

# **LIFE ESIDIMENI ARBITRATION**

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

**Date: 24<sup>th</sup> November 2017.**

5

**SESSION 1 – 3.**

---

**BEFORE ARBITRATOR –JUSTICE MOSENEKE**

10

---

**WITNESSES:**

**DR MAKGABO JOHANNA MANAMELA**

15 **Contents**

SESSION 1.....	2
SESSION 2.....	91
SESSION 3.....	134

## **SESSION 1**

20 **ARBITRATOR JUSTICE MOSENEKE:** Thank you. You may be seated. Good morning Dr Manamela.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR. MANAMELA:** Good morning Justice.

**ARBITRATOR JUSTICE MOSENEKE:** 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.

5**DR. MANAMELA:** So help me God.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel, good morning.

**ADV ADILA HASSIM:** Good morning Justice.

**ARBITRATOR JUSTICE MOSENEKE:** You may proceed.

**ADV ADILA HASSIM:** Thank you. Good morning Dr Manamela.

10**DR. MANAMELA:** Good morning Counsel.

**ADV ADILA HASSIM:** When we left off yesterday, we were talking about the licences to the NGO's. Do you remember?

**DR. MANAMELA:** Yes Counsel.

**ADV ADILA HASSIM:** And you have confirmed that the licences were signed by  
15you on the 1<sup>st</sup> of April 2016.

**DR. MANAMELA:** That is correct.

**ADV ADILA HASSIM:** And we were looking specifically at the Shama House audit report.

**DR. MANAMELA:** That is correct.

**ADV ADILA HASSIM:** And do you recall that the date of that audit report was 21 July 2016?

**DR. MANAMELA:** That is correct.

**ADV ADILA HASSIM:** Yesterday when my colleague, Advocate Yina, questioned you in relation to the Shama House audit report of July 2016, you said you cannot help it if things fall apart. Do you recall that?

**DR. MANAMELA:** I, did I mention I cannot help it if things fall apart?

**ADV ADILA HASSIM:** Yes.

**DR. MANAMELA:** It is not the word that I said.

10**ADV ADILA HASSIM:** Okay, well let us not argue about it. It is in the transcript and we can go there if you would like, but the point is simply this. You signed the licence in April and 21 July we have already described all of the conditions at Shama House. The fact that they depended on donations for food and so on. How could things have fallen apart so quickly between April and July?

15**DR. MANAMELA:** Justice, you mentioned that they depended on donation. Mental health care user, some of them were on disability grant. It cannot be only on donation. That is number one. You also asked that how can things fall apart as quick as that. I believe that the NGO are legal entities. They also have to take responsibility for the work that they are doing there, but for us to find, for my team in  
20the district to find that the situation is not as at the time when we licensed them and give them the first group of patients, is that they have to do quarterly review, and I

## LIFE ESIDIMENI ARBITRATION SESSION 1

cannot dispute what they have found, but what I can say is that they found the situation. They had to implement some of the measures. However, they reported to my office.

**ADV ADILA HASSIM:** Who is they?

5**DR. MANAMELA:** The district. You remember, the people who signed are the two district people who are responsible for the NGO's. So after they found that, they have to put measures on. But when it reach my office about the situation, I also put measures there. I, we use the strategy that we call adopt and NGO strategy and ... [interjects]

10**ADV ADILA HASSIM:** Let us just go back a moment, because ... [interjects]

**DR. MANAMELA:** Our team to adopt that NGO, so that it is in line with the way it was when we give the patient from Life Esidimeni.

**ADV ADILA HASSIM:** When you gave them and when you licensed them on the 1<sup>st</sup> of April 2016.

15**DR. MANAMELA:** Yes, yes.

**ADV ADILA HASSIM:** You assured, by virtue of your signature, everything was in order at Shama House.

**DR. MANAMELA:** At that time.

**ADV ADILA HASSIM:** And by July things had fallen apart.

20**DR. MANAMELA:** Yes. Yes, at that time.

**ADV ADILA HASSIM:** I am asking how could it have happened so quickly?

**DR. MANAMELA:** I may not know that one, because the NGO has to give an explanation. After three months, when we went for the quarterly review and we find that things fall apart, I think only the NGO can tell us, but I can tell you what my department did to ensure that they go back to where they were when we give them the patient.

**ADV ADILA HASSIM:** You said that your office, NGO manager did the licences for you. Do you recall?

**DR. MANAMELA:** Prepared the licences to me to sign, but after audit has been done.

**ADV ADILA HASSIM:** So when your NGO manager prepared the licences for you to sign, was there a checklist of everything that was confirmed to be in order?

**DR. MANAMELA:** There was a report that indicated they were, everything was in order from her. However, she received the check list of the form that might have been used. That is number one. The second thing, we also used the marathon report which I believe she also used that and then prepared the licences for me to authorise.

**ADV ADILA HASSIM:** So she brought you the paper work and you signed the licence?

**DR. MANAMELA:** Yes, I signed the licence.

**ADV ADILA HASSIM:** Were you aware that there were NGO's that had never cared for mental health care users before?

**DR. MANAMELA:** That was not correct, because when my team went there during the process, when we called the meeting to say department is going to terminate the contract, they also I believe they also came and that is when my team realised that there is another NGO at Shama. So that NGO, when they went there, they did find the patient who are mentally ill. I believe even the other patients who are not mental, like people who are stranded on the street ... [interjects]

**ADV ADILA HASSIM:** So are you saying that the NGO's, all of the NGO's that you licensed had experience in caring for mental health care users?

**DR. MANAMELA:** Can I finish the Shama, because that is what you asked me.

**ADV ADILA HASSIM:** I am asking about all the licences in fact.

**DR. MANAMELA:** Now we abandon the Shama issue, now we go to all the licences?

15 **ADV ADILA HASSIM:** I am not abandoning anything.

**DR. MANAMELA:** Okay. No, I wanted to say because ... [interjects]

**ADV ADILA HASSIM:** No, your Shama answer was that the paperwork was brought to you and you signed it.

**DR. MANAMELA:** And then you carried on and said do you know that Shama was not taking care of mental health care users?

**ADV ADILA HASSIM:** I said ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** May we remind you ... [interjects]

**DR. MANAMELA:** Alright.

**ARBITRATOR JUSTICE MOSENEKE:** You are here to answer questions, and not to ask questions.

5**DR. MANAMELA:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** So ... [interjects]

**DR. MANAMELA:** Yes Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Would you allow me to speak and finish?

**DR. MANAMELA:** Yes Justice.

10**ARBITRATOR JUSTICE MOSENEKE:** You must please listen to the question and answer it. Witnesses do not ask questions, their job is to answer them, and let us remain courteous to each other, throughout the process. Counsel.

**ADV ADILA HASSIM:** My question Dr Manamela, is were you aware that there were NGO's that you licensed that had never cared for mental health care users  
15before?

**DR. MANAMELA:** Yes Counsel.

**ADV ADILA HASSIM:** You were.

**DR. MANAMELA:** There were.

**ADV ADILA HASSIM:** And were you aware that they had insufficient resources to  
20feed and care for the patients?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR. MANAMELA:** According to the meetings we had with them and the resources they presented to us, there was no indications that at that time they do not have resources to ... [interjects]

**ADV ADILA HASSIM:** There was no indication.

5**DR. MANAMELA:** Yes.

**ADV ADILA HASSIM:** And when you say the meetings you had with them, you mean the meetings with the NGO's?

**DR. MANAMELA:** And the team that visited the NGO's also gave report that the NGO's that we are going to send patient are eligible to take care of the patients.

10**ADV ADILA HASSIM:** And you took their say so?

**DR. MANAMELA:** No.

**ADV ADILA HASSIM:** You accepted their word that they were, the funding was sufficient to provide the service?

**DR. MANAMELA:** Yes, I have been working with the NGO ... [interjects]

15**ADV ADILA HASSIM:** Did you ask to see their financial statements?

**DR. MANAMELA:** No, I did not ask to see financial statement, for reasons that it was always that for the first month they support the NGO with the money that they have and then also the disability grant. So I did not ask to see their financial statements.



**ADV ADILA HASSIM:** So when you issue the licence you do not satisfy yourself that the NGO that you are licencing objectively has the funds necessary?

**DR. MANAMELA:** We satisfy ourselves, but the team that went, they come, they tick where they have got financial, the account, the board and other things. They are there on the NGO forms, and that also make us to believe that this NGO is going to be able to render services.

**ADV ADILA HASSIM:** Because the NGO said so.

**DR. MANAMELA:** And we accept it as that.

**ADV ADILA HASSIM:** Because the NGO said we can do it.

10**DR. MANAMELA:** Yes, and they prove it by giving the team that assessed them, the documents that this is what they have.

**ADV ADILA HASSIM:** I see. So they did provide the financial statements?

**DR. MANAMELA:** The financial statement they did not provide to us at that time, but at the front of the year, because they are independent entities.

15**ADV ADILA HASSIM:** Yes, but you are contracting their services as government.

**DR. MANAMELA:** Yes, you are right Justice.

**ADV ADILA HASSIM:** So you need to satisfy yourself.

**DR. MANAMELA:** You are right, but what we do because we subsidise them, we give them, we check their financial almost quarterly as we started to subsidise them.  
20So before that we did not check their financial.

**ADV ADILA HASSIM:** Okay.

**DR. MANAMELA:** But it was ticked that they have got ... [interjects]

**ADV ADILA HASSIM:** So when you licensed them you had not checked their financial status?

5**DR. MANAMELA:** I did not ask them to give me the bank statement.

**ADV ADILA HASSIM:** And we you aware that some of them did not even have bank accounts?

**DR. MANAMELA:** The NGO at the time of licensing they were not submitting the report for the bank account, but we were looking at what they said they have.

10**ADV ADILA HASSIM:** Again you took the word of the NGO. You just took their say so.

**DR. MANAMELA:** That is correct.

**ADV ADILA HASSIM:** And even though you did not know all of this information, you still permitted the mental health care users to be sent there, is that not so?

15**DR. MANAMELA:** We, what we did not see is their bank statement, but the environment, the type of the staff, the number of the staff we had those, all those. It is just the bank statement that we did not have, and it was also discussed and they assured, because the finance department were also going out to assist the NGO and on what is required. So from that point of view we signed the licence.

20**ADV ADILA HASSIM:** The licence.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR. MANAMELA:** And send the patient.

**ADV ADILA HASSIM:** And you signed the licence yourself?

**DR. MANAMELA:** Yes, I am the one who signed the licenses.

**ADV ADILA HASSIM:** And yesterday you spoke about renovating beds. You  
5spoke about renovating beds yesterday in your testimony.

**DR. MANAMELA:** Renovating?

**ADV ADILA HASSIM:** Beds.

**DR. MANAMELA:** Beds?

**ADV ADILA HASSIM:** Yes, you spoke about renovating beds.

10**DR. MANAMELA:** Oh, plans. Sorry about that. Yes.

**ADV ADILA HASSIM:** And you mentioned Cullinan for example that you visited  
Cullinan.

**DR. MANAMELA:** Yes.

**ADV ADILA HASSIM:** And you said at that time the NGO's had not taken, had not  
15occupied the premises.

**DR. MANAMELA:** That is correct.

**ADV ADILA HASSIM:** So you were checking on the beds.

**DR. MANAMELA:** Yes.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV ADILA HASSIM:** And you said that in relation to Anchor House for example, even though the licence was at a different address, that you went to that address to check on the facility like Kalafong for example.

**DR. MANAMELA:** That is correct.

5**ADV ADILA HASSIM:** And in relation to Precious Angels it was in Lynnwood and you went to check on that facility.

**DR. MANAMELA:** That is correct.

**ADV ADILA HASSIM:** And so in the process of this renovations and renovating beds, can you tell us what that means? How does that fit into your signing of the  
10licences?

**DR. MANAMELA:** Okay. The signing of the licences were part of the delegated work from the meeting of the project to the directorate. So for us to visit the environment, the buildings, we must ensure firstly that the building will be suitable for the users that will be placed there. That was the main reason, and after we dealt  
15or during that process, we had also to look at other things like the stuff they had, where will they have the furniture and that. For the furniture, because we were renovating those hospitals. Weskoppies, Cullinan and we knew that we have those close hospitals that had furnitures and other hospitals that did not use them. Then we also look at that to say let us get assistance from these other hospitals with the  
20furnitures and other things they do not use.

**ADV ADILA HASSIM:** So, and your purpose was to be able to establish how many beds were available?

**DR. MANAMELA:** That is correct Justice.

**ADV ADILA HASSIM:** In order to facilitate the transfer of mental health care users?

**DR. MANAMELA:** That is correct.

5**ADV ADILA HASSIM:** But in your assessment, I accept what you say about needing to have a look at the physical infrastructure, but does it not also require you to determine whether there will be adequate food, water, hygiene and infection control, appropriately qualified staff, adequate numbers of staff, proper management by a manager that is experienced to run a mental health facility?  
10Does it not require you to do all of those things? Check all of those things as well?

**DR. MANAMELA:** It was required that we check all these things, but what I can mention again is that if a manager like ... [inaudible], the Precious Angels, is not a person who skills for mental health, but has got an NGO. That person will appoint people who has got skill, he is just a manager. So we looked at all those things,  
15and ... [interjects]

**ADV ADILA HASSIM:** And did she appoint anyone with those skills?

**DR. MANAMELA:** Yes. From the report, and I went there. I found a professional nurse there in her NGO as well.

**ADV ADILA HASSIM:** And the professional nurse was trained in psychiatric  
20nursing?

## LIFE ESIDIMENI ARBITRATION SESSION 1

**DR. MANAMELA:** Yes, it was a psychiatric nurse trained, I think if I am not mistaken was a person who is on pension if I am not mistaken. Like many NGO's we found that they appointed people who are professional nurses and ... [inaudible] and auxiliaries who were on pension and we were sure of the staff members that will take care of our users.

**ADV ADILA HASSIM:** Are you sure of that? Are you sure that the NGO's had that level of skill?

**DR. MANAMELA:** Yes, I will say at the time I issue and sign the licence I was sure that they have got the staff. Later when I visited, I also said that yesterday. I visited one NGO which had a lot of professional nurses. I found that most of them have left and when I asked they said because they were not paid and I asked why you were not paying them on the disability grant of the patient that we have, but you know that was that and then it means it was maybe not enough.

**ADV ADILA HASSIM:** Had they been paid their subsidy by the government at that point in time.

**DR. MANAMELA:** The professional nurses were or all the staff, they will be paid by the NGO manager.

**ADV ADILA HASSIM:** Was the NGO paid, my question was not that. My question was whether was the NGO paid by the Gauteng Department of Health?

**DR. MANAMELA:** The Gauteng Department of Health paid the NGO's, but late. It was not as quick as we planned.

## LIFE ESIDIMENI ARBITRATION SESSION 1

**ADV ADILA HASSIM:** And so the professional nurses left, because there was no one to pay them?

**DR. MANAMELA:** In the NGO that I visited I was told that, and I went several times over the weekend, and I could not find them, but there were enrolled nurse, I think I found enrolled nurse and then after they were paid I think they appointed one professional nurse, but I found lower categories of staff when I went there.

**ADV ADILA HASSIM:** Sure. But the bottom line is the NGO's did not have the money to be able to pay the staff?

**DR. MANAMELA:** Counsel, it may not be fully that, because most patient I am not saying they had the money, but partially because most patients who were there, were also getting disability grant, but they did not have the money from the department, because the department has established how much a prof nurse should be paid, they did not have the money that they can use from our department.

**ADV ADILA HASSIM:** And they did not have sufficient money on their own to pay the staff, to buy food, to ensure that the place was kept clean.

**DR. MANAMELA:** For to pay the staff from their pocket, some had some. It means they did not. Why I am saying that, because some nurses in other NGO did not leave. It means they had, but those that did not have or apparently they did not have money, and then the money for cleaning and the rest of the things, like if the patient will get disability grant, that grant can be used for some of the smaller, some smaller basics. Number two ... [interjects]

**ADV ADILA HASSIM:** You are saying that the disability grants would be sufficient to run an NGO?

**DR. MANAMELA:** No, I am not saying it will be sufficient.

**ADV ADILA HASSIM:** So ... [interjects]

5**DR. MANAMELA:** I said ... [interjects]

**ADV ADILA HASSIM:** You cannot rely on disability grants of the patients.

**DR. MANAMELA:** We were not relying on it. I am just mentioning it as a fact, because I will give you five factors, start from our unit we could manage to do. Disability grant cannot be from my unit.

10**ADV ADILA HASSIM:** No.

**DR. MANAMELA:** But what we did.

**ADV ADILA HASSIM:** Of course not.

**DR. MANAMELA:** For the clothing, because it is very critical and linen, we organise with a company from Tshwane that can give them clothing before they  
15were paid.

**ADV ADILA HASSIM:** Which ... [interjects]

**DR. MANAMELA:** Which company?

**ADV ADILA HASSIM:** Well, who did this company that you used.

**DR. MANAMELA:** Okay.



**ADV ADILA HASSIM:** Did they go to all the NGO's?

**DR. MANAMELA:** We were in a meeting in May I believe ... [interjects]

**ADV ADILA HASSIM:** Did they provide linen and clothing at all the NGO's?

**DR. MANAMELA:** Yes, those NGO's that did not have linen and clothing, they provided to them so that they will pay them as soon as we pay.

**ADV ADILA HASSIM:** And which NGO's were those?

**DR. MANAMELA:** For example I, the manager in my office will have all, but I know Rebaferi got the clothing, all their patients were in the same uniform. I know Tshepong got some clothing. Even Anchor got some clothing.

10 **ADV ADILA HASSIM:** And who paid this company to provide linen and clothing?

**DR. MANAMELA:** Okay, it was an organised effort from my team, to say when the NGO will be paid, they will pay them.

**ARBITRATOR JUSTICE MOSENEKE:** Again I would like to ask you to listen to the question. It is not about all words, words, words. Listen to the question and try  
15 and answer the question, and take a breather. Listen to the question and answer it please.

**DR. MANAMELA:** I am answering the question Justice.

**ARBITRATOR JUSTICE MOSENEKE:** But listen to the question and answer the very question.

20 **DR. MANAMELA:** Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Not anything that comes to your mind. Just carefully listen. There is a reason for the question and answer it please. Counsel, would you repeat the question and let us get an answer.

**ADV ADILA HASSIM:** Should I repeat the question?

5**DR. MANAMELA:** You can repeat it.

**ADV ADILA HASSIM:** Who paid this company to provide linen and clothing to the NGO's?

**DR. MANAMELA:** The NGO's paid them as soon as we paid them.

**ADV ADILA HASSIM:** The NGO's paid them?

10**DR. MANAMELA:** Yes, as soon as the department paid them. The arrangement was made, because at that time we made arrangement they were not yet paid.

**ADV ADILA HASSIM:** Sorry, I thought that this was an emergency measure because the NGO's did not have funds.

**DR. MANAMELA:** No, it was just ... [interjects]

15**ADV ADILA HASSIM:** So how could the NGO's have paid them? Why did, if they did not have funds how could they have paid this company?

**DR. MANAMELA:** I was saying Counsellor, we met with the NGO, and introduced a person who can give them the clothing on account. Let me put it that way. Then as soon as we paid them, they will pay them. The second thing we also organised  
20with them in a meeting, they were free because the NGO are a legal entity that is furnishing themselves, to choose to take them or not. Then we also organise for the

**LIFE ESIDIMENI ARBITRATION SESSION 1**

food, those that does not maange with the disability grants, they can meet with a company called Masala dietician which came with us to the meeting and presented to the NGO and agreed that they can also get the meals from them on account. So that the money they will get from the disability grant ... [interjects]

5 **ADV ADILA HASSIM:** They would get it on account? They would get food on account?

**DR. MANAMELA:** Yes.

**ADV ADILA HASSIM:** You said that ... [interjects]

**DR. MANAMELA:** Yes.

10 **ADV ADILA HASSIM:** You have just sid when you licenced you received the paperwork and you issued the licence on the basis that these NGO's were in good financial health.

**DR. MANAMELA:** I said ... [interjects]

**ADV ADILA HASSIM:** But now we are having to get food on account, clothing on  
15 account, linnen on account?

**DR. MANAMELA:** We said those, because why we came with that from my unit was that if, because we did not pay them in time. At that time, before they are paid ... [interjects]

**ADV ADILA HASSIM:** So it was because you have not paid them in time.

20 **DR. MANAMELA:** Because of they still not yet received the payment, how can we ... [interjects]

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV ADILA HASSIM:** And they could not without your payment sustain themselves. Is that not so?

**DR. MANAMELA:** I am not just saying so, but what I can say is that we realised, because they are not being paid subsidy. We cannot expect them to only manage with disciplinary, with disability grant and donation. That is why we organised that if you feel this DG and donation you have is not sufficient ... [interjects]

**ADV ADILA HASSIM:** Do you agree that these mental health care users were under your care? Under the care of the state?

**DR. MANAMELA:** Come again Counsel? Come again Counsel?

10 **ADV ADILA HASSIM:** Were you aware that the mental health care users were under the care of the state?

**DR. MANAMELA:** Yes, I was aware Counsel.

**ADV ADILA HASSIM:** So why would you send them to NGO's and say look after these people, use their disability grants and whatever donations you can get and we will subsidise you and then you are late with the subsidy and then they have to go and procure things on account. How did that make sense to you?

**DR. MANAMELA:** It makes sense to me to say I was putting the interest of the patient at heart, because it was not my unit that was paying. Then I had to make sure that I ensure the NGO's have got clothes for the patients, have got meals for the patients.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV ADILA HASSIM:** But you did not ensure it at the time that you licenced them?

**DR. MANAMELA:** At the time that we licensed them, the NGO were going to get the subsidy. We ensured, I also, I have got a document that indicate how much 5each NGO will get as a subsidy from the department. So we were sure that they will only maybe use their donation and DG for one month and they are paid.

**ADV ADILA HASSIM:** And how much was that subsidy per patient?

**DR. MANAMELA:** Depending on the type of patient, the other one I believe it was R3 300-00 I might not be sure.

10**ADV ADILA HASSIM:** Per day?

**DR. MANAMELA:** Per month.

**ADV ADILA HASSIM:** And per day?

**DR. MANAMELA:** Per day I did not work it per day, and ... [interjects]

**ADV ADILA HASSIM:** R3 300-00 per month?

15**DR. MANAMELA:** Plus minus that.

**ADV ADILA HASSIM:** And did you ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** No, per what?

**DR. MANAMELA:** Per month, per patient.

**ADV ADILA HASSIM:** Did you put a request for help, these health services out to  
20tender?

**DR. MANAMELA:** For?

**ADV ADILA HASSIM:** You contracted with private NGO's, legal entities in their own right to provide services on behalf of the state. Is that correct?

**DR. MANAMELA:** That is correct.

5**ADV ADILA HASSIM:** Did you put that request for services out to tender?

**DR. MANAMELA:** No.

**ADV ADILA HASSIM:** Why not?

**DR. MANAMELA:** That is not what we always used to do, because we called the meeting and in the meeting we were looking at the NGO, if they can expand and  
10they could not expand. The one they have, some expanded like Takalani Mosego. Then they called others, and the NGO also identified by the district. So when the district bring the list to us that these are the NGO, we knew they know the NGO.

**ADV ADILA HASSIM:** Yes, so that is really what I am trying to get at. You see, you refer to the NGO's being identified. That you identified the NGO's. NGO's  
15were identified, and they were identified by various teams, and the basis for identifying NGO's that can provide a service, must be that they meet certain criteria. Correct?

**DR. MANAMELA:** Yes, that is correct.

**ADV ADILA HASSIM:** I am asking did you put the request for what you need, you  
20see the tender bid, request for proposals will say we need someone who could provide the following.

**DR. MANAMELA:** The NGO's are non organisational, non profit organisations. So we did not put a tender, because they were not going to be fully paid. They were just going to be subsidised.

**ADV ADILA HASSIM:** Were you going to be paying the NGO's?

5**DR. MANAMELA:** We were going to subsidise the NGO's per patient.

**ADV ADILA HASSIM:** So you would be paying money to the NGO's.

**DR. MANAMELA:** That is correct Counsel.

**ADV ADILA HASSIM:** To provide a service on behalf of the state?

**DR. MANAMELA:** That is correct.

10**ADV ADILA HASSIM:** Are you aware of Section 217 of the constitution?

**DR. MANAMELA:** You can explain what it said?

**ADV ADILA HASSIM:** Section 217 of the constitution deals with procurement, and it says the following:

*"When an organ of state in the national provincial or local sphere of government or  
15any other institution identified in national legislation, contracts for goods or services,  
it must do so in accordance with the system which is fair, equitable, transparent,  
competitive and cost effective."*

Does that now ring a bell, that provision?

**DR. MANAMELA:** Yes, I know that portion. However, we also look at the sole  
20providers like what ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** It is okay to say I know of the provision, stop.

**DR. MANAMELA:** Okay.

**ARBITRATOR JUSTICE MOSENEKE:** And wait for the next question. So that we can just be systematic and save time please. You have been asked are you aware of the provisions? Yes, I am aware of the provisions. Next, and Counsel will ask you the next question.

**ADV ADILA HASSIM:** Thanks Justice. Did you comply with that constitutional obligation?

10 **DR. MANAMELA:** That is what I was going to explain, but I was told that ...  
[interjects]

**ARBITRATOR JUSTICE MOSENEKE:** You wait. Maybe we do not need an explanation. You wait until you are asked for an explanation.

**DR. MANAMELA:** Okay.

15 **ARBITRATOR JUSTICE MOSENEKE:** Counsel.

**ADV ADILA HASSIM:** Did you comply with that constitutional obligation?

**DR. MANAMELA:** That constitutional obligation was not applicable to the NGO, because we were looking at the sole providers of that services.

**ADV ADILA HASSIM:** The sole providers?

20 **DR. MANAMELA:** Those who say we are willing to provide the service.



**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV ADILA HASSIM:** So you relied on NGO's coming forward and saying we want to provide the service.

**DR. MANAMELA:** Yes.

**ADV ADILA HASSIM:** You had promised that they would get paid.

5**DR. MANAMELA:** Yes.

**ADV ADILA HASSIM:** And that was the basis for the licensing and for the contracts with them, the service level agreements.

**DR. MANAMELA:** We were saying they will be subsidised. The provider of services in the department, those who are being paid fully, they are not the same as  
10the one that we pay as the NGO that are subsidised.

**ADV ADILA HASSIM:** So why were they different.

**DR. MANAMELA:** That is why we used the quota system.

**ADV ADILA HASSIM:** A quota system?

**DR. MANAMELA:** Yes, because when we had the first meeting addressing our  
15own NGO's, the next meeting the other NGO's came. Then that is when we found that there are new NGO's as well.

**ADV ADILA HASSIM:** Right.

**DR. MANAMELA:** Yes.

**ADV ADILA HASSIM:** And you had no experience of these NGO's before, is that  
20not so?

**DR. MANAMELA:** Yes, we do not have and we were working with finance people who ... [interjects]

**ADV ADILA HASSIM:** So why did you... [interjects]

**DR. MANAMELA:** Who had experience with this.

5**ADV ADILA HASSIM:** Why did you in this process of implementing the NGO marathon project, and in the process of transferring mental health care users who were under the care of state, why did you not follow a process that would ensure that they would continue to receive the level of health services that they had received up until then? Why did you not do that? Why did you say no, in this case  
10we do not need to pay fully, we will just subsidise. Why did you say that? Why did you think that?

**DR. MANAMELA:** Because other services that the NGO will get, they will get them free. Firstly they do not have to appoint a doctor. They were linked to the clinics. They will go to the clinic, free of charge. They are seen by the doctor, they need  
15dental care, free of charge in the nearest clinic or hospital. They need x-ray whatever, they get medication, everything was free of charge.

**ADV ADILA HASSIM:** Everything was free and everything was fine.

**DR. MANAMELA:** Except the meals and the clothing. The NGO had to ensure the means, clothing of the patient and as well as the ... [interjects]

20**ADV ADILA HASSIM:** What about staff?

**DR. MANAMELA:** And the staff, because some of the staff they will also ...  
[interjects]

**ADV ADILA HASSIM:** And would you not say for mental health care users it is important they have staff that are trained to care for mental health care users, because we are not talking about a home for the elderly, for example. We are not talking about people who are homeless, who are otherwise fine but are homeless?

**ARBITRATOR JUSTICE MOSENEKE:** The question is closed Counsel. Let us keep it tight and short and get an answer.

**DR. MANAMELA:** The mental health care users have got different level. There are the acute one, there are the chronic one, there are the mentally disabled one. If I am going to explain, the acute one may need intensive and highly expensive treatment, and they will need multi disciplinary team, almost every day to be seen. Then the chronic one, they have been given the status of chronic according to their level, and they just need to be maintained. Then the mental disabled, disability one, severe and profound, you find that they also have physical disablement. They need to be cared for. Cleaned, fed if they cannot feed themselves and get clothes. So the level of care that needs to be given, it depend what type of, it will require what type of multi disciplinary team is needed. Hence we organise that there will be occupational therapy in the nearest clinic. There will be dental person. There will be a psychiatrist who will visit the place at the time when they need to be there, so because of the level and the chronocity of the patient's status, we manage them in that manner.

## LIFE ESIDIMENI ARBITRATION SESSION 1

**ADV ADILA HASSIM:** So you are saying they had, the NGO's were able to provide the level of service required for the patients they took in?

**DR. MANAMELA:** I will say yes, because the NGO if I qualify, the NGO has to ensure the patients are fed. When the patients are sick, they are taken to the clinic free of charge, when the patients are they need clothes, they need to also involve the family of the patient, so that they are working together towards the patient. At the end of the day the aim of the department was to say this patient will move out and work or do something at home, and still be a mother or a father or a sister. They are no longer in the NGO. So it was just a way, some of the route towards home, for those who have homes. For those who does not have home, we knew that they might be there for a long time, like those who were there at Life Esidimeni for a long time.

**ADV ADILA HASSIM:** Are you aware that there are, there has been testimony before these proceedings from the families about the neglect of the family members?

**DR. MANAMELA:** I did not see all of them, but some of them I saw when the family was saying there was neglect.

**ADV ADILA HASSIM:** And for example Sophia Molefe needed to be cared for and needed to be supervised constantly. So there were people, there were patients that were placed in these NGO's who needed a high level of care. Would you agree?

**DR. MANAMELA:** I would agree. Can I just briefly say something on Sophia Molefe? Sophia Molefe, at the process, at the beginning of the process, the family,

## LIFE ESIDIMENI ARBITRATION SESSION 1

we met the family. We told them of three areas. Some will go to the hospital, some will go to the clinic, some may go home if they are discharged and if the family wants, in case of Sophia the family decided to take Sophia home. We went, we were aware of that and then we went to try to check with the family and the mother told us that no, she felt that Sophia must come home, but Sophia was ending up not doing well. We organised, we organised with the mother. Can we take Sophia, because we saw potentials from Sophia that Sophia can be reorientated and go back to the community as the mother want. As we were planning for Sophia to go to an NGO in Pretoria, that was doing so well that we did not find any fault, then it was unfortunate that we lost Sophia, but we know that.

**ADV ADILA HASSIM:** So that was Sophia had been at Life Esidimeni, correct? She had been at Life Esidimeni before?

**DR. MANAMELA:** Yes Counsel.

**ADV ADILA HASSIM:** And you said you agree that there are patients who required high level care in the NGO's?

**DR. MANAMELA:** Yes, we agree.

**ADV ADILA HASSIM:** Okay.

**DR. MANAMELA:** And in the meantime, when they are there, the multi disciplinary team also assist them to say if they are at home, this is what they can do. If you find them having problems ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** It does not help that you give us an explanation which does not arise from the question. It does not add anything. You have given your evidence in chief, you are asked questions. Answer the question and if you are asked for an explanation, you will be asked to do so. Please.

5**ADV ADILA HASSIM:** Dr Manamela, the evidence before us is and maybe you are not aware of how bad things were at the NGO's. Are you aware of how bad things were at the NGO's for these patients?

**DR. MANAMELA:** After we have licensed them we were made aware how some of them were bad, but by the time we licensed them they were qualifying.

10**ARBITRATOR JUSTICE MOSENEKE:** You know madam, this is not a game about protecting yourself every minute. I just want the facts. I am going to make the decision about your credibility. Just a matter of time. So all I want is you to answer questions put to you and I will decide whether you are telling the truth or not. So do not spend a lot of time giving us explanations. Listen to the question.

15Did you know how bad things were at NGO's? The answer could be I did not know, I do not or I know. They will ask you why do you not know or why do you know. But let us not spend so much time. You are here for three days already and I am very determined that we go through your evidence so that you can go, and let us get on with our business. Counsel.

20**ADV ADILA HASSIM:** Thank you Justice. Can you answer te question Dr Manamela?

**ARBITRATOR JUSTICE MOSENEKE:** Did you know how bad it was at NGO's?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR. MANAMELA:** After we placed the patient I knew. I knew how bad situation were in some of the NGO's.

**ADV ADILA HASSIM:** Okay. Justice, I am going to move on from that. You said in your testimony yesterday when my colleague put to you the notations on some of the licences, for example that a licence was for a child residential facility, and the child residential facility as we now know housed adults. Do you recall that?

**DR. MANAMELA:** Yes Counsel.

**ADV ADILA HASSIM:** And your explanation for that is because with mental health care users, they are regarded as children. Do you recall that?

10 **DR. MANAMELA:** Yes Counsel.

**ADV ADILA HASSIM:** And who determines that they should be regarded as children? When you send adults to a child residential care facility ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** I thought you had put the question Counsel?

15 **ADV ADILA HASSIM:** Sorry. I am trying to, okay. If it is clear enough.

**ARBITRATOR JUSTICE MOSENEKE:** Who determines that and the witness must have an opportunity to answer. You know the goose and gander story.

**DR. MANAMELA:** The mental health care act indicate who are the people who, with disability. Mental disability, although it does not indicate the age limit, but at the work place I got into how the patient understand and the severity of disability.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

That is how they are determined, and I cannot say one person, but it worked out as the multi disciplinary team will see that person.

**ADV ADILA HASSIM:** So it was a multi disciplinary team that made that determination?

5**DR. MANAMELA:** No, I am not saying it was them. I cannot point out one person who will say if a person's mental disability is as low as of the child, then it is a child. I am saying the guidelines on mental health and the books on mental health are guiding us on that level, but there is no one person in the institution I can point to say your mind was like a child.

10**ADV ADILA HASSIM:** But you agree that you have said that adult psychiatric patients were regarded as children, correct?

**DR. MANAMELA:** I said adult severe mentally disabled are regarded ... [interjects]

**ADV ADILA HASSIM:** Regarded as children?

**DR. MANAMELA:** Yes.

15**ADV ADILA HASSIM:** And they, and that was an explanation for the licence, correct? For the licence being child residential care. Do you recall?

**DR. MANAMELA:** Yes, I recall Counsel.

**ADV ADILA HASSIM:** Are you aware that there are two reports, there had been two reports of rape at Takalani? Are you aware of that? Raped by a patient ...  
20[interjects]

**DR. MANAMELA:** Of rape?



**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV ADILA HASSIM:** Of another patient, ja.

**DR. MANAMELA:** I am not quite sure I am aware of that. I do not know if it is happening after I left the department or before. It was not reported to me.

**ADV ADILA HASSIM:** Would you agree that even if a patient has a mental ability of a child, the fact that they are an adult means that they are physically and physiologically have the characteristics of an adult, for example they are sexually active.

**DR. MANAMELA:** That is true.

**ADV ADILA HASSIM:** So why would they be placed in a child residential care facility?

**DR. MANAMELA:** That residential care facility is divided according to the level of age. So there is a specific ward for specific age and specific ward for specific age, and for the rape to happen it is just something that is unbearable if it happened, but they are in specific ward according to age and sex and deformity as well, as well as the severity of the intellectual disability.

**ADV ADILA HASSIM:** Do you agree Dr Manamela that one of the reasons for the termination of the contract with Life Esidimeni was in order to implement a policy of deinstitutionalisation?

**DR. MANAMELA:** I agree.

**ADV ADILA HASSIM:** And do you agree that that policy is to provide health services for mental health care users that is closer to their homes?

**DR. MANAMELA:** That is correct.

**ADV ADILA HASSIM:** Did you take steps to ensure that patients would be relocated to NGO's that were close to their families?

**DR. MANAMELA:** We tried to locate the family, especially for those that had the family contact. That is number one. Number two, the type of the NGO required to take care of the patient, if he is not near the family it will be difficult.

**ARBITRATOR JUSTICE MOSENEKE:** The question is did you ensure that the patient is taken to an NGO close to their family? That is the core question.

**DR. MANAMELA:** Yes, we were ensuring that. That is why I am qualifying it.

10 **ARBITRATOR JUSTICE MOSENEKE:** Yes.

**DR. MANAMELA:** Partially yes, because if you would take the patient who is psychotic due to drugs, I am just qualifying, my apology Judge. With psychotic because of drug induce we cannot take that one to Takalani if his home is just in Soweto. So that is why there were areas where we did not manage to place the patient next to the family. Same apply ... [interjects]

**ADV ADILA HASSIM:** Where would that patient be taken?

**DR. MANAMELA:** I am giving an example. That patient will be taken in an area, for example we had another NGO at Bopelong, and then it was for adult. The people who are psychiatrically ill. From different areas. Skitsophrenia, some whatever. But it happened same with Life Esidimeni. We had patient from Pretoria,

**LIFE ESIDIMENI ARBITRATION SESSION 1**

because we did not have Life Esidimeni in Pretoria. They were in Waverley. So ...  
[interjects]

**ADV ADILA HASSIM:** Yes, but that was before the policy of deinstitutionalisation.

**DR. MANAMELA:** No, even after the policy.

5**ADV ADILA HASSIM:** No, I mean that the Life, you have said that the reason for termination of the contract with Life Esidimeni was to give effect to the policy of deinstitutionalisation. Correct?

**DR. MANAMELA:** Correct.

**ADV ADILA HASSIM:** So we have had evidence from family members before  
10these hearings that they have had to travel from Soweto to Hammanskraal for example.

**DR. MANAMELA:** That is true.

**ADV ADILA HASSIM:** From Brakpan to Hammanskraal. From Vosloorus to Cullinan. Do you know the distances between these places?

15**DR. MANAMELA:** I know the distances Counsel.

**ADV ADILA HASSIM:** So would you say that that gave effect to the policy of deinstitutionalisation?

**DR. MANAMELA:** To a limited amount yes, because in the NGO the system is not as in the Life Esidimeni.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV ADILA HASSIM:** I do not understand your answer. Would you say that in those cases that I have just described travel from Soweto to Hammanskraal, Vosloorus to Cullinan and so on and so on, would you say that the patient was being reintegrated into their community?

5**DR. MANAMELA:** It was not ... [interjects]

**ADV ADILA HASSIM:** Which is what the policy required?

**DR. MANAMELA:** It was not into their community, but they will be free to meet the community that they are around. While we are busy looking for the space and other NGO next to them.

10**ADV ADILA HASSIM:** Would you, the community that they are not familiar with, is that not so?

**DR. MANAMELA:** That is correct.

**ADV ADILA HASSIM:** And in which none of their family members lived, is that not so?

15**DR. MANAMELA:** That is correct.

**ADV ADILA HASSIM:** As a professional psychiatric nurse, would you agree that family involvement is important to the care of mental health care users?

**DR. MANAMELA:** I do believe that.

**ADV ADILA HASSIM:** And according to evidence, for example by Dr Thalathala,  
20the lack of familiarity of surroundings and lack of contact with family, may result in a relapse in patients. Would you agree?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR. MANAMELA:** Ja, sometimes it can be, sometimes not. Because when they are taken from home, they are no longer in a familiar place at home. They are going to the hospital in the first place. So when they are reorientated, it is good to reorientate them with the family. Unfortunately in this case, most of our patients, 5some of them did not have family contact and they did not have families.

**ADV ADILA HASSIM:** I am not asking you, as I said to you yesterday we will get to the families.

**DR. MANAMELA:** Okay.

**ADV ADILA HASSIM:** My question is Dr Thalathala told us that the sudden 10change in surroundings and the lack of familiar surroundings could cause a relapse. Would you agree with that?

**DR. MANAMELA:** Like I said Counsel, partially I agree with that. Not fully. I do not know if I can qualify that?

**ADV ADILA HASSIM:** I am not sure what you are saying by partially. Are you 15saying that, it is just yes or no. Could it cause a relapse? Was Dr Thalathala correct when he said that in your estimation as a psychiatric nurse?

**DR. MANAMELA:** I will say that statement was made by Dr Thalathala, according to his experience, so can I be allowed to make the statement according to my experience as well?

20**ADV ADILA HASSIM:** That is what I am asking.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR. MANAMELA:** Yes. That is why I am saying partially, because when you move from a familiar environment, being mentally ill to the hospital, you reach there, you are treated and you go back. To go back home. You may not relapse because of that, but there are individuals who may relapse because they have been moved from Life Esidimeni to the place. Some may not relapse, that is how I see it.

**ADV ADILA HASSIM:** But you do not know who will or who will not. So you have to make sure that there are measures in place in the transfer to protect against that, correct?

**DR. MANAMELA:** That is correct.

10 **ADV ADILA HASSIM:** And would that, one of those measures be to ensure that there is family contact?

**DR. MANAMELA:** That is correct.

**ADV ADILA HASSIM:** And would you agree that it would be very difficult for family to visit the patients with these long distances?

15 **DR. MANAMELA:** The families were advised that if they need assistance with the transport we will transport them. Those whose family members are far, and some of the family members we did assist them.

**ADV ADILA HASSIM:** Sorry, let us just pause there. So you have offered to transport the family members to visit their relatives?

20 **DR. MANAMELA:** Yes Counsel.

**ADV ADILA HASSIM:** Did you make that offer yourself?

**DR. MANAMELA:** Did I?

**ADV ADILA HASSIM:** Did you personally make that offer?

**DR. MANAMELA:** That offer was made, even the HOD signed the requisition and there were some families that we transported from Soweto, I remember to 5Hammanskraal. Maybe other family members did not hear, because at the end they were no longer coming to the meeting.

**ADV ADILA HASSIM:** My question was did you personally make that offer to the families?

**DR. MANAMELA:** Yes, I released my social worker from my unit to accompany 10the family to the place.

**ADV ADILA HASSIM:** When?

**DR. MANAMELA:** I cannot remember, because it was before I left the office. It was before, I cannot remember, but it happened immediately after we have taken the patient, because we noticed some are at Hammanskraal and the family in 15Soweto. So that is around that time, after ... [interjects]

**ADV ADILA HASSIM:** So it was at the time of the transfer, you contacted the families and you said we understand that they are long distances, we will transport you?

**DR. MANAMELA:** After the transfer we did.

20**ADV ADILA HASSIM:** In the process of the transfer?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR. MANAMELA:** No, when we finished with the transfer we did that after we finished.

**ADV ADILA HASSIM:** How long after you were done with the transfer?

**DR. MANAMELA:** Maybe between a month or two, somewhere there. We agreed and we provided transport for the families.

**ADV ADILA HASSIM:** You see, there is also evidence before us that family members were not aware for some time as to the location of the patients. What do you say to that?

**DR. MANAMELA:** For the families to be not aware, what I can say is that the patients were at Life Esidimeni. I said it even yesterday. In our final meeting with Life Esidimeni for the placement, we agreed. I have got the minutes. That Life Esidimeni, because they have got data base of the families, they must inform the family that so and so is going to Takalani or where ever.

**ADV ADILA HASSIM:** So are you saying it was the responsibility of Life Esidimeni?

**DR. MANAMELA:** I have not finished Counsel. It was responsibility of the Life Esidimeni when they moved from Life. It was our responsibility of the government when they are received in the NGO to now to say so and so indeed has been received from Life Esidimeni. It was, that is how it was arranged.

**ADV ADILA HASSIM:** When you say it was your responsibility to confirm, to whom did you confirm that?



**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR. MANAMELA:** To confirm, to move, to say he is moving somewhere, it was Life's responsibility. If we see the placement report there is where they indicated the family were informed, the family were texted from Life Esidimeni, and then they reach our NDO's. We took responsibility to say the coordinator at that site and the NDO must inform the family, if the family's contact are there to say we have received this person from Life Esidimeni.

**ADV ADILA HASSIM:** And are you saying that that happened? That the families were all contacted?

**DR. MANAMELA:** I will not say they were all contacted, because they were not contacted by me, but I know there are families that were contacted ... [interjects]

**ADV ADILA HASSIM:** And the people ... [interjects]

**DR. MANAMELA:** Ja, those whom they said there was no answer and some they say they texted and I am not sure if they got the text.

**ADV ADILA HASSIM:** And the people who were responsible for informing the families, did they report to you?

**DR. MANAMELA:** They report to the district and the district report to me.

**ADV ADILA HASSIM:** So you were responsible for ensuring that the families were contacted. Is that correct?

**DR. MANAMELA:** Yes, as soon as we received the patient, we the department was responsible for the family to be contacted, but as they leave Life Esidimeni was responsible for the family to know they are leaving.

**ADV ADILA HASSIM:** Would you agree that in circumstances where patients were transferred to NGO's that were far from their homes and where they did not have, where the families were not informed, that that would have been a violation of the policy on the institutionalisation?

5**DR. MANAMELA:** I agree so, it will be the violation if they are there and they are not being informed.

**ADV ADILA HASSIM:** So is it not so that these patients, that this process resulted in an alienation and an abandonment of patients to an unknown system?

**DR. MANAMELA:** I will not agree with that, because the department tat was, has  
10been taking responsibility on this patient, knew where the patient were and again we know the MEC was all over the media to inform the people, those who did not know, I said on the first day, I even received calls from overseas. Those who heard about the move, they did call us and some complained about the move. They were not in favour of that.

15**ADV ADILA HASSIM:** We will come back to the families. I just want to stick with one topic at a time Dr Manamela. Were you satisfied then that your team was working efficiently and there was no risk in the process, that you were managing the risk rather, not that there was no risk, that you were managing the risks.

**DR. MANAMELA:** Until we transferred the patient all I was satisfied that my team  
20were doing their best.

**ADV ADILA HASSIM:** Can I ask you, did you raise any, can I ask you whether you had any concern at any point along the process that it was in trouble?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR. MANAMELA:** After placement, when we visit on weekly basis, I started to realise that there are a lot of concerns that are coming out.

**ADV ADILA HASSIM:** And before the transfer took place, before and particularly before the big wave of transfers which took place around May, June 2016, did you have any concerns?

**DR. MANAMELA:** Because we had many new NGO's. We did not have much concern. Our concern was the staff is there and the building is okay, and the old NGO's we only also look at those that has been working with us for some time, ja.

**ADV ADILA HASSIM:** It is fine. Dr Manamela, I will give you a chance to say more later, but I just needed to know whether you had any concerns before the transfer and you said no. So can we move on?

**DR. MANAMELA:** Okay.

**ADV ADILA HASSIM:** Thank you. Can I ask you to have a look at the exhibits file and to have a look at specifically Exhibit ELAH2, and can you turn to page 27 of ELAH2. Are you there?

**DR. MANAMELA:** Yes, I am here.

**ADV ADILA HASSIM:** It is a letter from Mr Mosenoge to the MEC. Do you see that?

**DR. MANAMELA:** Yes Counsel.

**ADV ADILA HASSIM:** Have you seen this letter before?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR. MANAMELA:** I only saw this letter when the report was released. I did not see this letter. My name is not even here.

**ADV ADILA HASSIM:** Yes, I see that. It is from Mr Mosenoge and it is copied to Dr Selobano, Dr Lebete and Ms Nkuna.

5**DR. MANAMELA:** That is correct.

**ADV ADILA HASSIM:** And have you read the letter?

**DR. MANAMELA:** Yes, I read the letter.

**ADV ADILA HASSIM:** And would you agree that in this letter Mr Mosenoge on the 12<sup>th</sup> of February 2016 is raising concerns about the project?

10**DR. MANAMELA:** I see that.

**ADV ADILA HASSIM:** And he says that he requests the MEC to delay or rather to extend the contract with Life Esidimeni, and in the second last paragraph of that email, he says:

*“This will assist us.”*

15In the middle of that paragraph. If I can just read it to you:

*“This will assist us to do better work in regards to beafing up our own facilities to cater for such vulnerable patients, and also ensure that the NGO’s are trained and also to adjust to handling a variety of specialised patients and also be well prepared for such venture. The clinicians have indicated that this will be of much value, especially considering the challenges faced by such patients. Also the Life Esidimeni people request that we indicate to them clearly our plans as they need to*

**LIFE ESIDIMENI ARBITRATION SESSION 1**

*issue notices to staff before the end of February 2016 to begin to wrap up and close the facilities, and I have asked the HOD what do we say to them. For me I think we should have time to avoid possible mess if our plans do not materialise plus the staff needs consideration.”*

5Did you agree with him?

**DR. MANAMELA:** I did not see the letter at that time.

**ADV ADILA HASSIM:** But did you agree with the concern that he was expressing at that time?

**DR. MANAMELA:** I do agree with the concern.

10**ADV ADILA HASSIM:** And why did you not raise it, you said you did not raise it, you had no concerns.

**DR. MANAMELA:** Pardon?

**ADV ADILA HASSIM:** So I asked if you had any concerns prior to the transfer of the patients and you said you did not have concerns. Your concerns arose after the  
15placement.

**DR. MANAMELA:** Because the MEC extended the six months by another three months, so that is why I answer you that time, but this letter, I did not have until I see it when I went to Ombuds.

**ADV ADILA HASSIM:** But my question is did you agree with the concerns that Mr  
20Mosenoge is expressing, the specialised needs of the patients, their vulnerability, their need to train NGO's and so on?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR. MANAMELA:** I agreed and happy when it is extended again with three months.

**ADV ADILA HASSIM:** And then, but you did not raise it with Mrs Mahlangu.

**DR. MANAMELA:** I did not?

5**ADV ADILA HASSIM:** You did not raise the concern with Mrs Mahlangu.

**DR. MANAMELA:** No, because I did not raise this concern myself, but we were in meetings with Mrs Mahlangu and he is the project leader. I was the deputy. Whatever I had I will raise with Mosenoge, and Mosenoge when he take it further like he did here, he did not tell me that he wrote this letter to the MEC.

10**ADV ADILA HASSIM:** Why did he not include you in this letter?

**ARBITRATOR JUSTICE MOSENEKE:** ... [inaudible] to call him Mr Mosenoge. It is quite in order.

**DR. MANAMELA:** Pardon?

**ARBITRATOR JUSTICE MOSENEKE:** I say it is quite in order to call him Mr  
15Mosenoge. Let us keep it up there. Let us just show each other respect all the way.

**DR. MANAMELA:** Okay. My apology for that.

**ARBITRATOR JUSTICE MOSENEKE:** Right. Counsel.

**ADV ADILA HASSIM:** Why did Mr Mosenoge not copy you in on this letter. Do  
20you know?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR. MANAMELA:** I do not know, but what I know is that he is at the executive level where I was not, but being a project leader who was working with me, he knew that we were already concerned about these issues that he raised. He had progress on what we do with the NGO training and all other progress that are there for the termination.

**ADV ADILA HASSIM:** Can you turn over the page. This is where Mr Mosenoge makes his alternative proposal and he sets out in more detail the concerns. Have you seen this letter before?

**DR. MANAMELA:** I did not see this letter. I was even thinking is it not the same letter as page 27? I did not see this letter.

**ADV ADILA HASSIM:** Page 27 was the email, and attached to the email was this letter.

**DR. MANAMELA:** No, I did not see it.

**ADV ADILA HASSIM:** The first sentence says:

15 *"We have attended and listened to the relatives of the mentally affected chronic patients in both Waverley Life Care Centre and the Randfontein Life Complex Care Centre, and the reality is that the project, the way it is going to unfold, may have unintended consequences of resulting in the disruption of mental health services broadly in the province, the disruption of affected families, the disruption of already*

20 *established academic programs performed at these facilities and may ultimately result in a loss of skilled mental health workers who are best trained in dealing with vulnerable patients."*

**LIFE ESIDIMENI ARBITRATION SESSION 1**

Did you agree with that?

**DR. MANAMELA:** Yes, I agree.

**ADV ADILA HASSIM:** Did you raise your concern with anyone?

**DR. MANAMELA:** My concern as the deputy project manager was raised with Mr  
5Mosenoge.

**ADV ADILA HASSIM:** Are you saying that Mr Mosenoge was speaking also on  
your behalf in this letter?

**DR. MANAMELA:** I believe so, because he say after the meeting, it is just after  
the meeting. This were raised in the meeting that we had.

10**ADV ADILA HASSIM:** Why did you continue to implement if you had these  
concerns?

**DR. MANAMELA:** The contract after, I believe after he wrote the letter, the MEC  
announced that it is extended with three months. So that was, we believe that was  
enough time for us to ensure that we do our best to this project.

15**ADV ADILA HASSIM:** And you believe you have done your best?

**DR. MANAMELA:** Yes.

**ADV ADILA HASSIM:** And yesterday you said despite these concerns, let me just  
take a step back, despite these concerns with which you agree, there were patients  
who were transported on bakkies and without their medical files. Do you agree?



**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR. MANAMELA:** I do not agree that any patient was transported in bakkies, but I agree that the patients were transported without, there are patients who were transported without files.

**ADV ADILA HASSIM:** Are you saying that there were no patients who were transported on bakkies?

**DR. MANAMELA:** From May to June there was no patient, because we organised the transport and my two DD's were in each and every life facility to ensure the patient are being transported and the bakkie issue was never reported to me during May June placement.

10**ADV ADILA HASSIM:** Did you hear about it afterwards?

**DR. MANAMELA:** No, before the bakkie, before the placement somewhere, am I allowed to take you back little bit?

**ADV ADILA HASSIM:** You can explain, but if you answer my question first. Did you hear about it after?

15**DR. MANAMELA:** No, after I did not hear about any bakkie, because after placement, in terms of the process no bakkie was used to collect the patient.

**ADV ADILA HASSIM:** You see Dr Manamela, Mr Mosenoge provided different evidence to us. He said he did become aware. He did not know at the time. He said that the bakkies were being used, but he did become aware afterwards. Are you saying that he is incorrect?

**DR. MANAMELA:** Can I say for being aware after the, during our placement is incorrect. I asked can I just clarify on the bakkie issue.

**ADV ADILA HASSIM:** I will let you clarify in a moment if you answer the questions first.

5**DR. MANAMELA:** He is incorrect.

**ADV ADILA HASSIM:** Are you saying that is not correct what he says?

**DR. MANAMELA:** That was not correct for placement of May June. That was not correct.

**ADV ADILA HASSIM:** And Ms Precious Matsoso, the DG of the National  
10Department of Health also testified and said that she was aware that this had taken place. That bakkies were used. Not only she said from the Ombud's report, but from the office of health standard's compliance. The inspectors there had reported to her and so she said she confirmed that bakkies had been used. Are you saying that she is incorrect?

15**DR. MANAMELA:** For the process of the placement, that is incorrect.

**ADV ADILA HASSIM:** She was talking about in the process of placement or transfer of patients.

**DR. MANAMELA:** Ja, the placement is incorrect. It is incorrect during the placement. That is why I wanted you to take ... [interjects]

20**ADV ADILA HASSIM:** Okay. So she is not telling the truth when she says this.

**DR. MANAMELA:** I think they were misinformed.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV ADILA HASSIM:** She was misinformed.

**DR. MANAMELA:** Yes. Even Mr Mosenoge I think was misinformed on the bakkie.

**ADV ADILA HASSIM:** They were misinformed by several people. The Ombud  
5and by the office of health standards compliance inspectors.

**DR. MANAMELA:** Yes, because they also come in on investigation.

**ADV ADILA HASSIM:** Why would they make that up? Why would the Ombud  
make that up and why would the office of health standard compliance inspectors  
make that up? Why would they, I mean that is outrageous. Why would they do  
10that?

**DR. MANAMELA:** If it places, Justice can I explain the bakkie issues, because  
once in a time ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** No, the question is why would three to four  
people, some your colleagues, say the bakkies were used to transfer patients?  
15Why would they lie about your project?

**DR. MANAMELA:** They were misinformed about the bakkie system. That is why I  
wanted to tell you about the bakkie problem. They were misinformed.

**ARBITRATOR JUSTICE MOSENEKE:** The witness want to explain.

**ADV ADILA HASSIM:** About the bakkie system, yes. Please do so.

20**DR. MANAMELA:** Okay, if thank you Justice. During the process of Life  
Esidimeni discharging patient to NGO, the NGO will go to the Life Esidimeni and

## LIFE ESIDIMENI ARBITRATION SESSION 1

identify the patient that are liable or legible for discharge to their place. So Dr Mkatswa reported to me some time ago, before the placement, that one NGO came to the facility with a bakkie and Dr Mkatswa was informed and he sent them back. So I believe that that is why I said they were misinformed. It was before the placement and he reported that to me, and that was what they have to do as Life Esidimeni, to ensure that if the NGO comes to take or collect the patient, they must come with a proper transportation, but during the placement no bakkie was used.

**ADV ADILA HASSIM:** Did you supervise the transport of patients from Life Esidimeni to the NGO's?

10**DR. MANAMELA:** I was given report every morning, every afternoon of the transportation. I place my two DD's in each and every Life Esidimeni. They were sending sms if they cannot phone or they cannot send email, and we organise the, with EMC, emergency services to transport. We do have report. We have report for transportation of the patient. Only, I think only one NGO came with their busses  
15to collect the patient. They reported that to me, and our hospital came with their busses and their Kombi's. In the process no patient was taken by bakkie, except that one during normal discharge before we started.

**ADV ADILA HASSIM:** The evidence of the Ombud and Mrs Matsoso and in fact also of Dr Mkatswa, is that it happened during the transfer. During the project. But  
20you are saying that they are all ... [interjects]

**DR. MANAMELA:** The DG and, they were misinformed of when. The problem was when, but the issue of bakkie was ... [interjects]

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV ADILA HASSIM:** And you supervised, okay. You supervised the process of transfer.

**DR. MANAMELA:** Yes, they were reporting ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** So NGO's went to Esidimeni to fetch 5patients.

**DR. MANAMELA:** Before the process, before termination most of them were going to fetch patient. It was between the Life Esidimeni and NGO and one NGO reached there with a bakkie, but during the process we organised the busses. Only two NGO's who had transport, who are established, Takalani and Tshepang ... 10[interjects]

**ARBITRATOR JUSTICE MOSENEKE:** You know, one of the most hurtful things I heard having sat here, was Ms Ngube who went to Life Esidimeni and picked and chose what she liked or what she did not like, randomly and I have been waiting patiently to hear you confirm that ... [inaudible] you have just done that. So NGO's 15went there with their own transport to pick up patients.

**DR. MANAMELA:** Few of them, those that they can, but we organised bus. If they were not collecting many, it means they went, like I was saying Takalani went with their own Kombi and for ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** How would an NGO know who has to 20come along with them?

**DR. MANAMELA:** Pardon?

**ARBITRATOR JUSTICE MOSENEKE:** You know, you come at like the end of like five weeks of evidence.

**DR. MANAMELA:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** We know a lot.

5**DR. MANAMELA:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** You are the person who was in command of that transfer. But we already know tons and tons of evidence and Ms Ngube tells us that she went there to pick and choose the patients she wanted.

**DR. MANAMELA:** She could have ... [interjects]

10**ARBITRATOR JUSTICE MOSENEKE:** Was she right or lying?

**DR. MANAMELA:** She could have gone there, but the team that were there, it means she did not come with a bakkie, because they should have reported ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** You miss the point. I am not talking about  
15the bakkie.

**DR. MANAMELA:** Okay. She could ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** I am talking about an NGO that has never looked after mentally disabled people, and went there to pick and choose the ones she wanted.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR. MANAMELA:** They could not pick and choose the ones she wanted. The doctors who were there, who have identified, this one can go to this type of NGO, if it is a mental, severe and profound NGO, they will know when Ms Ngube went there, doctors have already seen the patient and the DG's that were there will know that this one can go to Precious Angels.

**ARBITRATOR JUSTICE MOSENEKE:** You know Mr Mosenoge, your leader the one who was in command, on whom you put most of the blame, sat where you sat and he was so candid and so truthful. One, he told us the NGO's were not ready. They were not prepared. Do you agree? Two, do you agree with him or not? He was your leader. According to you he was in charge of the project. Do you agree with him?

**DR. MANAMELA:** No Counsel.

**ARBITRATOR JUSTICE MOSENEKE:** You do not agree with him?

**DR. MANAMELA:** No.

15 **ARBITRATOR JUSTICE MOSENEKE:** He was lying when he said that?

**DR. MANAMELA:** I am not saying he was lying.

**ARBITRATOR JUSTICE MOSENEKE:** Okay. You do not agree with him. What do you say?

**DR. MANAMELA:** What I am saying is that when we placed the patient and evaluated the place, the place was suitable. That is what I can say.

**ARBITRATOR JUSTICE MOSENEKE:** He said to us, look at his letter. Go and look at page 29. He asked for a year postponement. He tells you and your MEC how bad this project is going to be. He warns you that people are going to die and you go ahead and you come and waste so much of our time. Three days. You never take responsibility for anything that happened there and your own colleague has come to tell us what happened. He was the project leader. Will you take responsibility for something?

**DR. MANAMELA:** Justice, can I say he gave, Mr Mosenoge gave you his version, and this letter he wrote in February and there was extension and if Mr Mosenoge with due respect has told the truth and I do not want to take responsibility ...  
[interjects]

**ARBITRATOR JUSTICE MOSENEKE:** If he had told the truth. He was lying?

**DR. MANAMELA:** I am not saying he was lying.

**ARBITRATOR JUSTICE MOSENEKE:** What was he, okay.

15**DR. MANAMELA:** He was telling his version. That is why he wrote this letter, and when, after this letter was written, given to MEC, MEC extended.

**ARBITRATOR JUSTICE MOSENEKE:** He wanted an extension of a year madam, a whole year.

**DR. MANAMELA:** Ja, but it is not sent to me. It was not sent to me Justice, and  
20after that MEC said three months. Mr Mosenoge did not tell me that we must stop.



**LIFE ESIDIMENI ARBITRATION SESSION 1**

We did not stop. He should have said Magabo, we are not carrying on. But he was with me. We went to Cullinan together.

**ARBITRATOR JUSTICE MOSENEKE:** No, it does not make it better.

**DR. MANAMELA:** No, it does not make it better.

5**ARBITRATOR JUSTICE MOSENEKE:** That is why he came here and cried where you sat and told us how bad it was, how poorly managed it was, how patients were treated unwell. Do you say the same thing?

**DR. MANAMELA:** That was a collective of the project team Justice.

**ARBITRATOR JUSTICE MOSENEKE:** It does not matter whether it was  
10collective, but do you understand your responsibility?

**DR. MANAMELA:** I know my responsibility very well in the project.

**ARBITRATOR JUSTICE MOSENEKE:** And when are you going to admit it, for once? You are wasting, taking so much of our time and can you just talk to yourself and tell us like he did. He came and told us just how wrong things went.

15**DR. MANAMELA:** Justice, let me say this. He came and told you how wrong things were. He was with me in the MEC's meeting, he was with me when we visit the patient, he was with me when we go to Life Esidimeni to see how patient were being taken, and his version is what he told you, and I was called here to be a witness to tell you my version and what we have done from my area.

20**ARBITRATOR JUSTICE MOSENEKE:** And on your evidence nothing wrong was done?

**DR. MANAMELA:** I have not said nothing wrong.

**ARBITRATOR JUSTICE MOSENEKE:** Okay, tell me what went wrong?

**DR. MANAMELA:** I still said Justice, when we evaluated the NGO before we placed the patient, the NGO that we placed the patient were legible. Thereafter, 5many things went wrong.

**ARBITRATOR JUSTICE MOSENEKE:** Okay, tell us what went wrong. Take your time, patiently and tell us what went wrong.

**DR. MANAMELA:** What went wrong in the first place was that the NGO's were not paid in time. The second thing was that the staff that were appointed in the NGO, 10they left the NGO. The third thing was that the patient went with no record and that will have assisted the doctors who will assess the patient on the condition of the patient. The fourth thing was that the patient from Life, they had a ... [inaudible] issue. You find one patient on more than six medication and psychiatric medication do have side effect, and we did not have records. There were no blood level results 15that can be shown there. The other thing was that the, I think I mentioned some few Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Well, I want to hear whatever else you want to mention.

**DR. MANAMELA:** Okay, the other thing was that ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** What about the food, what about the hydration of the patients, what about their medication. Tell me about that. What went wrong about that?

**DR. MANAMELA:** Okay. The medication issue, some of the, most of the NGO struggled to get the medication, because Life gave limited number. However, the medication were in our clinics. The clinics and the managers in some areas were not so much supportive, because I remember one NGO that refused medication. Siyabadinga was refused medication by a certain clinic in Refiloe and that was something ... [inaudible] and we organised that get the medication from Cullinan, and then the other thing was that as the records are not there, the doctors will not be able to assist the level. I think I mentioned that again. The food issue, if the NGO, the NGO were informed if they do not have food at the moment because they are not paid, what can they do and in some cases ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** We are talking about what went wrong. Not what they were informed. In other words what did the patients have to confront?

**DR. MANAMELA:** They did not, it means the NGO did not take the offer of getting food supplies as they were afforded, and as a result that was also a challenge in the side of the NGO, and a challenge that we did not pay them in time.

**ARBITRATOR JUSTICE MOSENEKE:** In your view, how did this 143 people die? Who otherwise were alive at Life Esidimeni?

**DR. MANAMELA:** At the moment ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** We are all wiser after the event now. It is all done, but tell us your assessment. How do you think would have been the most prominent causes of their death?

**DR. MANAMELA:** At the moment Justice I may not know the most prominent cause of death, because at the moment I do not know anything about post mortem or that.

**ARBITRATOR JUSTICE MOSENEKE:** Okay. What were the likely thing to predispose them to death?

**DR. MANAMELA:** The likely things predisposed the patient to death, predisposing, I am not saying are the causes, because I do not know, is that the side effect of the treatment, if they were not properly managed might predispose to death. Porosity can also predispose them to death, as the patient have got cardiac problem and also other infections like HIV and the rest. That can also predispose. The other thing will be the life expectancy of the mentally ill patient which is very low. Lower than those who are not disabled. The other thing Justice is that research has also advised us that a prolonged use of psychotropic medication without some blood levels result and how they are doing and many of them may also cause sudden death. I am not saying it is the cause in this case. I am just giving you what might happen. Also looking at the issue of the deformity, because most of the patients that died Justice, is that they were having physical deformity as well and you find that at times it is pressing the lungs. Deformity pressed the lungs or the liver and whatever, that might be. I am not saying it is the cause, I am just giving that and maybe the last thing I will say. If the medication were also not given,

**LIFE ESIDIMENI ARBITRATION SESSION 1**

for example for those who suffer with hypertension plus mental illness, that might be also be the cause of death. But we will get the result ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** And low levels of feeding might cause death, right?

5**DR. MANAMELA:** Low levels of feeding will cause malnutrition and malnutrition might cause death.

**ARBITRATOR JUSTICE MOSENEKE:** And low levels of hydration?

**DR. MANAMELA:** Low levels of hydration will also cause dehydration and then at the end if the patient continuously being suffering from dehydration might also die.

10**ARBITRATOR JUSTICE MOSENEKE:** And winter exposure to cold?

**DR. MANAMELA:** I must say Justice, I must say exposure to cold is another problem that will cause illnesses like pneumonia and that might end up ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** And who had the duty to protect these patients from all that?

15**DR. MANAMELA:** Where ever the patients are, the manager in that area has the duty to protect the patient. For example if they are in Takalani, the Takalani manager will ensure that. If they are in Precious Angels, the Precious Angels will ensure that the patient are not exposed to cold. I am just giving example.

**ARBITRATOR JUSTICE MOSENEKE:** And your responsibility?

20**DR. MANAMELA:** My responsibility ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** You ticked it down to Takalani.

**DR. MANAMELA:** No, because ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Your responsibility?

**DR. MANAMELA:** The patient were not with me at that time.

5**ARBITRATOR JUSTICE MOSENEKE:** No, you ordered that they be taken there.

**DR. MANAMELA:** Yes, my responsibility was saying at my level they should have the resources, they should have money to buy the clothes, to buy the tea for the cold. That was my responsibility but if the clothes are there Justice and nobody at the NGO is ensuring they are covered, that will be a problem which cannot be my  
10responsibility. If they do not cover them.

**ARBITRATOR JUSTICE MOSENEKE:** In all of these 143 deaths, what is your responsibility? Just think carefully about it and put it on record. What is your accountability.

**DR. MANAMELA:** I think Counsel the post mortem will tell us where we went  
15wrong. That is number one. Number two, I am unable Justice to say that was my responsibility, because where I am, I was not giving any nursing care to any patient, but I had to ensure that the people who are taking care of the patients do have resources. Like that is what I said to Counsel I indicated what we have done to ensure. So the responsibility will be taken by the collective, because we agreed  
20and we ensured ... [interjects]

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ARBITRATOR JUSTICE MOSENEKE:** My question was what is your responsibility.

**DR. MANAMELA:** My responsibility was to ensure that the patients are not, are given good care and no one dies.

5**ARBITRATOR JUSTICE MOSENEKE:** Counsel.

**ADV ADILA HASSIM:** Thank you Justice. Dr Manamela, is it not so that the national department tried to assist you in the process?

**DR. MANAMELA:** I do not know that.

**ADV ADILA HASSIM:** Is it not correct that Professor Freeman contacted you to  
10enquire into what was happening and to offer assistance?

**DR. MANAMELA:** He did contacted me.

**ADV ADILA HASSIM:** And did you take up his offer?

**DR. MANAMELA:** In the, let me say that. He asked me in a workshop that we  
were in. I briefed him and then he wrote email to me and said can I have the plan  
15and then I sent the email, I sent the plan back to him, and the same email I sent to  
him with a plan, was given to Umbazi, but to my surprise in the report it was saying I  
was not cooperative. Further than that I also sent the progress report through the  
director of mental health to say the signed copy will follow. I just sent email and the  
email was also attached by the Professor.

20**ADV ADILA HASSIM:** Yes, I think that you are mischaracterising your interaction  
with Professor Freeman, and I will tell you why. We do have the series of emails

**LIFE ESIDIMENI ARBITRATION SESSION 1**

between you and Professor Freeman, and it is in Exhibit ELAH2, the same exhibit that has Mr Masonoge's letter, and if you turn to page 25 of ELAH2, do you have it?

**DR. MANAMELA:** The email? Yes, I have it.

**ADV ADILA HASSIM:** Okay. So page 25 at the bottom is an email from Melvin  
5Freeman from the National Department of Health to you, dated March 15, 2016.

**DR. MANAMELA:** I see.

**ADV ADILA HASSIM:** And it says:

*"Dear Dr Manamela."*

And he says in the first paragraph, I am not going to go through all of the detail, that  
10they have received correspondence from Section 27. In the second paragraph he  
says:

*"When we last spoke, you informed me that you would send me a copy of the plan  
for discharge of eligible patients and transfer to state institutions of those that  
cannot be discharged. Unfortunately I never received this plan. Can you please  
15send me the most up to date plan."*

Do you see that?

**DR. MANAMELA:** Yes.

**ADV ADILA HASSIM:** You replied to him, and you say:



**LIFE ESIDIMENI ARBITRATION SESSION 1**

*“My apology. I always thought I did send the report in December 2015. At the moment there are a lot of activities that need me to combine them in one. I can now attach the initial narrative plan, but a lot has changed. Great development.”*

Do you see that?

5 **DR. MANAMELA:** Yes.

**ADV ADILA HASSIM:** So there was not a final plan. You attached the initial narrative plan. Correct?

**DR. MANAMELA:** Correct.

**ADV ADILA HASSIM:** He then writes to you on the 10<sup>th</sup> of May, that is on page 24.

10 He writes to you on the 10<sup>th</sup> of May 2016 again.

**DR. MANAMELA:** Annexure?

**ADV ADILA HASSIM:** It is page 24.

**DR. MANAMELA:** Okay.

**ADV ADILA HASSIM:** Next to page 25.

15 **DR. MANAMELA:** Alright.

**ADV ADILA HASSIM:** Do you see the email?

**DR. MANAMELA:** Yes.

**ADV ADILA HASSIM:** 10<sup>th</sup> of May 2016:

*“Dear Dr Manamela. I have still not received a reply to the email I sent on 1<sup>st</sup> April.”*

**LIFE ESIDIMENI ARBITRATION SESSION 1**

So one month and ten days later he is saying:

*"I have still not received a reply to that email as well as other emails previously sent to you in regard to the Life Esidimeni issue in Gauteng. My emails have emphasised that the Minister of Health needs an urgent reply."*

5And he stresses urgent in capital letters:

*"URGENT reply from the province, but none has been received from you."*

Do you see that?

**DR. MANAMELA:** Yes Counsel.

**ADV ADILA HASSIM:** And then you reply saying I acknowledge receipt of the  
10email. I was under the impression that as discussed during the forensic workshop  
we will receive a request through the HOD's office as he has to sign off the report.

**DR. MANAMELA:** Yes.

**ADV ADILA HASSIM:** And then you say:

*"However, I will write the report and send it through the HOD's office, and can I  
15have five more days to do so."*

Do you see that?

**DR. MANAMELA:** Yes.

**ADV ADILA HASSIM:** So your interaction with Professor Freeman is similar to  
what you have been telling us here, which is it is not me, it is not it must go through

**LIFE ESIDIMENI ARBITRATION SESSION 1**

somebody else. I thought I did it. I did not do it. I am doing it now, and ...  
[interjects]

**DR. MANAMELA:** Can I respond to that Counsel?

**ADV ADILA HASSIM:** Yes, I would like you to respond to that please.

5**DR. MANAMELA:** I did send the plan to Professor Freeman and he said:

*“Dr Manamela, thanks for this report. Please though send me the updated information and in particular the latest development which sound promising. There is nothing in particular in the letter that needs responding to other than what will be done with the patients including already discharged patient, to ensure that they*  
10*receive equal care to what they are getting now.”*

This is the response I also got from Professor Freeman and the second thing I want to correct, I did not get where he was saying to me he need to assist me, but he wanted to write the report. The third point is what the DG has indicated when he said he wanted, he discussed with the HOD that Dr Freeman will help us in the  
15project. I was not of that info, I did not have that information, and I did not even know they communicated. I believe if that was so, I believe that if maybe it was sent to me that I must invite Prof who will have done that if it was sent to me, but I did what Prof has signed, and this information I also sent to the Ombudsman for him to see that I did, even if according to government it was going to go from HOD’s  
20office. That is why the progress report ... [interjects]

**ADV ADILA HASSIM:** According to government?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR. MANAMELA:** According to our government rules and regulation, that email that I sent to Professor was supposed to go to the national through HOD's office. But because I ... [interjects]

**ADV ADILA HASSIM:** You could not do it directly?

5**DR. MANAMELA:** I could not, but I still did it.

**ADV ADILA HASSIM:** Why no?

**DR. MANAMELA:** That is the process, but I did it.

**ADV ADILA HASSIM:** Whose process is that?

**DR. MANAMELA:** That is the government process. Any document that goes  
10outside the government, outside the department will go through HOD, but I have done it, and then the second progress when I sent to the DG but through my equal partner in the national, I sent through the HOD for him to sign and but I sent the progress report anyway.

**ADV ADILA HASSIM:** You see, the important but it was this initial narrative. The  
15importance of this is that you were being contacted by national and they were asking you for this plan, and it was important because it was already registered a concern about the services that mental health care users would receive. Are you aware that in 2007 there was a transfer of patients from Baneng to NGO's in which  
16died and had to be resent back to Life Esidimeni? Are you aware of that?

20**DR. MANAMELA:** I am not aware. I was not yet in the unit. I am not aware of that.

**ADV ADILA HASSIM:** This is a repeat. This is not the first time. That is actually what is most, and there is so many things that are startling, but this is not the first time that patients have been transferred on mass. So Professor Freeman is writing to say:

5 *"Please can you provide us with this information."*

And you ... [inaudible], is that not so?

**DR. MANAMELA:** Yes, I have done it. I have done it ,because ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** No, the question is you ... [inaudible].

**DR. MANAMELA:** I?

10 **ARBITRATOR JUSTICE MOSENEKE:** You ... [inaudible].

**ADV ADILA HASSIM:** You did not respond promptly to him. It took you over a month to respond to emails.

**DR. MANAMELA:** I gave Professor Freeman the full report of what is happening when we were in the workshop and in my email first email to him, I said I thought  
15 because I gave you the report it is okay, because I also ask him to ask through HOD, and I said my apology. If you did not, you still want, I am going to send it to you. Hence my email that I sent, that you do not have here, because it was not my evidence, is saying this is the email and he responded back to me. Say okay, there is nothing much except that we need to know about the discharge. Those who are  
20 discharged. I have got the email, you do not have it, because I am giving the evidence, but I responded. To my level as a director I cooperated with the

**LIFE ESIDIMENI ARBITRATION SESSION 1**

Professor who is at a higher level from me, because of the needs of the patients.  
So that if they can help, they can help. That is why I cooperated with ... [interjects]

**ADV ADILA HASSIM:** You see, Mrs Matsoso, the DG has a different view on that.  
When she testified, her words were the following. He sent it repeatedly, meaning  
5Professor Freedman:

*“He sent repeatedly emails to Dr Manamela requesting the plan, requesting  
information, requesting details, but nothing.”*

**DR. MANAMELA:** I heard the DG’s presentation.

**ADV ADILA HASSIM:** You heard her say that.

10**DR. MANAMELA:** Yes, she said that but in my response, that is why I have it  
here, she was that is how it was presented to her, and she also indicated she was  
communicating with the HOD, because she is not communicating with me, but at  
my level I did give Professor Freeman the ... [interjects]

**ADV ADILA HASSIM:** You would agree that given that this is an implementation  
15of a national policy, it would be important to inform the National Mental Health  
Directorate.

**DR. MANAMELA:** We were doing that. The first meeting I had, I informed the  
National Mental Health Directorate at my level and then progress report that I said it  
should still be signed, I sent to the director at the same level in the national. So I  
20did my part.

**ADV ADILA HASSIM:** You did everything.

**DR. MANAMELA:** I did my part.

**ADV ADILA HASSIM:** You did your part.

**ARBITRATOR JUSTICE MOSENEKE:** The last sentence of Dr Freeman's email, would you read that again into the record?

5**DR. MANAMELA:** From my email?

**ARBITRATOR JUSTICE MOSENEKE:** His email to you.

**DR. MANAMELA:** His email to me.

**ARBITRATOR JUSTICE MOSENEKE:** The last sentence.

**DR. MANAMELA:** Oh, from the one that you gave me:

10"*When we last spoke you informed me that you will send me a copy of the plan for,*"

I cannot see it well, can I read the one that I have because it is the same. I just made a copy.

**ARBITRATOR JUSTICE MOSENEKE:** You say he did acknowledge receipt of your report and then there is a last sentence in his email that you read out softly.

15**DR. MANAMELA:** Okay.

**ARBITRATOR JUSTICE MOSENEKE:** I want you to read it into the record loudly and clearly.

**DR. MANAMELA:** He said:

**LIFE ESIDIMENI ARBITRATION SESSION 1**

*“There is nothing in particular in the letter that needs responding to, other than what will be done with the patients including already discharged patient to ensure that they receive equal care to what they are getting now.”*

**ARBITRATOR JUSTICE MOSENEKE:** Provided they received equal care to what they are getting now.

**DR. MANAMELA:** That is correct.

**ARBITRATOR JUSTICE MOSENEKE:** What did that mean, do you know?

**DR. MANAMELA:** If I interpret it on myself, it will be the need to receive the quality care or the care must not be less than what they are receiving at Life.

10 **ARBITRATOR JUSTICE MOSENEKE:** At Life Esidimeni?

**DR. MANAMELA:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Do you think it happened here?

**DR. MANAMELA:** It happened in some, and it did not happen in some NGO's.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel.

15 **ADV ADILA HASSIM:** Thank you Justice. Dr Manamela, I have a couple of questions for you about the mental health review board. Did you appoint Mrs Masondo as the Chair of the mental health review board?

**DR. MANAMELA:** I missed that Counsel?

**ADV ADILA HASSIM:** Did you appoint Mrs Masondo as the Chair of the mental health review board?  
20



**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR. MANAMELA:** No, it was not me.

**ADV ADILA HASSIM:** Did you sign a contract?

**DR. MANAMELA:** Yes, I signed the contract with all of them.

**ADV ADILA HASSIM:** With all of who?

5**DR. MANAMELA:** With the mental health care review board.

**ADV ADILA HASSIM:** And is it appropriate for you to sign the contract?

**DR. MANAMELA:** It was as the MEC has already appointed them.

**ADV ADILA HASSIM:** So can you help us to understand, because the DG again Mrs Matsoso says that this was irregular because it is an independent body. The 10members are appointed separately. It is a different relationship she said. They are appointed in terms of the public finance management act, and that they are now queering how it is that there could be this contract.

**DR. MANAMELA:** In the Department of Health in Gauteng the appointment was done and signed by the MEC, but the contract because of the area where they are 15going to work, it was a regular procedure that the contract will be signed by the board together with the leader or the head of the unit for mental health care user. That... [interjects]

**ADV ADILA HASSIM:** You are saying that is a regular process?

**DR. MANAMELA:** Yes, it was the process.

**ADV ADILA HASSIM:** Okay, thank you. So Mrs Matsoso has got it wrong on that score.

**DR. MANAMELA:** I do not know who explained it to her, I cannot say that.

**ADV ADILA HASSIM:** But she is misinformed. Do you think she is misinformed?

5**DR. MANAMELA:** I can say she was not familiar with how the procedure in Gauteng Department of Health was working.

**ADV ADILA HASSIM:** Okay. Would you agree that the function of the mental health review board is to exercise an independent oversight of your directorate?

**DR. MANAMELA:** That is correct.

10**ADV ADILA HASSIM:** So how could you sign the contract?

**DR. MANAMELA:** I was advised to signed the contract because the MEC will not be available all the time, and that is how the department always did that.

**ADV ADILA HASSIM:** Okay. Mrs Masondo has testified that the powers of the mental health review board were infringed. Do you agree? The powers were  
15infringed by the mental health directorate?

**DR. MANAMELA:** I do not agree.

**ADV ADILA HASSIM:** She also said that she was told that the transfers were progressing well and when the Justice asked her who told you that she said it was Dr Manamela. That it is progressing well. Her words were there was nothing  
20alarming, there was no cause for alarm for us as board members. Do you agree with that?

## LIFE ESIDIMENI ARBITRATION SESSION 1

**DR. MANAMELA:** I do not agree. Can I qualify that? The board was appointed in January. When we came back from holiday the 4<sup>th</sup>. On the 14<sup>th</sup> of January I presented to the board and it was including all the services, including the termination. I have got a presentation, I can give it to you, and thereafter we asked the board to assist, because we know the board function was not the same function as we had. The board assisted to assess the patient at Life Esidimeni. The board sit in the meetings that were held by MEC. The board assisted to investigate the first death at Siyabadinga and Anchor. The board was part of the family committee. The family committee ... [interjects]

10 **ADV ADILA HASSIM:** Why was the board so involved if they were supposed to be independent?

**DR. MANAMELA:** Because the project was affecting the very same patients that they appointed for. So there was no way we cannot involve the board.

**ADV ADILA HASSIM:** There are different ways of exercising oversight. Sitting in the meetings and being part of the project is not one of them. Would you agree with that?

**DR. MANAMELA:** Yes, but in the case of the board I will not say they were just sitting in the meeting. The MEC's meeting, they were also advising. They even when we finished ... [interjects]

20 **ADV ADILA HASSIM:** My point is that they were in the meetings and part of the process. You cannot exercise oversight over yourself, you see. If you are part of the process you are already compromised.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR. MANAMELA:** They were invited. But they exercised their right in the same meeting, as they have advised the MEC. They even go to the level of having specific meeting with the MEC, and after we have placed, on the last meeting they also applauded. Mrs Masondo said we have been trying, because she was working 5in the department in mental health before I came. She said we have been trying to terminate the contract. We never done it, but this time it was done effectively because at that time it is when we send the patient on the way ... [interjects]

**ADV ADILA HASSIM:** But you, we are running short of time and I would like to get through this as fast as possible please Dr Manamela. Why did you ask mental 10health review board secretaries to phone the families?

**DR. MANAMELA:** Because it was reported to me that at Waverley their phone were not working. Then I said if their phone are not working at the moment, let us get ourselves, because I know at the end the family are going to look at department, not Life Esidimeni. I said okay, send those ... [interjects]

15**ADV ADILA HASSIM:** Yes, because you are responsible. That is why we look to you.

**DR. MANAMELA:** Yes, they will look at the Department of Health and said send those families where you have not yet sent information to the board so that the board secretary must phone the families.

20**ADV ADILA HASSIM:** So you asked the secretaries of the mental health review board to make contact with the families. Is that correct?

**DR. MANAMELA:** Yes.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV ADILA HASSIM:** Did you also ask Mrs Masondo to assist with transporting bodies from any of the NGO's?

**DR. MANAMELA:** Mrs Masondo was asked by the finance CFO and the MEC to transport the patient to Western Cape. However, as you just mentioned that they oversee my work, I reported to Mrs Masondo to say we do have families who does not have money to bury the loved one, so I do not know what we can do. Can you help in raising funds.

**ADV ADILA HASSIM:** Why is it ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** No Dr Manamela, just answer the question. Did you ask her to transport bodies?

**DR. MANAMELA:** I did not ask her as myself. We were in a meeting ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** We are recording a big, big record of things that are not required of you.

**DR. MANAMELA:** Ja, but ... [interjects]

15 **ARBITRATOR JUSTICE MOSENEKE:** We are recording every word you say.

**DR. MANAMELA:** Yes, record it because that is true.

**ARBITRATOR JUSTICE MOSENEKE:** Please listen to the question and answer. Did you ask her to transport bodies?

**DR. MANAMELA:** I did not ask her to transport bodies, but ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** So stop. Counsel will ask you more questions if she wants to.

**ADV ADILA HASSIM:** Mrs Masondo has said that you did ask her to transport bodies. Are you saying she was lying?

5**DR. MANAMELA:** I was in that meeting when that was discussed between the MEC and the finance and herself, and it was directed to her that can you transport the patients. She said we can.

**ADV ADILA HASSIM:** Okay.

**DR. MANAMELA:** And from there I was never part.

10**ADV ADILA HASSIM:** But it was not you?

**DR. MANAMELA:** It was not me per say.

**ADV ADILA HASSIM:** So she was lying when she said it was you?

**DR. MANAMELA:** I cannot say she, I do not know because she is the one who told you.

15**ADV ADILA HASSIM:** And why would you ask the Chair of the mental health review board to transport bodies? You as a department. Okay, you have said you did not do it yourself, but you were in the meeting where she was asked.

**DR. MANAMELA:** Yes.

**ADV ADILA HASSIM:** Why would you ask the Chair of the mental health review  
20board to transport bodies?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR. MANAMELA:** I think, I might be wrong, because she is running maybe a mortuary, she thought she can help. That is what I think, but I reported. It was not only one patient that she transferred that I reported to her. There were other family members struggling to get their loved one to be buried, but at that day it happened 5that she was there and they wanted to go to Western Cape and ... [interjects]

**ADV ADILA HASSIM:** And so she was asked by the department ... [interjects]

**DR. MANAMELA:** Yes.

**ADV ADILA HASSIM:** To use her company to transport a body. Correct?

**DR. MANAMELA:** Yes, I am not sure if it is hers or her family, but she was asked 10to do that.

**ARBITRATOR JUSTICE MOSENEKE:** Who in the department asked her?

**DR. MANAMELA:** It was at that meeting when it was, it was the MEC was there and the chief financial officer was there.

**ARBITRATOR JUSTICE MOSENEKE:** And she was asked in the presence of the 15MEC or by the MEC?

**DR. MANAMELA:** Ja, I will say she was asked in the presence, we presented it to the MEC, me and finance person and she was there and the MEC said ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** You presented what to the MEC?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR. MANAMELA:** The challenge of families, all families who does not have money to bury their loved one, and then Ma Masondo said no those who need transport we can transport them.

**ARBITRATOR JUSTICE MOSENEKE:** No, who asked her to transport the 5bodies?

**DR. MANAMELA:** The MEC who also asked the finance person to deal with it. She said that. Finance person, deal with it.

**ARBITRATOR JUSTICE MOSENEKE:** You reported the challenge to the MEC.

**DR. MANAMELA:** And to the board.

10**ARBITRATOR JUSTICE MOSENEKE:** And was Mrs Masondo there?

**DR. MANAMELA:** Yes, at the second time Mrs Masondo was there.

**ARBITRATOR JUSTICE MOSENEKE:** And the MEC, or who asked Mrs Masondo to transport the bodies?

**DR. MANAMELA:** The chief, the MEC said if Mrs Masondo can transport the 15bodies let her transfer, work it out and she worked it out together with the finance officer.

**ARBITRATOR JUSTICE MOSENEKE:** Was she paid?

**DR. MANAMELA:** I am not sure, but after this area, after the process of burying patient, I asked the finance unit how much money they did use to pay for the 20families that we helped. I think she was paid, and I believe she was paid because she did not say to me I am going to give donation or what. I believe she was paid.



**ADV ADILA HASSIM:** Of course, she was running a business.

**DR. MANAMELA:** Yes.

**ADV ADILA HASSIM:** I promised you that I would return to the question of the families, the issue of families, and you said repeatedly that there was no family contact or families were not available or families did not answer the phone. Is it your view that the families were not involved in the lives of the patients?

**DR. MANAMELA:** I cannot say all families were not involved, but there were some of the families, as evidence by the report we got from Life Esidimeni and also from health advanced institute, that there were families that were not actively involved in the life of their loved one, although others were actively involved.

**ADV ADILA HASSIM:** Okay. So there were families who were actively involved?

**DR. MANAMELA:** Some were actively involved. Like the health advance institute, said 50 percent had family involvement, meaning that other 50 percent ... [interjects]

**ADV ADILA HASSIM:** And were the families happy with this transfer of their loved ones?

**DR. MANAMELA:** Most families were not happy with the transfer of their loved one.

**ADV ADILA HASSIM:** And why were they not happy?

**DR. MANAMELA:** What we did, when we meet the family for the first time, we develop a smaller survey to ask, to let them fill it and see who can be able to take care of the family member at home and who cannot, and that survey that we did

## LIFE ESIDIMENI ARBITRATION SESSION 1

made us realise that most of them cannot be able to take care of the loved one at home, and they do not have a problem if they go to the NGO and in our institution, but the reason, many reason. There can be many reason for the family ...  
[interjects]

5 **ADV ADILA HASSIM:** Do you know that they were marching to your offices?

**DR. MANAMELA:** I know.

**ADV ADILA HASSIM:** Do you know that there were memoranda that were handed over?

**DR. MANAMELA:** That is correct.

10 **ADV ADILA HASSIM:** Do you know that they reported it to the media?

**DR. MANAMELA:** That is correct.

**ADV ADILA HASSIM:** Do you know that they went as far as engaging lawyers?

**DR. MANAMELA:** That is correct.

**ADV ADILA HASSIM:** Why do you think they did that?

15 **DR. MANAMELA:** Like I indicated there, I think can I give you my three thinking reason which may not be my three reason which may not be applicable to everyone? The first one will be they may not be able to manage the patient at home. The second one will be they may still be thinking about what most patient did when they are committed to our hospital, because mentally ill patient may  
20 destroy and become aggressive and they may think they will come back and be the same. The other thing, we were working with SASSA. We realised that there were

## LIFE ESIDIMENI ARBITRATION SESSION 1

other families who were getting disability grants while the patient were at Life, and now we told them that as the patient goes to NGO, the disability grant will follow them. So the other thing I think ... [interjects]

**ADV ADILA HASSIM:** So you gave us the three reasons. Those were three, I 5counted.

**DR. MANAMELA:** Pardon?

**ADV ADILA HASSIM:** Those were three reasons. All of those reasons, all of those reasons, are you saying all of those reasons suggest that they were marching and toy toying and protesting because they were self interested, because they 10wanted to keep the disability grants for themselves.

**DR. MANAMELA:** No, I am not saying that.

**ADV ADILA HASSIM:** Because they did not want to look after the family members themselves. That is what you said.

**DR. MANAMELA:** No, let me finish. I said it might be, I am not saying it is 15confirmed.

**ADV ADILA HASSIM:** You gave three reasons Dr Manamela.

**DR. MANAMELA:** I said it.

**ADV ADILA HASSIM:** All of them, listen to me. All of the reasons you have given, embedded in your reasons are that they were just looking after their own interests.

20**DR. MANAMELA:** That is not my perspective.

**ADV ADILA HASSIM:** Let me ask you this. Is it not that they did all of this because they were concerned about the wellbeing ... [interjects]

**DR. MANAMELA:** Yes.

**ADV ADILA HASSIM:** Of their loved ones.

5**DR. MANAMELA:** That is why I was saying I still have the fourth one that will be for every family member.

**ARBITRATOR JUSTICE MOSENEKE:** Well Counsel.

**ADV ADILA HASSIM:** I am going to close on this Justice. I am aware of the time. You have denied responsibility for everything. You denied responsibility  
10whatsoever on any score so far in your testimony. Who would you say is responsible for what happened?

**DR. MANAMELA:** I think for what has happened was a collective endeavour and the responsibility after the decision was taken, the responsibility will be to the, will be for the project team number one. Number two, the responsibility will be also for  
15the NGO that were found negligent if the post mortem confirm ... [interjects]

**ADV ADILA HASSIM:** So there is no one party we can hold responsible or two parties that we can name and hold responsible?

**DR. MANAMELA:** It can be partially, but Counsel it is difficult to hold one person responsible for a project, but if it was only it was just for mental health care services,  
20I will take the accountability, but it was a project. So all the project team members

## LIFE ESIDIMENI ARBITRATION SESSION 1

need to be hold accountable, responsible and the NGO as well where the patient were.

**ARBITRATOR JUSTICE MOSENEKE:** Why do you think you are paid so much money and given such a big title?

5**DR. MANAMELA:** I think I will not answer that, because what I said is already what indicated. I mean even if you are paid so much money but you are working at the project and the project had problems, it does not mean that it is you because you are paid so much money, but if ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Who was the director of mental health  
10care in Gauteng?

**DR. MANAMELA:** I was the director, but how, why am I just secluded out of the project team while I was even in terms of the project Justice, I cannot take responsibility alone, but in terms of the work in mental health I will take responsibility.

15**ARBITRATOR JUSTICE MOSENEKE:** You see, leaders. Listen to me madam. Leaders take responsibility. That is why they are given powers to order others. Do you know that?

**DR. MANAMELA:** What I know Justice, is that leaders ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** No, just tell me whether you know what I  
20am asking you.

**DR. MANAMELA:** Take accountability. Leaders will take accountability.

**ADV ADILA HASSIM:** But not responsibility.

**DR. MANAMELA:** Even if the responsibility ... [inaudible], but the main issue is the accountability. You were not there when the patients were fed and they were fed something else. You were not responsible, but the accountability still remain with the department who is the head in the department and if that is the case, the accountability I will take.

**ARBITRATOR JUSTICE MOSENEKE:** Let us go back to the question of Counsel. Who should be held accountable for these deaths? That is the question you were asked.

10**DR. MANAMELA:** Okay.

**ARBITRATOR JUSTICE MOSENEKE:** Lots of words spouted out there, but who do you think should be held accountable?

**DR. MANAMELA:** Like I said there will be partial accountable on my side, but the project team would be ... [interjects]

15**ARBITRATOR JUSTICE MOSENEKE:** Would you be one of the people who must be held accountable?

**DR. MANAMELA:** I am part of the project team. I am part of the project team. If that is that, I will be. I am part of the project team. I cannot be excluded, but I cannot be the only one picked up in the project team, but it was my mental, I must not say my mental health. Unit only mental health, I will take both of them.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

Accountability and responsibility, but this was a project not worked on by myself or by one individual.

**ARBITRATOR JUSTICE MOSENEKE:** Were you instructed by the MEC to manage the placement part of this project?

5**DR. MANAMELA:** It was said that in the meeting, yes.

**ARBITRATOR JUSTICE MOSENEKE:** Just give me a direct answer. [Vernacular 02:02:11].

**DR. MANAMELA:** Justice.

**ARBITRATOR JUSTICE MOSENEKE:** She will be here too, I am asking you so  
10that she can prepare herself and be able to answer the question. I am asking you.

**DR. MANAMELA:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Did the MEC instruct you to do the placement part of this project?

**DR. MANAMELA:** I will say yes, but it was not in a written form. It was in the  
15meeting minutes. Say how far are you, you need to do it by December, by July, by June, by end of June.

**ARBITRATOR JUSTICE MOSENEKE:** Ja, we can see from the presentations. We have a lot of evidence now. You are one person in a sea of evidence and did Dr Selobano give you instructions on the placement project?

20**DR. MANAMELA:** It all fall within me. It was not in a written form. It was also from the meeting.

**ARBITRATOR JUSTICE MOSENEKE:** Did he instruct you also to make sure the placement process goes ahead?

**DR. MANAMELA:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** And, who was your HOD at that time. Dr Selobano?

**DR. MANAMELA:** Yes Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Right, and when one reviews that, looks at this ultimate tragedy because that is what it is. When 143 people die needlessly, who do you think in that collection, the MEC, Dr Selobano and yourself, should be held accountable?

**DR. MANAMELA:** I do not know Counsel. I do not know Justice. I do not know.

**ARBITRATOR JUSTICE MOSENEKE:** Why do you not know?

**DR. MANAMELA:** Because of what I presented to you. I do not know, because of all the evidence I gave you. So you will make the final judgment, but I do not know, because there were a lot of process that took place.

**ARBITRATOR JUSTICE MOSENEKE:** Ja, I was trying to invite you to help me make that decision and that I do best when I understand what goes on in your head. Did you foresee that some of these patients might die? Like Mr Mosenoge warns in his letter.

**DR. MANAMELA:** That can happen anywhere where the patients are.



**ARBITRATOR JUSTICE MOSENEKE:** No, did you foresee that if the project is not properly handled some patients might die?

**DR. MANAMELA:** I do not know what to say, but it can be. It can be. It can be.

**ARBITRATOR JUSTICE MOSENEKE:** I do not know what the answer is madam, I want to hear it clearly. I am asking you did you personally realise that if the project is not properly managed, some of the patients might die?

**DR. MANAMELA:** Why I am answering in this manner Justice, is that we had to do all that we can to ensure that patients are not dying. Same applies to all the hospitals.

10 **ARBITRATOR JUSTICE MOSENEKE:** Understand that.

**DR. MANAMELA:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** But did you subjectively realise that if this project is not handled properly, patients who otherwise would not, might die?

**DR. MANAMELA:** That is true.

15 **ARBITRATOR JUSTICE MOSENEKE:** Okay. Do you want to take a break now or do you want to continue?

**ADV ADILA HASSIM:** Justice, I would like to take the break.

**ARBITRATOR JUSTICE MOSENEKE:** You do not have to. We can take the break at twelve o'clock. It depends on the state of mind or the animation of the  
20 cross-examiner. If you want to continue ... [interjects]

**ADV ADILA HASSIM:** I have no further questions for this witness. I am happy to call it a day.

**ARBITRATOR JUSTICE MOSENEKE:** You are happy to call it a day. Very well. Thank you. Under no pressure from me whatsoever?

5**ADV ADILA HASSIM:** No.

**ARBITRATOR JUSTICE MOSENEKE:** You are sure?

**ADV ADILA HASSIM:** Ja.

**ARBITRATOR JUSTICE MOSENEKE:** Dr Manamela, we are going to take a tea break. [Vernacular 02:06:28].

10**DR. MANAMELA:** Okay.

**ARBITRATOR JUSTICE MOSENEKE:** [Vernacular]

**DR. MANAMELA:** Okay.

**ARBITRATOR JUSTICE MOSENEKE:** [Vernacular]. So I hope we can finish today.

15**DR. MANAMELA:** I hope so.

**ARBITRATOR JUSTICE MOSENEKE:** I said in one of our official languages that you are to be cross-examined by two more advocates and the re-examination. Three more. Advocate Crouse, somehow I forgot, overlooked you. There will be three more advocates who will ask you questions and the re-examination, and that

## **LIFE ESIDIMENI ARBITRATION SESSION 1**

will happen at quarter past twelve. We will take a tea break for 30 minutes. Thank you. We are adjourned.

## **SESSION 2**

5 **ADV LILLA CROUSE**: As you sit there now today, you are saying yes, I followed instructions, not merely, you followed instructions?

**DR MANAMELA**: I have followed instructions, legal instruction I will say yes.

**ADV LILLA CROUSE**: And what you are saying today to the court and we will unpack it a little bit later, is you weren't the direct result of anything that went wrong  
10 in this project? Is that also right?

**DR MANAMELA**: Can you come again Counsel?

**ADV LILLA CROUSE**: As you are sitting there now, you are also saying to this Tribunal, you are not the direct result of any deaths, you didn't cause any deaths, is that what you are saying?

15 **DR MANAMELA**: That's what I said Counsel.

**ADV LILLA CROUSE**: Yes thank you and I am quite sure you want to make sure that nothing like this tragedy ever happens again, would that be fair?

**DR MANAMELA**: That is fair.

**ADV LILLA CROUSE**: And you would want to help this Tribunal to the best of your  
20 ability, would that be fair?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR MANAMELA**: That is correct.

**ADV LILLA CROUSE**: Now if that is so, why did you initially refuse to come and testify before this Tribunal?

**DR MANAMELA**: I have never refused to come and testify to this Tribunal.

5**ADV LILLA CROUSE**: Why did you refuse to consult with the evidence leaders?

**DR MANAMELA**: I have never refused to consult with the evidence leaders.

**ADV LILLA CROUSE**: Did you consult with the evidence leaders?

**DR MANAMELA**: I didn't.

**ADV LILLA CROUSE**: Why did you not?

10**DR MANAMELA**: For me not to consult, doesn't mean that it was a refusal.

**ADV LILLA CROUSE**: Could you explain that?

**DR MANAMELA**: The evidence leader called me and told me they will set a date. We responded to them and then we didn't get dates set for some reasons that was indicated and the last one, the evidence leaders when they called on a Saturday  
15last week, I was not available that Sunday.

**ADV LILLA CROUSE**: Okay let me just- for the remainder of my questions, I am only going to ask you about you, so if you use the word we, are you using the royal plural, or are you speaking about other people as well?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR MANAMELA**: If I'm saying we, it means I mean the team, or my directorate, but I think I haven't used we since you started with me. You asked me direct questions because I am the one who was called to meet the evidence leader.

**ADV LILLA CROUSE**: And if this is so that you want to help, why did you only request your laptop on Saturday?

**DR MANAMELA**: From my point of view, it was not for the first time I requested the laptop, but I requested and I didn't get any answer and I didn't even get response on that laptop, but when it was requested on Saturday, I know that although I have been in the project, I can answer questions, but there is certain information that I don't have, that I need to have from the laptop.

**ADV LILLA CROUSE**: Doctor I don't want to waste time on this, to who did you ask for your laptop and when did you ask for the laptop?

**DR MANAMELA**: I think I might be wrong, immediately after my suspension, when I submitted my appeal, I did ask for the laptop from the Acting Head of the Department. I sent an email from my iPad.

**ADV LILLA CROUSE**: And when was that sent?

**DR MANAMELA**: I don't remember the time, but it was before the closing date of the- when I was preparing for my appeal, I can't remember the date.

**ADV LILLA CROUSE**: That's one time. Was there any other time?

**DR MANAMELA**: No it was only twice.

**ADV LILLA CROUSE**: So long ago and on Saturday?

**DR MANAMELA**: That's correct.

**ADV LILLA CROUSE**: Yes and why if you are so willing to assist this court that this is not going to happen again, why did you refuse to testify on Monday?

**DR MANAMELA**: I never refused to testify, I was asking that I be able of assisting you fully by understanding the questions that you want me to answer, unlike now, there are questions that I have been asked and when I answer, I am told somebody told you that and that, so I wanted to prepare fully so that to assist the families to reach closure on what has happened.

**ADV LILLA CROUSE**: And on Tuesday you didn't come at all?

10 **DR MANAMELA**: That's correct.

**ADV LILLA CROUSE**: Were you so ill that you couldn't drive in a car?

**DR MANAMELA**: Yes I was ill.

**ADV LILLA CROUSE**: No you are not answering my question Doctor. Were you so ill that you couldn't drive in a car?

15 **DR MANAMELA**: I was so ill that I couldn't stand I couldn't be able to testify.

**ADV LILLA CROUSE**: I am going to ask the question for the third time, Doctor please answer it now, were you so ill that you couldn't drive in a car?

**DR MANAMELA**: I have been driven to come here, so there was no reason for me, if I was not ill, I will still be driven to come here if I was going to be able to testify.

**ADV LILLA CROUSE**: Doctor let us just try a yes or a no, were you so ill that you couldn't be driven in a car?

**DR MANAMELA**: Maybe I don't get the question, that I cannot be driven.

**ARBITRATOR JUSTICE MOSENEKE**: Explain Counsel, do you mean as a passenger in a car?

**ADV LILLA CROUSE**: Yes.

**DR MANAMELA**: As a passenger, like I am a passenger, its fine, I could have come as a passenger.

**ADV LILLA CROUSE**: And you couldn't come here by yourself and say to the court, please excuse me I am very ill?

**DR MANAMELA**: No I couldn't come, because I couldn't come here and ask the Judge and that was not out of lack of respect.

**ADV LILLA CROUSE**: And when were you so ill, when did you become so ill that you couldn't come the morning?

**DR MANAMELA**: I think I don't know if this is really- I don't know if I have to answer this one, I think I can't answer this one.

**ADV TEBOGO HUTAMO**: We don't understand the relevance of the question because the absence of the witness in this proceeding has been dealt with and we have gone past that, if the questions can be limited to the issues which are to be decided on.

**ARBITRATOR JUSTICE MOSENEKE:** Well let's ask there is an objection to relevance, Counsel your response?

**ADV LILLA CROUSE:** Thank you Justice, I wasn't aware that it has been dealt with fully. I know that there was a warrant issued and it was standing over. I further submit that this witness *bona fide* is at stake because she said she wants to help and I am still busy with trying to understand why if she wants to help, why is, this her conduct.

**ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE:** Ja it goes to credibility.

10**ADV LILLA CROUSE:** Absolutely.

**ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE:** Ja I will permit the question.

**ADV LILLA CROUSE:** I think we were at the why did you not come here to tell the Judge himself that you could not be here on Tuesday?

15**DR MANAMELA:** I am not so much comfortable to answer that, but I will give you my answer, because it was like if I couldn't have, the way I was sick, I couldn't have- I was not able to come here and I know that although it said I am not the accused but from this deliberation, there is some point where it appears I am the accused and then at that time, I might have been accused more that the people will  
20just look at you and say that you are fine and then you must take the stand, but I was not able, I was sick. So if you have got any problem with that, I will suggest-



**ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE**: Well it's enough to say to Counsel you were unwell and the Counsel is bound by that answer.

**ADV LILLA CROUSE**: Thank you.

**ARBITRATOR JUSTICE MOSENEKE**: If she gives you an answer, you are bound by the answer.

**ADV LILLA CROUSE**: Absolutely.

**ARBITRATOR JUSTICE MOSENEKE**: It's just I wasn't well to testify, I think that's the end of the enquiry.

**ADV LILLA CROUSE**: My question that I forgot that I was put to you before my learned friend's objection, was when did you get so ill that you couldn't be here the morning?

**DR MANAMELA**: Can I refer the Counsel to my physician to ask the physician, because it's now no longer about the arbitration, it's about my personal life and I am worried about that, I am sorry, I am not becoming disrespectful.

15 **ADV LILLA CROUSE**: Doctor I am going to repeat this question until the Justice stops me. When did you become so ill that you couldn't come to Court on Tuesday morning? It's an easy question? I am not asking details of your illness, I am asking when did you become so ill?

**DR MANAMELA**: Like I said, I am not comfortable to tell you, but I will tell you anyway, because when I came here, I was still not so well, but I had to honour the call, but I found that the following day I can't make it.

**ADV LILLA CROUSE**: You have not answered my question. My question is when did you become so ill that you couldn't be here on Tuesday morning?

**DR MANAMELA**: I think I've answered you Counsel.

**ADV LILLA CROUSE**: Was it-

5**ARBITRATOR JUSTICE MOSENEKE**: If you said on Monday evening, that would be the end of the enquiry, then I wouldn't allow Counsel to go any further. It's a question raised to test your credibility, so if you say you were ill on Monday evening, that's where it rests.

**DR MANAMELA**: I said that, I said even on Monday I was not feeling so well, but I  
10thought I would be okay the following day, I said that.

**ADV LILLA CROUSE**: Yes Mam, my question is, when, did you become so ill, because Monday you were healthy enough to testify, so when did you become so ill?

**ARBITRATOR JUSTICE MOSENEKE**: Well the witness said Monday after  
15testifying she became ill.

**ADV LILLA CROUSE**: I'm sorry, I didn't hear that Justice.

**ARBITRATOR JUSTICE MOSENEKE**: Do you want to repeat your answer?

**DR MANAMELA**: I said on Monday, I was not feeling so well, but I still came to testify.

20**ADV LILLA CROUSE**: Sorry Justice I have not received an answer yet, so my question remains Mam, when did you become too ill to testify?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR MANAMELA**: I think I can't comment anymore on that because I answered, I have answered you.

**ARBITRATOR JUSTICE MOSENEKE**: She says I was ill and I forced myself to come and that is the answer you get from your question.

5**ADV LILLA CROUSE**: I will move on. Doctor at the end of this, I am going to argue that you are argumentative and that you are defensive and that you are not answering questions. Do you agree with that?

**DR MANAMELA**: No.

**ADV LILLA CROUSE**: And I am also going to argue that that's indicative of a  
10person that does not want to bring closure to families.

**ARBITRATOR JUSTICE MOSENEKE**: I think you have to give an answer to that. All these questions do not go to the merits, but they go to your honesty and then it is put to you that in fact you are those things that they have just said. I think you should respond to them if you so choose. Of course, you could keep quiet.

15**DR MANAMELA**: Thank you Justice I think I will respond to this. What the Counsel is saying, is, her perception. I was trying all that I can to give the information that I know as part of the project team and if people came and paint me, I believe that this Tribunal will take my information and assess it and look at it. They cannot say because so and so said that, this is how it is. The second thing is that I  
20was also part of the project team and also the head of mental health. People didn't know the policies and the procedures, so all the procedures and policies I was trying to put forward, it was like I was lying and I was pushed as if people who didn't

## **LIFE ESIDIMENI ARBITRATION SESSION 1**

have all the information, whatever they said, it's okay, because I believed that when they said I am a project deputy, I should assist the project leader as he doesn't have experience in mental health-

**ARBITRATOR JUSTICE MOSENEKE**: Let's go back again Doctor. Counsel says 5to you, she will argue at the end of the case. After all, this is going to be argument whether to believe any particular witness or not. She says she is going to argue that you are argumentative, you are defensive, you don't answer questions and you do not want to bring closure to the families. Those are the accusations that were put to you, that is Counsel's conclusion, we all know that. What we normally do is, 10we give a witness an opportunity to reply to the charges. What do you say to that?

**DR MANAMELA**: I will say-

**ARBITRATOR JUSTICE MOSENEKE**: It's about your demeanour.

**DR MANAMELA**: Yes.

**ARBITRATOR JUSTICE MOSENEKE**: If you could just understand that and 15respond to that?

**DR MANAMELA**: I will say I am not defensive and I am not argumentative and I am not indicative and what I was trying to do, was to give you the vision of the process of mental health services in the province and Counsel has got power to believe her perception, but I wanted to explain to you most of the time, what is the process and 20which I have got my perception of the situation, that some of the things you were given not only you, was that you were not given the procedure because it's better to judge anybody related to procedure.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV LILLA CROUSE**: I am going to move on Doctor, I am going to go now to your thought process at the beginning of this project. Can you tell this forum, when you were first made aware that this project is in the pipeline?

**DR MANAMELA**: Not arbitration, not the whole project, I need to get it clear  
5Counsel?

**ADV LILLA CROUSE**: Yes please, when did you know that the Life Esidimeni is going to be closed and all these patients are going to be moved? When was the first indication that you received?

**DR MANAMELA**: When the termination letter was sent, but before that, there was  
10a 20% reduction around January/February before the end of closing year, I know that we must reduce by 20% on top of 200 that is required since we developed the policy. So as we were carrying on, they were still in meetings between the leadership and the leadership of Life between ourselves as well, so meaning that 2014/2015 financial year, we started to see it may lead us there until the time when  
15the presentation by MEC was made that at the end of 2016/2017, the contract will be terminated. Then September a letter was issued.

**ADV LILLA CROUSE**: I just want to make sure that I understand you. Could you just, without explanation, give us a date on which you were first made that Life Esidimeni might, I will put it as might first, might not continue to render services?

20**DR MANAMELA**: I don't have an exact date, but I know the MEC's presentation on the budget, which might be-

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV LILLA CROUSE**: Mam I'm asking for a date, the first date, so if you say to me the date the MEC made a budget speech, that will be a date, but I want only one date.

**DR MANAMELA**: Okay, the date the MEC made budget speech, I know that termination is unavoidable.

**ADV LILLA CROUSE**: Doctor I just want to make sure because you now say no. My question to you is when was your first hearing that it might close, the first hearing?

**DR MANAMELA**: I think I have answered when the MEC presented the budget speech, where the last point start affect my directorate was saying by 2016/2017 financial year, we will have-

**ARBITRATOR JUSTICE MOSENEKE**: You do have an answer Counsel, when the MEC presented the budget speech. We can find out when was that objectively.

**ADV LILLA CROUSE**: Yes I can put it to you, on the 19<sup>th</sup> of June 2015, the MEC made her budget speech. Would you agree with that? It's on the website.

**DR MANAMELA**: Yes if you say so, I will agree with it yes.

**ADV LILLA CROUSE**: Good and it's not something to, raise with you, but the topics of that budget speech is no longer on the website, but me that as it may, so you are saying before 15 June 2015, you had no inclination that Life Esidimeni's contract might be closed?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ARBITRATOR JUSTICE MOSENEKE**: Sorry Counsel I missed something, 9<sup>th</sup> or 20<sup>th</sup>?

**ADV LILLA CROUSE**: 15 July 2015.

**ARBITRATOR JUSTICE MOSENEKE**: Thank you.

5**DR MANAMELA**: What I had before that, was the 200 beds that must be reduced as agreed between us and Life Esidimeni and the 20% that must be discharged, that is what I know.

**ADV LILLA CROUSE**: Sorry Dr Manamela I have misled you, it's on the 19<sup>th</sup> of June 2015, sorry. Now let us just look before that date, 19 June 2015, what had 10happened of which you are aware. You were aware of the closing of Selby?

**DR MANAMELA**: Yes I was aware.

**ADV LILLA CROUSE**: According to Dr Talatala, in evidence here, he says by March 2015, the rumour was already going around.

**DR MANAMELA**: The rumour was going around, but, we were having to, work on 1520% reduction and that was a huge number of patients that must be out of Life Esidimeni. I believe, I might be wrong, that time, we didn't have any knowledge of termination, but we know that 20% out of 200 beds, must be added as evidence by the letter sent to MEC to the Premier and the letter that our Department sent to Life Esidimeni and it was a huge number of patients, that is why we had a task team to 20work on it.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV LILLA CROUSE**: Do you know the Health Advance Institute? Have you heard about them?

**DR MANAMELA**: That's correct Counsel.

**ADV LILLA CROUSE**: Have you instructed them to do a cost analysis of Life Esidimeni?

**DR MANAMELA**: The Department did Counsel.

**ADV LILLA CROUSE**: Mam I am asking you Doctor, did you instruct them?

**DR MANAMELA**: Not me as directorate.

**ADV LILLA CROUSE**: Who instructed them?

10**DR MANAMELA**: The Department, the financial unit.

**ADV LILLA CROUSE**: And that falls directly to the people that you must look after, the mental health patients?

**DR MANAMELA**: Yes.

**ADV LILLA CROUSE**: So they probably involved you in the process?

15**DR MANAMELA**: I was in the meeting that's true.

**ADV LILLA CROUSE**: And this was before the MEC's speech wasn't it?

**DR MANAMELA**: That's correct.

**ADV LILLA CROUSE**: So even before the MEC's speech, you knew the Department was looking at closing Life Esidimeni?



## LIFE ESIDIMENI ARBITRATION SESSION 1

**DR MANAMELA**: I didn't know as it would be closing because every year when we plan, we will look at where can, we reduce costs. Throughout my time in the directorate, Life Esidimeni will come and say what, can we do with Life Esidimeni. I remember, I don't have to bore you. First we said we can reduce by 100 beds, it didn't happen, just like that, so it was just a prioritisation. Nobody mentioned the closure at that time.

**ADV LILLA CROUSE**: So why would you do a cost analysis if you are not intending to close them?

**DR MANAMELA**: I think as it was presented to us, because the Department had 10 challenges. They had to look at all areas and then, cost analysis was something that needs to be done before maybe they take any decision whether to terminate or to add or to reduce by 20%, because after that, we had to reduce by 20%.

**ADV LILLA CROUSE**: I want to put it to you that according to the Health Advance Institute, they already visited Waverley on the 15<sup>th</sup> of March 2015, are you aware of 15 that?

**DR MANAMELA**: That's correct.

**ADV LILLA CROUSE**: And this is long before the MEC's speech.

**DR MANAMELA**: True.

**ADV LILLA CROUSE**: Yes and you would also know on the 16<sup>th</sup> of March, there 20 was a meeting with your Department with [SASOF] about the closure, isn't that so?

**DR MANAMELA**: It was not about the closure, it was about the 20% reduction.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV LILLA CROUSE**: Okay let me move on. The Health Advance Institute gave you the report in May 2015, is that right?

**DR MANAMELA**: That's correct.

**ADV LILLA CROUSE**: And they found that Life Esidimeni is cost effective, is that right?

**DR MANAMELA**: That's correct.

**ADV LILLA CROUSE**: In June 2015, when you had your regular meetings-

**ARBITRATOR JUSTICE MOSENEKE**: I'm sorry Counsel, what do you understand cost effective to mean?

10**DR MANAMELA**: My understanding was that although the finance section wanted them to check if we were not paying too much, the report said we are not paying too much than what we could pay, so that is how I think.

**ARBITRATOR JUSTICE MOSENEKE**: So in other words, it was economical? You are getting value for money.

15**DR MANAMELA**: Yes.

**ARBITRATOR JUSTICE MOSENEKE**: Okay.

**ADV LILLA CROUSE**: So at the time that the MEC made this speech, you already had in your knowledge, that you wouldn't get a better service for these patients any place, would you agree with that?

20**DR MANAMELA**: No Counsel.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV LILLA CROUSE**: You didn't agree with the report that you paid nearly a half a million Rand for?

**DR MANAMELA**: Although I agreed with the report, but I didn't agree that we won't find any place where we can get better service.

5**ADV LILLA CROUSE**: So Doctor what you're telling me, you are asking an expert to do a cost analysis. They come back to you, to say this is the best service you are going to get and you don't agree with that?

**DR MANAMELA**: No I never said I don't agree with that, but I heard you saying you think there can be other areas where they can still get better service. You will  
10pardon me if I heard you wrong.

**ADV LILLA CROUSE**: I am not sure what you're saying.

**DR MANAMELA**: Okay can I ask you to put the question-

**ADV LILLA CROUSE**: No please don't ask me questions.

**ARBITRATOR JUSTICE MOSENEKE**: Okay Counsel must re-state the question. If  
15we start asking questions backwards and forwards, then we are going to run into trouble. I think your question was if the expert report showed that Life Esidimeni was cost effective, how could, you have found a place that would give a better service than that.

**DR MANAMELA**: I could say initially, it was said that they might advertise for  
20another service, but that has got no record when we were in the meeting, but it was

## **LIFE ESIDIMENI ARBITRATION SESSION 1**

not me to take a decision of whether we will terminate even if we have got the report.

**ARBITRATOR JUSTICE MOSENEKE**: Let's try again Doctor. What Counsel says is that you knew after the report that you can't have a more cost effective institution to look after your patients. That is actually the question that she asked.

**DR MANAMELA**: Okay.

**ARBITRATOR JUSTICE MOSENEKE**: Do you agree with that?

**DR MANAMELA**: Ja I agree with that report that was given.

**ADV LILLA CROUSE**: So when the MEC now made this budget speech of closing Life Esidimeni, you no doubt said to her, but we paid half a million Rand for these experts and they say that we shouldn't do it. Did you do that?

**DR MANAMELA**: I was not having meetings with MEC.

**ADV LILLA CROUSE**: No I am not asking you that Mam, did you raise your concern?

**DR MANAMELA**: I didn't raise any concern to MEC, but in our unit, I did, but there was nothing we could do at the level that I am.

**ADV LILLA CROUSE**: You say you raised concerns. With whom did you raise concerns?

**DR MANAMELA**: We discussed it as the clinician in the first meeting when we received the report, clinicians were there and then we all realised what is in the report, but we are not dealing with finance and the finance team were also there.

## **LIFE ESIDIMENI ARBITRATION SESSION 1**

The fact, that, they will terminate in the end, in our meeting with the Health Advance Institute, it was not indicated.

**ADV LILLA CROUSE**: Mam I'm not sure which question you are answering now. Doctor my question to you is, did you raise after the MEC said we are closing Life Esidimeni, did you raise the issue that this is not a good decision and you said yes, we raised it in our unit and I am trying to find out what does that mean, that you raised concerns in your unit.

**DR MANAMELA**: I was under the impression that we are talking to the high report, we discussed the high report. When the MEC indicated termination, I didn't raise anything, I went to the Act and regulations and checked if that is in line, because if they are telling me that this company has been there for 36, it's not still in line with the procurement, so there was nothing. I will just check if I have to be involved, where am, I.

**ADV LILLA CROUSE**: Mam you have said that so many times. I am just asking you, yes or no, did you raise concerns saying we paid somebody nearly a half a million Rand to do a report and now we are going against it?

**DR MANAMELA**: No.

**ADV LILLA CROUSE**: Thank you. Now I want to go through the times that you could have raised concerns if you wanted to. We know that the MEC made a speech on 19 June 2015 and you didn't raise concerns at that stage, is that right? On the 22<sup>nd</sup> of June 2015, [SASOF] wanted to discuss this termination and your department refused to discuss-

**ARBITRATOR JUSTICE MOSENEKE**: I would like the witness to answer to each of them please?

**ADV LILLA CROUSE**: Yes.

**ARBITRATOR JUSTICE MOSENEKE**: It's just so easy and so efficient. The first one, the MEC made the statement public and you did not raise your concern, this was put to you. Please answer to that?

**DR MANAMELA**: No I didn't.

**ADV LILLA CROUSE**: Then on the 22<sup>nd</sup> of June 2015, a few days later [SASOP] wanted to discuss this with the Department in the regular meeting and Dr Talatala said you weren't willing to discuss this. Did you raise your concern at that stage?

**DR MANAMELA**: Can I get the point, Dr Talatala, are you saying Dr Talatala indicated I was not willing to discuss that?

**ADV LILLA CROUSE**: Mam he said that on the 22<sup>nd</sup> of June 2015, you had a regular meeting with [SASOP] and they wanted to raise this issue and your Department or you, did not want the discussion on that day.

**DR MANAMELA**: I will say that is incorrect and I must qualify it. The meeting we had with [SASOP] it was not including the executive leadership, it was from my level and my DD's, so at that meeting, we could talk about Life Esidimeni challenges which we did and thereafter, they wrote a letter to the MEC.

**ADV LILLA CROUSE**: Yes Mam I am only asking about the 22<sup>nd</sup> of June. On that meeting, you didn't raise concerns about it?

## LIFE ESIDIMENI ARBITRATION SESSION 1

**DR MANAMELA**: That's why I wanted to have records and see what is happening. I don't know which minutes you have, but I do have minutes that we had meeting with [SASOP] where we have discussed about Life Esidimeni.

**ADV LILLA CROUSE**: We will get to that Mam. On the 15<sup>th</sup> of July 2015, you prepared an executive presentation of 2 options, do you agree with that?

**DR MANAMELA**: I remember so.

**ADV LILLA CROUSE**: At that presentation, you didn't raise any problems with closing Life Esidimeni, is that so?

**DR MANAMELA**: At that time, there was not yet a termination notice. We were still working on the 20% and the 200.

**ADV LILLA CROUSE**: No Mam, you already said the MEC said we are closing and you were closing. Did you raise any concerns that this financially doesn't make sense?

**DR MANAMELA**: Although the MEC raised it in the meeting Counsel, they have not yet given us a termination letter and I was not sure that what she has raised, it means that we are actually terminating, or we still work on the 20%, so I couldn't raise that because we were busy working on the 20%.

**ADV LILLA CROUSE**: So Mam when you got the 2 options of closing Life Esidimeni on the 15<sup>th</sup> of July, that was your plans, wasn't it?

**DR MANAMELA**: That was our plan, it was not for closing, but where do we place the patients who want to leave Life Esidimeni, the 20% that must leave Life

## LIFE ESIDIMENI ARBITRATION SESSION 1

Esidimeni, where should they go. Firstly I knew our hospital cannot cope alone, that is why when we prepared there was an issue of NGO's.

**ADV LILLA CROUSE**: Mam on the 9<sup>th</sup> of September 2015, you had a meeting for the need of NGO's and to create space to accommodate all Life Esidimeni patients.

5**DR MANAMELA**: It was not September, it was not for the termination, it was for the 20%.

**ADV LILLA CROUSE**: Okay let us see what that document says. Please go to file number 8? Please go to Page 2727, could you read the heading there?

**DR MANAMELA**: Minutes of Mental Health Unit Specialised Hospital Infrastructure  
10held on 9<sup>th</sup> November 2015.

**ADV LILLA CROUSE**: I see that you are right, it is not on the 15<sup>th</sup>, let me just get the correct- let us stay there for the moment.

**ARBITRATOR JUSTICE MOSENEKE**: And it's not the 9<sup>th</sup> of September either  
Counsel.

15**ADV LILLA CROUSE**: It's 9 November.

**ARBITRATOR JUSTICE MOSENEKE**: I think you wanted to say 9 November.

**ADV LILLA CROUSE**: Yes, Professor [Jeena] raised a problem at that stage about the NGO's, do you agree?

**DR MANAMELA**: I agree Counsel.



**ADV LILLA CROUSE**: And you didn't raise any further issues that something might be going wrong in this project at that meeting?

**DR MANAMELA**: We were working together as this team. I believed that Professor [Jeena] was warning us that we need to be much careful in our plan so that patients might not relapse. So we had to strengthen our planning and ensure that, that was the warning that a risk that must be planned.

**ADV LILLA CROUSE**: Doctor I am asking you at that meeting, you did not raise any concerns, is that right?

**DR MANAMELA**: That is not right, because it doesn't mean that what is not written there, it means that I didn't raise a concern.

**DR MANAMELA**: Please tell us did you raise concerns at that meeting?

**DR MANAMELA**: Yes we were all.

**ADV LILLA CROUSE**: No I'm asking about you. I'm not asking about anybody else please Doctor. We are going to be here the whole day if you don't answer my questions.

**DR MANAMELA**: As the Director of mental health services at that time, I raised a concern that we will have to work hard and smart to ensure that what Professor [Jeena] was saying, is avoided.

**ADV LILLA CROUSE**: I'm asking you again, did you raise any concerns? I am not asking whether Professor [Jeena] raised concerns, I am asking did you raise concerns?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR MANAMELA**: I said yes, I have raised concerns.

**ADV LILLA CROUSE**: Then I want to know what concerns have you raised?

**DR MANAMELA**: Concerns that we are not disputing what she was saying, but we have to ensure that we guard against the relapses.

5**ADV LILLA CROUSE**: Yes but that was her concern, it wasn't your concern. I want to know what concerns, did, you raise?

**DR MANAMELA**: That's where we work as a team, because my concern was not written DR MANAMELAanemela said, it doesn't mean that I didn't raise any concern.

10**ADV LILLA CROUSE**: So if I understand your question then correctly, you didn't raise any fresh concerns at this meeting? Doctor you will have to answer, you have to say yes I did, or no I didn't.

**DR MANAMELA**: I said yes, because I qualified it, so it's fine, I said yes.

**ADV LILLA CROUSE**: What fresh concerns did you raise?

15**DR MANAMELA**: I have already given it to you Counsel.

**ADV LILLA CROUSE**: No that is Professor [Jeena's] concern, I am asking about fresh concerns. What fresh concerns did you raise?

**ARBITRATOR JUSTICE MOSENEKE**: Well the witness says I said that we have to tighten up to avoid relapses and to avoid the risk raised by Professor [Jeena]. I  
20think that's the answer you have.

**ADV LILLA CROUSE**: Did you raise the issue of the financial viability of this programme?

**DR MANAMELA**: Of the termination programme?

**ADV LILLA CROUSE**: At this meeting on the 9<sup>th</sup> of November, did you raise any concerns about the financial viability of the programme?

**DR MANAMELA**: As you look at the second column where the report was mentioned about the finances, I think that means we discussed the finances under these clinicians, all the understanding whatever and Auditor General procurement process, we raised concerns here, but as you will see here, we were also over-ruled by other acts and prescriptions of procurement as it is indicated, so what was left for us, was what do you do to ensure that the patients will not be jeopardized.

**ADV LILLA CROUSE**: Can I just make sure that we are on the same page? Did you say to anybody at that meeting, financially, closing of Life Esidimeni is not making sense?

**DR MANAMELA**: I think I have answered that-

**ADV LILLA CROUSE**: Could you answer it again please with a yes or a no?

**DR MANAMELA**: Yes I will say in that meeting, for us to accept we have already accepted the termination, the team were already commissioned, so there was no way or no usefulness to say financially, we must stop this. Like I said, I was guided by all the prescriptions of the Department and the government.

**ADV LILLA CROUSE**: Mam so is your answer no?

**ARBITRATOR JUSTICE MOSENEKE:** As the witness says, the decision had already been made and she thinks it wouldn't have been useful to raise the matter, but the Counsel then says so your answer is no?

**DR MANAMELA:** I can't remember because this meeting was long ago, but we discussed about the finance and we have already agreed to carry on with the plan.

**ADV LILLA CROUSE:** Could I please ask you just to put that file aside for a while and go to Volume 2. Please go to Page 582. Do you have that letter on 582?

**DR MANAMELA:** Yes.

**ADV LILLA CROUSE:** Have you acquainted yourself with that letter now? Is it a letter signed by you?

**DR MANAMELA:** No it's signed by the deputy in my office, because I was not available on that day.

**ADV LILLA CROUSE:** Is it the letter that went out on your instructions?

**DR MANAMELA:** I believe so.

**ADV LILLA CROUSE:** What is the reason for this letter?

**DR MANAMELA:** The reason for the letter was to get the input from the clinicians as we started with task team, so that we can carry on with the plan.

**ADV LILLA CROUSE:** Mam and the letter is dated 22<sup>nd</sup> September 2015, is that correct?

**DR MANAMELA:** That's correct.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV LILLA CROUSE**: And the plan- is that the document just after from Page 583 and further?

**DR MANAMELA**: That's correct.

**ADV LILLA CROUSE**: And this is the plan that you wanted people to comment on?

5**DR MANAMELA**: That's correct.

**ADV LILLA CROUSE**: Could you please read the subject line?

**DR MANAMELA**: The heading?

**ARBITRATOR JUSTICE MOSENEKE**: Yes.

**DR MANAMELA**: It's Life Esidimeni Termination Project.

10**ADV LILLA CROUSE**: Yes so in September on the 22<sup>nd</sup>, you say, or maybe we should just read first, the letter is very short, it says "with reference to Life Esidimeni project meeting held on the 21<sup>st</sup> of September 2015 at Penmore Tower Building, 7<sup>th</sup> Floor, a decision was taken for the mental health directorate to draft a plan of action for termination of Life Esidimeni contract following directives from the Department of  
15Health principles." Is that so?

**DR MANAMELA**: That's correct.

**ADV LILLA CROUSE**: And the plan that you attached here, who draw that plan?

**DR MANAMELA**: Should I read the whole plan, or the heading?

**ADV LILLA CROUSE**: No I'm asking who is the author of the plan?

**ARBITRATOR JUSTICE MOSENEKE**: There is an attached plan and we want to know who authored it?

**DR MANAMELA**: The author of the plan was the mental healthcare unit and to submit it to other team members to look at it. As you see here, it was 21 September 5 meeting which we were still continuing as-

**ARBITRATOR JUSTICE MOSENEKE**: No Doctor, who wrote the plan attached?

**DR MANAMELA**: The mental healthcare unit team.

**ARBITRATOR JUSTICE MOSENEKE**: Who in it, wrote the plan?

**DR MANAMELA**: All of the unit, my unit, the gentlemen who signed here, was the 10 scribe of the meeting, so what happened, was that every Monday when we meet, we will discuss after the MEC termination announcement was made, then we-

**ARBITRATOR JUSTICE MOSENEKE**: Did you support the plan?

**DR MANAMELA**: Yes I support because it is still a draft.

**ARBITRATOR JUSTICE MOSENEKE**: And it was distributed to clinicians and 15 nurses and name it under your name?

**DR MANAMELA**: No it was to the clinician of mental institutions.

**ARBITRATOR JUSTICE MOSENEKE**: Yes under your name, it was sent out?

**DR MANAMELA**: Yes because he was acting, it was under my name.

**ARBITRATOR JUSTICE MOSENEKE**: Under your instructions?

20 **DR MANAMELA**: It was under my name and under the meeting that we had.

**ARBITRATOR JUSTICE MOSENEKE:** No but under your instructions that it be distributed?

**DR MANAMELA:** Yes I said that, that whatever plan we are going to develop, it must be distributed.

5**ARBITRATOR JUSTICE MOSENEKE:** Then Counsel asked you who wrote the plan.

**DR MANAMELA:** That is what I'm saying Justice, the team will meet and write the plan, it is not one person's plan.

**ARBITRATOR JUSTICE MOSENEKE:** Ja did you approve of the plan once it was  
10written?

**DR MANAMELA:** Yes in my unit, they wrote this plan and submit.

**ARBITRATOR JUSTICE MOSENEKE:** But you approved of the plan once it was written?

**DR MANAMELA:** The draft yes, to say people will add on the draft.

15**ARBITRATOR JUSTICE MOSENEKE:** Counsel, it took 8 questions to get an answer, but we got an answer.

**ADV LILLA CROUSE:** Thank you Justice, did you at all, during the meeting of the 21<sup>st</sup> when this plan was drafted, say this is a mistake?

**DR MANAMELA:** I can't remember, because if it was a mistake, I alluded in this  
20proceeding, that I will write a letter to the MEC and say I am not going to be part, the law of this country allowed us to-

**ADV LILLA CROUSE**: Mam you answered the question, please try not to elaborate. You say I don't know whether I voiced any objection. I put it to you that it is highly unlikely that you have raised an objection, because you already in July, had the 2 option plan in your head wasn't it?

5**DR MANAMELA**: It was presented yes.

**ADV LILLA CROUSE**: Yes, so you didn't think anything wrong with this, with this plan of yours? Do you agree with me?

**DR MANAMELA**: With the plan of mine, you mean this one?

**ADV LILLA CROUSE**: Yes Mam I mean that one.

10**DR MANAMELA**: This was a draft this was just a draft that needs input, so I cannot endorse it. it was a draft.

**ADV LILLA CROUSE**: Well you wouldn't have sent it if you didn't endorse it, isn't that so?

**DR MANAMELA**: Yes.

15**ADV LILLA CROUSE**: Thank you, so you wouldn't have raised concerns isn't that so?

**DR MANAMELA**: That's correct.

**ADV LILLA CROUSE**: So why did you say just 3 questions earlier, you don't know whether you raised concerns?



## LIFE ESIDIMENI ARBITRATION SESSION 1

**DR MANAMELA**: But it's things that are not documented and when we are in meetings, we don't document everything, but I said to you, I have accepted the delegation and the instruction given by my superior, that's why we started with the draft to say clinicians, can you comment, can you add your addition, this is just something that we were doing, so from the beginning, I didn't oppose the termination.

**ADV LILLA CROUSE**: Thank you Mam, many people have asked you this question before and I am sorry, I am still not clear on what the answer is, who gave you that instruction?

10 **DR MANAMELA**: The termination letter?

**ADV LILLA CROUSE**: No we are not at the termination letter. Who told you to draft these plans to close Life Esidimeni? There is no termination letter yet.

**DR MANAMELA**: As the Director at that moment, when it was indicated that we are going to terminate, we, I would say we as my unit, we have to have a plan, we can't just wake up tomorrow and terminate. So the letter that was written gave it all, said it all.

**ADV LILLA CROUSE**: Mam let's just get our timeline right. The Life Esidimeni termination letter was only on the 29<sup>th</sup> of September 2015. These letters that we now refer to, these plans were before that. Now my question to you is, is again who gave you the instruction to prepare plans to close Life Esidimeni?

**DR MANAMELA**: Okay the letter that was sent to the Premier and to Life Esidimeni, made me as the leader to start planning to have beds that is what I'm saying. In

**LIFE ESIDIMENI ARBITRATION SESSION 1**

government, if they pronounce and you look at what is affecting your area, you can't wait and say someone must come and say as the HOD I am saying this, so I have got the letters signed by HOD to say-

**ADV LILLA CROUSE**: You have the letter by the HOD to say to you? Can you tell us what the date of that letter is and I am going to ask for copies of it.

**DR MANAMELA**: I will give you the copy, but I do have the letter that says Life Esidimeni, we are reducing beds by 20%.

**ADV LILLA CROUSE**: No Doctor I said who gave you instruction to close Life Esidimeni and we have all been asking you that question through the last 3 days.

10**DR MANAMELA**: Justice, I really don't know what answer I can give anymore, because it says it is clear the letter was signed by the HOD and I told you that there was a time when we were working on 20%. That letter was also signed by HOD. We don't wait in government and say somebody will instruct me to do this and do this.

15**ARBITRATOR JUSTICE MOSENEKE**: Doctor Manemela, just help us please, we have to move on, we have 3 other advocates waiting still to ask you questions, let me try this way. Look at Page 582 and I am going to ask you the same question that Counsel has asked you now, that is your letter, can you see that Page 582?

**DR MANAMELA**: Yes I see it.

20**ARBITRATOR JUSTICE MOSENEKE**: You were asked to read the heading that is proposed Life Esidimeni termination project, so it's not all about this 20% you are

## LIFE ESIDIMENI ARBITRATION SESSION 1

talking about. Then look in the middle, it says a plan of action for termination of Life Esidimeni contract following directives from the Department of Health principles and the question is that. It's just straightforward, which principles gave you the directive you are talking about in your letter?

5 **DR MANAMELA**: At this point, it was after the MEC pronounced that we are going to terminate, but the letter to Life was not yet done.

**ARBITRATOR JUSTICE MOSENEKE**: We know that, you have said it a hundred times. What Counsel is asking, under your own hand, a letter written by you, you say following directives from the Department of Health principles and she is asking  
10 you, who gave you those directives?

**DR MANAMELA**: The principles- at that time, it was MEC because she pronounced.

**ARBITRATOR JUSTICE MOSENEKE**: Just say their names, no explanations. You have already told us you have been instructed, we know that in your own letter, give  
15 us a list of your principals, who instructed you?

**DR MANAMELA**: My principals will be the political head Ms Mahlangu by then the HOD Dr Selebano-

**ARBITRATOR JUSTICE MOSENEKE**: That's Ms Mahlangu and then Dr Selebano, what was his position then?

20 **DR MANAMELA**: HOD. The DDG clinical doctor Dr Lebeta and other chief directors, which I don't know who was called to take part.

**ARBITRATOR JUSTICE MOSENEKE:** But those by name, were your principals who gave you directives to make plans for the termination of Life Esidimeni contract right?

**ADV LILLA CROUSE:** Were these instructions given to you in writing?

5**DR MANAMELA:** The instruction was not written to me, it's just the written pronouncement by the MEC.

**ADV LILLA CROUSE:** That wasn't written Mam, it was a speech.

**DR MANAMELA:** Ja that speech because that is how we work. When the speech is given, you look at what affects your unit, so that you are able to plan in time.

10**ADV LILLA CROUSE:** So it was your own initiative, is that what you are saying? You heard a speech and it is now your own initiative to now close despite expert opinion to the contrary?

**DR MANAMELA:** The answer will be two-way. It was our initiative we were also still working on the reduction in 20%.

15**ADV LILLA CROUSE:** Let us forget about the reduction Doctor, otherwise we are going to go in circles. So can I just put to you and if you can just answer me clearly. So what you're saying is that there was no instruction given to you? You were merely working on the suggestion in a political speech?

**DR MANAMELA:** No.

20**ADV LILLA CROUSE:** You say no then please show us the written instruction?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR MANAMELA**: I have the written- it's not saying Dr Manemela, it's unit, but it's saying Life Esidimeni, we are reducing 20%.

**ADV LILLA CROUSE**: Mam did I not just tell you we are leaving the 20% aside. We are talking about closing now.

5**DR MANAMELA**: So when you leave the 20% aside, it's difficult because by that time, the termination letter was not yet given to Life, so we, myself my team and the clinician, we were still working on the plan and when we were busy on the plan, termination pronouncement was made. Then we said we need to develop the plan. In government, it cannot just be yes, or no only, that's what I'm trying to explain to  
10you.

**ADV LILLA CROUSE**: Mam I was asking you for a written instruction. There were no instructions?

**DR MANAMELA**: No written instructions.

**ADV LILLA CROUSE**: And we know that the termination letter was only written on  
15the 29<sup>th</sup> of September.

**DR MANAMELA**: Yes.

**ADV LILLA CROUSE**: So when you had written this document that the Honourable Justice just referred you to, there was no reason for you to terminate yet?

**DR MANAMELA**: There was a reason because at that time, Life was still struggling  
20to reduce the 20%, I will show you the letter, so the termination announcement or letter notice, found us in the plan to try to assist those who will be from Life because

## LIFE ESIDIMENI ARBITRATION SESSION 1

of the letter that was signed, I will give you the letter, because we cannot deal with it in an isolated area.

**ARBITRATOR JUSTICE MOSENEKE**: Okay, find the letter in the meantime and I will send one of my support staff to come and pick it up. You don't have to do it now, during lunchtime, if you give it to them, let them copy it. If you give it to them, they will copy it and hand it in.

**ADV LILLA CROUSE**: The termination letter was given on the 29<sup>th</sup> of September and on the 30<sup>th</sup> of September you signed a plan for what should happen next, a draft plan, is that right?

10**DR MANAMELA**: That's correct.

**ADV LILLA CROUSE**: But the plan wasn't co-signed by Mr Mosonoge for about a year, do you agree with that?

**DR MANAMELA**: I saw that thanks, that's true.

**ADV LILLA CROUSE**: So why did he not sign your plan? If you know, but if you don't know, then say so.

**DR MANAMELA**: No I will say in government, you submit documents and at times, they take time, at times they don't come back, because at that time, the plan was sent, he was also not yet in our area, so it took time and that plan was already signed. When it was needed, we just gave it to him. So I cannot be sure.

20**ADV LILLA CROUSE**: Mam in that plan, you didn't raise any objection to this ludicrous financially bad plan of closing Life Esidimeni, is that so?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR MANAMELA**: Yes I didn't raise it.

**ADV LILLA CROUSE**: Yes but you knew about it and you knew that your NGO's didn't have the capacity to look after these patients didn't you?

**DR MANAMELA**: I didn't know at that time.

5**ADV LILLA CROUSE**: But you haven't yet built the capacity, you knew that, you knew that if patients were released, they end up in the streets.

**DR MANAMELA**: No, I didn't know and I never planned that the patient will end up on the street. The plan was that we will do all that we can to ensure that no patient is on the street.

10**ARBITRATOR JUSTICE MOSENEKE**: But look at the minute that Counsel referred to you of the 9<sup>th</sup> of November, Page 2727. Look under planning. Look at the concerns which are raised there about NGO's. Can you see that? You were required to sort this out, can you see that?

**DR MANAMELA**: Yes.

15**ARBITRATOR JUSTICE MOSENEKE**: NGO's need to create enough space to accommodate 2060 patients from Life Esidimeni. Team leaders wanted to know how many residential care facilities, team leaders wanted to know how many day care facilities. Look at that important line, adjudication of NGO's need to be conducted finalisation of available beds at NGO's. Professor Jeena mentioned that  
20NGO's are not well equipped and if patients relapse, they send them to hospital and refuse to take them back and then who is on the right responsible person Dr

**LIFE ESIDIMENI ARBITRATION SESSION 1**

Manemela that is you. So this was, like a neon light, it was a red light flashing like this already in November 2015.

**DR MANAMELA**: That's true.

**ARBITRATOR JUSTICE MOSENEKE**: Now Counsel says to you, you knew this was a bad plan.

**DR MANAMELA**: Like I said Chief, I said all these were almost part of the risk that we must work against, it was indicated in November if the termination time was not extended, it was going to be much, much chaos, but at that time, 9 November, we have to work on what was raised and when it is delegated to me, it means me and my team, we need to work together.

**ARBITRATOR JUSTICE MOSENEKE**: Counsel is going to refer you to many other documents. I am just referring to one where the same concern was raised about the readiness of the NGO's to look after these vulnerable people, but I am sure Advocate Crouse will take you there. Anyway, the answer is you knew that they were bad, but you thought because of the extension, you would be able to remedy the risk right?

**DR MANAMELA**: We started to remedy the risk, we just didn't thought, we started to work towards that.

**ARBITRATOR JUSTICE MOSENEKE**: There is your answer Counsel. She thought she would be able to remedy the risk.



**ADV LILLA CROUSE**: But at that stage, no extension was given Doctor. Do you want to answer to that?

**DR MANAMELA**: Yes at that stage, no extension was given, but it will be a work in process, that is why when we advise that there should be an extension, it was  
5given.

**ADV LILLA CROUSE**: Doctor you are just not answering the questions and in the process, you are just contradicting yourself, because when one of my colleagues led you, you said that you were not even aware that an extension was requested. Now we are requesting an extension, so please refrain from not answering or  
10putting more information before the commission that is not asked from you. Could you please go to Volume 1?

**DR MANAMELA**: Can I answer you on that one? I was not aware of Mr Mosonoge's letter to MEC, but I also needed that extension be given, that is what I said.

15**ADV LILLA CROUSE**: You said when we asked for the extension. You never asked for the extension Doctor and that's your evidence isn't that so?

**DR MANAMELA**: I was a deputy project manager, the project leader asked for an extension.

**ADV LILLA CROUSE**: But you said you weren't aware of that Doctor.

20**DR MANAMELA**: It's just that he didn't copy me the letter, but that was discussed.

**ADV LILLA CROUSE**: You said you weren't aware of that Doctor.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR MANAMELA**: Maybe you didn't understand me.

**ADV LILLA CROUSE**: So are you now saying you requested an extension?

**DR MANAMELA**: I am saying in the meeting as we worked together with the project manager, we indicated that it will be better to have extension, but when he wrote a letter, he didn't copy me.

**ADV LILLA CROUSE**: I am going to ask you again Doctor did you request an extension, you yourself?

**DR MANAMELA**: Me myself no. Verbally in the meeting and the project manager went and presented it the way he did.

10**ADV LILLA CROUSE**: And you weren't aware of that. Let's move on, please go to Volume Number 1. Please go to Page 331 in Volume 1. It was part of the plan that you said we must get out in the press what's happening and the MEC made a press statement on the 21<sup>st</sup> of October 2015 is that so, it was part of your plan? The previous plan that we referred to, it referred to a press statement didn't it?

15**ARBITRATOR JUSTICE MOSENEKE**: There are 2 questions to it. Let's have the first one. In your previous plan, you suggested that there should be a press release on the project, is that correct?

**DR MANAMELA**: I think so.

**ARBITRATOR JUSTICE MOSENEKE**: Yes it is on your plan, on your presentation.

20**DR MANAMELA**: Yes.

**ARBITRATOR JUSTICE MOSENEKE**: Now the second question is Counsel?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV LILLA CROUSE**: This was released immediately after your plan, do you agree?

**DR MANAMELA**: I would agree, but-

**ADV LILLA CROUSE**: Yes thank you. If you go to this plan and you go to just 5 below the middle, just about the middle, it says consequently, can you see that paragraph?

**DR MANAMELA**: The MEC's release?

**ADV LILLA CROUSE**: Yes in the middle of the page, consequently it says that patients are going to be reduced and then the next paragraph, says that patients 10 that require further management, will be referred to our hospitals, do you see that?

**DR MANAMELA**: Yes Counsel.

**ADV LILLA CROUSE**: Which have psychiatric wards, do you see that?

**DR MANAMELA**: Correct.

**ADV LILLA CROUSE**: And this will help, as patients will be treated closer to home, 15 do you see that?

**DR MANAMELA**: Correct.

**ADV LILLA CROUSE**: Did you agree with that? Did you agree that this must be in the press release?

**DR MANAMELA**: It was not sent to my office before it went out.

20 **ADV LILLA CROUSE**: Okay are you now satisfied with that Mam?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR MANAMELA**: I saw it in the press release and there was nothing I could do.

**ADV LILLA CROUSE**: Are you satisfied with that sentence?

**DR MANAMELA**: Ja it's fine.

**ADV LILLA CROUSE**: Thank you. We will also continue to work with NGO's in the 5mental health environment to assist us managing these patients accordingly, do you see that?

**DR MANAMELA**: Correct.

**ADV LILLA CROUSE**: So they will be going home and some of them will be going to hospitals, do you see that?

10**DR MANAMELA**: That's correct.

**ADV LILLA CROUSE**: And you were happy with that?

**DR MANAMELA**: Correct.

**ADV LILLA CROUSE**: So those who haven't responded to treatment will go to hospitals. Those who have responded to treatment, will go home and NGO's will 15help you, is that right, is that how you understood the programme?

**DR MANAMELA**: Yes Counsel.

**ADV LILLA CROUSE**: Thank you very much, Justice will this be an opportune time to adjourn?

**ARBITRATOR JUSTICE MOSENEKE**: Yes indeed it would be. Yes Advocate 20Groenewald?

## **LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV DIRK GROENEWALD:** Justice we have heard Dr Manamela refer to pre-assessment reports on the licensing of the NGO's in her evidence. Now we haven't had sight of those reports. If we can just perhaps request Dr Manamela to see whether or not she can get those reports so that we can also have a view of what they said.

**ARBITRATOR JUSTICE MOSENEKE:** Yes Dr Manamela heard you. Did you hear Counsel's request that we get copies of the assessment reports?

**DR MANAMELA:** I can avail those that I have, but some of them, are in my office, but the ones that I have, I will avail it and they will make copies for you.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you we are going to adjourn until 2:30 thank you.

**24 November 2017**

## **SESSION 3**

**ARBITRATOR, JUSTICE MOSENEKE:** Please be seated. Thank you. You are still under your pervious oath to tell the truth and nothing but the truth.

**DR MAKGABO JOHANNA MANAMELA:** Thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you, proceed.

**ADV. LILLA CROUSE:** Thank you Justice Moseneke. Dr Manamela, while sitting here during the adjournments I see that you are consulted by a gentleman in a suit and you take notes from what he tells you, can you tell us who that is?

**DR MAKGABO JOHANNA MANAMELA:** He is my son.

**ADV. LILLA CROUSE:** Your son?

**DR MAKGABO JOHANNA MANAMELA:** Yes.

**ADV. LILLA CROUSE:** And what is his name?

**DR MAKGABO JOHANNA MANAMELA:** His name is Kenneth.

5**ADV. LILLA CROUSE:** And is he a lawyer?

**DR MAKGABO JOHANNA MANAMELA:** No.

**ADV. LILLA CROUSE:** What information does he give you that you have to write down?

**DR MAKGABO JOHANNA MANAMELA:** No, we were just talking.

10**ADV. LILLA CROUSE:** Going through the files and talking. You made some notes earlier, minutes before the Arbitrator came in. What was that about?

**DR MAKGABO JOHANNA MANAMELA:** I was making notes of things that I think I will talk about.

**ADV. LILLA CROUSE:** And he was helping you.

15**DR MAKGABO JOHANNA MANAMELA:** No, they were asking me how do I do.

**ADV. LILLA CROUSE:** I am going to proceed. I am going to hand a document to you. Justice, I wish to hand in a document ELAH84. Dr Manamela, that is the address of the Minister of Health in Parliament on the 23<sup>rd</sup> of February 2016. Do you see that?

20**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel.

**ADV. LILLA CROUSE:** I just want to have your comment on some of the things that he says. You will see there are numbers on the left side indicating the line numbers and the page numbers are on the top, do you see that?

**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel.

5**ADV. LILLA CROUSE:** It starts off by saying, as we all are, “that the National Minister is deeply distressed and angered” ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** You meant to say 23 February 2017.

**ADV. LILLA CROUSE:** Yes, did I not Justice? I apologise.

**ARBITRATOR, JUSTICE MOSENEKE:** No problem.

10**ADV. LILLA CROUSE:** He says that: “It is one of the periods of darkness in our history and it is a moment of madness in the Provincial Health Department.” That is between lines 10 and 15 on page 1. Did you see that?

**DR MAKGABO JOHANNA MANAMELA:** Line 15?

**ADV. LILLA CROUSE:** Line 11 to line 14 to be precise. Do you agree with him  
15that it is a period of darkness in our history?

**DR MAKGABO JOHANNA MANAMELA:** I don’t have line 11. Line 11, let me count.

**ARBITRATOR, JUSTICE MOSENEKE:** Okay let’s try again. Normally when lawyers print out a document, they tend to write the line numbers on the left, can  
20you see that?

**DR MAKGABO JOHANNA MANAMELA:** Yes, I see 10, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** So for easy detection. On the right op corner would be the page number.

**DR MAKGABO JOHANNA MANAMELA:** Yes Justice.

5**ARBITRATOR, JUSTICE MOSENEKE:** And all of those lines represent 5 lines, 10 lines sometimes. So Counsel is referring you to line 11, more or less there, which is just after 10.

**DR MAKGABO JOHANNA MANAMELA:** Alright.

**ARBITRATOR, JUSTICE MOSENEKE:** And she is going to put a question to you.

10**DR MAKGABO JOHANNA MANAMELA:** I see it now. Thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you.

**ADV. LILLA CROUSE:** The National Minister says to Parliament it is a period of darkness in our history, do you agree?

**DR MAKGABO JOHANNA MANAMELA:** That is what is written, yes.

15**ADV. LILLA CROUSE:** And he says it is a moment of madness of the Provincial Health Department. Do you agree?

**DR MAKGABO JOHANNA MANAMELA:** Yes it is written here.

**ADV. LILLA CROUSE:** Yes and do you agree with that statement?

**DR MAKGABO JOHANNA MANAMELA:** I don't know because I didn't write the  
20statement.



**ADV. LILLA CROUSE:** Ma'am, please.

**ARBITRATOR, JUSTICE MOSENEKE:** Let's try and help you. Counsel wants to test whether you agree with the contents. She has already told you that you haven't written it. She wants to know whether you agree with what the Minister had 5 occasioned to say on the 23<sup>rd</sup> of February 2017. Just listen to each question and say I agree with him or I don't. Counsel.

**ADV. LILLA CROUSE:** Thank you Justice. Dr Manamela, do you agree that it is a moment of madness in the Provincial Health Department?

**DR MAKGABO JOHANNA MANAMELA:** I don't know whether to agree or not.

10 **ADV. LILLA CROUSE:** You have got a doctorate. Surely you are an educated woman. Surely you can tell us whether you agree with something or not.

**DR MAKGABO JOHANNA MANAMELA:** I won't say... I will say I partially agree and partially not because I don't know. This is the version of the Minister, the National Minister.

15 **ADV. LILLA CROUSE:** Can I ask you this, Dr Manamela, now seeing what has happened, do you agree that it was a moment of madness?

**DR MAKGABO JOHANNA MANAMELA:** Okay, yes.

**ADV. LILLA CROUSE:** Thank you. And at line 15 the National Minister continues and he says: "Our anguish is exacerbated because these are the most vulnerable 20 people in society and you agree with that, being a psychiatric nurse that the people we work with here were the most vulnerable."

**DR MAKGABO JOHANNA MANAMELA:** That's correct.

**ADV. LILLA CROUSE:** Do you agree with that?

**DR MAKGABO JOHANNA MANAMELA:** I agree with that.

**ADV. LILLA CROUSE:** Thank you. Line 17 says: "The idea behind the Gauteng  
5Mental Health Marathon Project, as it came to be known, was to save money (there  
is a spelling mistake), add another dimension to our disappointment and pain." Do  
you agree that this project was to save money? Just answer.

**DR MAKGABO JOHANNA MANAMELA:** That is correct.

**ADV. LILLA CROUSE:** And then he says in line 19: "I wish to put on record that at  
10no stage did it emerge directly or indirectly, implicit or explicitly the Department of  
Health nationally or in any province has run out of money to take care of mentally ill  
patients." Do you agree with that statement?

**DR MAKGABO JOHANNA MANAMELA:** I don't know.

**ADV. LILLA CROUSE:** You are saying the Minister is incorrect, your Department  
15had run out of money?

**DR MAKGABO JOHANNA MANAMELA:** I am not saying that.

**ADV. LILLA CROUSE:** Please then tell us what you are saying, Doctor.

**DR MAKGABO JOHANNA MANAMELA:** I don't work in Finance, I don't know.

**ADV. LILLA CROUSE:** Ma'am, that's an easy answer out, but you are the Head of  
20the Department with a budget and you have to look at your budget to make sure

**LIFE ESIDIMENI ARBITRATION SESSION 1**

that you comply with your obligations. So please don't go there and insult the families of the victims, please. Did your Department run out of money?

**DR MAKGABO JOHANNA MANAMELA:** In my line of duty, I don't handle even money for paying Life Esidimeni and that is why I say I don't know.

5**ADV. LILLA CROUSE:** Did you not have insight in your budget?

**DR MAKGABO JOHANNA MANAMELA:** I was told that we don't have enough money, that one I know, but in my budget ...intervened.

**ADV. LILLA CROUSE:** Please, Doctor, please answer my question. Did you not have insight as a Director of your budget?

10**DR MAKGABO JOHANNA MANAMELA:** I had insight of the budget that was used for the previous year. But for the following year I didn't have insight.

**ADV. LILLA CROUSE:** You didn't budget at all as a manager of a unit?

**DR MAKGABO JOHANNA MANAMELA:** We budgeted for Life Esidimeni on 5 year period, so that is what I know. But when the termination was taking place, I  
15didn't have an idea of how much money was allowed for Life Esidimeni.

**ADV. LILLA CROUSE:** Please Doctor, please just answer my questions. My question is, do you not budget in your Department?

**DR MAKGABO JOHANNA MANAMELA:** I budget.

**ADV. LILLA CROUSE:** So you have insight in the budget and you prepare  
20budgets, is that correct?

**DR MAKGABO JOHANNA MANAMELA:** Yes, I prepare budget.

**ADV. LILLA CROUSE:** So to say that you are not agreeing with the Minister that you ran out of money, you can't use the excuse that you don't have insight into the budget. So please tell us why do you not agree with the Minister.

5**DR MAKGABO JOHANNA MANAMELA:** I didn't say that I do not agree. I said I don't know, because the Minister is saying that the Department of Health nationally or in any province has run out of money to take care of mentally ill patients.

**ADV. LILLA CROUSE:** And you said you don't agree with that.

**DR MAKGABO JOHANNA MANAMELA:** I didn't say I don't agree. I said I don't  
10have much insight in our own province, because the Minister's version, all the province have money for managing mentally ill.

**ADV. LILLA CROUSE:** I am going to try again then. And ma'am, all this is typed, so we will see what your answer was. Do you agree with the National Minister that no department has run out of money to care for mentally ill patients?

15**DR MAKGABO JOHANNA MANAMELA:** I agree with him.

**ADV. LILLA CROUSE:** Thank you.

**DR MAKGABO JOHANNA MANAMELA:** But I don't know in our department.

**ADV. LILLA CROUSE:** At line 22 he says: "There was hence no reason for so many vulnerable people to perish on account of money." Do you agree with him?

20**DR MAKGABO JOHANNA MANAMELA:** That is correct.

**ADV. LILLA CROUSE:** And you agree you were the person that prepared the plan that caused this?

**DR MAKGABO JOHANNA MANAMELA:** No, we prepared the plan as the collective.

5**ADV. LILLA CROUSE:** Doctor, you are deflecting and you are denying and you are insulting the victims' families and the deceased's families. Are you saying that you would not oversee that plan? You weren't the person who signed it?

**DR MAKGABO JOHANNA MANAMELA:** I am saying the plan was a collective process, that's what I am saying.

10**ADV. LILLA CROUSE:** Are you taking responsibility at all, Dr Manamela?

**DR MAKGABO JOHANNA MANAMELA:** As part of the project team, I will take responsibility ...intervened.

**ADV. LILLA CROUSE:** So for what are you taking responsibility? Please inform us so that we can know.

15**DR MAKGABO JOHANNA MANAMELA:** Maybe I will say that I will take partial responsibility in terms of signing the license as advised based on the report that was submitted to my office by the district and my DD.

**ADV. LILLA CROUSE:** Let's put it another way. Are you taking responsibilities for the failure of this program that resulted in people suffering and dying?

20**DR MAKGABO JOHANNA MANAMELA:** I have mentioned that it was a collective ...intervened.

**ADV. LILLA CROUSE:** I am not talking about collective. Please, Doctor, I am asking are you taking responsibility for what has happened that people suffered and died.

**DR MAKGABO JOHANNA MANAMELA:** I am taking partial responsibility.

5**ADV. LILLA CROUSE:** Okay, we will get back to that. We are going to continue in that line. The Minister says: "I interrogated this issue with the Premier of the Gauteng Province, because I wanted to understand what actually the Executive Council of the Province discussed and approved. He told me that the issue never featured on the agenda of the Executive Council, but that he as Premier was told  
10that by the Department of Health that they have 4 000 beds in public health institutions, which they would like to use and there is absolutely no reason to continue contracting services for private companies, when public sector is able to provide that number of beds." Where did that information come from?

**DR MAKGABO JOHANNA MANAMELA:** I don't know.

15**ADV. LILLA CROUSE:** Because this is not true. Do you agree?

**DR MAKGABO JOHANNA MANAMELA:** It is not true that I don't know.

**ADV. LILLA CROUSE:** Yes. I am just going to read from line 29 to put it into perspective. It says: "This Honourable House must please note that Esidimeni contract is for 2 000 patients and hence the statement meant that they can be  
20accommodated twice." Well we know that is not true.

**DR MAKGABO JOHANNA MANAMELA:** I don't know about these numbers.

**ADV. LILLA CROUSE:** I would want you to tell us how this got to the Premier and how this got to the Minister. It is your department.

**DR MAKGABO JOHANNA MANAMELA:** Okay. At my department I am the lowest manager, there are four people above me and I have never, I don't meet with the Premier, I don't (inaudible) the Premier or the Minister. The seniority in the department allows the four people above me to speak to the Premier and to write to him and also to ...intervened.

**ADV. LILLA CROUSE:** We take note of that that you said it quite a few times, but you are the only person in the Mental Health Department, so information about mental health must come from your department, is that not so?

**DR MAKGABO JOHANNA MANAMELA:** If they want it from my department, I give, but I don't know about this one.

**ADV. LILLA CROUSE:** So do you have any guess how this information got to the National Minister and the Premier?

15 **DR MAKGABO JOHANNA MANAMELA:** I don't know. I can't guess.

**ADV. LILLA CROUSE:** If we can continue on line 31: "The Premier assures me that at no time was the issue of NGOs ever raised until that fateful day in September when the MEC made the announcement of 36 deaths in the Provincial Legislature." Do you agree with that?

20 **DR MAKGABO JOHANNA MANAMELA:** I also don't know.

**ADV. LILLA CROUSE:** You see, just before the lunch adjournment we looked at the press statement and the press statement said exactly that: “Patients will go to hospitals and those that are healthy will either go home or to NGOs.”

**DR MAKGABO JOHANNA MANAMELA:** Yes.

5**ADV. LILLA CROUSE:** So where does this thing come from, do you know?

**DR MAKGABO JOHANNA MANAMELA:** But for the Premier to know, he said at no time was he issued with the NGO, it will not come from me because I do not report to the Premier. It is just... it cannot come with me, that’s why I don’t know, I don’t correspond with the Premier and this question maybe is not directed properly  
10to the relevant person.

**ADV. LILLA CROUSE:** I am just going to direct it again at you.

**DR MAKGABO JOHANNA MANAMELA:** Okay it is fine.

**ADV. LILLA CROUSE:** The press statement with which you agreed just prior to the lunch adjournment was that healthy people would go home or to NGOs.

15**DR MAKGABO JOHANNA MANAMELA:** Yes.

**ADV. LILLA CROUSE:** Sick people will go to hospitals. You agreed with that.

**DR MAKGABO JOHANNA MANAMELA:** That one I agree.

**ADV. LILLA CROUSE:** Now this is exactly what the Minister of Health is saying.

**DR MAKGABO JOHANNA MANAMELA:** Can I say, he is saying at no time was  
20the Premier informed, that is what I say I don’t know. The statement says Premier



**LIFE ESIDIMENI ARBITRATION SESSION 1**

assured the Minister that at no time he was issued with the NGOs – that is the part I don't know.

**ARBITRATOR, JUSTICE MOSENEKE:** And your answer is you don't inform the Premier directly about anything.

5**DR MAKGABO JOHANNA MANAMELA:** Yes Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Now the question that Counsel puts to you is, you as head of mental health care in the province, did you not supply this information?

**DR MAKGABO JOHANNA MANAMELA:** The information I supplied is with this 36 10deaths, that I know. But that the Premier was never told about the NGO, I don't know.

**ARBITRATOR, JUSTICE MOSENEKE:** You supplied information on the 36 deaths.

**DR MAKGABO JOHANNA MANAMELA:** Yes.

15**ARBITRATOR, JUSTICE MOSENEKE:** But not on what was told to the Premier when the project started.

**DR MAKGABO JOHANNA MANAMELA:** That is not at my level.

**ARBITRATOR, JUSTICE MOSENEKE:** And then Counsel says to you but you remember the press release of the MEC, Qedani Mahlangu.

20**DR MAKGABO JOHANNA MANAMELA:** Yes Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** She too excludes any of these patients being placed at NGOs. And Counsel says, is this a coincidence?

**DR MAKGABO JOHANNA MANAMELA:** With due respect, Justice, she has included that some patients will go to the NGO. But the fact that she reported to Premier or not, I do not know. That is why the premier says at that time he didn't know, until when he got the report of the patients who died.

**ARBITRATOR, JUSTICE MOSENEKE:** There is your answer. (Inaudible) what you know, Counsel.

**ADV. LILLA CROUSE:** I am just going to leave that there for a moment, Justice. Ma'am, please turn the page of ELAH84. Now on this page the National Minister deals with the court case, of which you are aware, the December court case.

**DR MAKGABO JOHANNA MANAMELA:** ELAH84?

**ADV. LILLA CROUSE:** The document that you have in front of you, ma'am.

**DR MAKGABO JOHANNA MANAMELA:** Oh okay. Sorry about that.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel is standing over to page 2.

**DR MAKGABO JOHANNA MANAMELA:** Okay.

**ARBITRATOR, JUSTICE MOSENEKE:** Just listen to the question carefully and she'll guide you there.

**ADV. LILLA CROUSE:** The National Minister puts the December court case into perspective, as well as the agreement, and we will at a later stage go back to that.

And then he talks about, at line 39, about the agreement and he says: "This

## LIFE ESIDIMENI ARBITRATION SESSION 1

Honourable House may please note that the agreement says nothing about NGOs. It emphasises that wherever they are taken” (and referring to mental health care users), “it must be a place of no lesser quality than Life Esidimeni.” You would agree with that.

5 **DR MAKGABO JOHANNA MANAMELA:** Yes Counsel.

**ADV. LILLA CROUSE:** Let’s just break them down so that it is not too ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** And it is the same thing that Prof Freeman told you, isn’t it, in an email, exactly the same principle, which was put to you much  
10 earlier. But you go ahead Counsel.

**ADV. LILLA CROUSE:** Thank you. Let us just break this up in two. The first thing is the agreement doesn’t deal with NGOs, you agree with that. Just yes or no, please Doctor.

**DR MAKGABO JOHANNA MANAMELA:** I need to understand the agreement on  
15 this.

**ADV. LILLA CROUSE:** It is the court case, the December court case of which you are aware, and we will come back to the December court case.

**DR MAKGABO JOHANNA MANAMELA:** Oh this is December court case.

**ADV. LILLA CROUSE:** Yes.

20 **DR MAKGABO JOHANNA MANAMELA:** The agreement does not deal with NGO.

**ADV. LILLA CROUSE:** Yes, do you agree with that?

**DR MAKGABO JOHANNA MANAMELA:** I don't remember, but can I qualify that the agreement, if it was, it was about Takalani, so I don't know if it was not dealing with the NGO, because Takalani was NGO. So I don't agree with this, because the contentious matter was about Takalani and Takalani is NGO.

5**ADV. LILLA CROUSE:** Are you sure about that statement at the time of the court case, that Takalani was a NGO, are you 100% sure?

**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel.

**ARBITRATOR, JUSTICE MOSENEKE:** It may be fairer to put it to the witness, take the witness to the settlement agreement terms.

10**ADV. LILLA CROUSE:** Yes, I will do that.

**ARBITRATOR, JUSTICE MOSENEKE:** And then the Minister makes then the conclusion.

**ADV. LILLA CROUSE:** Can I just tell you that the agreement in December wasn't about Takalani at all. But let us just go, we will get back to that, I promise you. If  
15we can go on to page 3 of this document. The first line says: "Unfortunately the Gauteng Department of Health did not honour this agreement. And therefore Section 27 rushed back into court." Do you remember that?

**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel.

**ADV. LILLA CROUSE:** And then line 5 ...intervened.

20**ARBITRATOR, JUSTICE MOSENEKE:** But does the witness agree that you did not honour the agreement?

**DR MAKGABO JOHANNA MANAMELA:** No, I agree with the statement.

**ADV. LILLA CROUSE:** Thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Okay.

**ADV. LILLA CROUSE:** Do you agree with what the Minister says that you did not honour the agreement?

**DR MAKGABO JOHANNA MANAMELA:** That is correct.

**ADV. LILLA CROUSE:** Thank you. Line 5 the Honourable Minister says: “Unfortunately the Gauteng Department of Health was able to convince the court that we are honouring the plan.” Do you see that he says that?

10 **DR MAKGABO JOHANNA MANAMELA:** Yes, Counsel, I see it.

**ADV. LILLA CROUSE:** And do you agree with what he states that you convinced the court, despite your earlier concession that, that you were ...intervened.

**DR MAKGABO JOHANNA MANAMELA:** Counsel ...intervened.

**ADV. LILLA CROUSE:** No, you mustn't interrupt me and I won't interrupt you, let's try to do that.

**DR MAKGABO JOHANNA MANAMELA:** Apology for that.

**ADV. LILLA CROUSE:** You already said that you weren't honouring the plan. Now the Minister says it is unfortunate that you convinced the court of this untruth. Do you agree with that?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR MAKGABO JOHANNA MANAMELA:** Can I now say when I said yes, I was looking at the unfortunate. I didn't know that you were still talking to the mean max (?), the page behind. So that is what I wanted to say. With this one I will say I agree. My agreement was with the unfortunate, because this one, after 5 you didn't read it, so I was concentrating on the agreement.

**ADV. LILLA CROUSE:** Please if you can concentrate on my questions rather, if you don't mind, Doctor. Let's then go back.

**DR MAKGABO JOHANNA MANAMELA:** Okay.

**ADV. LILLA CROUSE:** Do you agree that the Department did not... You are again writing and reading and not listening.

**DR MAKGABO JOHANNA MANAMELA:** No, I am. I am listening.

**ADV. LILLA CROUSE:** Do you agree that the Department did not honour the agreement?

**DR MAKGABO JOHANNA MANAMELA:** I agree.

**ADV. LILLA CROUSE:** Thank you. And do you also agree that you, despite knowing that you are not honouring the agreement, you convinced the court that you were – and this was in March?

**DR MAKGABO JOHANNA MANAMELA:** Can I say that on the ...intervened.

**ADV. LILLA CROUSE:** No, no, please answer my question now. As you are sitting there, you know that you misled the court, isn't that so?

**DR MAKGABO JOHANNA MANAMELA:** I did not mislead the court.

**ADV. LILLA CROUSE:** Okay, we'll get back to that. You didn't make an affidavit. Are you saying you didn't make an affidavit, Dr Manamela?

**DR MAKGABO JOHANNA MANAMELA:** My affidavit was not about that agreement.

5**ADV. LILLA CROUSE:** Yes, your affidavit was about that, we'll show it to you just now. So let us just understand each other. Are you saying that you misled the court as you sit there or are you saying that you didn't mislead the court as you sit there?

**DR MAKGABO JOHANNA MANAMELA:** I am saying in terms of that court case  
10with Section 27, I did not mislead the court.

**ADV. LILLA CROUSE:** As you sit on that chair at this stage, you are saying the court was not misled.

**DR MAKGABO JOHANNA MANAMELA:** I am saying yes, that is correct.

**ARBITRATOR, JUSTICE MOSENEKE:** You understand that is reference to the  
15second case, the interdict?

**DR MAKGABO JOHANNA MANAMELA:** The second interdict. Yes Justice. Maybe the only thing is I wasn't given the opportunity to read the whole of this. But I know with the court case, I did not mislead the court.

**ADV. LILLA CROUSE:** We will get to that. But even now in hindsight, knowing  
20what has happened, are you still remaining in that position that you are adamant that you didn't mislead the court?

**DR MAKGABO JOHANNA MANAMELA:** I did not mislead the court, because of what was the situation at that time.

**ADV. LILLA CROUSE:** No, I am asking as you sit there, Doctor, please answer.

**DR MAKGABO JOHANNA MANAMELA:** Yes, I did not mislead the court.

5**ADV. LILLA CROUSE:** And you still maintain that. You are not taking responsibility for that.

**DR MAKGABO JOHANNA MANAMELA:** I still say that I did not mislead the court.

**ADV. LILLA CROUSE:** Let us go to line 10 on page 3. “Armed with this court outcome, the Gauteng Department of Health then fought off any attempts by the  
10National Health Director General and the National Chief Director of Mental Health was supposed to have been invited to all meetings in Gauteng where the plan was to be tabled and executed.” What do you say about that?

**DR MAKGABO JOHANNA MANAMELA:** For the first time I hear that National Health was supposed to be invited. That is when I hear that DG talking about it.  
15Like, as I said at my fourth level, I didn’t know about this.

**ADV. LILLA CROUSE:** Okay, the gist of this is, do you agree that you didn’t work together with the National Department?

**DR MAKGABO JOHANNA MANAMELA:** That is correct, Counsel.

**ADV. LILLA CROUSE:** And do you agree that if you had done so, the outcome  
20might have been different.

**DR MAKGABO JOHANNA MANAMELA:** I don’t know.



**ADV. LILLA CROUSE:** Okay let's go to line 15. I am just going to leave that as your answer for the moment. Line 15 says: "Firstly NGOs were issued invalid licenses, as the Health Ombud discovered later during investigations." Do you agree with that?

5**DR MAKGABO JOHANNA MANAMELA:** I don't agree with that.

**ADV. LILLA CROUSE:** You are saying the licenses were validly issued.

**DR MAKGABO JOHANNA MANAMELA:** That is correct.

**ADV. LILLA CROUSE:** Okay. "The licenses were issued by the Director of Mental Health", and that is you, is it not?

10**DR MAKGABO JOHANNA MANAMELA:** That is correct.

**ADV. LILLA CROUSE:** "Who is not in power to do so", do you agree with that statement?

**DR MAKGABO JOHANNA MANAMELA:** I don't.

**ADV. LILLA CROUSE:** You say you were empowered?

15**DR MAKGABO JOHANNA MANAMELA:** That is correct.

**ADV. LILLA CROUSE:** And you will take us to the relevant legislative empowerment.

**DR MAKGABO JOHANNA MANAMELA:** That is correct.

**ADV. LILLA CROUSE:** Can you do so now?

**DR MAKGABO JOHANNA MANAMELA:** Thank you. I think it is Regulation 43 that guide us... maybe let me just take my file. Mental Health Care Act 17 of 2002, 66 (O) authorisation in licensing of health establishments ...intervened.

**ADV. LILLA CROUSE:** Just where are you reading now?

5**DR MAKGABO JOHANNA MANAMELA:** I am reading on the, it is Mental Health Care Act section 66.

**ADV. LILLA CROUSE:** Are you in the Act or the Regulation?

**DR MAKGABO JOHANNA MANAMELA:** I am in the Act.

**ADV. LILLA CROUSE:** Okay and in the Act, to which section are you referring?

10**DR MAKGABO JOHANNA MANAMELA:** 66 (O).

**ADV. LILLA CROUSE:** You are referring to the enabling section in the Act referring to the regulations, yes.

**DR MAKGABO JOHANNA MANAMELA:** Yes.

**ADV. LILLA CROUSE:** And where do you want to refer there?

15**DR MAKGABO JOHANNA MANAMELA:** I want to refer to 66 (O) and 72 on delegation of powers.

**ADV. LILLA CROUSE:** Sorry, ma'am, I am still not sure, where in 66 are you referring?

**DR MAKGABO JOHANNA MANAMELA:** On 66 I am referring to (O) where it 20says: "Authorisation and licensing of health establishments administered under the

**LIFE ESIDIMENI ARBITRATION SESSION 1**

auspices of the State in non-governmental organisational or private body providing mental health care treatment and rehabilitation services and condition to be attached to authorisation of licenses.”

**ADV. LILLA CROUSE:** Okay.

5**DR MAKGABO JOHANNA MANAMELA:** 72, delegation of power: “The National Department or Provincial Department may enter into agreement with a non-governmental organisation or public or private provider of goods and services in order to exercise power and perform function and duties under this act.”

**ADV. LILLA CROUSE:** Where are you reading now, ma’am?

10**DR MAKGABO JOHANNA MANAMELA:** And then on the ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** 72 sub 6.

**ADV. LILLA CROUSE:** Sub 6, yes. Can you just go up to 72 (1) (A).

**DR MAKGABO JOHANNA MANAMELA:** I don’t have the Act, but I have got the summary with me.

15**ADV. LILLA CROUSE:** Well maybe I should then read Section 72 (1) (A) to you.

**DR MAKGABO JOHANNA MANAMELA:** Okay.

**ADV. LILLA CROUSE:** Because it says: “Delegation can be given except for the powers referred to in section 66.” Now you’ve read that for us. Are you going to help us where your delegation comes from or where your power to issue licenses  
20come from?

**DR MAKGABO JOHANNA MANAMELA:** Okay. Number (6) says: “If the condition of a license” ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Number what?

**DR MAKGABO JOHANNA MANAMELA:** It is just in my document.

5**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**DR MAKGABO JOHANNA MANAMELA:** It is not in your document.

**ADV. LILLA CROUSE:** But where did you get it, ma’am?

**DR MAKGABO JOHANNA MANAMELA:** I got it from the mental health care, this is amended Mental Health Care Regulation.

10**ADV. LILLA CROUSE:** Okay but you’ve got the Mental Health Care Act before you. Please use that one.

**DR MAKGABO JOHANNA MANAMELA:** I have got the Mental Health Care Policy, this is the policy but what I have ...intervened.

**ADV. LILLA CROUSE:** Just at the back, just turn to the back, please, Doctor.

15**DR MAKGABO JOHANNA MANAMELA:** Okay.

**ADV. LILLA CROUSE:** Which section are you looking for, then I can direct you to the page, Doctor?

**DR MAKGABO JOHANNA MANAMELA:** I am looking for section 66.

**ADV. LILLA CROUSE:** Section 66 is on page 41 of 46.

**DR MAKGABO JOHANNA MANAMELA:** It is on regulations, it is now what I have here. I am looking for the one on licensing.

**ADV. LILLA CROUSE:** You are looking for the regulation on licensing.

**DR MAKGABO JOHANNA MANAMELA:** Yes, I see here it talks... I spoke about the Act first and now I came to the Regulation. So can I just be given a moment to check according to what I have. Regulation amended 6 November 2014. I don't know if it is what you have, Counsel.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**ADV. LILLA CROUSE:** You are again at 66 (O)?

10**DR MAKGABO JOHANNA MANAMELA:** No, 66 (O) is in the Act. "Now in the Regulation, amendment 43 of the Regulation and it is hereby amended on this date, 6 November 2014. We say by the substitution and sub regulation 1 of the following sub regulation any service not directly run under the auspice of the organ of state and which is not a designated psychiatric hospital or care and rehabilitation centre, 15but which provide residential or day care facilities of the subsection" - oh excuse me "day care facilities of five people or more with mental disorder, must in terms of the Act be by the substitution of sub regulation 2 of the following regulation. The condition of license contained in sub regulation 1 must be clearly stipulated by the provincial department concerned and must include"... It went down to indicate what 20is included, which I didn't put here. But ...intervened.

**ADV. LILLA CROUSE:** Okay, are you saying ma'am ...intervened.

**DR MAKGABO JOHANNA MANAMELA:** It is saying provincial department.

**ADV. LILLA CROUSE:** Okay and you say you were the provincial department.

**DR MAKGABO JOHANNA MANAMELA:** Because I was in the provincial department, I was covered.

5**ADV. LILLA CROUSE:** So anybody in the provincial department can issue a license, is that what you are saying?

**DR MAKGABO JOHANNA MANAMELA:** Not anybody.

**ADV. LILLA CROUSE:** Do you have a delegation?

**DR MAKGABO JOHANNA MANAMELA:** The delegation letter I don't have. But  
10the Act and Regulation further says, indicate clearly where the delegation must be done. For example for 72 hour assessment indicate clearly, for psycho surgery it indicates clearly. But when it comes to the license it is just that the provincial department concerned. And in terms of this, my unit was in the provincial department and it was only my unit that was concerned and at that level I signed the  
15license and it has been signed that way throughout.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel, just a matter of law.

**ADV. LILLA CROUSE:** Yes, absolutely Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Why must we debate a psychiatric nurse about whether she has authority or not? I don't think we should do that.

20**ADV. LILLA CROUSE:** Okay thank you Justice. I just want to establish ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** She must tell you what she relies on and by very careful reading you see that she needs a delegation.

**ADV. LILLA CROUSE:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** She says she doesn't have one and that is the end of the enquiry.

**ADV. LILLA CROUSE:** Thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** But we can't argue about what the law says with witnesses.

**ADV. LILLA CROUSE:** Thank you, Justice, I wasn't going to take legal advice at this stage.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, absolutely not, ja.

**ADV. LILLA CROUSE:** Thank you. Let us just continue then. I hear that you say that you don't agree with the Minister and you've shown us in the Act where you rely on.

15 **DR MAKGABO JOHANNA MANAMELA:** Yes.

**ADV. LILLA CROUSE:** Now if we can go ...intervened.

**DR MAKGABO JOHANNA MANAMELA:** Can I ...intervened.

**ADV. LILLA CROUSE:** No, I will ask the questions and you answer them. It goes a little bit easier.

20 **DR MAKGABO JOHANNA MANAMELA:** I wanted to finish the ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Talk to me. Remember ultimately you are talking to me. The Counsel asks the questions but you talk to me.

**DR MAKGABO JOHANNA MANAMELA:** Okay Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** What do you want to do?

5**DR MAKGABO JOHANNA MANAMELA:** I want to further indicate that the Provincial Department of Health will license and regulate provision of community, those NGOs, nê, that is what it was saying. And by doing that the Provincial Department keeps the section 43 of Regulation. Meaning that there is no way in the Regulation and in the Act where it is said that the mental health care unit or director  
10will require delegation.

**ARBITRATOR, JUSTICE MOSENEKE:** You are not... look, the Minister just records the fact that you had no par to issue licenses. It is a legal question, ma'am. I don't know if you heard me, with respect. The question whether or not you had the power to sign, it is not a personal preference, we determine it by law. You referred  
15us to empowering provisions in section 43, which entitles the Minister to make regulations. Then you have to go to the regulations to see whether you have the power. We find that the department has the power. Now the next question is whether HOD delegated properly to you. You have already told us that there was no delegation and that is the end of that enquiry and we will deal with that, it is a  
20matter of law. They were just drawing your attention to the fact that the Minister records that all your licenses were unlawful, because you, it is the HOD who should have issued them, aside from other defects in the license. So the short thing you



can say is I agree with him or I don't agree with him. But we lawyers know that we have to determine it legally.

**DR MAKGABO JOHANNA MANAMELA:** Thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** So short answer so that we can move on.

5**DR MAKGABO JOHANNA MANAMELA:** A short answer will say, the Regulation and the Act does not indicate whether I should have a delegation or not and on that basis I signed the licenses. And my predecessors, those who were there before me signed ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Do you now accept that you made an  
10error, when subsequently people who understand the law better than you, told you that you had no authority? Do you accept that judgement?

**DR MAKGABO JOHANNA MANAMELA:** I ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** I am not saying you dishonestly did it. You might have thought that you had the power. Do you accept now that you, it is  
15the HOD who represents the department ordinarily, an absent delegation you would not have the power of a HOD, do you accept that?

**DR MAKGABO JOHANNA MANAMELA:** Because there is no delegation on the Act, I don't. Because if they were saying that the HOD will delegate you, I will accept that, Chief, with due respect. The Act is silent on that.

20**ARBITRATOR, JUSTICE MOSENEKE:** So you are giving us legal advice now, are you?

**DR MAKGABO JOHANNA MANAMELA:** No, I am not giving you legal advice. I am saying the Act was silent on that and that is why I am unable to accept it.

**ARBITRATOR, JUSTICE MOSENEKE:** But you accept now that you were wrong. The law doesn't give you the power but the HOD the power.

5**DR MAKGABO JOHANNA MANAMELA:** But even now the Act still don't say the HOD, Justice, it still don't, it is still silent, even as we speak, until they change the Act. I am not saying that I am going to do it again, because the department will determine. But now as I am reading, even from the Act, it is still the same, it is still silent on whether I should have given the delegation or not.

10**ARBITRATOR, JUSTICE MOSENEKE:** Don't you think it tells us what kind of person you are? You may know many things, but construction of statutes may not be your strongest point, ma'am. The Minister says you were wrong, you had no power. The only question is, do you agree with the Minister or not and the answer is no, okay. You don't agree, right?

15**DR MAKGABO JOHANNA MANAMELA:** I am not saying I have power but I just said that the Act is the one that made me to do that. I am not saying the Minister is wrong. If that is how the Department of Health they see it nationally, I won't say they are wrong, Justice. But I am just giving you what guided me.

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac).

20**DR MAKGABO JOHANNA MANAMELA:** (Vernac). You want to know on what basis ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac). You did not have the power. How could you persist today and say... and I have looked at it, quickly I have looked at it and I know you had no, you needed delegation to have the power. Do you challenge that? Don't you agree with that?

5**DR MAKGABO JOHANNA MANAMELA:** You know, Chief Justice, the other NGOs, from Chief Justice Moepe it was also saying the license is silent, it is silent. I won't dispute if the Department says I shouldn't, it is fine. But the Act is silent. I started by saying I was guided by the Act to agree on termination.

**ARBITRATOR, JUSTICE MOSENEKE:** Okay. We don't need this legal advice, do  
10we? Shall we get to another area please?

**ADV. LILLA CROUSE:** Thank you, Justice Moseneke. I just want to interrogate one aspect of the answer, if I may.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**ADV. LILLA CROUSE:** You heard for the first time from the Ombud... Ma'am, you  
15are writing again and you are not listening.

**DR MAKGABO JOHANNA MANAMELA:** I am writing your question so that I don't have problems.

**ADV. LILLA CROUSE:** You heard for the first time from the Ombud that you are not authorised to issue licenses, is that so?

20**DR MAKGABO JOHANNA MANAMELA:** That is correct.

**ADV. LILLA CROUSE:** And as a direct result of this, you didn't say to the Ombud, well I have the delegation or I am authorised, you didn't say that to the Ombud, is that correct?

**DR MAKGABO JOHANNA MANAMELA:** I told the Ombud what I said to you, but she asked me do you have a delegation letter and I said I don't have a delegation letter.

**ADV. LILLA CROUSE:** So you accepted ...intervened.

**DR MAKGABO JOHANNA MANAMELA:** I also say the delegation letter I don't have.

10**ADV. LILLA CROUSE:** Okay so you accepted that you don't have the authority, do you agree with me?

**DR MAKGABO JOHANNA MANAMELA:** That I didn't have the delegation letter.

**ADV. LILLA CROUSE:** No, ma'am. Doctor, please just answer my question. Did you accept that you didn't have authority when the Ombud raised this with you, just  
15yes or no?

**DR MAKGABO JOHANNA MANAMELA:** No.

**ADV. LILLA CROUSE:** Well can I then ask, why did you ask Dr Selebano to reissue these licenses?

**DR MAKGABO JOHANNA MANAMELA:** Counsel, it was not me. He told me that  
20the MEC asked him to issue the licenses and I explained to him that other licenses

of 110 NGOs that I signed, what are you going to do with them. And he said prepare them and I'll discuss that with the MEC.

**ADV. LILLA CROUSE:** So are you now saying that you never asked Dr Selebano to resign this licenses?

5**DR MAKGABO JOHANNA MANAMELA:** No, I didn't ask him, he told me.

**ADV. LILLA CROUSE:** And you didn't raise this at your appeal at all against the Ombud's report?

**DR MAKGABO JOHANNA MANAMELA:** I raised it at the appeal that I didn't ask him. He said that the MEC asked, because they were still already querying and that 10is what they said. He then said bring the licenses and I'll discuss them with the MEC. And then the next thing I was given those licenses which were signed and I couldn't query it. Because when we were busy with Ombud, we had to comply with what the Ombud is saying. So I didn't query it when he resigned the other licenses.

**ADV. LILLA CROUSE:** Okay, ma'am, I will leave that for argument. Can I continue 15on this letter?

**ARBITRATOR, JUSTICE MOSENEKE:** You mean the statement of the Minister.

**ADV. LILLA CROUSE:** Thank you, Justice, it is late in the day.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**ADV. LILLA CROUSE:** Line 18 page 3 says: "Secondly the NGOs went to Life 20Esidimeni to pick up patients on their own and brought them to their homes without

**LIFE ESIDIMENI ARBITRATION SESSION 1**

files, without diagnosis and all the necessary ingredients that would bring quality health care.” Do you see that?

**DR MAKGABO JOHANNA MANAMELA:** I see it.

**ADV. LILLA CROUSE:** Do you agree with that statement of the Minister?

5**DR MAKGABO JOHANNA MANAMELA:** Partially I agree and others ...intervened.

**ADV. LILLA CROUSE:** Please tell us what you agree with.

**DR MAKGABO JOHANNA MANAMELA:** I agree that they came without files where they will not know the diagnosis and the necessary ingredients that will bring 10quality, were not there. But the first part that they went to pick up is the one that I don't agree.

**ADV. LILLA CROUSE:** Are you saying that the NGOs didn't go and pick up their own patients?

**DR MAKGABO JOHANNA MANAMELA:** Few of them, but pick up means a lot. I 15wanted to say they went and collected the patients that were allocated to them, not to just go and pick up. That is the part that I don't agree, unless I don't understand the word pick up.

**ADV. LILLA CROUSE:** Can I just quickly on that aspect, ma'am, take you to file number 8? If you can go to page 2818.

20**DR MAKGABO JOHANNA MANAMELA:** 28?

**ADV. LILLA CROUSE:** 2818.

**DR MAKGABO JOHANNA MANAMELA:** 2818.

**ADV. LILLA CROUSE:** And on this again is your project plan. Do you recognise it as your project plan that we are dealing with?

**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel.

5**ADV. LILLA CROUSE:** If you go to page 2818.

**DR MAKGABO JOHANNA MANAMELA:** 2818, yes I am there.

**ADV. LILLA CROUSE:** If you go to the bottom of that page to the third block from the bottom.

**ARBITRATOR, JUSTICE MOSENEKE:** 2818.

10**DR MAKGABO JOHANNA MANAMELA:** Yes, I am there.

**ADV. LILLA CROUSE:** It says: “Identify and collect users from Life Esidimeni to the NGOs.” Do you see that?

**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel.

**ADV. LILLA CROUSE:** And it says under who is responsible, the identified NGOs  
15and the Life Esidimeni management. Do you see that?

**DR MAKGABO JOHANNA MANAMELA:** That’s correct.

**ADV. LILLA CROUSE:** So the Minister’s statement corresponds with what is in your own plan. Don’t you agree?

**DR MAKGABO JOHANNA MANAMELA:** I agree.

**ADV. LILLA CROUSE:** Thank you. So in fact the Minister's statement is completely correct not partially correct, do you agree?

**DR MAKGABO JOHANNA MANAMELA:** Can I qualify what I said?

**ADV. LILLA CROUSE:** Just answer my question first and then you can qualify.

5**DR MAKGABO JOHANNA MANAMELA:** If the Minister used this part, it is correct. But if we look at the third column of timeframes, it is not the timeframes where patients were collected ...intervened.

**ADV. LILLA CROUSE:** Doctor, I wasn't referring you to timeframes.

**DR MAKGABO JOHANNA MANAMELA:** Okay.

10**ADV. LILLA CROUSE:** And we all know that those timeframes changed, isn't that so?

**DR MAKGABO JOHANNA MANAMELA:** Okay that is correct.

**ADV. LILLA CROUSE:** And we've heard evidence that it has changed, you testified that it has changed, isn't that so?

15**DR MAKGABO JOHANNA MANAMELA:** That is correct.

**ADV. LILLA CROUSE:** So why are you deflecting and why are you denying all the time?

**DR MAKGABO JOHANNA MANAMELA:** No, I am not denying and that is why I didn't know that you are basing this on this one. I just wanted to highlight it.



**ADV. LILLA CROUSE:** Let me just take you to the next page. If you can go to line 7.

**ARBITRATOR, JUSTICE MOSENEKE:** We are back with the statement.

**ADV. LILLA CROUSE:** We are back with the statement, sorry, Justice.

5**ARBITRATOR, JUSTICE MOSENEKE:** That is a very fruitful enquiry, Counsel.

**ADV. LILLA CROUSE:** To go back to the statement, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, no I am saying continue. It is a fruitful enquiry.

**ADV. LILLA CROUSE:** Thank you.

10**ARBITRATOR, JUSTICE MOSENEKE:** There are many documents that will show us many things, but it is a summation of the tragedy frankly.

**ADV. LILLA CROUSE:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes please proceed.

**ADV. LILLA CROUSE:** Thank you Justice. Line 7 says: "It is common knowledge  
15that the Health Ombud arrived at a finding that this mental health review board in Gauteng was actually moribund, ineffective and without authority and without independence." Do you see that line?

**DR MAKGABO JOHANNA MANAMELA:** Can I be assisted? Which page is that?

**ADV. LILLA CROUSE:** Page 4 line 7.

20**DR MAKGABO JOHANNA MANAMELA:** I see it.

**ADV. LILLA CROUSE:** And do you agree with it?

**DR MAKGABO JOHANNA MANAMELA:** I don't.

**ADV. LILLA CROUSE:** You say that the Health Ombud was alive and well and effective and independent ...intervened.

5**ARBITRATOR, JUSTICE MOSENEKE:** The review board.

**ADV. LILLA CROUSE:** The review board.

**DR MAKGABO JOHANNA MANAMELA:** That's correct.

**ADV. LILLA CROUSE:** And can I ask you why do you say that? No, I am not going to ask you why do you say that. Let me continue.

10**ARBITRATOR, JUSTICE MOSENEKE:** Well another line could be well the chairperson of the board came here and agreed and said they were indeed moribund. They reported to you, you ordered them to go and do a whole range of things, they did not even know that they were independent.

**DR MAKGABO JOHANNA MANAMELA:** As far as I know, Justice, was that they  
15were independent. And even in meetings they will tell me, they will ask that they are independent. So that is what I know. But I did ask them to help us in other areas and it was the decision of the chairperson to agree or not.

**ADV. LILLA CROUSE:** Doctor, if I can continue. Line 9. Now he says his reasons why he agrees with the Ombud. He says: "This is because the Director of Mental  
20Health" (that's you) "the same person who issued invalid licenses to NGOs, issued

**LIFE ESIDIMENI ARBITRATION SESSION 1**

invalid appointments to the mental health review board and subjected them to fall under her unit.” So let us break that up. Do you see that sentence?

**DR MAKGABO JOHANNA MANAMELA:** I see it Counsel.

**ADV. LILLA CROUSE:** You agree you are the Director of Mental Health.

5**DR MAKGABO JOHANNA MANAMELA:** I am the Director of Mental Health.

**ADV. LILLA CROUSE:** And you are the person who issued the invalid licenses.

**DR MAKGABO JOHANNA MANAMELA:** I didn't issue invalid licenses.

**ADV. LILLA CROUSE:** And you issued invalid appointments to the mental health review board.

10**DR MAKGABO JOHANNA MANAMELA:** I didn't appoint the mental health review board.

**ADV. LILLA CROUSE:** It says invalid appointments, you say you didn't do invalid appointments.

**DR MAKGABO JOHANNA MANAMELA:** I didn't even appoint them.

15**ADV. LILLA CROUSE:** And subjected them to fall under her unit. Did you do that?

**DR MAKGABO JOHANNA MANAMELA:** I didn't do that.

**ADV. LILLA CROUSE:** Then it says: “That is why they did not exercise the authority to challenge the Gauteng Mental Health Marathon Project as empowered by the Act.” That has a ring of truth to it, doesn't it?

20**DR MAKGABO JOHANNA MANAMELA:** I beg your pardon?

**ADV. LILLA CROUSE:** Do you agree with this last sentence that I have just read?

**DR MAKGABO JOHANNA MANAMELA:** No Counsel, because I don't agree with the upper one, so I cannot agree with this. The board was independent and reporting to the MEC.

5**ADV. LILLA CROUSE:** And you are saying the mental health review board independently made sure that nobody died.

**DR MAKGABO JOHANNA MANAMELA:** I cannot say that, but the only problem maybe that led the Minister to say that, is that they were housed in the unit of mental health directorate, maybe that was not properly conveyed to the Minister.  
10But they were not reporting to me.

**ADV. LILLA CROUSE:** Okay. Ma'am, I am going to leave that letter for the moment and just put it aside. We have established now that you signed off on the plan. You agree with that. Your signature, your fingerprints are all over the plan.

**DR MAKGABO JOHANNA MANAMELA:** I agree that I signed the plan.

15**ADV. LILLA CROUSE:** Thank you. And we agreed that you were aware that it wasn't a financially sound decision, first of all, you already agreed to that. Is that correct?

**DR MAKGABO JOHANNA MANAMELA:** I didn't agree to that.

**ADV. LILLA CROUSE:** You want us to go back there? Okay let us go back there.  
20If we look at the information so far, we know that Life Esidimeni was paid R320 per person per day. Do you agree with that?

**DR MAKGABO JOHANNA MANAMELA:** That's correct.

**ADV. LILLA CROUSE:** That works out to R9 920 per month. Would you agree to that?

**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel.

5**ADV. LILLA CROUSE:** According to the evidence, at the start of this project there was 1 442 patients in Life Esidimeni, would you agree to that?

**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel.

**ADV. LILLA CROUSE:** Now if we then look at how much that cost for those patients per month, it will work out to more or less, plus/minus R14 million per 10month. Do you agree with that?

**DR MAKGABO JOHANNA MANAMELA:** That is correct.

**ADV. LILLA CROUSE:** And that will work out more or less R171 million per year. Do you agree with that?

**DR MAKGABO JOHANNA MANAMELA:** That is correct.

15**ADV. LILLA CROUSE:** And that is the cost that you wanted to curb. Is that so?

**DR MAKGABO JOHANNA MANAMELA:** At the beginning ...intervened.

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

**DR MAKGABO JOHANNA MANAMELA:** Okay, yes.

**ADV. LILLA CROUSE:** Thank you. You had advice that that was a good way to 20spend your money, you agree with that?

**DR MAKGABO JOHANNA MANAMELA:** I miss the point.

**ADV. LILLA CROUSE:** In May 2015 you got the report to say Life Esidimeni is rendering a good service at a good price, you knew that.

**DR MAKGABO JOHANNA MANAMELA:** That is correct.

5**ADV. LILLA CROUSE:** Now let's go to your plan. If we can go to page 2810 in volume 8.

**DR MAKGABO JOHANNA MANAMELA:** 2810.

**ADV. LILLA CROUSE:** If the Court would just grant me a moment. Again we are working with your plan, do you see the plan?

10**DR MAKGABO JOHANNA MANAMELA:** 2810, I found it Counsel.

**ADV. LILLA CROUSE:** Yes. This is your plan that we are looking at. We have looked at it a few times already, do you agree?

**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel.

**ADV. LILLA CROUSE:** Now if we can go to the middle of page 2810.

15**DR MAKGABO JOHANNA MANAMELA:** 280?

**ADV. LILLA CROUSE:** 2810, sorry, I am dyslexic.

**DR MAKGABO JOHANNA MANAMELA:** Okay, I am here.

**ADV. LILLA CROUSE:** You see table 17 there?

**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel.

**ADV. LILLA CROUSE:** It talks about renovations that you wanted to do.

**DR MAKGABO JOHANNA MANAMELA:** That is correct.

**ADV. LILLA CROUSE:** And the renovations for Weskoppies is nearly R140 million, do you see that?

5**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel.

**ADV. LILLA CROUSE:** And for Sterkfontein it is R28 million.

**DR MAKGABO JOHANNA MANAMELA:** That is correct.

**ADV. LILLA CROUSE:** That brings us to R168 million, do you agree?

**DR MAKGABO JOHANNA MANAMELA:** That's correct.

10**ADV. LILLA CROUSE:** Which, let us just turn the page twice to page 2812.

**DR MAKGABO JOHANNA MANAMELA:** 2812.

**ADV. LILLA CROUSE:** And then to implement the plan after the renovations, you need more staff, do you agree? And your plan at the bottom of page 2812 says you need nearly just over R9 million to staff Sterkfontein. Do you agree?

15**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel.

**ADV. LILLA CROUSE:** And then if we turn the page again to page 2813, we need R16.5 million to staff Weskoppies. Do you agree with that?

**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV. LILLA CROUSE:** So only on renovations and staff, no medicine, no food, no recreation, no clothing, you were prepared to pay much more. So where is the financial problem?

**ARBITRATOR, JUSTICE MOSENEKE:** In fact that number is R350 million, in that 5region.

**ADV. LILLA CROUSE:** Do you agree?

**DR MAKGABO JOHANNA MANAMELA:** I see it Counsel.

**ADV. LILLA CROUSE:** You prepared the plan, Dr Manamela, you knew that it wasn't about finances.

10**DR MAKGABO JOHANNA MANAMELA:** Okay, can I explain this? It was said that once you renovated the ward, that ward will stay in for almost five years functioning well. Once you appointed the staff, they will be your staff until when they decide to leave. So that is what was said.

**ADV. LILLA CROUSE:** Yes.

15**DR MAKGABO JOHANNA MANAMELA:** But as I said earlier, I was not in control of these money issues. I just asked the department, the hospital, to give us what will be required so that we are able to plan.

**ADV. LILLA CROUSE:** Ma'am, we are only interrogating your version that it was too costly to keep Life Esidimeni going. That is the only thing we are interrogating.  
20And I am putting it to you that you don't believe that version, if one look at the plan that you had before you.



**DR MAKGABO JOHANNA MANAMELA:** My version will be once we renovated the ward, it will take 3 to 5 years without being renovated. And once we appointed the staff, they will be there for plus/minus the term they need. And then the patient that will be there will be taken care by these staff who will be appointed by the 5Department.

**ADV. LILLA CROUSE:** I am going to leave that, because your answer doesn't make sense.

**ARBITRATOR, JUSTICE MOSENEKE:** But before you leave the point... Doctor Galagala, is that the right name?

10**ADV. LILLA CROUSE:** Talatala.

**ARBITRATOR, JUSTICE MOSENEKE:** Talatala, oh I am sorry. My young assistant's surname is Galagala. That one is Dr Talatala, I am sorry. I haven't asked her what Talatala means or Galagala means. Well I am sorry, I apologise everywhere. Let's get on with it. He made a proposition that was quite difficult to 15follow. He says he doesn't think that this whole project was about saving money. He says, I'll tell you what he says, for this R350 million or so for renovations, would that have translated into tenders... would you have needed tenders?

**DR MAKGABO JOHANNA MANAMELA:** That is correct. For building they needed tenders, for building yes.

20**ARBITRATOR, JUSTICE MOSENEKE:** Ja roughly added up it is about R350 million. So he suggested to us that this project might have been a project to create

**LIFE ESIDIMENI ARBITRATION SESSION 1**

construction, reconstruction and renovations and to create a space for tenders. You are smiling. I can see you are smiling. Why are you smiling?

**DR MAKGABO JOHANNA MANAMELA:** What do I do because ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** What do you say to that?

5**DR MAKGABO JOHANNA MANAMELA:** You know, I never thought of it that way, but if he said that, it might be, I don't know. But the Department, when they engaged me, they said it is because of the challenges that they have. So I am not disputing what he is saying, because at the end of the day the contractors money to renovate the hospital... but in my own belief throughout the process,  
10Justice ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** In one sentence, what was all this about? Why?

**DR MAKGABO JOHANNA MANAMELA:** Managing the cost and upscaling community mental health care services.

15**ARBITRATOR, JUSTICE MOSENEKE:** Managing cost and upscaling?

**DR MAKGABO JOHANNA MANAMELA:** The community health care services.

**ARBITRATOR, JUSTICE MOSENEKE:** I'll leave it to you.

**ADV. LILLA CROUSE:** Thank you Justice. Ma'am, actually we lost more than the terrible loss of lives in this project, isn't that so?

20**DR MAKGABO JOHANNA MANAMELA:** That is correct, Counsel.

**ADV. LILLA CROUSE:** We lost jobs.

**DR MAKGABO JOHANNA MANAMELA:** MM.

**ADV. LILLA CROUSE:** Isn't that so?

**DR MAKGABO JOHANNA MANAMELA:** That is correct.

5**ADV. LILLA CROUSE:** We lost training facility.

**DR MAKGABO JOHANNA MANAMELA:** That's correct.

**ADV. LILLA CROUSE:** We had vulnerable people suffer.

**DR MAKGABO JOHANNA MANAMELA:** True.

**ADV. LILLA CROUSE:** And you were in the process of trying to fill psychiatric  
10hospital beds. You were exasperating the problem with people that needed to be  
mentally observed in terms of the Criminal Procedure Act, the 30 day period, isn't  
that so?

**DR MAKGABO JOHANNA MANAMELA:** That is not correct, Counsel.

**ADV. LILLA CROUSE:** Well that is what Dr Talatala told us and he says he raised  
15it with you. What do you say to that?

**DR MAKGABO JOHANNA MANAMELA:** I will say the patient that were from Life  
Esidimeni were not going to be admitted in forensic unit. That's why there was  
renovation for new unit in the psychiatric hospital to allocate them in.

**ADV. LILLA CROUSE:** And there is already a shortage of beds for forensic  
20patients, as you put it, isn't that so?

**DR MAKGABO JOHANNA MANAMELA:** That's correct.

**ADV. LILLA CROUSE:** And we have State patients in prisons waiting placement in psychiatric hospitals, isn't that so?

**DR MAKGABO JOHANNA MANAMELA:** That is correct.

5**ADV. LILLA CROUSE:** And if we take into consideration the cost of this arbitration, the cost of... you agree that it is a huge cost to the Department.

**DR MAKGABO JOHANNA MANAMELA:** True, although I don't know how much, I was not part. But I believe... I guess so.

**ADV. LILLA CROUSE:** And we have payment of you while you are not working –  
10that is also increasing the cost, isn't it?

**DR MAKGABO JOHANNA MANAMELA:** That's correct.

**ADV. LILLA CROUSE:** I want to put it to you that one of our clients, Nompelo Nkosi, do you know her, you've met her a few times, didn't you?

**DR MAKGABO JOHANNA MANAMELA:** I don't remember her.

15**ADV. LILLA CROUSE:** Okay. It is the lady sitting behind me.

**DR MAKGABO JOHANNA MANAMELA:** Okay. Hi.

**ADV. LILLA CROUSE:** I see you waving at her. Do you remember her?

**DR MAKGABO JOHANNA MANAMELA:** I think she did once come to the committee meeting.

**ADV. LILLA CROUSE:** Yes... no she was in the office with you and your chief of staff in the week of the, second week of February 2016.

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac). She is very angry that I don't remember her now like the doctor here, I do remember you.

5**ADV. LILLA CROUSE:** She says she was in your office with your chief of staff and she challenged you that this was not a financial position. And she specifically said to you that she did research and nurses at Waverly were paid much less than nurses at Takalani. Can you remember her saying that?

**DR MAKGABO JOHANNA MANAMELA:** I don't remember a lot, but I remember I  
10was with her in my supervisor's office, not communication, Dr Mazamisa, am I right ma'am ...intervened.

**ADV. LILLA CROUSE:** No, don't ...intervened.

**DR MAKGABO JOHANNA MANAMELA:** Yes, but the nurses in  
Takalani ...intervened.

15**ADV. LILLA CROUSE:** No I am not asking you about nurses in Takalani.

**DR MAKGABO JOHANNA MANAMELA:** Okay.

**ADV. LILLA CROUSE:** Please, Doctor, we want to go home still. Can you remember her saying that to you, just yes or no?

**DR MAKGABO JOHANNA MANAMELA:** It is long time ago, Counsel, I don't  
20remember, but I know that I met with her.

**ADV. LILLA CROUSE:** Okay so you can't remember her saying so. She said when she said that, you lost control of yourself to such an extent that your co-worker had to get you to back down. Do you remember that?

**DR MAKGABO JOHANNA MANAMELA:** No that is not correct. I never lose temper with the family and the patients, no.

**ADV. LILLA CROUSE:** The statement that I want to give to you is that you knew full well that this wasn't about finances and it was for that reason that you lost your temper.

**DR MAKGABO JOHANNA MANAMELA:** That is incorrect, Justice.

10**ARBITRATOR, JUSTICE MOSENEKE:** But what was it about again? What was all this? I mean you were the chief, you were the head of health care. We sit here for weeks and I still deeply worry and wonder what was this marathon project about. And we must ask the question, when there has been so much pain and distress and in many instances death, and you are the only one, besides your political handlers  
15who can tell us what was this about, in your minds. What were you trying to do?

**DR MAKGABO JOHANNA MANAMELA:** Justice, that is what I was trying to do on the first day, because I felt I must tell you what events took place before I come to the question. Now it is two-way, I must answer the question and tell you what happened. Unfortunate part is that people who came before me, some of them who  
20didn't understand the process, they told you what they told you and it is like now I come here as an accused. And I wanted to tell you, to take you through, through the community involvement, through the process what we did and what we didn't do.

**ARBITRATOR, JUSTICE MOSENEKE:** But what were you trying to do with this project?

**DR MAKGABO JOHANNA MANAMELA:** Like I was saying, the one that affected me ...intervened.

5**ARBITRATOR, JUSTICE MOSENEKE:** What were your objects, what did you want to achieve?

**DR MAKGABO JOHANNA MANAMELA:** It was two-ways: Upscaling mental health community services and the cost maintainment.

**ARBITRATOR, JUSTICE MOSENEKE:** You told us you knew nothing about  
10money.

**DR MAKGABO JOHANNA MANAMELA:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** You told us that you don't know whether there is enough money or not in the system.

**DR MAKGABO JOHANNA MANAMELA:** No, I have indicated at the first day that  
15it was, the Department was having struggle with finance and then the MEC pronounce and then we use that presses to have to upscale the community health care. It was two-fold. And there were other objectives, if you can look at the plan, how we can reach there.

**ARBITRATOR, JUSTICE MOSENEKE:** And why did you shut down Esidimeni  
20before all these plans of yours had come to fruition? Why didn't you wait for these

## LIFE ESIDIMENI ARBITRATION SESSION 1

vulnerable people to stay where they are until you were certain that you would upscale services? It still leaves me sleepless up to now. Why did you do this?

**DR MAKGABO JOHANNA MANAMELA:** It was a decision taken by the leadership that we must do it at that time. And when they extended it by three 5months, it was also helping me and the project team to say maybe we will come out with better services thereafter.

**ARBITRATOR, JUSTICE MOSENEKE:** You know, Adv. Crouse has spent a lot of time to find out whether you ever objected right through this process. And it seems on the answers you have given, you did not. Mr. Mosenogi wrote letters, he 10pleaded for those children at Baneng, whom you also wanted to move on your plan. He pleaded until there was an extension. They may have also died by now. But tell me why did you go along with a plan that was bound to prove murderous?

**DR MAKGABO JOHANNA MANAMELA:** The plan, I went along with the plan, as indicated, about... as it was a legal instruction falling within the legal prescription. 15The second thing, the Baneng issue, from the beginning I did ask that we cannot take Baneng and that is why we were busy with the discussion to say we leave Baneng, we can't take everyone.

**ARBITRATOR, JUSTICE MOSENEKE:** What was the legal instruction? To take people from secure mental health care facility and take them to Takalani and 20Precious Angels and Siyabadinga and Mosego and Anchor... is that what it was about?



**DR MAKGABO JOHANNA MANAMELA:** At the time when we were evaluating the place eligible to accommodate the patient.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja, we are making no progress, are we? Continue Counsel. This is an opportunity for you to come clean and tell us what moved you to this tragedy so that it can help us understand why, particularly for the families who sit here, who came with much hope that you will tell them, what was happening in your head as Adv. Crouse put it to you. Tell us how you saw it. Help us understand why you would dive into such a deep-deep pool where you couldn't even swim. I mean how did it happen?

10**DR MAKGABO JOHANNA MANAMELA:** Justice, what I am saying is how it did happen – that is what I was saying. I told you the truth that I know. That is the truth that I know.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel.

**ADV. LILLA CROUSE:** Ma'am, I am going to get back to this in a very short while. 15Let me just test... you said to my learned friend yesterday that you realised that the constitution was your guiding object, that you have to act in terms of our constitution. Is that so?

**DR MAKGABO JOHANNA MANAMELA:** Correct.

**ADV. LILLA CROUSE:** And you said to her something very interesting in my 20opinion. You said you weren't bound by your profession, because you were dealing as a manager and not as a registered nurse. Do you remember saying that? Just yes or no, ma'am.

**DR MAKGABO JOHANNA MANAMELA:** I think I will say when I say yes I will qualify that, because I didn't say I was not bound by my profession, but I put it clear that I was where I were because of strategic position, not necessarily that I abandoned my profession.

5**ADV. LILLA CROUSE:** Okay, let us interrogate that. Did you abandon your profession?

**DR MAKGABO JOHANNA MANAMELA:** I didn't.

**ADV. LILLA CROUSE:** Did you take the Nightingale oath?

**DR MAKGABO JOHANNA MANAMELA:** Yes, I took it.

10**ADV. LILLA CROUSE:** And do you consider yourself bound by the Nursing Council 2013 Code of Ethics?

**DR MAKGABO JOHANNA MANAMELA:** Correct.

**ADV. LILLA CROUSE:** Do you also agree that you would do no harm as a professional?

15**DR MAKGABO JOHANNA MANAMELA:** That is correct.

**ADV. LILLA CROUSE:** Do you agree that you will protect all patients' safety?

**DR MAKGABO JOHANNA MANAMELA:** That is correct.

**ADV. LILLA CROUSE:** And you agree with me that that didn't happen here. You didn't protect the patients' safety and you caused harm.

20**DR MAKGABO JOHANNA MANAMELA:** No.

**ADV. LILLA CROUSE:** You don't agree?

**DR MAKGABO JOHANNA MANAMELA:** I am going to qualify that, because at the time, at the level where I am now, I was at a strategic level not taking care physically of the patients, but I ensured that before they are placed, there is safety, there is nurses ...intervened.

**ADV. LILLA CROUSE:** That is why so many died, because you ensured that.

**DR MAKGABO JOHANNA MANAMELA:** No.

**ADV. LILLA CROUSE:** Okay let's continue on your pledge. Did you pledge yourself in the service of humanity?

10**DR MAKGABO JOHANNA MANAMELA:** That's correct.

**ADV. LILLA CROUSE:** Do you think you upheld that oath here?

**DR MAKGABO JOHANNA MANAMELA:** I did uphold when I sent the patients from the first time to the eligible NGO with the right transport and nobody died on the way when we transported them.

15**ADV. LILLA CROUSE:** So in one aspect you complied but not with the rest. Is that what you are saying?

**DR MAKGABO JOHANNA MANAMELA:** No, I am not saying that. We need to look at the areas as things unfolded.

**ADV. LILLA CROUSE:** Do you think you upheld your oath to practice your  
20profession with conscience and dignity?

**DR MAKGABO JOHANNA MANAMELA:** It is just unfortunate because at that level I was not executing my nursing professional duty, I was executing the management duty, I ensured that the patients are transported to the NGO that I believed they were safe at that time, although there were challenges later.

5**ADV. LILLA CROUSE:** Dr Manamela, how do you divorce yourself from your oath?

**DR MAKGABO JOHANNA MANAMELA:** I am not divorcing myself from my oath.

**ADV. LILLA CROUSE:** Okay. So in terms of your oath you had to maintain by all means in your power the honour and the profession of your station, did you do that, of your patients?

10**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel. By the time I did my work that I am appointed for, I did that.

**ADV. LILLA CROUSE:** No, I am talking about your oath now, Doctor, please. Do you think you complied with your oath?

**DR MAKGABO JOHANNA MANAMELA:** In terms of my work, I think so, in terms  
15of my work.

**ADV. LILLA CROUSE:** And your oath also included that the total health of the patient was your first consideration. Was this about... is that so... is that part of the oath?

**DR MAKGABO JOHANNA MANAMELA:** That is part of the oath.

20**ADV. LILLA CROUSE:** Can I then ask you, was it about patients here or was it about money?

**DR MAKGABO JOHANNA MANAMELA:** It was about both.

**ADV. LILLA CROUSE:** Mm. Part of your oath was also that you would maintain the utmost respect for human life.

**DR MAKGABO JOHANNA MANAMELA:** That is correct.

5**ADV. LILLA CROUSE:** Well we know how many people died here.

**DR MAKGABO JOHANNA MANAMELA:** That is correct.

**ADV. LILLA CROUSE:** What do you say to that?

**DR MAKGABO JOHANNA MANAMELA:** The people who died, at the moment I don't have post mortem result. And when I executed my responsibility of ensuring  
10the move from Life Esidimeni to the NGO and hospitals, nobody died on the way and I made sure that no one was tied on the seat. I made sure that they reached the places well. And I also developed evaluation plan that also indicted when things are starting to fall apart.

**ADV. LILLA CROUSE:** Dr Manamela, in terms of your ethical duties, in terms of  
15the code of ethics of your profession, goes much wider than patients, isn't it?

**DR MAKGABO JOHANNA MANAMELA:** That's correct.

**ADV. LILLA CROUSE:** And it also includes stakeholder, that you will treat them correctly, isn't that so?

**DR MAKGABO JOHANNA MANAMELA:** That's correct.

20**ADV. LILLA CROUSE:** And you also have a duty to the community, isn't that so?

**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel.

**ADV. LILLA CROUSE:** So being a registered nurse, as you are, you can't divorce your ethics and your oath by saying I wasn't dealing with patients, are you agreeing with me?

5**DR MAKGABO JOHANNA MANAMELA:** I am not divorcing that, but you need to judge me at the level where I was working, that is what I can say.

**ADV. LILLA CROUSE:** I am quite sure we will do that. You've already said that you made no contact with national office to seek assistance, is that so?

**DR MAKGABO JOHANNA MANAMELA:** That is correct, I just gave the report.

10**ADV. LILLA CROUSE:** You never raised concerns with the national office, is that so?

**DR MAKGABO JOHANNA MANAMELA:** That is correct. It is not my level.

**ADV. LILLA CROUSE:** Yes. You didn't raise any concerns with the Nursing Council, did you?

15**DR MAKGABO JOHANNA MANAMELA:** No.

**ADV. LILLA CROUSE:** Even when the patients started dying, you didn't approach them for assistance.

**DR MAKGABO JOHANNA MANAMELA:** No, because we developed ...intervened.

**ADV. LILLA CROUSE:** You had no contact with the World Health Organisation, is  
20that so?

**DR MAKGABO JOHANNA MANAMELA:** That's correct.

**ADV. LILLA CROUSE:** You didn't ask them for advice.

**DR MAKGABO JOHANNA MANAMELA:** I didn't ask them for advice, but I know their documents.

5**ARBITRATOR, JUSTICE MOSENEKE:** And have you ever moved patients of this number before for mental health care facility?

**DR MAKGABO JOHANNA MANAMELA:** I think we moved less patients from Weskoppies during strike to Life Esidimeni, it was not above 500 patients, we moved them with busses.

10**ARBITRATOR, JUSTICE MOSENEKE:** From one hospital to another.

**DR MAKGABO JOHANNA MANAMELA:** To another.

**ARBITRATOR, JUSTICE MOSENEKE:** And where else? That was straightforward, right?

**DR MAKGABO JOHANNA MANAMELA:** Yes.

15**ARBITRATOR, JUSTICE MOSENEKE:** The procedures are clear cut. There are clinicians, there are nurses.

**DR MAKGABO JOHANNA MANAMELA:** Yes but the hospital continuously placed the patients in NGOs.

**ARBITRATOR, JUSTICE MOSENEKE:** I am just following up on the questions  
20Counsel was asking you, testing you preparedness to throw out nearly 1 800

**LIFE ESIDIMENI ARBITRATION SESSION 1**

patients from a facility and then spread them out to NGOs, have you ever done that before?

**DR MAKGABO JOHANNA MANAMELA:** No I haven't.

**ARBITRATOR, JUSTICE MOSENEKE:** This was your trial run. It was the first time you were doing it, in other words.

**DR MAKGABO JOHANNA MANAMELA:** It was for the first time that I was part of the project that did that.

**ARBITRATOR, JUSTICE MOSENEKE:** You know Mr. Mosenogi who worked with you and was part of the same project, sat there and apologised. He regretted that he never told his seniors hard enough, because he did, he wrote at least two letters, not to go ahead with this placement process. Are you of the same view?

**DR MAKGABO JOHANNA MANAMELA:** Yes Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** The answer is yes?

**DR MAKGABO JOHANNA MANAMELA:** Yes.

15 **ADV. LILLA CROUSE:** Thank you Justice. Dr Manamela, we have already established you have never raised any concerns. You agree with me.

**DR MAKGABO JOHANNA MANAMELA:** That is correct.

**ADV. LILLA CROUSE:** But on the other hand, and I want to show you now that you also didn't listen at all to people raising concerns. So the first place where I am going to start, my learned friend had already taken you to the email – and I am not



**LIFE ESIDIMENI ARBITRATION SESSION 1**

going to go there – from Prof Freeman asking for a plan and that was on the 1<sup>st</sup> of April 2016. Remember that email?

**DR MAKGABO JOHANNA MANAMELA:** That is correct.

**ADV. LILLA CROUSE:** Now at the stage when he asked you for the plan, two people had already died. Were you aware of that?

**DR MAKGABO JOHANNA MANAMELA:** They were not part of the project.

**ADV. LILLA CROUSE:** Okay.

**DR MAKGABO JOHANNA MANAMELA:** Yes.

**ADV. LILLA CROUSE:** Are you saying Dr Freeman wasn't part of the project or the people that died wasn't part of the project?

**DR MAKGABO JOHANNA MANAMELA:** The people that died. At that time we had not started with placements, because he asked the report around March and placement started around May/June.

**ADV. LILLA CROUSE:** Are you sure of that?

**DR MAKGABO JOHANNA MANAMELA:** Yes, I am sure of that.

**ADV. LILLA CROUSE:** When did you move people to Takalani for the first time, can you remember? It was after the court case in March, is the evidence.

**DR MAKGABO JOHANNA MANAMELA:** Ja, I think it was after the court case. We also removed patients to Takalani during May/June as we started with placement process.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV. LILLA CROUSE:** Yes. According to the Ombud the first person died already on the 23<sup>rd</sup> of March 2016, according to his executive summary. So you can't say you haven't moved people. People were moved.

**DR MAKGABO JOHANNA MANAMELA:** Can I explain that?

5**ADV. LILLA CROUSE:** Let us not fight that now.

**DR MAKGABO JOHANNA MANAMELA:** No, I don't want to fight with you. I want to tell you that even when the termination letter was issued, the Life Esidimeni continuously allowed to let the patients be discharged either home or NGO. That is why our plan for placement started with 1 442 patients and started May to June.

10**ADV. LILLA CROUSE:** Ma'am, the first person that died in Takalani was Deborah Phehla. Ma'am, on the 5<sup>th</sup> of... on the 10<sup>th</sup> of May 2016 Prof Freeman again asked you for the plan. We have dealt with that this morning. You are aware of that.

**DR MAKGABO JOHANNA MANAMELA:** Yes.

**ADV. LILLA CROUSE:** And you soldiered on.

15**DR MAKGABO JOHANNA MANAMELA:** Yes, we did deal with that.

**ADV. LILLA CROUSE:** On the 13<sup>th</sup> of May 2016 you did a PowerPoint presentation to the MEC. You are aware of that.

**DR MAKGABO JOHANNA MANAMELA:** I don't know which one you talk, but I have been doing PowerPoint presentation to the project team.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV. LILLA CROUSE:** Yes, we've got the presentations here and we can refer to them, if you want. At that stage three people had already died. And your presentation contains no warnings. Why is that?

**DR MAKGABO JOHANNA MANAMELA:** Yes, because the NGOs' report to the 5district, at the time I did presentation in... you said it is in May.

**ADV. LILLA CROUSE:** Yes.

**DR MAKGABO JOHANNA MANAMELA:** The district has not yet reported the death to the provincial office, that's why they were not included. If we look, I don't know...

10**ADV. LILLA CROUSE:** But ma'am, you are monitoring this process, you are caring for these patients, why didn't you know about it?

**DR MAKGABO JOHANNA MANAMELA:** Because I didn't receive the report from the district that indicate that. If you would see one of my presentation where my DD placed in Life Esidimeni, they reported the deaths and those deaths were included 15in the presentation.

**ADV. LILLA CROUSE:** Did your team not go out all the time to these places to make sure the patients were safe?

**DR MAKGABO JOHANNA MANAMELA:** At that moment the team they were place, because it is still May, until July the first week, they were assisting, ensuring 20that patients move from Life Esidimeni in the correct manner. So the two were in

**LIFE ESIDIMENI ARBITRATION SESSION 1**

another institution, two in another institution and that the two were busy in Tshwane with the NGOs.

**ADV. LILLA CROUSE:** Doctor, on the 2<sup>nd</sup> of June, SADAG wrote a letter which we have dealt with as well in these proceedings, it is the 2<sup>nd</sup> of June 2016, and the letter was addressed to you. And the letter said that the health care users are not getting the correct care. Do you remember that letter?

**DR MAKGABO JOHANNA MANAMELA:** I don't remember the letter.

**ADV. LILLA CROUSE:** You spoke about it earlier and said it wasn't really to you, it was addressed to other people as well.

10 **DR MAKGABO JOHANNA MANAMELA:** Okay.

**ADV. LILLA CROUSE:** Now at that stage, that letter you didn't listen to it and five people had already died. What do you say to that?

**DR MAKGABO JOHANNA MANAMELA:** What I say is that when things happened in the district, they report to the province. At that time I did not have a report of those patients who died.

**ADV. LILLA CROUSE:** I would suggest, Dr Manamela, if experts tell me patients are not getting right care, I would immediately go and look whether patients are getting right care and then you would have realised that five people already died.

**DR MAKGABO JOHANNA MANAMELA:** That is why when I learned of the death... the first death I learned about was the one at Siyabadinga where the CEO reported. I immediately asked the board to assist us to go and investigate and I

**LIFE ESIDIMENI ARBITRATION SESSION 1**

was so saddened by the death. So if I didn't have report, I didn't know about that. I should have done something as well.

**ADV. LILLA CROUSE:** Okay, ma'am, on the 9<sup>th</sup> of June 2016 the families marched to your office and you knew about that, isn't that so?

5**DR MAKGABO JOHANNA MANAMELA:** I know they had marches but I ...intervened.

**ADV. LILLA CROUSE:** They gave you a memorandum.

**DR MAKGABO JOHANNA MANAMELA:** They handed in a memorandum.

**ADV. LILLA CROUSE:** Did you listen to that memorandum?

10**DR MAKGABO JOHANNA MANAMELA:** Yes, we listened.

**ADV. LILLA CROUSE:** You just ignored it, the process went on, isn't that so?

**DR MAKGABO JOHANNA MANAMELA:** Termination was not my decision.

**ADV. LILLA CROUSE:** Dr Manamela, we are talking about you as the person who took oath that are bound ethically, that are bound by the constitution. I am putting it  
15to you that you had no regard to the march and what was in the document handed over to the department.

**DR MAKGABO JOHANNA MANAMELA:** That was incorrect, Counsel. I was there when they were handing memorandum and it was addressed to the MEC. And if I was guided that the termination should stop, there was no reason that I won't do  
20that, but it was not given to me, just because I am a deputy project manager.

**ADV. LILLA CROUSE:** At that stage eight people had already died, eight people.

**DR MAKGABO JOHANNA MANAMELA:** Yes, it is so sad, Counsel, because they were not reporting those deaths.

**ADV. LILLA CROUSE:** And you did nothing at the march, do you agree? You did nothing after the March.

**ARBITRATOR, JUSTICE MOSENEKE:** What is your answer?

**DR MAKGABO JOHANNA MANAMELA:** What I know after the march, what I remember, I may not remember everything, was that there were meetings that were organised with the family through the communication unit of the department, because we were working as a team. We attended some meetings. The family who started with us, the committee, most of them didn't come. I remember the last two meetings we had Mr. Peterson and Me. Nomvula. The last meeting we had with the family it was only Nomvula alone. But anyway, the memorandum was responded to and was emailed to Me. Nomvula as she was coming to the meeting.

**ADV. LILLA CROUSE:** Sorry Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** No problem. Go ahead. While Counsel is taking a breather, look at the schedule prepared by the Ombud. In June when you were ignoring memoranda, 14 people died all together. How would a caring leader not even come to know of that? No it is not you, the report to you, is that it?

**DR MAKGABO JOHANNA MANAMELA:** Look, Justice, there were some ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Will you give Dr Manamela E56, will you? Just look at that schedule, that is what Counsel is dealing with, on page 8 of that schedule. It is an invitation to explain how did you get it right, so many people die around you and you don't know about it. These are people that you have placed 5where you chose and now they are dying. Look at the schedule.

**DR MAKGABO JOHANNA MANAMELA:** It is page?

**ARBITRATOR, JUSTICE MOSENEKE:** 8.

**DR MAKGABO JOHANNA MANAMELA:** Page 8.

**ARBITRATOR, JUSTICE MOSENEKE:** It is E57 page 8.

10**DR MAKGABO JOHANNA MANAMELA:** Oh E57 page 8.

**ARBITRATOR, JUSTICE MOSENEKE:** That's the one.

**DR MAKGABO JOHANNA MANAMELA:** Okay.

**ARBITRATOR, JUSTICE MOSENEKE:** Let's look at that schedule. I am sure there will be many questions about this from Counsel. But for starters, just in June 15when people were writing to you, families were marching... look how many people died, 14. Can you see that total per month on the right?

**DR MAKGABO JOHANNA MANAMELA:** Yes Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** How did that escape you?

**DR MAKGABO JOHANNA MANAMELA:** We give the district, the NGO, death 20report forms, so we were expecting them to give us report on how many patients, if

**LIFE ESIDIMENI ARBITRATION SESSION 1**

they are transferred, for example, and died. And I had some of the information, I think, for June, but not all of them.

**ARBITRATOR, JUSTICE MOSENEKE:** In other words, why didn't you know this? Why didn't you know that the project was going wrong and people that you have placed wherever are dying.

**DR MAKGABO JOHANNA MANAMELA:** The people that the Department placed in the NGO through the project team, when they started dying, I asked the board to assist us and I also placed my DDs to say go and adopt these NGOs.

**ARBITRATOR, JUSTICE MOSENEKE:** Did you know they were dying in June already? Did you know?

**DR MAKGABO JOHANNA MANAMELA:** Yes, the first patient I knew about ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** The answer is yes?

**DR MAKGABO JOHANNA MANAMELA:** Yes, some.

15**ARBITRATOR, JUSTICE MOSENEKE:** Did you know 14 people died in June.

**DR MAKGABO JOHANNA MANAMELA:** I didn't know that 14 people died in June, during June.

**ARBITRATOR, JUSTICE MOSENEKE:** Why not?

**DR MAKGABO JOHANNA MANAMELA:** Because they were not reported to my office.

20



**ARBITRATOR, JUSTICE MOSENEKE:** Okay look at July. 32 people died in addition to the 14... 32 human beings under your care lost their lives. Did you know about that?

**DR MAKGABO JOHANNA MANAMELA:** After we learned from Cullinan, we started to say send us the death report and then we knew about this in July, I think all this we knew in July.

**ARBITRATOR, JUSTICE MOSENEKE:** Why didn't you stop in August... stop it?

**DR MAKGABO JOHANNA MANAMELA:** It was already done, Justice, the project was over. What we did within my power as the director in that area was to ensure that our DDs and the district multi-disciplinary team through the other office ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** They'd rather die so that your project can go ahead, is that it?

**DR MAKGABO JOHANNA MANAMELA:** No it is not what I said, Justice.

15**ARBITRATOR, JUSTICE MOSENEKE:** What did you say?

**DR MAKGABO JOHANNA MANAMELA:** What I am saying, after I learned that some patients are passing away, I had to commence with the investigation and I had to allocate the people from my office that don't even come to my office, just go to this NGO straight and then come to the office either on Friday to report.

20**ARBITRATOR, JUSTICE MOSENEKE:** But why did you not stop the project dead in its track to save more lives.

**DR MAKGABO JOHANNA MANAMELA:** It was already completed and it was not within my power, Justice, to say let's stop everything. It was not within my power at my level.

**ARBITRATOR, JUSTICE MOSENEKE:** Why not?

5**DR MAKGABO JOHANNA MANAMELA:** At my level it was not within my power.

**ARBITRATOR, JUSTICE MOSENEKE:** Mr. Mosenogi says he was scared, dead scared of his seniors. What about you?

**DR MAKGABO JOHANNA MANAMELA:** I was just so saddened, Justice, and I reported to the leadership ...intervened.

10**ARBITRATOR, JUSTICE MOSENEKE:** Just answer the question. Mr. Mosenogi says he was scared, very scared to contradict his superiors. What about you?

**DR MAKGABO JOHANNA MANAMELA:** I was not scared to contact Mr. Mosenogi because that is where I was reporting. But I didn't go to the MEC or HOD and say that, but I reported that there are patients who are dying. And if really I had  
15to ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** And what did the MEC say when you said patients are dying?

**DR MAKGABO JOHANNA MANAMELA:** She wanted us to strengthen and prevent the further deaths and she said make sure there are no more deaths and  
20that is when the adopt an NGO strategy was developed. Because she, MEC, I am not protecting her, in the meeting, the last meeting when we place, she asked that

**LIFE ESIDIMENI ARBITRATION SESSION 1**

Tshwane, she allocated Dr Tutso from Tshwane to support the NGO, from Ekurhuleni, from Sedibeng. And then I compliment there to add my DD. And when I see that all these processes were failing, I said to my DD we have to do something, let's adopt this NGO until December, until we see things are working well. We never let it to go like that, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** You might find more joy. You go ahead.

**ADV. LILLA CROUSE:** Thank you, Justice. Justice, I am not going to finish by 17:00 today, but I can continue until then.

**ARBITRATOR, JUSTICE MOSENEKE:** Clearly not. Well I suggest we sit up to 1017:00 and then you continue on Monday.

**ADV. LILLA CROUSE:** Yes, thank you Justice. Doctor, I am not so sure when you realised that ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Shall we continue to keep some order, please. We can only get it when we are quiet and listening and we must allow the witness to answer, please. Continue Counsel.

**ADV. LILLA CROUSE:** Thank you, Justice. Mr. Mosenogi says he only heard July/August of the deaths. When did you first hear about the deaths?

**DR MAKGABO JOHANNA MANAMELA:** I first heard about the death around June from Siyabadinga.

20**ADV. LILLA CROUSE:** So you knew before Mr. Mosenogi.

**DR MAKGABO JOHANNA MANAMELA:** Yes and I reported to him.

**ADV. LILLA CROUSE:** Because when he found out... or let me put it this way... on 31<sup>st</sup> of July 2016 already 44 people died. So you knew that there were a lot of deaths, isn't that so?

**DR MAKGABO JOHANNA MANAMELA:** I didn't know there were a lot, because we were looking at the time that we placed the patient, while the report of Ombud included the death of the patients from around March. So the one that I knew, maybe Mr. Mosenogi had forgotten, because the first death that we knew at Siyabadinga, that is when things changed and then we were in a meeting with him.

**ADV. LILLA CROUSE:** Okay. And the logical thing would be to immediately find out what happened and will other people die, is that so?

**DR MAKGABO JOHANNA MANAMELA:** That is correct.

**ADV. LILLA CROUSE:** Just yes or no... Yes. And you would immediately, I am quite sure, stop all service level agreements with the NGOs to make sure that you are not now entering into a service level agreement that could cause problems for you in future.

**DR MAKGABO JOHANNA MANAMELA:** It was not within my power to do that.

**ADV. LILLA CROUSE:** You didn't check which service level agreements had been signed and which not, at the time that you heard about the deaths.

**DR MAKGABO JOHANNA MANAMELA:** I checked.

**ADV. LILLA CROUSE:** So then it was in your power, isn't it?

**DR MAKGABO JOHANNA MANAMELA:** It was not in my power to stop the project. It was not ...intervened.

**ADV. LILLA CROUSE:** I am not talking about the project, Dr Manamela, I am talking about the NGOs. They are killing patients and you are entering into contracts with them. That is what I am talking about.

**DR MAKGABO JOHANNA MANAMELA:** The first patient I know about died, it was at Siyabadinga and I didn't enter into... Province was not part of the contract for that. However, we had to investigate the death and then we asked the district to start report, to ensure that they report all the deaths to us.

10**ADV. LILLA CROUSE:** Ma'am, on the 10<sup>th</sup> of October 2016 your Department entered into a service level agreement with Tsepeng. Are you aware of that?

**DR MAKGABO JOHANNA MANAMELA:** Tsepang.

**ADV. LILLA CROUSE:** Yes.

**DR MAKGABO JOHANNA MANAMELA:** I know they entered but I don't know the  
15date.

**ADV. LILLA CROUSE:** At that stage 53 people already died.

**DR MAKGABO JOHANNA MANAMELA:** I know they entered the contract, as the contract is done in the district. But like I said, I didn't know how many other patients died, except the one I know from Siyabadinga ...intervened.

20**ARBITRATOR, JUSTICE MOSENEKE:** But why didn't you know this? This is your project?

**DR MAKGABO JOHANNA MANAMELA:** Justice, they are reporting ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** And you have the duty to look after these patients and they die and you don't know that.

**DR MAKGABO JOHANNA MANAMELA:** Justice, we depend on the report given to us ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Why didn't you get out of your office and go and look at the NGOs?

**DR MAKGABO JOHANNA MANAMELA:** When I had time, I created time, Justice, to get out of the office over my own weekend and holidays – that was the time. Because there was other work that I was required to do. So I made it a point, because patients were my priority. I visited many NGOs on my weekend and on the holidays.

**ARBITRATOR, JUSTICE MOSENEKE:** You know, the cross-examination suggests to me that you listened just to nobody. And death or not, you just pushed ahead.

**DR MAKGABO JOHANNA MANAMELA:** Not me, Justice, it cannot be me who just pushed ahead. I don't understand if it is just me who pushed ahead.

**ARBITRATOR, JUSTICE MOSENEKE:** It doesn't make it any better if you are many, do you understand that? If something is wrong, it is wrong, it doesn't matter how many you are. You placed people at a variety of, we know now, horrible places, murderous places, where they are likely to lose their lives that is what I

## LIFE ESIDIMENI ARBITRATION SESSION 1

mean by murderous, and they truly lose their lives. And you, they start dying, you are not there... You are not there to know it.

**DR MAKGABO JOHANNA MANAMELA:** The process of Department, Justice ...intervened.

5**ARBITRATOR, JUSTICE MOSENEKE:** Did you stop it? Did you manage it?

**DR MAKGABO JOHANNA MANAMELA:** Yes. In government, Justice, we managed through other people. That is why we have problems. If maybe it was only me I must go to each and every NGO and manage it every day, I will still be doing that. But we managed through the district. There is a coordinator, people with  
10special mental health care skills in each and every district.

**ARBITRATOR, JUSTICE MOSENEKE:** But how did two months go by and so many people die and you hear almost nothing about it?

**DR MAKGABO JOHANNA MANAMELA:** I said in June I heard about that. The other months they didn't report and luckily the CEO of Cullinan reported the death at  
15Siyabadinga and then I knew about that. And when I asked the team to go, we started to say let's get all the, we pushed that let's get all the death reports. But because everybody knew, project started, placement May/June, they were only giving us May/June. Some of the deaths we saw at the part of the Ombudsman from March/April, but the rest they were concentrating on placement period and that  
20is where maybe we missed some of the deaths and it is so saddened.

**ADV. LILLA CROUSE:** Doctor, on the 25<sup>th</sup> of August 2016 you signed the service level agreement with Shama and at that stage 62 people had already died. And I

**LIFE ESIDIMENI ARBITRATION SESSION 1**

am saying you are not listening to people and maybe I should quickly just go there.  
If you go to Shama... if I understand your evidence correctly, you said Shama had a license, but it is not in our papers, is that right?

**DR MAKGABO JOHANNA MANAMELA:** I said it had a license.

5**ADV. LILLA CROUSE:** Okay. Well we have hears evidence ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** But are you going to invite the witness to answer the first part? I thought you were asking why did she sign a service level agreement at that time.

**ADV. LILLA CROUSE:** Yes, I really want to do, but I just want to take her a little  
10back in time, Justice, I don't want to confuse the time line.

**ARBITRATOR, JUSTICE MOSENEKE:** No, do it the way you choose, Counsel.

**ADV. LILLA CROUSE:** The first thing we say, we only have your word that there was a license for Shama, is that right?

**DR MAKGABO JOHANNA MANAMELA:** It's right, because I am not the one who  
15gave you the document. The license was there in my office and was issued to the district.

**ADV. LILLA CROUSE:** Just yes or no, please Doctor.

**DR MAKGABO JOHANNA MANAMELA:** Yes.

**ADV. LILLA CROUSE:** So we only have your word.

20**DR MAKGABO JOHANNA MANAMELA:** Yes.



**ADV. LILLA CROUSE:** We've got no documents to show that prior to the issue of the license that there was an inspection there.

**DR MAKGABO JOHANNA MANAMELA:** There were documents in my office of inspection there.

5**ADV. LILLA CROUSE:** We only have your word on that also.

**DR MAKGABO JOHANNA MANAMELA:** Can I ask that maybe the people who gave you documents, ask those documents, the licenses from Shama as well. Because I know for sure that Shama was not give the patients without license.

**ADV. LILLA CROUSE:** So you say there was an investigation and we know that all  
10the licenses were dated 1 April 2016.

**DR MAKGABO JOHANNA MANAMELA:** That is correct.

**ADV. LILLA CROUSE:** Now can I just establish from you, did you give Shama a license on the 1<sup>st</sup> of April 2016, or did you just perhaps backdated that license?

**DR MAKGABO JOHANNA MANAMELA:** I believe the license was signed in my  
15office before April.

**ADV. LILLA CROUSE:** Before the April.

**DR MAKGABO JOHANNA MANAMELA:** Ja, somewhere there.

**ADV. LILLA CROUSE:** Before the 1<sup>st</sup> of April.

**DR MAKGABO JOHANNA MANAMELA:** Ja, somewhere around there.

20**ADV. LILLA CROUSE:** But you dated it the 1<sup>st</sup> of April.

**DR MAKGABO JOHANNA MANAMELA:** Yes because it was saying you are allowed to operate from the 1<sup>st</sup> of April. So next year we will give you another one. That is how it has been done.

**ADV. LILLA CROUSE:** Can I please take you, just on the Shama aspect, to 5volume 8 page 2827?

**DR MAKGABO JOHANNA MANAMELA:** 287.

**ARBITRATOR, JUSTICE MOSENEKE:** 28?

**ADV. LILLA CROUSE:** 2827, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you.

10**DR MAKGABO JOHANNA MANAMELA:** 287. I found it.

**ADV. LILLA CROUSE:** Do you see the document in front of you, page 2827?

**DR MAKGABO JOHANNA MANAMELA:** 2827?

**ADV. LILLA CROUSE:** Yes. Can you see it is an inspection at Shama House for traumatised people? Do you see that?

15**DR MAKGABO JOHANNA MANAMELA:** Yes, I see that.

**ADV. LILLA CROUSE:** And it has a date on it, I am just trying to find the date for you. If you can just turn the page... I have the date of that document as 20 July 2011. Can you help me find the date, please?

**DR MAKGABO JOHANNA MANAMELA:** Under background there is 20 July...  
20what? 20 July 2011.

**ADV. LILLA CROUSE:** You have the date. Yes, under background, thank you very much, Doctor. So the audit was done on the 20<sup>th</sup> of July 2011 at Shama. Do you see that? Do you agree with that?

**DR MAKGABO JOHANNA MANAMELA:** I see it is written that, Counsel.

5**ADV. LILLA CROUSE:** And then if we turn the page we see under 3.1 that the house was not tidy, there was no ventilation in the house, the rail of the staircase was lose and the top of the stair was lose, that is what it's reading there. There were no fire extinguishers. Do you agree with that or do you see that?

**DR MAKGABO JOHANNA MANAMELA:** I see that Counsel.

10**ADV. LILLA CROUSE:** The floors and walls were not clean. There were dogs inside the sleeping area. 3.2 The room was not clean, dirty blankets, falling beds were noticed. 3.3 No water in the sink, I am not sure what that means, exposed wires, no clothes in the storing cabinets. 3.4 The lights and the windows weren't working properly, floors and walls weren't clean... And it goes on and on and that  
15was in 2011. Have you seen that report before?

**DR MAKGABO JOHANNA MANAMELA:** No Counsel.

**ADV. LILLA CROUSE:** Well you say you signed the certificate in April and your evidence is, when you signed these certificates everything was hunky dory at the NGOs, is that your evidence?

20**DR MAKGABO JOHANNA MANAMELA:** To start with, Counsel ...intervened.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV. LILLA CROUSE:** Just yes or no ma'am. You can explain but just let me know where you are going.

**DR MAKGABO JOHANNA MANAMELA:** When I signed the license, I checked the report, it was okay.

5**ADV. LILLA CROUSE:** Thank you.

**DR MAKGABO JOHANNA MANAMELA:** Then I say this person, I don't even know this person.

**ADV. LILLA CROUSE:** No that is fine ma'am.

**DR MAKGABO JOHANNA MANAMELA:** 20 July 2011... the project was not done  
10in 2011 so.

**ADV. LILLA CROUSE:** Yes that is fine. Dr Manamela, we are wasting a lot of time because you are trying to cover avenues or close avenues where we are not even going. I am not suggesting that... if you say you didn't see the report, I am not suggesting otherwise. So please let me just ask my questions.

15**DR MAKGABO JOHANNA MANAMELA:** Can I ...intervened.

**ADV. LILLA CROUSE:** My next question to you is, on the 12<sup>th</sup> of April 2016, which is then 12 days after you signed the certificate, Mr. Peterson went to Shama with some of your Department's people and he testified about that. And he testified about the lose staircase and he testified that it was very dirty. And he said that, his  
20testimony is that he told the Department that that is a no-no, you can't send patients to Shama. Were you aware of that?

**DR MAKGABO JOHANNA MANAMELA:** I think I might be aware because that was in April and the placement was in June. I went also to Shama and we said we cannot bring the patients unless the one, two, three things are fixed. So by that time it means they were fixed.

5**ADV. LILLA CROUSE:** Dr Manamela, I am just trying to establish, in 2011 it is not working, 12 days after you issue the license it is not working... why is it necessary to go there if everything was fine when you issued the license?

**DR MAKGABO JOHANNA MANAMELA:** Counsel, if I can just explain... The Shama, I indicated last that they were not even licensed. That is why maybe this 10person who went in 2011 found things like that. But in 2016 we also... 2015, we found that they have patients but they are not licensed. So we started to work with them that it is either you are going to take away this patient and then we start working with them in 2015. So the 2011 report it can be true but we started working in 2015.

15**ADV. LILLA CROUSE:** Okay so Dr Manamela, what you are saying is in June when you sent patients, everything was fine?

**DR MAKGABO JOHANNA MANAMELA:** In June when patients were sent, the NGO was legible to receive the patients.

**ADV. LILLA CROUSE:** I want you to ...intervened.

20**ARBITRATOR, JUSTICE MOSENEKE:** That is the Marathon Project patients, right?

**ADV. LILLA CROUSE:** Yes. So I want you to please go to volume 7, if you can go to page 2475.

**ARBITRATOR, JUSTICE MOSENEKE:** Okay.

**ADV. LILLA CROUSE:** Do you see page 2475?

5**DR MAKGABO JOHANNA MANAMELA:** 2475, I am still checking it. Yes I have it.

**ADV. LILLA CROUSE:** There is a very unclear written date of audit, mental health NPO facility audit report dated 21 July 2017 of Shama House for traumatised persons, do you see that?

10**DR MAKGABO JOHANNA MANAMELA:** That's correct.

**ADV. LILLA CROUSE:** I am not going to refer you to that page. I want you to turn the page three pages to page 2478, this is part of the report that one can read better.

**DR MAKGABO JOHANNA MANAMELA:** I found it.

15**ADV. LILLA CROUSE:** And you can see on page 2478 the date of inspection is the 21<sup>st</sup> of July 2016. Do you see that?

**DR MAKGABO JOHANNA MANAMELA:** That is correct, yes.

**ADV. LILLA CROUSE:** If you can turn the page, paragraph 2 on page 2479 it says that they are not receiving a subsidy, do you see that?

20**DR MAKGABO JOHANNA MANAMELA:** That's correct.

**ADV. LILLA CROUSE:** If you turn the page, paragraph 3, that is page 2480. Paragraph 3 says they have got no license. So what happened to the license that you issued in April?

**DR MAKGABO JOHANNA MANAMELA:** I will not have known, because the license signed and approved in my office are given to the coordinator in the district, who are taking the licenses to the NGO – that is how the procedure works.

**ARBITRATOR, JUSTICE MOSENEKE:** Is there a register of licenses in the province?

**DR MAKGABO JOHANNA MANAMELA:** Yes, there was a register of licenses.

10 **ARBITRATOR, JUSTICE MOSENEKE:** What do you mean there was?

**DR MAKGABO JOHANNA MANAMELA:** It is just that I am not there anymore since February.

**ARBITRATOR, JUSTICE MOSENEKE:** So besides the one that you signed, there would be a license kept back or recorded somewhere.

15 **DR MAKGABO JOHANNA MANAMELA:** Yes, besides the one that I signed, there should be a file in the office with licenses. There should also be licenses for the NGOs that we are paying in the finance. So there are two ways that you can find that Shama license.

**ADV. LILLA CROUSE:** If we can turn the page... sorry, Justice, were you finished?

20 **ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**ADV. LILLA CROUSE:** I am very sorry for interrupting.

**ARBITRATOR, JUSTICE MOSENEKE:** No, no.

**ADV. LILLA CROUSE:** If you can turn the page to page 2481. On nursing staff it says the manager dispenses medicine. Do you see that?

**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel.

5**ADV. LILLA CROUSE:** That can't be right, do you agree?

**DR MAKGABO JOHANNA MANAMELA:** Partly agree and partly not, because it is the NGO like at home. They had... what I found when I visited, they had a nurse who was not full-time that is why if the nurse is not there, the manager will be giving the medication.

10**ADV. LILLA CROUSE:** And it says there the patients must do the cleaning and the washing and the cooking.

**DR MAKGABO JOHANNA MANAMELA:** I see it and I condemn this if this is what they were doing.

**ARBITRATOR, JUSTICE MOSENEKE:** And you know it is an offence under the  
15Mental Health Care Act.

**DR MAKGABO JOHANNA MANAMELA:** Justice?

**ARBITRATOR, JUSTICE MOSENEKE:** To convert patients into labourers.

**DR MAKGABO JOHANNA MANAMELA:** No, it is an offence, we can't do that. The patient only have to have rehabilitation programme.

20**ARBITRATOR, JUSTICE MOSENEKE:** And your Shama did that.



**DR MAKGABO JOHANNA MANAMELA:** That is wrong.

**ARBITRATOR, JUSTICE MOSENEKE:** Hu?

**DR MAKGABO JOHANNA MANAMELA:** That is not accepted.

**ARBITRATOR, JUSTICE MOSENEKE:** But you want to assure us that it was all fine and you issued the license and you know that it was appropriate for, how many were the, 50 patients of Esidimeni, if that was the number.

**DR MAKGABO JOHANNA MANAMELA:** Yes. Justice, this report is three months report after we placed the patients.

**ARBITRATOR, JUSTICE MOSENEKE:** It is being put to you how does a place deteriorate in three months?

**DR MAKGABO JOHANNA MANAMELA:** But it deteriorated, there were reasons maybe, but we will be worried because they were not even paid at that time.

**ARBITRATOR, JUSTICE MOSENEKE:** Why didn't you make sure that that happens?

15**DR MAKGABO JOHANNA MANAMELA:** We tried, but because it was not in my level of function, they were not paid.

**ARBITRATOR, JUSTICE MOSENEKE:** Okay Counsel.

**ADV. LILLA CROUSE:** Thank you Justice. Ma'am, we are on page 2482.

**DR MAKGABO JOHANNA MANAMELA:** 82.

**ADV. LILLA CROUSE:** At the bottom of that page it says no nursing staff. So you thought there were nursing staff but there weren't.

**DR MAKGABO JOHANNA MANAMELA:** I think this report says there were no nursing staff, when these people did three month evaluation, they didn't find any nursing staff there, that is why they say the manager give medication.

**ADV. LILLA CROUSE:** Yes.

**DR MAKGABO JOHANNA MANAMELA:** So what they don't explain, what happened to their part-time nurse, it is not indicated. But I don't like that if there is no nursing staff and the way it is.

10**ADV. LILLA CROUSE:** Dr Manamela, what question did you answer now?

**DR MAKGABO JOHANNA MANAMELA:** I answered the question of no nursing staff.

**ADV. LILLA CROUSE:** So yes or no, there was nursing staff or there wasn't at the time of this inspection?

15**DR MAKGABO JOHANNA MANAMELA:** At the time of this inspection there was no nursing staff, it is written here.

**ADV. LILLA CROUSE:** Thank you. If you turn the page to page 2484. Now we know there are a lot of patients at this place and the second handwritten paragraph says only one manager and helper. The assistant worked very hard while we were  
20visiting. Can you imagine two people caring for mental health patients of this magnitude?

**DR MAKGABO JOHANNA MANAMELA:** Ja, this is not acceptable.

**ADV. LILLA CROUSE:** But yet there is a license.

**DR MAKGABO JOHANNA MANAMELA:** This is three months after we gave license.

5**ADV. LILLA CROUSE:** If you can turn to page 2485. At the bottom of the page it says that the patients keep the medicine with them. Is that right?

**DR MAKGABO JOHANNA MANAMELA:** I see it. It is also not acceptable.

**ADV. LILLA CROUSE:** If you turn the page, page 2468, there is no emergency oxygen, suction or first aid kit available. Do you see that?

10**DR MAKGABO JOHANNA MANAMELA:** I see it.

**ADV. LILLA CROUSE:** Is that acceptable for that number of people?

**DR MAKGABO JOHANNA MANAMELA:** Not acceptable.

**ADV. LILLA CROUSE:** If you turn the page, page 2487. On nutrition it says, eat porridge in the morning, bread in the afternoon and a balanced meal at night,  
15whatever that means, do you see that?

**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel.

**ADV. LILLA CROUSE:** Is that acceptable for mental health care users?

**DR MAKGABO JOHANNA MANAMELA:** Not acceptable.

**ADV. LILLA CROUSE:** Cleanliness can improve. Is that acceptable?

**DR MAKGABO JOHANNA MANAMELA:** Cleanliness...

**ADV. LILLA CROUSE:** Is it acceptable that people stay in a dirty place?

**DR MAKGABO JOHANNA MANAMELA:** It is not acceptable.

**ADV. LILLA CROUSE:** If we can turn the page, page 2488 at the bottom, sorry at the top, a group made a fire outside. Now we know there is no fire extinguisher, there is a fire outside, busy preparing sandwiches for lunch. Some were sleeping or sitting in the sun. Does that sound like a place where you want mental health care users?

**DR MAKGABO JOHANNA MANAMELA:** That is not good.

10**ADV. LILLA CROUSE:** If you can turn the page. Page 2489. It says no therapy and it refers to clinics and hospitals. Is that acceptable?

**DR MAKGABO JOHANNA MANAMELA:** This one is acceptable, because if they need occupational therapist services, they will refer to the nearest clinic, which I believe was Refilwe.

15**ADV. LILLA CROUSE:** Now we know there were more than 50 patients there. It is a very difficult thing to transport people to such a place. But can we turn the page to page 2490? The first comment on nutrition says, the same routine is followed daily, it can improve, no menu available. Do you see that? It says make food according to the notions they receive. Is that acceptable?

20**DR MAKGABO JOHANNA MANAMELA:** Not acceptable.

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV. LILLA CROUSE:** 11, linen and bathing requirements, no towels or paper towels or soap in the bathrooms. Is that acceptable?

**DR MAKGABO JOHANNA MANAMELA:** No Counsel.

**ADV. LILLA CROUSE:** Busy with building new ablution blocks. It is acceptable to build around patients?

**DR MAKGABO JOHANNA MANAMELA:** No.

**ADV. LILLA CROUSE:** The next page, page 2491, at the bottom, use cheap labour for building projects, poor workmanship. What do you say to that?

**DR MAKGABO JOHANNA MANAMELA:** It is also not acceptable.

10 **ADV. LILLA CROUSE:** It says no laundry. Is that acceptable?

**DR MAKGABO JOHANNA MANAMELA:** No.

**ADV. LILLA CROUSE:** No sickbay, is that acceptable?

**DR MAKGABO JOHANNA MANAMELA:** No.

**ADV. LILLA CROUSE:** The storeroom is untidy, is that acceptable?

15 **DR MAKGABO JOHANNA MANAMELA:** No.

**ADV. LILLA CROUSE:** Store petrol with food, is that acceptable?

**DR MAKGABO JOHANNA MANAMELA:** No, not at all.

**ADV. LILLA CROUSE:** If you can turn the page, page 2492.

**ARBITRATOR, JUSTICE MOSENEKE:** But look at the no's, Counsel, and compare them with the yes, it is incredible. Just about nothing... can you see that Dr Manamela?

**DR MAKGABO JOHANNA MANAMELA:** Yes.

5**ARBITRATOR, JUSTICE MOSENEKE:** Just about nothing is suitable on page 2491, can you see that? Anyway. Please go ahead.

**ADV. LILLA CROUSE:** If you turn the page, page 2492. Rooms are very untidy. Keep pet food in room. Linen seems dirty. Is that acceptable?

**DR MAKGABO JOHANNA MANAMELA:** No.

10**ADV. LILLA CROUSE:** If you go to the last paragraph, it says, now it says one fire extinguisher, not adequate for the big area. It says the gate is not locked, no security staff. Is that acceptable for mental health care users?

**DR MAKGABO JOHANNA MANAMELA:** No.

**ADV. LILLA CROUSE:** So what you are telling us, Dr Manamela, is that in 2011  
15we know now that the place was not fit for patients. We know 12 days after you allegedly signed the certificate, it wasn't fit for human, for mental health care users, do you agree? We know that now.

**DR MAKGABO JOHANNA MANAMELA:** I don't have report of 12 days, but the 2011 report I also don't have, because Shama was not part of our NGOs.

20**ADV. LILLA CROUSE:** I am not asking whether you have seen that report. I am just saying we have got a legal presumption that if something is like a certain way

## LIFE ESIDIMENI ARBITRATION SESSION 1

and a certain way in the future, it means in between it was also in that way, it is a logical explanation, isn't that so?

**DR MAKGABO JOHANNA MANAMELA:** Although it is so, we went, like Mr. Peterson told you, when we were preparing in 2016... from 2011 to 2015 it is almost 5four years and we in the province we never knew about Shama, only the people who placed the patients knew about it. We should have terminated Shama immediately if we know. But when we knew about it, it is then that we started to take them through to improve so that we can ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** But how did Life Esidimeni patients end up 10there?

**DR MAKGABO JOHANNA MANAMELA:** After we took Shama through the process of improving and then at the time we signed the licenses, the area was eligible for accommodation.

**ARBITRATOR, JUSTICE MOSENEKE:** What was this desperation about? I was 15hoping that you would come and tell us, do you know that? Why did it have to happen, whatever the conditions were?

**DR MAKGABO JOHANNA MANAMELA:** Justice, it had to happen.

**ARBITRATOR, JUSTICE MOSENEKE:** Why?

**DR MAKGABO JOHANNA MANAMELA:** As the contract was already terminated 20and that is why we were trying as mental health practitioner to assess and include all these people who can assist us, engineer, the family and the rest. So as the

**LIFE ESIDIMENI ARBITRATION SESSION 1**

leadership terminate the contract, Life Esidimeni also had challenges, their staff were also leaving and there was no way that we can try to say we can't take the patients. But we must, we had to ensure that as we sign, as we take them that the place is okay. But it is unfortunate, in three months' time they go there, it is horrible and it is so saddening.

**ARBITRATOR, JUSTICE MOSENEKE:** So the person who cancel the contract is the one who is responsible for all this, right? The one who terminated the contract, we know it is the HOD, right, was it him?

**DR MAKGABO JOHANNA MANAMELA:** The one who terminated the contract?

10**ARBITRATOR, JUSTICE MOSENEKE:** Yes, who signed the termination...

**DR MAKGABO JOHANNA MANAMELA:** Letter.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**DR MAKGABO JOHANNA MANAMELA:** Yes Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** In his position would you have signed the  
15termination letter?

**DR MAKGABO JOHANNA MANAMELA:** Yes, in his position he will have done that.

**ARBITRATOR, JUSTICE MOSENEKE:** No, in his position would you have signed it?

20**DR MAKGABO JOHANNA MANAMELA:** No. Or in his position as the HOD?



**ARBITRATOR, JUSTICE MOSENEKE:** If you were HOD and all of what you know and what was happening then, would you have signed the termination letter?

**DR MAKGABO JOHANNA MANAMELA:** Yes, in his position I would have signed the termination letter and looking at what is the process to ensure the patients are going to be well cared for. But if they were not going to be well cared for, I would not have signed the termination letter.

**ARBITRATOR, JUSTICE MOSENEKE:** I don't know what you are saying. Yes, I would have signed it or no, I wouldn't have signed it, what are you saying?

**DR MAKGABO JOHANNA MANAMELA:** I will sign it provided it is within the period that the patient will be transported safely and be in an adequately resourced place. I will sign it. But if I was the HOD and realised that what I have just said won't happen, I will not have signed it.

**ADV. LILLA CROUSE:** Justice, I have got two questions on this aspect.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, absolutely. And then we can go and rest a bit, isn't it?

**ADV. LILLA CROUSE:** Thank you Justice. Doctor, you have already said that because of the deaths, you relooked at the service level agreements, is that so? You've just said it earlier today.

**DR MAKGABO JOHANNA MANAMELA:** Because of the death?

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**ADV. LILLA CROUSE:** Yes, because people were dying, you realised something is wrong and as a responsible manager, you went to look at the service level agreements, isn't that so?

**DR MAKGABO JOHANNA MANAMELA:** I was referring to the service level agreement between the province and Life Esidimeni. The service level agreement between the NGOs and the Department is signed at the district level not at my level in the province.

**ADV. LILLA CROUSE:** Ma'am, I am going to make it short.

**DR MAKGABO JOHANNA MANAMELA:** Okay.

10**ADV. LILLA CROUSE:** With Shama under your control of your project, on the 25<sup>th</sup> of August 2016 you signed or your Department signed a service level agreement with situation as we have here, with reports as we have here. Do you agree? And at that stage already 65 people have died. What do you say to that? Is that responsible management?

15**DR MAKGABO JOHANNA MANAMELA:** What I will say to that is when the people had to sign, had to enter into service level agreement with the district, it was reported to my office that Shama didn't agree with some of the clauses and they even changed them. And then when they were confronted, when the district checked that, they took the service level agreement to their lawyers and that is why  
20it was signed very late, while even the patients were already there. And that was the report that I got from the Chief Director of Tshwane.

**ADV. LILLA CROUSE:** Can I just put it to you, the responsible manager would have said please don't sign the service level agreement, because they are not up to standard. What do you say to that?

**DR MAKGABO JOHANNA MANAMELA:** I will say that will be correct.

5**ADV. LILLA CROUSE:** So you made a mistake there.

**DR MAKGABO JOHANNA MANAMELA:** No, this report was not sent to me on the 21<sup>st</sup> of June as it was done, it was not sent to me. Because the people who were doing the evaluation ...intervened.

**ADV. LILLA CROUSE:** It wasn't done on the 21<sup>st</sup> ...intervened.

10**DR MAKGABO JOHANNA MANAMELA:** ...were reporting to the district, so they didn't send it to me immediately and by the time I see about the service level agreement signed, it was after it was signed, when I saw that Shama got a problem and I sent one of my manager, DD in the office, to station there ...intervened.

**ADV. LILLA CROUSE:** You didn't cancel the service level agreement. You didn't  
15cancel the license as a responsible manager would have done.

**DR MAKGABO JOHANNA MANAMELA:** I didn't cancel the license, because that is what was within my area. But I sent people to go and find out what is happening to Shama and decide if they can improve and let the Shama manager commit themselves to the improvement.

20**ADV. LILLA CROUSE:** You didn't cancel the service level agreement as a responsible manager would have done.

**DR MAKGABO JOHANNA MANAMELA:** The district didn't cancel the service level agreement and I didn't cancel the license.

**ADV. LILLA CROUSE:** Thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** How were you appointed to your post? By what process?

**DR MAKGABO JOHANNA MANAMELA:** By what process?

**ARBITRATOR, JUSTICE MOSENEKE:** By which process, yes.

**DR MAKGABO JOHANNA MANAMELA:** Okay, I was appointed to the post by the process and the virtue that I am a senior, I have the highest qualification in mental health care services. And although I had experience at the CS, the CEO, but I was appointed there because I got a letter that I would be appointed in the mental health care unit.

**ARBITRATOR, JUSTICE MOSENEKE:** You were once the CEO of a hospital, were you not?

15 **DR MAKGABO JOHANNA MANAMELA:** I was, that is correct.

**ARBITRATOR, JUSTICE MOSENEKE:** At which hospital?

**DR MAKGABO JOHANNA MANAMELA:** I was the CEO of Melody Hospital and I was the CEO of Natalspruit Hospital.

**ARBITRATOR, JUSTICE MOSENEKE:** How long were you the CEO of Mamelodi Hospital?  
20

**LIFE ESIDIMENI ARBITRATION SESSION 1**

**DR MAKGABO JOHANNA MANAMELA:** I think over six years I was at Mamelodi Hospital.

**ARBITRATOR, JUSTICE MOSENEKE:** But was your post advertised and were there other competitors?

5**DR MAKGABO JOHANNA MANAMELA:** For Mamelodi Hospital?

**ARBITRATOR, JUSTICE MOSENEKE:** No, for your current post.

**DR MAKGABO JOHANNA MANAMELA:** No, it was not advertised.

**ARBITRATOR, JUSTICE MOSENEKE:** Are you a political appointee?

**DR MAKGABO JOHANNA MANAMELA:** I am not a political appointee.

10**ARBITRATOR, JUSTICE MOSENEKE:** And then the day is done. It is 17:05 and we need to... I am obliged to inform you that, and warn you that you should be here on Monday at 9:30. There are at least current Counsel still busy and there are three others who will ask you questions. Two others and a re-examination. So we still have a long way to go and I hoped that we would (inaudible) today, but  
15unfortunately we are not there. So I require you to be here present at 9:30 on Monday to submit to further cross-examination. Is it understood? (Vernac).

**DR MAKGABO JOHANNA MANAMELA:** (Vernac).

**ARBITRATOR, JUSTICE MOSENEKE:** Okay, I said it in English and in Sepedi language. We are going to meet here at 9:30 on Monday. Do enjoy your weekend.

20We are adjourned.

**END OF SESSION 3**

