

LIFE ESIDIMENI ARBITRATION

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

7TH DECEMBER 2017

5

SESSION 1 – 3.

BEFORE ARBITRATOR –JUSTICE MOSENEKE

10

WITNESSES:

DR. SELEBANO

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SESSION 1

ARBITRATOR, JUSTICE MOSENEKE: Of course, you may be seated. Doctor Selebano, the evidence...

DR. SELEBANO: Yes, your Justice.

5**ARBITRATOR, JUSTICE MOSENEKE:** The evidence you'll continue giving will be the truth and nothing but the truth. Counsel.

ADV LILLA CROUSE: Good morning Justice Moseneke.

ARBITRATOR, JUSTICE MOSENEKE: Good morning. Good morning.

ADV LILLA CROUSE: Good morning Doctor Selebano.

10**DR. SELEBANO:** Good morning counsel.

ADV LILLA CROUSE: Can I just recap what you said to us yesterday and see whether you agree on...did I understand correctly that there was a collective to close life esidimeni

DR. SELEBANO: Yes, counsel.

15**ADV LILLA CROUSE:** Would you just speak into...

DR. SELEBANO: Yes, counsel. Sorry about that. Let me come nearer. I'm sorry about that.

ADV LILLA CROUSE: And did I understand you correctly that you mental health to prepare the termination letter

DR. SELEBANO: Yes, counsel

ADV LILLA CROUSE: And nobody instructed you to sign that letter?

DR. SELEBANO: No, nobody instructed me to sign that letter.

ADV LILLA CROUSE: And you told my learned friend before I started cross-examination that you didn't need the M-A-C consent to sign that letter, is that also correct?

DR. SELEBANO: Yes, that's correct.

ADV LILLA CROUSE: And you also told us that no single person drew the plan of how closure was going to happen. Is that right? Should I rephrase that rather...

10 **DR. SELEBANO:** Maybe ...

ADV LILLA CROUSE: You said you don't know who drew the plan?

DR. SELEBANO: Yes. Yes.

ADV LILLA CROUSE: You came up with the plan?

DR. SELEBANO: Yes. Previously

15 **ADV LILLA CROUSE:** And can I just ask you the next question is, do you know who prepared the plan?

DR. SELEBANO: Yes, Doctor Manamela prepared the plan.

ADV LILLA CROUSE: Thank you for your answer and can I just ask you very quickly to go to volume one, 180.

ARBITRATOR, JUSTICE MOSENEKE: Are you stepping off the cancellation letter?

ADV LILLA CROUSE: No, not completely.

ARBITRATOR, JUSTICE MOSENEKE: Okay.

DR. SELEBANO: Which page counsel?

5**ADV LILLA CROUSE:** Page 180, volume one. Do you have the document in front of you?

DR. SELEBANO: Yes, I'm there counsel.

ADV LILLA CROUSE: Its page 180 and it has a small 90 at the right end top and a CCN.1

10**DR. SELEBANO:** Yes, that's the one.

ADV LILLA CROUSE: Can you identify that first please? The document

DR. SELEBANO: Without going through the minutes but I see that I was present and I know the names here I can see

ADV LILLA CROUSE: Let us identify the document of the meeting sir. The minute 15of the meeting, the department of health and S-A-D-E-C, 15th of November 2015.

DR. SELEBANO: I can safely say that I met with S-A-D-A-C.

ADV LILLA CROUSE: Yes.

ARBITRATOR, JUSTICE MOSENEKE: I haven't found that yet counsel, repeat the reference.

ADV LILLA CROUSE: Its volume one, page 180 Justice.

ARBITRATOR, JUSTICE MOSENEKE: 180, I see. Thank you. Please proceed.

ADV LILLA CROUSE: We know at this stage you had already signed the termination letter.

⁵**DR. SELEBANO:** That's correct counsel.

ADV LILLA CROUSE: And we know from the first line, you played some leading role in this meeting.

DR. SELEBANO: That's right.

ADV LILLA CROUSE: What we saw, you were the chair of this meeting.

¹⁰**DR. SELEBANO:** Yes. Definitely I think I was the chair of this meeting.

ADV LILLA CROUSE: One thing that comes out from the first line of the paragraph was the unfortunate email of the M-A-C saying that the N-G-O's were dishonest. You remember that?

DR. SELEBANO: Yes, I remember that.

¹⁵**ADV LILLA CROUSE:** And you apologised for that.

DR. SELEBANO: I had to.

ADV LILLA CROUSE: One of the things you say in this letter is that you are going to deinstitutionalize. Is that right? In this minute you were adamant that you are going to deinstitutionalize.

²⁰**DR. SELEBANO:** In this minute?

ADV LILLA CROUSE: At that time.

DR. SELEBANO: Okay. On that time. Yes, counsel.

ADV LILLA CROUSE: And you also said that the states hospital wards are full.

DR. SELEBANO: Acute psychiatry wards were full.

5**ADV LILLA CROUSE:** Maybe let me just quickly go there and I'm not moving off of this point but I just want to touch on your evidence yesterday about the forensic patients and I think there's a misunderstanding and I just want to clarify with you whether we're are on the same page with forensic patients. Do you agree with me in terms of the current procedure act, if it's unsure whether a person is criminally responsible that he can be sent for a 30-day observation in a mental institution?

DR. SELEBANO: The answer I'll say is yes but I don't know the act itself.

ADV LILLA CROUSE: It's fine. It's in the criminal act procedure act 77 or nineish. The person must go for 30 days in a mental institution to determine whether he has the criminal responsibility.

15**DR. SELEBANO:** Correct. Correct.

ADV LILLA CROUSE: And you referred to these people as forensic patients

DR. SELEBANO: Mainly I said forensic psychiatrist, I was referring to the doctors who take care of those patients.

ADV LILLA CROUSE: Okay. But the question that was asked to you, were not in 20relation to these patients. They were in relation to the people who had gone through that route and they are called state patients, they don't need forensic psychiatry

processes. You agree with that? The court says you don't know what you've been doing, I declare you a state patient and you must go to a mental hospital. Did you know these extension as you testified yesterday?

DR. SELEBANO: When you explained, I took up the distinction of a state patient 5and at that time I thought it was a patient who is in court and the judge says I don't think...

ADV LILLA CROUSE: But do you now realize that they are two separate.

DR. SELEBANO: Yes. I have realized.

ADV LILLA CROUSE: What Doctor Talatala was all about is that both these type of 10patients are waiting in the prisons for placements. So, people with mental sickness might not have been an inquiry to its mental status. He might be imprisoned and you can imagine as a medical doctor that's not a place to be...

DR. SELEBANO: I can imagine, I agree.

ADV LILLA CROUSE: The other side of this is that you're ready to clear a mental 15patient, you already have dealt with those with criminal responsibility and then you put back into prison because there's no beds in psychiatric hospitals and you'll agree with me that both these instances on the letter has a great influence in your decision. Do you over load psychiatric hospital?

DR. SELEBANO: Yes. I agree that the psych institutions were...

20**ADV LILLA CROUSE:** So your evidence yesterday that it didn't play a role...that it shouldn't come into the picture is incorrect. Do you agree with me?

DR. SELEBANO: Now that you explain it, I was dealing with a different category. I understand what you're saying...

ADV LILLA CROUSE: I just don't understand why you didn't take it up to Doctor Talatala and ask him to explain it to you?

5**DR. SELEBANO:** I never had the opportunity to meet with him.

ADV LILLA CROUSE: You don't have a telephone?

DR. SELEBANO: I do.

ADV LILLA CROUSE: You don't have a legal department?

DR. SELEBANO: We have.

10**ADV LILLA CROUSE:** So, I don't understand how you as the head of the health department cannot understand this concept and then boldly say that it wasn't coming to play. Can you explain that to us?

DR. SELEBANO: I could see the counsel as we discuss earlier as I reflected, I slept over these things. I think about that. You know, I wish I could have done things 15differently.

ADV LILLA CROUSE: You're are not answering my question, with respect. My question is that how did you not yesterday, still in your evidence, not know about this distinction, not understand how it fits into the clear picture?

DR. SELEBANO: My understanding one was a different one that said these are 20patients who had gone through the court said that you are a psychiatric patient but

you need to be assessed by forensic psychiatrics. I apologize that I came out as if I was not understanding that. That was my understanding.

ADV LILLA CROUSE: Yes, we accept that doctor. I don't want to relay the point but I'm still trying to get my head around and how the head of the department does not understand technical terms put forward to him to consider in his decision making and he doesn't those terms. That's what I'm trying to understand and I'm not speaking now, I'm speaking up to yesterday. So, I'm trying to understand why you didn't understand those terms.

DR. SELEBANO: You mean yesterday.

10**ADV LILLA CROUSE:** No. when you made the decision doctor.

DR. SELEBANO: Okay, I understand.

ADV LILLA CROUSE: Why is that?

DR. SELEBANO: That time I don't know why I couldn't understand those terms; I can only say I don't know how I missed that.

15**ADV LILLA CROUSE:** Can you please turn to page 181? Can you please read the first sentence on that page?

DR. SELEBANO: The H-O-D discussed the need to desegregate patients from the life facilities and to assess the social impact on patients and employees of life esidimeni as instructed by the premium.

20**ADV LILLA CROUSE:** Can you explain that sentence to us please?

DR. SELEBANO: Okay. The last part of the sentence... let me say this, I discussed the need to desegregate or life esidimeni has different types of patients. So, I was saying we can't mix all the patients so we must segregate them and say these are mental retarded patients and these are patients, let me say an example; acute 5chronic psychiatric condition which would be different from retardation which would be a patient with cerebral Persis. So that would be the desegregation that I had in mind.

ADV LILLA CROUSE: So, let us just understand what desegregate means, does it mean that you want to take away the distinction or put them all together?

10**DR. SELEBANO:** No.no.no.

ADV LILLA CROUSE: You wanted to separate them?

DR. SELEBANO: No, to say this is patient A with cerebral Persis, you must segregate that patient with the patient with the chronic bipolar and you must...

ADV LILLA CROUSE: But what does desegregate mean? Because you are saying 15that we must segregate them but desegregate them means that I'm going to take away the segregation. Isn't that so?

DR. SELEBANO: Counsel now, maybe the desegregate is a written in these minutes but in my understanding when I said this I meant...

ADV LILLA CROUSE: But you already desegregated life esidimeni. Isn't that so?

20**DR. SELEBANO:** Yes,

ADV LILLA CROUSE: So why would there be a need to desegregate them?

DR. SELEBANO: In this case what I was...I'm thinking, I'm trying to think backwards that what I was meaning here was that as you move patients, do take care to separate patients. The cerebral persly not been mixed up by...

ADV LILLA CROUSE: Male and female?

5**DR. SELEBANO:** Male and female, I would suppose.

ADV LILLA CROUSE: And how would that assist the social impact?

DR. SELEBANO: Usually...

ADV LILLA CROUSE: If you've already separated them?

DR. SELEBANO: The social impact here, what I was saying, I was saying patients
10have families, there is no way you can separate patients from their families. What
was the impact of what we were going to do... that was the impact to the families.
Example, I had in minded that you cannot bedded the patient with transport cost,
not patients but the families with transport costs. That's what I had in mind. Some of
those were the implications that I was trying to...

15**ADV LILLA CROUSE:** Doctor, "As instructed by the premium" what does it mean?

DR. SELEBANO: Okay. As an employee of life esidimeni, here the instructions
were that as we close life esidimeni we were to ensure that the workers act as life
esidimeni has absorbed into the state, that's what I meant by that.

ADV LILLA CROUSE: And instructed by the premium?

20**DR. SELEBANO:** Yes, it was the premium side to ensure no one loses their job.

We had done this. We had done the same thing with Selby park.

ADV LILLA CROUSE: Did the premium say that to you?

DR. SELEBANO: In person?

ADV LILLA CROUSE: You said that the premium instructed, I want to know who did the premium instruct? Did the premium instruct you?

5**DR. SELEBANO:** Let me try and recollect. Either the premium might have informed, I'm trying to recollect. Either the premium might have informed the M-A-C to say, "Listen, whatever you do, tell your H-O-D that people must not lose jobs." Or he might have gone to the premiums office and were that instructions and suite as instructed to ensure that people don't lose jobs; minimize job losses. That was...I'm
10not...

ADV LILLA CROUSE: Doctor Selebano, I don't want to play with words. As instructed by the premium pretty seems straight forward. Don't you agree?

DR. SELEBANO: When you read it, yes.

ADV LILLA CROUSE: And it seems from that sentence the premium must have
15known about the closures, if he wanted to safeguard patients and jobs.

DR. SELEBANO: Yes.

ADV LILLA CROUSE: Do you know that the premium...?

ARBITRATOR, JUSTICE MOSENEKE: What does yes mean?

DR. SELEBANO: Counsel says that the premium knew that's why he said
20safeguard jobs and I'm saying yes.

ADV LILLA CROUSE: And I still want to know from you before we move on. How did you know that this was an instruction from the premium, did he speak to you?

DR. SELEBANO: In person, it's very rare that the premium will talk to me in person but...

5**ADV LILLA CROUSE:** Please, are we done in speaking in general terms doctor?

Did he speak to you and gave you those instructions? Yes, or no?

DR. SELEBANO: No. no. personally no.

ADV LILLA CROUSE: And do you have any record where these instructions come from?

10**DR. SELEBANO:** No, I don't have records, if I was to go back then perhaps I didn't know where to start.

ADV LILLA CROUSE: I just want to tell you I will argue on the sentence that you've just read out, the need to desegregate. That's does not make sense in light of your explanation. Do you agree?

15**DR. SELEBANO:** I hear your endives of language? Yes.

ADV LILLA CROUSE: Because men and women would be put together and that would have a social impact on patients. So it seems to me that this sentence rather speaks to males and females together.

DR. SELEBANO: Counsel, I wouldn't say that even in hospitals that do that. I can't 20[?] myself saying that put men and women together. I can't say that.

ADV LILLA CROUSE: Just to finish this all in fact, there was a terrible impact on patients. Do you agree?

DR. SELEBANO: I agree.

ADV LILLA CROUSE: And they were also an impact of life esidimeni on employees, do you agree?

DR. SELEBANO: I agree,

ADV LILLA CROUSE: So, if there was such an instruction from the premium, you didn't heed that.

DR. SELEBANO: Even the employees?

10**ADV LILLA CROUSE:** On both.

DR. SELEBANO: No. On the employees they were absorbed, lots of employees from life esidimeni were absorbed.

ADV LILLA CROUSE: Not all of them were unabsorbed. Unskilled people lost their jobs, didn't they?

15**DR. SELEBANO:** My meeting with the managers made sure that...

ADV LILLA CROUSE: You see, that's not what I'm putting to you. I'm saying you did not heed this because this was not executed. People lost jobs.

DR. SELEBANO: I hear you and...

ADV LILLA CROUSE: And you agree?

20**DR. SELEBANO:** But also a lot of people also were absorbed.

ARBITRATOR, JUSTICE MOSENEKE: Let's talk some detail here. Counsel is debating with you something that we know quite a bit about it.

DR. SELEBANO: Okay.

ARBITRATOR, JUSTICE MOSENEKE: Remember that people have testified ahead of you. Starting with Doctor Manamela. How many people were unemployed in life esidimeni at the point of termination September 2015?

DR. SELEBANO: On life esidimeni, I didn't know. I know that the professional [?], the ones who were first to be absorbed. I know that.

ARBITRATOR, JUSTICE MOSENEKE: We were told that they were in a record, I remember it now. It was something like 360-370 workers... employees employed by life esidimeni and not by you.

ADV LILLA CROUSE: 700 Justice.

ARBITRATOR, JUSTICE MOSENEKE: 700, so I've given you half. 700, thank you counsel and we asked Doctor Manamela quite carefully where in her plans was the protection of workers? I couldn't find it; I couldn't see it. The concern as you close life esidimeni, you actually want to tell me 700 jobs. Did you ever see on any of the plan?

DR. SELEBANO: In the plan it was not there but I'm raising my arm judge that the number of... I cannot get...

ARBITRATOR, JUSTICE MOSENEKE: Forget about the numbers now, we have to get to specifics. I looked at the plans that Doctor Manamela put up as you referred to her yesterday and I see a word about the workers.

DR. SELEBANO: No, it didn't include that.

5**ARBITRATOR, JUSTICE MOSENEKE:** Why not? She was asked the same question by me for that letter. Why not?

DR. SELEBANO: It's probably a terrible omission, it's a terrible omission.

ARBITRATOR, JUSTICE MOSENEKE: Again, it's about the people of life and blood; working people.

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

ARBITRATOR, JUSTICE MOSENEKE: Were you going to save costs on them besides the patients?

DR. SELEBANO: No.

ARBITRATOR, JUSTICE MOSENEKE: But it follows if you shut the place down, 15they lose their jobs and you don't have to pay life esidimeni. Let's go to the specifics, how many of the workers retained their jobs?

DR. SELEBANO: I can only talk of the categories; I don't have the number in my head to speculate with numbers but I know that the nursing category and the care givers. Those were the specifically absorbed.

20**ARBITRATOR, JUSTICE MOSENEKE:** Why? Why were they absorbed?

DR. SELEBANO: There was...

ARBITRATOR, JUSTICE MOSENEKE: We explored this with Mr Musinokhi and Manamela. Give me the specifics

DR. SELEBANO: I know that...

5**ARBITRATOR, JUSTICE MOSENEKE:** Working people lose their jobs because of their notice of termination. Let's leave the patients for a moment. How many of them got their jobs back?

DR. SELEBANO: I couldn't see. I don't have their numbers.

ARBITRATOR, JUSTICE MOSENEKE: But why is it not centrally planning?

10**DR. SELEBANO:** I consider again Justice that it was a terrible omission.

ARBITRATOR, JUSTICE MOSENEKE: Look, the patients were not centrally the planning. The working people were looking after them and they lose their jobs instantly. And none of your managers, Mr Musenoni, and Doctor Manamela could tell us how they saved this jobs. Let me tell you why it is irrelevant, at the NGO's it 15wouldn't be wise to take the care givers to. Does it not?

DR. SELEBANO: It was.

ARBITRATOR, JUSTICE MOSENEKE: And they would continue to look at the vulnerable patients, isn't it so?

DR. SELEBANO: It was.

20**ARBITRATOR, JUSTICE MOSENEKE:** Why was it not part of your plan?

DR. SELEBANO: As far as I know, I HR department worked on absorbing those and as far as I know, they were absorbed.

ARBITRATOR, JUSTICE MOSENEKE: Give us the details.

DR. SELEBANO: I can't give, I'm out of the system in a sense now judge but they were absorbed. I don't want to sound argumentative but I can't give you the...

ARBITRATOR, JUSTICE MOSENEKE: Why were they absorbed?

DR. SELEBANO: Some were absorbed, I wouldn't give you numbers whether it was 20 or what but this copies to some. I know some went to Timbisa and ones mainly to Beverly.

10**ARBITRATOR, JUSTICE MOSENEKE:** How did the absorption process go on?

DR. SELEBANO: We had to plan differently because we...

ARBITRATOR, JUSTICE MOSENEKE: I need; did they apply for jobs a new?

DR. SELEBANO: That's the process. We said that we are not going to advertise because we want to advertise the normal routine we were to go through a long long 15process. We said we are not going to...

ARBITRATOR, JUSTICE MOSENEKE: Do you know about these details or you're speculating now?

DR. SELEBANO: I know all about the details that we are not... I had to... I remember I had to sign to say that we're not going through the advert.

ARBITRATOR, JUSTICE MOSENEKE: You see, Doctor Manamela said she was quite sorry that people lost their jobs and she was the one implementing, she couldn't give us the numbers of where these care givers. They started off with clinicians, with doctors who lost their jobs, then came nurses, came a variety of workers. If she could say that they couldn't absorb people who were cleaning, grounds people and so on and she's sorry about it. Several nurses lost their jobs, I followed it carefully and she was sorry about it.

DR. SELEBANO: That's what she said. If I had the means to go in again, I can assure you Justice that HR department would be able to show you.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Who in HR department would tell us that?

DR. SELEBANO: The D-D-G, Miss Balowi should be able to pull out the information of the people who were absorbed. She should be able to do that.

ARBITRATOR, JUSTICE MOSENEKE: You see the plans that you had and Doctor Manamela played before you shows an additional HR cost for the hospitals that you had. And you needed quite a lot of money to get new employees at their facilities. Money which you were told you didn't have. So, when and how; let me tell you where I am getting to. It simpler and then counsel can continue. That uncaring attitude towards working people seems to tie in with uncaring attitude towards moving the patients they were caring for.

20 **DR. SELEBANO:** I hear you, justice.

ARBITRATOR, JUSTICE MOSENEKE: And I'm just certain that there was no plan to and it seems that you had been instructed by the premium, directly or indirectly.

No plan in looking after working people, you shut the place down, you send out the patients and the workers will see how you finish. Why was it like this?

DR. SELEBANO: I can raise my hand; we call this even the previous project to absorb the nurses.

5**ARBITRATOR, JUSTICE MOSENEKE:** Okay. With time will call the person who you said did that. Give me this specific person who you said...

DR. SELEBANO:, she would be the one who was extracting information from the system saying how many workers were absorbed.

ARBITRATOR, JUSTICE MOSENEKE: Did they ever give you a report on how 10many workers were absorbed?

DR. SELEBANO: Probably they did, I wouldn't remember.

ARBITRATOR, JUSTICE MOSENEKE: Did who?

DR. SELEBANO: Penkibalo.

ARBITRATOR, JUSTICE MOSENEKE: Didigi Penkibalo.

15**DR. SELEBANO:** She would be able to extract information and prepare report that would show how many people were...

ARBITRATOR, JUSTICE MOSENEKE: Counsel for the state, counsel leader.

Would you help us find Pinkibalo

COUNCIL FOR THE STATE: Thank you Justice, we'll follow that up.

ARBITRATOR, JUSTICE MOSENEKE: You'll follow that up. Very well, you may proceed counsel.

ADV LILLA CROUSE: Thank you Justice. Could you just keep that page in front of you but would you please go to L02? You'll be assisted. L02, if you can go to L02, Chapter 5, page 27 of the document, do you have it? L02 and in chapter 5 and at the bottom right hand, there must be a number 27. Do you see that?

DR. SELEBANO: The one that I have has a 90 and a 25 on top and then goes to 29. Its 23, 25 and 29.

ADV LILLA CROUSE: Mine is marked in chapter 5 and it's an email from Mr 10Mosenokhe.

DR. SELEBANO: That's the one directed to the M-E-C?

ADV LILLA CROUSE: That is so justice. Did you have it?

DR. SELEBANO: I have the email... counsellor, I have the email.

ADV LILLA CROUSE: You have the email. Do you see the unnumbered 15paragraphs up to number 7?

DR. SELEBANO: Up to number 7 I think...

ADV LILLA CROUSE: Let's just identify this document, this is an email from Mr Masinukhi to the former M-A-C and you were cc'd.

DR. SELEBANO: That's right.

20**ADV LILLA CROUSE:** It's on 12th of February 2016. Is that right?

DR. SELEBANO: You are right counsellor.

ARBITRATOR, JUSTICE MOSENEKE: I'm sorry counsellor, is that the same document that you said you virtually co-offered?

DR. SELEBANO: Yes, that's right.

5ADV LILLA CROUSE: We're going to the part that you co-authored. It's the letter attached to this email. Is that also sir?

DR. SELEBANO: Yes.

ADV LILLA CROUSE: Now, off to paragraph 7 there's a fairly substantial paragraph. Towards the end of the paragraph but to lines towards the end of the 10paragraph, it says, 'also the life of esidimeni or L-E people requested that we indicate to them clearly as the need to issue notices before end of February 2016 to begin to rep and close the facility and I've asked the H-O-D, what do we say to them? At least by Monday, for me I think we should have time to avoid possible mess if our plans don't materialize plus our staff need consideration. Is it true that 15life as esidimeni asked you what to do with these staff?

DR. SELEBANO: Yes, with Doctor Mukacholo, we were discussing these staff.

ADV LILLA CROUSE: If you turn the page itself to the letter itself, it's a letter to...

DR. SELEBANO: The same letter counsel?

ADV LILLA CROUSE: Not the email, if you turn to the letter it should be on the next 20page

DR. SELEBANO: The 12th February.

ADV LILLA CROUSE: Yes, that is the letter to the M-A-C and this is the letter you co-authored. The last paragraph; thirdly, the health care workers would be unduly affected as most would lose their jobs especially those who have specific care skills, they are professionally qualified. For example, care assistants, therapy assistants' Setcetera. The other categories of workers whom we have not said much about is the outsourced contract workers that is gardeners, caterers, cleaners etcetera, in the line of current economic crisis most are going to be retrenched. And you said you knew about it?

DR. SELEBANO: Yes, I knew about it.

10 **ADV LILLA CROUSE:** And you didn't care about them? You knew that they can't be absorbed into your system

DR. SELEBANO: You see, arguing this process, we were not alone. We were discussing how best we were going to absorb the workers. The categories that I have said, they were then categories that would have absorbed, start with this and 15 go on with these. The ones that I agree with you that they were very difficult because the union were saying they were unable to talk on behalf of those who were contract. Those were contracted by life esidimeni were not employed directly by life esidimeni.

ADV LILLA CROUSE: Doctor Selebano, who don't need a degree in economics to 20 know that these people lost their jobs. When I put it into you, you didn't care about those people.

DR. SELEBANO: I did care, losing a job is a devastating thing.

ADV LILLA CROUSE: I'm going to ask you to close that chapter and we are going to page 181 where you were previously.

ARBITRATOR, JUSTICE MOSENEKE: So, before we go back, how did he agree to the termination of these jobs? Is that what he said?

5**DR. SELEBANO:** How I knew about the termination of the contract...

ARBITRATOR, JUSTICE MOSENEKE: Did they agree?

DR. SELEBANO: I don't know if they agreed. It's difficult for me to whether they agreed or didn't agree. I don't want to...

ARBITRATOR, JUSTICE MOSENEKE: Counsel, continue.

10**ADV LILLA CROUSE:** Thank you Justice. Doctor Selebano, we're going to continue on page 181.

ARBITRATOR, JUSTICE MOSENEKE: I'm still there, counsel.

ADV LILLA CROUSE: The second sentence, could you read that please?

DR. SELEBANO: Which one? Starting with?

15**ADV LILLA CROUSE:** The H-O-D.

DR. SELEBANO: The H-O-D admitted? That one?

ADV LILLA CROUSE: No. no. The second sentence as instructed as the premium that we previously read. Just the second sentence there.

DR. SELEBANO: The H-O-D stated that when the life esidimeni was terminated they did not want to endanger patients, however, they were looking at costs and not patient profiles.

ADV LILLA CROUSE: Up to there. So, you stated that you don't want the endanger 5patients but you only looked at cost and not patient profiles. Is that what you said?

DR. SELEBANO: I did not want to endanger patients. I'm not sure what to describe...

ADV LILLA CROUSE: It's your meeting doctor. We are trying to establish what you say. So let us then break it up. Did you say the time the contract was terminated 10that you did not want to endanger patients?

DR. SELEBANO: That was the over-riding factor, yes.

ADV LILLA CROUSE: But did you say that you only look at costs?

DR. SELEBANO: Yes, that was the over-riding factor

ADV LILLA CROUSE: And not patients' profiles

15**DR. SELEBANO:** That's why I'm battling in my mind what could have this meant

ADV LILLA CROUSE: Yes, I can tell you what that meant Doctor. It means you sat in a boardroom and decided to cut costs without looking at the people. Do you agree with me?

DR. SELEBANO: No, but it says...

20**ADV LILLA CROUSE:** But this is what it says.

DR. SELEBANO: Not endanger patients.

ADV LILLA CROUSE: But you said that you're looking at the costs except in the beginning where you said that you didn't want to endanger patients. You agree with me it happened?

5**DR. SELEBANO:** Yes.

ADV LILLA CROUSE: But the reason was you were looking at the costs and not patients' profiles. Don't you agree?

DR. SELEBANO: I don't agree because my issue here is I'm trying to work backwards and think what did the scribe understand by patient profile? I'm battling with that because it doesn't make sense to me.

ADV LILLA CROUSE: Please make it easier, did you help the patient profiles in front of you before you took the decision to sign that termination letter? Just say yes or no for starters Doctor.

DR. SELEBANO: Myself? I didn't have the patient profiles.

15**ADV LILLA CROUSE:** So, you didn't go through the patient profiles?

DR. SELEBANO: Counsel, I'm trying to work the meaning profile, is the medical profile.

ARBITRATOR, JUSTICE MOSENEKE: Well, you've just told us that you didn't have the profiles, categorising the, how does it help. The answer is that you did not have the profiles when you had the contract to terminate.

DR. SELEBANO: When I signed the contract.

ARBITRATOR, JUSTICE MOSENEKE: Yes, when you signed the termination contract. There's your answer counsel.

ADV LILLA CROUSE: Thank you, justice. I'm now going to move off that file for a moment and take you to L0114. If somebody can assist you

5**DR. SELEBANO:** 114.

ADV LILLA CROUSE: Do you have it in front of you?

DR. SELEBANO: Yes, I have it.

ADV LILLA CROUSE: This is an affidavit by yourself, do you see it?

DR. SELEBANO: I see it.

10**ADV LILLA CROUSE:** And it was commissioned on 11th of July this year

DR. SELEBANO: That's right.

ADV LILLA CROUSE: And it's the affidavit that you prepared to appeal against the [?] decision. Would that be of fair?

DR. SELEBANO: That's fair.

15**ADV LILLA CROUSE:** If I could ask you... this is your affidavit; you don't have to read through it all in one. If I could take you to paragraph 14 please,

DR. SELEBANO: 14, okay.

ADV LILLA CROUSE: That is your explanation. Let me ask you, can you read paragraph 14 into your record?

DR. SELEBANO: During the financial effort 2014 to 2015 and 15-16 particular emphasis was placed on particular containment.

ADV LILLA CROUSE: Could you speak up a little bit louder, sorry to interrupt you doctor.

5**DR. SELEBANO:** Sorry. Okay. Cost containment and revenue enhancement which was included in the annual performance plans for the department without sacrificing the quality of the service commission. This was discussed at the premiums budget counsel and a presentation was given for the M-A-C for health [?]. In addition, the A-G had cautioned about the simple renewing of the contract without going through 10the proper tender and application process.

ADV LILLA CROUSE: Some of these you said yesterday, can I just ask you; have you seen the presentation given by the M-A-C to the premiums budget counsel?

DR. SELEBANO: Yes, I was there when she presented to the premiums budget counsel

15**ADV LILLA CROUSE:** In both financial years?

DR. SELEBANO: Yes. Yes. I have to accompany him.

ADV LILLA CROUSE: So, you're saying in both financial years she said she was going to close life esidimeni.

DR. SELEBANO: That will terminate the contract. Yes.

20**ADV LILLA CROUSE:** I both years. It was said

DR. SELEBANO: Yes, it was said.

ARBITRATOR, JUSTICE MOSENEKE: And was the premium in the meeting?

DR. SELEBANO: He chairs the meeting.

ARBITRATOR, JUSTICE MOSENEKE: He chairs the meeting? And was physically present.

5ADV LILLA CROUSE: Just for clarity sake, if you talk about a financial year 2014-2015. Which months are we looking at?

DR. SELEBANO: The financial year starts from April 14th and the 15th and it goes on like that.

ADV LILLA CROUSE: So, the financial year is from the first of April every year to 10the 31st of March the next year. Is that what you said.

DR. SELEBANO: Yes, exactly. So, it startles both years.

ADV LILLA CROUSE: So, you're saying it was already discussed from 2014 to 2015 but it wasn't closed.

DR. SELEBANO: Yes. It was discussed and then...

15ADV LILLA CROUSE: Just answer now, please Doctor. I don't want to interrupt you. Of course you can give an explanation but we are going to go much further if you answer the question.

DR. SELEBANO: My apologies counsel.

ADV LILLA CROUSE: So, it was decided that it would be closed but it wasn't closed in that year. Thank you. And with these presentations that the M-A-C has given at both these meetings, would they be available?

DR. SELEBANO: I'm sure they are available.

5**ADV LILLA CROUSE:** Where would we find that?

DR. SELEBANO: It would be in the department; the department would have it. The M-A-C's office. It should be there.

ADV LILLA CROUSE: When the M-A-C presented that plan in 2014, the year in which you didn't close life esidimeni. Was that the first time you heard that it was going to be closed?

DR. SELEBANO: The closure?

ADV LILLA CROUSE: Yes.

DR. SELEBANO: That was the first time.

ADV LILLA CROUSE: Did you ask where this was coming from?

15**DR. SELEBANO:** You mean the... before we goes for the P-B-C, we... I didn't ask her.

ADV LILLA CROUSE: You didn't ask her? You just accepted this is right. Let's close these important place.

DR. SELEBANO: It's a decision, yes.

20**ADV LILLA CROUSE:** You didn't interrogate the decision at all?

DR. SELEBANO: Prior to the drawing of the... we sit and do the all of us.

ADV LILLA CROUSE: So, it wasn't the first time you heard in 2014 at the premiums budget counsel?

DR. SELEBANO: No, it was not for the first time...

5ADV LILLA CROUSE: You were part of that.

DR. SELEBANO: There was discussion prior.

ADV LILLA CROUSE: Even when you were no appointed the as the head of the department yet but you were acting.

DR. SELEBANO: Yes, I was acting and there were other managers, finance and 10everybody. So, we sat and we worked on the presentation with the M-A-C.

ADV LILLA CROUSE: Okay. And if we can just interrogate this for a little bit further. The audit general never said that you must close life esidimeni. Is that correct?

DR. SELEBANO: Yes.

ADV LILLA CROUSE: Okay. Would you mind reading paragraph 15 first?

15DR. SELEBANO: At the same time there was a shift in the international base in the department of mental health patients to deinstitutionalize, that is, those patients; remove them from an institutionalize hospital environment and placed them in a community based care organization wherever possible. This practice is reflected in the mental health care act and regulations from ligated patients act. Thus, the 20mental policy on mental health which aids to provide patients with mental health with the most restrictive form available and attaches an extra policy.

ADV LILLA CROUSE: Thank you Doctor. We will also speak about not necessary with you but about arbitration about the frame work. Third year, is to not have patients in hospitals, is that so?

DR. SELEBANO: That's the idea.

5**ADV LILLA CROUSE:** Yes and you knew about that?

DR. SELEBANO: Yes, I know about that.

ADV LILLA CROUSE: Yet, when the [?] was busy and we dealt with it yesterday. You signed a contract of 20 million Rand for investigation to have 900 new beds. Is that not going against the framework?

10**DR. SELEBANO:** The...the...can I?...is it possible that I can explain? The creation of the 900 beds...

ARBITRATOR, JUSTICE MOSENEKE: It's best to say no, it didn't go against then explain why.

DR. SELEBANO: No, it didn't go against, the reason being that you must see as a 15[?]. if you recall the warnings that we were given by the doctors. They don't start at... and they start by saying there are a lot of psychiatry patients and we are running out of beds for acute psychiatry patients. The idea is that while the acute are coming, we should evade for those we can keep in the hospitals and when they get better, when they are socially functional then they can go back to their families.

ADV LILLA CROUSE: No, but life esidimeni will be closed by then. You having... you're holding a big capacity because you wanted to place them in a less restricted environment. So, why would they get to life esidimeni.

DR. SELEBANO: That's why I'm saying, do not see the 900 beds for the patients who are or in this case who are life esidimeni. See them in a [?] that there will be acute patients who are to be treated and want to go home and if they can't go home, they go to the next institution.

ADV LILLA CROUSE: No, you said even in the institutionalization you'll still have acute psychiatric patients. Your hospitals are currently crowded in any event and you'll need those beds even if you deinstitutionalize.

DR. SELEBANO: That's right, you'll still need those beds.

ADV LILLA CROUSE: Thank you. Doctor can you go to paragraph 17 please.

DR. SELEBANO: 17?

ADV LILLA CROUSE: Paragraph 1-7. Could you read that paragraph?

15 **DR. SELEBANO:** It was in this context that of the mandate to promote the institutionalization and as part of the cost containment exercised that the decision was taken by the M-A-C to deinstitutionalize mental health care patients in the care of...

ADV LILLA CROUSE: Can you stop there please? You said under oath here that this was a decision taken by the M-A-C?

DR. SELEBANO: Politically yes.

ADV LILLA CROUSE: Are you saying now that it was a decision of the M-A-C now, to close life esidimeni?

DR. SELEBANO: In the context of this, yes.

ADV LILLA CROUSE: So, that's what you've said in response to your appeal in Sambit? It was the M-A-C's decision?

DR. SELEBANO: Yes.

ADV LILLA CROUSE: Is that true?

DR. SELEBANO: Personally, I would... I didn't be the right person to close. You need a political support to close. So, the M-A-C would say, "Yes, go on." But also like I said, it was part of the P-V-C.

ADV LILLA CROUSE: P-V-C you see this is your words and it's your [?]

DR. SELEBANO: I accept that.

ADV LILLA CROUSE: You swore that this was the truth and what you told the court in your appeal against the ambit is that it was a decision of the M-A-C.

15**DR. SELEBANO:** Yes.

ADV LILLA CROUSE: And you stand by that?

DR. SELEBANO: Yes.

ADV LILLA CROUSE: Can you please read the sentence after that, the sentence after that, starting with notably?

DR. SELEBANO: Notably, the deinstitutionalization starting with the project was embarked upon by the M-A-C following an assessment which demonstrated debt. The G-O-H could procure equivalent services without compromising the quality on the service. All inherent costs associate with caring for those patients in mental health patients.

ADV LILLA CROUSE: If we can...thank you Doctor. If we can just look at what you said there, you said it was embarked upon before assessment. When was that assessment done?

DR. SELEBANO: I'm trying to think counsel, when was this assessment done. It 10was an internal assessment.

ADV LILLA CROUSE: And who did the internal assessment?

DR. SELEBANO: By the mental health unit, they ate the ones who are responsible for this.

ADV LILLA CROUSE: Have you seen the assessment?

15**DR. SELEBANO:** I know about the assessment.

ADV LILLA CROUSE: You are not answering the question doctor, have you seen the assessment?

DR. SELEBANO: Yes. I should say I have seen.

ADV LILLA CROUSE: And the assessment says that the department can give a 20similar service to the patients? Did this assessment say that?

DR. SELEBANO: The assessment if I recall was saying that if we were to embark to a different option, we would have to work towards doing exactly the same thing that was being done and that's why it ties with the beds now.

ADV LILLA CROUSE: I'm trying to establish doctor, are you saying that the assessment said that you could exactly render the same service to patients?

DR. SELEBANO: The department was capable...

ADV LILLA CROUSE: And you could do it cheaper.

DR. SELEBANO: It would be less and cheaper for the...

ADV LILLA CROUSE: Is that what the assessment said?

10 **DR. SELEBANO:** Yes.

ADV LILLA CROUSE: Now, we know that's not true. Why did you believe that assessment?

DR. SELEBANO: It is true.

ADV LILLA CROUSE: No, it is not. We've seen over and over and over in this arbitration that it's not true, people died, people starved, so it wasn't true. So, I want to know, why did you believe that assessment? If it's clearly not true.

DR. SELEBANO: I hear you counsel. I consent to what you are saying. I don't want to beat around the bush. At that time, we were under the impression that it can be done seamlessly without loss of lives and I seat here and I look at what you are saying that I said all things that we talked about and discussed with high sight one we wouldn't have believed some of these things.

ADV LILLA CROUSE: Doctor, I thank you for saying that.

DR. SELEBANO: I agree.

ADV LILLA CROUSE: But as an H-O-D, why did you believe such a faulty assessment?

5**DR. SELEBANO:** I hear you. It's faulty now but remember that if we go back when we were sitting with the managers, it doesn't sound faulty.

ADV LILLA CROUSE: I'm asking you again, why did you believe it? Surely as the H-O-D, you should interrogate things. See whether it could be true.

DR. SELEBANO: At that time, it was true.

10**ADV LILLA CROUSE:** We knew that you didn't have beds. Even when the program started, you didn't have beds. Is that so?

DR. SELEBANO: You mean in the hospitals?

ADV LILLA CROUSE: In the hospitals, in the N-G-O's, you didn't have beds.

DR. SELEBANO: Now, yes.

15**ADV LILLA CROUSE:** Now, you couldn't have been told that you had beds, if you didn't have beds. So, why would you believe such a fault statement?

DR. SELEBANO: I hear you counsel, if you are sitting with the managers and you hear them saying, "we are capable of doing this project and we assure you that it's going to run, we have beds, we have the capacity, we have this..."

ARBITRATOR, JUSTICE MOSENEKE: You see, what counsel is getting from you is this. Under oath in your own affidavit, you said the assessment which demonstrate as the department of health could procure an equivalent service without compromising quality of patients. And she puts it to you, rightly I'm afraid 5and that is patiently untrue. We know now.

DR. SELEBANO: We know now.

ARBITRATOR, JUSTICE MOSENEKE: Isn't it? Then follows the inevitable question, why did you believe this? You might said, "Oh, my managers come to me, they give these graphs to me, they show me the NGO's, they showed me the beds, 10the showed me the care givers, they showed me how they are going to fund those...

DR. SELEBANO: They did.

ARBITRATOR, JUSTICE MOSENEKE: Did they?

DR. SELEBANO: And it made sense.

15**ARBITRATOR, JUSTICE MOSENEKE:** Where is that plan?

DR. SELEBANO: At that time.

ARBITRATOR, JUSTICE MOSENEKE: Where is it? That's what counsel is asking you.

DR. SELEBANO: The prof that...

20**ARBITRATOR, JUSTICE MOSENEKE:** Yes, she started saying, did you see the assessment?

DR. SELEBANO: As of now I'm out of the system, it's not... I don't have any documents anywhere that I can demonstrate, I don't have them.

ARBITRATOR, JUSTICE MOSENEKE: But you are under oath when you were charged, you told the [?] that there was an assessment that demonstrated these 5things. Now we know that it could not have been so, in the week or second week of people arriving in the N-G-O's they started dying. And counsel is testing you on that saying you the H-O-D, how could you ever believe this. You just stand out to be untrue. What was the placement

DR. SELEBANO: I understand what counsel is saying but I also, if I pull your back, 10and your sitting with your managers and they are demonstrating to you that we are capable of doing this to your expense, their psychiatric training and all that. It's very difficult to have high index of suspicion that I don't believe you because I wouldn't revisit it, they would ask why?

ARBITRATOR, JUSTICE MOSENEKE: You know why? It may be because you 15never scratched. Not even the surface, we've been through with that. If an advocate passed through here yesterday, we could have taken you to the N-G-O's. to show you how horrible they were.

DR. SELEBANO: I agree.

ARBITRATOR, JUSTICE MOSENEKE: You've done that, you spent the last three 20days in there.

DR. SELEBANO: Yes.

ARBITRATOR, JUSTICE MOSENEKE: So, let's not go back there. So, the question is, confronted honestly, how could you believe something so impossible. So not worthy of being believed? And implemented and death ensued. What is the point?

5**DR. SELEBANO:** I take the point justice.

ARBITRATOR, JUSTICE MOSENEKE: Very well, counsel.

ADV LILLA CROUSE: Thank you, justice. Doctor Selebano, paragraph 18 you duped a plan which Doctor Manamela prepared. Do you see that?

DR. SELEBANO: That's right.

10**ADV LILLA CROUSE:** You attached it and that plan is for the period 1 March 2015 to 31st March 2016, you say. We all know that the financial year starts at the 1st of April. So, it was for the previous financial year that that plan was prepared. Do you agree?

DR. SELEBANO: For the previous?

15**ADV LILLA CROUSE:** Yes, it says that the period of this project is 1st March 2015 ending 31st March 2016. So, it's not the financial year that this plan was executed, do you agree?

DR. SELEBANO: Yes. Yes. I agree.

ADV LILLA CROUSE: So, in July when you prepared this you put a plan forward 20that wasn't the plan executed. Do you agree? It's in the next financial year that we had a plan that was signed in September.

ARBITRATOR, JUSTICE MOSENEKE: That is Doctor Manamela's plan. Do you follow the question?

ADV LILLA CROUSE: Do you agree?

DR. SELEBANO: I'm not following very nicely.

5**ADV LILLA CROUSE:** Okay. Let us start again. The M-A-C sat in the financial year 2014,

DR. SELEBANO: 14-15

ADV LILLA CROUSE: Yes, but there's going to be a close. This plan was for that year not the year which it was implemented.

10**DR. SELEBANO:** No. You present then...can I explain?

ADV LILLA CROUSE: Yes.

DR. SELEBANO: You present this year for the following financial year. So, you start a cycle.

15**ADV LILLA CROUSE:** Let me put it a little bit clearer, the plan that we have from Doctor Manamela is not the plan for the period 1 March 2015 to 31 March 2016. And I'll take you through the plan right now, so this was a previous version of the plan prepared a year before. Will you agree with that?

DR. SELEBANO: It would seem like, yes.

ADV LILLA CROUSE: But a small error in this paragraph, should it read from 31st 20 March to 1st April?

DR. SELEBANO: I should think so, I didn't want to sound like I'm the one arguing. I should have done that.

ADV LILLA CROUSE: But in the reading it has decided to appear as 1 April but it doesn't meet the point that the counsel makes in any event because the plan of Doctor Manamela is much later in 2015, you get the point?

DR. SELEBANO: Yes, I get the point.

ADV LILLA CROUSE: There were many versions of this plan and this is among the early plans that you've attached to your plans in July 2017

DR. SELEBANO: Yes, the plans were developed.

10**ADV LILLA CROUSE:** So, can I just ask you nothing keen on it but just for my curiosity. Why didn't you attach the loss plan?

DR. SELEBANO: Maybe I could attach what I could...

ADV LILLA CROUSE: Okay, let us move on. Can I take you to paragraph 18 and I would leave this [?] after that? For the moment, could you read the paragraph 19
15please? Yes, could you read it into the microphone please?

DR. SELEBANO: As part of the in dune institution analyzation project and on the instruction of the M-A-C and approvals by the premiums budget council as well as the annual performance plan of the department, I issue a notice of termination of life esidimeni on 29th of September giving L-H-L department a notice of 6 months on the 20haunting departments intention to terminate the contractual relationship between life esidimeni and give L-H-L a copy of this contract.

ADV LILLA CROUSE: Okay. Thank you. The first thing that I want to ask you, you said that it was the instruction of the M-A-C to sign this? Termination letter?

DR. SELEBANO: Yes.

ADV LILLA CROUSE: And you say it's under oath in the [?]?

⁵**DR. SELEBANO:** Yes, let me explain again.

ADV LILLA CROUSE: No. let me ask you a question because when I started you said that you didn't sign on anybody's instruction and you agreed with me, isn't that so?

DR. SELEBANO: That's why I wanted to...

¹⁰**ADV LILLA CROUSE:** Just yes or no first.

DR. SELEBANO: Yes, you said that.

ADV LILLA CROUSE: And my learned friend, advocate Hassan, you said that you didn't need the M-A-C's consent to sign this termination letter. Remember saying that? Now all of these things are under oath and I'm just trying to establish which
¹⁵one is the truth now.

DR. SELEBANO: If you, can I explain? You are putting brick walls around people. When we work in the real work situation. When counsel was asking, do you need instructions to do certain things. As an administrator and the head of administration, I do. But also consult, not only with the M-A-C, with other managers, does this make
²⁰sense, is this the right thing, are you happy or will you stand with me if I sign this thing.

ARBITRATOR, JUSTICE MOSENEKE: But you can't be over cleaver on this you know, Doctor Selebano.

DR. SELEBANO: No, I'm not trying to do that.

ARBITRATOR, JUSTICE MOSENEKE: Counsel, [?] from your affidavit, did you sign with instruction from the M-A-C? Paragraph 19, we've just read...

DR. SELEBANO: Alright...

ARBITRATOR, JUSTICE MOSENEKE: You signed because she instructed you to sign. The affidavit says, is that correct? That's what she's asking.

DR. SELEBANO: I understand what you're saying.

10 **ARBITRATOR, JUSTICE MOSENEKE:** You understand what I'm saying? The affidavit says you signed on instructions on the M-A-C like Danny Mathango, is that correct?

DR. SELEBANO: Okay. It's correct.

ARBITRATOR, JUSTICE MOSENEKE: Counsel.

15 **ADV LILLA CROUSE:** Doctor, then the earlier statement is incorrect. So, I want you now to choose why you signed this termination letter and explain to us why the other versions were wrongly given.

DR. SELEBANO: You see, its language here now, because I'm saying we work as a collective as a team, I'm the H-O-D, I have the authority to sign something, I'll still talk to colleagues and I still talked to the M-A-C and I said, M-A-C, I'm going to sign

this and there was no way she could walk away from me. So, she said yes. I'm allowing you to sign, I'm giving you an instruction to sign.

ADV LILLA CROUSE: Doctor, what you're telling us is she didn't give you an instruction to sign. Because she didn't instruct you to sign. Can I say my explanation to you?

DR. SELEBANO: Okay.

ADV LILLA CROUSE: You use the M-A-C in the affidavit to try to get the blame as far as possible from yourself that's why you said that it was her plan, that it was her instructing me to sign. Is that what you're doing to this affidavit?

10 **DR. SELEBANO:** I've accepted accountability. I've accepted accountability

ADV LILLA CROUSE: We will still speak about you for accepting accountability. But you agree with me the honour of three versions why you signed this termination letter before this court.

DR. SELEBANO: I don't completely agree.

15 **ADV LILLA CROUSE:** You only half agree with me.

DR. SELEBANO: I don't completely agree.

ADV LILLA CROUSE: Let us continue, you issued the notice of termination, we all know it was on the 29th of September 2015 as you say in this affidavit. Is that right?

DR. SELEBANO: Repeat the question counsel

ADV LILLA CROUSE: You say the affidavit was issued on 29th September 2015. Is that right?

DR. SELEBANO: Excuse me counsel, are you reading? I'm trying to find where you are reading.

5**ADV LILLA CROUSE:** It's just in the paragraph that you've just read.

DR. SELEBANO: Paragraph 19. I'm sorry to...

ADV LILLA CROUSE: Let me just put it as a fact. The notice of termination was on the 29th of September 2015

DR. SELEBANO: That's right.

10**ADV LILLA CROUSE:** We are in an agreement with that. If we go a little bit back, you were now saying you signed with instructions from the M-A-C with the approval of premiums budget counsel. You say that you say that? Did they say to you that you must sign that termination letter?

DR. SELEBANO: The premiums budget?

15**ADV LILLA CROUSE:** Yes.

DR. SELEBANO: That's why I'm saying with the knowledge of the premium's budget council.

ADV LILLA CROUSE: Okay.

DR. SELEBANO: For the approval?

20**ADV LILLA CROUSE:** No, with the knowledge for approve

DR. SELEBANO: Were the affidavits for approval?

ADV LILLA CROUSE: Of the P-B-C?

DR. SELEBANO: Yes, you're changing that. Is it 190?

ADV LILLA CROUSE: Yes. Line 2, paragraph 9.

5**DR. SELEBANO:** Okay. I see here.

ADV LILLA CROUSE: And then you say... what are you saying now, is it with the knowledge or the approval?

DR. SELEBANO: I understand the contradiction you're giving me, I understand.

ADV LILLA CROUSE: I'm asking you a question, was it with the knowledge, was it 10with the approval or what are you saying?

DR. SELEBANO: Let me stick here to what I said, with the approval.

ADV LILLA CROUSE: When you said knowledge, you don't want to stick to that anymore. It's now approval? Is there a minute that says that I approved from that council that you must sign this letter?

15**DR. SELEBANO:** Maybe that's why I'd love to explain. When you are the P-B-C, you discuss your plans with the premiums budget counsel, it's not him alone, it's the council. Then you inform him that this is what is going to happen in the financial year. So, in a sense in two different ways, they know what we are going to do and in an executive level it became an approval. That's why I'm saying with their 20knowledge it becomes at that time...

ADV LILLA CROUSE: What do you mean by the executive level?

DR. SELEBANO: The premiums sit with these M-A-C and...

ADV LILLA CROUSE: So, you are saying the premium knew and it was for approval?

DR. SELEBANO: The constitute an executive level, an executive team.

ADV LILLA CROUSE: I'm just trying to understand Doctor Selebano. You're trying to explain how the government work; all the witnesses seem to do that but are you saying the premium gave his approval?

DR. SELEBANO: In his presence, I wouldn't know but I know that the P-B-C-10resented and they know about our plans and then the M-A-C, takes it to the executive council to discuss that and then implement. You can now conclude that we have the knowledge of what we were doing and approved to what we were doing.

ADV LILLA CROUSE: Somehow we know it's about this collective but nobody 15takes responsibility. Isn't it? Because now you're saying it was with the approval. Now, you're not saying who approved it.

DR. SELEBANO: Okay. Maybe it's a language problem...

ADV LILLA CROUSE: Okay. Let's move on. And then you say' as will of the annual performance of the department, A-P-P. Is it for that reason that you signed the 20termination letter? Because it was in the A-P-P.

DR. SELEBANO: It was in the A-P-P.

ADV LILLA CROUSE: I have to take you... the A-P-P is a very length document that must be attached and it was attached to your affidavit? It refers to a spring program that was on the 20th and the 21st century of 2016. Do you agree?

DR. SELEBANO: Well, I don't...

5**ADV LILLA CROUSE:** It is in your affidavit, you put it there so you'll remember it and also you were on of the signatures of A-P-P. So, this was offered long before you signed the letter of affidavit. Do you agree with that and the A-P-P?

DR. SELEBANO: Okay, we were included in the annual performance plan so it was included in our A-P-P.

10**ADV LILLA CROUSE:** So, the annual letter has nothing to do with the signing of the termination paper? Would you agree?

DR. SELEBANO: The P-B-C sits around September, so they are also when the plans are prepared in the process for the following financial year. What we prepare for no, for example what they are doing now, they are preparing everything now for 15the coming year.

ADV LILLA CROUSE: The A-P-P had nothing to do with you in signing the termination letter, it was stated in paragraph 19 because it was stated long after your signature due to that termination.

ARBITRATOR, JUSTICE MOSENEKE: Can you confirm here.

20**DR. SELEBANO:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: The answer is yes.

ADV LILLA CROUSE: Thank you. For the moment I'm going to leave this affidavit of yours but I'll be coming to it a little bit later for it. I just was to tell you the [?]in chapter 11 of his report states why this termination letter wasn't [] and I couldn't get a sight answer from you. Do you agree with that?

5**DR. SELEBANO:** I don't...

ADV LILLA CROUSE: And I want to put it to you that even since now, we didn't get a straight answer. Would you agree with that?

DR. SELEBANO: No, I'm not agree with that.

ADV LILLA CROUSE: And when I put it to you that that does not bring any closure
10because we don't know what really happened.

DR. SELEBANO: I really regret...

ARBITRATOR, JUSTICE MOSENEKE: Yeah, that's the last shot on that issue. In
deed how many versions are heard from you. Just tell us slowly who approved the
termination letter.

15**DR. SELEBANO:** Other than that, I signed it and after I signed it there was nobody
to approve it because I'm the administrative done the last one. The letter.

But before you sent it out and you signed it, were there any people who deliberate
on the termination letter?

DR. SELEBANO: No, the deliberations come's first, the discussions come's first
20then there's an agreement then I signed the letter.

ARBITRATOR, JUSTICE MOSENEKE: In your affidavit, you referred to the premiums budget council, you referred to the M-A-C, and you said all those people approved the termination letter. What does that mean?

DR. SELEBANO: Well, what it means...

5**ARBITRATOR, JUSTICE MOSENEKE:** And I'm applauding you an opportunity when there's the...you agree they are because counsel has put to you... I'm giving you the las opportunity, even less for me and more for these family members for them to know what really happened because the termination letter is rarely the start. There was a start of this opportunity, just explain slowly and carefully what happed
10there.

DR. SELEBANO: Thank you, department...there are instructions in the department about a contract and the physical pressure and revenue enhancement, it's not in one meeting, several meetings across the province. And managers and myself, we look at what work can we try and distribute resources were in bad shape because
15we would need money to buy medication, to this to do that within the system. And the budget has shrunk in real time, we have a discussion on these matters with the M-A-C, she's aware of that. The government mainly lead by the premium, they were aware of the pressures inside the department. Then they say, "you've got to find ways and means to give services without compromising service and patients. Seat
20down, find... like what counsel before showed, let me see what Barbra Siti said, "cancel, all these trip, food, what, yes, cancel all those things, save money for patient services." That is still done but the pressure is still high and the real reasons why the project is still high. There's a lot of inward movement into the province.

There's no way a patient walks into a hospital the we say, oh no, we don't have money. Go home and come next month... we don't do that. Your big hospitals carry students who are trained in the hospitals, they consume huge amounts of money because of the services they give. I'm explaining partly because there's a lot of inward migration and there's also cross-boundaries and our own provision boundaries and our national borders and majority of people are in [?] and at that time I recall the budget was around 86.4, somewhere around there. Sixty percent of health is very labour intensive justice.

ARBITRATOR, JUSTICE MOSENEKE: My invitation was for you to explain the decision around the termination of life esidimeni contract. It's about the actors, the decision makers. The grant must be valuable but I still want to know in the face of this contradiction. What is the version that is credible, who decided on this seminar or contract that lead to the tragedy?

DR. SELEBANO: Who decided on the decision?

15**ARBITRATOR, JUSTICE MOSENEKE:** Yes, that's what we're talking about.

I was told to give you this picture but I'll stop honourable counsel.

ARBITRATOR, JUSTICE MOSENEKE: You did yesterday and you're doing it again. It's valuable, we've heard that but we still have to say, who made the decision and who else knew about the decision?

20**DR. SELEBANO:** The government knew about the decision, and this was the decision of the department of health lead by particularly MC Kabane and administratively lead by myself. That is why its seems its mouthing and not giving

names. It is because at other firm I'm not there but in other forums I'm there and that is why it's very difficult to defend the tragedy and you can't. There's no way you can do that. No one can do that. There's...

ARBITRATOR, JUSTICE MOSENEKE: In your specific, you said that you actually were going to cancel the agreement and shut down life esidimeni. Was that presented in the counsel you are talking about?

The P-B-C, yes. We presented.

ARBITRATOR, JUSTICE MOSENEKE: Who was the M-A-C for finance then?

DR. SELEBANO: Honourable member Barbra Chris. She was, she ceased to assist 10 the...

ARBITRATOR, JUSTICE MOSENEKE: And did you make the promise that what the patients would get will be equivalent or better than life esidimeni?

DR. SELEBANO: That's right. That was the over-riding factor. Whatever you do, do not put the patients in danger.

15 **ARBITRATOR, JUSTICE MOSENEKE:** So, you got the approval with the undertaking that you will protect the patients.

DR. SELEBANO: That's correct.

ARBITRATOR, JUSTICE MOSENEKE: And it didn't happen?

DR. SELEBANO: We now know tragically, it didn't happen.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Counsel.

ADV LILLA CROUSE: Thank you, justice Moseneke. Doctor Selebano, I thought you were going to say that we started this project. Whose baby was this? You're still not going to say that to us?

DR. SELEBANO: Counsel, as the head of the department at 11, at strategically 11, 5I cannot walk away from this.

ADV LILLA CROUSE: You mustn't speak about that Doctor, I assure you. Are you going to answer that question?

DR. SELEBANO: My question would be then I am the one.

ADV LILLA CROUSE: You faked out this plan? The reason I'm asking you now, but 10I wanted to come to it later, is that a certain thing happened in the Eastern cape of life esidimeni. Luckily, people did not lie much in that court case. So, those patients are still safe. But why is life esdimini targeted, both here and the Eastern Cape. Who can pull out that plan?

DR. SELEBANO: I wouldn't comment on that...

15**ADV LILLA CROUSE:** And why? Do you know why it came up with that plan?

DR. SELEBANO: I wouldn't say that there are any nefarious intentions or under hand reasons and all that...

ADV LILLA CROUSE: You don't know?

DR. SELEBANO: I don't know.

20**ADV LILLA CROUSE:** You can still not bring closure to the families. Let us go back. We all know, attached to your affidavit was a plan and doctor Manamela was

the author of that plan. So, she's not this bystander cripple as she proclaims to be?
Do you agree?

DR. SELEBANO: It would be said if she wants to pretend innocent.

ADV LILLA CROUSE: There were different versions of this plan just continuing.

5ARBITRATOR, JUSTICE MOSENEKE: [?] thank you, go on.

ADV LILLA CROUSE: Thank you. So, we have doctor Manamela as her role plays here. Can I ask you to go to volume 8? Please keep your affidavit in front of you because I'm going to refer to it just now. Could you go to volume 8, page 2824?

DR. SELEBANO: Is it file 8?

10ADV LILLA CROUSE: File 8, page 2824.

DR. SELEBANO: 2824.

ADV LILLA CROUSE: My learned friend referred to it yesterday as well.

DR. SELEBANO: I can see that counsel

ADV LILLA CROUSE: You've got the page?

15DR. SELEBANO: I'm in 2824.

ADV LILLA CROUSE: That is the signature page of one of the plans, do you agree?

DR. SELEBANO: That's right

ADV LILLA CROUSE: We see that it was compiled by doctor Manamela, do you see that?

DR. SELEBANO: That's right.

ADV LILLA CROUSE: And then there's a tacked in date, 30th September 2015.

⁵**DR. SELEBANO:** That's right.

ADV LILLA CROUSE: But we don't know whether that is correct.

DR. SELEBANO: I think it was the correct date, the others...

ADV LILLA CROUSE: Then we have Mr Masenokhi's signature saying," I support this plan or modifications." Do you see that?

¹⁰**DR. SELEBANO:** You say it's with modification

ADV LILLA CROUSE: Yes. Which date did he sign.

DR. SELEBANO: That's why I'm saying...

ADV LILLA CROUSE: No. no. I'm asking you which date did he sign?

2016.

¹⁵**ADV LILLA CROUSE:** Which date?

DR. SELEBANO: 12th October 2016.

ADV LILLA CROUSE: 12th of October 2016. That's the date that is written there. Do you agree?

DR. SELEBANO: That's written here, yes?

ADV LILLA CROUSE: Then there's your signature. It is your signature, isn't it?

DR. SELEBANO: It is my signature.

ADV LILLA CROUSE: And what date is it written on your signature?

DR. SELEBANO: 14th December 2016.

5**ADV LILLA CROUSE:** And if I'm not wrong you said to the court that it must be a mistake.

DR. SELEBANO: It was a mistake, yes

ADV LILLA CROUSE: And you said to my learned friend that you signed it in October 2015.

10**DR. SELEBANO:** Yes, it should be 2015

ADV LILLA CROUSE: Yes, that's what you said to my learned friend that you signed in October 2015.

DR. SELEBANO: Yes, because...

ADV LILLA CROUSE: Please let us go one at a time. It's your evidence.

15**DR. SELEBANO:** Yes, it's my evidence.

ADV LILLA CROUSE: My learned friend asked you why you remembered it was October 15th and I can't remember what your answer was. Please tell us your answer, how do you know that it was October 2015?

DR. SELEBANO: I was looking at...the file was compiled 30 September 2015, 20there is no way that a document can stay in my office for almost a year.

ADV LILLA CROUSE: Unless, that document wasn't in your office.

DR. SELEBANO: It was in my office.

ADV LILLA CROUSE: So, the only reason you're saying you signed in October 2015 is that it wouldn't have land in your office for a year, is that your reason?

5**DR. SELEBANO:** Nothing... nothing, over a year. No.

ADV LILLA CROUSE: What I'm trying to establish doctor, please, let us get that right. It must be in October 2015 because it wouldn't be in your office for that long

DR. SELEBANO: That's right.

ADV LILLA CROUSE: You can't remember that you signed it in October 2015?

10**DR. SELEBANO:** 15?

ADV LILLA CROUSE: Yes, that is what you told the court that it was signed in October 2015. But that's a reconstruction, you can't remember signing it in October 2015 or can you?

DR. SELEBANO: When I look at 30th September 2015 I'm saying...my mind tells 15me that there's no document that can stay for over a year.

ADV LILLA CROUSE: We've done that. Can you answer my question, you have no independent recollection of signing it in October 2015, I'm I correct?

DR. SELEBANO: Please with respect counsel, are you asking if I go back and think carefully whether in 2015, did I sign or not?

20**ADV LILLA CROUSE:** Please.

ARBITRATOR, JUSTICE MOSENEKE: Well, the answer of the witness is, it could have been in my office for a year

ADV LILLA CROUSE: I just want to know whether he has an independent recollection whether he signed it in 2015? Because he told the court that it was signed in 2015.

ARBITRATOR, JUSTICE MOSENEKE: Do you specifically remember signing it in 2015 or specifically referring to the year difference? The normal Doctor Manamela's signature was in between yours and...

DR. SELEBANO: It must have been, yes.

10 **ARBITRATOR, JUSTICE MOSENEKE:** So, you don't sit here and remember it now but you can see by looking at it, the dates tell me that I must have made a mistake. Where are the inferences?

ADV LILLA CROUSE: I wanted to put it to you that the inferences are wrong, and the reason why I'm saying this is that Doctor Mosenke was not appointed until 15 October 2015.

ARBITRATOR, JUSTICE MOSENEKE: Well...

ADV LILLA CROUSE: Mosenohi. Mosenokhi, sorry. I made a very big mistake, I apologise justice.

ARBITRATOR, JUSTICE MOSENEKE: I've been there before.

20 **ADV LILLA CROUSE:** Not from our side, I'm very sorry.

ARBITRATOR, JUSTICE MOSENEKE: Then I plead with everybody. It's quite close but not the same thing.

ADV LILLA CROUSE: I'm very sorry justice. Mr Mosenokhi, couldn't have signed on October 2015 because he hasn't been appointed project manager yet. Would you agree with that?

He was not appointed as project manager in 2015?

ADV LILLA CROUSE: Yes. In October 2015.

DR. SELEBANO: I don't recollect...he was project manager but I don't recollect when was the appointment

10**ADV LILLA CROUSE:** Sorry?

DR. SELEBANO: I don't recollect when he was project...

ADV LILLA CROUSE: Well, I can tell when he was appointed. The M-A-C approached him for appointment. The M-A-C first approached him. I'll tell you...

ARBITRATOR, JUSTICE MOSENEKE: I remember it was March 18th 2015

15**ADV LILLA CROUSE:** It was November 2015

ARBITRATOR, JUSTICE MOSENEKE: November 2015

ADV LILLA CROUSE: It was November 2015; I just want to get to the correct date. On the 4th of November 2015. The M-A-C approached Mr Mosenokhe to be a project manager. So, in October he was not yet appointed.

20**DR. SELEBANO:** He was part and parcel of the project, but if he...

ADV LILLA CROUSE: No, he was only appointed in November 2015, that's what I'm putting to you. Are you denying that?

No, I'm not denying that.

ADV LILLA CROUSE: Then my next question is that he wouldn't have signed as project leader.

DR. SELEBANO: But also in 2016...

ADV LILLA CROUSE: We're not talking about 2016 now. We're interrogating your statement that you signed in October 2015. I can put it to you that it was on the 9th or 10th of December that you appointed Mr. Mosenokhe, formally.

10**DR. SELEBANO:** Formally, yes.

ADV LILLA CROUSE: So, now I'm getting to my question. In October 2015 he was not the project leader. So, you couldn't have signed in 2015. Do you agree with that?

DR. SELEBANO: Formally, he was appointed the day he was given the job. He 15was leading the project.

ADV LILLA CROUSE: He couldn't prepare the project before he knew about the project. He was just approached, out of the blues with the M-A-C, in November 2015. That's his evidence.

DR. SELEBANO: He has been running the project for Selby and that is why...

20**ADV LILLA CROUSE:** Yes, that's why the M-A-C approached him.

DR. SELEBANO: But Selby came before...

ADV LILLA CROUSE: Yes, but he wasn't part of Dr Manamela's plan to close all life esidimeni. Why do you people question to get by? Would you agree with me that he wouldn't have signed in 2015? October 2015 because he didn't know that he was going to be project manager in 2015.

DR. SELEBANO: I hear you counsel. Except you are saying Mr Musenekhu was part and parcel of this project and if he agreed that formally he was given a letter to be a project leader but he was already leading the course. He had led the Selby project so he was the best placed person.

10**ADV LILLA CROUSE:** Without discussing whether he was the best placed, good or bad. We are discussing whether he was appointed project manager of this or he was not

DR. SELEBANO: At that time. Formally yes.

ADV LILLA CROUSE: That's why he put the real date on this project...the plan has 15been modified. Do you see that?

DR. SELEBANO: I see with modification.

ADV LILLA CROUSE: Yes and is it not so that without his's support, you would not have signed on this.

DR. SELEBANO: Yes, he must support then he explains...

20**ADV LILLA CROUSE:** So, that's why he's signature is 2 days off from your signature. Isn't that so?

DR. SELEBANO: Yes.

ADV LILLA CROUSE: So, it is logical that you signed in October 2016? Isn't that so?

DR. SELEBANO: By that time, the project had...

5**ADV LILLA CROUSE:** We will get to that but its logical that you would only sign off to him.

DR. SELEBANO: Yes, I can sign before him but it's always...

ADV LILLA CROUSE: Let's go to your affidavit again. This is L040. Can you look at paragraph two of your affidavit?

10**DR. SELEBANO:** Maybe I'm lost now.

ADV LILLA CROUSE: The second last sentence in paragraph 22.

DR. SELEBANO: Just the second sentence...

ADV LILLA CROUSE: The affidavit in L0114. 115 sorry.

DR. SELEBANO: Please I'm struggling, be patient a bit. I'm struggling, is the one or 15its this one.

DR. SELEBANO: I've got the file counsel.

ADV LILLA CROUSE: Paragraph 22 of your affidavit?

DR. SELEBANO: That's right counsel.

ADV LILLA CROUSE: Second last sentence.

DR. SELEBANO: You said paragraph?

ADV LILLA CROUSE: 22, the second last sentence. In paragraph 22, could you read that please?

DR. SELEBANO: In order to deinstitutionalize the project beginning from...

5ADV LILLA CROUSE: The second last sentence in that paragraph.

DR. SELEBANO: Oh, the second last. The project plan is signed by doctor Manamela on behalf of the project team. I approved the project plan on 17th of October 2016...

ADV LILLA CROUSE: It's just that, under oath you said, I approved it on 17th 10October 2016.

DR. SELEBANO: I see.

ADV LILLA CROUSE: That difference is completely from what you've been telling this whole morning and yesterday.

DR. SELEBANO: I hear you and I agree with you. This ties to exactly what I gave 15these documents to the liars.

ARBITRATOR, JUSTICE MOSENEKE: Let me have a state of advice, doctor Selebano. Lawyers spend a lot of time studying documents sworn affidavit in particular. Where you purposed to tell the truth, you can't depart from that at will.

DR. SELEBANO: I agree.

ARBITRATOR, JUSTICE MOSENEKE: You see that. You went to the path that you lied for so long and your affidavit put to you which contradicts your evidence under oath head-on. Any of that conduct in law may constitute perjury.

DR. SELEBANO: I know that.

ARBITRATOR, JUSTICE MOSENEKE: And it is punishable. That is why we asked to swear for the truth and nothing but the truth and that is why the affidavit, you swear to the truth because resolution of disputes are in pursuit of the law. So, witnesses are discouraged from concocting stories and events. Be assure that these advocates have studies these paper work which had been discovered before 10the arbitration started. I urge you again, remember that. Let's stay truth full and say the way you know it that sell it and that would be a much further course than what we are doing now.

DR. SELEBANO: I hear you.

ARBITRATOR, JUSTICE MOSENEKE: And take me quite seriously, I could pay to 15yourself a few times and you could be charged for forgery.

DR. SELEBANO: I hear you judge.

ARBITRATOR, JUSTICE MOSENEKE: Okay.

DR. SELEBANO: But also I think here judge, the affidavit; these are the documents I gave probably to my legal team and they would render any different knowledge 20that and that's why they wrote this and I accept that in this instance they were

writing what they saw the eye. I accept that. I accept that. It sounds that I'm lying but it's fair to infer that but it is the document that I gave to the lawyers.

ARBITRATOR, JUSTICE MOSENEKE: Let me just remind you, you are a very senior civil servant. This is an arbitration to find equitable redress

5**DR. SELEBANO:** And closure their families.

ARBITRATOR, JUSTICE MOSENEKE: And closure to those who have lost their families. And there are victims who survived, patients who survived this ordeal. So, let's help each other to go in the right place, please. You have made very encouraging confessions and thank you for that. I appreciate that and I thank you.
10Let's go [?] and let's get done with this thing. And let me just add that the state that you were working for has long considered the conduct of your department was unlawful, was reckless and it's well and good that we're hearing from you is important. This is in order to adhere to equitable redress and in other forms. So, please cooperate with us and explain as well as you can and please listen to
15questions and answer them and if you don't remember something, say I don't remember. If you want to see some documents, or something like that but it's about the truth please.

DR. SELEBANO: Thank you, justice and to have reminded me that and I accept, I accept. I'm not trying to argue and reconstruct. I see where and I agree with what
20counsel is saying that a typographical error here led to this type of thing. I'm sure... I don't know, it's a terrible typographical error that probably even yourself when yesterday I said no, no, it wouldn't have stayed for a... and I gave most probably the

same documents to the legal team and they wrote with understanding that... and also escalating the typographical error. It's me who gave them the documents and I'll be the one to accept. Have you read out the affidavit and you signed it, said it as the truth?

5 **DR. SELEBANO:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: That's where the difficulty comes in. I really urge you, you are almost there. Let's get there, let's tell the people how their loved ones died. And what were the decision making that went on with it? So that we get on to the next phase, we're almost there. To determine the compensation 10and you and the M-A-C, you were the most senior persons who made these crucial decisions. Please help us.

DR. SELEBANO: I assure to you, justice that and try and offer skate and it's a tragic thing that the families are living with it day in and day out. It's a different thing that I also live with it day in and day out with my family. If anything, justice, I also 15want closure for myself in this matter. Now, I accept that there was a terrible tragedy that happened and the paper work that I probably gave to my legal team does draw in the affidavit. Took the same error and placed it in the affidavit, I should have read it better perhaps and picked up the same error. I didn't, who is to blame? It's me. I blame anybody else.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Okay. I understand that. Always keep in mind that in our democracy there's a general complaint from powerful people when they are shown unlawful or wrong consequences. They have ways of explaining

and...They run around and they run around and they don't accept accountability which means running around. And I think our democracy would be the better from us who are powerful and we have the power from the state to be truthful. In our [?] you've heard weaker people, vulnerable people and I'm sure you've heard of it.

5 **DR. SELEBANO:** I have heard from it. 100%

ARBITRATOR, JUSTICE MOSENEKE: Very well. Counsel.

ADV LILLA CROUSE: Doctor Selebano, its correct to assume that two days after Mr Musanukhi signed you signed this document, isn't that so?

DR. SELEBANO: Correct.

10 **ADV LILLA CROUSE:** And if your affidavit is correct then it was in 2016 that you signed this because it wasn't laying in your office for a year. It was for two days at the most.

DR. SELEBANO: Ordinarily, as they lay for two days in my office.

ADV LILLA CROUSE: And the only reason that you would have signed in October 152016 at a stage where 81 people had already died. Is to use your words to legalise the process. Isn't that so?

DR. SELEBANO: No, it's not that so.

ADV LILLA CROUSE: Then why would you sign after 81 people had already died?

DR. SELEBANO: Counsel, one face when you look at this you are correct but I want to employ you to believe me. When I say, this error was then carried on and I want you to believe me.

ADV LILLA CROUSE: No, it wasn't the error doctor. It's exactly as its stated here and in your affidavit, it's not an error. How would I sign something after a year? It's not after a year its after two days, two days after Mr Masenokhi signed. I was taking it from 2015...Yes, but we are not taking after 2015. So I'm putting into you the time 5you signed it, 81 people had died.

DR. SELEBANO: No, it was before that.

ADV LILLA CROUSE: I'm going to leave that for argument.

ARBITRATOR, JUSTICE MOSENEKE: Yes, indeed, you haven't answered but I think you are bound by the answer. Credible is another answer, the answer is I 10signed it. We're yet to proceed.

ADV LILLA CROUSE: Thank you, justice. Can you please go to paragraph 20 of your affidavit?

DR. SELEBANO: I'm there, counsel.

ADV LILLA CROUSE: It says, although most positions of the H-O-D require to 15proceed the implementation of policies and strategic plans of the department although I must emphasize that I had a limited draw in the day to day operations and the implementations of the deinstitutionalization of the product itself. This is because the M-A-C established a separate project team, the project team lead by Mr Levi Mosenokhe as project manager in order to implement the 20deinstitutionalization project. Importantly, I was not part of the project team. The project members reported directly to Doctor Manamela and those project meetings were her and the team. That's in your affidavit. Is it true?

DR. SELEBANO: That's true.

ADV LILLA CROUSE: Did the project team directly report to doctor Manamela?

DR. SELEBANO: Manamela was the deputy...

ADV LILLA CROUSE: Please answer my question, did the project team report to doctor Manamela?

DR. SELEBANO: Yes, it reported to...

ADV LILLA CROUSE: Even though she was the deputy.

DR. SELEBANO: Alternatively, ...

ADV LILLA CROUSE: No. no. it's your word against this Doctor Selebano. I'm trying to establish the truth. Did the project team report to doctor manamela or not?

DR. SELEBANO: Yes.

ADV LILLA CROUSE: Is it true?

DR. SELEBANO: I was saying...

ADV LILLA CROUSE: No, I was asking you is it true.

15**DR. SELEBANO:** Yes.

ADV LILLA CROUSE: Well, doctor Manamela said that she reported to Mr Mosinokhi.

DR. SELEBANO: That's why I was trying to explain.

ADV LILLA CROUSE: No, there is no explanation necessary. Either this is true or the project team did not report to. There can't be an explanation between the two.

DR. SELEBANO: There could be, Mr Musenukhi could be the project leader by virtual of being the chief director. That is more senior....

5**ADV LILLA CROUSE:** And you reported to doctor Manamela?

DR. SELEBANO: Let me explain, Mr Musinukhi is most senior, she is the chief of directors, doctor Manamela is a director. The reason why he became a deputy and couldn't become a leader is because it would didn't work well. It would mean that then, the director, the chief director now...

10**DR. SELEBANO:** It would violate the hierarchy

ADV LILLA CROUSE: That you told us about.

DR. SELEBANO: Yes, but the expert in mental health is Doctor Manamela, so that is why because when you seated there, the team will report to doctor Manamela. She's the expert in this. It's not for me but I understand it. I agree with you when you 15find it very funny. I agree with you.

ADV LILLA CROUSE: Sorry, I don't understand it at all.

ARBITRATOR, JUSTICE MOSENEKE: Well, I understand the answer is that they factored Doctor Manamela to be in charge. But Musinokhi, Doctor Musinokhi, Doctor Labete would be a more senior hierarchy. But she was the day to day 20operations, day factor operations head. So, that's the answer you have.

ADV LILLA CROUSE: Thank you. And to whom did she report?

DR. SELEBANO: You mean?

ADV LILLA CROUSE: Doctor Manamela

DR. SELEBANO: When she's reporting to everybody now, it would be Mr Musenekho reporting, not her now and him and herself supporting Mr Musenekho. Remember, she's the best placed persons to give details, where are we and all.

ADV LILLA CROUSE: But it seems that you're saying that she's the best person to report in here in the management of the project and that the management to the project is not reporting to her. I'm sorry, I don't understand that.

DR. SELEBANO: The first explanation as who was reporting that, why would the team report to Manamela, doctor Manamela? Sorry, I didn't say Doctor Manamela. I didn't mean any disrespect judge. Because she's best placed, she's an expert in this. She knows it even far far better than me.

ARBITRATOR, JUSTICE MOSENEKE: So, the answer is that she was the day factor of the project team.

15**DR. SELEBANO:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: Counsel, there's your answer.

ADV LILLA CROUSE: Okay. I will leave it at that, I'm going to move on to another point. I don't know whether this is the appropriate time to...

ARBITRATOR, JUSTICE MOSENEKE: Yes, it is the appropriate time to take that adjournment. It is half passed 11, we're going to resume at 12 o'clock after the morning tea break. We are adjourned.

10SESSION 2

ARBITRATOR JUSTICE MOSENEKE: You may sit. Doctor, you are bound by your previous oath.

DR. SELIBANO: I understand.

ARBITRATOR JUSTICE MOSENEKE: To tell the truth.

15DR. SELIBANO: Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: Counsel?

ADV. LILLA CROUSE: Thank you Justice Moseneke. Dr Selibano, if we can go to paragraph 24 in that affidavit marked ELAH114. It is still your affidavit appealing the Ombud's findings. Have you got that paragraph 24?

DR. SELIBANO: Yes, on page 13. Am I correct?

ADV. LILLA CROUSE: It, you say ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: When you refer to a paragraph you are allowed to read it.

5**DR. SELIBANO:** Yes, but ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: So that you can take questions on it.

DR. SELIBANO: By virtue of?

ARBITRATOR JUSTICE MOSENEKE: No, I do not say you must read it out.

DR. SELIBANO: Oh, okay.

10**ARBITRATOR JUSTICE MOSENEKE:** I say you are allowed, I know it is your affidavit, to look at it and read it.

DR. SELIBANO: Okay.

ARBITRATOR JUSTICE MOSENEKE: As ahead of the questions that might be posed.

15**DR. SELIBANO:** Okay.

ARBITRATOR JUSTICE MOSENEKE: If you so wish. You pay proceed.

ADV. LILLA CROUSE: If you want to read it, please read it. You can read it into the record if you want to.

DR. SELIBANO: The one that says:

“By virtue of.”

ADV. LILLA CROUSE: Yes.

DR. SELIBANO: Okay.

ADV. LILLA CROUSE: Are you going to read it into the record Doctor?

5**DR. SELIBANO:** Oh, you want me to read it loud?

ADV. LILLA CROUSE: Yes, you can.

DR. SELIBANO: Okay:

“*By virtue of Mr Mosenoge’s involvement in the de-institutionalisation project and the reporting structure adopted by the MEC, the responsibility on the reporting lines 10for the project did not go through me. Rather Mr Mosenoge reported directly to the MEC and the Chief Director Dr Pila Masamisa and Deputy Director General Clinical Services, Dr Richard Lebete. In addition in many instances the MEC gave instructions directly to Mr Mosenoge and Dr Manamela bypassing me completely. Consequently I had only a limited oversight role over the project and was excluded 15from the implementation process.*”

ADV. LILLA CROUSE: In that paragraph you are saying the MEC had control of this, other people had control of it. You only had a limited oversight role. Is that a correct summary of what you are say?

DR. SELIBANO: That is the correct summary.

20**ADV. LILLA CROUSE:** But it is not completely true. Is that not ... [interjects]

DR. SELIBANO: It is not hundred percent, because there were instances where I was in meetings.

ADV. LILLA CROUSE: Yes, you were involved prior to this when the plan was hatched.

5**DR. SELIBANO:** Correct.

ADV. LILLA CROUSE: You were involved when there were complaints from stakeholders, is that not so?

DR. SELIBANO: Correct.

ADV. LILLA CROUSE: You were involved signing the termination letter.

10**DR. SELIBANO:** Correct.

ADV. LILLA CROUSE: You were involved in numerous discussions with Mr Mosenegge, is that not so?

DR. SELIBANO: Privately yes.

ADV. LILLA CROUSE: You had helped him draft a letter.

15**DR. SELIBANO:** Yes, we agreed on a letter.

ADV. LILLA CROUSE: You were involved in the closing of the NGO's.

DR. SELIBANO: Post facto, yes.

ADV. LILLA CROUSE: Yes. So and you said to us that you could have stopped this project if you wanted to. It was within your power, is that not so?

DR. SELIBANO: I did say yes. Now I understand, because I did not know the power issue.

ADV. LILLA CROUSE: Yes.

DR. SELIBANO: I understand I could have done it. I am not denying that.

5 **ADV. LILLA CROUSE:** Dr Selibano ... [interjects]

DR. SELIBANO: I am not denying that.

ADV. LILLA CROUSE: Dr Selibano what I am putting to you is that paragraph was just another contradictory part of this evidence that you are trying to put before for everybody. You are trying to make yourself blameless. Is that not the reason for 10that paragraph?

DR. SELIBANO: No, I am not blameless.

ADV. LILLA CROUSE: That is the intention that that paragraph is giving, is it not?

DR. SELIBANO: I have said as the head, there is no way that I can walk away without accepting accountability.

15 **ADV. LILLA CROUSE:** That is the impression the paragraph is giving. Is that not so?

DR. SELIBANO: I do not agree entirely with you ... [interjects]

ADV. LILLA CROUSE: But you also agree the paragraph is not completely the truth, the whole truth and nothing but the truth?

DR. SELIBANO: The intention of the paragraph was to say at an operational level I was not involved.

ADV. LILLA CROUSE: You were attacking the Ombud's report. That was the reason for that affidavit, is that not so?

5 **DR. SELIBANO:** I was stating that I was not operationally involved.

ADV. LILLA CROUSE: Sorry, I could not hear you?

DR. SELIBANO: I was stating that at all material times during the implementation of the movement of patients I was not involved.

ADV. LILLA CROUSE: I am sorry, Doctor. I cannot hear you. Can you speak into 10the microphone?

DR. SELIBANO: Okay. I am saying the paragraph explains that at the implementation, during the operational implementation of the movement of patients I was not involved.

ADV. LILLA CROUSE: But we know that is not true, because you have already 15testified to your involvement during that process.

DR. SELIBANO: The operational process of moving patients, that is the explanation ... [interjects]

ADV. LILLA CROUSE: We will get to that more fully in due course. I am going to just move off for a very short time from that. I want to just check the values with 20which you approached your work, and you already told the court that you are not a clinician, you are an administrator. Is that so?

DR. SELIBANO: I am not practicing as a clinician. Yes, I am ... [interjects]

ADV. LILLA CROUSE: But surely you regard yourself bound by your Hippocratic oath?

DR. SELIBANO: Hippocratic ... [interjects]

5**ADV. LILLA CROUSE:** You do not?

DR. SELIBANO: No Doctor, sorry. No Counsel.

ADV. LILLA CROUSE: An oath is something that you just call up when you want to use it? Is that what you are saying?

DR. SELIBANO: No, no, no I think you are incorrect in your approach on that.

10**ADV. LILLA CROUSE:** So you do not consider yourself bound by that oath?

DR. SELIBANO: The oath is part and parcel of being a medical doctor, so there is no way where you can choose where it works and where it does not work.

ADV. LILLA CROUSE: I am just trying to establish as you sit there, do you regard yourself bound by your oath as a medical doctor?

15**DR. SELIBANO:** In the execution of my duties, I executed administratively. When I engage, which I do not do, the oath kicks in with patients, it would kick in.

ADV. LILLA CROUSE: So your short answer is no, you do not regard yourself at the moment bound by your oath?

DR. SELIBANO: Reason being that you do not have to ... [interjects]

20**ADV. LILLA CROUSE:** Just yes or no, please Doctor.

DR. SELIBANO: No.

ADV. LILLA CROUSE: Thank you.

DR. SELIBANO: Can I explain?

ADV. LILLA CROUSE: Do you regard yourself bound by the values set out in your annual performance plan?

DR. SELIBANO: Yes.

ADV. LILLA CROUSE: You regard those values as proper values?

DR. SELIBANO: Yes.

ADV. LILLA CROUSE: Let us test those values. You know there are four values in your annual implementation, performance plan? The APP. Do you know the four values?

DR. SELIBANO: Yes, you can remind me. I do not know them off my head. I would be happy if you can remind me.

ADV. LILLA CROUSE: Okay. You agree with me there are four values?

15 **DR. SELIBANO:** Yes. I should think so. Let me think, yes.

ADV. LILLA CROUSE: Okay. The first value is patient centered care. Is that right?

DR. SELIBANO: That is right.

ADV. LILLA CROUSE: And in your APP you describe it as follows:

“Everything we do should benefit the patient.”

DR. SELIBANO: That is right. That is patient centeredness.

ADV. LILLA CROUSE: Is that a value that you think you live by?

DR. SELIBANO: Myself?

5**ADV. LILLA CROUSE:** Yes.

DR. SELIBANO: Yes.

ADV. LILLA CROUSE: Okay, but you would agree with me that the Gauteng Department of Health in this closing of Life Esidimeni did not uphold that value?

DR. SELIBANO: No, I would not agree with you because you are now taking it for 10now. It comes out that way, but during the time when the thinking was not really not being patient centered.

ADV. LILLA CROUSE: But let us test that. We know that the patients were moved without any preparation. That is not putting the patient first. Do you agree?

DR. SELIBANO: I now know that. I know that.

15**ADV. LILLA CROUSE:** I am not asking what you now know. I am saying the Department of Health did not uphold that value, and you do not agree with me so I am trying to test it. So what I am not saying is they did not prepare the patients. Do you agree?

DR. SELIBANO: Now I know they did not, yes.

20**ADV. LILLA CROUSE:** You know the people died without food and water?

DR. SELIBANO: Now I know that yes.

ADV. LILLA CROUSE: Yes. You know many patients relapsed, because they did not act in the best interest of the patient. Is that not so?

DR. SELIBANO: I know that now, yes.

5**ADV. LILLA CROUSE:** Please Doctor, you have known it before now. Please let us just not play with words.

DR. SELIBANO: No ... [interjects]

ADV. LILLA CROUSE: I am only testing this value. I will get to what you knew. So do you agree with me the Department of Health did not uphold that value?

10**DR. SELIBANO:** In the ... [inaudible] yes, on this particular instance.

ADV. LILLA CROUSE: And you do agree then that the officials and the NGO's did not act in the best interest of the patients.

DR. SELIBANO: With what has happened, yes I agree.

ADV. LILLA CROUSE: And you say you are the captain of this ship?

15**DR. SELIBANO:** Agreed.

ADV. LILLA CROUSE: So therefore you did not uphold these values.

DR. SELIBANO: It comes out that way now, but at the time that the project was initiated, the values were to be upheld.

ADV. LILLA CROUSE: Yes, but I want to put it to you more than only as the captain of the ship, you did not uphold the values knowing about the stakeholder complaints which my learned friend have taken you through. Is that not so?

DR. SELIBANO: No, but it has no relationship. When there were complaints ...
5[interjects]

ADV. LILLA CROUSE: You ignored the complaints. You lied to the court. Is that upholding the best interest of the patient?

DR. SELIBANO: How did I lie? Please, how did I lie Counsel, with due respect?

ADV. LILLA CROUSE: We will get to the court cases again if you want to. You told the court everything was in order. Everything is going well. No patient would be harmed. Is that not so?

DR. SELIBANO: But I would not say before the execution of the plan that patients are going to be harmed. How would I ... [interjects]

ADV. LILLA CROUSE: Nobody is speaking about before the execution. I said during this plan you knew that patients are being harmed.

DR. SELIBANO: No, no before the execution no.

ADV. LILLA CROUSE: Before the, before the plan was put into operation SADEC did not tell you you are busy with the wrong thing?

DR. SELIBANO: They raised objections yes.

20**ADV. LILLA CROUSE:** Yes, and you ignored them.

DR. SELIBANO: But that does not mean that, does it therefore mean that I knew that patients were going to demise?

ADV. LILLA CROUSE: Sir, you we are not talking about demising, we are not talking about dying, we are talking acting in the best interest of the patient. That is 5the value that we are on at the moment, and I am putting it to you you did not act in the best interest of the patients yourself.

DR. SELIBANO: I do not agree with you. I do not agree with you at all.

ADV. LILLA CROUSE: I want to put it to you you must accept more responsibility than just saying your personnel did things wrong. You did things wrong.

10**DR. SELIBANO:** I have actually never pointed a finger. I said I take accountability as the HOD and I have said it does not matter whether I was there or not. As the Accounting Officer and as a leader I cannot start pointing fingers. I must be the first one to take accountability.

ADV. LILLA CROUSE: Mr Mosenoge told you there is going to be problems.

15**DR. SELIBANO:** We discussed with Mr Mosenoge.

ADV. LILLA CROUSE: Yes, and you did not do anything.

DR. SELIBANO: We raised it with the MEC.

ADV. LILLA CROUSE: So you did not stopped in the best interest of the patients.

DR. SELIBANO: You are putting it as if we deliberately did not want to stop 20anything. Yes, that is exactly what I am putting to you.

ADV. LILLA CROUSE: No, it is not true.

DR. SELIBANO: So I am putting it to you that you deliberately ignored the first value by which you are supposed to live.

DR. SELIBANO: No.

5**ADV. LILLA CROUSE:** Of not being patient centered.

DR. SELIBANO: It is not true Counsel, it is not true.

ADV. LILLA CROUSE: Okay, let us go to the next value.

ARBITRATOR JUSTICE MOSENEKE: Ja, but you are bound by the answer now.

ADV. LILLA CROUSE: Yes, I am going ... [interjects]

10**ARBITRATOR JUSTICE MOSENEKE:** You have put it to the witness several times and his answer is ... [interjects]

ADV. LILLA CROUSE: Yes.

ARBITRATOR JUSTICE MOSENEKE: Ja, you can argue whether I ought to believe that or not.

15**ADV. LILLA CROUSE:** The next value, the second value is accountability. Do you agree with that?

DR. SELIBANO: Correct.

ADV. LILLA CROUSE: And you set out this value as:

“We take ownership of our responsibilities and go beyond, above and beyond.”

Remember that line?

DR. SELIBANO: I do not remember line by line, but I ... [interjects]

ADV. LILLA CROUSE: Do you remember that line that I just read to you?

5**DR. SELIBANO:** It would help perhaps if I had it now, but I do not have, but I am saying I ... [interjects]

ADV. LILLA CROUSE: I will read it again:

“We take ownership of our responsibility and we go above and beyond.”

ARBITRATOR JUSTICE MOSENEKE: And where is the APP? That comes from 10the APP does it not?

ADV. LILLA CROUSE: It comes from his affidavit. It is a very lengthy document. It would have cost a lot to make copies. I ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: And do we have it electronically?

ADV. LILLA CROUSE: No, we do not have it electronically.

15**ARBITRATOR JUSTICE MOSENEKE:** Ja, sure but the patient is entitled to see the document. If you got to take or put things to him from the document.

ADV. LILLA CROUSE: Yes.

ARBITRATOR JUSTICE MOSENEKE: It is a matter of fairness. So you might want to defer that for later or have it electronically put before the patient, I mean

before the witness so that maybe he will be able to look at it and confirm, and refresh his memory and confirm whether it is so or not.

ADV. LILLA CROUSE: I can do that. Maybe I should do that.

ARBITRATOR JUSTICE MOSENEKE: Ja, when he says I do not remember, then obviously he is entitled ... [interjects]

ADV. LILLA CROUSE: Could I just test it once more Justice? Do you agree with me that the second value is accountability?

DR. SELIBANO: Accountability is correct, yes.

ADV. LILLA CROUSE: Yes, and that you take responsibility.

10 **DR. SELIBANO:** I take accountability yes.

ADV. LILLA CROUSE: Ja, and you expect colleagues to do the same?

DR. SELIBANO: I expect any leader, myself included, that when things are right you take the accolades. When things are wrong you must take accountability.

15 **ADV. LILLA CROUSE:** And that you do that to get the best outcome for your patient. That is what accountability means?

DR. SELIBANO: Yes, we do everything to the best of the patient.

ADV. LILLA CROUSE: Now you will agree with me, now looking back that the Department of Health was not accountable in this project as they should have been?

DR. SELIBANO: Yes, the department, things went terribly wrong. I agree with you.

ADV. LILLA CROUSE: And at the Ombud the same happened. They did not take responsibility. Do you agree? The department as a whole.

5**DR. SELIBANO:** I do not know, but I did. I took accountability to the Ombud.

ADV. LILLA CROUSE: The Ombud found you to be vague and differentiating between responsibility and accountability. Is that not so?

DR. SELIBANO: That is the report of the Ombud.

ADV. LILLA CROUSE: Well, I am going to put it to you that in saying you are taking responsibility, you are actually paying lip service to that, and for that I am going to take you to ELAH115 if I may. Have you seen 115? Can I have yours please? ELAH115.

ARBITRATOR JUSTICE MOSENEKE: Can we get ELAH115 before the witness?

ADV. LILLA CROUSE: Thank you. Do you see ELAH115?

15**DR. SELIBANO:** I can see that.

ADV. LILLA CROUSE: It is a document prepared by yourself.

DR. SELIBANO: Yes.

ADV. LILLA CROUSE: Do you see that?

DR. SELIBANO: No, I would not, I have the document, but it would not be prepared by myself. I would not have all the details that are inside here.

ADV. LILLA CROUSE: It is a document that you attached to your affidavit in the appeal to the Ombud on which you relied. Are you admitting to that?

DR. SELIBANO: Let me ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: At the initial level, this is a document that bears your name.

DR. SELIBANO: Yes.

ARBITRATOR JUSTICE MOSENEKE: As author. Well ja.

DR. SELIBANO: Yes, it is, my name is there.

ARBITRATOR JUSTICE MOSENEKE: Let us go over that. There might be explanations that somebody else wrote it.

DR. SELIBANO: Wrote it.

ARBITRATOR JUSTICE MOSENEKE: Ja.

DR. SELIBANO: And then I know about it, yes.

ARBITRATOR JUSTICE MOSENEKE: But let us be efficient about this.

15 **DR. SELIBANO:** Yes, okay.

ARBITRATOR JUSTICE MOSENEKE: Yes, the document bears your name.

DR. SELIBANO: My name, yes.

ARBITRATOR JUSTICE MOSENEKE: And look at its date, look at its ...
[interjects]

DR. SELIBANO: That is right.

ARBITRATOR JUSTICE MOSENEKE: Heading and so on.

DR. SELIBANO: That is right.

ARBITRATOR JUSTICE MOSENEKE: Ja.

5 **ADV. LILLA CROUSE:** Okay. This is a document prepared or that is dated 14 September 2016. Do you see that?

DR. SELIBANO: That is right.

ADV. LILLA CROUSE: Now we know on the 13th of September 2016 the MEC was before the legislature and at that stage she said 36 people died. We know that.

10 **DR. SELIBANO:** That is correct.

ADV. LILLA CROUSE: So this is the day immediately after the MEC was in the legislature.

DR. SELIBANO: I would not know whether you are right when you say ... [inaudible]. I do not recall the date exactly when she was seeing the legislature.

15 **ADV. LILLA CROUSE:** Now this document is prepared in your name.

DR. SELIBANO: I do not deny that.

ADV. LILLA CROUSE: Sorry?

DR. SELIBANO: I am not denying that.

ADV. LILLA CROUSE: Yes, and the purpose of this is to tell the MEC I suppose that more people have died than she initially thought the day before. Do you want to read through the document first?

DR. SELIBANO: Ja, can I just ... [interjects]

5**ADV. LILLA CROUSE:** Yes, please.

DR. SELIBANO: Acquaint myself with it. Okay Counsel, I am ... [interjects]

ADV. LILLA CROUSE: Now this is a document that you placed before the forum ...
[interjects]

DR. SELIBANO: Okay.

10**ADV. LILLA CROUSE:** When you appealed the Ombud's findings against you. Do you agree?

DR. SELIBANO: Yes, yes, yes.

ADV. LILLA CROUSE: And we know the time when this was done.

DR. SELIBANO: Okay.

15**ADV. LILLA CROUSE:** Now if you go to the first line under the paragraph heading discussions.

DR. SELIBANO: Discussions.

ADV. LILLA CROUSE: Do you see that?

DR. SELIBANO: I see that.

ADV. LILLA CROUSE: The placement went on very well. Now surely by the 14th of September you knew that was not true.

DR. SELIBANO: Patients had demised, yes.

ADV. LILLA CROUSE: So why would you have put that before the MEC?

5 DR. SELIBANO: I think the placement, the Managers when they were reporting to me on this one, they were saying the removal of patients from A to B went well. That is what ... [interjects]

ADV. LILLA CROUSE: Ja, but we know it is not true.

DR. SELIBANO: But you know it could be true, it is true that patients were moved 10from A to B.

ADV. LILLA CROUSE: Yes, move is one thing.

DR. SELIBANO: They were placed well, yes.

ADV. LILLA CROUSE: That it went very well is a totally different thing and it is not true. Do you agree?

15 DR. SELIBANO: No, but that is your opinion. I am saying ... [interjects]

ADV. LILLA CROUSE: Yes you see, that is my opinion on accountability. An accountable Manager would say yes, I have made a mistake. This should have been not in the report, but you are still defending it that it went well.

DR. SELIBANO: No, no.

20 ADV. LILLA CROUSE: What are you doing?

DR. SELIBANO: I am saying the movement, the my understanding of this sentence says moving from point A to point B there were no hurdles. That does not mean that the patients were now being moved into dangerous situations. That does not mean that.

5 **ADV. LILLA CROUSE:** But we know that is not true. We know the family members could not find them. We knew they were moved in terrible, even inhumane manners at times. We knew they were moved without their clothing. We knew so many things.

DR. SELIBANO: At that time when I get the report they say we are moving with 10EMC. The doctors have examined the patients. Everything is going well. I agree with you, but at that time you are the HOD, you think everything is going well and boom, you know that things are not that what the Managers are saying. I do not want to go Justice into what you said. Your words are still ringing that we then as without using your words, then we want to shift the blame to other people, no. I do 15not want to go that route. That is why I am very careful in saying Managers dismanages that.

ARBITRATOR JUSTICE MOSENEKE: Ja, well we are going to get that, the Counsel is going to have to go there. If ... [inaudible] the move went well, then she will have to put to you quite a number of things. The examination, the 20desegregation to use your words there are files and records. The mode of transport. Their arrival and admissions. We have evidence of what happened in Cullinan, places like that. When they came there they did not know their names, they did not know, relied on pictures and photographs and they did not have

medication scripts with them. So I do not know whether you want to go down the route that says things went well.

DR. SELIBANO: I would not want to go down that road.

ARBITRATOR JUSTICE MOSENEKE: Yes.

5**DR. SELIBANO:** Except to say EMS have what we call transport, patient transport. They were tasked with the ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: At best was reported to you that these things went well.

DR. SELIBANO: At best.

10**ARBITRATOR JUSTICE MOSENEKE:** I do not know how you could defend that statement, with what we know now.

DR. SELIBANO: What we know now, that ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: After 31 days of hearing we know a hell of a lot.

15**DR. SELIBANO:** That things did not go according to the way the reports were coming, yes.

ARBITRATOR JUSTICE MOSENEKE: Many people were moved as Counsel, without family members being notified. Life Esidimeni says it is because they were never given NGO's where they were going to be taken to. We could not find a 20schedule of NGO's where they were taken to. Files did not go along. Most of them

were admitted when they arrived by, there were no caregivers or nurses or somebody to just receive them.

DR. SELIBANO: At the NGO's ja, I know that.

ARBITRATOR JUSTICE MOSENEKE: Okay.

⁵**DR. SELIBANO:** Now I know that. I know that.

ARBITRATOR JUSTICE MOSENEKE: Listen to the question and then give an answer then. Counsel?

ADV. LILLA CROUSE: Thank you Justice Moseneke. I am just reminding you again you placed this before the appeal process to prove that the Ombud was wrong, but you also placed this before the MEC to deal with why so many people had died. Is that right?

DR. SELIBANO: That is right.

ADV. LILLA CROUSE: Now the very next sentence you say:

"Well, people have died at Life Esidimeni before the move."

¹⁵You see that?

DR. SELIBANO: However some patient passed on at LE facilities before they were placed, yes.

ADV. LILLA CROUSE: And then you get graphs of people dying for the five years previous to that.

²⁰**DR. SELIBANO:** Yes.

ADV. LILLA CROUSE: So is that accountability to say well, people have died forever. Five years, look how many people have died. Is that taking responsibility?

DR. SELIBANO: No, it is a comparative analysis.

ADV. LILLA CROUSE: But you have not done the same with Weskoppies and 5Sterkfontein and Cullinan. It is only with Life Esidimeni that you do this in this report. Why is that?

DR. SELIBANO: But you cannot deny that we had, a comparative analysis was done. Unless you say it is wrong to have done that, then I will say it is fine, it was wrong, but it was a comparative analysis.

10**ADV. LILLA CROUSE:** Yes sir, it was not a comparative analysis, because then you would have taken the other centres as well. What you are trying to say is well, people die. Is that not so?

DR. SELIBANO: Let me rather explain to you. I did not want to come back to it. It would be, that is why I used the word comparative. You would not compare the 15patients at Life Esidimeni with the patients at Weskoppies or Sterkfontein. You cannot compare the two. They are a different category.

ARBITRATOR JUSTICE MOSENEKE: There is your answer.

ADV. LILLA CROUSE: Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: He chose to compare patients from Life 20Esidimeni with those that die, yes.

ADV. LILLA CROUSE: In the last paragraph on the first page of ELAH115, you say that the deaths reported by the NGO's ... [interjects]

DR. SELIBANO: Just give me a chance.

ADV. LILLA CROUSE: Were all natural death. Do you see that? Do you see
5that?

DR. SELIBANO: I was just trying to follow you. My eyesight can be, when especially when the handwriting is not nice. Which page are you in?

ADV. LILLA CROUSE: I am still at the first page sir.

DR. SELIBANO: First page, okay. So it is page, the one that starts with the
10department.

ADV. LILLA CROUSE: Last paragraph, second line says:

“The deaths reported by the NGO's were all natural deaths.”

You see that?

DR. SELIBANO: Yes.

15**ADV. LILLA CROUSE:** You still stand by that?

DR. SELIBANO: Yes, it is true. That is what the NGO's said. They said the deaths were natural.

ADV. LILLA CROUSE: Can we move to the next page please.

DR. SELIBANO: Okay.

ADV. LILLA CROUSE: It is important to note that most spiking up of deaths in any given environment are linked to predisposing causes and complications of medical conditions such as diabetes, high blood pressure, heart diseases, cancers, etcetera. Is that taking responsibility for the deaths?

5**DR. SELIBANO:** I do not know how you link that.

ADV. LILLA CROUSE: Well, that is what you said in this report. You are trying to explain why so many people die and you say well deaths spike all the time. Is that not so?

DR. SELIBANO: I do not know how you link that.

10**ADV. LILLA CROUSE:** Let us continue. All the deaths that took place raised concern and are taken very seriously, and as a department we sympathise with the affected families. However, the following factors are not uncommon. Again paying lip service. Look at the first bullet point. You speak about winter months. People die in winter months. Is that right?

15**DR. SELIBANO:** That is right.

ADV. LILLA CROUSE: So you are saying these people died because it was winter months? Is that what you were saying?

DR. SELIBANO: It was an analysis given to me yes.

ADV. LILLA CROUSE: Yes. The Ombud has ruled that as a non issue. He has looked at the temperatures and he said the coldest places people did not die, at

warmer places people did die. So it was something else that caused their death.
Will you accept that?

DR. SELIBANO: The Ombud said that, I will not quarrel with that.

ADV. LILLA CROUSE: The next bullet point explaining the deaths. You say:

5 “*The department place failed patient last as some patients were vulnerable and susceptible to illness.*”

What does that mean? Saying they were so, they were vulnerable and therefore they will get ill and therefore they will die?

DR. SELIBANO: No, no, no.

10 **ADV. LILLA CROUSE:** What are you saying?

DR. SELIBANO: The department frail patients are those who are very sick. More often than not, frail patients you will find that they are old, they have go core mobilities, they really need far much more specialised care. That is what is meant here.

15 **ADV. LILLA CROUSE:** You were not trying to say well, they were due to die?

DR. SELIBANO: No, no one has the right to determine who must or must not die.
No one.

ADV. LILLA CROUSE: And you say some had infectious diseases as HIV and chronic physical illness.

20 **DR. SELIBANO:** That is the report that ... [interjects]

ADV. LILLA CROUSE: Could that be a reason for them dying?

DR. SELIBANO: No, no. People do not have to die because of that, no.

ADV. LILLA CROUSE: Yes, and if we go to the fourth bullet point. We are all aware that sudden deaths also do occur anywhere in the community and any environment. You say well, people die suddenly.

DR. SELIBANO: It comes out ugly the way you are putting it now that people die suddenly. The explanation here is that it is possible that you can sleep being well, and you get a myocardial infection ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: But what was the purpose of all those 10 bullet points? It is really where Counsel is going to, read together with your conclusion in this document. What were you seeking to convey? These are natural deaths, where people die. In any even they were sick.

DR. SELIBANO: No, no, no Justice.

ARBITRATOR JUSTICE MOSENEKE: They were frail.

15 **DR. SELIBANO:** No.

ARBITRATOR JUSTICE MOSENEKE: It was winter.

DR. SELIBANO: No.

ARBITRATOR JUSTICE MOSENEKE: What are those bullet points about?

DR. SELIBANO: No, I do not want us to jump to conclusions.

ARBITRATOR JUSTICE MOSENEKE: Okay, tell me, correct me, tell me what is the right conclusion about those bullet points?

DR. SELIBANO: Here I mean what was being given was a situation. What I am saying, it has nothing to do with the fact that I do not take responsibility. Here there was a comparative analysis. Whether it was wrong or right then, at that time when the Managers and myself were sitting and working on this, we thought it was right and if it comes out now that it is wrong, then I will accept that, that you are saying it is wrong.

ARBITRATOR JUSTICE MOSENEKE: No, Counsel says to you this report by you compiled in September, the 14th 2016, puts out a number of bullet points that suggest people died in the normal course of providing health care to mental health care users. Is that what you intended to convey?

DR. SELIBANO: ... [inaudible] you are correct Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes, you are saying ja, people have died but you know ... [interjects]

DR. SELIBANO: No, no, no not ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Half of the course.

DR. SELIBANO: No.

ARBITRATOR JUSTICE MOSENEKE: No?

DR. SELIBANO: You know, when you put it this way it is as if we are now demeaning what happened. No, that was not the intention.

ARBITRATOR JUSTICE MOSENEKE: No, we do not go to demeaning and psychological issues.

DR. SELIBANO: Yes.

ARBITRATOR JUSTICE MOSENEKE: I want to, what Counsel is exploring with you, is what are these bullet points meant to convey and I enquire further and say were they meant to convey that they died in the normal cause of providing mental health care to users?

DR. SELIBANO: Most definitely or probably that in the process of patients life, there would be instances where you can analyse what is the cause of ... [interjects]

10**ARBITRATOR JUSTICE MOSENEKE:** Why do you not say they may have died because of inadequate or poor mental health care? Why does any of the bullet points not say that?

DR. SELIBANO: You cannot ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Why do they say they had HIV, they had diabetes, they were ill and warra warra and it was winter. Why do you not say, that is what Counsel is testing with you. Why do you not say I think they at least some of them passed on because of inadequate mental health care.

DR. SELIBANO: It would not be completely correct, because you would not pass away because of a mental condition.

20**ARBITRATOR JUSTICE MOSENEKE:** I was trying to cut to the chase so that we can save some time, but look at your conclusion.

DR. SELIBANO: I am sorry if I am, the department investigates any death that took place in all facilities. There were no unnatural deaths that were reported.

ARBITRATOR JUSTICE MOSENEKE: You see that conclusion? Could you just read it out loudly.

5 **DR. SELIBANO:** There were no unnatural deaths that were reported. You rely on people to say was it a natural or an unnatural death, and if it is not reported, it is not, I would not there sitting in the office say no I do not believe you, it is unnatural. I will have to come up and adduce evidence why am I saying that.

ARBITRATOR JUSTICE MOSENEKE: So the conclusion of all of this exercise is 10 no unnatural death MEC, I mean no unnatural death stop. I mean that is the conclusion.

DR. SELIBANO: They were not reported. However, it is very much important to find out what the cause of the deaths are.

ARBITRATOR JUSTICE MOSENEKE: Counsel?

15 **ADV. LILLA CROUSE:** Thank you Justice. I am just going to take you back to the last bullet point. You say:

“It is of critical importance to note that although the department managed to place all the patients without a problem, some of the patients died from Life Esidimeni before the placement.”

20 And then you give the statistics, again making light of the people that died at the NGO's. Do you agree?

DR. SELIBANO: No, I do not agree we are making light. Like I said, it was a comparative analyses.

ADV. LILLA CROUSE: And then you say in table 3 on the next page that two people had died. Do you see that, and table 4 you say 41 people had died. Do you see that?

DR. SELIBANO: Table 4?

ADV. LILLA CROUSE: Yes, the last page. The end of the last page you say 41 people have died. So all in all this report said 43 people died. Is that so?

DR. SELIBANO: Yes, I think so.

10**ADV. LILLA CROUSE:** And we know the previous day in parliament the MEC said do not grandstand the deaths, she only knew of 36 deaths. Is that so?

DR. SELIBANO: That was before the preparation of the report.

ADV. LILLA CROUSE: Yes, a day before.

DR. SELIBANO: A day before?

15**ADV. LILLA CROUSE:** Yes, and we also know nobody died on the 13th and the 14th of September. So how did the deaths go from 36 to 43 in one day? Do you know?

DR. SELIBANO: From 36 to 43? I would not know.

ADV. LILLA CROUSE: Yes, and the Ombud found that more than 70 people, 70 people had already died at that date and you did not know that?

DR. SELIBANO: I said yesterday that in my discussion with the Ombud that is what ... [interjects]

ADV. LILLA CROUSE: Just yes or no sir.

DR. SELIBANO: Yes, I did not know at that time.

5 ADV. LILLA CROUSE: Yes.

ARBITRATOR JUSTICE MOSENEKE: But if you were so hung up on numbers and on graphs, ... [inaudible] patterns, why did you not go and check the actual deaths? Why did people not check?

DR. SELIBANO: I think our systems let us down and we spoke about it Justice, 10that we rely on drips and drabs of information and the system lets you down because you do not know, you said it, you used the correct word. We did not have a tracking mechanism. That is where the problem start.

ARBITRATOR JUSTICE MOSENEKE: I mean you write a report in the midst of the carnage in September 2016 and you put up numbers and put up graphs. You 15surely have to be careful that you know who had actually died, and you under reporting by more than 50 percent, and then you say these are natural deaths on conclusion.

DR. SELIBANO: No Judge, I take the point and I agree that ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: You agree that on the Ombud's count you 20have under reported by ... [interjects]

DR. SELIBANO: When the Ombud raised it in November.

ARBITRATOR JUSTICE MOSENEKE: Yes.

DR. SELIBANO: And in my discussion, I said to the Ombud what we knew then was around 30's and that is why I was restricting it to a period. The Ombud said no, no, no you do not know. Let me tell you. The number was 78.

5**ARBITRATOR JUSTICE MOSENEKE:** Ja, but Counsel is ... [inaudible] you on that very point. You are writing a report that has been smoothed up, made pretty. You are under reporting and you pretend to be making comparatives.

DR. SELIBANO: No ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: With graphs and figures and it turns out 10that you actually ... [interjects]

DR. SELIBANO: We were wrong.

ARBITRATOR JUSTICE MOSENEKE: Yes, you were totally wrong and that is the concession that she is looking for.

DR. SELIBANO: Yes, we were wrong there but do not Justice, through you again, 15say that there were ulterior motives. There were no ulterior motives.

ARBITRATOR JUSTICE MOSENEKE: No, there are no accusations here. I mean she just wants, she wants an explanation why in the middle of September as I say when the carnage is in full swing, you would write a report. The MEC says only so many died before the legislature, 36. The following day 42 and then it turns out 20there are actually around 90 people who died.

DR. SELIBANO: It is unfortunate, really.

ARBITRATOR JUSTICE MOSENEKE: So clearly even the numbers you gave and the conclusions you reached are patently flaunt.

DR. SELIBANO: They were wrong yes.

ARBITRATOR JUSTICE MOSENEKE: They were wrong.

⁵**DR. SELIBANO:** They were wrong.

ARBITRATOR JUSTICE MOSENEKE: And that is the point of the cross-examination.

DR. SELIBANO: They were wrong.

ARBITRATOR JUSTICE MOSENEKE: Counsel?

10**ADV. LILLA CROUSE:** Thank you very much Justice. Did you follow the parliamentary discourse of the MEC before the legislature at all?

DR. SELIBANO: No, no, no I did not.

15**ADV. LILLA CROUSE:** Okay. But there were allegations made which must have come to your attention, that people were hungry and they did not have medicine. Is that not so? Already at this stage.

DR. SELIBANO: There were allegations in the media and I agree.

ADV. LILLA CROUSE: And my question to you is why is none of that included in this report?

DR. SELIBANO: Well, it was not included.

ADV. LILLA CROUSE: Yes, and that is exactly what my problem is and you say the value is accountability. We call each other up to go beyond. You know that these NGO's were not performing and you put all these generic things of people died before they were ill, they were vulnerable, they are dying just for nothing.

5**DR. SELIBANO:** No Counsel.

ADV. LILLA CROUSE: Why did you not deal with the real things for which you were supposed to be accountable?

DR. SELIBANO: No Counsel. You are saying that I know that the NGO's are not working. No, I did not know. I did not know.

10**ADV. LILLA CROUSE:** Yes, but you see, you heard what the families said, you heard what the media were saying and your report is silent on that. Why is that?

DR. SELIBANO: That is a different thing ... [interjects]

ADV. LILLA CROUSE: Will you agree with me that is not accountability, that is not taking responsibility?

15**DR. SELIBANO:** No, I think you are stretching it. You are stretching it.

ARBITRATOR JUSTICE MOSENEKE: But in September had you started shutting down NGO's?

DR. SELIBANO: No, not that time.

ARBITRATOR JUSTICE MOSENEKE: September 2016?

20**DR. SELIBANO:** No, we had not started.

ARBITRATOR JUSTICE MOSENEKE: When did you shut down NGO's, from your evidence of yesterday?

DR. SELIBANO: It should be either late September or early October. That is when I started, I ran around.

5**ARBITRATOR JUSTICE MOSENEKE:** When did Dr Motswahedi phone you?

Was it not July 2016?

DR. SELIBANO: No, no, no.

ARBITRATOR JUSTICE MOSENEKE: When was it?

DR. SELIBANO: It was around, when he phoned me that was, I think my 10recollection would be it was after the parliamentary discussions. It was after that, that he said now the media is aware of this. What is going on and we discussed that, and he said and that should, I am sure they were discussing amongst ...

[interjects]

ARBITRATOR JUSTICE MOSENEKE: And when did he shut down all these 15NGO's?

DR. SELIBANO: I do not recall the actual date Justice, but it should be long after the parliamentary discussions.

ARBITRATOR JUSTICE MOSENEKE: You see, what Counsel is putting to you, this is there was so much public concern ou there.

20**DR. SELIBANO:** Yes.

ARBITRATOR JUSTICE MOSENEKE: The MEC made this statement precisely because there were enquiries, there were TV programs.

DR. SELIBANO: Yes.

ARBITRATOR JUSTICE MOSENEKE: There had been marches to your office.

⁵**DR. SELIBANO:** I should say they came ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: On the evidence. Anyway, we will go and check. The marches started quite early.

DR. SELIBANO: Quite early.

ARBITRATOR JUSTICE MOSENEKE: In any event, and yet you have an airbrushed report. That is the point.

DR. SELIBANO: No, I did not say that Justice.

ARBITRATOR JUSTICE MOSENEKE: What were you doing? Why were you not forthright and honest about the crisis? Why do you put his hunky-dory picture, it is all fine, they died, they were ill ... [interjects]

¹⁵**DR. SELIBANO:** No, I think you are describing it ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: You are concerned, but they died.

DR. SELIBANO: You are describing it harshly Justice.

ARBITRATOR JUSTICE MOSENEKE: Okay. You describe it better.

DR. SELIBANO: No, I am not, I do not want to, I am not taking you on Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes.

DR. SELIBANO: Please forgive me. Please forgive me.

ARBITRATOR JUSTICE MOSENEKE: No, no but this calls for an explanation you see. The September report that is what you are being taxed on. Counsel?

⁵**ADV. LILLA CROUSE:** Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: I do not know if I have helped your course, I may not have.

ADV. LILLA CROUSE: You have tied the bow around the cross, thank you. I am going to move on to your third point. The third value that your department holds dear, and that is one of transparency.

DR. SELIBANO: Okay.

ADV. LILLA CROUSE: And you describe this value as:

“That you strive to be open and honest in all we do.”

DR. SELIBANO: That is right.

¹⁵**ADV. LILLA CROUSE:** Is that a value with, by which you live?

DR. SELIBANO: Myself as a person, yes.

ADV. LILLA CROUSE: But this report was not open and honest in all we do. Do you agree with that?

DR. SELIBANO: When you judge it now, yes I agree with you but at that time, no.

ADV. LILLA CROUSE: Yes, and up until now and I am sorry to be like a broken record, we still do not know why this project happened. There is no transparency there.

DR. SELIBANO: I just wish ... [interjects]

5**ADV. LILLA CROUSE:** Do you agree?

DR. SELIBANO: I just wish it had not happened. That is how I actually feel.

ADV. LILLA CROUSE: Sorry?

DR. SELIBANO: I am saying I just wish it had not just happened at all.

ADV. LILLA CROUSE: Yes, but do you agree with me we still do not know why
10this happened?

DR. SELIBANO: The reasons we are given on ... [inaudible] are not good enough.

ADV. LILLA CROUSE: The reasons are just not true sir.

DR. SELIBANO: I would not agree with you Counsel.

ADV. LILLA CROUSE: And you will also agree with me that the families were not
15taken into your confidence at all?

DR. SELIBANO: There were family meetings and families were not happy. I will never come here and say families were happy with that, because they were not.

ADV. LILLA CROUSE: You were part of volatile meetings at Randfontein.

DR. SELIBANO: I was there, I was there.

ADV. LILLA CROUSE: Yes, and you did not do anything about that.

DR. SELIBANO: I was there.

ADV. LILLA CROUSE: That is not transparency is it? We have listened to you but we will go ahead regardless of your feelings. That is what you basically told, is that
5not so?

DR. SELIBANO: Ja, the meeting in Randfontein was painful. I will tell you now.

ADV. LILLA CROUSE: So it was not painful enough for you to act upon?

DR. SELIBANO: No.

ADV. LILLA CROUSE: Is that not so?

10**DR. SELIBANO:** You are putting it differently.

ADV. LILLA CROUSE: Just answer my question please.

DR. SELIBANO: No, it is not so.

ADV. LILLA CROUSE: It was painful enough for you to react upon, you did something about it?

15**DR. SELIBANO:** I did not react, but it does not measure the painfulness of it.

ADV. LILLA CROUSE: Sir, I am going to leave that there. Your fourth value is one of efficiency. Your last value. Do you agree?

ARBITRATOR JUSTICE MOSENEKE: Just before you move to efficiency, a value in our constitution are keen to transparency is responsiveness of state.

DR. SELIBANO: Openness.

ARBITRATOR JUSTICE MOSENEKE: Right?

DR. SELIBANO: Yes.

ARBITRATOR JUSTICE MOSENEKE: Responsiveness. Openness is the one where you make available information and you tell it truthfully. The other is responsiveness. You find it in chapter 1 of our constitution. It is one of the founding values of our nation. Responsiveness. ... [inaudible] require the state to do everything that the people demand, but it requires a state that listens ... [interjects]

DR. SELIBANO: That is right.

10**ARBITRATOR JUSTICE MOSENEKE:** And seek to respond to ... [interjects]

DR. SELIBANO: The needs.

ARBITRATOR JUSTICE MOSENEKE: The needs of, the question is but why did you, you go to a painful meeting in Randfontein and people there were unhappy. We have heard lots of evidence on that. I think it is the meeting where the MEC 15came late.

DR. SELIBANO: No, no she was not there. It is not that one. That one was at ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: It was the earlier one, sorry.

DR. SELIBANO: At Waverley.

20**ARBITRATOR JUSTICE MOSENEKE:** Sorry, ja it is an earlier one.

DR. SELIBANO: It was at Waverley.

ARBITRATOR JUSTICE MOSENEKE: But be that as it may Mr Mosenoge was there, right?

DR. SELIBANO: He was with me, yes.

5**ARBITRATOR JUSTICE MOSENEKE:** And I mean Dr Manamela was there.

DR. SELIBANO: Ja. She was there, I was there. I was there.

ARBITRATOR JUSTICE MOSENEKE: Why were you not responsive to these concerns of the families? We public servants are the only, and only to serve the people.

10**DR. SELIBANO:** That is correct.

ARBITRATOR JUSTICE MOSENEKE: There is no other reason why there are public servants.

DR. SELIBANO: That is correct Judge.

ARBITRATOR JUSTICE MOSENEKE: But why were you not responsive to that?

15**DR. SELIBANO:** Judge, I can only say you know it is regrettable that I just wish we could just go back and one, undo all the things that happened and do things better. I cannot, I will not say if it happens I will do it, because I do not even want this type of thing to happen to anybody, anywhere, anyhow. Never.

ARBITRATOR JUSTICE MOSENEKE: But was it because they were family members of mental health care users and they had no, you thought no recourse, no power, no influence?

DR. SELIBANO: No Judge.

5**ARBITRATOR JUSTICE MOSENEKE:** But why did you ignore them? I mean it was a terrible meeting. We have evidence on that.

DR. SELIBANO: It was sad.

ARBITRATOR JUSTICE MOSENEKE: Some few struggling, and they too are struggling that they cried so much. Evidence can be put to you in fact all the 10marches, all the memoranda. They went to the media.

DR. SELIBANO: Yes, I know. I know Judge.

ARBITRATOR JUSTICE MOSENEKE: Advocate Hassim took you there yesterday.

DR. SELIBANO: Yes.

15**ARBITRATOR JUSTICE MOSENEKE:** And I just wonder because it is a value of our constitution. It sits there in black and white. The state will be responsible.

DR. SELIBANO: Must be responsive. I agree. I am not going to defend that. I am not going to try and explain it away or hide around it. One wishes one could have been more, far much more responsive at that time to know the, that the 20horrible ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Sure, and to wrap it up you are there, you have got your finger there. Had you been responsive then as a caring state then, the tragedy would not have happened. It is obvious.

DR. SELIBANO: You are correct.

5**ARBITRATOR JUSTICE MOSENEKE:** Counsel, you are going to the next value.

ADV. LILLA CROUSE: I am going to move ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Unless it ... [inaudible] with another one in our constitution, okay.

ADV. LILLA CROUSE: Thank you Justice. I am going to move on to the last value 10in your annual performance plan and that is efficiency.

DR. SELIBANO: Okay.

ADV. LILLA CROUSE: You also have it as your fourth value.

DR. SELIBANO: Yes, yes efficiency. I am following you, I agree with you ja.

ADV. LILLA CROUSE: Yes, and you described that as:

15 “*We know that wasting resources has a negative impact on patients.*”

DR. SELIBANO: Yes.

ADV. LILLA CROUSE: And we have seen that patients were harmed in this process. Do you agree?

DR. SELIBANO: In the process yes, patients were harmed.

ADV. LILLA CROUSE: We also know that before this project already the health advance institute explained to you that it was good value for money.

DR. SELIBANO: It said general. You remember we spoke about it with and ...
[interjects]

5**ADV. LILLA CROUSE:** Sir, we had the Minister of Health saying to parliament it was not about money. There was enough money to treat these patients.

DR. SELIBANO: I cannot comment on what the Minister said.

ADV. LILLA CROUSE: But you are the HOD. Either he is lying or you guys have an ulterior motive. So please help us.

10**DR. SELIBANO:** Well, if you want to know about Gauteng, I will tell you that we are running short of almost 3.5 billion. So if the Minister said there was ...
[interjects]

ADV. LILLA CROUSE: The Minister says there was no reason to harm these patients. There was enough money to treat them. Are you differing from him?

15**DR. SELIBANO:** All I can say ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Shall we put that document ... [interjects]

ADV. LILLA CROUSE: Yes, could you please go ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Can you find it Counsel?

ADV. LILLA CROUSE: ELAH84.

20**ARBITRATOR JUSTICE MOSENEKE:** Please put ELAH84 before the witness.

DR. SELIBANO: Is that what the Minister said? Ja, they are so small hey.

ADV. LILLA CROUSE: Dr Selibano, do you have ELAH84 before you?

DR. SELIBANO: I have.

ADV. LILLA CROUSE: That is Minister Aaron Motswahedi, address on Life 5 Esidimeni mental health patients tragedy in parliament on the 23rd of February 2017. Do you see that?

DR. SELIBANO: That is right, I can see that.

ADV. LILLA CROUSE: He calls this a moment of madness in line 14. Do you see that?

10 **DR. SELIBANO:** Can I, Justice can I just quickly acquaint myself with that?

ARBITRATOR JUSTICE MOSENEKE: Yes, yes do so.

DR. SELIBANO: Okay.

ARBITRATOR JUSTICE MOSENEKE: It is a long statement, but you can read it.

DR. SELIBANO: I will do a quick reading. Okay, let me not because the writing is 15 very, very small. Let us proceed Counsel. Sorry for the small delay.

ARBITRATOR JUSTICE MOSENEKE: Okay, let us help. You can accept as Counsel, Counsel will tell you what document it is.

DR. SELIBANO: Ja, the writing is very small.

ARBITRATOR JUSTICE MOSENEKE: And Counsel will read to you the passages 20 where, what the Minister said about this project.

DR. SELIBANO: Okay.

ARBITRATOR JUSTICE MOSENEKE: You may proceed Counsel.

ADV. LILLA CROUSE: Thank you Justice. I am going to read to you between lines 10 and 15 in the middle of that paragraph.

⁵**DR. SELIBANO:** 10 and 15.

ADV. LILLA CROUSE: Yes, first page of the document. He says:

"This constitutes one of the periods of darkness in the history of our country."

DR. SELIBANO: Okay.

ADV. LILLA CROUSE: *"But dare I say it was also a moment of madness in the 10 provincial health department."*

Do you agree with that?

DR. SELIBANO: I should agree with that, particularly the moment of madness.

Yes.

ADV. LILLA CROUSE: Line 15.

¹⁵**DR. SELIBANO:** Line 15, okay.

ADV. LILLA CROUSE: *"... [inaudible] by the very fact that the deceased constitute some of the most vulnerable members of society who are in need of even more protection than the rest of the society."*

Will you agree with that?

DR. SELIBANO: That is right.

ADV. LILLA CROUSE: The next line:

“That the idea behind the Gauteng Mental Health marathon project as it came to be known was to save money adds another dimension to our disappointment and 5 pain.”

Would you agree with that?

DR. SELIBANO: I do not want to have an open spat here, but ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: No, but just confront that. The Minister has a view and sets it out. You are asked do you agree with the Minister. It is open 10to you to say I do not agree with him or I agree with him.

DR. SELIBANO: No, I do not ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: So we can make progress. That is his public statement in parliament.

DR. SELIBANO: Ja, no, no I do not agree that ... [interjects]

15**ADV. LILLA CROUSE:** Okay, let us test that. Are you saying it was not to save money, the project?

DR. SELIBANO: The project, as I said the ... [inaudible] was under pressure. The aim of the project firstly, we thought the thinking at that time is that we will be able to distribute resources within the department, because we were at 3.5 I think ... 20[interjects]

ARBITRATOR JUSTICE MOSENEKE: No, but listen to the statement.

DR. SELIBANO: Ja.

ARBITRATOR JUSTICE MOSENEKE: You are throwing a lot of detail. Listen to what the Minister says, and I ask you to engage that, and answer it and say I do not agree with you.

DR. SELIBANO: I do not agree.

ADV. LILLA CROUSE: You do not agree that this was to save money?

DR. SELIBANO: In the manner that it is being put here, no I do not agree.

ADV. LILLA CROUSE: You have told us it was to save money.

10**DR. SELIBANO:** It was I did ... [inaudible] revenue enhancement. To distribute ...
[interjects]

ADV. LILLA CROUSE: We can use big words all day sir, and not understand each other, but is the simple thing not that you wanted to save money?

DR. SELIBANO: Okay. In simple terms let me agree with you, it was to save 15 costs.

ADV. LILLA CROUSE: And the Minister says that is disappointing and painful to him, as it should be to any person.

DR. SELIBANO: It is painful that ... [interjects]

ADV. LILLA CROUSE: Yes, so you agree with the Minister's statement.

DR. SELIBANO: I said for the purposes I will say it is fine what the Minister ...
[interjects]

ADV. LILLA CROUSE: Let us go to line 19 sir. Doctor, it says:

*"I wish to put it on record that at no stage did it merge directly or indirectly, implicitly
or explicitly that the Department of Health nationally or in any province has run out
of money to take care of mentally ill patients."*

Do you agree with that statement?

DR. SELIBANO: I do not know why would, the difficulty I have, let me explain. I
do not know why would, to say there is no money to take care of mentally ill
patients, as if there is money to do other things. To take care of one patient it is a
composite approach Justice. So ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Your Minister of National Health tells the
nation ... [interjects]

DR. SELIBANO: That there is no money to take ... [interjects]

15 **ARBITRATOR JUSTICE MOSENEKE:** No, that there was money nationally and in
each of the provinces to take care of mental health care users. Read it again. Can
you see it? Can you read it?

DR. SELIBANO: I have seen it. I have seen it.

ARBITRATOR JUSTICE MOSENEKE: So the question is do you agree with
20 Minister Motswahedi in his statement to parliament and therefore to the nation?

DR. SELIBANO: I do not completely agree with the Minister.

ARBITRATOR JUSTICE MOSENEKE: He says you were never short of money to look after patients who need mental health care. Your answer is he is wrong about that.

DR. SELIBANO: I do not completely agree.

5**ARBITRATOR JUSTICE MOSENEKE:** Not completely does not help us. Do you agree with the statement? No, you do not.

DR. SELIBANO: No, no.

ARBITRATOR JUSTICE MOSENEKE: There is your answer.

ADV. LILLA CROUSE: Thank you Justice. Dr Selibano, we have now looked at 10these four values, and no doubt you will agree with me that they were flaunted by the Department in respect of this mental health care users.

DR. SELIBANO: I agree with you Counsel.

ADV. LILLA CROUSE: And you will also agree with me that you flaunted them in your personal capacity as HOD?

15**DR. SELIBANO:** I do not agree with you at that level.

ADV. LILLA CROUSE: Okay. So everybody else has made a mistake, but you have done nothing wrong. Is that what you are saying?

DR. SELIBANO: No, you are personalising a project. That is what I am trying to say.

20**ADV. LILLA CROUSE:** You are what, sorry?

DR. SELIBANO: You are personalising it. You put it to me as a person.

ADV. LILLA CROUSE: Yes.

DR. SELIBANO: You do not see me inside a system. I am inside the Department of Health.

5**ADV. LILLA CROUSE:** Sir, what I am putting to you is that these values was not part of your armour when this project was being implemented.

DR. SELIBANO: I am not too sure why do you want Counsel, to pin them on ...
[interjects]

ARBITRATOR JUSTICE MOSENEKE: No, let us forget about you please.

10**DR. SELIBANO:** No ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Counsel is saying that there are four values. You have gone through them.

DR. SELIBANO: Yes.

ARBITRATOR JUSTICE MOSENEKE: In your own policy statement.

15**DR. SELIBANO:** That is correct.

ARBITRATOR JUSTICE MOSENEKE: Your plan, your annual plan.

DR. SELIBANO: That is correct.

ARBITRATOR JUSTICE MOSENEKE: And Counsel says to you project Esidimeni did not ... [interjects]

DR. SELIBANO: Go according to plan, I agree.

ARBITRATOR JUSTICE MOSENEKE: Fulfil any of these values.

DR. SELIBANO: I agree with that.

ARBITRATOR JUSTICE MOSENEKE: You agree?

5**DR. SELIBANO:** The department, we did not do it the right way.

ARBITRATOR JUSTICE MOSENEKE: I know.

DR. SELIBANO: Yes.

ARBITRATOR JUSTICE MOSENEKE: You are busy standing on the side, but you agree that all these four values were violated?

10**DR. SELIBANO:** Fair.

ARBITRATOR JUSTICE MOSENEKE: Fair. You agree in other words?

DR. SELIBANO: Yes.

ARBITRATOR JUSTICE MOSENEKE: Okay, Counsel?

ADV. LILLA CROUSE: And as HOD you also ignored them.

15**DR. SELIBANO:** I did not ignore them.

ADV. LILLA CROUSE: Okay.

DR. SELIBANO: As HOD, no.

ADV. LILLA CROUSE: Sir, I am going to leave that there, but I have to put it to you that even at this late stage, you are just paying lip service to your taking responsibility.

DR. SELIBANO: That is your opinion.

5**ADV. LILLA CROUSE:** And you ... [interjects]

DR. SELIBANO: You do not know me in my heart.

ADV. LILLA CROUSE: Yes, but we only have your evidence before us. I am going to move on to another point now if I may Justice. Sir, I am going to just speak a little bit about the licences ... [interjects]

10**DR. SELIBANO:** Okay.

ADV. LILLA CROUSE: That my learned friend has spoken quite a lot and I am going to try not to repeat what she said. You can close all the files in front of you. I am going to at some stage refer to file 7 though. You have agreed that the licences is significant in saving lives. Is that right?

15**DR. SELIBANO:** Can you explain in what sense so that I know what I am answering?

ADV. LILLA CROUSE: No, you said that sir. You said it carried great significance.

DR. SELIBANO: Licence ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Get yourself tidied up. Counsel is not going to ask you questions out of that now. Later on out of Volume 7. So you can put the files, Obakeng just help Doctor [vernacular]. Just take them away from the

doctor and then he can listen to the questions that are being put to him. Okay, Counsel?

ADV. LILLA CROUSE: Thank you Justice. You agreed with my learned friend during the course of your evidence that the licences are important.

5**DR. SELIBANO:** As an assessment tool.

ADV. LILLA CROUSE: And it could have saved lives if it was properly implemented.

DR. SELIBANO: If it was properly done, I agree.

ADV. LILLA CROUSE: Yes. We also know from the evidence here, is that the 10licences was only given to the NGO's after they have already received patients.

DR. SELIBANO: I got to know that yes.

ADV. LILLA CROUSE: And that must be wrong on anybody's take.

DR. SELIBANO: No arguments about that.

ADV. LILLA CROUSE: Okay. You have spoken a little bit about the authority. 15You do not accept the legal opinion. It seems to me that you were the person to either sign the licences or to delegate. Do you accept it now?

DR. SELIBANO: I said that we had a discussion ... [interjects]

ADV. LILLA CROUSE: No, no, no we know what you have said sir. We have definitely listened to everything that you have said. Justice Mosenke explained to

you the rule of law. Do you accept now that you are the responsible person that should have signed the licences?

DR. SELIBANO: No.

ADV. LILLA CROUSE: Still not.

5**DR. SELIBANO:** Licences are signed by the department concerned.

ADV. LILLA CROUSE: Yes.

DR. SELIBANO: Yes.

ADV. LILLA CROUSE: It bothers me sir that you have a legal department would be so naive about the legal position. Why is that?

10**DR. SELIBANO:** Maybe I am being let down by the legal department.

ADV. LILLA CROUSE: Maybe it speaks to your competence as a Manager.

DR. SELIBANO: No, no, no, no.

ADV. LILLA CROUSE: Okay, let us continue.

DR. SELIBANO: No, I do not agree with you Counsel.

15**ADV. LILLA CROUSE:** After the Ombud's report you re-signed licences. You said so.

DR. SELIBANO: I conceded to that, yes.

ADV. LILLA CROUSE: Dr Manamela told us that the MEC had asked you to sign those ... [interjects]

DR. SELIBANO: To sign the contracts, yes.

ADV. LILLA CROUSE: You did not tell us about that yesterday. Was it the MEC that asked you to do that?

DR. SELIBANO: The MEC said just sign the ... [interjects]

5**ADV. LILLA CROUSE:** Yes. Now let me just understand. When you just signed these contracts you did not have any supporting documents with you.

DR. SELIBANO: At that time, no.

ARBITRATOR JUSTICE MOSENEKE: You mean licences Counsel.

ADV. LILLA CROUSE: Sorry?

10**ARBITRATOR JUSTICE MOSENEKE:** When the HOD signed the licences.

ADV. LILLA CROUSE: Yes, what did I say Justice?

ARBITRATOR JUSTICE MOSENEKE: Contracts.

ADV. LILLA CROUSE: I am very sorry.

ARBITRATOR JUSTICE MOSENEKE: The day is still young Counsel.

15**ADV. LILLA CROUSE:** It does not feel so Justice. You did not have any supporting documents before you.

DR. SELIBANO: Yes, it was on the strength that I was regularising, and I have conceded to that, that I was regularising.

ADV. LILLA CROUSE: Yes. Do you know why the law would require your signature on these licences?

DR. SELIBANO: I do not ... [interjects]

ADV. LILLA CROUSE: If you accept now that your signature is important, and you put your signature there. Do you know why the law would require that?

DR. SELIBANO: Yesterday I explained that ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: You might or might not know.

DR. SELIBANO: I do not know, yes.

ARBITRATOR JUSTICE MOSENEKE: You do not know. Let Counsel put it to you.

DR. SELIBANO: Okay. Put it to me Counsel, I do not know.

ADV. LILLA CROUSE: Yes.

ARBITRATOR JUSTICE MOSENEKE: She has got all the legal requirements in front of her.

15 **DR. SELIBANO:** Okay. Okay.

ARBITRATOR JUSTICE MOSENEKE: We have been there before with Dr Manamela.

DR. SELIBANO: Alright. Alright.

ARBITRATOR JUSTICE MOSENEKE: Get yourself ready. She is going to tell you what the law requires of you.

DR. SELIBANO: Okay.

ADV. LILLA CROUSE: Justice, I do not want to disappoint you, but you already gave a legal opinion. It was correct yesterday.

ARBITRATOR JUSTICE MOSENEKE: No, please go ahead. No, no I just want the witness not to be argumentative, but to listen to your question and answer it.

ADV. LILLA CROUSE: Yes. As an HOD when you ... [interjects]

DR. SELIBANO: If I come out argumentative, it is not my intention.

ARBITRATOR JUSTICE MOSENEKE: Yes, please Doctor. You know, you have been there for three days and I want you to go home today.

10**DR. SELIBANO:** I want to go home.

ARBITRATOR JUSTICE MOSENEKE: And not come back tomorrow.

DR. SELIBANO: Thank you.

ARBITRATOR JUSTICE MOSENEKE: And that is going to happen only if you listen to the questions.

15**DR. SELIBANO:** Okay.

ARBITRATOR JUSTICE MOSENEKE: And we remain respectful to each other.

DR. SELIBANO: To each other.

ARBITRATOR JUSTICE MOSENEKE: Me to you, you to me, you to Counsel, okay.

DR. SELIBANO: I am trying very hard. If I have gone out of the way, anywhere down the line ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: No problem, but that is the only currency we deal with. Respect. Okay.

5**DR. SELIBANO:** Okay.

ARBITRATOR JUSTICE MOSENEKE: Counsel?

ADV. LILLA CROUSE: Thank you Justice Mosenike.

DR. SELIBANO: I am sorry Counsel if anywhere I indicated some disrespect for you. Please forgive me.

10**ADV. LILLA CROUSE:** Doctor, there is no need to apologise at this stage, but what I was asking you is do you think if the law requires you to sign a document, that your signature n it is sufficient?

DR. SELIBANO: Correct.

ADV. LILLA CROUSE: You do not think that you have to apply your mind before
15 appending your signature?

DR. SELIBANO: I do apply my mind before I sign. I have to apply my mind.

ADV. LILLA CROUSE: Yes, but with these licences you did not. You did not apply
your mind whatsoever.

DR. SELIBANO: Because I was under the impression that I am regularising.

ADV. LILLA CROUSE: Yes sir, but we are getting to the fact that your signature must mean something. Your signature does not mean that somebody else has done something, it means that you have done something. That is the rule of law, not so? So it means if your signature is on something, you say this is correct. Do you agree?

DR. SELIBANO: I agree.

ADV. LILLA CROUSE: Well, the date on which you issued it, was not correct.

DR. SELIBANO: I have conceded to that.

ADV. LILLA CROUSE: And you have not looked at the details whatsoever to see whether these people could be granted the licences. Do you agree?

DR. SELIBANO: When you regularise ... [interjects]

ADV. LILLA CROUSE: Just yes or no sir.

DR. SELIBANO: Let me just give you a simple explanation. When you ... [interjects]

15**ADV. LILLA CROUSE:** You can give an explanation, but first answer my question, then you give your explanation. You did not check whether these licences were in fact proper licences that should be given to these people.

DR. SELIBANO: I did not have to check, because I was regularising what I at that time assumed that things have been done right. That is what I was trying to say.

20**ADV. LILLA CROUSE:** Sir, I am going to just quickly take you to file 7. I am going to take you to file 7, page 2373.

DR. SELIBANO: Thank you, page?

ADV. LILLA CROUSE: 2373.

DR. SELIBANO: I am there Counsel.

ADV. LILLA CROUSE: Do you see that that is your signature as head of the
5department ... [interjects]

DR. SELIBANO: Yes.

ADV. LILLA CROUSE: On a licence ... [interjects]

DR. SELIBANO: I conceded even yesterday it is my signature.

ADV. LILLA CROUSE: Yes, and the licence is for Lapeng. Do you see that?

10**DR. SELIBANO:** That is right Counsel.

ADV. LILLA CROUSE: And Lapeng is supposed to be at 12 Anthony Street
Vereeniging.

DR. SELIBANO: Yes Counsel.

15**ADV. LILLA CROUSE:** Do you know whether there is a 12 Anthony Street in
Vereeniging?

DR. SELIBANO: No, I do not, I would not know.

ADV. LILLA CROUSE: And it is for persons with severe psychiatric disability. Do
you see that?

DR. SELIBANO: That is right.

ADV. LILLA CROUSE: And it is for 56 people.

DR. SELIBANO: I can see that.

ADV. LILLA CROUSE: And it is for the period 1 April 2016 to 31 March 2017.

DR. SELIBANO: That is right Counsel.

5**ADV. LILLA CROUSE:** And that would then give them a licence to then act as an NGO, is that so? To take these patients, all 56 of them.

DR. SELIBANO: Dr Manamela had signed and then ... [interjects]

ADV. LILLA CROUSE: No, no I am asking you. If you give them this certificate this would mean this.

10**DR. SELIBANO:** Then I signed.

ADV. LILLA CROUSE: Yes.

DR. SELIBANO: Then I signed.

ADV. LILLA CROUSE: Let us just turn the page sir. Page 2374. It is now for Lapeng Home of the Aged. Do you see that?

15**DR. SELIBANO:** That is right.

ADV. LILLA CROUSE: And it is again your signature.

DR. SELIBANO: That is right.

ADV. LILLA CROUSE: 1st April 2016. You see that?

DR. SELIBANO: That is right.

ADV. LILLA CROUSE: It is again 12 Anthony, something else. Anthony Kegmen Street.

DR. SELIBANO: That is right.

ADV. LILLA CROUSE: Do you know of that street in Vereeniging?

⁵**DR. SELIBANO:** No, no I do not.

ADV. LILLA CROUSE: And it is now for 38 severe psychiatric disability patients.

DR. SELIBANO: That is right.

ADV. LILLA CROUSE: Two seemingly similar licences, dealing with the same place, but clearly not either of them correctly. Now let us just turn the page one 10more time.

DR. SELIBANO: Same page?

ADV. LILLA CROUSE: Now page 2375.

DR. SELIBANO: Okay.

ADV. LILLA CROUSE: Now you were regularising and this is Dr Manamela's 15certificate that you were regularising according to your evidence.

DR. SELIBANO: That is right.

ADV. LILLA CROUSE: It is still for Lapeng Home of the Aged. It is for severe psychiatric disability. It is for 28 people. 71 Victoria Street.

DR. SELIBANO: Here it is written 38, I can see that.

ADV. LILLA CROUSE: Now if you were regularising, my question to you is how come you got the address wrong? How come you got the number wrong, and why sign too?

DR. SELIBANO: I cannot recall the facts at that time, but I concede that it does not look well. I concede.

ADV. LILLA CROUSE: Yes. Sir, I want to put it to you when you as an official with a duty put your signature to something, it means that you have applied your mind, because you are responsible then. Do you agree?

DR. SELIBANO: In this instance I concede to what you are saying.

10**ADV. LILLA CROUSE:** Yes, it is no defence to say somebody told me and I relied on that. That is just not or that will never be good enough.

DR. SELIBANO: It is never good enough.

ADV. LILLA CROUSE: Yes.

DR. SELIBANO: It is your final responsibility and like I am saying in this one ...
15 [interjects]

ADV. LILLA CROUSE: And this is just a mess.

DR. SELIBANO: It comes out as a mess.

ARBITRATOR JUSTICE MOSENEKE: But the big question is why, why did you carry on so uncaringly.

20**DR. SELIBANO:** No.

ARBITRATOR JUSTICE MOSENEKE: Why did you go and sign licences where mental health care users are going to be kept and you do not even scratch the surface? You do not go and look, you do not go and look at the file, look whether they have checked is the place ready and fit for purpose, to use your phrase. Why would you carry on like that? And then we have this tragedy.

DR. SELIBANO: Ja, speaking of this one, I recall very well that ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: It truly worries me.

DR. SELIBANO: I actually went to, but it was not for the purposes of this, but this I went to this Elapeng.

10 **ARBITRATOR JUSTICE MOSENEKE:** Dr Manamela signs things, she was here and she conceded it was done irregularly.

DR. SELIBANO: Yes.

15 **ARBITRATOR JUSTICE MOSENEKE:** You go and you say you regularise her unlawful conduct and you also signed, but you have not been to any of these places.

DR. SELIBANO: No, but like I am saying on this one I was, but like I am saying it was not for the purposes of the licence.

20 **ARBITRATOR JUSTICE MOSENEKE:** Okay, let us not go there. We are digressing then if it was not for ... [inaudible], but your duty is to issue a licence against the criteria. Counsel can run it through now and we can show your internal

departmental document that says when do you issue a licence for somebody or an NGO to have the authority to keep mental health care users and look after them.

DR. SELIBANO: And what are the requirements.

ARBITRATOR JUSTICE MOSENEKE: And you do that blindly. You do not, you signed because somebody, some junior of yours has signed, and my question is why would we do that Dr Selibano and therefore endanger lives?

DR. SELIBANO: The benefit of hindsight tells me that.

ARBITRATOR JUSTICE MOSENEKE: Ja.

DR. SELIBANO: Ja.

10 **ARBITRATOR JUSTICE MOSENEKE:** I understand but, but at that time ...
[interjects]

DR. SELIBANO: It should not have been done, it should not have been done.

15 **ARBITRATOR JUSTICE MOSENEKE:** You are highly qualified, highly educated, MBCHB, Doctor, you are an HOD, you have a wide span of control in the department, your budget runs into billions and you have this responsibility. Why do you not do it properly?

DR. SELIBANO: That on its own also gives you, you are prone to errors. Unfortunately some of the errors are never reversible.

ARBITRATOR JUSTICE MOSENEKE: Did you take your power for granted?

20 **DR. SELIBANO:** No.

ARBITRATOR JUSTICE MOSENEKE: That you could just sign?

DR. SELIBANO: No, no, no. You can ask any Manager. I do not do that. I do not do that. I do not do that Justice.

ARBITRATOR JUSTICE MOSENEKE: And what about the impact, you signed at 5the time when so many people had died. It was put to you yesterday by Advocate Hassim.

DR. SELIBANO: I agree. I did not even deny that.

ARBITRATOR JUSTICE MOSENEKE: How do you do that? A licence in a back dated way, facilities where people were busy dying. How do you explain that?

10**DR. SELIBANO:** For wrong or right, I did say to you Justice, that at that time I was regularising. You do not have to accept my reasons. Maybe they are not valid, but that was what was in my mind at that time.

ARBITRATOR JUSTICE MOSENEKE: I go beyond that and talk to you the HOD, you the doctor who is an HOD, dealing with mental health care patients, who has 15the values that were put to you this morning by your own department, has signed the Hippocratic oath and then you go and sign and give all these NGO's permission to hunt people. I will put it mildly.

DR. SELIBANO: No.

ARBITRATOR JUSTICE MOSENEKE: That calls for an explanation.

20**DR. SELIBANO:** Justice, you put it as if I woke up in the morning and I said I am going to mess up, and I do not know how it will be possible that you will wake up in

the morning as a human being and then you say I am going to do harm to people.
No Justice, I would say to you ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: But that is why I hope and trust there is an explanation. There must surely be. Think about any office empowered to issue gun licences and wakes up and just, and does not do what the law requires you, the law tells you how to look after mental health care patients. You go signing. You have not checked. That just worries me so deeply.

DR. SELIBANO: But you would agree that every time at a strategic level you depend also on the expertise of the colleagues that are working with you.

10 **ARBITRATOR JUSTICE MOSENEKE:** I agree. As a bare minimum, you say bring me the files. Show me that I may sign. Do you not? At a bare minimum.

DR. SELIBANO: If something has been issued and they say you know what, I remember the discussion. The Ombud's things that you should have signed. We have done everything the right way. Can you just sign? Now I know, you and I 15 know and everybody knows that with this one should not have signed. I would not have signed.

ARBITRATOR JUSTICE MOSENEKE: Were you not helping to sweep the legality under the carpet.

DR. SELIBANO: No, I would never do that.

20 **ARBITRATOR JUSTICE MOSENEKE:** What were you regularising?

DR. SELIBANO: No, I would never do that. Please sir Justice, if there is anything that you can say to me or believe about me, I have a proud youth history and I would never bring any harm.

ARBITRATOR JUSTICE MOSENEKE: I trust that. That is why I hope there is an explanation.

DR. SELIBANO: I would never, I would never outside being a Doctor or anything else, I would never.

ARBITRATOR JUSTICE MOSENEKE: Why did you agree to the MEC saying you must regularise invalid and unlawfully issued licences?

10 **DR. SELIBANO:** She said I must sign. I will be honest, I did not disagree with signing, with the spirit of regularising. So I do not want us to create the impression again that I am shifting to the MEC. I am not. I take what I was regularising, we discussed it. I was, but why I want to go back Justice, is when you said that it hurts me more, I know I am hurt as it is with what has happened, and I want to put the 15 message there. I have got a proud youth, where in my youth I also worked very hard to ensure that we have a good country for all of us. I am not ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Please again, please we cannot ...
[interjects]

DR. SELIBANO: And I would never ... [interjects]

20 **ARBITRATOR JUSTICE MOSENEKE:** Hackle each other please. Certainly not here.

DR. SELIBANO: I would never, I would rather give myself. I would never go out and bring harm to our own. They have had more harm. They have had more harm. We have had more harm. I will never do that. Never Justice, never.

ARBITRATOR JUSTICE MOSENEKE: I accept that. I do.

5 **DR. SELIBANO:** I want ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: I accept ... [interjects]

DR. SELIBANO: How you judge me on that one, I would never. Never.

ARBITRATOR JUSTICE MOSENEKE: But you owe an explanation to the families. That is all that I am saying. I do not doubt your bona fide, but you have 10 got to tell them why would you go merrily and signed licences which are patently invalid.

DR. SELIBANO: The difficulty with the past is that you do things in the past. You think your reasons are right at that time. When, let me give there is an example. We once transported 700 or so patients in one day from the old Nataalspruit Hospital 15 to the new Nataalspruit Hospital. I signed for some of those things, and why I am mentioning this Justice, is to say that ... [inaudible] that during that time I could have signed things in the wrong way. Except we were in a situation where everything went well. That is what maybe I am trying to give an example. Sometimes, errors as they happen, the consequences of them get to be known when things go wrong.

20 **ARBITRATOR JUSTICE MOSENEKE:** You see ... [interjects]

DR. SELIBANO: I am sure you ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: Yes, I hear what you are saying.

DR. SELIBANO: Yes.

ARBITRATOR JUSTICE MOSENEKE: But you see what a good citizen and a good patriot does.

5**DR. SELIBANO:** I am one. I am one.

ARBITRATOR JUSTICE MOSENEKE: I accept that. I accept that.

DR. SELIBANO: Yes.

ARBITRATOR JUSTICE MOSENEKE: Once that happens, becomes the first to say I am sorry, I have made a mistake.

10**DR. SELIBANO:** I ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: I should have checked more. I should have cared more.

DR. SELIBANO: I should have checked more. I should have listened more. I should have found alternatives.

15**ARBITRATOR JUSTICE MOSENEKE:** Ja.

DR. SELIBANO: I should have done, there are so many things that when one looks back and see everything, you say I wish I could have done things differently.

ARBITRATOR JUSTICE MOSENEKE: Yes, thank you.

DR. SELIBANO: And ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: That is the bare minimum you can say.

DR. SELIBANO: That is the bare minimum.

ARBITRATOR JUSTICE MOSENEKE: You have made an error and any good citizen, good patriot, if you have done something wrong, there is space to say I am sorry, I should have done better.

DR. SELIBANO: It went wrong. Yes, I should. I should have objected.

ARBITRATOR JUSTICE MOSENEKE: Thank you. Should have told the MEC no, I am not regularising anything.

DR. SELIBANO: Should.

10 **ARBITRATOR JUSTICE MOSENEKE:** Yes.

ADV. LILLA CROUSE: Thank you Justice, just to finish off this. In your opinion it was not necessary to regularise, because even today you do not think it is a legal requirement. But you never the less did it. Do you agree with me?

DR. SELIBANO: At that time I did not know the legal things.

15 **ADV. LILLA CROUSE:** Yes, and you still do not believe the legal things.

DR. SELIBANO: No.

ADV. LILLA CROUSE: So at that stage you definitely did not think it was necessary to regularise.

DR. SELIBANO: It is not that I do not believe. No, no.

20 **ADV. LILLA CROUSE:** Okay, let us not ... [interjects]

DR. SELIBANO: If you are telling me I believe that that it is a legal requirement.

ADV. LILLA CROUSE: Okay.

DR. SELIBANO: The legal department at the Bank of Lisbon says there is nothing wrong.

⁵**ADV. LILLA CROUSE:** We are missing the point now.

DR. SELIBANO: Ja.

ADV. LILLA CROUSE: Doctor, what I am putting to you at the time that you regularised these licences, you did not think there were anything wrong with them. So it was not necessary to regularise.

¹⁰**ARBITRATOR JUSTICE MOSENEKE:** You know Counsel, you sound like somebody from KZN.

ADV. LILLA CROUSE: I hope that is not racist Justice.

ARBITRATOR JUSTICE MOSENEKE: No, no it is geographic. I think you are from Port Elizabeth, are you not? But I am just fascinated by regularise and, very well.

DR. SELIBANO: The R and the L okay.

ADV. LILLA CROUSE: What I want to put to you, you were with the Ombud. You knew people had died.

DR. SELIBANO: I knew that.

²⁰**ADV. LILLA CROUSE:** You were with the Ombud on the 23rd of November 2016.

DR. SELIBANO: Yes.

ADV. LILLA CROUSE: Now we know at that stage 94 people had already died.
Just answer.

DR. SELIBANO: In fact Counsel yesterday said it was 108 to be correct. Am I
5correct?

ADV. LILLA CROUSE: Okay, I have done a re-plotting of the Ombud, but lots of
people have died.

DR. SELIBANO: Have passed away, yes.

ADV. LILLA CROUSE: And you knew at least 40 something people had died.

10**DR. SELIBANO:** Yes.

ADV. LILLA CROUSE: When you had the interview.

DR. SELIBANO: Yes.

15**ADV. LILLA CROUSE:** Now my problem with you going to sign documents, you
say it is not a cover up, but you knew people were dying. Why not leave it and say
this is how it was. Why try to change the paperwork now?

DR. SELIBANO: Ja, when you regularise, let me explain. When you regularise,
can I ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: [Vernacular 01:26:39]. Let us not huddle
please, let us just listen and the witness is entitled to provide an answer. Please.

DR. SELIBANO: When you regularise, you sign for something, but that thing must not disappear that you are regularising. That is why you are able to see the licence signed by Dr Manamela and the one that I have signed.

ADV. LILLA CROUSE: Please, I understand that Doctor.

5 **DR. SELIBANO:** So it is not like you are hiding. If you are hiding, the other one would disappear.

ADV. LILLA CROUSE: My question is why do it? You know people have died. Why not say whoever had this wrong will take responsibility for that? Why not take that stance?

10 **DR. SELIBANO:** That is what I was saying to the Justice, that at that time you think you are doing things the right way. At that time.

ADV. LILLA CROUSE: After that date more people died.

DR. SELIBANO: It is sad.

15 **ADV. LILLA CROUSE:** So why waste time with something like that, instead of trying to sort out the deaths that were still in the pipeline, to make sure that no more people die?

DR. SELIBANO: But I am sure you would agree that I did indicate that I was running around, even that time I was running around. If you say I did not do more, I will not argue with you.

20 **ARBITRATOR JUSTICE MOSENEKE:** Counsel?

ADV. LILLA CROUSE: Justice, I have still a way to go. I am very sorry to say.

ARBITRATOR JUSTICE MOSENEKE: You still have a way to go?

ADV. LILLA CROUSE: Yes.

ARBITRATOR JUSTICE MOSENEKE: Okay. That is fine. We are going to, it is one thirty. I think we are going to adjourn for lunch. The usual one hour lunch, and we will be back here at two thirty.

ADV. LILLA CROUSE: Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: But I think it is fair to say that we ought to shoot for, sorry. I think we ought to shoot for finishing this witness today, not so? That applies to all Counsel. We should try and without limiting, if you cannot you 10cannot. But we should keep that in mind, because we have two expert witnesses tomorrow, do we? Advocate Ngutshana?

ADV. PATRICK NGUTSHANA: Justice Moseneke?

ARBITRATOR JUSTICE MOSENEKE: On the program we have two expert witnesses tomorrow, do we not?

15**ADV. PATRICK NGUTSHANA:** Correct. One would touch on the factual evidence relating to the movements of patients back to Life Esidimeni, I think out of NGO's and so. So she will be touching on that as well.

ARBITRATOR JUSTICE MOSENEKE: But that is not an expert witness, is it?

ADV. PATRICK NGUTSHANA: It is factual, it is a factual witness.

20**ARBITRATOR JUSTICE MOSENEKE:** A factual witness.

ADV. PATRICK NGUTSHANA: Yes.

ARBITRATOR JUSTICE MOSENEKE: And Professor Dia, when would she testify?

ADV. PATRICK NGUTSHANA: Professor Dia is available, but I think it will depend on how far we go with this witness Justice Mosenike, but my colleague may address that whether she is still available for tomorrow or not.

ARBITRATOR JUSTICE MOSENEKE: Advocate Hassim?

ADV. ADILA HASSIM: Justice, Professor Dia was due to testify today and we have moved her and I cannot say that we will be ready to go with her tomorrow. We need to re-look at our schedule.

ARBITRATOR JUSTICE MOSENEKE: Okay.

ADV. PATRICK NGUTSHANA: Justice Mosenike, I think there is also a legal aid witness we can deal with tomorrow together with Ina Grobler, so there are two witnesses already available for tomorrow. If Professor Dia is not available tomorrow to assist.

ARBITRATOR JUSTICE MOSENEKE: And when would she testify?

ADV. PATRICK NGUTSHANA: Professor Dia ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: In January?

ADV. PATRICK NGUTSHANA: Yes, in January Justice Mosenike and Professor Grobler, that is the expert on mental health ethics.

ARBITRATOR JUSTICE MOSENEKE: Ja, okay very well. We might have to have a meeting of Counsel at the end of the day today, to help me understand all that.

ADV. PATRICK NGUTSHANA: Correct, it was suggested by my colleagues earlier this morning that we may have to sit down and thrash out our program I think again for next year January. We may have to find I think some few days before the 22nd to sit through these other witnesses. But that will ... [interjects]

ARBITRATOR JUSTICE MOSENEKE: I am sure we are all anxious to bring this to an end, right?

10**ADV. PATRICK NGUTSHANA:** Correct, correct.

ARBITRATOR JUSTICE MOSENEKE: Very well, we are adjourned from now until two thirty.

LIFE ESIDIMENI ARBITRATION

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

SESSION 3

ARBITRATOR JUSTICE MOSENEKE: Thank you very much you maybe seated.

DR. BARNEY SELEBANO: Thank you, Judge.

5**ADV ADILA HASSIM:** Thank you. Justice, is the witness going to be reminded that he's still under oath?

ARBITRATOR JUSTICE MOSENEKE: You're remain under oath to tell the truth.

DR. BARNEY SELEBANO: I know that, thank you Judge.

10**ADV ADILA HASSIM:** Dr. Selebano, it seems to me that you've been in meetings with the programs of closing down Life Esidimeni was discussed. Was it ever discussed that the world organizations should be approached for assistance?

DR. BARNEY SELEBANO: Not in the meetings where I was I don't recall that discussion.

ADV ADILA HASSIM: Did anybody think of approaching other countries where they tried this type of deindustrialization?

DR. BARNEY SELEBANO: Not that I recall of counsellor.

ADV ADILA HASSIM: Did you ever try to ensure that the mental health review board played an independent function in all of this?

DR. BARNEY SELEBANO: Well they reported to the MEC to government structure for the MEC so--

ADV ADILA HASSIM: So you never inquired whether they're independent and

whether they are monitoring?

DR. BARNEY SELEBANO: Because they report directly to the MEC, I didn't do that.

ADV ADILA HASSIM: Yeah, yeah, I get that.

5**DR. BARNEY SELEBANO:** I personally didn't do it.

ADV ADILA HASSIM: You didn't do it, thank you. Did you know that there's still 59 patients missing in all of this that were discharged.

DR. BARNEY SELEBANO: I adhere to your concern.

ADV ADILA HASSIM: Yes. This is terrible don't you agree?

10**DR. BARNEY SELEBANO:** Yes, despicable.

ADV ADILA HASSIM: Yes. Can I just ask you that (Inaudible) 1:47 really the last point.

ARBITRATOR JUSTICE MOSENEKE: Have you put up any project to find these patients?

15**DR. BARNEY SELEBANO:** Judge I'm out of the system now, I don't know what the department is doing now.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

ADV ADILA HASSIM: Thank you Justice. I want to speak to you about the (inaudible) 2:08 of the recommendation. You are well aware that the (inaudible) 202:10 recommended disciplinary steps against you?

DR. BARNEY SELEBANO: I'm aware.

ADV ADILA HASSIM: And the responding was that it was gross misconduct and or incompetence, you are aware of that?

DR. BARNEY SELEBANO: I'm aware of that.

ADV ADILA HASSIM: It's recommendation three of this report.

DR. BARNEY SELEBANO: Yes, I'm aware of that.

ADV ADILA HASSIM: Now, we know you that don't agree with that because 5that's why you took the process on appeal. But you also know that you made this recommendation no doubt because you were part of this sole process and you were the captain of the ship, isn't that correct?

DR. BARNEY SELEBANO: That is correct.

ADV ADILA HASSIM: And you were apart of many meetings and we've gone 10through this and I'm not going to go through this again, which objection was raised. Is that so?

DR. BARNEY SELEBANO: That is so with the concern yes.

ADV ADILA HASSIM: We know now about the the licenses which was issued without applying your mind. For those reasons the (inaudible)3:15 made this 15recommendation but if we look to misconduct. You agree that it was misconduct not to listen to the vital family members and the stockholders, don't you?

DR. BARNEY SELEBANO: No I don't agree with that. At that time, no I don't agree with that.

ADV ADILA HASSIM: And at this stage?

20**DR. BARNEY SELEBANO:** No, I don't agree.

ADV ADILA HASSIM: You don't -- that wasn't misconduct?

DR. BARNEY SELEBANO: No.

ADV ADILA HASSIM: And meetings where you shared and objections was

raised you don't see that as misconduct either?

DR. BARNEY SELEBANO: Meetings where discussions why would there be a misconduct I don't know.

ADV ADILA HASSIM: In the second court case in March where the court was issued with wrong information. Do you see that as misconduct?

DR. BARNEY SELEBANO: At that time, no.

ADV ADILA HASSIM: And now?

DR. BARNEY SELEBANO: The consequences of that are no.

ADV ADILA HASSIM: The consequences is if the department didn't lie to the court, none of this would have happened.

DR. BARNEY SELEBANO: I hear your concern.

ADV ADILA HASSIM: So do you regard that as misconduct?

DR. BARNEY SELEBANO: I would say that it is regrettable, counsel.

ADV ADILA HASSIM: You are not answering my question doctor please,
15would that be misconduct?

DR. BARNEY SELEBANO: No.

ADV ADILA HASSIM: See I'm going to argue that was the start of everything that went wrong and the department, including you, didn't uphold the constitutional obligation at that stage. And that the department should pay the cost, the punitive cost to that court case. What do you say to that?

DR. BARNEY SELEBANO: I would agree with you that it was the start, but I don't know how the issues of punitive cost work and I think--

ADV ADILA HASSIM: Is there any reason. Sorry doctor, please continue.

DR. BARNEY SELEBANO: I was saying issues of punitive costs how it works,

Um --

ADV ADILA HASSIM: If you think there's any reason why you shouldn't pay money in relation to that court case?

5**DR. BARNEY SELEBANO:** You mean the department?

ADV ADILA HASSIM: No you personally.

DR. BARNEY SELEBANO: But I was not acting in my personal capacities in it.

ADV ADILA HASSIM: But you were lying to the court.

DR. BARNEY SELEBANO: But I was not acting in my personal capacity.

10**ADV ADILA HASSIM:** So when you are lying to the court, no blame was comes to you?

DR. BARNEY SELEBANO: But I was not acting in my personal capacity.

ADV ADILA HASSIM: You see when people lie to the Courts, courts make the wrong decisions, isn't that so?

15**DR. BARNEY SELEBANO:** Maybe let the court then decide on that. But I was not working in my personal capacity.

ADV ADILA HASSIM: You also as HOD, it seems to us it seems to me I would argue that you allow the MEC take over a role that you should have played. Isn't that misconduct?

20**DR. BARNEY SELEBANO:** No. I didn't allow the MEC,. I was still the HOD.

There were instances where lines were crossed but I didn't allow it.

ADV ADILA HASSIM: And you didn't do the overseeing that you are supposed to do as an HOD? What do you say?

DR. BARNEY SELEBANO: For the whole department I was doing that, for the whole department.

ADV ADILA HASSIM: So my, what I put to you, it's either misconduct or you didn't care about what was happening.

5**DR. BARNEY SELEBANO:** It's unfortunate that you are saying that but it is not true.

ADV ADILA HASSIM: Well, if you don't want to agree that it is misconduct then may be the (inaudible)6:54 circulate of being incompetent is perhaps true what to you say to that?

10**DR. BARNEY SELEBANO:** I don't agree with that also. I've run the department very well.

ADV ADILA HASSIM: You didn't know about the deaths of the mental health care users, isn't that so?

15**ARBITRATOR JUSTICE MOSENEKE:** Also the little problem, the inquiry about misconduct. I think we should deal with the elements of the disputes about recklessness and negligence and incompetence, but misconduct is something that would be determined within another hearing or so.

ADV ADILA HASSIM: I'm just referring to the (inaudible)7:32 reports' at this stage but I hear what Justice is saying.

20**ARBITRATOR JUSTICE MOSENEKE:** You could turn to another tribunal, another forerun but for now I'm interested in this line of questions on recklessness and on negligence and on unlawfulness. And understanding that we would use for habeas corpus.

ADV ADILA HASSIM: Yes. And people starved and you didn't know about that?

DR. BARNEY SELEBANO: I wouldn't have known, honestly. I think I've said that before, I wouldn't have known.

5ADV ADILA HASSIM: And you issued licenses without applying your mind?

DR. BARNEY SELEBANO: I signed it and I've considered to it even yesterday.

ADV ADILA HASSIM: Was the system not just too big for you to handle?

DR. BARNEY SELEBANO: The system is big, but to say to handle is another thing. I mean there were other programs that happened and that were running well. I mean we're providing service, health services throughout the programs.

ADV ADILA HASSIM: You said that you have difficulty standing up to the MEC, do you think that a reasonable decision makers should have difficulty with that?

DR. BARNEY SELEBANO: I don't know what you mean reasonable decision maker.

ADV ADILA HASSIM: A person --

ARBITRATOR JUSTICE MOSENEKE: Competent decision maker who knows her, his task and executes the task in the way the law requires.

DR. BARNEY SELEBANO: But I hear you judge but except different with somebody may not necessarily or not different with somebody may not necessarily show --

ARBITRATOR JUSTICE MOSENEKE: Let me try and help you where counsel is going.

DR. BARNEY SELEBANO: Okay.

ARBITRATOR JUSTICE MOSENEKE: You see have you ever taken time to read the exert that regulates your powers?

DR. BARNEY SELEBANO: Yes, sir.

5**ARBITRATOR JUSTICE MOSENEKE:** You have?

DR. BARNEY SELEBANO: Yes, I have.

ARBITRATOR JUSTICE MOSENEKE: Which act's have you studied?

DR. BARNEY SELEBANO: You mean like. I'm unable to quote the regulation this and this and that. I'm unable to-- the act that I would know is the national 10health act but to say the details of the act, it's slightly beyond.

ARBITRATOR JUSTICE MOSENEKE: You as an HOD what law that regulates your conduct and your duties which laws sets out your powers.

DR. BARNEY SELEBANO: It's an epiphany.

ARBITRATOR JUSTICE MOSENEKE: I beg your pardon?

15**DR. BARNEY SELEBANO:** (Inaudible) 10:07 management act that is the epiphany.

ARBITRATOR JUSTICE MOSENEKE: Yes. And you see the point is the inquiry is whether you acted in a way that the law requires. You mentioned just one, you are bound by the public service act. Public administration act.

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

ARBITRATOR JUSTICE MOSENEKE: You are bound by the mental health care act. You are bound by at least those I think there are 6 or 7 others.

DR. BARNEY SELEBANO: I understand that.

ARBITRATOR JUSTICE MOSENEKE: But the ones that are relevant for these purposes, those are the laws. So what counsel is asking is do you think you acted as a reasonable administrator would act and you asked what reasonable means? And I said is one that acts diligently, efficiently, honestly and consistently worth legal prescripts. Do you think that Life Esidimeni, marathon life project, you were that kind of administrator?

DR. BARNEY SELEBANO: At that time it was being conceived, I was. At that time and if you say now when we look at everything it went wrong--

ARBITRATOR JUSTICE MOSENEKE: But this would have subjective thing 10doctor. Let's try again, what was in your mind between your ears. It is when we objectively look at you did. Is that what a competent lawfully administrator should have done?

DR. BARNEY SELEBANO: At that time yes.

ARBITRATOR JUSTICE MOSENEKE: Objectively.

15**DR. BARNEY SELEBANO:** Objectively speaking at that time we are faced with these decisions, you make this decision at that time. At that time. But I did indicate judge that hindsight is something different and knowing that if you move from A to B what will happen? I wouldn't have known. I'm not walking away from it. But --

20**ARBITRATOR JUSTICE MOSENEKE:** But sometimes I get a sense you don't quite understand the obligations that you bear. You have to make sure that patients get quality health care.

DR. BARNEY SELEBANO: That's right.

ARBITRATOR JUSTICE MOSENEKE: That one, many of the laws in our country require that from you.

DR. BARNEY SELEBANO: That's correct they do and even now they do patients get that.

5ARBITRATOR JUSTICE MOSENEKE: And you, allow for instance an example, licenses to be signed in an unlawful circumstances. And that in turn entitles the holders of the licenses; one to be paid by the state, public funds. Two; to keep patients which otherwise would have been looked after by the state. Three; to provide medication, which we know here they did a hazardous job and a collection of all those things lead to deaths. Would you ever stand with a straight face and say that is what a responsible HOD would have done in similar circumstances; do you understand the inquiry? Sometimes struggle, I think.

DR. BARNEY SELEBANO: Yes. A judge will do also, I'm just thinking that patients in hospitals and all our institutions who are being taken care who are being taken care of judge, and I could sit and it may not be something polite to say but the whole host of patients inside human department of health would have been taken care of. They were serving them food, they were getting medication, they were being clothed. All the operations were going on. I agree that the project went wrong Judge.

ARBITRATOR JUSTICE MOSENEKE: How many people were at Life Esidimeni when you shut it down?

DR. BARNEY SELEBANO: Approximately two thousand.

ARBITRATOR JUSTICE MOSENEKE: Those effected by the move were around 1500?

DR. BARNEY SELEBANO: One thousand 3 hundred and something.

ARBITRATOR JUSTICE MOSENEKE: 1380. Now let's talk about those 5patients. You remember the debate with Advocate Hassim about individualizing the right of access to health care. Now you got those people, do you think you acted like a reasonable HOD? You protected their interest, you protected 95 of the other interest just to get boss well done/ but these 1350 people, did you afford the right that the law requires you to afford them, that is the inquiry. Is it 10an assimilation of your over all competence. My job is to look at whether you afforded them the kind of care that the law imposes on you.

DR. BARNEY SELEBANO: I hear you judge. At that time, you were to meet with me while I was sitting in an office and ask me are you working correctly? Yes, I'm working correctly, Judge.

15**ARBITRATOR JUSTICE MOSENEKE:** No, no. You don't understand. That is subjective view. It was sitting in between your ears. Subjectively I'm doing the right thing, but if you go look objectively is when somebody independent looks and says, oh how could they send people to Precious Angle, would you?

20**DR. BARNEY SELEBANO:** But Judge, the person has objectively has hindsight now. Hindsight.

ARBITRATOR JUSTICE MOSENEKE: What hindsight?

DR. BARNEY SELEBANO: We now know what happened.

ARBITRATOR JUSTICE MOSENEKE: No, no. You could have got an off of

your desk and went to Precious Angels to go and look. You would have known what place it is. You would have known they didn't get the (Inaudible)16:40 they don't have money of the months of the four months. You would have known there are no care givers there. There are no psychiatric nurses. There were no occupational therapists. You would have known that had you as a good administrator, got out of your office or got some of your troops to go and look.

DR. BARNEY SELEBANO: The troops did that. The troops did that and said it is fine. Why would I then not trust the troops?

ARBITRATOR JUSTICE MOSENEKE: Did you know that they did that?

10**DR. BARNEY SELEBANO:** The troops said we have done that.

ARBITRATOR JUSTICE MOSENEKE: Do you know?

DR. BARNEY SELEBANO: I don't know.

ARBITRATOR JUSTICE MOSENEKE: But do you know did that they did that?

DR. BARNEY SELEBANO: The troops said they have done that.

15**ARBITRATOR JUSTICE MOSENEKE:** It startles me from time to time, that sometimes I think we're almost on the same wave of length and suddenly you take ten miles back.

DR. BARNEY SELEBANO: We are Judge. I'm also trained to go through the motions that said you are sitting with colleagues with managers, and I issue a 20spoke of issues of trust and that is how work situations operate. You trust your colleagues. You respect your colleagues as a leader. They respect you in turn, if they give you the report and said well done --

ARBITRATOR JUSTICE MOSENEKE: When you say I take responsibility and

I want to be an accountable leader what do you mean?

DR. BARNEY SELEBANO: When I said I take accountability, it happened under my watch, whether I went to check or didn't check. Whether I'm not operational which by nature no HOD is operational, any way in the country. No SHOD is operational. Whether I was not but when it happened it was under my watch. I cannot suddenly-- as an example, when we got an unqualified audit judge, it is the managers that work very hard for that. But the accumulates were received by me on that behalf. It was a good thing why would it then happen when things go awry I suddenly say no --

10 **ARBITRATOR JUSTICE MOSENEKE:** No nobody said that. Did you check when something has gone wrong, did you use your best endeavors to prevent it, did you?

DR. BARNEY SELEBANO: When, after post facto now, after everything--

ARBITRATOR JUSTICE MOSENEKE: No post facto about it. In Life 15 Esidimeni when you go and look at what you did, did you employ your best endeavors to stop this carnage and this tragedy?

DR. BARNEY SELEBANO: I did Judge. If you recall that I ran around the programs. I closed some of the NGOs. If I could have run faster I would have done it. If I didn't do much more than what I have done, I beg for forgiveness but 20 I tried everything in my power.

ARBITRATOR JUSTICE MOSENEKE: There's a word for that. I think it is receivism or something like. I think we can continue counsel.

ADV ADILA HASSIM: Thank you. Dr. Selebano, I'm very nearly finished I just

want to say to you a reasonable decision maker especially one with a medical background would have realized that this program is not going to work. What do you say to that?

DR. BARNEY SELEBANO: At that time, no I don't agree with you.

5**ADV ADILA HASSIM:** We're talking, the justice tried to explain to you subjective and objective.

DR. BARNEY SELEBANO: Yeah, but you know I come out wrong and it really bothers me because I'm trying to --

ADV ADILA HASSIM: I also want to. Sorry doctor.

10**DR. BARNEY SELEBANO:** Go on counsel sorry about that.

ADV ADILA HASSIM: You, a reasonable decision maker especially one with medical background, would have realized that the NGOs in the hospitals were not ready to receives these patients. What do you say to that?

15**DR. BARNEY SELEBANO:** Counsel, you know I struggle to bring you to understand at that time where was the department, where was the management team and everything --

ADV ADILA HASSIM: But now looking back you agree with that?

DR. BARNEY SELEBANO: Looking back, looking back.

ADV ADILA HASSIM: Okay.

20**ARBITRATOR JUSTICE MOSENEKE:** Just another example. I'm sorry counsel to interrupt you. A reasonable HOD would have had a tracking system of a project plan, isn't it so?

DR. BARNEY SELEBANO: Now I know that yes. I know that. It would have

helped to have a proper tracking system it would have helped.

ARBITRATOR JUSTICE MOSENEKE: Having a tracking system you would have known and heard about every single death, at least, within 24 or 48 hours of it?

5**DR. BARNEY SELEBANO:** In time.

ARBITRATOR JUSTICE MOSENEKE: Isn't it so?

DR. BARNEY SELEBANO: It's so.

ARBITRATOR JUSTICE MOSENEKE: And as the bodies were piling up, it was a track system, this diligent HOD would have said stop the world I want to 10get off isn't it?

DR. BARNEY SELEBANO: Correct with the proper tracking system.

ARBITRATOR JUSTICE MOSENEKE: Did you have one?

DR. BARNEY SELEBANO: We didn't have a tracking system.

ARBITRATOR JUSTICE MOSENEKE: Do you think that you are that 15competent and diligent HOD as Life Esidimeni? That's the point that we're trying to make. One moment we seem to be agreeing and the next moment you're retreating to your old, old ways.

DR. BARNEY SELEBANO: No judge, no judge. The issue is that you take the past and then bring it into the future and I must make a decision of the past as if 20it is in the present. The if part of it now. If we had a tracking system we would have been doing it.

ARBITRATOR JUSTICE MOSENEKE: Why didn't you have one?

DR. BARNEY SELEBANO: We don't have even now I'm sure.

ARBITRATOR JUSTICE MOSENEKE: Why didn't you have it? How big is your budget?

DR. BARNEY SELEBANO: At that time, I think it was 36.8.

ARBITRATOR JUSTICE MOSENEKE: Billion?

DR. BARNEY SELEBANO: Billion.

ARBITRATOR JUSTICE MOSENEKE: 36.8 thousand million rand.

DR. BARNEY SELEBANO: No, no. 36.8 billion rands, yes.

ARBITRATOR JUSTICE MOSENEKE: Yes, billion is a thousand million.

DR. BARNEY SELEBANO: Oh okay, yes.

10**ARBITRATOR JUSTICE MOSENEKE:** Do we agree doctor?

DR. BARNEY SELEBANO: Yes, 36 billion. Almost 58 to 60 percent of it taking by compensation of employees.

ARBITRATOR JUSTICE MOSENEKE: I see that. You pay employees well.

They take 60 percent of the budget.

15**DR. BARNEY SELEBANO:** Almost and we are left.

ARBITRATOR JUSTICE MOSENEKE: Just before you shutdown Life Esidimeni did you train any people?

DR. BARNEY SELEBANO: In government, no.

ARBITRATOR JUSTICE MOSENEKE: Did you reduce any elements of 20government employees?

DR. BARNEY SELEBANO: Elements?

ARBITRATOR JUSTICE MOSENEKE: Yes. Did you cut down benefits?

DR. BARNEY SELEBANO: Actually labor would never have it.

ARBITRATOR JUSTICE MOSENEKE: Labor wouldn't allow it. Okay let's go to management. Did you reduce the car allowances?

DR. BARNEY SELEBANO: No we even don't get car allowances.

ARBITRATOR JUSTICE MOSENEKE: And the question screams why target Life Esidimeni? Helpless people that can end their own money that have no medical aids of their known, who under evidence were needy South Africans.

DR. BARNEY SELEBANO: I hear you judge. I hear you.

ARBITRATOR JUSTICE MOSENEKE: And most of their families were working class people.

10**DR. BARNEY SELEBANO:** Some of them were not even employed per month, I hear you.

ARBITRATOR JUSTICE MOSENEKE: But still, 36 billion why do you target the most vulnerable part of the mental health care delivery?

DR. BARNEY SELEBANO: But Judge would you agree with that also with that 1536 billion --

ARBITRATOR JUSTICE MOSENEKE: I don't have to agree with anything, just tell me why they were a legitimate target of your --

DR. BARNEY SELEBANO: No, they were not a target judge. Please, Justice they were not a target. Patients can never be a target, never it can't be. You 20can't target most vulnerable mothers and children, elderly mental patients.

Those that are in our hospitals.

ARBITRATOR JUSTICE MOSENEKE: Your tracking tell you where was this patient was taken to. Where, physically, geographically.

DR. BARNEY SELEBANO: The original tracking, yes. It was saying this patient is going to this NGO, this NGO but you know that these were actually not that way. It was internally things went wrong, that we know. We know and I'm not arguing against that judge. I'm not arguing against that.

5ARBITRATOR JUSTICE MOSENEKE: With all of this evidence you know patients whose family that were taken to (inaudible)25:53 some were taken from here to (inaudible)25:59 you saw that, you know that.

DR. BARNEY SELEBANO: I know that.

ARBITRATOR JUSTICE MOSENEKE: And you say all of these are the deeds 10of a good HOD?

DR. BARNEY SELEBANO: I'm not saying that judge.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

ADV ADILA HASSIM: Thank you Justice. I also want to put it to you that a reasonable decision maker especially with medical background as yourself 15would have realized that several level agreements have to be in place and certain payments had to be made to NGOs, you agree with that?

DR. BARNEY SELEBANO: Let me see if I understand your question.

ADV ADILA HASSIM: If you had a tracking system, you would have realized the service level agreements were not signed.

20**DR. BARNEY SELEBANO:** Service level agreements are not signed, I know that yes.

ADV ADILA HASSIM: Yes. If you had a tracking system you would have realized?

DR. BARNEY SELEBANO: If we had a tracking system, yes.

ADV ADILA HASSIM: And if you had realized that you would have also known that people, that NGOs are not being paid, is that not so?

DR. BARNEY SELEBANO: Yes.

5 ADV ADILA HASSIM: And if you realize that the NGOs are not getting paid, you would have realized that people are going to die because there's not enough money?

DR. BARNEY SELEBANO: Except that I only knew--

ADV ADILA HASSIM: Yes but if you had a tracking system, you would have 10known?

DR. BARNEY SELEBANO: I would have known long in time, yes.

ADV ADILA HASSIM: Yes, and a reasonable decision maker would have had that in place?

DR. BARNEY SELEBANO: Tracking system, yes. We didn't have a tracking 15system now alright.

ARBITRATOR JUSTICE MOSENEKE: And the rest of the billions, how do you track whether they are used to properly, how the money outcomes? Is this quite a serious thing.

DR. BARNEY SELEBANO: It is, there are mechanisms inside of government 20--for instance seller's bill of composition of how you do it. It is not like the 36 billion is inside the department of health. No it's not. It's with treasury. So the trick mechanism of payments of salaries and supplies and all that, we do the paper work and it is a financial department and they do the paper work and let's

say the payment framework. Then they give it to treasury. Then they --

ARBITRATOR JUSTICE MOSENEKE: In the financial years 2014 to 2015, 2015 to 2016, were there any reported incidents of financial corruption in your department?

5**DR. BARNEY SELEBANO:** Corruption?

ARBITRATOR JUSTICE MOSENEKE: Yes. Unaccounted expenditure, fruitless expenditure?

DR. BARNEY SELEBANO: And wasteful expenditure, yes. Okay.

ARBITRATOR JUSTICE MOSENEKE: I beg your pardon?

10**DR. BARNEY SELEBANO:** Are you saying fruitless and wasteful expenditure?

ARBITRATOR JUSTICE MOSENEKE: Yes. Fruitful and wasteful expenditure.

DR. BARNEY SELEBANO: When I came into the department, I am proud to say that wasteful expenditure 15, 16 went to 0.

ARBITRATOR JUSTICE MOSENEKE: What is 15, 16?

15**DR. BARNEY SELEBANO:** That's the financial.

ARBITRATOR JUSTICE MOSENEKE: Yes. Before you got in what was the number?

DR. BARNEY SELEBANO: I know that it was not high. But I just wanted to just explain that it very it makes me proud that I got it at 0 wasteful and --

20**ARBITRATOR JUSTICE MOSENEKE:** For which year?

DR. BARNEY SELEBANO: 15, 16. A regular expenditure capriciously went down. And HG accepted that is why they were willing to give us an unqualified quote and after almost 8 years--

ARBITRATOR JUSTICE MOSENEKE: Of qualified audits.

DR. BARNEY SELEBANO: Of qualified audits. Yes. And the regular that was high was the one that we inherited which we're clearing up with parliament.

ARBITRATOR JUSTICE MOSENEKE: You know evidence you said the department was indebted virtually to everybody. What do you mean by that?

DR. BARNEY SELEBANO: I mean we had accruals. Accruals it means we've spent more than that we're able to pay. That is what it means.

ARBITRATOR JUSTICE MOSENEKE: Spent to whom?

DR. BARNEY SELEBANO: Spent to patients. Let me explain. What happens, 10 there's a discussion of DPSA. Just as an example, but it's a real example the discussion label sits public center sits with the DPSA, they agree on a salary structure. That increase we're going shut it we don't even ask sorry we don't have the money. All we know is that the following cycle we have to shut the inclement and that is how sometimes not always, you find that the salary bill that 15 comes stretched but there's one thing that we never ever do not to pay employees every time. Employees are paid that month. There are instances where I think December 14th --

ARBITRATOR JUSTICE MOSENEKE: And patients, are they every time covered?

20 **DR. BARNEY SELEBANO:** We make sure all of our patients across the board must have a meal. They must have a meal. There's no way that the patient may not have a meal in our institutions. We make sure that under very difficult conditions that doctors have the, sometimes they battle themselves the

doctors and nurses they battle with the little that they have. They battle continuously. Why? Because our pie still staying the time. The inclement is just more often than not inflation but the rest we stuck but you look at what I was trying to say yesterday, the health inflation is almost now at 10%. So we battle 5with very very limited resources.

ARBITRATOR JUSTICE MOSENEKE: So APS proceeding you your accounts are qualified?

DR. BARNEY SELEBANO: They were qualified.

ARBITRATOR JUSTICE MOSENEKE: And there were high numbers of--

10**DR. BARNEY SELEBANO:** Debtors.

ARBITRATOR JUSTICE MOSENEKE: Of debtors.

DR. BARNEY SELEBANO: Yeah.

ARBITRATOR JUSTICE MOSENEKE: And you said the one year you were there you corrected it?

15**DR. BARNEY SELEBANO:** The first 14, 15 we battled, we almost got it and still had issues with the irregular and we then worked very hard for 15, 16.

ARBITRATOR JUSTICE MOSENEKE: You see in all of that I'm trying to understand my self still the desperation around Life Esidimeni. Signing of a contract that nothing that we know now was ready at NGOs. What was that 20desperation? You got the accounts under control, you reduced wasteful expenditure, everything seems to be okay and then you bomb out this agreement that involves mental health care users. You the person that should be telling us what was that pressure? Why did it have to happen?

DR. BARNEY SELEBANO: You correctly said Justice, then we pumped up you know I mean we were working so hard to get the systems going well. Like reduce the wasteful expenditure. Meaning no money goes where it is not supposed to go. And --

5**ARBITRATOR JUSTICE MOSENEKE:** And you're still sent these poor patients packing.

DR. BARNEY SELEBANO: But we lose.

ARBITRATOR JUSTICE MOSENEKE: But what, it still remains the mystery. You are the one very senior. You should be letting us into the driver. This
10obstinate to drive, to do it. Did you know now?

DR. BARNEY SELEBANO: Obstinate.

ARBITRATOR JUSTICE MOSENEKE: Obstinate, stubborn.

DR. BARNEY SELEBANO: Yes. I'm thinking of the stubborn drive. Justice in our quest at that time, to say how this little pie this little cake how do you
15distribute it across the system? I agree with you, we made mistakes. We made mistakes. At that time we thought you know what we're doing to do this, we're going to do this, we're going to do that. It is regrettable and I said it a hundred times and I'll say it for as long as I can always say it.

ARBITRATOR JUSTICE MOSENEKE: My last question I'm going say counsel
20for the last time, did you and your department care for these patients? Did you really care?

DR. BARNEY SELEBANO: We cared Um, Justice. We cared, we cared Justice. Is the car business to do compassion we cared. It wrong Justice but

we cared, please believe me. Please, if anything, believe me we cared.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

ADV ADILA HASSIM: Thank you Justice Mosenike. Dr. Selebano, I'm going argue that the (inaudible)35:59 was correct. That you didn't act like a reasonable decision maker should have acted.

DR. BARNEY SELEBANO: I'll say to your opinion counsel --

ADV ADILA HASSIM: You are not in agreement with that?

DR. BARNEY SELEBANO: I'm not in agreement with that.

ADV ADILA HASSIM: But you say you're responsible. I'm not sure what you 10are saying. Are you saying you would take responsibility?

DR. BARNEY SELEBANO: I'll take accountability--

ADV ADILA HASSIM: You take accountability.

DR. BARNEY SELEBANO: When this thing happened, it happened under my watch.

15**ADV ADILA HASSIM:** Okay you take accountability. What does that mean? You realize you should vacate your position? How do you take accountability? How does one take accountability?

DR. BARNEY SELEBANO: I think I would want to ventilate that in a disciplinary hearing. That is way I would want to ventilate-

20**ADV ADILA HASSIM:** Okay. It is still a hearing that is coming up? Is that what you are saying?

DR. BARNEY SELEBANO: Actually that is custom to when a citizen--

ADV ADILA HASSIM: I'm just trying to understand doctor. I'm definitely not

trying to be difficult. I'm just trying to understand what you say when you take accountability. Is there sanctions to that accountability that you're taking?

DR. BARNEY SELEBANO: That's what I'm saying maybe let-- I'm facing a disciplinary hearing. I'll ventilate it, it will be ventilated that day.

5ADV ADILA HASSIM: You think you don't have to fall on your sword or leave it to somebody else to say whether you did wrong or not. Is that what you are saying?

DR. BARNEY SELEBANO: You are putting words into my mouth. I'm just saying let the disciplinary-- it's a separate process, it is only fair you know that 10counsel. It is only fair that the disciplinary hearing makes the final one.

ADV ADILA HASSIM: But you are not accepting responsibility, am I correct? You are accepting accountability but not responsibility?

DR. BARNEY SELEBANO: The charges on me counsel let me rather--

ADV ADILA HASSIM: Yeah. I'm just trying to understand doctor are you 15saying there's a difference between accountability and responsibility? Is that what you are saying because I'm just trying to establish what you keep saying in the box now.

DR. BARNEY SELEBANO: I'm picking up the word accountability from being an accounting officer. I'm picking it up from there. That's what I'm saying.

20ARBITRATOR JUSTICE MOSENEKE: I think what counsel is asking with all of this tragedy and consequences of what we know now, how should you be held accountable?

DR. BARNEY SELEBANO: I agree. That is why there's a disciplinary process

judge and I am saying it is where it would be ventilated and charges have been put against me and it is only fair that it would be there where sanction can be decided.

ARBITRATOR JUSTICE MOSENEKE: The advocate went further to say, are you going to fall on your sword are you going to resign in recognition of what has gone wrong? We know the MEC has resigned. Now are you also going to resign?

DR. BARNEY SELEBANO: I will not run away from disciplinary charges. I think it is only fair that I face the disciplinary hearing, it is only fair. If I resign now then the charges are no longer there but it is only fair again. It is only fair that I go for disciplinary hearing.

ARBITRATOR JUSTICE MOSENEKE: What for do you think your accountability could take, which you have publically acknowledged? I think counsel is trying to understand what should be make of your saying I assume the responsibility I was the leader? What should be the consequences of assuming responsibility?

DR. BARNEY SELEBANO: Yeah. But now judge that you are saying I must even prejudge what the disciplinary hearing is going to say.

ARBITRATOR JUSTICE MOSENEKE: No I don't care about the discipline hearing at all. I'm asking what do you mean when you say you accept accountability?

DR. BARNEY SELEBANO: I'm saying. I derive from the fact that as the accounting officer, if anything goes wrong under your watch, whether you knew

about it, whether you are not active involved in it, it doesn't matter. You must stand up and say I take accountability for this and I am willing that if there is a process for instance disciplinary hearing, to face the disciplinary hearing. I will not stand up and say no let it be somebody else, I was not there. You didn't give me--

ARBITRATOR JUSTICE MOSENEKE: But you do not follow the example of the MEC and fall on your sword. In other words acknowledge that something has gone wrong under your watch.

DR. BARNEY SELEBANO: She doesn't have -- I don't know but politicians do 10they go through disciplinary hearing I don't know that, I don't know that.

ARBITRATOR JUSTICE MOSENEKE: Okay let's talk about you for a while. Would you, how would you acknowledge that things have gone wrong under your watch?

DR. BARNEY SELEBANO: I'm going to acknowledge if given a chance with 15respect of how the families feel. I would stand up and say I'm sorry I'm sorry I'm sorry I'm sorry. I'm going to stand up.

ARBITRATOR JUSTICE MOSENEKE: Would you claim your job back after this process is done?

DR. BARNEY SELEBANO: After the disciplinary hearing?

20**ARBITRATOR JUSTICE MOSENEKE:** Including that yes, do you feel you must get your job back?

DR. BARNEY SELEBANO: I don't know. I don't know judge I don't know how to answer that one. I think it is a difficult question. It is the most difficult

question ever. It is not about a job. It is about more things what my family is going through. The families are going through pain.

ARBITRATOR JUSTICE MOSENEKE: Sure, counsel.

ADV ADILA HASSIM: Thank you. I'm going to argue that you have shown no remorse for what went wrong in the witness box.

DR. BARNEY SELEBANO: I differ so much with you.

ADV ADILA HASSIM: If you are also eager to come and show what went wrong why was it so difficult to get you here to come and testify, if you have nothing to hide?

10 **DR. BARNEY SELEBANO:** Can I please can we not discuss that now, because you are the lawyer and you know the Constitution better than I do. Also the Constitution has confessed some rights to me as a citizen.

ADV ADILA HASSIM: Yes. I'm not denying that doctor, doctor I don't deny that you have rights but somebody that I think is so sorry that have happened would 15 run to this arbitration to say this is what I have done wrong, please help. And you haven't done that. Why is that?

DR. BARNEY SELEBANO: You are, you are, with respect to you judge, please forgive me. I think counsel you are openly infringing on my constitutional rights and it is not right, it is not fair.

20 **ARBITRATOR JUSTICE MOSENEKE:** Let us hear the question again counsel.

ADV ADILA HASSIM: My is question judge --

DR. BARNEY SELEBANO: Why didn't I go to arbitration.

ADV ADILA HASSIM: I'm going argue that this witness hasn't show any remorse and he doesn't agree with that. And I say if a person that was sorry of what happened, they would have come running to this arbitration to tell their side of the story.

5**ARBITRATOR JUSTICE MOSENEKE:** What counsel is doing now, is what we do often in law. At the end of the hearing, she's going argue that your say so that you are remorseful was not a genuine one. You are entitled to say no it is or not.

DR. BARNEY SELEBANO: She has missed it entirely.

10**ARBITRATOR JUSTICE MOSENEKE:** So your answer is your remorse is genuine and your accountability is genuine.

DR. BARNEY SELEBANO: The pain. The patients family may not believe it-- not well --

ARBITRATOR JUSTICE MOSENEKE: Let's not, let's not heckle please.

15**DR. BARNEY SELEBANO:** Judge Mosenke, when these things happen under your watch when you want all that you ever wanted in your life. I worked for private, I had my own private practice. I worked I don't want to mention one of the big companies. I worked for the South African medical association, I chose to come to the state and worked as the CO at (inaudible)45:29. It is all 20sometimes you want to say this country has carried me this far, I have a duty to pay back. I have a duty to pay back. Now you will not believe it but I give you a hint into the window that many my youth this is what I always wanted to do to care for our own. If counsel thinks that I'm not remorseful, the pain I carry is a

blot to me. It's a blot to me that whatever happened it will never ever go away never. These are things that you kill for the rest of your life. It will never go away. It doesn't matter what happens, it doesn't matter. It will never ever go away. You don't want to this type of things to happen while you are in charge, 5you don't want that.

ARBITRATOR JUSTICE MOSENEKE: One way of closure doctor is to look into the mirror and accept what one sees. In other words to confront the truth, is it not?

DR. BARNEY SELEBANO: It is true.

10**ARBITRATOR JUSTICE MOSENEKE:** It is one way of easing pain after making mistakes, or errors and errors that hurt other people but lead to the death of their loved ones. Isn't it fair, is it much to ask that you the leader, you the captain acknowledge that things went wrong under your watch--

DR. BARNEY SELEBANO: Terribly wrong.

15**ARBITRATOR JUSTICE MOSENEKE:** And that you made mistakes on the course of implementing this project? I don't know how you could escape that.

DR. BARNEY SELEBANO: This much I accepted that.

ARBITRATOR JUSTICE MOSENEKE: And you'll have an opportunity later to say more I hope but I think it is a bare minimum of remorse is to acknowledge 20what went wrong. Painful as it particularly it does hurt any other people.

Counsel any further points?

ADV ADILA HASSIM: I have no further questions thank you.

ARBITRATOR JUSTICE MOSENEKE: No further questions. Very well. Thank

you ever so much counsel for the intense and dedicated work, thank you.

ADV DIRK GROENEWOLD: Thank you Justice.

5**ARBITRATOR JUSTICE MOSENEKE:** Yes I see you can't wait.

ADV DIRK GROENEWOLD: Ha ha the law unfortunately the place is almost empty.

ARBITRATOR JUSTICE MOSENEKE: Yeah.

ADV DIRK GROENEWOLD: Justice I don't think we'll be long. Dr. Selebano, 10my name is Dirk Groenewold and I represent four families that has lost loved ones as specifically at CCRC.

DR. BARNEY SELEBANO: Thank you thank you, counsel. You said Dirk?

ADV DIRK GROENEWOLD: Yes.

DR. BARNEY SELEBANO: Thank you counsel.

15**ADV DIRK GROENEWOLD:** Dr. Selebano, I would like to start off my colleague has referred to you as LL 114. That's your affidavit in respect to the appeal of the (inaudible)49:00 report. I would like us to start there. If someone can take you there. Thank you. LL 114, yes. And I would like you to get to paragraph 26.

20**DR. BARNEY SELEBANO:** I'm there counsel.

ADV DIRK GROENEWOLD: Yes. On the long sentence on that page you say that the project was implemented as planned until the MEC established the project marathon team which force extracted the practice to complete it within

six months instead of the initial attention to deindustrialization approximately 20 percent of mentally ill patients per year. So was it your evidence that the MEC established the project team?

DR. BARNEY SELEBANO: The the marathon project?

5**ADV DIRK GROENEWOLD:** Yes. The marathon project that was surprised to the discharge from patients of Life Esidimeni to the NGOs, am I that correct?

DR. BARNEY SELEBANO: At a high pace, yes.

ADV DIRK GROENEWOLD: Yes, I would like to refer you to LL 5.

DR. BARNEY SELEBANO: Okay I'm there.

10**ADV DIRK GROENEWOLD:** Mr. (Inaudible)51:07 testified is that right?

DR. BARNEY SELEBANO: That's right.

ADV DIRK GROENEWOLD: And we presented this document to him and he explained it to be the official appointment documentation of the team of the project task team, do you recognize this document sir?

15**DR. BARNEY SELEBANO:** Yes, yes this were the committee to serve on the project team.

ADV DIRK GROENEWOLD: Yes and who authorized and established this team?

DR. BARNEY SELEBANO: I know I eliminated the people here and submitted 20them for MEC agreement. Sorry counsel for MEC agreement yes.

ADV DIRK GROENEWOLD: No, sir. Let's look there at the last page.

DR. BARNEY SELEBANO: Which page?

ADV DIRK GROENEWOLD: The last page of this document.

ARBITRATOR JUSTICE MOSENEKE: Page 404, LL 5.

ADV DIRK GROENEWOLD: Page 404, LL5.

DR. BARNEY SELEBANO: Okay I see that.

ADV DIRK GROENEWOLD: It says approved now Mr. (Inaudible)52:13

5testified that you Dr. Selebano, you approved this task team, this project team.

DR. BARNEY SELEBANO: The project team, yes I would not argue in terms of me in the MEC, yes, that's fine.

ADV DIRK GROENEWOLD: Once again sir you are giving us contradictory, your evidence is not consistent. Do you agree with me?

10**DR. BARNEY SELEBANO:** No, maybe it's because you are looking at the project team, this one and then the project marathon. So this is the team and then there was a marathon team constituting of Dr. (Inaudible)53:00 and other official that is were now doing the actual placement. This team, (inaudible)53:07 if you could see a huge team of senior managers. They are not doing the actual 15operational placement of patient, they were not.

ADV DIRK GROENEWOLD: You see sir that is not consistent with the evidence that we heard during these proceedings. Um, you know Mr. (Inaudible)53:29

DR. BARNEY SELEBANO: The DG (inaudible) 53:36 yes.

20**ADV DIRK GROENEWOLD:** Yes she lectured me and give me a one on one on the difference between a policy, a contract and the program. Marathon program.

DR. BARNEY SELEBANO: She's good at that, yes sir.

ADV DIRK GROENEWOLD: Yeah she's very good at that.

DR. BARNEY SELEBANO: She does that every time she's very good on this.

DR. BARNEY SELEBANO: Now, according to her evidence as the marathon project as you now just testified sir, the marathon project was the project to discharge patients from Life Esidimeni to NGOs.

DR. BARNEY SELEBANO: Yes, that's the marathon.

ADV DIRK GROENEWOLD: But this is the exact team that Mr. (Inaudible)54:16 testified said they were responsible for this task.

DR. BARNEY SELEBANO: Yeah I hear you, I'm not arguing, can I just show 10that I'll give an example. Number 12 just randomly call if you look at number 12. This is a supply team guy, a financial guy and wouldn't really get involved in placing patients. He was just there to assist in how this works and how that work. I'm trying to clear the distinction to this team and the marathon Life Esidimeni operational people that are running around taking patients.

15**ADV DIRK GROENEWOLD:** Taking patients where, sir?

DR. BARNEY SELEBANO: Taking patients from Life Esidimeni to the NGOs.

ADV DIRK GROENEWOLD: To the NGOs.

DR. BARNEY SELEBANO: Yes.

ADV DIRK GROENEWOLD: The evidence that we have were all those people 20were allowed to play either identifying the NGOs, the clinicians to go see to the patients, the infrastructure to go see whether or not the NGOs was fit. The finance department that played a role to see whether or not there were service legal agreements, budgets, human resources, the longer the short is all these

individuals Mr. (Inaudible)55:31 who was the project team leader, he said this was the team.

DR. BARNEY SELEBANO: Yes. I hear you counsel with respect. That all I was giving you for instance I'll give you Mr. (Inaudible) 55:46 for budget. He wouldn't be the right guy who would be going to NGO and start seeing whether-- I went there and I also battle to say whether is this that --

ARBITRATOR JUSTICE MOSENEKE: But doc why are you spending so much time. Advocating just warming up to get to the real issues. Look at the letter. It is written to you. You see that directed to you as head of department.

10 **DR. BARNEY SELEBANO:** Yes.

ARBITRATOR JUSTICE MOSENEKE: That's the date and then they talk, there's the project team headed by Mr. (Inaudible)56:24 and then here are the subcommittees of functional teams.

DR. BARNEY SELEBANO: Yes.

15 **ARBITRATOR JUSTICE MOSENEKE:** And they are broken up and this is written all to you for your approval.

DR. BARNEY SELEBANO: Yes.

ARBITRATOR JUSTICE MOSENEKE: And evidence says you approved it why are we spending so much time on this?

20 **DR. BARNEY SELEBANO:** I thought--

ARBITRATOR JUSTICE MOSENEKE: Don't anticipate anything upfront.

DR. BARNEY SELEBANO: Okay. So--

ARBITRATOR JUSTICE MOSENEKE: Was this team assigned to you? The

letter says so on its face.

DR. BARNEY SELEBANO: Yes, I signed for this team.

ARBITRATOR JUSTICE MOSENEKE: Yes, let's go on.

DR. BARNEY SELEBANO: Sorry judge.

5**ADV DIRK GROENEWOLD:** But the MEC didn't appoint them?

DR. BARNEY SELEBANO: She didn't appoint them.

ADV DIRK GROENEWOLD: She didn't appoint them, you did.

DR. BARNEY SELEBANO: I elected them. If you look at the letter, it says nominees.

10**ADV DIRK GROENEWOLD:** Sir, short and sweet you signed this document you approved this deal?

DR. BARNEY SELEBANO: Okay I give it to you counsel yes.

ADV DIRK GROENEWOLD: Thank you sir. You give it to me? You contradicting the evidence that you presented in tribunal you agree with me as
15well?

DR. BARNEY SELEBANO: Which one counsel?

ADV DIRK GROENEWOLD: Where you said the MEC appointed them.

DR. BARNEY SELEBANO: You see that is why I was flowing I was trying to explain that is why I say I am giving it to you.

20**ADV DIRK GROENEWOLD:** I would leave that to argument sir I think we can move on. Alright sir, so now I would like to just understand something that is still a gray area for me. After 2013, 2020 policy.

DR. BARNEY SELEBANO: 2020 policy, yes.

ADV DIRK GROENEWOLD: Yes you have the contract with Life Esidimeni and then we have the marathon project.

DR. BARNEY SELEBANO: Okay.

ADV DIRK GROENEWOLD: Now from the evidence of Dr. (Inaudible)58:19 the 5department was already in the process of reducing the number of beds at Life Esidimeni.

DR. BARNEY SELEBANO: The number of patient, yes.

ADV DIRK GROENEWOLD: Yes the number of patients. There was a strict quarter they needed to comply with in terms of the service level agreement.

10**DR. BARNEY SELEBANO:** Yes.

ADV DIRK GROENEWOLD: Yes was it the ultimate goal that at some point in time there would be no patients at Life Esidimeni?

DR. BARNEY SELEBANO: That was the ultimate, yes.

ADV DIRK GROENEWOLD: Yes. Now our colleague represents section 27 has 15referred you to the letters of April and June with the specialist, these experts, I said this 2020 plan were you busy with the reduction with the beds and patients at Life Esidimeni is going to have a disastrous effect.

DR. BARNEY SELEBANO: Yes.

ADV DIRK GROENEWOLD: It was put to you that you disregarded the advice, 20you said yes in hindsight.

DR. BARNEY SELEBANO: In hindsight.

ADV DIRK GROENEWOLD: Yes in hindsight. I put it to you, you went much further than just disregarding the advice because within three months,

two months, you decided well we're not going to wait until 2020 we're simply going to finish this within 2016.

DR. BARNEY SELEBANO: That's correct.

ADV DIRK GROENEWOLD: So you upped your game?

5**DR. BARNEY SELEBANO:** I'm not clear with what you are saying is true.

ADV DIRK GROENEWOLD: That was one of the issues that was canvassed by the (inaudible) 1:00:14 with you.

DR. BARNEY SELEBANO: No. But guidance, yes.

ADV DIRK GROENEWOLD: Experts tells you even your 2020 plan is not good
10and you go ahead and make it a 2016 plan?

DR. BARNEY SELEBANO: Um, counsel Groenewold all I can tell you this is a very regrettable episode that should have never happened counsel it should have never happened. It's disgraceful--

ADV DIRK GROENEWOLD: So there's no one more that feels that way than
15the family members sitting behind me.

DR. BARNEY SELEBANO: I know that very very well.

ADV DIRK GROENEWOLD: But let's move on sir. You testified yesterday that they even wanted to cancel the contract earlier.

DR. BARNEY SELEBANO: Okay yes. Um there was a letter that was
20discussed and then you're right there was an attempted there.

ADV DIRK GROENEWOLD: Yes but we want details. We want to know about it.
Who write the letter, who presented the letter, who discussed it?

ADV DIRK GROENEWOLD: The collective management team, I signed the

letter for life and then they said no you can't do that you must give us six months that's why we came with another letter.

ADV DIRK GROENEWOLD: When did you actually, when did you want to kill the contract?

5**DR. BARNEY SELEBANO:** I think the letter that was saying I don't recall whether I was giving them a month or two months I don't recall the contents.

ADV DIRK GROENEWOLD: Might it have been March of 2015 already?

DR. BARNEY SELEBANO: It's, I don't recall, I don't recall I'm not playing around with you, I don't honestly recall but I do recall there was that letter.

10**ARBITRATOR JUSTICE MOSENEKE:** Just remind me of the effective date of tha appointment with HOD?

DR. BARNEY SELEBANO: First of May 2015. Before that I was acting.

ARBITRATOR JUSTICE MOSENEKE: You were acting before that. Is it you that upped the game once you got into office?

15**DR. BARNEY SELEBANO:** No I didn't do that.

ARBITRATOR JUSTICE MOSENEKE: No?

DR. BARNEY SELEBANO: No I didn't do that.

ARBITRATOR JUSTICE MOSENEKE: Weren't you the new HOD were you? I'm just running up with counsel Grenewold said to you. You are the new HOD, 20you get into power and the counsel on short time and you told no no we're entitled six months notice was it you who was so eager to pull the trigger?

DR. BARNEY SELEBANO: It's not like that Justice.

ARBITRATOR JUSTICE MOSENEKE: It's not like that.

DR. BARNEY SELEBANO: It is not like that. (Inaudible) 1:03:14

ARBITRATOR JUSTICE MOSENEKE: Who assisted that the patients must be taken out of Life Esidimeni?

DR. BARNEY SELEBANO: Justice like I said this is one of the things that I can't do. I will not sit here and come and say it is so and so. I can't do that because I'll be Um you know trying to shift the blame to other people and all that. There was like I did indicate there had been discussions previously and all the issues of managing cost and all that you are getting a bad AG result.

ARBITRATOR JUSTICE MOSENEKE: Let's go back that's fine. It just struck 10me that this happened shortly after you came into office,

DR. BARNEY SELEBANO: There had been other HODs before my time.

ARBITRATOR JUSTICE MOSENEKE: Continue counsel.

DR. BARNEY SELEBANO: Sorry about that Justice.

ARBITRATOR JUSTICE MOSENEKE: No, that's fine.

15 **ADV DIRK GROENEWOLD:** Thank you Justice. The light and short of the argument is simply was there was a plan it was a 2020 plan, you came into office and you make it 2016 plan.

DR. BARNEY SELEBANO: No it is not like that.

ADV DIRK GROENEWOLD: You signed the letter of termination.

20 **DR. BARNEY SELEBANO:** Under HOD I have to sign the letter. If the colleagues say we discussed here is the letter. Justice aside if you were to be appointed today counsel tomorrow you would have to sign so many things that is how it happens.

ADV DIRK GROENEWOLD: But the responsible HOD don't you simply signs everything it's table, on his or her table. He or she would interrogate it and find out whether or not that is right to sign it. Isn't that so?

DR. BARNEY SELEBANO: It's true.

5**ADV DIRK GROENEWOLD:** It's true and the question is that we would get to it that you considered all the facts before you signed it.

DR. BARNEY SELEBANO: On the table at that time the facts were saying I've got to sign. I agree, I agree.

ADV DIRK GROENEWOLD: We'll get to that sir.

10**DR. BARNEY SELEBANO:** Okay.

ADV DIRK GROENEWOLD: So you say sir, I am very sorry about what happened here but the long of the short is I didn't micro manage my team. I trusted my team, and I was there in my office and I just hope that everything was going well.

15**DR. BARNEY SELEBANO:** On the balance of evidence, everything should go well and I know it didn't go well.

ADV DIRK GROENEWOLD: Yes, am I correct that is what you are saying? You saying this tragedy happened but I didn't know what was happening going on there in the NGOs because I didn't micro manage and I trusted my 20employees and my managers.

DR. BARNEY SELEBANO: Managers. Like in any other program, in all the programs they say it, they present and I say yes go on. Yes go on, yes go on and unfortunately tragically on this one.

ADV DIRK GROENEWOLD: It was your taste in management sir if I'm not mistaken, you weren't part of the marathon project but the marathon project according to you was the physical removal of the patients to NGOs and so on is that correct?

5**DR. BARNEY SELEBANO:** Yes. The project was more deindustrialization.

ADV DIRK GROENEWOLD: Yes. Sir I would like to take you to file 8 someone can assist you to get file 8 and page 2769. 2769

DR. BARNEY SELEBANO: 2749. I'm there counsel.

ADV DIRK GROENEWOLD: Can you just identify this document. Do you know 10this document?

DR. BARNEY SELEBANO: Resolution for the MEC senior managers on early 8 contract relationship recognition 8-4-2016. Venue, MEC office.

ADV DIRK GROENEWOLD: 8 of April 2016.

DR. BARNEY SELEBANO: April yes.

15**ADV DIRK GROENEWOLD:** Yes. In your MEC office. Do you recall this meeting?

DR. BARNEY SELEBANO: Yes I can just run through it.

ADV DIRK GROENEWOLD: Go through it please sir.

DR. BARNEY SELEBANO: Okay I remember this. Okay, all right. Okay.

20**ADV DIRK GROENEWOLD:** You would see the task target date and a responsible person.

DR. BARNEY SELEBANO: That's right.

ADV DIRK GROENEWOLD: You would agree with me that a reasonable person

that implies that whoever is given the task his or hers name will appear there?

DR. BARNEY SELEBANO: That's right.

ADV DIRK GROENEWOLD: Alright. Now let's quickly see how many places your name appears in this instance. The first one an arrangement has to be made with the HOD of home affairs for the movements of foreigners to countries and other HOD for other providence to the users back to their Providence's.

DR. BARNEY SELEBANO: Yes.

DIRK GROENEWOLD: The reasonable person please?

DR. BARNEY SELEBANO: It's myself.

10 **ADV DIRK GROENEWOLD:** It's yourself. As this micro management?

DR. BARNEY SELEBANO: No the thing is there is no other official other than myself can talk to an HOD in another providence or talk to a DG. So if anything needs to be done with a DG or HOD needs to be done through my office not necessarily my office.

15 **ADV DIRK GROENEWOLD:** Okay if we go further down onto 1234. More information on the 109 users who are receiving grants while at Life Esidimeni that was requested HR to leases with SASOP leaders.

DR. BARNEY SELEBANO: That's true, it's me again to talk to social development DG all the leaders.

20 **ADV DIRK GROENEWOLD:** Yeah but did you do this sir?

DR. BARNEY SELEBANO: You mean literally talk to somebody at SASOP?

ADV DIRK GROENEWOLD: Yeah.

DR. BARNEY SELEBANO: No my team I take responsibilities in it, okay I'll

write a letter to social development and say to them these are the issues that were there and then they would ordinarily sometimes the response would be thank you.

ARBITRATOR JUSTICE MOSENEKE: The question is did you do it?

5 **DR. BARNEY SELEBANO:** Yes. I wrote the letter and they give us the officials and we included social development our local social development.

ADV DIRK GROENEWOLD: See sir, in some of these NGOs was it not for that SASOP grants I think much more patients would have died because they weren't receiving any subsidy from your department?

10 **DR. BARNEY SELEBANO:** But isn't it here they were saying to look at those serving grants while at LE?

ADV DIRK GROENEWOLD: More information. The longer the short sir, did you do it or not do it?

DR. BARNEY SELEBANO: I did that to check the patients the first of whom 15 affairs, do they have IDs, are they receiving grants while at LE.

ADV DIRK GROENEWOLD: Okay I'll get back to that. Just the one below that you are in this meeting sir, you are hearing all this evidence. You are hearing all of these facts.

DR. BARNEY SELEBANO: That's right.

20 **ADV DIRK GROENEWOLD:** 295 bed hospitals must be available by next week. One below. 447 beds of hospital must be ready by the end of May. We know that this is now beginning of April. Beginning of May the first patients were transferred or well I'm talking about CRCC now. The day the transfers were

already busy, we're still sorting out these beds. The second order the one below the equipment like beds linin, clothing and others a plan has to be presented. We all the prices of actually transferring patients and we still need a plan with respect equip like bed, linin and clothing.

5ARBITRATOR JUSTICE MOSENEKE: Give the witness an opportunity to respond to that, what do you say to that?

DR. BARNEY SELEBANO: I follow what he's saying but I don't know whether I agree with that or not.

DR. BARNEY SELEBANO: Yes this is the discussion.

10ARBITRATOR JUSTICE MOSENEKE: Then say yes that is true.

DR. BARNEY SELEBANO: Yes, that was the discussion. Sorry Judge.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

ADV DIRK GROENEWOLD: And the one below that, a visit by management and doctors should be undertaken to view the identified NGOs?

15DR. BARNEY SELEBANO: That's right.

ADV DIRK GROENEWOLD: Responsible person there.

DR. BARNEY SELEBANO: Selebano (inaudible)1:13:26

ADV DIRK GROENEWOLD: Did you go and visit the NGOs sir?

DR. BARNEY SELEBANO: I went to one only. Um because here we actually 20there was a team because NGO one would be (inaudible)1:13:46 and the other the one I went to was the one in (inaudible)1:13:50 I went to that one informally.

ADV DIRK GROENEWOLD: Correct me if if I'm wrong sir but you testified that you actually went to no NGO?

DR. BARNEY SELEBANO: No I said I was not operational. That is not operational. Here I went to one NGO, you didn't really say because you went to one then you are operational, no.

ADV DIRK GROENEWOLD: But you said, your exact words I went to no NGO. So I didn't go to any NGO.

DR. BARNEY SELEBANO: I don't remember that, honestly.

ADV DIRK GROENEWOLD: The longer short, you were required in the terms of this document you were required to go and identify NGOs. On your own submission you only went to one.

10 **DR. BARNEY SELEBANO:** Yes sir park went to another one region.

Dr. (Inaudible) 1:14:45 to another area (Inaudible) 1:14:49--

ARBITRATOR JUSTICE MOSENEKE: But you have many NGOs but why go to one one one?

DR. BARNEY SELEBANO: Justice?

15 **ARBITRATOR JUSTICE MOSENEKE:** The project needed many NGOs, why did you go to one?

DR. BARNEY SELEBANO: Okay, myself I went to (inaudible) 1:15:07 to this NGO Dr. Park went to the ones if I recall in the western and we all distributed into the providence. We didn't be feasible to go to all of them at the same time.

20 **ADV DIRK GROENEWOLD:** Sir I put it to you that if you, if you indeed went to these identified NGOs you would not have discharged the patients.

DR. BARNEY SELEBANO: Yes. You are right. You're right. When I think about it that if it had happened that I'm able to go to all the NGOs, yes.

ADV DIRK GROENEWOLD: Here's the other issue sir you said I didn't know there was anything wrong at the NGOs. Second one in April of 2016, NGO profiles must be submitted and presented.

DR. BARNEY SELEBANO: What is that?

5**ADV DIRK GROENEWOLD:** The next below the one below the one I just presented to you. NGO profiles must be submitted and submitted. We're in April. Patients are being transferred, you are requesting that NGO profiles must be submitted and presented.

DR. BARNEY SELEBANO: Yeah. I hear you.

10**ADV DIRK GROENEWOLD:** Negligent, do you accept sir? Reckless, do you accept?

DR. BARNEY SELEBANO: No no I don't accept that.

ADV DIRK GROENEWOLD: You don't accept that sir?

DR. BARNEY SELEBANO: Negligent. I don't know why you say it is a hard word to use. Reckless.

ARBITRATOR JUSTICE MOSENEKE: No. People are being moved already, April 2016 and your minute where you are present tells us that NGOs have to be checked out.

DR. BARNEY SELEBANO: No. Present profiles this is NGOA and has this capacity and this and that--

ARBITRATOR JUSTICE MOSENEKE: Yes and the correction to present profiles.

ADV DIRK GROENEWOLD: Justice before you go there. My apologize on this

issue sir let me take you to the first item on 2770. Just the next page.

DR. BARNEY SELEBANO: Yes.

ADV DIRK GROENEWOLD: Same meeting, NGO marathon and verification of NGOs must be done by the end of April. So what now sir? We're not requesting 5the profiles, we need to verify them. There's no verification has been done.

DR. BARNEY SELEBANO: But yes I hear what you are saying and I understand what you are saying but there are -- I don't want to come out, you know Um, Um, counsel I don't want to come out defending NGOs here I can't do that. There's no way I could start defending NGOs and the more I try to explain I 10would come out as if I'm defending NGO can I accept what you are saying, I can't defend NGOs at all.

ADV DIRK GROENEWOLD: Thank you for that sir but the next step would be to take responsibility and say well I shouldn't have sent them to the NGO that would have been the next step.

15**DR. BARNEY SELEBANO:** By that time I didn't know this type of NGOs what type of NGOs are these.

ADV DIRK GROENEWOLD: I'll guide through the document and then I'll engage you on that submission because it is quite frankly unbelievable for me. Let's go down sir I want you to the second, third, the forth one, now once again. 20Once again you are in this meeting, you are the HOD, you are the captain of the ship as my colleague put it to you. It says users from Life Esidimeni may maybe transferred to NGO and doctors will follow them at NGO to assist them and replace them to the relevant facility if there is a need. Let's give the patients to

the NGOs and send doctors to assist them and see whether or not they need to go to other facilities.

DR. BARNEY SELEBANO: That's wrong.

ADV DIRK GROENEWOLD: That's reckless sir, it is, do you agree?

5 **DR. BARNEY SELEBANO:** It was not thought out clear. It was not thought out.

ADV DIRK GROENEWOLD: It is reckless sir. Once again if you got three lives down, 950 users must be moved by the end of April 2016 to identify NGO beds, 950 patients by end of April. Was there no point in time where you said, it is impossible?

10 **DR. BARNEY SELEBANO:** Counsel, I wish at that time sitting with all those people that you saw here I wish I could have just said this honestly speaking. I just wish I could have said that.

ADV DIRK GROENEWOLD: Other, second last one sir a report on the NGOs we have been supporting and spending Dr. Selebano did you composite the 15 report?

DR. BARNEY SELEBANO: I don't recall that. These are talking about some of the NGOs that are working within other programs and I wanted to know are we supporting them and all that. So I don't recall if I got that report.

ADV DIRK GROENEWOLD: Now let's consider this again sir, you say you didn't micro manage, and you didn't know what was going on at the NGOs. I put it to you that based on this document, simply this document there's a lot of other evidence as well but based on this document, it is quite clear that you should have known, must have known that the NGOs would not have been capable to

look after the patients?

DR. BARNEY SELEBANO: Counsel, I don't want to defend NGOs. What happened is horrible in the NGOs.

ADV DIRK GROENEWOLD: Sir I'm asking you a question. I'm putting something to you I want you to say I have met or I deny, yes or no and then you could give an explanation for me. So I put it to you, you have all the document as the experts, section 27 all of these people coming to you, you went to court, you stop this. You and Mr. (Inaudible)1:22:47 you decided. In February you support him and say we can't go on. You tell them write a letter to 10the MEC. By then you already know. Now you are sitting in a meeting in April and you hear all of these facts, you must have known.

DR. BARNEY SELEBANO: In that meeting everybody is agreeable this project will work. I wouldn't have known. I wouldn't have known.

ADV DIRK GROENEWOLD: But in hindsight. In hindsight you met--

15**DR. BARNEY SELEBANO:** I wish I could have stopped this project on its tracks.

ADV DIRK GROENEWOLD: On hindsight any reasonable HOD that set in that meeting would have said stop this right now.

DR. BARNEY SELEBANO: I don't agree with you.

20**ADV DIRK GROENEWOLD:** You don't.

DR. BARNEY SELEBANO: No, bo with the size house in the biggest department no HOD would have been able to predict that.

ADV DIRK GROENEWOLD: We'll get back to that sir. Now I want to notice now

sir you said you did not sign the extension letter. The Life Esidimeni contract that was extended the three months you actually--

DR. BARNEY SELEBANO: You said two.

ADV DIRK GROENEWOLD: How is it possible the HOD of the department
5 doesn't know that the contract that only he can terminate or enter into is
extended?

DR. BARNEY SELEBANO: It happened and I recalled during the night
yesterday I said now I remember. I think Justice that an announcement was
made by the MEC to say by extending the contract there was no formal--

10 **ARBITRATOR JUSTICE MOSENEKE:** That is what you are being asked. How
could any other person extend the contract but you? You are the one who
cancelled it. The power to cancelled it.

DR. BARNEY SELEBANO: That's why I'm saying I then recall during the night
that MEC extended.

15 **ARBITRATOR JUSTICE MOSENEKE:** Cancel. There's your answer counsel.

DR. BARNEY SELEBANO: There was an extension.

ADV DIRK GROENEWOLD: Did she decide that on her own?

DR. BARNEY SELEBANO: She announced it. That's why I didn't even know
about that it has been extended.

20 **ADV DIRK GROENEWOLD:** Did she overrule you?

DR. BARNEY SELEBANO: In a way you could say that but--

ADV DIRK GROENEWOLD: In a way what does that mean sir?

DR. BARNEY SELEBANO: When you say overrule that I said and then she

changed it. No, that is what I said in a way.

ADV DIRK GROENEWOLD: Well sir Um I put it to you that you have in fact not taken any responsibility for what happened here. You said to my colleague no, that you did take responsibility.

5ARBITRATOR JUSTICE MOSENEKE: Any response?

DR. BARNEY SELEBANO: I thought you were talking.

ARBITRATOR JUSTICE MOSENEKE: You did not talk responsibility.

DR. BARNEY SELEBANO: I have taken accountability for what happened after being invasive to point to other people because I think when you are a leader 10you don't start by pointing out other people. You say to yourself it happened under my care, under my watch, I'm the one who must take accountability for this. I'm not too sure to what extent can I --

ADV DIRK GROENEWOLD: Responsibility sir. Did you take or did you not take any disciplinary action against your employees that you so trusted?

15**DR. BARNEY SELEBANO:** We spoke about that yesterday.

ADV DIRK GROENEWOLD: You did not take?

DR. BARNEY SELEBANO: No.

ADV DIRK GROENEWOLD: So you didn't take responsibility for your employees because you didn't discipline or didn't even investigate

20**DR. BARNEY SELEBANO:** The (Inaudible)1:27:07 were already in the picture.

ADV DIRK GROENEWOLD: The (Inaudible) 1:27:12 is not the HOD, do you agree?

DR. BARNEY SELEBANO: I did say yesterday that maybe I could have done a

separate inquiry, I didn't do it.

ADV DIRK GROENEWOLD: Once again sir, you have not take responsibility because you have amongst other and you have appealed the findings of the (inaudible)1:27:37. Your employer accepts the final of the (inaudible)1:27:42 5but you, you don't want to accept it.

DR. BARNEY SELEBANO: Do you agree also even in the national health act, I was given a letter by the minister to say if you want to to appeal it, you have the right to do that. It is a constitutional right. It is not bearing really to the way counsel is judging me.

10 **ARBITRATOR JUSTICE MOSENEKE:** Counsel is saying that--

DR. BARNEY SELEBANO: I was exercising a constitutional right.

ARBITRATOR JUSTICE MOSENEKE: You are right. You are entitled to that.

DR. BARNEY SELEBANO: I'm entitled to that.

ARBITRATOR JUSTICE MOSENEKE: Entitled to exercise it but he's saying 15out of that content, he infers that you are not remorseful. The state says you have accepted things that have gone wrong, you want to appeal the finds of the (Inaudible)1:28:40. He doesn't challenge your right to do it. He says that shows that you are not regretful.

DR. BARNEY SELEBANO: Is it not the state just accepted now and the Um Um 20the the events of the appeal the letter that I was given was 20 early February 2017. The state just accepted now how would have I known the state would do that.

ADV DIRK GROENEWOLD: Sir, all these things points to you not taking

responsibility. You are saying each and every time I take accountability for this, I take accountability for this. But what does it mean? Because what have you done sir? You haven't taken disciplinary action against any of your employees. You have appealed the finding of the (inaudible)1:29:31. You have done everything in your power not to come and testify at these proceedings. You have not resigned you have now taken a salary from the state for what is it ten months now.

DR. BARNEY SELEBANO: I didn't suspend myself.

ADV DIRK GROENEWOLD: Exactly.

10 **DR. BARNEY SELEBANO:** If you said to me I should go to work tomorrow, I would go to work. I would wake up and go to work. So the laws also Um Um counsel the laws applies to me I'm sure that you know that.

ADV DIRK GROENEWOLD: In your view sir what does taking responsibility mean?

15 **DR. BARNEY SELEBANO:** I have said I have taken accountability and the matter I with your respect judge Um I always refer to you when I'm like this. That the matter is going to be ventilated in a disciplinary hearing where my accountability would be tested. That's what I'm saying.

ARBITRATOR JUSTICE MOSENEKE: No. Counsel is saying the extent that 20 you have told this tribunal, it happened under your watch and you are accountable. He's entitled to test to that evidence to say what shows that you are accountable? He has listed 5 things which he says to you to show that you are not accountable. You have not taken responsibility and you can come back

and say to him no you have. And say why you say you have. Do you understand what is happening now? Counsel just put to you 5 things that show you have not and the question is

DR. BARNEY SELEBANO: Including the limitations of my rights as a citizen. I have the respectful the worse of the worse, have rights.

ARBITRATOR JUSTICE MOSENEKE: Right. You may say that but those don't point to the fact that I am not remorseful.

DR. BARNEY SELEBANO: Okay I didn't, you have put it better for me thank you Justice.

10**ARBITRATOR JUSTICE MOSENEKE:** Counsel is going to argue ultimately when there's going to be an argument stage when he's saying that you are not remorseful and when you say that you are.

DR. BARNEY SELEBANO: I am.

ARBITRATOR JUSTICE MOSENEKE: And he's given you the opportunity to 15respond to the charge, it is just happening now.

DR. BARNEY SELEBANO: Yeah.

ARBITRATOR JUSTICE MOSENEKE: So you have to tell us why you think that you are remorseful. Why do you think you are accountable? Why are you taking responsibility for things that happened under your watch and why do you 20say that you are? Because he says you are not.

DR. BARNEY SELEBANO: Remorse is an emotional state, where you look at everything around you and said if I had an opportunity to change things and not do things this way I would change and do them differently. And then you look at

the impact of what happened and that is where the remorse start to say this that has happened has resulted in this and I wish that I wouldn't have taken that type of step which has resulted in this. That is what I said I am subjecting even myself to a disciplinary hearing and other events of state most probably are going to get involved and I'm going to cooperate with other organs of state. I don't know but I can't limit my right as a citizen.

ADV DIRK GROENEWOLD: What have you done to correct for your falls?

DR. BARNEY SELEBANO: I'm out of the system now.

ADV DIRK GROENEWOLD: Sir the patients were transferred in 2016. We'll get 10you that the minister, Dr. (Inaudible)1:33:52 testified that she said she informed you of all the dates and she already knew of the dates early or end of June and said now she informed you the HOD but the longer of short being that in July end of July beginning of August on your own testimony you were aware of this crisis.

15**DR. BARNEY SELEBANO:** And I had a discussion with the minister.

ADV DIRK GROENEWOLD: You had a discussion with the minister.

DR. BARNEY SELEBANO: And I moved and patients out of NGOs to prevent more deaths.

ADV DIRK GROENEWOLD: And what have you done to create for the deaths 20that at that time point in time was already dead. What have you done for these family members and loved one to all these accountable that was responsible for the results of this, what did you do? You did nothing sir, I put it to you, you did nothing.

DR. BARNEY SELEBANO: I hear you counsel.

ADV DIRK GROENEWOLD: Yes.

DR. BARNEY SELEBANO: I hear you.

ADV DIRK GROENEWOLD: You closed down the other NGOs but you did
5nothing after that.

DR. BARNEY SELEBANO: I hear you counsel.

ARBITRATOR JUSTICE MOSENEKE: Yes. How do you have him respond.

The problem is all though you said you are remorseful, you have done nothing to
show it.

10**DR. BARNEY SELEBANO:** I'm not sure as the individual in the department
there's this tragedy that has happened. The providence can't say what as an
individual what I would have done. If I could suggest that this is what you would
have done at this time now, I would still do it.

ARBITRATOR JUSTICE MOSENEKE: Is the counsel right you are still earning
15your salary? You are suspended with salary?

DR. BARNEY SELEBANO: Yes, I'm suspended.

ADV DIRK GROENEWOLD: We know that from just on that point, we know that
from an answer to parliamentary question as July 17 you already earned 8
hundred thousand while being on suspension.

20**DR. BARNEY SELEBANO:** Before tax. Yes.

ADV DIRK GROENEWOLD: So one can always double that.

DR. BARNEY SELEBANO: It is before tax but I'm sure counsel you know that I
didn't suspend myself and I said if I were to go back to tomorrow I will go back.

ADV DIRK GROENEWOLD: Now sir, would you agree with me and you understand that you have done nothing to all those accountable that caused the death of these patients?

DR. BARNEY SELEBANO: Yes I have not done anything, I never had the opportunity to do that.

ADV DIRK GROENEWOLD: No, sir, no, sir. You as the HOD started in July, August when your own evidence you said the MEC instructed you and said that you must go and close some of these NGOs. So you were suspended?

DR. BARNEY SELEBANO: February.

10**ADV DIRK GROENEWOLD:** February, so that gives us 7, 8 months.

DR. BARNEY SELEBANO: I hear you. Yesterday--

ADV DIRK GROENEWOLD: Okay but yes or no sir?

DR. BARNEY SELEBANO: I didn't do it, I didn't do it.

ARBITRATOR JUSTICE MOSENEKE: You know what comes to mind, sorry 15counsel. Is why wasn't the department about how all these people would be buried? They are in your care, they die under these circumstances, and their bodies are in various mortuaries, placed there by NGOs,

DR. BARNEY SELEBANO: That's right.

ARBITRATOR JUSTICE MOSENEKE: And many of them was impecunious, 20no money. But why wasn't it part of your departments program to wonder and do something about where and how these victims would be buried?

DR. BARNEY SELEBANO: I recall, we could have done more enough like you are saying. We could have done a lot. I recall that there was an attempt by

Dr. (Inaudible)1:38:37 if I'm not mistaken he contacted the family, I'm not, my thoughts are not going to be clear Justice and he came back running because the family felt that you are now trying to bribe us. But the families that I recall in Orlando (inaudible) 1:38:59 that I went out to assist Um with a burial. I raised 5from friends, I asked people because I was also scared that they must not take it that I want to give them money so they must keep quite about it. So I did that--

ARBITRATOR JUSTICE MOSENEKE: Why the department of the program to find out that people that died at NGOs, the number was climbing and people like Precious Angles were struggling with many bodies in their custody, did you hear 10the tales?

DR. BARNEY SELEBANO: Yes I hear the tales.

ARBITRATOR JUSTICE MOSENEKE: And they put bodies in walk-in coolers at butcheries and so on. So why wasn't the department there at least to pick up the corpses?

15**DR. BARNEY SELEBANO:** Well they claim that the butcheries actually a funeral parlor which was natural bill that it was never the name remained butchery --I'm saying what I heard. But we took I remember very well I took some of the bodies to our praetorium. I remember that (Inaudible) 1:40:23 I did that. If fact some of the bodies, I think I spoke with MEC --

20**ARBITRATOR JUSTICE MOSENEKE:** Are there any bodies that you buried or paid the cost of burial? We sat here many days and listened how --

DR. BARNEY SELEBANO: I said the department no. Like I said I remember the family (inaudible) 1:40:46 and I raised funds from friends. I remember that for

sure. I don't recall the name, we budget tables, we did everything.

ARBITRATOR JUSTICE MOSENEKE: Why didn't the department take this responsibility? These are people who are not any income there was, there were institutionalized and now they are passed on.

5**DR. BARNEY SELEBANO:** Yes. I suppose you know when people have passed away and they are inside there, you the trauma that you go through throws you also into paralysis where most of us were traumatized and are still traumatized.

ARBITRATOR JUSTICE MOSENEKE: The stories of difficulty from families 10how to scrape money to bury as you would suspect.

DR. BARNEY SELEBANO: As you would suspect I mean struggling families that now inundated with bodies I understand that.

ARBITRATOR JUSTICE MOSENEKE: Did the department care how are these bodies buried?

15**DR. BARNEY SELEBANO:** We never did anything as a department I must accept it, I must accept it.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

ADV DIRK GROENEWOLD: Thank you Justice. I'll say yesterday you said and today as well. Any HOD would have done the same as you did. You said 20no other HOD could have done better and I think you also suggested that my colleague that represents section 2017, I think you also suggested that she could have done better.

DR. BARNEY SELEBANO: I still want to apologize counsel. I really really

apologize.

ADV DIRK GROENEWOLD: Nowm you are relying quite a bit on your hindsight sir. Now I try to summarize your evidence in respect of your hindsight admissions with things that you said well in hindsight. I admit I could see that 5was wrong. Let's just see what your hindsight tells us. It tells us that you should have listened to the experts advice given in April 2015, June 2015.

ARBITRATOR JUSTICE MOSENEKE: Stop there and so the witness can confirm.

DR. BARNEY SELEBANO: Correct.

10**ADV DIRK GROENEWOLD:** Correct. It tells us that you should have adhere to the settlement agreement that you entered into.

DR. BARNEY SELEBANO: Settlement agreement.

ADV DIRK GROENEWOLD: Yes, sir that my colleague referred you to.

DR. BARNEY SELEBANO: Can you remind me.

15**ARBITRATOR JUSTICE MOSENEKE:** The agreement.

ADV DIRK GROENEWOLD: In December.

DR. BARNEY SELEBANO: In December. Oh yes.

ADV DIRK GROENEWOLD: In December, 2015.

DR. BARNEY SELEBANO: The increment with Life Esidimeni, yes.

20**ADV DIRK GROENEWOLD:** Yes. The hindsight tells us--

DR. BARNEY SELEBANO: Hindsight yes.

ADV DIRK GROENEWOLD: Tell us you should have adhere to that settlement agreement.

DR. BARNEY SELEBANO: Agreed.

ADV DIRK GROENEWOLD: It also tells us that you should have supported Mr. (Inaudible)1:43:59 and demanded that the project should have been extended.

5**DR. BARNEY SELEBANO:** I accept with that.

ADV DIRK GROENEWOLD: You should have stood up to him that day.

DR. BARNEY SELEBANO: I should have stood up.

ADV DIRK GROENEWOLD: You said he said are you working for Life Esidimeni or for us.

10**DR. BARNEY SELEBANO:** I should have stood up counsel, I should have stood up. I should have stood up.

ADV DIRK GROENEWOLD: The hindsight tells us that you should have bought Life Esidimeni or the facilities because you could have.

DR. BARNEY SELEBANO: I agree with you. I agree with you.

15**ADV DIRK GROENEWOLD:** The hindsight tells us that you should have not have lied under oath in March 2016 urgent application.

DR. BARNEY SELEBANO: Can you remind me, I don't remember.

ADV DIRK GROENEWOLD: My colleague presented you your affidavit in the March 2016 urgent application where you took the time to go through the 20affidavit and you came back and you said well you can't believe what you said here and you admit that --

DR. BARNEY SELEBANO: On hindsight all that the details that were erased in that affidavit, I correct, I agree.

ADV DIRK GROENEWOLD: In hindsight are they correct or incorrect?

DR. BARNEY SELEBANO: No no I thought you were saying when I was directed to section right, I intentionally marked myself all that was on hindsight it is I don't know who to say it shouldn't have happened that is what I said.

5**ADV DIRK GROENEWOLD:** You shouldn't have said. In hindsight you shouldn't have said what you said in that affidavit because it wasn't true.

DR. BARNEY SELEBANO: At that time when it was presented to me, it was something else. On hindsight you look at it and say whatever I meant.

ADV DIRK GROENEWOLD: In hindsight you should have demanded proof that 10the NGOs was fruitful purpose.

DR. BARNEY SELEBANO: On hindsight I could have been with senior managers not only that were vigorous about this NGOs.

ADV DIRK GROENEWOLD: You you testified you said that they should have have been fit for purpose--

15**DR. BARNEY SELEBANO:** Yes yes.

ADV DIRK GROENEWOLD: You agree in hindsight.

DR. BARNEY SELEBANO: Yes.

ADV DIRK GROENEWOLD: As HOD that you should have demanded proof that the NGOs were fit for purpose.

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

ADV DIRK GROENEWOLD: In hindsight, you should have inspected the NGOs yourself?

DR. BARNEY SELEBANO: The answer is yes but to what extent that would

have been feasible that is something but yes.

ADV DIRK GROENEWOLD: In hindsight you should have demanded or implemented a monitoring system to see how the patients were doing?

DR. BARNEY SELEBANO: That's correct.

5**ADV DIRK GROENEWOLD:** In hindsight you should have and you could have stopped the program?

DR. BARNEY SELEBANO: I suppose I should have or I could have. I could have, on hindsight and I look at the tragedy and the horror now and I said I wish I should have stopped the project.

10**ADV DIRK GROENEWOLD:** In hindsight you should have considered what the impact of the termination would be on the employees of Life Esidimeni?

DR. BARNEY SELEBANO: If I recall, it is a period I don't have numbers and they are going to be checked the numbers, some indeed suffered because of the closure but others were also absorbed into the system. So you wish you don't 15wish anybody to be unemployed. I honestly feel bad about that also.

ADV DIRK GROENEWOLD: Sir I put it to you no reasonable HOD would have made all of these mistakes.

DR. BARNEY SELEBANO: But no reasonable HOD would have known that these are the things that will happen in future.

20**ADV DIRK GROENEWOLD:** Sir --

ARBITRATOR JUSTICE MOSENEKE: Do you know what is the effect of this whole hindsight questions.

DR. BARNEY SELEBANO: No.

ARBITRATOR JUSTICE MOSENEKE: That you should have had the fore site to prevent this things. Hindsight is nice but what really what counsel is listing to you vital things and says if you were a good HOD, you should have had fore site. Put it another way around.

5**DR. BARNEY SELEBANO:** No no.

ARBITRATOR JUSTICE MOSENEKE: Counsel is going to argue, and once you are done with argument and say look at this. He had this fore site. I'm raising it with you to give you the opportunity to deal with it. If you did your work properly you would have known all these. You could argue that in fact you knew 10all these.

DR. BARNEY SELEBANO: No no Justice. No. No. It is not true. I would never do that.

ARBITRATOR JUSTICE MOSENEKE: Okay let me put it another way around. In fact you should have known all these things.

15**DR. BARNEY SELEBANO:** At that point in time the plan was working well. It looked fine that this was going to go according to plan. The only time that you know that the plan is wrong is when it has been implemented. It is never easy to work out a plan before you know whether the house is going to work out. You have to build it first.

20**ARBITRATOR JUSTICE MOSENEKE:** The strange approach to management. The administration.

DR. BARNEY SELEBANO: You would never do anything.

ARBITRATOR JUSTICE MOSENEKE: You never no if a plan is good only

when it is failed.

DR. BARNEY SELEBANO: No when it is implemented.

ARBITRATOR JUSTICE MOSENEKE: That is a strange strange approach to project management.

5**DR. BARNEY SELEBANO:** No.

ARBITRATOR JUSTICE MOSENEKE: Let's close our eyes and go and try it--

DR. BARNEY SELEBANO: No no

ARBITRATOR JUSTICE MOSENEKE: I didn't know I couldn't have known.

Now I know because it has come down.

10**DR. BARNEY SELEBANO:** No no no no.

ARBITRATOR JUSTICE MOSENEKE: Okay explain.

DR. BARNEY SELEBANO: No, no, justice you are putting it --

ARBITRATOR JUSTICE MOSENEKE: Am I putting it bad?

DR. BARNEY SELEBANO: Yes.

15**ARBITRATOR JUSTICE MOSENEKE:** Put it correctly then.

DR. BARNEY SELEBANO: You know Justice that you plan for everything. We normally say in your country that we have good policies but most of the time the problem comes with implementation. That is the same what I'm trying to say to you. I'm not saying that you come up with a master plan and wait for it to fail. In 20health sometimes the difference sorry you wanted to say something.

ARBITRATOR JUSTICE MOSENEKE: No no.

DR. BARNEY SELEBANO: I'm saying in real in real situations you put a plan, you implement it. You go and treat it as you --

ARBITRATOR JUSTICE MOSENEKE: Have you heard of stress testing a plan?

DR. BARNEY SELEBANO: Yes I know.

ARBITRATOR JUSTICE MOSENEKE: When you stress test a plan, do you know about identifying risks in project management?

DR. BARNEY SELEBANO: That's right.

ARBITRATOR JUSTICE MOSENEKE: Something called risk management.

DR. BARNEY SELEBANO: That's right I know that.

ARBITRATOR JUSTICE MOSENEKE: Have you heard about a track system in a project as start implementing. All of those things must be known to an HOD isn't it? The techniques must be known?

DR. BARNEY SELEBANO: I agree.

ARBITRATOR JUSTICE MOSENEKE: And why were they absent here?

DR. BARNEY SELEBANO: The plan has gone wrong, no one can argue about that Justice.

ARBITRATOR JUSTICE MOSENEKE: Counsel, your witness.

ADV DIRK GROENEWOLD: Thank you Justice. Thank you Justice. Sir I put it to you that unlawful conduct reminds unlawful conduct even viewed from hindsight.

DR. BARNEY SELEBANO: I don't know that.

ADV DIRK GROENEWOLD: You could just say you agree or do not agree.

DR. BARNEY SELEBANO: But for me you are saying unlawful conduct is this or that I'm saying I don't know.

ADV DIRK GROENEWOLD: Unlawful conduct cannot become unlawful just because you viewed from hindsight either it's unlawful or not unlawful. A truth cannot become a lie if you viewed it from hindsight a lie cannot become the truth if you view it from hindsight. Do you agree?

5**DR. BARNEY SELEBANO:** You said so, you that's two. You are throwing me off.

ADV DIRK GROENEWOLD: It is a simple issue sir. We are now saying at that point in time everything was fine.

DR. BARNEY SELEBANO: Must work well.

10**ADV DIRK GROENEWOLD:** When you all these hindsight facts that I pointed out to you, you are saying that at that point in time when you failed to stand up next to Mr. (Inaudible) 1:54:25 and confront it, it wasn't wrong but now from hindsight you agree it was wrong?

DR. BARNEY SELEBANO: No I wish I would have stood up. Wrong is 15something else.

ADV DIRK GROENEWOLD: Wrong is something else. But the long of the short is sir you would agree with me that the wrong remains a wrong and it doesn't depend whether or not you view from hindsight?

DR. BARNEY SELEBANO: I need your help Justice. I need your help.

20**ARBITRATOR JUSTICE MOSENEKE:** What is your response? We could make it much much simpler.

DR. BARNEY SELEBANO: Yeah maybe.

ARBITRATOR JUSTICE MOSENEKE: Um what counsel is saying to you is

that if something was wrong or unlawful at a point of commission, it cannot change and become lawful only because you realized it later that it was unlawful.

DR. BARNEY SELEBANO: But it is a concept of law.

5**ARBITRATOR JUSTICE MOSENEKE:** And common sense also.

DR. BARNEY SELEBANO: I understand when you put it that way I understand.

ARBITRATOR JUSTICE MOSENEKE: You understand I'm not arguing for you to understand.

DR. BARNEY SELEBANO: I understand.

10**ARBITRATOR JUSTICE MOSENEKE:** If you bump someone negligently lets say with your car and you say I didn't think I was negligent then but on hindsight I was negligent. Oh but common sense people will say he was negligent.

DR. BARNEY SELEBANO: Did you want to do that deliberately.

ARBITRATOR JUSTICE MOSENEKE: That is a separate inquiry. But in law it
15 doesn't change.

DR. BARNEY SELEBANO: It doesn't matter I don't know the law that much.

Yeah.

ARBITRATOR JUSTICE MOSENEKE: If you sign something, you think you are regularizing it, in fact it is already unlawful anyway it doesn't become lawful
20 because on hindsight you thought it was lawful.

DR. BARNEY SELEBANO: Yes.

ARBITRATOR JUSTICE MOSENEKE: Whatever you think afterwards doesn't change the objective wrongfulness of the conduct.

DR. BARNEY SELEBANO: The respect of the intention.

ARBITRATOR JUSTICE MOSENEKE: Otherwise lawfulness will depend on the whims of people. Of the three months somebody says I didn't think it was wrong then but I realize it's wrong now. It still remains wrong, do you agree with that?

DR. BARNEY SELEBANO: You are the judge. You have experience with the law, I understand it.

ARBITRATOR JUSTICE MOSENEKE: That is what counsel is giving you, he's giving you the opportunity to respond because he's going to argue in your absence. That is what all this putting to you means. That's what this is about. He's going to say Dr. Selebano you shouldn't have accepted this version because in fact he had fore site let alone hindsight.

DR. BARNEY SELEBANO: No I didn't have fore site.

ARBITRATOR JUSTICE MOSENEKE: Very well counsel.

15 **ADV DIRK GROENEWOLD:** Thank you Justice

DR. BARNEY SELEBANO: I understand now.

ADV DIRK GROENEWOLD: Um Dr. Selebano, um, on the license issue, Um you confirm that you did not produce any foul report on that NGOs, you simply reissued the license.

20 **DR. BARNEY SELEBANO:** Regularized the license.

ADV DIRK GROENEWOLD: We'll get to regularized it but you didn't have a file, you didn't say bring me the file of the NGO I want to see the compliance of the NGO. All right I'm going regularize it but I'm satisfied they complied with

everything so I'm now regularizing this license. The point is you didn't go through the file, you didn't check that NGO in fact complies? You testified sir.

DR. BARNEY SELEBANO: I said with the previous counsel yes but you are having the managers sitting--

5ADV DIRK GROENEWOLD: No, sir. You are here on the spot you signed.

DR. BARNEY SELEBANO: Yes I signed.

ADV DIRK GROENEWOLD: You signed the license but I put it to you did not assist and term whether or not NGO in fact complied?

DR. BARNEY SELEBANO: At that point in time yes.

10ADV DIRK GROENEWOLD: You did not you agree that is a presentation of fact? Because when you sign a license you say this NGO in terms of the law they are license to take on patients.

DR. BARNEY SELEBANO: Yes. But Dr. (Inaudible) 1:59:23 had already signed. There's a

15ADV DIRK GROENEWOLD: No. You sir.

DR. BARNEY SELEBANO: But you take it that in a point of time. If you can I'm not saying is the right thing. I'm saying I regularized it at that time.

ARBITRATOR JUSTICE MOSENEKE: Yes, but you said what you thought you were doing regularizing. That's his answer counsel, he thought he was 20regularizing it.

ADV DIRK GROENEWOLD: But I want to get to something specific Justice that is you agree with that is a misrepresentation of the facts because if you issue a license you are saying that institution complies with the act and they can take

patients but you have not assist that NGO, you personally? In respect with whether or not you regularized it. If you signed the license you say this NGO complies with all the requirements and terms of the law. But if you did not prove the facts and did not establish it and you still sign that license, it is a misrepresentation of the facts.

DR. BARNEY SELEBANO: Okay. I hear you counsel but I did also explain Justice that I sign licenses for private health establishments. The files that I get are the ones that says HOD, we're going to net care hospital. We checked everything these are fine, these are fine. But I don't get a big file. The 10 colleagues say it is satisfying according to the act we have done everything please issue reissue normally we --

ARBITRATOR JUSTICE MOSENEKE: You say you are entitled to rely on the report of your colleagues.

DR. BARNEY SELEBANO: I'm entitled on the oral report.

15 **ARBITRATOR JUSTICE MOSENEKE:** I hear the point. Now counsel says when you sign a license, in his view you are required to do more than that. Okay let's start the first step, he says when you sign a license you are making a representation. You are telling the whole world that this person is entitled to do certain things.

20 **DR. BARNEY SELEBANO:** Fair fair Justice.

ARBITRATOR JUSTICE MOSENEKE: Right. You sign a license to drive. You are telling everybody that she's entitled and satisfy the requirements for the license. Let's take a driving license for a moment. But if you haven't checked

and didn't tested and haven't done the eye test and blah blah and then you sign the license. A typical driver license counsel says you are misrepresenting to the world that she knows how to drive. She has a good eye site. She is safe on the road that amounts to a misrepresentation. Do you agree with that?

5DR. BARNEY SELEBANO: Okay when you explain it I hear it yes.

ARBITRATOR JUSTICE MOSENEKE: Does it relate to you but every time an official signs a license is saying to everybody that we'll deal with that person that she has satisfied the requirements of the law. Do you understand it from that point of view?

10DR. BARNEY SELEBANO: From that point of view.

ARBITRATOR JUSTICE MOSENEKE: So your conduct says amounted to the representation which is not true.

DR. BARNEY SELEBANO: Which is not true. But respect to whether I was regularizing it or not.

15ARBITRATOR JUSTICE MOSENEKE: Yes, do you follow that?

DR. BARNEY SELEBANO: I follow the.

ADV DIRK GROENEWOLD: To make it more simple Dr. Selebano you signed there under my hand on this day the first of April. But when you sign it it wasn't the first of April, 2016 you agree?

20DR. BARNEY SELEBANO: Yes I agree.

ARBITRATOR JUSTICE MOSENEKE: You agree that is a misrepresentation of the facts because you did not sign the license on the first of April 2016?

DR. BARNEY SELEBANO: I'm going to go back to the regularizing yeah.

ADV DIRK GROENEWOLD: Sir if you regularized you could have said I have now reissued the license it was finished on the first of April but I'm now reissuing on 15th of May or June or wherever because I reissue it to regularize it but I confirm that everything is in order and these NGOs indeed fit for purpose. You didn't do that?

DR. BARNEY SELEBANO: I didn't do that.

ADV DIRK GROENEWOLD: You misrepresented the facts because you didn't establish they are indeed fit and proper to receive a license and you sign it on the first of April 2016 or you dated it the first of April 2016 while knowing it wasn't the first of April, 2016?

DR. BARNEY SELEBANO: That is why we didn't remove the original that was signed.

ADV DIRK GROENEWOLD: And you agree it was a misrepresentation of the facts?

15 **DR. BARNEY SELEBANO:** Under the explanation of the Justice yes. I understand.

ADV DIRK GROENEWOLD: Sir the last issue I'm going to take you to is LL 115.

DR. BARNEY SELEBANO: Is it counsel here already?

ADV DIRK GROENEWOLD: My apologize in that exhibit bundle I think. As my colleague also referred to you this document. It's that report on the death of the patients placed from Life Esidimeni to the hospitals in NGOs from May to August 2016.

DR. BARNEY SELEBANO: Okay yeah I'm with you counsel I'm with you.

ADV DIRK GROENEWOLD: I'm just going to be sweet and short on this sir.

You this document as we indicated is was dated the 14th of September --

DR. BARNEY SELEBANO: That's right.

ADV DIRK GROENEWOLD: 2016, you gave, you indicated that it was 41
5patients passed away.

DR. BARNEY SELEBANO: At that time, yes.

ADV DIRK GROENEWOLD: At that time. Now the MEC said on the previous
day was 36 but the issue that I want to get to on page 2 of the document. The
reasons that you provided.

10**DR. BARNEY SELEBANO:** That one that says all that?

ADV DIRK GROENEWOLD: Yes. The justice and my colleague canvas with
you said how is it possible that you nowhere mentioned that it might be due to
the negligence of the NGOs.

DR. BARNEY SELEBANO: Yeah no I'm not quarreling with you, yes I should
15have.

ADV DIRK GROENEWOLD: You should have, you agree?

DR. BARNEY SELEBANO: Yes I should have put that as a possibility.

ADV DIRK GROENEWOLD: Yes the reason why you should have put that in sir
because you testified and I went and looked, you testified earlier that at the
20beginning of August you received a phone call from the minister.

DR. BARNEY SELEBANO: Around that time, yes.

ADV DIRK GROENEWOLD: Yes. And it said Dr. Selebano get to work, close
down.

DR. BARNEY SELEBANO: I don't quarrel with you on that one.

ADV DIRK GROENEWOLD: Yes. And your evidence is you were running around and went to the NGOs and saw what was happening there sir. But then in September when you write the report, when you write the report, you don't make mention of any of that.

DR. BARNEY SELEBANO: It should have been included much more I agree with you, I agree with you.

ADV DIRK GROENEWOLD: So it is misrepresentation of the facts again here sir.

10 **DR. BARNEY SELEBANO:** I agree with you, I agree with you.

ADV DIRK GROENEWOLD: Now sir, in terms of section 70 of the mental health care act, any person who misrepresents a fact in any application report, record or certificate, is guilty of an offense. So you would admit sir that you are guilty of an offense?

15 **DR. BARNEY SELEBANO:** As you read it.

ARBITRATOR JUSTICE MOSENEKE: Sir reply he doesn't have to say more than that.

DV DIRK GROENEWOLD: I said. Thank you.

ARBITRATOR JUSTICE MOSENEKE: The witness has made a number of 20 concession there but he doesn't say that he's guilty of anything, yeah.

ADV DIRK GROENEWOLD: Thank you, Dr. Selebano. I hope you find closure.

DR. BARNEY SELEBANO: I hope I do also.

ADV DIRK GROENEWOLD: Thank you Justice.

DR. BARNEY SELEBANO: Thank you very much I appreciate your kindness, sir.

5

ARBITRATOR JUSTICE MOSENEKE: Advocate Hutamo.

ADV TEBOGO HUTAMO: Thank you Justice. Dr. Selebano, good afternoon.

DR. BARNEY SELEBANO: Hi advocate.

10**ADV TEBOGO HUTAMO:** As it appears on the last counsel to ask you questions, except for the reexamination.

DR. BARNEY SELEBANO: Okay.

ADV TEBOGO HUTAMO: I do not wish to repeat all the questions which have been posed to you.

15**DR. BARNEY SELEBANO:** Okay.

ADV TEBOGO HUTAMO: You have given the answers to the best of your ability.

DR. BARNEY SELEBANO: Thank you sir.

ADV TEBOGO HUTAMO: And from what appears from this proceedings you 20maybe aware that the families which are before you would like to know the truth of how the project was implemented.

DR. BARNEY SELEBANO: Yes.

ADV TEBOGO HUTAMO: In order to understand exactly how --

DR. BARNEY SELEBANO: What happened.

ADV TEBOGO HUTAMO: The death of their loved one were cared.

DR. BARNEY SELEBANO: Okay.

ADV TEBOGO HUTAMO: Um there's been a number of contradictions which
5we pointed out to you. And in order to avoid a petition of questions, I'll call upon
you to Um in shorter ways and in simple terms just explain who actually decided
to terminate the contract between the department and Life Esidimeni?

DR. BARNEY SELEBANO: You mean I should give a name and say so and
so.

10**ADV TEBOGO HUTAMO:** Indeed.

DR. BARNEY SELEBANO: I have been battling with the name as I said I
found the contract the decision that they might be there should be a review of
the contact of Life Esidimeni, I found I there.

ADV TEBOGO HUTAMO: If I could just interrupt you at that point. We all
15know that the contract was terminated on the 29th of September 2015.

DR. BARNEY SELEBANO: Yes that is when I signed the contract.

ADV TEBOGO HUTAMO: Yes.

DR. BARNEY SELEBANO: The termination letter.

ADV TEBOGO HUTAMO: The termination.

20**DR. BARNEY SELEBANO:** Yes. So in a sense it could be me, yes.

ADV TEBOGO HUTAMO: I need to establish from you who was the ultimate
decision maker that that letter that you have signed should have been drafted,
signed and sent to Life Esidimeni.

DR. BARNEY SELEBANO: I hear you and we spoke about that again and advocate the events before that but when I said I said family. The decision to sign to terminate was taken at the departmental level as part of what I have explained and I then was the one that signed it the termination letter.

5**ADV TEBOGO HUTAMO:** And is there any certain person that can take the ultimate responsibility of the consequences attended to the termination of the contract?

DR. BARNEY SELEBANO: I don't know if there can be a single person. There were deputy directors, assistant directors, managers, directors two directors.
10 You saw the list of the teams including myself MEC, I don't think there would be only one person to take.

ADV TEBOGO HUTAMO: Okay. I'm just going to take you to the questions which are opposed to you with regards to you were asked who was the decision maker in relation to the termination of the contract. And your response if I recall
15 you said it was the collective leadership of the projects of the providence. Is that how I understood your question, your answer?

DR. BARNEY SELEBANO: Sorry sorry the department and providence, yeah.

ADV TEBOGO HUTAMO: And then in your definition in the collective you made reference to the former MEC Mrs. (Inaudible) 2:13:15.

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

ADV TEBOGO HUTAMO: Yourself as the HOD.

DR. BARNEY SELEBANO: Yes and and senior managers.

ADV TEBOGO HUTAMO: And DGD led by (inaudible) 2:13:23

DR. BARNEY SELEBANO: CFO.

ADV TEBOGO HUTAMO: And you also made reference to Dr. (Inaudible) 2:13:30 was the director of mental health and chief executive of various hospitals HR, infrastructure in finance.

5**DR. BARNEY SELEBANO:** In finance, yes.

ADV TEBOGO HUTAMO: And you mentioned that this decision was taken during a number of meetings which were held in the department?

DR. BARNEY SELEBANO: Yes. And those that were held outside the department at the departure counsels.

10**ADV TEBOGO HUTAMO:** Yes and at what stage she was the premier involved during these meetings?

DR. BARNEY SELEBANO: The budget counsels belong to the premier. I wouldn't give you the actual dat but there were two we call them PBC. There were two of them that we presented to the premier.

15**ADV TEBOGO HUTAMO:** Yes. I just want us to deal with the reference to the collective as the decision maker and I just want to find out if within the department itself, was the premier involved during the meetings which were held.

DR. BARNEY SELEBANO: In the department?

20**ADV TEBOGO HUTAMO:** Indeed.

DR. BARNEY SELEBANO: No no. The premier wasn't in our meetings.

ADV TEBOGO HUTAMO: So we could accept that like during these meetings were the collective was having meetings, the premium wasn't involved.

DR. BARNEY SELEBANO: No no, he doesn't sit in our meetings.

ADV TEBOGO HUTAMO: And not have been previewed to the discussions.

DR. BARNEY SELEBANO: No to the grandular of discussions no he wouldn't.

No he wouldn't.

5**ADV TEBOGO HUTAMO:** Okay. Um you have just been asked a question about Um the termination of the contract and if I recall the evidence that you were given files. Amongst them were documents related to the letter to which you had to sign. That letter was the termination letter, do you recall that?

DR. BARNEY SELEBANO: Perhaps I was given the office situation where the 10files and table and all that I got to sign them. I was probably giving an office situation.

ADV TEBOGO HUTAMO: And you were asked if you had read that draft letter of termination?

DR. BARNEY SELEBANO: The draft.

15**ADV TEBOGO HUTAMO:** The letter, the letter which was drafted.

DR. BARNEY SELEBANO: Oh yeah, yes I signed it I read it and then I signed it.

ADV TEBOGO HUTAMO: And you agreed with the contents of that letter?

DR. BARNEY SELEBANO: That's correct counsel.

20**ADV TEBOGO HUTAMO:** The contents which justified the termination of the contract?

DR. BARNEY SELEBANO: That's correct.

ADV TEBOGO HUTAMO: Um if you can recall. From your evidence you said

that the facts which were placed before you justifies the termination of the contract?

DR. BARNEY SELEBANO: The facts that were discussed in the executive Um let's agree to call it collective everybody.

5ADV TEBOGO HUTAMO: Yes.

DR. BARNEY SELEBANO: Yes. We're convincing this is what we must do.

ADV TEBOGO HUTAMO: They were convincing that you could terminate the contract?

DR. BARNEY SELEBANO: Yes.

10ADV TEBOGO HUTAMO: And there was nothing that you could have prevented from terminated that contract on the 29th of September 15.

DR. BARNEY SELEBANO: At that time?

ADV TEBOGO HUTAMO: Yes

DR. BARNEY SELEBANO: No.

15ADV TEBOGO HUTAMO: Yes, thank you. Let's now deal with your interaction with, with Um Mr. (Inaudible)2:17:43. Um, when you had a discussion about the difficulties or the risks which could have arisen by the implementation of the project, do you recall that?

DR. BARNEY SELEBANO: Yes, I remember the letter yeah.

20ADV TEBOGO HUTAMO: And you have been quizzed on the appointment of the project team that in fact you have approved the project team?

DR. BARNEY SELEBANO: Yes I nominated the team if you see the list of nominees.

ADV TEBOGO HUTAMO: Yes. So you are the one that has appointed Mr. (Inaudible) 2:18:26 to leader the team as a project leader?

DR. BARNEY SELEBANO: Yes I nominated him. You see okay, yes.

ADV TEBOGO HUTAMO: And in your discussions with Mr. (Inaudible) 2:18:40
5you have had discussions with him that you had to communicate with the former MEC about the misgivings related to the implementation of the plan?

DR. BARNEY SELEBANO: No we were sitting then looking at everything and what should we do, how can we do it and who will do it and he said that I will do it. And that is why the letter starts by saying I apologize for misinteracting to 10misdirect.

ADV TEBOGO HUTAMO: The letter that you speak about is LL 2 if you can try and locate the file.

DR. BARNEY SELEBANO: Yeah. So the reporting circumstances?

ADV TEBOGO HUTAMO: Yes. If you could go page 27 it should be on the 15bottom. The bottom right of the document.

DR. BARNEY SELEBANO: 28, 29. Oh the letter the problem with that letter I recall it is the prints off file. So inky that you can't it's not legible.

ADV TEBOGO HUTAMO: But do you have any recollection of the concerns which were penned down in that letter?

20**DR. BARNEY SELEBANO:** I mean it would have been not that question it would be easy if I could if you recall sorry if would recall that letter had to see it through a laptop because I couldn't.

ADV TEBOGO HUTAMO: Yes.

DR. BARNEY SELEBANO: So if I were to say I recall --

ARBITRATOR JUSTICE MOSENEKE: It can we make available again an ask when you need it any time.

DR. BARNEY SELEBANO: Okay there it is. Thank you sir thank you very much. Where do you start?

ADV TEBOGO HUTAMO: For a moment you could just put aside the laptop and turn to the letter had an attachment of the issues which were raised. That should be Um--

DR. BARNEY SELEBANO: Is that on 12 February, 2016.

10**ADV TEBOGO HUTAMO:** Yes.

DR. BARNEY SELEBANO: That is with MEC and Mrs. (Inaudible) 2:21:17 we attendance.

ADV TEBOGO HUTAMO: Yes.

DR. BARNEY SELEBANO: Yes, I got it here.

15**ADV TEBOGO HUTAMO:** Are you able to read it?

DR. BARNEY SELEBANO: Yes I can see it.

ADV TEBOGO HUTAMO: Do you recall those concerns which were raised?

DR. BARNEY SELEBANO: This discussion yes. Not word for word of course.

ADV TEBOGO HUTAMO: Yes.

20**DR. BARNEY SELEBANO:** Yeah.

ADV TEBOGO HUTAMO: And your evidence was that because Mr. (Inaudible) 2:21:41 was the project leader he should have been the one to convey those concerns to the MEC?

DR. BARNEY SELEBANO: No no. I said we then discussed and said who would be best placed ordinarily. Ordinarily I would have been the one to do it. But then we agreed that now that you are their project leader you could still do it and that is how we agreed on it.

5**ADV TEBOGO HUTAMO:** Yes. And you conquered with Mr. (Inaudible)2:22:12 concerns which were raised?

DR. BARNEY SELEBANO: Yes. I was part of the the personal business.

ADV TEBOGO HUTAMO: Do you recall the dates where those concerns raised?

10**DR. BARNEY SELEBANO:** The date of the letter?

ADV TEBOGO HUTAMO: Yes. When the concerns were raised with the MEC from MEC.

DR. BARNEY SELEBANO: No I wouldn't recall that date of the meeting, no no I don't remember the actually date.

15**ADV TEBOGO HUTAMO:** But it would have been around February of 2015?

DR. BARNEY SELEBANO: It should yeah. I can --

ARBITRATOR JUSTICE MOSENEKE: The content raises the letter send --

ADV TEBOGO HUTAMO: The e-mail was sent on the 12th of February. 2015.

DR. BARNEY SELEBANO: I wouldn't know I don't have the date of February 2012, 2015.

ARBITRATOR JUSTICE MOSENEKE: Is it in front of you if you scroll up or down you will see it.

DR. BARNEY SELEBANO: The data is running low now.

ADV TEBOGO HUTAMO: Okay. Even at the actual document. If you could look at the document itself.

DR. BARNEY SELEBANO: The problem with the document is you can't see.

ADV TEBOGO HUTAMO: No no I'm just referring I want to take you to the date not the contents of the e-mail. You should be able to see that. Page 27 at the top of the document in bold.

DR. BARNEY SELEBANO: I was trying to say I don't have page 27, we use the laptop for that. Now it says it is closing. Okay it is less than 10% maybe we could quickly, sorry not. Okay now it is going down down.

10**ADV TEBOGO HUTAMO:** Do you see where it is written 90.2 at the top of the document?

DR. BARNEY SELEBANO: I'm lost with this, maybe someone can come and help.

ARBITRATOR JUSTICE MOSENEKE: Doctor.

15**ADV TEBOGO HUTAMO:** Yes below that.

DR. BARNEY SELEBANO: And then it says Mr. (Inaudible) 2:24:22

ADV TEBOGO HUTAMO: Can you see the date?

DR. BARNEY SELEBANO: The date is 12 Feb.

ADV TEBOGO HUTAMO: Yes.

20**DR. BARNEY SELEBANO:** At 4:06 p.m.

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

ARBITRATOR JUSTICE MOSENEKE: What do you want to establish counsel? It's late in the day, this was the common cause was the letter that was

sent to the MEC and this witness claims to be the coauthor in other words supported you in offering the letter. So the document would have been qualified already.

DR. BARNEY SELEBANO: Justice like the number of aspects that I need to convert with the witnesses as far as his position is concerned.

ARBITRATOR JUSTICE MOSENEKE: Yes but I'm saying that we shouldn't qualify the document we done that already and we know and all that. Ask the questions please proceed to the substance in other words don't spend time on identifying it.

10 **ADV TEBOGO HUTAMO:** Okay.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

ADV TEBOGO HUTAMO: Um, I notice justice is pressed for time maybe we might have to proceed with the witness otherwise like I'm happy to proceed with the questioning.

15 **ARBITRATOR JUSTICE MOSENEKE:** No. Please proceed with the question. I'm making a very narrow point counsel, it is very narrow. That taking time to identify the documents, I'm saying we have done that already by at least three advocates. I ask you to please proceed with the questions on the document.

ADV TEBOGO HUTAMO: Thank you justice.

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

ADV TEBOGO HUTAMO: Um Dr. Selebano.

DR. BARNEY SELEBANO: Counsel.

ADV TEBOGO HUTAMO: I have referred you to item, the contents to the

documents to which you agreed with Mr. (Inaudible)2:26:13. The items in which the concerns were raised about the misgivings that you had about the implementation of the project. And and when a question was asked why didn't you write to the MEC yourself. I recall you saying that you did not communicate with the MEC directly as far as those issues were concerned.

DR. BARNEY SELEBANO: I don't understand.

ADV TEBOGO HUTAMO: You were asked a question as to whether in your capacity as the HOD, raise with the MEC the concerns which you had about the project?

10 **DR. BARNEY SELEBANO:** In relation to this letter?

ADV TEBOGO HUTAMO: Yes.

DR. BARNEY SELEBANO: Yes. Did I raise it to the MEC?

ADV TEBOGO HUTAMO: Yes.

DR. BARNEY SELEBANO: Or raised in the meeting that you were asking? I
15 thought it was raised in the meeting agreed with Mr. (Inaudible) 2:27:24 that he'd raise it and he raised it.

ARBITRATOR JUSTICE MOSENEKE: And the meeting was subsequent to the e-mail the 11th of February?

DR. BARNEY SELEBANO: That's right. It was subsequent to that.

20 **ADV TEBOGO HUTAMO:** And do you recall when was that meeting?

DR. BARNEY SELEBANO: I can't recall the date. It's a long time ago, yeah the actual date no.

ADV TEBOGO HUTAMO: And you said that when Mr. (Inaudible)2:27:54

raised the issue, Um he was stopped from continuing with those issues when he was asked whether he was working for Life Esidimeni or the department?

DR. BARNEY SELEBANO: Yes I said that yesterday, yes I said that.

ADV TEBOGO HUTAMO: And you said that the letter was never discussed Sany further?

DR. BARNEY SELEBANO: That's correct.

ADV TEBOGO HUTAMO: And this is a matter which fell within your department as the head?

DR. BARNEY SELEBANO: The letter was settled when the MEC said do you 10work for Life Esidimeni or what Mr. (Inaudible)2:28:30 and we all kept quite like you should accept that it was a difficult way of answering a question.

ARBITRATOR JUSTICE MOSENEKE: What did that mean, what did understand head to mean?

DR. BARNEY SELEBANO: You are conversing for Life Esidimeni or what 15something like that.

ARBITRATOR JUSTICE MOSENEKE: Which side are you betting.

DR. BARNEY SELEBANO: Which team are you going with here.

ARBITRATOR JUSTICE MOSENEKE: Yeah you understood that to be mean, stop supporting Life Esidimeni?

20**DR. BARNEY SELEBANO:** No.

ARBITRATOR JUSTICE MOSENEKE: No.

DR. BARNEY SELEBANO: I never understood that to say we may not get any further now. Ordinarily okay what other concerns can we talk, what other issues.

Then you have an atmosphere then you exchange these are our views and we're thinking that way.

ARBITRATOR JUSTICE MOSENEKE: So the attempt to raises these things with the MEC were stopped dead in the tracks right there?

DR. BARNEY SELEBANO: Right there.

ADV TEBOGO HUTAMO: So basically you were prevented from raising your concerns about the inappropriate time to implement the project?

DR. BARNEY SELEBANO: Counsel, please forgive me I'm now very carefully language usage. When you say prevent. I don't want to create the impression 10and I wanted to do and the MEC stopped me. No, she didn't prevent me. We just didn't raise it.

ADV TEBOGO HUTAMO: You are saying in your letter. In the e-mail which you prepared with Mr. (Inaudible)2:30:00 you raised issues.

DR. BARNEY SELEBANO: Of course.

15**ADV TEBOGO HUTAMO:** Which related to the

DR. BARNEY SELEBANO: To the project.

ADV TEBOGO HUTAMO: The project and your concerns that it could not have been executed at that time, isn't that so?

DR. BARNEY SELEBANO: Yeah there was misgivings, yes.

20**ADV TEBOGO HUTAMO:** And following a meeting at which you had and wanted to repeat the same concerns that we couldn't proceed with this project, is that so?

DR. BARNEY SELEBANO: Correct.

ADV TEBOGO HUTAMO: And that was parted when Mr. (Inaudible)2:30:34
was asked the question?

DR. BARNEY SELEBANO: It was what?

ADV TEBOGO HUTAMO: That was stopped when Mr. (Inaudible)2:30:41 was
asked the question?

DR. BARNEY SELEBANO: Yeah Mr. (Inaudible) 2:30:45 wanted to raise the
issue and that's when they asked do work for Life Esidimeni? I don't even recall
whether he answered or not. We all just left it at that.

ARBITRATOR JUSTICE MOSENEKE: You all felt this is end of the road?

10**DR. BARNEY SELEBANO:** That is correct justice.

ADV TEBOGO HUTAMO: Is it then that you have not been prevented from
raising those issues?

DR. BARNEY SELEBANO: Well she'll say I never said don't talk.

ADV TEBOGO HUTAMO: The effect. Like you said the matter was never
15discussed any further by virtue of the question that was posed. The effect of
that was it not that you were prevented from discussing it further?

DR. BARNEY SELEBANO: Concerning to see that it as a prevention it is fair
but I'm simply saying when that question. When Mr. (Inaudible) 2:31:39 stood
up and said this and that answer came up we went to the next item. There was
20no other discussion.

ADV TEBOGO HUTAMO: Thank you. Let's then go back to your appointment.

DR. BARNEY SELEBANO: That's right.

ADV TEBOGO HUTAMO: You testified that you had been appointed by the

premium.

DR. BARNEY SELEBANO: Ordinarily yes.

ADV TEBOGO HUTAMO: All though--

DR. BARNEY SELEBANO: Appointed by premium.

5**ADV TEBOGO HUTAMO:** All though like the political head would be the MEC
for health?

DR. BARNEY SELEBANO: Supervising system yes.

ADV TEBOGO HUTAMO: Okay. You were asked a question about Um. I'm
still going to deal with this aspect of termination of the contract. You were asked
10a question in relation to the termination of the argument as to whether did you
report to anybody for the decision. Do you recall that question being posed to
you?

DR. BARNEY SELEBANO: I remember that.

ADV TEBOGO HUTAMO: And you said you'd have probably informed the
15MEC do you recall that?

DR. BARNEY SELEBANO: Yes we hurdled around that yes.

ADV TEBOGO HUTAMO: And and you asked whether you were obliged to tell
the MEC?

DR. BARNEY SELEBANO: When you work as a team you share information.
20If you know you can't take it justice you are signing a letter that has implications
in terms of the contract. You would want to assure your political head this is what
I have done. It's not asking for permission but say to the political head this is
what I have done.

ADV TEBOGO HUTAMO: The question is whether you were obliged to have informed the MEC of the decision?

DR. BARNEY SELEBANO: With ethics, the simple answer would be no I was not obliged. But work ethics suggest that you need to do this things so that you build a work relationship. So the obligation no. In terms of proper work environment, yes you got to do that.

ADV TEBOGO HUTAMO: So as far as the termination of the contract was concerned, you were asked a question whether did you require head approval. Do you recall that?

10 **DR. BARNEY SELEBANO:** Yes, I remember that.

ADV TEBOGO HUTAMO: What was your answer?

DR. BARNEY SELEBANO: I said it was an administrative matter and I could sign it.

ADV TEBOGO HUTAMO: So you did not require head approval?

15 **DR. BARNEY SELEBANO:** No, it wasn't an administrative manner.

ADV TEBOGO HUTAMO: Like if you could just indicate by a yes or no.

DR. BARNEY SELEBANO: No, I didn't require an approval.

ADV TEBOGO HUTAMO: So you didn't require head approval. So that decision to terminate lied with you not the MEC?

20 **DR. BARNEY SELEBANO:** The decision to sign the termination letter was with me, yes.

ADV TEBOGO HUTAMO: Let's not try to complicate the ways, what I'm saying the decision to terminate the contract.

DR. BARNEY SELEBANO: No but you see, that's again you are saying I'm complicating but you are saying the position to terminate the contract. I'm saying the collective said we terminate the contract. My decision, my action is to sign off.

5**ADV TEBOGO HUTAMO:** Can I just, can I just rephrase that?

DR. BARNEY SELEBANO: Maybe. Yes.

ADV TEBOGO HUTAMO: For the termination of the contract, you did not require the approval of the MEC?

DR. BARNEY SELEBANO: That's correct.

10**ADV TEBOGO HUTAMO:** And off of that matter you did not require the approval of the premiers budget counsel?

DR. BARNEY SELEBANO: No, the departmental matters end up in departments.

ADV TEBOGO HUTAMO: Yes.

15**DR. BARNEY SELEBANO:** No.

ADV TEBOGO HUTAMO: Okay. And you were asked a question whether the implementation of the process had proceeded without you saying yes and I recall you having given the response that you can't proceed until the HOD says yes.

20**DR. BARNEY SELEBANO:** In the normal function of things, if there is no signature that says proceed, Um you can't until you have that signature that is correct. If you don't mind excuse me can I just pick up water?

ADV TEBOGO HUTAMO: Yes.

ARBITRATOR JUSTICE MOSENEKE: Someone can help you, don't have to doc. Let them bring you water. Or you prefer to be up and down.

DR. BARNEY SELEBANO: Yes sitting for a moment. Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: Absolutely.

5**DR. BARNEY SELEBANO:** Sorry for the disruption counsel, sorry.

ADV TEBOGO HUTAMO: Yes. So now we know that you did not require the approval of the MEC nor the previous budget counsel.

DR. BARNEY SELEBANO: You don't get approvals in PBCs.

ADV TEBOGO HUTAMO: Yes, yes. You then terminated the contract under 1029th of September

DR. BARNEY SELEBANO: By sense of signing the letter, yes.

ADV TEBOGO HUTAMO: Yes. And when you did this, you were already aware of the risk which were identified by yourself together with Mr. (Inaudible) 2:38:11, is that so?

15**DR. BARNEY SELEBANO:** No no no, what you are talking about with Mr. (Inaudible) 2:38:18 happened around 2016.

ADV TEBOGO HUTAMO: Yes.

DR. BARNEY SELEBANO: And the contract if you check was--

ADV TEBOGO HUTAMO: Yes.

20**DR. BARNEY SELEBANO:** Was terminated in 2015, I think in my head is spinning it should be the 30th of September.

ADV TEBOGO HUTAMO: Okay.

DR. BARNEY SELEBANO: 2015.

ADV TEBOGO HUTAMO: So lets deal with the letter which was sent to you by SASOP do you remember the letter?

DR. BARNEY SELEBANO: Yes, previous counsel showed me the letter.

ADV TEBOGO HUTAMO: And references were made to the oings which Um 5Um were placed before you prior to the termination can, do you recall that?

DR. BARNEY SELEBANO: I did to consider the cancel that. There were warnings and I said it. There were a lot of warning signs, yes.

ADV TEBOGO HUTAMO: So there were a lot of warning signs prior to the termination of the argument?

10**DR. BARNEY SELEBANO:** No no. Some there's a letter that --am I allowed to do

ARBITRATOR JUSTICE MOSENEKE: To do what?

DR. BARNEY SELEBANO: That I recall that counsel showed me a letter that I said I don't have a recollection of that.

15**ARBITRATOR JUSTICE MOSENEKE:** If you describe the letter we could get it for you.

DR. BARNEY SELEBANO: The one that I said I don't recall. Then you showed me the letter the SASOP letter my recollection will say that--

ADV TEBOGO HUTAMO: Can you go to LL 2.

20**ARBITRATOR JUSTICE MOSENEKE:** Counsel should help you get you there. It's an attachment to LL2. To the support.

DR. BARNEY SELEBANO: Okay.

ADV TEBOGO HUTAMO: Page 47. Do you recall the letter?

DR. BARNEY SELEBANO: Yes, yes.

ADV TEBOGO HUTAMO: Can you just read for the record what is the date of that letter?

DR. BARNEY SELEBANO: Where is the date here? Signed 17th 06, 2015. It has other dates, I can't see the date --

ADV TEBOGO HUTAMO: That is prior to the termination of the argument is that so?

DR. BARNEY SELEBANO: That's right, yes I can see that.

ADV TEBOGO HUTAMO: So if you are made aware, all these flashing lights, 10there were warnings given to you. You have considered there were many warnings that you should have taken into account. If you did not require the approval of the former MEC, why did you proceed in spite of these warnings?

DR. BARNEY SELEBANO: Well, I hear you. There's no like you are putting it but I would still the collective and leading managers we still went on. And I 15considered and said we should have picked up the warning signs, I considered to that. We didn't, we now know that we should have picked up on it. We didn't, we now know that we should have picked up the warning signs.

ADV TEBOGO HUTAMO: You said that you were appointed by the premier and for your work you did not require the approval of the former MEC, is that so?

20**DR. BARNEY SELEBANO:** That's correct. No no we're generalizing from my work that there would be instances where I would meet the MEC.

ADV TEBOGO HUTAMO: In relation to this implementation to this project which failed within your department in law you did not require head approval,

isn't that so?

DR. BARNEY SELEBANO: That's correct.

ADV TEBOGO HUTAMO: So knowing your powers as the head of department, you should have not proceeded to terminate the contract. What is your response to that?

DR. BARNEY SELEBANO: At that time, the collective including the MEC we agreed that we should proceed with the project. Now we now know it was a bad decision.

ADV TEBOGO HUTAMO: I'm referring to you as the head of the department 10that on your own, in that capacity. Put aside other members of the collective, on your own, in law you should have stopped the project from being implemented in light of the warnings which were given to you?

DR. BARNEY SELEBANO: Yeah. The work situation doesn't work the way you are describing it. It doesn't work that way. Um it doesn't happen that I 15signed something then I just decide Um colleagues including MEC I'm cancelling this thing. I have to discuss with the manager center, the more finance people know better than me in terms of that. So I hear what you are saying but I'm saying take a real work situation doesn't work like that.

ADV TEBOGO HUTAMO: But but like the responsibility lied with you in the 20department. Isn't that so?

DR. BARNEY SELEBANO: In the accounting office.

ADV TEBOGO HUTAMO: So were you not suppose to be the decision maker in this regard?

DR. BARNEY SELEBANO: The accounting are helped by manager, anyone who does it alone I don't know how it works.

ADV TEBOGO HUTAMO: I have referred you the issues that were raised by your own managers about the implementation of the the project. You have been assisted. They told you that you can't assist you with the project they helped you.

DR. BARNEY SELEBANO: No no no, you are the you are the the letter that we sent with Mr. (Inaudible)2:44:55 is not what you are saying assisting me. We agreed with Mr. (Inaudible)2:44:59 that we seem to be going we're not 10going on the right direction and we had a discussion and said you raise the matter.

ADV TEBOGO HUTAMO: Okay even if we were to ask for your explanation are you saying the letter from SASOP was of no moment because it didn't come from the department?

15**DR. BARNEY SELEBANO:** Judge Mosenke said the of no moment I wouldn't agree that some where in justice said was it of no moment I said justice please that word for me it throws me off because it is like you see something and you just dismiss it and don't care about it. No it is not something like that.

ADV TEBOGO HUTAMO: Did you take into account their concerns when you 20terminates the contract?

DR. BARNEY SELEBANO: We knew that account was sitting with them and discussing with them but--

ADV TEBOGO HUTAMO: No no I'm asking a different question.

DR. BARNEY SELEBANO: No.

ADV TEBOGO HUTAMO: I'm asking did you take into consideration the concerns which were raised by SASOP in your decision making?

DR. BARNEY SELEBANO: We missed the signs, we didn't do that. We didn't do that.

ADV TEBOGO HUTAMO: So you should have done that?

DR. BARNEY SELEBANO: On hindsight now you know what happened. Now you go back to the same letter and everything and say that is why I consider yesterday counsel that if we had just picked up these signs things would have turned out differently.

ADV TEBOGO HUTAMO: Was it an over site in your part?

DR. BARNEY SELEBANO: In the sense--

ADV TEBOGO HUTAMO: To have not taken into consideration.

DR. BARNEY SELEBANO: The department--

15**ADV TEBOGO HUTAMO:** Those concerns.

DR. BARNEY SELEBANO: The department made a mistake by not --

ADV TEBOGO HUTAMO: No. I'm making reference to you your role as the head of that department who terminated the contract. I'm asking you whether was it an over sight of your part?

20**DR. BARNEY SELEBANO:** No it wasn't an over sight because I wouldn't have thought about the consequences at that time.

ADV TEBOGO HUTAMO: The issues were raised with you.

DR. BARNEY SELEBANO: When you say there's over sight you know the

reasons and agree with this but--

ARBITRATOR JUSTICE MOSENEKE: You've proved the point. You put the witness in over site, he said it is not. Um you can put it again he's going to say over site. So we have to probe other matters that are serious to that but you have an answer. The answer is it is not an oversight. Whether it is a good answer or not is another measure.

ADV TEBOGO HUTAMO: Yes. Um can you please go to, can you try to get file 1, page I'm going to refer you to file 1 page 181. Can I put this one aside counsel?

10 **ADV TEBOGO HUTAMO:** Yes, yes, yes.

DR. BARNEY SELEBANO: File 1 page?

ADV TEBOGO HUTAMO: 181.

DR. BARNEY SELEBANO: 181.

ADV TEBOGO HUTAMO: Yes. There is a sentence which was Um I mean 15 like in respect to which you were referred.

DR. BARNEY SELEBANO: Okay.

ADV TEBOGO HUTAMO: At the top of the document.

DR. BARNEY SELEBANO: Is it should top 181 or 180?

ADV TEBOGO HUTAMO: 181.

20 **DR. BARNEY SELEBANO:** 181, okay.

ADV TEBOGO HUTAMO: Where is it recorded that the HOD discussed the need to desegregate patients from the life facilities and to assess the social impact on patients and employees of Life Esidimeni as instructed by the premier.

There's quite a few questions which we'll pose to you in that regard. Once you are on that page can you please get the document LL 114.

DR. BARNEY SELEBANO: Where do I go now?

ARBITRATOR JUSTICE MOSENEKE: Of course it would help the witness if we -- tell the witness what we're going to ask or ask the question from many connection of passages of course it might prejudice the witness. You want the witness to compare the two passages.

ADV TEBOGO HUTAMO: Indeed.

ARBITRATOR JUSTICE MOSENEKE: Okay, very well.

10 **ADV TEBOGO HUTAMO:** Okay can you have a look at paragraph 14?

DR. BARNEY SELEBANO: In 114?

ADV TEBOGO HUTAMO: Yes.

DR. BARNEY SELEBANO: Okay.

ADV TEBOGO HUTAMO: From paragraph 14 which is the affidavit that you 15 already testified on. I just want to get some clarity on some issues here. In the affidavit you stated that during the financial years 2014 to 15 and 2015 to 16. Particularly emphasis was placed on cost containment and revenue enhancement in brackets which was included part of the annual performance plans for the department without sacrificing the quantity of service provision.

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

ADV TEBOGO HUTAMO: This was discussed at the premiers budget counsel and a presentation was given by the member of the executive quality for health and counting (inaudible) 2:51:44 can you see that?

DR. BARNEY SELEBANO: I can see that counsel.

ADV TEBOGO HUTAMO: Do you recall what presentation?

DR. BARNEY SELEBANO: It was a PBC presentation. In the premier budget counsel you don't present one thing, you present the whole budget of the department HR. What are you going to do ensuring that you manage your cost in HR. This is what we're going to do in premier. Okay what are you going to do in infrastructure. Okay did you oversee--

ARBITRATOR JUSTICE MOSENEKE: For you you are confirming the contents of the paragraph, that's the question.

10 **DR. BARNEY SELEBANO:** Yes, yes.

ARBITRATOR JUSTICE MOSENEKE: Proceed counsel.

ADV TEBOGO HUTAMO: Was the issue relating to the marathon project was that discussed or was it presented during this Um counsel meeting?

DR. BARNEY SELEBANO: No at that time they were not discussing the marathon project and not have been started at that time. This is 14, 15. The discussion to the premium would be what are you going to do on cost cutting and revenue enhancement. I'm going to do with this and do away with this. That is what we're going collect. I did collect money from those that are owing us this way and that way that way.

20 **ADV TEBOGO HUTAMO:** Yes. I just need to know during that presentation which is referred to in this paragraph, was the issue relating to the marathon dealt with? You have mentioned that the premier was the person who was sharing this premier counsel budget meetings also.

DR. BARNEY SELEBANO: The simple answer is no, we have not there was no I accept there was no marathon project there was none.

ADV TEBOGO HUTAMO: So despite the premier having been sharing these meetings he wouldn't have known of the marathon project at that time?

DR. BARNEY SELEBANO: The marathon project, it's an implementation project. Premier wouldn't have known about the preimplementation project.

ADV TEBOGO HUTAMO: So premiers would not have known, okay thank you.

DR. BARNEY SELEBANO: They wouldn't have known.

ADV TEBOGO HUTAMO: If you read from the same paragraph Um paragraph 1014 of your affidavit, the first, the last part of the first sentence it records that when this cost containment and revenue enhancement it should not sacrifice the quality of service provision do you see that?

DR. BARNEY SELEBANO: Yes I see that.

ADV TEBOGO HUTAMO: When the project was underway, was there any intention to cut on medication which should have been made able to the mental health care users?

DR. BARNEY SELEBANO: No there was no intention. You can't cut on medicine.

ADV TEBOGO HUTAMO: So what was it part of the strategy to scale down on the quality of care that was provided to the mental health care users that was housed by Life Esidimeni.

DR. BARNEY SELEBANO: No no how do you plan to scale down patient care? You can't scale down patient care.

ADV TEBOGO HUTAMO: We now know the consequences of the projects on the project is that so?

DR. BARNEY SELEBANO: Agreed.

ADV TEBOGO HUTAMO: Did anyone or anyone of the department foresee the possibility of death of those mental health care users?

DR. BARNEY SELEBANO: Um counsel I wish I wish that could have been what we foresaw no one did. I in my heart I wish somebody could have foreseen that and we stop immediately. No one did, no one.

ARBITRATOR JUSTICE MOSENEKE: What does paragraph 19 of the same affidavit mean?

DR. BARNEY SELEBANO: Can I quiteley read it?

ARBITRATOR JUSTICE MOSENEKE: Yes yes please read it.

DR. BARNEY SELEBANO: Okay. I think it is that as part of the project now. This deindustrialization project Um as we agreed now with the MEC as the leader now the political leader of the project, Um and the premier budget I know that the word approval again would have been with the knowledge by the budget counsel as well as the plan those were the things that were there. I then issued a notice.

ARBITRATOR JUSTICE MOSENEKE: Just the startled by the number of versions that you put before us.

DR. BARNEY SELEBANO: No. Justice I think I spoke to the advocate the word approval Um would have appropriate word would have been with the knowledge.

ARBITRATOR JUSTICE MOSENEKE: On instruction is that correct?

DR. BARNEY SELEBANO: That's correct yes. We're now working with--

ARBITRATOR JUSTICE MOSENEKE: There's a marathon project, right?

DR. BARNEY SELEBANO: The deindustrialization project. The inside there
5was this marathon project, yes.

ARBITRATOR JUSTICE MOSENEKE: Was it on the instruction of the MEC?

DR. BARNEY SELEBANO: That's right, that's right.

ARBITRATOR JUSTICE MOSENEKE: Approval of premier budget counsel.

DR. BARNEY SELEBANO: I would have said with the knowledge of.

10**ARBITRATOR JUSTICE MOSENEKE:** The knowledge.

DR. BARNEY SELEBANO: Yeah.

ARBITRATOR JUSTICE MOSENEKE: You know the version you've just given
to the response to advocate Hassim is not the same as that. It is very late in the
day but it is yet another version but you continue counsel.

15**ADV TEBOGO HUTAMO:** Um thank you. Can you just try and Um --

ARBITRATOR JUSTICE MOSENEKE: Let's do this way, a bit of
housekeeping. It is 5:30 just passed 5:30. We have to decide on what we're
going to do. I'd hope to have this witness away today that is why we're still
seated. But it is a function of how much more you still have. If you still have a
20long way of cross examination then we know what to do we'll all will rest. Um
I'm sure the witness is tired himself.

DR. BARNEY SELEBANO: Yes, but I would love to come tomorrow.

ARBITRATOR JUSTICE MOSENEKE: Yes, if it is going to be short we'll have

the witness away. If it is going to be long, we'll adjourn to tomorrow but an election that should come really from counsel.

ADV TEBOGO HUTAMO: Yes. Well justice there's still some aspects which we'll really need to deal with and then I'll propose that we take a break until we meet 9:30 tomorrow.

ARBITRATOR JUSTICE MOSENEKE: Of course. You heard that Dr. Selebano.

DR. BARNEY SELEBANO: I heard that.

ARBITRATOR JUSTICE MOSENEKE: We're almost to the end, that's a good thing.

DR. BARNEY SELEBANO: Thank you justice.

ARBITRATOR JUSTICE MOSENEKE: After the cross examination by the state you'll be left with reexamination by advocate Hutamo which is usually a procedure to revisit matters that were raised not new ones.

15**DR. BARNEY SELEBANO:** What he's doing now?

ARBITRATOR JUSTICE MOSENEKE: No reexamination with the advocate, the one you started with. The closing thing and you going to advocating the judge. Advocate Hassim would then re-examine the evidence leader and then you would say what you want to say.

20**DR. BARNEY SELEBANO:** Thank you justice.

ARBITRATOR JUSTICE MOSENEKE: And we'll be done.

DR. BARNEY SELEBANO: Thank you justice.

ARBITRATOR JUSTICE MOSENEKE: So I hope that I'll have a different voice

from you tomorrow.

DR. BARNEY SELEBANO: Thank you justice.

ARBITRATOR JUSTICE MOSENEKE: But you would still be here.

DR. BARNEY SELEBANO: I'll be here justice.

5**ARBITRATOR JUSTICE MOSENEKE:** So you are excused from there and should be back here 9:30 tomorrow. Shall we do some housekeeping or you rather want to do it in my chambers? If it is short we could do it here. If it is not as short we could do it here.

ADV DIRK GRENEWOLD: Justice.

10**ARBITRATOR JUSTICE MOSENEKE:** Yes.

ADV DIRK GRENEWOLD: Justice, unfortunately due to today's arrangement and time shifts. There's a small issue that needs to be sorted out tomorrow for myself and there's a possibility that we might be some 15 minutes late. Now I don't want to waste your time.

15**ARBITRATOR JUSTICE MOSENEKE:** That's fine.

ADV TEBOGO HUTAMO: But fortunately that is something I need to attend to.

ARBITRATOR JUSTICE MOSENEKE: 15 will kill nobody.

ADV TEBOGO HUTAMO: Thank you Judge.

ARBITRATOR JUSTICE MOSENEKE: Yes. 1 hour 15 will kill all of us but 15 20we could live. Very well any other housekeeping measures? This witness would be done surely 2 something once. Do we have other witnesses to go on?

ADV ALDIA HASSIM: Justice.

ARBITRATOR JUSTICE MOSENEKE: And will we have a program that

includes the January activity?

ADV ALDIA HASSIM: Justice from outside we do have a witness that will be able to testify tomorrow that we arranged to be here in the morning. We circulated between the parties in the new schedule but I think that it is an industry that we discuss that in chambers perhaps if we could do that tomorrow or this afternoon.

ARBITRATOR JUSTICE MOSENEKE: Very well. The available in January is an issue as I said many many times for me. So Um let's talk about that. I'm happy that we do it now but because you are becoming a little rushed tomorrow. 10So we prefer to do it now in my chambers and then we could all can go is that fine? Just a suggestion, if you feel we do it tomorrow we'll do it tomorrow.

ADV TEBOGO HUTAMO: Well justice I want to suggest if we could do it tomorrow morning at 9:00 or soon there after.

ARBITRATOR JUSTICE MOSENEKE: Well advocate you won't be here. So 15you are choosing a time that you won't be here. You can't be at 9:30 so the perfect way to exclude him I think Um--

ADV ALDIA HASSIM: Justice we could do it in the lunch adjournment tomorrow as well. Take the 15 minute minutes of the launch adjournment to meet and maybe that will give us some time to discuss amongst ourselves also 20before we meet with you.

ARBITRATOR JUSTICE MOSENEKE: The balance of the program.

ADV ALDIA HASSIM: Yes that is yes.

ARBITRATOR JUSTICE MOSENEKE: Yes okay. I think seeing the public and

also bring the matter to some point where we can see the finishing line. We have to talk about that tomorrow. Your warned to be here tomorrow Dr. Selebano.

DR. BARNEY SELEBANO: I'll be here justice.

5ARBITRATOR JUSTICE MOSENEKE: At 9:30. And by the end of this, if you are not a lawyer, I'll be surprised. But very well. We are adjourned until tomorrow at 9:30.