

# **LIFE ESIDIMENI ARBITRATION**

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

**DATE: 6<sup>th</sup> DECEMBER 2017 DAY**

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**DAY SESSION 1 – 4.**

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**BEFORE ARBITRATOR – JUSTICE MOSENEKE**

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**WITNESSES:**

**DR. BARNEY SELEBANO**

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## SESSION 1

**ARBITRATOR JUSTICE MOSENEKE:** Dr Selebano do you swear by the evidence you are about to give will be the truth and nothing but the truth, and if so, please raise your right hand and say so help me god.

5**DR TIEGO SELEBANO:** So help me god.

**ARBITRATOR JUSTICE MOSENEKE:** Very well. The cross-examination will continue. Good morning.

**ADV. ADILA HASSIM:** Good morning Justice.

**DR TIEGO SELEBANO:** Good morning Judge.

10**ARBITRATOR JUSTICE MOSENEKE:** And good morning doctor.

**DR TIEGO SELEBANO:** Good morning judge. Morning, morning judge.

**ADV. ADILA HASSIM:** Morning Dr Selebano.

**DR TIEGO SELEBANO:** Morning Counsel.

**ADV. ADILA HASSIM:** When we left off yesterday, we were in 28 April, 2015, and  
15we were discussing the letter from the [inaudible 00:00:41] in which they raised many concerns. And in the course of that discussion we spoke about Section 27 of the constitution, and the importance of not taking away services, existing services that are being provided to healthcare users. Do you recall that?

**DR TIEGO SELEBANO:** Yes, Counsel.

**ADV. ADILA HASSIM:** Apart from the constitutional obligation, I would like to Justice, in fact, if I may, I beg leave to hand up another exhibit and it will be ELAH113 and it's a budget speech by the Provincial MEC for Finance, Barbara Creecy.

5**ARBITRATOR JUSTICE MOSENEKE:** Yes. ELAH113 is admitted to the record. Is there a copy for the witness?

**DR TIEGO SELEBANO:** Thank you.

**ADV. ADILA HASSIM:** Dr Selebano it's the budget speech by the MEC for Finance and the speech is dated 7 March, 2017 and it's the presentation to the Gauteng  
10Provincial Legislature. I would like you to have a look at page 7 of that document please, and right at the bottom of page 7 there's a heading Cost Cutting. Justice, are you there?

**ARBITRATOR JUSTICE MOSENEKE:** I am there indeed.

**ADV. ADILA HASSIM:** Cost cutting, do you see that?

15**DR TIEGO SELEBANO:** I can see that.

**ADV. ADILA HASSIM:** I would like to just read out what the MEC says before I ask you the question. She says, "Honourable Members, over the past two and a half years, all provincial departments have been guided by National Treasury circulars to cut costs on non-core expenses. By non-core expenses, we mean those expenses  
20which are primarily targeted at government itself rather than spending targeted at our citizens. Examples include catering, corporate branding, accommodation and

travel expenses." And then the paragraph after the next says, "It has never been provincial government policy to save costs by cutting back on services to our citizens. In fact, honourable members, every effort has been made to protect the budgets of health, education and social development."

5So what MEC, Creecy is making clear is that it's not the policy of government to cut back on core services, meaning services which are intended for citizens, which are targeted at citizens as she defines it. So can you answer why this program of mental health users this project was chosen as a cost saving measure?

**DR TIEGO SELEBANO:** Well, I cannot – I don't disagree here with what probably  
10MEC Barbara Creecy was saying. I was not there. But your question is why did we choose this. It was not – at that time – and through you, Justice again, at that time, the thinking was different. At that time, the intention was not to cut the services, not cutting the services; the thinking, as I told you yesterday, was if we are able to shift to where we will be able to then support directly now as government, that was the  
15thing.

**ARBITRATOR JUSTICE MOSENEKE:** No, but you missed the question. The rump of the question is, is government policy – that there will be no cost cutting on core services to citizens – that's the policy. Do you contest that policy?

**DR TIEGO SELEBANO:** No, I don't.

20**ARBITRATOR JUSTICE MOSENEKE:** MEC says further, what Counsel read to you, this was never government policy to cut costs in relation to core services to citizens. Then follows the question, why did you act contrary to government policy,

why did you cut costs in relation to citizens' core service. That is the question of Counsel.

**DR TIEGO SELEBANO:** Yeah.

**ADV:** Justice Moseneke can I just point out before the witness answers this question, that if you look at the document which has just been handed us, it's for the 2017-2018 budget.

**ARBITRATOR JUSTICE MOSENEKE:** So?

**ADV:** It doesn't relate to the period in question.

**ARBITRATOR JUSTICE MOSENEKE:** No, you are off the mark entirely, [inaudible 1000:06:29]. The MEC says clearly, there's always government policy not to cut costs. She emphasized that there's never been their policy to do so, any time in the past. That 2017 is neither here nor there.

**ADV:** Justice Moseneke I am just pointing out that the question can be put to the witness but not in relation particularly to this document which relates to a budget 15after the event.

**ARBITRATOR JUSTICE MOSENEKE:** As I indicated, you have no real standing in this hearing. You cannot object, except if there's a vital interest of the witness you think is being invaded. The question is legitimate. In 2017, MEC says it never was government policy to cut costs on core services directed at citizens [inaudible 2000:07:28]. And he's been asked in 2015, why did you cut costs for core services to citizens. Proceed with the questioning.

**ADV. ADILA HASSIM:** Justice and perhaps if I could just add for the sake of completeness, that I began the quotation from the MEC where she says, she talks about the past two and a half years, so this is in the context of a period of time, the fact that she was giving the speech in March 2017 relating to that budget is not of concern to us.

**ARBITRATOR JUSTICE MOSENEKE:** Proceed with the question. Would you answer the question?

**DR TIEGO SELEBANO:** Yeah, okay. Counsel says we cut costs. Our thinking that time, we are not cutting costs we – and I said it again, we were saying, the same cost that would be incurred at a particular – and that is the thinking and Judge please understand, like I said this, I am not defending, I am explaining the thinking. At that time, we said, we are enhancing our revenue. The same services that we have been spending on life healthcare, we could shift them and be able to get the same revenue through our own services.

**ARBITRATOR JUSTICE MOSENEKE:** That was clever, but it takes us nowhere. You cutting costs on people's services, but you try to save money by giving people services at another place, so that you can save money. So Counsel asked you one of your own – the MEC says it never was government policy. How do you explain that you gave a directive to cut costs on core services? That's the question. What is your answer to that?

**DR TIEGO SELEBANO:** That's what I am saying. We moved from a different understanding. Our thinking was that we are enhancing, we are not cutting. You are saying, I understand, it becomes this and that, but our understanding...

**ARBITRATOR JUSTICE MOSENEKE:** Why did you move people from Life  
5Esidimeni? You told us yesterday already, haven't you?

**DR TIEGO SELEBANO:** Yes, I said that was...

**ARBITRATOR JUSTICE MOSENEKE:** We can play the record back to you, "in  
order to cut costs".

**DR TIEGO SELEBANO:** I said the fiscal pressure.

10**ARBITRATOR JUSTICE MOSENEKE:** Yeah, [inaudible 00:09:58] for fancy work, in  
order to cut costs for fiscal pressure, right. So Counsel legitimately says to you,  
besides the constitution and the law, it was not even the policy of your government  
to cut costs on core services directed at citizens. What is your response to that?

**DR TIEGO SELEBANO:** I still differ with Counsel on that. The manner in which  
15she's putting it is that we went out there to deliberately cut costs and our thinking,  
and I am saying it again Judge, with due respect, our thinking was not – at  
hindsight, she's able to say that, at hindsight, that our thinking was that if we do  
things the way we are thinking we would do then we would still be able to offer the  
same services.

20**ARBITRATOR JUSTICE MOSENEKE:** Well, tell the Counsel, what were you doing.  
Why did you shut down the contract?

**DR TIEGO SELEBANO:** It was not only cost cutting. I did say it yesterday. Also, the auditor general had...

**ARBITRATOR JUSTICE MOSENEKE:** No, was it cost cutting? Was it?

**DR TIEGO SELEBANO:** Revenue enhancement, we called it that. I mean, cost cutting, no, but you were not there in those discussions.

**ADV. ADILA HASSIM:** Sorry, Dr Selebano, because you are playing with words.

**DR TIEGO SELEBANO:** No, I am not.

**ADV. ADILA HASSIM:** Yesterday, you said you were under fiscal pressure.

**DR TIEGO SELEBANO:** Fiscal pressure.

10 **ADV. ADILA HASSIM:** And you needed to cut costs.

**DR TIEGO SELEBANO:** To manage costs, revenue enhancement, that's what we used to call it.

**ADV. ADILA HASSIM:** What does revenue enhancement mean?

**DR TIEGO SELEBANO:** It means you look at everything that you have and say, 15 how can we [inaudible 00:11:38] and I said to you with the same rent, to stretch the rent, to get the same thing, that's what I said.

**ADV. ADILA HASSIM:** So you needed to make the money go further?

**DR TIEGO SELEBANO:** Yes.

**ADV. ADILA HASSIM:** Is that what you mean?

**DR TIEGO SELEBANO:** Stretch, right.

**ADV. ADILA HASSIM:** And to do that, you terminated the contract.

**DR TIEGO SELEBANO:** Also, please, just to stretch the rent, to get the same [inaudible 00:12:03], remember I said that. You agreed with me.

5**ADV. ADILA HASSIM:** No, I never agreed. I am asking you the questions. You said that you needed, you were under fiscal pressure, money was an issue. Isn't that so?

**DR TIEGO SELEBANO:** It's still an issue now with the department.

**ADV. ADILA HASSIM:** Yes, and the MEC for Finance says that indeed there were circulars from National Treasury to guide departments as to how to cut costs.

10**DR TIEGO SELEBANO:** That's right. I agree.

**ADV. ADILA HASSIM:** And they were not to be – the departments were not to cut costs at services targeted at citizens. Do you agree with that?

**DR TIEGO SELEBANO:** You read it and this is what – if you say I agree with what MEC is saying, yes I see, I can see it.

15**ARBITRATOR JUSTICE MOSENEKE:** The real question is why you [inaudible 00:13:00] policy.

**DR TIEGO SELEBANO:** No, we didn't [inaudible 00:13:03] no. We didn't deliberately [inaudible 00:13:06].

**ARBITRATOR JUSTICE MOSENEKE:** I am not talking about deliberately, I am saying why did you choose to cut costs on services directed at vulnerable citizens. When the policy is you never do this.

**DR TIEGO SELEBANO:** We never did that. That's what I am saying. We never did that.

**ARBITRATOR JUSTICE MOSENEKE:** And that's why they are still alive.

**DR TIEGO SELEBANO:** No, Judge, please...

**ARBITRATOR JUSTICE MOSENEKE:** No, but it's a serious matter and you are playing [inaudible 00:13:32]. I want to suggest to you, confront the question, you were the person in charge, you are asked the question about policy of your government and [inaudible 00:13:43]. Show some serious intention to address the issue that's relevant.

**DR TIEGO SELEBANO:** Yeah, Judge, I respect you and the Counsel. You also have to appreciate the thinking at that time. It is important to appreciate the thinking at that time. When you fast track it to now, it looks like the way you are saying it, but the thinking at that time is, we are doing a revenue enhancement program.

**ADV. ADILA HASSIM:** And would revenue enhancements involve spending more money?

**DR TIEGO SELEBANO:** No.

20**ADV. ADILA HASSIM:** No?

**DR TIEGO SELEBANO:** It involves ensuring that you get your debts from those who are owing you, there are departments that are owing us, so we are going to get that money. It involves some of the things that MEC Creecy is talking about ensuring that we don't spend on anything, no accommodation, no travelling, nothing. It involved looking at other services where we can still do more by stretching...

**ADV. ADILA HASSIM:** With the same amount of money?

**DR TIEGO SELEBANO:** By stretching the rent.

**ADV. ADILA HASSIM:** With the same amount of money, is that what you understand?

**DR TIEGO SELEBANO:** Well, the budget would be fixed, yes.

**ADV. ADILA HASSIM:** Yes, but that's true. So then I would like to ask you this, and in order to put the question to you, I need you to have a look at another exhibit and it's in the exhibit bundle and it's ELAH59. Do you have it?

15**DR TIEGO SELEBANO:** Yes Counsel, I have it.

**ADV. ADILA HASSIM:** And it's an official Gauteng Province document, and it is headed Proposed Development of New 900 Beds Facilities for Mental Health Services to be Constructed at Tara, Weskoppies and Sterkfontein.

**DR TIEGO SELEBANO:** That's right.

20**ADV. ADILA HASSIM:** And it is a document that is signed by you.

**DR TIEGO SELEBANO:** That's right. I saw that.

**ADV. ADILA HASSIM:** And it was in November 2016.

**DR TIEGO SELEBANO:** That's right.

**ADV. ADILA HASSIM:** Yes?

**DR TIEGO SELEBANO:** Yes, I can see that.

5**ADV. ADILA HASSIM:** So you've seen this document before. You recall this document?

**DR TIEGO SELEBANO:** I've signed it. Definitely, then I went through it.

**ADV. ADILA HASSIM:** Does it look familiar to you?

**DR TIEGO SELEBANO:** I accept this is probably my document. It's my document.  
10I've signed it.

**ADV. ADILA HASSIM:** So, the purpose of this is set out in paragraph 3 of the documents. It says the Gauteng Department of Health experiences a high prevalence of mental health conditions in the communities. The communities are exposed to greater risks of mental illness and psychological distress due to varying  
15social practice and pressures. And the second paragraph, the inability to admit and accommodate the identified patients is not because of lack of willingness, the major factor limiting access to mental health care is the limited hospital capacity. And then towards the end of the same paragraph, the Department of Health records indicate that in an instant it requires an average of 1200 beds capacity additional to the  
20existing to relieve other areas of distress within the mental health care system. The department is therefore commissioning the construction of three new facilities at

Tara Hospital, 300 beds; Weskoppies hospital, 300 beds; and Sterkfontein Hospital, 300 beds.

**DR TIEGO SELEBANO:** That's right.

**ADV. ADILA HASSIM:** Why were you planning to build and spend money on 5 additional beds, while at the same time terminating the beds that were accessible to you at Life Esidimeni?

**DR TIEGO SELEBANO:** If you read it, I can – let me also read it. It says, Gauteng Department of Health experiences a high prevalence of mental health conditions. So, here the idea was that this solution is not a permanent solution, it's not a 10 permanent solution. We need to have a long term solution and the long term solution would be to have facilities that are not outsourced but insourced, done inside the department. That was the long term solution. That's the reason.

**ADV. ADILA HASSIM:** But would this have stretched the rent?

**DR TIEGO SELEBANO:** Well, by [inaudible 00:19:03] the rent I don't know, it 15 doesn't necessarily mean that you [inaudible 00:19:06] spending.

**ADV. ADILA HASSIM:** Well, I am trying to understand what you mean by when you spend, when you revenue enhance, when you cut costs and when you spent. So you said to us that the department was under fiscal pressure. At the same time that you used that as a reason to terminate the contract with Life Esidimeni, you enter 20 into plans to build 900 beds. And I will come to the cost of the building of the 900 beds.

**DR TIEGO SELEBANO:** Yeah, I agree but you would also not...

**ARBITRATOR JUSTICE MOSENEKE:** You agree with what? Let's just record what you agree with?

**DR TIEGO SELEBANO:** She's saying that we got into an enhancement program and I said I agree with that. But I am saying, also, she cannot begrudge – Counsel, sorry Counsel, my forgiveness, I am very, very sorry. Through you, Judge, it's no disrespect. Counsel, but also you can't begrudge us for claiming because we found there were no plans for insourced services. Here, Tara is a psychiatric hospital, Weskoppies is one also, and Sterkfontein. So the plan was finally, we are going to have here – actually, if I were to explain to you, the situation in the hospitals, then you will understand why we had to plan this way. We had to plan this way into the future.

**ADV. ADILA HASSIM:** This was in November 2016.

**DR TIEGO SELEBANO:** That's right.

15**ADV. ADILA HASSIM:** And your planning – according to your planning and it's set out under the heading Infrastructure Planning, the following deliverables are envisaged. And it sets out 10 deliverables.

**DR TIEGO SELEBANO:** Where is that? Where are you now Counsel?

**ADV. ADILA HASSIM:** On the same page, under the heading Infrastructure  
20Planning.

**ARBITRATOR JUSTICE MOSENEKE:** Just give me the reference again, Counsel, please.

**ADV. ADILA HASSIM:** Sorry Justice, it's ELAH59.

**ARBITRATOR JUSTICE MOSENEKE:** ELAH59, thank you, I've got it.

5**DR TIEGO SELEBANO:** Where it says Infrastructure Planning, right.

**ADV. ADILA HASSIM:** And it says, the following deliverables are envisaged, and it sets out 10 deliverables. And some of them include, for example, at 3.2, accommodation list of the facilities should include mental health care wards for 900 beds, kitchen facilities, ablution facilities relative to the number of users 10accommodated, training facilities for educational programs, indoor rehabilitation facilities and outdoor sporting activity grounds, outdoor seating facility under shade. 3.3, all wards should be provided or fitted with temperature regulation systems, automated or manually operated. 3.4, overnight facilities for health caregivers and supporting staff as opposed to permanent accommodation facilities for staff. 3.5, all 15facilities should have sufficient security provisions. 3.6, all yards should be fenced with appropriate fencing materials to control and manage movement of patients, and so on and so on. That would be quite costly, wouldn't it?

**DR TIEGO SELEBANO:** But that is also noble.

**ADV. ADILA HASSIM:** That's also noble?

20**DR TIEGO SELEBANO:** It's also noble.

**ADV. ADILA HASSIM:** I am not questioning that. I am not questioning the nobility of the motive to build more hospitals. My question is related to cost cutting or cost saving, however you wish to explain it.

**DR TIEGO SELEBANO:** Counsel, I don't understand when – we are not cutting costs. This is a service – it's a service platform. When we cut costs, we don't shut down the service. I don't understand when you say we are cutting costs but you still want to build. We still have to provide medication, we still have to provide food for patients, we still have to provide...

**ADV. ADILA HASSIM:** Except that that didn't take place for the users at Life Esidimeni who were moved.

**DR TIEGO SELEBANO:** I don't know why you say that. I don't agree with that.

**ADV. ADILA HASSIM:** Well, we've got ways to go. And I am surprised here you say that you don't agree with that if you've been following these proceedings and if you've read the Ombuds report. My point is this. In an effort to save costs, you terminated the contract. It says so in the termination letter. In the process of doing that, lives were endangered. Would you agree?

**DR TIEGO SELEBANO:** In hindsight, yes, I agree.

**ADV. ADILA HASSIM:** And so, I am questioning you on the motive, not the nobility of this plan, on – what I am questioning is why was it necessary to cut costs in relation to those patients when there were plans to spend money at great cost.

**DR TIEGO SELEBANO:** Yeah. I hear you, except you are taking one incident and then squeeze it into another incident. The planning here, in government when you plan to, through you, Justice, when you plan, let's say for a clinic, it's not like in private where you say, I want to have a clinic and then next week you have a clinic. 5It doesn't work like that. It works through a cycle. So you plan now, you submit it to DID, that is Department of Infrastructure Development, then you submit it again to Treasury. Then in that cycle, money is allocated to do the infrastructure planning. So it wouldn't have been by all intents and purposes that by 2017 the facilities would have been built, no, it wouldn't have been like that.

10**ARBITRATOR JUSTICE MOSENEKE:** No. If there's fiscal pressure? That is the question. To use your words, why do you go plan this grand facility for 920 beds and just about a few months ahead of it, you have thrown out 1000 nearly 480 patients out of Life Esidimeni. So Counsel wants to know why is cost cutting the correct motive for the Marathon Project when a few months later you plan to build 15and spend hundreds of millions. That is the inquiry.

**DR TIEGO SELEBANO:** Yeah, to Justice...

**ARBITRATOR JUSTICE MOSENEKE:** And not just have you to confront the issues because we are struggling to understand what was happening in your mind when the Marathon Project was happening. These are not attempts to demean you or 20anything. We want to understand why would you choose to send people out there, patients who are vulnerable and a few months later you have this grand plan to build this, to expand these three existing mental facilities.

**DR TIEGO SELEBANO:** Justice, you know, it's painful, I must say, like you put it, we threw people into – threw them out of Life Esidimeni in real terms, really – that's why I keep on saying the thinking at that time in hindsight again, the intention, there was no nefarious intention to throw out patients, we can't do that. It's not how health systems work. We don't throw out patients. On hindsight, but also coming – this was in November, in the process we planned – this was not the only plan for NGOs, there are also plans I can tell you now, they have not been actualized, that we must refurbish hospitals...

**ARBITRATOR JUSTICE MOSENEKE:** No, but the [inaudible 00:27:36] of it doctor please...

**DR TIEGO SELEBANO:** But given the bigger picture, Justice that, it doesn't mean when you are in a fiscal situation, then nothing happens, people are not eating, there's no medicine, there are no accessories, all those things are still happening. The expansion of population was actually necessitating that you need to plan further down the line, not even in my time, to have facilities that, the Counsel read well, that are now much better. They put fencing, they've got all – because we don't have those facilities as government.

**ARBITRATOR JUSTICE MOSENEKE:** The Counsel is really saying you cut cost on around 1500 patients at Esidimeni and you plan a few months later to build this grand facility. Why didn't you wait a few... Why didn't you wait, and when the facility is there, move them to this place they deserve? For instance, so she's probing what was happening in the executive mind that led to this tragedy, if you could just appreciate what we are trying to do.

**DR TIEGO SELEBANO:** I do a lot Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Please, in your senior position, grapple with what we are trying to grapple with. Was it money? Hence the question. But you had money to build. Was it money? What was it?

5**DR TIEGO SELEBANO:** Let me explain again and the Counsel I think would know this, she has been – and I would want to think Counsel has interacted a lot with government, and I know that. The cycle, government budget cycles, what you plan now, what you plan now, you will not get it next month, you will probably, if like get it the next budget cycle.

10**ADV. ADILA HASSIM:** I understand that Dr Selebano, but I think we are getting a bit off track. So let me bring you again to the relevance of this. In this document, the ELAH59, the planning for building 900 beds, you say in the document the major factor limiting access to mental healthcare is the limited hospital capacity.

**DR TIEGO SELEBANO:** Where is it Counsel if you don't mind?

15**ADV. ADILA HASSIM:** In second paragraph under the heading that says, Strategic Intent.

**DR TIEGO SELEBANO:** Strategic Intent, yes.

**ADV. ADILA HASSIM:** The second paragraph.

**DR TIEGO SELEBANO:** The inability.

20**ADV. ADILA HASSIM:** Yes. Do you see that?

**DR TIEGO SELEBANO:** I see that. Where it says it is not lack of willingness.

**ADV. ADILA HASSIM:** Yes. So why is it – let me ask you this, was it your policy to deinstitutionalize patients?

**DR TIEGO SELEBANO:** Deinstitutionalization is government policy.

**ADV. ADILA HASSIM:** Was that a motivation for cutting – for terminating rather the contract with Life Esidimeni?

**DR TIEGO SELEBANO:** Deinstitutionalization? We implemented the policy. That is deinstitutionalizing policy. We implemented that.

**ADV. ADILA HASSIM:** Was the termination of the contract with Life Esidimeni intended to give effect to the policy of deinstitutionalization?

10 **DR TIEGO SELEBANO:** That process does that, yes.

**ADV. ADILA HASSIM:** But how can you be on the one hand saying that you are deinstitutionalizing into the communities and on the other hand expending these resources into facilities for institutionalizing patients?

**DR TIEGO SELEBANO:** Let me explain. You see if I were to give an example, let me explain judge through you so that you get what is happening. When a patient is admitted – let's take a patient is admitted – if an acute patient, we admit that patient in a hospital for a number of days. After that, the patient, we make – the doctors there, I don't – the doctors then make a decision, "Is this patient ready to go home or not?" If the patient is not ready to go home, then we send the patient to a psychiatric hospital. Those are still acute patients. The problem there becomes then like you correctly read that the numbers of psychiatric patients, not mental health –

you see there's a distinction there, there's a subtle distinction. For instance, let me give an example. A mental retardation patient is not necessarily a psychiatric patient. A patient with bipolar...

**ADV. ADILA HASSIM:** Yes.

5**DR TIEGO SELEBANO:** Yes, you know that.

**ADV. ADILA HASSIM:** But we are talking about mental healthcare, we are talking about mental healthcare services in this document.

**DR TIEGO SELEBANO:** But you must appreciate the service is not cut into pieces, the service is like a tool. So once a patient is in our hospital and the doctors determine, "No, this patient cannot go home," the patient is socially dysfunctional. You take that patient to one of the three, either Tara or Weskoppies or Sterkfontein.

**ADV. ADILA HASSIM:** Or Life Esidimeni.

**DR TIEGO SELEBANO:** No. Not necessarily. No. You can still have a patient moving directly from a district hospital directly to Life Esidimeni, you don't – Baneng for instance – you know Baneng? The three centres around Life Esidimeni, Baneng is still in existence now, still – and Life Esidimeni subsidized through...

**ADV. ADILA HASSIM:** Yes, and I am aware of Baneng.

**DR TIEGO SELEBANO:** They are still subsidized by government.

**ADV. ADILA HASSIM:** Thanks to Mr. Moseneke, I believe, yes.

20**DR TIEGO SELEBANO:** No, we wouldn't – you can't touch Baneng, it's... okay, maybe thanks to Mr. Moseneke. Let's leave it at that. But I am saying, Judge, I was

explaining, then in that process, the doctors are the ones who make a determination, they say, this patient socially is not functional, then they go to one of the three. At that level, in those three institutions, the doctor can – the doctors there can still make a determination whether you go home or you keep on coming and going or they make a determination this patient will never be able to go home. Now, that's where we now get stuck. The reason being, now that more patients and more patients are coming with the same condition and the doctors are saying these patients can never be functional on their own, that's where now Life Esidimeni comes in. So, you must understand that – and this is why this document clearly says, if we don't plan properly into the future, we are going to clog – already the system is clogged – well, already there's...

**ADV. ADILA HASSIM:** That's precisely the point, thank you, Dr Selebano, precisely the point, because that's what the letter of 28 April, 2015 also pointed out to you, was this chain of movement of patients, acute patients it's Life Esidimeni. And the psychiatrists themselves said we have a problem because we don't have anywhere to put the long term care patients. And by terminating the contract, there's no place for these patients to go, the NGOs are not adequate. That is what they said in that letter, we dealt with it yesterday, right?

**DR TIEGO SELEBANO:** And I said I don't argue with the letter also.

**ADV. ADILA HASSIM:** Yes. So my question is, why then, in the face of all of that, are you terminating the contract that is clearly needed and at the same time planning to spend many hundreds of millions on building extra beds that are institutional based?

**DR TIEGO SELEBANO:** Yes, and at the same time, and I am saying this not at the same time.

**ADV. ADILA HASSIM:** Well, within months of each other.

**DR TIEGO SELEBANO:** No, no, no, I am saying, you are saying, and at the same time you want to build. No, it was not going to be built at the same time.

**ADV. ADILA HASSIM:** Okay, it doesn't matter when it was. The point is you were thinking about spending money and you were cutting money and I am trying to understand what took priority here. Why did the rights of the mental healthcare users at Esidimeni not take priority when it came to how you were looking at the money?

**DR TIEGO SELEBANO:** Yeah. Counsel, I wouldn't agree that the rights of the vulnerable, the most vulnerable people were not taken into account. It's and hindsight when this tragedy has occurred that we can question the thinking, did it make sense, was it implemented correctly...

15 **ARBITRATOR JUSTICE MOSENEKE:** Did it make sense?

**DR TIEGO SELEBANO:** At that time during our thinking, during that time. But now I am saying, in hindsight, we can start questioning the whole...

**ARBITRATOR JUSTICE MOSENEKE:** Well, answer me, did it make sense?

**DR TIEGO SELEBANO:** At that time?

20 **ARBITRATOR JUSTICE MOSENEKE:** Yes.

**DR TIEGO SELEBANO:** Yes, it did at that time.

**ARBITRATOR JUSTICE MOSENEKE**: What sense did it make?

**DR TIEGO SELEBANO**: The sense was that patients will be relocated to NGOs as part of the institutionalization over a period of time.

**ARBITRATOR JUSTICE MOSENEKE**: Why did you ignore people more equipped than you, [inaudible 00:37:50] psychiatrists would tell you, this may lead to fatalities? Why did you ignore them?

**DR TIEGO SELEBANO**: Judge if I read that letter properly, I am not too sure Counsel would tell me, they didn't actually talk about mortality, they spoke – if I read it casually, they spoke more about if you do this without sorting out the public health, they meant – the public health mental system – they said, if you don't do that, then you are bound to have rehospitalization so there will be too much rebound, that's one of the things that I picked up in [inaudible 00:38:31].

**ADV. ADILA HASSIM**: They said – sorry Justice.

**ARBITRATOR JUSTICE MOSENEKE**: Go ahead Counsel.

15 **ADV. ADILA HASSIM**: What they said is you cannot do this unless you improve and invest in community based care. There isn't community based care therefore this idea of deinstitutionalizing long term care patients into the communities will, and in their words – these were their words, will have a devastating impact on their health and social well-being. Those were the precise words.

20 **DR TIEGO SELEBANO**: Yeah, I will give it, but I also picked up...

**ADV. ADILA HASSIM**: So that comes quite close to mortality, doesn't it?

**DR TIEGO SELEBANO:** But they didn't say that.

**ADV. ADILA HASSIM:** But they didn't say it yet.

**ARBITRATOR JUSTICE MOSENEKE:** Do they have to say, "People are going to die"? It's about their care, even when they are alive. Isn't it so?

5**DR TIEGO SELEBANO:** It's so.

**ARBITRATOR JUSTICE MOSENEKE:** Yes. And your duty is to provide them with a care that is in law, our constitution requires, the act requires, government policy requires, as you were told this morning – why do you compromise these norms of our society and place people in NGOs which are, in hindsight, you know now, which  
10were not fit for their care?

**DR TIEGO SELEBANO:** For the [inaudible 00:39:50] yes. I agree with you on that one. On hindsight, really it shouldn't have happened.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, I know, we are observe about  
hindsight, but you were warned before, that's the point. You were alerted before, not  
15once, Counsel will tell you how many times. And you still steamed ahead. Hindsight  
I hear. I am worried, why did you steam ahead. And something that you have to  
grapple with, because you were the person who was the head of the department,  
you were the DG of the department. Why did you steam ahead with something that  
would have adverse consequences and we know in fact did? Why did you proceed?

20**DR TIEGO SELEBANO:** Yeah, but Justice, also, agree with me that I wouldn't have  
known that there would be mortalities. I wouldn't have guessed that. If I had known

really, then that would have been unthinkable that I would have gone on. I wouldn't have known. I didn't know Justice. I didn't know that there will be mortalities.

**ADV. ADILA HASSIM:** Did you fear that there may be fatalities?

**DR TIEGO SELEBANO:** Did I fear?

5**ADV. ADILA HASSIM:** That there may be. You didn't know that people would die.

**DR TIEGO SELEBANO:** That's what I am saying. I didn't know.

**ADV. ADILA HASSIM:** You had no hint that perhaps... Did you fear that maybe their health would be affected negatively?

**DR TIEGO SELEBANO:** I am not a clinician. When managers, who are  
10experienced...

**ADV. ADILA HASSIM:** Are you a medical doctor, Dr Selebano?

**DR TIEGO SELEBANO:** I am an MSH BS. I am not a clinician. There's a difference.

**ADV. ADILA HASSIM:** I will come back to that. But my question is did you have a  
15concern about the negative impact on the health of patients?

**DR TIEGO SELEBANO:** I wouldn't have had that.

**ADV. ADILA HASSIM:** You would not have had that.

**DR TIEGO SELEBANO:** I don't know how would I have had that unless you guide me why I should have had that. I wouldn't...

**ADV. ADILA HASSIM:** Well, I pointed you to one – I will show you more. But I pointed you to the letter of 28 April, 2015 and I will come back to why else...

**DR TIEGO SELEBANO:** But you remember Counsel that I said I don't recall it...

**ADV. ADILA HASSIM:** You don't remember whether you read it or not. I do recall that. Just before we leave ELAH59 and the cost issue, the last page of that document has a paragraph headed costing and financial implications. And it says the department is budgeting 20 million this financial year as the preliminary cost for planning and carrying out, mandatory investigation on identified properties. So 20 million rand just on planning. Then, the GDID, is that the Gauteng Department of Infrastructure and Development?

**DR TIEGO SELEBANO:** Yeah, your normal, what people call public works.

**ADV. ADILA HASSIM:** Yes, is expected and requested to provide Gauteng Department of Health with all development costs required for the remainder of 2016-17 and for 2017-2018. What was that ultimate budget?

15 **DR TIEGO SELEBANO:** What ultimate budget?

**ADV. ADILA HASSIM:** What was the budget for all of those deliverables that I read out to you?

**DR TIEGO SELEBANO:** I don't understand. What do you mean by...

**ADV. ADILA HASSIM:** What would it have cost to implement this project?

**DR TIEGO SELEBANO:** But it says here, you read it, it says GDID is expected and requested to provide GDOH with all development costs required for the remainder of 16-17 and 17-18. It clearly shows.

**ADV. ADILA HASSIM:** Shows what?

5**DR TIEGO SELEBANO:** We as health wouldn't have known the total cost for developing this. They are implementing it...

**ADV. ADILA HASSIM:** So you didn't know what this would cost?

**DR TIEGO SELEBANO:** There are implementing agents. Our core business is health services. That core business...

10**ADV. ADILA HASSIM:** So you did not know what it would cost? Is that what you are saying?

**DR TIEGO SELEBANO:** I wouldn't have known. Yeah, we...

**ADV. ADILA HASSIM:** But you did know that it would cost 20 million just to do the preliminary planning?

15**DR TIEGO SELEBANO:** No, no, no, no. It says that department is budgeting.

**ADV. ADILA HASSIM:** Yes.

**DR TIEGO SELEBANO:** When you budget, you are saying I want to suppose that this thing will cost us this much?

**ADV. ADILA HASSIM:** Yes.

20**DR TIEGO SELEBANO:** Then you say...

**ADV. ADILA HASSIM:** So you were expecting that that would cost you 20 million rand.

**DR TIEGO SELEBANO:** For what?

**ADV. ADILA HASSIM:** For planning, for preliminary cost, for planning.

5**DR TIEGO SELEBANO:** Exactly, for planning.

**ADV. ADILA HASSIM:** Yes.

**DR TIEGO SELEBANO:** I don't know. I don't understand. Maybe 20 million sounds huge but here, the infrastructure people are saying when – I don't know the cost of building. I don't know how it works, the planning, the [inaudible 00:44:55], the what, 10I don't know all those things. But experts inside the department say to me, "Let's put this position for all the planning and all that and all that." Who am I to say, "No, no, no, 20 million is a lot." I can't.

**ADV. ADILA HASSIM:** But what you did know was that it was too much at Life Esidimeni, that you were not getting value for money at Life Esidimeni. Is that right?

15**DR TIEGO SELEBANO:** Counsel you are being unfair, you are comparing things that you should...

**ADV. ADILA HASSIM:** I am trying to understand how you think about value for money. So we are talking about terminating the contract with Life Esidimeni because you need to stretch the rand. Correct?

20**DR TIEGO SELEBANO:** Yeah, through you Justice, I think Counsel is being unfair to me, and I will explain why. The issue here – we are talking about planning...

**ARBITRATOR JUSTICE MOSENEKE**: You say the question is unfair?

**DR TIEGO SELEBANO**: Generally it's unfair that – yeah, because here we are talking about planning and we are talking about budgeting into the future. Now, the Counsel wants me to say we can't plan into the future.

5**ADV. ADILA HASSIM**: No.

**DR TIEGO SELEBANO**: Because here now, here you are again you are talking cost...

**ARBITRATOR JUSTICE MOSENEKE**: Listen to the question and answer it. Please just listen to the question.

10**ADV. ADILA HASSIM**: No, you are not understanding me.

**DR TIEGO SELEBANO**: Yeah, maybe put it differently Counsel.

**ADV. ADILA HASSIM**: You have determined that a preliminary cost for this plan, however noble this plan is, is 20 million.

**DR TIEGO SELEBANO**: For planning.

15**ADV. ADILA HASSIM**: Yes, for planning. Nothing more than planning, 20 million rand in that year.

**ARBITRATOR JUSTICE MOSENEKE**: And the answer is yes there, isn't it?

**DR TIEGO SELEBANO**: The answer is it's a preliminary cost for planning and carrying out all mandatory investigations on identified properties if [crosstalk 2000:46:52]

**ARBITRATOR JUSTICE MOSENEKE**: Sure. That is the answer. Counsel will ask the next question. Deal with the question please, yes Counsel.

**ADV. ADILA HASSIM**: And at the same time, you had terminated the contract with Life Esidimeni because you needed to stretch the rand, isn't that so?

5 **DR TIEGO SELEBANO**: That's right.

**ADV. ADILA HASSIM**: That's what you said.

**DR TIEGO SELEBANO**: Okay.

**ADV. ADILA HASSIM**: Yes. And how does it square then? Why is it that you couldn't – why was all that urgency, an emergency created from the termination of  
10 the contract with Life Esidimeni, when at the same time there was money in the budget to pay for preliminary plans?

**ARBITRATOR JUSTICE MOSENEKE**: Deal with the question.

**DR TIEGO SELEBANO**: well, I don't know. She says there was money in the budget. Here we are saying we are budgeting for, and I tried to explain to explain  
15 the budgeting cycle. We are budgeting for this.

**ADV. ADILA HASSIM**: You said 20 in this financial year.

**DR TIEGO SELEBANO**: We are budgeting for 15... 16-17 and 17-18. It's a budget cycle.

**ADV. ADILA HASSIM**: So could you not have then, in your calculations of this  
20 budget that would be available to you, consider using that money for the users at Life Esidimeni?

**DR TIEGO SELEBANO:** Well, I wouldn't – whether should I have considered that then and now is difficult for me to say...

**ADV. ADILA HASSIM:** In hindsight?

**ARBITRATOR JUSTICE MOSENEKE:** But why is it difficult? Your core mission is health. You are there to provide access to healthcare. The constitution requires, the law requires, just plain morality requires, that's your core... Why didn't you remember how you can best give care to mental healthcare users at Life Esidimeni?

**DR TIEGO SELEBANO:** Yes, I hear you Justice and I agree with you, but you also have to agree that unless we move from the same understanding, that there was no nefarious intentions, there was no nefarious intentions at all.

**ARBITRATOR JUSTICE MOSENEKE:** No, we are not talking about nefarious intentions.

**DR TIEGO SELEBANO:** It's important.

**ARBITRATOR JUSTICE MOSENEKE:** We are talking about caring, taking steps to provide healthcare. That's what we are talking about. Let's leave intentions out of this. It's a legal thing. It might arise one time or the other in the future. I am just saying why is it you can't – I want you to – let's forget about it. Let's not impute anything to you. Please tell us what was going through your mind and that's what Counsel is trying to do, when you talk about money and what you do with patients at Life Esidimeni, what are the considerations, that's what she's struggling to debate with you.

**DR TIEGO SELEBANO:** We are talking about money, we are talking about hospitals, clinics. It's not one sub-system. It's a big system, 36 hospitals. We got 36 hospitals. We have 340 or so clinics, 67,000 or so employees, programs, vaccination programs, all these programs. I am giving you this picture Justice, so 5that it is not that what... And it is not, please Justice, and I want to say it with respect to you and the Counsel and the house here, it is not in a demeaning way that there is no way that any other HOD including myself would be saying, "I am just thinking of one thing." You are thinking of how do we make sure that we don't fail on our HIV/AIDS program. It's critical for us. We don't do that how do we make sure that 10when patients go to clinics, to hospitals, they still get medication; how do we make sure that when patients are in the hospitals, there's still food for them, there's medication for them, doctors are paid. All those things, they constitute the big system of that.

**ARBITRATOR JUSTICE MOSENEKE:** May we add, how do you think the best way 15to fund NGOs where I have placed patients, isn't that vital subset of your big, big, big job? Isn't it?

**DR TIEGO SELEBANO:** It is. I agree.

**ARBITRATOR JUSTICE MOSENEKE:** How do I get the proper medication to patients that I have taken out of Life Esidimeni NGOs, isn't it?

20**DR TIEGO SELEBANO:** Through NGOs. It is. It is.

**ARBITRATOR JUSTICE MOSENEKE:** How do I get care and skill to look after those patients when they are at NGOs? Isn't it?

**DR TIEGO SELEBANO:** It is. I agree.

**ARBITRATOR JUSTICE MOSENEKE:** Did that happen on your part? Did that happen?

**DR TIEGO SELEBANO:** You mean now as an...

5**ARBITRATOR JUSTICE MOSENEKE:** As head of the... as head of the department?

**DR TIEGO SELEBANO:** On hindsight I know that you know – let me explain again, there's something that you mentioned.

**ARBITRATOR JUSTICE MOSENEKE:** Hindsight you know what?

10**DR TIEGO SELEBANO:** Let me explain that you mentioned Justice, that I then got to know that actually our subsidy for NGOs is actually not correct. We take patients to NGOs but the [inaudible 00:52:36] subsidy that we are giving is not right. I got to know those micro details after the effect.

**ADV. ADILA HASSIM:** What is not right about the subsidy?

15**DR TIEGO SELEBANO:** It's little.

**ADV. ADILA HASSIM:** It's too little?

**DR TIEGO SELEBANO:** Too little.

**ADV. ADILA HASSIM:** And in fact it wasn't even paid to these NGOs.

**DR TIEGO SELEBANO:** For a period of time...

20**ADV. ADILA HASSIM:** Do you agree?

**DR TIEGO SELEBANO:** I know that. I know that. I know that.

**ADV. ADILA HASSIM:** So that's why the money and the context of these users, that's why the – sorry, that's why this context of ELAH59 is important for the families to understand this issue of money. There was only a 112-rand per patient allocated 5as a subsidy.

**DR TIEGO SELEBANO:** Which is like I am saying Counsel, I consider that one.

**ADV. ADILA HASSIM:** Yes.

**DR TIEGO SELEBANO:** When I got to know about that, I said, "But what are we doing here?" How do we expect NGOs to really be able to sustain patients...

10**ARBITRATOR JUSTICE MOSENEKE:** But make sure doctor – why did you make sure with your staff, they don't expose people on medication or mental healthcare users for months without proper supply of just food? Forget about the rest, just food.

**DR TIEGO SELEBANO:** It's tragic. It's tragic. It's unacceptable.

**ARBITRATOR JUSTICE MOSENEKE:** And in that four months, people started 15dying.

**DR TIEGO SELEBANO:** It's tragic, it's unacceptable, really you can't expect that.

**ARBITRATOR JUSTICE MOSENEKE:** What's your explanation as head of department? Why didn't you foresee this?

**DR TIEGO SELEBANO:** It's not easy, like I was saying – but let me explain 20something to you. When I asked, but why were you not paying people here, you get all kinds of explanations. There was no – some NGOs didn't have this and that. And

I said, "But no, no, no, it's our responsibility, it's our responsibility if they don't have tax clearance, we don't put patients there then, we don't do that. Why did you do that?"

**ARBITRATOR JUSTICE MOSENEKE**: But why did you allow them to get out of 5Life Esidimeni when these things had not been tied up doc?

**DR TIEGO SELEBANO**: Yes. I give it to you and I agree, I concede to all those things that you, that these managers are experienced, Dr. [inaudible 00:54:54] I couldn't – what I know and not only myself and other programs, they are experienced in doing some of these things. Now suddenly you discuss...

10**ARBITRATOR JUSTICE MOSENEKE**: She says you never moved people in large numbers like this ever.

**DR TIEGO SELEBANO**: The department had done that before I think.

**ARBITRATOR JUSTICE MOSENEKE**: And people died.

**DR TIEGO SELEBANO**: Yeah, it's tragic, but it's no excuse...

15**ARBITRATOR JUSTICE MOSENEKE**: And you do it again.

**DR TIEGO SELEBANO**: When was that? I don't understand Counsel.

**ARBITRATOR JUSTICE MOSENEKE**: We dealt with that yesterday.

**DR TIEGO SELEBANO**: No, no, no [crosstalk 00:55:29]

**ARBITRATOR JUSTICE MOSENEKE**: You remember?

20**DR TIEGO SELEBANO**: About moving people?

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**DR TIEGO SELEBANO:** The Life Esidimeni patients?

**ARBITRATOR JUSTICE MOSENEKE:** No. Why shouldn't you know this doctor? It was conversed with you yesterday, by advocate Ngutshana In a letter written by 5clinicians to you in which you are...

**DR TIEGO SELEBANO:** Oh yes, the 2009.

**ARBITRATOR JUSTICE MOSENEKE:** Yeah. Draw attention to 2009 mass movement of mental healthcare patients. You remember that?

**DR TIEGO SELEBANO:** I remember the letter now.

10**ARBITRATOR JUSTICE MOSENEKE:** The letter was directed to you. And they warned in the letter that these patients died. They give a number, if I remember, about 11 or so of the patients died.

**DR TIEGO SELEBANO:** The letter actually was read by the Counsel.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, indeed. Now you remember.

15**DR TIEGO SELEBANO:** I remember that. That's why I got lost when you said Counsel Ngutshana.

**ARBITRATOR JUSTICE MOSENEKE:** Now we go back to mass movement of people and I am asking, why didn't you take the precautions about the basics, about food, about clothing. You are going to hear later about the outbreak of typhoid at 20Takalani, you are going to hear about – all those would be put to you today by

Counsel. But why didn't you take steps? You are the chief honcho to say, if this happens it will happen in a humane way. Why didn't you do that?

**DR TIEGO SELEBANO:** That's why I said, if we move people from Life Esidimeni – either the same or even much better, I said that. I said that. I did.

5**ARBITRATOR JUSTICE MOSENEKE:** What did you do to make sure it's in a humane way? That's the question.

**DR TIEGO SELEBANO:** Justice, I also explained that it is not feasible for any HOD, anywhere in the country to be able to run every day operations with all the programs inside any department. It is not possible. You rely – and I said that to Counsel, you  
10rely on your managers who are experts, who you have to develop a relationship of trust. If you can't trust managers that you work with, who do you trust? Because you can't do these things on your own, you can't.

**ARBITRATOR JUSTICE MOSENEKE:** Who do you think is responsible administratively for this tragedy of 143 deaths? Please engage with the question.  
15It's a very important question.

**DR TIEGO SELEBANO:** I would say I take responsibility, I've said it to professor, that I take accountability it happened under my watch. I said that and I am saying it again. There's no way that if you are a leader, something happens and then you suddenly want to walk away from it. When it's good, you want to raise your hand  
20and say, no it's good, then I am taking it, no, it doesn't work like that, at least for me, doesn't work like that. I was not there. I was not doing the everyday activities. I can't do that. It is impossible, but it happened under my watch. I was there, I've said it.

**ARBITRATOR JUSTICE MOSENEKE**: And you accept that the death occurred – the death of 143 of these patients occurred unlawfully, in circumstances which the law does not permit, just to break it down?

**DR TIEGO SELEBANO**: 143, I mean, but the report, when I was in charge, didn't talk about 143. I think...

**ARBITRATOR JUSTICE MOSENEKE**: But do you accept that these patients died in circumstances in contravention of the law, the constitution, the mental healthcare?

**DR TIEGO SELEBANO**: I would say the patients were compromised.

10 **ARBITRATOR JUSTICE MOSENEKE**: No, but it was unlawful, in circumstances which the law did not permit?

**DR TIEGO SELEBANO**: I would say the patients were compromised.

**ARBITRATOR JUSTICE MOSENEKE**: No, but what is your answer to my question? I must know about the law.

15 **DR TIEGO SELEBANO**: I don't know... Justice, I would want to say that I agree the patients passed away and the report was released...

**ARBITRATOR JUSTICE MOSENEKE**: The government has already conceded that these patients died under unlawful circumstances. Do you differ with them?

**DR TIEGO SELEBANO**: But government has agreed, I've not engaged with government. As you know I am on suspension, so it's very difficult for me to say, whether, what are the reasons, why they agreed, I don't know.

**ARBITRATOR JUSTICE MOSENEKE**: Do you agree that these patients died on account of negligence on the part of the department?

**DR TIEGO SELEBANO**: On the part of the department, yes.

**ARBITRATOR JUSTICE MOSENEKE**: Which you headed.

5**DR TIEGO SELEBANO**: Yes. I've taken accountability, yeah.

**ARBITRATOR JUSTICE MOSENEKE**: Yes, and you agree that they've died because of negligent conduct on the part of the department?

**DR TIEGO SELEBANO**: Yes, let me say yes.

**ARBITRATOR JUSTICE MOSENEKE**: Counsel?

10**ADV. ADILA HASSIM**: Thank you Justice. Dr Selebano, sorry, just to wrap up for now the issue of the cost, you agree that it cost the department 320 rand per patient per day while they were – while the patients were at Life Esidimeni?

**DR TIEGO SELEBANO**: That's right.

**ADV. ADILA HASSIM**: And do you agree that that was in fact value for money?

15**DR TIEGO SELEBANO**: I never engaged directly before that. I don't know. I don't know.

**ADV. ADILA HASSIM**: You don't know whether it was value for money?

**DR TIEGO SELEBANO**: I wouldn't know. Like I am saying, I never engaged with Life Esidimeni at that micro level to know what are the cost inputs in that around the  
20[inaudible 01:01:39]. So I don't know.

**ADV. ADILA HASSIM:** You are aware of the report by the Health Advance Institute?

**DR TIEGO SELEBANO:** Yes, I saw that.

**ADV. ADILA HASSIM:** And that was commissioned by the department?

5**DR TIEGO SELEBANO:** Yes, I remember that.

**ADV. ADILA HASSIM:** To look at value for money of Life Esidimeni, correct?

**DR TIEGO SELEBANO:** Yeah.

**ADV. ADILA HASSIM:** And they found that in fact it was value for money.

**DR TIEGO SELEBANO:** Yeah, but also they raised that some of the...

10**ADV. ADILA HASSIM:** Did they agree that it was value for money?

**DR TIEGO SELEBANO:** The report.

**ADV. ADILA HASSIM:** Yes, the Health Advance Institute.

**DR TIEGO SELEBANO:** Yeah, but you are picking up – I don't have the report now.

We could engage [crosstalk 01:02:11]

15**ADV. ADILA HASSIM:** I can put it to you if you would like me to.

**DR TIEGO SELEBANO:** I would like to have a look at it actually.

**ADV. ADILA HASSIM:** Let me just get the reference for you. It's volume 4, page 1387.

**DR TIEGO SELEBANO:** Page 1...?

**ADV. ADILA HASSIM:** 1387. This is the presentation that's based on the report.

**DR TIEGO SELEBANO:** Okay.

**ADV. ADILA HASSIM:** The presentation by an official at the Health Advance Institute.

5**DR TIEGO SELEBANO:** Right.

**ADV. ADILA HASSIM:** And if you go specifically to 1394...

**DR TIEGO SELEBANO:** Is it 13...

**ADV. ADILA HASSIM:** 94.

**DR TIEGO SELEBANO:** Can I quickly browse through it if it's okay with you  
10Counsel.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**DR TIEGO SELEBANO:** I would like to browse through it.

**ARBITRATOR JUSTICE MOSENEKE:** It's quite in order. Take your time and read  
it.

15**ADV. ADILA HASSIM:** Have you seen this presentation by the Health Advance  
Institute before Dr Selebano?

**DR TIEGO SELEBANO:** Well, it was done 14-15.

**ADV. ADILA HASSIM:** Yes.

**DR TIEGO SELEBANO:** I did have – it was commissioned by one of my managers and then I got sight of it.

**ADV. ADILA HASSIM:** Can I take you to the relevant aspect?

**DR TIEGO SELEBANO:** But if you don't mind, it would really help so that I understand the context. Through you Justice, can I just – I will finish, I am just browsing through it.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, take your time and look at it.

**DR TIEGO SELEBANO:** Yeah, I will browse quickly.

**ARBITRATOR JUSTICE MOSENEKE:** Yes. Of course, Counsel may take you to the recommendation, but she is interested in and you can work backwards from there.

**DR TIEGO SELEBANO:** Okay.

**ARBITRATOR JUSTICE MOSENEKE:** It's an extensive presentation but Counsel is interested in certain conclusions that are relevant to our purposes.

15 **DR TIEGO SELEBANO:** I hear you Justice, because we also engaged with this report, I recall very well, and the [inaudible 01:07:46] send it also to the professor, and there were other good things that we picked up from this report. But there were also other guidances that we picked up from this report. That's why I am trying to look at it so that I can also...

20 **ARBITRATOR JUSTICE MOSENEKE:** Please do that, and then you can take questions on it from advocate Hassim.

**DR TIEGO SELEBANO:** Counsel I quickly ran through it and not in detail, but I think...

**ARBITRATOR JUSTICE MOSENEKE:** Sure.

**DR TIEGO SELEBANO:** Yeah, we can...

5**ADV. ADILA HASSIM:** Thank you Dr Selebano. The aspect I wish to refer you to is at page 1394 and it's the slide that is headed clinical compliance. Do you see that?

**DR TIEGO SELEBANO:** Okay.

**ADV. ADILA HASSIM:** And it's the last bullet point. And I will just read it for the record. It says, "In general, the services provided by Life Esidimeni is good value for 10money. HAI believes that sufficient and relevant information has been obtained to enable Gauteng Department of Health to make sound and evidence based decisions with regards to the future financial planning and management of the service level agreement." Did you agree with that?

**DR TIEGO SELEBANO:** Yes. I saw the statement and I read it yes.

15**ADV. ADILA HASSIM:** Yes, and you agree that it was good value for money?

**DR TIEGO SELEBANO:** It says in general.

**ADV. ADILA HASSIM:** Yes, in general.

**DR TIEGO SELEBANO:** Yes, because it also says relative, this is general compliance...

20**ADV. ADILA HASSIM:** Yes, in general good value for money.

**DR TIEGO SELEBANO:** Yeah, in general.

**ADV. ADILA HASSIM:** Yes. And do you confirm this to the Health Ombud? Isn't that so?

**DR TIEGO SELEBANO:** Yeah, we submitted this. We gave it to...

5**ADV. ADILA HASSIM:** But you also confirmed that to him in your interview with him. Isn't that so?

**DR TIEGO SELEBANO:** Confirmed what?

**ADV. ADILA HASSIM:** In your interview with the Health Ombud... Let's go there, to the interview. Maybe it will be easier. It's ELAH111, it was provided to you  
10yesterday.

**DR TIEGO SELEBANO:** Perhaps you can read it, I will probably recall it.

**ADV. ADILA HASSIM:** So do you remember the transcript from yesterday of the interview between yourself and the professor?

**DR TIEGO SELEBANO:** I have it with me here.

15**ADV. ADILA HASSIM:** If you have it, then let's go straight to the page, relevant pages, page 29. Are you there?

**DR TIEGO SELEBANO:** All right.

**ADV. ADILA HASSIM:** At line 10 it says – and this is you, Dr. Tiego Selebano, you say, in your words, "The truth is Life Esidimeni has perfected the business side of  
20managing these patients." Professor Makgoba says, "Yes." You say, "There is a

report that you got, I know, from the health guy at... " And Professor Makgoba intervenes and says, "Advance Health... " He means the Health Advance Institute. Isn't that so?

**DR TIEGO SELEBANO:** That's right.

5**ADV. ADILA HASSIM:** And then it goes on, you say, "Yeah, yeah, yes, I spoke to them. That report will show you how they have managed to manage costs." Professor Makgoba says, "No, they are one of the best in the business." Your response, "Yeah, in the world there is no one to compare with them."

**DR TIEGO SELEBANO:** Yes, that's what I said.

10**ADV. ADILA HASSIM:** That's what you said.

**DR TIEGO SELEBANO:** Yeah. But also remember...

**ARBITRATOR JUSTICE MOSENEKE:** And then means Life Esidimeni...

**DR TIEGO SELEBANO:** That's right, yes.

**ADV. ADILA HASSIM:** So they were value for money?

15**DR TIEGO SELEBANO:** No, but also, if you read – why don't you go through – so number 25, they have not done extremely well. That is the business. They have done well on the business side. But they know themselves that they were weak also on the clinical side. It's here also. And the mortality is showing – there is it again, the mortality also was showing. But then I said, "Well, that could be explained, I  
20suppose." And then I went on to say, "They do not have things like your pharmacies regularly there." You saw the report, I sent out to [inaudible 01:12:11]. And I said,

"Let's go on. They do not have a lot of things notwithstanding," I couldn't understand why. If you read the whole context you will understand the... If you read one sentence, it's another thing.

**ADV. ADILA HASSIM:** So it was in fact not value for money in your view?

5**DR TIEGO SELEBANO:** You see I am not saying that. But I was pointing out that yes they were providing a service.

**ADV. ADILA HASSIM:** I am not suggesting that Life Esidimeni was perfect, let me make that clear, I am not suggesting that at all.

**DR TIEGO SELEBANO:** Well, I got an impression you are doing that, and I was  
10saying, no...

**ADV. ADILA HASSIM:** Well, then let's dispel that impression. That is not what I am suggesting. We've been talking about cost cutting, we've been talking – you under fiscal pressure made decisions and you were paying for patients at 320 rand per patient per day. The decision was to stop doing that and to rather pay 112 rand per  
15patient per day. Correct?

**DR TIEGO SELEBANO:** To the NGOs.

**ADV. ADILA HASSIM:** Yes, to the NGOs.

**DR TIEGO SELEBANO:** But also add, with the added support that they were not doing, they didn't have pharmacists. We were also going in that – and I am not  
20saying 112 is enough, that's not what I am saying. I just want Counsel also to complete, to say – and I said it yesterday Justice, I said, in our thinking we are

saying, as soon as we are – and that is again, like I am saying Counsel with – Justice with respect, you must look at the whole context...

**ADV. ADILA HASSIM:** I am fully aware of the whole context. What I am saying to you, Dr Selebano, because I think we need to stay on track, or else we are going to be here for many days. So please can you allow me, allow me to put the questions to you and to answer the question?

**DR TIEGO SELEBANO:** I am sorry Counsel if I am...

**ADV. ADILA HASSIM:** I am dispelling for the sake of clarity about my questions, I am dispelling your impression that it is my view and my view is of no consequence here that Life Esidimeni was perfect, that's not the point. The point is the money, the cost cutting and why it was done and so on. That is why I am putting to you the question, you've agreed 320 per patient per day was being paid, 112 rand per patient per day was going to be paid to the NGOs and in fact they didn't get that for some period of time. Do you know what the patients received at Life Esidimeni for 15320 rand per patient per day?

**DR TIEGO SELEBANO:** I mean, you would expect that they should be fed, there should be activities that they are doing and would expect occasionally that they should be seen by a psychiatrist, by an OT, by a psychologist, all those things, they were part and parcel of what...

20**ARBITRATOR JUSTICE MOSENEKE:** Accommodation.

**DR TIEGO SELEBANO:** Accommodation.

**ARBITRATOR JUSTICE MOSENEKE:** Clothing.

**ADV. ADILA HASSIM:** Yes.

**DR TIEGO SELEBANO:** Yeah.

**ARBITRATOR JUSTICE MOSENEKE:** Medication.

5**DR TIEGO SELEBANO:** The medication was at the expense of the department, we were giving medication. It's their...

**ADV. ADILA HASSIM:** Transport to hospitals for follow-up visits.

**DR TIEGO SELEBANO:** Yes.

**ADV. ADILA HASSIM:** That's what – I am putting that to you because that's what  
10Dr. Mkachwa has told these proceedings.

**DR TIEGO SELEBANO:** Yeah. But he didn't tell you that there was also cross-subsidization. Baneng, they didn't need any transport because they are unable to do that. So the cost of Baneng...

**ADV. ADILA HASSIM:** Did they provide transport to the patients for follow-up visits  
15to hospitals?

**DR TIEGO SELEBANO:** I suppose they did.

**ADV. ADILA HASSIM:** And they supplied daily toiletries according to Dr. Mkachwa.

**DR TIEGO SELEBANO:** They should, yes.

**ADV. ADILA HASSIM:** They supplied clothing, they supplied meals, Dr. Mkachwa says they supplied three major meals per day and four snacks. They provided accommodation.

**DR TIEGO SELEBANO:** They provided security also.

5**ADV. ADILA HASSIM:** Correct, for 320 rand per patient per day.

**DR TIEGO SELEBANO:** You see I don't know – I agree. You are now...

**ARBITRATOR JUSTICE MOSENEKE:** You agree with what? I want to know...

**DR TIEGO SELEBANO:** That they were providing all those things.

**ADV. ADILA HASSIM:** Okay. Then the next thing is this. You were then talking  
10about building the 900 beds and so on. And yesterday, you spoke about the option  
of buying Life Esidimeni. Do you recall that?

**DR TIEGO SELEBANO:** Yes, I toyed with the idea of buying.

**ADV. ADILA HASSIM:** And you spoke to Dr. Mkachwa about the possibility?

**DR TIEGO SELEBANO:** No, during the discussions – I know Dr. Mkachwa, we  
15know each other – and I said, "Doctor, is it possible that your... " It was just two of  
us in the office. "Is it possible, would you be selling the facilities because I know that  
we've had ups and downs with ourselves in terms of payments. We are not paying  
them well." And he said, "Yeah, I can go and ask." Then he went to ask and then he  
came back to me and said, "Yeah, this would be – we would consider selling, yes."

20**ADV. ADILA HASSIM:** So Dr. Mkachwa said the following, and I am just reading  
from his transcript. He says, "The proposal that I then presented to Dr Selebano

was why don't you just take over our facilities, buy us out so there is continuity of care, and asked me to go back and put together a proposal. I did go put together and evaluated the facilities and I sent him the information which had three options. Three option, that would be, cash payment, a 5-year plan and a 10-year plan. We never heard from the department."

**DR TIEGO SELEBANO:** Dr. Mkachwa pretends as if now he's the one who actually said can we do that. I asked Dr. Mkachwa in my office with him. Like I said – I know him, and I said, "Would we consider some of these options?" And I said, in the discussion with the prof, it's stalled. Why? Because then I suggested to...

10 **ADV. ADILA HASSIM:** So did you ask him to make a proposal?

**DR TIEGO SELEBANO:** I asked him to give me what would be the cost of the three centres.

**ADV. ADILA HASSIM:** And did he do that?

**DR TIEGO SELEBANO:** He came back. He orally told me. As far as I recall, he orally came back...

**ADV. ADILA HASSIM:** And then you say it stalled.

**DR TIEGO SELEBANO:** It stalled in me. I said it yesterday that it stalled because I didn't take it any further myself.

**ADV. ADILA HASSIM:** Why not?

20 **DR TIEGO SELEBANO:** I don't know. I mean, I just didn't take it any further. It stalled. And I told Counsel and I said it to yourself Justice that...

**ARBITRATOR JUSTICE MOSENEKE**: What remained in my mind in your answer was that in fact you had enough money to buy Life Esidimeni in cash?

**DR TIEGO SELEBANO**: I did say that I asked budget – as he was going to check, I did say that I asked budget, "If you are to scrape around, would you be able to get something?" They came back to me and gave me [inaudible 01:19:15], yes I said.

**ARBITRATOR JUSTICE MOSENEKE**: Yes...

**ADV. ADILA HASSIM**: They said yes.

**ARBITRATOR JUSTICE MOSENEKE**: In fact, lo and behold, you were surprised, in fact I have the money to buy in cash...

10 **DR TIEGO SELEBANO**: We can get the money, yeah.

**ARBITRATOR JUSTICE MOSENEKE**: As that saved the township to buy just in cash, right? So you could have bought in cash. Why didn't you? Ultimately there's [inaudible 01:19:32]. Why did you prefer to displace the patients rather than buy the place and preserve it?

15 **DR TIEGO SELEBANO**: I hear you. You know, I mean, why I didn't think of pulling that thing through, it just stalled in my...

**ARBITRATOR JUSTICE MOSENEKE**: But doc, you are paid to be the decision-maker. That's what leaders are. They make decisions.

**DR TIEGO SELEBANO**: Yeah, but – I hear you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** But why didn't you make – or did you make the decisions – why didn't you make it – you should know there is something big. It's something ahead of deciding to displace nearly 1500 patients.

**DR TIEGO SELEBANO:** Yeah, Justice, I hear you and with respect I hear you, but also let's not – as it's stalling in my head, it's not like I deliberately never thought about it. It stalled... There were other – I mean, I didn't thought so even for one minute that there will be such a tragedy. I mean, if you think about it now, if you ask me how do you feel about that now, I just got – I could have just bought these things at that time.

10 **ARBITRATOR JUSTICE MOSENEKE:** Yes. I am with you. So [inaudible 01:20:46] why didn't you do it? So it's an obvious rational question, given the consequences that followed, nobody has insight into what the future might be...

**DR TIEGO SELEBANO:** The future holds, yes.

**ARBITRATOR JUSTICE MOSENEKE:** Fair enough. But once we sit there now, we must ask, he is appointed and paid to make decisions, that's what a DG or HOD is about. And it was a relevant decision, it was one that would have spared us the tragedy.

**DR TIEGO SELEBANO:** Correct.

**ARBITRATOR JUSTICE MOSENEKE:** And it's fair to ask you why didn't you make the decision.

**DR TIEGO SELEBANO:** Like you correctly said, I wish I had. And you said, if I had the ability to see into the future, to say, there will be a tragedy, then at least out, I am sure, I would have made that decision.

**ARBITRATOR JUSTICE MOSENEKE:** But you know what the law requires of you, to take precautions, not to cause future harm. You know that.

**DR TIEGO SELEBANO:** Exactly.

**ARBITRATOR JUSTICE MOSENEKE:** You don't always have to know everything about the future, but the law expects every one of us, particularly those who wield public power, to take steps to avoid harm, particularly to citizens. You know that?

10 **DR TIEGO SELEBANO:** I agree.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel?

**ADV. ADILA HASSIM:** Thanks Justice. Dr Selebano, you say if you could have seen into the future, you would have done – you would have – it wouldn't have stalled, you would have acted on the idea of purchasing Life Esidimeni?

15 **DR TIEGO SELEBANO:** Not only that, probably if I could see into the future...

**ADV. ADILA HASSIM:** Not even terminated the contract.

**DR TIEGO SELEBANO:** I would have stopped the whole thing.

**ADV. ADILA HASSIM:** Okay. So, you don't recall too much by the April 2015 warnings. But in June 2015 you were informed of the risks again. And...

20 **DR TIEGO SELEBANO:** Can I have sight of what you are reading?

**ADV. ADILA HASSIM:** Yes, I am going to refer you there, and it's ELAH2, the annexure to the Ombuds report, ELAH2, and it's at page 47.

**DR TIEGO SELEBANO:** I generally get...

**ARBITRATOR JUSTICE MOSENEKE:** Let me get one of my staff members to help you there to the correct page. Oba King?

**DR TIEGO SELEBANO:** Is that the one? Which page Counsel?

**ADV. ADILA HASSIM:** 47.

**DR TIEGO SELEBANO:** 47.

**ADV. ADILA HASSIM:** It's on the letterhead of the South African Society of Psychiatrists.

**DR TIEGO SELEBANO:** That's right.

**ADV. ADILA HASSIM:** Have you found it?

**DR TIEGO SELEBANO:** I found it.

**ADV. ADILA HASSIM:** Does this letter look familiar to you?

**DR TIEGO SELEBANO:** I think I know about this letter. I know about this letter that went with the MEC. I know about it.

**ADV. ADILA HASSIM:** Have you read it before?

**DR TIEGO SELEBANO:** I should have read it. It went with the MEC.

**ADV. ADILA HASSIM:** And it was also sent to you.

**DR TIEGO SELEBANO:** Yeah, I should have read it. It was sent to also Dr. Masamisa and [inaudible 01:24:25].

**ADV. ADILA HASSIM:** Yes, and to you.

**DR TIEGO SELEBANO:** And to myself.

5**ADV. ADILA HASSIM:** And it's dated June 2015.

**DR TIEGO SELEBANO:** That's right.

**ADV. ADILA HASSIM:** So it was before the termination of the contract. And if I could just take you through this letter, the first paragraph, the first big paragraph starting with the public sector, do you see that?

10**DR TIEGO SELEBANO:** The public sector, yes.

**ADV. ADILA HASSIM:** Yes. What the psychiatrists say here is the public sector psychiatrists of Southern Gauteng have several concerns about the reduction of beds, restrictions on admissions and the planned closure of the Life Esidimeni care centres, and they therefore request an opportunity to comment on the matter and so  
15on. The next paragraph says the following, they start to set out their concerns, starting off with the first one. They say primarily we are concerned that the reduction of beds at Life Esidimeni will have unintended, costly, negative consequences. As stated on page 16 of the NMHPF, which means the National Mental Health Policy Framework and Strategic Plan, and they quote...

20**DR TIEGO SELEBANO:** Are you still in the public sector, the paragraph?

**ADV. ADILA HASSIM:** The paragraph below that, primarily.

**DR TIEGO SELEBANO:** Primarily, okay.

**ADV. ADILA HASSIM:** Primarily we are worried that the reduction of beds at Life Esidimeni will have unintended, costly, negative consequences As stated on page 16 of the National Mental Health Policy Framework, and they quote from the policy, 5deinstitutionalization has progressed at a rapid rate in South Africa without the necessary development of community based services. This has led to high number of homeless, mentally ill people living with mental illness in prisons and revolving door patterns of care. Do you see that?

**DR TIEGO SELEBANO:** Hmm.

10**ADV. ADILA HASSIM:** We believe it continues that these problems will be exacerbated by the reducing chronic care hospital beds as community mental health services are still insufficiently developed to cope, and it goes on. That's the crux of that. If you turn over the page, there are numbered paragraphs.

**DR TIEGO SELEBANO:** This was 8, right?

15**ADV. ADILA HASSIM:** There are numbered paragraphs, and just ahead of the numbered paragraphs it says – they say rather, we would like to highlight the following points, and they start with number one. The mental healthcare users who require placement in chronic care with 24-hour psychiatric nursing and onsite occupational therapy do so because of the severity of their psychiatric disorder, lack  
20of insight for a level of functioning, inability to live independently and behaviour that cannot be managed in the community setting. Medium to long term hospital care is

particularly necessary for MHC use with a history of violent behaviour before reintegration into society.

Their second concern – we will just go through all of the concerns and then I will ask you the question. The second concern, the community based residential facilities currently available are not equivalent to the Life Esidimeni care centres in staffing or equipment. They are non-profit organizations run by lay people who have an interest in caring for the mentally ill. I am summarizing their concerns.

The next paragraph before number 3, it says, the total number of government subsidized residential beds in Southern Gauteng for MHC use under the age of 60 years is 809 and 95% are occupied. This is about 550 beds short of the norms adopted by the National Mental Health Policy Framework. Many of these facilities are open to the community, none employ occupational therapists, and if they do employ a nurse it is only on a part time basis, okay. That was number 2.

Number 3, most of the daycare facilities in Southern Gauteng are for intellectually disabled children. There are five for mental healthcare users in the City of Johannesburg and the West Rand has one. There are none in Sedibeng or Ekurhuleni. People with severe mental illness living at home are very often left unattended and unoccupied during the day. This increases the risk of substance use and non-adherence to treatment.

Number 4, with primary care reengineering the district and there are no longer any social workers or occupational therapists attached to the district's specialist mental health clinics, which are also short staffed of doctors. And it goes on, the intended

district psychiatric specialist teams have not yet been rolled out. That was number 4.

Number 5, according to the norms advocated by the National Mental Health Policy Framework, there is shortage of more than 1200 acute inpatient psychiatric beds in 5Southern Gauteng. The existing acute psychiatric units in general hospitals are already overwhelmed by the revolving door of mental healthcare users, those with co-morbid medical illness and substance use disorders and mental healthcare users presenting with the first episode of psychiatric illness. They will be unable to meet the increased demand of hospitalization, of mental healthcare users discharged 10early from Life Esidimeni. And then the next paragraph again quotes from the Mental Health National Policy in which it says, these community mental health services will be developed before further downscaling of psychiatric hospitals can proceed, as the community mental health services are still severely under developed and unable to support the current demand. We therefore believe that the 15reduction of beds and the planned closure of Life Esidimeni is premature and acts in contraindication to the policy.

So those were about five risks that were pointed out to you before the termination of the contract. So that was the second hint if you want to use that word, but it was the second alarm.

20**DR TIEGO SELEBANO:** I accept that. I accept that.

**ADV. ADILA HASSIM:** And what did you do in response to this letter?

**ARBITRATOR JUSTICE MOSENEKE:** You accept what? We need clarity because of the record.

**DR TIEGO SELEBANO:** The letter and the contents of the letter.

**ADV. ADILA HASSIM:** And that it...

5**ARBITRATOR JUSTICE MOSENEKE:** Please go ahead. I just want to hear the doctor's voice in response to your question. That's what I am trying to get, yes.

**DR TIEGO SELEBANO:** Yes Counsel.

**ADV. ADILA HASSIM:** Can you confirm that these were warnings that were received – that you received...

10**DR TIEGO SELEBANO:** Yeah. There were warnings given to the department, I confirm that.

**ADV. ADILA HASSIM:** And to you, as the head of department?

**DR TIEGO SELEBANO:** Well, to me as cc'ed, yes.

**ADV. ADILA HASSIM:** I am not asking about the others for now, because they are  
15not present here. When they are present, I will ask them the same question.

**DR TIEGO SELEBANO:** Yes.

**ADV. ADILA HASSIM:** But it was sent to you?

**DR TIEGO SELEBANO:** Cc'ed yes.

**ADV. ADILA HASSIM:** And these were warnings before you terminated the  
20contract, so?

**DR TIEGO SELEBANO:** Yes.

**ADV. ADILA HASSIM:** And now I would like to know what your response is. What did you do – not response is – was – what did you do?

**DR TIEGO SELEBANO:** Well, Sasop wanted a meeting with the MEC, and it's important because – that's why I said – it was referred to the MEC.

**ADV. ADILA HASSIM:** Did it trouble you – these five detailed concerns?

**DR TIEGO SELEBANO:** At that time...

**ADV. ADILA HASSIM:** Did it give you poise?

**DR TIEGO SELEBANO:** At that time we could have just discussed with Sasop so that we understand the concerns. But there were doctors who are Sasop members, they are the ones yesterday, and they were meeting regularly with ourselves. So, I am not defending but I am saying what was my feeling at that time I can't tell that, what was my feeling...

**ARBITRATOR JUSTICE MOSENEKE:** But doctor please, could you engage the question. Did these warnings worry you? That's what Counsel is just...

**DR TIEGO SELEBANO:** I don't know what was my feeling at that time. I don't know. I mean, it's 2015. Was I worried? Was I concerned? I don't know. This letter was sent to the MEC and we are going to action it – shows going to action it, the MEC.

**ARBITRATOR JUSTICE MOSENEKE:** No, but, you as head of department, risks are listed, the question is did that engage your concern.

**DR TIEGO SELEBANO:** Justice, I hear what you are saying. I am supposed to go back to 2015 and say what is my state of mind then. It's very difficult for me. But I accept that there were warnings. I accept that there were warnings.

**ARBITRATOR JUSTICE MOSENEKE:** Okay. There's another way of putting it. It would be why did you ignore the warnings, because we know you proceeded. So why did you ignore these warnings?

**DR TIEGO SELEBANO:** Justice, would you honestly say that the warnings were ignored? The warnings came and now even that letter that you read yesterday Counsel and this one and probably some more warnings came our way. One wish is that we could wind back the time and act differently, that's what I can say. I wish I could wind back the time and act differently, and do things the way – the colleagues here were also saying if I were to read, we [inaudible 01:35:57] the MEC for health [inaudible 01:35:58] to reconsider the decision to cut long term care. So you know when you read it and [inaudible 01:36:07] direct efforts to further development of the [inaudible 01:36:10] I see it and I say wouldn't it have influenced the head that we now started thinking, you know we need to plan better and further for this type of – and the question that you are asking me. So I am not defending it, I am not saying in any way that we acted in the right manner, I am not saying that at all. I am saying the warnings were clear.

**ADV. ADILA HASSIM:** The warnings were clear and earlier in your testimony you said if we had a hint, then you could have done things differently. What I am putting to you is that there were more than hints that were presented.

**DR TIEGO SELEBANO:** Counsel if I could foresee the future...

**ADV. ADILA HASSIM:** Yes, but that's what these doctors were doing. They were talking about consequences.

**DR TIEGO SELEBANO:** Well, you are going... I've read it also. You are going to say when I said – they never specifically said there will be mortalities, they never said that.

**ADV. ADILA HASSIM:** So if they didn't say there would be mortalities – if they had said, there would be deaths, would you have taken it seriously then?

**DR TIEGO SELEBANO:** I don't want to be dishonest. I don't know whether I would have done it at that time or not. It would be dishonest of me if I said, oh yeah, if they said that, then I would have said this. I don't want to be dishonest. It's the same thing that I can't work out at 2015 what was my thinking, but the warnings were clear. I am accepting that.

**ADV. ADILA HASSIM:** You accept that you received warnings?

15**DR TIEGO SELEBANO:** The warnings were clear.

**ADV. ADILA HASSIM:** Yes. And you accept that the warnings were clear?

**DR TIEGO SELEBANO:** Yeah.

**ADV. ADILA HASSIM:** And do you accept that the warnings – there were warnings which means it was a foretelling. They were saying, if you go down this road, there are going to be very bad things that are going to happen.

20

**DR TIEGO SELEBANO:** But they also specified those things that there will be a lot of rehospitization...

**ADV. ADILA HASSIM:** Correct.

**DR TIEGO SELEBANO:** Which, rehospitization is not mortality. So you release 5 people, they can't socially sustain themselves, then they go back into the...

**ADV. ADILA HASSIM:** They spoke about substance abuse...

**DR TIEGO SELEBANO:** Then they say – please can I just finish? I am quoting your letter here. They said it will be a revolving door. They say, it is in it.

**ADV. ADILA HASSIM:** Yes, amongst other things, yes.

10 **DR TIEGO SELEBANO:** They say it will be a revolving door. I am not saying that the warning was not adequate, what I am saying also...

**ARBITRATOR JUSTICE MOSENEKE:** What did you understand by unintended consequences – adverse unintended consequences? What do you think those were?

15 **DR TIEGO SELEBANO:** Unintended, you want to do this? The opposite happens. That's unintended.

**ARBITRATOR JUSTICE MOSENEKE:** You want to place people at an NGO and they die.

**DR TIEGO SELEBANO:** Or they get in the revolving...

**ARBITRATOR JUSTICE MOSENEKE**: Or they become – look, we are dealing with survivors of this project. We've had evidence of how horrific their care was. So forget about that for a moment.

**DR TIEGO SELEBANO**: Yeah, we will not – I will not defend that again. I will not. I disagree with you. I know I...

**ARBITRATOR JUSTICE MOSENEKE**: So death is ultimate as we always say.

**DR TIEGO SELEBANO**: Which is sad.

**ARBITRATOR JUSTICE MOSENEKE**: Ultimate price...

**DR TIEGO SELEBANO**: Which is sad, yes.

10**ARBITRATOR JUSTICE MOSENEKE**: That these patients paid, but another nearly 1400 are survivors of this tragedy. So death is neither here nor there doctor. The real question is, why did you think these warnings are of no moment? Or at least why did you proceed despite the warnings?

**DR TIEGO SELEBANO**: Justice, I hear two things. No, it's not that these warnings  
15were of no moment, no, it's not that. Why we proceeded, like I have said, if I had that foresight to know that you know if we are going to go this route, the consequences are going to be dire. If I had that foresight, I am saying it again here, then I would have stopped.

**ARBITRATOR JUSTICE MOSENEKE**: But your colleagues tell you the  
20consequences would be dire. [inaudible 01:40:26] about death but they say there will be severe unintended consequences on mental healthcare users.

**DR TIEGO SELEBANO:** I hear you.

**ARBITRATOR JUSTICE MOSENEKE:** Isn't that sufficient to get a caring administrator to review his decision? Why is that not sufficient?

**DR TIEGO SELEBANO:** I wouldn't say that was not reviewed because we are not scaring. The department still cares. I think...

**ARBITRATOR JUSTICE MOSENEKE:** Tell us. That's what I am asking you. I will give you an opportunity to tell us why despite the warnings, you and the MEC went straight ahead, why?

**DR TIEGO SELEBANO:** I wish I know why we went ahead. I wish I could stop the wheels of [inaudible 01:41:19] stop, let's take another turn, I wish I could.

**ARBITRATOR JUSTICE MOSENEKE:** Was it executive arrogance?

**DR TIEGO SELEBANO:** You mean on my sight?

**ARBITRATOR JUSTICE MOSENEKE:** Yes, I am asking you.

**DR TIEGO SELEBANO:** No.

15**ARBITRATOR JUSTICE MOSENEKE:** You say you don't know.

**DR TIEGO SELEBANO:** No, no.

**ARBITRATOR JUSTICE MOSENEKE:** So I am probing. You have to tell us or we have to start...

**DR TIEGO SELEBANO:** No, I am not an arrogant person. People who report to me will tell me. I respect my colleagues with a lot of humility. I never show off authority or power.

**ARBITRATOR JUSTICE MOSENEKE:** But why would you dismiss heads of  
5psychiatry in your department?

**DR TIEGO SELEBANO:** At a personal level I didn't dismiss them. [inaudible  
01:41:57] one of the people who wrote the letter that you read yesterday knows me very well. You can call him, he will tell you that is not the type of person. I am just saying Justice that I am not an arrogant person, it's not...

10**ARBITRATOR JUSTICE MOSENEKE:** [Foreign Language 01:42:14] I am sorry for those who don't follow Tswana, I've just said, but you did not do the – follow the advice that you were given by people who are possibly better equipped and informed than you. And he says he agrees, but doesn't know why yet.

**ADV. ADILA HASSIM:** In fact Dr Selebano in this letter by a Sasop, they also say  
15to you that there are mental healthcare users who have been classified as state patients currently waiting in prison for state patient beds.

**DR TIEGO SELEBANO:** That's right.

**ADV. ADILA HASSIM:** And they said the following to you, "We consider this to be  
an infringement of the human rights of the mental healthcare user to appropriate  
20psychiatric care and believe the situation will worsen if chronic care beds for the mentally ill are reduced."

**DR TIEGO SELEBANO:** I think they were addressing a different issue here. It's a slightly different – it's inside the picture, but it's slightly different. You would recall, you know that when the Cots refer people for psychiatric assessment, would you [inaudible 01:43:32] go to a forensic psychiatrist and we only have one at 5Weskoppies and other one at Sterkfontein. So the congestion is not really because of what you are alluding to. The congestion is slightly different.

**ADV. ADILA HASSIM:** The congestion where?

**DR TIEGO SELEBANO:** In Sterkfontein and Weskoppies, it's different, because...

**ADV. ADILA HASSIM:** You can't remove...

10**DR TIEGO SELEBANO:** No...

**ADV. ADILA HASSIM:** You are misunderstanding me sir. Let me clarify, because you can't remove the mental healthcare user in prison, for mental healthcare users and the system in general. What they are saying to you is because of the insufficient number of beds, there are state patients who are waiting in prison and 15that they consider this to be a violation of the rights of mental healthcare users, and that this project is going to worsen the situation.

**DR TIEGO SELEBANO:** Well, that's how they put it, but I was telling you.

**ADV. ADILA HASSIM:** But do you agree with what they say before you...

**DR TIEGO SELEBANO:** That's why I said to you they are addressing a different 20issue here. The issue wherein somebody is assessed to – goes to Cot and they say, "No, no, you are not mentally fit." Those should be in the Sterkfontein. And I

said, we don't have forensic psychiatrists, and I think we have one or two for the whole Gauteng Province, and that's where the logjam is and those patients are not sharing facilities with other psychiatric patients, they have their own separate facilities and they are fooled. There are a lot of social reasons why that is happening.

**ADV. ADILA HASSIM:** Yes.

**DR TIEGO SELEBANO:** Lots of social reasons.

**ADV. ADILA HASSIM:** Yes.

**DR TIEGO SELEBANO:** So, that's why I am saying that reason [inaudible 01:45:22] in fact if we had met with them...

**ADV. ADILA HASSIM:** I don't see the separation of the issues but can we just say this is what they are concerned about, that there was – that the human rights of those mental healthcare users are being infringed and the concern is that the situation will worsen with the termination of the contract with Life Esidimeni. Do you understand... that's what they say. Can I read it to you again or can I point you to the right sentence?

**DR TIEGO SELEBANO:** You don't have to but also you must accept that I am saying I hear that, except it's not – they are creating a correlation, it's not related.

**ADV. ADILA HASSIM:** So it wasn't related to Life Esidimeni.

**DR TIEGO SELEBANO:** Yes. It's part of the criminal justice system also. It's part of that I think, yes.

**ARBITRATOR JUSTICE MOSENEKE**: If you move people out of Life Esidimeni doctor, some of them may enter criminal settings that might increase those who await assessment and clog the system. Do you agree with that?

**DR TIEGO SELEBANO**: Just say it again Justice so that I understand exactly.

5**ARBITRATOR JUSTICE MOSENEKE**: What Counsel putting to you again, let's go to the letter. He says the impact of closing Life Esidimeni is that some of the patients, acute patients...

**DR TIEGO SELEBANO**: They would be chronic yes.

**ARBITRATOR JUSTICE MOSENEKE**: Chronic ones – if they are violent, and they 10are moved out of Life Esidimeni, may very well themselves fall into the criminal justice net, which is already clogged where people wait long for assessment and whose rights therefore, variety of constitutional rights are violated. That's the link that the doctors, the psychiatrists are making. Why is that link incorrect?

**DR TIEGO SELEBANO**: I am not saying the link is incorrect. I've said it's inside the 15psychiatric realm except that they should have said perhaps noting that there are no psychiatric, forensic psychiatrists. Those are the important blockades that I've been dealing with. The country doesn't have psychiatric care...

**ARBITRATOR JUSTICE MOSENEKE**: And if you release more patients of that class to the public or to NGOs, you may very well clog that waiting list even further. 20That's the point that they are making. Is it wrong?

**DR TIEGO SELEBANO:** I wouldn't – if they would sit in chair, I would actually discuss with them and I would show them my point of view that – yeah.

**ARBITRATOR JUSTICE MOSENEKE:** [crosstalk 01:48:18]

**ADV. ADILA HASSIM:** Did you discuss it with them at the time? Sorry. Did you  
5 discuss it with them at the time?

**DR TIEGO SELEBANO:** No, there was never a meeting with them.

**ADV. ADILA HASSIM:** Never a meeting on this.

**DR TIEGO SELEBANO:** Yeah. Remember, they wrote to the MEC who...

**ADV. ADILA HASSIM:** Yes, and they wrote to you, and you were the head of  
10 department.

**DR TIEGO SELEBANO:** Cc.

**ADV. ADILA HASSIM:** You were the head of department.

**DR TIEGO SELEBANO:** They wrote to the MEC requesting a meeting. I can't then  
call them and say, go and meet the MEC.

15 **ADV. ADILA HASSIM:** No. That's not what I am saying. They wrote a letter...

**DR TIEGO SELEBANO:** To the MEC.

**ADV. ADILA HASSIM:** And to you.

**DR TIEGO SELEBANO:** And cc'ed me, yes.

**ADV. ADILA HASSIM:** Yes, is there some magic in the cc?

**DR TIEGO SELEBANO:** No, there is magic.

**ADV. ADILA HASSIM:** There is a bit, okay.

**DR TIEGO SELEBANO:** I don't know why you use the word magic.

**ADV. ADILA HASSIM:** Because you keep telling me that they cc'ed you rather than...

**DR TIEGO SELEBANO:** Counsel but also you must be fair to me and...

**ADV. ADILA HASSIM:** I am not being unfair to you. I am trying to understand, you've already said you received the letter...

**ARBITRATOR JUSTICE MOSENEKE:** We can't have a heckling session please. The discussion between your counsel and the witness please. We've agreed when you are unhappy, you mumble right, but no heckling please. Counsel?

**ADV. ADILA HASSIM:** Thank you Justice. You've already said you've received the letter, you've read the letter.

**DR TIEGO SELEBANO:** I know the letter.

**ADV. ADILA HASSIM:** Yes, and that there were warnings, that these were clear warnings.

**DR TIEGO SELEBANO:** I think we are past that one.

**ADV. ADILA HASSIM:** Right. So let's not talk about cc'ing and all of that. The point is what we've just agreed to now. You as the HOD, you bear contractual relationship duties to your employer. Correct?

**DR TIEGO SELEBANO:** That's right.

**ADV. ADILA HASSIM:** But you also bear statutory obligations as an HOD. Isn't that so?

**DR TIEGO SELEBANO:** Yeah.

5**ADV. ADILA HASSIM:** Yes, in the National Health Act. Correct?

**DR TIEGO SELEBANO:** Yeah.

**ADV. ADILA HASSIM:** Section 25 of the National Health Act. So it was your duty, the buck stopped with you as the head of the department to do something with these warnings. Is that not correct?

10**DR TIEGO SELEBANO:** Not necessarily.

**ADV. ADILA HASSIM:** No.

**DR TIEGO SELEBANO:** Not necessarily.

**ADV. ADILA HASSIM:** Whose duty was it?

**DR TIEGO SELEBANO:** The letter was written to the MEC. I also get guidance  
15from the MEC.

**ADV. ADILA HASSIM:** But your statutory obligations...

**DR TIEGO SELEBANO:** And that is why nowhere do they mention, they just cc'ed me.

**ADV. ADILA HASSIM:** We are back to the cc question.

**DR TIEGO SELEBANO:** You don't like it, I understand, but I am telling you this...

**ADV. ADILA HASSIM:** It's not whether I like it or not. In fact it's about the constitution and it's about the law. You have obligations as a head of department under Section 25 of the National Health Act. You have statutory obligations. You have constitutional obligations under the constitution, many.

**DR TIEGO SELEBANO:** Counsel I've said I take...

**ADV. ADILA HASSIM:** And you confirm that you did nothing with these warnings.

**DR TIEGO SELEBANO:** Counsel I've said I [inaudible 01:51:11] ability. I've said that. You don't have to repeat all those things. I take accountability and I say, I wish that if I had foresight, I would have...

**ADV. ADILA HASSIM:** That's why these letters – I am sorry Dr Selebano, the foresight was provided to you.

**DR TIEGO SELEBANO:** No. You know it's not true also.

**ADV. ADILA HASSIM:** Oh no. I am not lying. I put it to you in the form of two very detailed letters. I am not making it up.

**DR TIEGO SELEBANO:** I take your point Counsel.

**ADV. ADILA HASSIM:** You didn't do anything with these warnings. It did not give you poise. Isn't that so?

**DR TIEGO SELEBANO:** I think I did say that that I wish we could have acted on the warnings. I've said that.

**ADV. ADILA HASSIM:** Justice it's about time, almost time for the tea adjournment and before I move on to another topic, maybe we should adjourn here.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, we should.

[vernacular 01:52:33]

5

6 December 2017

**SESSION 2**

**ARBITRATOR, JUSTICE MOSENEKE:** I am grateful. You may be seated. You are under your previous oath to tell the truth. Counsel.

5**ADV. ADILA HASSIM:** Thank you, Justice. So Dr Selebano, we were dealing with the June 2015 letter from SASOP and the warnings and all of that, we've gone past all that. We know a few months after that the contract was terminated in September. But it is correct, isn't it, that those psychiatrists and others continued to engage the Department even after the contract was terminated.

10**DR BARNEY SELEBANO:** Yes, Dr Madigeng in particular was (inaudible).

**ARBITRATOR, JUSTICE MOSENEKE:** Again I would ask you to lift your voice, please. Thank you.

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** And SASOP and The South African Federation for Mental  
15Health and SADAG, the Depression and Anxiety Group, and families were raising a concern even after the contract has been terminated.

**DR BARNEY SELEBANO:** It is true.

**ADV. ADILA HASSIM:** And that continued until December when they then got their lawyers involved, is that correct?

20**DR BARNEY SELEBANO:** That's true.

**ADV. ADILA HASSIM:** So they didn't make any headway, in their view, with the Department, in these letters and these engagements.

**DR BARNEY SELEBANO:** Yes, you can, it is sure to say that, yes.

**ADV. ADILA HASSIM:** And that culminated then in a letter of demand that was addressed to the Department of Health and that was in December. And I would like you to look at file 1 page 182.

**DR BARNEY SELEBANO:** File 1, page?

**ADV. ADILA HASSIM:** 182.

**DR BARNEY SELEBANO:** 182. Just give me a second. File 1, 182.

10**ADV. ADILA HASSIM:** 182.

**DR BARNEY SELEBANO:** I am there, Counsel.

**ADV. ADILA HASSIM:** It is on the letterhead of the attorneys ...intervened.

**DR BARNEY SELEBANO:** Section 27.

**ADV. ADILA HASSIM:** Section 27.

15**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** And it is addressed to the former MEC.

**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** And you.

**DR BARNEY SELEBANO:** Right.

**ADV. ADILA HASSIM:** To Dr Manamela.

**DR BARNEY SELEBANO:** Right.

**ADV. ADILA HASSIM:** Mr. Mosenogi and Mr. Mkhathshwa.

**DR BARNEY SELEBANO:** I can see that.

5**ADV. ADILA HASSIM:** And it is dated 9 December 2015. And unless you wish me to... you've seen this letter before, I imagine.

**DR BARNEY SELEBANO:** I know about this letter. I was engaging at that time, yes.

**ADV. ADILA HASSIM:** So the letter begins with the history of engagement  
10between the clients of Section 27 and the Department for the first few pages. And then if we can go to page 185 to paragraph 11.

**DR BARNEY SELEBANO:** Can I just quickly browse through, if it is okay with you?

**ADV. ADILA HASSIM:** Yes.

**DR BARNEY SELEBANO:** Can I do that, Justice?

15**ARBITRATOR, JUSTICE MOSENEKE:** Yes, indeed, you may.

**DR BARNEY SELEBANO:** Okay.

**ADV. ADILA HASSIM:** Let me know when you get to para 11 and I'll take you through the rest of the way.

**DR BARNEY SELEBANO:** I'll do that. Okay. I have got an idea, yes.

**ADV. ADILA HASSIM:** So at paragraph 11 what is recorded is the following: “Our clients were also advised in an email from Mr. Levy Mosenogi and dated 8 December 2015 that the closure of the Esidimeni Facilities on 31 March 2016 is not negotiable. It is therefore clear that the users at these facilities will continue to be discharged.” So at that point in time the letter was in September, so which meant in March 2016 the users had to be out of Life Esidimeni. Is that correct? I am just confirming that that is what this is a reference to.

**DR BARNEY SELEBANO:** This is what Mr. Mosenogi said.

**ADV. ADILA HASSIM:** Yes.

10 **DR BARNEY SELEBANO:** Oh you want me to say whether is it true.

**ADV. ADILA HASSIM:** I am saying, does it make sense to you because it was going to... the contract... well the notice was given in September and all the patients had to be out by March 2016.

**DR BARNEY SELEBANO:** Ja, it is fair what Mosenogi was saying, yes.

15 **ADV. ADILA HASSIM:** Then it goes on to say: “We further have no indication of” ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Sorry, Counsel. Mr. Mosenogi was conveying the position of the Department when he said the transfer is not negotiable.

20 **DR BARNEY SELEBANO:** That is correct.

**ARBITRATOR, JUSTICE MOSENEKE:** At that stage.

**DR BARNEY SELEBANO:** It should be correct, yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Proceed.

**ADV. ADILA HASSIM:** At paragraph 12 it continues: “We further have no indication of the profile of these users or where they have been discharged to. It is therefore not possible to assess whether these discharges are safe, responsible and lawful and whether the best interest of the users have been taken into account. It is also still not clear to which public health care facilities and NGOs users will be transferred, whether these facilities have been consulted, whether they can accommodate these users and what services the users will receive. We remain concerned that these discharges are in breach of the users’ rights, including the right to health care services as guaranteed in section 27 of the constitution.” So here you have again the interested groups, the psychiatrists and the South African Federation of Mental Health, SADAG, people working on the ground saying we continue to have these concerns. And then there is the proposed way forward in paragraph 16: “Given the threats to the rights of users currently accommodated at the Esidimeni facilities or recently discharged from these facilities, as well as the Department’s constitutional and statutory obligation to consult with stakeholders to ensure the best interest of the users are held paramount, we are instructed to make the following proposal and way forward.” And then the proposal follows: “That our clients and the Department make a joint approach to court for the appointment of one or more curators ad litem to report on the user profiles, the health care needs of the users at the Esidimeni facilities and whether these needs will be met through the Department’s proposed plan. And then that the Department will bear the cost of

these curators in line with its obligations to ensure that it has taken into account and prioritised users' needs in this termination plan. And then finally that all discharges are suspended pending the submission of the curators' reports and implementation of their recommendations." In paragraph 17: "Our instructions are that should you not agree to this proposal, we should approach a court on an urgent basis to appoint curators to protect the rights of the Esidimeni users and to interdict further discharges from the Esidimeni facilities pending the completion of the curators' duties." And the final paragraph says: "That you should reply by no later than 11 December 2015." It is correct that the position of the Department was to refuse the proposal for a joint approach, is that so?

**DR BARNEY SELEBANO:** It is correct, because if I recall, we ended up going to court.

**ADV. ADILA HASSIM:** Instead you ended up going to report. The next response that Section 27 received to this letter was from your attorneys and that is at 189, Nbetsha Mahlangu (spelling) Incorporated. And in which they say they represent the Department of Health and they specify whom in the Department of Health and that is the former MEC and then you, Dr Barney Selebano and Dr Makgabo Manamela. So they had instructions to oppose the urgent application, is that correct?

**DR BARNEY SELEBANO:** Yes, I think I remember that, yes.

**ADV. ADILA HASSIM:** And then you did oppose the application.

**DR BARNEY SELEBANO:** I think we did.

**ADV. ADILA HASSIM:** And I want to go to your position in the answering affidavit, but can I ask you first, why did you not think it was a feasible idea to have a curator appointed, an independent person from the parties?

**DR BARNEY SELEBANO:** You mean as a person or as a Department now?

5**ADV. ADILA HASSIM:** As the former Head of Department, why did you instruct your attorneys to defend this litigation?

**DR BARNEY SELEBANO:** Counsel, I'll be honest with you, I don't know. Probably I got advice from the legal department saying no we will defend. Because I wanted to go to the end where I actually intervened and said why can't we just talk amongst  
10ourselves and not go to court, I did say that finally.

**ADV. ADILA HASSIM:** We'll get there.

**DR BARNEY SELEBANO:** Okay.

**ADV. ADILA HASSIM:** Let's just go step by step.

**DR BARNEY SELEBANO:** Okay.

15**ADV. ADILA HASSIM:** At this point in time these organisations representing the interests and rights of mental health care users felt that their engagements up until this point had been futile, hence the letter of demand. But the approach was to say in order to avoid litigation, let's jointly approach a court to resolve this problem. Why did you instruct your attorneys to defend?

**DR BARNEY SELEBANO:** Like I said, I wouldn't recall, but I would have taken advice from the legal department to say let's go and get an attorney and defend. That would be the advice that I probably got. I actually think I got that advice.

**ADV. ADILA HASSIM:** So these would be legal advisors, not the attorneys in this letter.

**DR BARNEY SELEBANO:** No. We have a legal department, how can I call it, it is a legal department within.

**ADV. ADILA HASSIM:** Your internal legal advisors.

**DR BARNEY SELEBANO:** Yes, internal legal advisors, it is a department on its own.

**ADV. ADILA HASSIM:** And who is that?

**DR BARNEY SELEBANO:** The head was Mr. Mlambo.

**ADV. ADILA HASSIM:** So was it on Mr. Mlambo's advice that you defended, is that what you are saying?

15**DR BARNEY SELEBANO:** That's why I am saying most definitely, because he was the one, every time if there are legal issues, just that I would be signing your affidavits, yes.

**ADV. ADILA HASSIM:** And would you have had a discussion with Mr. Mlambo about this, about the merits or not of this idea of jointly approaching a court with  
20appointment of a curator?

**DR BARNEY SELEBANO:** If I recall, there were discussions. The MEC called a meeting and sat all of us, Mlambo, all the chief directors and I think also the CEOs... ja I would just like to think off cuff. I think also the CEOs of the three psychiatric hospitals and some of the doctors from those institutions. I think we sat 5 in that meeting and a decision was taken.

**ADV. ADILA HASSIM:** A decision was taken to defend.

**DR BARNEY SELEBANO:** To defend, ja. I am thinking off the cuff.

**ADV. ADILA HASSIM:** And what was the reason? What was the thinking of the meeting, why not approach, why not have an independent curator appointed?

10 **DR BARNEY SELEBANO:** Counsel, I will be pressed to... you see I am under oath and I must try and tell the truth as much as possible. I will be pressed to ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** No, not as much as possible, all of it.

**DR BARNEY SELEBANO:** All of it. So I will be pressed to recall the (inaudible) 15 details, unless probably if you have the minutes, then I can go through them and confirm the minutes. I would just say that the meeting agreed that let's defend. I don't have the minute details.

**ADV. ADILA HASSIM:** So defended you did and an answering affidavit is contained in that bundle. And I just want to take you to one or two aspects of the 20 answering affidavit. If we could begin at page 408.

**DR BARNEY SELEBANO:** So that is the bundle that you are now talking about?

**ADV. ADILA HASSIM:** File 1. Page 408 should be in that same bundle.

**DR BARNEY SELEBANO:** 408, oh it has numbers here. If you don't mind, Counsel, what is this... is it...?

**ADV. ADILA HASSIM:** This is the answering affidavit that was filed by the Department to defend the litigation.

**DR BARNEY SELEBANO:** That is 2015?

**ADV. ADILA HASSIM:** 2015.

**DR BARNEY SELEBANO:** Okay.

**ARBITRATOR, JUSTICE MOSENEKE:** If you want to, it starts on page 403.

**DR BARNEY SELEBANO:** 403. Okay, I am just quickly browsing because it is 2015.

**ADV. ADILA HASSIM:** Yes, but it is going to be very difficult if you read the entire affidavit all over again.

**DR BARNEY SELEBANO:** But you agree also that it is going to be difficult to engage better so that I give context.

**ADV. ADILA HASSIM:** I will help you and take you through the affidavit.

**DR BARNEY SELEBANO:** But you are limiting my ...intervened.

**ADV. ADILA HASSIM:** Are you proposing that you read the whole affidavit before I ask you any questions?

**DR BARNEY SELEBANO:** Unless if ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Well it may help, Counsel, if you take Dr Selebano to page 444.

**DR BARNEY SELEBANO:** 444.

**ARBITRATOR, JUSTICE MOSENEKE:** The point being that... 444.

5**DR BARNEY SELEBANO:** Triple four?

**ARBITRATOR, JUSTICE MOSENEKE:** Yes. You signed... I know this one doesn't reflect your signature immediately.

**DR BARNEY SELEBANO:** Okay.

**ARBITRATOR, JUSTICE MOSENEKE:** But the way legal documents work, you  
10signed a confirming affidavit, can you see that, page 444?

**DR BARNEY SELEBANO:** Okay.

**ARBITRATOR, JUSTICE MOSENEKE:** "I am Head of Department". You say you know the... "I have read the affidavit".

**DR BARNEY SELEBANO:** Of?

15**ARBITRATOR, JUSTICE MOSENEKE:** "Of Lebete Lebete and confirm the contents thereof as true and correct in so far as they relate to the Department to where it refers to me." Just as a starting point.

**DR BARNEY SELEBANO:** Okay.

**ARBITRATOR, JUSTICE MOSENEKE:** It is a document, which before the court, you confirmed that you knew what it was about and it was true and correct. Let Counsel lead you and if you need more time, of course, let me know.

**DR BARNEY SELEBANO:** Okay.

5**ARBITRATOR, JUSTICE MOSENEKE:** Very well. Counsel.

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

**DR BARNEY SELEBANO:** Because I am a bit worried, because if I look at it, I thought I was intimately involved, but there is a gap where I think the acting HOD ...intervened.

10**ADV. ADILA HASSIM:** Yes, this affidavit was by the acting HOD, Dr Lebete.

**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** And there was a confirmatory affidavit by you, which is contained at page 444 that the Justice has just read out to you, in which you confirm that the contents of Dr Lebete's affidavit in so far as it relates to the Department and  
15in so far as it relates to you.

**DR BARNEY SELEBANO:** Okay Counsel, you ordinarily every time say with your signature, but you agree my signature is not here.

**ADV. ADILA HASSIM:** Yes, no, I know your signature is not there. This is urgent litigation and as I recall, they were filed without signatures with the documents to  
20follow.

**DR BARNEY SELEBANO:** That's why I am saying you agree that my signature is not here.

**ADV. ADILA HASSIM:** Did you not sign a confirmatory affidavit then?

**DR BARNEY SELEBANO:** What I remember about this affidavit, it was signed by Dr Lebete. I am not denying it, no, I am not denying it. That is why it would help a bit if I just went through it, because ...intervened.

**ADV. ADILA HASSIM:** But did you sign a confirmatory affidavit?

**DR BARNEY SELEBANO:** Meaning this letter?

**ARBITRATOR, JUSTICE MOSENEKE:** Ja, it is an affidavit sworn under oath that you have read the affidavit of Dr Lebete Lebete and you confirm that it is true and correct.

**DR BARNEY SELEBANO:** Okay, Justice, let me move on so that I don't ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Let me help you quickly.

15 **DR BARNEY SELEBANO:** Ja.

**ARBITRATOR, JUSTICE MOSENEKE:** In urgent application sometimes you file without signing.

**DR BARNEY SELEBANO:** Oh okay.

**ARBITRATOR, JUSTICE MOSENEKE:** If you deny it, Counsel will simply go to the original court file and will bring up your affidavit. It is a matter of somebody driving to the High Court and getting a copy.

**DR BARNEY SELEBANO:** No, no, Justice, no.

5**ARBITRATOR, JUSTICE MOSENEKE:** So you are not denying that?

**DR BARNEY SELEBANO:** No, I am not saying we should go that road, that is not what I am saying.

**ADV. ADILA HASSIM:** So I would just like to establish whether you did sign a confirmatory affidavit.

10**DR BARNEY SELEBANO:** That is why I am saying, I don't recall whether I signed it, but I am willing that you take me through, because I was part and parcel of this. But I was saying that, I was noting that I didn't sign here. You see, legal advice, confirmatory affidavit, all those things, normally the legal people, yourselves, will know better about these things. I am not denying anything.

15**ADV. ADILA HASSIM:** You are not denying anything, okay.

**DR BARNEY SELEBANO:** So let's move on.

**ADV. ADILA HASSIM:** So the point of the confirmatory is to say that you've read Dr Lebete's affidavit.

**DR BARNEY SELEBANO:** Affidavit.

20**ADV. ADILA HASSIM:** And that you confirmed the contents.

**DR BARNEY SELEBANO:** And then that is why it would be fair that you allow me to ...intervened.

**ADV. ADILA HASSIM:** Yes, so let's now go to certain aspects of the answering affidavit which you would have read at that point in time already.

5**ARBITRATOR, JUSTICE MOSENEKE:** In fairness to you, if you have a deep desire to read the affidavit ...intervened.

**DR BARNEY SELEBANO:** I have.

**ARBITRATOR, JUSTICE MOSENEKE:** We will stand down for a while and you can call me from my chambers once you are done.

10**DR BARNEY SELEBANO:** I hate wasting your time.

**ARBITRATOR, JUSTICE MOSENEKE:** No, not at all. You want to know what you confirmed.

**DR BARNEY SELEBANO:** Ja.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja. The gist of it is that you basically  
15agree with him that this application must be dismissed. You support the position of Dr Lebete. But read it with your own eyes and once you are done, I must be called, so that we can continue the cross-examination.

**DR BARNEY SELEBANO:** I will try to be as quick as possible.

**ARBITRATOR, JUSTICE MOSENEKE:** You are entitled to look at a document if  
20you are going to be questioned ...intervened.

**DR BARNEY SELEBANO:** On it.

**ARBITRATOR, JUSTICE MOSENEKE:** On it, yes.

**DR BARNEY SELEBANO:** Okay.

**ARBITRATOR, JUSTICE MOSENEKE:** Very well. I am going to adjourn and call  
5me when you are.

**DR BARNEY SELEBANO:** I will try and be very quick.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, no, that is in order. We are  
adjourned.

**END OF SESSION 2**

10

6 December 2017

**SESSION 3**

**DR BARNEY SELEBANO:** Justice, can I apologise please?

**ARBITRATOR, JUSTICE MOSENEKE:** You want to apologise? I don't remember  
5you doing anything wrong.

**DR BARNEY SELEBANO:** No, I took your time and the time of... I am sorry to the  
Counsel again that I took your time and her time and the legal team. And I just  
wanted to au fait myself with the contents. My sincere apologies.

**ARBITRATOR, JUSTICE MOSENEKE:** You are entitled to that, Doctor, you are.

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

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

**ADV. ADILA HASSIM:** There is no need to apologise, Dr Selebano. I appreciate  
your apology, but there is no need to apologise. You have now read through the  
affidavit.

15**DR BARNEY SELEBANO:** I did speed reading on it, yes.

**ADV. ADILA HASSIM:** So just to go back to where we were. This is December  
2015 after the engagement by these applicants and then culminating in the letter of  
demand and then ultimately this litigation. And at page 411.

**DR BARNEY SELEBANO:** 411?

20**ADV. ADILA HASSIM:** Yes.

**DR BARNEY SELEBANO:** Okay.

**ADV. ADILA HASSIM:** At paragraph 25, the paragraph reads: “A close reading of the act amply shows that the users cannot be transferred to a facility other than one designated to provide the health care services. A contention, also without evidence, 5that the users will be sent to facilities that do not provide the level of services required by the users is without foundation.” Do you see that?

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** So just to remind you, these are the same stakeholders, SASOP, Dr Talatala in particular on behalf of SASOP deposed to an affidavit in this 10case and attached the June 2015 letter that we were talking about.

**DR BARNEY SELEBANO:** Okay.

**ADV. ADILA HASSIM:** So this application was based, amongst others, on the contents of that letter in which they raised all of the concerns and the warnings we have already discussed this morning. The response, however, from the Department 15is that this is without evidence, simply that, it is without evidence. The Department goes on, if you turn over the page at paragraph 35: “To facilitate the discharge or transfer of users come 31 March 2016, the Department has established a project team comprising of high level placed individuals, from policy, research and planning unit, mental health services, acting deputy director general, chief director and other 20related services.” So the crux of this affidavit is, you haven’t, this is without basis, the concerns that you’ve raised, we’ve got a team in place. And then in 39 concluding it by saying the following, paragraph 39 page 414 saying: “I am

confident that on/before 31 March 2016 there will be designated facilities to accommodate the users discharged from the third respondent. There are ongoing discussions with existing NGOs to increase their capacity, as well as new NGOs to provide additional beds. With the planned renovation of state facilities, I am  
5confident that there will be sufficient designated facilities to provide the required level of care to users who will be transferred to them.” And then one last reference that I would like to draw your attention to and that is over the page 415, the first is in paragraph 44, the last sentence of it, which says: “There is no duty to consult necessary stakeholders”. And then 45 it reads as follows: “Again the applicants  
10build allegations without any supporting evidence to say that the plan to discharge or transfer users poses a serious threat to the health and safety of the users is irresponsible. I am unable to know what part of the plan or statutory is said to pose a serious threat or what threat. I am placed at a disadvantage to give a meaningful answer beyond a denial.” So as I said this was in relation to the concerns we have  
15already been through.

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** And now it has been raised a level, in fact.

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** In the degree of warning. Because now the lawyers have  
20become involved and they said there is a threat to rights.

**DR BARNEY SELEBANO:** That’s right.

**ADV. ADILA HASSIM:** And so the urgent application is to protect against the threats eventuating and therefore please we want a curator appointed.

**DR BARNEY SELEBANO:** Okay.

**ADV. ADILA HASSIM:** Why did you see fit... so you know you said in the June 2015 letter that you ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** I thought you were posing the question, Counsel.

**ADV. ADILA HASSIM:** Sorry, I am getting there, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** You put a long thing to the witness. I think you should have posed a question now.

**ADV. ADILA HASSIM:** We spoke about the June 2015 letter, we are back to the June 2015 letter in a different form. Why did you in December 2015 still not take regard of the warnings?

**DR BARNEY SELEBANO:** Thank you Counsel. Justice, interestingly, as I was reading through the affidavit exactly what Counsel asked, are those things that I marked. You know I marked, you can call the gentleman to come and see, I marked number 25, I marked 27 and I marked 35 and I did on 39, I think there is only one I didn't pick up and 43 I also marked and also 45. When I read this, I realised how we did everything wrong. Just when I read this, and I marked exactly, you can come anybody to come and see, I marked exactly.

**ARBITRATOR, JUSTICE MOSENEKE:** No, I believe you.

**DR BARNEY SELEBANO:** I just said in my heart Counsel is going to say what is this. And I am saying now, I now know exactly how we did things wrong, very wrong by not heeding to advice, by not listening to other people. I mean there is somewhere where I read again where it says you've got no responsibility to do this, stakeholders and all that. And I read and I said, what were we doing here? What were we doing here? I am not in quarrel with what you said. I am just astounded that exactly what you are asking me is what I said, we did things the wrong way, terribly wrong. We should have listened to other people.

**ADV. ADILA HASSIM:** I accept that response. Are you saying that if you were to go back in time, you would not have supported this and confirmed on affidavit?

**DR BARNEY SELEBANO:** I wouldn't. In a funny twist again, Counsel, if you go forward, you would recall that I also didn't want to go to court, I had discussions with Section 27, privately and openly, about that I really don't think we should always be taking one another to court. We share common interest here, we share a common thing, we care about... Section 27 that is actually how I understood it far much better, other than my past experiences with Section 27 when I was at the Medical Association. Then I understood it when I was with Mark (?) that you know... in fact let me tell you what I said to him, Justice and Counsel, if you don't mind. I said: Mark, I wish there would be a day where you will dissolve ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** You are talking about Mark Haywood?

**DR BARNEY SELEBANO:** Mark Haywood, yes. I said ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Of Section 27, yes.

**DR BARNEY SELEBANO:** I said: I wish there will be a day where you will dissolve so that we are all confident that all those things inside Section 27 are done. There shouldn't be any reason to be following Government to do its obligations on health, there shouldn't be any reason to be following Government to do its obligations on education and also on housing – that was our discussion. And I look at it now, I realise how we did things wrong.

**ADV. ADILA HASSIM:** So that was December 2015. Thank you, Dr Selebano.

**DR BARNEY SELEBANO:** I think my discussion was after that, ja, with Mark.

**ADV. ADILA HASSIM:** Yes because then what happened was, the Director General contacted you, isn't that so?

**DR BARNEY SELEBANO:** I contacted her.

**ADV. ADILA HASSIM:** The Director General of the National Department.

**DR BARNEY SELEBANO:** Of the National Department, yes, I contacted her.

**ADV. ADILA HASSIM:** In her testimony to us she said that she contacted you and recommended that you settle.

**DR BARNEY SELEBANO:** We settle. You know, it is a you and I now, I don't know, but I remember we were talking and I said we can't be fighting and we settled. I think Mark had actually met somebody from the Premier's office.

**ADV. ADILA HASSIM:** From the Premier's office?

20**DR BARNEY SELEBANO:** I think so.

**ADV. ADILA HASSIM:** Okay.

**DR BARNEY SELEBANO:** I don't want to ...intervened.

**ADV. ADILA HASSIM:** I am saying that DG Matsoso was here and testified before these proceedings and she says that she contacted you and recommended that there should be a settlement in this matter.

**DR BARNEY SELEBANO:** Ja it's fine. If I came before then, I would have said I contacted her, you know what I am saying? I don't know. For me it doesn't really matter, Justice, quibbling on who did what. We speak a lot, myself... we did speak a lot that time, myself and her. And we did, I can confirm that we had a conversation and said we are not going to be fighting, we must settle.

**ADV. ADILA HASSIM:** So it was a couple of days after this affidavit.

**DR BARNEY SELEBANO:** Ja.

**ADV. ADILA HASSIM:** That a settlement was reached.

**DR BARNEY SELEBANO:** That a settlement was reached.

**ADV. ADILA HASSIM:** And the terms of the settlement agreement, you are aware of the terms.

**DR BARNEY SELEBANO:** I will be happy if you can recollect. One of the terms inside there, I don't know whether it inside the terms, I think the lawyers had now taken over the situation. But one of the things, and I kept on repeating it, I said if we were to move the clients they must go to either the same or much better. I don't know if I had it in those settlements or not.

**ADV. ADILA HASSIM:** Yes, no that was in the settlement agreement.

**DR BARNEY SELEBANO:** Was it?

**ADV. ADILA HASSIM:** Yes. We can...

**DR BARNEY SELEBANO:** That is my quotation, if there is anything I remember, that's that part.

**ADV. ADILA HASSIM:** So the settlement agreement made it very clear, as you say, that whatever happens, wherever the users are moved to, they will receive services of equal or better quality.

**DR BARNEY SELEBANO:** Or better.

10**ADV. ADILA HASSIM:** But we know that that didn't happen.

**DR BARNEY SELEBANO:** We know, we know, really, we know.

**ADV. ADILA HASSIM:** So that was December 2015. Then we come to February 2016. In the meantime the process continued. Would you agree?

**DR BARNEY SELEBANO:** Yes.

15**ADV. ADILA HASSIM:** And then in February 2016, I'd ask you to have a look again at that exhibits bundle, it is the one, the ELAH2, the annexures to the Ombud's report.

**DR BARNEY SELEBANO:** Okay. ELAH2, page what?

**ADV. ADILA HASSIM:** Page 27.

20**DR BARNEY SELEBANO:** Page 27. Is that the one that says Mosenogi Levy?

**ADV. ADILA HASSIM:** That's the one.

**DR BARNEY SELEBANO:** Okay, annexure 5.

**ADV. ADILA HASSIM:** Annexure 5, correct. And it is an email.

**DR BARNEY SELEBANO:** That's right.

5**ADV. ADILA HASSIM:** From Mr. Mosenogi to the former MEC.

**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** And to you.

**DR BARNEY SELEBANO:** And to me.

**ADV. ADILA HASSIM:** Even though you are CC'ed.

10**DR BARNEY SELEBANO:** I know it very well, this thing.

**ADV. ADILA HASSIM:** Yes, you know this letter very well.

**DR BARNEY SELEBANO:** I know it very, very well. We worked on it, myself and him.

**ADV. ADILA HASSIM:** So this is an important letter.

15**DR BARNEY SELEBANO:** It is very important.

**ADV. ADILA HASSIM:** Because it is addressed to the MEC directly and it says ...intervened.

**DR BARNEY SELEBANO:** Well it is not clear on my bundle here, but I will say it is a very important letter. That's why I asked the Prof to call Mr. Mosenogi.

**ADV. ADILA HASSIM:** The letter says, sorry it is after all the numbered paragraphs ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** You found it, have you?

**DR BARNEY SELEBANO:** I have it, Justice, but it is so... I can't... but I don't want to hold up because ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes. Counsel will read it to you and you've said you worked on it before, so...

**DR BARNEY SELEBANO:** I know this, yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Tell us where you can't see and we will read it to you.

**DR BARNEY SELEBANO:** The whole of it, it is very, very, I can't see, ja.

**ADV. ADILA HASSIM:** Okay let me just... My colleague has very kindly offered to lend you his version, it might be easier for you to read. Thank you.

**ARBITRATOR, JUSTICE MOSENEKE:** Is it the one on the laptop?

15**DR BARNEY SELEBANO:** But you can see, look at it, it is completely ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** You've been given one on a laptop and ...intervened.

**DR BARNEY SELEBANO:** Ja, I'll give your laptop back. Okay it is clear now.

20**ADV. ADILA HASSIM:** So this email is actually...

**DR BARNEY SELEBANO:** Right.

**ADV. ADILA HASSIM:** From Mr. Mosenogi, towards the end after the numbered paragraphs, the point of the email is to appeal to the MEC to propose extending the contract, do you see that, by six months at a minimum ...intervened.

5**DR BARNEY SELEBANO:** Where are you reading?

**ADV. ADILA HASSIM:** Under the numbered paragraphs.

**DR BARNEY SELEBANO:** From the meetings in depth discussion?

**ADV. ADILA HASSIM:** Yes.

**DR BARNEY SELEBANO:** “My personal assessment”, he says... let me read it:  
10“From the meetings in depth discussions and my personal assessment as the program manager, Honourable MEC, I propose that the Department seriously consider an extension of the contract” ...intervened.

**DR BARNEY SELEBANO:** Yes, I remember that very well.

**ADV. ADILA HASSIM:** “...to about six months at a minimum, to a year maximally.”

15**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** “This will assist us to do better work in regard to beefing up our own facilities to cater for such vulnerable patients. And also to ensure that the NGOs are trained and also just to handling a variety of specialised patients and also well-prepared for such venture.”

20**DR BARNEY SELEBANO:** That’s right.

**ADV. ADILA HASSIM:** “The clinicians have indicated that this will be of much value, especially considering the challenges faced by such patients.”

**DR BARNEY SELEBANO:** That’s right.

**ADV. ADILA HASSIM:** “Also the Life Esidimeni, the LE people, request that we indicate to them clearly our plans, as they need to issue notices to staff before the end of February 2016 to begin to wrap up and close the facilities. And I have asked the HOD what do we say to them. At least by Monday, for me I think we should have time to avoid possible mess if our plans don’t materialise, plus the staff needs consideration.”

10**DR BARNEY SELEBANO:** I know exactly what he meant, yes, I was with him.

**ADV. ADILA HASSIM:** Did you agree with these concerns?

**DR BARNEY SELEBANO:** I was with him when this... that’s why he starts by apologising. You may not appreciate that, but if you look when he starts he says MEC I apologise for writing to you directly.

15**ADV. ADILA HASSIM:** Yes.

**DR BARNEY SELEBANO:** But I said to him, you can, you are the project leader.

**ADV. ADILA HASSIM:** Well this is quite important in fact, because he was a chief director.

**DR BARNEY SELEBANO:** It is important. But would you ...intervened.

20**ADV. ADILA HASSIM:** Before we get there... I appreciate where you want to go and we’ll get there.

**DR BARNEY SELEBANO:** Okay, ja.

**ADV. ADILA HASSIM:** Attached to this email was a formal letter, a more formal letter on the next page. Do you see it? Is it legible to you?

**DR BARNEY SELEBANO:** The one that says, “we have attended and listened”?

5**ADV. ADILA HASSIM:** Yes.

**DR BARNEY SELEBANO:** I was with him actually, Justice, I was with him at Randfontein.

**ADV. ADILA HASSIM:** At the meeting at Randfontein.

**DR BARNEY SELEBANO:** With the parents, yes, I was with him.

10**ADV. ADILA HASSIM:** And again this letter, in the second paragraph, he sets out the lessons, as he calls it.

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** He says the lessons from the three family meetings at the Life Esidimeni facilities and the follow-up with the parent committees are as follows,  
15and he sets out all the lessons.

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** Including in bullet point 4, most NGOs are not sustainable as an alternative to Life Esidimeni partnership. Do you see that? The fourth bullet point.

20**DR BARNEY SELEBANO:** Yes, I actually, I know it very well.

**ADV. ADILA HASSIM:** Did you agree with that?

**DR BARNEY SELEBANO:** I can actually explain why we ...intervened.

**ADV. ADILA HASSIM:** You can explain in a moment. Can you tell me whether you agree with that?

5**DR BARNEY SELEBANO:** I agree with the letter, actually I agree with everything here.

**ADV. ADILA HASSIM:** Then he talks about the concerns about the relapse. You see there firstly relapse of the most vulnerable patients and it goes on. Secondly, the next paragraph, the process will impact negatively on the relatives.

10**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** Thirdly, the health care workers will be unduly affected.

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** Including the gardeners and the caterers and everybody.

**DR BARNEY SELEBANO:** That's right.

15**ADV. ADILA HASSIM:** And then he says, and finally the academic programs at the Life Esidimeni facilities, which have undergone fairly strenuous accreditation criteria.

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** Did you agree with all of these concerns that were faced?

**DR BARNEY SELEBANO:** I was with him, yes, I know exactly what he meant. I can explain it in detail.

**ADV. ADILA HASSIM:** Did you also write to the MEC with these concerns?

**DR BARNEY SELEBANO:** No, I didn't.

5**ADV. ADILA HASSIM:** Did you address them to her?

**DR BARNEY SELEBANO:** No, I didn't do that.

**ADV. ADILA HASSIM:** Did you raise them with her in any way?

**DR BARNEY SELEBANO:** In a meeting where this discussion was raised, Mr. Mosenogi said... do you want me to not wait for you because I said I can, if you  
10want to ask me on these letters, I can explain what he meant, why he said that.

**ADV. ADILA HASSIM:** I am just asking whether you wrote as a HOD to the MEC.

**DR BARNEY SELEBANO:** No, I didn't.

**ADV. ADILA HASSIM:** Why did an official below you, the chief director, we've also had a long discussion earlier or yesterday about the hierarchy and who can do what  
15and when... why would a chief director address the MEC and not you? Why did you not raise the concerns?

**DR BARNEY SELEBANO:** But that is why I was alerting you to that first part that said, MEC I apologise... We sat in the office, it was in the evening, we thought about it, how do we do... if I write it they will say you are not operational, what do  
20you know, you are not in the program, that people are actually doing the work,

Mosenogi and the other team, you are not leading this team. And then I said maybe then you should be the right ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Well say it, were you a collaborator with Mr. Mosenogi, is that what you are saying?

5**DR BARNEY SELEBANO:** I was a collaborator with him, yes.

**ADV. ADILA HASSIM:** But why did you not write the letter?

**DR BARNEY SELEBANO:** I am saying that is why he started by apologising. We sat and weighed who will have more weight in convincing that we should rather wait. And he is the chief director who is actually the project leader. So he was  
10actually the one who was doing the operational work. Like you can see you can give the numbers, how many numbers, how many this... I wouldn't be able to say ...intervened.

**ADV. ADILA HASSIM:** But he could advice you.

**DR BARNEY SELEBANO:** Counsel, it is neither here nor there anymore. I have  
15accepted this and I am saying we sat and worked on this. He can testify to that that we sat on it.

**ADV. ADILA HASSIM:** Okay so you were in agreement with these concerns.

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** And you and Mr. Mosenogi discussed the letter and  
20decided that it would be better if he sent the letter rather than you.

**DR BARNEY SELEBANO:** Rather than myself. There was nothing cynical about it.

**ADV. ADILA HASSIM:** Sure.

**DR BARNEY SELEBANO:** We were just saying who has grasp of issues.

5**ADV. ADILA HASSIM:** And who would be able to persuade the MEC, more I likely to persuade the MEC.

**DR BARNEY SELEBANO:** Actually speaking, who would be able to persuade.

**ADV. ADILA HASSIM:** And you didn't write a letter after this, at any point after this to the MEC.

10**DR BARNEY SELEBANO:** No.

**ADV. ADILA HASSIM:** So that was in February 2016, but the project continued, isn't that so?

**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** Despite all of these concerns. And then in March 2016  
15there was further litigation, do you remember that?

**ARBITRATOR, JUSTICE MOSENEKE:** Just before you move on to litigation, Counsel... Why did the project continue?

**DR BARNEY SELEBANO:** After all this?

**ARBITRATOR, JUSTICE MOSENEKE:** Yes. You told us now you were a  
20collaborator with Mr. Mosenogi. The concerns are far outgoing the fundamental, the

substantial and you were a silent co-author. Why would this continue, would the project continue?

**DR BARNEY SELEBANO:** Sorry Justice, sorry Counsel. If you look at, there is a part that I would like to read, I will come to that: “We respectfully request the MEC to consider the above”, it is in that letter, “alternative proposal as made by the senior management team tasked with the implementation of the LE termination project.” The proposal has been discussed and shared amongst ourselves as senior managers – that is HOD, DDG and the LE project managers. I just wanted to show that we shared the concern ...intervened.

10 **ARBITRATOR, JUSTICE MOSENEKE:** I have read it a few times.

**DR BARNEY SELEBANO:** Right.

**ARBITRATOR, JUSTICE MOSENEKE:** Now we know that you were one of the silent authors of this very incisive (inaudible) going and fundamental letter, probably the sharpest warning so far. Now the question begs an answer and the question is ...intervened.

**DR BARNEY SELEBANO:** Why did it go on?

**ARBITRATOR, JUSTICE MOSENEKE:** Why did it go on? The HOD is in opposition, we know now, why does it go on?

**DR BARNEY SELEBANO:** We went to a meeting, we discussed, Mosenogi, who will raise this, who can do this, who can do that. We sat there with other managers. And I recall very well Mr. Mosenogi stood up and said I would like to raise the

matter as a team, like he is saying there, we would want to raise a concern. The answer was, Mr. Mosenogi are you working for Life Esidimeni or what?

**ARBITRATOR, JUSTICE MOSENEKE:** No, no ...intervened.

**DR BARNEY SELEBANO:** I am explaining.

5**ARBITRATOR, JUSTICE MOSENEKE:** Not the answer was. Who said what?

**DR BARNEY SELEBANO:** Okay. The MEC said Mr. Mosenogi, are you working for Life Esidimeni or not and the matter rested there. We couldn't go beyond that.

**ADV. ADILA HASSIM:** But Dr Selebano, you are the head of department, you are the one who bears the statutory obligation that I referred to earlier in section 25 of 10the Act.

**DR BARNEY SELEBANO:** I know that.

**ADV. ADILA HASSIM:** You are the one who signed the contract, you approved the termination of the contract.

**DR BARNEY SELEBANO:** Counsel.

15**ADV. ADILA HASSIM:** It was in your power, was it not? Was it not in your power to halt this process?

**DR BARNEY SELEBANO:** I don't think it was in my power... by power... the executive also has overwriting powers also.

**ADV. ADILA HASSIM:** Who is the executive?

**DR BARNEY SELEBANO:** Me. Qedani Mahlangu would have overwriting powers also, MECs have that.

**ADV. ADILA HASSIM:** Why is that so? She is your political principle. In fact you told us earlier that you actually report to the Premier, is that not so?

5**DR BARNEY SELEBANO:** No, no, I said I am employed by the office of the Premier but I report to the MEC. If I am assessed, I am not assessed by the Premier, I am assessed by the MEC.

**ADV. ADILA HASSIM:** But you are appointed by the Premier.

**DR BARNEY SELEBANO:** Ja, I don't know why it works like that. And I have  
10explained ...intervened.

**ADV. ADILA HASSIM:** So why is the head of department given the statutory obligations, given of course the constitutional obligations that rest on you... why did you not have the power to stop this?

**DR BARNEY SELEBANO:** I hear you. I couldn't stop it. I didn't stop it. I wish I  
15could have stopped it. I didn't do that.

**ADV. ADILA HASSIM:** But you had the legal power to do so.

**DR BARNEY SELEBANO:** I don't know, Counsel, honestly. I don't know if I have the legal power to overwrite a MEC, I don't know.

**ARBITRATOR, JUSTICE MOSENEKE:** You know, Mr. Mosenogi sat where you  
20sat.

**DR BARNEY SELEBANO:** Right.

**ARBITRATOR, JUSTICE MOSENEKE:** And was asked pretty much the same question, it being clear from the letter that he was representing senior managers.

**DR BARNEY SELEBANO:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Who worked with him and under him. He came to tears telling us how afraid he was to stand up to the MEC. He talked about the MEC slapping him down and saying do you work for us or do you work for Life Esidimeni.

**DR BARNEY SELEBANO:** Okay, it is true, I was there ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Right, MEC said that in your presence.

10**DR BARNEY SELEBANO:** She said that.

**ARBITRATOR, JUSTICE MOSENEKE:** And in his presence.

**DR BARNEY SELEBANO:** She said that.

**ARBITRATOR, JUSTICE MOSENEKE:** Now when pressed to answer, he said I was afraid to stand up to the MEC. What is your answer?

15**DR BARNEY SELEBANO:** It was difficult for me to stand up to the MEC. Fear, I wouldn't be ruled by fear, but you know when that answer comes like Mr. Mosenogi says, it is a shocking answer and you say ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** But why were you afraid to stand up to the MEC on something that you tell us you were convinced was wrong. If you co-  
20authored this with Mr. Mosenogi, why didn't you stand up and said excuse me

member of executive council, we cannot put this through, which is the crux of the letter?

**DR BARNEY SELEBANO:** I hear you, Justice, I hear you. In a real work situation with relations it is not sometimes as easy as that to be confrontational to your senior. That's why, you know, we sat and said who will raise this. Am I the right guy? Can this one? Can this one? And he said I will do it and we said fine. And why I didn't stand up to it, history will... ja.

**ARBITRATOR, JUSTICE MOSENEKE:** Well let's make the history now. Let's get the facts on the table for prosperity so that it never happens again ...intervened.

10**DR BARNEY SELEBANO:** It must never happen again. I hope all HODs all over should know that this type of thing should never happen.

**ARBITRATOR, JUSTICE MOSENEKE:** And at the time we put to Mr. Mosenogi the fact that as a matter of law he is not obliged to implement an unlawful instruction from a senior, do you know that?

15**DR BARNEY SELEBANO:** I know that.

**ARBITRATOR, JUSTICE MOSENEKE:** You were not obliged in law... you, you are the statutory head of department, to do what the MEC wanted you to do about the lives of other people. Do you realise that?

**DR BARNEY SELEBANO:** I realise that.

**ARBITRATOR, JUSTICE MOSENEKE:** And the law would have protected you if she tried to dismiss you for refusing to execute an order that may endanger the lives of other citizens, you realise you are not obliged to do that.

**DR BARNEY SELEBANO:** I hear you. I agree with you.

5**ARBITRATOR, JUSTICE MOSENEKE:** But why didn't you do it? Why didn't you stand up to her?

**DR BARNEY SELEBANO:** I didn't stand up at that time. I wish I had. Probably I doubt if I would ever have gotten any better results, and I am saying probably, we still would have walked this tragic road.

10**ARBITRATOR, JUSTICE MOSENEKE:** Counsel.

**ADV. ADILA HASSIM:** Thank you Justice. In other words, Dr Selebano, there was no legal impediment to you doing something about this, stopping the project.

**DR BARNEY SELEBANO:** You mean ...intervened.

**ADV. ADILA HASSIM:** There was no legal impediment, there was nothing in law  
15that was preventing you from doing so.

**DR BARNEY SELEBANO:** Now I know you told me that there wouldn't be anything ...intervened.

**ADV. ADILA HASSIM:** At the time you thought the law prevented you or was it a culture of government more?

20**DR BARNEY SELEBANO:** It is culture.

**ADV. ADILA HASSIM:** It is culture of government?

**DR BARNEY SELEBANO:** It is culture.

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac). I am sorry somebody must interpret that. I was just saying that in our indigenous language it is more powerful  
5– Were you really scared of this lady, the MEC, who was in charge of you, while patients are likely to suffer great harm? And I think the answer is yes.

**DR BARNEY SELEBANO:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** The HOD's answer is yes, he was scared.

**DR BARNEY SELEBANO:** It was tense.

10**ADV. ADILA HASSIM:** Thanks Dr Selebano. I regret that and I regret what I am going to continue to take you through.

**DR BARNEY SELEBANO:** Okay.

**ADV. ADILA HASSIM:** Because it was at this point that the deaths really started to pile up.

15**DR BARNEY SELEBANO:** Ja.

**ADV. ADILA HASSIM:** And if I may now turn to the March 2016 litigation. Do you recall that?

**DR BARNEY SELEBANO:** Yes, that's the one that related to Takalani.

**ADV. ADILA HASSIM:** Yes that's correct.

20**DR BARNEY SELEBANO:** I have got a fair idea of it, ja.

**ADV. ADILA HASSIM:** Sorry just a second. I just want to give you the right reference. This related to the discharge of about 15 mental health care users to Takalani. And it was brought by the same parties to the December 2015 litigation, do you recall that?

5**DR BARNEY SELEBANO:** Where is it, Counsel? Do you want me to have a look at it?

**ADV. ADILA HASSIM:** It is in file 2.

**DR BARNEY SELEBANO:** I don't have a file 2. File 2. Thank you. Page?

**ADV. ADILA HASSIM:** And it was defended ...intervened.

10**DR BARNEY SELEBANO:** It was the same lawyers, if I am ...intervened.

**ADV. ADILA HASSIM:** Sorry, were your lawyers the same?

**DR BARNEY SELEBANO:** The same departmental lawyers, yes, I should think they were.

**ADV. ADILA HASSIM:** Okay, so if you can turn to page 765.

15**DR BARNEY SELEBANO:** 765.

**ADV. ADILA HASSIM:** That's your affidavit, is it?

**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** Now this was in order to oppose the application to prevent the move of mental health care users ...intervened.

20**DR BARNEY SELEBANO:** From?

**ADV. ADILA HASSIM:** From Life Esidimeni to Takalani.

**DR BARNEY SELEBANO:** I recall that.

**ADV. ADILA HASSIM:** And the crux of the application was that the users were not ready to be sent to Takalani, that was one major reason ...intervened.

5**DR BARNEY SELEBANO:** The contention, yes ...intervened.

**ADV. ADILA HASSIM:** You recall the case.

**DR BARNEY SELEBANO:** The contention was stop discharging the patients from Life Esidimeni. But those, I think, Justice, had gone to Takalani at that time. I don't know whether they had gone but at that time there was that objection.

10**ADV. ADILA HASSIM:** Yes. And your view at page 775... page 775.

**DR BARNEY SELEBANO:** I am at 775.

**ADV. ADILA HASSIM:** At paragraph 35.

**DR BARNEY SELEBANO:** 35.

**ADV. ADILA HASSIM:** Your words in that paragraph: "The Respondents are  
15bound by the legislative and constitutional imperatives. Takalani Home has been approved as a suitable alternative facility which is able to accommodate the selected users and provide the necessary mental health care." Do you see that?

**DR BARNEY SELEBANO:** I see that.

**ADV. ADILA HASSIM:** Next paragraph: “The fact that the applicants are not happy with the respondent’s election of facility does not create reasonable apprehension of irreparable harm.”

**DR BARNEY SELEBANO:** Well it is unfortunate, we know the truth now.

5**ADV. ADILA HASSIM:** And then you ask for costs at page 777, costs against ...intervened.

**DR BARNEY SELEBANO:** 77?

**ADV. ADILA HASSIM:** 777.

**DR BARNEY SELEBANO:** Costs.

10**ADV. ADILA HASSIM:** Do you see that?

**DR BARNEY SELEBANO:** Yes, I see that.

**ADV. ADILA HASSIM:** And quite importantly, page 785, if you can get there.

**DR BARNEY SELEBANO:** 785.

15**ADV. ADILA HASSIM:** Paragraph 74, and I’ll read it for you: “The applicants may build allegations of their concerns about the conditions of Takalani, the impact on the users of Takalani and Life Esidimeni. They further rely on an affidavit of a person who by their own admission had not examined any user nor visited Takalani. Their alleged concerns are baseless and unfounded.” That was a reference, do you recall that?

20**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** Yes.

**DR BARNEY SELEBANO:** Maybe not the detail, but it is my affidavit, yes.

**ADV. ADILA HASSIM:** So the person that you say did not examine any user nor visit to Takalani and whose concerns are baseless and unfounded, that refers to a 5Dr Johanna Taylor and her affidavit. If I can take you there. It is at page 732.

**DR BARNEY SELEBANO:** Should I go back?

**ADV. ADILA HASSIM:** 732.

**DR BARNEY SELEBANO:** 732. Okay, I am there.

**ADV. ADILA HASSIM:** The affidavit of Johanna Taylor.

10**DR BARNEY SELEBANO:** Okay.

**ADV. ADILA HASSIM:** And she is a specialist psychiatrist, do you agree?

**DR BARNEY SELEBANO:** Yes, she is saying I am a psychiatrist in private practice.

**ADV. ADILA HASSIM:** Yes. And in paragraph 6 she says: “While I am unable to provide a clinical opinion on individual mental health care users, my perusal of the 15document gives rise to a number of questions and concerns.” And then she sets them out. In the next paragraph she says: “The patients earmarked for transfer to Takalani are male and female adults. It is not clear whether there would be separate facilities and care programs for the different categories of patients. In other words, whether Takalani Home has facilities to separate adults from children 20and males from females.” I am going to be posing my question in a second. The next paragraph says: “Some of the users identified for transfer to Takalani Home

are adult male patients taken Androcur. Androcur is used to suppress hypersexual symptoms and behaviour by suppressing male androgen hormonal activity, usually used as a last resort to control behaviour measures and so on.” Do you see that?

**DR BARNEY SELEBANO:** Yes, I read that.

5**ADV. ADILA HASSIM:** Do you know how many patients died at Takalani?

**DR BARNEY SELEBANO:** At that time I knew the exact number. Please give and take, don't be too hard on me, I think there were 32/38, I am not 100% sure. You can correct me.

**ADV. ADILA HASSIM:** I will tell you. If you have regard to ELAH57.

10**DR BARNEY SELEBANO:** Counsel, you can tell me, I won't argue with you on that, I won't argue.

**ADV. ADILA HASSIM:** 38.

**DR BARNEY SELEBANO:** 38.

**ADV. ADILA HASSIM:** It is 38 patients who died at Takalani.

15**DR BARNEY SELEBANO:** Ja that's the number.

**ADV. ADILA HASSIM:** Do you know there were two reports of alleged rape at Takalani?

**DR BARNEY SELEBANO:** At that time?

**ADV. ADILA HASSIM:** Yes. The rape, there were reports of alleged rape at  
20Takalani, subsequent to the transfer of the patients.

**DR BARNEY SELEBANO:** No, I was not aware of that. At that time when... sorry to be rhetorical... are you saying at the time as we were moving patients there was an allegation?

**ADV. ADILA HASSIM:** No, I am saying to you that this case was brought in order to say there are very serious concerns about the threat to the rights of the users and to their wellbeing. They are concerned about the facility, Takalani.

**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** They are concerned about the categories of mental health care users that are being transferred.

10 **DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** Dr Taylor also referred to the nurse staff, sorry the nurse/patient ratio.

**DR BARNEY SELEBANO:** Ratio.

**ADV. ADILA HASSIM:** Do you recall that?

15 **DR BARNEY SELEBANO:** I saw that, yes.

**ADV. ADILA HASSIM:** She said these are hyper sexual males that are being in the same place as children and women.

**DR BARNEY SELEBANO:** They are put on Androcur.

**ADV. ADILA HASSIM:** And your response was these are baseless and unfounded  
20 allegations. I am asking you to respond to that. Why did you say that?

**DR BARNEY SELEBANO:** I'll respond in the same way as I did with the last... it was regrettable, it is highly regrettable that we missed these warnings, we walked away from these warnings, not only... just walked away. It is highly regrettable. It is sad. It is terribly embarrassing. It is painful. It is hurtful.

5**ADV. ADILA HASSIM:** You seen in February 2016 you said you were deeply concerned already, in February 2016.

**DR BARNEY SELEBANO:** Ja.

**ADV. ADILA HASSIM:** This is March 2016 and you put up a vigorous defence in this case. Why did you do that on oath, when you were so concerned?

10**DR BARNEY SELEBANO:** I wish I would have done different, I honestly wish.

**ADV. ADILA HASSIM:** Because the consequence at Takalani.

**DR BARNEY SELEBANO:** I know.

**ADV. ADILA HASSIM:** Was that 38 people died.

**DR BARNEY SELEBANO:** Died, I know that.

15**ADV. ADILA HASSIM:** And there was at least two alleged rapes that took place.

**DR BARNEY SELEBANO:** I know that.

**ADV. ADILA HASSIM:** And men and women were all mixed up.

**DR BARNEY SELEBANO:** That's why I said, Counsel, it is regrettable, it is actually shameful that we allowed this to go on.

**ADV. ADILA HASSIM:** Did anybody instruct you to defend this litigation or was it your decision?

**DR BARNEY SELEBANO:** Through you, Justice, again I want to explain. How Government, how we work, I mean this legal document, if you ask me, and you know, did I write this word for word, I wouldn't have been able to write this thing word for word, I wouldn't. It is legal language, lots of Latin here. I was trying to (inaudible), these are legal people. Then you sit there, they say we are going to defend here, there are grounds to defend, HOD there are grounds to defend, we can take this thing. And then they write these big bundle. I sit there and I read and I read and I read a load and I ask what is the content of this. No, no, HOD, we are taking these guys to court and we will win. I am being honest with you, Justice, I am being honest. Maybe if it was a medical issue, which I would have probably have seen differently, but this is a mirror of the legal people sitting and saying we will win. We are writing this thing, we are writing an affidavit, read through it, read through it, do you understand it... what does this mean, what does this mean... no it means this and that, you don't have anything to worry about.

**ARBITRATOR, JUSTICE MOSENEKE:** But did you read it?

**DR BARNEY SELEBANO:** I read it.

**ARBITRATOR, JUSTICE MOSENEKE:** At the bear minimum?

20**DR BARNEY SELEBANO:** I read it. I don't sign anything without reading it. Absorbing it would be smiting different. I read it.

**ADV. ADILA HASSIM:** You did sign it.

**DR BARNEY SELEBANO:** I will never walk away from that.

**ADV. ADILA HASSIM:** And you did sign it on oath.

**DR BARNEY SELEBANO:** I read it, I read it. I will not walk away from it. I am saying it, I read it.

5**ADV. ADILA HASSIM:** You did more than read it, Dr Selebano, you swore under oath that all of this is true and correct and that is important because it persuaded the judge and that is how you won.

**DR BARNEY SELEBANO:** It was a technicality, as I recall, they said we won on technicality, we did not... And if you recall, Judge, to say that, after that I did  
10indicate yesterday that when the contract ended there was an extension, the correction from the lawyer said was three months, I always thought it was two. And I said I didn't even sign for that extension, it was not my decision to sign that.

**ARBITRATOR, JUSTICE MOSENEKE:** But Counsel is taking you somewhere else.

15**DR BARNEY SELEBANO:** Ja, I was just heading, yes.

**ARBITRATOR, JUSTICE MOSENEKE:** This is an affidavit.

**DR BARNEY SELEBANO:** Ja.

**ARBITRATOR, JUSTICE MOSENEKE:** Under your hand.

**DR BARNEY SELEBANO:** I appreciate that.

**ARBITRATOR, JUSTICE MOSENEKE:** Duly sworn to, is placed before a judge and the judge was persuaded by its contents and the Department won.

**DR BARNEY SELEBANO:** I agree, Judge.

**ARBITRATOR, JUSTICE MOSENEKE:** The project went on.

5**DR BARNEY SELEBANO:** And the consequences we know that.

**ARBITRATOR, JUSTICE MOSENEKE:** People stayed at Takalani and they died. You understand the judicatory.

**DR BARNEY SELEBANO:** I understand that.

**ARBITRATOR, JUSTICE MOSENEKE:** That is what Counsel is putting to you.

10**DR BARNEY SELEBANO:** I appreciate that.

**ARBITRATOR, JUSTICE MOSENEKE:** Why did you depose to something while you did not believe in, if we accept your evidence, because you supported Mr. Mosenogi's letter? And two, it is untruthful. Why did you do that? We know now that it is untruthful.

15**DR BARNEY SELEBANO:** Ja, we know now. At that time I am the HOD, I am advised by my managers and I think they were truthful also in advising. I don't want to stand up here and blame them and say they didn't tell me the truth. No, no, no. I said it and I am saying it, I am the one who signed, I must stand by it and now we know it is not truthful because the consequences were dire and I am accepting that.

20**ARBITRATOR, JUSTICE MOSENEKE:** You see Counsel will get to a number passages.

**DR BARNEY SELEBANO:** And I accept that.

**ARBITRATOR, JUSTICE MOSENEKE:** Let me stick you to one, just to one. Go to page 798.

**DR BARNEY SELEBANO:** 798?

5**ARBITRATOR, JUSTICE MOSENEKE:** 798. Paragraph 130, look with you say to the judge there.

**DR BARNEY SELEBANO:** Okay.

**ARBITRATOR, JUSTICE MOSENEKE:** Can you read it out into the record?

**DR BARNEY SELEBANO:** You want me to read it, Judge?

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

**DR BARNEY SELEBANO:** Okay. “I am confident that Takalani Home, which is part financed by the Government, has adequate facilities to give access to quality mental health care, to all users in their care, including those which are currently accommodated at Life Esidimeni facilities.”

15**ARBITRATOR, JUSTICE MOSENEKE:** I will read it again. “I am confident that Takalani Home, which is part financed by the Government, has adequate facilities to give access to quality mental health care, to all users in their care, including those which are currently accommodated at Life Esidimeni facilities” – says you under oath to the presiding judge in the matter. It is just (inaudible) of what Counsel  
20has been putting to you. Why would you go that far? Why would you depose so

emphatically and people go there, within days we know, there are many reports they can put to you some other time, Counsel, that place was a death trap.

**DR BARNEY SELEBANO:** No, I accept that.

**ARBITRATOR, JUSTICE MOSENEKE:** And complaints of rape.

5**DR BARNEY SELEBANO:** I accept that.

**ARBITRATOR, JUSTICE MOSENEKE:** About which the Department was warned in these very papers.

**DR BARNEY SELEBANO:** I accept that.

**ARBITRATOR, JUSTICE MOSENEKE:** So inevitably the question must be, why  
10did you do this?

**DR BARNEY SELEBANO:** I wish I could have done differently, Judge. I can only say, like I said, it is regrettable, it is very sad and very shameful. I can't defend this type of thing.

**ARBITRATOR, JUSTICE MOSENEKE:** Was it the fear again of the MEC? I mean  
15why would you go to court and depose to things that are blatantly incorrect, we know now, without a doubt? Was it the MEC?

**DR BARNEY SELEBANO:** You know, Justice, if you indulge me a second, when I took the accountability, I am not the type that would want to point fingers at other people that it is so and so, and so and so. When you are a leader it will be to  
20yourself to say if something happened, I am the leader, if it is wrong, pointing fingers at other people, is it the right thing to do? I am not that type. I can't do that.

I am the one who signed here to come in front of everybody here and then point a finger somewhere else. I find it very painful in my person, as a person.

**ARBITRATOR, JUSTICE MOSENEKE:** You already told us that you did this in fear of the MEC, you told us so. So I am narrowing it down to this affidavit which had all sorts of consequences – that is where Counsel is now.

**DR BARNEY SELEBANO:** Okay, I hear you.

**ARBITRATOR, JUSTICE MOSENEKE:** The applicants lost the case. People therefore were compelled to go to Takalani and stay there.

**DR BARNEY SELEBANO:** And they perished.

10 **ARBITRATOR, JUSTICE MOSENEKE:** And all checks have shown that Takalani was a death trap and women were exposed to potential rape.

**DR BARNEY SELEBANO:** Yes, it is regrettable.

**ARBITRATOR, JUSTICE MOSENEKE:** And the question really must be, HOD, why did you depose to these untruths to a court.

15 **DR BARNEY SELEBANO:** I hear you, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** And your answer?

**DR BARNEY SELEBANO:** It is difficult. It is very sad. When I look at this and what Counsel was saying, you wish that, you know, you have had an opportunity to examine and re-examine and re-examine and stand up and say no, colleagues ...intervened.  
20

**ARBITRATOR, JUSTICE MOSENEKE:** And say no to whom?

**DR BARNEY SELEBANO:** I am saying to colleagues, as you are talking to your colleagues and say colleagues, managers let's not go this road, let's go this road. In a sense that is where accountability comes. When I spoke to the Prof I said, you know if I couldn't help the managers, who would help them?

**ADV. ADILA HASSIM:** But as you said that wouldn't have happened because it is not the culture of government.

**DR BARNEY SELEBANO:** It is a different kind of culture in government, it is difficult, very difficult.

10 **ADV. ADILA HASSIM:** Yes. Justice, I still have little ways to go, but it is time for the lunch adjournment.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes. I can't resist asking, describe the culture that you are talking about, what is that culture?

15 **DR BARNEY SELEBANO:** It is a culture of hierarchy, steps... like the first inclination you will see where Mr. Mosenogi says MEC I apologise to write to you directly. That is a summary of it that you don't do that, you follow steps. Director, chief director, chief director, DDG, DDG, HOD, HOD, MEC... I can't write a letter on my own to the Premier, it doesn't work like that.

20 **ARBITRATOR, JUSTICE MOSENEKE:** In that culture, is the leader ever wrong, in the culture you are describing?

**DR BARNEY SELEBANO:** It depends on the type of leader. My managers on, not particularly on this matter, on a lot of matters they would engage me and say no, no, no, HOD we don't agree with you on this one, let's sit... It depends on how, as a leader, you project yourself to those who report to you.

5**ARBITRATOR, JUSTICE MOSENEKE:** No but the culture you are describing to us you say exist in Government. Is there room and space to say to a leader, leader you are wrong?

**DR BARNEY SELEBANO:** With me the demonstration would be when Mr. Mosenogi could come to me and said let's talk, I want to talk, only the two of us, 10let's talk about this, I am worried, how do we go around this. You might find I am a (inaudible) guy who allow people to express themselves and differ with me. Leadership must not fear people differing with them. But you might find the same department, the same chief director, his subordinates can't even differ with him.

**ARBITRATOR, JUSTICE MOSENEKE:** You are talking about why didn't you 15quietly or publically, maybe quietly going to the MEC's office and saying we can't do this, people might be hurt or die, why didn't you do that? You see you put it to culture and I wanted to know what the culture is but you are not going much further. why didn't you open the door of the MEC Mahlangu and say I am not going to authorise this any further, you keep the money as far as I know, I am not going to 20do it any further because rights might be violated, this is wrong, people might be hurt, people might die and they happened to be vulnerable people, why didn't you do that?

**DR BARNEY SELEBANO:** There was no space to differ sharply. There is no space.

**ARBITRATOR, JUSTICE MOSENEKE:** What would she have done if you differed with her?

5**DR BARNEY SELEBANO:** I can't speculate on that, but there is no space. I mean in any working relationship if you start differing with your leader, you must know going forward the relationship is going to be extremely difficult. It becomes extremely difficult.

**ARBITRATOR, JUSTICE MOSENEKE:** So you thought damn let the patients be  
10placed, rather than take on your leader.

**DR BARNEY SELEBANO:** No Justice, I was describing a real work relationship. I am not in any way translating to what you are saying. I wouldn't do that. I wouldn't do that.

**ARBITRATOR, JUSTICE MOSENEKE:** But it happened here, didn't it?

15**DR BARNEY SELEBANO:** Let's go back again, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Don't hackle the witness, please. Yes.

**DR BARNEY SELEBANO:** I was going to say to you, when Counsel showed me some of these things, I did indicate that I actually marked them, in recognition that you know, this history is here to haunt us. I am saying to you, if this history was to  
20be repeated now, I would walk into the office like you are saying and say you know

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what, after this I am done, I am done, I am taking my things, I am out, if history could repeat itself.

**ARBITRATOR, JUSTICE MOSENEKE:** (Vernac).

**DR BARNEY SELEBANO:** You are on TV, Justice. You didn't interpret it, Justice.

**5END OF SESSION 3**

6 December 2017

**SESSION 4**

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you, you may be seated. You know, Dr Selebano, we've got guests from the TAC.

5**DR BARNEY SELEBANO:** Okay.

**ARBITRATOR, JUSTICE MOSENEKE:** Treatment Action Campaign.

**DR BARNEY SELEBANO:** I know them, yes.

**ARBITRATOR, JUSTICE MOSENEKE:** They are the ones who were blocking my way and greeting and hugging. So they are welcome, but they are just about to  
10leave. That's the level of interest in what you have to say.

**DR BARNEY SELEBANO:** Thank you, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** You are still under your previous oath.

**DR BARNEY SELEBANO:** I understand, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel.

15**ADV. ADILA HASSIM:** Thank you Justice. Dr Selebano, we were in March 2016. You have already confirmed that as a result of the untruths that were in that litigation, the case succeeded for you, for the Department. And it was just soon after that that the waves of transfers took place, isn't that so, from Life Esidimeni?

**DR BARNEY SELEBANO:** That's March?

20**ADV. ADILA HASSIM:** Soon after March 2016.

**DR BARNEY SELEBANO:** Soon after March. I would have thought it was around May, I don't know.

**ADV. ADILA HASSIM:** When the big waves began.

**DR BARNEY SELEBANO:** Big waves, okay, ja.

5**ADV. ADILA HASSIM:** Ja. Do you know that two months after you won the case to send the people to Takalani that there was a Typhoid outbreak at Takalani?

**DR BARNEY SELEBANO:** No, I didn't know about that.

**ADV. ADILA HASSIM:** Can I ask you to have a look at ELAH 58, it is that exhibit bundle again?

10**DR BARNEY SELEBANO:** This one?

**ADV. ADILA HASSIM:** It says exhibits and it is number 58.

**DR BARNEY SELEBANO:** I am a bit lost.

**ARBITRATOR, JUSTICE MOSENEKE:** Somebody should help the witness please.

15**DR BARNEY SELEBANO:** Thank you very much. I appreciate that. I am on page 1, Counsel, ELAH 58, yes.

**ADV. ADILA HASSIM:** Yes, this is your department, Health Department.

**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** And it is dated 19 July 2016.

**DR BARNEY SELEBANO:** 19 July 2016, right.

**ADV. ADILA HASSIM:** And the purpose is to inform the Johannesburg Health District Management of the Salmonella Typhoid case from Chris Hani Academic Hospital, can you see that?

5**DR BARNEY SELEBANO:** Ja, I can see that. Can I just browse quickly so that I can answer nicely?

**ADV. ADILA HASSIM:** Go ahead.

**DR BARNEY SELEBANO:** Ja, okay, I can see that.

**ADV. ADILA HASSIM:** Now that you've read the document, you agree that this  
10was an outbreak of Typhoid at Takalani.

**DR BARNEY SELEBANO:** I can see it, yes.

**ADV. ADILA HASSIM:** And that there were several patients at Takalani that were affected.

**DR BARNEY SELEBANO:** That's right, I have checked that.

15**ADV. ADILA HASSIM:** And on page 3 there is reference to a Me. Johanna Thladi who had symptoms of Typhoid and on 3<sup>rd</sup> July 2016 it says she vomited blood stained vomit after which she was taken back to the hospital.

**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** Johanna Thladi died three months later on 26 October  
202016.

**DR BARNEY SELEBANO:** At Takalani?

**ADV. ADILA HASSIM:** Yes. Well, she was transferred from Chris Hani Bara to Takalani.

**DR BARNEY SELEBANO:** Okay.

5**ADV. ADILA HASSIM:** She is one of the deceased whose family we represent in these proceedings. The document doesn't just highlight the cases, but it explains why the Typhoid would have arisen at Takalani and that is under the environmental assessment.

**DR BARNEY SELEBANO:** I have read it quickly.

10**ADV. ADILA HASSIM:** You've read it. And you agree with me that this is a shocking state of Takalani.

**DR BARNEY SELEBANO:** Shocking. I mean there was a pungent foul smell. It is sad. People can't be kept in these type of conditions.

**ADV. ADILA HASSIM:** And it is those conditions that would give rise to something  
15like Typhoid and Typhoid is a notifiable condition, isn't that so.

**DR BARNEY SELEBANO:** Condition, yes.

**ADV. ADILA HASSIM:** Meaning it has an impact on public health if it spreads.

**DR BARNEY SELEBANO:** It spreads through water and all that. So you need to  
ensure the public that our water doesn't have Salmonella, Salmonella Typhoid and  
20ensure that you take it out of the system.

**ADV. ADILA HASSIM:** And this was not in your knowledge. You never knew of this before now.

**DR BARNEY SELEBANO:** I know there was a Typhoid outbreak in Gauteng, but I am unable to locate this one in particular, but there was a Typhoid outbreak in 5Gauteng.

**ADV. ADILA HASSIM:** At the same time?

**DR BARNEY SELEBANO:** I am not good with the dates then, but there was a Typhoid outbreak and I think we located it from Hilbrow at that time and it started spreading around the province. We did an alert and got the outbreak team to go 10and find, we call them sources, where is the source.

**ADV. ADILA HASSIM:** The point is simply that Takalani was not a suitable place, would you agree, for mental health care users?

**DR BARNEY SELEBANO:** On the basis of what I read here, really it can't be a good place. I mean not enough personal space, no handwashing basins, pungent 15smell.

**ADV. ADILA HASSIM:** Yes and that was true at the time of the March 2016 litigation.

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** Yes.

20**DR BARNEY SELEBANO:** Like I said, Counsel, these are things that you can never with a clean conscious defend, you can't... not you, me.

**ADV. ADILA HASSIM:** I'll come to the NGOs in a moment. The other important think about this case is that it emboldened the Department to continue the project, wouldn't you agree?

**DR BARNEY SELEBANO:** Agree.

5**ADV. ADILA HASSIM:** And in your interview with the Ombud, then the deaths really began, it was at that point, the deaths really began. In your interview with the Ombud which was in November 2016, correct?

**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** You said to him at that point in time the number of deaths  
10could have been slightly above 40, can you remember?

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel, you meant November 2016 surely?

**ADV. ADILA HASSIM:** I am sorry, Justice, I did mean 2016.

**ARBITRATOR, JUSTICE MOSENEKE:** 2016, sure.

15**DR BARNEY SELEBANO:** Yes, in my discussion with the Prof I said... we spoke about the number, what number... yesterday I did explain ...intervened.

**ADV. ADILA HASSIM:** Yes.

**DR BARNEY SELEBANO:** That we were working more on the parliamentary question that was given.

20**ADV. ADILA HASSIM:** Yes.

**DR BARNEY SELEBANO:** But it was incorrect.

**ADV. ADILA HASSIM:** But we are talking about November.

**DR BARNEY SELEBANO:** I accept it was incorrect.

**ADV. ADILA HASSIM:** So there are a couple of things. One is that firstly you said 5it was slightly above 40. But then when it is put to you by the Ombud that in fact it is about 78 you said it is probable, it is probable that there is 78.

**DR BARNEY SELEBANO:** I said that because at that time the Ombud had done investigation, had supplied a lot of information from national, so he probably had ...intervened.

10**ADV. ADILA HASSIM:** He had the data, some more data than you had.

**DR BARNEY SELEBANO:** Ja, more data. Which at that time ...intervened.

**ADV. ADILA HASSIM:** You didn't have the data on the deaths.

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** And Prof Makgoba put it to you that do you not think that it 15would be useful to have that data, you and the MEC, and that you've should have been updated on a weekly basis and you said yes.

**DR BARNEY SELEBANO:** Yes, it is true.

**ADV. ADILA HASSIM:** Did you ask for that information once it came to your knowledge?

20**DR BARNEY SELEBANO:** You mean around September?

**ADV. ADILA HASSIM:** Correct.

**DR BARNEY SELEBANO:** The answer is yes, I did. But the reply is what we got there, 36, 40. That is why I conceded yesterday to Justice and said if we had a system, there was no system and I agreed.

5**ADV. ADILA HASSIM:** You said there was no tracking system.

**DR BARNEY SELEBANO:** No tracking system, yes, I concede to that.

**ADV. ADILA HASSIM:** Would you agree that that means that the patients who were transferred from Life Esidimeni were not followed up afterwards?

**DR BARNEY SELEBANO:** That is correct. That would be correct. Looking at the 10circumstances and everything, no one can stand up and say oh no they were being followed, no. Nothing shows that they were being followed.

**ADV. ADILA HASSIM:** Had they been followed up, you would have discovered the deaths sooner, isn't that so?

**DR BARNEY SELEBANO:** If they had been followed up, we actually would have 15picked up some of the terrible conditions like these ones that ...intervened.

**ADV. ADILA HASSIM:** You would have been able to prevent.

**DR BARNEY SELEBANO:** We would have been able to do our job properly that time, I agree with that.

**ADV. ADILA HASSIM:** And it is also a requirement of the plan and a requirement 20of good clinical practice ...intervened.

**DR BARNEY SELEBANO:** To do a follow up.

**ADV. ADILA HASSIM:** To do a follow up.

**DR BARNEY SELEBANO:** Correct.

**ADV. ADILA HASSIM:** And it was not done.

5**DR BARNEY SELEBANO:** It was not done, it is clear that it was not done.

**ADV. ADILA HASSIM:** And when you began... so your concerns had registered in July, sorry in February 2016 and then yesterday you said also in July and September these deaths were reported to you. Did you ask the mental health directorate to verify the figures?

10**DR BARNEY SELEBANO:** I will tell you the events then. There were a flurry of meetings, lots and lots of meetings, what happened, who is this, who is that, there were a flurry of meetings. At that time the mental health directorate then – and that is why I said some of the managers I knew them that time – flurry of meetings... what happened and they were reporting and reporting and reporting.

15**ADV. ADILA HASSIM:** Yes and did they update you with verified numbers?

**DR BARNEY SELEBANO:** In those meetings, because they are the ground troops, whatever they say you, you would accept that they are giving you proper information. But it has emerged and I am not even going to argue about that.

**ADV. ADILA HASSIM:** But did you have any reason to doubt that you were just not  
20getting the right information at this point in time, by September/October.

**DR BARNEY SELEBANO:** Yes, it is called high index of suspicion. I didn't have it at that time. No one ...intervened.

**ADV. ADILA HASSIM:** Not in September/October?

**DR BARNEY SELEBANO:** By that time... I want to talk about October. By the 5time – that's my personal involvement now, Justice – when that happened, Counsel says was the index of suspicion high, no it was not, but it then got raised when the media and everybody else raised and the MEC was on TV and all that – that's when the index was high. And that is when I said in that time I was in communication now directly with the Minister to get into the ...intervened.

10**ADV. ADILA HASSIM:** That is what I mean, at that time.

**DR BARNEY SELEBANO:** Ja.

**ADV. ADILA HASSIM:** Did you ask them, your Department, to verify, to provide you with source information – let me put it that way – so that you could be sure as to what the state of affairs was with this project?

15**DR BARNEY SELEBANO:** Personally I didn't ask, hi Dr Manamela, please give me this information. What they were doing, the meetings were called by the MEC and we were all going there and they were reporting to the whole meeting, not to me as a person.

**ADV. ADILA HASSIM:** And you said that you took the initiative to move patients 20from the NGOs.

**DR BARNEY SELEBANO:** Well I wouldn't, well I did that, but like I was saying yesterday then I was in touch with the Minister and he advised that you can't have more deaths, you need to move and remove patients. And I said, Minister I will do that but I want to also to write to the MEC so that, the culture of government like we were saying, at least the MEC knows that you are saying that we must move.

**ADV. ADILA HASSIM:** And when was that?

**DR BARNEY SELEBANO:** Counsel, the dates are muddled, I wouldn't know. I am saying me, the dates were muddled. But that was the time really that there was an outcry that patients have demised, that was around that time and that is when I moved. I can't pin... there was a Saturday... I could work it out. It was a Saturday, I recall that it was a Saturday when I went to all these NGOs. I don't have the actual date. If I were to go back and check, I could find the exact date.

**ADV. ADILA HASSIM:** So you decided to move the patients from the NGOs.

**DR BARNEY SELEBANO:** That's right.

15 **ADV. ADILA HASSIM:** And Prof Makgoba asked you how could it be that so soon after licensing these NGOs they were in such a bad state and I would like to ask you the same question. How so soon after licensing they would be in such a bad state?

**DR BARNEY SELEBANO:** Okay, Counsel, it is obvious that they were given licenses and yesterday we spoke about that that it is clear that some of those that were given the licenses, shouldn't have had licenses that were not, I used the term fit for purpose.

**ADV. ADILA HASSIM:** Yes.

**DR BARNEY SELEBANO:** I think that is probably what I said. And then the patients were sent there, they were overcrowded some.

**ADV. ADILA HASSIM:** So they shouldn't have been given licenses. They were improperly licensed, that's what you are saying.

**DR BARNEY SELEBANO:** They were given license. I don't want to be polemical but I am just saying at that time it is clear that the consideration was not taken for fit for purpose, they just issued a license. Because you tick a box, you say do you have this, yes, do you have this, yes, do you have staff, yes... it is a tick box type of thing.

**ARBITRATOR, JUSTICE MOSENEKE:** But why are we debating with Counsel? I mean the licenses were unlawfully issued.

**DR BARNEY SELEBANO:** Well maybe at a legal, when you say unlawful ...intervened.

15**ARBITRATOR, JUSTICE MOSENEKE:** They were not issued in accordance with the law.

**DR BARNEY SELEBANO:** I thought they were following the Mental Health Act issuing the licenses.

**ARBITRATOR, JUSTICE MOSENEKE:** Aside what you think, I mean, you know 20that there are regulations prescribed ...intervened.

**DR BARNEY SELEBANO:** How the license should be ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** And who might be entitled to a license.

**DR BARNEY SELEBANO:** Ja, I know that.

**ARBITRATOR, JUSTICE MOSENEKE:** What they should have, what facilities they should have, what kind of facility they should run, what registration they need, you know that. Aside from your personal preferences of (inaudible) the law has tried to take care of this issue and then comes the question, in your knowledge were these licenses issued lawfully?

**DR BARNEY SELEBANO:** In my knowledge yes I would say they were issued lawfully but things went (inaudible), in my knowledge.

10 **ARBITRATOR, JUSTICE MOSENEKE:** What you know, were they issued lawfully?

**DR BARNEY SELEBANO:** What I know now, I am doubtful to say really whether ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Well let's not struggle. The person who 15 issued them, Dr Manamela, conceded that he licenses were unlawful.

**DR BARNEY SELEBANO:** I didn't know that myself. I am not polemical. I am looking at the lawful and they said we followed the law according to policy and that is why I am unable to say whether they were unlawful.

**ARBITRATOR, JUSTICE MOSENEKE:** And you know that she had no authority to 20 issue the licenses.

**DR BARNEY SELEBANO:** I think according to the Act the licenses or the... we had a discussion with the Prof around that. The certificates, there was no specification as to who must give that license. The Prof suggested that I should be the one issuing the licenses.

5**ARBITRATOR, JUSTICE MOSENEKE:** She can only issue them if you delegate the power to her in writing. Did you delegate the power to her?

**DR BARNEY SELEBANO:** No, I didn't. Reason being, there had been practice all throughout, even before my time, licenses were being given by junior officials. Licenses, we would call them certificates, they were being given by... So nothing  
10said in my head ti-ti-ti, on this one you must do that, nothing. If you think, Justice, in addition, Justice, I wouldn't have known if they had been doing that with social development ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** You see, the much larger issue here is commitment of public officials to act in accordance with the law.

15**DR BARNEY SELEBANO:** Ja.

**ARBITRATOR, JUSTICE MOSENEKE:** You get the point.

**DR BARNEY SELEBANO:** I get the point.

**ARBITRATOR, JUSTICE MOSENEKE:** Parliament makes laws or the provincial legislature and they make regulations in an attempt to regulate and prevent harm or  
20to advance good to the public. And officials like you ought to observe the law.

**DR BARNEY SELEBANO:** I agree.

**ARBITRATOR, JUSTICE MOSENEKE:** And if the culture is we do it generally like this in the civil service, you are in effect acting contrary to the desired outcomes, to public good, which is assumed to be contained in a law or regulation.

**DR BARNEY SELEBANO:** I hear you Justice.

5**ARBITRATOR, JUSTICE MOSENEKE:** Now for you to say that I gather that I had the power but the practice is they did it this way, worries me.

**DR BARNEY SELEBANO:** No, the Act doesn't prescribe that the HOD must give licenses, it doesn't.

**ARBITRATOR, JUSTICE MOSENEKE:** Are you sure about this?

10**DR BARNEY SELEBANO:** I am sure.

**ARBITRATOR, JUSTICE MOSENEKE:** We'll come back to that. Counsel, you go ahead.

**ADV. ADILA HASSIM:** Thank you Justice. Even if you are right, which you are not, the point about licenses is that they are not simply tick... what do you call it...  
15box ticking exercises, because the license is giving an entity, a private entity, NGOs in this case, the right to look after mental health care patients, isn't that so?

**DR BARNEY SELEBANO:** It is fair, ja.

**ADV. ADILA HASSIM:** So it is quite important that all of the relevant requirements are in place as far as everything, the physical infrastructure, the staffing, the  
20security, all of that. You would agree?

**DR BARNEY SELEBANO:** Ja fair.

**ADV. ADILA HASSIM:** So it is not just a simple license, it is not a vehicle license, it is not a dog license, it is a license that carries great significance and consequences, do you agree?

**DR BARNEY SELEBANO:** Now that you are saying it and now that we know the history, I agree.

**ADV. ADILA HASSIM:** And when you began to close down the NGOs, did you at that point instruct the officials under you to investigate all the NGOs?

**DR BARNEY SELEBANO:** No, I didn't.

**ADV. ADILA HASSIM:** How many NGOs did you close down?

10 **DR BARNEY SELEBANO:** Two, that is Precious Angels and the Danville one, Sirma, and two here, about five.

**ADV. ADILA HASSIM:** About five?

**DR BARNEY SELEBANO:** Ja.

**ADV. ADILA HASSIM:** What about the rest? Why did you not issue an instruction  
15 to investigate the conditions at the rest of the NGOs?

**DR BARNEY SELEBANO:** I think at that time we had enlisted the Ombud to assist.

**ADV. ADILA HASSIM:** It didn't alleviate you from your responsibilities, did it?

**DR BARNEY SELEBANO:** No, but, it is not like I shant the responsibility, the  
20 Ombud at that time was conducting ...intervened.

**ADV. ADILA HASSIM:** At the same time as you were closing the NGOs.

**DR BARNEY SELEBANO:** Yes, at the same time we agreed that I had to act quickly to ...intervened.

**ADV. ADILA HASSIM:** Yes, so you did act and you started to close some NGOs.  
5Why in that same course did you not instruct your officials or you yourself investigate the other NGOs?

**DR BARNEY SELEBANO:** But I am saying at that time the Ombud was already doing an investigation. If I ever had to do a parallel investigation, now I know that I could have done that, but at that time ...intervened.

10**ADV. ADILA HASSIM:** Well you knew that you could have done it at that time, Dr Selebano, you did not do it.

**DR BARNEY SELEBANO:** I don't know why you say I knew, I didn't know.

**ADV. ADILA HASSIM:** Because you started to close down the NGOs, so you knew you could take action.

15**DR BARNEY SELEBANO:** I don't know why you are saying that. You are creating an impression that I knew and I didn't do it deliberately, no... please, no.

**ADV. ADILA HASSIM:** I am saying that you knew that you could take action. You did indeed take action in relation to a few of the NGOs, but you did not enquire about the remainder of the NGOs, is that correct?

20**DR BARNEY SELEBANO:** There was a discussion around other NGOs.

**ADV. ADILA HASSIM:** A discussion? Did you investigate the other NGOs?

**DR BARNEY SELEBANO:** The Ombud was investigating so I didn't do it.

**ADV. ADILA HASSIM:** So you didn't investigate the other NGOs. And did you ask the mental health directorate to provide you with an audit report of the other NGOs?

**DR BARNEY SELEBANO:** Counsel, like I was saying, at that time, during that time, there were flurry of meetings that were held in the office ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** The question is quite narrow and pointed, did you ask for audit reports?

**DR BARNEY SELEBANO:** I wouldn't ask because they were being submitted in the meeting.

10**ARBITRATOR, JUSTICE MOSENEKE:** You could say, no I did not.

**DR BARNEY SELEBANO:** No, I did not.

**ADV. ADILA HASSIM:** Have you ever seen since then, at any point in time, those audit reports?

**DR BARNEY SELEBANO:** Until now?

15**ADV. ADILA HASSIM:** Yes.

**DR BARNEY SELEBANO:** I have no access, I haven't seen them. I have no access.

**ADV. ADILA HASSIM:** Can I ask you to have a look at file 7 please?

**DR BARNEY SELEBANO:** File 7.

20**ADV. ADILA HASSIM:** Let's look at Shama House, page 2478.

**DR BARNEY SELEBANO:** 2478. I am at 278, yes.

**ADV. ADILA HASSIM:** 2478.

**DR BARNEY SELEBANO:** Facility for clients with ...intervened.

**ADV. ADILA HASSIM:** Yes.

5**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** And it is dated, if you look down the page 21 July 2016.

**DR BARNEY SELEBANO:** Right.

**ADV. ADILA HASSIM:** And if you turn over the page, the form now begins to be filled in.

10**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** Do you see under license and subsidies on page 2480 ...intervened.

**DR BARNEY SELEBANO:** 2480 under?

**ADV. ADILA HASSIM:** 2480.

15**DR BARNEY SELEBANO:** Licenses and subsidies, yes.

**ADV. ADILA HASSIM:** Yes. That there is no license and they are not receiving subsidies.

**DR BARNEY SELEBANO:** I can see that.

**ADV. ADILA HASSIM:** And yet patients were sent there.

**DR BARNEY SELEBANO:** I didn't know that, yes, but I can see it now. It is not right, I agree, at all.

**ADV. ADILA HASSIM:** But you agree that that would be incorrect, that would be unlawful.

5**DR BARNEY SELEBANO:** It is completely incorrect. That guide me better to say it is unlawful.

**ADV. ADILA HASSIM:** It would be negligent to send patients to a facility without a license.

**DR BARNEY SELEBANO:** Yes, I agree with you.

10**ADV. ADILA HASSIM:** Can you turn the page over to 2481?

**DR BARNEY SELEBANO:** I am there.

**ADV. ADILA HASSIM:** Do you see the handwritten note?

**DR BARNEY SELEBANO:** No training ...intervened.

**ADV. ADILA HASSIM:** Above that. "Clients do all the work programs for kitchen,  
15cleaning, washing."

**DR BARNEY SELEBANO:** 2481?

**ADV. ADILA HASSIM:** Yes.

**DR BARNEY SELEBANO:** The handwritten says: "No training, no stimulation programs".

20**ADV. ADILA HASSIM:** Yes, it says no training, no stimulation programs.

**DR BARNEY SELEBANO:** That's correct yes.

**ADV. ADILA HASSIM:** And above that in that table, do you see that handwritten note?

**DR BARNEY SELEBANO:** On the left?

5**ADV. ADILA HASSIM:** Yes.

**DR BARNEY SELEBANO:** "Clients do all the work programs for kitchen"... ja, I can see that.

**ADV. ADILA HASSIM:** Cleaning and washing.

**DR BARNEY SELEBANO:** That's awful.

10**ADV. ADILA HASSIM:** It's not...

**DR BARNEY SELEBANO:** It's not right. No one can... I can't... Like I said, Justice, this happened under my watch. I didn't know... I mean these are the operational issues that I talk about that when you trust people that they are doing what they are supposed to be doing, what they are employed to do. You don't  
15expect them to be seeing things like this. It is very painful, at least for me it is very heart breaking.

**ADV. ADILA HASSIM:** Yes.

**DR BARNEY SELEBANO:** For any leader you wonder what went wrong.

**ARBITRATOR, JUSTICE MOSENEKE:** But what kind of project was this without a  
20monitoring system, tell me, I mean...

**DR BARNEY SELEBANO:** I mean we all agree that it was a bad project and there is no way you can defend this project, noting what happened and the consequences, it was a bad project, very bad.

**ADV. ADILA HASSIM:** But Dr Selebano, you didn't ask to see any of this after you began closing down the NGOs, you agreed, right.

**DR BARNEY SELEBANO:** No, I didn't.

**ADV. ADILA HASSIM:** I am not going to take you through this. You can read it in your spare time, we've gone through it a number of times. It is quite shocking the conditions at Shama House.

10 **DR BARNEY SELEBANO:** It is more than shocking, it is terrible, ja.

**ADV. ADILA HASSIM:** So then if you look at 2494.

**DR BARNEY SELEBANO:** 2494.

**ADV. ADILA HASSIM:** This is the audit report for Precious Angels.

**DR BARNEY SELEBANO:** Okay.

15 **ADV. ADILA HASSIM:** And it is dated 28 July 2016.

**DR BARNEY SELEBANO:** This is supposed to be my managers doing this.

**ADV. ADILA HASSIM:** Yes.

**DR BARNEY SELEBANO:** I am sorry, I was just confirming that the pain and ...intervened.

20 **ARBITRATOR, JUSTICE MOSENEKE:** And why don't you know HOD?

**DR BARNEY SELEBANO:** Ja.

**ARBITRATOR, JUSTICE MOSENEKE:** It is your guys, it is your managers. Go out there and go and check ex post facto. When the patients are already there and they find horror, why didn't somebody in your structure know this and tell you about 5it?

**DR BARNEY SELEBANO:** The horror of this episode, tragic event, became more apparent. The way I see this, it says July. It became more apparent around end of August/September. It was then that it was terrible and it was there. So really if, I know what you are saying, but practically I wouldn't have picked it up in my brain 10that rush to this NGO, rush to this NGO. I am not obfuscating, I am simply ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** This is not a project to move bricks from one place to another. This is a project of mental health care users.

**DR BARNEY SELEBANO:** I agree.

15**ARBITRATOR, JUSTICE MOSENEKE:** Being removed from where they are located from facilities that have already been put to you.

**DR BARNEY SELEBANO:** I agree.

**ARBITRATOR, JUSTICE MOSENEKE:** Not perfect and then moved, uprooted from there to a variety of places.

20**DR BARNEY SELEBANO:** There is no defence.

**ARBITRATOR, JUSTICE MOSENEKE:** Why is there no tracking, why is there no feedback on outcomes? Why is there no target setting end, searching to ensure that intended outcomes are reached? That is core to any project plan.

**DR BARNEY SELEBANO:** I hear you.

5**ARBITRATOR, JUSTICE MOSENEKE:** Project planning 101.

**DR BARNEY SELEBANO:** The whys are really more painful, because when you go back you know you'll say fortunately this type of thing must never ever happen, so it must never happen.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel, you go ahead. I am sure  
10Counsel has many other examples of the horror of this project.

**DR BARNEY SELEBANO:** I can imagine.

**ARBITRATOR, JUSTICE MOSENEKE:** And she rightly puts it to you piece by  
piece.

**DR BARNEY SELEBANO:** I can imagine and I appreciate that.

15**ADV. ADILA HASSIM:** Dr Selebano, the Precious Angels audit report that I am  
referring you to is dated 28 July 2016.

**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** Do you agree that at that time there were already Life  
Esidimeni users that had been placed at Precious Angels?

20**DR BARNEY SELEBANO:** Ja, there were already.

**ADV. ADILA HASSIM:** And this audit report, if you turn over the page, 2495, there is a description of the physical resources.

**DR BARNEY SELEBANO:** Okay.

**ADV. ADILA HASSIM:** And the crux of all of this description in the physical resources is that it was wilfully inadequate.

**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** It says the number of rooms available is not enough for patients, beds are too close to each other. There are not enough chairs and tables in the facility. The centre has electricity, but only cold running water. Patients' sleeping arrangements at both facilities are just random, there is no specific classification. Do you agree that this is unacceptable?

**DR BARNEY SELEBANO:** This is completely unacceptable. Like I say, Counsel, there is no way in a clean conscience anybody can defend this type of thing, I can't.

**ADV. ADILA HASSIM:** And in each of the pages following, in each of these blocks, these tables, there are similar findings in relation to other areas.

**DR BARNEY SELEBANO:** I am sure it is horror after horror, I agree.

**ADV. ADILA HASSIM:** In relation to the assisted devices and equipment, general administration, in relation to stimulation, therapeutic programs, that there were none. Human resource management, for example, staff are not trained in first aid techniques. And it goes on and on for pages. There is no emergency equipment, no cleanliness checklist. And that is at 28 July 2016.

**DR BARNEY SELEBANO:** I understand, Counsel, I understand very well.

**ADV. ADILA HASSIM:** It was around this time that you closed Precious Angels, isn't that so? When did you close Precious Angels?

**DR BARNEY SELEBANO:** Like I am saying, I don't know exactly. I thought it would have been early September when I (inaudible).

**ADV. ADILA HASSIM:** Early September?

**DR BARNEY SELEBANO:** Ja. I just recall it was a Saturday that I went there and then Sunday I went to close it. I am not sure of the date.

**ADV. ADILA HASSIM:** And I need you then to answer the following question and for that I need you to look at, in the exhibit file, ELAH 26 please. 26.

**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** While you have ELAH 26, at the same time look at page 2397 of file 7.

**DR BARNEY SELEBANO:** The same file here?

**ADV. ADILA HASSIM:** 2397, the same file with the audit report.

**DR BARNEY SELEBANO:** Page?

**ADV. ADILA HASSIM:** 2397. So not in file 7, the one that had the audit reports.

**DR BARNEY SELEBANO:** Oh okay. I don't know where I put it. Alright. I am there, Counsel.

**ADV. ADILA HASSIM:** You have it?

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** Page 2397 is a license for Precious Angels.

**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** And it is signed on the 1<sup>st</sup> of April 2016 by Dr Manamela.

5**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** And if you look a couple of paragraphs up it says the license is valid for the period 1 April 2016 to 31 March 2017.

**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** Yes. And then if you look at ELAH 26, it is a license for  
10Precious Angels.

**DR BARNEY SELEBANO:** Signed by myself now.

**ADV. ADILA HASSIM:** It is signed by you.

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** And it is signed on the 1<sup>st</sup> of April 2016, is that... do you  
15agree that you signed this?

**DR BARNEY SELEBANO:** Well it shows the date as 1 April 2016 to March.

**ADV. ADILA HASSIM:** And that the license is valid for the period April 2016 to 31  
March 2017.

**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** Why did you sign this license?

**DR BARNEY SELEBANO:** Let me start by saying it was not signed at the same time as this one.

**ADV. ADILA HASSIM:** It is dated first day of April 2016.

5**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** Given under my hand.

**DR BARNEY SELEBANO:** Okay let me go... I signed it because we then had a discussion and I think I signed it ...intervened.

**ADV. ADILA HASSIM:** You signed it after you had the interview with the Ombud,  
10isn't that so?

**DR BARNEY SELEBANO:** The Ombud, yes, because ...intervened.

**ADV. ADILA HASSIM:** And at that point... that was November 2016.

**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** And you just told me that you closed Precious Angels  
15before you had the Ombud interview.

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** So why had you signed a license for Precious Angels after  
you had closed it?

**DR BARNEY SELEBANO:** At that time there was a discussion again with the  
20Prof, if I recall, during that time that these licenses are not supposed to be signed by

Manamela, they are supposed to be signed by yourself, and we had a discussion around that. And as a HOD you can regularise certain things. The only reason that I was doing this was not to do any other hidden activity, was to regularise.

**ADV. ADILA HASSIM:** Why would you regularise a license for a NGO in which 5 people were dying and that you yourself had to close down?

**DR BARNEY SELEBANO:** I regularised it.

**ADV. ADILA HASSIM:** It gave them a license up to 2017, do you agree?

**DR BARNEY SELEBANO:** I agree. I regularised it.

**ADV. ADILA HASSIM:** It was unlawful.

10 **DR BARNEY SELEBANO:** It shouldn't have happened, because the pressure was that the Prof was saying this is not right, you should have been the one doing it yourself. So if you take the logic that it is not her who should have signed, it should have been me, then you can regularise.

**ADV. ADILA HASSIM:** You mean you went to fix the date... it is called cooking the 15 books, not regularising.

**DR BARNEY SELEBANO:** No, no, no, I don't know. If somebody, as an example, we pick up there is a discrepancy in administration... let me give a simple example. We find that we have overpaid you or underpaid you, I can regularise it.

**ARBITRATOR, JUSTICE MOSENEKE:** Provided... you know, just confront the 20 issue that Counsel is putting to you.

**DR BARNEY SELEBANO:** I am saying it shouldn't have happened and I agree that Precious ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** One, it is backdated, is that true?

**DR BARNEY SELEBANO:** Yes. I signed it in November after I closed it.

5**ARBITRATOR, JUSTICE MOSENEKE:** You gave it a date 1 April and signed it in November.

**DR BARNEY SELEBANO:** You can regularise that one.

**ARBITRATOR, JUSTICE MOSENEKE:** No, no, forget the term, it is a big term, I know what it means.

10**DR BARNEY SELEBANO:** Okay.

**ARBITRATOR, JUSTICE MOSENEKE:** You backdated the license. You signed 1 April in November – let's tick that box first.

**DR BARNEY SELEBANO:** Okay, yes.

**ARBITRATOR, JUSTICE MOSENEKE:** That is what Counsel puts to you. And the  
15second thing is you on your evidence you had already shut down Precious Angels, right?

**DR BARNEY SELEBANO:** Right.

**ARBITRATOR, JUSTICE MOSENEKE:** How do you then go and issue a license to an entity where, in your knowledge, many mental health care users ...intervened.

20**DR BARNEY SELEBANO:** Passed away.

**ARBITRATOR, JUSTICE MOSENEKE:** Died and in your knowledge it was not suitable, it was not fit for purpose. So Counsel asked properly, how did you come to do that? It is blatantly unlawful and you regularised it. And she says, were you covering up?

5**DR BARNEY SELEBANO:** No.

**ARBITRATOR, JUSTICE MOSENEKE:** Were you trying to cook the books?

**DR BARNEY SELEBANO:** No, I was not doing that. I was not covering.

**ARBITRATOR, JUSTICE MOSENEKE:** Well what were you doing?

**DR BARNEY SELEBANO:** Like I am saying, you may not accept the fact that I was  
10regularising. We can argue that it was wrong, but I was regularising it and I was not cooking the books, there was no underhand intention here, nothing else.

**ADV. ADILA HASSIM:** Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel.

**ADV. ADILA HASSIM:** That wasn't the only license that you signed, isn't that so?

15**DR BARNEY SELEBANO:** I am aware, yes.

**ADV. ADILA HASSIM:** And that you backdated.

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** In fact on that file 7 next to the Precious Angels license at  
page 2398.

20**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** There is a license ...intervened.

**DR BARNEY SELEBANO:** Seba Sarona (spelling).

**ADV. ADILA HASSIM:** Seba Sarona.

**DR BARNEY SELEBANO:** Ja.

5**ADV. ADILA HASSIM:** Signed by you.

**DR BARNEY SELEBANO:** Yes, it is the same situation again.

**ADV. ADILA HASSIM:** Dated 1 April 2016.

**DR BARNEY SELEBANO:** Ja.

**ADV. ADILA HASSIM:** You signed it in November.

10**DR BARNEY SELEBANO:** I agree.

**ADV. ADILA HASSIM:** And it is a duplicate of the license that was signed by Dr Manamela which is to be found on the very next page.

**DR BARNEY SELEBANO:** I agree Counsel.

**ADV. ADILA HASSIM:** When you signed this in November, this license, did you  
15ask to see the audit report in order to sign the license?

**DR BARNEY SELEBANO:** No, I didn't.

**ADV. ADILA HASSIM:** So when you signed it, you were not aware, you had no information to satisfy yourself that in fact this NGO, Seba Sarona, justified the license.

**DR BARNEY SELEBANO:** I sign licenses for private establishments, health establishments. When I sign them, when the team brings the license to me, I am giving a real example, they don't bring a file that says Netcare now this hospital has this and this. They say we have gone there, we have satisfied ourselves, HOD  
5issue the license and I issue the license.

**ADV. ADILA HASSIM:** So you just issue the license on people say so. What I am saying to you in relation to ...intervened.

**DR BARNEY SELEBANO:** I am sure you agree that I won't be able to go to all hospitals ...intervened.

10**ADV. ADILA HASSIM:** Why do you issue this license? I am not asking you about hospitals. I am asking you about this NGO.

**DR BARNEY SELEBANO:** I am relating a slightly similar situation.

**ADV. ADILA HASSIM:** But I am asking you not about that, I am asking you about this NGO, in the context of what you've already found, that people were dying in  
15these NGOs.

**DR BARNEY SELEBANO:** I hear you.

**ADV. ADILA HASSIM:** You didn't ask to see the audit report to make sure that ...intervened.

**DR BARNEY SELEBANO:** No, I didn't.

20**ADV. ADILA HASSIM:** That all of the requirements are met before you could sign the license, you didn't do that.

**DR BARNEY SELEBANO:** I didn't do that, Counsel. I wish I did. Now that we are discussing it, I wish I did.

**ARBITRATOR, JUSTICE MOSENEKE:** And you know that, as a matter of common sense and as a matter of law, you can't regularise something that is already void and contravenes the law. How do you do that? How do you issue... Yes.

**DR BARNEY SELEBANO:** We are seeing that now, but at that time, please bear with me, at that time the void and all that was not there. I am not defending it, please understand Counsel and understand Justice. I am saying at that time I shouldn't have done it, but because we even checked the law to say but I am not, it says the department concerned. And in this case the impression was then it would mean mental health care department, not necessarily the HOD.

**ADV. ADILA HASSIM:** We need to separate the issues. One is about who in law was entitled or required, rather, committed to sign a license like this. The second is, what are the requirements that need to be met before a license is signed.

**DR BARNEY SELEBANO:** I agree with you on that one. I think we have spoken about it.

**ADV. ADILA HASSIM:** And we are talking about November 2016 and the news is out now of the deaths. You are aware, you've already had an interview with the Ombud. In fact the Ombud informs you that the public don't even know yet actually how high the number is, isn't that so?

**DR BARNEY SELEBANO:** Ja, probably, I don't recall. But the Ombud would say that we actually had a long discussion around the issue of license.

**ADV. ADILA HASSIM:** Yes, no I know that, and then you went ahead and signed the license without checking if that NGO was suitable.

5**DR BARNEY SELEBANO:** I am not justifying it, but also that would give you the context that I did have a long discussion around that with the Ombud.

**ADV. ADILA HASSIM:** I know. We've seen the discussion. It is in the transcript.

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** That's fine, we don't need to take it further than that. You  
10accept that you should not have signed that.

**DR BARNEY SELEBANO:** I should not.

**ADV. ADILA HASSIM:** In the transcript of your interview with the Ombud, I would like you to have a look at the transcript at page 47 please.

**DR BARNEY SELEBANO:** I don't have the full one. Okay let me try this one. No,  
15I am struggling, I don't have the full...

**ADV. ADILA HASSIM:** It is ELAH 111.

**DR BARNEY SELEBANO:** You have that one. Can I just use it? I'll give it back to you. Page 47? You said page 47.

**ADV. ADILA HASSIM:** Page 47.

20**DR BARNEY SELEBANO:** That's right, I am at page 47.

**ADV. ADILA HASSIM:** Are you there?

**DR BARNEY SELEBANO:** I can hear you.

**ADV. ADILA HASSIM:** I'll read it with you. At the top of the page it says, and this is the Ombud speaking: "You know there were several instances where patient would be admitted into a NGO. We have been struggling with... what is the name... is it Obuthle Bonke (spelling) where they went to? They went into a NGO called Obuthle Bonke and these patients were taken"... And you intervene and you say to him: "Nkosi". And he says: "Yes". You were actually correcting the name of the NGO, it was actually Obuthle Bonkosi (spelling), is that correct?

10**DR BARNEY SELEBANO:** I should think so, Obuthle Bonkosi.

**ADV. ADILA HASSIM:** He says: "These patients were taken immediately to a place in Marabastad." And you say: "Marabastad". He says: "Ja." You say: "Nobody knows whether it was licensed or not." "They were then taken out of Marabastad taken to Lanseria." Do you see that?

15**DR BARNEY SELEBANO:** No, it is not me. The Lanseria part is the Prof who said ...intervened.

**ADV. ADILA HASSIM:** Oh there is an error in the transcript.

**DR BARNEY SELEBANO:** It was an error in the transcript, no. It was an error in the transcript.

20**ADV. ADILA HASSIM:** Can you... Sorry, Dr Selebano, because of the rain we are going to have to raise our voices.

**DR BARNEY SELEBANO:** Ja, I am saying it was an error in the transcript. It was the Prof ...intervened.

**ADV. ADILA HASSIM:** So it was the Ombud who said ...intervened.

**DR BARNEY SELEBANO:** It was the Prof who said, yes.

5**ADV. ADILA HASSIM:** Yes. “Nobody knows whether it was licensed or not. They were taken out of Marabastad, taken to Lanseria.” And then you say: “Lanseria?” And he says: “Ja, the airport.” And you say: “I am not even aware of that.”

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** And he says: “No that is why I am sharing this.” Correct?

10**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** And then you say: “These are Life Esidimeni patients?” And he says: “Yes.” And you say: “This is criminal.”

**DR BARNEY SELEBANO:** I am saying that again, it is criminal.

**ADV. ADILA HASSIM:** “It is criminal. It is not right.”

15**DR BARNEY SELEBANO:** It is not right.

**ADV. ADILA HASSIM:** And then if you turn over the page, page 48, around line 16, the Professor continues, he says: “Lanseria Airport. We don’t know where in Lanseria Airport they went. And then they finally settled wherever in Centurion. Now it is one of the instances where you ask yourself where, how, where was the 20directorate when things like that were happening and in terms of the Mental Health

Care Act, how.” And you say: “You cannot be moving patients like that”, basically, is that right?

**DR BARNEY SELEBANO:** No, I was agreeable with the Prof. Like I say, Counsel, when he said that, I mean... and the reason why I said Marabastad, Marabastad is in Pretoria and suddenly the patients, the Prof says the patients are now in Lanseria. I mean it is criminal, and I said it, it is criminal.

**ADV. ADILA HASSIM:** It was criminal for Obuthle Bonkosi to have moved mental health care users from one place to another without regard for anything, is that so?

**DR BARNEY SELEBANO:** Any... Okay Obuthle Bonkosi here ...intervened.

10**ADV. ADILA HASSIM:** I am asking about Obuthle Bonkosi because that is what this pertains to.

**DR BARNEY SELEBANO:** Ja but it would be criminal for anybody to do it. It would be criminal.

**ADV. ADILA HASSIM:** So if you then look at file 7 again.

15**DR BARNEY SELEBANO:** File? Where?

**ADV. ADILA HASSIM:** File 7. The file with the licenses.

**DR BARNEY SELEBANO:** Page?

**ADV. ADILA HASSIM:** At page 2409.

**DR BARNEY SELEBANO:** 2409, that's right.

20**ADV. ADILA HASSIM:** 2409 is a license under your hand, Dr Selebano.

**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** To Obuthle Bonkosi Ministries.

**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** And this is a duplicate of the one that Dr Manamela had signed earlier.

**DR BARNEY SELEBANO:** I agree. It wouldn't change that it was criminal, however, it was.

**ADV. ADILA HASSIM:** This is the NGO that transferred patients to Marabastad and the Airport and all over.

10**DR BARNEY SELEBANO:** Yes that is what the Prof told me.

**ADV. ADILA HASSIM:** And you signed the license after you knew that, you signed it after the interview with the Ombud, correct?

**DR BARNEY SELEBANO:** Maybe we are not agreeable. I said yes, not... I suppose it is not only this one, there might have been quite a few of those that I signed.

**ADV. ADILA HASSIM:** I am asking this one.

**DR BARNEY SELEBANO:** Ja, Counsel, I hear you. Please be patient also with me. I know that I signed quite a number of these licenses, I know that.

**ARBITRATOR, JUSTICE MOSENEKE:** Who asked you to sign them, if anybody?

**DR BARNEY SELEBANO:** You know when the discussion with the Prof had gone on about whether this is correct for Manamela to sign or it should have been me, we then held a meeting with the MEC and I think with Manamela. To be honest to Manamela, she actually said do not sign. Dr Manamela said don't sign, do not sign, don't regularise this. I am the one who must sign these things. She was adamant. I think she even showed me some licenses that have been signed many years ago. So let me take responsibility. I signed, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** To achieve what?

**DR BARNEY SELEBANO:** In my mind I was regularising. I was just regularising. There was nothing cynical that I was doing.

**ARBITRATOR, JUSTICE MOSENEKE:** What do you want us to do?

**ADV. ADILA HASSIM:** Justice, I can shout, but my colleagues are having difficulty hearing the witness.

**ARBITRATOR, JUSTICE MOSENEKE:** Adv. Crouse.

**ADV. LILLA CROUSE:** Justice, I can't hear the witness at all. Maybe if he speaks closer to the microphone.

**DR BARNEY SELEBANO:** Okay I'll try. I will put my mouth on there. Sorry about that.

**ARBITRATOR, JUSTICE MOSENEKE:** Time is at a totally premium, so I would not likely adjourn. And those of us who live in Gauteng, Adv. Crouse, it is called

civil service showers, around 4 o'clock, every day around this time there is rain and it goes away very quickly.

**ADV. LILLA CROUSE:** Justice, I am not suggesting that we should adjourn. I just can't hear the witness.

5**ARBITRATOR, JUSTICE MOSENEKE:** We'll ask the witness to shout.

**DR BARNEY SELEBANO:** I'll try Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** And all Counsel are still comfortable, we are all here? Adv. Hutamo?

**ADV. TEBOGO HUTAMO:** Yes Justice.

10**ARBITRATOR, JUSTICE MOSENEKE:** Should we go ahead?

**ADV. TEBOGO HUTAMO:** We can try to proceed.

**ADV. DIRK GROENEWALD:** We are ready to proceed.

**ARBITRATOR, JUSTICE MOSENEKE:** You are ready to go.

**ADV. PATRICK NGUTSHANA:** We can go ahead, Justice Moseneke.

15**ARBITRATOR, JUSTICE MOSENEKE:** Yes. (Vernac). Okay thank you. Your clients say we should proceed.

**ADV. ADILA HASSIM:** No problem in hearing them, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** No, not at all. As we know, the rain usually goes away. Let's see whether this one will go away. But let's keep it high  
20up.

**DR BARNEY SELEBANO:** I'll try.

**ARBITRATOR, JUSTICE MOSENEKE:** Please do so.

**DR BARNEY SELEBANO:** I'll put my mouth to the mic, yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Adv. Hassim.

5**ADV. ADILA HASSIM:** So Dr Selebano, you signed the license for Obuthle Bonkosi.

**DR BARNEY SELEBANO:** Ja, quite a few.

**ADV. ADILA HASSIM:** In November.

**DR BARNEY SELEBANO:** Yes.

10**ADV. ADILA HASSIM:** Now at the time of your interview with the Ombud, you were not sure what the number of deaths were, because you were not provided with that data.

**DR BARNEY SELEBANO:** That's right.

**ADV. ADILA HASSIM:** Do you now know how many people had died by November 152016?

**DR BARNEY SELEBANO:** By November. The Prof gave a number of around 76.

**ADV. ADILA HASSIM:** Yes, but in fact the number was much higher and I think it would assist if you looked at ELAH 57 in the exhibits bundle.

**DR BARNEY SELEBANO:** I've got it, Counsel. You said page 57.

**ADV. ADILA HASSIM:** ELAH57.

**DR BARNEY SELEBANO:** ELAH57, okay.

**ADV. ADILA HASSIM:** It is the final summary on deceased Life Esidimeni patients, do you see that?

5**DR BARNEY SELEBANO:** Yes that is the one I am having here.

**ADV. ADILA HASSIM:** And if you look at page 8 of that report.

**DR BARNEY SELEBANO:** I am there, Counsel.

**ADV. ADILA HASSIM:** There is a breakdown of deaths.

**DR BARNEY SELEBANO:** Yes.

10**ADV. ADILA HASSIM:** Per facility and per month.

**DR BARNEY SELEBANO:** Yes, I think yesterday I was shown this.

**ADV. ADILA HASSIM:** Yes.

**DR BARNEY SELEBANO:** I am agreeable, I didn't want to argue about it.

**ARBITRATOR, JUSTICE MOSENEKE:** You are agreeable with what?

15**DR BARNEY SELEBANO:** That the deaths at the time in November were higher than I had estimated.

**ADV. ADILA HASSIM:** Yes. By November 2016 according to this table there were 108 deaths.

**DR BARNEY SELEBANO:** I wouldn't argue, yes.

**ADV. ADILA HASSIM:** But you didn't know in November 2016 how many deaths there were.

**DR BARNEY SELEBANO:** I explained that... and, Counsel, you see ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** It normally helps to answer the question and explain thereafter. Did you know ...intervened.

**DR BARNEY SELEBANO:** I didn't know.

**ARBITRATOR, JUSTICE MOSENEKE:** That there were 108 deaths. You didn't know. Very well. And you may or not be asked for an explanation. But you've answered the question and you may feel that you want to qualify it.

10 **DR BARNEY SELEBANO:** In the discussion with the Ombud in November I specifically said I am responding to the question, the legislature question and at that time the officials gave us this number. So I was specifically responding to that, it is wrong.

**ARBITRATOR, JUSTICE MOSENEKE:** You have given Counsel the answer.

15 **DR BARNEY SELEBANO:** Okay.

**ARBITRATOR, JUSTICE MOSENEKE:** She has a series of questions like building blocks. So she has asked you, did you know? Your answer is no, you say you didn't know.

**DR BARNEY SELEBANO:** Okay.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Then the next question will follow.

**ADV. ADILA HASSIM:** And you confirmed with us that you never asked for an updated list, isn't that so?

**DR BARNEY SELEBANO:** Yes, the meetings were sitting there and they were updating the whole team.

5**ADV. ADILA HASSIM:** What is the answer again?

**DR BARNEY SELEBANO:** The meeting... I need your protection. The meeting, after the incident, after the tragic event, MEC was calling meetings and the whole team was going to those meetings to give updates to the MEC and that meeting.

**ADV. ADILA HASSIM:** And were you receiving updates?

10**DR BARNEY SELEBANO:** Personally?

**ADV. ADILA HASSIM:** Yes, as the head of department.

**DR BARNEY SELEBANO:** No, no.

**ADV. ADILA HASSIM:** And did you ask for updates?

**DR BARNEY SELEBANO:** The updates, the discussions were in a broad meeting,  
15so I didn't personally say please give me those updates, I didn't do that.

**ADV. ADILA HASSIM:** And do you know what the impact on this rise of deaths was for the families?

**DR BARNEY SELEBANO:** Do I know what?

**ADV. ADILA HASSIM:** Do you know the impact that it had on the families?

20**ADV. ADILA HASSIM:** Especially when it is under unlawful circumstances.

**DR BARNEY SELEBANO:** When I was a young doctor, loss of lives, I had this discussion again with the Minster during this period and he said you can never explain death, even if it is one, you can't. It is a painful episode for any family. I agree.

5**ADV. ADILA HASSIM:** And this death was not an accident, that is what I am saying... these deaths were not an accident. They occurred under unlawful circumstances, do you agree?

**DR BARNEY SELEBANO:** Well you are saying they were unlawful. At that time, no.

10**ADV. ADILA HASSIM:** Given everything you knew by November 2016 you had no reason to suspect that this was negligent conduct?

**DR BARNEY SELEBANO:** By November my thrust was to remove patients, that was my thrust. On hindsight, you are using hindsight ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** No but the question is also plain. By  
15November didn't you know that these were unlawful deaths?

**DR BARNEY SELEBANO:** No, I wouldn't know. I didn't know that they were unlawful.

**ADV. ADILA HASSIM:** Despite what we know about Obuthle Bonkosi, despite what you found out about the NGOs and closed them down.

**DR BARNEY SELEBANO:** But you would agree in the discussion with the Prof... the Prof said the patients were moved and I agreed it was criminal. He didn't say patients died there. I am sure you agree.

**ADV. ADILA HASSIM:** No, no, I don't agree. Because at that point in time he told you that according to his data 78 people had died.

**DR BARNEY SELEBANO:** Correct.

**ADV. ADILA HASSIM:** 78.

**DR BARNEY SELEBANO:** But I am saying ...intervened.

**ADV. ADILA HASSIM:** At the same time the Department was holding onto the figure of 36.

**DR BARNEY SELEBANO:** Yes, I agree. I am saying on the transcript as we were talking, the Prof didn't at any stage, we didn't discuss the deaths that occurred at Obuthle Bonkosi – that is what I was saying.

**ADV. ADILA HASSIM:** Yes, I am talking about... you agreed that it was criminal behaviour of Obuthle Bonkosi, didn't you?

**DR BARNEY SELEBANO:** I said it, yes.

**ADV. ADILA HASSIM:** Yes. And you were aware that 78 people at bear minimum died... in fact we found out later on that it was 108 by that time. But 78 people died and you were informed.

**DR BARNEY SELEBANO:** That is the number that I was given by the Ombud at that time.

**ADV. ADILA HASSIM:** Yes. And did you then go to your department and say, what is going on that is causing these deaths?

**DR BARNEY SELEBANO:** It is a pity that I am going to go back to that thing. There was a flurry of meetings. We were trying to get what is happening, where are the other patients. It was lot of activity.

**ADV. ADILA HASSIM:** Lot of activity.

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** But you say you didn't think it was unlawful. You didn't think that the deaths may be due to unlawful conduct.

10 **DR BARNEY SELEBANO:** At that time it didn't occur to me. You see the lawful ...intervened.

**ADV. ADILA HASSIM:** Did you think your officials were acting diligently, were performing their duties diligently?

**DR BARNEY SELEBANO:** When the deaths occurred?

15 **ADV. ADILA HASSIM:** Throughout this process and certainly by November 2016.

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** Did you think they were performing their duties diligently?

**DR BARNEY SELEBANO:** When the deaths occurred, the managers were the ones implementing that. Before then I wouldn't have any reason to suspect that  
20 they were not doing their jobs properly.

**ADV. ADILA HASSIM:** By November 2016?

**DR BARNEY SELEBANO:** It was clear that the project has gone wrong by that time. It was clear.

**ADV. ADILA HASSIM:** So you had reason to suspect that your officials were not performing their duties diligently.

**DR BARNEY SELEBANO:** The project had gone wrong by that time and also it means probably the implementation was wrong.

**ARBITRATOR, JUSTICE MOSENEKE:** Even when the MEC was talking to the Legislature, didn't you think that the project had gone wrong?

10 **DR BARNEY SELEBANO:** It had gone wrong, I am accepting that that the project had gone wrong, completely wrong.

**ARBITRATOR, JUSTICE MOSENEKE:** And that your officials acted unlawfully and negligently.

**DR BARNEY SELEBANO:** I wouldn't go to that conclusion that they are the ones  
15 who did that, but now we know.

**ARBITRATOR, JUSTICE MOSENEKE:** You see the legal conclusion is the one that I have a duty has to make and it is one that the government has already conceded. So I don't have to haggle with you backwards and forwards about that.

**DR BARNEY SELEBANO:** Okay.

20 **ARBITRATOR, JUSTICE MOSENEKE:** About you it is accountability.

**DR BARNEY SELEBANO:** I have accepted the accountability.

**ARBITRATOR, JUSTICE MOSENEKE:** It's your duty to act lawfully, for starters, you are a public official, you hold public office, you get paid in order to advance lawful projects.

5**DR BARNEY SELEBANO:** I agree.

**ARBITRATOR, JUSTICE MOSENEKE:** You agree entirely.

**DR BARNEY SELEBANO:** I agree.

**ARBITRATOR, JUSTICE MOSENEKE:** And within the context of that project, Counsel has put it over and over again, people died in circumstances which you  
10called criminal.

**DR BARNEY SELEBANO:** I can't hear.

**ARBITRATOR, JUSTICE MOSENEKE:** In circumstance you've called criminal.

**DR BARNEY SELEBANO:** When I was talking to the Prof then he said that people were in Marabastad and they were moved to Lanseria and that is when I said that is  
15criminal to do that, you can't just move people like that.

**ARBITRATOR, JUSTICE MOSENEKE:** You see, when people accept accountability, it includes acknowledging the wrongs.

**DR BARNEY SELEBANO:** I acknowledge that the project went completely wrong, Justice. Wrong, wrong, wrong, wrong. There is nothing that anyone can try and  
20say this way or that way, it was wrong, lives were lost, it was wrong.

**ARBITRATOR, JUSTICE MOSENEKE:** So we shouldn't waste a lot of time decking (?) on whether or not it was contrary to the law or whether or not it was negligent.

**DR BARNEY SELEBANO:** The question was at that time were they unlawful 5deaths.

**ARBITRATOR, JUSTICE MOSENEKE:** You don't have half-hearted acceptance of accountability.

**DR BARNEY SELEBANO:** No, I am not half hearted. I have accepted accountability and I am still accepting it, Justice.

10**ARBITRATOR, JUSTICE MOSENEKE:** Okay.

**DR BARNEY SELEBANO:** But when the question says, do you know at that time it was unlawful, I am saying no, I didn't know.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel.

**ADV. ADILA HASSIM:** I asked you whether you thought your officials were 15performing their duties diligently. What is your answer to that?

**DR BARNEY SELEBANO:** At what time, before or after?

**ADV. ADILA HASSIM:** Before or after what? I asked November 2016, let's take that.

**DR BARNEY SELEBANO:** Be patient with me, Counsel. I am just asking so that I 20can answer you properly. I am sorry if I am irritating you.

**ADV. ADILA HASSIM:** Dr Selebano, my difficulty is that I am not getting an answer and I'll be able to move on more quickly if I did. The question was, by November 2016 did you think that your officials were performing their duties diligently?

**DR BARNEY SELEBANO:** The implementers, no, I don't think they were doing well, they were not doing well.

**ADV. ADILA HASSIM:** In November 2016 you did not think that they were performing diligently.

**DR BARNEY SELEBANO:** I should think on top off my head, no.

**ADV. ADILA HASSIM:** And you didn't do anything about it. You didn't ask for regular updates on the deaths, did you?

**DR BARNEY SELEBANO:** But I said that the regular updates were given in the office of the MEC.

**ADV. ADILA HASSIM:** I know, you said that already, but you didn't ask for regular update.

**DR BARNEY SELEBANO:** I am not too sure why I would have asked. Maybe now that you are saying it, I could have asked.

**ADV. ADILA HASSIM:** Why you would have asked? Because you were the head of department and in November 2016 you signed and backdated licenses.

**DR BARNEY SELEBANO:** I have accepted that.

**ADV. ADILA HASSIM:** And in 2016 many people had died and you knew that the number was at minimum 78, correct?

**DR BARNEY SELEBANO:** I was informed by the Prof, yes.

**ADV. ADILA HASSIM:** What I would like to put to you, Dr Selebano, is that you yourself were not performing your duties diligently.

**DR BARNEY SELEBANO:** It is your opinion, Counsel.

5**ADV. ADILA HASSIM:** No, it is not my opinion. There is a constitutional duty on you to perform your duties diligently.

**DR BARNEY SELEBANO:** It is your opinion, I still say that. I did my best. You wouldn't have done any better.

**ADV. ADILA HASSIM:** You could not have done any better?

10**DR BARNEY SELEBANO:** I am saying yourselves, if you were in that situation, you wouldn't have done any better, I was in a bad ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** No, you may not be personal at all.

**DR BARNEY SELEBANO:** Sorry Justice, I withdraw.

**ARBITRATOR, JUSTICE MOSENEKE:** The Advocate has many clients.

15**DR BARNEY SELEBANO:** I am sorry.

**ARBITRATOR, JUSTICE MOSENEKE:** All she is doing is she is putting to you the version she is instructed to.

**DR BARNEY SELEBANO:** I apologise, Justice, I apologise. Counsel, I am sorry. Please accept my apology. I am sorry. All I am saying is that it is your opinion to

say that I didn't do my job properly. But I am saying under the circumstances, it was difficult, I did everything possible that any other HOD would have done.

**ADV. ADILA HASSIM:** You could not have done anything differently, that is what you are saying.

5**DR BARNEY SELEBANO:** When I think of it now, in hindsight, on the benefit of hindsight, I say it again. I could have done a lot of things differently, and I agree to that, but that is hindsight.

**ADV. ADILA HASSIM:** There are many things you could have done differently. For example, you could have listened to the experts, correct?

10**DR BARNEY SELEBANO:** But the same experts were sitting in our meetings with us.

**ADV. ADILA HASSIM:** No, you could have listened to the experts, correct?

**DR BARNEY SELEBANO:** Yes, but can I qualify that?

**ADV. ADILA HASSIM:** You will be given an opportunity to speak more and to say  
15whatever you would like to say.

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** But for now, what I am putting to you is that at various points, we started, when I started this evidence part with you, we started on 28 April 2015.

20**DR BARNEY SELEBANO:** And I accepted that.

**ADV. ADILA HASSIM:** It culminated in the Ombud's report.

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** And all the information in between and at various points along the way you could have stopped that project, isn't that so?

5**DR BARNEY SELEBANO:** God willing, yes. In hindsight when I think about it, there were so many signs that we could have stopped this.

**ARBITRATOR, JUSTICE MOSENEKE:** Let's not introduce God now.

**DR BARNEY SELEBANO:** That is why I am saying God willing.

**ARBITRATOR, JUSTICE MOSENEKE:** God would never have willed that 143  
10people die, so let's not get there. I think just listen to the question and answer it,  
please.

**ADV. ADILA HASSIM:** You said you saw the signs.

**DR BARNEY SELEBANO:** I am saying now that you are showing me that there  
were signs... Remember, I did indicate that that letter, I can't recall that letter, but I  
15am not arguing with the letter. I know there were signs ...intervened.

**ADV. ADILA HASSIM:** It is not only the one letter. That is why I took you through  
blow by blow from 28 April 2015. There were many points along the way, there  
were many signs along the way.

**DR BARNEY SELEBANO:** That is why I am saying there were many signs  
20that ...intervened.

**ADV. ADILA HASSIM:** And you ignored those signs.

**DR BARNEY SELEBANO:** At a personal level, I didn't ignore them, but the Department, my officials, all of us, we should have acted differently, I concede to that.

5**ADV. ADILA HASSIM:** But you could not have done anything, is that what you are saying?

**DR BARNEY SELEBANO:** At a personal level?

**ADV. ADILA HASSIM:** Yes, as the HOD.

**DR BARNEY SELEBANO:** The HOD is a person.

10**ADV. ADILA HASSIM:** The HOD is a person, but you are also an official vested with statutory duties and constitutional duties. So you are not an ordinary person.

**DR BARNEY SELEBANO:** I would not agree. Counsel, I hear you and I have said I so much wish – and I said it yesterday – I so much wished that I could have evoked some wisdom to pick up that these things are going to happen and stop the  
15project. I said it yesterday and it is regrettable that it didn't happen. And I am not defending it and I said to you ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** I thought, Doctor, you also told us that you knew that these things were wrong. You told the Ombud that, you told me that you knew that Mr. Mosenogi was correct and that this project was a dangerous one.

20**DR BARNEY SELEBANO:** If you read the letter that Mr. Mosenogi said that there were concerns about the ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes and you said you silently co-authored that letter with him.

**DR BARNEY SELEBANO:** We agreed on that letter, yes.

**ARBITRATOR, JUSTICE MOSENEKE:** You discussed and agreed on it.

5**DR BARNEY SELEBANO:** And we presented it to the MEC.

**ARBITRATOR, JUSTICE MOSENEKE:** Why are we struggling so much... your own concession is that you knew that this is a fatalistic project, it ought to be stopped.

**DR BARNEY SELEBANO:** No, Justice. When you say fatalistic it presupposes  
10that I knew that patients were going to demise and I am saying no, I didn't know that.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja, you are worried about a possible charge, possible future charge, isn't it?

**DR BARNEY SELEBANO:** No.

15**ARBITRATOR, JUSTICE MOSENEKE:** And you are taking a lot of our time on that. But anyway, you remember you were telling us that you were scared of the MEC and that is why you went ahead with the project, do you remember that?

**DR BARNEY SELEBANO:** Scared?

**ARBITRATOR, JUSTICE MOSENEKE:** Scared, yes.

**DR BARNEY SELEBANO:** I don't think I was scared of the MEC, I was not scared. We said... let's go back, Justice. Mr. Mosenogi is there... Mr. Mosenogi, we agree, you raise it, and then MEC Mahlangu says are you working for Life or not, Mr. Mosenogi sit down. Then we said why wouldn't we do that and I said it is tense, it was a tense situation, it is not easy in a work relationship to but your senior. The fact that did I have fear in my heart on her, no. It is just that I didn't tell her... it was not really out of fear, it was the fact that I knew it was closed.

**ARBITRATOR, JUSTICE MOSENEKE:** You knew what?

**DR BARNEY SELEBANO:** I knew taking the matter further it will not help. I am saying with her now that she said are you working for Life Esidimeni, that's what I mean.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel.

**ADV. ADILA HASSIM:** And it is ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** I don't think we don't need to argue on that.

**ADV. ADILA HASSIM:** I agree, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** This is a matter for argument.

**ADV. ADILA HASSIM:** I agree, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** I think we should make progress.

**ADV. ADILA HASSIM:** And you agree you did not contact the families once you became aware of the number of deaths that had occurred.

**DR BARNEY SELEBANO:** You mean individual families?

**ADV. ADILA HASSIM:** Yes.

**DR BARNEY SELEBANO:** No, I didn't. I just had an interaction but there was not a death then, with Mambeth, I know Mambeth, I had interaction with her. And I...  
5no, no... I then got to know... but I didn't speak to her at that time, Christine, but I spoke to Mambeth subsequently. I actually met her face to face at Zola Clinic.

**ADV. ADILA HASSIM:** You spoke to Mambeth, you know the sad circumstances of the death of Sophia.

**DR BARNEY SELEBANO:** I know that, yes.

10**ADV. ADILA HASSIM:** And said in your interview, and it is my last reference now to your interview, the interview with the Ombud, and it is at page 67.

**DR BARNEY SELEBANO:** I am at page 67.

**ADV. ADILA HASSIM:** Page 67.

**DR BARNEY SELEBANO:** That's right.

15**ADV. ADILA HASSIM:** So page 67 is preceded by the discussions about the families being angry and so on.

**DR BARNEY SELEBANO:** Is that at page 66 now?

**ADV. ADILA HASSIM:** Ja. You can see at the end of the page. Prof Makgoba says: "Has there ever been a thought to contact the families again from the  
20Department's point of view?" You say: "You know the families are so angry." And

then on page 67 at line 5 you say: “You know I will tell you where...” And Professor: “Maybe let me... I want to say to you and also to the other side, you know, taking people to Checkpoint, they think they are embarrassing the department or whatever they are doing, but in the process they even harm the same 5families.” Is that a reference to Checkpoint, the news documentary program?

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** And then you say at line 12: “They take the dignity.”

**DR BARNEY SELEBANO:** That’s the Prof saying: “Well they take the dignity away from them”, that’s the Prof.

10**ADV. ADILA HASSIM:** And then you say: “They take the dignity.”

**DR BARNEY SELEBANO:** I was confirming what the Prof said.

**ADV. ADILA HASSIM:** Are you following with me? “They take the dignity”, are you there.

**DR BARNEY SELEBANO:** Yes. 10 and 11 is Prof and then 12 is me.

15**ADV. ADILA HASSIM:** And then it is you at line 12.

**DR BARNEY SELEBANO:** Yes.

**ADV. ADILA HASSIM:** And then you say: “They take the dignity, I am sorry to say, these white woman will not take responsibility, but they encouraged her to take the child.”

20**DR BARNEY SELEBANO:** It is unfortunate yes.

**ADV. ADILA HASSIM:** And then you go on at line 16: “They encouraged her. They will deny it. They were doing it with the other mother from Braamfontein. Take your child away and do not, something, for this. I mean you know that is how sad it is.” And then at line 21: “So Professor, when a child is now suddenly on television...”

**DR BARNEY SELEBANO:** Okay you want to?

**ADV. ADILA HASSIM:** This whole passage is important, because you go on in line 24: “On television, the neighbours suddenly now, the community around... I grew up in Soweto... we grew up... and they say... oh then they do funny thing.” And that continues on page 68 at line 5: “The family bears a heavy burden because now she was on television. Everybody knows. The secret is in the street. They will never take responsibility, Checkpoint, that they have contributed to her being taunted and being harassed in the streets that she decided to take her life.” Do you still hold this view that it was Checkpoint that caused Sophia to take her life?

**DR BARNEY SELEBANO:** No, no, no that is not what I said. I said when you... I grew up in the townships. When you suddenly know something that you didn't know, the reaction, especially for mental patients, then people start treating you differently compared to when they didn't even know about you – that is what I was trying to say.

**ADV. ADILA HASSIM:** So who is the white woman that you were referring to?

**DR BARNEY SELEBANO:** Well it is white... I shouldn't emphasise white or black, but we picked up that there was communication that circulated to encourage

families what to say and how to say it. It will be difficult to prove it now, but there was that communications.

**ADV. ADILA HASSIM:** From who?

**DR BARNEY SELEBANO:** On WhatsApp groups, it was on WhatsApp groups.

5**ADV. ADILA HASSIM:** And from whom did that communication come?

**DR BARNEY SELEBANO:** Like I am saying I know that it was a white lady but I don't want us to think more of white, it was more descriptive, Justice, more descriptive.

**ADV. ADILA HASSIM:** Was it a lawyer?

10**DR BARNEY SELEBANO:** I'll tell you I don't know, but we even went to Etv to object to say you are broadcasting some of these things, but the families were canvassed to say certain things.

**ADV. ADILA HASSIM:** So is it the media that you are referring to?

**DR BARNEY SELEBANO:** Yes.

15**ADV. ADILA HASSIM:** Are you aware that the families approached the media themselves?

**DR BARNEY SELEBANO:** Probably they did yes.

**ADV. ADILA HASSIM:** And do you know why they approached the media? Because the Department was not listening to them.

20**DR BARNEY SELEBANO:** No one was listening to them.

**ADV. ADILA HASSIM:** Yes.

**DR BARNEY SELEBANO:** No one.

**ADV. ADILA HASSIM:** And it was as a result ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Do you agree with that?

5**DR BARNEY SELEBANO:** I agree.

**ARBITRATOR, JUSTICE MOSENEKE:** But this white lady, what has it got to do with ...intervened.

**DR BARNEY SELEBANO:** It was more descriptive, not any hidden meaning there.

**ARBITRATOR, JUSTICE MOSENEKE:** In the papers before me there is a  
10suggestion that your department thought the dissatisfaction of these family  
members was a political thing. Did you have that view?

**DR BARNEY SELEBANO:** No, I wouldn't entertain that view. When patients have  
passed away, what politics are there, there are no politics, personally?

**ARBITRATOR, JUSTICE MOSENEKE:** When they were unhappy with the move,  
15did you see this as a political resistance or opposition when the families of the  
health care users were unhappy?

**DR BARNEY SELEBANO:** No, I didn't see politics here, there are no politics. For  
me there are no politics here. These are patients. On hindsight we shouldn't have  
done it and they lost their lives. When we had a meeting at Randfontein, and Mr.  
20Mosenogi captures it again, the families were saying what you are doing is going to  
bring problems to us. And I think that is where myself and Mr. Mosenogi agreed

and said you know what, we are going to bring problems to families because the patients have been somewhere fairly stable, the families are fine with that arrangement.

**ARBITRATOR, JUSTICE MOSENEKE:** Do you think the families were instigated  
5by Section 27?

**DR BARNEY SELEBANO:** No. I confirmed to you that I had discussion with Mark and I said to Mark in the opposite, I said I hope there will be a time where you are not there, because we are doing the right things, yes. No.

**ARBITRATOR, JUSTICE MOSENEKE:** You did accept that they had a genuine  
10concern, fear.

**DR BARNEY SELEBANO:** It was a genuine concern, genuine fear. It was painful in that meeting and they were saying to us, the families, Christine was saying why don't yourselves and Life Esidimeni sit and agree on these things, unlike what you are doing. And I think... it was from Randfontein, Justice, it was a lonely drive for  
15me to go home and thinking that what are we doing to these families.

**ARBITRATOR, JUSTICE MOSENEKE:** And the termination of the contract of Life Esidimeni, were there any racial considerations?

**DR BARNEY SELEBANO:** No, no, no. I am just saying no but I wouldn't know in what sense, no. These are patients. These are just patients.

20**ARBITRATOR, JUSTICE MOSENEKE:** You know Dr Mkhathshwa was here before  
us.

**DR BARNEY SELEBANO:** Okay. Morgan, I know him, Dr Morgan Mkhathshwa.

**ARBITRATOR, JUSTICE MOSENEKE:** And suggested that some of your colleagues thought that Life Esidimeni was a white company.

**DR BARNEY SELEBANO:** No, it is Life Health Care.

5**ARBITRATOR, JUSTICE MOSENEKE:** I beg your pardon?

**DR BARNEY SELEBANO:** It is Life Health Care, it is part of Life Health Care Hospitals.

**ARBITRATOR, JUSTICE MOSENEKE:** Did that play any role in your decision?

**DR BARNEY SELEBANO:** No. To terminate? No. I mean from time to time I work  
10with private hospitals, big hospitals.

**ARBITRATOR, JUSTICE MOSENEKE:** Just to go back to it, what was the real reason for the termination? Counsel has spent a lot of time with you to show you that it could not have been financial. What was the real reason for targeting Life Esidimeni? We know now that it was the only contract of the hospital that you  
15cancelled at that time, so what was the reason?

**DR BARNEY SELEBANO:** We had cancelled Selby Hospital contract before.

**ARBITRATOR, JUSTICE MOSENEKE:** Many years earlier?

**DR BARNEY SELEBANO:** No, Justice, no. I would even say 2015 or so we had cancelled Selby, 2014 or something there.

**ARBITRATOR, JUSTICE MOSENEKE:** Still tell me, what was the reason for cancelling the contract?

**DR BARNEY SELEBANO:** The dominant reason, and we have put it there, was the physical pressure and the intention – and I am saying it again – the intention was never ever to put the lives of patients in danger.

**ARBITRATOR, JUSTICE MOSENEKE:** Besides money, what other reason was there?

**DR BARNEY SELEBANO:** I don't know if there were any other reason, no. I wouldn't have supported any other reason.

10 **ARBITRATOR, JUSTICE MOSENEKE:** In effect you want us to accept that it was money and people and you chose to save money, is that it?

**DR BARNEY SELEBANO:** Justice, the same money... if I follow what you are saying... you save money. This money still goes to hospitals to do operations, to buy medicine, to clean the wards, it goes to the clinic. It is the same money. So it is not like we save it and it doesn't do anything. It goes back to the service, because the service is under extreme pressure, even now.

**DR.BARNEY SELEBANO:** And it doesn't do anything. It goes back to the service because the service is under extreme pressure. Even now.

**ARBITRATOR JUSTICE MOSENEKE:** No, why do you take it away from these health care users? And use it at other health care users.

**DR.BARNEY SELEBANO**: The thinking at that time you asked me yesterday would be able to say and it's wrong. Let me start by accepting. It was wrong. The counsel showed me all the signs that we should have picked up. It was wrong. Wrong. Wrong. Wrong. But let me say, at that time the thinking was that. If you are able to stake a patient to a facility, we would then support the facility. That was the thinking. And I said that the District Psychiatry would be supportive. OT psychology, they would be supportive. It didn't happen and I agree, it went wrong and I agree.

**ARBITRATOR JUSTICE MOSENEKE**: You see, I've spent a brief time on this and I will turn you over to the advocate. I've sat here for 30 days of hearing.

10 **DR.BARNEY SELEBANO**: I can imagine.

**ARBITRATOR JUSTICE MOSENEKE**: And so, these families have come here...

**DR.BARNEY SELEBANO**: Every day.

**ARBITRATOR JUSTICE MOSENEKE**: For 30 days of hearing and that's what they have heard up to now. And we all are wondering, what was it about? We've been shown that you are not exactly short of money. The counsel has spent a lot of time to deal with that part. I want to go back to it. And the hope is you will tell them, the families why your department lead by you and the M-E-C. Why you did what you did because it still remains a mere mystery. That's why I'm asking you about whiteness, I'm asking you about ownership life at Decidimeni, I ask you about political motive...

20 **DR.BARNEY SELEBANO**: No... no....no...

**ARBITRATOR JUSTICE MOSENEKE**: No? All that...

**DR.BARNEY SELEBANO:** All that political, whiteness, no...no...no...

**ARBITRATOR JUSTICE MOSENEKE:** Societal pressure groups is none of all that?

What was it about?

**DR.BARNEY SELEBANO:** I'm not buying any bodies face. I have a lot of respect for section 27 by doing whether people like it or not the truth is that the holding government accountable on education, on health, they've not been very strong on housing. I'm sure it will come but I'm not buying any bodies face and I'm saying it's a real pity that we have people who are doing that.

**ARBITRATOR JUSTICE MOSENEKE:** Let's go back to the question. Why did you do it? I'm really... I'm entreating you to engage the question seriously. A somebody who understands a tragedy that he has helped to cause it's you. I want you to engage in the question quite seriously because we're all wondering, why did they do it?

**DR.BARNEY SELEBANO:** But there's something that you said. I'll engage again, you said 'while you know you have money'. As far as I know even now, the accruals in the department, 14-15 were roughly around 4 billion, accruals saying how much we owe to people out there. Really, that is the truth and I think we have recently just moved out of administration. Administration suggesting that you are now hamstrung financially. The department has seen that situation and I think it's still in that situation even now. We here... I'm not a thief but we here that suppliers are not paid, all this and all that. So, it's not that there was money and its was not used appropriately.

**ARBITRATOR JUSTICE MOSENEKE:** I've tried, counsel?

**ADV. ADILA HASSIM:** Justice... I'm going to avoid the temptation to return to where it all begun with cross cutting and fascial pressure. Dr Selebano, your degree that if it went for the loud of the families, the matching and the protesting, more lives would have been lost.

**DR.BARNEY SELEBANO:** I agree.

And if it had not been for the media, more lives would have been lost.

**DR.BARNEY SELEBANO:** I agree.

And if it had not been for the civil society, more lives would have been lost.

10**DR.BARNEY SELEBANO:** I agree **ADV. ADILA HASSIM,** I agree.  
Unconditionally.

**ADV. ADILA HASSIM:** Thank you, I have no other questions and thank you for testifying for these proceedings.

**DR.BARNEY SELEBANO:** Thank you counsel and if I have offended you please...

15**ADV. ADILA HASSIM:** Dr Wolf, thank you.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you counsel and all the things that you have come on to the road court through effective examination. Thank you. We are going to move on to advocate Crosser.

**ADV LILLA CROUSE:** Thank you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** I intend to proceed up to 5 pm. Even if you look at me on this stage, I'm not adjourning. We are going up to 5 pm.

**ADV LILLA CROUSE:** I've got nowhere to go; I don't have a house in this province we can work till late.

5**ARBITRATOR JUSTICE MOSENEKE:** We can work till late? We are going to work a little bit late, let's go on.

**ADV LILLA CROUSE:** Thank you Justice. Dr Selebano, I'm acting with my learned friend Dr Skibi for there is survivors and we are instructed by leaders in South Africa.

10**DR.BARNEY SELEBANO:** Thank you counsel.

**ADV LILLA CROUSE:** Unfortunately, I'm going to carry on where my learned friend didn't want to go. I really want to know why this contract was terminated and you testified on Monday, you said that it was a plan conceived by the lower levels. What did you mean by that?

15**DR.BARNEY SELEBANO:** No... I think you want to say Tuesday. Tuesday...

**ADV LILLA CROUSE:** Tuesday. Yes, sorry. You were in Monday in another court.

**ADV LILLA CROUSE:** Yes.

**DR.BARNEY SELEBANO:** I said the plans... there was a discussion at management levels with senior managers and a decision is made then the concrete  
20plans are wept by in this instance unity itself. So, it was not like lower level, I don't know how you understood that because it was the junior managers who work on

this everyday... I don't want to use the word but they are the ones who do the actual operation work in the department.

**ADV LILLA CROUSE:** If I can take you to [?] report, I can assure you that it's not necessary that you go there now. It says that the dean institutional organization started in the office of the premier together with the H-O-D. Do you know anything about that?

**DR.BARNEY SELEBANO:** Well, I said that these discussions about the institutional organization we not only management officials. There was a discussion at the premiums budget counsel twice to say you need to cut costs. Find where you'll live to save money because the treasury meaning national now, there's no money, the state has no money. You're not going to get anything more, if you think about it, health inflation is ordinarily higher than the normal inflation. So, that was the thinking.

**ADV LILLA CROUSE:** Maybe I didn't put my question clearly to you. Did this dean institutionalization planned to stop in the office of the premier?

**DR.BARNEY SELEBANO:** You'll have to guide me properly by start... maybe bad language that I used by start but I'm saying that the office of the premier would have known because the premiums budget cancelled. That's where all departments come and we sit and present our budgets, cost saving, what is it that we are going to do, what are your plans, that's where we plan to present it back to the premium budget counsel.

**ADV LILLA CROUSE**: The office said the use of the office of the premium was perhaps not a good idea because in the office of a premium and a premier are two different concepts. I just want to clarify, are you saying the premier was the conceiver of this plan?

5**DR.BARNEY SELEBANO**: No-no-no-no. Not the conceiver of the plan. You wouldn't know about the plan.

**ADV LILLA CROUSE**: He what?

**DR.BARNEY SELEBANO**: He wouldn't... as a premier things of the institutionalization because it would be asking too much.

10**ADV LILLA CROUSE**: Can you just repeat that, sorry doctor?

**DR.BARNEY SELEBANO**: I was... you were saying is it the office of the premium, we call it O-O-P or the premier in person? I said no. Not the premier in person. He wouldn't know in person.

**ADV LILLA CROUSE**: The implementation speaks about a simultaneous  
15engagement between the M-M-C and the head of the department with life as a demeaning. Would it be a true reflection of how this plan started?

**DR.BARNEY SELEBANO**: Simultaneous engagement with?

**ADV LILLA CROUSE**: It's says M-A-C and the head of department with life as a demeaning.

20**DR.BARNEY SELEBANO**: I'm afraid...

**ARBITRATOR JUSTICE MOSENEKE**: I don't follow the question either.

**ADV LILLA CROUSE:** Maybe I should go to the member's report. Justice if I could go to volume one please.

**DR.BARNEY SELEBANO:** Can I have a ...

**ADV LILLA CROUSE:** Ouch!

5**DR.BARNEY SELEBANO:** Sorry.

**ARBITRATOR JUSTICE MOSENEKE:** Are you okay? I have the file counsel.

**ADV LILLA CROUSE:** I have unfortunately close the computer with the file numbering on it maybe I should rather go with it tomorrow? Because I see none of the pages has the numberings on it so it would be difficult for us to get to it. Let me  
10just move off to that point and then we'll get to you back tomorrow. I apologize for the run around. Doctor Melamela testified that it was the instructions of you and the M-M-C's that life as a demeaning was closed. What was your response to that?

**DR.BARNEY SELEBANO:** It's probably correct because she's referring to the hierarchy now. She wouldn't just close it if I didn't sign the letters. So, in that  
15senses she's correct.

**ADV LILLA CROUSE:** If you see what is happening to these proceedings is so interesting. There's a run around and nobody wants to tell us where it started. I'm trying to establish, so the plan started with you? It was your plan to close life as a demeaning, is that what your trying to tell us?

**DR.BARNEY SELEBANO:** I thought you said the implementation of the plan, I thought I was answering that. When you say I started the plan, now that's H-O-D. No... no...no...no...

**ADV LILLA CROUSE:** Can you just please tell us Doctor. Selebano, we just want to know where did the start as life as a demeaning, was going to be closed. Whose plan was that?

**DR.BARNEY SELEBANO:** I said when I first came here that the plan was formed by some managers who had been there long before my time that the plan to review the contract – the life as a demeaning contract has been there. Now everything happened, that's what I'm saying again now. The physical pressure became incompletely unbearable, huge assurance then we presented to the premiums budget counsel. I think we even did it twice, 14-15 and 15-16.

**ADV LILLA CROUSE:** At least there's a process and we'll get to all of that, I promise I'll get to that. My question is very simple; whose plan was it to close?

15**DR.BARNEY SELEBANO:** You wanted...

**ADV LILLA CROUSE:** I want a name. whose plan was it to close life as a demeaning? It's not a difficult question.

**DR.BARNEY SELEBANO:** I was before my time; I wouldn't know who in particular said close. No. I can concede that I signed but as to where was it conceived, it has been there. I adhere it has been since 1977. The contract, it has been there since 1977.

**ADV LILLA CROUSE:** Doctor it doesn't help us to tell us when the contract started. We want to know really who said, surely you're not going to sign a document if you say whose plan was it and that's what we want to know.

**DR.BARNEY SELEBANO:** I'm afraid I'm unable to give you a name to say Mr so and so or so and so.

**ADV LILLA CROUSE:** So, nobody knows who decided to ultimately close life as a demeaning? That person is not around?

**DR.BARNEY SELEBANO:** I'm not saying that...

**ADV LILLA CROUSE:** But I want to understand what you are saying. Surely the plan must be... the plan must originate somewhere.

**DR.BARNEY SELEBANO:** But it's difficult for me to give you a name when I was not there myself.

**ADV LILLA CROUSE:** But you signed the letter, so you must have known who made this plan.

15 **DR.BARNEY SELEBANO:** Now, you are confusing me.

**ARBITRATOR JUSTICE MOSENEKE:** No. no. you cannot accuse council unduly. It's a fairly plain question and I think you should listen to it and answer it. She'd like to know who?

**DR.BARNEY SELEBANO:** But I'm saying...

20 **ARBITRATOR JUSTICE MOSENEKE:** Whose decision was it to close life as a demeaning? Let's start there.

**DR.BARNEY SELEBANO:** Before my time, I don't know but the plan to entail the contract or rather to review the contract has been there long before my time. But if you say who signed the contract to terminate the letter... to terminate the contract, I'll say it's me, that's what I'm saying.

5**ADV LILLA CROUSE:** Doctor, let us not play around this too much, somebody had to come up with this plan, whether it was concocted before your time or not. Somebody had to bring it to the front and now we're closing. I want to know who is that person.

**DR.BARNEY SELEBANO:** I'm battling for your respect and I'm trying because you see there's a plan and there's a contract. Somewhere I thought that you are saying, who said the contract must be terminated? Sometime in the past and I was thinking I don't know but I'm saying, if you asked who signed the contract, the letter that terminates the contract. It's me but when you talk about the plan it's a different thing for me because that's what you asked.

15**ADV LILLA CROUSE:** Let me ask you then in order to assist you. Do you know who concocted the plan?

**DR.BARNEY SELEBANO:** What do you mean concocted?

**ADV LILLA CROUSE:** Did you make up this plan?

**DR.BARNEY SELEBANO:** The plan to transfer patients?

20**ADV LILLA CROUSE:** Yes, to close life as a demeaning.

**DR.BARNEY SELEBANO:** Yeah but...

**ARBITRATOR JUSTICE MOSENEKE:** Are we talking of a decision or a plan?

**ADV LILLA CROUSE:** Let me get you the decision rather. You took the decision that life as a demeaning must be closed.

**DR.BARNEY SELEBANO:** I signed the letter.

5**ADV LILLA CROUSE:** Yeah, we all know that you signed the letter Doctor but that's not news for us. We also know that when you sign the letter, we have the letter. I want to know who decided that that must be done.

**DR.BARNEY SELEBANO:** I'm unable to answer the question.

**ADV LILLA CROUSE:** Surely you should have got instructions from somewhere to  
10sign that letter.

**ARBITRATOR JUSTICE MOSENEKE:** Because I was going to ask the same question, is it you who decided to terminate the contract?

**DR.BARNEY SELEBANO:** No, it's a collective in the department. It's a collective inside the department and I signed the letter following... that's why I was trying to  
15explain that the whole department, all H-O-D's a called.

**ARBITRATOR JUSTICE MOSENEKE:** Describe the collective...

**DR.BARNEY SELEBANO:** It would be ...

**ARBITRATOR JUSTICE MOSENEKE:** Insufficient for the counsel, let's hear what other questions you have.

**DR.BARNEY SELEBANO**: M-M-A, myself, all other D-D-G, all the chief directors, all the directors. Not necessarily all of them but in this case it would be Manamela and the C-E-0's.

**ARBITRATOR JUSTICE MOSENEKE**: Okay. Let's put it at that. These are the 5names Advocate Crouse was looking for. So, the decision makers were the M-M-C, H-O-D, D-D-G. Director general, Doctor Libete,

**DR.BARNEY SELEBANO**: Not him alone but all D-G-G's.

**ARBITRATOR JUSTICE MOSENEKE**: I understand but I'm trying to get the collective of the collectives. That's what I'm trying to say. Now we know it's the M-10M-C, Mr Danny Masangu, Dr Selebano who is the H-O-D (head of department) it is the deputy director general, who's Doctor Libete, it is the director, Doctor Banamela. At a minimum, those would be the decision makers collectively.

**DR.BARNEY SELEBANO**: It's a bare minimum because ...

**ARBITRATOR JUSTICE MOSENEKE**: You can add more, just name them.

15**DR.BARNEY SELEBANO**: HR is sitting there, infrastructure is seating there, finance is seating there, budget.

**ARBITRATOR JUSTICE MOSENEKE**: But those are support staff. The M-M-C, the H-O-D, the D-D-G, the director, Doctor Manamela.

**ADV LILLA CROUSE**: Thank you, justice.

20**ARBITRATOR JUSTICE MOSENEKE**: We have four names at least.

**ADV LILLA CROUSE**: Thank you, was this at a meeting.

**DR.BARNEY SELEBANO:** Yes, it was.

**ADV LILLA CROUSE:** Is there a minute of this meeting?

**DR.BARNEY SELEBANO:** It should...

**ADV LILLA CROUSE:** Where would we find the minute of that meeting.

5**DR.BARNEY SELEBANO:** The officer of the M-U-C, I should think.

**ADV LILLA CROUSE:** Can you give us a date for that meeting?

**DR.BARNEY SELEBANO:** It was not one meeting, there were many many meetings.

**ADV LILLA CROUSE:** Why is it necessary you have many many meetings?

10**DR.BARNEY SELEBANO:** No, but it's how we work.

**ADV LILLA CROUSE:** Over what periods did you hold these meetings?

**DR.BARNEY SELEBANO:** Anything from 2014 over 2015.

**ADV LILLA CROUSE:** And during those meetings, who placed this plans on the table?

15**DR.BARNEY SELEBANO:** Can you agree you mean the contract or a plan because there was a plan to transfer patients and there's a contract.

**ADV LILLA CROUSE:** For us sitting here, transferring all the patients from life as a demeaning is closing life as a demeaning. So, we can play with words but I want to know who put this on the table that life as a demeaning is going to be closed?

**DR.BARNEY SELEBANO:** Counsel, I'm not playing with words, I need to answer you correctly, with a proper understanding. I'm under oath and if i asking for clarity it's not that I'm...

**ADV LILLA CROUSE:** Please answer both, who put the plan on the paper and who 5put the...

**DR.BARNEY SELEBANO:** Manamela's team put the plan on the paper.

**ADV LILLA CROUSE:** And who in the Manamela table put the plan on the table?

**DR.BARNEY SELEBANO:** Dr Manamela.

**ADV LILLA CROUSE:** So, why do you say it's her team?

10**DR.BARNEY SELEBANO:** She didn't do it alone.

**ADV LILLA CROUSE:** Was the members of her team with her?

**DR.BARNEY SELEBANO:** When they were working on a plan?

**ADV LILLA CROUSE:** Yes.

**DR.BARNEY SELEBANO:** I should think so because I'm seeing Doctor Manamela 15and the team and when they met the had separate departmental meetings

**ADV LILLA CROUSE:** And who put on the table the contract must be closed, if we were to reciprocate the two then

**DR.BARNEY SELEBANO:** We all agreed that we wanted to terminate the... and that is why I wanted to take you back so that you have an understanding of how 20government works.

**ADV LILLA CROUSE:** So you want to say that it was a democratic decision, the majority agreed? Like yeah, here we go.

**DR.BARNEY SELEBANO:** I didn't say that.

**ADV LILLA CROUSE:** What are you saying Doctor, please give us...

5**DR.BARNEY SELEBANO:** I'm saying that if you could give me feed of time I'll be able to show you how... I did say something to you, previous budget counsel and I would have explained to you both treasury national and provincial... the cake is small, its shrinking. You are in huge debt yourself as haunting, your owing everybody. Look into everything that you have cut, cut, cut, cut...

10**ARBITRATOR JUSTICE MOSENEKE:** So, is it the health that was in debt

**DR.BARNEY SELEBANO:** Yes. So, we have accruals, huge accruals

**ARBITRATOR JUSTICE MOSENEKE:** The health that owes everybody, are we talking about the accounting problems?

**DR.BARNEY SELEBANO:** The accounting problems. So, the cake is small, it's not  
15going to get any bigger. You've got to... and that is what we were discussing in the previous counsel, you've got to find ways and means of giving the same service with the same amount and not the service going down. So, we all sit now, we have a mandate from the premium budget counsel, before, its pre-. Let's say, you come to us, you come and present how you are going to save in the department. We  
20started with sledding, actually we worked on a lot of projects to say. Let's reduce that one, let's reduce that one, let's reduce that one. Not in trying to put justice

towards the money but to translate other service pleasures where they are. Medicine, equipment all that, that was why we did the P-B-C from that premium budget counsel. Then I sit with the managers and said, we come to now ... is expecting us to come up with a mechanism, we've identified all those things now.

5 **ARBITRATOR JUSTICE MOSENEKE**: So, has the question been answered?

**ADV LILLA CROUSE**: No, but I'm giving the witness an opportunity to tell me how the government works. It seems to us that he really wants to explain to us justice.

**ARBITRATOR JUSTICE MOSENEKE**: Okay. Fair enough. Are you done?

**DR.BARNEY SELEBANO**: Yeah.

10 **ARBITRATOR JUSTICE MOSENEKE**: Please try to listen to questions and lead them head on. It helps us to make progress and to save time and getting to the weighing query.

**DR.BARNEY SELEBANO**: I agree justice but also... I agree justice.

**ARBITRATOR JUSTICE MOSENEKE**: Shall you pose another question counsel?

15 **ADV LILLA CROUSE**: He is... let me just try from another angle. As your sitting there now, today in December 2017, what is the real reason why life as a demeaning was closed down?

**DR.BARNEY SELEBANO**: The department was arranging to release the physical pressure

**ADV LILLA CROUSE:** You were trying to self-cost, is that what your trying to say? Even today you're saying that and for that reason you go to the most vulnerable people that you can because you think that they are the most dispensable people.

**DR.BARNEY SELEBANO:** No. no. you're putting it wrong. I'm sorry counsel.

5**ADV LILLA CROUSE:** You started when you testified on Tuesday, you said this contract was from the time of Renophenta. That's what you heard? Well'... I quickly googled and she wasn't the minister of health in 1970. So why did her name come up?

**DR.BARNEY SELEBANO:** I think she was ... social development. It was called  
10that. Health was social development.

**ADV LILLA CROUSE:** Health was social development?

**DR.BARNEY SELEBANO:** I think so, I'm not sure.

**ADV LILLA CROUSE:** Because she wasn't but she was a white woman though but she wasn't a minister when the contract was ended. If your timeline is correct.

15**DR.BARNEY SELEBANO:** I don't think

**ADV LILLA CROUSE:** Is that one of the many reasons why you wanted to terminate this contract because it was an old contract of the previous government?

**DR.BARNEY SELEBANO:** No. I don't know why you say that.

**ADV LILLA CROUSE:** Then why did you bring her up then?

**DR.BARNEY SELEBANO**: I was just saying that I was told that... maybe I shouldn't have said it but I was told that this contract has been there during the time of minister and I didn't say minister. No disrespect for that. This is one country, our country, I can't do that.

5**ARBITRATOR JUSTICE MOSENEKE**: Just answer the question, why did you raise her name at all in referring to the age of the contract?

**DR SELEBANO**: I think it's like saying this thing happened during this time of minister Manthu Shabalala. Something like that.

**ADV LILLA CROUSE**: But she wasn't the minister at that time if your calculations  
10was correct.

**DR.BARNEY SELEBANO**: I take the correction but I was just saying that if I ... this happened during the time of minister Shabalala.

**ADV LILLA CROUSE**: Doctor, it bothers me that you brought up a name because clearly you are under an oath to tell the truth and clearly she was not the minister.  
15I'm just trying to understand, why her?

**DR.BARNEY SELEBANO**: You are finding something cynical in that but that was not the intention. That was not the intention.

**ARBITRATOR JUSTICE MOSENEKE**: But you are saying that the contract...the treasury was asking you about this contract because it was so old.

20**DR.BARNEY SELEBANO**: Aging. I was informed that A. G has been informed about this contract. To say you guys are not conforming to supply chains. A

contracts cannot just be... it must be sent out. Ask everybody, do you have the facility to do, this and this and that? So, it kept on being renewed and renewed and renewed and that's when...

**ARBITRATOR JUSTICE MOSENEKE:** Then why was that service not put to tender then? It's a valid thing to say that it must be put to tender and it appears to be ever green. It's a fair concern. Did you put it to tender?

**DR SELEBANO:** No, we didn't put it to tender.

**ARBITRATOR JUSTICE MOSENEKE:** You know by now I'm going to ask you why not. Why did you choose to terminate it instead of putting it to tender and somebody else would come and say, I would do this for 320 rent per day per patient maybe

**DR SELEBANO:** The report by Africa health institute indicated that it seems that when they were showing the things they said, they were showing that the model of life as a demeaning has been applying on, it doesn't exist anywhere. But that's just the first part, we were not going to be able to...

**ARBITRATOR JUSTICE MOSENEKE:** And that it was very good, it was very financially

**DR SELEBANO:** When we were making some...

**ARBITRATOR JUSTICE MOSENEKE:** Why didn't you get some people to reach your tender so that you can have to reduce costs without sacrificing the patients. Why didn't you take that course?

**DR SELEBANO:** Now that you are saying it, I think that would have been a better approach rather than...

**ARBITRATOR JUSTICE MOSENEKE:** You see, I'll turn you over to counsel right now. You see one of the things that gives me very little sleep is shutting down the contract with no way back. Which meant that the patients had to go to NGO's, infants had to die because there's no way you could have countermanded what you had done.

**DR SELEBANO:** I agree.

**ARBITRATOR JUSTICE MOSENEKE:** Then why did you do the other way round? Because we are dealing with people who are vulnerable and financially challenged in all sectors. Why not give them a chance?

**DR SELEBANO:** I agree with you Justice

**ARBITRATOR JUSTICE MOSENEKE:** You shut them down and the only way was to go to these NGO's and they were trapped in there and they started dying. So, I always ask myself, why not the logical thing? Leave them there as Mr[?] suggested for a year or more. Link this to tender if you are unhappy with life as a demeaning, find another operator that's better than them or buy life as a demeaning. You had many options. Why didn't you go for them and you went for the weak? Counsel was asking you, why did you go for the weak ones in the game when you're such a powerful state?

**DR SELEBANO:** But it's not... but I'm not defending but not exclusive that the Selby patients...

**ARBITRATOR JUSTICE MOSENEKE**: It doesn't make it better.

**DR SELEBANO**: It doesn't but...

**ARBITRATOR JUSTICE MOSENEKE**: You went back to Selby once you were in trouble with the NGO's? didn't you? I understand that you wanted to make it better  
5but ...

**DR SELEBANO**: As far as I know, Selby was closed, I wouldn't know that.

**ARBITRATOR JUSTICE MOSENEKE**: You must go back and check your facts. Anyways, we've got evidence on that. Why not all these options that lend themselves to decisions by you?

10**DR SELEBANO**: Yeah. One which you could have followed the signs, you could have picked up the signs in time you could have looked at things differently, you could have come up with many options. You got into a one channel approach and I agree.

**ARBITRATOR JUSTICE MOSENEKE**: So, the treasury point and doctor  
15Reinafentar comes in that context?

**DR SELEBANO**: Yeah.

**ARBITRATOR JUSTICE MOSENEKE**: If you are unhappy that there's an old contract then you tender a fresh and counsel entitled to ask why did you bring up her name to your evidence?

**DR SELEBANO:** That's why I'm explaining. The name I was informed. This contract is so old. Apparently, it wasn't operating in the whole country. That's what I was hearing.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel.

5**ADV LILLA CROUSE:** Who was the author of the termination letter that you signed?

**DR SELEBANO:** I take responsibility...

**ADV LILLA CROUSE:** I'm not asking you to take responsibility of the letter but who was the author of that letter? You said you didn't author it. I'm just trying to find out  
10who authored it.

**DR SELEBANO:** The difficult that I have is that the letter comes in a file for H-O-D files, lots of files and the letter is sitted there, then I go through the letter. Its not one of the letters that you find compiled by. So this letter, im unable to say it was so and so or so and so. Like lots of letters come in

15**ADV LILLA CROUSE:** Where did you send the letter off to that? Where did you resend the letter after it came to you? Did you send it to life as a demeaning, did you send it to back to the department that sent it to you?

**DR SELEBANO:** You're the H-O-D, any letters, contracts, everything is seated there, you work on them the administrative team write what has gone in and what  
20has gone out. I wouldn't know if the letter is sent to life as a demeaning, if you want

me to guess, I'll probably say that it went to the mental health unit, so it's not myself that I'm saying that I'm taking this letter.

**ADV LILLA CROUSE:** You hadn't asked anybody to author the letter for you? Seeing that you wanted to cancel the contract.

5**DR.BARNEY SELEBANO:** The mental healthcare unit offered the letter ...

**ADV LILLA CROUSE:** Thank you!

**DR.BARNEY SELEBANO:** But that's not what I'm...

**ADV LILLA CROUSE:** It wasn't a difficult question, was it?

**DR.BARNEY SELEBANO:** I thought you wanted a name and I told you I don't  
10know if its Mary Jane or James. I don't know that.

**ADV LILLA CROUSE:** But you probably asked for the letter,

**DR.BARNEY SELEBANO:** We agreed that the mental health care unit must write  
the letter and I'll sign it

**ADV LILLA CROUSE:** So, it wasn't a surprise on your desk in other words?

15**DR.BARNEY SELEBANO:** No. I knew that the letter was coming.

**ADV LILLA CROUSE:** I'm just trying to get my head around this meeting that you  
had to cancel the contract. Before you cancel the contract you knew that the  
services were good value for money. Isn't that sir?

**DR.BARNEY SELEBANO:** You want my opinion; I had not been engaging  
20thoroughly with life as a demeaning...

**ADV LILLA CROUSE:** You did not rate the report as an advancement by the health institute.

**DR.BARNEY SELEBANO:** I read it

**ADV LILLA CROUSE:** Then you would have seen that it was priced as a good value for money but also they were showing other things that didn't have...I'm talking about ... you wanted to cancel the contract because you wanted to save money. In May, before you cancelled the contract in September, you already have an expensive report telling you that this is good value for money. If the consideration is merely financial then I would suspect that you have debated that very expensive report. Isn't that so?

**DR.BARNEY SELEBANO:** In that report also, they were saying that I was making...

**ADV LILLA CROUSE:** Please answer the question, am I correct in the situation? That you would have debated that the financial implications of that very expensive report.

**DR.BARNEY SELEBANO:** The A-H-I-F report?

**ADV LILLA CROUSE:** Yes.

**DR.BARNEY SELEBANO:** Well, I don't know if it was expensive but we discussed the report

**ADV LILLA CROUSE:** You spent more than 400,000 Grand for that report. Isn't that so?

**DR.BARNEY SELEBANO**: It was commissioned by another department.

**ADV LILLA CROUSE**: You are the head of department; you are under financial constrain. Now you get this very expensive report

**DR.BARNEY SELEBANO**: I don't argue with you, if you know the figure then its 5possibly the figure. And my question is you consider this report and you still debate on this report before you made a discussion. We discussed the report

**ADV LILLA CROUSE**: Did you debate the report? Or you just sweep it under the table?

**ADV LILLA CROUSE**: But doctor this ground we have already covered. Should you 10give us answers and move on?

**DR.BARNEY SELEBANO**: Debate... we seat in our meetings and discuss we don't debate. You know, you're this, you're that. We discuss. That's how I run...

**ADV LILLA CROUSE**: Okay, I hear your point. Your quibbling with the word debate. But the point is, you spend a lot of time answering this, I thought you had 15gone through this. You wrote a report and agreed that life as a demeaning was ... services they deliver. Why don't you give this answer to the counsel so that we move on?

**DR.BARNEY SELEBANO**: Okay. Counsel, we debated the report.

**ADV LILLA CROUSE**: Okay. Thank you. Justice is see its past five already. I 20wonder if it's an opportune time to stop now.

**ARBITRATOR JUSTICE MOSENEKE:** Yes. It is an opportune time to stop. Unfortunately, doctor, you're going to come back tomorrow.

**DR.BARNEY SELEBANO:** I'm coming.

**ARBITRATOR JUSTICE MOSENEKE:** Because we are not done and to counsel, I know that I had asked unban. We'll start late tomorrow because of the farewell meeting of Justice Kabinde. I'm attending a formal dinner tonight and I would forfeit the formal sitting. So, I think we should sit at 9:30 tomorrow other than later in the day. If the time is good for every counsel. We'll reside at 9:30 tomorrow instead of 11:00 because I'm attending a farewell dinner tonight any way. So, I've been excused from the formal sitting tomorrow and the constitutional court. So, we come here at 9:30 so that we can finish on Friday and go on holiday. Okay. So, you are warned to be here presently tomorrow presently 9:30. Doctor Selebano and to all counsel I think its indeed to start the court tomorrow at 9:30

**DR.BARNEY SELEBANO:** Thank you Justice.

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