

LIFE ESIDIMENI ARBITRATION

HELD AT: EMOYENI CONFERENCE CENTRE, 15 JUBILEE ROAD,

PARKTOWN, JOHANNESBURG

DATE: 14th NOVEMBER 2017 DAY

5

DAY SESSION 1 – 3.

BEFORE ARBITRATOR – JUSTICE MOSENEKE

10

WITNESSES:

DR MVUYISO TALATALA

DIKELEDI MANAKA

[Contents](#)

15	SESSION 1	2
	SESSION 2	78
	SESSION 3	141

20 14 November 2017

SESSION 1

ARBITRATOR, JUSTICE MOSENEKE: You may be seated. Doctor, the evidence you are about to give will be the truth and nothing but the truth and if so, raise your right hand and say so help me God.

25 **DR MVUYISO TALATALA:** So help me God.

ARBITRATOR, JUSTICE MOSENEKE: Counsel, we had started cross-examination, hadn't we?

ADV. LILLA CROUSE: Thank you, Justice Moseneke.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

30 **ADV. LILLA CROUSE:** Justice Moseneke, my learned friend from Section 27 would just like to place something on record.

ARBITRATOR, JUSTICE MOSENEKE: Very well. Adv. Hassim.

ADV. ADILA HASSIM: Good morning, Justice Moseneke.

ARBITRATOR, JUSTICE MOSENEKE: Good morning.

35 **ADV. ADILA HASSIM:** In Dr Talatala's evidence in chief he referred to the addition of 900 beds at existing psychiatric hospitals in the province. I ask leave to hand up the document to support what he has said.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ADV. ADILA HASSIM: As exhibit ELAH59.

40 **ARBITRATOR, JUSTICE MOSENEKE:** Yes indeed. Any objection by any of the parties to the handing up of the document?

ADV. TEBOGO HUTAMO: There is no objection we are having about the document.

ADV. DIRK GROENEWALD: No.

45 **ARBITRATOR, JUSTICE MOSENEKE:** No.

ADV. PATRICK NGUTSHANA: No objection.

ARBITRATOR, JUSTICE MOSENEKE: Thanks. ELAH59 is admitted as an exhibit. Before cross-examination continues I have been alerted that the either the evidence leaders or you, Adv. Hassim, are going to tell us something we don't know.

50 **ADV. PATRICK NGUTSHANA:** Let me take the responsibility, Justice Moseneke. It is in relation to a witness who has been mentioned throughout the beginning of the proceedings and that is Dr Manamela. We have received communication on the 12th of this month that she has reconsidered her position and she will come to testify during the course of next week. The date will be the 20th, if I am not mistaken. I
55 think it is the 20th. Yes. She will be coming on the 20th, but the State has been

requested to address communication back to her attorneys, because there was a condition that she has placed on her attendance and that is yet to be communicated to her later this afternoon.

ARBITRATOR, JUSTICE MOSENEKE: You know I like direct speech not indirect
60 speech. We have received communication, that doesn't help.

ADV. PATRICK NGUTSHANA: Justice ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Somebody wrote to somebody and said something.

ADV. PATRICK NGUTSHANA: Justice Moseneke ...intervened.

65 **ARBITRATOR, JUSTICE MOSENEKE:** It is called direct speech. The cat drinks the milk. The milk is drunk by the cat.

ADV. PATRICK NGUTSHANA: Apologies.

ARBITRATOR, JUSTICE MOSENEKE: Okay.

ADV. PATRICK NGUTSHANA: On the 12th of November Dr Manamela's attorneys,
70 ACM Attorneys, wrote correspondence, it was directed for my attention. I had responded to the email, accepting the undertaking that she will come and testify or reconsider her position. She has undertook to come and testify from the 20th – that is the date which has been indicated on the subpoena.

ARBITRATOR, JUSTICE MOSENEKE: And the 20th would be Monday, the coming
75 next Monday.

ADV. PATRICK NGUTSHANA: That is Monday.

ARBITRATOR, JUSTICE MOSENEKE: The 20th of November.

ADV. PATRICK NGUTSHANA: Yes. However, there is one issue that the State
needs to address her and her attorneys in relation to any interpretation of a clause,
80 specifically clause 6.8 of the terms of reference relating to cost or payment of the
attendance of parties and witnesses and so on. And that is yet to be communicated
to Dr Manamela and her attorneys by the State later this afternoon. So in so far as
that issue has been raised as well in the letter, I am not in a position to address you
further on it, since it has not been dealt with by the State. So they have undertook to
85 address that issue later in the afternoon. So once that issue shall have been
addressed, then we will be in a position to make further announcements in relation to
it.

ARBITRATOR, JUSTICE MOSENEKE: Adv. Hassim, you subpoenaed Dr
Manamela.

90 **ADV. ADILA HASSIM:** That is correct, Justice Moseneke, we did subpoena Dr
Manamela and despite her initial objections she has now, as my learned friend says,
she has written to us via her attorneys to say she has reconsidered her position, she

will be here on the 20th of November. And we have requested the evidence leaders
...(Faulty recorder)... Okay, I think we are back on.

95 **ARBITRATOR, JUSTICE MOSENEKE:** Okay very well.

ADV. ADILA HASSIM: I was saying Dr Manamela has reconsidered, she will be
here on the 20th of November. Her evidence will be led by the evidence leaders.
Her condition was that her costs of attendance and her legal costs should be paid by
the State. And in support of that request she refers to paragraph 6.8 of the terms of
100 reference and that is really perhaps an issue on which my friend for the State will be
best placed to address you on and what the meaning of that is. We have a view on
it, but it is really up to the State to decide whether they wish to pay her legal costs or
not.

ARBITRATOR, JUSTICE MOSENEKE: Very well. Adv. Crouse, do you have
105 anything to say about this?

ADV. LILLA CROUSE: I don't think ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: We are still talking about the witness, Dr
Manamela.

ADV. LILLA CROUSE: Justice Moseneke, I have a definite view on it, but I don't
110 think it is something that this forum has to decide at this stage.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. Counsel Groenewald.

ADV. DIRK GROENEWALD: Ja, we don't have any specific issue to raise at this point in time, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Adv. Hutamo, it all comes back to you, it
115 seems to me.

ADV. TEBOGO HUTAMO: Well from the State all that we can say is that it is on record that Dr Manamela has been subpoenaed as a witness and then she will have to be in attendance. Correspondence between attorneys will be exchanged like in the normal course, so it is not a matter that is supposed to be subjected to these
120 proceedings. It is on record that she is coming pursuant to her subpoena, so let's just leave it as it is.

ARBITRATOR, JUSTICE MOSENEKE: Very well. I think that is good advice. Anything else that anybody would like to say about that particular matter? No, we are done? And we will see her on Monday, Monday morning. Adv. Crouse. Your
125 mic was on, do you want to say anything else Adv. Ngutshana?

ADV. PATRICK NGUTSHANA: No, nothing.

ARBITRATOR, JUSTICE MOSENEKE: Very well.

ADV. LILLA CROUSE: Thank you Justice Moseneke. Morning Doctor.

DR MVUYISO TALATALA: Morning.

130 **ADV. LILLA CROUSE:** We were last speaking about the lack of water or over
dehydration. I don't know whether you have an answer for the Justice on over
hydration.

DR MVUYISO TALATALA: Yes Counsel, I don't think it would be a problem for
Justice because it was very hot yesterday, so he may have been getting dehydrated
135 and that is why he needed to replenish the stores (?), but it could have some
relevance for the psychiatric patients, because part of the illness, they could actually
if you do not supervise them, some of the patients may drink lots of water and that
lowers the chemicals called sodium in the blood and that could result in seizures. So
the danger is not only dehydration, it is also if they drink too much water, they could
140 be at risk of Hyponatremia, low sodium. And if not checked, it can cause seizures
and death.

ADV. LILLA CROUSE: And Doctor, that could perhaps explain people testifying
about their family members having seizures who have never had seizures before,
but it could also be dehydration that caused that, both.

145 **DR MVUYISO TALATALA:** Both it could be.

ADV. LILLA CROUSE: In so far as a lack of food is concerned, how will that affect
a person?

DR MVUYISO TALATALA: With food, also variance levels ...intervened.

ADV. LILLA CROUSE: You talked about the increase of appetite yesterday.

150 **DR MVUYISO TALATALA:** Which they need. And also you need food to take your medications. But also if you then don't eat or you go to starvation your blood sugar will go down and you could die from low blood sugar or starvation.

ADV. LILLA CROUSE: And the lack of food, will that make you non-responsive?

DR MVUYISO TALATALA: You mean in terms of ...intervened.

155 **ADV. LILLA CROUSE:** Communication.

DR MVUYISO TALATALA: If the blood sugar goes down, you can become, that is one of the signs of Hypoglycaemia, you can become non-responsive.

ADV. LILLA CROUSE: Doctor, we have heard evidence, we will still hear evidence as well, of people being cold, inappropriately dressed in winter, bare foot. How will that affect a mental health care user?

160

DR MVUYISO TALATALA: When you are looking after patients, especially of that severity, you actually need to control their environment in terms of temperature. Any hospital's control temperature anyway for any patient, but for those kind of patients you need to control, to have a heating system, because they may not dress appropriately, even when you've got the clothes, even at night they may not cover themselves appropriately. So you need some kind of heating system.

165

ADV. LILLA CROUSE: More control than another adult?

DR MVUYISO TALATALA: Yes. I assume that when you are running a NGO, you may not have a heating system like at Sterkfontein Hospital, but then you will then
170 have to pay attention in making sure that they are dressed up warmly in winter and lightly in summer during hot days.

ADV. LILLA CROUSE: If we can move to the lack of hygiene and we have dealt with it and I will again deal with it with Takalani's report, but how will that influence the mental health of a mental health care user?

DR MVUYISO TALATALA: Firstly the hygiene needs to be supervised, especially
175 with patients with that severity of illness. You have to supervise their hygiene, their washing of hands, the cleanliness of the environment. For any patient there needs to be good hygiene, because you will spread infections from one person to the next and that could result in infectious diseases, diarrhoea, even respiratory diseases if it
180 is an overcrowded place and without good hygiene and ventilation.

ADV. LILLA CROUSE: Are you saying that that could lead to respiratory diseases which was non-existent in the patient before?

DR MVUYISO TALATALA: Yes, they could have flu, they could have Pneumonia, one of the respiratory infections, an acute infection not something the person may
185 have had, they could also be spread of TB.

ADV. LILLA CROUSE: Yes. We have heard that the lack of hygiene actually goes further of the not washing of hands. We have heard evidence or opinion evidence that patients didn't wash for prolonged times. What effect would that have on a patient?

190 **DR MVUYISO TALATALA:** Firstly some of the psychiatric illnesses such as Schizophrenia, may make patients to lack motivation, part of motivation is to wake up and take a bath. So if you are looking after the patients, you need to remind them to take a bath, to brush their teeth. Now without such supervision some patients may not even bath and without bathing that is already poor hygiene that one will
195 spread infections to other people, but also you may end up with skin diseases, assuming that you are not brushing properly your teeth, dental carelessness, there could be some diseases related to not bathing for a prolonged period of time.

ADV. LILLA CROUSE: It is good for a human to have good hygiene.

DR MVUYISO TALATALA: Yes and if a person is not bathing and you are not
200 supervising them, you may not pick up little injuries that they may have had or little infections of the skin that you could treat early.

ADV. LILLA CROUSE: Thank you Doctor. And we have dealt with this, I just want to finish on this, lack of qualified staff for mental health care users, how will that affect them?

205 **DR MVUYISO TALATALA:** It depends on your support systems. I don't want to leave a message that you cannot have a NGO run by ordinary people ...intervened.

ADV. LILLA CROUSE: People from the street.

DR MVUYISO TALATALA: In an area, looking after a small number of patients with support from a neighbouring clinic that is full staff. So I don't want to exclude that possibility. But if you are going to take a huge number, then you, and you don't have support from the neighbouring clinics in the area, the health system in the area, then you definitely need occupational therapists, psychologists, social workers and some kind of access to a doctor to review your medications.

ADV. LILLA CROUSE: Yes. Now we have dealt with quite a number of things since yesterday. We talked about the lack of water, the lack of food, the lack of appropriate clothing, lack of hygiene, trained persons, we talked about the lack of proper medicine or giving the wrong medicine. Now on the survivors itself, all of those things combined, what affect would that have on the mental health care users?

DR MVUYISO TALATALA: It is a lot of things. There could be many affects, but overall I think there is a high risk of relapse, deterioration of the mental illness, the mental illness getting worse. And we know it is sometimes very difficult to, if your patients have been stabilised and they relapse, it is sometimes very difficult or it

takes a long time to regain the previous functional level, especially with patients with severe mental illnesses.

225 **ADV. LILLA CROUSE:** We have heard that you can have a natural relapse, but these are induced relapses, isn't it, through bad care?

DR MVUYISO TALATALA: Yes, it sounds like these are induced relapses.

ADV. LILLA CROUSE: Thank you. Doctor, I just want to have your view on this, in terms of the Mental Health Care Act, the family member is included in the definition
230 of a mental health care user. How do you handle that in your practice?

DR MVUYISO TALATALA: In terms of involving the family member?

ADV. LILLA CROUSE: Or in terms of informed consent, I am not sure. If you can just say to us how do you handle the family in terms of the definition of a health care user.

235 **DR MVUYISO TALATALA:** There is different... in the Mental Health Care Act patients are divided into three levels.

ADV. LILLA CROUSE: Yes.

DR MVUYISO TALATALA: There is a voluntary health care user – that would be a person who is depressed or who has whatever illness, they voluntary represent for
240 treatment and admission. Those patients can sign themselves in without a problem.

As part of treatment we still consider a significant other important, whether it is a spouse or a parent ...intervened.

ADV. LILLA CROUSE: So at all times, even with a voluntary patient you consider, there is a family treatment.

245 **DR MVUYISO TALATALA:** It is quite important for one to get additional information on the patient, but also to us... it is part of therapy, part of treating the patient and also as part of support for the patient, even for the voluntary patient. The assisted patient to the same level and the involuntary patient, there you actually need family members. Because for the assisted patients, you need family members to apply for
250 the patient to be assisted. And for involuntary patients, unless it is a special circumstance, you want the families to apply for their treatments. For the two types, obviously, because of the severity of the illness, you definitely need family members as you treat those two types of patients. It is very difficult to treat them without family members.

255 **ADV. LILLA CROUSE:** So what you are saying, firstly in terms of treatment it is necessary and then in terms of informed consent the family members are also necessary.

DR MVUYISO TALATALA: Yes. It is not absolute, you can go without it, but the law sort of requires us to get hold of family members and get them to apply.

260 **ADV. LILLA CROUSE:** And it seems to me that it is something that you agree with that the law should do that.

DR MVUYISO TALATALA: Yes, absolutely.

ARBITRATOR, JUSTICE MOSENEKE: You promised a taxonomy of three. You said first voluntary health care user. What are the other categories?

265 **DR MVUYISO TALATALA:** Assisted mental health care user and involuntary mental health care user. But in my discussion I just, in terms of the role of the family, the assisted and the involuntary, I just combined them.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ADV. LILLA CROUSE: And those definitions are in the Act.

270 **DR MVUYISO TALATALA:** They are in the Act, Counsel.

ADV. LILLA CROUSE: So just to finish off that, the dynamic of a family assistance is overall important with a mental health care user.

DR MVUYISO TALATALA: Yes, even the voluntary health care user.

ADV. LILLA CROUSE: Yes.

275 **DR MVUYISO TALATALA:** It is part of training for psychiatry.

ADV. LILLA CROUSE: Doctor, I just want to ask you a few questions about the ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Just before you move away from that. The consent requirement for mental health care users, how is that ordinarily dealt with?

280 All of our patients would know mental disability, you presumably would require their consent or in certain extreme circumstances the consent of their families. But in the case of mental disability, how do you deal with and fulfil the consent requirement before you administer treatment?

DR MVUYISO TALATALA: The first category which is voluntary, they consent for themselves, because they have got capacity to consent. The assisted mental health care user, will be someone for instance with dementia, he or she is not opposed to treatment, but does not understand the treatment and therefore cannot consent. So the Act then prescribes that there must be an application made by family or anyone who had seen the patient, to a head of health establishment that the patient must be treated. And then a doctor and another person who works in the health will assess the patient and decide whether the application is appropriate, if the patient needs to be treated. They will then admit the patient for what is called 72 hour observation, which is where the clinical team will look after the patient, assess and then at the end of that 72 hour observation then the two, doctor and someone else, a nurse, will reassess the patient and determine whether the patient still needs care or not. They will then, all those forms of the application they go to head of health establishment who approves and then eventually they end up with a review board. The difference

285
290
295

between assisted and involuntary is that with the involuntary it would be someone who is opposed to, who is ill, does not see himself as ill and poses a danger to himself or others. And a similar process will be followed and at the end of the 72
300 hour observation it is determined that the patient is still ill and needs further care, then that patient will be transferred to a psychiatric hospital.

ARBITRATOR, JUSTICE MOSENEKE: Now in the case of patients who were kept at Esidimeni – or let's for a moment talk about the 50 or so that had to be moved to
305 Takalani. How would you deal with the consent requirement in that situation?

DR MVUYISO TALATALA: Firstly, they would have ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Who has to be asked to agree for movement from Life Esidimeni to Takalani?

DR MVUYISO TALATALA: The families would be the first people to be asked,
310 because they would have been the ones who made the applications in the first place, if families are available. And where families are not available, I think the second option will be to get the authority of the head of health establishment.

ARBITRATOR, JUSTICE MOSENEKE: Ordinarily before you make a decision to transfer or discharge a patient, who is capable of understanding your communication
315 to him/her, would you ask the patient for consent?

DR MVUYISO TALATALA: Yes. If the patient can consent, the patient was admitted as a voluntary patient, then the patient can be discharged without consulting anyone. But my understanding of the Life Esidimeni patients, they would not have been admitted as involuntary patients.

320 **ARBITRATOR, JUSTICE MOSENEKE:** They were admitted as what?

DR MVUYISO TALATALA: I will not know with certainty all the details, but either assisted or involuntary. There is no way that any of them would have been admitted as a voluntary patient.

ARBITRATOR, JUSTICE MOSENEKE: So the patients there were generally
325 assisted or involuntary.

DR MVUYISO TALATALA: Yes. It would make sense that you would admit an involuntary patient.

ARBITRATOR, JUSTICE MOSENEKE: Yes and in that instance, whose consent would you have to procure?

330 **DR MVUYISO TALATALA:** Either the family or the head of health establishment when the family is not available.

ARBITRATOR, JUSTICE MOSENEKE: And how does preparation coincide, if at all, with consent? You talked a lot yesterday about preparing patients to be moved. Is preparation the same thing as consent or something different?

335 **DR MVUYISO TALATALA:** The Life Esidimeni is an unusual scenario. Ordinarily if you are going to move the patient and the patient has family, the family would have been made aware of such a move. If you are moving one patient from a facility, whether the patient is admitted as involuntary or assisted, definitely for the families who are available, would have informed the families and get their agreement to the

340 move of a patient. So if I were to move 50 patients to Takalani I will consult the families and inform them that I am going to move patients to Takalani. Apart from the consent, also you don't want families to be coming to your facility or searching for patients all over – that is actually bad care. You want them to know where their loved ones are.

345 **ARBITRATOR, JUSTICE MOSENEKE:** Yes I get that, I understand that is part of the answer. But how do you prepare a patient in particular, before you move the patient.

DR MVUYISO TALATALA: Justice, just to get the question. You mean how do I prepare the patient psychologically?

350 **ARBITRATOR, JUSTICE MOSENEKE:** How do you reduce the impact of movement from one facility to another?

DR MVUYISO TALATALA: Okay. Firstly it is preparation of the two facilities that are handling the patient. It is also communicating with the patient, even if you think

that they don't understand, it is communicating with the patient directly that from this
355 particular date we will be moving you to a particular institution. And you don't do that
in one session, unless you've got an emergency. You won't do it in one session.
You would interview the patient, discuss with the patient. The psychologist, if you
have one, would have included that as part of their therapy, even if you think that
they do not understand you. Because there may be certain things that the patients
360 were used to in the facility, they should be aware now that they are moving to a
different facility, to a different treating team. And this would apply even if you are
sending them home, you would have to do some kind of psychotherapy to prepare
them for a new facility.

ARBITRATOR, JUSTICE MOSENEKE: So you need some psychotherapy that
365 goes along with moving a patient from one place to another.

DR MVUYISO TALATALA: Absolutely, especially if they have been there for a long
time. I am not talking about an acute situation, especially if the patients have been
there for a long time. Even in an acute situation I must add you still, even with an
aggressive patient, you still communicate to the person and say you are ill to this
370 level, we are deciding to move you to this facility because we cannot contain you
because you are breaking the windows in our facility.

ARBITRATOR, JUSTICE MOSENEKE: Counsel.

ADV. LILLA CROUSE: Thank you Justice. Doctor, if I can move to ELAH58 which
you handed in yesterday or the day before you came, it is about the Salmonella
375 Typhoid case.

DR MVUYISO TALATALA: Yes.

ADV. LILLA CROUSE: Now as I read the timeline, in March 2016, you were upset
about the 50 patients moved to Takalani.

DR MVUYISO TALATALA: That is correct.

380 **ADV. LILLA CROUSE:** And if I can just move a little bit on. This letter was, although
it was written on the 19th of July, the cases represented itself in early July and late
June, would you agree with that?

DR MVUYISO TALATALA: That is correct, Counsel.

ADV. LILLA CROUSE: And we know from this letter and you are not in
385 disagreement with that, if I understand you correctly, that the incubation period would
be one to two weeks.

DR MVUYISO TALATALA: That is correct, Counsel.

ADV. LILLA CROUSE: And it says the illness could take three to four weeks to run
its course.

390 **DR MVUYISO TALATALA:** Yes that is correct, Counsel.

ADV. LILLA CROUSE: I know you are not an infectious diseases expert, but you are a medical doctor. You don't always die from this, is that right, you can survive this.

DR MVUYISO TALATALA: Yes, you can survive it, Counsel.

395 **ADV. LILLA CROUSE:** Now if you go to the Ombud's report, the later report that he has handed in, and that would be ELAH57, I don't think you have it in front of you. I just want to give you information on that, you don't have to go there. That in June, July and August, in the time of incubation and that this was... something went wrong here, sorry.

400 **ARBITRATOR, JUSTICE MOSENEKE:** It is (inaudible) to give the doctor the report. Do you have it before you? Let somebody help you.

ADV. LILLA CROUSE: Thank you Justice. Do you have it in front of you?

DR MVUYISO TALATALA: I have, Counsel.

ADV. LILLA CROUSE: If you can turn to page 8 of the report. You will see a graph
405 of some sort, it says total death per facility. Then you have on your left hand side the month in the blue.

DR MVUYISO TALATALA: That's correct.

ADV. LILLA CROUSE: And then the second institution is Moseko Takalani, do you see that?

410 **DR MVUYISO TALATALA:** That's correct.

ADV. LILLA CROUSE: If you move down that column to June 2016, you will see that six people died at that institution, July five and August five.

DR MVUYISO TALATALA: I see that.

ADV. LILLA CROUSE: It is quite high except for October which is, well any death is
415 unacceptable, but those are concentrated in those months, do you see that?

DR MVUYISO TALATALA: I see that, Counsel.

ADV. LILLA CROUSE: That could be as a result, I suppose, of the outbreak. You are not the pathologist, I know that as well.

DR MVUYISO TALATALA: Ja. It is possible, but it was also winter months, there
420 could also be other infectious diseases, especially respiratory infections that could have caused the deaths as well.

ADV. LILLA CROUSE: Yes I would accept that. We looked at the symptoms in ELAH58 and you agreed with the symptoms yesterday that is on the first page, paragraph 2. It says: Poor appetite, headaches, generalised aches and pains,
425 fever, lethargy, chest congestion develops, abdominal pain and discomfort.

DR MVUYISO TALATALA: Yes I agree.

ADV. LILLA CROUSE: Then if we turn two pages to page 3, we see that Johanna Thladli was vomiting blood stained vomit. Would that be related?

DR MVUYISO TALATALA: It could be but it can also be ...intervened.

430 **ADV. LILLA CROUSE:** Respiratory because she had a runny nose.

DR MVUYISO TALATALA: Ja.

ADV. LILLA CROUSE: And then... let me just get to the right place now... if we can turn one page back on page 2. At the bottom of the page just before the last heading, it refers to Excellence Nozusa and it says the skin was dehydrated, sunken eyes and he was gasping for air. Will that be related? Could it be related?

DR MVUYISO TALATALA: That is a severely ill person. It could be related or it could be form something else, but those are signs of someone who is physically severely ill, whether they had diarrhoea related to the Typhoid or they could have something else that made them to be dehydrated.

440 **ADV. LILLA CROUSE:** The skin was dehydrated. Could you just explain that to us? Is there a change in skin colour if it is dehydrated?

DR MVUYISO TALATALA: The ...intervened.

ADV. LILLA CROUSE: It is loose?

DR MVUYISO TALATALA: The skin texture, if I have to use that, may change or
445 when you pinch the skin, the elasticity may be lost.

ADV. LILLA CROUSE: I understand the elasticity. We all had babies and we all
knew how to test those. But I specifically want to know about the skin colour,
whether that would change.

DR MVUYISO TALATALA: I am not 100% sure.

450 **ADV. LILLA CROUSE:** Thank you. We are just ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: What are we doing here? Are we trying to
show that these people may have been killed by Typhoid?

ADV. LILLA CROUSE: Or dehydration.

ARBITRATOR, JUSTICE MOSENEKE: Or dehydration.

455 **ADV. LILLA CROUSE:** We just heard evidence of people's skin colour changing
and we had consultations where that came out as well and we can't make sense of
it, why would a person's skin tone change.

DR MVUYISO TALATALA: It could... I just don't want to commit myself without
having refreshed my memory in checking the science, but I suspect, but I am not
460 certain, that the skin colour with dehydration could change.

ADV. LILLA CROUSE: It could also be hygiene.

DR MVUYISO TALATALA: It could be hygiene, but there is a possibility that it could be dehydration itself.

ADV. LILLA CROUSE: Thank you.

465 **DR MVUYISO TALATALA:** And in this case the dehydration could be due to Typhoid, but it can also be due to many other causes.

ADV. LILLA CROUSE: Thank you.

ARBITRATOR, JUSTICE MOSENEKE: Let me tell you, Doctor, what goes through my mind about the Typhoid that you drew our attention to and the time when it
470 occurred, you know given its gestation period up to its possible high point, you know two months into June/July. Shouldn't that have been a big alarm bell to all concerned and to the department to evacuate the people immediately?

DR MVUYISO TALATALA: It should have been, Justice, but at the time they ignored the deaths. I was already in the media in August of that year, on ENCA and
475 on Carte Blanche and the journalists were already asking me questions at the time.

ARBITRATOR, JUSTICE MOSENEKE: In June/July 2016? You see the peak of... let me try and make the point again. If you look at ELAH57, it is the Ombud's additional report, which we had asked him to prepare after his initial evidence. You go back to the page that you were referred to and that graph, you will see that the
480 high points of deaths at Takalani, May it started three, June six, July five, August

five, September one and October six. If you add those up they are big numbers, can you see them, Doctor?

DR MVUYISO TALATALA: I see them Justice.

ARBITRATOR, JUSTICE MOSENEKE: We are talking 28 people more or less
485 around that time, so it is quite a rump at that time. So I am saying, when the initial detection of Typhoid was done, was there a good reason to blow the whistle loud and say, is it medically sound to anticipate that there would be or should be an immediate evacuation from Takalani?

DR MVUYISO TALATALA: The department should have picked up as a warning,
490 especially the type of infection that was suspected, being Typhoid, that should have said to them that something wrong is going on in that institution. But I am also adding that they ignored that warning that was in their system, but they also ignored warning outside. Because I was interviewed by ENCA in July and the journalist was telling me about people dying of July the same year. And the MEC, the journalist
495 also went to the MEC.

ARBITRATOR, JUSTICE MOSENEKE: So you are saying there were a number of warnings out there. The one was a discovery of a risk of Typhoid outbreak and the other is you for instance going out there and being interviewed because journalists have already come to pick up that people were dying.

500 **DR MVUYISO TALATALA:** That is correct, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Yes. So you are saying there were enough signs out there, for instance Takalani in particular, to be evacuated or people to be moved there. Because you see the death continues, if you look at the schedule, into October. You see in October... in September there is a little respite but in October

505 another six people die. Can you see that?

DR MVUYISO TALATALA: I see that.

ARBITRATOR, JUSTICE MOSENEKE: So any time from June, many people died, there was a peak and it is that peak where nothing drastic was done to save those lives, it appears to me.

510 **DR MVUYISO TALATALA:** They should have seen that as a big warning sign, especially with the type of patients they were dealing with and especially... in fact for any psychiatric facility to have six people out of 50 dying in one month, should be you to be concerned and really investigate and do something.

ARBITRATOR, JUSTICE MOSENEKE: And that number rises up to over 20,
515 almost 29.

DR MVUYISO TALATALA: Which is the total number that was 50 that was moved, that is almost half the people that were moved.

ARBITRATOR, JUSTICE MOSENEKE: Yes, because it is a six and a five, in May it is three, that is nine, 10, 15, 21. By November half the people nearly who were there
520 had died. And lastly, do you think this report, ELAH58, if one looks at it, it was compiled in July 2016 and it makes all these points about the conditions at Takalani, the pungent foul smell, the floors and the walls were clean, that is a good respite, but not all of those things. Then you go to the kitchen, very dirty floor, poor elimination, poor housekeeping, and all of them... very dirty handwashing basin and so on and
525 so on, it goes on. In July already that report should have, aside from Typhoid, should have got any authority to be concerned, isn't it?

DR MVUYISO TALATALA: It should have, Justice, there should have been concern, even if the Typhoid was not confirmed.

ARBITRATOR, JUSTICE MOSENEKE: Ja. Counsel.

530 **ADV. LILLA CROUSE:** Thank you, Justice Moseneke. My learned friend had taken you through that list, that assessment, so did Justice Moseneke just now. It is totally substandard, do you agree?

DR MVUYISO TALATALA: Yes it is, especially for health facility, in fact even for one's house, but for a health facility it is substandard.

535 **ADV. LILLA CROUSE:** And I was just thinking, is this reckless, is this uncaring, is this incompetent? What leads to this in a hospital or in a facility?

DR MVUYISO TALATALA: I would say in a properly managed facility it would be carelessness or in fact recklessness. I would not see why would a health facility be like that and still accept patients.

540 **ADV. LILLA CROUSE:** As a clinician if you saw this, you would definitely not walk past it.

DR MVUYISO TALATALA: Absolutely not. I would have probably taken it up with management, it would have been drastic, we cannot have that in a health facility.

ADV. LILLA CROUSE: Absolutely. I am very nearly finished with this report. One
545 thing that stands out or that stood out for me was that the staff advised the staff and the carers not to drink water other than from a treated source and that they should monitor the mental health care users to only drink from a treated source – that is on page 4 from the document. Now do you know whether that facility had treated water available or did they only have tap water?

550 **DR MVUYISO TALATALA:** I am not sure about that. I assume that they would have normal tap water that we all have.

ADV. LILLA CROUSE: So that instruction in the wrong hands could have led to more dehydration, I suppose, if there weren't bottled water available.

DR MVUYISO TALATALA: I would have assumed that, I hope that they actually
555 advised them to just drink tap water, because our tap water is safe enough to drink,
unless the facility didn't have tap water.

ADV. LILLA CROUSE: Yes. So why do you think then, if tap water was safe, why
would that advice have been given?

DR MVUYISO TALATALA: It doesn't make sense to me. I don't know.

560 **ADV. LILLA CROUSE:** Okay. Doctor, I am very nearly finished with the questions
that I am posing to you, but I still have to deal with two issues. If I can ask you, how
are we going to prevent this from happening again, what would your answer be to
that?

DR MVUYISO TALATALA: As we all go into the future, I think the key, one of my
565 thoughts into it is that what lacked in the Life Esidimeni Marathon Project was
monthly stakeholder participation, because we don't know, all know everything. As I
am sitting here I probably don't know how to run a NGO in detail, if you were to give
it to myself. So I think if we were to... looking after patients with mental illnesses, we
need the treating doctors, the (inaudible) team that is looking after the patients to
570 interact with policy makers and policy implementers. But also to interact with the
NGOs. The solution to chronic mental illness and illness is there in the policy, we
need to develop community based mental health care services, it is outlined in the

policy framework. I think the provinces should interpret the policy framework and implement it, then we would be out of all these problems. But in an emergency
575 where you want to close a facility, then all stakeholders should be brought in and they should actually participate. So in a sense I am saying we need stakeholder involvement if we are dealing with a crisis, not one person must deal with it. But in terms of the general long term mental health in South Africa, it is articulated in the mental health policy framework and it starts with strengthening the community based
580 mental health care services.

ADV. LILLA CROUSE: Yes, I am going to ask you quite a lot about that still. So what you're saying is multi-discipline, engagement with stakeholders.

DR MVUYISO TALATALA: Absolutely. Not engaging, to tick the box that you have engaged.

585 **ADV. LILLA CROUSE:** Yes.

DR MVUYISO TALATALA: Engaging meaningfully and ...intervened.

ADV. LILLA CROUSE: Not from a position of strength and power.

DR MVUYISO TALATALA: Yes.

ADV. LILLA CROUSE: As we have seen here. How do we make people in power
590 listen, do you know?

DR MVUYISO TALATALA: You mean how do we make them to listen to us? We hope this will be a lesson for everyone in power to ...intervened.

ADV. LILLA CROUSE: So we hope some memory banks will be laid down and that will make them listen. Because they didn't listen to you, they didn't listen to the court
595 cases that you were making, isn't that so?

DR MVUYISO TALATALA: That is correct.

ADV. LILLA CROUSE: And how, Doctor, going forward, are we going to instil the correct ethics in the medical profession not to be part of something like this?

DR MVUYISO TALATALA: The medical profession in this situation, I think, they
600 were scared of government. There is ...intervened.

ADV. LILLA CROUSE: I am talking going forward. I hear that you say there might be reasons, but how are we going to make ethics the strong point of a medical practitioner.

DR MVUYISO TALATALA: But we need to deal with that fear.

605 **ADV. LILLA CROUSE:** Okay I hear you.

DR MVUYISO TALATALA: That fear of, if something is happening, the government will issue a statement that employees are not supposed to talk to the media and that includes doctors. So it is fear that doctors work under that they (inaudible).

ADV. LILLA CROUSE: Yes and we have seen that in our history, yes.

610 **DR MVUYISO TALATALA:** So I think the doctors need to be empowered. They may know it theoretically that they are supposed to stand up to government and stand for the patients, but in practice they may not actually do it out of fear. And I think for the doctors as well, they need to make use of the societies, the South African Medical Association, for instance the South African Society of Psychiatrists.

615 Because it is easier, relatively easier if you speak through your medical association than when you speak as an individual by yourself.

ADV. LILLA CROUSE: Ja, you are not exposed to the extent that you would be as an individual.

DR MVUYISO TALATALA: Sorry, I didn't get that.

620 **ADV. LILLA CROUSE:** You are not exposed to the extent that you would have been as an individual.

DR MVUYISO TALATALA: Absolutely. And I have seen that as I have led the society and being the president of our society.

ADV. LILLA CROUSE: Just an observation, I heard what you said about the last

625 court case and the sentiments that you've expressed. It would be a good day for our country when people defending court cases know they are bound by the constitution, wouldn't that be so?

DR MVUYISO TALATALA: That is correct, Counsel.

ADV. LILLA CROUSE: And section 8 of our Constitution that says you are bound,
630 but sometimes in court cases something goes wrong, like in your March court case.

DR MVUYISO TALATALA: That is correct, Counsel.

ADV. LILLA CROUSE: I want to speak to you a little bit about policy now which you
have raised and the deinstitutionalisation. It is so that the World Health Organisation
and the international obligations is moving away from institutionalisation to
635 deinstitutionalisation. I think it is a 2030 plan that says hopefully that that would be
over by then. It is a lofty goal, but can I just ask you this document that you just
handed in, ELAH59, those are the 900 beds letter.

DR MVUYISO TALATALA: That is correct, Counsel.

ADV. LILLA CROUSE: And interestingly enough I see at a cost, paragraph 7, the
640 last page, a budgeting cost of R20 million for this financial year, that was 2016, for
planning and carrying out mandatory investigations on identifying properties and so
forth. So it is not even the building at R20 million. But let us just put this ELAH59 in
perspective, it is signed by the person that prepared it, O.L. Molotsi on 9 November
2016. And the head of the department, Dr Selebano, approve it on the 11th of
645 November 2016. You know the timeline, but I just want to put it into perspective. At
that stage there has already been deaths. The Life Esidimeni Marathon Project has

run. The Ombud is in the middle or very close to the end of his investigation. Do you agree with that?

DR MVUYISO TALATALA: That is correct, Counsel.

650 **ADV. LILLA CROUSE:** That is the time period that this brilliant letter is written.

DR MVUYISO TALATALA: That is correct, Counsel.

ADV. LILLA CROUSE: And does this letter at all comply with the international obligation to deinstitutionalise?

655 **DR MVUYISO TALATALA:** It does not even comply with our own policy framework, it is actually a deviation from it.

ADV. LILLA CROUSE: Because we say we are not going to spend money on institutions further.

660 **DR MVUYISO TALATALA:** Yes. It also does not comply with what the MEC has said is the reason for cancelling the contract with Life Esidimeni. So it is a deviation from everything that we know. And 900 beds, if I have to put it in context, that is bigger than Sterkfontein Hospital today. Sterkfontein is between 600 and 800 beds, so 900 beds would be a hospital bigger than Sterkfontein Hospital.

ADV. LILLA CROUSE: I want to make a statement and I want to hear your view on this. This is not in terms of policy, but is it not an indication of lack of leadership and
665 lack of implementation of policy?

DR MVUYISO TALATALA: I think it goes beyond. It is a lack of appreciation, a lack of understanding of policy. Because all three hospitals, Tara Hospital, Sterkfontein and Weskoppies are far removed from the bigger population, especially the poor population. And even if you were to say that you are going to build it in Orange
670 Farm, it will still be too big for one population, one community.

Lila: So it just doesn't make sense on any level.

DR MVUYISO TALATALA: It doesn't make sense.

ADV. LILLA CROUSE: At a huge cost.

DR MVUYISO TALATALA: It would cost them a lot, if they went ahead with it.

675 **ARBITRATOR, JUSTICE MOSENEKE:** But the intriguing thing here is, and by here I mean ELAH59, it proposes that 2016, the remainder of 2016, 2017 and 2017/2018 R20 million should be used for planning.

DR MVUYISO TALATALA: That is correct, Justice.

ARBITRATOR, JUSTICE MOSENEKE: And this is said, as Counsel has pointed
680 out, in November 2016. And then nearly 80 possibly to 90% of the people we are
concerned with here, had died.

DR MVUYISO TALATALA: That is correct.

ARBITRATOR, JUSTICE MOSENEKE: So this plan was not directed at dealing
with Esidimeni Marathon plan, was it?

685 **DR MVUYISO TALATALA:** I don't think it was designed to deal with Life Esidimeni,
but I think the authorities were aware of the consequences of closing Life Esidimeni
that you will then still need beds, but they were going about it the wrong way.

ARBITRATOR, JUSTICE MOSENEKE: And you say to Counsel's question, this
was opposite to the target of deinstitutionalisation.

690 **DR MVUYISO TALATALA:** It was opposite to that and it was opposite to what the
policy prescribes.

ARBITRATOR, JUSTICE MOSENEKE: In the end the recommendation seems to
acknowledge that there will be a lot of work still to be done. The R20 million would
just be to get a project plan going.

695 **DR MVUYISO TALATALA:** That is correct, Justice.

ARBITRATOR, JUSTICE MOSENEKE: And all of those things, 8.1 to 8.5, were yet to be worked out. So when the marathon project was taken over, there were no 900 beds in sight.

DR MVUYISO TALATALA: No Justice, there were no additional beds, there were
700 no 900 beds.

ARBITRATOR, JUSTICE MOSENEKE: Just the last question on that from me is, have we ever in the past had a complete closure of a mental health care facility? I am not talking about transfers from one point to the other, one facility to the other, where there is a complete closure of patients in the order of around 1 000, just over
705 1 700? Which other facility has been closed down like this?

DR MVUYISO TALATALA: I am not aware of one that has been closed down in this manner, but there are facilities that have been gradually deinstitutionalised, the facilities became smaller or the facilities are closed. For instance I think there used to be Millside in Gauteng that is no longer operational. I am not aware of one that
710 was just closed in three months' period. But there are facilities that have been gradually reduced in size in terms of the chronic patients.

ARBITRATOR, JUSTICE MOSENEKE: But you don't know of any of this magnitude.

DR MVUYISO TALATALA: To my knowledge. It could have been there, but to my
715 knowledge I am not aware of any other facility that has been closed in this manner.

ARBITRATOR, JUSTICE MOSENEKE: You see that goes to the multi-disciplinary
task team you said was necessary. So I was trying to understand whether we had
done this before, by we I mean the department, and whether there was project
management skills to do something of this magnitude.

720 **DR MVUYISO TALATALA:** That is correct, Justice. But also it would not be
necessary to close an institution like that. I cannot see why anyone would close a
facility in that manner, why would you create stress to the system unnecessarily?

ARBITRATOR, JUSTICE MOSENEKE: Counsel.

ADV. LILLA CROUSE: Thank you Justice. If I can speak to you a little bit further
725 about deinstitutionalisation. It seems to me the policy is accepted, that's the way
that everybody wants to go, do you agree with that?

DR MVUYISO TALATALA: I agree.

ADV. LILLA CROUSE: Yes.

DR MVUYISO TALATALA: But it is not a policy that has no problems.

730 **ADV. LILLA CROUSE:** Yes and the Health Ombud said this is going to be more
expensive than institutionalisation. Do you agree with that?

DR MVUYISO TALATALA: it is cheaper to institutionalise.

ADV. LILLA CROUSE: Yes. So if we are going to reach this goal, would you agree that it would be imperative for a community level health services to be developed?

735 **DR MVUYISO TALATALA:** Absolutely and it is not easy to do that in terms of time, human resource and money.

ADV. LILLA CROUSE: Yes and Prof Makgoba actually said that in his report, it says that mental health services must be developed on the community, so it is a logical thing that must happen.

740 **DR MVUYISO TALATALA:** That is correct.

ADV. LILLA CROUSE: And the Health Ombud also said for this capacity to be developed, there needs to be appropriate self-help, peer led services, for example community health workers. Would you agree with that?

DR MVUYISO TALATALA: That's correct.

745 **ADV. LILLA CROUSE:** And we don't have those at the moment, do you agree?

DR MVUYISO TALATALA: No, we don't have.

ADV. LILLA CROUSE: Yes. In terms of the Health Professions Council of South Africa, they have a description which they recognise as mental health assistants.

Are you aware of that description in their documents? They recognise mental health
750 assistants.

DR MVUYISO TALATALA: No, I am not aware, especially coming from there.

ARBITRATOR, JUSTICE MOSENEKE: Let us find that, Counsel. Is there a
reference for that?

ADV. LILLA CROUSE: It is not in the documents before us. I will ensure that this
755 will be placed before the court. According to the Health Professional Council of
South Africa, these professionals should be working on policy development, program
design, identification of mental health problems, guidance for wellness options, as
well as social support structures and resources. And their responsibilities will be
augmented with the registered councillors. Does that ring a bell at all?

760 **DR MVUYISO TALATALA:** I can see it done in other countries, but not to my
knowledge in our country.

ADV. LILLA CROUSE: Okay. One of the things that the Ombud lifted out is that
because there is no community care, it is difficult to have a mental health care user
go home, because there is no support. Do you agree with that?

765 **DR MVUYISO TALATALA:** Yes.

ADV. LILLA CROUSE: So I want to take it just a little bit further. If there were this
grouping of people that could fulfil this role, that the care of the survivors and the

inhumane treatment of these patients might have been avoided, if there were more people, more feet on the ground.

770 **DR MVUYISO TALATALA:** I don't say specifically the ones that you are mentioning, but if there was a better community based care with human resource, some of the patients could be discharged to a supportive community with those kind of facilities and that kind of human resource.

ADV. LILLA CROUSE: Now in terms of your national mental health policy
775 framework and statutory plan for 2013-2020, there is no recognition of such a group of people doing this type of work. Are you aware of that?

DR MVUYISO TALATALA: I don't remember them from the policy.

ADV. LILLA CROUSE: Yes, it is not there. The mental health assistant is not in the policy.

780 **DR MVUYISO TALATALA:** I don't think so.

ADV. LILLA CROUSE: Yes.

ARBITRATOR, JUSTICE MOSENEKE: I am quite confused, Counsel. I thought the initial proposition was that somewhere there is a policy that envisages community mental health care assistance.

785 **ADV. LILLA CROUSE:** Maybe I should just... I'll try to make this a little bit clearer, Justice, and I apologise for the confusion.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ADV. LILLA CROUSE: In the Health Professions Council of South Africa, there is such a profession mentioned, but it doesn't feature in the Department's plan at all.

790 That is the proposition that I put to you.

ARBITRATOR, JUSTICE MOSENEKE: Health Professions Council of South Africa has documentation, policy documentation ...intervened.

ADV. LILLA CROUSE: Of a profession called the mental health assistant.

ARBITRATOR, JUSTICE MOSENEKE: A profession called mental health assistant.

795 Thank you.

ADV. LILLA CROUSE: But the policy framework and the strategic plan, there is nothing of such a person in that.

DR MVUYISO TALATALA: I don't know when the Health Professions Council made that documentation and profession, but chances are that they did not bring it to the
800 discussions that developed the policy. And I don't think, also I don't think it would be a big limitation, because as we translate the policy into our provinces, we could incorporate a lot of other ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Well there are two questions in essence:

805 Do you know whether or not the Health Professions Council of South Africa has a profession which deals with mental health care assistance?

DR MVUYISO TALATALA: No, I was not aware of that.

ARBITRATOR, JUSTICE MOSENEKE: You are not aware of that.

DR MVUYISO TALATALA: Ja.

810 **ARBITRATOR, JUSTICE MOSENEKE:** The second part is, if so, if you accept that there is such a profession envisaged, do you know whether it has been built into the policy framework?

DR MVUYISO TALATALA: Because I read ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: For community mental health care.

815 **DR MVUYISO TALATALA:** Because I have read the policy framework, I don't think it is included in the policy framework.

ADV. LILLA CROUSE: Okay. Thank you. And that absence in the framework and in the mind of professionals, I think has gone over to our universities. Because we, in terms of documentation, which I hope to provide, there is about 6 000, let me just get the right pronunciation here, psychology students with honours that finishes
820 university every year. Would you agree with that number just as a ball park?

DR MVUYISO TALATALA: I am not sure of the exact number, but there is a lot of psychology students who finish every year.

ADV. LILLA CROUSE: Yes. And some of them goes on to do a masters degree and they can then enter through that door. But the people with just an honours degree, there is very few job opportunities for them, would you agree?

DR MVUYISO TALATALA: I am not sure, but there are job opportunities.

ADV. LILLA CROUSE: Yes, but they are not ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Are you going to give us this statistical platform at some stage?

ADV. LILLA CROUSE: At some stage, yes Justice. They don't qualify as mental health assistants at all. Because I want to say to you because what they need is a tertiary education and even if they have this honours degree, there is only two tertiary education institutions in South Africa that are private institutions that gives this training and they would have to redo their first four years. So there is a bulk of students, this is my submission to you, that is in South Africa that can help but they are nowhere recognised and they can't study at private institutions because the costs are just so very-very high.

ARBITRATOR, JUSTICE MOSENEKE: The long and the short of the proposition is that, we have university graduates at honours level in psychology who usefully could

840 practice the profession of community health care assistants. One, do you know if
they exist? You've already said no. Two, do you agree with the proposition that that
would be useful to have a professional like that who work in the community?

DR MVUYISO TALATALA: I think any help would be useful, but I think that would
have to be discussed with the Department of Health and the Health Professions
845 Council.

ADV. LILLA CROUSE: Yes. The Health Professions Council of South Africa have
an exam for these people after they finish in the private institutions and they must
also do a 720 hour internship. But this is not open to the university graduates, they
need to do the private institution first. So the proposition that I am putting to you is
850 that there is not sufficient talk between universities that offer degrees and the Health
Professional Council and the Department to use our resources properly. What would
you say?

ARBITRATOR, JUSTICE MOSENEKE: Is this an appropriate witness to deal with
that issue? Answer that question.

855 **ADV. LILLA CROUSE:** He is in the mental health field, so he would know whether
these people could be of assistance.

ARBITRATOR, JUSTICE MOSENEKE: Well Counsel, he has already told us that
he is not aware of the existence of the profession but any help will help.

ADV. LILLA CROUSE: Justice, I will then just leave that there for the moment.

860 Thank you.

ARBITRATOR, JUSTICE MOSENEKE: Yes. It is a useful enquiry which I would like to hear more about, because it speaks to the future.

ADV. LILLA CROUSE: Yes.

ARBITRATOR, JUSTICE MOSENEKE: How we present this in the future? And of
865 you are serious about deinstitutionalisation, you are going to need the human resource.

ADV. LILLA CROUSE: Absolutely Justice.

ARBITRATOR, JUSTICE MOSENEKE: To look after people properly. So it is a very valuable part of the enquiry. I just don't know whether Dr Talatala can help you.

870 **ADV. LILLA CROUSE:** I hope in his professional organisation he will look into the things that I have put to him and from their side they will do something about this.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ADV. LILLA CROUSE: Justice, I am finished with my cross-examination. Doctor, thank you ...intervened.

875 **ARBITRATOR, JUSTICE MOSENEKE:** And (inaudible) will be coming, you can put that to them.

ADV. LILLA CROUSE: Thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: Who control health in the province?

ADV. LILLA CROUSE: Thank you. Doctor, I just want to from our side want to
880 thank you from doing what you've done and being a role model for younger doctors,
we just want to thank you for that.

DR MVUYISO TALATALA: Thank you Counsel.

ADV. LILLA CROUSE: Thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: Thank you Counsel. Adv. Groenewald?

885 **ADV. DIRK GROENEWALD:** Thank you Justice. Doctor, we only have a few
questions for you. I want to start off with your testimony of yesterday. It is common
cause and we all know that you lost that urgent application in March of 2016, which if
it turned out differently, it might have saved a lot of lives. But your reaction to the
question from my colleague from Section 27 was yes, we lost it because they lied.
890 Now I want to know, who are they?

DR MVUYISO TALATALA: The Department of Health through their advocate.

ADV. DIRK GROENEWALD: But he argues on paper. So I don't want to speculate,
if you can... I want to know whether or not you can refer us to an affidavit of the MEC
or Dr Manamela or the HOD. Because your argument was quite specific. You said

895 that they argued and said that the patients which were discharged from Life
Esidimeni they were fine and they were discharged in the sense that they are not ill
anymore. Am I correct?

DR MVUYISO TALATALA: Yes that is what I heard in court and I think the
judgement itself comment on that as well.

900 **ADV. DIRK GROENEWALD:** Okay, but you cannot provide us specifically with an
affidavit per se that states that. I don't want you to speculate, I just want you to... if
you have the facts, I would really like to have it.

DR MVUYISO TALATALA: I won't have it with me here, but if you were to go to the
judgement itself or even the court recording, the recordings of the court, you'll find
905 that.

ADV. DIRK GROENEWALD: Okay, but according to you, the argument from
government was that these patients they are fine, they are not ill anymore, they are
being discharged.

DR MVUYISO TALATALA: Yes, they are being discharged by the doctors.

910 **ADV. DIRK GROENEWALD:** By the doctors.

DR MVUYISO TALATALA: Yes.

ADV. DIRK GROENEWALD: Now that is quite a huge misrepresentation, am I correct?

DR MVUYISO TALATALA: Now that we've seen the patients, yes.

915 **ADV. DIRK GROENEWALD:** Yes. Because you know and you also testified that these were severely ill patients, those were your words, am I correct?

DR MVUYISO TALATALA: That is correct.

ADV. DIRK GROENEWALD: But you cannot assist us further on that topic.

920 **DR MVUYISO TALATALA:** But you can find the records of the court. I won't have it with me here.

ADV. DIRK GROENEWALD: We will do that, we will make that effort, because I think it is quite a very important point in light of the consequences of this mental health project.

925 **ARBITRATOR, JUSTICE MOSENEKE:** Adv. Groenewald, will you pause for a while? Maybe some assistance coming your way.

ADV. DIRK GROENEWALD: Thank you very much, Justice.

ADV. ADILA HASSIM: Precisely that, Justice Moseneke. To assist my colleague, the transcript of the hearing, the papers in the case, the affidavits are in file 2. And

the actual transcript of the exchange that took place in court, is to be found at page

930 873 of file 2.

ARBITRATOR, JUSTICE MOSENEKE: Well you've got (inaudible) for the meal, I know you need this for your cross-examination.

ADV. DIRK GROENEWALD: Indeed so.

ARBITRATOR, JUSTICE MOSENEKE: Now you know where to find your
935 references.

ADV. DIRK GROENEWALD: Indeed so, Justice, I will do so.

ARBITRATOR, JUSTICE MOSENEKE: Thank you Counsel. You may proceed.

ADV. DIRK GROENEWALD: Thank you Justice. Then sir, you were asked by Justice Moseneke why do you think all these people ignored you and your response
940 was well there were multiple reasons. And you referred to the fact that history had shown that the Department doesn't listen to clinicians and so on. But then you made mention of an incident of, and your words were that the head of the department or someone told you or presented to you that the province are getting rid of mental health care users, but you were interrupted and you couldn't finish that. Can you
945 recall that?

DR MVUYISO TALATALA: Yes, I recall. Not the mental health care users.

ADV. DIRK GROENEWALD: Oh.

DR MVUYISO TALATALA: There was a meeting in Midrand of psychiatrists in Gauteng and the head of health was presenting and they said they wanted to get rid
950 of service contractors, service providers like their contract with (inaudible), their contract with Life Esidimeni. So as part of their management of their finances, they wanted to do away with those kind of arrangements.

ADV. DIRK GROENEWALD: Okay so the strategy was that we don't want to outsource anymore.

955 **DR MVUYISO TALATALA:** That is correct.

ADV. DIRK GROENEWALD: Then, just lastly, you foresaw the consequences, you warned the Department, you wrote letters, you argued it during consultations, you went to court twice. At the end of the day they didn't listen to you. Now all I want to know from you is, do you agree with me that any reasonable person should have
960 and must have foreseen the drastic consequences of this mental health project?

DR MVUYISO TALATALA: I think they should have. Any reasonable person should have foreseen it, especially with the advice. Without advice maybe... without support and advice from the professions maybe a person who is not trained in mental health or health, may have made mistakes, but with the advice that was
965 provided, any reasonable person should have foreseen.

ARBITRATOR, JUSTICE MOSENEKE: The witness is in fact, Counsel, saying to you that you are to formulate the test, the legal standard. Any reasonable decision maker in the same position as the HOD or the MEC or the head of the mental health care, should have reasonable foreseen these adverse consequences, isn't it?

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

ARBITRATOR, JUSTICE MOSENEKE: Many reasonable persons may not be able to anticipate it, but the target group, the decision makers here, skilled presumably in their task, should have reasonably anticipated that these dire consequences would follow. I wonder what you say to that, Doctor.

975 **DR MVUYISO TALATALA:** Yes Justice, any person work at the Department of Health, at the level of the MEC Head of Health, with the additional support that they had, they should have foreseen it, even if they are not medically trained.

ARBITRATOR, JUSTICE MOSENEKE: Yes and let alone those who were medically trained and who were also administrated, they (inaudible) case. I mean
980 they, even more so, should have anticipated the disaster.

DR MVUYISO TALATALA: The wards who were medically trained should have anticipated it from their administrative point of view, but also from the medical training, their medical training self should have taught them that problems would have happened with the move.

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

ADV. DIRK GROENEWALD: Thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: You may proceed, Counsel.

ADV. DIRK GROENEWALD: Mr. Mosenogi who was the project leader in his closing arguments or submissions, he said that politicians should rather play an
990 overview role and people that gets appointed, should have the necessary skills to do the job. Now, I would just like to know from you, are you in agreement with that submission and to what extent can you say that politicians should not give instructions to clinicians on issues of health and health care?

DR MVUYISO TALATALA: I think politicians, I agree with him that the politicians
995 should play an oversight role, but the people actually appointed to do the job, whether it is head of health or a doctor on the ground, they should be given space to actually execute their job. In fact there should be space for them to... in fact it would be healthy for our country of the people on the ground, they are allowed to do their work, as there is a sort of a debate between them and the politicians on the
1000 directions. Why I am saying that, the politicians may say that maybe you are going to spend too much money with the doctors on the ground, then there should be a debate between us and the politicians whether that injection is a good injection to have, despite the cost. So there should be a healthy debate. Politicians should do

an oversight and the people employed to do the job should do the job and there
1005 should be healthy debate between the two.

ADV. DIRK GROENEWALD: And that is exactly the problem that we had here,
because we had a dictator almost, who didn't want to listen to any of the
organisations and who didn't want to sit down and give you an opportunity to state
your case and to warn them.

1010 **DR MVUYISO TALATALA:** I agree with you, Counsel. And I think the senior
people at the Department did not even listen to the junior people within the
Department and the junior people worked with fear, they did their work with fear.

ADV. DIRK GROENEWALD: Thank you very much, Doctor, and thank you for your
good work. Thank you very much, Justice.

1015 **DR MVUYISO TALATALA:** Thank you Counsel.

ARBITRATOR, JUSTICE MOSENEKE: Thank you Counsel. Adv. Ngutshana.

ADV. PATRICK NGUTSHANA: Thank you Justice Moseneke. Just one item, that
is one topic, to find out from you. You have been asked earlier on about the ethics of
the clinicians who were involved in this matter and you had just now been referred
1020 back to the issue where somebody else had lied in the manner in which the project
was implemented. And I do know that you had deposed to an affidavit prior to the

application that you referred to that you had lost somewhere in March 2016. There was an affidavit that you deposed to in 2015, do you still recall that?

DR MVUYISO TALATALA: I didn't get that.

1025 **ADV. PATRICK NGUTSHANA:** An affidavit that you deposed to in 2015.

DR MVUYISO TALATALA: That is correct.

ADV. PATRICK NGUTSHANA: And that was in support of an application that was brought by you in December 2015.

DR MVUYISO TALATALA: That is correct.

1030 **ADV. PATRICK NGUTSHANA:** Do you still recall that?

DR MVUYISO TALATALA: Yes.

ADV. PATRICK NGUTSHANA: And the main application, that is the main affidavit was deposed to by your colleague Casey ...intervened.

DR MVUYISO TALATALA: Chambers.

1035 **ADV. PATRICK NGUTSHANA:** Chambers, yes.

DR MVUYISO TALATALA: Yes.

ADV. PATRICK NGUTSHANA: And you were simply confirming that those were the conditions of the mental hospital as you knew them from your own experience.

DR MVUYISO TALATALA: I wouldn't remember all the detail.

1040 **ADV. PATRICK NGUTSHANA:** Yes. And in fact the affidavit, when I read through it, it reads the same way as your report on page 3548, the contents are the same.

ARBITRATOR, JUSTICE MOSENEKE: Yes, give the witness the advantage of the record.

ADV. PATRICK NGUTSHANA: The record is on page ...intervened.

1045 **ARBITRATOR, JUSTICE MOSENEKE:** If it is on the record, he can as well see it.

ADV. PATRICK NGUTSHANA: That is page 3548 volume 11.

ARBITRATOR, JUSTICE MOSENEKE: Yes, that will be given to Dr Talatala. Both the volumes and the questions can be posed.

ADV. PATRICK NGUTSHANA: Can I request that you be given another bundle that is 1? Are you there?

DR MVUYISO TALATALA: Yes.

ADV. PATRICK NGUTSHANA: And your affidavit on page, that is in volume 1, is on page, so as to refresh your memory, on 338. Volume 1, 338.

DR MVUYISO TALATALA: Ja, I have got 338.

1055 **ADV. PATRICK NGUTSHANA:** Yes. On 338, specifically on page 334, your paragraph 27, ja. Page 338... no, no, I am sorry. It is page 344 on volume 1.

DR MVUYISO TALATALA: 344.

ADV. PATRICK NGUTSHANA: Are you there?

DR MVUYISO TALATALA: That's correct.

1060 **ADV. PATRICK NGUTSHANA:** Ja, one of the issues, and this came up as well
from one of the questions by Justice Moseneke, that you know that SASOP
correspondence with the Gauteng Department of Health on these issues, SASOP's
concerns about the discharge of all patients from Life Esidimeni facilities stems
lightly from concerns about the adequacy of care at alternative facilities or
1065 communities, given the care needs of mental health care users of Life Esidimeni. In
this part I layout in more detail and from personal experience the reasons for this
concern. Do you still recall this?

DR MVUYISO TALATALA: Ja, I see that.

ADV. PATRICK NGUTSHANA: So you laid out your concerns to the Department in
1070 December 2015.

DR MVUYISO TALATALA: Yes.

ADV. PATRICK NGUTSHANA: That from your own experience, these NGOs are
completely inadequate to care for these mental health care users.

DR MVUYISO TALATALA: That is correct.

1075 **ARBITRATOR, JUSTICE MOSENEKE:** Counsel, can we record that this is a press release, is it?

ADV. PATRICK NGUTSHANA: Press release? What page is that, Justice Moseneke?

ARBITRATOR, JUSTICE MOSENEKE: You referred me to 334, is it or do I have it
1080 wrong?

ADV. PATRICK NGUTSHANA: I think you have it ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: In volume 1.

ADV. PATRICK NGUTSHANA: I think you have it wrong. It is 338.

ARBITRATOR, JUSTICE MOSENEKE: Thank you.

1085 **ADV. PATRICK NGUTSHANA:** That is an affidavit.

ARBITRATOR, JUSTICE MOSENEKE: I see, okay, I have got that.

ADV. PATRICK NGUTSHANA: Ja and the specific passage that I requested him to go to it is on page 344.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

1090 **ADV. PATRICK NGUTSHANA:** Paragraph 27. It relates to the concerns which he had raised.

ARBITRATOR, JUSTICE MOSENEKE: Yes, you go ahead with the question. I have got it now. Thank you.

ADV. PATRICK NGUTSHANA: Those were the concerns you raised and in the following paragraphs, specifically in paragraph 29, 28 and so on, you set out all which you had set out that is in your report.

DR MVUYISO TALATALA: Okay, yes.

ADV. PATRICK NGUTSHANA: Yes and what I want to find out from you is the following: There was a response to that affidavit by Dr Lebetse who is employed by the Department. And I want to find out the ethical duties of Dr Lebetse. What was he required as a medical doctor to disclose before court for purposes of this litigation?

ARBITRATOR, JUSTICE MOSENEKE: Will you take us to Dr Lebetse's response?

ADV. PATRICK NGUTSHANA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: And in particular to paragraph 27, 28 and 29.

ADV. PATRICK NGUTSHANA: No, no, don't rush, I will take you there. On page 404 that is where the affidavit of Dr Lebetse starts. Are you there?

DR MVUYISO TALATALA: Yes.

ADV. PATRICK NGUTSHANA: Yes and the specific passage, the first one I want to

1110 take you to, before I deal with the response to your paragraph 27, is on page 418 of
that affidavit. Are you there?

DR MVUYISO TALATALA: Yes.

ADV. PATRICK NGUTSHANA: Yes, you see on paragraph 56 Dr Lebetete responds

1115 to the main affidavit that it is totally irresponsible for Chambers under oath to state
that the health care facilities and NGOs to which users are scheduled to be
discharged, do not have the capacity to accommodate them. Chambers does not
which of these facilities these are intended for transfer of the users. Did this accord
with your knowledge then about the NGOs that as it is indicated there that they have
such capacity to take care of these mental users?

1120 **DR MVUYISO TALATALA:** Yes. Even at the time I was of the opinion that the
established NGOs would not, through my experience, would not have capacity to
look after the Life Esidimeni patients, partly because of the number of beds available
and my experience of them returning those patients to me when I worked at
Sterkfontein and me then having sent them to Life Esidimeni.

1125 **ADV. PATRICK NGUTSHANA:** Yes and what were the responsibilities of Dr Lebetete
then ethically?

DR MVUYISO TALATALA: Well ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Just before you walk away there, I mean to make the point, and thank you for referring us to this, Counsel. Dr Lebetse is
1130 unhappy that Dr Chambers under oath had stated that the health care facilities and NGOs to which users are scheduled to be discharged, do not have the capacity to accommodate them. so he actually says, in effect he says when Dr Chambers says that, he is in fact being untruthful, because he says this under oath and yet he does not mention which of these facilities are intended for transfer of users. So he refutes
1135 the notion that these NGOs do not have the capacity to accommodate them. What do you say to that, to that response?

DR MVUYISO TALATALA: Yes, Me. Chambers was correct in her affidavit to say that ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Is it Me. Chambers?

1140 **DR MVUYISO TALATALA:** It is Me. Chambers.

ARBITRATOR, JUSTICE MOSENEKE: Yes okay.

DR MVUYISO TALATALA: She was correct to, in her view, and I agree with her, that the facilities, even the established ones, didn't have the capacity to accommodate the patients. We knew of the numbers. The Department was not
1145 cooperative to tell us exactly where they are going to put, so we were commenting on the NGOs that we know of, we assumed that they will use NGOs in Gauteng that

we know of, but they didn't tell us the exact facilities. So based on the knowledge that we had about the facilities, Me. Chambers was correct to say the facilities won't be able to accommodate those Life Esidimeni patients. And actually Dr Lebetse was
1150 incorrect to say that Me. Chambers was lying.

ARBITRATOR, JUSTICE MOSENEKE: You may proceed, Counsel.

ADV. PATRICK NGUTSHANA: And in fact, before that, evidence was referred to Dr Lebetse or the Department of the fact that there is no such capacity that the Department has to accommodate all these mental health care users. And I want to
1155 refer you to these specific passages of it, that – and that appears on page 156 of the same bundle.

ARBITRATOR, JUSTICE MOSENEKE: I am not sure what you are going to show us now, Counsel.

ADV. PATRICK NGUTSHANA: The capacity the Department had, I think at the
1160 time. Are you there?

DR MVUYISO TALATALA: Yes.

ADV. PATRICK NGUTSHANA: Now in response to a question and in the legislature the MEC, Me. Mahlangu, at the bottom there, that is under Roman figure four ...intervened.

1165 **ARBITRATOR, JUSTICE MOSENEKE:** At the bottom of page 156.

ADV. PATRICK NGUTSHANA: 156. Approximately how many of the 2 000 patients currently at Life Health Care Esidimeni are assessed as requiring long term care and supervision in a protected environment? Then she records 1 671 need long term care, which can be provided at NGOs and home. NGOs will
1170 accommodate 113 patients that need medium term care, but are categorised as high level functioning patients. Only 50 users will be discharged home. And on top of that is Roman figure three, that is the capacity for each of the institutions there. The first one Weskoppies 416 and so on... and the total number ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Let's take them in small bits. Remember
1175 you have a witness and you would like to extract something for the witness to confirm or to contest.

ADV. PATRICK NGUTSHANA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Can you keep it short and then we can go to the additional part. What do you want from the witness under Roman 4?

1180 **ADV. PATRICK NGUTSHANA:** Under Roman 4 that is the number 1 671, did this accord with your experience that this long term care users from Life Esidimeni would be taken care of at NGOs and homes.

DR MVUYISO TALATALA: I didn't agree with that. I didn't think that they could be taken care of at NGOs.

1185 **ADV. PATRICK NGUTSHANA:** And what do you say about the number, 1 671?

Was that possible?

DR MVUYISO TALATALA: I didn't think that the NGOs would have that capacity.

Our available NGOs won't be able to accommodate that big number of patients.

ADV. PATRICK NGUTSHANA: And specifically on that, it wouldn't be possible for
1190 the NGO to take care of that, let's look at the column that is under Roman figure
three. Do you see the estimated capacity of the NGOs there against that number of
1 671?

DR MVUYISO TALATALA: Yes, I see that.

ADV. PATRICK NGUTSHANA: And what is the capacity of the NGO there?

1195 **DR MVUYISO TALATALA:** The facilities listed are not all NGOs.

ADV. PATRICK NGUTSHANA: Yes.

DR MVUYISO TALATALA: The facilities in the list.

ADV. PATRICK NGUTSHANA: That is for NGOs, the last two columns, existing
NGOs, they can take 214.

1200 **DR MVUYISO TALATALA:** Plus 377.

ADV. PATRICK NGUTSHANA: Additional NGO beds 377.

DR MVUYISO TALATALA: Yes.

ADV. PATRICK NGUTSHANA: That number does not even make half of the 1 671.

DR MVUYISO TALATALA: That is correct, Counsel.

1205 **ADV. PATRICK NGUTSHANA:** Do you agree with me?

DR MVUYISO TALATALA: I agree, Counsel.

ARBITRATOR, JUSTICE MOSENEKE: Get to the point, Counsel. You are saying on the face of this response, the contents of Roman 4 is inconsistent with the contents of Roman 3.

1210 **ADV. PATRICK NGUTSHANA:** Correct. At face value it is completely inconsistent.

ARBITRATOR, JUSTICE MOSENEKE: Ja, I hear the point.

ADV. PATRICK NGUTSHANA: Are you there? And not ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: You can comment on that, Counsel, all of this is directed at you, notionally you are the witness, so there must be a question

1215 that flows every time you refer to some document. You see the discrepancy?

DR MVUYISO TALATALA: Yes, Justice, there is a discrepancy.

ARBITRATOR, JUSTICE MOSENEKE: Ja. In the one instance she talks about 1 671 and when you add those, those do not give you more than 591. So Counsel says there is a discrepancy there and whether you agree that there is a discrepancy.

1220 **DR MVUYISO TALATALA:** There is discrepancy but at the time we were dealing with Life Esidimeni, it was quite common for the Department to give different figures for different things. Like that number was not even the number that was virtually discharged from Life Esidimeni, as you can notice. So it was quite common for them to give us different figures at different times.

1225 **ARBITRATOR, JUSTICE MOSENEKE:** But the other thing also is that strikingly, did any of the Life Esidimeni people go to these other institutions in the initial part of the Marathon Project, Weskoppies and Sterkfontein and Cullinan or are these simply numbers of beds available?

DR MVUYISO TALATALA: Justice, there were... I can't remember exactly at what
1230 stage, there were patients that were eventually moved to Sterkfontein. Some of them, before the Ombudsman intervened, there were patients who were, when the media started making noise, there were patients that would be moved from one NGO for instance to Sterkfontein Hospital. So there were patients that were eventually accommodated at Sterkfontein, I know that, and I think at Weskoppies as well.

1235 **ARBITRATOR, JUSTICE MOSENEKE:** You see under two the question was, what are the identified hospitals or premises where they will be placed? And the answer comes: Weskoppies, Sterkfontein, Cullinan Care, unused part of Tshwane District Hospital, Transvaal Memorial Institution, Pinar (?) and old Germiston Hospital and then existing NGOs. Then three: How many beds will be available for them at each

1240 hospital or premise? It is a follow-up from two, and then that breakdown is given. But the evidence up to now did not suggest that there were 416 people who left from Life Esidimeni to Weskoppies or 230 or to Cullinan Care 148 or Tshwane District Hospital and so on. Do you have any comments about that? Do you know anything about that? If you don't, it is understandable.

1245 **DR MVUYISO TALATALA:** I don't know what was the number of patients that were eventually moved to those hospitals. But as I know Sterkfontein Hospital, it would not ordinarily have 230 available beds. And I did raise that in our meeting after the first court case, because Sterkfontein Hospital had wards that were told that they were no longer good for human use and they were closed down. So I was even
1250 scared that if you say Sterkfontein has got additional beds, then patients will be moved to those wards that were closed down when I was working there, because they were thought to be dangerous.

ARBITRATOR, JUSTICE MOSENEKE: Okay Counsel.

ADV. PATRICK NGUTSHANA: Yes and in fact those answers are dated 18
1255 November 2015 and on 26 November – that is the same month – a response comes and that is from the South African Depression and Anxiety Group and it is on page 169. And specifically let's go to page 172. The paragraph there is 11.4, at the end reference is made to the MEC's response on page 156 and in fact it says: The Life Esidimeni termination project plan provides for the renovation of identified units in

1260 the specialised hospitals. No timeline is given for this renovation. In addition in
response to legislature question 5 HLO143, that refers to the MEC's response that I
have taken you through. A number of specialised hospital beds are listed. The 416
for Weskoppies and so on. The number of beds available in each hospital according
to response is in the second column. We have been in touch with hospital managers
1265 and CEOs at these facilities. The information that we received is reflected in the
third column. So this is a response now to the suggestion that there is that capacity
available at those institutions.

ARBITRATOR, JUSTICE MOSENEKE: Well we have to take the witness through it
properly, Counsel, shouldn't we?

1270 **ADV. PATRICK NGUTSHANA:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: Is he aware of this letter? Does he know of
it? Has it seen it before?

ADV. PATRICK NGUTSHANA: No, I am not sure if he knows about this letter.

ARBITRATOR, JUSTICE MOSENEKE: Okay so let's do that.

1275 **ADV. PATRICK NGUTSHANA:** Have you seen this ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: I think you went right to the heart of the
letter, ja, okay.

ADV. PATRICK NGUTSHANA: Have you seen this letter before?

DR MVUYISO TALATALA: I wouldn't remember, Counsel.

1280 **ADV. PATRICK NGUTSHANA:** It is part of the annexures to your application.

DR MVUYISO TALATALA: Yes.

ADV. PATRICK NGUTSHANA: Ja.

DR MVUYISO TALATALA: I may have been copied.

1285 **ADV. PATRICK NGUTSHANA:** Ja, it is fine, I have assumed that you don't know
this letter.

ARBITRATOR, JUSTICE MOSENEKE: But in the application he filed a
confirmatory affidavit, isn't it?

ADV. PATRICK NGUTSHANA: Correct.

1290 **ARBITRATOR, JUSTICE MOSENEKE:** Right. So we have to take him gently
through that and this was attached to the main affidavit, isn't it?

ADV. PATRICK NGUTSHANA: Correct. Then on page 153, that is the following
page, these specific responses: In relation to Weskoppies Hospital the 416, the
response there is that the hospital is currently full. Do you see that? Will that accord
with your knowledge then?

1295 **DR MVUYISO TALATALA:** Yes, definitely for our hospitals I would understand that Weskoppies would say they are full.

ADV. PATRICK NGUTSHANA: Then Sterkfontein as well, the hospital is currently full. Will that be in accordance with what you had known then?

1300 **DR MVUYISO TALATALA:** That I know for Sterkfontein and it has been like that for years.

ADV. PATRICK NGUTSHANA: Yes.

DR MVUYISO TALATALA: So that is why I say I would be surprised that Sterkfontein would say they've got beds, unless you are going to use the dilapidated closed down wards.

1305 **ADV. PATRICK NGUTSHANA:** Yes. Then the next one is Cullinan. The facility wards are empty but have previously closed due to health and safety concerns and will require significant renovation and cannot currently accommodate any patients. You wouldn't know anything about this.

DR MVUYISO TALATALA: I am not familiar with Cullinan.

1310 **ADV. PATRICK NGUTSHANA:** Yes, evidence has been led about the fact that they were renovated previously, so don't worry about that. Then the next one is Tshwane District Hospital and again the response there is, psychiatric patients in this facility

are in general wards and there is no dedicated psychiatric ward. Do you have any knowledge of this?

1315 **DR MVUYISO TALATALA:** I am also not... I would expect Tshwane, because of its level of care, to accommodate psychiatric patients in the way they have described.

ADV. PATRICK NGUTSHANA: Yes.

DR MVUYISO TALATALA: But I have not worked there myself.

ADV. PATRICK NGUTSHANA: So in short, those were the responses to the
1320 available beds. But despite that then the following month you have Dr Lebetse denying to averments that that is indeed the current condition then. Do you still recall my reference to Dr Lebetse's evidence where he says that no Chambers, you are wrong by stating that we don't have this capacity?

DR MVUYISO TALATALA: Dr Lebetse was incorrect in his view.

1325 **ADV. PATRICK NGUTSHANA:** Yes, correct. So then, now let me take you to the response to your paragraph 27.

ARBITRATOR, JUSTICE MOSENEKE: Well that is not where we intended to go to originally, Counsel.

ADV. PATRICK NGUTSHANA: Yes.

1330 **ARBITRATOR, JUSTICE MOSENEKE:** We never quite got there, did we?

ADV. PATRICK NGUTSHANA: A response to your paragraph 27.

DR MVUYISO TALATALA: Sorry, I can't remember where it was.

ADV. PATRICK NGUTSHANA: No, no, I'll take you to it. It is on page 435. It is
1335 435 paragraph 165 to 170 and Dr Lebetse says: I deny the correctness of these
allegations – that is your paragraph 27. In particular Talatala does not know which
facilities the users would be transferred to. To call then inadequate is an uninformed
opinion. It is common cause that NGO facilities do not deal with acute patients. It is
also common cause that no discharge of a user is possible without the decision of a
multi-disciplinary team, annexure LRRL2 shows the staff component working. There
1340 is only one medical officer indicated in table 22 of that... I concede intervention by
psychiatric doctors may be required in those instances, a psychiatric is engaged to
do it. Do you see that?

DR MVUYISO TALATALA: I see.

ADV. PATRICK NGUTSHANA: So Dr Lebetse in December 2015 says that your
1345 averments that is from your experience, the NGOs will not be capable to take care of
that, was incorrect as a matter of fact.

DR MVUYISO TALATALA: Dr Lebetse was incorrect in his opinion or in his affidavit.
Probably he didn't know the work that I had done.

ADV. PATRICK NGUTSHANA: And from your ethical point of view, what were the
1350 responsibilities of Dr Lebete?

DR MVUYISO TALATALA: Well he should have, in my view, he should have
established the facts and established the facts correctly. No matter what action was
going to be taken, but it should be taken with correct facts, because the practice of
medicine itself relies on truth, truth is the key ingredient of the practice of medicine.
1355 So even if you are going to do something not desirable, we are going to switch off
the life support, but you still need to tell the truth. So he deviated from that.

ADV. PATRICK NGUTSHANA: Yes and somewhere in his affidavit he makes
reference to the fact that there is no intention to discharge acute users, but the
intention was to discharge chronic users. Will that also be correct as a matter of
1360 fact?

DR MVUYISO TALATALA: Well the patients at Life Esidimeni would be described
as chronic patients.

ADV. PATRICK NGUTSHANA: Oh as chronic patients?

DR MVUYISO TALATALA: As chronic patients.

1365 **ADV. PATRICK NGUTSHANA:** Yes, alright.

ARBITRATOR, JUSTICE MOSENEKE: And at the time he was the acting Head of the Department of Health in Gauteng. He says so in his affidavit, Lebeta was the acting Head of Department of Health in Gauteng.

DR MVUYISO TALATALA: I wouldn't be sure, Justice, but at the time I think he
1370 was the deputy to the head of health.

ARBITRATOR, JUSTICE MOSENEKE: Okay.

ADV. PATRICK NGUTSHANA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: It is tea time. I think we would like to take the adjournment now and resume at 12. If you have any more questions, you can
1375 continue then, Counsel.

ADV. PATRICK NGUTSHANA: No questions, Justice Moseneke.

ARBITRATOR, JUSTICE MOSENEKE: No further questions?

ADV. PATRICK NGUTSHANA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Very well. When we come back then we
1380 will go to the State and then followed by re-examination.

LIFE ESIDIMENI ARBITRATION

HELD AT: EMOYENI CONFERENCE CENTER, 15 JUBILEE ROAD,

PARKTOWN, JOHANNESBURG

1385 **SESSION 2**

BEFORE ARBITRATOR –JUSTICE MOSENEKE

1390 **WITNESSES:**

[Contents](#)

1395

1400

SESSION 2

ARBITRATOR JUSTICE MOSENEKE: Thanks. You may be seated. You are still under your previous oath doctor. Advocate Hutamo.

1405 **ADV TEBOGO HUTAMO:** Thank you Justice. **DR MVUYISO TALATALA,** good afternoon.

DR MVUYISO TALATALA: Afternoon Counsel.

ADV TEBOGO HUTAMO: Can you just try and make sure that the mike is closer to you so that like ... [interjects]

1410 **DR MVUYISO TALATALA:** Okay.

ADV TEBOGO HUTAMO: You can be heard properly. During 2016, you instituted an urgent application in the high court in Pretoria. Is that correct?

DR MVUYISO TALATALA: Not in Pretoria. South Gauteng high court.

ADV TEBOGO HUTAMO: The South Gauteng high court. I beg your pardon, just
1415 make sure that, and at the time you were acting on behalf of the South African
Society of Psychiatrists?

DR MVUYISO TALATALA: That is correct.

ADV TEBOGO HUTAMO: And in that application there were a number of relief that
you were seeking.

1420 **DR MVUYISO TALATALA:** Yes, that is correct. Sorry Counsel, you mean the
March 2016?

ADV TEBOGO HUTAMO: Yes.

DR MVUYISO TALATALA: The Takalani one?

ADV TEBOGO HUTAMO: Yes.

1425 **DR MVUYISO TALATALA:** Okay.

ADV TEBOGO HUTAMO: Will you agree with me that having made an application
to court it was only the court which could resolve the issues which were referred for
resolution?

DR MVUYISO TALATALA: No. Not only the court. We could have resolved them
1430 outside the court.

ADV TEBOGO HUTAMO: Having launched an application out of the high court,
you ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Do not be distracted. The question comes
from there, the answer goes that way. Okay. That is how it works here. You are
1435 talking to me and to everybody else.

DR MVUYISO TALATALA: Okay.

ARBITRATOR JUSTICE MOSENEKE: But the Counsel is the one who is asking
questions. So do not turn your neck or anything. Listen to the question and then,
and answer it okay. Sure, okay and then again allocution is important here, because
1440 we want everybody here to hear and follow what we are saying. So if you could
speak a little louder. But do relax and listen to the advocate and then answer the
question. Thank you.

ADV TEBOGO HUTAMO: Thanks Justice. What was the object of you launching
the application at court?

1445 **DR MVUYISO TALATALA:** The main aim was to interdict the Department of Health
from moving patients from Life Esidimeni to Takalani.

ADV TEBOGO HUTAMO: Who would have been empowered to grant such an
interdict?

DR MVUYISO TALATALA: The court.

1450 **ADV TEBOGO HUTAMO:** So you will agree with me that in those circumstances it was the court which had the power to resolve the dispute which you had with the Respondents?

DR MVUYISO TALATALA: Yes, at that time.

ADV TEBOGO HUTAMO: And once the court has considered the matter, it would
1455 ordinarily issue a judgment or an order?

DR MVUYISO TALATALA: Yes, they did. The court did.

ADV TEBOGO HUTAMO: And will you agree with me that the outcome of the court must be respected by all parties?

DR MVUYISO TALATALA: Yes, it should be respected.

1460 **ADV TEBOGO HUTAMO:** And with regard to this application in the South Gauteng High Court in Johannesburg, you will recall that the court granted an order or a judgment ... [interjects]

DR MVUYISO TALATALA: Yes.

ADV TEBOGO HUTAMO: On the 15th of March 2016.

1465 **DR MVUYISO TALATALA:** I cannot remember the exact date but they did.

ADV TEBOGO HUTAMO: Well, the judgment was delivered on the 15th of March 2016.

DR MVUYISO TALATALA: Yes.

ADV TEBOGO HUTAMO: And that appears in the record at page 987.

1470 **DR MVUYISO TALATALA:** Okay, yes.

ADV TEBOGO HUTAMO: So if like you can be assisted to get file 2.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

ADV TEBOGO HUTAMO: And turn to page 987. That is the copy of the judgment in respect of the application that you launched. Do you see that?

1475 **DR MVUYISO TALATALA:** I see it.

ADV TEBOGO HUTAMO: And then the judgment ends at page 997. Can you turn to page 997?

DR MVUYISO TALATALA: Yes.

1480 **ADV TEBOGO HUTAMO:** The judgment was handed down by the honourable Judge B Vali on the 15th of March 2016. Do you see that?

DR MVUYISO TALATALA: That is correct.

ADV TEBOGO HUTAMO: Will you agree with me that all court judgments must be respected unless if they are challenged.

DR MVUYISO TALATALA: I agree.

1485 **ADV TEBOGO HUTAMO:** And in respect of this judgment, was it ever challenged through the process of appeal?

DR MVUYISO TALATALA: No, we did not appeal.

ADV TEBOGO HUTAMO: So you will agree with me that in the absence of an appeal challenging the correctness of the judgment, all parties were obliged to respect the content of the judgment?

DR MVUYISO TALATALA: We, I respect the judgment but I do not think it was based on true facts.

ADV TEBOGO HUTAMO: No, I am asking you the question will you agree with me, would you agree with me or not that the judgment having been granted and not having been challenged, the parties are obliged to respect that judgment.

DR MVUYISO TALATALA: Yes, we would respect it until we challenge it.

ADV TEBOGO HUTAMO: Yes, do you agree or not?

DR MVUYISO TALATALA: Until we challenge it, I will qualify that.

ADV TEBOGO HUTAMO: You have already said that you have not challenged it, not so?

DR MVUYISO TALATALA: Yes, we never said, we did not make time to challenge it because the process moved forward.

ADV TEBOGO HUTAMO: Please ... [interjects]

DR MVUYISO TALATALA: But it did not mean that I did not think that the
1505 judgment should have been challenged, even at the time.

ADV TEBOGO HUTAMO: Please doctor, let us just make matters simple. You
have not challenged the judgment. Is that correct?

DR MVUYISO TALATALA: Yes, I have not challenged the judgment.

ADV TEBOGO HUTAMO: Yes, thank you. So the proposition which I was putting
1510 to you is that the judgment not having been challenged, you are obliged to respect it.
Not so?

DR MVUYISO TALATALA: Yes.

ADV TEBOGO HUTAMO: In your repeated testimony, you said that the judgment
was based on a lie from the department. Do you recall that?

1515 **DR MVUYISO TALATALA:** Yes, that is correct.

ADV TEBOGO HUTAMO: Can you please just try and make the mike to be closer
to you ... [interjects]

DR MVUYISO TALATALA: That is correct.

ADV TEBOGO HUTAMO: You even went further to state that the advocate on
1520 behalf of the department lied to the court. Do you recall that?

DR MVUYISO TALATALA: That is correct.

ADV TEBOGO HUTAMO: And this remarks that you make before this platform, the remarks which you make before this platform is with full knowledge that you never challenged the judgment of the 15th of March 2016.

1525 **DR MVUYISO TALATALA:** That is correct.

ADV TEBOGO HUTAMO: **DR MVUYISO TALATALA,** I put it to you that your testimony or remarks in so far as they relate to the department or the advocate of the department lying to the court, such remarks are unfortunate and inappropriate. What is your response to that?

1530 **DR MVUYISO TALATALA:** I respect the judgment. I do not agree with the judgment. So there are reasons why we never challenged the judgment, and that we did not challenge the judgment was not because we agreed with the judgment.

ADV TEBOGO HUTAMO: Yes, but ... [interjects]

DR MVUYISO TALATALA: There are other reasons we did not challenge the
1535 judgment. I therefore still reserve the right to disagree with the arguments that were put forward in court and disagree with the judgment.

ADV TEBOGO HUTAMO: But are we not agreed that the judgment is to be respected in its form?

DR MVUYISO TALATALA: Respected, but not agreed with. To me there is a
1540 difference between the two. I respect the court that it has made a certain
determination. I do not necessarily agree with the court.

ADV TEBOGO HUTAMO: Doctor, I put it to you that your testimony in relation to
the remarks that you have made that there has been lies, when you know that the
judgment has not been challenged, those remarks are contemptuous of the dignity of
1545 the court. What is your response to that?

ADV. DIRK GROENEWALD: Justice, I need to object here. Because I asked the
question and the question was based that the order was granted or your application
was dismissed and you said, and the witness said yes, because the department lied.
That was his testimony. It is not that the court lied or that the judge lied or that
1550 anything like that. It was because according to the witness, the department lied,
misrepresented the facts to the court. So the attack of my learned colleague of the
witness that the witness is insinuating that the court erred or that the court was
incorrect, is without basis.

ARBITRATOR JUSTICE MOSENEKE: Ja, you heard the objection. What is your
1555 response to that Counsel?

ADV TEBOGO HUTAMO: Justice, there is no basis to the objection. I am entitled
to put the questions in the manner which I did, and it is on the basis of what the

witness had testified himself. So like I cannot find any basis. It is not just to protect
... [interjects]

1560 **ARBITRATOR JUSTICE MOSENEKE:** The objection is narrow. It says the
witness never said the court lied. That is the point, but the department
representatives lied. Should that not be what you put to the witness?

ADV TEBOGO HUTAMO: Hm ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: In other words you are invited to draw a
1565 distinction between the witness's view that the deposition of the department was a
lie, as distinct from the court's judgment itself being a lie.

ADV TEBOGO HUTAMO: Hm ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Should you not put those quite clearly to
the witness so that he can respond to the propositions rather than collapse the two
1570 into one?

ADV TEBOGO HUTAMO: Well ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: I think that is what the objection is, and it
can be met easily by putting questions that do not impute the witness, what the
witness has not said i.e. the court lied or i.e. the court was wrong.

1575 **ADV TEBOGO HUTAMO:** Justice, at no stage in my questioning to the witness did I ever put a proposition that the court lied. I put it to the witness that he said that the department lied. He further stated that the advocate on behalf of the department lied. So I do not know where is this objection arising from.

ARBITRATOR JUSTICE MOSENEKE: Well, let us formulate. Let us hear the
1580 question. As long as the question does not impute things that the witness has not, any question has to be fair is it not so? We agreed on that. You go ahead. I will listen carefully and hear what you say.

ADV TEBOGO HUTAMO: Doctor Tahlatahla, you testified that the application which you launched was argued before court.

1585 **DR MVUYISO TALATALA:** Yes, that is correct.

ADV TEBOGO HUTAMO: And both the Applicants and Respondents were represented at court.

DR MVUYISO TALATALA: That is correct Counsel.

ADV TEBOGO HUTAMO: And in that process the court was called upon to make a
1590 determination of the dispute between the parties, not so?

DR MVUYISO TALATALA: That is correct.

ADV TEBOGO HUTAMO: And in your testimony, you said that in the presentation of its case before the court, the department lied. Not so?

DR MVUYISO TALATALA: That is correct, on certain facts.

1595 **ADV TEBOGO HUTAMO:** And then you even went further to state that the advocate for the department lied to the court?

DR MVUYISO TALATALA: But that obviously I meant the department. Remember, the advocate was arguing what the department was telling ... [interjects]

ADV TEBOGO HUTAMO: But like is it what you have said?

1600 **DR MVUYISO TALATALA:** Yes, she may not, the advocate herself may not have been lying deliberately in her thinking. She was arguing the facts provided by the department which were untrue.

ADV TEBOGO HUTAMO: Yes, like ... [interjects]

DR MVUYISO TALATALA: So to say the advocate lied, that would imply that she
1605 deliberately told lies. I do not know that.

ADV TEBOGO HUTAMO: So you ... [interjects]

DR MVUYISO TALATALA: The facts provided by the department to the advocate and to the court were not true.

ADV TEBOGO HUTAMO: So you are retracting your statement in relation to the
1610 reference to the advocate?

DR MVUYISO TALATALA: Well, if I had inferred that the advocate herself
deliberately lied, I would retract that, but I am not aware if I said that.

ADV TEBOGO HUTAMO: Well, I am asking you the question. Are you retracting
your reference to the advocate having lied to the court? Just, let us just make it
1615 simple.

ARBITRATOR JUSTICE MOSENEKE: There is an objection. Yes. Would you
wait Counsel for a while, sorry there is an objection?

ADV ADILA HASSIM: Sorry. Justice Moseneke, the witness said that the counsel
for the state was acting on the instructions of the department, and that the
1620 instructions or the facts that were provided were incorrect, were lies. So there is
nothing for him to retract. My colleague is putting a proposal to the witness to retract
something he never said.

ARBITRATOR JUSTICE MOSENEKE: Well, there is a dispute now about what the
witness has said. So we will have to replay his evidence on that part, is it not so?

1625 **ADV ADILA HASSIM:** I do not ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: The one counsel says he says it, the other says he did not say it. There is an easy way of resolving it. It is to play the record. The witness had explained that he meant counsel was instructed.

ADV ADILA HASSIM: Yes.

1630 **ARBITRATOR JUSTICE MOSENEKE:** And instructions were lies. So ...
[interjects]

ADV ADILA HASSIM: So ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: When he said counsel lied, he is being tasked with that and he should explain what he meant. You proceed. Are you
1635 putting it to the witness that he said counsel lied? That we can verify. We can run the machine back.

ADV TEBOGO HUTAMO: Justice, that is on record. The witness had testified that even the advocate of the department lied to the court. So he has given an explanation, his reference to the witness. So what I want to get from the witness is
1640 that is he retracting his reference to the advocate having lied? It cannot be difficult.

ARBITRATOR JUSTICE MOSENEKE: Well, it must be two things. We must first establish whether he said it, step one. Step two is he retracting.

ADV TEBOGO HUTAMO: Indeed.

ARBITRATOR JUSTICE MOSENEKE: So you are quite convinced that he said

1645 that?

ADV TEBOGO HUTAMO: That is correct, yes.

ARBITRATOR JUSTICE MOSENEKE: I do not remember immediately myself, but that is why we record things here. We are going to play it back with the lunch break and then we are going to listen to it.

1650 **ADV TEBOGO HUTAMO:** Yes.

ARBITRATOR JUSTICE MOSENEKE: I do not want them to run the machine back, but you can cross-examine on the assumption that he said so. We can check it and we will check it. I will ask the stenographers to run it back so that we hear exactly what the witness said about counsel in particular. Is it not so?

1655 **ADV TEBOGO HUTAMO:** Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: Very well. You continue then.

ADV TEBOGO HUTAMO: Doctor, are you retracting that reference to the advocate?

DR MVUYISO TALATALA: If I said the advocate deliberately lied, then I will retract

1660 that.

ADV TEBOGO HUTAMO: Thank you.

DR MVUYISO TALATALA: But if I, as I have explained. If my argument was that the advocate was received untruthful information to the department and she used that information which was incorrect to represent the state in that court case, then
1665 that I will ... [inaudible].

ARBITRATOR JUSTICE MOSENEKE: Of course cross-examination is not a game. I mean we can cut through this. Let us go to paragraph 11 of the judgment, on page the judgment you have referred us to. Are you going to ultimately put to the witness that what the department said was truthful?

1670 **ADV TEBOGO HUTAMO:** No Justice.

ARBITRATOR JUSTICE MOSENEKE: No?

ADV TEBOGO HUTAMO: Yes.

ARBITRATOR JUSTICE MOSENEKE: So what are we doing? We are just playing around with whether or not, you see if your case is the department did not, was not
1675 truthful, I understand. But let us go to paragraph 11 and there the judge summarises what the department said. So it is not your case that the department did not state facts which were untrue before the high court, or is it?

ADV TEBOGO HUTAMO: Well, if Justice I can be allowed to actually like get to the point where I want to, if I can be allowed to proceed with the line of questioning.

1680 **ARBITRATOR JUSTICE MOSENEKE:** Certainly. I will just remind ... [interjects]

ADV TEBOGO HUTAMO: Then Justice will be able to understand exactly where
am I trying to get to.

ARBITRATOR JUSTICE MOSENEKE: No, that is fine. You are entitled to do that.
I have the duty presiding to remind you that cross-examination is about ultimately, I
1685 said that to all of you repeatedly. You must ultimately put a version to the witness
that contradicts what the witness says. The witness persists that the department
was untruthful in his deposition before the high court, and that evidence is
summarised in 11. At some point Counsel, you have to say to the witness I put it to
you that the department was not untruthful in his deposition. At some point you have
1690 to get to that substantive question after all the ... [inaudible]. We have to get to the
substance, but please do ask your questions. I do not want to limit you. As long as
you promise me that you will get there ultimately, and to paragraph 11 of the
judgment. Very well.

ADV TEBOGO HUTAMO: Thank you Justice.

1695 **ARBITRATOR JUSTICE MOSENEKE:** Hm.

ADV TEBOGO HUTAMO: Doctor, if we can go back to the process that you
followed when you sought relief from the court. In your testimony you stated that
when the matter was argued before court, there were some misrepresentation by the
department. Do you recall having given that evidence?

1700 **DR MVUYISO TALATALA:** Yes, that is correct.

ADV TEBOGO HUTAMO: And after the matter having being argued, it was then the turn of the court to consider arguments presented by both parties. Would you agree that that would have been the process?

DR MVUYISO TALATALA: That is correct.

1705 **ADV TEBOGO HUTAMO:** And the judgment or the order of the court would have been based on what was presented before it, not so?

DR MVUYISO TALATALA: That is correct.

ADV TEBOGO HUTAMO: And according to your testimony, you say that the court arrived at its decision on the basis of the lies by the department. Is that how I

1710 understand your question, I mean your testimony?

DR MVUYISO TALATALA: On the basis of incorrect information, provided to the court by the department.

ADV TEBOGO HUTAMO: So you say that the judgment was on the basis of incorrect information?

1715 **DR MVUYISO TALATALA:** Yes. The information considered by the judge, including the information provided by the department.

ADV TEBOGO HUTAMO: Yes.

DR MVUYISO TALATALA: And the information which I argue that was incorrect.

ADV TEBOGO HUTAMO: And that information was before the judge?

1720 **DR MVUYISO TALATALA:** It was provided by the state, by the government to the judge.

ADV TEBOGO HUTAMO: To the judge yes, and the judge considered that information.

DR MVUYISO TALATALA: That is correct.

1725 **ADV TEBOGO HUTAMO:** And it arrived at its decision?

DR MVUYISO TALATALA: That is correct.

ADV TEBOGO HUTAMO: And ultimately the application was dismissed.

DR MVUYISO TALATALA: That is correct.

ADV TEBOGO HUTAMO: And which judgment was never challenged by yourself.

1730 **DR MVUYISO TALATALA:** Yes, we never challenged it.

ADV TEBOGO HUTAMO: So would it not have been appropriate that if you disagreed so much with how the court arrived at its decision, you should have appealed against such judgment?

DR MVUYISO TALATALA: Counsel, I also had an option of knowing that in health
1735 time tells the truth. I did not have to waste the time of the society back to court when
I know that in a few months we will know the truth.

ADV TEBOGO HUTAMO: That is why I am saying to you in light of the fact that to
the extent that you had concerns with how the judgment was arrived at, and you
were unhappy about that judgment. You had the option to appeal such judgment
1740 and you did not do so. So what I am saying to you is that having failed to appeal
such judgment, I submit that your remarks before these proceedings are
contemptuous of the dignity of the court in relation to the judgment that has been
granted. What is your response to that?

DR MVUYISO TALATALA: I would not know the technicalities of law, but to a lay
1745 man like me in my view the judge is fit to make his judgment and he should be
respected based on the information that he has in front of him, but it does not
necessarily mean that the judge will always get correct information.

ARBITRATOR JUSTICE MOSENEKE: Council, we are back at where we started
are we not?

1750 **ADV TEBOGO HUTAMO:** Yes.

ARBITRATOR JUSTICE MOSENEKE: The proposition must just be fair to the
witness. The witness has said many times, he insists the facts were incorrect and

you put it to him therefore you disrespect the court. The proposition should be fair, and as I invited you earlier, at some point it is what cross-examination is about. You
1755 have got to say to the witness the department deposed to the truth before the judge. At some point you have got to say to the witness so he insists they were untruthful and we have the affidavits. We know what the department said and we know what the judge found on the basis of the depositions of the department. In motion proceedings, on cold paper, the Respondent's version prompts the Applicant's
1760 version. You and I know that rule, is it not? ... [interjects] we know it very well. The judge did exactly that. The crunch of the question is did the department tell the judge the truth? It is not about the judge's integrity or the court's integrity, and you must challenge the witness and say the department told the truth, and you can make any other thing. You are entitled to ask all the other questions of course. But just be
1765 fair to the witness and do not collapse the respect with the court with the allegation that the department was untruthful?

ADV TEBOGO HUTAMO: Well, like Justice, what the witness has been testifying on. It has a direct bearing on the outcome of the court and we have already established and he has accepted that the outcome of the court has to be respected,
1770 and we have already established that in the event you are unhappy about the outcome of the court from what he says that they were lies, there was an option which was open to him, and in this regard even the court itself opened the door to

the Applicants, to make any challenge and in that regard I will refer to page 997 of the record.

1775 **ARBITRATOR JUSTICE MOSENEKE:** No, no my point is very narrow. You can continue with as many questions as you might choose Counsel. I am saying do not text the witness on respecting the court, because the witness's position is the department lied. So you ought to take him on on that and say you are not being truthful when you say the department lied. The department told the truth. The court
1780 arrived at the decision on the basis of the department's facts. We have the judgment before us and we can go to paragraph 11, and so I just the only thing I want you to do is do not text the witness on the integrity of the court, because I do not understand that to be his case. His case is he does not agree with the outcome. He thinks it was based on lied provided by the department and that is what you must
1785 take him on on. Proceed Counsel, I do not want to interrupt you unduly. You go ahead.

ADV TEBOGO HUTAMO: Thank you Justice. Doctor, can you please just help us. Would it not have been appropriate for you to expose the misinformation that you have referred to through the court process which was available to you through the
1790 means of an appeal?

DR MVUYISO TALATALA: I had, as the society and the ... [inaudible] I had many options to consider on how to deal with that account. Firstly it was an urgent

application. The patient would have been moved anyway in my view as soon as we lost the case, and challenging the department in court was one of my many options
1795 that I had. So I did not think I relied on disputing them again in an appeal. One of my options was that as I tell you, when it comes to health time tells. If they make any incorrect decision time was going to tell and it did within a few months.

ADV TEBOGO HUTAMO: But like you say that ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: How did time tell? How did time expose
1800 the truth?

DR MVUYISO TALATALA: Because if you are making an incorrect medical decision, the complications I am warning you about will, if I am wrong, then you will be the one who is right, because those complications will not come up.

ARBITRATOR JUSTICE MOSENEKE: And here what complications arose?

1805 **DR MVUYISO TALATALA:** The patients were moved to Takalani. We know that they were not discharged, even though the department described them as discharged as being well, and when they moved to Takalani, we have seen earlier today that a lot of them died.

ARBITRATOR JUSTICE MOSENEKE: And nearly half of them died.

1810 **DR MVUYISO TALATALA:** That is correct Justice.

ARBITRATOR JUSTICE MOSENEKE: Ja. So you are saying time proved you correct. You did not have to go to court.

DR MVUYISO TALATALA: It did Justice, and in medicine if you are still managing the case, time would tell. It will prove we do not have to go to court all the time, and
1815 secondly it is not something that the society of psychiatrists take lightly to take government to court. It was not a pleasant experience to be in South Gauteng court that day on behalf of the society of psychiatrists and be fighting with the Department of Health. As I said earlier on, those are our partners, stakeholders. In fact today with this incident we are dealing with today, it should not be the society versus the
1820 government who should have sat together, who should have come up with a plan of dealing with Life Esidimeni if we had to deal with and we should all be answering on the same side of the table with the MEC and ourselves. We should be owning up to what had happened. We should have worked together. It should not be that we should have been fighting. So I was not, my society would not be happy to be in and
1825 out of court fighting with the Department of Health.

ADV TEBOGO HUTAMO: You say that in medicine time will tell, but you chose to go to court. Not so?

DR MVUYISO TALATALA: Yes. Speedily, because we heard that on Monday the patients are moving to Takalani. We wanted to ... [inaudible], we thought we could
1830 over that weekend bring some sense to the department.

ADV TEBOGO HUTAMO: And you were able to go to court speedily?

DR MVUYISO TALATALA: Yes.

ADV TEBOGO HUTAMO: And then can you please turn to page 996, and I am going to read the last sentence of that paragraph 14, where it is recorded that:

1835 *“In these circumstances there may be serious risk that the services provided to the original users of Takalani. The children may be severely compromised. Should the Applicants find this to be the case, they or any other person are free to bring an application on an urgent basis if need be, calling for the relocation of all or some of the 54 users.”*

1840 Do you see that?

DR MVUYISO TALATALA: Yes, I see Counsel.

ADV TEBOGO HUTAMO: So you were provided with an opportunity as you said to speedily approach court for such relief.

DR MVUYISO TALATALA: Yes.

1845 **ADV TEBOGO HUTAMO:** Was it not an opportunity for you to have exposed the department of the lies that you speak about?

DR MVUYISO TALATALA: Read the paragraph carefully Counsel. The paragraph says:

“If at any stage we find that there was a risk to the original Takalani patients.”

1850 So if there was a risk caused by the Life Esidimeni patients to the Takalani patients, then we would need to approach the court. That is what, are we agreeing that is what ... [interjects]

ADV TEBOGO HUTAMO: Speedily, like to use your word.

DR MVUYISO TALATALA: Ja, but that is what the paragraph say.

1855 **ADV TEBOGO HUTAMO:** Yes.

DR MVUYISO TALATALA: So it means for us to go back to court, we would have to find evidence, not just what you think would happen, but we would have to find evidence that the children at Takalani were at risk from the Life Esidimeni patients. Am I correct interpreting the paragraph?

1860 **ADV TEBOGO HUTAMO:** Well, is it not your case that the judgment was based on lies?

DR MVUYISO TALATALA: I did not say that everything discussed in that court was lies. I just said, I actually highlighted the information that was lies. If I remember it now one was the ... [inaudible] of discharge, which the department
1865 should know what a discharge is and they defined it in a way that was incorrect to anyone who is supervising many health establishments in Gauteng that are discharging patients every day. That was one of the lies, and two, in the way they

define discharge, it gave an impression that the patients were well. They could go home. The only reason they are not going home is because the families, they do not have families or families are not prepared to take the patients. It was not that these are severely ill patients that we are placing at Takalani for further treatment. The state argued that these patients were being housed. So I have correctly identified. I did not say, I did not talk about the presence of the children at Takalani being lies. The paragraph there, the judge says:

"If at any time the society of psychiatrists and its partners picks up that the children at Takalani are at risk from the adults from Life Esidimeni, then we should go back to court."

Not what we think. We already know that the children are at risk, but we need to find evidence that that is happening and then bring the application.

ADV TEBOGO HUTAMO: Yes, but like what I am putting to you is at that stage of the judgment, you were quite convinced that the information which the court relied on was not correct, not so?

DR MVUYISO TALATALA: That is correct Counsel, but you are mixing two things. If the children are at risk which the judge says we must go back in an event that those children are at risk, is the lies which is a separate matter told about the definition of discharge and the level of illness of the patient discharged. Those are

two separate things. Let us talk about, you want me to go back to court. Was the judge advising me to go back to court on the children of Takalani? You want me to go to court on the discharge and definition as to the lies?

1890 **ADV TEBOGO HUTAMO:** Let us then deal with the issues relating to the lies, aside issues relating to the children.

DR MVUYISO TALATALA: Yes.

ADV TEBOGO HUTAMO: What I am saying to you is that you said at the, the court relied on the information by the department in its interpretation of the word discharge, and thereby arriving at its decision. The decision which ultimately dismiss
1895 the application. Not so?

DR MVUYISO TALATALA: Not just discharged. As I said it was the definition of the word discharge. It was the fact that they then said the patients were well enough. Firstly, let me just go back to discharge. It was discharge, because to them
1900 they talk like lay people. They said discharge means you are well, you can go home. So if a doctor says you are discharged, you are well to go home which is not the definition of discharge in anyone who is running any health facility. So that is the first lie. The second lie is to say the patients who were being discharged at Life Esidimeni, are discharged by doctors and these doctors have declared them well
1905 and fit to go home. It is the families that do not want to collect, to take the patient.

So it is, as the department was saying that the Life Esidimeni patients were going to Takalani, were homeless people who are well.

ADV TEBOGO HUTAMO: So what I am saying to you is that at the time when the judgment was granted, you were aware of what you referred to as lies not so?

1910 **DR MVUYISO TALATALA:** That is correct.

ADV TEBOGO HUTAMO: And in terms of due process of the law, you were entitled to challenge that judgment which was based on what you referred to as lies.

ARBITRATOR JUSTICE MOSENEKE: The witness has answered you many times Counsel. He chose not to appeal. He was entitled, it may be he says he has chosen not to appeal and has given reasons. They may be good or bad. Why is that wrong, and why do you cast the duty on him to appeal? He had answered the question. It is the third time or fourth time you put it. So we have to make some progress there. You may not repeat the same question that the witness answers. You may or may not appeal, I mean and it is not him. This is the South African Society of Psychiatrists and he was acting ... [inaudible].

1915
1920

ADV TEBOGO HUTAMO: Well, I have dealt with that Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV TEBOGO HUTAMO: I have placed that on record. I am not referring to him in his personal capacity.

1925 **ARBITRATOR JUSTICE MOSENEKE:** Ja, very well but you cannot ask him the same question four times. He may or may not want to appeal and I think you are bound by the answer.

ADV TEBOGO HUTAMO: Yes.

ARBITRATOR JUSTICE MOSENEKE: Okay, you have an answer and you are
1930 bound by the answer. You have to proceed and ask other questions.

ADV TEBOGO HUTAMO: Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: Hm.

ADV TEBOGO HUTAMO: Doctor, you have just said that ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: I am still looking forward to your point
1935 where you are going to say to him the department was not untruthful in his deposition in court. That Dr Lebete told the court facts that were consistent with the state of affairs. In other words that were truthful, because that is this witness's contention and at some point you have got to take that on or move on. But you cannot budge around it forever. If Dr Lebete knew of you, is your case, made a
1940 truthful deposition I think you must say so to the witness, and the witness can then tell you why it was not truthful. In all fairness.

ADV TEBOGO HUTAMO: But Justice, what I am trying to do in this instance is that those issues were within the powers of the court to make a determination. So I am

not here trying to debate the merits of that application. All that I am trying to
1945 establish is in relation to what was the outcome of the court application. So the
witness has already testified that he opted not to appeal the judgment. So all that I
am trying to point out is that it is not for him to be on the side line when he had an
opportunity to make remarks in relation to what the court has determined.

ARBITRATOR JUSTICE MOSENEKE: Is he entitled to say Dr Lebete's allegations
1950 before court were untrue in his opinion? Is he entitled to say that and if not, why
not?

ADV TEBOGO HUTAMO: Whether he is entitled to say that, that will depend on
what will the court ultimately come to its conclusion, because whatever information
that was put by Dr Lebete, was put at the disposal of the court for consideration. So
1955 hence like I am repeating myself to say my objective is not to debate the merits of
that application. All that I am saying is that the process having run its course, there
were options available and I do not want to get into that debate.

ARBITRATOR JUSTICE MOSENEKE: Okay, very well.

ADV TEBOGO HUTAMO: Yes.

1960 **ARBITRATOR JUSTICE MOSENEKE:** You may proceed Counsel.

ADV TEBOGO HUTAMO: Thank you. Doctor, you have just said that after the judgment having been granted dismissing your application, you opted not to pursue the process of appeal, which was available to you.

DR MVUYISO TALATALA: That is correct.

1965 **ADV TEBOGO HUTAMO:** Yes. So what I am putting to you is that having had that opportunity to expose what you referred to as lies, you cannot at this proceedings make remarks about matters which were subject to court and which could have been resolved by court through the process of appeal.

DR MVUYISO TALATALA: Counsel, appeal was one of the society's many options
1970 in exposing the truth. In fact appeal would have been the most difficult, because we would have to get access from the department which would not allow us to go and assess the patients, whether they are really well or not and the department would not allow us so that we can provide that evidence to court. So the appeal would have made a much more difficult way of proving, of dealing with the matter and when we
1975 know that patients are going to move to Takalani and sooner what we have warned the department about, will become a reality and then the department would have then realised the truth, and I think the history has told that that is what happened. So the appeal to us when we considered our options would have been difficult, compared to just allowing the time a few months to pass and the department,
1980 obviously we did not anticipate death, but we did anticipate patients relapsing. We

did not, we did anticipate patients going back to Baragwanath. The department was obstructive in us, it is not like it is a department that would allow us to go and assess these patients and actually confirm that these patients are well. So it would be difficult to prove it is lies to the court.

1985 **ADV TEBOGO HUTAMO:** So you are saying it was going to be difficult to disprove the lies?

DR MVUYISO TALATALA: I may have been using the wrong word. It would be difficult to say, to confirm on, our opinion that the patients that were being moved were ill, it would have been difficult to do that without us having to assess the

1990 patients or having got someone who has actually seen the patients going to court and confirming that, and it is not that it would be impossible. We could have done it over time, but the complications that we had warned the department about, which they chose to lie, were going to happen as well. In fact, probably by the time we do the appeal problems would have already started.

1995 **ADV TEBOGO HUTAMO:** Yes. In conclusion, I want to put it to you that not having taken the recourse which was available to you to expose the lies, and you are now making the remarks about the lies in respect of a court judgment which was made after both, after all the parties having presented their case, amounts to contemptuous attitude towards the dignity of that court order. What is your
2000 response?

ARBITRATOR JUSTICE MOSENEKE: We have an objection.

ADV ADILA HASSIM: Sorry Justice. It is an objection upon an objection that has already been upheld. It is now bordering on an abuse of this process, to, there was a ruling. There was a discussion about putting it to the witness that he is being contemptuous of the court, and we are back again after that whole discussion and after a ruling by you Justice Moseneke.

ARBITRATOR JUSTICE MOSENEKE: Yes, you are right. Patients always ... [inaudible] Counsel, but I think we are going through the normal limits. You may not unfairly accuse this witness of being contemptuous towards the court. That is the essence of the point. We have debated it before. Of course you may accuse him of unfairly lying about the department if you think so. Secondly, he is not obliged to agree with every judgment that any court makes. Respect is one thing. Agreeing another. So he is not always obliged to agree with everything that a court finds, but he does not even go that far. His case appears to be so uncomplicated. What the deponent or the province before the court did, was to be untruthful and time showed it beyond any question nearly 25 of the 50 people died at Takalani, and that is his case. He says time vindicated him. He did not have to appeal. So please let us not, do not put a proposition that is unfair to him. That is the objection. You cannot say he is disrespectful towards courts, because that is not what he said and that is not his case. Do you have any further questions to put?

ADV TEBOGO HUTAMO: Justice, what I am putting to the witness is that to the extent that he did not agree, I accept that like you did not have to agree with the, with all court orders and but we have to respect all court orders.

ARBITRATOR JUSTICE MOSENEKE: Yes.

2025 **ADV TEBOGO HUTAMO:** In the event of one not disagreeing with a court order, I submitted that there is recourse available to those who are aggrieved by the court order. That is the point which I am trying to make, and this witness clearly testified that he opted not to take that recourse, and which is the basis of my proposition to him, that not having utilised the recourse available to him. This is not the appropriate
2030 forum to raise his disagreements with how the court has come to its conclusion, and it is on that basis I will not pose any further questions.

ARBITRATOR JUSTICE MOSENEKE: Thank you. We are done, I am not going to go there at all. Counsel, we are done. You have any further questions? No, you do not. You do not have any further questions. Let us go back to re-examination.

2035 Patience always help. You now have the opportunity to put your points. Okay Counsel.

ADV ADILA HASSIM: Thanks Justice. Doctor, you did you participate in the December 2015 litigation as SASOP?

DR MVUYISO TALATALA: Yes, we did Counsel.

2040 **ADV ADILA HASSIM:** And we all know that resulted in a settlement agreement
made in good faith, and then you participated in the March 2016 litigation.

DR MVUYISO TALATALA: Yes Counsel.

ADV ADILA HASSIM: And we know the outcome of that. Did you, did you feel that
there would be value in initiating a third round of litigation on the same subject
2045 matter?

DR MVUYISO TALATALA: After the second litigation we did not think that there
would be value. As I have said earlier on, also going to court was not something that
we like. Otherwise on the 31st of January 2016 we would have gone back to court
after the failure of the negotiations on the first court intervention. So we did not think
2050 that there would be value.

ADV ADILA HASSIM: You have already testified in your evidence in chief that the
reason you did not was because you were conducting yourself in good faith with the
department and assumed that the delay was because government is busy.

DR MVUYISO TALATALA: That is correct.

2055 **ADV ADILA HASSIM:** Is that correct?

DR MVUYISO TALATALA: That is correct.

ADV ADILA HASSIM: You have said that the department and its officials acting on its behalf lied to the court. Let me take you precisely to what the department said to the court. In the volume that is before you at page 775.

2060 **DR MVUYISO TALATALA:** That is File 2, is that on File 2?

ADV ADILA HASSIM: Yes.

DR MVUYISO TALATALA: Okay, that is correct.

ADV ADILA HASSIM: Page 775, especially paragraph 35. This is the affidavit of Dr Selobano. Dr Selobano was the Head of Health of the Gauteng provincial
2065 department. At paragraph 35 Dr Selobano says:

“The Respondents ...”

The Respondents being the government, the provincial department:

*“Are bound by their legislative and constitutional imperatives. Takalani Home has
been approved as a suitable alternative facility which is able to accommodate the
2070 selected users and provide the necessary mental health care.”*

Did you agree with this statement that was made under oath by Dr Selobano?

DR MVUYISO TALATALA: I did not agree with the statement, unless they have done an overhaul of Takalani. Takalani changed from what it was.

ARBITRATOR JUSTICE MOSENEKE: And this significantly from the affidavit was
2075 said on the 13th of March 2016.

DR MVUYISO TALATALA: That is correct.

ARBITRATOR JUSTICE MOSENEKE: That would have been what, a few months
just before the actual move, not so?

ADV ADILA HASSIM: The move, this was 13th of March. 15th of March was the
2080 judgment and the move began a few days after the judgment and perhaps to help us
really put this into sequence, the picture. We had a witness testify before the
hearings about the death of Debra Petla at Takalani. Debra had been kept in what
she called a store room. Debra according to the post mortem reports had plastic
bottles in her stomach and brown paper. That is the Takalani that she was
2085 transferred to on the 23rd of March in her case.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV ADILA HASSIM: In the case of that particular patient.

ARBITRATOR JUSTICE MOSENEKE: So the transfer happened a few days after
the deposition under oath by Dr Selobano.

2090 **ADV ADILA HASSIM:** A week or so.

ARBITRATOR JUSTICE MOSENEKE: That is what I was trying to ascertain.

Thank you. But we have the witness's answer that he thinks that is untrue, right?

ADV ADILA HASSIM: And then at page 796, at paragraph 126, Dr Selobano says under oath:

2095 *"The rights and needs of the mental health care users will be met at Takalani in the same manner that the rights and needs of those users currently accommodated at Takalani home are being met. I reiterate that the users are only discharged following a thorough assessment by psychiatric professionals and the user has been identified as being ready for discharge."*

2100 Is this one of the statements with which you disagreed, which you call a lie?

DR MVUYISO TALATALA: Especially their, that is correct Counsel. Especially their definition of discharge, which implies that the patient, that those psychiatric professionals have declared this patient to be well to go home.

ADV ADILA HASSIM: Yes.

2105 **DR MVUYISO TALATALA:** Otherwise discharge has no meaning to the next facility if it is interpreted in the correct way. It has meaning to the facility that is discharging, not the one that is observing, but in their interpretation discharge had a meaning in the sense that those patients were well.

ADV ADILA HASSIM: Yes, so let us then go to how that then went through and

2110 how it came through into the judgment. At page 922 of the same volume, and this is
the transcript of the hearing.

ARBITRATOR JUSTICE MOSENEKE: Well, before you go there. Look at 797, 12,
127 point 4. Do you know whether that did happen doctor, 797?

DR MVUYISO TALATALA: Yes Justice.

2115 **ARBITRATOR JUSTICE MOSENEKE:** Paragraph 127.4 on page 797.

DR MVUYISO TALATALA: Yes.

ARBITRATOR JUSTICE MOSENEKE: Dr Selobano says:

*“I reiterate that it is the psychiatrists at Life Esidimeni that assessed the mental
health care users in question and advised on the discharge of the users.”*

2120 **DR MVUYISO TALATALA:** We never actually, I never actually established at the
time whether the psychiatrists would actually assess and discharge the patients. So
I did not have that information, but subsequently we have later learnt that how the
doctors, the Ombudsman, how the doctors were uncomfortable with the discharges,
and in fact it would not made sense Justice out of the normal practice, because if the
2125 psychiatrists have decided to discharge a patient, it does not have to come from the
Department of Health. Life Esidimeni was allowed even probably under pressure at
all times even before this move, to assess patients and discharge them or place

them to NGO's. So that there would be no need for additional involvement from the department. That was part of the work of the psychiatrists who worked there to

2130 asses the patients and not keep patients at Life Esidimeni indefinitely.

ARBITRATOR JUSTICE MOSENEKE: Look at 127 point 6. Is that true? Is that a true recordal of the practice around the discharge of a patient?

DR MVUYISO TALATALA: In strict times, the paragraph says:

"The psychiatrist decision to discharge the mental health care users cannot be
2135 *interfered with."*

In strict terms, that is how things should be but that is not our usual ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: When you shut down a facility, what options do doctors have?

DR MVUYISO TALATALA: Actually when you say you are shutting down a facility,
2140 you are actually not giving the psychiatrists any option to keep the patients, unless they fight with you.

ARBITRATOR JUSTICE MOSENEKE: But look at the next sentence by Dr Selobano:

2145 *“The department will be acting against the patient’s right to be in the community and interfering with the clinician’s finding that the mental health care users are eligible for discharge.”*

He says:

“Once the clinician has made the decision it will be against the patient’s right to interfere.”

2150 In practice that must be correct, not so?

DR MVUYISO TALATALA: I cannot understand the sentence well.

ARBITRATOR JUSTICE MOSENEKE: The department will be acting against the patient’s rights, the right to be in the community. You see that?

DR MVUYISO TALATALA: Yes.

2155 **ARBITRATOR JUSTICE MOSENEKE:** Implies that the patient has a right to be in the community. In other words to be discharged and interfering with the attending clinician’s findings that the mental health care user are eligible for discharge.

DR MVUYISO TALATALA: Dr Selobano there is implying that the department has not said we have ended the contract with Life Esidimeni. The psychiatrists are
2160 discharging patients as they deem fit and if they then stopped that, they would be ...
[interjects]

ARBITRATOR JUSTICE MOSENEKE: Interfering with the rights of the patients.

DR MVUYISO TALATALA: And they will be actually that would have been wrong actually.

2165 **ARBITRATOR JUSTICE MOSENEKE:** That is what he tells the court, but we know in fact you know they are going to shut down the institution.

DR MVUYISO TALATALA: That is correct Justice.

ARBITRATOR JUSTICE MOSENEKE: And that the psychiatrists had no option in these circumstances.

2170 **DR MVUYISO TALATALA:** That is correct Justice.

ARBITRATOR JUSTICE MOSENEKE: That it was not a discharge as described in the affidavit.

DR MVUYISO TALATALA: That is correct Justice.

ARBITRATOR JUSTICE MOSENEKE: Very well. Anyway, let us go to 130. Like
2175 what the doctor says there again:

“I am confident in Takalani Home which is part financed by the government ...”

I did not know that:

“Has adequate facilities to give access to quality mental health care to all users in their care, including those which are currently accommodated at Life Esidimeni facilities.”

2180

That is what the judge was told. Was that true at the time when the deposition was made?

DR MVUYISO TALATALA: I do not know where he got this confidence from, because around that time, Takalani was, Employees were on strike, and I as I said even yesterday, I have been called at Takalani to assist here and there. That would not be a facility that is running smoothly, that should be having its own staff. I have been called once or twice to go and help pro bono when there was an emergency. So I would not characterise Takalani as a facility. We can live with it, but it is not a facility that you can stress it with additional patients.

2185

2190

ARBITRATOR JUSTICE MOSENEKE: In 123 point 2 Dr Selobano goes back and says:

“Psychiatrist’s decision to discharge the mental health care users cannot be interfered with, and the honourable court in granting the interdict would be infringing against the patient’s right to be reintegrated into community life and will be interfering with the attending clinician’s findings that the mental health care users are eligible for discharge.”

2195

What do you want to say about that?

DR MVUYISO TALATALA: That is why I am arguing that Dr Lebeta was not giving truthful information, because he is arguing, assuming that the psychiatrists without
2200 any interference from the department has decided to discharge patients, and the society of psychiatrists and others are actually stopping the psychiatrists from discharging the patients, who is otherwise deemed to be dischargeable by the treating team.

ARBITRATOR JUSTICE MOSENEKE: And I will hand you over to Counsel in a
2205 moment, but I would like you to look at paragraph 11 of the findings of the court.

DR MVUYISO TALATALA: Sorry Justice, where can I find that?

ARBITRATOR JUSTICE MOSENEKE: That will be on page, mine is not paginated beyond, go to the judgment.

DR MVUYISO TALATALA: Ja, I have got the judgment.

2210 **ARBITRATOR JUSTICE MOSENEKE:** And go to paragraph 11 of the judgment, right at the end of that volume.

DR MVUYISO TALATALA: Yes, I have got it.

ARBITRATOR JUSTICE MOSENEKE: Look at the middle of paragraph 11. The judge says:

2215 *“Your claim of possible harm is based on inference, on all inferences.”*

In the middle the learned judge says:

“The problem with this contention is that it asked for a finding on fact based on inferential reasoning, which finding will be in direct contract to the clear and ... [inaudible] factual averment by the deponent to the department’s answering affidavit.

2220 *To the contrary there is a clear and ... [inaudible] averment in the answering affidavit that the users have been discharged by clinicians and that because they have no family to go to they are being temporarily housed at Takalani. There is nothing before the court to can say or doubt this averment. In which case it would not be proper to disregard it and through the process of inferential reason make a finding or*
2225 *fact that is in direct contrast to this.”*

So the learned judge makes it clear that he relied on the state’s averment. Now the question to you is are those averments truthful?

DR MVUYISO TALATALA: Justice ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: I am not asking whether or not the judge is
2230 right. I want to know whether what the judge says, the department told him, is that truthful?

DR MVUYISO TALATALA: Justice, it is not truthful. The information the judge received, so that I am clear, was not truthful, because the definition of discharge was

incorrect and the argument that the clinicians were independently assessing the
2235 patients and deciding that they are well enough to be discharged is not truthful.

ARBITRATOR JUSTICE MOSENEKE: And what about the averment that they
were discharged because they have no family to go to?

DR MVUYISO TALATALA: That is the third part. The third part is that the state
was arguing that these patients were well enough to go home. The only reason they
2240 are at Takalani is because they needed to be housed. They have no family. That is
also untruthful and time has shown, has indicated that.

ARBITRATOR JUSTICE MOSENEKE: And the judge has also accepted the
averment of the department that they are being temporarily housed at Takalani.
What do you want to say about that?

2245 **DR MVUYISO TALATALA:** That assumes that these patients were well, and they
were going to be housed until maybe family is found, that is untrue as well.

ARBITRATOR JUSTICE MOSENEKE: And history, the evidence before me
suggest that half of them died.

DR MVUYISO TALATALA: Half of them died. Even after the Ombudsman Justice,
2250 those patients still need treatment. It is not like they are well and needed to go
home.

ARBITRATOR JUSTICE MOSENEKE: Counsel, you may proceed.

ADV ADILA HASSIM: Thank you Justice. In the paragraph that Justice Moseneke referred you to a few moments ago, paragraph 130 at page 798 of Dr Selobano's affidavit. Page 798.

DR MVUYISO TALATALA: I have got it.

ADV ADILA HASSIM: He says in paragraph 130:

"It is confident Takalani home which is part financed by the government has adequate facilities to give access to quality mental health care, to all users in their care, including those which are currently accommodated at the Life Esidimeni facilities."

Is it consistent with his earlier statements or the later statements, where ever you find it in the affidavit, that they are being discharged because they are ready to go home? If somebody is discharged and ready to go home, would they need this continuing mental health care? That is my first question.

DR MVUYISO TALATALA: Okay. I think Dr Lebeta was contradicting himself there, because at one point they are arguing that these patients are well enough to go home. They only are awaiting, they are only being housed really like homeless people, because their families are not there, but which then it means these are people who can be in a hostel. On the other side he is saying that the facility itself is

good enough and well equipped to deal with ill patients including those of Life Esidimeni. So he is contradicting himself.

ADV ADILA HASSIM: He is contradicting himself, and he says that the quality of mental health care would be suitable even for those who are currently
2275 accommodated at the Life Esidimeni facilities. What is the general condition of mental health care users that are accommodated at Life Esidimeni?

DR MVUYISO TALATALA: It is people with severe mental illnesses. Schizophrenia, bipolar disorder, there is also learning disabilities, epilepsy, head injuries, but it is people with severe treatment resistant or treatment ... [inaudible]
2280 illnesses.

ADV ADILA HASSIM: And we have, you know it was led in this case and there is evidence in the papers that were before the court in March 2016 that Takalani is a home for mentally disabled children. Would a home for mentally disabled children be able to offer the quality of care that would be required for mental health care
2285 users that were accommodated at Life Esidimeni?

DR MVUYISO TALATALA: Counsel, even if you had to consider just the age it is the only factor. Even if Takalani was well equipped and functioning optimally, the age mental health is a big problem. So it is difficult for a facility to be good for children and for adults in one space. So the age would have been a problem, but

2290 also the type of illness that the staff at Takalani would have been dealing with. The
people with, children with mental disabilities have got different challenges from
patients with skitsophrenia, bipolar, epilepsy, head injuries and all kinds of illnesses
that the other patients at Life Esidimeni had. In fact Life Esidimeni itself separated
the two types of patients. They had facilities for adults and they had facilities for
2295 children.

ADV ADILA HASSIM: Seperate buildings?

DR MVUYISO TALATALA: Even seperate facilities with Life Esidimeni, but it would
be seperate buildings.

ADV ADILA HASSIM: And is it normal in your experience to have 54 mental health
2300 care users in one facility, discharged at the same time? Would it be normal that at
one facility being Life Esidimeni here, that the attending psychiatrist would discharge
54 in one go?

DR MVUYISO TALATALA: That would be extra ordinary. That would be
something not, that does not happen. It is unusual. It is extra ordinary. It is
2305 something that I would say it would be difficult. It gets worse if we are dealing with
patients that have been there for a prolonged period of time. I am putting that
because there could be a possibility that you could house a few patients over a 24
hour period in an area because you are going to move them to a psychiatric facility.

They only arrive within 14 hours. That is not much, but if you have got 54 that you
2310 are going to move, but they have been there for a long time, the files are thick. To
review each file and make a summary of discharge will take time. So you probably
need additional staff to move 54 patients and you are bound to have errors.

ADV ADILA HASSIM: So but you are speaking now about how difficult it would be
to just the process of discharge.

2315 **DR MVUYISO TALATALA:** Yes.

ADV ADILA HASSIM: But would it be usual that so many people would suddenly
become well at the same time?

DR MVUYISO TALATALA: No. Sorry Counsel, no that is impossible. That is
impossible that they have been ill for so long and suddenly they are well over a short
2320 period of time, and in fact I would have questions for the doctors who have been
treating them, because that would mean these patients have been getting well, but
they have been keeping them in the facility whilst well, and then on a particular date
then they are told to discharge them and they discharge them they are all well. It
would be unusual that you would have 54 patients well in one day or in a short
2325 period of time.

ADV ADILA HASSIM: So if we then, thank you. If we go to ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Just before you step off that point. It just brings to mind the additional report which is filed at our request by the Ombud. Could they give you that, could they give you ELAH57.

2330 **DR MVUYISO TALATALA:** Thank you.

ARBITRATOR JUSTICE MOSENEKE: If you go to page 3 of the Ombud's report, you see when the project, the relocation project started, the 1711 patients at Life Esidimeni, 1441 of those were transferred to various facilities. If in fact they were discharged to go back to Counsel's point, that many 1441 would have then become
2335 well all at the same time, and allegeable for discharge. What do you want to say about that? Is that probable in your field that you could have that level of coincidence?

DR MVUYISO TALATALA: It would, it is not possible that out of 1711 patients suddenly you have got 1441 patients well, especially with the severity of illness that
2340 we are dealing with at Life Esidimeni. As I have said earlier on, it is either they were not well at the time they were discharged or the institution kept well patients for a prolonged period of time and accumulated them.

ARBITRATOR JUSTICE MOSENEKE: So the suggestion that in fact this was a discharge project, is quite difficult to follow, not so?

2345 **DR MVUYISO TALATALA:** Discharge meaning these patients are well, it is difficult to ..

ARBITRATOR JUSTICE MOSENEKE: Meaning ready to go home.

DR MVUYISO TALATALA: It is difficult ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: If they had relatives.

2350 **DR MVUYISO TALATALA:** It is difficult to comprehend.

ARBITRATOR JUSTICE MOSENEKE: Ja.

ADV ADILA HASSIM: So on to continue on the point of going home. I am not going anywhere Justice.

ARBITRATOR JUSTICE MOSENEKE: I am sorry. I thought I was interrupting you

2355 Counsel. You go ahead with your point. Ja.

ADV ADILA HASSIM: Sorry, I wanted to refer you to page 928 which is the transcript of the court hearing, and at line 10 the court is told in relation to the question of discharge:

“That is a clinical decision that is taken by clinicians or psychiatrists. It is not the

2360 *department that discharges people. It is the discharge concerned who ...”*

I supposed it is the doctor concerned.

“Who discharges a patient and says they are home ready.”

So we have already, we have already spoken and we have already put questions to you about discharge and home ready, but in the judgment of Justice Vali, that is the
2365 evidence that was before him. So I am going to ask you to please turn to page 994. You will see at page 994 the first paragraph, which is paragraph 9 of the judgment halfway through, it says:

“A discharge results from a decision of a clinician who concludes that the user is home ready.”

2370 So this was not just, this was the statements and the position and the proposition and the facts that were put to the court throughout this case, throughout the hearing in the court papers, and during the hearing and on the basis of that the judge found that, he was bound to find that they were home ready. I am going to go backwards again to the transcript and there are many references, but I would just like to refer to
2375 one example, and that is at page 952 of the transcript. In which it is, and let us look at line 18.

DR MVUYISO TALATALA: Sorry, page?

ADV ADILA HASSIM: 952 and then it is the bottom third ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: On the left there will be line numbering.

2380 You can see that.

ADV ADILA HASSIM: So there is a debate taking place, sorry Justice.

ARBITRATOR JUSTICE MOSENEKE: No, that is fine. I am just helping the witness to get to the part.

ADV ADILA HASSIM: There is a debate which is taking place, it starts earlier,
2385 between Counsel for the families and the court, and around line 18 they get to the point, and Counsel says:

*“If we look at her circumstances, her being female 36, one of the 54 that were to be transferred, she has severe intellectual disability, she has epilepsy and seribral palsy. Her functional level is classified as dependant. She has good family
2390 contact, but the recommended action by the multi disciplinary team and the mental health review board, is assisted in patient.”*

The court then says:

“And then she is now being sent to Takalani.”

And Counsel says:

2395 *“On the basis that she has no family, even though she is ready to be sent home.”*

Now would a patient with these mental health conditions, severe intellectual disabilities, epilepsy, seribral palsy, would that patient be considered for discharge in the sense that is now being put to the judge in this, in that case? Judge Vali.

DR MVUYISO TALATALA: Counsel, we even assisted the multi disciplinary team

2400 and the mental health review board said the patient must be assisted in patient.

ADV ADILA HASSIM: Yes, but that is not what Dr Selobano said to the court. So

this is a contrary view that has been put to the justice, right, and what we know is

that Dr Selobano put to the justice no, these people have been, they have been

given their release card. So if, just objectively from your view, a patient with these

2405 conditions, would they be eligible for discharge?

DR MVUYISO TALATALA: They would no, they would need lots of, you will have

to assess the family. It will need a family with quite a lot of resources to keep the

patient at home and I think that is why the review board would, and the multi

disciplinary team would have recommended that the patient continued staying as an

2410 assisted patient, in patient.

ADV ADILA HASSIM: So the mental health review board has recommended that

this patient be an assisted in patient?

DR MVUYISO TALATALA: That means the patient must continue being admitted

and if you look at the diagnosis, international disability, epilepsy, she has got seribral

2415 palsy and it says that the level of function is dependant.

ADV ADILA HASSIM: What does that mean?

DR MVUYISO TALATALA: That would mean that this patient at the very least needs support with daily activities of living. That is she needs support with feeding, dressing, bathing. That level of care, and that is why I will say that it will then need, 2420 there is a possibility that there could be a family that is well resourced that would afford to go extra mile. Even for that family it would be a difficult patient to take care of. But an average family would struggle with that patient.

ADV ADILA HASSIM: Although in this case, even though there was good family contact, she was being discharged to Takalani.

2425 **DR MVUYISO TALATALA:** Yes. So this patient, it means the issue was not the family as argued by the state. The state in the case had said these patients are well, they do not have families. So the families was not an issue in this patient, but it was the level of care that the patient required, that made the patient to be kept at ... [interjects]

2430 **ADV ADILA HASSIM:** So this would bear out another lie that the department has put before the court, but in fact they just do not have family.

DR MVUYISO TALATALA: Yes, one that they do not have family, but also if the review board has said the patient needs assisted in patient care, I cannot see how any clinician, remember the review board oversees the mental health psychiatrist.

2435 How could he decide that the patient needs in patient care.

ARBITRATOR JUSTICE MOSENEKE: You mean a proper review board?

DR MVUYISO TALATALA: Yes Justice, yes.

ARBITRATOR JUSTICE MOSENEKE: Functioning, understanding its duties and exercising oversight on decisions that you make?

2440 **DR MVUYISO TALATALA:** Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: About these charges or otherwise.

DR MVUYISO TALATALA: Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: Ja.

DR MVUYISO TALATALA: So the review board, if the review board makes,
2445 because the review board relies, should rely on the information that the team would have provided as well as what the patient and the family would have provided. So when we give them the information, the review board makes a decision. It will be incorrect to go against the decision of the review board.

ADV ADILA HASSIM: The mental health review board is there to provide
2450 independent oversight. So it is not to be, there to be ignored.

DR MVUYISO TALATALA: Yes, and yes Counsel, I would expect the review board to be biased towards discharging the patients home, you know so that we do not keep patients unnecessarily institutionalised. So if the review board itself says keep

this patient a little longer in hospital, I do not see why would anyone go against that.

2455 Because the review board is an oversight body, but to make sure that we do not abuse patients, their rights and keep them against their I mean decision or keep them in hospital unnecessarily.

ADV ADILA HASSIM: Does the fact that you chose not to appeal, you have provided your reasons. I just want to clarify with you that your decision not to appeal

2460 did not mean that you did not think that the department lied. If you can follow my negatives?

DR MVUYISO TALATALA: Yes, the reason that we did not appeal is not because we did not think that the department lied, but we had many other options of dealing with the problem.

2465 **ADV ADILA HASSIM:** And you chose to exercise other options?

DR MVUYISO TALATALA: That is correct Counsel.

ADV ADILA HASSIM: I have one last question for you and it is now on a different topic, and that is in relation to the 900 beds ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Before you move there. Do you have any

2470 disrespect for his lordship Mr Justice Vali?

DR MVUYISO TALATALA: No Justice.

ARBITRATOR JUSTICE MOSENEKE: Or for the decision that he made?

DR MVUYISO TALATALA: No Justice.

ARBITRATOR JUSTICE MOSENEKE: But you do not agree with the outcome?

2475 **DR MVUYISO TALATALA:** I do not agree with the outcome.

ARBITRATOR JUSTICE MOSENEKE: Yes, and you think the findings were premised on what?

DR MVUYISO TALATALA: On the information provided by the Department of Health, provincial Department of Health which were incorrect.

2480 **ARBITRATOR JUSTICE MOSENEKE:** Ja.

ADV ADILA HASSIM: Justice, I am aware that we are coming up to the lunch adjournment, but I only have one or two questions ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Yes, it is fine. I urge you to finish.

ADV ADILA HASSIM: Thank you.

2485 **ARBITRATOR JUSTICE MOSENEKE:** If it were cricket I would have said this is a one day game.

ADV ADILA HASSIM: I will be very quick Justice.

ARBITRATOR JUSTICE MOSENEKE: Or perhaps a test. We are going on for our second day.

2490 **ADV ADILA HASSIM:** Certainly this is not a one day match. In your, you were questioned in cross-examination about the 900 beds, the new beds and reference was made to Exhibit ELAH59. I do not know if you still have it in front of you. It is the document by the Gauteng Province about, and it is headed proposed development of new 900 bed facilities, and the document is dated November 2016.

2495 **DR MVUYISO TALATALA:** That is correct.

ADV ADILA HASSIM: At this point in time we have already now progressed and there has been a transfer of patients. In March, sorry. In June 2016 were there or in fact let me put it to you in the way the Justice put it to you. Justice said to you in his question when the marathon project took place there were no 900 beds in sight, and
2500 you said no. So there was no building of 900 beds yet at that point. It was not 900 beds to be built in order to accommodate the marathon project and in order to ease the marathon project and its implementation. Is that what you meant?

DR MVUYISO TALATALA: To my knowledge there was no discussion of 900 beds at the beginning of the project.

2505 **ADV ADILA HASSIM:** So there were no 900 beds in sight, but maybe it had been a twinkle in somebody's eye, but I have no further questions. I just wanted to confirm your answer.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

ADV ADILA HASSIM: Thank you Justice.

2510 **ARBITRATOR JUSTICE MOSENEKE:** To all Counsel, especially Counsel for the state have asked a number of questions after your examination and you are entitled to revisit any point that you choose to revisit, if you so mind it. I do not say you must, I say you may.

ADV TEBOGO HUTAMO: We have no further questions Justice.

2515 **ARBITRATOR JUSTICE MOSENEKE:** You have no further questions.

ADV TEBOGO HUTAMO: Thanks for the opportunity.

ARBITRATOR JUSTICE MOSENEKE: Okay Counsel.

ADV TEBOGO HUTAMO: Thank you.

2520 **ARBITRATOR JUSTICE MOSENEKE:** I am duty bound to give you that opportunity. If I have traversed a lot of areas that you might not have touched yourself. Any other Counsel who would like to traverse any point before we adjourn?

LEGAL AID LILLA CROUSE: We have no further questions, thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: No further questions.

ADV TEBOGO HUTAMO: No further questions Justice.

2525 **ADV. DIRK GROENEWALD:** No further questions.

ARBITRATOR JUSTICE MOSENEKE: No further questions. Well, we have developed a song sung convention in this hearing Doctor. We allow witnesses to say whatever, as they come to the end of their testimony. I am about to release you from your oath and the chair in which you sit. From my part I would like to thank you
2530 for coming. Hopefully it is an important inquiry that will get us somewhere. So it is the opportunity to say whatever you might choose to say.

DR MVUYISO TALATALA: Thanks Justice, thanks for the opportunity. I am also hopeful that this process whilst it has been difficult, especially for our society will result in better care for our patients and our communities. Thank you.

2535 **ARBITRATOR JUSTICE MOSENEKE:** Yes. There is something you know doctor, about understanding one's post in the public space and remaining on one's post and doing what the law requires you to do with the ethics of your post require and doing the humanly honest and good thing. It is something quite vital in delivering services for vulnerable people, because they have few opportunities to demand
2540 accountability, vulnerability implies diminished ability to demand that right be done to you if you are vulnerable. So you have intervened in a way that is remarkable. That is really what I am saying, and without any immediate benefit or gain and just extend that I think also to all your colleagues in the South African Society of Psychiatrists who were part of this and who blew the whistle and who refused to be cowed down
2545 and who did what had to be done, and that is my way of saying thank you to you. I

think on behalf of the family, they would have said it themselves that they are grateful to doctors like yourselves.

DR MVUYISO TALATALA: Thank you. Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: [Vernacular 01:34:26]

2550 **DR MVUYISO TALATALA:** Thank you.

ARBITRATOR JUSTICE MOSENEKE: You are released. We are going to adjourn and we will resume at two thirty.

SESSION 3

ARBITRATOR, JUSTICE MOSENEKE: Thank you, you may be seated. Advocate Ngutshana

ADV. PATRICK NGUTSHANA: Thank you Justice Moseneke. The next witness, according to the schedule, that is Chambas(?) is not going to be leading any
5 evidence, she is not going to be called anymore, we have a witness from CCRC [*Cullinan Care and Rehabilitation Centre*] who has been requested by Hardus Pierce(?), she is here with a... she was requested specifically with three patients' files and the three patients are here. I will take her through in chief, the legal representatives on... that is for the three families who would take the opportunity to
10 cross-examination him a little, most probably tomorrow morning, because they had not an opportunity to go through these voluminous patients' files. I will call on **DIKELEDI MANAKA** that is from CCRC.

ARBITRATOR, JUSTICE MOSENEKE: Very well. While MS MANAKA is coming through or she is here, we will be using the 15th and the 17th fully, counsel. The
15 witnesses are ready and will be here.

ADV. PATRICK NGUTSHANA: The witnesses are ready and they will be here, we have two witnesses that we will call, two of the family members.

ARBITRATOR, JUSTICE MOSENEKE: Yes, wonderful.

ADV. PATRICK NGUTSHANA: Thank you Your Worship.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Very good. MS MANAKA in what language do you want to testify?

DIKELEDI MANAKA: In English, Justice.

ARBITRATOR, JUSTICE MOSENEKE: In English.

DIKELEDI MANAKA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Very good. Would you put your full names

5 on record?

DIKELEDI MANAKA: I am Dikeledi Jenny Manaka.

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

10 **DIKELEDI MANAKA**: So help me God.

DIKELEDI JENNY MANAKA DULY SWORN STATES

ARBITRATOR, JUSTICE MOSENEKE: Thank you. Advocate Ngutshana.

ADV. PATRICK NGUTSHANA: Thank you Justice Moseneke. Ms Manaka in... where are currently employed?

15 **DIKELEDI MANAKA**: I am currently employed in the Department Health, Gauteng under Cullinan Care and Rehabilitation Centre.

ADV. PATRICK NGUTSHANA: And how long have you been employed by the Department of Health?

DIKELEDI MANAKA: I have been employed by the Department of Health since
20 January 2004.

ADV. PATRICK NGUTSHANA: And in January 2004, what were your... in what capacity were you employed?

DIKELEDI MANAKA: I was appointment as a professional nurse and I proceeded to be an operational manager and I also proceeded to be a nursing service manager
5 area, currently I am acting as the deputy manager.

ADV. PATRICK NGUTSHANA: Currently. In 2004 you were a nurse and currently you are a...?

DIKELEDI MANAKA: I am appointed as nursing service manager area, which is assistant director and I am acting as the deputy manager.

10 **ADV. PATRICK NGUTSHANA:** And where are you based currently?

DIKELEDI MANAKA: I am based at Cullinan Care and Rehabilitation Centre.

ADV. PATRICK NGUTSHANA: And since when... [intervention]

ARBITRATOR, JUSTICE MOSENEKE: As a deputy manager of the whole facility, or of a particular division in the facility?

15 **DIKELEDI MANAKA:** In the nursing department.

ARBITRATOR, JUSTICE MOSENEKE: That would mean that you are the second most senior person in the nursing department?

DIKELEDI MANAKA: Yes Justice.

ARBITRATOR, JUSTICE MOSENEKE: At CRC[sic] thank you.

ADV. PATRICK NGUTSHANA: And how long have you been appointed in that capacity, you currently occupy?

DIKELEDI MANAKA: I was appointed as the nursing service manager area, starting from 1st April 2017, subsequently I was also appointed as the deputy manager in
5 nursing on the very same date.

ADV. PATRICK NGUTSHANA: And your... that is in 2015, I am sure you now are aware that there were certain patients who were moved from Life Esidimeni to your facility. Were you employed or were you still based at Cullinan?

DIKELEDI MANAKA: Yes counsel I was still in Cullinan, but at that time I was
10 appointed or seconded as a quality person.

ADV. PATRICK NGUTSHANA: A quality...?

DIKELEDI MANAKA: Person. I was basically the quality assurance officer.

ADV. PATRICK NGUTSHANA: And what does the quality assurance officer do?

DIKELEDI MANAKA: The quality assurance officer assures that quality care is
15 being provided to all the mental care users in the institution and also looking at managing all the complaints that are coming through into the institution.

ADV. PATRICK NGUTSHANA: And what specifically will this quality assurance entail in relation to treatment of patients?

DIKELEDI MANAKA: In terms of the treatment counsel, it entails that correct or quality services are being rendered to all the patients in terms of... we look at their hygiene, we look at their safety, we look at their treatment and rehabilitation.

ADV. PATRICK NGUTSHANA: And will that include, as well as the provision of
5 meals, where the meals are prepared and so on?

DIKELEDI MANAKA: Yes counsel, though it is the function of the food service unit.

ADV. PATRICK NGUTSHANA: But you said the quality of standards.

DIKELEDI MANAKA: Yes, if something is not going well the quality assurance is the one that calls every department to right by the patients.

10 **ADV. PATRICK NGUTSHANA:** Okay. And in relation to these patients which were moved from Life Esidimeni in 2015 / 2016 do you still recall the movements of these patients into your facility?

DIKELEDI MANAKA: Yes counsel, starting with the 2015 ones that came March, though I am not sure of the date, but they came in March, there were 15.

15 **ADV. PATRICK NGUTSHANA:** There were 50.

DIKELEDI MANAKA: 15.

ADV. PATRICK NGUTSHANA: 15.

DIKELEDI MANAKA: Yes.

ADV. PATRICK NGUTSHANA: In March, in 2015

20 **DIKELEDI MANAKA:** 2015.

ADV. PATRICK NGUTSHANA: Okay and the next group, do you still recall?

DIKELEDI MANAKA: The next group came, not came, I am sorry they were, they were fetched on 10 May 2016 from Randfontein.

ADV. PATRICK NGUTSHANA: And what was the procedure for attempting these
5 patients into your facility as you knew it then... [intervention]

ARBITRATOR, JUSTICE MOSENEKE: Sorry, let's get some detail about those who were fetched on 10th May, how many were they?

DIKELEDI MANAKA: They were 26.

ARBITRATOR, JUSTICE MOSENEKE: 26 patients.

10 **DIKELEDI MANAKA**: Yes justice.

ARBITRATOR, JUSTICE MOSENEKE: Were they male or female?

DIKELEDI MANAKA: There were males and females.

ARBITRATOR, JUSTICE MOSENEKE: There were males and females.

DIKELEDI MANAKA: Yes.

15 **ARBITRATOR, JUSTICE MOSENEKE**: Who fetched them from Randfontein?

DIKELEDI MANAKA: I was one of the group that went to fetch them. I was not alone judge, I was... it was it myself, definitely the social worker, professional nurses, occupational therapist and occupational therapist technicians.

ARBITRATOR, JUSTICE MOSENEKE: Yes. Counsel there are still a lot to be
20 asked around the point.

ADV. PATRICK NGUTSHANA: Yes that is from... [intervention]

ARBITRATOR, JUSTICE MOSENEKE: Who long, where, when, why.

ADV. PATRICK NGUTSHANA: Yes. You went with Daphne and other professional staff to fetch these patients.

5 **DIKELEDI MANAKA:** Yes counsel.

ADV. PATRICK NGUTSHANA: And who was with you, other than Daphne? Did you have doctors, clinicians?

DIKELEDI MANAKA: No, we didn't have any clinicians we didn't have doctor, it was the nurses and myself that were representing the nursing fraternity and the social
10 worker and the OT representing their allies(?)

ADV. PATRICK NGUTSHANA: And did you know the patients that you were going to fetch from Randfontein?

DIKELEDI MANAKA: We didn't know the patients and in actual essence, we were supposed to go to Waverley, but because they said Life and we didn't know which
15 Life and Daphne knew Randfontein and then went for Randfontein, but coincidentally we find them waiting for us.

ADV. PATRICK NGUTSHANA: And how many were these patients you were going to fetch on that day?

DIKELEDI MANAKA: We were directed to fetch 10 but we were forced to take 26.

20 **ADV. PATRICK NGUTSHANA:** Who directed you to go an fetch these patients?

DIKELEDI MANAKA: I was directed by my nursing manager, Ms Masego who said she was directed by the CEO Ms Nyatlo[?]

ADV. PATRICK NGUTSHANA: And why did you have to go and fetch these patients?

5 **DIKELEDI MANAKA**: Whilst I was based in the quality assurance office, I was also nominated and co-appointed as the institutional patient assessor for admission, then I went there on those basis.

ADV. PATRICK NGUTSHANA: Yes, I want to know why were you directed to admit or to go and fetch these 10 patients from Life Esidimeni, what was the reason, why
10 were these patients admitted into your facility?

DIKELEDI MANAKA: The reason that we were given, was that Life Esidimeni's contract has been terminated and all the patients from Life Esidimeni needs to be admitted in some facilities including ours.

ADV. PATRICK NGUTSHANA: Yes, and who informed of this?

15 **DIKELEDI MANAKA**: We were informed by the CEO Ms Nyatlo.

ADV. PATRICK NGUTSHANA: Ms Nyatlo(?)

DIKELEDI MANAKA: Yes.

ADV. PATRICK NGUTSHANA: Okay before I move on, where is Ms Nyatlo currently?

DIKELEDI MANAKA: The first time I heard about Ms Nyatlo was when she was suspended on the 5th July 2016.

ADV. PATRICK NGUTSHANA: Is she still on suspension?

DIKELEDI MANAKA: I am sure justice, I am not sure counsellor.

5 **ADV. PATRICK NGUTSHANA:** Has she been dismissed or has she resigned?

DIKELEDI MANAKA: That I don't know counsellor.

ADV. PATRICK NGUTSHANA: Okay. The lets go back to these 10 patients. Then you go there you say that to fetch 10 and you say you were forced to take 26 of these patients, and how did identify these patients when you arrived at Life

10 Esidimeni?

DIKELEDI MANAKA: The process was like this: when we get to Life Esidimeni, we found then already being put aside that... everything group were prepared to go wherever they are supposed to. When we get there, we were told a Cullinan bus is here, all those patients that are going to Cullinan let them come. We found them

15 already prepared. So my reason to go there as an assessor, didn't work.

ADV. PATRICK NGUTSHANA: So as I understand it, you went as an assessor to assess the patients whether they fit the criteria of your facility.

DIKELEDI MANAKA: Yes, notion was that counsellor.

ADV. PATRICK NGUTSHANA: That was your role specifically.

20 **DIKELEDI MANAKA:** Yes, counsellor.

ADV. PATRICK NGUTSHANA: And you say now you were not able to do that.

DIKELEDI MANAKA: Yes, counsel.

ADV. PATRICK NGUTSHANA: And what were you looking for as an assessor in these patients? What were going to identify?

5 **DIKELEDI MANAKA:** I was going to identify... looking at the dialogises of being severely intellectually disabled or profoundly intellectually disabled. It could be a person who is, who cannot even understand, who doesn't even have an insight of what is happening to him or her.

ADV. PATRICK NGUTSHANA: So would that which you would look for from each
10 patient, be what our criteria for admission would allow you to take into account?

DIKELEDI MANAKA: Yes counsel my understanding of going there, as it was explained to me, that I going there on the capacity of being an assessor. I have been doing that with all the patients that came after my appointment under the wing of the psychiatrist, or the experience of an MO who has been working for a long time
15 in the psychiatry, Dr. Padiachy so we would assess and give our inputs. So going there was, I thought it was the same thing but it didn't.

ADV. PATRICK NGUTSHANA: It didn't occur you just took everyone.

DIKELEDI MANAKA: That was prepared for us.

ADV. PATRICK NGUTSHANA: Exactly. So with... in relation to that, I want to find out that is on the admission criteria that is for your facility, what type of patients did you admit in your facility at the time?

DIKELEDI MANAKA: Before like... [intervention]

5 **ADV. PATRICK NGUTSHANA:** What type of patients would you allow into your facility?

DIKELEDI MANAKA: Well the patient should be starting with age, 3 years up to 21 years of age and the person should meet the criteria of being severely or profoundly intellectually disabled.

10 **ADV. PATRICK NGUTSHANA:** And any other criteria?

ARBITRATOR, JUSTICE MOSENEKE: Sorry, this age.

DIKELEDI MANAKA: Three years to twenty one.

ARBITRATOR, JUSTICE MOSENEKE: Between three years to twenty one years.

DIKELEDI MANAKA: Yes Justice.

15 **ARBITRATOR, JUSTICE MOSENEKE:** And that is what CRC[sic] looks after?

DIKELEDI MANAKA: Yes justice.

ARBITRATOR, JUSTICE MOSENEKE: Thank you.

ADV. PATRICK NGUTSHANA: And you had said that they should be severe and profound intellectually impairment?

20 **DIKELEDI MANAKA:** Yes counsel.

ADV. PATRICK NGUTSHANA: And this is what you were prevented from satisfying yourself whether these patients, these particular type of patients they qualify for admission.

DIKELEDI MANAKA: That was never done.

5 **ARBITRATOR, JUSTICE MOSENEKE:** I just want to understand this well. As you went there all the patients you had at CCRC fell within this category, is it?

DIKELEDI MANAKA: Not all... [intervention]

ARBITRATOR, JUSTICE MOSENEKE: It is all those that you had to bring to your institution.

10 **DIKELEDI MANAKA:** Not all of them justice, because when I started at Cullinan, we had severely and profoundly intellectually disabled mental health care users, we had mildly intellectually disabled patients, we also had moderately intellectually disabled patients, but when the Mental Health Care Act, 17 of 2002 came into effect, some patients were discharged, some were transferred other facilities, those that did not fit
15 our criteria and we were left with others that didn't have parents, didn't have anywhere to go because they didn't fit other NGOs criteria, so they said.

ARBITRATOR, JUSTICE MOSENEKE: Bur your core focus would have been what you described earlier, and how many of your patients would have fitted that criteria of 3 to 21 years with severe and profound intellectual impairment.

20 **DIKELEDI MANAKA:** None of them justice.

ARBITRATOR, JUSTICE MOSENEKE: None of your patients at CCRC fitted this description?

DIKELEDI MANAKA: From those that we got from Life Esidimeni, those that were there have been long there, every since somewhere three years and at that time
5 they were about 76 years old.

ARBITRATOR, JUSTICE MOSENEKE: I see. So if I had to ask for a profile of your patients before you went to fetch this, you would have said what? 50% of them fitted this criteria or 60 or 70 or 80 or...? What is your estimate?

DIKELEDI MANAKA: I would say 80% of them fitted the criteria.

10 **ARBITRATOR, JUSTICE MOSENEKE:** 80% fitted the criteria.

DIKELEDI MANAKA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Thank you.

ADV. PATRICK NGUTSHANA: Yes, then you say 80% fitted the criteria and your criteria was that the... you were limited to the age group, that is 3 to 21 years. Since
15 when were you required to admit patients from 3 to 21 years? Was it subsequent to the Act you referred to or...

DIKELEDI MANAKA: Yes.

ADV. PATRICK NGUTSHANA: ... these requirements were in existence for some time before the Act came into operation?

DIKELEDI MANAKA: It's wasn't, the criteria was developed after the Mental Health Care Act.

ADV. PATRICK NGUTSHANA: Yes, thank you. And from this group of 26 you were forced to... that is take from Life Esidimeni, who handed them over to you?

5 **DIKELEDI MANAKA**: The leader was Ms Salomie Masilele(?)

ADV. PATRICK NGUTSHANA: Yes.

DIKELEDI MANAKA: With Freda, I can't remember the surname and the staff from Life Esidimeni.

ADV. PATRICK NGUTSHANA: And this Salomie Masilele is... is he or she a
10 employee of the department of Life Esidimeni?

DIKELEDI MANAKA: She is an employee of the Department of Health and the Mental Health Directorate.

ADV. PATRICK NGUTSHANA: In what capacity was she employed then?

DIKELEDI MANAKA: I am not sure of her title, I just know that she's one of the
15 mental health directorate.

ADV. PATRICK NGUTSHANA: Was she a medical doctor?

DIKELEDI MANAKA: No, according what I heard her talking to Ms Nyatlo, she said she is a nurse.

ADV. PATRICK NGUTSHANA: Were there any medical doctor employed by the
20 department at the handover of these patients?

DIKELEDI MANAKA: We were not introduced to anybody.

ADV. PATRICK NGUTSHANA: So when they were handed over to you, what were they handed with, did you get their medication, their identity documents, their patient files, clinical notes which includes clinical notes or what?

5 **DIKELEDI MANAKA**: What we got was a small file comprised of a colour filled[?] photo of the patient and an ID number if they person has had, and in the file you will find also a copy of, Form 4, copies of Form 5 and in some you will find a summary of the parents or family contacts and also the Form 11.

ADV. PATRICK NGUTSHANA: Yes, and what is the Form 4 and Form 5 forms?

10 **DIKELEDI MANAKA**: Form 4 is an application form for admission and Form 5 is an assessment form that needs to be two, done by two separate, a doctor or a nurse or anybody who is allowed to, who can perform a physical examination and then... But those two forms needs to tally.

ADV. PATRICK NGUTSHANA: Needs to...?

15 **DIKELEDI MANAKA**: They need to tally, they need agree to each other...

ADV. PATRICK NGUTSHANA: Oh I see.

DIKELEDI MANAKA: ... in terms of assessment, whether the patient is being admitted or is not admitted, but the two forms need to talk to one language.

ADV. PATRICK NGUTSHANA: Okay. That is whether the patient is admitted,
20 admitted where, at Life Esidimeni or at CCRC?

DIKELEDI MANAKA: At any mental health care facility.

ADV. PATRICK NGUTSHANA: Yes.

DIKELEDI MANAKA: Yes, specifically that is being governed by the Mental Health Care Act.

5 **ADV. PATRICK NGUTSHANA:** In relation to these two forms, which one was a discharge, if these patients were discharged?

DIKELEDI MANAKA: A discharge is a Form 3.

ADV. PATRICK NGUTSHANA: Form 3.

DIKELEDI MANAKA: But a transfer is Form 11 from the Mental Health Care Act.

10 **ADV. PATRICK NGUTSHANA:** So what occurred to these patients were they transferred or discharged?

DIKELEDI MANAKA: They were transferred.

ADV. PATRICK NGUTSHANA: They were transferred.

DIKELEDI MANAKA: Yes.

15 **ADV. PATRICK NGUTSHANA:** So there was no Form 3 there.

DIKELEDI MANAKA: No it was Form 11.

ADV. PATRICK NGUTSHANA: Form 11.

DIKELEDI MANAKA: Yes.

ADV. PATRICK NGUTSHANA: Okay. And you said that you took both males and females and you did not ensure that they fell within the age limitation for your facility and were you told why did you have breach your admission criteria?

DIKELEDI MANAKA: The reason behind was that Life Esidimeni contract had been
5 determinate so everybody needs to go out. But then for those that were coming to Cullinan it was said they were assessed and they see them fit in Cullinan.

ADV. PATRICK NGUTSHANA: Yes. Then the next group of patients, when you...
[intervention]

ARBITRATOR, JUSTICE MOSENEKE: Before you got to the next group, I would
10 like to know a few things, you used the word you were 'forced' to take more than 10 patients but you had originally been required to fetch. How were you forced, by which means?

DIKELEDI MANAKA: When we got into Randfontein, we went to the reception and introduced ourselves that we coming from Cullinan and then the person from the
15 reception took us to a place where we got a Ms Salomie and her team and then first question they posed was that... [intervention]

ARBITRATOR, JUSTICE MOSENEKE: And the team was from the department, the Gauteng Department of Health, yes.

DIKELEDI MANAKA: Yes. And then we were asked what mode of transport did we
20 come with and we said we came with a 27 seater bus, but then we were directed to

get only 10 patients for us to be able to settle with them and Ms Salomie said ‘no, you cannot take 10 patients, you are supposed to take as many as the bus can carry’. Then we said ‘no, our CEO said 10 patients is enough for us’ and in the midst of that, Ms Nyatlo was called we said we are here but, we are supposed to get 10
5 but we are, it is said that we need to take more than 10, and she said no...
[intervention]

ARBITRATOR, JUSTICE MOSENEKE: Do you mean one of you called your CEO...

[intervention]

DIKELEDI MANAKA: Yes, and the CEO said ‘no bring along 10’ and Ms Salomie
10 was given the phone to talk Ms Nyatlo and that is when now she said: ‘why do you want to take 10’ and then Ms Nyatlo said ‘no, I want us to get 10 so that we not overload my staff with a lot of patients and also those patients we don’t know then, we need to learn them bit by bit up until we get used to them’, because we having an experience in 2015 we got 15 and then they settled very, very well we never
15 encountered anything and we also observed and saw what we to correct on and give treatment thereof. But then here they are, arguing about us not taking 10 but 27 and Dr Malamela was also phoned at that time and Dr Malamela...

ARBITRATOR, JUSTICE MOSENEKE: Dr. Malamela phoned who?

DIKELEDI MANAKA: Dr Malamela was also called by Ms Salomie to say, here are
20 Cullinan people refusing to take... [intervention]

ARBITRATOR, JUSTICE MOSENEKE: So Ms Masilele phoned Dr Malamela...

DIKELEDI MANAKA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: ... asking her what?

DIKELEDI MANAKA: She was telling her that the Cullinan people and their CEO

5 refuse to take as much as the bus can take and then Dr Malamela agreed that we
take 27 patients, irrespective of Ms Nyatlo refuse or not.

ARBITRATOR, JUSTICE MOSENEKE: Sjoe, and that, what you mean by 'we were
forced to take 27 people'. At the beginning of your evidence I understand that thank
you, you talked about the first group of patients who came to you, um came in

10 March 2015, were they men only or women and men?

DIKELEDI MANAKA: I don't remember how they, there were 15 I know, but I can't
remember how many were men who many were women if they were...

ARBITRATOR, JUSTICE MOSENEKE: And where did the 15 mental health care
users come from?

15 **DIKELEDI MANAKA:** I just know they were coming from Life Esidimeni.

ARBITRATOR, JUSTICE MOSENEKE: Coming from Life Esidimeni.

DIKELEDI MANAKA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: So you were not involved in going to fetch
them, selecting them and settle them in, no?

20 **DIKELEDI MANAKA:** No justice.

ARBITRATOR, JUSTICE MOSENEKE: No you don't, okay that is fine. You may proceed counsel.

ADV. PATRICK NGUTSHANA: Thank you Justice Moseneke. The... I take it that there was another group of patients who came to your facility, do you still recall?

5 **DIKELEDI MANAKA:** After the ones... [intervention]

ADV. PATRICK NGUTSHANA: The 26.

DIKELEDI MANAKA: Yes, on the 12th we went to fetch another group of patients from Waverley.

10 **ADV. PATRICK NGUTSHANA:** You went to fetch from Waverley: How many were there?

ARBITRATOR, JUSTICE MOSENEKE: It was 12 of which month?

DIKELEDI MANAKA: The 12th May 2016

ARBITRATOR, JUSTICE MOSENEKE: Of May 2016.

15 **ADV. PATRICK NGUTSHANA:** JUSTICE MOSENEKE perhaps, let me approach it differently, let me take you... there is a document in front of you referred to as ELLA 9, just to help you through it. Do you recognise that document?

DIKELEDI MANAKA: Yes, I do counsellor.

ADV. PATRICK NGUTSHANA: What is this or what is that document?

20 **DIKELEDI MANAKA:** This document is a report that was prepared for Dr... the MEC, Dr Ramokgopa.

ADV. PATRICK NGUTSHANA: It was prepared for the MEC. Dr Ramokgopa...

DIKELEDI MANAKA: Yes.

ADV. PATRICK NGUTSHANA: ...by your institution?

DIKELEDI MANAKA: Yes.

5 **ADV. PATRICK NGUTSHANA:** Were you involved in the preparation of this document?

DIKELEDI MANAKA: Yes I was counsellor.

ADV. PATRICK NGUTSHANA: You contributed as well.

DIKELEDI MANAKA: Yes

10 **ADV. PATRICK NGUTSHANA:** Okay. So this is the document which you are familiar with: let me take you to... we have dealt with the admission criteria, let me take to page 4 of that document. Page 4 is at the bottom. That is on the page before there is the... the paragraphs under Life Esidimeni Project Discharge and Admission Processes, do you see that?

15 **DIKELEDI MANAKA:** Yes, counsel.

ADV. PATRICK NGUTSHANA: And under that paragraph there, there are bullet points there and they are introduced as follows:-

'The following were taken along with the mental health care users on discharge'.

20 That is the report from the medical doctor:

Discharged Summary from the Psychiatric Nurses:-

*a copy of medication / prescription chart, copy of MHCA form,
that is the discharge form. One month's supply of prescribed
medication:*

5 Is that correct?

DIKELEDI MANAKA: Yes, counsel.

ADV. PATRICK NGUTSHANA: And it is correct that you took along these charge forms that these patients were actually discharged.

DIKELEDI MANAKA: Yes counsel copies thereof.

10 **ADV. PATRICK NGUTSHANA**: Then it goes:-

*'The following is a list of admitted patients from Life
Esidimeni according to dates of admission. Mental
health care users received from Life Esidimeni had
no medical records and were not properly identified'.*

15 Is that a correct reflection of the facts?

DIKELEDI MANAKA: Yes, counsel.

ADV. PATRICK NGUTSHANA: Then there is the number of patients for the date of 10 May 2016. I am not going to go through the lists with you. Then the next page on 5, an entry under 12 May, do you use that?

20 **DIKELEDI MANAKA**: Yes, counsel.

ADV. PATRICK NGUTSHANA: That is where reference to Ms Salomie Masilele and Freda Simelo from the Mental Health Directorate at Central Offices is referred. These are the people you are referring to.

DIKELEDI MANAKA: Yes counsel.

5 **ADV. PATRICK NGUTSHANA:** And these are the people you interacted with when you arrived at Randfontein?

DIKELEDI MANAKA: Yes counsel.

ADV. PATRICK NGUTSHANA: Ja. And that's where you refer to the list of 27 patients which you were... no, no, no the 27 seater bus and so on.

10 **DIKELEDI MANAKA:** Yes, counsel.

ADV. PATRICK NGUTSHANA: Okay. And then on page 6 reference is made to the fact that 26 mental health care users were loaded in the bus at the insistence of Ms Salomie. Is that still correct, as a fact?

DIKELEDI MANAKA: Yes counsel.

15 **ADV. PATRICK NGUTSHANA:** Justice Moseneke I think, I am being alerted to something there.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

MALE SPEAKER: Thank you Justice. I just wanted to give an indication that this report, ELLA 9 has been dealt with, with the previous witness, the contents of which

are already on record. So I am not sure if like we are going to through the whole report once again.

ARBITRATOR, JUSTICE MOSENEKE: Sure. It's a legitimate point... counsel?

ADV. PATRICK NGUTSHANA: No, we will not go through the entire report Justice

5 Moseneke

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ADV. PATRICK NGUTSHANA: Yes and then you deal with the... that is the reasons why the patients were taken in and certain patients were discharged in the remainder of the... that is the paragraphs there on page 6.

10 **DIKELEDI MANAKA**: Yes counsel.

ADV. PATRICK NGUTSHANA: Good. Then on 12 May, that was the next intake of patients, how many were there?

DIKELEDI MANAKA: There were 24.

ADV. PATRICK NGUTSHANA: 24 patients. And where does it appear on... oh I

15 see 25 on the page.

DIKELEDI MANAKA: Those that came from Waverley on the 12 May, the total is on page 7.

ADV. PATRICK NGUTSHANA: Oh I see, ja. Then the next intake is on 17 May on page 8.

ARBITRATOR, JUSTICE MOSENEKE: Could you just tell me where in CRC[sic] were these patients housed? You get in new patients coming from another institution to yours, where did you find the space and place to accommodate them?

DIKELEDI MANAKA: Okay before the intake of patients from Life Esidimeni there were two NGOs that were housed into Cullinan Care and Rehabilitation Centre. The first one was Sibadinga and the second one was Anchor. And then when we are about to go and fetch the patients from Life Esidimeni, those that were in Cullinan Care and Rehabilitation Centre were discharged to the NGOs.

ARBITRATOR, JUSTICE MOSENEKE: And the original question was where did you accommodate the new patients that come from Life Esidimeni, or did you give them over to Sibadinga an Anchor, or did you keep them?

DIKELEDI MANAKA: We kept them at Cullinan Care and Rehabilitation Centre

ARBITRATOR, JUSTICE MOSENEKE: I see. So to create space you discharged patients to make room for those who came from Life Esidimeni?

DIKELEDI MANAKA: Yes Justice.

ARBITRATOR, JUSTICE MOSENEKE: Why did your institution do that?

DIKELEDI MANAKA: It was by the order of the CEO,

ARBITRATOR, JUSTICE MOSENEKE: You may proceed.

ADV. PATRICK NGUTSHANA: Thank you. You say it was at the order by the CEO, that would be Ms Nyatlo, is that correct?

DIKELEDI MANAKA: Yes counsel.

ADV. PATRICK NGUTSHANA: Yes. And from the document on page 13, I see that there were 38 patients who were admitted at the facility and these were brought to you by the Life Esidimeni personnel. Why did you take 38, and can you explain the
5 circumstances under which these patients were brought to your facility?

ARBITRATOR, JUSTICE MOSENEKE: You refer to page 13?

ADV. PATRICK NGUTSHANA: 13 yes. The total, 38: 29 males, 9 females: Can you explain the circumstances under which you received these patients?

DIKELEDI MANAKA: Yes counsel. We were supposed to have 29 patients
10 according the agreement from Dr Mamelela and the CEO and then the first batch came and then the buses went back to get others. Whilst the others were on their way, on that day I wasn't on duty but Dr Mamelela called me... [intervention]

ADV. PATRICK NGUTSHANA: You were not on duty on that day?

DIKELEDI MANAKA: No, I wasn't on duty.

15 **ADV. PATRICK NGUTSHANA:** Yes.

DIKELEDI MANAKA: And then she called me round about 4 o'clock to say 'oh there are patients that coming but they are extra, can you please talk to the CEO, I've been trying to contact her but I not getting through but we sending them and they are already on their way, they can get in at any given moment from now'.

ADV. PATRICK NGUTSHANA: So Dr Malamela(?) is telling you that we are sending them, that is the patients.

DIKELEDI MANAKA: Yes, but by then they were already on their way.

ADV. PATRICK NGUTSHANA: Okay, proceed.

5 **DIKELEDI MANAKA:** And then I went to work because I am residing within the premises of CCRC and then I went to work and then I found the buses there, already they are there, it's means they were, they were not far from reaching our institution when I was called and then I told the CEO that Dr Malamela said she has been trying to call you Ma'am but she is not getting through but the message is that the
10 patients are extra by 9 so please make provision for them for the night, they will come tomorrow to get them, but they never did. And then eventually she said okay...

[intervention]

ADV. PATRICK NGUTSHANA: Who will come tomorrow?

DIKELEDI MANAKA: Dr Malamela and her crew will come the next day to get the 9
15 patients that didn't have space to be accommodated.

ADV. PATRICK NGUTSHANA: That is to sort out the space arrangements for the extra 9.

DIKELEDI MANAKA: Yes.

ADV. PATRICK NGUTSHANA: The following day and they never came.

DIKELEDI MANAKA: But later she said ‘please check with Hannah Jacobus[?] and the lady from Sabadinga if there is space for them to can house the extra 9 because I know you don’t have space’. And then CEO arranged with the two NGOs and then we took them.

5 **ADV. PATRICK NGUTSHANA:** But where did you place them whilst you were still look for a space? You didn't have space as a fact, as you referred to but where did you place them?

DIKELEDI MANAKA: In the meantime it was... there was an exchange of patients: we were putting others in the wards and then others we being discharged to the
10 NGOs at the same time.

ADV. PATRICK NGUTSHANA: Was there a... that is some patients... were there some patients which were left lying on the floor by any chance during these moves?

DIKELEDI MANAKA: When we do the rounds, I didn't see anybody on the floor.

ADV. PATRICK NGUTSHANA: That is out of these extra 9 patients which you
15 never had space for.

DIKELEDI MANAKA: Yes, because we managed to discharge again, 9 to the NGOs to create space for the ones that came in.

ADV. PATRICK NGUTSHANA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Who discharged the 9, or what was access
20 in number, who did that discharging function, from CCRC to Sabadinga or Anchor?

DIKELEDI MANAKA: I wouldn't know because when they were discharged I wasn't in the wards, I don't know who that, but mostly the discharges are being handled by the CEO.

ARBITRATOR, JUSTICE MOSENEKE: Could a nurse discharge a patient? May a
5 nurse discharge a patient?

DIKELEDI MANAKA: No audible response.

ARBITRATOR, JUSTICE MOSENEKE: Let's say respectful towards the witness please, just continue to do so. [Justice Moseneke *addresses the general public at the hearing*]. What is your answer Ma'am?

10 **DIKELEDI MANAKA**: The patients were being assessed by the nurses and then the discharge were determined by how the patients are by the nurses.

ARBITRATOR, JUSTICE MOSENEKE: They were assessed by nurses and discharged by nurses, is that correct?

DIKELEDI MANAKA: They are being discharged with the order of Ms Nyatlo. If
15 they assess to say this... [intervention]

ARBITRATOR, JUSTICE MOSENEKE: Let's try again Ma'am. Patients who arrived, or were due to be discharged were assessed by nurses, is that right?

DIKELEDI MANAKA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Under your, authority?

20 **DIKELEDI MANAKA**: No, no justice.

ARBITRATOR, JUSTICE MOSENEKE: I thought you were the chief... [intervention]

DIKELEDI MANAKA: Not under my authority...

ARBITRATOR, JUSTICE MOSENEKE: Not under your authority.

5 **DIKELEDI MANAKA**: No.

ARBITRATOR, JUSTICE MOSENEKE: Okay let's leave the authority issue: and they were discharged from your facility by nurses.

DIKELEDI MANAKA: Justice if I recommend... [intervention]

ARBITRATOR, JUSTICE MOSENEKE: Ma'am [vernacular]

10 **DIKELEDI MANAKA**: Okay.

ARBITRATOR, JUSTICE MOSENEKE: [vernacular]

DIKELEDI MANAKA: [vernacular]

ARBITRATOR, JUSTICE MOSENEKE: [vernacular]

DIKELEDI MANAKA: Yes.

15 **ARBITRATOR, JUSTICE MOSENEKE**: [vernacular]. You know how important this part is [vernacular]

DIKELEDI MANAKA: Yes [vernacular]. Justice...

ARBITRATOR, JUSTICE MOSENEKE: [vernacular]

ADV. PATRICK NGUTSHANA: Just hang on here, just hang on a little bit.

20 **ARBITRATOR, JUSTICE MOSENEKE**: [vernacular]

DIKELEDI MANAKA: [vernacular]. There are two things justice.

ARBITRATOR, JUSTICE MOSENEKE: There are two things okay, you go...

DIKELEDI MANAKA: Me as a nurse, and part of the MTD, when we recommend for discharge, what is happening is, I recommend for discharge but the Form 3 for
5 authorisation of discharge, is being done by CEO. Me, as a nurse don't sign a discharge form unless otherwise the CEO gave me the authority to do so.

ARBITRATOR, JUSTICE MOSENEKE: Did the CEO give you the authority to do it?

DIKELEDI MANAKA: No, in this instance no, all the discharge forms were by the
CEO.

10 **ARBITRATOR, JUSTICE MOSENEKE:** There was a day when Dr Malemela phoned and the patients, whose names appear on page 13 of 25 were near and you were phoned by Dr Malemela because she couldn't reach CEO. Who received those patients to your institutions?

DIKELEDI MANAKA: The CEO was there the nurse manager Ms Masonga[?] was
15 there, operational managers were there. Professional nurses were there.

ARBITRATOR, JUSTICE MOSENEKE: Who admitted the patients to your institution? We are back at the same question. I want to know who admitted patients and who discharged patients.

DIKELEDI MANAKA: Okay.

ARBITRATOR, JUSTICE MOSENEKE: And you said two things, I am waiting for the two things, but I just want you to tell me forthrightly what happened here?

DIKELEDI MANAKA: As said so justice, I said there two things... [intervention]

ARBITRATOR, JUSTICE MOSENEKE: Yes.

5 **DIKELEDI MANAKA:** One: the nurse in... the professional nurse in the ward assess the patient as part of the MTD that this one can go. Two: The Form 3 is being signed by the CEO. So the CEO gives authority that this patient is discharged from this institution, which is why I said... [intervention]

ARBITRATOR, JUSTICE MOSENEKE: And your CEO... [intervention]

10 **DIKELEDI MANAKA:** The nurses cannot...

ARBITRATOR, JUSTICE MOSENEKE: and your CEO was Ms Nyatlo...

DIKELEDI MANAKA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Is she a clinician?

DIKELEDI MANAKA: What I know about her is that she is a radiographer by
15 profession.

ARBITRATOR, JUSTICE MOSENEKE: Is she a psychiatrist?

DIKELEDI MANAKA: No, she was the CEO.

ARBITRATOR, JUSTICE MOSENEKE: And when you discharged people from CCRC to Sabadinga and Anchor was there any clinician present?

20 **DIKELEDI MANAKA:** No, the clinician was not there.

ARBITRATOR, JUSTICE MOSENEKE: How did you make the decision which patient ought to be discharged?

DIKELEDI MANAKA: It was by order justice. People were ordered to do tasks and then...

5 **ARBITRATOR, JUSTICE MOSENEKE:** Who ordered to discharge the patients?

DIKELEDI MANAKA: The CEO with the order... from Dr Malamela.

ARBITRATOR, JUSTICE MOSENEKE: So the CEO ordered you in the team to discharge patients and she in term was ordered by Dr Malamela, is that what you are saying?

10 **DIKELEDI MANAKA:** Yes justice, but not me specifically but the nurses in the institution... [intervention]

ARBITRATOR, JUSTICE MOSENEKE: How did you... [intervention]

DIKELEDI MANAKA: At that time... [intervention]

[Inaudible - cross talk]

15 **ARBITRATOR, JUSTICE MOSENEKE:** How did you chose the patients, it was strictly by order.

DIKELEDI MANAKA: Or the choosing part was that those that appeared to be stable, they can go to the other side. There was no psychiatrist, there was no clinician so their actions were by order.

ARBITRATOR, JUSTICE MOSENEKE: So CEO would order you and identify those who appeared to be stable...

DIKELEDI MANAKA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: ... and these the ones who would then, 5 being taken to Sabadinga and Anchor.

DIKELEDI MANAKA: Yes justice.

ARBITRATOR, JUSTICE MOSENEKE: Okay counsel.

ADV. PATRICK NGUTSHANA: Thank you Justice Moseneke. Perhaps let me introduce one document, I thought we will introduce it tomorrow morning, it shall be 10 introduced as ELLA 61. Just to move off this point Justice Moseneke about the discharge, or could you please... I will make copies these documents after this. Can you read this document into the record and tell who signed that. What is that document and who signed it?

DIKELEDI MANAKA: Thank you counsel.

15 *'This is a Mental Health Care Act Form number 3*
which is a discharge report in terms of Section 16 of
56 of the Act. It has the full name as Mogotso David.
ID is not there, the date of birth 1995 May 31 or
estimated age as 21 years;
20 *Gender: Male;*

*Is hereby discharged from Cullinan Care and
Rehabilitation Centre on 9th May 2016;*

*and the comments are: Mental Health User is
discharged to Sabadinga NGO;*

5 *and the printed initials and surname are as MPO
Nyatlo and the signature thereof and the date was
the 2016 May, 9’.*

ADV. PATRICK NGUTSHANA: So is the Ms Nyatlo you are referring to?

DIKELEDI MANAKA: Yes.

10 **ADV. PATRICK NGUTSHANA:** And this is Ms Nyatlo who say is not a clinician.

DIKELEDI MANAKA: No audible response

ADV. PATRICK NGUTSHANA: Is she a doctor?

DIKELEDI MANAKA: Okay, I am talking under the functions that she is performing
at our institution, she is the CEO but I know she is a radiographer by profession.

15 **ARBITRATOR, JUSTICE MOSENEKE:** A photographer?

DIKELEDI MANAKA: No a photographer.

ADV. PATRICK NGUTSHANA: Radiographer.

DIKELEDI MANAKA: A radiographer I am sorry. I am sorry justice a radiographer
by profession.

ADV. PATRICK NGUTSHANA: So what you have just read, what you have just read in relation to that form is what occurred with the discharges of the other patients?

DIKELEDI MANAKA: Yes.

5 **ADV. PATRICK NGUTSHANA:** Okay, Justice Moseneke I will make copies and...

DIKELEDI MANAKA: Can I add... [intervention]

ADV. PATRICK NGUTSHANA: Just a minute. Yes we can add... [intervention]

DIKELEDI MANAKA: This Form at the bottom there it says signature of the Head of Health Establishment which is Ms Nyatlo.

10 **ADV. PATRICK NGUTSHANA:** Ms Nyatlo.

DIKELEDI MANAKA: Yes.

ADV. PATRICK NGUTSHANA: Okay. Thank you on that. You can return the Form so that we don't lose it.

15 **ADV. PATRICK NGUTSHANA:** And then on these 28 patients whom you had received, or the last intake of these patients, you said there was the first batch: how many was the first batch composed- of how many were males and how males were females?

DIKELEDI MANAKA: The first batch in 2016.

ADV. PATRICK NGUTSHANA: No, of these 38, or are you mistaken?

ARBITRATOR, JUSTICE MOSENEKE: I don't understand question either counsel,
lets...

ADV. PATRICK NGUTSHANA: You had said there was the first batch, you were
called by Dr Mamelela and there was the first batch, that is from these patients, or I
5 misunderstood you.

DIKELEDI MANAKA: I was called by Dr Mamelela on the last batch that was
brought.

ADV. PATRICK NGUTSHANA: Oh I see.

DIKELEDI MANAKA: Okay counsel.

10 **ADV. PATRICK NGUTSHANA:** Then were you informed why Dr Mamelela was
involved in the admission of these patients to your facility instead of your CEO?

DIKELEDI MANAKA: No I wasn't.

ADV. PATRICK NGUTSHANA: Okay. You have been called here in relation to
three patients: the files have not been properly prepared but let's deal with one of the
15 patients. There is a document in front of you referred to ELLA 60. Do you have
that?

DIKELEDI MANAKA: Yes counsel.

ADV. PATRICK NGUTSHANA: And what is that document?

DIKELEDI MANAKA: This document is part of the report that was prepared for a
20 complaint that was raised by family of the patient.

ADV. PATRICK NGUTSHANA: And which... who is this patient? Who was this patient?

DIKELEDI MANAKA: Jaco Scholtz.

ADV. PATRICK NGUTSHANA: Jaco Scholtz.

5 **DIKELEDI MANAKA:** Yes.

ADV. PATRICK NGUTSHANA: Okay. And I see there are different columns there starting from 10 September 2016, [indistinct] meeting for the day. What do record there? What is that document?

ARBITRATOR, JUSTICE MOSENEKE: But where is the identity of the patient on
10 ELLA 60?

ADV. PATRICK NGUTSHANA: Where is the first page of the document? Just read the first page into the record before we can make copies.

DIKELEDI MANAKA: Okay this is the cover page for a complaint form.

'Name of the complaint is Sunette Rensburg

15 *Tel 073 642 0095*

Date and time: Reported 16 October 2016 at 3:33 pm

Route of complaint was telephone

Patient details, surname and initials: Scholtz J

Date of birth: 06 01 2016

Diagnosis: Profound mental retardation with behavioural problems.

Complaint: The family has stated that they not received sufficient information regarding what has lead to the turn
5 *in his health.*

Action taken, the date the time and the narrative: On 9 September 2016 at 11 o'clock, vomited a coffee ground substance...

ADV. PATRICK NGUTSHANA: Where are you now, on the second page?

10 **DIKELEDI MANAKA:** First page

ADV. PATRICK NGUTSHANA: First page

DIKELEDI MANAKA: Yes.

'...vomited a coffee ground substance after lunch and supper and no further vomiting for the night'.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Shouldn't we simply make a copy and make ELLA 60 to be complete.

ADV. PATRICK NGUTSHANA: Ja, to be complete, yes. Thank you. Then let's go to the second page.

DIKELEDI MANAKA: On the 10th ... [intervention]

20 **ADV. PATRICK NGUTSHANA:** What are you recording there?

DIKELEDI MANAKA: A sequence of events that occurred.

ADV. PATRICK NGUTSHANA: That occurred.

DIKELEDI MANAKA: Yes.

ADV. PATRICK NGUTSHANA: For this patient, okay, let's go forward.

5 **DIKELEDI MANAKA**:

'On the 10th September 2016 for the day staff... [intervention]

ARBITRATOR, JUSTICE MOSENEKE: Need the patient read all those entries?

Why would we, we handled this as an exhibit before us already, isn't it?

ADV. PATRICK NGUTSHANA: No I will jump if that would be sufficient.

10 **ARBITRATOR, JUSTICE MOSENEKE**: Yes it doesn't have to read every word on it, if there are questions then you know, we can go back to ELLA 60 and pose the questions.

ADV. PATRICK NGUTSHANA: Yes.

15 **ARBITRATOR, JUSTICE MOSENEKE**: ELLA 60 is a complete form with a cover, the page of the complaint.

ADV. PATRICK NGUTSHANA: Yes and lets go to page 3 of the document, that is at the bottom, where you referred to a response on receiving... not received sufficient information regarding what had to lead his turn in his health. Is that all you reported to with the sister on the complaint?

20 **DIKELEDI MANAKA**: Ja, that was all that was reported.

ADV. PATRICK NGUTSHANA: Yes, and...

DIKELEDI MANAKA: Signed by the nursing manager Ms Masego.

ADV. PATRICK NGUTSHANA: Yes, and you reported as well to the sister on what were the probable causes of this patients demise or deterioration in health.

5 **ARBITRATOR, JUSTICE MOSENEKE:** Sorry what is the question? The question is...?

ADV. PATRICK NGUTSHANA: Have you reported as well on the probable causes of the death of this patient to the sister.

DIKELEDI MANAKA: Okay this report was compiled by Ms Masego and it was sent
10 to the person who complained.

ADV. PATRICK NGUTSHANA: Who complained.

DIKELEDI MANAKA: Yes.

ADV. PATRICK NGUTSHANA: Okay. So that was all which you reported to the
sister?

15 **DIKELEDI MANAKA:** Yes.

ADV. PATRICK NGUTSHANA: Okay and in relation to the other patients, two patients you requested to come and testify but have you done similar reports on them?

DIKELEDI MANAKA: No.

ADV. PATRICK NGUTSHANA: You have not done any similar reports? Thank you.

Anything else that you would like to add, before we excuse you, on these patients, in particular?

DIKELEDI MANAKA: Nothing counsel thank you for opportunity.

5 **ARBITRATOR, JUSTICE MOSENEKE:** You were long at this facility and you knew it's selection criteria. You knew its capacity and you were deputy head in fact of the nursing services and you rose to become a quality assurance officer. What did you think about what was happening in front of you? More and more patients, patients outside the criteria that the institution by law was required to look after and more and
10 more men and women were brought... what did you think about what was happening around you?

DIKELEDI MANAKA: Justice, you know to be honest...

ARBITRATOR, JUSTICE MOSENEKE: Yes, we did ask you to be honest from the beginning.

15 **DIKELEDI MANAKA:** No, I am honest I don't want to talk about my thoughts, but I would relate to my feelings, because we tried as the lower category of managers in the institution that, this is not going to be right, even before it can start. Starting was just like as... some of us felt that if we were take those patients in a smaller anjana group that would be manageable.

ARBITRATOR, JUSTICE MOSENEKE: Small anjana is an English word. Certainly
in this country... [intervention]

DIKELEDI MANAKA: In a small group that would be manageable as much we were
instructed to take 10, yes, it would be manageable because at that time we had 6
5 functional wards so we would spread them amongst the wards so that we manage
them correctly. But by the way it was done, it was like a bomb to us and we didn't
even have a time to create reports with the patients. Because you jump from here to
there, you jump there... everybody displaced his own or her behaviour that you don't
even know and it took time for the patients to know us because we are new to them
10 and they are new to us.

ARBITRATOR, JUSTICE MOSENEKE: How did you medicate them, I mean you
had three batches of high numbers of patients coming into your institution and you
discharging others to make way for the new ones, how did you know what
medication to give to which patient?

15 **DIKELEDI MANAKA**: The first group, we relied on the coloured photos for them to
identify, this is who, this is who and the second group, they were not identified, but
when we get there they were not identified, though the photos were there, but I
requested them to at least, they know better to write somewhere... [intervention]

ARBITRATOR, JUSTICE MOSENEKE: Who are they?

DIKELEDI MANAKA: ... on the chest on the back so that when we relate with them in the transport, we would know who are talking to. So that is when now it was a bit simpler for us when we get there to say, this is Manaka, this Mashaba this who and who and who.

5 **ARBITRATOR, JUSTICE MOSENEKE**: How did you know who to medicate and that you had to know everything day of their stay with you. [vernacular]

DIKELEDI MANAKA: No, there was a prescription. They gave us the prescription and a 7 day supply.

ARBITRATOR, JUSTICE MOSENEKE: Did you have washing facilities for all these
10 new entrants?

DIKELEDI MANAKA: At least we having a laundry facility that...

ARBITRATOR, JUSTICE MOSENEKE: No, no, no bathing facilities.

DIKELEDI MANAKA: Oh when we, we, we take them from Life Esidimeni they had their own, their own packs.

15 **ARBITRATOR, JUSTICE MOSENEKE**: No, did you have place in your wards and hospitals where the additional new patients... three sets of patients were brought to you, did you now have place where they could properly wash their bodies?

DIKELEDI MANAKA: We have showers, we have baths. Remember justice when...
[intervention]

ARBITRATOR, JUSTICE MOSENEKE: But were they now adequate for the new people who have come?

DIKELEDI MANAKA: Remember when we take the new patients, the old patients were gone and then the new ones occupy their space...

5 **ARBITRATOR, JUSTICE MOSENEKE:** And therefore... [intervention]

DIKELEDI MANAKA: ...and therefore they use the very same things that we have been using.

ARBITRATOR, JUSTICE MOSENEKE: Oh so you would take them out to Anchor and Sabadinga, so your number was constant was it, or was it higher than what it was before the marathon project?

DIKELEDI MANAKA: I wouldn't say it was higher either, and I wouldn't say all of the patients went, we had only one ward that was never touched before there are children, it's a kid's ward.

ARBITRATOR, JUSTICE MOSENEKE: But what did guys know about treating patients outside our normal mandate?

DIKELEDI MANAKA: Knowing maybe could be something else, but doing is the other thing. So you, as a person, you cannot say these ones are, I won't take care of because there in... [intervention]

ARBITRATOR, JUSTICE MOSENEKE: No, I am talking about your skill, you are quality assurance officer.

DIKELEDI MANAKA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Remember when your evidence started.

DIKELEDI MANAKA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: You are the person who must make sure
5 that health care is appropriate, hygiene is correct, the food appropriate for purpose
etcetera, etcetera. Now say... what did you say when suddenly you had all new
patients and you were, you had more patients than normal and they were outside
your scope of expertise?

DIKELEDI MANAKA: No audible response.

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

DIKELEDI MANAKA: A lot has been said justice that these patients don't fit our
criteria and at some point they are difficult. We are not an institution that caters for
mentally ill patients: we are an institution that caters for intellectually disabled. And
to learn then, it's a task.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Do you know that those patients that you
put out to Sabadinga and Anchor died in large numbers, do you know that?

DIKELEDI MANAKA: That I justice. That I know.

ARBITRATOR, JUSTICE MOSENEKE: Couldn't you smell this disaster coming as
you were...you nurses and your head were discharging patients without psychiatrists,
20 without anybody... Couldn't you smell that danger was coming?

DIKELEDI MANAKA: Justice we cried a lot of times we cried.

ARBITRATOR, JUSTICE MOSENEKE: You cried or tried?

DIKELEDI MANAKA: Yes, we cried, we cried [vernacular] is not the correct way to go and if... to start with, housing and NGO inside an institution: how are we going to
5 differentiate ourselves and the NGOs. But we were told, people you know what, the NGOs are an entity on their own and CRCC it's an entity on its own. Therefore, they do their thing, we do our thing.

ARBITRATOR, JUSTICE MOSENEKE: And who told you that, the CEO?

DIKELEDI MANAKA: Yes. And then when it happens we were like, you know that
10 feeling when you lose something that you been with for a very long time and now you lose it forever, nobody can bring it back to you.

ARBITRATOR, JUSTICE MOSENEKE: And is that what made you cry, why did you cry like that?

DIKELEDI MANAKA: It's because losing one life is too many and a life is a life, and
15 a life is never replaced.

ARBITRATOR, JUSTICE MOSENEKE: And you could see that you were going to lose lives they way you carried on, is that right?

DIKELEDI MANAKA: We complained that we are, we are not happy with the situation but the CEO also said, 'it's an order, there is nothing I can do, I just have to

follow the orders'. And as much as you can, you can witness what we, we, we are going through when we are discussing this, you will understand.

ARBITRATOR, JUSTICE MOSENEKE: I do certainly understand and I am sure you

see it as professional... you take your work seriously. We are going adjourn for

5 today, tomorrow you are going to be asked questions by at least four other

advocates. Cross-examination and thereafter there will be a re-examination. We

thank you for coming today but we ask you to be here tomorrow at 9:30 and they will

have many, many more questions that I had for you. Again thank you for coming, we

will see tomorrow at 9:30.

10 We are adjourned.

[MATTER IS ADJOURNED]