

LIFE ESIDIMENI ARBITRATION

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

DATE: 5th DECEMBER 2017.

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SESSION 1 – 3.

BEFORE - ARBITRATOR JUSTICE MOSENEKE.

10

WITNESSES: DR. BARNEY SELEBANO

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SESSION 1

ARBITRATOR JUSTICE MOSENEKE: Thank you, you may be seated. Good morning, shall we settle down and start? Advocate Hutamo where do we start?

ADV.TEBOGO HUTAMO: Thank you justice, the witness who will be called will be 5Dr Selebano.

ARBITRATOR JUSTICE MOSENEKE: Shall we as always please remain silent as we start. Dr Selebano your full names? We want to place your full names on record.

DR.BARNEY SELEBANO Ephraim Tiego Selebano

ARBITRATOR JUSTICE MOSENEKE: Ephraim Tiego Selebano. In which 10language do you want to testify?

DR.SELEBANO: English will be fine.

ARBITRATOR JUSTICE MOSENEKE: In English? Very well. Before I swear you in I have noticed that you have been accompanied by council and attorneys. They don't seem to be properly housed. Mr. Cook? All these journalists please allow us to 15work while you do your picture please. Allow council to rise if he wants to, I have noticed that that you are accompanied by council and attorneys, is there anything you would like to say at all before I swear the witness in. Just put your full names on record.

ARTHUR OWEN COOK: I am Arthur Owen Cook. I represent the witness. I am 20instructed by Ramsey Weber attorneys. I am happy for you to swear in the witness

but I do wish to place some facts on record before any examination of the witness commences, should I do that at this time?

ARBITRATOR JUSTICE MOSENEKE: Very well I am going to swear the witness in we hear on his subpoena and of course you are welcome to make such 5submissions as you might find appropriate as instructed .Because of the rain am going to ask everyone to speak at the height of their voices so that we can have a proper recording but also so that all the family members who are here hear what we are communicating. 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, 10“So help me God.”

DR.SELEBANO: So help me God.

ADVOCATE COOK: Justice Maseneko it would help if I had a table so that I could put my papers in front of me and arrange them properly.

ARBITRATOR JUSTICE MOSENEKE: Certainly. I thought that had been arranged. 15I specifically inquired whether there has been space. I am going to adjourn very briefly, and to get people in my office to find another table, which should make a place for you and your attorneys to sit.

ADVOCATE COOK: Thank you.

ARBITRATOR JUSTICE MOSENEKE: Adjourn for ten minutes and let's get that 20done. We are adjourned.

ARBITRATOR JUSTICE MOSENEKE: You may be seated. Dr Selebano you are still under your oath to tell the truth and nothing but the truth. Mr Cook.

ADVOCATE ARTHUR COOK: Justice Moseneko it's not entirely clear to us what the procedure to be followed is in this matter and I just want to place on record some of the recent background, as you are aware my client is here under subpoena. That subpoena was issued by the government a party to this process. My client objected to the subpoena and sort to have it set aside in the high court as I believe you are aware. That application was unsuccessful a judgement was granted yesterday dismissing that application. I came into the matter thereafter so I am not steeped in the matter but I have had the opportunity to read some of the papers and to consult with my client. The basis for the objection to the subpoena was that this process properly construed was not arbitration in terms of the arbitration act. The court found against my client on that score and held that indeed this process is arbitration and therefore under the arbitration act the subpoena is competent and as you are well aware under the arbitration act a subpoena can be issued as one would do so in a civil trial. And if one is dealing with arbitration akin to a civil trial the evidence that is immiscible is evidence which is relevant to a disputing issue. I have read the terms of reference in this matter and its not clear to me with respect what issues are in dispute in relation to which this witness can testify. What may well be constitute as being in dispute is the question of compensation and at the end of the day unless there is an agreement on that score you may be called upon to make a reward on that regard which the family may accept and that will become a finding and a binding award on them. I do not see

that my client can be of any assistance to this dispute resolution process in regard to the question of compensation. My client does not wish to be obstructive and what my client does wish to say having been sworn in and then being here under compulsion and subpoena is that he wants to say something to the family in form of an apology. You have seen from the interview which was conducted by a professor Makhabu, my client admitted quite clearly that as a head of department he took responsibility and is accountable for what happened that is pages 51 and 52 of the record of the interview with professor Makhabu. So, he acknowledges his role as head of department and his responsibility in that capacity. He would also like to apologise to the family as I had said for what has occurred but he also had some other interests that he needs to protect, he has been suspended, he is facing disciplinary proceedings and he is also facing the possibility of criminal proceedings and that is why he sort to exercise his constitutional rights to have the subpoena set aside unsuccessfully and that is why today I am here to protect him and to make sure that his constitutional rights are observed. I would ask from you because it is not clear what the procedure is to make a directive or ruling on how this witness is to be approached and what issues he is going to be examined on because the question of accountability of the government for what has happened is not an issue, if you look at the terms of reference it's quite clearly stated that the government accepts a liability to the family for what has happened. The terms of reference also contemplate that the government would lead witnesses on various aspects which are canvassed in the terms of reference to the extent that has been done I gathered it has been done to some extent it's sever. This witness however cannot contribute

in my submission any further to the question of liability which is not an issue in these proceedings.

ARBITRATOR JUSTICE MOSENEKE: Mr Cook are we arguing the application to set aside the subpoena again are we?

5**ADVOCATE ARTHUR COOK:** No Justice Moseneke I am accepting the finding that this is an arbitration and the line that I am taking is that if it is an arbitration it is akin to a civil trial there's a subpoena that has been issued under the arbitration act and that the witness must be examined on relevant issues in the arbitration.

ARBITRATOR JUSTICE MOSENEKE: You see when cross examination travels
10beyond the borders of relevance it is my task to determine that.

ADVOCATE ARTHUR COOK: Yes.

ARBITRATOR JUSTICE MOSENEKE: So, I don't understand to what end are this submissions. In any arbitration there will be issues in dispute and here the big issue...there are several issues in dispute. The one over redress is equitable
15redress parties can't agree on what should be the content of equitable redress. And as you have seen in the arbitration agreement also called terms of reference the parties hope that the arbitrator will make a binding award under the arbitration act which burying it being set aside in some way the government will have to make good and pay up. But it's not only about money it's about as the arbitration
20contemplates; there is a difference about what else besides money or to constitute equitable redress and that is my task to determine that as arbitrator. So, are we at

the stage where you are seeking to limit the questions that we put to the witness. I am uncertain as to what end are the submissions you are making.

ADVOCATE ARTHUR COOK: Justice Maseneke shortly before the commencement we were approached by Patrick Ngutshana who wished to interview my client and we said we had no difficulty and we had a short meeting then we were summoned because the hearing was about to commence. I understand that he is one of the evidence leaders appointed by you, now he is not a party to the proceedings so he would be an inappropriate person to lead this witness. He asked me if I intended to lead the witness and I said I did not because the witness is here is under the subpoena, and the subpoena is that of the government said it would seem to me that the appropriate person to question this witness will be the representative of the government and I would ask you to rule that that is so and I address you on the questions of the issues so that there may be some sort of clarity for my clients perspective and from mine as well in order to protect him in this process. What those issues are which are going to be transversed if it is equitable redress and compensation so be it I accept it.

ARBITRATOR JUSTICE MOSENEKE: No, I mean relevant close examination always as an evidence would go to relevance and credit and whether or not a matter is relevant to the dispute indeed it is conditioned by the dispute within the parties normally set out in pleadings. The parties chose not to exchange pleadings but to write up an agreement and the dispute is quite clear from the agreement. Essentially the arbitrator is required to determine equitable redress which is a wider concept than merely compensation and you can't do that unless you know what

happens. To the extent that what happened informs the quantum of the damages even where marriages have been conceded there is now I have a task to hear out and the parties are entitled to call out witnesses who will tell the arbitrator what happened. To that extent I don't think we should...you are here, you are welcomed 5to sit here for the day you have no you are, you have no formal role, you are only council to the witness and if at some point you seek to object to some letter you will direct it to me but Dr Solebano is a witness and he should be asked and dealt with as any other witness to the extent that the questions are relevant. If any letter he thinks might incriminate him he is entitled to raise the point I will hear him out and 10make a decision on that particular matter. Again, I don't understand which end are your submissions.

ADVOCATE ARTHUR COOK: Justice Moseneke I accept what you say and I was seeking clarity really on what the issues are that are going to be traversed so therefore I could take that into account in the conduct of this examination of my 15client.

ARBITRATOR JUSTICE MOSENEKE: You see Mr. Cook also I am delighted that you warned us that Dr. Solebano will assume responsibility for what has happened and that he would want to apologise all that is a legitimate part of this process because arbitrators are called upon to determine equitable redress which will 20inevitably includes...I know you commercial lawyers only think money but inevitably includes an apology, it includes possible counselling in this setting it will include an order that a memorial be built for instance an order that certain disputes where there is a dispute between the government and the parties should be done and the

order the government be ordered to do all those make this evidence crucial and if there is any derogation from fairness am here to look after him.

ADV. ARTHUR COOK : Thank you Justice Moseneke.

ARBITRATOR JUSTICE MOSENEKE: It is my primary task to ensure there is fairness towards Dr. Solebano and to any other witness and the parties. Very well, Is there any other submissions and matter unmet you would like to submit.

ADV. ARTHUR COOK: Do you want to* that the government will then lead Mr Solebano as the parties subpoena.

ARBITRATOR JUSTICE MOSENEKE: It is their witness, rightly so because this is an arbitration suganneris which some people confuse with the commissions certainly not, there's a dispute that issues, there's money to be awarded which the government will be obliged to make good. So, it is an arbitration in every sense with suganneris because it has soft issues about life and death. So, we are going to start real and go ahead if there is any moment where you think there is a matter you want to draw to my attention you are more than welcomed to raise it but ordinarily I would decide whether or not a question is fair or unfair and whether the question is relevant to the dispute between the parties that is what equitable redress should ensue from this proceedings. And rightly so the merits have been considered so we are really dealing with what happened in order to determine how much and what other unscilliary remedies would be appropriate.

ADV ARTHUR COOK: Thank you.

ARBITRATOR JUSTICE MOSENEKE: On the second question about who is going to lead the witness. The witness has been subpoenaed by the state. We have developed a practice where we would have evidence leaders but what matters which might be necessary but is neutral to each of the parties' position. If your submission is that in law who should lead the witness clearly it's the state and that they invites council to do so.

ADV ARTHUR COOK: Thank you Justice Moseneke.

ARBITRATOR JUSTICE MOSENEKE: Now before I call this to an end obviously there are parties to this proceedings so my ruling is really preliminary start with you council, is there any submissions you would like to make that has been put before me by Mr Cook?

ADV: ADILA HASSIM: Thank you Justice Moseneke. This has taken us by surprise, we didn't have any warning that this submissions would be made by our colleague; we would have appreciated the courtesy of a heads up even if it was a late notice. Justice, I don't wish to repeat what you have said but as far as the nature of this proceedings go there are several issues in dispute and the facts are inexplicably intertwined with what is adjustable remedy in the circumstances the just and equitable remedy is also wide ranging and may have many elements and so I would hope that the process of cross examination will continue as has been throughout this proceedings for all of the witnesses and I have no objection to the state of course leading the witness as requested by my learned friend and subject to those factors we are happy to proceed.

ARBITRATOR JUSTICE MOSENEKE: Thank you advocate.

ADV LILLA CROUSE: Thank you Justice Moseneke. We have nothing to add.

ARBITRATOR JUSTICE MOSENEKE: Which means what? You agree with your colleague or you disagree with her?

5ADV LILLA CROUSE: I have heard what you have suggested and we have nothing to add to what you have said and we are definitely not in disagreement with it.

ARBITRATOR JUSTICE MOSENEKE: Ok very well we will follow that.

ADV DIRK GROENEWALD: Justice my first request will be is that we take up our advocacy apart from that we are set back on the reviews of the self justice in this
10issue and we support the views of our colleagues and we are ready to proceed.

ARBITRATOR JUSTICE MOSENEKE: Thank you. Advocate Ngutshana.

ADV PATRICK NGUTSHANA: Thank you Justice. We also align ourselves with the views expressed by our colleagues on this issue. What has been done as my colleague for section 27 has said is in accordance with the times of reference and
15pre amputation minute we have not departed from those times, thank you justice.

ARBITRATOR JUSTICE MOSENEKE: Thank you. Advocate Ngutshana.

ADV PATRICK NGUTSHANA: Thank you Justice Moseneke. We also align ourselves with the views expressed by our colleagues on this issue. What has been done as my colleague for section 27 has said is in accordance with the times of
20reference and pre aputation minute we have not departed from those times, thank you justice

AVD TEBOGO HUTAMO: Thank you Justice. I must state that what my learned friend has submitted in his submission on behalf of Dr Solebano and as submissions which we have heard in the high court when the subpoena was challenged and those issues have been dealt with so there is no point as to re-argue whether this is an imitation or not. A finding has been made and Dr. Solebano is before this proceedings pursuant to a subpoena which has been issued and he cannot be treated any different from all other witnesses. What we need to say is that the parties have concluded an arbitration agreement which seeks to regulate how the proceedings are to be conducted, there has been a pre-arbitration minute which has been concluded further regulating the manner in which proceedings will have to be conducted. Absent to any amendment to those two documents which have regulated this proceedings, we should proceed in the same format and manner in which we have conducted this proceedings. And I should emphasize that the representatives of Dr Solebano do not have any platform in this proceedings to deal with this matters. It is for the witness to answer questions which have been put to him and as justice has indicated if any issues related to relevance arise then that determination has to be made. It's not up to you justice to deal with matters which have been settled by the high court and what we want to say is that in terms of the arbitration agreement the parties to this proceedings and am assuming its supposed to state that Dr Solebano is not a party to third arbitration agreement he has been called here as a witness so what I want to highlight is that the parties have agreed for the appointment of evidence leaders which has been agreed and that aspect of evidence leaders was argued on behalf of Dr Solebano but such argument could

not assail him from coming to this proceedings therefore we should not go back and deal with those matters the evidence leaders having agreed to assist in this proceeding. We should proceed with this proceedings in terms of the arbitration agreement and in terms of clause 11 of the pre arbitration minute and there is no reason which that procedure which has been agreed upon should be departed from because Dr Solebano is being represented we all welcome the presence of his legal team to observe the proceedings as they unfold but they don't have a platform as the witness can answer questions for himself. He has acknowledged that...

ARBITRATOR JUSTICE MOSENEKE: No we have long agreed...we have been together for four weeks now no heckling no applause no shouting if we are to proceed properly. If you like the submissions show a broad smile to yourself but no applause and heckling please. Please do proceed council.

AVD TEBOGO HUTAMO: Yes. What we have heard submissions being made on behalf of Dr Solebano is that he has accepted the responsibility and he is willing to testify that is precisely why the reason he has been called to come before these proceedings and on that note that is how this proceeding should be preceded with. On another aspect whether there is a dispute or whether Dr Solebano will not assist on the issues relating to compensation, he is neither here nor there. Those issues have been dealt with we all know what are the issues involved and what is the relevance of his testimony and I should put it in record that the parties in this proceedings have set out their claims which are supposed to be considered as determination for you as the arbitrator. They have set out what their claims are and the impression has been made that because there are no statements of claim

therefore there is no dispute and that aspect was dealt with in the pre arbitration minute and subsequent to that minute the claimers have set out their statements of claim just as a point of clarity to clear off that confusion of the absence of statements of claim on behalf of the claimers. It is on that note that we submit that the witness having been sworn in should be dealt with in the same manner as all other witnesses and it would be on that note that we would hand over the witness to the evidence leaders as per the arbitration agreement for them to lead this witness. Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: Thank you. Mr Cook for what is right you have got a right of reply. You've had submissions of the party to the dispute, is there anything at all you would like to say before I make the final ruling?

ADV ARTHUR COOK: Justice Maseneke, very briefly yes, I thought it would have been reasonably clear from my submissions that I accept the finding of the court that this is arbitration and I addressed you on the basis that this is arbitration. And on the basis that it isn't arbitration a party to arbitration is entitled to lead a witness, a party to this arbitration has subpoenaed a witness it is that party that leads a witness that's my submission .Thank you.

ARBITRATOR JUSTICE MOSENEKE: And the answer to that is there is a pre-arbitration hearing minute in which the parties have agreed to that evidence leaders may lead witnesses as and when as they so decide to lead the witnesses so the answer to that point is that its settled among parties. Is there and reason why I shouldn't proceed the same way that we have up to now.

JUSTICE MOSENEKE: That indeed it is. I think we got to lead evidence leader to lead this witness and all the other parties will have an opportunity to cross examine the witness. If there is any dispute as to relevance, and it arises often here, one party raises a point, and like any other tribunal, I would apply my mind to the submission and defer the ruling to the end of the hearing. If at any point you think it is necessary for you to draw my attention to some nature, you are welcome to do so but i must alert you right now, in the normal course, i will direct the proceedings and the witness will have the protection that any witness would have. No more and no less. Shall we swap seats around you, so that your colleague advocate Kulnavt could participate in the cross examination. Advocate Ngutshana, you may lead the witness.

ADV ARTHUR COOK: Justice Maseneke if that is your ruling I will abide by it.

ARBITRATOR JUSTICE MOSENEKE: That indeed it is. Am going to invite the evidence leader to lead this witness and all other parties will have an opportunity to cross examine the witness and again if there is any dispute as to relevance, and it arises often here, one party raises a point , and like any other tribunal, I would apply my mind to the submission and defer the ruling to the end of the hearing. If at any point you think it is necessary for you to draw my attention to some nature, you are welcome to do so but i must alert you right now, in the normal course, i will direct the proceedings and the witness will have the protection that any witness would have. No more and no less. Shall we swap seats around you, so that your colleague

advocate Kulnavt could participate in the cross examination. Advocate Ngutshana, you may lead the witness.

ADV PATRICK NGUTSHANA: Thank you Justice Moseneke. Dr. Selebano, you have been called here as the witness for the arbitration to explain to us on what had occurred leading to the implementation the project now called the Halting Mental Health marathon Project. Do you understand the Project?

DR.SELEBANO: I know the project.

ADV PATRICK NGUTSHANA: When were you appointed as the HOD of the department of health?

DR.SELEBANO: I was initially the deputy director general from First of May 2015.

ADV PATRICK NGUTSHANA: Did you not start acting in 2014?

DR.SELEBANO: I was the DDG, then I acted, then I was appointed.

ADV PATRICK NGUTSHANA:Which Years? Can you Tell Us?

DR.SELEBANO: In 2014, I was acting, around September.

ADV PATRICK NGUTSHANA: Then were permanently appointed as the H. O. D of the department in which year?

DR. SELEBANO: On 1st May 2015.

ADV PATRICK NGUTSHANA: so when this project commenced, you were the responsible accounting officer for the department.

DR. SELEBANO: Yes, I was the accounting officer in the department.

ADV PATRICK NGUTSHANA: You had intimate knowledge of this project.

DR. SELEBANO: I knew the project.

ADV PATRICK NGUTSHANA: How was this and when was this project conceived?

5**DR. SELEBANO:** The project was long being in operation at a lower level where patients would be discharged from life it preceded my time.

ADV PATRICK NGUTSHANA: Let me direct you now, on 29th September 2015, there was a letter offered by you, it's in one of the bundled documents. It's a notice of cancellation of contract between the department of health and Life Esidimeni.

10The specific volume of documents is on file 8, page 2830.

DR. SELEBANO: Where should I check?

ADV PATRICK NGUTSHANA: Page 2830, it's at the top right of the page.

ARBITRATOR JUSTICE MOSENEKE: Dr Selebano, I'm going to ask you to speak into the mic. Speak volubly as you can.

15**DR. BARNEY SELEBANO:** I'll do that.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

DR. BARNEY SELEBANO: 2830?

ADV PATRICK NGUTSHANA: Yes.

ARBITRATOR JUSTICE MOSENEKE: Are we there?

DR.BARNEY SELEBANO: That's right. I'm there.

ADV PATRICK NGUTSHANA: Are you familiar with this document? The signature appended to it appears on 2832.

DR.BARNEY SELEBANO That's My signature.

5**ADV PATRICK NGUTSHANA**: What is that letter, for the record?

DR.BARNEY SELEBANO That is the termination of contract between the department of health and Life Esidimeni.

ADV PATRICK NGUTSHANA: why did you issue that notice to terminate the contract?

10**DR.BARNEY SELEBANO** I was advised by the managers from legal department, finance, mental health that this is the right letter, and that I should sign it.

ADV PATRICK NGUTSHANA: Just Explain. I don't Understand. You were advised that you must sign this letter. Who authored the letter?

DR.BARNEY SELEBANO Do you want me to explain how government works? I
15can do that.

ADV PATRICK NGUTSHANA: Yes, I want to know.

DR.BARNEY SELEBANO if there is a letter, the managers will discuss the letter, the managers will discuss the letter, then they will discuss the letter, then they will seat down and then read, they write the letter for the eyes of the HOD. Then they
20will say, "HOD, we have written a letter, go through the letter" subsequently, then I will sign the letter.

ADV PATRICK NGUTSHANA: One of my colleagues requested that you speak a little bit louder. She can't hear you.

DR.BARNEY SELEBANO: Ordinarily HOD we didn't write the letters, the managers themselves would write the letter then they would bring the letter and say "This is the letter discussed with me" then I append the letter so I know the letter.

ADV PATRICK NGUTSHANA: What is reflected in that letter would be decision of the department?

DR.BARNEY SELEBANO Correct

ADV PATRICK NGUTSHANA: was this decision taken and who took this decision?

10**DR.BARNEY SELEBANO** Please explain properly what do you mean by who took the decision?

ADV PATRICK NGUTSHANA: To terminate that contract.

DR.BARNEY SELEBANO I might not be able to give you the specific day and time In terms of saying so and so took a decision. It was a department that discussed 15contracts and life Ediminus was part of that discussion. It was not the only contract and then a decision was taken.

ADV PATRICK NGUTSHANA: what was the reason for the termination?

DR.BARNEY SELEBANO of this particular contract?

ADV PATRICK NGUTSHANA: Correct.

DR.BARNEY SELEBANO There were several real reasons. The Fuscous was under pressure, and also there were supply chain issues, where the contract has been there since Days on, I was told. It was a long standing contract which was continuously being renewed monthly and am told the editor general had raised 5issues around there. But there was also more than anything, a fiscal pressure on the department.

ADV PATRICK NGUTSHANA: I don't understand the fiscal pressure, what do you mean specifically in relation to this contract?

DR.BARNEY SELEBANO The contract has been there and there was a certain 10amount, I am not too sure, I don't want to speculate, and it was felt that it was not the only contract, there were other contracts. [00:40:16 unintelligible] contract for instance. It was one of the contracts that was discussed and decided that this is what we should do "we should find the same way of getting the same venue but at a lesser cost."

15**ADV PATRICK NGUTSHANA:** Dr you are going to discover that in your stay in the box that are like direct speech, the cat drinks the milk. In other words, it is helpful for evidence to have a subject, the action, the verb and the object if any. "It was decided", "it was considered". If you could just tell us the actors. it would be much clearer every time. I have said in generic times, there will be no questions asked, 20but just keep in mind that the passive voice usually obfuscated and direct voice makes us understand clearly who were the actors and what do they do. There is no specific question but it's a spiel of responses which am asking you result to.

DR.BARNEY SELEBANO I will try hard to be direct.

ADV PATRICK NGUTSHANA: Thank you.

ARBITRATOR JUSTICE MOSENEKE: You indicate that it was decided by the department you advised to write this letter. I think I am not clear that is, behind the reasons which you indicate on fiscal pressure that you wanted to move them from Life Esidimeni to somewhere else they will receive the same quality of assistance. Are you trying to say that the department was unable at the time to keep up with the payments to life Esidimeni or what are you saying exactly?

DR.BARNEY SELEBANO it is known that the department of health has serious pressures. Because of the demand. The reality that the department faces is a reality that with the little resources that the department has, define that it was under pressure to provide services and treasury then, I would sit with the HODs and they would advise and say “we must find ways of getting the same venue but at a reasonable resources” using less resources. The soda was canned.

15 **ARBITRATOR JUSTICE MOSENEKE:** prior to doing that, I take It that you received advice on what would be the reasonable cost of the same savings somewhere else.

DR.BARNEY SELEBANO Yes. Not to the micro , when I represent the department at treasury or anywhere else they say ”Listen, the fiscal is under pressure. We are 20not going to increase any amount of money you are going to do exactly the same things we have been doing. ”

ARBITRATOR JUSTICE MOSENEKE: You are going to have to do exactly the same things that you have been doing but with less money that has been the overriding issue you can ask any HOD in the country they will tell you.

ADV PATRICK NGUTSHANA: Now that you had raised that you are going to cancel and provide this services to patients somewhere else how was that project going to be implemented.

DR.BARNEY SELEBANO: Yeah .Well then there was a plan to implement that process

ADV PATRICK NGUTSHANA: Tell us what the plan was.

10**DR.BARNEY SELEBANO:** Well like I said again granular am not *justice please understand, the granular levels sometimes as an HOD, you can call in HOD at the micro levels sometime the HOD wouldn't know but there was a plan to say let me give you a broad guideline of the place.

ADV PATRICK NGUTSHANA: Correct.

15**DR.BARNEY SELEBANO:** The patients after this* are given six months and then if you can see it, it gave six months* pureout then the managers and the directorate said ok so this is how we are going to move patients they wouldn't just give details that we are going to this patient and that patient they would just say we would go out there use our own NGOs that we have then we will move those patients to those
20NGOs.

ARBITRATOR JUSTICE MOSENEKE: Who made the plan which was presented to you?

DR.BARNEY SELEBANO: It was made by the mental health directorate

ARBITRATOR JUSTICE MOSENEKE: And who in the mental health directorate made the presentation.

DR.BARNEY SELEBANO: The representative of that would be the director who is Dr Malanela but she was working with a team.

ARBITRATOR JUSTICE MOSENEKE: So she hatched the plan on moving and presented it to you. You know by now we do have the plan, bearing your signature and its part of the evidence the plan which was presented would that be correct?

DR.BARNEY SELEBANO: It would be correct but I hear you said she hatched the plan but it would have been a collective sitting working out on a plan then saying HOD we have a plan can we agree with the plan or not agree with the plan.

ARBITRATOR JUSTICE MOSENEKE: Who would form the collective?

DR.BARNEY SELEBANO: She is the director she has...I wouldn't know them by name because of the distance but this are your deputy directors, assistant directors and managers I wouldn't know them by name. It's not possible to know them by name.

ARBITRATOR JUSTICE MOSENEKE: Proceed council.

ADV PATRICK NGUTSHANA: So Dr Mananela was the team leader of this team to implement the project plan.

DR.BARNEY SELEBANO: Well she presented the plan and if you want us to then there were meetings.

ADV PATRICK NGUTSHANA: We shall come back to it, let me refer you to the same documents on page 2789, and I want you to confirm whether that was the 5plan presented to you for your approval.

DR.BARNEY SELEBANO: This is would be in 2015 so you would appreciate that I can confidently say yes this *would be the plan. There would be no reason to say it's not.

ARBITRATOR JUSTICE MOSENEKE: You can take your time to look at it we need 10your confirmation that was indeed the plan.

DR.BARNEY SELEBANO: Yes. Justice I would say yes.

ADV PATRICK NGUTSHANA: Let me focus your attention on page 2824. There are several signatures there the three of them.

DR.BARNEY SELEBANO: That's right. The other one is mine in October.

15**ADV PATRICK NGUTSHANA:** Which signifies that you had approved the plane?

DR.BARNEY SELEBANO: That's right.

ADV PATRICK NGUTSHANA: Ok.

ARBITRATOR JUSTICE MOSENEKE: The words "approved by" are used in page 2824 what does that signify? Is it the most senior authority? What does it mean?

DR.BARNEY SELEBANO: In government...let me try to explain how. In a submission the managers will write a submission and then they would say written by so and so that's bureaucracy then they will take it to the next level recommended or supported by so and so, it will then go through bureaucracy and then the person who must get the wheel going is the HOD. Then it is approved by the HOD.

ARBITRATOR JUSTICE MOSENEKE: Then it is opened to the HOD to say yes or no? Is it?

DR.BARNEY SELEBANO: Yes.

ARBITRATOR JUSTICE MOSENEKE: And could the plan be implemented before the HOD says yes?

DR.BARNEY SELEBANO: I dint hear you properly...

ARBITRATOR JUSTICE MOSENEKE: Could the plan, the full plan on page 2819 ending on 2824 be implemented without the approval of the HOD?

DR.BARNEY SELEBANO: No you can't, but the difficulty any HOD would have is if the managers are saying, remember they are the actual work force the heartbeat of the department if they we are satisfied we are happy that this will work it will be a hard pressed issue to say no, why would you say no?

DR.BARNEY SELEBANO: If the managers are saying, remember there the actual force the heartbeat of the department. If they say they were satisfied, were happy this would work, [00:51:12 Unintelligible] say no, why would you say no?

ARBITRATOR JUSTICE MOSENEKE: I'm saying as a power question, if you read it and didn't like it, it's open to you as H-O-D to say nay. Do you understand?

DR.BARNEY SELEBANO: I understand

ARBITRATOR JUSTICE MOSENEKE: The point issue correctly?

5**DR.BARNEY SELEBANO:** Correctly.

ARBITRATOR JUSTICE MOSENEKE: The hierarchy Issue?

DR.BARNEY SELEBANO: Yes.

ARBITRATOR JUSTICE MOSENEKE: Thank you

And in terms of the responsibilities as well, um saying that the ultimate
10responsibility to approve it was on the H.O.D, where would the ultimate
responsibilities for the successes or the failures of this project lie? Would it be
similarly on the H.O.D? Yes, and no?

DR.BARNEY SELEBANO: The yes part is that once you have approved, then you
take accountability.

15[00:52:09] Speaker 3: You take accountability

DR.BARNEY SELEBANO: Accountability. The no part would be, if there is an
implementation in a generic sense now, if there is an implementation at an
operation level, it is not possible that any H.O.D will be able to open an operation at
another level. To say the place is "a", you are now "a1" that's why I said yes and no.
20Approval, yes. Oppression, it's different.

Speaker 3: And let me give this example as a accumulation of what he has said. if urgent operation, say you are going to take 500 patients from point a to point b for safety reasons-- for many reasons which would to safety, then you take a thousand of them-- and the fact that you took more than the permitted number, then it exposes, that is the manager, or the lower level managers. Where is the responsibility of the HOD there?

DR.BARNEY SELEBANO: It's a deviation and if anything happens then the HOD must then-- remember we are now talking generic sense because if you get the Director, deputy director, Chief director, ETG and the HOD I would probably in a generic sense insist that um, some form of action must be taken "two", that's in a generic sense, but I wouldn't be the one in the HOD doing it, because i would be running a department in in a micromanagement so if anything goes wrong, then the hierarchy will kick in like he was saying, useless power and the ETG or the chief director who must then take action

15**ARBITRATOR JUSTICE MOSENEKE:** And all your team owes you the duty of reporting, don't they?

DR.BARNEY SELEBANO: Yes

ARBITRATOR JUSTICE MOSENEKE: And the power of the span of your administrative and executive power entitles you to call up any of them and say what happened.

DR.BARNEY SELEBANO: In the normal individual things you are asking me now as a HOD?

ARBITRATOR JUSTICE MOSENEKE: Yes

DR.BARNEY SELEBANO:I would be more careful never to jump my colleagues, and go and call an assistant director, I can't do that, if I do that..

ARBITRATOR JUSTICE MOSENEKE: No, in the normal line. You for instance were entitled to call Dr. Mananela and say-- "Director, what happened?"

DR.BARNEY SELEBANO: No, I wouldn't. It's I and the DGG for clinical services. That would be the regarded I would say "Please, intervene in this matter".

ARBITRATOR JUSTICE MOSENEKE: Who has the DDG for...

DR.BARNEY SELEBANO: It's Dr. Livet.

10**ARBITRATOR JUSTICE MOSENEKE:** Dr. Livet. So ordinarily you would ask if your concerned to Dr. Livet, "What's Happening?"

DR.BARNEY SELEBANO: Yes

ARBITRATOR JUSTICE MOSENEKE: and what would he do? You tell what will he do

15**DR.BARNEY SELEBANO:** You see, it will depend again. He could ask the chief director. I mean, that's how you may not like it, but that's how government works. It the Chief director, He may just say, "Chief Director, there is an issue here, please attend to it". then the chief director will be the one to talks to the director. But in the normal unintelligible] sometimes you don't want a simple thing-- um, if there is a pen
20missing, you can't go through that process. You just say "Can you get this thing done quickly please"

ARBITRATOR JUSTICE MOSENEKE: But I'm Just trying to understand the lines of accountability..

DR.BARNEY SELEBANO: Yeah, the hierarchy

ARBITRATOR JUSTICE MOSENEKE: Flow of power, hierarchy, who can ask who what to do and what not to do, so if something went amiss with the marathon project , you would ask Dr. Livet to come to see you and ask him, "What is happening?" and he would move down to the hierarchy to try and find out defects. Council.

ADV TEBOGO HUTAMO: Yes, Justice i'm not whether my colleague wanted to raise that issue.

10**AVD ADILA HASSIM**: Sorry Justice, I just I don't know whether, I've aged up normally throughout this process, but I was having difficulty hearing the witness, so i'm ask you to speak up.

DR.BARNEY SELEBANO: I'm so sorry, I liberally apologize. ok. Let me put it this way.

15**ARBITRATOR JUSTICE MOSENEKE**: Well, I think here we should do some help aging but we'll ask again. I think Dr. Stefano wants to be cooperative but he's going to try and speak a little...

DR.BARNEY SELEBANO: Louder.

ARBITRATOR JUSTICE MOSENEKE: louder.

20**DR.BARNEY SELEBANO**: I'm sorry about that.

ARBITRATOR JUSTICE MOSENEKE: No-- no, that's in order.

ADV TEBOGO HUTAMO: Yeah, you said when-- if there are problems which you'll pick up, you'll call Dr. Livet, who-- from your[00:57:54 unintelligible] will be your line manager directed to you, reporting to you , and the one the one reporting directly to him, would it be Dr. Manamelo or the Chief director? Who is the chief Director?

5**DR.BARNEY SELEBANO:** In that case-- I think that would be-- taws' Dr. Pilama Zamisa.

ARBITRATOR JUSTICE MOSENEKE: Well, talking about so many doctors, let's just clear with that. What are your qualifications [00:58:20]?

DR.BARNEY SELEBANO: am an MBCH

10**ARBITRATOR JUSTICE MOSENEKE:** MBCH

DR.BARNEY SELEBANO: Yes, I have a Bachelor of Science Honors in Biochemistry

ARBITRATOR JUSTICE MOSENEKE: MBC Biochemistry and MBCHB.

DR.BARNEY SELEBANO: That's right

15**ARBITRATOR JUSTICE MOSENEKE:** So you are a doctor.

DR.BARNEY SELEBANO: No, I am an administrator.

ARBITRATOR JUSTICE MOSENEKE: You are an administrator?

DR.BARNEY SELEBANO: Yes

ARBITRATOR JUSTICE MOSENEKE: Ok, we'll come to that later. And-- and
20doctor Livet?

DR.BARNEY SELEBANO: Is an MBCHB.

ARBITRATOR JUSTICE MOSENEKE: Is an MBCHB? And Dr. Mwazane in and MBCHB also? So, you really are medical practitioner clinicians, in an administrative role?

5**DR.BARNEY SELEBANO:** I wouldn't say we are clinicians. Clinicians would be attaching patients, we don't.

ARBITRATOR JUSTICE MOSENEKE: So, you qualified as doctors but you are employed as executives?

DR.BARNEY SELEBANO: Yes as Administrators. We call ourselves admini

10**ARBITRATOR JUSTICE MOSENEKE:** Would you retain your registration?

DR.BARNEY SELEBANO: We register every year.

ARBITRATOR JUSTICE MOSENEKE: So, would you retain your professional registration?

DR.BARNEY SELEBANO: It's a private thing

15**DR.BARNEY SELEBANO:** You see, that's when now you get the other directorate.

ARBITRATOR JUSTICE MOSENEKE: I think let's say-- let's go-- let's go back to Dr. Manamela,and-- and take it up directly to you because she appears to be the person who was leading the project from the concept.

ARBITRATOR JUSTICE MOSENEKE: ... So you really are medical practitioners, clinicians, in an administrative role.

DR BARNEY SELEBANO: I would not say we are clinicians. Clinicians would be that we are touching patients. We do not.

5**ARBITRATOR JUSTICE MOSENEKE:** You qualified as doctors but you are employed as executives?

DR BARNEY SELEBANO: Yes, as administrators. We call ourselves administrators.

ARBITRATOR JUSTICE MOSENEKE: Administrators.

10**DR BARNEY SELEBANO:** Ja.

ARBITRATOR JUSTICE MOSENEKE: Ja. Would you retain your registration?

DR BARNEY SELEBANO: I register every year.

ARBITRATOR JUSTICE MOSENEKE: So you would retain your professional registration?

15**DR BARNEY SELEBANO:** It is a private thing [indistinct]

ARBITRATOR JUSTICE MOSENEKE: Ja. Okay.

M: Then Dr Mazamiza, who reports to Dr Mazamiza?

DR BARNEY SELEBANO: You see, that is where now you will get the other directorates [intervenes]

M: I think let us go to Dr Manamela [indistinct - cross-talking] and I take it up directly to you because she appears to be the person who was leading the project from the onset.

DR BARNEY SELEBANO: It will be Dr Manamela.

5**ADVOCATE NGUTSHANA:** From Dr Manamela to?

DR BARNEY SELEBANO: To Dr Mazamiza.

ADVOCATE NGUTSHANA: To Dr Mazamiza.

DR BARNEY SELEBANO: Dr Lebethe.

ADVOCATE NGUTSHANA: To Dr Lebethe.

10**DR BARNEY SELEBANO:** Myself.

ADVOCATE NGUTSHANA: And then to you. Right, thank you. And where does Mr Masenoge feeds in this line?

DR BARNEY SELEBANO: No, he is a chief director for something else again. Here we are talking about hospital services.

15**ADVOCATE NGUTSHANA:** Oh, I see.

DR BARNEY SELEBANO: Ja.

ADVOCATE NGUTSHANA: I see.

DR BARNEY SELEBANO: He is in planning.

ADVOCATE NGUTSHANA: So, there were problems which you would pick up, and I am sure you know by now that it is common cause that there were many problems which were picked up in the implementation of these problems [intervenes]

5**DR BARNEY SELEBANO:** That is correct.

ADVOCATE NGUTSHANA: ...oh, for this project. I am sorry.

DR BARNEY SELEBANO: Ja.

ADVOCATE NGUTSHANA: And how did you intervene in this?

DR BARNEY SELEBANO: Okay. When I got to know about the problems, I had
10discussions with the MEC [intervenes]

ADVOCATE NGUTSHANA: And when did you pick up these problems specifically? Which year?

DR BARNEY SELEBANO: Twenty... this is 17, 16. Anything around, I stand
corrected, Judge, I do not want to say that it is, you know, ja... It should be anything
15around end of July, mid-July, end of July.

ADVOCATE NGUTSHANA: 2016?

DR BARNEY SELEBANO: 2016. Then I picked up that they were issues.

ADVOCATE NGUTSHANA: Yes, so you [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Now that we are talking about– I am sorry, I interrupted you. Now that we are talking about the MEC, what was your reporting line, if any?

DR BARNEY SELEBANO: It is– my immediate supervisor is the MEC but ordinarily, HODs are employed by the Premier.

ARBITRATOR JUSTICE MOSENEKE: Explain that to me.

DR BARNEY SELEBANO: Ja, it is really difficult also.

ARBITRATOR JUSTICE MOSENEKE: Yes.

DR BARNEY SELEBANO: It is like the DGs in national. They support the Cabinet Minister but they signed a contract with the president. It is almost the same.

ARBITRATOR JUSTICE MOSENEKE: Ja. So you were employed and your letter of appointment would be designed by or for the Premier.

DR BARNEY SELEBANO: By or for the Premier, that is correct.

ARBITRATOR JUSTICE MOSENEKE: And your political principal was the MEC.

15**DR BARNEY SELEBANO:** The MEC.

ARBITRATOR JUSTICE MOSENEKE: And at the time, what was the name of the MEC?

DR BARNEY SELEBANO: [Indistinct] Mahlangu.

ARBITRATOR JUSTICE MOSENEKE: Mr Qedani Mahlangu.

20**DR BARNEY SELEBANO:** I am sorry about that, Mr Qedani Mahlangu.

ARBITRATOR JUSTICE MOSENEKE: Yes, let us stay with the decorum.

DR BARNEY SELEBANO: Okay, ja. I am sorry about that.

ARBITRATOR JUSTICE MOSENEKE: There is a slippery slope. Very soon we will be on first name terms and it would be even more derogatory.

5**DR BARNEY SELEBANO:** Ja, then it is a mess.

ARBITRATOR JUSTICE MOSENEKE: So would you operationally report to for instance, when you signed the termination agreement, did you have to report to anybody about that decision?

DR BARNEY SELEBANO: No. I am trying to work backwards that the plan is 10signed and it goes down to the managers, and they implement. Who do I tell in the normal course of events? I would probably tell the MEC Qedani Mahlangu, Qedani Mahlangu.

ARBITRATOR JUSTICE MOSENEKE: Why is it not a matter of course but probably? Are you obliged? In other words, I am really asking are you obliged to 15tell her, "I am going to terminate the Life Esidimeni contract."

DR BARNEY SELEBANO: Ja. But you see, also, that is why we need to go back. There had been discussions before. So she would have been aware that– It goes back to what I said again, the [indistinct] issue and all that.

ARBITRATOR JUSTICE MOSENEKE: Sure.

20**DR BARNEY SELEBANO:** And like I said, it was not the only contract.

ARBITRATOR JUSTICE MOSENEKE: But here, did you require her political approval?

DR BARNEY SELEBANO: No.

ARBITRATOR JUSTICE MOSENEKE: No.

DR BARNEY SELEBANO: No.

ARBITRATOR JUSTICE MOSENEKE: So the decision to terminate was the HOD's decision after the team have done all the spade work?

DR BARNEY SELEBANO: HOD signed, end of contracts, and sometimes, if it is Vodacom I will sign the contract. If I cancel that I will sign. It is part of an administrative job.

ARBITRATOR JUSTICE MOSENEKE: So they started to kick up politically. It was not the one who is employed you, not to the one we report to politically. It was your decision.

DR BARNEY SELEBANO: It will hamstrung the bureaucracy worse if we were to do that.

ARBITRATOR JUSTICE MOSENEKE: Yes.

DR BARNEY SELEBANO: It would be worse.

ARBITRATOR JUSTICE MOSENEKE: So it was a management decision and it was made by you.

DR BARNEY SELEBANO: It is a management decision, an administrative decision, and I have to do it.

ARBITRATOR JUSTICE MOSENEKE: Yes.

DR BARNEY SELEBANO: Yes.

5**ARBITRATOR JUSTICE MOSENEKE:** Counsel.

ADVOCATE NGUTSHANA: And you were still explaining when you first picked up problems with this project.

DR BARNEY SELEBANO: Ja. It– Like I said, I am not, I mean, because of time, I cannot tell you whether it was August but I do not want to say that and come back
10and say no, I am sorry. Alright, let us take it around August, late July, August, then there were reports that were coming from the media. I think the other one that came out all, Justice, was from the DA and that is when honestly then I knew then that *woa*, there is a problem.

ADVOCATE NGUTSHANA: Ja, let us take it by steps. You identified that there
15were problems with this project. What was the nature of these problems?

DR BARNEY SELEBANO: I got to know that there was a problem.

ADVOCATE NGUTSHANA: What was the nature of that?

DR BARNEY SELEBANO: That patients who have been moved – I prefer calling them patients - MCHU patients that had been moved from Life Esidimeni, some of
20them have demised. I have got to know that.

ADVOCATE NGUTSHANA: Had demised?

DR BARNEY SELEBANO: Yes.

ADVOCATE NGUTSHANA: And where did they demise?

DR BARNEY SELEBANO: Well [intervenes]

ADVOCATE NGUTSHANA: During the movement or an NGOs [intervenes]

5**DR BARNEY SELEBANO:** At NGOs [intervenes]

ADVOCATE NGUTSHANA: Or at hospitals?

DR BARNEY SELEBANO: At hospitals and NGOs, at both the hospitals and NGOs.

ADVOCATE NGUTSHANA: And what was your intervention would you received
10these reports?

DR BARNEY SELEBANO: Okay. Then immediately, immediately it was... ja. Immediately, I remember very well, Justice, that I was then in contact with the Minister, Dr Aaron Motsoaledi, and we spoke about it and he said, "You have got to intervene. You must intervene." So that is when I ran around the province
15[indistinct - cross-talking 01:07: 22]. I ran around the province, and I am putting it again that I closed the NGOs myself. I closed the NGO. Why? The Minister said – he called me Barney – he said, "Barney, you go and close those NGOs. We cannot afford any other person to pass away." I hope he does not deny that but that is when he said. He said, "...we cannot afford," and I said, "Minister, it would be
20difficult for me to close the I needed to write a letter at least because I cannot pick directives," that is how it works, "from the Minister. Please write a letter to the MEC

and informer that you have made a decision that we must close some of these NGOs.” And he dead. That letter was written and I ran around, closed the NGOs.

ARBITRATOR JUSTICE MOSENEKE: Why did you go to the National Minister and not to the MEC, Qedani Mahlangu?

5**DR BARNEY SELEBANO:** No, I got a call from the Minister myself.

ARBITRATOR JUSTICE MOSENEKE: Oh.

DR BARNEY SELEBANO: It would not be... I cannot say, “Sorry, Minister, do not talk to me. Talk to the MEC.”

ARBITRATOR JUSTICE MOSENEKE: Oh, the Minister phoned you?

10**DR BARNEY SELEBANO:** Yes, and said, “There is the situation. You know about it. You have heard about it in the media. Move.” And I said, “I will move, Minister, but you would have to at least so that it does not seem like I am taking instructions all over, talk to the MEC, write a letter to the MEC, instruct or inform her,” I do not know how they talk, whether they instruct or inform. Then that is when I moved and
15I closed some of the NGOs.

ADVOCATE NGUTSHANA: And these interventions, your actioned immediately when you picked up these problems. What was the role of the MEC? What role did she play in this?

DR BARNEY SELEBANO: Well, you know, we were all running around. She was
20running in the province. I was running. I— We stopped everything. We stopped everything, running around. I am sure she was doing at the political work but for

me, all I had to do, or that I had to do was to make sure that no one– I cannot allow any other person or to lose their lives. So I ran around and closed them.

ADVOCATE NGUTSHANA: And this problem, you say you picked up or received reports on [indistinct] deaths at these NGOs. How many deaths at the time when you received this report, were reported to you?

DR BARNEY SELEBANO: The reported deaths then was around 36 then, and that has been a mute point but that is what we got at that time. Remember, I would not know, like I said again, Justice, you depend on other people to uplift the information to you. So that information actually I got from the MEC that it is around 1036 patients who had passed away at that time. That is why I was careful about the time..

ARBITRATOR JUSTICE MOSENEKE: Why did not you simply call Dr Manamela or Dr Lebethi and say, “Please come and tell me about this crisis”?

DR BARNEY SELEBANO: It is an emergency. It was an emergency. We ran. I told them, “We are all running.” I was running with him.

ARBITRATOR JUSTICE MOSENEKE: But did you call her in to get details of the deaths?

DR BARNEY SELEBANO: I think the MEC called a meeting with the matter was discussed. Personally I was no longer interested in meetings. I just wanted to ensure that areas where there has been identified that they were problems, that I had to run there and save as much as possible.

ADVOCATE NGUTSHANA: Will come to the meetings you not being interested in. So at the end of July, it is reported to you that the deaths at the NGOs were 36.

DR BARNEY SELEBANO: Ja.

ADVOCATE NGUTSHANA: And to use old recall a meeting you have had – we will come back to this – a meeting you have had or interview you have had with the Health Ombud on this issue?

DR BARNEY SELEBANO: Ja-ja, I remember very well.

ADVOCATE NGUTSHANA: When was it?

DR BARNEY SELEBANO: It was in November.

10 **ADVOCATE NGUTSHANA:** In November?

DR BARNEY SELEBANO: In November, ja.

ADVOCATE NGUTSHANA: And at bedtime, what number of death did you report to the Health Ombud?

15a **DR BARNEY SELEBANO:** I said 36 to 40, reason being that I was working within a period of time. He had more information probably but my impression was that he wanted to know, “When did you intervene?” and [indistinct 01:12:03] and... ja.

ADVOCATE NGUTSHANA: No-no, I want to find that you are running around the province, receiving reports from all angles, that is from July to November, and it seems, I think, from your answer that the number did not change, that is from 36
20 between July and November.

DR BARNEY SELEBANO: Ja, but the question was from the Ombud, if I recall very well, that we, as we were discussing, I confine myself to the official number that we knew.

ADVOCATE NGUTSHANA: Yes.

5**DR BARNEY SELEBANO:** Yes, between, within this period of time that I am talking about, August or so, and I am not hard fast on that number but I am just– I am giving you the number that was given to us. That is why if you check, you will see that even the MDC is the same number even though I did not, I have not, I did not even talk to her, and I think even Dr Manamela probably said the same number.
10It was a time period issue and I did not ask the Ombud whether, “You saying only Life Esidimeni patients or” and then he said, “No, all mental health patients.” And I said, “I cannot for now answer that one.”

ADVOCATE NGUTSHANA: [Indistinct 01:13:18] we would come to that at a later stage. So on these interventions, I want to find out specifically on these
15interventions you had actioned, what specific measures that you put in place?

DR BARNEY SELEBANO: You have got to explain that [intervenes]

ADVOCATE NGUTSHANA: With the interventions to stop the problems which you were picking up which now we know that patients were dying at the NGOs. What did you do?

20**DR BARNEY SELEBANO:** I closed the NGOs.

ADVOCATE NGUTSHANA: You closed the NGOs. Okay. And how many did you close?

DR BARNEY SELEBANO: I closed Pressures Angels, I closed it. I remember it was a Sunday when I closed it. I may not recall the date [intervenes]

5**ADVOCATE NGUTSHANA:** Precious Angels?

DR BARNEY SELEBANO: Yes, I close it. I went to the other ones in Soweto here, Siyaba, Siyaba Dinga, Siyaba Dinga [indistinct] somewhere. I closed it.

ARBITRATOR JUSTICE MOSENEKE: Shaba Dinga in Soweto.

DR BARNEY SELEBANO: Ja.

10**ARBITRATOR JUSTICE MOSENEKE:** You have no [indistinct - cross-talking] whatsoever [intervenes]

DR BARNEY SELEBANO: [indistinct - cross-talking] Shaba Danga, I do not know either— sorry, Justice.

ARBITRATOR JUSTICE MOSENEKE: No problem.

15**DR BARNEY SELEBANO:** There are— they were two NGOs that had almost similar name; one was Siyaba Thanda [?], one was Siyaba Dinga. So I would not— I am trying to— and then there was one Bokang or Bakang, and after all those patients to Sterkfontein. And the Precious Angels patients [intervenes]

ARBITRATOR JUSTICE MOSENEKE: But did you go to Siyaba Dinga?

DR BARNEY SELEBANO: Ja, here, I went there personally, Siyaba Dinga. I think it is Siyaba Dinga.

ARBITRATOR JUSTICE MOSENEKE: In Soweto.

DR BARNEY SELEBANO: In Soweto, ja.

5**ARBITRATOR JUSTICE MOSENEKE:** Okay.

DR BARNEY SELEBANO: I stand corrected on whether it is Siyaba Dinga or Siyaba Thanga. I stand corrected.

ARBITRATOR JUSTICE MOSENEKE: Yes. Okay, you can continue to count the NGOs you went to.

10**DR BARNEY SELEBANO:** Ja, and then there was another one at Danville. I think it was related to Pressures Angels. I called – and I was with the managers – I called the CEO from Kalafong, the CEO from Pretoria West, and call the CEO from Pretoria District Hospital and I said– and I also call the CEO from– we held a meeting at Weskoppies on that Sunday morning and I said, “We have got to
15patients. We are going to have to take them from Precious Angel and distribute them amongst yourselves.”

ADVOCATE NGUTSHANA: Yes. Then, let me take you to– they are many passages of this, that is in the record of the interview you have had with the Health Ombud, and there is a document which has been circulated. I am sure you have it
20in front of you.

ARBITRATOR JUSTICE MOSENEKE: Can we make sure it is put before the witness, please?

ADVOCATE NGUTSHANA: Are you familiar with that document?

DR BARNEY SELEBANO: Ja-ja.

5**ADVOCATE NGUTSHANA:** There it looks– it is– it says, “Interview 62, Professor Malagaburu William Magoba in interview with Diago Ephraim Selebano.”

DR BARNEY SELEBANO: That is right.

ADVOCATE NGUTSHANA: And that is you.

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

10**ADVOCATE NGUTSHANA:** And this is the interview you have had with the professor in November.

DR BARNEY SELEBANO: That is in November. That is right.

ADVOCATE NGUTSHANA: Okay. And let me take you to page 17 of the document.

15**DR BARNEY SELEBANO:** I am at page 17.

ADVOCATE NGUTSHANA: Yes, at the top there, under “Dr Diago Selebano,” you make reference to Sepong and then you really spent there, “There following day, on Sunday, I came myself now...”

DR BARNEY SELEBANO: Okay.

ADVOCATE NGUTSHANA: Then underneath, “Professor NW Magobo,” okay.
Then I draw your attention to the again where it says, “Dr Diago Selebano” line four.

“And I called all the CEO when I picked up they were issues
and I said, ‘We are moving patients from Precious Angels’.”

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

ADVOCATE NGUTSHANA: Do you see that?

DR BARNEY SELEBANO: That is what I said.

ADVOCATE NGUTSHANA: So, that is what you said to the professor question
mark

10**DR BARNEY SELEBANO:** Ja.

ADVOCATE NGUTSHANA: Then, further down there under line 15, 16, under line
17.

DR BARNEY SELEBANO: Yes.

ADVOCATE NGUTSHANA: You say:

15 “Well, Professor, I realise that we are in a bad situation with
the NGOs. Whatever we do, is way we are in trouble. So I
had– and I moved them from not only Precious Angel only. I
moved some, and I will tell you why I moved them. I took
some to Kalafong because people do not even know that...”

20Is this you [intervenes]

DR BARNEY SELEBANO: Ja.

ADVOCATE NGUTSHANA: ...telling the professor this?

DR BARNEY SELEBANO: Ja.

ADVOCATE NGUTSHANA: And what is the “bad situation NGOs” you are referring to there?

5**DR BARNEY SELEBANO:** No, no, no, no. We are in a bad situation– if you recall, I said I got a call from the Minister and the Minister said we are not going to afford to have any other patient demise in now.

ADVOCATE NGUTSHANA: Ja.

DR BARNEY SELEBANO: So that is the bad situation I was saying. The Minister 10said, “We cannot. Move and to ensure that we ensure that patients do not demise.”

ADVOCATE NGUTSHANA: Yes.

DR BARNEY SELEBANO: And that is the bad situation I am talking about.

ARBITRATOR JUSTICE MOSENEKE: Well, let us take some time and talk about the bad situation. Just tell us what did you find out? What was this bad situation 15that required patients to be moved immediately?

DR BARNEY SELEBANO: But, Justice, I am saying in this instance the bad situation referred to what the Minister said. The Minister said, “We are in a situation where patients have demised.” The patients there have been moved have demised. “Now, Barney, move. Make sure that we do not have any patients 20devising in these NGOs.” That is what I am talking about when I said, “We are in a bad space. We have got to move these patients from the NGOs.”

ARBITRATOR JUSTICE MOSENEKE: But you went there personally, did you not?

DR BARNEY SELEBANO: To?

ARBITRATOR JUSTICE MOSENEKE: To the NGOs.

5**DR BARNEY SELEBANO:** Yes, I went. If I am to move, I was there and I said, “I am closing you down.”

ARBITRATOR JUSTICE MOSENEKE: Why did you close them down?

DR BARNEY SELEBANO: It comes from— you know, I do not want to harp on what my discussion with the Minister was. The Minister did not say, you know, “Go
10and check if you like the NGO or not.” He said, “We cannot afford to have other patients passing away. So go and close those NGOs,” and that is what I did.

ARBITRATOR JUSTICE MOSENEKE: Ja, in your own judgement, why did you close the NGOs down, because the Minister said so or because you perceived real danger to the lives of mental health care users?

15**DR BARNEY SELEBANO:** Well, you know, at that time, you are I having a situation. The media is saying there is a big problem. My opinion does not matter here. What matters is that we needed to ensure that we take those patients and put them in our facilities now, that was— that were the hospitals.

ARBITRATOR JUSTICE MOSENEKE: Did you go to Precious Angels?

20**DR BARNEY SELEBANO:** I went there.

ARBITRATOR JUSTICE MOSENEKE: I heard you say you also went to the Danville facility of Precious Angels.

DR BARNEY SELEBANO: I went there also.

ARBITRATOR JUSTICE MOSENEKE: There is going to be a lot of detail put to you about the conditions of those two places. Do you know about those conditions?

DR BARNEY SELEBANO: I cannot surmise. I went on a Saturday. On a Sunday, I was out patients. I did not spend time there. I just went there and told them I am will be patients, and I moved to patients.

ARBITRATOR JUSTICE MOSENEKE: Then why did you move the patients
10customer

DR BARNEY SELEBANO: I do not know, Judge. I will have to go back going to say I said we were in a situation where the Department had to – with the agreement with the Minister – the Department could not afford any other [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Is going to be your evidence? There is
15going to be a lot of questions – all of these counsel are ready to ask many questions– but is going to be your evidence at a high level that the NGOs were the perfect place to move mental health care users?

DR BARNEY SELEBANO: No, I did not say that.

ARBITRATOR JUSTICE MOSENEKE: That is not going to be your evidence?

20**DR BARNEY SELEBANO:** I would not– I cannot say that because even initially, I never went to the NGO. It is not what an HOD would do. I would not go there.

ARBITRATOR JUSTICE MOSENEKE: Know, a lot of time has passed. With everything that you know now, just to the a high line of what evidence is going to be about the conditions at which mental health care users were kept and died.

DR BARNEY SELEBANO: You want my opinion [intervenes]

5**ARBITRATOR JUSTICE MOSENEKE:** [indistinct - cross-talking 01:23:21] I do not want your opinion. You are the HOD. You are the man in charge. You are closing down NGOs. The simple question is why did you do it? You said to me, "The Minister will do it." Okay [intervenes]

DR BARNEY SELEBANO: [indistinct - cross-talking 01:23:35] discussed with the
10Minister.

ARBITRATOR JUSTICE MOSENEKE: ...there is an answer maybe. Then I said to you when you went to the NGOs, did you walk out there with a smile and say, "Perfect place to keep the mental health care users"?

DR BARNEY SELEBANO: My point was to remove patients there. I want– even
15if, I do not know, even if I found any other NGO, I would have, I would have closed
it.

ARBITRATOR JUSTICE MOSENEKE: Why?

DR BARNEY SELEBANO: Firstly, I mean, most probably– I hear what you want me to say. I hear what you want me to say. I do not mean that in a– please forgive
20me, Judge, if it comes [Indistinct 01:24:25] that [intervenes]

ARBITRATOR JUSTICE MOSENEKE: I do not want you to say anything, Dr Selebano.

DR BARNEY SELEBANO: Okay.

ARBITRATOR JUSTICE MOSENEKE: I want the truth and nothing but the truth.

5**DR BARNEY SELEBANO:** Nothing else.

ARBITRATOR JUSTICE MOSENEKE: That is my work.

DR BARNEY SELEBANO: Okay.

ARBITRATOR JUSTICE MOSENEKE: That is what I am about. So what I am saying is they are going to be many, many questions about each of these NGOs
10and these counsel have been here for weeks. They know this case backwards and forwards. I just wanted a high line from you. What was this crisis that required patients to be moved urgently, where the HOD forgets the hierarchy that he told us about this morning, and goes there himself and shuts down NGOs. Why did you do it?

15**DR BARNEY SELEBANO:** That is why probably I said– Let me explain.

ARBITRATOR JUSTICE MOSENEKE: Please do.

DR BARNEY SELEBANO: I mean, you are an HOD and there is– the patients are passing away and use that with your MEC and the Minister. Then a decision is taken, “Let us...” I did explain how that decision came, “let us move the patients.”
20And the area we identified, I went there. I remember I went was Professor Rataemani. I went was Professor Rataemani. We went– He is a psychiatrist. He

will probably be better placed to make that assessment. I went a. We went to another one – I have just forgotten its name – just behind Kalafong Hospital. There is another NGO. It was a Saturday. We spent all evening there, running around and Sunday, I have made up my mind that, “EMS, you must help me. We want to move the patients.”

ARBITRATOR JUSTICE MOSENEKE: Why? What made you, Head of Department, so unhappy? Why do you want to move them?

DR BARNEY SELEBANO: But, I do not know, I have just said it. You want me to make my own opinion and I am saying – and I am not– I must put it openly to you, Judge – that I am not protecting anything here. I am just telling you as you want me to tell the truth. When I arrived there, I informed the lady there that, “Tomorrow I am taking all the patients out of this place.” I went to Danville. She was there again and I told her – it was in the evening, around eight o’clock, now I remember - I said, “I am taking all the patients.” And I phoned the CEOs and I phoned EMS. I said, “Be ready, we are taking patients.” And that is what we did.

ARBITRATOR JUSTICE MOSENEKE: Okay, Doctor, we will come back to that. I understand that is what you did. They will be a lot of debate about why you did it, at a later stage. Counsel, will you proceed?

ADVOCATE NGUTSHANA: Thank you. Dr Selebano, you know, the issue is I referred you to a portion where you specifically said that:

“I picked up that there were issues.”

That in itself needs an explanation. What were these issues which are picked up?
It cannot be death.

DR BARNEY SELEBANO: Why, why cannot not be death?

ADVOCATE NGUTSHANA: No, it is fine. Let me put it this way to you
5[intervenes]

ARBITRATOR JUSTICE MOSENEKE: In all fairness, I think refer the witness to
the passage.

ADVOCATE NGUTSHANA: Yes.

ARBITRATOR JUSTICE MOSENEKE: And then let the witness look at the
10passage and then you ask the question.

ADVOCATE NGUTSHANA: On– that is line 4, page 17. Dr Diago Selebano:

“And I called all the CEOs when I picked up they were issues
and I said we are moving patients from Precious Angels.”

And that is why this question would keep coming as to why?

15**DR BARNEY SELEBANO:** But you see, you want to put issues something else.
For me, the issue here was that we are not going to afford to have other patients
passing away.

ADVOCATE NGUTSHANA: Mhm.

DR BARNEY SELEBANO: That is the issue.

20**ADVOCATE NGUTSHANA:** Yes.

DR BARNEY SELEBANO: Yes.

ADVOCATE NGUTSHANA: Let me put it differently do you, this, do you accept that they were patients who died at Life Esidimeni?

DR BARNEY SELEBANO: You mean [intervenes]

5**ADVOCATE NGUTSHANA:** ...and who continue to die even today?

DR BARNEY SELEBANO: Yes.

ADVOCATE NGUTSHANA: And Life Esidimeni were not closed or patients were not moved from Life Esidimeni on account of deaths of those patients. You accept that?

10**DR BARNEY SELEBANO:** Yes.

ADVOCATE NGUTSHANA: Exactly. So that is the basis of the question – why move patients from these NGOs on accounts of deaths only?

DR BARNEY SELEBANO: You want to– you see, and I am careful. I [intervenes]

ADVOCATE NGUTSHANA: No, let me assist you. Let me assist you. Turn to the
15next page, that is page 18. In line 14.

DR BARNEY SELEBANO: Sirma.

ADVOCATE NGUTSHANA: Let us start at line 9, Dr Diago Selebano.

“That is when I dispersed all these patients and we emptied
Precious Angels. Subsequent to that, I have done that also on
20 the other instances. I have moved again, and move the

patients. I have done that.”

And then in line 14, Dr Diago Selebano:

“I have move patients from Sirma. I have moved all patients. I went there. I was not happy. I move them out.”

5Do you see that?

DR BARNEY SELEBANO: But [intervenes]

ADVOCATE NGUTSHANA: So, that is the background we require from you.

DR BARNEY SELEBANO: No, but you are not talking about Sirma. It is, I think, it is Sirma if I recall it, somewhere in Hammanskraal.

10**ADVOCATE NGUTSHANA:** Yes.

DR BARNEY SELEBANO: Ja. Well, what do you want– I want to be as respectful as possible. Please understand.

ADVOCATE NGUTSHANA: No-no, it is fine. It is fine. Be comfortable. Be comfortable, do not feel pressured.

15**DR BARNEY SELEBANO:** No, no, I just want to show respect to the families and yourselves and the Justice here.

ADVOCATE NGUTSHANA: And below that, you also record:

20 “I found some poor record management from Cullinan. We spoke with the Minister. I took out the NGO and gave it back to the hospital.”

Surely, you cannot remove patients for poor record management, is that so?

DR BARNEY SELEBANO: Now, let me explain to you. You see, Cullinan is our hospital.

ADVOCATE NGUTSHANA: Yes.

DR BARNEY SELEBANO: It is a rehab hospital.

5**ADVOCATE NGUTSHANA:** Yes.

DR BARNEY SELEBANO: Now, at Cullinan, you see, and you have got to understand that, when I drove there, I was speaking to the Minister again [indistinct 01:31:51]. He said, "Go to Cullinan and close Cullinan," and I said, "Minister, it is a hospital. It is our rehab institution. I cannot close that." When I arrived there, there
10was an NGO called Cullinan. The discussion was that things are the this and that but when I arrived, and that is why I say here, there was a problem of record management meaning just an eyeball, you see patient files in the ward seated where there are not supposed. That is what I meant. I said, "No, if people can just put record all over the show," for me, I need the understanding that we need to
15move people out. So those patients were not actually physically moved. They were not. What we— what I did, I said to the lady from Anchor, I said, "From now on, you are no longer responsible for these patients." Then I called the CEO. I said, "CEO, you are now, I am telling you now, you have got to take over these patients." They were in the ward inside Cullinan. That is what happened. So there was no physical
20movement of those patients.

ADVOCATE NGUTSHANA: Yes. Let me, I think, broaden this topic I think a little bit more by making reference to what was brought to your attention by the Professor

in the interview. On page 19 of the same document... from line 10, the Professor says:

“Well, let me ask you, Barney, and this is a very interesting thing that you can with this information. You see, these NGOs
5 were all licensed.”

Then you say, “Ja.” Then in line 14, the question is asked:

“So how come the NGOs are licensed and suddenly, they are unsuitable to host the patients for whom they are licensed for?”

10 So, the question still remains why move these patients from this NGO? What were the problems other than dying?

DR BARNEY SELEBANO: I mean, I do not– I am sorry, with due respect to you, I do not [intervenes]

ADVOCATE NGUTSHANA: Why you close them down? Why close these NGOs
15 down?

DR BARNEY SELEBANO: You see, unless you understand that when, and I think we are going to have to reach that understanding, that when we had a discussion, at a political level, a decision was made that you know, we need to close some of these NGOs.

20 **ARBITRATOR JUSTICE MOSENEKE:** Political discussion? Tell me about that.

DR BARNEY SELEBANO: I did say [intervenes]

ARBITRATOR JUSTICE MOSENEKE: Amongst whom?

DR BARNEY SELEBANO: I did say that the MEC started with the Premier or not the Premier rather, the Minister who said, “We need to move patients. We cannot afford to have pat– any more patient [intervenes]”

5**ARBITRATOR JUSTICE MOSENEKE:** So that is a political discussion?

DR BARNEY SELEBANO: That is– I would not discuss anything unless with the Minister. Our relationship, she– he is the political head. I am an administrator.

ARBITRATOR JUSTICE MOSENEKE: Sure. I understand that. So you say with that political discussion, what did you do next?

10**DR BARNEY SELEBANO:** I said, “Minister, please, I will do that. I will go and close the NGOs to ensure that we do not have anybody passing away then, but you need to help me also by writing a letter or informing the MEC that this is the line of action that must be taken,” and that was done.

ARBITRATOR JUSTICE MOSENEKE: But the passage which you were referred
15to is about licensing of NGOs, and counsel puts to you that Professor Magoba asked you very pertinently:

“How come licensed NGOs turned so bad so quickly?”

Can you see the question? And you [indistinct 01:36:32] an answer, opposite line
18. Professor asks you line 13:

20 “So how come the NGOs are licensed and suddenly they are
unsuitable to host the patients for whom they are licensed?”

And there is an answer there provided by you. Now, the question pops up again today [intervenes]

DR BARNEY SELEBANO: No, but if you look – and it is with due respect – ja, please.

5**ARBITRATOR JUSTICE MOSENEKE:** The question pops up today and in fact, Counsel is asking you, “How do licensed NGO quickly convert to death-traps?”

DR BARNEY SELEBANO: But even here, I did not even offer any opinion or you know, to say I went, I went to an NGO assessed it. I did not offer that opinion [intervenes]

10**ARBITRATOR JUSTICE MOSENEKE:** I understand that. I am asking you today, now, I know you were asked the question, I have seen your answer, and I will not tell you what my views about the answer but what I am asking you now, how do licensed NGOs within months, sometimes with the weeks as the evidence, it will be put to you in time, doing so bad so quickly? So quickly that you have to rush and
15get NG– patients out of the clasps?

DR BARNEY SELEBANO: Okay.

ARBITRATOR JUSTICE MOSENEKE: Can you engage that question?

DR BARNEY SELEBANO: Ja, I can engage the question. I can give my opinion and nothing else. It will be my opinion. What– well, the lic– the team led by Dr
20Manamela obviously went to the NGOs, different NGOs, checked them, assessed them, and – I am just giving my opinion – and then went on to [indistinct 01:38:53]

according to themselves, that these NGOs are okay. That is according to themselves. And then if, Justice [indistinct 01:39:03], if you would ask me, I would not even know how to assess an NGO because it is there space. They are the ones who know how to do these things. So they went there and made up their minds and their opinions that these NGOs are fine. Your question is now what transpired in between with these NGOs and really went, according to what is known, that they were dead. It is very difficult for me to openly say but what I can surmise, Justice, it could be that one, perhaps – and that is just a “perhaps” – they were not properly assessed all the issue of fit for purpose was not considered. My impression was that some patients were moved – that is my impression, I would not want anybody– if I am pressed, I will be careful [intervenes]

ARBITRATOR JUSTICE MOSENEKE: You know, Dr Selebano, you will be pressed quite a lot on that. You see, you are HOD. You are head of a department. You are accounting officer. Your troops are out there to do your bidding, the plan you sign, under your hand, authorised, and within months, people die. They lose their lives. So yours is not an opinion of some innocent bystander. You are the General here. You are the guy who commands the troops who owe you a duty of accountability, so you cannot get us down the path of “my opinion.”

DR BARNEY SELEBANO: No-no.

20**ARBITRATOR JUSTICE MOSENEKE:** Do you understand that?

DR BARNEY SELEBANO: I hear you, Justice.

ARBITRATOR JUSTICE MOSENEKE: You want the guy in charge. You are not the guy would just get told, “Oh, some people died here.” You are the guy with the duty to look after their lives.

DR BARNEY SELEBANO: Ja.

5**ARBITRATOR JUSTICE MOSENEKE:** What is your response?

DR BARNEY SELEBANO: You– in a broad sense, you are correct but you are summarising the job of an HOD in a different way. You are– at any given point in time, any other HOD, you can ask any other HOD, it would not be feasible. What you are saying would never be feasible, that the HOD would know whether the medication has been given at Charlotte, whether an operation has been done, with the clinic is this. It is not practically possible to know that.

ARBITRATOR JUSTICE MOSENEKE: We are going to come to know what is practically possible over quite a time but it is tea time, I think.

ADVOCATE NGUTSHANA: It is tea time, Justice Moseneke.

15**ARBITRATOR JUSTICE MOSENEKE:** Doctor, let them show you where you can find tea, and we are going to be back at 12 o'clock to continue with this. We are adjourned.

DR BARNEY SELEBANO: Thank you.

HEARING ADJOURNS

5 DECEMBER 2017

SESSION 2

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Thank you, you may be seated. Dr Selebano you are still under your previous oath.

5**DR BARNEY SELEBANO:** Yes Justice.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: Thank you. Advocate Ngutshana?

ADV PATRICK NGUTSHANA: Thank you Justice Moseneke, in your last answer to the question, you had made reference to the fact that Doctor Manemela's team
10went there to inspect to assess the NGO's and in their view, the NGO's were suitable to take these patients and you also offered that maybe a fit for purpose was not done during the implementation of the project, do you still recall that?

DR BARNEY SELEBANO: Ja I recall that.

ADV PATRICK NGUTSHANA: And in relation to the first one whether assessment
15of these NGO pre-placement was done or not, it is clear from what we have heard, also from Dr Manamela that that was not done. There were no assessments of these NGO's to determine their suitability. She had made mention to the fact that there are reports, but those reports do not exist. Are you aware of that?

DR BARNEY SELEBANO: That reports don't exist?

20**ADV PATRICK NGUTSHANA:** Yes the pre-assessment reports on the suitability of these NGO's.

DR BARNEY SELEBANO: No I am not aware.

ADV PATRICK NGUTSHANA: You are not aware of that. So you will accept that patients were placed at these NGO's prior to them being assessed, whether they are suitable to cater for the needs of these patients or not.

5**DR BARNEY SELEBANO:** My assumption would have been that that they must have been assessed. Now that you are saying that, your answer is correct.

ADV PATRICK NGUTSHANA: Then with that in mind, how does the fit for purpose feature in here and what do you refer to by the fit for purpose?

DR BARNEY SELEBANO: In this instance when I spoke about fit for purpose, I
10was saying if you want an NGO which will treat as an example cerebral palsy, so then it means that type of NGO should also have the necessary facilities and people who have the understanding of a cerebral palsy patient. You can't just put them in as an example, a double storey with people who do not have experience of taking care of such patients. That is what I meant, in summary, by fit for purpose.

15**ADV PATRICK NGUTSHANA:** Yes and from the NGO's which you had decided to close down, they were not fit for that purpose they did not have these facilities?

DR BARNEY SELEBANO: I wouldn't say that. I closed them like I had said, that there was this pressure that we can't have patients demising, so do what you have to do to ensure that you minimise or we actually stop that. So I was driven by that.

20**ADV PATRICK NGUTSHANA:** And why specifically did you choose these particular NGO's for closure and not all of them?

DR BARNEY SELEBANO: Well you would know that I am sure after that post facto, you know that most of, I should say most of the patients who passed away, were in that Pretoria Tswane area, but I didn't only do that, I came like I told you, to Siyabadinga and Bokang and also in Hammanskraal also.

5 **ADV PATRICK NGUTSHANA**: And what were the problems specific related to these NGO's which you closed?

DR BARNEY SELEBANO: You see I can tell you with Precious Angels, the reports we heard and I am sure you know them, that patients had passed away there and when I went there, I was not going to discuss how, why, what, I was just there to
10 say I am moving the patients, so that we don't have any further deaths. They were not going to convince me otherwise to say oh, it will not happen no, I was not interested in that. Similarly, in Bokang, even though there were no patients who passed away, I was not interested. I just felt that it was in area- in those times
Justice, we were also scared that we don't want this thing to continue, so you are
15 driven by that also to say listen, I want to stop this thing as much as I can.

ADV PATRICK NGUTSHANA: And with Bokang, you were not comfortable with the structures in place there?

DR BARNEY SELEBANO: You mean Bokang here in Soweto?

ADV PATRICK NGUTSHANA: Yes.

20 **DR BARNEY SELEBANO**: I just didn't like and it's a subjective view, I just went there and I just didn't like going- I was even thinking if I'm a parent and I want to see my loved one, you've got to go through an up and down, it is not practical, so for me

the assessment of whether is it good or not, became immaterial, I said also other than that, we want to move them out, but even going there, it's a hassle, because it's in I think if I'm not mistaken, I think it's in a place called Snake Park.

ARBITRATOR JUSTICE MOSENEKE: In short, it was not fit for purpose?

5**DR BARNEY SELEBANO**: Well if you use that concept for the family, it wouldn't be fit because you don't want to catch a taxi and another taxi and another taxi to go and see your loved one. You would ideally want to save as much money as possible.

ARBITRATOR JUSTICE MOSENEKE: Was it fit for the purpose of looking after
10patients?

DR BARNEY SELEBANO: You mean Bokang now in this case?

ARBITRATOR JUSTICE MOSENEKE: Yes.

DR BARNEY SELEBANO: The one in Snake Park?

ARBITRATOR JUSTICE MOSENEKE: Yes.

15**DR BARNEY SELEBANO**: Like I said Justice, on the same day I went there, that's the same day I called MES to remove them, so I didn't even want to hear their story assess, whether they have a menu or whether they've got food, I didn't want to hear that. I said we are moving the patients.

ADV PATRICK NGUTSHANA: Let me refer you to Page 21 of the record of your
20interview, Line 17, also on this issue, you say the newer ones were struggling, I will tell you what my impression is. When they were placed originally, it worked, but

then I think the error came when they started upping the numbers, that is when the error started. We should not have upped the numbers, the pressure from below or above, I do not want to say above or below. The newer ones were struggling. You can explain what you mean by this?

5 **DR BARNEY SELEBANO**: Probably they were not coping with the patients.

ADV PATRICK NGUTSHANA: No as a matter of fact, you say that the newer ones were struggling, so give us the facts, which underpins your conclusion there?

DR BARNEY SELEBANO: But that was my impression and if you read it, I said this is my impression.

10 **ADV PATRICK NGUTSHANA**: What were the facts behind that conclusion?

DR BARNEY SELEBANO: No, no I hear you, except I want us to agree that I said this was my impression. I didn't have facts to say you are struggling because of A B or C, I said this is my impression.

ADV PATRICK NGUTSHANA: So would I be correct that they were not struggling?

15 **DR BARNEY SELEBANO**: I don't know why you would say that. I am saying here they were struggling.

ADV PATRICK NGUTSHANA: No I want to understand why would you choose that word, they were struggling?

DR BARNEY SELEBANO: Spoken language, my impression, let me rather tell you
20 what, was, my impression. My impression was that they were given 10 as an example Justice, they were given 10 and then the numbers increased, so if you are

given 10 and suddenly now you are at above 10, you would struggle, that's the impression that I had and that is what I meant by that.

ADV PATRICK NGUTSHANA: Let me help you, then they will struggle in feeding these patients?

5**DR BARNEY SELEBANO**: It is possible yes.

ADV PATRICK NGUTSHANA: They will struggle in terms of housing them properly they would struggle in terms of clothing them and so on and so on, providing medication and providing an environment that is conducive for them to flourish. Would that be correct?

10**DR BARNEY SELEBANO**: Well you have mentioned a number of things that are not necessarily correlated, for instance, if you say they would struggle to get medication, if you get a patient you will get with the medication.

ADV PATRICK NGUTSHANA: And they will struggle to look well after the patient whether a particular patient needs attention, special attention or not?

15**DR BARNEY SELEBANO**: You are fair.

ADV PATRICK NGUTSHANA: It's fair okay. Then you go on somewhere in the record, you made reference to the fact that you were uncomfortable with the NGO- let me be specific and take you to the specific passage, Page 41 of the record.

DR BARNEY SELEBANO: I don't have 41, I have 42 and 43, I don't have 41.

20**ADV PATRICK NGUTSHANA**: 41 you don't have.

ARBITRATOR JUSTICE MOSENEKE: I don't have a 41 either I am in the same position as you Doctor. Somehow they have copied a 40 and a 42 at the back.

DR BARNEY SELEBANO: In this bundle, I now have a 41.

ADV PATRICK NGUTSHANA: In Line 21 on Page 41, it says Dr Selebano the difficulty I sometimes have is that in other instances, in other NGO's that for me, I was very uncomfortable, nothing happened to those patients, so clearly, those NGO's by the look of things, you were uncomfortable with their structures.

DR BARNEY SELEBANO: No I think we have different numberings.

ADV PATRICK NGUTSHANA: Okay let me read it into the record. You say the difficulty I sometimes have is that in other instances, in other NGO's, that for me, I was very uncomfortable, did you hear that? Nothing happened to those patients. Why were you uncomfortable with these NGO's?

DR BARNEY SELEBANO: I think in particular I was referring to Bokang, the one that I was saying was in Snake Park.

ADV PATRICK NGUTSHANA: What specific features were troubling to you?

DR BARNEY SELEBANO: But I did explain that, for me, when we talk about fit for purpose, I told you that going there, was a hassle, we struggled ourselves to go there and for me, I found it very unfair and uncomfortable and that is what I meant. Then I said going there, I was just relating in a discussion to say and you know, you go there and nothing has happened to those patients, even though I moved them.

ADV PATRICK NGUTSHANA: That is a fit for purpose?

DR BARNEY SELEBANO: I don't know what you mean, please explain?

ADV PATRICK NGUTSHANA: I'm saying that you are saying that you struggled to reach this place and that explains the fit for purpose you referred to?

DR BARNEY SELEBANO: Yes I didn't explain that, for parents who want to see their loved ones, they are going to struggle.

ADV PATRICK NGUTSHANA: Yes and then close off this fit for purpose by reference to Precious Angels, that is in your evidence as well and it is on Page 43 at the bottom of the page, you say what we should have done, was to be able to do a proper fit for purpose type of thing. So you were not able at all to do a proper fit for purpose?

DR BARNEY SELEBANO: No, no but read the whole sentence, what we should have done.

ADV PATRICK NGUTSHANA: Yes let me complete it, when we send to you, we will know what exactly you will be able to deal with. So it's clear, it doesn't need an interpretation, that is patients –

ARBITRATOR JUSTICE MOSENEKE: You can ask the witness what does, he mean by, that?

ADV PATRICK NGUTSHANA: What do you mean by that?

DR BARNEY SELEBANO: No, no here you see this is a discussion, we are seated here and I am saying if you do a fit for purpose, these are the things that you should, that's why you should also have done and in this particular instance, when I

was talking about Precious Angels, as you go on, you will see I said- remember when I say we, there is no way that I could disassociate myself from the Department, I can't, so I said we and I understood that we were unfair in that we didn't do that fit for purpose, we just kept on sending patients to them. That was also, my assessment, that, if we had done this proper, we should have done that and know that we can't send A to this and mix it with B and mix it with C. That was the essence of the discussion.

ADV PATRICK NGUTSHANA: For example, I think give us a clear picture, I don't follow you?

10**DR BARNEY SELEBANO:** I will give you an example again. If you have patients who are cerebral palsy, you wouldn't want a place where they have to intra-verse the stairs, a double or triple storey place, you don't want that type of place. You would want a place where because of their difficulty either in communication and difficulty in walking, you would want a place that would be fit for what you want to do.

ARBITRATOR JUSTICE MOSENEKE: Did you know then what category of mental healthcare users were taken to Precious Angels?

DR BARNEY SELEBANO: No I didn't know at all.

ARBITRATOR JUSTICE MOSENEKE: Did you know how many had been taken there?

DR BARNEY SELEBANO: No I wouldn't have known honestly.

ARBITRATOR JUSTICE MOSENEKE: Did you do a prior check on what fir for purpose had been done?

DR BARNEY SELEBANO: No I wouldn't have known also.

ARBITRATOR JUSTICE MOSENEKE: So what does the statement on Page 43
5Line 17 onwards mean then, what we should have done was to be able to do a
proper fit for purpose type of thing. When we send to you, we will know exactly that
you would be able to deal with this and then later with Precious Angels, we were
unfair to Precious Angels. I am saying it and I will always say it. Yes, we were
unfair, the Professor asks you and you come back again and you say we were
10unfair. In what way he asks you and you say in a sense that we sent too many
different types of patients to Precious Angels, we should not have done that. If we
wanted to send patients with intellectual disability, this is what we should have done
only and not sent those who are demented and then mix with.... because it is not
helping them. Could you decipher that, could you help me understand that?

15**DR BARNEY SELEBANO**: What I was saying, when I said, remember Justice this
is also hindsight, you must also remember it is hindsight that then I got to learn what
actually transpired, because in all honesty and I am saying it again Justice, it is not
easy for any other HOD to know. This is post-facto, so when I learnt what
happened at Precious Angels, firstly what I then knew, was that the lady there, was
20actually taking care of cerebral palsy children, so why would we suddenly want to
give her adults? That was in this discussion.

ARBITRATOR JUSTICE MOSENEKE: You know she got a licence issued by Dr Manemela?

DR BARNEY SELEBANO: Yes I would think yes, she has a licence she said she has a licence.

5**ARBITRATOR JUSTICE MOSENEKE:** Do you know it authorised her to deal with patients, you say it yourself, which were unrelated to her core skills, you know that?

DR BARNEY SELEBANO: Yes that is what I'm saying here, if you read this, this is exactly what I'm saying.

ARBITRATOR JUSTICE MOSENEKE: Yes and you know that the numbers were 10way beyond what the facility could care for?

DR BARNEY SELEBANO: Could take yes, I knew that after yes.

ARBITRATOR JUSTICE MOSENEKE: And do you know that she didn't have the personnel to look after that class of patient?

DR BARNEY SELEBANO: Yes I learnt that also, yes.

15**ARBITRATOR JUSTICE MOSENEKE:** And you know now that her home had levels which people on wheelchairs and immobile patients couldn't negotiate, do you know that?

DR BARNEY SELEBANO: That's the Danville one, yes I remember that one.

ARBITRATOR JUSTICE MOSENEKE: Yes and now you know many mental 20healthcare users died in her hands.

DR BARNEY SELEBANO: Yes they demised.

ARBITRATOR JUSTICE MOSENEKE: That must surely be proof in the eating of the pudding, patients were there with all of these defects I have just described to you and they lost their lives, but you know now?

5**DR BARNEY SELEBANO**: I know.

ARBITRATOR JUSTICE MOSENEKE: Ja continue Counsel?

ADV PATRICK NGUTSHANA: Now with these admissions Dr Selebano, let me refer you to another aspect related to this as well, I think that came up quite clearly from your interview, on Page 44 at the bottom Line 23 and under your name, so that
10is what we did, we sent some chronic [inaudible] patients, we sent some elderly patients and then we sent those who are [indistinct]. Once you do that, you set up that person for failure and unknowingly, you see Professor, the other problem and that is what I have said to Dr Manemela and all of us, that the lesson that I have learnt out of this, is that out there, because of the socio economic conditions, it
15becomes a numbers game. What is this numbers game, or let me refer you further down, you say then Professor Makgoba says ja and you respond, the more patients I get, the more subsidy I get and the better off I become.

DR BARNEY SELEBANO: That's what the numbers game meant, that people would take more than they could chew, so that they could get more subsidy that is
20what I meant.

ADV PATRICK NGUTSHANA: And this is what occurred.

DR BARNEY SELEBANO: By and large with Precious Angels. I wouldn't want to say with others, but by and large with Precious Angels, that is what I suspect happened.

ARBITRATOR JUSTICE MOSENEKE: Is it a suspicion or a reasonable inference
5from the facts?

DR BARNEY SELEBANO: It would be a reasonable inference I just used a common language.

ADV PATRICK NGUTSHANA: And then you go on and say in Line 10, Professor Makgoba yes, then you say and I said that also at that time when people were
10under pressure, it worked in their favour, but we know now that it does not work in their favour, it should not have happened and Professor Makgoba says okay, then you say we should have said we give you 10, we know you have a licence for 25, but we know you are not experienced.

DR BARNEY SELEBANO: That's hindsight yes.

15**ADV PATRICK NGUTSHANA:** Its hindsight, no we know that you were not out there on the ground, so this is hindsight this is what you found out with hindsight.

DR BARNEY SELEBANO: That's hindsight.

ADV PATRICK NGUTSHANA: So then you go on, we are giving you 10, we will watch you over the period of time how you deal with these 10. Then Professor
20Makgoba says well which goes to your original strategy. We will come back to that debate, the original strategy. Do you see that?

DR BARNEY SELEBANO: Ja I am following you.

ADV PATRICK NGUTSHANA: So Precious Angels, for example, is licenced with no experience at all in this field, that much we know with hindsight and licence to take 150 patients and you provide patients or transfer patients closer to that number and these patents are mixed, not related to the licence issued under her name and this is what occurred. We must accept it?

DR BARNEY SELEBANO: Yes.

ARBITRATOR JUSTICE MOSENEKE: And is it lawful, can you- may one under the Act, I am sure there will be many questions about that, issue a licence on a speculative basis? I give you 150 one day, it may be okay, may one do that?

DR BARNEY SELEBANO: In my opinion, no you can't. We don't do that with private establishments.

ARBITRATOR JUSTICE MOSENEKE: And the risk lurking there is plain Doctor is it not? If you say to somebody I give you a licence for 150 in a category they know nothing about, you are inviting them to find fodder isn't it? To find people who would generate income?

DR BARNEY SELEBANO: Yes.

ARBITRATOR JUSTICE MOSENEKE: And that's your impression that the scheme went array with numbers game you call it, where people were given licences and they were virtually encouraged to go and look or to take people from Life Esidimeni.

DR BARNEY SELEBANO: To take.

ARBITRATOR JUSTICE MOSENEKE: Ja and that would be a near perfect recipe.

DR BARNEY SELEBANO: For things to go wrong yes.

ARBITRATOR JUSTICE MOSENEKE: For things to go wrong isn't it?

DR BARNEY SELEBANO: Perfect I agree.

5**ARBITRATOR JUSTICE MOSENEKE**: And that going wrong, includes people dying?

DR BARNEY SELEBANO: Yes.

ARBITRATOR JUSTICE MOSENEKE: Counsel?

ADV PATRICK NGUTSHANA: Thank you. Then in the next page on Page 46,
10then you answer yes, you would have all learnt lessons that is Professor Makgoba
and then you Dr Selebano, we have learnt in a better business way, I don't know
what that means.

DR BARNEY SELEBANO: I can't see it nicely, where is it?

ADV PATRICK NGUTSHANA: At the top of the page, Page 46. Then in Line 4,
15Professor Makgoba yes and then Line 5, you say but when what happened when
the pressure was high, we will come to this pressure, it seems to be your interview
is full of this pressure, but you somehow did not explain it properly. Then when
what happened when the pressure was high, people just said you know you are
licenced for 10 for 20, just take 20 and I think that put pressure on the ... and some
20of them could not even say no. I mean which was unfortunate and-

DR BARNEY SELEBANO: I can't see where you are now.

ADV PATRICK NGUTSHANA: Page 46. I am sorry it was copied from the same printer I don't know why it came out differently.

ARBITRATOR JUSTICE MOSENEKE: Well shall we resolve that issue? It's a small matter, we ought to resolve it?

5**ADV PATRICK NGUTSHANA:** Yes.

ARBITRATOR JUSTICE MOSENEKE: We should work all from the same copy. If there is an additional one, let it be given to the witness please.

ADV PATRICK NGUTSHANA: Yes it is Page 45 at the bottom of the page.

ARBITRATOR JUSTICE MOSENEKE: Get the witness to the passage and let's
10make sure that we are on the right passage and then the questions follow, not
before. Very well, where should we look?

ADV PATRICK NGUTSHANA: Then you have at the bottom, Line 20, Page 45, but
then what happened when the pressure was high-

ARBITRATOR JUSTICE MOSENEKE: Let's just make sure the witness has it?

15**DR BARNEY SELEBANO:** Yes I have it.

ADV PATRICK NGUTSHANA: When the pressure was high, people just said you
know you are licenced for 10 or 20, just take 20 and I think that put pressure on
the... and some of them could not even say no, I mean which was unfortunate. We
are looking at evidence we don't want to repeat that-

20**ARBITRATOR JUSTICE MOSENEKE:** Let the witness answer. Put the question,
there must be some response to that.

DR BARNEY SELEBANO: I don't know what, is, the question.

ADV PATRICK NGUTSHANA: The question is, these NGO's were pressured to take patients-

ARBITRATOR JUSTICE MOSENEKE: A simpler question is what did you mean here, these are his words and then he can tell us what he meant?

DR BARNEY SELEBANO: Well what I meant is that on hindsight when this had happened Justice, if you go back and relate it to what I said in terms of that people were licenced and it became a numbers game and if you then correlate it with this, you will see what I mean, to say that there is a time when the number of patients were being increased unduly on NGO's. This is what I meant.

ARBITRATOR JUSTICE MOSENEKE: Where would the pressure have come from, from the implementer's?

DR BARNEY SELEBANO: No, not from the implementer's, you will see somewhere I have gone through it, you will see that there was a change in plan, as it went, there was a change in plan and the numbers started upping very quickly.

ARBITRATOR JUSTICE MOSENEKE: Yes we know that, we are going to come to that. It is a big part of this case, but I mean for NGO's, I want to follow your assessment. You have already told us it became a numbers game some NGO's took more people to make more money.

DR BARNEY SELEBANO: Some yes.

ARBITRATOR JUSTICE MOSENEKE: Yes some, I said some and so I am asking you, how did it become about that they took more people?

DR BARNEY SELEBANO: Well Justice it would be difficult for me to know at that time, but what I am saying, is that once the [inaudible] was up and more patients were being moved, I would, there is term you use to make an assessment to say most probably at that time when that [inaudible] increased, even those that were licenced for 10, or licenced for 20 but can only cope with 10, because there must be staff-

ARBITRATOR JUSTICE MOSENEKE: But how did NGO's come to take more 10people?

DR BARNEY SELEBANO: They were given I think by the implementer's.

ARBITRATOR JUSTICE MOSENEKE: They were given by the implementer's?

DR BARNEY SELEBANO: Yes they were requested or give by the implementer's to say now, take more.

15**ARBITRATOR JUSTICE MOSENEKE:** I am sure later on questions will come about the impact, the throttle impact of terminating the agreement and that was closing the back door. The only way is out would the implementer's have had that kind of pressure? You must be out at a certain time out of Life Esidimeni?

DR BARNEY SELEBANO: Like any other plan, there would be some that 20timeframes and all that. I can just give an opinion.

ARBITRATOR JUSTICE MOSENEKE: But the termination, would it put pressure on the implementer's?

DR BARNEY SELEBANO: There was 6 months-

ARBITRATOR JUSTICE MOSENEKE: To find more beds, to find more places for 5mental healthcare users?

DR BARNEY SELEBANO: But there was 6 months before the contract expired.

ARBITRATOR JUSTICE MOSENEKE: So you mean what, you think they should have used the 6 months to do this properly?

DR BARNEY SELEBANO: Proper planning.

10**ARBITRATOR JUSTICE MOSENEKE**: Is that what you are saying?

DR BARNEY SELEBANO: I should say in that 6 months, ordinarily we would expect that proper planning, everything should have been done, so that when that expires, then the phased approach comes in.

ARBITRATOR JUSTICE MOSENEKE: And did the implementer's tell you that in 15May and June, they are going to push out so many people?

DR BARNEY SELEBANO: No they didn't tell me, I wouldn't have met with them, they didn't tell me.

ARBITRATOR JUSTICE MOSENEKE: Do you know why they didn't tell you?

DR BARNEY SELEBANO: Most of them like I said, in terms of hierarchy, most of 20them are your assistant managers, property directors-

ARBITRATOR JUSTICE MOSENEKE: No there was a project team which was led by Mr Mosonoge and the deputy project leader was Dr Manamela. Didn't they report in regular meetings to you and the MEC?

DR BARNEY SELEBANO: To the MEC yes they did.

5**ARBITRATOR JUSTICE MOSENEKE**: Did they ever alert you that the throughput in May and June is going to be very high?

DR BARNEY SELEBANO: Not that I recall. I must say I am not saying they didn't, I don't want to blame them, I am just saying I don't recall that level of discussion.

ARBITRATOR JUSTICE MOSENEKE: Counsel?

10**ADV PATRICK NGUTSHANA**: I am still interested in this pressure Doctor Selebano, there was this pressure exerted on these NGO's to receive more patients. Where specifically did it come from within your department?

DR BARNEY SELEBANO: I should think it must have been from- do you mean the pressure to accept more patients?

15**ADV PATRICK NGUTSHANA**: Correct.

DR BARNEY SELEBANO: They were [inaudible] with implementer's isn't it?

ADV PATRICK NGUTSHANA: With the implementer's?

DR BARNEY SELEBANO: Yes.

ADV PATRICK NGUTSHANA: And who would be responsible for that according to
20your view?

DR BARNEY SELEBANO: Do you want a name?

ADV PATRICK NGUTSHANA: Yes. Would Doctor Manamela fit into that description?

DR BARNEY SELEBANO: As the leader of the team, yes.

5**ADV PATRICK NGUTSHANA**: Okay.

ARBITRATOR JUSTICE MOSENEKE: But did she have an option? Once a contract is cancelled, she has to find beds, isn't it for mental healthcare users?

DR BARNEY SELEBANO: Correct.

ARBITRATOR JUSTICE MOSENEKE: I see you nodding your head Doctor I want
10you to record your answer on the record?

DR BARNEY SELEBANO: Okay.

ARBITRATOR JUSTICE MOSENEKE: Once the contract had been cancelled on a
6 months' notice, she had to find beds for mental healthcare users who were at Life
Esidimeni?

15**DR BARNEY SELEBANO**: That's correct.

ARBITRATOR JUSTICE MOSENEKE: Did she have an option but to find the
beds? In other words, could she leave the patients at Life Esidimeni for an
example?

DR BARNEY SELEBANO: But the contract was being terminated, so she wouldn't.

ARBITRATOR JUSTICE MOSENEKE: Ja, so as team leader, whatever she did, she had to find places for the mental healthcare users who were displaced from Life Esidimeni, is it fair to say that?

DR BARNEY SELEBANO: Who have been moved from Life Esidimeni, I would say looking at the plan and everything, it's fair that she would have found the places, she had to find the places, it is part of her job.

ARBITRATOR JUSTICE MOSENEKE: It is part of her job to find the places?

DR BARNEY SELEBANO: To assist in the placement of patients, let me put it that way.

10 **ARBITRATOR JUSTICE MOSENEKE**: Counsel?

ADV PATRICK NGUTSHANA: And seeing that there was this pressure coming from that angle as well, that the contract has been terminated, beds had to be found, being the person who according to your evidence, decided that indeed the cancellation must go ahead. Where did you think those beds were going to come from?
15

DR BARNEY SELEBANO: I don't understand your question?

ADV PATRICK NGUTSHANA: Where did the extra beds to house these patients, supposed to come from?

DR BARNEY SELEBANO: The plan was to move the patients to the NGO's.

20 **ADV PATRICK NGUTSHANA**: To the NGO's?

DR BARNEY SELEBANO: Yes.

ADV PATRICK NGUTSHANA: That was the original plan?

DR BARNEY SELEBANO: That's the plan.

ADV PATRICK NGUTSHANA: Okay and then is that the original plan which Professor Makgoba refers to in the passage I have referred you to?

5**DR BARNEY SELEBANO**: Well I don't really know- I would have assumed that is what he meant.

ADV PATRICK NGUTSHANA: Okay what was the original plan? Let's go back to that now.

DR BARNEY SELEBANO: The original plan is to de-institutionalise the patients
10that was, the original plan.

ADV PATRICK NGUTSHANA: And how was the implementation going to be executed in relation to these NGO's?

DR BARNEY SELEBANO: No I mean now you are asking at an operational level what is it that was going to happen, I wouldn't know. I mean patients move in
15Gauteng every day.

ADV PATRICK NGUTSHANA: Okay. Let me get you back to the interview record, let's go back to Page 22, at the top there, you make reference to the fact that you say no, the pressure on the staff became 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,
20you cannot blame the staff. As the head of administration, I should take responsibility and that is why I say I will take the sword for them, rather they be

saved, I can rather walk because the pressure became so much on them, that they [inaudible]. Then Professor Makgoba asks the pressure came from whom and you answer in Line 10, let us leave that Professor. Let's deal with that.

DR BARNEY SELEBANO: Ja I don't know what you want me to say.

5**ADV PATRICK NGUTSHANA**: The pressure came from whom?

DR BARNEY SELEBANO: Well it's known there, we subsequently agreed with the Professor that it was coming from the MEC Ms Mahlangu.

ADV PATRICK NGUTSHANA: Yes I think now we are having progress and the pressure escalated the implementation of the programme and that is the project that
10is where NGO place patients whether there is space, whether they are capable-

ARBITRATOR JUSTICE MOSENEKE: Shouldn't we ask the witness what was the pressure?

ADV PATRICK NGUTSHANA: Okay what was the pressure?

DR BARNEY SELEBANO: To place patients, that was the big pressure, to put the
15patients in the NGO's.

ADV PATRICK NGUTSHANA: Where were these patients to be placed?

DR BARNEY SELEBANO: In the NGO's, I don't know, I don't want to be misconstrued the patients were going to be placed in the NGO's.

ADV PATRICK NGUTSHANA: Correct. No I just wanted to get that clear before
20there is a debate. Then on the same page-

ARBITRATOR JUSTICE MOSENEKE: But how was the pressure put on you, HOD?

DR BARNEY SELEBANO: Now I was not under pressure. You see there were two parts, the first part was that there was the de-institutionalisation and then subsequent to that, I learnt later that then there was a marathon now. What inspired that, I am not too sure myself, but that on its own meant that it's a gallop to put patients in the NGO's. The pressure started from saying patients need to be put in the NGO's.

ARBITRATOR JUSTICE MOSENEKE: But Doctor Selebano, who made that decision? Who made the decision that there will be a marathon project that would gallop?

DR BARNEY SELEBANO: Honestly speaking, I am just, I knew only of the de-institutionalisation, the bigger project. The marathon part and that is my opinion, it must have been worked by the team that was implementing that. That is my opinion.

ARBITRATOR JUSTICE MOSENEKE: Can you tell us the facts and less your opinion? Can you tell us who made the decision that led to you signing the termination agreement with Life Esidimeni on 6 months' notice, who, in which position of authority made that decision?

DR BARNEY SELEBANO: But let me explain again Judge and please understand what I'm saying, there is a fiscal pressure, this doesn't apply to one aspect of the department, it applies across the board. The people, who also feel the pressure

every time, would be the financial people, the budge people, so it's not like then it is only one person who said we must cancel the contract. There were other contracts, for instance, the Selby contract, that was also part of this, we started with the Selby project, so it was part and parcel of- we called it Revenue Enhancement, something like that.

ARBITRATOR JUSTICE MOSENEKE: But I would like you to put faces to the decision making. There must have been a committee, there must have been people who made the decision we are going to cancel the Life Esidimeni contract which you implemented you signed the termination letter? All I am asking Doctor, is earlier you said the pressure came from the MEC. I want to understand the mechanics of what happened there, who made the decision, HOD we are cancelling?

DR BARNEY SELEBANO: No but these are different things that you are talking about. You say the pressure on the MEC in terms of putting patients in the NGO, it is a separate thing from discussing the contract how it was terminated. What transpired, was that the fiscas and I want to go back again, there was fiscal pressure and we all said not only myself, the finance people, HR people, infrastructure people, we say where do we cut, where do we reduce the pressure on us, so that is why it is not easy for me to say all the chief directors were there, all the DDG's were there and the idea was to reduce the fiscas pressure on the department. So it is not easy to say I was in that meeting, it is not easy to say it was so and so, so it was a departmental discussion on how are we going to manage, because we were told that there is no new money, there is no money.

ARBITRATOR JUSTICE MOSENEKE: Who told you so?

DR BARNEY SELEBANO: The Treasury.

ARBITRATOR JUSTICE MOSENEKE: National or Provincial?

DR BARNEY SELEBANO: Let me rather explain again, as HOD, I sit with other 5HOD's with the DG and then we also look at the issues of is there money, is there no money, how is the country going to manage with this, but the Treasury will say, I think we call it 10 x 10 and with the finance people and then the Treasury will say the country doesn't have money.

ARBITRATOR JUSTICE MOSENEKE: How did Life Esidimeni, how was it 10identified as an appropriate target for reducing expenditure?

DR BARNEY SELEBANO: I wouldn't say it was a target in that sense. I would say all the contracts were identified, all without fail, many contracts that we have, can we do this, can we do that and that is why I'm saying it was one of the contracts. It was not specifically targeted for any malicious intentions.

15**ARBITRATOR JUSTICE MOSENEKE**: We will come back to that, there are a lot of questions around there, the financials are also here, but I am sure we will go back and debate that issue, but we are talking about pressure. So what kind of pressure came from the MEC?

DR BARNEY SELEBANO: Well the pressure was that the team must move to get 20NGO's having beds and patients being placed in the NGO's, I think that would be

the pressure and typically junior officials, once that thing has happened, they have to do it, they run.

ARBITRATOR JUSTICE MOSENEKE: So she championed the notion that, NGO's, ought, to be found and mental healthcare users must be placed in NGO's?

5**DR BARNEY SELEBANO**: No there have always been NGO's in the system.

ARBITRATOR JUSTICE MOSENEKE: No in the marathon project? I am talking about the marathon project?

DR BARNEY SELEBANO: Well the managers-

ARBITRATOR JUSTICE MOSENEKE: I am trying to understand the pressure,
10remember that is where we are. Are you talking about the pressure from the MEC?
So I am trying to understand its character.

DR BARNEY SELEBANO: Ja it's a language issue sometimes when you say
pressure, but let me try and put it this way Justice, the contract is ending within a
period of time, in fact, if I recall, it was supposed to end at the end of the financial
15year, there was a 2 months' extension, I didn't do it myself, but there was a 2
months' extension with Life Esidimeni. They were happy to have the 2 months'
extension themselves. I only signed until the end of the financial year, so there was
this extra extension and I think that was where now because they wouldn't like you
were saying, it was from behind, we must emerge that side and that was when the
20pressure took place and patients increased.

ADV PATRICK NGUTSHANA: Would it be correct that the pressure which you refer to, was also to the effect that to the extent that you don't have existing NGO's, new NGO's must be established in order to house these patients?

DR BARNEY SELEBANO: You want to know whether it would be correct or not?

5**ADV PATRICK NGUTSHANA:** Yes.

DR BARNEY SELEBANO: Well there were NGO's that were in existence and other NGO's were being formed, so I am not too sure-

ADV PATRICK NGUTSHANA: Let me put it differently. Was the original plan not to use existing NGO's?

10**DR BARNEY SELEBANO:** I don't recall saying we only use existing NGO's, I don't recall that.

ADV PATRICK NGUTSHANA: Okay I will refer you to some passages from the documents. Let me refer you to File 3, it should be before you there. In File 3 on Page 1057 that is the MEC's responses to the legislature do you recall this exercise
15by the MEC where she was called upon to answer certain questions?

DR BARNEY SELEBANO: Can I just read it so that I know what-

ADV PATRICK NGUTSHANA: You don't have to read the entire document. I want to refer you to Roman Figure ii, the question there is, what are the identified hospitals and/or premises where they will be placed. Then the answer bullet point
20(i) (ii) (iii) on (iii) it is existing NGO's, do you see that?

DR BARNEY SELEBANO: I see that.

ADV PATRICK NGUTSHANA: And bullet point (ii) it says unused part of the Tswane District Hospital Transvaal Memorial Institution Pienaar and old Germiston Hospital bullet point (i) Weskoppies Hospital, Sterkfontein Hospital and Cullinan Care, so it will appear to me that this was the plan and that accorded to the presentation made by Dr Manamela from the evidence we have heard so far.

DR BARNEY SELEBANO: Well I don't know, but here, she was responding to a question, that is what I would say, she was responding to the question, what are the hospitals. I will give you an example, for instance unused part of Tswane District Hospital, it was never used. I will give you another example, TMI, it was never used.

ADV PATRICK NGUTSHANA: No let's not lose focus on this pressure. I want to find out whether this pressure was to the effect that you must find new NGO's, so that we can house all of these patients, because from there, the answer seems to suggest that the plan was to use existing NGO's and I will refer you now to another volume where that specific point was dealt with by Dr Manamela.

ARBITRATOR JUSTICE MOSENEKE: Well let's find out from the witness, was that the plan?

ADV PATRICK NGUTSHANA: Was that the plan?

DR BARNEY SELEBANO: No I don't know of any plan where specifically it was said look for new NGO's, I don't know of that plan.

ARBITRATOR JUSTICE MOSENEKE: Well if that is the answer, then Counsel refers you to Page 1057 where the legislature was told that is the plan that is the cutting end that is the thrust of the question.

DR BARNEY SELEBANO: Ja but Justice I am sure you would agree I wouldn't say I know it if I don't know it.

ARBITRATOR JUSTICE MOSENEKE: No I don't say you should say you know it. We just want a response from you. Was that the plan, so your answer is I don't know?

DR BARNEY SELEBANO: I don't know.

10 **ARBITRATOR JUSTICE MOSENEKE**: When you terminated the contract, where did you think these patients would go to?

DR BARNEY SELEBANO: The concept of de-institutionalisation was to take patients to the NGO's which are in communities.

ARBITRATOR JUSTICE MOSENEKE: And a presentation is made to you by Dr Manamela on the implementation plan isn't it so?

DR BARNEY SELEBANO: Yes not to me alone, to management.

ARBITRATOR JUSTICE MOSENEKE: No I understand that, but you were in a meeting, the evidence goes and we have shown you quite early, Counsel showed you the plan which was presented by Dr Manamela. Beyond the high level, from her plan, what did you gather to be the destination of these patients?

DR BARNEY SELEBANO: NGO's.

ARBITRATOR JUSTICE MOSENEKE: Which NGO's?

DR BARNEY SELEBANO: Like I say, I wouldn't be able to say this one or that one, because that is not where and I am not saying anything funny, this is not where I would ask the micro details which NGO, how many beds, how many this, you can't do that.

ARBITRATOR JUSTICE MOSENEKE: As a bare minimum, would you have required that the NGO's be licenced?

DR BARNEY SELEBANO: They should be the right licenced certificated NGO's yes.

10 **ARBITRATOR JUSTICE MOSENEKE**: And they should be NGO's selected in accordance with the Mental Health Care Act?

DR BARNEY SELEBANO: That's right.

ARBITRATOR JUSTICE MOSENEKE: At a bare minimum, they must accord with the requirements?

15 **DR BARNEY SELEBANO**: Bare minimum.

ARBITRATOR JUSTICE MOSENEKE: Prescripts of the law?

DR BARNEY SELEBANO: Bare minimum yes.

ARBITRATOR JUSTICE MOSENEKE: (iii) you told us they must be fit for purpose is that correct?

DR BARNEY SELEBANO: That was my discussion with the Ombud and I said it should be a fit for purpose it's a concept that applies across the board in anything.

ARBITRATOR JUSTICE MOSENEKE: And when the presentation was made to you about the destination of those patients, were you happy with the plan?

5**DR BARNEY SELEBANO**: Justice why would I be unhappy with the plan that is still going to be implemented? I was not unhappy with the plan.

ARBITRATOR JUSTICE MOSENEKE: And if you were unhappy, you had the power to stop it, did you?

DR BARNEY SELEBANO: I think yes, I can't approve something that I am
10unhappy with.

ADV PATRICK NGUTSHANA: Just to move off from this point, the presentation by Dr Manamela is on Volume 7, Page 2661, but the document, starts at 2658, perhaps start at 2658, are you familiar with that document?

DR BARNEY SELEBANO: Ja it's 2015, really I will struggle to say whether I am
15familiar with it or not. There are many documents in the department, many.

ADV PATRICK NGUTSHANA: Okay no it's fine, Dr Manamela had already testified about this document, it's the department's document, you don't have to worry about that. This she said is a presentation on the project she had made the project plan and on Page 2661, she refers to Option 1. Then the first bullet point
20beds identified and listed below hospitals and CEO's and infrastructure unit

submitted, the estimates, the requirements for renovations, HR and the budgets thereof. Bullet point 2, other-

ARBITRATOR JUSTICE MOSENEKE: Just before we delve into detail, I think it's fair to tell the witness whether this was presented at a meeting where he was present.

ADV PATRICK NGUTSHANA: Okay Doctor Selebano I have asked whether you are familiar with this document and you referred that it is a 2015 document and so on. Are you aware of a meeting that you attended where such a document was presented, where you were present?

10 **DR BARNEY SELEBANO**: I wouldn't recall, it's possible that I was present.

ARBITRATOR JUSTICE MOSENEKE: You can put to the witness Dr Manamela says the witness was present.

ADV PATRICK NGUTSHANA: Yes Dr Manamela said one of the leaders for the department, you were present do you accept that?

15 **DR BARNEY SELEBANO**: It is possible yes.

ADV PATRICK NGUTSHANA: Okay. Then let's go to 2661, the second bullet point now, it says that other beds were identified to manage acute users to relieve psychiatric hospitals high number of referrals. Then the last bullet point, the 3 psychiatric hospitals and existing NGO's, will take the bulk of mental healthcare users while the other hospital will increase or open acute services. The other users had to be discharged to home. Do you recall this?

DR BARNEY SELEBANO: I can just read it now, I understand ja, but like I said, I don't recall, but I am not denying that I was in this meeting, I don't remember.

ADV PATRICK NGUTSHANA: And that it was impressed upon you that the existing NGO's would take the bulk of the patients.

5**DR BARNEY SELEBANO**: I am not too sure, I don't understand.

ARBITRATOR JUSTICE MOSENEKE: Well the question is, it was always part of the plan that existing NGO's not new ones would take the bulk of the mental healthcare users. What is your response to that?

DR BARNEY SELEBANO: I wouldn't argue with that.

10**ARBITRATOR JUSTICE MOSENEKE**: Ja it's in the presentation, it was put to you that that was the plan.

DR BARNEY SELEBANO: Ja I wouldn't argue with that.

ADV PATRICK NGUTSHANA: So in relation to this pressure, would it be reasonable to conclude or infer that this pressure resulted in the implementer's as
15well deciding on opening new NGO's in order to take on these new patients which existing NGO's can't take?

DR BARNEY SELEBANO: You want me to make an inference?

ADV PATRICK NGUTSHANA: Yes.

DR BARNEY SELEBANO: Ja reasonably, ja.

ARBITRATOR JUSTICE MOSENEKE: Just go to Page 2662, that relates to numbers, that relates to money, starting from the HR requirements of Weskoppies Hospital, can you see that?

DR BARNEY SELEBANO: Yes.

5**ARBITRATOR JUSTICE MOSENEKE:** Thank you, if you page over, again it's costs of Weskoppies HR requirement, then the Sterkfontein ones, let's page over, Cullinan HR requirement and the total budget needed for that, is put down there. Then comes the section on renovations 2665 in the presentation. Part of the plan was that if renovated, there would be 974 beds, with a total staff headcount of 243
10and then they give the estimates of each of the hospitals in relation to renovations and HR. Were those renovations ever done?

DR BARNEY SELEBANO: No they were not done there was no money to do this.

ARBITRATOR JUSTICE MOSENEKE: So these are just numbers, there was no money to do this?

15**DR BARNEY SELEBANO:** I think she was making, this 2015, if I am to place this correctly, this is 2015 and she must come up as the leader in the mental health, give us a plan, how are you going to do this. That is why I explained to you Judge that when you say point out who said you must sign, I will say it was a team, it's obvious from me when I see this, that the HR people were in this meeting, the
20infrastructure people were in the meeting and the finance people were in this meeting, so this was a plan that was given to the department.

ARBITRATOR JUSTICE MOSENEKE: So if there was no plan to renovate and create new beds, look at Page 2667, the beds would have had to come from NGO's.

DR BARNEY SELEBANO: I am not following you.

5**ARBITRATOR JUSTICE MOSENEKE**: Okay let's try again, we know that there was no money for renovations, this was a plan up in the cloud, it must follow, we are looking at 2667, the conclusion. It must follow that the beds had to come from NGO's.

DR BARNEY SELEBANO: So you're saying if we couldn't renovate, then obviously
10we had to get beds from NGO's?

ARBITRATOR JUSTICE MOSENEKE: Yes and when the presentation was made to you, that must have been quite plain Doctor, it must have been quite obvious?

DR BARNEY SELEBANO: No this is-

ARBITRATOR JUSTICE MOSENEKE: You renovate or else you are going to take
15these patients from Life Esidimeni to NGO's, I am just asking on this presentation, was it obvious to you that you would end up with NGO's?

DR BARNEY SELEBANO: No it wouldn't be that obvious. This is 2015, the movement of patients was around 2016, so it would have been unthinkable to think that there could have a plan and we don't put money. Dr Manamela when she was
20doing this, she wouldn't worry whether is there money or not to renovate, her job would be to sit with the team and say these are the estimates that you are going to

do, HR this and this and that and that level of understanding, would come from myself and the CFO to say no matter how much we may wish to do certain things, some things may not be able to be done now. So it wouldn't be that obvious like you are putting it.

5 **ARBITRATOR JUSTICE MOSENEKE**: Well you told us there was no money and renovations were not going to be done.

DR BARNEY SELEBANO: The other way around, renovations were not done because there was no money.

ARBITRATOR JUSTICE MOSENEKE: Ja it is the same equation Doctor, but then
10 the narrow question is was it obvious that all these patients will have to go to NGO's, unless you renovated old hospitals, unless you increased capacity at Weskoppies, Cullinan and Sterkfontein, you had to resort to NGO's.

DR BARNEY SELEBANO: It's fair ja.

ARBITRATOR JUSTICE MOSENEKE: And it was plain from the plan.

15 **DR BARNEY SELEBANO**: Fair.

ARBITRATOR JUSTICE MOSENEKE: It took time to get there Doctor.

DR BARNEY SELEBANO: No, no, no.

ARBITRATOR JUSTICE MOSENEKE: Ja let's help each other, let's try and be efficient, save time.

DR BARNEY SELEBANO: No but I am sure with due respect and I respect you a lot, I also need you to understand exactly what is the question so that I can answer it properly.

ARBITRATOR JUSTICE MOSENEKE: Okay.

5**ADV PATRICK NGUTSHANA**: In fact the evidence we have from Dr Manamela was that this planned renovations did not work. Does that accord with your knowledge as well?

DR BARNEY SELEBANO: Yes it is true they were not done.

ADV PATRICK NGUTSHANA: So the planned 1164 beds if renovations were to be
10done, would not be available if that is the case?

DR BARNEY SELEBANO: Ja I am not too sure how much the renovations would absorb.

ADV PATRICK NGUTSHANA: According to the plan, it says if renovations then this is the figure.

15**DR BARNEY SELEBANO**: Ja then it stands to reason that it was not done.

ADV PATRICK NGUTSHANA: And are you aware of an invitation which was sent out to NGO's in an email sent by Hannah Jacobs dated 9 November 2015?

DR BARNEY SELEBANO: No I am not aware of any email, I wouldn't know about that.

20**ADV PATRICK NGUTSHANA**: Okay.

DR BARNEY SELEBANO: I actually knew Hannah after, I never knew her before.

ADV PATRICK NGUTSHANA: Before when?

DR BARNEY SELEBANO: I never knew Hannah personally until after the post-facto.

5**ADV PATRICK NGUTSHANA**: Oh I see. In this meeting, one of the attendees was an owner of an NGO called Anchor House or Anchor Home, Dorothy Franks.

DR BARNEY SELEBANO: I don't know her.

ADV PATRICK NGUTSHANA: At the time, she worked as a credit control clerk for another NGO and she came out of the meeting with an advice that she can go and 10form an NGO because there is a need for NGO's by the department. Are you aware of this?

DR BARNEY SELEBANO: No I am not aware of that, I didn't attend that meeting, I don't know that person.

ADV PATRICK NGUTSHANA: Okay but to you, does that sound right that people 15should be invited at that late stage, 9 November 2015, you had already issued out a notice to Council on 29 November 2015, to form new NGO's.

DR BARNEY SELEBANO: Like you say, does it sound right, no it doesn't.

ADV PATRICK NGUTSHANA: Then let's move on, let me take you back to Page 22 of the record of the proceedings or interview, then in Line 12 on Page 22, it says 20the pressure was so high that they in the process, I think errors were made where

we had agreed on 20 patients, hold onto 15 and let us see how you cope and then you end up increasing and increasing and increasing. What did you mean by that?

DR BARNEY SELEBANO: Remember we spoke about the pressure to place patients, so this is exactly what it means, that I think errors were made where we had agreed on 20 patients. Remember I did say to you that some NGO's could only take 10 and that is why I am saying that, instead of 10 now, it actually ended up not being 10, but being more than that. That is what I meant.

ADV PATRICK NGUTSHANA: Then further down there, Professor Makgoba says increasing then you say ja, that is where I think the error started.

10**DR BARNEY SELEBANO:** I think yes.

ADV PATRICK NGUTSHANA: Then he goes on, okay, Line 21, Dr Selebano that is important as well, why would that error happen that is you asking the question, it is because now you are- these are new NGO's, not necessarily new people to manage these types of patients you are adding. You see the skill for psychiatric patients is an undefined skill, I will not say you just need to have good hearts to deal with, sometimes you need slightly more than that to recognise when this guy is ill and all that. So what do you mean by this? Why was it important for you to emphasise that these are new NGO's?

DR BARNEY SELEBANO: If you remember what I said, I said I think and then the NGO's my assumption, my opinion, was that once you now have new NGO's, if you read it with the right context here, you will see that I said you have a new NGO now, it's new, you are bringing in people, they might have good hearts, but you need

more than that. It's a new NGO, you need more than a good heart, you need a guy or a caretaker who will understand that type of patient, because you see it is not easy for let's say a patient who can't talk due to a mental issue, the patient will not say I've got a pain here, but you need somebody then who would be able out of 5experience, to say I think this patient is not well. That is what I meant.

ADV PATRICK NGUTSHANA: Oh I see, that is why you make specific reference there you say the skill for psychiatric patients is an undefined skill.

DR BARNEY SELEBANO: In particular, I was referring to the fact that you wouldn't have a special psychiatric nurse, that is what I meant, so you would want somebody 10who has been working with psychiatric patients and knows how to relate to them, how to take care of them, how to pick up issues.

ARBITRATOR JUSTICE MOSENEKE: And that bit, the mental healthcare directorate would have known at a bare minimum, they would have known that?

DR BARNEY SELEBANO: You see if you don't tick boxes, you would know.

15**ARBITRATOR JUSTICE MOSENEKE:** That is their core function, the mental healthcare directorate and they would have known what you have just told us which is quite helpful Doctor.

DR BARNEY SELEBANO: I would expect that they should know.

ARBITRATOR JUSTICE MOSENEKE: And with that knowledge, they would place 20patients in full cognisance of these requirements you have just described?

DR BARNEY SELEBANO: Appropriately yes.

ARBITRATOR JUSTICE MOSENEKE: Is it fair with what you know now, that exact science hindsight, is it fair to say that the directorate did not do that? In most NGO's, I know you are going to tell me in not all, in most NGO's? You can start with Precious Angels. Look people died at specific NGO's, I am sure Counsel will stake you to those details. There is a lot of detail of who died where and when and how long they have been there, we have all those facts, so I am saying to you on hindsight, as an HOD, you look back and say did the mental care directorate follow these precautions when they placed mental healthcare users at NGO's?

DR BARNEY SELEBANO: Ja I agree with you.

10 **ARBITRATOR JUSTICE MOSENEKE**: You agree that they did not?

DR BARNEY SELEBANO: They should have followed that.

ARBITRATOR JUSTICE MOSENEKE: But did they?

DR BARNEY SELEBANO: Well with hindsight and with what transpired, you are pressed to say no, they didn't, but you can never say that as a fact.

15 **ARBITRATOR JUSTICE MOSENEKE**: No you can, many of the people under your care died, you can say it as a fact, can't you?

DR BARNEY SELEBANO: Well for now for these purposes, I will say yes, but we can discuss, yes.

ARBITRATOR JUSTICE MOSENEKE: We still hope that somebody under your
20 command starting with you will come and tell us what happened. It is a very

important part of healing Doctor Selebano. So you are a very vital part of this, because you are the man who signed off on the plan.

DR BARNEY SELEBANO: That's right.

ARBITRATOR JUSTICE MOSENEKE: As you sit there, do you think these NGO's were mental healthcare users when the marathon project died, were fit for purpose?

DR BARNEY SELEBANO: No I wouldn't say they were no they were not.

ADV PATRICK NGUTSHANA: With this in mind now that these new NGO's, these new people you refer to, might not and as a matter of fact, we know now that they did not have the skill to look after these patients, was the move to these particular 10 NGO's, to the interests of these patients are not in your view? Was this transferring of patients to these NGO's who had no skills, no experience at all in taking care of mental healthcare users, was it to their benefit or not?

DR BARNEY SELEBANO: Yes it was not.

ADV PATRICK NGUTSHANA: It was not. In what way was it not to the benefit of 15 the user?

DR BARNEY SELEBANO: We have just said it that they should have been skilled and be able to pick up issues that patients can have.

ADV PATRICK NGUTSHANA: To what dangers or possible dangers were these patients exposed to by placing them under the care of these NGO's in your view?

DR BARNEY SELEBANO: Like I said, if the patient is ill and you are not skilled to pick up that this patient is ill, you are putting that patient in danger, that's it. I am sure they could wash the patients.

ADV PATRICK NGUTSHANA: And what other dangers?

5**DR BARNEY SELEBANO**: I don't know what more dangers you want, I gave you what is more paramount for me, if they are unable to pick up that this patient is sick outside the chronic condition, if you can't pick up just that, then you are putting this patient in danger.

ADV PATRICK NGUTSHANA: So they may not know when and how to intervene
10with administering medication to this particular patient?

DR BARNEY SELEBANO: I have just given you what I know my experience. If it's a chronic medication, people at home administer medication, you don't need any experience, these hypertension drugs you just take it. So if you say they don't know to do that, then they are even more dangerous to the patients.

15**ADV PATRICK NGUTSHANA**: And then let's go further and identify the second problem out of this pressure you had identified that is in your interview on Page 23, on Page 23 that is on Line 10, before we get to Line 10, just complete that for record purposes, I think your answers are important for the record. Under Line 6, you say and it can be slightly difficult if you do not have experience that is you refer
20to the NGO. No I'm sorry it is Page 23 Line 4 I am sorry, it can be slightly difficult if you do not have experience. Who are you referring to there?

DR BARNEY SELEBANO: It's the same discussion that if you take somebody who doesn't have experience of taking care of a particular type of patient, it can be slightly more to recognise when the guy is ill, it goes with that, that if you take this guy, he doesn't have experience, then it is a problem.

5**ARBITRATOR JUSTICE MOSENEKE**: And by problem you mean it would pose a risk to the mental healthcare user?

DR BARNEY SELEBANO: To the patient yes.

ADV PATRICK NGUTSHANA: And let's get to the second error, out of this pressure, on the same page, Line 11, then you say and I think that is where the
10error started, the second error I would want to say that the haste in moving the patients, we would have some of us cautioned against haste. The haste was too much you could have done it in a phased way. You had already referred to the fact that your view that it ought to have been phased in and what do you mean by this, the second error?

15**DR BARNEY SELEBANO**: The haste I mean patients were moved very quickly, that is what I meant without- it is also hindsight that you move patients quickly, the preparations and I am saying this Judge because now I know that patients moved fast, but the preparations were not up to scratch, I now know that, but that time, honestly speaking, at that time, I didn't know that, I didn't know, but now we know
20that patients were moved very quickly. I have seen a graph where it shows that about 900 or so patients were moved very quickly and if you add the fact that some

of the NGO's were new and new as they are, they didn't have the requisite skills, that is what I meant, that that became the error.

ARBITRATOR JUSTICE MOSENEKE: And Doctor you didn't pay them for 4 months.

DR BARNEY SELEBANO: They were not paid for 4 months.

ARBITRATOR JUSTICE MOSENEKE: We are going to have the lunch break now and we ask you to be back here at 2:30, it is 1:30 now, we are adjourned.

SESSION 3

ARBITRATOR JUSTICE MOSENEKE: Thank you. You may be seated.

Dr. Selebano, you're still under your previous oath to tell the truth.

DR. BARNEY SELEBANO: I understand Justice.

5**ARBITRATOR JUSTICE MOSENEKE:** Shall we proceed? Counsel.

ADV PATRICK NGUTSHANA: Thank you Justice Moseneke. Dr. Selebano you have said that with reference to the passage on page 23 of the record of the interview that you learned with inside against this. That this policy was implemented in a hastily manner. Are you certain that you learned with inside--
10no, no, let me put it differently. Are you certain that you did not know of the problems associated with this programs prior to it being implemented? Was it never brought to your attention before? Was it never brought to your attention before that there are risks attended to the implementing of this project? For example by other clinicians?

15**DR. BARNEY SELEBANO:** No I never met with any other clinicians, but I know that there were concerns around.

ADV PATRICK NGUTSHANA: Were you not warned by SASOP, for example?

DR. BARNEY SELEBANO: I never met with SASOP.

ADV PATRICK NGUTSHANA: Have you not received any correspondence
20with SASOP Posadeck?

ARBITRATOR JUSTICE MOSENEKE: Do you want to read off the acronyms fully, at least for the first time.

DR. BARNEY SELEBANO: The South African Society of Psychiatrist.

ADV PATRICK NGUTSHANA: That's correct, yes.

DR. BARNEY SELEBANO: SASOP. That there could be South African depression and anxiety group.

ARBITRATOR JUSTICE MOSENEKE: Oh, so you know both of them very well?

ADV PATRICK NGUTSHANA: That's correct. So you never received any correspondences from this?

DR. BARNEY SELEBANO: Well we used to meet during 2015 Justice around November early December 2015 we were meeting with Sadek.

10 **ARBITRATOR JUSTICE MOSENEKE:** Yes. Again I'm going to ask you to throw your voice outwards.

DR. BARNEY SELEBANO: Yeah.

ARBITRATOR JUSTICE MOSENEKE: When young singers are taught how to start singing, one of the first things they would teach them is to go chest out and
15 to trust your voice outwards.

DR. BARNEY SELEBANO: Okay.

ARBITRATOR JUSTICE MOSENEKE: If you speak downwards, of course the voice would be less audible.

DR. BARNEY SELEBANO: I learned my lesson, thank you, I'm sorry judge.

20 **ADV PATRICK NGUTSHANA:** Yes. Another way of this correspondence.

DR. BARNEY SELEBANO: From Sadek?

ADV PATRICK NGUTSHANA: Yes.

DR. BARNEY SELEBANO: I don't know it might have been in 2015, like I'm

saying we used to to meet with Sadek. With a lady, just the name just passed my mind we used to to meet.

ADV PATRICK NGUTSHANA: Are you aware of the legal proceedings that were brought against the department in December of 2015?

5**DR. BARNEY SELEBANO:** Yes, I know.

ADV PATRICK NGUTSHANA: The issues are attended to the implementations of this project not raised in those proceedings?

DR. BARNEY SELEBANO: Yes the Sadek and section 27, I think in that legal cases, SASOP also help raised concerns.

10**ADV PATRICK NGUTSHANA:** Concerns.

DR. BARNEY SELEBANO: Yeah.

ADV PATRICK NGUTSHANA: How did you attend to those concerns which were raised by Sadek and SASOP? How did you attend to them?

DR. BARNEY SELEBANO: You mean me as a person?

15**ADV PATRICK NGUTSHANA:** Yes. As an HOD, remember you are trying or approved the project plan and you indicated that they depended on you to approve or not to approve the project plan and now you are confronted with concerns by role players as well as families of the mental health care users as well. So what was your intervention then?

20**DR. BARNEY SELEBANO:** Well we met, I mean when there are disagreements people sit and meet and discuss and if I'm seeing I think late November, early December, we met --

ARBITRATOR JUSTICE MOSENEKE: Of which year?

DR. BARNEY SELEBANO: 2015, 2015, yeah. Sorry about that. And then the way it continuous discussions and meetings they were not happy, I'll say openly they were not happy, then --

ARBITRATOR JUSTICE MOSENEKE: Unhappy about what?

5**DR. BARNEY SELEBANO:** About the fact that the department has taken the position to terminate the contract with Life Esidimeni. They were not happy about that, yeah.

ADV PATRICK NGUTSHANA: And were issues related to the readiness of the NGOs so take care of the these patients not raised?

10**DR. BARNEY SELEBANO:** Well, I don't recall the actual minor details of what was this or this. All I could summarize, they raised a concern. They are not happy that we're moving patients and I must say that throughout the end of December, I recall that was when there was an issue of going to cut. I met with section 27 and I met with Mark Woodrow also. But, uh, person to person and I
15said that whatever we do, I'm saying it again. Whatever we do as a department, we must move patients to a place either similar to where they are or far much better. And I said that and I pressed upon the managers about that.

ADV PATRICK NGUTSHANA: True and how did you ensure that these patients that were moved according to your purpose that is to institutions where
20they would receive similar care quality of care?

DR. BARNEY SELEBANO: I indicated to go back to if you say was I now practically involved in saying these are the patients that are moving from this end to another end. I wouldn't be able to do that. If you'll excuse me, it's not

possible that if there's a project then the HOD must now, everyday go there and --

ARBITRATOR JUSTICE MOSENEKE: But did you assure, these three bodies, two bodies you referred to and later the courts that the patients will be moved 5from Life Esidimeni only if they go to a comfortable or better environment, did you make that assertion?

DR. BARNEY SELEBANO: Yes. And my assertion was I hear your concerns and I see where you come from. The position has been taken from moving the patient. What should have been the patients should go to places that are either 10similar to where they were or better, I said that.

ARBITRATOR JUSTICE MOSENEKE: Yes. That was your statement, I remember reading it too. That's quite impressive. So undertaking the bodies concerns was I would not have them moved to circumstances inferior --

DR. BARNEY SELEBANO: Correct.

15**ARBITRATOR JUSTICE MOSENEKE:** To where they are.

DR. BARNEY SELEBANO: Correct. I made that undertaking.

ARBITRATOR JUSTICE MOSENEKE: After all these are mental health care users. Their care will be not be any less than what they currently were receiving, that was the undertaking?

20**DR. BARNEY SELEBANO:** Yes. That was my under taking.

ARBITRATOR JUSTICE MOSENEKE: In fact, I remember seeing it under oath in the court papers.

DR. BARNEY SELEBANO: Yes I made that undertaking.

ARBITRATOR JUSTICE MOSENEKE: Yes you made that undertaking in the court papers. Um, and I'm sure there would be many questions around that. Which inevitably the question would be and what happened? You promised HOD and what happened?

5**DR. BARNEY SELEBANO:** You promise under strength of talking to managers, when I was making that undertaking, I didn't only write it down but I think in one of the meetings I had that could have been actually the 22nd or 23rd of December. Around there because I remember we then agreed that we don't have to go to court we can --

10**ARBITRATOR JUSTICE MOSENEKE:** There would be a settlement, yes. There would be a lot of questions about that. A lot of questions no doubt from section 27, from other applications.

DR. BARNEY SELEBANO: Yeah. I did that. Understand that as an HOD you make that undertaking, under the strength of the managers that you got to do it
15the right way, the right time so that I made an undertaking that this is how it is going to be.

ARBITRATOR JUSTICE MOSENEKE: Another strength of your undertaking that no harm would befall these mental health care users.

DR. BARNEY SELEBANO: That's right judge.

20**ARBITRATOR JUSTICE MOSENEKE:** A settlement was entered into.

DR. BARNEY SELEBANO: That's right. My meeting, the discussion that I had with Mark and I said, I didn't ask him permission when I said this but one of the things that I said, I said it doesn't always have to be that we must always going

to court with ourselves meaning section 27 to resolve issues. And that was my approach to say we can still find one another in this thing that was my approach.

ARBITRATOR JUSTICE MOSENEKE: And what happened? You made this undertaking to them in negotiations under oath before a court and people were moved.

DR. BARNEY SELEBANO: Yes.

ARBITRATOR JUSTICE MOSENEKE: To facility equivalent to Life Esidimeni.

DR. BARNEY SELEBANO: I can only stand on my undertaking and it didn't happen. But I was doing it under the strength of my managers.

10**ARBITRATOR JUSTICE MOSENEKE:** What about your managers?

DR. BARNEY SELEBANO: Under strength that in in in activities you make, let me give you a slightly different example. If a supplier says look, I have not been paid. I need to be paid da da da. And I speak to their supplier and say I'll go and talk to my managers and under the strength of my managers you would get 15your payment. It is a simple example but I'm just illustrating why I made an undertaking, I was saying from the managers you have the responsibility to do exactly the way I said that. It must be better places if not better than--

ARBITRATOR JUSTICE MOSENEKE: Not quite the same, isn't it doc? Here you have a duty not to harm those under your --

20**DR. BARNEY SELEBANO:** Care.

ARBITRATOR JUSTICE MOSENEKE: Care.

DR. BARNEY SELEBANO: Right.

ARBITRATOR JUSTICE MOSENEKE: There's no debate about that right?

DR. BARNEY SELEBANO: No, no, no, there's no debate.

ARBITRATOR JUSTICE MOSENEKE: It's a clear legal duty, ethical duty, professional duty not to harm those placed under your care. Constitutional duty,

DR. BARNEY SELEBANO: Yeah.

5**ARBITRATOR JUSTICE MOSENEKE:** Not debatable?

DR. BARNEY SELEBANO: Yeah. No, not debatable.

ARBITRATOR JUSTICE MOSENEKE: And what went wrong?

DR. BARNEY SELEBANO: Yeah. It's difficult, I mean we all know that things didn't go to according the way they have been planned and it's tragic.

10**ARBITRATOR JUSTICE MOSENEKE:** Counsel.

ADV PATRICK NGUTSHANA: Yes. But this undertakings you made these undertaking in response to this concerns from your stakeholders and in direct I want to point to you to a passage from your that is is Life Esidimeni from your departments meetings that there was also a concern from your department that
15these NGOs are not well equipped. So what want to find out from you when you were making your undertaking, what steps did you take to ensure that your undertakings are carried through?

DR. BARNEY SELEBANO: Counsel. You are saying I should say this is what I did. I went to the NGOs, I checked them. It is not possible for me to do all
20those things. If the managers are the ones who say I say to them. Maybe the undertaking, I was not alone. Some of the managers were actually apart of those discussions until the last minute really. They were there when that undertaking was made. So in your heart as a leader, you believe that I made a

decision, I made an undertaking and it must be seen through. Ordinarily you are saying I should have gone and made sure that maybe on the hindsight if I had known. But if I had known I would have cancelled everything, if I had known.

ARBITRATOR JUSTICE MOSENEKE: Cancelled the what?

5**DR. BARNEY SELEBANO:** The whole-- I'm saying in hindsight. Now, counsel is saying what did I do? I said I wouldn't done anything expect to say to the managers, we made an undertaking and own up to it and do it the right way. Then you correctly ask what went wrong? Things went wrong, all right and I'm saying on hindsight, if you then knew that things would go wrong you would just
10stop and just say no let's not go on. So I didn't know that things would go this wrong.

ARBITRATOR JUSTICE MOSENEKE: But doctor it can't be that easy. Here are professional bodies too. Bodies of clinicians who meet with you and warn you of the depending probable danger. Some of them even go to court to try to
15stop you from moving patients and you promised them, let's settle, I'll consult you. I will not move these patients to any circumstances worse than the present. Why didn't you make sure that your word is as good as your bond?

DR. BARNEY SELEBANO: Yeah. I hear you Justice. I hear you and I hear you very well. Like I'm saying, I didn't meet with the psychiatry association. I
20met with Sadek and section 27 and reached an agreement. One of those agreements they would be part in partner on the project team and also with Life Esidimeni. Dr. (Inaudible) 16:13 he was the partner person of the project team. That is what happened then. That they would be current partners of this and

they would make sure that the plans and all happy and if they are not happy then we'll continue to discuss and find one another. That is what happened. That's prior to the implementation.

ADV PATRICK NGUTSHANA: Let me put this, make this clear to you that the purpose of the inquiry around your role is that we want to find out whether. As the HOD did you take steps to ensure that these projects was implemented by your junior managers or employees of the department according to the concerns raised in the undertaking and the plan that you're not simply rubber stamping the project.

10**DR. BARNEY SELEBANO:** Well I don't know why you used to the word rubber stamp but I'm explaining that it wouldn't be feasible that you see it's hindsight that guides that if I had known that this would have been the consequence but I'm saying at that time, I work with managers everyday. They come and give me information on this. You must that 67 thousand of people in that department.
15You must develop some level of that trust. If you are a leader you lead people and there are may projects inside and many activities. You need to develop a level of trust in people. That if I trust you, say you would do this, it would be done. When you say you would do this, it would be done. It is not possible that unless if you say I should have not trusted them, maybe now I know now.

20**ARBITRATOR JUSTICE MOSENEKE:** No. Dr. Selebano, when stakeholders raise the flag, when they raise a red flag with all the trust in the world that you have with the subordinates and they say watch out, there might be risks either pending placement, what is your duty?

DR. BARNEY SELEBANO: No, no I don't understand. Are you saying sorry judge.

ARBITRATOR JUSTICE MOSENEKE: Yes. Section 27 all side deck. All other people that draw your attention to the risk of closing Life Esidimeni transferring 5patients. Isn't there an extra duty to check to look, to make sure?

DR. BARNEY SELEBANO: Now that you say it, I hear you and I understand but remember this is the project belongs to the department. In that meeting there was (Inaudible)19:14 everybody is in there. When I sit and I say I have 10made an undertaking, we need to ensure that this undertaking is done to the letter. I'm not too sure to what extent what I then would have to now everyday walk with the implementals the managers in ensure that happens. I'm saying would it really be feasible to do that?

ADV PATRICK NGUTSHANA: Yes. Um we move out of this point but let me 15leave you with this. That you trust your managers, that's fair enough. You ought to trust them that is like the employees and you still keep them. Within that environment there are other stakeholders that say to you that there are problems with this. Yes we do know that you trust your managers, but there are problems with this. Shouldn't that concern you?

20**DR. BARNEY SELEBANO:** I hear your concern, it would. But also there's concern in any process. The collective makes a decision, I represent the collective. And in a different way you are introducing paralysis in government now. Because from time to time when we try to do other things people contest

what we're doing, you are not doing it the right way you can't build a clinic here. So I'm saying sometimes when we now think about it now what happened. It is now where we say I just wish at that time maybe something you know God could have intervened and said be careful. You know when I spoke to some
5professors--

ARBITRATOR JUSTICE MOSENEKE: What about the court case?

DR. BARNEY SELEBANO: What court case?

ARBITRATOR JUSTICE MOSENEKE: What about the court case?

DR. BARNEY SELEBANO: The court case we agreed. I don't recall the
10actual, I'm not good in the legal things but in that court case we agreed. I don't recall very well and I'm not playing you. I don't recall very well because the papers were this big and the legal people say HOD we have done our job, we got a lawyer from outside and we're ready to go to court. Sign this affidavit because you are the one who signed this thing.

15**ARBITRATOR JUSTICE MOSENEKE:** Yes let's leave it there. Question on your affidavit would be given to you by various counsel, I'm sure very shortly. Where you deal with claims that this project is holds the risks and dangers from mental health care users. They put your responses through to those issues. So counsel is trying to say in your position, what did you do to stop all of this?
20Because you were warned by various stakeholders.

DR. BARNEY SELEBANO: Well, counsel probably wants me to say Um, I should have done this, I didn't do it. I didn't stop it. I didn't stop the project, I didn't stop it.

ADV PATRICK NGUTSHANA: Let me refer you to an internal document on file page 8, page 2729.

DR. BARNEY SELEBANO: You said file 8?

ADV PATRICK NGUTSHANA: 2729. Are you there?

5**DR. BARNEY SELEBANO:** Yes.

ADV PATRICK NGUTSHANA: Those are minutes of the meeting of 23, November 2015.

DR. BARNEY SELEBANO: Okay.

ADV PATRICK NGUTSHANA: What I want to point out to you is that issues
10pertaining to this project were raised back then. And on page 2730--

DR. BARNEY SELEBANO: 27, 29.

ADV PATRICK NGUTSHANA: Just the page over.

ADV PATRICK NGUTSHANA: 2730.

DR. BARNEY SELEBANO: Sorry. Okay. I'm there.

15**ADV PATRICK NGUTSHANA:** Yes. There's a column that is on the first column on the left. Questions by families in Sadek.

ARBITRATOR JUSTICE MOSENEKE: Can you identify the document for the witness please, so he can familiarize himself with it and then the questions can come.

20**ADV PATRICK NGUTSHANA:** The document on 2729 is recorded, is referred to as minutes of LA meeting with parents held on 23, November 2015 then united floor board room DOL.

DR. BARNEY SELEBANO: Okay.

ADV PATRICK NGUTSHANA: Are you familiar with these said documents?

These are the minutes of your department?

DR. BARNEY SELEBANO: That they belong to the department, these minute, yeah I got notice.

5**ADV PATRICK NGUTSHANA:** Yes. Are you, were you present at this meeting? Can you recall?

DR. BARNEY SELEBANO: I can't recall. I don't think I was present. I don't recall. I don't recall. If you could say I was present, I won't deny it.

ADV PATRICK NGUTSHANA: But the document belongs to the department.

10**DR. BARNEY SELEBANO:** The department, yes.

ADV PATRICK NGUTSHANA: Okay, then turn the page over 2730.

DR. BARNEY SELEBANO: 2730.

ADV PATRICK NGUTSHANA: Yes. In fact (Inaudible) 26:19 let me confirm that these were minutes of that meeting, she was aware of the meeting. Then
15the questions are raised that is on the first column it refers to questions by family and Sadek do you recall that? Can you see that?

DR. BARNEY SELEBANO: Questions by.

ADV PATRICK NGUTSHANA: The first column.

DR. BARNEY SELEBANO: Yeah 2730.

20**ADV PATRICK NGUTSHANA:** Yes.

DR. BARNEY SELEBANO: Yeah.

ADV PATRICK NGUTSHANA: And then there is a responses by the department. The department indicated that the department is subsidizing the

NGO as mental health care users in the providence. They identified users and so on. Then on the Sadek raised certain concerns, do you see those concerns?

DR. BARNEY SELEBANO: Okay, I can see them.

ADV PATRICK NGUTSHANA: Okay. Then in the third column it was recorded, Sadek was advised to get information from the right people that whatever information they get should be accurate, do you see that?

DR. BARNEY SELEBANO: I can see that.

ADV PATRICK NGUTSHANA: So it is quite clear as early of that time that concerns were raised about this project and Sadek amongst others requested the project plan, do you recall that?

DR. BARNEY SELEBANO: I don't recall this meeting. But if you said I was there, like I said I didn't argue. But I don't recall Sadek saying to me they want the project plan.

ADV PATRICK NGUTSHANA: Yes. It is clear to me from the minutes of the meeting, Sadek requested certain permissions about the project which included a project plan. So what I want to put it to you is that why didn't all this attention on the department specifically on this project, why didn't they heightened your concerns?

DR. BARNEY SELEBANO: Well this meeting when I look at it the date, Um 23rd November 2015. Like I said it was toward the ends of November, early December when I started engaging now myself, not managers now. Now with Sadek with section 27, I mean I was engaging with this. I was already engaging with the stakeholders. Remember in this meeting, so we have psychiatrists.

ADV PATRICK NGUTSHANA: Yes.

DR. BARNEY SELEBANO: Um, the other doctors who are also in the department.

ADV PATRICK NGUTSHANA: Yes.

5**DR. BARNEY SELEBANO:** So it's it's very difficult because we also rely on that advisor psychiatrists sort of to balance. So it is very difficult for me.

ADV PATRICK NGUTSHANA: It is precisely to the point in this inquiry on you and your role why so much attention on this project was given by not your officials but other stakeholders and the court action is not an isolated incident.
10Remember. It has the inquiry now on you.

DR. BARNEY SELEBANO: Yeah but counsel I hear you and I take your point but also you must accept you are relying on hindsight. Because if God willing things had gone the right way we wouldn't be here. That's what I think. I hear what you are saying and I I I accept what you are saying. I am saying at that
15time when we look back, you said I would have perhaps intervened in this way and that way. Justice is not easy now for me to say why didn't I do it because there was a psychiatrist doctor, I just don't recall them but some were from Takalani, some were from (inaudible)30:35 doctor I'm just recalling some what from this copies. There are a couple of persons on this.

20**ARBITRATOR JUSTICE MOSENEKE:** When these meetings occurred Dr. Selebano, was the agreement still in place with Life Esidimeni?

DR. BARNEY SELEBANO: No no by that time I had signed.

ARBITRATOR JUSTICE MOSENEKE: You had signed. Yeah, so your

juniors, those who reported to you, were confronted with the faith of complete were they not? The contract had been cancelled. So what remained was where you take this mental health care users to. Is it not so? It is a different inquiry from whether or not you ought to move them. The inquiry then is where do we stake them to?

DR. BARNEY SELEBANO: At that time.

ARBITRATOR JUSTICE MOSENEKE: Yes, at that time, yeah.

DR. BARNEY SELEBANO: That's November, yes.

ARBITRATOR JUSTICE MOSENEKE: So your colleagues didn't have much options, did they? Other psychiatrist from other hospitals, I could see from the register that you attended. They had to engage with how do we move the patients. Not whether or not we're moving the patients. Is my understanding correct?

DR. BARNEY SELEBANO: Yes. Your assessment is correct. But can I just say something? Remember the officials that you are talking about outside the psychiatrist the ones that drew up the plans. They are the ones that said this is our plan, this is how we're going to do this and can you then based on this signed the letter to implement it. So I hear you when you said it was a fear to complete but actually again they were part of the collective that agreed to the termination. Alone I would never agree to terminate because I didn't know what to do if I was just to terminate the contract. I would never know what to do.

ARBITRATOR JUSTICE MOSENEKE: What you are saying HOD you are a victim of the people that you worked for you?

DR. BARNEY SELEBANO: No I'm part of the collective that's why you've seen in the combat that you can walk away as a leader. When things don't go your way, you don't stop pointing fingers.

ARBITRATOR JUSTICE MOSENEKE: But leaders show direction, don't they?
5After listening to everybody else who works for them, leaders point the way.
Don't they?

DR. BARNEY SELEBANO: They point either this way or that way.

ARBITRATOR JUSTICE MOSENEKE: Yes.

DR. BARNEY SELEBANO: And you never know when you're pointing the
10other way whether that is right way, you'll never know.

ARBITRATOR JUSTICE MOSENEKE: And leaders have this facility to say no if they are unhappy, isn't it?

DR. BARNEY SELEBANO: With the collective, yes. You could say no as a leader, yes.

15**ARBITRATOR JUSTICE MOSENEKE:** And leaders check whether the plans they subscribe to are likely to work, don't they? As a bare minimum.

DR. BARNEY SELEBANO: Leaders also have their managers who will come to the leader and say so far so good. Or so far things are not going well.

ARBITRATOR JUSTICE MOSENEKE: Why didn't you check? Your debating
20with counsel is precisely that. We say to you but why didn't you go and look lower to see whether the plan is good? Alternatively whether the plan is being implemented properly. Why didn't you do this?

DR. BARNEY SELEBANO: This is still 2015. What is cut in stone in 2015 at

that time, a plan has not been implemented. It's 2015. The plan was implemented much much later than that.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

ADV PATRICK NGUTSHANA: Thank you. Dr. Selebano, with that much is clear let's go back to page 23 of the interview. That is from line 20. No line 16 professor (Inaudible) 35:15 said was that not the original strategy? That was the phased way. Is that correct?

DR. BARNEY SELEBANO: Yeah that was the meaning.

ADV PATRICK NGUTSHANA: Okay. Then that was the original strategy. So what made you guys change the tragedy from the intervene? That is the originals that is you, professor (inaudible)35:41. Yeah, yeah. Dr. Selebano, I want to stick to the original strategy. I want us to go to and debate this original tragedy. Tell us, how did you or your implementers departed from the original strategy or the collective departed from the original strategy?

DR. BARNEY SELEBANO: You are saying during the implementation, what happened when I think we discussed that. That there was then what was called a marathon. That is where the departure started. That's where the departure was. From the original strategy and then the marathon came because the original was just sitting here that went to the phase marathon--

ARBITRATOR JUSTICE MOSENEKE: Where did the marathon came from? It came, again it was the passive voice. But who brought the marathon there?

DR. BARNEY SELEBANO: In the name, even the name marathon I mean really--

ARBITRATOR JUSTICE MOSENEKE: But who made that plan?

DR. BARNEY SELEBANO: The marathon, no no, I was not partner at that I said it.

ARBITRATOR JUSTICE MOSENEKE: He said it. For me, I mean suddenly there's a plan. Then there's like you used the term, then there's a plan to gallop. HOD where did the plan come to gallop? Suddenly there was a plan, again, the passive voice. Tell me somebody made a plan, rather than there was a plan.

DR. BARNEY SELEBANO: I should think (Inaudible) 37:19 and the team they came up with the plan to gallop the implementation project. Dr. (Inaudible) 1037:27 Came up with a plan to fast track and called it marathon.

ARBITRATOR JUSTICE MOSENEKE: Did they tell you why HOD?

DR. BARNEY SELEBANO: No. They didn't tell me and I also got surprised that now it was a marathon now. So and then we now know what happened.

ARBITRATOR JUSTICE MOSENEKE: So the cancellation of the agreement with Life Esidimeni was not part of the marathon plan?

DR. BARNEY SELEBANO: No. The cancellation, you see, you'll see the plan inside the deinstitutionalization. That's where the plan is. The phased plan is inside the deinstitutionalized in a phased manner. But as it would be then I mean stakeholders actually objected and we met and then there was the marathon plan now.

ARBITRATOR JUSTICE MOSENEKE: Where did it come from? That is really what I'm trying to say.

DR. BARNEY SELEBANO: I did indicate it judge.

ARBITRATOR JUSTICE MOSENEKE: Dr. (Inaudible)38:49- 38:52

DR. BARNEY SELEBANO: And the team came up with the marathon plan.

ARBITRATOR JUSTICE MOSENEKE: But she's your junior.

DR. BARNEY SELEBANO: It's an implementation phase. I mean she's there's
5Dr.(Inaudible) 39:04. It's an implementation phase. Where it went wrong, I
agree. Could anyone have anticipated that, I can't say that.

ARBITRATOR JUSTICE MOSENEKE: What you mean is an implementation
phrase, you always knew that in six months time, every single patient had to
leave. Every single of your patients, the Providence patients had to leave Life
10Esidimeni isn't it so?

DR. BARNEY SELEBANO: That's right.

ARBITRATOR JUSTICE MOSENEKE: And you signed that termination letter?

DR. BARNEY SELEBANO: That's right.

ARBITRATOR JUSTICE MOSENEKE: And you say that was not the marathon
15project, the galloping started somewhere thereafter?

DR. BARNEY SELEBANO: Thereafter.

ARBITRATOR JUSTICE MOSENEKE: And that was done by Dr.

(Inaudible)40:12

DR. BARNEY SELEBANO: Yeah and the collective team, the team that works
20with her.

ARBITRATOR JUSTICE MOSENEKE: Did they come to you for your
permission?

DR. BARNEY SELEBANO: No they didn't.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

ADV PATRICK NGUTSHANA: Yes. And the galloping that you referred to, they came later. What later? We know that on 29 September of 2015 you got reached the notice was the effective date would be end of March 2016.

5**DR. BARNEY SELEBANO:** Right.

ADV PATRICK NGUTSHANA: When did this galloping in relation to this period come into being?

DR. BARNEY SELEBANO: Yeah. At that time at the end of March, there was I'm saying it again I think I did say the contract had terminated. There was a 6 10month period and then there was a lent after after that there was a two months extension.

ADV PATRICK NGUTSHANA: Three months.

DR. BARNEY SELEBANO: Come again, three months. You say three months. I thought it was two months. That was not given, but it was not given by me.

15**ADV PATRICK NGUTSHANA:** Who approved the extension?

DR. BARNEY SELEBANO: All I know it not given by me. The discussion was to when and how it should be given I was not part of those discussions. I'm not walking away from it but I'm simply saying I didn't sign any extension after that.

ADV PATRICK NGUTSHANA: Yeah, but who signed for that extension?

20**DR. BARNEY SELEBANO:** I don't know. I didn't even see it. I didn't see the extension, I wouldn't have known. I only knew after that there was an extension given.

ADV PATRICK NGUTSHANA: When after were you informed that it was

extended by three months?

DR. BARNEY SELEBANO: I thought it was two, you are saying three. After like I'm saying post facto now where like patients, things that have gone wrong and all that that is when I knew.

5**ADV PATRICK NGUTSHANA:** So that would be July or August.

DR. BARNEY SELEBANO: July, August.

ADV PATRICK NGUTSHANA: So according to you by March or end of March, the project would have been implemented to each family?

DR. BARNEY SELEBANO: That would have started or moving to the finality
10yes. But remember it is a phased project the one I'm talking about.

ADV PATRICK NGUTSHANA: Yes. That is the phased project that you are talking about. Okay. Let's get back to that phased project. In the bottom of the page 23, you said yes it's the original strategy was that you were going to be used about 20% and by the end of 2020 you would have the then in place inter
15service 24 at the top. Yeah, we'll fix that and professor (Inaudible) 43:04 what has changed because I'm going to tell you something that may not surprise you but I want you to hear that because every member of the department as soon as you changed from that phased approach, they did not buy into the new approach not a single one. Dr. Selebano, I know. Professor (Inaudible) 43:28 they were
20all passively resistant and your answer is I know. And I am referring to, is this collective which was passively resistant? (Inaudible)43:42

ADV PATRICK NGUTSHANA: So they were resistant but they implemented the project?

DR. BARNEY SELEBANO: They were passive that is why the term was used as passive resistant.

ADV PATRICK NGUTSHANA: Can you explain that I don't understand it.

DR. BARNEY SELEBANO: No, but well I can explain what passive resistance mean but it was the professor who said I'm away because I suppose you have spoken to all the managers by that time and probably privately to him as we're talking. They might have explained that that proof who are under a situation where we have to do what we have to do but we didn't want to do that. That I'm making, I'm summarizing judge that could be the reason why the project said of 10the passive resistance on my interactions also with them that's what I also I picked up they were not happy.

ARBITRATOR JUSTICE MOSENEKE: They why did you people go ahead then? Your troops are not happy. You say you were not in charge of the accelerated program, who was in charge?

15**DR. BARNEY SELEBANO:** I was not in charge. There were meetings that they were holding with the MEC and the (Inaudible)45:09 the project team. They were holding such meetings.

ARBITRATOR JUSTICE MOSENEKE: In your absence?

DR. BARNEY SELEBANO: Justice I don't, it is not sometimes possible to be in 20all meetings in the department. So I don't want to stand up here and claim that there were not calling me to the meetings.

ARBITRATOR JUSTICE MOSENEKE: Did the MEC know about the accelerated marathon projects?

DR. BARNEY SELEBANO: She knew yes.

ARBITRATOR JUSTICE MOSENEKE: Did she support it? You said earlier that she was the one that was pushing the replacements at NGOs. Did she support the accelerated project?

5**DR. BARNEY SELEBANO:** It would be a fair, there's a term that you use to say that based on the fact that there was the pressure to move patients and she knew about the project then it follows that she must have supported it.

ARBITRATOR JUSTICE MOSENEKE: Were you apart of the resistance passive resistance, or active leadership in this?

10**DR. BARNEY SELEBANO:** I'll I'll, let me give a different approach. Let me give a different approach. After I said, I don't recall maybe I said with Mr. (Inaudible) 46:27 I said with (Inaudible)46:30 said I'm worried that I'm not sure whether we're going in the right direction. That I think that there's some e-mail that says that. The professor and I said (Inaudible) 46:50 you are a
15project leader you are not necessarily reporting now to me. You can send that e-mail to the MEC and CC me you can't do it both ways. You have to send it to the MEC and CC me and that's what was done. And I was in that meeting where there was the discussion--

ARBITRATOR JUSTICE MOSENEKE: And what did you do about those
20concerns of Mr. (Inaudible) 47:14 if he sends them out, as your colleague and project leader, he has deep doubts about the cogency and usefulness of the plan. You are copied in the MEC is written, to what did you do about it?

DR. BARNEY SELEBANO: I'm explain, I mean--

ARBITRATOR JUSTICE MOSENEKE: Please do.

DR. BARNEY SELEBANO: When Mr. (Inaudible)47:37 I don't have the details now of that meeting, but there's nowhere Mr. (Inaudible)47:44 would have said I'm worried because--

5**ADV PATRICK NGUTSHANA:** Justice Moseneke, let me refer the witness assist it's volume one, page 19.16.

ARBITRATOR JUSTICE MOSENEKE: Yes. But you are going to allow the witness to finish the answer too?

ADV PATRICK NGUTSHANA: Yes. The witness can finish the answer.

10 **ARBITRATOR JUSTICE MOSENEKE:** Absolutely. You could put that in a moment but you must hear the answer and you could put that too.

DR. BARNEY SELEBANO: Well maybe the short answer would be there's no way that Mr. (Inaudible) 48:16 said I'm scared that patients will demise, he didn't say that. He wouldn't have known.

15**ARBITRATOR JUSTICE MOSENEKE:** Counsel.

ADV PATRICK NGUTSHANA: Yes. Um as volume one on page 19.2 that is the e-mail by (Inaudible) 48:38 you referred to but you be taken through this I think at a later stage, let's deal with this issue and complete your evidence in chief. So what I want to understand, that is from you is that the HOD the
20accounting officer, this the project is now hurried from the original strategies and what steps did you take yourself to ensure that this does not okay. That is you did not depart from the original strategy?

DR. BARNEY SELEBANO: I couldn't stop the project.

ADV PATRICK NGUTSHANA: You couldn't stop it?

DR. BARNEY SELEBANO: No, I couldn't.

ARBITRATOR JUSTICE MOSENEKE: Why not? You are the accounting officer, you are the HOD, why couldn't you stop it?

5**DR. BARNEY SELEBANO:** The project was already being implemented how do you stop? You say don't take the patients. The patients are already being moved. I couldn't stop it. I wouldn't be able to stop it. Even though Justice Moseneke, even though you are an HOD or, it doesn't always allow you that you can simply overrule people and work against other people. It is not, I know you
10are saying you are the HOD why didn't you do it? I hear you but it is not --

ARBITRATOR JUSTICE MOSENEKE: But you assured me that you are a man of resoluteness when it is necessary. You were right in the beginning you stopped and you went from NGO to NGO to take patients out of there and to place them in safer places, you said that, you remember that?

15**DR. BARNEY SELEBANO:** Yes, I did, yes.

ARBITRATOR JUSTICE MOSENEKE: So you indeed have have the power to stop it, if it was necessary.

DR. BARNEY SELEBANO: So you see, that's post facto Justice, it's post facto. And I said by that time, there's no interest in meetings now. There was a
20real situation now and it was looking at my eyes. I had to act.

ADV PATRICK NGUTSHANA: Dr. Selebano, I don't think you are correct when you say it is a post facto. You have a plan, you sign it off, but this plan must proceed according to this thinking or plan. And half way through or at

commencement of that plan, some junior official decides to depart from it. And you as the leader of the department, what do you do? You let the junior official overrule you; is that what you are saying?

DR. BARNEY SELEBANO: No. I don't know why you are saying that. I never said what you are saying. This is what I said. When I said post facto, I was saying to Justice when he was saying you are a resolute guy and you told me that you acted. And why wouldn't you act before. And I said what you are referring to post facto. I acted after when the patients were moved and there were reports of patients having demised. That's when I moved. That is what I meant by post facto.

ADV PATRICK NGUTSHANA: So we must accept that does mean as the ground as the leader of this department?

DR. BARNEY SELEBANO: What do you mean, I don't understand clearly I need to be sure whether, it is not -- what do you mean?

15 **ADV PATRICK NGUTSHANA:** Yes. What I mean is that you are not aware what is happening with this project implementation?

DR. BARNEY SELEBANO: No, I was aware that the patients are being moved, I was aware.

ADV PATRICK NGUTSHANA: And you are aware of how these patients were moved and to where they were moved?

DR. BARNEY SELEBANO: By how you mean, the mode of transport? What do you mean?

ADV PATRICK NGUTSHANA: The number of patients moved, the day from

Life Esidimeni of the month from a particular period of time including that mode of transport, the destinations to where they were moved or destinations to where they are moved. Whether this is done in accordance with the plan. At the bear minimum.

5 **DR. BARNEY SELEBANO:** You asked a number of questions. Um firstly you said was I aware? Yes I was aware of patients being moved. I was aware on Monday who is moving patients to where. On Tuesday I wasn't aware of that. I wouldn't aware of that. But I was aware that patients were being moved.

ADV PATRICK NGUTSHANA: Okay. Now, then let's move in with a different 10topic. I think your answers are quite clear, I don't need to delay the point.

ARBITRATOR JUSTICE MOSENEKE: From the same thing counsel?

ADV PATRICK NGUTSHANA: Yes from the same item. When you remember being asked about the that is the cancellation of this project and the reasons for the cancellations, for the cancellation of the project and you may mention the 15fiscal pressure and so on, do you still remember that? Have you had an occasion to see the alternatives to cancelling or moving patients from Life Esidimeni to NGO and if there were urgencies you did consider, what were those alternatives?

DR. BARNEY SELEBANO: At the time?

20 **ADV PATRICK NGUTSHANA:** Yes.

DR. BARNEY SELEBANO: No we didn't discuss?

ADV PATRICK NGUTSHANA: Prior to cancellation.

ADV PATRICK NGUTSHANA: No we didn't discuss. I want you to understand

as we're looking at contracts.

ADV PATRICK NGUTSHANA: Yes.

DR. BARNEY SELEBANO: Individual contracts. You are saying this is the contract, this is the contract and this one this is cancel this one, we'll do this one.

5So at that time there was no different consideration.

ADV PATRICK NGUTSHANA: Yeah. In relation to that, let me take you to page, let me look, let me page 28 of the same document. On page 28, the debate or the discussions between you and professor (Inaudible) 57:03 let's start at the top. That is you Dr. Selebano yeah well I'm sure they told you of
10course that then professor (Inaudible) 57:17 no no they were just say to go me they were not going to give those names no it not relevant. Let me take you to line 15. Are you online 15?

DR. BARNEY SELEBANO: Line 15?

ADV PATRICK NGUTSHANA: Yes. You discount several approaches which
15were suggested to the cancellation then in line 15. Professor (Inaudible)57:53 that he did a recall and then you respond, yeah what happened? I said no, there are many ways that we are thinking and our best how to deal with thing. Then you go on, yes, yeah. One of them wants to buy, can you explain that into the record what do you mean by one of them wants to buy?

20**DR. BARNEY SELEBANO:** When I was discussing with Mr. (Inaudible)58:17 that is one of the things, that is around January, February, March.

ARBITRATOR JUSTICE MOSENEKE: Of this year?

DR. BARNEY SELEBANO: 2016. I said you know one of the things you could

do we could just buy the three Life Esidimeni centers (Inaudible)58:41 we just said you know the best way out of this would be just buy the three of them and we allow the government to take over and all that and all that. That is what we mean.

5 **ADV PATRICK NGUTSHANA:** When you go on there--

ARBITRATOR JUSTICE MOSENEKE: Was there a senior suggestion?

DR. BARNEY SELEBANO: I was with Mr. (Inaudible) 59:02 we were in an office and we're looking at you know. I think that was during the same time I wish we could try--

10 **ARBITRATOR JUSTICE MOSENEKE:** Was that a serious suggestion?

DR. BARNEY SELEBANO: A formal suggestion, no. It was not formal.

ARBITRATOR JUSTICE MOSENEKE: Did you have the money to buy?

DR. BARNEY SELEBANO: Not incidental judge on my own after that, I actually checked. I checked with the budget people and they said there's about 15a hundred and something that probably we could have used to.

ARBITRATOR JUSTICE MOSENEKE: A hundred and something what? Million, billion.

DR. BARNEY SELEBANO: Yeah, a million. That we could have used to.

ARBITRATOR JUSTICE MOSENEKE: So you could have afford to buy the 20three Life Esidimeni centers.

DR. BARNEY SELEBANO: I'm saying subsequent to that, on my own I just checked.

ARBITRATOR JUSTICE MOSENEKE: You found that you had the money to

buy if you wanted.

DR. BARNEY SELEBANO: Budget said yeah we could scrape around and pick up a hundred.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

5**ADV PATRICK NGUTSHANA:** Yes. In relation to this, let me there's whether you could have managed to buy and so on, let me take you to Um page 30. It's 32. Page 32 of the document you said online 15 professor (Inaudible)1:00:46 said okay. Then you say so that was our plan, actually I could tell you the figure. They wanted, 1104 and we had the money and the budget checks will tell you 10that we and it did not help him. Just explain that.

DR. BARNEY SELEBANO: Well to explain, that's why I said subsequent to that. I didn't read this. It confirms what I didn't read it now. It just confirms well the number said a 100 and actually it's 110.

ARBITRATOR JUSTICE MOSENEKE: So later in the cross examinations of 15the Americans that are in the cue, and I'm sure the various leaders are getting curious to what it leads. Think about it and you could think over night about it.

DR. BARNEY SELEBANO: Okay.

ARBITRATOR JUSTICE MOSENEKE: Why in the scheme of your finances did you choose to sacrifice the most vulnerable of the people under your care? 20Even assuming there were fiscal constraints, why did you choose to shutdown contracts that would lead to this devastation? Go and think about it and let's talk about it tomorrow. I want us to debate the numbers tomorrow. You are the accounting officer, what was so compelling financially to sacrifice them and

when it hit the fan, you rush and put them back in the same institutions. You understand my?

DR. BARNEY SELEBANO: I hear you judge.

ARBITRATOR JUSTICE MOSENEKE: You don't have to answer me now. 5When trouble comes, you rush them back to the same institutions and you have to tell us at what cost did you get them back to the same institutions. So two questions, why the most vulnerable you choose to sacrifice in your financial constrain and two, did you afford to pay the same institutions in order to salvage mental health care users who were survivors? You don't have to answer me 10now, but that is something that I'm interested in and we could talk about it later or tomorrow.

DR. BARNEY SELEBANO: Okay.

ARBITRATOR JUSTICE MOSENEKE: Counsel, any other questions?

ADV PATRICK NGUTSHANA: Yes, can you explain that the 110 you had the 15budget.

DR. BARNEY SELEBANO: When I said, I said to cancel after I had spoken to Mr.(Inaudible)1:03:46 subsequent to that, I then told you there's a step that I missed. Subsequent to that I had a one on one with Dr.(Inaudible) 1:03:57 And I said Dr. (Inaudible)1:04:02 are you able to check what would be the value of 20your percentiles and he said okay I'll check for you and he took some time and he checked and I think he gave me the figure of around that is why the hundred came first, he gave me the figure around it. Then I went, you know delays and delays and I went to the budget cut and said just check if you could find on an

infrastructure any 110. And that is when they said yeah we could scrape around and we would probably find that amount of money.

ADV PATRICK NGUTSHANA: Yes the fee 110 didn't come from you but it originated from Dr. (Inaudible)1:04:50

5**DR. BARNEY SELEBANO:** No no I don't recall what Dr. (Inaudible)1:04:54 said at the time. That's why I'm saying he gave me a figure around that.

ADV PATRICK NGUTSHANA: Around 110?

DR. BARNEY SELEBANO: Yeah and the figure 110 comes from and after that I had made inquiries. Remember this is around March, April when --

10**ADV PATRICK NGUTSHANA:** March, April of which year?

DR. BARNEY SELEBANO: 2016. That is when Dr. (Inaudible) 1:05:15 said the budget people yeah let's say March, March we could scrape around 110 or so.

ADV PATRICK NGUTSHANA: And it is quite clear that figure if it was indeed
15suggested by Dr. (Inaudible)1:05:31 or what whomsoever but it would be the probable cost of those three center, it would be less than the projected cost of renovations of over 2 hundred million rent.

DR. BARNEY SELEBANO: Yeah counsel I hear except this is the figure that stayed with me. It is not something that I discussed with the colleagues.

20**ADV PATRICK NGUTSHANA:** Yes, let me be specific and refer you to the projected cost for example, of renovations that dealt with this, I'm sure--

DR. BARNEY SELEBANO: I hear you and I agree with all you are saying.

ADV PATRICK NGUTSHANA: 22665. At 224 million rent.

DR. BARNEY SELEBANO: I hear you.

ADV PATRICK NGUTSHANA: You accept that?

DR. BARNEY SELEBANO: That the figure that I picked up from the (Inaudible) 1:06:28 and the budget people, yes it is less than that.

5**ADV PATRICK NGUTSHANA:** Okay.

DR. BARNEY SELEBANO: But like I said I never discussed it with managers.

ADV PATRICK NGUTSHANA: And then you go on and say in the discussion that this proposal stalled. What do you mean by saying that they stalled?

DR. BARNEY SELEBANO: Maybe that is what I am saying, it stalled. I didn't 10then go and discussed it. Because already the project was going on in that time. It start in that sense that. It is not like it was presented, then it was discussed. No it didn't materialized.

ADV PATRICK NGUTSHANA: It stalled at your level?

DR. BARNEY SELEBANO: It is what I got from (Inaudible) 1:07:11 and the 15project is running at that time, yeah.

ADV PATRICK NGUTSHANA: Yes. Then the final point that is a topic I want to address with you is in relation to the, that is the date when you had an interview with the Harold (inaudible)1:07:40 and you said that you indicated that already 36th deaths at the time. You gained knowledge of this around July, 20August. The interview was in November. Can you tell us why did you figure remain the same throughout from July until November?

DR. BARNEY SELEBANO: No no no, that figure was related to the question. There was a question from Um, the democratic alliance.

ADV PATRICK NGUTSHANA: Yes.

DR. BARNEY SELEBANO: And they said give us how many people passed on and the figure and I looked at it the officer from MEC that it is 36 because that is what she got from the manager. So it was not that we're stalling time and that is if I recall from professor (inaudible)1:08:45 I didn't almost wanted to say it is a time thing when do you measure it from May to what time? By November he indicated the number was increased by November. But this one was specifically for that period of time.

ADV PATRICK NGUTSHANA: Why was it that being the person who was actively involved in shutting down a specific NGOs, where not aware of the exact number of deaths in November when you were interviewed by the professor?

DR. BARNEY SELEBANO: No. I don't know why you are saying I am not aware. I am saying, my understanding was to respond to the specific period. May to August or so. That is the response I was giving in relation to the DA question I think there is that question, I don't know I may not have it now. But there was that question that was asked by DA. I was specifically responding to that type of question.

ADV PATRICK NGUTSHANA: Do you still recall professor (inaudible)1:09:53 tell you that the number of death at the time was 78? And here it was still at 36.

DR. BARNEY SELEBANO: Well we then with respect to professor. He said, no the number is here. And I said, okay but here I'm referring to this period. He said no, no. I said prof you are also taking all. No I mandate I recall that, I hope my memory is still correct but he said no my mandate is not only from the patient

from Life Esidimeni it is all the mental health patients. So that was, I recall that type of discussion from the prof.

ADV PATRICK NGUTSHANA: Yes. And I think at the time when you were gained knowledge apparently gained knowledge in July, the number was in excess of the 36 that you had referred to.

DR. BARNEY SELEBANO: But if the managers given the number 36 then it becomes difficult then that number comes from the MEC and it becomes very difficult to give a different number. They are the ones who'd know.

ADV PATRICK NGUTSHANA: For example, a number of patients injured there were a number of patients that is is why you closed it.

DR. BARNEY SELEBANO: I don't know what you mean.

ARBITRATOR JUSTICE MOSENEKE: Why not give the witness the number if you want to put it to the witness so he can respond to the assertion properly.

ADV PATRICK NGUTSHANA: Yes. Let me give you the total number of deaths at the time, in July for example. Um, just calculate this. What I want to know I think from you, because I think what appears to me that throughout in your evidence you knew nothing about the project. Including the number of deaths despite the fact that you were involved in closing down this institutions. Why was that so?

20**DR. BARNEY SELEBANO:** But you are talking about two era's here. There's an era before and that's what you are asking me that I was involved and there's an era after the deaths had occurred. So if you separate, I was active in this era one and I explained why it happened that I had to close some of the NGOs. The

precious angel and the others and I had to close them. And I explained that I had this discussion with the minister and the mandate was clear when I closed those NGOs.

ADV PATRICK NGUTSHANA: Yes.

5**ARBITRATOR JUSTICE MOSENEKE:** Yeah. But that is not the question doctor. The question is why are you unaware of the deaths that happened about the care of NGOs? Why are your numbers so misaligned to what we have noted here?

DR. BARNEY SELEBANO: I think the misalignment comes from a
10parliamental question which said there was a parliamentary question and that is the number that was given by the --

ARBITRATOR JUSTICE MOSENEKE: But you said under the marathon project 143 people died.

DR. BARNEY SELEBANO: As of now?

15**ARBITRATOR JUSTICE MOSENEKE:** Yes.

DR. BARNEY SELEBANO: Yes I have been following the newspapers.

ARBITRATOR JUSTICE MOSENEKE: And you have seen the professor
(Inaudible)1:13:40 report that we got. I shouldn't have to point it out to you now. I shouldn't do it now but many competent advocates will still ask you the
20question.

DR. BARNEY SELEBANO: I missed you Justice.

ARBITRATOR JUSTICE MOSENEKE: I said that by the time you sprung up to action and rushed the close--

DR. BARNEY SELEBANO: The NGOs.

ARBITRATOR JUSTICE MOSENEKE: Precious Angels, many people were transferred under the order of your signature had died and counsel wants to know why don't you know these numbers? Why wasn't there a system to track the consequences of your decision?

DR. BARNEY SELEBANO: I hear you. I understand what you are saying. You are saying why was there, there was no system to track that, that there was no system to track because NGOs are heightened and do you depend on them? I think that is what I asked some of the managers. How do you work out what is happening in the NGO what is going on and all that? They said we also, I don't recall who in particular--

ARBITRATOR JUSTICE MOSENEKE: Just break it down. There was no tracking system?

DR. BARNEY SELEBANO: There was no tracking system.

15**ARBITRATOR JUSTICE MOSENEKE:** Right. You had no mechanism to hold those who report to you accountable? There is no mechanism for them to tell you oh no 5 people died of precious angle. No servant is here but no whatever the numbers are there would be put to you in a moment so you had no such system?

20**DR. BARNEY SELEBANO:** That would be the tracking system, I agree there was no such way of knowing so many, on maybe like let me also add to what you are saying. On realtime to say --

ARBITRATOR JUSTICE MOSENEKE: What did you think, what would happen

to these corpses? There's no departmental concern or systems and people are dying, what do you think happens to their remains? They are under your care.

DR. BARNEY SELEBANO: Some of the patients who passed away it is a, it is not a difficult question but it's painful. Some of them passed away in hospitals.

5So I say no they are kept in the hospital.

ARBITRATOR JUSTICE MOSENEKE: Many others died at precious angels. Precious angels is an example, many died right there.

DR. BARNEY SELEBANO: Yeah. I know that. I know that.

ARBITRATOR JUSTICE MOSENEKE: You know that.

10**DR. BARNEY SELEBANO:** Yeah I know that.

ARBITRATOR JUSTICE MOSENEKE: Yet to run at a butchery to store bodies because there's no system from your department to how to deal with the people that you had to look after. Any way there would be many questions on that you don't have to rely to me now. Any more questions counsel?

15**ADV PATRICK NGUTSHANA:** Yeah let me take you to LL 57 on the numbers. It's on page 8 of the document. Page 8. We are on page 8.

DR. BARNEY SELEBANO: Yeah, yeah I'm on page 8.

ADV PATRICK NGUTSHANA: Are you there? Yes. The document there it's Um describe the death of facility period 2016-2017. As a report by professor
20which (inaudible)1:17:46 which compiled in response to certain questions in this hearing. And the column on that is on the left, it reflects months that is January 2016 until June 2016. Do you see that?

DR. BARNEY SELEBANO: On the left, yes I can see the months.

ADV PATRICK NGUTSHANA: Yeah the months and you would see that at the end of July our calculation there that already the patients who died 51 in number. And if we add August there was 78 already. And by November there were even more.

5**DR. BARNEY SELEBANO:** I can see that.

ADV PATRICK NGUTSHANA: Yes. And you can see there from precious angles they have 7, plus 8, plus 2 there's 3 and so on. There's twenty in total died from Precious Angles. And you closed them in response to this deaths according to your evidence. So what I want to know is that why didn't you
10know?

DR. BARNEY SELEBANO: Well like I was explain to go the judge, when you don't have a system, you don't have a system. So realtime, you can't, you can't capture what is happening. That is why I was saying the number that I gave was the number that the officials had given. I'm in the blaming them. I'm in the
15pushing anything to them. You're right maybe I should have done or the department should have known and had the mechanism to track what is happening, it was not there. There's a lessons again, these are lessons.

ADV PATRICK NGUTSHANA: And when you learned of this tragedies what steps did you take corrective steps against the officials?

20**DR. BARNEY SELEBANO:** You mean in terms of maybe disciplinary process and all that?

ADV PATRICK NGUTSHANA: Correct?

DR. BARNEY SELEBANO: Well I never had the opportunity to honestly to

even start thinking of disciplinary hearings and yeah. If probably I don't know but I'm saying if given the same opportunity I would have of also insisted on getting over and above what (inaudible)1:20:43 was doing to get an opportunity to do an investigation and also to see really --

5 **ARBITRATOR JUSTICE MOSENEKE:** When you moved mental health care users from NGOs as you shut them down, who did you hold accountable for those placements?

DR. BARNEY SELEBANO: You mean, like if I take out a patient a person from Precious Angle and take them to some where else.

10 **ARBITRATOR JUSTICE MOSENEKE:** Yeah you shut down a number of NGOs and took patients from your evidence to other safer place, who did you hold to account for those improper placements?

DR. BARNEY SELEBANO: No one at that time. Remember at that time if I'm not mistaken the combatants was conducting some investigation.

15 **ARBITRATOR JUSTICE MOSENEKE:** No. When did you do this? Didn't you do this in July?

DR. BARNEY SELEBANO: July, August. I don't recall when, I'm in the too sure.

ARBITRATOR JUSTICE MOSENEKE: Yeah but you know the importance
20 Dr.--

DR. BARNEY SELEBANO: I know.

ARBITRATOR JUSTICE MOSENEKE: Selebano. And you're the leader, you are the HOD, you controlled the money, the department, you're the accounting

officer and something like this goes wrong and you have to go back and renegotiate contracts with entities that you had shutdown to take patients back.

Um who did you hold account for those missteps?

DR. BARNEY SELEBANO: Um during my time before the suspension, I didn't go and renegotiate the contract with Life Esidimeni. What I did I just took them to our facilities. Your question again is who did I hold accountable at that time? No one I can't not point to anybody that I'm going to discipline you. I can't point that person but at that time again I am saying I am not too sure maybe --

ARBITRATOR JUSTICE MOSENEKE: Were there people worthy of discipline?

DR. BARNEY SELEBANO: I don't think whether you are worthy of discipline or not. The process itself will unfold whether you are or not. But out of taking --

ARBITRATOR JUSTICE MOSENEKE: No no but, you are head of department and there is a disastrous thing that happened under your care and charge did you hold any of your officers accountable?

DR. BARNEY SELEBANO: Yes Justice. I said at that time I didn't then the question are there people that where worthy. I said I wouldn't consider that I just have said it is now going back I just have said. Listen this is what happened we're now going through a process. I would check whether maybe this one is with you or not. I would just say we're going through the process and the outcome of the investigation and disciplinary hearing that will make that determination.

ARBITRATOR JUSTICE MOSENEKE: Even the number of 36 corpses that

should have got a senior administrator like you at the edge of his chair isn't it?

DR. BARNEY SELEBANO: Yes you are right, but remember Justice this is the number that you have and then we pick up later like counsellor is showing and actually knew that much later that the numbers were not corresponding, I know 5that. The numbers are not corresponding. We're getting bits and pieces of information that was not helpful. So it's correct but at that time you have this number--

ARBITRATOR JUSTICE MOSENEKE: Didn't you go out, who caused this? How did it happen? I signed off on a cancellation. Look at these death, who 10caused them and who must account, didn't you go like that?

DR. BARNEY SELEBANO: No. What happened immediately after that, Um, it was that the MEC had a discussion and that's what she told. She had a discussion with the minister and they just agreed that please let's start a process with the combatants, that's how it started.

15**ADV PATRICK NGUTSHANA:** Thank you Justice. The final question was when were you suspended?

DR. BARNEY SELEBANO: I think the 3rd of, the report came on the first of February and two or three days later.

ARBITRATOR JUSTICE MOSENEKE: 2017?

20**ADV PATRICK NGUTSHANA:** 2017. And you took no steps until then.

DR. BARNEY SELEBANO: You mean until that time?

ADV PATRICK NGUTSHANA: Yes against any officials.

DR. BARNEY SELEBANO: But see also remember that is when the

combatants reports had not been released by that time. So I don't know if you would say I don't know if I could have done a parallel process again I don't know.

ADV PATRICK NGUTSHANA: No. What I am just saying that you were instructed by the minister way back then to close down according to the evidence because there were deaths and so on, surely if there's nothing wrong with those NGO there wouldn't have been those death, do you agree with me?

DR. BARNEY SELEBANO: No, I don't know, yeah.

ADV PATRICK NGUTSHANA: You have to find out why were those deaths and you have to find out why were those NGOs unsuitable and you have to find out why patients were sent to unsuitable NGOs. So that's what I want to find out from you. That prior to the suspension, you took no steps at all to find out why is this happening?

DR. BARNEY SELEBANO: That's what I'm saying that there was a process that the combatants had embarked on. Are you saying I was going to on a parallel process again? I don't know if I would have gone parallel process because the combatant was on the process as well to do exactly what you are saying.

ADV PATRICK NGUTSHANA: But combatant was involved at a later stage than that.

DR. BARNEY SELEBANO: So maybe there's an omission on my side. You are saying maybe immediately around September, October. I don't recall when the combatant came in. I thought it came in earlier than that.

ADV PATRICK NGUTSHANA: Okay. Thank you Justice Moseneke. I don't

have anything else to add.

ARBITRATOR JUSTICE MOSENEKE: Thank you counsel, thank you so much. Advocate Hassim.

ADV ADILA HASSIM: Thank you Justice.

5**ARBITRATOR JUSTICE MOSENEKE:** The day is young, it is only 4:00 p.m.

ADV ADILA HASSIM: I agree. Good afternoon Dr. Selebano.

DR. BARNEY SELEBANO: Hi Adila. Hi counsel, sorry I said Adila.

ADV ADILA HASSIM: My name is Adila Hassim and I am one of the members of the legal team that represents the families of about 65 deceased in these 10proceedings. Um thank you for making yourself available today.

DR. BARNEY SELEBANO: Thank you.

ADV ADILA HASSIM: I'd like to begin with the termination of the contract and I know that some of the questions have been canvassed with you by my learner friend but I am willing to go over some of that terrain again. So if we could begin 15with the termination of the contract of Life Esidimeni. That was on 29 September, 2015 and you said that you were advised to sign the letter, is that right?

DR. BARNEY SELEBANO: That's the process inside the department, yes.

ADV ADILA HASSIM: Did you read the contents of the letter and agree to the 20contents before you signed it?

DR. BARNEY SELEBANO: Yes, I read what before I sign yes I would.

ADV ADILA HASSIM: So you were in support of the decision to terminate?

DR. BARNEY SELEBANO: It was a collective decision and we all agreed and I

signed yes.

ADV ADILA HASSIM: But ultimately whose decision was it to terminate the contract?

DR. BARNEY SELEBANO: Now that it was my signature it would be my decision.

ADV ADILA HASSIM: Once you signed it, it is your decision, correct.

DR. BARNEY SELEBANO: On behalf of the department.

ADV ADILA HASSIM: Yes, in your position as the head of the department?

DR. BARNEY SELEBANO: Yes.

10 **ADV ADILA HASSIM:** And you said you did so because of fiscal pressure?

DR. BARNEY SELEBANO: Amongst the canvassed issues, yes.

ADV ADILA HASSIM: You did so because you needed to cut cost?

ADV ADILA HASSIM: You did so because you needed to cut costs?

15 **DR. BARNEY SELEBANO:** Manage costs.

ADV ADILA HASSIM: You needed to reduce costs?

DR. BARNEY SELEBANO: Maybe, yeah. Yeah, let's yeah let me say yes.

ADV ADILA HASSIM: You needed to reduce costs. And in order to reduce costs, you cut essential health services; isn't that so?

20 **DR. BARNEY SELEBANO:** I don't know what you mean by essential health services.

ADV ADILA HASSIM: You cut health services that were being provided to patients in the programs; correct?

DR. BARNEY SELEBANO: (Inaudible) 1:30:33 Justice, when you say essential services it means emergency services are essential services, we didn't cut that.

ADV ADILA HASSIM: I'm talking about the services that were being provided to mental health care users at Life Esidimeni.

DR. BARNEY SELEBANO: So that's all when you said -- okay. I thought when you say essential services you meant maybe emergency medical services.

ADV ADILA HASSIM: No.

ARBITRATOR JUSTICE MOSENEKE: Counsel is asking about essential services not emergency services.

DR. BARNEY SELEBANO: I'll tell it to you again Justice. Essential services is inside the essential services. You'd find things like emergency services. So that's what I misunderstood. Now I understand.

ADV ADILA HASSIM: It's a term of art essential services, I understand.

15 **DR. BARNEY SELEBANO:** I beg your pardon.

ADV ADILA HASSIM: I understand, I think where you are coming from. Essential services, you're referring to a term of art that's often used labeling essential services; is that right?

ARBITRATOR JUSTICE MOSENEKE: I'm not clear.

20

ADV ADILA HASSIM: No, no. I thought I was trying to help you out, but I'm going to stop trying to help you out.

ARBITRATOR JUSTICE MOSENEKE: I would talk to your lawyer in cross

references. In any event, put your question.

ADV ADILA HASSIM: The question is, in relation to health services that were being provided to mental health care users at Life Esidimeni.

DR. BARNEY SELEBANO: Okay.

5**ADV ADILA HASSIM:** So my question is do you agree that in the effort to reduce costs, those services to those patients were reduced?

DR. BARNEY SELEBANO: Yes.

ADV ADILA HASSIM: And are you aware that there's -- are you aware of section 27 of the Constitution?

10**DR. BARNEY SELEBANO:** Yeah I am, I'm aware of that. That are entitled to health, yeah.

ADV ADILA HASSIM: Yes. And do you understand the obligations under Section 27 under the Constitution?

DR. BARNEY SELEBANO: To the state, yes, I understand.

15**ADV ADILA HASSIM:** What do you consider to be the obligations under Section 27?

DR. BARNEY SELEBANO: The right to health. Really that the state has the obligation to ensure that the citizens have access to health care access.

ADV ADILA HASSIM: That's correct. And it's more than ensuring that they do
20have access but also where access has currently been provided not to take away those service, would you agree?

DR. BARNEY SELEBANO: If you are putting it out in areas to to--

ARBITRATOR JUSTICE MOSENEKE: It's not complicated what counsel is

asking you. Every Right has a positive end obligation and a negative obligation. The positive requires you to do several things. One access to health care. The negative requires the state not to interfere with or take away existing access to health care. So that is the negative side of the Right and the positive side is to give, the negative is not to take away.

DR. BARNEY SELEBANO: I understand.

ARBITRATOR JUSTICE MOSENEKE: I was just helping out. Go ahead counsel, thank you.

10 **ADV ADILA HASSIM:** Thank you Justice. Do you understand, did you at the time understand the Right in that way?

DR. BARNEY SELEBANO: At that time?

ADV ADILA HASSIM: Yes.

DR. BARNEY SELEBANO: No no I didn't understand that there.

15 **ADV ADILA HASSIM:** Why not? I'm asking you specifically about Section 27 just before you answered because that is the Right that is most closely related to your function in government. There are many Right that I will be putting out throughout my cross-examination but in this one, why did you not know that?

DR. BARNEY SELEBANO: You see you are saying there was an reduction
20 and I said because you see the owner was not to take away the right. As I understood it then, the end was when you move the patients to an NGO, if you recall it as I said it, my understanding was I said to the managers, you must provide exactly the same services that they got at Life Esidimeni, if not more.

That's how I answered.

ADV ADILA HASSIM: That's for less money?

DR. BARNEY SELEBANO: It's an economist issue that we then stretch the rent to still meet, to get the same thing.

5**ADV ADILA HASSIM:** And you were persuaded that by stretching the rent that you would be able to provide the same level of services?

DR. BARNEY SELEBANO: Yes. I mean if you think different like that. I'm not, I want to say up front, Justice, that I'm not defending the wrong things that happened. Counsel is asking my thinking. And I've also gone to think again
10about what was inside there. Life Esidimeni, they were offering a broad symptoms of psychotic medical care. They would have OTs. They would have some psychologist and all that. Now the thinking was that the state can still offer this but then we will offer them one individualized NGO.

That was the thinking. So in a way it was not like you were going to
15reduce what has been offered. It was to just saying now instead of Life Esidimeni is hire those services from psychiatrists we have them already. So they would be the ones that come to give, an example to yourself, if you are in the (inaudible)1:36:32 then you would access psychotic services that you would get from either a telephone or the nearest one would be your that was
20(inaudible) 1:36:45 West. That was their thinking at that time. So the reduction was not that to say that now just going to reduce. That was the thinking then.

ADV ADILA HASSIM: So we've heard evidence that it costing rent 21 per patient per day after Life Esidimeni and at the NGOs it would cost the

department 112 grand per patient per day. On your economical calculation that you view within that amount of money you would be able to provide the same level of services as Life Esidimeni?

DR. BARNEY SELEBANO: Yeah. Well, I don't know you said 220. I always thought it was about 380, that's what I thought.

ADV ADILA HASSIM: I said 320, but I'll take your figure. 380 verses 112.

DR. BARNEY SELEBANO: Yeah, the figure will just talk to the principle.

ADV ADILA HASSIM: Actually, I would like you to speak to the figure. Because the reason I'm asking you this is because we're talking about the termination of the contract. One very significant reason for the termination of the contract, according to the evidence is fiscal pressure, correct?

DR. BARNEY SELEBANO: Okay.

ADV ADILA HASSIM: So the numbers count. So 380 verses 112, now you can answer.

DR. BARNEY SELEBANO: You see in 380, what has been calculated inside that 380 is what I have told you. That there would be (inaudible) 1:38:19 test, OTs, psychologist and all that. They are incorporated in that 380 per day.

ARBITRATOR JUSTICE MOSENEKE: Can we use the correct figure, though?

DR. BARNEY SELEBANO: It's 320.

ARBITRATOR JUSTICE MOSENEKE: 320, okay.

DR. BARNEY SELEBANO: Yeah. I'll take the figure. So in that figure that would be the cost that would have be calculated to include that. So the thinking was that we we-- because how does Life Esidimeni income to that. They work

on that cost because they know that we'll hire the psychiatrist to come and we'll pay the psychiatrist. That is Life Esidimeni, life health care will hire the OT and pay the OT. As I was saying, the thinking was that already in the department they're already picking up a salary. The psychiatrist where that was the thinking. 5The psychiatrist, the OT they are already picking up the salary, we would just then have a mechanism of allowing them to over and above their duties to go and check the patients. For instance there are districts, there are district psychiatrists and they would be the one doing that type of thing, but that was the thinking.

10 **ADV ADILA HASSIM:** I see. So your plan was that the patients would go to NGOs and then from NGOs they would be taken to state facilities to receive medical care or treatment?

DR. BARNEY SELEBANO: Yeah, either you treat them or you re --

ADV ADILA HASSIM: But, that was the plan?

15 **DR. BARNEY SELEBANO:** That was the thinking, yes.

ADV ADILA HASSIM: And as far as physical environment and food and nutrition goes, what was your plan there?

DR. BARNEY SELEBANO: Um the physical environment it would then fall into the type of NGO. That is, I'm still talking about the thinking that you would have 20an ideal proper NGO that would -- some of the things that I now know is that they should have a meal chart. They should have a chart that shows what are the activities that the patients should get involved in and some such things.

That was the information I had. That thinking at that time. So the way I

know it was that, that is why I said it is a subsidy more than it is like pain.

ADV ADILA HASSIM: Right.

DR. BARNEY SELEBANO: Because the impression was that I don't know how or where it comes from, Justice these are some of the the practices that have been happening over and over again. That some of the individuals would have sponsors and that's why if they have a sponsor, then we put in a the subsidy. That was the thinking.

ADV ADILA HASSIM: So you had a plan in place before you terminated the contract, that's what you are saying? You're saying there was a plan. We knew it was 320 grand but we-- your thinking was to do it this other way using state resources and so on. You had a plan and that's why you terminated the contract?

DR. BARNEY SELEBANO: Yeah because I mean, Justice it's a big step to terminated a contract. You need to know and be a sure of it what is going to happen to the patients and that is what I got to know at that time, no no no, this is how we get this.

ADV ADILA HASSIM: Right. I'm glad to hear you say that but I'm puzzled to hear you say you had a plan and I'd like you to have a look at page 2824, please. That is in file 8.

DR. BARNEY SELEBANO: I don't have that.

ARBITRATOR JUSTICE MOSENEKE: 2824.

ADV ADILA HASSIM: 2824.

DR. BARNEY SELEBANO: Okay.

ADV ADILA HASSIM: That's the last page of the document that is entitled Project Plan and just for the record let's quote: "Project Plan Termination of Contract Relationship Between Department of Health and Life Esidimeni and Upscaling Community Base and Health Service in the Providence" that was the 5plan, correct?

DR. BARNEY SELEBANO: I can see 2824, is that the one that says number ten conclusions?

ADV ADILA HASSIM: Yes. So 2824 is the last page of that plan. And you just said that there was a plan in place, by the time you terminated the contract and 10we already know that you terminated the contract on 29 September, 2015; correct?

DR. BARNEY SELEBANO: I don't understand.

ADV ADILA HASSIM: I'm just confirming that you terminated the contract on 29, September, 2015.

15**DR. BARNEY SELEBANO:** Okay yeah. Before then, before, okay let me say--

ADV ADILA HASSIM: It was dated September 29, 2015. The date of your termination letter.

DR. BARNEY SELEBANO: Okay. Yes.

ADV ADILA HASSIM: This plan was compiled only a day later. 30, September 202015; do you see that?

DR. BARNEY SELEBANO: I'm not following you.

ADV ADILA HASSIM: It says compiled by, Dr. (Inaudible) 1:43:57 on 30 September, 2015.

DR. BARNEY SELEBANO: Alright.

ADV ADILA HASSIM: And the last signature is your signature, is that so?

DR. BARNEY SELEBANO: That's right.

ADV ADILA HASSIM: And that is your approval?

5**DR. BARNEY SELEBANO:** That's right.

ADV ADILA HASSIM: And what is the date of your signature?

DR. BARNEY SELEBANO: 14, October.

ADV ADILA HASSIM: What year?

DR. BARNEY SELEBANO: It should be 20-- there's an error here.

10**ADV ADILA HASSIM:** It's an error?

DR. BARNEY SELEBANO: Can't be 2016.

ADV ADILA HASSIM: It says 2016. Are you saying that is a mistake?

DR. BARNEY SELEBANO: Yeah. If you look at 30, September 2015, yeah.

ARBITRATOR JUSTICE MOSENEKE: Yes the date is an error. Let the report
15highlight it's an error.

DR. BARNEY SELEBANO: No, it's an error.

ADV ADILA HASSIM: Sorry. And then Mr. (Inaudible)1:44:50 Also signed it in
2016; that's also an error?

DR. BARNEY SELEBANO: Yes it was an error. I mean it's an error. It was
20compiled in the 2015 and I signed it.

ADV ADILA HASSIM: Both of you signed it incorrectly? Is that what you are
saying?

DR. BARNEY SELEBANO: I can just say only that it's an error because I

signed this in October 2015.

ADV ADILA HASSIM: Okay. So you signed it in October 2015 in your version?

DR. BARNEY SELEBANO: That's right.

ADV ADILA HASSIM: SO this was after the termination of the contract?

5**DR. BARNEY SELEBANO:** After the signing of, remember it was 6 months to go with that contract.

ADV ADILA HASSIM: I understand that. But at the point that you put your signature on the termination, the train had left the station. Things now needed to happen, wouldn't you agree? You had 6 months within which to make things
10happen.

DR. BARNEY SELEBANO: You are making it mechanically as if things happen to happen that way. I told the Justice that there was a collective discussion. There was discussions as to when you see the people that came after. It doesn't tell you about the discussion that happened before.

15**ADV ADILA HASSIM:** It doesn't matter whether there were discussions, my concern -- you see nothing can happen until you've approved it. That's what you said earlier. Once you approved the document, then the instructions follow.

DR. BARNEY SELEBANO: In a legal sense that's what you are saying, I agree with you. If I have not approved something, it is not legally binding.

20**ADV ADILA HASSIM:** No. It's not a question of legally binding. Dr. Selebano, maybe we have cross purposes.

DR. BARNEY SELEBANO: Yeah.

ADV ADILA HASSIM: You early said that you make a decision and then your team implements. You have to sign off, you have to approve what then will follow, am I right? They couldn't make a plan on their own.

5**DR. BARNEY SELEBANO:** They did.

ADV ADILA HASSIM: But you had to approve it, isn't that so?

DR. BARNEY SELEBANO: Well they did make the plan and the plan was presented to the collective.

ADV ADILA HASSIM: You approved it in October?

10**DR. BARNEY SELEBANO:** Yeah 14th October, I think, yeah.

ADV ADILA HASSIM: So you approved it after you terminated the contract, that is what I'm trying to establish.

DR. BARNEY SELEBANO: Let me tell you what had happened before. Um--

15**ARBITRATOR JUSTICE MOSENEKE:** Well, do you want to answer the question and then explain it? Did you approve after the termination of the contract? It would help to answer and you may very well explain.

DR. BARNEY SELEBANO: Justice, if you just could bear with me so I could explain then I'm not stirring away from the question.

20**ARBITRATOR JUSTICE MOSENEKE:** Okay.

DR. BARNEY SELEBANO: Before the 6th month contract, there had been indications in fact there's a letter that we wrote to Life Esidimeni, to say that we are terminating the contract long before I actually did the signing. I signed that

letter and they came back through the legal department, our legal department and said no you, you can't. You cannot do that. And they spoke with the legal department. By that time I think we're not standing still but then they actually said you got to give us 6 months notice of termination otherwise we'll take you to court. So that is the important part that, that is the discussion of termination helps along that there. So there's not something that I started after signing then we start.

ARBITRATOR JUSTICE MOSENEKE: Well the question is quite clear. Just go back to it. Did you approve the plan after you had signed the letter of termination?

DR. BARNEY SELEBANO: I thought I had explained. Yes, I did but there's that explanation that I gave that is why that had been done.

ADV ADILA HASSIM: To develop the plan?

DR. BARNEY SELEBANO: To work on the plan, yes.

ADV ADILA HASSIM: Yes. I understand that and then you approved it in October?

DR. BARNEY SELEBANO: Yes.

ADV ADILA HASSIM: A month after you terminated the contract?

DR. BARNEY SELEBANO: Was it a month?

ADV ADILA HASSIM: According to, you signed it --

DR. BARNEY SELEBANO: The end of September. The termination was it not at the end of September of the contract? I don't know--

ADV ADILA HASSIM: So it was two weeks after, is that what you're saying?

DR. BARNEY SELEBANO: I don't know, I don't know the the--

5**ADV ADILA HASSIM:** You don't remember when you terminated the contract but you do remember this is 2015 signature and not 2016?

ARBITRATOR JUSTICE MOSENEKE: 29, September 2016, you terminated the--

10**DR. BARNEY SELEBANO:** That was the month, yes. 14 days later then, yeah.

ADV ADILA HASSIM: You then approved the plan?

DR. BARNEY SELEBANO: Yes.

ADV ADILA HASSIM: And then implementation of the plan began immediately?

15**DR. BARNEY SELEBANO:** Well it depends. You know, I'm trying to follow, when you say implementation of the plan, you mean movement of patients? No.

ADV ADILA HASSIM: I mean implementation of the plan that you approved and everything that is in the plan.

DR. BARNEY SELEBANO: Okay. Let me put it this way, then by just
20approving it, everything was kicked into motion.

ADV ADILA HASSIM: That's--thank you very much. That's what I'm trying to get you to say. So once you've approved it, then things could get into motion. Now you said again this was part of the fiscal pressure and you referred to the

fact that treasury had also been warning and advising that there needs to be a containment of costs; right?

DR. BARNEY SELEBANO: That's right.

ADV ADILA HASSIM: The treasury-- was it treasuries instruction what services you should cut? What programs you should cut?

DR. BARNEY SELEBANO: No. They were not really doing that. They are not doing it only to health. They were doing it to the whole Providence.

ADV ADILA HASSIM: That's fine. My question is in relation to the health.

DR. BARNEY SELEBANO: Yeah but I'm trying to give you a broader picture that the fiscal is not health only.

ADV ADILA HASSIM: I understand what the fiscal is. My question is was it instruction from treasury that you should cut certain programs?

DR. BARNEY SELEBANO: No, it was not an instruction from treasury.

ADV ADILA HASSIM: It was not an instruction from treasury that you should cut this program; is that so?

DR. BARNEY SELEBANO: This program, no, no, no. They would tell us cut this one, cut that one.

ADV ADILA HASSIM: So the decision to terminate this was yours?

DR. BARNEY SELEBANO: A departmental decision.

ADV ADILA HASSIM: But ultimately yours once you sign the termination?

DR. BARNEY SELEBANO: It if you say so, yes.

ADV ADILA HASSIM: Thank you. So that took place in the 28 September sorry 29th September 2015 and you say that you were persuaded that was the

right thing to do; right?

DR. BARNEY SELEBANO: Of course.

ADV ADILA HASSIM: And you were not at that time concerned that there would be a violation of the rights of the mental health care users?

5**DR. BARNEY SELEBANO:** I wouldn't have known, yes.

ADV ADILA HASSIM: And did you at that time try to cut any other areas cost in any other areas?

DR. BARNEY SELEBANO: Yes.

ADV ADILA HASSIM: Noncall.

10**DR. BARNEY SELEBANO:** Noncall. There was Selby, I don't know, I'm trying to work out the dates. There was a Selby contract with nicks that was also cut. Yeah.

ADV ADILA HASSIM: But would that not be a core cost?

DR. BARNEY SELEBANO: We (inaudible)1:52:39 the patient's case core
15business of health.

ADV ADILA HASSIM: That's right. So the question is did you try to cut cost in any area that was not about patient care and service to the community?

DR. BARNEY SELEBANO: Not that Um I think. I could think of other contracts like-- let me tell you how you work on management of cost.

20**ARBITRATOR JUSTICE MOSENEKE:** The question is it is going to help if we try to listen and give the answer. The question is did you cut areas which are noncall?

DR. BARNEY SELEBANO: I can't immediately while now think of any other

thing that was noncall.

ARBITRATOR JUSTICE MOSENEKE: Now let's go to Selby just a little bit.

Selby gave care to what category to patients?

DR. BARNEY SELEBANO: It was, we call them step down, not step down, 5 your minimal care type of patients. Let me explain what this mean, (inaudible) 1:53:52 it's a central hospital. After 5 days or so you find that we're not comfortable to let you go home. So instead of keeping you in a bed, because our beds the expensive beds go into the hospitals. So what we then need, there was I found it there also Justice, in that contract that then the patients would be 10 transferred to Selby.

ARBITRATOR JUSTICE MOSENEKE: Were they any particular to your health?

DR. BARNEY SELEBANO: You wouldn't, you would want to take patients who are almost ready for for for discharge. Like the acute patients.

15 **ARBITRATOR JUSTICE MOSENEKE:** Let's go back to counsel. Anyway's the question was that is call business of the department, isn't it?

DR. BARNEY SELEBANO: Yeah. That's call.

ARBITRATOR JUSTICE MOSENEKE: Counsel?

ADV ADILA HASSIM: Sorry Dr. Selebano, I'm not sure I got the answer 20 correctly as to what noncall cost were cut?

DR. BARNEY SELEBANO: Some of them noncall cost were cut we actually had to were another place in post. Now I'm thinking about it. We said we can't get a place in post. We detailed the use of cell phones and all that. We detailed

those type of, we literally almost stopped buying the IT. You know your computer laptop ones and said you may have to revert the desktop. So we did a lot of those things. I remember also in health I did say to you that call is of patient services. The support that come there in clean air in health, it is actually important and we all agree they will discarded as call. So we're in a tight corner now when you don't place cleaner of creating problems and when you don't replace a product, you're creating problems. So, we're in this situation. So those are some of the noncall that we cut.

ADV ADILA HASSIM: So do you consider that to be noncall or call cost? I'm finding hard to follow because you said that the (inaudible)1:56:20 would be under call.

DR. BARNEY SELEBANO: I'm saying in health.

ADV ADILA HASSIM: Yes.

DR. BARNEY SELEBANO: You didn't want to classify any other health worker professional as call or noncall because we have argued that actually cleaner in the hospital is not a normal cleaner like in the mall. It is a critical--

ADV ADILA HASSIM: So you wouldn't have cut cost when it comes to cleaners because--

DR. BARNEY SELEBANO: We're not replacing some of the posts.

20**ADV ADILA HASSIM:** And that would be a core cost, wouldn't it?

DR. BARNEY SELEBANO: That's what I'm saying to you. It's difficult in your understanding or in a different definition that would be noncall. But we argue that actually there is nothing noncall in health, all of it is call.

ADV ADILA HASSIM: So, but you did cut this program and you did see, just confirming, you did say you thought it was appropriate to cut and terminate this contract?

DR. BARNEY SELEBANO: That was the thinking at that time.

5**ARBITRATOR JUSTICE MOSENEKE:** What other hospitals or contracts did you terminate within the same financial year?

DR. BARNEY SELEBANO: No we didn't have a lot of outside services, we didn't have.

ARBITRATOR JUSTICE MOSENEKE: We know from the evidence Selby was
10earlier.

DR. BARNEY SELEBANO: Yes, it was earlier but--

ARBITRATOR JUSTICE MOSENEKE: So in the year that you decided to shutdown Life Esidimeni, which other contract that provided cost services to patients did you terminate?

15**DR. BARNEY SELEBANO:** I'm trying to think. I can't recall of any contract. The outside services that I recall was Selby and Life Esidimeni.

ADV ADILA HASSIM: Thank you Justice. So just to repeating in saying that you were satisfied that this was an appropriate move, this was an appropriate measure?

20**DR. BARNEY SELEBANO:** At that time it was the right thing to do.

ADV ADILA HASSIM: And this was so despite the fact that you have been warned that in fact it would be a bad thing to do?

DR. BARNEY SELEBANO: Well I've said it that there were meetings. I met

with section 27 that--

ADV ADILA HASSIM: This was before then, so let me tell you. Let me take you there, if you could have regards to annex to the report.

DR. BARNEY SELEBANO: Okay.

5**ADV ADILA HASSIM:** It is in the exhibits file and it would be LL 2.

DR. BARNEY SELEBANO: Okay. I have it.

ADV ADILA HASSIM: Could you please turn to annex 8 A.

DR. BARNEY SELEBANO: Oh I don't know how to work my way here.

Annex--

10**ADV ADILA HASSIM:** 8 A.

DR. BARNEY SELEBANO: Before 6C? Okay.

ARBITRATOR JUSTICE MOSENEKE: Can we familiarize the witness to the document.

DR. BARNEY SELEBANO: I'm really lost here.

15**ADV ADILA HASSIM:** 8 A.

DR. BARNEY SELEBANO: There's something written LLA.

ADV ADILA HASSIM: I can come and assist you.

ARBITRATOR JUSTICE MOSENEKE: Give him a bundle of exhibits marked LL-- yeah give him a bundle of exhibits documents handed in this hearing, 20marked LL 1 to whatever you are referring to--.

ADV ADILA HASSIM: Annex 8 A it might be page 41 of the patinated version.

DR. BARNEY SELEBANO: Okay. All right yes I have it.

ADV ADILA HASSIM: And this is a memorandum that is addressed to Dr.

Nontlantla And copied to you, correct?

DR. BARNEY SELEBANO: That's right.

ADV ADILA HASSIM: And it's from the clinical heads how to specialize psychiatric hospitals, heads of psychiatric departments or units how central units and hospitals and academic departments. Do you see that?

DR. BARNEY SELEBANO: I see that.

ADV ADILA HASSIM: It is dated 28, April 2015.

DR. BARNEY SELEBANO: That's right.

ADV ADILA HASSIM: This is the first written warning that we have on record to the accounting department and it's quite on important warning because it comes from your own psychiatrist and your own hospital heads. So this was 28, April, 2015.

DR. BARNEY SELEBANO: All right.

ADV ADILA HASSIM: And the purpose of this memorandum is stated in paragraph one. And it stays to outline serious concerns related to the reduction of beds at the Life Esidimeni hospital in Gauteng, and to request an urgent meeting with the honorable MEC, do you see that?

DR. BARNEY SELEBANO: I can see that.

ADV ADILA HASSIM: And are you familiar with this document, have you seen it before?

DR. BARNEY SELEBANO: Now that, I mean it was CC to me, probably I have seen this document.

ADV ADILA HASSIM: You don't recall seeing this before or what do you mean

probably?

DR. BARNEY SELEBANO: It's 2015 it is very difficult to recall what e-mails you got. I would normally get lots and lots of--

ADV ADILA HASSIM: But you would have received it are you saying you would have read it?

DR. BARNEY SELEBANO: I would have read it. I would have read it.

ADV ADILA HASSIM: So in paragraph three, the clinicians referred to the process of deindustrialization and they say that the above decision by which they mean the reduction of Life Esidimeni seems to be promised on a view that persons with severe chronic mental illness, receiving long term hospital care and rehabilitation can be suddenly discharged; to home or community-residential care unmasked. Such an approach is unfortunately impractical. Good clinical practice in this context obliges a gradual an individualized discharge process that addresses both the health and social needs of each patient thus facilitating the gradual reintegration of such patients into the community. Did you agree with that understanding of the clinicians?

DR. BARNEY SELEBANO: Did I agree with them, the psychiatrist?

ADV ADILA HASSIM: Yes did you agree with the statements in the paragraphs?

DR. BARNEY SELEBANO: They are specialist and I didn't argue with them.

ADV ADILA HASSIM: They go onto say then that further more as clearly outlined in our national mental health policy framework and strategic plan 2013-2020 successful deindustrialization requires among others the availability

of adequate community residential and day care facilities and the scaling up of community mental health services. There's a great shortage of community residential and day care facilities in Gauteng and the sworn number of remaining beds are required for patients from all levels of care on an ongoing basis. Did you take issue with that, that they maybe were incorrect or did you agree?

DR. BARNEY SELEBANO: They are specialist like I said, it would be out of order for me to start arguing with professors.

ADV ADILA HASSIM: It would have been out of order for you to disagree. If you turn over the page to paragraph 6, where they deal with particularly Gauteng, how Gauteng experience. The last paragraph and which is on page three of the document, the last paragraph reads as follows. Unmasked discharges or transfers from Life Esidimeni have previously been attempted and the example cited at the meeting was the transfer of 40 patients with physical and intellectual disability in 2009 to the (inaudible) 2:05:35 in 2009. Only to capacity limitations of this NGO and the inability of the patients to adapt to the environment. The departments of social development in health with requested Life Esidimeni to accept them as back within two months. What's your comment on that?

DR. BARNEY SELEBANO: Well my comment would be, I wouldn't know because I think I read quickly through it this was done in 2009. Yeah and maybe at that time, I was not in the department.

ADV ADILA HASSIM: But when you read this letter in 2015 did it raise any alarm bells for you?

DR. BARNEY SELEBANO: I can't recall on this, I can't recall.

ADV ADILA HASSIM: In fact, Dr.(inaudible)2:06:23 for these proceedings refer to this example and his evidence was that patients died in that move and those who didn't return and when they were returned to Life Esidimeni they were 5already severely dehydrated and malnourished. So the claims--

ARBITRATOR JUSTICE MOSENEKE: Can we help you answer on record what is your response to that?

DR. BARNEY SELEBANO: To what the psychiatrist said?

ADV ADILA HASSIM: Yes.

10**DR. BARNEY SELEBANO:** That patients were returned. Like I said it was 2009 I wasn't in the department.

ARBITRATOR JUSTICE MOSENEKE: No, counsel is saying what your response when you read it in 2015.

DR. BARNEY SELEBANO: I did indicate I can't -- I don't remember what my 15response to that, at that time. I can't recall, but now I understand it now that I read it.

ARBITRATOR JUSTICE MOSENEKE: Then why can't you recall such a solitary warning that if you move people, there's going to be consequences and past experiences shown that some may die. Why wasn't this an important 20thing?

DR. BARNEY SELEBANO: No no. I didn't say it was not important.

ARBITRATOR JUSTICE MOSENEKE: But you don't remember it?

DR. BARNEY SELEBANO: I don't recall it. If I recall it, I'll never walk away from

it, I'll say I'll recall it. If I don't I'll have to say that I don't recall it.

ARBITRATOR JUSTICE MOSENEKE: But then was it something that remained with you that was a risk of taking patients out of this tribe before and that they might have their lives in dangered.

5**DR. BARNEY SELEBANO:** Yeah, but also I hear you Justice, but also remember this letter actually explains the way that I read it. I have been quickly reading it again. It explains what the department should have done at that time and we didn't do that. That is how I understand this letter.

ADV ADILA HASSIM: That's right. It was as I said, it was the first written
10warning we have on record whether they are others we don't know. But this was 28 April 2015. What's important about it is that it is alone, detailed and very considered letter from the most imminent public health professionals in the country. The heads, clinical heads of your hospitals and they're advising you in relation to this project.

15**DR. BARNEY SELEBANO:** Yes, I agree, I agree.

ADV ADILA HASSIM: And one of the things they say to you, the first thing that I put to you was that they saying be careful on this process. What I read to you earlier, that it requires a gradual and individualized discharge process that addresses both the health and social needs of each patient. That's the first
20thing.

DR. BARNEY SELEBANO: I agree.

ADV ADILA HASSIM: Which means every patient has a right. Every patients' rights needs to be taken into account, would you agree?

DR. BARNEY SELEBANO: Of course patients are different.

ADV ADILA HASSIM: The constant distinction is with unmasked discharge.

DR. BARNEY SELEBANO: Yeah.

ADV ADILA HASSIM: Where individual needs of the patients are not considered. Do you agree?

DR. BARNEY SELEBANO: Yeah.

ADV ADILA HASSIM: So that was the first warning, the second warning is they say to you, in any event you have done this before, and it failed. Meaning the department. I'm not saying you yourself I'm saying the department has done it before do you agree and it failed?

DR. BARNEY SELEBANO: The department, yes.

ADV ADILA HASSIM: My question is what was your response when you read this?

DR. BARNEY SELEBANO: What I'm saying that Justice was saying why can't I recall it. I don't recall it and I'm not being invasive I just don't recall it. If I did, Justice, I would say I recall it and I would tell you how I felt.

ADV ADILA HASSIM: Okay that is in relation to the previous move. The previous attempt?

ARBITRATOR JUSTICE MOSENEKE: Or was it water off of ducks' back?

DR. BARNEY SELEBANO: Meaning, Justice?

ARBITRATOR JUSTICE MOSENEKE: Meaning you've made a decision and these inputs, these warnings may find no place in your plan of action?

DR. BARNEY SELEBANO: When I see the date, 26 April, I think by that time

really the position even for me to sign, I had not done that if I look at it well.

ADV ADILA HASSIM: No, you hadn't done that.

DR. BARNEY SELEBANO: I hadn't done that, yeah.

ADV ADILA HASSIM: But you did it after you received the warning, that is what is so important. Is that these warnings were coming to you before you signed the termination letter?

DR. BARNEY SELEBANO: Yeah that's true.

ADV ADILA HASSIM: The next danger they point out to you is in paragraph 7. And they try to say to you it deals with financial implications. It says the following, we were informed for the main reason for exhalation of discharge of patients life at Life Emidimeni was to reduce health care costs and thus contribute to expenditure reduction within the Proventil government as discussed in the meeting we respectfully submit that the process being followed will in fact escalate and not reduced direct and indirect health care costs. The reasons can be summarized as follows. Then they set out their reasons --

DR. BARNEY SELEBANO: Yes.

ADV ADILA HASSIM: In detail. What did you make of that when you read it? In other words now they are talking about costs and saying in fact this is going to have the opposite effect.

DR. BARNEY SELEBANO: Yeah but that did indicate with your respect, counsel. The letter was CC'd to me, I won't denied it in my e-mail. And I didn't want to say whether I received it or not. It's immaterial it was CC'd to me. What I'm saying I do not recall the details of this letter. So it's not easy for me to tell

you how I, but I understand as I read it now, I understand the letter now. I understand it now.

ADV ADILA HASSIM: Before I started talking you through contents of the letter. I asked if you would have read the letter and you said yes.

5**DR. BARNEY SELEBANO:** I said most probably.

ADV ADILA HASSIM: You don't know if you read the letter or not is that what you are saying? See there are two things. Either you read the letter and can't remember your response to some of the specifics or can't recall reading the letter at all, which one is it?

10**DR. BARNEY SELEBANO:** I can't recall reading the letter, therefore I can't work on that response.

ADV ADILA HASSIM: So you were not aware of these concerns at the time; is that what you are saying?

DR. BARNEY SELEBANO: These concerns, Dr. (Inaudible) 2:14:17 was part
15of the team that went after the termination. He and Um other professors (inaudible) 2:14:27, they were part of the team. And other there was another professor from --

ADV ADILA HASSIM: Yes and they tried to prevent what they could see coming down the tract the termination of the contract.

20**DR. BARNEY SELEBANO:** Well in the meetings were with doctor (inaudible)2:14:47 and other professors, they, I don't know if maybe separately the other officials were but they didn't worry a slick about this saying stop this process. I'm not accusing them of anything.

ADV ADILA HASSIM: Could they have been anymore robust than they are in this letter? And in writing?

DR. BARNEY SELEBANO: Counsel agreeing to the letter, I did indicate that the letter, I can't recall the letter. So I'm saying in the meetings I was with 5Dr. (Inaudible) 2:15:17 and Dr. (Inaudible)2:15:20 was there also.

ADV ADILA HASSIM: I'm not asking, I am asking about the letter because it is important that it happened before the contact was terminated. Before I leave the letter, I just like to point out one last thing that they state in the letter. That is in the conclusion, and it is in the second paragraph. It says we note that this 10decision will have a devastating impact on the health and social wellbeing of mental care care users, the health care system, and members of the community. We also note this decision will likely escalate the health care cost in our Providence. So this is strong language coming from the clinicians, devastating impact on health. You are not aware of this concern? It wasn't in some way in 15the background that there's a concern about the impact on of the health of mental health care users?

DR. BARNEY SELEBANO: Yeah, but like I indicated again-- you see--

ADV ADILA HASSIM: You can say no and we could leave it there.

DR. BARNEY SELEBANO: I didn't, I don't recall reading the letter.

20**ADV ADILA HASSIM:** Why would you not have read this letter, why would it not have been brought to your attention?

DR. BARNEY SELEBANO: This letter was addressed to the MEC and I don't and I see that the professor should say I should drop it. I know some of them, I

know (Inaudible) 2:16:53 but I don't even know whether the MEC responded because this letter was specifically sent to the MEC --

ADV ADILA HASSIM: It was sent to Donald Miller.

DR. BARNEY SELEBANO: Well my impression was they were requesting the meeting with the MEC. The MEC of health.

ADV ADILA HASSIM: Yes but the letter was copied to you. Does it mean that when government officials are copied on letters, it doesn't have any impact?

DR. BARNEY SELEBANO: I don't know why you realize about government officials.

10 **ADV ADILA HASSIM:** Because--

DR. BARNEY SELEBANO: Because if I haven't read the letter, I don't think you can't say government officials, I don't know.

ADV ADILA HASSIM: So you are saying you did not read the letter?

DR. BARNEY SELEBANO: I don't recall. Counsel I don't want to come out as if I'm being invasive Justice. If I recall the letter I would say I recall the letter and I will stand for whatever happened.

ARBITRATOR JUSTICE MOSENEKE: Well the point for us the point really is people working with any department, they are high end clinicians handle psychiatrist in different hospitals under your jurisdiction, write to the director, copy the HOD, and treat the interest of the MEC, and you can't remember the contents of the letter. Counsel is entitled to press you onto say but why such a momentous thing, why was it in significant for you not to remember.

DR. BARNEY SELEBANO: No, no. I didn't say it wasn't significant, I never,

what I'm saying I didn't want to use except if I don't recall something it would be incorrect of me now to say that I do recall it. If I recall it --

ARBITRATOR JUSTICE MOSENEKE: Then it goes onto say and you went onto sign a termination agreement. That implemented a mass movement of 5 mental health care users under the claim that is going to reduce costs and that it would be done in a way that they will afford mental health care. These are the points that she read out to you in the letter. You see you went on to do the opposite of what your internal in clinicians were warning. She's entitled to press you and say why did you go ahead with this? Why didn't you remember this?
10 This is so crucial.

DR. BARNEY SELEBANO: But how can you ask why don't you remember unless you are suggesting I'm not telling the truth?

ARBITRATOR JUSTICE MOSENEKE: No the suggestion is did you perhaps ignore the contents of the letter?

15 **DR. BARNEY SELEBANO:** No I wouldn't do that. I wouldn't do that.

ARBITRATOR JUSTICE MOSENEKE: That is the point that she's pressing you on.

DR. BARNEY SELEBANO: I wouldn't ignore the letter, I wouldn't.

ARBITRATOR JUSTICE MOSENEKE: Then she's entitled to say why couldn't
20 you remember these contents if you wouldn't acknowledge?

ADV ADILA HASSIM: Any way it passed you by in other words?

DR. BARNEY SELEBANO: What do you mean by that?

ADV ADILA HASSIM: This letter and its contents passed you by. Whether you

read it or not, actually that is not the point. The point is it passed you by.

ARBITRATOR JUSTICE MOSENEKE: The impression on you what counsel is really saying. It came and passed by, that is a nonevent.

DR. BARNEY SELEBANO: No, no, no, no.

5**ARBITRATOR JUSTICE MOSENEKE:** Okay. Could you explain to the question?

DR. BARNEY SELEBANO: You see she's she's please forgive me counsel, but I get an impression that you are suggesting that I deliberately ignored reading this letter, I don't. If I'm wrong please forgive me, I'm saying to you, I 10don't recall this letter. It doesn't mean that I ignored the letter, it doesn't mean it passed by, if I understand English well. Passed by, no. I just don't recall. If I did recall I'm repeating again, I would stand by my weight and say I read that letter, I would stand by my word.

ARBITRATOR JUSTICE MOSENEKE: Let's test that we're going to the 15substance. If you had remembered that you're clinicians were head of psychiatrist in your had warned that a mass transfer of patients could be detrimental, would you have nonetheless signed the termination agreement? Just forget about remembering or not remembering, if you had seen this, would you have gone ahead and signed the termination agreement?

20**DR. BARNEY SELEBANO:** It is highly probably that I would have. Because I know some of the professors. It is highly probable that I would have said whoa, whoa, let's call the professors and let's have this discussion. That's why I was indirectly saying Dr. (Inaudible)2:22:31 what part of the team. I don't recall in

any meeting where I sat with Dr. (Inaudible)2:22:38 that he robustly indicated some of these things that are really paramount. But I'm not undermining this letter that are really paramount, I don't recall. (Inaudible) 2:22:51

ARBITRATOR JUSTICE MOSENEKE: Say you want to save cost by transfer 5or placing patients outside Life Esidimeni, did you apply your mind to that but in fact despite your motivation of husbandry you are not going save my money, they tell you so the special is to work in the field. Had you read the letter and remembered would you have gone ahead and to displace all these people?

DR. BARNEY SELEBANO: I hear what you are saying Justice. I hear you very 10well and I understand you very well but you are pulling me back in time in 2015 what I would have done at that time. Really Justice. What would I have done in 2015, there are so many things at that time. If I had said to you, I feel like I would be lying to you, if I had said, no I wouldn't have signed this. I feel like I'm being dishonest. That's how I feel.

15**ARBITRATOR JUSTICE MOSENEKE:** Counsel.

ADV ADILA HASSIM: Justice it is 5:00 o'clock and it might be a good enough time --

ARBITRATOR JUSTICE MOSENEKE: Yes, it is a good enough time. Let me leave you with a parting thought. You are required to be here tomorrow. At 9:30 20we're going to start.

DR. BARNEY SELEBANO: I'll be here.

ARBITRATOR JUSTICE MOSENEKE: Um Mr.(Inaudible) 2:24:30 sit Where you are seated now and talk about the pain of implementing something that he

knew is likely to be disastrous of the lives of mental health care users. Do you share his pain?

DR. BARNEY SELEBANO: Yes it's painful. And he implemented it happened under my watch. It happened under my watch. It's something that is hanging
5around me.

ARBITRATOR JUSTICE MOSENEKE: Unlike him did you try to resist the move?

DR. BARNEY SELEBANO: Well I don't know, Mr. (Inaudible)2:25:22 he said that he resisted the move. But he was attending the meetings, he was the
10leader. You said and spoke and you know would sit in my office and say H H H H you know. You know. We would sit. So that was, that was the pain, that was the pain. And still even said after the event it was very very painful for us. It is very very painful. It's not something that you wake up during the night and say but why?

15 You even start to wonder, couldn't have something hinted to me that the way to go is not this one but that one. Honestly Justice I want to tell you it's not something that easy to dismiss. It's a painful episode to carry and the pain that the families feel and carry everyday. We carry that pain some of us. It's very painful. It's very painful.

20**ARBITRATOR JUSTICE MOSENEKE:** vernacular...2:26:37-2:26:45 Um I just warned the witness in his mother tongue that he should be here at 9:30 tomorrow to continue with this evidence. We are adjourned.

