

**LIFE ESIDIMENI ARBITRATION**

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

**DATE: 8<sup>th</sup> DECEMBER 2017 DAY**

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**SESSION 1 – 3.**

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**BEFORE ARBITRATOR – JUSTICE MOSENEKE**

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**WITNESSES:**

**MR. COOK**

**MS. INA GROBLER**

**MS. NOMVULA NONJABE**

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## SESSION 1

**ARBITRATOR, JUSTICE MOSENEKE:** Good morning.

**MR COOK:** Justice Moseneke before the cross-examination resumes, may I address you briefly?

5**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**MR COOK:** Thank you, I was loathe to interfere with the proceedings yesterday afternoon because I had hoped, as I think many of us had, that the examination of my client would be completed yesterday afternoon, but that was not to be unfortunately. What we are engaged with at the moment, is a cross-examination by  
10Adv Hutamo who represents the Gauteng government of his own witness, in circumstances where he lectured effectively not to lead the witness in the first instance. Now I know that the answer to that, you will tell me, is that that is the procedure that you have adopted, but I would like to make these submissions and they are based on general principles and also upon procedural fairness to the  
15witness himself. What I am going to submit to you, is irrespective of what one might say about the conduct or not, who he is and what he has done and what he has not done, as a matter of general principle, the witness has been subjected to four fairly gruelling cross-examinations by four different Counsel. The witness has also been subjected to some fairly searching questioning by you yourself and many issues  
20have been traversed time and again. Yesterday afternoon, my learned friend was traversing again some of the issues that have already been addressed, bearing in mind again that this is his witness which he had the right to lead in the first instance.

I would ask that you make a ruling that the cross-examination be limited to new matter or different points that need to be made and that we should not allow a re-hashing of issues which have been traversed a number of times. Cross-examiners very often do not like the answers that witnesses give to questions, but there does  
5 come a time where you are stuck with the answer, you are stuck with the evidence and then you can argue at the end of the day is it credible, has it any weight, is it truthful whatever, but the answers are there and I can't think of anything really that is going to come out that is new in this matter which is going to be of guidance to you or assistance to you in determining the disputes which you identified when I first  
10 addressed you when the witness started to testify, so that I would ask that you direct that the cross-examination be on a limited scale so that we can complete the cross-examination of my client essentially because he has traversed most issues that you can conceive of. If there is something new obviously, then my learned friend can pursue that, thank you.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Yes thank you, let's start by getting responses from various Counsel. Ms Stein?

**ADV NIKKI STEIN:** Thank you Justice, Justice this is something that of course we will leave to you, but perhaps just to highlight that one of the purposes of these proceedings, is to search for the truth, for an explanation for the families and get the  
20 information that they have been denied for for more than 2 years to this point. We trust Justice that any unfairness in the cross-examination, with respect, it is your role to protect the witness, but that can't happen and it should not happen at the expense of the families getting their explanations that they seek. Doctor Selebano,

we appreciate that he has been here for a long period of time, we appreciate that he has been answering the questions that have been posed to him and we would support an approach that would conclude the cross-examination in a manner that allows the families to get that full explanation.

5 **ARBITRATOR, JUSTICE MOSENEKE:** But Mr Cook is surely right that no amount of repetition will improve the ability to resolve the dispute between the parties.

**ADV NIKKI STEIN:** Of course Justice to the extent that there is repetition, that doesn't take the objective of explanations and information much further, but to the extent that there are different angles to cover, that in our submission, is necessary  
10 for the matter to proceed.

**ARBITRATOR, JUSTICE MOSENEKE:** What do you say to his submission that a party may not cross-examine its own witness?

**ADV NIKKI STEIN:** Justice, this is, an, arbitration [inaudible] generous as we have said on a number of occasions, it is regulated by the procedure that has been  
15 agreed to between the parties to the arbitration. It has been the approach that has been adopted in relation to other witnesses as well. I think Adv Hutamo would be able to deal with that point in more detail than I can, but just to highlight that the terms of reference make clear that the parties have agreed on the process for the arbitration.

20 **ARBITRATOR, JUSTICE MOSENEKE:** That point that Mr Cook makes that maybe a good point is also that quite often Counsels seek a particular answer and they

press on and press on and I have often said you are bound by that answer now move on, isn't it so?

**ADV NIKKI STEIN:** Justice in those instances, your role with respect is to protect the witness from that type of repetitive questioning and we would support that going forward.

**ARBITRATOR, JUSTICE MOSENEKE:** Very well thank you Ms Crouse?

**ADV LILLA CROUSE:** Thank you Justice, to the two issues that were raised. The first is whether a person can cross-examine their own witnesses, we have dealt with this at this hearing and it lies within a person to cross-examine the witness that he subpoenaed. The second question I have to agree with my learned friend Ms Stein that it is your role to protect the witness, it will be a sad day for you to make a blanket decision now. I trust that my learned friend for the State does not want to repeat everything that was said in cross-examination, but in order for him to properly lift out the issues that he wants to lift out, he must be given leeway in that regard, but of course, a witness must not be hammered and be abused and we leave that entirely in your hands that will not happen, as it has not happened before in these proceedings, thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you. Advocate?

**ADV DIRK GROENEWALD:** Justice we don't have any specific remarks that we would like to make. In general, we would just like to say that we think it is the right of each and every Counsel to cross-examine the witness, whether or not that question raised by Counsel has been raised by another Counsel, we submit that

that must be allowed as a general rule in these proceedings for a number of reasons. Each and every Counsel and each and every party has their own line of questioning and a reason for asking that question, so as a general principle, we submit that a Counsel should not be limited to not ask questions that have already been asked by other Counsel, to the extent that the argument has been made that Dr Selebano is a witness of the State, that he cannot be cross-examined by the State, I will leave it up to my learned colleague to address you on that specific issue.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja of course at the same time, repetition for its own sake, advances nothing.

**ADV DIRK GROENEWALD:** Indeed so.

**ARBITRATOR, JUSTICE MOSENEKE:** In resolving a dispute between the parties.

**ADV DIRK GROENEWALD:** Indeed so Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Advocate Ngutshana?

**ADV PATRICK NGUTSHANA:** Thank you Justice Moseneke, in relation to the first issue that an issue should not be repeated, that is that a question should not be repeated time and time again, you have repeatedly throughout the proceedings, guided by the parties by informing us that we are bound by the answer that the witness provides. I think to that extent, my view is that you have executed your duty and now you have been invited to make a ruling on whether you had executed your duties or not as a presiding officer. In my view that has been done, so in so far as there are repetitive questions, yes it is fair, I think the concern is fair, that has

occurred I think from all of us here, I think we should take heed so that we can expedite these proceedings and not repeat questions that has happened and that accounts for some of the delay with this witness Justice Moseneke and the second issue whether the State can cross-examine Dr Selebano who happens to be their employee, Justice, we are guided by the terms of reference. The terms of reference are clear on that and we can't depart from that. We have been conducting ourselves within the four corners of those terms of reference. In order to explain this, I think once and for all, I think finally is that the agreement of the parties is that a witness may be called and then it is the decision of the party that calls that witness, whether to lead that witness. If the party decides not to lead that witness, that witness will be led by evidence leaders, so if the witness is led by an evidence leader, it is open to whoever called that witness, to be cross-examined by that party, so there is nothing peculiar with that. It is in line with the terms of reference Justice. We do know the general principles and the general rules in relation to that, but the terms of reference, we decided that we are going to conduct ourselves in this fashion. So the concern in my view which is valid, is repetition and we shall avoid asking repetitive questions, thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Very well Advocate Hutamo?

**ADV TEBOGO HUTAMO:** Good morning Justice, I must indicate that the concerns which have been raised, have been noted, but what has come out from the witness, is that on every turn when he was cross-examined by different Counsel, there have been different answers which have been provided, which somehow necessitated the repeat of some of those questions. However, I do take note of the fact that we

should not just repeat questions for the sake of making a point and on that score, I will accept that we should avoid putting repetitive questions if the question has been answered very clearly. On the second aspect of cross-examination-

**ARBITRATOR, JUSTICE MOSENEKE:** And that is good practice isn't it?

5**ADV TEBOGO HUTAMO:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Procedural practice?

**ADV TEBOGO HUTAMO:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** If the witness gives an answer and you don't like it, you could probe a little, but if the answer stands, you are bound by the  
10answer and what remains becomes an answer on credit isn't it?

**ADV TEBOGO HUTAMO:** Yes as I was saying, it would depend on the type of answer that the witness would have provided. If more than once he has given the same answer, there is no point to persist with that question, but if an occasion has arisen that there are different answers, then that question would have to be  
15repeated so that it can be cleared. It was on that basis that the questions were put and as I say, I do think we should concede that we should not repeat for the sake of doing so. On the second aspect, without being repetitive, I cannot add more than what my learned colleagues have said about the procedure adopted with regard to the cross-examination of witnesses.



**ARBITRATOR, JUSTICE MOSENEKE:** That's fine, Mr Cook naturally I would have heard your colleagues first and you have a right of reply to the initial submissions having heard your other learned colleagues, is there anything you want to add?

**MR COOK:** Very briefly Justice, the basis for the ruling is not the procedure. I said when I addressed you that I know what the answer is, so you don't have to worry with that. The basis is repetition and I would ask you to make a ruling on that score thank you.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you, all Counsel before me, are very alive to undesirability of repetition, I think every one of them has noted the point and I have, you have been here for days and I urge Counsel to move on every time they didn't like the answer. If you don't, it simply means the answer is different from your expectation. You accept the answer having probed and you move on and two, you are quite right and you did all acknowledge repetition for its own sake, takes us nowhere, but I don't think I am inclined to make any ruling. I think Counsel should observe proper practice and by and large they have. It has been my job to make sure that they do. There has been repetition on occasions and I think everybody is alive to the fact that we ought not to have undue repetition, but certainly I won't restrict anybody and you know the answer about the other matter. Parties had a pre-arbitration hearing conference and there is a pre-arbitration minute. All arbitrations as you know, are conducted within the four corners of the agreement between the parties provided the agreement is not unlawful, the arbitrator is bound by that arrangement. So I am afraid the State is entitled to continue with the cross-examination and I am not making a ruling that they are

limited in any way, but certainly where there is repetition, I will intervene in favour of fairness to the witness thank you. You remain under your oath to tell the truth and nothing but the truth. Advocate Hutamo?

**ADV TEBOGO HUTAMO:** Good morning Dr Selebano, thank you for once again making the time before these proceedings. During the past days, you have made quite a number of concessions about the failure of the implementation of the marathon project, do you recall that?

**DR BARNEY SELEBANO:** Ja you are not specifying them-

**ADV TEBOGO HUTAMO:** Well I am trying to avoid having to repeat those aspects which were highlighted as failures in the implementation of the project.

**DR BARNEY SELEBANO:** Okay in a general sense yes.

**ADV TEBOGO HUTAMO:** That the project has not been a success in its implementation.

**DR BARNEY SELEBANO:** Yes there were failures in the implementation.

15**ADV TEBOGO HUTAMO:** And for quite some time, like you have mentioned that you take accountability for all those failures, do you recall that?

**DR BARNEY SELEBANO:** Yes as the accounting officer yes.

**ADV TEBOGO HUTAMO:** As the accounting officer. Would that also entail you taking responsibility as the head of the department?

20**DR BARNEY SELEBANO:** No I would say the disciplinary hearing will make that determination.

**ADV TEBOGO HUTAMO:** So is there a difference between you taking accountability and you taking responsibility of the consequences attended to the failures of the implementation of the project?

**DR BARNEY SELEBANO:** By definition, there is a difference between  
5accountability and responsibility.

**ADV TEBOGO HUTAMO:** So for now, you are not taking responsibility?

**DR BARNEY SELEBANO:** Yes I am saying the disciplinary hearing will ventilate  
that.

**ARBITRATOR, JUSTICE MOSENEKE:** Would you clarify the difference between  
10responsibility and accountability?

**DR BARNEY SELEBANO:** In broad terms, accountability you are seen as an  
accounting officer and whatever happened under my watch irrespective of I knew, I  
did it or I didn't do it, would have to come to me because it was under my watch, but  
then at a level of responsibility, I am giving it in broad terms, would be when you  
15were actually doing the actual deed itself yourself and you were responsible for the  
running of what you were doing, then you have to take responsibility at that level. I  
can give an example Judge if you want, if you want to send me to the airport to go  
and give somebody important documents and he is catching a 2:00 flight and you  
give me enough time to go there and I then decide that I will go and have lunch and  
20play around and I don't deliver that, you might take accountability because I am  
responsible to you in that sense, but in terms of really then being directly  
responsible for not giving the said person the message, you might say no but I have

done everything, I gave him a car, I gave him the documents at 11:00 for 2:00, he chose to go to the airport at 2:00.

**ARBITRATOR, JUSTICE MOSENEKE:** So you think accountability is the same thing as vicarious liability do you?

5**DR BARNEY SELEBANO:** Judge I don't know, but in medicine, I know the National Health Act when it talks about vicarious liability, please forgive me on that one, I am just telling like I know it, is that they say as a doctor, if I sit and do an operation as an example and something goes wrong there and I wouldn't have done anything beyond what I know in terms of my skills, but something went wrong, the State may  
10take vicarious liability saying you did that, whatever you did that, you did that for the State and you didn't go all out on yourself knowingly. The difference would be that I am not a surgeon, I don't know anything about operations and then suddenly I want to perform an operation, then the State can't take vicarious liability that is how I understood it.

15**ARBITRATOR, JUSTICE MOSENEKE:** You are saying you have done nothing wrong but you accept accountability because you are the head of the department?

**DR BARNEY SELEBANO:** That's correct and I can't walk away from it.

**ARBITRATOR, JUSTICE MOSENEKE:** So your attitude is your conduct was blameless, but you take accountability because you were the head of the  
20department?

**DR BARNEY SELEBANO:** The head of the department.

**ARBITRATOR, JUSTICE MOSENEKE:** I just want to understand your concerns, that's, all, I don't want to blame you, I just want to understand what you mean by that. So you don't admit or accept that you did anything wrong, but you say you are accountable because you were the head of the department, is that it?

5**DR BARNEY SELEBANO:** That's correct. I understand it in that way.

**ARBITRATOR, JUSTICE MOSENEKE:** You understand it that way and as for responsibility, do you have any?

**DR BARNEY SELEBANO:** The trial is saying-

**ARBITRATOR, JUSTICE MOSENEKE:** Are you responsible for any of these miss-  
10deeds, more precisely the wrongful and reckless and unlawful conduct which occurred within the marathon project? Were you responsible for anything there?

**DR BARNEY SELEBANO:** I would say no until and I will allow the disciplinary hearing to ventilate that.

**ARBITRATOR, JUSTICE MOSENEKE:** And that is your honest view, that you are  
15not responsible for any of the miss-steps in the implementation of the marathon project related to Life Esidimeni?

**DR BARNEY SELEBANO:** That is my honest view that the miss-steps happened under my watch.

**ARBITRATOR, JUSTICE MOSENEKE:** No I am talking about responsibility now.  
20We started first with accountability and we are done. You are saying I am accountable because I am the head of the department. The second part is

responsibility on your definition and you say you are not responsible for any of the unlawful and negligent conduct that happened in the marathon project?

**DR BARNEY SELEBANO:** I would say yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel?

5**ADV TEBOGO HUTAMO:** Thank you Justice, Dr Selebano if you can try and locate before you, a document ELA111, it's an interview that you had with the Ombud, please turn to Page 22 of the transcript of the interview that you had with the Ombud. From the interview, you will note that your response appears at Page 22 where it is recorded Dr Selebano, can you just read for the record, what did you  
10convey to the Ombud like when you had the exchange with him?

**DR BARNEY SELEBANO:** I conveyed that I should take the responsibility and that is why I say –

**ADV TEBOGO HUTAMO:** Can you just read it for the record? If I can make it easier for you, I am going to read it for you, you said no, the pressure on the staff  
15became such that they and I will take the sword for that, because you know when you are not there for your staff and things go wrong, you cannot blame your staff as the head of administration, I should take the responsibility and that is why I say I will take the sword for them. They be saved, I can rather walk because the pressure became so much on them. What did you mean when you conveyed to the Ombud  
20that you will take responsibility?

**DR BARNEY SELEBANO**: In that sense, I actually meant that I take accountability. If you read it in full, it says exactly what I have been saying, that I was not there for the staff, so I was not there for the staff.

**ADV TEBOGO HUTAMO**: Please turn to Page 24, also in your exchange Line 11, do you see that, where you have said that you no, as the head of the department, I will take responsibility even though I was not responsible for this 10 because it is an administrative issue. Do you recall giving the evidence that the decision to terminate the contract was your own decision as it was an administrative decision which did not require the approval of the MEC?

10 **DR BARNEY SELEBANO**: I think we have agreed on that yesterday.

**ADV TEBOGO HUTAMO**: Yes, so what responsibility were you alluding to when you said you will take responsibility in this regard?

**DR BARNEY SELEBANO**: It was in spoken language, but I was alluding to exactly what I said that you would distinguish responsibility and now accountability and I 15 said I was not there for the staff, meaning even when they were doing all these things, I was not there, but the accountability, lies with me, I cannot walk away and suddenly pretend as if it's the problem of the staff. I as the head of the department, I take accountability there.

**ADV TEBOGO HUTAMO**: Okay thank you, from your use of the two words 20 accountability and responsibility, can you just explain to the audience before you, to what extent do you, as the head of the department, take accountability and

responsibility in respect of the unfortunate loss of lives of the mental healthcare users?

**DR BARNEY SELEBANO:** I am saying I take accountability as the Judge did say you were the captain of the ship and I said yes I am the captain of the ship. If anything goes array in that ship, whether I was at the back of the ship, it is immaterial, I am the guy who is captaining the ship, so I take that accountability.

**ARBITRATOR, JUSTICE MOSENEKE:** You know talking about ships, a week ago an Italian captain who left the ship before his passengers, did you read about that?

**DR BARNEY SELEBANO:** Yes.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Do you know what happened to him?

**DR BARNEY SELEBANO:** He ran away when the ship was sinking.

**ARBITRATOR, JUSTICE MOSENEKE:** He ran away and recently before a Tribunal, well you don't know what happened to him?

**DR BARNEY SELEBANO:** No I am not up-to-date, all I know is that Captain when he was told go back to the ship, he was already outside and he said I am not going there.

**ARBITRATOR, JUSTICE MOSENEKE:** Do you know how many years he was sentenced to prison?

**DR BARNEY SELEBANO:** No.

20 **ARBITRATOR, JUSTICE MOSENEKE:** You can Google that during tea time, but he had done nothing to drown the people, but he was captain of the ship and he has



to take all steps necessary to protect the lives of those under his command and he did not do so. How does that example I have given you now, fit into your use of responsibility and accountability?

**DR BARNEY SELEBANO:** As I would know in the same example, the captain was told do not sail towards that area, there are too many rocks there and it will ground the ship. He deliberately and knowingly ignoring everybody's advice, even the advice around people with him, he went and did that and he knew that he was doing, was wrong.

**ARBITRATOR, JUSTICE MOSENEKE:** And what about this captain Dr Selebano?  
10 Sorry let us not have any heckling, we are having quite a serious discussion actually.

**DR BARNEY SELEBANO:** I am saying knowingly, there was no way that I would have known and sat there and deliberately hatched a plan to lose lives.

**ARBITRATOR, JUSTICE MOSENEKE:** No but was this captain warned?

15 **DR BARNEY SELEBANO:** Yes by his own team. In this case, it would be like Manamela and everybody came to me and said don't do it and then I still went on to do it, that would be big distinction.

**ARBITRATOR, JUSTICE MOSENEKE:** But was Captain Selebano warned that this ship might get into trouble if we proceed?

20 **DR BARNEY SELEBANO:** There were discussions from- okay let me not waste time, there were like I conceded, there were signs but we missed the signs.

**ARBITRATOR, JUSTICE MOSENEKE:** That is where the repetition comes from you realise that.

**DR BARNEY SELEBANO:** We missed the signs.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel might have to go over again and show you what your evidence was. So when a captain is alerted to impending risk and does not take steps to prevent it, should he or she be held accountable do you think?

**DR BARNEY SELEBANO:** Accountable yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Should he or she be held responsible?

10 **DR BARNEY SELEBANO:** That is why I am saying I will ventilate that in a disciplinary hearing where we can look-

**ARBITRATOR, JUSTICE MOSENEKE:** No we are talking theoretically. Should it happen in your view, I am not talking about you. In your view, should a captain like the one we have talked about, the Italian captain be held-

15 **DR BARNEY SELEBANO:** The difficulty with that example Justice is that the Italian captain knew exactly what he was doing, he knew exactly what he was doing without doubt.

**ARBITRATOR, JUSTICE MOSENEKE:** And you?

**DR BARNEY SELEBANO:** I didn't know exactly that the outcome in  
20 implementation is going to be this, I didn't know that, I wouldn't have known the outcome.

**ARBITRATOR, JUSTICE MOSENEKE:** Didn't know or didn't want to know?

**DR BARNEY SELEBANO:** No I didn't know.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel?

**ADV TEBOGO HUTAMO:** Thank you Justice, can you please turn to Page 64 of 5 that record? If you can start at Page 63 I beg your pardon, Line 16, Professor Makgoba asked you the question, what do you regret most about this project. Please turn to Page 64 I am just going to read through the responses that you have given. Turn to Page 64, Line 5 and your response was you see Professor, when I sat with SADAG and all those guys and then the Professor said ja, ja, ja and then 10 your response was that they raised, let me tell you Professor, you know this was a painful journey, I used to- well parents will argue that we never spoke to them, well maybe at a one on one yes, when we went to see the parents, I picked up that you know I remember at Randfontein I was there, I was addressed, it was a Saturday morning and then the Professor then said ja, they told me about it that you 15 continued at Line 15, I came back very depressed not because of anything and I promised those people that you know I look like I never fulfilled my promises and that was the turning point for me that I said you know what, we will have to do this thing differently. We are going to throw, I told them, I said we are going to throw our own people into turmoil.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Did you say that?

**DR BARNEY SELEBANO:** Yes I said that and I can explain exactly what I meant.

**ARBITRATOR, JUSTICE MOSENEKE:** I am not asking for an explanation now.  
You might be asked for that, but you said that?

**DR BARNEY SELEBANO:** I said that, I remember very well.

**ADV TEBOGO HUTAMO:** And then the exchange continued from Line 22, then you  
5said as you know, it is sad Professor because I saw it, we picked it up. I will give an  
example of what I mean by turmoil, families who stood up, said we hear you, we  
hear you, but let us tell you about our lives with these patients. If you turn to Page  
65-

**ARBITRATOR, JUSTICE MOSENEKE:** Did you say that?

10**DR BARNEY SELEBANO:** Yes I said that and I can explain that yes.

**ADV TEBOGO HUTAMO:** And then you continued to say and some of the patients  
I mean you realised that since they have been hospitalised, the families could  
breathe better and the Professor then said they could have a life and then from Line  
5, then you continued to say and we were not giving that guarantee to the families  
15that you will still continue to breath better, that is what changed it and I knew that  
no, no, no, we are doing it the wrong way, because in a pursuit to do whatever and  
achieve what we want to achieve here, you have forgotten there are families.

**DR BARNEY SELEBANO:** That is right.

**ARBITRATOR, JUSTICE MOSENEKE:** You said those words?

20**DR BARNEY SELEBANO:** I said those words and I can explain them.

**ADV TEBOGO HUTAMO:** So you were aware of these issues which were raised by the families over and above your own clinicians in April of 2015 and by SASOP in June of 2015.

**DR BARNEY SELEBANO:** No, no, no we have gone through the letter by SASOP, 5I have given my view on the letter and what also transpired with the letter that I said I don't recall having it here. When I said what we are doing, we are doing it the wrong way and I explained it again previously, I said there were patients and there are families here, what we were doing, we were looking more at what we want to do with the patients and not looking at what we are going to do for the families, the 10families were saying that if you are going to do what you are going to do, what happens to us as families in terms of transport, we are not giving them assurances ourselves. It has nothing to do with the fact that we are saying and that is where I said it makes me sad that as we speak with the patients, we are forgetting the part that we also have to deal with the families and we are not doing that that is what I 15meant. That is the truth Judge.

**ARBITRATOR, JUSTICE MOSENEKE:** You know Doctor, why were the patients able to foresee the risks, the danger, these outcomes that, eventuated and you could not, why?

**DR BARNEY SELEBANO:** The families were saying if you do it and leaving us out, 20because the biggest weakness was that we left the families out, so we were concentrating on the patients only.

**ARBITRATOR, JUSTICE MOSENEKE:** No but you are not dealing with the question- they formed a family committee, they told you and your MEC this will go wrong, they made representations to you and your MEC, these families toy-toyed, they sent circulars, they gave you memorandums, besides all these clinicians, why do you choose not to know that this project might have gone wrong, accept to avoid disciplinary hearing? Why would you choose that, why would they know? They are not clinicians, they are not trained, they have more pressing circumstances, they could foresee it and not you, why?

**DR BARNEY SELEBANO:** I think like I said, we missed the element which was a terrible error, we missed the element of including the families in the decision.

**ARBITRATOR, JUSTICE MOSENEKE:** No but why don't you know the risk, the apprehension was so obvious and you pushed ahead and you want to persuade all of us, that you did not have the foresight that things might go wrong.

**DR BARNEY SELEBANO:** In all honesty, I didn't have the foresight.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Why?

**DR BARNEY SELEBANO:** I didn't have the foresight.

**ARBITRATOR, JUSTICE MOSENEKE:** But why, I mean you are not retarded, you are an MBCHB, you are an HOD, families say please don't move our people, a lot is going to go wrong, they form themselves up into an entity, they march, they have meetings with you, why couldn't you see what they saw, because they don't have the benefit of your training?

**DR BARNEY SELEBANO:** Even the best of the best of people, do miss things, it happens Justice, it happens. It has happened so many times in history. I didn't have the foresight at that time.

**ARBITRATOR, JUSTICE MOSENEKE:** And when you joined Mr Mosonoge to write that submission to the MEC, you list a number of risks and you say you co-authored the letter. Why didn't that give you the foresight, a reasonable apprehension of harm to others, why didn't you have that?

**DR BARNEY SELEBANO:** I didn't have the foresight at that time.

**ARBITRATOR, JUSTICE MOSENEKE:** Why did you not have it?

10 **DR BARNEY SELEBANO:** I can't think of what it is that blinded me, I can't think of it.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel?

**ADV TEBOGO HUTAMO:** Dr Selebano, we have heard evidence and I really don't want to take you through a lot of that evidence, but what we have heard, is that 15 most of these mental healthcare users were transferred to places which were more than 100 kilometres away from their families. How was that for the benefit or interest of those patients or those families?

**DR BARNEY SELEBANO:** That is the aspect I am saying that as we were doing this, we were leaving the families outside.

**ADV TEBOGO HUTAMO**: Was it not that you as the decision maker, at least at that time and after such a meeting which you have described that you really felt very sad, that you should have done something to deal with those issues?

**DR BARNEY SELEBANO**: But at that meeting, there wouldn't be issues of 100 5kilometres from patients isn't it.

**ADV TEBOGO HUTAMO**: Did you know whether these patients were going to be transferred?

**DR BARNEY SELEBANO**: I knew that patients were going to be transferred to NGO's.

10**ADV TEBOGO HUTAMO**: Do you know where those NGO's were located?

**DR BARNEY SELEBANO**: Some were in the Vaal, some were in Pretoria, in the West Rand.

**ADV TEBOGO HUTAMO**: Did you make any enquiry if those transferred to the NGO's would be closer to their families? Did you make the enquiry?

15**DR BARNEY SELEBANO**: I didn't because maybe you don't know, not all patients who as an example who were at Waverley, there are relatives who are staying around the West Rand.

**ADV TEBOGO HUTAMO**: Okay well you having explained that you only take  
20accountability, not responsibility, can you just explain if you have any regret or  
remorse in relation to the loss of lives of these mental healthcare users and if so,  
what can you say to the families and all those who are affected by this tragedy?



**DR BARNEY SELEBANO**: Advocate Hutamo, the toll that this has had on me and my family, is also unbelievable. Let me explain, it is never easy to explain the loss of a loved one, it doesn't matter whether it is one or as the families are here in large numbers, it is never easy. As a head, you don't want to preside over a department that then this type of thing happens to. In fact, the toll on me and I didn't want to say this, was that I even got hospitalised because you can't live with this and like Justice was saying, what blinded me, what is it that I missed, where did I lack courage if I lacked courage, it is so sad, I don't want to say this again, but maybe you know the issue of remorse has been asked again, the emotions of remorse. Justice, my ailing mother sitting there, she can't move, she can't do anything, I stay with her, she even asked me what happened and she was even hospitalised and every day she asks me are you going to work, she is almost on her death bed. I didn't want to talk about these things and the pain that I feel is almost every day, are you going to work, what do I say to her. Just to keep her happy, I say yes, I am going to work, because when I look at her, I can actually see her pain to say why would this happen to my son and I can see that pain that the families are going through. It is an everyday experience for me, it is not easy, it is not easy at all. I am sorry if I didn't answer you directly, but it's not easy, it is painful. Your own kids ask you what happened you can't even answer, because you can't explain death.

**ADV TEBOGO HUTAMO**: And all this happened under your watch?

**DR BARNEY SELEBANO**: I have said that yes.

**ADV TEBOGO HUTAMO**: Thank you for making the time, there are no further questions to you Doctor.

**DR BARNEY SELEBANO**: Thank you Advocate.

**ARBITRATOR, JUSTICE MOSENEKE**: Advocate Ngutshana?

**ADV PATRICK NGUTSHANA**: Thank you Justice Moseneke, Dr Selebano, the MEC, I don't have much to ask you on, I just want you to comment on this, the MEC in an interview, the same as you before Professor Makgoba, had indicated in relation to the warnings of the letter of 28 April 2015, we have gone through this, I don't want us to go back-

**DR BARNEY SELEBANO**: What letter is that, the letter from SASOP?

**ADV PATRICK NGUTSHANA**: Correct, there is another letter dated June 2015 and that is pre-termination of the contract letter, where you were warned about this- you have indicated that you accept the contents of the letter, you accept that you were warned and let's proceed I think from that understanding.

**DR BARNEY SELEBANO**: I don't mind, except there were many- is that the one that the previous Advocate- just give me an idea?

**ADV TEBOGO HUTAMO**: Your evidence was that I accept the contents of the letter and that there were warnings given to the department, do you still remember?

**DR BARNEY SELEBANO**: Ja is that the letter from SASOP?

**ADV TEBOGO HUTAMO**: Correct and the MEC when confronted with this, ignored advices from these letters, indicated that- let me read from the Ombud's report on  
20Page 22-

**DR BARNEY SELEBANO**: I don't have it here with me.

**ADV TEBOGO HUTAMO:** It's Volume 1, if you want to go through the same exercise, but it's not necessary for you to.

**ARBITRATOR, JUSTICE MOSENEKE:** If you want to look at it, I will get Obakeng to help.

5**DR BARNEY SELEBANO:** Counsel thinks it is not necessary.

**ADV TEBOGO HUTAMO:** No let us give you the opportunity to go through it, Volume 1 Page 22. There is the first bullet point on the left hand side and the second bullet that is where I want us to concentrate on, it says in response to the ignored advice, she argued the concerns/advice of SASOP was sent to the HOD  
10and Dr Manamela not directly to her, otherwise she would have addressed the issues. She also argued that in all the meetings, none of the psychiatrists raised these concerns with her. Do you have any comment on that the MEC now shifts the responsibility back on you that you did not raise all these concerns/warnings raised with her, otherwise she would have stopped or addressed these problems.

15**DR BARNEY SELEBANO:** Well the witness in that is that the letter was addressed to her. If she didn't read the letter, then she can't say then, if I recall that letter, it was addressed to her, but on the other part where she says that psychiatrists were sitting with us, they were never saying anything, I think I did raise it also that indeed Dr [Madege], Dr Park, Professor Moosa, they were all sitting with us and I think-

20**ARBITRATOR, JUSTICE MOSENEKE:** But they had written an earlier letter to make their position clear isn't it?

**DR BARNEY SELEBANO:** Yes they were part and parcel of that.

**ADV TEBOGO HUTAMO**: So these issues were raised with the MEC. Did you upon receipt of this, yourself personally raise them again with the MEC?

**DR BARNEY SELEBANO**: No not at a personal level.

**ADV TEBOGO HUTAMO**: Okay thank you.

5**ARBITRATOR, JUSTICE MOSENEKE**: But what is your response to what the MEC says?

**DR BARNEY SELEBANO**: That I should have-

**ARBITRATOR, JUSTICE MOSENEKE**: Ja you didn't apprise her fully, otherwise she would have known this and she would have stopped it.

10**DR BARNEY SELEBANO**: Ja but you see the thing is Judge, the letter was written to her. If she had wanted any information ordinarily, why does she do this and say there is a letter, can we discuss the letter, she didn't go that road.

**ARBITRATOR, JUSTICE MOSENEKE**: No but you agree that you did not inform her, keep her informed sufficiently?

15**DR BARNEY SELEBANO**: When I hear what Counsel is saying, he is saying the letter from SASOP and I recall that letter when it was read to me by another Counsel, it was referred to MEC it was written to her. Now here she says oh no, it was not written to me, it was written to the HOD, I think she makes that mistake there.

**ARBITRATOR, JUSTICE MOSENEKE:** She makes a mistake and is she correct when she says if you had appraised her fully of what was happening, her position would have been different.

**DR BARNEY SELEBANO:** Justice when things are tough, the nearest thing that people like doing, is to apportion blame that is the quickest thing that we do. Apportioning blame is the worst thing that you can do, don't apportion blame, take accountability for your own actions, be fair.

**ARBITRATOR, JUSTICE MOSENEKE:** Do you think the MEC is being fair?

**DR BARNEY SELEBANO:** I don't want to pass judgement on her Justice please.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Even at this late stage, you still seem scared to talk about the MEC.

**DR BARNEY SELEBANO:** She is not being fair, she was not fair here, she should be fair.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes as a bare minimum, you are entitled  
15 to say I think she is not fair.

**DR BARNEY SELEBANO:** She is not being fair, you are right Judge, in fact I should apologise for that.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**ADV PATRICK NGUTSHANA:** In Mr Mosonoge's evidence in relation to the  
20 question that has been asked to you, why was the contract terminated? Mr Mosonoge discounted the cost issues raised, he discounted the fact that there was

no need for urgency and also he indicated thirdly, that Auditor General did not advise you to terminate the contract. What do you have to say to that?

**DR BARNEY SELEBANO:** The difficulty Advocate, you have asked me a lot of critical-

5**ARBITRATOR, JUSTICE MOSENEKE:** It is a fair complaint, can we shorten it Counsel?

**ADV PATRICK NGUTSHANA:** Mr Mosonoge discounted the cost issues you had raised as a reason for the termination and he also discounted the concerns raised by the AG on the contract.

10**ARBITRATOR, JUSTICE MOSENEKE:** Can we stop there. Can we talk about finances first?

**ADV PATRICK NGUTSHANA:** Ja I doubt if Mr Mosonoge can say that again, knowing he is in planning, he is not in finance or budget and he doesn't sit in AG meetings, he doesn't sit at budget meetings, maybe he was making his own  
15opinion, but he wouldn't know all those things, he wouldn't.

**ADV PATRICK NGUTSHANA:** Okay it's fine, I am not going to debate, I accept your answer.

**ARBITRATOR, JUSTICE MOSENEKE:** And when the Minister National Minister says to us and to Parliament that you had the money to look after mental healthcare  
20users, you seemed not to agree?

**DR BARNEY SELEBANO:** Yes I found it very difficult because the facts that we had at a finance level in the department, pointed to the opposite that the system is in huge strain.

**ARBITRATOR, JUSTICE MOSENEKE:** No but let's tease that out a little bit. You may not have had enough money for all the things you wanted to do. All that the Minister says, is that you had enough money to look after mental healthcare users, maybe not for the Mercedes Benz, maybe not for the salary increases, maybe not for the most modern equipment, but you had money to look after healthcare users that is what the statement of the Minister says. You had the money, so why do you differ with that?

**DR BARNEY SELEBANO:** On the evidence that we have, it was not that we have money for this and not money for that. The pressure, even now, the pressure was in the whole system, it was cracking the system, you must make sure there is food, as you battle with the food, the equipment is breaking up because we have not had enough money to fix it. It was a whole system thing, that is why I don't understand why would that be-

**ARBITRATOR, JUSTICE MOSENEKE:** Let's try somebody else. It was Barbara Kris who is MEC Finance, Advocate Crouse reminded you, comes out and says yes we have to save money, we have to have enhancement and so on, but never ever on the core duty to provide healthcare and she assures that it has always been government policy. We canvassed this yesterday.

**DR BARNEY SELEBANO:** Yes we did.

**ARBITRATOR, JUSTICE MOSENEKE:** Do you agree with that again still?

**DR BARNEY SELEBANO:** No, you can't endanger services.

**ARBITRATOR, JUSTICE MOSENEKE:** So you agree with MEC for finance on that one?

5**DR BARNEY SELEBANO:** That do what you've got to do, but be cognisant that you do not endanger health services.

**ARBITRATOR, JUSTICE MOSENEKE:** And then Mr Mosonoge also in his notes, that is where all this comes from, says we can postpone this thing, we can do it slowly, we can push it out and money is not the issue and you disagree.

10**DR BARNEY SELEBANO:** No I am not disagreeing. Mr Mosonoge raised it and it never worked as we now know. It was my evidence that he did stand up and I think other people have said it, that he did stand up-

**ARBITRATOR, JUSTICE MOSENEKE:** An inevitable question is once you decided to go on a money saving trip, why did you choose the patients of Life Esidimeni?  
15We have asked you this before. I just want to know again, what was the cogent reason for singling them out and saving money on them?

**DR BARNEY SELEBANO:** We singled the clinic's patients and then after that and I think Judge if I may tell you, when you think you have done something and it has worked, because the clinics were really able to get it right, take all the patients and  
20put them in our system and we thought it can work. The thinking at that time, is that if we then take the patients and I kept on saying yesterday the danger that I face, is



that I come out as I am defending the NGO's here and I am not, I will never do that. Then we said if we do this, we cut these costs, there and there, we will then be able to take our psychiatrists from the ones that we have in different districts to supplement what has been done, so in our wrong thinking now, at that time, we thought we are going to maintain the same level of service. It was the wrong thinking, now we know that.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel?

**ADV PATRICK NGUTSHANA:** Thank you Justice, Dr Selebano I think the issues have been sufficiently canvassed, I don't think there is any point in raising them any further with you. Justice I am not, going to, proceed thank, you Justice.

**DR BARNEY SELEBANO:** Can I say something?

**ARBITRATOR, JUSTICE MOSENEKE:** We have a practice and a convention here to give whichever witness who might come here, the final word. After all the questions and answers have been given, we allow the witness to say her peace, his peace in his or her own words and to the extent of his or her heart's content. So after all of this, it is your opportunity to talk to me, to the family, to Counsel, to your mother at home and to the world.

**DR BARNEY SELEBANO:** Can I stand up?

**ARBITRATOR, JUSTICE MOSENEKE:** As long as you can get to the mic and you prefer to stand up, please stand up. Just let someone help you with the mic. I am sorry, shall we all be quiet please to allow this witness as we have always done.

**DR BARNEY SELEBANO**: I am standing up Justice but actually I am not standing up. I want to kneel in front of the families here and bow my head. When I am bowing my head, it is not because I fear eye contact. In our way, when you bow your head, you show humility and I want to show humility to the families. I have not written a speech, I want to speak from the heart. I am a young man who was born in Soweto from the poorest of families that we all know. God was kind to me he gave me the opportunity to go through school. I am also a generation that also were activists and Justice, during these days that I have been here, there was one thing that I have known and I have seen and I have observed, the families are very angry, justifiably so. Their anger is even palpable, you can touch it and the pain is there, you can even touch it. In fact, you ask the higher powers to say when other families when you go for lunch and they use difficult words at you, you say God I understand why they are doing this, they are angry, we have let them down and the pain that you carry as a young activist, you said I want to get into a country that will take care of its own. When these types of things happen, you question everything and it actually embarrasses everything that you have actually stood for. I told you Justice that I chose to come to the public sector, I wanted to serve, I wanted to serve. In fact, my first part was to join the army. I always believed that, I don't know whether the idealism was right or not, but when you are in the army, you will protect the constitution. Maybe that is an idealism and we know at our age now that the idealist has started going wrong. I am saying to the families, you have every right not to even forgive us, you've got every right to look angrily at us and say we have lost our loved ones, your loss is not a group loss, it is an individual loss, you sit

at home, you don't miss a group, you miss your own mother your own sister alone and that is why I kept on saying you can't explain this. In short, we made a mess, we made a mess. The officials that I know that I worked with, are in a state of sadness, believe me Judge, believe me, you know when a professor called me this morning, he said you know Barney, all that you have been trying to do that is good, helping Garankuwa that is the old Medunsa to rise, this big blunder that the Department did, has cancelled that, it has cancelled all the good things that every time the good man the good doctors to the porter in the hospital who work very hard, this tragedy has actually from time to time you were saying were you a caring government, it has killed that. I said we were a caring department, because I led men and women, doctors, professors of high integrity, but this has completely destroyed that. People don't have trust on us. We deliver in excess of 80 000 babies a year, but people don't trust us anymore. When we go to our hospitals, this is a Friday, I can invite you to go and see the trauma in those hospitals, the pain the people go through, they don't trust us anymore. Why? We made an error of judgement where the most vulnerable mental patients are extremely vulnerable they can't make up their mind to do certain things. They continuously need to be guided. In Baneng, if you go to Baneng, it will break your heart. It is not easy to go to Baneng and thanks God that Mosonoge may not have said it, we gallantly fought with Mosonoge again that we may touch and I am not saying this so that I feel like a big hero now, I can never be one. We gallantly fought and said we are not going to touch Baneng, because God save us, if we had just touched Baneng, it would have been worse than worse and I am asking the families if you don't forgive us, if you

can't find it in your hearts to forgive us, it is because as a person, I understand, I ask myself would I also forgive, would I heal that quickly, but I also want to tell you, that some of the officials out there, are in pain, they may not have touched the patients themselves, some are even far, they don't deal with mental health, but they say this has brought shame to the department and shame to government and like I said, you don't want to be a leader. I consider myself a leader, I consider myself an ethical guy who tries very hard under difficult conditions, where there is almost nothing in a department, the doctors, the nurses, the cleaners, the clerks, they wake up and try and try and when we fail them, we fail everybody. It has been a journey that- this is a permanent bracelet around my neck, I know for sure now, that even at my old age, the bracelet will never go away, because it will always be that the loss of lives at Life Esidimeni, those vulnerable patients, demised with Dr Selebano being the HOD. There is no need for any explanation, the negligence is permanent, it's a painful thing to carry, it embarrasses, you, it hurts your family, it hurts your friends, it hurts your comrades. They ask me what happened Barney, can't you shift the blame to somebody and I said that is not me. Let me carry the cross. I was suspended, I didn't even want to argue because I knew the families are fuming, it is true they toy-toyed, you know Christine, I still hear her voice in Randfontein saying you and Life Esidimeni, why don't you sit and resolve your problems, don't burden us with this thing, if it is all about money why are you doing this. These are the tell-tale signs, there was a young lady who said you must and that is where the question came, you must guarantee me that my, she gave her history that my brother gets lost and we battle and we find and indeed ever since the brother has

been here, it's fine. If you move that brother, you must give me that guarantee and that is what I was saying, that we are sitting with Mosonoge, we talk all the time, we were sitting and saying what are we doing here and we hatched up a plan and the plan didn't work. We said can't we extend this thing, can't we do this can't we do 5that, sometimes intentional or unintentional government can fail you and the worst part of failing you, it brings pain to the poorest of the poor like you are saying, the most vulnerable, families that have nothing and that is actually where it should be strong and we were weak. I am saying to families, whenever you meet me in the street, in fact, I am asking you Justice and I am hoping I will talk to Section 27, I will 10talk to Mark, I want to find a way also, I am sure and I have spoken to one or two managers, but this is my way, I want to find an opportunity to go to individual families, away from the media, away from everything, go home there in an African home, where even there is a last tea bag, they will say drink the tea and humble themselves and humble myself and say Mama I brought you a lot of pain. I know 15what might probably happen, they will say don't come into our house, get out, you messed up, you come here, get out. I have resolved in my heart Justice that if they do that, I will come back again and I will come back again and they will say come in and they will say don't ever come in our house and I will come back again and they will say what is your story and I will say I want you to forgive me at a personal level, 20forget the department. If I have to walk the streets and the miles around Gauteng, I want to do that. If the families, I want to ask a few families after this, I don't want to interfere with your processes, I want to ask a few families and then I can go there and I want it to be properly arranged so that I don't seem to be intruding into their

privacy, but I just want to go to individual families and say me, not as Dr Selebano, not as anything, just as a human being, I want to come to you and say if I could ask God to reverse this process, I would really ask God to reverse this process, you didn't deserve this type of thing and I am so sorry about that. This is where people will say you die many, many times, some of us even myself in particular, I die many, many times. It is not easy, you know Justice you said it easily yesterday when you said you are going to be able to sleep tonight you said that and I said I wonder if Justice knows that it is so difficult to sleep. At 1:00 AM you wonder somebody somewhere is sitting and crying and saying but why did these people do this to us. I am so sorry and I am so remorseful. The problem with remorse is that you can't measure it and say this is remorse. That is why I want to go to individual families I want you to open your homes for me. You don't have to open your hearts, just open your homes. If you want me to talk to you at the gate, I will talk at the gate. As human beings, our capacity to forgive is limited. We always hope that God gives us power to be able to cross the path of anger and forgive others and that is why I want to go to the individual homes and touch each and every family so that as you touch me, I can touch you and we feel the pain together. It has been the worst nightmare of my life and I hope that God will chart a way for all of us and those managers who implemented the programme, they must also find themselves, but before I even finish Justice, I want to say something, I want to say you suspected that you could see my heart. When you were pressing me to give you a name, I just- I am the type of person who says carry the cross, I hope the leaders who will be coming here, typical of our leaders, if they hear these cries, these families don't

want excuses, they are not going to be happy no it's the HOD, no it's so and so, we must all take accountability for what we have done. It can't be like it always happens it's not me, I am just up there, I don't see anything, it is the official. I hope and I trust that they will have the courage of being leaders and not try if they can hear these cries, I am just an oversight, I didn't know it is the HOD. I am hoping they don't do that, they must be honest. We must all be honest Justice, we must confront the demon that we have created and say we humble ourselves, I kneel I ask for forgiveness, please find it in your heart to forgive me. I also want to say Justice that I want to extend my appreciation to Counsel that is here, they are good people. I will start that side, Counsel Crouse, I thank you very much, you are representing what we are failing to represent and I thank you very much. Please pass on my regards to Advocate Hassim, I have worked with her previously. Counsel Ngutshana I don't know your assistant, thank you very much Sir, you are doing what all of us should be doing to protect the weak and I also gained a brother Advocate Dirk Groenewald. After yesterday Dirk, there is something remarkable that you did for me with your colleague and I said the human spirit will always be able all of us, you came and we hugged if you recall and we held each other like brothers that have known each other forever and I thank you for that, you are a good brother and thank you to your colleague. Advocate Hutamo, thank you very much, you are doing what we should have been doing for your own people here and we failed dismally. The last point Justice, I hope that God gives you the strength, I hope that if you know the story of Solomon he was generally confronted by difficult problems, but he sat there and God gave him wisdom and he could entangle

difficult problems. I hope you find that wisdom that you have, God adds more so that we find finally closure for our families. Like I said, I want to go to them, but also, it is a difficult leadership role, I hope God also makes you Moses that you carry this journey in a difficult situation every day coming here listening to pain, if you check the Bible, that is exactly what Moses went through, listening to pain, listening to people and I hope lastly that I would like to touch one family if it allows so that I can start a chain where I will be able to touch other families. I hope I can just touch one family and say I am starting a chain, can I visit you at your homes so that I can start a chain where we can start talking. You are free as families, to say anything to me, I will absorb it and I will take it. Can I just touch one family Justice?

**ARBITRATOR, JUSTICE MOSENEKE:** [inaudible]

**MALE SPEAKER:** [inaudible] hold our hands together and pray in whatever language we used to pray and say thank you God we have heard the truth and thank God for Dr Selebano as he has been saying that our hearts have been broken and we were very much doubtful about him right from the beginning, but thank you God that he has come up to say I am sorry. I remember God where Dr Selebano was sitting and I said let us pray, I prayed for Mr Moseneke, I prayed for our legal leaders here, asking God to give them strength and power, asking God to give them wisdom, asking God to give them the right judgement at the end, so that everybody who has been affected by this, should say God we've got your men and women who are leading us through this wilderness, thank you God that we hope that those will still come and say yes we were there, we are part of this removal, we are sorry, because lots of souls have been lost. Some of us Lord, we still continue to pray that



as Jesus was hanging on the cross, Jesus said Father forgive them, Father forgive them for they know not what they are doing, Father forgive them for they know not what they are doing, but now God I think through your Holy Spirit, they will start to realise that these people who have died, they are created in your own image, the 5 people who are left, the families, the grannies, the brothers, are still in your image and also the people who have been given positions in our country to lead us, they must know that you are God and you are the one who controls and not them. The positions that they are holding God it is not their position, they must know that it is not a position, it is a calling, to call people Lord to be in charge, we call people Lord 10 to be responsible, we call people God to be accountable about what they are doing and what they are saying. God thank you very much, thank you Justice Moseneke, thank you God for these legal people, many men and women who are sitting in front of us, time to get the truth out of these people, may God bless you, may God strengthen you. There is still a journey to be travelled and I know God that you will 15 be with them. We know that God will give them more wisdom. We know that God will be the one who has led the wise man to the stable in Bethlehem. Lord bless us this day. Lord bless all the other people who are listening to this arbitration in the whole world, we thank you God that things will come to where you want them, we ask all this in Jesus name, in the name of Jesus Christ, Dr Selebano I pray for you 20 and your family, I hope you will go and be in a corner of your house and pray and say God I have destroyed your people created in your image. May God bless you, may God forgive you, may God give you strength and repent if you have not repented, repent from all that you have done which is wrong and say God I am sorry

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forgive me. May our blessing be on you and all your other colleagues who are working in this Department of Health, I ask all this in Jesus name, Amen.

**ADV LILLA CROUSE:** Justice Dr Selebano had said something now which amounts to new evidence and I would just like to ask him about that if I may.

5**ARBITRATOR, JUSTICE MOSENEKE:** Well you've got to tell me what it is.

**ADV LILLA CROUSE:** He said he wasn't going to give us names because that is not his way of doing it, but by saying that, he clearly withheld names under oath and I would want to know which names he withheld under oath.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel I am not inclined to re-open your  
10cross-examination and it was said in an explanation of his emotional state. I don't think it was meant to be evidence.

**ADV LILLA CROUSE:** I will accept that ruling, but I had to make this application as well thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** No the application is not granted. We are  
15done and you are free to go thank you. We are adjourned until 12:00 PM.

## **LIFE ESIDIMENI ARBITRATION**

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

20**DATE: 8<sup>th</sup> DECEMBER 2017 DAY**

**DAY SESSION 2**

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**5BEFORE ARBITRATOR – JUSTICE MOSENEKE**

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**WITNESSES:**

**MS. INA GROBLER**

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## SESSION 2

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you, you may be seated. Welcome back. Adv. Hassim.

5**ADV. ADILA HASSIM:** Thank you Justice. My apologies for this morning.

**ARBITRATOR, JUSTICE MOSENEKE:** Not at all, it has been conveyed to me. We are happy to see you back. Adv. Crouse.

**ADV. TEBOGO HUTAMO:** Justice, before you proceed, we have two matters which we require to report on. The first is in relation to Kgotso Maditsi (spelling).

10**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**ADV. TEBOGO HUTAMO:** On Monday Mr. Modiane (spelling) testified in relation to his niece who is currently in Limpopo. We just want to report that the Department has made arrangements and all the necessary papers authorising the admission of Kgotso Maditsi have been signed. She will be admitted at the Life Esidimeni facility  
15at Waverly in Germiston, which is the facility that the family has chosen from what has been made available to them. And the family has made an undertaking that they will make an arrangement for her transportation, where she will be admitted next week on Tuesday, the 12<sup>th</sup> of December 2017. Then the other aspect relate to ...intervened.

20**ARBITRATOR, JUSTICE MOSENEKE:** That makes me happy obviously, I am not saying the word, but I am extremely, like everybody else, I am grateful and happy.

**ADV. TEBOGO HUTAMO:** Yes. The other aspect relates to the documents which were sought by the South African Police Service. We have had evidence from Major General about outstanding documents which were requested from the Department and which were requested pursuant to a subpoena which was issued. 5We can report that on the 6<sup>th</sup> of December, Dr Kenoshi who is the acting HOD, appeared in court where it was confirmed that indeed all the documents which were requested had been provided to the South African Police Service, which then necessitated the subpoena to be withdrawn against Dr Kenoshi. And what came out during the appearance was that as previously reported there was no warrant 10which was issued against Dr Kenoshi. The documents were only sought pursuant to the subpoena, but that matter has now been settled between the Department and the South African Police, which will enable them to further deal with their role in so far as their investigations are concerned. So there are no outstanding issues in that regard. Thank you.

15**ARBITRATOR, JUSTICE MOSENEKE:** Thank you for that report. It sounds like a satisfactory outcome, one that would get us closer to a proper criminal investigation of the conduct of some officials in this matter. But thank you for the update, much appreciated. Any other Counsel who would like to say something? I am going to go to Adv. Crouse.

20**ADV. LILLA CROUSE:** Justice, the evidence leaders wants to lead a witness first. Thank you.

**ARBITRATOR, JUSTICE MOSENEKE:** Very well. Adv. Ngutshana.

**ADV. PATRICK NGUTSHANA:** Thank you, Justice Moseneke. The next witness we have for today is Me. Ina Grobler, she is an occupational therapist from Weskoppies. My colleague, Adv. Yina, will lead her.

**ARBITRATOR, JUSTICE MOSENEKE:** In Pretoria we call the place Weskoppies.

5**ADV. PATRICK NGUTSHANA:** Weskoppies.

**ARBITRATOR, JUSTICE MOSENEKE:** Certainly not Westkoppies. Okay. (Vernac) from where I was born, that is why I know this.

**ADV. PATRICK NGUTSHANA:** No, I know it as well, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes. Thank you. Me. Ina Grobler, would  
10you put your full names on record please. Is your mic switched on? It is? Ja.

**ME. INA GROBLER:** Ina Grobler.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you. In which language do you want to testify?

**ME. INA GROBLER:** My first language is Afrikaans, but I can testify in English, it's  
15fine.

**ARBITRATOR, JUSTICE MOSENEKE:** You are happy to testify in English. 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.

**ME. INA GROBLER:** So help me God.

20**ARBITRATOR, JUSTICE MOSENEKE:** Thank you.

**ADV. NONTLANTLA YINA:** Good afternoon, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Good afternoon, Adv. Yina.

**ADV. NONTLANTLA YINA:** Good afternoon, Me. Grobler.

**ME. INA GROBLER:** Hallo.

5**ADV. NONTLANTLA YINA:** Me. Grobler, is it correct that you are an occupational therapist at Weskoppies?

**ME. INA GROBLER:** Yes.

**ADV. NONTLANTLA YINA:** For how long have you been employed at Weskoppies?

10**ME. INA GROBLER:** For 23 years.

**ADV. NONTLANTLA YINA:** And before that, did you work anywhere else?

**ME. INA GROBLER:** I qualified in '92. I studied at the University of Free State and got my Bachelor's Degree in '92. I worked for a year at Thembisa Hospital and transferred to Weskoppies Hospital in April '94.

15**ADV. NONTLANTLA YINA:** Thank you. And what position do you currently hold at Weskoppies?

**ME. INA GROBLER:** I am currently Chief Occupational Therapist.

**ADV. NONTLANTLA YINA:** Is it correct that you were part of the team that was tasked to implement recommendations by the Ombud in 2016 and 2017?

20**ME. INA GROBLER:** Yes.

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**ADV. NONTLANTLA YINA:** Yes, if you could go to Volume 1 of File number 1. Page 58 of the bundle. The numbering appears on the top right hand corner.

**ARBITRATOR, JUSTICE MOSENEKE:** You mean page... volume, file 1?

**ADV. NONTLANTLA YINA:** Yes, Justice, File 1, page 58.

5**ARBITRATOR, JUSTICE MOSENEKE:** Yes, thank you.

**ADV. NONTLANTLA YINA:** On the right column those are the recommendations and the relevant one for you would be recommendation number 13, am I correct?

**ME. INA GROBLER:** Yes.

**ADV. NONTLANTLA YINA:** Justice, if I may introduce two documents which may  
10assist us, it is ELAH119 and ELAH118, I believe they have been placed before you. It is a report, a short report that was compiled by the witness, as well as her CV. It was circulated to the colleagues via email.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, that's fine.

**ADV. NONTLANTLA YINA:** Thank you.

15**ARBITRATOR, JUSTICE MOSENEKE:** I have got ELAH117, what did you say is this, ELAH118 and 119?

**ADV. NONTLANTLA YINA:** It is 117 and 118.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, I've only got 117. I beg your pardon. I have both, I apologise.



**ADV. NONTLANTLA YINA:** Thank you, Justice. In your report, in the first paragraph in your report you indicated that you were to implement recommendation number 13 of the Ombud, am I correct?

**ME. INA GROBLER:** Yes.

5**ADV. NONTLANTLA YINA:** Yes. Will you please briefly tell us what exactly did you do in implementing recommendation number 13?

**ME. INA GROBLER:** After the release of the Ombudsman report, different teams had to go to different NGOs and do a screening on the patients, on the mental health care users ...intervened.

10**ARBITRATOR, JUSTICE MOSENEKE:** I am sorry to disturb you again. Obakeng, we have to switch that off. It is right next to Me. Grobler and it is cutting out her voice quite a bit. Would you repeat that please?

**ME. INA GROBLER:** After the release of the Ombudsman report, different teams were identified who had to go to the NGOs and assess the mental health care users  
15with the aim of moving them to contracted facilities.

**ADV. NONTLANTLA YINA:** And you were part of the task team?

**ME. INA GROBLER:** I was part of the task team, also identifying occupational therapists who could assist in this. It was quite a lot of mental health care users who had to be assessed, more than 300 mental health care users that was quite  
20urgent to assess and move out of the facilities. So it was not possible for one person to do that. So most of the occupational therapists at Weskoppies Hospital

indicated their willingness to do this, as well as occupational therapists from districts Pretoria region, also Ekurhuleni and also therapists from Sterkfontein and Tara, also indicated their willingness to do this.

**ADV. NONTLANTLA YINA:** Yes, thank you. And then did you visit the NGOs where the mental health care users were kept?

**ME. INA GROBLER:** Ja. I visited one NGO, one specific one and my colleagues visited other NGOs.

**ADV. NONTLANTLA YINA:** Do you still remember the name of the NGO that you visited?

10 **ME. INA GROBLER:** I visited Ubuhle Benkosi.

**ADV. NONTLANTLA YINA:** Where is Ubuhle Benkosi?

**ME. INA GROBLER:** It is on the R55 route, just outside Centurion.

**ADV. NONTLANTLA YINA:** And that would be in Pretoria.

**ARBITRATOR, JUSTICE MOSENEKE:** Advocate, can we put a date to this, please?

**ADV. NONTLANTLA YINA:** And when was this when you visited Ubuhle Benkosi?

**ME. INA GROBLER:** It was the 1<sup>st</sup> of March.

**ADV. NONTLANTLA YINA:** Which year?

**ME. INA GROBLER:** 2017.

**ADV. NONTLANTLA YINA:** Yes, were there patients that were kept at Ubhle Benkosi?

**ME. INA GROBLER:** Yes, there were, I think, 34 mental health care users, according to the list, who was at Ubhle.

5**ADV. NONTLANTLA YINA:** Can you tell us what did you observe, if anything, at Ubhle Benkosi?

**ME. INA GROBLER:** The mental health care users were outside when we arrived there and all the different disciplines just went on to do their specific assessments. So the OTs there, I was one of three OTs that day and we started with our  
10screening of the mental health care users. It was close to lunch time so at that point they dished up lunch for the users, so we used that as part of our assessment to see what are the patients able to do. My biggest concern at that point was that they didn't have tables for the users to eat at. The users ...intervened.

**ADV. NONTLANTLA YINA:** If I may ask you to just go a bit slow, so that we can  
15also take notes. If I may ask, were these adults or children that you found at Ubhle Benkosi?

**ME. INA GROBLER:** All adults, all males.

**ADV. NONTLANTLA YINA:** All males?

**ME. INA GROBLER:** Yes.

20**ADV. NONTLANTLA YINA:** Yes, then they were serving them lunch. How did they serve lunch?

**ME. INA GROBLER:** They dished up in the plates and then gave to all the users, but there were no tables. The plates had to be on their laps and that is how they ate. So the users who was not able to, due to either tremors or side effects and maybe incoordination, were not able to effectively eat.

5**ADV. NONTLANTLA YINA:** Were there anybody who you observed who had tremors who were immobile?

**ME. INA GROBLER:** Sorry, say again.

**ADV. NONTLANTLA YINA:** Did you observe any patients who were immobile or who had tremors?

10**ME. INA GROBLER:** There were two patients that was of concern, that they were not able to, the plates started sliding off their laps and they had to be assisted, otherwise they would not have been able to eat. But that was a concern.

**ADV. NONTLANTLA YINA:** How was it served on the patients? Were they queueing to collect the food or was it brought to them or were they sitting around a  
15table?

**ME. INA GROBLER:** They were sitting on chairs outside under a roof and the food was brought to them. There were no tables. There was one table, but most of the users, in fact all of them did not sit at a table.

**ADV. NONTLANTLA YINA:** Yes, anything else that you observed?

20**ME. INA GROBLER:** The users did struggle to, some of them struggled to walk. They were not able to move their chairs themselves, so they were physically not

well. There were no activities that we could see, no occupational therapy program, no meaningful activities for them to do, and they were just basically sitting on the chairs the whole time we were there.

**ADV. NONTLANTLA YINA:** On the observations that you made, did you enquire from the caregivers there, if there were any, if they under normal circumstances assist those patients who are unable to feed themselves?

**ME. INA GROBLER:** I did not enquire. Because the whole team was there that day, they were helping different team members. The social workers had to check the files and had different scopes of practice that day. The doctors had to assess the patients, so all the team members had different responsibilities that day, so I did not ask that question.

**ADV. NONTLANTLA YINA:** And you said that there were no activities for them to perform, for the patients.

**ME. INA GROBLER:** Yes.

**ADV. NONTLANTLA YINA:** And what is the effect of that in relation to mental health care users?

**ME. INA GROBLER:** Well occupational therapy believe in meaningful activities, in engagements and participation and everyday tasks and occupations. And that is the purpose of activities for mental health care users in that it also gives them meaning and it also serves the purpose of maintaining abilities and also ensuring optimal functioning. That is the purpose of activities. So if there are no activities, they will just sit and actually will deteriorate. That is also a way of ensuring that they

are able to do what they are supposed to. If you just feed people and if you don't facilitate them for as long as possible, to do it themselves, then they deteriorate and you actually do not address any possible emotional wellbeing that there might be.

**ADV. NONTLANTLA YINA:** I see. And then what type of these activities that you would have expected at least to find?

**ME. INA GROBLER:** At least, usually you would find games that they could do, but if patients are of such a level that they cannot do it themselves, they would need facilitation from someone. But at least if there is table games for them to do... other kinds of activities can also be craft activities or even like gardening. There is lots of projects that you could have at NGOs. The idea would also be to have kind of activities that a person would find in their normal home environment. So even themselves helping dishing up their own food or make their own tea, make their own beds, that is every day activities that ...intervened.

**ADV. NONTLANTLA YINA:** They should find meaning in life.

15 **ME. INA GROBLER:** That also adds to meaning in life, because then they will have a purpose.

**ADV. NONTLANTLA YINA:** I see.

**ARBITRATOR, JUSTICE MOSENEKE:** Me. Grobler... I am sorry to interrupt you, Counsel. Did you find any health care users who you had not brought along at Ubhle Benkosi? Were there any health care users who were there, already employed there?

**ME. INA GROBLER:** I am not sure about that. I think the quality assurance people from the team's side were dealing with that matter. As far as I know, there were no health care workers there, just the owner of Ubuhle.

**ARBITRATOR, JUSTICE MOSENEKE:** If I may tell you, your pronunciation is perfect, amazing. Ubuhle Benkosi. Just as a Zulu person would call it.

**ME. INA GROBLER:** Thank you.

**ADV. NONTLANTLA YINA:** Thank you Justice. And what did you do with those patients? Did you manage to assess them?

**ME. INA GROBLER:** Ja. To do a complete assessment was not possible. An occupational therapist would need between like two and three hours to do a complete assessment, and you also need to involve users in an activity and that was not possible. So we just did a screening on all the users there. But we did screen all the users at Ubuhle on that day.

**ADV. NONTLANTLA YINA:** And what does screening entail?

**ME. INA GROBLER:** The screening entails a basic assessment, the cognitive ability, the affect, ADL, their ability to communicate, their self-care and if there was any possible thought process disturbances. So it is a mental health assessment that was also the reason why it was important that occupational therapist with mental health experience had to do this assessment, the screenings.

**ADV. NONTLANTLA YINA:** From the occupational point of view, what did you observe out of the screening?

**ME. INA GROBLER:** There were a few users that were acutely psychotic, they had thought process disturbances, they were disorientated, they were not able to communicate effectively. And that would... so that will be a problem if they were not on the right medication or even taking effective medication. And also the level of functioning was quite low of most of the users there. So the implication of this was the amount of supervision or care they would need – that would be the implication of it.

**ADV. NONTLANTLA YINA:** Do you know if those mental health care users were removed from Ubhle Benkosi?

10**ME. INA GROBLER:** After the assessment all of the users had to be removed. But on that day one specific user was removed with an ambulance because of his physical condition.

**ADV. NONTLANTLA YINA:** What was his physical condition, do you remember?

**ME. INA GROBLER:** He had to be removed the day before and Ubhle did not  
15allow that. So only on the day that we did the visit, did they allow the ambulance services to remove him. He was physically not well. I don't know exactly what was the physical condition that led to him not being well.

**ARBITRATOR, JUSTICE MOSENEKE:** Can I take you back just to earlier evidence? You say you found some of the users being acutely psychotic.

20**ME. INA GROBLER:** Yes.



**ARBITRATOR, JUSTICE MOSENEKE:** In other words their thought processes had been disturbed.

**ME. INA GROBLER:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** And then you said others had a low functionality level. Now is it the same category that was both psychotic with low functionality level or you are talking about separate users?

**ME. INA GROBLER:** The one who was psychotic was on a low functioning level, but some of the others... the assessment model we use is occupational therapy model of creative ability. According to that we place people according to their level of functioning. So most of the users at Ubuhle were on the lowest two levels of functioning.

**ARBITRATOR, JUSTICE MOSENEKE:** And what would that mean? Can they walk?

**ME. INA GROBLER:** Most of them could walk. There were one or two who needed assistance, but they could walk, except for the one who was physically not well.

**ARBITRATOR, JUSTICE MOSENEKE:** Could they use their upper limbs?

**ME. INA GROBLER:** They could use their upper limbs, but there were one or two that had, it could be due to side effects, but they had tremors. Usually psychiatric medication can cause severe tremors.

**ARBITRATOR, JUSTICE MOSENEKE:** And those who were psychotic in the assessment, how would one describe them?

**ME. INA GROBLER:** Sorry?

**ARBITRATOR, JUSTICE MOSENEKE:** I am sorry, I will repeat again. You told us some of the users were acutely psychotic. Was there any other category of users, besides those who were acutely psychotic?

**ME. INA GROBLER:** There could have been, but we didn't have access to diagnosis or files. So we just did the functional assessment.

**ARBITRATOR, JUSTICE MOSENEKE:** So it is mainly a functional assessment.

10**ME. INA GROBLER:** Ja.

**ARBITRATOR, JUSTICE MOSENEKE:** Could most of them speak?

**ME. INA GROBLER:** There was one who did not speak, but again it could be because of the psychiatric illness. I don't know why he could not speak.

**ARBITRATOR, JUSTICE MOSENEKE:** But the rest could communicate effectively.  
15

**ME. INA GROBLER:** I won't say effectively. A lot of them, because of the psychiatric condition, was not able to communicate effectively.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you.

**ADV. NONTLANTLA YINA:** Thank you Justice. The ones that could communicate, did you speak to them?  
20

**ME. INA GROBLER:** Yes.

**ADV. NONTLANTLA YINA:** Did you receive any complaints or any information from them?

**ME. INA GROBLER:** Because it was lunch time, I did enquire about lunch, I enquired about food and did they get something to drink. Two of the mental health care users told me that they only get once in the morning something to drink and not anything then for the rest of the day.

**ADV. NONTLANTLA YINA:** And you said then they were subsequently removed all of them. One was sent to hospital and others were sent to Life Esidimeni.

10 **ME. INA GROBLER:** Ja. I am not sure to which places they were removed to, but the purpose of it was to assess them to be removed.

**ADV. NONTLANTLA YINA:** Now with the lack of action ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** I am sorry to interrupt you again. What was their state of nutrition? Were they malnourished or did they look, had a good physical  
15 look?

**ME. INA GROBLER:** I won't say a good physical look, but there were a few who did look maybe not that well-nourished, but not to an extreme extent. I didn't see anyone that looked extremely malnourished.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you.

20 **ADV. NONTLANTLA YINA:** Did they look clean, tidy?

**ME. INA GROBLER:** The basic hygiene was fair. They were clean. They were fairly tidy, ja.

**ADV. NONTLANTLA YINA:** Did you get to see the wards where they were kept other than the places outside where they were eating?

5**ME. INA GROBLER:** Only the dining room area. I didn't see where they slept, the sleeping area, I only saw the dining room area.

**ADV. NONTLANTLA YINA:** From an occupational point of view, was it okay, was it in order?

**ME. INA GROBLER:** It was quite small.

10**ADV. NONTLANTLA YINA:** For the number?

**ME. INA GROBLER:** For the number of people there, ja.

**ADV. NONTLANTLA YINA:** Now with the lack of activities that you highlighted earlier on and stimulation programs, would you say Ubhle Benkosi was fit for the purpose of keeping mental health care users?

15**ME. INA GROBLER:** No, I don't think so. It was a house on a small holding and the outside area was just one area that they could sit under a roof, it is not big enough. And the inside as well. So there is definitely... I don't think it is suitable for that amount of people that was there.

**ADV. NONTLANTLA YINA:** Was it a single storey or a double storey house?

20**ME. INA GROBLER:** It was a single storey.

**ADV. NONTLANTLA YINA:** And was it fenced, was it properly fenced?

**ME. INA GROBLER:** Ja, there was a fence around the house.

**ADV. NONTLANTLA YINA:** Were there security or personnel?

**ME. INA GROBLER:** There were security. When we left, we had to sign in the  
5visitors book, but not when we arrived there.

**ADV. NONTLANTLA YINA:** Was that the only NGO that you visited during this  
project?

**ME. INA GROBLER:** I also visited one of the Rebafeanyi's but not as part of the  
relocation team.

10**ADV. NONTLANTLA YINA:** Yes, when was that?

**ME. INA GROBLER:** That was, I think it was... it could be 2016  
November/December. I am not sure about the date.

**ADV. NONTLANTLA YINA:** And what was the purpose of visiting Rebafeanyi?

**ME. INA GROBLER:** At that point it was to... I was told to join one of the teams to  
15see and investigate what was happening at the NGO. So but on that day I also  
assessed the users at Rebafeanyi.

**ADV. NONTLANTLA YINA:** What did you find at Rebafeanyi?

**ME. INA GROBLER:** More or less the same as at Ubuhle. The users... it was  
myself and another therapist and we assessed all the users there and they were  
20also different psychiatric diagnosis, there were also people who were still psychotic.

They were more or less the same level of functioning. There were maybe one or two who were a bit higher, like the third level of functioning. That place was a bigger area.

**ADV. NONTLANTLA YINA:** Did they have the activities and stimulation program for the patients?

**ME. INA GROBLER:** I did not see any activities or stimulation programs.

**ADV. NONTLANTLA YINA:** And was that all, those two NGOs that you visited?

**ME. INA GROBLER:** Ja that is the only two that I visited.

**ADV. NONTLANTLA YINA:** And the medical conditions of those patients, were they good?

**ME. INA GROBLER:** The physical condition of the people at Rebafeanyi was fair. I did not see anyone who was not in physical condition.

**ADV. NONTLANTLA YINA:** And the area, was it suitable?

**ME. INA GROBLER:** That area was just recently, before we visited them, that they started to use that area, so it was quite bare, it was close to a stream and that was a concern. Users could walk down to the stream and that could be a risk to them. And the house was a double storey house and that was also a problem identified by the team.

**ADV. NONTLANTLA YINA:** If you can just read the summary of the findings from your report, the last row.

**ME. INA GROBLER:** Ja, just the last sentence or the whole summary?

**ADV. NONTLANTLA YINA:** The whole summary, please.

**ME. INA GROBLER:** The summary was also from the other NGOs that was visited by my colleagues.

**ADV. NONTLANTLA YINA:** Which were those NGOs?

5**ME. INA GROBLER:** They were Tshepong, Shama and also Rebafenyi.

**ADV. NONTLANTLA YINA:** Are those the dates on which the visitations took place?

**ME. INA GROBLER:** Yes.

**ADV. NONTLANTLA YINA:** Can you read them on record? Start with Tshepong.

10**ME. INA GROBLER:** Tshepong was on the 14<sup>th</sup> of March, the 15<sup>th</sup> of March and the 29<sup>th</sup> of March.

**ADV. NONTLANTLA YINA:** And which year was this?

**ME. INA GROBLER:** 2017.

**ADV. NONTLANTLA YINA:** Yes and then in respect of Shama House?

15**ME. INA GROBLER:** Shama House was also 13 March 2017 and then Rebafenyi the 6<sup>th</sup> of March 2017.

**ADV. NONTLANTLA YINA:** And then read out the summary of the findings.

**ME. INA GROBLER:** “At some of the NGOs the mental health care users appeared unkempt and had poor hygiene. There were no activity programs for users, no  
20stimulation, and some of the mental health care users were left unattended for long

periods of time. One of the NGOs, one of the users complained that their medical conditions are not dealt with when they complain to the owners or the managers of the NGOs. There was poor interaction between the staff of the NGOs and the users.”

5 **ADV. NONTLANTLA YINA:** And after you had conducted the assessment, you were also of the view that the mental health care users should be removed from those NGOs.

**ME. INA GROBLER:** Yes.

**ADV. NONTLANTLA YINA:** Thank you, Justice, that would be all.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Thank you. Adv. Hassim.

**ADV. ADILA HASSIM:** Good morning Me. Grobler.

**ME. INA GROBLER:** Morning.

**ADV. ADILA HASSIM:** My name is Adila Hassim and I am one of the legal team that represents the families of 65 deceased. I would like to begin with your  
15 description of Ubhle Benkosi. Can you just recall how many people were there, how many mental health care users on the day that you visited?

**ME. INA GROBLER:** According to the list that we received there, there were 34 users. I think there was one, I remember on that day that it was a problem, one user we could not find, but I think it was 34 users there.

20 **ADV. ADILA HASSIM:** And you said that the place was not big enough for that many mental health care users.



**ME. INA GROBLER:** Ja.

**ADV. ADILA HASSIM:** So the license for Ubuhle Benkosi is a license for 50 people. I assume if the place was not big enough for 34, it was clearly not big enough for 50.

5**ME. INA GROBLER:** Definitely not.

**ADV. ADILA HASSIM:** Not. And when you visited the NGO, do you recall which street it was on?

**ME. INA GROBLER:** I don't recall. It is at the back of Centurion and I did travel on the R55, but I don't recall.

10**ADV. ADILA HASSIM:** You don't recall the address?

**ME. INA GROBLER:** No.

**ADV. ADILA HASSIM:** It wasn't Bart Street by any chance?

**ME. INA GROBLER:** It could be.

**ADV. ADILA HASSIM:** Could be.

15**ME. INA GROBLER:** I am not sure.

**ADV. ADILA HASSIM:** I am just asking because there are different addresses for this NGO on our records. It is Bart Street in the license and in the audit report for the NGO the address is described as Plot number 15, Von Willich Street.

**ME. INA GROBLER:** I think that is the one that I used. The other street does not  
20sound familiar.

**ADV. ADILA HASSIM:** Not familiar. They both are listed as being in Centurion, but does that sound familiar, the Von Willich Street?

**ME. INA GROBLER:** Von Willich, ja.

**ADV. ADILA HASSIM:** They are just different addresses on the licenses and the 5audit report. So thank you for assisting me to understand it better. You also said that there were acute psychotic mental health care users.

**ME. INA GROBLER:** Yes.

**ADV. ADILA HASSIM:** In terms of the overall layout and the services that were being provided, would you say that it was a suitable facility for severe psychiatric 10disabilities?

**ME. INA GROBLER:** I don't think so because there is a lot of risk involved in severe psychiatric illnesses and a risk for injuring themselves or other users. So for that reason I wouldn't say it is a suitable area. But a home environment that is a better environment than like a hostel kind of set up.

15**ADV. ADILA HASSIM:** Yes. And is there a difference between severe psychiatric disability and chronic psychiatric disability?

**ME. INA GROBLER:** Yes. Chronic psychiatric disability obviously is a long 20standing illness. So a chronic psychiatric disability can be severe as well, but otherwise acute psychiatric illness probably, well they can be severe as well, but it is not necessarily the same thing.

**ARBITRATOR, JUSTICE MOSENEKE:** So chronic would point to a long standing condition.

**ME. INA GROBLER:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** A continual condition.

5**ME. INA GROBLER:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Right. And the condition could be severe or not.

**ME. INA GROBLER:** Yes.

**ADV. ADILA HASSIM:** There are two licenses that are on record for these  
10proceedings and the one license says it is a facility for patients with chronic  
psychiatric disability and that was a license that was signed by Dr Manamela. And  
there is a second license that was signed by Dr Selebano and that is for persons  
with severe psychiatric disability.

**ME. INA GROBLER:** I don't think it is suitable for severe psychiatric disability. But  
15even for chronic psychiatric disability, because one of the aims of working with  
chronic mental health care users is the aim of deinstitutionalisation and the NGO  
was quite on the outskirts of Pretoria, so there were no... it is on a small holding.  
So there is no possibility for them to go different places. So that would be a  
problem as well. But I would say definitely not for severe psychiatric illness, as I  
20said because of the risk of possible injury to themselves or other people.

**ADV. ADILA HASSIM:** Thank you. If it was on a small holding, what type of integration would there be with the community or were they isolated?

**ME. INA GROBLER:** I think they were quite isolated because the access gates were locked, you couldn't just leave unless someone opens for you, so it did seem quite isolated. There would have been little or minimal interaction with other people or with the community.

**ADV. ADILA HASSIM:** And are you familiar with the national mental health policy on deinstitutionalisation?

**ME. INA GROBLER:** I am.

10**ADV. ADILA HASSIM:** Would you say that moving patients to a NGO like that, would be consistent with the aims of deinstitutionalisation?

**ME. INA GROBLER:** I don't think so. You would... my understanding of it is that the environment should be close to the home environment. It should facilitate having like a home environment. And also with reintegration into the community.  
15And also trying still, although their mental illness is a chronic illness, you will still try and maintain current abilities or even improve, if possible. And for that reason it would not be suitable to have them at an isolated place outside a community. I think also looking at the stigma around mental illness, for that reason you sort of keep them marginalised if you just let them stay on isolated places.

20**ADV. ADILA HASSIM:** And the occupational therapy, that program, would be a very important element of the care of mental health care users, you would agree.

**ME. INA GROBLER:** Yes.

**ADV. ADILA HASSIM:** And you spoke a little about the consequences of not having such a program and that users could deteriorate without that type of stimulation program.

5**ME. INA GROBLER:** Ja.

**ADV. ADILA HASSIM:** Would you also say that they would feel abandoned?

**ME. INA GROBLER:** Definitely. The four layer functioning patients, the stimulation would be important. When they are a bit higher functioning, you would focus on... the aim would always be to try and rehabilitate them back into the community. And 10part of that rehabilitation into the community is also interpersonal relationships and contact and support from the family and the community. So if they are isolated within certain psychiatric conditions, they in any case feel rejected and that's why... and a lot of the mental health care users, just from my experience, from Weskoppies' side, do feel rejected. And they don't want to go to NGOs or places 15like Life Esidimeni, they want to go back to their families.

**ADV. ADILA HASSIM:** Yes.

**ME. INA GROBLER:** The reality is, sometimes families cannot take care of them or cannot deal with a mental illness. But yes, they definitely feel rejected and abandoned.

**ARBITRATOR, JUSTICE MOSENEKE:** Tell me something, Me. Grobler, in your understanding of the national policy on deinstitutionalisation, does it permit taking somebody out of a larger institution to a smaller institution but still away from home?

**ME. INA GROBLER:** I think the Mental Health Care Act says lease restrictive environment. So when the psychiatric condition is stable and they don't warrant admission anymore, they need to be removed from like Weskoppies Hospital. But some users do require constant supervision, constant care and that is a problem. A lot of families cannot provide that or are not able to, for whatever reason, to do that. But my understanding is that it shouldn't be these large institutions. It should be smaller institutions that represents the home environment, which means it should be smaller houses within the community to allow for that to happen.

**ARBITRATOR, JUSTICE MOSENEKE:** So taking people to a place like Rebafenyi or to Ubuhle Benkosi where there are 34, you said, is that consistent with the expectation, with the policy expectation? Would 34 people in that environment approximate or be like a home?

**ME. INA GROBLER:** I think if you have a suitable environment, 34 would be better, if the house has enough rooms, if you could recreate the home environment. But having people sleep in these dormitories, that would not recreate the home environment. So you should have a suitable area that users do not maybe share or even that might not be practical, but then still that they don't share with 12 other people but maybe with only two or three other people – that would also create a more homely environment.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja, because the very term deinstitutionalisation denotes moving away from an institution, regimented activity in limited space for many people. I can see your head is going, but we need to record your answer. Is that consistent with your understanding of what must happen here? 5 I know nothing. It is actually a question that I was asking, you may not have seen it as one.

**ME. INA GROBLER:** Ja, I think, ja, that is my understanding that it should be smaller and the stimulation or the activity program... the ultimate would be, the ideal circumstances would be to cater for all the users there within their interest, within 10 their abilities. But for that you need also qualified people and we know that is a problem that the NGOs cannot afford qualified people. So to have that ideal program you would need a regular occupational therapist to try and implement such a program. But just a stimulation program or knowledge about mental illness would also allow them to understand not to do everything for mental health care users, but 15 to, as far as possible, help them, enable them to be independent and optimally function and that requires a lot of things. Also the effective management of the psychiatric illness, because the users that we did see who were still acutely psychotic, it could be that that is the best that they are, but it could also be that they were not effectively treated.

20 **ARBITRATOR, JUSTICE MOSENEKE:** And if the acutely psychotic ones, if you had anything to do with it, would you have kept them at Ubuhle Benkosi, or would you have rather kept them in an institution larger like Weskoppies or Life Esidimeni?

**ME. INA GROBLER:** I think if there is no inappropriate behaviour or aggressive behaviour, they could stay at a NGO. Personally I would think that a smaller place would be suitable, because I think in a big place it becomes like a dormitory, it becomes a clinical environment. And I think it removes the dignity of people with 5mental illness and it removes... it could also institute low mood depression, other psychiatric illnesses that were originally not the problem.

**ARBITRATOR, JUSTICE MOSENEKE:** Adv. Hassim.

**ADV. ADILA HASSIM:** Me. Grobler, you said you didn't have access to the patients' medical files. Were there files for each patient?

10**ME. INA GROBLER:** There were files, but I think the files that were there were actually taken there by the task team. I am not sure if Ubhle themselves had files for the users, because we actually had to start a file for them to be relocated to a different place. So I don't know if they had their own files, files we had there were actually started with the task team.

15**ADV. ADILA HASSIM:** And would they have been able to take care of the users properly without files, without knowing the details of the diagnosis and the medication and that type of information?

**ME. INA GROBLER:** They definitely need files for the correct administering of medication. But the NGO will also need to have knowledge how to... they might 20have access or knowledge of the diagnosis, but still not know how to handle people with that diagnosis. So that does not automatically mean that if they had files, they would have known how to handle the users.



**ADV. ADILA HASSIM:** And you say you also visited Rebafenyi.

**ME. INA GROBLER:** Ja.

**ADV. ADILA HASSIM:** And you say this was in 2016.

**ME. INA GROBLER:** Yes.

5**ADV. ADILA HASSIM:** And you didn't see any activities or stimulation programs.

**ME. INA GROBLER:** Yes.

**ADV. ADILA HASSIM:** And who asked you to visit Rebafenyi to assess the users?

**ME. INA GROBLER:** I was asked by head office, Department of Health, but it was unclear what I had to do there. So the team that I went with that day, didn't know  
10what I had to do there. So I was there, so I helped the occupational therapist from the district who was there that day to assess the users.

**ADV. ADILA HASSIM:** One of the family members of one of the deceased testified before these proceedings and that was Mr. Lucas Mogoerane. And his family member, Christopher, was at Rebafenyi. And he said it was somewhere near  
15Diepsloot. Is that the one... and I understand there to be several Rebafenyi Homes. Is that the one that you visited?

**ME. INA GROBLER:** I don't think so. I visited the one also like outside Pretoria Centurion. I think there was one that side. But we struggled to find the place, we couldn't find the house initially.

20**ADV. ADILA HASSIM:** Do you recall the manager's name?

**ME. INA GROBLER:** No, I don't.

**ADV. ADILA HASSIM:** It was a women by the name of Noelene?

**ME. INA GROBLER:** I don't know.

**ADV. ADILA HASSIM:** Mr. Mogoerane testified that when he went to visit  
5 Christopher, he was very thin and very hungry and he was crying. And he said it  
was the first time in 30 years that he had seen his brother cry like that. And one of  
the things, apart from many other things, one of the issues was that there was not  
sufficient food at the NGO. Did you observe anything in relation to food and  
nutrition and the supply of food when you visited Rebafenyi?

10 **ME. INA GROBLER:** We were there the whole day, so they did give... also during  
lunch time. It was a scheduled visit, so that day I didn't see anything that was  
concerning, but I don't know if the food is always like that that. So on that day they  
had fresh fruit apples and pears. So I don't know, but it could have been just for our  
benefit.

15 **ADV. ADILA HASSIM:** And did it feel isolated, the building itself, the location, did it  
feel like an isolated location?

**ME. INA GROBLER:** Ja, because it is also on a small holding. So there is not...  
the houses are not that far apart, but it is isolated as well.

**ADV. ADILA HASSIM:** One of the things that Mr. Mogoerane said to the  
20 proceedings was that Christopher and the other users at Rebafenyi kept asking

where are we and they wanted to leave. That is why I am asking whether that would be consistent with this questioning, where are we... they seemed lost.

**ME. INA GROBLER:** They did. There were users that was from Weskoppies from earlier years and when they heard I am from Weskoppies, they did ask if they could go back to Weskoppies. On that day there was one user whose father came to visit, but we had to use the help of the care givers to assess some of the users, because they could not all speak Afrikaans or English and so we had to use a translator or I had to use a translator. Some of the users did say they haven't had contact with their families, they don't know if their families know that they are there.

10 **ADV. ADILA HASSIM:** And was there any follow-up done from... was that reported to the Department, first of all, this concern from the users?

**ME. INA GROBLER:** I did report to the people I was with, the team I was with. There were several teams that day and none of the teams actually were very sure what their role is that day. There was a team from head office, there was a monitoring team from head office. There were two or three mental health teams from Tshwane district. But it was not clear exactly what each team's role was that day.

**ADV. ADILA HASSIM:** Was there somebody in charge? Was there a leader of the teams?

20 **ME. INA GROBLER:** I did not observe someone specifically to be in charge.

**ADV. ADILA HASSIM:** And when you referred to head office, what do you mean by head office?

**ME. INA GROBLER:** I think it was a team that was... I know there was a social worker, a mental health registered nurse that was seconded to start an investigation. I think it was just very soon... I am not sure... I think it was very soon in the process. So I was just told that I had to be there, but without clear indication of what I had to do there, what was the purpose of it.

**ADV. ADILA HASSIM:** What were their names?

**ME. INA GROBLER:** The social worker... I can't remember now. I can get the names and I can give the names to you, but I cannot remember now.

**ADV. ADILA HASSIM:** But by head office you mean the provincial ...intervened.

10 **ME. INA GROBLER:** Provincial government.

**ADV. ADILA HASSIM:** Provincial department.

**ME. INA GROBLER:** Provincial department, ja.

**ADV. ADILA HASSIM:** And did you find, observe or talk to anyone who was in the NGO, about payment of subsidies by the government?

15 **ME. INA GROBLER:** No.

**ADV. ADILA HASSIM:** There were no complaints about payment of subsidies?

**ME. INA GROBLER:** There might have... I did not talk to anyone about that. It could have been some of the other people there, some of the other teams, because there were people who had to look at the environment, at the structural part of the building, the nutrition, all the requirements according to the licenses. If there is a driver, if the medication is sorted and according to the licensing agreement.

**ADV. ADILA HASSIM:** And did the meet the requirement of the license?

**ME. INA GROBLER:** What I do remember, not all the requirements. If I remember correctly, one of the requirements was that there should be a separate person for like, it cannot be the same person that is the driver and the cook, it needs to be 5separate people. I know that was a problem. I think the transport was also a problem. That was a complaint that the users did not follow up, which meant that they defaulted on medication, because they did not get their medication in time.

**ADV. ADILA HASSIM:** And by follow-up you mean visits to the local clinics.

**ME. INA GROBLER:** Ja.

10**ADV. ADILA HASSIM:** And that's important because these are NGOs.

**ME. INA GROBLER:** That was the agreement that most psychiatric patients monthly has to get their medication. And if they do not take them to the clinics every month for their follow up, then they won't take their medication.

**ADV. ADILA HASSIM:** Mr. Mogoerane also said that the manager, whom he called 15Noelene, said that they did not receive subsidies and they had to go to Shoprite and ask for donations for food. Did you see a meal program? You said on that day it was a scheduled visit, I heard you.

**ME. INA GROBLER:** Yes.

**ADV. ADILA HASSIM:** But was there anything else that you observed in relation to 20food and nutrition?

**ME. INA GROBLER:** There was also a dietitian that day, so I only did the occupational therapy part. So I don't know at all about the nutrition or the meal plan.

**ADV. ADILA HASSIM:** And from your layperson's observation of the structure, what did it seem like to you?

**ME. INA GROBLER:** Again the structure... a concern was mentioned because it was a double storey building and there was not enough security. The windows could open and there was nothing, so someone could fall out of the window. So that kind of risk it was a problem. And then the environment... if a user is not able to physically, to be independent physically the environment could be a risk in that regard as well. But the outside space was big enough, except for the risk of the stream that was close by and that was not fenced off, so it is possible that someone could wander off and that could be a risk.

**ADV. ADILA HASSIM:** The stream?

15 **ME. INA GROBLER:** Ja, like a small river.

**ADV. ADILA HASSIM:** Is it the Hennops River?

**ME. INA GROBLER:** Ja, I think so.

**ADV. ADILA HASSIM:** I do think that it is the same venue as Mr. Mogoerane was talking about.

20 **ME. INA GROBLER:** Okay.

**ADV. ADILA HASSIM:** All the descriptions that you provided is consistent with his. Did you see any leaking pipes or doors falling of the hinges?

**ME. INA GROBLER:** I was only in one area. So I did not walk around and see anything like that. But I also did not look for things like that.

5**ADV. ADILA HASSIM:** And Mr. Mogoerane also said that, as you entered it, on the outside it seemed okay, the place, but when you went inside you saw the full – what he described the horror – of what it was. Does that sound familiar to you? Does that sound familiar with what you saw?

**ME. INA GROBLER:** It could be. We were in the office area. So just a small, I am  
10not sure if it is a dining room where we assessed the users. So I didn't see the rest of the buildings or the sleeping area or the kitchen or any of the other areas.

**ADV. ADILA HASSIM:** But you did observe that safety was a concern.

**ME. INA GROBLER:** Ja.

**ADV. ADILA HASSIM:** In double storey and housing those kinds of patients that  
15might jump out of the window and then the stream and the risk of drowning.

**ME. INA GROBLER:** And also the stairs, because they can be... psychiatric medication can cause physical kind of problems, tremors. So it could also pose a risk in that regard.

**ADV. ADILA HASSIM:** And you said earlier that you reported the concerns of the  
20users. To whom did you report it again?

**ME. INA GROBLER:** The people I went with to the place was not willing to take me back, so one of the mental health coordinators took me back to the hospital and I then did report in general to the mental health coordinator.

**ADV. ADILA HASSIM:** Do you remember the person's name?

5**ME. INA GROBLER:** I am sorry, there was so many, no I don't. There was so many people on that day, I don't remember his name.

**ADV. ADILA HASSIM:** And do you know whether there was any further follow-up visit to the NGO?

**ME. INA GROBLER:** I think there... I don't know. I can't... I don't want to assume  
10anything, but I don't know. I was not involved further than that day. So I don't know what was, what happened after that.

**ADV. ADILA HASSIM:** And which other NGOs did you visit?

**ME. INA GROBLER:** I only visited those two.

**ADV. ADILA HASSIM:** Those two?

15**ME. INA GROBLER:** Ja.

**ADV. ADILA HASSIM:** Thank you. Thank you for testifying today. I have no further questions, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Adv. Crouse.

**ADV. LILLA CROUSE:** Thank you Justice. Me. Grobler, my name is Lilla Crouse, I  
20act with my learned friend, Mr. Skibi, for the survivors of the families and we are



instructed by Legal Aid South Africa. Could I ask you to please go to file number 7? Somebody will assist you. File number 7 page 2565. We know from the Ombud's report that at least two people from Ubuhle has died there. But the list on page 2565 is a list of patients that we received that was supposed to be there. You will see there is 35, if you count them. I see they are not numbered, but we have counted them as 35. Did you find 35 people on that day, did you say?

**ME. INA GROBLER:** I can't remember exactly how many patients were there. I think the list we had, it was a struggle to find all the people on the list.

**ADV. LILLA CROUSE:** To verify.

10**ME. INA GROBLER:** So the quality assurance person who went with us as part of the team, sorted that out. So we saw all the people who were there on that day.

**ADV. LILLA CROUSE:** Could you just remind ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** The evidence is 34 people, so far, isn't it? At the beginning of your evidence you said 34.

15**ME. INA GROBLER:** Ja that was the list of names we had going there.

**ADV. LILLA CROUSE:** And could you just remind us your reason for going there?

**ME. INA GROBLER:** That is, I had the Ombudsman report, all the users had to be screened and assessed to be relocated to better facilities.

**ADV. LILLA CROUSE:** If I take you to that list in front of you, you would see for  
20instance the second last person on the list, that is probably the easiest one to get to

now, Mr. Sope, you will see there is no diagnosis there. Is it possible to properly treat somebody if you don't have a diagnosis?

**ME. INA GROBLER:** I don't think so. The... well psychiatric... although only the psychiatric diagnosis seem to be mentioned here, but there could also be other diagnosis ...intervened.

**ADV. LILLA CROUSE:** You need others as well.

**ME. INA GROBLER:** You need all of it, because it could... even like hypertension or ...intervened.

**ADV. LILLA CROUSE:** Or HIV.

10**ME. INA GROBLER:** Or HIV, ja.

**ADV. LILLA CROUSE:** And you need medication for both.

**ME. INA GROBLER:** Ja.

**ADV. LILLA CROUSE:** So but if you don't even have the psychiatric diagnosis, that is dangerous, don't you agree?

15**ME. INA GROBLER:** I agree, because you also need to know what to look out for. If you don't know that you have a user with schizophrenia, you also won't know when the illness require may be admission.

**ADV. LILLA CROUSE:** If you go a little bit up the list, there is a name in bold, do you see that?

20**ME. INA GROBLER:** Yes.

**ADV. LILLA CROUSE:** A Mr. Motsomae (spelling). Same there, there is no diagnosis, do you see that?

**ME. INA GROBLER:** I see it.

**ADV. LILLA CROUSE:** And what is worrying to us is that there is also no family involved with no ID number and things like that. How would that affect the treatment of a patient?

**ME. INA GROBLER:** I think because the aim would be for all health care professionals to have people function optimally, if there is no diagnosis then you won't be able to give medication, which could improve that person's functioning. If there is no ID number, as far as I know, then it has implication for disability grants.

**ADV. LILLA CROUSE:** For the SASSA grants, yes.

**ME. INA GROBLER:** For the SASSA grants.

**ADV. LILLA CROUSE:** And especially if the service level agreements are not in place, it means not enough money, would you agree with that?

**ME. INA GROBLER:** Yes.

**ADV. LILLA CROUSE:** Now you've seen this place. We know there are two bathrooms and one shower. Would that be sufficient?

**ME. INA GROBLER:** No, I don't think so. Because again, out of occupational therapy perspective, you want people to be independent and also to protect their dignity. The ones who can wash themselves or who are independent that they can carry on with that, but if there are only two bathrooms available, it means that they

might not... there is not suitable facility if people also want to do it on their own time. So that just actually creates more institutionalisation because things has to be done according to routines, and probably very fixed routines to get all activities of daily living done.

5 **ARBITRATOR, JUSTICE MOSENEKE:** And where do you get that information, from the assessment report?

**ADV. LILLA CROUSE:** Yes, I will take you to that if necessary, Justice. Can I just ask you, as you saw the people there that day, would you have left them there without relocating?

10 **ME. INA GROBLER:** No. A lot of them were quite distressed because I think they were concerned that their families didn't know where they were. Some of them were from the Johannesburg area and it was quite far. So they were quite upset about that as well. The ones who were better able to communicate, did communicate that.

15 **ADV. LILLA CROUSE:** Yes. I am going to ask you to just go to page 2534. It is just a few pages before that one. Do you have the document in front of you?

**ME. INA GROBLER:** Yes.

**ADV. LILLA CROUSE:** It is an audit checklist concerning Ubuhle Benkosi and it has got the date on there about the fifth line from the top of the 9<sup>th</sup> of September 202016. Do you see that?

**ME. INA GROBLER:** Yes.

**ADV. LILLA CROUSE:** So we know at that stage there was an audit being done. That is less than a month before the service agreement was signed with this place. And my learned friend had already told you that the address on the license and the address on this differs. This refers to Von Willich Street whereas the license refers to another address. But it says there that there were five bedrooms at 1.1.4, do you see that? And then they give the beds per the bedroom. You didn't see that yourself.

**ME. INA GROBLER:** No.

**ADV. LILLA CROUSE:** What comes out of this, and I am not going to waste time, is that they were concerned about the ventilation and that there is not enough space for 50 people. But this was kept open after September 2016. What would your response to that be? With no proper ventilation and with this number of people.

**ME. INA GROBLER:** I think that would be a problem if nothing has changed since the time I was there.

15 **ADV. LILLA CROUSE:** If you turn one page, page 2536, in the middle of the page at 5.3 to 5.4, it says there is no care givers with a post matric education. There are six care givers who have Grade 10 to 12 and then seven care givers with a Grade 4 to 9 qualification. Would that be sufficient staff to look after 34 or 35 people?

**ME. INA GROBLER:** I don't think so, not with the qualifications they have. But I think... because the people at Ubhle, all of them are quite low functioning, which I do think require a bit more skills.

**ADV. LILLA CROUSE:** And would require at least an OT.

**ME. INA GROBLER:** An OT, a mental health registered nurse, a professional person, yes.

**ADV. LILLA CROUSE:** Can I just ask you just on that... I just want to ask you one more question on that. If you go to page 2564. Did you see any people sleeping in 5 buildings outside or were all the people housed in the house?

**ME. INA GROBLER:** The team was informed that at that place, at the small holding there were horse stables, that there were concerns that they used the horse stables as places for people to sleep. So the NGO did deny that, but what I observed – I can only say what I observed – and that was that there were blankets 10 outside these stables.

**ADV. LILLA CROUSE:** Because if one look at page 2564 it says that there were two inside toilets and four outside toilets. Do you see that?

**ME. INA GROBLER:** Yes.

**ADV. LILLA CROUSE:** How will an outside toilet assist if a person is sleeping 15 inside the house, can you explain that?

**ME. INA GROBLER:** Ja, I don't think... it could be a risk. If they leave the doors open then that in any case would be a risk, but if people would walk around at night, that could pose serious risk to the mental health care users.

**ADV. LILLA CROUSE:** These reports, and I just have to put it to you in fairness to 20 the person who drafted this report, found that there was sufficient place. That was against your finding. Your finding was that here wasn't sufficient place there.

**ME. INA GROBLER:** Not what I saw to be effective.

**ADV. LILLA CROUSE:** Thank you. And just very lastly ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** I don't understand the question though.  
Look at page 2564.

5**ADV. LILLA CROUSE:** It says the place is big enough but the building that is currently in use cannot accommodate 50 users as indicated, only 36 can be accommodated now. And this witness' evidence is that 35 people were too many for the place. So this report differs from the witness, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja. I am not sure about that. The  
10language is inelegant but it seems to say that the license says 50 but there were 36 people there.

**ADV. LILLA CROUSE:** Yes, but it also says it is not big enough for 50 people.

**ARBITRATOR, JUSTICE MOSENEKE:** Very well, okay.

**ADV. LILLA CROUSE:** As I read it. When this report was done in September  
152016, the patients were busy with gardening and sweeping, but when you were there you didn't find any of that.

**ME. INA GROBLER:** No. When we were there, most of the users did seem upset. Why they were upset, I think, because we do know that some of the problems before, when first moving to the NGO, users were not informed, they didn't know  
20what was happening. And we do know that changes like that is discomforting to mental health care users. So when we arrived there, most of the users just sat on

the chairs and they did not sweep. I don't know if other times they do that, but not on the day we were there.

**ADV. LILLA CROUSE:** Thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you. Did you tell the users that you were there to implement recommendation 13 of the Ombud's report? In other words not in that language, but you were there basically to assess in order to shut the place down.

**ME. INA GROBLER:** No. There was also a psychologist with our team that day. So but we did try to ease the users and not to cause any emotional turmoil, because the move... so there was going to be a team who would also help on the day of the move. So we just went to do the assessments beforehand.

**ARBITRATOR, JUSTICE MOSENEKE:** Assessments.

**ME. INA GROBLER:** Ja.

**ARBITRATOR, JUSTICE MOSENEKE:** Fair enough. You know if you look at page 2564.

**ME. INA GROBLER:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** The names of the NGO representatives are set out there, can you see them? Did you meet Me. Mabatsha and Mr. Moeketsi?

**ME. INA GROBLER:** I did not meet them.



**ARBITRATOR, JUSTICE MOSENEKE:** You did not meet them. Did you come to know who the owners... well it is a NGO I suppose. It is sufficient that there are representatives, Me. Mabatsha and Mr. Moeketsi. Very well. Thank you. Counsel.

**ADV. DIRK GROENEWALD:** Thank you, Justice, we have no questions for the witness.

**ARBITRATOR, JUSTICE MOSENEKE:** You led the witness, so I must move on to Adv. Hutamo.

**ADV. TEBOGO HUTAMO:** Thank you Justice. Dumela Me. Grobler.

**ME. INA GROBLER:** Dumela.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Look, you got what you wanted, right, testing, testing from Me. Grobler.

**ADV. TEBOGO HUTAMO:** Me. Grobler, you testified that you visited one of the NGOs by the name of Ubuhle Benkosi.

**ME. INA GROBLER:** Yes.

15 **ADV. TEBOGO HUTAMO:** And you said that the house was a single storey.

**ME. INA GROBLER:** Yes.

**ADV. TEBOGO HUTAMO:** Did I get our evidence correct when you said that you only observed the dining area of the house?

**ME. INA GROBLER:** Yes.

**ADV. TEBOGO HUTAMO:** And you said that you visited the NGO for purposes of making an assessment on the conditions under which the mental health care users were kept.

**ME. INA GROBLER:** Not the conditions. The assessment of the users themselves.

**ADV. TEBOGO HUTAMO:** So you didn't have to assess the surroundings or the place where they were housed.

**ME. INA GROBLER:** There were other people who were part of the team who did that assessments.

10**ADV. TEBOGO HUTAMO:** Oh okay. And then your conclusions, I heard you saying that you found the place not to be suitable for the accommodation of mental health care users.

**ME. INA GROBLER:** Yes.

**ADV. TEBOGO HUTAMO:** And then if you have not assessed other areas of the house, would it not have been proper for you to do so, for you to be able to reach that conclusion?

**ARBITRATOR, JUSTICE MOSENEKE:** Me. Grobler is an occupational therapist.

**ADV. TEBOGO HUTAMO:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** And she had gone to screen patients for their functionality, bodily functionality.

**ADV. TEBOGO HUTAMO:** Indeed so Justice. I am just only asking the question in relation to what she has said. She has given the testimony that she has found the place not to be suitable to the extent that ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, from an OT point of view.

5**ADV. TEBOGO HUTAMO:** Indeed.

**ARBITRATOR, JUSTICE MOSENEKE:** Sure.

**ADV. TEBOGO HUTAMO:** Yes. So which is the reason why I asked her if, would it not have been necessary for her to have observed other areas.

**ARBITRATOR, JUSTICE MOSENEKE:** I see. Okay proceed.

10**ADV. NONTLANTLA YINA:** Justice, the witness clearly stated that the basis for her opinion was because there were no stimulation programs, there were no activities. From an OT point of view, the place was not suitable.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes. You are repeating the exchange that we've just had. But we have an objection essentially that you ought to limit your  
15criticism, if it is criticism, to the understanding that she is an occupational therapist, the head of occupational therapy at Weskoppies, and she was expressing the view within the context of occupational therapy. I think you had the point already.

**ADV. TEBOGO HUTAMO:** Indeed so, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** So continue to ask questions, keeping that  
20in mind.

**ADV. TEBOGO HUTAMO:** Well Justice, I will rest my questions on that basis.

**ARBITRATOR, JUSTICE MOSENEKE:** You really don't have to. If you have a point to make, you are entitled to make it.

**ADV. TEBOGO HUTAMO:** Me. Grobler, can you just assist us, on what basis did you come to the conclusion that the house was not suitable to house mental health  
5care users?

**ME. INA GROBLER:** For the purpose of deinstitutionalisation and also the occupational performance that we would want mental health care users to do. The area where they eat, they should have a table to sit at. If they are not able to eat independently, it would be very difficult to eat, if you have to eat from your plate on  
10your lap. So because we promote or the independence of mental health care users should be promoted, but you will not be able to implement adaptations or assistive devices or anything to allow people to be independent if they don't even have a table to sit and eat at. If you use a knife and a fork, how will you do that eating from your lap? These people do have psychiatric illness, they are on chronic medication  
15and that adds to barriers in their environment if they don't even have a table to eat at. So that is... based on that, I said that part is not suitable for people to live. If you need to accommodate people for a short while, it could have been acceptable. But keeping in mind these places should be the place where these people will need to call their home, it was not effective enough for that purpose.

20**ADV. TEBOGO HUTAMO:** And that consideration should have also been applicable to the ablution facilities, not so?

**ME. INA GROBLER:** Yes. Users who does use, who take psychiatric medication, they tend to drink a lot of water and that also requires from them to use the bathroom quite often. So it could have implications there as well. If the toilets were outside and the users had to use the bathroom during the night, that would not have been acceptable. It poses risk if there is no supervision and people... or if they were not even allowed to unlock the door, go outside to use the bathrooms for example, then you will not promote independence, because then users could develop infections or incontinent or lots of other problems. And I think it is also a basic human right to have access to those facilities whenever you need them.

10 **ADV. TEBOGO HUTAMO:** And you only observed the dining area.

**ME. INA GROBLER:** Yes.

**ADV. TEBOGO HUTAMO:** Thank you. Me. Grobler, thank you very much for your assistance, there are no further questions.

**ME. INA GROBLER:** Okay.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Thank you Counsel. Adv. Yina.

**ADV. NONTLANTLA YINA:** Thank you Justice. Me. Grobler, you said you struggled to find the area, is that so?

**ME. INA GROBLER:** Yes.

**ADV. NONTLANTLA YINA:** Is it acceptable to public transport, do you know?

**ME. INA GROBLER:** I think it is accessible. I don't know if there is public transport. It was... I was quite early there so I had to wait outside so there was not a lot of traffic.

**ADV. NONTLANTLA YINA:** Did you see any taxis driving pass by?

5**ME. INA GROBLER:** If there was any, it was like one taxi. But I didn't see a lot of... there were a few cars moving in that area, but I did not see public transport.

**ADV. NONTLANTLA YINA:** Do you know if it is close to any clinics?

**ME. INA GROBLER:** As far as I know, the closest clinic to that are is probably Laudium Clinic.

10**ADV. NONTLANTLA YINA:** Which is about how many kilometres maybe?

**ME. INA GROBLER:** It is difficult for me to say.

**ADV. NONTLANTLA YINA:** On estimation.

**ME. INA GROBLER:** I think it is not close.

**ADV. NONTLANTLA YINA:** It is not close. Thank you Justice. That will be all.

15**ARBITRATOR, JUSTICE MOSENEKE:** Die plek is in my (inaudible). En heelwaarskynlik is die distansie 30km. Wat dink u?

**ME. INA GROBLER:** It is possible. To orientate myself in that area... I don't know at all.

**ARBITRATOR, JUSTICE MOSENEKE:** It is a fair answer. I don't know is a fair  
20answer. We would like to thank you and to join others to thank you for coming and

helping us in this difficult case. Two people had died by the time you went to Ubhle Benkosi, two users had died in July and November 2016 and you went 2017.

**ME. INA GROBLER:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** You said already that you didn't know why it was left open throughout the time and shutdown only after the Ombud's report and after you were sent to go and assess with your team and others. You probably don't know why it was so.

**ME. INA GROBLER:** I don't know.

**ARBITRATOR, JUSTICE MOSENEKE:** Very well. Once more thank you for coming out. We appreciate it.

**ME. INA GROBLER:** It is a pleasure.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you. It is 13:30 and I think it is appropriate to adjourn now for lunch. Are we having our meeting as suggested yesterday? Perhaps from 14:15 to 14:30.

15 **ADV. ADILA HASSIM:** That will be suitable.

**ARBITRATOR, JUSTICE MOSENEKE:** Is that suitable?

**ADV. ADILA HASSIM:** At 14:15 we will come to your chambers, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** 14:15.

**ADV. PATRICK NGUTSHANA:** That is in order.

**LIFE ESIDIMENI ARBITRATION DATE: 8th DECEMBER 2017 DAY, Session 1 – 3.**

**ARBITRATOR, JUSTICE MOSENEKE:** Very well. U is verskoon. Thank you. We are adjourned until 14:30.

**END OF SESSION 2**

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### SESSION 3

**ARBITRATOR JUSTICE MOSENEKE:** Siyabonga, you may be seated.

**ADV. LILLA CROUSE:** Thank you Justice. We call Nomvula Nonjabe. Her affidavit is at ELAH98, 98 and she will testify in English although that is not her home language and she will take the oath.

**ARBITRATOR JUSTICE MOSENEKE:** Would you put your full names on record?

**MS. NOMVULA NONJABE:** I am Nomvula Nonjabe.

**ARBITRATOR JUSTICE MOSENEKE:** Nkosi Nomvula. Do you swear that the evidence you are about to give will be the truth and nothing but the truth and if so please raise your right hand and say so help me God.

**MS. NOMVULA NONJABE:** So help me God.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel?

**ADV. LILLA CROUSE:** Thank you Justice Moseneke. Ms Nonjabe, you are working at a commercial bank. Is that right?

15**MS. NOMVULA NONJABE:** That is correct.

**ADV. LILLA CROUSE:** And you have attended some of these arbitration hearings. Is that also right?

**MS. NOMVULA NONJABE:** That is correct.

**ADV. LILLA CROUSE:** And from our side at the start of your evidence we just want to thank you for making yourself available to testify here. Now if we can speak about your family member who is a mental health care user, who is that?

**MS. NOMVULA NONJABE:** She is Kajakazi Nonjabe.

5**ADV. LILLA CROUSE:** And how is she related to you?

**MS. NOMVULA NONJABE:** She is my last born, I mean she is the last born at home. She comes after me.

**ADV. LILLA CROUSE:** She is your younger sister?

**MS. NOMVULA NONJABE:** Yes, that is correct.

10**ADV. LILLA CROUSE:** And you are how many at home?

**MS. NOMVULA NONJABE:** We are four siblings.

**ADV. LILLA CROUSE:** Thank you, and it is correct that your parents have both passed away. Is that so?

**MS. NOMVULA NONJABE:** Correct.

15**ADV. LILLA CROUSE:** And that was already in 2004?

**MS. NOMVULA NONJABE:** Correct.

**ADV. LILLA CROUSE:** Is that so? So you have played a mothering role for your younger sister, ag for your sister. Is that so?

**MS. NOMVULA NONJABE:** That is correct.

**ADV. LILLA CROUSE:** Kajakazi, did she go to school?

**MS. NOMVULA NONJABE:** Yes, she did until Grade 10.

**ADV. LILLA CROUSE:** And what happened in Grade 10?

**MS. NOMVULA NONJABE:** What happened in Grade 10 we received a call from 5high school that she had fainted and she was collected and then it continued every other day and then before we knew it, it was worse. She was hearing voices and seeing things that we were not seeing and as a result she was pulled off school.

**ADV. LILLA CROUSE:** And can you tell the court in what year that was?

**MS. NOMVULA NONJABE:** That was 2009, around September.

10**ADV. LILLA CROUSE:** Your parents had at that time already deceased?

**MS. NOMVULA NONJABE:** Yes, for about five years.

**ADV. LILLA CROUSE:** Yes, and as a result of a long journey that we are not going through now, she was placed in Weskoppies at some stage. Is that right?

**MS. NOMVULA NONJABE:** That is correct Justice.

15**ADV. LILLA CROUSE:** And in an NGO.

**MS. NOMVULA NONJABE:** That is correct.

**ADV. LILLA CROUSE:** And eventually in February 2015 she went to Randfontein Life Esidimeni. Is that right?

**MS. NOMVULA NONJABE:** That is correct.

**ADV. LILLA CROUSE:** And how did she fare at Life Esidimeni?

**MS. NOMVULA NONJABE:** Sorry, can you repeat the question?

**ADV. LILLA CROUSE:** How did it go there?

**MS. NOMVULA NONJABE:** I would describe it as a place that gave me peace. I  
5 could sleep finally at night, knowing that she was well taken care of.

**ADV. LILLA CROUSE:** Because it was an emotionally roller coaster ride until then,  
was it not?

**MS. NOMVULA NONJABE:** It was.

**ADV. LILLA CROUSE:** Can you just give us a little background why you say that?

10 **MS. NOMVULA NONJABE:** So I am saying this because we had so many  
episodes. If I could just give examples like when I placed her at the rehab centre  
in ... [inaudible], it was not a restricted environment. So they tried to get her to be  
independent and she escaped there three times. So she would leave  
Johannesburg, round about it is close to Ellispark and she would make her way to  
15 Westonaria which is in Johannesburg West. I do not know how. Sometimes she  
would you know command the taxi driver by the Johannesburg Park Station to take  
her home and we would have to settle the bill when she gets to Westonaria, but that  
was too much for me, because I was working in Pretoria at that time, and I would  
have to leave work and drive around, because I think the worst thing is when you  
20 know that she is out there and she is not yet home and she is not where you left her  
and you do not know where she is, if she is going to get home or not and when she

finally gets home she tells you that she has been raped, and then you have to run around and go to the clinic, get her tested for pregnancy and HIV and get her also to be sedated so that she can be less aggressive. So there were many of those episodes and ja, it has not been a smooth journey Justice.

5 **ADV. LILLA CROUSE**: And she was also aggressive towards you, is that not so?

**MS. NOMVULA NONJABE**: That is correct Justice.

**ADV. LILLA CROUSE**: Can you give us an example?

**MS. NOMVULA NONJABE**: So we are a big family at home and we have got kids around. So sometimes if the kids are playing together and they just you know brake  
10 in laughter, she would accuse them of laughing at her and when you try and tell her that they are not laughing at her, she would tell you no, I know they are laughing at me, why are you defending them, and then when, because she feels like you are defending the kids, then she fights with you and ja. At some point she strangled me, but my grandmother saved me.

15 **ADV. LILLA CROUSE**: It was a very difficult road up to 2015 when she was admitted to Randfontein and we are not going through everything now, but you have touched on it. At Randfontein you were informed in about November that there was going to be a move. Is that so?

**MS. NOMVULA NONJABE**: That is correct.

20 **ARBITRATOR JUSTICE MOSENEKE**: I am sorry. How old is she now Counsel?

**ADV. LILLA CROUSE**: Did we deal with it? Can you tell the court ... [interjects]

**MS. NOMVULA NONJABE:** She is 26 years old.

**ADV. LILLA CROUSE:** Yes, and let us just go back there. Does she have any children of her own?

**MS. NOMVULA NONJABE:** No, she does not have.

5**ADV. LILLA CROUSE:** But she can walk?

**MS. NOMVULA NONJABE:** She can walk.

**ADV. LILLA CROUSE:** Can she talk?

**MS. NOMVULA NONJABE:** Yes.

**ADV. LILLA CROUSE:** And she can feed herself?

10**MS. NOMVULA NONJABE:** Yes, that is correct.

**ADV. LILLA CROUSE:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** What was the diagnosis, is it known?

**MS. NOMVULA NONJABE:** Yes, I know the diagnosis. It is called skitsophrenia.

**ADV. LILLA CROUSE:** But that was also not the diagnosis from the start. You  
15went through a few diagnoses, is that not so?

**MS. NOMVULA NONJABE:** That is correct.

**ADV. LILLA CROUSE:** Where did it start?

**MS. NOMVULA NONJABE:** So it started with epilepsy and it was bipolar and then  
at a later stage, while she was in Weskoppies it was skitsophrenia.

**ADV. LILLA CROUSE:** Now we have dealt with the move extensively and we will still deal with your participation, the family committee and your activism, but for your sister Kajakazi, they first wanted to put her in an NGO, which one was that?

**MS. NOMVULA NONJABE:** That was Anani in Vereeniging.

5**ADV. LILLA CROUSE:** And what was your reaction to that?

**MS. NOMVULA NONJABE:** I told them there is no way my sister is going there, because it is very far and one of their promises was that they were not going to put her far from our home. So I said they dare do that.

**ADV. LILLA CROUSE:** And what happened, where was she placed?

10**MS. NOMVULA NONJABE:** She was placed in Goetsi Modimo.

**ADV. LILLA CROUSE:** Where is that?

**MS. NOMVULA NONJABE:** It is in Fochtville. So it is also in, it is almost in North West.

**ADV. LILLA CROUSE:** How far is that from your house?

15**MS. NOMVULA NONJABE:** It is about 60 kilometres, one trip.

**ARBITRATOR JUSTICE MOSENEKE:** And where is your home?

**MS. NOMVULA NONJABE:** It is Westonaria.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you.

**ADV. LILLA CROUSE:** Did you go there?

**MS. NOMVULA NONJABE:** Yes, I did go there because they sent her during the week and I could not escape work so I went there the following weekend.

**ADV. LILLA CROUSE:** Do you know when about she went there?

**MS. NOMVULA NONJABE:** I think she went there in or about June, early June.

5**ADV. LILLA CROUSE:** 20?

**MS. NOMVULA NONJABE:** 2016.

**ADV. LILLA CROUSE:** And was that with your knowledge and consent?

**MS. NOMVULA NONJABE:** More like forced to me, because one of the agreements with Mrs Manamela was that we are going to see the NGO's first before  
10they transfer the patients there, but my sister was sent to Goetsi Modimo and it was the first time I heard of the NGO and we had not seen it, and when I asked Manamela she said sorry ... [interjects]

**ADV. LILLA CROUSE:** Dr Manamela?

**MS. NOMVULA NONJABE:** She said I must ask Mr Thobani. When I called Mr  
15Thobani he said because they are pressed for time they have to move the patients, we will see the NGO's later.

**ADV. LILLA CROUSE:** And you went to the NGO?

**MS. NOMVULA NONJABE:** Yes, I went to the NGO.

**ADV. LILLA CROUSE:** Could you find it easily?



**MS. NOMVULA NONJABE:** I did not have the address. I only had the cell phone number of the owner. So from N12, the minute I realised that I am close by Fochtville, because on the GPS I just put Fochtville, so I had to be on the call so that they can direct me until I get to the destination.

5**ADV. LILLA CROUSE:** And they directed you?

**MS. NOMVULA NONJABE:** Yes, the son of the owner directed me.

**ARBITRATOR JUSTICE MOSENEKE:** Goetsi Modimo is the name of the NGO or of the place?

**MS. NOMVULA NONJABE:** It is the name of the NGO.

10**ARBITRATOR JUSTICE MOSENEKE:** Hm.

**ADV. LILLA CROUSE:** When you got there was there any markings outside on the building?

**MS. NOMVULA NONJABE:** No.

**ADV. LILLA CROUSE:** How did you know that you were at the right place?

15**MS. NOMVULA NONJABE:** The son had to appear by the gate and I had to identify the car I was driving in and once I identified him, then I knew that I was in the right place.

**ADV. LILLA CROUSE:** Will you give the court your general impression when you got there starting at the fence?

**MS. NOMVULA NONJABE:** When I got there, it is a location like a township and just by the gate there is a shack next door and the fence of the actual NGO is very short and the shack next door, you cannot even you know some shacks you can tell a family stays there. That one I could not tell if a family stays there or not.

5**ARBITRATOR JUSTICE MOSENEKE:** The shack was made of corrugated iron, wood?

**MS. NOMVULA NONJABE:** Yes, corrugated iron. Zink, and then at the back of the NGO it is like an open veldt. Ja, all throughout.

**ADV. LILLA CROUSE:** Okay, sorry to interrupt you. The fence you say it is a bit  
10short. What do you mean by that?

**MS. NOMVULA NONJABE:** What I mean by that is knowing my sister she could escape very easily.

**ADV. LILLA CROUSE:** Could one just get over the fence if one wanted to?

**MS. NOMVULA NONJABE:** Yes, I could.

15**ADV. LILLA CROUSE:** Yes, and the house?

**MS. NOMVULA NONJABE:** The house, so there was a main house and there was the actual house where the patients would sleep in.

**ADV. LILLA CROUSE:** Are those two different houses ... [inaudible]?

**MS. NOMVULA NONJABE:** Yes, those are two separate houses.

20**ADV. LILLA CROUSE:** So explain to us how they are situated on the earth?

**MS. NOMVULA NONJABE:** So they are situated on the same yard. I think it is one ERF and then the one where the patients would sleep in, it is like an L shape and it is made of, it is not bricks. It is like ... [inaudible] on top of each other. Ja, with the zinc on top.

5**ADV. LILLA CROUSE:** So did you establish whether any patient stayed in the main house?

**MS. NOMVULA NONJABE:** There was no patient who stayed in the main house. In the main house they had the kitchen and the visitor's area and the place where the owner was hoping to do activities in.

10**ADV. LILLA CROUSE:** So did you meet the owner?

**MS. NOMVULA NONJABE:** I met the owner.

**ADV. LILLA CROUSE:** And before we speak about her, just tell us her name. Do you know?

**MS. NOMVULA NONJABE:** Yes, her name is Lizzy.

15**ADV. LILLA CROUSE:** Do you know her surname?

**MS. NOMVULA NONJABE:** I do not know her surname Justice.

**ADV. LILLA CROUSE:** Did you see where the patients were sleeping?

**MS. NOMVULA NONJABE:** I could not see where the patients are sleeping that day.

20**ADV. LILLA CROUSE:** Why is that?

**MS. NOMVULA NONJABE:** Because when I got there, the owner was very irritated and the attitude that she had, she was somebody who was fed up because the minute I got there and I said I am looking for my sister, she was transferred from Life Esidimeni, she was like you Life Esidimeni people, I am fed up with you and the government. You dropped the people here when I did not ask for them, and I am still mourning for my husband. You know what, I do not want you to ask me any questions. If you want to take your sister, you can take her.

**ADV. LILLA CROUSE:** Did you see your sister eventually?

**MS. NOMVULA NONJABE:** Yes, I did Justice.

10**ADV. LILLA CROUSE:** And ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** She is a young woman, middle aged woman?

**MS. NOMVULA NONJABE:** She is close to her pension I would assume.

**ARBITRATOR JUSTICE MOSENEKE:** Okay. I am pensioned already, so we care for what you say.

**ADV. LILLA CROUSE:** Your sister, did they bring her to you?

**MS. NOMVULA NONJABE:** Yes, they did.

**ADV. LILLA CROUSE:** And could you describe what you saw?

**MS. NOMVULA NONJABE:** She was wearing clothes I did not know, and the only thing I could recognise was shoes, and ... [interjects]

**ADV. LILLA CROUSE:** Why do you say that?

**MS. NOMVULA NONJABE:** Because those are the shoes that I had bought her.

**ADV. LILLA CROUSE:** But you did not recognise the clothing that she was wearing, but you recognised her?

5**MS. NOMVULA NONJABE:** The shoes.

**ADV. LILLA CROUSE:** Did you recognise her?

**MS. NOMVULA NONJABE:** Yes, I did.

**ADV. LILLA CROUSE:** Yes, and what did you find?

**MS. NOMVULA NONJABE:** With just almost a week when she was there, she  
10had lost weight. My sister was big. She had lost weight. She was very dark. She  
is a dark beauty, but the dark, the darkness that I saw that day, was the dark I have  
never seen before.

**ADV. LILLA CROUSE:** Where did that come from, do you know?

**MS. NOMVULA NONJABE:** I think, because I did ask her. It came from the fact  
15that most of the day they were sitting in the sun doing nothing, and it was around  
winter so when it is cold inside they would sit outside just to get themselves warmer.

**ADV. LILLA CROUSE:** And the clothing, was that appropriate for that time of year?

**MS. NOMVULA NONJABE:** The clothing was not appropriate.

**ADV. LILLA CROUSE:** Why is that?

**MS. NOMVULA NONJABE:** Because the trouser had a few holes and she was not wearing a track top, but she was wearing like a t-shirt. That is not appropriate for that time of the year.

**ADV. LILLA CROUSE:** Did you see any other patients there?

5**MS. NOMVULA NONJABE:** Yes, there was quite a few of them.

**ADV. LILLA CROUSE:** Could you estimate how many?

**MS. NOMVULA NONJABE:** Around 27, 28.

**ADV. LILLA CROUSE:** And were they males or females?

**MS. NOMVULA NONJABE:** Most of them they were females. I only saw two  
10males.

**ADV. LILLA CROUSE:** And you did not see the sleeping arrangement?

**MS. NOMVULA NONJABE:** No, that the owner would not let me go anywhere except for the other house which is the main house.

**ADV. LILLA CROUSE:** Did you see any staff?

15**MS. NOMVULA NONJABE:** No, there was just her son and I think two other ladies that they are helping around. When I asked for security by the gate she said she does have, but her argument was that he does not wear uniform because he does not want it to be an environment that is restricted.

**ADV. LILLA CROUSE:** Did you see anybody fitting a description of a security  
20guard?

**MS. NOMVULA NONJABE:** No, it was just ... [inaudible].

**ADV. LILLA CROUSE:** Did you see any bathrooms?

**MS. NOMVULA NONJABE:** No, like I said the mama Lizzy would not let me go anywhere close.

5**ADV. LILLA CROUSE:** And the kitchen?

**MS. NOMVULA NONJABE:** The kitchen was a normal house kitchen like we have at home.

**ADV. LILLA CROUSE:** Did you see your sister's file?

**MS. NOMVULA NONJABE:** So I asked her if she received the files, and she said  
10she received some files and she is not sure if my sister's one is there or not and I  
asked her about the ID and the SASSA card if she also received that as part of  
hand over. She said she received some, but she would not show me so I did not  
see anything.

**ADV. LILLA CROUSE:** Did you discuss medication with Lizzy, the owner?

15**MS. NOMVULA NONJABE:** I did and she said she only received medication for  
seven days and she was still busy trying to communicate with the clinic close by  
and the social workers for them to provide medication for all the patients.

**ADV. LILLA CROUSE:** Did you ask the owner there why your sister was losing  
weight?

**MS. NOMVULA NONJABE:** I did, but like I said I think she was, to her defence she told me I must stop interrogating her, because she was still mourning for her husband.

**ADV. LILLA CROUSE:** What was the cleanliness of Kajakazi when you saw her there?

**MS. NOMVULA NONJABE:** I would say she had not bathed that time, because I went there in the mid morning and ... [interjects]

**ADV. LILLA CROUSE:** Why do you say that?

**MS. NOMVULA NONJABE:** Because she still had, you know when you are sleeping and ... [interjects]

**ADV. LILLA CROUSE:** You are showing next to your mouth a running.

**MS. NOMVULA NONJABE:** Yes.

**ADV. LILLA CROUSE:** You are saying the spittle was, there was dry spittle on her face?

15**MS. NOMVULA NONJABE:** Yes, that is correct.

**ADV. LILLA CROUSE:** And did you enquire about this?

**MS. NOMVULA NONJABE:** By the time I wanted to, I had so many questions really but the woman was like just take her instead of asking me too many questions. So I had to shut up.

20**ADV. LILLA CROUSE:** Okay. Now she stayed there for some time, is that so?



**MS. NOMVULA NONJABE:** Yes, she did.

**ADV. LILLA CROUSE:** For how long did she stay there?

**MS. NOMVULA NONJABE:** She stayed there until May 2017.

**ADV. LILLA CROUSE:** And during this time did she lose further weight?

5**MS. NOMVULA NONJABE:** No, but she did not gain any.

**ADV. LILLA CROUSE:** If you have to estimate, if you can just give us an estimate when she went there, how much did she weigh more or less?

**MS. NOMVULA NONJABE:** I think before she went there, she was around 80.

**ADV. LILLA CROUSE:** And at the lowest point of her weight?

10**MS. NOMVULA NONJABE:** At the lowest I would say 60.

**ARBITRATOR JUSTICE MOSENEKE:** 80 is the weight of a rugby player.

**ADV. LILLA CROUSE:** It depends on how tall he is Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Yes. Ja, some are up to 100 I think. That is a good weight.

15**ADV. LILLA CROUSE:** In all the time, did you visit her again at that place?

**MS. NOMVULA NONJABE:** Yes, I visited at least to a minimum of once a month.

**ADV. LILLA CROUSE:** And in all that time did you ever see the bedrooms?

**MS. NOMVULA NONJABE:** I saw the bedrooms after, she was busy with the renovations and I think at that time she had also done the cleansing, so she was a

little bit better, and because she actually invited me to see, and she was happy like we are fixing, we are making things better and ja, but it was still like work in progress.

**ADV. LILLA CROUSE:** Did she ... [interjects]

5**ARBITRATOR JUSTICE MOSENEKE:** How do you renovate a stop nonsense wall?

**MS. NOMVULA NONJABE:** Well, she was renovating, there were toilets that were built, I think they were not there before, and I think this is something she had improved on. Like she would have the pictures next to the bed of each patient and 10ja, like taps in the bathrooms and the showers, she had extended those. Ja, but as for the actual house or the walls there was no renovations there.

**ADV. LILLA CROUSE:** What was wrong with the walls?

**MS. NOMVULA NONJABE:** Like Justice said, it is not a brick laid house.

**ARBITRATOR JUSTICE MOSENEKE:** They are made of concrete slabs she says 15which you normally use for your ... [inaudible] fence.

**ADV. LILLA CROUSE:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Called stop nonsense in the township.

**ADV. LILLA CROUSE:** Thank you Justice. So there was no plastering and paint. Is that what you are saying?

20**MS. NOMVULA NONJABE:** There was just paint, no plastering.

**ADV. LILLA CROUSE:** Okay, thank you. Now she was moved to Waverley after this time, after the Ombud's report.

**MS. NOMVULA NONJABE:** That is correct.

**ADV. LILLA CROUSE:** And she is currently still at Waverley, is that right?

5**MS. NOMVULA NONJABE:** That is correct Justice.

**ADV. LILLA CROUSE:** And how is things going?

**MS. NOMVULA NONJABE:** I think she has been through a lot honestly and she has changed. Like she is anti social now. She sleeps most of the time and she is very quiet and ja, but things are fine at Waverley, but I think what still bothers me is  
10the fact there are no OT's there, unless they have appointed one recently.

**ADV. LILLA CROUSE:** At Waverley?

**MS. NOMVULA NONJABE:** Sorry?

**ADV. LILLA CROUSE:** At Waverley?

**MS. NOMVULA NONJABE:** Yes.

15**ADV. LILLA CROUSE:** And you were complaining about that?

**MS. NOMVULA NONJABE:** Yes.

**ADV. LILLA CROUSE:** Can you just tell me about your sister's weight. Has she gained weight again?

**MS. NOMVULA NONJABE:** No, she has not.

**ADV. LILLA CROUSE:** Okay.

**MS. NOMVULA NONJABE:** She is still more or less same weight.

**ADV. LILLA CROUSE:** And the SASSA card and the ID, do you know anything about that?

5**MS. NOMVULA NONJABE:** I am still struggling to get Waverley to confirm if they have the ID or not, but they have said they had it, but no one I can pin out, like the social worker there I cannot say, because the last time I spoke to them three weeks ago, they said they were going to call me back to confirm that the ID is there. I still do not have that confirmation.

10**ARBITRATOR JUSTICE MOSENEKE:** Do you know how do they draw money on as SASSA card for a patient?

**MS. NOMVULA NONJABE:** I do not know how they do it Justice.

**ARBITRATOR JUSTICE MOSENEKE:** You are not any wiser Counsel, are you on that topic?

15**ADV. LILLA CROUSE:** No, we have not canvassed that.

**ARBITRATOR JUSTICE MOSENEKE:** Investigated that and see how, I am going to just sit and wonder. I mean how vulnerable the system is, where you have patients, here how many were they 27, and you are keeping their cards. Why is it good practice and feasible to take the cards to some point and the money gets  
20given to you, whoever you might be. Caregiver or owner of an NGO.

**ADV. LILLA CROUSE:** But it goes further than that with respect Justice, because the 59 people that are missing, the evidence are that their SASSA cards are being used, but we have got no way to know whether they are using that themselves. So we will investigate that. It is very important that we do.

5**ARBITRATOR JUSTICE MOSENEKE:** Ja, it might be important to know that. It is supposed to be part of the funding system, but we have taken it for granted, but it is all okay but you sit and say it is a grant surely specific to a person entitled to it, how do third parties so readily breach that and access money.

**ADV. LILLA CROUSE:** Yes.

10**ARBITRATOR JUSTICE MOSENEKE:** What about those who cannot speak, those who cannot write, those who have limited intellectual capacity? How do they give the authority to somebody else to take money due to them?

**ADV. LILLA CROUSE:** Yes. Ms Nonjabe, you spoke about Dr Manamela. Did you meet her?

15**MS. NOMVULA NONJABE:** Yes, I did Justice.

**ADV. LILLA CROUSE:** How did that come about?

**MS. NOMVULA NONJABE:** It was in our first meeting in Randfontein which was the 14<sup>th</sup> of November 2015.

**ADV. LILLA CROUSE:** Yes.

20**MS. NOMVULA NONJABE:** She was there with her crew, Mr Mosenege, Dr Lebete. There were others, I cannot remember their names and ja, we were in a

meeting and they said they want to hear our views after we have heard the news that they were closing Life Esidimeni and we gave our views, but that was all in vein.

**ADV. LILLA CROUSE:** What views did you give?

5**MS. NOMVULA NONJABE:** So I gave them a view of my sister, that I am, she is my child. My first born Innocence and that I have to work to provide for myself and my son, and therefore I cannot look after her at home. That is why I need a safe place, because when these episodes happen outside and she is taken advantage of, I cannot be there to save her at that point in time. Every time when I get there it  
10is post the episode and it hurts, it is not nice.

**ADV. LILLA CROUSE:** Did you have other meetings with Dr Manamela?

**MS. NOMVULA NONJABE:** Yes, I had quite a few of those.

**ADV. LILLA CROUSE:** And what was the general trend of these meetings?

**MS. NOMVULA NONJABE:** Throughout the meetings she was stubborn and it is  
15her way or the high way and selfish. Very selfish.

**ADV. LILLA CROUSE:** She at one stage called you.

**MS. NOMVULA NONJABE:** Yes.

**ADV. LILLA CROUSE:** Was that in July 2016?

**MS. NOMVULA NONJABE:** Yes, that was in July.

20**ADV. LILLA CROUSE:** Why did she call you?

**MS. NOMVULA NONJABE:** She gave me a call because she had seen an article in the Drum magazine.

**ADV. LILLA CROUSE:** Just stop there, thank you. Could I refer you to ELAH119 that is in front of you. Do you see that? Ms Nonjabe, did you see that?

5**MS. NOMVULA NONJABE:** Yes, I see.

**ADV. LILLA CROUSE:** You were speaking about the article in the Drum. Can you just identify the ELAH119 please?

**MS. NOMVULA NONJABE:** So in the article, that is me in the glasses there ...  
[interjects]

10**ADV. LILLA CROUSE:** In the microphone?

**MS. NOMVULA NONJABE:** In the microphone yes.

**ADV. LILLA CROUSE:** And could you just give us a little background. Where were you speaking there with the microphone?

**MS. NOMVULA NONJABE:** It was in Randfontein. I think this was our second  
15meeting, and Dr Selibano was there, and we were still pleading and telling them not to do it, and ja.

**ADV. LILLA CROUSE:** And how did your photo end up in Drum?

**MS. NOMVULA NONJABE:** This photo was taken by Herald Randfontein. They were there in that meeting. I am not sure how, I think Drum got it from the internet.

20**ADV. LILLA CROUSE:** Okay, and Drum what is that? What publication is that?

**MS. NOMVULA NONJABE:** It is a magazine and they ... [interjects]

**ADV. LILLA CROUSE:** That you can buy in the shop?

**MS. NOMVULA NONJABE:** Yes. That is correct.

**ADV. LILLA CROUSE:** Now why did Dr Manamela phone you after this  
5publication?

**MS. NOMVULA NONJABE:** She phoned me and she told me that she saw this  
article in Drum and she was like Nomvula [vernacular 00:32:00] and that is when I  
started recording conversations with her, because I realised that this woman is  
something else.

10**ARBITRATOR JUSTICE MOSENEKE:** Well, you will have to find an Interpreter  
for your Counsel. The kind of township emphasis language. It is a language of  
swords. I mean, but I think Nomvula is putting up an act of, I think somebody must  
interpret that.

**UNKNOWN:** You can repeat again?

15**MS. NOMVULA NONJABE:** I am sorry, but I just had to say it in her words.

**ARBITRATOR JUSTICE MOSENEKE:** Ja.

**UNKNOWN:** Repeat the words?

**MS. NOMVULA NONJABE:** She was saying Nomvula [vernacular]

**UNKNOWN:** She said Nomvula, I saw an article in Drum Magazine. Why do you  
20take us to the media when we had meetings with you but they told you that your



people they will not be lost, we will take care of them, we are busy looking at the NGO's and who are those naked people on this picture. The and she said those people, the media ... [inaudible] because they also have their rights. These people have their rights also.

5 **MS. NOMVULA NONJABE:** And then she said ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** You know, there is something you left out.

**MS. NOMVULA NONJABE:** Yes. [Vernacular].

**UNKNOWN:** She said why do you take us to the media because we will end up not getting our bonus about what you are now doing.

10 **MS. NOMVULA NONJABE:** And that is when I started recording her.

**ADV. LILLA CROUSE:** And what was your reaction to that?

**MS. NOMVULA NONJABE:** You know, to be honest I pretended like I have not seen the article. I said mama, serious? [Vernacular].

**UNKNOWN:** I then said to her I did not see the article, send it to me.

15 **MS. NOMVULA NONJABE:** And the reason why I did that is because I have been asking her for a proper list or a final list of NGO's because families are calling us trying to locate their loved ones and we did not even have a list of where these NGO's are, what are their contact details and all of that, and now if she could send me the article, what was preventing her from sending me the list of NGO's.

20 **ADV. LILLA CROUSE:** And did she send you the article?

**MS. NOMVULA NONJABE:** She did not.

**ADV. LILLA CROUSE:** And did you receive the list of NGO's?

**MS. NOMVULA NONJABE:** Not even up to this day.

**ADV. LILLA CROUSE:** Yes. I am not sure whether you can help us, but the main picture above your picture, what is that half?

**MS. NOMVULA NONJABE:** I think these are the patients that were at Takalani if I remember correctly.

**ADV. LILLA CROUSE:** Okay. Tell us, did you meet with any other officials of the department?

10**MS. NOMVULA NONJABE:** I did meet with quite a lot of them.

**ADV. LILLA CROUSE:** And what was the purpose of this?

**MS. NOMVULA NONJABE:** For me I wanted to get a view if all of them agree to this, and none of them are agreeing with us as families, and ja. They were all in one voice, supporting each other. To some extent you know people like Mr  
15Mosenege and Dr Lebetete they would even you know pat us on the backs and say do not worry, it will all go well. We will work together in this thing of which we did not work together.

**ADV. LILLA CROUSE:** Have you met Ms Hanna Jacobus?

**MS. NOMVULA NONJABE:** Quite a lot of times.

20**ADV. LILLA CROUSE:** And what message did you get from her?

**MS. NOMVULA NONJABE:** The message I got from her was that she was responsible of NGO's, identifying them, making sure that they meet the basic standards and ja, but the sense I got from her in the meetings was that she was not, she did not own her own house in terms of NGO's. She was not clued up. 5 Sometimes she did not even have the update that we would have requested her from the previous meeting.

**ADV. LILLA CROUSE:** Did she give you any undertakings that things will go alright?

**MS. NOMVULA NONJABE:** She did. She said that she has been working with 10 NGO's forever.

**ADV. LILLA CROUSE:** Did, out of all these meetings with the officials, could you ever determine what was the reason if you can help us, why Life Esidimeni was closed?

**MS. NOMVULA NONJABE:** So that was the pertinent question which was asked 15 over and over again, and the reasons I got was one. The Auditor General was on their backs, because they have had the contract with Life for over 30 years, they must tender the contract, they cannot have the same supplier holding the contract for that long. So my question to that was then tender it. Do not move people, and if there is no one else, there is no other supplier that comes to the fore, it means only 20 Life can handle this, and then the second reason was that they were, they had to save costs because Life was expensive and the Department of Health did not have

funds to go further with the contract. The other reason really, I think it was those two main reasons.

**ADV. LILLA CROUSE:** You have been very active in the family committee and we have dealt with the marches and the meetings, so I am not going to redo that, but 5did it take a lot of your time?

**MS. NOMVULA NONJABE:** It did, because the march in June I organised it.

**ADV. LILLA CROUSE:** And other than the time that it took from you, what effect did this whole move have on you?

**MS. NOMVULA NONJABE:** It had a, it took its toll on me. I think emotionally and 10I think both personally and also work, because I work in an environment where you are measured based on your performance, and it is not everyone who understands when you are faced with something like this. So ja, the times I had to take from work to go and check on my sister when there were episodes and the meetings as well, because I had to beg for that, ja, I can say it affected my performance in 2016, 15and ... [interjects]

**ADV. LILLA CROUSE:** Do you mean that in terms of your performance review you were marked down?

**MS. NOMVULA NONJABE:** Yes, it was, it did come in the review that ... [interjects]

20**ADV. LILLA CROUSE:** And if you do not perform in terms of your performance review, you lose money is that not so?

**MS. NOMVULA NONJABE:** That is correct.

**ADV. LILLA CROUSE:** And emotionally?

**MS. NOMVULA NONJABE:** Emotionally, it has been tough. Like in last month I started getting help from a psychologist in Pretoria. I think after the breakdown I had at work.

**ADV. LILLA CROUSE:** Who recommended that you get help?

**MS. NOMVULA NONJABE:** It was Ms Casey Chambers from SADAC.

**ADV. LILLA CROUSE:** Was that the first counselling that you received?

**MS. NOMVULA NONJABE:** That is correct.

10**ADV. LILLA CROUSE:** And you said that your grandmother was still alive.

**MS. NOMVULA NONJABE:** She is still alive.

**ADV. LILLA CROUSE:** Did this have any effect on her?

**MS. NOMVULA NONJABE:** It did.

**ADV. LILLA CROUSE:** Explain to us.

15**MS. NOMVULA NONJABE:** Yes, because the things that we had, you know when we see her and she comes from the home and she tells the stories, my grandmother would just you know sit and cry and I think the question that she kept on asking herself was why did my mother leave, because at least she would have her and not her directly having to deal with this, and us as children. So ja.

**ADV. LILLA CROUSE:** Could I ask you, did you spend any money on visitations to your sister or replacing items?

**MS. NOMVULA NONJABE:** I did, because I think one because Fochville is an additional 45 kilometres compared to Randfontein, and I had bought her clothes when she was admitted in February 2015, and when she went to Goetsi Modimo it is only the shoes which she had which was one pair and I had to buy her other clothes.

**ADV. LILLA CROUSE:** Can you give us an estimation on how much you paid for clothes?

10**MS. NOMVULA NONJABE:** I think round about four thousand.

**ADV. LILLA CROUSE:** And could you give us an estimation how much extra you paid on travelling costs?

**MS. NOMVULA NONJABE:** I am not sure.

**ADV. LILLA CROUSE:** Why did you feel that it is necessary to give your time in being an activist in this matter, instead of working and being at home and having a social life?

**MS. NOMVULA NONJABE:** I think firstly she is my sister and I could not sit and watch and wait for the worst to happen before I stand up. I had to make sure that she is in a better place. I think for me especially because she was not born like this and we did not have anyone like her in the family and from the meetings as well, you know I have met quite a few people who are old and they either stay alone or

they stay with their partners, and you know, hearing the stories from old ladies and grandfathers who are looking after these loved ones, because you know some of them have lost their parents or they are the only ones remaining who are caring, and for me I was like I am still young and I still have the energy. It is not just standing up for my sister only, but also for those gogos who could not you know travel back and forth.

**ADV. LILLA CROUSE:** I am going to just briefly refer you again to ELAH119 before you. If you turn the page, there is a photograph over there. Can you identify the photograph at the top of the page?

10**MS. NOMVULA NONJABE:** Yes, I can.

**ADV. LILLA CROUSE:** Please tell us what that photograph is about?

**MS. NOMVULA NONJABE:** This was the march that we did to the Department of Health.

**ADV. LILLA CROUSE:** Protesting the closing of Life Esidimeni?

15**MS. NOMVULA NONJABE:** Yes, we were still begging. In actual fact during this march we had already heard that some patients started dying in Takalani.

**ADV. LILLA CROUSE:** Ms Nonjabe, this has been a very difficult ride for you. What would you like to see come out of this arbitration?

**ARBITRATOR JUSTICE MOSENEKE:** I am sorry. Just before you go there. One  
20of the placards there, it is written where are they. You are referring to mental health care users?

**MS. NOMVULA NONJABE:** Yes, that is correct.

**ARBITRATOR JUSTICE MOSENEKE:** And you wanted to know where they were?

**MS. NOMVULA NONJABE:** Yes, that is correct Justice.

5**ARBITRATOR JUSTICE MOSENEKE:** And the other one ... [inaudible]. The one in front is obvious. The MEC lied to us.

**MS. NOMVULA NONJABE:** That is correct.

**ARBITRATOR JUSTICE MOSENEKE:** On the right, do you still remember what was there?

10**MS. NOMVULA NONJABE:** I cannot remember, but it was still a question of where are they sleeping, do they have food. I think it is like an overlap.

**ARBITRATOR JUSTICE MOSENEKE:** And 37 ... [inaudible] whose address is that?

**MS. NOMVULA NONJABE:** That is the Department of Health in Gauteng.

15**ARBITRATOR JUSTICE MOSENEKE:** Counsel?

**ADV. LILLA CROUSE:** Thank you Justice Moseneke. Ms Nonjabe, can you tell us what you want to see after this arbitration or in this arbitration?

**MS. NOMVULA NONJABE:** There is a lot I would want to see. Firstly those who are accountable and responsible for this, they must take account and they must be



held accountable. In fact if they can be arrested I will be happy. The second thing is the Department of Health needs to fix its house.

**ARBITRATOR JUSTICE MOSENEKE:** Before you go past that, you know that I cannot arrest them in this particular role, right?

5 **MS. NOMVULA NONJABE:** Honourable Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Yes. We can only bring the truth out, give it to the police, you remember we call the police here to tell us what are they doing about this, and I can only write and recommend in the police that the police do that or ultimately the police and the National Director of Public Prosecutions, when we 10 do get another one, has to make that decision. But I hear you and I understand exactly what you are saying. I just wanted to make it quite clear that I am just going to award a monitory award, but I am not going to arrest any person. Okay, you go ahead.

**ADV. LILLA CROUSE:** You were saying you want the department to get their 15 house in order. What do you mean?

**MS. NOMVULA NONJABE:** What I mean is you know, there is still a list of individuals who are in this project. I do not understand how they dodged the Ombud, and they are still in the department, and I mean if you want to plant a seed in a good soil, if there are worms you will not get anything. So if all they do is just 20 you know re-shuffle them within the department, and I have got a few examples of those, it is pointless.

**ADV. LILLA CROUSE:** Any other thing you want to see from what has happened here?

**MS. NOMVULA NONJABE:** The other one is ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** The Ombud has listed a number of 5officials, nearly seven or eight of them who he things were responsible for the misdeeds. So what are you really saying? I just want to get it clear. You say they ought not to be allowed to continue in the same roles and you say they are like worms in a garden.

**MS. NOMVULA NONJABE:** Yes.

10**ARBITRATOR JUSTICE MOSENEKE:** They will destroy the vegetation.

**MS. NOMVULA NONJABE:** Yes, and my sister is still alive.

**ARBITRATOR JUSTICE MOSENEKE:** Okay.

**ADV. LILLA CROUSE:** Ms Nonjabe, anything else that you want to see out of this arbitration?

15**MS. NOMVULA NONJABE:** The other thing, I said what I said because I still need them to help me with my sister, and I do not know what is going to happen. I mean, should I pass on before my sister, at least if I know that the department, if she is well taken care of there I will rest in peace and the other thing is I feel they wasted my time. So much of my time wasted. If they could pay that back I would  
20appreciate that, but they cannot.

**ARBITRATOR JUSTICE MOSENEKE:** Of course the other side of it Nomvula is standing up to injustice, is it not so?

**MS. NOMVULA NONJABE:** Yes, that is correct Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Do you remember Bob Marley?  
5Remember the song?

**MS. NOMVULA NONJABE:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** When you hear it again, let it sink. Stand up, stand up.

**MS. NOMVULA NONJABE:** I will play it afterwards.

10**ARBITRATOR JUSTICE MOSENEKE:** Ja, you go and play it again and many more young people should play that song, just to remind themselves that and you did exactly that. That is why Dr Manamela knew that you would be the one who would bring, who would do all these things of being an activist in a right way. So I suggest you draw a lot of strength from that. Whilst there is an injustice, every one  
15of us should learn not to tolerate it and you did not.

**MS. NOMVULA NONJABE:** I could not Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, and it is a wonderful thing. I am in awe, I am in admiration and you did it clearly and you still feel as strongly that is the right thing to do.

20**MS. NOMVULA NONJABE:** Thank you Justice.

**ADV. LILLA CROUSE:** Just lastly, is there anything else that you wanted to still see out of this?

**MS. NOMVULA NONJABE:** I think what I want to see is families need counselling and ... [inaudible] a change in behaviour. I think she needs counselling, because when I first met her at Goetsi Modimo she was like they took us from Randfontein and they put us here, when are we going back, when are we going to see so and so, and she would mention the names of some of the caregivers, and some of the people that she shared the wards or the rooms with, and ja.

**ADV. LILLA CROUSE:** Ms Nonjabe, how do you feel about the true facts why this happened? Do you think that has come out so far?

**MS. NOMVULA NONJABE:** I think not from the culprits, because they still blaming each other and they are still pointing fingers and no one wants to say I was wrong.

**ADV. LILLA CROUSE:** Do you need the true facts for closure you think?

**MS. NOMVULA NONJABE:** I do need them.

**ADV. LILLA CROUSE:** Thank you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** We are almost at the end of this arbitration. There are not too many places left where we are going to hear the true facts, but again I think you must draw strength from the hard role that the family played, as far as I know I was appointed by representatives of the family together with the government. Most of you played an incredible role to resist injustice. I think that must also be a source of closure. What do you think?

**MS. NOMVULA NONJABE:** You are correct Justice.

**ARBITRATOR JUSTICE MOSENEKE:** But you did not, they come here and say I was scared and they had all the power.

**MS. NOMVULA NONJABE:** Ja, like ... [inaudible].

5**ARBITRATOR JUSTICE MOSENEKE:** And you were clearly not scared.

**MS. NOMVULA NONJABE:** No. I think because I had the experience and you know, like we told them, I told them life has so far it has only been nine months, but I have no complaints and my sister did not last nine months in Kodonia.

**ARBITRATOR JUSTICE MOSENEKE:** Ja, and from that you must draw the  
10strength and be thankful that you have the presence of mind and the strength of character and spirit to make your voice heard, because the more of us cow down, the more the injustice flourishes. Is it not?

**MS. NOMVULA NONJABE:** That is correct Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, so well done. This process is an  
15outcome of you and all of your colleagues with the committee, in the family committee, and I suggest that you also draw strength from that, closure from that and not wait for the closure to come from them. What do you say about that?

**MS. NOMVULA NONJABE:** That is correct Justice. I agree with you.

**ARBITRATOR JUSTICE MOSENEKE:** Ja. Cross-examination?

20**ADV ADILA HASSIM:** Justice, I just have a few questions.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**ADV. ADILA HASSIM:** Good afternoon Ms Nonjabe.

**MS. NOMVULA NONJABE:** Afternoon.

**ADV ADILA HASSIM:** My name is Adila Hassim and I am a member of the legal team for the families of the deceased. I heard you say that Dr Manamela called you when she saw this article in the Drum magazine, and the, and I would just like you to confirm for me. At the bottom of the article, the date is 7 July 2016.

**MS. NOMVULA NONJABE:** That is correct Justice.

**ADV ADILA HASSIM:** Did she call you in July?

10**MS. NOMVULA NONJABE:** That is correct Justice.

**ADV ADILA HASSIM:** So she saw the article, that is what she said to you?

**MS. NOMVULA NONJABE:** That is correct.

**ADV ADILA HASSIM:** So she would have seen this photograph and she would have read the stories of the families, correct?

15**MS. NOMVULA NONJABE:** I would not say she read the stories, because when she called me she said Nomvula, I saw your picture in the Drum magazine.

**ADV ADILA HASSIM:** And if she saw your picture, she would have then also seen the picture above it?

**MS. NOMVULA NONJABE:** Yes, that is correct. I think that is why she called me,  
20because she said she saw me there.

**ADV ADILA HASSIM:** And the picture above yours is a very shocking picture.  
Would you not agree?

**MS. NOMVULA NONJABE:** I fully agree.

**ADV ADILA HASSIM:** And you say this is Takalani?

5**MS. NOMVULA NONJABE:** If I remember correctly.

**ADV ADILA HASSIM:** And there are people who are half dressed, naked, sleeping on the floor against a wall, men and women mixed. Is that, can you just confirm that that is what is in the photograph?

**MS. NOMVULA NONJABE:** That is correct Justice.

10**ADV ADILA HASSIM:** And did Dr Manamela say to you other than how are you in the Drum magazine, did she say to you what she will do to investigate these NGO's?

**MS. NOMVULA NONJABE:** Sorry, can you repeat the question?

**ADV ADILA HASSIM:** Did she say to you, apart from commenting on your picture,  
15did she say this is shocking, I am going to investigate the NGO's?

**MS. NOMVULA NONJABE:** No, what she said was she had promised us that she will place these people at the NGO's after they inspect them and approve the NGO's and she denied this picture because she was saying that this picture, she does not recognise these people. This is just a mere picture that media got it where  
20ever they got it from, and she was actually saying the bed looks like one in a hospital so it cannot be Takalani or it cannot be any NGO for that matter.

**ADV ADILA HASSIM:** So she did see the photograph and she denied that it was something that she should look into?

**MS. NOMVULA NONJABE:** That is correct. She was only worried about bonus.

**ADV ADILA HASSIM:** And I, did I hear you correctly when you said you started  
5recording your conversations with Dr Manamela?

**MS. NOMVULA NONJABE:** That is correct Justice.

**ADV ADILA HASSIM:** And do you still have those recordings?

**MS. NOMVULA NONJABE:** I have got only two recordings. The one is the  
remainder of this conversation of the article and the other one I was complaining  
10about something.

**ADV ADILA HASSIM:** And would you make it available to your Counsel?

**MS. NOMVULA NONJABE:** I have made them available to Legal Aid.

**ADV ADILA HASSIM:** The NGO that your sister was taken to in Fochville ...  
[interjects]

15**ARBITRATOR JUSTICE MOSENEKE:** And the part that you made available, has  
the bonus part?

**MS. NOMVULA NONJABE:** No, it was after she mentioned the bonus, because  
that is where I realised this woman is selfish. She is thinking about money, when I  
am looking at the article and I am worried and we are trying to make our voices  
20louder here, because they could not hear us clearly after a good eight months we



have been saying the same thing and it does not get through their ears. So this was us trying to put a volume in our voices.

**ADV ADILA HASSIM:** But it did not make a difference at that time.

**MS. NOMVULA NONJABE:** No, not at all.

5**ADV ADILA HASSIM:** The NGO in Fochville, the owner of the NGO said to you that she expressed irritation with Life Esidimeni and the mental health care users. Is that right?

**MS. NOMVULA NONJABE:** That is correct.

**ADV ADILA HASSIM:** Did she say whether she was under pressure to receive  
10mental health care users from the government?

**MS. NOMVULA NONJABE:** Her exact words were they were dropped to her, because she had another NGO in the same area but quite a distance and she has just started to extend and open another one, when the department approached her. So she was not ready to receive the patients, but despite her saying she is not  
15ready they were given to her anyway. As a result there was ... [inaudible] in this NGO. There was a lady who escaped from Fochville to Turffontein and she travelled the entire day, she got home.

**ARBITRATOR JUSTICE MOSENEKE:** One thing that still worries me Nomvula, even after all this many days of hearing, how did they choose the NGO's? How did  
20they choose who, who must play this role who must get the subsidies?

**MS. NOMVULA NONJABE:** I cannot tell you Justice, because we asked that they share the selection criteria with us, and also the people who must view it. The officials or the professionals who must view and okay the NGO, despite the promises from Dr Manamela, we never saw those.

5**ARBITRATOR JUSTICE MOSENEKE:** You see, one is in Fochville, one is in Vanderbijlpark, another one is I do not know, almost next to Centurion. Another in Themba, Hammanskraal. I mean they are spread. You know. Some in Randfontein, others so not sit in one and say where is there, was there a rational process of selecting who would be entrusted with this difficult task? You did not  
10 come to know of that while you were working in the family committee, or while you were interacting with them?

**MS. NOMVULA NONJABE:** What I picked up was there was no strategic plan and it was a process that was not thought through and you could see that from them, because I mean the numbers kept changing, the NGO's list kept changing, the  
15 numbers of the NGO's who can accommodate kept on changing, and the communication was not there to families, and when the plans kept on changing, you know you hold a meeting with them today and they talk Zulu and the next time you have a meeting with them, they talk Sepedi. Two different languages all together and it is not the same thing. So that is what was really frustrating in the process,  
20 and despite us pointing it to them that guys, think about it. Have you looked at this and that, where is your check list you know, so that we can also get comfort and it was not there. I remember after this article, it was actually after I was very frustrated and I visited Tshepong in Atteridgeville on a certain Sunday and the story

I had from that woman was very sad, because she had her child her last born who had a mental disorder and she was just starting and they gave her 185 patients with nothing. They promised her what they called a, it is not a starter pack, but something like that. Something that would come with clothes and a set of food and 5toiletries for each patient and nothing happened, and she said to me she wanted to tell Mr Aaron Motswahedi about this and Dr Manemela said no, do not report this to Mr Motswahedi, we will fix this. Next week you will be having your starter packs. And it never happened, and that woman was struggling. She was struggling.

**ARBITRATOR JUSTICE MOSENEKE:** Ja.

10**ADV ADILA HASSIM:** It was a similar question I was going to ask you about the Fochville NGO as well, which is was it mama Lizzy you say who was the owner?

**MS. NOMVULA NONJABE:** That is correct.

**ADV ADILA HASSIM:** Was she being paid by government for the patients?

15**MS. NOMVULA NONJABE:** At that point in time I think she also had that silly agreement of three months without pay first and then only then we will back pay you, but I think what really saved her is the fact that she has had the NGO, the other one and on this one she was just extending, and she had a backup from the mine that was sponsoring her. I do not know what would have happened if it was not for that sponsor.

20**ADV ADILA HASSIM:** Sorry, when you spoke about the renovations, do you have any idea whether that came from the government, whether she had then been paid by the government that allowed her to do the renovations?

**MS. NOMVULA NONJABE:** No, it was not from the government, it was from the sponsor, because at some point she also asked me for material that she uses to try and help the users to do some activities in the NGO's and that activity was she wanted them to make pillows. So I supplied them with some sponges that I bought from a factory and I delivered them.

**ADV ADILA HASSIM:** And the owner at Tshepong, did she ask the department if she could, did she say to the department please take these patients back because I cannot cope?

**MS. NOMVULA NONJABE:** She did say, but they kept on saying no we will fix it, but nothing was fixed.

**ADV ADILA HASSIM:** And how is your sister now?

**MS. NOMVULA NONJABE:** She is fine. Like I said she is a bit anti social than she was before. But she is fine.

**ADV ADILA HASSIM:** Thank you. I do not have any further questions, but I would like to join the Justice in expressing my appreciation for your work and your activism and for standing up to power and thank you for testifying today.

**MS. NOMVULA NONJABE:** Thank you.

**ARBITRATOR JUSTICE MOSENEKE:** Counsellor Groenewald?

**ADV. DIRK GROENEWALD:** Thank you Justice. Justice, we have no questions for the witness, thank you.

**ARBITRATOR JUSTICE MOSENEKE:** Advocate Ngutshana?

**ADV. PATRICK NGUTSHANA:** Thank you Justice Moseneke. We have no questions for the witness.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you. Advocate Hutamo?

**ADV. TEBOGO HUTAMO:** Thank you Justice. We would like to thank Ms Nonjabe for coming through and the steps that she has taken are quite exemplary to ensure that the interests and rights of those who are most vulnerable are being protected, and we do note the pain that she had to go through and how the implementation of this project has affected her at work and emotionally, and we just want to say that we hope that your sister recovers while being at Waverley and we hope that this process should try and assist us in finding closure and redress. Thank you so much. No questions to the witness Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you, thank you Counsel. You are the last of family witnesses. You realise that?

**MS. NOMVULA NONJABE:** Yes, I do Justice.

**ARBITRATOR JUSTICE MOSENEKE:** When we re-open in January, we are going to be calling important people. But you have not told me how much. How much my child? They told you that you do not have parents and I do not like that.

**MS. NOMVULA NONJABE:** Thank you for adopting me Justice. To be honest, for me it is really difficult to put a number on this, because it is something I believe I did with my whole heart and I did it for myself as well, because I always tell people that you never know what is going to happen tomorrow. So I could lose the job and

have a mental disorder and not have a medical aid. So I would need these facilities. So it is, I cannot put a number on it. I am sorry.

**ARBITRATOR JUSTICE MOSENEKE:** ... [inaudible] your sister.

**MS. NOMVULA NONJABE:** That is correct Justice.

5**ARBITRATOR JUSTICE MOSENEKE:** She could become worse. She is a young woman and she could be institutionalised for a life time.

**MS. NOMVULA NONJABE:** That scares me Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Okay. I am not going to press you. I asked how much do you want, but you do not want to say. You have worked hard  
10my daughter. I am going to ask re-examination, after which you will have your swan song, your valedictory speech. But let me ask your Counsel first for re-examination?

**ADV. LILLA CROUSE:** Thank you Justice Moseneke. The sponges you bought, can you tell us how much you paid for that?

15**MS. NOMVULA NONJABE:** I think I spend around three thousand.

**ADV. LILLA CROUSE:** R3 000-00?

**MS. NOMVULA NONJABE:** That is correct Justice.

**ADV. LILLA CROUSE:** Justice, this is not strictly re-examination, but if I could just ask the witness to go to ELAH119, to the second page of it. Do you see the little  
20flog, the right hand corner?

**MS. NOMVULA NONJABE:** Top or bottom.

**ARBITRATOR JUSTICE MOSENEKE:** Bottom corner.

**ADV. LILLA CROUSE:** Yes, the bottom corner. The bottom right hand corner. Do you see that?

5**MS. NOMVULA NONJABE:** Yes, that is correct.

**ADV. LILLA CROUSE:** Could you read that for us?

**MS. NOMVULA NONJABE:** It reads:

*“The department is trying its best to look after the patients. We have no death reports, except for the only two out of 1442 patients placed. These two were sick and on a chronic general illness treatment. One death is one too many and cannot be taken lightly. Dr Magabo Manamela, Director of Mental Health Services in Gauteng, said in a statement.”*

10**ADV. LILLA CROUSE:** And the heading says what government says at the bottom give SADAC’s numbering. You see that?

15**MS. NOMVULA NONJABE:** I see that Justice.

**ADV. LILLA CROUSE:** I just want to put it to you that at that time there were already 20 people passed away. Thank you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you. After you we are all going to go home and all try and rest a bit. It is your opportunity Nomvula to say what sits in  
20your heart.

**MS. NOMVULA NONJABE:** Thank you Justice. All I want to say is it could have been stopped. It could have been prevented and what pains me is that people who hold high positions, they come here and take the seat and they still lie. Worse of them all Dr Manamela. You know, I grew up in a village where the village you know brought you up and the mother and father next door were also your parents. So for me [vernacular]. It is like she never gave birth to anyone, and I think I am saying this because I have got a son so I know how it feels, and ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** And you are a sibling mother.

**MS. NOMVULA NONJABE:** And I am a sibling mother. So the child I see on the street is my child. How could she do this? You know, we cried tears. Not what they are pretending to be doing here. We shared our stories which they asked for, and instead of validating those stories and go back to the drawing board, they were still stubborn and they went ahead. Now the least that they can do is sincerely apologise and admit, and especially those that looked at our faces and assured us that it will all go well. You know, I just want to point out also the people from the Mental Health Review Board, we had two bishops there, bishops, and one of them is, I think his initials is M or BP Tshole. You know, you will think that person will be your father, but the only thing that he did when we were marching in June, and she was like if you want to see the MEC, you must go through me because you do not have teeth and this is a grown up bishop. She is a father to somebody. He is wearing his collar and he tells you this and already by that time we were telling them people are dying in Takalani. Takalani is in a mess. That time it had had a strike since 2010, and there was administration going on in Takalani, but still, still ...



[inaudible] parents they did this to us. All these people have children, I have discovered. I thought they do not, but they have given birth to somebody, but how can people be so cold, and that is why it pains me the most that we still have these people reshuffled within the health department. That itself is not healthy. So ...

5[inaudible] fixed must we wait for another tragedy, because it is still not fixed, and it is like people are doing this because they know they have got jobs, they are covered. If anything happens to their mental state, they will go to private institutions. But when they need jobs and votes, they beg, they promise and they lie. Can people have Ubuntu and not just preach Ubuntu? Because there is no

10Ubuntu out of this, and the sad thing is there is still nothing. No Ubuntu whatsoever. Now why bother and look for a job in the health department if you cannot look after somebody. If you do not have a heart, because I think they have hearts of iron. There is no blood pumping in those people. I am sorry. But you do not do that. Not to the vulnerable and especially some of these patients they saw them, how

15vulnerable they are. So I just want to plead that they must change their ways. If it means that they turn to their Gods, they must do that but it cannot continue like this, and ja. People are just not remorseful. It is very sad, and over and above that, I really want to take my hat off to the families. That it has not been easy and some of them lost other siblings because of this. That is how far it goes. That is how big the

20impact has been, and I want to thank Section 27. I would say they have been darlings, because they have been there since the first meeting, and I would also like to thank SADAC as well. You know, they have helped. Casey has been there. She has helped a lot of families and that includes me, with counselling. They

listened to our stories. The only people who seem to have ears, and really I want I think we also drew our strength from them, because at least you could sense that somebody does validate what you are saying and they are not looking at you like you are crazy or you are just trying to be difficult, and I want to thank you Justice for 5taking your time and help us to reveal the truth. It is not easy. But we can only stay and hope that it comes out, and people can lie and deny, but if you have got the conscious it is not going to lie to you. It is going to haunt you until you agree or admit and I hope that happens. If they are not sleeping, then I am glad. They should not be sleeping. They do not deserve sleep. We have not been sleeping for 10too long. So thank you.

**ARBITRATOR JUSTICE MOSENEKE:** You narrowed it down. I do not have money my child, but I did not bring anything along. Thank you Nomvula. Thank you, thank you a lot.

**MS. NOMVULA NONJABE:** Thank you.

15**ARBITRATOR JUSTICE MOSENEKE:** We have come to the end of this part of the arbitration. Private in chambers I have already thanked Counsel for the work they have done up to now. All the Attorneys and I want to thank the families and all other people who have been here, and also the media of course for allowing South Africa to share this with us. We cannot diminish that it has been made that much 20more valuable and I think an experience for all our nation, all miss media we have this country has been ... [inaudible] this live day by day, hour by hour and I think it is fair to say that must be the reward to the families. You have done such hard work to insist that the truth must be heard. We are not done yet, there will be a day when

I will come back here to give an award. It is an equivalent of a judgment. So I will have to go back and go on my knees and find strength to write something that describes this process, but not until the next session in January. I think your Counsel and Attorneys will tell you the steps in January, but it is fair to say publically  
5that we will have Ms Hanna Jacobus, we will certainly have MEC Kadani Mahlangu, former MEC I should say and we will have the Premier, Premier Makhura and from the state's side we will then have Minister Motswahedi. So those are the witnesses we will have in January. In a very short sitting, it will not be a long sitting like this one. There will be two expert witnesses on specific areas that your lawyers would  
10lead them on, but most we hope to have a session of only a week in January and after that there will be argument from the various lawyers and I will have to go away and go and write up an award, which will be made public to all of you, and then you will know whether it is a lot of money or is little money, but we are going to try and find what it means to have a just and equitable order out of these proceedings. I  
15just want to spend the time and say to wish you all a merry Christmas and a happy new year, and I trust that we as it is said in Islaam God willing we will again meet in the new year and complete the task at hand, and thank you ever so much. Anything that Counsel wants to say? I am about, Counsel Crouse I can see you ...  
[interjects]

20**ADV. LILLA CROUSE:** Justice, no nothing from our side. We just want to thank you as well for allowing us to do our work. Thank you.

**LIFE ESIDIMENI ARBITRATION DATE: 8th DECEMBER 2017 DAY, Session 1 – 3.**

**ARBITRATOR JUSTICE MOSENEKE:** Thank you. We seem to be done, and we are not going to call the father to pray again. He prayed already, right? We are going to adjourn till next year. We are adjourned.

5