LIFE ESIDIMENI ARBITRATION

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

Session 1 – 3. Nov 13.

BEFORE ARBITRATOR –JUSTICE MOSENEKE

WITNESSES:

MS CORALIE TROTTER.

DR. MVUYISO TALATALA.

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SESSION 1

ARBITRATOR JUSTICE MOSENEKE: Good morning, you may be seated. Is that all lighting that is available here, this is dark.

ADV ADILA HASSIM: Justice, may I request the camera people to change the direction of the light so that it is not shining right in our faces.

ARBITRATOR JUSTICE MOSENEKE: Yah. I think when we adjourn, the people from the province should come and tell us what has changed during the tea break, if they could just come through to me. Let me understand what is all this and why we are here. And is the other room fitted in screens for the rest of the people that want to watch. Do you know Counsel?

ADV ADILA HASSIM: I am not aware, I was not aware we would be in this room Justice.

ARBITRATOR JUSTICE MOSENEKE: Does anybody know the other room is featured with screens? And obviously chairs were people could sit and watch this?

ADVOCATE: Yes, there are.

ARBITRATOR JUSTICE MOSENEKE: You should nonetheless come and see me during the tea break right, and help me understand what is all this. Shall we start? We are going to be with you in a moment. Are there any housekeeping matters that we are to deal with?

ADV ADILA HASSIM: Not from our side, thank you Justice Moseneke.

ADV LILLA CROUSE: Not from our side either Justice.

ADV PATRICK NGUTSHANA: There is nothing for our side Justice Moseneke.

ADV DIRK GROENEWALD: Nothing from our side.

ARBITRATOR JUSTICE MOSENEKE: Ok. Counsel?

ADV TEBOGO HUTAMO: We are ready with our cross-examination

ARBITRATOR JUSTICE MOSENEKE: Yes, indeed. Let me come through to you in a moment. But I would like to okay what steps that have so far in relation to the application brought to the high court by Dr. Selebane. I have to make up my mind whether I file a notice of intention to oppose as time moves on and that is dependent on what the other parties are doing. Do we know now? I mean, those parties specifically cited and the state in particular?

ADV TEBOGO HUTAMO: Justice, as far as I understand there is Counsel who has been appointed to deal with that application. There are time frames with which have been set out for the filing answering affidavit and understand that like they are working on that to meet the deadline as set out in the notice of motion and the appointment of the of the other Counsel was necessitated by the need to continue with these proceedings. So, as far as I understand, steps are being taken to do everything that is necessary affidavit in accordance with the timeframes set out in the notice of motion.

ARBITRATOR JUSTICE MOSENEKE: Do we know whether the state parties will be opposing the application?

ADV TEBOGO HUTAMO: That is what I understand that like the object of the filing of the answering affidavit is in opposition of the relief sort in the motion of opposition.

ARBITRATOR JUSTICE MOSENEKE: I follow. I am asking this only because I have been cited as a party and I have got to make up my mind whether I file a notice to oppose or a notice to abide and that will be influenced by whether or not there is otherwise opposition.

ADV TEBOGO HUTAMO: Justice, perhaps I should just make this point that to the extent that there are other interested parties to that application, it might be prudent for those parties to the application or those parties who have interest in the application to take necessary steps to ensure that maybe their position clear by joining in the proceedings. As we know that the subpoena was issued subsequent to the discussions which the parties had with regard to the need to ensure that people are in attendance. And to the extent that any of the parties feel strongly that witness has to make appearance before these proceedings. It might be advisable that such parties should be able to take steps to join in these proceedings and not just leave it to the state. We are all parties to these proceedings, but like that responsibility should not be only left to the state as they are representing other parties to this arbitration.

ARBITRATOR JUSTICE MOSENEKE: Sure. I think that is the correct position. Would any of the other parties want to say anything at this stage?

ADV LILLA CROUSE: Justice Moseneke, we are not prepared to give any undertaking or otherwise at this stage.

ADV ADILA HASSIM: Justice, I am still taking instructions on this. We are not cited as a party. The state was cited as a party because they are the party who caused the subpoena to be issued. We have tended to provide an affidavit to support the case of the state in so far of understanding the terms of reference of this arbitration goal. All of the parties are clear and there is consensus among the parties about the termness of the arbitration. We have also requested that the state provide us with their paper so that we know whether and how to intervene when necessary.

ARBITRATOR JUSTICE MOSENEKE: Very well, Counsel is there something that you want to say at this stage?

ADV LILLA CROUSE: Nothing at this stage Justice Moseneke, we will comment later.

ADV DIRK GROENEWALD: Well Justice we share the same sentiments as Section 27 in that in this point in time we don't have proper instruction to oppose the application. But we feel that the state being a party to the urgent application has been the party who caused the subpoena to be issued should go and attend to the urgent application and should oppose it on the legal basis that we feel that there is no legal grounds for that application. Be that as it may, we still reserve the right to join those proceedings depending on the actions of the state.

ARBITRATOR JUSTICE MOSENEKE: Very well, I think we should proceed. You are under your previous oath to tell the truth and nothing but the truth and I am

going to invite Counsel for the state to continue the cross-examination of the (Inaudible – 0:08:54)

ADV TEBOGO HUTAMO: Thank you Justice. Good morning Ms. Trotter.

CORALIE TROTTER: Good morning.

ADV TEBOGO HUTAMO: When we adjourned last week Friday, we were still dealing with your testimony and I should remind you that our questions are purely based on what you have already testified on during examination in chief by advocate for Section 27. So, in essence, we will be trying to clarify some of those matters which you have testified on.

ARBITRATOR JUSTICE MOSENEKE: I am sorry Counsel to interrupt now. There was a request that we ensure camera people that your flashes are not directed in those faces particular Counsel who are working here. So, do your best from here you are and keep that in mind please. You may continue.

ADV TEBOGO HUTAMO: Thank you. Ms. Trotter, you will recall that during your testimony, you made mention of the fact that there was a team which had to interview some of the affected families in relation to the tragedy – in relation to the mental healthcare users. Do you recall that?

CORALIE TROTTER: I do.

ADV TEBOGO HUTAMO: And during questioning, you were asked a question which related to your objective or the objective in relation to your appearance before these proceedings. And if I recall, I just want to try and verify if like I got your

evidence correct when during examination in chief you indicated that you had to come before these proceedings to formulate an argument in terms of why the impact was so devastating. Do you remember that? You were asked a question, what was the objective of your project with the rest of the team? Your response was that, it was to try and understand how the individual members of the families had experienced this entire process from the very beginning and to look at the impact that it had on them and also to formulate an argument in terms of what impact was so devastating. Do you recall that evidence?

CORALIE TROTTER: Yes.

ADV TEBOGO HUTAMO: So, and then you continued to say that the information essentially came from the families but then it was put together in a particular way to create an argument. Do you recall that?

CORALIE TROTTER: Yes.

ADV TEBOGO HUTAMO: So, as you said like your objective is essentially to create an argument on behalf of the of the family members.

CORALIE TROTTER: My objective is to try and understand how the family members experience this from a psychological and emotional point of view and using all my psychological theory to be able to explain that impact on them. I mean, I am not attached at all to the word argument. A way of making sense of what they have gone through using all the theory that is available to us.

ADV TEBOGO HUTAMO: So, essentially from what you had initially said that you wanted to make an argument for them that was not appropriate.

CORALIE TROTTER: No, I wouldn't say that. What I would say is the anything which I learnt of Friday, the way that you use terms legally is not the same as the way lay people use terms or the way that I would use terms as a psychoanalyst and clinical psychologist. So, for me it is one particular word, I could use the word linking things together, I could talk about making sense of things. It is that I use that word differently to how you might.

ADV TEBOGO HUTAMO: Ok. I think like before you like there should be a Bundle which is the report of your team, the report prepared by your team, the supplemented one. ELLA56 (SP)

CORALIE TROTTER: I don't have that. I have ELLA 1-51+

ADV TEBOGO HUTAMO: Try and see if you can locate.

CORALIE TROTTER: It says the witness to find her report. It is essentially her report. Sorry, I can't find it.

ARBITRATOR JUSTICE MOSENEKE: It is ELLA 56 on the front of it. Is it not thee, I see. Do you have it now? ELLA56, nothing more than your supplemented affidavit and the attached which is the report MARKCT1 (sp), you may continue Counsel.

ADV TEBOGO HUTAMO: You will recall that in relation to these documents, you give testimony that you were asked by Counsel for Section 27 to essentially read a specific article and I want to refer that article which appears on page 41 of the report. According to your evidence, you stated that Counsel asked you to read his report and add it, which is partly why you got a new report. Essentially, your evidence was that you ere requested by Counsel to read this report that appears on

page 41 so that it can be added to this report and it is exactly the reason why this report had to be supplemented. Do you recall that?

CORALIE TROTTER: It is part of the reason. The real issue was that as much as we read the report a serious number of typing errors and I was unhappy with that. So, I had already asked if I could give another report that was deposed. So, the report in the public record s free of error because in a situation like this, that seems to me to be particular important.

ADV TEBOGO HUTAMO: Yes, but like from what you have said it is like during your interaction with Counsel for Section 27, she actually engaged you to identify one of the documents which was found to be critical to these proceedings.

CORALIE TROTTER: Certainly not critical. Counsel alerted me to 2 documents, one was the health omberts (sp) report and then I was alerted to this document. I could have entirely ignored the email. I mean it was up to me to read it, to decide how to use it, how not to use it and the same as the omberts report.

ADV TEBOGO HUTAMO: So, like I clearly understand you, you are saying that Counsel alerted you to at least 2 documents.

CORALIE TROTTER: Correct.

ADV TEBOGO HUTAMO: The 1st being the [indistinct] eport and the 2nd being the report appearing on page 41 of Ella.

CORALIE TROTTER: Correct.

ADV TEBOGO HUTAMO: And then you were requested to at least edit into the revised edited report.

CORALIE TROTTER: No, that was not the request. The request was, see if this is helpful in any anything and given that we are redeposing the document, let's put it at the end because I am sure you can see the similarities in terms of the Hillsbrow tragedy and how this situation has unfolded.

ADV TEBOGO HUTAMO: Yes, well like I take it that the document is quite helpful in order to make that comparison but what we would try to understand from you is that this came through the assistance of Counsel.

CORALIE TROTTER: As did the Omberts report, but I was free to use it in my own way or not.

ADV TEBOGO HUTAMO: And in your testimony, you testify that you had your own methodology of doing the assessment?

CORALIE TROTTER: That's correct.

ADV TEBOGO HUTAMO: And Counsel also alerted you to certain documents which you had to include in the production of your report?

CORALIE TROTTER: Not at all, the only thing I received was 56 affidavits.

ADV TEBOGO HUTAMO: Say that again?

CORALIE TROTTER: The only thing that I received apart from the – well, I was alerted to the Omberts report and the Hillsbrow report. Other than that, the only thing that I received from Counsel were the 56 affidavits. No other reports.

ADV TEBOGO HUTAMO: Ms. Trotter, I put it to you that as an expert you were required to do your work independently without being influenced by a party to the proceedings.

CORALIE TROTTER: That is correct and that is what we did.

ADV TEBOGO HUTAMO: And in this instance, you have stated that Counsel for Section 27 alerted you to documents which had to be considered in the preparation of a report.

CORALIE TROTTER: No, not had to be considered. They were available, I was alerted to them. There was absolutely no pressure on me to consider them at all.

ADV TEBOGO HUTAMO: Did you consider the documents?

CORALIE TROTTER: The Omberts report I have read backwards and forwards, the Hillsbrow report I read. Look, it was interesting to read a similar report about a similar situation. There were only 3 things in the report out of 122 page report that I thought they were in any way relevant or useful. So, it was not for me the most useful document. And by that time my argument or the links that I made were there and I had a 6 page reference list, that is a lot of references.

ADV TEBOGO HUTAMO: And my question to you is that you did read or consider the documents provided to you by Counsel

CORALIE TROTTER: I did.

ADV TEBOGO HUTAMO: That is why I am putting to you that in the production of your work, you were required to work independent of a party to the proceedings as

your duty is not as a party to the proceedings but to the arbitrator, in this instance. Do you appreciate that?

CORALIE TROTTER: I appreciate that and I can assure you that we worked absolutely independently, we have done all of this work pro bono. Partly to ensure that we can maintain independence. In other words, the methodology was designed by me with the help of the team. If we had arrived at a point where Section 27 was not happy with the report, that's is the they would have to accept. Which is partly why we all worked pro bono so that as mental health professionals, we could be 100% independent.

ADV TEBOGO HUTAMO: Did you know when did you revise the report, do you recall the date?

CORALIE TROTTER: Which part of the report, is it the Hillsbrow?

ADV TEBOGO HUTAMO: The ELLA56.

CORALIE TROTTER: The supplementary affidavit because of the errors was already in my mailbox. It was before the, where are we, Saturday was the 4th. It was round about the 3rd or 4th of November.

ADV TEBOGO HUTAMO: In your testimony, you stated that it was on the 3rd of November, would that be correct?

CORALIE TROTTER: No, it was probably the 4th or the beginning of that week. So, I had a supplementary affidavit to correct all the errors already. Then the request came in terms of the Hillsbrow report. I think that was on the 3rd and on the Sunday

morning which would have been the 5th, I read the document as I said, I included 3 things and then the document was supplemented again.

ADV TEBOGO HUTAMO: Maybe like let me assist you, go to page 2 of that document ELLA56. Is that your signature like just above the name Coralie Trotter?

CORALIE TROTTER: That is my signature.

ADV TEBOGO HUTAMO: You signed the document?

CORALIE TROTTER: I signed the document.

ADV TEBOGO HUTAMO: Do you recall here was this affidavit deposed?

CORALIE TROTTER: It was done at the Sandton police station Summit road.

ADV TEBOGO HUTAMO: Do you remember the date on which it was deposed?

CORALIE TROTTER: It was on a Monday, so that would have made it the 6th.

ADV TEBOGO HUTAMO: The 6th, ok. Is there any explanation to reference of the date of October on the document?

CORALIE TROTTER: I am sorry I can't see any reference to what you talking about.

ADV TEBOGO HUTAMO: Like just below Sandton SAPS, like you see it says like it was signed.

CORALIE TROTTER: Oh no, that should be November.

ADV TEBOGO HUTAMO: It should be November.

CORALIE TROTTER: It should be November.

ADV TEBOGO HUTAMO: So, it was not done on the 6th of October.

CORALIE TROTTER: It was not done on the 6th of October. No, it s done on Monday.

ADV TEBOGO HUTAMO: Like the time of signing this document, you were not aware of this date?

CORALIE TROTTER: No.

ADV TEBOGO HUTAMO: So, it was not signed in October?

CORALIE TROTTER: It was signed in November.

ADV TEBOGO HUTAMO: Ok. When you were asked questions by Advocate for the Legal Aid Board acting on behalf of those who survived, you will recall that your testimony was that the report of your team was of equal application to those who had survived. Do you recall that?

CORALIE TROTTER: It would apply and then there would be some different things and then that one who need to make sense of the survivors.

ADV TEBOGO HUTAMO: Where you giving an opinion when you mentioned that?

CORALIE TROTTER: That is definitely my opinion, that the impact would be very similar in terms of what this report describes on the survivors. And then there would be additional dynamics.

ADV TEBOGO HUTAMO: Let's go to the report itself starting on page 3 and help us and see if you can direct us to those aspects which relate to the survivors?

CORALIE TROTTER: So, the aspects which relate to the survivors would firstly be my whole introductory points and then what leads into my 1st factor. And that is the whole concept of home, that to lose a home, to have a home is a profoundly important thing in terms of one's sense of security. To lose a home is hard for anyone under any circumstances. When you apply that to psychiatric patients, that becomes absolutely critical. So, in terms of the survivors, I haven't read their affidavits. But firstly, they were moved and they were also moved without preparation. Secondly, from what I can gather, they were moved many times. And for those survivors to now trust that the place that they are in will remain a break mother and a stable place is an extremely hard thing for them. I would anticipate in my opinion that the survivors will now live with heightened anxiety about when they will be moved again. That is the 1st thing in my report.

2nd thing in my report is they were also moved without consent, without any family member involved and without any form of preparation. And I think I have made it clear how important preparation is.

The 3rd thing is they were exposed to exactly the same dehumanization as the people who died were exposed. They were also exposed to an event that they were not ready for. Which means they experienced slipped in and there is no disjunct psychologically between the experience and owning it. So, they are also traumatized. And then what will apply to them which is in the report in terms of the families which will also be true for the patients, is that there is survivor guilt. It is

wonderful to live but it is a very hard thing to make sense of. Why me, how come I lived? So, they have got that added dynamic. That is how my report applies to the survivors.

ADV TEBOGO HUTAMO: Let's look at page 3 like where it is recorded that this report is written in memory and honour of those who died silently and the families who loved them.

CORALIE TROTTER: That's correct.

ADV TEBOGO HUTAMO: Do you see that?

CORALIE TROTTER: Yes.

ADV TEBOGO HUTAMO: What I as asking you is as I understand, your testimony is based on the report that you have prepared and which is before these proceedings which has been made available to us.

CORALIE TROTTER: Correct.

ADV TEBOGO HUTAMO: In respect to what you will be testifying on.

CORALIE TROTTER: Correct.

ADV TEBOGO HUTAMO: Where in your report do you deal with issues relating to survivors?

CORALIE TROTTER: That is a very confusing question for me because what I was meant to do with the cross-examination to say to everyone I am sorry, but that is not in my report and I am not prepared to answer that.

ARBITRATOR JUSTICE MOSENEKE: Yes, I asked your opinion. I sought to know which parts of your findings would extend to the experience of survivors and you were obliged to give that answer because I put it to you.

CORALIE TROTTER: But that question is now confusing for me because obviously my report doesn't include the survivors.

ARBITRATOR JUSTICE MOSENEKE: No, you were invited to give an opinion that your report is your report.

CORALIE TROTTER: So, my report doesn't include reference to the survivors.

ADV TEBOGO HUTAMO: So, without having assessed the circumstances relating to the survivors, you cannot be in a position to formulate an opinion?

CORALIE TROTTER: I think we have arrived back at the dilemma we were dealing with on Friday. Perhaps because these things are so obvious to me, I didn't make it clear that although we all have individual variation, the bottom line is that we are part of a species, it is a human species and therefore we all have a body that is going to react in a similar way and a mind. So, if I was a cardiologist, I would be able to predict what will happen to the heart. The mind is an organism and whatever differences there are, because that is my area of expertise, if a certain stimulus is imposed on the human mind, I am able like anyone else who is qualified and trained to predict the outcome A and B, if I leave here today and someone rushes in here a gun and grabs Justice Moseneke and rushes out, I know that everybody in this room will be able to predict that only is Justice Moseneke will be traumatized but everyone will be traumatized.

ARBITRATOR JUSTICE MOSENEKE: Well, I better stay not traumatized if I am to make a decision here. Let Counsel continue with his questions. If we get back to that same legal point we will have to pause there and talk about it. Experts are different from ordinary witnesses because ordinary witnesses have to testify about their own experiences. Experts are called precisely for the reason that they ought to give opinions.

CORALIE TROTTER: I am learning that.

ARBITRATOR JUSTICE MOSENEKE: They are not required to give non-hear evidence or direct evidence and that is why you can be asked to give an opinion on provided that they are properly premised on a set of facts that are already before the courts or facts that can be properly deduced. So, experts are a particular class of witnesses for the knowledge they have, the experience and the technical ability that they have built over many years. That is why before you gave evidence you had to tell us what your qualifications are, what you worked with what entitles you to express an opinion as distinct from only relaying what you saw or felt or thought. Very well, but let Counsel go on. I checked the law again over the weekend and that is the law. But let us hear questions that you might have Counsel.

ADV TEBOGO HUTAMO: Justice, I submit that like in fact it might be an opportunity that we request that Justice should make a ruling on the difficulties that we have had with this witness. Since Friday, it has been our position and it is still our position today that the witness is entirely relying on hearsay evidence. And what we submit is that the rule of hearsay evidence is applicable to experts as well. And from what the courts have decided is that when such a situation arise, it is for the

presiding judge or the arbitrator in this instance to make a determination of the admissibility or otherwise of that evidence in order to avoid a situation where a lot of time is spent on information which is purely hearsay.

ARBITRATOR JUSTICE MOSENEKE: If what you say is hearsay here and what the witness has said up to now -

ADV TEBOGO HUTAMO: Justice will recall that the witness' testimony is entirely based on a report on information which she was not privy to. There are people who were privy to the findings or fact. It is on record that she had clearly indicated that she did not interview any single-family member. All that she relies on is on her colleagues and those are the people who has the better position to express themselves and as I have indicated, an opinion should be based on facts which are known to that expert. And in this instance we submit -

ARBITRATOR JUSTICE MOSENEKE: Which in your argument are collected by the expert.

ADV TEBOGO HUTAMO: Yes, indeed.

ARBITRATOR JUSTICE MOSENEKE: Do you have authority on that position, an expert may express an opinion only on facts collected 1st hand by the expert, do you have authority like that?

ADV TEBOGO HUTAMO: Indeed Justice. If I can refer Justice, there are 2 judgments. 1 is the judgment of the supreme court of appeal in the matter of PriceWtaerHouse Coopers Inc. and others versus the National Potato Cooperative Limited IMF Australia Ltd as the 2nd respondent. Is Case Number451 of 2012.

ARBITRATOR JUSTICE MOSENEKE: I am sorry, that citation I am not familiar with. Is that an SCI citation unreported?

ADV TEBOGO HUTAMO: Yes, unreported.

ARBITRATOR JUSTICE MOSENEKE: Just give us a proper citation please so that we can find it.

ADV TEBOGO HUTAMO: I have a copy, if I can hand out the copy.

ARBITRATOR JUSTICE MOSENEKE: Certainly. Oh yes, you have the proper citation, what is it?

FEMALE SPEAKER: It is Number 2 [indistinct] South Africa 403

ARBITRATOR JUSTICE MOSENEKE: Yes, thank you. Yes, Counsel you can proceed. You are going to refer me to the dictor which supports your proposition.

ADV TEBOGO HUTAMO: Paragraph 80 of the judgment and which is that in my view not withstanding the stance of PWC's counsel, the trial court should have intervened once it became apparent as it must have done within a couple of days of Mr. Collette commencing giving evidence. That is was merely based on hearsay. The basic principle is that while a party in general call its witnesses in any order it likes, it is the usual practice of expert witnesses to be called after witnesses of fact, when they are called to express opinions on the fact dealt with. While the conduct on the trial is usually for the parties to determine as they present their cases, I have no doubt that in the exercise of a judge's power to control trial proceedings -

ARBITRATOR JUSTICE MOSENEKE: I am trying to follow where paragraph 8 takes us to, I suppose it is the way that it has been -

ADV TEBOGO HUTAMO: I apologize for the manner of copying.

ARBITRATOR JUSTICE MOSENEKE: Yes, while the conduct – okay, I have come to it. I think it is the collation of the document is in sequential. Very well, I have got it, thank you.

ADV TEBOGO HUTAMO: If I can just repeat the last sentence. While the conduct of the trial is usually a matter of the parties to determine as they present their cases, I have no doubt that in the exercise of a judge's power to control trial proceedings, the judge may intervene to ensure that they are conducted in a manner that avoids delay and the unwarranted the escalation of costs. Two quarters of action are open to the judge. The 1st would have been to require MPC to identify the hearsay evidence that it wished to have admitted and make application of its admission on any available ground. And then make a ruling on its admissibility. Such a ruling could always be revisited at a later stage of the trial if necessary.

The 2nd, in so far as it was indicated that witnesses will be called to substantiate the hearsay evidence was to require Mr. Collette's evidence stand down until such evidence had been led and was properly before the court. That would have been an appropriate and permissible course for the judge to adopt. Instead, Mr. Collette was allowed to continue unchecked.

And clearly judge, our concern is that we have raised our concerns regarding -

ARBITRATOR JUSTICE MOSENEKE: Let us read 81 also because it is relevant.

ADV TEBOGO HUTAMO: Paragraph 81 reads that, the next stage at which this issue could have been addressed was when Mr. Collette finished giving evidence and before he was cross-examined. Is that he was cross-examined on the very evidence that was said to be inadmissible. The 2nd time it should have been dealt with was at the close of MPC's case. But the court was not asked to make a ruling. Then at the end of the trial after some 160 days had been spent on this evidence, it was submitted that it was all inadmissible hearsay. By then of course, it was impossible to sort the wit of admissible evidence from the chaff of inadmissible hearsay.

And if I can also be permitted to refer to another judgment of the South Gauteng High Court.

ARBITRATOR JUSTICE MOSENEKE: Well, you have got to show me authority that says that an expert witness may not express an opinion on a set of facts put before. Where do we find that in the passages that you have described to me.

ADV TEBOGO HUTAMO: In addition to that-

ARBITRATOR JUSTICE MOSENEKE: In a space where an expert sought to – well spent 160 days cross-examining somebody without deciding on whether the underlying evidence is hearsay or not, isn't it. I [indistinct] case but the passages you read today seems to cite s, are we in the same terrain here?

ADV TEBOGO HUTAMO: In addition to that I would like to refer to another judge.

ARBITRATOR JUSTICE MOSENEKE: Another authority, very well. Thank you.

ADV TEBOGO HUTAMO: Justice, this is an unreported case of the South Gauteng High Court Johannesburg under case number 11453 of 2007 in the matter between Nick Haussman, Charlene as the plaintiff and the road accident fund as the defendant. The judgment was written by Judge Re[indistinct]. and in relation to this judgment, I particularly want to refer to page 3, from page 2 of the judgment paragraph 3. Where it reports that a number of expert witnesses called on behalf of the plaintiff overstepped the mark by attempting to usurp the function of the court and to express opinion based on certain facts as to the future employability of the plaintiff and to express views on probabilities. It is the function of the court to base its inferences and conclusions on all facts placed before it. Then the court then referred to the judgment of State versus Harris and quoted the following passage:

"In the ultimate analysis, the crucial issue of the appellant's responsibility of his action at the relevant time is a matter to be determined not by the psychiatrist but by the court itself. In the appeal this court must of necessity have regard to the experts, the experts medical agents and also to the other facts of the case including the reliability of the Applicant as a witness and the nature of his proved actions throughout the relevant period."

And if I can proceed to paragraph 4 of the judgement which records that, the further difficulty which I have to struggle with is the absence of the factual basis on which some of the experts based their opinions. In this regard, I agree with Mayor AJ as he then was in the matter of Mathebula versus RAF and where a passage was also quoted which reads as follows;

"An expert is not entitled on any more than any other witness to give hearsay evidence as to any fact and all facts which the expert witness relies must ordinarily be established during the trial. Except those facts which the expert draws as a conclusion by reason of his or her expertise from other facts which have been admitted by the other party or established by admissible evidence". So, it is on this basis that the Justice is called upon to determine one of the courses which have been set out in the PWC case when this issue of hearsay evidence is raised. It would be a travesty for this process that a witness should go on and on and make statements which do not qualify as opinions because they are not based on facts. So, it becomes quite critical that a ruling should be made on the admissibility of what Ms. Trotter is placing before these proceedings. Otherwise it will then become very difficult at the end of these proceedings where a witness even ventures to testify on behalf of other parties that has not requested her to opine on the experiences of their own client. As I have indicated, the 1st issue is in relation to the 11 families which were interviewed by other team members and the clear admission -

ARBITRATOR JUSTICE MOSENEKE: How do you say those facts must be placed before this hearing? Do you want everyone of the team members to testify?

ADV TEBOGO HUTAMO: Justice, it is entirely upon the legal representatives of Section 27 to make that call whether they like call one of them or all of them.

ARBITRATOR JUSTICE MOSENEKE: No, you say the report is based on hearsay evidence. So, I am trying to understand what do you say will be good evidence that the entitled witness, expert witness to make tender opinion evidence?

ADV TEBOGO HUTAMO: It is my submission Justice that those experts would be better placed to come before these proceedings and express their opinions because they have undertaken the type of therapy that this witness has made reference to. So, it is those witnesses -

ARBITRATOR JUSTICE MOSENEKE: No, let us go through it carefully, let us calm it down and go through it carefully. We know the rule, you have referred us to it on page 4 of the judgment, ok. We know that an expert is allowed to use facts and from correct to draw a conclusion by reason of his or her expertise from the facts which have been admitted by other parties, established admissible evidence. That has been the rule, it has always been the rule forever. The only witness that is entitled to express an opinion on facts establish education by others or facts that appear from evidence. Now you are saying there are no such facts and I just want you to stand your submission in relation to this case, is the submission that those facts will be present only when those who compile the statements, only those psychoanalysts' experts in their own right who compiled the statements were actually called to say so. Is that what the submission is?

ADV TEBOGO HUTAMO: The submission is that, that should have been the proper course to have been taken so that those facts should be placed before the tribunal before this process because as I have submitted, an opinion can only be based on facts and in fact -

ARBITRATOR JUSTICE MOSENEKE: May an expert draw inferences from a series of statements that purport to set out facts? If the statements are ultimately admitted to evidence?

ADV TEBOGO HUTAMO: Well, if I can answer that in relation to the PWC case, paragraph 80 towards the end where the court said that, in so far as it was indicated that witnesses would be called to substantiate the hearsay evidence was to require that Mr. Collette's evidence stand down until such evidence has been led and was properly before court. That would have been an appropriate and permissible course for the judge to adopt. And that applies in this instance which is what we submit that Ms. Trotter is in no position to deal with those aspects until those facts are placed before these proceedings.

ARBITRATOR JUSTICE MOSENEKE: And by those facts you mean the members of the team ought to be called to say I have made the interviews and drew up this statement which ended up with Ms. Trotter, is that what you are saying?

ADV TEBOGO HUTAMO: Justice, what has been led is that the members of the teams, they are experts in their own rights. So, this report was based on their own findings. They are better placed to speak to the report.

ARBITRATOR JUSTICE MOSENEKE: Yah, based on the recorders of the interviews that they had with family members, so they wrote out statements which were submitted to Ms. Trotter. From those statements, she tells us in her evidence, she made certain conclusions which led her to a particular disorder. Now, you are saying in effect you are saying all of those who took the statements should company everyone testify?

ADV TEBOGO HUTAMO: Indeed so, if that is what Section 27 intends to do. But in so far as this witness is concerned, we object to her evidence as purely constituted by hearsay evidence. And as to whether they take that course -

ARBITRATOR JUSTICE MOSENEKE: But the opinions can't be hearsay evidence. You mean the underlying facts that she claims that she collated from the other statements, you see let us not collapse a few things. The law is quite clear with all the passages you have quoted. An expert witness may formulate an opinion and put on the basis of facts, right. She does not have to produce the facts if the facts are placed before an expert, the expert will provide and is entitled to provide an opinion. So, the debate as I understand you are raising, there are no underlying facts, is that right?

ADV TEBOGO HUTAMO: that is correct, hence we say the opinion is based on hearsay evidence, therefore -

ARBITRATOR JUSTICE MOSENEKE: And the law allows that those facts before or after the expert witness, isn't it?

ADV TEBOGO HUTAMO: I have just read the paragraph of what is the proper course in those circumstances. The facts must be before court. It cannot work the other way round.

ARBITRATOR JUSTICE MOSENEKE: Let us understand the passage, I don't was us to debate. Let us understand the passage that you referred me to this. A judge has 3 options – collaboration rule upfront, could hear the expert evidence provided the facts based on it would company elater before the close of the case isn't it?

From the passages you read to me. So, the court would have prescribed the order in which witnesses are called. We will hear them now. If they think that your point is good, then we are going to sit here and listen to 8 psychoanalysts that took statements. That is fine, it is a decision that they Section 27 has to make provided they think your attack is good. And that they can do after this witness – before this witness on authority you read to me. As long as it is before they close their case. Isn't it?

ADV TEBOGO HUTAMO: Justice, it is quite clear that the witness has already testified, has already given her testimony.

ARBITRATOR JUSTICE MOSENEKE: I am not sure about it being clear.

ADV TEBOGO HUTAMO: The submission which I wish to make is that the witness has already been led in chief and that being the case we object to that testimony. So, that is the reason why we request you Justice to make a ruling on the admissibility of her evidence. That is what -

ARBITRATOR JUSTICE MOSENEKE: On the authority put before me, I have the option to make that ruling right up to the end of the case of Section 27 isn't it? Because if there is a defect, we must remedy it. It is that simple. Or if there is no defect, that they go ahead then the point is still there for you to argue and say don't admit her evidence because it was based on hearsay That is the real procedural options a judge always has. Object hearsay and the judge will say I have heard your objections, I will admit the evidence provisionally and I will decide at the end of the hearing. The hearsay may be remedied by other evidence or may not be remedied

or may not be hearsay. So, but I have had your point, you require me to make a ruling on whether or not this witness should proceed, what should her ruling be.

ADV TEBOGO HUTAMO: To consider her evidence to be inadmissible on the basis that such evidence is hearsay and therefore not continue to testify on matters she does not have knowledge.

ARBITRATOR JUSTICE MOSENEKE: Is the court ever required to do that in media race right in full flight of the hearing? Evidence why witness finishes, you have made your points and you say it is hearsay and the discretion seats with the presiding judge at the end of the hearing. Where jv you ever heard of a witness being stopped midway. You may criticize the evidence, but you can't stop the witness.

ADV TEBOGO HUTAMO: What we submit Justice is that framework the sake of these proceedings and not to be overburdened with information which will ultimately be of no use to the proceedings, it should be an appropriate moment for the Justice to make a determination. Either way, whether the Justice overrules on this aspect or not, is a totally different matter. But in the interests of the proceedings, that determination has to be made.

ARBITRATOR JUSTICE MOSENEKE: So, you invite me to make what determination? That the witness must stop testifying?

ADV TEBOGO HUTAMO: That the evidence given on is inadmissible.

ARBITRATOR JUSTICE MOSENEKE: And what is the authority of that proposition. Let's go back to the PriceWterhouseCoopers Case. It sets out the

options that a judge has and those options extend right up to the end of the case and very logically so, isn't it? Let us go to paragraph 81 again and show me where a judge can throw a witness out on the grounds of hearsay. Let us look at the middle, starting with 80 for instance, the basic principle is that while a party may in general call his witnesses in any order that he likes, there is the usual practice of the expert witness to the called after witnesses of fact where they are to be called to express opinions on the facts dealt by each witness. While the conduct of the trial is usually a matter for the parties to determine as they present their cases. I have no doubt that in exercise of a judge's power to control trial proceedings, the judge may intervene to ensure the they are conducted in a manner that avoids delay and an unwarranted escalation of costs. 2 courses of action were open to the judge. 1st, he would have required MPC to identify the hearsay evidence that it wish to have admitted and make application for its admission on any available grounds and then to make a ruling on its admissibility. Such a ruling will always be revisited at a later stage of the trial. The 2nd was indicated, the witness will be called to substantiate the hearsay evidence. [indistinct] to require that Mr. Collette's evidence to stand down until such evidence had been led and was properly before the court, that would have been an appropriate and permissible course for the judge to adopt, instead Mr. Collette was allowed to continue and unchecked for 160 days. This is also the specific facts of that case. But those are options which a presiding judge will have, that is why it is may. It short the judge must control the case in such a way that doesn't lead to wastage, to a lot of time, but the any party may any time remedy any hearsay if there is any. But you have to finally decide what you are calling me to

do. I will hear your other colleagues because this is an argument on admissibility. I think, have you made all your points and what order do you desire I make at this stage?

ADV TEBOGO HUTAMO: We seek an order that Ms. Trotter's testimony is considered to be inadmissible on the basis that it is hearsay.

ARBITRATOR JUSTICE MOSENEKE: An order for me to rule that entire evidence as hearsay?

ADV TEBOGO HUTAMO: Indeed so.

ARBITRATOR JUSTICE MOSENEKE: Very well, it is clear what you are asking for. Let me hear what your colleagues say. Let us start off with Section 27, you called the witness. What is your response to the legal arguments on admissibility that have been made?

ADV ADILA HASSIM: Thank you Justice. My colleague has referred us to 2 cases. The interpretation of these causes by my colleague is an astonishing misinterpretation of the nature of expert evidence. Expert witnesses are witnesses of a special character. They do not provide evidence to the triburnal as direct witnesses. They need not have direct sensory impressions in order to provide an opinion, provided the opinion that the expert is expressing is based on facts that are before this tribunal and before this hearing, that expert may express an opinion. What facts is it that Ms. Trotter is placing her opinion? She is placing her opinion, basing her opinion 1st of all on the Ombud's report, a lengthy report, all the facts

that have been conceded by the state. Those are common cause facts, let alone simply evidence that has been led in this tribunal. Those are common cause facts.

My colleague speaks about the interests of these proceedings, I am afraid he is showing the hand of the government by trying to dislodge this witness by saying it is not in the interests of the proceedings to have an expert provide an opinion to you Justice Moseneke, not to us, to you. On what the trauma is, whether there will be trauma that will result from those facts and what type of trauma will ordinarily result from those facts based on her expertise. That is what she seeks to do. She seeks to assist the tribunal, she seeks to assist the arbitrator. In fact, if you have a regard to the 1st page, the covering page of the report, the report clearly says arbitration by Justice Mosenele is provided for purposes of the arbitration. It is not provided as my colleague seems to suggest for the purposes of Section 27 and some nefarious motives by Section 27 to pull the wool over the eyes of the arbitrator in this hearing. It is provided directly to you Justice Moseneke.

I said it is based on the facts of the Ombud's report. But that is only the beginning of it. It is also based on testimony and evidence that has been led in this hearing thus far. There is a reason why this expert is providing evidence after the testimony of the families. The witness has already told us that she has heard and listened to all of that evidence that has been led before this hearing. The witness also bases her opinion her opinion on the work of her team. On a team of 19 professionals, experts in their own right. She says she does so based on a particular methodology. She sets out the methodology in her report. The methodology was to work together with the team in order to gather the facts and to gather the reports of experts and not just

ordinary person. And through that research prepare a report that might be of assistance to this tribunal.

Not only that, Ms. Trotter also tells us that so concerned was she about the integrity of the process that she ensured that the process was independently peer reviewed, the process was peer reviewed by an attorney and a Professor, an expert in psychoanalysis to provide oversight to Ms. Trotter and her team.

On the basis of those facts, Ms. Trotter is offering an opinion in order to assist this process. The PriceWtaerhouseCoopers case as well as the case that we have been referred to, Nicholson versus the RAF and especially the paragraph read out by my colleague is of no assistance to him. The paragraph that he has quoted and I will repeat it. It says; “An expert is not entitled on any more than any other witness to give hearsay evidence as to any fact and all facts which the expert witness relies must ordinarily be established during the trial. Except those facts which the expert draws as a conclusion by reason of his or her expertise from other facts which have been admitted by the other party or established by admissible evidence”. That is exactly the I have set out. The 4 or 5 different categories of facts upon which Ms. Trotter is basing her evidence.

I would take this opportunity to also say that my colleague seems to insinuate that there was an improper influence by myself. He specifically referred to Counsel for Section 27. He insinuates that there was improper conduct by me and I take objection on that and I deny that there was any improper conduct. The legal representatives of the families did indeed retain the services of Ms. Trotter pro bono and her entire team, pro bono. Not for payment, not for reward, there is no reward

that these experts will gain from the participation of these proceedings. In the course of retaining her services, documents were provided to her in order to assist her to undertake her task. All of those documents are in evidence before the courts. The affidavits are all in the bundles that are before this tribunal. The testimony that has been led is the testimony that is before this tribunal upon which Ms. Trotter bases her facts and so on the Ombud's report, common cause facts.

So, this I am afraid to say is a gross misinterpretation by my colleague of the State of Law of evidence and where if this tribunal was to take evidence of my colleague, it would make her a nonsense for the need of a need of an expert opinion ion matters. The reason we need expert opinion is because none of us and particularly you with respect Justice Moseneke don't have the expertise to draw inferences and deductions and conclusions regarding the psychological impact of the facts that are at play in this hearing. Ms. Trotter however is an expert who can advise us as to the trauma that is likely to result, what can be predicted from the facts that are at play in this hearing.

I would like to refer Justice to another judgment which I believe is unreported and I can provide Justice with the subtly citation. Justice, if I may do so after the recess because I thought I had the citation with me but I don't. But the case name is AD versus the MEC for Health and Social Development Western Cape Provincial government. It is a judgment by his Lordship Mr. Justice Rogers in the high court of South Africa, the Western Cape division. I am just going to the relevant paragraph. It is a matter in which the Justice had to consider the value of an expert opinion and the basis upon which experts made raw opinions and provided opinion evidence.

And he begins his assessment, what he calls a heading, assessment of expert evidence, paragraph 39 of the judgment. Justice, my colleague has provided me with the reference, so I can provide to you right away. It is 2016 ZAWCHC116 and the judgment was delivered on 7 September 2016 and it makes reference to PriceWaterhouseCoopers and applies PriceWaterhouseCoopers the judgment of 2 years before this particular judgment.

And at paragraph 40 of this judgment his Lordship refers to the very same extract that both my colleague and I have read out to you in relation to what an expert is entitled to do and not do. He then in paragraph 41 refers to United Kingdom Supreme Court judgment which reviews the principles relating to expert evidence and why they are relevant to our law. And then in paragraph 42, referring to the UK Supreme court judgment and now I quote, he says: an expert may draw on the works of others such as the findings of public research or the pulled knowledge of a team with whom the expert works. The expert then goes on to say must demonstrate to the court that he or she has relevant knowledge and experience to offer opinion evidence. My submission is that this expert has done so, it was put to Counsel at the start of Ms. Trotter's evidence if they object to her expertise, they did not object to her expertise. On the basis of the law as it stands and the references to the judges put to yourself Justice by my colleague and by myself and from the overwhelming evidence that is already on this tribunal, I ask you to not grant the relief that my colleague seeks to dismiss the evidence of Ms. Trotter. The point is wholly unfounded on hearsay evidence, it is a misinterpretation of the hearsay rule.

And so we on that basis say that there is no application. There should be no further truck with this line of argument and that ruling should not be granted.

But I would like to add one further thing for the record that to the extent that we were and to the interest of these proceedings which are of a special nature itself, and we are all here to get to the truth and in the pursuit if that truth, we tended to provide confirmatory affidavits by the other psychologists who are part of the team to confirm that the references to them in the report are true and correct. We tended to do so over the weekend. The State Counsel objected and refused to accept that evidence. I don't understand the motive of the State's Counsel for taking the points that they are now taking in relation to a witness whose task is to assist you, and those are my submissions on the matter.

ARBITRATOR JUSTICE MOSENEKE: Thank you. [indistinct]

ADV LILLA CROUSE: Thank you Justice Moseneke, I am going to endeavour not to repeat what has been said by my learned friend. Message. Hassim, I will urge the court to dismiss the application by the State and this court knows very well with respect the principles on which expert evidence rests. You need the expertise of the person that is already before court, you need the independence of the person. But that will be determined by this court at the end. The court will then look at the facts on which the opinion is based. And the court will determine whether the facts on which the witness based her opinion was the proper facts. But that is not for this court to decide that now. The court will also look at the process, whether it is a scientific process that can be repeated and that is the [indistinct] principle of court.

So, our submission is simply, the elements of expert evidence I before this court. This court cannot rule this evidence inadmissible at this stage. The court will of course evaluate whether the court trusts this witness. But this is an evaluation that the court will do at the end of the hearing. Those are our submissions.

ARBITRATOR JUSTICE MOSENEKE: Thank you. Advocate Groenwald.

ADV DIRK GROENWALD: Thank you Justice. Justice, say for submitting we fully support the arguments presented by both Section 27 and Legal Aid SA and that we are in support of the contention that the application of the State be dismissed. We can only add to the fact that as Justice has pointed out, this is a process [indistinct] and to now apply legal principles that is attempting to prohibit this arbitration from hearing facts and evidence which will support and assist the Justice in making a ruling, it isn't to the benefit of these proceedings. I therefore, we submit that this application should be dismissed.

ARBITRATOR JUSTICE MOSENEKE: Of course arbitration must be in accordance with the law.

ADV DIRK GROENWALD: Indeed so Justice, indeed so. But as indicated, we submit that the legal arguments presented by Section 27 and Legal Aid SA is sound and there is no reason to doubt them and there is no reason to uphold the argument presented by the State.

There is one other issue and that is the issue of the admissibility of hearsay evidence in any of them. In Section 3 of the law of evidence act, it clearly states that one of the factors should the Justice find that it is hearsay evidence, is that it can be

admitted in the interests of Justice and having regard to the proceedings and having regard to the [indistinct] value of the evidence and so on. So, irrespective of the fact that Counsel is arguing that it is hearsay evidence to the extent that Justice might want to consider that it might be hearsay evidence, it can still be admitted. But we stand with the argument in support of Section 27 and Legal Aid SA.

ARBITRATOR JUSTICE MOSENEKE: Very well, Counsel, do you want to make any submissions?

MALE COUNSEL: I thank you Justice Moseneke. I think the issue has been properly traversed. The only thing that I will add on is that my understanding of the issue is that there is the expert opinion moves from a premise that there is a home, there is a break mother and so on. and that is established by the fact that we are dealing with mental patients that were moved from Life Esidimeni, that is the home which was disrupted. And then from there, those are established facts and they appear from the Ombud's report, and then from there they were moved from different entities or different homes which as I understand the concept of home has been testified to by the expert was disrupted. That is one.

Then the question is, have we established the fact that these patients were moved from one home to another. That is the answer to the rest of the question is, yes, they have been moved. And the objection that is to the witness' evidence is that evidence that has been led is based on hearsay or it is hearsay. Whether the fact that patients were moved from one place to the other is hearsay or is a fact, I don't believe that can be hearsay and what follows thereafter is that whether is an expert entitled to base his or her opinion on that fact to make as an expert opinion whether

the fact of the move of these patients had an impact on them or did not have an impact on them. Those are my opinions.

ARBITRATOR JUSTICE MOSENEKE: [indistinct] on the application. The application should declare that the evidence of this witness is hearsay and should not be permitted to proceed for that reason.

MALE COUNSEL: On the basis that the facts are established on the base of which the opinion is made, the opinion is not based on hearsay evidence.

ARBITRATOR JUSTICE MOSENEKE: Should I uphold the application?

MALE COUNSEL: No.

ARBITRATOR JUSTICE MOSENEKE: Very well, we are back with you Counsel. If I make the ruling, is there anything else that you want to share and I think possibly the most important thing that you have to address on this hearsay argument is a platform not narrow. You are looking at 11 statement s and we have been here for 4-5 weeks. By agreement, the Ombud's report was admitted by all the parties and they had witnesses and not even one of them was challenged on their evidence. That was accepted unchallenged followed only by an apology. Totally startling maybe, your colleagues suggest you should now say all these are hearsay facts even without the 17-other people will it be the terrain for hearsay and all the facts have been admitted over hearing of 4-5 weeks. So, I think that is what your colleagues are saying, you ought to admit that. It goes way beyond the statements reduced to writing by the other experts and they make the other point that you want

all 17 of them to come and just say that which was never disputed. Anyway, what is your response to your colleagues' arguments.

ADV TEBOGO HUTAMO: Justice, I think like what we have to,LK take into account is that the witness' testimony is in relation to her establishing the extent of the trauma suffered by the families. It is indeed correct that the Ombud's report has be admitted to the extent of the occurrence of the deaths but what we take issue is that this witness testifies about the issues relating to trauma and we all know that the next aspect which has to be decided by this tribunal is the aspect relating to compensation. And compensation has to be measured against the extent of trauma suffered by the family members. So, it is on that basis it becomes very critical that those facts should be placed before you Justice so that when that moment comes for the determination of compensation, it should be known to what extent has there been suffering.

ARBITRATOR JUSTICE MOSENEKE: Can't you at the end of the hearing say, the expert witness exaggerated or the expert witness not to be relied upon, the expert witness overstated the extent of the trauma. Quite different from saying her evidence is inadmissible, isn't it?

ADV TEBOGO HUTAMO: Well, Justice the challenge is purely that we are now being forced to cross-examine a witness when there is no factual basis led. That is where the challenge is. That is why we submit that the proper course was to lay the ground where people with festered information will be able to give evidence. Already -

ARBITRATOR JUSTICE MOSENEKE: What festered information, the one recorded by clinicians? We have heard direct evidence, we have heard people come here and cry and scream and tell you the they have experienced, we have heard evidence about the movements, how unprepared placements of patients, we have heard evidence of their hunger, their death, their pain, we have heard it directly from them. Clinicians are told the we have already been told in this hearing. So, they themselves are 2nd hand reporters of what they have been told, you understand that. So, when you say there are no facts, is somebody ought to really argue to persuade me that there are no facts before me about the movement from their homes, about the hurried movements, about inadequate medication, about no hospital records; it is not contested and about the Ombuds report which is understand contested and about the Ombuds report which is before us uncontested, about deaths which are written 43, about it goes on. Clinicians recorded in statements what we have already been told. So, what facts do you say are not before us, which a clinical expert or a clinical psychoanalyst can't make expert inferences from. I haven't made a ruling, I am just putting it to you to argue that point because I would like to hear you on it.

ADV TEBOGO HUTAMO: Justice, the role of the expert witness is different from the other witnesses who came before these proceedings. And that role is to assist you as the arbitrator to be able to understand the nature and the extent of the harm suffered by the families. So, the experts testimonies cannot be compared to what other witnesses had already testified on about the events. So, what we say is that we have already heard from Ms. Trotter herself that amongst other important

considerations during the interviews is to consider the demeanour of those who are affected in order to be able to make an assessment.

ARBITRATOR JUSTICE MOSENEKE: She has told in statements about the demeanour and she has had the evidence open about how the people failed. What else should an expert go look for? [indistinct] sensory experiences, is that what the argument is?

ADV TEBOGO HUTAMO: That is the method that Ms. Trotter has testified, that is the method that was used.

ARBITRATOR JUSTICE MOSENEKE: No, didn't she say they used a team, didn't she describe the method and how do you distil the recorder of her colleagues and impressions and they all get garnered into one place as a team where those inferences were made. Be that as it may, I think you must finish your argument. I have given you an opportunity to respond to the earlier responses to your colleagues to your argument. And they are 3, one is the affects, she doesn't rely on hearsay evidence. 2, and admitted facts, 2 she is an expert and nobody suggested she is not, 3, in any event judges decide at the end of a hearing whether hearsay evidence ought to be given any weight or not, isn't that law now? No judges are called upon to make decisions on hearsay evidence in race media in full flight of the hearing. That was the law many years ago. You hear out a witness and in the end you can argue that I should place no reliance on it or little reliance on it or throw it out as a bad expert. But you don't stop witnesses. But you require a ruling, make your submissions and I will do so.

ADV TEBOGO HUTAMO: Justice, our responses are that firstly, on the aspect relating to facts, we stand by our submission that there are no facts placed before you Justice and the witness relate purely on the hearsay evidence by other experts. And secondly on the issue relating to the nature of these proceedings where it has been suggested that it is [indistinct] therefore the evidence should be admitted. We submit that even if it is so, we still have to operate in terms of the established legal principles. There is no reason to deviate or to depart from what the law provides. And that will be able to assist us in dealing with this.

ARBITRATOR JUSTICE MOSENEKE: About that you are right, the arbitration act is clear, we operate within the law. So, there are bigger issues that you may want to respond to. But if you are done, I will make a ruling and so that we can proceed.

ADV TEBOGO HUTAMO: Then the other issue relates to whether having admitted the content of the Ombud report, like does that translate to the admission of the extent of the harm suffered by the families. Because it is essentially what this witness is before these proceedings.

ARBITRATOR JUSTICE MOSENEKE: But this is startling Counsel, isn't it the witness of the witness that you were talking about, the severity of the experience and so on, you and I are not clinicians, we are not psychoanalysts. Somebody must tell us what all this is, what does it mean, the kind of trauma does it evoke in people who are exposed to this kind of situation, isn't it so?

ADV TEBOGO HUTAMO: Well Justice, our last submission is that -

ARBITRATOR JUSTICE MOSENEKE: Why would this witness be incompetent to do that, why?

ADV TEBOGO HUTAMO: Our last submission is that this witness is supposed to assist these proceedings by formulating an opinion. So, what we say is that her opinion will be fraud if it is not based on established facts before this tribunal. Those are our submissions and we request you justice to make a ruling on that matter.

ARBITRATOR JUSTICE MOSENEKE: Your application is dismissed and we will now proceed and the reasons for the decision will be set put on my own [indistinct]. and no further line of cross-examination that seeks to impugn this evidence on the grounds that it is hearsay will be permitted. May you proceed with cross-examination please.

ADV TEBOGO HUTAMO: Thank you Justice. Ms. Trotter you will recall that yesterday during your testimony you indicated that there was a person who was interviewed and it was established that, that person did not suffer trauma, do you recall that?

CORALIE TROTTER: Correct.

ADV TEBOGO HUTAMO: So, if according to your assessment that amongst other people who were interviewed did not suffer trauma, then on what basis do you seek this tribunal to extend the findings of your report in respect of 11 families to all the other families?

CORALIE TROTTER: On the basis that we all have a human mind and so although there will be differences on how we respond, if someone has had a lot of

loss in their lives that might affect how they respond to trauma, in this particular case, the person relies hugely on faith and that mitigates against it. What I am absolutely clear about is that everyone who has been through this experience is traumatized and hugely traumatized, then it anything be that there are some variations. The human is exposed to a particular stimulus, neurologically, biologically responds in the same way.

ADV TEBOGO HUTAMO: And then how did you come to the finding that the person interviewed did not suffer trauma?

CORALIE TROTTER: So, the interviews were conducted and then there were the pair that conducted the interviews wrote up reports which gave to me. There were times when I asked for additional information, I know that your argument is that I should have been there but in fact this method relies entirely on my not having been there because I have a totally objective view once I sit with all of these reports in terms of finding ongoing themes. And those themes eventually reached a saturation point. And I read every single report and then because I know what the signs of trauma are, I could see this person is traumatized, within one report there was no sign of trauma. And then I checked with the 2 people that had done the interview and I said is it correct that this person is not traumatized and they said. Then when we all met finally after I had written my report, what I said to everyone is listen very carefully because I want you to be sure that everything I said in this report is an accurate reflection of your clinical judgment and all of the information derived from your interviews. So, I am looking for themes in the report objectively and I know the trauma looks like.

ADV TEBOGO HUTAMO: Well, like the question was how was the determination made in relation to the person who did not suffer trauma?

CORALIE TROTTER: There were no signs and symptoms of trauma reported in the report.

ADV TEBOGO HUTAMO: In relation to those other family members that your team did not interview, is it unlikely that there may be others who are in the same position with the person the you said you could not find signs of trauma?

CORALIE TROTTER: There might be other people who also not be traumatized, that will be very low, that number.

ADV TEBOGO HUTAMO: There may be other people who did not suffer trauma.

CORALIE TROTTER: There may be other people who did not suffer trauma, but it will be a really low number.

ADV TEBOGO HUTAMO: Thank you. I therefore put it to you that, your methodology cannot be relied on by these proceedings by virtue of your evidence that you have already established that there s someone who was interviewed who did not suffer trauma. And you have already testified that there may be other people who did not –

ARBITRATOR JUSTICE MOSENELE: Let Counsel finish their proposition and then you will raise your objection. Will you complete your proposition? There is a pending objection but I think you should finish the point so that we can hear what the objection is. Please proceed.

ADV TEBOGO HUTAMO: Thank you Justice. What I was saying to you is that like I am putting it to you that your methodology cannot be relied on. Firstly, because you have said that your team has found that there was someone who did not suffer trauma and in your expert testimony now you also confirm that there are other people, of those who have not been interviewed, there may be those who have not suffered trauma. So, what I am saying to you is that your testimony in terms of the method that has been applied in order to assess the extent of the trauma cannot be relied on because of your failure to have interviewed all affected families. What is your response?

ARBITRATOR JUSTICE MOSENEKE: Before you respond, there is an objection. Advocate.

ADV ADILA HASSIM: My objection why this person to be disallowed is because my learned friend is not an expert, it is not competent, it doesn't lie in his mouth to say that the methodology is incorrect because he is not an expert. The expert report has been before this hearing and before the States Counsel from the very beginning. Had they wished to call an expert to make this proposition then they should have done so. But I request that, that question be disallowed.

ARBITRATOR JUSTICE MOSENEKE: I think the objection is not granted. Counsel might not be an expert to question on expert opinion. And the witness is here to defend the methodology. She is here and we don't have to be experts to listen to experts and to test whether the conclusions they make are reasonably supportable. So, the witness must apply to the question and say why the methodology is defensible.

ADV ADILA HASSIM: The methodology used is essentially how all epidemiological research is undertaken where you wont see there is a particular kind of problem for example that we have a major problem in South Africa with tuberculosis and you might then would want to look for something in terms of the impact of having tuberculosis which could be like the trauma.

ARBITRATOR JUSTICE MOSENEKE: Wait, I think I incited you to confront the criticism. The criticism is that the methodology you have used is not supportable, it is not to be supported because you have not interviewed or you had not made everybody who has been part of a victim part of the cohort. That is the essence of the criticism. So, I invite you to meet that criticism.

CORALIE TROTTER: So, in terms of this type of research, you will always choose a sample out of the big pool, whatever it is you were looking for and then you will look for saturation themes. You will always look at the same thing coming up over and over again. If you are trying to find out something about HIV, you don't go interview everyone in the country that has got HIV or who has got TB. Nevertheless, it is well established that the conclusions experts in that particular field arrive at based on a small sample are absolutely accurate and founded. That is the methodology, I haven't used a methodology that isn't well accepted epidemiologically. And I put in very specifically because of the nature of this situation, a hundred ticks and balances as I explained last time because of my distress that the ball could be dropped.

ARBITRATOR JUSTICE MOSENEKE: The peer review safety, what is the answer?

ADV TEBOGO HUTAMO: Thank you Justice, may I request that I proceed after the tea adjournment?

ARBITRATOR JUSTICE MOSENEKE: Yes, are we there already, very well. Indeed you may. We are going to require you after tea, we are going to resume at 12 midday. It is 11:30. Shall we adjourn now till 12 midday?

13 November 2017

SESSION 2

ARBITRATOR, JUSTICE MOSENEKE: Please be seated. Me. Trotter, you are still under your previous oath. Counsel.

ADV. TEBOGO HUTAMO: Thank you Justice. Me. Trotter, may you please turn to ELAH56? I just want to refer you to this page. Just bear with me for a second. Please turn to page 6, the one which is marked with a marker at the top right. Do you see that?

CORALIE TROTTER: I don't know if it is marked with a marker, but yes.

ADV. TEBOGO HUTAMO: Yes, on the right, yes.

CORALIE TROTTER: Ja.

ADV. TEBOGO HUTAMO: Page 6.

CORALIE TROTTER: Ja.

ADV. TEBOGO HUTAMO: Yes.

ARBITRATOR, JUSTICE MOSENEKE: It is page 4 of your report.

CORALIE TROTTER: Thank you.

ADV. TEBOGO HUTAMO: The second paragraph where it is recorded that: "The team conducted consultations with 11 families of deceased individuals." Do you see that?

CORALIE TROTTER: Yes.

ADV. TEBOGO HUTAMO: And further it is stated that: "Those consulted include", then it makes reference to those families. And on counting it appears that it is indeed 11 families.

CORALIE TROTTER: Yes.

ADV. TEBOGO HUTAMO: From your testimony that you were able to establish that there were no signs of trauma in respect of one of the families, can you assist us and give us an indication which of those families did not demonstrate signs of trauma?

CORALIE TROTTER: Certainly. The Reverend Joseph Mabue, he was interviewed alone and he did not demonstrate any signs or symptoms of trauma. He was in pain but he wasn't showing signs of trauma.

ARBITRATOR, JUSTICE MOSENEKE: And you said somewhere in the body of the report, I remember, I just can't immediately find it… You may proceed, Counsel.

ADV. TEBOGO HUTAMO: Thanks Justice. Me. Trotter, on Friday you dealt extensively with the definition of torture like from your involvement in the preparation of the report.

CORALIE TROTTER: Yes.

ADV. TEBOGO HUTAMO: Yes. I have managed to get the definition of torture under the United Nations Torture Convention of 1984. Are you familiar with it?

CORALIE TROTTER: No, I am not.

ADV. TEBOGO HUTAMO: Okay. It is defined as follows: "Torture involves intentional affliction of pain by a public official to obtain information." Then the definition goes further to say: "The full definition of torture in the convention is, any act by which severe pain or suffering, whether physical or mentally, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person or for any reason based on discrimination of any kind. When such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." And then lastly it says that: "This definition excludes pain or suffering arising only from inherent in or incidental to lawful sanctions, which seems designed to permit the death penalty." From what I have read, you would have noted that the main feature is the intentional infliction of pain, did you see that?

CORALIE TROTTER: I heard that.

ADV. TEBOGO HUTAMO: Yes. And you testified that at some point you were able to consult with detainees, do you recall that?

CORALIE TROTTER: Yes that's right.

ADV. TEBOGO HUTAMO: Who were subjected to torture.

CORALIE TROTTER: Correct.

ADV. TEBOGO HUTAMO: From that definition, how do you attribute the intentional infliction of pain?

CORALIE TROTTER: I think torture can be by commission or omission and if you are given the responsibility of looking after people who can't move, who can't talk, who are unable to feed themselves and you watch them dying, that would qualify as torture psychologically, precisely because those individuals were in the care of those who were running the NGOs. And they were not able to protest, to move, to help themselves. So that for me would be defined as torture, especially when it is combined with such massive dehumanisation. So you might not be trying to extract, but torture is also about intimidating people, about eliminating them. So the dehumanisation and then the process people went through to die, for me, psychologically is torture.

ADV. TEBOGO HUTAMO: From the definition what comes out is the intentional infliction of pain is with the object of obtaining information as defined in the convention. So will that… will your assessment fall within the confines of that definition?

ARBITRATOR, JUSTICE MOSENEKE: Ja, but are you saying to the witness that the only object of torture is obtaining information? I think you should formulate it clearer. There are several objects of torture and one of them you are putting it to her. But I think you should make it quite clear that you are putting one objective to her.

ADV. TEBOGO HUTAMO: Okay thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: I am just saying that the question should be clear – that is all I am saying.

ADV. TEBOGO HUTAMO: From my reading of the definition of torture in the convention, it makes reference that the object will be to obtain information from the person subjected to such torture. So what I am asking from you is that, from your assessment of the information provided to you, would that fall within that definition as set out in the convention.

CORALIE TROTTER: No, it doesn't. I have a different definition of torture.

ADV. TEBOGO HUTAMO: Okay.

ARBITRATOR, JUSTICE MOSENEKE: Just for clarity sake, Counsel, the definition you've just read, I don't have it before me, it has three parts to it, does it?

ADV. TEBOGO HUTAMO: Yes.

ARBITRATOR, JUSTICE MOSENEKE: What are the other objects besides extracting information?

ADV. TEBOGO HUTAMO: Well the object is for purposes of obtaining information by various means of… by various means of conduct, either be by coercing, by torturing, intimidation, it lists the manner in which such information… coercion and so forth. But like the main objective according to the definition is only to ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Just read it again.

ADV. TEBOGO HUTAMO: "The full definition of torture in the convention is, any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person

information or confession, punishing him for an act that he or the third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official."

ARBITRATOR, JUSTICE MOSENEKE: So you could torture to get information, you could torture to punish, you could torture out of hatred and discrimination, isn't it?

ADV. TEBOGO HUTAMO: Yes, with the object of obtaining information.

ARBITRATOR, JUSTICE MOSENEKE: No Counsel, you've just read it now. We all are listening, isn't it? I haven't got it before me. Do you have a copy?

ADV. TEBOGO HUTAMO: I'll make a copy.

ARBITRATOR, JUSTICE MOSENEKE: You torture to extract information, you torture to punish, you torture out of hatred or exclusion, you torture… isn't it? Extracting information, as I understand you read it, is a subset of a number of purposes of torturing. Or am I totally lost?

ADV. TEBOGO HUTAMO: Well that is what it provides.

ARBITRATOR, JUSTICE MOSENEKE: So there are several purposes why you could torture somebody.

ADV. TEBOGO HUTAMO: That is what appears from the definition.

ARBITRATOR, JUSTICE MOSENEKE: Okay. Thank you.

ADV. TEBOGO HUTAMO: Thank you. Me. Trotter, let's now deal with the aspect to relating to the disruption of the concept of home ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: I am sorry, what was Me. Trotter's answer to the question that you put to her? I know you furnished it, but I was more concerned about definitions.

CORALIE TROTTER: From my point of view, if you look for example at the holocaust and the concentration camps where mostly they were not trying to extract information from people, that was being done in the cities… I think we would be hard pressed to say that the way that people were treated did not fall under the guides of torture. So what I am saying is that torture is simply not only about getting information and that in fact part of why I end my report talking about dignity is that for me that underlies all of this, a hatred of another that is different.

ARBITRATOR, JUSTICE MOSENEKE: Ja, okay. Thanks Counsel, you may proceed.

ADV. TEBOGO HUTAMO: You testified that if the concept of home is disrupted ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Before you leave the torture, are you going to put it to the witness that in your view the treatment to which the victims here were exposed, did not amount to torture? I just want to understand the reason for the question, because questions are always put, at least in law, they are put for a reason to establish a proposition or to counter evidence put up by another. Is it the State's attitude that this did not approximate torture, is that where we are going?

ADV. TEBOGO HUTAMO: Indeed so Justice.

ARBITRATOR, JUSTICE MOSENEKE: I think it should be put to the witness in all fairness so that she can respond to it and say I think it is, so that we understand the difference.

ADV. TEBOGO HUTAMO: Thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: Thank you.

ADV. TEBOGO HUTAMO: Me. Trotter, from the definition which I have read from the convention, I put it to you that it is quite clear that what had actually happened was a tragedy which unfolded. There was no intention at all on the part of the Government to punish those who were affected. So in short what I say to you is that there was never any intention to punish or to cause pain to those who have been affected. What is your response?

CORALIE TROTTER: I don't agree with that.

ADV. TEBOGO HUTAMO: Okay. In your testimony you stated that if a home is disrupted it comes with the most severe social stresses. Do you recall that?

CORALIE TROTTER: I am actually quoting the diagnostic and statistical manual of mental health disorders and making the point that in that document that is their opinion that this is such a severe social stress that they would argue that it is the most stressful one. I mean I agree with it, but I am basically giving you a reference for it.

ADV. TEBOGO HUTAMO: And then on that aspect like you were making reference to the mental health care users, not so? The effect of the disruption of the home, was it in respect of the mental health care users or was it in respect of the family members?

CORALIE TROTTER: The argument has two parts, well if you want to put it that way, three parts. The first premise is that for all of us, for everyone, not just for the families, not just for patients, home is… some experience of a home allows us to define ourselves to have a sense of meaning and a sense of continuity. So that is my premise for each and every one of us. Then disruption of a home for anyone is difficult. Then if you take the argument down to the mental health users or the patients, with this particular population group, moving people is serious business. Then on top of it, if you move those people and you don't alert their families and their families aren't there and the families are running around looking for the people they love, you've now got a number of layers of stress, of trauma, that we can link back to the premise of home, to the importance of home or a brick mother.

ADV. TEBOGO HUTAMO: Then from what you say in relation to the families that have been consulted or interviewed, what will you describe as the harm suffered by those families?

CORALIE TROTTER: In terms of the concept of home?

ADV. TEBOGO HUTAMO: Yes.

CORALIE TROTTER: So, if I link this specifically to the context of home, it is a very-very painful thing to have someone in your family who is disabled and to

decide that that person needs too much care in terms of what can be provided at home. It is a very hard and painful decision to make. So these families have already made that decision, there is already conflict inside about it. All the families we interviewed were satisfied enough with Life Esidimeni and we know this because they opposed it and opposed it strongly. They knew it in their souls and bones that this is not going to be in the best interest of those they loved. Then if you take for example what Jabulile said, she says they went behind our backs and they moved everyone. So now you've got all these families looking for people they love, who they know can't protest, can't walk, can't feed themselves. I can't imagine a single mother or father hearing that who wouldn't think that that is very traumatic. It is one of the worst things in the world to lose a child or to lose a partner and to never be able to find them and these families had to go through that experience.

ADV. TEBOGO HUTAMO: And your testimony has been from the interviews, with the exception of one family, you were able to establish trauma suffered by the families.

CORALIE TROTTER: Correct.

ADV. TEBOGO HUTAMO: In terms of percentage, are you able to give an indication as to whether all of the ten family members have continuous or post traumatic trauma?

CORALIE TROTTER: They all have continuous traumatic stress.

ADV. TEBOGO HUTAMO: And you say with the exception of one.

CORALIE TROTTER: With the exception of Reverend Mabue.

ADV. TEBOGO HUTAMO: Yes. And in relation to the other family members that have not been consulted and interviewed, you also indicated that there is a likelihood that there may be those who did not suffer trauma.

CORALIE TROTTER: There is that likelihood.

ADV. TEBOGO HUTAMO: Okay.

ARBITRATOR, JUSTICE MOSENEKE: But in essence, Counsel, do you want to put anything to the witness? in other words, do you want to suggest otherwise than what she says that there was pervasive stress out of which arose disorder as she concludes in her, and that it is continuous, as it concludes in her report? Is that finding challenged?

ADV. TEBOGO HUTAMO: Well Justice, I just want to establish that, and I am content with the answer which was given.

ARBITRATOR, JUSTICE MOSENEKE: Which was given.

ADV. TEBOGO HUTAMO: In relation to those who have shown signs and the one who did not show the signs and those that are unlikely to have those signs.

ARBITRATOR, JUSTICE MOSENEKE: Sure.

ADV. TEBOGO HUTAMO: So I cannot take the question any further.

ARBITRATOR, JUSTICE MOSENEKE: Okay. For me as the adjudicator it is always helpful to know what are the things that the other party is contesting and which aren't they contesting. That is the only thing I am trying to establish obviously.

ADV. TEBOGO HUTAMO: Yes.

ARBITRATOR, JUSTICE MOSENEKE: I want to understand which part of this does the State object in the opinion and which part does the State not contest. You are not obliged to do that, but if you ask questions, any adjudicator will ask, are they agreeing to this or are they contesting this. And that is why in our tradition, in our law we always, you put a proposition to the witness in the end. If you don't agree then you say I don't agree. That is what a put is about. I have heard you but I don't think you have sufficient evidence to make the conclusion. Or I have heard you, I think you are wrong. I heard you, I think I am not contesting. That always help at any rate for the adjudicator to know exactly where the points of difference are. But anyway, you may proceed.

ADV. TEBOGO HUTAMO: Thank you Justice. That will be the end of the questions.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. And that gets us back to re-examination. Adv. Hassim.

ADV. ADILA HASSIM: Justice, you need to switch off one of your mics, please. (Inaudible – very soft).

ADV. ADILA HASSIM: I need it. Good afternoon, Me. Trotter.

CORALIE TROTTER: Good afternoon.

ADV. ADILA HASSIM: Thank you for making yourself available again for this hearing. I only have a couple of questions in re-examination and perhaps I'll begin

with where my learned friend left off and that is with the findings of the Reverend not showing signs of trauma. Is it your opinion that someone who does not show signs of trauma is not experiencing trauma or is not likely to experience trauma? Can you help us to understand why there would be that manifestation of feelings in a person and what it means… what are we to make of that?

CORALIE TROTTER: Look it is highly likely that someone is traumatised and they have a delayed response. So the fact that someone is not traumatised immediately afterwards is not uncommon. Because one of the three dominant features of trauma is that you try to avoid any queue or any association with the trauma. So often people after the trauma will shut down, they'll go numb and the trauma can take a long time to manifest. Often what happens is, there will be another loss or another crisis and then that will be the straw that breaks the camel's back and the person will then show signs of trauma. In the Reverend Mabue's case he lost his wife. He has a very deep and profound faith in God and because of that faith he is able in his mind to mitigate against the trauma.

ADV. ADILA HASSIM: He lost his son in ...intervened.

CORALIE TROTTER: He lost his son but before that he lost his wife. And so what he spoke about was having lost his wife, which was devastating for him, in some way, and his age, he is not a young person, he is in the process of coming to terms with loss and eventually the loss of his own life and he has a faith that protects him. That does not mean to say that he was not absolutely devastated. There is a difference between being emotionally and psychologically devastated and showing actual signs of trauma, which doesn't mean those signs won't appear again.

ADV. ADILA HASSIM: Thank you.

ARBITRATOR, JUSTICE MOSENEKE: You are talking about three dominant features of trauma, but you seem to have mentioned only one. For my benefit, would you tell me of the balance?

CORALIE TROTTER: So the one sign of trauma is what we would call increased arousal. So the whole sort of neurobiological and psychological system is aroused in a way that we wouldn't expect if someone had not been traumatised. And that can manifest at a physiological level, emotional, at a psychological level. So the classic one is startle response, where, if you haven't been traumatised you might hear a sharp loud sound and not respond. If you have been traumatised it is highly likely that even a door closing is going to give you a fright, because your physiologies in that sort of exaggerated state of arousal. The second main feature is an attempt to avoid all queues and associations with the trauma both internal and both external. So anything in the outside world, the person will try and not expose themselves to, but at the same time what makes it really hard is that you might choose not to go back to Takalani and traumatise yourself in that way, but you can't stop internal queues. So internal queues will be coming up the whole time that you will then desperately try to avoid. So you might deny your feelings so that you are not reminded of the trauma. And the third thing is, it is a feature that is about… I mean if you remember the definition of trauma, it is an experience that you weren't ready for, that is horrifying, slipped in because you were unprepared and there was no witness to it internally. So what that means is, because you didn't witness it in

the moment and find words to describe it and say okay well it is like this in my life ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: And it has to be a horrific experience.

CORALIE TROTTER: Exactly, life threatening. So that is why we can say everyone, we can anticipate more or less anyone would respond in a similar way precisely because the event threatens psychological integrity and it is outside of ordinary normal experience. So what happens is, the imprint is there but it hasn't been processes and digested. So the third feature, which is probably the hardest feature of all, and in these families it is so florid is that then the imprint of the trauma keeps returning in unbidden ways, so you have a flashback or you can't stop dreaming about the person. So Sophie Mangena talks about how she dreams about her mother and her mother was this extraordinary mother and she was fierce and she was available. Then she got vascular dementia and the last time she saw her mother, her mother had this sort of dead medicated look. She went with her sister and her brother to see her and now when she dreams, she can't dream about her mother smiling and she can't dream about her mother being fierce.

ARBITRATOR, JUSTICE MOSENEKE: And she was here and she told us that herself.

CORALIE TROTTER: And that dream tortures her. I think it was her sister, Boitumelo.

ARBITRATOR, JUSTICE MOSENEKE: Boitumelo, right, who was here.

CORALIE TROTTER: And Sophie is the one, her sister, who has the dream. So those kinds of flashbacks, dreams, intrusive memories, that is probably the hardest part of trauma because you can't stop it. And you start being traumatised in a way not just by the event that you weren't able to metabolise but by your own experience of yourself. And that is what is so hard about continuous trauma, if the event is over and it is sealed, you can then begin to say okay what impact has this had on me, how has it changed me, how do I mourn that I have lost that version of myself. When you are in a situation like this and you are fighting for justice, for truth, trying to make sense of everything, you can't seal it off and so then there is a greater possibility of all the flashbacks, etcetera, etcetera. So Christine, for example, says if she thought about Virginia calling out, she would never ever want to wake up again in the world. It is that kind of internal persecution.

ARBITRATOR, JUSTICE MOSENEKE: Thank you.

ADV. ADILA HASSIM: Me. Trotter, in your evidence in chief we traversed some of your findings particularly the language you used of degradation and dehumanisation. Can you explain to us, you have already explained your history and your experience… My understanding, I just want to make sure we are all on the same page, is that these are exceptional, what you have found and what the team has found is exceptional.

CORALIE TROTTER: Correct.

ADV. ADILA HASSIM: And would you then say the treatment was inhumane?

CORALIE TROTTER: I would definitely say that and without a cause. So if we go back to the state of emergency, the apartheid era, partly what mitigated, not that people weren't traumatised, but partly what helped people deal with their experiences was a cause. And if you have a cause and you believe that cause is just and you are fighting for it, it helps you internally manage traumatic experiences. I think one of the devastating things about this situation is no one can find the cause. And so then it is like we have all been thrown into space, because we can't hold on, we can't make meaning of it, we can't understand it without a cause. So I think that is why the picture is so catastrophic.

ARBITRATOR, JUSTICE MOSENEKE: But was this an intentional plan to cause harm? I think Counsel sought to tax from that to say how can you say this was torture, this was not an intentional plan to cause harm. Negligent maybe, uncaring maybe, careless maybe, but was this an intentional plan to cause harm?

CORALIE TROTTER: There is no way that I can say that it was.

ADV. ADILA HASSIM: Can you say that it was not?

CORALIE TROTTER: I can't say that it was not. And I can say apart from negligence, not taking care, the lack of ethics, all of the things that we have discussed a lot… from my point of view as a psychologists, one of the biggest problems in this situation is the erasure of reality. So you do something because inside you that is the way you wish it to be and that is what you want to do, which is what seems to have happened with this relocation. And then you erase the reality on the outside of you and partially what is being erased is all the knowledge,

expertise, information around moving psychiatric patients. But in a way the same thing has happened with the State's Counsel today. There is an attempt to erase knowledge, information, expertise about trauma that is derived from many different places. So we get very stuck if we just trust what is inside us and then refuse to acknowledge that outside of this is reality and in that reality are things we don't like, information, etcetera.

ARBITRATOR, JUSTICE MOSENEKE: I understand the erasure point and I am not there. What I am trying to settle in my own mind is, was this an act of torture. I am going to hatefully kill them or I am going to expose them to horrendous treatment so that they die or suffer. Or was it a case of neglect… a case of unethical conduct… a case of low levels of caring… a case of recklessness and negligence. I am trying to locate it. You were taxed on that and Counsel sought to debate that with you with all those quotations about what torture is. What is your response?

CORALIE TROTTER: So in terms of the Gauteng Department of Health, I can't say that it is any more than unethical, negligent, ignoring all the information that is available. In terms of the ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: The Ombud says reckless, he adds that ...intervened.

CORALIE TROTTER: Exactly and deviation from principles, ja.

ARBITRATOR, JUSTICE MOSENEKE: Deviation from principle, deviation from the law.

CORALIE TROTTER: Ja and I agree with that. Once we move into the NGO environments, we now have a different argument, because now we have got people watching someone dehydrate. For example the Reverend Mabue tells us he was told that Billy could not have water because, to quote "he would pee in his pants." So at this point that is not just negligence. This now becomes… or you lock someone in a filing room without food and forget that… I mean we all know the different examples. So if you watch someone starving and dehydrating to death, for me that is torture. Then on top of it, from the Ombud's report and from all the testimony that I have heard here in the arbitration, as well as what came out of the interviews, people were physically injured – that is torture.

ARBITRATOR, JUSTICE MOSENEKE: Yes, Counsel.

ADV. ADILA HASSIM: Thank you Justice. I was going to go down a similar line of questions, but your responses to the Justice took care of that. My final question then is whether at any time you were placed under undue pressure, under undue influence to come to the findings in your report.

CORALIE TROTTER: Absolutely not in any way. I mean what I am absolutely clear about is that none of you could have developed this protocol, argued it theoretically, done the interviews and written the report that I wrote. In fact… or let me not go there. There was absolutely no way that I was under pressure. And anyone who knows me, would know that I am not that kind of person. The one thing I value is the independence of my own mind, especially in a situation like this, which is so important for our country and for our children. If I may say, my son on Saturday, so he came up to me and he said mom you are looking distressed again,

is it about Oddy (who is our dog that died 10 days ago), or is it about the arbitration. And I said to him it is about the arbitration. And he said mom, I really don't like this arbitration it is interfering with your mothering and I said to him that I know, but this is so important for your future and so you're just going to have to manage it until it is over. That is why I have done this.

ARBITRATOR, JUSTICE MOSENEKE: You could have said all of the above.

CORALIE TROTTER: Exactly.

ADV. ADILA HASSIM: Funny enough my son asked me the same question over the weekend and asked me whether I can quite, can I quite this job now and I said no I can't. And just to emphasise the point on the independent… you sought to have… is it normal to have independent peer review when you undertake studies and research?

CORALIE TROTTER: No that is not ordinary. That came very much out of these circumstances where you've got this sort of series of events where all kinds of things are dropped and forgotten, ID documents, people, autopsy results, bodies. So for me that, as a clinician, would have been a red light. Because what happens in life is if something like that has happened in the marathon project and now I am going to investigate that, something called parallel process, which means often the process repeats itself in the investigation or in the arbitration, so I would know that about anything. In this particular situation, as I have explained before, Me. Regege's email disappeared into virtual reality. And when I then got the email again and realised what it was about, I felt absolutely devastated that this – I am

sure that you would have got someone else, but that this arbitration might have proceeded without testimony from clinicians. So from that point onwards, you can ask the team, I kept saying the big risk for us here is to drop balls. We are going to interview in pairs, we are going to get people checking all the time so that we don't drop a ball. So that is where that came from.

ADV. ADILA HASSIM: Thank you. I would like to, for the record, thank you and your time for your selfless service to the arbitration, thanks.

CORALIE TROTTER: You are welcome.

ADV. ADILA HASSIM: There are no further questions from me, Justice Moseneke.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. There was an insinuation though that by touching the Hillsborough report, the Hillsborough disaster report, you were acting less than as independently as you were required to as an expert. I wonder what your response is to that. Simply, why did you attach the report to your expert opinion?

CORALIE TROTTER: Look, I don't know of another report that in some way is so similar, not just because of the tragedy itself, but because of the Hillsborough families it took such a long period of time to get justice and that felt for me like two features of this are reflected in that report. Honestly, I think the report is a good report, but it wasn't that impressive for me. There were three things that the Reverend Jones said that I thought oh that applies exactly here and that is a beautiful quote. Because sometimes if we use other people's words, they say something in a more meaningful way. Also the Hillsborough report, my report was

written and the Hillsborough report in no way at all, substantially, in terms of content, and I can alert you to the three quotes from the Hillsborough report, but it is absolutely in no way changed my report, it was all done and dusted. I had always felt that the ending to my report was a bit sort of unimpressive. And then when I read the Hillsborough report, his last three lines, which I read on Friday about something like this having a vicarious quality and a meaning for all South Africans – I love that and that is why I ended my report that way. And the other thing I loved was what he said about a false public narrative is an injustice in itself. And I thought well that is so true in terms of what we are trying to do here. But it substantially changed nothing.

ARBITRATOR, JUSTICE MOSENEKE: Yes and it is not a clinical report in the sense of yours.

CORALIE TROTTER: Exactly.

ARBITRATOR, JUSTICE MOSENEKE: That is what struck me that it sought to sweep across many areas (inaudible), the response of victims, the response of communities and of the nation and so on. So it is a report that is much more sweeping than one that is clinical in its narrow focus.

CORALIE TROTTER: That is exactly right. and in fact when I read it, I felt very pleased with my report, because I thought actually the Reverend Jones could not have linked the things I have linked, all he could do was quote the families, really, and then arrive at some ethical some learning points.

ARBITRATOR, JUSTICE MOSENEKE: But in fact, if one ignored it, no harm would come to your report.

CORALIE TROTTER: Could be completely ignored.

ARBITRATOR, JUSTICE MOSENEKE: Because Reverend Jones is not a clinician, not by any means.

CORALIE TROTTER: Exactly.

ARBITRATOR, JUSTICE MOSENEKE: He is a public thinker but not a clinician as yourself.

CORALIE TROTTER: Ja.

ARBITRATOR, JUSTICE MOSENEKE: Okay. and the last thing I thought I would raise, which always entitles you to re-examine if anything comes up, which really is Counsel for the State somewhat obliquely insinuated that you were called to make the compensation end of this enquiry more stacked against the State.

CORALIE TROTTER: No that is not what the email said. The email to me said what would be helpful would be to have clinical information, so a view of the families that wasn't them giving testimony and listening to their narratives, but a view of the families that was based on our clinical knowledge and expertise.

ARBITRATOR, JUSTICE MOSENEKE: Okay listen again to my question. The question really is, there is an insinuation that you have placed a thumb on the one scale so that compensation may be higher than otherwise.

CORALIE TROTTER: Not at all. All I was told was that it may help inform you about the nature of the compensation. And for me it was always very clear that that outcome applied to things like memorial services, you know, the compensation is part of it. There was no pressure… I mean I am not even sure exactly what that means. So there was no pressure in terms of an amount at all. And the families made it clear that what matters to them as much, and for some families more, is restoring dignity, truth, etcetera. So for me as a psychologist became the focus. It is for you to use the report in terms of assessing compensation amounts.

ARBITRATOR, JUSTICE MOSENEKE: Again the perception obliquely is that you are here to make out an argument in favour of the claimants and that is how you saw the task at hand. What is your response to that?

CORALIE TROTTER: If the issue of compensation disappeared, I would have written exactly the same report.

ARBITRATOR, JUSTICE MOSENEKE: Very well. Is there any re-examination that arises from the questions I have asked? For that matter, would any Counsel like to ask any more questions?

ADV. LILLA CROUSE: We have no questions. Thank you Justice.

ADV. ADILA HASSIM: We have no questions.

ADV. PATRICK NGUTSHANA: No questions.

ADV. DIRK GROENEWALD: No questions.

ARBITRATOR, JUSTICE MOSENEKE: Counsel?

ADV. TEBOGO HUTAMO: We will not proceed to ask any questions.

ARBITRATOR, JUSTICE MOSENEKE: You have no questions.

ADV. TEBOGO HUTAMO: Ja.

ARBITRATOR, JUSTICE MOSENEKE: Procedurally you are entitled to follow-up if the court raises a new matter that you might want to clear up, but there are no questions as I understand. Well we have come to the end of the road. It is a bit of a taste of what lawyers do to psycho analysts.

CORALIE TROTTER: I'll be writing a paper about it.

ARBITRATOR, JUSTICE MOSENEKE: Very well, but again thank you for coming out.

CORALIE TROTTER: You are welcome.

ARBITRATOR, JUSTICE MOSENEKE: And thank you for being part of this process to try and get at the truth in all its complex manifestations.

CORALIE TROTTER: You are most welcome.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. You are again excused. And again thank you for working pro bono in a world where money seems to be everything.

CORALIE TROTTER: You are most welcome.

ARBITRATOR, JUSTICE MOSENEKE: Ja. Thank you.

ADV. ADILA HASSIM: Justice Moseneke, we are ready to call our next witness.

ARBITRATOR, JUSTICE MOSENEKE: Yes indeed.

ADV. ADILA HASSIM: Dr Talatala.

ARBITRATOR, JUSTICE MOSENEKE: Let's go on. I beg your pardon, Counsel?

ADV. TEBOGO HUTAMO: May I just be given one opportunity?

ARBITRATOR, JUSTICE MOSENEKE: Yes certainly.

ADV. TEBOGO HUTAMO: We have noticed the sequence of the witnesses who are going to be called, the expert witnesses to be called by Section 27 and amongst them is Dr Talatala and Dr Chambers. We have expressed our reservation for their appearance as expert witnesses on behalf of Section 27. And this issue we have raised it last week, but however they are charged to proceed with those witnesses. And our concerns emanate from the fact that the two doctors deposed to founding affidavits in the urgent application on the instructions of Section 27. Dr Chambers deposed to a founding affidavit of that application, which appears at page 97 of file 1. And then Dr Talatala deposed to a confirmatory affidavit in support of the application at page 338 of file 1.

ARBITRATOR, JUSTICE MOSENEKE: File 1. Yes and what is the legal objection to them testifying? What is the legal premise for the objection?

ADV. TEBOGO HUTAMO: We submit that they cannot appear before these proceedings as the hired guns on behalf of Section 27, because their independence is questioned by virtue of their association with the claimants in these proceedings. And with regard to the two cases which I have previously referred to, the Price

Waterhouse Cooper… the court has given guidelines when will credibility of a witness be called to question. So I just want to enquire from you, Justice, whether will this be an opportune moment for us to formally raise our objection and set out exactly what it is that is expected of an expert witness in the proceedings.

ARBITRATOR, JUSTICE MOSENEKE: To put an exact finger on it, you say they are disqualified because they had in the past deposed to affidavits in support of a case of the claimants.

ADV. TEBOGO HUTAMO: Indeed so.

ARBITRATOR, JUSTICE MOSENEKE: You must, Counsel, have had cases of two engineers, accountants or other experts called on the one end by the claimant and on the other end by the respondent. You have no doubt come across such cases, haven't you? The one claimant would call one or two surgeons and the defendant will call two surgeons, all experts, and in the end the court is called upon to make a preference, to make a finding of preference on expert testimony, isn't it?

ADV. TEBOGO HUTAMO: Well ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Experts are not free willing people all the time. They may have a view and another expert may have an opposite view, and you are entitled, aren't you, to call experts that support your proposition and others that counter it. And don't courts every day have to make a decision about which expert testimony is preferable?

ADV. TEBOGO HUTAMO: Well, Justice, our concern is not on the expertise of the witnesses. Our concern arises from the fact that they are partisan to the claimants

in the matter. They were parties, they were not called as witnesses. They were instituting proceedings on behalf of the claimants.

ARBITRATOR, JUSTICE MOSENEKE: Sure, I take the point and that would be a valid argument to raise when you evaluate the evidence, it might be, isn't it? I am just trying, Counsel, to draw a line between should a witness be prevented from testifying on the one hand and what weight I as arbitrator ought to put on the evidence. You get the difference.

ADV. TEBOGO HUTAMO: Yes, well our main concern is that these are matters that we need to set them out forthright.

ARBITRATOR, JUSTICE MOSENEKE: Sure. No, the point is validly made and at the right time… I don't think you are making it at the right time. But you are not asking that the witness be prevented, because in your view it is an expert that has already made up his mind about the issues. Then that is a criticism that you validly raise and say don't place much weight on Dr Talatala's evidence, because he has chosen, has picked a side much earlier and that is a fair criticism. Two (inaudible) experts on two sides, two auditors on two sides, it happens all the time. And the State might want to call the experts after the expert testimony here, in an attempt to refute the opinions raised by the other expert. But the right time to raise it is now and I'll hear what your colleagues say to say we don't think this expert is independent, he has shown his hand before, and let your colleagues respond to that and that will be on the record to show that you have raised the matter and you have concerns about the non-partisanship that is distinct from the expertise of the witness. Any more points you would like to make before I turn to your colleagues?

ADV. TEBOGO HUTAMO: No further submissions.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. Counsel, is your witness disqualified?

ADV. ADILA HASSIM: No Justice Moseneke, thank you. In fact it is quite ironic that it is the question of independence that is being raised as grounds for disqualification in respect of this witness. Because the reason why this witness was called, is because he exercised independence at the time that the marathon project was ongoing. He exercised his independence by raising his concerns, by taking steps, and to that extent that is true that he did take steps in the course of the facts that are before this tribunal. He did so because he was acting – and I'll leave it for him to speak if he is allowed to provide testimony – out of an ethical duty as a psychiatrist. And it is for that reason that we have called Dr Talatala because in fact the question of independence of the medical professionals who were involved, let's leave aside the government officials, but those who were medically qualified and what obligations rested on them, firstly. Secondly, my learned friend says that Dr Talatala filed an affidavit in the December 2015 litigation on the instructions of Section 27. Well he has got the cat by the tail. It is Section 27 who filed that affidavit on the instructions of Dr Talatala, they were acting as legal representatives, he instructed them to file the affidavit in support of a motion to draw a hold for a brief period of time while things get sorted out ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: But it makes Adv. Hutamo's point even more so. He is saying rightly or wrongly, he picked sides.

ADV. ADILA HASSIM: We are not calling… Let me also clarify this that he is here in order to provide testimony, direct testimony of his involvement of this project over the last two years.

ARBITRATOR, JUSTICE MOSENEKE: So you don't seek to qualify him as ...intervened.

ADV. ADILA HASSIM: Only to this extent.

ARBITRATOR, JUSTICE MOSENEKE: …as a psychiatrist, ja.

ADV. ADILA HASSIM: No, I do. And he sets it out in his affidavit that is before the tribunal, his report that is before the tribunal, that he is a psychiatrist. And the reason why that is relevant is because his actions were determined as a result of his qualification. And so he is here to testify as to what he saw, what he did and why he did it.

ARBITRATOR, JUSTICE MOSENEKE: Ja, but a pick has to be made… you see the argument is this, is that law of evidence privileges expert witnesses, it allows them to flourish to draw inference from facts that are already established. That is really what the regime is. You are allowed as an expert to… but if you come in to depose to the facts yourself, then you are subjected to the normal rules of tendering evidence. So that is why at the beginning we have to make a pick, whether a witness is allowed the flourish of opinion or the witness is constrained by what the witness knows, has seen, sensorially and cognitively.

ADV. ADILA HASSIM: If it assist the tribunal, then we don't need to refer to this witness as an expert witness in the narrow sense understood in litigation.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ADV. ADILA HASSIM: His expertise, however, is relevant to his direct testimony.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ADV. ADILA HASSIM: And whatever his testimony is in that regard and whatever opinions may emerge is for the arbitrator to decide what weight to place on it. And if it assists the tribunal to not refer to him as an expert witness, we are calling him as a direct witness, we are comfortable with that.

ARBITRATOR, JUSTICE MOSENEKE: Ja, very well. Is there anything that you would like to say, Adv. Crouse, on this debate?

ADV. LILLA CROUSE: Thank you Justice Moseneke. I am a little taken aback by the objection. I have never heard to a person objects to a witness being called, that is questions you put to a witness whether he is in fact independent. And it is ultimately for the court to decide. It might be, and as you know we have come late into the whole arbitration, and it might be that we want to ask the witness some questions that might be seeking an opinion and he is qualified. So from our side it is for the arbitration, as per our previous argument, it is for the arbitrator to decide at the end what value to place and on what facts the opinions were based. But to object beforehand, it seems to me like a game being played, with due respect to my learned friend, of trying to unsettle the witness or ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: But they are surely at minimum entitled to say you litigated against us in the past. You can't now come and say I am an expert witness who ca provide opinion untarnished by bias.

ADV. LILLA CROUSE: With respect, Justice Moseneke, that is a question for the arbitrator to decide after hearing the evidence, not before hearing the evidence. And it is not for the party to object to the calling of another party's witnesses. That will directly infringe on your right to the access to court and I can't think that that can ever be allowed.

ARBITRATOR, JUSTICE MOSENEKE: But why wouldn't a party say I don't think he is an expert witness in this matter for reason that he or she has already taken sides, already has a known opinion.

ADV. LILLA CROUSE: But for every witness that is so, Justice Moseneke, every witness that comes has already taken a side in this matter. Why would this witness be different? With respect, I cannot see that before witnesses testify that the court can decide whether he is so bias that his testimony can't be relied on.

ARBITRATOR, JUSTICE MOSENEKE: No, the party that calls the witness has to make up her mind whether the witness is called as direct evidence witness or a specialist or expert witness. So that choice needs to be made clear to the court, so that the court knows what leeway to allow the witness. So when they object to hearsay or they object to any of all those traditional objections, rulings will be different, depending on whether the witness is an expert or a free willing witness.

ADV. LILLA CROUSE: With respect, Justice Moseneke, it is so that is sui generis proceedings and it is so that this court said you must qualify your witness as you would do with rule 39. But none of these witnesses have got a rule 39 summary before the court. There are affidavits though, but there is no summary to… And if I

have to qualify the witness in his evidence now, there is no reason why I can't do that, he is not called by me, with respect.

ARBITRATOR, JUSTICE MOSENEKE: Do you have any more submission on the matter? I still have to make a ruling on that. I heard you.

ADV. LILLA CROUSE: As the court pleases.

ARBITRATOR, JUSTICE MOSENEKE: Adv. Groenewald?

ADV. DIRK GROENEWALD: I think my colleagues have made the argument. We have nothing to add. Thank you, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ADV. PATRICK NGUTSHANA: Thank you Justice Moseneke. I think the concession has been made on behalf of Section 27 that they are calling him as a direct witness to these proceedings. We can proceed along that line. But my understanding of the objection is that they are not objecting to this witness coming to testify. This witness can testify, but the capacity in which he must be allowed to testified is the one that is raised in question, whether he is going to be an independent witness that should be treated the same as the previous witness as an expert witness or not. I think that is the issue. And the example I can put forth, Justice Moseneke, is the following: You have a doctor treating a patient and there is a claim for medical negligence and so on… when you decide calling the witnesses, the first witness that must be called in dealing with the facts, whether there was negligence or not, is the doctor that treated the patient. Obviously a doctor would have to (inaudible) between, I think, the facts, what actually happened

and the expertise of that particular witness. This witness is unfortunately in that same position. He had been involved, he had witnessed what had occurred. You can't prevent him from coming here to testify about what he had witnessed. He can come and testify about what he directly saw. And to an extent that he may offer an opinion, I think expert opinion on what had occurred. He had already provided us a report. In my view he can't be prevented from testifying on those things.

ARBITRATOR, JUSTICE MOSENEKE: Yes. I'll go back to the State now. I don't understand the objection to be to prevent him, is to the kind of witness that he should be, does he ought to… does he qualify as an expert and express independent opinion or in fact normal evidence, including the fact that he is an expert. He is a psychiatrist and that is his field and he knows the field and that includes the direct evidence, he can talk about that.

ADV. PATRICK NGUTSHANA: Correct Justice Moseneke, he can testify about those things. He is here, he is an expert, he is qualified in that field, he can talk about that. I think even more he has provided us with an expert report. Otherwise if there was no expert report then he will be prevented obviously from expressing any expert opinion. But to an extent that we have that expert report, then he is entitled to offer an opinion on that.

ARBITRATOR, JUSTICE MOSENEKE: Well you'll have to make up your mind whether he qualifies as an expert witness or a witness in the normal course, isn't it?

ADV. PATRICK NGUTSHANA: Correct Justice and a concession has been made. He is being provided to this hearing as a direct witness, Justice.

ARBITRATOR, JUSTICE MOSENEKE: When you talk about his report, you mean his affidavit on 338.

ADV. PATRICK NGUTSHANA: Yes that is correct.

ARBITRATOR, JUSTICE MOSENEKE: Well that is the source of the objection that there was an affidavit filed in litigation.

ADV. PATRICK NGUTSHANA: No, no, I am sorry. There is 3548 in volume 11, I am sorry. Page 3548.

ARBITRATOR, JUSTICE MOSENEKE: Take me there.

ADV. PATRICK NGUTSHANA: That is an affidavit which he offers his expert opinion there and some passages as it appears that in his view as a psychiatrist, what ought to have happened. He expresses an opinion on those. How they were treated and how they ought not to have been treated and so on, he offers his expert opinion on that.

ARBITRATOR, JUSTICE MOSENEKE: Very well. Let's… Have you decided on what you want to do, Counsel? Are you going to lead him as an expert witness or lead him…?

ADV. ADILA HASSIM: Justice, as I said, I think that the appropriate way to call this witness is to call the witness as a direct witness with expertise. So we can't ignore the fact that this witness is ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: No, part of his evidence is that he is a psychiatrist.

ADV. ADILA HASSIM: Correct.

ARBITRATOR, JUSTICE MOSENEKE: But he also knows a lot of the facts.

ADV. ADILA HASSIM: Indeed.

ARBITRATOR, JUSTICE MOSENEKE: And he has also been part of litigation against the State.

ADV. ADILA HASSIM: Correct.

ARBITRATOR, JUSTICE MOSENEKE: So those things you cannot wish away.

ADV. ADILA HASSIM: To the contrary. We want to make much of the fact that he was involved and why he was involved.

ARBITRATOR, JUSTICE MOSENEKE: Very well. Shall we… the objection has been noted and the witness will testify as an ordinary witness. You look surprised?

ADV. TEBOGO HUTAMO: We have doubted that, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Ja, very well. Part of being an ordinary witness is being a psychiatrist and having been in the middle of it and having taken decisions which he believed were correct and all of that is part of the evidence, obviously. You'll have the opportunity to cross-examine in the normal way. Counsel, proceed please.

ADV. ADILA HASSIM: Justice, I need you to swear the witness in first.

ARBITRATOR, JUSTICE MOSENEKE: Oh yes, at the very minimum. Dr Talatala, welcome. In which language do you want to testify?

DR MVUYISO TALATALA: In English.

ARBITRATOR, JUSTICE MOSENEKE: In English. Would you put your full names on record?

DR MVUYISO TALATALA: Mvuyiso Talatala.

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

DR MVUYISO TALATALA: So help me God.

ARBITRATOR, JUSTICE MOSENEKE: Counsel.

ADV. ADILA HASSIM: Thank you Justice. Good afternoon Dr Talatala.

DR MVUYISO TALATALA: Afternoon Counsel.

ADV. ADILA HASSIM: I am not sure. Can you please locate file 11? And can you turn to page 3560 of volume 11?

DR MVUYISO TALATALA: Yes, I am there.

ADV. ADILA HASSIM: Is this your CV?

DR MVUYISO TALATALA: Yes, it is my CV, Counsel.

ADV. ADILA HASSIM: You are a specialist psychiatrist as it emerges from your CV.

DR MVUYISO TALATALA: Yes, I am a specialist psychiatrist.

ADV. ADILA HASSIM: Thanks. Let's start at the beginning. When did you become aware of the project called the Gauteng Mental Health Marathon Project?

ARBITRATOR, JUSTICE MOSENEKE: Can the doctor tell me what his qualifications on and how long has he been a specialist psychiatrist and where has he practiced?

DR MVUYISO TALATALA: Okay. I have go Bachelor of Medicine and Bachelor of Surgery from the University of Natal, which I qualified in 1997. And I have got Fellowship of the College of Psychiatrists, which I qualified in 2003. And I have got a Masters in Medicine in Psychiatry from the University of Natal, which I qualified in 2009. I have been a psychiatrist, a registered psychiatrist since 2004. And I have been in full-time private practice from 1st of March 2005 and I have done other roles.

ARBITRATOR, JUSTICE MOSENEKE: Wonderful. Thank you, Doctor. Just in case there are some young people out there listening and watching, they would know that it could be done in obtaining proper qualifications and skilling oneself in a specified field. Thanks Counsel.

ADV. ADILA HASSIM: Thank you Justice. The question was, when did you become aware of the Gauteng Mental Health Marathon Project?

DR MVUYISO TALATALA: I will not put a date by that name, but in terms of the rumours and the project, I think I became aware about it as early as beginning of 2015, February or March, when we heard that there was a rumour that the conduct with Life Esidimeni was going to be terminated.

ADV. ADILA HASSIM: And what did you do when you heard the rumours?

DR MVUYISO TALATALA: Well initially it was… just to take a step back, we were in consultation with the Department of Health as partners.

ADV. ADILA HASSIM: When you say we were, what do you mean?

DR MVUYISO TALATALA: I mean the South African Society of Psychiatrists.

ADV. ADILA HASSIM: And what was your role in the South African Society of Psychiatrists?

DR MVUYISO TALATALA: I have been on the board of the South African Society of Psychiatrists for the past seven years. But at the time of this project I was the president of the Society of Psychiatrist. At the moment I am the past president, I am still part of the board of the South African Society of Psychiatrists.

ADV. ADILA HASSIM: And just before we move on, I think it will assist us just to know what is the South African Society of Psychiatrists. Who are its members and how big is it?

DR MVUYISO TALATALA: Okay, the South African Society of Psychiatrists is the society that represents the interest of psychiatrists and psychiatrists as a discipline and the interest of the community as it relates to mental health and psychiatry. We have got a fluctuating membership, we have got about, I will say between 600 and 700 members who represent over 90% of psychiatrists in South Africa, I mean paid up members.

ARBITRATOR, JUSTICE MOSENEKE: 600 to 700?

DR MVUYISO TALATALA: Between 600 and 700 members. It fluctuates depends on when people are paid up.

ARBITRATOR, JUSTICE MOSENEKE: And 90% of professionals.

DR MVUYISO TALATALA: Of psychiatrists.

ARBITRATOR, JUSTICE MOSENEKE: Of psychiatrists.

DR MVUYISO TALATALA: In the field of psychiatry. Some are in the private sector and the others are in the public sector.

ARBITRATOR, JUSTICE MOSENEKE: Thank you.

DR MVUYISO TALATALA: So we are registered as a, the society itself has been around for over 60 years and became registered as a company I think in about 2007. So we have got a company structure that runs the society.

ADV. ADILA HASSIM: Thank you. You were saying you, so being representative of SASOP.

DR MVUYISO TALATALA: Yes.

ADV. ADILA HASSIM: Had a meeting with the Mental Health Directorate. Is that the Mental Health Directorate of the Gauteng Provincial Department of Health?

DR MVUYISO TALATALA: What happened… what would happen in the past, we would have standing regular meetings with the Department of Health Gauteng through the Mental Health Directorate, so about three to four meetings per year, that would be representatives of the national SASOP as well as our provincial

structure would meet the Mental Health Directorate on a regular basis, as I say three to four times ...intervened.

ADV. ADILA HASSIM: And why would you do that?

DR MVUYISO TALATALA: We meet to discuss issues… I mean there is lots of challenges in terms of provision of mental health. So we would meet to advice the Provincial Department of Health based on our expertise on how they should go about. I mean one of the biggest projects is that with the National Department of Health, there was a national mental health policy framework that was published in 2013 which guided, for instance, on how patients will be discharged, on how mental health services would be established. This mental health policy framework has been done by the National Minister of Health, but it started at provincial level where psychiatrists, psychologists, government, had meetings where they discuss on how they would review, how would they would work to improve mental health between 2013 and 2017. This culminated in ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: How they would work to improve mental health care going forward?

DR MVUYISO TALATALA: Going forward yes. Then there was a national meeting where all provinces were represented including the South African Society of Psychiatrists and other societies, where then the document was published on national mental health policy framework and strategic plan 2013 to 2020. Now the next step would be how to then translate that document into Gauteng, for instance, or Eastern Cape or any other province. So that would be one of the things we'd

meet for. Because it does speak to deinstitutionalisation and it has certain guidelines, not guidelines per se, but it advises on how things should be done. So we were meeting partly for that, but several other day to day issues in mental health, whether we were dealing with… I wouldn't remember what was in the agenda specifically, but whether we are dealing with a waiting list in the forensic unit which are current challenges or any other challenge.

ADV. ADILA HASSIM: So in other words it was a standing meeting. You were present at the meeting to discuss a range of issues.

DR MVUYISO TALATALA: The first one I was not present, but I was represented. But the second one, which was around June, I was physically present.

ADV. ADILA HASSIM: And can you tell us about the meeting?

DR MVUYISO TALATALA: Well in the first meeting we did, it was presented to me that the issue of the rumour that Life Esidimeni contract was going to be terminated was raised, but it was not entertained in the meeting. And in the second meeting where I was there, I think around June ...intervened.

ADV. ADILA HASSIM: June of what year?

DR MVUYISO TALATALA: 2015, before the closure. In that meeting which I was present, the issue was raised, but the directorate felt that we are of the opinion that we can't discuss the closure of Life Esidimeni because they were still having contractual dispute with Life Esidimeni itself.

ADV. ADILA HASSIM: So at that meeting you had no discussion.

DR MVUYISO TALATALA: So we raised it, but it was not discussed.

ADV. ADILA HASSIM: And what did you do next?

DR MVUYISO TALATALA: Well we then wrote to the Department of Health. We wrote in June 2015 to the MEC, to the Directorate itself, to the Mental Health Directorate and to the National Mental Health Directorate, those are the people who were copied. In fact we wrote to the MEC but we copied the National Mental Health Directorate, the Head of Health in Gauteng… it is in the documents… several other people including Correctional Services.

ADV. ADILA HASSIM: Can I refer you to page 3574 of file 11?

DR MVUYISO TALATALA: Yes.

ADV. ADILA HASSIM: Is this the letter that you are referring to?

DR MVUYISO TALATALA: Yes that is the letter that I am referring to.

ADV. ADILA HASSIM: And why did you write this letter?

DR MVUYISO TALATALA: We were concerned about the possible closure and the fact that this was going to be a big project in our view and it was not being brought to the usual discussions that we were having with the Department of Health. And we did raise a few concerns that we had about what would happen to the mental health care users at Life Esidimeni and what would happen to the services in general, never mind the Life Esidimeni patients, but the impact it would have on the acute units that we have and also on the patients awaiting forensic observation, as well as state patients in prison.

ARBITRATOR, JUSTICE MOSENEKE: Dr Talatala, I would like all the names of the people that you wrote to, you copied in, to be put on record. I think it is going to be quite relevant not long from now on. I would like you to read besides the MEC of Health in Gauteng, Me. Qedani Dorothy Mahlangu, all of those names and the positions of people you copied the letter to.

DR MVUYISO TALATALA: Thanks Justice. It is Mr. S. Pagati (Director Mental Health and Substance Abuse National Department of Health). Dr B Selebano (Head Gauteng Department of Health). Dr M. Masamisa (Chief Director Hospital Services Gauteng Department of Health). Me. M. Leroutla (Chief Director District Health Services Gauteng Department of Health. Dr M. Manamela (Director Mental Health and Substance Abuse Gauteng Department of Health). Me. E. Dlamini (Head Department of Justice and Constitutional Development Gauteng). Mr. Z. Modise (Commissioner Department of Correctional Services Gauteng). Mr. E. Ledwaba (Coordinator of Health Services Department of Correctional Services Gauteng).

ARBITRATOR, JUSTICE MOSENEKE: And was this letter, do you know that this letter reached the people who have been copied in?

DR MVUYISO TALATALA: We sent it via email, Justice, and some of the people confirmed that the emails were read, but we never got a response.

ARBITRATOR, JUSTICE MOSENEKE: At the end of the letter it appears to have been signed by several people. Will you explain that to me?

DR MVUYISO TALATALA: Okay. I'll start with the bottom one which is myself. At the time I was the president of the South African Society of Psychiatrists. Prof Jansen Van Rensburg was the president elect at the time and he is in full employment of the State, he is a psychiatrist in full employment of the State. I was in private practice at the time of signing the letter. Then Prof Ratatom (?) was a chairperson of the SASOP Southern Gauteng sub group, that is our provincial structure, so she was the chairperson at the time. Then Dr Lesley Robinson is part of the board of SASOP and she looks after the interest of the public psychiatrists. The society itself has got, as I said earlier, two arms, the private psychiatry and the state psychiatry. So she would chair the public sector part of psychiatrists.

ARBITRATOR, JUSTICE MOSENEKE: Why was the letter signed by so many people?

DR MVUYISO TALATALA: Well it could have easily been signed by the whole board, but we tried to emphasise the importance of this letter and our fear of the consequences of what was going to happen. So I think it added weight.

ARBITRATOR, JUSTICE MOSENEKE: You were trying to give weight to the message by having all these high ranking officials sign the letter, co-signing the letter.

DR MVUYISO TALATALA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: And why was it sent to so many state functionaries in different departments that you just read into the record?

DR MVUYISO TALATALA: I think one of the reasons is that, well if the patients were discharged, all those departments were going to be affected, that is the first problem. But the second problem is that, which is my opinion, when dealing with State it could be denied that you actually communicated. So we had to send to as many people, especially those who were responsible. So we couldn't just send, at the time, to the Mental Health Directorate, because then later on when we are dealing with issues of forensic psychiatry for instance, then the correctional services will appear as if they are not aware of the challenges. And we also wanted the support of everyone in government.

ARBITRATOR, JUSTICE MOSENEKE: So you were trying to rally support from the different parts of State by making them all aware in their respective and important positions.

DR MVUYISO TALATALA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Should we go and eat, Counsel?

ADV. ADILA HASSIM: Justice, this would be an opportune time. I am still going to be dealing in detail with this letter, but we can do that when we return from the adjournment.

ARBITRATOR, JUSTICE MOSENEKE: Yes, I am sure that you would want to do that. Dr Talatala, we are going to find some sustenance. We will be back at 14:30. 13:30 to 14:30. And we hope to see you back then.

DR MVUYISO TALATALA: Thanks Justice.

SESSION 3

ADV ADILA HASSIM: Sorry, Justice Moseneke a fan has been kindly provided to assist with the temperature levels but I think it is blowing warm air. I wonder if I may ask one of the attendants to either switch it off or make it colder.

ARBITRATOR JUSTICE MOSENEKE: Yes, it looks quite sophisticated at the top it has electronic display…

ADV ADILA HASSIM: It's definitely warm.

ARBITRATOR JUSTICE MOSENEKE: It should be possible to make it colder. So will we take our chances for a while or rather switch it off?

ADV ADILA HASSIM: We will see how it goes. Dr. Talatala before the adjournment we were on page 3574 of file 11 which you confirmed to be the letter that you and your colleagues wrote to several government officials and you mentioned their names and their designation. I would like to go through some of the aspects of this letter you begin the letter by saying in the first paragraph in the middle of the first paragraph we are committing to working with the department of health in providing mental health…

ARBITRATOR JUSTICE MOSENEKE: I think switch it off.

ADV ADILA HASSIM: Sorry it is to hot.

ARBITRATOR JUSTICE MOSENEKE: Ja, it is hot. Just switch it off.

ADV ADILA HASSIM: Thanks.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

ADV ADILA HASSIM: Sorry let me just repeat…

ARBITRATOR JUSTICE MOSENEKE: May we please have the door at the back open? Get some ventilation, natural ventilation. I just don't want the people to speak out there, ok. Counsel?

ADV ADILA HASSIM: So in the middle of the first paragraph you say ''*We are committed working with the department of health in providing mental health care to the province and in the implementation of the national mental health policy framework and strategic plan 2013 to 2020. Our comments below are in the context of this commitment*". Can you explain why, it's clear to me that you work with the department, maybe you can confirm that? You spoke about regular meetings with the department. Why did you feel the need to stress the importance and your commitment to a partnership?

DR. MVUYISO TALATALA: I would like to first confirm that we actually do work with the department of health. In fact, we are trained by the department of health, we are I mean the doctors are paid for by the department of health. And when they qualify they actually work for the department of health even though later on they may go for private practice. Amongst the board of the society of psychiatrists, some of the board members if not the majority actually are state employees. So we work with the government as employees of the state to deliver on this mandate of providing health care to the community. We are also aware that we are the experts in psychiatry we, therefore, have that knowledge that the department may need in

order that they can get some assistance on how to implement it's policies. So I think that we are recommitting ourselves to people we already work with, at the time we wrote the letter we already as stated earlier on we already have had met several meetings even projects together. I have been asked to give talks on behalf or in a government-organized meeting. So we didn't see each other, we saw each other as important partners. We didn't see each other as adversaries we are not on opposite sides; we thought that we had the same common vision for health in South Africa.

ADV ADILA HASSIM: And some of the signatories to this letter you say are State Employees?

DR. MVUYISO TALATALA: Yes.

ADV ADILA HASSIM: In certain links, there are members of the society that are employed by the State, it is not only private practitioners?

DR. MVUYISO TALATALA: Yes, I think at the list at the time I was the only one in that list of the signature list. But I must also bring it that even I as the private psychiatrist, I was also working for the State I had, not at the time. But I had worked with the State on a [inaudible 05:09] basis from 2006 to 2013 at Sterkfontein Hospital.

ADV ADILA HASSIM: You then go on to the next paragraph to say '' *Primarily we are worried that reduction of beds at Life Esidimeni will have unintended costly negative consequences"*. And then you quote from the, what you call it the MHPF that is the policy framework, the national policy. And the quote reads as follows: ''*Deinstitutionalization has progressed at a rapid rate in South Africa, without the*

necessary development of community-based services. This is lead to a high number of homeless mentally ill, people living with mental illness in prisons and revolving door patterns of care". Is this, this is a direct quote from the policy or is this your opinion on deinstitutionalization?

DR. MVUYISO TALATALA: It is a direct quote from the policy framework and it is on page 16 of the policy framework.

ADV ADILA HASSIM: So at the time that the marathon project was taking place or was it about to take place, they had already been in the process of deinstitutionalization had begun, maybe not in the relation to the Life Esidimeni facilities. But it had begun in some other form?

DR. MVUYISO TALATALA: Yes. In fact, if I put it in context these are probably the last few patients that was still in the institution. The deinstitutionalizing has begun on post-1994 and at the time of the policy when it was being written the policy was commanding on the experience that we had already prior to 13. So the policies is telling us that government and all personnel on mental health had already before 2013 had moved to rapidly and it has resulted in that consequences. So that is what the policy thought of at the time when it was been conducted. And I must also add that at the time we were writing this letter, we are not under the impression that we are warning the government, not based under the impression of what they have actually done. We were warning them assuming that they will reduce the number of patients and send them to the NGO's that we know of that we sent patients to, that we are aware of.

So the warning was not obviously I am sure that it would have come with a mass, extreme warning if we had the patients were discharged in the manner that they were discharged. We have the warning even at the time that we assumed that the government will discharge patients to our well known NGO's.

ADV ADILA HASSIM: So just for clarity and please correct me if I'm wrong, what you are saying is that– well first of all according to the policy it says that there has been rapid deinstitutionalization and this already a problem. Second, you are saying that you are under the impression that the transfer was going to take place to NGO's that you are aware of and we will come back to that. And the second is that it will be conducted in a particular manner the transfer?

DR. MVUYISO TALATALA: Yes.

ADV ADILA HASSIM: Not a assumption, your meaning the transfer with the meaning that there will be protocols and they will be placed in NGO's that are able to take care of mental health care users?

DR. MVUYISO TALATALA: That is correct. Either they would be placed in the NGO's – cause we have been deinstitutionalized as psychiatrists and doctors.

ADV ADILA HASSIM: So you have not been part of that?

DR. MVUYISO TALATALA: Not part of the process, so we had assumed that they will then discharge the patients either to the established NGO's – it was given to us it was not an assumption, it was given to us that patients will be discharged either to the established NGO's or the patient will be discharged home, so that was the given that was given.

ADV ADILA HASSIM: So there are established NGO's, are you saying there are established NGO's that will be capable of providing appropriate care for mental health care users?

DR. MVUYISO TALATALA: There are established NGO's but we didn't think and I still don't think that they will be able to cope with the types of patients that were going to be discharged. I'm saying this because in the years 2006 to 2013 when I worked in Sterkfontein I was in charge of the patients that are called treatment-resistant or reflecting patients. But that I mean is [inaudible 10:26] just comment to give some more detail. Sterkfontein hospital between 2006 and 2013 had three acute wards for mentally ill patients who were admitted as involuntary patients. So they were severally mentally ill, they were admitted as involuntary in sector 3 wards. The patients were treated by psychiatry's and psychologist in that wards because they were discharged once they are well. But there are a number of patients who do not get well from that psychiatrist and then they will be transferred to my ward, which was ward 5 changed later to ward 9. Then my responsibility with my MDT was to treat and try all kinds of treatment.

ADV ADILA HASSIM: With your?

DR. MVUYISO TALATALA: With my [inaudible 11:13] team, the psychologists that was working and supervising them the doctors and nurses. So our job was to treat the patient as much as possible and for as long as possible with whatever combination of medications. So after we would treat them we will make the decision whether this patients should go home, should go to an NGO or must go to Life Esidimeni. Those who do well can meet with families and send them home, those

who are not so okay to go home, then we will send them to NGO's. It will be the most severe patient that we will send to Life Esidimeni. Or alternatively it will be a patient that we sent to NGO's, because NGO's are allowed to take these patients and [inaudible 12:00] to ask if they can cope with them, so if we send the patient to an NGO then the NGO can answer to us and then we could consider placement at Life Esidimeni. Because if the patients had ongoing symptoms that had failed – the medication had failed to treat and not out of lack of medication but with all of the sides of medication that is available.

ADV ADILA HASSIM: So are you able to name some of the NGO's that you considered to be the established NGO's?

DR. MVUYISO TALATALA: As I can think of them from the top of my head Talisman, Tandalani I can only think of those two of my head.

ADV ADILA HASSIM: Where and of the Life Esidimeni patients transferred to those NGO's in your knowledge?

DR. MVUYISO TALATALA: In my knowledge no. And its something I have brought in one of the meetings with the National mental directory, in the years that I have worked at Sterkfontein it was difficult to find an NGO to take our patients. I asked the question where are you going to find the NGO's, but I never really find the answer of where they are going to get NGO's. And at the time my assumption was that they were going to get an NGO like the established NGO's that we have and we know that the NGO's – even at that time they even didn't have beds.

ADV ADILA HASSIM: So you raised these concerns you said that in the letter precisely what you are saying now, community mental health service which I imagine would include NGO's is that correct?

DR. MVUYISO TALATALA: Y…

ADV ADILA HASSIM: Insufficiently developed to cope with the resulting increase mental health care demands. Is that what you are talking about now, when you say that there is not sufficient supply of community based care?

DR. MVUYISO TALATALA: Yes, even beyond that the community-based services it is not yet established as emphasized by the policy.

ADV ADILA HASSIM: It is not yet established?

DR. MVUYISO TALATALA: Not yet established, as emphasized by the policy even today. Because if we're going to discharge patients from institutions, the policy itself says that we mustn't close the institutions before we have developed community health services. That should include firstly integrated mental health care with primary health care in the communities that will include residential care NGO's. So that even though you may have NGO's you don't want NGO's to absorb patients and do not know where to take them when they are lost. So it's not just the NGO's only its also the primary health clinic that is integrated, it is also a residential care sort of house half houses. The act is a good policy because you want the patients to be treated closer to their health community not in institutions that are far.

ADV ADILA HASSIM: Ok. You say that in condition you were concerned of the rising number of mentally ill people in prison. How is that relevant to this deinstitutionalization process?

DR. MVUYISO TALATALA: Well, everyone knows in the mental health including the government that the department of health was aware of it and is still are aware of it even today, that firstly if I can just paint the picture a little bit. We have got our acute facilities like Paragora hospital, Helen Joseph, Charlotte Maxeke. Then we have got, I'm just naming a few we have got our big institutions like Sterkfontein and Weskoppies and Tara hospital. We are all aware that they are full, so if you then close – because Life Esidimeni is at the end. If you then close Life Esidimeni, Charlotte Maxeke, and Paragora hospital is not going to have a place and Sterkfontein to discharge the severely ill patients who is not responding to treatment. So you limit that and what is then going to happen either they are going to keep the patients longer, I'm not talking about the forensic ones just the normal patients. It will mean that they will the have to keep the patients longer in the hospital because they don't have a place Life Esidimeni or that kind of a facility where there person can stay for 2 or 3 years. So then they would have to do that at Charlotte Maxeke or Helen Joseph or Paraghon Hospital and then that will cloth the system. In addition to that remember we already had a challenge with Sterkfontein hospital and Weskoppies in terms of the forensic observation. The national [inaudible 16:45] they already raised Justice sorry, the majority at some level raised concerns that there are patients that are waiting for observation. It is a growing waiting list…

ADV ADILA HASSIM: Are you talking about the accused?

DR. MVUYISO TALATALA: The accused the waiting trial who are alleged to accommodate in the offense of mentally illness. There is already a waiting list to get seconded which…

ARBITRATOR JUSTICE MOSENEKE: Those are patients who require forensic assessment?

DR. MVUYISO TALATALA: Assessment yes.

ARBITRATOR JUSTICE MOSENEKE: And a report under the, CPA act to be forwarded to a court?

DR. MVUYISO TALATALA: Yes, Justice.

ARBITRATOR JUSTICE MOSENEKE: To assess with their criminal responsibility?

DR. MVUYISO TALATALA: Yes, Justice.

ADV ADILA HASSIM: Are you saying there is a waiting list?

DR. MVUYISO TALATALA: There is already, and the waiting list had been growing after I wrote the letter, it had been growing instead of reducing. That is one arm of the forensic patients but the other arm of forensic patients that the – sorry I'm calling them forensic, but they are not forensic patients yet once they have gone for observation. But now when they are found not fit to stand trial they are supposed to immediately go to Sterkfontein for treatment, but that is not happening because we

do not have beds. So patients wait in prisons as day patients, so when you already…

ADV ADILA HASSIM: Do they get care, any sort of mental health care while they are in prison?

DR. MVUYISO TALATALA: They could get, the correctional services does have a psychiatrist to look at them but it is not even close to the ideal care to treat mentally ill people in prisons with other prisoners in there. So we already had a system that was already in a crisis because we were already treating people in human – assist in their human rights was already affected for that you can be a state patient but you are going to be kept in prison, that is already a problem. So when you got a system that is like that we do not think it is a correct thing to then close the chronic beds. Because then we are going to have a cloth up in the system in all those arms, there are several arms that the province was aware of.

ARBITRATOR JUSTICE MOSENEKE: Tell me a little more about Life Esidimeni. I just want to check on my understanding it is a facility for chronic mental health care users, is it?

DR. MVUYISO TALATALA: Yes it is.

ARBITRATOR JUSTICE MOSENEKE: In other words what does that mean, the patient there ordinarily would dearly be looked after when the institutionalized, is that what it means?

DR. MVUYISO TALATALA: In our current circumstance that is the best list for them.

ARBITRATOR JUSTICE MOSENEKE: And the NGO's that already existed and you mentioned two that you say appeared in operating well Talisman and Tandanani. Where they taking on chronic patients or acute patients as you sometimes call them?

DR. MVUYISO TALATALA: They both NGO's and Life Esidimeni would not take acute patients. They will take chronic patients, but it depends on the severity of their illness.

ARBITRATOR JUSTICE MOSENEKE: Tell me the difference between acute and chronic?

DR. MVUYISO TALATALA: It depends on the illness what you have, but I've I give a good way of differentiating a patient for example with Schizophrenia may have an episode of illness whether they are severely ill with disorganised behaviour, behaving in a way that doesn't fit the community, hearing voices, delusions and they may get admitted after several steps to acute facility, lets say Chris Paragon hospital where they attempt to remain to treatment and get that episode treated. But that patient may either not respond to treatment or Paragon may not cope with the illness and that patient may end up at Sterkfontein hospital. Or at Parghona the patient stays for several months at Paragon hospital, if the patient stays at the hospital then the patient will go to the wards of mine we talked about three wards. And they end up in that ward of mine, so this is like several months it can even go to years. Then that patient when we tried everything will be the chronic patient that will go to Life Esidimeni.

ARBITRATOR JUSTICE MOSENEKE: Let me try the shortcut, so Life Esidimeni will then take what, will take chronic patients?

DR. MVUYISO TALATALA: Yes.

ARBITRATOR JUSTICE MOSENEKE: That will require constant and continuous care?

DR. MVUYISO TALATALA: Yes.

ARBITRATOR JUSTICE MOSENEKE: And who – what is the desirability of patients like that to be given out to NGO's, to be discharged to NGO's?

DR. MVUYISO TALATALA: At all of these levels our thematic goal is to discharge the patient back to their family, so that's the thematic goal even at Life Esidimeni. So even the NGO's themselves are hoping, in fact the NGO's should not be taking the patients to keep them indefinitely, the NGO's will provide some circumstance interventions that will reintegrate the patient back to family. But it may take longer than, if that is Paragon hospital that will actually block the bat and also the NGO is not as, it doesn't look like a hospital it is not a hospital, hospital if I'm explaining myself well. Like if this integration in the community will ideally be done in the NGO or in a reserve facility or home than doing it in a hospital which is [inaudible 23:08] far removed and that is the treatment model that is for hospital patients. I mean one of the simple things will be to meet the family, let's assume it will happen at Sterkfontein, the community – I had done that with my patients in the past. The community have someone who is ill, they hear that the patient is in Sterkfontein hospital they write a petition to the attending doctors at Sterkfontein that '' Please do

not discharge that person ever back to us, because he had caused to much harm." Now it is difficult to call those families if they are from Heidelberg if you are at Sterkfontein even the families. So the reintegration will not be easier, the reintegration will be easier if the NGO is closer to their community or some facility within the community. So Sterkfontein hospital are hospitals that are not as equip to integrate as NGO's would be.

ADV ADILA HASSIM: When you speak about discharge from Sterkfontein to Life Esidimeni, what do you mean by discharge? Does it mean that they are now well and no longer needed of some chronic care, what does it mean for their treatment? When you say discharge what do you mean by it?

DR. MVUYISO TALATALA: The word discharge has nothing to do with what is going to happen to the patient or how the patient looks like. Unlike in [inaudible 24:47] language you will think that discharged it will mean that you are well you should go home. So discharge has to do with the person who is treating the patient, you are under my care at Sterkfontein I'm discharging you because I think that I have done what I should do with you. It has nothing to do with whether you are well or not or your going home, so in medicine, we do discharge people to a hospice or discharge people to another hospital whenever it transpired. So it has nothing to do with what is going to happen to you. So the patient that went to Life Esidimeni he would have been discharged to Sterkfontein because Sterkfontein also says we are done with you…

ADV ADILA HASSIM: From Sterkfontein?

DR. MVUYISO TALATALA: Yes, sorry. From Sterkfontein because Sterkfontein says we are done with you but in fact, some of the patients I sent to Life Esidimeni were still ill enough to require further in patient care.

ADV ADILA HASSIM: So they will be discharged into the care of somebody else?

DR. MVUYISO TALATALA: To the care of Life Esidimeni.

ADV ADILA HASSIM: We will come back to all of that, I don't want to distract from where we are now the letter. We need to just go through this. On page 3575 you set out five concerns that you say to the addressees that you want to highlight the following five concerns, can you briefly take us through these concerns and why you felt you had to highlight these particular concerns?

DR. MVUYISO TALATALA: Ok. The first one is talking about the severity of the illness. It's actually commenting on the care that is provided at Life Esidimeni and why we thought that those patients need that kind of care, because of the state of their illness and at the time of [inaudible 26:40] that they will be suitable to be discharged. I think that is what the first one talks to.

ADV ADILA HASSIM: Continue.

DR. MVUYISO TALATALA: The second one is talking about the level of care at NGO's and versus the level of care at Life Esidimeni. The first line in order to say that the community-based health facilities that are currently available are not equivalent to the Life Esidimeni care centres in staffing or equipment.

ADV ADILA HASSIM: Just pause there for a moment. Those NGO's that you are referring to are they the NGO's that are involved in this marathon project, are they the NGO's?

DR. MVUYISO TALATALA: Do you mean the ones that I'm commenting about here?

ADV ADILA HASSIM: Yes.

DR. MVUYISO TALATALA: We are talking about the licensed NGO's that we had at that time, we are not talking about the unlicensed and unestablished fonts. But in that comment I was talking about the NGO's that are currently available in the – that were available in the community licensed. Because they are in the community, the NGO's are not established by psychologist or psychiatrist or occupational therapists. They are established by [inaudible 28:04] people in the community who has an interest in mental health. And we are aware of the level of care provided by Life Esidimeni and the needs of the patient at Life Esidimeni would, is to high it's to…

ADV ADILA HASSIM: It will not be met by those NGO's?

DR. MVUYISO TALATALA: It would not be met by the NGO'S.

ADV ADILA HASSIM: And even though it was NGO's that was licensed and that you were familiar with?

DR. MVUYISO TALATALA: Yes.

ARBITRATOR JUSTICE MOSENEKE: In paragraph two what does COJ refer to?

DR. MVUYISO TALATALA: City of Johannesburg.

ADV ADILA HASSIM: Continue, so that's the thrust of your point in line two and there is some detail there which supports and substantiates your point…

DR. MVUYISO TALATALA: Yes, and it is also right that at the time they were 95% occupied.

ARBITRATOR JUSTICE MOSENEKE: But only 8 or 9 beds which was 95% occupied and we know now at the time in Life Esidimeni there was nearly what 1700 patients?

DR. MVUYISO TALATALA: Yes.

ADV ADILA HASSIM: And then your third concern?

DR. MVUYISO TALATALA: I think we were talking about actually the type of facilities that we had. Most of the daycare facilities in Southern Gauteng are there for intellectually disabled children. There are five for medical users in the City of Johannesburg and the Westrand has one. There are none in Sedibeng or Ekurhuleni, people with severe mental illness leaving at home are every often left unattended and unoccupied during the day. This increases the risk of substance abuse, substance abuse and [inaudible 29:50] treatment. Here we were talking not about the NGO's but about day facilities if this would be established, and we are trying to highlight that we do not have day facilities. And in the biggest regions of Gauteng of Southern Gauteng which is Ekurhuleni with even less resources in that side of Johannesburg you don't even have a facility for daycare, day facilities. So I

think here we are trying to highlight that was [inaudible 30:25] that Ekurhuleni and Sedibeng will be in the West position.

ADV ADILA HASSIM: And your fourth concern, can you take us through that? And sanity be related to what you are talking about earlier about forensic mental health care users meaning the waiting trial [inaudible 30:48].

DR. MVUYISO TALATALA: Yeah, we were talking about that but we were also talking about the staffing can I just read it here?

ADV ADILA HASSIM: Sure.

DR. MVUYISO TALATALA: *''With primary care in the district clinics there are no longer any social workers or … therapies attached to the district special mental health clinics, which are also short staffed of doctors.''* So we are talking – because if I'm going to discharge these patients I'm going to need them to go and be attended by the clinics and the clinics themselves didn't have those facilities. The specialist status of the current secondary level of patient's services remains uncertain and without a specialist and disciplinary team. As indicated by the rising numbers of the forensic mental health acre users they are already inadequate for the specialist needs of the severally mentally ill. The [inaudible] special psychiatrist teams in the Gauteng department of health operational plan has not yet been brought up. If these patients are going to be discharged from Life Esidimeni or even from any other chronic facility to the community we need to have proper staffing to receive them. Because of the severity of the illness, remember this are the patients who will be on combination treatment that I would put at Sterkfontein hospital. You

will not then expect the nurse to be adequately trained to look after – even just the medication prescription. So we also need a psychiatrist and psychological therapist, so before we move severely mentally ill patients to the community, we needed to have at least some level of staffing and that is in the policy.

ADV ADILA HASSIM: And then that wasn't at that level staffing available?

DR. MVUYISO TALATALA: Our experience working in the community that it was not at that level.

ADV ADILA HASSIM: And your fifth concern?

DR. MVUYISO TALATALA: That one I think it speaks to the shortness of beds in general. Once we were closing Life Esidimeni there are already a shortage of acute beds, just going to explain what acute beds are. The beds at Charlotte Maxete and Helen Joseph, Chris Paragoba there is already a shortage of those beds, there are already a shortage of beds even in the district hospital. So that is the number that we are talking about that is 1200, so to close the chronic beds we will then put pressure on those acute beds that are already 1200 short at the time of writing the letter.

ARBITRATOR JUSTICE MOSENEKE: What is MNHPF?

DR. MVUYISO TALATALA: MNHPF its is the [inaudible] mental health policy framework.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

ADV ADILA HASSIM: So you raised all of the concerns, you conclude your letter by saying '' *We urge the MEC of health and the Department of Health, to reconsider the decision to cut long-term care and instead direct efforts to further develop the CMH".* Is that community mental health services?

DR. MVUYISO TALATALA: That is correct.

ADV ADILA HASSIM: And your last sentence is '' *We sincerely hope that by working together the ultimate goal of this policy may be achieved."* Did you get a response to this letter?

DR. MVUYISO TALATALA: We never got a response council.

ADV ADILA HASSIM: From any of the officials to whom it was sent or are you only referring to the former MEC?

DR. MVUYISO TALATALA: No. We never got a letter back from any of the people who we wrote to and copied. Some of them may have talked about it later on but it was not a direct response or letter.

ADV ADILA HASSIM: So you received no response, do you have any understanding as to why – if you would be cooperating, why did you not get a response from any of those officials? Do you have any idea?

DR. MVUYISO TALATALA: My think to it is that the department has already made up its mind that its going to cloth the facilities. And we are utterly being a nuisance to raise those concerns.

ADV ADILA HASSIM: So what did you do then when there was no response, it is now June 2015 the move is imminent the transfer is imminent. What was the next step if any that Sasop took?

DR. MVUYISO TALATALA: Are you asking before the announcement by the MEC? It was officially announced in October.

ADV ADILA HASSIM: Whenever it was whether it was before or after.

DR. MVUYISO TALATALA: Ok. Before the official announcement, there was no specific action that is on record. Obviously, they engaged quietly and unofficially until the MEC then announced it in October that the contract had been terminated, that is when we then wrote a second letter requesting a meeting with the MEC.

ADV ADILA HASSIM: When did you write this letter?

DR. MVUYISO TALATALA: It was in October.

ADV ADILA HASSIM: October 2015?

DR. MVUYISO TALATALA: Just after she made the announcement.

ADV ADILA HASSIM: I believe the letter is attached to you affidavit. Let me just find it.

ARBITRATOR JUSTICE MOSENEKE: On page 3581.

ADV ADILA HASSIM: That's it 3581 thank you, Justice. So 3581 are you at that page?

DR. MVUYISO TALATALA: Yes, that is correct.

ADV ADILA HASSIM: October 2015 is a letter that is addressed to the former MEC . And then also to the other addressees who where on their original on the first letter rather Mr. Pagathi, Dr. Silibano, DR. Lebethe, Dr. Masamisa , Ms. Reluthla, Mr. Mosonogi and Dr. Malamela. Can you tell us, well lets first say we look at what the context of the letter is. Is this – am I understanding that it is a letter requesting a meeting?

DR. MVUYISO TALATALA: Yes, council. It was a letter requesting a meeting after the announcement by the MEC.

ADV ADILA HASSIM: And it again repeats your concern, you don't go into detail this time but you say you are deeply concerned?

DR. MVUYISO TALATALA: Yes, we said so and we referred the MEC to our previous communications.

ADV ADILA HASSIM: Previous communications, and did you get a response to this letter?

DR. MVUYISO TALATALA: No never got a response.

ADV ADILA HASSIM: Not from any of the addressees from this letter or was it that you just didn't get a response from the former MEC?

DR. MVUYISO TALATALA:No we never got a response from the MEC or any of the addressee as I say in the passages I would try and still whisper to some of them and say this is going to be a problem. But not in the official meeting they have not given communication to us.

ADV ADILA HASSIM: I see that the addressees its apart form the provincial department, you also addressed it to the national department. The director of mental health and substance abuse national department of health.

DR. MVUYISO TALATALA: Yes, council. Both letters where to both provincial mental health directory and national mental health directory. Because once we were engaging with the provincial [inaudible 38:56] we also were in and engagement in several meetings with the national department of health, the national health directory on several other issues.

ADV ADILA HASSIM: Where you hoping that the national department of health would intervene, would take some steps to address the concern?

DR. MVUYISO TALATALA: Well, we were hoping that the national directory of health is probably the custodian of the national mental policy framework will go and raise concerns with the provisional department of health. And we were worried about the consequences of these discharges and we did not only think that it will have an impact on just the province. We thought of an impact nationally and also we are hoping that the national department of health would assist us into [inaudible 39:56] with the province into how much is debating from the policy.

ADV ADILA HASSIM: Did you get any assistance from the national department of health?

DR. MVUYISO TALATALA: Not at that stage, not until 2016 when it was presented to the minister advisor community.

ADV ADILA HASSIM: When in 2016 was that?

DR. MVUYISO TALATALA: August 2016.

ADV ADILA HASSIM: August 2016. So this was October 2015, you don't get a response what do you do next?

DR. MVUYISO TALATALA: Then we started speaking with other stakeholders in mental health the South African [inaudible 40:30] group, the [inaudible 40:34] federation and the patients the family members that tried to gather some kind of support so that you could speak with them – that they could support us. In fact also making the families aware of what is going on because we also don't see our, we see our role as psychiatrists as people who have this knowledge. But we cannot keep it to ourselves only or we cannot only advise one stakeholder in mental health. So we cannot say to treat schizophrenia you need [inaudible 41:11] government. We have to tell the government, we have to tell the patients and we have to tell the patients families all stakeholders involved including business owners and everyone, because the impact of not doing the right thing will affect all of them. So our responsibilities are not only to the patients families or to the government side, our responsibility is to say what we know with all stakeholders. So we then started being with our partners in mental health and our view was that if the government thinks of us so badly that we are not partners. At the very least there should be a appointment of a curator to look after the interest of the patient, we can then go and speak with the curator and raise our concerns and then the curator would then be the one to advocate on what is right and wrong, if we look so bad our image to the government that is what we were looking on.

ADV ADILA HASSIM: So how did you, what steps did you try to take to have a curator? You were talking about a curator at Ligthem to look after those patients interests?

DR. MVUYISO TALATALA: Yes. Attempts was made to communicate with the department of health they were still unresponsive until we filed a court case in December 2015 where we were going to ask the court to stop discharges announced by the MEC. And instead we appoint a curator who will then assist in the process of discharging because it was not about us trying to keep the patients under Life Esidimeni no matter what. That was not our idea it was not to look after the interested of Life Esidimeni, our idea was to look after the interest of the patient and mental health. We the – I think the court date was around the 22nd of December.

ADV ADILA HASSIM: Did you, before we get there. Did you, you said that you attempted to communicate with the provincial department of health. Where you unable to get a meeting?

DR. MVUYISO TALATALA: The meeting as per the letter, the meeting there was never a response to the request the official request. But at the time after that letter without any meeting or any further communication to engage us and in fact after I had actually gone to the office of the – of Dr. Malamelo the mental health director to discuss I think she was going to do some mental substance abuse meeting in the Eastrand which she wanted us to participate in. But in that meeting I also raised the issue of Life Esidimeni once again. But even after raising it there in that meeting I

didn't get a response that they want to Sasop to officially discuss issues regarding Life Esidimeni.

ARBITRATOR JUSTICE MOSENEKE: But before you move away back to the court case look at 3577.

DR. MVUYISO TALATALA: Yes.

ARBITRATOR JUSTICE MOSENEKE: No this appears to be a minutes of the meeting held on the 21st of September 2015 is that correct?

DR. MVUYISO TALATALA: That's correct.

ARBITRATOR JUSTICE MOSENEKE: And there appeasr present on behalf of the Gauteng department of mental health Johanna Jacobus, Sophie Linkwane, Salome Mashile, Dr Malamela. From the province and assumingly your colleagues from Sasop who's names are set out there with a Tom Barnard Jansen Van Rensburg and Lesley Robertson. What do you know about this meeting and this minute? Because it has – I'm asking you this you can anticipate the question, because on 3579 it is a long discussion about Life Esidimeni. This was just before the MEC announced the termination of the contract. Is that correct?

DR. MVUYISO TALATALA: That is correct, Justice.

ARBITRATOR JUSTICE MOSENEKE: Are you able to tell u anything about this minute, this meeting and in particular the discussion on Life Esidimeni?

DR. MVUYISO TALATALA: I don't remember in detail the context of the discussion but it was one of those meetings that I did not attend, but my colleagues attended it where the issue of Life Esidimeni was raised again.

ADV ADILA HASSIM: Is this one of the standing meetings?

DR. MVUYISO TALATALA: Yes, it was one of the standing meetings if you look at the minutes we are discussing several other project. So it was one of the standing meeting where the Life Esidimeni was brought to the meeting once again.

ARBITRATOR JUSTICE MOSENEKE: Ok. Thank you.

ADV ADILA HASSIM: That was September 2015 and then in October 2015 you wrote a letter requesting a meeting, do I understand that in October 2015 when you wrote that letter you wished to have a meeting specifically on Life Esidimedi?

DR. MVUYISO TALATALA: Yes. The request for the meeting in October, it was after the MEC had announced that the contract will be terminated. So that meeting with the MEC and the Gauteng [inaudible 47:40] would have been - our request was for asking to discuss specifically Life Esidimeni.

ADV ADILA HASSIM: And then you say in December after meeting with several partners and after having received no responses you chose to litigate. Had Sasop ever litigated against the department before?

DR. MVUYISO TALATALA: Its something that we will think deeply of doing, we will never directly litigate the department of health. Especially for public sector issues I'm putting that because we may have been partied to a litigation that is done by a

private specialist on medical aid issue. So I don't see it totally it may have been partied with a medical private specialist issue and then by [inaudible 49:35] medical issues. But to that on the government and take them to court we would have never done that at Sasop.

ADV ADILA HASSIM: Yet you felt that you needed to do it now?

DR. MVUYISO TALATALA: Yes, we felt that we had run out of options of trying to engage with the department. So and we are too worried about what is going to happen with mental health if we do nothing.

ADV ADILA HASSIM: And that lead to the litigation in December 2015 and the settlement agreement that that has already been part of these proceedings that we have discussed to some extent the December 2015 litigation resulted in a settlement. Can you tell us about that, what was your understanding then of the outcome of that litigation seeing that it did then not go to court?

DR. MVUYISO TALATALA: In terms of the settlement it was agreed that Sasop and other stakeholder will engage with department of health and will come up with some reasonable process that will be followed on how we are going to discharge if that is the agreement the patient at Life Esidemeni. But the government will meaningfully engage with Sasop and other stakeholders and will come up with a reasonable plan if the conclusion is that the patients should be discharged. Bear in mind that reasonable plan already existed in term of the [inaudible 50:21] policy framework that would guide us. So that was my understanding of the settlement and this was supposed to be concluded by 31st of January 2016.

ADV ADILA HASSIM: And did that consultation then follow?

DR. MVUYISO TALATALA: When we came back in January the first meeting took place very early on in January. So I did not physically attend that one, but I got feedback from my colleagues who attended that the department and specifically the head of health would not have wanted the South African society of psychiatrist to be in that meeting because half of the board member of the South African society of psychiatrist is state employees. Meetings was then scheduled after that canceled and scheduled…

ADV ADILA HASSIM: Pause for a second why would state employees not be permitted to be part of those consultations, particularly since this was a decision that was taken by the state. Wouldn't it be important to have the state employees present in the consultations?

DR. MVUYISO TALATALA: I will better answer your question quoting the second meeting because there I was actually physically there. So me being told by my colleagues.

ADV ADILA HASSIM: Sure.

DR. MVUYISO TALATALA: Once I heard that I then attended the second meeting which was delayed I think it was early February and in the meeting the head of health was not there. But the person representing the head of health did not want me to be in that meeting.

ADV ADILA HASSIM: Who was that?

DR. MVUYISO TALATALA: I can't remember their name the actual person but you can go back to the minutes of that meeting. But there was a person that was presenting the head of health who said I shouldn't be there we had a long discussion or debate because I was insisting that I should be in the meeting until the deputy of head of health Dr. Lebethe is the one who then said Sasop is similar to Sama I should stay in the meeting and engage. Sasop should stay and engage but Sasop should go to the head of health that was not in the meeting that day and try and have a discussion with him so that we can even out our differences [inaudible 53:00] and not want us to be in those meeting.

I did write an email to the head of health and I gave the summary of the of what the meeting had agreed to do or asked me to do. And if I remember very well, form the head of health it was the response – there was never a response that said Ok lets meet on this particular day and discuss…

ARBITRATOR JUSTICE MOSENEKE: But wasn't there a court order that required that you talk?

DR. MVUYISO TALATALA: Yes, there was a court order he was deviating form the court order, Justice.

ADV ADILA HASSIM: And was Sasop a party, you were not a party, where you a party to the litigation in your personal capacity?

DR. MVUYISO TALATALA: On behalf of Sasop.

ADV ADILA HASSIM: So Sasop was in party in the December 2015 litigations?

DR. MVUYISO TALATALA: Yes.

ADV ADILA HASSIM: So the Sasop agreement was concluded between the parties?

DR. MVUYISO TALATALA: Yes, and the settlement agreement they it says that the parties the stakeholder must go and engage with the department and any other relevant stakeholder who may be important in the discussions.

ADV ADILA HASSIM: And then did they – where they persuaded by your explanation apart from the fact that they may not have been, because they were under a court agreed settlement that you would talk. Was there then further – now this is then you telling February 2016?

DR. MVUYISO TALATALA: Yes. After a intense debate and discussion and arguing, as I said that DR Lebethe is the one who intervened and said to head of department let me be allowed to stay in the meeting, but I was going to iron out my differences with the head of health. But I must also say after that meeting there was not another meeting.

ADV ADILA HASSIM: After February 2016?

DR. MVUYISO TALATALA: Yes.

ADV ADILA HASSIM: Was that early February?

DR. MVUYISO TALATALA: Yes, I think the 6th of February.

ADV ADILA HASSIM: And then in March 2016 there was further litigation/

DR. MVUYISO TALATALA: Yes, there was never another meeting after that. And we were past our cut of date our deadline that was in the settlement agreement. But we continued to avail ourselves to any kind of engagement, we didn't actually – still speaking on the 31st of January e should have gone back to court immediately because they were given 10 days after the 31st then we should go back to court and bring up the application if the engagement didn't…

ADV ADILA HASSIM: Why didn't you go back to court straight away meaning that there was some weeks that passed, a month that passed before you approached the court again. Why didn't you immediately go back to court?

DR. MVUYISO TALATALA: Our attitude with the government was not to fight with the government, its to engage with the government. We understand the difficulties of providing health and the limitations the government has. So we will not if the deadline was not too important to us like we have to – as if there are someone has stolen something from our house. Sow e didn't have to by that day go back to that, because we understand the challenges and we considered that what we are still doing today as partners. We also understand the delays the government usually have, they have got more meetings and more things to do beyond our mental health issues. So we did not think at the time that not concluding the discussions but the 31st of January 2016 was malicious on the part of government. We thought that it was the usual government delays, who eventually they were not discharging the patients until we have concluded until - even if it happens after the deadline that has been set by the court.

ADV ADILA HASSIM: So you still took them at good faith at that point?

DR. MVUYISO TALATALA: That is correct council.

ADV ADILA HASSIM: In relations to Sasops involvement in the consultations, Justice for the record and Dr. Talatala if you could please have regard to file 2, if someone could assist the witness.

ARBITRATOR JUSTICE MOSENEKE: In the first application your lawyers were section 27, were they?

DR. MVUYISO TALATALA: That is correct, Justice.

ADV ADILA HASSIM: Ok. And on page 645 of that file, 645, these are the minutes of that meeting that you are referring to. And item number 5, Justice are you there?

ARBITRATOR JUSTICE MOSENEKE: I am not yet there, I will be there soon. Yes, thank you.

ADV ADILA HASSIM: 645 item number 5.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV ADILA HASSIM: Its says Sasop involvement. And the minutes confirm and I'll just read the relevant aspect *'' In response to objections from the department to Sasop participations in the consultations, DR. Talatala explained the importance of Sasop's involvement.''* And then it says '' *As an applicant a body representing psychiatrist and a body that sort and engagement with the department on the issues since mid-2015".* And paragraph 5B says '' *DR. Lebethe agreed that Sasop should be involved and noted Sasop's expertise could be of assistance as per the*

settlement agreement, they could neglect the fact that Sasop have the right to be present'. That I sin the meeting of 9th February, it was 9 February?

DR. MVUYISO TALATALA: That is correct.

ADV ADILA HASSIM: And then on page 653 on the very same file…

ARBITRATOR JUSTICE MOSENEKE: And Dr Mahlemela was present as the minutes states?

DR. MVUYISO TALATALA: Yes, she was present.

ARBITRATOR JUSTICE MOSENEKE: And Mr Mosenoke? But, who objected, then thereafter follows Dr Richard Lebethe – who didn't want you there?

DR. MVUYISO TALATALA: The – I cannot remember the actual name – it's the person chairing the meeting on that day.

ADV ADILA HASSIM: Was it a man or was it a woman?

DR. MVUYISO TALATALA: It was a man.

ARBITRATOR JUSTICE MOSENEKE: So, Dr Mahlemela did not chair the meeting?

DR. MVUYISO TALATALA: No, she presented in the meeting.

ARBITRATOR JUSTICE MOSENEKE: I see – thank you.

ADV ADILA HASSIM: It was page 653 - was my next reference – are you there?

DR. MVUYISO TALATALA: Yeah, that's correct.

ADV ADILA HASSIM: Justice, are you at page 653? Not yet…?

ARBITRATOR JUSTICE MOSENEKE: Uh-huh, I'm there…

ADV ADILA HASSIM: Is this the e-mail you've just referred to earlier in your testimony? The e-mail to the Head of Department.

DR. MVUYISO TALATALA: That's correct Counsel.

ADV ADILA HASSIM: And you just tell us what was the importance of this e-mail?

DR. MVUYISO TALATALA: As I've said it was on that day – I can see now on the date – sent 9th February 2016. It must have been on the, it was in the evening of the day that we had the meeting. Firstly, because I've been asked by the meeting to actually try…

ADV ADILA HASSIM: It looks like it was – yes – at night?

DR. MVUYISO TALATALA: Yes, at 20 past 11 pm.

ADV ADILA HASSIM: 20 past 11 at night?

DR. MVUYISO TALATALA: Yes – so, we had already – I was summarizing what had been, what the meeting had asked me to do, that we should – and not in our defence, but I was also trying to show the Head of Health through the e-mail – even before we meet – the importance why SASSOP was part of the settlement agreement – why the parties need to engage.

ADV ADILA HASSIM: Justice, the e-mail itself is explanatory – I don't …

ARBITRATOR JUSTICE MOSENEKE: Yes, you don't need to…

ADV ADILA HASSIM: I don't need to go through it?

ARBITRATOR JUSTICE MOSENEKE: Uh-huh. Thank you so much for that one.

ADV ADILA HASSIM: And yet you landed up in court – again?

DR. MVUYISO TALATALA: Yeah. So, in the e-mail I also I was also still asking for the meeting with him. He's – we did end up in court again, because we got to – on some weekend – I think around March – we got to hear that about 50 patients were going to be moved from Life Esidimeni to Thakalani – I remember that weekend, because I was not even in Johannesburg. So, I had to come back so that we could prepare for an urgent application to interdict the government, the Department of Health moving the patients to Thakalani.

ADV ADILA HASSIM: Why were you concerned about the move of 50 of the users from the Life Esidimeni to Thakalani?

DR. MVUYISO TALATALA: Well, there's many levels of concern – for one, we have not yet settled, we've not yet agreed on the proper way of discharging the, or transferring the patients from Life Esidimeni to any facility. That was the first concern. Secondly, the process of transporting of moving patients is – I would say - a scientific process – it is not, it is not something – I am sure even moving people with a taxi who are well from Soweto to town, it has also its own risk, but the stakes are higher …

ARBITRATOR JUSTICE MOSENEKE: You can just leave it at the scientific process – taxi involvement may not be an ideal example…

DR. MVUYISO TALATALA: …, but the process of moving a patient from one area to the next, is something we get trained to do.

ADV ADILA HASSIM: Who gets trained to do that?

DR. MVUYISO TALATALA: All – health providers – doctors. We get trained at medical school on how …

ADV ADILA HASSIM: All doctors, regardless you specialising…

DR. MVUYISO TALATALA: All health providers. For instance, it is known that you could cause more harm with the transfer – it is like an accident scene, it is better to stabilise the patient at the accident scene and not hope that the transfer process will make things better. And also, you need to prepare the facility that's going to receive, because you can't transfer a patient or an injured person to a maternity hospital and visa versa. So, at the time they are going to move 50 patients, I was of the opinion that they have not made proper planning to move patients from Life to Thakalani.

ARBITRATOR JUSTICE MOSENEKE: They means the Gauteng Department of Health?

DR. MVUYISO TALATALA: Yes, the government.

ARBITRATOR JUSTICE MOSENEKE: The government, yes?

DR. MVUYISO TALATALA: Yes. Firstly – you would not move 50 patients at once in one day – that would be rather careless, unless you plan for it over a very prolonged period of time and you've prepared – you can already – if I'm saying that next week I am going to move 50 patients from facility A to facility B. I can already

say there are going to be errors, because there are errors that happen on a – even if you move one patient. For instance, the correct documents may not be signed by the facilitators sending the patient, or correct forms in the mental health care that may not be filled – proper forms that we need to fill. So, there are even little errors that happen anyway when you are moving patients. When you are moving 50, that will be too big. I also know Thakalani is a neighbour – I work at Dr [inaudible 1:06:40] memorial hospital and Thakalani is a neighbour of our facility. I have been asked by Thakalani a few years ago to go and do favours when they've got a problem with the review board is going to close them down, because forms are not done – I would go and assist them. So, once I have not worked for Thakalani – I mean for a long time – I was aware they do have limitations. And also, they are looking after children with mental disabilities – it is not after adults. So already – to me – that process raised concerns, based on my knowledge of Thakalani, or my knowledge of difficulties of transferring patients and the risks are certain transferring patients – irrespective of which patients we are transferring.

ADV ADILA HASSIM: So, you say Thakalani was a home that took care of mentally disabled children and there would be adults that would now be transferred to Thakalani?

DR. MVUYISO TALATALA: Yes, even that…

ADV ADILA HASSIM: And what risks would come from that?

DR. MVUYISO TALATALA: Yeah. Throughout this process there are things that would be done by the department that had never been done before or had never

been done to the scale of that they was going to do and every step and even when you think about the environment that you are going to move mentally ill patients to go and reside with children and you are going to move 50 of them – not 2 or 3, and then bring more as the team gets comfortable. Already that was a problem, so we were going to advise – if we were allowed – for something that is never already been done before, which is complicated. The reason is going to be you are probably going to have a clear separation of the adults from the children at the facility. The facility would probably need to be – not probably, it would need to be properly staffed to deal with these mentally ill patients who could pose danger to the children and the staff itself may not be used to the Life Esidimeni patients to receive them in such a huge number all at once. And, they may not even have established what is going to happen when they have a relapse – are they going to send them to Lillian Ngoyi clinic are they going to send them to Chris Hani Baragwanath hospital? Are you going to have a psychiatrist to come and see the patients are you going to – my impression at the time is that they have not assessed the risks asserted with the move.

ADV ADILA HASSIM: And when you move a patient from one facility to another or you're discharged from the one into the care of another – who would do the discharge? If the person is being attended to by a medical professional, would it not be required that the doctor sign that discharge?

DR. MVUYISO TALATALA: Even before the signing – if you are going to move a patient from one facility to the other – even if it is at the wish of the founder or the government, but it must be approved by the treating team. So, if government or

founder is finding the facility to treat those patients, but the admin responsibility should be of the treating team. Now, when it comes to mentally ill patients – it is before the doctor even signs, the team must agree, must identify the patient that is going to be transferred – you must know where the patient is going to go to – who is going to receive the patient – what level of care is available – so the team must be aware of that and the doctor had done this at Sterkfontein many times. You then get reports from the different team members – the nurses, the psychologists, the social workers – so that we as a team can put up a proper plan on how we are going to move that patient – whether we are discharging them home or to another facility. Then at the last line is then for the doctor to attach is signature on the form 3 of the medical health care act and say you are discharging this patient to this facility and this is the treatment and – so, the doctor is the one who ultimately sign, but in consultation with the multi [inaudible 1:11:00] team – that is why it is very difficult if you are going to do it for 50 patients in one day.

ADV ADILA HASSIM: And then – assume that all of that happened – assume that all of those steps you say that needed to take place – ultimately then, with the signature of the doctor – what then happens to the patient – how is the patient physically transferred – who attend to that – the physical conveyance of the patient from one place to another?

DR. MVUYISO TALATALA: Well, if we are talking about this – okay, let's make it easy and say you are going to transfer a patient from Sterkfontein to Life Esidimeni, then Sterkfontein hospital would provide transport to move the patient and will decide is the patient going to be accompanied by a nurse, by a social worker – so

Sterkfontein hospital will then provide transport to move the patients to Life Esidimeni.

ADV ADILA HASSIM: So, will they be required to have support staff accompany them?

DR. MVUYISO TALATALA: The team that is treating the patient will make that determination – would decide on what level of support the patient – we have at Sterkfontein decided that this patient will have to go with a nurse or will have to go with a social worker, who will then hand over the patient to wherever the patient is – or alternatively the NGO, which happens to be at Sterkfontein, will come and pick up the patient who will meet the people from the NGO who are the actual people who are going to move with the patient to the NGO.

ADV ADILA HASSIM: And these are mentally health patients – so, the one is they need to be accompanied – as you say?

DR. MVUYISO TALATALA: Yes.

ADV ADILA HASSIM: And how would they be transported?

DR. MVUYISO TALATALA: Firstly, on the fact that they need to be accompanied, is because some of them may not be able to tell their story when they arrive at where they are going to – so, they may not be able to say: *I've got high blood pressure – I am taking Captropal*(?) or whatever medication – someone else may need to, in fact took the steps and signed the information upfront before the patient goes – if you are going to transfer a patient to a facility, you fax all the documents, so that the facility that is going to receive, reads them, gets comfortable that they

are going to be able to deal with this kind of care that is required for this patient and then says: *okay then bring the patient*. The patient will have to go with someone who will also just say – I mean, brief the facility on what is happening with the patient, because the patient may not be able to … I mean …

ARBITRATOR JUSTICE MOSENEKE: Finish the sentence doctor… patients may not be able to ….?

DR. MVUYISO TALATALA: To explain, to tell, to talk about their process, their treatment.

ARBITRATOR JUSTICE MOSENEKE: Sure – thank you.

DR. MVUYISO TALATALA: Than also – in addition – there could be other information that is known by the treating team, that may not be documented. You know, the information about living with the patient – you know, you had this patient for ten months or a year – she likes sitting in the sun, please bring her back in the shade, she could burn herself dead left out in the sun – little things like that.

ADV ADILA HASSIM: And then once that happens and I am assuming all of that happens the way you say it should – is that the end of the story for the discharging side? You were giving the example of Sterkfontein and you would discharge into the care of someone else and this is the procedure and this is how it would happen and then – is that the end of it for you?

DR. MVUYISO TALATALA: If it is done correctly, that would be the end of it, unless there is an argument that patients should come back, should he relapse which would – I mean in the severely ill patients, you don't want them to step into a

NGO – for instance – and once the relapse at the NGO, you make them to start at the bottom again and the NGO must go to the clinic – you don't want that. It is preferable that for three months – if the patient relapses, the NGO would take the patient back to Sterkfontein – to my ward, because you don't want them to start the process from …

ADV ADILA HASSIM: So, how would you know – how would they know that they could go back to you in three months' time if they can't cope?

DR. MVUYISO TALATALA: That would be an agreement at the time that they discharge the patient. When you discharge the patient from Sterkfontein, we have an option to say this person wouldn't do it for NGOs, but you can say you are well – we are discharging you from Sterkfontein back to your home in Soweto and when you get sick again the home in Soweto will take you to a clinic and you will follow the upward referral system to Baragwanath before you come back to Sterkfontein, but remember that would be too hard if you already know the patient is not well enough – you are sending the patient to Life Esidimeni or a NGO, so, we would allow – the patients are not actually discharged legally – their status of admission is not changed from assisted or involuntary out-patient, so that …

ADV ADILA HASSIM: I understand.

DR. MVUYISO TALATALA: …the NGO can bring the patient back – severely ill patients and we would actually allow them back two or three times and after that we would say that now the patient is fully discharged and if the patient relapses then we would have to start the process from the clinics.

ADV ADILA HASSIM: Has that happened in your experience – that patients come back after a period of time?

DR. MVUYISO TALATALA: In my experience? Yes, it happens all the time, yes. Some of the patients, the NGOs couldn't cope with them, then they will bring them back to Sterkfontein and then we would keep them stabilized or whatever. We can stabilize them and send them to Life Esidimeni.

ADV ADILA HASSIM: So now you have Thakalani and you are involved in the litigation – can you just explain then what your role was and what was – what did you want when you went to court? What did you want from the government?

DR. MVUYISO TALATALA: If – I remember very well – we wanted the discharge of those patients to Life Esidimeni – sorry, to Thakalani – until such time we've concluded those discussions about the best way of discharging patients from Life Esidimeni.

ADV ADILA HASSIM: Were you present in those proceedings at all in the March 2016?

DR. MVUYISO TALATALA: Yes I was of course in the court Counsel.

ADV ADILA HASSIM: And, it was an unsuccessful application?

DR. MVUYISO TALATALA: Yes, it was unsuccessful Counsel.

ADV ADILA HASSIM: And why do you think it was unsuccessful?

DR. MVUYISO TALATALA: Because the department lied to court and they conversed the charge.

ADV ADILA HASSIM: About?

DR. MVUYISO TALATALA: They argued that – through their Counsel – that – firstly, they made an issue about discharge – about displacement – they argued that if you are discharged, it means you are well you should be going home – as I say, that is the Layman's understanding of the word discharge. It is not like that in the health – so they argued that those patients that is being discharged by doctors – it was not them discharging the patients and the patients were well enough to be at home, but the patients don't have families to look after them and therefore they are just being housed at Thakalani – they are not really going for further treatment. That was the drift of their argument – which was untrue …

ADV ADILA HASSIM: What kind of patients were these that were being transferred – the 50 patients – what were their disabilities?

DR. MVUYISO TALATALA: Severe – I mean, if I speak for all Life Esidimeni patients who are talked about – patients with severe mental illness, which is treatment refractory, which …

ADV ADILA HASSIM: Repeat that phrase again?

DR. MVUYISO TALATALA: Treatment refractory, which is ….

ADV ADILA HASSIM: Meaning?

DR. MVUYISO TALATALA: For schizophrenia – it is people you have used the first under psychotic – you have used the second under psychotic, in addition to other type – I am just implicating myself to medications, but there are other therapy

as well, but in terms of medication – you have used the first under psychotic, you have used the second under psychotic and it has failed – you will then use – then you want an under psychotic that is reserved for treatment resistant patients, which is called Clozapine(?) and you have used it at a good level – I will put it clever - for a prolonged period of time and the patient had still not responded to treatment and now you are trying a [inaudible 1:19:53] medications – in fact, the patient has poor prognosis in ever responding to the treatment – that is a kind of patient in terms of – that is the kind of patients that they had. There is another group of patients with mental sedation, but the big bulk of the ones that are going to be discharged were the ones with that kind of severe mental illnesses.

ADV ADILA HASSIM: And, what would happen to those patients who defaulted on their treatment or when not provided with the medication?

DR. MVUYISO TALATALA: Yes – once I've said they have not - they are not well – they have responded to some level – it is they are contained, but not contained enough to be released to the community, because they have now the substance abuse – in fact, they now want to stop the treatment, because they don't have the insight to realise that they need the medication. So, if you then stop the medications, they will actually get worse – they will actually - their psychotic condition would deteriorate.

ARBITRATOR JUSTICE MOSENEKE: You go ahead – I am listening.

ADV ADILA HASSIM: Maybe I thought it was a queue from you….

ARBITRATOR JUSTICE MOSENEKE: No.

ADV ADILA HASSIM: And would you – would these patients have receive that treatment at Thakalani?

DR. MVUYISO TALATALA: Sorry Counsel – I didn't hear the question.

ADV ADILA HASSIM: So, we were just talking about the negative – okay, so – let's just go back to the case. You've said that you were concerned about moving – we've gone through that it was a large number of people – we have talked about the manner and process of discharge and then the concern about Thakalani no being – being a home for mentally disabled children.

DR. MVUYISO TALATALA: Yes.

ADV ADILA HASSIM: But, other than the fact that it was a home for mentally disabled children – is there any other reason why they would not be capable of taking care of these patients from Life Esidimeni? And the one – I put it – the one – I am going to let you answer that and then we'll take it from there…

DR. MVUYISO TALATALA: I think partly, because they are looking after children, they would not have the expertise immediately to look after patietns older patients who have – other patients with mental illness. I don't say that they could not develop it with time, but in a short space of time they would not have – I was also concerned – we were also concerned that they may not even know their referral system – where are they going to get their medications? When we discharge patients from any of our facilities, the challenge is that – when the patient gets to Heidelberg or Soweto, they still get the same medication they were getting at Chris Hani Baragwanath, which is not happening all the time. So, when they are going to be

discharged to Thakalani with a month's supply of medications – had Thakalani established where they were going to get the medication for the next month and going forward?

ADV ADILA HASSIM: And this type of medication – let's take the example of schizophrenia and the treatment of anti-psychotic medication? Is it something that anybody can do – can it just be left to a Lay person to provide that medication or does there need to be some level of knowledge of that drug and its side-effects or whatever, I don't know?

DR. MVUYISO TALATALA: If they are adequately trained, they could and it is easier to train a family member or a counsellor to give medication for one patient. But now, when you are having 50, you need to have a system. It can no longer be about and I state a Lay person can look after her son and give medications under psychotic and you can look after, then that becomes a system and have trained people. But not only that, the system must know that we give our medication at this time and this time and as such you take blood pressure so many times per day – you take temperature so many times per day, because now you are not dealing with the one patient and your staff patient ratio is not going to be as such that you – if it was one to one, then a Lay person could pick up that one person is sick, but even if there is a system, where the staff is going to be less in number, then you need a health system that will make sure that there is no – that they can balance – there is no one to one supervision of the patients. Like for instance, if you take your medication it is easier – maybe relatively easier for a family member to know if their son did not take medication that day, but in the system they have to develop – that

is mouth checks for all patients that after they have taken their medications. So, it is the people, but it is also the system – you need to develop a system to be able to do that.

ADV ADILA HASSIM: Did you say mouth checks?

DR. MVUYISO TALATALA: Yes, I am saying that after you gave medications, patients may take the medication and not swallow it or put it in the mouth and not...

ADV ADILA HASSIM: Okay, I see.

DR. MVUYISO TALATALA: Or they put it in the pocket.

ADV ADILA HASSIM: So, you have said you had some knowledge of Thakalani, that you have been there before and that it was a neighbour of the facility where you practise – are you aware that a large number of people died at Thakalani as a result of this transfer from Life Esidimeni?

DR. MVUYISO TALATALA: Afterwards we have heard that a large number of patients had died, but even before that – I had come across a document about Thakalani that also got me worried that people are going to die at Thakalani, because in the document done by the department of health – on of the departments of the department of health – one of the patients had typhoid infection and the patient had been admitted at Baragwanath hospital and then, because a typhoid outbreak would cause a health crisis – I think the department had investigated what caused the typhoid infection in those patients …

ARBITRATOR JUSTICE MOSENEKE: Now, was there typhoid infection at Thakalani?

DR. MVUYISO TALATALA: Yes…

ADV ADILA HASSIM: Justice and Dr – if we could just pause there, because it would be of assistance to all of us if we have that document that you are referring to – it is called ELAH 58 and it should be in a file called Exhibits and it will be numbered with the exhibits in it – it is ELAH 58 Justice.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

ADV ADILA HASSIM: Is this the document that you are referring to?

DR. MVUYISO TALATALA: Yes Counsel, that is the document that I am talking about.

ADV ADILA HASSIM: And, when did you? Okay, tell us about this document. What is this document? It is a Gauteng Province official document.

DR. MVUYISO TALATALA: Yes, it is an official document compiled by Johannesburg health district – from this document it looks like Chris Hani Baragwanath hospital admitted a patient with typhoid infection and that is supposed to be reported, because there could be an outbreak of typhoid of where the patient comes from and the Johannesburg health district had investigated the source of the typhoid infection, because obviously …

ADV ADILA HASSIM: Before we get to the typhoid – it is just to understand the document – it says it is compiled by a person with the surname of Manala

Louscher(?), we see that on page 4 – the end of the document and the designation of this person is a bunch of letters EPI/EPR/CDC Manager, Johannesburg health district. Do these letters make any sense to you?

DR. MVUYISO TALATALA: Not immediately – I can't remember what they stand for.

ADV ADILA HASSIM: So it is some sort of manager in the Johannesburg health district that compiled this report? And then it was sent to a range of people – Chief Director, Directors, Deputy Directors, Public Health Specialists, Health Programme Managers – do you know why a document like this would be sent to so many categories of people within the provincial health department?

DR. MVUYISO TALATALA: Because it would be sent to a lot of people – sorry, I should have said – it becomes a public document, because to have typhoid infection in the province would be – a typhoid epidemic would be a crisis.

ADV ADILA HASSIM: Is it a notifyable condition?

DR. MVUYISO TALATALA: I think it is a notifyable condition.

ADV ADILA HASSIM: Why would it become a crisis?

DR. MVUYISO TALATALA: Because it could get a lot of people sick. It could spread fast and it also reflects on the kind of hygiene that we have. We may have to look for the source of the infection, because it could spread in the community and could cause typhoid infection and typhoid infection could kill people can kill people.

ADV ADILA HASSIM: Can kill people? And, 19, this is dated 19th July 2016 and the document refers specifically to salmonella typhoid and it describes in the second paragraph it describes what salmonella typhoid is and in the first paragraph it talks about contaminated food or water and then paragraph 3 – I am not going to go through all of it – it is there and self-explanatory, but one important thing that it says is that salmonella is treated with anti-biotics and infection prevention and controlled precautions. What would infection prevention and controlled precautions entail?

DR. MVUYISO TALATALA: It is an infection you don't want your defence to be – to treat the infection with anti-biotics, your first defence is through poor hygienic – if the bacteria finds itself to food and water, it contaminates food and water, then it can spread amongst people with the infection and who then consume unhygienic water and or food. So the first would be, in fact we would want the whole community to be aware of such an infection so that we could prevent the infection and not relying on treating it with the anti-biotics.

ADV ADILA HASSIM: So, you would need to prevent it from spreading – is that what it means?

DR. MVUYISO TALATALA: Yes, you could contain it – if you could contain the infection in the community with good hygiene, good water, washing our hands, good co-operation hygienic operational food.

ADV ADILA HASSIM: So, what is important about this is this is what you were referring to – you have raised this letter – you have said there was this letter and it was related to Thakalani and it says in paragraph 3 the case background – on 18th

July 2016 a conjoined investigation was conducted by Johannesburg health district outbreak team at Thakalani Home for the mentally disabled, following a receipt or a notification from Chris Hani Baragwanath academic hospital. So, the outbreak was traced back to Thakalani – I would like you to help us understand this.

DR. MVUYISO TALATALA: Yes, that is correct. At the second half of the document they trace it back to – given the history of the first patient, who is a former Life Esidimeni patient, they traced it back to Thakalani and I think there was two other cases who were suspected, but not confirmed at the time the document was compiled.

ARBITRATOR JUSTICE MOSENEKE: Shouldn't we cut to the chase Counsel? We have got the document, it is an exhibit and the environment assessment is the…

ADV ADILA HASSIM: …is the real

ARBITRATOR JUSTICE MOSENEKE: …is the real issue.

ADV ADILA HASSIM: One issue before we get to the environmental assessment Justice, and that is just to note – that one of the names, one of the suspected patients of salmonella typhoid in this document is a Johanna Thladi and she is one of the deceased that is represented whose family is represented in this hearing.

ARBITRATOR JUSTICE MOSENEKE: Sure.

ADV ADILA HASSIM: We don't have to go there right now and to note and for the record or note the affidavit of the family member related to Johanna Thladi is to be found on page 4025 of the bundles.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV ADILA HASSIM: I forgot the volume, I don't have the volume number. I think it is volume 11, but page 4025 is the affidavit and the death certificate is to be found on page 4030. We can now get to the environment assessment. **DR. MVUYISO TALATALA**, on page 3 of this document, there is a section headed Environmental Assessment and then it describes the environment – can you take us through this environment? You read from the document and tell us exactly what this assessment found at Thakalani.

DR. MVUYISO TALATALA: Let's start with the sleeping area – there are 6 patients that share a room, there was not enough personal space. Then hand washing basins were not provided and that is important, because where you keep patients – whether it is a ward, you need to have, like if you go into any ward you will find hand washing basins that is to prevent infections from spreading. The dining hall area – there was a foul smell, the floors and walls were clean, even there was not hand washing basins, soap and paper towels for the patients to wash and clean before eating – so that is also important so the patients are going to the dining area – especially with the mentally ill, the nurse in charge or whoever is in charge to instruct them to wash their hands before eating and also wash their hands after eating.

ARBITRATOR JUSTICE MOSENEKE: But then you would also have a nice smell that possibly wet your appetite – here the dining hall has got a horrible smell.

DR. MVUYISO TALATALA: That is correct Justice.

ARBITRATOR JUSTICE MOSENEKE: Anyway, you go ahead doctor.

DR. MVUYISO TALATALA: The kitchen they say had a very dirty floor – poor illumination, some light bulbs were missing – the illumination might sound like a small thing, but it is important, because as you are preparing the food you need to actually see what you are doing – if you cut you need to make sure that your utensils are clean, because remember, as you are preparing the food to don't want to mix meat with vegetables and move around different food – so you need good illumination. There is very poor housekeeping, dishwashing water was being reused – it was not drained after use. Soap for hand washing and paper towels were not provided – very dirty hand washing basin – hot water was not provided.

ADV ADILA HASSIM: So, is this consistent with your observations of Thakalani when you had been there or have you not been to these areas?

DR. MVUYISO TALATALA: I must be honest – when you go and assist a facility – you don't go as an inspector you don't go with a hat of an inspector of being critical – so I did not go to them even at the time when I would be unhappy, but I would not tick the problems as they have done, because you wouldn't be going as an inspector.

ADV ADILA HASSIM: Can you describe what you saw – did you go into the sleeping area for example – they say 6 patients share a room – how big would these rooms be?

DR. MVUYISO TALATALA: I would not be able to say – like I said, I would just go and assist with the paperwork. I will just go into the office to sign the document – I would not go and see the environment how it is, but the report describes it well.

ARBITRATOR JUSTICE MOSENEKE: But the times you visited was quite different from the time there was an outbreak of typhoid there and severely disabled mentally patients adults were brought in there – isn't it?

DR. MVUYISO TALATALA: Yes, that is correct Justice. At the time and that is many years ago and it was not at the time they were going to look after the mentally ill patients….

ARBITRATOR JUSTICE MOSENEKE: Yes, it would have been much younger people in there?

DR. MVUYISO TALATALA: Yes.

ARBITRATOR JUSTICE MOSENEKE: So you would know this you have gathered it from the report yourself?

DR. MVUYISO TALATALA: Yes, that's correct Justice.

ARBITRATOR JUSTICE MOSENEKE: Very well.

ADV ADILA HASSIM: Do you know anything about the symptoms of salmonella typhoid?

DR. MVUYISO TALATALA: It is described here – it is not my area of expertise.

ADV ADILA HASSIM: Sure.

DR. MVUYISO TALATALA: And I have not treated those patients in a long time, but the descriptions listed in the document are correct.

ADV ADILA HASSIM: I want to return, because this is the first real move when the first big move started – this is the first NGO that received patients from Life Esidimeni. In the beginning of your testimony when we were looking at your letter of 22nd June 2015 – you said that – you spoke about established NGOs – was Thakalani one of those?

DR. MVUYISO TALATALA: It would be Counsel one of the established NGOs, but remember Thakalani was to look after children – so we would not have sent patients to them anyway.

ADV ADILA HASSIM: At the time you wrote the letter – did you think there would be patients sent to Thakalani?

DR. MVUYISO TALATALA: I would not have thought they would have sent patients to Thakalani, unless Thakalani would have changed.

ADV ADILA HASSIM: And had you known that they would sent patients to Thakalani earlier – I mean you made your concerns known when you had to go back to court in March 2016, but had you known about it earlier, would that have been of concern to you and why?

DR. MVUYISO TALATALA: It would have been a concern, unless they unless Thakalani had changed. Look it would have been a concern, because it is not designed for to look after adults adult patients and also Thakalani had issues even before, I mean – we've heard even the department itself had once investigated Thakalani – I think around 2010 and then they found problems with Thakalani. We are aware that even at the time that the patients had been moved to Thakalani, the strike by the people working at Thakalani – those would be additional problems in the fact that in any event it was perfectly optimal – it was not designed to look after mentally ill patients.

ADV ADILA HASSIM: So, at the time you wrote the letter initially to say whoa it is a problem, there are potential consequences – it was on the assumption that there will be established NGOs that would be familiar and that is enough to raise a concern.

DR. MVUYISO TALATALA: That is correct Counsel.

ADV ADILA HASSIM: Were you aware then that patients were moved to unlicensed NGOs, in fact to houses?

DR. MVUYISO TALATALA: We later learned Counsel that patients were moved to Thakalani and we later learned that the patients were being moved to houses that we got reports that those patients were put in garages and all kinds of places – not the usual NGOs.

ARBITRATOR JUSTICE MOSENEKE: Why do you think that the MEC ignored you – the head of department ignored you – the head of mental care ignored you – the project leader Mr Mosenogi ignored you – why do you think all of them did?

DR. MVUYISO TALATALA: I think that….

ARBITRATOR JUSTICE MOSENEKE: You wrote – you raised at meetings – you tallied a meeting after the first case – they tried to keep you out of the meeting until Dr Lebethe said come in – you go to court twice – they promised the court they will talk to you and consult – they don't and go ahead. Why do you think they do not – you, a president of an organisation that represents many many psychiatrists – why did they ignore you?

DR. MVUYISO TALATALA: I think Justice, there are multiple reasons. The first one probably be that the department of health had made up its mind – the Gauteng department of health that is what I told that facility and it would not listen to the professionals and they have a culture of not listening to the professionals. I am going to give you two examples listed that – which is part of those issues discussed …

ARBITRATOR JUSTICE MOSENEKE: By professionals, you mean clinicians like yourself?

DR. MVUYISO TALATALA: Clinician, yes that's correct. And something that maybe minor – the Gauteng department of health does not allow children under the age of 16 to be admitted as voluntary patients in their licensing – we have brought this to their attention – I am saying minor, because no-one has died from it – we

brought it to their attention even if we go and look at all the laws that govern admission they will not allow voluntary admission which means that if you are less than 16 and you have got a mental illness you need someone to consent for you, because you can only be admitted as an assisted patient even in the private sector. We brought this to their attention – we've put it together and we took it to national department of health even today there is no even today if we go to [inaudible 1:44:37] hospital and you are less than 16, you will be admitted, because the government does not want you to consent to that admission [inaudible 1:44:51]

ARBITRATOR JUSTICE MOSENEKE: You were saying they had a culture of not listening – could you just develop that point? Give me an example, yeah.

DR. MVUYISO TALATALA: Now with that example, I cannot figure out why they would not listen to us and not listen to the law that we have provided them with. When you come to this case, the head of health had presented to us before 2015 in one of our Gauteng psychiatrists meeting and said in the meeting that the province was going to do away with outsource work to another party and they gave examples like they had done away with cellphones and the Life Esidimeni are going to be the next target. Even today….

ARBITRATOR JUSTICE MOSENEKE: I am looking for a very direct answer of your understanding of why all of these [inaudible 1:46:08] the health, provincial health, etc. would be written to – not once, but a few times – by your organisation of psychiatrists and you would go to court – not once, but twice – and they nonetheless go ahead and move people into large numbers – 1712 people, contrary to advise from clinicians specialised in the field.

DR. MVUYISO TALATALA: Justice, they don't listen to professionals – probably they thought we are colluding with Life Esidimeni and they wanted to end the contract with Life Esidimeni no matter what.

ARBITRATOR JUSTICE MOSENEKE: Did you understand why they wanted to end the contract with Life Esidimeni?

DR. MVUYISO TALATALA: Well, they never said it to us, but we can only conclude that it is a contractor – it is not in the government.

ARBITRATOR JUSTICE MOSENEKE: No, but did they give you reason to understand why they wanted to close down Life Esidimeni?

DR. MVUYISO TALATALA: The reasons they gave…

ARBITRATOR JUSTICE MOSENEKE: I am asking from your observations from their conduct and responses summarised in your mind – what would you say is the reason why they would – dispite all this warnng – not, I mean proceed and shut down Life Esidimeni?

DR. MVUYISO TALATALA: The reasons that they gave is that – in light of the ANC – they are not coping with their actions their policies – the reasons given – in my view – are not the real reasons.

ADV ADILA HASSIM: What are the real reasons in your view?

DR. MVUYISO TALATALA: In my view, I think they wanted to do away with Life Esidimeni – I think at another level they also wanted to create a crisis, because after the process had started then the department of health issued a document that they

are going to build 300 beds at Weskoppies and 300 beds at Tara hospital and 300 beds at Sterkfontein hospital to accommodate some of the patients, which was a deviation…

ADV ADILA HASSIM: But that is not de-institutionalisation – that is not consistent with de-institutionalisation.

DR. MVUYISO TALATALA: That is why I say that the reason they gave is not in keeping with their actions. So building 900 beds at [inaudible 1:48:57] is a deviation from the policy. So, I can only conclude that they wanted to create an infrastructure crisis – especially when they are discharged, we will have to find beds for them. It is easier to built extra beds at Weskoppies, Tara and Sterkfontein than to build facilities in the communities.

ADV ADILA HASSIM: And, I think the basis of that oath is that you will do no harm.

DR. MVUYISO TALATALA: That is correct Counsel.

ADV ADILA HASSIM: So, even if you did not take active steps to – as you did – to write and litigate and all of that to try and stop it – at the very least – one would not participate.

DR. MVUYISO TALATALA: Yes Dr Mahlamela promised that he would contact me and he said that he will do as we agreed to bring the body by half past 4, but that never happened.

LEGAL AID LILLA CROUSE: I know that last month there was some statistics – I don't have it with me, but in October this year I've brought an application to take a

mentally ill child out of prison and that staged in Port Elizabeth – the time for mentally ill state patients awaiting a bed was 22 months. Do you agree with that?

DR. MVUYISO TALATALA: That is possible, and it is not just Port Elizabeth it is the entire country – I don't have the actual days the actual time, but it is long for every it is long for most provinces.

LEGAL AID LILLA CROUSE: That was the stats given to the eastern cape legislator.

ARBITRATOR JUSTICE MOSENEKE: 22 months?

LEGAL AID LILLA CROUSE: 22 months. So I understand your concern there and I think it is a valid concern.

ARBITRATOR JUSTICE MOSENEKE: But I thought you also wrote to the justice of corrections because of the forensic delays that it was the inquising(?) waiting lists of people detained who were to be assessed for criminal responsibility.

DR. MVUYISO TALATALA: That's correct Justice.

LEGAL AID LILLA CROUSE: Thank you doctor – one of the questions I really want to get you to answer is why the Life Esidimeni centres has been closed and you have answered some of it already and I am not sure that I understand the creation of an infrastructure crisis – just explain that to me please.

DR. MVUYISO TALATALA: It covers my reading of it – I am making those conclusions – we have a policy that says we should not be building beds at Sterkfontein, Weskoppies and Tara, we should be building in the community. The

department says I am closing Life Esidimeni, because we want to push the patients to the community – a few months later, they say we are going to build 900 beds in those facilities. So, it can't be the institutionalisation and the need to treat patients in their communities. I can only say that it is the need to build and the easier way to build will be at Sterkfontein, Weskoppies and Tara hospital.

LEGAL AID LILLA CROUSE: Can you assist us when it was said that 900 beds would be added.

DR. MVUYISO TALATALA: I have to find my date Counsel.

SESSION 3B

LEGAL AID LILLA CROUSE: If I can perhaps ask you again tomorrow.

DR. MVUYISO TALATALA: Some dates later, later after the patient is discharged.

LEGAL AID LILLA CROUSE: Thank you. Doctor, I want to thank you for the way you explained to us how a transfer should happen. I think we've got clarity on that now. The Ombud said to us that a transfer, even the knowledge of a transfer can stress a mental health patient. That could cause him stress. Do you agree with that?

DR. MVUYISO TALATALA: Yes Counsel. I have only discussed the transfer on the system side.

LEGAL AID LILLA CROUSE: Yes, I understand that. Yes.

DR. MVUYISO TALATALA: I did not even touch on the patients and family side. Any change in environment affects us all and it's worse with people who are

vulnerable, mentally ill people. So a transfer would have to be managed differently. Not differently, but there should be some work done with the patients to prepare them for a transfer. Unless of course you are transferring very acutely ill patients.

LEGAL AID LILLA CROUSE: To hospital.

DR. MVUYISO TALATALA: We have no choice. We have no choice to, but to move rapidly.

LEGAL AID LILLA CROUSE: And multiple transfers, what effect would that have on a patient, a mental health care user?

DR. MVUYISO TALATALA: I think from my point of view the consequences will be from the system failures, because the system would struggle to fail multiple transfer and then that will have consequences as we have heard in this case that we are, in this Life Esidimeni project.

LEGAL AID LILLA CROUSE: How will that manifest in a patient?

DR. MVUYISO TALATALA: The obvious one is that the patients would, because the system won't be ready for them, the patients would relapse. The patients could have, would relapse in terms of the mental illness that they have, but most patients that are having psychiatric problems, especially at that level, they do not only have psychiatric problems. They also have diabetes and high blood pressure, due to many reasons. So then there is also a risk of relapse of their other medical conditions, because one the medication could be forgotten. Two, if they were on a diabetic diet, provided by certain, provided in a certain environment, when they go to the different facility, they may even not want to eat or eat differently. So it can,

there is a lot of personal stuff that is therapeutic that could change if the patients are moved rapidly without proper preparation.

LEGAL AID LILLA CROUSE: Okay. I understand that if you relapse in terms of your, the other medical condition like diabetes, that could cause your death. You agree with that?

DR. MVUYISO TALATALA: That is correct Counsel.

LEGAL AID LILLA CROUSE: But if it does not cause your death, what effect will a relapse on ordinary chronic medical condition be on the mental health of a patient?

DR. MVUYISO TALATALA: Depending on the illness, the relapse of the medical condition or poor control of it has an adverse effect on the psychiatric condition. So it could actually worsen the prognosis of the psychiatric conditions. The psychiatric conditions and other general health condition, especially diabetes, high blood pressure and heart disease, they are quite interlinked.

LEGAL AID LILLA CROUSE: Interlinked.

DR. MVUYISO TALATALA: One makes the other worse. You need to control both.

LEGAL AID LILLA CROUSE: Yes. That makes sense to a lay person, but what would the effect be for instance if a heart condition or high blood pressure is not treated, how will that affect the relapse of the mental health patient. Will his symptoms become worse? How will it manifest?

DR. MVUYISO TALATALA: Well, if there is a relapse of the medical condition, at worst it can actually bring an additional psychiatric condition to the person who is already having the ... (interjects)

LEGAL AID LILLA CROUSE: So he could have a new illness?

DR. MVUYISO TALATALA: Additional, yes. For instance the patients who are already having dementia, and then the diabetes is poorly controlled, then they have, they will then get delirium. Then they will say they have got delirium super imposed on dementia, which carries a poor prognosis in terms of life.

LEGAL AID LILLA CROUSE: Yes.

DR. MVUYISO TALATALA: That combination could actually kill the patient. So it could give us an additional condition to a psychiatric condition to someone who is already having a psychiatric condition, and at the time they are sick and with the movement and send them to hospital, the psychiatric medication could easily be forgotten or not taken which could even worsen the original psychiatric condition.

LEGAL AID LILLA CROUSE: Yes, that would be my next question. If you send a whole lot of mental health care users without proper identification to a non clinician, how would they know what medicine to give and what effect would that have in getting the wrong medication or no medication?

DR. MVUYISO TALATALA: You need to have a system. I am sure established NGO's will have a system them will make sure that they are prepared, they have got times for taking medication. They know how to identify the patients, but if patients are going to come unidentified, even to an advance psychiatric facility, there will be

mistakes, because one will not know the diagnosis of which patients and you may not know which medication to give to which patient and you may end up starting, even if they came to my unit, I, if I do not know who is taking what, then I am going to go back and make the diagnosis afresh, which takes time to make a psychiatric diagnosis is not, I am not going to just do a blood sugar and get it, which takes time. My intervention, if I do not know you from before, I cannot go full blown five medications that you are on or three medications that you are on. I will start afresh as if I am seeing you for the first time. Adjust slowly. So you are likely to then relapse. Even in an established facility.

LEGAL AID LILLA CROUSE: But that is a, an expert medical practitioner dealing with the situation. What in a situation where there are no medical personnel?

DR. MVUYISO TALATALA: If I were them, I would not even take the patients or I would have passed them to a medical facility, because I would not know which patient is getting which medication. So I would not, I would not them keep them.

LEGAL AID LILLA CROUSE: So what you are saying to us it is totally unreasonable if there is not somebody that can properly identify and properly medicate a mental health care user?

DR. MVUYISO TALATALA: Absolutely. Counsel, remember that under normal circumstances if I at Sterkfontein send a patient to an NGO and for some reason I forgot to send the document, the NGO will return the patient immediately to Sterkfontein, because they will not know what to do with the patient. In fact, that will be frowned upon that I have actually, I am not saying that that error does not

happen, but it will be frowned upon that I actually sent a patient to an NGO with no documentation at all, just with a pack of medications. Even if I send just one patient.

LEGAL AID LILLA CROUSE: And you say that will be the reasonable thing to do?

DR. MVUYISO TALATALA: It would have been the reasonable thing to do, to either return the patients back to where they were coming from or to send them to a medical facility that could look after the patients and help them sift through the medications and figure out what is going on.

LEGAL AID LILLA CROUSE: So the fact that the patients were not returned to Life Esidimeni, is an indication that there were not reasonable personnel at the NGO's?

DR. MVUYISO TALATALA: I do not know their reasons. I do not know their reasons why they would have patients that they do not know who is having what medications and they still keep their patients under their care. Even a family member, I would not if the family member did not know that which medication to give, they should go back to the clinic.

LEGAL AID LILLA CROUSE: Yes. We have heard evidence of a child that looked for a mother and the wrong mother was brought. It had the mother's name on, but it was not her mother. Those things can also happen I suppose.

DR. MVUYISO TALATALA: Counsel, there is little things that happen.

ARBITRATOR JUSTICE MOSENEKE: I do not remember about mothers and medication Counsel.

LEGAL AID LILLA CROUSE: I will refer the Court to it, I have it.

ARBITRATOR JUSTICE MOSENEKE: The evidence in this case?

LEGAL AID LILLA CROUSE: In this case.

ARBITRATOR JUSTICE MOSENEKE: Oh.

LEGAL AID LILLA CROUSE: Yes.

ARBITRATOR JUSTICE MOSENEKE: We have talked about mothers and ... (interjects)

LEGAL AID LILLA CROUSE: No, the daughter went to fetch the mother, to go to the mother.

ARBITRATOR JUSTICE MOSENEKE: Oh, I see.

LEGAL AID LILLA CROUSE: Yes.

ARBITRATOR JUSTICE MOSENEKE: Okay.

DR. MVUYISO TALATALA: There is little things Counsel that we take for granted in a hospital environment, like I am arm bands as a tag. So that you know which patients you are dealing with.

LEGAL AID LILLA CROUSE: Yes.

DR. MVUYISO TALATALA: I suspect that in that situation the basic identification of patients was not done or it was taken for granted.

LEGAL AID LILLA CROUSE: And you would expect the basic medicine to be recorded on a patient's file in such circumstances as well.

DR. MVUYISO TALATALA: The first is the identity of the patient.

LEGAL AID LILLA CROUSE: Yes.

DR. MVUYISO TALATALA: If you are sending one it is easy. You do not need an arm band, you can go with the person, but if you are going to transport a big group, you probably need to give them some arm bands so that they are identified, so that you can link the patient to the file, and in the file there should be the diagnosis and the medications of the patients with the actual dosages of medications and some risk factors. Things in your facility that you need to watch for.

LEGAL AID LILLA CROUSE: Yes. Doctor, if a patient were not to receive sufficient water or food, what effect would that have on his medical or mental health condition?

DR. MVUYISO TALATALA: I mean with water they could go into dehydration, and dehydration is a risk for all of us. We could die from dehydration, but some of the patients could be on medications like lithium. Lithium is a drug that is very sensitive to the amount of water your body has. So you need to hydrate well, not hydrate too much and not too under hydrate and get dehydrated. So those who are on lithium are at risk of going to lithium texicity if they are dehydrated, but there is all other complications of dehydration that would affect any of us. Similarly with food.

LEGAL AID LILLA CROUSE: Before we move on to the food, i am sorry to put this to you, but give us the symptoms. What would a person experience with a shortage of water?

DR. MVUYISO TALATALA: Well, firstly the first one is definitely thirsty. I mean if they can appreciate that. They will feel thirsty, they could feel dizzy as the blood pressure falls because they are dehydrated. They could end up collapse, have seizures and die, and if they are on lithium, that process could even be more complicated, because the lithium levels in the blood as the fluids go down, the lithium levels is going to rise.

LEGAL AID LILLA CROUSE: The concentration rise?

DR. MVUYISO TALATALA: Concentration of lithium in the blood, and that lithium is toxic at certain levels in the blood.

LEGAL AID LILLA CROUSE: So you would die from the medication?

DR. MVUYISO TALATALA: You could die, if you are on lithium you could die from lithium itself, but dehydration itself kills.

LEGAL AID LILLA CROUSE: And if the lithium concentrations are too high, what symptoms are there?

DR. MVUYISO TALATALA: Well, the patients will feel sick, could feel ... (interjects)

LEGAL AID LILLA CROUSE: What do you mean sick?

DR. MVUYISO TALATALA: They feel unwell. Generally unwell, but the worst scenario they could go into seizures from the lithium, get confused. More confused than their illness. In fact from the lay man's point of view, they could think that the patient is actually getting more sick from the psychiatric condition, but when you listen to the patient as a psychiatrist, you realise that this is confusion related to a medical problem. Lithium that is going up in the blood. They will get confused, they could get, they could end up with fits, seizures and eventually die.

LEGAL AID LILLA CROUSE: And food doctor?

DR. MVUYISO TALATALA: Just the same, similar to dehydration. If people do not eat, even if they do not have the mental illness, they are likely to I mean they will have the complications of not eating, which is the blood sugar going down and eventually you dying from the blood sugar, but with psychiatric patients, at the beginning if they are not getting enough food, before they even get complication of the food, because the medication increases the apetite, the patients are going to be restless in a ward if there is not adequate provision of food, because they have got an increased apetite, a craving from food, for food from the medications so you will have and then you will think that maybe their psychiatric illness is getting worse, and yet they actually do want food, and then as the blood glucose go down they could also go to delirium confusion and you may as a lay person think that even a junior doctor may think that maybe they are getting mentally ill and yet it is the confusion due to hypoglacemia which is low blood sugar.

ARBITRATOR JUSTICE MOSENEKE: Well ... (interjects)

LEGAL AID LILLA CROUSE: I see that you have taken some water Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes. I am highly hydrated doctor. What you should be telling us is the risk of drinking three jars a day, which I do very often. It is five o'clock and we are going to, Counsel is it appropriate time to ... (interjects)

LEGAL AID LILLA CROUSE: Thank you Justice, I have still more some questions.

ARBITRATOR JUSTICE MOSENEKE: I am sure you would have more and tomorrow you might tell us what is the risk of over hydrating. I will be anxious to hear that tomorrow. I have been for five weeks. Anything from Counsel before we adjourn? Doctor, we are going to start tomorrow at nine thirty. Tomorrow morning and we request that you be here present then so that we continue with your evidence. You are going to be asked questions by three, four more advocates. So it is quite a way to go you still have and re-examine by the advocate who introduced your evidence. Very well. Thank you. We are adjourned.