

**LIFE ESIDIMENI ARBITRATION**

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

**DATE: 24<sup>TH</sup> OF JANUARY 2018.**

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**SESSION 1 - 3**

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**BEFORE ARBITRATOR –JUSTICE MOSENEKE**

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**WITNESSES: MS. QEDANI MAHLANGU**

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## SESSION 1

**ARBITRATOR JUSTICE MOSENEKE:** Good morning to all Counsel. Is everybody else here present? Good morning. Do you swear that the evidence you will continue to give today will be the truth, nothing but the truth, and if so please raise your right hand and say so help me God.

**MS. QEDANI MAHLANGU:** So help me God.

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

**ADV ADILA HASSIM:** Just before we begin, you have been handed a ream of documents by the lawyer for Ms Mahlangu. We just divided it a minute ago. We have not had an opportunity to look at any of those documents. I am not sure what the intention is, but I am just alerting you that we have received documents. We have not had a chance to peruse them and to the extent that there will be any reference to that, we will need to consider that properly if there are questions.

**ARBITRATOR JUSTICE MOSENEKE:** Mr Mmusi, morning.

**ADV. LESEGO MUSI:** Morning Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Mr Mmusi, good morning.

**ADV. LESEGO MUSI:** Good morning Justice.

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

**ADV. LESEGO MUSI:** These are email communication which for the period I think 2015 to 2016. There is the letter which the witness referred to, ... [inaudible]. A

meeting which was held between the witness and the Premier and Representatives of NEHAWU. It is a copy of the memorandum that was handed by the families to the department. There is also a blow-by-blow response to the questions in form of a memorandum by the HOD in the letterhead. There is also a report by Dr 5Manamela, after the transfer. The report t talks about the Life Esidimeni termination project from the beginning. It talks about the challenges. It talks about the transportation. It talks about the support that was given to the NGO's and patients after the transportation. It talks about also the fact that the patients were assessed. It is basically an overall report. It talks about generally the risks that were there, and 10what was done by who. Basically it is that. Also to, added to ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** How many pages are there?

**ADV. LESEGO MUSI:** There are 392.

**ARBITRATOR JUSTICE MOSENEKE:** How are they going to be admitted into evidence?

15**ADV. LESEGO MUSI:** The document, the witness referred to them in her evidence in chief. She said for example ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** No, I do not want you to say anything about the witness ... [inaudible].

**ADV. LESEGO MUSI:** Yes.

20**ARBITRATOR JUSTICE MOSENEKE:** I want the disputed nature of the documents for you ... [inaudible].

**ADV. LESEGO MUSI:** Yes, most of them are official documentation. They are departmental reports. There is ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** I think what we should do is this. I think the reference must be given to Advocate Ngutshana, and ... [inaudible] the 5 documents, give them ELAH numbers which is the system we are using and at some point we have to see what we are making. The documents are not evidence in themselves. They may be valuable ... [inaudible]. So for now ... [interjects]

**ADV. PATRICK NGUTSHANA:** If I may Justice.

**ARBITRATOR JUSTICE MOSENEKE:** No, you may not. For now, you will hand 10 them over to Advocate Ngutshana. He must systematically look at the documents and then let us give them a serial number so that we can refer to them. Only then might they become valuable. Would you want to say?

**ADV. PATRICK NGUTSHANA:** I wanted to say Justice, when we left on Monday during the course of the proceedings, the witness made a request to go back, look 15 into her documents and emails. That request was granted. These documents are being handed in line with that arrangement.

**ARBITRATOR JUSTICE MOSENEKE:** Very well. That is the system in which we hand in documents. I have just told you about it. So give them to the evidence leader, and they will and Ms Yina and they will look at them. Make of them 20 whatever it is and then give them serial numbers so that we can ultimately read them into the record, if it becomes relevant. Okay.

**ADV. PATRICK NGUTSHANA:** Thank you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you. Ms Hassim?

**ADV ADILA HASSIM:** Thank you Justice. Good morning Ms ... [inaudible].

**MS. QEDANI MAHLANGU:** Good morning Counsel.

**ADV ADILA HASSIM:** We left off yesterday with your response to a letter from 5SADAC dated 26 November 2015. If you could just return to that letter, we dealt with the issue of hospitals and what the state of play was at the hospitals, but there are a number of other aspects in that letter that we did not look at. So if you could just return to that letter, which is in file 1, and it begins at page 169.

**MS. QEDANI MAHLANGU:** Thank you.

10**ADV ADILA HASSIM:** And at paragraph 11 of this letter there are, there is a long list of questions that are posed to you and the questions are quite detailed. They concern questions about the budget, whether the NGO's have been assessed, renovations to old hospitals that are required and importantly how the department plans to communicate with the families. You have seen paragraph 11?

15**MS. QEDANI MAHLANGU:** Yes, I have.

**ADV ADILA HASSIM:** It is common cause that these questions went unanswered. Is the reason for that because you instructed senior management to get the lawyers involved?

**MS. QEDANI MAHLANGU:** Good morning Justice.

20**ARBITRATOR JUSTICE MOSENEKE:** Good morning.

**MS. QEDANI MAHLANGU:** And to the Counsels, family members present here and the members of the media. With your permission Justice, may I raise a concern?

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

5**MS. QEDANI MAHLANGU:** When I arrived in South Africa on the 10<sup>th</sup>, I was welcomed by the police at the airport, and at that time I did not take, I did not take it serious. They told me they were from Crime Intelligence. Yesterday in my house as I was perusing through document, there was a drone hovering above my home. I do not know what to make of this, and I do not know why I am being harassed, 10because I came here voluntarily and there was no reason for anyone, there is no reason for anyone to harass me, because I am committed to work with government to ensure that the families find closure. I thought it is important for me to alert you of the concerning developments around me and within my family. Thank you.

**ARBITRATOR JUSTICE MOSENEKE:** Well, at the airport what did the police do? 15What did they say they were there for? Did they?

**MS. QEDANI MAHLANGU:** Firstly there was an unusual passport check when you come out of the plane and as I was going through ... [inaudible] in the first batch of people who came out of the plane, passports were being checked just before you start walking in the airport building, and so something said to me there is more to 20this. After I picked up my bags from the carousel concerned, two Police Officials approached me. They said they were from Crime Intelligence. Introduced themselves, showed me the police cards. They said to me they were sent by their

bosses. Reasons explained as to why actually I am not sure what were the real reasons, but as I am saying I did not take note of, I just thought probably they are doing their work. I did ask them how did they know I was in the plane, because I did not do travelling arrangements through whatever, through any travelling agency. I did them directly with the airline, but they did not answer me and I did not expect and answer because they said they are from Crime Intelligence, but when the drone was hovering above my house yesterday, I started asking myself questions.

**ARBITRATOR JUSTICE MOSENEKE:** What kind of drone was it and could you assess what was the source of the drone?

10 **MS. QEDANI MAHLANGU:** A drone is like something that flies around, probably looks like a bigger whatever. I have seen a drone, I just do not know how to describe it.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

15 **MS. QEDANI MAHLANGU:** But I know how it looks. It was hovering around the house and someone observed it. The security observed it and after circling a couple of times it moved away from the house.

**ARBITRATOR JUSTICE MOSENEKE:** So it was a known electronical drone hovering over your home. It was not just the sound of a drone, but ... [interjects]

**MS. QEDANI MAHLANGU:** No, there was a drone. There was a drone.

20 **ARBITRATOR JUSTICE MOSENEKE:** There was a drone.

**MS. QEDANI MAHLANGU:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** And have you managed to gather any more information about its source and why it was over your home?

**MS. QEDANI MAHLANGU:** No, I have not. I thought I must raise it formally, because ... [interjects]

5**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**MS. QEDANI MAHLANGU:** And I did inform the MEC for community safety about it, but I think that as the Chair of the arbitration, I thought it is important for me to alert you of the developments around me.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

10**MS. QEDANI MAHLANGU:** Thank you.

**ARBITRATOR JUSTICE MOSENEKE:** I have assured you before I am deeply concerned about your safety and your ability to be able to give evidence so that we can go on with our work. Counsel for the State, could you be useful at all? I am thinking of asking you and your Attorney to enquire from the Police General who is  
15here present whether they are aware of these developments and what they might mean. Is that something that the state can do?

**ADV TEBOGO HUTAMO:** Thank you Justice. For the record, we have been informed that the General Johnson is on retirement, but we will make enquiries with the relevant officials and try and gather some information as to the activities which  
20are said to be taking place, and ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** General Johnson who came to testify here?

**ADV TEBOGO HUTAMO:** Yes. We have been informed that he is now on retirement. So he is no longer in the service. So there are other officers within the 5SAPS that the department will make contact in order to ascertain the activities which are being said to be taking place, in order to ensure that safety is provided in this circumstances.

**ARBITRATOR JUSTICE MOSENEKE:** But would you ask them to find an explanation for this specific complaint raised by Ms Mahlangu?

10**ADV TEBOGO HUTAMO:** We will do so.

**ARBITRATOR JUSTICE MOSENEKE:** Will do so, and hopefully if you could report to us at the very latest tomorrow morning so that we know exactly what is available, what is known and what the police activity means.

**ADV TEBOGO HUTAMO:** We will take all effort to give a proper report.

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

**ADV TEBOGO HUTAMO:** Thank you.

**ARBITRATOR JUSTICE MOSENEKE:** Ms Hassim? Is there anything else you want to say in this regard Ms Mahlangu before we continue with the cross-examination? If I remember, a question has been put to you but before you answer, 20is there anything else you want to say in the light of the request I have just made to the State Counsel?

**MS. QEDANI MAHLANGU:** I am happy with your action Justice Moseneke.

**ARBITRATOR JUSTICE MOSENEKE:** You are happy.

**MS. QEDANI MAHLANGU:** Thank you.

**ARBITRATOR JUSTICE MOSENEKE:** Very well. Thanks. The question was in relation to page 196. In the letter written to you by the South African Depression and Anxiety Group, and Counsel had a few questions about the questions in the letter.

**ADV ADILA HASSIM:** I will repeat the question ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Yes, please do.

10 **ADV ADILA HASSIM:** For the witness's convenience. The question was to you that these requests for information and other questions in paragraph 11 were not answered. That is now common cause, and it is because you instructed senior management to get the lawyers involved. Is that not so?

**MS. QEDANI MAHLANGU:** Thank you very much Counsel. Justice Moseneke, 15 may I put it on record that at no, throughout this process I did not instruct officials not to work with all stakeholders who had interest on this matter. On this email concerned that the Counsel has raised with me, in looking at some of the document that the Counsel was saying contained in this file that I am requesting that it be considered for as part of the exhibition, exhibit sorry, is a trail of documents that 20 indicate to me the correspondence and meetings between the officials led by the HOD together with the officials of the department with SADAC, with Section 27 and

minutes thereof, whether the department agreed to certain things and in the next meeting things are not being done. So, and also to state that part of what also I am presenting here, you will see in the preceding email to this, is that it is, there is a meeting that is requested to discuss these matters, supposedly on the 30<sup>th</sup> of 5 November, and in the trail of email you will also see that I was prepared to attend that meeting, to discuss these matters. However, it clashed with the legislature sitting and again there is in this file a speakers list which demonstrate that I had, I was going to speak twice in the legislator on that day, and therefore it is important to, I have brought this exhibit to demonstrate a willingness on my part to have been 10 part of that meeting to look at these issues contained in this email. However, due to legislature commitment I could not attend the meeting, and at no stage and I would like to repeat that, did I say to the officials please do not work with stakeholders, because in the HIV and Aids program we are working with all stakeholders, even those that were not part of the Aids Council initially. Thank you very much.

15 **ADV ADILA HASSIM:** Okay. You have answered only one part of the question. To deny that you instructed anybody to do anything, but when we dealt with the letter on Monday, the letter, the wording in the letter was please get our lawyers involved, take leadership, these NGO's are dishonest. So what I am saying to you is that the reason the questions went unanswered, was because you did say to your 20 officials that these NGO's are dishonest. In other words, do not work with them, and you copied your lawyer in that very email.

**MS. QEDANI MAHLANGU:** Through you Justice, again.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**MS. QEDANI MAHLANGU:** This communication was internal in the department in the course of work, as we were engaging with the department, particularly the officials, and part of the reason why the lawyers will be involved, because throughout the processes of at least where I was aware of and in my engagement with the HOD in the main, is the involvement of lawyers from Section 27 informal meetings. So therefore, when we engage with, or the HOD and the team engaged with Section 27 and the lawyer come into the meeting, and I thought it was necessary for us in whatever we do, so that the lawyers that are working with the department, get notified of what, of the communication between us and when I asked the officials to take leadership, it was not to set them and say go and do illegal and wrong things. It was simply to say we must demonstrate our ability to lead and to ensure that issues that needs to be resolved are being resolved, not to ... [inaudible] around the issues, and that is really my honest and my genuine answer to the matter as you, now you are interpreting the communication to mean that I said the officials should not work with the NGO's. That will be simply to the contrary of the view I hold about NGO's.

**ADV ADILA HASSIM:** So the letter was not from lawyers to you, that letter was from a civil society organisation involved in the field of mental health, is that not so?

**MS. QEDANI MAHLANGU:** Counsel, I was just giving, I gave the context on how ... [interjects]

**ADV ADILA HASSIM:** I just want to answer that letter. So in, it is not about other circumstances and what you have done elsewhere. This letter came from a Civil Society organisation, not from lawyers. Do you agree?

**MS. QEDANI MAHLANGU:** Through you Justice?

**ARBITRATOR JUSTICE MOSENEKE:** Yes. Let us get back to what we did by the time we adjourned.

**MS. QEDANI MAHLANGU:** Yes.

5**ARBITRATOR JUSTICE MOSENEKE:** Listen to the question and try and in  
fewest of words, try and engage the question. Answer it. We cannot prescribe the  
answer, but we can insist that you at least answer the specific question. That will  
allow us to be able to move on. So please listen to the question and just come to it  
as briefly as you can. It ... [inaudible] the times Ms Mahlangu, when explanation  
10may be necessary at the times when it would not be necessary. So just listen to the  
question and try and engage with it. You can be sure there will be many others that  
will come. For you to better keep them as they say in Swahili mbodi mbodi. Piece  
by piece. So just take it that way, step by step. It will be much easier. Counsel?

**ADV ADILA HASSIM:** Thank you Justice. Do you agree that that letter was sent  
15to you by a Civil Society organisation and not lawyers?

**MS. QEDANI MAHLANGU:** Yes, the letter was sent by Civil Society Counsel, and  
I would like again through you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Yes. She is going to come back and say  
but why did you say this. Then you explain that and so on. So if you are trying to  
20explain it all, you are already inviting even more questions and we are making little  
progress.

**MS. QEDANI MAHLANGU:** Okay.

**ARBITRATOR JUSTICE MOSENEKE:** The letter is from Civil Society yes, and then the next question will follow. Inevitably.

**MS. QEDANI MAHLANGU:** Thank you.

5**ADV ADILA HASSIM:** Is it your position that you were willing to engage with Civil Society organisations and that you were not distrusting and dismissive of them? Is that your ... [interjects]

**MS. QEDANI MAHLANGU:** Thank you Counsel. No, it is not my position. As I said in the interaction in the emails, I was committed to attend some of the 10meetings, but due to other commitments I could not.

**ADV ADILA HASSIM:** Were you distrusting of the organisations?

**MS. QEDANI MAHLANGU:** I have no reason to, I had no reason to distrust anybody.

**ADV ADILA HASSIM:** And what is the name of the lawyers that you asked to be 15involved, in that email?

**MS. QEDANI MAHLANGU:** On this particular instance I think it was Nabesha Mahlangu, I think that is the name of the law firm.

**ADV ADILA HASSIM:** Are they private attorneys?

**MS. QEDANI MAHLANGU:** Yes, I think so.

**ADV ADILA HASSIM:** So you used private attorneys rather than the state attorney, is that so?

**MS. QEDANI MAHLANGU:** We used both state attorneys and private attorneys on different matters of the department.

5**ADV ADILA HASSIM:** In this matter you used private attorneys?

**MS. QEDANI MAHLANGU:** I think on some matters we used private attorneys and in others ... [interjects]

**ADV ADILA HASSIM:** In this matter?

**MS. QEDANI MAHLANGU:** I do not know how many other lawyers or other  
10people that HOD consulted, but I think on the specific correspondence that you are referring to, it would have been the private attorneys concerned.

**ADV ADILA HASSIM:** Private attorneys, and that would have come at a cost to the department, is that not so?

**MS. QEDANI MAHLANGU:** Yes, of course.

15**ADV ADILA HASSIM:** Yes, and on Monday you told us that one of the cost saving measures of the department related to litigation against the department.

**MS. QEDANI MAHLANGU:** Yes indeed I did say that.

**ADV ADILA HASSIM:** Yet you spent public resources in this matter in order to avoid answering the questions in paragraph 11 of the letter, is that not so?

20**MS. QEDANI MAHLANGU:** I do not agree with your assertion Counsel.

**ADV ADILA HASSIM:** Do you know what it cost to engage the lawyers?

**MS. QEDANI MAHLANGU:** Well, I would not be aware. The HOD and the Chief Financial Officer would know the real cost. I do not get involved with procurement processes.

5**ADV ADILA HASSIM:** We will return to the issue of procurement in a moment. If you could look at the termination of the contract, whose decision was it to terminate the contract with Life Esidimeni?

**MS. QEDANI MAHLANGU:** Through you Justice Moseneke.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

10**MS. QEDANI MAHLANGU:** As I said in my statement it was a decision of the collective.

**ADV ADILA HASSIM:** And who would be responsible, if there would have to be one person responsible, would that not, is that not so? Who would be responsible?

**MS. QEDANI MAHLANGU:** The head of department is responsible for all  
15administrative matters in the department.

**ADV ADILA HASSIM:** It was the head of department that took the decision and it was not you?

**MS. QEDANI MAHLANGU:** The decision was taken by the collective, through the process I have outlined on Monday, and the execution of the decision in terms of  
20the legislation, particularly PFMA is the responsibility of the Accounting Officer.

**ADV ADILA HASSIM:** Are you a member of the collective?

**MS. QEDANI MAHLANGU:** Yes, I was a member of the collective.

**ADV ADILA HASSIM:** Were you the most senior member of the collective?

**MS. QEDANI MAHLANGU:** Yes, I am the senior member of the collective.

**ADV ADILA HASSIM:** And what was the reason for termination of the contract?

5**MS. QEDANI MAHLANGU:** Thank you Counsel. May I refer back to the, my statement on Monday?

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**MS. QEDANI MAHLANGU:** But over and above that, and I am not sure the status of the documents I am referring to, because they ... [interjects]

10**ARBITRATOR JUSTICE MOSENEKE:** What you need to refer to, whatever would suit your answer.

**MS. QEDANI MAHLANGU:** Okay.

**ARBITRATOR JUSTICE MOSENEKE:** What we are doing, what I have directed, is that all documents that have been handed in will be labelled appropriately and  
15Counsel will be given an opportunity to look at them and there might be other questions that arise from that, but for now please do answer the questions. Counsel, the question was?

**ADV TEBOGO HUTAMO:** Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**ADV. PATRICK NGUTSHANA:** May I please just suggest that we have noted that the documents which have been handed up, have been paginated. If they can be given ELAH number 132 so that the witness, as and when she goes through her statement and there is a reference to any documents which is in the file, then she 5be given that opportunity to deal with that document.

**ARBITRATOR JUSTICE MOSENEKE:** I have not seen the documents, I have not seen the file. Is the file appropriately paginated? Let me start with you Advocate Hassim.

**ADV ADILA HASSIM:** Justice, I have not, it literally was handed to me one minute 10before I was about to begin my line of questioning. I have not had an opportunity to look at it. It may be paginated, but that does not assist us, because we have not had a chance to look through all the documents, and it would not be appropriate for us to start engaging with documents that we have not seen, and to distract from the purpose and the plan for today.

15**ARBITRATOR JUSTICE MOSENEKE:** Ja. I am inclined to agree with you Counsel. Advocate Crouse?

**ADV. LILLA CROUSE:** Thank you Justice. We are in the same position, in that the documents were handed to us minutes before the proceedings. We would like to have a look at it, and we would also like to engage that we do not want to have any 20irrelevant documents not before this commission, but we want to see whether they are relevant.

**ARBITRATOR JUSTICE MOSENEKE:** Advocate Ngutshana?

**ADV. PATRICK NGUTSHANA:** Yes Justice Moseneke. I am also the last person to receive this bundle, but a brief perusal of the documents, some of them are a repetition. We have those which I have had an opportunity to look through them. We do have them in these bundles, and the ELAH numbers, especially Dr Selobano's response to the memorandums, I have seen them. They are repeated there and one of the reports on the project is also in there. We have them in the bundle of documents. So if we label it 132, there might not be a need for some of those documents Justice Moseneke.

**ARBITRATOR JUSTICE MOSENEKE:** Because they already are in the bundles?

10 **ADV. PATRICK NGUTSHANA:** We already have them.

**ARBITRATOR JUSTICE MOSENEKE:** We have easily a few thousands of pages already, but very well. I think, Advocate Groenewald, your view on the matter?

**ADV. DIRK GROENEWALD:** I am in agreement with my colleagues Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

15 **ADV. DIRK GROENEWALD:** We need to peruse the documents before reference are made to them and some of them can be excluded seeing that it is a duplication.

**ARBITRATOR JUSTICE MOSENEKE:** Yes. Advocate Hutamo, unless you convince me otherwise, I think I will stick to my initial ruling. That everybody have the opportunity to look at the documents. Let them be systematised. Let them be given numbers, and we deal with them once they have been systematised. The witness must go ahead and refer to whatever and describe it, and we will once

everybody has looked at the documents, then we will come back to them if we have to.

**ADV TEBOGO HUTAMO:** Thank you Justice. I just wanted to say that it might be helpful for the witness to be able to give comprehensive answers to the questions 5put to her, by making reference to the documents that she intends to rely on. In as much as there might be a repetition of those documents in the number of documents which we already have, she might not have had access to those documents, but for purposes of achieving the objective of getting information from her, the witness should be given that opportunity to refer to those documents. As 10and when a question arise, and the relevance will obviously be determined, and if the views of my learned colleagues is that they have not had the opportunity to peruse them, and there is a need for a brief adjournment to have a look at them, so be it. So that the witness should be able to finish her testimony with regards to what she wants to put before these proceedings. Otherwise to limit her answers, it will 15not help these proceedings.

**ARBITRATOR JUSTICE MOSENEKE:** Ja. Why do you think about that the answers will be limited?

**ADV TEBOGO HUTAMO:** Because of her inability to refer to certain documents which have been handed up to us, even though it is late. If she cannot refer to 20those documents, then in that way, then her answers will be limited in that regard.

**ARBITRATOR JUSTICE MOSENEKE:** She can. I think she can refer to any document and identify it, and once they have been looked at, paginated, the

duplications got out of the way, we should be able to identify them quite easily, quite readily. I do not intend to expand time. This matter must be brought to a close as soon as we can, and I do not think I am going to lightly stand down. Particularly if documents were given to all the parties that late. I think we will proceed, and as 5and when it becomes difficult, we will re-assess the situation then. For now the witness wants to refer to her statement which she handed in yesterday. So we are not there yet. I think I would rather proceed Counsel. As and when some difficulty arises, we will confront it then.

**ADV. PATRICK NGUTSHANA:** Thank you Justice.

10**ARBITRATOR JUSTICE MOSENEKE:** Okay.

**ADV. PATRICK NGUTSHANA:** I was just only saying this in relation to the statement which makes reference to annexures. In the statement she makes reference to certain annexures. So I was only saying that in the event that any point that she wants to raise from the statement and it refers to an annexure, she be 15given that opportunity to refer to that document, which would then give a proper answer.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**ADV. PATRICK NGUTSHANA:** Thank you.

**ARBITRATOR JUSTICE MOSENEKE:** I think she will get that opportunity. She 20must do so and once they have been systematised, we should be able to identify that statement. I hear that. I have considered carefully your suggestion and my view is that we proceed at this stage, having heard all Counsel and your suggestion.

The second thing is of course this document should have been done yesterday. The day we adjourned, we agreed that it would be done, and they get handed to Counsel five minutes before we start. We had a whole break yesterday to facilitate that. So I am not likely going to stop the hearings now, when we had a day in which these things could have been done and served timorously on all the parties. Shall we proceed?

**ADV ADILA HASSIM:** Thank you Justice. Ms Mahlangu, my question was in relation to the reason for the termination of the contract. Let me try to make it a bit easier for you. You say that the reason for the termination in your evidence in chief was twofold, and you will add if there is anything I have left out. One is to comply with the policy of de-institutionalisation. Is that right?

**MS. QEDANI MAHLANGU:** Yes. I stated three reasons, ja.

**ADV ADILA HASSIM:** Pardon me?

**MS. QEDANI MAHLANGU:** I am saying I stated three reasons.

15 **ADV ADILA HASSIM:** And one is de-institutionalisation.

**MS. QEDANI MAHLANGU:** Absolutely.

**ADV ADILA HASSIM:** Yes. The other was costs. That you need to save, cut costs.

**MS. QEDANI MAHLANGU:** Hm.

20 **ADV ADILA HASSIM:** Is that so?

**MS. QEDANI MAHLANGU:** Yes, it is.

**ADV ADILA HASSIM:** And what is the third reason?

**MS. QEDANI MAHLANGU:** The concerns raised by the Auditor General.

**ADV ADILA HASSIM:** And what was the concern raised by the Auditor General?

**MS. QEDANI MAHLANGU:** As I said in my statement, through you Justice.

5**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**MS. QEDANI MAHLANGU:** That the Auditor General, when they take the sample of audit items that they audit in any department, they will say this contract and that contract is not in line with the public supply chain regulations, which are coming out of the Public Finance Management Act. Therefore, if the department does not do  
10anything about it, it is likely to end up in findings by the Auditor General if you are not doing anything about it. So it is in that context that I am raising this matter.

**ADV ADILA HASSIM:** Is the, was the concern of the Auditor General that there had not been a tender?

**MS. QEDANI MAHLANGU:** Yes, all government contracts have to go through  
15tender, through you Justice. That is the Public Finance Management Act, and that is derived from the constitution ... [interjects]

**ADV ADILA HASSIM:** That is fine, I understand the law on that.

**MS. QEDANI MAHLANGU:** Yes.

**ADV ADILA HASSIM:** Did you embark on a tender process for awarding contracts  
20to the NGO's?

**MS. QEDANI MAHLANGU:** Well, the officials can answer those processes. I would not get involved in that. The law is very clear, and through you Justice, that politicians cannot and should not and must not get involved in procurement processes.

5**ADV ADILA HASSIM:** You have oversights, do you not?

**MS. QEDANI MAHLANGU:** Yes. Yes Counsel.

**ADV ADILA HASSIM:** And the obligations in Section 217 of the constitution bind you, is that not so?

**MS. QEDANI MAHLANGU:** Through you Justice, may I ask Counsel to allow me  
10to complete my sentences.

**ARBITRATOR JUSTICE MOSENEKE:** Hm.

**MS. QEDANI MAHLANGU:** Or my replies.

**ARBITRATOR JUSTICE MOSENEKE:** Certainly.

**MS. QEDANI MAHLANGU:** Because she continues to interrupt me as I try to  
15answer.

**ARBITRATOR JUSTICE MOSENEKE:** Okay. Complete the answer.

**MS. QEDANI MAHLANGU:** I was answering the question on the role of politicians in supply chain processes. That politicians are not allowed, should not, must not and must never get involved in any supply chain processes. In respect of following,  
20on understanding whether procurement processes have been done in any project, you can only ask and when the answer in this particular instance related to the

NGO, did you follow the processes, all the legislative requirements. If the answer was yes in all the meetings.

**ADV ADILA HASSIM:** So you asked and the answer was yes?

**MS. QEDANI MAHLANGU:** Yes.

5**ADV ADILA HASSIM:** And you are familiar with Section 217 of the constitution?

**MS. QEDANI MAHLANGU:** Yes, I do.

**ADV ADILA HASSIM:** Yes. Do you know now whether the contracts were put out to tender?

**MS. QEDANI MAHLANGU:** I do not know. I did not ask ... [interjects]

10**ADV ADILA HASSIM:** You still do not know?

**MS. QEDANI MAHLANGU:** Yes, I did not ask that question ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** But before the decision was made by the collective, was that matter ventilated? All we could do was to tender and invite other service providers so that we comply with the law and the ages concerns. Did  
15the collective consider that?

**MS. QEDANI MAHLANGU:** Through you Justice. Once we have taken a decision and the administrative process has started, throughout the reports when the officials were indicating and it is in some of the documents that I was referring to earlier that are in the document, that we say the transport plan is in place. The project plan is  
20in place, this meeting or this meeting we indicate, we have looked at the NGO's. They meet the criteria, they do all of that. Expectation is, because these are not

officials who started working yesterday. They have been in the system. They know the law. The expectation is that they should comply with all legislative requirements, including ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** No, my question is did the collective consider whether or not to place the contract or the service provided by Life Esidimeni to tender?

**MS. QEDANI MAHLANGU:** I am not sure exactly about that aspect Justice.

**ARBITRATOR JUSTICE MOSENEKE:** No. You give us three grounds for cancelling the contract. One of these is the AG is concerned about the non-tender of the long-standing contract.

**MS. QEDANI MAHLANGU:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** So the question is inevitable. It begs an answer. Did the collective before making the decision, consider to tender the contract so that you invite more and other maybe more competent service providers?

**MS. QEDANI MAHLANGU:** Thank you Justice Moseneke. My role or any role of any politician in any scenarios relating to that, we make a decision and the expectation is as to the procurement processes and those. Those are the pure responsibilities of the officials.

**ARBITRATOR JUSTICE MOSENEKE:** But when they said to you this contract has been here for since the 70's or 80's.

**MS. QEDANI MAHLANGU:** 79.

**ARBITRATOR JUSTICE MOSENEKE:** 79. It is a legitimate concern. Did you not automatically say put the service to tender, invite the broader public and let us see what comes out there. Why is the only response to cancel rather than to tender?

5**MS. QEDANI MAHLANGU:** If, thank you Justice for your question. If you, and just give me a minute just to go back to my statement when I said the initial indication of the beds that were going to be utilised was government hospitals which we either no longer use or that will no longer, that were no longer in use like the old hospitals where we have built new hospitals and all of that. That is the answer I gave on  
10Monday and I even said at the time we were informed that most of the mental health care users from Life were going to be accommodated there. Then when the officials changed direction to then go to the NGO's direction, they indicated that the NGO's move was because there are a lot of mental health care users who were already with the NGO's and they either had patients there or there will be new  
15NGO's, as to the process of procuring those NGO's, I would not be sure exactly how that works administratively.

**ARBITRATOR JUSTICE MOSENEKE:** Well, let us go back to ground zero again. We are talking about the tender. I am asking did the collective consider to tender in the light of the longevity of this contract which was a legitimate concern? What are  
20you saying? Do you say did you consider that or not?

**MS. QEDANI MAHLANGU:** Justice, I would ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Or are you saying we did not consider, because we were going to place them in other hospitals? What is the answer?

**MS. QEDANI MAHLANGU:** My understanding was that because we are going to place the mental health care users in either hospitals or within NGO's, as to how 5NGO's are procured and because they have done it before, I would not know the actual details, because that is an operational matter done by the officials.

**ARBITRATOR JUSTICE MOSENEKE:** I am not sure still former MEC what the answer is. Did you ever sit and say let us tender, and bring back the answer no, because we have other hospitals or did you simply say we are not going to tender, 10we are going to shut it down and what would be the consequence? Lead us into your reason and your deliberations so that we understand why the decision that was taken by your collective, led to 143 deaths? We are entitled to understand what was happening in your discussions. Why did you decide to get the guillotine down when there are a number of options. Can you respond to that?

15**MS. QEDANI MAHLANGU:** Again Justice, may I suggest, may I say that discussions relating to any procurement decision, politicians are not involved in those processes, and I was not involved in those processes, and that is in accordance with legislation.

**ARBITRATOR JUSTICE MOSENEKE:** But did the collective in deciding to shut 20down or to terminate the contract of Life Esidimeni, that is where Counsel is. Did it consider the option of a tender?

**MS. QEDANI MAHLANGU:** In the meetings where I was part of Justice, I do not remember us discussing any issues relating to tender as an option and all of that.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel?

**ADV ADILA HASSIM:** Thank you Justice. Ms Mahlangu, are you saying, you said 5that the officials changed direction and went to the NGO's. Are you saying that it was not the plan to use NGO's at the time the decision was taken?

**MS. QEDANI MAHLANGU:** Counsel, I did say that the initial plan was to get 10mental health care users to number of government hospitals prior that were no longer used. The numbers who were going to go to NGO's at the time when I answered the first question of the legislature, the number was smaller than what finally ended up being in. That is that I am saying.

**ADV ADILA HASSIM:** I understand.

**MS. QEDANI MAHLANGU:** Which is what I said on Monday again.

**ADV ADILA HASSIM:** Okay, no that is fine. So the plan was from the beginning 15that there would be some number of patients that would go to NGO's.

**MS. QEDANI MAHLANGU:** Absolutely.

**ADV ADILA HASSIM:** Yes.

**MS. QEDANI MAHLANGU:** But it was far lesser than the numbers that ended up going.

**ADV ADILA HASSIM:** We will get to the numbers, but for now I am just asking you about the decision, when the decision was taken there was a plan. The thinking was that the patients would go to NGO's as well as hospitals.

**MS. QEDANI MAHLANGU:** Absolutely.

5**ADV ADILA HASSIM:** But the bulk would go to hospitals.

**MS. QEDANI MAHLANGU:** Yes.

**ADV ADILA HASSIM:** And in respect of the NGO's, was that put out to tender to see which NGO's could provide the best service. Most efficient, most effective service for the money?

10**MS. QEDANI MAHLANGU:** Again Counsel, issues of procurements and tenders, I would not be party to those discussion at all. The Public Finance Management Act is absolutely clear on how procurement procedures are done. If I am, through you Justice.

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

15**MS. QEDANI MAHLANGU:** If I sit in a meeting with officials and say to them put this policy or this implementation decision through a tender process, and then tomorrow they appoint someone who may know me or who may know my family whatever, then the allegation would be that the MEC influenced or she said people must go on tender, because she wanted to influence us otherwise to appoint her  
20friends and all of that. So the decisions around procurement, what you procure, for what purpose, in line with the mandate of the department, those through you

Justice, are solely the responsibilities of government officials who are employed in respect of doing those kind of work.

**ARBITRATOR JUSTICE MOSENEKE:** What Counsel means, did your officials not say, tell you how they are going to procure the NGO's?

5**MS. QEDANI MAHLANGU:** No, they did not say that Justice.

**ARBITRATOR JUSTICE MOSENEKE:** How were they going to identify them and choose them and capacitate them? Did they not tell you that?

**MS. QEDANI MAHLANGU:** Justice Moseneke, what I was assured in the file that I would like to refer to, the checklist. I think I have seen it in one of the files that 10Advocate Ngutshana gave me. The checklist as to what are the criteria's that are being assessed against the requirement of policy. Those were presented to me to have been adequate requirements for NGO's to meet. Then the question is, then did you direct them to go and look for ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** No, no, no we do not have to go that far. 15So they told you that here is a checklist and these NGO's are good for purpose.

**MS. QEDANI MAHLANGU:** Yes, absolutely, and the documents that Counsel was referring to this morning that he helped me to source, and I looked around. They talk about that. The identification of hospitals and NGO's, the involvement of different stakeholders. It will talk about the placement plan. It talks about 20transportation plan in respect of the organisation. It also talks about NGO budgets and all of that. So that is what I am referring to. When you receive such reports

that gives you assurance at any given point in time, my assumption is I had no any other reason to doubt the information that I am being given.

**ARBITRATOR JUSTICE MOSENEKE:** Ja, we will come back to that. I am sure the Advocate will take you there. Let me leave you with this one thought, which might save a lot of time and pain for all of us. Remember, you come at a time when we have heard Mr Mosenege. We have heard HOD Manamela, I am sorry Dr Manamela. Head of the Directorate. We have heard the HOD. We have heard Ms Hannah Jacobus, and each one of them told us what your role was. That is still going to be put to you.

10 **MS. QEDANI MAHLANGU:** Okay.

**ARBITRATOR JUSTICE MOSENEKE:** So every single one of them was asked very carefully what your role was.

**MS. QEDANI MAHLANGU:** Okay.

**ARBITRATOR JUSTICE MOSENEKE:** So when you answer questions, just keep 15 that in mind. There are going to be many questions which are going to come back, and you are going to be taken to the specific things they have said. Some of which I looked at this morning.

**MS. QEDANI MAHLANGU:** Okay.

**ARBITRATOR JUSTICE MOSENEKE:** So just keep that in mind that there is a 20 whole body of evidence and paper work which relates to you and your role, in the decision making and in the directing of the project.

**MS. QEDANI MAHLANGU:** Okay.

**ARBITRATOR JUSTICE MOSENEKE:** And your answers should just keep that in mind, and that you are under oath. Counsel?

**ADV ADILA HASSIM:** Thank you Justice. Ms Mahlangu, just to clarify the point. 5Are you saying that as you sit here today you do not know if a tender process was followed?

**MS. QEDANI MAHLANGU:** I was assured all government prescripts and regulations were followed and supply chain is one of those, which means it is simply tender processes.

10**ADV ADILA HASSIM:** And do you say that the bulk of the patients at the time you took the decision were to be transferred to state hospitals at the time the decision was taken?

**MS. QEDANI MAHLANGU:** Yes, and then things changed.

**ADV ADILA HASSIM:** So that does not make sense of your second reason for 15termination of the contract which you say is de-institutionalisation. Is that not so?

**MS. QEDANI MAHLANGU:** On what basis Counsel?

**ADV ADILA HASSIM:** Well, de-institutionalisation, the policy and we have been through it a few times in this hearing, is about integrating mental health care users into the communities. Is that not so?

20**MS. QEDANI MAHLANGU:** Yes, it is.

**ADV ADILA HASSIM:** And to remove them from hospital environment?

**MS. QEDANI MAHLANGU:** Yes, yes it is.

**ADV ADILA HASSIM:** Yes, but you are saying at the time the decision was taken the bulk of the patients were to be sent to hospitals?

**MS. QEDANI MAHLANGU:** Yes, indeed.

5**ADV ADILA HASSIM:** And is that consistent with the policy of de-institutionalisation?

**MS. QEDANI MAHLANGU:** Yes, that part is not consistent with institutionalisation and I think that is why there was a turn of events to look at the, to use the NGO's in the majority and again bearing in mind what I said in my statement on Monday or  
10through the cross-examination, that I was assured that there were more than 10000 mental health care users already in Gauteng that were already with the NGO's since the Mental Health Care Act was promulgated.

**ADV ADILA HASSIM:** I take it you are familiar with the national policy.

**MS. QEDANI MAHLANGU:** Yes, I am.

15**ADV ADILA HASSIM:** Of the strategic framework.

**MS. QEDANI MAHLANGU:** Ja.

**ADV ADILA HASSIM:** The 2013 to 2020 one.

**MS. QEDANI MAHLANGU:** And the Gauteng one as well.

**ADV ADILA HASSIM:** So if you look at that document, if you look at that policy  
20and it is in the record, just for ease of reference ... [interjects]

**MS. QEDANI MAHLANGU:** Ja, which page?

**ADV ADILA HASSIM:** Sorry Justice. It is in file 4 and it begins at page 1358. Do you have it?

**MS. QEDANI MAHLANGU:** Yes, I do.

5**ADV ADILA HASSIM:** Do you have it Ms Mahlangu?

**MS. QEDANI MAHLANGU:** Yes, I have it.

**ADV ADILA HASSIM:** So the relevant part that I would like to take you to, is on page 1365, and it is at paragraph 12 of the policy and what the policy says at paragraph 12 is that:

10“*De-institutionalisation has progressed at a rapid rate in South Africa without the necessary development of community based services. This has led to a high number of homeless mentally ill people, people living with mental illness in prisons and revolving patterns of care.*”

So what the policy is saying is that there is an inadequacy of community-based  
15services for mental health care users. That is what it is saying. You agree?

**MS. QEDANI MAHLANGU:** Yes, I am following. I am following.

**ADV ADILA HASSIM:** Okay, and then at page 1369, it says:

“*These community mental health services will be developed before further downscaling of psychiatric hospitals can proceed.*”

Now given this warning from the policy document and the fact that the NGO's required strengthening, the decision to terminate the contract on the basis, on one reason being de-institutionalisation, did not comply with the principles of the policy, is that not so?

5 **MS. QEDANI MAHLANGU:** Through you Justice. The point I will keep making is that information presented to me at all material times suggested that the NGO's had capacity to do the work. The NGO's had the necessary staff to do the work, and they were being monitored and supported by the department. Of course post the placement of the mental health care users, it turned out that is what was said and  
10 told to me in meetings, was not necessarily the truth.

**ADV ADILA HASSIM:** So you are saying that even though the national policy framework document, it is clear that de-institutionalisation has progressed rapidly and it has been done, basically what the policy is saying haphazardly, there has not been a development of community services before de-institutionalisation takes  
15 place. You were satisfied that that was not the case in Gauteng.

**MS. QEDANI MAHLANGU:** With the information at my disposal at the time, I had a sense that the team knew what they were doing. Moreover, I was working with qualified medically trained people. I had no doubt, I had no reason to doubt the authenticity of their report, as well as what they will say to me. We have checked  
20 this, we have checked that. So I had no reason to doubt or to disbelieve anything I have been given.

**ADV ADILA HASSIM:** So you say it was the officials who misled you?

**MS. QEDANI MAHLANGU:** Yes, because every information I present in any situation, I get it from the officials unless I walk into a hospital or a clinic, I find something to the contrary what I have been given.

**ARBITRATOR JUSTICE MOSENEKE:** Let us put faces to the officials. Who assured you that the NGO's were ready and well resourced to receive mental health care users?

**MS. QEDANI MAHLANGU:** It was in our formal meetings when I asked for meetings to monitor the HOD will be present, if he is not there Dr Lebete, as well as Dr Manamela when they give report and Mr Mosenege as well.

10 **ARBITRATOR JUSTICE MOSENEKE:** So it would be Mr Mosenege, he was the project leader.

**MS. QEDANI MAHLANGU:** Absolutely.

**ARBITRATOR JUSTICE MOSENEKE:** Appointed by you as project leader.

**MS. QEDANI MAHLANGU:** Not, I did not appoint Mr Mosenege.

15 **ARBITRATOR JUSTICE MOSENEKE:** Okay, we will come back to that, and it was the HOD, Dr Selobano.

**MS. QEDANI MAHLANGU:** Yes. In his absence the acting HOD will be Dr Lebete.

**ARBITRATOR JUSTICE MOSENEKE:** And the HOD Dr Lebete, and Dr  
20 Manamela. Those four assured you that the NGO's were well capacitated and ready to receive mental health care users?

**MS. QEDANI MAHLANGU:** Yes. Yes, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Did you scratch any deeper than that, besides their assurances?

**MS. QEDANI MAHLANGU:** Justice Moseneke, as I said and I continue to say. At the time I had no reason to worry much about the concerns. I did not have reason to be concerned about anything. Maybe let me elaborate to give an example.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**MS. QEDANI MAHLANGU:** If someone said or if one CO hospital and say to me we have so many experiencing a challenge in or we are experiencing, what example to give? If for instance the head of trauma, whether be it Charlotte or Chris Hani Baragwanath, they will say to me MEC we are having so many patients we are saying every day and this is the impact or this is the number of staff we have and we are running services absolutely fine. I have no reason to doubt that information, because they are on the ground and I am using that as an example, and I can use many others or we have challenge X, Y, Z and Q. Once they alert me with the challenges I will be able to act on those challenges and ensure that those things are resolved Justice.

**ARBITRATOR JUSTICE MOSENEKE:** You know why Counsel took you to the National Mental Health Policy Framework and Strategic Planning?

**MS. QEDANI MAHLANGU:** Yes. Yes, Justice.

**ARBITRATOR JUSTICE MOSENEKE:** And do you realise why she took you to paragraph 12?

**MS. QEDANI MAHLANGU:** Yes Counsel.

**ARBITRATOR JUSTICE MOSENEKE:** It records in an official policy document, 5that community based services for mental health care users are not sufficiently developed. That is why Advocate Hassim took you there. That does not escape you, does it? Policy tells you NGO's are not ready to receive mental health care users and you on the other hand tell us I had no reason to doubt incapacity. Can you see the tension? You clearly can. I have no doubt in that.

10**MS. QEDANI MAHLANGU:** Yes, yes Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Can you deal with that? That is the invitation. That is the question.

**MS. QEDANI MAHLANGU:** Yes, I can see the inconsistency or the contradiction.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

15**MS. QEDANI MAHLANGU:** However, the point is when you are sitting with competent well qualified officials who have not been employed yesterday, who have been in the system, and frankly speaking I had no reason to doubt their bona fides and the authenticity of the information I am being given. When they say to me we had a transport plan and this is how the patients were transported. This one went 20with their own transport, this one was transported by EMS, I had no reason to doubt that up until I am told contrary information by the Ombud's person who says well,

they were not transported by this, they were transported by this. So in the absence of any contrary information given to me, I would not be in a position to doubt the information that I am being given.

**ARBITRATOR JUSTICE MOSENEKE:** You might miss the point MEC. The enquiry at this stage is about when you made the decision as leader of the collective. Did you have regard to the policy framework that says community based services are not adequately developed?

**MS. QEDANI MAHLANGU:** Yes, yes I was made aware and also it was indicated to me that MEC we are doing everything we can to make sure that indeed we strengthen the NGO's, there is training that is happening and all of that. That was continuously indicated that staff has been trained, the NGO's have been trained. In number of requirements that they need to comply with, including the care to the patients.

**ARBITRATOR JUSTICE MOSENEKE:** And what about the letters of SADAC? They wrote to you and said we have checked the hospitals and there is no capacity in the hospitals. Remember, where we ended on Friday ... [interjects]

**MS. QEDANI MAHLANGU:** Yes, on Monday.

**ARBITRATOR JUSTICE MOSENEKE:** On Monday.

**MS. QEDANI MAHLANGU:** Yes Justice.

**ARBITRATOR JUSTICE MOSENEKE:** SADAC wrote to you and told you there is no capacity and blow by blow every hospital that your people were relying on, and

you said call our lawyers, they are dishonest. That is really what the Advocate is talking to you about, and I know you can and please deal with that.

**MS. QEDANI MAHLANGU:** Justice, adding correspondence that I will get or I receive via email or by being delivered in my office, whether I had seen it or not 5seen it, but we ensured through my office and myself that every correspondence is sent to the HOD for action. Meaning that because I am not the Administrator, these things must be responded to by the HOD, and in some of the documents there is where the HOD is responding to those concerns and to the issues. Assuring, and when I read the document it assures me that this has been done, this has been 10done, this has been done, and in the absence of politicians, their responsibility is defined to a certain extent and administrative responsibilities are being done by professionals, by people who know the law and the frame work of the existence and the mandate of the department concerned.

**ARBITRATOR JUSTICE MOSENEKE:** Ms Mahlangu, you know SADAC writes to 15you and tells you of the dangers. Counsel will go to many other people who have done that. Here are red lights flashing. There is no capacity for mental health care users, and why is that an assurance that everything is in order for Life Esidimeni to be shut down? I do not understand that. Do you get my difficulty? Professionals warn you there are difficulties at hospitals you rely on. Policy framework warns you 20community based services are not well developed, and you still decide to shut down Life Esidimeni? That calls for an explanation.

**MS. QEDANI MAHLANGU:** Justice Moseneke, the same professionals I work with say to me everything is well.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel?

**MS. QEDANI MAHLANGU:** So, and I think it is important for us to really understand my role or of any politician in any of the government executive as well as that of administrative processes in any government department.

5**ADV ADILA HASSIM:** Thank you Justice. Ms Mahlangu, your response regarding your role as a politician and letters that are sent to you, are you saying that there is no point writing to you, that the public should not engage you directly?

**MS. QEDANI MAHLANGU:** When the public, sorry.

**ADV ADILA HASSIM:** Yes. You can answer that.

10**MS. QEDANI MAHLANGU:** No, no you can finish. Sorry. Sorry for interjecting.

**ADV ADILA HASSIM:** The question is are you saying that the public should not write to you and engage you directly, because you are merely the politician?

**MS. QEDANI MAHLANGU:** Thank you Counsel. When the public writes to me, which I always encourage, at all material times, in any department where I have  
15served, I will take the, I will refer the issue to a specific official or if it is a clinic I will ask the clinic head to deal with the matter and provide the telephone number of the person concerned, and encourage the person please call me back if indeed you  
continue to encounter problem. So in resolving the problem, I would not resolve them myself personally in terms of going to the pharmacy and taking the  
20medication. Instead I will make sure that if a person complains about medication, those issues are resolved. Specifically relating to the concerns you are raising.

Each correspondence I receive that I have knowledge of and that I have seen, I had referred those correspondence to the HOD who is the head of department. HOD, please and the please in some of the emails suggest that I was appealing that for urgency that the issues must be attended to as soon as possible.

5 **ADV ADILA HASSIM:** Are you saying that your response to the SADAC letter and the concerns was a request to the officials to address the concerns?

**MS. QEDANI MAHLANGU:** Absolutely.

**ADV ADILA HASSIM:** And the lawyers were required for that?

**MS. QEDANI MAHLANGU:** Counsel, I explained the angle of the lawyers.

10 **ADV ADILA HASSIM:** Okay. So you say the lawyers were required in order to engage with civil society?

**MS. QEDANI MAHLANGU:** I did say to you Counsel, through you Justice Moseneke. That things the way things were working in the department, it became difficult to understand what is going where and how. For instance, there is a copy of 15 sms's I found yesterday, as I am trying to search for answers of some of these things, particularly the emails that refers, which I said these NGO's are dishonest. This is a context. So in engaging with this process throughout, and I think there is a trail of emails. You will see it in the files that is still to be considered. You get an email today, someone replies. You get an email today, someone replies. So in a 20 day there will be about three or four emails, and then tomorrow an email comes. Is the meeting confirmed, not confirmed to discuss the said issues. Saturday. Is the meeting confirmed or not confirmed or whatever. So, and I see the correspondence

between the HOD and Dr Manamela and I cannot remember the person from Section, SADAC or Section 27, and finally the meeting take place. Of course I am in the legislature. So in that process there is a lot of issues that arises that sometimes became difficult to appreciate in the sense that the sms I am referring to for instance which happened much later, and I beg your indulgence Justice, to explain. A WhatsApp group is created and family members are asked to participate and give information in that WhatsApp group is created by Section 27, and family members are asked to say please say the following to this, that the Department of Health they did this and that. This is possibly what you can say in that as a response to this question.

**ARBITRATOR JUSTICE MOSENEKE:** Was this a WhatsApp in which you were part of the group?

**MS. QEDANI MAHLANGU:** No, I was not part of the group. I have got to be informed about it, and for whatever you are wanting to raise as a concern in response to the guide we have given you, please send a message to this number and probably the police can look at whose number that is and whatever else, and or the appropriate person can look at that.

**ADV ADILA HASSIM:** Justice ... [interjects]

**MS. QEDANI MAHLANGU:** So when all of those things are happening and many others, it then becomes difficult to know who you are working with, who is genuinely working to support what you are doing and who is genuinely not in the interest of what you are trying to do. So that is a context Justice. I had no malice intention of

whatever kind to anybody or to be dishonourable. Particularly because here we are dealing with a very sensitive issue of where families have lost their loved one.

**ARBITRATOR JUSTICE MOSENEKE:** Fair enough. Let us go back to the issues that Counsel has been canvassing with you. Have you thought the night before and yesterday why would Dr Selobano give you false assurances? Have you thought why as HOD he would lie to you outright?

**MS. QEDANI MAHLANGU:** I do not know senior, Justice. I have been thinking about this not only from yesterday. I have been thinking about this ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Sorry, let us hear the answer please. Let us go quiet. Yes.

**MS. QEDANI MAHLANGU:** This has preoccupied my mind for the longest of time, and even today I still do not have the answer, because I have great respect for Dr Selobano, and I regarded him as a highly qualified professional who became an Administrator who knew what he was doing. So I had no doubt or any reason to believe otherwise whatever he was telling me.

**ARBITRATOR JUSTICE MOSENEKE:** It will be put to you later and if they do not, I will. Passages from his evidence where he says you drove the marathon project. You made the decision, he does also say within the collective, but you were the driver and there were constant reports made to you about what was happening. Why would he tell an untruth like that?

**MS. QEDANI MAHLANGU:** The reports I have at my disposal which were presented in meetings, were indicated that things were going okay, and patients or

mental health care users are being placed in appropriate NGO's and again Justice, I had no reason to disbelieve the HOD.

**ARBITRATOR JUSTICE MOSENEKE:** Okay. Let us take Mr Mosenege. Mr Mosenege says he pleaded with you, he wrote a letter to you. He pleaded about 5Baneng which was in line to be shut down and actually wrote to you, telling you it will be dangerous to shut down Life Esidimeni in that short time and to shut down Baneng completely. Do you remember that kind of communication from him to you?

**MS. QEDANI MAHLANGU:** Through you Justice Moseneke.

10**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**MS. QEDANI MAHLANGU:** I do not remember the said communication. Reason being on the 3<sup>rd</sup> of February, because his email is written on the 6<sup>th</sup> of February 2016, on the 3<sup>rd</sup> of February I was hospitalised at George Mukhari Hospital. His email is written for the 6<sup>th</sup> of February. I was booked of leave and you can check 15the records with George Mukhari. If you need to see the file, you can see the file and on, when I was discharged from George Mukhari, I had difficulties with my lower back. I went to Chris Hani Baragwanath and I did an MRI. Again I have a file at Chris Hani Baragwanath. You can check that and I continued to consult respective doctors at, dealing with pain management at Chris Hani Baragwanath as 20well as Helen Joseph, a specialist there. So the email concerned from Mr Mosenege, I saw it when Advocate Ngutshana gave me the document. I do not remember the email. However, I do remember a discussion in the meeting. I think

it was March if I am not mistaken. That when, I think it was before March because we extended the contract after that meeting, and the discussion in the meeting was about there is no facility in Gauteng that can accommodate the children who are at Baneng. We took, it was discussed in a meeting and we agreed that we are not going to move the children from Baneng. On the basis of that, we also on the same meeting we agreed after discussion that we will extend the contract. Instead of ending on the 31<sup>st</sup> of March, it will end on the 30<sup>th</sup> of June.

**ARBITRATOR JUSTICE MOSENEKE:** Do you know why he would be, he says he was scared of you and he said you were the driver and you were prepared to agree to only Baneng being not shut down. Why would he be untruthful about your role? Do you know?

**MS. QEDANI MAHLANGU:** Justice, maybe I do not know why would someone whom I was working with, every day they come or every time when we have a meeting they come to meetings, and all of a sudden they say they were scared of me.

**ARBITRATOR JUSTICE MOSENEKE:** Did you see the passages of the evidence of Dr Manamela about you?

**MS. QEDANI MAHLANGU:** I read Mosenege and I read the HOD, and Dr Manamela about being fearing me and that I pushed them around to do things.

**ARBITRATOR JUSTICE MOSENEKE:** And you were the driver, you were the decision maker and they had to take instructions from you. You saw that? She says so.

**MS. QEDANI MAHLANGU:** Justice Moseneke ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** No, but did you see that that is her evidence?

**MS. QEDANI MAHLANGU:** Yes, I saw that.

5**ARBITRATOR JUSTICE MOSENEKE:** Why does she, why is she untruthful?

**MS. QEDANI MAHLANGU:** I do not know, because when we sat in meetings presentations are made and we take decisions. For instance, Baneng were taken in the same meeting where supposedly people are fearing me. They raised it in a meeting, and supposed the issue of extending the contract was raised in the same 10meeting and we extended the meeting. If it may suit you, probably you may call the other Managers who sat in the meetings, who necessarily may not have been doctors. Our communications team and our medialising team, because they sat throughout the meetings. At no stage did I sense or have a suspicion that people are afraid of me. I know myself to be a very warm person. So I am not sure when 15there is an impression that the official concerned are afraid of me. I am not sure Justice. I cannot describe that honestly.

**ARBITRATOR JUSTICE MOSENEKE:** [Vernacular 01:15:45]. If you want to continue screaming and you are identified, it might not be pleasant please, because we will have to ask you to leave. I really ask you again the witness is entitled to 20give her answers, because she is being asked questions. So please keep your responses and anger inside you. We have to make progress. Counsel?

**ADV ADILA HASSIM:** Thank you Justice. If it would assist the process, I do intend to raise some of the questions you have asked with references to the record, and it might make it easier for the witness to answer.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

5**ADV ADILA HASSIM:** If I may come to that.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, indeed. You should go to that some time. There is a very high level question about why all these people would blame the former MEC.

**ADV ADILA HASSIM:** Yes.

10**ARBITRATOR JUSTICE MOSENEKE:** But there is a lot of detail there and you can go to it, please. Thank you.

**ADV ADILA HASSIM:** We were discussing the reason for the termination of the contract, and we were discussing the policy of de-institutionalisation and the warning in the national policy document, and of course there were letters to you. Did  
15you say to any of your officials that no patient should be moved until such time as the NGO's are ready?

**MS. QEDANI MAHLANGU:** That was an assurance we gave throughout the meetings. Not only should the patients not be moved till they are ready, that patient must have the records or the patient files and that they must also be assessed by  
20medical doctors, both the psychiatrist as well as medical doctors.

**ADV ADILA HASSIM:** But that assurance was not, that assurance was not given effect to, is that not so, because we know that they were moved without clinical files and to NGO's that were not ready?

**MS. QEDANI MAHLANGU:** Now I know that is what happened, but in the 5documentation and information I have before me, and that was presented before me, suggested that patients were assessed, patients were seen by doctors and I even remember saying in a meeting, actually one of the doctors and I saw it in my conversation, in my presentation to Professor Magoba, that some of the doctors would have suggested that the mental health care users, there must be a face in 10and out process. There must be a weekend to be taken to the new place where they are going to go and they must be brought back to the old institution and they must be taken back again so that they can be familiarised with those. I remember us discussing those issues and emphasising to the ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** But former MEC ... [interjects]

15**MS. QEDANI MAHLANGU:** Please attend to those issues.

**ARBITRATOR JUSTICE MOSENEKE:** I am sorry to interrupt you, but the core question is now we know the assurances were never kept. The answer should be yes, now we know, is it not?

**MS. QEDANI MAHLANGU:** Yes Justice.

20**ARBITRATOR JUSTICE MOSENEKE:** We are not trying to blame you now. We just want to get the facts on record. Now we know whatever they promised you it did not happen, because 143 people dies.

**MS. QEDANI MAHLANGU:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** And another 1400 were under severe trauma. Is that not the answer, yes you know?

**MS. QEDANI MAHLANGU:** Yes, that is correct.

5**ARBITRATOR JUSTICE MOSENEKE:** Ja.

**ADV ADILA HASSIM:** Thank you, and one of the purposes of de-institutionalisation we are still there, is also to reintegrate mental health care users into the communities, into their communities. Is that not so?

**MS. QEDANI MAHLANGU:** Yes, it is.

10**ADV ADILA HASSIM:** Which would mean placing them close to their communities and families.

**MS. QEDANI MAHLANGU:** Yes.

**ADV ADILA HASSIM:** And that did not take place, is that not so?

**MS. QEDANI MAHLANGU:** Yes, I came to understand that is the case. May I  
15elaborate Justice?

**ARBITRATOR JUSTICE MOSENEKE:** Yes, very briefly please. Yes.

**MS. QEDANI MAHLANGU:** From what I was informed, we moved patients from three institutions to 27 odd institutions, and that gave me comfort when they say MEC, we have moved people from three institutions to 27 institutions across the  
20province, but mainly in Tshwane. So I had no reason to believe that patients were

moved concentrating one place, because if you move, common sense tells me that from 3 to 27 it is good progress. However, I do note that when I went to Suurman on I think it was on the 18<sup>th</sup> or so of September, there was a family who came to visit their relative and they complained about the distance, and I asked the officials to assist the family to relocate the mental health care user closer to Soweto, and the patient concerned, the mental health care user said he is not wishing to go, he is happy with the company of the people that was there. So I tried my best to assist, to ask officials to make sure that family members, mental health care users are closer to families. Where I was alerted Justice that people were too far and the families needed assistance, I intervened and I asked the officials to move the patient back closer to their families.

**ADV ADILA HASSIM:** Did you ask the officials, apart from that individual circumstance where the complaint is made to you, did you then say to the officials it would appear that there is non-compliance with the policy, because patients are being placed far from their families? Did you then, did you then say to them that they should ensure that the remainder of the patients, to ensure that they are placed close to their families?

**MS. QEDANI MAHLANGU:** Yes, I did that.

**ADV ADILA HASSIM:** Not only in the individual cases that were brought to you.

**MS. QEDANI MAHLANGU:** I did ask officials, from time to time, particular post the September period, that can you please make sure that where families, relatives are far from the venues, let us make sure that they are brought closer.

**ADV ADILA HASSIM:** You say in the post September period.

**MS. QEDANI MAHLANGU:** Yes. Maybe just let me elaborate.

**ADV ADILA HASSIM:** I just want to understand before you elaborate. Post September 2016?

5**MS. QEDANI MAHLANGU:** I am saying once I found that the 27 NGO's did not cater for the close proximity to the families, I asked them to re-assign and continuously engage with the families, particularly to make sure that they know their loved one has been moved from one place to the other.

**ADV ADILA HASSIM:** In the post September period, can you clarify? You are  
10talking about post September 2016?

**MS. QEDANI MAHLANGU:** I forgot now. Can you, I forgot the context.

**ADV ADILA HASSIM:** That is why it helps if you answer the question when I ask it. There were many people who were placed far from their families. Reverent Mabwe spoke about being, having to travel 130 kilometres. Ms Corlett had to travel  
15100 kilometres. Jabulilo Hlatswayo had to travel 120 kilometres. Did you know, did you know of these particular patients who were far from their families?

**MS. QEDANI MAHLANGU:** I would not be able to know each and every one of them Justice. However, again I repeated to the officials please, engage with the families. Where there are great concerns, please make sure that their concerns are  
20taken into account, and I also was informed that Masigo was the only NGO accommodating ... [inaudible] mental health care users. Hence every patient who

needed ... [inaudible] care and who is a mental health care user needed to be taken to Masigo. That was what I was told when I asked about Masigo specifically, because I found more or less people of the same condition in that regard.

**ADV ADILA HASSIM:** In any event there was not compliance with the policy in that regard, correct? There was not compliance with the policy. Can we just agree on that?

**MS. QEDANI MAHLANGU:** I am saying the aspects of the policy in relation to, I am saying Counsel when you, my impression was when you move people from three institutions to 27, you are dealing with proximity, because even at Waverley, when the mental health care users who were at Waverley, the mother will move from Mamelodi to go to Germiston and the transportation, there were a lot of difficulties. So I was under the impression that 27 NGO's were accommodating and responding to those issues. However, I do know now that not everyone was accommodated closer to their families.

**ADV ADILA HASSIM:** And that was in violation of the policy. Yes.

**MS. QEDANI MAHLANGU:** Pardon?

**ARBITRATOR JUSTICE MOSENEKE:** Taking patients far away from their homes and their loved ones, was in violation of policy and Counsel wants to know if that is so.

**MS. QEDANI MAHLANGU:** I suppose to Justice.

**ARBITRATOR JUSTICE MOSENEKE:** It is obviously so, not so?

**ADV ADILA HASSIM:** You suppose so.

**ARBITRATOR JUSTICE MOSENEKE:** It is obviously so. I mean if you de-institutionalise and want to get people closer to their communities and their families and you take them 130 kilometres away, that is inconsistent with policy. That is quite obvious, is it not Ms Mahlangu?

**ADV ADILA HASSIM:** Ms Mahlangu, you say that the other reason for the termination of the contract was cost saving, and we have had regard on several occasions now to a report by Professor Freeman, and I would like you to have a look at it. It is in the exhibits bundle, ELAH2 and it is Annexure 4B.

10**ARBITRATOR JUSTICE MOSENEKE:** You can take that away, thank you.

**ADV ADILA HASSIM:** You have got it. Annexure 4B, ag sorry 4A. Brief report with respect to closing of Life Esidimeni in Gauteng is the title.

**MS. QEDANI MAHLANGU:** This is the Ombud's report.

**ADV ADILA HASSIM:** 4A, and after the four bullet points, Professor Freeman, he refers to research and he agrees that de-institutionalisation is a good practice, but in the second sentence he says:

*“However, de-institutionalisation should NOT be used to save money as this inevitably results in people with mental illnesses being further abused, increase hospital admissions for acute care and early mortality.”*

20Do you agree with that?

**ARBITRATOR JUSTICE MOSENEKE:** Let us find out if the witness have found the passage. Have you found the passage you are being referred to?

**ADV ADILA HASSIM:** Have you found the passage Ms Mahlangu?

**MS. QEDANI MAHLANGU:** Yes, I have.

5**ADV ADILA HASSIM:** So do you agree with that?

**MS. QEDANI MAHLANGU:** Can you allow me to read it?

**ADV ADILA HASSIM:** I will read it to you again:

*“However de-institutionalisation should NOT be used to save money as this inevitably results in people with mental illness being further abused, increased  
10hospital admissions for acute care and early mortality.”*

**MS. QEDANI MAHLANGU:** Okay, thank you Counsel. I do not think that at the time anyone in the department thought that there was going to be loss of life. At least not me, not the HOD, not anybody. I do not think anyone of us sat and said this was going to result in the loss of life. Indeed it is regrettable that people,  
15families have lost their loved one, but it was not, it is the unintended consequences of implementing the policy or the decision incorrectly. So and the point is fair, and it is a genuine point.

**ADV ADILA HASSIM:** Do you agree with the point?

**MS. QEDANI MAHLANGU:** Yes, but I contextualise my answer to that there  
20Counsel.

**ADV ADILA HASSIM:** He goes on to say:

*“The principle that should be adopted is that the money used for persons care in an institution must follow the patient into the community.”*

Do you agree with that?

**MS. QEDANI MAHLANGU:** Yes, I agree and I also, Professor Freeman also, I remember I saw him yesterday briefly, on Monday. You will remember my conversation with him and the officials in the department, that we should look at increasing or re-adjusting the tariff that the NGO’s were being given by government. That is something that we had discussed with Professor Freeman and the officials in the department.

10 **ADV ADILA HASSIM:** And can you turn over the page and have a look at page 86? Right at the bottom of the page. It us under the heading the current situation in Gauteng. By five lines from the bottom of the page, Professor Freeman says:

*“From what we understand, NGO’s that could potentially take on more patients, are not currently prepared for additional numbers, and even if the subsidy was paid, 15 there are questions about the sufficiency of the amount and the ability of the NGO’s to take patients without adequate accommodation available staffing, and so forth.”*

What do you say to that? Do you agree with it?

**MS. QEDANI MAHLANGU:** Okay. So one of the things Justice that we, and may I just beg for your indulgence?

20 **ADV ADILA HASSIM:** Could you just first say whether you agree?

**MS. QEDANI MAHLANGU:** Justice, may I please be given an opportunity to explain?

**ARBITRATOR JUSTICE MOSENEKE:** Yes, but it is a fair request. A passage is put to you, of Professor Freeman, and you MEC health, it is important for us to know whether you agree with the views, and then you could say but we did it differently, but whatever. But for starters, do you agree with those views? Please take time and read them again.

**MS. QEDANI MAHLANGU:** Okay, thank you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

10 **MS. QEDANI MAHLANGU:** For giving me a moment. I think the first sentence I fully agree with that, and then I come to the second sentence, I also ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** The second one is the one that starts from what can ... [interjects]

**MS. QEDANI MAHLANGU:** The NGO's will be requested to take on the  
15 community care of patients as far as possible.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**ADV ADILA HASSIM:** Sorry, I do not know where are you reading? Okay, the second sentence of that paragraph.

**MS. QEDANI MAHLANGU:** And from what can be established ... [inaudible]  
20 patients will be given disability grants currently at R1 420-00. As far as I understand this and I think probably colleagues from the department can clarify this. Justice, as

far as I understand how the social grants work, is that once a person is institutionalised, that grant ceases to be given to the person directly, but it is given to the allocated, to the institution where that person is. On the basis of that then the government tariff or subsidy than tops up that kind of, the funding that comes with that and I know examples of my family members who also ended up needing to be cared for in homes. That was the scenario in that instance. The additional amounts to NGO's as I said earlier, that I had a discussion with Professor Freeman. Myself and Dr Manamela and I think Hannah was present. We were doing one of the walkabouts. If I am not mistaken it was Suurman. We agreed, or it was Sterkfontein. That there has to be an increment in looking at additional resources that must be given to NGO, because the tariffs that they were given on monthly basis per patient was not sufficient for them to care enough, and in addition to that, the issues of staffing, I also discussed it with Dr Freeman. Was that issues relating to staffing, particularly to professional nurses, it was important that government should consider employing those qualified nurses to be employed, and the to be delegated ... [interjects]

**ADV ADILA HASSIM:** Sorry Ms Mahlangu, I am not sure which question you are answering now.

**MS. QEDANI MAHLANGU:** I am dealing with this paragraph and I am giving the broader context relating to this issue.

**ADV ADILA HASSIM:** Well no, you are not answering the question still.

**MS. QEDANI MAHLANGU:** I did.

**ADV ADILA HASSIM:** No, you did not. I asked you, I read it twice to you. From what we understand NGO's that could potentially take on more patients are not currently prepared for additional numbers and so on and so on and I asked you whether you agree with that view of Professor Freeman.

5**ARBITRATOR JUSTICE MOSENEKE:** That is the last question in that passage, and the question is do you agree with that observation by Professor Freeman?

**MS. QEDANI MAHLANGU:** But I thought Justice, I have gone sentence by sentence. I thought I had answered it.

**ARBITRATOR JUSTICE MOSENEKE:** Okay.

10**MS. QEDANI MAHLANGU:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** But we have not reached that particular sentence.

**MS. QEDANI MAHLANGU:** Oh, so I was still going there.

**ARBITRATOR JUSTICE MOSENEKE:** Oh, are you going there.

15**MS. QEDANI MAHLANGU:** When I was disrupted.

**ARBITRATOR JUSTICE MOSENEKE:** Very well. Okay, let us get there.

**ADV ADILA HASSIM:** I am not asking you questions about other parts. I am asking you if you eventually get there for some reason you may, but I am asking you ... [interjects]

**MS. QEDANI MAHLANGU:** It is important Counsel, because these things are not in isolation. They all go together.

**ADV ADILA HASSIM:** But you do need to answer my question before you go elsewhere, please.

5**ARBITRATOR JUSTICE MOSENEKE:** The question relates to from what we understand, from that sentence.

**MS. QEDANI MAHLANGU:** So based on the facts, on the things up until I left on the 1<sup>st</sup> of February, so this will be the, if this was drafted at the time, I think it is correct. I do not know now what the situation is and I have no authority to speak  
10about it.

**ADV ADILA HASSIM:** Thanks. Thank you. So if we could turn over, and this is the last aspect of this report that I wish to put to you, and it is in the second paragraph of page 87, and it begins with the second sentence:

*“While Gauteng health have said that some provision would be made for funding of  
15community care, they have also said that they cannot afford Life Esidimeni, and therefore the principle that the money should follow the patient into the community, will it appears, not be followed.”*

So we have discussed the principle of the importance of the money following the patient. You said you agree with that.

20**MS. QEDANI MAHLANGU:** Ja.

**ADV ADILA HASSIM:** And what do you say to this, because it seems obvious is it not, that if you cannot afford R320-00 per patient, the money would not follow the patient into the community.

**MS. QEDANI MAHLANGU:** As far as I understand, through you Justice, and I do not know the actual details, whatever nitty gritty of those nuts and bolts. The department, if you look at the, or one of the documents that I have here, I think you may have it in one of the files that talks about the budget over a period of five years that the Department of Health was spending relating to Life Esidimeni and I beg for indulgence Justice Moseneke. In 2011, 2012 the department would allocate 194 million. It would spend 209 million. Throughout these years there was over expenditure. In 2012, 2013 it will be 203 million budgeted. The expenditure will be 224 million and so forth. The figures are here in black and white. So what is my point? When the matter comes before, let me just finish all the numbers. In 2013, 2014 the budget would have been 213 million, and the department will spend 234 million. 2014, 2015 the expenditure would have been 250, budget will be 251 million, building into what would have been spent in the previous financial year, add inflation then expenditure jumps into 353 million and then in 2015, 2016 when we started managing the process and managing the contract in that sense, the budget was 265 million but we spent 176 million. What am I driving at is that indeed money must follow function and that is government policy throughout, but because of the competing needs across the system, in my presentation on Monday Justice Moseneke, I spoke about the robbing ... [inaudible], and that is just a difficult position that the CFO of the Department of Health find them and the HOD find

themselves under those circumstances that in many instances they have to move the budget around. Yes, I agree with the principle that money must follow function and it is a noble principle, however with the budget constraints and that we are facing during this period, and I do not know now ... [interjects]

5 **ARBITRATOR JUSTICE MOSENEKE:** But did money follow the patient in the marathon project?

**MS. QEDANI MAHLANGU:** As far as I am concerned, resources were allocated. Including appointment of staff. I do not know actually exact amount of money ... [interjects]

10 **ARBITRATOR JUSTICE MOSENEKE:** No, in real terms. Knowing what you know now, did that principle set out there by Professor Freeman which you acknowledged properly so, did the money follow the patients?

**MS. QEDANI MAHLANGU:** I do not have the 2016, 2017 budget. I do not know how much was spent on the NGO's.

15 **ARBITRATOR JUSTICE MOSENEKE:** No, knowing what happened at the NGO's now, did the money follow the patients?

**MS. QEDANI MAHLANGU:** Justice, I will not answer with authority.

**ARBITRATOR JUSTICE MOSENEKE:** Were nurses appointed and paid for this? Was there medication that followed the patients? Were the NGO's adequately  
20 resourced financially? Were they paid while the patients were there? We have

facts on those things. We do not need the facts from you, we know already and you know by now. Did the money follow the patients?

**MS. QEDANI MAHLANGU:** I am not sure Justice. I am not sure.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel.

5**MS. QEDANI MAHLANGU:** I do not have the figures in front of me, so I do not want to sit here and lie to you.

**ADV ADILA HASSIM:** Thanks Justice. What we do know is that the government was spending R320-00 per patient per day at Life Esidimeni, and then through the marathon project opted to spend R112-00 per patient per day for those patients who  
10were being moved to NGO's, and as a result health services that patients had been receiving, they no longer received. Is that not so?

**MS. QEDANI MAHLANGU:** The issues of food, I know that those were the concern and the expenditure you are referring to it is accurate, but I do know that government continued to supply medication as they were doing when the patient  
15were still at Life.

**ARBITRATOR JUSTICE MOSENEKE:** But deal with the question. The drop in number in cost per day per patient, do you concede to that as accurate?

**MS. QEDANI MAHLANGU:** I think so Justice.

**ADV ADILA HASSIM:** Regarding the reason for the termination as being a cost  
20saving measure, you had reported to the legislature that 416 patients would go to Weskoppies, but we know that at Weskoppies it would cost R1 960-00 per patient

per day. So that would not have been a cost saving. It would have been actually six times more. Is that not so?

**MS. QEDANI MAHLANGU:** Counsel, I do not know what it cost to look after what patients. So I trust, I trusted that when the official said someone must go to 5Weskoppies and the expenditure is high and remember Weskoppies, the expenditure will be high in the sense that it is a training platform. You have academics being trained at Weskoppies. Similarly when I go and get flue treatment at Charlotte and or I go to the clinic, it will be expensive for me to be treated at Charlotte for flue than to go to a clinic and be treated there. So that is the difference 10for patients who are at Weskoppies, vice versa those who will be at Cullinan. So that is my understanding of the costs of the different hospitals and why it will be expensive in an academic hospital and it will be cheaper in a district or at the clinic level.

**ADV ADILA HASSIM:** Thanks. I am not comparing the hospitals just yet, I am just 15comparing what was being spent on the patients at Life Esidimeni and then the transfer to Weskoppies where you would be paying six times more. So there are many reasons why it is that expensive, and they may be very good reasons as you are trying to tell us, but that is not what I am talking about. I am talking about the mere fact that it was much more expensive.

20**MS. QEDANI MAHLANGU:** Simply because Weskoppies is an academic platform, and it is an academic institution. Therefore it will be expensive to care for anybody, whether you have got ... [interjects]

**ADV ADILA HASSIM:** So you did not save costs. In other words you were not saving.

**MS. QEDANI MAHLANGU:** But it means those patients needed to be cared for in terms of the assessment of the professionals, the clinicians. They made a determination that those mental health care users were fit to be treated at Weskoppies or at Sterkfontein in particular.

**ADV ADILA HASSIM:** So there were not actually those users had to be moved from Life Esidimeni not because of the termination of the contract anyway, it is because they needed to be institutionalised at Weskoppies.

10**MS. QEDANI MAHLANGU:** They needed to be given better care and I think Weskoppies became an appropriate fit for them to be taken there and the cost is associated with the calibre of medical professionals you will find in an institution like Weskoppies, Sterkfontein or as well as Chris Hani Baragwanath or Charlotte.

**ADV ADILA HASSIM:** So the reason then for moving the patients is because they  
15needed to get better care, you say.

**MS. QEDANI MAHLANGU:** Yes.

**ADV ADILA HASSIM:** So then the reason for terminating the contract with Life Esidimeni is because the patients were not receiving adequate care at Life Esidimeni. Is that what you are now saying?

20**MS. QEDANI MAHLANGU:** You know Justice, may I present to you a document that I would like us, with your indulgence ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**MS. QEDANI MAHLANGU:** I beg you to allow me to submit it as evidence.

**ARBITRATOR JUSTICE MOSENEKE:** Is it a document in the files which are ...  
[interjects]

5**MS. QEDANI MAHLANGU:** It is in the files that my Counsel was referring to.

**ARBITRATOR JUSTICE MOSENEKE:** On what page in the file is it? You can just identify it. You can just identify it.

**MS. QEDANI MAHLANGU:** Just give me a few minutes.

**ARBITRATOR JUSTICE MOSENEKE:** The date and the title.

10**MS. QEDANI MAHLANGU:** I think it will be Annexure I of the documents that I have before me.

**ARBITRATOR JUSTICE MOSENEKE:** Yes. So it is Annexure I to your main statement that you read in?

**MS. QEDANI MAHLANGU:** No, no, no Annexure I in my files, in the indexation  
15that has been done by ... [interjects]

**ARBITRATOR JUSTICE MOSENEKE:** Yes, and what part of that ... [interjects]

**ADV ADILA HASSIM:** Could I ask that the witness please answer the question and if she, the question does not need a document to answer. If she wishes to explain, I have no objection to that.

**ARBITRATOR JUSTICE MOSENEKE:** I understand that, but the witness believes it needs reference to a document. So we are not going to limit the witness in that regard. In the answer she thinks must be sourced from a document, let us allow her to look at the document and give you the answer. I am not going to stop her from referring to the document at this stage. I would like her to identify the document, and then answer you in relation to the document. Ms Mahlangu, what is the name of the document and what is the date, and is it in the bundle that your lawyer circulated this morning?

**MS. QEDANI MAHLANGU:** Okay. Yes Justice, it is in the bundle that was referred to.

**ADV ADILA HASSIM:** And what page of the bundle please?

**MS. QEDANI MAHLANGU:** It will be page 239 and I am not referring the whole of that, and the issue here, I am referring to really the assumption Counsel is no, no not the answer.

**ARBITRATOR JUSTICE MOSENEKE:** Let me tell you what. It is 11H29. So I am going to take the tea break now. Again impress on your Counsel they must have a discussion with Advocate Ngutshana so that it must be easier for us to identify the documents. They know. They know what the procedure is in an arbitration or a court. Documents are handed up in a particular way that has not been complied with, but they must work in the next 30 minutes and try and make it easy for us to access the documents. Whether or not they will form part of the evidence is a decision that is made by the triad of facts at the end of the hearing. So I would like

this documents to be systematised in a way that will make reference to them easier and you have 30 minutes in which to deal with that issue. Any comment from Counsel? I want to take the tea break now.

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

**5 ARBITRATOR JUSTICE MOSENEKE**: And we resume at twelve o'clock. We are adjourned.

## SESSION 2:

**ARBITRATOR JUSTICE MOSENEKE:** Thank you, you may be seated. You are still under your previous oath to tell the truth. Is the documentation issue resolved?

**ADV PATRICK NGUTSHANA:** Justice Moseneke we have identified the 5 documents, there's a lot of duplication, but the difficulty that we have is that in some of the duplication, the documents are slightly different as was picked by some of our colleagues, but we have decided in the meantime, so as not delay these proceedings that we admit the file because it's paginated from page 1 to over 400 pages as an LR(?), that is one, those documents will be provisionally admitted, we 10 will debate the admissibility at a later stage so that we don't delay the proceedings.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, very well. I think that's a fair arrangement are all counsel part of this agreement?

**ADV ADILA HASSIM:** I confirm Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, I can see.

15 **ADV ADILA HASSIM:** Thank you Justice, I confirm that is the arrangement, my only respectful request is that in the process of cross-examination... let me start with saying that the reason we agreed to that is because we would like to get as full and complete answers as possible in the interest in of justice and so it's for that reason that we agreed to the provisional admission of the documents.

20 But the witness has had an opportunity to provide her evidence in chief and so my respectful request is that during the process of cross-examination that references and diversions are kept to a minimum.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, we shouldn't be bogged down in paperwork when we have had evidence in chief, I understand (intervenes). I think that is quite a legitimate point to raise, anything more counsel? Advocate Groenewald, no.

5 **ADV GROENEWALD:** We confirm the arrangements thank you Justice

**ARBITRATOR JUSTICE MOSENEKE:** You are just worried that you waiting too long, right?

**ADV GROENEWALD:** Indeed so Justice.

**ARBITRATOR JUSTICE MOSENEKE:** You are in your box so he wants to get  
10 into the ring and you have been kept too long in the corner? Okay, advocate  
Nugtshana

**ADV PATRICK NGUTSHANA:** Thank you Justice we are indebted to our colleagues for making the arrangements. It is in order.

**ARBITRATOR JUSTICE MOSENEKE:** Yes very well thank you. That will be LR  
15 what?

**ADV PATRICK NGUTSHANA:** It shall be LR 132 Justice Moseneke.

**ARBITRATOR JUSTICE MOSENEKE:** And is it this one or that one? That one? And consequently each of the... each annexure will be referred to as annexure 1 of LR1.

20 **ADV PATRICK NGUTSHANA:** Correct that's a...

**ARBITRATOR JUSTICE MOSENEKE:** LR143 or 32?

**ADV PATRICK NGUTSHANA:** 132.

**ARBITRATOR JUSTICE MOSENEKE:** 132 thank you. You may proceed advocate Hassim.

**CROSS-EXAMINATION BY ADV HASSIM CONT.**

**ADV ADILA HASSIM:** Thank you Justice. Ms Mahlangu I was... we left off, when 5we left off I was asking about the issue cost saving um, we discussed the institutionalisation, and that it's not cost saving measure, we were talking about the plan to move 416 patients to Weskoppies at a cost R1 960.00 per patient per day and I put it to you that this was six times more than the cost at Life Esidimeni and therefore it wasn't a cost saving exercise and I asked for your response to that.

10**MS. QEDANI MAHLANGU:** Thank you counsel, through Justice Moseneke indeed if you look at the numbers and absolute at you put them the 1000 figure you mentioned it is higher, may I give context Justice through you. Weskoppies is an academic hospital.

**ARBITRATOR JUSTICE MOSENEKE:** You see before you go the context let me 15tell what counsel is trying to get at, is the say the reasons underlying the decision are not valid reasons. In other words, you told us this is cost saving measure: if we look at the numbers we are going to pay more. In essence that is what it is ease, so we could add a lot of words to it but she's really saying, counsel is saying, you told us you made the decision as part of the collective to save costs, but in fact the plan 20shows that you are going to spend more money, that is the issue that you should grapple with.

**MS. QEDANI MAHLANGU:** Through you Justice Moseneke may I just be given an indulgence to explain that.

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**MS. QEDANI MAHLANGU:** In any service that is provided there will always be cross subsidisation principle, what do I mean by that even at Life. Banning was cross-subsidised by the rest of the other homes or facilities that were providing the services because when we said to Life you will keep Banning, they said but we need the tariffs to be, to be increased because now we no longer getting money for the rest of the other services since the patients have been taken specifically to Weskoppies.

The cross-subsidisation will be a principle that we allow and as I said, you will have paid the mental health users are taken to Weskoppies treated at a higher cost because of the calibre of professionals who are at Weskoppies simply because it's a training platform. And because after the analysis of the medical teams and who... who would assess the mental health care users they saw it fit to take those patients there and that is why the issue of cross-subsidisation comes into victor(?) because someone will be taken to an NGO that costs will be lower and so forth and throughout the process then the budget still be more or less what would have been allocated to but others will more, other will get less and also going back to the issues we were discussing relating to professor Friedman suggesting about increasing the tariffs for the NGO.

**ADV ADILA HASSIM:** So you do accept that it was going to cost six times as much for those 416 patients?

**MS. QEDANI MAHLANGU:** In order to quality care for those specific patients in particular Sterkfontein and Weskoppies to be exact will be in that category, orange.

**ADV ADILA HASSIM:** And at Sterkfontein there were going to be 230 patients moved to Sterkfontein.

**MS. QEDANI MAHLANGU:** At the moment I don't have the exact numbers, ja.

**ADV ADILA HASSIM:** It was, we referred to it on Monday in your... it comes from your answer to parliament and the cost there is R1 386.00 per patient per day. That was four times as much.

**MS. QEDANI MAHLANGU:** Again Sterkfontein is in the same level as Weskoppies these are academic training platform the calibre of professionals who are there will be different from what you will find in a district hospital, Southrand or Bethatklo(?) or any other district hospital including the community health care centre.

**ADV ADILA HASSIM:** And then you also told us that 148 patients were to go to Cullinan Care and that was at a cost of R1 486.00 per patient per pay which is more than four times as much.

**MS. QEDANI MAHLANGU:** Yes because again Cullinan its core business as a hospital since it was established and they specialise in taking patients, or mental health care users with those kind of conditions. So indeed, if the numbers are 1 400 it will be in keeping with the profile of the care that should be given by the hospital to those particular patients.

**ADV ADILA HASSIM:** And for those patients who are going to be sent to NGO's it was at a cost R112.00 per patient per day and then you are saying that's the element of cross-subsidisation?

**MS. QEDANI MAHLANGU:** No, I saying the 120, the 100 and odd exactly, I don't.. I can't.. I don't have the exact figure now that amount will be... remember at the time

what I said when I was answering counsel on Professor Friedman's document you were reading to me, is that we agreed, once I found that the monies paid or subsidised to NGO's was lesser that it needs to be re-looked into so that NGO's can be given decent amount of resources for them to provide the quality of care we desire to give to all mental health care users. At the time it was exactly that price, amount that you stipulated.

**ADV ADILA HASSIM:** Ja, it's a vast difference between... if we take the highest figures which are for Weskoppies, which is R1 960.00 per day versus R112.00 per day. That is a very stark difference and what we, what we read earlier from Professor Friedman's report was that he said that the NGO's couldn't.

From those NGO's that could potentially take on more patients, are not currently prepared for additional numbers and even if the subsidy was paid, there are questions about the sufficiency of the amount and the ability of the NGO's to take these patients. So the point is that R112.00 per day was not going to be sufficient for those patients who were being sent to NGO's, that's the point that Professor Friedman was making and it's a point that we've been making and I would like you to respond to that.

**MS. QEDANI MAHLANGU:** Yes, indeed that is correct and may I elaborate through you Justice because that 120 amount we referring to which was a figure used at the NGO, that's why NGO's would mainly... most of them would have a lower level of staff, they would probably have one professional nurse or one (inaudible) and as an intervention for instance, I said to the HoD that we must ensure that we look at a mechanism which will see... get qualified nurses being

employed by the department and then being absorbed or being deployed in the respective NGO's so that... because the cost of human resources cost will the highest cost in the NGO's in looking after the mental health care users.

Yes, there is deficiency in the, in the subsidy but in the discussion after realising that, I had a discussion with HoD and Dr Manamela(?) as well as Hannah to say let's look into this matter and then ensure that indeed it is adjusted appropriately.

**ARBITRATOR JUSTICE MOSENEKE:** The core question is the amount allocated of R112.00 patient per day was hopelessly low, there is a caucus, it's not what did you do, did you caution them, did you... it is the plan was flawed, the plan was meant to save money but actually one did not save money. That's is where counsel is coming from. I am just urging you to engage with the issues that worry us and two: in that cost cutting process you allocated amounts that would never adequate, even on paper. So those are the things that counsel is seeking to draw your attention to.

In other words the plan was taken, the decision to close was taken for reasons that are not cogent. I am only saying costs but in fact you going spent more money. I am going to de-institutionalise and in fact you take people to institutions and that is debate, to try and understand what was in the mind of collective or what were the true objectives of the collective when the decision to shutdown Life Esidimeni was taken.

That's what these people want to hear and know. Less about blaming you more about how did so much go so wrong? That is the question. That's the caucus and all these are additions to the caucus and how did these people die?

**MS. QEDANI MAHLANGU:** Justice Moseneke... (intervenes)

**5 ARBITRATOR JUSTICE MOSENEKE:** How is that connection to the decision to close Life Esidimeni of which you were part?

**MS. QEDANI MAHLANGU:** Justice Moseneke may I go back to my primary presentation on Monday on the reasons for the decision taken by the collective and the processes followed. That not only was it Life Esidimeni it was all... many other  
10 programs of the department that needed to be reviewed over and above that the tariff is, I am not sure for NGO how is it determined but the tariff is set at a particular time and it can be reviewed in a cycle, at the moment I do have the exact process how the tariff's to NGO's is being reviewed.

I know the hospital tariff is being reviewed on an annual basis through  
15 treasury, through regulations. The NGO's tariffs I am not sure how it is reviewed, I did not know that this question was going to be becoming an I would've looked information for the tariff in particular how it's reviewed. So the specific question you asking Justice about the tariff and the cutting costs and indeed things became expensive I do not have the final budget post, the completion of the project as well  
20 as to exactly how much the department spent in that industry and what exactly went to the NGO's in terms of allocation and what we discussed with the HoD and SAFO was finally acted upon to the respective NGO's and then all of that.

**ARBITRATOR JUSTICE MOSENEKE:** Did your reportees, the HoD, Dr Manamela, Mr Mosenogi(?) Ms Hannah Jacobus tell you that the plan will now be focused on NGO's and that by far, the biggest number of mental health care users will be taken to NGO's?

5**MS. QEDANI MAHLANGU:** Yes it was an indicating in the meeting when the government hospital numbers were reduced and the NGO's was taken as an option, again Justice may go back to the point that... (intervenes)

**ARBITRATOR JUSTICE MOSENEKE:** Before you do I want to know did you give your approval to the change of that arrangement?

10**MS. QEDANI MAHLANGU:** Yes it was in a meeting and where we agreed that indeed now if they presenting that NGO's are now going to take more mental health care users, it is appropriate because they would indicate, they would have indicated Justice that already there is 10 000 mental health care users that were being taken care of at the NGO level and I had no reason to doubt that.

15**ARBITRATOR JUSTICE MOSENEKE:** You did give your approval that they may change the strategy from hospitals, state owned to NGO's, private... (intervenes)

**MS. QEDANI MAHLANGU:** We agreed in a meeting Justice.

**ARBITRATOR JUSTICE MOSENEKE:** But that had your blessing as MEC.

**MS. QEDANI MAHLANGU:** Yes we agreed in a meeting with all the official  
20presence.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel.

**ADV ADILA HASSIM:** Thank you. So the R112.00 per patient per day and the cost cutting such that there was resulted in the deaths of more than 143 patients, do you accept that?

**MS. QEDANI MAHLANGU:** Come again?

5**ADV ADILA HASSIM:** Do you accept that the cost cutting exercise such as it was resulted, when it comes to the NGO's that is, resulted in the deaths of more than 143 patients?

**MS. QEDANI MAHLANGU:** Thank you counsel I am not a medical practitioner or a forensic expert so I wouldn't know who died of what for the following reasons that in 10my, in the documents we sent to the Ombuds when he asked us to submit documentation, we presented the case numbers of... which we opened at the police station to allow autopsies to be done by the forensic laboratory services and that suggested to me that doing so, is to just to making sure that we not hiding anything and allowed an investigation that would be led by Professor Magoba to take its 15course and to reveal the true results of this.

May I beg you with permission Judge take you to Judge Ngobe's ruling on the tribunal in terms of considering this, Professor Magoba's report. There were two NGO's that took the matter for review with Judge Ngobe and it's important that I refer to that if you were to allow me.

20**ARBITRATOR JUSTICE MOSENEKE:** Is it in this bundle of documents?

**MS. QEDANI MAHLANGU:** Yes it is.

**ARBITRATOR JUSTICE MOSENEKE:** It was presented to us, it's also already before us isn't it?

**ADV ADILA HASSIM:** That's correct.

**ARBITRATOR JUSTICE MOSENEKE:** Ja, okay very well, what do you want, what do you want to refer to in it?

**MS. QEDANI MAHLANGU:** So what I want to refer to Justice is that the 5document... let me just go and read it so that I don't misrepresent Judge Ngobe. It's paragraph 22.2 of this judgment by... judgment, reads as followed 22.2, okay just let me start from the top of the page.

10                   “Findings in the first respondent’s report in respect of the two appellants which are contrary to paragraph 22.2.1 to 22.2.4 below are hereby set aside and substituted by the following:

22.2.1 reads as follows:

15                   There is no conclusive evidence that mental care health users would have receive from Life Esidimeni Care Centre by Mosego Home and Takalani Home under the Gauteng Health Department, Gauteng Health, Gauteng Mental Health marathon project and who died at the two homes and died under unlawful circumstances.

20                   22.2.2. Mosego Home and Takalani and Takalani Home did all relevant.. did at all relevant times operate with valid licences...”

Let me leave this and read... and leave it at the first... (intervenes)

**ARBITRATOR JUSTICE MOSENEKE:** While we reading this, while we hearing this... (intervenes)

**MS. QEDANI MAHLANGU:** Because... (intervenes)

**ARBITRATOR JUSTICE MOSENEKE:** Answer which question?

5**MS. QEDANI MAHLANGU:** The question when just um, um counsel is saying the deaths were caused by the move. What I am saying there is inclusive evidence from what Justice Ngobe would have said in this judgment when the two NGO's took this matter for appeal.

**ADV ADILA HASSIM:** So is your answer that there is no evidence that the patients  
10died as result of the move to the NGO's? Is that your answer?

**MS. QEDANI MAHLANGU:** I did not say there is no answer, I there is inclusive evidence and particular here I am referring to the judgment.

**ADV ADILA HASSIM:** So your answer that...

**MS. QEDANI MAHLANGU:** The answer is... also taking the point further is that  
15through you um Justice with the previous lawyers who were assisting me with the logistics I would've... they would've have asked the police for the forensic report, they would have asked the NPA for a forensic report as well as the relevant bodies in government. There response was they do not have the, the results of autopsies which were done by the forensic laboratories. So on the basis of that information I  
20have from my previous lawyers and what Justice Ngobe would have said, and I am not able to... I, I did not do the autopsies and I do not have the results.

**ADV ADILA HASSIM:** You... that's true you were represented by lawyers and you were given a couple of months to prepare for your testimony here. You were also

provided with the report of these proceedings and all the transcripts. Have you read and have you followed the proceedings?

**MS. QEDANI MAHLANGU:** I tried to follow it to the extent that it was possible and I tried to read as many documents as possible.

5**ADV ADILA HASSIM:** And as you sit here today you say that you cannot accept that the deaths were due to the cost cutting exercise and the transfer of patients to the NGO's?

**MS. QEDANI MAHLANGU:** I said there is inconclusive evidence simply because the police as the previous attorneys were assisting me did not get information from  
10the NPA nor from the forensic laboratories, it's says it's on the outcomes of the autopsies done.

**ADV ADILA HASSIM:** I will return to the issue of Takalani and what you deem to be the situation but we will come to that at the appropriate moment. We still dealing with the issue of termination of the contract.

15**ARBITRATOR JUSTICE MOSENEKE:** But what are you really saying? Let's not scatter around here: you saying 143 people who died, died of a cause that is inconclusive or unknown, it that it, is that your attitude?

**MS. QEDANI MAHLANGU:** No, Justice my attitude is that at the moment I do know the causes of death because I don't know, exactly what the causes... hence when  
20we open the cases to the extent of the bodies with the permission of the families and those who did not have families to ask for autopsies to be done it was really to find out to the extent possible what the causes of death were.

**ARBITRATOR JUSTICE MOSENEKE:** Do you as the government does, accept that the conduct, your conduct and that of those who reported to you, was inconsistent with the law and constitution? Do you accept that?

**MS. QEDANI MAHLANGU:** What is appropriate to say Justice Moseneke is that as far as I have looked at all the policies and government pre-scripts there was nothing... it was not... it's was not... there is nothing wrong with the decision to cancel the contract. What went wrong is the implementation or the execution of the decision in terms of the logics... (intervenes)

**ARBITRATOR JUSTICE MOSENEKE:** Do you accept that implementation of the project, the marathon project was done unlawfully and inconsistent with the law, I can tell you which specific statutes and with the constitution.

**MS. QEDANI MAHLANGU:** I agree that things went wrong people would loss... families lost their loved one and that is regrettable and I will continue to say, I am sincerely, sincerely sorry.

**ARBITRATOR JUSTICE MOSENEKE:** No but you accept that was as a result of unlawful conduct on the part of officials who worked under you?

**MS. QEDANI MAHLANGU:** Yes they worked under me.

**ARBITRATOR JUSTICE MOSENEKE:** And you accept that their conduct was not what the law required of them?

**MS. QEDANI MAHLANGU:** In executing their duties relating to looking at all the information given before me, yet the truth... now that you find out that some of the things were not truthful.

**ARBITRATOR JUSTICE MOSENEKE:** They were not lawful, I am asking about the legality, they were not lawful: they are not in terms of the mental health care, they were not in terms of the constitution, they were not in terms of any of the polices both national and provincial. They were unlawful. The government has already 5admitted that.

**MS. QEDANI MAHLANGU:** Yes government has admitted.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, do you admit?

**MS. QEDANI MAHLANGU:** Yes I accept.

**ARBITRATOR JUSTICE MOSENEKE:** You do? The second thing do you admit 10that the conduct of the officials who reported to you was negligent? They did not care, take due and proper care required by the law when you deal with patients, do you accept that? Again the government has already admitted that.

**MS. QEDANI MAHLANGU:** I think it's a fair point.

**ARBITRATOR JUSTICE MOSENEKE:** You think it's a fair point? Ja sure.

15**MS. QEDANI MAHLANGU:** That things went wrong.

**ARBITRATOR JUSTICE MOSENEKE:** Yes and they acted negligently, they did not take the care that the law requires of public officials in their position to take, are we on the same page there?

**MS. QEDANI MAHLANGU:** Yes Sir we are.

20**ARBITRATOR JUSTICE MOSENEKE:** Ja, we are. Very well and the next thing is do you accept that because of that unlawful and reckless conduct many patients, mental health care users were exposed to treatment which was less than what they were entitled to?

**MS. QEDANI MAHLANGU:** Yes I agree.

**ARBITRATOR JUSTICE MOSENEKE:** You accept that? And you accept that some of those patients because of the trauma and the levels of treatment that were reckless and unlawful died and we know that 143 of them died. Is this something that you accept? The government does. And they have already admitted...  
(intervenes)

**MS. QEDANI MAHLANGU:** Yes, its fine, it's okay.

**ARBITRATOR JUSTICE MOSENEKE:** It for purposes of these proceedings...

**MS. QEDANI MAHLANGU:** Yes I agree.

10 **ARBITRATOR JUSTICE MOSENEKE:** You agree to that. Very well, you may continue please.

**ADV ADILA HASSIM:** Ms Mahlanga before the contract was terminated with Life Esidimeni there were warnings and concerns that were raised with the Gauteng Department of Health and the first written statement of concern that we have is on 1528 April 2015. And I would like you to have a look at that letter, it's a letter from the heads of the psychiatric wards in the public hospitals and it is to be found in the EXHIBIT bundle LR2 and it's at page 41.

This is a letter as I said, from the clinical heads to the Department of Health and it is stated that the purpose of the letter is to outline serious concerns related to the reduction of beds at the Life Esidimeni Hospitals in Gauteng and to request an urgent meeting with you to discuss those concerns. If you turn over the page the clinicians begin to outline their concerns and under the heading the process of de-institutionalisation they say:

“The above decision seems to be premised on a view that persons with severe chronic mental illness receiving long term hospital based care, treatment and rehabilitation can be suddenly discharged home or into  
5 community residential care on mass(?) Such an approach is unfortunately impractical, good clinical practice in this context obliges a gradual and individualised discharge process that addresses both the health and social needs of each patient thus  
10 facilitating the gradual re-integration of such patients into the community”.

Do you agree with that observation of the clinicians?

**MS. QEDANI MAHLANGU:** Yes I see the observation thanks.

**ADV ADILA HASSIM:** And you agree with... you agree with that approach?

15 **MS. QEDANI MAHLANGU:** Yes, I do.

**ADV ADILA HASSIM:** And two paragraphs down they say there is a grave shortage of community residential and day care facilities in Gauteng. Are you saying that you were not aware of this?

**MS. QEDANI MAHLANGU:** No I wasn't. I got to know about that when we had a  
20 meeting with SASOF in 2016, post their conference.

**ADV ADILA HASSIM:** Are you saying that your officials did not bring this to your attention?

**MS. QEDANI MAHLANGU:** No.

**ADV ADILA HASSIM:** Before we get to that I just want to point out one or two other concerns that are raised in this letter, it's a very detailed letter, have you seen it before?

**MS. QEDANI MAHLANGU:** No this one I saw if post the September period when we started compiling documents and I think in one... in the meeting I had with SASOF they brought letter which I not seen. A letter I had seen which I sent to the HoD I received on... I will tell you the date, I received it from Dr Lesley Robertson on the 23<sup>rd</sup> June 2016 and I ask... I immediately refer it to the HoD to attend to the issues that were being raised by Dr Robertson, I think there are a few others 10 psychiatrists who had signed that letter... but I got that letter... (intervenes)

**ADV ADILA HASSIM:** You saying you did not receive this letter, what, you refer again to the post September period, post September in which year?

**MS. QEDANI MAHLANGU:** 2016.

**ADV ADILA HASSIM:** 2016. Now that you have seen it and you had regard to this 15 letter, do you see that the clinicians point out that while the de-institutionalisation may make sense in certain other countries, well resourced countries that it doesn't, it not feasible in South Africa until such time as the communities are properly resourced.

**MS. QEDANI MAHLANGU:** Yes I what is written here as you reading it and I've 20 said to you I saw this letter post September. In the discussion I would've had with the team and again Justice I want to really refer because I no... any other source of information from the department besides relying on the officials. In the meeting I am being assured, I think there is a couple of press conferences we would have done,

that suggest that we would, I think a press conference that the Department of Health in Gauteng would have started to implement the community mental health care over a period of about five years or so and in that process they have more than 10 000 patients in community NGO's.

5        So I had no reason to believe anything else other than that which was said to me, informal government meetings when we're getting process report on this project.

**ADV ADILA HASSIM:** This letter also talks about the financial implications of the decision um and specifically they say, the clinicians: that it will in fact escalate and 10not reduce direct and indirect health care costs and they provide their reasons for it. At the end they again reiterate their request to meet with you to discuss these concerns. Did you meet with them?

**MS. QEDANI MAHLANGU:** No, I met Dr Madigo and Dr Sebodela and who... there is a doctor from Sterkfontein, I forgot his name they were attending our meetings 15and throughout the process of course whenever they were available, just part and parcel of implementing this project. Whatever concerns for instance, as I was saying when the patients were, when the process of, of discharging started, Dr Sebodela would have said can we do the back and forth patients... and the phasing approach and that's what... and my understanding with those concerned Dr 20Manamela and the team in the execution should have really taken those issues being raised by the doctors and there is also in the documents that we have, or they ones they have it suggest that clinicians were involved in assessing the patient psychiatric doctors as well as medical doctors.

**MS. QEDANI MAHLANGU:** So you saying the despite having raised these concerns, they participated in the process.

**MS. QEDANI MAHLANGU:** Yes they were attending our meeting each time there were the review meetings... (intervenes)

5**ADV ADILA HASSIM:** And they never raised these concerns in the meetings?

**MS. QEDANI MAHLANGU:** Whatever... the concerns as I am saying to you the community... development of community mental health um it was raised in the meeting and that's why the district heads, that is the head of the district who is looking after all the clinics in each and every region was brought to the meetings so  
10that the NGO's will be linked to the different NGO's... will be linked to a different clinic in terms of easy referral as well as ensuring that the medication in that clinic it takes into account that in the NGO you have a psychiatric who are coming from Life Esidimeni.

**ADV ADILA HASSIM:** Are you saying that at the time you made the decision to  
15terminate the contract you were not aware of concerns of health professionals?

**MS. QEDANI MAHLANGU:** I am saying to you counsel Dr Lesley Robertson wrote an email to me and it was an elaborate email and immediately when I received it and I said to the HoD, HoD please look at this, I think it's one of... (intervenes)

**ADV ADILA HASSIM:** Was that before the contract was terminated?

20**MS. QEDANI MAHLANGU:** Yes. I receive the email... (intervenes)

**ADV ADILA HASSIM:** So you did receive email (inaudible) (intervenes)

**MS. QEDANI MAHLANGU:** I received the email on the 23<sup>rd</sup> June 2016 and on the....

**ADV ADILA HASSIM:** 2015.

**MS. QEDANI MAHLANGU:** 2015 at 10:16 and I... via my phone I sent an email to the HoD and forwarded him the document. I said please look at this matter and it's important... (intervenes).

5**ADV ADILA HASSIM:** Well let's have a look at the letter. I am glad that you received it and you are aware of it and yet it was in June 2015, it was before the decision was taken to terminate the contract and you will find it in same file as you have in front of you at page 47. Is this the letter you are referring to?

**MS. QEDANI MAHLANGU:** Ja, this is the letter ja.

10**ADV ADILA HASSIM:** And it's addressed to you and before I go into the concerns, it addressed to you, it's from the South Society of Psychiatrists and they end the letter saying... with an appeal to you... we urge you they say, the MEC to reconsider the decision and in order to try to persuade to reconsider the decision they outline their concerns. On the first page of the letter and in paragraph 2, they say primarily  
15we are worried that the reduction at beds at Life Esidimeni will have untended costly negative consequences.

And then they refer to the National Policy, the same paragraph that I put to you earlier that de-institutionalisation has progressed at a rapid rate in South Africa without the necessary development of community based service. This has led to a  
20high number of homeless mentally ill people living with mental ill in prisons and revolving patterns of care. Do you remember reading that?

**MS. QEDANI MAHLANGU:** Yes I did and hence I am saying counsel through your Justice that the letter when I received it and I realised it was very important and I

asked the HoD to look at the issues and if you look at my email to HOD. I said HOD please, please, please attend to this matter and because I realised the issue, the issues being raised by the association... (intervenes)

**ADV ADILA HASSIM:** Were quite important. Let me... but I want outline the 5 concerns. They summarise it on the next page, they say they want to highlight the following points and at point 1 they say:

“The mental health care users who require placement in chronic care with 24 hour psychiatric nursing and on sight occupational therapy do so because of the severity of their psychiatric disorder, lack of insight, poor level of functioning, inability to live independently and behaviour that cannot be managed in the community setting”.

The second point:

“That the community based residential facilities currently available are not equivalent to the Life Esidimeni care centres in staffing or equipment. They are non-profitable organisations run by lay people who have an interest in caring for mental ill but of the 21 residential facilities in the City of Johannesburg only 13 are for mental care health users, the others being for the intellectually disabled”.

And they go on to specify and to explain the details of the inadequacy of the NGO’s in that paragraph. In point 3 they say:

“Most of the day care facilities in Southern Gauteng are for intellectually disabled children. There are non in Sebodingwe(?) in Ekhureleni for mental health care users, people with severe mental illness living at home are very often left unattended and unoccupied during the day, this increases the risk of substance abuse and non-adherence to treatment.

And at point 4:

**ARBITRATOR JUSTICE MOSENEKE:** But do we need to place all that on record counsel? The witnesses have read the letter, he says he understood its severity and importance and handed it on to HoD. Shouldn't we get to the next questions arising from that?

**ADV ADILA HASSIM:** I will do so Justice.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you.

**ADV ADILA HASSIM:** The point I am trying to make by repeating the concerns of the doctors which concerns were not taken into account in this process, is that it was raised with you. They asked for a meeting with you. When this letter was put to your officials they said but the letter was addressed to the MEC, if was for the MEC to deal with it.

**MS. QEDANI MAHLANGU:** Thank you counsel... (intervenes)

**ADV ADILA HASSIM:** Why, why... and my question is this why did you not, yourself agree to meet with the psychiatrists who were raising the concerned?

**MS. QEDANI MAHLANGU:** Thank Justice through you...

**ARBITRATOR JUSTICE MOSENEKE:** Yes Ma'am.

**MS. QEDANI MAHLANGU:** Correspondence sends to offices of politicians when you receive a letter you see deem that's it's very important, the most senior person to refer the letter to is the head of department who is an accounting officer. And then HoD who he works with to answer and to deal with those issues it is prerogative to decide what do those things, but my action in getting the letter and then saying to the HoD please attend to this matter it is in keeping with what I thought the matter, would, it's important the HoD as the senior person should deal with the matter and not because I was avoiding to meet with own employees at the time and these are people I respect and the HoD as I said, medically qualified and the people he worked with most of them are medically qualified other as nurses in specialising in different discipline in the nursing, so I had no... (intervenes)

**ARBITRATOR JUSTICE MOSENEKE:** But MEC I am sorry to interrupt you, so sorry, former MEC why, why would you kick downwards such important concerns directed at you by the South African Society of Psychiatrists? Why kick this concerns downwards?

**MS. QEDANI MAHLANGU:** Justice Moseneke this system in government works more or less like that and the HoD has got to process and deal with the issues and bring them back to me and say MEC on this and that issues this is how I responded, this is how I dealt with them and subsequent to that I was aware that there has been engagement with Dr Manamela and the HoD on a different range of stakeholders relating to this, including... (intervenes)

**ARBITRATOR JUSTICE MOSENEKE:** (Inaudible) ... come back to you. Resolved those serious concerns.

**MS. QEDANI MAHLANGU:** I don't remember exactly on the specific issues relating to this memo.

5**ARBITRATOR JUSTICE MOSENEKE:** You know why this is important, you are the political principal, things are written to you in that capacity, all these warnings are drawn to your attention and you go ahead and make the decision to close the hospital. I mean that screams for a response. How do you, in the face of a letter like that which you simply gave to the HoD just go ahead and decide I am shutting down  
10this hospital? Can the explanation simply be I gave it to the HoD?

**MS. QEDANI MAHLANGU:** To look at the issues Justice and deal with them because the issues are important they need to be dealt with, the HoD as a competent person who is well qualified to deal with the issues that are being raised by his colleagues in the medical fraternity.

15**ARBITRATOR JUSTICE MOSENEKE:** With the same letter, counsel already has told you she said it was directed at you and she took your instructions.

**MS. QEDANI MAHLANGU:** Come again?

**ARBITRATOR JUSTICE MOSENEKE:** HoD...

**MS. QEDANI MAHLANGU:** Yes.

20**ARBITRATOR JUSTICE MOSENEKE:** Was asked to respond to this letter and she says it's a letter which is directed firstly not at her but at you. Two: that you are the one made the decision that Life Esidimeni will be shutdown despite these warnings.

**MS. QEDANI MAHLANGU:** But Justice that is inconsistent with the... my presentation as I said on Monday, and my I please repeat. Justice decisions in government will never be made by individual, particularly politically. This is a thing that has got an impact in related to service delivery. The Public Finance Management Act protects officials from wrongful decisions by politician. At no stage did Barney Selebano, the head of the department say MEC I am uncomfortable here, this is my memorandum to you on this and that I don't agree.

And it's very interesting that he will disown a letter that I sent to him because on many, many issues that were brought to my attention and I said HoD deal with the issues, he will deal with those issues without me having to make a follow up or MEC I have dealt with the issues and I attending to this meeting with the stakeholders.

So I do not understand why he will disown a letter which I indeed, I referred to him and there is an email I have attached in the new documents I am sending to. That shows that indeed I did ask him to look at this matter with the seriousness it deserves.

**ARBITRATOR JUSTICE MOSENEKE:** He said exactly what you said and said that he didn't want this project to on... (intervenes)

**MS. QEDANI MAHLANGU:** And what did he do... (intervenes)

**ARBITRATOR JUSTICE MOSENEKE:** Due to that it held enormous danger for patients but he was scared of you. He said he was so scared he could never bring himself around to say no, once the decision was made. And puts the decision and the drive to go on with this project squarely at your feet.

**MS. QEDANI MAHLANGU:** Justice Moseneke that is absolutely incorrect. Can I explain?

**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**MS. QEDANI MAHLANGU:** Heads of department as a matter of fact are employed by the Premier of any province. The only thing they sign with the members of Executive Council who is an MEC it will be a performance contract. At no stage was I made aware that the HoD have reported to the Premier that there are certain things he does not like what we are doing in the department, at no stage, whether via sms or telephone call or email or correspondence.

10 At no stage was I aware that the HoD was afraid of me. The Public Finance Management Act and again I would like to go back to it. It protects officials from undue influence from politicians when it says if you are been given an instruction that is unlawful and instructions that you think is going to have detriment on over expenditure and all of that, please file a document and let the politician put it in  
15 writing to you and thereafter take that instruction, give it to the Auditor General and the Treasury then we can proceed to implement the decision, so that you protect yourself from this politician who wants you to do wrong things.

At no stage have I that understanding from the HoD and everybody else was reporting to him.

20 **ARBITRATOR JUSTICE MOSENEKE:** What do you say is your responsibility as a political principal of the department?

**MS. QEDANI MAHLANGU:** Is to monitor the government policies are implemented and when there are challenges that are brought to my attention or why I picked when I go the ground, I intervene in it so that the HoD attends to those concerns.

**ARBITRATOR JUSTICE MOSENEKE:** Ordinarily the HoD would report to...?

5**MS. QEDANI MAHLANGU:** He reports to me put appointed by the Premier.

**ARBITRATOR JUSTICE MOSENEKE:** But reports to you on his activity and operations.

**MS. QEDANI MAHLANGU:** Absolutely.

**ARBITRATOR JUSTICE MOSENEKE:** You remember I kept on asking you the  
10question why did you resign? You knew nothing, you heard nothing wrong, you never reported to anything that was going amiss, you only heard when people died. So my question must be why did you resign?

**MS. QEDANI MAHLANGU:** Thank you Justice Moseneke as I said in my resignation letter that I am taking political responsibility and also wanting to having,  
15being someone who followed the wider practice principles.... (intervenes)

**ARBITRATOR JUSTICE MOSENEKE:** I respectfully ask you to take it step by step, what political responsibility?

**MS. QEDANI MAHLANGU:** To say that things, I am going that Justice I going to those aspects.

20**ARBITRATOR JUSTICE MOSENEKE:** Yes.

**MS. QEDANI MAHLANGU:** That in other democracies in political systems that when something goes wrong in those under the authority of that politician those politicians resigned. Unfortunately in South Africa that doesn't often but I took a very

concise decision that things have gone horribly wrong under the mental health care unit would I could keep myself in the system for that. Secondly, the Department of Health is not an easy department. When I was appointed the colleagues I sat with in the room will tell you how I felt at the time.

5       And I did ask the Premier why do you appoint me. But I said to myself I will take this responsibility and I am going to try and do my very best and that last thing I want to say that I took a decision to resign also because that department, I wanted the department to go ahead with these programs, broader problems that it was doing, it was doing well wherever the challenges were but I didn't want the mental  
10health to be... me to be round and not to stop government from moving on and without me being on the scene because the rest of the other programs I think they are running very well. So those are my reasons Justice for leaving, and I couldn't justify earning a salary after that.

**ARBITRATOR JUSTICE MOSENEKE:** I admire the fact that you took political  
15responsibility, you may have made history under this government but having said that and I compliment quite sincerely, having said that, I would invite to tell us what that political responsibility that you think you failed in? Tell us candidly what it is?

**MS. QEDANI MAHLANGU:** The levels of trust had gone, there was no level of trust with the officials particularly relating to the mental problem and the HoD because I  
20kept on being told things were okay and in only September when the deaths finally, information can on board, I realised that things actually, the people I trusted, people I relied on, people who were well trained well qualified I could not justify working there because things were not going to be same.

**ARBITRATOR JUSTICE MOSENEKE:** It is part of that responsibility that despite the assurances, mental health care users died in large numbers.

**MS. QEDANI MAHLANGU:** Yes it is.

**ARBITRATOR JUSTICE MOSENEKE:** Did you acknowledge that and recognise that?

**MS. QEDANI MAHLANGU:** Yes I did acknowledge that. When I say things horribly went wrong, I said people lost.. families lost their loved ones and it is something that will forever like linger in my mind.

**ARBITRATOR JUSTICE MOSENEKE:** And did you acknowledge that about 1 400 others went through very traumatic placements at places which were not appropriate for the care they were entitled to?

**MS. QEDANI MAHLANGU:** Yes Justice

**ARBITRATOR JUSTICE MOSENEKE:** You acknowledge that and you resigned because of that? Now had you not been lied to on your version, by Selebano and Manamela would we be having this tragedy? With all these survivors and deaths?

**MS. QEDANI MAHLANGU:** I am not sure how to answer that question but probably yes.

**ARBITRATOR JUSTICE MOSENEKE:** By yes you mean what? Let me understand what you mean.

**MS. QEDANI MAHLANGU:** I mean if probably I was given accurate information at the time I was given accurate facts about what was going on the NGO or the potential of the risks as identified by officials probably would not be sitting here today.

**ARBITRATOR JUSTICE MOSENEKE:** Yes and you accept lastly that you above all, you've got the political responsibility to protect patients from harm.

**MS. QEDANI MAHLANGU:** Absolutely.

**ARBITRATOR JUSTICE MOSENEKE:** It's not just the duty of the HoD or the head of the directorate of mental health care, excuse me, it is a duty that also resides in you.

**MS. QEDANI MAHLANGU:** Yes it is that is why... (intervenes)

**ARBITRATOR JUSTICE MOSENEKE:** Constitutionally and politically.

**MS. QEDANI MAHLANGU:** Yes Justice and that is why I made my cell phone, my work cell phone at the time to be publically available for everyone who needed to call me about any matter relating to a clinic whether it be the worker, a citizen whatever concern they had in the Gauteng Department of Health.

**ARBITRATOR JUSTICE MOSENEKE:** Um Counsel, sorry it was a long interruption but I wanted to... (intervenes)

15 **ADV ADILA HASSIM:** Thank you, thank you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** I am sorry about the bee in my bonnet..

**ADV ADILA HASSIM:** I am aware of the bee in your bonnet.

**ARBITRATOR JUSTICE MOSENEKE:** Okay.

**ADV ADILA HASSIM:** And we are not quite done with that bee either.

20 **ARBITRATOR JUSTICE MOSENEKE:** Okay.

**ADV ADILA HASSIM:** But before we... but what I would like to ask about this letter and your response that you forwarded it to the HoD, the HoD of Health. The letter specifically asks you, the word of the letter, the wording of the letter is, "we urge you

to reconsider your decision in the light of the concerns” but you nevertheless took the decision to terminate the contract, didn't you?

**MS. QEDANI MAHLANGU:** The decision was taken together with the officials in one meeting where we all agreed this is what we have to do and on the basis of that 5a decision was taken.

**ADV ADILA HASSIM:** And you were part of that decision?

**MS. QEDANI MAHLANGU:** Yes of course I was that decision.

**ADV ADILA HASSIM:** So you took the decision having seen this letter...  
(intervenes)

10**MS. QEDANI MAHLANGU:** I did not make the decision: it was taken by the collective counsel.

**ADV ADILA HASSIM:** You were part of the collective that took the decision and you were the most senior member of the collective?

**MS. QEDANI MAHLANGU:** Yes.

15**ADV ADILA HASSIM:** And you were aware of the letter?

**MS. QEDANI MAHLANGU:** Yes as I answered earlier.

**ADV ADILA HASSIM:** And you agreed to terminate the contract.

**MS. QEDANI MAHLANGU:** We agreed.

**ADV ADILA HASSIM:** You agreed nevertheless thank you. So after the contract  
20was terminated then there continued to be engagement with you and with the department and it really was a concern that was coming from the perspective of the implications for the patients. Do you agree that the Mental Health Care Act requires

you to obtain consent from the mental health care users regarding decisions regarding to their treatment and care?

**MS. QEDANI MAHLANGU:** I was assured that families indeed were being engaged by the officials.

5**ADV ADILA HASSIM:** The families. So you were aware that if patients are unable to make an informed decision, then it is necessary to consult the families.

**MS. QEDANI MAHLANGU:** Absolutely.

**ADV ADILA HASSIM:** But when the patient advocacy groups and the psychiatrists and the families raised concerns, you dealt with the concerns through your lawyers,  
10isn't that so?

**MS. QEDANI MAHLANGU:** Not entirely. The HoD is a lawyer, Dr Lebetto(?) is not a lawyer Dr Manamela is not a lawyer, including the lawyers and I did explain early the context under which the hostilities were beginning to build up in the department and its appropriate counsel to appreciate that.

15**ADV ADILA HASSIM:** The hostilities because, hostilities from whom, where was that coming from?

**MS. QEDANI MAHLANGU:** The engagement between the department and different NGO's.

**ADV ADILA HASSIM:** Okay. So the NGO's as we now have established had  
20approached you in November, there were the letters, there were the questions, we referred to paragraph 11, there were no answers to the point where they then had to write to you on 9 December. Can you please have regard to file 1 at page 150.

**MS. QEDANI MAHLANGU:** Sorry which page?

**ADV ADILA HASSIM:** Page 150. You there? Do you see the letter, have you seen it before?

**MS. QEDANI MAHLANGU:** Yes, I saw it in one of the meetings we had with SASOF in 2016.

5**ADV ADILA HASSIM:** It's the letter dated 9 December from Section 27. And in this letter they explain who they represent, who their clients are and all of the attempts by their clients to engage with the department and essentially the main concern, there is a lot of detail, but their main concern is captured in paragraph 14. They say we remain concerned that these discharges are in breach of the user's  
10rights including the right to health care services as guaranteed in Section 27 of the Constitution. And this letter was sent to you, did you respond to it?

**MS. QEDANI MAHLANGU:** No, I didn't respond because the HoD was dealing with the matters and if you look at the number of correspondence and emails and so forth the HoD, I had a sense that they were on top of the issues.

15**ADV ADILA HASSIM:** Did you ask the HoD who he responded to the letter?

**MS. QEDANI MAHLANGU:** I can't remember exactly whether I asked specifically or I can't remember exactly those kinds of details.

**ADV ADILA HASSIM:** And you say there were hostilities between the department and this organisation at the time.

20**MS. QEDANI MAHLANGU:** I am saying hostilities were building because as I said earlier on I read the message about the text messages um um...

**ADV ADILA HASSIM:** So the letter...

**MS. QEDANI MAHLANGU:** Ja, ja sorry, sorry.

**ADV ADILA HASSIM:** Were you still answering I am sorry to interrupt.

**MS. QEDANI MAHLANGU:** Ja you can proceed.

**ADV ADILA HASSIM:** So the letter is a letter, they finally go to their lawyers and they ask you to intervene and that if you don't then they would have to approach a court.

**MS. QEDANI MAHLANGU:** Counsel I seem to remember and I saw in the emails I went through yesterday that there was a request for a meeting and I was copied in those emails and the meeting was suggested to have been held on the 30<sup>th</sup> and that date of the 30<sup>th</sup> initially I was going to be available and later on the legislature sitting was confirmed on a Monday, there is even a speakers list to confirm that indeed I as legislature was speaking on that day.

So I can't remember exactly why the meeting... what was the outcome of that meeting with them and why they finally they didn't see eye to eye with the HoD. And again there is several correspondence I would have read in this bundle of document suggest that there were meeting after meeting, they will agree to this, next week the issues are not being implemented upon so. When I talk about hostilities those kind of things were starting to build up, things they agreed, they not implemented, they have another meeting, then there are emails back and forth so that's what I am referring to.

**ADV ADILA HASSIM:** There were all these engagements which now culminate at this point in time, it's 9 December 2015, patients have not been moved yet, the attempt is to protect the patients from harm. And let's look at what you requested, what was the heft of the letter, what were they requesting.

**MS. QEDANI MAHLANGU:** What the department was requested to do maybe that's appropriate.

**ADV ADILA HASSIM:** You, you, you and the rest of the department. It was sent to you, this letter.

5**MS. QEDANI MAHLANGU:** But counsel these are not personal things, these are matters referring to the department as a whole. I used to happen to just be MEC but these are departmental matters and in government that's how the system works.

**ADV ADILA HASSIM:** So you would've have left despite the fact that this was addressed to you, you would've left it to your department to deal with.

10**MS. QEDANI MAHLANGU:** To the most competent person who happens to be the HoD who is the head of the administration... (intervenes)

**ADV ADILA HASSIM:** But did you at least read the letter?

**MS. QEDANI MAHLANGU:** Pardon?

**ADV ADILA HASSIM:** Did you read the letter?

15**MS. QEDANI MAHLANGU:** I said to you I didn't read letter prior, I saw the letter much later days, I think in 2016.

**ADV ADILA HASSIM:** You only saw this letter in 2016?

**MS. QEDANI MAHLANGU:** Yes, yes.

**ADV ADILA HASSIM:** Not in... (intervenes)

20**MS. QEDANI MAHLANGU:** Not at the time what is referred to here because correspondence... (intervenes)

**ADV ADILA HASSIM:** Okay.

**MS. QEDANI MAHLANGU:** Correspondence sends to political offices not all of them get to the hands and the eyes of the political principal. Some do get some they don't get and when you are not in the office for whatever reason, those get sent to the appropriate person in the department to deal with those issues and the follow up is being... and I am not sure exactly what would have happened under the circumstances.

**ARBITRATOR JUSTICE MOSENEKE:** Ms Mahlangu (inaudible) affecting nearly 700 people, 1 700 wouldn't you have wanted to apprise yourself with the risks?

**MS. QEDANI MAHLANGU:** Justice...

10**ARBITRATOR JUSTICE MOSENEKE:** The likely consequences of the decision on implementation, why would that not interest you?

**MS. QEDANI MAHLANGU:** Justice Moseneke it did interest me and the numbers, you know if you look at the department of health and the sheer volumes and the number of patients we dealing with it millions of people every single day the system 15is saying that so and by no means I am suggesting that 1 700 number is not a lot.

All I am simply saying that each and every program that's why there are qualified medically trained competent people in my understanding of course I thought that much, that they will dealing with this matter competently and engage with the HoD and be able to resolve the issues and that normally how the course of 20business work. And of course now I know that things did not go according to plan.

So the correspondence every one of them sent to me, and it is not possible for me have got to each and every one of the correspondence which would have been sent to me. Some I had seen, some I had not seen for practical reasons.

**ADV ADILA HASSIM:** You see this letter, was very important because what this letter was saying was that they have instructions to go to court and unless something else happens.

**MS. QEDANI MAHLANGU:** And he HoD council was dealing with the issues.

5**ADV ADILA HASSIM:** Before we... we are about to break for the lunch adjournment so let me just leave it with this for you to think about. This is what the question was to you and the department in this letter. To avoid litigation and it's page 154 in paragraph 16 and they say they made the following proposal as to a way forward and this is what the proposal is:

10 "That our clients and the department make a joint approach to court for the appointment of one or more curators at Life Esidimeni to report on the user profiles, the health care needs of the users at Esidimeni facilities and whether these needs will be met through the  
15 department's proposed plans".

What was so objectionable with that proposal?

**MS. QEDANI MAHLANGU:** I was not involved in those details counsel so I won't know what, why the HoD would not have agreed with this processes, with what is being proposed here.

20**ADV ADILA HASSIM:** So you were not aware of this?

**MS. QEDANI MAHLANGU:** I was not involved in the nitty-gritty of this as I said to you I don't remember seeing the correspondence... (Intervenues) but the HoD would have been engaging with the, and the Section 27 on these issues.

**ADV ADILA HASSIM:** And you didn't instruct your lawyers to oppose this urgent litigation?

**MS. QEDANI MAHLANGU:** Counsel through you Justice every matter that the department of health is litigated on, the MEC for health is always the first respondent or is cited. I found it like that and don't know where it is derived from if you look at, if something happen at Sharlot um the orthopaedic department, someone's operation goes wrong, you look at that document on the negligence on the patients file, the first respondent on any of those document is the MEC for health. Whether the MEC filed an Affidavit or not, but the MEC for health will always be the first respondent.

So the fact that I was cited in a court document does not necessarily mean that I was consulted on the content nor did I was party to any signing of the Affidavit. The HoD has competent authority to have dealt with the issues and in this case he dealt with the issues with the attorneys as well as with our legal team.

**ADV ADILA HASSIM:** So finally your answer is that you knew nothing about this litigation even though you were cited the papers, the court papers never came to you, the founding papers...

**MS. QEDANI MAHLANGU:** No I didn't...

**ADV ADILA HASSIM:** This letter never got to you.

**MS. QEDANI MAHLANGU:** I did not see the court papers

**ADV ADILA HASSIM:** And you gave instructions to oppose.

**MS. QEDANI MAHLANGU:** I did not see the papers so when HoD went to court they told me after court what would have happened so...

**ADV ADILA HASSIM:** So you were completely unaware of this?

**MS. QEDANI MAHLANGU:** No I was, I am saying the HoD was involved in dealing with all those issues as he has got competent authority to do so. He will brief me on issues and they way he sees fit (intervenes) even that are necessary for you, again 5the MEC is not cited, it's because she has or he has given instruction is cited on all matters relating to the Department of Health as far as I know.

**ADV ADILA HASSIM:** Well, we will come back to why you were cited perhaps of the lunch adjournment.

**ARBITRATOR JUSTICE MOSENEKE:** If you had chosen to ask all the questions 10that showed that the marathon project would be dangerous or even fatal for the patients, do you have the power to stop it?

**MS. QEDANI MAHLANGU:** If I was given the right information yes indeed I would've got back to the Premier and budget committee and said and indicate that this is not possible, this is going to have the following consequences and I am 15proposing that we review and look at different aspect of this.

**ARBITRATOR JUSTICE MOSENEKE:** But did you have the power to stop it?

**MS. QEDANI MAHLANGU:** I am saying if I Justice remember that context of what explained on Monday, the process starting the Premier's audit committee, we were asked to save R700 million if I am not mistaken and we back to that and remember 20those things, once they have been agreed to they are factored into the department's budget in the following financial year. If I had the correct information I would've got back to say this is not possible.

**ARBITRATOR JUSTICE MOSENEKE:** So you would have had the facility indeed the power and the obligation had you known the truth to start at process of stopping it.

**MS. QEDANI MAHLANGU:** Yes if I had all the facts before me.

5**ARBITRATOR JUSTICE MOSENEKE:** And had they all told you the truth therefore clearly we would be not here.

**MS. QEDANI MAHLANGU:** I don't think so.

**ARBITRATOR JUSTICE MOSENEKE:** Because the normal care and processes, caring for mental health care users would-be have kicked in.

10**MS. QEDANI MAHLANGU:** But remember Justice Moseneke maybe just indulge me for a minute. This... coming back to Life Esidimeni contract implementation after we took a decision it was after other contracts had been reviewed, cancelled which have had impact on the patients. The Selby the patient there, I think there was about 800 patients at Selby, the officials concerned led by the HoD and other  
15clinicians from the other hospitals led the project successfully and once that was concluded there were no any difficulties whatsoever in this thing and I had a doubt in my mind that what they would've had done in the previous projects would be different from what they did in the Life Esidimeni.

There was prior work that they have done of more or less the similar nature  
20but different profiles of patients.

**ARBITRATOR JUSTICE MOSENEKE:** In the afternoon I have no doubt, you going to be checked, excuse me, to passages(?) which refer to your presence and reporting meetings. There is evidence by Mr Mosenogi, there is evidence by the

HoD, there is evidence by Dr Manamela excuse me, Ms Jacobus of your presence at periodic reporting meetings. They are on our record on the evidence record.

**MS. QEDANI MAHLANGU:** But Justice I did not deny having present in the meetings where information was said.

5**ARBITRATOR JUSTICE MOSENEKE:** It's not quite the same thing as saying I did not know of the project and the risks in the project. You understand my point?.

**MS. QEDANI MAHLANGU:** I am not following Justice

**ARBITRATOR JUSTICE MOSENEKE:** We are going to adjourn now but I am saying in the afternoon I have schedule of all report back meetings that were on  
10evidence where you were present and where risks were raised besides all this paperwork that came from SYSA(?) and Sadac and Section 27. At meetings of the department where flags were raised um and were assumingly ignored because the project went only one way and that was forward.

So it's something to think about that, you have seen the record, we have  
15sent you the evidence and your team people say they reported to you regularly. Your stance before us today is you knew nothing about the difficulties pre- and during implementation. But we can come back to that as we come back from lunch. Anything from counsel before I adjourn? Very well. Let's be back here at 2:30. We are adjourned.

24 JANUARY 2018

### SESSION 3

**ARBITRATOR JUSTICE MOSENEKE:** Thank you ever so much. You may be seated. You are still under your previous oath. Shall we proceed, please?

5**QEDANI MAHLANGU** (still under oath)

**CROSS- EXAMINATION BY ADV ADILA HASSIM (Continues):** Thank you, Justice. Ms Mahlangu, we were– we were dealing with the letter of 9 December 2015, the letter [intervenes]

**MS QEDANI MAHLANGU:** It's in file one. Which file?

10**ADV ADILA HASSIM:** It was file 1 page 182.

**MS QEDANI MAHLANGU:** Okay.

**ADV ADILA HASSIM:** This is the letter seeking to have an agreement that the Department and patient advocacy groups would jointly approach the courts for an appointment of curator to look after the patient's rights, and you said you had not  
15received this letter. You said [intervenes]

**MS QEDANI MAHLANGU:** No, no.

**ADV ADILA HASSIM:** What did you say? You had received the letter?

**MS QEDANI MAHLANGU:** No, I said I did not and I did explain that, Counsel, that not every correspondence addressed to any politician will getting to be seen or to

be read or whatever. So I would have said that. I do not exactly remember the words are used before lunch.

**ADV ADILA HASSIM:** Did you receive the letter?

**MS QEDANI MAHLANGU:** I said a letter addressed to me may not necessarily be seen by person or if I had seen it, probably it would be sent to the relevant people. As you see, it is addressed to a number of people but I am aware that the HOD would have dealt with some of the issues that are raised that there, which I had seen those issues after– in 2016.

**ADV ADILA HASSIM:** Did you say that you had not trick the letter until after  
10[intervenues]

**MS QEDANI MAHLANGU:** Post – I did indicate earlier that that HOD did indicate to me that they went to court because they were issues that were differing with the Section 27 and the outcome of the court processes.

**ADV ADILA HASSIM:** And it was only after the court proceedings that you read  
15this letter.

**MS QEDANI MAHLANGU:** No, I did not read the letter. I– we spoke to the HOD in passing on– related to the issues that they were in court about.

**ADV ADILA HASSIM:** So the letter is sent from a Ms Monyana Rojeje and it is sent to your email address and it is sent to a one Kanyisa Ncuna. Who is that?

20**MS QEDANI MAHLANGU:** It was my personal assistant at the bar.

**ADV ADILA HASSIM:** Your PA.

**MS QEDANI MAHLANGU:** Yes.

**ADV ADILA HASSIM:** And so when it arrived in your inbox and with your PA, did you not read it?

**MS QEDANI MAHLANGU:** Through you, Justice, people who work in my office, 5had, one or two, I cannot remember exactly the other one, they had access to my email to check a particularly for work-related issues. Some emails I would read them personally. Some of them I would not read them– I would not read them personally. So every– and I would like to repeat, Justice, through you not every 10correspondence that is sent to every politician gets to be seen, to be read, and to be attended to by a politician specifically, including in this instance.

**ADV ADILA HASSIM:** Correspondence that is threatening litigation, would that not be read by you?

**MS QEDANI MAHLANGU:** The correspondence threatening litigation the 15Department of Health it happens every single day. So the HOD deal with those matter and he is competent authority to deal with those matters. If he sees that the method requires him to consult the MEC about the specificities of that matter, he would definitely, in some instances, he would come to me and say, “On this and this matter, what do you think?” and then all of that.

**ADV ADILA HASSIM:** So this was an unusual matter though, is not it? Was not 20this is a matter in which they are had been a lot media already? There were a lot of attempts to reach you by patient advocacy groups. There were concerns that had been raised by health professionals.

**MS QEDANI MAHLANGU:** At the time, Counsel, I did not see anything unusual about us, me and the HOD, discussing nitty-gritties of the operation matters related to the Department of the day.

**ADV ADILA HASSIM:** But this was not nitty-gritty. This was about a decision that you took.

**MS QEDANI MAHLANGU:** But, Counsel, the Department of Health, or any department I have been to, takes number of decisions on– every single day or every month or every week, and not all those matters, through you, gets to dealt with in their conclusion with the involvement of executing authority. Many of them will be concluded not– without even the knowledge of the executing authority because the HODs are competent in terms of the law, and their powers are derived from legislation. It is not the delegated functions.

**ADV ADILA HASSIM:** In other words, if the public writes to you, there should be no expectation that you will actually read the letter?

15 **MS QEDANI MAHLANGU:** Through you, Justice Moseneke, at all material times to the extend is that I could and to the extend that I tried, I dealt with all the matters that were brought to my attention, whether via SMS or via email. And I think that suffices to say that [intervenes]

**ADV ADILA HASSIM:** But you did not deal with this letter [indistinct - cross-  
20talking]

**MS QEDANI MAHLANGU:** I may not have dealt with them personally but the head of Department dealt with that issue and I think he is competent enough to– he was competent enough to have dealt with those issues as well.

**ARBITRATOR JUSTICE MONSENEKE:** I think you are bound by the answer at this point, Counsel. You have asked the question many times and the answer has come back, “I do not remember whether I read the letter or not.” So we have to proceed.

**ADV ADILA HASSIM:** Thank you, Justice. So the steps that took place then subsequent to this letter, was that lawyers for the Department responded to the letter. And in the same file that is in front of you, if you have a look at page 189, these are letters from your attorneys, is not it so?

**MS QEDANI MAHLANGU:** Yes, it is.

**ADV ADILA HASSIM:** It is the same attorney that you sent an email to regarding the dishonest NGOs, is not that so?

15 **MS QEDANI MAHLANGU:** Yes, I copied him in the email.

**ADV ADILA HASSIM:** And this is the same attorneys on page 189?

**MS QEDANI MAHLANGU:** Yes, they were working with– duly contacted by the Department.

**ADV ADILA HASSIM:** And in the first paragraph of that letter, that response, the attorney say:  
20

“We represent the Department of Health MEC Qedani Mahlangu, Dr Barney Selebano, and Dr Manamela in the matter.”

Do you see that, that he represents you, amongst others? And then he says, if you turn over the page to paragraph 5, well, the first thing he says is:

“Our clients have taken all reasonable steps and in keeping with the various legislative prescripts of that act to effectively provide both for the discharge and the transfer of the users. In the allegation to the contrary is either self-serving or disingenuous.”

Did you instruct attorneys to respond in this manner?

**MS QEDANI MAHLANGU:** Through you, Justice, I said before lunch and I would like to set it on record again: correspondences or when people have litigation against the Department of Health, since I have been the MDC for Health in 2009 and I have— until 2010 and now in 2012 till I lived in 2017, in many documents relating to litigation, the MEC for Health is always cited as the first respondent. What is the origins of that? I did not go into detail to research the origins of that. As I have made an example earlier, if a woman gives birth in a particular hospital, something goes wrong, the baby die or a mother dies, and that is when the family concerned sues the Department. They do not sue the doctor concerned. They sue the DH and the first respondent in those documents is the MEC for Health. I am sure the

legal department or the legal representative of the Department can share that information with yourself.

**ADV ADILA HASSIM:** You were the first respondent and that is because you took a decision to terminate the contract. Do you not think you were cited because of your responsibilities under section 125 of the constitution?

**MS QEDANI MAHLANGU:** My responsibilities as defined in the constitution and all other legislation, I guess it requires that the ME for Health, the MEC for any department be cited. If a policeman shoots the person somewhere, the person [intervenes]

10 **ARBITRATOR JUSTICE MONSENEKE:** I am sorry. Allow me to interrupt you. You know the answer could have– We have been at it for two days now. We have to come to an end sometime. Please listen to the question. Frankly, the question is whether you personally instructed these lawyers to write about you or not. It may be that your head of department included you in the defence because you are cited 15 but let us stay with it because I really am anxious that we should move on. The question is did you instruct these attorneys personally to write about you?

**MS QEDANI MAHLANGU:** No, I did not.

**ARBITRATOR JUSTICE MONSENEKE:** That is the answer.

**MS QEDANI MAHLANGU:** I was giving context [intervenes]

20 **ARBITRATOR JUSTICE MONSENEKE:** Yes, and let Counsel come back and say what they say [intervenes]

**MS QEDANI MAHLANGU:** Thank you, Justice.

**ARBITRATOR JUSTICE MONSENEKE:** ...but for now, you did not instruct them personally or you did. Your answer is you did not.

**MS QEDANI MAHLANGU:** No, I did not, Justice.

5**ARBITRATOR JUSTICE MONSENEKE:** Very well. Counsel.

**ADV ADILA HASSIM:** And to do you say that this letter was not provided to you before it was sent either?

**MS QEDANI MAHLANGU:** No, it was not.

**ADV ADILA HASSIM:** So the importance of the letter, apart from the fact that it  
10says that it represents you, is that the instructions that the attorneys were given was  
that all steps were taken, all reasonable steps, to effectively provide for the  
discharge of users and that “our clients,” meaning the Department of Health in  
which the attorneys include you, “have consulted all the health services to which  
users have either been discharged or transferred to.” And then they go on to say  
15that the insistence of the NGOs, that is of Sadac and Sasop and so on, on the  
suspension of the discharges is “reckless and a demonstration of selective  
morality.” The first thing is that that tone it appears to be very similar to the tone of  
your email where you call the NGOs dishonest.

**MS QEDANI MAHLANGU:** But, Counsel, I think you are really being unfair. For  
20every little— every word that is written in there, letters all correspondence with  
Department of Health, you are going to attribute that I am responsible for those.

**ADV ADILA HASSIM:** I am asking you before I attribute it.

**MS QEDANI MAHLANGU:** It is incorrect. It is incorrect.

**ADV ADILA HASSIM:** It is not similar tone to your email [intervenes]

**MS QEDANI MAHLANGU:** It cannot be. It cannot be year and I did explain the context to why the tone of that email – of that message. And again, I would like to come back to you, Justice, because it looks like [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** You are well protected. Your answer is the tone is not the same as the one in the email. I think that is the answer. I am going to ask you to stick to the question. There are moments when context will help us but it is not helpful all the time.

**MS QEDANI MAHLANGU:** Okay.

**ARBITRATOR JUSTICE MONSENEKE:** So you are very well – I do not want you to be restricted to yes/no. As you have seen, I have been very patient but at the same time, there are facts that Counsel would like to raise or doubts in your testimony and there are entitled to do so within reasonable limits – they also have limits – and you have to give answers within reasonable limits. So let us go. The proposition is that the accusation is that the tone of this letter is the same as the tone of your email. You can say now it is the same or not the same.

**MS QEDANI MAHLANGU:** But I did not write the letter, Justice. So I cannot really have – there is no relationship between the two things because I could not sit with

the lawyer and say, “Write this.” If I did indeed I could easily answer [indistinct - cross-talking]

**ARBITRATOR JUSTICE MONSENEKE:** Sure, it is a fair answer. [Indistinct] write the letter, therefore the tone is cannot be the same. That is the answer. Counsel.

5**ADV ADILA HASSIM:** And the statement by the lawyers that all of the health services had been consulted, which would include the NGOs, before the transfer took place, before transfer was to take place, we know now was actually not true, is not that so?

**MS QEDANI MAHLANGU:** But, Counsel, my attorneys are briefed by officials of  
10the Department and whatever information you brief attorney, if you give the attorney the information that is wrong, they will come to wrong conclusion. If you give the attorney right information, the right– they will come to that conclusion. So I think it would have been raised on this matter but Dr Selebano himself.

**ADV ADILA HASSIM:** So you are saying that Dr S and/or Dr M instructed the  
15attorneys to say this.

**MS QEDANI MAHLANGU:** Yes, because that is an administrative processes that they were busy with and engaging in.

**ADV ADILA HASSIM:** And did you not give an instruction– Let me say, you have said already that you gave no instructions in relation to this litigation. At page 398  
20of the same file...

**MS QEDANI MAHLANGU:** Okay, I am there.

**ADV ADILA HASSIM:** It is a notice of intention to oppose, and it is filed on behalf of, apart from the HOD and the Premier, it is filed on behalf of you, the first respondent. It says:

“...that the first respondent, amongst others, hereby gives notice of intention to oppose.”

You did not give that instruction to oppose.

**MS QEDANI MAHLANGU:** I think my first answer I gave about the MEC for Health being a first respondent on many legal matters, suffice, Justice.

**ADV ADILA HASSIM:** So the process would be that you are just cited for some reason but any instruction that [intervenes]

**ADV PATRICK NGUTSHANA:** Through you, Justice, if I can just try and assist, perhaps we may put this matter to bed. The witness has testified on many occasions that she would normally be cited in any litigation against the Department, and that matter is regulated by the State Liability Act, which requires that the executive member should be cited in every litigation. So to the extent that the witness has testified that the administrative decisions relating to litigation were taken by the head of department, the witness cannot take the matter any further in response to issues relating to the litigation. So that matter about the citation, because she is now being cross-examined on why a notice has been given on her behalf as the first respondent. Indeed it is correct. The citation will include the member of the executive Counsel as required by law. Thank you.

**ARBITRATOR JUSTICE MONSENEKE:** Sure. Counsel.

**ADV ADILA HASSIM:** Justice, it is not as simple as that because while there are legislative prescripts that require the political principle to be cited, there are other reasons why a political principal is cited. And the mere fact that the HOD and others are cited, it does not mean steps can be taken in the name of the MEC without the MEC giving an instruction.

Secondly, the MEC was cited because of her particular responsibilities. The political principal merely by being an politician does not evade constitutional accountability. It is not– and if the answer of the witness is that the political principal has not role in litigation, things will be filed on their behalf and they are not asked and they give no instruction, that is a cause for concern but then we will leave it at that if that is going to be the answer.

**ARBITRATOR JUSTICE MONSENEKE:** Sure. The response I think is more nuanced. It is, “I am a state functionary. I get cited ordinarily often all the time but I did not give actual instructions.” The Premier is cited. He will probably say the same thing if asked the questions, “I did not give actual instructions.” What your argument will be later, a different matter. She should have taken active interest. It is a fair argument but for cross-examination, the answer is, “I did not instruct personally,” and you can invite me to make inferences from that later [intervenes]

**ADV ADILA HASSIM:** Thank you, Justice. The culmination [?] of this stage of litigation was that it resulted in a settlement agreement. Was that settlement agreement brought to your attention?

**MS QEDANI MAHLANGU:** Yes, the HOD informed me. I think it was in January 2016. Yes.

**ADV ADILA HASSIM:** And are you familiar with the terms of that agreement?

**MS QEDANI MAHLANGU:** Not all of it, and noting that I did say in the morning through you, Justice, that beginning of 2016, I was not too well and I ended up being hospitalised. So the nitty-gritties of exactly the contents of the settlement, he mentioned that there was a settlement and by agreement of the two parties. Thank you.

**ADV ADILA HASSIM:** And that was all you were informed of as far as this litigation goes?

**MS QEDANI MAHLANGU:** That they were implementing the decisions of the court of that agreement between the two parties.

**ADV ADILA HASSIM:** And do you know now that in fact, that did not take place, that the Department breached the settlement agreement?

**MS QEDANI MAHLANGU:** Can you please repeat the first one?

**ADV ADILA HASSIM:** Do you know now that the Department breached the settlement agreement?

**MS QEDANI MAHLANGU:** Well, post the— ja, post the conclusion of the placement of the NGO, that is how I came to understand that.

**ADV ADILA HASSIM:** And as a result of that, the transfer of mental healthcare users continued, and that was December/January, December 2015/January 2016,

which then led to your own officials raising concerns. So let us go to that. So we were talking about stakeholders, patient advocacy groups and the general public. Nothing came of their concerns. The process went ahead. And then on 12 February 2015, Mr Mosenogi writes to you and you have referred– you have alluded to the letter earlier, and it is in ELAH 2 ANNEXURE 5 page 27.

**MS QEDANI MAHLANGU:** Which page, Ma'am?

**ADV ADILA HASSIM:** Page 27. It is an email. Do you see it?

**MS QEDANI MAHLANGU:** On the 11<sup>th</sup> of February?

**ADV ADILA HASSIM:** 12 February 2016 an email from Mr Mosenogi to you.

10 **MS QEDANI MAHLANGU:** No, I do not have it. I cannot see it here but I [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** [Indistinct - cross-talking] see either. ELAH 5, is it?

**ADV ADILA HASSIM:** ELAH 2 ANNEXURE 5.

15 **ARBITRATOR JUSTICE MONSENEKE:** ELAH 2 ANNEXURE 5. Okay, let us try again – ELAH 2 ANNEXURE 5. You must have found it now, have you?

**MS QEDANI MAHLANGU:** I see ANNEXURE 6A and ANNEXURE 4 [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** Have you found ALAH 2?

**MS QEDANI MAHLANGU:** ...ANNEXURE 4B but I cannot find... there is 24, 25 pages, 26, 29. I do not have 27 to 8. I do not have this one [indistinct]. Ja, I have got access to it.

**MS QEDANI MAHLANGU:** Do you have it now?

5**MS QEDANI MAHLANGU:** Yes.

**ADV ADILA HASSIM:** Is this the email that you were referring to earlier?

**MS QEDANI MAHLANGU:** Yes, that is the email I was referring to.

**ADV ADILA HASSIM:** And this is an email in which Mr Mosenogi raises his concerns and you have read it.

10**MS QEDANI MAHLANGU:** I read it now after Adv Ngutshana shared it with me. Ja, last week Thursday.

**ADV ADILA HASSIM:** So we have been through this letter several times as well in the hearing and it is an appeal again to you to take a different course with regard to this project. Do you agree.

15**MS QEDANI MAHLANGU:** I agree what– so the contents of the letters say. May I again, Justice, bring it to your attention, during time, this is the time when I was recovering at home. I was not– I was on sick leave during this time and if you care to want to know the details, my file at George Mokhari is available. My file at Chris Hani Baragwaneth is available [intervenes]

20**ARBITRATOR JUSTICE MONSENEKE:** Yes, I believe you. You were unwell but I want to know did you receive the letter?

**MS QEDANI MAHLANGU:** I did not receive it and I did not go through any work related stuff when I was not well, and I do not remember seeing it till Adv Ngutshana shared it with me last week when he was briefing me.

**ARBITRATOR JUSTICE MONSENEKE:** So the letter from Mr Mosenogi, which raised all these concerns inter-departmentally, never reached you?

**MS QEDANI MAHLANGU:** I do not remember seeing it, Justice.

**ARBITRATOR JUSTICE MONSENEKE:** “I do not remember” is a safe base but do you want to– Do you deny that you received it?

**MS QEDANI MAHLANGU:** I do not remember, Justice. Remember, during the time, I was at home. I was not well. And it is either my email was opened by someone who referred the matter to the HOD.

**ARBITRATOR JUSTICE MONSENEKE:** Counsel.

**ADV ADILA HASSIM:** So you did not receive this and you did not read it?

**MS QEDANI MAHLANGU:** I was not well. I was recovering from home.

15**ADV ADILA HASSIM:** That is fine.

**MS QEDANI MAHLANGU:** If you really would– you care to want to get my files, they are open. You can have access to them.

**ADV ADILA HASSIM:** No, I just want to know what happened to the letter. Attached to the email is a proposal, and the proposal is from all of the senior managers in your department.

20

**MS QEDANI MAHLANGU:** Just maybe to answer the question specifically on the contents of this, I remember in– the issues being raised in a meeting, not in the email.

**ARBITRATOR JUSTICE MONSENEKE:** But look at the email. Have you referred to the email where it starts:

“We therefore senior managers, task to implement...”

Can you see that part?

**MS QEDANI MAHLANGU:** Yes, I see it.

**ARBITRATOR JUSTICE MONSENEKE:** Yes. So Counsel has questions to you about that. Would you proceed, Counsel?

**ADV ADILA HASSIM:** Thank you, Justice. So the three– This is the alternative proposal. As I said, it was– it comes from all of your senior management team. There are three aspects to the proposal. The first is they say, “Let the Department extend the process by at least a financial year,” in summary. Two, they suggest that you, “begin a negotiation to take over Life Esidimeni,” and then three, they say, “Over the course of the year, commencing March 2016, a smooth deliberate process be undertaken,” and they go into detail and they ask you to consider this proposal. And they say it was discussed and shared amongst them. [Indistinct - cross-talking]

**MS QEDANI MAHLANGU:** Again, Justice, I do not remember the email and I do not remember seeing it. And during this time it is the time when I was recovering and I was not at work. Secondly, the contents, for instance, what exactly is the

contents I want to talk about. Firstly, the first issue was about Baneng, that we should not cancel the contract at Baneng. We agreed. There was no argument from anyone that Baneng should not be cancelled. Instead, the officials must negotiate with Life about the continuation of Baneng till a solution is found.

5 **ARBITRATOR JUSTICE MONSENEKE:** How did that proposal reach you.

**MS QEDANI MAHLANGU:** It was— it was presented in a meeting by Mosenogi and the team. Secondly, the second issue being raised was that there should be an extension of the cancellation. Instead of ending on the 31<sup>st</sup> of March, it should be either six months or three months as discussed. We then after discussion agreed that we will  
10 extend it by a period of three months. Instead of ending it on the 31<sup>st</sup> of March, the contract will be extended up until the— it will be ended at the 30<sup>th</sup> of June.

**ADV ADILA HASSIM:** And on the suggestion that you look at procuring Life Esidimeni, purchasing it basically?

**MS QEDANI MAHLANGU:** I do not know... the discussion in a formal meeting to  
15 discuss purchasing of Life I really do not remember. What I do know that, as I have said, as at Monday in my primary— in my statement on Monday, that the budget— Department had serious budget constraints throughout the financial years. And in the annexure of my file, the file I handed over on Monday, you will see the number— the cost overruns not only from the Mental Health Directorate, but from across the  
20 Department on different aspects of the delivery of [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** Before we go far down that route, former MEC, Dr Selebano says he had enough money to buy Life Esidimeni.

**MS QEDANI MAHLANGU:** Well, I [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** So let us not go down the speculative route. He said when he looked, he was pleasantly surprised that in fact, the price range was within money that he had at hand.

5**MS QEDANI MAHLANGU:** Justice, if the HOD indeed had money to buy Life Esidimeni, he had all the authority and the right to make that decision and go ahead and buy it if he had money. But you can talk to any official in the Department who is senior, including the CFO, who would tell you that the cost in Health Department, including during that period, we did not have money.

10**ARBITRATOR JUSTICE MONSENEKE:** He says you countermanded the idea of buying Life Esidimeni and you were very insistent that it must be off-loaded, i.e. the contract cancelled.

**MS QEDANI MAHLANGU:** But, Justice, if there is a credible proposal on the table that MEC has money, I have decided to go and buy Life Esidimeni facilities and I  
15am going ahead to do it, I would not have prevented the HOD. If indeed I had prevented him, so why did he not go and tell the Premier because the Premier employs him.

**ARBITRATOR JUSTICE MONSENEKE:** Let me [indistinct - cross-talking] the other question which is this from– arising from Adv Hassim’s examination. Had you  
20received Mr Mosenogi’s letter, what would you have done with it?

**MS QEDANI MAHLANGU:** The contents [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** The evidence is [indistinct] but had you received it, what would have been your response? Senior managers expressing deep concern, what would you have done?

**MS QEDANI MAHLANGU:** I would have attended to the issues as we did, Justice, which were raised in informal meetings. Secondly, it is interesting to know that senior managers will resort to write a memorandum when they see me each and every day in the building and they had unfettered access to my office. Each and every person within the Department could be – was in a position to call me any time of the day, including a patient, including a cleaner, including a union member. Why would I not listen to my own managers? I still find it difficult to understand that.

**ARBITRATOR JUSTICE MONSENEKE:** Let me tell you what Dr Selebano's explanation is.

**MS QEDANI MAHLANGU:** Okay.

**ARBITRATOR JUSTICE MONSENEKE:** He says that he was so scared that he asked Mr Mosenogi to write the letter representing senior managers [intervenes]

**MS QEDANI MAHLANGU:** Oh, is that so?

**ARBITRATOR JUSTICE MONSENEKE:** ...because your attitude – I am just repeating the evidence to you wish you know – your attitude was unbending. You were inflexible and that is why the letter was written. That is his explanation. You saw the letter but you were inflexible

**MS QEDANI MAHLANGU:** But that is not accurate, Justice.

**ARBITRATOR JUSTICE MONSENEKE:** It is not true?

**MS QEDANI MAHLANGU:** And that is not how I work. That is not how I have led. On all other departments I have worked with people with people I have never met from a bar of soap. In every department that I have been to, I have never worked with someone whom I had prior knowledge or have had a relationship with before. Why would Barney be scared of talking to me when we were talking almost on a daily basis about any matter? All of the sudden, when it came to Life specifically, he could not talk to me and approached me. To give just a small example, Justice, when the HODs are appointed, there is a performance asse– there is a test that is being done and Dr Barney Selebano’s um... what is it – I forgot the taste, particular test. Just remind me if you can. So in that test, it– they assist your ability as a manager to work with a team, your understanding on financial management, your ability to work under pressure, and many, many other things. And one of the things about the HOD was about just managing the system and people’s issues. And I do not have the– I may not exactly be articulating this thing because I do not have the document in front of me and then when the Lancaster programs that are asked, I suggested to the HOD, “Can you please be part of the team that are taking this course at the Lancaster programs so that it can help you?” And I also enrolled in the same program because I needed to be helped and to get some skills as part of running the Department. He did not take part in that. Did I fight him? Did I shoot him? Did I do anything to him? I did not. It was his right to decide not to take the course, which in my view was to help him as a manager to get the skill at the right level.

**ARBITRATOR JUSTICE MONSENEKE:** Who is said to senior managers, “Are you working for Life Esidimeni or Gauteng Health”? Whose words are those? Have you heard about that?

**MS QEDANI MAHLANGU:** Yes, I have.

5**ARBITRATOR JUSTICE MONSENEKE:** They are attributed to? To you.

**MS QEDANI MAHLANGU:** Yes, they are attributed to me.

**ARBITRATOR JUSTICE MONSENEKE:** What you say about that? We have that evidence before us. In a meeting of senior managers, who sought to follow up on these issues, you said, and at least Dr Selebano and Mr Mosenogi said that, “Are you working for Life Esidimeni or are you working for Gauteng Health?” Did you say that?

**MS QEDANI MAHLANGU:** You know what, Senior Counsel– sorry, my apology. I have never been through this cross-examination and if I am fumbling, please just forgive me. It is my trying to do things as honourable as possible.

15**ARBITRATOR JUSTICE MONSENEKE:** Yes. I am the referee. I am meant to be here to protect you.

**MS QEDANI MAHLANGU:** You know, Justice, when you work with individuals, and particularly in the public service, not everyone in the public service is there to protect the interest of the state and the people we serve, and that is fact. And I can give you evidence of a particular program called Commit Health Workers and I will park that side. So when I make a statement, says, “Colleagues, we are here. You

are employees of the state and being paid by the state, our responsibility, core responsibility, is to ensure that resources are running efficient and effective manner.” So but in the process when at every given point in time we are going to raise an obstacle without substantiating, the statement came in that context. Not it was meant, “Oh, if you do not want to support this, it is my way or highway. Then go, you are working for Life.”

**ARBITRATOR JUSTICE MONSENEKE:** So you did say, “Are you working for Life Esidimeni or Gauteng Health”?

**MS QEDANI MAHLANGU:** In the context that I have explained, yes, I remember saying this. Yes.

**ARBITRATOR JUSTICE MONSENEKE:** Yes, I understand the context but you did say that?

**MS QEDANI MAHLANGU:** Yes, that I did say, Justice.

**ARBITRATOR JUSTICE MONSENEKE:** Counsel.

15 **ADV ADILA HASSIM:** And, Ms Mahlangu, you did that– you said that to Mr Mosenogi in front of his colleagues, did you not?

**MS QEDANI MAHLANGU:** No, it was in a meeting. I was not saying to Mr Mosenogi. We were discussing and I cannot remember who made my point and at what point did I say that.

20 **ADV ADILA HASSIM:** You are saying you did not say that to Mr Mosenogi?

**MS QEDANI MAHLANGU:** I said it in a meeting and I was not saying it to a particular individual [indistinct - cross-talking] And again, Counsel, may I beg your indulgence? The context I have explain. I think it suffices for you to put that statement in the context in the manner that I have explained it.

5**ADV ADILA HASSIM:** I am trying to understand what you are saying. We have different evidence. Mr Mosenogi says that that is what you said to him when he raised concerns about the Life Esidimeni termination, the process. That was confirmed by Dr Selebano in his testimony that this happened in a meeting. And so I am asking you whether you said it to Mr Mosenogi in front of his colleagues.

10**MS QEDANI MAHLANGU:** I made the statement in a meeting and I was– just I was saying to Justice, and the statement was not meant to any particular individual. And the context is as I explained few minutes ago.

**ADV ADILA HASSIM:** And you say that it was you who had power to halt the process.

15**MS QEDANI MAHLANGU:** No, I had to consult colleagues. Remember, the budget is not my decision. The budget is allocated from Treasury based on the resources available across the province to determine who gets X, Y, and Z. On the basis of that, then you have to go and say, “Well, we think this is– what we propose is not going to work, and this is going to the severity of the impact of this.” Had I  
20been told that information, I would have really honestly went and approach both MEC for finance and the Premier so that the budget is adjusted accordingly.

**ADV ADILA HASSIM:** And the information that was contained in this letter that you had not seen, was that information conveyed to you in the meeting that you had that you have just been referring to?

**MS QEDANI MAHLANGU:** As I responded earlier, Counsel, that the issues relating to the extension of the contract, we have dealt with those, and after one of those meetings we even issued a media statement. I am sure you have– you are in possession of that. Secondly, Baneng was not tampered with at all. And subsequently, by lack of communicating with Life formally, I wrote a letter to Life, and of course am sure we can find it if we were to call the Life CEO. And I said in the letter to the CEO of Life, it was preceding in a meeting which I would have had with the HOD, with the CEO of Life and I have had with the CEO of Life, with Dr Lebethe as well as Steve Mabona. Some of the meetings were held here. So it is in that context that I wrote the letter when there was no formal communication from the Department officials to say life to Life, “We are assuring you of this. The officials will take the matter deal with the nitty-gritties of that.” And that letter, by the way, I wrote it in September and before that, there was no formal communication Life over the extension of the contract, of the Baneng contract.

**ADV ADILA HASSIM:** I am not talking about the Baneng contract now. I understand that there is a difference between them. I am talking about the issues [intervenes]

**MS QEDANI MAHLANGU:** Yes, in the meeting and that is what I am responding to.

**ADV ADILA HASSIM:** Yes, but we were talking about the extension of the contract. And you say you agreed to extend the contract by three months. The request was for more than three months. But importantly, importance to this discussion is what the reason for the request was. So my question is whether the 5 concerns that were raised in the letter, you said you did not receive or read the letter, but when it was being discussed in the meeting, the need for an extension of the contract, were the reasons for the need of the extension discussed?

**MS QEDANI MAHLANGU:** I would not be able to remember the exact words used in the meeting because I [intervenes]

10 **ADV ADILA HASSIM:** So the letter that supports this request for an extension and other proposals is one, the relapse of vulnerable patients. Do you recall that being discussed?

**MS QEDANI MAHLANGU:** That was discussed in meetings over and over again that whatever the— when the move of the patients happen, the officials concerned 15 must make sure that the patients are given enough medication but also, the observation wherever they were going, they must make sure that they identify patients those who were about order to prevent the relapse at all if it was at all possible.

**MS QEDANI MAHLANGU:** Yes, but this [intervenes]

20 **MS QEDANI MAHLANGU:** Those things were discussed in a meeting.

**ADV ADILA HASSIM:** No, but [intervenes]

**MS QEDANI MAHLANGU:** I do not know exactly which meeting.

**ADV ADILA HASSIM:** No, I am talking specifically in relation to the concerns that led to the extension of the contract. It was not about in general how to transfer patients in order to mitigate the risk of relapse. It was that the concern, and that is 5in this letter that you did not read, the concern as it is written here is:

“That the impact of the policy decision, if effected in the current form, will ultimately result in the following. Firstly, in the relapse of the most vulnerable patients.”

So at this point in time, this is February 2016, you are senior managers are saying, 10“If we continue, they have will be relapse of vulnerable patients.”

**MS QEDANI MAHLANGU:** But, Counsel, I would really like you to help me a bit.

**ADV ADILA HASSIM:** Did they raise that with you in the meeting?

**MS QEDANI MAHLANGU:** Counsel, can I– before I answer you, may I just be allowed to say something? If you work with a team, every week or every se– every 15third week you have meetings. And there is no indication in whatsoever in the meeting that suggests that things are going horribly wrong. And then only *post facto* you get to know that oh, no, there is people who are scared of you to the extend that they mobilise each other, the same people that are coming to the meeting I guess, to say they were scared to raise issues with me when they were 20seeing me in the passage, with me in the lift, with me in the same boardrooms. I am failing to understand how to interpret this and what to make out of this.

**ADV ADILA HASSIM:** Well, my question was a simple one. It was just this is a concern that they have raised and you did not read the letter but you say you were in the meeting. And that they put this concern before the meeting question mark

**MS QEDANI MAHLANGU:** The concern is put before the meeting and again I will  
5repeat that [indistinct - cross-talking]. The extension of the Baneng contract which  
we agreed to and it was effected. The extension of the contract between three  
months and six months – and already remember, the contract it would have been  
running for six months already and it would have been nine months by the time it  
was ended on the 30<sup>th</sup> of June. And in those discussions, those were the issues  
10raised. And in those discussions, amongst other things that I remember being  
discussed, was that the quality of care, Justice, through you, was being  
compromised because the staff at Life was looking for jobs and some of them were  
leaving. And I said that also to the ombudsperson that– and I said to the team, “Let  
us do everything we can to ensure that we do not end up with a problem in our  
15hands because as you are saying to me that the quality of care at Life is reducing,”  
and exactly I do not know, remember which meeting, in one of those, “let us try and  
do our level best to make sure that the quality of care of the mental healthcare  
users is not compromised.” That we discussed in a meeting and I thought we had  
an understanding based on our discussion on how they are going to make sure that  
20the patient as soon as possible in terms of their plans, they were able to make sure  
that patients are taken to safe places.

**ADV ADILA HASSIM:** So I asked you whether the concern about– they say, “If we continue, it will be a relapse of the most vulnerable patients.” Was that concern raised in a meeting?

**MS QEDANI MAHLANGU:** The relapse, Counsel, was discussed in several meetings and at all material times the official would have un– made an undertaking that they are putting systems in place to deal with those issues.

**ADV ADILA HASSIM:** Another reason that grounded this proposal to you to extend the contract, is that the healthcare workers would be unduly affected as they would lose their jobs. Was that discussed in the meeting that they would lose their jobs?

**MS QEDANI MAHLANGU:** Yes, I remember the issues of the workers would have been discussed in November 2015 already. Actually, they started in beginning of November. You will see– if you see one of the emails and one of the minutes between the Nihau and all other unions relating to these issues. And in 2015 November, then we meet with Nihau and the Premier to discuss those issues again. So through and through those issues were part and parcel of the discussions.

**ADV ADILA HASSIM:** Well, I am not asking about 2015. I am asking about February 2016.

**MS QEDANI MAHLANGU:** But issues relating to employment in government, they start in one year, ending into other because of the long-term [intervenes]

**ADV ADILA HASSIM:** No, you see [intervenes]

**MS QEDANI MAHLANGU:** ...long processes of recruitment and all of that. Again, I am not an HR specialist. So I would not be able to answer the greatest of details.

**ADV ADILA HASSIM:** So you were not aware in February 2016 as far as you know, when you were discussing the need to extend the contract, there was a discussion about the impact of the workers and the specific concern also about outsourced workers. The gardeners and the cleaners were going to lose their jobs.

**MS QEDANI MAHLANGU:** But that was discussed, as I have said, in November 2015 already that we must do everything we can that those workers must be absolved.

10**ADV ADILA HASSIM:** Right, but it would appear – I am not denying or challenging your response that that was discussed in November 2015 – what it would appear is that because they are writing to you in February 2016, that the problem had been resolved. That they were still a very serious concern about the number of people who would lose their jobs. And my question to you– And that was one of the  
15reasons why they said, “We need you. Please, MEC, can we change tack [?]” I am asking did that get put on the table in the meeting?

**MS QEDANI MAHLANGU:** The HR issues were discussed in several meetings and I think in one of the files, Justice, I request this to be handed over this morning, there is a file that talks about HR issues relating to the project, the profiles, and all  
20of that. I think it is in [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** Aside the details though, it is the human question, an HR question. You were quite comfortable that hundreds of workers

would lose their jobs. If not comfortable, you were aware it was going to happen and you nonetheless were quite comfortable that you proceed.

**MS QEDANI MAHLANGU:** But, Justice, I had indicated even yesterday, on Monday that the meeting we had with Nihau and the Premier about guaranteeing 5 people jobs, and there is minutes in the file I handed over this morning which indicate the processes in government, as to what can happen, how, and who is going to be employed, why? And the HR presentation I am referring to year, suggests to me that the HR issues were taken care of. I would not– it was not government policy to throw people in the street. That is why we had to have a 10 meeting with Premier and the unions and consistently take those issues, and you see those minutes, that these issues of employment, of the workers was taken in the provincial by the [indistinct - cross-talking]

**ARBITRATOR JUSTICE MONSENEKE:** Well, I am talking about the impact. I am sure there was policy of government on preserving jobs but here, over 700 jobs 15 were going to be lost and I am saying you went along with the plan that would result with the loss of more than 700 jobs.

**MS QEDANI MAHLANGU:** Justice, in the meeting I had with the official, they assured me that they were going to work with every person to make sure that they are being assisted and placed in one institution all the other. And I remember very 20 well getting up call from some of the nurses and other employees from Life who called me and said, “I have been placed. I have not been placed,” and again, I referred those to the HR team to look into those and ensure that those employees I attended to.

**ARBITRATOR JUSTICE MONSENEKE:** Your team's evidence before us is by far, the majority of those workers became redundant.

**MS QEDANI MAHLANGU:** Well, I was not aware, Justice, until you say to me now.

**ARBITRATOR JUSTICE MONSENEKE:** Why were not you aware? Did not you have somebody at least keep a tally to say what happens to the workers and how are they going to have their jobs protected because you are saving money. That is what you told us is the reason for all this. And as you save money, what was to be the fate of the workers?

**MS QEDANI MAHLANGU:** They were supposed to be employed in the system or to be assisted to get jobs, working with the HOD and the HR.

**ARBITRATOR JUSTICE MONSENEKE:** Did you ever follow that up? Can you give us some numbers on how many were re-employed?

**MS QEDANI MAHLANGU:** So here is a presentation on ANNEXURE 20.

**ADV ADILA HASSIM:** Could you give us the page reference, please, Ms Mahlangu?

**MS QEDANI MAHLANGU:** I think it is page 365. It talks about the creation of Persal. Persal is a system used by Treasury and the numbers of faint. So I cannot see them properly in this light on page 366. So the presentation suggests to me that at the time, as I am saying, I do not have the proper visible presentation in this but this is the presentation. I am sure colleagues in Health can help retrieve a better quality of this version of what would have happened there. And if you go to

page 368, this is some of the people who were employed between July and August 2016. That information is given there. And also 369, it talks about the additional post at Weskoppies. The next page talks about the Sterkfontein Hospital. So that information I have as I have got it from the HR [intervenes]

5 **ARBITRATOR JUSTICE MONSENEKE:** Just repeat the page again, 368?

**MS QEDANI MAHLANGU:** 368 Cullinan, this was the Cullinan numbers were 27.

**ADV ADILA HASSIM:** Justice, we do not those pages in our file.

**ARBITRATOR JUSTICE MONSENEKE:** No, I have no 368 in my files. Do you have 368 in your file?

10 **MS QEDANI MAHLANGU:** Yes, I do, Justice. I can pass my copy to you.

**ARBITRATOR JUSTICE MONSENEKE:** Well, there is a problem about that because then everybody else must have the same thing that I have.

**MS QEDANI MAHLANGU:** My apology, Justice, for [indistinct]

**ARBITRATOR JUSTICE MONSENEKE:** We have to refer to the same thing. We  
15 are many. We have got to play on the same page. Anyway, when you find it some  
other time but the questions anyway, we are going to papers, the court question  
was what happened to the workers who were retrenched when Life Esidimeni was  
closed? That question we asked the CEO of Life Esidimeni and he said they had to  
terminate the employment because the contract was done. And we asked if you are  
20 HOD and Ms Manamela and that they had no idea what happened, where the  
workers ended up. So I am just saying was not there is an important consideration

for a political principle not to likely loose jobs but rather in the face of a request, like the letter in Mr Mosenogi's plea to you?

**MS QEDANI MAHLANGU:** Justice, the document I have before me suggests that 365 staff members from Life were taken to the Department. So this is what I have 5here. And it was prepared by Ms Mary Grace Msimang in April 2016. So I– that is what I have and I will make sure that the colleagues who are assisting me with the logistics help me to get the document [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** [Indistinct - cross-talking] make a copy. I am interested in that. Let us make a copy but Counsel has many more questions 10on that.

**MS QEDANI MAHLANGU:** Okay.

**ADV ADILA HASSIM:** Justice, maybe we could then returned to that once the witness has found some information.

**ARBITRATOR JUSTICE MONSENEKE:** Yes, absolutely.

15**ADV ADILA HASSIM:** The thrust of the question is also that the reason for the extension of the contract and this concern is being raised, the reason for the extension of the contract is based on these concerns. Nevertheless, the contract continued. It was extended by only three months as we know and as you have said, and this was February 2016. Unfortunately, the patient advocacy groups did 20not go away. They approached court again in relation to an interdict to prevent the transfer of patients to Takalani in March 2016. Do you recall that litigation?

**MS QEDANI MAHLANGU:** Yes, I heard about it. HOD was dealing with it.

**ADV ADILA HASSIM:** And Dr Selebano testified that you called a meeting with him, the chief directors, and legal to decide whether to defend the March litigation. Did you do so?

5**MS QEDANI MAHLANGU:** I am not sure.

**ADV ADILA HASSIM:** Is it possible that you did call the meeting?

**MS QEDANI MAHLANGU:** I am really not sure because we have had lots of meeting. So to discuss specifically to defend litigation, I do not remember. I just have to call a few colleagues and to try and whatever.

10**ADV ADILA HASSIM:** You do not recall having a meeting [intervenes]

**MS QEDANI MAHLANGU:** Did he give you the dates of the meeting? Maybe I can try and trace it somehow from my emails.

**ADV ADILA HASSIM:** It would have been in March 2016.

**MS QEDANI MAHLANGU:** Okay. May I seek permission from you to, through you,  
15Justice, to go and get– clarify this matter before I answer [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** But did you support the opposition of the interdict?

**MS QEDANI MAHLANGU:** No, what the HOD said to me [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** [Indistinct] forget about the meeting. Did  
20you as political head support or opposing the interdict?

**MS QEDANI MAHLANGU:** Justice, I do not remember exactly but what I seem to recollect is the issue relating from move of patients to Takalani if I am not mistaken but maybe I should not say anything until I just refresh my mind on that particular aspect, please.

5**ARBITRATOR JUSTICE MONSENEKE:** Can you for instance, remember what was the outcome of that case?

**MS QEDANI MAHLANGU:** Can I just refresh my mind properly, Justice? I plead with you.

**ARBITRATOR JUSTICE MONSENEKE:** Okay.

10**ADV ADILA HASSIM:** It was in the second half of March 2016 just to narrow it down. It was in March and it was in the second two weeks because it was an urgent application and of course, you were cited as the first respondent but we know now that it does not mean that you read anything. Do you recall what happened after that litigation?

15**MS QEDANI MAHLANGU:** Uh-huh.

**ADV ADILA HASSIM:** So the [intervenes]

**MS QEDANI MAHLANGU:** Specifically relating to what [intervenes]

**ADV ADILA HASSIM:** To the Takalani– to the transfer of patients to Takalani. What happened was that those patient advocacy groups – Sadac, Sasop, the  
20Association of Psychiatrists, the South African Federation for Mental Health, and the families, the Association of Family Members – approached the court to interdict the

Department from transferring patients to Takalani. And the Department defended that litigation.

**ARBITRATOR JUSTICE MONSENEKE:** Do you remember hearing of that case?

**MS QEDANI MAHLANGU:** Justice, I remember something about Takalani but the details of that, I really do not know and to that is why I am requesting with your permission to really try and refresh my mind. I can give your answers first thing tomorrow morning when we reconvene.

**ARBITRATOR JUSTICE MONSENEKE:** Your answer is, “I do not remember,” Counsel.

10 **ADV ADILA HASSIM:** And I take it that mean you do not remember whether you received the court papers either?

**MS QEDANI MAHLANGU:** I cannot– the papers relating to this matter?

**ADV ADILA HASSIM:** Yes.

**MS QEDANI MAHLANGU:** No, it can answer you tomorrow, Counsel, if you do not  
15 mind?

**ADV ADILA HASSIM:** Yes, please. Sorry, I thought– are you– I thought you were going to respond.

**MS QEDANI MAHLANGU:** No, I was requesting to answer it tomorrow.

**ADV ADILA HASSIM:** Tomorrow? Oh, I see.

20 **MS QEDANI MAHLANGU:** Yes, please. Yes.

**ADV ADILA HASSIM:** Okay. Well, as you– you may answer it later. I would just like to draw to your attention that the affidavit, the answering affidavit that was filed by the Department by Dr Selebano, states that he was duly authorised to depose the affidavit on your behalf as well as on behalf on the Department. And you do not recall that, is that so?

**MS QEDANI MAHLANGU:** Can I please deal with all of them together [intervenes]

**ADV ADILA HASSIM:** Okay.

**MS QEDANI MAHLANGU:** Relating to this matter specifically.

**ADV ADILA HASSIM:** Do you know how many patients died Takalani?

10 **MS QEDANI MAHLANGU:** I do not remember specifically.

**MS QEDANI MAHLANGU:** Do you– It was 38.

**MS QEDANI MAHLANGU:** Okay.

**ADV ADILA HASSIM:** You see [intervenes]

15 **ARBITRATOR JUSTICE MONSENEKE:** What Counsel is saying is that after you opposed the affidavit, at least, your name is in the court papers as having authorised Dr Selebano, people were transferred to Takalani, patients, mental health care users, and 38 of them died. Can you see that connection?

**MS QEDANI MAHLANGU:** Yes, I see, Chair. That is why I am proposing, Justice, that let me go and look at all the issues. I will come back to you tomorrow.

20 **ARBITRATOR JUSTICE MONSENEKE:** Okay. Counsel.

**ADV ADILA HASSIM:** You may look and come back to the detail on the litigation later, but can I ask you– what was raised in that litigation was a warning that adults were being transferred to an NGO that was licensed to look after children. If you had known about that, if that had been brought to your attention the court papers or the letters, would you have permitted the transfer of the patients?

**MS QEDANI MAHLANGU:** Can I answer the questions relating to Takalani and this court case tomorrow, please, because [indistinct - cross-talking]

**ADV ADILA HASSIM:** As you sit here now, let me ask you [intervenes]

**MS QEDANI MAHLANGU:** [Indistinct] your understanding, Counsel.

10 **ADV ADILA HASSIM:** No, I understand that you may come back to it again but as you said you now, if you had known, if it had been brought you attention, this morning that adults were being transferred to an NGO licensed to look after children, what would you have done?

**MS QEDANI MAHLANGU:** Can I answer that question tomorrow, Counsel, please?

**ADV ADILA HASSIM:** As you sit here now, you are unable to answer that. Is that what you are saying

**MS QEDANI MAHLANGU:** Because I need the full information before me so that I can apply my mind [intervenes]

20 **ADV ADILA HASSIM:** No, I am asking you a hypothetical question. So you can return to it later once you have read the court papers [intervenes]

**MS QEDANI MAHLANGU:** But it is incorrect to say that because it is important for me to give factual information. If I am going to say this today and tomorrow and I change and say that, and I do not think it is correct for the purposes of this hearing. Can you please indulge me?

5**ADV ADILA HASSIM:** The question is not about the facts now on that case. We can come back to that. The question is you as the MEC for Health, if it were brought to your attention that adults were been placed in a facility for children, and if it were– let me put it to you– let me put to you the other concern. If it were put to you that amongst those adult patients were patients who were being treated for  
10hyper-sexual symptoms and they were being placed in the wards, if those concerns were put to you, what would you have done?

**MS QEDANI MAHLANGU:** I would not have agreed and just let me make a small point, Justice. I knew Takalani– I have known Takalani for a while and I have had an interaction with Takalani when I was MEC for Health and Social Development.  
15So and I know the profile of users who are at Takalani. So that is why I really want to be careful and sure about what exactly you are asking me and I have taken detailed notes of that. And I will– again, I have answered a portion of your question. Can I please ask that I come back to you because as I have said, at least I know Takalani. Of all of these NGOs, I know Takalani. So it is important for me to give  
20you proper answers that are factual.

**ADV ADILA HASSIM:** So you are unable to say what you would have done?

**MS QEDANI MAHLANGU:** No, but I did answer, Counsel. I said I would not have agreed.

**ADV ADILA HASSIM:** You would not have agreed.

**MS QEDANI MAHLANGU:** However, can I [intervenues]

5**ADV ADILA HASSIM:** Okay, then I have your answer.

**MS QEDANI MAHLANGU:** Can– let me– Yes. Can I then go and look for detailed information that will help me to answer your other questions?

**ADV ADILA HASSIM:** That is fine. No, I have your own now. As a result of the information that was put to the court in that hearing by the Department, the  
10Department won the case. Did you know that? Did you know that you succeeded in defending the case?

**MS QEDANI MAHLANGU:** Ja, something like that was mentioned.

**ADV ADILA HASSIM:** And do you [intervenues]

**MS QEDANI MAHLANGU:** Again, can I get back to the documents and then and  
15read all of them? Tomorrow I will come with the answers, please.

**ADV ADILA HASSIM:** As a result of your success in that case, patients were then transferred to Takalani and that was after March 2016. Do you know that there was a typhoid outbreak at Takalani subsequent transfer?

**MS QEDANI MAHLANGU:** I remember asking the HOD to get the team dealing  
20with the outbreaks to go and look at the matter. And again, let me just check the

facts related to their but I remember something like that being mentioned and the speaking to the HOD to get the facts and to get the team in that facility [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** Was it an outbreak at Takalani?

**MS QEDANI MAHLANGU:** I do not know whether it was an outbreak or and I do not know how many cases you refer to. That is why– I do not have the facts before me, Justice.

**ARBITRATOR JUSTICE MONSENEKE:** No, no, I understand that. When you said you remember asking the HOD to go and inspect the outbreak, was it in relation to Takalani?

10 **MS QEDANI MAHLANGU:** Yes, it was something rela– it was said one patient had typhoid but I do not know how they found how many and I do remember something to do with typhoid but I do not know how many people were affected by that.

**ADV ADILA HASSIM:** If you turn to your exhibits file and have a look at ELAH 58...

15 **MS QEDANI MAHLANGU:** [Indistinct]

**ADV ADILA HASSIM:** So ELHA 58, do you see it?

**MS QEDANI MAHLANGU:** Yes, I do.

**ADV ADILA HASSIM:** It is in relation to an outbreak of salmonella typhoid, and if you look at paragraph 3, it says that it was an investigation conducted at Takalani Home.

**MS QEDANI MAHLANGU:** Yes, I am following, Counsel.

**ADV ADILA HASSIM:** And then it lists the patients who were affected, and then provides an environmental assessment Takalani on page 3. Do you see it? And it raises concerns and that assessment regarding the sleeping area, that six patients share a room. It talks about a pungent foul smell in the dining hall, no and washing basin and so on, and then in the kitchen very dirty floor, poor illumination, poor housekeeping, dishwashing water was being reused and so on. Was this– were you aware of this? Was this brought your attention?

**MS QEDANI MAHLANGU:** I do not remember seeing the report of this particular nature relating to this case. As I said, I remember talking to the HOD about a specific issue. Can we [intervenes]

**ADV ADILA HASSIM:** But it was not this? Was it this issue?

**MS QEDANI MAHLANGU:** It was something to do with typhoid but I do not know how many people were affected and finally what happened and the report that was produced. I did not see that report.

15 **ADV ADILA HASSIM:** Well, this is a report that is here. Would you agree that this is a very serious indictment on Takalani?

**MS QEDANI MAHLANGU:** Yes, the report suggest as so.

**MS QEDANI MAHLANGU:** And this was July 2016.

**MS QEDANI MAHLANGU:** Yes, that is what the report says.

20 **ARBITRATOR JUSTICE MONSENEKE:** But do you see the connection, the trail of events that Counsel is getting at?

**MS QEDANI MAHLANGU:** Yes, Justice. Yes, I do.

**ARBITRATOR JUSTICE MONSENEKE:** The various interested groups say, “Do not move patients to Takalani.” You are cited as the first respondent. You through Dr Selebano opposes the application, patients are sent to Takalani. They end up in those conditions where typhoid break out. Some of them die and others complained, as it would be put to you, about rape because men and women were together. Can you see that trail? You were part of a court case where you said they must go to Takalani. They go there and in three months’ time, that is the report that your Department files showing the terrible circumstances at Takalani. Ultimately, 38 people died. That is the connection the Counsel is trying to make with you and with your seniority to respond to that collection of events, they are not isolated, freestanding events.

**MS QEDANI MAHLANGU:** Thank you, Justice. May I request that I respond with all the Takalani-related issues tomorrow, please? I need to get facts and information that will enable me to give you a decent answer.

**ARBITRATOR JUSTICE MONSENEKE:** Counsel.

**ADV ADILA HASSIM:** Justice, if you are minded to do so then I would be amenable to waiting [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** No, no, let us have a rational evaluation of this. Why would you want to deal with this tomorrow, former MEC?

**MS QEDANI MAHLANGU:** Because I need to look at the documentation and look to try and help remember the things as they happened then, Justice. It has been

almost more than a year that I have been out of the system and I have not been connected to any information relating to this. I am human. I am likely to forget certain things.

**ARBITRATOR JUSTICE MONSENEKE:** But you had access to the evidence transcripts, did not you?

**MS QEDANI MAHLANGU:** Yes, I did and I tried to read as much as I could, Justice.

**ARBITRATOR JUSTICE MONSENEKE:** You had access to the documentation that we are dealing with here, at least most of it. In fact, you add another 390 this morning. So why cannot you deal with the questions around Takalani?

**MS QEDANI MAHLANGU:** Because I do not have all the– I cannot remember certain things and I need to really refresh my mind properly so that I can give you a decent answer.

**ARBITRATOR JUSTICE MONSENEKE:** And how would you refresh your memory, by what means?

**MS QEDANI MAHLANGU:** Just to look at a number of things – my notes, to look at my diary, to look at every aspect of the things so that I can be able to connect the dots where I am not able to connect them properly now. I have got a rough idea but I do not want to present half baked answers to you, Justice.

**ARBITRATOR JUSTICE MONSENEKE:** But if you tell a court that Takalani is fine and patients must go there, and they get confronted with typhoid, that does not

need much memory does that? That is unacceptable, is it not? Is not that plainly wrong?

**MS QEDANI MAHLANGU:** You know, Justice, maybe just to say that you know, when I was hospitalised in February, initially they thought I had typhoid because of the signs and whatever else. So I do not know where exactly people get typhoid, under what circumstances. It would be those kind of details. So may I please plead with you that– I know it may be– and you have been doing this exerc– going through this exercise for a while but for my purposes because I am not a lawyer and I am trying to remind myself and am not allowed to have any lawyers helping me, so I am doing the best I can to go through the documentation so that I can give decent answers. So I do not want to sit here and say, “I cannot answer. I cannot answer,” and I do not think that would be helpful either.

**ARBITRATOR JUSTICE MONSENEKE:** Okay. We have heard the explanation. I wanted to exercise patience, Counsel.

15**ADV ADILA HASSIM:** Justice, the thing is that, if I may– Ms Mahlangu, you did have legal representation and these hearings waited for you. The reason we are still sitting is because we waited for you in order for you to prepare for this appropriately. And all of the documents and the transcripts of the hearings have been provided to you. Did you read them before he came to testify?

20**MS QEDANI MAHLANGU:** I tried to read as much as I could and I continue to read every day. Even yesterday was trying to read. So and I do not know when it is

going to be possible for me to go through each and every page, each and every document, and I am doing my utmost best.

**ADV ADILA HASSIM:** Did you read the transcripts of the families who had relatives at Takalani?

5**MS QEDANI MAHLANGU:** Oh.

**ADV ADILA HASSIM:** Did you read their testimony?

**MS QEDANI MAHLANGU:** I cannot remember exactly. I read the Dr Manamela, I read the Dr Selebano, and I read the— no, I have not read Hannah, and I read most of the documents that were here. Some of the transcripts I have not gotten through 10them and some of them, I am still making my way through them. It is [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** The question is about the families, the testimony of the families. Did you read those this the monies?

**MS QEDANI MAHLANGU:** I cannot remember. There is one I read but I cannot remember for which person particularly. Justice, can I come back to you tomorrow, 15please Chris Rock

**ADV ADILA HASSIM:** Why did not you— sorry. Why did not you read the testimony of the families?

**MS QEDANI MAHLANGU:** I am still reading the transcript, Counsel, and these are many documents. And I was told that I am not allowed to work with lawyers. The 20only thing they can do is to get documentation source documents for me. So I am

doing the best I can to go through all these documentation and to listen to YouTube and whatever else.

**ADV ADILA HASSIM:** Yes.

**MS QEDANI MAHLANGU:** I am trying my best. Probably my best is not enough but I am trying to come here and be as ready as possible.

**ADV ADILA HASSIM:** So the record and the transcripts were provided you last year?

**MS QEDANI MAHLANGU:** But I only got these documents when I got back.

**ADV ADILA HASSIM:** So you are lawyers [intervenes]

10**MS QEDANI MAHLANGU:** Justice, may I please plead with you.

**ARBITRATOR JUSTICE MONSENEKE:** You want time to go and refresh your memory so that you can deal with [intervenes]

**MS QEDANI MAHLANGU:** And also to read more of some of– including the transcripts that the Counsel is referring to or refer– remind me exactly which  
15particular transcript that I am talking– we are referring to.

**ARBITRATOR JUSTICE MONSENEKE:** We have long said we are not sitting in a rally. Please, I will not have any hackling. Please, and those of us who would like to hackle and we identify them, we will be compelled to ask them to leave. And I do not want that to happen to anybody. We have to give the witness an opportunity. I  
20said many times, even if we do not like answers, we have two remained respectful. Please. Just repeat that.

**MS QEDANI MAHLANGU:** Justice, may I beg your indulgence just to go through the document and again, I will cross night again tonight to try and get through as much documents as possible [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** Yes.

5**MS QEDANI MAHLANGU:** ...and so that tomorrow I can [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** The difficulty, Counsel, is a witness who says, “I cannot remember. I want to refresh my memory.” So you can of course ask inference to be made in argument on credibility but I do not think you can compel a witness to remember it here and now. So I want to allow the witness to go  
10and refresh your memory and to submit to examination on the issue tomorrow. May you proceed with other– in another area?

**ADV ADILA HASSIM:** Yes, Justice. I will do so. May ask just one question arising from the response of the witness as to when, as to the timing?

**ARBITRATOR JUSTICE MONSENEKE:** Yes.

15**ADV ADILA HASSIM:** The record and the transcripts were provided to your lawyers last year, and you see only received it on 10 of January, is that so?

**MS QEDANI MAHLANGU:** Yes, that is true.

**ADV ADILA HASSIM:** So they had not– they did not give it you last year when was made available to them?

20**MS QEDANI MAHLANGU:** No.

**ADV ADILA HASSIM:** Okay.

**MS QEDANI MAHLANGU:** There is a reason why I have a new legal team, people are supporting me. So ...

**ADV ADILA HASSIM:** We will return to Takalani then. Your testimony thus far has been that you did not know much of what was going on, and that the Department withheld information from you, and that when they did provide information, that information was incorrect but we have heard testimony from several witnesses that in fact, you played a very hands-on role. What Dr Selebano said was that the project team people to you regularly, and this was confirmed by Dr Manamela and Mr Mosenogi that they had fortnightly progress reports with you. Is that correct?

**MS QEDANI MAHLANGU:** We had frequent meetings but I do not know exactly how often. I think it was every three weeks or once a month or so. I am not exactly sure of the date but we met frequently with the presence of the HOD. When you could not attend to, Dr Lebethe will attend the meeting.

**ADV ADILA HASSIM:** Mr Mosenogi said that the time frames for the projects, and this relates to implementation, was determined by you and Dr Selebano.

**MS QEDANI MAHLANGU:** After the presentation from him as a project leader and Dr Manamela.

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

**MS QEDANI MAHLANGU:** Yes.

**ADV ADILA HASSIM:** And Ms Manaka from Cullinan testified that you said that politicians intending to visit Cullinan Centre could only do so with your permission.

**MS QEDANI MAHLANGU:** Politicians who want to do oversight, yes, so that they do not disrupt services.

5**ADV ADILA HASSIM:** They could only do so with your permission.

**MS QEDANI MAHLANGU:** ...and that was across the province. It was not only about Cullinan. It was across the province. Again, primarily may I just explain, Justice. You find politicians walking into hospitals and they are disrupting services and sometimes, they then cause difficulties for doctors. It was a concern of the  
10practitioners throughout the system where they have raised the those kinds of issues that they would like to concentrate on working but they get distracted from time to time. It was not only Cullinan but it was a provincial wide practice.

**ADV ADILA HASSIM:** Ms Manaka testified that this was recorded in the meeting at Cullinan. So it was specifically in relation to Cullinan.

15**MS QEDANI MAHLANGU:** No, it was a provincial wide issue. I do not– it cannot be– you cannot make one rule for one hospital. All hospitals are the same and are governed by the same government. It cannot be correct.

**ADV ADILA HASSIM:** She also testified that you, along with officials, visited Cullinan on 1<sup>st</sup> July 2016.

20**MS QEDANI MAHLANGU:** Yes, I said that in my testimony.

**ADV ADILA HASSIM:** And you inspect that the two NGOs at Cullinan, Anker and Siya Badinga.

**MS QEDANI MAHLANGU:** Yes, I said that in my testimony as well. When I was notified that they were challenges relating to food and to the kitchen of the hospital, I said that in my testimony.

**ADV ADILA HASSIM:** So you would have witnessed the circumstances at the NGOs.

**MS QEDANI MAHLANGU:** Yes, and I asked that the relevant officials to respond to the issues. I spoke about the stove in my presentation. I spoke about the cold storage in my presentation. I spoke about the clothing and to the extent that I would have gone to the media to appeal for additional items to be donated by the public.

**ADV ADILA HASSIM:** And why did you not take steps to move the patients from those NGOs?

**MS QEDANI MAHLANGU:** But, Counsel, yesterday when I presented, I cannot remember where it was, through cross-examination, Counsel, on Monday, one of the things I said that overcrowding was an issue. If you would remember that is what I said on Monday. As I am saying, I cannot remember whether it was through examination or what. And I said what worried me when I raised the issue of overcrowding at Cullinan, they said they were going to attend to it. And when I went to – what is the NGO? – Precious Angel, I did indicate even on Monday that the patient I had seen at Cullinan and at one of the NGOs, I found them at Precious

Angel. And I was not sure and I asked them, “But what is going on?” And I said, “No, we are decanting and this and this and that.” So [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** This sharp end of that question is why did not you arrange for the users to be taken to better places?

5**MS QEDANI MAHLANGU:** But I asked the team. I was with – who was I with? – in every place I went to, Justice, I always went with the team, the district team that was in that area, in that district. In this instance, it would have been the Tshwane district team and someone from the mental health directorate, there are asked them to look at those issues and to ensure that patient safety is prioritised and are taken  
10in decent places.

**ARBITRATOR JUSTICE MONSENEKE:** Former MEC, let us not [indistinct] in silos. Again, here is the trajectory. You make a decision to close down, you and the team or the collective. People are taken to Cullinan. The real hospital is actually full, your hospital, and are handed over to NGOs, Anker and Siya Badinga.  
15You go and visit and you find unsatisfactory conditions. The [indistinct] is boated but you ordered it and the conditions are unsatisfactory. Counsel asks why did not order you close your or that they move to better places?

**MS QEDANI MAHLANGU:** Justice, I did ask them to move the patients to better places and ensure that patient safety is respected at all times. And remember,  
20Justice, you are not talking about people who do not– one of qualified medical practitioners of one kind or the other. So when I say to them, “Can you please ensure the patient safety? There is patients in the respective categories as you

classify them, can they be move into decent places and make sure that that happens,” and I expected them to do as such.

**ARBITRATOR JUSTICE MONSENEKE:** And where any of these orders written down?

5**MS QEDANI MAHLANGU:** No, it was– we were doing the walk about and has been doing the walkabouts, when we finish that we have a conversation and say, “Can you please act on X and Y, Z, and Q.” And the things I said, I asked them to act them on was the HR which they were attended to by Mrs More and Ms Msimang relating to the HR issues. And the others are asked the district team from Tshwane  
10to look into the issues and ensure that the patient safety is adhered to at all times.

**ARBITRATOR JUSTICE MONSENEKE:** These advocates will be following or perhaps even Adv Hassim, are going to tell you how many people died in those facilities, even after you had been there, before you were there and after you were there. They going to tell you how they starved, how they had no proper medical  
15care, how NGOs had to be pleaded with to give them food. Not even the mortuary worked. [Vernacular] because the mortuary did not work. So you must see it always holistically. It is that continuum of concern that has really been put to you about your visit to Cullinan. Counsel.

**ADV ADILA HASSIM:** Ms Mahlangu, you visited in July. The are that by then, 14  
20patients had died.

**MS QEDANI MAHLANGU:** On that day, Counsel, that information was not shared with me.

**ADV ADILA HASSIM:** You did not know that?

**MS QEDANI MAHLANGU:** No, not at all.

**ADV ADILA HASSIM:** They died because of the circumstances in which they were kept. You visited the NGOs and you did not move the patients to a safer place. We know that now.

**MS QEDANI MAHLANGU:** But, Counsel, the responsibility of officials of government who are qualified medical practitioners in this ends that I am referring to, when we say to them, “You have to decant. These patients all of these mental healthcare users are overcrowded here, can you please it into the matter?” It is in their– these are people who take an oath when they qualify in the university or the nursing colleges. I am not talking about someone of the finance or whatever. I am talking about people who are highly medically qualified. When you say to them– and they know what are the ideal conditions for patients and they know which ones are not ideal for patients. So probably adequate for granted that I am working with people who know what they were supposed to be doing. Secondly, the fact that I was not told about the numbers when I walked into Cullinan. How was I supposed to know when I am not being told? Because at the time, as I have said in my pre-primary statement, that I went to Cullinan primarily because they were concerns raised by the media relating to food and the conditions in the kitchen. And I went there because I was becoming just really annoyed about this noise and I went there to see what is going on, what can be done. And I asked officials to intervene and to follow through on those issues.

**ADV ADILA HASSIM:** You were getting annoyed by the media and so you visited. How is it that you did not know all of this information? This was happening under your watch. So far [intervenes]

**MS QEDANI MAHLANGU:** It is impossible, Counsel, for any politician to know each and everything that happens under their watch in any department [intervenes]

**ADV ADILA HASSIM:** But there are many things that you have now said you were not aware of.

**MS QEDANI MAHLANGU:** But I am saying, if you ask me now or you ask any politician what is happening in Bara, what has happened today, what has happened yesterday, I doubt very much that you would get an absolute answer or in any facility in Gauteng or in any education system in the province in the country. It is impossible for a politician to do [indistinct]. Even probably the HOD may not even know. The people who may have a knowledge is those in that area but the rest of the other people may not know. The system is too complex and huge for me to have had eyes and ears to know that 10 million people who are visiting the house system, were being served by the health system in Gauteng, that I would know each and every one of those things. It highly impossible. What happened is regrettable and I will continue to say so.

**ADV ADILA HASSIM:** No, I am sorry I disagree because this issue of the termination of the contract had been brought to your attention many, many times and were taking you through now is the fact that you were getting– you were being– they were meetings every two weeks at which reports were given. There was

media noise that irritated you. There were letters that were being sent to you by various organisations. There was litigation, already two sets of litigation by this point in time, that you go to these NGOs. So this was not any ordinary situation of knowing what was going on. You were not taking a keen interest, is not that so?

5 **MS QEDANI MAHLANGU:** I took a keen interest that is why I drove late at night on Friday after I was in all– in doing other things during the day and I said, “I cannot go to bed without going and just understanding for myself what is going.”

**ADV ADILA HASSIM:** Did you do that because you were concerned about the patients or did you do that because you wanted to stop the media noise?

10 **MS QEDANI MAHLANGU:** Now, I was concerned about the patients. Why would I be worried about the media? They have got a certain agenda. My agenda is to serve [intervenes] my country.

**ADV ADILA HASSIM:** What is the media agenda?

**MS QEDANI MAHLANGU:** I do not know but I know my agenda was to serve and  
15 to the extent possible with all my abilities and to the extent possible and do what I can to prevent the loss of life but were I could not, I could not.

**ADV ADILA HASSIM:** And so when you then visited the NGOs and saw for yourself with your own eyes how bad things were, why did you not make a plan to move the patients to a safer place?

20 **MS QEDANI MAHLANGU:** Counsel, if you are implying that on that day I should have organised a truck and organise a bus [indistinct - cross-talking] Sorry, slippery

of the tongue, my apology. If on that day he expected me to organise the patient plan transport from the EMS, to organise a venue that night, that is impossible. However, what I did, I asked the respective managers to act and take responsibility to ensure that patients are not overloaded. And again, I continue to say I tried my level best to mobilise resources and try and ask the official to do what they are employed to do but also in keeping with their ethics as profess– as medical professionals.

**ADV ADILA HASSIM:** Do you know how many patients died on people with that?

The 14 had died by July

10. **MS QEDANI MAHLANGU:** I do not know. I do not know.

**ADV ADILA HASSIM:** A further 15 patients died. Those were preventable deaths, would you agree?

**MS QEDANI MAHLANGU:** I do not know, Counsel. As I said yesterday, one life lost, too many. And it is important to say I think for all intents and purposes, the causes of deaths of the mental healthcare users, it is important for all of us to find out exactly what is the cause of death so that we can get to the conclusion and certainty is that the families can find closure, and everyone else affected can find closure.

**ARBITRATOR JUSTICE MONSENEKE:** But, former MEC, by do you talk about a truck?

**MS QEDANI MAHLANGU:** No, Justice, I did say it is a slippery of the tongue. I am sorry. I did say that. I did say it is a slippery of the tongue. I did not– yes, I did say it is very of the tongue.

**ARBITRATOR JUSTICE MONSENEKE:** Okay. You just meant means of transport  
5I suppose.

**MS QEDANI MAHLANGU:** No, no, no, I was just– I did say sorry. It was slippery of the tongue and I further said, Justice, [indistinct] using the planned patient transport that you transport patients in Gauteng from time to time because those– that transport does exist in the province.

10**ADV ADILA HASSIM:** Are you aware that a bakkie was used to transport patients  
[intervenes]

**MS QEDANI MAHLANGU:** I was not aware.

**ADV ADILA HASSIM:** ...from Esidimeni to the NGOs?

**MS QEDANI MAHLANGU:** I was not aware. I got to know about it when I had an  
15inter– I attended the hearing with the ombudsperson.

**ADV ADILA HASSIM:** You did not know about it?

**MS QEDANI MAHLANGU:** No.

**ADV ADILA HASSIM:** There are a lot of things that do not come to your attention.  
I am going to continue with the fact that you were actually– to demonstrate to you  
20that you actually were very involved. You did visit Precious Angels, did not you?

**MS QEDANI MAHLANGU:** Yes. I think I visit Precious Angel in September. I think the other day you raised– there is a letter you read. I cannot remember exactly the date but I visit Precious Angel in September [intervenes]

**ADV ADILA HASSIM:** Was it not August?

5**MS QEDANI MAHLANGU:** No, I think it was September. I am not sure exactly of the date. I am still trying to go through my emails from [intervenes]

**ADV ADILA HASSIM:** And you witnessed the conditions at Precious Angels?

**MS QEDANI MAHLANGU:** And on that visit, Justice, this is what I observed and asked the official to deal with. In the letter that the Counsel read on Monday, they  
10were issues about bodies who were lying in mortuaries. I was with Dr Gnocchi in that visit. I was with Mr Motomone Pitsi. Pitsi was a chief director for the Tshwane district and one of the things, I think Dr Manamela was also present on that day, and the conditions were not proper role. And I asked him, “Why are mental healthcare users in this facility?” They said the owner had at the premises but  
15because of certain administrative issues they had to relocate. However, they are planning to be– there are place that they procured in Centurion somewhere which was big enough to accommodate the patient. And I was assured by the owner of Precious Angel as well as the officials of the Department that was the case. And I asked them, “Please ensure that the issues of payment to the NGOs are not  
20delayed, issues relating to make sure that these patients are safe and then all of that are done.” Lastly, I asked Dr Lebethe relating to these bodies, Justice, who were lying in mortuary, “Dr Lebethe, can you please get the forensic mortuary

laboratory services to work with you in getting these bodies into the rightful place and work with the relative concern, including getting autopsies done.” That would have been my action on the letter that you referred to on Monday in your cross-examination, Counsel.

5 **ADV ADILA HASSIM:** When you visited Precious Angels and you inspected this facility, did you ask to see their licence?

**MS QEDANI MAHLANGU:** I cannot remember exactly when I asked to see the license not because the license is to have– how does the licence work? Oe, I do not know but the license argument to an NGOs and I think it states how many 10patients are there and I am not sure whether it speaks to– it states the building or the address. That logistics I would not be aware of but I cannot remember.

**ARBITRATOR JUSTICE MONSENEKE:** Just go straight to the question, please. Did you ask for their licence?

**MS QEDANI MAHLANGU:** I cannot remember [intervenes]

15 **ARBITRATOR JUSTICE MONSENEKE:** It is a no or a yes.

**MS QEDANI MAHLANGU:** I do not remember, Justice.

**ARBITRATOR JUSTICE MONSENEKE:** You do not remember?

**MS QEDANI MAHLANGU:** Yes.

**ADV ADILA HASSIM:** So you said that when you went there, you were informed 20that that in fact, they were not supposed to be at the premises. They were meant to be [intervenes]

**MS QEDANI MAHLANGU:** Yes, they were operating in two premises, Counsel.

**ADV ADILA HASSIM:** And so did it not then occurred to you that this would be in violation of the license

**MS QEDANI MAHLANGU:** As I am saying, I was assured that there are being—  
5they have a place that is bigger and official said to me they had seen the place with  
a patients are going to be taken to and I did they work because as I have said,  
these are professionals who are dealing with this work on a daily basis. And if they  
say the place is appropriate for the mental care users, I had no doubt that the time,  
reason to doubt what they were telling me when I visit Precious Angel after the  
10concerns were raised.

**ADV ADILA HASSIM:** So this was around August, August probably early  
September from the timeline we have. You witnessed these conditions. It you ask  
your officials how it is they could have been accredited and licensed without the  
basic requirements in place?

15**MS QEDANI MAHLANGU:** I was not happy at all about the conditions, Counsel. I  
was not happy at all about the conditions, Counsel. I was not happy. I left that  
building not [indistinct] happy and I did emphasise to the officials to try and make  
sure that the building concern was resolved as soon as possible so that the patients  
can be in a decent safe place that is suitable to house them.

20**ADV ADILA HASSIM:** And did you [intervenes]

**MS QEDANI MAHLANGU:** The license issue, at that time, actually I was— I do not  
think I had anything to— I spoke anything to anybody about the licences.

**ADV ADILA HASSIM:** And did you know how many died at Precious Angels by August?

**MS QEDANI MAHLANGU:** No, I do not. I know.

**ADV ADILA HASSIM:** Were you aware of any deaths at Precious Angels at the 5time you visited?

**MS QEDANI MAHLANGU:** But, Counsel, yesterday I said to you and I would like to– I said to the Arbitration, excuse my language, Justice, that up until the 13<sup>th</sup> of or on the night before the 13<sup>th</sup> when I answered the question the legislator, I was not aware of the deaths that were happening in the respective NGOs.

10**ADV ADILA HASSIM:** NOt one?

**MS QEDANI MAHLANGU:** No, I was not.

**ADV ADILA HASSIM:** Now you are there at Precious Angels and you see, this is before you report it to the legislator, and you see the conditions [intervenes]

**MS QEDANI MAHLANGU:** I cannot remember when I went to Precious Angels, 15before the legislator or after. The sequencing is what I am really trying to ascertain in my mind.

**ADV ADILA HASSIM:** Some Ms Ncube, who is the owner of Precious Angels, said you visited in August 2016.

**MS QEDANI MAHLANGU:** Okay.

20**ADV ADILA HASSIM:** Ms Mosando [?] also confirmed this. She was [intervenes]

**MS QEDANI MAHLANGU:** Which date?

**ADV ADILA HASSIM:** Which date? Well, they did not give a specific date but it was before your appearance in the provincial legislator.

**MS QEDANI MAHLANGU:** Okay.

5**ADV ADILA HASSIM:** And you saw the conditions and you did not close the NGO down, is not that to pick up

**MS QEDANI MAHLANGU:** But, Counsel, and probably am saying this for the third time, that when I went to the premises, the officials I was worth including Dr Lebethe, it was indicated to me that the premises were Precious Angel was at the 10time were not permanent places. They will move into the permanent place where they had bought a premises and I do not know [indistinct] what was the stumbling block for them to move there. And I was assured that that matter was going to be resolved as soon as possible. So and I lived the matter with the officials to do what was right in keeping with the taking care of the patients.

15**ARBITRATOR JUSTICE MONSENEKE:** But why did not you require that the contract be kept in place until all these capacity issues were in place? You know, you talk like somebody was dropped from some planet and comes and finds the mess, but widened you before your officials took such a drastic step about 1700 people, and make sure that everything is in place? Why is it that only afterwards 20you are so surprised at the poor conditions?

**MS QEDANI MAHLANGU:** But, Justice, may go back to the point I have been raising? And one of them is one instance, the HOD, Mr Mosenogi, probably the

common people in the continuation from the Selby cancellation contract, which involved patients, which involved HR issues, which involved in patient care, of course working with the respective hospitals who were using Selby, nothing untoward happened as far as I know relating to that and that impacted negatively on the contract. The same individuals [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** I am sorry to interrupt you. I do not think we should walk away from that so easily. You are aware that there was an earlier closure of Baneng.

**MS QEDANI MAHLANGU:** Baneng?

10 **ARBITRATOR JUSTICE MONSENEKE:** Mhm.

**MS QEDANI MAHLANGU:** I am not understanding you, Justice.

**ARBITRATOR JUSTICE MONSENEKE:** Where many young users died.

**MS QEDANI MAHLANGU:** At Baneng?

**ARBITRATOR JUSTICE MONSENEKE:** I think that is the name, speaking from  
15 memory.

**MS QEDANI MAHLANGU:** I do not know. When? Baneng as far as I know was never closed by the Department during this period.

**ARBITRATOR JUSTICE MONSENEKE:** [Indistinct - cross-talking] I am going to give you an opportunity to go and refresh your memory and you go and look at  
20 goal and enquire about the past.

**MS QEDANI MAHLANGU:** Which period, Justice question mark

**ARBITRATOR JUSTICE MONSENEKE:** I beg your pardon?

**MS QEDANI MAHLANGU:** Which period [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** It would be in the period probably just before you were appointed.

5**MS QEDANI MAHLANGU:** Oh, okay.

**ARBITRATOR JUSTICE MONSENEKE:** Now, the real point is the following. It is why did not you take precautions? Why did not you make sure that NGOs are capacitated, they have medical staff, they have the space in which to care? That they had money, they had food, they had clothing, they had security. Men were not  
10all mixed with women users. Why did not you make sure about these things before you agreed to send patients to these NGOs?

**MS QEDANI MAHLANGU:** Thank you, Justice. I will look at this report because nothing was ever mentioned to me all, that period before I came in, what would have happened in Baneng. Specifically the file I was referring to which I brought  
15this morning, you will see there is a budget of NGOs. Maybe let me just get the page.

**ARBITRATOR JUSTICE MONSENEKE:** No, I do not want to go to paperwork again now. What I want to know is why in your planning did not you take preventative measures in order to avert harm, to prevent harm to mental health  
20users? The simple way is, if I put the other way, why did not you insist that the HOD and Dr Manamela and then to reassure you and show you their plans on how

they were going to do this and precautions in order to prevent loss of life and other forms of trauma?

**MS QEDANI MAHLANGU:** The document I was requesting to get to about the budget, it shows how much money was going to be– was allocated to each NGO. 5And again for me, Justice, that suffice that there is budget, NGOs are being allocated resources, staff has been appointed so far I was told and so probably, the information I have made not be satisfactory but as I know it now probably, but this information I was given time, asking for assurance. At all times, Justice, I tried my utmost best [indistinct - cross-talking]

10**ARBITRATOR JUSTICE MONSENEKE:** [Indistinct - cross-talking] interesting. What page is that? Budget for NGOs, I would like to see that.

**MS QEDANI MAHLANGU:** I think it says– in my index it would be ANNEXURE 17.

**ARBITRATOR JUSTICE MONSENEKE:** ANNEXURE 17.

**MS QEDANI MAHLANGU:** Yes.

15**ARBITRATOR JUSTICE MONSENEKE:** What page is that?

**MS QEDANI MAHLANGU:** Page 300, Justice.

**ARBITRATOR JUSTICE MONSENEKE:** Page?

**MS QEDANI MAHLANGU:** 300.

**ARBITRATOR JUSTICE MONSENEKE:** Page 300? Well, the document is dated 20July 2016.

**MS QEDANI MAHLANGU:** Yes.

**ARBITRATOR JUSTICE MONSENEKE:** And it was received in August 2016.

**MS QEDANI MAHLANGU:** In the office of the CFO. But this is the budget [intervenes] the budget for 16.

5**ARBITRATOR JUSTICE MONSENEKE:** The transfer had long happened then.

**MS QEDANI MAHLANGU:** But this is the budget for 16/17 that started on 1<sup>st</sup> of April 2016 until 31<sup>st</sup> of March 2017.

**ARBITRATOR JUSTICE MONSENEKE:** But when the transfers happened, had this budget been prepared?

10**MS QEDANI MAHLANGU:** The budget, government budget starts on the 1<sup>st</sup> of April every year. So this is the adjusted budget. There was a budget and this was adjusted around the period that you are seeing here, signed by all the relevant officials, the chief director for budget, Dr Lebetho, the CFO, as well as the HOD, and it is for different facilities and different NGOs as it is stated here. I think it is up  
15to ANNEXURE...

**ARBITRATOR JUSTICE MONSENEKE:** And what is that total budget?

**MS QEDANI MAHLANGU:** Oh... I did not finalise [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** Page to suggest that the budget is now 189 million for NGOs.

20**MS QEDANI MAHLANGU:** Yes, this is what the officials have approved, Justice, which is– Page 2 is at 300, page 3030.

**ARBITRATOR JUSTICE MONSENEKE:** And how and where was used, 389 million is what was budgeted for that year. Where and how and by whom was it used?

**MS QEDANI MAHLANGU:** Well, I think the mental health directorate would have to give an account to Justice about that. This report would have come quarter by quarter. The first quarter which is in June, the second quarter end of August, and the third quarter end of December, the fourth quarter would be in March. So quarter by quarter they will indicate what expenditure would have been for the 2016/17 budget.

10 **ARBITRATOR JUSTICE MONSENEKE:** But this was in effect approved only in July 2016.

**MS QEDANI MAHLANGU:** Yes, Justice, but it does not mean that there was no expenditure or resources allocated to the programme. They continued to spend. The budget can be approved and finalised later as far as the system.

15 **ARBITRATOR JUSTICE MONSENEKE:** And there is, is this the money for all NGOs or NGOs which are related to mental health care?

**MS QEDANI MAHLANGU:** Oe, I think it is– it has many NGOs. Some of them are not– have got nothing to– are not for Life. So but if you look at them, Justice, it shows what kind of a degree of the users: severe adult psychiatry– psychiatric  
20 geriatric, and– so the category would be– it is also stated there – [Indistinct], Tshwane, Sedibeng, Tshwane district NGO, NGOs. So all the NGOs are reflected [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** But all the annexures relate to mental health care. That is why I am asking you.

**MS QEDANI MAHLANGU:** Yes, this annexure– no, this is just mental health budget, this particular issue.

5**ARBITRATOR JUSTICE MONSENEKE:** Do you know how that 189.76 million was used question mark

**MS QEDANI MAHLANGU:** I do not know, Justice. You must remember, I am no longer in the system so I do not have the actual expenditure against this budget as per the relevant quarters of the year. So that may be sourced from the Department  
10of Health just to look at this.

**ARBITRATOR JUSTICE MONSENEKE:** And that is the 2016/2017 financial year budget for only mental health the NGOs.

**MS QEDANI MAHLANGU:** Yes. That is probably– the psychiatric hospital they get the budget through other programmes in the Department. I am sure that that  
15information I can try in Health– ask the colleagues in Health to provide to the Justice.

**ARBITRATOR JUSTICE MONSENEKE:** And why were all these NGOs where they were mental health care patients is [indistinct] circumstances when there was money, at least at this note, to the tune of 189 million which was meant to be used  
20to look after NGOs taking care of, of the face of this, I do not know whether it is correct or not, taking care of mental have the users?

**MS QEDANI MAHLANGU:** Again, Justice [intervenes]

**ARBITRATOR JUSTICE MONSENEKE:** There is no close, there is no food. They did not have adequate medication. In some instances, the evidence you will hear, there were not regular doctors. Many died. There was no money to the bodies to their homes. And you have no idea how that money was used, do you?

**MS QEDANI MAHLANGU:** I am no longer in the system, Justice. And I think probably the Health officials or MEC can help you to give you how the money was spent throughout the different quarters related to this budget.

**ARBITRATOR JUSTICE MONSENEKE:** Counsel.

10 **ADV ADILA HASSIM:** Thank you, Justice. Just before we move off this document that you have referred us to, Ms Mahlangu, the title is “Request for approval of the mental health NGO funding amendment.” And at 301, the amendment that is requested is to reduce the budget from 194.5 million to 189.7 million. And it appears that the reason for this is because some of the NGOs were found not ready  
15 and the team was unable to place patients at those NGOs although budgeted for. And then the letter goes on, “It is imperative to amend the budget to avoid non-compliance with financial prescriptions as well as reducing the likelihood of the audit queries.” So is it correct that the budget was actually reduced?

**MS QEDANI MAHLANGU:** Remember, the budget if it is produced because the  
20 services— service providers are not ready, it does not mean that the money is lost in system. It simply means that once they are ready and there are approved, they will be— the budget will be adjusted during the adjustment estimates in November

[indistinct]. That is how the budget cycle close because if you allocate money quarter by quarter it is not utilised, you are likely to lose it in the process if the budget is not used.

**ADV ADILA HASSIM:** The cost containment– there was a document in your statement to this hearing. You said that the value of the contract with Life Esidimeni was about two 50 million, is not that so?

**MS QEDANI MAHLANGU:** I think it varies year after year. I think at some point it was 300 and something. I can go back to the document, refer you.

**ADV ADILA HASSIM:** If it was 250 million and here was a budget for 194 million, that is quite close. Where was the savings?

**MS QEDANI MAHLANGU:** But you may not realise used saving in the programme because remember, you had to also put infrastructure in place. But I do not– I do not have authority to speak on the item by item where did the money go. That would be important to budget line items because I do not– I am not in the system now to know what this money was used for, with the savings went to, and what it was applied for.

**ARBITRATOR JUSTICE MONSENEKE:** Well, we will ask Dr Gwenda Magopa.

**MS QEDANI MAHLANGU:** Mhm, that is okay.

**ARBITRATOR JUSTICE MONSENEKE:** She will be coming to testify after you. I want to know what happened to the money. How was it used? Where? Because most of the patients on the report and the evidence that we have, were in *haaglike*

*omstandighede*. That is what you would say in Pretoria. They were in terrible circumstances that contributed to the death. So a legitimate question would be what happened to the 190 and something million which was budgeted for them.

**MS QEDANI MAHLANGU:** I think you need to look at the specifics, Counsel, to be able to determine exactly what the money was used for, and I want to assume that it was used for genuine purposes of serving the patient but that determination can be made in looking, into looking in the details of the budget.

**ARBITRATOR JUSTICE MONSENEKE:** But did you ask them? You knew when you went to do these visits, did not you, that it was money for these NGOs. Did you say, “But why do not we give these NGOs resources”?

**MS QEDANI MAHLANGU:** But, Justice, I can say in the question asked by Counsel about Prof Freeman’s statement on the tariffs and all of that, I said we have had a discussion with the HOD and the CFO that we have two review even if it means that we only do it for the purposes outside of the tariff adjustment that should have been done. As to the actualisation of that discussion and practical terms, that would have asserted from the budget in itself that was implemented in the period under review and referring to.

**ADV ADILA HASSIM:** Thank you, Justice. Ms Mahlangu, in the annexure that you referred us to on Monday, you referred to R250 million, that that was the value of the contract with Life Esidimeni. This document you have now [intervenes]

**MS QEDANI MAHLANGU:** Just wait, wait, wait.

**ADV ADILA HASSIM:** Do you want me to refer you to your document question mark

**MS QEDANI MAHLANGU:** No, no, no.

**ARBITRATOR, JUSTICE MOSENEKE:** What are we looking for Ms Mahlangu?

5**MS. QEDANI MAHLANGU:** I am looking for a budget spreadsheet.

**ARBITRATOR, JUSTICE MOSENEKE:** You are looking for a budget, the one you showed me just now?

**MS. QEDANI MAHLANGU:** No.

**ARBITRATOR, JUSTICE MOSENEKE:** Or a different one?

10**ADV ADILA HASSIM:** Are you looking for...

**MS. QEDANI MAHLANGU:** Sorry, this is the one, on the Annexure LR132.

**ARBITRATOR, JUSTICE MOSENEKE:** I see. Okay.

**MS. QEDANI MAHLANGU:** So the first, the document, I think it is page 4 on the first annexure on this, the LR132.

15**ARBITRATOR, JUSTICE MOSENEKE:** Yes? But Council was in the process of comparing the amount of the budget with the amount that you spend annually on Esidimeni.

**MS. QEDANI MAHLANGU:** Yes, I am coming to that Justice.

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

**MS. QEDANI MAHLANGU:** I am answering that.

**ARBITRATOR, JUSTICE MOSENEKE:** Okay.

**MS. QEDANI MAHLANGU:** If you look at page 4 of this document, you will see that, and I read these numbers to the record in the morning, that from 2011/2012, 52012/2013 the budget has been increasing throughout what, against what was projected to be spend and every year it was over expenditure. In 2015/2016 the budget was R265 million, we spend R176 million. The budget you are looking at at the moment is based on the this adjusted of what would have been spent in the prior year, 2015/2016 which informed 2017/2018 going forward, particularly for Life 10related, not for any other mental healthcare services. So here would have spent R176 million in the 2015/2016 financial year and in the next year it will be this amount reflected in this documents...

**ARBITRATOR, JUSTICE MOSENEKE:** Council ask a question then.

**ADV ADILA HASSIM:** Sorry Justice, we will take that figure, the document you 15provided to us, the cost containment savings refers to R251 million. But my point is this – if that was what the value of the contract was to Life Esidimeni and the NGO's, the budget for the NGO's for mental healthcare users here was R190 million and that does not include the patients who were going to be placed at the hospitals, at those high costs that we have already dealt with at Weskoppies and Sterkfontein, 20where is the cost saving?

**MS. QEDANI MAHLANGU:** Between R176 million and R180 something?

**ADV ADILA HASSIM:** Between the contract value for Life Esidimeni that you had budgeted for...

**MS. QEDANI MAHLANGU:** No, I am talking about what the actual expenditure was in 2015/2016 – you must compare against that.

5**ADV ADILA HASSIM:** You gave us a figure of R265.

**MS. QEDANI MAHLANGU:** So I am saying look at this document. Remember, look at the document.

**ADV ADILA HASSIM:** Am I referring to the wrong figure, is it not R265 million?

**ARBITRATOR, JUSTICE MOSENEKE:** No, the actuals are around R170  
10something, I think that is what...

**MS. QEDANI MAHLANGU:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** ... say.

**MS. QEDANI MAHLANGU:** What was budgeted, the budget allocated in  
2015/2016 was R265 million. What was actually spent when the contract was being  
15managed actively it was R176 million. So the budget for 2016/2017 will build into  
what was actually spent in 2017/2018 so it does not have too much of a shock in  
the system. So that will be the intention of this budget, but the nitty gritty of how  
the budgets are constructed and all of that, I would not be an expert because I am  
really not involved in those things.

20**ARBITRATOR, JUSTICE MOSENEKE:** So you have to compare R176 million to  
R190 million. Council's question still remains – she says...

**ADV ADILA HASSIM:** In fact [inaudible], I want to know where is the cost saving? You did not spend that much less, if anything you spent more as a result of termination of the contract.

**MS. QEDANI MAHLANGU:** I do not have the figures in front of me Council, so I will not be able to say that. So probably and the MEC comes before you, she may give you actual numbers of what was spent on relating to the NGO's.

**ARBITRATOR, JUSTICE MOSENEKE:** You see the impact of the question is the following – you shut down the contract, people go to terrible circumstances and they die. Then you get asked the question – why did you shut it down? You say we were cost saving. So the inevitable question would be – but you were spending R176 million there on your own budget approved by five very important people in your Department; you are going to spend R190 million. So the question is why did these people die? What were you saving? Because on the numbers you do not seem to have saved anything. If anything you have spent more. That is the point that Advocate Hassim is putting to you.

**MS. QEDANI MAHLANGU:** Well I, Justice to tell you the truth I would not be able to answer the question with authority because for me to be able to say whether there was an actual saving and whether money went to [inaudible] to specifically to the patient who had gone to the NGO's – I would be better off if I were to look at the actual numbers and be able to say to you – yes or no this indeed was the case.

**ARBITRATOR, JUSTICE MOSENEKE:** We will ask your successor.

**MS. QEDANI MAHLANGU:** Absolutely.

**ARBITRATOR, JUSTICE MOSENEKE:** To tell us how the money was used.

**MS. QEDANI MAHLANGU:** Okay.

**ARBITRATOR, JUSTICE MOSENEKE:** In relation to NGO's in mental healthcare in particular. Council? And I guess you got that Advocate Hutamo?

5**ADV TEBOGO HUTAMO:** We have made note of that Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** You have made a record of that. Ja, just alert Dr Gwen Ramogopa we will be very interested to hear from her about those numbers.

**ADV ADILA HASSIM:** Ms Mahlangu, in any event it is obvious that there is a lot of  
10money that has been allocated. You say when you went to Precious Angels and you saw the conditions you did not close it down or take any drastic action because you were advised that they would be moving to better premises. However, the problem at Precious Angels was not only about the premises. It was about the lack of food, lack of blankets, clothing, adult diapers, Ms Ncube told us she had to dig  
15into her pocket for that. How do you explain that?

**ARBITRATOR, JUSTICE MOSENEKE:** And absence of wheelchairs.

**MS. QEDANI MAHLANGU:** I am sorry, through you Justice when I said in my statement the concerns around blankets, around food, I had asked the officials to help in ensuring that food was bought at bulk and I remember there was a weekend  
20where the CFO worked flat out with the team, together with the Heads of Departments to make sure that food in NGO's was availed, including Mr Pitse in

Tshwane who was the head of the district there at the time; to make sure that food was available and all of those things because I was concerned about that and that the NGO's were not registered at the Provincial database system and I appealed that they must make sure that those NGO's are registered in the system so that they can indeed be made as frequently. And I did say on Monday that when NGO's, after that process I started monitoring the payment of NGO's in our Friday meeting where we were discussing the state of finance in the Department. And I was satisfied on weekly basis when we had our 07:00 meeting on Fridays to look at the state of finances that indeed NGO's were being paid consistently, particularly NGO's who had taken mental healthcare users.

**ADV ADILA HASSIM:** And did you ask your officials how they could have sent your people to these NGO's if they were unable to take care of the patients?

**MS. QEDANI MAHLANGU:** As I said Council, I raised questions and I was extremely unhappy about that when I found out and that is why I said to the CFO at the time we are not going to sleep today until we are certain that food is bought where ever you can find food that is decent, that is in keeping with the standards that is supposed to be met, that the food is available. So that intervention at least helped and to make sure that patients, mental healthcare users were given food and again, as I said, if I was alerted much earlier I could have done something at the time to prevent the crises but I was not aware that NGO's were not being paid, no there were challenges of food, actually challenges of food we picked it up in the media through our media liaison.

**ARBITRATOR, JUSTICE MOSENEKE:** Just at that session, that briefing session where you so concerned – why didn't you ask them how many of them died?

**MS. QEDANI MAHLANGU:** Can you please repeat the question?

**ARBITRATOR, JUSTICE MOSENEKE:** At [Siyabadinga?], at Enke, at Precious 5Angels – at least those three why didn't you ask them that simple question – they have not been paid, you know now for four months at least, why didn't you ask the vital question? How many died?

**MS. QEDANI MAHLANGU:** At the time, at the time Justice I had no idea that people were dying or people, I had no idea that people were dying. My concern 10was to make sure that people, the mental healthcare users are given food and are given medication so that there is no relapse and all of that...

**ARBITRATOR, JUSTICE MOSENEKE:** My question was different.

**MS. QEDANI MAHLANGU:** ... concern.

**ARBITRATOR, JUSTICE MOSENEKE:** Why did you not as a concerned political 15principal ask without the money, have any of these patients died?

**MS. QEDANI MAHLANGU:** I did not ask the question and I am not sure why, but I did not think about it that people could be dying because I did not, it did not cross my mind Justice.

**ADV ADILA HASSIM:** On 1<sup>st</sup> of September however, you had received a letter, we 20have dealt with that already, from section 27 representing Ms Christine Nxumalo

whose sister had died at Precious Angels. So it was brought to your attention the 1<sup>st</sup> of September.

**MS. QEDANI MAHLANGU:** Remember that is why I said Council when I was responding in the beginning of this examination related to this matter, I said I had asked Dr Lebete in particular to deal with that concern and because I went back to try and remember what exactly would I have done with that e-mail that was sent by section 27. Indeed I asked Dr Lebete to work with the forensic pathologist to try and make sure...

**ADV ADILA HASSIM:** But my point is that you knew that there was a death, at least one.

**MS. QEDANI MAHLANGU:** But I did not know what was the cause of that and for and I said to Dr Lebete, expeditiously and try and attend to this matter as soon as possible so that we can be in a position to ascertain what has happened and if indeed there are bodies lying in that mortuary can you please ascertain where are they from and if they are from the NGO's and try and get all the relevant information so that we can attend to it.

**ADV ADILA HASSIM:** And when you visited Precious Angels did it not occur to you that maybe this was the cause of death – no food, no blankets, no warmth, nobody there who could, who was trained. Did you know that? There was no one trained to provide services to mental healthcare users?

**MS. QEDANI MAHLANGU:** I was told even by a team that they had I think what, what category of nurses now, I forgot, but it was not professional nurses, I think the

next category they had people who were looking after the patients. As I said, I was with the health medical practitioners who were competent to look at the skills and competencies of the individual concerned when we walk around in the respective, in particular when we went to Precious Angel and when I left Precious Angel my 5discomfort where the premises and I asked to the team to make sure we really get to decent places and to make sure that food was provided and the overcrowding issue is resolved.

**ADV ADILA HASSIM:** It does not require health professional though does it, to question whether these kind of circumstances would cause harm to the patients.

10**MS. QEDANI MAHLANGU:** But Council when there is qualified medical professionals says to you we are in the process of moving this mental healthcare users to a better place, here is holding operation, how many, no it is few days. You take comfort that indeed they will, they are taking every precautionary measures to try and make sure that every aspect that is of, that will cause any harm to any 15mental healthcare user is taken into account.

**ARBITRATOR, JUSTICE MOSENEKE:** Who gave you that assurances?

**MS. QEDANI MAHLANGU:** I was with Dr Lebete, Dr Mathamela I think she was present and we thought that the district team from Tshwane, the mental district team...

20**ARBITRATOR, JUSTICE MOSENEKE:** I need names, I need names of the officials who said to you do not worry MEC, they will be moved within days. Who are they?

**MS. QEDANI MAHLANGU:** I just have to remember Chair, I will remember, I will remember as I go along.

**ARBITRATOR, JUSTICE MOSENEKE:** No, you know why it is important MEC...

**MS. QEDANI MAHLANGU:** I just said Justice I was with Dr Lebetse.

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

**MS. QEDANI MAHLANGU:** And then with Mr Pitse as a Chief Director of the Districts, the other I am not sure whether Dr Manamela was present on that day or not. I just have to try and remember because it was not a scheduled visit. It was just an unannounced visit that I went on. So I do not know whether I will get the list  
10of people who would have joined me in that meeting from the diary or not.

**ARBITRATOR, JUSTICE MOSENEKE:** You see, if they had told you the truth about the dying rate of patients and their circumstances, you have already told us they were lying to you, you would have sprung to action maybe.

**MS. QEDANI MAHLANGU:** I would have Justice.

15**ARBITRATOR, JUSTICE MOSENEKE:** Because so many people died after your visits.

**MS. QEDANI MAHLANGU:** I would have taken action Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** In other words you would have been in a position to protect and save the remaining lives that were ultimately lost.

20**MS. QEDANI MAHLANGU:** Absolutely, I would have done that Justice. Because I had done it in the past on other occasions, unrelated to this matter at all when

nurses were on strike and there were no nurses looking after them we moved the children to the private sector.

**ARBITRATOR, JUSTICE MOSENEKE:** And they tell you untruths and people continue to lose their lives as you know right through to December 2016. Without any effective intervention. All this was broken up when the Ombud came in and these places were shut down. So why is it that you did not know? Even midway so that you can save the remaining lives?

**MS. QEDANI MAHLANGU:** Justice, you know I just wish you will understand my predicament. And I want to given, I would like to be given permission to give an example. It will take me a minute.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**MS. QEDANI MAHLANGU:** In 2009 there was a public sector strike and babies were left alone by, with one nurse, both neo-natals, pre-mature babies and about forty or fifty children who were in the ward, who were being taken care of by one nurse. When I walked into the hospital babies were crying all over who had not been taken care of for a whole day. I then called Netcare and I asked them to help me to intervene. They came on board, we took the, I just sat in the hospital to oversee. They took the babies into a Netcare facility throughout the night until we completed. Had I been made aware of the situation, I know I would have done something. Similarly when the generator shut down at Charlotte and I think one of, not so long ago in 2015 or 2016, and we [inaudible], we got the engineers to come on board to resolve the problem and all of that. So if Justice I was made aware, the

facts that I am aware of now, if they were shared with me then the situation we would not be sitting here today, that I can assure you and with all honesty in what I am as a human being and what I am about and what I believe in.

**ADV ADILA HASSIM**: Thank you Justice. Ms Mahlangu, what actually happened was that the Minister of Health, the National Minister, put together a team, a ministerial advisory committee and they then went in and visited and they shut down...

**MS. QEDANI MAHLANGU**: No, that is incorrect.

**ADV ADILA HASSIM**: The NGO's.

10 **MS. QEDANI MAHLANGU**: That is incorrect.

**ADV ADILA HASSIM**: But that is what the Ombud says.

**MS. QEDANI MAHLANGU**: Well that is in factually incorrect. When you ask me about certain things in the report and I was hesitant because one of the things that is incorrect it is that statement. This is what happened – we had a conversation, 15 telephone conversation with the Minister and he said to me I would like to send the team to NGO's. I said Minister, I have a meeting with my team tomorrow and we are going to different NGO's, all the senior managers are being allocated to go to those and he said – can we then have joint effort in getting the mental, the Ministerial Advisory Team to join your team to go together. Yes, indeed they joined 20 us. Who was I with? I was with Professor [Ratayman] who chairs the Ministerial Committee. Before we went to a meeting he briefed us, he brief me and the Head of Department of what they were interested in. On the basis of that we factored

what they were interested in, it was the same with what the Gauteng Department was trying to do. We went together on the ground and we went, it was Saturday, Sunday, I think Dr, Professor Ratayman went back on this own in Takalani on a particular Monday, but the work was done together with the, by the Department of Health in Gauteng, meeting initiated by myself, the Minister's team joined our initiative and we went together to the NGO's. When I said I was in [Siriman?] with Professor Friedman and Jeanette Hunter it was on that weekend when we were doing this exercise together.

**ADV ADILA HASSIM:** And why do you think the Minister felt that he had to urgently put together a team and send them in?

**MS. QEDANI MAHLANGU:** Because we work together and we support each other. The Minister has, in his responsibility is to support provinces and to ensure that government policy is implemented. I did not see it as anything untoward that the Minister was intervening because we had a telephonic conversation with him because he was overseas at the time.

**ADV ADILA HASSIM:** Why would he need to put together a team if you were doing everything necessary?

**MS. QEDANI MAHLANGU:** Because he was sending his team of experts to support what we were doing in the province.

**ADV ADILA HASSIM:** And so when the Ombud says that the Minister sent in team urgently and that they were the ones who made the decision to close down the NGO's, you say that was...

**MS. QEDANI MAHLANGU:** It is factually incorrect.

**ADV ADILA HASSIM:** ...that is not true?

**MS. QEDANI MAHLANGU:** And I said it in his, in my engagement with him. It is factually incorrect. Precious Angel was closed down by the Head of Department, 5[Sirimam?] was closed down by the Head of Department, the NGO's in I think Braam Fischer, if I am not mistaken, they were closed by the Head of Department...

**ADV ADILA HASSIM:** Was it under the instruction of the team?

**MS. QEDANI MAHLANGU:** No, it was not under the instruction of nobody. After assessing because that is the same premises that I was told that the NGO was 10going to move from when that, on that weekend those premises were still operating. On those basis the Head of Department then took a decision then and there to move the patients and we used the government transport, the EMS planned patient transport to move those.

**ADV ADILA HASSIM:** The Head of Department, sorry we need to answer the 15questions but the Head of Department has testified that the Minister called him and instructed him to shut down the NGO's...

**MS. QEDANI MAHLANGU:** Well I do not...

**ADV ADILA HASSIM:** Let me finish.

**MS. QEDANI MAHLANGU:** Sorry.

20**ADV ADILA HASSIM:** The Head of Department says that he said to the Minister please inform the MEC, please go through the MEC.

**MS. QEDANI MAHLANGU:** Well that is news to me because if in the, in the presentation of the Head of Department to the Ombuds person, I think it is in the Ombud's report, it does say he, the Head of Department, he closed those NGO's.

**ADV ADILA HASSIM:** Yes, but the Head of Department said was that he closed it  
5after the Minister...

**MS. QEDANI MAHLANGU:** Well I do not know.

**ADV ADILA HASSIM:** ...lit a fire under him.

**MS. QEDANI MAHLANGU:** No, I do not know that conversation and I am hearing it  
from you for the first time.

10**ADV ADILA HASSIM:** And so the Minister did not express any concerns to you  
directly at that time?

**MS. QEDANI MAHLANGU:** The Minister wrote a letter to me, probably you will  
have it in the records, I do not know exactly which record. He says we must close  
Precious Angel and at the time we had already closed Precious Angel. And he said  
15we must keep the [Banengi?] contract and at that time we had already informed Life  
that [Banengi?] contract will be kept. And what did he else? Oh and he said we  
must move patients at, from all the NGO's and I called him and I said Minister can  
we have a conversation about your letter. And I went to see the Ombud about the  
letter, the contents of the letter of the Minister because at the time and again as I  
20said in my chief statement chief on Monday, that I was made aware by the officials  
from the provincial Department of Health that Gauteng has been de-institutionalising  
in terms of community mental healthcare for more than, a period of more than five

years. So on the basis of that as I said before, that I had not doubt to disbelieve what I was being told so and I said to Minister, are you aware that when you say to me we must close Cullinan in particular. Cullinan is a hospital that has been operating since 1973. If you say we must close all the NGO do you understand the simplification? Where are we going to find a facility, he says okay, if that is the case then confine yourself to the specific Life Esidimeni patients.

**ARBITRATOR, JUSTICE MOSENEKE:** Why were you and the Head of Department busy, on your version, shutting down the NGO's?

**MS. QEDANI MAHLANGU:** Because of...

10**ARBITRATOR, JUSTICE MOSENEKE:** Why were you closing them down?

**MS. QEDANI MAHLANGU:** It is because of the concerns Minister that the team assured us that those NGO's will improve, but realising that the improvement that they were saying they were going to happen were not realisable and we were continuing, the patients were, mental healthcare users were safety were being  
15endangered.

**ARBITRATOR, JUSTICE MOSENEKE:** And what did people like Selebano and Manamela say? On your version they assured you at the time everything was fine. And within months everything had gone mad and you now had to shut them down. How does that tie in with the assurances? What did they say?

20**MS. QEDANI MAHLANGU:** Justice, if you go to this file that was handed in this morning and you look at this report – it has got how many pages? It has got 22

pages. It was prepared or sent to me on I think, the date is the 5<sup>th</sup> of August. In reading this report...

**ARBITRATOR, JUSTICE MOSENEKE:** 2016.

**MS. QEDANI MAHLANGU:** Yes, 2016. When you read this report you would not...

**ARBITRATOR, JUSTICE MOSENEKE:** It is prepared by whom?

**MS. QEDANI MAHLANGU:** By Dr Manamela.

**ARBITRATOR, JUSTICE MOSENEKE:** To whom?

**MS. QEDANI MAHLANGU:** It was a final close out report relating to the placement of the Life Esidimeni mental healthcare users.

**ARBITRATOR, JUSTICE MOSENEKE:** And it was a report to you?

**MS. QEDANI MAHLANGU:** It is not titled to anybody, it was a close out report and I think we discuss it is one, in the close out meeting if I am not mistaken.

**ARBITRATOR, JUSTICE MOSENEKE:** And what about that report?

15 **MS. QEDANI MAHLANGU:** I am saying if you read this report you would not pick up any major concerns that warrants that you should really be worried because for every risk that it says there is a risk they say well we have attended to this risk, we have attended to this problem, we are doing something about it, we are doing something but it, mental healthcare users have been placed in relevant places and  
20 that is when you say the project officer was appointed...

**ARBITRATOR, JUSTICE MOSENEKE:** What is the page at which I will find that?

**MS. QEDANI MAHLANGU:** Okay. For instance, when you start with page 7...

**ARBITRATOR, JUSTICE MOSENEKE:** On which page is the report?

**MS. QEDANI MAHLANGU:** Page 7 Justice.

5**ARBITRATOR, JUSTICE MOSENEKE:** It starts from page 7.

**MS. QEDANI MAHLANGU:** Yes. The report starts from page 1 but maybe for purpose of time I will start from page 7.

**ARBITRATOR, JUSTICE MOSENEKE:** Before we get caught up in detail, your view is that this report left you with the communicates that everything is well at  
10NGO's – is that it?

**MS. QEDANI MAHLANGU:** Yes, yes, yes.

**ARBITRATOR, JUSTICE MOSENEKE:** And by reading it you had no reason to believe that things would go wrong at the NGO?

**MS. QEDANI MAHLANGU:** I had no reason.

15**ARBITRATOR, JUSTICE MOSENEKE:** This is a report on the 5<sup>th</sup> of August 2016 and this is how many days before you appeared before the legislature.

**MS. QEDANI MAHLANGU:** The legislature sitting was on the 13, I think it was a month to go, more than a month or so.

**ARBITRATOR, JUSTICE MOSENEKE:** So a month before your public declaration before the legislature about the deaths you had a report that said everything is alright or everything will be alright as Bob Marley says.

**MS. QEDANI MAHLANGU:** Yes.

5**ARBITRATOR, JUSTICE MOSENEKE:** Is that it?

**MS. QEDANI MAHLANGU:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** And a few, a week or two later you have to tell the nation that in fact thirty eight of those patients died?

**MS. QEDANI MAHLANGU:** Yes. Yes, Justice.

10**ARBITRATOR, JUSTICE MOSENEKE:** How did they explain this?

**MS. QEDANI MAHLANGU:** That is why I was concerned enough to say but few days ago we were dealing, I was given a different impression. Now the report suggests that there is thirty six people who have died. This matter is serious and it deserves to be given the attention necessary to establish the facts around this  
15matter.

**ARBITRATOR, JUSTICE MOSENEKE:** Did you tell them how unhappy you were?

**MS. QEDANI MAHLANGU:** Yes, I was really unhappy and I just thought that in the appropriate action, we had a conversation with the Head of Department telephonically and we both agreed that we should approach Professor Makgoba  
20and after approaching Professor Makgoba I went back to the Head of Department. I

said well I have spoken to him and because I was going to see the Head of Department, in the same meeting I had with the Minister that afternoon.

**ARBITRATOR, JUSTICE MOSENEKE:** Did you charge Professor Manamela, I mean Dr Manamela? Did you ask her to give an explanation?

5**MS. QEDANI MAHLANGU:** I asked them to given an explanation but Justice it was not, the story was not gelling. It was not gelling. From there on things were not making sense and then I said to myself we will just have to make sure that we, the investigation is done appropriately and everything else must be, we must make sure that we prevent any loss of life from thereon.

10**ARBITRATOR, JUSTICE MOSENEKE:** So they told you a whole range of untruths about the implementation of the project according to you. They wrote a report on the 5<sup>th</sup> of August 2016 and two weeks later they told you, sorry in fact things are not okay, and at least thirty eight of the users had died. And we know in truth that there are much more than that.

15**MS. QEDANI MAHLANGU:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** At that time. And did you demand any explanations of such blatant misreporting, untruthful reporting?

**MS. QEDANI MAHLANGU:** I tried Justice, I tried to get answers but I was getting just, the more questions I was asking the more I just realised that there is more, this  
20matter is deeper than what I thought and therefore was just really to pin my hopes on supporting what the Ombus, we have asked the Ombud's person to do and make sure that he gets as much access to information as possible.

**ADV ADILA HASSIM:** So Ms Mahlangu, if you could look a bit more closely at the document that you are referring to. At page 17, your team says, gives you some information. They call it low lights. But let us look at the low lights. Do you see on page 17?

5 **MS. QEDANI MAHLANGU:** Ja, I am here.

**ADV ADILA HASSIM:** This is after patients have been placed what are the low lights? 1 users were not grouped according to their individual needs, there were no assistive devices available for users in line with the principles of correct seating such as rails and ramps, no evidence of daily roll call of patients, individual progress 10 reports for each patient are not available, there was no certificate of compliance in the kitchen but it was indicated that they are still waiting for Tshwane municipality to conduct the assessment, there is no food menu, most of the food in the storage has expired, they had medication but there was no progress recording for each patient, cleanliness was also a problem, there was a shortage of medical equipment, they 15 did not have enough staff due to non-payment, they had professional nurse on site, patients were not found in hygienic conditions and did not have toiletries, did not have medical professional to take care of patients medical needs, they did not have enough blankets, there were patients on ARV's who have run out of medication for more than two weeks...

20 **ARBITRATOR, JUSTICE MOSENEKE:** Is that all from the report of the 5<sup>th</sup> of August?

**MS. QEDANI MAHLANGU:** Yes.

**ADV ADILA HASSIM**: Yes Justice.

**ARBITRATOR, JUSTICE MOSENEKE**: Good.

**ADV ADILA HASSIM**: The patients were overcrowded, it is at page 17 and following.

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

**ADV ADILA HASSIM**: The patients were overcrowded, the structure was not suitable for the low functioning patients, so safety was of major concern, there was shortage of medical equipment, the centre which was situated at corner Proes and Eskia Mpahlele was found to not be suitable to house our patients due to the 10infrastructure, security concerns, unsuitable dormitory, poor toilet facilities and hygiene. They did not have enough food. Patients were fed expired food. That is described as low lights.

**MS. QEDANI MAHLANGU**: And let us also look at the action, what they did to respond to the issues.

15**ADV ADILA HASSIM**: What did you ask them about those low lights?

**MS. QEDANI MAHLANGU**: Remember like they say the document this is what the low lights and this is the action we are going to do and in making sure that those low lights are responded to.

**ADV ADILA HASSIM**: Do you think it was appropriate that it was called low lights? 20Was this not actually very significant in that the NGO's were not suitable to look after the patients?

**MS. QEDANI MAHLANGU:** But Council remember I am saying this is a report that the officials gave me and then I am being assured when you look at the actions and recommendations that they have taken to deal with the issues related to their concerns they raised.

5**ADV ADILA HASSIM:** Yes.

**MS. QEDANI MAHLANGU:** In addition to that, the NGO visits that then get done later on are about following through that all the actions that are suggested here and others are being acted upon.

**ADV ADILA HASSIM:** And what was that, that they were recommendations to  
10address each of those things?

**MS. QEDANI MAHLANGU:** Yes, and the food problem remember...

**ADV ADILA HASSIM:** So you were satisfied with the recommendations that were included in here?

**MS. QEDANI MAHLANGU:** Pardon?

15**ADV ADILA HASSIM:** You were satisfied with these recommendations?

**MS. QEDANI MAHLANGU:** Yes, remember when you have recommendation to resolve a problem and if indeed those recommendation things change you have to review them. So at the time when they said to me, yes, there is this low lights that we picked up as we are concluding this report, [inaudible] patients have been  
20placed in the respective institutions. This is what we are wanting to do. For instance, sending a team from Weskoppies with specialised doctors to visit the

facility, to visit a different NGO is one of those interventions to make sure that the issues of relapsing of the mental healthcare users, those issues are dealt with. And to make sure that the issues of the records which continues to be a niggling issue throughout this process because mental healthcare users left without those record 5that issue are being addressed. The emergency equipment of blood pressure machines...

**ARBITRATOR, JUSTICE MOSENEKE:** But did you read...

**MS. QEDANI MAHLANGU:** Yes, yes, yes.

**ARBITRATOR, JUSTICE MOSENEKE:** And become aware of all those low lights?

10**MS. QEDANI MAHLANGU:** Yes, but Chief I spoke, I referred to this document and I am saying this document, I cannot remember they presented in which meeting and there is a slide presentation...

**ARBITRATOR, JUSTICE MOSENEKE:** But why did you believe everything will be alright?

15**MS. QEDANI MAHLANGU:** But Chief, Chief Justice I do not know how else, if you work with the professional team. Let us say I am a soccer player and I am making a very far example...

**ARBITRATOR, JUSTICE MOSENEKE:** But look at that list, that inventory of trouble! Look at that of poor medication of everything you can think of...

20**MS. QEDANI MAHLANGU:** But Justice...

**ARBITRATOR, JUSTICE MOSENEKE:** ...hunger and so on. I mean Council called them out. I am just saying you were aware of these things and you were satisfied that they will be alright.

**MS. QEDANI MAHLANGU:** But Justice I had said already against the background of the things I have been saying that the issues of medication, the issues of food, I said that in my statement yesterday, the issues of food, the issues of medication – those issues are issues that we picked up early and they were being resolved in my understanding at, with the interventions that we were making throughout. When I got to know about them in July, particularly arising from one NGO and then we started to check all the other NGO's and even had meetings. I think on the day when I went to Precious Angel, I cannot remember the exact date, I would have had a meeting with the NGO's in Tshwane just to say to them – what are the challenges, what are the things that you are encountering, what are the officials doing? The state of affairs of all your facilities and what can be done to help those as part, particularly in making sure that the conditions where the mental healthcare users are improves and stays better, if not improve to be in a better situation.

**ARBITRATOR, JUSTICE MOSENEKE:** But former MEC, remember where we started – why did you shut down the NGO's?

**MS. QEDANI MAHLANGU:** The NGO's was...

20**ARBITRATOR, JUSTICE MOSENEKE:** Why did you shut them down?

**MS. QEDANI MAHLANGU:** We shut them down in September because we were not satisfied with the continuous improvement that were expected to be done on the basis of this report.

**ARBITRATOR, JUSTICE MOSENEKE:** And then the natural question is why didn't you do it earlier in the face of the low lights?

**MS. QEDANI MAHLANGU:** But this report was done in August senior, sorry.

**ADV ADILA HASSIM:** Did you provide...

**MS. QEDANI MAHLANGU:** It was done in August Justice.

**ADV ADILA HASSIM:** Did you provide this report to the legislature to, when the questions were put to you?

**MS. QEDANI MAHLANGU:** I cannot remember. I do not know whether we presented to the Portfolio committee or not, I am not sure.

**ADV ADILA HASSIM:** Because these, this was very relevant to the questions that were asked...

15 **MS. QEDANI MAHLANGU:** I am not sure.

**ADV ADILA HASSIM:** ...before the 13<sup>th</sup> September.

**MS. QEDANI MAHLANGU:** I did not speak about specifically in the legislature on that day, but I am not sure in terms of the Portfolio committee processes which committee did I present to and which committee I did not present to.

**ADV ADILA HASSIM:** And you do not know if you put this information before them?

**MS. QEDANI MAHLANGU:** No, I am not sure.

**ADV ADILA HASSIM:** Justice, it is 17:20. I am fine, but I am mindful of other staff and I am in your hands.

**ARBITRATOR, JUSTICE MOSENEKE:** Well frankly I hope you finish today. We have, but it is just a hope, because we have many other Council in the queue and we have to make progress and we must finish at the end of this week. So I just want you to keep that in mind.

10 **ADV ADILA HASSIM:** Justice, we have gone down various diversions in the process...

**ARBITRATOR, JUSTICE MOSENEKE:** Sure.

**ADV ADILA HASSIM:** ...of the cross-examination and if the witness could just answer the questions more briefly then we could finish. The witness has also asked  
15 to revert on certain topics tomorrow.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja.

**ADV ADILA HASSIM:** The, if Justice, are you asking me how much more time I would need?

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, that is what I want, that is exactly  
20 what I want to ask.

**ADV ADILA HASSIM:** I would need...

**ARBITRATOR, JUSTICE MOSENEKE:** After a day and a half it is not unreasonable to ask...

**ADV ADILA HASSIM:** Fair enough.

**ARBITRATOR, JUSTICE MOSENEKE:** ...how much more?

5**ADV ADILA HASSIM:** I would need half an hour.

**ARBITRATOR, JUSTICE MOSENEKE:** Let us do half an hour.

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

**ARBITRATOR, JUSTICE MOSENEKE:** I think let us do half an hour. Council?

**ADV TEBOGO HUTAMO:** We have no objections except that we will not be able to  
10get an indication of how much time is still going to be required for tomorrow in  
relation to the topics which still require to be canvassed.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, I am on a time cutting mission  
obviously Advocate Hutamo. In Xhosa they say [speaking Xhosa] so we have to  
get there, we have to get to the core and wrap it up, we cannot go on forever.  
15Advocate Groenewald, you have got the farthest to drive so?

**ADV DIRK GROENEWALD:** It is fine Justice, hopefully by then the traffic will be  
better so thirty minutes we can go.

**ARBITRATOR, JUSTICE MOSENEKE:** Thirty minutes we can go. Well, thank  
you.

20**MALE SPEAKER:** We have no objection.

**ARBITRATOR, JUSTICE MOSENEKE:** Okay.

**LILLA CROUSE:** Thank you Justice, we have no objection even sitting later than a half an hour if we can finish the cross-examination.

**ARBITRATOR, JUSTICE MOSENEKE:** We have to, well your colleagues have every gently nudged you on. You have to go to the big issues that you have and let us wrap it up. If, as you know, if there is a really important matter that you would like to re-open it is open to you to bring an application but you have not yet stated to use that in the past. So if there is an issue that really sits heavily with you, obviously you always can talk to me about that but let us go for thirty minutes. We are 17:15, let us go to 17:45.

**ADV ADILA HASSIM:** I appreciate the indulgence Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, and I have not asked you Ms Mahlangu, are you still okay? Will you be able to continue to take questions?

**MS. QEDANI MAHLANGU:** It is okay Justice, I am tired though but it is okay.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja. Well alert me if it really gets bad but let us push on. We would like to keep you here a few days, not forever because we have much bigger work ahead of us to wrap up this thing. So we are going to continue and when you get to your point where you cannot manage, let me know.

**MS. QEDANI MAHLANGU:** Sorry Justice, may I request that I be allowed to answer, to give answer to the extent that I can because the yes or no may not be

really helpful in the process. If indeed the thirty minutes is going to get to that I am not sure whether it is going to help.

**ARBITRATOR, JUSTICE MOSENEKE:** Well in some answers it may be necessary and in others not. I do not want to say you have a blanket permission to give context all the time, sometimes we do not need context. But I will be respectful of your desire to explain as I have been.

**MS. QEDANI MAHLANGU:** Yes you have.

**ARBITRATOR, JUSTICE MOSENEKE:** I will continue to do so.

**MS. QEDANI MAHLANGU:** Thank you.

10 **ARBITRATOR, JUSTICE MOSENEKE:** So Council, let us go.

**ADV ADILA HASSIM:** Thank you Justice. Ms Mahlangu, Dr Manamela testified and Ms Masondo, Ms Dumi Masondo, the Chair at the Mental Health Review Board, that you requested Ms Masondo to transport one of the deceased using her private business, her Ms Masondo has a private business, it is a funeral undertake business. And they testified that you instructed, that you requested Ms Masondo to transport one of the deceased.

**MS. QEDANI MAHLANGU:** Thank you Justice, and how would I know that Ms Masondo has an undertaker?

**ADV ADILA HASSIM:** Well it is not for me to answer the questions. Did you ask Ms Masondo to transfer, to transport rather one of the deceased?

**MS. QEDANI MAHLANGU:** I had no involvement in any administrative issues. What I asked the officials to do when Dr Manamela mentioned that there was a, a person who had died from Northern Cape and the family need assistance to get the body to Northern Cape and I said they must work with the CFO and find a solution to find a problem and Dr Manamela will have to assist the CFO in getting the correct information so that indeed they can assist the family concerned. Dr, Mrs Masondo mentioned the she is an undertaker but I would not give instruction that she has a, she should transport government, she should transport someone because I will be simply saying to her that is, I do not know, supplying, violating government procurement rules.

**ADV ADILA HASSIM:** So you were...

**MS. QEDANI MAHLANGU:** She is a Mental Health Review Board.

**ADV ADILA HASSIM:** Yes.

**MS. QEDANI MAHLANGU:** And she is a member of the Board and then she gets involved in service delivery in the Department, I do not know, I would never do it with any of my relatives either.

**ADV ADILA HASSIM:** Yes. So but you were aware then? You just said you were aware she had a funeral undertaker business.

**MS. QEDANI MAHLANGU:** No she mentioned it as we were walking out of a meeting. Dr Manamela I want to repeat said there is a reality, there is a person who died who needed to go to the Northern Cape and I asked her why can't we assist the family? She said they are going to assist the family. I said well work out the

logistics in dealing with those and Mrs Masondo mentioned that she had an undertaker. I gave no authority for her to do anything. They cannot be abusing my name literally. So like the way they do but I did not.

**ADV ADILA HASSIM:** So you deny that? You were aware of the circumstances but you deny that you made the request?

**MS. QEDANI MAHLANGU:** She mentioned it, that she had an undertaker as we were going out, but I did not give an instruction that she should be contacted...

**ARBITRATOR, JUSTICE MOSENEKE:** [inaudible] you say you deny it, you have explained I think yes. Thank you.

10 **ADV ADILA HASSIM:** Thank you. Justice, we circulated an LR, LR131A and 131B and I would like to refer to those now Ms Mahlangu.

**MS. QEDANI MAHLANGU:** Which file?

**ADV ADILA HASSIM:** It is in your exhibits bundle – LR, or it might be in front of you. Perhaps Aviwe could assist? It is 131A and B.

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

**MS. QEDANI MAHLANGU:** Okay. Okay. Oh.

**ADV ADILA HASSIM:** These are your responses to the Ombud when he provided you with the draft report before he finalised it, isn't that so?

**MS. QEDANI MAHLANGU:** Ja.

**ADV ADILA HASSIM**: There are two responses. 131A is dated 13 January 2017 and the second 131B is 24 January 2017.

**MS. QEDANI MAHLANGU**: Okay.

**ADV ADILA HASSIM**: And these are important in relation to your view on the 5 Ombud's report and what you accept and do not accept. If we begin with the earlier, well let us begin with the later one, 24 January. You said you Commissioned this report, isn't that so? You commissioned an independent report?

**MS. QEDANI MAHLANGU**: I have been very consistent to that throughout.

**ADV ADILA HASSIM**: But you challenged some of the findings. You disagree with 10 the findings.

**MS. QEDANI MAHLANGU**: Yes, I do.

**ADV ADILA HASSIM**: And we have already established where you deal with the Auditor General that there was no tender process, correct?

**MS. QEDANI MAHLANGU**: Yes, indeed.

15 **ADV ADILA HASSIM**: And we have established in relation to your 3.3 that you asked for the payment of subsidies to the NGO's to be corrected but you did not remove patients to a safer place? In 3.5 you admit that there was an absence of files, medical records, why did you permit patients to be transferred without files? 20

**MS. QEDANI MAHLANGU**: It all material times Council I appealed to the officials 20 that they must make sure that patients files are sort, are received from Life. At the final action when the final movement of patients was done and I was not on the site

and I was not involved. My assumption was properly suitably qualified people are involved in managing those processes. I would not be on the ground in dealing with that matter.

**ADV ADILA HASSIM:** But you were aware that they were being transferred without files?

**MS. QEDANI MAHLANGU:** I was aware that patients were being transferred, without files I go to know after that indeed when, I think it had in a meeting after the process was concluded that the patients file were not given and I think as I said earlier I did write a letter to Life after we struggled through communication telephone and whatever to get those patients files because I realised that it was important. As to why we did not, the officials did not impress upon Life to give those at the beginning it is something that I would really not be able to speak with authority because again we are dealing with competent medical professionals here.

**ADV ADILA HASSIM:** So it was the officials?

15 **MS. QEDANI MAHLANGU:** Yes, of course.

**ADV ADILA HASSIM:** Okay. And then in 3.6 you say that to the extent that the interim report may be read to mean that all the deaths occurred at the NGO's, the correct position is that some of the deaths occurred at different hospitals. And then you say by way of illustration – what is the point you are trying to make here?

20 **MS. QEDANI MAHLANGU:** I think we were indicating that there are patients who died in hospital and I am sure you know that there is an annexure that was sent by

different hospitals where the patient would have died, that they died in hospital, not necessary at the NGO's.

**ADV ADILA HASSIM:** But weren't these patients patients who had been at the NGO's and then moved to hospital because they were acutely ill and then died in the hospital?

**MS. QEDANI MAHLANGU:** Yes, but the point here was that they died in hospital...

**ADV ADILA HASSIM:** And not at the NGO?

**MS. QEDANI MAHLANGU:** Not in the NGO necessarily. And the CEO's, respective CEO's, the Head of Department co-ordinated that the respective CEO's of the hospitals they send the information which was an attachment to this report, to this response I sent, you are referring to.

**ADV ADILA HASSIM:** And you are aware that they were transferred to the hospital because of the conditions at the NGO's, that caused them to be ill?

**MS. QEDANI MAHLANGU:** Well, I do not discuss specific patient related information and as I said, we were responding to the report and it, which we thought there were inaccuracies about the place of death of patients as it was stipulated in the report.

**ADV ADILA HASSIM:** So is it just a technical point that you are making that they died at the hospital?

**MS. QEDANI MAHLANGU:** Yes.

**ADV ADILA HASSIM:** Okay. That is fine, thanks. And then at the end of this response at paragraph 5 you say that the Ombud is to submit the report to the CEO and not to the media – why did you not want the report to be public?

**MS. QEDANI MAHLANGU:** That is not the point being made there. The law that establishes the Ombud's I think that is what it says in terms of its provisions.

**ADV ADILA HASSIM:** The law does not say that the Ombud is not to make the report public.

**MS. QEDANI MAHLANGU:** But the report, if you read the sentence correctly it says you submit the report to the CEO and thereafter the report can be published, not that it goes directly to the media before you submit the report to the CEO.

**ADV ADILA HASSIM:** That is not what this sentence reads.

**MS. QEDANI MAHLANGU:** Well that is my understanding of what I was saying in this sentence.

**ADV ADILA HASSIM:** So the point that you make that the Ombud is to submit the report together with the recommendations to the CEO and not to the media – by that you are saying, in fact it was fine to provide the report and make it public as long as it went to the CEO as well.

**MS. QEDANI MAHLANGU:** To follow the proper channels of course as required by regulation that established the Ombuds.

**ADV ADILA HASSIM:** Was it your view that the Ombud was not going to submit the report to the CEO?

**MS. QEDANI MAHLANGU:** Well we just simply referring that the procedures must be followed because it is a legislated process.

**ADV ADILA HASSIM:** Oh, I see. So you were just reminding the Ombud about the procedures to be followed. Then we will go to the next document and this is your earlier response. And at paragraph 12 of that response you make much of the fact that there was nothing wrong with the decision to terminate, that the problem was in the implementation. Is this not a case of passing the buck to your officials?

**MS. QEDANI MAHLANGU:** But we all agree, I mean you also, you know that the de-institutionalisation is something that is government policy...

10 **ADV ADILA HASSIM:** But we have already gone there and we have and we do not want to...

**MS. QEDANI MAHLANGU:** Council, allow me to state my point.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, you were saying?

**MS. QEDANI MAHLANGU:** Justice through you that de-institutionalisation is 15 government policy which is recognised across the globe. And the point I was making here is there was nothing wrong with the decision to de-institutionalise. What went wrong is the execution, that went wrong in taking patients out of Life, taking them to inappropriate places and everything else that went wrong after that.

**ARBITRATOR, JUSTICE MOSENEKE:** But what is the point of a de- 20 institutionalisation that goes so horribly wrong? That does not follow national policy on de-institutionalisation.

**MS. QEDANI MAHLANGU:** But the issue Justice was, the policy says de-institutionalise, but it does not say do it wrong. So what I am saying here – the decision to de-institutionalise was correct. What went wrong is the implementation and I think that point I continue to make that point that things went horribly wrong and again I will continue to say I am profusely sorry for what happened. I know it is not going to change anything but for what it is worth...

**ARBITRATOR, JUSTICE MOSENEKE:** What was the haste about? Why did it have to happen at May 2016? What was so pressing that it must happen then no other time?

10 **MS. QEDANI MAHLANGU:** But it, Justice there was, there were indications that it must happen there and not any other time. When you plan projects have a beginning and an end date. When we sat in the meeting the first interactions I think the official started working early February, early 2015 if I am not mistaken after the budget processes would have kicked in in 2015. They started working on the  
15 processes, back and forth amongst them. So when the different stakeholders get involved as per this correspondence suggest here, the officials would have been already getting involved and even engaging with Life itself and the different unions in that process. So my assumption was, and at the time I thought the planning that had been done over a period of time will enable the execution, appropriate  
20 execution of the contract being cancelled. Of course now I know that things did not go according to plan, actually they went the other way instead of...

**ARBITRATOR, JUSTICE MOSENEKE:** No, but take us into your confidence – why did it have to happen then and no other? Why didn't you agree to an extension?

**MS. QEDANI MAHLANGU:** But we agreed to an extension Judge, Justice, of three further months. In total it was nine months.

**ARBITRATOR, JUSTICE MOSENEKE:** No, they asked for a year. They asked for a year. Why didn't you agree to that?

5**MS. QEDANI MAHLANGU:** But the same officials Justice would have said in a meeting the quality of care is deteriorating and I said that when I had an interview with the Ombuds person and when they come and speak here they say no we told her this, we told her this, but in the meeting they will say and particularly Dr Manamela in the report, MEC the quality of care is deteriorating. Okay, so if it is  
10deteriorating you have got to do something to ensure that we prevent any loss of life and...

**ARBITRATOR, JUSTICE MOSENEKE:** No, but you are not helping us now. We have the benefit of hindsight. We know the implementation went very wrong.

**MS. QEDANI MAHLANGU:** I agree with you Justice.

15**ARBITRATOR, JUSTICE MOSENEKE:** Yes. Now I am saying help us understand why did you close the door by cancelling the contract and forcing this rushed movement of patients in different parts of the province?

**MS. QEDANI MAHLANGU:** But at the time that was...

**ARBITRATOR, JUSTICE MOSENEKE:** Why did you do that?

20**MS. QEDANI MAHLANGU:** At the time Justice we were not aware of the consequence, of what was going to happen.

**ARBITRATOR, JUSTICE MOSENEKE:** But why do you do things for which, whose consequences you have not planned?

**MS. QEDANI MAHLANGU:** But Justice, in executing a decision I think it will be incorrect for me to execute a decision when I know that it is going to result in death, I should not implement such a decision. When...

**ARBITRATOR, JUSTICE MOSENEKE:** No, but why, I am sorry I am interrupting you. But I really would like us to get to the nub of this case – you make a decision that we are shutting down and suddenly everybody had to march to that drum beat and then they take patients without all of those things that are necessary, called low lights, and then they die. So the natural question is – why did you cause the stampede and put a termination date which meant everybody had to get out of Life Esidimeni whatever their condition and circumstances and whatever the conditions of the NGO's were. Why did you do that or allow that to happen?

**MS. QEDANI MAHLANGU:** But Justice again I would like to go back to what I said on Monday. That information I had at my disposal did not suggest that things are going to go horribly wrong. It did not. If, and I made an example...

**ARBITRATOR, JUSTICE MOSENEKE:** Well let us make an example. What did you know about NGO's?

**MS. QEDANI MAHLANGU:** May you just elaborate?

**ARBITRATOR, JUSTICE MOSENEKE:** No, what did you know about Takalani and what it can offer? What did you know about Precious Angel? What did you know

about Enke? What Siyabadinga? I am citing those where many people died.  
Why?

**MS. QEDANI MAHLANGU:** I did not know anything Justice about any NGO's.

**ARBITRATOR, JUSTICE MOSENEKE:** You did not know anything about them.

5**MS. QEDANI MAHLANGU:** But the NGO I had visited and I did say in my previous  
cross-questioning that the NGO I knew amongst all of these that were being  
mentioned was Takalani because of its long existence that has been providing other  
services for many many years.

**ARBITRATOR, JUSTICE MOSENEKE:** So why...

10**MS. QEDANI MAHLANGU:** The rest of the NGO's I did not know and I think it  
would have been appropriate for me to sit in a meeting, decide on this NGO, then  
on that NGO. The officials were competent and are competent to decide which an  
appropriate place is suitable for what because and my understanding was mental  
healthcare users were being grouped according to their abilities and functionalities  
15and on the basis of that they will be taken to a facility that will be, help them to get  
better or to be looked after better.

**ARBITRATOR, JUSTICE MOSENEKE:** Your real answer is I did not know where I  
am sending these patients. You just told me that now. I did not know, I wanted  
them out of Life Esidimeni, where were they going to go to, I do not know. Do you  
20know that where most people died, those NGO's did not have lawful licenses – you  
know that?

**MS. QEDANI MAHLANGU:** It is something that I heard after the effect.

**ARBITRATOR, JUSTICE MOSENEKE:** You know now right?

**MS. QEDANI MAHLANGU:** Yes, now I know.

**ARBITRATOR, JUSTICE MOSENEKE:** But why didn't you check then? At the right time? Before you slammed them the door behind these patients?

**MS. QEDANI MAHLANGU:** But Justice, may I once again, I beg for your indulgence.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes?

**MS. QEDANI MAHLANGU:** Licenses and any other related matter to look at in line with the tool we were given or the checklist that we were given that they were going to check X and Y and [inaudible] from infrastructure to conditions in the kitchen to this and that, those things in my understanding were checked and checked and checked on the basis of that. The reports all getting good, okay no this is okay. So if you work with people and you do not trust them, how are we going to do government work when you work with people you do not trust?

**ARBITRATOR, JUSTICE MOSENEKE:** But you agree that a competent and reasonable MEC would never have sent seventeen hundred to a place she does not know.

**MS. QEDANI MAHLANGU:** If she had accurate information yes she would not have. And also Justice and again, the process of moving patients from place X to

Y, that process was a responsibility of the said officials who were assigned and in my understanding were competently medical...

**ARBITRATOR, JUSTICE MOSENEKE:** Call their names?

**MS. QEDANI MAHLANGU:** To deal with these things.

5**ARBITRATOR, JUSTICE MOSENEKE:** Call their names.

**MS. QEDANI MAHLANGU:** Dr Manamela as the Head of Mental Healthcare team and the doctors that they said that they had in the team. If you read some of the document that [inaudible] mentions, the doctors in his testimony, I just do not have the actual names there but I saw some of the names in those things.

10**ARBITRATOR, JUSTICE MOSENEKE:** So if you had to place somebody on the hook, if you had to charge anybody here, disciplinarily, who would you charge in your troops? Those who worked under you?

**MS. QEDANI MAHLANGU:** At the moment I cannot charge anybody Justice, but if I were to be in a, if I was still in government I would have looked into the charges  
15relating to the Mental Healthcare Directorate as well as the Head of Department.

**ARBITRATOR, JUSTICE MOSENEKE:** So you would have charged the Head of Department, Dr Selebano. You would have charged Dr Manamela. Would you have charged Mr Mosinogi?

**MS. QEDANI MAHLANGU:** Yes, because he was a project manager.

20**ARBITRATOR, JUSTICE MOSENEKE:** And who else would you have charged?  
Ms Jacobus?

**MS. QEDANI MAHLANGU:** The Mental Health Directorate, I cannot remember how many people are there.

**ARBITRATOR, JUSTICE MOSENEKE:** But you would have wanted them to be dealt with.

5**MS. QEDANI MAHLANGU:** I would have wanted them to be subjected to disciplinary processes.

**ARBITRATOR, JUSTICE MOSENEKE:** And would you be added to that list?

**MS. QEDANI MAHLANGU:** I, that is why I decided to leave Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja, that is a fair question. Council, it is a  
10fair answer. Council?

**ADV ADILA HASSIM:** I am in the home straight. I just need a few more minutes.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja sure, you go on the home straight, go there.

**ADV ADILA HASSIM:** Ms Mahlangu...

15**ARBITRATOR, JUSTICE MOSENEKE:** I took probably fifteen minutes of your time, but you go ahead. I hope it was...

**ADV ADILA HASSIM:** I am indebted to you Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** ...for a good cause.

**ADV ADILA HASSIM:** Ms Mahlangu, you say in paragraph 12 of your response, so  
20we have and I do not want to re-open this, but you have said that the decision

could, to de-institutionalise could hardly be described as fundamentally flawed and irrational or unwise. And then you say what may have been “inhumane” could have been the implementation of the decision in some respects. And then at another point in this response...

5 **MS. QEDANI MAHLANGU:** So which paragraph?

**ADV ADILA HASSIM:** That was paragraph 12.

**MS. QEDANI MAHLANGU:** The first or second response?

**ADV ADILA HASSIM:** We are dealing now with the early response.

**MS. QEDANI MAHLANGU:** Okay.

10 **ADV ADILA HASSIM:** 13 January. Okay, so we have already been discussing that. That was in paragraph 12 and then in paragraph 27 you say I concede that the manner in which the implementation was in some instance done in ways less than reasonable. As you sit here now, do you still hold the view that (a) the decision was good and that it was only unreasonable in some instances in implementation?

15 Do you still hold that view?

**MS. QEDANI MAHLANGU:** De-institutionalisation is a government policy and I think you have it...

**ADV ADILA HASSIM:** I am talking about the decision in this context and what happened. Do you still hold the view that there was nothing wrong with the  
20 decision?

**MS. QEDANI MAHLANGU:** The decision to de-institutionalise is a government decision and I do not think I can sit here and change that decision because the, what the Department was doing informed by what the officials have said of the de-institutionalisation would have happened long before I even came...

5**ADV ADILA HASSIM:** Okay, you made a decision to terminate the contract. As you sit here now would you reverse that? If you could go back in time, would you still do so? Would you still terminate the contract?

**MS. QEDANI MAHLANGU:** I would terminate the contract, but implement, execute it differently.

10**ADV ADILA HASSIM:** And do you still hold the view that it was only the implementation was only unreasonable in some instances?

**MS. QEDANI MAHLANGU:** The implementation went horribly wrong. I said that, and I want to repeat it.

**ADV ADILA HASSIM:** Do you agree that it was a wonton violation of the rights of  
15vulnerable patients that were in your care?

**MS. QEDANI MAHLANGU:** The implementation went wrong, it did violate the mental healthcare users wrong, rights.

**ADV ADILA HASSIM:** And there were patients that were in your care?

**MS. QEDANI MAHLANGU:** They were under the care of government, of the  
20provincial government.

**ADV ADILA HASSIM**: Yes. And you know why they were in your care? Because their families were not in a material position to take care of them themselves.

**MS. QEDANI MAHLANGU**: Yes, that is indeed correct.

**ADV ADILA HASSIM**: And finally, at paragraph 18 of your response you take issue with the allegations that have been made against you about being heavy handed and you say in paragraph 18 – I have been in the public service for over 12 years and during that whole period I have never treated and administrative or a government task as a personal assignment.

**MS. QEDANI MAHLANGU**: That is absolutely correct.

10 **ADV ADILA HASSIM**: And is that true also in the case of the way you handled the Gambling Board in 2013?

**MS. QEDANI MAHLANGU**: Gambling Board has nothing to do with this.

**ADV ADILA HASSIM**: There were findings against you by the Supreme Court of Appeal.

15 **MS. QEDANI MAHLANGU**: Okay.

**ADV ADILA HASSIM**: In 2013 and they have very...

**ADV TEBOGO HUTEMO**: Justice, what is the relevance of the question relating to the Gambling Board in this matter? Really, like this question is unnecessary? If it can be parked for the relevant period.

20 **ADV ADILA HASSIM**: Justice, may I respond to the relevance?

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, the inquiry may very well be irrelevant, the similar facts inquiry.

**ADV ADILA HASSIM:** The witness...

**ARBITRATOR, JUSTICE MOSENEKE:** Kicked your dog yesterday, you are going to kick it again tomorrow. It is, and you know it is a matter of law, you do not likely allow similar inquiry.

**ADV ADILA HASSIM:** I appreciate that. The witness has on several occasions testified that that is not the manner in which she behaves and that she has not done so in her twelve years as an MEC.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Ja, I am disinclined to allow similar fact evidence to impugn character. It is a well established conclusion. I think you should move on to your other areas.

**ADV ADILA HASSIM:** Thank you Justice. The up shot of these responses is that you did not accept the findings of the Ombud's report in relation to you. Given what  
15 you have heard and I suppose the little you have read so far in these proceedings, have you changed your mind about your role?

**MS. QEDANI MAHLANGU:** I have not changed my mind. That is why I left the system because I was remorseful enough to recognise the magnitude of how things have gone wrong and I still stand by what I said when I left, when I resigned.

20 **ADV ADILA HASSIM:** Justice, that brings me to the end of my cross-examination.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes. Thank you Council, and thank you for the hard work in formulating the questions and getting us to important and relevant parts of the record and paperwork, much appreciated. We have come to the end of today's proceedings Ms Mahlangu.

5 **MS. QEDANI MAHLANGU:** Yes Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** [African language], thank you for being here and remaining patient, it is a job we have to do and try and get through it. Let us talk about tomorrow.

10 **LILLA CROUSE:** Justice, might I just before we get to tomorrow just place on the record and I am in no way putting the ethics of my learned friend Mr Musi into play but justice must be seen and I would ask that the witness be warned not to speak to any legal representative please.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, whilst under cross-examination.

**LILLE CROUSE:** Whilst under cross-examination.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Ja, there could be interim consultations and so on, whilst under cross-examination and Advocate Musi that you know no doubt.

**ADV MUSI:** I am well aware of that Justice and I, actually I am boggled by this proposition which seek to attack my integrity as a professional. I know my duties...

20 **ARBITRATOR, JUSTICE MOSENEKE:** I thought the qualification was clear? Your integrity is not being, your ethical conduct is not being challenged. It is a recordal

that there should be no examination, there should be no consultation during, whilst a witness is under cross-examination.

**ADV MUSI**: If I may Justice.

**ARBITRATOR, JUSTICE MOSENEKE**: Certainly.

5**ADV MUSI**: There will be no consultation, however we do assist the witness to carry if she needs something. Like yesterday, she would call, I would liaise with my colleague, Mr Ngutshana, like those things that are necessary to get the process going like in a collation of information, those are things which I believe do not amount to consultation.

10**ARBITRATOR, JUSTICE MOSENEKE**: I accept your assurances. Be assured that I do and I trust and accept your ethical observance so you should not be worried at all.

**ADV MUSI**: Thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE**: Very well. Is there anybody else who  
15would like to make any point amongst? I would like to thank all Council for their patience, it is 17:50. I cannot be said we are not dutiful citizens and we are going to be duty bound to warn you to be present here at this hearing tomorrow at 09:30 Ms Mahlangu.

**MS. QEDANI MAHLANGU**: Yes Justice, I will be here.

20**ARBITRATOR, JUSTICE MOSENEKE**: Thank you ever so much. We are adjourned until tomorrow at 09:30.

**[MATTER IS ADJOURNED]**