

LIFE ESIDIMENI ARBITRATION

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

SESSION 1 – 3, Nov 8

5

BEFORE ARBITRATOR – ARBITRATOR JUSTICE MOSENEKE

WITNESSES:

ELIZABETH PANGELA

10 **MS NONO MODITSE**

ME. MARIA PHEHLA

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SESSION 1

ARBITRATOR JUSTICE MOSENEKE: Thank you, you may be seated. Good
5 morning to you all, we are set to proceed for the next 3 weeks in the hope that we
are going to get to the end of this inquiry, this arbitration. I would like to thank you
council, for the schedule of witnesses which is meant to cover the period up to the
first week of December, before we hear evidence, however, I have certain enquiries
I would like to make from council about the attendance of three public officials
10 whose appearance in this hearing this arbitration hearing, is considered vital by the
parties themselves. So I'm going to start of enquiring about an arrangements to
achieve the attendance of the former MEC of health in the province of Gauteng Ms.
Qedani Mahlangu. Council?

ADV TEBOGO HUTAMO: Thank you, Justice. Good morning with regards to the
15 former MEC the attorneys are making effort to locate the residential address of the
former MEC, that process is ongoing we have not yet been in a position to establish
her residential address. However, there has been communication with a new side of
attorneys BBM...

ARBITRATOR JUSTICE MOSENEKE: In what residential address, in which
20 country?

ADV TEBOGO HUTAMO: The residential address in England we are made to understand that she is currently in England. However we do not have the full details of her residential address and that still needs to be ascertained in order to make sure that when the subpoena is issued, it's issued at a specific address of her residence. So that process is still taking place, and I wanted to proceed to state that, there has been communication on her behalf by a set of attorneys that she has appointed, to assist and facilitate her attendance in this proceedings. The attorneys are BBM attorneys, workmen's attorneys have been in contact with the former MEC's attorneys trying to make arrangements. And the arrangements are being made in order to ensure that like she attends these proceedings during this month of November. And when progress has been made regarding the availability of the former MEC that will be announced as to exactly on which date will she be available. But that is not the only recourse that we are taking, as I said we are proceeding to ensure that we try and locate her residential address in England in the absence of finding any agreement with the attorneys. So far those are the efforts which are being made to ensure that he attends these proceedings.

ARBITRATOR JUSTICE MOSENEKE: Thank you, counsel, for the state. Would any other council want to make any other submissions or comment on what has just been relayed by counsel for the state? None. Very well then we are going to move to the next witness where the parties require to give evidence in this arbitration proceedings and that is Doctor Malamela.

ADV ADILA HASSIM: Good morning Justice

ARBITRATOR JUSTICE MOSENEKE: Good morning.

ADV ADILA HASSIM: We've received a return of service from the sheriff, the subpoena had been reissued and was served on the 2nd of November and the date on which DR Mamelela is required to appear is 20th of November, we have heard no objection or challenge to the subpoena thus far. So we expect her on the 20th of
5 November at this point.

ARBITRATOR JUSTICE MOSENEKE: So if we can equal DR Mamelela is expected to testify the 20th of November?

ADV ADILA HASSIM: That is correct.

ARBITRATOR JUSTICE MOSENEKE: Very well. From the rest of the council any
10 comment? Any? None. That inevitably moves us to the 3rd witness Dr Diego Silibano.

ADV TEBOGO HUTAMO: Thank you, Justice Moseneke. Once again like we need to report that we have made effort to get the subpoena issued against Dr. Silibano. The subpoena was served on the 31st of October 2017 and we have confirmation of
15 that service in terms of this subpoena DR. Silibano is appeared before this proceedings on the 4th of December 2017. Subsequent to the service of this subpoena DR. Silibano has issued an urgent application in the Johannesburg High Court under Case number 43011 of 2017. In terms of the urgent application issued
20 by DR. Silibano, he seeks to set aside the subpoena issued against him requiring him to appear before this proceedings, that application is sat down for hearing at the Johannesburg High Court on the 28th of November. Upon receipt of the application, consideration is been given to that application in order to determine the way forward

with regards to the challenge to the subpoena which has been issued against him.

ARBITRATOR JUSTICE MOSENEKE: So DR. Silibano has started proceedings in the High Court you report council?

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

ARBITRATOR JUSTICE MOSENEKE: In order to resist or to set aside the subpoena that requires him to appear before these arbitration proceedings?

ADV TEBOGO HUTAMO: That is correct Justice. The grounds of the challenge of the subpoena are full canvassed and detailed in the application which is already
10 before court and those will have to be considered in relation to the stance that is been taken for his unwillingness to come and appear before this proceedings.

ARBITRATOR JUSTICE MOSENEKE: Yes, thank you council. Is there anything you would like to record in that regard?

ADV TEBOGO HUTAMO: As I've said to Justice, we are considering the
15 application which seeks to challenge this subpoena. Our view is that DR. Silibona is supposed to appear before these proceedings which exactly the reason why we took steps to have this subpoena issued. So we will have to consider that application and take appropriate measures to see that the issue is being resolved and that will then be an update will then be given to the members of the families as
20 well as the public as to exactly what effort has been made in order to ensure relevant officials or witnesses appeared before this proceedings.

ARBITRATOR JUSTICE MOSENEKE: Very well thank you. Is there any comment from any other council about what has just been reported now?

DIRK GROENEWALD: Thank you, Justice. Justice I have just received instructions to make the following submission. DR. Silibano is still an employee of the
5 department, therefore, the doctor is obliged to comply with any instructions of the department. So should the department give the instructions to DR. Silibano to appear at these proceedings and he does not appear that would say to us according to us is grounds of disciplinary actions against DR. Silibano. And the question is just whether or not the department intends to take disciplinary action
10 against DR. Silibano for failing to comply with the lawful instruction by the department his employer.

ARBITRATOR JUSTICE MOSENEKE: Thank you, counsel. We will go back to council for the state in the moment but let's see other council.

ADV ADILA HASSIM: Justice, we notice that the application was issued yesterday,
15 my attorney received it last night, Of particularly importance to us is that section 27 or the families of the deceased that are represented here by section 27 is now sighted as a party, as a responded or an interested party. And I will take instructions on how we are to respond to this application.

ARBITRATOR JUSTICE MOSENEKE: Very well. Council, you have no
20 submissions or anything to say at this stage?

LILLA CROUSE: I have no submissions thank you.

ARBITRATOR JUSTICE MOSENEKE: Evidence leaders?

PATRICK NGUTSHANA: Justice Moseneke, there is nothing else to say at this stage.

ARBITRATOR JUSTICE MOSENEKE: Well, all I can say is that I'm sighted as a party right?

5 **ADV TEBOGO HUTAMO:** That is correct.

ARBITRATOR JUSTICE MOSENEKE: I know the people who are sued in these papers before the High Court.

ADV TEBOGO HUTAMO: Yes, they do make reference to the fact that there is no specific remedy that they seek against you, you are sighted just for the reason that
10 you are the presiding officer.

ARBITRATOR JUSTICE MOSENEKE: I follow, I might have to shut this down and go and fight the case in court?

ADV TEBOGO HUTAMO: Correct.

ARBITRATOR JUSTICE MOSENEKE: I thought I'm just doing my duty my public
15 duty and now I'm in a case of a witness who doesn't want to estate functionary to appear in the arbitration proceedings. We will see I just record all of you publicly that the application does site me as one of the respondents and so we are, I'll have to either than the parties, consider my own position and how I would respond to the application. But I think it is to the public's interest is to say it out there, there is an
20 application and it is also against me, or I am sited in the application. We will in the meantime as I indicated to the council in chambers proceed with the task at hand.

We have a set of witnesses who are willing to help us come to an appropriate award, rising from the arbitration proceedings in order to resolve the dispute between the state on the one end and claimants, specified in the arbitration agreement. So that job has to continue and I think that is where we are going to go,
5 but before we do so of course we are going to give the council of state an opportunity to respond to the points that have been made so far if any.

ADV TEBOGO HUTAMO: Thank you, Justice. What my learned friend has said Justice is that Dr. Silibano is still an employee of the department. That is indeed correct I should, however, indicate that we leave under the rule of law, we have
10 followed the law in order to secure the attendance of DR. Silibano before this proceedings which resulted in the subpoena. As to the grounds of the challenge of such subpoena I will really invite my learned friend to consider the application itself, it is already on record that there are disciplinary proceedings which have been taken against DR. Silibano. So its just not a simple matter to say 'you are still
15 employed, therefore you are forced'. We had to issue a subpoena that has been issued and under the rule of law, he is entitled to take whatever steps he deems appropriate, challenging the subpoena. And that is the process that we have to allow, its due process to have. So it should not appear as if we have not been doing anything to ensure the attendance of relevant officials before this proceedings. That
20 is my response.

ARBITRATOR JUSTICE MOSENEKE: How far are the disciplinary proceedings against DR, Silibano?

ADV TEBOGO HUTAMO: I'll have to get clear instructions as to exactly how far they have progressed, I understand that there is a set of attorneys or council dealing specifically with those matters.

ARBITRATOR JUSTICE MOSENEKE: Very well.

5 **ADV DIRK GROENEWALD:** My apologies Justice I just want to make the argument clear from our side. The argument is simple that there is a distinction between DR. Silibano challenging the subpoena that has been issued by these arbitration proceedings and Dr. Silibano challenging an instruction from his employer. There is a distinction that we submit in law and what we submit is that
10 DR. Silibano's employer should give the instruction to DR. Silibano to appear at these proceedings and if he does not want to appear, does not comply with that instruction that should be cause of disciplinary action against him.

ARBITRATOR JUSTICE MOSENEKE: Yeah, your colleague has responded to that. They wrote to him and asked him to come or instructed him to come. He didn't
15 they subpoena him, he has received the subpoena duly served and he is now brought an application to High Court to set aside the subpoena compelling him to come. And I think your colleague may be correct that he is entitled to due process and the rule of law he may even if it's from the employer raise the point that the subpoena that he is not compatible, he said what it is. He set aside the subpoena
20 by saying 'I am not a compatible witness'. And that is what the court has to decide whether he may refuse to attend arbitration proceeding called to him by a party to the arbitration and that party also being his employer. But the point has been made and the response to it, I think that you would have to proceed at this point with

evidence and who the state charges or doesn't, frankly it is their prerogative ultimately. We are going to have to proceed. Council?

ADV ADILA HASSIM: Justice, the first witness that we wish to call today is Mrs Elizabeth Phangela. Thank you.

5 **ARBITRATOR JUSTICE MOSENEKE:** isiZulu, do you swear that the evidence you are about to give will be the truth and nothing but the truth, if so please raise your right hand and say so help me God?

ARBITRATOR JUSTICE MOSENEKE: Council?

ADV ADILA HASSIM: Thank you. Good morning Miss Phangela.

10 **ELIZABETH PHANGELA:** Morning.

ADV ADILA HASSIM: Can you tell us what is your relationship to Christopher Makhoba?

ELIZABETH PHANGELA: He is my youngest brother.

ADV ADILA HASSIM: And can you tell us when Christopher passed away?

15 **ELIZABETH PHANGELA:** I'm not sure about the date, but the date that was only given to us was on the 15th of June 2016.

ADV ADILA HASSIM: Ok. I'll come to that in a moment, maybe to assist you if you could, there is file 11 in front of you. Can you please open it and turn to page 3807?

ELIZABETH PHANGELA: Yes I found the page.

20 **ADV ADILA HASSIM:** 3807 Justice.

ARBITRATOR JUSTICE MOSENEKE: Thank you, got it.

ADV ADILA HASSIM: On that page is this the death certificate of your brother?

ELIZABETH PHANGELA: Yes.

ADV ADILA HASSIM: The date of death that is recorded is 3 July 2016?

5 **ELIZABETH PHANGELA:** Yes.

ADV ADILA HASSIM: And the cause of death is reported as natural causes do you see that?

ELIZABETH PHANGELA: Yes. That is what is written.

ADV ADILA HASSIM: You have, you've just testified that you were informed the
10 15th of July 2016. Can you tell us where Christopher was at which facility
Christopher was being cared for in which facility?

ELIZABETH PHANGELA: He was in Waverly, Life Esidimeni Germiston.

ADV ADILA HASSIM: And how long was he there?

ELIZABETH PHANGELA: He was there form the year 2009.

15 **ADV ADILA HASSIM:** And was he moved from Life Esidimeni?

ELIZABETH PHANGELA: We didn't know if he was moved or not because we last
saw him there then the next time we heard of him they said he was dead.

ADV ADILA HASSIM: Who informed you of his passing?

ELIZABETH PHANGELA: My mother called me on the 15th, she said a lady contacted her that her son was passed away.

ADV ADILA HASSIM: Do you remember the name of the lady who contacted your family?

5 **ELIZABETH PHANGELA:** No, I do not remember because I only spoken to my mother.

ADV ADILA HASSIM: At the time, but now do you remember?

ELIZABETH PHANGELA: Yes I know.

ADV ADILA HASSIM: And who was it?

10 **ELIZABETH PHANGELA:** It was ETHELEthel Ncube.

ADV ADILA HASSIM: And was Christopher at Precious Angels?

ELIZABETH PHANGELA: We didn't know we only knew on the 16th that he was kept at Precious Angels.

ADV ADILA HASSIM: Had you visited Christopher at Life Esidimeni?

15 **ELIZABETH PHANGELA:** Yes, we did.

ADV ADILA HASSIM: And what condition was suffering from?

ELIZABETH PHANGELA: He was epileptic.

ADV ADILA HASSIM: Was he taking medication?

ELIZABETH PHANGELA: Yes.

ADV ADILA HASSIM: And when you visited him at Life Esidimeni where you informed that they would be moving Christopher to another facility?

ELIZABETH PHANGELA: They did tell us that the hospital was going to be closed.

ADV ADILA HASSIM: But they didn't tell you specifically when Christopher would
5 be moved? Is that right?

ELIZABETH PHANGELA: No, they didn't tell us.

ADV ADILA HASSIM: And when was the last time you saw Christopher?

ELIZABETH PHANGELA: It was May 2016.

ADV ADILA HASSIM: May 2016. And how was he, what was his condition when
10 you saw him?

ELIZABETH PHANGELA: He was handsome and he had his new clothes on and I even sang to him because of how I was so happy, I just wanted to show him the way I felt at that time.

ADV ADILA HASSIM: Can you tell us about the phone call that your family
15 received from Miss Ncube?

ELIZABETH PHANGELA: It was at my mother's home, it was my mother and I who was sitting in the bedroom and talking to each other.

ADV ADILA HASSIM: Can you just confirm again what date was it when you received the phone call?

ELIZABETH PHANGELA: The initial call was on the 15th but we received another phone call on the 16th when I was with my mother.

ADV ADILA HASSIM: And what did Miss Ncube tell you?

ELIZABETH PHANGELA: She asked if they could bury Christopher for them.

5 **ADV ADILA HASSIM:** So if who can bury Christopher?

ELIZABETH PHANGELA: It was Ethel who said that to us.

ADV ADILA HASSIM: So I just want to be clear you were phoned on the 15th of July 2016 by Miss Ncube who informed you for the first time that Christopher had passed away is that right?

10 **ELIZABETH PHANGELA:** Yes.

ADV ADILA HASSIM: And in the same phone call she asked if she can go ahead and bury him?

ELIZABETH PHANGELA: Yes it was the same conversation.

ADV ADILA HASSIM: And how did you respond to her?

15 **ELIZABETH PHANGELA:** I was really hurt because I asked her that they only informed us yesterday that he was passed and now you want to go ahead and bury him, what is wrong. Because as the family we haven't gathered together and discussed to bury my brother.

ADV ADILA HASSIM: So the first phone call was to inform you that he passed away and the second phone call was to ask if they can burry, I just want to get the dates correct?

ELIZABETH PHANGELA: Yes, it's correct.

5 **ADV ADILA HASSIM:** Why did she take so long to inform you?

ELIZABETH PHANGELA: I asked her the following Monday when we went there to take my brother body that why did they take so long to inform us about his passing.

ADV ADILA HASSIM: And what did she say?

10 **ELIZABETH PHANGELA:** She said that they didn't have our contact details.

ADV ADILA HASSIM: And when did you then go to collect Christopher body?

ELIZABETH PHANGELA: It was on Monday 19th July 2016.

ADV ADILA HASSIM: Did you go to Precious Angels?

ELIZABETH PHANGELA: We didn't know that place very well we only took our
15 undertaker and they arranged that we would meet them at the morgue there.

ADV ADILA HASSIM: You arranged with whom?

ELIZABETH PHANGELA: It was with Ethel.

ADV ADILA HASSIM: And you arrange to meet at which morgue?

ELIZABETH PHANGELA: In Atteridgeville.

ADV ADILA HASSIM: Do you remember the name?

ELIZABETH PHANGELA: No I don't know.

ADV ADILA HASSIM: And what did Miss Ncube say when she met you at the morgue?

5 **ELIZABETH PHANGELA:** She said that she is going to take us to put him to rest so that we can pay for the corpse.

ADV ADILA HASSIM: So you then went to put you to rest?

ELIZABETH PHANGELA: Yes, we went there but I saw only an open field, there were no proper offices there.

10 **ADV ADILA HASSIM:** And then what did you do?

ELIZABETH PHANGELA: When we got there she went out of the car and she talked to another gentleman and then she came back to our car. And the other gentleman took the undertaker.

ADV ADILA HASSIM: And who identified Christopher's body?

15 **ELIZABETH PHANGELA:** Ethel was with us in the car or in the car that we organised our funeral undertaker, and it was only that gentleman who went away. Only what I saw is just a rusty place there were no proper offices. It was just a place I couldn't identify it as a mortuary because the corpse was there at the door and when we went in the gentleman from that place said this is your brother, you can
20 even check him we didn't cut him or do anything to him.

ADV ADILA HASSIM: Do you remember the name of the gentleman who spoke to you?

ELIZABETH PHANGELA: I don't know the guy I can't even point him out if he had to come. Because everything was just hurried up and we had an argument there in
5 that process but I had to check my brother at that moment so I didn't take his name or identify him.

ADV ADILA HASSIM: And then, did your undertaker take Christopher to your, to a different funeral parlour?

ELIZABETH PHANGELA: Yes, they took him to the funeral undertaker that we
10 organized as a family.

ARBITRATOR JUSTICE MOSENEKE: Was your brother's body properly refrigerated?

ELIZABETH PHANGELA: I didn't see any refrigeration, because he was there at the door, I couldn't see any proper facility that indicated that it was a mortuary. I
15 only saw that it was my brother because he had a lump in his forehead.

ARBITRATOR JUSTICE MOSENEKE: But had they told you then that he have died on the 3rd of July 2016?

ELIZABETH PHANGELA: I thank you Justice because it was only you who asked Ethel when she was here, that when did my brother die. Because we had different
20 dates and other papers indicate that he only passed on it was in the evening.

ARBITRATOR JUSTICE MOSENEKE: But did they say then that they kept your brother and put you to rest from then the 2nd or 3rd of July up to when you were there to fetch him on the 19th of July?

ELIZABETH PHANGELA: Yes it was Ethel who told us and she said that we must
5 pay because they kept my brother for a very long time. That is why I argued with her and saying that they only told us yesterday that my brother passed away.

ARBITRATOR JUSTICE MOSENEKE: Who did she say you must pay?

ELIZABETH PHANGELA: Ethel Ncube.

ARBITRATOR JUSTICE MOSENEKE: Okay, let me put it in another way - who
10 had to be paid?

ELIZABETH PHANGELA: Another funeral parlour who put you to rest. They say we must pay the people from Put you to Rest.

ARBITRATOR JUSTICE MOSENEKE: Was your brother's body decomposed or in
order?

ELIZABETH PHANGELA: He wasn't in a good situation or the form of his body if I
15 knew then I would have taken pictures but he wasn't decomposed or anything like that.

ARBITRATOR JUSTICE MOSENEKE: He was not decomposed?

ELIZABETH PHANGELA: No.

ADV ADILA HASSIM: Thanks, Justice. Was he covered?
20

ELIZABETH PHANGELA: He had a burned track pants on him or trouser and a big top that matched that check pant. He had different socks on...

ARBITRATOR JUSTICE MOSENEKE: Now the witness says the pair of socks were not the same.

5 **ADV ADILA HASSIM:** Thank you, Justice.

ARBITRATOR JUSTICE MOSENEKE: So it's a pair that looked differently...

ADV ADILA HASSIM: Mismatched.

ARBITRATOR JUSTICE MOSENEKE: Mismatched, that is the word thank you.

10 **ELIZABETH PHANGELA:** He had a vest on that only he had one part missing, so he was only covered the half part of his body.

ARBITRATOR JUSTICE MOSENEKE: Did he have shoes on?

ELIZABETH PHANGELA: No he didn't have shoes. He had emaciated], so the clothes that he had on were very big, and that is why I phoned Ethel to question her, that why did they put those clothes on.

15 **ARBITRATOR JUSTICE MOSENEKE:** And when they showed your brother to you was he on a table on a stretcher or on the floor?

ELIZABETH PHANGELA: He was on the floor.

ADV ADILA HASSIM: Was there a tag on his wrist or ankle to identify him?

20 **ELIZABETH PHANGELA:** No, he didn't have any tag on. That's the reason why I asked how did they know it was him.

ADV ADILA HASSIM: And the clothes that he was wearing were those his clothes?

ELIZABETH PHANGELA: No. We don't know, we didn't recognize his clothes.

ADV ADILA HASSIM: Did you, do you know what caused Christopher's death, did you ask Ethel?

5 **ELIZABETH PHANGELA:** Yes, I did ask Ethel.

ADV ADILA HASSIM: And what did she say?

ELIZABETH PHANGELA: She said my brother was only sleeping when the sister took rounds it was when she notified Ethel that Christopher doesn't, or he is not waking up when she was trying to wake him up.

10 **ADV ADILA HASSIM:** So Ethel says he passed away in his sleep?

ELIZABETH PHANGELA: Ethel said he passed away after breakfast and I asked Ethel if he took his medication and then she said yes, he did take his medication.

ADV ADILA HASSIM: Please may I refer you to page 3800 of the same file that is in front of you? 3800. Justice for the record this document is an official Gauteng provincial government document headed the department of health emergency medical services. And it purports to be a document signed by an emergency medical practitioner a MR. T Nkosi. It is not dated – I'd just like the witness to be sure that we are on the right page.

ELIZABETH PHANGELA: Yes, yes, on the right page.

20 **ADV ADILA HASSIM:** It states that Mr. Nkosi was dispatched to an address, 194 Burgatallery Street in Danville and it notes that the person to whom he attended

identified to him as Christopher Makoba passed away at 08:57 that morning. The difficulty with this form is that it says that he arrived on Sunday 3rd July 2015. The second difficulty with the form is that it is not commissioned. So there is no confirmation by a commissioner of oaths, that this is, in fact, a sworn statement and
5 that the contents are true and correct. But Mrs. Phangela, this document suggests that Christopher passed away in the morning on the 3rd of July and I presume that 2015 is an error on the form?

ELIZABETH PHANGELA: Yes, it does say so, but they didn't tell us the truth.

ADV ADILA HASSIM: You went to collect Christopher's body, what about his
10 belongings - his ID, his clothes, medical record, whatever he may have had with him – did Ethel return those to you?

ELIZABETH PHANGELA: She didn't give us anything – it was only the ID – that is when I've asked her "how can you say you didn't have our contact details, but you have his ID document?".

15 **ADV ADILA HASSIM:** Was your address in his ID document or your mother's address rather?

ELIZABETH PHANGELA: No, there was no address, but I thought if they could go to Home Affairs and try to track us down, I think they would have found some of our details there and they do have our phone numbers, 7 of them.

20 **ADV ADILA HASSIM:** 7 phone numbers of 7 family members?

ELIZABETH PHANGELA: Yes

ADV ADILA HASSIM: And did she provide you with any other of his belongings?

ELIZABETH PHANGELA: There is nothing, she only gave us these papers. I even asked her why did she write and then scratch again on the paper, because it wasn't clear what she has written.

5 **ADV ADILA HASSIM:** On which paper are you referring to?

ELIZABETH PHANGELA: She is referring to the file she gave them.

ADV ADILA HASSIM: Oh, I see. Did you ask her for the belongings?

ELIZABETH PHANGELA: Yes, I did ask for his belongings and I asked her again to show me where he was kept where he slept or where he died.

10 **ARBITRATOR JUSTICE MOSENEKE:** Were you taken to Danville?

ELIZABETH PHANGELA: No, we didn't go there. She said it was too far and she was busy with other patients.

ADV ADILA HASSIM: Did you go at any other time?

ELIZABETH PHANGELA: We did arrange for some other time and she said yes, I
15 can come.

ADV ADILA HASSIM: Did you go?

ELIZABETH PHANGELA: I did go there when I called her she said she was driving – I must wait for her, but she didn't pitch.

ARBITRATOR JUSTICE MOSENEKE: Did you tell Ethel Ncube that, according to
20 tradition, it is very important to know exactly where your loved one died?

ELIZABETH PHANGELA: Yes, she said she knew that and she said she'll take us there.

ARBITRATOR JUSTICE MOSENEKE: So she understood why you wanted to go to Danville?

5 **ELIZABETH PHANGELA:** Yes, she did understand.

ADV ADILA HASSIM: So, you never then had an opportunity to visit the place where Christopher passed away?

ELIZABETH PHANGELA: Here I would like to thank Section 27 because they are the ones whom showed us which route to take – they sent Kayla to me and that was
10 the opportunity I got to go and see the place.

ADV ADILA HASSIM: Did Ms. Ncube never contacted you again?

ELIZABETH PHANGELA: I did phone Ethel when I didn't understand something that was written and I did call her again when we were with Kayla, notifying her that we were coming, but only to find out that they have moved out the previous
15 evening.

ADV ADILA HASSIM: So, the place was closed?

ELIZABETH PHANGELA: Yes, it was closed.

ADV ADILA HASSIM: And, did you ever speak to Ms. Ncube again?

ELIZABETH PHANGELA: Yes, I did make contact.

20 **ADV ADILA HASSIM:** Why?

ELIZABETH PHANGELA: It is because I wanted to notify her that I was going to open a case against her at Atteridgeville Police Station, so that was when I talked to her, notifying her about that.

ADV ADILA HASSIM: Why did you want to open a case at Atteridgeville Police
5 Station?

ELIZABETH PHANGELA: I took that decision because I saw that she was a thief – she killed someone and then she even vacated the premises the previous night, so I only saw fit that I should open a case against her because she was a thief and a murderer.

10 **ADV ADILA HASSIM:** Did you then go to the Atteridgeville Police Station to open a case against her?

ELIZABETH PHANGELA: Yes, I did go to the Police Station and I called her when I was at the Police Station again.

ADV ADILA HASSIM: And did you speak to any police officer at the Police
15 Station?

ELIZABETH PHANGELA: Yes, yes.

ADV ADILA HASSIM: And did they open a case for you – did they give you a case number?

ELIZABETH PHANGELA: Yes

20 **ADV ADILA HASSIM:** And did they ever contact you again – the police?

ELIZABETH PHANGELA: My sister was going to make a follow-up, but when she was trying to phone the Police Station, her fingers – the phone was slippery and then she dialled Ethel’s number by mistake, but she did talk to Ethel and then after that phone call, she said to me no, they didn’t – Ethel was not in jail, because I was
5 just talking to her. Then after that, I phoned warrant McCurry, he’s the officer there and to notify him that Ethel was not arrested.

ADV ADILA HASSIM: What did officer McCurry say to you?

ELIZABETH PHANGELA: He informed us that he is still waiting for a court order to go and arrest Ethel – I think the legal document.

10 **ADV ADILA HASSIM:** Do you have – do you still have the case number that they provided to you when you first went to the police?

ELIZABETH PHANGELA: Yes, I do have it.

ADV ADILA HASSIM: And have you heard from them again – the police?

ELIZABETH PHANGELA: It was only in July this year that another police officer
15 phoned me and told me that McCurry has also passed away. So, he was the one who was going to take the case over.

ADV ADILA HASSIM: And what was the name of that officer that called you in July 2017?

ELIZABETH PHANGELA: She can’t remember – she says it is Nnotho or Nncolo
20 (?) – something there.

ADV ADILA HASSIM: Where do you think Christopher died? You were very concerned and you opened a case at the Police Station – what do you think is the cause of his death?

5 **ELIZABETH PHANGELA:** I think it was because he wasn't taking his medication properly. Christopher knew that after he's taken a bath, he should take his medication, but I think that is what killed him because he didn't receive proper medication.

ADV ADILA HASSIM: Was Christopher receiving a disability grant from SASSA?

ELIZABETH PHANGELA: Yes, he did receive a grant.

10 **ADV ADILA HASSIM:** Who collected the grant for him, given that he was in an institution?

ELIZABETH PHANGELA: The card was kept there, they were the ones who collected the money.

ADV ADILA HASSIM: Kept where?

15 **ELIZABETH PHANGELA:** From Life Esidimeni, they are the ones who kept his SASSA card.

ADV ADILA HASSIM: Did they collect the money every month from SASSA?

ELIZABETH PHANGELA: I am not sure, but because we were happy that he was kept he was looked after very well there at Waverley, because so we didn't know if
20 they took it or not.

ADV ADILA HASSIM: Did anybody return his SASSA card to you?

ELIZABETH PHANGELA: No, no-one did.

ADV ADILA HASSIM: When was Christopher laid to rest?

ELIZABETH PHANGELA: Between the 23rd or 24th of July 2016.

ADV ADILA HASSIM: Who arranged for the burial services and paid for the funeral
5 expenses?

ELIZABETH PHANGELA: It was my sister and I, but the initial person who paid for
everything was my mother because she had a policy.

ADV ADILA HASSIM: Do you know how much it cost you and your sister?

ELIZABETH PHANGELA: She doesn't know the precise amount, but she can
10 estimate.

ADV ADILA HASSIM: Were there a lot of visitors at the time of the funeral?

ELIZABETH PHANGELA: Yes, they did come, because in our culture from day
when they hear of the passing of a person, everyone comes.

ADV ADILA HASSIM: Did you have to provide food to all the visitors?

15 **ELIZABETH PHANGELA:** Yes, we did.

ADV ADILA HASSIM: What has the impact of Christopher's death been on you
and your family Mrs. Phangela?

ELIZABETH PHANGELA: It was very painful and hurtful, because we had 3
brothers and the 2 of them since they also passed on and we knew how they died
20 and when they died, but with Christopher we didn't have all the details, so that is

why it was very painful and my mother as well, that's why she cried so much, because she didn't know what really happened to Christopher.

ADV ADILA HASSIM: Mrs. Phangela, you've been present at these hearings since the beginning and you've heard some of the government officials who've come to
5 explain what happened. There will be others who will come in the future, but is there anything you would like to say, based on what you have heard so far? Is there anything you would like to add?

ELIZABETH PHANGELA: She is saying, who are you referring to?

ADV ADILA HASSIM: Which government officials?

10 **ELIZABETH PHANGELA:** She is referring to Counsellor that she is very hurtful because she loves her family and Christopher – when Christopher was here it wasn't a mistake she loves her family and everybody, so she is referring to the Counsellor who are still continuing to address government officials.

ARBITRATOR JUSTICE MOSENEKE: She is referring to the State Counsellor?

15 **ELIZABETH PHANGELA:** Yes Justice. Someone who was a witness here compared this situation here to the Marikana, but I don't compare this situation to Marikana, because people at Marikana was protesting and they had weapons on them, but these people didn't do anything – they didn't go and protest, they were patients.

20 **ARBITRATOR JUSTICE MOSENEKE:** And they were taken were taken out, thrown onto trucks, helplessly – I thought that is what the witness said. I thought the

witness said these were innocent people who were patients – who were taken, thrown out there and put on trucks – what have they done to deserve that?

ELIZABETH PHANGELA: Yes, that is what she said, yes.

ARBITRATOR JUSTICE MOSENEKE: Sure

5 **ELIZABETH PHANGELA:** She says they were innocent and whenever she went to visit Christopher 5 or 10 of them they would come because they were happy to see anyone who was coming from outside and she was carrying sweets and 50c to give each of them, because that is how happy they were.

ARBITRATOR JUSTICE MOSENEKE: Who were they fighting? Who were they
10 fighting, it looks they were abandoned in an open field?

ELIZABETH PHANGELA: They didn't know anything, they only knew it is time to eat and time to take medication and they will go outside and play and they were very happy when they were discharged and they were taken home because they knew that they wanted to visit home they were happy. But now, these women, like
15 me, they killed these people.

ADV ADILA HASSIM: Thank you Mrs. Phangela, I don't have further questions.

ELIZABETH PHANGELA: Thank you.

ARBITRATOR JUSTICE MOSENEKE: Now, on page 3802 – how does one categorize that document?

20 **ELIZABETH PHANGELA:** Yes, Justice

ARBITRATOR JUSTICE MOSENEKE: I will tell you what is potentially important, is the note at the bottom – these patients were brought from Waverley without – as I can see – medical history.

ADV ADILA HASSIM: Assessment, without assessment or medical history.

5 **ARBITRATOR JUSTICE MOSENEKE:** Is it clear who would have compiled the document?

ADV ADILA HASSIM: Justice, the document...

ARBITRATOR JUSTICE MOSENEKE: There is a medical officer at the top, but I don't see the name of the medical officer.

10 **ADV ADILA HASSIM:** Right at the bottom right-hand corner of the page, it says the name of the medical officer is MS – and I can't read the signature and it is dated 22 June 2016, and...

ARBITRATOR JUSTICE MOSENEKE: Would that be the possible date of admission at...

15 **ADV ADILA HASSIM:** At, potentially, at Precious Angels, but we don't have evidence of that, because the family would wasn't informed, because the last visit that the family had with Christopher was May 2016,

ARBITRATOR JUSTICE MOSENEKE: You see after that note if you go to page 3803.

20 **ADV ADILA HASSIM:** Yes, but my understanding is that is a different document – the two – they are not part of the same set.

ARBITRATOR JUSTICE MOSENEKE: That is from Life Esidimeni – it would be different from...

ADV ADILA HASSIM: Yes.

ARBITRATOR JUSTICE MOSENEKE: ...the previous ones.

5 **ADV ADILA HASSIM:** Yes.

ARBITRATOR JUSTICE MOSENEKE: And 3804 – will this still be Life Esidimeni or will it just be part of page 3800?

ADV ADILA HASSIM: That is possible that it is part of – it isn't part of the Life Esidimeni page, which is a page which clearly record the patients' progress. So, it is
10 a page for taking notes and to report patients' progress. These documents were provided to the families by Ms. Ncube in this current form, incomplete as they are. As you will see from page 3802, it says it is page 5 of 26, but all 26 pages are not provided and these were the documents that were provided to the family and that the family provided to the attorneys.

15 **ARBITRATOR JUSTICE MOSENEKE:** Of course she told us herself the patients were brought there – Ms. Ncube – they were brought there without assessment ...

ADV ADILA HASSIM: Yes.

ARBITRATOR JUSTICE MOSENEKE: ...and without records.

ADV ADILA HASSIM: That's correct.

20 **ARBITRATOR JUSTICE MOSENEKE:** And this is an epileptic person...

ADV ADILA HASSIM: That's correct.

ARBITRATOR JUSTICE MOSENEKE: ... who would have depended for his life on the medication and if you look at, but look after 3802 – that happens to be a Life Esidimeni document – it happens to be a description of how he died, can you see
5 that? And somebody has written in the right corner. Patient drink night medication without any problems – after some few minutes, he vomited – during the night he was often checked if he is okay, In the morning, at about 6 am, when bathing patient, went to check the patient again and realized that he was cold. Checked the pulse and there was no pulse. On some record, presumably, they received,
10 somebody made this entry on the 3rd of ...

ADV ADILA HASSIM: June

ARBITRATOR JUSTICE MOSENEKE: ...June, which is a month ...

ADV ADILA HASSIM: ...earlier.

ARBITRATOR JUSTICE MOSENEKE: ...earlier. Is this of any help to us?

15 **ADV ADILA HASSIM:** The only inference that I can draw from all of this, is that there was one very poor record keeping and it is very – well, we can't even make sense of the report by the medical officer, the emergency medical officer who said that he attended at Danville. We don't know whether that can be taken to be a true reflection of what took place. I think all that we can say is, is in fact, that – and I say
20 this with ...

ARBITRATOR JUSTICE MOSENEKE: Can we say with disrespect – can't we?

ADV ADILA HASSIM: ...that, well also with reluctance, because I think it is possible that the date that is recorded on this death certificate is not accurate. It was simply what was provided

ARBITRATOR JUSTICE MOSENEKE: ...and the duty to keep proper record of all
5 the patients – you look at what’s available before us is totally symbolic - so inadequate, so inaccurate, so lacking in what is necessary to give care to somebody who is epileptic. Just by reading this ... anyway, it may be a matter for argument later. Did you ever asked for any records of your brother, because we are looking at some records here that the State had given us and there are just no records?

10 **ELIZABETH PHANGELA:** Yes, we did ask for records.

ARBITRATOR JUSTICE MOSENEKE: Did she give you any?

ELIZABETH PHANGELA: She only gave us this papers. There was nothing else that she gave us. We only saw this file when we back at home when we were reading through the file.

15 **ARBITRATOR JUSTICE MOSENEKE:** Yes, I’m done. Any further questions in light of what I have asked?

ADV ADILA HASSIM: Justice, anything that I can say now will only add to further confusion regarding what the meaning of these documents are, who filled them in, why there is no sense of the dates. There is actually – what these documents show,
20 unfortunately, is that there isn't an answer. It isn't clear what happened, it isn't clear who cared for Christopher and it isn't, in fact, clear what procedures were followed by medical officers and or those responsible for registration of death.

ARBITRATOR JUSTICE MOSENEKE: Even to certify his death, to ascertain the date of death, to ascertain the cause of death or the place of death – it is shocking by just looking at these skimpy documents.

ADV ADILA HASSIM: Indeed.

5 **ARBITRATOR JUSTICE MOSENEKE:** Very well. Let's start with questions. Counsel.

ADV ADILA HASSIM: Thank you, Justice. My learned friend, Mr. Skibi will ask a few questions.

ARBITRATOR JUSTICE MOSENEKE: Very well.

10 **LEGAL AID NZAME SKIBI:** Thank you, Justice. I just want to ask one or two questions. Did you undergo any counselling after having heard the sad news of the passing of your brother?

ELIZABETH PHANGELA: Yes, we did.

LEGAL AID NZAME SKIBI: Thank you. No further questions.

15 **ARBITRATOR JUSTICE MOSENEKE:** Who provided the counselling?

ELIZABETH PHANGELA: SADAG – they are the ones who arranged for us for counsellors to come to our house in Soweto.

ARBITRATOR JUSTICE MOSENEKE: SADAG? The South African Depression Association, isn't it?

20 **ADV ADILA HASSIM:** Depression and Anxiety Group

ARBITRATOR JUSTICE MOSENEKE: Thank you. Any further questions?

LEGAL AID NZAME SKIBI: No, thank you, Justice.

ARBITRATOR JUSTICE MOSENEKE: You are done?

LEGAL AID NZAME SKIBI: Yes.

5 **ARBITRATOR JUSTICE MOSENEKE:** Very well. Counsel Groenewald?

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

ARBITRATOR JUSTICE MOSENEKE: Very well. Evidence leaders, Counsel?

10 **EVIDENCE LEADER PATRICK NGUTSHANA:** Thank you ARBITRATOR JUSTICE MOSENEKE. Ma'am Phangela, just to place one thing on record on the document you have been referred to on 3803 – are you on the page?

ELIZABETH PHANGELA: Page?

EVIDENCE LEADER PATRICK NGUTSHANA: Page 3803

ELIZABETH PHANGELA: Yes

15 **EVIDENCE LEADER PATRICK NGUTSHANA:** The document at the top – it is written patient's progress – the name is Christopher Makoba, then there is, against the doctor, there is something written there – I can't read what is exactly what that is. Underneath there, there's a date – the first entry is the date and the time as I see it is 11:15, can you see that?

20 **ELIZABETH PHANGELA:** Yes

EVIDENCE LEADER PATRICK NGUTSHANA: Yes. The date entry there is 06/2016 – I can't see the exact date there – eish, and on the notes it reads: user will be transferred to an NGO today, conditions: satisfactory, well – I'm not sure well what, then it goes on: no recent aeries noted, then there is an entry, which reads:
5 TTO for 28 days supplied – I assume that will be the medication. Then it goes on with: file with patient's details taken with. Do you see that?

ELIZABETH PHANGELA: Yes, I can see that.

EVIDENCE LEADER PATRICK NGUTSHANA: So, from this appears, your brother may have been transferred from Life Esidimeni during June, but it is not
10 sure exactly what date in June and as you indicate on the 3rd of, that is the next month, the incident occurred as it appears on the paper that is on the page 3800 – where is he died? In fact, in less than a month that your brother was transferred to that NGO – which is not identified on the page – he met his demise.

ELIZABETH PHANGELA: Yes, that is what I've said.

15 **EVIDENCE LEADER PATRICK NGUTSHANA:** Thank Justice Moseneke, I have nothing further.

ARBITRATOR JUSTICE MOSENEKE: It probably happened when the 28 days of TTO, of the medication that was given to him, ran out.

EVIDENCE LEADER PATRICK NGUTSHANA: Correct Justice Moseneke.

20 **ARBITRATOR JUSTICE MOSENEKE:** From the dates here.

EVIDENCE LEADER PATRICK NGUTSHANA: From the dates, yes.

ARBITRATOR JUSTICE MOSENEKE: Looks like when the medication ran out, he died.

EVIDENCE LEADER PATRICK NGUTSHANA: That's correct.

ARBITRATOR JUSTICE MOSENEKE: Counsel for the State?

5 **COUNSEL FOR THE STATE – ADV TEBOGO HUTAMO:** Thank you, Justice. Ms. Phangela, good morning.

ELIZABETH PHANGELA: Yes, good morning.

COUNSEL FOR THE STATE – ADV TEBOGO HUTAMO: On behalf of the government, we have had the account in the experience that you have had gone
10 through during the passing of your brother, Christopher Makoba. We indeed regret his passing – there is no justification that can be made for the loss of your brother, and all that I can say is that we trust that this process should be able to assist for you to find closure with regards to the unfortunate occurrence of the death of your brother. And, we thank you for having taken the time to be part of this process,
15 together with other family members and the government officials in order to get to the bottom of the process of the tragic events which had occurred. On that note Justice, we have no questions to the witness. We just regret the passing of his brother, Christopher Makoba. Thank you, Justice.

ARBITRATOR JUSTICE MOSENEKE: Thank you. Ma'am Phangela, you have
20 the right to answer, if you want to – you are not compelled.

ELIZABETH PHANGELA: Counsel, I will find closure if all these women had been arrested and put to jail, that is when I will find closure. I will be very happy if these women were arrested, even when Ethel was here, I did talk to her and did say to her and she said to me: only 37 people at that time were dead, but then we
5 uncovered that more people died, but I want to talk to them woman to woman face to face.

ARBITRATOR JUSTICE MOSENEKE: And, I told you that we are going to meet – it won't end up here. We are going to meet and now here we meet I felt this and that...

10 **ELIZABETH PHANGELA:** Yes, it's true Justice. Yes indeed Justice, I told her that one day we will meet and yes, it did happen and other people were asking us that why did she say so, and she said that she said she didn't know why she didn't leave what she was doing ...

ARBITRATOR JUSTICE MOSENEKE: Yes. Why didn't you stop farming with
15 people?

ELIZABETH PHANGELA: Yes, yes – her correct words.

ARBITRATOR JUSTICE MOSENEKE: That is really what the witness implies.

ELIZABETH PHANGELA: Yes.

ARBITRATOR JUSTICE MOSENEKE: Yes.

20 **ELIZABETH PHANGELA:** It really hurts me when people are greedy and when they want their pockets full of money when we struggle even to go and visit our

loved ones. My mother is very old and she can't even walk by herself or and she only last – she saw his son – she last saw his son on the 18th of May 2016.

ARBITRATOR JUSTICE MOSENEKE: Counsel, re-examination?

ADV ADILA HASSIM: No re-examination Justice.

5 **ARBITRATOR JUSTICE MOSENEKE:** Is there anything that you would like to add?

ELIZABETH PHANGELA: Thank you, Justice, because they elected you and you are the one who summoned the people to come here, like Mrs. Masondu and she is my brother-in-law's neighbour in Rawville(?), Soweto. So, thank you for you
10 summoning then to come here, so that we can hear all the truths about what happened.

ARBITRATOR JUSTICE MOSENEKE: Thank you. It is not me, it is all these smart Advocates, but I will take the credit if you give it to me. Thank you, Mrs. Phangela.

15 **ELIZABETH PHANGELA:** Thank you and Section 27.

ARBITRATOR JUSTICE MOSENEKE: Thank you and you also thank Section 27, she says. Very well, we are going to take a tea-break – it is like 17 minutes before 12. We will have to do it quickly. We meet at a quarter past 12, to resume the hearing, please. We are adjourned for now.

20

08 November 2017

SESSION 2

ARBITRATOR, JUSTICE MOSENEKE: Thank you. You may be seated. Council?

ADV ADILA HASSIM: Thank you Justice. The next witness we wish to call is Ms

5 Nono Moditse.

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]?

MS NONO MODITSE: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]

MS NONO MODITSE: [Vernacular]

10 **ARBITRATOR, JUSTICE MOSENEKE**: [Vernacular]

MS NONO MODITSE: Setswana.

ARBITRATOR, JUSTICE MOSENEKE: Setswana, okay. Would you put your full names on record please?

INTERPRETER: [Vernacular]

15 **MS NONO MODITSE**: Nono Joan Moditse.

INTERPRETER: Nono Joan Moditse.

ARBITRATOR, JUSTICE MOSENEKE: Moditse?

MS NONO MODITSE: Hm.

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

INTERPRETER: [Vernacular]

5 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: Sworn in.

ARBITRATOR, JUSTICE MOSENEKE: Council.

ADV ADILA HASSIM: (Inaudible – Advocate not talking into the mic)

ARBITRATOR, JUSTICE MOSENEKE: Yes.

10 **ADV ADILA HASSIM**: Good afternoon Ms Moditse.

INTERPRETER: [Vernacular]

MS NONO MODITSE: Afternoon.

ADV ADILA HASSIM: Can you please explain to us what your relationship is to Charity Ratsotso?

15 **INTERPRETER**: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: Charity is my brother. I am the third one behind him.

ADV ADILA HASSIM: And do you know when Charity passed away?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: 11th of July.

ADV ADILA HASSIM: Was Charity ever at Life Esidimeni, at one of the Life Esidimeni facilities?

5 **INTERPRETER**: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]

INTERPRETER: [Vernacular]

MS NONO MODITSE: 2016.

INTERPRETER: 2016.

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

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

ADV ADILA HASSIM: And was he moved from Life Esidimeni?

15 **INTERPRETER**: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: He started at Witpoortjie.

MS NONO MODITSE: [Vernacular]

ADV ADILA HASSIM: When was that?

INTERPRETER: [Vernacular]

MS NONO MODITSE: 2015 I think.

INTERPRETER: I think 2015.

MS NONO MODITSE: 2015.

5 **INTERPRETER:** 2015.

ADV ADILA HASSIM: Before you say ... Can you just tell us what was Charity's medical condition?

INTERPRETER: [Vernacular]

MS NONO MODITSE:

10 **INTERPRETER:** He had epileptic fits.

ADV ADILA HASSIM: Okay, so, he was at Witpoortjie in 2015?

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes. [Vernacular]

INTERPRETER: Yes he was at Witpoortjie, but he stayed for a very long period at
15 Witpoortjie.

ADV ADILA HASSIM: For how many years was he there?

INTERPRETER: [Vernacular]

MS NONO MODITSE: 10 Years.

INTERPRETER: 10 Years.

ADV ADILA HASSIM: And did you visit ... Did you and your family visit Charity at Witpoortjie?

MS NONO MODITSE: Yes.

INTERPRETER: [Vernacular]

5 **MS NONO MODITSE**: Yes.

ADV ADILA HASSIM: How often would you visit?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: After a month, or sometimes after two months.

10 **ADV ADILA HASSIM**: And what was his condition when you visited him?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: He was healthy...

MS NONO MODITSE: [Vernacular]

15 **INTERPRETER**: And he was strong, and he was happy.

ADV ADILA HASSIM: And when was he moved from Witpoortjie?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: April 2015.

ADV ADILA HASSIM: Were you informed that he would be moved from the Life Esidimeni in Witpoortjie?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

5 **INTERPRETER**: The social worker from Witpoortjie called us and informed us that they are going to move Charity.

MS NONO MODITSE: To Cullinan.

INTERPRETER: To Cullinan.

10 **ADV ADILA HASSIM**: And were you informed before he was moved or after he was moved?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: After he was moved.

ADV ADILA HASSIM: And did you then visit him at Cullinan?

15 **INTERPRETER**: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: I went to Cullinan with my brother, Kevin Moditse.

MS NONO MODITSE: [Vernacular]

INTERPRETER: On June 2016.

MS NONO MODITSE: [Vernacular]

INTERPRETER: On the 16th of June 2016.

ADV ADILA HASSIM: And how was Charity's condition when you visited him?

INTERPRETER: [Vernacular]

5 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: He was very right, he was fine and you could see that he is eating healthy and taking his medication.

ADV ADILA HASSIM: And when was the last time that you saw Charity?

INTERPRETER: [Vernacular]

10 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: On 16 June 2016.

ADV ADILA HASSIM: Did any of your other ... Did any other family members visit him after that?

INTERPRETER: [Vernacular]

15 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: No, thereafter no.

MS NONO MODITSE: [Vernacular]

INTERPRETER: Because during September we received a phone call, sorry it was a sms ... [intervention]

ARBITRATOR, JUSTICE MOSENEKE: Before December 2016?

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: Where at Cullinan was your brother kept?

INTERPRETER: [Vernacular]

5 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: It was at Life Esidimeni at Cl...

MS NONO MODITSE: [Vernacular]

INTERPRETER: There at Cullinan CRC.

ARBITRATOR, JUSTICE MOSENEKE: So that was at Cullinan Rehabilitation
10 Centre?

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

ARBITRATOR, JUSTICE MOSENEKE: And that's where you found him in good
health?

15 **INTERPRETER**: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Thank you.

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: Did your brother visit him at Cullinan?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: Kevin, yes.

5 **ADV ADILA HASSIM**: When?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: We saw him ... The last time that we saw him was on June 16, 2016.

10 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: And one of our family members informed us that there are some people who died at Atteridgeville, from Life Esidimeni.

MS NONO MODITSE: [Vernacular]

INTERPRETER: We must check on Charity about his whereabouts.

15 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: I called Daphne; I think it was during September.

MS NONO MODITSE: It was late afternoon.

INTERPRETER: It was late in the afternoon.

MS NONO MODITSE: [Vernacular]

INTERPRETER: I asked about Charity's condition and told that person that I've learned that people are being transferred from the Mental Health to other places.

MS NONO MODITSE: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]

5 **MS NONO MODITSE:** [Vernacular]

INTERPRETER: What is the date?

MS NONO MODITSE: 2016.

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]

MS NONO MODITSE: [Vernacular]

10 **INTERPRETER:** I phoned Daphne during August and September. [Vernacular]?

MS NONO MODITSE: 2016.

INTERPRETER: 2016.

MS NONO MODITSE: [Vernacular]

INTERPRETER: Daphne informed me that she is with Charity and he can see him
15 because he had just passed.

MS NONO MODITSE: [Vernacular]

INTERPRETER: That is how she informed me.

MS NONO MODITSE: [Vernacular]

INTERPRETER: And we even shared a joke that he must tell the Minister that even I was called during the night. Then we shared the joke and laughed.

ADV ADILA HASSIM: But did Charity go missing at any point?

INTERPRETER: [Vernacular]

5 **MS NONO MODITSE:** [Vernacular]

INTERPRETER: No.

ADV ADILA HASSIM: So you received a call from Daphne?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

10 **INTERPRETER:** Yes.

MS NONO MODITSE: I called Daphne. [Vernacular].

INTERPRETER: I am the one who called Daphne.

ADV ADILA HASSIM: And then she informed you ... [intervention]

MS NONO MODITSE: [Vernacular]

15 **INTERPRETER:** That Charity is fine.

ADV ADILA HASSIM: And when did you ... When were you informed that Charity had passed away?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: After five months, December.

MS NONO MODITSE: 2016.

INTERPRETER: 2016.

ADV ADILA HASSIM: Who informed you in December?

5 **INTERPRETER:** [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: We visited the hospital during December.

MS NONO MODITSE: [Vernacular]

INTERPRETER: We knew it was a family day and I wanted to go with my mom.

10 **MS NONO MODITSE:** [Vernacular]

INTERPRETER: And other family members.

MS NONO MODITSE: [Vernacular]

INTERPRETER: Then I went with my brother before the other family members.

MS NONO MODITSE: [Vernacular]

15 **INTERPRETER:** When we arrived at the hospital and said that we are visiting Charity Ratsotso, it seemed people were surprised to see us there.

MS NONO MODITSE: [Vernacular]

INTERPRETER: They were surprised because they didn't know whether it was a male or a female, this Charity Ratsotso.

MS NONO MODITSE: [Vernacular]

INTERPRETER: The male nurse took us for a route in different wards to see if Charity was present.

MS NONO MODITSE: [Vernacular]

5 **INTERPRETER:** They said we must leave, go home, they will contact us about his, about Charity's whereabouts.

MS NONO MODITSE: [Vernacular]

INTERPRETER: We were surprised because if a patient is not in hospital, it is a discharge or maybe the person left.

10 **MS NONO MODITSE:** [Vernacular]

INTERPRETER: We were heartbroken. We went home, and I was close to my brother.

MS NONO MODITSE: [Vernacular]

INTERPRETER: Because I knew he loves food.

15 **MS NONO MODITSE:** [Vernacular]

INTERPRETER: Because I know if I had my handbag in my possession he will come running to me.

MS NONO MODITSE: [Vernacular]

INTERPRETER: And wanted to see what is the contents of my bag.

MS NONO MODITSE: [Vernacular]

INTERPRETER: Hold my wrist.

MS NONO MODITSE: [Vernacular]

INTERPRETER: Go and sit at the chair where they used to sleep so that he can
5 have his meal.

MS NONO MODITSE: [Vernacular]

INTERPRETER: The day of the 16th we went home bored.

MS NONO MODITSE: [Vernacular]

INTERPRETER: We was surprised of what was happening. On my way home I
10 phoned advocate.

MS NONO MODITSE: [Vernacular]

INTERPRETER: Esra Leswalo, he is a family member.

MS NONO MODITSE: [Vernacular]

INTERPRETER: Informed him that Charity is not at the hospital.

15 **MS NONO MODITSE:** [Vernacular]

INTERPRETER: He asked how. If a person is not at hospital then that person
should be discharged.

MS NONO MODITSE: [Vernacular]

INTERPRETER: It was during December.

MS NONO MODITSE: [Vernacular]

INTERPRETER: I can't remember which date.

MS NONO MODITSE: [Vernacular]

INTERPRETER: Daphne called and said she's coming to see us, to visit us.

5 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: To come and report to us what happened to Charity.

MS NONO MODITSE: [Vernacular]

INTERPRETER: It was during December 2016, I cannot say what day it was, she came out at our home.

10 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: She came with two men, I assumed they were bodyguards.

MS NONO MODITSE: [Vernacular]

ADV ADILA HASSIM: It was Daphne that came to your house?

INTERPRETER: [Vernacular]

15 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: Yes.

MS NONO MODITSE: [Vernacular]

INTERPRETER: And she said that she is frightened.

MS NONO MODITSE: [Vernacular]

INTERPRETER: I asked her what happened to Charity.

MS NONO MODITSE: [Vernacular]

INTERPRETER: She said that Charity got an attack and went to hospital.

MS NONO MODITSE: [Vernacular]

5 **INTERPRETER:** All these years. Charity never fell sick or had attacks, epileptic attacks.

MS NONO MODITSE: [Vernacular]

INTERPRETER: That was for the first time that he had a fit.

MS NONO MODITSE: [Vernacular]

10 **INTERPRETER:** She then told us, and we asked her: “Where is Charity?”

MS NONO MODITSE: [Vernacular]

INTERPRETER: She made a report to us that she had seen somebody at Mamelodi hospital who looked like Charity.

MS NONO MODITSE: [Vernacular]

15 **INTERPRETER:** Because Charity had no teeth in front.

MS NONO MODITSE: [Vernacular]

INTERPRETER: She made a report to us that Charity had an attack and he was taken to hospital.

MS NONO MODITSE: [Vernacular]

INTERPRETER: She will conduct an investigation.

MS NONO MODITSE: [Vernacular]

INTERPRETER: With the help of Advocate Esra Leswaro.

MS NONO MODITSE: [Vernacular]

5 **INTERPRETER:** He went to the MEC office.

MS NONO MODITSE: [Vernacular]

INTERPRETER: To help us locate Charity. That was before.

MS NONO MODITSE: [Vernacular]

INTERPRETER: With the help of Siphiso Magathi.

10 **MS NONO MODITSE:** [Vernacular]

INTERPRETER: They then informed us the whereabouts of Charity.

MS NONO MODITSE: [Vernacular]

INTERPRETER: That he is deceased.

ADV ADILA HASSIM: When was that?

15 **INTERPRETER:** [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: December 2016, but I cannot say for certain what date was that.

ADV ADILA HASSIM: Just to repeat, who informed you that Charity was deceased?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: Esra Leswalo, the advocate was the one who found out.

ADV ADILA HASSIM: And you said that he found out after contacting officials?

5 **INTERPRETER:** [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: Yes.

ADV ADILA HASSIM: And can you just repeat on what day did they say he had passed away?

10 **INTERPRETER:** [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: It was on the 11th of July.

ADV ADILA HASSIM: 2016?

INTERPRETER: 2016?

15 **MS NONO MODITSE:** 2016.

ADV ADILA HASSIM: And did they explain why it took five months longer to inform you?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: Daphne informed us that she did not have our addresses, but she has my number, my brother's number, my mom and grandma because they used to phone us even in Mafikeng.

MS NONO MODITSE: [Vernacular]

5 **INTERPRETER:** Because my mom is staying with my grandma in Mafikeng.

ADV ADILA HASSIM: So you say they had got contact details, but they said that they did not have any contact details?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

10 **INTERPRETER:** Yes.

ADV ADILA HASSIM: And did they tell you where Charity died?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: They didn't inform us at which NGO was he.

15 **MS NONO MODITSE:** [Vernacular]

INTERPRETER: We don't know if my brother died in a forest or an open field.

ADV ADILA HASSIM: Do you still not know?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: No.

ADV ADILA HASSIM: Sorry Ms Moditse, we can assist you on that.

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: If someone could assist the witness to locate ...

5 [intervention]

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: Exhibit ELAH4.

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: On the first page, about 10 names down you will see

10 Charity's name. Do you see it?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: Yes.

ADV ADILA HASSIM: And it says that he was registered at the facility called

15 Anchor.

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: As a family we didn't know. This is the first time we are hearing this.

ADV ADILA HASSIM: He then, from Anchor, it would seem, was transferred to Mamelodi Hospital for some reason. Presumably because he was very ill and that was where he passed away.

INTERPRETER: [Vernacular]

5 **MS NONO MODITSE**: Yes.

INTERPRETER: Yes.

ADV ADILA HASSIM: After you were informed that he had died so many months earlier.

INTERPRETER: [Vernacular]

10 **ADV ADILA HASSIM**: Did anybody else contact you to give you any explanation?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: Dr Lebetla, I think he was the CEO by then, he came with the head of the department.

15 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: To come and explain to us what happened.

MS NONO MODITSE: [Vernacular]

INTERPRETER: And that they were sorry about what happened.

MS NONO MODITSE: [Vernacular]

INTERPRETER: And asked if we need any help.

ADV ADILA HASSIM: When was this?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

5 **INTERPRETER:** It was early January. [Vernacular]

MS NONO MODITSE: 2017.

INTERPRETER: 2017.

MS NONO MODITSE: [Vernacular]

INTERPRETER: Sorry, it was on December 2016.

10 **MS NONO MODITSE:** Ja, 2016.

ADV ADILA HASSIM: And did anybody inform you where Charity's body was being kept?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

15 **INTERPRETER:** We were informed that Charity's body was kept at Mamelodi mortuary.

MS NONO MODITSE: [Vernacular]

INTERPRETER: And thereafter he was taken to Forensics, next to Steve Biko Hospital.

ADV ADILA HASSIM: Did anybody go and identify Charity's body?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: Yes, myself, my mother, my uncle and my cousin.

5 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: And my aunt (indistinct)

MS NONO MODITSE: [Vernacular]

INTERPRETER: My cousin Esra Leswalo and my brother Kevin Moditse.

ADV ADILA HASSIM: And what did you see? What was the condition of Charity
10 when you identified his body?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: Charity's body was decomposed.

MS NONO MODITSE: [Vernacular]

15 **INTERPRETER**: He had no eyes.

MS NONO MODITSE: [Vernacular]

INTERPRETER: I don't know if it was the refrigerator, but his eyes were not there.

MS NONO MODITSE: [Vernacular]

INTERPRETER: He had injuries. There was blood and pass pouring out.

MS NONO MODITSE: [Vernacular]

INTERPRETER: And he had a big hole on his chest.

MS NONO MODITSE: [Vernacular]

INTERPRETER: On his ribs.

5 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: A big hole.

MS NONO MODITSE: [Vernacular]

INTERPRETER: Pointing out on the left side.

MS NONO MODITSE: [Vernacular]

10 **INTERPRETER**: It seemed his hands were tied. I don't know if the cops had him tightened up.

MS NONO MODITSE: [Vernacular]

INTERPRETER: But it looked like his hands were tightened up.

MS NONO MODITSE: [Vernacular]

15 **INTERPRETER**: And he was heavy, but by then he was very tiny.

ADV ADILA HASSIM: And di you report this to anybody at the mortuary? Did you report your concerns or the condition in which you found Charity?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: No. I think Esra Leswaro send the Ombudsman an email.

MS NONO MODITSE: [Vernacular]

ADV ADILA HASSIM: And did anybody in the family report it to the police?

INTERPRETER: [Vernacular]

5 **MS NONO MODITSE:** [Vernacular]

INTERPRETER: Yes, my aunt went to the Mamelodi Police Station.

ARBITRATOR, JUSTICE MOSENEKE: Before you get to the Police Station, where did you see the body? At Steve Biko or at Mamelodi Hospital?

INTERPRETER: [Vernacular]

10 **MS NONO MODITSE:** [Vernacular]

INTERPRETER: It was at Steve Biko.

ARBITRATOR, JUSTICE MOSENEKE: When you say he had no eyes, what do you mean? Were they eyes sockets empty?

MS NONO MODITSE: Yes.

15 **INTERPRETER:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: And was any other part of his body deformed?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: It is that part where his head had blood. It seems like when he has fallen down, and even the whole on the left side of his ribs. It seemed as if this person was assaulted.

ARBITRATOR, JUSTICE MOSENEKE: With what was his wrists tied together?

5 **INTERPRETER:** [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: By then it was not tightened up. There were marks as if he was tightened up.

10 **ADV ADILA HASSIM:** Just to clarify, there was marks on the wrists as if he had been tied?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: Yes.

ARBITRATOR, JUSTICE MOSENEKE: And the blood must have dried up?

15 **INTERPRETER:** [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: Yes.

ARBITRATOR, JUSTICE MOSENEKE: And could you see a post-mortem scar?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: Yes, because there was a stich on his chest.

ARBITRATOR, JUSTICE MOSENEKE: The middle of the [indistinct] or running from the top to the bottom?

5 **INTERPRETER**: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Council.

10 **ADV ADILA HASSIM**: Ms Moditse, could you please ... There is a file in front of you. I don't know if that is the ... It is file 11.

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: If you could turn to page 3871?

INTERPRETER: Page 3871.

ADV ADILA HASSIM: Do you have it?

15 **INTERPRETER**: [Vernacular]

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

ADV ADILA HASSIM: Do you see that that is the death certificate of your brother?

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

ADV ADILA HASSIM: And it note, it records the date of death as 11 July 2016?

INTERPRETER: [Vernacular]

5 **MS NONO MODITSE**: Yes.

INTERPRETER: Yes.

ADV ADILA HASSIM: And the place of death as Mamelodi Hospital.

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

10 **ADV ADILA HASSIM**: And the cause of death is unknown.

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

MS NONO MODITSE: [Vernacular]

15 **INTERPRETER**: We took the first post-mortem.

MS NONO MODITSE: [Vernacular]

INTERPRETER: And they said the cause of death was swelling of the food that strangled him.

MS NONO MODITSE: Yes. [Vernacular]

INTERPRETER: We were just near to bury him. We were just due to bury him.

MS NONO MODITSE: [Vernacular]

INTERPRETER: And thereafter we heard the first pathologist was mistaken.

MS NONO MODITSE: [Vernacular]

5 **INTERPRETER:** We were in February and the date said 29 December 20...?

MS NONO MODITSE: 2017.

INTERPRETER: 2017.

MS NONO MODITSE: [Vernacular]

INTERPRETER: And we were in 2016.

10 **MS NONO MODITSE:** [Vernacular]

INTERPRETER: It was during 2017, February.

MS NONO MODITSE: [Vernacular]

INTERPRETER: And they wrote 2017, December.

MS NONO MODITSE: [Vernacular]

15 **INTERPRETER:** The first post-mortem was wrong.

MS NONO MODITSE: [Vernacular]

INTERPRETER: Then as family members we hired the service of a second pathologist.

MS NONO MODITSE: Private pathologist.

INTERPRETER: Private pathologist.

MS NONO MODITSE: [Vernacular]

INTERPRETER: And she informed us the cause of death was pneumonia on Charity.

5 **ADV ADILA HASSIM:** Ms Moditse, I am just going to slow you down a little. Justice, before the ... I need to refer to some documents in the record. But some of them might cause trauma to the witness, so I just want to warn that she need not turn over the page.

INTERPRETER: [Vernacular]

10 **ADV ADILA HASSIM:** If she is uncomfortable.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]

INTERPRETER: There are photos of Charity here.

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]

15 **INTERPRETER:** The advocate wants to warn you, or to inform you.

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]

INTERPRETER: So if you cannot look at these photos.

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]

INTERPRETER: You will go through other photos that won't cause problems to you about Charity's death.

MS NONO MODITSE: Okay.

ARBITRATOR, JUSTICE MOSENEKE: She must alert me when she finds it
5 difficult to ...[intervention]

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: From page 3872 to page 3875 ...

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: ... photographs ... [intervention]

10 **ARBITRATOR, JUSTICE MOSENEKE:** [Vernacular]

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]

15 **INTERPRETER:** [Vernacular]. If you cannot look at them, you can alert us and inform us if you don't want to go through them.

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]

ADV ADILA HASSIM: Thank you Justice.

INTERPRETER: Which page council?

ADV ADILA HASSIM: 3872, and the go on to 3875. These are the photographs that were taken after the post-mortem.

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: I think ... Is this the condition in which you saw Charity when
5 you went to the mortuary?

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

ADV ADILA HASSIM: The post-mortem, the results of the post-mortem are
10 recorded at page 3879.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]

INTERPRETER: Did you find him undressed, as naked as he is?

MS NONO MODITSE: [Vernacular]

15 **INTERPRETER**: Yes.

ADV ADILA HASSIM: And it is signed by a forensic pathologist named Musa Aubrey Makoba, do you see that?

INTERPRETER: Musa Makoba, is it page 3879?

ADV ADILA HASSIM: Yes.

INTERPRETER: Ja.

ADV ADILA HASSIM: And he confirms that he was the doctor who'd perform the post-mortem.

INTERPRETER: [Vernacular]

5 **MS NONO MODITSE:** Okay.

INTERPRETER: Okay.

ADV ADILA HASSIM: And then on page 3881.

INTERPRETER: 3881.

ADV ADILA HASSIM: Do you have that page?

10 **ARBITRATOR, JUSTICE MOSENEKE:** 3881?

ADV ADILA HASSIM: 3881 Justice.

ARBITRATOR, JUSTICE MOSENEKE: Thank you.

MS NONO MODITSE: I see.

15 **ADV ADILA HASSIM:** Then three-quarter way down the page, the cause of death is recorded, and it says that it is "in keeping with food aspiration, complicated by necrotising pneumonia".

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]. Yes.

INTERPRETER: Yes.

ARBITRATOR, JUSTICE MOSENEKE: I am struggling to find the cause of death you are referring to council, 3881?

ADV ADILA HASSIM: Yes, just above the hand-written date in bold, in capital letters.

5 **ARBITRATOR, JUSTICE MOSENEKE**: I see, thank you.

ADV ADILA HASSIM: This was the first post-mortem.

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

10 **ADV ADILA HASSIM**: And do I understand you correctly, that your family wasn't happy and requested a second post-mortem by a private pathologist?

MS NONO MODITSE: Yes.

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

15 **ARBITRATOR, JUSTICE MOSENEKE**: But before you move from page 3881, can you see the Roman letter 4 (IV)?

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: I know you went for another post-mortem.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: But this doctor makes a finding that he records there and says: “An elderly black male with signs of late decomposition, including post-mortem fungal contamination”.

INTERPRETER: [Vernacular]. The witness is asking the witness to say “due to
5 wrong dates” that is why the second post-mortem was requested.

MS NONO MODITSE: Yes. It was the wrong date there.

INTERPRETER: I think I have testified about that.

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]. We can call you as a witness later. [Vernacular]. Let’s go back to the question that I have just asked.

10 **INTERPRETER**: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: I am going to ask you what your observation was. I am reading to you what the doctor has recorded.

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

15 **ARBITRATOR, JUSTICE MOSENEKE**: “These post-mortem findings made by me on the body were the following:”

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: “An elderly black male with signs of late decomposition”...

20 **INTERPRETER**: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: ... “including post-mortem fungal contamination”...

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE:... “of the skin”...

5 **INTERPRETER**: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: ... “and the mummification of the body and chronic diseases”.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: You are not a doctor, but when you looked
10 at the body, is that what you also saw?

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Thank you council, you may proceed.

15 **ADV ADILA HASSIM**: Is it correct that the second post-mortem was conducted by
a Dr Patricia Klepp?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: I don't remember the name, but we conducted the second post-mortem.

ADV ADILA HASSIM: Justice, for the record, if you have regard to page 3886, this is the relevant part of the post-mortem report of the second forensic pathologist.

5 **INTERPRETER:** [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: 3886?

ADV ADILA HASSIM: 3886 is the picture and sketches.

INTERPRETER: [Vernacular]

10 **ARBITRATOR, JUSTICE MOSENEKE:** I can see 3887, which is a customary anatomy of a human being.

ADV ADILA HASSIM: Yes.

ARBITRATOR, JUSTICE MOSENEKE: But what is this dark picture on 3886?

ADV ADILA HASSIM: It is a picture of the upper body area of the deceased.

INTERPRETER: [Vernacular]

15 **ADV ADILA HASSIM:** If you ... It has hand-written notes on it.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: Picture A?

ADV ADILA HASSIM: Picture A.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ADV ADILA HASSIM: And it says “foreign material”, there is an arrow.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: Yes I can see that.

ADV ADILA HASSIM: And it is simply part of the post-mortem report that is
5 relevant to the findings of necrotising pneumonia.

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: That is my understanding of the first post-mortem result.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: This is the part of Dr Makoba’s finding?

10 **ADV ADILA HASSIM**: Makoba’s finding yes.

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

ADV ADILA HASSIM: Page 3889, I will come to page 3888 in a moment.

INTERPRETER: [Vernacular]

15 **ADV ADILA HASSIM**: Page 3889 is a repeat.

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: All the way up to 3893.

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: So I am just warning you Justice, that the pages had been duplicated.

ARBITRATOR, JUSTICE MOSENEKE: Okay I see that.

INTERPRETER: [Vernacular]

5 **ADV ADILA HASSIM**: At page 3899 is the report of the second pathologist.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: By Dr Patricia Klepp?

ADV ADILA HASSIM: Correct.

INTERPRETER: [Vernacular]

10 **ADV ADILA HASSIM**: Do you see it?

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

ADV ADILA HASSIM: And it is dated 28 March 2017.

15 **INTERPRETER**: [Vernacular]

MS NONO MODITSE: [Vernacular]

ADV ADILA HASSIM: And it says: "I conducted a post-mortem examination on Mr Charity Ratsotso to date"

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: And it continues to say: “A history is furnished that this gentleman died on 11 July 2016”

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: “A post-mortem examination was conducted by Dr Musa
5 Aubrey Makoba”

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: “At the Pretoria Government Mortuary on 29 December
2016”

INTERPRETER: [Vernacular]

10 **ADV ADILA HASSIM**: “He gave the cause of death as” and she quotes “in keeping
of food aspiration complicated by necrotising pneumonia”

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: She then says: “Concern had been raised due to the
findings he documented in paragraph 9 of his report”

15 **INTERPRETER**: [Vernacular]

ADV ADILA HASSIM: It says: “The anterior and posterior scalp muscles are
surrounded by hem ridge. There is complete dislocation of the atlanto-occipital
joint” and so on.

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: She then says that she is informed ... “I am informed by Dr Makoba, as to attend the second examination”

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: And then she says: “On my arrival he informs me that there
5 had been an error”

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: “He had somehow mixed up two reports”

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: “He informed me that paragraph 7 and 9 needed to be
10 altered”

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: “He then gave me a copy of the amended report”

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: Okay, so there was some unhappiness with the first report,
15 and it would seem that there is basis for there to be some unhappiness with the first
report.

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

ADV ADILA HASSIM: She then goes on to record her findings of the detailed post-mortem.

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: And she concludes, if you turn over the page, that it is
5 consistent with pneumonia.

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: Which paragraph?

ADV ADILA HASSIM: It is the last paragraph, it is on page 3910. It also ... Do you
10 see it?

MS NONO MODITSE: Yes.

ADV ADILA HASSIM: It's also clear from her notes in other aspects of the report
for example if you look at the section on ... or if you look at paragraph 7.

INTERPRETER: [Vernacular]

15 **ADV ADILA HASSIM**: She talks about marked decomposition.

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: In paragraph 6 she says, she basically is noting that again,
that the body had undergone marked decomposition. The brain had decomposed,
and so on.

20 **INTERPRETER**: [Vernacular]

MS NONO MODITSE: Yes.

ADV ADILA HASSIM: So by the time this pathologist had conducted the post-mortem, there had been significant decomposition of the body.

INTERPRETER: [Vernacular]

5 **MS NONO MODITSE:** Yes.

INTERPRETER: Yes.

ADV ADILA HASSIM: But the conclusion that she comes to is that her findings are consistent with pneumonia.

INTERPRETER: [Vernacular]

10 **ADV ADILA HASSIM:** She doesn't, there isn't anywhere in this report that she differs with the findings of the first report.

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: Other than for those two paragraphs.

INTERPRETER: [Vernacular]

15 **MS NONO MODITSE:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: Where did you keep the body after you found it at Steve Biko Hospital?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: My mom had a policy at Martins.

MS NONO MODITSE: [Vernacular]

INTERPRETER: Then they took him to their own mortuary.

ARBITRATOR, JUSTICE MOSENEKE: You see, Dr Klepp conducted her
5 examination nearly three months after Dr Makoba.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: So was the body for the three months at
the mortuary?

INTERPRETER: [Vernacular]

10 **MS NONO MODITSE:** Yes.

INTERPRETER: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Of undertakers?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

15 **INTERPRETER:** Because the mortuary asked us when are we going to bury him
because the body was a little bit decomposed.

MS NONO MODITSE: [Vernacular]

INTERPRETER: Because due to the delays with the post-mortem.

ARBITRATOR, JUSTICE MOSENEKE: but why did you have to wait for three months for that Dr Klepp to do the post-mortem?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

5 **INTERPRETER**: We wanted to know the truth about what caused his death.

ARBITRATOR, JUSTICE MOSENEKE: Now that I understand. I am talking about the time lapse.

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

10 **INTERPRETER**: At the mortuary?

ARBITRATOR, JUSTICE MOSENEKE: Yes.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: Once you have taken over the body, and once Dr Makoba had done the first post-mortem examination and report, you have
15 already told us that the body was kept at your funeral parlour.

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: Yes.

MS NONO MODITSE: [Vernacular]

INTERPRETER: The first funeral was postponed, it was stopped due to ... because of this post-mortem.

MS NONO MODITSE: [Vernacular]

INTERPRETER: We just conducted a memorial.

5 **MS NONO MODITSE:** [Vernacular]

INTERPRETER: After we found the right post-mortem, then we buried him during the week.

ARBITRATOR, JUSTICE MOSENEKE: At the end of March, was it?

INTERPRETER: [Vernacular]

10 **MS NONO MODITSE:** [Vernacular]

INTERPRETER: Yes.

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]

INTERPRETER: I wanted to highlight this, the whole body was decomposed when Dr Klepp examined him.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Because in every paragraph you will see that. So I am just wondering why you had kept the body for so long, in what appears to be inadequate refrigeration.

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: Lack of funds.

ADV ADILA HASSIM: Justice, can I just ... I don't know whether the witness is following. Can you ... the first post-mortem, between the first post-mortem, which took place at Steve Biko ...

5 **INTERPRETER:** [Vernacular]

ADV ADILA HASSIM: ... and the second post-mortem. Where was Charity's body kept?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

10 **INTERPRETER:** it was at forensics at Steve Biko, before we transferred him to our mortuary.

ADV ADILA HASSIM: When did you transfer him to your mortuary?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

15 **INTERPRETER:** When we were just nearby to bury him.

ARBITRATOR, JUSTICE MOSENEKE: So, the decomposition could not be arrested by further refrigeration?

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: Justice, just as a reminder, the date of death was July 2016.

20 The first post-mortem is conducted February 2017.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: The first?

ADV ADILA HASSIM: The first, in February.

INTERPRETER: [Vernacular]

5 **ADV ADILA HASSIM:** Oh, sorry, the 29th of December 2016. The date is obviously incorrect.

INTERPRETER: [Vernacular]

MS NONO MODITSE: Ja, the date is wrong.

10 **ADV ADILA HASSIM:** So there was already quite advanced decomposition at the time the first post-mortem took place.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: Yes, and then there is a wait of three months.

INTERPRETER: [Vernacular]

15 **ARBITRATOR, JUSTICE MOSENEKE:** Before the second post-mortem is conducted.

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: Yes.

ARBITRATOR, JUSTICE MOSENEKE: That is what I am trying to pursue and understand.

ADV ADILA HASSIM: Yes.

INTERPRETER: [Vernacular]

5 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: We waited for seven months, waiting for the post-mortem to be conducted.

MS NONO MODITSE: [Vernacular]

INTERPRETER: We couldn't find it.

10 **ADV ADILA HASSIM**: For the report you mean?

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

ARBITRATOR, JUSTICE MOSENEKE: So, after the post-mortem ... [intervention]

15 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: He was for a very long time kept at Steve Biko.

MS NONO MODITSE: [Vernacular]

INTERPRETER: For us to get the post-mortem, we waited seven months.

ARBITRATOR, JUSTICE MOSENEKE: Please just follow this up council? I don't understand this. Dr Makoba made an examination of the body, and made you wait for seven months before the report was issued?

INTERPRETER: [Vernacular]

5 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: Yes, they were just wasting our time.

ADV ADILA HASSIM: Sorry, you see, the second post-mortem is dated 28 March 2017. That is the second one.

INTERPRETER: [Vernacular]

10 **ADV ADILA HASSIM**: And you were informed of Charity's death in December 2016.

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: So three months had passed.

INTERPRETER: [Vernacular]

15 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: Yes.

ADV ADILA HASSIM: In that three months, two post-mortems were conducted.

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

ADV ADILA HASSIM: So, when you say that you waited for seven months, do you mean that you waited for the report of the post-mortem?

MS NONO MODITSE: Yes, we waited for the report of the post-mortem.

5 **INTERPRETER:** [Vernacular]

ADV ADILA HASSIM: Were you aware of the second post-mortem by the private pathologist?

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

10 **ADV ADILA HASSIM:** And where did that post-mortem take place?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: It was then by Esra Leswaro. I can't remember.

MS NONO MODITSE: [Vernacular]

15 **INTERPRETER:** Because I think, I assume it was during June in Johannesburg.

ADV ADILA HASSIM: I think it was something that you ... am I right? Esra is your family member?

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

ADV ADILA HASSIM: And he was responsible for the process?

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

5 **INTERPRETER:** Yes.

ADV ADILA HASSIM: It is fine if you don't remember or if you don't know. You don't have to search for an answer. If you don't know, you can say that you don't know.

INTERPRETER: [Vernacular]

10 **MS NONO MODITSE:** Okay.

INTERPRETER: Fine.

ARBITRATOR, JUSTICE MOSENEKE: I can't find the seven months here.

INTERPRETER: [Vernacular]

15 **ARBITRATOR, JUSTICE MOSENEKE:** Can you council or not? Look at page 3881, I don't want us to waste too much time on this. I can see the erroneous date by Dr Makoba.

INTERPRETER: [Vernacular]. The witness wants to say something.

ARBITRATOR, JUSTICE MOSENEKE: Just one minute. We will come back to you in a moment.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: 3880 you can see that 2017 obviously should be 2016 from the evidence before us, is that right?

ADV ADILA HASSIM: That is correct.

5 **ARBITRATOR, JUSTICE MOSENEKE:** And then you move over, but you see that his report is dated 7 February 2017. And he examined the body on the 29th of December 2016.

ADV ADILA HASSIM: That is correct.

ARBITRATOR, JUSTICE MOSENEKE: But his report is compiled in February.

10 **ADV ADILA HASSIM:** In February, correct.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: And Dr Klepp's report is compiled in March.

ADV ADILA HASSIM: March 2017, yes.

15 **INTERPRETER:** [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: So the difference between the two reports is only a little over a month, is that correct?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: You don't have to remember all the dates, only what you can remember.

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

5 **INTERPRETER**: The first report did not take long.

MS NONO MODITSE: [Vernacular]

INTERPRETER: The second report did not take long, and then we arranged the funeral.

MS NONO MODITSE: [Vernacular]

10 **INTERPRETER**: We arranged for the funeral and that is when we learned that the first report was wrong. We cancelled the burial. We conducted a memorial.

MS NONO MODITSE: The following week, it was on Friday, that is when we [vernacular]

INTERPRETER: The following week on the Friday, I think, that is when we buried
15 him.

ARBITRATOR, JUSTICE MOSENEKE: Ja, it is reasonably clear thanks.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: Besides the 2017 error, the rest seems to fall in line. The last question I wanted to know is, where was the body kept? I think

the advocate has already asked you that. Where was the body kept from the time they took it from Mamelodi. Was it taken to Steve Biko Hospital Mortuary?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

5 **INTERPRETER:** When we removed the body from Steve Biko?

ARBITRATOR, JUSTICE MOSENEKE: No, from Mamelodi Hospital.

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: To Steve Biko at forensics.

10 **ARBITRATOR, JUSTICE MOSENEKE:** And the seven months happened there, isn't it?

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: From the time of his death to the time he was transferred to Steve Biko Hospital.

15 **INTERPRETER:** [Vernacular]

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Council you may proceed.

ADV ADILA HASSIM: Do you remember the date on which Charity was laid to rest?

INTERPRETER: [Vernacular]

MS NONO MODITSE: 30 March 2016.

5 **INTERPRETER**: 30 March 2016.

ADV ADILA HASSIM: You mean 2017?

INTERPRETER: [Vernacular]

MS NONO MODITSE: 2017 sorry.

INTERPRETER: 2017 sorry.

10 **ADV ADILA HASSIM**: It's fine. There is no need to ... I can see you are anxious, and so, that is why there is some errors. Don't be nervous.

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: The only reason, just to confirm some of what you've said earlier, that was provided to you for why there was such a delay in informing the
15 family of Charity's death, is that they did not have the contact details of the family.

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: And they listed him as unknown at the hospital.

ADV ADILA HASSIM: Yes. Just to confirm, Justice, on page 3898, it's an affidavit by a Mr Morudu, who is a forensic officer at Mamelodi Hospital, and he confirms that he received the body.

INTERPRETER: [Vernacular]

5 **ADV ADILA HASSIM**: He doesn't identify the body, other than to say he was unknown.

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: This is dated 28 December 2016.

INTERPRETER: [Vernacular]

10 **ADV ADILA HASSIM**: By this point in time, if I follow the chronology properly, the family had already been notified. So Charity was no longer an unknown body.

INTERPRETER: [Vernacular]

ADV ADILA HASSIM: In any event, the testimony seems to suggest that it was the family that was unknown.

15 **INTERPRETER**: [Vernacular]

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

ADV ADILA HASSIM: Not the identity of the deceased, who had obviously been admitted from Anchor to Mamelodi.

20 **INTERPRETER**: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: So at that point he was known.

ADV ADILA HASSIM: Yes.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: But was that (indistinct)? That is the point.

5 Here is a corpse, and no effort is taken by forensics to take the trail to make sure that Charity is known and identified.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: And for the same reason, he stayed for seven months in Mamelodi Hospital, which we know now by the evidence, had no
10 proper mortuary.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: And every single part of his body was decomposed.

INTERPRETER: [Vernacular]

15 **ARBITRATOR, JUSTICE MOSENEKE**: I mean, you can't get a better (indistinct) than that, can you?

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: With a body that had been completely decomposed, and nobody cares to remember where this body are.

20 **INTERPRETER**: [Vernacular]

ADV ADILA HASSIM: Finally Ms Moditse, I understand that this has been hard on your family.

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

5 **INTERPRETER**: Yes.

ADV ADILA HASSIM: Is there anything further that you'd wish to say?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

10 **INTERPRETER**: I don't understand what did they want to gain, because it is clear that they were not getting the right foot, they didn't get their medication. We as family we are hurt, because Charity was the first grandchild.

MS NONO MODITSE: [Vernacular]

INTERPRETER: My grandmother was seriously hurt.

MS NONO MODITSE: [Vernacular]

15 **INTERPRETER**: I forgot to mention that C O Malaza phoned us. It was after we'd learned that Charity has passed on. He also called us to inform us that he was late.

ARBITRATOR, JUSTICE MOSENEKE: Who paid for Dr Klepp's fees?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: Esra Leswaro, a family member.

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]

INTERPRETER: How much was it?

MS NONO MODITSE: R17 000.00

5 **INTERPRETER:** R17 000.00

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]

INTERPRETER: Who paid for the funeral services?

MS NONO MODITSE: [Vernacular]

INTERPRETER: The family helped but my mother had a funeral policy at Martins

10 Funeral Undertakers.

MS NONO MODITSE: [Vernacular]

INTERPRETER: With the help of the other family members, they also put their hand in.

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]

15 **INTERPRETER:** When you went to bury him, did you open the coffin?

MS NONO MODITSE: No.

INTERPRETER: No.

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]

INTERPRETER: The funeral expenses, what was it? How much was it?

MS NONO MODITSE: [Vernacular]

INTERPRETER: We spend for the first one, and the second one.

MS NONO MODITSE: [Vernacular]

INTERPRETER: The second one was only for the family members.

5 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: The first one, there were people there.

MS NONO MODITSE: [Vernacular]

INTERPRETER: It was R55 000.00.

ARBITRATOR, JUSTICE MOSENEKE: Any further questions council?

10 **ADV ADILA HASSIM**: No further questions from me Justice.

ARBITRATOR, JUSTICE MOSENEKE: Questions from Legal Aid?

ADV PATRICK NGUTSHANA: Thank you Justice. Ma'am can I just ask you whether you've received any counselling?

INTERPRETER: [Vernacular]

15 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: The social workers from (indistinct) Department promised to come, but they never availed themselves.

ADV PATRICK NGUTSHANA: So you have not received any counselling?

INTERPRETER: [Vernacular]

MS NONO MODITSE: No.

INTERPRETER: No.

ADV PATRICK NGUTSHANA: Do you think that you need counselling?

INTERPRETER: [Vernacular]

5 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: Yes please.

ADV PATRICK NGUTSHANA: Thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. Advocate Groenewald?

10 **ADV DIRK GROENEWALD**: Thank you Justice, just two questions. Ma'am I just want to confirm, you testified that you went to visit your brother on the 16th of June 2016 at CCRC.

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

15 **ADV DIRK GROENEWALD**: Okay, do you know, passed that, you don't know was it Anchor or CCRC?

INTERPRETER: [Vernacular]

MS NONO MODITSE: No.

INTERPRETER: No.

ADV DIRK GROENEWALD: And you don't know when he was admitted to the hospital?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

5 **INTERPRETER**: No, no one informed us.

ADV DIRK GROENEWALD: Am I correct that you testified that you phoned Ms Daphne during September and August 2016?

MS NONO MODITSE: Yes.

INTERPRETER: [Vernacular]

10 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: Yes.

MS NONO MODITSE: [Vernacular]

INTERPRETER: Yes, because she had sent us a sms and informed us about an event at Cullinan.

15 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: I couldn't go there, that is why I called her.

ADV DIRK GROENEWALD: But she said to you that your brother was fine?

MS NONO MODITSE: Yes.

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

ADV DIRK GROENEWALD: And at that point in time, your brother had actually already passed away?

5 **INTERPRETER:** [Vernacular]

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

ADV DIRK GROENEWALD: Ma'am, we have received some documentation, and unfortunately we cannot paint you a clear picture of what happened and how it
10 happened, but what I can tell you from the documentation, and perhaps it is not information that you have, and that can assist you.

INTERPRETER: [Vernacular]

ADV DIRK GROENEWALD: And just for that sake Justice, it is ELAH11, at pages
2.

15 **INTERPRETER:** [Vernacular]

ADV DIRK GROENEWALD: Number 19.

INTERPRETER: [Vernacular]

ADV DIRK GROENEWALD: Is it correct? Do you see Charity Ratsotso there?

MS NONO MODITSE: Yes.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: I don't see that council.

ADV DIRK GROENEWALD: My apologies Justice.

ARBITRATOR, JUSTICE MOSENEKE: ELAH11 on page 2. I found it thank you.

5 **ADV DIRK GROENEWALD:** Thank you Justice. Now, ma'am, the first date is the date when Charity was discharged to CCRC on 12 May 2016.

INTERPRETER: [Vernacular]

ADV DIRK GROENEWALD: On the 23rd of June 2016 Charity was discharged to Anchor.

10 **INTERPRETER:** [Vernacular]

ADV DIRK GROENEWALD: And on the 11th of July 2016, we know that the death occurred.

INTERPRETER: [Vernacular]

15 **ADV DIRK GROENEWALD:** Not that it is not with condolences, but it just explains to you that Charity was actually transferred to CCRC and then again transferred to Anchor.

INTERPRETER: [Vernacular]

MS NONO MODITSE: No, we didn't know about that.

INTERPRETER: We didn't know about that.

ADV DIRK GROENEWALD: Thank you very much ma'am. Thank you Justice. No further questions.

INTERPRETER: [Vernacular]

ADV PATRICK NGUTSHANA: We have no questions Justice.

5 **ARBITRATOR, JUSTICE MOSENEKE**: You have no questions. Council for the State? Just before you start, remember I'd expressed the (inaudible – interpreter interprets while Justice is talking) ...

INTERPRETER: [Vernacular]

10 **ARBITRATOR, JUSTICE MOSENEKE**: ... to have the person responsible for looking after the mortuaries ...

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: ... within the Provincial Health structure ...

INTERPRETER: [Vernacular]

15 **ARBITRATOR, JUSTICE MOSENEKE**: ... and in particular the one specifically on the hook, in relation to the Cullinan mortuary and the Mamelodi Hospital mortuary.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: And for the simple reason, how can a health care system where we cannot properly refrigerate bodies of people ...

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: The last time I checked, there is a difference between perhaps how some communities will deal with dogs that have passed on and actual human beings.

INTERPRETER: [Vernacular]

5 **ARBITRATOR, JUSTICE MOSENEKE**: Do we know who it is? Do we have those witnesses who can tell us what happened here?

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: The post-mortem report tells us that this particular corpse had empty sockets.

10 **INTERPRETER**: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: His body was ... his brain was liquefied.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: And every part of his body was decomposed.

15 **INTERPRETER**: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: That is what Dr Klepp tells us in her post-mortem report.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: But the question must be asked.

20 **INTERPRETER**: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: How is it that we have post-mortems that can do the basic honour to deceased people?

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: Do we know who to call?

5 **INTERPRETER**: [Vernacular]

ADV ADV TEBOGO HUTAMO: Justice, we can make that enquiry to identify the relevant officials.

INTERPRETER: [Vernacular]

10 **ARBITRATOR, JUSTICE MOSENEKE**: You must remember that this is my second request.

INTERPRETER: [Vernacular]

ADV ADV TEBOGO HUTAMO: Justice, I should indicate that on the previous occasion Justice required a report on the state of affairs of the two mortuaries.

INTERPRETER: [Vernacular]

15 **ADV ADV TEBOGO HUTAMO**: And which reports, as I understand, is part of the exhibits.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: Which exhibits are those council? I may have missed them.

20 **INTERPRETER**: [Vernacular]

ADV ADV TEBOGO HUTAMO: The exhibits have not yet been made part of what is part of the record. But we have those reports.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: Will you find a moment at some point to
5 hand in the exhibits?

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: And let's find somebody who compiled the report to tell us about that. It shouldn't be long evidence but I think that, on my part, it is very necessary evidence.

10 **INTERPRETER**: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: Families of deceased's not once (inaudible – interpreter)...

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: ... decomposed bodies.

15 **INTERPRETER**: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: So we will wait for the moment council, when you hand up those.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: And the witnesses who held the report.
20 You may proceed.

INTERPRETER: [Vernacular]

ADV ADV TEBOGO HUTAMO: Well Justice, for the moment we will make the reports available, and with regard to the witnesses, we will make arrangements.

INTERPRETER: [Vernacular]

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

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: You may pose your questions.

ADV ADV TEBOGO HUTAMO: Thank you Justice. Justice we have no questions for the witness.

10 **INTERPRETER:** [Vernacular]

ADV ADV TEBOGO HUTAMO: We just want to express our regret for the passing of Ms Moditse's brother, Charity Matsotso.

INTERPRETER: [Vernacular]

15 **ADV ADV TEBOGO HUTAMO:** And we hope that she will find strength through this process to deal with the tragedy that she had to endure, together with her family.

INTERPRETER: [Vernacular]

ADV ADV TEBOGO HUTAMO: And we once again, thank her for the courage to come and testify at these sittings.

20 **INTERPRETER:** [Vernacular]

ADV ADV TEBOGO HUTAMO: Thank you Justice.

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: Thank you council. [Vernacular]

INTERPRETER: You have a right to answer if it is necessary for you to answer.

5 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: Must I answer the council?

ARBITRATOR, JUSTICE MOSENEKE: Council has made a proposition and an apology to you on behalf of the state.

INTERPRETER: [Vernacular]

10 **ARBITRATOR, JUSTICE MOSENEKE**: You are entitled to respond to that if you so choose.

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: I remember during the visit with Dr Lebele at home...

15 **MS NONO MODITSE**: [Vernacular]

INTERPRETER: They said Tathlane Mahlangu wants to come, we didn't want him there.

MS NONO MODITSE: [Vernacular]

INTERPRETER: We were so angry.

MS NONO MODITSE: [Vernacular]

INTERPRETER: We were so angry, we cancelled the meeting with her.

MS NONO MODITSE: [Vernacular]

INTERPRETER: Now is the chance that she must come.

5 **MS NONO MODITSE:** [Vernacular]

INTERPRETER: She must now come and explain to us what happened to our family member.

MS NONO MODITSE: [Vernacular]

10 **INTERPRETER:** Because they were also human beings. They needed that treatment.

MS NONO MODITSE: [Vernacular]

INTERPRETER: Even the prisoners are properly handled in prison. They are being educated in prison.

MS NONO MODITSE: [Vernacular]

15 **ARBITRATOR, JUSTICE MOSENEKE:** No but why do you look at me and say ...

(Parties laughing)

INTERPRETER: [Vernacular]

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]

INTERPRETER: You may continue ma'am.

MS NONO MODITSE: [Vernacular]

INTERPRETER: She must come and testify. We want her here.

MS NONO MODITSE: [Vernacular]

INTERPRETER: Because she must come and explain.

5 **MS NONO MODITSE:** [Vernacular]

INTERPRETER: She just woke up in the morning and decided to close the hospitals and open NGO's.

MS NONO MODITSE: [Vernacular]

10 **INTERPRETER:** She didn't want advises from somewhere else to be guided. She said she wanted to cut the costs for what?

MS NONO MODITSE: [Vernacular]

INTERPRETER: People are paying tax for what?

ARBITRATOR, JUSTICE MOSENEKE: Council, any questions for re-examination?

15 **ADV ADILA HASSIM:** Just one question Justice. Ms Moditse, you've said Daphne contacted the family in June?

INTERPRETER: [Vernacular]

MS NONO MODITSE: Ja.

ADV ADILA HASSIM: That the family received a sms in June about the family day?

INTERPRETER: [Vernacular]

MS NONO MODITSE: No, not in June, I think it was September/August, ja.

INTERPRETER: It was between August and September, not in June.

MS NONO MODITSE: [Vernacular]

5 **INTERPRETER:** During June we went to visit the deceased.

ADV ADILA HASSIM: Yes, you've said somebody sent you a sms?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: I don't know if it was Daphne or what, but we did get the sms.

10 **ADV ADILA HASSIM:** Okay, so you've got the notification that there was a family day coming up?

INTERPRETER: [Vernacular]

MS NONO MODITSE: Yes.

INTERPRETER: Yes.

15 **ADV ADILA HASSIM:** Is that correct? And that was in June 2016?

INTERPRETER: [Vernacular]

MS NONO MODITSE: [Vernacular]

INTERPRETER: It was August 2016.

MS NONO MODITSE: [Vernacular]

INTERPRETER: We visited Charity June 2016, he was fine.

MS NONO MODITSE: [Vernacular]

INTERPRETER: And Daphne sent us a sms informing us about the family event.

MS NONO MODITSE: [Vernacular]

5 **INTERPRETER:** We couldn't go there.

ADV ADILA HASSIM: Sorry, I don't need the details. I just want to know that whether it is ... I am just confirming that this is as you have said it earlier, that a notification, a sms notification was sent to the family.

INTERPRETER: [Vernacular]

10 **MS NONO MODITSE:** [Vernacular]

INTERPRETER: It was on my phone which I have lost.

ADV ADILA HASSIM: But you've also said that when you asked why they took so long to tell you that Charity had passed away, they say they did not have contact details.

15 **INTERPRETER:** [Vernacular]

MS NONO MODITSE: Yes.

ADV ADILA HASSIM: That is all from me Justice Moseneke.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. [Vernacular]

INTERPRETER: Anyone who has testified here, we give them chance that they can utter his/her last words.

ARBITRATOR, JUSTICE MOSENEKE: [Vernacular]

INTERPRETER: You are not forced.

5 **ARBITRATOR, JUSTICE MOSENEKE:** [Vernacular]

INTERPRETER: You are not forced to do that, but if that is your wish, you may continue.

UNKNOWN FEMALE: [Vernacular]

INTERPRETER: I would like to thank the people from Section 27.

10 **UNKNOWN FEMALE:** [Vernacular]

INTERPRETER: They were with us through thick and thin with sms's.

UNKNOWN FEMALE: [Vernacular]

INTERPRETER: And they were not impatient with us. We used to call them late.

UNKNOWN FEMALE: [Vernacular]

15 **INTERPRETER:** We would like to thank the Judge.

UNKNOWN FEMALE: [Vernacular]

INTERPRETER: You are a godsend to us, to represent us.

UNKNOWN FEMALE: [Vernacular]

INTERPRETER: Continue, and God bless you.

ARBITRATOR, JUSTICE MOSENEKE: Yes, I am not representing you ma'am.

(Parties laughing)

ARBITRATOR, JUSTICE MOSENEKE: Section 27 that is representing you.

UNKNOWN FEMALE: I only want the truth here.

- 5 **ARBITRATOR, JUSTICE MOSENEKE**: We thank you lady. Council it is 13h45, obviously we had a witness underway that is why we extended. I think we should resume here at 14h45 for the afternoon session. I am told that you do need an hour. I would have gone for 14h30, but I am told an hour is necessary. Very well. So let's resume at 14h45, we are adjourned.

10

8 November 2017

SESSION 3

ARBITRATOR, JUSTICE MOSENEKE: You may be seated, thank you. Counsel.

ADV. ADILA HASSIM: Thank Justice. I must apologise for the delay in the
5 resumption of proceedings. We had to switch witnesses around due to availability.

ARBITRATOR, JUSTICE MOSENEKE: Sure.

ADV. ADILA HASSIM: But we are ready to call Me. Maria Phehla.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. You may proceed Me. Phehla.
Would you put your full names on record?

10 **ME. MARIA PHEHLA:** Okay, Zimbi Maria Phehla.

ARBITRATOR, JUSTICE MOSENEKE: Which language do you want to use for
your evidence?

ME. MARIA PHEHLA: English, Justice.

ARBITRATOR, JUSTICE MOSENEKE: You want to speak in English. Very well.
15 Do you swear that the evidence you are about to give will be the truth, nothing but
the truth? And if so, please raise your right hand and say so help me God.

ME. MARIA PHEHLA: So help me God.

ARBITRATOR, JUSTICE MOSENEKE: Counsel.

ADV. ADILA HASSIM: Good afternoon Me. Phehla.

20 **ME. MARIA PHEHLA:** Good afternoon.

ADV. ADILA HASSIM: Could you tell us what your relationship is to Deborah Phehla?

ME. MARIA PHEHLA: Deborah is my daughter.

ARBITRATOR, JUSTICE MOSENEKE: Deborah is my what, sorry, I didn't hear
5 that.

ME. MARIA PHEHLA: Deborah is my daughter.

ARBITRATOR, JUSTICE MOSENEKE: Oh daughter.

ME. MARIA PHEHLA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Thank you ma'am.

10 **ADV. ADILA HASSIM:** And Deborah had been in Life Esidimeni Facility.

ME. MARIA PHEHLA: Counsellor, let me put it this way, Deborah in the early
200's and 80's she was at Esidimeni. Now that I was growing older and all that and
I asked them to find me a place near my place in Vosloorus because to travel, it
was a little bit difficult for me to travel there. And as time goes by they found me
15 Witpoort Esidimeni in Brakpan and she was transferred there.

ADV. ADILA HASSIM: And how long was she there?

ME. MARIA PHEHLA: From 2006 to 2015.

ADV. ADILA HASSIM: And then in 2015, where was she moved?

ME. MARIA PHEHLA: And then they told me the facility was closing down and she
20 was going to be moved back to Randfontein. And she was moved to Randfontein

and I went there to visit her, because I knew the place, I went there before, because she was there before.

ADV. ADILA HASSIM: She was at the Life Esidimeni in Randfontein.

ME. MARIA PHEHLA: In Randfontein, I knew that place.

5 **ADV. ADILA HASSIM:** And then to Witpoort.

ME. MARIA PHEHLA: And then from Witpoort back to Randfontein.

ADV. ADILA HASSIM: And that was in 2015 when she was moved back to Randfontein.

10 **ME. MARIA PHEHLA:** That was... I am sure if it was not end of 2015, it was beginning of 2016.

ADV. ADILA HASSIM: And did you visit Deborah when she was at Life Esidimeni facilities in Witpoort and in Randfontein?

ME. MARIA PHEHLA: I visited her regularly and sometimes took her home with me for a month or so.

15 **ADV. ADILA HASSIM:** So she would live with you from time to time.

ME. MARIA PHEHLA: That's right, Counsellor.

ADV. ADILA HASSIM: Me. Phehla, there should be a file in front of you numbered file 10.

20 **ARBITRATOR, JUSTICE MOSENEKE:** You said your home was located in Vosloorus.

ME. MARIA PHEHLA: That's right, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Thank you.

ADV. ADILA HASSIM: Page... I am sorry, just one second, 3537.

ME. MARIA PHEHLA: Which one, because I haven't got glasses on?

ADV. ADILA HASSIM: Are you able to read the document? Are you able to...?

5 **ME. MARIA PHEHLA:** Counsellor, I am sorry because I have got poor eyesight
...intervened.

ADV. ADILA HASSIM: I know.

ME. MARIA PHEHLA: And I haven't got my glasses with me.

ADV. ADILA HASSIM: I know that is why I am asking. Let me tell you what the
10 document is. It is a leave of absence form.

ARBITRATOR, JUSTICE MOSENEKE: There are reading glasses in my
chambers.

ME. MARIA PHEHLA: Ah Justice.

ARBITRATOR, JUSTICE MOSENEKE: I can ask these young people to get them
15 for you.

ME. MARIA PHEHLA: Justice, they are not made for my eyes.

ARBITRATOR, JUSTICE MOSENEKE: Oh okay.

ADV. ADILA HASSIM: But you know this form, because you gave this form to your
lawyers, this leave of absence form, am I right?

20 **ME. MARIA PHEHLA:** That's right, Counsellor.

ADV. ADILA HASSIM: And it is an example of a form they give you when you take Deborah home and so it says on the form for how long she is going to be with you, when she must be returned and how she is to be cared for while she is with you.

ME. MARIA PHEHLA: That is true, Counsellor.

5 **ADV. ADILA HASSIM:** That is what you recall the form to be about.

ME. MARIA PHEHLA: Yes that is true, Counsellor.

ADV. ADILA HASSIM: You can turn over the page, if it makes any difference.

ARBITRATOR, JUSTICE MOSENEKE: 1.10 care centre is the same place as Life Esidimeni Randfontein.

10 **ADV. ADILA HASSIM:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: Thank you.

ADV. ADILA HASSIM: And it is a form that has two pages and on page 3538 it stipulates the conditions of behaviour which must be adhered to by the user. And it says: “The user to be supervised all the time. No alcohol or drug. Medication to be given as prescribed. Not left unattended.” Did you understand those requirements when you would take Deborah home?

ME. MARIA PHEHLA: Yes, I did Counsellor.

ADV. ADILA HASSIM: And I am going to return to this because it seems, and we’ll get there, that she was left unattended when she was moved out of Life Esidimeni, but we’ll get there.

ARBITRATOR, JUSTICE MOSENEKE: What condition did she suffer?

ADV. ADILA HASSIM: What condition did Deborah suffer?

ME. MARIA PHEHLA: She was mentally retarded as the doctor told me.

ADV. ADILA HASSIM: And when she was diagnosed?

ME. MARIA PHEHLA: Since... she was not a normal baby, she was sick and all
5 that. When I took her to the doctor, the doctor told me that she was mentally
retarded.

ADV. ADILA HASSIM: And was she on any medication?

ME. MARIA PHEHLA: Yes, she was.

ADV. ADILA HASSIM: For what?

10 **ME. MARIA PHEHLA:** Because at the age of four, she was admitted into an
institution here in Jo'burg, that's where she started her medication and all that of
mentally ill patients.

ADV. ADILA HASSIM: Was she epileptic or...?

ME. MARIA PHEHLA: She was, since she was a baby she was.

15 **ADV. ADILA HASSIM:** So she was at Randfontein.

ME. MARIA PHEHLA: That's right, Counsellor.

ADV. ADILA HASSIM: And she was removed from Life Esidimeni Randfontein.

ME. MARIA PHEHLA: That's right.

ADV. ADILA HASSIM: When was she moved?

20 **ME. MARIA PHEHLA:** I can say it was early or late February in 2016.

ADV. ADILA HASSIM: Where was she moved to?

ME. MARIA PHEHLA: She was moved to Takalani.

ADV. ADILA HASSIM: And who informed you that she would be moved?

ME. MARIA PHEHLA: It is a social worker at Randfontein called Priscilla. She told
5 me about that and I came to visit Deborah and I said... it was near the Easter
Holidays when I got there. And I told her that I will be coming on a Monday
...intervened.

ADV. ADILA HASSIM: When you got there, meaning when you got to
Randfontein?

10 **ME. MARIA PHEHLA:** To Randfontein. Because she told me that now it was also
going to be closed down and that is why they are moving her to Takalani.

ADV. ADILA HASSIM: Was that the last time you saw Deborah?

ME. MARIA PHEHLA: That was the last time I saw her. Because I said to Priscilla
that I will come back again before she is moved to Takalani. And she said she
15 thought it is not a good idea, because I may come and then she will be gone by
then. So that is why I said to her that I will come on a Monday over the Easter
weekend to come and pay her a visit.

ADV. ADILA HASSIM: So this was in 2016. You say when was the visit, this last
time? It was two weeks, you said, before.

20 **ME. MARIA PHEHLA:** That was two weeks before Good Friday when I visited her.
And then from there Priscilla phoned me and told me that Deborah had already
been moved to Takalani.

ADV. ADILA HASSIM: When did she ...intervened.

ME. MARIA PHEHLA: And she ...intervened.

ADV. ADILA HASSIM: On which day was she moved, do you know?

ME. MARIA PHEHLA: She was moved on the 23rd of March 2016. And then she
5 phoned me to inform me about that and gave me a phone number of Basani. And I
phoned that number and every time I phoned, they told me that number doesn't
exist. And I phoned Priscilla back and said, and I complained, I said Priscilla, the
number you provided me doesn't exist and how am I going to see my daughter
where she is. And she advised me, she said I must catch a taxi from Vosloorus to
10 Jo'burg, from Jo'burg to Baragwanath Hospital and I can ask anybody there who will
direct me to Takalani.

ADV. ADILA HASSIM: Is that what you did then?

ME. MARIA PHEHLA: So I did so.

ADV. ADILA HASSIM: When did you do that?

15 **ME. MARIA PHEHLA:** That was, I am sure, on the... I didn't go... I didn't go when I
received that call and I said to her I will do that on Monday on the Easter holiday.

ADV. ADILA HASSIM: Okay.

ME. MARIA PHEHLA: So on the 24th she phoned me again.

ADV. ADILA HASSIM: Of March?

20 **ME. MARIA PHEHLA:** Of March.

ADV. ADILA HASSIM: 2016.

ME. MARIA PHEHLA: That Deborah is already there.

ADV. ADILA HASSIM: Right.

ME. MARIA PHEHLA: No, no, the matron of Takalani phoned me on the 24th. No, I am sorry, Counsellor.

5 **ADV. ADILA HASSIM:** Take your time.

ME. MARIA PHEHLA: Let me just bring my mind back, I am sorry. When Priscilla told me that she is down there in Takalani.

ADV. ADILA HASSIM: Yes.

ME. MARIA PHEHLA: I said I will go and pay her a visit.

10 **ADV. ADILA HASSIM:** Yes.

ME. MARIA PHEHLA: Before visiting Deborah on the 26th of March 2016, our church we had a church service that was on the Friday, Saturday and it was going to end on the Sunday. On Saturday afternoon I received this call from matron in Takalani.

15 **ADV. ADILA HASSIM:** Do you remember the name of the matron?

ME. MARIA PHEHLA: I am sorry, Counsellor, I can't remember the name, I can't, but I will know her when I see her.

ARBITRATOR, JUSTICE MOSENEKE: Why do you call her matron?

ME. MARIA PHEHLA: She is a matron, Justice. She is a matron at that place.

20 She is a matron.

ARBITRATOR, JUSTICE MOSENEKE: A matron at a hospital?

ME. MARIA PHEHLA: Well when I got there, after all we spoke about, I realised that she is a matron of that place.

ARBITRATOR, JUSTICE MOSENEKE: Matron of Takalani?

ME. MARIA PHEHLA: Matron of Takalani.

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

ME. MARIA PHEHLA: Ja.

ADV. ADILA HASSIM: Did she call herself a matron?

ME. MARIA PHEHLA: Well everybody called her matron, just like we call Justice, Justice and Counsellor, Counsellor, just like that. And then she told me that
10 Deborah had passed on. I said it is impossible, I don't believe it, which Deborah are you talking about.

ADV. ADILA HASSIM: This is while you were at the church.

ME. MARIA PHEHLA: I was at the church that night.

ARBITRATOR, JUSTICE MOSENEKE: And where was the matron?

15 **ME. MARIA PHEHLA:** I don't know whether she was at the hospital or whatever in Takalani or wherever she was when she called me.

ARBITRATOR, JUSTICE MOSENEKE: And you had not been up to Takalani by then.

ME. MARIA PHEHLA: No. Justice, as I was saying, she told me that my daughter
20 passed on. And I asked her what was wrong with Deborah because the last two weeks she was okay and healthy and all that. No, she said, she just vomited and

she went to the bathroom to clean herself and then she went back to bed. Then I said what happened that killed her and then they said no they don't know, the nurses phoned me in the early hours and told me that there is something wrong with Deborah. From her home to Takalani she said she found Deborah on her last
5 breath. And I said what happened and she said we gave her oxygen but she didn't make it. That is what she told me.

ADV. ADILA HASSIM: And...

ME. MARIA PHEHLA: Well I just dropped the phone. And on Monday was that holiday which I said I was going to visit and know Takalani. We went there with my
10 nephew on the 29th of March 2016. We found them in the small office and I wanted to see the matron. And she was called and I talked to her and I said what happened to Deborah. She said, you know, we don't know what happened to her. I said where is she now and then she said Deborah is in the mortuary. I asked her which mortuary and she said there is a mortuary called Vusani, I am sure it is in
15 Diepkloof around there. And I said can we go there, and we went. When getting there, I asked the owner of the mortuary, can I see the body of my daughter. They said we must wait and we waited.

ADV. ADILA HASSIM: Was this a private funeral home or...?

ME. MARIA PHEHLA: Yes that was a private funeral parlour. And then they
20 brought her and they said to us come and see her, there she is. She was on a stretcher on the floor. Counsellor, I was so shocked, I nearly died when I saw my daughter lying there, her face full of blood. It wasn't drops of blood from her nose, it

was rivers and she had one of her hands upwards. And I asked myself where were ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: One of her what upwards?

ME. MARIA PHEHLA: Pardon?

5 **ARBITRATOR, JUSTICE MOSENEKE:** You mean one of her hands, her arms?

ME. MARIA PHEHLA: One of her arms stretched upwards.

ARBITRATOR, JUSTICE MOSENEKE: Okay.

ME. MARIA PHEHLA: And I asked myself, where were they when she started bleeding like that, where were they when she stretched out her hand asking for
10 help, where were they? Where were they when the last moment came? They were not there. They don't even know when she died, they don't know.

ADV. ADILA HASSIM: You saw her in that condition at the funeral parlour.

ME. MARIA PHEHLA: That's right.

ADV. ADILA HASSIM: And you say she was lying on a stretcher on the floor.

15 **ME. MARIA PHEHLA:** That's right.

ADV. ADILA HASSIM: And her arm was outstretched.

ME. MARIA PHEHLA: That's right, Counsellor.

ADV. ADILA HASSIM: And is there anything else about the condition of her body that... can you describe the condition of her body?

ME. MARIA PHEHLA: Yes, that is how I found her body like that, because I said to them Deborah is moving out of here to a government mortuary now, because we travelled by car with my nephew.

ARBITRATOR, JUSTICE MOSENEKE: But was the blood dried up?

5 **ME. MARIA PHEHLA:** It was, Counsellor. It was. It was, Justice.

ADV. ADILA HASSIM: Anything else about the body?

ME. MARIA PHEHLA: And then we took her to the government mortuary that is next to Chris Hani Baragwanath Hospital.

ADV. ADILA HASSIM: When you say we, who do you mean?

10 **ME. MARIA PHEHLA:** Me and my nephew and the undertaker, Vusani undertakers.

ADV. ADILA HASSIM: They transported ...intervened.

ME. MARIA PHEHLA: They transported the body there. And from there, they told me that they opened a case with the Diepkloof Police.

15 **ADV. ADILA HASSIM:** Who opened a case?

ME. MARIA PHEHLA: Takalani.

ADV. ADILA HASSIM: Is this the matron?

ME. MARIA PHEHLA: The matron. And I don't know this guy, whether he is also in charge of that place, I don't know, I can't remember his name.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Did the matron have any uniform on?

ME. MARIA PHEHLA: Yes, she did Justice, she did.

ARBITRATOR, JUSTICE MOSENEKE: And epaulettes of a nurse?

ME. MARIA PHEHLA: Yes, she did Justice, she did. And then they went with us to the police station and we met this Detective Ndahonde (spelling). Well he took a statement and all that and all that and then we left. When we left ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Took a statement from whom?

ME. MARIA PHEHLA: Took a statement from the matron and this guy from Takalani.

ARBITRATOR, JUSTICE MOSENEKE: Were you present?

10 **ME. MARIA PHEHLA:** I was there, Justice.

ARBITRATOR, JUSTICE MOSENEKE: What did she say? What did the matron say about the death of your daughter, how did she die?

ME. MARIA PHEHLA: No, no, to me she said she vomited, she never mentioned the blood and all that, she just said she vomited.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Listen to the question. When the matron was giving a statement to the police, were you present?

ME. MARIA PHEHLA: No Justice, I wasn't there.

ARBITRATOR, JUSTICE MOSENEKE: So you don't know what the matron told the police.

20 **ME. MARIA PHEHLA:** Ja, I don't know, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Did they take any statement from you?

ME. MARIA PHEHLA: I really don't know, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Okay.

ADV. ADILA HASSIM: So this was, you say, at Diepkloof Police Station. Was there then a post-mortem?

5 **ME. MARIA PHEHLA:** Ja, there was Counsellor.

ADV. ADILA HASSIM: Me. Phehla, I know that you know this already, so if you can't read it properly it is fine.

ARBITRATOR, JUSTICE MOSENEKE: Did you ask for the post-mortem examination?

10 **ME. MARIA PHEHLA:** They told me to wait for three months, Justice.

ARBITRATOR, JUSTICE MOSENEKE: But did you ask for it?

ME. MARIA PHEHLA: Yes, I did.

ARBITRATOR, JUSTICE MOSENEKE: Why did you?

15 **ME. MARIA PHEHLA:** Because when I saw her in that condition and heard what they said, it didn't correspond, so that is why I wanted a post-mortem.

ARBITRATOR, JUSTICE MOSENEKE: You suspected that it wasn't a natural death.

ME. MARIA PHEHLA: Ja, that's it Justice.

20 **ADV. ADILA HASSIM:** So page 3533 of volume 10. I think we found a solution for your eyesight. Is that any better?

ME. MARIA PHEHLA: No, I can't see.

ADV. ADILA HASSIM: Not?

ME. MARIA PHEHLA: Ja, but I know what happened.

ARBITRATOR, JUSTICE MOSENEKE: Okay.

5 **ME. MARIA PHEHLA:** Ja, I know what happened.

ADV. ADILA HASSIM: So page 3533 is the post-mortem report.

ME. MARIA PHEHLA: Mm.

ADV. ADILA HASSIM: It says, well one of the first thing it says is that Deborah was 1.47 meters, so she took after her mother.

10 **ME. MARIA PHEHLA:** That's it, that's it, Counsellor.

ARBITRATOR, JUSTICE MOSENEKE: But where is the name of the deceased on the report? 3532 has no name.

ADV. ADILA HASSIM: It is 35 ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Look at 1 roman 2.

15 **ADV. ADILA HASSIM:** Let me just try to see if the name is there other than the body. It has the identification number of the body, DK521/2016. There isn't a name that identifies her, she is identified by the number and it is the same number that appears on the notice of death form, Justice, at page 3527. It is handwritten DK521.

ARBITRATOR, JUSTICE MOSENEKE: Ja, all those forms have DK521, but where
20 is the name?

ADV. ADILA HASSIM: On page 3527 it has the number DK521 and the name of the deceased as Deborah.

ARBITRATOR, JUSTICE MOSENEKE: Ja, I see that. Thank you.

ADV. ADILA HASSIM: The post-mortem refers to Deborah only by a number and not by her full name. The post-mortem was conducted by a Dr Morule on 31st of March 2016. And that is to be found at page 3532. Justice, if you are there, 3532 is the name of the doctor.

ARBITRATOR, JUSTICE MOSENEKE: I can see that.

ADV. ADILA HASSIM: Examined the body on 31 March 2016. Paragraph Roman numeral five notes the cause of death and it says that the cause of death was determined to be consistent with asphyxia due to aspiration of blood.

ARBITRATOR, JUSTICE MOSENEKE: Yes, in simple language she drowned in her own blood.

ADV. ADILA HASSIM: But if we turn to page 3534, the paragraph of this post-mortem report that is headed stomach and contents, describes the findings of the pathologist. And it says as far as the stomach goes, it contains two bottled up plastics which are a size of a fist. Several pieces of brown papers are found in the stomach. Partially digested food resembles samp with beans. Were you informed about these findings of the post-mortem, Me. Phehla?

ME. MARIA PHEHLA: Yes, I was Counsellor, because those forms I got from the Diepkloof Police Station. It was given to me by Detective Ndahonde, I saw those.

ADV. ADILA HASSIM: And did anybody at Takalani, whether it was the matron or anyone else, explain to you what... why that was the case, why the post-mortem report showed that she was drowned in her own blood and that there was plastic and brown paper in her stomach, did they explain to you why?

5 **ME. MARIA PHEHLA:** No, they didn't Counsellor. Because my only problem was, I asked them, I never got an answer. When Deborah and the group from Randfontein were transferred to Takalani, Deborah was the only one who was separated from the group. She was placed in a small room behind all the wards.

ADV. ADILA HASSIM: How do you know that? So when you went to Takalani she
10 already passed away.

ME. MARIA PHEHLA: She did, yes, Counsellor.

ADV. ADILA HASSIM: Did you go back to Takalani?

ME. MARIA PHEHLA: After one week of the burial I went back and I asked to see the matron and they called her and she came. And I said, matron, will you please
15 take me to the place where my daughter died, I want to see the place. And in that small office they looked at each other and I started to become, hu-uh there is something wrong.

ADV. ADILA HASSIM: But did they take you to the ward?

ME. MARIA PHEHLA: The matron did. I went past all the wards with her and I
20 was surprised until we went to the last ward and we went right behind the wards, there was a small room there, she opened that room up. You know when a room is closed for a long time, when you open the door you get that smell. When she

opened up, I thought maybe she is coming to show me something, because I know my daughter died in the ward. But then she led me into that room. Counsellor, I don't know, it was something like this... something like this... the bed was standing in this corner and another one in that corner with a cupboard in between and she

5 showed me that your daughter died here. I said, matron, I don't get you, what do you mean she died in here? Why wasn't she in the ward with the other patients? She said to me, if patients are transferred here, they oversleep one night here. And I said because she was the only one, why wasn't all the patients in here, why was it only her alone here. She was the only one who slept there and all the other

10 patients she came with was in the ward, why did you separate her from the other group? She never answered me.

ADV. ADILA HASSIM: And how long was she at Takalani?

ME. MARIA PHEHLA: She went on the 23rd, she was admitted. On the 24th they phoned me to tell me that she was there. 25th and on the 26th, they told me she

15 died on the fourth day when she arrived there, she lived only for three days there, the fourth day she died. To my knowledge, they locked her up, I don't know why... was she a dog or what was she that she was took and locked up in that room all alone. To me it seems that they locked her up, even they changed her shifts, they forgot that there was a human being living in that shack, they never went to her,

20 they never gave her food. She out these brown papers of old files, I don't know where she got the plastic that she ate.

ADV. ADILA HASSIM: Were there files in that room?

ME. MARIA PHEHLA: There were old files, Counsellor, in the cupboard when you walk in on your right hand, in a cupboard where she was kept in a place like this. She ate those files and those plastics because she was starving. I am sure when they served the other patients with food, they forgot that she was there, she was
5 hungry.

ADV. ADILA HASSIM: And what did they say when you asked these questions, when you asked why was she left in this room?

ME. MARIA PHEHLA: I never got any answers from the matron. When I asked her why did they place her in that place, why, why was she separated I wanted to
10 know. Because where she was, she spent years there with all the other patients, but now here she was separated like a dog.

ADV. ADILA HASSIM: Did they have her medical records, any information or any of her belongings?

ME. MARIA PHEHLA: Her cousin, my nephew, asked for the records and this
15 Basani whose phone I have been given who does not exist, she told us there are no records.

ADV. ADILA HASSIM: She said there were no records at Takalani?

ME. MARIA PHEHLA: Of all these patients of Randfontein. I said, how come, you can't keep patients, because now they have a life, how can you say you have got no
20 records of their life and the medical. Then she showed us a small piece of paper and said the medicine was written there and how to take the medication. We wanted a life file.

ADV. ADILA HASSIM: Did they provide her with the medication?

ME. MARIA PHEHLA: Counsellor, I don't know. Because me and my nephew drove down to Randfontein again. We found an Indian doctor there and we told him that we are here for the records. And he said each and every patient who went to the NGOs, their records went with them, there is no record here. And we went back
5 again to Takalani and told them the doctor said there are no records, all the patients went with their records, so they denied it.

ADV. ADILA HASSIM: So you've never seen her medical records.

ME. MARIA PHEHLA: I have never ever.

10 **ADV. ADILA HASSIM:** What about her other belongings, did she have anything else?

ME. MARIA PHEHLA: No.

ARBITRATOR, JUSTICE MOSENEKE: When Deborah was left to go on leave with you, why was the condition said that she must always be under observation?

15 **ME. MARIA PHEHLA:** Justice, I really don't understand, I don't know what to say.

ARBITRATOR, JUSTICE MOSENEKE: Okay let me start again. We were shown a document that shows that you took her out of hospital on leave, is that right?

ME. MARIA PHEHLA: For going home?

ARBITRATOR, JUSTICE MOSENEKE: Yes for going home with you.

20 **ME. MARIA PHEHLA:** That's right.

ARBITRATOR, JUSTICE MOSENEKE: Now you have no eyes, otherwise I would have said the document is page 2537.

ME. MARIA PHEHLA: Okay.

ARBITRATOR, JUSTICE MOSENEKE: And Counsellor put to you that one of the
5 conditions not to be left unattended.

ME. MARIA PHEHLA: That is right, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Now my question is, do you know why she needed to be attended to at all times?

ME. MARIA PHEHLA: Justice, that is right because she could be a danger to
10 herself sometimes.

ARBITRATOR, JUSTICE MOSENEKE: Explain.

ME. MARIA PHEHLA: Like when she is all by herself, I remember sometimes when I have done washing and all that, I put the washing on the bed and she will take the washing and throw out of the window.

ARBITRATOR, JUSTICE MOSENEKE: You mean linen, she would take the linen
15 and throw it out of the window.

ME. MARIA PHEHLA: Out of the window.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ME. MARIA PHEHLA: And then when I leave like the room divider she would take
20 them and throw them down. So it was a danger, she might get hurt by those glasses and all that.

ARBITRATOR, JUSTICE MOSENEKE: You see, why I ask the question, let me tell you where I am going to. The doctor tells us that your daughter bled, she bled so much that she aspirated blood that landed in her lungs and she was (inaudible), in other words she could not breath anymore.

5 **ME. MARIA PHEHLA:** That's right Justice.

ARBITRATOR, JUSTICE MOSENEKE: Because of blood that was inhaled into her lungs. So hence I am asking the question trying to work back. How could that possibly have happened? I mean you are not an expert but you would know how she behaves because she was under your attention.

10 **ME. MARIA PHEHLA:** Well if there wasn't anybody near her, she does take everything and it goes straight into the mouth, that is why she needed proper protection. And maybe things that she might take may be a danger to her life.

ARBITRATOR, JUSTICE MOSENEKE: She had digested brown paper in her stomach.

15 **ME. MARIA PHEHLA:** Ja.

ARBITRATOR, JUSTICE MOSENEKE: How do you think it got there?

ME. MARIA PHEHLA: She ate it, Justice, she ate it.

ARBITRATOR, JUSTICE MOSENEKE: And that is consistent with her behaviour when she was at home. Did she put a lot of things into her mouth?

20 **ME. MARIA PHEHLA:** Well I saw her doing that but I was very careful when she was with me. I was very careful to see that there is nothing that she'll take and put in her mouth. I was very careful about that.

ARBITRATOR, JUSTICE MOSENEKE: So it is fair to say that she was unattended when she hurt herself.

ME. MARIA PHEHLA: That's right, Justice, that's right. She needed a good eye to look after her, she needed a good eye.

5 **ARBITRATOR, JUSTICE MOSENEKE:** And that would have been so in her medical records, isn't it so?

ME. MARIA PHEHLA: Yes Justice.

ARBITRATOR, JUSTICE MOSENEKE: You can see from this leave form, and I have seen the name of this doctor on a few forms who seems to be quite particular,
10 Dr Vadvala Rabia. She signed this and set out the conditions. This surely would have been in her medical records, if they were available.

ME. MARIA PHEHLA: That's true, Justice, it is true, it should be.

ARBITRATOR, JUSTICE MOSENEKE: Counsel.

ME. MARIA PHEHLA: As I said, Justice, I am blaming the Gauteng Province of
15 Health – that is what led to Deborah's death. Because if she was still there, all the years she spent there, she should still be alive if she wasn't removed. Because they took good care of her, they knew her. So that is why I wanted to see the records of her life to show them, can't you read, it stands here and there, but there was none. There was none of the records.

20 **ARBITRATOR, JUSTICE MOSENEKE:** And that is when you insisted, you told me earlier, that there should be a post-mortem examination.

ME. MARIA PHEHLA: That's right, Justice.

ADV. ADILA HASSIM: And then there was the post-mortem conducted 31st of March 2016. It is now a long time since, it is now a year and a half since the post-mortem was conducted. Have there been any further developments with the case? Has the police contacted you? Have they updated you as to where they are with the investigations? It has been a long time now.

ME. MARIA PHEHLA: Well I am sure it was last year, early or late last year, a detective phoned me from Pretoria telling me that they are coming over to me to take a statement. Oh well I waited and they arrived and they told me that they were sent by Detective Ndahonde from Diepkloof to take the case over. And those two gentlemen from Pretoria they were here.

ADV. ADILA HASSIM: They were where?

ME. MARIA PHEHLA: They were here with us in the last meetings.

ADV. ADILA HASSIM: In this arbitration?

ME. MARIA PHEHLA: Yes, I can just not remember was it the captain or ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Was it the General?

ME. MARIA PHEHLA: That's right, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Police General.

ME. MARIA PHEHLA: I know Captain Modiswa, he came with the other one, they came and took a statement from me.

ADV. ADILA HASSIM: But have they told you... when you saw them here was that the first time you'd seen them...?

ME. MARIA PHEHLA: Since they left my place. It was the first time I saw them here.

5 **ADV. ADILA HASSIM:** And other than taking a statement from you, have they updated you at all about their investigations?

ME. MARIA PHEHLA: No.

ADV. ADILA HASSIM: Okay.

ME. MARIA PHEHLA: Since that day they took the statement, nothing happened,
10 nobody phoned me and all that.

ADV. ADILA HASSIM: Were you aware of a court case that took place in March 2016 to prevent the government from moving patients to Takalani? Were you aware of that court case?

ME. MARIA PHEHLA: I am not quite sure.

15 **ADV. ADILA HASSIM:** That's fine. I just wondered if you were aware of it, because there was a concern about moving patients to Takalani and whether the care that they would receive would be appropriate. But the court case was lost and so the move then happened, which was the same time that Deborah was moved to Takalani.

20 **ME. MARIA PHEHLA:** All I can say is I am sure it was when the Randfontein, Brakpan Esidimeni told me about that when I was aware, when they told me that

they were going to close down and that she was going to be moved back to Randfontein.

ADV. ADILA HASSIM: Oh I see, yes. When was Deborah laid to rest?

ME. MARIA PHEHLA: It was on the 2nd of April 2016.

5 **ADV. ADILA HASSIM:** And who paid for the funeral?

ME. MARIA PHEHLA: Well her two brothers and the family did.

ADV. ADILA HASSIM: And do you recall what the expense of...?

ME. MARIA PHEHLA: Well they did all the expenses, because now we've got families in the homeland who come and stay the whole week with you. The whole
10 week they are here, you've got to give them food, breakfast and everything, that's money... it is money. Because there are grannies like me who will tell you I don't eat meat, I want milk, I don't eat cabbage I want that, and you've got to get that for them. You won't say no, you'll eat what you get. And there were also my church people coming. And when the burial came there must be food, enough food, and
15 on the funeral day it is only the hearse and the family car. You've got to see to the buses and all other transport to transport the people to the graveyard. And then after all that there was a tombstone as well.

ARBITRATOR, JUSTICE MOSENEKE: How much was all that?

ME. MARIA PHEHLA: Justice, it comes to R60 000 with the tombstone as well.

20 **ADV. ADILA HASSIM:** With a tombstone?

ME. MARIA PHEHLA: Yes because we erected a tombstone for her.

ARBITRATOR, JUSTICE MOSENEKE: Thank you.

ADV. ADILA HASSIM: I know it was difficult for you, particularly to hear about the post-mortem report and the death certificate is clear that it was unnatural ...intervened.

5 **ARBITRATOR, JUSTICE MOSENEKE:** Sorry, Counsellor, before you go to that sensitive part, can I ask a few more questions about what you saw at Takalani? All of us can remember you saw the matron, but I want to hear more than the matron. What was the... where were the patients kept?

ME. MARIA PHEHLA: In the wards, Justice.

10 **ARBITRATOR, JUSTICE MOSENEKE:** How many wards did they have?

ME. MARIA PHEHLA: I didn't even count Justice, we just went through the wards, whether four or five lines of wards.

ARBITRATOR, JUSTICE MOSENEKE: But is Takalani built like a hospital, if you talk about wards?

15 **ME. MARIA PHEHLA:** What can I say... like a school with many classes.

ARBITRATOR, JUSTICE MOSENEKE: It looked like a school with many classes.

ME. MARIA PHEHLA: That's right Justice.

ARBITRATOR, JUSTICE MOSENEKE: Did you walk through the wards?

ME. MARIA PHEHLA: No, we were outside, walking outside.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Did you see any patients?

ME. MARIA PHEHLA: Well there were, there were, Justice, outside.

ARBITRATOR, JUSTICE MOSENEKE: Men and women?

ME. MARIA PHEHLA: Ja, men and women.

ARBITRATOR, JUSTICE MOSENEKE: Could you estimate the number of people who were there?

5 **ME. MARIA PHEHLA:** No, I will be telling a lie, Justice. I don't know.

ARBITRATOR, JUSTICE MOSENEKE: And could you have a sense of how people were fed there?

ME. MARIA PHEHLA: The food, Justice?

ARBITRATOR, JUSTICE MOSENEKE: Mm.

10 **ME. MARIA PHEHLA:** I have never seen ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: You said they starved your daughter, so I am trying to understand what you saw and what you inferred from what you saw.

ME. MARIA PHEHLA: Well I couldn't check, because I never went into the wards, Justice, we never went into the wards. We just walked past the wards, just past the
15 wards to the back.

ARBITRATOR, JUSTICE MOSENEKE: And were the wards crowded with beds or not?

ME. MARIA PHEHLA: Justice, I couldn't see anything.

ARBITRATOR, JUSTICE MOSENEKE: You couldn't see anything?

20 **ME. MARIA PHEHLA:** I couldn't see anything.

ARBITRATOR, JUSTICE MOSENEKE: So if I were to ask you in one word what you think the conditions were at Takalani, what would be your answer?

ME. MARIA PHEHLA: I would say it is no good. Because if it was a good place, Justice, my daughter wouldn't be locked in an outside room, she shouldn't be
5 locked there. If it was a good place, she shouldn't have been locked out there.

ARBITRATOR, JUSTICE MOSENEKE: Besides the matron, could you see any other nurses?

ME. MARIA PHEHLA: No, it was only those in the tiny office. I am sure they were the clerks or whatever they were with the matron.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Did you say the ablution block, where the patients washed?

ME. MARIA PHEHLA: Justice, I saw nothing.

ARBITRATOR, JUSTICE MOSENEKE: You saw nothing, okay.

ME. MARIA PHEHLA: I saw nothing.

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

ADV. ADILA HASSIM: Thank you, Justice, you have reminded me of a question that I forgot to ask and that is whether there was a bathroom in the room where Deborah had been kept, whether there was washing facilities.

ME. MARIA PHEHLA: When I went past I saw a little tap, I am sure it was a small
20 bathroom with a little tap, there were two taps.

ADV. ADILA HASSIM: Inside the room or outside?

ME. MARIA PHEHLA: No, no, it was in that room.

ADV. ADILA HASSIM: Inside the room there were two taps.

ME. MARIA PHEHLA: And the matron told me that they were using it and I said, matron, you won't even dig a glass of water in this place, it was filthy. It seems
5 everything that wasn't working was thrown into that room. That room was never in use anymore, nobody could live there.

ADV. ADILA HASSIM: But were the taps separated or was it just all in one part of the same room?

ME. MARIA PHEHLA: Ja, it is all in one basin.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Were the taps over a hand basin?

ME. MARIA PHEHLA: That's it, Justice, that's it.

ADV. ADILA HASSIM: And you could see the bed and the taps and everything from one place, the taps weren't in a separate room like a bathroom, that's what I am trying to understand.

15 **ME. MARIA PHEHLA:** Ja, when you walk through the door, there is a door this side and that is where I saw the tap on the side here.

ADV. ADILA HASSIM: I see. And were there windows in this room?

ME. MARIA PHEHLA: The windows were on that side of the room.

ARBITRATOR, JUSTICE MOSENEKE: You've got to say more than that.

20 **ADV. ADILA HASSIM:** They were in the room near Deborah's bed?

ME. MARIA PHEHLA: Like I said if this is where Deborah was kept in this corner, the windows were there.

ADV. ADILA HASSIM: Were they open?

ME. MARIA PHEHLA: No. Counsellor, it seems like a storeroom. Whatever they
5 were not using anymore, they used to just throw it in that room.

ARBITRATOR, JUSTICE MOSENEKE: Was there a bed in that room?

ME. MARIA PHEHLA: There were two beds, Justice.

ADV. ADILA HASSIM: Do you know whether there was anybody else in the room?

ME. MARIA PHEHLA: No, it was only Deborah. She was locked there alone.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Your advocate has been asking for some time to try and find out if you know whether there was a bathroom in there.

ME. MARIA PHEHLA: Ah Justice.

ARBITRATOR, JUSTICE MOSENEKE: You told us about a hand tap, hand basin, but was there a bathroom?

15 **ME. MARIA PHEHLA:** Justice, the way I was so furious, I never even had a chance to look into that bathroom.

ADV. ADILA HASSIM: So was there a doorway to another room?

ME. MARIA PHEHLA: No, it was open like this when you go through there to that bathroom or whether... I don't know what it is. I don't know.

20 **ARBITRATOR, JUSTICE MOSENEKE:** The problem is, the record cannot pick up like this. So you've got to tell us a little more. Many other people are going to read

the record after this. So just tell us, was there any other door, Counsel is asking you, besides the entrance door?

ME. MARIA PHEHLA: No, no, there was only one door that you enter in to go to that room.

5 **ARBITRATOR, JUSTICE MOSENEKE:** So there was no door leading to an ablution space.

ME. MARIA PHEHLA: No, as I said Justice, when you come in, on your right hand, it has got no door, it is just like this ...intervened.

ADV. ADILA HASSIM: A recess?

10 **ME. MARIA PHEHLA:** And there is a bathroom there.

ADV. ADILA HASSIM: A recess.

ME. MARIA PHEHLA: That's it, ja.

ADV. ADILA HASSIM: Do you have any idea how big the room was, any sense of how to describe the size of the room?

15 **ME. MARIA PHEHLA:** I am sure it is from the curtains from there to here and then it comes to here and that is where this place was on the right and on the left it is where the beds were pushed into the wall.

ARBITRATOR, JUSTICE MOSENEKE: So that is like 6 meters by 4 meters.

ME. MARIA PHEHLA: Ja, because when I walked through the door to go to where
20 the bed was, I am sure I only took one, two, three steps to go to that bed.

ADV. ADILA HASSIM: Just a question about Deborah. Did she... you say you visited her regularly.

ME. MARIA PHEHLA: Mm.

ADV. ADILA HASSIM: Did she recognise you? Did she appreciate your visits?

5 Wait for your visits? I am just asking just to understand more about Deborah and her mental disability.

ME. MARIA PHEHLA: Counsellor, she knew me as her mum. Because whenever I said goodbye I kissed her and when the sister took her by hand to go back to the wards she used to come, you know, don't touch me, and then she used to come
10 after me. She knew me.

ADV. ADILA HASSIM: And when you took her home to stay with you, she was happy to be with you at home.

ME. MARIA PHEHLA: Ja, she was. We will really remember her. She never talk. The only person she could call is her brother and say Petrus, it is the only thing.
15 And then she would ask you, when you stand there and she will ask you what are you doing, what are you doing. And when I called her Deborah and then she used to say hu-uh Dirkie, Dirkie. And I said you are not Dirkie, you are not a boy, you are Deborah. You know, we'll remember her, really, we'll remember her. She knew me and she knew her brothers.

20 **ADV. ADILA HASSIM:** Is there anything else that you would like to say? I don't have any more questions for you at this point. But I don't... if there is anything else

that I have not asked you about or anything else you would like to say, you may do so.

ME. MARIA PHEHLA: I want answers, Counsellor, I want answers. I won't be okay without getting those answers. Because the one thing I want to know is where
5 were they... where were they at that time... where were they... what happened? Nobody can tell me what happened. And I said to the matron you can't give a person oxygen, that means by the time when you came she was long gone, there is no such like giving her oxygen. Why didn't they take her straight to hospital? So that shows me that they don't know what time when she died, they don't know.
10 Because she said to me, when she talked over the phone she said oh I was so scared that you are going to be so furious and all that, when she talked to me when I got there.

ADV. ADILA HASSIM: This was the matron.

ME. MARIA PHEHLA: The matron. So I don't know, really I don't know.

15 **ADV. ADILA HASSIM:** Thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: Thank you Counsel.

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

ARBITRATOR, JUSTICE MOSENEKE: Adv. Crouse?

ADV. LILLA CROUSE: We have got no questions, thank you.

20 **ARBITRATOR, JUSTICE MOSENEKE:** No questions. Adv. Groenewald?

ADV. DIRK GROENEWALD: We have got no questions for the witness, thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: Adv. Ngutshana?

ADV. PATRICK NGUTSHANA: Thank you, Justice Moseneke. Just one question.

5 Let me take you back to the application for leave of absence. The document you still remember on 3537, at the bottom there it is written “the user is to present him/herself to the health establishment every two weeks/two months to be monitored and his/her health status reviewed.” Do you still recall that?

ME. MARIA PHEHLA: Can you ...intervened.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Well the problem is, Counsellor, the witness can’t see clearly the document. You are referred to document 3537 and at the bottom of the document there is a last sentence there and I think Counsel should read it to you in order to remind you what is stated in the document.

ADV. PATRICK NGUTSHANA: On page 3537, it is your application for leave of
15 absence. Signed for by Vadvala Rabia. The date of commencement of leave there is the 23rd of March 2016. Due date for return from leave is 6 April 2016. Name of health establishment where the user’s mental health status will be monitored, Randfontein Care Centre. Do you still remember this document, Me. Phehla?

ME. MARIA PHEHLA: Yes, I do, Counsellor.

20 **ADV. PATRICK NGUTSHANA:** Okay. And at the bottom there on the same page it is recorded that: “The user is to present him/herself to his health establishment

every two weeks/month to be monitored and his/her health status reviewed.” Do you still recall these conditions?

ME. MARIA PHEHLA: Yes that is right, Counsellor.

ADV. PATRICK NGUTSHANA: Yes, why was it required that the user present
5 herself or that is for these two weeks or two months?

ME. MARIA PHEHLA: Because I used to take her, if she was with me, if something went wrong, although I had her medication, I used to take her to the clinic if there was something wrong with her.

ADV. PATRICK NGUTSHANA: Would this not be for the reasons which are stated
10 on the following page, on page 3538 that the user is required to be supervised all the time, no alcohol or... I can't read what the...?

ARBITRATOR, JUSTICE MOSENEKE: Now if you and the witness can't read, we are in trouble. Counsel...

ADV. PATRICK NGUTSHANA: Oh, drugs.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Yes, no alcohol or drugs.

ADV. PATRICK NGUTSHANA: Or drugs.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ME. MARIA PHEHLA: No, she was never taking that.

ADV. PATRICK NGUTSHANA: There was no pre-existing condition that required
20 her to be monitored on...?

ME. MARIA PHEHLA: None Counsellor.

ADV. PATRICK NGUTSHANA: Okay. Thank you, Justice Moseneke.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. The point that Counsel makes has some importance which really is, your very leave is only for two weeks, if one looks at the dates in the documents, do you remember it so too? You were given
5 only two weeks' leave with your daughter.

ME. MARIA PHEHLA: Ja, that is right, Justice.

ARBITRATOR, JUSTICE MOSENEKE: And the note says that she may not... she has to be presented to an establishment every two weeks.

ME. MARIA PHEHLA: No Justice, no.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Stroke months, to be monitored.

ME. MARIA PHEHLA: No Justice, no.

ARBITRATOR, JUSTICE MOSENEKE: No means what?

ME. MARIA PHEHLA: I mean they never told me about that. I don't know about that.

15 **ARBITRATOR, JUSTICE MOSENEKE:** You don't know about the condition. Well it is written, it is a condition written in the document. Anyway that's fine, no problem. Any further questions?

ADV. PATRICK NGUTSHANA: No further questions, Justice.

ARBITRATOR, JUSTICE MOSENEKE: No further questions, very well. Adv.
20 Hutamo?

ADV. ADV TEBOGO HUTAMO: Thank you Justice. Good afternoon, Me. Phehla.

ME. MARIA PHEHLA: Hallo Counsellor.

ADV. ADV TEBOGO HUTAMO: It is indeed very sad to lose someone that you have loved so much. We regret the death of your daughter, Deborah. And from what you have testified on, the Government is indeed taking note of the issues that you've raised. And we do take note of the fact that you said you want answers for you to be able to deal with the situation in which you find yourself.

ME. MARIA PHEHLA: That is right Counsellor.

ADV. ADV TEBOGO HUTAMO: And we thank you for having taken the time to give your side of the story about what you have experienced and the family as well. We trust that this process that we are going through now should be able to assist us to uncover the answers that you seek. And on behalf of the Government, we want to say to you, let's allow the process, so that we may find piece from the difficult moment that we have gone through. And we just want to apologise again for what you had to go through. It was unfortunate, tragic and lessons have been learned. Thank you so much.

ME. MARIA PHEHLA: Thanks Counsellor, thank you very much.

ARBITRATOR, JUSTICE MOSENEKE: After all said and done, you know a lot now and you have lived through pain. What do you think caused the death of your daughter?

ME. MARIA PHEHLA: As I said, Justice, it is through negligence of the Gauteng Department of Health that led to that and the circumstances that surrounds all – that is the cause that I am worried about what happened. And, Justice, as the people

have spoken, I wouldn't repeat their words, they have spoken the truth, that is what I was going to say as well, but I won't repeat it.

ARBITRATOR, JUSTICE MOSENEKE: Sure.

ME. MARIA PHEHLA: My only... Justice, if you'll allow me to go through all that I
5 want to say. I am asking what is happening in South Africa, our beautiful land. In each and every corner there is heartache and sorrow. There are killings every day of young and old. What have we done that we deserve this? What have we done? Justice, I want to quote from the Bible, if you'll allow me.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

10 **ME. MARIA PHEHLA:** Peter 1 chapter 5 verse 6 says: "Humble yourselves, then under the mighty hand of God, He will lift you up in His old good time. Take all your sorrows and give it to Him, because he cares." South Africans, I want to say to all the aggrieved families, we must know that in all our sorrows, there is someone who is watching us from above. He is Lord of lords, He is the Lily of the valley. Let's
15 take our prayers to him... let's take our sorrows and everything to Him in prayer. He is the one who will answer and He says He is the one who will heal our land from what it is. There is nothing else, Justice, I can say. We just keep our faith in God, let's give Him all the glory, because He deserves it. He is the Redeemer and He is the Comforter. There is nobody else we have to look up on. It is only God who can
20 help us in this. And it is only God who can heal our country, if we ask Him to do that. But if we don't go down on our knees, nothing will come right. And I pray for all our leaders, let God show them the way. Because those people who died, our loved ones, they were also in the image of God, they were not animals, they were in

the image of God. So that is why I say let's take everything to God in prayer. Justice, I thank you. I wish you didn't take our pension and carry on with your job. That is great job, Justice. I thank you. Section 27 keep it up Justice, keep it up Counsellor, all the Counsellors keep it up, don't give up hope, help us, we depend
5 on you. Especially with grownups, we believe if we take everything to God, everything will be okay and this land will be healed. I have got nothing else to say, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Thank you, Ma. Re-examination, Counsel. Thank you so much.

10 **ADV. ADILA HASSIM:** No re-examination. Thank you for coming today, Ma.

ME. MARIA PHEHLA: Thank you Counsellor.

ARBITRATOR, JUSTICE MOSENEKE: Me. Phehla, thank you. You are released from where you are.

ME. MARIA PHEHLA: Thank you Justice.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Yes, thank you. What do you want to do next, Counsel?

ADV. ADILA HASSIM: I would like to propose to you that we adjourn. Those were our witnesses for today and we have three witnesses tomorrow and we will be ready.

20 **ARBITRATOR, JUSTICE MOSENEKE:** So we will have no slippage, so to speak.

ADV. ADILA HASSIM: That is correct.

ARBITRATOR, JUSTICE MOSENEKE: I am keeping my biddy eye on this, on this program obviously, but you've done well, so we should be okay and keep moving. There is some work we have to do over and above the big witnesses and we still have to do that. But thank you. I think... is there any violent opposition to
5 adjourning now from any of the Counsellors?

ADV. ADV TEBOGO HUTAMO: Justice?

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ADV. ADV TEBOGO HUTAMO: May we request to see Justice in chambers after the adjournment? There is no violent opposition to the adjournment.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Yes certainly, we will certainly do that. After seen pictures of decomposed bodies, I can take some relief, I can do with an early adjournment. But we are going to be back here and we are going to do what has to be done. Shall all Counsel meet me in chambers then at the request of State Counsel immediately after the adjournment? Thank you. We are adjourned.

15 **END OF SESSION 3**