEDANI MAHLANGU**: Yes.

ADV. LILLA CROUSE: The last paragraph on that page, what is that about?

MS. QEDANI MAHLANGU: This is very simple.

ADV. LILLA CROUSE: Can you first read, sorry. Can you please read the paragraph into the record?

5**MS. QEDANI MAHLANGU:** *“As part of McKenzie equity equivalent program they have committed to working with us to improving the management and operational system in our facilities for the department to deliver a better quality of service to our people.”*

What it means Justice, if you go to Charlotte just across the road, if there was time I
10would definitely walk with someone to hear, because the program is still visible.
What McKenzie, because I do not think they have the BEE kind of status. They are
a multi, international consulting company. They have funds that they set aside to
assist causes that they decide to fund. For instance health was one of those. So
we went to them to make a presentation. I think they gave us about ten million or
15so. I am speaking under correction, because I do not have that information. They
gave us the resources. What did we do? They supported Charlotte. We were
looking at improving efficiencies in theatre, because there was no proper records in
theatre before when I arrived in 2014. To look at theatre to have proper records
and make sure that patients, operations are not cancelled ... [inaudible] because
20there is no system. Secondly they help to improve the efficiencies using lean
principles at the pharmacy at Charlotte and also they help with painting and all of
that with the hospital. They also trained the pharmacy head and different other

managers in order to use, to improve system within the facility. So if you go to Charlotte I am sure he CEO and other people can explain to you the greatest of details. So that is what McKenzie did.

ADV. LILLA CROUSE: Do you pay McKenzie for their services?

5**MS. QEDANI MAHLANGU:** McKenzie gave us their money that was meant for CSI, I think. That is what it is called, but they call it the equity equivalent program.

ADV. LILLA CROUSE: Can I just ask did you pay them for any services?

MS. QEDANI MAHLANGU: Well, for this service they were not paid for anything.

ADV. LILLA CROUSE: Did you pay them for any services Ms Mahlangu?

10**MS. QEDANI MAHLANGU:** At this moment ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: In other words for any other services.

MS. QEDANI MAHLANGU: I do not know. McKenzie, I just have to get information.

ARBITRATOR JUSTICE MOSENEKE: Ja. Were they contracted to the
15department in their consulting business?

MS. QEDANI MAHLANGU: They are contracted by many government departments.

ARBITRATOR JUSTICE MOSENEKE: No, Department of Health. Did they have a contract with the Department of Health?

MS. QEDANI MAHLANGU: I have to get the details Justice. This program I know about is this specific program that had to do with CSI. The actual program, and I know they facilitated one of our ... [inaudible] plan and I do not know whether it was pro bono or what, and I think ja. That is what I remember. The rest, I think the details can be found into that, but Justice through you, I do not understand the relevance of this question to what is at hand.

ARBITRATOR JUSTICE MOSENEKE: It is in the presentation, and Counsel is seeking clarification about the role and presence of McKenzie. It is a fair question. It is part of the presentation you thought we should look at and you placed it before us.

MS. QEDANI MAHLANGU: And I thought I would, if I was allowed to explain the presentation in the details I would have thought it would have helped to clarify a lot of issues which they are grey air at the moment.

ARBITRATOR JUSTICE MOSENEKE: Counsel?

15 **ADV. LILLA CROUSE:** Thank you Justice. I am moving on. Can I please take you to ELAH84.

MS. QEDANI MAHLANGU: Okay. I have got it.

ADV. LILLA CROUSE: Do you have it in front of you?

MS. QEDANI MAHLANGU: Yes, I do.

20 **ADV. LILLA CROUSE:** We have referred to it before. It is the Minister of Health's address in parliament. You have that?

MS. QEDANI MAHLANGU: Yes, I do.

ADV. LILLA CROUSE: Line 13.

MS. QEDANI MAHLANGU: 30, ja.

ADV. LILLA CROUSE: No, 13.

5**MS. QEDANI MAHLANGU:** Oh, sorry.

ADV. LILLA CROUSE: Says, he regards this as one of the:

“It constitutes one of the periods of darkness in our history of our country and I dare say it was also a moment of madness in the provincial health department.”

Do you have that?

10**MS. QEDANI MAHLANGU:** I do not see the exact page.

ADV. LILLA CROUSE: First page madam.

MS. QEDANI MAHLANGU: First page, ja.

ADV. LILLA CROUSE: Line 13.

ARBITRATOR JUSTICE MOSENEKE: And this is ELAH84 Counsel?

15**ADV. LILLA CROUSE:** That is ELAH84.

ARBITRATOR JUSTICE MOSENEKE: Ja.

ADV. LILLA CROUSE: Do you see that?

MS. QEDANI MAHLANGU: What does the paragraph start with?

ADV. LILLA CROUSE: Madam, do you see the numbering on the left hand side?

MS. QEDANI MAHLANGU: There is 5, 10, 15.

ADV. LILLA CROUSE: Yes. Now between 10 and 15, if you just count your ...
[interjects]

MS. QEDANI MAHLANGU: Oh ja, okay.

5**ADV. LILLA CROUSE:** You will get to line 13.

MS. QEDANI MAHLANGU: Ja, I can see that now.

ADV. LILLA CROUSE: Okay. Now do you agree with him that it is a period of
darkness in our country?

MS. QEDANI MAHLANGU: I said in my speech ... [interjects]

10**ADV. LILLA CROUSE:** Just yes or no madam. That would be sufficient.

MS. QEDANI MAHLANGU: Yes, I agree about the period of darkness.

ADV. LILLA CROUSE: Thank you.

MS. QEDANI MAHLANGU: And that ... [interjects]

ADV. LILLA CROUSE: And do you agree that it was a moment of madness ...
15[interjects]

MS. QEDANI MAHLANGU: Well, the choice of words is the Minister's choice, so I
will not be able to interpret them.

ADV. LILLA CROUSE: No, but you have interpreted the previous one. So let us,
do you agree with him it was a moment of madness?

MS. QEDANI MAHLANGU: I accept that the period was regrettable and most unfortunate and I think you must refer to what I had said, and I think it is incorrect you want me to interpret and to try and say what other people have said, because people choose words for certain things and the language I use and someone else use to describe the same thing is different.

ADV. LILLA CROUSE: Well, I am going to argue at the end of the day that this was indeed irrational, unreasonable and a moment of madness. Would you want to say anything to that?

MS. QEDANI MAHLANGU: I said Counsel, things went horribly wrong and I stand by that.

ADV. LILLA CROUSE: Can you please go to line 18.

MS. QEDANI MAHLANGU: Hm. Ja, I am here.

ADV. LILLA CROUSE: Thank you. Can you read line 18?

MS. QEDANI MAHLANGU: *“The idea behind the Gauteng mental health marathon project as it came to be known was to save money adds another dimension to our disappointment and pain.”*

ADV. LILLA CROUSE: Yes. He says it was not about money.

MS. QEDANI MAHLANGU: Well, I would not, I do not know why would the Minister make this statement, because the budget of provinces are determined by provincial treasuries and the pressures that provinces are faced with on daily basis, those are discussed at a provincial level.

ADV. LILLA CROUSE: Yes.

MS. QEDANI MAHLANGU: And from time to time national will have conditional grounds for specific programs. The Department of Health without any shadow of doubt I can take you to slides that looks at accrual.

5**ADV. LILLA CROUSE:** Let us just concentrate to finish today. So what you are saying he is wrong about budget reconstrains?

MS. QEDANI MAHLANGU: Yes, we had budget constraints.

ADV. LILLA CROUSE: Thank you, and that is why you said earlier yesterday in your evidence, you robbed Peter to pay Paul.

10**MS. QEDANI MAHLANGU:** Yes, I was using that as a phrase that sometimes you take this money from this program, you use it in this and vice versa, and that happens throughout the year.

ADV. LILLA CROUSE: Yes, and I am going to argue that this robbing Peter to pay Paul, shows your attitude in prejudicing the most vulnerable in our society.

15**MS. QEDANI MAHLANGU:** That is inaccurate Counsel. I disagree with you.

ADV. LILLA CROUSE: And you knew they were ... [inaudible], was that not so when you made the decision?

MS. QEDANI MAHLANGU: At all material times, Justice let me come back to this. The reason why I read the responses signed and written and signed by the
20HOD and Dr Manamela to the families, at the time I was made to believe that everything is well, and I had no reason to believe anything otherwise. So, and it will

be incorrect to continue to attribute the fact that I knew this, I knew that when I did not know at all material times when I am giving information and I have given evidence in this arbitration to demonstrate the fact that I have always been told this is this, and this is the truth and beyond that I really cannot say anything else.

5 **ARBITRATOR JUSTICE MOSENEKE:** Let me explain where we are. We are at the stage where Counsel having cross-examined at length is putting to you as lawyers would say, is stating to you what she is going to argue. She is going to argue that you knew, that you were dishonest, that you it was not about money, that it is unclear what it was about, that it was irrational, it was unreasonable, and that is
10 what she is doing now. In other words she is putting to you the conclusions that she will be urging me to make.

MS. QEDANI MAHLANGU: Okay.

ARBITRATOR JUSTICE MOSENEKE: Ultimately. So listen to those carefully. If you do not agree, you just tell her you do not agree, but that is really what is
15 happening now. So if you listen to those carefully.

ADV. LILLA CROUSE: Thank you Justice, and I am going to argue that you made this decision in the hope that these poor vulnerable people will not have society caring for them.

MS. QEDANI MAHLANGU: That is absolutely incorrect.

20 **ADV. LILLA CROUSE:** And you were wrong in that ... [interjects]

MS. QEDANI MAHLANGU: And the facts that I have presented before this arbitration committee suggest that at all material times I was assured that things were okay.

ADV. LILLA CROUSE: Yes, except when you took the decision. Can I just please go to ELAH127.

ARBITRATOR JUSTICE MOSENEKE: Just before you walk away from ELAH84 Counsel, look at line 19 former MEC. Can you see line 19 to line 21? Those are strong words, are they not? The Minister says:

“I wish to put it on record that at no stage did it emerge directly or indirectly implicitly or explicitly that the Department of Health nationally or in any province has run out of money to take care of mentally ill patients.”

That is the view of Dr Motswahedi talking to parliament and obviously the nation after reviewing whatever facts were available to him. What do you say to that? What is your response?

MS. QEDANI MAHLANGU: Justice, I will continue to say with the facts presented before me, probably we can call the CFO health, former CFO to tell you about the budget constrain that the Department of Health has. Every single year, and I remember last year or 2015 or 2016 we will have meetings with service providers to say to them sorry we do not have money. We have run out of money. We will only pay you in the beginning of the financial year.

ARBITRATOR JUSTICE MOSENEKE: Now the national Minister tells parliament, tells the nation that this was not about money. He says at a national level, at your

level, the province, there was never a shortage of money to look after mentally ill patients. That is his position.

MS. QEDANI MAHLANGU: Justice, and again I would like to repeat and if at all possible, I think probably you should give the former CFO of health an opportunity to explain the issues of the budget constraints, because the budget constraints are real and the Minister if probably he does not know about it, but I know the CFO of Gauteng would have been engaging with that CFO of national at any given point of time. We are short of money. Can you please help us to squeeze this and this and that, for this program from that program, across the board.

10 **ARBITRATOR JUSTICE MOSENEKE:** You see, I thought the Minister is saying maybe money is always ... [inaudible], money is always limited.

MS. QEDANI MAHLANGU: Yes.

ARBITRATOR JUSTICE MOSENEKE: But he says there never was a time where it was so limited that there was no money to look after mentally ill patients. I
15 thought that is what he is saying.

MS. QEDANI MAHLANGU: But Justice, the budget I presented to you early, the slide I presented to you early, which demonstrated the previous financial year, this is how much you budget for and then you do overspending. March we budget ... [inaudible] overspending. So I really do not know how else to explain, and I cannot,
20 I am not in the Minister's shoes and I do not know what propelled him to make such a statement, honestly.

ARBITRATOR JUSTICE MOSENEKE: But do you say there was no money to look after mental health patients? Is that your position or you had hoped to save money going into the future? You know those things are different.

MS. QEDANI MAHLANGU: But Justice, the issue and the reason why I brought 5the documents with the budget to show the history where the budget constrain came from, that you budget for this and then the expenditure is that. You budget for this and the expenditure is that. Right.

ARBITRATOR JUSTICE MOSENEKE: So you reject the assessment of Dr Motswahedi?

10**MS. QEDANI MAHLANGU:** Well, I have no comment on it Justice.

ARBITRATOR JUSTICE MOSENEKE: Okay. Do you agree with it? Certainly you do not. Obviously ... [interjects]

MS. QEDANI MAHLANGU: I do not have comments on that particular point Justice.

15**ARBITRATOR JUSTICE MOSENEKE:** You see, why the Minister may be correct, you showed us a slide that showed that your department had budgeted nearly 190 million.

MS. QEDANI MAHLANGU: For 16/17 yes.

ARBITRATOR JUSTICE MOSENEKE: Yes, for NGO's. So it was not a question 20of there being no money, was it? It was a question of is it enough for your dreams,

everything that you might want to do, but was there ever a time when there was no money for mentally ill patients?

MS. QEDANI MAHLANGU: But Justice, the budget of the department it is a very ... [interjects]

5**ARBITRATOR JUSTICE MOSENEKE:** Just think again. You might want to answer again at some point. From your own evidence and from the Minister's assessment, it appears there was money, and he says, he told all of us there was no shortage of money. Let us just test that finally. If immediately hell broke loose, the patients were taken back to institutions, not so?

10**MS. QEDANI MAHLANGU:** To government institutions?

ARBITRATOR JUSTICE MOSENEKE: Ja, the patients who were placed from Life Esidimeni, were taken back to an institutionalised environment once the NGO's had been shut down, is it not so?

MS. QEDANI MAHLANGU: I think when I was there that the NGO's were shut,
15yes that is what happened, but post I left I do not know what has happened.

ARBITRATOR JUSTICE MOSENEKE: All of those patients from the evidence we had, nearly all went back to institutions. Were taken back and the government seemingly is paying a rate higher that we paid before they were moved.

MS. QEDANI MAHLANGU: Justice, I would not make an opinion on that or
20comment, because I am no longer in the system.

ARBITRATOR JUSTICE MOSENEKE: Again it appeared that there was money to pay for these displaced patient, because they were paid for and are still being paid for on the evidence that is before me.

MS. QEDANI MAHLANGU: Okay Justice, maybe the new MEC can deal with the 5issues.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

ADV. LILLA CROUSE: Thank you Justice, if I could just Ms Mahlangu, we are not denying that you have got budgetary constraints. What the Minister is saying and what I am trying to put to you is if you have budgetary constraints you do not go to 10the most vulnerable and kill them all. You look at your litigation costs. You look at Price Waterhouse Cooper's costs. You look at McKenzie's costs. You look at the study program that you have implemented for senior managers overseas. Those are the things you look at. You look at increases. You look at petrol. You do not look at mental health care users and take away their livelihood. What do you say to 15that?

MS. QEDANI MAHLANGU: Justice, in Annexure B and I think it is also reflected in my chief evidence, the items that would have been looked at from a cost saving point of view, and I think there are about 14 of them. Let me just find them and then re-state them again for record. The Alexander Clinic which was running at the 20higher cost above those of other clinics in the province. The Selby Park and I have explained that over and over again. Life Esidimeni cost associated and related to

Telkom. The Vodacom. Security services. Long incapacity leave for 12 months and onwards.

ADV. LILLA CROUSE: Can I just interrupt you Ms Mahlangu?

MS. QEDANI MAHLANGU: May I complete Counsel please?

5**ADV. LILLA CROUSE**: We have all read that, every time.

MS. QEDANI MAHLANGU: But Counsel, you keep on ... [interjects]

ADV. LILLA CROUSE: But there is a huge difference between cutting telephone costs and security costs and mental health care users. Do you agree with me?

MS. QEDANI MAHLANGU: But what I am trying to explain, that there are a lot
10of ... [inaudible] of things that were looked into.

ADV. LILLA CROUSE: Can I ... [interjects]

MS. QEDANI MAHLANGU: And some of them related, Selby was about patients
were involved in that.

ADV. LILLA CROUSE: Can I take you to ... [interjects]

15**ARBITRATOR JUSTICE MOSENEKE**: We have to try and have one person
talking at a time. It is just vital. Counsel, ask the question, formulate it and the
witness must be given an opportunity to answer.

ADV. LILLA CROUSE: Thank you Justice. Could I please ask you to go to
ELAH113.

ARBITRATOR JUSTICE MOSENEKE: But just before you go there. Were you done with the list of things that you say you were saving on?

MS. QEDANI MAHLANGU: No, I was not done Justice.

ARBITRATOR JUSTICE MOSENEKE: Okay, please finish.

5**MS. QEDANI MAHLANGU:** So I was talking about long incapacity leave for 12 months onwards. ... [inaudible] laboratory. Laundry services. Road Accident Fund and stationary. So these are the items we have identified and when you look at these issue in total, all of them would have resulted into an amount of about plus minus 700 million rands.

10**ARBITRATOR JUSTICE MOSENEKE:** Now Counsel says even so, listen to the question. The question is when you go cost cutting, you do not start by targeting the most vulnerable. That is her point, and I think that could have been answered quite crisply. Then you can say no, I did not target the vulnerable or I did, but I know you targeted at least three clinics or hospitals. So she is, her argument is you
15go to the biggies, not the smallies. You do not go ... [interjects]

MS. QEDANI MAHLANGU: But Justice, it was not a targeting and also it was not deliberately. As I said the outcome of the decision is regrettable. Yet, and there was no intention to deliberately go and say the vulnerable people we are going to do this and this and that. That was not the intention and I think that is what I am
20trying to put across.

ARBITRATOR JUSTICE MOSENEKE: Yes. I understand matter of intention, but she is saying objectively seen what would be required ordinarily would be to look at

what would boarder on expenses that you could live on, and she is saying the overseas trips, the cars, the all of those things, but the patients must be last in the cost cutting. That is her argument. Do you find fault in the argument?

MS. QEDANI MAHLANGU: Let me explain. The Lancaster program in particular, 5people did not study overseas. They were studying here through video conferencing and all of that. So, and this is about building capacity for Managers in the Department of Health to be able to manage better. Learning from the NSH, and I do not think there is anything wrong in capacitating your Managers, because it is part and parcel of wanting to improve and deliver the best health care. Secondly 10Justice, I continue to say it was not intentional to have the wrong implementation of this program. It was never the intention. How I wish that I had foresight to see what was going to happen, because I would have prevented that.

ARBITRATOR JUSTICE MOSENEKE: Ja, but you will not follow the principle that when the chips are down, when I was young I always wondered why adults ate all 15the meat. [Vernacular 00:48:47], and the kids get the smallest parts of the meat. I am talking about an anecdote that happens often in some families. The adults eat all the, the thigh, the drumstick and the thighs and the kids get the smallest pieces of food and meat, and I am just reminding MEC would know this, because we both come from the township. The men eat all the meat and thereafter the children sit 20there, picking the crumbs. It is the same principle. When you want to save on costs in your setting, Counsel suggest that you do not go to mentally ill patients. You go and save somewhere else. So the vulnerable you identify it is the children, as the

one who must get the food and the men must go out there and eat the smallest bits.
Not the biggest pieces of meat.

ADV. LILLA CROUSE: Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

5**ADV. LILLA CROUSE**: Ms Mahlangu, will you please go to ELAH113.

MS. QEDANI MAHLANGU: Yes, I am there.

ADV. LILLA CROUSE: It is a speech by the Gauteng MEC for finance, Barbara Creesy, on the occasion of 2017/2018 budget presentation in the legislature on 7 March 2017. Do you agree with me that that is in the heading?

10**MS. QEDANI MAHLANGU**: Ja, that is what is written in the statement.

ADV. LILLA CROUSE: Thank you. Will you please go to page 8 thereof? The page number is at the bottom of the page in the middle. Are you at page 8? Ms Mahlangu, are you at page 8?

MS. QEDANI MAHLANGU: Yes, I am. I thought you, I am waiting for you.

15**ADV. LILLA CROUSE**: Thank you. The third paragraph from the top. Could you read that for us please?

MS. QEDANI MAHLANGU: *“It has never been provincial government policy to save costs by cutting back on services to our citizens. In fact honourable members, every effort has been made to protect the budgets of health, education and social
20development. A simple study where additional resources have been allocated over the last two and a half years will support this argument.”*

ADV. LILLA CROUSE: So what she says it has never been the policy to cut services to citizens.

MS. QEDANI MAHLANGU: Well, the framework I have given. My answer Justice is as follows, and I hope that we are not going to have a prolonged question and answer here.

ARBITRATOR JUSTICE MOSENEKE: Hm.

MS. QEDANI MAHLANGU: The framework I have given in Annexure A comes from treasury and the follow up on cost containment comes from treasury. If you look at the following year, which will be 15/16, I do not know where that presentation is. It seems not to be in this. The cost containment that we would have presented to you, and this presentation affected in the budget. So and I am not sure exactly what would be the, in that program for instance in 15/16 you will see the savings reflected in the budget, this is what is the case. So I would want to leave my comments at that.

15 **ARBITRATOR JUSTICE MOSENEKE:** Ja, but I think it is a head on statement of that decision you make or its rationality and its consistency with policy. In the midst of all this trouble, she comes up and says no, no, no never was promises policy to save on patients and healthcare.

MS. QEDANI MAHLANGU: Justice, I believe that the truth will set me free. What is being discussed in boardroom and what people say in public statement are two different things, and I will not come here and take an oath and then say to you that

this is a budget presentation when in fact that meeting did not take place, and it is absolutely important that principle to be understood.

ARBITRATOR JUSTICE MOSENEKE: Was Ms Creesy at that meeting?

MS. QEDANI MAHLANGU: Yes, she was at that meeting and we can even ask the CFO, you can ask other Managers, and what ... [inaudible] God probably helped me through this process. I never, in those meeting I took senior management and health who were with me in going to those presentations. If need be to test my statement, yes you can ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Did she know that you were going to shut down Life Esidimeni?

MS. QEDANI MAHLANGU: Yes, she knew. She knew all of that. Including when we were discussing the Selby contract. To be exact, on the 13th of March we had a meeting with the Premier with the Selby Park Clinic. The accession that the leadership of the province did not know about what the Department of Health is doing, it is absolutely incorrect and I want to repeat what we say and discuss in boardroom and the statements we make in public, it is important to be consistent with that, and again I want to repeat lastly the truth will set me free.

ADV. LILLA CROUSE: Ms Mahlangu, are you saying that when you make public statements politicians do not say the truth?

MS. QEDANI MAHLANGU: I did not say that.

ADV. LILLA CROUSE: Oh.

MS. QEDANI MAHLANGU: I just said that the truth will set me free.

ADV. LILLA CROUSE: No, no before you said the truth will set you free. Are you saying that when you make a public statement, that it might not be the truth?

MS. QEDANI MAHLANGU: I am referring to a particular instance here, and I say
5it again. The truth will set me free.

ADV. LILLA CROUSE: Okay, so you ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Ja. Counsel, we should not spend too
much time on that hey. Maybe we understand the context, maybe we should move
on please.

10**ADV. LILLA CROUSE:** Thank you Justice. It is very relevant.

ARBITRATOR JUSTICE MOSENEKE: It is the response of the witness, that is
her attitude and that is fine. It is not a fact that will get us anywhere now. Okay.

ADV. LILLA CROUSE: Ms Mahlangu, will you please go to ELAH127.

MS. QEDANI MAHLANGU: I think it is here. This one?

15**ADV. LILLA CROUSE:** Do you have it in front of you?

MS. QEDANI MAHLANGU: Yes, I do.

ADV. LILLA CROUSE: That is a press statement by yourself, dated 1 February
2017. Is that right?

MS. QEDANI MAHLANGU: Yes, it is.

20**ADV. LILLA CROUSE:** I am sorry, I cannot hear you?

MS. QEDANI MAHLANGU: I said yes, it is.

ADV. LILLA CROUSE: Yes. Are there any untruths in this statement?

MS. QEDANI MAHLANGU: The statement I read and it is written by me, so I am not sure what you mean by untruths.

5**ADV. LILLA CROUSE:** Sorry. When you wrote this statement it was for the public, so you did not want to have any untruths in there. Do you agree?

MS. QEDANI MAHLANGU: Will you take me to the section that suggest that, read the section that suggest that I am not telling the truth?

ADV. LILLA CROUSE: Ms Mahlangu, you are running up ahead. I am asking you
10when you wrote this statement you probably did not want to put untruths in, as you suggested earlier in your evidence.

MS. QEDANI MAHLANGU: Justice, I am not sure. Can Counsel put the exact point she is making or reference paragraphs so that I can answer?

ARBITRATOR JUSTICE MOSENEKE: Ja. Let us put the question Counsel
15please.

ADV. LILLA CROUSE: Thank you. I want to put it to you there is numerous inaccurate and untruthful statements in your letter.

MS. QEDANI MAHLANGU: Okay.

ADV. LILLA CROUSE: Would you agree with that?

20**MS. QEDANI MAHLANGU:** Can you please point me that exactly the statement?

ADV. LILLA CROUSE: Yes, I will do that. Did you plan to put any untruths in your statement?

MS. QEDANI MAHLANGU: Do you mind to put the inconsistencies ... [interjects]

ADV. LILLA CROUSE: Madam, please answer my question. You said earlier if you make a public statement you are not necessarily telling the truth.

MS. QEDANI MAHLANGU: No.

ADV. LILLA CROUSE: So I just want to know when you made this statement, were you planning to tell the truth in this statement?

MS. QEDANI MAHLANGU: Justice, through you.

10 **ARBITRATOR JUSTICE MOSENEKE:** Ja.

MS. QEDANI MAHLANGU: I thought I will explain the context of that statement and I think Counsel is taking it too far and I do not know if it ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: And I think specific untruths should be pointed out to you.

15 **MS. QEDANI MAHLANGU:** Exactly and that is why I am asking.

ARBITRATOR JUSTICE MOSENEKE: So you wait, okay. Counsel, may I plead with you to point out the untruths?

ADV. LILLA CROUSE: I will do so Justice.

ARBITRATOR JUSTICE MOSENEKE: You and me understand how cross-examination goes ordinarily, but here we are and we need to make some progress.

Will you put the untruths that you perceive and the witness can respond to whether they are untruths or not.

ADV. LILLA CROUSE: Line 3 of the first paragraph. It says:

“I have been in public service without blemish for the past 20 years.”

Is that true?

MS. QEDANI MAHLANGU: Yes, it is true.

ADV. LILLA CROUSE: Was your 20 years without blemish?

MS. QEDANI MAHLANGU: I do not know, maybe you can point to me the blemishes you know.

10**ADV. LILLA CROUSE**: Ja. That the SCA not very seriously spoke about your highhanded attitude with the, with the gambling board?

MS. QEDANI MAHLANGU: I do not see the relevance of that Justice, honestly.

ADV. LILLA CROUSE: Well, that is a blemish, is that not so?

ARBITRATOR JUSTICE MOSENEKE: We were there I thought Counsel
15yesterday. Your colleague, Advocate Hassim wanted to go there. Let us just get the principles again. Where cross-examination is directed at reputation or character, you ordinarily or let me put it the other way around. Ordinarily you would not be entitled to adduce same fact evidence. You would not say you kicked your dog a week ago, therefore this is proof that you kicked your dog today. Ordinarily it
20is not permissible to do that. You have to lead direct evidence that you kicked the dog today. In other words you cannot use something of the past to say it must be

so now. You abused your wife two years ago, therefore you abused your wife now. So decisions of the court then if they are used to impugn credit, is something that we all have to be very careful and cautious about. I know courts now have very wide powers in admitting evidence, but if it is used only for that purpose, I would certainly be very reluctant to allow you to do that Counsel.

ADV. LILLA CROUSE: Thank you Justice. Justice, yesterday ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Some court found that you were bully and therefore you are bully.

ADV. LILLA CROUSE: There are two principles that I want to raise.

10 **ARBITRATOR JUSTICE MOSENEKE**: Yes.

ADV. LILLA CROUSE: The one is that, the one that my learned friend raised yesterday and the court made a ruling. Similar fact the court is not going to allow this, but this goes further than similar fact. This goes towards character, and character is different than similar fact. Character is if you put evidence of good character before a tribunal you are entitled, you open yourself up to show that you are not truthful, and this witness has done so, so many times in this tribunal. So I would submit that in so far as character is concerned, she has opened herself up to this, and therefore it would be allowed to cross-examine her on it. I have made the point, I do not want to take it much further than I have made, but I would say it is relevant and it is, it should be allowed in law and it is not similar fact evidence.

ARBITRATOR JUSTICE MOSENEKE: I am very open minded to the submission, I hear it. One ought to be persuaded that it is not similar fact evidence. You

impugned character only when the party uses character to defend himself or herself.

ADV. LILLA CROUSE: She has done so in these hearings.

ARBITRATOR JUSTICE MOSENEKE: That is one of the exceptions to similar fact evidence. Now and there must be some clarity between the attack you raise on character and the defence that was raised on character. Is it not so? There must be a relationship. You cannot say you said two days ago you swim well, and say but that in fact, you are not a good electrician because you are not a good swimmer. So there must be a rational relationship between the set of facts that one was to use. I am just talking just straight law. So if you persuade me that there is that relationship, then it may be put in, but you say other people have said you are bad and therefore you are bad, that is not, usually ordinarily it is not sufficient.

ADV. LILLA CROUSE: This witness has over and over that she is the perfect politician, not no blame to lay. She is perfectly honest and the truth will set her free. She will not lie in any place. She has got an open door policy. She is kind, she is I have went through it earlier today.

ARBITRATOR JUSTICE MOSENEKE: And would that finding be within the same parameters, it would be about conduct within public office?

ADV. LILLA CROUSE: I would submit so, as the MEC and I would submit further that a public office bearer should be held higher accountable than others.

ARBITRATOR JUSTICE MOSENEKE: And once we go beyond that hurdle, what would be the relevance of past impugned character in the inquiry here? Let us assume your argument is correct.

ADV. LILLA CROUSE: We are testing ... [interjects]

5**ARBITRATOR JUSTICE MOSENEKE:** How would that help us in finding closure and in finding appropriate redress?

ADV. LILLA CROUSE: At the end of this day this court is going to make a credibility finding. I am testing the credibility of this witness, and I submit that in testing the credibility I am allowed in terms of her trying to put the good character
10before court, to show that this is not completely true.

ARBITRATOR JUSTICE MOSENEKE: Would you describe the circumstances briefly to allow me to understand?

ADV. LILLA CROUSE: The circumstances of?

ARBITRATOR JUSTICE MOSENEKE: That you are about to embark on?

15**ADV. LILLA CROUSE:** I am sort of finished already embarked, I am finished with what I wanted to do. I just wanted to say this is just not true. She has not been unblemished for 20 years. I can put the facts of the gambling board before the court if the court wants that.

ARBITRATOR JUSTICE MOSENEKE: Counsel seeks to put to you that whilst
20you say that you have had an unblemished term as a political office bearer, there is

a finding in the past which suggest differently. Before we get to the details, is there anything you want to say about that?

MS. QEDANI MAHLANGU: I do not know Justice ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: I do not know what the relevance is yet, but we are at the initial stage.

MS. QEDANI MAHLANGU: But I think ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: The hearing that involved your role in relation to the gambling board there was criticism levelled against your character.

ADV. PATRICK NGUTSHANA: Justice.

10**ARBITRATOR JUSTICE MOSENEKE:** I am listening Counsel.

ADV. PATRICK NGUTSHANA: Yes, if I may just be allowed to intervene.

ARBITRATOR JUSTICE MOSENEKE: Yes, you are allowed.

ADV. PATRICK NGUTSHANA: This matter was raised yesterday, and a ruling on the issue of relevance has been made that such questions cannot be posed to the witness, and they are yet repeated in these proceedings. I am mindful of what the Justice has said about saving time. The core issue as the Justice has said, it is about the issue of redress and closure. It is well on record that the merits have been considered and this is a matter which is totally outside the issues before these proceedings, and I beg your intervention that this line of questioning should not be repeated. Thank you.

ARBITRATOR JUSTICE MOSENEKE: Thank you. Is there any other Counsel who wants to be heard on the same issue? It is a straight legal argument. It is about similar fact evidence and about relevance. Those are the issues. Those are not facts. Whether in accordance with the law I ought to permit this line of cross-examination. Is there anybody who wants to express amongst Counsel on the issue?

ADV. LILLA CROUSE: Justice, I just want to put on record that I have gone as far as I want to go. If you want me to put the facts of the matter on record, I will gladly do so.

10 **ARBITRATOR JUSTICE MOSENEKE:** No, I will make no ruling then. If you are done, we move on. We move straight on. I think I will persist in the ruling I made yesterday, but if anything I think we should proceed.

ADV. LILLA CROUSE: The only thing that I am putting to you, is that this is not completely true that you have been unblemished.

15 **MS. QEDANI MAHLANGU:** Am I expected to answer Justice?

ARBITRATOR JUSTICE MOSENEKE: Well, lawyer has put it to you. You may.

ADV. LILLA CROUSE: You must.

ARBITRATOR JUSTICE MOSENEKE: You may say yes or no.

MS. QEDANI MAHLANGU: I do not agree with Counsel.

20 **ADV. LILLA CROUSE:** If we can go to the third paragraph from the top, do you see to this end?

MS. QEDANI MAHLANGU: Which document?

ADV. LILLA CROUSE: Third paragraph, still on ELAH127 madam.

MS. QEDANI MAHLANGU: My resignation letter?

ADV. LILLA CROUSE: Yes.

5**MS. QEDANI MAHLANGU:** Okay.

ADV. LILLA CROUSE: Do you see that?

MS. QEDANI MAHLANGU: Paragraph 3 starts for the record?

ADV. LILLA CROUSE: Yes, in the middle of that paragraph to that end, do you see that?

10**MS. QEDANI MAHLANGU:** *“To that end, I contacted the Minister of Health.”*

Ja.

ADV. LILLA CROUSE: It says you contacted the Minister of Health requesting him to appoint the health Ombud. Is that completely true?

MS. QEDANI MAHLANGU: But I have said that in my submission and if I would
15like to point you back to that.

ADV. LILLA CROUSE: No, you said you started the process.

MS. QEDANI MAHLANGU: I started the process and I told you that, I indicated to you Justice that when I asked the Ombud’s person what was his response, and thereafter I met with the Minister and he indeed he said he will support me, and
20there is even evidence of the sms’s I submitted. That is the reason to demonstrate

all honesty on my part, what is it that I have done, and you can see the trail of conversation between me and the Ombud in that regard.

ADV. LILLA CROUSE: Yes. So you asked the Ombud.

MS. QEDANI MAHLANGU: Yes, I called him.

5**ADV. LILLA CROUSE**: Not the Minister of Health.

MS. QEDANI MAHLANGU: I called him in the morning, I spoke to the Ombud first.

ADV. LILLA CROUSE: So this is not completely true, because you started the process, not the Minister of Health.

10**MS. QEDANI MAHLANGU**: Justice, I thought I had put those issues, I had laid them to rest yesterday.

ARBITRATOR JUSTICE MOSENEKE: ... [inaudible] cross-purposes, you know Ms Mahlangu.

MS. QEDANI MAHLANGU: Pardon?

15**ARBITRATOR JUSTICE MOSENEKE**: Who may instruct the Ombud to initiate an investigation?

MS. QEDANI MAHLANGU: I think the ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: What does the law require? Who may do so?

MS. QEDANI MAHLANGU: I do not, I cannot remember exactly the section, but the ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: You see, you may have written to the Ombud, but the Ombud's formal brief appears in his report. He said I was formally 5in terms of the provisions of the act required by the Minister to investigate.

MS. QEDANI MAHLANGU: But ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: So you may be talking of an informal letter to the Ombud. The Minister says he lawfully initiated the investigation.

MS. QEDANI MAHLANGU: But after ... [interjects]

10**ARBITRATOR JUSTICE MOSENEKE:** So there may be no conflict. You may have written, but the Minister has the power and did ask formally and that is what happened.

MS. QEDANI MAHLANGU: But I asked the Minister to convince the Ombud's person to assist us with the investigation.

15**ARBITRATOR JUSTICE MOSENEKE:** That may be so, but you did not instruct the Ombud to start the investigation, did you? As this thing from writing to the Ombud, what is the procedure for initiating an investigation by the Ombud?

MS. QEDANI MAHLANGU: I did not check the procedure Justice.

ARBITRATOR JUSTICE MOSENEKE: And you have the power to instruct the 20Ombud to do so?

MS. QEDANI MAHLANGU: But I thought anybody can ask the Ombud to investigate certain things in the respective institutions, the CEO's of hospital, things that they are concerned with related to that.

ARBITRATOR JUSTICE MOSENEKE: Ja, but let us spare all of us that. I mean I think it is, the Ombud says quite clearly in his report it is the Minister who gave the formal instruction. That is, other people may have wanted him to do so, it is another matter.

MS. QEDANI MAHLANGU: Counsel, let us leave it at that.

ARBITRATOR JUSTICE MOSENEKE: Ja.

10 **ADV. LILLA CROUSE:** Could I take you to paragraph 4 thereof. You say that the health Ombud has not found any culpability on your part. Is that completely true?

MS. QEDANI MAHLANGU: Yes, it is true.

ADV. LILLA CROUSE: He did not find you culpable at all?

MS. QEDANI MAHLANGU: Justice, may I, I beg your indulgence. May I refer
15 you back to Judge Nupe's ruling?

ADV. LILLA CROUSE: When you wrote this letter madam, Judge Nupe has not given a judgment yet. So I am not asking you about things afterwards. I am asking you on the 1st of February 2017 you have seen the Ombud's report. Did he make culpability findings against you?

20 **MS. QEDANI MAHLANGU:** No, he has not.

ADV. LILLA CROUSE: In other words did he find that you have done something wrong?

MS. QEDANI MAHLANGU: He has not.

ADV. LILLA CROUSE: That is your understanding?

5**MS. QEDANI MAHLANGU:** Yes, it is indeed my understanding. Correctly so.

ADV. LILLA CROUSE: So facts does no matter to you?

ARBITRATOR JUSTICE MOSENEKE: But should we, is it not an easy exercise. You look at the Ombud's report and you can see the findings the Ombud made about you Ms Mahlangu. Should we be spending any time on this? The Ombud
10made a series of findings that places culpability on your part.

MS. QEDANI MAHLANGU: May I be pointed to the exact page and section.

ARBITRATOR JUSTICE MOSENEKE: Of the report?

MS. QEDANI MAHLANGU: Yes, of there where the Ombud says so that we can have a discussion on it.

15**ARBITRATOR JUSTICE MOSENEKE:** Yes. I think it is ELAH1 or 2, what is it?

ADV. LILLA CROUSE: Can I take you to recommendation 2 on page 58? Is it 2?

MS. QEDANI MAHLANGU: Justice, may I please ask a question for clarity?

ARBITRATOR JUSTICE MOSENEKE: Yes madam.

MS. QEDANI MAHLANGU: And I do not know whether it is procedural.

ARBITRATOR JUSTICE MOSENEKE: Please do ask.

MS. QEDANI MAHLANGU: Bear with me with this. If, I am getting an impression and I was trying to suppress my suspicion, but I am getting an impression that I am here in the arbitration to present, and this is about my character more than anything else. Because I am not understanding what is going on. If this is about my character, I will like to recommend to you that I be allowed to have a lawyer, and consult properly because I am becoming uncomfortable that I am being asked questions that are getting into my character and previous activities are brought into the equation relating to my previous character. I am not sure what is going on
10Justice. Please assist me with my lack of understanding of law.

ARBITRATOR JUSTICE MOSENEKE: But you have heard the ruling I have made here in your presence, that your character should not be impugned. I think when you get to an arbitration, the law requires of you to answer questions.

ADV. LILLA CROUSE: Yes.

15**ARBITRATOR JUSTICE MOSENEKE:** And that is, and if any question goes to your character unfairly, I thought you were here and you heard me set out what the law requires in that regard. In other words, the law does not allow anybody to just free wheel impugning your character, and the circumstances are limited whether it may be done. So when we get to a point where you think there is an unfair attack
20on your character, let me know and I am here also to guide that that does not happen. But you will be asked questions about what happened. Unfortunately that always is part of an inquiry. Such as the present. I think the most important part of

the inquiry at least for closure, is how did all these people die? What were the decisions and who were the actors who led to these unfortunate circumstances. When you get to a point where you feel you are being unfairly treated, please I am here to make sure that does not happen to any witness. Witnesses unfortunately are obliged to answer questions. Counsel.

ADV. LILLA CROUSE: Thank you Justice. Recommendation 2 says that ...
[interjects]

MS. QEDANI MAHLANGU: Page, which page? Which page?

ADV. LILLA CROUSE: Page 58 I think.

10 **MS. QEDANI MAHLANGU:** Which section of the report?

ADV. LILLA CROUSE: It is the recommendations, page 58 file 1. Thanks.

MS. QEDANI MAHLANGU: 5A. In the document I have it has got, under section 5 it is the background on NGO's.

ADV. LILLA CROUSE: Page 58. 58.

15 **MS. QEDANI MAHLANGU:** Okay.

ADV. LILLA CROUSE: File 1, chapter 18.

ARBITRATOR JUSTICE MOSENEKE: The section with the heading recommendations.

MS. QEDANI MAHLANGU: Ja, I am going there Justice.

20 **ARBITRATOR JUSTICE MOSENEKE:** [Vernacular 01:15:48]

MS. QEDANI MAHLANGU: Yes, I am here.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

ADV. LILLA CROUSE: Thank you. Have you seen recommendation 2?

MS. QEDANI MAHLANGU: The Gauteng Premier.

5**ADV. LILLA CROUSE:** Yes, can you read that.

MS. QEDANI MAHLANGU: *“The Premier of Gauteng province must in the light of the findings here in consider the suitability of MEC Qedani Mahlangu to continue in her current role as MEC for health.”*

ADV. LILLA CROUSE: Yes. So you have done nothing wrong. You say the
10Ombud has found no culpability on your side, and yet he says your suitability must be looked at. So are you then completely honest when you say he has not found any culpability on your side?

MS. QEDANI MAHLANGU: I will need someone with legal understanding of what is the meaning of culpability, and what exactly this Ombud is saying, because that is
15not my understanding at all.

ADV. LILLA CROUSE: You see, it was the wording that you used in your letter.

MS. QEDANI MAHLANGU: Exactly, that is what I meant. So but I do not understand what is the relationship of what you are trying to say. This recommendation does not say anything of that. It just said my suitability, and I did
20not have to wait for the Premier Counsel, I chose to go.

ADV. LILLA CROUSE: Yes. Ms Mahlangu, the only thing that I am saying and we can go through the Ombud's report, but it is going to take a lot of time. The Ombud does not say you are blameless, the report. Even when he testified here he did not say you were blameless.

5**MS. QEDANI MAHLANGU:** Okay please, you can take me to the relevant section.

ADV. LILLA CROUSE: No, you should have read it before.

MS. QEDANI MAHLANGU: I have read the report.

ADV. LILLA CROUSE: I will argue that. I do not need your buy in to say yes, he 10said so. It is before all of us. We know it, it is there. Can you please turn the page of ELAH127, your resignation letter. Are you on page 2?

MS. QEDANI MAHLANGU: Yes.

ADV. LILLA CROUSE: You say:

"I wish to express my gratitude to the health professionals and managers in the 15department whom I have been privileged to work with."

Did you really feel that way when you wrote this letter?

MS. QEDANI MAHLANGU: The Department of Health has 67000 Employees. I enjoyed Justice through you, very good and cordial relationship with many, many professionals.

20**ADV. LILLA CROUSE:** Yes.

MS. QEDANI MAHLANGU: Professors, and many of them have become my personal friends.

ADV. LILLA CROUSE: And you regard it as a privilege to work with them.

MS. QEDANI MAHLANGU: Of course.

5**ADV. LILLA CROUSE:** And their professional advice at all material times you respected and accepted.

MS. QEDANI MAHLANGU: Yes, of course.

ADV. LILLA CROUSE: So nobody lied to you whatsoever in that department?

MS. QEDANI MAHLANGU: But Justice, the Department of Health through you
10has 67000 Employees. It cannot mean that in this statement I am not saying all, if I
said or used the word all, probably Counsel point will be correct.

ARBITRATOR JUSTICE MOSENEKE: You understand the point. In all fairness,
somebody who headed 67000 people is going away, will make some statement to
say bye, good-bye and thank you for everything. I think it might be taken in that
15context. The position evidence of the former MEC is the senior people lied to her.

ADV. LILLA CROUSE: Yes.

ARBITRATOR JUSTICE MOSENEKE: But she was still entitled to say goodbye to
the rest.

ADV. LILLA CROUSE: Yes. But she could have, the whole truth she could have
20excluded some.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

ADV. LILLA CROUSE: Can I just ask you Ms Mahlangu.

MS. QEDANI MAHLANGU: Yes.

ADV. LILLA CROUSE: You have at no stage made any disciplinary hearings
5 against any of the people that lied so terribly to you?

MS. QEDANI MAHLANGU: Can you please repeat the question Counsel?

ADV. LILLA CROUSE: Yes, sure. You at no stage initiated disciplinary hearing
against the people that has lied so terribly to you?

MS. QEDANI MAHLANGU: Through you Justice, I do not know how the
10 disciplinary hearings would have proceeded when there was an investigation
running, because we needed to wait for the investigation to be completed and then
start the procedures ... [interjects]

ADV. LILLA CROUSE: But why? You know these people had lied to you. You
found them out and you merrily work with them and another 50 people die.

15 **MS. QEDANI MAHLANGU:** But we needed to allow the Ombud to finish his
report to even consult with the same individual to provide as much information as
useful to the Ombud's person, and I think that is a fair point.

ADV. LILLA CROUSE: You see, in response to what the Ombud said in his initial
report to you, you said you do not like the recommendation that Dr Selobano and Dr
20 Manamela will be immediately placed on precautionary suspension because that
violates their rights.

MS. QEDANI MAHLANGU: In terms of the public service regulations Counsel.

ADV. LILLA CROUSE: Yes, so you do not mind. They can continue. They can continue to lie.

MS. QEDANI MAHLANGU: But that is not the point Counsel.

5**ADV. LILLA CROUSE:** You are still defending them.

MS. QEDANI MAHLANGU: No, I was raising a principle point.

ADV. LILLA CROUSE: Ja, but they were suspended.

MS. QEDANI MAHLANGU: Justice, because the in the public service you just do not suspend someone on the basis of hearsay or something. There must be a
10formal document that says yes, we find you guilty on this and that. After the report was submitted to the Premier, there was a process of formulating charges. I may not be describing the processes properly, but from what I understand that once a report is complete, the process of formulating charges is done, and only thereafter you serve someone with a charge sheet and say we are suspending you on the
15basis of the following, and that is how I understand the system to work, and again I may not be hundred percent accurate on this thing. Probably the state attorney may assist ... [inaudible]. So that is the principle point. I was not defending anybody.

ADV. LILLA CROUSE: So I thought that you would understand the difference
20between making a decision and the implementation thereof, seeing that you are the

MEC. He was making a recommendation, you guys had to implement it. You did not understand it that way. But let us move on.

MS. QEDANI MAHLANGU: But Counsel, maybe to say through you Justice. I said yesterday my decision to resign was taken much earlier than the time it was executed. It was disrupted by the passing on of my elder brother. So the important thing to say here that when the report was finally published, the action of the report and its finding, I knew that I will not be in the picture at the time. So the proceedings of taking the process forward and all of those things, were going to be taken over by somebody else, and I thought that principle I think I think it must be respected and again it is in line with the public service regulation act.

ADV. LILLA CROUSE: I am not sure which question you are now answering, but let me move on.

ARBITRATOR JUSTICE MOSENEKE: No, the witness says she knew that she was not going to state the cause in anticipation of the report and therefore somebody else, her successor would have to do the charging if any had to happen.

ADV. LILLA CROUSE: My question was why defend people that lie to you and say they cannot be placed on cautionary suspension. That was merely my question and it was not about anything else. Justice ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: It was not about charging anybody after the report had been out?

ADV. LILLA CROUSE: No.

ARBITRATOR JUSTICE MOSENEKE: Well if you want to proceed Counsel you can put it to the witness.

ADV. LILLA CROUSE: I am watchful of the time Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes.

5**ADV. LILLA CROUSE:** And I am trying to move on. I have to put it to you that the impression that I have gained in during the evidence and reading through all the documents, is that you are more worried about your political career than about the patients. What would your comment on that be?

MS. QEDANI MAHLANGU: May you please just guide me as to what gives you
10that impression so that I can answer you quickly?

ADV. LILLA CROUSE: Yes, I am of course going to guide you to that. I am just asking you was that a true reflection of what you thought at the time?

MS. QEDANI MAHLANGU: No, may you just guide me as to how do you come to that conclusion?

15**ADV. LILLA CROUSE:** You refuse to answer the question yet again. I will guide you. You on the 29th of January 2016 you were at Waverley. Is that right?

MS. QEDANI MAHLANGU: Yes.

ADV. LILLA CROUSE: And the families were there, and they had lots to say. Do you agree?

20**MS. QEDANI MAHLANGU:** Yes.

ADV. LILLA CROUSE: It was an emotionally charged time. Do you agree?

MS. QEDANI MAHLANGU: The meeting yes, the families raised concerns.

ADV. LILLA CROUSE: And you said to the families, and I quote from the record of Nompilo Nkosi, it is day 30 at page 56. You said:

5“*You had no mental ... [interjects]*”

MS. QEDANI MAHLANGU: Sorry, sorry. Can I get the ... [interjects]

ADV. LILLA CROUSE: No, you cannot. It is not printed, so I am just for the rest, I will read to you what she said.

MS. QEDANI MAHLANGU: No, but it is not correct Justice.

10**ARBITRATOR JUSTICE MOSENEKE:** Sorry, what was the request? What was the question and what was the request?

ADV. LILLA CROUSE: She want the transcribed evidence to be placed before her. We do not have that Justice.

ARBITRATOR JUSTICE MOSENEKE: Transcribed evidence of who, of Nompilo
15Nkosi?

ADV. LILLA CROUSE: And we are ethical people here, and if I misquote I am quite sure one of my colleagues will correct me.

ARBITRATOR JUSTICE MOSENEKE: Ja, the transcriptions will be read to you in a moment, but you also had a copy of it, not so, but you cannot remember it now,

and I do not expect you to. But Counsel, you want to read out the evidence and require a response from ... [interjects]

ADV. LILLA CROUSE: Yes.

ARBITRATOR JUSTICE MOSENEKE: Well, I think you should read it.

5**ADV. LILLA CROUSE**: Thank you.

ARBITRATOR JUSTICE MOSENEKE: And if you have any difficulties in following, please alert me.

MS. QEDANI MAHLANGU: Okay.

ADV. LILLA CROUSE: You said that:

10"*There were no mental illness in your bloodline.*"

You said these patients were the families responsibilities and they should take care of them. What do you say to that?

MS. QEDANI MAHLANGU: Justice, I disagree honestly. Because the meeting we discussed, the families raised concern and I did say I think I remember saying
15that yes indeed I do not have anyone in my family with mental health challenges, but the fact that the families must take responsibility, the context is Justice and I think it is important that when we are talking about people going over weekends to go to families and coming back, it is in that context to say yes, government is taking care of your loved ones. From time to time you have got to visit them. From time to
20time you have, they have got to come and visit you and the family. So the responsibility lies between yourself and government. That would have been what I

would have said in that meeting, but anything to the contrary it cannot be correct honestly.

ADV. LILLA CROUSE: Ms Nompilo also said that when you were asked what measures were in place to make sure that the mental health care users do not relapse, your answer was well, that is the families responsibility.

MS. QEDANI MAHLANGU: Excuse me, can you repeat that?

ADV. LILLA CROUSE: Yes, sure. Ms Nompilo Nkosi said that you were asked what measures were in place to make sure that the mental health care users did not relapse, and your answer was that the families must make sure that that does not happen.

MS. QEDANI MAHLANGU: No, but that is incorrect. It is incorrect Counsel.

ADV. LILLA CROUSE: They must talk to their ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: That is somebody's evidence, so you can say no, I did not say that and if you want to explain what you said you are also free to do so.

MS. QEDANI MAHLANGU: No, I did not say that Justice, but also to say that the relapse are the families responsibility, that will be inaccurate, because when someone relapses they have to be taken to the clinic or the hospital or something like that. So it cannot be correct that I would have said that. I do not agree.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV. LILLA CROUSE: You deny that.

MS. QEDANI MAHLANGU: Just maybe to say that I had an interaction with Nompilo and I am not sure whether it is the same Nompilo via email. About a march that they were planning to bring to the, march to the department. In that conversation I had with Nompilo Justice, she said we would like to come and bring a memorandum to the office, and I said to her why do we not have a meeting and discuss the issues, and she responded by saying no we want to march or I will come back to you another day. Some time. I am going to consult. She came back. She says no, we are going to march and I said to her, I cannot remember the date they were wanting to march to come to the office, and I said to her Nompilo, on that day I have a commitment outside of the office and it was not even in Johannesburg. I will not be in the office. Do you mind that we have a meeting prior so that whenever if you did want to continue to hand over the memorandum, at least we would have met. I would have gotten the sense of what the issues were. She said no, we are not going to meet, we are going to proceed with the march and then I said because I am not going to be available on that day, I think it was about four, five, six weeks in advance or something like that, I am not going to be available on that day. I think I said the HOD or Dr Lebete was going to receive the memorandum. This is the memorandum responses I have read to you Justice. Relating to all the issues that I was given assurances in responding to those memorandum. So I thought it is important to bring that angle, because I remembered Nompilo that I had an email conversation with her back and forth when she suggested that there is going to be a march. I said to her a march is important, but I would suggest that we have a meeting and have a conversation.

ARBITRATOR JUSTICE MOSENEKE: Yes. Clearly you do not agree with Nompilo's evidence. Counsel?

ADV. LILLA CROUSE: Thank you Justice. Your attitude also comes through fairly clearly in your responses to the questions put to you in the legislature. Can you remember saying after you thought there were 36 people dead, saying to one of your fellow members in the legislature, his grandstanding. You said it quite a few times.

MS. QEDANI MAHLANGU: No, I do not remember that.

ADV. LILLA CROUSE: Okay. I will take you to that.

10 **MS. QEDANI MAHLANGU:** Where did I say that? In the legislature?

ADV. LILLA CROUSE: Yes.

MS. QEDANI MAHLANGU: No, I do not remember. I mean the official records of the legislature, when you answer the question you answer the question, and remember Justice through you, maybe you will have an appreciation of this better. 15 Legislature is a political ground, and being a political ground there is a lot of ... [inaudible] in the legislature, and at all material times I tried not to use, because health is a very sensitive portfolio to use politics to deal with issues and questions raised in the legislature, and I thought it is important to me to bring that context.

ADV. LILLA CROUSE: So you never used the word grandstanding? I am going to 20 take you to it now. It is in file 3. If you can, somebody can get that for you.

MS. QEDANI MAHLANGU: What file is that?

ADV. LILLA CROUSE: But remember the initial statement that I made to you. I said I am trying to show that your political career is more important than the mental health patients.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

5**MS. QEDANI MAHLANGU:** Ja, I have got file 3.

ADV. LILLA CROUSE: File 3, page 1079.

MS. QEDANI MAHLANGU: 1?

ADV. LILLA CROUSE: 1079. That is a transcription of 13 September 2016, and that is the day that you told the legislature wrongly that 36 people had died. My
10learned friend had also taken you to that passage.

MS. QEDANI MAHLANGU: Yes, I am on 1079.

ADV. LILLA CROUSE: Yes. Now at that stage you are, if I can start at the top of the page. Instead of addressing the problem, you say but everything was not hunky
dory at Life Esidimeni. At least we know the people did not die, and then you said
15and the patients walked out with one set of clothes. So you are not addressing the problem of the people dying, you are trying to make other people look bad, and then you continue and you say, and my learned friends had taken you to task on that, on the third paragraph, that only one complaint has been received and she had shown that that was not the truth. If you turn the page ... [interjects]

20**ARBITRATOR JUSTICE MOSENEKE:** But in pursuit of what are we now Counsel?

ADV. LILLA CROUSE: We are in pursuit of her worrying more about her political career than about the patients dying. If you can go to page 1081, and then the third paragraph there and I will read it to you. You say:

“I think again I want to appeal to member blue, can you please stop grandstanding on patient issues and let us deal with the issues. There are challenges, so let us deal with those issues and stop using people’s poverty and challenges in grandstanding them here in the legislature.”

That was not anything close to what a person who was in charge of a project where people had died should say to a fellow member. Do you not agree?

10 **MS. QEDANI MAHLANGU:** The legislature, through you Justice, as I said it is a political ground and the language we use in the legislature and in engaging one another as political party members, the ruling party of the opposition and all of that, it is the point I was making here is that when we deal with issues relating to patient care and this point I have emphasised it over and over again.

15 **ARBITRATOR JUSTICE MOSENEKE:** Yes.

MS. QEDANI MAHLANGU: In the period where I have served in the executive, particular in sensitive portfolios like health, that we should not use patients issues relating to death as a political football, because we are going to end up hyping up emotions and end up with an unnecessary crisis, modus operandi instead of
20 getting the system and people ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: I understand that. Counsel says you should not have said it. She says it is not what you should have said given the deaths that had occurred. What is your response to that?

MS. QEDANI MAHLANGU: The response Justice, remember at the time when I 5am saying to you is that I did not know the information that I have at my disposal now, and I think it is important for me to continue to qualify the fact that the legislature, it is a very, it is a political football. Sometimes issues that are real and sensitive are being taken and used as a political football and that becomes unfair on the people who are affected.

10**ADV. LILLA CROUSE:** But you have a statutory duty to fully report to the legislature.

MS. QEDANI MAHLANGU: Yes, indeed I observe that at all times.

ADV. LILLA CROUSE: I would have thought if I were in your position or anybody else with responsibility and a good leader, they would say please give me all the 15information. I am so thankful that you have brought things to me that I did not know.

MS. QEDANI MAHLANGU: You know Justice, the reports, the legislature are governed by Public Finance Management Act. There is monitory information you sign and there is a non-monitory information. Non-monitory information relates to performance and programs and all of that. The monitory information you say you 20spend so much, you did not spend, we overspend or whatever. So this is Section Chapter 7 of the PFMA and I would like to read two paragraphs.

ARBITRATOR JUSTICE MOSENEKE: Yes.

MS. QEDANI MAHLANGU: The law says this is about the executive authorities.

Section 63 of the PFMA says the following:

“Financial responsibilities of the executive authorities number one. Executive authorities of departments, executive authorities MEC’s of departments must perform their statutory functions within the limits of the funds authorised for the relevant vote. B, in performing their statutory functions executive authorities must consider, they must consider the monthly reports submitted to them in terms of Section 39(2)B and 44C. The second ... [interjects]”

I will leave the second paragraph, because it applies to certain things, and then:

10“Section 64 of the PFMA, Section 1 says any directive by the executive authority of a department to the accounting officer which is the HOD of the department have, which has financial implication to the department must be in writing.”

It further on goes to say:

15“If the implementation of the directive is likely to result in the unauthorised expenditure, the accounting officer will be responsible for any of those material related to that.”

And the last paragraph says:

20“Any decision of the executive authority to proceed with the implementation of the directive and the reasons for the decisions, must be in writing and the accounting officer must promptly file a copy of this document with the national treasury and with the auditor general if a provincial is involved.”

The point I am going to Justice, that if I am given information as I have read immediately after lunch, there is a memorandum from families. There is memorandum from NGO's that says these are our concerns, and based on those concerns a response is written by competent civil servants. The legislation refers to them as accounting officer and respective responsibilities. I am given assurance that these issue are being dealt with. Another memorandum come after my conversation with Nompilo, it comes in a response is given. So that report does not belong to the legislature necessarily, it is in te department. We will report about that activity when we report in the financial year of all the activities that would have been done relating to stakeholder engagement and if you go to any annual report of the department, you will find those activities. Thank you.

ARBITRATOR JUSTICE MOSENEKE: I am certainly not sure what answer it was, but in relation to which question, but it is clear what you are saying and thank you. You are saying that you relied on these officials. The theme that runs right through your evidence, and they including an accounting officer and you are entitled to rely on the information which was given to you.

MS. QEDANI MAHLANGU: Absolutely.

ARBITRATOR JUSTICE MOSENEKE: Counsel?

ADV. LILLA CROUSE: Madam, I just wanted to say that that was not an answer to my question, but what I am saying is that your handling of the matter in the legislature, talking about grandstanding, saying yes 36 had died but most of them

do not have families, that sort of attitude is not what one would expect of a political leader under our constitution. What do you want to say to that?

MS. QEDANI MAHLANGU: Counsel, and through you Justice. I have made a point, probably the choice of words in this instance in answering the question were not appropriate, and for that I take part.

ARBITRATOR JUSTICE MOSENEKE: Ja.

ADV. LILLA CROUSE: Thank you. I am also worried about your attitude to bring closure to the families and I want to ask you when you started giving evidence here, you know, I will just go back a little bit. You know that the arbitration was delayed to make provision for you to come. Is that so that you know that?

MS. QEDANI MAHLANGU: I was not aware that the arbitration is delayed because of me.

ADV. LILLA CROUSE: Okay, I am putting it to you now. The arbitration was ...
[interjects]

15**MS. QEDANI MAHLANGU:** And I am saying I was not aware Counsel.

ADV. LILLA CROUSE: Now you said, your intention was to come in November. Remember saying that?

MS. QEDANI MAHLANGU: Yes, I do remember saying that.

ADV. LILLA CROUSE: And you said your intention was to come in December.
20Remember saying that?

MS. QEDANI MAHLANGU: Yes, I remember saying so.

ADV. LILLA CROUSE: And then you say they advised me best to come in January and I obliged. Remember saying that?

MS. QEDANI MAHLANGU: Yes, I remember saying so.

ADV. LILLA CROUSE: Who are the they that you are referring to?

5**MS. QEDANI MAHLANGU:** The lawyers I was consulting with.

ADV. LILLA CROUSE: So are you saying that the, you said to the lawyers I want to come in November or December and they say no, rather come in January?

MS. QEDANI MAHLANGU: Justice, if I may explain. At the time, I think on the 10th the conversation we had was in the week before the 10th of November to be 10exact. I was about to, I was due to submit my second assignment and I was working on that, and I had indicated to them that when I submit my assignment on the 10th, I will have two weeks break before I start my next module. However, I would have missed my evening classes on the second course I was referring to, the accounting course I took interest and I enrolled in. But I will speak to my lecturers 15and try and negotiate for that, and then the advice and discussion we had with the lawyers was that but what is when you come in, then you are not allowed to leave, go back to your studies till the arbitration is completed. It is on those basis that then they approached you Justice. I am sure you remember that. After conversation and shared with you my program of what I was doing up until mid December and 20thereafter that is why then the January became the most visible time. So again I apologise if indeed I dragged you.

ARBITRATOR JUSTICE MOSENEKE: You see, the ... [inaudible] charge against you or that Counsel is putting is your attitude is a bad one, because you kept everybody waiting. That is the one that you want to briefly respond to. That is what I understand ... [interjects]

5**MS. QEDANI MAHLANGU:** It was not intentional.

ARBITRATOR JUSTICE MOSENEKE: Her question implied that you were less than cooperative and you did not mind all of us waiting until it was convenient for you.

MS. QEDANI MAHLANGU: It is not accurate Justice, and I thought we had
10spoken about those issues on Monday.

ARBITRATOR JUSTICE MOSENEKE: Sure.

MS. QEDANI MAHLANGU: That with my academic commitments and the fact that after considering all aspects, then when they approach you Justice and then the conclusion was made that I will come in January.

15**ARBITRATOR JUSTICE MOSENEKE:** Well, you do not agree that you did it out of disrespect.

MS. QEDANI MAHLANGU: No, absolutely not.

ARBITRATOR JUSTICE MOSENEKE: Or out of being uncooperative.

MS. QEDANI MAHLANGU: No, absolutely not.

20**ARBITRATOR JUSTICE MOSENEKE:** There is the answer Counsel.

ADV. LILLA CROUSE: Thank you Justice.

MS. QEDANI MAHLANGU: Excuse me Justice. I was answering in this manner because I thought on Monday we had dealt with that aspect of why I did not come early.

5**ARBITRATOR JUSTICE MOSENEKE:** Lawyers go back to things.

MS. QEDANI MAHLANGU: But that is why I am confused.

ARBITRATOR JUSTICE MOSENEKE: Cross-examination is about, I mean let us go back to things and find out and probe. So it happens that way here. Counsel, you have got an answer.

10**ADV. LILLA CROUSE:** Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: I was not uncooperative, and I was not disrespectful.

ADV. LILLA CROUSE: Just as a matter of interest Ms Mahlangu, what happened to your suspension in the UK?

15**MS. QEDANI MAHLANGU:** I am still suspended till my appearance at the arbitration.

ADV. LILLA CROUSE: Thank you. Now in fairness to you I must just put it to you ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: I am sorry. Which suspension?

20**ADV. LILLA CROUSE:** Justice, the witness was suspended from her college.

ARBITRATOR JUSTICE MOSENEKE: You mean the university suspension.

ADV. LILLA CROUSE: The university where she studied yes.

ARBITRATOR JUSTICE MOSENEKE: At the university?

ADV. LILLA CROUSE: Yes. Sorry for not putting that clearly.

5**ARBITRATOR JUSTICE MOSENEKE:** Okay.

ADV. LILLA CROUSE: Ms Mahlangu, I must just as a matter of fairness put it to you and I have not dealt with it at all in my cross-examination, because my learned friend for Section 27 has dealt with and I believe my learned friend for the other families will also deal with it, but I am going to argue having looked at your evidence
10and looked at all of the documents, that you were actively involved in this process of the termination, the marathon project. So just yes or no. You can just agree with me or disagree with me.

MS. QEDANI MAHLANGU: Actively involved, let me clarify and I think I will answer you. Actively involved means I do not know what you mean by that,
15because when I, when there are meetings to give report back as to the progress, I am not sure whether that is active involvement or not. That has been my part and nothing more and nothing less. To receive reports and to say yes, are you making progress or not. If so, what are you doing with the challenges. So I am not sure when you say actively involved what does that mean.

20**ADV. LILLA CROUSE:** You went to family meetings in the beginning. You tried to explain what was going on. You were doing implementation.

MS. QEDANI MAHLANGU: No, I was not. Stakeholder engagement is not implementation, and earlier on Counsel you were asking me about stakeholder engagement, and I said to you we could have consulted wider than what was consulted, and going to family meetings, I thought was an important thing for me to be present, at least in one of the meetings.

ADV. LILLA CROUSE: Madam, I am also going to argue that you were aware of the problems and you chose to ignore them.

MS. QEDANI MAHLANGU: Well, I have given my answers Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes.

10 **MS. QEDANI MAHLANGU:** And the evidence is before the arbitration.

ARBITRATOR JUSTICE MOSENEKE: Yes, I think you have. Let us move on.

ADV. LILLA CROUSE: And I am also going to argue that you neglected your statutory duties as MEC for health.

15 **MS. QEDANI MAHLANGU:** I have answered Justice, and with the evidence given at the time, I had no reason to doubt anything, because the people I was working with were medically qualified, and very competent people.

ADV. LILLA CROUSE: Ms Mahlangu, I still see that you do not understand my point. I have not gone to the implementation at all. In taking this decision, you have not complied with your statutory duties. That is what I will argue.

20 **MS. QEDANI MAHLANGU:** I have answered you Counsel.

ADV. LILLA CROUSE: You agree with me?

MS. QEDANI MAHLANGU: I have answered, I have given you my answer.

ADV. LILLA CROUSE: Do you agree with me?

MS. QEDANI MAHLANGU: I do not agree with you.

ADV. LILLA CROUSE: Thank you, and I put it to you that you are directly to blame
5for the deaths and suffering.

MS. QEDANI MAHLANGU: I am not directly to blame.

ADV. LILLA CROUSE: Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: Thank you Counsel, and thank you for the
thorough research and preparation. Much appreciated. I should have said that too
10to Advocate Ngutshana on the first day. These things do not come easily, they
come out of a lot of work, thousands of pages to look at. This is the end of the
cross-examination by Advocate Crouse.

MS. QEDANI MAHLANGU: Thank you Advocate.

ARBITRATOR JUSTICE MOSENEKE: Who represents, I do not know if you were
15told in the beginning, the survivors of this project. In other words those patients who
were subjected to the same treatment, but survived.

MS. QEDANI MAHLANGU: I read it in some of the transcripts Counsel.

ARBITRATOR JUSTICE MOSENEKE: Yes. So that was her role and that is what
she was doing here. Now it is half past four Advocate Groenewald, the day is still
20young.

ADV. DIRK GROENEWALD: Indeed so Justice, subject to what the witness have to say we are ready to proceed.

ARBITRATOR JUSTICE MOSENEKE: I think we better proceed. Former MEC, we will be continuing. We are very determined to bring this to an end. So we are going to try and finish all the key evidence by tomorrow and have a few political principles maybe on Tuesday and Wednesday and we will be done with this public part of the hearing. So I think we are going to have to proceed. Advocate Groenewald.

ADV. DIRK GROENEWALD: Thank you very much Justice.

10 **MS. QEDANI MAHLANGU:** Excuse me Justice. May I please ask for a comfort break.

ARBITRATOR JUSTICE MOSENEKE: Oh yes, certainly. I think it will suit all of us. I am going to adjourn for ten minutes and we start all over again. Thank you.

25 JANUARY 2018

SESSION 4

ARBITRATOR, JUSTICE MOSENEKE: Please be seated. Are you still on your previous oath, uh, Ms Mahlangu?

5 **MS QEDANI MAHLANGU:** Yes, yes Justice, thank you.

ARBITRATOR, JUSTICE MOSENEKE: Yes, thank you.

ADV DIRK GROENEWALD: Thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: Counsel?

ADV DIRK GROENEWALD: I think my colleagues has covered most of the factual
10 grounds, so uh, I do not intend to be too long. There's just a few issues that we
need to, uh, clarify. Ms Mahlangu, my name is Dirk Groenewald. I represent a
number of families who have lost loved ones due to this Gauteng Marathon Project.
I would just like to understand from your side; do you agree with me that your
evidence is very important for this proceedings?

15 **MS QEDANI MAHLANGU:** Yes sir Counsel, I agree.

ADV DIRK GROENEWALD: Do you know why it is important?

MS QEDANI MAHLANGU: Because I was a political head of the department at the
time.

ADV DIRK GROENEWALD: It's important, ma'am, because your evidence can or
20 could have given closure to these families. Do you agree with me?

MS QEDANI MAHLANGU: Yes, yes, I agree.

ADV DIRK GROENEWALD: Ma'am I put it to you that it's my instructions that your evidence up to now has not brought the families any closure what so ever. Do you want to respond to that?

5**MS QEDANI MAHLANGU**: Eh, I'm not sure how to respond to that Justice because, eh, I had come here and sourced every piece of document I could lay my hands on and, and I thought that once the process is completed officially, then there'll be a formalisation processes. Then the family would be given a report. Only then, then that the process of closure is eh, eh, is, is done. So I'm not sure at the
10moment eh, is eh, here. So I wouldn't be able to make a judgement in in this, about how the families are feeling but my sincere [indistinct – 02:33] wish that eh, I'm sharing with the arbitration to extend possible information I remember and that I could have access to, I've tried my best to share that information.

ADV DIRK GROENEWALD: Uh, ma'am, I also put it to you that the reason one of,
15two of the reasons why evidence has not brought any closure what so ever, is because we are now on the third month of these proceedings. You were the highest point of authority in respect of this programme and still we do not have answers as to why the contract with Life Esidimeni was terminated?

MS QEDANI MAHLANGU: Through you Justice, Counsel, I thought I had
20stipulated those, eh, reasons, eh, probably you may not agree with them and through and through, eh, Tues... Monday, Wednesday and yesterday and today I thought we'd gone through all of that and, and as I said I tried to share information

to the extent possible as I remember and where I could access document and share that with the, with the, with, with arbitration come eh... [Interrupted]

ADV DIRK GROENEWALD: Yes ma'am, with all due respect, I think your evidence was pulled apart by my colleagues in respect to why the Life Esidimeni contract was terminated because you could not provide a rational reason for the termination. All three your grounds was dismissed by evidence that contradicted your three reasons. And that I put to you.

MS QEDANI MAHLANGU: I do not agree with you Counsel.

ADV DIRK GROENEWALD: And then the second ground, ma'am, why your evidence does not bring any closure to the families is due to the fact that you live in total denial and that you say you knew nothing.

MS QEDANI MAHLANGU: Through you Justice, I thought the documents, eh, I sought to read through into the records, you know that, that it must be recorded as part and parcel of, of this hearing would help to shed light on why I'm saying I was misled and I thought that was important for me to con, consistently going back to those documents and, and, and you may not agree with me, Counsel, but I thought I'd tried my best to share information to the extent possible.

ADV DIRK GROENEWALD: Ma'am, I'm going to give you one last opportunity; do you persist that you did not know about the risk that this marathon project entailed?

MS QEDANI MAHLANGU: With the evidence I presented before the arbitration and the information I've shared in, in different cross examination and, and that is my answer.

ADV DIRK GROENEWALD: And you want the truth and nothing but the truth?

MS QEDANI MAHLANGU: Yes, I've said so.

ADV DIRK GROENEWALD: So let's go to volume 8, pages 2758, please ma'am.

MS QEDANI MAHLANGU: Which one is that? 2, 7?

5**ADV DIRK GROENEWALD**: 2758.

ARBITRATOR, JUSTICE MOSENEKE: [Indistinct – 05:56]

MS QEDANI MAHLANGU: Okay.

ADV DIRK GROENEWALD: You will agree with me that this is minutes of a meeting in respect of the Life Esidimeni termination project. Meeting between
10yourself, managers and clinicians. It's a meeting that was held on the 26th of January 2016.

MS QEDANI MAHLANGU: Okay. Yes, I see that the minutes are not signed, so...

ADV DIRK GROENEWALD: Well, the documents has been accepted, handed in
15are true and correct, ma'am.

MS QEDANI MAHLANGU: Justice through you, as a chairperson of any meeting, minutes eh, are supposed to be approved and all of that and I seeing this meeting, I've seen this meeting minutes, eh, you'll, you'll ask eh, I indicated that to, to Adv. Ngutshana when I met him for the first time.

ARBITRATOR, JUSTICE MOSENEKE: But you are rushing to the defence quickly. There have not even been asked a question, Ms Mahlangu? [Indistinct – 07:17]

MS QEDANI MAHLANGU: Okay.

ARBITRATOR, JUSTICE MOSENEKE: You may raise the point. The point may or may not be relevant. It's a defensive point. Counsel has just referred you to the minutes. Just, just allow him to ask the questions and maybe later you may, having dealt with them, you say I contest the veracity of the, of the [indistinct – 07:35] but for now just allow him to ask the questions please.

ADV DIRK GROENEWALD: Uhm ma'am, you disputed the fact that you, that you pushed this programme through [interrupted]

MS QEDANI MAHLANGU: Eh ex, explain please...

ADV DIRK GROENEWALD: It was put to you that Dr Selebano testified so, that Mr Mosenogi testified so and you said no, it was a collective. Do you agree with me?

MS QEDANI MAHLANGU: Yes, I'm, I still stand by that...

15 **ADV DIRK GROENEWALD:** Yes.

MS QEDANI MAHLANGU: That it's a collective.

ADV DIRK GROENEWALD: Can you confirm you chaired this meeting, ma'am?

MS QEDANI MAHLANGU: But this is progress meetings that, eh, I referred to and I did not deny Counsel through you, I did not deny any progress meeting when the officials come to give reports, eh, to me to the meeting.

20

ADV DIRK GROENEWALD: Can you confirm who chaired this meeting, ma'am?

MS QEDANI MAHLANGU: The progress meeting that they were reporting to me, yes, I presided over those meetings.

ADV DIRK GROENEWALD: You presided over that meeting? Discussions... can you read that first sentence please?

MS QEDANI MAHLANGU: Emphasis was made that the termination is not, is, is a done deal. No going back with the department's decision to terminate the contract between the Life Esidimeni and, and department and Life Esidimeni. [Indistinct – 09:04] indicated that there's no extra money. That the department, the department to join hands and ensure that all the identified beds for the project, uh, are to be ready by the 1st of March, eh, at least 15th of March 2016.

ADV DIRK GROENEWALD: Yes Ma'am, you said it was a done deal, there's no going back, we're going to push through. Do you deny this?

MS QEDANI MAHLANGU: I don't remember saying that.

ADV DIRK GROENEWALD: The minutes tells us that you said it.

MS QEDANI MAHLANGU: Justice that why I was saying, uhm, and you said I'm, I'm being defensive before I know what is what. For any meetings, they have minutes have to signed.

ARBITRATOR, JUSTICE MOSENEKE: The scribe has signed.

MS QEDANI MAHLANGU: The scribe has signed but I did not see these minutes till the file was given to me by Adv. Ngutshana.

ARBITRATOR, JUSTICE MOSENEKE: Well, look, let me explain this; then that becomes an accuracy issue. The minute happened, you chaired it, the scribe records, the scribe signs, so you got to very sharply say these minutes are inaccurate or the scribe has been untruthful.

5 **MS QEDANI MAHLANGU:** But I did not see the minutes and they were never presented in any of the meetings.

ARBITRATOR, JUSTICE MOSENEKE: No, I, I understand that. For now we, you know how the documents came to the arbitration? They were supplied by the state, from the records of the province. This is how all these documents came here so
10 these were given to the arbitration as part of the arbitration agreement that the state will provide all records of the department relevant to Life Esidimeni. Let's get back to the, the page before us which is page 2758. The [indistinct – 10:57] it is; Counsel says here are minutes you chaired, the scribe signed and it is recorded, as it is recorded that this is a done deal. So you have to give a response. Would you say
15 yes this was said in the meeting, no it was not said, the scribe is wrong?

MS QEDANI MAHLANGU: But Justice may I really, on, on a point of, because this is, is a legal process...

ARBITRATOR, JUSTICE MOSENEKE: Yes.

MS QEDANI MAHLANGU: And this process is about finding closure and...

20 **ARBITRATOR, JUSTICE MOSENEKE:** And the truth.

MS QEDANI MAHLANGU: And have the truth.

ARBITRATOR, JUSTICE MOSENEKE: Yes, absolutely.

MS QEDANI MAHLANGU: And if the truth is going to be on the version of [indistinct – 11:38] the other person and the other person has information that the other one doesn't have, for instance, the issue about the minutes. Minutes are signed by somebody, by signed by the person who chairs that meeting and the person who takes the minutes, right? So as I'm saying I do not remember seeing these minutes and it's, it's important to say and things are attributed to me, eh, in this, in this min... in this document that I had said x and y and z and q.

ADV DIRK GROENEWALD: Ma'am let's recap... my apologies Justice.

10**ARBITRATOR, JUSTICE MOSENEKE**: Counsel no, not at all. Who was Tjobane KJ, who, who's that?

MS QEDANI MAHLANGU: I think he was working eh, with Dr Manamela, uhm, no he, he was working in the mental health directory, he reports to Dr Manamela.

ARBITRATOR, JUSTICE MOSENEKE: And he was the scribe at the meeting?

15**MS QEDANI MAHLANGU**: And I was not aware that we had a scribe in the meeting either.

ARBITRATOR, JUSTICE MOSENEKE: Okay, well, there you have to deal with the... on its face it is a minute of a meeting so you have to... as, as things are put to you as Adv. Groenewald is going to do, you can say what you know to be true and
20what is not true.

MS QEDANI MAHLANGU: Because what I'm struggling to understand, it says the meeting, the date it says the 26th of June 2016, but there's something that says the department to join hands to ensure that all identified beds for the project are to be ready, at least by the 15th of March 2016. So I'm not sure, that's why I say I'm struggling to understand what, what exactly is going on and so that I can [interrupted]

ARBITRATOR, JUSTICE MOSENEKE: Look again, it's the 26 January.

MS QEDANI MAHLANGU: Pardon?

ARBITRATOR, JUSTICE MOSENEKE: It's the 26 January.

10 **MS QEDANI MAHLANGU**: Oh sorry, sorry, my, my apologies but [interrupted]

ARBITRATOR, JUSTICE MOSENEKE: But anyway, let's allow the advocate that you ask the questions.

MS QEDANI MAHLANGU: Okay.

ARBITRATOR, JUSTICE MOSENEKE: It's a minute that you have not signed, the scribe has signed it and there are questions about it. Can you just field the questions? Counsel, please proceed.

ADV DIRK GROENEWALD: Thank you very much Justice. Uhm, ma'am I would in an event argue that uh, you didn't see a lot of documents as your evidence indicated so, uh, it's, there's nothing uhm, nothing peculiar about the fact that you didn't see the minutes. Well let's proceed. If we go to page 2758, uhm, it's the second column... 1, 2, 3, 4, 5, 6, 7. Can you read us what, what's stated there?

MS QEDANI MAHLANGU: Which, what, what is the title?

ADV DIRK GROENEWALD: There's no title there, there's a presentation by Mr Mosenogi on the left hand side...

MS QEDANI MAHLANGU: Okay.

5**ADV DIRK GROENEWALD**: On the presentation. He gives a presentation and then the second column is the resolutions column.

MS QEDANI MAHLANGU: Ja.

ADV DIRK GROENEWALD: That tells us, am I correct to say resolutions is what needs to be done?

10**MS QEDANI MAHLANGU**: Ja

ADV DIRK GROENEWALD: Right. So go to the second column... 1, 2, 3, 4, 5, 6, 7, the 7th.

MS QEDANI MAHLANGU: What does the sentence start with?

ADV DIRK GROENEWALD: Yes, licensing.

15**MS QEDANI MAHLANGU**: Okay.

ADV DIRK GROENEWALD: What does it say ma'am?

MS QEDANI MAHLANGU: Licensing of both, eh, NGO and new NGO's must be done by the 5th of February.

ADV DIRK GROENEWALD: Yes, 5th of February. This is the 26th of January 2016.

We had evidence that at that point in time the NGO's wasn't properly identified yet.

Do you dispute that?

MS QEDANI MAHLANGU: I'd like to rely on my documents, eh, Justice, that I send 5eh to this, because I think it's going to be very important that I now talk related to document only.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

MS QEDANI MAHLANGU: So you may repeat your question Counsel?

ADV DIRK GROENEWALD: Ma'am it's just simple, I'm just asking you to confirm 10that you had a meeting on the 21st of January 2016 and at that meeting it was said resolve that licensing of both old and new NGO's must be done by 5th February 2016. I'm putting it to you that at that point in time all the NGO's wasn't even identified.

MS QEDANI MAHLANGU: Well I wouldn't know, I just need to remind, get my 15documents and look at what the presentation had said. It would've helped Justice through you...

ARBITRATOR, JUSTICE MOSENEKE: Yes.

MS QEDANI MAHLANGU: To have seen the presentations that were made in the meeting concerned, eh, so that they, it can relate to the discussion and the 20decisions that are reflecting here, are reflected here.

ADV DIRK GROENEWALD: Is there something specific that you want to dispute ma'am?

MS QEDANI MAHLANGU: Yes. I want to refer you to something because, uhm, I'm saying, eh, Justice that, that the relevance of, of, that's why I was raising the issue of sign minutes and all of that. I'm saying if there was a presentation linked to these [indistinct – 17:15] I would be able to remember the discussion and be able to say yes this is what I agreed, was agreed, was agreed. So...

ARBITRATOR, JUSTICE MOSENEKE: You mean the presentation which was made in that meeting...

10 **MS QEDANI MAHLANGU**: Yes.

ARBITRATOR, JUSTICE MOSENEKE: That you chaired?

MS QEDANI MAHLANGU: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Okay.

MS QEDANI MAHLANGU: Because they will always making a slide presentation and on the basis of that then there would be a discussion, okay, this and this and that... this is a conclusion, this is that. Just bear with me [interrupted]

ARBITRATOR, JUSTICE MOSENEKE: The minutes are recording the discussion, the resolutions and the responsible person.

MS QEDANI MAHLANGU: Yes Justice, indeed. But those, those, that discussion is preceded by a presentation. Yes no there is a presentation and I sis... it's very small though so I'm not sure how to [interrupted]

ADV DIRK GROENEWALD: Can you please confirm in which bundle you are and which page you are referring and what specifically is the document?

MS QEDANI MAHLANGU: I think I'm seeing on the E... I'm on E L Ella 132, page 59.

5**ARBITRATOR, JUSTICE MOSENEKE**: Wh, what is that?

MS QEDANI MAHLANGU: Eh, it's a, it's report in that meeting and it's very faint...

ARBITRATOR, JUSTICE MOSENEKE: Yes.

MS QEDANI MAHLANGU: Eh, it talks about the Tshwane district NGO information, Tshwane district NGO, eh, all the, all the [indistinct - 18:41] different 10reasons in the districts so as I'm saying the slides are very faint and the numbers are small so maybe we can get, look at a better vision, eh...

ARBITRATOR, JUSTICE MOSENEKE: Ja, but, but I think you have to allow Counsel to ask questions on the minute that he has in his hand, isn't it? And you've got to give responses to the, the contents of the minutes. In the end your head 15should might be; forget them, they are unreliable, because I haven't signed them. But there are minutes which reflect, which [indistinct – 19:12] to reflect discussions, resolutions and who must implement. And the minutes record that you chaired the meeting so Counsel is trying to ask you about the discussions and the resolutions. I think he's entitled to do that and you should allow him to do that.

20**MS QEDANI MAHLANGU**: Yes Justice, I agree with you. The point I'm making is for that every meeting that I had with the team, when they were giving me progress

report, those slides presentation made and for this meeting there's a slide presentation made on the, by Mosenogi about the NGO's so... and, and Counsel is saying that at the time the NGO's are not identified, all I want to say is that the slide presentations that I have before me and which was made at that meeting, it just referred to these are the NGO's eh, eh identified in the process. So I don't know whether you've got a better vision than mine so, mine is not visible [interrupted]

ADV DIRK GROENEWALD: So your argument is simply that the NGO's were at that point in time, they were identified.

MS QEDANI MAHLANGU: Yes, according, according to this presentation, yes, they were identified and its respective reasons I've mentioned here.

ADV DIRK GROENEWALD: Are you informed that they were identified and it was resolved that their licenses must be finalised by the 5th of February 2016?

MS QEDANI MAHLANGU: Yes, they reported that in the meeting.

ADV DIRK GROENEWALD: Yes. Ma'am you said at that meeting as you, well, semi confirmed now, that you said we've got to push through, it's a done deal, no going back and on the 26th of January 2016 you were already informed by your own department the minutes and the meetings that we, my colleague referred you to on the 26th of November 2014... the risk that they showed there. There was the SADAG letter of June 2015.

MS QEDANI MAHLANGU: Eh what?

ADV DIRK GROENEWALD: The SADAG letter...

MS QEDANI MAHLANGU: Ja. Okay

ADV DIRK GROENEWALD: Of June 2015. There was Section27's letter...

MS QEDANI MAHLANGU: Okay, was, was it in the meeting or you referring to the old letters?

5**ADV DIRK GROENEWALD**: Ma'am I'm just referring to the evidence.

MS QEDANI MAHLANGU: Oh okay.

ADV DIRK GROENEWALD: You were saying you didn't know about the risks. I'm saying that on the 26th of January 2016 you said there's no turning back, we're going forward people and at that point in time you already had risks identified by 10SADAG, Section27, uhm, there was already litigation, which confirmed that dispute and the fact that there was a risk. Uhm, and yet you said we're going to push through.

MS QEDANI MAHLANGU: But Justice, eh, through you, I, I just have a difficulty to understand where that line, the, the line of questioning is going? And this is my 15difficulty.

ADV DIRK GROENEWALD: You see ma'am it's my line of questionings for me to know, it's for you to answer questions.

MS QEDANI MAHLANGU: But I need to understand [interrupted]

ADV DIRK GROENEWALD: If she don't understand the question, then she can 20ask me to clarify the question. But you can't ask me what's my line of questioning, ma'am. This is not parliament.

MS QEDANI MAHLANGU: Okay. Is it allowed, Justice?

ARBITRATOR, JUSTICE MOSENEKE: Ja, but I, I think you should answer the question though. The one thing that I, I don't feel there shouldn't be additional remarks about parliament, Counsel. But certainly...

5**ADV DIRK GROENEWALD**: My, my apologies.

ARBITRATOR, JUSTICE MOSENEKE: There shouldn't be remarks about parliament here but certainly when the question is put, please answer it.

MS QEDANI MAHLANGU: Justice, I'm answering the question [interrupted]

ARBITRATOR, JUSTICE MOSENEKE: Sometimes I, you know, people who ask
10questions may have three or four reasons why they ask it but you don't have to know it. What you have to do is to tell the truth the way you know it. That is what's required of, of, of a witness.

MS QEDANI MAHLANGU: The truth, as I know it, is a slide presentation of the information that is containing the file. In this instance it will be from page 59 to page
1563. As I said my copy is not visible. Ma'am can I borrow that, that other that's...

ADV DIRK GROENEWALD: Ma'am just answer my question; I put it to you that on the 26th of January 2016 you said to your department, to your department push through [interrupted]

MS QEDANI MAHLANGU: Excuse me Justice, please may I borrow the copy, that
20copy of the document...

ADV DIRK GROENEWALD: Push through... and that point in time [interrupted]

ARBITRATOR, JUSTICE MOSENEKE: Well, let's find... uh sorry...you've been stopped a few times, I'm sorry, and should not be. But we have to listen to the question. We cannot be pushed to different documents all the time. We have to listen to the question and answer it. That's precisely my point right at the beginning. Counsel has obligations to clients and he is asking questions and where paperwork might assist, tell me so and let's, let's, let's hear how it would but only now only listen to the question and answer it please.

MS QEDANI MAHLANGU: Thank you Justice for your guidance and I do want, like to appeal that I, I know how to answer the way, I've been in the political system, there is no any other way I know how to answer questions. And that way may not be a legal ques... a legal way but my I just please be given the scope to explain because in the absence of me having the ability to explain using the document or evidence at least before me or before this arbitration, I'm not able to give the answers.

ARBITRATOR, JUSTICE MOSENEKE: Ms Mahlangu this record will be [indistinct – 24:52] but let me just show how much space you have been given to talk, massive space. Ordinarily witnesses are not allowed that much and I've consciously decided to allow you to do so, so you can explain your position because of the number one position you hold in the province in health. But please let's not, let's, let's guard that and respect each other to move on. [Indistinct – 25:20] questions, he's not even asked why, he's asked one question and we haven't moved from that one question. Here's the set of minutes, you chaired the meeting, they record those. Allow him to ask the questions about the recordings. Please proceed.

ADV DIRK GROENEWALD: Thank you Justice. Ma'am so my question again is; on the 26th of January 2016 you tell the department that we're going to push through, there's no going back. But at that point in time there was already numerous risks pointed out to you. Do you deny that?

5 **MS QEDANI MAHLANGU:** Eh, with the presentation I have before me Justice through you [indistinct – 26:03] answering the question [interrupted]

ADV DIRK GROENEWALD: Do you deny that ma'am? I'm asking you do you deny that, that when you gave the instruction, when you said we are pushing through, a number of risks have already been pointed out to you. That is the
10 question and the answer I would like is either yes or no.

MS QEDANI MAHLANGU: Through you Justice, Counsel is forcing words into my mouth and I'm answering the question, the question [interrupted]

ADV DIRK GROENEWALD: I give you two options, ma'am, a yes or no.

MS QEDANI MAHLANGU: ...26, 2682, you'll see on the presentation it talks about
15 the NGO's, the license and [indistinct - 26:35] is in this presentation.

ARBITRATOR, JUSTICE MOSENEKE: What does the presentation got to do with the minutes?

MS QEDANI MAHLANGU: It's got to, it, it talks about the, wh, what was presented in the meeting, Justice, because his saying things were not ready at the time and
20 I'm trying to say as at this presentation on that day there was a clear presentation

that was indicating what was happening, what was not in place and what was going to be done.

ARBITRATOR, JUSTICE MOSENEKE: No ma'am, the minutes say you were not ready and Counsel is trying to pursue that line and you want to look for [indistinct – 527:07] documents from other places to show that you were ready but frankly for now he has hardly started, he's asked one question in the last 30 minutes. He wants to know why would you say there's no going back in January 26th at a meet, 2016, a meeting you chaired, when you had been alerted to a number of risks already, including litigation in court. That is, that is his point. Can you confront that?

10 **MS QEDANI MAHLANGU:** But Justice, we've, we've, I've answered those issues over and over again and frankly I no longer know how to say these things differently because the answers I gave yesterday and I've been giving today, they remain the same.

ARBITRATOR, JUSTICE MOSENEKE: You see the minutes suggest that you 15 were there and you were aware that there are issues with NGO's and that there were risks a plenty. That is what Coun, if you want to know where he is going, this is where he's going.

MS QEDANI MAHLANGU: But Counsel, but Justice, that's why I'm saying these minutes, I have not seen them before. That was my first point I raised when 20 Counsel started on this questioning on this minutes. Secondly [interrupted]

ARBITRATOR, JUSTICE MOSENEKE: Are they, are they accurate?

MS QEDANI MAHLANGU: I, I, I said Justice, I'd, I remem... this meeting I was present but in terms of the accuracy of the minutes, I'll, I do not remember exactly what was discussed but I'm saying to say the minutes concerned, the evidence of what was discussed in the meeting, is contained in one of the presentation which is 5in the files.

ARBITRATOR, JUSTICE MOSENEKE: No, but are you saying the summary of the discussion on the minute page, on page 2786 is inaccurate, is it wrong?

MS QEDANI MAHLANGU: I don't know Justice.

ARBITRATOR, JUSTICE MOSENEKE: Okay, the answer is I don't know.
10Counsel?

ADV DIRK GROENEWALD: Neither yes or no, I don't know. You know ma'am that is, ja, perhaps a matter for argument but I think your evidence has been... will be remembered for the I don't knows but in anyway let's fast forward ma'am. You give this instruction. In February your project manager, which Dr Selebano 15appointed by letter, but, which you hand-picked and selected for this programme, do you deny that?

MS QEDANI MAHLANGU: I deny it and I refer to [interrupted]

ADV DIRK GROENEWALD: You deny that you...

MS QEDANI MAHLANGU: Yes.

20**ADV DIRK GROENEWALD:** That you selected Mr Mosenogi?

MS QEDANI MAHLANGU: I did not select Mr Mosenogi, he was appointed by the HOD again can Justice, on page 7 of the file ELA 132, that is the, uh, project management and you can find it in respective documents. It is here.

ARBITRATOR, JUSTICE MOSENEKE: The witness denies that they appointed Mr Mosenogi. Next question, Counsel?

ADV DIRK GROENEWALD: Thank you, uh, Justice I'm, I thought I'm just going to have a few questions but, uhm, as I indicated to you, ma'am, I agree with you that he was appointed by the HOD but he was selected and his testimony was that you approached him and that you said [interrupted]

10 **MS QEDANI MAHLANGU**: No, not at all.

ADV DIRK GROENEWALD: Is it?

MS QEDANI MAHLANGU: No, it's not true.

ADV DIRK GROENEWALD: Well, let's go to your bundle of documents, ma'am.

MS QEDANI MAHLANGU: Okay.

15 **ADV DIRK GROENEWALD**: Now let's go to your bundle of documents and page 270.

MS QEDANI MAHLANGU: Where's that, which... EL 132?

ADV DIRK GROENEWALD: Yes ma'am.

MS QEDANI MAHLANGU: Okay. Which page?

20 **ADV DIRK GROENEWALD**: Two seven zero.

MS QEDANI MAHLANGU: Okay. Yes.

ADV DIRK GROENEWALD: Can you confirm the document ma'am? What is it?

MS QEDANI MAHLANGU: Yes, I... There's a document there.

ADV DIRK GROENEWALD: Sorry?

5**MS QEDANI MAHLANGU**: Yes, this document to page 270.

ADV DIRK GROENEWALD: Yes ma'am, can you just confirm what is the document?

MS QEDANI MAHLANGU: It's a document that has been sub, eh, what, I think it's a, what was it... it's a minutes, it's the minutes of, uhm, Mosenogi.

10**ADV DIRK GROENEWALD**: Yes.

MS QEDANI MAHLANGU: Yes.

ADV DIRK GROENEWALD: Alright, so let's go there. You have item and discussion and then you have introduction. Just read the second bullet point there and as you've confirmed, it's minutes by Mr Mosenogi. Just read it please.

15**MS QEDANI MAHLANGU**: Which, which eh, which point must I read?

ADV DIRK GROENEWALD: Second bullet point.

MS QEDANI MAHLANGU: She was nominated by the MEC to lead the project, but it's not accurate. But that's not accurate. If you go back, Justice, to the document on page eh, I think the EL, the file I submitted, there, that's eh, that clear, that, that's
20the evidence I'm giving to you.

ARBITRATOR, JUSTICE MOSENEKE: Well I saw the formal appointment...

MS QEDANI MAHLANGU: Yes.

ARBITRATOR, JUSTICE MOSENEKE: By the HOD of the project team.

MS QEDANI MAHLANGU: So I can't do a double appointment on top of other
5HOD [indistinct – 32:11]

ARBITRATOR, JUSTICE MOSENEKE: No, the distinction here is that you
nominated him.

MS QEDANI MAHLANGU: No, it, no Justice.

ARBITRATOR, JUSTICE MOSENEKE: An HOD appointed him formally. This is
10what Counsel is putting to you.

MS QEDANI MAHLANGU: It's not true, Justice. Maybe let me explain, Justice,
through you.

ARBITRATOR, JUSTICE MOSENEKE: Or no, let's put it this way, that's what Mr
Mosenogi testified on.

15**MS QEDANI MAHLANGU:** No, it's not, it's not accurate, Justice.

ARBITRATOR, JUSTICE MOSENEKE: In fact, Dr Manamela was quite unhappy.
She says she was surprised that you chose Mr Mosenogi...

MS QEDANI MAHLANGU: No I didn't.

ARBITRATOR, JUSTICE MOSENEKE: [Indistinct – 32:39] had to be the head of
20the project team.

MS QEDANI MAHLANGU: I didn't appoint Mr Mosenogi actually.

ARBITRATOR, JUSTICE MOSENEKE: I'm just repeating the evidence, that's the evidence about you.

MS QEDANI MAHLANGU: I, I understand what you are doing, Justice, but I'm
5indicating to you, as we'd seen, actually, the important thing here that the document
I was reading to you, this is a [interrupted]

ARBITRATOR, JUSTICE MOSENEKE: Mmmm.

ADV DIRK GROENEWALD: Ma'am, I was referring you to the document and I
wanted you to, to read out one specific point.

10**MS QEDANI MAHLANGU**: But I, I'd like...

ADV DIRK GROENEWALD: You have read that specific point...

MS QEDANI MAHLANGU: Ja.

ADV DIRK GROENEWALD: And I will now ask my following question.

MS QEDANI MAHLANGU: Okay.

15**ADV DIRK GROENEWALD**: Can we please move on. So your project manager
warns you. The HOD also testified that he agreed with the project manager that
they should not proceed. Mr Mosenogi testifies and he said well, I did my best to
persuade the MEC that we should not proceed but at least with Baneng I was
successful and I could get a three months extension. And he testified that that was
20you, ma'am, that you made that decision.

MS QEDANI MAHLANGU: Thank you Justice, again, as I answered yesterday, the decision was made by the collective. The February meeting concern that is referred to, we've already dealt with the, with the details of that and thirdly the project management in the close-out report, in the close-out report of the, of whe, when, 5when things have concluded, the report that I was reading to you early, on page 7, the project team establishment, it gives account of what would have happened throughout the phases and I want to submit again page eh, item, page 7 and item 3.3 pro, project team from where who was, who was, when it was established, who was, who appointed them and what responsibility they had and the different names.

10**ADV DIRK GROENEWALD**: Ma'am you had nothing to do with this project, had you?

MS QEDANI MAHLANGU: I, I, I attended meetings, I was given briefings frequently.

ADV DIRK GROENEWALD: You know that, uh, Ms Mahlangu, you know that Dr 15Selebano actually testified and he said he didn't know or he didn't, uh, he didn't extend the contract with the Life Esidimeni.

MS QEDANI MAHLANGU: He didn't?

ADV DIRK GROENEWALD: Ja.

MS QEDANI MAHLANGU: So who extended it?

20**ADV DIRK GROENEWALD**: Well, that's a good question but as I put it to you, it was you ma'am. You made that call.

MS QEDANI MAHLANGU: But we sat in the meeting and in the meeting the discussion was, the point was discussed and thereafter we went out and issued the media statement and the HOD went on to inform Life about the, the decision of the meeting. And that's the [indistinct - 35:18] thing. I would not get involved into taking 5to service providers about contractual obligation between the department and, and, and the, eh, which would've been entered correctly so by the relevant administrator.

ADV DIRK GROENEWALD: Well, that's the evidence before the tribunal ma'am but let's move on. So we have the risks [interrupted]

MS QEDANI MAHLANGU: And I wish to see letter through you Justice, where I 10had written a letter to Life to say that I am extending the contract, if, if, if at all possible.

ADV DIRK GROENEWALD: Well, can you show us a letter by Dr Selebano that he extended it?

MS QEDANI MAHLANGU: No but I'm saying, your saying I, I took the decision, so 15I'm asking Justice through you, if possible, may I be given a copy of the letter where I sent it?

ARBITRATOR, JUSTICE MOSENEKE: No, Counsel is telling you what the evidence is, remember, we've been long here and he's telling you what Dr Selebano says. So this are not the, what's happening now, if you want to know, 20Counsel is simply picking up from the evidence that has been given about you and there's a lot of it and he's putting these things to you about what your colleagues said about your role. Just put more shortly and directly. Your colleagues don't

accept that you knew nothing. All of them gave evidence and they say it's you
[interrupted]

MS QEDANI MAHLANGU: Can I... sorry, sorry.

ARBITRATOR, JUSTICE MOSENEKE: You made the decision and you knew
5because you came to meetings and chaired the meetings where regular reports
were given and that's where Counsel started, [indistinct – 36:46] of January 26th.
Anyway, that's where he's going if you are concerned about that. He's putting to
you piece by piece the evidence of your colleagues and that begs the question; why
are they all lying about the MEC?

10**MS QEDANI MAHLANGU**: Justice, I sit here and I continue to wonder why things,
why official are behaving in the manner that they are because in the evidence I've
shared with you in this file, it say that the officials would've made presentation to me
and that presen, presentation suggested that all is well. So I am not sure why
someone would prepare a presentation, come to the meeting. When they come
15before, the, the arbitration, no, no we no longer, we didn't do that. The MEC forced
us to do that and again, I would like to go back to the [indistinct – 37:41] if I may?

ARBITRATOR, JUSTICE MOSENEKE: Who would've appointed this bunch of
liars? Every one of them [interrupted]

MS QEDANI MAHLANGU: But Justice, here is evidence, here is evidence that the
20team was appointed by the HOD.

ARBITRATOR, JUSTICE MOSENEKE: By the HOD?

MS QEDANI MAHLANGU: Yes.

ARBITRATOR, JUSTICE MOSENEKE: But you get my point? I'm not, I'm not being nasty or facetious, every one of them, from your point of view, has been untruthful and had not been... and, and in fact the project, the tragedy occurred because of their lies, this whole tragedy?

MS QEDANI MAHLANGU: You know Justice, again, I'd like to repeat that page 7 on this close-out report...

ARBITRATOR, JUSTICE MOSENEKE: Yes.

MS QEDANI MAHLANGU: That's why I, I would like, I wanted it to be [indistinct – 1038:24] to be recorded. I know you've had these documents you've sent me forward, this may be a duplication or maybe mines differently. It's exactly for that reason.

ARBITRATOR, JUSTICE MOSENEKE: Mmmm.

MS QEDANI MAHLANGU: Secondly, it's impossible for me to have been on the ground, be with the team every single day. It's highly impossible. And thirdly
15[interrupted]

ARBITRATOR, JUSTICE MOSENEKE: I, I agree...

MS QEDANI MAHLANGU: The law prevents me from doing so [interrupted]

ARBITRATOR, JUSTICE MOSENEKE: But they say they kept on reporting at regular meetings.

20**MS QEDANI MAHLANGU**: Justice, the meetings were not on a weekly basis, the meetings were [indistinct – 38:59] every three weeks or so, sometimes once a

month. So I don't know, if, if I'm involved in a project, the way I work if I run a particular project, meetings will be almost every second day.

ARBITRATOR, JUSTICE MOSENEKE: L, let's, let's turn it around, let's turn it on its head; why didn't you, as political principal, ask them the questions? What is the readiness of this, what is the state of that? How you going to fund the NGO's, are their licenses in place? Have the families been told? Are the NGO's identified and known? Why didn't you ask those questions?

MS QEDANI MAHLANGU: But Justice, at every occasion, when presentations are made, it's indicated. That's why I'm saying the slide presentation on the 26th of 10 January. It talks about the NGO's and it reflects who has a license and who doesn't have. Again, in the different presentations you'll see what the team would've reported in the formal meetings and of what was going on in the project and I sought to put those on record as to what would've happened. It would be impossible for me to go and assess patients on the ground and say; this one is 15 suitable to go to a NGO, this one is suitable to go to this and that, those things were done by officials.

ARBITRATOR, JUSTICE MOSENEKE: Adv. Groenewald?

ADV DIRK GROENEWALD: Thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: You, I think you've made more progress 20 than me, please go ahead.

ADV DIRK GROENEWALD: Thank you Justice. Ja, there's, there's a lot of, uh, points to make, ma'am, but uh, ja, let's proceed on the issues that really count.

Uhm, so, but you pushed through. February, get warned by your own staff, by your own professional competent people that you relied on so much, uh, but you say no, we push through. March there's again litigation, you push through. I want to refer you to another document; it's also in volume 8, page 2769. Can you confirm what 5documents is this, ma'am?

MS QEDANI MAHLANGU: 2769, né?

ADV DIRK GROENEWALD: That's correct, ma'am.

MS QEDANI MAHLANGU: Yes.

ADV DIRK GROENEWALD: Can you confirm...

10**MS QEDANI MAHLANGU:** [Indistinct – 41:37] what is it?

ADV DIRK GROENEWALD: What document is this?

MS QEDANI MAHLANGU: Eh, it's a document, you said 2765?

ADV DIRK GROENEWALD: Ma'am that is the page number, the paginated page number. I'm asking you what document is this? Identify the document.

15**MS QEDANI MAHLANGU:** Oh, it's the meeting minutes between, of the minutes of the meeting held between the NGO's and the department.

ADV DIRK GROENEWALD: 2769, resolution for the MEC meeting with senior managers on the Life Esidimeni contract relationship termination.

MS QEDANI MAHLANGU: Uhum.

ADV DIRK GROENEWALD: You can confirm that? The date is the 8th of April 2016, can you confirm that? The venue was your office.

MS QEDANI MAHLANGU: Ja, if I checked my diary, it should be correct.

ADV DIRK GROENEWALD: Uh, so...

5**MS QEDANI MAHLANGU:** Ja.

ADV DIRK GROENEWALD: You've, you were present at this meeting?

MS QEDANI MAHLANGU: I, I proba, if it was in my boardroom, probably yes.

ADV DIRK GROENEWALD: Yes, ma'am, you were present at this meeting.

MS QEDANI MAHLANGU: Uhum.

10**ADV DIRK GROENEWALD:** So let's highlight a few points here; it's the 8th of April, was it not for the extension, uhm, this project would've been finalised already.

MS QEDANI MAHLANGU: Pardon?

ADV DIRK GROENEWALD: But at that point in time a number of patients have already been transferred out of Life Esidimeni.

15**MS QEDANI MAHLANGU:** Can you please repeat your que, Justice no...

ADV DIRK GROENEWALD: It's the 8th of April...

MS QEDANI MAHLANGU: Yes, yes I follow the date here.

ADV DIRK GROENEWALD: Yes, so at this point in time [interrupted]

MS QEDANI MAHLANGU: Let me deal with point by point and to indicate which column or row we are dealing with.

ADV DIRK GROENEWALD: Just making, before I'll get to specific issues...

MS QEDANI MAHLANGU: Oh okay, so you are still making...

5**ADV DIRK GROENEWALD:** I want to put us in the timeline. The 8th of April...

MS QEDANI MAHLANGU: Uhum.

ADV DIRK GROENEWALD: There was already a transfer of a number of patients to Takalani, there was already transfers conducted.

MS QEDANI MAHLANGU: Okay.

10**ADV DIRK GROENEWALD:** But at this point in time you were now ready for the big phase because we know in May there was a huge number of, uhm, mental healthcare users transferred. So we are at the point of the transfers being affected, do you agree with me?

MS QEDANI MAHLANGU: Ja,

15**ADV DIRK GROENEWALD:** Alright, so let's see on the 8th of April what happened. Point number two; a slide to be prepared on a number of LE personnel and their categories indicating how many will be absorbed. Do you agree with me that you are the point and you had a time where Life Esidimeni's contract is to be terminated and you haven't finalised that yet?

20**MS QEDANI MAHLANGU:** Yes, I think this is a HR and again, to just to amplify my answer, Justice, in the file, the E L, uh E, eh Ella 132, there in one of the

presentations that you'll see there's a HR file, eh, with all the categories that when I was trying to take through yesterday, yes..

ADV DIRK GROENEWALD: Yes ma'am, I'm just getting to the point that you are here at day zero and this needs, still needs to be done, so let's get through them. 5Fourth one; a slide should be prepared indicating how many users have ID's, how many still need ID's, how many are in the process of application. So that still needed to be done. You can confirm?

ARBITRATOR, JUSTICE MOSENEKE: The point is these things were raised in a meeting chaired by you where you were present in your boardroom. Th, th, that is 10the point and Counsel wants a response to that.

MS QEDANI MAHLANGU: But Justice, specific eh, to be specific exactly on, on this issue one by one, may I?

ARBITRATOR, JUSTICE MOSENEKE: Yes, just wait for the question that he wants confirmation on, is he's just asked you a question; is it true that those issues 15were discussed at your meeting?

MS QEDANI MAHLANGU: The issues of [interrupted]

ARBITRATOR, JUSTICE MOSENEKE: And, and yet you are so close to the big displacement of patients?

MS QEDANI MAHLANGU: But remember Justice, the, as patients move and the 20HR people accordingly move or be absorbed in the department, so whatever the phases the official they were implementing, it is in accordance to what has been

discussed at the meeting and I would like to refer you to the, the, the numbers of workers who would've been app, employed in totality, ehm, absorbed from Life in one of the slide presentations.

ADV DIRK GROENEWALD: Ma'am that's not the point, that, that's not the point.

5The point is simple; you come here, you testify for three days and you say the whole time I didn't know, I didn't know about the risk, I didn't know about risk. They did it, I'm not a professional, nobody told me this, they didn't inform me of the risk. My apologies, Justice.

ARBITRATOR, JUSTICE MOSENEKE: [Indistinct – 46:16] witness said I'm not a
10prophet.

ADV DIRK GROENEWALD: Oh ja, she's not a prophet, uh, so...she's not a prophet. So that's the issue here, ma'am, and what I'm trying to show is and I'll show you, I'll play my hand, I'll show you my cards and that is simple; you knew about the risks, you knew fully about the risks and we, and I will show you it
15because in this meeting you still needed... it's the 8th of April, it's said to you there
295 beds for hospitals must be available by next week, it must be available. It's not yet available, it must be available.

MS QEDANI MAHLANGU: Okay, may, maybe through you Justice [interrupted]

ADV DIRK GROENEWALD: I'm going to put it ma'am, I'll, I'll get through, I'll get
20through [interrupted]

MS QEDANI MAHLANGU: Justice, can I please answer?

ARBITRATOR, JUSTICE MOSENEKE: Allow, allow the witness to answer on that one. In the meeting, so many beds were to be, yet to be found.

MS QEDANI MAHLANGU: Not, the beds were not to be found but the beds were being picked up from a respective health facilities where we had spare beds. When 5it says it must be found is because they must be collected in respective places and then be taken to the places where it has been, they were being identified.

ARBITRATOR, JUSTICE MOSENEKE: So these discussions was held at the meeting?

MS QEDANI MAHLANGU: Yes, I remember discussing yes...

10**ARBITRATOR, JUSTICE MOSENEKE**: As per minutes?

MS QEDANI MAHLANGU: Yes, I remember discussing beds and where they're going to find them and who was going to make sure that those beds are found.

ARBITRATOR, JUSTICE MOSENEKE: Counsel?

ADV DIRK GROENEWALD: Thank you Justice. Next bullet point; 447 beds for 15Kalafong Hospital must be ready by end of May 2016. You knew this. You are, you are the MEC, you sit there, you hear all of this and you said to them, why don't you say to them; people what are we doing? We are placing these patients' lives at risk because all of this should've been done and finalised months ago and now on number ninety-nine we're still struggling with it.

20**MS QEDANI MAHLANGU**: But Justice, if you are to look at the same page, it says, it also gives a responsible person as well as a timeline. So when people, and that's

normally how work, when you have a task, there's a responsibility or a matter to be resolved. You assign at a timeframe and you assign an individual concern. So in my understanding when, when people present something to me and said; this is what we are going to, this, this is the issue, this is what we're doing, by this day we are going to resolve it and we will be able to, to, to meet our timelines. And I do not know beyond that what I've been told in the meeting. What is eh, eh, uhm, eh Counsel saying, actually, I'm not following properly?

ARBITRATOR, JUSTICE MOSENEKE: Counsel is saying; it's so late in the day before the May big push, you should've realised that a lot is still to be done. This, this is the input of, was put to you. Alternatively it's not true when you say you didn't know there are likely to be difficulties.

MS QEDANI MAHLANGU: But Justice, eh, if you go according to this minutes, uh, minutes, I would love to see the presentation that go along with this. It would have been said; this is the presentation and this is where we are but this, these issues we are identifying, we're going to be able to resolve them according to these timelines. So we are discussing these minutes in the absence of this document [indistinct – 49:53] this list. In the absence of what would have been presented in the meeting and I keep saying, Justice, when I'm being given, and I don't know myself to be that irresponsible, I know myself to be saying; when there's a problem, I put, I come to the party full steam and I make sure that things are resolved.

ARBITRATOR, JUSTICE MOSENEKE: [Indistinct – 50:11] I'm going to ask something like leaving people with the thought so that they don't feel harassed. I'm saying at the end of all of these questions, I'm going to be asking; why is it that you

had no sense of danger? Why, why is it that you, okay, let me phrase that differently; what is it that was so pressing, so compelling, that these patients must be out at the end of, of May? [Indistinct – 51:01] I mean what was, what was the real driver because part of the closure of the questions that are being asked by most of the witnesses wouldn't know why was it so pressing, so compelling to move ahead even when the NGO's were not, were not ready? As history showed, ultimately, uhm, I'd like you to think about it, even as a matter of hindsight. I'm not trying to blame you, but I'd, I'd like, I'd still remain with a mystery why it was so pressing that it must for better, for worse, happen? Just think about that and let's talk about that a little later after all the detailed questions.

MS QEDANI MAHLANGU: Okay.

ADV DIRK GROENEWALD: Thank you Justice. Ma'am, I'm just going to highlight some of these issues and then I'll put my question to you. So if you go on the equipment like beds, the equipment like beds' linen, clothing and others, a plan has to be presented. Second one; a visit by management and doctors should be undertaken to view the identified NGO's. Patients are going to them but we still need to view them in any event. Second one; NGO profiles must be submitted and presented. Second one; NGO staff to be presented in the next meeting. Second one; NGO marathon and verification of NGO's must be done by end of April 2016. Another one; users from Life Esidimeni may be transferred to NGO and doctors will follow them at NGO to assess them and replace them to the relevant facility if there is a need. Let's get this done, people, let's get this done. There's no backing down. Next one; 950 users must be moved by end of April 2016 to identified NGO beds.

Now these are the exact same NGO's that you still needed to verify, that you still needed the doctors to go out to, in terms of these minutes. And you, ma'am, still persist with your argument that you did not know about the risks?

MS QEDANI MAHLANGU: Okay, again, Justice, and I want to assure you in all 5certainties...

ARBITRATOR, JUSTICE MOSENEKE: Yes ma'am.

MS QEDANI MAHLANGU: That my assurance working with the team of medically qualified people gave me a sense of comfort that they know what they're doing because if you've seen the team who will have, in relating to infrastructure, it will be 10the team from health that instructs the department of infrastructures which has engineers and all the relevant qualified personnel, eh, to do the infra, infrastructure on behalf of the department.

ARBITRATOR, JUSTICE MOSENEKE: Mmmm.

MS QEDANI MAHLANGU: As it would, should've seen in the least of the project 15managers, those by, it will include, the, eh, plethora of, of, of, of individuals for the rest responsible areas of their work so that decisions are made speedily so with the assurance and the competent individuals in my sense that I continue to have, uhm, confidence. Off course in hindsight things are different and it's important for me to continue to emphasise that because if you say going by this document, and as I've 20said in the short comings of what this document is and, and, and that's difficulty of me to seeing one document as being said it's the minutes of the meeting, which I have not seen and I've chosen not to see, to, to, to go in that argument. I'm saying I

do not see the presentations which would've been made in this meeting and the discussion thereof, uhm, eh, and, and, and what, which led to this kind of, of, of, of, ehm, of, of, of, resolutions being returned in this manner but I take the point.

ARBITRATOR, JUSTICE MOSENEKE: Mmmm.

5**ADV DIRK GROENEWALD**: You take the point that should you, the MEC, at that point in time being presented with these facts, should've known that you are placing mental healthcare users' lives at risk?

MS QEDANI MAHLANGU: Once again, Counsel, I would not have known that the decision that the department has made was going to place the most vulnerable 10people in our society at risk. Had I known, with the benefit of hindsight, I would've done things differently, definitely and I can assure you that.

ADV DIRK GROENEWALD: Ma'am, that is why these people places their lives in your hands, is that you can predict and see what's the best for them.

MS QEDANI MAHLANGU: I can't, Counsel, it's [indistinct – 56:22] impossible, I 15can't predict [interrupted]

ADV DIRK GROENEWALD: It is possible.

ARBITRATOR, JUSTICE MOSENEKE: No, but do you understand the question? Leaders are leaders because they are meant to have foresight. They are meant to be able to sense the way forward and the dangers that the way forward may 20present. And that's what the question is. These people has chosen you to be a

leader because they trust that you will [indistinct – 56:56]. That is what the question is.

MS QEDANI MAHLANGU: [Indistinct – 57:04] But Justice if I knew that the decision that we took in the department in the end would have these kind of results 5that we have now, I think we would've done things differently.

ARBITRATOR, JUSTICE MOSENEKE: [Indistinct – 57:34] But it truly should have foresights.

MS QEDANI MAHLANGU: Yes Justice. In some other times you don't have foresights, there are times where you see that, there are times, Justice, that you see 10that there are dangers here. There are times where you get, there are times when you get assurances. Had I known what I know now and probably had the better foresight and had looked at things differently, maybe we would not be definitely sitting here, and again, this is at the benefit of hindsight and I'll take that point and I'll continue to agree with you on that point.

15**ARBITRATOR, JUSTICE MOSENEKE:** Mmmm and that's not my point, it's Counsel's point is that leaders are meant to [indistinct – 58:35] foresight.

MS QEDANI MAHLANGU: To the extent possible.

ARBITRATOR, JUSTICE MOSENEKE: Counsel?

ADV DIRK GROENEWALD: Thank you Justice. Ma'am I put it to you actually that 20you didn't need foresight, all that you need was to pay a bit of attention because the

facts were in front of you, the signs were there, [indistinct - 59:03] professional people warned you about it, but you, MS Qedani Mahlangu...

MS QEDANI MAHLANGU: Maybe, no, just call me Dorothy, just to be safe.

ADV DIRK GROENEWALD: Dorothy?

5**MS QEDANI MAHLANGU**: Yes, better, because we're going to cross [indistinct – 59:20] when we get there.

ADV DIRK GROENEWALD: But you Dorothy...

MS QEDANI MAHLANGU: Absolutely.

ADV DIRK GROENEWALD: The former MEC, you decided to push through.

10**MS QEDANI MAHLANGU**: But Counsel, I continue to say with the benefit of hindsight, I would've done things differently. And if indeed I had signs, I had foresight that things were going to turn out the way they did, I would've indeed and, eh, asked the team that we should do things differently.

ADV DIRK GROENEWALD: The thing is ma'am; you haven't produced any
15documents or any argument that you queried your professionals.

MS QEDANI MAHLANGU: Because I trusted them.

ADV DIRK GROENEWALD: You trusted them? They tell you we are at risk, do not proceed, you trust them? But you say we must proceed?

MS QEDANI MAHLANGU: No that's not inc, that's incorrect. It's, remember I said
20in government decisions are not made by individuals, you can call MEC for, for

community safety or anyone, any politician and ask how decisions are made in any department. The decisions in government are never an individual decision and it will be impossible to have decisions made by an individual and it doesn't matter how senior you are.

5 **ADV DIRK GROENEWALD:** Ja, uhm, thank you ma'am, I will argue at the end of the day that you were evasive witness, that you didn't want to confront the issues, that the evidence was quite clear by all your, your professional staff on which you relied. That you knew about the risks and that you were not truthful...

MS QEDANI MAHLANGU: That's inaccurate.

10 **ADV DIRK GROENEWALD:** During your testimony.

MS QEDANI MAHLANGU: I'll disagree with you Counsel.

ADV DIRK GROENEWALD: A last point of question from my side, ma'am; do you seek forgiveness from the families?

MS QEDANI MAHLANGU: Yes, I do.

15 **ADV DIRK GROENEWALD:** You do? And for what do you seek forgiveness?

MS QEDANI MAHLANGU: For what happened under my political leadership.

ADV DIRK GROENEWALD: Under your political leadership? But you distanced yourself to some extent.

MS QEDANI MAHLANGU: I'm not distancing myself, I'm saying that the team that
20I worked with failed me and to that extent, people lost lives and I'm truly, truly sorry
and I will work systematically and to make sure that, uhm, I support every effort that

government is doing in finding closure on, on this, so that families can find peace at last.

ADV DIRK GROENEWALD: And again, ma'am, I will argue that your testimony has not brought any form of closure to the families. Thank you Justice, no further questions.

ARBITRATOR, JUSTICE MOSENEKE: Adv. Groenewald, thank you. Adv. Hutamo?

ADV TEBOGO HUTAMO: Uh, thank you Justice. Ms Mahlangu, good afternoon.

MS QEDANI MAHLANGU: Good afternoon Adv. Hutamo.

10 **ADV TEBOGO HUTAMO**: I am the fifth Counsel to cross examine you after three days of you being on the stand. Uhm, it is quite clear that there's been quite a number of questions which were put to you and you have provided the answers to the extent that you did. Uhm, from what appears from our side is that my learned colleagues have for some reasons deprived me of, eh, asking you questions, eh, 15 because the questions which I wanted to put to you, have already been canvassed and been dealt with and on that note, Ms Mahlangu, we'll post no questions to you, thank you.

MS QEDANI MAHLANGU: Thank you Advocate.

ARBITRATOR, JUSTICE MOSENEKE: Adv. Ngutshana? I know it's late in the 20 day but we must continue to, uhm, allow the proceedings to go on please.

ADV PATRICK NGUTSHANA: Uh, thank, uh thank you Justice Moseneka, I don't have anything else to add on the re-examination exam.

ARBITRATOR, JUSTICE MOSENEKE: You have no re-examination?

ADV PATRICK NGUTSHANA: Thank you.

5**ARBITRATOR, JUSTICE MOSENEKE**: That's good news, uh, for my MEC that the end of the cross examination [cough] excuse me. We, again, I would like to thank you for having come here.

MS QEDANI MAHLANGU: Okay Justice.

ARBITRATOR, JUSTICE MOSENEKE: This is not a trivial exercise, sometimes
10when I talk about the enormity of the exercise, I say one will struggle to find an equal number of people dying in one tragedy. It's larger than Sharpville, it's larger than June 16, it's larger than Marikana. Many people, and that is why it's such national reverberance because people are, understand that it is a tragedy. So I would like to thank you for having made time to come. We would've wanted to
15come earlier than you did so we could wrap it up and help closure to come quickly and go all our different ways to go and lick our wounds as we try and heal but none the less, thank you for coming and thank you for coming voluntarily and participating in, in the process. There will be an argument after this and there will be an award which will be my duty to write that would reflect the outcome of these proceedings.
20Proceedings are about compensation but are also about readdress and closure. I know that you have facilitate that we have developed a practice in arbitration proceedings rather unusual to allow every, any and every witness at the end of his

or her testimony and you'll see that on all the tapes that you've had a look at or the transcriptions, to have a valedictory message to the families in the first instance and certainly to the nation to an extent that this is, as you know, televised live. And I think it is that moment where you have the opportunity, uhm, to speak and I hand 5that over to you.

MS QEDANI MAHLANGU: Uh, thank you Justice. Eh, it's been a difficult exercise and I'd like to thank each and every member of the families who was represented here.

ARBITRATOR, JUSTICE MOSENEKE: Tho, please leave quite, those who are 10leaving, I see people rise, do it quietly please. Please, you may proceed.

MS QEDANI MAHLANGU: Thank you Justice, once again, uh, for the opportunity. Uhm, I'd like to say to the families that indeed what happened, em, it's really regrettable and once again my sincere condolences to each and every one of the family members who lost their loved one. And I'm not saying this lightly that a loss 15of life is, is very painful. I may not have understand what they have gone through but I do understand the pain of losing a loved one and I do say dudu [indistinct – 1:08:17] what government is doing, we'll help the families to find closure finally. And secondly, I'd like to say that, to thank you, Justice, for having afforded me the opportunity to, to be listened to and to present my story and to thank all the 20Counsels, uhm, who were present here, particularly Adv. Ngutshana, who took time and took me through the documentation and for at every moment he was available together with the state advocate to, whenever they were called upon to give a, to to provide information that was necessary for me to be a useful witness and at that

aspect I'd like to, to say is that being a political leader is not an easy task. Post democracy probably this is one of those very difficult incidents that I don't think I'll ever forget in my life. It has not been easy, it's been exceptionally difficult and complicated with the fact that I was out of the country without my family and at no 5stage did I attempt to avoid coming to the arbitration or appear. My reasons of not coming on time, those have already been explained and they're on record and I'd like to assure you, Justice, if there's anything that I still need to do in supporting your work in whatever way, I remain available. Whether telephonic or email or whatever, I remain available because I realise that I'm an important link to what 10would've been happen, have happened in the department. I tried my utmost best to remember, to access document, I may not have access all the document necessary. And the fourth point I'd like to say and emphasise, and I've raised it couple of times in the arbitration process that I feel that we have let down the most vulnerable in our society and for that I apologise. Myself and the team that I led 15and I hope the colleagues, every politician going forward to look at to do things differently with the benefit of hindsight, off course, we can always do things differently. And many of times I was asked what is my view about the, the arbitration report opt, excuse me, about the ombuds' report, eh, I'm still, I'll continue to read the report in the next couple of days and allow it Justice to conclude your 20processes, eh, if necessary for to make, eh, further any eh, enquiries either through you or government or through any other legal processes, I'll certainly do so because in reason being, Justice, is that, and I'd like to explain that some of the questions that I, uhm, I picked up during this interaction suggested that his process was about

my testing, checking my integrity. I know you tried your best to, to [indistinct – 1:11:47] my fears but I feel that as I walk out of here, this exercise, to some extent, was about testing my integrity, whether indeed I have the integrated to be, to have been a political head in the respective department that I led and to that extent I will consider what to my options are in relating to the report of the ombuds person and once again I'd like to humbly thank you very much. If I indeed I'd cross lines of one kind of the other, I apologise because it's my first time to appear in such formalities. I wish you all the best for the remainder part of the hearings and, and now I'm looking forward to the conclusion of this matter so that even me, and myself and my family can find closure just to share a bit of an antidote. I had a sore heart on Saturday, I went to Mpumalanga to visit my family, while I come from Hendriena in a township called [indistinct – 1:12:46] and I got there because they have not seen me for months and my aunt said to me we are happy to see you alive, because I was, I think she's 80 or 82 and when I was away, I heard that she had, she was hospitalised so it's the reason why I made sure I see her before the hearing and she said to me, she told me a story which really broke my heart and I hope that South Africans, whatever the interpretation related to my rule as it's been presented by the media, they will try and understand my perspective as I've come here to present. My aunt said to me; I went to the clinic as a diabetic patient, as a person who has, who has high blood, who take high blood medication from the clinic. And she said being checked or consulted by, consulting a nurse [indistinct – 1:13:37] and someone said two nurse were taking about me, and the two nurses was saying to the nurse who was em, looking, who was attending to my aunt, said to her by the

way that's Qedani's relative and the nurse who was treating my aunt said to her oh your child kill people and an argument ensued from an 85, eighty something year old and a nurse at the clinic. And my aunt said to her it's okay if you want to kill me, if that satisfies you, please do kill me. What am I saying, Justice? My family has 5 taken strain because of my voluntary role that I've taken in government in trying and I've done, I tried my best to do my work. Yes, things may have gone wrong under my watch and I accept that. That is why I thought my decision to step aside and allow government to do its work and rebuild, particularly the mental health, uhm, services. I thought it was an honourable thing and, and I do want to say to South 10 Africans once again I apologise and I hope this doesn't happen again but my family should not suffer on the basis of the thing that happen in the conduct, in the work that I was doing politically as a [indistinct – 1:14:59]. Thank you very much once again.

ARBITRATOR, JUSTICE MOSENEKE: [Indistinct – 1:15:04] thank you very much 15 and [cough] excuse me. I think as we close, I have already expressed my view of it's a noble thing to fall on one sword and to accept political responsibility and I hope a few more, even most senior leaders would learn from you. So I have admiration for that, I want you to know that.

MS QEDANI MAHLANGU: Thank you Justice.

20 **ARBITRATOR, JUSTICE MOSENEKE:** But as for the balance of this, we'll have to go back and think, apply our minds and uhm, and, and do the right thing and I think we are partners with government in this arbitration to try and find closure and to acknowledging this is a tragedy. It is a total post-apartheid tragedy. Uh, we've

come to the end of, of today and thank you for everybody who have shown so much patience. [Indistinct – 1:16:04] the Counsel, I could see rotations flying around of cross examinations but that's, that's, it comes with the territory, I comes with the territory but I'd like to thank all of you, it's a lot of hard work and difficult 5circumstances. I've had a good few offers of people saying I need debriefing, psychologists and psychiatrists thinks I'm a victim myself so I hope you're not as much victims as I am of all this pain and trauma around us. Uhm, we're meeting tomorrow at 09:30 and what's the programme for tomorrow?

COUNSEL: Uhm, Justice Moseneke, we have uhm [interrupted]

10**ARBITRATOR, JUSTICE MOSENEKE:** We are doing a bit of housekeeping but you are welcome to start packing your documents and again siyabonga [indistinct – 1:16:54]

MS QEDANI MAHLANGU: Thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: Okay.

15**COUNSEL:** We have, uh, Professor Grobler tomorrow. Uh, that's the only witness available for tomorrow from the schedule of witnesses but, uh, prior to that, uhm, I had, uh, received a document. That is the report back from the SAPS, I wanted to introduce it during lunch time but I didn't want to waste, no after lunch time, I did not want to waste more time which I'll deal with it tomorrow morning before Professor 20Grobler starts. It's a short report.

ARBITRATOR, JUSTICE MOSENEKE: Very good, I think well let's do that then, uhm, I do accept that. I think we've done well, sorry... let's meet tomorrow then at 09:30. You are adjourned.

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