

**LIFE ESIDIMENI ARBITRATION**

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

**SESSION 1 – 3,**

**5Date: 20<sup>th</sup> November 2017.**

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**BEFORE ARBITRATOR – JUSTICE MOSENEKE**

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**10WITNESS**

**DR. MAKGABO JOHANNA MANAMELA:**

**Contents**

15SESSION 1.....2

SESSION 2.....30

SESSION 3.....85

20 NOVEMBER 2017

## SESSION 1

**ARBITRATOR JUSTICE MOSENEKE:** You may be seated. Good morning Counsel, good morning everybody. May we start?

5**ADV PATRICK NGUTSHANA:** The witness that we are supposed to deal with today, it is Dr Manamela. Her attorneys are outside. I just spoke to them just a minute ago. They had indicated that they would be here at 9:30, they are here. I have called them to come in together with their client. I am not sure whether they are still making their way in, but I was told that there is Counsel on her behalf that is  
10going to be addressing us on certain issues which they have raised and I suggest that we give them that opportunity to raise those issues themselves before we can deal with them now. I can't raise them now until they raise them Justice Moseneke.

**ARBITRATOR JUSTICE MOSENEKE:** Very well, let them come in and let's hear what they are, but is the witness going to take the stand in the meantime?

15**ADV PATRICK NGUTSHANA:** That is what I have suggested to them, that the witness must come in and take the stand. Thank you Justice Moseneke, the witness is walking in and the attorney is here, Mr Selepe Dexter, he will be addressing us just now.

**MR DEXTER SELEPE:** Good morning Justice, my name is Dexter Selepe I'm the  
20attorney from ACM Attorneys, we are representing Dr Manemale and we are at present with due respect, waiting for our Counsel who is lost somewhere in Hillbrow

trying to reach this place and Dr Manamela is indeed here to come and address you. There are certain issues which are preliminary and which we request you to consider and Counsel will address you on those issues, thank you Justice.

**ADV LERATA MASHILANE**: Morning Chief Justice.

5**ARBITRATOR JUSTICE MOSENEKE**: Yes good morning.

**ADV LERATA MASHILANE**: Justice Moseneke my apologies for being late, it's still tough for a young man from Limpopo to find his way around JHB. By the way, I am here, my name is Lerato Mashilane I am Counsel for Dr Manamela.

**ARBITRATOR JUSTICE MOSENEKE**: Advocate Mashilane good morning and  
10welcome, we are all ears and ready to listen to you. I believe you have a matter that you want to raise preliminarily or *in limine* before we start?

**ADV LERATA MASHILANE**: That's correct Justice.

**ARBITRATOR JUSTICE MOSENEKE**: But for starters, is your client here?

**ADV LERATA MASHILANE**: Yes indeed.

15**ARBITRATOR JUSTICE MOSENEKE**: Very well.

**ADV LERATA MASHILANE**: Before I proceed further Justice I would like to state on record that I've got instructions to actually request a postponement in this matter and I have reasons to actually convince the arbitrator to an extent that my client be granted such postponement as we will request. I would like to indicate that the  
20basis of that request is based on the fact that up-to-date, my client does not have any information at their disposal to actually prepare herself to stand this arbitration.

We understand and as per my instructions, that there is a volume of document which I've got instructions that it will be just and fair for the person of my client, to be given an opportunity with respect to actually get to understand what is in there and further to that, the difficulty that my client is facing at the moment, is due to the fact that there might be a need of further documentation which she might want in order to reply adequately to the advantage of this arbitration. So it is my submission as per my instructions, that because my instructions is that she would like to stand before this arbitration and answer questions while she had an advantage of having been advised accordingly and also, since this matter is one of public interest, so that the public can get to know each and everything that had transpired. So it is based simply on that particular aspect. My client is happy to stand before this arbitration and give evidence, however the predicament that she is currently facing, it is as what I have brought to the attention of Justice Moseneke.

**ARBITRATOR JUSTICE MOSENEKE**: Thank you Counsel. Let me understand the reasons for the postponement again. Let's try and take them one by one. Okay let's start off with the obvious and the easiest thing. To which, to what periods does your client want the hearing to be postponed? To this afternoon, to tomorrow, to next year, just give me the detail of your application?

**ADV LERATA MASHILANE**: To be straight to the point Justice, that will depend on the volume of the document that is actually before this arbitration, but we may request to stand it down and get further instructions and then we give a clear direction, but however, we would also like to bring it to your attention, that my client might want to request further documentation from the Department of Health, of

which with due respect, we will submit that it might be a bit difficult. That being the case, we will also seek protection from the ARBITRATOR JUSTICE MOSENEKE that the Department actually be of my client's assistance with regards to any information that we may need in future and I don't think that it is something that I can say it here as to how long we will request a stand-down and then I consult thoroughly and at least get to have an advantage of how big the documents are.

**ARBITRATOR JUSTICE MOSENEKE**: So you didn't consult with your client over the weekend, or before today?

**ADV LERATA MASHILANE**: I think that will take approximately- I have just had a look at the document, but I don't want to say something that I want to give a clear indication and direction and I think it would be fair if we can just stand down for 5 minutes and then I get instructions and to get an idea as to how big is the document that needs to be-

**ARBITRATOR JUSTICE MOSENEKE**: Ja there are many other things that you are going to have to clear up. Just for starters, I just wanted to know for what period are you asking for deferment of the hearing, are you looking for a week or 2 weeks, or 10 weeks, or 1 year, or 1 day? Have you made up your mind about that, or do you want instructions on that?

**ADV LERATA MASHILANE**: I want instructions. I want to take instructions and also canvas that with my attorney and that will only take some few minutes, 5 minutes so to say.

**ARBITRATOR JUSTICE MOSENEKE**: Well let's go back to the reasons for the postponement. When was the subpoena served on your client?

**ADV LERATA MASHILANE**: With due respect Justice there are 2 subpoena's that had actually been given to my client-

5**ARBITRATOR JUSTICE MOSENEKE**: No the second one that specified today's date, when was it served on your client?

**ADV LERATA MASHILANE**: The second one was served on the 2<sup>nd</sup> of November.

**ARBITRATOR JUSTICE MOSENEKE**: And today's date is the?

**ADV LERATA MASHILANE**: The 20<sup>th</sup>.

10**ARBITRATOR JUSTICE MOSENEKE**: The 20<sup>th</sup> of November?

**ADV LERATA MASHILANE**: That's correct.

**ARBITRATOR JUSTICE MOSENEKE**: So for the last 18 days, your client knew that today will be a date of hearing right?

**ADV LERATA MASHILANE**: That's correct.

15**ARBITRATOR JUSTICE MOSENEKE**: Okay let's specify the documents. Let's understand what Dr Manemela would like to have at her disposal. You say she needs certain documents to study. What documents are they?

**ADV LERATA MASHILANE**: To be specific to that particular question, it is not clear now because she has not had advantage of the documentation that is before  
20the arbitration and that will be informed by the kind of document and the kind of

questions that she is actually going to face and as I am speaking now, Dr Manemela had been suspended and her laptop had been confiscated at this stage, which as per my instructions, there will be information that she will need to-

**ARBITRATOR JUSTICE MOSENEKE**: Can we go to the point Counsel? I ask you to listen to me please, which documents does your client seek to have access to?

**ADV LERATA MASHILANE**: I have just been given instructions. As I have indicated earlier on when I started to address the ARBITRATOR, that one, my client does not have any information that is before the arbitration. It is my instruction that she will need all the information with regards to all that information and have-

10 **ARBITRATOR JUSTICE MOSENEKE**: Just specify the information Counsel? Talk in the language that you and I know. What information are we talking about? What are your instructions? What does your client seek?

**ADV LERATA MASHILANE**: Apparently Justice, we don't know precisely what are the questions that my client will be faced with and we understand that there is a  
15 volume of documents before the arbitration. As per my instructions from my client, is that she can't expose herself to questions wherein she did not have any background information with regards to the information before this arbitration and I submit with due respect, that it will be just and fair, for my client to have insight of that particular document that is before this arbitration.

20 **ARBITRATOR JUSTICE MOSENEKE**: No but specify that, have you talked to your client, have you consulted?

**ADV LERATA MASHILANE**: I have consulted.

**ARBITRATOR JUSTICE MOSENEKE:** You bring an application for a postponement right, you are obliged to set out grounds why we should incur all these costs and time wasting and further waiting by the families, there must be a cogent reason in law, that moves us to defer the current proceedings and as you know, a postponement is not there for the taking, particularly for a witness. So you are obliged to at least persuade me why you seek a postponement, so the first thing you mentioned, one, you don't know to what date it should be postponed or what is the extent of the period of the postponement. We will give you an opportunity to consult with your client about that. The second is, you say you seek a postponement because of certain documents your client would like to look at. The natural question is, what documents are they? I wouldn't know whether it is fair or not to postpone if I don't know what your client is looking for. So you've got to start right there and tell me what stands in her way to give evidence without the documents, but for us to get there, we must know what documents she is in search for. Would you respond to that?

**ADV LERATA MASHILANE:** Thank you Justice, my answer will be structured as follows, one and I will stand my ground as per my instructions, that currently, my client does not have any document before this arbitration and I will go to the second question. The second question was, what document does, my client need in order to prepare. It is my instructions that the document that will in fact be given to my client and that is the request and I carry instructions for it, after perusal, which Chief Justice has indicated that he is happy to give us an opportunity to consult, then I will know after how long is it going to take to consult with client and then we will know



precisely what document we need. But at this point in time, with respect, it is extremely hard to indicate as to what document my client might need, because that will be determined by the information or in fact, the information that is before the arbitration, that she needs to have an opportunity to peruse and be advised accordingly and then, so I think-

**ARBITRATOR JUSTICE MOSENEKE:** Has your client asked anybody for any document before this morning, before now when you started speaking?

**ADV LERATA MASHILANE:** I would like to bring to the attention of the ARBITRATOR JUSTICE MOSENEKE, that my client had been in contact with the evidence leader one Advocate Ngutshana to be precise and there is a situation wherein my client after having had been given her subpoena, she requested information as to what extent is she expected to answer the questions and any background information-

**ARBITRATOR JUSTICE MOSENEKE:** But did you hear my question Counsel? I say has your client directed any request to anybody before this morning for the documents she now seeks? The answer could be yes, or no.

**ADV LERATA MASHILANE:** It's yes, I would say yes.

**ARBITRATOR JUSTICE MOSENEKE:** In what form and to whom, was the request directed?

**ADV LERATA MASHILANE:** A request had been made to Section 27 wherein a letter was addressed and Section 27 referred my client to the evidence leaders to say that the evidence leaders are the ones who precisely know to what extent will

she be in in fact facing, they are in fact leading her examination in chief and information had been requested from the evidence leaders, but my client raised a concern to say that the subpoena is from Section 27, hence my client requested information in order to prepare. That is when we indicated clearly, that we won't be 5able to proceed without information and secondly, a letter had been directed to the Minister, the Acting CEO of the Department HOD Dr E. Kenoshi requesting information, more to be specific, the laptop that my client was using when she was still under the employment of the Department and that had been clearly indicated that she will need that information in order to prepare for the arbitration. Hence it 10had been indicated from the onset, that we won't be able to proceed with the arbitration today, that communication had been communicated to Advocate Ngutshana and at some point, he requested that my client avail herself which was yesterday at 8:00 at his chambers and that was short notice. Hence we are indicating that the major issues that my client as we speak, she is happy to stand 15before the arbitration to answer the questions, however, she does not have any information as we speak now and it will be unjust, it will be unfair for my client to be expected to answer the questions adequately even to the advantage of this arbitration, because this arbitration has a duty and that duty means that my client should be afforded an opportunity to actually have an advantage of all the 20documentation if she has to request a document which we believe as per my instructions, that there might be more document requests from the Department and further to that, her laptop had been requested which has some information which we

strongly believe without doubt, that it will be important for her in order to prepare thoroughly.

**ARBITRATOR JUSTICE MOSENEKE**: What else do you want to say in support of the application for a postponement?

5 **ADV LERATA MASHILANE**: With due respect Justice, I would like to be granted that opportunity that we stand down and then I will be able to answer fully those questions, I think it will be just and fair and then we will be able to also try to seek information as to how big is the document that is before this arbitration.

**ARBITRATOR JUSTICE MOSENEKE**: But why didn't you get this information, 10 these instructions from your client before the start of today's hearing? Why should all of us nearly 10 lawyers adjourn, including me when you have the obvious duty that you and I know, your attorney knows, you know that you consult with your client at your own time, not during the time of the hearing. Particularly on a simple thing like what documents she needs, how much time she needs, why must you consult 15 now to the inconvenience of all of us?

**ADV LERATA MASHILANE**: Chief Justice, as it had been indicated that my client does not know the volume of documents before this arbitration and it will be fair if one will be given an opportunity-

**ARBITRATOR JUSTICE MOSENEKE**: By what law, just tell me, let's talk about 20 the law a little, by what law is a witness entitled to all the documents before a proceeding? Could you find me the authority for that proposition?

**ADV LERATA MASHILANE:** With due respect, my submission in that regard, taking into account the fact that my client had been implicated, there are some witnesses who implicated her and it would be just and fair, it will be her constitutional right to exercise that the proceedings be fair on her part. She would be able to stand her ground and answer questions adequately, knowing exactly what is it that is expected from her. It would be unfair if my client has to come before this arbitration today without having had an opportunity to peruse the document that the question will actually flow from. For an example, one can say arch-lever file and then there are document number 2000 for an example and my client would be expected to answer questions from that particular question and at this moment in time, it is unfair for my client-

**ARBITRATOR JUSTICE MOSENEKE:** I will try again, let's talk law refer me to authority for the proposition that a witness is entitled to what you claim, not a party, a witness?

**ADV LERATA MASHILANE:** Justice I think I need to lay a ground before I come to the precise question that had been posed, so first and foremost, I would like to indicate that my client is different from most of the witnesses that have come before this arbitration and I will indicate why. That for all intents and purposes, there had been evidence to implicate her and that being the case, my client can be seen as an accused because the possibility is that if there is negative doing on her part, she might face a criminal prosecution and with respect and in the best interests of justice and in the best interests of the public to know and in the best interests of my client as an individual, I submit that on her part, it is different from all the witnesses

and she needs to have an opportunity to prepare thoroughly, taking into account what I have just indicated.

**ARBITRATOR JUSTICE MOSENEKE**: Are you going to make a legal submission or refer me to authority that supports the request you have just made? You are not obliged to, I invited you to do so and if you decline, I will understand. Is there anything else you want to say?

**ADV LERATA MASHILANE**: Nothing else.

**ARBITRATOR JUSTICE MOSENEKE**: I have to get your colleagues to respond. There is a whole panel of legal representatives who have an interest in these proceedings, starting with those who subpoenaed your client. She is here on subpoena, which requires that you answer all questions fully that are posed to her, except if there is reason in law not to answer the question, that is why she is here, she is on a subpoena. You want a postponement and before I make a ruling on the application for a postponement, I am going to hear out every interested party in the matter, that is why I asked you do you have anything else to say in relation to the application for a postponement?

**ADV LERATA MASHILANE**: Currently no, because as I have indicated earlier on, I have indicated that I will be happy may it, please the ARBITRATOR JUSTICE MOSENEKE that at least if we could stand down, I think I would be in a position to answer some of these questions. So I don't want to answer them in a vacuum, I just want to get certainty and then-

**ARBITRATOR JUSTICE MOSENEKE**: So you say you will not be able to complete your application for a postponement until you have talked to your client, is that what you are saying?

**ADV LERATA MASHILANE**: No I do have an application for a postponement and there is an affidavit that has been prepared to that extent. That affidavit it is actually based on the submission that it touches a lot on what I have just brought to the attention-

**ARBITRATOR JUSTICE MOSENEKE**: Would the affidavit be part of the application for postponement?

10 **ADV LERATA MASHILANE**: That is correct.

**ARBITRATOR JUSTICE MOSENEKE**: Can you hand it up?

**ADV LERATA MASHILANE**: I have been told that it still has to be commissioned.

**ARBITRATOR JUSTICE MOSENEKE**: I'm sorry to everybody in here, we have long agreed that we don't boo and heckle with the witnesses please not. Unhappy  
15 as you might be, I ask you to restrain yourselves please and Counsel is entitled to make all sorts of submissions that he is making now. Shall we please observe that? So there is a draft affidavit, it has not been attested to yet, is that it?

**ADV LERATA MASHILANE**: Yes, but that will be attended to should we be given that opportunity to stand down as we have requested, or indicated that it won't be  
20 more than 5 minutes.

**ARBITRATOR JUSTICE MOSENEKE**: Advocate Hassim, it's your opportunity to respond on what has been said up to now? There are two parts to it. One is a request for a stand-down and the other one of course, the main substantive thing, is an application for a postponement so those are the two things which are before us for the grounds which have just been set out now and I am going to give all of you an opportunity to- the question is whether I should give all of you an opportunity now, or allow the stand-down after which hear all of you out.

**ADV ADILA HASSIM**: Justice I would like an opportunity to at least make preliminary submissions in relation to this application that's now being sought, so I would ask to make submissions before we stand down if I may.

**ARBITRATOR JUSTICE MOSENEKE**: Yes of course you may.

**ADV ADILA HASSIM**: Let me begin with the following and that's we don't actually have an application yet. Let's start at the beginning. A subpoena was served on the 2<sup>nd</sup> of November. A subpoena was issued by the Clerk of the Court specifying the date on which Dr Manemela was to appear. Dr Manemela's non-appearance would be contempt, would put her in contempt. We don't have an explanation in my view, as to why we have not been served with a notice of the postponement. There has been no notice that has been provided to say they will be seeking a postponement and there is certainly no evidence to support the notice of motion. So far, the evidence that has been provided by Counsel for Dr Manemela has been from the Bar, so this has taken us completely by surprise. I have just been advised that the lawyers for Dr Manemela have requested my attorney to commission the affidavit that supports the application. It would be a breach of our ethics to do that.

We are a party to this. We are the party that issued the subpoena. We cannot commission the affidavit of Dr Manemela and the application for a postponement. So the first thing I would like to say is that there is no notice. The second thing is that a postponement is an indulgence. It's not as you put it Justice, there for the 5staking and I would like to refer Justice Moseneke to the authority for that and that's National Police Service Union versus the Minister of Safety and Security and the citation is 2000 Volume 4 SA Law Reports at Page 1110 and it's a judgement of the constitutional court and the relevant paragraph is Paragraph 4, in which the court says that a postponement of a matter that has been set down on a particular date, 10cannot be claimed as of right, an applicant for a postponement seeks an indulgence from the court. What I would like to also point out, is that in that case and in all the cases I am aware of in dealing with postponements, the postponement is sought by a party to the matter, not by a witness. There is good reason why the court has taken that approach and that's because it's in the interest of all that there is finality 15to litigation, postponement results in greater costs to the parties, postponement also relates in a waste of time and it has an implication for the fairness and justice to the proceedings. In order for the Applicant to succeed in her request for this arbitration, she has to show good cause. She also has to show why it would prejudice her. I will refer you Justice to two further cases. The first one in relation to good cause 20and that's PRASADH versus General Motors and it's 2006 Volume 1 South African Law Reports at Page 455 and it is cited as a South Eastern Coast local division and it is Page 459 in which the judgement explains the need for good cause. The second judgement, is Myburgh Transport versus Botha 1991 Volume 3, South



African Law Reports 310 Page 310 and it's a Namibian Supreme Court and what was an issue in these judgements, is the weighing up of prejudice and good cause and versus finality of litigation and fairness and justice to the parties involved.

**ARBITRATOR JUSTICE MOSENEKE**: In all of those cases, did it relate to parties?

5 **ADV ADILA HASSIM**: They all relate to parties. I am not aware of any precedent that permits a witness to proceedings to be provided with questions in advance and to be provided with the evidence upon which those questions rest in advance. I am not aware of any such precedent and my invite my learned colleague to provide us with precedent for this very, very unusual request. But most of all Justice, it comes 10 on the morning on which Dr Manemela is due to appear and we are not provided with reasons as to why that is the case, why it was not possible to consult. I am sure the evidence leaders will give an explanation as to their contact with Dr Manemela, why there was not an opportunity to consult beforehand to provide notice to the parties that this application would be forthcoming and to provide an 15 affidavit upon which the application rests. None of that is before us and this is on subpoena, this is not an ordinary witness either. My learned friend is quite correct that she is not an ordinary witness. This witness had to be compelled to compel and our last correspondence with the witness was that the witness would be appearing today at 9:30 and no notice was given of this that we are now dealing 20 with. The other thing that I would like to say is that Dr Manemela is not on trial in these proceedings, she is a witness that is meant to assist the arbitration in order to come to the bottom of what answers we are seeking in this arbitration. The merits of the case have been conceded. What we seek, are answers and that is why we

would submit that Dr Manemela must proceed with her testimony today. Finally, to the extent that this has caused a delay and to the extent that there is any postponement that is granted, we seek costs on a punitive scale from the Applicant for postponement in her personal capacity, thank you.

**5****ARBITRATOR JUSTICE MOSENEKE**: Thank you Counsel. Advocate Crouse?

**ADV LILLA CROUSE**: Thank you Justice Moseneke, as I understand there are two issues before the forum at the moment. The one is the request that the matter stand down and the other, the request that the matter be postponed to an undetermined date and as I understand it, the issue raised, let me start with the first  
10issue, if the matter is to be stood down, of course in the fairness for the witness, we will have no objection to that, but merely to take a brief instruction. As to the application for postponement, we will oppose that and I will try to address this court on two issues in fairness to Dr Manemela and in fairness to the rest of the parties. Now we know that the subpoena was served on the 2<sup>nd</sup> of November, we know that  
15there was a letter addressed to the evidence leaders on the 12<sup>th</sup> of November asking for legal costs, no issues of today's magnitude was raised in that correspondence. The further correspondence that we have received and we have received that only this morning, was a letter by the attorneys for Dr Manemela dated 17 November and that was emailed on the 18<sup>th</sup> of November which is Saturday at  
2013 minutes 7 in the morning, so it's correspondence that reached the evidence leaders according to what we have received, on Saturday morning, stating that the subpoena of Section 27, was not in good faith, but that their witness wanted to tell a story because of all the lies that have been told. Similarly there was an email

forwarded to us dated the 18<sup>th</sup> of November which is Saturday just after 8:00 to Dr Kenoshi asking for the laptop. Now if one looks at the fairness to Dr Manemela in all of this, it is quite clear that she was given enough time to deal with these issues, but she did not. If one looks on the other side to the fairness, to the rest of the 5 parties and to the families that are attending this, it is quite clear that any postponement will be totally unfair to them and as my learned friend has point out, it is for a party to ask for a postponement, because if a witness is not available, that party must ultimately bear the costs, it is never a witness that can ask for a postponement, so in our submission, this court should refuse any further 10 postponement of the matter thank you.

**ARBITRATOR JUSTICE MOSENEKE**: Very well, Advocate Groenewald?

**ADV DIRK GROENEWALD**: Thank you Justice. Justice I would not like to reiterate everything my colleagues have said, but I think they are on the point with their arguments. The long and the short is, Dr Manemela is not a party to the 15 proceedings. She has been subpoenaed to testify, so the application for postponement is based on the fact that she wants to prepare herself for a testimony. The fact is that she is a witness that needs to answer questions. She played a central role in the Gauteng Mental Health Marathon Project, it's unclear to what extent she wants to prepare herself. With all due respect Justice, it seems like 20 this is a fishing expedition to prepare, herself and to evade difficult questions. Unfortunately witnesses are required to answer difficult questions, so there are no exceptional circumstances here and the prejudice towards the family members, by far outweigh any prejudice which Dr Manemela might stand to suffer. The long and

the short of it Justice, is that we are not opposed if Dr Manemela wants an opportunity to consult with her legal representatives, we don't oppose a 10 minute break to get further instructions, but in respect of the application for a postponement, we will vigorously oppose such an application and we reserve the right to peruse the affidavit which we haven't seen up-to-date and to respond thereto if Dr Manemela's representatives persist with this application.

**ARBITRATOR JUSTICE MOSENEKE**: Do I have a proper application before me?

**ADV DIRK GROENEWALD**: There is no proper application before you Justice that is also part of our submission.

10 **ARBITRATOR JUSTICE MOSENEKE**: I mean aside its merits.

**ADV DIRK GROENEWALD**: Indeed Justice, nothing has been filed on either of the parties we haven't even received notice that they will bring this application, so the exact grounds for the application, is extremely vague Justice. We have heard simple issues of fairness, to what extent fairness plays a role it is unclear, because 15 the witness seems to want to peruse the documents. She is either the author of most of these documents, or she is the recipient of most of these documents, or she has been a party and a deponent to affidavits, so it is unclear why she would not have knowledge of the documents that is part of these proceedings. So with all due respect, we cannot understand the argument, but the fact is that it is without merit.

20 **ARBITRATOR JUSTICE MOSENEKE**: And would she be entitled to see every document she has referred to?

**ADV DIRK GROENEWALD**: She is not entitled to see any document and every document Justice, because she is not a party to these proceedings. She is a witness, it's as plain and simple as that and I think that is where the argument, that is the high water mark of the argument, she is not a party to these proceedings, she is a witness, she has been subpoenaed to come and testify and that is the end of the matter.

**ARBITRATOR JUSTICE MOSENEKE**: But while she is in the box and a document is put before her, she will have the opportunity to look at it isn't it?

**ADV DIRK GROENEWALD**: Indeed so Justice and to the extent that she doesn't know the document or she wants to dispute the authenticity of the document, she is entitled to do so I submit as a witness and she is entitled to protect herself to that extent and if she has another document which she says will refute the evidence presented to her, I do not see why she cannot be afforded an opportunity to present a document, so I can see no prejudice to the witness whatsoever Justice.

**ARBITRATOR JUSTICE MOSENEKE**: Very well, Advocate Ngutshana?

**ADV PATRICK NGUTSHANA**: Thank you Justice the facts have been touched by my colleagues. What I want to reiterate here, is that we are correctly dealing with a witness that is one. What is before you now, is an incomplete application for a postponement. An application has been addressed to you that one, an adjournment should be granted so that further consultation should occur with the witness, so that we can be properly addressed and one of the outstanding issues is the affidavit which is currently unsigned, which I assumed would form part of the basis of this

application. Then the other is the actual postponement of the witness testimony that is today. You have been consistent with the fact that the application is incomplete we have not been furnished with particulars as to which date this witness evidence ought to be postponed to, so to that extent, it is still incomplete. 5We are still in the dark. Those are the issues. Then in so far as the question you had persistently asked Counsel on behalf of Manemela as to when were these documents requested and whether they were ever requested and so on, the question has been referred to in brief by my colleague on behalf of Section 27. The only time that we learnt with the specifics that there are certain documents which 10are required, in fact, this was not in reference to documents, it was only on Saturday morning when that email was sent directed for my attention and the same-

**ARBITRATOR JUSTICE MOSENEKE**: Can you put the date on record, Saturday morning?

**ADV PATRICK NGUTSHANA**: That is Saturday morning on the 18<sup>th</sup> of November 15and the letter is dated 17 November. Dr Kenoshi who was copied in the correspondence together with me, also received the same letter with the same contents. I will hand up a copy of the letter, I have made copies. Basically the letter addresses or raises a number of issues which I had summarised to be that the witness complains that she will be ambushed and my response that is to the letter 20immediately thereafter, was that I do not understand why the witness would be ambushed because one, she was a project leader, none of us were involved in this project, she has intimate knowledge of what has occurred or what has not occurred. She was there from the onset, so she ought to know what has been done or what

has not been done as a project leader. Then two, in the event that there is a concern that she may be ambushed, I offered on Sunday morning, I will be available for the day to consult with her to prepare her and the basis for that, was that she was not going to be led by her legal representative, but she would be led by the evidence leaders. Then that being our responsibility, we need to consult with her, but if she doesn't want to consult, if she wants to expose herself to cross-examination, or leading evidence without being prepared, that is entirely up to her and the response to that, was no, curiously the response was-

**ARBITRATOR JUSTICE MOSENEKE**: So you offered to be available on Sunday the 19<sup>th</sup>?

**ADV PATRICK NGUTSHANA**: I offered that Sunday I am available I can consult with you, please provide specific times and revert to my proposal. The response to the proposal was that the proposal was made, in fact the timelines that I was given was too short, so the notice was short, that was refused. Instead, the answer was that no, I will meet with you at 9:30 on Monday morning, that is why we are here today, that is why we are now dealing with an application which is incomplete, that is why we have now a witness who is apparently completely unprepared. Because one, she has refused an offer to consult with the evidence leaders. As a witness, she ought to consult with the evidence leaders Justice Moseneke, so be that as it may, whether you grant the opportunity which I support the opportunity to be granted for her to further consult with her legal representatives, but those are the issues, those are the facts and they can't change Justice.

**ARBITRATOR JUSTICE MOSENEKE**: Who should I say or order to pay the costs of the postponement?

**ADV PATRICK NGUTSHANA**: Precisely there are cost implications involved, huge cost implications involved. Unfortunately it is the government that is going to carry the tab of organising this hearing for today.

**ARBITRATOR JUSTICE MOSENEKE**: The government?

**ADV PATRICK NGUTSHANA**: The government would incur costs as well as the parties as well they will incur the costs, so there are huge cost implications involved.

**ARBITRATOR JUSTICE MOSENEKE**: Ja we are in an arbitration, there are parties to an arbitration, if we were to postpone and they have reserved these days for this week, several days to hear Dr Manemela, who should I order, I am inviting argument, who should I order to pay the costs of the parties for a deferred hearing.

**ADV PATRICK NGUTSHANA**: Justice the witness is here, that is by way of a subpoena that is one and the witness is present for purposes of tendering evidence as a witness and the witness says that no I am not going to comply, or I am not ready to do the purpose for which I was called here and it is the responsibility of that witness Justice. I do know that the witness is not a party, but the witness is here by virtue of a subpoena, there are consequences, if she were to say decide now that I am not going to abide by the subpoena, there are consequences to that. A warrant will be issued. Why can't costs be issued?



**ARBITRATOR JUSTICE MOSENEKE:** Ja you see over the years, the judicial system knew quite well that if witnesses were to have the authority to call for postponements, justice would almost never be done.

**ADV PATRICK NGUTSHANA:** Correct Justice.

5**ARBITRATOR JUSTICE MOSENEKE:** And the parties would prepare themselves for the hills and witnesses could call the party off, they could call the game off by just appearing and say I am not ready, I need more time. Is there anything you want to say by way of submission there, whether our judicial system at all, permits witnesses to seek postponements?

10**ADV PATRICK NGUTSHANA:** Yes otherwise if witnesses were permitted to do that Justice, then witnesses are going to direct proceedings themselves, then the parties are not going to be responsible for the progress of a proceeding such as this.

**ARBITRATOR JUSTICE MOSENEKE:** Hence the question, who bears the cost? The witness wakes up one morning and says I want to read more, who pays those  
15costs?

**ADV PATRICK NGUTSHANA:** The parties do pay those costs, but now, it should be the witness Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you, any more submissions?

**ADV PATRICK NGUTSHANA:** No more submissions.

20**ARBITRATOR JUSTICE MOSENEKE:** Advocate Hutamo?

**ADV TEBOGO HUTAMO**: Thank you Justice, there are two issues which have been raised, the first being a request for an adjournment so that my learned friend on behalf of Dr Manemela should be able to take instructions. The second issue is in relation to a request for a postponement. Justice what appears before us, is that 5the application for the postponement, is not complete and from what my learned friends have already said, they are not opposed to an adjournment being granted to Counsel on behalf of Dr Manemela. What we have also heard is that the affidavit in support of the application is in the process of it being commissioned, so for now, we are also not opposed to an opportunity being given to Counsel on behalf of Dr 10Manemela. What he has said, is that 5 minutes should be able to complete his instruction, so if that can be granted to him, then we will be in a better position to appropriately deal with the application for a postponement. Where we are now, we don't have that application, so if that 5 minutes can be given and then we will be able to resolve the second issue relating to the postponement, because what we will 15be submitting now, will be premature in view of the fact that that application is not before these proceedings, so let's allow the application to be complete in its form and with submissions and we will then be able to resolve the second aspect.

**ARBITRATOR JUSTICE MOSENEKE**: When will the application be complete in its form?

20**ADV TEBOGO HUTAMO**: Well from what we have heard, is that the request has been made that 5 minutes should be able to be sufficient for us to resume and then deal with the application.

**ARBITRATOR JUSTICE MOSENEKE**: So what are you saying to me Counsel?  
You would like to have another bite once we have adjourned for 5 minutes?

**ADV TEBOGO HUTAMO**: Well it can only be appropriate for us to have a response to the application which is complete, so we will not be making 5 submissions in relation to an incomplete application.

**ARBITRATOR JUSTICE MOSENEKE**: I hear the submission. We are back at you Counsel, you have an opportunity to reply in the light of the arguments that you heard from your colleagues?

**ADV LERATA MASHILANE**: That's correct Justice. As I have indicated and my 10 colleagues are not contrary to me being granted that opportunity so that I can be able to answer adequately and deal with these issues once and for all and then, we go forward with this arbitration. So I think it will be fair that I be granted that opportunity to consult with my client and I have just been given an indication, as I have indicated earlier on that 5 minutes, but there is an indication that 10 minutes 15 will suffice.

**ARBITRATOR JUSTICE MOSENEKE**: Very well, but you don't want to deal with any of the other substantive submissions that were made by other Counsels for the parties?

**ADV LERATA MASHILANE**: I will deal with them after our adjournment, because I 20 would like to have an opportunity and give grounds and reasons since it is apparent that my client is different from most, if not all of the witnesses that have to come and give evidence before this arbitration and I will lay grounds and give reasons and

substantiate as to why it will be just and fair to my client to be granted an opportunity to actually prepare herself.

**ARBITRATOR JUSTICE MOSENEKE**: And when you come back, you should also make submissions on the law about witnesses and postponement, I would like you to make submissions about what order I ought to make in relation to costs if a postponement is granted. You must make submissions about how long the postponement should be. I want to hear precise submissions about what documents you say in their absence, prejudice will flow. I want to hear submissions from you about what prejudice you say your client will suffer as a witness and I would like to hear submissions about prejudice to the parties and in particular, to the family members of the deceased, each one of those points I would like to hear from you. So when you take instructions, take full instructions on all of those issues and lastly, I would like to hear submissions about the delay and the reason for the delay, emails flying backwards and forth on the 17<sup>th</sup> and the 18<sup>th</sup> before a hearing of the 15<sup>20</sup><sup>th</sup> and I want an explanation about the delay between the 2<sup>nd</sup> of November and the 20<sup>th</sup> of November, so I just lay them out to you Counsel. I want to hear you on all of those issues which will enable me to properly consider the application for a postponement. We are adjourned for 15 minutes.

**LIFE ESIDIMENI ARBITRATION**

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

**5SESSION 2**

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**BEFORE ARBITRATOR –JUSTICE MOSENEKE**

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10**WITNESSES:**

[Contents](#)

15

20

## SESSION 2

**ARBITRATOR JUSTICE MOSENEKE:** Thank you, you may be seated. Thank you. Advocate Mashilane, are you ready to proceed?

**ADV. LERATA MASHILANE:** Indeed so Chief Justice. I do not know where to start. Should I phrase it myself or the Arbitrator would like to give direction as to where do we start, so that I can deal with specific issues one by one, but I would like if I am given the opportunity to start myself, I will start with the issues that had been raised by my learned colleagues. But before I go there, as I have indicated earlier on that I would like to bring to the attention of the Arbitrator that my client is in fact different from all the witnesses that have come before this arbitration, and I would like to bring it to the attention of the Arbitrator further that there is a possibility taking into account as to how are these proceedings going to unfold, of my client facing a possible criminal trial. I would also like to bring it to the attention of the Arbitrator further, that there is a disciplinary hearing that my client will have to face.

**ARBITRATOR JUSTICE MOSENEKE:** A criminal trial for what?

**ADV. LERATA MASHILANE:** Possibility, possibility.

**ARBITRATOR JUSTICE MOSENEKE:** What possibility, of what crime?

**ADV. LERATA MASHILANE:** I would like to bring to the attention further that there is in fact a decision that had been made, that being the decision wherein my client was actually appealing the decision of or the report of Dr Magabu, of the Ombudsman so to say, and the appeal had in fact been dismissed and it had been recommended that my client should actually attend to the disciplinary hearing that

had been scheduled for the 5<sup>th</sup> until the 8<sup>th</sup> of December, and in that in his ruling, paragraph ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Before you get there.

**ADV. LERATA MASHILANE:** Yes.

5**ARBITRATOR JUSTICE MOSENEKE:** You said to me your client may possibly face criminal charges.

**ADV. LERATA MASHILANE:** That is correct.

**ARBITRATOR JUSTICE MOSENEKE:** I just want you to elaborate on that. Help me understand what charges would they be and about what offence?

10**ADV. LERATA MASHILANE:** There is allegations that she tried to conceal some of the evidence, as per that particular ruling that had been given by the honourable judge Moepe being the Chair of the ad hock tribunal dated the 27<sup>th</sup> day of October 2017. So what, the emphasis of this point is on the fact that it will be fair and just for my client to be given an opportunity to have an advantage of all the document and  
15ensure that, taking into account that the evidence that she is going to submit or to bring to the attention of the arbitration may be used against her, and that arbitration having, the disciplinary hearing as we speak of today, having heard being said, we believe that the evidence that she is going to give will be also used in that particular hearing, and that being the case, I submit and I stand by ... [interjects]

20**ARBITRATOR JUSTICE MOSENEKE:** The evidence she is going to give will be used in which hearing?

**ADV. LERATA MASHILANE:** The disciplinary hearing which she is going to attend from the 4<sup>th</sup> until, scheduled from the 4<sup>th</sup> until the 8<sup>th</sup> of December.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**ADV. LERATA MASHILANE:** And I submit that taking into account that currently 5as we speak there are two parallel sittings, being this arbitration and there will be also the disciplinary hearing, wherein they are based on the same facts. I submit that that makes the case to be different and that makes my client to be different from all the people who have come to give evidence before this arbitration, and I will also indicate in conclusion that as one of my learned colleagues had indicated 10that ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** And the difference is that she has to go before a disciplinary hearing. Is that the submission?

**ADV. LERATA MASHILANE:** That is the submission.

**ARBITRATOR JUSTICE MOSENEKE:** Any other difference?

15**ADV. LERATA MASHILANE:** The difference, another difference it is what I have already indicated. That possibility of a criminal prosecution, and ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** I asked you what possible charges might she face. I am here to get an answer.

**ADV. LERATA MASHILANE:** I think I have already answered that.

20**ARBITRATOR JUSTICE MOSENEKE:** I apologise. Would you tell me that again?



**ADV. LERATA MASHILANE:** Thank you Justice. There is an allegation that my client had concealed evidence and the Honourable Judge indicated in his ruling as well that ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Let us reduce our words. The criminal charge you say she might face, is a charge on concealment of evidence. Is that it?

**ADV. LERATA MASHILANE:** Yes. So that being the case, because that might be a decision to be taken at the disciplinary hearing, should that be the decision. However, my submission is that as I have indicated earlier on that my client is different from the rest, is that she need to get the advantage of the information and prepare thoroughly so that she comes before this arbitration and assist the Arbitrator to reach a fair and a just decision. My submission as it has been indicated that the issue of the delay ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Your client will be asked to testify about things in her knowledge.

15**ADV. LERATA MASHILANE:** That is correct.

**ARBITRATOR JUSTICE MOSENEKE:** She will not be asked questions about all sort of things out there. It will be about decisions she made as an office bearers. It will be about matters within her personal knowledge, like any other witness. Why are the documents necessary? What documents? You are yet to tell me what documents are they.

**ADV. LERATA MASHILANE:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** What are they? What documents?

**ADV. LERATA MASHILANE:** Currently I cannot tell this arbitration the precise document that will be requested by my client.

**ARBITRATOR JUSTICE MOSENEKE:** I gave you an opportunity to consult so  
5that you can gather that information.

**ADV. LERATA MASHILANE:** I have consulted and I will indicate why. As we  
have indicated that will depend on the decision of the, of Justice as you ... we  
request information which is before the arbitration for my client to actually have an  
advantage to consult with her legal representative and be advised accordingly, and  
10that being the case, we submit that it will be fair and just taking into account what I  
have brought to the attention of the Arbitrator that the possibility of criminal charges  
might be there. So that being the case, I submit that it makes my client exclusive in  
the sense that her evidence need to be well considered and I further submit that as  
it has been indicated, it will assist the Arbitrator to have more insight of what  
15precisely have happened, and my client is actually happy to give evidence, but her  
request is that she need to have information. She need to consult which I submit  
that it will, it is fair under the circumstances. All the files, I see there is quite a lot of  
files here, and I have indicated earlier on what if the question comes and then ...  
[interjects]

20**ARBITRATOR JUSTICE MOSENEKE:** She may not be entitled to any of those  
documents. Your client is a witness. She is not a party to these proceedings. Is it  
not so?

**ADV. LERATA MASHILANE:** That is correct.

**ARBITRATOR JUSTICE MOSENEKE:** Where have you ever heard a witness saying give me all the documents you have? I want to see them before I tell you what is in my personal knowledge.

5**ADV. LERATA MASHILANE:** But I was to address that particular ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Well, you got to do that. The day is running out. You have got to do that.

**ADV. LERATA MASHILANE:** Thank you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** And I have invited you to give me legal  
10propositions that supports the request you are making, to help me arrive at a just  
decision. Where ever have you heard a witness say give me all the documents you  
have, I want to see them beforehand, because why? You have to have some  
compelling reason to get us there, and I am listening. She might be charged you  
say for concealing said information so alleged. I have listened to that, and what  
15makes her again different, she has got a pending disciplinary hearing that will come  
up some time in December. I have heard that. I suggest you make all of your  
submissions. Let us hear the other parties and let me make a ruling.

**ADV. LERATA MASHILANE:** Ja, and another issue that I want to bring to the  
attention of the Arbitrator, is that there is actually the case, that being the case of  
20the Supreme Court of Appeal, the Law Society of Cape of Good Hope being the  
Appellant and Michael ... [inaudible]. So in this case ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Law Society and who?

**ADV. LERATA MASHILANE:** It is the Law Society of the Cape of Good Hope and Michael ... [inaudible]. It is a Supreme Court of Appeal judgment.

**ARBITRATOR JUSTICE MOSENEKE:** Yes. The full reference?

5**ADV. LERATA MASHILANE:** The neutral citation is the parties as I have indicated, and then 341/2012 (23 SACA 36) and the date is the 28<sup>th</sup> of March 2013. That is the date wherein it had been delivered. So what I will like to bring to the attention ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** That is authority for which proposition?

10**ADV. LERATA MASHILANE:** It is with regards to the issue of a possible criminal charge that my client might face. However, in this case, this gentleman Michael ... [inaudible] was an attorney, wherein there was allegations that he misappropriated the trust monies. However, there were civil litigation against him and in the same time there were criminal litigation against him. Wherein he made an application to  
15stay the civil proceedings against him, and the court granted that the Law Society of Cape of Good Hope, having brought the application to strike him off, appealed that decision. That is when it went to the SCA, and the SCA indicated that in a situation wherein one is compelled to actually state something, and that being the criminal case, that the respondent in this matter has actually been granted, because there  
20was a counter application wherein the court granted that, actually dismissed the application of the Law Society, indicating that while a civil trial is running and there

is a pending criminal trial, they should stay the civil matter pending the finalisation of the criminal trial.

**ARBITRATOR JUSTICE MOSENEKE:** Was ... [interjects]

**ADV. LERATA MASHILANE:** Currently there is no criminal trial ... [interjects]

5**ARBITRATOR JUSTICE MOSENEKE:** Is your client in the same position as Mr Rendau?

**ADV. LERATA MASHILANE:** No.

**ARBITRATOR JUSTICE MOSENEKE:** Is she a party?

**ADV. LERATA MASHILANE:** My submission is that no, but the inference that I 10am or my submission with regards to that is that there is that possibility and it brings us back to the issue of my client having to come here without having being prepared and give evidence, and I submit on the point of law taking what I have brought to the attention of the Arbitrator, that that being the issue currently, I submit that it is fair.

15**ARBITRATOR JUSTICE MOSENEKE:** Let us assume your point is right in law, why did your client not prepare in the last 20 days, 18 days to be exact?

**ADV. LERATA MASHILANE:** My submission with regards to that, my client from the onset indicated that ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Which onset, 17<sup>th</sup> of November? Is that 20the onset?

**ADV. LERATA MASHILANE:** With due respect Justice Moseneke, there was actually a situation wherein my client with the assistance of the attorneys would actually get hold, I have indicated earlier on that there is a letter that had been addressed to Section 27, and to be specific with regards to that letter, she wanted to know exactly what is it that she will be facing, and it takes us back to my client should be given such an opportunity. She is a witness of which I understand that will be incorporated or flow from my submission with regards to her being a different witness under the circumstances. Further to that she is facing a DC and it could possibly prejudice her. The DC it as I have indicated will stand on the 4<sup>th</sup> until the 8<sup>th</sup>, and every evidence that she is going to give without doubt, will also be used in the DC. That being the case it put my client in a different standing wherein the initial submission and request that the postponement be granted and information be granted ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** And is this a departmental disciplinary inquiry?

**ADV. LERATA MASHILANE:** That is correct.

**ARBITRATOR JUSTICE MOSENEKE:** Has she been otherwise criminally charged?

**ADV. LERATA MASHILANE:** She had been charged.

**ARBITRATOR JUSTICE MOSENEKE:** No, has she been criminally charged, in the criminal justice system?

**ADV. LERATA MASHILANE:** Not at all. Not at all.

**ARBITRATOR JUSTICE MOSENEKE:** You are talking about an inquiry, a disciplinary inquiry within the department.

**ADV. LERATA MASHILANE:** That is correct.

**ARBITRATOR JUSTICE MOSENEKE:** Very well. Are there any further submissions? I have to hear your other colleagues and we have to ... [interjects]

**ADV. LERATA MASHILANE:** Ja. With regards to the issue of the time there have been engagements, but at some point it was discovered that the subpoena did not have adequate information wherein a letter had been addressed to Section 27 as well as the evidence leaders. That is wherein it actually flow from that, and takes us back ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Have you ever seen a witness ask or request for further particulars on a subpoena? Have you ever seen such a thing?

**ADV. LERATA MASHILANE:** I will submit that this witness as I have indicated is different.

**ARBITRATOR JUSTICE MOSENEKE:** Okay.

**ADV. LERATA MASHILANE:** And I still stand my ground.

**ARBITRATOR JUSTICE MOSENEKE:** No, no I am asking a different question. As a matter of law, have you ever seen any witness write to the issuer of the subpoena requiring further and better particulars?

**ADV. LERATA MASHILANE:** No.

**ARBITRATOR JUSTICE MOSENEKE:** So why would such a procedure be appropriate in this case?

**ADV. LERATA MASHILANE:** It will be appropriate due to the fact that during the arbitration there is actually witnesses who said something against my client and that being the case, my client need to adequately respond to those allegations. That is the only chance wherein my client will have to deal with this.

**ARBITRATOR JUSTICE MOSENEKE:** She will have ample opportunity, is it not so? I am here presiding over these proceedings, and every witness has to be treated fairly, and that is an entitlement that the law puts out there. That is why there is a presiding judicial officer or an Arbitrator.

**ADV. LERATA MASHILANE:** Ja, but what I am trying to indicate is that my client have never had a chance to actually cross-examine and the only way ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Has never had a chance to do what?

**ADV. LERATA MASHILANE:** My client as per the proceedings, the arbitrations, will not have a chance to cross-examine and the only chance wherein justice can prevail on her side is to be given that opportunity to answer adequately to those allegations and it will only be in a situation wherein she is given the information and be given enough time to prepare and reply adequately thereto, and she is I will submit that she is portrayed as an accused or a criminal. Hence there is ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** She is portrayed as an accused or a criminal?



**ADV. LERATA MASHILANE:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** By whom?

**ADV. LERATA MASHILANE:** As I have indicated, that the people who have come before this arbitration have actually made adverse statement against my client and misrepresented fact, and that being the case as I have said and I will still stand my ground that it will be fair that she be granted an opportunity to consult with her legal representative and be able to reply ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** But you are here. He has got an attorney, he has got an advocate. You knew for the last 18 days this day was going to dawn and you had the opportunity to consult all the way. What opportunity, can you explain that to me. Opportunity to do what?

**ADV. LERATA MASHILANE:** Unless the Arbitrator decide otherwise, but my instructions as I have indicated that though there is an impression that my client is not going to be given the information that she requires, being the information before the arbitration, it will be just and fair for her to actually ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Have you, how long have you been practicing? Have you ever heard anybody ask a court give me all the information you have before you before I testify? I have invited you to give me authority that entitles a witness to that? She can meet all the legal representatives she require, and before time she could ask for information if she so seeks and apprise herself to the best of her ability, but on the day that she has to testify, she testifies. So where ever have you, how do you support the procedure you suggest I adopt?

**ADV. LERATA MASHILANE:** My submission was based on the fact or on the submission that I have made that this is actually that my client is a different witness altogether and I will not be taking that submission any way further.

**ARBITRATOR JUSTICE MOSENEKE:** Sure.

5**ADV. LERATA MASHILANE:** That will be the decision of the Arbitrator.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you. Do you have any other further points ... [interjects]

**ADV. LERATA MASHILANE:** I have other issues with regards ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Submissions to make, yes.

10**ADV. LERATA MASHILANE:** To the issue of prejudice to parties, and everyone including my client, I submit that the arbitration has a duty to actually hear everything and the unfolding of the event and my client as I have indicated earlier on, she is happy to do that, but need time in order to do justice so that even the family can get to know exactly what transpired, which I submit that it will be fair and  
15it is also one of the duties that this arbitration ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Do you not think in the witness box she can tell me exactly what she needs on her own? She can tell me why she cannot answer any particular question and she can tell me why, what happened in the matter. Why is that prejudicial?

20**ADV. LERATA MASHILANE:** The prejudice is based on the fact, one is that there is this disciplinary inquiry and there is this arbitration based on the very same fact,

and that being the case it makes my client exclusive, because the evidence that she is going to give ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Your client can tell the truth in this hearing and can go and tell the truth in the disciplinary inquiry, and that is what witnesses are there for.

**ADV. LERATA MASHILANE:** That is correct.

**ARBITRATOR JUSTICE MOSENEKE:** And if they feel they are likely to be incriminated, the law protects them.

**ADV. LERATA MASHILANE:** And that is ... [interjects]

10**ARBITRATOR JUSTICE MOSENEKE:** And any witness can scream and say I require protection against self incrimination. The law is quite clear on that, and the remedy is not to refuse to testify. We know that. As a matter of law. Is it not so Counsel?

**ADV. LERATA MASHILANE:** And with due respect I agree to that.

15**ARBITRATOR JUSTICE MOSENEKE:** Sure, thank you.

**ADV. LERATA MASHILANE:** However ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** But do you have any further submissions? We are spending quite a bit of time on this.

**ADV. LERATA MASHILANE:** I want to close. I think no further submission.

**ARBITRATOR JUSTICE MOSENEKE:** Yes. Remember, you are entitled to make your submissions. I just want us to move to another one. So I do not want to stop you in your duty. Very well, we have had and the affidavit, has the affidavit been handed up? Are you going to give me an affidavit at some stage?

5**ADV. LERATA MASHILANE:** I was made to understand that there is one before you.

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

**ADV. LERATA MASHILANE:** I beg leave to hand it in, ja.

**ARBITRATOR JUSTICE MOSENEKE:** We should mark the affidavit what?

10**ADV. LERATA MASHILANE:** And maybe, sorry to interject. Maybe lastly we did not deal with the issue of cost Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**ADV. LERATA MASHILANE:** Which I think is one of the aspects which needs to be dealt with. My submission in that regard is that the department or the state had  
15accepted liability in this case, and the reason behind my client seeking postponement as a witness, was for her as we have indicated, that she would like to give evidence and details and unpack all the things to the best advantage of all the interested parties. That is the basis upon which the application is founded.

**ARBITRATOR JUSTICE MOSENEKE:** And that submission is welcome Counsel.  
20You can see it makes me smile to know that somebody in that important position is prepared to come and tell us what happened, because we cannot conclude the

arbitration unless we hear the key actors. So I am happy to hear that submission what I await is the but. Is there any but to the submission? Your client is ready and prepared to give, to testify in full detail. That is what you have just told me.

**ADV. LERATA MASHILANE:** Ja, that but is that a foundation of this application. 5 Adequate time to prepare, and if the decision is that she is not going to be given any information, that is fine. But we are happy, as we have indicated that we requested the laptop from the department and that laptop had not been provided to her, and that is one of the sources of information which has imported document for her to actually reply to everything that she will be subjected to adequately, and further to 10 that should we be granted a postponement, that an order be made that the department if she need any information which we are going to request, I know we will request the information. She will be of our assistance and grant us that information. It is not to her own advantage.

**ARBITRATOR JUSTICE MOSENEKE:** You are talking about costs, you know 15 that. Now you are talking about something else. Counsel.

**ADV. LERATA MASHILANE:** Yes. With regards to cost I have made my ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Who should bear the wasted cost of the postponement?

20 **ADV. LERATA MASHILANE:** My submission is that ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Who is going to pay all these advocates and for the days which are already reserved, all of this week when we are going to hear Dr Manamela? Who is going to pay their costs?

**ADV. LERATA MASHILANE:** Unfortunately my submission on that aspect is that the state has to pay the costs, and I will give the reason why as I did. The reason is because the state had accepted liability, and the postponement is not being sought to prejudice anybody. It is in fact made to an extent that it will, that particular time will be utilised effectively to the assistance of the Arbitrator to reach a fair and just decision or findings. That is exactly ... [interjects]

10 **ARBITRATOR JUSTICE MOSENEKE:** Does the affidavit tell us whether a request for the laptop was made before this weekend?

**ADV. LERATA MASHILANE:** No, a request for the laptop has been made. There is a letter that has been attached thereto. Just for reference ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Take me to that letter. I see paragraph 11  
15 tells me that the letter was addressed to Dr Genoshi on the 17<sup>th</sup> of November.

**ADV. LERATA MASHILANE:** Justice, my submission in that regard, other than this letter that had been attached thereto, in the applications they had not been made. This was in fact the second request for that laptop. The first request was made in respect of her appeal at the tribunal. Hence we have indicate, it was stated  
20 in this one. It is actually a bit of ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Counsel, show that to me. Just take me to the ... [interjects]

**ADV. LERATA MASHILANE:** In the application that ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** In the affidavit before me, just show me what request was made for the laptop.

**ADV. LERATA MASHILANE:** It is attachment number D, that being the letter dated the 17<sup>th</sup> of November addressed to Dr Genoshi. That paragraph 1 read that:

*“Dr MJ Manamela, our client, has been subpoenaed to appear before the alternative dispute resolution on the 20<sup>th</sup>, to testify on issues in the subpoena pertaining to the death of mental health care users.”*

And in paragraph 2:

10*“Dr Manamela requires access to her work laptop which was taken away from her when she was placed on precautionary suspension. The laptop contains crucial information which will assist Dr Manamela in her preparation, both for disciplinary hearing and for putting together a report or a statement to be presented to the AGR Arbitration.”*

15**ARBITRATOR JUSTICE MOSENEKE:** Is the date on the letter correct, 17 November 2017?

**ADV. LERATA MASHILANE:** That is correct. Hence I have indicated that this was a second letter that have been addressed, wick I do not have it in my possession.

20**ARBITRATOR JUSTICE MOSENEKE:** Where is the first letter? You s ay it is not attached to the affidavit.

**ADV. LERATA MASHILANE:** it is not attached and it has not been alleged in this affidavit.

**ARBITRATOR JUSTICE MOSENEKE:** Is there anything else that you would like to say?

5**ADV. LERATA MASHILANE:** No, there is nothing else other than that particular letter, being the first letter that had been, wherein a request had been made can be made available Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Now I am looking at the notice of motion. That request to doctor, of the laptop was on the 17<sup>th</sup> of November I gather, and the  
10record of witnesses what does that mean? You mean the record of their evidence right?

**ADV ADILA HASSIM:** Sorry Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Was that ever requested?

**ADV ADILA HASSIM:** I am sorry. I am very sorry to interrupt, but we have not  
15been provided with a notice of motion. So we are unaware of your, relation to what your questions are directed.

**ARBITRATOR JUSTICE MOSENEKE:** Have the parties not been given a copy of this notice of motion?

**ADV. LERATA MASHILANE:** I thought because we requested someone to make  
20the copies I thought that had been given to them. My apologies. Yes, Justice. May the question be repeated again? It was with regards to the issue of paragraph 3.



**ARBITRATOR JUSTICE MOSENEKE:** Yes. You want to talk to your attorney, you have got to excuse yourself so you do not leave me hanging.

**ADV. LERATA MASHILANE:** No, I am not. I am not. What I will bring to the, to your attention Justice with regards to that is that at least even if not all the ...  
5[interjects]

**ARBITRATOR JUSTICE MOSENEKE:** I asked you the question did you ever request for the record of proceedings?

**ADV. LERATA MASHILANE:** No. In short no.

**ARBITRATOR JUSTICE MOSENEKE:** Yes. Many other people who are not even  
10parties here have asked for the record and we have made it available. So you have never asked for it until in this notice of motion, in other words this morning. Anyway, do you have any further submissions to make?

**ADV. LERATA MASHILANE:** No further submissions.

**ARBITRATOR JUSTICE MOSENEKE:** Alright. Counsel, we have to repeat ...  
15[interjects]

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

**ARBITRATOR JUSTICE MOSENEKE:** Is there any further submissions to make in light of the fresh submissions?

**ADV ADILA HASSIM:** Yes, there is Justice Moseneke. Beginning with the  
20affidavit. At paragraph 9 of the affidavit Dr Manamela confirms herself that the subpoena was served on her on the 2<sup>nd</sup> of November 2017 requiring her to appear

on the 20<sup>th</sup>. Her first correspondence to any of the parties was a full ten days later. Requesting information it would seem to assist her in her preparation as a witness. A full ten days later on 12 November she addressed a letter to Mr Monyana Ragege of Section 27. None of the correspondence, there is no evidence of 5correspondence by Section 27 in response that is attached to this affidavit. At paragraph 11 Dr Manamela says that she wrote to Dr Genoshi 17 November. So 15 days now after the subpoena is served, a full 15 days first contact is made with Dr Genoshi to say she would like her laptop. Moreover, if one has regard to that letter, it states in paragraph 2 and it is Annexure D to the affidavit:

10*"It would be appreciated if the laptop could be made available to Dr Manamela by twelve noon on Monday 20 November 2017."*

So by twelve noon today. Fully knowing that she was required to testify at nine thirty am today. I would also ask Justice Moseneke to have regard to Annexure E to the affidavit. Annexure E, the second page and halfway down the page it is the 15email information which says sent Saturday 18 November. So while the letter is dated 17 November, it would appear that the letter was actually sent on Saturday 18 November to Dr Genoshi and copied to my learned colleague, the evidence leader. I would also like to draw Justice's attention to other aspects of this, but I do not want to make too much of it. It is however relevant that Dr Manamela in paragraph 2.8 20and 3 in particular of the letter 17 November 2017, make a series of allegations against Section 27, but this letter was never provided to Section 27 or copied to Section 27 and there was no opportunity to respond to that. At paragraph 15 of the affidavit, it is the first time we have some legal submission as to the legal basis for

the request for a postponement, and that is with reference to the constitution and Dr Manamela's right to a fair trial. That is at paragraph 15. However this is a wilful misapplication of the rights. It is a right that is available to arrested, detained or accused persons. The fact that there may be disciplinary proceedings pending against Dr Manamela is not relevant. Those are not criminal proceedings. I had asked you Justice not to have any regard therefore to the reliance on the right Section 35 of the constitution on the right to a fair trial, although the rights has not been mentioned by numbers, but I am assuming that that is the right that Dr Manamela is referring to. Finally Justice in relation to the Randell case that we have been referred to in argument. I am afraid to say that this is either a wilful misunderstanding of the reading of the judgment in Randell. That case involved proceedings against an attorney. Civil proceedings in which the attorney had already been charged separately with criminal offences. So there were criminal offences, sorry criminal proceedings pending which is not the case here.

**15 ARBITRATOR JUSTICE MOSENEKE:** And the attorney was a party.

**ADV ADILA HASSIM:** Secondly the attorney was a party to the proceedings, which is not the case here. Third, even in relation to the merits, assuming that Dr Manamela could pass the hurdle of being able, the hurdle of the fact that there are not criminal proceedings that are pending, even if Dr Manamela could rely on some ponandra of the right to say that it would not be fair. At paragraph 16 of te Randell judgment the court made it very clear that it is really in circumstances where there will be an element of compulsion in the proceedings, in the civil proceedings. For example in the insolvency act that one should take into account the rights of the

party not to incriminate themselves in later criminal proceedings, but it is specifically in proceedings where there is an element of compulsion. Where the proceedings are of a nature of an interrogation like in the insolvency act, and that is in paragraph 16 and then I would suggest that ... [interjects]

5 **ARBITRATOR JUSTICE MOSENEKE:** And is it good enough in law to say maybe one day somebody might decide to charge me, and therefore I have a right against self incrimination? Is that what the law projects?

**ADV ADILA HASSIM:** Not. In fact ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Could you speculatively say one day I  
10 might be charged and therefore I am not going to answer questions?

**ADV ADILA HASSIM:** Absolutely. If I may refer you Justice to paragraph 23 of the judgment, and if I can just quote from it. I think that is the ratio and the court says the following:

*"In my view after having gone through the case law, in my view the approaching  
15 day this is sound and does not more than reiterate the approach of the previous decisions, namely that a stay will only be granted where there is an element of state compulsion impacting on the accused person's right to silence. It is true that the judges in those cases do not specifically refer to compulsion, but this is a matter of deduction made in the way the general principle was applied in matters which  
20 primarily involves sequestration proceedings. The development and formulation of the principle occurred in the context of sequestration proceedings."*

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**ADV ADILA HASSIM:** *“There is no authority to support the proposition that the principle is of application in ordinary civil proceedings, not involving an element of compulsion.”*

And that is at paragraph 23 of that judgment. So it does not ... [interjects]

5**ARBITRATOR JUSTICE MOSENEKE:** And the oppositions you will find in ... [inaudible] in the Constitutional Court.

**ADV ADILA HASSIM:** Indeed. This is well accepted by our courts and no more needs to be said about that. The only factor that is, the only factor in common between this judgment and the proceedings here is that in that case Randell was an  
10attorney, was an officer of the court and both ethical and public obligations as a result and in this case Dr Manamela too as a public official bears public duties under the constitution. If there is any communality between that set of facts and proceedings and these, it is that they both bear a public ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** It includes the duty of transparency.

15**ADV ADILA HASSIM:** Section 195.

**ARBITRATOR JUSTICE MOSENEKE:** The duty of accountability.

**ADV ADILA HASSIM:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** All of those bind every single public official.

20**ADV ADILA HASSIM:** That is so Justice. I am afraid to say that Dr Manamela's conduct today is consistent with the evidence that has been placed before this

hearing already, which is a violation and a repeated violation. This is perpetuating the violation of Section 195 of the constitution and it is not only contemptuous of the Arbitrator and of the court process, but it is contemptuous of the families who have made themselves present for the hearing and those are my submissions, as I would urge you Justice to dismiss the application in entirety. Not only in relation to the postponement, but the late and belated request for recordings and the like that I have seen for the first time now in the notice of motion a few minutes ago and to do so with costs. Thank you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you. Advocate Crouse?

10 **ADV. LILLA CROUSE:** Thank you Justice. I will try to be brief. There is just two issues that I want to address at this stage. The first is there is no indication why this must be heard in such an urgent basis. Dr Manamela caused her own urgency and therefore on that basis alone this belated application must fail. The second continues, and my learned friend has touched on this. The issue of the Randell  
15 court case. Can I give the court the citation? It is 2013 (3) South African Law Reports 437 and it is an SCA decision. Unfortunately I think there is a misreading of this court case as my learned friend had said. What happened in this court case is that the attorney sought a stay in the local division and the SCA has overturned that. So the SCA has not granted the stay of the civil matter. That is the first point,  
20 and the SCA raised three issues in my submission which is important. The first is that prejudice is not a broad issue. You have to show what your prejudice is, and the SCA said specifically:

*“The attorney denies any wrongdoing.”*

So what prejudice could there be in any of these proceedings for him to place his defence on record, and it is the same with Dr Manamela here. She denies any wrongdoing, so what prejudice could there be for her, and the second issue is that what my learned friend has just touched on, and that is the huge public importance of the matter, and for those two issues, the SCA had said the matter should proceed. The court has not asked again on the cost issue, and I am very reluctant to make any submissions without giving Dr Manamela a proper right to answer perhaps in writing, because we have got the ... [inaudible] principle, but we also have the frivolousness of this application. So for that reason I am not making any submissions that this court should make a ruling now. She is not a party to these proceedings. If the court finds perhaps that the state should be reimbursed or that she must make submissions, at a later stage the court specifically ask her to make submissions, then I submit that would be the proper approach. Those are our submissions.

15 **ARBITRATOR JUSTICE MOSENEKE:** Well, I have invited her Counsel to make submissions on costs.

**ADV. LILLA CROUSE:** That is so, but Justice this application has been holy unprepared. I submit that perhaps a little bit more should be done in the interest of justice. As the court pleases.

20 **ARBITRATOR JUSTICE MOSENEKE:** Very well. Advocate Groenewald?

**ADV. DIRK GROENEWALD:** Thank you Justice. Justice, I think my colleagues have dealt with the law on the issue and we stand by our previous submissions.

The application is without basis and we submit that it should be dismissed. It is now three hours into the day, and Justice it is opportunity that we have missed to hear evidence. So ja, the long and the short Justice, we say that there is no legal basis for the application. It should be dismissed, to the extent that the Justice would be inclined to provide the postponement or grant the postponement. We have taken note of the fact that my learned colleague has made no submissions in respect to when they want the matter to be postponed. It is now we have heard about the disciplinary proceedings. We have heard about possible criminal proceedings. So it seems like it is not an application for postponement Justice, it is rather an application to set aside the subpoena in totality. That is how we see this, because although the Dr Manamela says that she is inclined to testify and she wants to testify, she says well, I do not want to testify now because I have disciplinary proceedings and possible criminal proceedings. So she is not telling us when will be the exact date when she will be available to testify, and the long and the short of the story is there is a subpoena, she is required to testify and that Justice, we submit is the end of the matter.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel?

**ADV TEBOGO HUTAMO:** Thank you Justice. As we have indicated before the adjournment, there is no indication as to when is the matter supposed to be postponed to, but what we want to submit is that Dr Manamela's appearance before these proceedings, is in respect of a subpoena which has been issued, and it has been acknowledged that such a subpoena was served on the 2<sup>nd</sup> of November. No steps were taken seeking the type of information that is now being requested. Apart



from that, the subpoena itself, it is clearly state what is it that is expected of her and if I can just read it for the record. The subpoena is attached to the affidavit which has been presented as Annexure C. The second page of that subpoena clearly states that:

5 *"She is required to appear in person before these proceedings today, the 20<sup>th</sup> of November at nine thirty. In order to testify in regard to all matters within her knowledge relating to the issues before the arbitration. Relating to the Gauteng mental health marathon project. Including the circumstances leading to the discharge of mental health care users from the Life Esidimeni mental health care*  
10 *facilities."*

This much has been made clear from the subpoena itself. It is quite unclear what other information is sought from the witness, and with regards to the aspect relating to the request for the laptop, this much has been canvassed and it has been admitted by my learned friend on behalf of Dr Manamela that to the extent that the  
15 letter requesting the laptop is dated the 17<sup>th</sup> of November 2017, that letter was only transmitted on Saturday the 18<sup>th</sup> of November 2017 and there is no explanation why has such request not been made soon after the service of the subpoena on the 2<sup>nd</sup> of November. Be that as it may, the department after receipt of such a request, has made means to ensure that that laptop is made available in order to assist to the  
20 extent that Dr Manamela request such a laptop. The laptop will be made available, but what we do not understand is why was such a request not made prior to these proceedings. From the letter requesting the laptop, it requires the department to make that laptop available by mid day today, when the subpoena already has stated

that her testimony was required to have commenced at least nine thirty this morning. So the timing of the request is just unfortunate, but we have done everything to make sure that the laptop is available, and arrangements of her access to that laptop will be made with the department. We should just put it on record that it is indeed available.

**ARBITRATOR JUSTICE MOSENEKE:** And the record of proceedings Counsel, is it not? The other people have asked for the record of proceedings, and other witnesses and they have been given the record. Is it not so?

**ADV TEBOGO HUTAMO:** Indeed so. From, even if the subpoena which she has been called upon to come before these proceedings, having been served on the 2<sup>nd</sup> of November, Dr Manamela was quite aware that there was an attempt requesting her to appear before these proceedings. That much occurred long before the 2<sup>nd</sup> of November, and we do not get any explanation why steps have not been taken in order to secure it be the record of the proceedings, it be the laptop sought to be relied upon. All that is being sought is that the matter has to be postponed to unidentified date. Basically like what is being sought is that like her appearance should be postponed indefinitely, because we do not know exactly when will she be ready to be able to come before these proceedings, and apart from that we should make it clear that it is not about her choice to come before these proceedings. There is a subpoena that has to be complied with.

**ARBITRATOR JUSTICE MOSENEKE:** And you cannot set it aside by simply asking for a postponement can you, and you are a witness and not a party.

**ADV TEBOGO HUTAMO:** Indeed so. She is not a party. All that is called upon her is to testify on matters within her knowledge. That is all that is being requested from her. The request of the documents is neither here nor there. Questions will have to be answered about what she has knowledge of, her involvement, and what needs to be highlighted is that she is requested to come before these proceedings by virtue of the position that she is holding in relation to matters before these proceedings. She is the director for mental health Gauteng project. So the subpoena is in relation to that capacity that she is holding so that she can shed light and information pertaining to the matters before these proceedings, and it is on that basis that we would request that the application should be dismissed and she should be called upon to take the stand and deal with matters as and when they are put to her. Those would be our submissions in relation to the application for a postponement. We submit that there is no basis for this belated application.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you. Thank you Counsel, Advocate Hutamo. Yours is a right to reply which implies that it will be on issues that have a reason from submissions made by your colleagues. Would you keep it to that please? We need to proceed.

**ADV. LERATA MASHILANE:** Thank you Justice. The first issue will be with regard to the issue of public interest. It had been canvassed that this matter is of public interest and the picture that is being painted, it is as if my client does not want to testify. I have indicated that my client is happy to testify. I however request more time in order to prepare and the second issue I would like to highlight is the issue of my client being a director of mental health yes, but she was a deputy project

manager to these issues, and she was four level behind. There is an HOD, there is a deputy director general, there is a director general, and some of the decision there is a political head. So her duty was actually to ensure that there are things to ensure that the decision that had been taken at the end of the day are complied with. Hence on that ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Should we not hear that from your client? What point are you making now? You are supposed to address me in reply to the points raised by the other Counsel opposing your application.

**ADV. LERATA MASHILANE:** The point that I am making is that it should not be one sided. I submit that it is also in the best interest of justice that she be granted that particular postponement in order to ensure that all the issues are ventilated properly which is the main objective of this arbitration.

**ARBITRATOR JUSTICE MOSENEKE:** Any other point?

**ADV. LERATA MASHILANE:** And other issue which I will, because I think there is no prejudice and there is no one to object, is with regards to the time frame. So I will just like to indicate that as per my instructions that if ever there is any other, four weeks will be sufficient for my client to prepare. Unless if the Arbitrator rules otherwise. Unless there is less time. So, but that is my instructions.

**ARBITRATOR JUSTICE MOSENEKE:** What do you say to the point that was made by Advocate Hutamo that Dr Manamela knew even before the 2<sup>nd</sup> of November that there was an attempt to procure her presence here and she had therefore more than 18 days in which to prepare herself?

**ADV. LERATA MASHILANE:** Ja, with regards to that, this is his submission and we do not know as to where those submissions are founded. So my submission is that ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** No, no in the affidavit you have attached two subpoenas. The first one and the second one. So Counsel simply says by looking at the initial subpoena she would have known many, many weeks before today that there is an attempt to procure her attendance and all I am inviting you is to respond to that submission if any. You are not obliged to.

**ADV. LERATA MASHILANE:** Just a moment.

10 **ARBITRATOR JUSTICE MOSENEKE:** Look at Annexure A of your papers. In other words submission is that she knew a month ago, that she has had a month from the first subpoena to now. Anyway, do you have any further submissions in reply?

**ADV. MALULANE:** No further submission other than the point that I have highlighted with regards to the issue of the public interest. That it should not be one sided, and this request for postponement is also to the advantage which we have highlighted earlier on, that in fact my client is happy to testify. However, this application Justice.

**ARBITRATOR JUSTICE MOSENEKE:** This morning, at the start of the proceedings there appeared before me an attorney and Counsel who introduced themselves as acting on behalf of Dr Makgabo Johanna Manamela. They sought to postpone these proceedings in order to permit Dr Manamela to prepare herself in

her subpoenaed role as a witness. Upon the objection that the application was defective, the party, Dr Manamela's Counsel sought an adjournment, and on resumption I was presented with a notice of motion as well as a founding affidavit purporting to support the relief sought in the notice of motion. The relief sought in the notice of motion reads as follows:

*"To grant postponement to the Applicant. Applicant being Dr Makgabo Johanna Manamela. Two, ordering the Department of Health Gauteng to release the laptop of Dr MJ Manamela. Three, ordering the record of witnesses."*

I presume that means record of the proceedings or of the evidence of witnesses:

*10 "That have testified before the arbitration and the application seeks costs to be paid by the state other than further or alternative relief."*

I have exercised immense patience this morning, in listening to submissions which have been made to support the application, and I have again looked at the affidavit which has been filed in support of the application. In my view the application is baseless, both on the facts that it purports to rely on and as well as on the law and consequently the application is dismissed fourth with and Dr Manamela is directed to take the witness stand immediately.

I presume that means record of the proceedings or of the evidence of witnesses who had testified before the arbitration and the application sees cost to be paid by the State other than further or alternative relief. I have exercised immense patience this morning, listening to submissions which have been made to support the application and I have again looked at the Affidavit which had been filed in support

of the application. In my view the application is baseless – both on the facts that its purpose to rely on and as well as on the law and consequently the application is dismissed forthwith and Dr Manamela is directed to take the witness stand immediately. Evidence leader, would you call Dr Manamela to take the witness stand please? I should have added that any further reasons, if necessary, will be provided in the full reasons of the award. To all here present, we have long – I agree, I will not tolerate any haggling or any cheers and witnesses provide their evidence. Dr Manamela should be given all the space and all the respect to deliver her testimony this morning – this afternoon I should say. Will you put your full names for the record please?

**DR MAKGABO JOHANNA MANAMELA:** My name is Makgabo Johanna Manamela, I am appointed by the Department of Health as a ...

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

**DR MAKGABO JOHANNA MANAMELA:** So help me God.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you. Counsel Ngutshana.

**ADV PATRICK NGUTSHANA:** Thank you Justice Moseneke, my colleague, Adv Yina will now leader.

**ADV NONTLANTLA YINA:** Thank you Justice. Good afternoon Dr Manamela.

**DR MAKGABO JOHANNA MANAMELA:** Good afternoon.

**ADV NONTLANTLA YINA:** Will you please state your qualifications for the record?

Will you please state your qualifications?

**DR MAKGABO JOHANNA MANAMELA:** Okay. I am a professional nurse, trained in psychiatry – I did masters in psychiatry, psychiatric nursing actually. I also studied 5at Wits for public health and I also did my doctorate in psychiatric nursing and I did other courses in nursing – nursing education training community and other administration qualification I have achieved

**ADV NONTLANTLA YINA:** Thank you. Will you also state your experience – your work experience?

10**DR MAKGABO JOHANNA MANAMELA:** My work experience – I've worked in many hospitals, starting with mental health nurse, then mental health nurse in advanced level, advanced mental health specialist. I also worked in hospitals as CEO of hospitals – I also managed mental health care unit in Limpopo [inaudible 1:14:07] as the head of nursing years ago before I came to the position of CEO. I 15also managed mental health services in all my positions that I was until I was also managing the mental health or appointed director mental health care services in the province since 2010 to date.

**ADV NONTLANTLA YINA:** It is common cause then that during the period spending from 2015 to 2016, you were the director for the Gauteng department of 20mental health?

**DR MAKGABO JOHANNA MANAMELA:** Yes.



**ARBITRATOR JUSTICE MOSENEKE:** Sorry Counsel, will you repeat those dates again?

**ADV NONTLANTLA YINA:** During the period spending from 2015 to 2016.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

5**ADV NONTLANTLA YINA:** Her evidence Justice is that she was appointed in 2010 – is this correct Dr Manamela?

**DR MAKGABO JOHANNA MANAMELA:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Director from 2010, but also director during the relevant period?

10**ADV NONTLANTLA YINA:** Yes, thank you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** ie. 2015 to 2016?

**ADV NONTLANTLA YINA:** Thank you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** I follow that, thank you.

**ADV NONTLANTLA YINA:** Thank you. Ma'am, it is common cause that sometime  
15in 2015 there was a project that the department of Gauteng mental health embarked on, which is commonly known as the Gauteng department of mental health marathon project – are you familiar with that project?

**DR MAKGABO JOHANNA MANAMELA:** I am not familiar with the name of that  
project, but I am familiar with the project that was termed: *Termination of contract of*  
20*mental health care services between Gauteng Province and Life Esidimeni and*

having been stating that – if it pleases the judge – I would like to first take you through before I can answer all your questions. Through what happened at all the events chronologically before I can answer the questions.

**ADV NONTLANTLA YINA:** If you please – if you could repeat the name of the project, according to you – before you start? What was the project, according to you, what was it called again?

**DR MAKGABO JOHANNA MANAMELA:** The project was never called Gauteng mental health marathon project – that was not the name of the project. Everyone who took part in the project, including the Ombudsman – before I go to Ombudsman he put the project into the name of the project and the project was termed: *Termination of contract relationship between Gauteng Department of Health and Life Esidimeni and upscaling of community based mental health services* – that is the name of the project that I know. However, marathon – within this project there was a marathon – NGO marathon project that (maybe I will take you through later), but this is the name of the project – input into by all the input team that were appointed including the leadership of the department.

**ADV NONTLANTLA YINA:** And, this was the same project that was conceived in 2015 and executed in 2015 and 2016?

**DR MAKGABO JOHANNA MANAMELA:** Yes, it is the same project - yes.

**ADV NONTLANTLA YINA:** Yes, please go ahead.

**ARBITRATOR JUSTICE MOSENEKE:** ...but, just before you do doctor – [inaudible 1:17:41] the hierarchy as I understand where you sat in the order of the management hierarchy.

**DR MAKGABO JOHANNA MANAMELA:** Thank you Justice – where I am standing, I am the director. There is the political head in the department, who assist in making decisions that are relevant for politicians or political ...

**ARBITRATOR JUSTICE MOSENEKE:** I am talking of the particular ...

**DR MAKGABO JOHANNA MANAMELA:** I was the director of mental health care services in Gauteng province.

10**ARBITRATOR JUSTICE MOSENEKE:** Yes, thank you.

**DR MAKGABO JOHANNA MANAMELA:** Before me, I was reporting to the chief director, hospital services and also she was reporting to the deputy director general, clinical services ...

**ARBITRATOR JUSTICE MOSENEKE:** Who was the chief director at the time?

15**DR MAKGABO JOHANNA MANAMELA:** At the time, the chief director I was reporting to on my mental health care services was Dr Mazimeza, but the chief director I was reporting to with relation with the termination was Mr Masinoogi as the project manager.

**ARBITRATOR JUSTICE MOSENEKE:** In the normal course you report to Dr  
20Mazimeza.

**DR MAKGABO JOHANNA MANAMELA:** Yes Justice.

**ARBITRATOR JUSTICE MOSENEKE:** ...but, on this project you reported to Mr Masinoogi?

**DR MAKGABO JOHANNA MANAMELA:** Yes Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Okay. Take me up the ladder and then you can tell us what happened – and who is then your – the person that you report to beyond the chief director – or to whom does the chief director report?

**DR MAKGABO JOHANNA MANAMELA:** The chief director reports to the deputy director general, clinical services and then the deputy director general, clinical services ...

10 **ARBITRATOR JUSTICE MOSENEKE:** Who was it?

**DR MAKGABO JOHANNA MANAMELA:** During the project?

**ARBITRATOR JUSTICE MOSENEKE:** 2015 2016?

**DR MAKGABO JOHANNA MANAMELA:** Dr Lebethe

**ARBITRATOR JUSTICE MOSENEKE:** Dr Lebethe. Right – let's go up the ladder.

15 **DR MAKGABO JOHANNA MANAMELA:** And Dr Lebethe will report to the head of the department, who was Dr Selebano – who will report to the politically – the MEC Mahlangu.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you. Please proceed. You wanted to tell us the story in your own words? Then thereafter Counsel will then ask you 20 questions as she may deem necessary - we are listening.

**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel. I must start by saying: I am saddened by all the death that took place in our services and from the first day that I heard of any patient who died in the first NGO and including the hospital. I was devastated and I felt that pain that anyone who lose the parent or the loved one would feel and I have no better words to can explain the pain that pain and that hurt and the anger based on how things was unfolding during the process that the family might have and I know it was a difficult time for the family, but the summary that I will give to this proceedings will try to clarify all what has happened. Gauteng department of health had a service level agreement with Life Esidimeni for a period of about 36 years – I think we all know about it – and it terminated its contract relationship during 2015 2016. Like all other mental health services in the province, I knew when we had the pronouncement, even before the termination letter was sent that that process will fall within my unit and I have some few documents for the Justice, that I have attached that indicate when the termination letter was sent it was in line with the service level agreement. As it is stated in the service level agreement – it is attached here to Annexure 2.

**ADV NONTLANTLA YINA:** Justice, if I may please? Dr Manamela, usually this arbitration would give witnesses an opportunity to state whatever they want to state at the end of their evidence. We will assist you – if you allow us to lead you by way of questioning and then if you want to add more clarity, you can do so during the questioning and you can also – at a later stage – if you feel there is something that we omitted or that you want to state, you can do so. In that, your evidence will be more structured – if you don't mind?

**DR MAKGABO JOHANNA MANAMELA:** Thank you – I think I might. I want to give you what has happened and then you will ask me – I will still go back if we need clarity. I don't want to be in a situation where I touch there and there. So if I put it – I didn't put a lot – it is just to give you clear – I know you all are aware of what is happening in terms of termination. I might be boring some of you, but I wanted you to get it from me, because I was also part of the project team. So I have not reading each and everything – I am just touching things that I prevailed important – if I am allowed?

**ARBITRATOR JUSTICE MOSENEKE:** Counsel, I am on the side of the witness on this one – I want to allow the witness to say it like she knows it to be.

**ADV NONTLANTLA YINA:** Thank you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** ...and I ask you to track all that and go back and fill up the gaps as you deem necessary.

**ADV NONTLANTLA YINA:** Thank you Justice.

15**ARBITRATOR JUSTICE MOSENEKE:** It is not always unuseful to hear the witness tell her story in full and of course, the questions will follow.

**ADV NONTLANTLA YINA:** Thank you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** So I allow you to proceed the way you find it convenient Dr Manamela.

20**DR MAKGABO JOHANNA MANAMELA:** Thank you Justice. I have also tried to answer the questions that I have heard over this proceeding, although some I

couldn't hear them, but pardon me if I mention my answers to mischaracterisation of the facts that were indicated. For example – the first thing that I should have said to this - it was on the 9<sup>th</sup> that the professor Mahlaliburu(?) the Ombudsman for help presenting. He has indicated that when he was asked about the records and the 5 documents – and he has indicated that I had a plan that was not signed, I didn't use that document. I only used the witness information and that – explain to me – why he didn't name the name of the project properly, but took a certain strategy within the project, like NGO marathon and use it as Gauteng mental health marathon – I said I'll go to the NGO marathon and I explained to him what it was all about, but 10 that also explain why, because if we give evidence, we give him verbal evidence and we also gave him written evidence. The written evidence that was signed, which was also included here for the judge as Annexure 6. So, after the service level agreement was terminated – we were all aware that the MEC has been talking about it in the media, but maybe before I can say that – when the department – 15 most of the people who are here – knew that the department was under very financial constraints. At a certain stage, on every year, we will reprioritise the services for the department – it happened in the financial year 2015 2016 when the reprioritisation was made, there were a lot of some constraint and the other areas were looked into and it was found that some of the areas will have to have more 20 constrict management or finance or try to see how we can manage the issues. As a result of that, the MEC presented in the budget speech – the budget speech of 2015 2016, where he said, I'll quote: *we have started with the close containment initiatives by reviewing outsource services, that will include Life Esidimeni, because*

*the services was for department, not done by department, in particular those whose at Selby Park for step down facilities and Life Esidimeni for long term psychiatric beds. The second point: with regard to Life Esidimeni, the department has already commenced with the reduction of the number of beds by 20% in the 2015 2016 with the view to exceed this arrangement at the end of 2016 2017, which was the last year and the MEC was all vocal in the media and everybody was hearing that. And considering the above, as the director for mental health – knowing that the work that the MEC was pronounced will fall within my unit. Me and my team – we had to commission a task team before we go to project team and the task team...*

10 **ARBITRATOR JUSTICE MOSENEKE:** Sorry, was the budget speech in parliament in the legislature?

**DR MAKGABO JOHANNA MANAMELA:** Yes, it was in the legislature.

**ARBITRATOR JUSTICE MOSENEKE:** ...and it referred to Life Esidimeni?

**DR MAKGABO JOHANNA MANAMELA:** Yes, it referred to Life Esidimeni.

15 **ARBITRATOR JUSTICE MOSENEKE:** Please continue.

**DR MAKGABO JOHANNA MANAMELA:** Even before that – even 2014 towards the end of 2014 2015, when we closed the budget – around January – a letter was written to the Premier to indicate that we are going to reduce the beds of Life Esidimeni by 20% and that was informed by the mental health strategy 20/20 vision, which we developed after we have given the mental health policy from the national. That strategy was saying: Life Esidimeni had to reduce the beds on the early basis by 200 beds, but the very same year, as we were closing we still had problem in



Life Esidimeni to have managed to reduce beds, because mentally ill patients at times they come and go and come again – so, we were still at that. So, unfortunate for us, there was a dispute about the 20% that was informing Life Esidimeni to reduce the beds, because they were still working on the 200 beds that they were working on. Thereafter they declared a dispute and the dispute was resolved – we carried on. We carried on with the task team which I was leading at that time. In that task team there were Life Esidimeni managers, there were clinicians of the department representing all the hospitals, psychiatric hospitals. There were clinicians representing all the community, community mental health care services. However, in the beginning the task team is also [inaudible 1:28:58] – in the beginning as the task team we realised – we look at the reduction and were will, because if this patient some of them will go back to Life Esidimeni even when discharged or with the NGO. So, we started to plan – our plan from the beginning included an infrastructure unit. We had Mr Kubanjhela, who was assisting us with the renovations, so that we renovate the hospital, we renovate the old hospital that were not being in use, so they were part of the task team. I must state that during the task team Chief Justice, it was not so easy for everyone to realise that. However, MEC had a meeting every Friday with the CEO, where I was not part. It happened that as she meet with them and explaining things, the CEO must try to understand better the termination process.

**ARBITRATOR JUSTICE MOSENEKE:** Who had the meeting the MEC?

**DR. MAKGABO JOHANNA MANAMELA:** MEC use to have, Miss MEC Mahlangu use to have a meeting for service delivery every Friday improvement. So the CEO's

of mental health unit were part of that, so they had, they are psychiatrist also understand the process of the termination. And during that time there were minute here I know they were giving me task time as I was leader of the task team. And there was actions that was suppose to be done, to the unfortunate part SOS 30 was still an task team. Then when we discussed everything from the meetings we noticed that some of the information for example we had 5 hospitals that are not used that we wanted to renovate so that it can be used by the NGO. We applied for that ...

**ARBITRATOR JUSTICE MOSENEKE:** The people allowed you to speak to free will so to speak?

**DR. MAKGABO JOHANNA MANAMELA:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Like all stories when you tell them, you got to tell the timelines please.

**DR. MAKGABO JOHANNA MANAMELA:** Ok.

**ARBITRATOR JUSTICE MOSENEKE:** In November this year warra, warra, warra... In March this year – so that the story flows in a way that we understand.

**DR. MAKGABO JOHANNA MANAMELA:** Ok. Between March – between January...

**ARBITRATOR JUSTICE MOSENEKE:** Because a work of evidence lead us normally but I've agreed that you say your peace and be asked questions later. So help us with dates and names in a clear way so that we all follow the evidence.

**DR. MAKGABO JOHANNA MANAMELA:** We have started with this meeting around end of February/March the task team.

**ARBITRATOR JUSTICE MOSENEKE:** Always mention the year.

**DR. MAKGABO JOHANNA MANAMELA:** Yes, 2015.

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

**DR. MAKGABO JOHANNA MANAMELA:** And during this meeting like I mentioned the task team people including Life Esidimeni managers. During this meeting we identified what we need to do and the hospital that we need to renovate, from that time until June we were busy with that. During the process as I said...

10**ARBITRATOR JUSTICE MOSENEKE:** Until June 2015?

**DR. MAKGABO JOHANNA MANAMELA:** Until June 2015.

**ARBITRATOR JUSTICE MOSENEKE:** Every month please add a year, so we can have the chronology clear. All of these councils is going to be asking you questions later.

15**DR. MAKGABO JOHANNA MANAMELA:** Yes, until June 2015 we were busy with this project of task as a task team. And because we heard what was going to happen and during that time I must admit that the clinicians had so many concerns and some of the things that I couldn't ask I referred them to the MEC to write- to meet the MEC or the leadership of the department which they wrote the letter. And  
20that letter was in April directed to me, I'm not sure I've forgotten the date but the date the letter is here and CC to the executive knowing that I was not part of the

executive. And when I the team worked together for planning and everything until we meet the HOD and during the meeting, that is when we meet the HOD after...

**ADV LILLA CROUSE:** I apologise for interrupting, Justice we don't get the transcriptions immediately in the morning. So it is necessary for us knowing that this 5DR. MAKGABO JOHANNA MANAMELA will also still continue to take notes at this phase it is absolutely impossible for us to, so if the DR. MAKGABO JOHANNA MANAMELA can just speak a little bit slower so that we can take notes. Thanks, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** That is a fair point. You're asked to speak a 10little bit slower so that the transcript can follow the normal so they can take notes – the normal procedure is for you to be lead. I have ruled that you say your story, it is a big and important story enough that the evidence leader will go back and carefully take you through the gaps that might still be there. But we ask you to take your time, take a deep breath and tell us the dates and times and places and names, what 15happened. Very well, just remember to keep it slow so that we all can assimilate it, you are a very important DR. MAKGABO JOHANNA MANAMELA. Proceed.

**DR. MAKGABO JOHANNA MANAMELA:** Ok. Thank you, Justice. I also have to mention that during the task team meetings that we had it was clear that Life Esidimeni manager who were part of the task team were not in favour with the 20termination. And the leadership had – the executive leadership used to have the meeting from around April, I think before April lead by the MEC. I'm not quite sure of the exact date...

**ARBITRATOR JUSTICE MOSENEKE:** Who was not in favour of the project, the managers?

**DR. MAKGABO JOHANNA MANAMELA:** The managers that are at my same level in the meetings that we had. You could take that they are not in favour of the termination of the project. And when they – during the process as the Life Esidimeni had a mandate to reduce the beds by two hundred according to twenty twenty vision strategy. They managed to reduce the two hundred beds during the process before end of September, so at the time of the end of September when the notice was issued to Life Esidimeni then they have already closed a...

10 **ARBITRATOR JUSTICE MOSENEKE:** That is September of?

**DR. MAKGABO JOHANNA MANAMELA:** 2015, yes they have already closed one of their facilities called [inaudible 1:36:15] poort, there were no patients there because most of the patients were discharged home, some were taken to the NGO on the normal process. Because I should mention that during the process of us and 15 Life Esidimeni there were a process that they will send the patient to the NGO. And that process was that then when the patient was to be discharged the NGO will go and identify which patients are the patient that they are managing, those NGO's that we had contract with. So then after the termination letter was issued the project team was appointed and MR. Manosena who was the leader of the project. I heard 20 in this proceeding that the...

**ARBITRATOR JUSTICE MOSENEKE:** When was he appointed, again date and places?

**DR. MAKGABO JOHANNA MANAMELA:** He was appointed around October and during our...

**ARBITRATOR JUSTICE MOSENEKE:** October 2015?

**DR. MAKGABO JOHANNA MANAMELA:** 2015. I will say so because I think – or immediately after that if not end or the beginning of November it was end of October 2015. And when he was appointed he was appointed because of his role as the executive, he was not appointed because I failed in my duty for mental health services as it was said by the ombudsman in this proceedings. And when - immediately after he was appointed he commissioned the project team that is what we have been looking for. And the project team members were appointed and their names are also in the document and that included all of the psychiatrists in our mental healthcare unit, including some of the psychiatry who are heading there, who are heading the district on mental health services. That document is also here and they are the one by the time they were appointed in January 20.. in February, in November 2015. You could see that immediately the termination letter was given. We have started ourselves in our united and the psychiatrists with the plan and then we just needed the project leader. And then when they came they appointed – they were given the project, the project draft to look at. And they commended and there was some –if you look at what we tend as the project task team name it's not the same as the project name. That is when we had the project named termination of contract relationship between Gauteng Department of Health and Life Esidimeni and also up scaling community base mental health services.

**ARBITRATOR JUSTICE MOSENEKE:** Doctor take it slower, take it slower. It is a long forehead story but take it slower, I know you have it all in front of you but just take it slower. And you have a copy of the draft project claim in writing?

**DR. MAKGABO JOHANNA MANAMELA:** Yes.

5**ARBITRATOR JUSTICE MOSENEKE:** With you there?

**DR. MAKGABO JOHANNA MANAMELA:** ...

**ARBITRATOR JUSTICE MOSENEKE:** You can proceed I'm sure they will come and ask for it.

**DR. MAKGABO JOHANNA MANAMELA:** Alright, the project plan was indicated  
10there...

**ARBITRATOR JUSTICE MOSENEKE:** Yes November 2015, the project team put together and it was a draft which was made available to them?

**DR. MAKGABO JOHANNA MANAMELA:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Let's proceed then.

15**DR. MAKGABO JOHANNA MANAMELA:** Yes. And I must also say it wasn't true that the psychiatrist and they were not part of the process. Because the team worked together and arrived at the name, and welcomed the name and started to use the name. And during this process now I was no, no longer leading this team of Psychiatrists because I was leading the psychiatrist together with the infrastructure.  
20During this process we had to get the project team to lead and the meetings were held, managed or held by either HOD, MEC actually it was [inaudible] the MEC

meeting. If she was not there the HOD would lead the project and after the very same termination letter was issued in 2015 September we invited the NGO. Because we knew they would be effected, we invited the hospital, psychiatrists and the multi disciplinary team members during the very same – during November to know because we knew that they would be affected. And in the meeting I'll start first with the NGO we drawn- we gave them the information told them that there would be termination by the end of 2017 – 2016/2017 financial year.

**ARBITRATOR JUSTICE MOSENEKE:** Let us past I'm going to lead you because I'm getting confused now. November 2015 you talk about NGO's, you had a meeting with NGO'S?

**DR. MAKGABO JOHANNA MANAMELA:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Tell us who convened the meeting where was it, when was it. Every time you tell a story like a bedtime story, okay. November 2015 the project team decided to meet with NGO's, so and so convened the meeting and it was chaired by so and so and we said this to the NGO's. Just logically and slowly let's follow the tale please.

**DR. MAKGABO JOHANNA MANAMELA:** Ok. During or after the termination letter was given we commends properly with the project team from Novemebr, lead wither by the project leader I was always advertising him and also with a two weekly meeting with the MEC to gain progress. Then during the ...

**ARBITRATOR JUSTICE MOSENEKE:** Every time you say MEC you mean MEC?



**DR. MAKGABO JOHANNA MANAMELA:** The former MEC Mahlangu, I haven't worked with the new MEC now.

**ARBITRATOR JUSTICE MOSENEKE:** I follow.

**DR. MAKGABO JOHANNA MANAMELA:** Then we realised that we need to inform the NGO's because we know that there are a lot of patients in our Life Esidimeni facility and some will pick up the community that doesn't have families and some have families but the families doesn't know how to take care of them because of their condition. So what we did we met with the NGO and made a [presentation to them so say those who are willing we called all the NGO's that we knew we work with that I licensed during the process. And even the NGO that doesn't have patients like Syberg and others and South African federation. They were in a meeting and then we presented to them what is the decision of the department, the meeting I think was on the 13 November 2015, the meeting was at Sterkfontein.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**DR. MAKGABO JOHANNA MANAMELA:** That meeting was chair by myself as the director of mental health services but there were – my deputy directors who were to present what they are are doing for example in my directory we are having someone responsible only for NGO's because we had over a hundred and ten NGO in this province. So they needed someone who lies within the district to be able to support and guide the NGO. We also had someone who is specifically responsible for mental health service in our own facilities, we also have had we still have I believe so two more deputy directors who were responsible for mental health care

service in the community for those who were discharged. And we also has a social worker who also support all of us. So during this process –during this process we also noted that we need to have other stakeholders in our meeting such as Syberg, such as South African federation to work together with us. Because they have been working together with us anyway we cant leave the mass out.

**ARBITRATOR JUSTICE MOSENEKE:** The federation of?

**DR. MAKGABO JOHANNA MANAMELA:** Of mental health care. And we look at that and then they were also invited in the meeting. The other meeting that can also indicate was the meeting with the family, but before I will go there I think I will need to go into detail with that. Let me say that in the project plan the Life Esidimeni project team pass team – the Life Esidimeni manager was tasked with some duties for example to go and give us the patient profile for us to know how many patient we will have, who should go where, who should not go and how do we advise maybe the leadership to say that this patient must not go anywhere or not. So during that time they have given us the list the profile, I will just mention amongst the issues that they have highlighted in the profile that we notice there was seven hundred and seventy three patients who are in Life Esidimeni, who doesn't have families. And there were at that time one thousand two hundred patient who had family contact with their or in their document, but they were not visited as they were suppose to. But they ahd family contact and when we check it the reason was; sometimes the family contact numbers was changed and the family moved to a certain place, like for example a healthy gentleman during the process who called me from oversee and the mother to call form oversee to say *'I hear that there will*

*be termination, where is my brother and so and so and so*". And they were also assisted and apart from that involving stakeholders like I mentioned I started/ we started as task team and I was chairing the meeting. But when the pronouncement was made for termination it was also I must clearly indicate that it was also 5indicated that the stakeholders was not so keen in the termination. Then there was a little bit if a problem, then we asked the HOD to lead the meeting at the end of the day.

**ARBITRATOR JUSTICE MOSENEKE:** I think you have to help us there. Who are the stakeholder that you are talking about?

10**DR. MAKGABO JOHANNA MANAMELA:** The stakeholders I am talking about I said is Staberg, Staberg is the South African federation for mental health. Because they were the one that were basically dealing with mental health care services and their involvement was key to us and that us why we started without the request by the HOD. And then later when we realised that its like we can't go where we have to 15go, we asked the leadership to take over. Why I'm saying this because there was a media that was released that was saying by Staberg I'm not having the details of the date. But it was saying that we are going to take patient to Germiston hospital, they phoned Germiston hospital there is no [inaudible] and they phoned [inaudible] because they didn't know that we were going to renovate first before we send and 20then they phoned the CEO of the hospital and asked about the bed and the CEO also during that time around September they didn't know of the date.

**ARBITRATOR JUSTICE MOSENEKE:** DR. Manamale, thank you. It is half passed one and I attend to take the lunch adjournment now to half passed two. But let me

leave you with this thought, it is a rare privilege in a court to allow a DR. MAKGABO JOHANNA MANAMELA or in arbitration or in tradition proceedings to tell their story the way that they know it. And I will like that to happen when we come back please think about that. If it doesn't happen properly I would have to then turn over to the evidence leader, she is trained in the work she knows how to get a DR. MAKGABO JOHANNA MANAMELA to tell – to render or tell evidence. Normally we need time and place and events in a particular way that allows everybody to understand what happened and how it happened. And the advocate who is going to ask you questions is very skilled in that regard; it is her work to make sure the DR. MAKGABO JOHANNA MANAMELA gives us evidence in chief. So think about it when we come back, you will be allowed for awhile to tell the story. Please remember we require dates, we require the year, we require the place, we require the people and what happened. Those are the basics in all evidence, so unless you give the story that well you will have to find somebody who will help lead you in chief, so that we can get the full story of your anticipation. I thank you so far for what you have told us. We are going to adjourn for an hour and when we come back I want you to continue and if you go along in that open ended way I'm going to ask the advocate to actually pose questions in chief which is different from cross examination. But it is to get the whole tale properly recorded, I thank you. You will be expected back here at two thirty, we are adjourned.

**20 NOVEMBER 2017**

### SESSION 3

**ARBITRATOR JUSTICE MOSENEKE**: Thank you, you may be seated. Dr Manemela the evidence you will continue to give, will be the truth and nothing but the truth and if so, please raise your right hand and say so help me God?

5 **DR MAKGABO JOHANNA MANAMELA**: So help me God.

**ARBITRATOR JUSTICE MOSENEKE**: Thank you, we are going to have- I thought about it again and again and I think we are going to use the evidence leader and she is going to guide, so that we can get the evidence in a structured way. I ask you to listen quite carefully to the question. You will still have the opportunity to tell  
10 your tale, but in each case, just listen carefully to the question. I know I am confident she will take you through all of this quite carefully and methodically. Counsel?

**ADV NONTLANTLA YINA**: Thank you Justice. Dr Manemela I will start from the Project. You said that there was a budget speech that was given by former MEC  
15 Qedani Mahlangu, is that so?

**DR MAKGABO JOHANNA MANAMELA**: Yes.

**ADV NONTLANTLA YINA**: When was this speech given?

**DR MAKGABO JOHANNA MANAMELA**: I am not quite sure of the date, but it was around June/July 2015, I am not quite sure if I am giving the right date,  
20 because I didn't have the information from my laptop, but the budget speech is there in the internet.

**ADV NONTLANTLA YINA:** Yes so were you present when the speech was made?

**DR MAKGABO JOHANNA MANAMELA:** No I was not present.

**ADV NONTLANTLA YINA:** Did you get a copy of the speech?

**DR MAKGABO JOHANNA MANAMELA:** Yes I got a copy.

5**ADV NONTLANTLA YINA:** You indicated earlier on, that one of the things that was mentioned, was the fact that the Department was under financial constraint, is that so?

**DR MAKGABO JOHANNA MANAMELA:** That was not – I didn't say, it's mentioned in the budget speech it's a known fact that I knew when we needed 10things.

**ADV NONTLANTLA YINA:** In relation to the financial constraints that the Department was going through and the Project, what was the speech about in respect of those two?

**DR MAKGABO JOHANNA MANAMELA:** I think I have read the quotes from the 15MEC's speech. The first one was reduction in 20%. The second one was saying we are closing by the end of 2016/2017.

**ADV NONTLANTLA YINA:** Yes then you indicated earlier on-

**ARBITRATOR JUSTICE MOSENEKE:** Reduction of 20% of beds, was it to happen only at Life Esidimeni?

20**DR MAKGABO JOHANNA MANAMELA:** Yes Justice.

**ADV NONTLANTLA YINA:** You indicated earlier on that the Department needed to review some of the outsource services, do you remember that?

**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel.

**ADV NONTLANTLA YINA:** The mental health services that were rendered by Life Esidimeni, were those the only services that were reviewed?

**DR MAKGABO JOHANNA MANAMELA:** It was not the only services. According to the speech and according to my knowledge, Selby Park was one of the services that was rendered by outsourced companies, which was closed and that is why we had the speech saying we have already closed Selby, we are working towards Life Esidimeni, but we started with 20%.

**ADV NONTLANTLA YINA:** I see. What other measures did the Department consider to improve its finances, do you know?

**DR MAKGABO JOHANNA MANAMELA:** My unit is still Mental Health Unit, so I wouldn't know, but what I know is that in every family, you need to use resources effectively and efficiently.

**ADV NONTLANTLA YINA:** So in respect of the services that were outsourced to Life Esidimeni, you came up with a project which was intended to close down Life Esidimeni, am I correct?

**DR MAKGABO JOHANNA MANAMELA:** The leadership came out with the project.

**ADV NONTLANTLA YINA:** Yes when I say you, I mean the Department.

**DR MAKGABO JOHANNA MANAMELA**: Okay yes.

**ADV NONTLANTLA YINA**: Can you tell us whose baby was it? Who came up with the idea, do you know?

**DR MAKGABO JOHANNA MANAMELA**: Okay live I've indicated, as the Director for Mental Health, having heard where the Department's direction is, it is your responsibility to support the Department. It was said by the executive and they said it at a higher level, we have to implement it, so that is what I can say.

**ADV NONTLANTLA YINA**: Can you please clarify what you do you mean by executive?

10**DR MAKGABO JOHANNA MANAMELA**: Executive I am saying people from Chief Director upwards they are the executives they have got meetings which I may not sit in unless I am invited.

**ADV NONTLANTLA YINA**: But you had to implement it as a Director?

**DR MAKGABO JOHANNA MANAMELA**: I had to be part of the committee and the  
15team that implemented it.

**ADV NONTLANTLA YINA**: And the consequence of the project was to terminate the contract between the Department and Life Esidimeni?

**DR MAKGABO JOHANNA MANAMELA**: Yes.

**ADV NONTLANTLA YINA**: If someone could assist you to go to File Number 2,  
20Page 552 and that will be a letter in terms of which the, services, between the Department of Health and Life Esidimeni was terminated. Are you on Page 552?



**DR MAKGABO JOHANNA MANAMELA**: Still looking.

**ADV NONTLANTLA YINA**: The numbering appears on top at the right corner.

**DR MAKGABO JOHANNA MANAMELA**: There is no 552 in this, it is, 550 and the next one is 557.

5**ADV NONTLANTLA YINA**: We will assist you.

**DR MAKGABO JOHANNA MANAMELA**: Okay it's the next one, 552 is after 557, I found it.

**ADV NONTLANTLA YINA**: Is that the letter in terms of which the services between the Department of Health and Life Esidimeni were terminated?

10**DR MAKGABO JOHANNA MANAMELA**: I agree it's the letter.

**ADV NONTLANTLA YINA**: Yes if you go to Page 554, there is a signature there of Dr Selebano and the date is 29 September 2015.

**DR MAKGABO JOHANNA MANAMELA**: That is correct.

**ADV NONTLANTLA YINA**: You do confirm that was the date when the letter was  
15concluded, when it was signed, do you confirm?

**DR MAKGABO JOHANNA MANAMELA**: Yes.

**ADV NONTLANTLA YINA**: At this stage, were you the Project Manager or was it Mr Mosonoge?

**DR MAKGABO JOHANNA MANAMELA**: There was no project yet, it was a task  
20team. We were still working as a task team, because of the 20% I told you earlier,

so at that time, there was no one who was a project manager and I was not yet appointed project deputy manager.

**ADV NONTLANTLA YINA:** Yes when did you become the project deputy manager?

5**DR MAKGABO JOHANNA MANAMELA:** I am not sure of the date because like I don't have some of the information, but immediately when Mr Mosonoge was appointed, I was appointed as the project deputy manager.

**MR Y:** Mr Mosonoge gave evidence that he was appointed in November.

**DR MAKGABO JOHANNA MANAMELA:** Yes it means I was deputy project  
10manager, I alluded earlier, that we started as a task team, only mental health care unit professionally in the province, my unit and the hospital, psychiatrists and other multi-disciplinary team. At that time, before that time, we were still including Life Esidimeni, we were still working as a task team.

**ADV NONTLANTLA YINA:** All that I want to establish is in September 2015, when  
15the services were terminated between the Department and Life Esidimeni, did the task team have a plan on what to do with the patients that would now be moved from Life Esidimeni, that is what I want to establish?

**DR MAKGABO JOHANNA MANAMELA:** Yes, we were still working on the plan. The very same plan that we developed early 2015, we were still working on it and  
20that's the plan that further was circulated to the project team members for their input and came up with the name as I have indicated earlier.

**ADV NONTLANTLA YINA:** What was the plan in respect of the patients that would now be moved out of Life Esidimeni at the end of the contract?

**DR MAKGABO JOHANNA MANAMELA:** The plan like I was saying, I was coming to the plan, let me give you the plan. The plan-

5**ADV NONTLANTLA YINA:** If I may assist you, if someone could give you File Number 8 on Page 2789 there is a project plan. Is that the plan that you are referring to?

**DR MAKGABO JOHANNA MANAMELA:** Yes.

**ADV NONTLANTLA YINA:** If you go to Page 2824, it is signed 30 September 2015  
10by Dr M.J. Manemela, would that be you?

**DR MAKGABO JOHANNA MANAMELA:** I beg your pardon, can you repeat that?

**ADV NONTLANTLA YINA:** Page 2824.

**ARBITRATOR JUSTICE MOSENEKE:** In other words, you go to the project plan and just run with it until you get to its end which is on Page 2824.

15**ADV NONTLANTLA YINA:** It says compiled by Dr M.J. Manemela Deputy Project Manager.

**DR MAKGABO JOHANNA MANAMELA:** Yes.

**ADV NONTLANTLA YINA:** Would that be you and it appears that you signed on the 30<sup>th</sup> of September 2015.

20**DR MAKGABO JOHANNA MANAMELA:** Yes.

**ADV NONTLANTLA YINA:** And then it is counter signed by Mr L. Mosonoge in October 2016 and it's approved by Dr Selebano in October 2016. So is that the plan that you are referring to?

**DR MAKGABO JOHANNA MANAMELA:** Yes it's the plan that I am referring to.

5**ADV NONTLANTLA YINA:** Now if you could take us through the plan, now the most important thing that I wanted to establish in respect of the plan, is isn't now you had sent a letter of termination to Life Esidimeni and at that point in time, how many mental healthcare users were at Life Esidimeni?

**DR MAKGABO JOHANNA MANAMELA:** I am not quite sure of the number, but  
10we had around 1.7 mental healthcare users.

**ADV NONTLANTLA YINA:** Yes obviously when you terminated the contract with Life Esidimeni, you had to have a plan on what to do with those patients.

**DR MAKGABO JOHANNA MANAMELA:** Yes we had a plan.

**ADV NONTLANTLA YINA:** Yes please take us through the plan.

15**DR MAKGABO JOHANNA MANAMELA:** Okay. Like I said to you, the plan started as a task team, it was a continuation. When we left, I was talking about the involvement of the NGO, I think I am not going back to that-

**ADV NONTLANTLA YINA:** Ja maybe whilst you are talking about the NGO's, if you could assist us, because there is evidence before this Tribunal that there were  
20existing NGO's that were working with the Department and then there were also

new NGO's who became involved at a later stage, so when you say you had a meeting with the NGO's, which one were you referring to?

**DR MAKGABO JOHANNA MANAMELA:** Okay when we called a meeting, we called a meeting through the district, because the NGO's fall within the district and they invited the people and in those NGO's, as Province, we had to ensure that other stakeholders are invited by us, so the NGO included the old NGO and any other person who might listen, because it was already in the air that there will be termination, so I couldn't check which NGO is not represented, but from the NGO's that we had on that meeting of November, we checked if they are represented and then even people who were not NGO's who were there, we have got documents that indicate who came to the meeting and the old and the new NGO people, will come, it's like when we finish with the meeting, people will talk and tell other people that the Department is ending contracts, they will need beds and we made it clear that we are not forcing you NGO, because we called people that we know that they are on our database, if you feel you can expand, we will welcome that and if you cannot, it is still your decision because you are not appointed by the Department.

**ADV NONTLANTLA YINA:** When did you have the first meeting with the NGO's?

**DR MAKGABO JOHANNA MANAMELA:** I believe the first meeting was 30 November if I'm not mistaken.

**ADV NONTLANTLA YINA:** Which year?

**DR MAKGABO JOHANNA MANAMELA:** 2015.

**ADV NONTLANTLA YINA:** Yes so in September, what was the plan before you met with the NGO's when you terminated the contract? You were still taking us through the plan?

**DR MAKGABO JOHANNA MANAMELA:** Maybe let me explain to you what do we mean by this letter. Termination of contract, that was a notice, it doesn't mean that the contract had already ended. It was a notice to say by the end of March 2016, we will have no more patients from the State to Life Esidimeni, so that was just a notice according to service level agreement that must be given 6 months before, so before that, as we have started, 2014/2015 financial year which ended in March, we carried on and then when these project team members are appointed from different areas rather than psychiatric services, they found us already in the process of planning for the beds or planning where do we take the patients. For example, renovation of hospital, we check which hospital can we renovate because we knew that there could be patients who still need to be in a hospital, which NGO can we use, like when we don't have NGO, that is why I mentioned there were 5 unoccupied hospitals that are no longer being used that we identified, that is why we had people from the Department who are working in infrastructure.

**ADV NONTLANTLA YINA:** Yes which are those hospitals?

**DR MAKGABO JOHANNA MANAMELA:** It was Germiston Hospital, it was Natalspruit Hospital, it was [Benar] it's a crèche and the other two I think I have forgotten, but we identified them and invited our infrastructure. All the unused buildings of health are the ones that we identified and as we have identified them, we wanted to check if they can be renovated or it will be too costly. That is why we

had infrastructure people and those were in the plan, because this plan, until it was signed, it was a draft, because we couldn't conclude it, we didn't have a project manager, we kept on making it as a draft and people who didn't know, even those who were against termination, used it. They used it to go to the media and say they are going to throw the patients in the street, while we were trying. At the end of the day, those buildings, we didn't use, because we are mental health practitioners, we have got infrastructure-

**ARBITRATOR JUSTICE MOSENEKE:** I am not sure which question we are answering now Doctor. I ask you again please listen to the evidence leader. We are trying to get the tale as logical as we can record it. I just want you to listen to her carefully and give answers. You are going to have ample opportunity to defend whatever decisions you might have made, but for now, it's a recordal of what happened, that is where we are.

**ADV NONTLANTLA YINA:** Thank you Justice, if I may just break it down Dr Manemela, the first point is what was the plan in respect of the 1700 patients that you said were at Life Esidimeni, so from what you said, it seems like you intended to send them to the NOG's, some of them?

**DR MAKGABO JOHANNA MANAMELA:** Some of them will go to the NGO. I mentioned that some will go to the hospital, our psychiatric hospital and some will be discharged, if the family are willing number one and number two, they might be willing and unable because of the condition of the patient, so those were the things that we planned to do.

**ADV NONTLANTLA YINA:** Now in respect of the ones that you were going to send to the NGO's, what steps did you take to ensure that the NGO's are ready if any?

**DR MAKGABO JOHANNA MANAMELA:** Okay thank you, like I said to you the first step, was to call the NGO that we have got relationship with, not relationship, service level agreement and those that we know they are licenced by myself actually at that time and present this plan to them and identify how many NGO's can expand and how many NGO's are still having empty beds. That was the first step. The second step, was for us to say, these NGO's if we have to have a new NGO, we know what we need to do, is to assess the NGO, evaluate them, we called the second meeting, I don't remember the date, because I don't have the laptop, we called a second meeting through the district, to say let them all come to the district-

**ADV NONTLANTLA YINA:** If I may just interject, you mentioned something important. You said you also needed to assess them if they are ready. Did you assess them?

15**DR MAKGABO JOHANNA MANAMELA:** Yes we assessed them.

**ADV NONTLANTLA YINA:** How did you assess them?

**DR MAKGABO JOHANNA MANAMELA:** I am trying to go through that. The way we assess them, we use the normal assessment route, we also because the project was a special project and we didn't want to err or put the life of the patient in danger, we developed a strategy called NGO Marathon-

**ADV NONTLANTLA YINA:** Can you please take us through the assessment project? What does it entail?



**DR MAKGABO JOHANNA MANAMELA:** Okay assessment project entails we have got a format that we use, we go to the NGO and check the infrastructure and check the staff and check if they are registered and check how the buildings are and check what is it that the NGO is interested to provide, what type of service, because  
5some mentally ill patient who was severely mentally disabled, may not go to where they may be in a specific area and others, will be those who are mentally ill, specific areas, some will be schizophrenia, some will be due to drug-induced, so we assess those things.

**ADV NONTLANTLA YINA:** So did that happen in all the NGO's that were  
10involved?

**DR MAKGABO JOHANNA MANAMELA:** Yes the NGO's that we were involved, it happened, because now-

**ADV NONTLANTLA YINA:** When was this, when did you assess them, do you know?

15**DR MAKGABO JOHANNA MANAMELA:** Okay actually I was thinking I would take you through the process what we have done with the new NGO because you asked that. The new NGO's were called to the meeting and then those who were interested, had to be visited, then we did visit them and-

**ARBITRATOR JUSTICE MOSENEKE:** Do you have a list of the NGO's who  
20attended the meeting?

**DR MAKGABO JOHANNA MANAMELA:** Yes Justice we do have the list.

**ARBITRATOR JUSTICE MOSENEKE**: Where is that list?

**DR MAKGABO JOHANNA MANAMELA**: It's in my confiscated laptop, but I do have some of the lists here on my presentation.

**ARBITRATOR JUSTICE MOSENEKE**: I am interested in the lists and if you, not  
5now, even when your evidence stops, if you could give it to the evidence leaders so  
that they can make copies of the NGO's who attended the meeting 13 November  
2015 and would the list will show with which ones you already had a relationship  
and which ones were new, would it show that?

**DR MAKGABO JOHANNA MANAMELA**: No the list will not show that, because  
10everybody who came to the meeting, including the Life Esidimeni, they were there  
in that meeting, they will sign an attendance register which I believe if I have. If I  
don't have, my office has that attendance register.

**ARBITRATOR JUSTICE MOSENEKE**: Okay very good.

**ADV NONTLANTLA YINA**: Thank you Justice, yes we are still on the assessment.  
15The question was did you assess them and if you did, when?

**DR MAKGABO JOHANNA MANAMELA**: Yes we did assess them I don't know if I  
can just check, I am not quite sure of the date.

**ADV NONTLANTLA YINA**: You may.

**DR MAKGABO JOHANNA MANAMELA**: We assessed them, I didn't have all the  
20list of the documents of what has been assessed, but as far as I know, we didn't  
place patients where we didn't assess. We assessed all the NGO's and towards

the end, I said NGO Marathon, the engineers, the mental health team from my office, mental health team from the district, psychiatrists in the district and the families of mental healthcare users committee, joined in the strategy called NGO Marathon Project. That is the project that they joined and then apart from that-

5 **ARBITRATOR JUSTICE MOSENEKE**: What do you mean they joined the project?

**DR MAKGABO JOHANNA MANAMELA**: We developed the NGO marathon strategy that the Ombud mistook as the project. That was to expedite, to ensure that the NGO's where the mental health patient from Life Esidimeni will be sent, is being assessed by this team, not only multi-disciplinary team like we used to do.  
10 Under normal circumstances, it is only mental healthcare practitioners who would visit the NGO and assess them on a yearly basis, but for the sake of this process, we developed that, so that the engineers of all kinds who know the structure, they can also join and go with us and assist us in assessing the NGO's, so we used two types of processes.

15 **ADV NONTLANTLA YINA**: Maybe let me ask this question this way, the assessment, was it done after or before you issued the licences to the NGO's?

**DR MAKGABO JOHANNA MANAMELA**: We have done the assessment in most areas- it is done before we issue the licence. Every year, the district is doing the assessment of the NGO.

20 **ADV NONTLANTLA YINA**: Were you satisfied that the NGO's will be able to provide the services?

**DR MAKGABO JOHANNA MANAMELA:** They were assessed and when they were assessed, I get the report, I get the licence, I don't prepare the licence, even the new NGO, I get their budget from the district and then they send it to my office and if there are queries, I call the NGO manager in my office, or I send my team to go and find out-

**ARBITRATOR JUSTICE MOSENEKE:** Let's me a little bit more concrete. Look, you held a meeting you developed a strategy called Project Marathon.

**DR MAKGABO JOHANNA MANAMELA:** NGO Marathon.

**ARBITRATOR JUSTICE MOSENEKE:** NGO Marathon and the purpose was to facilitate checking on the facilities offered by each NGO.

**DR MAKGABO JOHANNA MANAMELA:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Who would go out to the NGO to go and make that examination or that inspection? Just keep it short so that we can make progress.

**DR MAKGABO JOHANNA MANAMELA:** The district mental health team will go out. My team in some areas, will go out from my office, I had 5 DD's and the members of the family, they went out, the family committee let me put it specifically and other psychiatrists.

**ARBITRATOR JUSTICE MOSENEKE:** Let's start off with the district people. Do they file reports after their inspections?

**DR MAKGABO JOHANNA MANAMELA:** Yes after the inspection, they submit that we have assessed this NGO, even those that are okay, they are assessed every year. Those that were new also, we assessed. They file a report to us, but again for this project, I also say that the NGO leader in my office, must be into those 5 NGO's also to assist, so they were assessed and the report was sent and then the licence prepared and the budget prepared.

**ARBITRATOR JUSTICE MOSENEKE:** Would you issue an licence without an assessment?

**DR MAKGABO JOHANNA MANAMELA:** No I cannot issue any licence without an 10 assessment.

**ARBITRATOR JUSTICE MOSENEKE:** And you assure me under oath, hat every single licence you issued, was done after an inspection report was filed with you?

**DR MAKGABO JOHANNA MANAMELA:** The licences that were sent to me, I will assure you Chief Justice that the people assessed the place and then they 15 developed that request for the licences and my office NGO manager did the licences for me.

**ARBITRATOR JUSTICE MOSENEKE:** Let me try it again Mam, do you assure me that you who acted as a licensing officer, in relation to every NGO, which presumably was part of the NGO Marathon Project, had been inspected and a 20 report had been filed, setting out the conditions at the NGO?

**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel the reports were filed.

**ARBITRATOR JUSTICE MOSENEKE**: And you saw them and studied them, did you?

**DR MAKGABO JOHANNA MANAMELA**: Yes.

**ARBITRATOR JUSTICE MOSENEKE**: Before you signed the licence?

5**DR MAKGABO JOHANNA MANAMELA**: I saw them although I didn't see all the NGO's but the report, I saw the report.

**ARBITRATOR JUSTICE MOSENEKE**: So whether we're talking of Precious Angels or Takalani or Anchor or Siyabadinga, or name it, you received reports that set out the conditions of these NGO's that were to receive patients?

10**DR MAKGABO JOHANNA MANAMELA**: Not all of them. Now I am not disputing what I just said, because Siyabadinga was not one of the NGO's that were identified. The NGO that was identified, was Out Steps, then Siyabadinga was pushed in. The relevant NGO which we took along through the meetings, through the training, were sent out and they pulled Siyabadinga, but the building where  
15Siyabadinga was, was assessed-

**ARBITRATOR JUSTICE MOSENEKE**: I am sure they will get those details in a moment. Mine was an initial generic question which says once a licence is issued, am I entitled to accept that you caused the inspection to be done, it was done, you saw the report of the, inspection and you issued the licence. Let's stop there, I  
20need an answer there. Is that how it happened?

**DR MAKGABO JOHANNA MANAMELA**: I believe so Judge.

**ADV NONTLANTLA YINA:** If I may refer you for example the NGO that Justice made an example of, it's File Number 7 and the licence appears on Page 2397, that would be Precious Angels.

**DR MAKGABO JOHANNA MANAMELA:** Come again Counsel?

5**ADV NONTLANTLA YINA:** Page 2397 and that's the licence that was signed by you, do you confirm, 2397?

**ARBITRATOR JUSTICE MOSENEKE:** On the right top corner, there will be printed black numbers, 2397.

**DR MAKGABO JOHANNA MANAMELA:** Yes I found it.

10**ADV NONTLANTLA YINA:** That's the licence that was issued to Precious Angels do you confirm the signature appearing at the bottom, to be your signature?

**DR MAKGABO JOHANNA MANAMELA:** Yes.

**ADV NONTLANTLA YINA:** Yes and it was issued on the 1<sup>st</sup> day of April 2016, do you confirm that at the bottom?

15**DR MAKGABO JOHANNA MANAMELA:** Yes.

**ADV NONTLANTLA YINA:** And the address where they were supposed to be operating from, it's Lynwood Road, Tyger Valley, Pretoria, do you see that, that will be the third line from the top?

**DR MAKGABO JOHANNA MANAMELA:** Yes I see it.

**ADV NONTLANTLA YINA:** Yes and now the evidence before this arbitration, is that they were actually not operating from that address. They were operating in Atteridgeville-

**ARBITRATOR JUSTICE MOSENEKE:** I would put it differently Counsel, I want to know from the witness, did you have people go to this place to inspect it and if so, I would like to see the report of the inspection? I don't want you to lead the witness I want to know what happened. Did her inspectors go to Tyger Valley in Pretoria on Lynwood Road and if so, could she lead me to the reports that they filed.

**DR MAKGABO JOHANNA MANAMELA:** Okay firstly let me start with the first day of April, that the NGO are authorised to start operating for the period of financial year, that's number one. This place Lynwood Road where they were not operating, when we realised there were challenges after some time at Precious Angels, Precious Angels already had patients, then we found that they cannot keep the patient there, so my team from Tswane and the head office, were informed by Precious Angels that we have found another place, that is when they went to assess that place.

**ADV NONTLANTLA YINA:** So you are in essence saying that initially, Precious Angels were operating from Tyger Valley?

**DR MAKGABO JOHANNA MANAMELA:** I am not saying initially. Later when there were challenges at Precious Angels, they had to find the spaces, another space which they found at-



**ARBITRATOR JUSTICE MOSENEKE:** Doctor I don't understand all that. Your evidence was your team had the duty to indeed go to NGO premises, they inspected them, they filed with you, a report, you reviewed the report and you issued a licence. Just help me understand what's happening in relation to the licence on Page 2397 signed by you?

**DR MAKGABO JOHANNA MANAMELA:** Can I say during the process of a financial year when we found that there are challenges in the NGO, it is either we will close the NGO or the NGO will find another space, so this report I remember very well. My team and the one at Tswane, went when we found that Precious Angels had challenges, then the name was changed to where the people are going-

**ARBITRATOR JUSTICE MOSENEKE:** I am asking you did your people go to Lynwood Road, Tyger Valley Pretoria to inspect the premises reflected on the licence?

**DR MAKGABO JOHANNA MANAMELA:** Yes they went.

15**ARBITRATOR JUSTICE MOSENEKE:** And what did they find there? Did they compile a report?

**DR MAKGABO JOHANNA MANAMELA:** They compiled a report.

**ARBITRATOR JUSTICE MOSENEKE:** Can you guide us to the report?

**DR MAKGABO JOHANNA MANAMELA:** I don't have the report, it was in the office, but I know they went and they compiled a report, I saw the report that they

went and then they compiled a licence, but licence because this lady already had patients, we will-

**ARBITRATOR JUSTICE MOSENEKE**: How do they have patients before the licence? They can get there they can ask you those questions. I just wanted to see how consistent your procedure was by the time you issued the licence and in this case, it is quite an important NGO, as you know by now.

**ADV NONTLANTLA YINA**: If I may assist Justice, there is a report that appears on the same file, it starts from Page 2494 in relation to Precious Angels. Have you found the document Dr Manemela?

10 **DR MAKGABO JOHANNA MANAMELA**: Yes Counsel.

**ADV NONTLANTLA YINA**: Do you see the date of visit on the report?

**DR MAKGABO JOHANNA MANAMELA**: Yes I see the date.

**ADV NONTLANTLA YINA**: Would that be the report that you were referring to?

**DR MAKGABO JOHANNA MANAMELA**: No it's not the report you are referring to.

15 **ADV NONTLANTLA YINA**: What is this report?

**DR MAKGABO JOHANNA MANAMELA**: This report was for follow-up after we have placed the patient, that's the report that will tell us how the patients are doing, but the assessment report will be specific, this was just a general report written by the person delegated to manage Precious Angels.

20 **ADV NONTLANTLA YINA**: If you go to 2503, there is a different report, 2503, would that be the report?

**DR MAKGABO JOHANNA MANAMELA:** No the address is not the one, it's not the report, because here we talk about the Lynwood Road tiger Valley Pretoria. This one is still where they were.

**ADV NONTLANTLA YINA:** Those are the only reports that we have in respect of Precious Angels. In actual fact, Ethel Ncube the owner of Precious Angels, gave evidence here that they never operated at Tyger Valley.

**DR MAKGABO JOHANNA MANAMELA:** Yes you are very correct Counsel she never operated there because for us to say we wanted to take away the patient from her unless she has got another place, so she identified the Tiger Valley. My team went and evaluated the Tyger Valley. Before we could move the patient to Tyger Valley, there were some challenges and we couldn't do it, so meaning that she was planning to move the patient from this place to the licenced one.

**ADV NONTLANTLA YINA:** What were those challenges at Tyger Valley?

**DR MAKGABO JOHANNA MANAMELA:** No I haven't been to Tyger Valley, but there were no challenges. The challenges were where she was accommodating the patients. That is where we found that no, she needed to move from that place to another, place or we are going to take the patient. We had two options and that is what we always did with the NGO where we found they have got problems.

**ADV NONTLANTLA YINA:** Oh so you encountered these challenges after you had issued the licence?

**DR MAKGABO JOHANNA MANAMELA:** Not after.

**ADV NONTLANTLA YINA:** Before?

**DR MAKGABO JOHANNA MANAMELA:** The challenges were encountered before and then, she identified another place to say it's fine, you are saying I've got challenges, I am going to move this patient from here to Tyger Valley and my team  
5from the district and the manager in my office, had to go and assess that Tyger Valley and when they come back, they write the report together with the licence and then they presented it to me and then I signed.

**ADV NONTLANTLA YINA:** But you signed the licence when she already had patients.

10**DR MAKGABO JOHANNA MANAMELA:** Because the one that where she was having a patient, were also signed, but that is now when we had to move the patient, we sign another licence.

**ADV NONTLANTLA YINA:** Are you referring to patients that were moved from Life Esidimeni?

15**DR MAKGABO JOHANNA MANAMELA:** Okay this is how the system works? Can I be allowed to present the system?

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**DR MAKGABO JOHANNA MANAMELA:** When we identified the NGO or we have placed the patients in the NGO and later during the process of the financial year,  
20there are challenges in that NGO, we are left with two choices, it's either we close the NGO, take the patient to the better NGO or anywhere where they will be safe or

whatever and then point number two, the NGO because they are not falling within the Department, they can identify another place and say to us, I understand the challenges I am having, I am willing if you go and assess, to move my patient to a new place, then we go there and assess and that is what happened with Precious 5Angels.

**ARBITRATOR JUSTICE MOSENEKE**: I still don't understand, I don't know what you are saying to us DR MAKGABO JOHANNA MANAMELA. When you signed the licence in favour of Precious Angels at specified premises on Lynwood Road, had your people been there?

10**DR MAKGABO JOHANNA MANAMELA**: Yes they gave a report that the place is suitable.

**ARBITRATOR JUSTICE MOSENEKE**: You see Ms Ncube was here and she denies that she was ever at that premises, that she never occupied the premises.

**DR MAKGABO JOHANNA MANAMELA**: Yes she never, she is right, she never 15occupied the premises.

**ARBITRATOR JUSTICE MOSENEKE**: Okay now you must tell me why you issued a licence to premises that were never occupied by the Applicant?

**DR MAKGABO JOHANNA MANAMELA**: She told us she was supposed to occupy the premises, it is like Chief Justice if I want to buy a house and the deal falls of, 20then I cannot be –

**ARBITRATOR JUSTICE MOSENEKE**: No you cannot say that, you can't say that.

**DR MAKGABO JOHANNA MANAMELA:** Yes but that is what she said to us. When we found there are problems, we said we are taking away the patient and then she went out and found another place and then we said we can't take our patient there.

5**ARBITRATOR JUSTICE MOSENEKE:** Take away patients from where?

**DR MAKGABO JOHANNA MANAMELA:** From where she was in Pretoria.

**ARBITRATOR JUSTICE MOSENEKE:** She never was here?

**DR MAKGABO JOHANNA MANAMELA:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** But you issued a licence to operate at a  
10place which she never occupied, so my simple question is, how did that happen?

**DR MAKGABO JOHANNA MANAMELA:** That is what I'm trying to explain Justice that what happened, was that she was planning to take the patient there, because our rules say that you cannot place the patient where there is no licence.

**ARBITRATOR JUSTICE MOSENEKE:** Let's forget about the patients for a  
15moment. I thought you never issue licences unless the place is inspected?

**DR MAKGABO JOHANNA MANAMELA:** It was inspected and then we couldn't move the patient, but it was inspected.

**ARBITRATOR JUSTICE MOSENEKE:** She says you were never there.

**DR MAKGABO JOHANNA MANAMELA:** I don't know then, because that report  
20was given by the district and my office manager, that Precious Angels, because I

was worried about them and she said no they found another venue. I said go and evaluate it. After you evaluated it, then we will-

**ARBITRATOR JUSTICE MOSENEKE:** That is the report that you know that you used to issue the licence?

5**DR MAKGABO JOHANNA MANAMELA:** I beg your pardon?

**ARBITRATOR JUSTICE MOSENEKE:** Where is the report in relation to Tyger Valley on Lynwood Road in Pretoria that you used to issue the licence?

**DR MAKGABO JOHANNA MANAMELA:** I don't have it with me-

**ADV NONTLANTLA YINA:** If I may assist Justice, File Number 8, Page 2765, 10although it seems like it's a minute of a meeting, but it does talk about assessment. Would that be the assessment that you issued the licence based on, or there is a different one?

**DR MAKGABO JOHANNA MANAMELA:** This is the meeting that we had in my office with the new NGO's or NGO's that are going to expand and have more beds. 15It's not evaluation, this was in my office. We met the Tswane one first session, we met the second session and then we met all the Sedibeng and then we met Johannesburg and Tswane the third session. We didn't have new NGO's most of them in Johannesburg, so this was a meeting it's the minutes of the meeting and things that we wanted from the NGO.

20**ADV NONTLANTLA YINA:** If you go to Page 2767 of the same document, maybe whilst you are on 2765, it says the purpose of the meeting is to assess the

readiness of the NGO's to take users from Life Esidimeni in terms of their capacity like staff, actual beds, availability and the space. Each NGO was asked to present to the team, the status of their NGO's and then if you go to Page 2767, you will see the name of the NGO's and Precious Angels is one of the NGO's that are listed there.

**DR MAKGABO JOHANNA MANAMELA**: Okay.

**ADV NONTLANTLA YINA**: And then it says Precious Angels, number of actual beds 150 no actual beds, this was now in February 2016, 22 February 2016.

**DR MAKGABO JOHANNA MANAMELA**: Yes.

10 **ADV NONTLANTLA YINA**: So in February 2016, Precious Angels didn't have beds.

**DR MAKGABO JOHANNA MANAMELA**: That is correct and as I was going to take you about the event, you will understand why, but can I say at the moment, these were the NGO's that were identified by the district as the new NGO's from their district.

15 **ADV NONTLANTLA YINA**: The point is Dr Manemela is that on the 22<sup>nd</sup> of February 2016, Precious Angels did not have beds. We showed you 3 documents which we wanted to find out if those were the assessments and you said they were not assessments and then in April, you issued them with a licence to take 150 patients at Tyger Valley, that's the point and the point is that according to Ethel  
20 Ncube the owner of Precious Angels, she never operated at Tyger Valley, that's the essence of the question.



**DR MAKGABO JOHANNA MANAMELA:** Did she tell you the reason for not operating there?

**ADV NONTLANTLA YINA:** That is what we were trying to find out, however, you seem to suggest that she had patients where she was and you threatened to remove the patients unless she finds a better place and then she gave you a better place being the Tyger Valley place, but the question that Justice was trying to find out, is how is that possible that she had patients before she was issued with a licence?

**DR MAKGABO JOHANNA MANAMELA:** No where she was, she was issued with a licence, maybe it was not given to you. She had a licence in the two facilities she had in Pretoria, but when we found that there are areas of challenges, she started to go I am going to look for another place and my team went and assessed. Those two places she had in Pretoria, were licenced, was assessed.

**ARBITRATOR JUSTICE MOSENEKE:** But those have nothing to do with Life Esidimeni right?

**DR MAKGABO JOHANNA MANAMELA:** No they had Life Esidimeni, she had the third one where that has nothing to do with Life Esidimeni.

**ARBITRATOR JUSTICE MOSENEKE:** Okay let's get back though to what you were about. Page 2767 Counsel refers you, the minute of the meeting that you chaired, is that right?

**DR MAKGABO JOHANNA MANAMELA:** Yes.

**ARBITRATOR JUSTICE MOSENEKE**: The meeting was on the 22<sup>nd</sup> of February 2016.

**DR MAKGABO JOHANNA MANAMELA**: Yes Counsel.

**ARBITRATOR JUSTICE MOSENEKE**: In fact, you prepared the minutes or you were the chairperson of the meeting and the Advocate referred you to Page 2767. Can you see what is said there about Precious Angels?

**DR MAKGABO JOHANNA MANAMELA**: Yes.

**ARBITRATOR JUSTICE MOSENEKE**: Could you read it out into the record Doctor?

10 **DR MAKGABO JOHANNA MANAMELA**: Yes they say 150, number of beds, no actual beds.

**ARBITRATOR JUSTICE MOSENEKE**: So the meeting that you chaired, that Precious Angels had no actual beds right?

**DR MAKGABO JOHANNA MANAMELA**: Yes.

15 **ARBITRATOR JUSTICE MOSENEKE**: And then you go and look at Page 2397, that's the licence, you issued a licence valid from the 1<sup>st</sup> of April for 150 patients. In February, you are told there are no beds by this NGO and within 2 months of that, you issued a licence allowing them a maximum of 150 patients and you issue it at a venue which Ms Ncube told us never existed, she never was there. So why don't  
20 you just explain to me how that happened?

**DR MAKGABO JOHANNA MANAMELA**: That is what I am trying to say how that happened and it didn't start then. It used to happen that way. When an NGO has beds and patients and during the process, we have got 3 monthly monthly evaluation visiting the NGO, during the process, we realised that there are problems 5in the NGO, we have got two options to close the NGO, or the NGO finds another place. So Ethel told my team at Tswane that she has found another place and they told me and I said okay, go and assess the new place. They went and assessed the new place. When we get the new place assessment, we transferred the licence to the new place, that's what happened and that's what has been happening.

10**ARBITRATOR JUSTICE MOSENEKE**: Go back to Page 397 you issued the licence for severe profound intellectual disability. Had Ethel Ncube ever worked with that category of mental healthcare users?

**DR MAKGABO JOHANNA MANAMELA**: Hmm mm.

**ARBITRATOR JUSTICE MOSENEKE**: You gave me 4 looks so far.

15**DR MAKGABO JOHANNA MANAMELA**: Yes Justice, because she has another NGO where she is working with people with intellectual disability, that is why I was looking at you, because when she came and that NGO has been funded and supported by the Department, so now, she came as one of the NGO's that operated but wanted to expand and unfortunately she used a new name, so I didn't know until 20when there were problems when I asked that she has another NGO funded long ago managed well, that is why the district saw that she can manage the patient.

**ARBITRATOR JUSTICE MOSENEKE:** I am sure all these Advocates will be on your case, they will ask you questions, let me let you go. Just keep this in mind this is not an exercise on how clever one can be. Do you know how many people died at Precious Angels?

5 **DR MAKGABO JOHANNA MANAMELA:** I know.

**ARBITRATOR JUSTICE MOSENEKE:** Do you know Dr Manemela?

**DR MAKGABO JOHANNA MANAMELA:** Yes I know.

**ADV NONTLANTLA YINA:** Just two last points on the issue of licences Dr Manemela, the reason we are asking you these questions, is because the Ombud  
10 stated that you did not have the authority to issue the licences. Did you have authority to issue the licences?

**DR MAKGABO JOHANNA MANAMELA:** Yes Counsel I had the authority to issue the licence. I will say that because the Act has covered me and the Act has nowhere indicating who should issue the licence, but the previous Act was  
15 indicating who should issue licences and the same information I have given to the Professor that I am covered in terms of the Mental Health Care Act on how to issue the licence and it says the Provincial consent, it never said the HOD or the MEC will delegate someone, but there are areas where the Act spells out a delegation must be done, for example in case-

20 **ADV NONTLANTLA YINA:** Sorry if I may just interject, there is a blue file there in front of you. The blue file contains the policy and the Act, if you could just take us to

the relevant section of the Act. Justice there is no provision for her to sign the licence on the Act. She says it's in terms of the Act.

**ARBITRATOR JUSTICE MOSENEKE:** Well she says the Act does not preclude her, so it's your proposition that the Act precludes her?

5 **ADV NONTLANTLA YINA:** If I may come back to that one Justice, I will come back to the Act. If I may refer the witness to the annexures, there is Annexure ELA26 which was another licence which was issued to Precious Angels on the same day that she issued a licence to Precious Angels and this time it was signed by Dr Selabano and that's the licence that Ms Ncube provided to this arbitration. You  
10 would note that on that licence, she was authorised to operate from Kalefong Hospital premises and the licence was issued on the same day that you had issued yours. What was the reason for her to have two licences? Did you intend to give her 300 patients?

**DR MAKGABO JOHANNA MANAMELA:** Can I explain like I did, that when we  
15 issue a licence, the licence will cover a financial year period, that's why you see this has been licenced, this is supposed to be for the patient that she already had and at the time of Kalefong, let me pause a little bit and explain Kalefong to you-

**ADV NONTLANTLA YINA:** Sorry if I may just correct you on the patients that she had. Her evidence was that she was running a day care centre, are you referring to  
20 those patients?

**DR MAKGABO JOHANNA MANAMELA:** No they are not the one for Kalefong. I want to take you through the Kalefong issue, because it will come out in many

NGO's. Kalefong nurses home was one of the 5 government buildings which we thought or we planned from the task team process, to accommodate the patient and when these people were coming to our meeting, they were informed that there is an unused building in Kalefong, so they went to Kalefong and when we did the NGO 5marathon, we checked, because we had the advantage of the engineer. We checked the inside, we thought everything is okay, but when they went all around to, check the building, they found that the structural part outside, is not suitable and that building was being used. I think it was before we issued the licence, I am not quite sure, I think I am mixing the two here.

10 **ADV NONTLANTLA YINA**: Because then if you say it was before, then why did you issue the licence anyway?

**DR MAKGABO JOHANNA MANAMELA**: I think I am not quite sure here, I am not quite sure it was before, but the NGO marathon continued until the end of June, so I am not quite sure of the date, but because the date, this day of April covers the 15financial year, that is how it was put as this day of April and when the district submitted, they had not yet been informed about the structural outside that the engineer has discovered, so then we discovered that, we abandoned the issue of Kalefong. It was Precious Angels, Anchor, Shiloboh, the other, there were 4 NGO's who were supposed to use that place.

20 **ARBITRATOR JUSTICE MOSENEKE**: But you miss it don't you? You really missed the question put to you, why do you issue a licence about Kalefong which turns out never to be operational?

**DR MAKGABO JOHANNA MANAMELA**: I think this was just an error because the person who was preparing the licence, I think she just took it from the-

**ARBITRATOR JUSTICE MOSENEKE**: How could you allow somebody to operate under the guise of the law, to look after mental healthcare users and you have never been there to make sure the building works? How did that happen? Was it just a mistake?

**DR MAKGABO JOHANNA MANAMELA**: No it's the mistake of writing Kalefong Hospital, because that is a human error I believe.

**ARBITRATOR JUSTICE MOSENEKE**: How does that mistake happen when your procedure was set out to us so clearly?

**DR MAKGABO JOHANNA MANAMELA**: Yes.

**ARBITRATOR JUSTICE MOSENEKE**: Your people go and inspect first isn't it?

**DR MAKGABO JOHANNA MANAMELA**: Hmm.

**ARBITRATOR JUSTICE MOSENEKE**: How did that happen?

15**DR MAKGABO JOHANNA MANAMELA**: I will say how did that happen, Chief Justice, I am not quite sure and I may not be able to answer, but when the district submit their budget requests, normally after the assessment, they also look how many patients need to be in that area. I believe this was just a human error, because by that time, the patients for Precious Angels were never in Kalefong.

**ARBITRATOR JUSTICE MOSENEKE**: You know we have heard Ms Ncube come and talk to us. She intended to operate there. She even started doing initial renovations, so what human error are you talking about?

**DR MAKGABO JOHANNA MANAMELA**: I think maybe when she-

5**ARBITRATOR JUSTICE MOSENEKE**: She was issued a licence even before she occupied the premises and she was given patients before she had any premises, certainly not Kalefong. Do you understand what I am trying to get from you?

**DR MAKGABO JOHANNA MANAMELA**: I understand Chief Justice.

**ARBITRATOR JUSTICE MOSENEKE**: As a matter of law, how do you issue to her,  
10a licence about premises in Kalefong, about 150 mental healthcare users and the premises don't even exist, let alone an inspection report. What kind of error is that?

**DR MAKGABO JOHANNA MANAMELA**: No the inspection disqualified the use of Kalefong as the NGO. All the people who were supposed to go to Kalefong, were disqualified, they were staying at home, we told them clearly that we cannot use  
15Kalefong and you can look for other places.

**ARBITRATOR JUSTICE MOSENEKE**: And your superior issues a licence for exactly the same premises which are disqualified? How does that happen?

**DR MAKGABO JOHANNA MANAMELA**: Like I said, it was a human error. They should have taken out Kalefong.

20**ADV NONTLANTLA YINA**: Just the last part on the licencing Dr Manemela, if you go to File 1 please, Page 24 of the bundle, it's Page 19 of the actual report, that will



be the report of the Ombud, Item 5.2.6, it reads some facilities were found to be operating without a valid licence on investigation, e.g. Mosigo, Hafbizah, Takalani and Tshaping. Were you aware of any NGO's that received patients from Life Esidimeni and who did not have a licence or a valid licence?

**DR MAKGABO JOHANNA MANAMELA**: No.

**ADV NONTLANTLA YINA**: One of them was Siyabadinga.

**DR MAKGABO JOHANNA MANAMELA**: Oh yes Siyabadinga received the patients without valid licence, that's the only NGO. Like I said to these proceedings, that Siyabadinga took the space of Love Disciples which was licenced and that is why they were operating without licence and they further said they using Love Disciple licence and that was illegal and they even fought with us, because they were not part of the NGO marathon. When we went there for the last time to say Cullinan can be used, we knew that the NGO that is going to use the place was Love Disciples. Siyabadinga was the only NGO that operated without a licence that signed.

**ADV NONTLANTLA YINA**: 5.2.7 Mosigo's licence was invalid because the number of patients received (181) was not aligned to the licence capacity of 171. Were you aware of this?

**DR MAKGABO JOHANNA MANAMELA**: I think the licence was issued, but apparently when the Ombud went there, they didn't find that licence, because maybe I need to tell you to give you the procedure, after I told you from the beginning after the assessment and the rest, when I signed the licence, the licence

are given to the NGO manager who is taking them to the district. We are not moving from head office to go and issue licence to the NGO, so the licence to the NGO's are issued by the district.

**ARBITRATOR JUSTICE MOSENEKE**: Issued by the district? What do you mean  
5Doctor?

**DR MAKGABO JOHANNA MANAMELA**: I mean we have 5 districts in Gauteng. Every district has got a chief director, but they are supported from the Province, so in terms of the NGO in the district, there are roles for the district and there are roles for the Province. One of the provincial roles was to-

10**ARBITRATOR JUSTICE MOSENEKE**: Does any district office issue licences?

**DR MAKGABO JOHANNA MANAMELA**: They issue licences that are signed by head office. We sign them, then we give it to the district office and they take it to the NGO's.

**ARBITRATOR JUSTICE MOSENEKE**: No, but do they issue, do they authorise  
15anybody to-

**DR MAKGABO JOHANNA MANAMELA**: They don't authorise, we authorise from head office.

**ADV NONTLANTLA YINA**: Moshigo and El-Shaddai were requested by the Gauteng Department of Health to accommodate more patients than the number  
20stipulated in their licences and they were promised that the licences would be amended accordingly, which was never done. Do you wish to comment?

**DR MAKGABO JOHANNA MANAMELA:** No I won't comment because with this one, I know every NGO we gave licence from head office and we know for sure at times, when we went to the NGO, not find the licence, we found that some of the coordinators, still have to issue those licences.

5**ADV NONTLANTLA YINA:** But the point is that the Department requested the NGO's to take more than they were licenced to take.

**DR MAKGABO JOHANNA MANAMELA:** No.

**ADV NONTLANTLA YINA:** Did you request the NGO's to take more patients?

**DR MAKGABO JOHANNA MANAMELA:** No we didn't request them. We informed  
10them that if they would like to expand, they are willing to do that, we would appreciate, for example, I told you that we didn't even have one single NGO that expanded in Johannesburg for reasons that they were influenced not to give the Department beds.

**ADV NONTLANTLA YINA:** So this is not true in essence?

15**DR MAKGABO JOHANNA MANAMELA:** Ja this is not true. Every NGO that we gave patients, it was on their will, it was never on ours asking them to do that.

**ADV NONTLANTLA YINA:** But strange enough, this corresponds with the evidence of Siyabadinga, a Ms Noyila as well as Anchor, they also confirmed that there was a bus that came with patients and you were there and you didn't know  
20what to do with the patients and you asked them to take some of the patients.

**DR MAKGABO JOHANNA MANAMELA:** Which NGO?

**ADV NONTLANTLA YINA:** Anchor and Siyabadinga.

**DR MAKGABO JOHANNA MANAMELA:** I didn't know what to do with the patients?

**ADV NONTLANTLA YINA:** Yes.

**DR MAKGABO JOHANNA MANAMELA:** That is untrue.

**ADV NONTLANTLA YINA:** There were 38 patients to be precise in the bus.

**DR MAKGABO JOHANNA MANAMELA:** Okay alright, it's like if I took you through the role of the NGO, you would have understood what happened. The Anchor is one of the NGO's who were supposed to occupy Kalefong Hospital and then they didn't occupy Kalefong, because they were assessed of the staff and other things, except they don't have a building just like other NGO's that had a building but didn't have staff. So when we found that, we renovated Cullinan by the way. Cullinan was renovated for 100 beds, specifically for this process. Now when Siyabadinga was there illegally, we couldn't just say go out now, now. We have to analyse and check what is it, why are they are there, so in the process, they said they can only accommodate 73 patients that they have. At that time, 5 of them were on leave of absence and they were using one ward as a laundry, as a dustbin throwing things, so during the placement process, we developed 3 teams. The team that will ensure that the NGO where the patients are going, is according to the standard, so the NGO team, as thy went to Cullinan, they found that as I said about the ward and 100 beds has been renovated using over R10 million and now that one ward that is not occupied and the other one they use a throwing all the dirt. Then they phoned

me and said we can have more beds in this NGO. If the NGO that is there, will allow the patient, then I said to him, that NGO, I started to phone that NGO only to find like I said, it was a new NGO and the CEO said this NGO was not-

**ADV NONTLANTLA YINA:** What NGO was that?

5**DR MAKGABO JOHANNA MANAMELA:** That was Siyabadinga. The Love Disciples, if we look at the licences they were to get 100 patients-

**ARBITRATOR JUSTICE MOSENEKE:** What question are we answering now Counsel, where are we?

**ADV NONTLANTLA YINA:** Justice the question was that there was a bus with 38  
10patients and you were at Cullinan and you requested Anchor and Siyabadinga to take those patients. You didn't know what to do with those patients.

**DR MAKGABO JOHANNA MANAMELA:** No the fact that we didn't know what to do with those patients, was untrue, because they were planned. I was at Randfontein on the last day when these patients were moving and when they were  
15getting into their bus and when they were there, we followed them because they were the last number of patients that went there. We followed them and when we were there, we found that that is after everything-

**ADV NONTLANTLA YINA:** So your short answer is that no, there was no bus with 38 patients that was at Cullinan and you did not ask Siyabadinga and Anchor to  
20take the patients?

**DR MAKGABO JOHANNA MANAMELA:** I don't agree with the statement that I didn't know what to do with the patients that, is what I don't agree.

**ARBITRATOR JUSTICE MOSENEKE:** Okay let's test how well you knew what to do with these patients. On your plan, which patients were you going to take to 5which location, let's start there?

**DR MAKGABO JOHANNA MANAMELA:** Okay, the plan, now we are talking Chief Justice, with due respect, it's about implementation now, it's about placement now of patients.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, firstly show us the written plan, can we 10have a look at it?

**DR MAKGABO JOHANNA MANAMELA:** I don't know if it was indicated here, but I know we met with the Life Esidimeni and developed a plan that will start from May to June to take the patients from Life Esidimeni to our facility.

**ARBITRATOR JUSTICE MOSENEKE:** Yes can you help us get that plan?

15**DR MAKGABO JOHANNA MANAMELA:** Yes I have got that plan, I have got it.

**ARBITRATOR JUSTICE MOSENEKE:** You are going to take it out there and make a copy of the plan right? That was the plan that was how to manage how you are going to, if you like distribute patients to different NGO's, is that it?

**DR MAKGABO JOHANNA MANAMELA:** How do I put it, there was a plan on how 20many patients must be moved per week to different NGO's that were authorised, so

I have that plan, so when we had to take the patient to Cullinan after Siyabadinga was given 73 patients, the last number of patients, were to go to Cullinan.

**ARBITRATOR JUSTICE MOSENEKE**: Let's go step by step, it's going to be a long journey this, it's going to be days, not one day, can you find the plan?

5**DR MAKGABO JOHANNA MANAMELA**: The plan for the number of patients?

**ARBITRATOR JUSTICE MOSENEKE**: Yes how you were going to- you told us there were 1700 and more patients.

**DR MAKGABO JOHANNA MANAMELA**: No.

**ARBITRATOR JUSTICE MOSENEKE**: At Life Esidimeni?

10**DR MAKGABO JOHANNA MANAMELA**: During the task team, because during the task team, as we started-

**ARBITRATOR JUSTICE MOSENEKE**: Let's not use many words you can say no the number was not 1700. What was the number?

**DR MAKGABO JOHANNA MANAMELA**: When we started, it was 1442.

15**ARBITRATOR JUSTICE MOSENEKE**: Okay let's accept your number and then show me the plan, how you would have dealt with these patients to end up at licenced NGO's.

**DR MAKGABO JOHANNA MANAMELA**: Yes it's the only copy I have.

**ARBITRATOR JUSTICE MOSENEKE**: We will make a copy and we will get it back  
20to you.

**DR MAKGABO JOHANNA MANAMELA**: Okay it's just to say, because we have to meet with Life and agree, this is the copy that this patient will be moved in this pattern.

**ARBITRATOR JUSTICE MOSENEKE**: Yes we want to see the plan, just give it to the staff in my office, they will make copies and they will bring it back and that plan was available to everybody who was involved in the process of placement?

**DR MAKGABO JOHANNA MANAMELA**: Yes in the process of placement. Now it was the placing team, the NGO team and Life Esidimeni, so the plan was indicated to say this is the number you will take, but the placing team will decide to which NGO these patients are going.

**ARBITRATOR JUSTICE MOSENEKE**: Did you tell Life Esidimeni about the plan and where patients would be taken to?

**DR MAKGABO JOHANNA MANAMELA**: We were in a meeting with them and then we developed a plan and the team-

**ARBITRATOR JUSTICE MOSENEKE**: Did you tell them which patients would go to which NGO?

**DR MAKGABO JOHANNA MANAMELA**: I believe the team that is there, told them which NGO is going these patients. When the patients are leaving, some of them in the beginning, they even accompanied by the Life Esidimeni staff.

**ARBITRATOR JUSTICE MOSENEKE**: The CEO was here and he said he was never told of even one NGO where these patients were to be taken to.



**DR MAKGABO JOHANNA MANAMELA:** I don't know, that is not true, because I've got the minutes that I had and the manager who wrote the minutes-

**ARBITRATOR JUSTICE MOSENEKE:** Show us the minute which includes all the NGO's where you would take the patients to?

5**DR MAKGABO JOHANNA MANAMELA:** The minutes we will give to Life Esidimeni?

**ARBITRATOR JUSTICE MOSENEKE:** Life Esidimeni says you never told them, never gave them a copy of the list of NGO's.

**DR MAKGABO JOHANNA MANAMELA:** Okay Justice, these people you know  
10 Doctor Makata, although I didn't hear all what he said, at his level and at my level, we are not down at the placing team, but the first meeting I went and I met with the manager in both Life Esidimeni, Waverley and the rest and showed them the plan that we are removing these patients in this manner and the placing team that are standing there, they know they will tell you this one is going to El Shaddai, this one  
15 is going to Cullinan, this one is going to where-

**ARBITRATOR JUSTICE MOSENEKE:** Show me that plan that they used to do that.

**DR MAKGABO JOHANNA MANAMELA:** No I didn't have the plan they used with me, but what I know-

20**ARBITRATOR JUSTICE MOSENEKE:** Who would have the plan that can give it to us?

**DR MAKGABO JOHANNA MANAMELA:** The plan, I don't have the plan myself, maybe in my laptop, but in my other laptop, but I don't have the plan, but the people, the placing team will be the one, because firstly before we place, we assess the patient. The placing team had 2 roles the other role was to assist the doctors that are assessing the patients. The second one was to ensure that the patient X goes to where he or she has to go and to ensure that the transportation of that patient is okay.

**ARBITRATOR JUSTICE MOSENEKE:** It sounds all so good like it's all wrapped up well Doctor.

10 **DR MAKGABO JOHANNA MANAMELA:** That is how it was.

**ARBITRATOR JUSTICE MOSENEKE:** Really?

**DR MAKGABO JOHANNA MANAMELA:** Really I said to you I've got 5 DD's and 1 social worker. 2 of them were placed mostly in Tswane to ensure-

**ARBITRATOR JUSTICE MOSENEKE:** Are the patients properly assessed by 15 doctors? They were discharged and their records were taken along and they were given medication and they were taken to known pre-known NGO's, is that your evidence?

**DR MAKGABO JOHANNA MANAMELA:** My evidence is not covering everything what you are saying, but the doctor assessed them. I've got evidence, I wrote the 20 letter myself to the Board chairperson to ask the 2 other doctors who were serving at the Mental Review Board, to go and assist the Life Esidimeni doctors to assess the patients and then they went. They assessed all the patients. The other doctor

was in Randfontein and the other doctor was in Waverley and there were 2 teams of people from my office, like I said in the beginning, that when the MEC pronounced, we knew that this is work for my office, so the team was there, 2 teams were there. Mrs Sinelo and Dr Linkwani were at Waverley and they implemented this plan.

**5****ARBITRATOR JUSTICE MOSENEKE:** And they made sure that the patients are assessed and they are fit to be discharged and they were going to be placed at a place that was known and the patients were given necessary medication, they went along with their prescription records, is that your evidence?

**DR MAKGABO JOHANNA MANAMELA:** No, the 2 are not my evidence, because  
10we struggled with the patients' records, we struggled with the patients' wheelchairs, we struggled with the patients' clothing, we struggled with the patients' medication. They phoned me and they were reporting to me every day by SMS or phone. When they said about the medication, I called myself Dr Mokacha, to say Dr Mokacha you can't give 7 days' medication, because according to SLA, it's 30 days when people  
15are placed and we must know that from May to June, we were placing, we were not discharging. But throughout until April, they were still being discharged from Life Esidimeni, so the 2 people in each area like in Randfontein, it was DR MAKGABO JOHANNA MANAMELAashile and Ms Senelo, they were ensuring that the right transport, they couldn't manage to ensure that they get all the clothes, because it  
20was not within their power, but the transport was. They couldn't manage about the medication, because the medication that they were given, it was with the way the Life Esidimeni would want.

**ARBITRATOR JUSTICE MOSENEKE**: You are throwing a lot of words at me Mam. I am asking you very simple questions and I just want to get precise answers. Were the patients moved with their medical records?

**DR MAKGABO JOHANNA MANAMELA**: No not all of them.

5**ARBITRATOR JUSTICE MOSENEKE**: Were the patients moved with their medication?

**DR MAKGABO JOHANNA MANAMELA**: Not for the whole month.

**ARBITRATOR JUSTICE MOSENEKE**: For how long?

**DR MAKGABO JOHANNA MANAMELA**: There were patients who were moved  
10with 7 days medication and it was brought to my attention and I started to fight.

**ARBITRATOR JUSTICE MOSENEKE**: Did the patients know where they were going to be taken to?

**DR MAKGABO JOHANNA MANAMELA**: Yes the 2 in each area were telling the patients. When I visited, some patients were even fighting to say I must go first,  
15they knew, they were told, but you must remember Justice that we are talking about mentally ill patients, but they knew, because most of them had their own luggage, but the one that they had from their own families, but not the ones from Life Esidimeni. Life Esidimeni didn't give clothes, the patients were received-

**ARBITRATOR JUSTICE MOSENEKE**: And it's also your evidence that their  
20families knew all about where they were going to be taken to?

**DR MAKGABO JOHANNA MANAMELA:** Justice I will say families who were available, knew. Can I take you through the process how we invited the families? First, the MEC and the HOD invited a meeting at Waverley to meet the families and the families raised their concerns. We had a small one pager to say families-

5**ARBITRATOR JUSTICE MOSENEKE:** No Mam I am asking you about the actual transfer. Please don't take me to meetings before that. We have evidence about that. There will be many questions to be asked. I want us to get a nutshell of your evidence, nothing went wrong here, you identified the patients, you knew where you were going to take them to, the patients were told, they were given medication and  
10they were given whatever clothing was necessary and they were taken in an orderly way with your DDG's there to specific NGO's, is that your evidence?

**DR MAKGABO JOHANNA MANAMELA:** Yes although I cannot confirm the evidence in terms of all the family members of the patients, because like I said, over 700 patients didn't have families and some- there were roles, role of Life Esidimeni  
15and role of the Department. One of the role of Life Esidimeni was to inform their families where their patients are going and the role that was in our meeting, the role of ourselves, was to inform the family when we receive the patient because by that time, when they were at Life Esidimeni, only Life Esidimeni had documentation of who this one is coming from and who is the family members, so we agreed in a  
20meeting that the Life Esidimeni will inform the family that he is leaving and then when they reach our place, we will inform the family that we received them. That's the plan and I left it with my DD's and the managers of Life Esidimeni in both centres.

**ARBITRATOR JUSTICE MOSENEKE**: Counsel?

**ADV NONTLANTLA YINA**: Thank you Justice, I note that it's now almost 4:10, I remember that Friday you made an announcement that you wanted to see us in chambers at 4:00, I am not sure if it would be an opportune time to-

5**ARBITRATOR JUSTICE MOSENEKE**: No I think you can continue.

**ADV NONTLANTLA YINA**: Thank you. Just to follow-up on the families, you said that those family members who were there, they were aware that the patients were moving to the NGO's, some family members were aware?

**DR MAKGABO JOHANNA MANAMELA**: Yes some family members were aware.

10**ADV NONTLANTLA YINA**: What was the reason for the others not to be aware, do you know?

**DR MAKGABO JOHANNA MANAMELA**: There were 2 reasons when we met. You know every project will have some challenges. There was a time when I got the report that Life Esidimeni's telephones are no longer functioning during the  
15process and I asked because my DD's were in the facility for 2 and 1 week, they were not in the office, coming only on Monday for report. Then they said the lines are not functioning. We said okay, let's get the names of those that have, we will ask the Mental Health Review Board secretary's to phone the family. Then that was reported on Monday. The following day, it was reported back to me that the Life  
20Esidimeni has got the lines, their telephone lines are now working.

**ADV NONTLANTLA YINA:** Can I ask this question differently. Did they approve the project of the move?

**DR MAKGABO JOHANNA MANAMELA:** Whom?

**ADV NONTLANTLA YINA:** The family members, did they approve of their relatives being moved to the NGO's from Life Esidimeni, do you know?

**DR MAKGABO JOHANNA MANAMELA:** I cannot say there is somewhere where they approved, but I will say in case the family threw out, they agreed to form a family committee and they also went with us to the NGO during the NGO marathon, their committee went with us, but I must say Counsel throughout the process, we had a lot of challenges. The families were toy-toying, the families were influenced-

**ADV NONTLANTLA YINA:** If they approved, why were they toy-toying?

**DR MAKGABO JOHANNA MANAMELA:** I am just saying that we got the families, but they were working together with us, so I cannot have reason why they were toy-toying. I cannot have that, because the Department took a decision.

**ADV NONTLANTLA YINA:** When did they begin to toy-toy?

**DR MAKGABO JOHANNA MANAMELA:** Department took a decision to terminate and the highest leadership met the-

**ARBITRATOR JUSTICE MOSENEKE:** You were part of that decision right?

**DR MAKGABO JOHANNA MANAMELA:** I was told, I was informed-

**ARBITRATOR JUSTICE MOSENEKE:** No, no you drafted the plan and signed it.

**DR MAKGABO JOHANNA MANAMELA:** Yes I managed the plan.

**ARBITRATOR JUSTICE MOSENEKE:** You were the deputy project leader.

**DR MAKGABO JOHANNA MANAMELA:** Yes I was.

**ARBITRATOR JUSTICE MOSENEKE:** Before then, you were the project leader,  
5before Mr Mosonoge was appointed in September.

**DR MAKGABO JOHANNA MANAMELA:** No I was just the director for Mental  
Health Services, meaning that I must oversee everything that is happening to  
mental health services.

**ARBITRATOR JUSTICE MOSENEKE:** And you devised a plan and wrote it down.

10**DR MAKGABO JOHANNA MANAMELA:** Yes from the beginning, yes with my  
team.

**ARBITRATOR JUSTICE MOSENEKE:** And you were in charge of the  
implementation of the plan.

**DR MAKGABO JOHANNA MANAMELA:** All of us because we were giving the  
15report to MEC-

**ARBITRATOR JUSTICE MOSENEKE:** No, no in the packing order, you were the  
one who was in charge of the implementation of the plan.

**DR MAKGABO JOHANNA MANAMELA:** I will say my unit was in charge at that  
time.

20**ARBITRATOR JUSTICE MOSENEKE:** No Mam, no Mam.



**DR MAKGABO JOHANNA MANAMELA**: Why should it be a personal person-

**ARBITRATOR JUSTICE MOSENEKE**: Because you had the authority. Remember in the beginning, I asked you what the structure was remember right at the beginning and you were in the charge of the implementation of this project, is that right?

**DR MAKGABO JOHANNA MANAMELA**: I was ensuring that things should go well.

**ARBITRATOR JUSTICE MOSENEKE**: Many witnesses have come and told us that already.

10 **DR MAKGABO JOHANNA MANAMELA**: Alright.

**ARBITRATOR JUSTICE MOSENEKE**: Including your own colleagues and you are the one who gave orders on patients for instance to be taken from Randfontein to Cullinan, you gave those orders right?

**DR MAKGABO JOHANNA MANAMELA**: The termination project gave orders, the 15 orders were already there.

**ARBITRATOR JUSTICE MOSENEKE**: And you were that person who gave orders about the termination project.

**DR MAKGABO JOHANNA MANAMELA**: I was supporting yes the termination project.

20 **ARBITRATOR JUSTICE MOSENEKE**: Who were you supporting?

**DR MAKGABO JOHANNA MANAMELA**: The whole process.

**ARBITRATOR JUSTICE MOSENEKE**: But you were the head of the Directorate.

**DR MAKGABO JOHANNA MANAMELA**: Yes I was.

**ARBITRATOR JUSTICE MOSENEKE**: Of mental healthcare.

**DR MAKGABO JOHANNA MANAMELA**: Yes.

5**ARBITRATOR JUSTICE MOSENEKE**: You know it is going to help if we get fairly  
candid and serious. You know how many people died here, because of the  
decisions you made, so we are there to probe and understand that. You can't  
spend the afternoon telling me everything was perfect. You were there, you made  
sure the records were available, you knew the patients, you knew where to take  
10them to, they were given medication and you made sure that their families know  
and their families agreed with you. Is that what happened? Is that why 143 people  
died?

**DR MAKGABO JOHANNA MANAMELA**: With due respect Justice I didn't say  
everything was perfect. I mentioned that the treatment, I mentioned about the  
15records, but I was just outlining the plan of what took place.

**ARBITRATOR JUSTICE MOSENEKE**: Now the people you ordered to be spread  
around various NGO's died, do you know that?

**DR MAKGABO JOHANNA MANAMELA**: Yes I know Justice.

**ARBITRATOR JUSTICE MOSENEKE**: They lost their lives when they had lived  
20long at Life Esidimeni facilities, do you know that? I am just cutting to the chase,  
although there will be a lot of detail that will be canvassed with you. Do you think

they died because you, the commander in chief, acted in every way properly, is that what I should find?

**DR MAKGABO JOHANNA MANAMELA**: In terms of death Justice, not only one reason can attain to-

5 **ARBITRATOR JUSTICE MOSENEKE**: No I am talking about your role. Should I find that your role was perfect?

**DR MAKGABO JOHANNA MANAMELA**: No I haven't said my role was perfect. I did indicate that not all- you mentioned 6 things and I said the treatment, the clothing were not there, the wheelchairs, some were not there and then there were 10 issues that you didn't understand about the licences. I never said they were 100% perfect.

**ARBITRATOR JUSTICE MOSENEKE**: You know later, these Counsel are going to put to you inspection reports of these different places where you sent people to and those reports continue to shock me. The inspection at Takalani, inspection at 15 Siyabadinga, at Anchor Life, at Precious Angels, at all of them, we have these inspection reports and they are horrifying for human beings to live there and this was as a result of your decision to send them there. Why couldn't you stop that and make sure the conditions are fit for mental healthcare users?

**DR MAKGABO JOHANNA MANAMELA**: Chief Justice, we did the evaluation and 20 I will say when we did the evaluation, before the patients were placed there, the area was found to be suitable. There are reports on who went to the NGO's to do the evaluation and at that time, they were suitable and I didn't [inaudible] to go to

each and every NGO where the patients were supposed to go, because we were working as a team, a project team that is presenting everything to the MEC and there are records, when they went and assessed the place. Then we placed and thereafter, problems came up and I haven't said there were no problems after we placed, but we are still talking about evaluation.

**ARBITRATOR JUSTICE MOSENEKE**: And when people started dying, why didn't you intervene? You were the commander in chief, why didn't you say stop, people are dying in large numbers?

**DR MAKGABO JOHANNA MANAMELA**: Justice, no patient died during transportation. My work until transportation, all the patients, the 144 except 4 who died at Life, they arrived at the NGO's with no death and the deaths started after and the first death that was reported to me, was from Siyabadinga. When I questioned the CEO about that, the following day she reported about that and what I did, I went to the Board and I said Board, help us, I was so devastated as well by the death, go there and assess what is the problem. They went and wrote a report and when these patients- now we started to have problems with patients dying, they were still assessing the Board and my team as well. Unfortunately during the process, when the Ombud came, everything was-

**ARBITRATOR JUSTICE MOSENEKE**: You ordered these patients to the destinations that they ended up at. You gave those instructions, why didn't you intervene and firstly why didn't you regularly inspect the places to make sure they are fit for habitation and once things go back, why don't you intervene?

**DR MAKGABO JOHANNA MANAMELA:** We did assess and there are even NGO's that I went over the weekend, because during the week there was a lot of work. I had to go on my weekend and assess. When the first patient died in Siyabadinga and followed by the ones in Anchor, I asked, there are letters that we sent, the Board went to assess, I didn't fold my hands and say they are dying. I was concerned and it was really traumatising for me and I was hurt to learn that they were dying, but we transported them all with no problem, all of them with no problems.

**ARBITRATOR JUSTICE MOSENEKE:** Dr Manemela, it's not about transporting 10 people. It is about where you take them to, what care they received, the conditions where you have arranged for them and then they start dying within the first month of their move, what did you do about that?

**DR MAKGABO JOHANNA MANAMELA:** Yes we didn't just leave them Chief Justice to die. We started to check those areas, what is the problem, why are these 15 patients dying, we did that and after placement, it was not only my unit that I will give instruction to maybe as you are saying. There was also multi-disciplinary team in each and every district that was going there to ensure that the NGO are in good hands. If they are not, we have to move them and then there was also a strategy that as we were going, we are seeing that there are more problems. We developed, 20 I asked my team, because I only had-

**ARBITRATOR JUSTICE MOSENEKE:** We have evidence here Mam, these NGO's did not have doctors on site, they did not have occupational therapists, some did not have trained nurses, some did not have- I mean we have all this evidence

before us and I had hoped that you will help us understand. How would you permit such a thing to happen?

**DR MAKGABO JOHANNA MANAMELA**: We didn't permit let me take you how the NGO's are working in the province. You go to all our NGO's it doesn't mean that they will have a doctor. We gave each and every NGO a link of the clinic when they are having problems they are linked to a certain clinic, where the patient will be taken care of. They are also linked to a certain hospital where when the patient needs admission, they will go there. That is how the NGO process is working, there is no NGO's that have doctors. The doctors are coming and do the voluntary work, but we made sure that NGO Precious Angels are linked to this NGO at Atteridgeville, you Anchor you are linked to-

**ARBITRATOR JUSTICE MOSENEKE**: And how long did you take to pay them?

**DR MAKGABO JOHANNA MANAMELA**: Ja it took time to pay them I must agree.

**ARBITRATOR JUSTICE MOSENEKE**: Why?

**DR MAKGABO JOHANNA MANAMELA**: Okay let me give you the reason. We didn't pay them in time. My office is not the one who is paying. I am not shunting away the responsibility, we monitor if they are paid and when we realised that they had not been paid, then we started to liaise with the unit that has to pay the NGO and find out what is the problem.

**ARBITRATOR JUSTICE MOSENEKE**: When all that happened, where do you think these patients are? And why do you remove them before you arrange for payment? What do you think they are going to eat?

**DR MAKGABO JOHANNA MANAMELA:** Okay how the NGO's are working-

**ARBITRATOR JUSTICE MOSENEKE:** No, no just answer me and tell me why did you transfer them before you made the arrangements to protect their lives?

**DR MAKGABO JOHANNA MANAMELA:** We met with the NGO and they assured that they have funds. The NGO's are not being paid fully by the Department, they are subsidised.

**ARBITRATOR JUSTICE MOSENEKE:** Dr Manemela why did you not make arrangements for them to be paid on day one when they received patients?

**DR MAKGABO JOHANNA MANAMELA:** Okay we wrote a letter to finance from my unit written by one of the DD to ask that they be paid up-front, but we never got a response, because the Department rule is that you deliver and be paid late.

**ARBITRATOR JUSTICE MOSENEKE:** Did you care? What were they going to eat for 4 months, what were they going to eat?

**DR MAKGABO JOHANNA MANAMELA:** No the 4 months we cared. Let me tell you what we have done Justice. I know it is not an easy thing, it was paining me as well. What we did, realising the delays in the payment, because like I said, there were professional nurses before but when there was a delay in payment, some left but what my unit did, we organised with these NGO's, the NGO's that can assist them, there was one NGO that assisted for example Tshepong, we called all the NGO's that had patients to say come to a meeting and said let's understand how do you cope in this situation and they told us and then we organised some company that deals with balanced dietician and then she presented to them and we said

those who are having challenges can be given food and they will pay later. Then for clothing, because we knew that they came from Life Esidimeni with one pair of trouser and jacket, we organised with a company, I just know the name Stephens, who came and said I will give you money, I will give you clothing, tell me what you want, so we ensured that the clothing and the food are provided.

**ARBITRATOR JUSTICE MOSENEKE:** There we go again, you are now telling me that there was enough good, enough clothing, there you are telling me again.

**DR MAKGABO JOHANNA MANAMELA:** I am telling you what I have done, because you asked me what I have done.

10**ARBITRATOR JUSTICE MOSENEKE:** No but why did you authorise them to be moved when you had not arranged for them to be looked after properly?

**DR MAKGABO JOHANNA MANAMELA:** The authorisation was at the termination. It was not my authorisation. There was nowhere where I said I am authorising, the termination letter was the authorisation, so we have to see to it they move and when they are there, we have to see to it that they are covered, they have got clothes, they've got food, but how the NGO fed them, we were not there at that time, but we did all we could, because we even wrote a letter to say if you don't want to get meals from Masala Dietician who is offering to say I will support you, you can take this letter that I signed and go to the shop next to you and let them give you food if you don't have.

**ARBITRATOR JUSTICE MOSENEKE:** But why did you expose these patients to these terrible circumstances before you made proper arrangements?



**DR MAKGABO JOHANNA MANAMELA**: The arrangement was that they would be paid within one month, that was the arrangement and the NGO that came, they were confirming that they would be able to carry on with food for the whole month and the clothing.

5**ARBITRATOR JUSTICE MOSENEKE**: Forget about the NGO's, why did you, the commander in chief, take people and put their lives at risk that is the question?

**DR MAKGABO JOHANNA MANAMELA**: The contract was terminated and I was just making sure that they go where we can reach them.

**ARBITRATOR JUSTICE MOSENEKE**: Counsel?

10**ADV NONTLANTLA YINA**: Thank you Justice, Dr Manemela the evidence that is before this arbitration is that the service level agreements were signed long after patients had been moved to the NGO's, are you aware of that?

**DR MAKGABO JOHANNA MANAMELA**: Yes Counsel I am.

**ADV NONTLANTLA YINA**: And therefore the NGO's could not have received  
15payment earlier because the service level agreement was signed very late.

**DR MAKGABO JOHANNA MANAMELA**: Not all of them.

**ADV NONTLANTLA YINA**: I will take you to one of them just to make a point that will be File 6, Page 2106, that is the service level agreement in respect of Precious Angels. If you go to Page 2106, then the signature appears on 2138 and it would  
20seem like it was signed in Pretoria on the 16<sup>th</sup> of August 2016. Do you agree with that?

**DR MAKGABO JOHANNA MANAMELA:** Yes I see it.

**ADV NONTLANTLA YINA:** Yes now if you can just keep that file open and go to ELA57 on the annexures, ELA57 it is a schedule that was prepared by the Ombud of the deaths and if you look at Precious Angels in July, 7 people died. In August, 8 5people died, so when the service level agreement was signed, already, 15 people had died and that was even before they received money from the Department. Do you wish to comment?

**DR MAKGABO JOHANNA MANAMELA:** Okay in terms of service level agreement, that's why I requested Justice to just give you the way things unfolded 10and the way things are happening. Can I be allowed to-

**ARBITRATOR JUSTICE MOSENEKE:** Yes I am sure you will be allowed, but the tight point is this, is that several people died before the government gave these NGO's any money.

**DR MAKGABO JOHANNA MANAMELA:** Yes.

15**ADV NONTLANTLA YINA:** And you indicated earlier on-

**ARBITRATOR JUSTICE MOSENEKE:** And what is your response to that? That is what Counsel is putting to you? You may explain other things, but I think you must meet the question.

**DR MAKGABO JOHANNA MANAMELA:** Yes before they were given money, 20because like I indicated, the money part was not from my office, but if I take you through how the service level agreement that she asked me to open, how does it

work, we as the Department, we work closely with the managers of the NGO and the staff, but the NGO's has got a board, so we called them to a meeting and explained, finance people explained how the SLA must be signed. Thereafter, they are given a copy to go and discuss with their board, so now, they didn't bring it in 5time they brought it very late-

**ADV NONTLANTLA YINA:** Dr Manemela if I may interject, if there was a proper plan, service level agreements would have been signed before patients were placed, not so?

**DR MAKGABO JOHANNA MANAMELA:** I don't know.

10**ADV NONTLANTLA YINA:** And these deaths could have been prevented not so?

**DR MAKGABO JOHANNA MANAMELA:** But it depends on some other third party, not us.

**ADV NONTLANTLA YINA:** Coincidentally, Mrs Masondo testified that she went there and there was no food at Precious Angels. On the day she went there, there 15was no food.

**DR MAKGABO JOHANNA MANAMELA:** I don't know, I was not with her and I can't comment on that.

**ADV NONTLANTLA YINA:** Precious Angel's manager Ms Ncube testified that even her car was re-possessed, because she was suffering a lot of financial 20constraint. She had to loan money from relatives, she survived on donations.

**ARBITRATOR JUSTICE MOSENEKE:** What do you say to that?

**DR MAKGABO JOHANNA MANAMELA:** I have got nothing to say about that because I know that we were to give them subsidy and then by that time, the subsidy was not yet given.

**ARBITRATOR JUSTICE MOSENEKE:** But you see, the cutting end of the question is, why did you, the operational commander in chief, allow people to go to NGO's when service level agreements had not been signed and when they would get no money from yourselves? Why would you expose patients to such obvious risk?

**DR MAKGABO JOHANNA MANAMELA:** We are not working with only Precious Angels and the money issue, is not determined in my office and how it goes through-

**ARBITRATOR JUSTICE MOSENEKE:** No you went out and commanded that people be put on trucks and buses and moved to other places. I am saying why do you do that?

**DR MAKGABO JOHANNA MANAMELA:** I don't agree that I went out Justice, I don't agree, because the termination was given. Already the termination letter was given, saying we extend it by the 30<sup>th</sup> of June and then when we met with the NGO that is the plan that was within my directorate.

**ARBITRATOR JUSTICE MOSENEKE:** No you made the plan and signed the plan and I said to you why do, you implement it when it is going to harm patients' that is my question. You have a PHD in psychiatric nursing, why do you agree to take patients who need mental healthcare and put them in places which don't even have food, because they don't have money from you?

**DR MAKGABO JOHANNA MANAMELA:** At the beginning, when this was assessed, it was assured that they have got money that can keep them for a month, they have got clothes and when we realised they don't have, then we went out and that termination was not my own termination. It was the departmental endeavour, so I was there to implement, so when we met with the NGO, we realised we will look at what can we do within our reach and within my reach, was to organise those people who can provide clothes-

**ARBITRATOR JUSTICE MOSENEKE:** No but why do you do it in the first instance, that is my question?

10 **DR MAKGABO JOHANNA MANAMELA:** No the order was given, the termination letter-

**ARBITRATOR JUSTICE MOSENEKE:** Who gave you the order?

**DR MAKGABO JOHANNA MANAMELA:** The termination letter was given.

**ARBITRATOR JUSTICE MOSENEKE:** Who gave you the order to distribute 15 mental healthcare patients the way you did? Was that your decision, or was it somebody else's decision?

**DR MAKGABO JOHANNA MANAMELA:** No it was not my decision to terminate the project.

**ARBITRATOR JUSTICE MOSENEKE:** Whose decision was it?

20 **DR MAKGABO JOHANNA MANAMELA:** It was the departmental decision, the HOD-

**ARBITRATOR JUSTICE MOSENEKE:** Who in the department, the department is big? Who gave you, you say it is not your decision, who gave the instructions to take other human beings and then spread them around NGO's?

**DR MAKGABO JOHANNA MANAMELA:** No I don't know how to- maybe I might not answer that, because the issue was not to spread them around the NGO's, that is why we had NGO marathon, to identify the NGO and thereafter-

**ARBITRATOR JUSTICE MOSENEKE:** To place people was done by you and I am saying to you, who ordered you to place patients the way you did? Was it your decision, or somebody else's decision?

10 **DR MAKGABO JOHANNA MANAMELA:** It was a collective decision to place patients on the assessed NGO.

**ARBITRATOR JUSTICE MOSENEKE:** Who was part of that collective?

**DR MAKGABO JOHANNA MANAMELA:** I was also part of the collective.

**ARBITRATOR JUSTICE MOSENEKE:** And who else?

15 **DR MAKGABO JOHANNA MANAMELA:** And the doctors who assisted the patients were also part and my team and we were giving MEC and the executive meeting of the progress every week.

**ARBITRATOR JUSTICE MOSENEKE:** Who gave you instructions to do the placements?

20 **DR MAKGABO JOHANNA MANAMELA:** Yes in the meeting, the MEC has indicated that we should have placed the patients by the end of June.

**ARBITRATOR JUSTICE MOSENEKE**: Did the MEC give you the instructions to take patients to facilities where no service level agreements had been signed?

**DR MAKGABO JOHANNA MANAMELA**: No we cannot say she said we must take them to facilities where no service level agreement was signed and to start with, the service level agreements are signed with the district, not with my office. I only take what they send to me to prepare their budget.

**ARBITRATOR JUSTICE MOSENEKE**: Could you have said stop, I am moving nobody until the facilities have their monthly resources, could you have done that?

**DR MAKGABO JOHANNA MANAMELA**: If that was allowed, I could have done that, but the other thing-

**ARBITRATOR JUSTICE MOSENEKE**: Allowed by whom?

**DR MAKGABO JOHANNA MANAMELA**: By the executive of the department.

**ARBITRATOR JUSTICE MOSENEKE**: Who needed to allow that?

**DR MAKGABO JOHANNA MANAMELA**: The MEC because she is the one who extended the contract. We told her that we are not ready at that time. We said we are not ready and she extended. If she extended, we should have stopped, but again, we look at those NGO's, we found that at that time, that is why they say the test is in the pudding, at that time, we found the staff, my DD's went and found the staff members and then they found the place suitable, only to realise later that there were problems. We never planned that anybody should lose their lives, we never planned that.

**ARBITRATOR JUSTICE MOSENEKE**: It might be an appropriate time to adjourn until tomorrow.

**ADV NONTLANTLA YINA**: Thank you Justice.

**ARBITRATOR JUSTICE MOSENEKE**: Dr Manemela will resume tomorrow at 9:30 5to, continue to hear your evidence. There will be cross-examination by 4 sets of advocates and a re-examination and that will be tomorrow at 9:30, we are adjourned.