

**LIFE ESIDIMENI ARBITRATION**

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

**November 16, SESSION 1 – 3.**

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**BEFORE ARBITRATOR –JUSTICE MOSENEKE**

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**WITNESSES:**

10

**MERRIAM MONYANE**

**MR SIBUSISO SKHAKHANE**

**SARAH MHLONGO-NOKO**

[Contents](#)

SESSION 1.....	2
15 SESSION 2.....	52
SESSION 3.....	96

## SESSION 1

**ARBITRATOR JUSTICE MOSENEKE:** [Vernacular 00:00:21].

**FEMALE:** Your full names please?

**MERRIAM MONYANE:** Miriam Mapuko Monyane.

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

**INTERPRETER:** Sworn in Your Worship.

**ADV. DIRK GROENEWALD:** Thank you Justice. Mrs Monyane, first of all thank  
10 you for being here. I know that this has been a difficult time for yourself and you have been in and out of the hospital since these proceedings started.

**MERRIAM MONYANE:** Yes.

**ADV. DIRK GROENEWALD:** Mrs Monyane, you had a family member who died as a consequence of the Gauteng mental health project.

15 **MERRIAM MONYANE:** Yes, it was my son.

**ADV. DIRK GROENEWALD:** What was his name?

**MERRIAM MONYANE:** Thabo Monyane.

**ADV. DIRK GROENEWALD:** Mrs Monyane, can I refer you to the document marked ELAH57.

20 **INTERPRETER:** No, we do not have it here.

**ADV. DIRK GROENEWALD:** Page, this is the updated, the final summary on deceased Life Esidimeni patients. Prepared for these proceedings. Now if I can refer you to page 6 thereof. There is a list of names. The eighth name on that list ... [interjects]

5 **MERRIAM MONYANE:** No, this is not the names. Which page, page 6?

**ADV. DIRK GROENEWALD:** Page 6.

**ARBITRATOR JUSTICE MOSENEKE:** Well, I see no names too on page 6.

**INTERPRETER:** There is no names on page 6.

**ADV. DIRK GROENEWALD:** ELAH57 Justice.

10 **ARBITRATOR JUSTICE MOSENEKE:** Yes, let us use the Ombud's numbering, shall we?

**ADV. DIRK GROENEWALD:** Yes Justice. It is the annexures thereto. 7, 8, 9. After page 9 Justice, it is not numbered. It starts to number again. The numbering starts again. It is at the last page.

15 **ARBITRATOR JUSTICE MOSENEKE:** So you are referring us to the schedule.

**ADV. DIRK GROENEWALD:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Second schedule to the Ombud's report.

**ADV. DIRK GROENEWALD:** It is the last page of the document. My apologies.

20 **ARBITRATOR JUSTICE MOSENEKE:** Can you ask the witness to look at which number?

**ADV. DIRK GROENEWALD:** Number 8. Number 8, yes.

**ARBITRATOR JUSTICE MOSENEKE:** Number 8. ... [inaudible]. Are we on the same thing?

**ADV. DIRK GROENEWALD:** It is the last page of that report Justice. At the  
5 bottom it is page 6 of 6. Next page. There we go.

**ARBITRATOR JUSTICE MOSENEKE:** Under the heading associated deaths. Is that it?

**ADV. DIRK GROENEWALD:** That is correct. Can you just confirm is that indeed Thabo Monyane?

10 **ARBITRATOR JUSTICE MOSENEKE:** I am not sure what you want the witness to confirm Counsel.

**ADV. DIRK GROENEWALD:** Well, I just want her to confirm that Thabo ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** There is a list before her and the name  
15 Thabo Monyane.

**ADV. DIRK GROENEWALD:** Yes Justice, I just want to confirm that Thabo Monyane is indeed on the list.

**MERRIAM MONYANE:** No Counsellor.

**ADV. DIRK GROENEWALD:** Okay, let us try again madam. It is, look at the date  
20 of number 8.

**MERRIAM MONYANE**: Oh, yes. Number 8.

**ADV. DIRK GROENEWALD**: Number 8, date of birth 30<sup>th</sup> of October 1983.

**MERRIAM MONYANE**: Yes, I do see it.

**ADV. DIRK GROENEWALD**: Okay, and the date of death we have an issue with  
5 that. It was not the 23<sup>rd</sup> of August. It was in fact the 12<sup>th</sup> of August if I am correct.

**MERRIAM MONYANE**: He passed on, on the 12<sup>th</sup> of August.

**ADV. DIRK GROENEWALD**: Thank you madam. You can confirm that is indeed  
Thabo Monyane on that list?

**MERRIAM MONYANE**: ... [inaudible]

10 **ADV. DIRK GROENEWALD**: Madam, now can you just confirm we have heard  
evidence that Mr Monyane, your son, was at CCRC.

**MERRIAM MONYANE**: That is correct Counsellor.

**ADV. DIRK GROENEWALD**: Since when was he at CCRC? When was he  
admitted at CCRC?

15 **MERRIAM MONYANE**: From 2005.

**ADV. DIRK GROENEWALD**: And what was his medical condition?

**MERRIAM MONYANE**: He was not, when he was born he had a mental block. It  
is called Seriblamic Palsy.

**ARBITRATOR JUSTICE MOSENEKE**: No, cerebral palsy. I think that is what the  
20 witness said.

**MERRIAM MONYANE**: Cerebral palsy.

**ADV. DIRK GROENEWALD**: Madam, we know that at some point in time the government decided that to implement this Gauteng mental health project and as a consequence thereof the decision was taken that the number of CCR patients  
5 would be transferred to NGO's.

**MERRIAM MONYANE**: Yes, that is correct Counsellor.

**ADV. DIRK GROENEWALD**: We also know from the documentation and the evidence already presented at these proceedings that Thabo was indeed transferred to Siyabadinga.

10 **MERRIAM MONYANE**: That is correct Counsellor.

**ADV. DIRK GROENEWALD**: Can you just confirm and state, were you informed of this transfer and to what extent?

**MERRIAM MONYANE**: Yes, I was informed.

**ADV. DIRK GROENEWALD**: How were you informed?

15 **MERRIAM MONYANE**: The social workers called me that I must attend their meeting. On our arrival at the meeting, we were informed that our kids, our children will be transferred to the NGO's. We, when we asked we did not get the full answers. Some of them told us that they are already adults, they want to make space for small kids from three years.

20 **ADV. DIRK GROENEWALD**: Now madam, when was do you know when Thabo was indeed then transferred to Siyabadinga.

**MERRIAM MONYANE:** If I am not confusing the dates it was during May.

**ADV. DIRK GROENEWALD:** 2016?

**MERRIAM MONYANE:** 2016, sorry.

**ADV. DIRK GROENEWALD:** Now madam, how did you observe the conditions at  
5 Siyabadinga?

**MERRIAM MONYANE:** It was stressful, it was not good conditions, because they were just starting. It was confusing. When they started staying there, there were no blankets, there were no clothings, enough clothings. They used to do hand washing and they were using one washing machine.

10 **ADV. DIRK GROENEWALD:** Was there a point in time that you as family members had to intervene?

**MERRIAM MONYANE:** We arranged as family that when must we bring clothes for the kids. I was one of them in that project. I called our neighbours, we met together and we gathered blankets and clothings.

15 **ADV. DIRK GROENEWALD:** Now madam, you have heard the testimony of the CEO of Siyabadinga.

**MERRIAM MONYANE:** Yes.

**ADV. DIRK GROENEWALD:** And there is one specific issue that I would just like to clarify with you. I asked her whether or not she knew Thabo, and she said yes  
20 she knew Thabo and she said yes she knew you, but she made a comment and said that Thabo was bedridden. Is that correct?

**MERRIAM MONYANE:** My Thabo was not bedridden. When he was born he was hyper active. When he entered at Cullinan Rehabilitation Centre, he became blind and I did not know why. I did not know how he sustained his injuries. He even went for operation for his eyes and they say they want to fix the retina. Then from there  
5 he was totally blind. He was placed on the bed due to lack of taking care of him. At least if there was somebody who can hold his hand and help him to walk around, but there was not that help for Thabo. Then he was now cramping on the bed at Cullinan. As a parent, as a parent I saw it deemed that I must just go and visit him every time so that I can help him from the bed.

10 **ARBITRATOR JUSTICE MOSENEKE:** All this happened before May 2016, is that it?

**MERRIAM MONYANE:** Yes.

**ADV. DIRK GROENEWALD:** So madam, now you visited Thabo regularly.

**MERRIAM MONYANE:** I used to pay him a visit regularly and every July I used to  
15 take him home for holidays.

**ADV. DIRK GROENEWALD:** Now when he was still at Siyabadinga, did you take him home also?

**MERRIAM MONYANE:** When he entered Siyabadinga first, the first time he was two days there. I took him home. Then I took him back May on the 29<sup>th</sup>. I took him  
20 back. I took him again June for the whole week. I took him back at the end of June 2016.



**ADV. DIRK GROENEWALD:** And what was Thabo's conditions, condition like when you took him back in June 2016?

**MERRIAM MONYANE:** He was fine. When we took him out of the hospital, he will go out running and when you take him back, it will take us long to take him back  
5 inside. He will grip at the gate and not want to get in.

**ARBITRATOR JUSTICE MOSENEKE:** I am a little confused now. I thought Thabo became blind and later became bedridden before May 2016.

**MERRIAM MONYANE:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** And you say that nobody helped him to be  
10 mobile anymore.

**MERRIAM MONYANE:** That is correct Justice.

**ARBITRATOR JUSTICE MOSENEKE:** So much so that he shrunk in his body size.

**MERRIAM MONYANE:** Yes. He was thin.

15 **ARBITRATOR JUSTICE MOSENEKE:** So in May you took him home. Also in June 2016. Now you talk about him running and rushing towards you.

**MERRIAM MONYANE:** Not running, rushing to me. When we left the hospital and balanced him, let me explain this. As I have noticed him that he was now becoming thin and there was no one helping him to walk around. He was not mobile anymore.  
20 I used to take him regularly, even if I was not taking him home we used to walk

around the hospital so that he can just exercise his legs. When I entered there and called, he will just lift his head.

**ADV. DIRK GROENEWALD:** Mrs Monyane, I am going to stop you there. I think you, I am just trying to take you through step by step. So we will get to that part.

5 But your evidence is that at the end of June 2016 when you left Thabo in the care of Siyabadinga, he was in a good condition.

**MERRIAM MONYANE:** Yes, he was in good condition.

**ADV. DIRK GROENEWALD:** Now madam, we know from the evidence and you were here yesterday. We presented from the medical records that we received we  
10 know that at some point in time you went and you fetched Thabo from CCRC, and that was on the 10<sup>th</sup> of August 2016.

**MERRIAM MONYANE:** That is correct Counsellor.

**ADV. DIRK GROENEWALD:** But you, that was the first time that you saw Thabo since the end of June 2016?

15 **MERRIAM MONYANE:** That is correct Counsellor.

**ADV. DIRK GROENEWALD:** Just briefly madam, if you can explain just your personal circumstances in that period. Just briefly.

**MERRIAM MONYANE:** After I left him during June, I was admitted for a week. There was, the following week there was a wedding in the family. My first born. The  
20 third week July I buried my uncle. I did not fetch him. Then time passed on.

**ADV. DIRK GROENEWALD:** Thank you madam. Now on the 10<sup>th</sup> of August 2016, why did you go and get Thabo from CCRC?

**INTERPRETER:** Pardon?

**ADV. DIRK GROENEWALD:** On the 10<sup>th</sup> of August 2016, why did you go and get  
5 Thabo?

**MERRIAM MONYANE:** On the 10<sup>th</sup> of August 2016 I was on duty. I received a call on my cell phone. The person on the other side said she is a sister, but I did not grab, I did not hear his name well, what was her name. From Cullinan, and she made a report to me and said Thabo's mom, Thabo is sick. We are busy feeding  
10 him ensure. I asked the caller when did he start. When this started, and she said, the caller said she started to work the very same day but she does not know. Then she dropped the phone. After work, I stayed for the whole day. Then after work, I knocked off at three thirty. I went home. I left with my son in law and my daughter. It was to seven. We arrived at Cullinan. On our arrival at Cullinan, the security  
15 stopped me. Blocked me. I made a report to the security that I am coming, I am here to visit my son, I received a report that he is ill. Then he made me wait at the waiting area. I did not enter that area. I just waited at the door. I was just waiting to see what is going to happen. He went to the ward to make a report to the sisters that I am there to visit Thabo. After a few minutes, three sisters, sister in charge  
20 and three nurses he was on the bed. He was being pushed on the bed. Wheels on the bed.

**ADV. DIRK GROENEWALD:** Take your time madam, take your time.

**MERRIAM MONYANE:** They then brought him to me. It was dark. I opened the blankets. I found him very thin.

**INTERPRETER:** As the witness is now demonstrating.

**MERRIAM MONYANE:** I asked them was it not important for me to carry him from  
5 the bed where he was lying. They then said, they said we brought him with his own  
bed. I tried to help him to wear his clothes which I brought along, took him inside  
the car. They also did not know when did he start being feeling sick. They said to  
me that they observed him and saw that he started to fell ill, they saw him being ill  
at that time because he was not moving. I took him home. At home I undressed  
10 him. I wanted to bath him. When I undressed him, on his upper leg, on the left  
upper leg there was a sore. It was in the middle of the upper leg and if they could  
have allowed us to get into the ward, we could have seen that sore. All of us.

**ARBITRATOR JUSTICE MOSENEKE:** Did they tell you why they brought,  
wheeled Thabo on his bed to you and not to allow you to get into the ward to see  
15 him there?

**MERRIAM MONYANE:** They had a lot of we do not know's. I asked them you  
have now turned this place into a prison, because I know this place. Sometimes  
they refuse people to get inside. At that time I wished I could have just grabbed my  
child from that bed. On my arrival at home ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** I am sorry. You were still telling us about  
20 the wound on the thigh.

**MERRIAM MONYANE:** There was a round wound on his upper leg. I then asked him after, I have just left you for three months, sorry for three weeks, but you have this bed sore on your upper leg. I had no answer.

**ARBITRATOR JUSTICE MOSENEKE:** Could he speak?

5 **MERRIAM MONYANE:** He could communicate with me.

**ARBITRATOR JUSTICE MOSENEKE:** In words or in other form?

**MERRIAM MONYANE:** With his eyes. He could communicate with me as a parent.

**ARBITRATOR JUSTICE MOSENEKE:** [Vernacular 00:26:50].

10 **MERRIAM MONYANE:** Thabo could not speak, but he could hear.

**ADV. DIRK GROENEWALD:** So when you took him home madam, what did you do?

**MERRIAM MONYANE:** I took off his clothes. I saw the wound and bathed him. It was at night by then. Then I observed him the whole night. The following morning I  
15 woke up, took him to hospital. The doctors attended him.

**ADV. DIRK GROENEWALD:** Which hospital madam?

**MERRIAM MONYANE:** Steve Bikho. I asked the doctor about this sore, and he made a report to me that it is not a bedsore. Mostly explained to me that that was not a bedsore.

**ADV. DIRK GROENEWALD:** What was the doctor's observation of Thabo's condition?

**MERRIAM MONYANE:** After the doctor had observed him, he made a report to me that my son will not live. He then continued to be busy with him on his kidneys  
5 and he said to me do you see what am I doing to him, and he said to me Thabo did not receive water nor food. I asked him how long did this take. He said it can be very fast. Sometimes it can take long. I told the doctor that I have left him, it is not even a month. It is roughly four to three weeks. Three to four weeks. The doctor examined him, placed drip on him and told me that he will not live. When he  
10 opened his eye, the doctor opened his eye, he said to me this what I gave in the drip, if he received those drips earlier he could have survived. Then Thabo passed on on the 12<sup>th</sup> and there was a bed for him. We find him a bed at Tshwane District and the doctor said there is nothing that can help him. Then my son passed on.

**ADV. DIRK GROENEWALD:** Did anybody from CCRC phone you madam and  
15 asked you how was Thabo, is everything fine?

**MERRIAM MONYANE:** He passed on at quarter to eight on Friday. I phoned Diane and said Diane, Thabo passed on.

**ARBITRATOR JUSTICE MOSENEKE:** By Diane you mean the CEO of Siyabadinga?

**MERRIAM MONYANE:** Yes Counsellor, Justice. On that, on the Saturday Gotso  
20 was buried and the following day it was the other child. On Saturday after Thabo

has passed, one child who was at Siyabadinga was also buried and we came back from the funeral. The whole staff came to my house, the Saturday.

**ADV. DIRK GROENEWALD:** Sorry, which staff is that madam?

**MERRIAM MONYANE:** Siyabadinga staff. Those are the staff who were working  
5 with Diane Noyile, the CEO.

**ADV. DIRK GROENEWALD:** Now madam, you know that Siyabadinga was officially closed down on the 12<sup>th</sup> of July 2016. Now were you at any point in time informed that Thabo was to be transferred back to CCRC?

**MERRIAM MONYANE:** I did not know.

10 **ADV. DIRK GROENEWALD:** Madam, did anybody explain to you why is it that Thabo's condition deteriorated so in those three weeks' time?

**MERRIAM MONYANE:** I phoned numerous times, even if I did not go and pay him a visit. I tried to call the Siyabadinga staff and their phones were off. That is the time when they were chased away. I did not expect that there is a lot of things  
15 coming. The day when they made a report to me about Thabo is sick, I called Diane during the night and asked where is Thabo and she told me that they have been chased away. She could not call me.

**ADV. DIRK GROENEWALD:** So you were, at that point in time you still thought that Thabo was at Siyabadinga?

20 **MERRIAM MONYANE:** Yes Counsellor.

**ADV. DIRK GROENEWALD:** Now subsequent to all of these events madam, did anybody from the government contact you and tell you they are sorry or provided you with an explanation?

5 **MERRIAM MONYANE:** No. I tried to call them, but the phone would not reach them. I will wait on the phone, trying to explain to the Cullinan staff that my son passed on. I could not get hold of even one of them.

**ADV. DIRK GROENEWALD:** But there was no autopsy done on Thabo.

**MERRIAM MONYANE:** No. There was no autopsy.

10 **ADV. DIRK GROENEWALD:** And his death certificate simply states that it is natural causes.

**MERRIAM MONYANE:** That is correct Counsellor.

**ADV. DIRK GROENEWALD:** But up to today you do not know what exactly caused the death of your son. Is that correct?

15 **MERRIAM MONYANE:** I can say so, because I did not get any explanation from any of the nurses.

**ADV. DIRK GROENEWALD:** How old was Thabo when he died?

**MERRIAM MONYANE:** 32 years old.

**ADV. DIRK GROENEWALD:** You madam, what was your expectations for you and Thabo?



**MERRIAM MONYANE:** When he was shifted at Siyabadinga, I said Thabo, I am going to resign. At 60 years I will be with you for the most of the time. Immediately when I left that meeting I filled in the retirement forms so that I can have enough time with my son. When I took him from the institution, go and visit him at  
5 Siyabadinga, I just counted all the months and told him that at the end of September I will be off duty and explained to him that this is July month, he will not come home. I will come and fetch you during October, and I was misleading myself. I miss my son.

**ADV. DIRK GROENEWALD:** Are you okay to continue madam, do you want us to  
10 ... [interjects]

**MERRIAM MONYANE:** You may continue.

**ADV. DIRK GROENEWALD:** Now madam, you who paid for the funeral expenses of Thabo?

**MERRIAM MONYANE:** Yes, I did.

15 **ADV. DIRK GROENEWALD:** Just give us an estimate of what did that cost you?

**MERRIAM MONYANE:** Plus the coffin?

**ADV. DIRK GROENEWALD:** Yes, everything.

**MERRIAM MONYANE:** Between 45 and 50. The busses, transport, mobile toilets and the others.

20 **ADV. DIRK GROENEWALD:** Now madam, you have been here and you have heard the evidence of the department's witnesses and some of the staff.

**MERRIAM MONYANE:** Yes Counsellor.

**ADV. DIRK GROENEWALD:** I want to provide you with this opportunity to respond to any of that what they testified.

**MERRIAM MONYANE:** Evidence of Sister Manaka yesterday, I still remember  
5 when I took Thabo back during June I met her, because she is residing at the res.  
That is when I took Thabo back. We just discussed ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** [Vernacular 00:40:09]

**MERRIAM MONYANE:** We were talking about, she asked me did you take him  
back, now you brought him back, and she made a report to me that the place is still  
10 new. I just laughed and took Thabo back. She saw me. Why did she not call me  
and tell me that your son is back to us and now he is confused? She knew me from  
long back with my son, but she did not call me. When I used to call Cullinan and  
asked what happened, she was the sister in charge. Why did she not make a report  
to me that Thabo is now not well. I am not happy about it. I am totally not happy  
15 about this. If a parent is visiting the son or the child, you can just see. They could  
have just called me and made a report to me. Not to wait up until his last days and  
then they called me. I am not satisfied and they said he did not die in his hand, in  
their hands. Why those with medical background, because before Thabo there  
were a lot of people who died there. Why did they not stand up and to stop this.  
20 There is an ambulance depot just next to Cullinan. It is just a walking distance to  
call an ambulance for the child. Why did they not take these kids to hospital. Take

steps as they had medical background. Take necessary steps for the sick people. I am not satisfied, I am not happy.

**ARBITRATOR JUSTICE MOSENEKE:** Mrs Monyane took your son yourself to Steve Bikho Hospital?

5 **MERRIAM MONYANE:** Yes Justice.

**ARBITRATOR JUSTICE MOSENEKE:** [Vernacular 00:43:10]

**MERRIAM MONYANE:** He was very sick. I saw him.

**ARBITRATOR JUSTICE MOSENEKE:** You did not ask them why did they not take him personally to hospital?

10 **MERRIAM MONYANE:** I asked them. Even those reports, they allege that I have signed. There were no assessment there. It is something that happened very fast and I took my child, because what was surprising I did not have medication in my possession.

**ARBITRATOR JUSTICE MOSENEKE:** Do you want to say that when you took  
15 him from hospital they did not give you any medication for him?

**MERRIAM MONYANE:** Nothing. Nothing. He used to drink a tablet, but he also used to vomit this coffee substance. They did not give me that tablet and folic acid. They gave me nothing. I only had the pass out that I used to go out at the security.

**ARBITRATOR JUSTICE MOSENEKE:** Did you go and visit him, see him at  
20 Siyabadinga? At the new place where he was transferred?

**MERRIAM MONYANE:** I went there, even my kids we went there. We used to help there at Siyabadinga. We saw him.

**ARBITRATOR JUSTICE MOSENEKE:** You spoke about a lot of things that they did not have. You did not speak about food.

5 **MERRIAM MONYANE:** Yes, they had food. But it was not the ratio similar to the one in Cullinan.

**ARBITRATOR JUSTICE MOSENEKE:** Was it a lot of food or small food?

**MERRIAM MONYANE:** The food in Cullinan was much.

**ARBITRATOR JUSTICE MOSENEKE:** Did they give them water?

10 **MERRIAM MONYANE:** I did not see anything about water. I brought along, mostly I brought along water. I did not see if they gave them water after food. What I saw it was juice.

**ARBITRATOR JUSTICE MOSENEKE:** Lastly I did not hear you. When was Thabo's last place? Was it Steve Bikho?

15 **MERRIAM MONYANE:** They go a bed for him from Tshwane District, in another ward next to the mortuary. That is where he passed on at quarter to eight on a Friday.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel?

**ADV. DIRK GROENEWALD:** Thank you Justice. Now madam, unfortunately these  
20 proceedings cannot bring back Thabo. But what is it that you hope will come from these proceedings?

**MERRIAM MONYANE:** I am thankful, because when he went back to CCRC what was his condition? What troubled me emotionally it was these kids. If anything happens to them, no one will give you an answer. You will never get an answer. You will find wounds on his bed whereas he is bedridden. No one will give you an answer. It was their habit. When you ask them questions, they will tell you that I started to be on duty today, on that day. They do not hand over, there is something and the word was oorgee, handover. The sister who is on duty, who will start to commence with the duty will not know what happened to the patient, whereas she found other sisters on duty. I was surprised. That troubled me. What I expected, I expected changes in such institutions where kids are being injured or mentally ill patient. There must be changes.

**ADV. DIRK GROENEWALD:** Tell me madam, have you been offered counselling by the state, by the department?

**MERRIAM MONYANE:** Yes.

15 **ADV. DIRK GROENEWALD:** Have you went for counselling?

**MERRIAM MONYANE:** At church. Busi from Logistics she came and counselled me.

**ARBITRATOR JUSTICE MOSENEKE:** Where, what organisation is Logistics?

**MERRIAM MONYANE:** I do not know. She made a report to me that she is Busisiwe from Logistics, she is a social worker.

**ARBITRATOR JUSTICE MOSENEKE:** I am sorry. There is a lady assisting you there. I suggest you give her a chair. I do not see you squatting forever. Thank you.

**INTERPRETER:** Continue.

5 **MERRIAM MONYANE:** And about the wrong dates that are entered in the files, I am not satisfied about that. That is something that just came out of their mind and place it in their records to bring them to this hearing.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel, is it Thabo Monyane who fell onto his head or do I confuse that with one of your other clients?

10 **ADV. DIRK GROENEWALD:** It is one of our other clients.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**ADV. DIRK GROENEWALD:** David Mpofo. His grandmother will testify.

**ARBITRATOR JUSTICE MOSENEKE:** I see, okay.

15 **ADV. DIRK GROENEWALD:** Then lastly madam, how did the death of Thabo in the circumstances that we know, how did that impact on you?

**MERRIAM MONYANE:** I did not accept it. I did not accept it. Because I have been asking myself a lot of questions, because I did not receive any answer.

**ADV. DIRK GROENEWALD:** Hopefully you have received some answers during these proceedings madam.

**MERRIAM MONYANE:** That is correct. From since from yesterday. I did not expect to get answers from here. I would like that those sisters, the staff at Cullinan, would have explained to me before I buried my son and give me my son's clothes back, because with out Sotho culture, you cannot bury somebody with his  
5 clothes outside. Currently we do not know where is his clothes.

**ADV. DIRK GROENEWALD:** Madam, is there anything else that you would like to add?

**MERRIAM MONYANE:** Nothing Counsellor.

**ADV. DIRK GROENEWALD:** Thank you justice.

10 **ARBITRATOR JUSTICE MOSENEKE:** Advocate Groenewald, thank you. Three advocates are going to put questions to you. I will ask you to listen and answer those questions, and answer them in short.

**MERRIAM MONYANE:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel?

15 **ADV ADILA HASSIM:** Thank you Justice. Good morning Ma Monyane.

**MERRIAM MONYANE:** Morning Counsellor.

**ADV ADILA HASSIM:** Thank you for coming to testify today. I just have a couple of questions, and they are more as questions of clarification. You mentioned that there was, you referred to a sister in charge at Cullinan that you knew well and that  
20 you expected her to contact you. What was her name?

**MERRIAM MONYANE:** Sister Manaka, Janine Manaka.

**ADV ADILA HASSIM:** Manaka. Were you here during the hearings yesterday?

**MERRIAM MONYANE:** Yes, I was present.

**ADV ADILA HASSIM:** When you say Manaka, are you referring to the witness who was here yesterday from CCRC?

5 **MERRIAM MONYANE:** Yes Counsellor.

**ADV ADILA HASSIM:** Thank you. My other question is in relation to the counselling. You say you, if I heard you correctly you said you received counselling at church and then from a person names Busi who is a social worker.

**MERRIAM MONYANE:** Yes Counsellor.

10 **ADV ADILA HASSIM:** And when did Busi contact you to offer counselling?

**MERRIAM MONYANE:** She came at my house.

**ADV ADILA HASSIM:** When was that?

**MERRIAM MONYANE:** Two weeks before the arbitration was introduced.

**ADV ADILA HASSIM:** And do you remember her surname?

15 **MERRIAM MONYANE:** No, I do not.

**ADV ADILA HASSIM:** And how many times did you meet with Busi?

**MERRIAM MONYANE:** That was the second time meeting her. The first meeting, that is when they came and said they are going to take us to Freedom Park. Then she came back the second time and said she is going to give me counselling.



**ADV ADILA HASSIM:** And then, so was it only two occasions on which you saw her?

**MERRIAM MONYANE:** That is correct Counsellor.

**ADV ADILA HASSIM:** And it was only one session that you had with her directly  
5 one on one?

**MERRIAM MONYANE:** Yes Counsellor.

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

**ARBITRATOR JUSTICE MOSENEKE:** And how long was this session?

**MERRIAM MONYANE:** She arrived at eleven o'clock. Left at twelve thirty or  
10 13h00.

**ARBITRATOR JUSTICE MOSENEKE:** Advocate Crouse?

**ADV. LILLA CROUSE:** Thank you Justice. We have no questions for this witness.

**ARBITRATOR JUSTICE MOSENEKE:** Advocate Ngutshana?

**ADV. PATRICK NGUTSHANA:** Thank you Justice. Just to clarify one thing with  
15 the witness. It has been put to you that Siyabadinga was closing the 12<sup>th</sup> of July at  
2016 and it appears to me that before the closure of Siyabadinga, CCRC took over  
the care of your son on the 8<sup>th</sup> of, that is on the 8<sup>th</sup> of July 2016.

**MERRIAM MONYANE:** That is what I have heard. I was not aware of it.

**ADV. PATRICK NGUTSHANA:** You were not aware of that. Okay, thank you.  
20 For record purposes Justice, let me refer the witness to ELAH11. The second last

page of ELAH11. On the second last page at the bottom, towards the end of, at the bottom of that page 33, Monyane T.

**MERRIAM MONYANE**: Yes.

**ADV. PATRICK NGUTSHANA**: Are you there?

5 **MERRIAM MONYANE**: Yes.

**ADV. PATRICK NGUTSHANA**: Yes. There is a column on a take over date. The date reflected there is the 8<sup>th</sup> of July 2016.

**MERRIAM MONYANE**: Yes Counsellor, I see it.

10 **ADV. PATRICK NGUTSHANA**: And the date of death is correct there on the 12<sup>th</sup> of August 2016.

**MERRIAM MONYANE**: Yes Counsellor, that is correct.

**ADV. PATRICK NGUTSHANA**: And that date is the correct date of death.

**MERRIAM MONYANE**: That is correct Counsellor.

**ADV. PATRICK NGUTSHANA**: Okay, thank you.

15 **ARBITRATOR JUSTICE MOSENEKE**: Well, you can as well be taken through the rest of the details. Was he in ward 8?

**MERRIAM MONYANE**: Yes, he was there at ward 8.

**ARBITRATOR JUSTICE MOSENEKE**: And that was before his move to Siyabadinga?

**MERRIAM MONYANE**: Yes, yes Counsellor.

**ARBITRATOR JUSTICE MOSENEKE**: And they recorded there that he was discharged on the 17<sup>th</sup> of May, 2016. Do you still remember that?

**MERRIAM MONYANE**: Yes Justice. Yes Justice, that is correct.

5 **ARBITRATOR JUSTICE MOSENEKE**: It is recorded that he was taken back to CCRC on the 8<sup>th</sup> of July.

**MERRIAM MONYANE**: That is correct Justice.

**ARBITRATOR JUSTICE MOSENEKE**: Did Thabo have other siblings? Brothers and sisters?

10 **MERRIAM MONYANE**: He is my third son. I have three sons and one daughter. Thabo is the third one.

**ARBITRATOR JUSTICE MOSENEKE**: Counsel?

**UNKNOWN**: Mrs Monyane, greetings to you madam.

**MERRIAM MONYANE**: Morning Counsellor.

15 **UNKNOWN**: Firstly I would like to thank you for having taken the time to give your testimony in these proceedings.

**MERRIAM MONYANE**: Thank you Counsellor.

**UNKNOWN**: We must at the outset regret the loss of your son, Thabo Monyane. It is indeed regrettable that such death should have been prevented, and from your  
20 testimony it is quite clear that you really miss your son. This is even demonstrated

by the fact that like you even told him that you wanted to spend more time with him after your retirement, and that never got to happen.

**MERRIAM MONYANE**: That is correct.

**UNKNOWN**: We profusely apologise for the loss of your son when you wanted to spend more time with him. But from the evidence that you have stated, it is quite clear that you recognised that like there is a need on the part of the government to ensure that the institutions which look after the mental health care users are improved.

**MERRIAM MONYANE**: Yes Counsellor.

**UNKNOWN**: We want to ensure that the government will take steps to try and ensure that this history does not repeat itself.

**MERRIAM MONYANE**: I will be very much pleased.

**UNKNOWN**: And we trust that these arbitration proceedings should be able to help you together with your family, and all other family members to find closure in the pain that you suffer.

**MERRIAM MONYANE**: Thank you Counsellor.

**UNKNOWN**: And we hope that at the end of these proceedings we should be able to find closure with regard to the pain and suffering.

**MERRIAM MONYANE**: Thank you Counsellor.

**UNKNOWN**: Thank you Mrs Monyane. Justice, there are no questions to the witness.

**MERRIAM MONYANE:** Thank you Counsellor.

**ARBITRATOR JUSTICE MOSENEKE:** ... [inaudible]. I also say sorry, you must get well.

**MERRIAM MONYANE:** I will get well.

5 **ARBITRATOR JUSTICE MOSENEKE:** Your son was at CCRC for 11 years? They took him out there, just in two months' time, less than three months when he was due to die?

**MERRIAM MONYANE:** Yes Justice.

10 **ARBITRATOR JUSTICE MOSENEKE:** By so saying I say sorry to you. Be comforted. We will try our level best that the government, the health department has heard your outcry, that you were asking respect for those who are needy. They need help and care at our hospitals.

**MERRIAM MONYANE:** That is true Justice.

15 **ARBITRATOR JUSTICE MOSENEKE:** We are now done. As you know, and you are now used to at the end this Counsel is going to ask you, when he is done you will have your last word. Counsel, re-examination?

**ADV. DIRK GROENEWALD:** Thank you Justice. There is no questions for re-exam.

20 **ARBITRATOR JUSTICE MOSENEKE:** I now give you a chance to say what you wish to say. Then we can release you.

**MERRIAM MONYANE:** I would like to say thank you to the arbitration department. Counsellors with your different portfolio's to gather this what we are here for today, because it is very important. Even it heals us. I thank you. Thank you all of you who are here.

5 **ARBITRATOR JUSTICE MOSENEKE:** We now release you and call the next witness. Advocate Groenewald, if you are ready we should be able to proceed.

**ADV. DIRK GROENEWALD:** Thank you Justice. We would like to call our next witness, Mrs Mpofu.

10 **ARBITRATOR JUSTICE MOSENEKE:** Madam Mpofu, in which language are you going to testify?

**MRS. LILIAN MPOFU:** Sotho.

**ARBITRATOR JUSTICE MOSENEKE:** Give your full names.

**MRS. LILIAN MPOFU:** Lilian Bapedi Mpofu.

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

**INTERPRETER:** Sworn in.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel.

20 **ADV. DIRK GROENEWALD:** Thank you Justice. Good morning Mrs Mpofu. Madam, you had a family member who died as a consequence of the Gauteng mental health development project.

**MRS. LILIAN MPOFU:** There are a lot of them. I am the only one left of my three kids.

**ADV. DIRK GROENEWALD:** Can you, madam can I perhaps ask you. You are testifying, but you can ja ... [interjects]

5 **INTERPRETER:** Pardon?

**ADV. DIRK GROENEWALD:** Who is the relative that died?

**MRS. LILIAN MPOFU:** Gotso's father, Gotso's grandfather, Gotso's mother and Gotso's father. Gotso have nothing now.

**ADV. DIRK GROENEWALD:** So ... [interjects]

10 **ARBITRATOR JUSTICE MOSENEKE:** Well, you could help more Interpreter. Let counsel start again and let us try and convey the question. I am afraid you have to start all over again.

**ADV. DIRK GROENEWALD:** Thank you Justice. Madam, how are you related to David Gotso Mpofu?

15 **MRS. LILIAN MPOFU:** David is my grandson. His mom died while he was five years and left him with me. I raised him so up until now recently when he passed on while he was 21 years old.

**ADV. DIRK GROENEWALD:** So from the age of 5 till 21 you cared for Gotso?

**MRS. LILIAN MPOFU:** I took him to school at the age of 18 years, because I could  
20 not care anymore for him because I had to pamper him.

**ARBITRATOR JUSTICE MOSENEKE:** Let us listen to the question madam Mpofu. Just answer what is being asked to you. Your attorney is going to ask you questions. You are going to be baby fed, as if you are being spoon fed. Just wait what has been asked, then answer the question. The question now is, the question  
5 is you started to raise him from the age of 5 up until he passed on.

**MRS. LILIAN MPOFU:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Just wait for the next question. The attorney will ask, the counsellor will ask you questions. Thank you madam. We do not stop you not to answer questions, but listen to any question that is being put to  
10 you.

**MRS. LILIAN MPOFU:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Proceed Counsel.

**ADV. DIRK GROENEWALD:** Thank you Justice. Madam, I would like to refer you to a document it is numbered ELAH64, ELAH64. ELAH64, 64 yes. Madam, this is  
15 a document that we received from the government. It is a document from the health Ombudsman addressed, ag it is a document from the acting CEO of CCRC addressed to the health Ombudsman.

**MRS. LILIAN MPOFU:** Yes.

**ADV. DIRK GROENEWALD:** Now this document states that Gotso was admitted  
20 at CCRC, Cullinan Care and Rehabilitation Centre on the 9<sup>th</sup> of May 2011.

**MRS. LILIAN MPOFU:** That is correct.



**ADV. DIRK GROENEWALD:** Is that correct?

**MRS. LILIAN MPOFU:** Yes.

**ADV. DIRK GROENEWALD:** Why was he admitted? What was his mental condition, his condition?

5 **MRS. LILIAN MPOFU:** He was fine. I only heard, I was informed that he had been taken there so that he can have a good health.

**ADV. DIRK GROENEWALD:** And ... [interjects]

**MRS. LILIAN MPOFU:** I went to visit him at the new place.

**ADV. DIRK GROENEWALD:** Sorry, if I could just stop you there madam. We know  
10 he was admitted on the 9<sup>th</sup> of May 2011. He was admitted at CCRC. Now it is correct that the second paragraph states that he was transferred to Siyabadinga on the 9<sup>th</sup> of May 2016.

**MRS. LILIAN MPOFU:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Is that coincidence Counsel?

15 **ADV. DIRK GROENEWALD:** I, ja. I do not hope so, but five years later, exactly five years later madam, he was now transferred to this NGO, Siyabadinga. We have heard the evidence and the reasons for it. The government wanted to make space at CCRC for the patients from Life Esidimeni. I would just like to know were you informed that Gotso was going to be transferred from CCRC to Siyabadinga?

20 **MRS. LILIAN MPOFU:** I was not called. My neighbour is also employed there. She made a report to me that Gotso is now going to be moved to another place.

**ADV. DIRK GROENEWALD:** So you lived, do you live close to CCRC?

**MRS. LILIAN MPOFU:** Yes, it is not far.

**ADV. DIRK GROENEWALD:** Okay. Now madam, did you go and visit ...  
[interjects]

5 **ARBITRATOR JUSTICE MOSENEKE:** Where do you stay?

**MRS. LILIAN MPOFU:** In Refiloe, Cullinan.

**ADV. DIRK GROENEWALD:** Now madam, the did you go and visit Gotso there at  
Siyabadinga?

**MRS. LILIAN MPOFU:** Many times, a lot. We used to visit him.

10 **ADV. DIRK GROENEWALD:** How was the circumstances there in Siyabadinga?

**MRS. LILIAN MPOFU:** Is it where he was now moved?

**ADV. DIRK GROENEWALD:** Yes, that NGO.

**MRS. LILIAN MPOFU:** It was not comfortable, it was not nice. It was not like the  
other one. He started to become thin. He was permanently on his bed. He could  
15 not walk anymore. So one day I took him home for a visit.

**ADV. DIRK GROENEWALD:** When was that madam?

**MRS. LILIAN MPOFU:** It was after four weeks they have moved to the new place.  
After moving to the new place.

**ADV. DIRK GROENEWALD:** So it was somewhere in June?

**MRS. LILIAN MPOFU:** Yes. When I took him back, I was informed that Gotso does not have clothing, nor blankets. Then I packed blankets and clothing to take them to Gotso's place. When I went there to visit again, I found Gotso having scratches on his back. It seemed he was scratched by a cat. He was not vocal  
5 because I did not know what happened to him. I asked the staff. They told me that they do not know. They said maybe one of the patients, one of the sick patients scratched him. That is how he was scratched.

**ADV. DIRK GROENEWALD:** Sorry madam. Just tell us could Gotso speak, can he talk?

10 **MRS. LILIAN MPOFU:** No.

**ADV. DIRK GROENEWALD:** No.

**MRS. LILIAN MPOFU:** He was seen talking after his birth and he had mental disturbance. He could not grasp anything.

**ADV. DIRK GROENEWALD:** But he could walk?

15 **MRS. LILIAN MPOFU:** Just a short distance. He could not see properly.

**ADV. DIRK GROENEWALD:** So he needed assistance?

**MRS. LILIAN MPOFU:** Yes.

**ADV. DIRK GROENEWALD:** Constant care.

**MRS. LILIAN MPOFU:** Yes.

**ADV. DIRK GROENEWALD:** So when these scratch marks madam, when did you observe that? Roundabout months.

**MRS. LILIAN MPOFU:** When I asked him to come for a visit. When I was busy bathing him I observed those scratches on his back. I asked them permission to  
5 take him to the doctor because they do not know what scratched him, because it was turning into sores.

**ADV. DIRK GROENEWALD:** Now that was in June 2016.

**MRS. LILIAN MPOFU:** Yes. I kept him for one month for him to heal. When I took him back to the school, the lady informed me that Gotso fell and he is in hospital.  
10 She asked me was I not informed.

**ADV. DIRK GROENEWALD:** Sorry, when is this now madam?

**MRS. LILIAN MPOFU:** It was during this year.

**ADV. DIRK GROENEWALD:** Oh, okay but let us, ja. Sorry. We will get to that. So you returned Gotso, you took him back to Siyabadinga or CCR. When did you  
15 take him back?

**MRS. LILIAN MPOFU:** At CCRC where he got injuries, that is where I took him back.

**ADV. DIRK GROENEWALD:** So we know Gotso passed away on the 3<sup>rd</sup> of August 2016. Is that correct madam?

20 **MRS. LILIAN MPOFU:** Yes.

**ADV. DIRK GROENEWALD:** When prior to that, when was the last time that you saw him?

**MRS. LILIAN MPOFU:** I visited him after he fell. He had a bruised arm. I nursed him. He was healed. He recovered and he was coughing something brownish as if  
5 it was blood. His cough was brownish. Now lastly when he passed on, he fell down. His lips were bruised. I was not informed.

**ADV. DIRK GROENEWALD:** Yes, let me take you to that madam. Let me take you to that. On page 4 of ELAH64, page 4 these documents we received the day before yesterday. Now we heard the evidence of, are you there madam? Now we  
10 heard the evidence of sister Manaka that this is a transfer document, application for transfer and that is the document that is completed by CCRC and it is taken with the patient to the hospital. So we note on the 20<sup>th</sup> of July 2016 almost a little bit less than two weeks before Gotso passed on, passed away he fell so hard that they needed to take him to the hospital. Did they phone you madam?

15 **MRS. LILIAN MPOFU:** No, they did not call me.

**ADV. DIRK GROENEWALD:** They did not tell you anything?

**MRS. LILIAN MPOFU:** No.

**ADV. DIRK GROENEWALD:** Now you visited just before this, just before the 20<sup>th</sup> of July 2016 was your last visit there.

**MRS. LILIAN MPOFU:** Yes. After he passed on, his uncle was called and it was not them. It was my neighbour from Kimberley. The uncle called us from Kimberley and reported to us that he had heard that Gotso passed on.

**ADV. DIRK GROENEWALD:** So they did not phone you? They knew you because  
5 you visited CCRC. They knew you.

**MRS. LILIAN MPOFU:** No, and they had our contact details.

**ADV. DIRK GROENEWALD:** Now madam, how did you heard that Gotso passed  
on?

**MRS. LILIAN MPOFU:** From Gotso's uncle who resides in Kimberley. The lady  
10 called in Kimberley because she said she does not have our phones.

**ADV. DIRK GROENEWALD:** And did they, did you phone CCRC or the staff  
there?

**MRS. LILIAN MPOFU:** We all went there.

**ADV. DIRK GROENEWALD:** Yes, and what did they tell you? Did they tell you  
15 something?

**MRS. LILIAN MPOFU:** We were informed that Gotso fell down and he died at the  
hospital.

**ADV. DIRK GROENEWALD:** Was that the reasons they gave you?

**MRS. LILIAN MPOFU:** Yes.

**ADV. DIRK GROENEWALD:** Did you ask them why did you not phone us?  
20

**MRS. LILIAN MPOFU:** They said they do not have our contact details, but they were lying, because I furnished them with my contact details.

**ADV. DIRK GROENEWALD:** Madam, how did you, did you then have to go and get Gotso's body from the hospital?

5 **MRS. LILIAN MPOFU:** It was myself and my children who went to fetch his body and placed him at a safe place, up until we buried him.

**ADV. DIRK GROENEWALD:** Did somebody there speak to you and tell you what happened to him?

**MRS. LILIAN MPOFU:** No.

10 **ARBITRATOR JUSTICE MOSENEKE:** Where did you take his corpse to?

**MRS. LILIAN MPOFU:** We took him to the, we took him from the hospital, from the institution we took him to our mortuary in Cullinan.

**ARBITRATOR JUSTICE MOSENEKE:** Where did he pass on?

15 **MRS. LILIAN MPOFU:** At Dag Hospital, Mamelodi Dag Hospitaal, Mamelodi Day Hospital.

**ARBITRATOR JUSTICE MOSENEKE:** When they took him to hospital, were you informed?

**MRS. LILIAN MPOFU:** No.

**ARBITRATOR JUSTICE MOSENEKE:** But you took his body from the hospital?

20 **MRS. LILIAN MPOFU:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel.

**ADV. DIRK GROENEWALD:** So they only phoned you after Gotso passed on.

**MRS. LILIAN MPOFU:** Yes.

**ADV. DIRK GROENEWALD:** Did they phone you on the same day that he passed  
5 on?

**MRS. LILIAN MPOFU:** Yes, but late.

**ADV. DIRK GROENEWALD:** Late. So now madam, do you yesterday you were  
present here when we heard the evidence of Mrs Manaka who testified.

**MRS. LILIAN MPOFU:** Yes, I was present.

10 **ADV. DIRK GROENEWALD:** Now she testified with respect to the medical records  
and the documents and unfortunately all that we have showed that on the 20<sup>th</sup> of  
July he had fallen to such an extent that he needed to be taken to hospital and that  
on the 3<sup>rd</sup> of August 2016 he started to vomit a brownish fluid and that it was then  
decided to take him to the Mamelodi Hospital.

15 **MRS. LILIAN MPOFU:** Yes. They did not inform us. I only heard later.

**ADV. DIRK GROENEWALD:** You said madam that you actually, you saw or you  
visited there two weeks prior to that. You saw that his condition was deteriorating.

**MRS. LILIAN MPOFU:** Too much. He was very tiny.

**ADV. DIRK GROENEWALD:** But did they tell you what was wrong with him?



**MRS. LILIAN MPOFU:** They said they do not know, but he will come right. He will be fine.

**ARBITRATOR JUSTICE MOSENEKE:** Did they tell you that he had been starved? That is what sister Manaka told us here.

5 **MRS. LILIAN MPOFU:** Yes. Mostly I like to visit him during lunchtime and I find him being fed with small portion of food, and it was rice and he loved food.

**ARBITRATOR JUSTICE MOSENEKE:** Did you see him deteriorating?

**MRS. LILIAN MPOFU:** Yes, not a little but very serious and I thought of taking him away, because I thought how am I going to take care of him because I do not have  
10 that strength.

**ARBITRATOR JUSTICE MOSENEKE:** Even Mrs Manaka testified yesterday about, she told us that she was not being given fluid like water and juice, etcetera and as he had epilepsy and that they were giving him medication tablets, and at this place they did not give him medication. So he had epilepsy and your knowledge is  
15 that he was not being given epilepsy tablets.

**MRS. LILIAN MPOFU:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** You have got to interpret what I asked in Tshwana also.

**INTERPRETER:** Sorry.

20 **MRS. LILIAN MPOFU:** That is what I thought.

**ARBITRATOR JUSTICE MOSENEKE:** I asked if they were giving him epilepsy tablets.

**MRS. LILIAN MPOFU:** Yes, they give him there but not at the new place.

**ARBITRATOR JUSTICE MOSENEKE:** So he used to get the tablets at CCRC.

5 **MRS. LILIAN MPOFU:** Yes. But at the, there they did not give him.

**ARBITRATOR JUSTICE MOSENEKE:** Did they ever tell you why?

**MRS. LILIAN MPOFU:** They mostly reported to me that he got tablets once in the morning.

**ARBITRATOR JUSTICE MOSENEKE:** But did they ever tell you why after five  
10 years at CCRC he had to be moved to Siyabadinga?

**MRS. LILIAN MPOFU:** They said it is a place for babies. That is why they were moving out the adults.

**ARBITRATOR JUSTICE MOSENEKE:** And now you know that that is not true.

**MRS. LILIAN MPOFU:** Yes.

15 **ARBITRATOR JUSTICE MOSENEKE:** Who told you that they were making space for babies?

**MRS. LILIAN MPOFU:** It was the staff there.

**ARBITRATOR JUSTICE MOSENEKE:** And now you know that adults, many adults from Esidimeni replaced your son, your grandson.

20 **MRS. LILIAN MPOFU:** Who?

**ARBITRATOR JUSTICE MOSENEKE:** People, patients. Mental health care users who were transferred from Esidimeni. Some were from Waverley in Randfontein, were brought to Esidimeni. I am sorry, brought to Cullinan and your grandson was moved to make way for them. Do you know that?

5 **MRS. LILIAN MPOFU:** No.

**ARBITRATOR JUSTICE MOSENEKE:** Did you hear that here in the proceedings?

**MRS. LILIAN MPOFU:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel.

10 **ADV. DIRK GROENEWALD:** Thank you Justice. When was Gotso's funeral madam?

**INTERPRETER:** Pardon?

**ADV. DIRK GROENEWALD:** When was his funeral?

**MRS. LILIAN MPOFU:** I cannot remember the date.

15 **ADV. DIRK GROENEWALD:** We know he passed on on the 3<sup>rd</sup> of August. Was it long thereafter?

**MRS. LILIAN MPOFU:** We buried him after two weeks.

**ADV. DIRK GROENEWALD:** Who paid for the funeral?

**MRS. LILIAN MPOFU:** It was my son, my daughter Gaylen.

20 **ADV. DIRK GROENEWALD:** How much did she pay for the funeral, for the expenses?

**MRS. LILIAN MPOFU:** I cannot estimate. They bought the coffin, food. I did not enquire from or ask them how much they spent.

**ADV. DIRK GROENEWALD:** But if you had to give an estimate madam, how much would you say did it cost? R40 000-00, R50 000-00?

5 **MRS. LILIAN MPOFU:** More than R40 000-00.

**ADV. DIRK GROENEWALD:** More than R40 000-00. Now madam, how old was Gotso when he passed on?

**MRS. LILIAN MPOFU:** 21 years.

**ADV. DIRK GROENEWALD:** 21 years of age?

10 **MRS. LILIAN MPOFU:** 21.

**ADV. DIRK GROENEWALD:** Now we know he was at CCRC for, since 2011.

**MRS. LILIAN MPOFU:** Yes.

**ADV. DIRK GROENEWALD:** Madam, I would just like to know how does it make you feel. You heard the testimony yesterday and you heard the testimony of other  
15 witnesses. Yes Gotso, it is quite clear that his condition is deteriorating, but only on the day which he dies, does the people take him to hospital. The people that is supposed to care for him. That is supposed to provide for him.

**MRS. LILIAN MPOFU:** It is hurting, because they did not call me.

**ADV. DIRK GROENEWALD:** That came as a surprise to you?

20 **MRS. LILIAN MPOFU:** Yes, it was a surprise.

**ADV. DIRK GROENEWALD:** Because you asked them why is he deteriorating like this and they said no, we will look after him, he will get better.

**MRS. LILIAN MPOFU:** Yes, they said he will be right, he will be fine and he did not become well.

5 **ADV. DIRK GROENEWALD:** And the next moment you get a phone call, two weeks later to tell you your grandson has passed away.

**MRS. LILIAN MPOFU:** Yes.

**ADV. DIRK GROENEWALD:** Now I know that we have been involved with your daughter as well. Gaylen. The death of Gotso, what was the impact on the family?

10 Because the family needed to care for him after his mother passed on.

**MRS. LILIAN MPOFU:** Do you mean in my family, amongst my kids?

**ADV. DIRK GROENEWALD:** Yes.

**MRS. LILIAN MPOFU:** They were not feeling well. It was very hurting.

**ADV. DIRK GROENEWALD:** Were you contacted by a government official to  
15 explain to you what happened to Gotso, what was the reason for his death?

**MRS. LILIAN MPOFU:** They told me that they do not know anything. They are just sorry.

**ADV. DIRK GROENEWALD:** So up until today madam, you know that he was admitted to hospital for vomiting and he died on the same day, but you do not know  
20 anything else?

**MRS. LILIAN MPOFU:** He fell down, because his lips were swollen.

**ADV. DIRK GROENEWALD:** Tell me, did anybody phone you? We heard testimony of some of the witnesses that government officials phoned them and offered them counselling sessions and treatment and something like that. Were you  
5 contacted or any of your family members?

**MRS. LILIAN MPOFU:** They did not call me. They called family member from Kimberley and the person who called that person in Kimberley, it was my neighbour. I asked them and they told me that they do not have my contacts.

**ADV. DIRK GROENEWALD:** But subsequent now after Gotso passed away  
10 madam, after he passed away did anybody from CCRC phone you or from the department, Gauteng Department of Health? Did anybody phone you and say Mrs Mpofu, we just want to explain to you what happened to Gotso and we just want to give our condolences or anything like that?

**MRS. LILIAN MPOFU:** No, no one.

15 **ADV. DIRK GROENEWALD:** Were you provided with any counselling? Did somebody, a specialist sit down with you and provided, give you treatment, counselling sessions?

**MRS. LILIAN MPOFU:** No. No one came.

**ARBITRATOR JUSTICE MOSENEKE:** Were you not called to come to Freedom  
20 Park?

**MRS. LILIAN MPOFU:** My kids went there.

**ADV. DIRK GROENEWALD:** Madam, you have this opportunity to, you have heard the evidence of some of the witnesses, and you have the opportunity, I want to know from you what is it that you would like from these proceedings?

**MRS. LILIAN MPOFU:** How ... [interjects]

5 **ARBITRATOR JUSTICE MOSENEKE:** As we are now sitting here in this arbitration, you what do you believe is going to happen after this arbitration?

**MRS. LILIAN MPOFU:** I do not know. I am not the one to know. I do not know what can be done to me. I am happy that I was here and testified.

10 **ARBITRATOR JUSTICE MOSENEKE:** For you to be here it is going to help you to get healing.

**MRS. LILIAN MPOFU:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** And from here, what do you expect to be done to the mentally disturbed people, just like mentally ill people just like your grandson, Gotso?

15 **MRS. LILIAN MPOFU:** I just pray for those, for the survivors. They must not be like Gotso. They must be taken care of, properly care of so that they can live.

**ARBITRATOR JUSTICE MOSENEKE:** And when they are sick, it does not mean that they do not have the right to live.

20 **MRS. LILIAN MPOFU:** They must live. They must give them the necessary stuff so that they do not fall ill like Gotso, they must not fall down.

**ARBITRATOR JUSTICE MOSENEKE:** Repeat yourself madam.

**MRS. LILIAN MPOFU:** I just pray they must live like, they must not live like those who passed on. They must take care of them, give them medication properly so that they must live not like Gotso.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel.

5 **ADV. DIRK GROENEWALD:** But you will agree madam that one of the ways that we will find closure is accountability of those that is responsible.

**MRS. LILIAN MPOFU:** Yes.

**ADV. DIRK GROENEWALD:** And to find the truth and the true reasons ...  
[interjects]

10 **MRS. LILIAN MPOFU:** Yes.

**ADV. DIRK GROENEWALD:** Of why your grandson died. What was the medical causes of his death.

**MRS. LILIAN MPOFU:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** What is more hurtful, what is more hurtful  
15 yesterday, you know sister Manaka, you know her well.

**MRS. LILIAN MPOFU:** I saw her, I do not know her properly, but I know her by sight.

**ARBITRATOR JUSTICE MOSENEKE:** She testified that your grandson died of hunger and lack of fluids and water.

20 **MRS. LILIAN MPOFU:** Were there no food at that institution?



**ARBITRATOR JUSTICE MOSENEKE:** You are now asking a proper question, but I do not have an answer now. I was just advising you what was her testimony yesterday. But when you arrived at Siyabadinga there were no food. It was just a little portion of food.

5 **MRS. LILIAN MPOFU:** It was little and rice, it was rice. Each of them were served with a small portion of rice. Two spoons.

**ARBITRATOR JUSTICE MOSENEKE:** As your Counsellor was asking you, he was not given epilepsy medication.

**MRS. LILIAN MPOFU:** No. We only gave him medication when he was at home.  
10 Even there, at where he was stationed first.

**ARBITRATOR JUSTICE MOSENEKE:** Now he is taken back to CRC, and he continues to be weaker and weaker. And they did not inform you?

**MRS. LILIAN MPOFU:** Nothing. Not at all.

**ARBITRATOR JUSTICE MOSENEKE:** Any more questions Counsel?

15 **ADV. DIRK GROENEWALD:** No further questions, thank you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Cross-examination?

**ADV ADILA HASSIM:** Thank you for coming to testify before these proceedings Mrs Mpofu. I am sorry for your loss. I have no questions.

**MRS. LILIAN MPOFU:** Thank you.

20 **ARBITRATOR JUSTICE MOSENEKE:** Thank you Counsel. Advocate Crouse.

**ADV. LILLA CROUSE:** Thank you Justice, we have no questions.

**ADV TEBOGO HUTAMO:** No questions Justice.

**ARBITRATOR JUSTICE MOSENEKE:** The Counsel is going to speak to you.

**ADV. PATRICK NGUTSHANA:** Greetings to you Mrs Mpofu.

5 **MRS. LILIAN MPOFU:** Hello.

**ADV. PATRICK NGUTSHANA:** We have heard your account of how your grandson, David Gotso Mpofu has passed on. It is indeed sad and we regret for his passing. And we want to take this opportunity to apologise on behalf of the government for what had happened.

10 **MRS. LILIAN MPOFU:** Yes.

**ADV. PATRICK NGUTSHANA:** And we say this now and we want to let you know that other government officials will also be coming before these proceedings to extend their apology.

**MRS. LILIAN MPOFU:** Thank you.

15 **ADV. PATRICK NGUTSHANA:** And what we want to say to you is that through this process we hope that the government together with those who are affected are able to find closure and that they should be redressed to those who have been affected. We just want to thank you for having taken the time to come and participate in these proceedings. Finally we hope that you will heal during the  
20 process that we are undertaking, and appropriate measures will be taken to assist you through.

**MRS. LILIAN MPOFU:** Thank you.

**ADV. PATRICK NGUTSHANA:** Thank you Mrs Mpofu. Justice, there are no questions to the witness.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you. You have the right to answer  
5 this what is being put to you.

**MRS. LILIAN MPOFU:** Fine. Fine. What can I say?

**ARBITRATOR JUSTICE MOSENEKE:** Thank you madam, you are not forced to say anything. The government was just pleading with you and asking for forgiveness.

10 **MRS. LILIAN MPOFU:** I have heard and I said thank you, and I am happy you are those who wiped off my tears. Thank you.

**ARBITRATOR JUSTICE MOSENEKE:** We thank you madam. Re-examination Counsel?

**ADV. DIRK GROENEWALD:** No re-examination thank you Justice.

15 **ARBITRATOR JUSTICE MOSENEKE:** Find comfort madam, be healed. For now we are going to take the tea break and we will resume at twelve mid day. We are adjourned.

5

## SESSION 2

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

**ADV. DIRK GROENEWALD**: Justice, my colleague from Legal Aid SA will be leading the next witness.

**ARBITRATOR JUSTICE MOSENEKE**: Very well.

**ADV TEBOGO HUTAMO**: Justice, before we commence with the next witness.

15 **ARBITRATOR JUSTICE MOSENEKE**: Yes.

**ADV TEBOGO HUTAMO**: I beg leave to raise just two issues. The first is in relation to the meeting that the legal representatives of the parties, including the government had with regard to the aspect relating to compensation.

**ARBITRATOR JUSTICE MOSENEKE**: Yes.

**ADV TEBOGO HUTAMO:** It was agreed during the meeting that the claimants would submit a statement of claim, setting out the claim on behalf of their clients, and it was during that meeting last week that it was agreed that such statement of claim was supposed to have been filed by yesterday, and I have been informed that

5 there has been correspondence exchanged, which has given an indication that such a statement will not be filed, but it will be filed some time next week without an indication of the date. We just want to give an indication that in view of the fact that these proceedings are progressing, it becomes important for our preparation to get that statement of claim. So if we can just get an indication as to when will we be

10 able to get that statement of claim. It is quite an important aspect of these proceedings relating to compensation. So that like we do not wait until the last minute which will hamper our effort to get that aspect resolved. Then the second issue is that we just want to give an indication that in light of the urgent application which has been launched by Dr Selobano, we have made progress with regard to

15 preparation of necessary papers to oppose that application, seeking to set aside the subpoena. We consider that witness to be important and we have taken those steps, and still on that aspect, we have not got received any indication from the representatives of the families if they have taken steps also to take part in that urgent application, but our actions are really not dependant upon the involvement,

20 but it would have been prudent if they do take part in those proceedings. Those are the two issues which I just wanted to raise.

**ARBITRATOR JUSTICE MOSENEKE:** Raise. Thanks Counsel. Both are very important, I agree. So we are going to do the usual merry go round and try and

understand exactly where we are. Starting with the statement of claim on compensation.

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

**ARBITRATOR JUSTICE MOSENEKE:** On the quantum of the ... [inaudible].

5 **ADV ADILA HASSIM:** On the quantum and it would merely be setting out the head of damages and the quantum associated with the heads, various heads of damages as we choose to set it out. I must just clarify, I have been instructed by my attorney that an email had been sent to the other parties. It is indeed correct that we met on the 7<sup>th</sup> of November, the legal representatives with the various  
10 teams. At that meeting the government's lawyers informed us that they would not be making an offer. You will recall Justice, one of the issues was who is going to go first on this topic of compensation and we had requested government to make an offer that we could respond to. They confirmed that they would not be doing so. We then said in that case we will provide a statement of claim. It is also correct that  
15 we meant to do so by yesterday. I am instructed by my attorney that there was further correspondence between the parties to explain that because of the report by the Ombud and the change in the figures of death, the number of death that the axuary has requested to amend his calculation. So it is for that reason that there is a bit of a delay and an undertaking was made to provide the statement by the  
20 middle of next week. So by Wednesday at the latest would be the middle of next week.

**ARBITRATOR JUSTICE MOSENEKE:** And what is that date?

**ADV ADILA HASSIM:** The 29<sup>th</sup>.

**ARBITRATOR JUSTICE MOSENEKE:** The 29<sup>th</sup> of November?

**ADV ADILA HASSIM:** Oh no, no next week. Sorry.

**ARBITRATOR JUSTICE MOSENEKE:** 29<sup>th</sup>?

5 **ADV ADILA HASSIM:** 22<sup>nd</sup>.

**ARBITRATOR JUSTICE MOSENEKE:** The 22<sup>nd</sup> of November.

**ADV ADILA HASSIM:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** And that is the new undertaking, time line wise.

10 **ADV ADILA HASSIM:** Indeed.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you. On the second issue?

**ADV ADILA HASSIM:** Yes Justice, I mean I am must take instructions from my clients as to what we should do. It is not, we were not answerable to the government's counsel or the government's legal team as to what we do and how we do it. But I have been informed that, and advised that we, that Section 27 has requested a draft of the government's responding papers so that they could know where to fit in and not to simply repeat anything that has already been said, so not to duplicate anything, and there has been conversations between the attorneys on that. So it is basically that is where it is. They are waiting to see exactly what the line of argument is from government and how to supplement that, and that is about as much as I can say for now.

**ARBITRATOR JUSTICE MOSENEKE:** Ja.

**ADV ADILA HASSIM:** Should there be a need to intervene, they will do so.

**ARBITRATOR JUSTICE MOSENEKE:** Sure.

**ADV ADILA HASSIM:** As they deem fit.

5 **ARBITRATOR JUSTICE MOSENEKE:** Advocate Crouse?

**ADV. LILLA CROUSE:** Thank you Justice. From our side there was no undertaking to deliver a statement of claim. There was however an undertaking that a minute will be provided. That minute has not been provided. If we had that minute, that would have been clear from the situation. Our undertaking was that we would want to see the statements of claim as we came in late and see what needs to be done. So there was definitely no undertaking from our side. In so far ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Is there an argument about the duty to begin in relation to compensation? In other words the extent of the compensation.

15 **ADV. LILLA CROUSE:** Justice, we have not discussed that at the pre-trial meeting.

**ARBITRATOR JUSTICE MOSENEKE:** You have or have not? You have not?

**ADV. LILLA CROUSE:** As far as I can remember we have not discussed that issue, but I suppose that the normal principles will follow. In respect of the second issue and ... [interjects]



**ARBITRATOR JUSTICE MOSENEKE:** I.e. claimants ought to set out what their claim is.

**ADV. LILLA CROUSE:** Yes, that is so. That would be the normal issue.

**ARBITRATOR JUSTICE MOSENEKE:** I am asking the question because I am a  
5 bit startled by the fact that you have made no undertaking to do that some time.

**ADV. LILLA CROUSE:** No, we said we will provide that Justice, but we needed more time.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**ADV. LILLA CROUSE:** Than last week, and we wanted to look at a few further  
10 issues.

**ARBITRATOR JUSTICE MOSENEKE:** I see. So the issue would be you have not made an undertaking as to time.

**ADV. LILLA CROUSE:** Yes, definitely not.

**ARBITRATOR JUSTICE MOSENEKE:** But there is no debate ordinarily.  
15 Claimants have to show their hand first.

**ADV. LILLA CROUSE:** Yes. Justice, I doubt that the, I have got no doubt that the normal principles will apply.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**ADV. LILLA CROUSE:** And that is not the argument that we are making.

**ARBITRATOR JUSTICE MOSENEKE:** Difficult ... [inaudible] I understand that.  
Thank you. You may go to the second issue.

**ADV. LILLA CROUSE:** And the second issue Justice, we have placed on record before that we do not think that this is an issue to be debated in this forum. We  
5 have requested the papers of the state. I cannot understand why informal conversation cannot be dealt with in this regard. I cannot understand why it should be placed before this forum. Those are my submissions. We are still not prepared to discuss it in this forum, unless the court of course forces us to do so.

**ARBITRATOR JUSTICE MOSENEKE:** No. I have no power to stop any party to  
10 place any ... [inaudible] before the Arbitrator. Any Arbitrator power includes resolving interlocketary questions. It is quite plain by looking at the law between the parties.

**ADV. LILLA CROUSE:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** So if an interlectory dispute arises, if it is  
15 at all, as you know the parties ought to try and resolve it, away from the Arbitrator. If it is brought to his or her attention, then the question becomes whether it properly ought to be decided.

**ADV. LILLA CROUSE:** Maybe it is premature Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Ja, very well. But I hear the point. You  
20 are saying, you are still talking and therefore it may be premature to make a decision on the matter.

**ADV. LILLA CROUSE:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** I hear you. Advocate Groenewald.

**ADV. DIRK GROENEWALD:** Thank you Justice. Justice, in respect of the issue of the claim, we have indicated at the pre-arb conference that we would make our  
5 submissions subsequent to Section 27, making available the figures for a number of reasons. So that was our undertaking that we gave. Secondly in respect of the urgent application ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** And you accept that you bear the duty to ... [interjects]

10 **ADV. DIRK GROENEWALD:** Indeed ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** To formulate a statement of claim.

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

**ARBITRATOR JUSTICE MOSENEKE:** Ja.

**ADV. DIRK GROENEWALD:** Well, we need to set forth and argue a figure.

15 **ARBITRATOR JUSTICE MOSENEKE:** Sure.

**ADV. DIRK GROENEWALD:** Indeed we must do that and we intend to do so. We do not have any issue in respect of that. In respect of the urgent application Justice, I share the same sentiments as my colleagues. The long and the short is ...  
[interjects]

20 **ARBITRATOR JUSTICE MOSENEKE:** But before you move from the first point.

**ADV. DIRK GROENEWALD:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Within, do you know at this stage within what time would you be able to file yourself the Section 27? You have given us a date of next week Wednesday.

5 **ADV. DIRK GROENEWALD:** Yes Justice. If we can by latest by Friday, two weeks subsequent to receiving their document or their claim, we would be able to formulate and confirm our view and our stance on compensation.

**ARBITRATOR JUSTICE MOSENEKE:** You would need two weeks after ...  
[interjects]

10 **ADV. DIRK GROENEWALD:** Two days. Two days.

**ARBITRATOR JUSTICE MOSENEKE:** Oh, two days.

**ADV. DIRK GROENEWALD:** My apologies.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you, that is better. Two days, very well.

15 **ADV. DIRK GROENEWALD:** Two days. So Friday.

**ARBITRATOR JUSTICE MOSENEKE:** So that will be the Friday after the Wednesday of Section 27.

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

**ARBITRATOR JUSTICE MOSENEKE:** Ja. You can see my obvious sympathy with the need for timelines. The government, the wheels tend to turn slowly. So if you need money to pay next year, you need to ask for it now.

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

5 **ARBITRATOR JUSTICE MOSENEKE:** Ja, ja. So it is not like a private entity which could call on its bank and say I want it. There is a whole process. So I have some sympathy for them being anxious about claims being ball park figures, being set out and they will have to be fully debated in argument over time. Who have I left out? Is there anything you want to say about this?

10 **ADV. PATRICK NGUTSHANA:** No.

**ARBITRATOR JUSTICE MOSENEKE:** You do not have any claim?

**ADV. PATRICK NGUTSHANA:** There is nothing, there is nothing to say.

**ARBITRATOR JUSTICE MOSENEKE:** Neither you nor your learned colleague would have a claim here and then that gets us, what about the second part of the  
15 matter which was raised by Advocate Hutamo?

**ADV. PATRICK NGUTSHANA:** The second part of the issue, we have prepared a notice on behalf of the third Respondent, and the notice is to abide and it is already with the state attorneys. It should have been served by now. So we will receive feedback from them on what, whether it has been served or not.

20 **ARBITRATOR JUSTICE MOSENEKE:** Ja, and the notice to abide has qualified the way ... [interjects]

**ADV. PATRICK NGUTSHANA:** It is qualified.

**ARBITRATOR JUSTICE MOSENEKE:** Like we all discussed in chambers.

**ADV. PATRICK NGUTSHANA:** It is qualified.

**ARBITRATOR JUSTICE MOSENEKE:** Very well.

5 **ADV. PATRICK NGUTSHANA:** Thank you.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel, where I come from I would have said [vernacular 00:12:48]. You have heard the responses of your colleagues. Is there anything else you want me to do or you want to say?

**ADV TEBOGO HUTAMO:** Indeed so.

10 **ARBITRATOR JUSTICE MOSENEKE:** On the first part the undertaking, the dates are clear.

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

**ARBITRATOR JUSTICE MOSENEKE:** Ja, on the second part yes I am sorry. Say what you have to say.

15 **ADV TEBOGO HUTAMO:** To the extent that Section 27 and ... [inaudible] have committed to specific dates, we would also call upon the legal aid to give a firm date during which their statement of claim on behalf of their clients would have to be filed.

**ARBITRATOR JUSTICE MOSENEKE:** Ja, but it is a good point that ordinarily I am not the referee of that agreement. It is an agreement that the representatives have to reach. I come in only, and only when they say interlocketory dispute.

**ADV TEBOGO HUTAMO:** Well, what I am trying to say is that like the commitment  
5 having been made now.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**ADV TEBOGO HUTAMO:** We just want to get an indication from them whether do they commit to a specific date or whether they are not going to file those statements. If we can just get a response.

10 **ARBITRATOR JUSTICE MOSENEKE:** Ja, let us find out if they ... [inaudible] to commit to a date now.

**ADV. LILLA CROUSE:** Justice, unfortunately I do not have instructions, but I could give that undertaking on Monday.

**ARBITRATOR JUSTICE MOSENEKE:** Very well. On Monday your colleague,  
15 your learned colleague will come and give you the undertaking.

**ADV TEBOGO HUTAMO:** That is very ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Unless you want me to be like that ...  
[interjects]

**ADV TEBOGO HUTAMO:** It is very well ... [interjects]

20 **ARBITRATOR JUSTICE MOSENEKE:** The points person.

**ADV TEBOGO HUTAMO:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** I can make a decision. You have to agree on this and if you do agree then it is just so fine. If you do not agree and it endangers the arbitration, that is where interlocketory powers kick in.

5 **ADV TEBOGO HUTAMO:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** So I think you wait for Monday and she tells you when she can do it.

**ADV TEBOGO HUTAMO:** We do accept the commitment.

10 **ARBITRATOR JUSTICE MOSENEKE:** Very good. The second point, you have got a right of reply if any.

**ADV TEBOGO HUTAMO:** Eh ... [interjects]

15 **ARBITRATOR JUSTICE MOSENEKE:** The, as I understand the response of your colleagues is that they are waiting for the state's answering position. Once they have the answering papers, they would then consider whether it is necessary to have additional resistance or opposition to the application. That is what I understand them all to be saying.

20 **ADV TEBOGO HUTAMO:** I do understand where they come from Justice, but what we have been trying to emphasise is that the respective parties, they have got different interests in the matter, and to the extent that we have taken steps to bring the witness before these proceedings. They should be able to intervene in the proceedings by virtue of them having an interest in that witness coming before



these proceedings, and the basis of which may differ for their own respective cases, and our view has been that their involvement should not be dependant upon what the government says in their papers.

**ARBITRATOR JUSTICE MOSENEKE:** But can anybody compel a party to  
5 intervene ever?

**ADV TEBOGO HUTAMO:** Well, we are not compelling any parties. We were just wondering if are they not having an interest in the outcome of that application and ...  
[interjects]

**ARBITRATOR JUSTICE MOSENEKE:** The ... [inaudible] to the point was that  
10 there are discussions off line that are going on.

**ADV TEBOGO HUTAMO:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** And that you should allow those discussions to go on. They think it is totally premature to raise it now, and I have sympathy for that view, because once they have seen your papers, indeed they will  
15 have to make up their minds whether they heed to your advice that you have just put up now. It is not unreasonable for them to say we want to see what the response of the main party is.

**ADV TEBOGO HUTAMO:** Yes Justice. That is quite proper that we are actually on the same side on wanting to get the witness before these proceedings.

20 **ARBITRATOR JUSTICE MOSENEKE:** Oh, yes.

**ADV TEBOGO HUTAMO:** But we do not have difficulties to share the documents which we have prepared, but our main concern is that it being an urgent application time frames having been set out for the filing of papers, the delay by one of the parties might prejudice their position in wanting to intervene, should they decide to do so. That is all that we were concerned with.

**ARBITRATOR JUSTICE MOSENEKE:** I get the point Counsel. They will consider that, including that.

**ADV TEBOGO HUTAMO:** Thank you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** In urgency, if you could not meet the deadline which is set by the Applicant, that is not the deadline of the court.

**ADV TEBOGO HUTAMO:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Remember, it is the deadline by the Applicant. So if you cannot meet it, explain you cannot meet it and that is why I am waiting for the main party.

**ADV TEBOGO HUTAMO:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** But once more I have been, I have not even been joined. So I had to get a copy from the main party you know. So there might be explanation, but let us it is premature. Let us wait. People must talk offline as always. Give them a copy of your papers, not your the state's papers. If the state is saying client and then they must make up their minds what they are going to do.

**ADV TEBOGO HUTAMO:** We do commit to share the papers with them.

**ARBITRATOR JUSTICE MOSENEKE:** To share the papers, wonderful. That will take us far. I think that is quite important. But it is also important to find that certainty in our work you know, and in early December and also to so yes, it is  
5 important that people file and that we should as and when they so choose and we should, the state should go to court and defend the subpoena. Very well. Better still is to persuade Dr Selobano to come on his own, and then we do not have to have a side show or be sidetracked. Okay. I think we are, are we done with those, with your points Counsel?

10 **ADV. PATRICK NGUTSHANA:** Thank you for the opportunity Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Very well. You are most welcome. Well, shall we get back to evidence then?

**ADV. LILLA CROUSE:** Thank you Justice. My learned friend Mr Skibi, will lead this witness.

15 **ARBITRATOR JUSTICE MOSENEKE:** Yes, certainly. Indeed.

**MR. NZAME SKIBI:** Thank you Justice. Let me place my name on record.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, please do. Your full names.

**MR. NZAME SKIBI:** My name is Nzame Skibi.

**ARBITRATOR JUSTICE MOSENEKE:** We have got it down. Well, let us start.

20 **MR. NZAME SKIBI:** Thank you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Shall we, in what language do you want to speak?

**MR SIBUSISO SKHAKHANE:** Zulu.

**ARBITRATOR JUSTICE MOSENEKE:** Zulu. Good day, how are you?

5 **MR SIBUSISO SKHAKHANE:** I am well.

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

**MR SIBUSISO SKHAKHANE:** Sibusiso Jacob Swelisha Skhakhane. Those are my names.

10 **ARBITRATOR JUSTICE MOSENEKE:** Mr Skhakhane, do you swear that the evidence you are about to give will be the truth, and if so please raise your right hand and say so help me God.

**INTERPRETER:** Sworn in Honourable Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Mr Skibi.

15 **MR. NZAME SKIBI:** Thank you Justice. Mr Skhakhane, do you know Mduzuzi Skhakhane?

**MR SIBUSISO SKHAKHANE:** Yes, I am.

**MR. NZAME SKIBI:** How are you related to him?

20 **MR SIBUSISO SKHAKHANE:** He is my younger brother. He is the last born at home.

**MR. NZAME SKIBI:** Where is your mother, his mother?

**MR SIBUSISO SKHAKHANE:** My mom is at home as we speak.

**MR. NZAME SKIBI:** So Mduduzi Skhakhane is your biological brother. You are from the same mother. Am I correct?

5 **MR SIBUSISO SKHAKHANE:** Yes, that is correct. We are three siblings at home.

**MR. NZAME SKIBI:** Mduduzi Skhakhane is one of the survivors who was affected by, in this Gauteng marathon project.

**MR SIBUSISO SKHAKHANE:** Yes, that is correct.

**MR. NZAME SKIBI:** Where is he now?

10 **MR SIBUSISO SKHAKHANE:** He is at Sterkfontein at the moment.

**MR. NZAME SKIBI:** Okay. You are going to take us up until we get where he is now, and how did he get there. What was wrong with his mental condition?

**MR SIBUSISO SKHAKHANE:** He had a bipolar disorder.

**MR. NZAME SKIBI:** Do you know what is that?

15 **MR SIBUSISO SKHAKHANE:** According to the doctor's explanations they said it was, he had mood swings. Sometimes he would be very happy and sometimes he would be very upset.

**MR. NZAME SKIBI:** When was he diagnosed with this bipolar?

**MR SIBUSISO SKHAKHANE:** In 2002.

**MR. NZAME SKIBI:** Did he go to school?

**MR SIBUSISO SKHAKHANE:** Yes, he did go to school. He passed matric. When he was diagnosed, he was at Highveld next to Langlaagte.

**MR. NZAME SKIBI:** Can he talk and walk?

5 **MR SIBUSISO SKHAKHANE:** Yes Counsel.

**MR. NZAME SKIBI:** Then in which hospital was he in when this marathon project started?

**MR SIBUSISO SKHAKHANE:** Waverley in Germiston.

**MR. NZAME SKIBI:** Is it one of the hospitals of Life Esidimeni?

10 **MR SIBUSISO SKHAKHANE:** Yes, that is correct Counsel.

**MR. NZAME SKIBI:** When did he start to be a patient or admitted at Waverley in Germiston?

**MR SIBUSISO SKHAKHANE:** In 2013.

**MR. NZAME SKIBI:** Alright. In 20, during 2015 ... [interjects]

15 **ARBITRATOR JUSTICE MOSENEKE:** Sorry, I must have got something wrong here Mr Skibi. When was he diagnosed?

**MR SIBUSISO SKHAKHANE:** In 2002 Justice.

**ARBITRATOR JUSTICE MOSENEKE:** 2002, but admitted to Waverley Germiston 2013?

**MR SIBUSISO SKHAKHANE:** That is correct Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Between 2002 and 2013, was he institutionalised?

**MR SIBUSISO SKHAKHANE:** After being diagnosed at Chris Hani Baragwanath,  
5 he was referred to Tara Hospital in Sandton.

**ARBITRATOR JUSTICE MOSENEKE:** Well, I will leave it with you Counsel. I am moving off.

**MR. NZAME SKIBI:** Thank you Justice. When was he referred to Waverley by Tara Hospital?

10 **MR SIBUSISO SKHAKHANE:** When he was discharged at Tara he was an outpatient. He was getting his medication at Swawelo Clinic. In around 2010 he started resisting medication. That is when a decision was made at Baragwanath that he must be transferred to a place like Waverley.

**MR. NZAME SKIBI:** Alright. He was at Waverley from 2013 and then near 2015  
15 an incident happened during December while he was at Waverley in Germiston. Can you tell us?

**MR SIBUSISO SKHAKHANE:** In 2015 during the open day that is when we heard rumours that it seems like the hospital was going to be closed down.

**MR. NZAME SKIBI:** What was the occasion in, during December when you were  
20 told that the institution is about to be closed down?

**MR SIBUSISO SKHAKHANE:** It was, the event was an open day. When the families come together to come and visit their loved ones.

**MR. NZAME SKIBI:** Was there a key note speaker in that gathering from government?

5 **MR SIBUSISO SKHAKHANE:** No, at that time we heard that information from the staff that there was a possibility that the hospital was going to be closed down.

**MR. NZAME SKIBI:** And then after that gathering you dispersed and then you went, I mean before you dispersed, how was your reaction when you heard the rumour that the hospital is about to be closed down?

10 **MR SIBUSISO SKHAKHANE:** We did not take that well, because together with some of the families we were concerned because our loved ones have been there for a very long time. We tried to ask questions, but we did not get proper answers.

**MR. NZAME SKIBI:** So by that time in December 2015 it was just still a rumour. There was nothing formal?

15 **MR SIBUSISO SKHAKHANE:** Yes, that is correct Counsel.

**MR. NZAME SKIBI:** Right. During January 2016 is there anything which happened, regarding that rumour that you heard in December 2015?

**MR SIBUSISO SKHAKHANE:** Yes, there was a meeting which was convened by the former MEC, Mr Danie Mahlangu.

20 **MR. NZAME SKIBI:** Do you remember on which date was it?



**MR SIBUSISO SKHAKHANE:** January 2016. I cannot remember the date, but I remember it was in, some time in January.

**MR. NZAME SKIBI:** So did she invite all the family members with patients housed at Waverley?

5 **MR SIBUSISO SKHAKHANE:** Yes, that is correct Counsel.

**MR. NZAME SKIBI:** Did you attend that meeting yourself?

**MR SIBUSISO SKHAKHANE:** Yes Counsel, I attended.

**MR. NZAME SKIBI:** Do you still remember the time which was set for the meeting to be held?

10 **MR SIBUSISO SKHAKHANE:** It was scheduled to start at twelve o'clock.

**MR. NZAME SKIBI:** You know, the officials they are quite busy. They have a busy schedule. Did they, the meeting start at twelve o'clock?

**MR SIBUSISO SKHAKHANE:** No, it was very frustrating because the meeting did not start at twelve o'clock as scheduled. The Ms Katane only arrived at about past  
15 two. That is only when we started the meeting.

**MR. NZAME SKIBI:** How did you get the invitation for the meeting which was organised by the former MEC?

**MR SIBUSISO SKHAKHANE:** When we visit the hospital, the staff members will tell us about the meeting, and they will invite us to say that all family members are  
20 invited, and the sms that my mother received, also invited us to that particular meeting.

**MR. NZAME SKIBI:** When you attended the meeting, did you know the theme or what was going to be addressed by the MEC? The former MEC?

**MR SIBUSISO SKHAKHANE:** Yes, they were going to explain to us about the closure of the hospital.

5 **MR. NZAME SKIBI:** Right. Ultimately she, the former MEC arrived and then what message that was delivered by the former MEC, Ms Mahlangu?

**MR SIBUSISO SKHAKHANE:** It was very difficult, because as he was about to start the family, the families were not happy because of the fact that she arrived late. She was requested to apologise for being late, because there were elder  
10 people in the audience. She was requested to apologise for that.

**MR. NZAME SKIBI:** Yes, did she apologise?

**MR SIBUSISO SKHAKHANE:** Eventually yes, she did apologise and thereafter the meeting started, and it was explained to us regarding the reasons for the closure of the hospital.

15 **MR. NZAME SKIBI:** What was the reason for the closure of the, the proposed closure of the hospital?

**MR SIBUSISO SKHAKHANE:** The reason which was forwarded was that it was very costly to the government. The costs were very high, because they told us that the government was spending about ten thousand per month for each patient. So  
20 the government considered those costs to be very high.

**MR. NZAME SKIBI:** Were you given any option if the hospital was about to be, were to be closed?

**MR SIBUSISO SKHAKHANE:** There were very different views, some views among the family members were that how about maybe seeking donations and support from the community, so that the hospital cannot be closed.

**MR. NZAME SKIBI:** Was it the only reason of cost saving mechanism, the one for the closure of the hospital?

**MR SIBUSISO SKHAKHANE:** Another reason was that when they were explaining, they said that they wanted our patients to be nearer their homes. They said that there were going to be institutions like Life Esidimeni in the communities and that is where our patients were going to be taken to.

**MR. NZAME SKIBI:** Were you told as to when, in which month the hospital was going to be closed? That is Waverley.

**MR SIBUSISO SKHAKHANE:** They said in March.

**MR. NZAME SKIBI:** Any date?

**MR SIBUSISO SKHAKHANE:** End of March.

**MR. NZAME SKIBI:** After she, the MEC had delivered the message, how was I mean the families, is there anything that they did to mitigate as to what plan they want to do?

**MR SIBUSISO SKHAKHANE:** There were many views and among those views was that there must be, we must establish a family committee which was going to

represent all other families which was going to interact with the government, because it was very difficult at that time, because we were many. So that is why we came to a conclusion that we, to a proposal that there must be a committee that is going to interact with the government regarding this issue.

5 **MR. NZAME SKIBI:** Was there any plan that you proposed or action you intended to take before March, the end of March to voice out your concerns as family members?

**MR SIBUSISO SKHAKHANE:** Yes, we have decided to have a march so that we can go to the provincial department of health, so that we can go there and raise our  
10 concerns regarding those developments.

**ARBITRATOR JUSTICE MOSENEKE:** Well, I think the witness said they considered having a march.

**MR SIBUSISO SKHAKHANE:** Thank you Justice. Yes, some of us, we considered that we propose a march to go to the Department of Health to raise our  
15 concerns.

**MR. NZAME SKIBI:** In which month was the march going to be, was organised. Do you remember?

**MR SIBUSISO SKHAKHANE:** I cannot remember the date exactly, but I think it was around February going to March.

20 **MR. NZAME SKIBI:** Did you attend the march then?

**MR SIBUSISO SKHAKHANE:** No, I did not attend that march.

**MR. NZAME SKIBI:** Then there came March 2016. Was the Life Esidimeni ...  
[interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Did the march take place? I know you were not there, but did you gather or hear later whether the march took place?

5 **MR SIBUSISO SKHAKHANE:** According to the information that I heard, that march did take place, but I am not sure because I did not go to, I did not attend that march.

**ARBITRATOR JUSTICE MOSENEKE:** On your information the march was from where to where?

10 **MR SIBUSISO SKHAKHANE:** I do not have those details Honourable Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Hm.

**MR. NZAME SKIBI:** Thank you Justice. Thank you.

**ARBITRATOR JUSTICE MOSENEKE:** Continue.

**MR. NZAME SKIBI:** Then in March 2016 was the Life Esidimeni closed?

15 **MR SIBUSISO SKHAKHANE:** No, it was not closed.

**MR. NZAME SKIBI:** Did you enquire as to what was the plan, whether it was still going to be closed?

**MR SIBUSISO SKHAKHANE:** We were told that there was an extension. The hospital was now going to be closed in June.

**MR. NZAME SKIBI:** Who told you that? Who told you that there is an extension now?

**MR SIBUSISO SKHAKHANE:** The staff as we went to visit at the hospital.

**MR. NZAME SKIBI:** Alright. Then during May 2016, something happened. Can  
5 you tell us?

**MR SIBUSISO SKHAKHANE:** Yes. My mother, we received an sms from my mother's cell phone. Which said that one of our family members was moved to Rebaferni in Pretoria.

**MR. NZAME SKIBI:** Was there a telephone number to call, to enquire as to where  
10 is Rebaferni in Pretoria?

**MR SIBUSISO SKHAKHANE:** Yes Honourable Counsel. There was a number, but every time we called we did not get an answer.

**MR. NZAME SKIBI:** Before you received that message or your mother received that message, was the family at any stage invited to go with the inspectors to go to  
15 Rebaferni to observe as to the living conditions of that institution?

**MR SIBUSISO SKHAKHANE:** No, we were not offered that opportunity.

**MR. NZAME SKIBI:** So you received an sms, then you called. The number does not get through then what did you do?

**MR SIBUSISO SKHAKHANE:** And we received a please call ... [interjects]

**MR. NZAME SKIBI:** Sorry, sorry. Was it on the very same day that the sms came  
20 and say Mduduzi now is at Rebaferni?

**MR SIBUSISO SKHAKHANE:** No. I think it was just shortly thereafter. This please call it was one of the staff members at Rebafeni and when we called her, she asked whether we knew Mduduzi Skhakhane. Indeed we agreed to say yes, we do know Mduduzi Skhakhane and then we enquired as to where was that place.

5 **MR. NZAME SKIBI:** Did you speak to that sister after you made a call or you spoke to someone else or to Mduduzi?

**MR SIBUSISO SKHAKHANE:** She did give Mduduzi the phone and he did say to me that he does not know where the place was, but it was in Pretoria and I could recognise my brother's voice.

10 **ARBITRATOR JUSTICE MOSENEKE:** And at the time, where was your home?

**MR SIBUSISO SKHAKHANE:** My home at the time was at Protea Glen, Extension 11.

**ARBITRATOR JUSTICE MOSENEKE:** And where was your mother's home?

**MR SIBUSISO SKHAKHANE:** Protea Glen, Extension 11.

15 **MR. NZAME SKIBI:** Thank you Justice, thank you. So did you ultimately go and look for Mduduzi at Rebafeni?

**MR SIBUSISO SKHAKHANE:** Yes, I went there. It was my sister, my mom and my brother in law.

**MR. NZAME SKIBI:** Was it on the very same day you received the, you had made  
20 a call?

**MR SIBUSISO SKHAKHANE:** No, when we went there it was on a Saturday.

**MR. NZAME SKIBI:** Yes, did you go and search for this Rebafeni then?

**MR SIBUSISO SKHAKHANE:** Yes, indeed we did. Indeed Counsel. We did go there, but it was very difficult to find that place because it was on the outskirts. Eventually we managed to speak with another staff member by the name of Disetso  
5 who said he or she was the manager of that facility.

**ARBITRATOR JUSTICE MOSENEKE:** Where exactly was the place? Let us start with the nearest town. What was the nearest town to it?

**MR SIBUSISO SKHAKHANE:** Atteridgeville when you, that place is called Hennops.

10 **ARBITRATOR JUSTICE MOSENEKE:** Yes, just next to Hennops River.

**MR SIBUSISO SKHAKHANE:** Next to Hennops River.

**ARBITRATOR JUSTICE MOSENEKE:** Between Atteridgeville and Hennops River. Ja.

**MR. NZAME SKIBI:** Thank you Justice. So you ultimately arrive at this Rebafeni.  
15 Tell us how does it look like?

**MR SIBUSISO SKHAKHANE:** It is a residential house and when we arrived there, it was on the gate it was written Alclusive and we were looking for the word, for the name Rebafeni.

**ARBITRATOR JUSTICE MOSENEKE:** What was on the gate? Repeat the name  
20 for me please.

**MR SIBUSISO SKHAKHANE:** Alclusive.



**ARBITRATOR JUSTICE MOSENEKE:** Hm.

**MR. NZAME SKIBI:** So how did you know that it was Rebaferi if it was written Alclusive?

**MR SIBUSISO SKHAKHANE:** Disetso give us the directions. She is the one who  
5 said that it was a red house. She described the house for us.

**ARBITRATOR JUSTICE MOSENEKE:** You would have travelled what? 70, 80 kilometres from Soweto?

**MR SIBUSISO SKHAKHANE:** Indeed. That is correct Justice.

**MR. NZAME SKIBI:** Thank you Justice. So on your arrival, and then did you meet  
10 this Disetso?

**MR SIBUSISO SKHAKHANE:** No, we did not find Disetso. We found a guy by the name of Victor at the gate. He opened the gate for us and we went inside. When we get inside there, we find that there were goats and sheep.

**ARBITRATOR JUSTICE MOSENEKE:** No, but you mean inside the yard?

**MR SIBUSISO SKHAKHANE:** Yes. As we go along the driveway we observed  
15 there were boreholes which was leaking that borehole.

**ARBITRATOR JUSTICE MOSENEKE:** You mean the pump of the borehole was leaking?

**MR SIBUSISO SKHAKHANE:** Yes Justice.

**ARBITRATOR JUSTICE MOSENEKE:** The borehole cannot leak.  
20

**MR SIBUSISO SKHAKHANE:** Ja, the pump of the borehole was leaking, and as we go further there was a parking space and then we went there and parked, and when we arrived there we saw our loved ones there. They still had the clothes which were written Waverley.

5 **MR. NZAME SKIBI:** Were they inside the house, the patients or were they inside?

**MR SIBUSISO SKHAKHANE:** They were outside. They were outside sitting on the sun.

**MR. NZAME SKIBI:** How was their reaction, that is the patients, when they saw you arriving?

10 **MR SIBUSISO SKHAKHANE:** They were very happy. They came around us as they see that car. They were very happy to see us. Then others were like asking questions. Others they wanted to take photos. Others were asking us for two rands, and yes. Those things.

**MR. NZAME SKIBI:** How many patients more or less did you see there on your  
15 arrival?

**MR SIBUSISO SKHAKHANE:** They were around 30 males.

**MR. NZAME SKIBI:** Were there any females?

**MR SIBUSISO SKHAKHANE:** No, it was only males.

**MR. NZAME SKIBI:** Then did you meet with the owners of the establishment?

20 **MR SIBUSISO SKHAKHANE:** We met a lady by the name of Noni. When she introduced herself as a social worker.

**MR. NZAME SKIBI:** What did Noni tell you, the social worker?

**MR SIBUSISO SKHAKHANE:** I, we asked them how did it happen, because at the meeting we were told that the patients were going to be taken nearer their home. How did it happen that he ended up here in Pretoria? He just said that no, 5 this patient including Mduduzi they were brought to their place by the government, and she explained to us that this place as you see it, it is an NGO. He said that one of the things that they were told was that they did not want that place to look like a hospital. They want it to look like a home, so that it can prepare them for discharge to go home.

10 **MR. NZAME SKIBI:** When you saw Mduduzi, was he neat or did he, was he dressed up well or neat?

**MR SIBUSISO SKHAKHANE:** What was very disturbing Honourable Counsel, is that all these patients, our brothers you can see that they have not washed since at Waverley.

15 **MR. NZAME SKIBI:** What informed you that? What did you observe? What makes you say that it was like ... [interjects]

**MR SIBUSISO SKHAKHANE:** What I observed is that some of the clothes they had grass and it looked like they were sleeping with those clothes, and even when I asked my brother to say why did you not wash my brother and then he say no this 20 water is very cold.

**MR. NZAME SKIBI:** Then did you ask Mduduzi if he came with his medication?

**MR SIBUSISO SKHAKHANE:** Noni told us that he was given a small pack which was the medication and my brother also confirmed that. That they were given some medication from Waverley.

**MR. NZAME SKIBI:** You earlier on stated that when you came in, the patients they  
5 came to you running and asking, some asking to take photos, some asking to phone, others they were asking something to eat or money.

**MR SIBUSISO SKHAKHANE:** Yes, I remember that.

**MR. NZAME SKIBI:** Did you ask Mduzuzi if he had eaten?

**MR SIBUSISO SKHAKHANE:** When we arrived there, we were told that the staff  
10 was busy preparing their food. There were two ladies who were busy preparing the food.

**ARBITRATOR JUSTICE MOSENEKE:** But what time were you there?

**MR SIBUSISO SKHAKHANE:** It was around one o'clock when we arrived there.

**ARBITRATOR JUSTICE MOSENEKE:** So the question to you is had Mduzuzi  
15 eaten for the day?

**MR SIBUSISO SKHAKHANE:** He said they ate bread in the morning. We had, we have brought food. We have brought some food with us and as we were taking out the food, other patients were coming to us. That is when Victor was at, Victor said they must go out and give us some privacy here in the dining hall where we  
20 were seated.

**MR. NZAME SKIBI:** Thereafter, did you ask the owner of the establishment to go inside and inspect where Mduduzi was sleeping and other patients?

**MR SIBUSISO SKHAKHANE:** Yes, indeed we did ask to go inside and we asked Noni, and she allowed, she permitted us to go in and Victor accompanied us to go  
5 inside. We did see those rooms where they were sleeping.

**MR. NZAME SKIBI:** In a room were there any beds?

**MR SIBUSISO SKHAKHANE:** Yes, there were beds.

**MR. NZAME SKIBI:** More or less how many beds in one room?

**MR SIBUSISO SKHAKHANE:** In that room I think there were about seven single  
10 beds.

**MR. NZAME SKIBI:** Were there blankets? It was in winter that time. Were there blankets?

**MR SIBUSISO SKHAKHANE:** Yes, there were this blankets which looked like from Pep which were grey in colour.

15 **ARBITRATOR JUSTICE MOSENEKE:** From where?

**INTERPRETER:** He said Pep, Pep Store.

**MR SIBUSISO SKHAKHANE:** I am sorry about that, but that is where I usually see these blankets.

**MR. NZAME SKIBI:** Did you ask Mduduzi if he receive, he gets his medication as  
20 prescribed?

**MR SIBUSISO SKHAKHANE:** When we arrived there, you can see that they were not yet well organised where you can see that they were still busy trying to set up and organise some things, but Mduduzi did confirm that he was taking his medication.

5 **MR. NZAME SKIBI:** Yes, you went to the bedroom. Were there bathrooms?

**MR SIBUSISO SKHAKHANE:** Yes, there was a bathroom, but it was leaking water. We did ask about that and they said that the plumber will come and fix that as they were busy trying to organise some of the things. That leak was going to be fixed because they did not have a shower but they will make sure that they have hot  
10 water as well.

**ARBITRATOR JUSTICE MOSENEKE:** How long had your brother been there?

**MR SIBUSISO SKHAKHANE:** It was only a week after being transferred from Waverley.

**MR. NZAME SKIBI:** Thank you Justice. Did he have clothes to change?

15 **MR SIBUSISO SKHAKHANE:** No Counsellor, they were still wearing the uniform from Waverley like as Noni had alluded to earlier that they did not want that place to look like a hospital. She advised us that when we come next time, we must bring him some clothes so that they can have some clothes to change, because they wanted them to wear their private clothes, because they did not want that place to  
20 look like a hospital.

**MR. NZAME SKIBI:** Alright. Then you have been at the bedroom and the bathroom. In one room, how many beds did you see there?

**ARBITRATOR JUSTICE MOSENEKE:** You will have to be more precise than that. We know about seven beds, single beds in the room in which Mduduzi slept.

5 **MR. NZAME SKIBI:** Thank you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** But if you want to canvass evidence about the other rooms, obviously you may.

**MR. NZAME SKIBI:** Thank you Justice. In the room where Mduduzi was sleeping, how many beds were there?

10 **MR SIBUSISO SKHAKHANE:** Seven. Seven beds. Single beds.

**MR. NZAME SKIBI:** Alright, and then the kitchen. Did you go to the kitchen and see if there was food?

**ARBITRATOR JUSTICE MOSENEKE:** You can find out whether the witness knows where the other patients slept.

15 **MR SIBUSISO SKHAKHANE:** That place is, that building is like it is L shaped and there is an upper floor. Almost like this building here. So that is where these other patients were sleeping at.

**MR. NZAME SKIBI:** Thank you.

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

**MR. NZAME SKIBI:** The kitchen where food was made, did you go and inspect and have a look there?

**MR SIBUSISO SKHAKHANE:** No, because the ladies there they were very busy in the kitchen and we were, I mean Mduduzi was happy for us and that is when we  
5 sat with our brother Mduduzi. We did not go to check in the kitchen.

**MR. NZAME SKIBI:** How big was that house?

**MR SIBUSISO SKHAKHANE:** Well, I cannot estimate exactly but I think it can be half of this building here which we are at.

**MR. NZAME SKIBI:** So it is not a hall, subdivided the rooms?

10 **ARBITRATOR JUSTICE MOSENEKE:** I do not know how big is this building Counsel. We will have to place that on record. Somebody who ... [inaudible] must have an idea of what the witness is talking about. That looks, I do not know. Not quite a rugby field. Probably 60 metres by 20. 80 metres by 20.

**MR. NZAME SKIBI:** I will accept that Justice. I do not know my colleagues, if they  
15 ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** We can record half of that.

**MR. NZAME SKIBI:** Half, because he is saying half of this.

**ARBITRATOR JUSTICE MOSENEKE:** Yes. Ja, I think it is about 70, 80 metres by 20 metres.

20 **MR. NZAME SKIBI:** Yes Justice, maybe perhaps we can put ... [interjects]



**ARBITRATOR JUSTICE MOSENEKE:** It is a rough estimate.

**MR. NZAME SKIBI:** Yes, thank you. I will ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** It is not a motor collision case. Okay.

**MR. NZAME SKIBI:** Yes, indeed. So then you were there on that first day at  
5 Rebafeni and then you left.

**MR SIBUSISO SKHAKHANE:** Yes Counsel.

**ARBITRATOR JUSTICE MOSENEKE:** Before you leave, I am interested to know  
how did your brother eat the food.

**MR SIBUSISO SKHAKHANE:** The way he was eating that food, you can see that  
10 indeed he was very hungry. Because as he was eating the other patients were  
coming to ask and then we thought that no, it is of no use to chase them away.  
That is when we asked him to share with them to give them banana or any other  
food items.

**ARBITRATOR JUSTICE MOSENEKE:** Mduduzi, was he able to speak?

15 **MR SIBUSISO SKHAKHANE:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Did you ask him how he was feeling?

**MR SIBUSISO SKHAKHANE:** He was not happy, because he explained that they  
were travelling in a bus and it was at night.

**ARBITRATOR JUSTICE MOSENEKE:** Did he mention anything about the  
20 situation in that place where they were staying?

**MR SIBUSISO SKHAKHANE:** He said you can see where we are here, we are at the rural areas.

**ARBITRATOR JUSTICE MOSENEKE:** A person who comes from Soweto does not like rural areas. Ja. Is there anything else that he said?

5 **MR SIBUSISO SKHAKHANE:** On that day when we went there, he did not have much to complain about, except hunger.

**ARBITRATOR JUSTICE MOSENEKE:** How was his body? The situation of his body?

**MR SIBUSISO SKHAKHANE:** Ja, he had a bigger body compared to mine.

10 **ARBITRATOR JUSTICE MOSENEKE:** And when you got there was he still the same body size?

**MR SIBUSISO SKHAKHANE:** Yes, that is correct.

**ARBITRATOR JUSTICE MOSENEKE:** Okay, thank you.

**MR. NZAME SKIBI:** Thank you Justice. So the body was still the way you used to  
15 see him, because he had been there just for a week. Am I correct?

**MR SIBUSISO SKHAKHANE:** Yes, that is correct.

**MR. NZAME SKIBI:** Was he having shoes on?

**MR SIBUSISO SKHAKHANE:** Yes, there was that, the ones that he used to wear while he was at Waverley.

**MR. NZAME SKIBI:** Right. Did you see any clinician or a nurse by a chance or a doctor in the establishment?

**MR SIBUSISO SKHAKHANE:** No, there were no clinicians and Noni says that since that place has just started to operate the clinicians and the doctors and nurses will come later. So and then he said there were only two ladies who were working in the kitchen, and Victor who was the security guard.

**MR. NZAME SKIBI:** Right. Then you were there and then you did not see any clinician or nurse. You only saw the social worker Nono?

**MR SIBUSISO SKHAKHANE:** Noni, yes. Yes, that is correct Counsel.

10 **MR. NZAME SKIBI:** Did you ask Mduduzi if he came with his medical records in that establishment?

**MR SIBUSISO SKHAKHANE:** That was the problem, because even Noni alluded to that fact that they did not bring their medical files. We were also confused as to how did they transfer them without all this documentation. We also asked about the ID and the SASA card and Noni said that no, they did not bring those along.

15 **MR. NZAME SKIBI:** After your first visit and then you then thereafter you left. Did you visit Mduduzi again?

**MR SIBUSISO SKHAKHANE:** Yes, we were visiting him because that place was far. We always planned to go and visit him.

20 **ARBITRATOR JUSTICE MOSENEKE:** The goats and the sheep, do you know who did they belong to?

**MR SIBUSISO SKHAKHANE:** We did not get any explanation when we enquired about those goats and sheep, but that place according to my observations it looks like a plot.

**INTERPRETER:** The Justice is asking whether Mduduzi was getting meat there.

5 He said no, the witness said no that was very scarce there.

**ARBITRATOR JUSTICE MOSENEKE:** And he complained a lot about food.

**MR SIBUSISO SKHAKHANE:** Subsequent to that, when we visited that place we observed that he was losing weight and when we asked Noni, Noni said that he did not like to take his medication.

10 **MR. NZAME SKIBI:** Did you ask Mduduzi why is he not taking his medication?

**MR SIBUSISO SKHAKHANE:** Yes, he responded by saying that he has observed that they were taking the same treatment, all of them. Now he had that problem that since we are not having the same condition why are we taking the same medication. The other time we find that he had marks on his neck as well as on the  
15 wrist, like he looked like he was tied and when we asked what was the problem we were told that Mduduzi was becoming aggressive and he wanted to fight with other patients.

**MR. NZAME SKIBI:** Right. Let us move on. Then that was your second visit. How was his body look like there? Was he still a big man as you saw him  
20 previously?

**MR SIBUSISO SKHAKHANE:** He was losing a lot of weight as we were going there, and eventually we got a phone call which informed us that Mduduzi was transferred to Jubilee Hospital, he was sick.

**MR. NZAME SKIBI:** Okay, we are going to go to Jubilee Hospital just now. Did  
5 you establish if Mduduzi had friends in within that room that he was sleeping in?

**MR SIBUSISO SKHAKHANE:** Most of the patients were those patients he was with at Waverley and Christopher, he was very close to Christopher Mogworani. They were sharing a room with Christopher Mogworani.

**ARBITRATOR JUSTICE MOSENEKE:** Is it the son of Mr Mogworani?

10 **MR SIBUSISO SKHAKHANE:** Yes, indeed.

**MR. NZAME SKIBI:** Do you know that if he was in that room when the unfortunate incident of passing on of Christopher, was he in that room on that day?

**MR SIBUSISO SKHAKHANE:** What he said is that Christopher has passed on and the family of Christopher were coming to take his body for the funeral. Because  
15 when they woke up in the morning, they found that Christopher did not wake up that morning.

**MR. NZAME SKIBI:** Did you ask him if there were any professional nurses or doctors who attended to Christopher before he passed on that night?

**MR SIBUSISO SKHAKHANE:** Since we were going to that area, the explanation  
20 we got there was that the doctors had not come yet, because Mduduzi, I mean the condition of illness did not require that they be seen by the doctor every day.

**ARBITRATOR JUSTICE MOSENEKE:** But did I understand you well that you were, your brother was a roommate to Mr Mogworani's son who passed on?

**MR SIBUSISO SKHAKHANE:** Yes Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Was it your understanding that your  
5 brother was in the room when Mr Mogworani's son died?

**MR SIBUSISO SKHAKHANE:** They were in the same room.

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

**MR. NZAME SKIBI:** How was his, how was his, how did he react when he narrated that the sadness of passing on of somebody within his room where he  
10 was?

**MR SIBUSISO SKHAKHANE:** You could see that he was no longer happy, because you can see even the size of the body was no longer the same as previously.

**MR. NZAME SKIBI:** Did you ask, when you saw the body, his body now he is  
15 getting thinner. Did you ask if his medication, he still had medication or not?

**MR SIBUSISO SKHAKHANE:** That was the problem, because when we asked him that he will say that he have a problem with the fact that they were taking the same medication, because he knew his medication which was called Epilim. So he was surprised because they were now, they were then taking the same medication.

20 **MR. NZAME SKIBI:** Justice, I see it is almost ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Yes, indeed. I can see from your demeanour that you still have a long way to go.

**MR. NZAME SKIBI:** I will increase the pace a bit Justice.

**ARBITRATOR JUSTICE MOSENEKE:** No, you do not have to at all. The only  
5 indication is, is this an appropriate time to adjourn?

**MR. NZAME SKIBI:** Yes Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Very well, let us do that. It is one thirty.  
We will adjourn till two thirty.

10

15

16 November 2017

SESSION 3

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel.

**INTERPRETER:** ...*Interpret...*

5 **ADV. SKIBY:** Thank you Justice.

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

**ADV. SKIBY:** Thank you. MR SKHAKHANE, when we adjourned, you just finished you telling us about your second visit of your brother at Rebafenyi (spelling).

**INTERPRETER:** ...*Interpret...*

10 **MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** It has been for a couple of months paying visit at Rebafenyi.

**ADV. SKIBY:** As you were visiting your brother, were his conditions getting improved or becoming worse or was he becoming thinner?

**INTERPRETER:** ...*Interpret...*

15 **MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** He has lost a lot of weight.

**ADV. SKIBY:** And you mentioned earlier on that you received a call and he was sick and he was transferred to Jubilee Hospital.

**INTERPRETER:** ...*Interpret...*



**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** Yes, we did get that call to say he was sick and he was admitted at Jubilee.

**ADV. SKIBY:** You visited him at Jubilee Hospital?

5 **INTERPRETER:** ...Interpret...

**MR SIBUSISO SKHAKHANE:** Yes Counsel, we did.

**ADV. SKIBY:** What was wrong with him then?

**INTERPRETER:** ...Interpret...

**MR SIBUSISO SKHAKHANE:** ...Reply...

10 **INTERPRETER:** We were told that he had a relapse and he also had the flu.

**ADV. SKIBY:** How long was he at Jubilee Hospital?

**INTERPRETER:** ...Interpret...

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** Two months.

15 **ARBITRATOR, JUSTICE MOSENEKE:** But Jubilee Hospital is in Hammanskraal.

**MR SIBUSISO SKHAKHANE:** Yes Justice.

**INTERPRETER:** ...Interpret... Yes Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Now that is a good what, 100 km from Soweto?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Yes, it is quite a distance.

**ADV. SKIBY:** How many times did you visit him at Jubilee Hospital?

5 **INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Three times.

**ADV. SKIBY:** Alright. From Jubilee where was he transferred to or after he had been discharged?

10 **INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** He went back to Rebafenyi, but it was another place, it was not the same place where he was initially.

**ADV. SKIBY:** How did you find out that he is at another establishment?

15 **INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** We had a problem about this place because we did not know where it was and seemingly when we received a please call and when we called, we were told that that place is somewhere in the vicinity of Hartebees.

**ADV. SKIBY:** Were the conditions at Rebafenyi two now better at Rebafenyi number one?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

5 **INTERPRETER:** The problem with the second Rebafenyi is that we did not go inside the rooms where they were sleeping.

**ADV. SKIBY:** Did you ask why you were restricted?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

10 **INTERPRETER:** They just insisted that we are not allowed to go inside the rooms where they were sleeping.

**ADV. SKIBY:** How long did he stay at Rebafenyi number two?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

15 **INTERPRETER:** Almost two months.

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Because in December we took him home and then we were taking him for two weeks. In fact they said we must bring him back after two weeks and we agreed.

**ADV. SKIBY:** How were the living conditions now at Rebafenyi two?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** I was not pleased with the space, the yard, it was very small.

5 **ADV. SKIBY:** Was it a house or...?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Yes it was a house.

**ADV. SKIBY:** What house was that?

10 **INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** It is very difficult to explain, because we were not allowed to get inside, we were kept at the reception.

15 **ADV. SKIBY:** Alright. From Rebafenyi two then he was ultimately moved to where?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** He was transferred the Lens in 2017.

**MR SIBUSISO SKHAKHANE:** Lenasia Clinic.

**INTERPRETER:** To Lenasia Clinic.

**ARBITRATOR, JUSTICE MOSENEKE:** Sorry, I missed that Counsel, when was he transferred to Lenasia Clinic?

**INTERPRETER:** ...*Interpret...*

5 **MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Just after December 2016.

**ARBITRATOR, JUSTICE MOSENEKE:** But this NGO was right out of sight in Hartebees.

**INTERPRETER:** ...*Interpret...*

10 **MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Hartebeespoortdam?

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Just before you reach Hartebeespoortdam.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja that is North West. (Vernac).

15 **INTERPRETER:** That is in North West. How did you get to Lenasia from there?

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** At Lenasia they were removed because I think at the time the Ombud had already started with the investigations and at the time there were 36

deaths reported and they were told that the Ombud was going to inspect the NGOs, so they were moved at night.

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac).

**MR SIBUSISO SKHAKHANE:** ...Reply...

5 **INTERPRETER:** They were moved from Rebafenyi two to Lenasia. Yes that is correct, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac).

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** Was it at night? Yes, it was at night.

10 **ARBITRATOR, JUSTICE MOSENEKE:** (Vernac)

**MR SIBUSISO SKHAKHANE:** Yes.

**INTERPRETER:** Did they tell you what mode of transport?

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** Yes we did ask our brother as to how did they go there. My  
15 mother received a SMS to say our loved one was transferred to Gordonia.

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac)

**INTERPRETER:** And when we googled Gordonia we discovered that it was at Hillbrow.

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac)

**MR SIBUSISO SKHAKHANE:** ...Reply...

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac)

**INTERPRETER:** Did you go to Hillbrow? Yes Justice, indeed we did go to Hillbrow.

5 **MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** Yes, we went there at Gordonia. It was a very small place and then we understood that there it was not people who were profoundly sick, but my brother Mdudusi was not there at Gordonia.

**ADV. SKIBY:** Thank you Justice. And then from Lenasia he was moved to another  
10 mental establishment, am I correct?

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac)

**INTERPRETER:** I do not understand how does Lenasia feature here. Where was he moved from when he went to Lenasia?

**MR SIBUSISO SKHAKHANE:** ...Reply...

15 **ARBITRATOR, JUSTICE MOSENEKE:** I see.

**INTERPRETER:** When he was transferred from Rebafenyi, he was transferred to Lenasia, but the SMS said he was going to be transferred to Gordonia. And when we arrived at Gordonia we did not find my brother. That is when we called the number which sent the SMS and that is when we were told that my brother is at  
20 Lenasia Clinic.

**ADV. SKIBY:** Did you find him at Lenasia Clinic?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Yes Counsel, we did.

5 **ADV. SKIBY:** And then was he ever moved again from Lenasia Clinic?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Yes, he was moved to South Rand Hospital.

**ADV. SKIBY:** And then?

10 **MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** When we arrived there, we asked them why did they bring my brother there and they explained that he fought with one of the patients and that is why he was transferred or moved to the clinic.

**ADV. SKIBY:** So at South Rand Hospital and then was he ever moved again?

15 **INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** Well how long did he stay at South Rand Clinic?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*



**INTERPRETER:** At South Rand Hospital they said they are going to observe him for 72 hours and thereafter he was taken back.

**ADV. SKIBY:** Back to where?

**MR SIBUSISO SKHAKHANE:** Lenasia Clinic.

5 **INTERPRETER:** Back to Lenasia Clinic.

**ARBITRATOR, JUSTICE MOSENEKE:** But in your knowledge how long did he all and all stay at Lenasia Clinic?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

10 **INTERPRETER:** He stayed for two weeks and then he was taken back to South Rand.

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** I think he went in there five times back and forth, about five times.

**ARBITRATOR, JUSTICE MOSENEKE:** But did he ever go back to Rebafenyi?

15 **INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** No, because it was now this year when we heard the news about the report and the demise of the people.

**ADV. SKIBY:** Thank you Justice. So you say all and all it was about five times when he was moved from Lenasia Clinic to South Rand Clinic.

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

5 **INTERPRETER:** Yes that is correct, Counsel.

**ADV. SKIBY:** Was he also taken somewhere else to another hospital?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Yes, at South Rand they said he must be taken back to Chris  
10 Hani Baragwanath Hospital.

**ADV. SKIBY:** How long did he stay at Baragwanath Hospital?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Almost a month.

15 **ADV. SKIBY:** Was he ever moved thereafter from Bara Hospital?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Yes he was moved from Bara.

**ADV. SKIBY:** To where?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** He was transferred to Sterkfontein.

**ARBITRATOR, JUSTICE MOSENEKE:** And that would have been this year.

5 **MR SIBUSISO SKHAKHANE:** Yes Justice.

**INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** From Chris Hani to Sterkfontein. And more or less when was that, around February or March?

**INTERPRETER:** ...*Interpret...*

10 **MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Yes around those months, February/March.

**ADV. SKIBY:** Then he is still at Sterkfontein as we speak.

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Yes Counsel.

15 **MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Yes, he stayed at Sterkfontein and then at Sterkfontein he was then moved back to Waverly.

**ADV. SKIBY:** And something happened when he was taken back to Waverly, can you tell us briefly?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Yes, when he was at Waverly it was around September.

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

5 **INTERPRETER:** It was on that week of Heritage Day.

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** That is when my brother escaped from the hospital.

**ADV. SKIBY:** How do you know that he escaped?

**INTERPRETER:** ...*Interpret...*

10 **MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** We received a call on Tuesday.

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** They called my mom and informed her that Mdudusi is missing.

**ARBITRATOR, JUSTICE MOSENEKE:** And who are they, who called?

15 **INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** One of the staff members at Waverly.

**ADV. SKIBY:** How long was he missing, Mdudusi?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** 10 days.

**ARBITRATOR, JUSTICE MOSENEKE:** It was still around February/March of this  
5 year?

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**ARBITRATOR, JUSTICE MOSENEKE:** September.

**INTERPRETER:** It was in September.

**ADV. SKIBY:** Did he resurface or did you go and look for him?

10 **INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** We went to Waverly seeking an explanation as to how did he get  
missing at the hospital.

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

15 **INTERPRETER:** They did not give us an answer. We also made our efforts to look  
for him at places like Germiston, searching for him.

**ADV. SKIBY:** How was the reaction of his mother when she heard that her son is  
missing?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** Like I said my mom is not well, she is sick and then she is not taking this news very well every time she gets these messages that my brother is missing at hospital.

5 **MR SIBUSISO SKHAKHANE:** ...Reply...

**ARBITRATOR, JUSTICE MOSENEKE:** And where are we going with this detail of the non-relevant period?

**ADV. SKIBY:** Well Justice ...intervened.

10 **ARBITRATOR, JUSTICE MOSENEKE:** In other words, why should we hear all the additional detail, for instance, about this year?

**ADV. SKIBY:** Well I am going to the point, Justice, I'll get to the point.

**ARBITRATOR, JUSTICE MOSENEKE:** I beg your pardon?

**ADV. SKIBY:** I understand the point, but it might be relevant, Justice. But I hear about for this year, yes, but the initial period it had impact.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Everything has been relevant until now, this year. I am just trying to understand.

**ADV. SKIBY:** Let me move on, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**ADV. SKIBY:** Yes, thank you.

**ARBITRATOR, JUSTICE MOSENEKE:** Unless you are going to argue that there is some connection between the escape from Waverly and everything else.

**ADV. SKIBY:** Mdudusi, was he not having a SASSA card?

**INTERPRETER:** ...*Interpret...*

5 **MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** He did have a SASSA card and ID but we don't know where it ended up.

**ADV. SKIBY:** You don't know if it was lost when he was moved from Life Esidimeni in 2015... 2016 May, sorry.

10 **INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Because when we paid our first visit in Pretoria we did enquire about his ID and his SASSA card and they said they knew nothing about those.

**ADV. SKIBY:** What else was lost? His ID and SASSA card... his clothes and  
15 anything... is there any of his other property which went missing?

**INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** Let's locate the date and the place. Is this about the Marathon Project?

**INTERPRETER:** ...*Interpret...*

20 **ADV. SKIBY:** When did the SASSA card... I am sorry to interrupt.

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** Both the SASSA card and the ID were lost when they were first moved from Waverly.

**ARBITRATOR, JUSTICE MOSENEKE:** And we have already heard your evidence  
5 that when you went to Rebafenyi those things were lost, both of them already, isn't it?

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** Indeed Justice.

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

10 **ADV. SKIBY:** Thank you Justice. We heard about the missing of Mdudusi, but now we know that he is where he is and that is at Sterkfontein.

**INTERPRETER:** ...Interpret...

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** Yes that is correct, Counsel.

15 **ADV. SKIBY:** His movement from these different institutions, you can agree with me that it is possible that it had an impact to make his mental condition becoming worse.

**INTERPRETER:** ...Interpret...

**MR SIBUSISO SKHAKHANE:** ...Reply...



**INTERPRETER:** Yes, I agree, because when he was moved to all these other places, every time we went to visit, we would be told about the fact that Mdudusi is now aggressive and Mdudusi was not an aggressive person.

**ADV. SKIBY:** The fact of him being taken far away from home, did you suffer any  
5 financial loss having to travel long distance from Soweto to Rebafenyi in Hammanskraal?

**INTERPRETER:** *...Interpret...*

**MR SIBUSISO SKHAKHANE:** *...Reply...*

**INTERPRETER:** Yes that is correct.

10 **ADV. SKIBY:** So you agree with me also that what you were promised by the former MEC that where these patients would be transferred to, it came out to be a total disaster.

**INTERPRETER:** *...Interpret...*

**MR SIBUSISO SKHAKHANE:** *...Reply...*

15 **INTERPRETER:** Yes that is correct, Counsel.

**ADV. SKIBY:** Now how do you feel as the family at what happened during this Marathon Project?

**INTERPRETER:** *...Interpret...*

**MR SIBUSISO SKHAKHANE:** *...Reply...*

**INTERPRETER:** Honestly it was very disturbing, especially when the news came out about the demise of the patients. Every time when my mom received these phone calls, we were expecting bad news.

**ADV. SKIBY:** What do you want the Government to offer or to put up to the table  
5 so that what happened it never happened during the movement of these patients?

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Please come again, Counsel, I did not get that because of the sound.

**ADV. SKIBY:** What would you propose the Government should do that what  
10 happened, it doesn't happen to your brother who is still in one of the mental institution, and others?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** To all these hospitals which I have visited, the conditions there  
15 are not well and I would like the Government to improve the conditions of those institutions.

**ADV. SKIBY:** Is there anything that you want to bring to the attention of the Arbitrator?

**INTERPRETER:** ...*Interpret...*

20 **MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** I would like to say that the Government must fix the problems that exist in hospitals, especially in relation to the mentally ill patients, because regarding this particular project, they have suffered a lot. And I also hope that the Government will go to all these other hospitals and try to improve their level of service.

**ARBITRATOR, JUSTICE MOSENEKE:** And how is your brother doing now?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** He looks very better because we went to pay him a visit about two weeks ago.

**ARBITRATOR, JUSTICE MOSENEKE:** You said he is now at...?

**MR SIBUSISO SKHAKHANE:** Sterkfontein.

**ARBITRATOR, JUSTICE MOSENEKE:** Sterkfontein.

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Yes Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Was he ever married?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** No Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Does he have children of his own?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

5 **INTERPRETER:** No Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Because he was diagnosed after a post-matric qualification or whilst studying at a post-matric college, if I understand you well?

**INTERPRETER:** ...*Interpret...*

10 **MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Yes that is correct, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** So he must... do you know whether he had an insight into his condition? Did he understand his bipolar disorder?

**INTERPRETER:** ...*Interpret...*

15 **MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** I think I have two responses on this one. During 2002 I think he did understand his condition because he would go by himself to the clinic to go and fetch his medication.

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** From 2010 up to now it was very difficult, because he experienced a relapse, so it was very difficult to him.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja.

**ADV. SKIBY:** Thank you, Justice Moseneke, there are no further questions.

5 **ARBITRATOR, JUSTICE MOSENEKE:** Counsel, I am looking at these various schedules to get some objective assistance about Rebafenyi. And if one looks at the Ombud's supplementary account, he doesn't want us to call it an Ombud report because it is not statutorily complied, but... which is 57, ELAH57. I would like you to go there please.

10 **ADV. SKIBY:** Thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Before we start the cross-examination. And if you were to go to page 8 as numbered by the Ombud, when I look at Rebafenyi there, now we heard there were two of them.

**ADV. SKIBY:** Yes, I see that.

15 **ARBITRATOR, JUSTICE MOSENEKE:** (Inaudible 34:11) Rebafenyi Complex. And when I look down there I see one death in the month of June and one death in the month of July. Am I reading that chart correctly, in your view?

**ADV. SKIBY:** Yes, it is correct Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** And your client would have been at  
20 Rebafenyi during which of those deaths?

**ADV. SKIBY:** From what he testified, Justice, is that at Rebafenyi One, he was transferred to Rebafenyi One in May 2016.

**ARBITRATOR, JUSTICE MOSENEKE:** So the death that happened there would be the one that happened in June.

5 **ADV. SKIBY:** Most probably, yes.

**ARBITRATOR, JUSTICE MOSENEKE:** June 2016.

**ADV. SKIBY:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Was he still there when somebody else died in July 2016, from the evidence that we had today? (Vernac)

10 **INTERPRETER:** Where was your brother in June/July.

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** He was still at Rebafenyi One.

**ARBITRATOR, JUSTICE MOSENEKE:** Is there evidence of any more, I am talking objectively, in these schedules we have, any more deaths at Rebafenyi other than those reflected on ELAH57? You don't have to answer that now. Maybe in your re-examination you would have found all that.

**ADV. SKIBY:** Yes Justice. I can maybe just put one question to the witness.

**ARBITRATOR, JUSTICE MOSENEKE:** Oh yes and many as you find necessary.

**ADV. SKIBY:** Thank you Justice.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Please proceed.

**ADV. SKIBY:** **MR SIBUSISO SKHAKHANE,** earlier on you told us that your brother told you that there was one patient who passed on while he was still at Rebafenyi One, do you remember that?

**MR SIBUSISO SKHAKHANE:** Yes.

5 **INTERPRETER:** *...Interpret...*

**MR SIBUSISO SKHAKHANE:** *...Reply...*

**INTERPRETER:** Yes Counsel.

**ADV. SKIBY:** Did you get a report that he was aware that another patient passed on at Rebafenyi One as well?

10 **INTERPRETER:** *...Interpret...*

**MR SIBUSISO SKHAKHANE:** *...Reply...*

**INTERPRETER:** The only person I know who died it is Christopher Mogwarani.

**ADV. SKIBY:** Our attorney also consulted with your brother and Mdudusi also confirmed that he was only aware of one patient who passed on.

15 **INTERPRETER:** *...Interpret...*

**MR SIBUSISO SKHAKHANE:** *...Reply...*

**INTERPRETER:** Yes that is correct, Counsel.

**ADV. SKIBY:** No further questions, Justice, thank you.

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

**ADV. ADILA HASSIM:** Thank you, Justice. I was actually trying to see if I could assist you with your question. I don't have any questions for the witness in cross-examination. The Christopher Mogwarani that is referred to, that your brother, Mdudusi, shared the room with, is one of the deceased of the family members that we represent and he passed away in June 2016. I just wanted to confirm for your record, Justice, that it is the same Christopher Mogwarani that is one of the deceased that is being represented here. I am sorry for your loss and thank you for coming to testify.

**INTERPRETER:** *...Interpret...*

10 **MR SIBUSISO SKHAKHANE:** *...Reply...*

**INTERPRETER:** For me it was also traumatizing as well when I saw Christopher's brother to testify here and I told him that I am also here to testify on behalf of my brother, so it was a very painful experience.

15 **ARBITRATOR, JUSTICE MOSENEKE:** You see, the Ombud in his report, in the executive summary in the beginning says the NGOs must close immediately and he has got Anchor, Rebafenyi, Masego, Takalani, Thuli, Bophelong, Precious Angels.

**INTERPRETER:** *...Interpret...*

20 **ARBITRATOR, JUSTICE MOSENEKE:** And that appears on page 6 as numbered by the Ombud. But I am not able to see how many more other people died at Rebafenyi. Obviously the Ombud must have found the conditions to be terrible. Do you... are you able to help us there at all? Of course we'll go and look at the papers



and look at the evidence and the learned advocates will take us there, but do you know of anything more than Mr. Christopher Mogwarani who died there?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

5 **INTERPRETER:** I would be lying if I say I knew about any other people except Christopher, because at the time Christopher was moved from Rebafenyi... Mdudisi was removed from Rebafenyi One.

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

10 **INTERPRETER:** And that is when he was moved at Hammanskraal at Jubilee Hospital.

**ARBITRATOR, JUSTICE MOSENEKE:** You see the report also tell us there is Rebafenyi House One and House Two.

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

15 **INTERPRETER:** Yes that is correct, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** And that there license was invalid. They had no proper license, did you know that?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** About the license issue I will be lying, but what I can tell is my observation when we went to visit my brother at Rebafenyi. I observed that they were not being treated well at that institution.

**ARBITRATOR, JUSTICE MOSENEKE:** The Ombud tells us that Rebafenyi was  
5 meant to deal with women empowerment.

**INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac)

**INTERPRETER:** Maybe these (inaudible) that is where they come from.

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

10 **INTERPRETER:** I only found males at Rebafenyi.

**ARBITRATOR, JUSTICE MOSENEKE:** And did you ever manage to determine who owned Rebafenyi?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

15 **INTERPRETER:** Our contact person in most cases it was this lady by the name of Noni.

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Because Mr. Mogwarenjani (spelling) used to refer to her as Noelene.

20 **MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** And we used to call her Noni.

**ARBITRATOR, JUSTICE MOSENEKE:** And the Ombud also tells us that it was a report in the Daily Sun about Rebafenyi and what a risky place it was. Did you hear about that? Did you know anything about that while your brother was there?

5 **INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** No, I did not read that newspaper.

**ARBITRATOR, JUSTICE MOSENEKE:** And the Ombud tells us that the houses were still performing renovations whilst they were at the same time keeping  
10 patients, do you know anything about that?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Yes that I can confirm, because every time when we were asking them about the geyser, they will say yes the work is still in progress and I can see  
15 they were sometimes busy when we went to visit there.

**ARBITRATOR, JUSTICE MOSENEKE:** And he tells us also that at least five of the patients who were admitted to Jubilee Hospital, you already told us about your brother.

**INTERPRETER:** ...*Interpret...*

20 **MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Yes that I can confirm because my brother also confirmed that he was together with other patients at Jubilee.

**ARBITRATOR, JUSTICE MOSENEKE:** Is there any cross-examination from you, Advocate?

5 **ADV. DIRK GROENEWALD:** No cross-examination. Thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** None. Cross-examination.

**ADV. PATRICK NGUTSHANA:** No cross-examination.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel.

10 **ADV. TEBOGO HUTAMO:** Thank you Justice. **MR SIBUSISO SKHAKHANE,**  
greetings to you.

**MR SIBUSISO SKHAKHANE:** ...Reply...

**ADV. TEBOGO HUTAMO:** You have just mentioned that your brother was admitted to Life Esidimeni Waverly during 2013.

**MR SIBUSISO SKHAKHANE:** Yes Counsel.

15 **INTERPRETER:** ...Interpret... Yes.

**ADV. TEBOGO HUTAMO:** And he was moved or transferred from that institution to Rebafenyi during May 2016.

**INTERPRETER:** ...Interpret...

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** That is correct, Counsel.

**ADV. TEBOGO HUTAMO:** And in your testimony you mentioned that he was moved from one institution to the other, until he was settled at Sterkfontein.

**INTERPRETER:** ...*Interpret...*

5 **MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Indeed that is correct, Counsel.

**ADV. TEBOGO HUTAMO:** Can you state when he was transferred to Sterkfontein?

**INTERPRETER:** ...*Interpret...*

10 **MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** This year in 2017.

**ADV. TEBOGO HUTAMO:** And in your testimony you mentioned that since his transfer to Sterkfontein, his condition has improved.

**INTERPRETER:** ...*Interpret...*

15 **MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** I agree, Counsel.

**ADV. TEBOGO HUTAMO:** Will you agree with me that this arbitration process seeks to address the concerns which family members had with regard to the Marathon Project?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** I agree, Counsel.

**ADV. TEBOGO HUTAMO:** And the government is taking steps to ensure that the  
5 conditions of the mental health care users are improved at the institutions where  
they are being accommodated.

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** I also agree to that.

10 **ADV. TEBOGO HUTAMO:** And we want to express our regret in the manner in  
which your brother was kept at the various institutions.

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Yes, I hear you and thank you for that.

15 **ADV. TEBOGO HUTAMO:** And we hope that the conditions in which your brother  
is kept now will improve for the better.

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** We will be very happy if that should manifest, Counsel.

**ADV. TEBOGO HUTAMO:** And we take this opportunity to thank you for having to come and give testimony and we want to assure you that the Government is taking all these concerns into account in order to ensure that the conditions are improved.

**INTERPRETER:** ...*Interpret...*

5 **MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** I appreciate that very much, Counsel.

**ADV. TEBOGO HUTAMO:** We thank you, **MR SIBUSISO SKHAKHANE.** Justice, there are no further questions to the witness.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you. Re-examination?

10 **ADV. SKIBY:** Thank you, Justice. No re-examination.

**ARBITRATOR, JUSTICE MOSENEKE:** On page 46 of the report, I would like you to get there, if you can, of the main report of the Ombud. There is a table 8, which appears on page 46 of the Ombud's report. And on it, as I said, is a schedule which represents NGO placements, site of death, fitness for transfer of 25 who died within  
15 60 days.

**INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** So within 60 days 25 people died in Rebafeanyi, when one is looking at that schedule. Are you reading it the same way, Counsel?

20 **ADV. SKIBY:** The number, Justice Moseneke?

**ADV. ADILA HASSIM:** Are we at page 46?

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**ADV. ADILA HASSIM:** The number next to Rebafenyi is number 5, is that the number you are referring to?

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

**ADV. ADILA HASSIM:** And then what it is referring to, it would appear, from the top of the column, it's the patient's number, not the number of patients, but patient number 5, I think. And that would make sense then why there is a repetition of the other facility names.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Why would the numbers of the facility... Is that the number of patients?

**ADV. ADILA HASSIM:** Justice, if the intention was to say how many patients died at the facility, the facility name would be mentioned only once with the number that died.

15 **ARBITRATOR, JUSTICE MOSENEKE:** So what does the number represent, you say?

**ADV. ADILA HASSIM:** The patient number. So the patient was given a number by the Ombud.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Very well. But all of you know what I am struggling with currently and we might get... I am trying to get my arms around the number of people who died at Rebafenyi One and Two and who they were and



when did they die. That would be relevant to the enquiry about survivors and it is one of the reasons why I was asking you, Mr. Skiby (?) about that.

**ADV. SKIBY:** It looks like ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Logically if a few people died there, the  
5 survivors should be many and therefore I was trying to get the understanding of why  
the Ombud would want to shut it down and list it amongst the worst performers. But  
I can't see yet. One needs to study this carefully. I can't see the number of people  
who died, they are not obvious, they don't jump at you.

**ADV. SKIBY:** Justice, (inaudible – mic not switched on) clearly on certain issues,  
10 licenses and other stuff which were not in place with regards to Rebafenyi.

**ARBITRATOR, JUSTICE MOSENEKE:** I have seen that.

**ADV. SKIBY:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** They were not fit for purpose, but besides  
they were operating at (inaudible) with the purpose of their establishment, I have  
15 seen that.

**ADV. SKIBY:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** And the conditions he talks about a little. It  
is one of the first to be shut down, it may be because of the license. When I look at  
the mortality numbers, I don't, they are nowhere near the big 5.

20 **ADV. SKIBY:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** But anyway, we might be able to get to that. We don't have to detain this witness unduly. Do you have any re-examination?

**ADV. SKIBY:** None, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** None whatsoever.

5 **ADV. SKIBY:** Thank you.

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac) when we get to the stage of the proceedings, what do you want to say, if anything?

**INTERPRETER:** ...*Interpret...*

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

10 **INTERPRETER:** Firstly I would like to thank you, Honourable Justice, and all the parties who were involved who made this arbitration hearing possible so that we can be able to get the truth to know what has happened to our loved ones.

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** Thanks to Section 27 and SADAG.

15 **MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** And I will also like to thank our brothers and all family members during this period. I would like to also say to them they must be strong. I send my condolences to those who have lost.

**MR SIBUSISO SKHAKHANE:** ...*Reply...*

**INTERPRETER:** We are not happy because our brothers at least survived, we also feel the pain that you feel because you have lost.

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** I would like to also thank the family committee, because they  
5 were always there for us. Every time we have a problem, we'll send up messages through the WhatsApp group to report that our brothers are missing in those institutions.

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** I would like the Government to revisit the issue of health services  
10 provision. They must not only focus on the mental health illnesses, but health overall they must make sure that they look into it and try to improve service provisions in that regard.

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** Because we have members of our families who are sick.

15 **MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** I think that the community clinics are very critical in the health of our communities. Without that we won't have healthy communities.

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** I would also like to make a humble plea to all those who work in  
20 the health sector to have patience when they deal with patients, because they are

dealing with our family members, our mothers, our fathers, our grandfathers and elderly people.

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** What makes me to say this is that I still have a child who is  
5 attending the hospital.

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** My father also went to hospital.

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** He was diagnosed with dementia.

10 **MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** And he eventually passed on.

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** My child is 13 years old.

**MR SIBUSISO SKHAKHANE:** ...Reply...

15 **INTERPRETER:** He was diagnosed last year with Lupus.

**MR SIBUSISO SKHAKHANE:** I am told that Lupus is one of the diseases that it  
needs medication. ...Reply...

**INTERPRETER:** I am told that it is a chronic disease.

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** I am very worried to see my brothers who have lost their family members.

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** It is very painful when you arrive at an institution and you are told  
5 there is no medication or they do not have enough medication.

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** Thank you very much, Honourable Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac)

**INTERPRETER:** Thank you very much, **MR SIBUSISO SKHAKHANE.**

10 **ARBITRATOR, JUSTICE MOSENEKE:** Counsel, there is one affidavit that presumably must have been handed up by this witness, isn't it, ELAH65, do you want to make that an exhibit? Then the witness must identify the affidavit as his, if you are going to hand it in. I have heard no objection. If there is no objection then obviously we will hand it in, purporting to be what it says it is.

15 **ADV. SKIBY:** Thank you Justice. Can I just confirm?

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

**ADV. SKIBY:** **MR SIBUSISO SKHAKHANE,** the document and affidavit is marked ELAH65. There is a signature at page number 4 for the deponent. Is that your signature?

20 **INTERPRETER:** ...Interpret...

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** Yes that is correct.

**ADV. SKIBY:** So in signing your signature, you confirm the content of this document.

5 **INTERPRETER:** ...Interpret...

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** Yes that is correct.

**ADV. SKIBY:** Yes Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** So you are handing that in as ELAH65.

10 **ADV. SKIBY:** That is correct, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you. You are excused.

**MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** Thank you Justice.

15 **ARBITRATOR, JUSTICE MOSENEKE:** I don't know which way to look at. There are at least three advocates looking at me intensely. So I am going to start with you, Adv. Groenewald.

**ADV. DIRK GROENEWALD:** Thank you very much, Justice. Justice, we would like to call **SARAH MHLONGO-NOKO** to come and testify.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**ADV. DIRK GROENEWALD:** Justice, I would also just like to confirm before the witness starts to testify, we have provided our colleagues and we have also provided yourself, Justice, with a bundle of documents ELAH69, which will be relevant in respect of the evidence that we will hear.

5 **ARBITRATOR, JUSTICE MOSENEKE:** Yes. Absent any objection, ELAH69 is admitted into the documents bundle. (Vernac)

**SARAH MHLONGO-NOKO:** ...Reply...

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac)

**SARAH MHLONGO-NOKO:** (Inaudible) Sarah (Inaudible) Moshlongu.

10 **INTERPRETER:** Those are my names, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac).

**SARAH MHLONGO-NOKO:** ...Reply...

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

**INTERPRETER:** ...Interpret...

**SARAH MHLONGO-NOKO:** ...Reply...

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac)

**SARAH MHLONGO-NOKO:** ...Reply...

20 **INTERPRETER:** Sorry Honourable Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Honestly it makes no difference, I am just speaking very lightly to you.

**INTERPRETER:** ...*Interpret...*

**ADV. DIRK GROENEWALD:** Thank you Justice. Mhlongo-Noko, can you confirm  
5 how are you related to Jabulani Moshlongu?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** He is my son.

**ADV. DIRK GROENEWALD:** Ma'am, I would like to take you to a document,  
10 ELAH57, it is in the exhibits file.

**INTERPRETER:** ...*Interpret...*

**ADV. DIRK GROENEWALD:** Now this is the final summary provided by the  
Ombud in respect of the patients that died as a consequence of this Mental Health  
Marathon Project, and I would like to take you to the last page of that report, page 6.  
15 It is the last page of the report, you will see is a list, associated deaths? Written in  
small 6 of 6 at the back.

**INTERPRETER:** Yes we have got it, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** I am going to ask my support staff to  
number every one of these annexures, to paginate them from one to whatever, so  
20 that we don't struggle like this to refer to them. And unless there is any objection  
from any of the parties, can we proceed and do that. And you should be shown the



numbering so that you can update your own, so that we can deal with these documents much easier than we are doing now.

**ADV. DIRK GROENEWALD:** Thank you, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** But we've got that, Counsel, it is the last  
5 page.

**ADV. DIRK GROENEWALD:** It is the last page of the report.

**ARBITRATOR, JUSTICE MOSENEKE:** Of ELAH57.

**ADV. DIRK GROENEWALD:** That is correct, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Very well. Now, ma'am, I just want to  
10 confirm the first name on that list is Moshlongu Jabulani, male, ID number  
9307155375082, is that your Jabulani?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Yes that is true, Counsel.

**ADV. DIRK GROENEWALD:** Thank you, ma'am. Now ma'am, we know from the  
15 documentation at hand and the evidence that we heard that Jabulani was one of the  
patients that died at Siyabadinga.

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Yes that is correct, Counsel.  
20

**ADV. DIRK GROENEWALD:** And we also know patients from CCRC was transferred to Siyabadinga.

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

5 **INTERPRETER:** That is also correct.

**ADV. DIRK GROENEWALD:** So when was Jabulani admitted as a patient at CCRC?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

10 **INTERPRETER:** In January 2008.

**ADV. DIRK GROENEWALD:** What was his condition?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** He was epileptic.

15 **SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** He was also asthmatic.

**ADV. DIRK GROENEWALD:** Ma'am, you can take your time and answer the questions. There is no rush. Just tell us, ma'am, did he have any other disability, could he walk?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** He could not walk properly.

**ADV. DIRK GROENEWALD:** So did he need to make use of a wheelchair?

5 **INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Yes.

**ADV. DIRK GROENEWALD:** Now, ma'am, were you informed of the fact that Jabulani was to be transferred to Siyabadinga?

10 **INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Yes that is true, Counsel.

**ADV. DIRK GROENEWALD:** How were you informed of the transfer?

**INTERPRETER:** ...*Interpret...*

15 **SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** I received a phone call. I was informed through a phone call.

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** And I was also invited to a meeting.

**ADV. DIRK GROENEWALD:** Can you recall when was that meeting?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** 12 April 2016.

**ADV. DIRK GROENEWALD:** Can you recall who from the Department was  
5 present there?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** The CEO was there.

**ADV. DIRK GROENEWALD:** That is the CEO of CCRC?

10 **INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** It looks like it was from the Department of Health.

**ADV. DIRK GROENEWALD:** Okay, from the Department of Health.

**INTERPRETER:** ...*Interpret...*

15 **SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Yes.

**ADV. DIRK GROENEWALD:** But can you recall the person's surname?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** No.

**ADV. DIRK GROENEWALD:** Can you recall when Jabulani was transferred to Siyabadinga?

**INTERPRETER:** ...*Interpret...*

5 **SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** 19 May 2016.

**ADV. DIRK GROENEWALD:** And were you able to visit Jabulani there at Siyabadinga ...intervened.

10 **ARBITRATOR, JUSTICE MOSENEKE:** I am sorry, this is the date he was admitted at Siyabadinga.

**ADV. DIRK GROENEWALD:** At Siyabadinga.

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

**ADV. DIRK GROENEWALD:** Indeed so, Justice. Were you able to go and visit Jabulani at Siyabadinga?

15 **INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Yes, I did go once to pay him a visit.

**ADV. DIRK GROENEWALD:** And what were the circumstances there at Siyabadinga, the conditions?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** There at Siyabadinga they were very disorganised.

**SARAH MHLONGO-NOKO:** ...*Reply...*

5 **INTERPRETER:** It looked like they had a problem with the availability of food and medication.

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** As a person who was asthmatic...

**SARAH MHLONGO-NOKO:** ...*Reply...*

10 **INTERPRETER:** We were also told that they had to make some donation so that he can get a spray.

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Yes.

**ADV. DIRK GROENEWALD:** Tell me, ma'am, when was that visit of yours, what  
15 was the date plus/minus?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** On the 5<sup>th</sup> of June 2015.

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** That is where we discovered that he had a chest problem.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** He had lost a lot of weight on his chest.

**SARAH MHLONGO-NOKO:** ...Reply...

5 **INTERPRETER:** We enquired as to whether they have observed that and what is it that they were doing.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** We then requested a doctor at CCRC.

**SARAH MHLONGO-NOKO:** ...Reply...

10 **INTERPRETER:** Who said he knew about Jabulani's problem.

**ADV. DIRK GROENEWALD:** My apologies, ma'am. So we all know that Siyabadinga didn't have a clinician, so there was nobody to assist Jabulani at Siyabadinga, you had to get somebody from CCRC.

**INTERPRETER:** ...Interpret...

15 **SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** Yes that is correct.

**ADV. DIRK GROENEWALD:** Sorry, continue, ma'am.

**INTERPRETER:** ...Interpret...

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** Yes, the doctor availed himself at that particular time.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** Promised that he was going to refer him.

**SARAH MHLONGO-NOKO:** ...Reply...

5 **INTERPRETER:** But after that we found that nothing was done.

**ADV. DIRK GROENEWALD:** Ma'am, did you ever see Jabulani again after this date?

**SARAH MHLONGO-NOKO:** No.

**INTERPRETER:** ...Interpret...

10 **MR SIBUSISO SKHAKHANE:** ...Reply...

**INTERPRETER:** No.

**ADV. DIRK GROENEWALD:** Ma'am, I would like to refer you to ELAH69, it is your document, the documents that were handed to you. Yes. In front of you, it is in front of you. If I can take you to page 4 of that document.

15 **INTERPRETER:** ...Interpret... Yes Counsel.

**ADV. DIRK GROENEWALD:** It is a report from Siyabadinga.

**INTERPRETER:** ...Interpret...

**ADV. DIRK GROENEWALD:** Do you recognise this document?

**INTERPRETER:** ...Interpret...



**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** Yes, I recognise this.

**ADV. DIRK GROENEWALD:** Can you explain just the circumstances surrounding your son's death, ma'am, and how you were informed of it?

5 **INTERPRETER:** ...Interpret...

**ADV. DIRK GROENEWALD:** We will get to the report just now, but just in your own words, just explain to us as you recall it, what happened.

**INTERPRETER:** ...Interpret...

**SARAH MHLONGO-NOKO:** ...Reply...

10 **INTERPRETER:** 27 June 2016.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** It was in the afternoon.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** I received a call from Siyabadinga.

15 **SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** And they said you must go and visit Jabulani at Mamelodi.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** Because it was in the early evening.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** We are staying very far at Mbombela.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** I asked one of my relatives that as we were coming here, she must rush to Mamelodi Hospital.

5 **SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** Because she stays nearby the hospital.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** When he arrived at the hospital.

**SARAH MHLONGO-NOKO:** ...Reply...

10 **INTERPRETER:** His name is Lucas Sehlangu.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** When he explained, he said he waited for a very long time.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** He was not attended to and he did not get any answers.

15 **SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** Afterwards in the evening.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** He was then told that the child had passed on.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** That traumatised us very much.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** Because Siyabadinga has never informed us about his sickness or illness.

5 **SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** And the other thing is that they took him to the hospital but they were not making the follow-ups.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** Yes that is the story.

10 **ADV. DIRK GROENEWALD:** So they phoned you after he had passed away, ma'am?

**SARAH MHLONGO-NOKO:** Yes.

**INTERPRETER:** ...Interpret...

**SARAH MHLONGO-NOKO:** ...Reply...

15 **INTERPRETER:** Yes that is correct, Counsel.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** But they did not explain when they called me, they did not explain that he has passed on. They just said we must come and go and see him at the hospital.

**ADV. DIRK GROENEWALD:** Did you confront the personnel and the people from Siyabadinga as to what happened?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

5 **INTERPRETER:** Yes Counsel.

**ADV. DIRK GROENEWALD:** And what was their response?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** When we arrived there on the 28<sup>th</sup> in the morning.

10 **SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** We were told that they took him to the hospital but the hospital took a very long time before they admitted him. He was only admitted at 9 o'clock.

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** That is all I was told about and that he also had fits continuously.

15 **ADV. DIRK GROENEWALD:** And then they provided you with this report, is this correct?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** We did not receive this report at that time.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** We made some efforts, a lot of efforts, to get this report.

**ADV. DIRK GROENEWALD:** How long thereafter were you provided with this report?

5 **INTERPRETER:** ...Interpret...

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** It was faxed.

**ADV. DIRK GROENEWALD:** Was it faxed to you?

**SARAH MHLONGO-NOKO:** ...Reply...

10 **INTERPRETER:** Yes.

**ADV. DIRK GROENEWALD:** Now, ma'am, I would just like to, you had an opportunity to read this report.

**INTERPRETER:** ...Interpret...

**ADV. DIRK GROENEWALD:** But unfortunately for the purposes of the record, I  
15 would just like to read it into the record.

**ARBITRATOR, JUSTICE MOSENEKE:** Well before she does, page 4 is startling, isn't it?

**ADV. DIRK GROENEWALD:** It is.

**ARBITRATOR, JUSTICE MOSENEKE:** Look at the heading of the body that is supposed to, the name of the body that is supposed to look after these patients.

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

**ARBITRATOR, JUSTICE MOSENEKE:** Siyabadinga Elderly and Disabled Project.

5 **INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** Literally is a project that disables.

**INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** It is a very (inaudible) irony because so many people were disabled there, isn't it?

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

**INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** And to get the name so wrong, that they are a disabled project and then end up with so many people dying, it is incredible. They couldn't even just get the name right.

15 **ADV. DIRK GROENEWALD:** Correctly so, Justice.

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Yes that is correct, Justice.

**ADV. DIRK GROENEWALD:** Now this report is compiled by Pokane.

**INTERPRETER:** ...*Interpret...*

**ADV. DIRK GROENEWALD:** Do you know this individual, ma'am?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

5 **INTERPRETER:** Yes.

**ADV. DIRK GROENEWALD:** Was this individual a professional nurse or...?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** He said he is the manager of the centre.

10 **SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** She said it is a she, she said she is the manager of that centre.

**ADV. DIRK GROENEWALD:** They inform you in this report, they say occupation is caregiver and the date is 26<sup>th</sup> of June 2016, time is quarter to one. And they state: "It was on Saturday on the 26<sup>th</sup> of June at around 12:45 when Jabulani Moshlongu started not feeling well. We called the ambulance, they arrived and they checked him. They sent him to Mamelodi Hospital. We waited to open the file, but the fits were still attacking him every now and then. After opening file, the doctor checked him around 4 o'clock and he said he can't control it, because they said we must wait outside. The doctor didn't admit the patient, he went home. The nightshift staff,

15

when they came in, they admitted him at around 21:00, 9 o'clock, but they never gave us full report until we left the hospital around 20 past 9.

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

5 **INTERPRETER:** Yes Counsel.

**ADV. DIRK GROENEWALD:** Then you say nobody clarified this to you.

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** No Counsel.

10 **ADV. DIRK GROENEWALD:** And your son spent, well we know at least five hours before he was admitted into hospital at Mamelodi.

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Yes that is what the report says, Counsel.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Well I don't know how you get to five hours, Counsel. 12:45 he is unwell.

**ADV. DIRK GROENEWALD:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** The ambulance comes and takes him to Mamelodi Hospital. Then they wait to open the file and they said they couldn't do it



because he kept on having multiple fits, continues fits. At 4 o'clock the doctor says I can't control the fits, but they must wait. The doctor goes home. The nightshift staff come in. He is admitted to hospital at 9 pm. Now 4 o'clock the doctor saw him, five, six, seven, eight, nine, that is five hours. But the ambulance took him some  
5 time after 12:45.

**ADV. DIRK GROENEWALD:** It is indeed, Justice, I concede it is longer than five hours, definitely.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja.

**ADV. DIRK GROENEWALD:** The report is just written in ...intervened.

10 **ARBITRATOR, JUSTICE MOSENEKE:** It is more like eight hours.

**ADV. DIRK GROENEWALD:** The report is just written in a very specific way not to say when the ambulance was phoned and when the ambulance exactly picked him up.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

15 **ADV. DIRK GROENEWALD:** But we know at 12:45 already he was in need of emergency medical assistance.

**ARBITRATOR, JUSTICE MOSENEKE:** Emergency medical care.

**ADV. DIRK GROENEWALD:** And he only received it at 9 o'clock that evening.

**ARBITRATOR, JUSTICE MOSENEKE:** And he died the following day.

**ADV. DIRK GROENEWALD:** Did they inform you... my apologies, Justice. Did they inform you exactly when your son died, ma'am, timewise?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

5 **INTERPRETER:** No, they did not inform me.

**ADV. DIRK GROENEWALD:** What we do know is that it was sometime the next day on the 27<sup>th</sup> of June.

**INTERPRETER:** ...*Interpret...*

10 **ADV. DIRK GROENEWALD:** Because that we can see from the death certificate at page 5.

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Yes Counsel.

15 **ADV. DIRK GROENEWALD:** Ma'am, were you approached by anybody from the Department of Health or the Government or somebody from Siyabadinga to give you some clarity and to give you some closure?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Not even one, Counsel.

**ADV. DIRK GROENEWALD:** Did you receive any counselling, ma'am?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** No.

5 **ARBITRATOR, JUSTICE MOSENEKE:** This is remarkable. You know, **SARAH MHLONGO-NOKO,** I have seen the note that you and your husband have written.

**SARAH MHLONGO-NOKO:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** On page 1 of ELAH69.

**SARAH MHLONGO-NOKO:** Yes.

10 **ARBITRATOR, JUSTICE MOSENEKE:** I read all of it. It is a heart breaking note.

**INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** I am sure Counsel will come back to that.

But what I really want to ask you is about at the hospital. Did anybody explain to you why a patient who is fitting continuously, seemingly because of epilepsy, cannot

15 be admitted, they have to wait until the fits stop?

**INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** He was at the hospital precisely for that, to get help, so that the fits must stop.

**INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** Was that ever explained to you?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** No one explained to me, Honourable Justice.

5 **ARBITRATOR, JUSTICE MOSENEKE:** By rough calculation, as I said earlier to the advocate, your son was there for something like probably seven to eight hours waiting for treatment.

**SARAH MHLONGO-NOKO:** Yes.

**INTERPRETER:** ...*Interpret...*

10 **ARBITRATOR, JUSTICE MOSENEKE:** And predictably overnight he died.

**INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** Do you know any better than what we can read in this report?

**INTERPRETER:** ...*Interpret...*

15 **SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** No, there is nothing I know other than this report, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel.

**ADV. DIRK GROENEWALD:** Was he receiving medication, ma'am, Jabulani?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Yes he was on medication.

**ADV. DIRK GROENEWALD:** And I can just presume that the medication was quite important because it helped him not to get the fits or not to get the seizures.

5 **INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Yes that is correct.

**ADV. DIRK GROENEWALD:** And we know that from January 2008 when he stayed at CCRC up until June 2016.

10 **INTERPRETER:** ...*Interpret...*

**ADV. DIRK GROENEWALD:** He survived and he lived and he received proper care.

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

15 **INTERPRETER:** Yes that is correct, Counsel.

**ADV. DIRK GROENEWALD:** And it is highly likely that it is due to the fact that he didn't get his medication.

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** The conditions at Siyabadinga, I suspected that he was getting some medication at the time.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** Because they even made some donations so that they can go and  
5 buy him an asthmatic spray.

**ADV. DIRK GROENEWALD:** Now ma'am, as Justice indicated, on page 1 of this ELAH69, you, can you confirm what document is that, it is the first page?

**INTERPRETER:** ...Interpret... Yes, we are there, Counsel.

**ADV. DIRK GROENEWALD:** Can you just confirm what document this is?

10 **INTERPRETER:** ...Interpret...

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** Counsel, it was written on the 15<sup>th</sup> of February 2017.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** Jabulani has passed on by then.

15 **SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** But we always had these queries as to what has happened with Jabulani.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** After viewing the news bulletins.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** We heard that there are a lot of people who continued to die.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** And that is when we realised that there is a possibility that we  
5 were also affected by this.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** Because we did not get proper explanation with regard to the  
issues of the NGOs.

**SARAH MHLONGO-NOKO:** ...Reply...

10 **INTERPRETER:** Because we did not know who the contact persons were because  
we were not addressed.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** And we subsequently received advice to say it is better if you go  
and raise your concern to the Ombudsman.

15 **SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** That is why we wrote this letter.

**ADV. DIRK GROENEWALD:** And in this letter, ma'am, am I correct that you  
indicated that you were highly satisfied with the care Jabulani received at CCRC  
prior to him being transferred to the NGO. Am I correct?

20 **INTERPRETER:** ...Interpret...

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** Yes that is correct, Counsel.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** That is why we were asking and pleading with them that they  
5 must not transfer him.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** But all that was in vain.

**ADV. DIRK GROENEWALD:** Because you were concerned at that point in time  
already, am I correct, ma'am?

10 **INTERPRETER:** ...Interpret...

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** That is true, Counsel.

**ARBITRATOR, JUSTICE MOSENEKE:** And on page 3, would that be what, is it  
the notice of the meeting?

15 **INTERPRETER:** ...Interpret...

**ARBITRATOR, JUSTICE MOSENEKE:** That you told us about that occurred on  
the 12<sup>th</sup> of April 2016.

**INTERPRETER:** ...Interpret...

**SARAH MHLONGO-NOKO:** ...Reply...



**INTERPRETER:** That is correct, Honourable Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Who presided over it? You said a CEO from the head office.

**INTERPRETER:** ...*Interpret...*

5 **SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Yes, he was there, even though I don't know exactly the name.

**ADV. DIRK GROENEWALD:** Was it a male or female? My apologies, Justice.

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

10 **INTERPRETER:** Female.

**ARBITRATOR, JUSTICE MOSENEKE:** You see I am asking you those questions because you said you pleaded and pleaded and pleaded that they should not transfer your son, but it was to no avail.

**INTERPRETER:** ...*Interpret...*

15 **SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Yes, that is true, I pleaded with them.

**ARBITRATOR, JUSTICE MOSENEKE:** With whom?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** The social worker, Me. Ndhlovu.

**ARBITRATOR, JUSTICE MOSENEKE:** What did she say as you were pleading that your son must not be transferred?

**INTERPRETER:** ...*Interpret...*

5 **SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** He did not agree, he said it was final.

**ARBITRATOR, JUSTICE MOSENEKE:** What was final?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

10 **INTERPRETER:** He said they have finalised the names of those who were going to be transferred.

**ARBITRATOR, JUSTICE MOSENEKE:** But your son was in a wheelchair, wasn't he?

**INTERPRETER:** ...*Interpret...*

15 **SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Yes that is correct, Honourable Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** On a form here, page 2.

**INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** He is described, I don't know by whom, the form describes him as severe mental retardation.

**SARAH MHLONGO-NOKO:** It is true.

**INTERPRETER:** ...*Interpret...*

5 **SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Yes that is true, Honourable Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** So besides the asthma and the epilepsy, he also had severe mental retardation.

**INTERPRETER:** ...*Interpret...*

10 **SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Yes that is true, Honourable Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** You see they told us, the sister who was here yesterday, that the criteria for choosing patients who were going to be moved from CCRC to Siyabadinga was to look at their stability.

15 **INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** Those who need less care, in other words.

**INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** Would be moved to give way for those who came from Waverly.

**INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** And the question is, did your son need less care? Why did you plead that he must not be moved? What was your fear?

**INTERPRETER:** ...*Interpret...*

5 **SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Jabu could not do anything for himself.

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** He needed assistance when he eats.

**SARAH MHLONGO-NOKO:** ...*Reply...*

10 **INTERPRETER:** You must also bath him.

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Everything.

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** He was bedridden.

15 **ARBITRATOR, JUSTICE MOSENEKE:** So the suggestion that he was strong enough to survive at Siyabadinga and to give way for others, how does that reach you? What do you think about that?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** That is not true, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel.

**ADV. DIRK GROENEWALD:** Thank you Justice. Well ma'am, I think, especially in this case and in all of the cases, the Ombudsman's words that he used was that  
5 those patients from CCRC were sacrificed.

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** That is true.

**ADV. DIRK GROENEWALD:** Ma'am, how old was your son when he died?

10 **INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** 22.

**ADV. DIRK GROENEWALD:** 22 years of age.

**SARAH MHLONGO-NOKO:** ...*Reply...*

15 **INTERPRETER:** Yes Counsel.

**ADV. DIRK GROENEWALD:** And when did you have his funeral? When was his funeral?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** On the 3<sup>rd</sup> of July.

**ADV. DIRK GROENEWALD:** On the 3<sup>rd</sup> of July. Ma'am, who paid for his funeral?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

5 **INTERPRETER:** I did.

**ADV. DIRK GROENEWALD:** How much did you pay for his funeral?

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Around R60 000.

10 **ADV. DIRK GROENEWALD:** Now ma'am, I would like to know the death of your son in these conditions. You begged them not to transfer him, he was transferred and then he died under these circumstances which you have no clarity on, you don't know why and you don't know how. How does that make you feel? What is the impact of that on you?

15 **INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** I felt sick, I was not well, I did not take the news well, I felt sick.

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** At some point I was even admitted to hospital.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** For almost a year I was under treatment.

**ADV. DIRK GROENEWALD:** Ma'am, I have asked all of the witnesses that come and testify, what is it that they hope that will come from these proceedings. What is  
5 it that you hope will come from these proceedings?

**INTERPRETER:** ...Interpret...

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** If they can fix the conditions in the hospitals.

**SARAH MHLONGO-NOKO:** ...Reply...

10 **INTERPRETER:** Because it is clear not everything is well there.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** They don't take the lives of the people as important.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** That is what I can say.

15 **SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** And that all the health practitioners.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** Must have the patience to take care of patients.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** And to consider the circumstances surrounding a particular patient.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** Because sometimes it happens.

5 **SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** Those that are close to that patient.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** They also become affected and become ill.

**SARAH MHLONGO-NOKO:** ...Reply...

10 **INTERPRETER:** So this issue about the psychologists.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** I think it will help us a lot, especially with regard to counselling.

**SARAH MHLONGO-NOKO:** ...Reply...

15 **INTERPRETER:** So that it can mitigate and stop not to repeat the same situation where a lot of people died.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** We are very happy and we appreciate the establishment of these arbitration hearings.

**SARAH MHLONGO-NOKO:** ...Reply...



**INTERPRETER:** Even though it is painful and difficult.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** We have learned so much.

**SARAH MHLONGO-NOKO:** ...Reply...

5 **INTERPRETER:** As to what was actually happening.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** Because we were not aware of what was happening.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** And the fact all these NGOs were there at Cullinan.

10 **SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** We did not know that.

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** At least this process is explaining some of the things.

**SARAH MHLONGO-NOKO:** ...Reply...

15 **INTERPRETER:** And for that we appreciate very much.

**ADV. DIRK GROENEWALD:** Ma'am, if there is anything else that you would like to add in respect of the treatment, the conditions of the place, you are more than welcome to do so. Otherwise my colleagues will have the opportunity to now ask you a few questions.

**INTERPRETER:** ...*Interpret...*

**ADV. DIRK GROENEWALD:** Thank you Justice.

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** I have nothing to say at the moment, Counsel.

5 **ADV. DIRK GROENEWALD:** Thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Well I don't know how to tell you in  
IsiSwazi, (vernac).

**INTERPRETER:** ...*Interpret...*

10 **ARBITRATOR, JUSTICE MOSENEKE:** When I look at the facts they are quite  
traumatic. Your son survived eight years at CCRC.

**INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** It took one month for him to die at  
Siyabadinga.

**INTERPRETER:** ...*Interpret...*

15 **ARBITRATOR, JUSTICE MOSENEKE:** And from the facts, it looks like he fitted  
himself to death.

**INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** Anyway... Cross-examination.

**ADV. ADILA HASSIM:** Good afternoon **SARAH MHLONGO-NOKO.** Thank you for coming to testify today. I just have one question and that is whether you have been offered counselling by the State?

**INTERPRETER:** ...*Interpret...*

5 **SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** No.

**ADV. ADILA HASSIM:** I am very sorry for your loss. Those are the questions, Justice.

**INTERPRETER:** ...*Interpret...*

10 **ARBITRATOR, JUSTICE MOSENEKE:** Advocate Crouse.

**ADV. LILLA CROUSE:** Thank you Justice, we have no questions.

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

**ADV. PATRICK NGUTSHANA:** Thank you Justice Moseneke, no questions.

**ARBITRATOR, JUSTICE MOSENEKE:** Advocate Hutamo.

15 **ADV. TEBOGO HUTAMO:** Thank you Justice. **SARAH MHLONGO-NOKO,** greetings to you.

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Yes Counsel.

**ADV. TEBOGO HUTAMO:** We must say to you that it is unfortunate, that it is with regret that your son had to pass away in the circumstances in which death could have been avoided.

**INTERPRETER:** ...*Interpret...*

5 **ADV. TEBOGO HUTAMO:** And on behalf of the Government we do apologise for the passing of your son, Jabulani.

**INTERPRETER:** ...*Interpret...*

**ADV. TEBOGO HUTAMO:** We, however, appreciate the courage which you have had to come before these proceedings to give your testimony.

10 **INTERPRETER:** ...*Interpret...*

**ADV. TEBOGO HUTAMO:** And it is through this process that we hope that you and your family and other family members will be able to heal through the information which comes from these proceedings.

**INTERPRETER:** ...*Interpret...*

15 **ADV. TEBOGO HUTAMO:** And you would probably have heard the evidence in relation to the conditions at Siyabadinga where your son was accommodated.

**INTERPRETER:** ...*Interpret...*

**ADV. TEBOGO HUTAMO:** And we take that as an opportunity that should allow you to understand exactly what had occurred in relation to the passing of your son.

20 **INTERPRETER:** ...*Interpret...*

**ADV. TEBOGO HUTAMO:** And on behalf of the Government we have learned as to what actually led to this unfortunate situation.

**INTERPRETER:** ...*Interpret...*

**ADV. TEBOGO HUTAMO:** And we are saying that we will take steps to try and  
5 avoid this situation having to repeat itself.

**INTERPRETER:** ...*Interpret...*

**ADV. TEBOGO HUTAMO:** And from what you've said, you've indicated that counselling is quite necessary for everyone to heal from the unfortunate situation.

**INTERPRETER:** ...*Interpret...*

10 **ADV. TEBOGO HUTAMO:** And the Government is listening to everyone with regard to the concerns which were being raised in these proceedings.

**INTERPRETER:** ...*Interpret...*

**ADV. TEBOGO HUTAMO:** And we should say that we are really sorry for what has happened and we hope that at the end of these proceedings, we should be able to  
15 find some closure and all appropriate measures will be taken to assist everyone to heal from these wounds.

**INTERPRETER:** ...*Interpret...*

**ADV. TEBOGO HUTAMO:** And we trust that this process is quite necessary for that purpose and we thank you so much.

20 **INTERPRETER:** ...*Interpret...*

**ADV. TEBOGO HUTAMO:** Justice, there are no questions to the witness.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, thank you. Thanks Counsel.

(Vernac)

**INTERPRETER:** Ma'am, you have a right to respond if you feel that you want to  
5 respond.

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac)

**INTERPRETER:** Before you respond, when are you going back to (inaudible)?

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac)

**INTERPRETER:** It is very far.

10 **SARAH MHLONGO-NOKO:** ...Reply...

**ARBITRATOR, JUSTICE MOSENEKE:** Four hours, four and a half hours.  
(Vernac).

**INTERPRETER:** Are you going back today?

**SARAH MHLONGO-NOKO:** ...Reply...

15 **INTERPRETER:** If we have transport, I can go back today.

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac)

**INTERPRETER:** I am not saying you must go, I was just asking.

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac)

**SARAH MHLONGO-NOKO:** ...Reply...

**INTERPRETER:** There is nothing I can say, except to say thank you very much and please be considerate going forward.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes. Re-examination, Counsel.

**ADV. DIRK GROENEWALD:** No re-examination. Thank you Justice.

5 **ARBITRATOR, JUSTICE MOSENEKE:** You are right. We have to take care of each other.

**INTERPRETER:** ...*Interpret...*

**SARAH MHLONGO-NOKO:** ...*Reply...*

**INTERPRETER:** Yes that is correct, Justice.

10 **ARBITRATOR, JUSTICE MOSENEKE:** If there is no care, there can't be a true society.

**INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** You can't talk about Ubuntu and not care.

**INTERPRETER:** ...*Interpret...*

15 **ARBITRATOR, JUSTICE MOSENEKE:** Siyabonga ma'am, against thanks for coming and you are released from there, if you want to.

**INTERPRETER:** ...*Interpret...*

**ARBITRATOR, JUSTICE MOSENEKE:** Can we do brief housekeeping? I guess this is the last witness for today.

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

**ARBITRATOR, JUSTICE MOSENEKE:** Yes. Two things, obviously I would like to see all counsel. On Monday I think we should do it at 4 pm at the end of the day, in relation to the order as to cost, Monday 4 pm. Let's come back to witnesses. Are we set for Monday?

**ADV. LILLA CROUSE:** Justice, Dr Manamela was set down for Monday and Tuesday, as I understand it.

**ARBITRATOR, JUSTICE MOSENEKE:** That is the question I am asking, yes indeed, I am aware of that.

10 **ADV. ADILA HASSIM:** Yes, the question you are asking is not whether she was allocated but whether she is indeed coming and as far as we are aware, she is coming.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes that is indeed what I am asking. Counsel for the State, there was some condition which was floating around. I trust all of that has been attended to, Monday being upon us.

**ADV. TEBOGO HUTAMO:** As far as we understand, Dr Manamela is set to testify on Monday. We have not had any information to the contrary.

**ARBITRATOR, JUSTICE MOSENEKE:** And will be available for both days, Monday and Tuesday?

20 **ADV. TEBOGO HUTAMO:** Yes... Well in terms of the subpoena I understand that she will be in attendance until the evidence is concluded.



**ARBITRATOR, JUSTICE MOSENEKE:** Until evidence is concluded.

**ADV. TEBOGO HUTAMO:** If it is concluded in a day, then I guess she may be excused.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, very well. You clearly want to speak,  
5 Counsel.

**ADV. PATRICK NGUTSHANA:** Yes, Justice Moseneke, what I wanted to say is, Monday and Tuesday is confirmed. I think the issue of conditions are now off the table, I think. What we know is that it is confirmed.

**ARBITRATOR, JUSTICE MOSENEKE:** Very well. Your weekend work is well cut  
10 out for all of you, is all I can say. From my part I am going to Advocate George Bizo's 90<sup>th</sup> birthday dinner tonight, so I am going to a party, I don't know about the rest of you. You have a good weekend, you are adjourned.

**END OF SESSION 3**

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