

LIFE ESIDIMENI ARBITRATION

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

DATE: 13th OCTOBER 2017 DAY 5

5

DAY 5 SESSION 1 – 3.

BEFORE ARBITRATOR – JUSTICE MOSENEKE

10

WITNESSES:

DR ERNEST KENOSHI

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SESSION 1

ARBITRATOR JUSTICE MOSENEKE: Good morning shall we get the next witness in counsel?

5 **ADV TEBOGO HUTAMO:** Thank you Justice, the state will be calling the next witness, DR Ernest Kenoshi.

ARBITRATOR JUSTICE MOSENEKE: Of course it always helps council to have the witness in position by the time you call me isn't it?

ADV TEBOGO HUTAMO: I do apologise Justice, I was under the impression that,
10 that arrangement is been made. I have spoken to the witness...

ARBITRATOR JUSTICE MOSENEKE: The witness should be here this [inaudible] counsel. When you call me the witness should be seated so we can get on with it. Mr. Kenotshi please do take your seat, you are most welcome there is a mic in front of you, there is a little obvious on and off button. I suggest you keep your button on
15 through out your evidence.

DR ERNEST KENOSHI : Thank you, Justice.

ARBITRATOR JUSTICE MOSENEKE: It is just more convenient. We are going to ask that your evidence be given under oath, and there are two forms that you can take the affirmation or the conventional oath which both ends with 'So help me
20 God'. What is your choice?

DR ERNEST KENOSHI: I will take the conventional oath Justice.

ARBITRATOR JUSTICE MOSENEKE: In that event, the evidence you are about to give must be the truth and nothing but the truth, and if it so raise your right hand and say ‘so help me God’?

DR ERNEST KENOSHI : So help me God

5 **ARBITRATOR JUSTICE MOSENEKE:** Thank you, Counsel?

ADV TEBOGO HUTAMO: Thank you, Justice. Dr Kenoshi, may you please for the record state your full names?

DR ERNEST KENOSHI: Counsel my full name are Ernest Kenoshi.

10 **ADV TEBOGO HUTAMO:** Thank you. Can you indicate where you are currently employed?

DR ERNEST KENOSHI: I am currently employed as the acting head of the Department in Gauteng Department of Health.

ADV TEBOGO HUTAMO: Since when have you been on the position?

15 **DR ERNEST KENOSHI:** I was seconded from my substantive appointment at Steve Biko Academic Hospital as Chief Executive Officer and seconded to this post of acting Head of Department on the 8th of February 2017.

20 **ADV TEBOGO HUTAMO:** Doctor Kenoshi, there is a bundle of documents before you which is file number 1. If you may proceed, if you get to page 1, you will note that it is a report from the office of the Ombudsman. Are you familiar with the document?

DR ERNEST KENOSHI : Counsel, I am familiar with the document.

ADV TEBOGO HUTAMO: That is the document which details the findings of the office of the Ombudsman and also the recommendations which have been made and which had to be attended to or addressed by the officials responsible. There have been evidences for the past days and some of the issues have been deferred
5 to you as the acting head of the Gauteng Department of Health. I just want to give an indication that there are people before you who are family members of those who have been affected by the events which have been detailed in the report. And the nation is also of concern with regarding to those findings.

10 We have requested your assistance before this proceedings so that you can give an explanation of the steps that the government has taken in order to address the issues which has been raise by the Ombud. And in that regard we need to emphasis, to emphasis that there are two issues here which the families, the nation as well whole world will like to know, that pursuant to the report has there been any
15 consequences to those officials who have been fingered by the office of the Ombudman for the accountable conduct which resulted in the tragic event.

And the second aspect that we would like you to assist relates to what [inaudible] steps has the government taken in order to insure that compliance with the recommendation is given effect to. And that should be a demonstration on the part
20 of the government about if intention to insure that the recommendations are fully implemented. As I have indicated to you, I will only refer you to those aspects which have been deferred to you to deal with. And in that regards if you can find a

document which details the report on the implementation, the document should be on your left.

Dr. Kenoshi, I'll take straight to point number 6 of the report which is page 2. As I have indicated the nation has been waiting with eagerness to find out exactly if there has been consequences on those officials that the Ombudsman had identified as the officials responsible for the tragic events.

ARBITRATOR JUSTICE MOSENEKE: At some point you will have to put a question to the witness.

ADV TEBOGO HUTAMO: Indeed.

10 **ARBITRATOR JUSTICE MOSENEKE:** To allow Dr. Kenoshi to respond.

ADV TEBOGO HUTAMO: With regards to recommendation number 6, you will note that the Ombudsman has recommended that the corrective disciplinary actions must be taken against members of the Gauteng Department of Mental Health Ms S. Mashile who is the deputy director, Mr F Tubani Deputy Director, Ms H.Jacobus Deputy Director, Ms S.Senelo Deputy Director, Dr S. Lenkwane Deputy Director, Mr M. Pitty Chief director, Ms D. Masondo chair of the Mental Health Review Board, Ms M. Nyatho chief executive officer of the Cullinan care and rehabilitation center, and Ms M. Malasa acting CEO the chief executive officer of Cullinan care and rehabilitation center, in compliance with the disciplinary code and the procedures applicable to them for failing to exercise their fiduciary duties and responsibilities. They allowed fear to cloud and override their fiduciary responsibilities and thus failed to report this matter earlier to relevant authorities. Fiduciary responsibilities

essential for good corporate governance, with regards to this recommendations that I have just put on record, can you just inform everyone as to what appropriate steps has been taken by the government against these officials who have been identified by the Ombudsman?

5 **DR ERNEST KENOSHI:** Thank you counsel. Indeed action was taken during the months of...

ARBITRATOR JUSTICE MOSENEKE: Mr Ernest may I suggest when you do give your reply straight in front of you or to your left. The council ask the questions but the answers goes to the Court, and everybody who sits here to listen. You don't
10 have to strain your neck but its good to go straight in front of you.

DR ERNEST KENOSHI: Thank you very much Justice. Action has been taken against all the 9 members mentioned in the recommendation number 6 of the Health Ombud. And I will detail it as follows, an investigating officer was appointed to investigate the issues around MS Mahile, Mr Tubani, Ms Jacobas, Ms Senolo, Dr
15 Lenkwane, Ms Malasa and Ms Nyatho and Mr Pitty. I will come to Ms Masondo after this. The cases against a presiding officer was also appointed for all these matters. The disciplinary cases of the following five have been finalised and those are: Ms Mashile, Mr Tubani, Ms H.Jacobas, Ms S. Senelo, Doctor Lenkwane and Ms M. Malasa. And the findings of the presiding officer in their disciplinary cases was that
20 they are indeed guilty in the allegations mentioned by the ombudsman and that the sanction was given that they should be given final warning letters. And that they should receive counselling on their responsibilities.

These sanctions have been issued to them by their immediate supervisor the acting director of Mental Health Care Services. The disciplinary case against Ms M. Nyathlo who was the [inaudible] the suspended CEO of Cullinan Care and Rehab Center is still pending because the case had to be postponed on numerous times
5 due to her ill health. The case against Mr Pitty was halted, when Mr Pitty launched appeal during the month of March, against the findings and recommendations of the Health Ombud and his case was handled by the tribunal appointed by the minister of Health at Dr Moshaledi. The case against the Chairperson of the Mental Health Review Board, Ms D. Masondo.....

10 **ADV TEBOGO HUTAMO:** Doctor Kenoshi, if I can just take you back before you get to Ms Masondo, Can you just indicate what is the status of with regard to, you have mentioned that the sanctions have been given against this officials who where suppose to be, or who where given written warning. Can you just elaborate with that regard as to exactly what is the status of those sanctions whether they have been
15 implemented or what is the position?

DR ERNEST KENOSHI: The sanction of the Final Written Warning and the counselling have indeed been implemented by their immediate supervisor, the current supervisor of the 5 at the head office and then the same has happened for Ms Malasa who is actually a substantive appointment is at this office as a assistant
20 MEC Manager. But Ms Malas acted subsequently I can't remember around August last year as acting CEO of Cullinan Health Care and Rehabilitation Center were. So they have been given final written warning letter but the government feels the

sanctions may be to lenient and the government has, the department has or is in the process of applying to reviewing of the sanctions.

ARBITRATOR JUSTICE MOSENEKE: What where the substantive charges against them?

5 **DR ERNEST KENOSHI**: Justice, the charges where as stated in the recommendation number 6 that is for failing to exercise their fiduciary duties and responsibilities due to what they have claimed is fear, and so those was the substantive charges against them in performing their duties as deputy directors in the Mental health Care services.

10 **ARBITRATOR JUSTICE MOSENEKE**: In other words, Ok lets put it this way the specified what fiduciary duties they failed to fulfil on the account of fear? **DR**

ERNEST KENOSHI: Yes Justice, I don't have a copy of the charge sheet in front of me at the moment but the charge sheet did detailed what they were supposed to have done as middle managers in the Mental Health Services of the Department
15 and also their responsibilities to our Mental Health Care users.

ARBITRATOR JUSTICE MOSENEKE: You see Mr. Kenoshi you must think about initials who are required to ensure that bed letters and all necessary medical information is transferred from Esidimeni to any of the NGOs to the 27 NGOs, were some these directors in that category for instance?

20 **DR ERNEST KENOSHI**: Justice not exactly, because for the ombudsman to reach this recommendation, I think he took it from the interviews that he had with each one of these during the period of his investigation. And during in the record in the

ombudsman report and findings he states what exactly what these managers said to him that even when they saw that things where going wrong direction, they couldn't correct them. Because of fear they had of their superiors and the matters continued the way they went despite them being there. And they put them down to
5 fear of their superiors and that is what the judge is saying that they let their fear overrule what they knew what is correct, and that is what they were charged with.

ARBITRATOR JUSTICE MOSENEKE: You see, there must always be a relationship between omission and commission on one side and punishment on the other. Fear is not a substantive thing in itself it is something that prevents you from
10 doing your duty, so it is important in a asses if you want to know what duties did they failed to do. Besides saying were afraid. I am looking at the interview section of the report, because that may help to tell us what their exact omissions or commission of their part are as a result of fear. And one way of dealing of that of course will be to get copies of the charge sheet, could those be readily available?

15 **DR ERNEST KENOSHI:** Those would be readily available, Justice. And we can submit them during the course of the day.

ARBITRATOR JUSTICE MOSENEKE: That is good enough. Counsel will you arrange with the witness to get copies of the charge sheet, in each of the cases?

ADV TEBOGO HUTAMO: Indeed.

20 **ARBITRATOR JUSTICE MOSENEKE:** Thank you. You may proceed thank you. You are about to moved to Ms Masondo I think?

ADV TEBOGO HUTAMO: The witness was still giving details of the steps taken to have the sanctions reviewed before the court, if he can just complete on that aspect?

ARBITRATOR JUSTICE MOSENEKE: Yes.

5 **DR ERNEST KENOSHI**: Yes. The sanction given to the 5 deputy directors and Ms Malasa who is stationed in West office are in the process of being referred for review after we [inaudible] department have obtained in legal opinion on that.

ARBITRATOR JUSTICE MOSENEKE: As the state of view of what appropriate punishment ought to have been?

10 **DR ERNEST KENOSHI**: I think Justice, the state will not want to pre-empt the findings of any presiding officer, but the state wants to make sure that the sanctions given are appropriate.

ARBITRATOR JUSTICE MOSENEKE: Are all of them back at work?

DR ERNEST KENOSHI: All of them are back at work, Justice.

15 **ADV TEBOGO HUTAMO**: You may then proceed to give detail of the consequence which followed on Ms Masondo upon being pointed by the Ombudsman?

DR ERNEST KENOSHI: In the case of Ms Masondo, in accordance with the Mental Health Care Act on the section that deal with Mental Health Review Board, and enquiry was established and she was immediately suspended by the MEC of the
20 Department of Health, Dr Gwen Mokoba and an enquiry was set up headed by a senior counsel. And during her testimony during in the enquiry, she also mentioned

that she was not acting alone and that there were 12 other Mental Health Review Board members. And they also an enquiry was also set up, a second enquiry to also address the other remaining members of the board. So in effect the board was in effect dissolved by the MEC of health the board as listed at that time. The senior
5 counsel was appointed to presiding over the enquiry has only recently presented his findings and has found Ms Masondo to be not guilty in effect if I may use that word, to be innocent. Again the department is taking that sanction for review.

ARBITRATOR JUSTICE MOSENEKE: Again in this case can we get a copy of the charge sheet of MS Masondo?

10 **DR ERNEST KENOSHI:** Justice, we will do that.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

ADV TEBOGO HUTAMO: Can you just clarify what steps were taken against those members that Ms Masondo has indicated that she was not acting alone, in the execution of her duties in the board?

15 **DR ERNEST KENOSHI:** The enquiry set up in the case of the rest of the members of the Mental Health Care Review Board is not over yet, so we are still awaiting the outcome from the presiding officer.

ADV TEBOGO HUTAMO: Dr. Kenoshi, let's move on to recommendation number
20 8. It recalls that the ombuds fully support the ongoing South African Police service and forensic investigation underway. The findings and outcome of this investigation must be shared with appropriate agencies so that appropriate actions were deemed justified can be taken. If you may turn to Page 4 of that report, can you please just

assist to give an explanation relating to the status in so far as the case dockets which has been opened. It already before this proceedings that the recorded number of the people who have passed on is standing at 118, can you just give an indication on why is there such a number on the dockets, number of 35 dockets in
5 relation to the actual number of deaths?

DR ERNEST KENOSHI: Justice, there are, the department has indeed been working with the SAPS and also the National Prosecuting Authority. They have requested all copies of all clinical records of the patients that we have in our possession. And the department has co operated and handed this over to the SAPS
10 and to the NPA. The SAPS have opened 35 dockets as stated in records and over and above they have opened 76 enquiries in investigating the deaths. So there are 76 enquiries and 35 dockets. I should also state that the remaining 7, unfortunately Justice, the remaining 7 if you add those it will be 111. The remaining 7 are cases which are also in the hands of the SAPS of Former Life Esidimeni patients who
15 have not been claimed, or whose bodies have not been claimed, And they are unfortunately still lying in our Mortuaries. If you add those it will come to 118.

ADV TEBOGO HUTAMO: The status report recalls that there is 26 post mortem reports which have been finalised, can you give an account as to what happened with the regards to the rest of the deaths that has happened has there been any
20 post mortem reports provided?

DR ERNEST KENOSHI: Indeed, 26 post mortem autopsies have been performed on those who are deceased and all the reports are with the SAPS as should happen with the law. The reports by law are handed over to the SAPS by the Forensic

pathologist and the reports are in the possession SAPS. The department is not in possession of the reports. Counsel I am not sure what the rest of the question is?

ADV TEBOGO HUTAMO: I just want you to get an indication as to why only 26 post mortem reports, if the deaths has been recorded at 118?

5 **DR ERNEST KENOSHI:** Justice, This so because most of the deaths happened before the whole number deaths of our patients became public matter. And even before the health ombud releases his report on the 1st of February, 2017. So the post-mortems were done maybe at the [inaudible] part, when the matter was already in the public space and when the Ombudsman have started investigating
10 the matter after his appointment in October 2016. And so most of those deaths happened after that when there were autopsies and those happened earlier in 2016 in the early months and the middle months of 2016, and they happened some in NGOs and others in government institutions were not autopsied. And I think up to this process I suppose to decide what would have happened in those cases and of
15 course the SAPS as well.

ARBITRATOR JUSTICE MOSENEKE: Were not autopsies means that they are buried without any pathological examination?

DR ERNEST KENOSHI : Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: A few question pop up one, do we know
20 where they are buried, and that is 118 less 26, do we know where exactly they are buried?

DR ERNEST KENOSHI: Justice, We have been working hard since our appointment earlier this year and we have done exactly that and we do know where all 111 are buried and as I have indicated, seven of them still remained in our mortuaries.

5 **ARBITRATOR JUSTICE MOSENEKE:** I am thinking of the schedule that the ombud gave us when he came to testify and the places of burial appear on that schedule lets look. In other words part of closure is to know where the remains are, it is part of closure isn't it. I'm looking at the schedule, I don't know if you have one available to you Dr Kenoshi?

10 **DR ERNEST KENOSHI:** I'm not sure..

ARBITRATOR JUSTICE MOSENEKE: I can ask one of my support staffs to give it to you or the Counsel will give your or lend your a copy. If you look at that spread sheet, it was given to us obviously it contains a lot of details about the deceased, and the detail appear in the first row at the top. Place of death I can see, provisional
15 type of death obviously subjected to post-mortem, I don't see place of burial?

DR ERNEST KENOSHI: The place of burial on this one Justice is not shown ,as some of them because they happened long before the investigation. We have to work with Home Affairs, we had to work with the various institutions where they have been housed. And we also had to work with undertakers as well. So we did
20 interrupt with quite a number of funeral undertakers in this process, I agree Justice that it will be important to state where each one of them are buried and that can be provided.

ARBITRATOR JUSTICE MOSENEKE: Wonderful Dr Kenoshi, shall we again Counsel, we need copies of the schedule that sets out place of burial, particularly the burial was not done by family, but we need that schedule. So that family can know where to go and look and say they lived, they died and this is where they are
5 resting?

ADV TEBOGO HUTAMO: Indeed, Justice that will be arranged.

ARBITRATOR JUSTICE MOSENEKE: It will be arranged thank you, you may proceed council. Before you do, going back to the schedule, Doctor Kenoshi they said you know about the details, on that list you can see provisional type of death,
10 at the bulk is described as natural causes, why will that be so?

DR ERNEST KENOSHI: Justice, most of them we could find a copy of a death certificates and what is written there is what appeared on the death certificate, a copy of there what we could find, some where in their clinical record. Especially those who had passed on in our institutions, But the reason we wrote provisional as
15 the cause of death is that we know that SAPS in terms hold inquest for all these deaths and as a result where there would be a inquest, a inquest would confirm the most probable or the actual cause of death. So the process would wait for inquest to happen, if indeed they are going to happen as it is intended. We rely on those inquest to determine the death.

20 **ARBITRATOR JUSTICE MOSENEKE:** How would police know the actual cause of death, without a post mortem report. In other words how would they overcome the description 'natural cause'?

DR ERNEST KENOSHI : Justice I think we will leave that to the police but we will assist with any information or document that the would require from us as Gauteng Department of Health in doing so, in determining that.

ARBITRATOR JUSTICE MOSENEKE: You see Doctor, every time that there is
5 natural cause of death[inaudible] no prosecution. Number one no inquest is held, two no prosecution ensues. You know that don't you?

DR ERNEST KENOSHI: Yes I do.

10 **ARBITRATOR JUSTICE MOSENEKE**: So if we get schedule like this from the ombud or you to the police, wont it follow that there will be no possible prosecution, and that is the importance to whether the 35 post mortem reports come in. Because that in, fact that there is no post mortem reports in 118 minus 35, it means in any fact that there can't be prosecution even for starters in those cases, when there is
15 no post mortem report, isn't it so?

DR ERNEST KENOSHI: Justice, I think that is the whole reason for the SAPS and NPAS' involvements in the process, because I suppose they and maybe they should be called to this house to confirm that. They are in the process of determining the actual causes of the circumstances of each deaths. And getting as
20 much evidence as possible in each case individual case, and then they would probably decide or come to a decision whether there is anybody liable or not. And

whether any prosecution will ensue or not, I think that is the premise that we as a department are holding at the moment.

ARBITRATOR JUSTICE MOSENEKE: Will there be somebody who has more details than you have to help the police, who else will have more detail of the
5 circumstances of their death? Other than those that you have investigated with your team.

DR ERNEST KENOSHI: Justice, those individual Mental Health Care users who demised within the hospitals of Gauteng Department of Health there are clinical records, they are doctors who saw the patients in their last days and there are
10 records. And those records are the ones who's copies we have made available to the SAPS as well. So if the individual doctors who attended to the patients need to be called I think they will provide more information than I have, because we went according to what they have written.

ARBITRATOR JUSTICE MOSENEKE: Let's look at the schedule doc, I think that is
15 a fair answer. But look at the number of people who died in Takalani, can you see that, people who died at Ephziba Home, Museko Home, look at the number who died at CRC, that might be easier, I don't know, and going further, look at Precious Angels. So we can see some did indeed died in the hospitals under your authority as HOD, even more died at NGOs many, many more. Where will the police find
20 those details of the circumstance of their death?

DR ERNEST KENOSHI: Justice, That has been indeed our dilemma with the SAPS and we have held a lot of meetings, interactions, communications with the SAPS in

doing so we have assisted the SAPS by sending our officials to some of these NGOs, which are not closed yet. Because remember that some are closed, and where to find documents they don't keep proper clinical records of patients that in proper hospitals, and that has been a challenge. We have given the SAPS quite a

5 number of records that were written scanty as they are from some of the NGO's that where we could find records. And I agree with you Justice that in quite a number there where no record at all. So in that case I interacted with the Life Ensedi management the managing director wrote to him, and requested to make the records they have of our patients before they were moved from Life Esidiami to the

10 NGO's. So at least we could have some record of the individuals even the last record of the Life Esidimeni information documents would be maybe outdate. Would be not be so close to the date of deaths, and Life Esidimedi has cooperate and they have said the SAPS can give them the list of all those records they would like to have and they would make these records available.

15 **ARBITRATOR JUSTICE MOSENEKE:** So potentially doctor, why don't we start at the other end, you can see the matter that worries me quite a bit. In fact who would have been responsible for the order that diseased Mental Health Care users be buried without post mortem, and without the consent of the families? Who made that order, who made that decision?

20 **DR ERNEST KENOSHI:** Justice, I will not be able to answer for the management of the NGOs, that happened in most of 2016. In quite a number of cases that we looked at and enquired and investigated, we found that a person would demise in the NGO, they would call a private doctor to certify a General Practitioner. Either

with the involvement of the family or not, engage a private undertakers and go onto bury. And that unfortunately happened in quite a number of cases, some of them with family involvement other not., especially where they claim where they could not trace the families.

5 **ARBITRATOR JUSTICE MOSENEKE:** Each burial requires at least a burial warrant isn't it so?

DR ERNEST KENOSHI: Yes.

ARBITRATOR JUSTICE MOSENEKE: Which must set out the cause of death, whether natural or unnatural and normally should be certified by a doctor?

10 **DR ERNEST KENOSHI:** You are correct Justice. And that is why we have been told in most of the cases that the NGOs engaged local general practitioners, and local funeral undertakers who are cooperating in this process and normally undertakers do assist family with trips to the Department of Home Affairs to get the death certificates and so on. That si what would happen without knowledge of
15 government.

ARBITRATOR JUSTICE MOSENEKE: Council?

ADV TEBOGO HUTAMO: Thank you, Doctor. Can you just assist this proceedings in giving a clear indication of the number of people who have demised pursuant to this project, what is before this proceedings and in terms of what the ombudsman
20 has reported. The numbers is standing at 118. Can you just assist from the departments side as to exactly what is the current position of those who have been affected by this unfortunate tragedy?

DR ERNEST KENOSHI: Yes, Justice and Council. We did not stop with ombudsman's report in working together with representatives of the families, in working in tracking each and every one of the patients who where in the institutions and those who also died. Subsequent to 1st of February when the Ombudsman released his report up till end of September, there were deaths that happened in the month of February itself, in March and so on up till now and a total of 23 deaths have happened in the 8 months from February till date, let me say end of September.

ADV TEBOGO HUTAMO: Justice, I just [inaudible] hand out a documents which gives detail of the number if I can also make copies available to you my colleagues. Doctor these are two lists that has been handed over, can you just give a description of the two lists as it appears the on list that is comprises of two pages, it goes up to number 118. And the other sheet comprise of a list up to 23. Can you just explain like the two lists in terms of how you arrived at what the total number of death is to date?

DR ERNEST KENOSHI: If we add the number of 118 that happened by first of February and the 23 that happened in the 8 months from the first of February till end of September the number becomes 141.

ARBITRATOR JUSTICE MOSENEKE: You have to say that again Dr Kenoshi?

DR ERNEST KENOSHI: If we add the death that has happened in various places where the patience are now housed from 8 months from 1st of February to the end of September, the 23 we add to the 118, that had happened before the 1st of

February. The number becomes 23 plus 118 is 141, so a 141 of the former Life Esidimeni Mental Health Care users have now demised if we continue to turn them on.

ARBITRATOR JUSTICE MOSENEKE: So the 23 we had to add, you are happy
5 with the accuracy of 118, that's a good number, that's an accurate number?

DR ERNEST KENOSHI: Yes Justice, I agree with the number of 118 till end of January, 2017.

ARBITRATOR JUSTICE MOSENEKE: And to that cohort we should add 23 people
10 who would have demised between February and September 2017, And they too were mental health care users at the Life Esidimeni at the time of Marathon Project?

DR ERNEST KENOSHI: Yes, you are correct Justice.

ARBITRATOR JUSTICE MOSENEKE: So, the actual tally then on your evidence is
141 people who have died?

DR ERNEST KENOSHI: Yes Justice, the numbers were different and most of them
15 passed on because of the natural causes, most of them has passed on after been referred them to our acute hospitals and we know the causes of deaths for the provisional if I may call it before post-mortems, most of them have had post mortems. Because we are aware of their illnesses which obviously I may not disclose diagnosis of individual patients publicly I am not allow to do so. But we
20 know they vary from pneumonia to kidney infection even paediatric cancer in one case. So, we do know what happened to them.

ARBITRATOR JUSTICE MOSENEKE: But they are part of original cohorts associated with Life Esidimeni and they have died in the last 8 months?

DR ERNEST KENOSHI: That is correct, Justice.

ARBITRATOR JUSTICE MOSENEKE: Very well, you may continue council.

5 **ADV TEBOGO HUTAMO:** Thank you for your assistance Doctor. May we then move to the recommendations which were specific to the provincial Department of health and those appeared from page 11 of the status report, are you able to get to that?

DR ERNEST KENOSHI: Yes, Justice.

10 **ADV TEBOGO HUTAMO:** In this regard the Gauteng department of health in respect to the first specific recommendations from them was that there has to be development of information system with patient registers. Can you just give an account of what the department has done in order to address this aspect?

DR ERNEST KENOSHI: Yes, Justice and Council. The department of Health
15 Considers seriously the keeping of accurate reliable records of all nature. And because up to now we rely on hard copy records including patient files, patients medical records which get lost, misplaced and so on. Even though we have strengthened system around even the hard copies themselves the department has taken a decision that we need to have electronic patient records and we have taken
20 serious step within this financial year, to plan for implementation in the new financial year, when we have budgeted for it.

We have setup a body of expert in advisory committee of expert in health care and in EL and we have completed specifications for such a system to ensure that in all our institutions from our clinics right through all our hospitals including tertiary hospitals we have electronic patients records. We are publishing before the end of
5 October with a request for information to the industry to get a good idea using the specifications that we have developed to get a good idea of the availability of the system in the country.

We know that they exist because there are some hospitals especially in the private sector that do have electronic patient records. And RFI will be published soon and
10 that will give us a good information about how much we will request from Treasury for us to go out on a request to the industry, including pricing to install this as early as possible in the new financial year. But in the mean time we have tightened the management of our hard copy record at all levels not only for our mental health care patient but also for all patients in our primary health care services and also in our
15 specialised and regular hospitals.

ADV TEBOGO HUTAMO: Thank you Doctor. The second recommendation is that there has to be adherence to the mental health act and its related regulations. How do you give an account in relations to that?

DR ERNEST KENOSHI: That's correct. The department has since March this year,
20 involved expert from National department of health and we have also involve our specialist psychiatrist and mental health care practitioner to access all the services that we provide in our district health care services. We have look at all vacant posts and filled them, we have health training sessions for all our health care workers on

mental health care act and regulations, also on guide line on managements of NGOs in the province. We are confident that we have really strengthened mental health care services in the province in the last 8 months.

ADV TEBOGO HUTAMO: Let's proceed to recommendation 3 that the district have services capitations to insure adherence to regulations and to provide clinical support to the non-governmental organisations.

DR ERNEST KENOSHI: I think over above of what I just I said, we have engaged the NGOs, and the MEC an myself and other senior manager held sessions ever since in June and July with Managers and owners of all the NGOs where we. In which our mental health care patients are housed and we engage with them and supported them with teams from [inaudible] form all the departments to go and visit each and every one NGOs that we have contracted. And to look at standards to assist them as well and to be properly licensed and what they need to be licensed. But we not only do that on a regular basis examine their patients, the mental health care users in those NGO's to make sure they are well clothed, and taken care of and that if any of them get ill that they are promptly referred to our acute hospitals., so we are continuously doing that.

ARBITRATOR JUSTICE MOSENEKE: You know that after this tragedy, ... yourself and other went out there to go and look at the NGO's, all 27 of them failed legislative requirements, and it was in the Ombuds reports and the national DG told us so. How many people are still in the NGOs, that is one part of the question and the other part is, the other 23 who died between February and September, how many of them died still at the NGOs do we know? It's not a trick question, the

question is are we still having our NGOs up to scratch, who did pass the test which they failed resoundingly, in other words are mental health care users save where they are now?

DR ERNEST KENOSHI: You have asked me two questions and I will start with the
5 first one, you asked about the 27 NGO's sited in the ombuds report and I think the waiting and the findings and the recommendations of the Ombudsman was that those 27 were not properly license or inadequate....immediately after the National
Minister, DR ... came up team of 60 experts who examine each and everyone of the
27 and they came up with a initial reports which we confirm as the Gauteng
10 Department of Health when we send our team, [inaudible] team of experts that it was not an homogenous group of 27 who where all equally bared.

Yes, the licenses they have received may have been improper license, they have not been properly licensed and they had licensed, but whether the license were valid or not was in question and I think the ombuds mentioned it. The physical
15 conditions within each one of them equally varied widely and all they needed are a proper occupational certificate and zoning certificate, issue of documentation. While as others were so bad that we have to remove patience immediately in order to save their patients lives there was a range. The ministerial team of experts which include staffs who are psychiatrist, social workers, mental health care specialists
20 and environmental health practitioners who we use to call health inspectors in the past. They were part of the team of both National and the Gauteng departmental team and as a result , our aim was to remove everyone of the patients who are in the 27. The department, working with National Department of Health as well and

Psychiatrists but also working with the representative of the families of Life Esidimeni patients and we have managed to moved 850 mental Health care users within 3 months, from the 3rd of March until the 31st of May. So, in those months March, April and May we moved 850 mental health care user to saver facilities and
5 not all 850, I should correct myself it 820. Not all 820 were former Life Esidimeni patients but only 750 of the 820 are former Life Esidimeni patients and the 70 happened to be patients who where in those NGO's long before the Life Esidimeni started. But because we regarded those NGOs as not save at the moment, we also relocated those patients as well to saver facility.

10 I must say that there are still 31 mental care users who were formal Life Esidimeni patients who remained in various NGO'S and for only one reason that their relatives didn't want their loved ones to be moved. And we even went to a extend of developing a form which the families could fill to say to us that we don't want their loved ones their happy where they are and don't want them to be moved again. A
15 statement has been made that the mental health care user numerous times is not safe for them as well. So we didn't remove any user without their approval of the family member. So all the other 850 we took working with the family community, to ensure that the family member of that particular Mental Health care users are and we are now moving the person from this NGO to this particular facility.

20 **ARBITRATOR JUSTICE MOSENEKE:** You have to decide whether it is 820 or 850.

DR ERNEST KENOSHI: We moved 820, 820included those who were not formal Life Esidemeni patience but we have found them in these NGO's.

ARBITRATOR JUSTICE MOSENEKE: Remember where we are, Doctor Kenotshi we are item number 3 and you are reporting on what you have done with the NGOs, the conclusion there is that you are doing a lot and your NGO managers are being advised on staffs quality patient care, so the second part of my question is how
5 many Mental Health Care users now are still at NGO's? We know what happened with the tragedy how you cleaned up, you have told us about that, and you told us about those who want to be there and did not give consent to be moved. But as in your total population of mental health care users how many are being cared for in NGO's currently?

10 **DR ERNEST KENOSHI:** Can I ask for clarity Justice, you mean not [inaudible] all of those in NGO's?

ARBITRATOR JUSTICE MOSENEKE: Not the numbers on Lide Estdimenedi thank you for that. I want to get a sense the recommendation is go out and clean up NGO facilities in generic terms. So your report says yes we have been doing that and
15 [inaudible] question is how many mental health care users are still at NGO's in a generic sense?

DR ERNEST KENOSHI: Justice, Then number that I have is 5,184 and I need to qualify that number. The numbers just like in any institution hospital will change from numbers change from day to day because patients get admitted and patients
20 get discharged, so the last count was 5,184. I should also qualify that these NGO's are not run by a department of health alone, quite a number of these NGO's they are co licensed by both the department of social development and Gauteng department of Health, there is a Gauteng department of social development. So we

worked together with social development in managing these NGO's and also insuring that patients in those NGO's are save.

ARBITRATOR JUSTICE MOSENEKE: There is no lacking tragedy there?

DR ERNEST KENOSHI: We have since March this year Justice, formed a team a
5 departmental team of practitioners from Gauteng Department of Health and
Gauteng department of social development. And this team has develop a tool that
they use to in every NGO's totality and also accessing the patients the users in
those facilities as well. But this team has made tremendous [inaudible], they may
not have they in the last 8 months visited in each and everyone of them they are
10 continuing their phases, but they have visited most of them.

ARBITRATOR JUSTICE MOSENEKE: The last part of the question is how many
of those who died of the 23 who died , died in the NGOs?

DR ERNEST KENOSHI: Justice I will have to count from the list that has been
submitted as record. The list of the 23 column far right has got the heading " Place
15 of death". But there is also a column that says that facility registered at, in other
words where the user was at that time, there is a column that says...you will see
there is Khalafong, Shermer house, Anchor House, Moseko, Takalani, and those
are the NGOs and I have marked those that are demised in NGOs, they are
1,2,3,4,5,6 ,7 that I can count. **ARBITRATOR JUSTICE MOSENEKE:** I see, I
20 realise you did not need spectacles to look at those small numbers.

DR ERNEST KENOSHI: I have got one with a bigger font.

ARBITRATOR JUSTICE MOSENEKE: ... this is very, very small council. But still be there as it may, it still looks like most of them appear to be regular institutions?

DR ERNEST KENOSHI: Yes justice most of them. Only 7 of the 23 passed on in the NGOs while the rest 16, passed on in our State hospitals.

5 **ARBITRATOR JUSTICE MOSENEKE:** They are receiving Mental Health care at state hospitals?

DR ERNEST KENOSHI: That's right.

ARBITRATOR JUSTICE MOSENEKE: Very well thank you. Council?

DR ERNEST KENOSHI: Thank you Justice.

10 **ADV TEBOGO HUTAMO:** Thank you, It really appears that your teams together with the Nationals government are doing a great job in implementation. Lets now move to recommendation number 4, the De-institutionalisation of Mental Health Care implemented with provision of structured community Mental Health Care Services. What has the provincial government done in order to meet these
15 recommendation?

DR ERNEST KENOSHI: Community Health Care Services have been strengthened by the decision, by the department of health Gauteng provincial government to make sure within each district, I want you to know that Gauteng has got 5 districts. There would be a psychiatrist appointed in each of the districts to help the team of
20 Mental Health Practitioners in each district. So that those being discharge from the Mental Health Care institutions are continuously taken care as our patients by

qualified professionals in each institution. We have so far after advertisement attracted 2 psychiatrists, the others we are still recruiting. But it doesn't mean that there is no care there, we have strengthen the mental care practitioners, the nurses who... in those.

- 5 We have taken a decision of instead of having 13 members mental health review board, that is stationed in head office like it use to be in the past. With the reviewed board has now got 25 members at 5 care district, and a decision was taken that they will not be housed at the Head office but at the district in the district where they are appointed, whether it is Tshwane, Ekurhuleni, Sedibeng, Johannesburg or West
10 Rands etc, and the environmental Health Care Review Board will be stationed there so that they will be closer to the services, closer to the clinics where the outpatients take their medication and our services care and can even visit them at their homes.

ARBITRATOR JUSTICE MOSENEKE: Are the review board full time, are the members of the review board full time?

- 15 **DR ERNEST KENOSHI:** Justice, No they are not but they have to give us a certain number of hours per week, and indeed per day each one of them.

ARBITRATOR JUSTICE MOSENEKE: Are they paid?

DR ERNEST KENOSHI: Yes Justice they are paid.

- ARBITRATOR JUSTICE MOSENEKE:** And of course they have exercised their
20 duties in accordance with the law?

DR ERNEST KENOSHI: Yes Justice, they appointment with Mental health review boards is in the statues in both in the act and regulations. And they are also guideline on how they should function. And what kind fo person can be appointed by the MEC in the case of provinces to be in that board. So there an advertisement
5 was published and people responded with their Cv's and the advertisement said what type of person can apply. And the interviews where held and that's how they were appointed as board members. So they all have knowledge, qualifications or other in mental health care to be appointed in that position.

ADV TEBOGO HUTAMO: Thank you for that accounting lets proceed to
10 recommendation number 5, which require specialist run community psychiatry services?

DR ERNEST KENOSHI: Justice I think in answering a previous question I have answered this one as well, so I will be repeating myself.

ARBITRATOR JUSTICE MOSENEKE: Indeed you have.

15 **DR ERNEST KENOSHI:** Thank you Justice.

ADV TEBOGO HUTAMO: Can we then conclude by dealing with the last aspect of the recommendation that the Gauteng Department of Health must develop a capacity programme for all newly established Non-Governmental Organisations?

DR ERNEST KENOSHI: Yes. Thank you Counsel and Justice, the department has
20 set up team that works with all the 129 NGO's with which we are contracted. Those are the recent number of NGO's we have contracted and we are paying to keep our loved ones and take care of them. We have set standard and we have shared with

them the tools that we used to assess an NGO before we license it. We have trained them on what they need to have including documentation not only the structure, the preparation of food in the NGO's, the cleansings. The layout of the facilities so that our users can walk freely and have exercise. And not be confined into small space, 5 so it sets out the personnel that they need to have. The professionals and the carers who take care of them, so we have trained them on that and we go to the extend of assisting them even if they have to get documentation from their local authorities, from the municipalities and the city authorities risk and occupation certificate and so on. I have personally engage with them, and the managers as 10 well and filled their question for them. And we have given them our numbers so they can contact us at any time, and these are the owners and managers of all these NGO's.

ARBITRATOR JUSTICE MOSENEKE: Very good. Counsel, do you have any more questions?

15 **ADV TEBOGO HUTAMO:** Thank you Doctor, I appears if a lot of worked has been done, in the response the recommendations which are been taking seriously. Thank you for having given the account in the manner that you did and there are no further questions.

ARBITRATOR JUSTICE MOSENEKE: Is there any theoretical difference between 20 deinstitutionalisation and community Health care, your colleague, the National DG almost suggest that there was a difference?

DR ERNEST KENOSHI: Not all Mental health care users needs to be institutionalised because there are various levels of functioning of mental health care users and there those that can be taken care of at home and some of them are even employed. And they get their out patience medications from our clinics and
5 hospitals, and they are checked on a regular basis, those are community services mental health care services that we provide and whenever they need to be hospitalised they will be when they have an acute illness and they will be discharge when they are stabilised. Those are the services that we provide on a community level.

10 Deinstitutionalisation as far as I know and this is actually documented, and even world health organisation has got documents and guideline with this. This is where in cases where patients that have been taken care of in institutions need to be taken care of in homes, either day care centres or residential homes like NGO's. Then what needs to be looked at the capacity of the NGO's, what kind of patient can be
15 sent to those residential community facilities. And what should not be done, so there are guidelines and there are processes. There are a process for deinstitutionalising where instead of people being taken care of by the state their being taken care of by community structures. As I said NGOs can be either residential where people are houses and sleep there, there are those who had day-care centre's who can go
20 back to their individual homes and during the day they can come and be taken care of while the relatives are engaged else where.

ARBITRATOR JUSTICE MOSENEKE: Thank you. Counsel Hassim, it is your turn.

ADV ADILA HASSIM: Thank you Justice Moseneke, Good morning Doctor Kenoshi, I am representing the families of 55 diseased. Can I begin with the question regarding the numbers, you started off your testimony this morning and speaking about 118 and then subsequently produced an excel spread sheet of 23
5 additional names and inform us now that it is 141 deaths in fact, are you certain that this is the correct number?

DR ERNEST KENOSHI: Counsel yes, I don't work alone I work with a team and we keep record of where each one of our patience are, what happens to them. Of course if there's any deaths we do keep records of them hat and those are these
10 that we have records of.

ADV ADILA HASSIM: We have seen in this saga the result of the marathon project that it is very difficult in fact to establish the correct number of deaths and it keeps changing, if it is so simple while the records are there, why is it numbers still changing?

DR ERNEST KENOSHI: Yes it has not been easy Counsel especially going into history from last year, to where we are with numbers, we really have to work hard. But I should say that since February to March where we know where each and everyone of our mental care users are. It has become easier to know their numbers in the last 18 months from the lesson we have learned.

ADV ADILA HASSIM: Who is responsible for compiling the numbers, who is responsible for double checking making sure that every death is include in the list with a emphasis of these proceedings?

DR ERNEST KENOSHI: I have personally written to CEOs of the Health institutions to report the admission, the discharge and the death of each and everyone of these patients and the hospitals report not only to myself but to the directorate of Mental Health Care at the Head Office to report to, So they report to different levels, to the
5 director mental care services in head office and to the DDG, the deputy director general, responsible for clinical services and to myself.

ADV ADILA HASSIM: The concern of the family is, that there are dysfunctions, this whole process has been characterise by dysfunction, leading to deaths. And the family want to be reassured to make sure that what is going to take place now is
10 going to be managed very tightly. So you said you have written to the CEO of this institutions to get information from them regarding this deaths, are you saying therefore you are, you have got your hand on the steering wheel, you are the one keeping the list, double checking the list and making sure that it is accurate?

DR ERNEST KENOSHI: Counsel as the acting Head of Department and the
15 accounting officer I will say yes, I should take responsibility for the accuracy for the information and I do take steps to do so and as far as I can go the statistics that I've given correct.

ADV ADILA HASSIM: The CEO's of the institutions that you have written to are they NGOs? Who have you written to, you say you written to the CEO of?

20 **DR ERNEST KENOSHI:** The CEO of hospitals.

ADV ADILA HASSIM: So what about the deaths at the NGOs?

DR ERNEST KENOSHI: Counsel, the ,mental Health Unit in each and every district interact with each and everyone one of the NGOs at that level, so within the district, each district manager, knows the NGOs that are within that district, Ehkuruleni, Tshwane and so on, they have a team that goes there to interact and they also go
5 to see the patients on a regular basis at the NGOs and owners of NGOs and manager have been trained to report any illness of any NGO either refer them to the nearest hospitals as soon as possible. And this si what happens, and if any unfortunately happens before referral its also to report it. And so far we had have cooperation from their NGO as well.

10 **ADV ADILA HASSIM:** What you have just describe do you say it's a matter of course, the protocol that the district manager are in control, they know that they are in contact with the NGO's, they are alerted as to illnesses and so on. You are saying that is, that they have trained to do so. The NGO's are trained to do so to provide the information. You are saying that is as a matter of course this is all in the
15 system?

DR ERNEST KENOSHI: Yes and If there is any dereliction of duty that I am not aware of, I think one will need to know about it and correct it as far as possible.

ADV ADILA HASSIM: I'm not sure if I'm miss understanding you. But this is here because there has been dereliction of duty, there are some NGOs that have not
20 complied and because the officers responsible for the oversight of the NGOs, for licensing the NGO's and monitoring the Mental health care users of patience have also failed in their duties. I am concerned that relying on the same system that has

been in place all along in order to fix what's happened is not really going to get us anywhere? Would you agree?

DR ERNEST KENOSHI: Yes Counsel, if we rely on the same system and we didn't change anything obviously we will get the same results. But as I say the Ombuds report's since I came to head office in February, the recommendations made in them and the implementation in the recommendation, but also doing more than that in some of the ways in which I described. We are hoping to change the outcome of in the case of all our mental care users, the results in each shows that care of our patients in the NGO's and in our own institutions has approved a lot in the last 6 to 8 months.

ADV ADILA HASSIM: So my question is related to the numbers, there is clearly a lot of work to be done as you say in relation to the system in improving things. My question that I'm putting to you is, is whether you are satisfied with the system that you have implemented to determine the exact number of deaths is suitable, is it working well?

DR ERNEST KENOSHI: Yes, so far it is working. It is not a one man system, it is a team work that we have. We have two body now that are looking at what we do as a department, not only the Mental Health Review Board, but the [inaudible] department we have retained the services of the families committee, that represents all the families of the patients or Mental Health Care Users and they are the eyes of the community and they correct us and make suggestions and make sure as a department do the right thing. We work with them as well and they check on us but also to assist in provide the best health care services possible.

ADV ADILA HASSIM: You see, I appreciate it also that there has to be teams, this cant be done by one person. But one person has to be held responsible ultimately for the list. And that is why I'm putting these questions to you to say who is the one person that is responsible for the list, that parties can communicate with and parties
5 can hold account for the accuracy of the list?

DR ERNEST KENOSHI: If we have to point at one person, then Counsel, then you can point at me as accounting officer of the department.

ADV ADILA HASSIM: We have been provided with this list now the last 45min these spread sheets. So we will take our time and go through it carefully, but on a
10 cursory examination we see that there is at least one repeat mad and that is on the big list, the list of 118. There are two documents, one is the 23 and the other is 118. I'm referring to the list of 118, I mean the print is quite small. Do you see number 49?

DR ERNEST KENOSHI: The list that I have is not numbered, oh this side thanks.

15 **ARBITRATOR JUSTICE MOSENEKE:** The person who chose the font must be charged and jailed for life.

ADV ADILA HASSIM: Is your list not numbered?

DR ERNEST KENOSHI: The big one that I can see does not have numbers, the page is not numbered. But the one that is numbered is just font size 6 I think. Sorry
20 about that.

ADV ADILA HASSIM: If you look at number 49.

ARBITRATOR JUSTICE MOSENEKE: 49 is Mark Konfela what is that?

ADV ADILA HASSIM: It looks like Mathophela Legwabe.

ARBITRATOR JUSTICE MOSENEKE: Legwabe Matobela yes. Then look at 7105.

ADV ADILA HASSIM: Ok. I'm just waiting for the witness to be with us.

5 **DR ERNEST KENOSHI:** Yes, thank you.

ADV ADILA HASSIM: You see it now?

DR ERNEST KENOSHI: Yes. It is Maklapela?

ADV ADILA HASSIM: Mothophela Lekgwabe. Number 49,7105 as the ID number
7105 106.

10 **DR ERNEST KENOSHI:** Maybe if you can assist me on this one.

ADV ADILA HASSIM: Its number 87, its on the same page it's the very last entry
on that page. It is the same person, it's the names are swapped around, so
Mothophela Lekgwabe the same ID number. They are both Cullinan...

DR ERNEST KENOSHI: Counsel is number 49 and what other number?

15 **ADV ADILA HASSIM:** 87.

DR ERNEST KENOSHI: 87 on the same list.

ADV ADILA HASSIM: So there is an error in the spelling, it seems like a typo
because there is one letter that's just different, but everything else. And both had
Cullinan.

DR ERNEST KENOSHI: Is it 51 not 49?

ADV ADILA HASSIM: Pardon me 49.

DR ERNEST KENOSHI:49 ok. Yes I can see that council, well the surnames are spelled differently.

5 **ADV ADILA HASSIM:** The surnames are but the date of death are the same.

DR ERNEST KENOSHI: Yeah .

ADV ADILA HASSIM: Do you see the date of death?

DR ERNEST KENOSHI: Yes. I see the date of death on the at 87.

ADV ADILA HASSIM: So this is my question are these two different people, who
10 just happened to share a lot of things in common or?

DR ERNEST KENOSHI: We will look into that council, I will look at this and compare it with a list that I have.

ADV ADILA HASSIM: Does this appear to be a repeated name to you?

DR ERNEST KENOSHI: Council we will look into that, the surnames are spelled
15 differently. I think that is all that I can say at the moment.

ARBITRATOR JUSTICE MOSENEKE: That is fare after the adjournment I think the HOD can come back and provide an explanation, if any.

ADV ADILA HASSIM: Also, I will like to point out earlier in the proceedings on the list that was provided by the Ombuds, the expanded list that was provided by the
20 ombud. We pointed out that 11 of the people we represent and their families were

not on the list, and we see that on this new list this 23 that has been added, there remain 4 of our clients who are still missing from that list so it's not accurate. What I'm putting to you is that this list is not accurate and I would like to know what you suggest to ensure the accuracy of this list going forward?

- 5 **DR ERNEST KENOSHI**: The list is as accurate as can be with the information that we have, and if there is any records that we don't know of we should be told about them. There were interactions before this between our office and the Ombuds on a particular list of patients given by Section 27 to him and we found that 5 of the 9 names that he gave, that he said was not on our list was actually on our list as well.
- 10 So 5 names... with ours, the other 4 are people who are deceased before the control period of October 2015 till his report of the Ombuds but they are on our list also, but just before the control period in time of reference of the ADR process, but they are on our list as well.

- ADV ADILA HASSIM**: The Ombuds said the same thing and since then there has
- 15 been a reconciliation audit of the list to reconcile those anomalies, to see that they do in fact fall in the control period and the Ombuds has confirmed it. As part from one I think they all do fall within the control period. So again I am putting it to you that there are different people involved in this process of determining the accuracy of the list.

- 20 **ARBITRATOR JUSTICE MOSENEKE**: Does the Ombuds confirm to the Counsel outside the proceeding, remember we agree on a process where you would provide them with the list that you had of exclusions did that happen?

ADV ADILA HASSIM: That is correct.

ARBITRATOR JUSTICE MOSENEKE: And what is the outcome?

ADV ADILA HASSIM: He subsequently emailed the party that is with notes in relations each of our those 11 that we have put to him, and discuss the
5 circumstance of their deaths.

ARBITRATOR JUSTICE MOSENEKE: Is there some report that I will see at some time, that reflect the reconciliation?

ADV ADILA HASSIM: I am advised that the Ombuds said he will provide a written report to you Justice Moseneke.

10 **ARBITRATOR JUSTICE MOSENEKE:** I ask for one on obvious reason we are all searching for accuracy, and that is the reconciliation which should be given to the HOD, so in his further evidence he must be able to ...or otherwise amend his numbers in light of what the ombud says. And direct it onwards so that we can get, for me it should be accuracy, everyone entitled to be in should be in, those who are
15 not should know so.

We are very close to tea break now a minute before tee break. We have to find Counsel the Ombud, your witness. And say he owns me a report of the reconciliation, which I believe that Counsel have seen and I have not seen. And he should send me a report on that liberation with the parties and that report should
20 also be made available to the HOD, so that when he comes back after tee, then there will be of course further examination around issues of accuracy. Counsel it is 11:30 and the time is good as any to adjourn.

ADV ADILA HASSIM: As good as any.

ARBITRATOR JUSTICE MOSENEKE: Well, we are going to adjourn until 12:00 o
clock.

END OF SESSION 1

5

SESSION 2

ARBITRATOR JUSTICE MOSENEKE: HOD, you are under your previous oath.

Counsels?

ADV ADILA HASSIM: Thank you Justice Moseneke, DR Kenoshi were you able to
5 look more closely into the discrepancies? Before you answer, let me just also say
that it is not my intention to be perciga tree. The numbers are important each one
represents a life or rather a death. So it is for that reason that I am probing the
accuracy of the table.

DR ERNEST KENOSHI: I understand Counsel.

10 **ADV ADILA HASSIM:** Were you able to reconcile those two names?

DR ERNEST KENOSHI: Yes Counsel. We've looked at the two names that
appeared on the list. Their surnames are spelt differently and their ID numbers are
also different. That is why I think using our excel spreadsheet system, they are
regarded as two different people but I would like to say that after this process they
15 would be checked again. There will always be a process of re-looking at the list and
welcoming any new names, as you have mentioned Counsel. We will look at the
and with our team and your team as well and recheck the list. I should say also that
the list took time to develop and also to go back into history of last year; what
happened, by a team including data capturers. We are open to having the list,
20 actually we intend having the list, all the lists audited. So, we will have an
independent audit process for all these figures.

ADV ADILA HASSIM: That will be very helpful. If we could if the parties remain attach us to who, one person to speak to in order to provide the information, and we will gladly cooperate. On that discrepancy, even though the ID numbers are different, would you agree there are typos and that is why the ID numbers are
5 different because the dates of birth and death of both are the same, and place of the death as well are the same?

DR ERNEST KENOSHI: It could be possible.

ARBITRATOR JUSTICE MOSENEKE: Counsel, I guess you are going to get there. But does that affect the gross number you gave us? I guess it would. Does it
10 affects the 23, you might get there at some stage. Are you going to get there? In short I am asking is the 141 number, assuming for the moment these are different people, will that number still be good?

DR ERNEST KENOSHI: Justice, the numbers of last year to time, took time to develop, without accurate document in a lot of cases. And I think that is the
15 supposes the 118 we are open to have it audited and also we will work with all parties to ensure that we agree on that number. The 23 of this year, we are even more confident of its accuracy. But I think we will subject the figures to the same process. I am not against subjecting the figures to the same processes.

ARBITRATOR JUSTICE MOSENEKE: I understand that but preliminary, if 23 is
20 good and 108 subject to audit then we are looking at 141 lives are we or death if you will?

DR ERNEST KENOSHI: Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: Proceed Counsel.

ADV ADILA HASSIM: Thank you Justice Moseneke. So will we use 141 as the working number for now because I want to stick with this theme of numbers. In relation to the inquest and the post-mortem report and so on, let me begin by referring you to a report that was handed over to you, to the Gauteng Department by Director General of Health in the national department. It was a result of her investigation and her team into the deaths in tracing, It is called the report of tracing of the deceased from Life Esidimeni. Are you aware of that report?

DR ERNEST KENOSHI: I am not in a position at the moment but I am aware of the report.

ADV ADILA HASSIM: You will find it in the record at page 3733, file 11.

ARBITRATOR JUSTICE MOSENEKE: Somebody should bring the file to the witness, please. Or help Dr. Kenoshi to find it.

DR ERNEST KENOSHI: 3733, yes.

ADV ADILA HASSIM: Have you seen this report before?

DR ERNEST KENOSHI: Yes, I have seen the report.

ADV ADILA HASSIM: The DG informed us yesterday that from the national department side, this investigation is wrapped up from their side and there is obviously more work to be done and that it is now under the control of your department. Is that correct?

DR ERNEST KENOSHI: Yes, it is correct, Counsel.

ADV ADILA HASSIM: And there is some starkly information in this report. I like to refer you to the part of the report that will have an impact on the numbers and the ability to do proper inquest or not. So, if you could please turn to page 3735.

DR ERNEST KENOSHI: 3735, yes, Counsel.

5 **ADV ADILA HASSIM:** You see the three names 1, 2, 3 in the middle of the page; three bodies that were moved from (Puti) to (res), to Cotello and yet moved again to Royal Funeral parlor and they were buried as destitute. That is below the three names, it says at this funeral parlor we confirm that the three patients above was buried as destitute. And then it goes on to say they were buried as destitute with the
10 authorisation from Tshwane Municipality and the person was the Director of Urban Management who provided that authorisation. And it says with the concurrence of Precious Angel NGO, Ms Ethol Ncube who signed as member of family in the document. Do you know Ms Ncube? Do you know who she is in these events?

DR ERNEST KENOSHI: Counsel, I know the name of Ms. Ethol Ncube. I have
15 never met her, but I know as owner of a Precious NGOs because I think it has two separate premises of the Precious NGO there is not one house.

ADV ADILA HASSIM: Have you been able to established why she signed as member of the family?

DR ERNEST KENOSHI: I wouldn't know why Counsel, why she signed as member
20 of family last year when these three were buried.

ADV ADILA HASSIM: Are you investigating this report further, have you taken the findings of this report and identified avenues of the investigation?

DR ERNEST KENOSHI: Counsel, we have given all documents in our possession to the SAPS, as well as the SIU who are investigating on behalf of government. We put all of our trust in and we cooperate with them in all investigation.

ADV ADILA HASSIM: And you are working with them to provide further
5 information?

DR ERNEST KENOSHI: All information that they need, we provide. Not only myself, but other officials within the department the information that we have.

ADV ADILA HASSIM: And you are saying the term of reference includes following up on this particular report?

10 **DR ERNEST KENOSHI:** They are following all NGOs that have been cited. So, they are not only investigating matters within the department, but also matters within NGOs in general.

ADV ADILA HASSIM: My question is whether they are investigating matters that arise from this report?

15 **DR ERNEST KENOSHI:** Counsel, the documents have been given to them. I am assuming they would. We would continue to follow up with them on how far they are with each investigation. I would not be able to say whether they've looked at this report already and how far they are with the report.

ADV ADILA HASSIM: I am asking the question Dr. Kenoshi because the Director
20 General said to us that it is now in the hands of the Gauteng Department and most certainly not the end of their investigation and that the department is going to be

taking it further. That is the reason why I am asking you the question. Your answer to me is that you have handed it over to other State entities and now it is with them. But you are not sure whether they are actually investigating this particular aspect. And the concern is that it might fall into the cracks again as we've seen with many things in this process. What would you do to ensure that this report is followed up?

DR ERNEST KENOSHI: Counsel, SIU have been involved only since last month, a period of a month roughly or less and we've been handing them reports and we will hand them lots of reports and more as they need. So, this process has now only started if I may say and we continue to engage with them through... not only myself but our legal services unit, we have got a legal service unit within the department who engage with them on a regular basis. We will ensure that all investigation that they do; we will cooperate but also get progress on where they are on each one of the cases they are investigating.

ADV ADILA HASSIM: Will you ensure that this report is specifically part of their investigation and updates are provided to you?

DR ERNEST KENOSHI: Yes Counsel and Justice, I will make sure it is included in their closer investigation.

ADV ADILA HASSIM: Thank you DR Kenoshi. Second reason why this is relevant is it relates to the SAPS and the inquest in the absence of post-mortem report. You've said that there are 26 post-mortems that have been conducted. Is that correct or did I hear you incorrectly?

DR ERNEST KENOSHI: I have a figure of 26.

ADV ADILA HASSIM: 26?

DR ERNEST KENOSHI: Yes.

ADV ADILA HASSIM: 26 of the 141?

DR ERNEST KENOSHI: Yes.

5 **ADV ADILA HASSIM:** And 35...

ARBITRATOR JUSTICE MOSENEKE: I am sorry. Counsel before you go there. I thought the new 23 actually; they are post-mortem reports because those are well, well post Ombuds report.

DR ERNEST KENOSHI: Justice, it is not every case, it is not in each case that a
10 post mortem report is done because we need to obtain approval from the family.
And we have cases where the family refuses post-mortem for various reasons
including that some of them wanting to bury quite early. So, it is not each and every
case even that 23 where a post-mortem was done. But a post-mortem gets offered
in a way. The SAPS also has a view in a case of clearly unnatural death and it is
15 declared as such, and the person is in the hands of forensic pathological services,
the post-mortems have become compulsory. I think in this case, they have allowed
burial without post-mortems – it is the SAPS- I am assuming that they don't regard
each and every case in the same way. So short answer is, it is not in all cases that
a post-mortem was done.

ARBITRATOR JUSTICE MOSENEKE: The shorter question was, were all post-mortems reports for the 23 Or 26 relates to 141? That was counsels question which I followed up on. So, 26 is out of total deaths?

DR ERNEST KENOSHI: Of 141 yes, Justice. It is true.

5 **ADV ADILA HASSIM:** DR Kenoshi, you said that you are cooperating with the SAPS in the process of the inquest?

DR ERNEST KENOSHI: Yes. Not only myself. They often need the assistance of various other managers in the department with whom I work.

10 **ADV ADILA HASSIM:** How will the inquest be, how will it be possible for a full inquest hearing to take place if they are only 26 post-mortem reports? Maybe you can clarify for us whether the inquest is only into those 26?

DR ERNEST KENOSHI: Counsel, as far as I am concerned, we've handed the list the total list of all those who passed on to the SAPS. I am not sure which one they will decide to hold an inquest with. I was under the personal impression that the inquest will be arranged or discussed with the NPA for each and every case and the decision will be made at that level. So, it is not up to the Department of Health to decide which cases we should have an inquest and which one should not. We leave it to the SAPS and Justice System to decide. I am not sure whether they will need a post-mortem in every inquest or whether an inquest can be held without a post-mortem. But I think the SAPS will decide, and that is why I said earlier that the question of those have not had post-mortem done because they passed on last year and even before this matter became public whether they will still want to apply

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for exhumation or not. I think we will leave it to both this process the ADI process, and also for the SAPS and the NPA to decide.

ADV ADILA HASSIM: I think it will be utterly crucial that you work with SAPS, because I think they need more information from you rather than just handing it over
5 leave it to them. The reason why I said that is because these deaths in a number of cases are marked as natural causes and the post mortem in the inquest takes place in relation to death in State's custody of unnatural causes.

DR ERNEST KENOSHI: I agree Counsel. We do cooperate with them and we will continue to cooperate with them.

10 **ADV ADILA HASSIM:** Let me take the point a little bit further and I will ask you a question. If you can please turn to page 1111 and it is in file 3. Have you found the record?

DR ERNEST KENOSHI: I have found the record, Counsel.

ADV ADILA HASSIM: So, what appears there is a letter from the legal
15 representatives for some of the family members, Section 27 and is dated 16th September 2016. The subject of this correspondence is Urgent Request for Referral to Judicial Inquest. Do you see that?

DR ERNEST KENOSHI: I can see it.

ADV ADILA HASSIM: You can turn over then to page 1113 and for the record I am
20 going to read the paragraph the relevant part of the correspondence, I'm going to begin at paragraph 13; it says "As these deaths all follow the decision of the

department to discharge users from Life Esidimeni and they have all occurred since the discharge of these users between 1 March 2016 and 30 June 2016, our clients believe that there is a clear connection between these multiple deaths. Moreover, the high number of deaths that have occurred within recent months suggest that they were likely due to unnatural causes. We request that you take the measures set out in Section 3 of the Inquest Act in regards to all deaths occurring among former residents of Life Esidimeni- who were removed from Life Esidimeni as a result of Department of Health decision to terminate its contract with the facility. These include mental health care users transferred to NGOs and other facilities after the closure of Life Esidimeni as well as those discharged to the care of their families. We further request that the inquest be conducted in terms of Section 6a of the Inquest Act, which allows for a joint inquest into multiple connected deaths”. It then says “This matter is inherently urgent due to the need to conduct post-mortem examination before the burial or cremation of the deceased as well as the on-going danger to the health and safety of other people that have been removed from Life Esidimeni. It may be necessary depending on the outcome of the judicial inquest to take steps to protect the other mental health care users discharged from Life Esidimeni from similar harm”.

This was addressed to the SAPS on 16th September 2016. I just want to refer you then to the response, if you can bare with me for a moment. Sorry DR Kenoshi, the other relevant part of this letter is in paragraph 6, its what actually prompted this letter. In paragraph 6, it is recorded that the clients represented here were advised by the SAPs that report of the death paragraph 6, “The report of the death must be

directed to the Department of Social Development or the Department of Health for their investigation and that it will be open to them to refer the matter for criminal investigation if they suspected foul play”.

My concern is that if you are not involved and if you don't put the motivation into the investigation into all of the deaths that took place, that they will not be a full and proper inquest into deaths. Would you agree with that?

DR ERNEST KENOSHI: I would agree with that Counsel. I was not aware of this letter because it was addressed from Section 27 to SAPS. Since Ombudsman's report, we referred all the deaths to SAPS even before we saw this letter. And the SAPS also decide based on clinical picture whether to enforce a post mortem or to allow family to decide. But we do work with SAPS and we will cooperate with them as we have been on all cases with a view to inquest being held either individually or collectively inquest as you preferred and the date is not known to us now.

ADV ADILA HASSIM: Do you think that the clinical picture as you say, is evident from the documents that you have provided to the SAPS? If the decision the SAPS has to make as to whether to conduct an inquest into the death; if that decision is based on clinical picture, is it your view that clinical picture is apparent from the rest of the documents that have been provided to the SAPS?

DR ERNEST KENOSHI: Counsel, the ones that I have seen the copies of clinical records that I have seen especially for those who passed on in our hospitals, the clinical pictures is quite clear. And the doctors have written their own professional

opinions in them as well. So, I can vouch for those passed on in our State hospitals. I cannot do the same for those who passed on in NGOs unfortunately.

ADV ADILA HASSIM: Okay, let's start with the ones that passed on in the hospitals. Is it not correct that the cause of death is recorded as natural causes?

5 **DR ERNEST KENOSHI:** Yes. It is recorded as such and you would have seen in a lot of cases it is written as provisional cause of death.

ADV ADILA HASSIM: So, in the absence of further information and explanation for why a death might be recorded as of natural causes, that the circumstances that gave rise to death by cold or pneumonia is the real issue at play, in the absence in
10 that they don't have the full clinical picture. Am I right?

DR ERNEST KENOSHI: Counsel, I think that is why we have taken the view that all deaths should be subjected to an inquest process to determine exactly that. We will provide all necessary information that may be in our possession to assist the inquest process.

15 **ADV ADILA HASSIM:** But you wouldn't provide information with regards to the death at NGOs? Because you said that you don't have.

DR ERNEST KENOSHI: The ones that we don't have, we don't have but that doesn't mean that the circumstances is not being investigated. We hope that the police will also assist in getting information. The information we have amount some
20 of the NGOs we have shared with SAPS and not all cases do we have information.

ADV ADILA HASSIM: What steps are you taking to get more information in relation to the deaths that happened at the NGOs. For example, the three names I referred to you earlier, the two people who were given a pauper's burial, what are you doing about that? Or what happens with them from now on in your view?

5 **DR ERNEST KENOSHI:** Counsel, you remember that quite a number of NGOs were shut down and patients moved immediately even before the Ombudsman's report was released on the 1st of February by the department. I think it was after the officials from the department went to those NGOS and found that they were in a state where patients were regarded as not being safe. There hasn't been any
10 further step after closing down of those NGOs taken to those NGO's accept in sharing information with the SAPS.

ADV ADILA HASSIM: My question was not in relation to steps that were being taken against the NGOs subject. The question is I referred you to the report by the director general and I referred you to 3 people who have been given a pauper's
15 burial and were confirmed that they fall within the scope of this inquiry. So Sarofina Nglowo, Christine Hurbs and Jesire Nbutinyana Mogomotsi what about them ?That is my question. How do we find out the cause of the death and whether they are going to be part of the inquest? What are you doing to ensure they are part of the inquest?

20 **DR ERNEST KENOSHI:** Counsel, there are no clinical records available to us; no post mortem was done before they were given the kind of burial they received. So, we do not have any information about the patients, we do not have any other information on what we did except what we did as a department by closing the

NGO. But also we've handed all information even about the list of those who passed on and where they passed on to the SAPS to investigate further. We haven't done any further investigation.

ARBITRATOR JUSTICE MOSENEKE: The charge that the Counsel is making to
5 you through a series of question is the following;

She is saying there isn't enough information here and you as a department hasn't done enough to ensure that there will be post-mortems as the law requires. Remember, that their deaths are admittedly unlawful and admittedly as a result of reckless and negligence conduct, inquest ordinarily must follow. What the Counsel
10 is putting to you is have you as a department done enough to place the police in a position where post-mortems can be conducted? That requires a response, I think. And she takes you to the letter where they asked a year ago; please conduct a post-mortem examination, nothing virtually comes back. If you look at the schedules, you have to tell us whether they are sufficient for post-mortem
15 examination and/or inquest to ensue.

DR ERNEST KENOSHI: Justice, I will attempt to answer the Counsel and the question as best as I can. First of all, the letter of Section 27 was not copied according to the department of Health. So, I am not sure whether the department was made aware in September last year of this letter addressed to the SAPS. The
20 question of post-mortems of those who passed on in NGOs has been discussed in our meetings with the SAPS. And we as a department did not want to make a decision on our own to apply for exhumation.

ARBITRATOR JUSTICE MOSENEKE: But you agree that deaths occurred as a result of unlawful, reckless contextual conduct. Any death that occurs in the republic unlawfully, and reckless and negligently or intentionally is an unnatural death which requires investigation by the law. Do you agree with that?

5 **DR ERNEST KENOSHI:** Yes, Justice, I do agree.

ARBITRATOR JUSTICE MOSENEKE: Do you agree all of these 180 and 141 deaths were death that occurred that unlawfully? They occurred because of the commission or omission of State officials.

DR ERNEST KENOSHI: If we are to go to the Ombudsman's report, yes.

10 **ARBITRATOR JUSTICE MOSENEKE:** And they occurred because, according to Ombudsman's words, of reckless negligent on the part of State officials?

DR ERNEST KENOSHI: We agree Justice.

ARBITRATOR JUSTICE MOSENEKE: Do you therefore agree that all 141 ordinarily ought to be the subject of judicial inquest?

15 **DR ERNEST KENOSHI:** Justice, I agree that all of them should be subjected to an inquest process to determine the exact cause of the death in each and every case.

ARBITRATOR JUSTICE MOSENEKE: And therefore follows the Counsel's questions, what has the department done or doing to ensure that?

20 **DR ERNEST KENOSHI:** You will excuse me if I repeat myself because the question repeats itself, the department has offered post-mortem to be done in each and every case since then. And it is unfortunate that this was only done in the later

months rather than before. All cases in post mortem was referred to forensic pathology service and awaited SAPS decision and also families were consulted in each case. The department will cooperate with any process that is decided on jointly by the department, the family and their representatives and also by organs of State like SAPS and NPA if a decision is made to have post-mortems done on all 141.

ARBITRATOR JUSTICE MOSENEKE: Where was the department and why didn't it act, I know you weren't here to prohibit what you know form all the unlawful documentation. Where was the department to prohibit the officials of the department to insure a proper and respectful burial of all these people, do you know why?

DR ERNEST KENOSHI: Justice, I will not be able to speak for those who are not here but I can only speak for the period that the MEC and myself starting coming into picture in the middle of February.

ARBITRATOR JUSTICE MOSENEKE: But if you were there then, what would you have done? Would you have ensured that you pay last respect to your patients either by finding their families or arranging for proper documentation, making sure that their bodies are not kept in all varieties of funeral parlors and so on? Wouldn't you have done that for you former patients?

DR ERNEST KENOSHI: Yes, Justice. I agree that should have been done and to demonstrate why I say so is that we immediately since February stopped all pauper burial and that is why we are still trying to trace the relatives of the seven that I mentioned earlier that are still in our mortuary. The laws allow that they could have

happened before but we have stopped. We have gone to lengths including Home Affairs, SAPS, finger printing and so on, to try and identify those that were not claimed. We have informed all the NGOs that we have contracted to. No death will go unreported to stop that happening again. With this process, we have managed to

5 trace quite a numbers of families and we are left with these 7 and we hope that this process helps families who may have missing persons, to assists us...

ARBITRATOR JUSTICE MOSENEKE: Sorry Dr, I interrupted you finish.

DR ERNEST KENOSHI: Yes, Justice. It should not have happened at the burials of that nature should happen.

10 **ARBITRATOR JUSTICE MOSENEKE:** And justice many not be had heard here because people were hurriedly buried and there is no proper documentation as to follow-up on the lawfulness of their death isn't it?

DR ERNEST KENOSHI: That is true Justice.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

15 **ADV ADILA HASSIM:** Thank you Justice. DR Kenoshi, do you convey your view that these deaths were the result of conduct that were unlawful and reckless or negligent? Did you convey that view to the SAPS when you handed the information over to them?

DR ERNEST KENOSHI: Maybe not in those exact words, Counsel, but we said

20 that these deaths need further investigation and we agreed with them on that. Especially those that happened since February to make sure even where there was

natural disease process, because some of them had cancer, but also even those too are subjective to inquest process, we did convey that to SAPS.

ADV ADILA HASSIM: But what I have trying to put to you, DR Kenoshi is that this is not a simple process like other maybe, where the cause of death is known and
5 where the cause of death is recorded as unnatural. These are unusual circumstances and in order for the SAPS to do its job properly, it has said that it requires the department of health needs to say to it that you suspect foul-play in their words. And so that is why I asked you the question that; whether you informed of your view that these deaths were the result in their words foul play, and you said
10 you did not do so?

DR ERNEST KENOSHI: We did not use those words.

ADV ADILA HASSIM: You did say they need investigation.

DR ERNEST KENOSHI: Yes Counsel, we may not have used the same words, but we said they need investigation to find out why they passed on whether it was due
15 to some of the neglect former Life Esidemini patients were subjected to or not.

ADV ADILA HASSIM: Thanks DR Kenoshi, we can leave it there. My next question is about the post mortem reports. Part of the terms of reference of this inquiry is to make information available to the arbitration. And the 26 post mortem reports that are in existence, request has been made for you to provide those
20 reports to this process, to this hearing. Those reports have not been provided, why is that?

DR ERNEST KENOSHI: The reports are in the possession of the SAPS. We have tried as a department to obtain the reports so we can share them with families. We are told that the reports should be held by law by the SAPS and they hand them to the inquest process. So, despite numerous communications with the SAPS, we
5 have not as the department be able to obtain the reports. We have also handed the matter to our legal team to assist in the process. And it is true that we have struggle to obtain the report the final post-mortem reports from the SAPS.

ARBITRATOR JUSTICE MOSENEKE: Well, we might have to subpoena them. If we know the exact person in whose custody they are we might just have to
10 subpoena the SAPS. If your loved one passes on and there is post-mortem report, at bare minimum, you want to read that. At a very bare minimum what killed him or her, you want to know. So HOD, we need a specific custodian of these reports and I will cause subpoena to be issued if they don't willingly come. Or you may arrange it with them, so they come. Then, we don't have to be coercive about it.

15 **DR ERNEST KENOSHI:** Justice, I would fully support the idea of subpoenaing the SAPS to provide the report.

ADV ADILA HASSIM: Besides which is quiet important to the relationship of cooperation between your department and the SAPS, that you have information. And you said to us that they have refused to provide that.

20 **DR ERNEST KENOSHI:** Yes. We've worked with specific families to try and obtain the reports to assist them. I must say we have failed in the process.

ADV ADILA HASSIM: DR Kenoshi, if I can turn to and this is the last set of last topic...

ARBITRATOR JUSTICE MOSENEKE: I am sorry before you move on Counsel, how do we ascertain the custodian of the report or the particular office or level of office in SAPS? I don't want this to fall in between the cracks, who will give us certified copies of what they have in their files. If you don't have the details now, your Counsel can find them or your attorney and make them available to the rest of the team.

ADV TEBOGO HUTAMO: Justice if I may be permitted to come to the assistance of the hearing. There is a correspondence which gives the details of the person who is in possession of those reports from the National prosecuting authority. And there has been a correspondence which was exchanged from the attorney on behalf of the government making a request of those reports for the purpose of making them available but the response if I can just read for the record in relation to such request is as follows:

'As discussed during our previous meeting, most of the post-mortem reports are still outstanding and we can only discuss the possibility of making the reports available once we have received all the reports and opinions. Currently, there are 21 dockets with the pathologist that are awaiting opinions and post-mortem reports. The investigating officers are in better position to address you regarding the outstanding investigation and the possible timeframe involved in completing same'. It is signed kind regard, G. Van Der Westhuizen senior Public Prosecutor, National Prosecuting Authority, Pretoria. If I can make this available perhaps that will assist.

ARBITRATOR JUSTICE MOSENEKE: Yes please. You may proceed Counsel.

ADV ADILA HASSIM: Thank you Justice Moseneke. DE Kenoshi may I turn to recommendation 18 and update on recommendation 18 which was provided to us yesterday. Recommendation 18 is in relation to the previous Chair of the Mental
5 Health Review Board, Ms. D. Masondo. The status update tells us that Ms. Masondo was placed on suspension on the 22nd of February 2017. And enquiry commenced on 22 March 2017 and we heard from you today that the presiding officer has now made a finding and the finding is that she is not guilty. Is that correct?

10 **DR ERNEST KENOSHI:** It is so Counsel.

ADV ADILA HASSIM: But we are actually not sure what she is not guilty of because we do not know what the allegations are in the report. Is that correct?

DR ERNEST KENOSHI: Counsel, when the matter was referred to for an enquiry as the law provides, the referral for enquiry included an investigation. She was to be
15 investigated whether she had the capacity to fully be a member of the Mental Health Review board and whether she capable and qualified and perfect person to be holding that board bearing in mind what the Ombudsman's report contains. We have a copy not here with me, but as Justice has said we should provide it as record of this court. We can provide the copy of the, the decision of the presiding
20 officer, the senior counsel who handled the enquiry.

ADV ADILA HASSIM: What you do intend to do beyond providing it to us with that report?

DR ERNEST KENOSHI: Counsel, we have said and I'm repeating as a department is taking on the review.

ADV ADILA HASSIM: On what basis?

DR ERNEST KENOSHI: On the basis that the allegations against Mrs Masondo
5 were quite strong and we don't as a department fully agree with the content of the decision and the rationale for the decision.

ADV ADILA HASSIM: DR Kenoshi, can I ask you to have regard to page 1356 of the record, file 3. Its right at the end of file 3 the last document in file 3, page 1356. Have you seen this news article before?

10 **DR ERNEST KENOSHI:** Counsel, I have not seen this news report before.

ADV ADILA HASSIM: The headline says for R14,000 fees to transport the body of patient. The reason I am putting it to you is because I raised it yesterday with the DG and she informed us that you are the appropriate person to address questions on this issue. The content of the news article tells us that Ms Masondo operates a
15 funeral parlour- called African Queens of Africa, and that she was contacted by Dr. Manemella to provide transport services for patients who have died from Life Esidemini. In her words in page 1357, she is quoted in the article as follows:

'Manemella called me and told me there were having crisis regarding many dead bodies of the mentally ill patients which the department was unable to transport. I
20 said since you have a crisis, I will assist you and arrange to transport some of the bodies. And she tells us that she transported the body of Josiah and she was paid R14,000. Were you aware of these allegations?

DR ERNEST KENOSHI: Counsel, it is the first time, I am aware of this newspaper clip.

ADV ADILA HASSIM: But the content, the issue?

DR ERNEST KENOSHI: Counsel, one of the reasons why as a department, are
5 referring the matters for further review is the decision that she is not guilty is exactly
that there has been a rumour which I only heard recently that she or one of her
family members of hers runs a funeral parlor that was involved in transporting the
bodies of our former Life Esidemini patients. I am not sure whether the senior
counsel who looked at her matter was aware of that. We have made a decision to
10 refer the matter to Gauteng auditing services for forensic investigation and for all
departments within Gauteng provincial government to investigate further. I have
also discussed this with head of our legal services. And our Head of our legal
services has spoken with Ms Masondo and asked her and she said she does not
run a funeral parlour, but one of her family member does that. That will be a matter
15 we will be investigating further to confirm this. But if this article has to be taken as it
is, then it is quite damning and I agree with you Counsel.

ADV ADILA HASSIM: DR Kenoshi, even though there may be other investigations
that you have said this to your auditing people for further investigation. It's has been
8 months since Ms Masondo was placed on suspension and there isn't proper
20 finding against her, was the information placed before the presiding officer who was
conducting the disciplinary enquiry?

DR ERNEST KENOSHI: The information that she may be related to somebody who runs a funeral parlour and might have been involved only came after the matter have been referred to presiding officer who handled the matter. When Ms Masondo when she was suspended, she was not on pay at all. So, she is out of the
5 department and a new board has been appointed by the MEC so that there is no void left with the suspension of the previous board. So the old board os on suspension, The board is not being paid at all and this is reason why we have taken this decision which as I have said we only received within the last month end of September or so for review.

10 **ARBITRATOR JUSTICE MOSENEKE:** Dr. I am sorry to interrupt you. The question was its 8 months since Ms Masondo was suspended and nothing appears to have happened in relation to the accusation as damning as that.

DR ERNEST KENOSHI: Justice, I have seen this article before. I don't think it has come to the attention, it is not printed in a local newspaper that we read. I haven't
15 seen this but I have heard this rumour. And that is the reason why we have referred this matter for further investigation.

ADV ADILA HASSIM: DR Kenoshi who is responsible for the implementation of the recommendation by the Ombuds?

DR ERNEST KENOSHI: It is the whole department; myself and the MEC heading
20 the department.

ADV ADILA HASSIM: It is a collective responsibility?

DR ERNEST KENOSHI: Yes. Some of the recommendations are directed at the Minister; others at the provincial government and others at Gauteng department of health in particular.

ADV ADILA HASSIM: But the bucks stop with any one person?

5 **DR ERNEST KENOSHI:** Difficult question to answer Counsel. Yes, one of the persons who are responsible to make sure that the recommendations are implemented and I have related how we have handled with the recommendation so far.

ADV ADILA HASSIM: I put it to you that DR Kenoshi, with regret I must say, it
10 does not appear the implementation of the recommendations is being followed with the vigour and fervour we are led to believe. I am saying this to you because part of the problem in previous administration; the erstwhile officials sitting in your seat as the head of department and others, had the same approach which is that it is a collective responsibility and the problem with that approach is that nobody then
15 takes responsibility. And in this case of the implementation of the recommendation, there has been very dedicated and committed follow up by the representatives of the families to assist the department and the officials who have since taken office to implement the recommendations. In this regard, I ask you to please turn to page 1419 of the record, which is in file 4.

20 **DR ERNEST KENOSHI:** 14?

ADV ADILA HASSIM: 1419. Have you located it?

DR ERNEST KENOSHI: Yes I have council.

ADV ADILA HASSIM: It is a letter from Section 27 to MEC Ramakopa. It is copied to Mrs. Precious Matsonso. We put this letter to the director general yesterday and she advised us to rather direct the question to you. It is dated 8th March 2017 which is before the disciplinary proceeding against Ms Masondo commenced according to
5 your report.

‘On 8th March 2017, we brought it to the attention of the Gauteng Department of Health that there are very serious charges and allegations against Ms Masondo.’

If you may turn to page 1423 and paragraph 17, it states; “ We note also that Ms. Masondo owns a funeral service that was engaged to transport deceased from
10 residents of Life Esidimini. Please, indicate whether Ms. Masondo is being investigated for contravention of the law and terms and conditions of her employment for her multiple overlapping roles Life Esidimini matter”. In other words, it was brought to your attention well before the commencement of enquiry against Ms. Masondo. Why did you not include it in the terms of reference for the
15 disciplinary enquiry?

DR ERNEST KENOSHI: Counsel, the matters related to Mental Health Review Board are not dealt with in the office of the accounting officer of the HOD, but are the dealt with at the level of the MEC. And I think the letter was correctly addressed to the MEC. I will have to find out whether it was included in the terms of reference
20 for the senior counsel who was appointed to look into this or not. But this letter was not brought to my attention at that time.

ADV ADILA HASSIM: So, this is the problem ,DR Kenoshi; the collective responsibility. We wrote a letter to the MEC on the subject and its a very long letter, I'm just referring to this particular aspect, so we wrote a letter to your department, the legal representative on behalf of the client to the department saying "Here is all
5 the information we have, here is how we can assist you and we would like to know whether you are going to include this in the process going forward; which is very important to ensure that those recommendations are properly and diligently implemented". We and your legal representatives here have been at pains to stress that is in tragedy what took place but rest assured that government is now putting its
10 shoulders to wheels. And it doesn't help for the family to hear that this was not addressed to me, it was addressed to the MEC. It is relation to the implementation of the recommendation in the Ombuds report. Do you agree that you have responsibility for the implementation of those recommendation?

DR ERNEST KENOSHI: Yes, Counsel, I have taken full responsibility and will
15 continue to do so. As I have indicated we regard this as so serious that we as a department have not accepted the actual decision of the person who was heading the enquiry. We should also bear in mind that the law as it is at the moment, precludes the MEC from summarily dismissing any member of the Mental Health Review Board. And the MEC has received legal opinion on doing so and she was
20 advised that she cannot do so. She has to go to through an enquiry process. And that process is the one that has landed us where we are now. As a department, we have not accepted that decision and we are taking on review.

ADV ADILA HASSIM: DR Kenoshi, there is nothing summary about this process. This has been 8 months in which what you read out as the charge that the presiding officer is meant to investigate is whether she has the capacity to continue in her position in the Mental Health Review Board; whether she is capable in to fulfil her
5 functions. It doesn't seem to me to be precisely formulated and to include this kind of allegation. Would you agree?

DR ERNEST KENOSHI: I do agree Counsel.

ADV ADILA HASSIM: How long do you envisage the next phase of the process of the disciplinary of Ms Masondo to take?

10 **DR ERNEST KENOSHI:** Counsel, I can't predict legal processes but I would hope that it is done as swiftly as possible. And we would do anything that would assist that process that it is finalised as quickly as possible.

ADV ADILA HASSIM: Would you be placing information in relation to Ms. Masondo that is on record- which goes beyond the news article- will you be placing
15 that information before the next panel?

DR ERNEST KENOSHI: Yes, we will be doing so, Counsel.

ADV ADILA HASSIM: Thank you DR Kenoshi. My final two questions; have you been able to determine what was the cause of, let me put it differently, have you been able to determine why the former MEC and the former HOD and the senior
20 officials chose this course of action? Have you been able to determined why they still fit to determinate the contract and move so many people with such haste?

DR ERNEST KENOSHI: Counsel, I have not been able to determine that and I can't vouch to it.

ADV ADILA HASSIM: Would you agree that this cannot be a justification that it was a cost-saving measure?

5 **DR ERNEST KENOSHI:** I don't know whether that was the reason why this project was undertaken, but no cost-saving was realised.

ADV ADILA HASSIM: In fact, we are told not only were no saving realised, but that in order to fix the problem, patients had to be sent back to Esidimedi and at this time at higher cost than before. So, in fact not were there no cost saving, it cost more
10 that it was in the past. Is that correct?

DR ERNEST KENOSHI: That is correct. The new contract with Life Esidemeni and Phoenix Healthcare is that they are not the only ones who are taking care of our patients now. I was part of that those negotiations. And the one of the reasons why the charges are slightly higher than in the past is that we have put more stringent,
15 safer conditions for LE to provide for our patients. Because of the higher specifications that we have put in our contract for them, it does cost more. Just to ensure that our patients are in safer place than when they were in LE initially and we are confident that is the case at the moment.

ADV ADILA HASSIM: Have you done the calculation of what the actual cost of all
20 this has been?

DR ERNEST KENOSHI: Counsel, we are in the process of doing that and it is not easy. But we will eventually get to calculate how much it has cost.

ADV ADILA HASSIM: Once you do, will you make that available to this hearing?

DR ERNEST KENOSHI: We will make it available to the public because financial statements of the department are public statements and we will make it available in that way.

5 **ADV ADILA HASSIM:** Thank you, DR Kenoshi. Did you enquire whether a medical opinion was sought by department to advise on the move and to do mass transfer of patients especially mentally ill patients?

DR ERNEST KENOSHI: Counsel I am aware that there were people with psychiatry qualifications in who are part of the process on and off. Because I was
10 not closely involved in the matter, I am not sure to what extent the experts were involved in this matter.

ADV ADILA HASSIM: Did you enquire if legal opinion was sought as to conduct mass transfer of this nature and still protect and respect the rights of patients?

DR ERNEST KENOSHI: No, Counsel, I am not aware if legal opinion was sought
15 on this kind of project.

ADV ADILA HASSIM: Did you enquire whether they sought legal advice?

DR ERNEST KENOSHI: No, I did not.

ADV ADILA HASSIM: Thank you, DR Kenoshi .

ARBITRATOR JUSTICE MOSENEKE: We've been promised the budget of your
20 department for 2014, 2015, 2016. We would like to see what kind of money you had

to provide mental health care services. I don't know if the previous witness alerted you to that?

DR ERNEST KENOSHI: Counsel, this information will be provided to the hearing. If not today, by Monday it will be handed to our legal representative.

5 **ARBITRATOR JUSTICE MOSENEKE:** Thank you so much. Was the department in financial crunch anytime of the marathon project?

DR ERNEST KENOSHI: Justice, the Department of Health has been under financial pressure for the past 5 to 6 years mainly because of the demand on the services it provides outstrips the budget allocation the department has been getting.

10 That was what has resulted in massive accrual above R4billion that the department was faced with even at the beginning of this financial year.

ARBITRATOR JUSTICE MOSENEKE: 4 billion will be what kind of accrual?

DR ERNEST KENOSHI: This is the amount of debts and invoices from suppliers and contractors that the department still have to pay for previous years and it was
15 faced with April this year when the financial started.

ARBITRATOR JUSTICE MOSENEKE: And when the marathon project was devised, the crunch was still there; isn't it? The department has a lot of debt which you now say run up to R4billion.

DR ERNEST KENOSHI: That is true Justice, the department has been under a lot
20 of pressure from increasing number of people who come to Gauteng not only from other provinces who flock to Gauteng but across the borders of South Africa; all of

them needing services from the Department of Health and the increasing population which is said to be increasing at the rate of 2.5% per annum; budget allocations have not kept up with the increasing number of people in the province.

ARBITRATOR JUSTICE MOSENEKE: Lastly, DR. Kenoshi, I know from reading
5 your role together with the National DG and the DG in the Premier’s office has been enormous ever since you have come as HOD around this matter and you have been part of cleaning sort of team in the aftermath of this coming from another institution. But from the question that was put to you just to wrap up there is an incipient criticism that we will never get to the root of the cause and we will never
10 get proper redress. That was the trend of the questions. In other words, the team and the new team may not get us to the kind of redress that unlawful death normally demands. What do you say to that?

DR ERNEST KENOSHI: Justice, in response, I should say to the hearing and the families as well, that it wasn’t getting into this department in February. If one can
15 imagine getting into the department where, especially after the Ombuds’ report, then suddenly were filled with lots and lots of patients, even at stage in February, we have to take food from patients in the hospitals to the some of the NGOs to feed them because they didn’t have food and some of them have not been bathed for days and this was in February of this year. We have to clothe and feed them at cost
20 to the state; even some of the NGOs just to save lives. SO, there has been process of saving lives. The department concentrated mainly on saving lives and moving 820 people was not easy in three months. We had teams of psychiatrists, EMS. We had to get additional cars from GG to augment our Emergency Medical Services.

The help of the families helped a lot and they know the story of what we went through the night on a number of occasions. So, as a department, it was mainly about saving lives in this situation to an extent now if you look at the trend of death a per month, it has shrank to the level where it was before were at LE in the last
5 four or five years. We have looked at the figures and that was our main intention to save lives and stabilise the situation and to make sure that we are sure where each and everyone of is. Because it wasn't an easy one getting into a department where at that time there were no accurate records at all. So, the kind of figures we saw and presented today, it was not easy getting those figures. That is why I still say we
10 are prepare for them to be put through an audit process just to make sure that they are perfect. But just compiling those figures was from nothing and was not easy. So, punishing other people was the immediate when we came in. It was more to save lives and I think we have done enough in that respect. And now that we are working with other organs of state, we can get on with that process of finding reasons why it
15 was done and the justification for this process and if people are liable or not, and we can put our teeth into it. But it was not immediate concern in the first three months. And there is testimony to that from some of the families who were closely involved and continued to be closely involved with us, we are grateful.

ADV ADILA HASSIM:

20 **ARBITRATOR JUSTICE MOSENEKE:** Thank you, DR Kenoshi. We are going to take adjournment because it is 1.30. Let me take you through what is going to happen ahead of you. We are going to have questions by Counsel for Legal Aid, followed immediately by Advocate Groenewald which is representing and Advocate

Ngutshana who is an appointed Evidence leader and or his colleague and then we will have re-examination. So, you still have about three people who are going to be talking to you. And that would be the end for today. It has been a hard grind week. So, you are probably going to be our last witness unless counsels vehemently
5 object, then we seat up to 8pm. But otherwise, after you that is going to be the end of the hearing. We are going to take catch our breath and think about a very hard week, very well we are going to adjourn now 1:30, we resume 2:30 here. We are adjourned.

10

15 **SESSION 3**

ARBITRATOR JUSTICE MOSENEKE: Well HOD, you are still under your previous oath...

DR ERNEST KENOSHI: Thank you Counsel.

ARBITRATOR JUSTICE MOSENEKE: and the re-examination will continue. We
20 are going to start with you Mr Skibi, are you ready to go?

LEGAL AID NZAME SKIBI: Yes.

ARBITRATOR JUSTICE MOSENEKE: Please do.

LEGAL AID NZAME SKIBI: Good afternoon doctor.

DR ERNEST KENOSHI: Good afternoon to you Counsel.

5 **LEGAL AID NZAME SKIBI:** Dr Kenoshi, we are representing the third group, as set out in the terms of reference group – the third group is the so-called, it's described as life as an amendment under health care users, who've survived – do you agree with that?

DR ERNEST KENOSHI: Thank you Counsel.

10 **LEGAL AID NZAME SKIBI:** In your evidence you've mentioned that you'd joined the department or you were seconded in February when you joined the current position where you are?

DR ERNEST KENOSHI: Yes Counsel, I have joined that department on the 5th of February.

15 **LEGAL AID NZAME SKIBI:** This year?

DR ERNEST KENOSHI: Yes.

LEGAL AID NZAME SKIBI: ...and before you joined on the 8th of February – where were you?

DR ERNEST KENOSHI: I have been the CEO, Chief Executive Officer, of Steve Biko Academic Hospital in Tswane, I am still appointed there, but seconded to this position of HOD, yes.

LEGAL AID NZAME SKIBI: So, in this position you are still appointed as acting.

5 **DR ERNEST KENOSHI:** Acting Head of the Department, yes, because they, yes.

LEGAL AID NZAME SKIBI: All right, thank you. So, when this tragedy was announced, you were at Tswane – you were based in Tswane, but in Gauteng province?

DR ERNEST KENOSHI: That is true Counsel, yes.

10 **LEGAL AID NZAME SKIBI:** All right. So, in actual fact you've arrived before or you've come before the current MEC now?

DR ERNEST KENOSHI: The current MEC, Dr Gwenneth Cooper was sworn in two days before I joined, she was sworn in on the 6th of February and I was transferred into this position on the 8th of February.

15 **LEGAL AID NZAME SKIBI:** All right, thank you. So, you've mentioned in your testimony further that the NGO's which are working or were conducted with the department of social services – social development?

DR ERNEST KENOSHI: That is true Counsel, yes.

20 **LEGAL AID NZAME SKIBI:** Yes. How is your relationship with or are you involved as the department of are you rendering any support between those contracting departments?

DR ERNEST KENOSHI: Counsel, the department of, that's the Gauteng department of social development is another department within Gauteng Provincial Government are providing social services to the people of Gauteng, but they also have NGO's, to which they are contracted or which they have contracted NGO's to
5 provide some services for them and some of the services they provide, we share as Gauteng department of health with them. So, we have since formed a team of managers who together managed and showed that our patients and NGO's – especially NGO's that are co-licensed – there are NGO's which had the license with the social development and with the department of health at the same time. So, we
10 manage them together, after I met with the Head of Department of social development in April this year.

LEGAL AID NZAME SKIBI: All right, thank you. When you've started, you've mentioned further that not all the 27 NGO's were closed down after this tragic incident was announced.

15 **DR ERNEST KENOSHI:** That is true Counsel.

LEGAL AID NZAME SKIBI: Are you able to state which ones which remained – which were not closed down?

DR ERNEST KENOSHI: Yes, if I refer to my notes, I should be able to say so.

LEGAL AID NZAME SKIBI: Certainly.

20 **DR ERNEST KENOSHI:** Yes.

LEGAL AID NZAME SKIBI: Yes, you can.

DR ERNEST KENOSHI: You referring to those that I have sited I the report to the Ombudsman and yet are not closed.

LEGAL AID NZAME SKIBI: Yes, as sited to ...

DR ERNEST KENOSHI: All right, I will attempt to do that. Do you want me to
5 mention them by name?

LEGAL AID NZAME SKIBI: Precisely, yes.

DR ERNEST KENOSHI: I will do that, yes, this – I'll start with the ones that have out patients still there, but those are the ones whose relatives refuse us permission to remove their loved ones.

10 **LEGAL AID NZAME SKIBI:** Yes.

ARBITRATOR JUSTICE MOSENEKE: How many are there?

DR ERNEST KENOSHI: Okay. One, two, three, four, five, six, seven - I've got seven on this list and it is Anani, it is Ghotsi , oh sorry and Dolphin Acres, it is Little Aden - oh, sorry, that is six, it is Mosego, it is Michelle Home and it is Odirele. I think
15 that's six – why I'm correcting myself from seven to six is that Ghotsi Modimo is although it's still has one of the former Life Esidimeni patients with them – the one near Carletonville. Ghotsi Modimo was not mentioned in the Ombudsman's report, although it had Life Esidimeni former Life Esidimeni patients in them – so there are about 15 at a time – we've removed the others, so the one remained. So, I've
20 mentioned those six that I have mentioned, but still have our patients in them.

LEGAL AID NZAME SKIBI: So, in your testimony when you were answering questions by Chief Justice Moseneke, you've mentioned that there after your arrival – I take it was after the 8th of February this year, you used to assist other NGO's to take food, because they were struggling to feed or to provide food to the patients.

5 **DR ERNEST KENOSHI:** That is true Counsel, we did that in more than one NGO that did not have resources to take care of our people in them. So, between us arranging alternative accommodation at that time, we had to make sure that the patients are taken care of. Some were moved into our hospitals temporarily before being moved to appropriate arrangements and others were fed and clothed where
10 they were and we prioritised those particular NGO's where patients were not safe. To move patients from those first and those who were better, we moved them later. So, there was planning, proper planning of where of which ones we start with when we started moving patients.

LEGAL AID NZAME SKIBI: Yes. So, what plans did you establish to make sure
15 that those NGO's they their patients are properly looked after taken care of - getting food, medication, etc.

DR ERNEST KENOSHI: Yes, and getting examined, although we had doctors going to see them, we had psychiatrists going to assess them, we had mental health care nurses going to see them as well in the NGO's to make sure they are
20 safe and make sure they are all identified, so there was a process of identifying each and every person and actually providing nametags for each one of them and then we knew to move 820 people in one month would be dangerous. So, we did not want to repeat what had happened earlier by moving too many people too

quickly and that is why we've planned it over a three months period rather. It was the quickest we could do, but that was part of the planning that got into moving them – we had to check what resources we have and create files for them – as I've already stated – not all NGO's, actually most NGO's did not have proper files or records of each and every one of them and we had to create files for each and every one as we move them as well.

LEGAL AID NZAME SKIBI: Thank you. You know, initially I referred you to the working relationship between the department and or the support you could be providing to the two contractual, I mean the NGO's which are contracted with the department of social services – while the Ombud was busy investigating with his report in this matter in the eastern Cape, it was on the verge that two frail care centres were about to be closed down. If it was not for the intervention of the legal team of Legal Aid South Africa in eastern Cape, where they have to lodge such application to stop, to interdict the department of social development from closing down those two health care centres. So, now, we all we'll all understand that it is better to be pro-active than to react once a tragedy has occurred, that is why I am pointing to you that if you are not providing more support on those social development and those NGO's something similar to this might happen. So, can you confirm that – I know you are not a prophet – you cannot predict what will happen tomorrow – can you assure that government will take steps to prevent a tragedy like this to happen again?

DR ERNEST KENOSHI: I think that not only the Gauteng department of health, but a government as a whole, actually the society as a whole can't help being

awakened to issues of mental health care in the country. Even people who are not involved in government now know about mental health analysis(?) more after the Life Esidimeni tragedy than before. So, I am sure that as South Africans we will never allow this to happen again and we as Gauteng department of health are of the same view – we will not be alone, we will be supported by the whole country in making sure that never again will such a tragedy happen again.

LEGAL AID NZAME SKIBI: So, those NGO's when you returned, patients who were moved from Life Esidimeni during this marathon project, are they fully capacitated now?

10 **DR ERNEST KENOSHI:** The ones where some of in fact, the one patient are still there...

LEGAL AID NZAME SKIBI: Yes.

DR ERNEST KENOSHI: Yes, they are assessed on a regular basis and contact with the family have with their families have not stopped and we have said to their families that if at any one time they would like to have their loved ones reallocated they should indicate that and we will do that, and I should say that the initial number was more than 31, who remained and about five or six have already in the past few months requested us to come back and relocate the patients to either Life Esidimeni or Silver Park Hospital and we've done so. So, interaction with the families and the owners and the NGO's is continuous.

20 **LEGAL AID NZAME SKIBI:** Thank you. Those who were discharged from Life Esidimeni after this or during this marathon project – do you make any follow up

about their progress with regard to their – whether they are receiving medication or if they are taken care of or what?

DR ERNEST KENOSHI: Yes, we are in contact with most of them – we know the number is 393 that are at home, who were discharged home and are out-patients
5 and 59 of them we tried to contact just to keep to make sure they get medication and are taken care of, whatever, so we don't have proper addresses for them, but the rest most of them are we are in contact with them, we tell their families at least and we inform their families that if there is anything that they must let us know and we will readmit the patients. I should mention that one was readmitted this morning
10 – one of the patients that were at home – after I have received a call yesterday evening from a relative and we responded and we actually wanted only to send the emergency services yesterday evening to collect the patient and take them to hospital and they said no, you can do so at 6 am and at 6 am this morning our EMS was at their home, we collected the patient and we took him we have taken the
15 patient to Thambo Memorial Hospital this morning for stabilisation and for proper assessment and diagnosis made and have been taken care of, but this is why I am just saying to demonstrate to you that we are in contact with them and we would encourage all of them to their relatives especially is that if they need assistance, they should – we are only a phone call away.

20 **LEGAL AID NZAME SKIBI:** Thank you Dr Kenoshi, that is the reaction that we expect from those who are entrusted to look after the lives of especially when more vulnerable. Did you confine yourself to only to the recommendations of the health Ombud or you did some extra or you weighted the scope of their recommendations

– is there something extra you did, apart from what was raised in their recommendations of the health Ombud?

DR ERNEST KENOSHI: I think we are doing much more than just what is in the recommendations – we've arranged that this is mental health care month – that is
5 all we know this month and you would know that there was a launch by the department of the mental health care month in Atteridgeville [indistinct] earlier this month and we are continuing with activities to make people aware – first of all, this stigmatised mental health disease and also to make people aware of this illness, but also how to care for people who have mental health care who have mental
10 health illnesses and this is how we end up in a summit on the 31st of this month – we call it a mental health summit – in our process of ensuring that the whole community of Gauteng is aware of mental health illness as something that we need to be aware of and also to make sure that people and families who are affected by mental health care of mental health illness are taken care of and that there are
15 resources that they can turn to.

LEGAL AID NZAME SKIBI: All right, thank you. When the health Ombud released his report, there were 94 deaths of patients as a result of which as a result of this project and this week, when he testified, the number had increased to 118 – today you are bringing a number ... the extra 23 to that 118. So, although they and also
20 you state the total number is 141 – so, would you agree with me that out of those who were released or discharged or transferred or and ended up being taken home, some died, which could increase this number that you think of and giving here today?

DR ERNEST KENOSHI: Counsel, I think when the Ombudsman released his report on the 1st of February, you are correct he said 94, but he qualified that in a way to say that this is not the final figure, because verifications were still going on and those verifications were done with our co-operation with the Ombud all the way

5 until today and the operation continues with the Ombud and that is how we've reached the figure of 119 after digging and finding out – especially those who have died in NGO's and were not recorded in the books of Gauteng department of health. So, we had to go out and look for each and every one of them. The aim was to trace each and every one of the 1712 people – according to our records – were moved or

10 relocated from Life Esidimeni's project – whether they were at home or in hospital or wherever and that was how the figure was amended from 94 to 118. I must add that the 23 who have since died, because they did not die in NGO's because of hunger, dehydration and so on – and I don't want to Justice, I don't want to raise again the discussion again that we had earlier on – although we are subjecting them to

15 inquest purposes and we are reporting them to the Police – most of them were not housed in dangerous NGO's like in the past. So, they passed on in hospitals – most of them – I can say most of the 23, they had natural illnesses you know, but we just want to make sure that there are reassurances that they didn't die of anything else – the urology(?) of their illnesses have been part of this project and that is why we

20 continue to report to the Police. So, it is true that people that are at home also may die, because death is natural I mean, but so, the reason why we want to keep track of them who have died at home – we wish them to come on a monthly basis, at least as out-patients to our clinics and our hospitals, is exactly to keep track of

them, so that if any of them passes on, we would know about it Counsel – it is a long way to answer your question.

ARBITRATOR JUSTICE MOSENEKE: It is a long way to answer – I was just about to say doctor – the question was ‘could more people have died after your
5 count’ – the answer could be ‘yes’ or ‘no’.

DR ERNEST KENOSHI: The way we work with it, we would be, we would want to know and record it and we don’t have any others, except those who were ill and were rushed to our hospitals and died in hospitals...

ARBITRATOR JUSTICE MOSENEKE: So your count of 23, is the number?

10 **DR ERNEST KENOSHI:** That is the number that we have and if there is anything else different, I think we would like to know about it ...

ARBITRATOR JUSTICE MOSENEKE: You have got your answer Counsel.

LEGAL AID NZAME SKIBI: Yes, 23 is it?

DR ERNEST KENOSHI: 23 is it.

15 **ARBITRATOR JUSTICE MOSENEKE:** Yes.

LEGAL AID NZAME SKIBI: But, it is not satisfactory in a way, like Chief Justice, I mean, Justice Moseneke has just indicated the answer could be ‘yes’ or ‘no’ – it could be more than 141 – could you say ‘yes’ or ‘no’ doctor?

DR ERNEST KENOSHI: It could be ‘yes’.

20 **LEGAL AID NZAME SKIBI:** Thank you.

ARBITRATOR JUSTICE MOSENEKE: And we are talking about people who have been moved from Life Esidimeni on account of the marathon project?

DR ERNEST KENOSHI: That is correct.

ARBITRATOR JUSTICE MOSENEKE: We always have to keep it within the
5 boundaries.

DR ERNEST KENOSHI: Thank you Justice, but despite this big number, this large number we've got two senior officials, or should refer at the former executive head – I am mindful of the fact that the Police is doing some investigation, but for now there is no-one that have been charged with anything.

10 **LEGAL AID NZAME SKIBI:** Can you clarify?

ARBITRATOR JUSTICE MOSENEKE: Do you have any comments with regards to that?

DR ERNEST KENOSHI: There were people who were charged and there were people to whom sanctions have been given, besides you've mentioned...

15 **LEGAL AID NZAME SKIBI:** Can you clarify?

ARBITRATOR JUSTICE MOSENEKE: With regards to criminal charges...?

DR ERNEST KENOSHI: There is nobody else who is criminally charged.

LEGAL AID NZAME SKIBI: All right, but my colleague will take it a further you know, this point – the one for the three families and it has also been conversed by
20 my colleague. So, is there any plan or any measure that you put into place with regards to the level of medication – you know that there are different levels of

medicines, which may be found at the district regional hospital and at tertiary training. In other words, the level of those patients who receive medication at the third level, which there is one at tertiary training or regional hospitals – medication could not be found at the primary health care levels.

5 **ARBITRATOR JUSTICE MOSENEKE:** ...but, Counsel, why don't we ask the witness so we get answers? You could ask 'are other levels of medication to be found at different points of service'? ... and he can either say 'yes' or 'no'.

LEGAL AID NZAME SKIBI: Yes.

ARBITRATOR JUSTICE MOSENEKE: He knows it all – he's been a doctor for
10 nearly 40 years.

LEGAL AID NZAME SKIBI: Yes.

ARBITRATOR JUSTICE MOSENEKE: He knows quite a lot, I can assure you. So, just ask him the questions and the answers will come.

LEGAL AID NZAME SKIBI: Yes, thank you Justice Moseneke.

15 **ARBITRATOR JUSTICE MOSENEKE:** Yes.

LEGAL AID NZAME SKIBI: Do you know about those different levels doctor?

DR ERNEST KENOSHI: Yes, I do Counsel.

LEGAL AID NZAME SKIBI: How many levels then are we talking about here?

DR ERNEST KENOSHI: There are three levels Counsel.

LEGAL AID NZAME SKIBI: Tell them which are those levels - and the names thereof and the medicines.

DR ERNEST KENOSHI: Let me start with the levels of care in the health system in the country and that is the primary health care level, which is the clinics and so on
5 and then there is the hospital level of essential medicine, which I call essential medicine list (for short EML) – they used to call it EDL (essential drug list), but we’ve moved from calling them drugs, we are calling them medicines. So, essential medicine list is a primary health care package – it’s office, it is also a hospital, but then there is also a tertiary level, one which also available in the academic
10 hospitals, central hospitals, because there are medicines that are used by super specialists.

ARBITRATOR JUSTICE MOSENEKE: You see Counsel, he knows it all. So then you can go to your next question.

LEGAL AID NZAME SKIBI: Thank you Justice. So now, when somebody is in a
15 critical, like in a mental institution, can he or she get medication at a primary health care level?

DR ERNEST KENOSHI: Yes, they can. You see medicines for mental health care are different, because there are many mental health care illnesses, so there are those that need, that can be treated at clinic level at primary care level – there are
20 those who need tertiary care to an illness, they are sent to tertiary hospital and those who’d need medicines for those kinds of illnesses as well. So, you’ll get

mental health care, drugs, medicines and it could also be of a primary level and hospital and as a tertiary level as well.

LEGAL AID NZAME SKIBI: Yes. If somebody had been discharged can he just go over the counter at primary health care level and get medication there?

5 **DR ERNEST KENOSHI:** Medication has to be prescribed and to be available at that level – at the level at which it has been prescribed.

LEGAL AID NZAME SKIBI: Okay. So, you have mentioned that you have only came into the picture or this in March – so, you are aware – are you aware that some ...

10 **ARBITRATOR JUSTICE MOSENEKE:** On the 8th of February.

LEGAL AID NZAME SKIBI: On the 8th of February, okay, thank you Justice Moseneke. You came into the picture on the 8th of February – are you aware that some patients were sent home and some and there were those who they were taken to [indistinct] they were not fed, then they did not have shoes and then, I've
15 mentioned yesterday – if I may refer to one of them – this is her relative, Lasego Maloi(?), she described the manner in which she found her sister, Julia Gali(?) – she described that when she found her at Takalani(?) NGO she was barefoot it was in winter in May and it was very cold in May of 2016 and she have she didn't have
20 much food to eat. What – would you agree that it's a gross, but it was not just at a mental institution, it was in a hospital where she was supposed to have been taken care of – would you agree it was a gross violation of ...

DR ERNEST KENOSHI: Justice, I didn't get the question clearly.

ARBITRATOR JUSTICE MOSENEKE: Would you want to repeat the question?

LEGAL AID NZAME SKIBI: The question is – would you agree with me that – even if I put it blindly – the manner in which these patients were put through this marathon project, it was grossly in violation of the constitution and the mental health
5 care act – would you agree with me?

DR ERNEST KENOSHI: Yes, I would agree Justice.

LEGAL AID NZAME SKIBI: ... and, now, if you agree – you would also agree that there should be – at the end of this commission, there should be something of compensatory, so that it deters other public officials to act or to execute their duties
10 properly, in a professional manner or will you leave that to the chair of the committee?

ARBITRATOR JUSTICE MOSENEKE: Yes, I was just about to say that you are taking my work and give it to the good doctor. Do you have any further questions?

LEGAL AID NZAME SKIBI: No further questions.

15 **ARBITRATOR JUSTICE MOSENEKE:** You are done?

LEGAL AID NZAME SKIBI: No further questions Justice.

ARBITRATOR JUSTICE MOSENEKE: Well, I do have questions in your area of interest and concern. What impact would deaths of fellow-patients have on a survivor?

20 **DR ERNEST KENOSHI:** Justice, it could be traumatic for various reasons, especially if a death happens in the presence of the survivor – it is not a nice

situation to experience, so it could have a definite negative impact, especially if it is someone you know, and...

ARBITRATOR JUSTICE MOSENEKE: Yes, and even if you have been inflicted with a mental illness, would that be any worse than otherwise?

5 **DR ERNEST KENOSHI:** Yes Justice, because some of our mental health care patients you know are helpless on their own, so there are those who would need assistance – so, I think they need even more assistance than all of us.

ARBITRATOR JUSTICE MOSENEKE: Let's consummate a situation like the one who obtained, for instance, at Precious Angels – where many people who have
10 lived in the same space died – what do you say about that? What kind of impact would that have on those who have survived? They are in a narrow space, they would've noticed that their numbers are diminishing.

DR ERNEST KENOSHI: Justice, it could have a negative effect and I agree and I
15 assume some of them would need counselling to assist them to get over it, but it would be difficult for the reasons I've said – I agree.

ARBITRATOR JUSTICE MOSENEKE: You know – moving people without notifying their families is something that the Ombuds is telling us something about and it duplicates quite deeply – do you agree with that – that it would increase levels of trauma and stress if mentally ill people have moved to places where their families
20 could not immediately knew about?

DR ERNEST KENOSHI: Yes Justice, it would not be an advisable thing to do, especially when the family wants to visit their loved one and they don't know where

the loved one is – they have to struggle to find the loved one. The loved one is used to be visited and suddenly there are no more visits and they are in a strange place and I think that's why we've learned from the process and this time around – when we move them again, we'll make sure their families are involved in the process.

5 **ARBITRATOR JUSTICE MOSENEKE:** We were told and we can refer from the Ombuds' report that even survivors were moved without script – so presumably they will be moved from Esidimeni, get into one Angel place or the other and find that there is no prescription for them.

DR ERNEST KENOSHI: Yes, Justice I have read those stories, yes.

10 **ARBITRATOR JUSTICE MOSENEKE:** We were told the mere moving of somebody who is mentally ill, without the proper preparation is in itself quite traumatic – do you agree with that?

DR ERNEST KENOSHI: I agree fully Justice and that even why a move this time, we'll make sure that it is probably the last move and avoid moving them too many
15 times. There are reports of the effect that constant and repeated moving of such mental health care users what negative what effect it have on their health.

ARBITRATOR JUSTICE MOSENEKE: Of course the agreement contemplates that that category of patients would also be entitled to equitable redress that includes compensation – is there anything you would like to say about that at this
20 stage? Would it be something that is fair – that is necessary?

DR ERNEST KENOSHI: Justice, I agree with the Ombud, health Ombud in their resolution 17 where he recommends compensation and the compensation - if you read recommendation 17, it's not limited to not only where there has been death.

ARBITRATOR JUSTICE MOSENEKE: When I've asked about numbers relations
5 to survivors, I was referred to you – another big pass, I think, but how many survivors are there and how do we determine them?

DR ERNEST KENOSHI: Those who are in our hospitals, the state hospitals, we have the numbers – in Cullinan Care Rehab Centre, Sterkfontein, Weskoppies and indeed those who are still acutely in our acute hospitals are one, two, three, four,
10 five hospitals, I still have one or two. Even those who are in the NGO's and the ones in the Life Esidimeni – the two facilities of Life Esidimeni that we have contracted and the one Selby Park Hospital, we have the numbers and they amount to 1179. So, those ...

ARBITRATOR JUSTICE MOSENEKE: 1179?

15 **DR ERNEST KENOSHI:** 1179 survivors are currently in institutions, but...

ARBITRATOR JUSTICE MOSENEKE: In institutions?

DR ERNEST KENOSHI: I've included NGO's, remember I've said 31 are in NGO's

ARBITRATOR JUSTICE MOSENEKE: Yes.

DR ERNEST KENOSHI: So, if we add in those 31

20 **ARBITRATOR JUSTICE MOSENEKE:** So, these would be patients who were part of the marathon I would call displacement?

DR ERNEST KENOSHI: Yes, I'm referring to them actually.

ARBITRATOR JUSTICE MOSENEKE: 1179?

DR ERNEST KENOSHI: 1179, that is the stats that I have and the stats of those who are at home is – when I counted last, it was 393 – I need to qualify these
5 numbers and earlier on = a few minutes ago – I did relate how one of the former Life Esidimeni patients was at home, we had to rush her to hospital this morning to Thambo Memorial. So, they move from home to hospital and back home and so on – so, if I say 393 today next week this time maybe it may be 392 or more.

ARBITRATOR JUSTICE MOSENEKE: Yes, you have elated us, but 393 would be
10 the most – yeah.

DR ERNEST KENOSHI: The amount of mentally ill patients who are currently at home – some are discharged primarily from Life Esidimeni straight home = others went through to NGO's or to Sterkfontein or whatever. When stabilised, whenever they are stabilised, and their level of functionalities are determined by a psychiatrist
15 is – a psychiatrist decide whether this person can be treated – it is in conjunction with their family of course whether this person can be treated at home on an out-patient basis or should be in an institution.

ARBITRATOR JUSTICE MOSENEKE: Now HOD, can we get a schedule – would the schedule have names to be started at of survivors?

20 **DR ERNEST KENOSHI:** Yes.

ARBITRATOR JUSTICE MOSENEKE: We would?

DR ERNEST KENOSHI: We can get that.

ARBITRATOR JUSTICE MOSENEKE: I ask you to prepare a schedule of survivors 1179, and I understand it is a bouncing number, in institutions and 393 in homes at the onus of their relatives – if you could get that schedule to Counsel of State and to made available to everybody and to us at some stage. There is no real hurry, but in the next couple of days would be most helpful.

DR ERNEST KENOSHI: Justice I can do that, but I have given a preliminary list of these patients to our Counsel – to our legal team, but we will clean it up and provide it as soon as possible.

10 **ARBITRATOR JUSTICE MOSENEKE:** Thank you ever so much. That was quick – Counsel Groenewald.

ADVOCATE DIRK GROENEWALD: Thank you Justice. Doctor, I know it is late in the week, I'll try and be as quick and thorough as I can. Just to start off, I would like to hand you three documents. For the sake of convenience, I've just marked them A, B and C. So, if we can start off with that. You have made mention of lists – we had the 118 patients, then we had the 23 – we have indicated earlier this week that we are representing the family members of the deceased patients – the deceased patient that is not on this list, so document C, the document marked C – the subject of this document is Cullinan Care and Rehabilitation Centre - report of transferring patients from Life Esidimeni. Do you know this document? Are you familiar with this document?

DR ERNEST KENOSHI: I have seen this document. I am familiar with this document.

ADVOCATE DIRK GROENEWALD: So you have seen this document – I can see it was also addressed to yourself.

5 **DR ERNEST KENOSHI:** Yes.

ADVOCATE DIRK GROENEWALD: I would just like to take you to page 20 of that document – page 20 of the document, there you will see in bold Cullinan Care and Rehabilitation Centre death stats 2016 to April 2017 – my apologies Justice.

10 **ARBITRATOR JUSTICE MOSENEKE:** No, that's fine – we're okay, thank you – I've been helped out.

ADVOCATE DIRK GROENEWALD: Then you will see there, the full names, ID number, committed from, date committed at CCRC, deceased, place of death and comments. Now, at the bottom there, there is Ghotso Mphofu(?). We are representing the family members of Ghotso Mphofu(?). You will note there that date
15 admitted 15th April 2011, deceased 3rd August 2016. 3 August 2016, you will agree with me, that is within the controlled period for the purpose.

DR ERNEST KENOSHI: I agree.

ARBITRATOR JUSTICE MOSENEKE: Do you agree with Counsel?

20 **ADVOCATE DIRK GROENEWALD:** Thank you and just for the sake of the comments there – admitted at CCRC then discharged to Siyabadinga(?) satisfactory condition and re-admitted to CCRC in an extremely emaciated condition

and finally died at Mamelodi Hospital as a referral from CCRC. This patient's name does not appear on the list of 118 deceased persons. Would you agree with me and do you accept that we can include his name on this list of 118?

DR ERNEST KENOSHI: Counsel and Justice, I was asked by somebody enquiring
5 last night about Ghotso Mphofu(?) and I agree he is not on our list of 118 and I can explain Justice, because the patient was never at Life Esidimeni and that is the reason why, but we should remember that the list of 118 as the Ombud explained on Monday and Tuesday when he was here consists of 108 from Life Esidimeni patients and 10 that were never at Life Esidimeni, but there was an agreement that
10 their deaths – those were associated with the project and there was an agreement to include those ten and they are regarding as being Gauteng marathon project associated deaths and they add up to the 118. If this, if the death of Ghotso Mphofu(?) if there is an agreement Justice that it falls within the scope – I am not adverse to discussions about him added into it as well, if it is the same as the other
15 nine – there were nine others who are included in the 118, who were also CCRC patients and one from Thakelane who are included in the 118 and if there is sufficient evidence and agreement, I am not adverse to including him.

ADVOCATE DIRK GROENEWALD: Well sir, according to me and subject to my colleagues not objecting to what I am going to say, is that Mr Ghotso Mphofu(?) falls
20 into the category of persons to whom this arbitration relate and to whom the remedies applies in terms of reference apply. So, I submit that he must be included in the list.

DR ERNEST KENOSHI: If the submission is to the hearing, I think I would leave it to Justice to ...

ARBITRATOR JUSTICE MOSENEKE: You see, we have evidence before us HOD from the Ombud that the patients were discharged from CCRC on account of
5 people who came through from Life Esidimeni and to make room and space for them, they were discharged to Siyabadinga and subsequently they died – as in the case of Mr Mphofu(?) – do you know about that, as in the evidence?

DR ERNEST KENOSHI: Justice, I am aware of that.

ARBITRATOR JUSTICE MOSENEKE: ...and they are related to Life Esidimeni in
10 the sense that they were discharged at CCRC with the probabilities they would have survived, but once they went to Siyabadinga there were obviously adverse circumstances and they died. In that sense, they are people – patients related to the Life Esidimeni marathon project. That is a proposition that I am enquiring – would you agree with that?

15 **DR ERNEST KENOSHI:** Yes Justice, and as I was saying – his circumstances seems to be similar to the other nine of CCRC, which I have, we have (I shouldn't say I) we, as a department, have previously agreed that they be included and because the circumstances described here are similar – I do agree that we can include this particular person.

20 **ARBITRATOR JUSTICE MOSENEKE:** Thank you. Counsel, you may proceed.

ADVOCATE DIRK GROENEWALD: Thank you very much Justice. Thank you doctor. Seeing that we are on this document, perhaps I can take you to page 4, in

fact Life Esidimeni project is a in bold a discharge and re-admission process – there is fact, it is recorded, what the Justice has just been confirmed and you just now have confirmed – that is stated there, that was the object. You need to make place for the patients from the Life Esidimeni project, so you know you need to discharge
5 some of these individuals. Now sir, if I can take you then to document B, document B...
B...

ARBITRATOR JUSTICE MOSENEKE: We will call it document B provisionally Obakeng(?) will prepare a schedule of all the documents handed in so far and it will all bear a ELAH 1 to whatever – but, for present purposes, it should be fine, but we
10 will number them chronologically and ask all Counsel to use the number sequentially on the schedule, so that we – we will have a flood of documents that are not numbered.

ADVOCATE DIRK GROENEWALD: My apologies Justice.

ARBITRATOR JUSTICE MOSENEKE: That is fine. Please proceed.

15 **ADVOCATE DIRK GROENEWALD:** If you can just turn to page 2, page 2 – just the next page sir. I just want to get to – you will see there, this is an email from Pieter de Jager – it was sent on Tuesday, June 28th 2016, it was sent to Kodini Mashlangu(?) at Gauteng.gov.za, Khanyisa(?) – to a number of individuals – the subject there : CCRC and Siyabadinga NGO – Urgent feedback required – 28th
20 June 2016. I just want to quickly take you through this document ... now, Mr de Jager will come and testify and he was a committee member, Siyabadinga committee member. In this document he describes and he says: *I am on the*

Siyabadinga NGO committee and therefore representing the parents or the guardians or the patients in the care of the current NGO's of Siyabadinga under management of Diane (?). We write to express our concern over reports relating to the discharge and potential combining with another NGO on the same premises.

5 *We have many concerns and we would need urgent feedback with regards to below.* Now here Mr de Jager sets out – oh sorry, I also need to point out that this letter was also addressed to the MEC, Mr Mashlangu, Dr Salubanu and Dr Anamela. In terms of this correspondence Mr de Jager points out a number of concerns and I wish to just highlight a few. He firstly confirms that there has been a

10 lease agreement entered into between CCRC and Siyabadinga for at least four wards to accommodate at least 73 patients. Paragraph 2 under the use of office space – the lease agreement commence on the 1st of May 2016 and is valid for the duration of two calendar years. It says there, the lease agreement was entered legally on departmental documentation with the signatures of the CCRC CEO and

15 Siyabadinga witnesses and then it sets out what's the costs in respect of the rent there. Paragraph 4, he says there, upon his inspection two weeks ago by the members of the committee, it was found that there exist minimal infrastructure for the proper care of these patients - they cannot fend for themselves as they have been certified to be taken under the care of the department of health. The kitchen

20 has a stove with two plates to prepare food for 73 patients, they have one small washing machine to do all laundry and linen etc. of the patients. Since approximately three weeks ago, the patients and other organisations set out about in providing food. Paragraph 6 – Dr Manemela called a meeting to discuss this on

the 13th of June at the Cullinan facilities and did not arrive as scheduled – we were all waiting for her appearance, but to no avail. She then summoned that she had to go to the CCRC for a meeting that same day at the department offices at 12 – she also said that she doesn't want to speak to either the parents, guardians or the media. Now, this is the person responsible – Dr Manemela is personally responsible for the – directly responsible for these institutions and the person responsible for the placement of these individuals – if I am correct.

DR ERNEST KENOSHI: You are correct Counsel.

ADVOCATE DIRK GROENEWALD: I am correct. They don't want to speak to the parents – she didn't want to speak to the parents and ...

ARBITRATOR JUSTICE MOSENEKE: Of course you are here to put the questions.

ADVOCATE DIRK GROENEWALD: Indeed so, indeed so Justice, I just need to take the witness through a few documents – there's three other documents and then my questions will follow.

ARBITRATOR JUSTICE MOSENEKE: ...and then your questions will follow, okay.

ADVOCATE DIRK GROENEWALD: At paragraph 10, Dr Manemela has proposed a meeting this coming 1st July Friday at 12, to discuss the placing of the second NGO on Siyabadinga premises with Diane the CEO of CCRC. Now, Mr de Jager confirmed that this meeting never took place and Dr Manemela never came to address the family members – you don't have any knowledge of this, do you?

DR ERNEST KENOSHI: Counsel, I don't have any knowledge of this.

ADVOCATE DIRK GROENEWALD: Thank you. Now, in that he sets out *we need the following answers to be addressed and deemed urgent* – now he sets out there ten issues, ten issues that they want Dr Manemela argh the MEC to clarify to them
5 – now, none of this has been done. Now then I want to refer you to Volume 8 – the files there, File 8.

ARBITRATOR JUSTICE MOSENEKE: The email is today's email, but when was the document prepared? June 28th?

ADVOCATE DIRK GROENEWALD: Justice, ja – it was just sent to us – the email
10 was just sent to us, so you will see at the bottom there.

ARBITRATOR JUSTICE MOSENEKE: So, the correct date would be which?

ADVOCATE DIRK GROENEWALD: 28th June 2016.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

ADVOCATE DIRK GROENEWALD: Thank you Justice. So Volume 8, at pages
15 2771 – 2771, Volume 8. Thank you doctor, are you there?

DR ERNEST KENOSHI: Yes, I am.

ADVOCATE DIRK GROENEWALD: All right. Are you familiar with these documents? These are minutes of meetings between the department of health delegation, Weskoppies Hospital staff working at Cullinan Care and Rehabilitation
20 Centre for clarifying reasons for their delegation. Are you familiar with this?

DR ERNEST KENOSHI: I am not familiar with this document.

ADVOCATE DIRK GROENEWALD: You are not familiar with this document. Do you have any reason for us receiving these documents from the representatives of the State – do you have any reason to dispute the contents of these documents?

DR ERNEST KENOSHI: No, I don't have any reason to dispute it.

5 **ADVOCATE DIRK GROENEWALD:** Okay. Now I just want to highlight again some of the disturbing issues herein. We note there the date is the 5th of July 2016, the venue is there at Cullinan, the chairperson is there Dr Mufanjane(?) – do you know Dr Mufanjane?

DR ERNEST KENOSHI: Yes, Dr Mufanjane is one of the deputy director generals
10 in the department of health currently.

ADVOCATE DIRK GROENEWALD: Currently?

DR ERNEST KENOSHI: And he was even there last year 2016.

ADVOCATE DIRK GROENEWALD: Is he still in the department of health?

DR ERNEST KENOSHI: He is still in the department.

15 **ADVOCATE DIRK GROENEWALD:** Has there - can you confirm if any disciplinary action has been pending against Dr Mufanjane in respect of this programme?

DR ERNEST KENOSHI: Counsel, no, there is no pending disciplinary action currently.

ADVOCATE DIRK GROENEWALD: Thank you. Now, Dr Mufanjane is the
20 chairperson here – of these meetings. Now, as indicated, this is a meeting with the Weskoppies hospital staff working at Cullinan. It says the introductions were done –

the Weskoppies hospital staff were thanked for helping at the Cullinan Care and Rehabilitation Centre. The department indicated that they recognise that there are no resources to work on at the allocated units. They were also thanked for raising a concern to work with no proper paperwork. Do you agree with me – two major
5 issues are identified here?

DR ERNEST KENOSHI: Yes, that's true Counsel.

ADVOCATE DIRK GROENEWALD: One: no resources. Two: no paperwork. And Dr Mafunjane were informed of that on the 5th of July – it's part of that. Now the concerns of the Weskoppies staff – it actually lists a number of issues – patient's
10 identification, medicine cups, emergency medicine, laundry, infection control, glucose test machine not available in the units, gloves are not available. One of the two clerks were requesting assistance here. In the letter from the legal department that state that the staff will not be held accountable for any irregularities that as they are asked to come and assist in the unit that is not compliant with the basic
15 standards of service. If we turn to page 2773 – Justice, I am getting to my answers.

ARBITRATOR JUSTICE MOSENEKE: You are going to go to your questions?

ADVOCATE DIRK GROENEWALD: Argh, the questions – I've been giving my...

ARBITRATOR JUSTICE MOSENEKE: No, I thought this was a reading class – you've got to go to your questions some time.

20 **ADVOCATE DIRK GROENEWALD:** Yes. Now again, this is the minutes of a meeting of the department of health delegation at Cullinan Care and Rehabilitation Centre. Organised labour ...

ARBITRATOR JUSTICE MOSENEKE: On which page are you now?

ADVOCATE DIRK GROENEWALD: 2773 Justice.

ARBITRATOR JUSTICE MOSENEKE: I've got that, thank you.

ADVOCATE DIRK GROENEWALD: Just two issues I want to highlight here.

5 Again it is the 5th of July, same day, same chairperson. Now here the chairperson indicate that the delegation is here on the instruction of the HOD as there were challenges with the NGO's. From last week there have been a series of visits from the province, including the MEC. There were two NGO's at the Cullinan Care and Rehabilitation Centre – there are issues with Siyabadinga NGO regarding the

10 logistics of the government requirements – there were issues with relation to the status of the NGO. The following paragraph – while legal and HR departments are still solving other issues, service must be protected as emphasized by the chairperson. Patients could be in the care of Siyabadinga, but they are the responsibility of the department. Now, I am not going to take you through all of the

15 further issues, but it is quite clear that the labour has asked quite a number of questions and clarifications and so on, but it is not clear whether or not they received an adequate answer. What we know here is that the MEC visited the department and we know that the HOD was involved and we know that Dr Mafunjane was involved and we know that it has been recorded and under these

20 circumstances there are no medicine. The question then as such – would you agree with me that any person that is in charge of an organisation, that is informed of the circumstances within the organisation, the circumstances at the NGO, the

circumstances at the CCRC – that person must surely have foreseen that there will be consequences for the patients – will you agree?

DR ERNEST KENOSHI: Counsel, I agree fully that the decision you described should raise alarm and then be corrected as soon as possible. I am not sure
5 whether it was done at the time.

ADVOCATE DIRK GROENEWALD: So, you are currently the CEO of Steve Biko and the question, which you have answered, which I just want you to agree with me on – a person which is responsible for that – that person, with the full knowledge that there is no medicine, that person must surely foresee that there will be
10 consequences, and that person must – to some extent – reconcile them with those consequences in light of the fact that nothing has been done about it, wouldn't you agree?

DR ERNEST KENOSHI: Counsel, I agree that in a situation where you need medicine there, there should be medicine. Where you need gloves, there should be
15 gloves – where you need any form of tools or therapy that you need for patients, those also need to be there. As I say, this is now June last year at Cullinan and I'm not sure what happened when these issues were raised with staff from Weskoppies working now at Cullinan and also now with the second letter by members of labour movements by union has raised similar issues. So, I hope that the authorities then
20 at the time responded positively and made sure those resources are available. I'm not sure – I can't answer it.

ADVOCATE DIRK GROENEWALD: The patients or the family members whose loved ones we represent here – they all died subsequent to that. August and October – so, here is July, facts clear – there is no question about the fact that there is a crisis on hand – no question about the fact that the MEC or all the other senior officials knew about it. Now, I have stressed the point and I am going to leave it there, but I just put it to you that those individuals, they must have foreseen that there will be consequences.

LEGAL AID NZAME SKIBI: Sorry Justice.

ARBITRATOR JUSTICE MOSENEKE: Uh-huh

10 **LEGAL AID NZAME SKIBI:** These questions had already been answered twice. So, the emphasis has really been made – if we can just proceed.

ARBITRATOR JUSTICE MOSENEKE: Yes. Counsel, it is so indeed.

ADVOCATE DIRK GROENEWALD: Thank you very much Justice.

15 **ARBITRATOR JUSTICE MOSENEKE:** No amount of repetition would increase the cogency of the issue.

ADVOCATE DIRK GROENEWALD: Thank you very much Justice.

ARBITRATOR JUSTICE MOSENEKE: A point well made, but I think it was conceded by the HOD and lawyers know what you are doing – you are setting up a basis where dolus eventualis and we all are aware of what you are doing, but you have made the point and objection is upheld.

ADVOCATE DIRK GROENEWALD: Thank you very much Justice, I will proceed.

ARBITRATOR JUSTICE MOSENEKE: You could foresee that people might die, you nonetheless failed to take action to remedy the act in truth and in fact people did die – isn't it?

ADVOCATE DIRK GROENEWALD: That is indeed.

5 **ARBITRATOR JUSTICE MOSENEKE:** That is the point that you are making?

ADVOCATE DIRK GROENEWALD: That is indeed Justice.

ARBITRATOR JUSTICE MOSENEKE: This witness wasn't there, he wasn't in charge, but you really want his opinion on a matter that you can argue.

ADVOCATE DIRK GROENEWALD: Thank you very much Justice, I will move on.

10 Now sir, in respect of the accountability issue, because you will agree with me that one of the ways to ensure that these family members find closure is if we can show to them and we can persuade them that listen here, the responsible people had been held accountable – that would be one of the ways that most definitely they will find closure. Would you agree with me?

15 **DR ERNEST KENOSHI:** I would agree with you, in fact that is true.

ADVOCATE DIRK GROENEWALD: Now sir, in your testimony with respect of the individuals that received final written warnings – I would just like to clarify there – those individuals that received the warnings – final written warnings – they pleaded guilty.

20 **DR ERNEST KENOSHI:** Counsel and Justice, yes they did, but we will get to that – the six that have received the final written warnings.

ADVOCATE DIRK GROENEWALD: And there was a formal finding by a chairperson.

DR ERNEST KENOSHI: Yes, it was an external person – it was a legal person, an advocate who chaired the hearings and they delivered those sanctions in the end.

5 **ADVOCATE DIRK GROENEWALD:** Can you just tell us, because I think the family members would just like to know, you know at the disciplinary hearing an employer is entitled to ask for a certain sanction – so, the employer can at a disciplinary hearing say: I am going to present the facts, I am going to show that the employee was guilty, but I will ask that – in terms of our policy or procedure – that the
10 employee be sanctioned with a final written warning or be summarily be dismissed or a written warning. Can you state to us and confirm whether or not the department – what sanction did the department requested to be imposed upon these employees?

DR ERNEST KENOSHI: Counsel, in disciplinary hearings – in accordance with the
15 disciplinary code in the public service, unlike in a court of law – does not allow the employer to say to the presiding officer that this is the sentence that you should impose. So, it was not done in this case. The person leading evidence on behalf of the employer set out what the employee is charged with and they provided some evidence. Obviously, as accounting officer, I don't sit in those hearings, but the
20 presiding officer did provide a report of his findings and also the rational for his sanction and the sanctions as well. Those are the only documents that we are privilege to, but there was no saying by the employer representative that this is the sanction that should be imposed.

ADVOCATE DIRK GROENEWALD: So, just to confirm – the department did not request the dismissal of these employees?

DR ERNEST KENOSHI: No, the department did not.

ADVOCATE DIRK GROENEWALD: The department did not request the dismissal
5 of the employees. Now, the document marked A - before you sir. That is the project
team that worked on this project. Now, you will see on page 2 there: Suggested
sub-committees or functional teams, clinical specialists, mental health unit,
infrastructure, finance, budget, SEM, human resources, EMS, hospital, project
officers – now, are all these individuals would be informed by Mr Mosenoge, that all
10 those individuals have a role to play in this project. So, it is not only the seven
individuals identified in the Ombudsman’s report for possible disciplinary action that
were part of this project. Have you ever conducted an investigation into these
individual’s – their participation in the project, to what extend was negligent, to what
extend it was misconduct, to what extend it was unlawful?

15 **DR ERNEST KENOSHI:** Counsel, no formal investigation have been conducted in
the process, but we are complying and co-operating with the SAPS and SIU, who
are investigating the whole matter and are in a position of – many documents now,
including this one.

ADVOCATE DIRK GROENEWALD: Sir, my question is simple: these people –
20 prima facie evidence – these people were part of a project that was, you know – to
use the words – a huge failure, isn’t sufficient. They were part of it – they had a role
to play in this – I am asking you – from a departmental point, criminal – we will get

to the criminal issues now – from a departmental point of view – you haven't even conducted an investigation to establish what was those individual's roles – what did they do? Is that what you are saying to us?

DR ERNEST KENOSHI: What I am saying Counsel, is that we are investigating
5 together with the SAPS and SIU, so we are not doing it alone – I agree with you, we are not doing it alone. We are doing it with the other organs of State in this matter, so we are part of it.

ADVOCATE DIRK GROENEWALD: I do not and sir, I do not find your answer to
10 be sufficient. Are you saying to me that, well we have given, because your evidence was: we have given everything to the SAPS and we have said to the SAPS: please go and find out who was guilty and who was not guilty and are you waiting for the SAPS to come and inform you whose conduct was wrong and then you will institute or implement institute disciplinary action?

DR ERNEST KENOSHI: Justice, I did not say that we have given over to the SAPS
15 – I have said that we are working with them in this matter and I remember I have said there had been numerous interactions with them.

ARBITRATOR JUSTICE MOSENEKE: Counsel, shouldn't the questions be
though...

DR ERNEST KENOSHI: ... in this matter, so I agreed to

20 **ARBITRATOR JUSTICE MOSENEKE:** I am sorry, I thought you were done.

DR ERNEST KENOSHI: Sorry Justice.

ARBITRATOR JUSTICE MOSENEKE: Your complaint?

DR ERNEST KENOSHI: Okay. No, I am saying we are doing it together – I did not hand it over to them – maybe there were other words that I've used.

ARBITRATOR JUSTICE MOSENEKE: Counsel, you should make it clear what
5 you require from the witness. Are you talking about disciplinary action internally or are you talking about criminal investigation?

ADVOCATE DIRK GROENEWALD: No, no, my apologies Justice, I thought I made the question clear – is that we will get to the criminal issues now – I am asking you that from a departmental point of view, haven't you even conducted an
10 investigation to determine whether or not these individuals – who were part of this project – whether or not they contravened any law whether policy, whether or not their actions with respect to this project, amounted to misconduct, was unlawful?

DR ERNEST KENOSHI: No, as a department we did not we have not instituted any investigations on our own and maybe I need to emphasize that – and I did say
15 earlier that we have been busy with – from March this year – saving lives, concentrating on saving lives, instead of realizing a situation and we have been working with the other bodies to do exactly what you are questioning Counsel.

ADVOCATE DIRK GROENEWALD: So, I am just going to put it to you that – for these families – I mean, how are they supposed to find closure if a number of
20 individuals who were intricately involved in this project, has not even been investigated by the department, but let's leave it at that. Sir, we know now that with you have provided the SAPS with the documents, you've requested them and you

have set up a team – you know that a number of 35 dockets were opened. You know the number of autopsy reports is busy or on the point of being finalised? From the families' point of view, we don't know whether or not – in respect of which patient this is. You know, some of the family members would just like some clarity

5 you know. One of the family members that we represent, they laid a charge already in October of last year – they requested an autopsy, but they don't know what is the outcome thereof. You know sir – that is quite a frustration – is it possible that you can make it available to her to say the docket was opened in respect of this patient, this is the autopsy reports of these patients are currently finalised, in the process of

10 being finalised, inquest was done with regard to the following patients – so that they just know what is the status of this, because to some extend sir – you would agree with me – that there is not really clarity on where do we stand.

ARBITRATOR JUSTICE MOSENEKE: I thought we have agreed that we would – knowing that the Police Officers are involved, with a letter handed out – that we

15 would seek to subpoena the Police – you remember? With the dockets – with the post-mortem reports, then we can encompass them fully.

ADVOCATE DIRK GROENEWALD: Justice, if that's the agreement – on this topic I am not going to push it any further.

ARBITRATOR JUSTICE MOSENEKE: But that is set and done by the State in

20 which they had asked the NPA to give them copies of the post-mortem reports.

ADVOCATE DIRK GROENEWALD: Yes.

ARBITRATOR JUSTICE MOSENEKE: One and two to give a report on what they have done, how far they are with the investigations. If you look at the letter that you have just handed in – the NPA very justly replied and say only a few post-mortems had been done – they are all here. We might consider giving you copies and then
5 they went on to say you must ask them this thing of the aiding officers. How far their investigations are – so the State on its own brought it to the NPA to say *tell us what you have done* and that is the answer before you. So clearly the solution might be and I think it would be to subpoena the Police and they could tell us how far they are.

10 **ADVOCATE DIRK GROENEWALD:** That will suffice if we could do that Justice, then we can move on. No further questions, thank you very much Justice.

ARBITRATOR JUSTICE MOSENEKE: Very well, thank you. Counsel.

ADVOCATE TEBOGO HUTAMO: Thank you Justice Moseneke. Doctor Kenoshi, I have a few questions for clarity that you have been asked already. You will recall
15 from – I think - part of the last questions that you have been asked about 2027(?)

DR ERNEST KENOSHI: Yes.

ADVOCATE TEBOGO HUTAMO: About whether you are aware of [indistinct] and so on by on behalf of the department – do you still recall that question?

DR ERNEST KENOSHI: Yes, and it was put in respect of – I can't remember,

20 **ADVOCATE TEBOGO HUTAMO:** In respect of termination of the project.

DR ERNEST KENOSHI: Yes, I remember being asked that and I did answer that one.

ADVOCATE TEBOGO HUTAMO: Let me take you to a minute of your department, dated 10th December 2015 – that was way before your time, isn't it?

5 **DR ERNEST KENOSHI:** Yes.

ADVOCATE TEBOGO HUTAMO: It is just for information purposes.

DR ERNEST KENOSHI: Okay.

ADVOCATE TEBOGO HUTAMO: It is on Bundle 8 of the documents, specifically pages 2740.

10 **ARBITRATOR JUSTICE MOSENEKE:** 2740?

ADVOCATE TEBOGO HUTAMO: Yes

ARBITRATOR JUSTICE MOSENEKE: Okay, thank you. Yes Counsel.

ADVOCATE TEBOGO HUTAMO: It is an eight page minute and it starts at 2736 about this specific passage I want to draw your attention to is on page 2740 under
15 item: Discussions and Comments

DR ERNEST KENOSHI: Yes, I am there Counsel.

ADVOCATE TEBOGO HUTAMO: The first bullet point – it is recorded, but it was highlighted that there is a need to consult with [indistinct] services - do you understand? The riots – firstly its inclinations that was scratched out and on top it

was written Patients Have – it should be noted that stakeholders will be losing out once the life of the main contract has been terminated – can you see that?

DR ERNEST KENOSHI: I can see that Counsel.

ADVOCATE TEBOGO HUTAMO: So, it seems to me there was an appreciation on
5 behalf of your department then or the executives then that there ought to be some sort of legal advice given to them about the reality of the termination of this [indistinct] especially in relation with the riots. How would the riots and the patients be affected?

DR ERNEST KENOSHI: Yes.

10 **ADVOCATE TEBOGO HUTAMO:** With that in mind – if somebody were to say I volunteer evidence that indeed this legal opinion was sought – you would not dispute that?

DR ERNEST KENOSHI: No, if it was evidence that legal opinion was sought after – yes, I would not dispute it.

15 **ADVOCATE TEBOGO HUTAMO:** But were you aware of any illegal opinion that is on record from the documents that I've been furnished to you?

DR ERNEST KENOSHI: No, I am not aware.

ADVOCATE TEBOGO HUTAMO: So you are not aware of it – thank you. That's that part. Then, earlier on, you had been asked about the issue of the impact of
20 [indistinct] for survivors – that will ordinarily be based on survivors.

DR ERNEST KENOSHI: Yes I did answer when Justice asked me that question.

ADVOCATE TEBOGO HUTAMO: ...and with that being the impact, what are the chances that are on average for a person surviving that impact on survivors? What are the chances of them resuming a normal functioning or other interventions?

5 **DR ERNEST KENOSHI:** Counsel I don't think it would ordinarily be accurately predicted or the effect of counselling either. The main reason why a person needs counselling is to stabilise emotions.

ADVOCATE TEBOGO HUTAMO: Yes.

10 **DR ERNEST KENOSHI:** ...and ensure that the person manages to deal with whatever tragedy or negative circumstances that's personalised experience and to assist that person and the aim is – obviously – to improve the outcome eventually.

ADVOCATE TEBOGO HUTAMO: ...and the chances that someone might not fully resume their normal life functions?

DR ERNEST KENOSHI: Counsel, the ability is a possibility.

15 **ADVOCATE TEBOGO HUTAMO:** Thank you, and the other issue you've been asked today with – it relates to the death certificates as well as the recorded cause of death and so on, which I think was earlier on in your evidence.

DR ERNEST KENOSHI: Yes.

20 **ADVOCATE TEBOGO HUTAMO:** ...and specifically this comes out from which bundles – it is nine and ten – it's Bundles 9 and 10, but you have made mention of the fact that you are precluded from revealing the cause of death in specific stations

and so on. I am not asking you to reveal the cause of death on any of these patients.

DR ERNEST KENOSHI: Okay.

ADVOCATE TEBOGO HUTAMO: The clarity that I seek from you is – most of the
5 death certificates I have gone through, as well as the death notices and so on. In
some of them, it is written *under investigations* – what would that mean? Or would
this be those cases which were referred for post-mortem examinations?

DR ERNEST KENOSHI: Yes. If those are department of home affairs documents,
they do often write [indistinct] on what we regard as a death certificate that are
10 under investigation on provisional cause of death. When there is going to be an
inquest or post-mortem results are being awaited and I think to expedite or to
facilitate burial to happen even though the finality is still being sorted.

ADVOCATE TEBOGO HUTAMO: For record purposes Justice Moseneke, these
appears on – for interest purposes – volume 10 on page 3378 – that is one of the
15 cases, there are a number of them which appears there.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADVOCATE TEBOGO HUTAMO: I have record of them, there are a number of
them. I'll share those with you.

ARBITRATOR JUSTICE MOSENEKE: Those are the cases for referral of post-
20 mortem examinations.

ADVOCATE TEBOGO HUTAMO: No, under investigations.

ARBITRATOR JUSTICE MOSENEKE: Oh, they are under investigation?

ADVOCATE TEBOGO HUTAMO: Yes.

ARBITRATOR JUSTICE MOSENEKE: I saw those on the schedule, yes.

ADVOCATE TEBOGO HUTAMO: Yes.

5 **ARBITRATOR JUSTICE MOSENEKE:** Okay.

ADVOCATE TEBOGO HUTAMO: Then also page 3363 of the same volume and there are many entries that's on the volume. Have you seen that Dr Kenoshi?

DR ERNEST KENOSHI: Yes, I have seen that.

ADVOCATE TEBOGO HUTAMO: You have seen it?

10 **DR ERNEST KENOSHI:** I am on it.

ARBITRATOR JUSTICE MOSENEKE: What specific answer are you looking at?

ADVOCATE TEBOGO HUTAMO: I am just trying to find out if these are those cases that had been referred to the SAPS for post-mortem....

15 **ARBITRATOR JUSTICE MOSENEKE:** My understanding is that everything is under investigation. I think we have been there – I know that a single out sum, but frankly – the Police are obliged to go and investigate everything.

ADVOCATE TEBOGO HUTAMO: Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: Deaths had ensued negligently if not recklessly and unlawfully – that is a matter that concerns the law. Isn't it?

ADVOCATE TEBOGO HUTAMO: Yes.

ARBITRATOR JUSTICE MOSENEKE: Including criminal law.

ADVOCATE TEBOGO HUTAMO: Yes, it is true. Just to close off on this point – I see that the causes of death – there is in some death certificates recorded as natural causes, but when you read the death notices, the immediate cause of death is different to what is recorded on the death certificate. What could be the reason for that?

DR ERNEST KENOSHI: Counsel, refer me to one, so that I can see.

ADVOCATE TEBOGO HUTAMO: Let me refer you – let me see. In Volume 10...

10 **DR ERNEST KENOSHI:** I am on Volume 10, page?

ADVOCATE TEBOGO HUTAMO: Let's go to Volume 10, page – sorry – please go to Volume 9, page 2943.

ARBITRATOR JUSTICE MOSENEKE: Page?

ADVOCATE TEBOGO HUTAMO: 2943, Volume 9

15 **ARBITRATOR JUSTICE MOSENEKE:** Thank you.

ADVOCATE TEBOGO HUTAMO: Are you there? Under Item 77 Part 1

ARBITRATOR JUSTICE MOSENEKE: You are referring to psychosis?

ADVOCATE TEBOGO HUTAMO: Yes and on page 2939, that's the death certificate.

20 **ARBITRATOR JUSTICE MOSENEKE:** Page?

ADVOCATE TEBOGO HUTAMO: 2939 – I am referring you to these as an example – there are many of them.

ARBITRATOR JUSTICE MOSENEKE: There it says natural death – is that what you mean?

5 **ADVOCATE TEBOGO HUTAMO:** Yes.

DR ERNEST KENOSHI: Justice, I wouldn't speak for the department of home affairs, but they often – when the doctors write on the B116-form...

ARBITRATOR JUSTICE MOSENEKE: Yes.

10 **DR ERNEST KENOSHI:** ...the notification of death, they would write a diagnosis – not the actual cause of death, but the illness the person was suffering from, but the home affairs would then write natural causes – they won't write there the actual diagnosis. So, if I had died of diabetes and the doctors wrote I died of sole diabetes, the certificate that I will get that home affairs would generate would say natural causes. I've seen that happening quite often.

15 **ARBITRATOR JUSTICE MOSENEKE:** Yes, okay. Thank you.

ADVOCATE TEBOGO HUTAMO: Let me refer you to a letter in Volume 9 as well, page 3174 – there is an Affidavit there – paragraph 23.

ARBITRATOR JUSTICE MOSENEKE: Paragraph?

20 **ADVOCATE TEBOGO HUTAMO:** 23. The first sentence there, it says Tsepong NGO had funeral insurance for all the patients that was paid for Johan's funeral – is that permitted?

ARBITRATOR JUSTICE MOSENEKE: 3174?

ADVOCATE TEBOGO HUTAMO: 3174.

ARBITRATOR JUSTICE MOSENEKE: What is the question? Just take me to the paragraph please.

5 **ADVOCATE TEBOGO HUTAMO:** Paragraph 23.

ARBITRATOR JUSTICE MOSENEKE: Paragraph 23?

ADVOCATE TEBOGO HUTAMO: Yes. Would that not be relevant for the purpose of your post-mortem reports?

DR ERNEST KENOSHI: I am not sure what the question is Counsel, because I
10 think what they are talking about is that Tsepong NGO, which was a NGO at Atteridgeville – one of those that had been closed so by the way - they say here the NGO had arranged burial insurance, burial schemes for their clients – if I am reading it correctly (I am reading it quite quickly) and that this was what was used to for the burial of this particular patient. What is the question?

15 **ADVOCATE TEBOGO HUTAMO:** The question is – is that permitted in terms of your regulations?

DR ERNEST KENOSHI: No, but remember this was a NGO that – there are burial societies everywhere and they would probably not need the department admin's permission to arrange a burial society cover for people.

20 **ARBITRATOR JUSTICE MOSENEKE:** No, I suppose NGO – here is the cutting end of the question: NGO that is employed by the department insures all his

patients – that is what the Affidavit says and this relates to a Mr Botha, who was kept at Atteridgeville and who died – the complaint of the family member is that this particular NGO – look at paragraph 23 – Tsepong NGO had a funeral insurance for all the patients, that was used to pay for Johan’s funeral.

5 **ADVOCATE TEBOGO HUTAMO:** Yes.

ARBITRATOR JUSTICE MOSENEKE: They thus asked for a signed Affidavit to this effect. We drove to Johan’s funeral with the owner, as a Tsepong NGO. She told me that she initially wanted to open a Youth Development Centre of sorts and had been told by an official that she should rather open a NGO for people with
10 mental illness, because she would then be funded to take in mental health care users. I was surprised of this upon reading this from the Health Ombudsman’s report on the deaths of two people. I suppose the cutting end of that is that there may be NGO’s that are in agreement with yourselves, insures the patients that are on their premises and therefore be entitled to the proceeds out of the insurance. Is
15 that part of the arrangement that you have and is it lawful?

DR ERNEST KENOSHI: Justice, this is not part of the current agreement or arrangements that we have with NGO’s – it is not clear from this paragraph whether this insurance was a burial society – a kind of cover or whether it was life cover and who indicates the beneficiary if it was life cover. So, I think one would need to go
20 into that whether...

ARBITRATOR JUSTICE MOSENEKE: You see a relative was there from the Affidavit and she was told your relative had been buried – how so? Well, we have a

policy that will be paid out, because of his death and then required her to co-operate and signed some document. Well, she opposed to this and she was quite surprised and shocked that her father was insured and that there will be proceeds in the event of his death. Do you find anything improper there or is it something that NGO's may
5 do?

DR ERNEST KENOSHI: Justice, yes it would be improper even if it is a simple burial society to assist families to cover the cost, because that is done without the knowledge and agreement of the family. Well, this is just a personal opinion – it is not a departmental policy, but if it is a burial cover – it should be done in agreement
10 of the family.

ARBITRATOR JUSTICE MOSENEKE: Well, who will carry the cost of one of your patients which you might have placed with a NGO?

DR ERNEST KENOSHI: Normally the burial cost will be borne by the family, except if the family would like assistance. So, as a department of health, we do
15 assist families who are not able financially to bury their loved ones and that is a policy that is practised throughout the country, Normally NGO's are individuals – they are not organisations of the department of health, but they are private organisations and they all run differently Justice and we as a department contract with them to provide certain services that they will provide to our clients or our
20 patients.

ARBITRATOR JUSTICE MOSENEKE: Do you not have other instances of insuring people with mental care, once they are at institutions such as a NGO?

DR ERNEST KENOSHI: Justice, I am not aware of any other such situation – I think it would need proper investigation – what kind of insurance and whether it was done with a family member or any family members and whether it is done properly or not.

5 **ARBITRATOR JUSTICE MOSENEKE:** I can imagine the temptation of wanting to insure all people that you look after, but you will get paid out only when they died.

DR ERNEST KENOSHI: That would be life cover – that would be a different insurance.

ARBITRATOR JUSTICE MOSENEKE: It raises a very ominous setting – isn't it?

10 **DR ERNEST KENOSHI:** Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: Counsel, are you done?

ADVOCATE TEBOGO HUTAMO: Just one more question about this Justice – you testified earlier on about the former CEO of the CCRC that a disciplinary enquiry was formed earlier due to ill health – do you recall?

15 **DR ERNEST KENOSHI:** Yes, I remember.

ADVOCATE TEBOGO HUTAMO: To what date was it postponed?

DR ERNEST KENOSHI: Counsel, I can come back to you about which date is the current postponement date now, because it had been postponed for quite a number of times, because she has been hospitalised quite often.

20 **ADVOCATE TEBOGO HUTAMO:** Quite often?

DR ERNEST KENOSHI: Yes.

ADVOCATE TEBOGO HUTAMO: So, would it be correct that there should also not be a [indistinct] to come and testify at this hearing?

DR ERNEST KENOSHI: Counsel, can you repeat that?

5 **ADVOCATE TEBOGO HUTAMO:** Can you – by virtue of the fact that the disciplinary enquiry had been postponed several times – would that mean she would also not be able to attend this proceedings?

DR ERNEST KENOSHI: To attend this one here?

ADVOCATE TEBOGO HUTAMO: Yes.

10 **ARBITRATOR JUSTICE MOSENEKE:** To return as a witness?

ADVOCATE TEBOGO HUTAMO: As a witness yes.

DR ERNEST KENOSHI: I would not know – I would need to know her current state of health as it is now, but we can find out.

ADVOCATE TEBOGO HUTAMO: Are you aware that whether we are finished with
15 the medical certificates.

DR ERNEST KENOSHI: She has provided medical certificates for her absences in the past.

ADVOCATE TEBOGO HUTAMO: Okay, thank you.

ARBITRATOR JUSTICE MOSENEKE: Very well. Re-examination?

ADVOCATE TEBOGO HUTAMO: Thank you Justice, the State will not ask questions for re-examination. That will be the last witness on behalf of the State in relation to this first part of the proceedings.

ARBITRATOR JUSTICE MOSENEKE: Thank you Counsel. Dr Kenoshi...

5 **DR ERNEST KENOSHI:** Justice

ARBITRATOR JUSTICE MOSENEKE: You were not the HOD when all of this happened? You are now! In fact we know that in fact you are the CEO of Steve Biko Academic Hospital. What do you have to say about all of this? You have the executive head of the department. Now, look where we are – is there anything that
10 you would like to say?

DR ERNEST KENOSHI: Justice, you are asking a very difficult question. Well, if you are asking about the seat and how it is – I can tell you that it is not a seat for the faint-hearted. You would remember that over and above this tragedy, the department of health in any province is not one of the easiest to run at all, because
15 of the pressures and the number of employees – the number of institutions that we have to handle to help the country, I think is an important aspect of taking care of any nation and the department of health in Gauteng is even more so, simply because of the huge numbers – we have the largest number of people living than in any province – we are the smallest in service area and we are squeezed – we have
20 lots of trauma – all car accidents and gunshots that you see on the road end up with us and so, the financial pressures, the resources pressures are high. So, with this tragedy I think it made things doubly worse, because to stabilise the situation posed

the Ombud's report of the 1st of February – itself was a full-time occupation. So, if you have to double it with continuing running the department, and looking after the health of the people of Gauteng – all 13 to 14 million of them. I think it was not easy, and it is not easier now. Things have stabilised, but we have managed – it was with
5 a team also that was wounded, I think Counsel – more than one Counsel referred to project teams, and that project team actually consist of the actual people who should be running the department of health and then, when they become moody bound or they are all afraid and they are all worried and they are all tense and apprehensive, the whole department becomes paralysed and so you will
10 understand why it hasn't been easy to sort out all these other issues.

ARBITRATOR JUSTICE MOSENEKE: Is your staff afraid of you?

DR ERNEST KENOSHI: I hope not Justice. I am not anyone to be afraid of. I don't have that personality, although I wish I had such personality. I deal openly with all my colleagues in the department and indeed with the Gauteng provincial
15 department and the national department of health.

ARBITRATOR JUSTICE MOSENEKE: Do you tell them that it is quite in order to descent from your superior? You see, the question comes from Mr Mosenoge, who was near tears about how he could never find the strength in his worst to speak truth to power – he never had the strength to say this should not happen - instead
20 he implemented this horrendous scheme.

DR ERNEST KENOSHI: I think it will be wrong to have leadership that people are scared of. Yes, leadership needs to be respected, but leadership needs to be

engaged and I think – as government – we would like to be that kind of leadership that can engage by the labour movement, by our staff and indeed and most importantly, by the people that we serve. So, this is not the department of health for the MEC or the Head of Department or the Premier – it's a department of health for
5 the people of Gauteng and we need to portray that kind of leadership.

ARBITRATOR JUSTICE MOSENEKE: Do you encourage them to work with civil society? You see, the MEC in the papers before us, was referred to Section 27 and Sadac as treacherous, sneaky and dishonest when they were pressing on, showing the dangers of going on with this project, drawing attention to the risk and we have it
10 in one of the minutes where she actually called them this civil society organisations are dishonest. Do you encourage them to engage with people and to listen honestly to their true needs, because vulnerable people have needs.

DR ERNEST KENOSHI: Yes.

ARBITRATOR JUSTICE MOSENEKE: Critical needs.

15 **DR ERNEST KENOSHI:** Yes.

ARBITRATOR JUSTICE MOSENEKE: You and me are a little like we are, but there are people that only trust the state and nobody else.

DR ERNEST KENOSHI: Justice, I wouldn't speak for the previous MEC, but as part of leadership from now – I would like to say that I – my doors are always open
20 and I engage freely with those who have anything to say and a lot of the family members have approached me – they have approached the current MEC. Some of the managers have been open, but it hasn't been easy, because as a management

team, we have – and I wouldn't say divided – not been working in full strength up to now, because some of them are still wounded and traumatised by the whole process. Some feel that they could have handled things better – there could be a sense of guilt – there could be a sense of fear and the fear of either anything
5 happening to them – we have spoken and referred to criminal action, that might be taken and I think we have spoken about disciplinary actions here and it is not just here that we have spoken about. So, as a result, the people are not working at full steam as they should, but we encourage everybody to do that and my leadership style is that one of inclusivity – not only our managers, but also the people that we
10 serve.

ARBITRATOR JUSTICE MOSENEKE: The last point that I am engaging you with – you had questions from various Counsel – there was an insinuation that senior state management does not hold to account – those who bridge management codes through law and the constitution and that you're soft on holding feet of people
15 to the fire when it is justified. What do you want to say about that, because I think these are important assurances to the families, that there is not going to be an attempt to have it all behind us quickly. Are you going to insist on full accountability?

DR ERNEST KENOSHI: Yes, Justice, I think it is understandable whenever there is something that has gone wrong, that the community or people out there –
20 members of the public – would like to see justice done as soon as possible and it doesn't only happen in this case, but also with the criminal justice system as well and that is why at times you see citizens taking the law into their hands. Then of course, there are procedures to be followed Justice and so – in all cases –

investigations have to be done properly in so that we don't do anything hastily that would end up working against us. So, investigations are continuing and I think this is part of the process that will help us to find out exactly what happened and it is quite a helpful process – the ADR process and I think all of us – not just government and
5 not just the public, we will be clearer to the answers that we are seeking all along.

ARBITRATOR JUSTICE MOSENEKE: Thank you. For my part, I think I want to be prepared for this and you are diligent, very dedicated and very honest in your efforts – I have no doubt you are going to help us push through all this, because you are a vital partner in this process going on and I would like to thank you for the work you
10 have done up to now – there is much more to be done clearly. That is going to conclude the proceedings for today. I thought about it again and I think I must place on record that Dr Kenoshi and I went to the same school – the same high school at just about the same time and he went to medical school and I went to law school on some island. So I just want to put that on record - somebody must not stumble into
15 this and say oh-oh, they didn't tell us that they grew up in the same village of Atteridgeville and went to the same high school of Mia (?) High and they have known each other for 40 years – so I just want to put that on record and he is a stellar doctor – he is a very.....no, he didn't go to Robben Island – he ran away when he went to Robben Island and he has turned out to be a very good doctor and
20 he runs an academic hospital, called Steve Biko and now acting HOD, but I want all of you to know that we know one another for 40 years and we went to the same school. Thank you very much – we are going to adjourn until Monday at 09:30. Thank you.

