

LIFE ESIDIMENI ARBITRATION

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

DATE: 11th OCTOBER 2017 DAY 3

5

DAY 3 SESSION 1 – 4.

BEFORE ARBITRATOR – JUSTICE MOSENEKE

10

WITNESSES:

MR. LEVY MOSENOGI

ME. MALEBONA PRECIOUS MATSOSO

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11 October 2017

SESSION 1

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: The evidence you are going to lead today in this hearing will be the truth, nothing but the truth. Please do right
5 your raise hand and say, so help me God.

MR. LEVY MOSENOGI: So help me God.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: Very well. Thank you. We are going to proceed with the cross-examination. I think at this stage we are going to invite Advocate Crouse.

10 **ADV. LILLA CROUSE:** Thank you Justice. I just noticed that my learned colleague next to me is not here.

ARBITRATOR, JUSTICE DIKGANG MOSENEKE: We will have to invite them into the proceedings, please. Good. Somebody assist to that.

ADV. LILLA CROUSE: Apologies, Justice Moseneke.

15 **ARBITRATOR, JUSTICE DIKGANG MOSENEKE:** Advocate Crouse.

ADV. LILLA CROUSE: Thank you, Justice Moseneke. Morning Mr. Mosenogi.

MR. LEVY MOSENOGI: Morning.

ADV. LILLA CROUSE: I represent the survivors of this move that were in Life Esidimeni before the move. If I can ask you a few questions regarding, first of all I
20 didn't understand your evidence clearly concerning the progress report that you

have made. We know that you made one progress report, you said you made a progress report in about on the 20th of January, the first one, is that right?

MR LEVY MOSENOGI: Which one?

ADV. LILLA CROUSE: You said you made your first progress report on or about
5 the 20th of January 2016.

MR LEVY MOSENOGI: I think... was it not the 26th?

ADV. LILLA CROUSE: 20?

MR. LEVY MOSENOGI: 26th of January.

ADV. LILLA CROUSE: 26th of January. Okay, I misunderstood your evidence
10 there.

MR. LEVY MOSENOGI: If I remember it, ja.

ADV. LILLA CROUSE: And then ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: I am sorry, for the record, both
Counsel and witness, will you always add the year every time you mention a date to
15 make easy reading for anybody else other than us?

ADV. LILLA CROUSE: Thank you Justice Moseneke.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Yes.

ADV. LILLA CROUSE: So you say on the 26th of January was your first progress
report... 2016.

20 **MR. LEVY MOSENOGI:** If I recall, yes.

ADV. LILLA CROUSE: Yes. And you say your second progress report was on the 12th of February 2016.

MR. LEVY MOSENOGI: Yes, to the executive.

ADV. LILLA CROUSE: Yes. Now my learned friend asked you yesterday about
5 other progress reports and I didn't get the answer. Were there any other progress reports after the 12th of February 2016?

MR. LEVY MOSENOGI: Yes. What I said is on a regularly basis, fortnightly, especially if there is a MEC who is available, will be given the reports. So we might have missed one or two weeks, but it was a regular process.

10 **ADV. LILLA CROUSE:** And can you inform us until when did you make these regular reports?

MR. LEVY MOSENOGI: If I recall, the last regular report that we made is after the move has been finalised. Then after that problems started and we had to run around.

15 **ADV. LILLA CROUSE:** If you say after the move was finalised, what do you mean by that?

MR. LEVY MOSENOGI: After the patients have been moved from Life Esidimeni and Life Esidimeni was no longer having patients.

ADV. LILLA CROUSE: Can I just make sure that I understand you correct? Are
20 you saying on the 30th of June 2016?

MR. LEVY MOSENOGI: After that day, ja.

ADV. LILLA CROUSE: After that you had no more progress reports.

MR. LEVY MOSENOGI: After that we did have the progress report in terms of patients have been moved. I think we continued to have those progress reports.

ADV. LILLA CROUSE: Sir, I am just trying to establish when your last progress
5 report was.

MR. LEVY MOSENOGI: I did not remember but it was after June 2016.

ADV. LILLA CROUSE: Can you remember how many reports you had after June
2016?

MR. LEVY MOSENOGI: I don't remember how many, but we can go through, look
10 through.

ADV. LILLA CROUSE: You have all the report with you?

MR. LEVY MOSENOGI: Myself, in my computer I have almost all that I was part of,
I've got.

ADV. LILLA CROUSE: What do you mean almost all?

MR. LEVY MOSENOGI: I might have missed others but the ones that were under
15 me, I should be having.

ADV. LILLA CROUSE: Sorry I don't understand what you are saying? Why do you
say you have got almost all reports on your computer?

MR. LEVY MOSENOGI: Why I say that is because when we submit that
20 Ombudsman we were making a lot of copies and all those things, so I might have

lost some of the reports. But the ones that I kept in my computer, they are still there.

ADV. LILLA CROUSE: You would be able to make them available to us?

MR. LEVY MOSENOGI: From my computer, yes.

5 **ADV. LILLA CROUSE:** Thank you. Did you deal in those progress reports with the deaths of the patients?

MR. LEVY MOSENOGI: Hallo?

ADV. LILLA CROUSE: Did you deal in your progress reports with the deaths of the mental health care users?

10 **MR. LEVY MOSENOGI:** What I said, Counsel, is that after June and after we began to experience that people are dying in the NGOs, it became a crisis kind of approach. So and because of the tensions that were there, I ended up being on the marginal side.

ADV. LILLA CROUSE: Yes, maybe I should go back to my earlier question. Did
15 you deal with the deaths in any of your progress reports?

MR. LEVY MOSENOGI: I don't remember us dealing... At that time it was a crisis and I don't think I sat in a meeting where I presented on the deaths, I did not do that.

ADV. LILLA CROUSE: Can I just ask you also, did you brief the former MEC in
20 another way than via your fortnightly report?

MR. LEVY MOSENOGI: Myself as a project manager, the only available space was when we were briefing him as part of the project managers. But on a personal level, I was not able to brief him on most of the issues.

5 **ADV. LILLA CROUSE:** In September 2016, were you still making progress report at that stage?

MR. LEVY MOSENOGI: The meetings continued, but I think on September... I don't know whether... I was no longer a critical part of the task team, because there were problems between me and the executive.

10 **ADV. LILLA CROUSE:** So is your answer to my question that in September 2013 you were no longer making progress reports?

MR. LEVY MOSENOGI: What I am saying is that ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: 2016.

ADV. LILLA CROUSE: 2016.

15 **MR. LEVY MOSENOGI:** The meetings continued and I did attend the meetings, but I don't remember when I was... somebody else was appointed to coordinate the meetings.

ADV. LILLA CROUSE: I am just trying to establish, Mr. Mosenogi, whether you were making reports to the MEC in September 2016?

MR. LEVY MOSENOGI: I don't remember.

20 **ADV. LILLA CROUSE:** Because in September 2016 the MEC appeared before in the legislature, do you remember that? And she was confronted with the deaths.

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: Did you brief her on that occasion on what she should say with information?

MR. LEVY MOSENOGI: I think Dr Manamela did.

5 **ADV. LILLA CROUSE:** Okay. Can I just make sure that I understand it correctly? You said you think he did, but my question is did you do so?

MR. LEVY MOSENOGI: Myself, I did not brief her.

ADV. LILLA CROUSE: Thank you. Can I just speak to you about Baneng, do you know about Baneng?

10 **MR. LEVY MOSENOGI:** Yes.

ADV. LILLA CROUSE: In none of the documents that I have, and I might have missed it, is your plea to keep that open?

MR. LEVY MOSENOGI: In the meetings that we had, I did plea that it should be kept open and it was agreed from the beginning that in principle we shall keep it
15 until the end of the financial year and then we will see how we negotiate forward. That was the principle concession that I received.

ADV. LILLA CROUSE: So it wasn't in writing, any of your pleas, it was orally, is that what you say?

MR. LEVY MOSENOGI: It was in the meeting that we agreed on, but also I was
20 tasked by the HOD to meet with Life Esidimeni negotiating new tariffs for Baneng

for that financial year and I was involved in the discussion with Life Esidimeni about Baneng and the new tariffs, because we had to negotiate new tariffs for it.

ADV. LILLA CROUSE: Just for clarity sake, at the time you took over as project manager, there were children at that centre. There were only children at that centre
5 when you took over as project manager in November 2016.

MR. LEVY MOSENOGI: There were mainly children but I was told that there was Witpoort, another institution, which had closed prior to me taking over. And about some of the people who were from Witpoort were taken to Baneng.

ADV. LILLA CROUSE: Can you put a date to that?

10 **MR. LEVY MOSENOGI:** Hallo?

ADV. LILLA CROUSE: Can you put a date to that?

MR. LEVY MOSENOGI: It was before my time, so I cannot put a date to that.

ADV. LILLA CROUSE: So are you saying that that was in the time that the Marathon project was running that adults went there, is that what you are saying?

15 **MR. LEVY MOSENOGI:** That was the time when... the Marathon project came after. That was the time when Dr Manamela was responsible. It was a phased move.

ADV. LILLA CROUSE: Let me put it in another way, this was before the contract or adults were moved to Baneng after the contract with Life was closed, can we put in
20 that way, just to get a timeframe?

MR. LEVY MOSENOGI: If my memory serves me, it was before the contract was closed.

ADV. LILLA CROUSE: Sorry?

MR. LEVY MOSENOGI: If my memory serves me, it was before the contract was
5 terminated.

ADV. LILLA CROUSE: We will look into that. Who are at that centre at the moment, do you know?

MR. LEVY MOSENOGI: Hallo?

ADV. LILLA CROUSE: Who are at that centre at the moment? Are there children
10 there? Are there adults there, do you know?

MR. LEVY MOSENOGI: Mainly Baneng was for children, people who are intellectually disabled.

ADV. LILLA CROUSE: Yes sir, I am asking at this stage, do you know which patients are there at this stage, are there children now there, are there adults, do
15 you know?

MR. LEVY MOSENOGI: The children were not removed and who are the other people, I am not sure, I haven't been part of the process now.

ADV. LILLA CROUSE: At some stage further adults were taken to Baneng, isn't that right?

20 **MR. LEVY MOSENOGI:** Yes. But it was before my time.

ADV. LILLA CROUSE: Did anybody die at Baneng?

MR. LEVY MOSENOGI: I don't remember. I am not sure.

ADV. LILLA CROUSE: You see, I looked at the list that was provided by the Ombud and I couldn't find any children dying on that list.

MR. LEVY MOSENOGI: Okay.

5 **ADV. LILLA CROUSE:** But I am informed by my learned colleagues that they have... they are representing people that died there that is not yet on the list.

MR. LEVY MOSENOGI: I am not clear about that.

ADV. LILLA CROUSE: Okay. Can I just walk off from Baneng now and speak to you about the ID documents? am I correct to say that the ID documents were
10 important to you to obtain ID documents for the mental health care users, because that will give them access ultimately into SASSA grants?

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: That was the reason why you wanted the ID numbers of each patient.

15 **MR. LEVY MOSENOGI:** But also to know people, to identify people, because there were people that were long in the Life Esidimeni and they have lost contact with their families. So it was going to make it easier to trace their families also.

ADV. LILLA CROUSE: How is that?

MR. LEVY MOSENOGI: Hu?

20 **ADV. LILLA CROUSE:** How is that?

MR. LEVY MOSENOGI: There was a team that was tasked to do that.

ADV. LILLA CROUSE: My question is, how will the ID number help to trace the family?

MR. LEVY MOSENOGI: Because at least then you know who is the person and then you will be able to ...intervened.

5 **ADV. LILLA CROUSE:** I don't understand that. Sorry. Can you just explain that to me?

MR. LEVY MOSENOGI: The ID number is your identity as a person, it has a surname and a name, so we are able to know where to start when you trace people.

10 **ADV. LILLA CROUSE:** Are you saying there were people there as mental health care users that didn't have a name and a surname?

MR. LEVY MOSENOGI: They have been there and they lost contact and they didn't have IDs.

ADV. LILLA CROUSE: Sir, my question is, are you saying there were people without names and surnames as health care users in the facilities?

15 **MR. LEVY MOSENOGI:** There were people who did not recall where they come from and who they are.

ADV. LILLA CROUSE: Sir, I am going to ask again. Are you saying there are people who didn't have names or surnames in the hospitals or in the facilities?

20 **MR. LEVY MOSENOGI:** Counsellor, I can't answer that directly because I was not involved in the nitty gritty.

ADV. LILLA CROUSE: Well I don't understand that, because one of your projects were to get ID numbers.

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: So what are you saying? I am just trying to understand. I
5 am not trying to be funny to you. I am just trying to understand what you are saying.

MR. LEVY MOSENOGI: Counsel, the project was a multi project, it was a very complex project. So we had appointed technical people to deal with different aspects, so I could not be involved with all these aspects, so I can't give you a straight answer.

10 **ADV. LILLA CROUSE:** What I am just trying to establish is my question to you was, you needed the ID number to access the SASSA grant and you said no, we needed that to get the family members.

MR. LEVY MOSENOGI: No, I didn't say no. I said it will also assist with the identification. It was needed for grant purposes and also for identification.

15 **ADV. LILLA CROUSE:** But you say you don't know whether any of them were unidentified. Because if you look at the list of the deceases people, there are still quite a number without ID numbers.

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: And they are identified.

20 **MR. LEVY MOSENOGI:** Okay.

ADV. LILLA CROUSE: So I am just trying to understand why you needed the ID numbers.

MR. LEVY MOSENOGI: I accept that. We needed it mainly because people needed to have grants.

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

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: That was my initial statement to you.

MR. LEVY MOSENOGI: But I did not object to that.

ADV. LILLA CROUSE: And the reason that you wanted them to have SASSA
10 grants was because you wanted them to pay their SASSA grants to the NGO to supplement the amount paid by the government to the NGO, isn't that so?

MR. LEVY MOSENOGI: That is what I said yesterday that the SASSA grants also supplemented the funds at the NGO.

ADV. LILLA CROUSE: So if you were to move somebody without an ID number
15 and without a SASSA grant to a NGO, that... the income of the NGO is not going to be supplemented by that person's SASSA grant, do you agree with me?

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: So if you move somebody without an ID number, without a
SASSA grant, you are acting irresponsibly because you know you are causing
20 financial problems to the NGO, isn't that so?

MR. LEVY MOSENOGI: Everything happened ...intervened.

ADV. LILLA CROUSE: Sir, you were the project manager. You knew who had ID numbers, you knew who had SASSA grants. If you moved that person without that in place, that was irresponsible, don't you agree with me?

MR. LEVY MOSENOGI: Counsel, being a project manager doesn't mean you know
5 everything all the time. You get given information, you process information.

ADV. LILLA CROUSE: Okay, let me try again. You knew that this was a cost saving exercise, so finances were important to you, isn't that so?

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: And if finances were important to you, you would have
10 known that it would be important to the NGOs.

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: And that means that you would make sure that the NGOs get all the money that they needed to protect these mental health users, isn't that so?

15 **MR. LEVY MOSENOGI:** Yes.

ADV. LILLA CROUSE: So then as part of your project manager, you would make sure that everybody has an ID number and a SASSA grant to make sure that they don't suffer at the NGOs, isn't that so?

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: Therefore, I put it to you that it was irresponsible to move any person without an ID number and a social grant to a NGO, do you agree with me?

MR. LEVY MOSENOGI: Yes, if this happened, it is irresponsible.

5 **ADV. LILLA CROUSE:** Thank you.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: But why did it happen? You just told us that it was irresponsible, but why did you allow it to happen?

MR. LEVY MOSENOGI: Justice, I am not aware that it has happened, that's why I say if it has happened.

10 **ARBITRATOR, JUDGE DIKGANG MOSENEKE:** No, you gave us a schedule yesterday of categories of people and from memory over 500 of them had no IDs.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: And none the less the contract was terminated and these people were moved. Is that correct? You've already
15 conceded to that.

MR. LEVY MOSENOGI: Yes, but I am ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Now the question is, why did you not only delay in paying the NGOs, send them people with no grants? Why didn't you prevent that happening?

MR. LEVY MOSENOGI: Justice, the people had other facilities, state facilities to send them... we should have sent them to state facilities, Weskoppies and Sterkfontein.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: But why didn't you do that? I
5 am merely following up on the point that you are debating with Counsel.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: It is a logical question, you haven't done it, people were sent without grants. You told us yesterday you delayed three to four months to pay the NGOs. And really the underlying question
10 of Advocate Crouse is, it was irresponsible to do that, because that would threaten the lives of the patients concerned. My question inevitably is why didn't you heed that, why did you do something irresponsible.

MR. LEVY MOSENOGI: My answer to that, Justice, is that I wasn't aware that they were removed to NGOs, the ones without ID, because the provision was that the
15 people needed... we had other facilities to move them to.

ADV. LILLA CROUSE: Thank you Justice. Can I move on to the service level agreement? You are as a project manager or were no doubt aware that in order to receive payment, there should have been a valid service level agreement between the NGOs and the government. Is that so?

20 **MR. LEVY MOSENOGI:** Yes.

ADV. LILLA CROUSE: So if a person was moved to a NGO without a valid service level agreement, then no money would have been paid over to that NGO. Is that right?

MR. LEVY MOSENOGI: Yes.

5 **ADV. LILLA CROUSE:** So if you move people to a NGO without a service level agreement, chances are that the patients would suffer because there wouldn't be money coming in. Is that so?

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: So in sending patients to a NGO without a service level
10 agreement, that would be irresponsible, do you agree with me?

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: And do you agree with me that that happened?

MR. LEVY MOSENOGI: Hallo?

ADV. LILLA CROUSE: That happened. People were sent to NGOs where there
15 weren't signed service level agreements.

MR. LEVY MOSENOGI: Yes and that is why I agreed that it is a mistake, mistakes
crept in, it happened.

ADV. LILLA CROUSE: Yes, but mistakes happened because leaders don't look at
things. You knew that this was something to be put in place, so I want to put it to
20 you that you were irresponsible for not checking that this was in place. Do you
agree with me?

MR. LEVY MOSENOGI: As the leader of the project team, maybe, ja. I can't say much. I can't argue against that.

ADV. LILLA CROUSE: Yes. And no service level agreement ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Sorry, I just want to get that
5 answer on record. You say as the leader of the project, what?

MR. LEVY MOSENOGI: Of the team.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Yes.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: You accept that you were
10 irresponsible, is that the answer?

MR. LEVY MOSENOGI: I should have checked more to ensure that these things have happened but ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Yes, thank you.

MR. LEVY MOSENOGI: Justice, it was a complex process. It was a lot of things
15 and sometimes when you look back, you could have done things better.

ADV. LILLA CROUSE: Now I just want to put it to you that with no service level agreement and no SASSA grant, these patients were left in a very difficult position. Do you agree with me?

MR. LEVY MOSENOGI: Yes.

20 **ADV. LILLA CROUSE:** Now can I just understand your reasoning... you just told Justice Moseneke now that looking back you should have done things differently.

Now before the move of any patient, would you agree with me that... we have already agreed that the SASSA grant should have been in place?

MR. LEVY MOSENOGI: Mm.

ADV. LILLA CROUSE: Just answer please.

5 **MR. LEVY MOSENOGI:** Yes.

ADV. LILLA CROUSE: And we agreed that the service level agreement had to be in place.

MR. LEVY MOSENOGI: That was a requirement, yes.

ADV. LILLA CROUSE: And would you agree with me that there had to be a
10 medical assessment of each patient?

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: And would you agree with me that there should have been medical information available on each patient?

MR. LEVY MOSENOGI: Yes.

15 **ADV. LILLA CROUSE:** This is all still before the move.

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: Do you agree with me that the medical information on each patient, there should have been a proper handover to the NGO?

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: And for that you no doubt knew that the patient's medical file would be very necessary.

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: Did you ensure that the files went to the NGOs?

5 **MR. LEVY MOSENOGI:** Counsel, there was a task team that has clinicians in the mental health unit who were tasked to do that work. And I think we have dedicated doctors who were assisting us. If I remember well, there were two doctors assisting us to ensure that when they discharge patients, they have checked through the patient and they are satisfied that they could write a discharge slip. We had a
10 problem with Life Esidimeni because they were reluctant to release the whole record, the patient record.

ADV. LILLA CROUSE: Okay, I am going to get back to your answer in just a moment. You referred to two doctors, who were they?

MR. LEVY MOSENOGI: Dr Wadala and the other was... they were part of... they
15 were assisting us with that.

ADV. LILLA CROUSE: Could you just spell the first name, please?

MR. LEVY MOSENOGI: Dr Wadala.

ADV. LILLA CROUSE: Could you spell that?

MR. LEVY MOSENOGI: W A D A L A.

20 **ADV. LILLA CROUSE:** And the second?

MR. LEVY MOSENOGI: And the other one I don't remember, but we had two doctors who were asked to assist.

ADV. LILLA CROUSE: Sir, as the project manager, did you oversee that process?

MR. LEVY MOSENOGI: The sub-project team on clinical services were the ones
5 responsible to oversee that.

ADV. LILLA CROUSE: I am going to ask my question again. As project manager, did you oversee that process?

MR. LEVY MOSENOGI: On a non-clinical basis I did oversee it. But clinically it was overseen by clinical people.

10 **ADV. LILLA CROUSE:** So you would have called for a list to make sure that each person, before it was transferred, has been seen by a doctor and you would have checked what was said by the doctor about this patient. Is that so?

MR. LEVY MOSENOGI: The mental health team and the clinicians were the ones who were checking that, not me personally.

15 **ADV. LILLA CROUSE:** Did you have a list, sir, to see whether those things were done?

MR. LEVY MOSENOGI: No, I didn't have that list, but I was assured that it was happening.

ADV. LILLA CROUSE: As project manager, why did you not check that that
20 happened?

MR. LEVY MOSENOGI: Counsel, the project was running and it has different task teams, maybe I must explain. And I was also responsible for other tasks. So I thought that one is a clinical, it needed clinical experts and those were the ones who were assisting us on that.

5 **ADV. LILLA CROUSE:** So your short answer is, I didn't oversee that. And your answer that I want to come back, you used an interesting word... you said there were two doctors discharging these patients.

MR. LEVY MOSENOGI: Not... overseeing the discharge of these patients.

ADV. LILLA CROUSE: That word is an interesting word because it comes back
10 often in the papers, isn't it?

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: Section 22... ag Section 27 is called this transfers, where you called it transfers from Life to the NGOs.

MR. LEVY MOSENOGI: Yes.

15 **ADV. LILLA CROUSE:** You heard that.

MR. LEVY MOSENOGI: What?

ADV. LILLA CROUSE: We call the process a transfer or a move or a relocation.

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: You've heard that.

20 **MR. LEVY MOSENOGI:** I think we were calling it placement.

ADV. LILLA CROUSE: Or you can call it a placement.

MR. LEVY MOSENOGI: Ja.

ADV. LILLA CROUSE: But you used the word discharge now.

MR. LEVY MOSENOGI: Ja.

ADV. LILLA CROUSE: Did you discharge them?

5 **MR. LEVY MOSENOGI:** Okay now you are becoming technical. I think we were using it in the more laid persons, the way I used it, but you are becoming technical. It was a discharge because the doctors have to assess, so that we are able to know the condition of the patient, whether he needs to go to the hospital or the NGO or to where. So basically when I spoke of assessment, this is what I was saying.

10 **ADV. LILLA CROUSE:** And you checked that process, sir, who must be discharged and who must go to other medical places. Or were you just using the word discharge as a general term now?

MR. LEVY MOSENOGI: Ja, as a general term.

ADV. LILLA CROUSE: So you would agree with me that most of those patients,
15 mental health users, wouldn't in three months be so healthy that they can be discharged. There wasn't a general miracle that South Africa knew about that all the mental health users just overnight became cured.

MR. LEVY MOSENOGI: I think the premise which I think if Dr Manamela and her team were here, will explain it better than that.

20 **ADV. LILLA CROUSE:** I will come back to the discharge in a while, sir. Can I just before I move off from this point, did you see that there was a doctor to doctor or doctor to health care transfer of the information of each patient? From where the

patient was held to where the patient was moved, was there a clinician giving over information about this patient?

MR. LEVY MOSENOGI: Physically I was not at the facilities all the time when people were being moved. But when I visited some of the facilities in Randfontein I will engage with the responsible doctor and she will tell me and the nurses will tell me what they are doing and how the process is going.

ADV. LILLA CROUSE: You are talking about doctors and nurses. Were there doctors and nurses at all the NGOs?

MR. LEVY MOSENOGI: No, I mean from the facility from Life Esidimeni to move them. Where we were placing people, I will go to like maybe Randfontein and I will get a report from the doctor and ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: That is not the question. The question is, were you physically there to oversee the handover of medical records from Life Esidimeni on the one hand, to the NGOs who would be taking on the patients?

MR. LEVY MOSENOGI: As an individual it would not have been possible, Justice, because there were people tasked to do that. So I was not there physically.

ADV. LILLA CROUSE: And you haven't asked to check that. You haven't asked for a spreadsheet to check that that has happened.

MR. LEVY MOSENOGI: No, I didn't ask for that.

ADV. LILLA CROUSE: Did you go to Anchor Home to see if there were doctors and nurses?

MR. LEVY MOSENOGI: Where?

ADV. LILLA CROUSE: Anchor Home.

MR. LEVY MOSENOGI: Anchor Home, no I have visited Anchor Home.

ADV. LILLA CROUSE: And Precious Angels?

5 **MR. LEVY MOSENOGI:** I visited only after deaths had occurred.

ADV. LILLA CROUSE: Did you see any doctors or nurses there?

MR. LEVY MOSENOGI: No. NGOs are not required to have doctors in the facility.

ADV. LILLA CROUSE: And did you check whether the patients needed medical assistance there?

10 **MR. LEVY MOSENOGI:** What is requested in the NGO is a professional (inaudible) overseer and health care workers and connection with a public facility, a clinic ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: But the question is, did you check whether there will be medical care available for the transferred patients?

15 **MR. LEVY MOSENOGI:** Justice, the medical care available for patients in the NGOs, which is a practice, is that they are linked with the nearest hospital and nearest clinic ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Did you check that in fact that was available? That is what Counsel is asking.

MR. LEVY MOSENOGI: It was available in terms of the linkage that was there between the clinics and the... But the doctors are not expected to be in the NGOs, that is not required.

ADV. LILLA CROUSE: Sir, this is perhaps not something to raise with you but
5 medicine... or let me start it this way – we have the health facilities being in three categories. You've got a district, you've got an institution that gives training and you've got your ground level. You get your district, your regional and your facilities that give training. Do you agree with me?

MR. LEVY MOSENOGI: Yes.

10 **ADV. LILLA CROUSE:** Now your lowest levels would be your clinics.

MR. LEVY MOSENOGI: Community based services will be our lowest level.

ADV. LILLA CROUSE: Yes. But those clinics don't have medicine that will fit the, which we will call psychiatric drugs. That needs to be prescribed by a psychiatric hospital and that needs to be done beforehand. Did you know about that?

15 **MR. LEVY MOSENOGI:** Yes.

ADV. LILLA CROUSE: Did you arrange that these clinics where these patients would go would have access to the correct medication?

MR. LEVY MOSENOGI: That is why I had clinical experts in my team, they were able to do that.

20 **ADV. LILLA CROUSE:** Did they do it, sir?

MR. LEVY MOSENOGI: In short... the first thing what we do in short is that when they are released from Life Esidimeni, they needed to have a package of treatment that they are receiving, that's why we needed doctors to oversee ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: The question is a very direct
5 one. Did you ensure that the doctors actually do it? That is what you are being asked sir. You had... patients need to be transferred with medication.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: And with their prescriptions even
if they go to NGOs.

10 **MR. LEVY MOSENOGI:** Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Did you make sure or take steps
to ensure that that happens – that is what the question is? Not what usually
happens... did you ensure in this case?

MR. LEVY MOSENOGI: The project team ensured that.

15 **ADV. LILLA CROUSE:** Sir, can you say that under oath that that happened?

MR. LEVY MOSENOGI: It should have happened.

ADV. LILLA CROUSE: No, I am not asking if it should have happened. I am
saying... and you are under oath, you said the project team has done that. As
project manager, can you under oath say that it did happen?

20 **MR. LEVY MOSENOGI:** I can't say that.

ADV. LILLA CROUSE: Thank you. I am going to move over now to the move itself. Who arranged the moves of these mental health care users? Who arranged the transport?

MR. LEVY MOSENOGI: We used the EMS to assist us with transport.

5 **ADV. LILLA CROUSE:** Just assist me, what is EMS?

MR. LEVY MOSENOGI: Emergency Medical Services, our emergency medical services were tasked to assist and to support the project.

ADV. LILLA CROUSE: Would you refer to those as ambulances or not?

MR. LEVY MOSENOGI: Ja, ambulances and patient transport and all the transport
10 needs that can move patients.

ADV. LILLA CROUSE: Okay. Did you move any other service provider?

MR. LEVY MOSENOGI: Some NGOs who were having resources, they used their own combis to do that. Those who were having resources like combis.

ADV. LILLA CROUSE: Any busses used?

15 **MR. LEVY MOSENOGI:** And busses, yes.

ADV. LILLA CROUSE: Who paid for the busses?

MR. LEVY MOSENOGI: The EMS busses, we used EMS busses.

ADV. LILLA CROUSE: Not public busses.

MR. LEVY MOSENOGI: I am not sure of that one.

20 **ADV. LILLA CROUSE:** Okay.

MR. LEVY MOSENOGI: If it was used, it was not used by... I don't know, but I was not in every situation.

ADV. LILLA CROUSE: Okay. And did you use bakkies?

MR. LEVY MOSENOGI: To my knowledge, I didn't know that we used bakkies, I
5 read about it.

ADV. LILLA CROUSE: Why is it that you don't know that, sir?

MR. LEVY MOSENOGI: Because it was never part of the plan.

ADV. LILLA CROUSE: Yes, I can understand that, because that would be totally irresponsible. But as a project manager you know, I have to move close to 2 000
10 patients. For 2 000 patients I need transport and this is how I am going to do it. So how did you think this was going to happen?

MR. LEVY MOSENOGI: Through the EMS we have enough transport, ambulances, patient transport, combis, under EMS, even busses. So there was no need to think that somebody can use a van to do that.

15 **ADV. LILLA CROUSE:** With who did you arrange with the EMS?

MR. LEVY MOSENOGI: Hallo?

ADV. LILLA CROUSE: With who did you speak there?

MR. LEVY MOSENOGI: The team of EMS was part of the project team who was tasked to assist us.

20 **ADV. LILLA CROUSE:** Sorry sir, could you give us a name please?

MR. LEVY MOSENOGI: Mr. Malotana.

ADV. LILLA CROUSE: Can you spell that for us please?

MR. LEVY MOSENOGI: M A L O T A N A. Malotana.

ADV. LILLA CROUSE: Is he part of the emergency services?

MR. LEVY MOSENOGI: He is the head of the emergency services. So if there
5 were problems, people will phone and say we have problems, can you... I will
phone Mr. Malotana and make sure that they are able to assist.

ADV. LILLA CROUSE: What type of problems did people phone you with, sir?

MR. LEVY MOSENOGI: People will complain that the patients are ready, there is
no transport and then they'll phone me and then I will request Mr. Malotana to
10 assist.

ADV. LILLA CROUSE: Any other problems?

MR. LEVY MOSENOGI: That's it.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: But was there a written logistics
plan? If there was, would you give us a copy of that?

15 **MR. LEVY MOSENOGI:** For the transportation?

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Yes. Was there a plan on how
to move 1 700 patients?

MR. LEVY MOSENOGI: It was not a written plan and that is why Mr. Malotana was
part of the task team, to assist us with the transport logistics.

20 **ARBITRATOR, JUDGE DIKGANG MOSENEKE:** The answer is, there was no
written plan.

MR. LEVY MOSENOGI: I presume that he should be having a written plan, but I haven't seen it.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: But did you have a written plan?

MR. LEVY MOSENOGI: No, I didn't have.

5 **ARBITRATOR, JUDGE DIKGANG MOSENEKE:** Let's go back to the question of bakkies.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: I saw your interview with the Ombud.

10 **MR. LEVY MOSENOGI:** Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Were open bakkies used?

MR. LEVY MOSENOGI: Yes, I was informed there were open bakkies used, but it was not with my knowledge.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: And patients had to be tied.

15 **MR. LEVY MOSENOGI:** Patients had to?

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Patients had to be tied, their limbs had to be tied whilst transported. Do you know about that?

MR. LEVY MOSENOGI: No, I wasn't aware of that at that time.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: It appears in the Ombud's report.

20 **MR. LEVY MOSENOGI:** Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: You heard about that.

MR. LEVY MOSENOGI: Yes, I heard about it after the ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: To investigate what happened and where.

5 **MR. LEVY MOSENOGI:** After the Ombudsman's report?

ARBITRATOR, JUDGE DIKGANG MOSENEKE: After the transfer. You've come to hear about that there were patients in open bakkies who are mentally ill and who were tied up and driven to NGOs. Did you go back and say I am the project head, what happened here?

10 **MR. LEVY MOSENOGI:** But Justice, I was not aware of that during the ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: No, sir, after the incident. You are saying you heard it only after. Did you go back and look and can you enlighten us because we see it in the Ombud's report and we want to know from you, the man
15 who ordered the transfer, what happened? Even if you heard it later, what are the facts?

MR. LEVY MOSENOGI: No, I didn't go back, because after everything has happened, Justice, there were things in the department where we... nobody was talking to each other. You know, we were all shocked. And I think maybe we did
20 not even have a briefing, a debriefing ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Would you ever have ordered mentally ill patients to be transported in open bakkies?

MR. LEVY MOSENOGI: No, I would not have done that.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: And tied up... would you ever have ordered that?

MR. LEVY MOSENOGI: No, I would not have done that and even if I knew, I would
5 have intervened appropriately. But at that time I didn't know.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Counsel.

ADV. LILLA CROUSE: Thank you Justice. I am now going to take you through the timeline, just to make sure that I understand how this timeline works. So if you can just assist us. You were approached on the 5th of November for the first time.

10 **MR. LEVY MOSENOGI:** Yes.

ADV. LILLA CROUSE: At that stage the project was already in its being. Who was the project manager at that stage?

MR. LEVY MOSENOGI: I don't think there was a... I don't think there was a named project manager. I think it was... because Dr Manamela is the head of the
15 directorate, it was given to the directorate, so they were operating it as a directorate.

ADV. LILLA CROUSE: We know that already in September, the 22nd of September, Dr Manamela signed a draft plan, so it was long before you were there, do you agree with me?

MR. LEVY MOSENOGI: 27 September of?

20 **ADV. LILLA CROUSE:** Sorry Justice. 22nd of September 2015 the draft plan was signed. That was before you.

MR. LEVY MOSENOGI: I was not part of that, yes.

ADV. LILLA CROUSE: But you say there was no project manager.

MR. LEVY MOSENOGI: No, I said there was no named project manager. It was run under the directorate of Dr Manamela. So it means that Dr Manamela was the overall head.

ADV. LILLA CROUSE: And on the 29th of September 2015 Life Esidimeni was given termination notice – that was also before you were approached to be a project manager.

MR. LEVY MOSENOGI: Yes.

10 **ADV. LILLA CROUSE:** Then you established a team, is that right?

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: When was your team established?

MR. LEVY MOSENOGI: The letter that I received... I did write for Dr Selebano after clearing with him what he expected of me. I did write a list of nominees.

15 **ARBITRATOR, JUDGE DIKGANG MOSENEKE:** The question requires a date as an answer.

MR. LEVY MOSENOGI: Yes, I just want to put context to it, Justice.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Oh.

20 **MR. LEVY MOSENOGI:** I did write a list of nominees of people who can serve in the team and I submitted it to the office of the chief director. I did receive mine... it was signed on the 9th of December 2015, my letter that appointed me. And then I

signed it off on the 10th. So most of the people who were suggested, also signed on the 10th of December.

ADV. LILLA CROUSE: So would it be safe to say that on the 10th of December, just over a month after you were first approached, you had a team in place.

5 **MR. LEVY MOSENOGI:** Yes.

ADV. LILLA CROUSE: So would it then be safe to say that at that stage you started working.

MR. LEVY MOSENOGI: Ja, I started my work in terms of going to the facilities to see what is that that is needed. So I did do my visits.

10 **ADV. LILLA CROUSE:** Okay, we know from the Ombud's report that you went to Waverly, Randfontein and Banenge.

MR. LEVY MOSENOGI: Ja.

ADV. LILLA CROUSE: Was that after the 10th of December?

MR. LEVY MOSENOGI: Yes.

15 **ADV. LILLA CROUSE:** And you knew at Waverly and Randfontein you didn't get good reception at all.

MR. LEVY MOSENOGI: No. First of all I did my initial visit with the mental health unit that took me to the different facilities just for me to know the situation – that was my visit not with the executive. And I did meet the CEOs of those different facilities
20 and they took me around.

ADV. LILLA CROUSE: You say after the 10th of December 2015.

MR. LEVY MOSENOGI: If I remember well it was after, but I will have to check when it was.

ADV. LILLA CROUSE: When can you check, sir?

MR. LEVY MOSENOGI: I don't see the document that I noted in, but I did visit
5 initially alone with the mental health unit.

ADV. LILLA CROUSE: Can you tell us when the volatile meetings took place at Waverly and Randfontein?

MR. LEVY MOSENOGI: Those were after we had our meeting with the MEC, and it was agreed that we would have to visit the facilities.

10 **ADV. LILLA CROUSE:** I am just trying to get a timeline, sir. Was it in the beginning of December, end of December... when was these volatile meetings?

MR. LEVY MOSENOGI: Okay... Counsel, can I ...intervened.

ADV. LILLA CROUSE: If you don't know sir ...intervened.

MR. LEVY MOSENOGI: Can I come back to you in terms of the dates
15 ...intervened.

ADV. LILLA CROUSE: If you don't know, it is fine.

MR. LEVY MOSENOGI: But we did visits.

ADV. LILLA CROUSE: Yes, thank you.

MR. LEVY MOSENOGI: Can I come back with the dates?

20 **ADV. LILLA CROUSE:** Is it safe to ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Before you move on. Why were the meetings in Randfontein turbulent? What were the people unhappy about?

MR. LEVY MOSENOGI: Both meetings at Waverly and Randfontein were not very good meetings. The interaction was volatile and people were not happy with the
5 move.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Let's start off, which people?

MR. LEVY MOSENOGI: The patients, the families and the representatives of those families who were in those meetings, because the meetings was sort of a mass meeting.

10 **ARBITRATOR, JUDGE DIKGANG MOSENEKE:** Yes.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: And they told you so that they were unhappy.

MR. LEVY MOSENOGI: They told us.

15 **ARBITRATOR, JUDGE DIKGANG MOSENEKE:** Yes, but whom were you with?

MR. LEVY MOSENOGI: At Waverly, the first meeting, we were with the MEC.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Was MEC there?

MR. LEVY MOSENOGI: Ja, we were part of the delegation with the MEC. That was a very tough meeting. I initially chatted, but she took over. It was volatile.
20 People were angry. People were raising their concerns and their issues. I remember even the Wits students were there because they were training

occupational therapy students, because it was going to disrupt their academic thing, they did raise issues. So a lot of people raised issues. That is how out of that meeting, we agreed that they must elect a family committee and they did at Waverly. The same thing at Randfontein. It was volatile. The MEC was not there
5 at Randfontein, it was the HOD who was assisting me to chair and people were robust also and telling us about the experience of their patients at home and all those things. They did raise issues, very difficult issues, very emotional issues. And that's where, if you read the Ombudsman's report, myself and the HOD had to step aside after the meeting and say this is not really a very good thing.

10 **ARBITRATOR, JUDGE DIKGANG MOSENEKE:** And you and the HOD according to the Ombud, were of the view that cancelling the LE contract, the Life Esidimeni contract was not the correct decision.

MR. LEVY MOSENOGI: Yes, it was my ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: After those two meetings you
15 were convinced that it was not the correct decision.

MR. LEVY MOSENOGI: Yes, myself as a person I had a foreboding in terms of this project. So when we discussed I found that the HOD also had serious uh... he also had problems with that.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: And you were aware and you
20 knew then and you and the HOD talked about the fact that you did not have enough beds, isn't it? You thought that you needed about 2 000 beds, isn't it, which you did not have?

MR. LEVY MOSENOGI: Yes, I think the other first meeting, people played around and they said they think they will be able to get 2 000 beds. But when we had a meeting... you will remember yesterday I said I attended a meeting where Dr Manamela had called NGOs and the districts and we looked every district where
5 these beds are, only to find the beds are planned, they are not in actual sense.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: And you expressed the view that you thought that the MEC was misled to want to push ahead with something which was obviously opposed by the patients, by their families, by young students who were training at those facilities.

10 **MR. LEVY MOSENOGI:** Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: And you thought the MEC was misled to go ahead with this, is that correct?

MR. LEVY MOSENOGI: That was my opinion and is still my opinion that maybe if the correct details were outlined.

15 **ARBITRATOR, JUDGE DIKGANG MOSENEKE:** And at the time you... it was reported that you were of the view that you and the HOD rather worked with Section 27 South African Depression and Anxiety Group (SADAG) and the South African Society of Psychiatrists to build trusts and to suspend... in order to get them to suspend the court action, that was your view, right?

20 **MR. LEVY MOSENOGI:** That was part of the meeting that we had with Section 27 and the other stakeholders.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: And you communicated your concerns to the MEC, did you? You told the MEC that this plan will not work. Did you?

MR. LEVY MOSENOGI: Yes, I did communicate my views and I did try to suggest
5 alternative approaches to the issue and I did highlight the concerns that the families had, because regularly I was also meeting with the, it was my task to also meet with the family committees.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Now knowing all that you knew at the time, why didn't you go and tell somebody else other than the MEC? You
10 used the word foreboding, a beautiful word.

MR. LEVY MOSENOGI: Yes. Justice, on my personal ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: (Vernac).

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Because you've got a discomfort
15 that something terrible might happen.

MR. LEVY MOSENOGI: Yes, I had that discomfort.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Right and why...?

MR. LEVY MOSENOGI: I did raise it on my individual basis, personal basis, I did
raise it in my prayer meetings and asked people to pray. I did ask... Ja, prayer is
20 important for me, it is something that carries me.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Shall we give the witness an opportunity please?

MR. LEVY MOSENOGI: And also I did raise it in my organisation, in my branch as a branch leader. I did raise it with other fellow comrades but ...intervened.

5 **ARBITRATOR, JUDGE DIKGANG MOSENEKE:** But why didn't you raise it with somebody more senior than the MEC and say we are getting into a disaster? Instead you go ahead with the plan to transfer people, you go and get EMS to help you. You don't check properly whether medication has been moved on ...intervened.

10 **MR. LEVY MOSENOGI:** We talked with the HOD ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: You did not ensure that they have grants.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: And you go ahead with a plan
15 that was going to be very dangerous to vulnerable people.

MR. LEVY MOSENOGI: I should have done that. I have done that on a personal level.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Why didn't you go to the premier? Why didn't you tell another MEC? Why didn't you tell your comrades?

20 **MR. LEVY MOSENOGI:** I did ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: When you met with your comrades, why didn't you tell them?

MR. LEVY MOSENOGI: I did communicate with my comrades and ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Comrades where?

5 **MR. LEVY MOSENOGI:** In the branch and also in the province.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Which branch is that?

MR. LEVY MOSENOGI: My branch.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Of the political movement of the South African National Congress?

10 **MR. LEVY MOSENOGI:** Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: And did you tell the provincial leadership if this impending disaster?

MR. LEVY MOSENOGI: I did raise it with... on an informal basis, not formally. I think I should have raised it formally. I think that was a bit... I should have done
15 that on a formal basis.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: And after all said and done ...intervened.

MR. LEVY MOSENOGI: And also I should have raised it with the premier and I did not do that.

20 **ARBITRATOR, JUDGE DIKGANG MOSENEKE:** You did not do that.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Instead you fostered straight ahead with a plan that resulted in at least 118 deaths.

MR. LEVY MOSENOGI: When I was meeting with the family... because we had regular meetings with the family committees, they did really lambast us and I did
5 advise them and appeal to them that this is democracy, why don't you go... as the families you've got the right to go and knock at the door of the MEC. You've got the right to go to the premier and they will be able to listen to you maybe. I did try to ask them to do that, but...

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Why didn't you do it?

10 **MR. LEVY MOSENOGI:** I don't know why I didn't do that. I am always forthright but this time I don't know why I didn't do that.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Counsel.

ADV. LILLA CROUSE: Thank you Justice. Who misled the MEC?

15 **MR. LEVY MOSENOGI:** It was my opinion that maybe if she had full knowledge of the situation, maybe she would have reconsidered. It was my opinion.

ADV. LILLA CROUSE: I hear your opinion, but saying somebody was misled, somebody must mislead that person. So who was the person that misled the MEC?

MR. LEVY MOSENOGI: I was not referring to... my opinion was that she didn't get all the details, correct details.

20 **ADV. LILLA CROUSE:** And who was responsible to give her the correct details?

MR. LEVY MOSENOGI: All of us, senior managers.

ADV. LILLA CROUSE: So are you saying you misled the MEC?

MR. LEVY MOSENOGI: No.

ADV. LILLA CROUSE: I just want to understand what you mean, sir.

MR. LEVY MOSENOGI: I confronted the MEC several times, I can't be misleading
5 her.

ADV. LILLA CROUSE: So are you saying the MEC was not misled because you
gave her all the correct information?

MR. LEVY MOSENOGI: Ja, if you read my documents, I did highlight the concerns
of people, I did provide alternatives and I did manage to convince the HOD also of
10 my opinions and he bought into my opinions.

ADV. LILLA CROUSE: So are you saying the MEC was not misled because you
gave her all the information?

MR. LEVY MOSENOGI: That is why I say it was my opinion.

ADV. LILLA CROUSE: I am just trying to understand what your opinion was, sir.

15 **MR. LEVY MOSENOGI:** My opinion was that maybe she didn't get.

ADV. LILLA CROUSE: But didn't you give her all the information? It is an easy
question, sir, did you give her all the information?

MR. LEVY MOSENOGI: Yes, in my own thinking I did.

ADV. LILLA CROUSE: Yes, so she couldn't have been misled. Isn't that so?

20 **MR. LEVY MOSENOGI:** I don't know why you want me to say that, because it was
an opinion at that time.

ADV. LILLA CROUSE: But it is no longer your opinion, is it, because you are saying that you gave her all the information so she couldn't have been misled.

MR. LEVY MOSENOGI: Yes, in the context of the beds that were said to be there, I think it was an error.

5 **ADV. LILLA CROUSE:** Can you just explain that, sir, I didn't hear?

MR. LEVY MOSENOGI: Originally she was presented that 2 000 beds were available.

ADV. LILLA CROUSE: Who presented her with that, sir?

MR. LEVY MOSENOGI: The team.

10 **ADV. LILLA CROUSE:** What team?

MR. LEVY MOSENOGI: The mental health unit team only to find that when we called the NGOs, some of the beds were not actual, they still have to renovate, they still have to get extra beds to make the 2 000 beds that are needed.

ADV. LILLA CROUSE: Okay but you knew that and she knew that before the
15 mass move took place. Do you agree?

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: So there couldn't have been any misleading at that stage.

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: Thank you. I want to go back to my timeline. From the 5th
20 of November 2015 when you were approached to run this project, until the 10th of December when your team was ready to proceed, did you attend any meetings?

MR. LEVY MOSENOGI: Yes, I did attend to familiarise myself with the project, I did attend meetings. I did attend Dr Manamela's clinical mental health meeting.

ADV. LILLA CROUSE: And you attended meetings with the South African Depression and Anxiety Group.

5 **MR. LEVY MOSENOGI:** That is what I call the stakeholders' meetings.

ADV. LILLA CROUSE: Okay. And that was in November 2015 and they expressed very serious views that this project can't go on.

MR. LEVY MOSENOGI: Yes, they did.

10 **ADV. LILLA CROUSE:** And you were aware of that by the 10th when you put your team, 10 December 2015, when you put your team together.

MR. LEVY MOSENOGI: No, I think the meeting was on the 21st of December.

ADV. LILLA CROUSE: Sir, there was a meeting with them on the 23rd of November 2015. There was one again on the 7th of December 2015. Were you part of both of these meetings?

15 **MR. LEVY MOSENOGI:** The 7th?

ADV. LILLA CROUSE: Yes sir, the 7th of December 2015, three days before your task team was up and running according to you.

MR. LEVY MOSENOGI: Maybe can you refer me to the page?

ADV. LILLA CROUSE: Yes, sure. It is on page 998 of the record and that is file 3.

20 **MR. LEVY MOSENOGI:** 993?

ADV. LILLA CROUSE: It would be the first page in that file, sir. Sir, it seems to me that I have misled you about the... The meeting of the 7th is on page 113, sir, sorry, I misled you, and that is file 1.

MR. LEVY MOSENOGI: 113?

5 **ADV. LILLA CROUSE:** 113. You see paragraph 54.1 there. I am merely trying to know whether you were part of that meeting. Were you part of that meeting, sir?

MR. LEVY MOSENOGI: I am not sure.

ADV. LILLA CROUSE: You don't know?

MR. LEVY MOSENOGI: I am not sure whether I was part of ...intervened.

10 **ADV. LILLA CROUSE:** Sorry, I can't hear you.

MR. LEVY MOSENOGI: I am not sure if I was part of this meeting.

ADV. LILLA CROUSE: You are not sure.

MR. LEVY MOSENOGI: Unless you can refer me somewhere.

15 **ADV. LILLA CROUSE:** Were you aware of... I'll move on from that, if you are not aware. On the 9th of December, that was the day before your task team was up and running. There was a letter to the department that a curator at (inaudible) should be appointed for the patients, that's 9 December 2015. Were you aware of that letter?

MR. LEVY MOSENOGI: The letter from where?

ADV. LILLA CROUSE: From Section 27.

20 **MR. LEVY MOSENOGI:** Yes.

ADV. LILLA CROUSE: That they asked that the curator at (inaudible) be appointed for the patients.

MR. LEVY MOSENOGI: I don't remember.

ADV. LILLA CROUSE: You don't remember such a letter. Did it not come to your
5 attention?

MR. LEVY MOSENOGI: I don't remember.

ADV. LILLA CROUSE: What would have been your attitude, had you known that they wanted a curator at (inaudible) appointed? Do you understand what a curator is?

10 **MR. LEVY MOSENOGI:** I have a vague idea of what a curator is.

ADV. LILLA CROUSE: Somebody to oversee.

MR. LEVY MOSENOGI: Ja, to oversee the project.

ADV. LILLA CROUSE: What would have been your attitude?

MR. LEVY MOSENOGI: I think we did discuss it in the meeting that we had with
15 the stakeholders.

ADV. LILLA CROUSE: So you were aware of it.

MR. LEVY MOSENOGI: On the 23rd meeting that was chaired by the HOD, ja, they did talk about the curator as part of the settlement that they wanted.

ADV. LILLA CROUSE: Sorry sir, I couldn't hear. What meeting are you saying?

20 **MR. LEVY MOSENOGI:** I am saying we did discuss it as part of the settlement discussions that we had, SADAG and the other team members.

ADV. LILLA CROUSE: When was that, sir, when did you have that meeting, do you know? Because their letter was on the 9th of December 2015.

MR. LEVY MOSENOGI: On the 23rd I think, 23rd or 21.

ADV. LILLA CROUSE: 23rd?

5 **MR. LEVY MOSENOGI:** Ja, we did discuss those issues.

ADV. LILLA CROUSE: So that was after Section 27 had already served on you the urgent application.

MR. LEVY MOSENOGI: Ja and that is why we had that meeting, because Section 27, if I can remember it was there, Cassie from SADAG was there and all the other
10 people.

ADV. LILLA CROUSE: Yes. Okay thank you sir. I am just going to take you a little bit back. After the letter of the 9th of December 2015 wherein they asked if a curator should be appointed, the Department wrote a letter on the 15th of December 2015 saying they will continue to discharge patients – again the word discharge. Are you
15 aware of that letter?

MR. LEVY MOSENOGI: I am aware that we had a discussion on that. I might not be aware ...intervened.

ADV. LILLA CROUSE: And did you use the term discharge again in a loose way?

MR. LEVY MOSENOGI: That discharge, I think that they were talking of at that
20 particular moment, which we debated with SADAG, was the issue of a normal discharge when a patient is being discharged.

ADV. LILLA CROUSE: And normal discharge means going home, not to another home.

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: Then on the 22nd of December 2015 Section 27 brought
5 their urgent application, that's right.

MR. LEVY MOSENOGI: The court application?

ADV. LILLA CROUSE: Yes.

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: And you said you had a meeting and you decided to settle
10 the meeting. It was the day before the urgent application was to be in court that you
settled, is that right?

MR. LEVY MOSENOGI: Yes, under the leadership of the HOD we agreed the
other parties that maybe we need together.

ADV. LILLA CROUSE: Yes that is very important. You were against the idea of a
15 curator. You didn't agree to a curator at all.

MR. LEVY MOSENOGI: Myself personally or...?

ADV. LILLA CROUSE: Or the department, either sir.

MR. LEVY MOSENOGI: Ja, the department did not, I think they did not agree on
the curator.

20 **ADV. LILLA CROUSE:** Can I ask you, what did you understand about the
settlement, what did it mean?

MR. LEVY MOSENOGI: For me it meant that we must work together with the stakeholders, hold meetings and agree on the processes and on what needs to be done and then all work together for the sake of the patients.

ADV. LILLA CROUSE: Absolutely, sir. So as a responsible leader you realised
5 here are some expertise, it's a lot of people and they can assist to take this feeling away that something is going to go wrong... no doubt that happened in your mind.

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: So you were probably eager to engage with them.

MR. LEVY MOSENOGI: Yes, I was engaging with them.

10 **ADV. LILLA CROUSE:** No, no, sir, my question is, were you eager to engage with them?

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: And did you engage with them on a daily basis?

MR. LEVY MOSENOGI: As a department we did engage with them.

15 **ADV. LILLA CROUSE:** My question to you sir is, did you engage with them on a daily basis?

MR. LEVY MOSENOGI: Me individually?

ADV. LILLA CROUSE: Yes, to get expertise.

MR. LEVY MOSENOGI: Yes, I was engaging with them on... we had an
20 agreement to have regular meetings to share information and to do work together.

ADV. LILLA CROUSE: Sir, I am going to repeat my question. I am not sure whether you understand my question. My question is, did you engage with them on a daily basis, yes or no?

MR. LEVY MOSENOGI: Not on a daily basis.

5 **ADV. LILLA CROUSE:** On what frequency were your meetings?

MR. LEVY MOSENOGI: Hallo?

ADV. LILLA CROUSE: How often did you have the meetings, sir?

MR. LEVY MOSENOGI: There were regular meetings, but it was not scheduled meetings.

10 **ADV. LILLA CROUSE:** Yes, I understand that.

MR. LEVY MOSENOGI: Ja.

ADV. LILLA CROUSE: But what I understand under regular and what you understand might differ. So I need to know what does regular meetings mean.

MR. LEVY MOSENOGI: When they needed to meet with us, we met.

15 **ADV. LILLA CROUSE:** So when they asked for a meeting you obliged. Is that what you are saying?

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: Okay.

MR. LEVY MOSENOGI: And even if we wanted to meet, we would have asked
20 them to come together.

ADV. LILLA CROUSE: What did you need them for meetings for, sir?

MR. LEVY MOSENOGI: What we did was to give them feedback in terms of what is being done and where is the progress and they will raise issues of concerns and we will explain the issues and we will debate some of the issues that they did not
5 agree with.

ADV. LILLA CROUSE: Let's just differentiate between the processes. You said you will meet whenever they wanted to meet. I am trying to establish when did you want to meet and did you arrange meetings, did you call for meetings with them to tap into their expertise?

10 **MR. LEVY MOSENOGI:** The stakeholders' meetings was under the ambit of the HOD. So I was just supportive in terms of that as a project manager.

ADV. LILLA CROUSE: You were what, sir, sorry?

MR. LEVY MOSENOGI: Supportive to the HOD because ...intervened.

ADV. LILLA CROUSE: Were you part of the ...intervened.

15 **MR. LEVY MOSENOGI:** Because the chairperson of the stakeholders' meeting was the HOD.

ADV. LILLA CROUSE: Sir, were you part of those meetings with the stakeholders?

MR. LEVY MOSENOGI: Yes, to provide support and also to brief ...intervened.

ADV. LILLA CROUSE: How often?

20 **MR. LEVY MOSENOGI:** Hu?

ADV. LILLA CROUSE: How often?

MR. LEVY MOSENOGI: Whenever the meetings were called.

ADV. LILLA CROUSE: When sir?

MR. LEVY MOSENOGI: Hu?

ADV. LILLA CROUSE: How often? Let us take it... the urgent application was on
5 the 22nd of December 2015. You said to the court yesterday your process started in
January 2016. Were there any meetings between 22nd of December and January?

MR. LEVY MOSENOGI: There should have been meetings, Counsel. There
should have been meetings. The minutes will reflect that.

ADV. LILLA CROUSE: Okay sir, I am aware of three meetings. One on the 6th of
10 January 2016, one on the 20th of January 2016 and one on the 9th of February
2016.

MR. LEVY MOSENOGI: Mm.

ADV. LILLA CROUSE: Is that not so?

MR. LEVY MOSENOGI: Yes.

15 **ADV. LILLA CROUSE:** Were there other meetings after that?

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: Were there other meetings after that?

MR. LEVY MOSENOGI: No, there were no meetings after that. I think there was
tension and disagreement.

20 **ADV. LILLA CROUSE:** You realised that you are not going to come to a settlement
with them.

MR. LEVY MOSENOGI: I think it is them who pulled out.

ADV. LILLA CROUSE: Sorry?

MR. LEVY MOSENOGI: I think it is them who pulled out, because we did not...

5 **ADV. LILLA CROUSE:** You are saying it was them who did not want to engage
anymore.

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: So you understood, if I can just recap, you understood the
settlement agreement is that you will engage them.

MR. LEVY MOSENOGI: And we'll work together with them.

10 **ADV. LILLA CROUSE:** And that you will work together.

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: Did you understand that you won't move patients where
they would become to harm or did you not think that was part of it?

MR. LEVY MOSENOGI: That was the assurance.

15 **ADV. LILLA CROUSE:** You gave them that assurance? You will make sure that
the patients aren't moved to a place where they are getting less treatment.

MR. LEVY MOSENOGI: Yes, but you are misunderstanding when it comes to the
word discharge.

20 **ADV. LILLA CROUSE:** We'll get to that sir. So in your mind you've undertaken I
will engage these guys, I will try to accommodate them and I won't harm the
patients. Is that a good summary of how you understood the ...intervened.

MR. LEVY MOSENOGI: As Gauteng Health Department, yes.

ADV. LILLA CROUSE: You understood it that way.

MR. LEVY MOSENOGI: Mm.

ADV. LILLA CROUSE: Very well. Now you... on the 10th of March you said you
5 are going to move 50 patients, 10th of March 2016 to Takalani. Is that right?
Remember that letter?

MR. LEVY MOSENOGI: Written by me?

ADV. LILLA CROUSE: By the Department, sir.

MR. LEVY MOSENOGI: Okay.

10 **ADV. LILLA CROUSE:** But you are the project manager, you should have known
about that probably.

MR. LEVY MOSENOGI: Ja, you can refer me to that letter.

ADV. LILLA CROUSE: I will refer you to the letter that was written by the
Depression and Anxiety Group. It is on page 1017 and that will be in file 5, as I
15 have it.

MR. LEVY MOSENOGI: The number again.

ADV. LILLA CROUSE: 1017, sir.

MR. LEVY MOSENOGI: Is it five?

ADV. LILLA CROUSE: Volume 5, yes.

20 **MR. LEVY MOSENOGI:** 4.

ADV. LILLA CROUSE: 5.

MR. LEVY MOSENOGI: I have got 5, it starts with... is it not 4?

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Of course while you are looking at that, at some point, Counsel, you will have to indicate to me where this detail is
5 taking us to.

ADV. LILLA CROUSE: I am very nearly close to that detail to explain to you where the detail ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Where we are going to.

ADV. LILLA CROUSE: Yes.

10 **ARBITRATOR, JUDGE DIKGANG MOSENEKE:** Because we need to get to the substantive questions through cross-examination, but we must check whether the detail actually gets us there.

ADV. LILLA CROUSE: It is file 3, sir.

MR. LEVY MOSENOGI: Hallo?

15 **ADV. LILLA CROUSE:** It is page 1017 in file 3.

MR. LEVY MOSENOGI: File?

ADV. LILLA CROUSE: 3.

MR. LEVY MOSENOGI: File 3. Thank you. 107?

ADV. LILLA CROUSE: 1017.

20 **MR. LEVY MOSENOGI:** 1017. Okay.

ADV. LILLA CROUSE: Now the Department was going to move 50 patients to Takalani. And on the 10th of March 2016 the Depression and Anxiety Group said you can't move them, because there is going to be considerable imminent and irreparable harm. Remember that?

5 **MR. LEVY MOSENOGI:** This letter was not ...intervened.

ADV. LILLA CROUSE: You didn't know about that letter.

MR. LEVY MOSENOGI: Yes, it was going to, I think, Life Esidimeni. It was written to Life Esidimeni.

10 **ADV. LILLA CROUSE:** Sir, were you aware of that letter saying you can't move these guys to Takalani, it is going to be problematic?

MR. LEVY MOSENOGI: I didn't read the letter.

ADV. LILLA CROUSE: Okay. Now the very next day Section 27 said to you guys don't move these patients, because we are going back to court. Did you get that letter?

15 **MR. LEVY MOSENOGI:** Which letter?

ADV. LILLA CROUSE: Were you aware that Section 27 was saying that we are going back to court if you move the 50 patients?

MR. LEVY MOSENOGI: I was aware that there was a debate between Section 27 and mental health in terms of what discharge is and ...intervened.

20 **ADV. LILLA CROUSE:** Sir, we'll get to that.

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: Well you know that there were people going to be moved to Takalani. The day after that you were served with a notice of motion saying you are in contempt of the agreement, remember that? On the 12th of March 2016.

MR. LEVY MOSENOGI: I don't remember it, but I have got a vague idea, yes.

5 **ADV. LILLA CROUSE:** Now on the 13th of March you were in court and then you raised the issue of these patients are not going to be moved, they are going to be discharged, so we can't be in contempt of the court order, remember that?

MR. LEVY MOSENOGI: Yes, I remember that.

ADV. LILLA CROUSE: Ja, would you say that is discharge, moving 50 people from
10 one place to another?

MR. LEVY MOSENOGI: It was more of placement, I think.

ADV. LILLA CROUSE: Yes and that was part of the agreement, you can't move
people if there is problem with that. You probably told your attorneys no, no, let's
engage these people, we are doing wrong here... did you not do that? Sir, you
15 knew there was a problem coming, you knew it all along, you said it already, a
month before. Now there is a court action. You are now before a judge of a high
court. Did you stand up and say this is a problem?

MR. LEVY MOSENOGI: I was not a participant. There were people who were
...intervened.

20 **ADV. LILLA CROUSE:** You didn't sign an affidavit?

MR. LEVY MOSENOGI: I say I was not... I did go to the court but we were
represented by our clinical people.

ADV. LILLA CROUSE: Yes, but you were the project leader. You knew here is problems coming, isn't that so? Now you say no, we are not moving them, we are not placing them, we are discharging them, so therefore our previous agreement is not of any value here. Is that not what your paper say?

5 **MR. LEVY MOSENOGI:** I am not sure.

ADV. LILLA CROUSE: Now two days later on the 15th of March 2016, Judge Valley (?) gives a judgement and he says, yes maybe you guys are right, maybe you thought that you are discharging them and not moving them. But he says, be careful, you are placing adults with children and there might be problems of
10 overcrowding. Do you remember that the judge said that?

MR. LEVY MOSENOGI: I don't remember.

ADV. LILLA CROUSE: You didn't read the judgement? Did you read the judgement, sir?

MR. LEVY MOSENOGI: I did read a lot of papers. I don't remember in so many
15 words.

ADV. LILLA CROUSE: You can't remember whether you read the judgement.

MR. LEVY MOSENOGI: Hu-uh.

ADV. LILLA CROUSE: You are shaking your head. I can't hear you.

MR. LEVY MOSENOGI: I don't remember.

20 **ADV. LILLA CROUSE:** You can't remember reading the judgement.

MR. LEVY MOSENOGI: I can't, yes.

ADV. LILLA CROUSE: I want to put it to you that as a responsible project manager, you would have read the judgement to make sure what the judge says in there. Don't you agree with me, thinking back now who you are?

MR. LEVY MOSENOGI: Yes.

5 **ADV. LILLA CROUSE:** Yes. So now the first death occurred barely a week after the judge's judgement on the 23rd of March 2016, according to the Ombud's report.

MR. LEVY MOSENOGI: Mm.

ADV. LILLA CROUSE: You weren't aware of that death, is that not so?

MR. LEVY MOSENOGI: At that time?

10 **ADV. LILLA CROUSE:** Yes.

MR. LEVY MOSENOGI: Yes, I wasn't aware.

ADV. LILLA CROUSE: According to you, you only became aware of this in July/August 2016, is that so? So from March to July/August you didn't know that people were dying in your project.

15 **MR. LEVY MOSENOGI:** You see, Counsel, ill people die and it is attended to, it is reported to. Mental health unit has a process of reporting the deaths and investigating and all those things. So it did not raise, for me I was not aware because as a health department people die all the time. Sick people die and I think the issue... when I became aware of a lot of people dying, that became a concern
20 for me.

ADV. LILLA CROUSE: Yes, but in the Department's view these were healthy people because they were discharged, they were not sick people. Isn't that so?

MR. LEVY MOSENOGI: They were stable people, they were not healthy people.

ADV. LILLA CROUSE: Mm. Sir, bearing in mind that to put a lot of people in a
5 NGO could harm the others in that facility, despite Judge Valley's warning, you still went ahead and did that, didn't you? Placed a lot of people in NGOs where there was a lot of overcrowding.

MR. LEVY MOSENOGI: Ja, we should have avoided overcrowding, I agree with that.

10 **ADV. LILLA CROUSE:** Now when you were moving these people in mass, were you discharging them or were you relocating them?

MR. LEVY MOSENOGI: That's why I say there is an issue of ...intervened.

ADV. LILLA CROUSE: No, I am asking you, sir. When people were in mass taken from Life Esidimeni, Waverly, it was emptied on the 31st of May 2016 ...intervened.

15 **MR. LEVY MOSENOGI:** In my definition they were being placed.

ADV. LILLA CROUSE: Yes. They weren't being discharged, isn't that so?

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: So your agreement with Section 27, the December agreement, should have kicked in, shouldn't it?

20 **MR. LEVY MOSENOGI:** Yes, if ...intervened.

ADV. LILLA CROUSE: In your mind you thought that it was part of the agreement that wouldn't do anything to harm these patients.

MR. LEVY MOSENOGI: It is very technical.

ADV. LILLA CROUSE: No, it is not technical sir. You have already said I was
5 placing them, it was in terms of the agreement, but you renegade on that agreement
in its totality, isn't that so?

MR. LEVY MOSENOGI: I can't agree with that.

ADV. LILLA CROUSE: You knew these people were not being discharged, the
guy in Waverly Life Esidimeni. Is that true? On the 31st of May 2016 when you
10 emptied out that whole place, you knew they were not discharged.

MR. LEVY MOSENOGI: Ja, what I am saying in technical terms, discharge is
discharge from hospital.

ADV. LILLA CROUSE: No but I am talking about you, sir.

MR. LEVY MOSENOGI: To other facilities.

ADV. LILLA CROUSE: You knew these guys weren't discharged, they weren't
15 healthy. And in your mind your agreement with Section 27 was in place, you
weren't going to place these guys in a worse position.

MR. LEVY MOSENOGI: They were stable. They were chronic persons stabilised
and they were having regular medications.

ADV. LILLA CROUSE: Sir, you knew when you sent these people, when you
20 closed Waverly, this wasn't discharging, you already agreed to that now.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Advocate Crouse, you will have to put it to him and he must respond to that.

ADV. LILLA CROUSE: As the Court pleases.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Asking him four times about it, 5 won't change quite much. I think you have to put a proposition to him once you've laid a basis, so that we can move on.

ADV. LILLA CROUSE: Thank you Justice.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: And it must be kept in mind that the State has conceded that their conduct was unlawful, was negligent and was not 10 consistent with the standards that were required here. So let's deal with the detail keeping that in mind that there is this overarching concession.

ADV. LILLA CROUSE: Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: So the detail should get us to in a way that actually gets us closer ultimately to equitable redress.

15 **ADV. LILLA CROUSE:** As the Court pleases.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Very well.

ADV. LILLA CROUSE: Sir, I am asking you these questions because I want to make sure that this type of thing never happens again. That the courts are being misled and that the courts can't protect clients. So what I am putting to you is that 20 you came with an understanding of what your agreement was in December 2015 with Section 27. But in March 2016 you didn't have any regard to that agreement with Section 27, do you agree with me?

MR. LEVY MOSENOGI: Personally I did have regard.

ADV. LILLA CROUSE: Okay. I put it to you further sir that you wouldn't have moved all of these patients, if you had regard to that agreement. Do you want to answer? Sir, I see you ...intervened.

5 **MR. LEVY MOSENOGI:** I valued the contribution of SADAG and Section 27 and I would have liked us to continue.

ADV. LILLA CROUSE: You valued it?

MR. LEVY MOSENOGI: They would have helped us a lot.

ADV. LILLA CROUSE: Yes. Sir, you say you valued it. How did you show that
10 you valued it?

MR. LEVY MOSENOGI: I was engaging with them.

ADV. LILLA CROUSE: In May 2016 when you moved all these patients, you were engaging with them? Is that what you are telling this Commission?

MR. LEVY MOSENOGI: I don't know how to answer that.

15 **ADV. LILLA CROUSE:** The answer is no, sir, you didn't value them, you didn't engage them. It is an easier answer. Let us move on. According to... and I am very nearly finished now, I am just wrapping up on this. According to you, by 30 June 2016 you've done all the moves of all the patients. Did I understand you correctly?

20 **MR. LEVY MOSENOGI:** That was the timeline because the facilities were going to be closed.

ADV. LILLA CROUSE: So can we accept that there was nobody moved after 30 June 2016?

MR. LEVY MOSENOGI: That was the deadline. So if people remained it was very few people. But the deadline was that at the end of 30 June the companies their
5 doors and people were ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: No, but the question is direct. Let's try and save time also.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: They are asking you, were any
10 people moved after 30th of June. The answer could be yes or no.

MR. LEVY MOSENOGI: Most of the people were moved at the end of June.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: No, were there any people moved after the end of June?

MR. LEVY MOSENOGI: I am not clear, Judge, whether all the people were moved
15 at the end of June. But the plan was that by the end of June there will be no patients in the facilities, unless there were issues that had to be attended to.

ADV. LILLA CROUSE: So would it be safe to say in your mind all the patients were moved by the 30th of June. You weren't aware of anybody left.

MR. LEVY MOSENOGI: That should have been moved, ja.

20 **ADV. LILLA CROUSE:** In your mind sir, just a yes or no... yes, in your mind everybody was moved.

MR. LEVY MOSENOGI: Was supposed to be moved.

ADV. LILLA CROUSE: Okay. So you were wanting to look after these patients that you've now moved in the NGOs by 30 June 2016. Is that a fair statement?

MR. LEVY MOSENOGI: Yes.

5 **ADV. LILLA CROUSE:** Thank you. Now I just want to take you through some of the service agreements. The Bofelong service agreement, are you aware of that service agreement?

MR. LEVY MOSENOGI: Who?

ADV. LILLA CROUSE: Bofelong.

10 **MR. LEVY MOSENOGI:** Bopelong.

ADV. LILLA CROUSE: Yes. Did you move patients to them?

MR. LEVY MOSENOGI: Bopelong, where is Bopelong? I haven't visited that NGO.

ADV. LILLA CROUSE: Okay.

MR. LEVY MOSENOGI: Yesterday I said it was Tsepong that I visited.

15 **ADV. LILLA CROUSE:** Okay. But let's talk about the service level agreements, sir. According to the papers supplied by us, that service level agreement was signed on the 4th of July 2017 by them and on the 30th of August 2016 by the Department. So it is fair to say that people moved there, would have been without any payment until after 30 August 2016. Will that be fair?

20 **MR. LEVY MOSENOGI:** I am not sure. I can't answer that one.

ADV. LILLA CROUSE: Let's accept, sir, that the last date on this service level agreement, when it was signed by your department, was the 30th of August 2016. If we accept that, is it fair to say they wouldn't have received any subsidies before that date?

5 **MR. LEVY MOSENOGI:** I am not aware of that situation, but technically it is true, if they were moved, the service level agreement was agreed on the 30th of August. I am not aware of that.

ADV. LILLA CROUSE: If we move to Cullinan, that was only signed on the 11th of July 2016. So when you move the patients there, we must accept that there was no
10 service level agreement in place and no subsidies in place. You agree?

MR. LEVY MOSENOGI: There were problems in Cullinan. There were problems in terms of the NGOs that were part of the Cullinan agreement. So there were particular problems. So those issues arose.

ADV. LILLA CROUSE: Sir, Santa Sepong (?), that was also one of the NGOs that
15 you used.

MR. LEVY MOSENOGI: Tsepong?

ADV. LILLA CROUSE: Yes.

MR. LEVY MOSENOGI: Next to Kalafong.

ADV. LILLA CROUSE: That service level agreement was only co-signed on the
20 16th of August 2016.

MR. LEVY MOSENOGI: Yes.

ADV. LILLA CROUSE: So we can be sure that for nearly two months at least there was no money coming to them. Do you agree with me?

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Well the question that begs an answer is, why did you do this? Why do you move people to a NGO with no proper service level agreements and with no resources? Why did you do this?

MR. LEVY MOSENOGI: As I said yesterday it was the enormity of the task, mistakes crept in and I can't explain the mistakes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: You can't call these mistakes. The law has requirements which we heard of yesterday.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: And in any case you need the service level agreement and you need the resources in order to place people, to use your language.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: But why do you do this in circumstances that will endanger the lives of these vulnerable patients? Why did you people do that? Why did you as head of project leader, why did the Department do it, why did its HOD do it and why did the MEC do it? Maybe you can't speak for them... can you speak for yourself?

MR. LEVY MOSENOGI: Yes. For myself I think our plans were not tight enough.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: What do you think was the most common cause for these deaths, did you come to know that afterwards?

MR. LEVY MOSENOGI: There were factors that contributed to that.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: No, I am ask what did you find
5 out to be the most common causes of death?

MR. LEVY MOSENOGI: I think the patients were, most of them had comorbidities.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: They had what?

MR. LEVY MOSENOGI: They had comorbidities. They were not only psychiatric patients. Some of them had diabetes, hypertension, other chronic diseases. So
10 they needed to be taken care of in terms of food, they needed to be looked after by people familiar with them, which we did not provide, because they were in a complete new environment. And also it was the winter season, they needed clothes. And if you move people to areas where they don't have the resources, it was going to be difficult for them. So all these factors, I think, exacerbated their
15 condition.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: And knowing all that, the inevitable question again is, why do you place... why did you place the lives of these patients at risk? If you are diabetic and there is no food, you are going to?

MR. LEVY MOSENOGI: Have problems, yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: No, not problems. What is going
20 to happen to you? If you are diabetic and you don't have adequate food, what is going to happen to you?

MR. LEVY MOSENOGI: You are going to be sick and eventually you might die.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: So why did you do this? I am going back to this question that worries me most that emerges from all this detail.

MR. LEVY MOSENOGI: Counsel, we should have done better and we would have
5 avoided all these things, these questions.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Ja and the question is, why didn't you do better?

MR. LEVY MOSENOGI: I did raise issues.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: You know you were warned by a
10 variety of entities, by specialists. I am repeating myself like a gramophone now.

MR. LEVY MOSENOGI: Yes, I know Counsel.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: You were warned by specialists, you were warned by lawyers concerned with access to health care. You were warned by family members, the patients themselves. You told us so this morning.
15 You went to Waverly, you went to Randfontein. You thought your MEC is misled. In all of that you push ahead and to your knowledge also during winter.

MR. LEVY MOSENOGI: Yes and ...intervened.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: And people inevitably die. So the question must be, why did you choose this careless option, this heartless option,
20 rather than the cautious one which every public official ought to choose, Batho Pele, why didn't you choose that option?

MR. LEVY MOSENOGI: Justice, I will always say I should have been much more stronger in my contention against this thing. Maybe I should have pulled out... it did come to my point that maybe I should pull out when I saw those kids and the conditions people were in. But I thought I will be able to contribute and make a difference and I regret... I regret that it ended up the way it has ended up. I tried my best but it was not the best because people died.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: You see the Ombud says he was deeply saddened that most of you were visibly scared of your leaders. I am sorry, I will repeat the question. I am sorry. Thank you recorder. The Ombud came here and told us that he was saddened by the fact that state officials who are paid to do their work, were visibly scared of the people they reported to. Were you scared?

MR. LEVY MOSENOGI: Myself I did tell also the Ombudsman that I was not scared, but the conditions that we worked under... maybe I will raise it when I close the remarks that maybe Department of Health must be run by people who know health, it would have been far better.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: We'll give you an opportunity to make your closing remark. But I am sorry, I interrupted you, please complete.

MR. LEVY MOSENOGI: Because in my years in the Department I have worked under people who are health conscious, you can be able to reach them. But it was difficult to reach the MEC because maybe we are trained differently, I don't know.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Maybe because she was?

MR. LEVY MOSENOGI: Trained differently. I am from the health training. So that is why I said maybe that was (inaudible).

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Were you afraid to tell her that she was wrong and you thought that you were right?

5 **MR. LEVY MOSENOGI:** As a person I did raise issues and I did raise issues even in the meeting. But you see, Judge, when you are in these meetings and everybody's head is down and you are the only one on a confrontational basis with your senior, it becomes very difficult.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Do you know why everybody's
10 head is down?

MR. LEVY MOSENOGI: Maybe they were afraid or... I don't know. But the conditions that we worked in, senior management were... Actually some of them even raised issues, but why do you do that, why do you do that. But I had to stand for myself and I think we need to improve on that as a government that we have
15 leaders who understand the trade. It will add much more value.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: And leaders who are not afraid to tell ...intervened.

MR. LEVY MOSENOGI: The truth, yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Is that right?

20 **MR. LEVY MOSENOGI:** Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: You think so.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: And who are not afraid to confront the truth when the moment requires so. Do you agree with that?

MR. LEVY MOSENOGI: Yes, I agree with that.

5 **ARBITRATOR, JUDGE DIKGANG MOSENEKE:** And if we had leaders who confronted the truth here within the health department, we might have saved lives, is it not so?

MR. LEVY MOSENOGI: Yes, I should have done more as a person.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Counsel.

10 **ADV. LILLA CROUSE:** Just a few questions to wrap up. Your training, sir, you referred to your training now, what training are you referring to?

MR. LEVY MOSENOGI: My training, I am a dental therapist.

ADV. LILLA CROUSE: Thank you. Just following up on this question that Justice Moseneke has just asked you. An opportunity for you to tell the truth and to make a
15 difference, was that day when the contempt application was before court in March 2016? Would you agree with me? You could have made a difference there.

MR. LEVY MOSENOGI: But my position was already known by that time.

ADV. LILLA CROUSE: No sir, your position wasn't known by Section 27, it wasn't known by the other NGOs. You should have stood up there and said don't agree
20 with this, don't take technical points in court that is totally non-existent. Let's deal

with the situation now. You didn't raise that. You didn't tell the judge here is problems... isn't that so?

MR. LEVY MOSENOGI: Yes, I should have interacted more with Section 27. I didn't interact with them more.

5 **ADV. LILLA CROUSE:** Yes. Were there any criminal proceedings or disciplinary proceedings against you throughout this process?

MR. LEVY MOSENOGI: Against me?

ADV. LILLA CROUSE: Yes.

MR. LEVY MOSENOGI: Where, from the Department? No, I was not ...intervened.

10 **ADV. LILLA CROUSE:** No disciplinary proceedings. And any criminal proceedings?

MR. LEVY MOSENOGI: Against me?

ADV. LILLA CROUSE: Yes.

MR. LEVY MOSENOGI: No.

15 **ADV. LILLA CROUSE:** Thank you, Justice Moseneke.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: Thank you, Counsel, for thorough cross-examination. Thank you. It is time for tea. When we return, you are going to hear from at least three advocates. There is going to be Advocate Groenewald, followed by Advocate Ngutshana and then the Advocate who called
20 you here will have a brief re-examination.

MR. LEVY MOSENOGI: Okay.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: That's what lawyers do.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: And then you will have your closing statement.

5 **MR. LEVY MOSENOGI:** Yes.

ARBITRATOR, JUDGE DIKGANG MOSENEKE: So this is what is going to happen immediately when we come back. We will resume at around 12 o'clock. So you have at least two more sets of advocates and your own advocate. We will adjourn until 12 o'clock.

10 **END OF SESSION 1**

SESSION 2

ARBITRATOR, JUSTICE MOSENEKE: Could somebody secure the presence of the witness, please?

MR. LEVY MOSENOGI: Apologies, Judge.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Well accepted. Thank you for being back. Remember Mr. Mosenogi, you are still under your previous oath. (Vernac).

MR. LEVY MOSENOGI: So help me God.

ARBITRATOR, JUSTICE MOSENEKE: Advocate Groenewald.

20 **ADV. DIRK GROENEWALD:** Thank you very much, Justice. I think my colleague and yourself have been very thorough under cross-examination, so I don't intend to be very long. Mr. Mosenogi, my name is Dirk Groenewald and I represent three

family members of deceased patients from the Cullinan Care and Rehabilitation Centre.

MR. LEVY MOSENOGI: Yes.

ADV. DIRK GROENEWALD: Now, Mr. Mosenogi, as the Justice has correctly
5 indicated, the State has already admitted to liability, they have already admitted that
they were in the wrong. So the purpose here today, and my purpose is, to try and
get closure for the families. And we can only get that if we provided them with the
facts, who did what, when and where. So I am just going to ask you a few
questions to clarify a few issues. Now to start off with, I would just like to know what
10 is your qualification, sir?

MR. LEVY MOSENOGI: I have got a Bachelor Degree in Dental Therapy from
MEDUNSA now known as Sefako Makgatho. I have got a Post Graduate Degree in
Public Management from Wits University. I have done Masters in Public Health
from University of London.

15 **ADV. DIRK GROENEWALD:** Thank you. To what extent does that make you
competent to be a project manager?

MR. LEVY MOSENOGI: Sir, in my post graduate studies at Wits, we did... I did
courses on governance and on policy and also we did a crash course on project
management. And when I was studying my Masters, I also did a course on project
20 management. And refresher courses, I have also done some refresher courses on
project management. But what enabled me to do that is experience, more than just
courses, because courses are courses. I have been a senior manager for,

especially under planning and strategic management for some time. Starting in the North West I was a director policy and planning and I did very well. I came here, I was head of chief directorate districtal (?) services which was responsible for clinics and community based services. I have worked as a regional chief director in
5 Ekurhuleni and also in Tshwane running the districts, before I came back as head of planning. So I think the experience also enabled me as I have some projects which I have run successfully. So this one was huge, it was a huge project. It had sub-projects in it and it needed a lot of technical skills from different people. I could not do it alone. I had to have a team to assist me to do it. So, basically that is my take.

10 **ADV. DIRK GROENEWALD:** Your evidence in chief, sir, you indicated that you ran one project prior to be appointed to this specific project at the end of 2015.

MR. LEVY MOSENOGI: Yes, I coordinated one project.

ADV. DIRK GROENEWALD: Okay.

MR. LEVY MOSENOGI: Assisted by a team of CEOs of hospitals, that was the
15 Selby Park one.

ADV. DIRK GROENEWALD: That's correct. So according to you, am I correct to say the MEC was aware of one project that you ran prior to appointing you?

MR. LEVY MOSENOGI: Yes.

ADV. DIRK GROENEWALD: Yes. Now sir, we heard testimony yesterday that
20 there is only two other countries in the world that has this kind of system or project in place. It is a unique project, it is a unique system. As you well indicated, it is a huge project. Now I would like to know what kind of research did you conduct

and/or studies did you undertake when you were appointed. So what did you do...
what research did you do?

MR. LEVY MOSENOGI: I did not do much research, but what I did was to assemble expertise in terms of people.

5 **COUNSEL FOR STATE:** Through you Justice, if I can just intervene on behalf of the witness.

ARBITRATOR, JUSTICE MOSENEKE: Certainly.

COUNSEL FOR STATE: The question is relating to the research conducted for the purposes of the project. The witness has already testified that at the time of his
10 appointment on 5 November 2015, the project was already underway. So I did not understand the relevance of the question pertaining to research in respect of this witness.

ARBITRATOR, JUSTICE MOSENEKE: Advocate Groenewald.

ADV. DIRK GROENEWALD: Well, Justice, the relevance of the question is quite
15 simple. The witness testified that this was a huge project. We have the evidence of the Ombudsman that says there is only two countries in the world that has done this. So all I want to know is, what kind of extra measures did Mr. Mosenogi as the project manager take to ensure that he runs this project sufficiently, properly and according to the standards that there might be. So I think the question is extremely
20 relevant.

ARBITRATOR, JUSTICE MOSENEKE: I think, Counsel, I am going to allow the question in the light of earlier responses of the witness. It was big, it was

overwhelming, so Counsel wants to know what work did you do, preparatory work to be able to run the project. I think it is a relevant question and the question will be allowed. As long as Counsel does not call him Moseneke, he comes very close to calling him that. Our surnames are quite close.

5 **ADV. DIRK GROENEWALD:** Mosenogi.

ARBITRATOR, JUSTICE MOSENEKE: It is Moseneke and Mosenogi.

ADV. DIRK GROENEWALD: My apologies, Justice.

ARBITRATOR, JUSTICE MOSENEKE: It is from the same tribal extraction. So be careful, Mosenogi and Moseneke is very close.

10 **ADV. DIRK GROENEWALD:** I will be careful, thank you Justice.

MR. LEVY MOSENOGI: Ja, maybe in response to that, Counsel, is that I did look at what was already there in terms of the project, what was called the project plan. But also I did try to look at the work that... what influenced the project. So I looked... I only discovered that only cost analysis or cost effectiveness study was
15 done by our health economics – that is the Health Advance Institute. But there was no other document except the mental health policy that spoke of the institutionalisation which is supposed to be a community based approach to mental health, which is a new policy that needed to be implemented. But it was really a new policy and it needed a lot of work to implement that. I also, because of my
20 experience, realised that we did not – and I did sound it out when we spoke with other leadership, especially the HOD and I think I did write something about that that there was no... normally this kind of project you must do proper due diligence

so that you are able to see what is involved. But I didn't do much in terms of that, but I did sound out that there was no due diligence done. Because if due diligence was done, proper due diligence was done, we will have been able to identify the hiccups and the parameters and even it will have assisted us in terms of the length
5 or the duration and even the cost of the project. So the project was weak in that respect.

ADV. DIRK GROENEWALD: Yes sir. Just to summarise, you received this plan and you saw that there was no due diligence done and the plan was lacking in a number of respects, but you were instructed to implement that plan. That was your
10 instruction, go and implement this.

MR. LEVY MOSENOGI: In a way, ja, I had to implement.

ADV. DIRK GROENEWALD: No, not in a way, sir. You were the project manager. And all I am asking you is ...intervened.

MR. LEVY MOSENOGI: I was appointed to do that, yes.

15 **ADV. DIRK GROENEWALD:** Yes, you were appointed to do that. Now sir, just briefly, I just want to find out, whose brainchild is this project?

MR. LEVY MOSENOGI: As I said that I came into the project that was already running. The idea, if I recall well, the idea of this cost saving measure, it was part of the cost saving measures ...intervened.

20 **ADV. DIRK GROENEWALD:** Sorry sir, I am going to interrupt you there. I don't want to duplicate the questions asked by my colleagues here and so on. We know that it was cost saving and so on. I want to know who sat there around the table

and who said well this is going to be our project and this is going to be our plan, because you weren't involved in that. So whose brainchild was this plan?

MR. LEVY MOSENOGI: I can't point to people, but I think it was an executive decision.

5 **ADV. DIRK GROENEWALD:** Okay, executive decision... that will include?

MR. LEVY MOSENOGI: The executive, the DDG, the HOD and the MEC and maybe the CFO.

ADV. DIRK GROENEWALD: The MEC and?

10 **MR. LEVY MOSENOGI:** The executive of the department which include the DDGs, the HOD and the MEC.

ADV. DIRK GROENEWALD: You don't know who they consulted on the plan, the executive, you don't know whether or not they consulted external stakeholders, specialists or something like that.

MR. LEVY MOSENOGI: I am not sure of that.

15 **ADV. DIRK GROENEWALD:** 100%. Now sir, I am correct that Me. Mahlangu, the previous MEC... do I pronounce it correctly?

MR. LEVY MOSENOGI: Yes.

ADV. DIRK GROENEWALD: She resigned a day before the Ombudsman report became public, isn't it so?

20 **MR. LEVY MOSENOGI:** That is what the Premier stated at the Ombudsman launch of the report.

ADV. DIRK GROENEWALD: Okay. Now you testified sir and you said that after this tragedy became public knowledge, you were a bit pushed to the side. And your words were, there were problems between yourself and the executive – that was your words. Now what was that problem, sir?

5 **MR. LEVY MOSENOGI:** I think it arose in one of the meetings when I tackled the issue of Baneng, that we need to finalise the extension of the contract. There were issues... I think Baneng requested a much more tariff because now they were only going to look for children. So I was arguing that maybe we need to look at that and have finality in terms of the extension of the contract. And then the issue was that
10 maybe I am becoming a spokesperson for Life Esidimeni. And at that point I took the MEC on, because that was not the case. I was just raising it for the sake of the children. So, I did tackle the issue, confront the issue. And at that time I think it caused a lot of tension because I was a bit angry.

ADV. DIRK GROENEWALD: Sir, I think it is time, you know the family wants
15 closure but you can also get closure. So present us with the facts and tell us. We want to know sir, the MEC gave you an instruction to execute the project. The MEC resigned. We don't know... well I don't know where is the MEC. So we want to know, sir, what were the discussions between yourself and the MEC. What did the MEC say? Why do you say there was difficulty between yourself and the MEC?

20 **MR. LEVY MOSENOGI:** Yes, because she accused me of being a spokesperson and then I had to retort and challenge that. And I think it created tension. It was a very tense meeting and it was me and her and it was a very difficult meeting.

ADV. DIRK GROENEWALD: Now sir, you say that when you were called to the Premier's office, the MEC didn't introduce yourself as the project manager, am I correct?

MR. LEVY MOSENOGI: Yes.

5 **ADV. DIRK GROENEWALD:** Ja, now why did the MEC introduce you as the project manager?

MR. LEVY MOSENOGI: I don't know, I didn't ask, but it was obvious that I am no longer in... I don't know... in good books.

10 **ADV. DIRK GROENEWALD:** Or do you think the MEC was trying to hide something?

MR. LEVY MOSENOGI: I am not sure. She will be able to answer that.

15 **ADV. DIRK GROENEWALD:** Well we don't know, she is not going to be called as a witness here by the Government, so we don't know if we are going to get those answers, sir. But let's move on, sir. We note from the Ombudsman's report that there was a number of people that tried to interfere with the investigation. We note from the report and the recommendations by the Ombudsman that a number of your colleagues that were identified – and it is specifically stated there by the Ombudsman that Dr Manamela and Dr Selebano, it states there which includes tampering of evidence. I want to know from you sir... so the Ombudsman
20 confirmed that some of the witnesses and some of the Department's employees tampered with evidence. Now I want to know from you, sir, are you aware of any individual that tampered with evidence?

MR. LEVY MOSENOGI: I was not aware until I read the report, but I wasn't aware that people were tampering with evidence. I did present my evidence myself, yes.

ADV. DIRK GROENEWALD: You are the project manager, sir. I mean at the end of the day you had a big responsibility and you say that you don't know of anybody
5 that tampered with evidence.

MR. LEVY MOSENOGI: Yes, I say I was not aware.

ADV. DIRK GROENEWALD: You are not aware.

MR. LEVY MOSENOGI: Nobody brought it to my notice.

ADV. DIRK GROENEWALD: Now the Ombudsman further testified and the
10 Professor said that his mandate was not to investigate any issues of fraud. But he said well, he was made aware of one issue where there was fronting by NGOs. You as the project manager, were you aware of any fraudulent activities?

MR. LEVY MOSENOGI: The only one which maybe be classified as fraudulent, but there was a problem at Cullinan with the Siyabadinga NGO, which came into
15 Cullinan while it was supposed to be a NGO called Life Disciples. That one I was aware and we did take the CEO responsible to task and eventually she had to face disciplinary action.

ADV. DIRK GROENEWALD: In respect of ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Just before, Counsel, you move on. What
20 was happening at Cullinan, the Ombud talked about the fact that whilst Cullinan was meant to be the state mental health care giver.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: It also had NGOs operating from Cullinan or something close to that. Can you explain to us what was happening there?

MR. LEVY MOSENOGI: Judge, what happened in Cullinan is that Cullinan is a facility for intellectual disability, they were taking care of those kind of patients. So
5 what happened was there were facilities or space wards that were not being used and those wards were, they were those that were part of the renovation project to renovate them so that we can get the space. So what has happened is that there was a division between Cullinan where state patients are and those facilities were divided. And the plan was maybe we can use that space to accommodate patients
10 that are coming from Life Esidimeni, that is why there was renovation. So basically that was the initial plan that was there by the CEO of the... the then CEO of the hospital. But when the project came, we thought that we will have to use that space because at least it will accommodate more people.

ARBITRATOR, JUSTICE MOSENEKE: The NGOs ...intervened.

15 **MR. LEVY MOSENOGI:** That is how it came into the picture. And then the mental health unit and Dr Manamela bought into that and the NGOs were offered that space to take care of patients. So there were facilities available and there was a division between the hospital and those rooms. That is what happened and that is how the NGOs came into the picture.

20 **ARBITRATOR, JUSTICE MOSENEKE:** And were the NGOs funded directly by yourselves or were they just an extension of Cullinan?

MR. LEVY MOSENOGI: They had undergone the same process the other NGOs were. But the hospitals just made space available for them to work from there.

ARBITRATOR, JUSTICE MOSENEKE: And you said it was Siyabadinga and which other NGO?

5 **MR. LEVY MOSENOGI:** The other one was Anchor Life, it came later, Anchor Life, yes.

ARBITRATOR, JUSTICE MOSENEKE: Now did they receive any patients from Life Esidimeni?

MR. LEVY MOSENOGI: The way it worked there, if I am correct, Judge, is that
10 what happened, it was unique in Cullinan. Patients were discharged, bona fide patient from Cullinan were discharged into one NGO and patients from Life were admitted in Cullinan. But I am not very clear. I think Dr Manamela will make it clear in terms of that. But basically the issue was that originally it was supposed to be Life Care patients who were going to be looked after in that space, but it ended up
15 being patients who are ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: You see the Ombud – that is why this is relevant – the Ombud says that patients who otherwise were stable, were discharged from Cullinan.

MR. LEVY MOSENOGI: Yes.

20 **ARBITRATOR, JUSTICE MOSENEKE:** To make space for patients who were placed, to use your language, from Life Esidimeni. And he says the consequence

of that was that the patients who were placed in Cullinan met their demise, they subsequently died.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: You know that.

5 **MR. LEVY MOSENOGI:** I am aware of that.

ARBITRATOR, JUSTICE MOSENEKE: Who ordered that the patients be discharged from Cullinan?

MR. LEVY MOSENOGI: I think ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: How did that happen?

10 **MR. LEVY MOSENOGI:** I am not clear on the process, but I think the CEO can answer that.

ARBITRATOR, JUSTICE MOSENEKE: The CEO?

MR. LEVY MOSENOGI: The then CEO can answer that.

ARBITRATOR, JUSTICE MOSENEKE: But wasn't this part of your project, overall
15 project?

MR. LEVY MOSENOGI: I think it just got assimilated into the project, but it was something that was original from my side. So I am not clear what ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: But who gave instructions that Cullinan should discharge these patients, who ultimately met their death?

20 **MR. LEVY MOSENOGI:** I think it was... I can't answer that, Justice, because it was not from the project side that it happened.

ARBITRATOR, JUSTICE MOSENEKE: Counsel.

ADV. DIRK GROENEWALD: Thank you very much, Justice. Sir, you say that it was not from the project side, but then in the same breath you also say that Dr Manamela, who was from your ...intervened.

5 **MR. LEVY MOSENOGI:** From mental health unit.

ADV. DIRK GROENEWALD: From mental health unit and the mental health unit was part of the project.

MR. LEVY MOSENOGI: That has always been mental health unit directorate.

ADV. DIRK GROENEWALD: Okay.

10 **MR. LEVY MOSENOGI:** But it was a major part of the project, because it had to do with that patients.

ADV. DIRK GROENEWALD: So according to you now, are you saying the transfer or the discharge of the patients from CCRC to Siyabadinga and Anchor, was not part of this project.

15 **MR. LEVY MOSENOGI:** It shouldn't have been but it was assimilated into the project, because it happened at the same time when the project was taking place.

ADV. DIRK GROENEWALD: So if you say it was assimilated into the project, it was then part of the project. Was the project on its own?

20 **MR. LEVY MOSENOGI:** No, what I am saying is that it was not... when the project took place, that project of discharging patients to Cullinan was under the ambit of the normal mental health directorate and the CEO of the hospital. But because then

we were also responsible for the project, it happened during that time. So I am not very clear how it happened, but I came into the picture when we had to deal with the problems that were there.

ADV. DIRK GROENEWALD: So as a project manager, you were only aware of the
5 transfers from CCRC to Siyabadinga and Anchor in June/July when the patients were transferred and the problems started.

MR. LEVY MOSENOGI: When the problems started with Siyabadinga and also issues were raised about that. So we had to sit down with... I ended up having to sit with the leadership of that department and the CEO to understand what has
10 happened, why are there problems, what is this, what is this Siyabadinga and all those things. And we tried to advice, but the advice was not taken and then we had to take action. We had to recommend that the Department take action and that is why the CEO was suspended and charged.

ADV. DIRK GROENEWALD: When did you sit down with the CEO of CCRC?

15 **MR. LEVY MOSENOGI:** I don't have the exact date, but we did sit down with her.

ADV. DIRK GROENEWALD: July, August, September?

MR. LEVY MOSENOGI: I don't think I have the correct date, unless if you have the dates. But we did sit down with her before we took action against her.

ADV. DIRK GROENEWALD: Okay.

20 **MR. LEVY MOSENOGI:** To try to understand what happened. I think Mr. Manamela will be able to answer that one.

ADV. DIRK GROENEWALD: Sir, you see, we are in a very difficult situation here. We need to find closure for these families. And each and every time we have a witness here, that witness is not able to tell us what happened at the specific institutions. Now you will agree with me that that is frustrating for the families.

5 **MR. LEVY MOSENOGI:** Yes.

ADV. DIRK GROENEWALD: And you will agree with me that we will never get closure if we cannot get to the facts.

MR. LEVY MOSENOGI: Yes, but Counsel, I can't say I know if I don't know.

10 **ADV. DIRK GROENEWALD:** And that is 100%, sir. I don't want you to testify something that you know nothing about.

MR. LEVY MOSENOGI: Mm.

15 **ADV. DIRK GROENEWALD:** But just to summarise then, you as a project manager, you only learned about Siyabadinga, Anchor and CCRC's problems when the problems actually arose. So you weren't aware of the transfers, how the transfers should take place, who was responsible of the patients, the discharge of the patients and so on – you weren't aware of that.

20 **MR. LEVY MOSENOGI:** Because it was a normal function of the mental health directorate, that is why maybe I wasn't aware, until the problems came and then I became aware that there are problems, patients are transferred from the hospital to the other side.

ADV. DIRK GROENEWALD: So are you saying to me, sir, you were not responsible for those transfers, it is Dr Manamela that was responsible, that fell outside your instruction, the CCRC situation?

MR. LEVY MOSENOGI: What I am saying is that it was a normal mental health
5 directorate function, especially that has to do with discharge of patients from Cullinan to that other side. It wasn't... I wasn't part of that.

ADV. DIRK GROENEWALD: Okay. Sir, the Ombud made it quite clear that this project was part of the bigger project. He made it clear that Life Esidimeni patients were transferred to CCRC. The patients that were at CCRC, in the Ombudsman's
10 words, were sacrificed to go to the NGOs. So they were part of this program, sir. I put it to you they were part of this program and I put it to you that you were also responsible for them.

MR. LEVY MOSENOGI: Maybe, Mr. Groenewald, the CEO can clarify it better than me.

15 **ADV. DIRK GROENEWALD:** 100%, sir, thank you.

ARBITRATOR, JUSTICE MOSENEKE: No but before we leave the matter... it is quite an important matter. You said you were part of the disciplinary processes against the CEO.

MR. LEVY MOSENOGI: Yes.

20 **ARBITRATOR, JUSTICE MOSENEKE:** What were the disciplinary processes against the CEO of CCRC?

MR. LEVY MOSENOGI: It was the issue of the recognition of this Siyabadinga NGO that came in a normal routine, you know. Because originally Dr Manamela, we were dealing with... the NGO that originally came to the previous, when we were calling for beds, was Life Disciple. But we were surprised that then we were dealing
5 with Siyabadinga and Siyabadinga was not registered, we did not know of its existence until when we were meeting with the CEO.

ARBITRATOR, JUSTICE MOSENEKE: Mr. Mosenogi, what I am asking is, what charges did the CEO of CRC face?

MR. LEVY MOSENOGI: She did face the charges, the issue of Siyabadinga and
10 also the issue of leasing Siyabadinga the space to work in that facility.

ARBITRATOR, JUSTICE MOSENEKE: But how did... what were the infractions, what were the wrong things that she/he had done?

MR. LEVY MOSENOGI: I think the issue was that she was not given permission to do that.

15 **ARBITRATOR, JUSTICE MOSENEKE:** To do what, to rent space?

MR. LEVY MOSENOGI: To rent out space, but also the involvement of Siyabadinga in the whole process. Because we never knew the existence of Siyabadinga until then.

ARBITRATOR, JUSTICE MOSENEKE: Was Siyabadinga ever given a service
20 level agreement?

MR. LEVY MOSENOGI: I am not sure that they were ever given service level agreement because that was the bone of contention, that is why there were charges.

ARBITRATOR, JUSTICE MOSENEKE: Did Siyabadinga receive any stipends?

5 **MR. LEVY MOSENOGI:** Not to my knowledge, Judge.

ARBITRATOR, JUSTICE MOSENEKE: Did Siyabadinga receive any patients?

MR. LEVY MOSENOGI: They did receive patients.

ARBITRATOR, JUSTICE MOSENEKE: Who had formally been at Cullinan or at Life Esidimeni?

10 **MR. LEVY MOSENOGI:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: And she was charged for doing what, what was the wrong thing?

MR. LEVY MOSENOGI: I don't have the ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: I am asking this only because we are told
15 because of that arrangement, people died ultimately. And Mr. Groenewald has a special interest in that particular situation.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: So I would like to get back to the question.
Was this part of your project or not? And two, why did the CEO act wrongly, in
20 what sense did she act wrongly?

MR. LEVY MOSENOGI: Judge, that is why we recommended that she be charged, because then it ended up being part of the project, because we wanted to place NGOs in that area and that is how we had to take action against her.

ARBITRATOR, JUSTICE MOSENEKE: So the answer is, it was part of the project.

5 **MR. LEVY MOSENOGI:** Eventually.

ARBITRATOR, JUSTICE MOSENEKE: Ja and she acted wrongly...

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: By allowing Siyabadinga to rent wards that were not in use. But you don't know whether Siyabadinga was one of your NGOs.

10 **MR. LEVY MOSENOGI:** It was not until they came into the picture.

ARBITRATOR, JUSTICE MOSENEKE: What do you mean came into the picture?

MR. LEVY MOSENOGI: They came later in the picture. They were not part of the initial meeting. The initial meeting it was Life Disciple which was part of that. And that is what we were supposed to deal with. But Life Disciple in the end turned out to be... Siyabadinga took their place. That is how we disciplined the manager, because it was a problem.

ARBITRATOR, JUSTICE MOSENEKE: Did you have any problems with Anchor Life?

20 **MR. LEVY MOSENOGI:** The issue of Anchor Life came later, because they were supposed to be accommodated at Kalafong, the facilities that were supposed to have been renovated at Kalafong, the nursing colleague side. But when myself and

the DID, technical people, went to see Kalafong to see whether is it possible, we agreed that that is not the correct place to place patients. And then as an alternative then they were accommodated at Cullinan, because there was space available. So I think it was provided that they will share the space with Siyabadinga.

5 **ARBITRATOR, JUSTICE MOSENEKE:** Lastly, in your knowledge, how many people passed on under the care of Siyabadinga and how many under the care of Anchor Life?

MR. LEVY MOSENOGI: I don't have the record here, Chair, I will have to check.

ARBITRATOR, JUSTICE MOSENEKE: But people did pass on, isn't it?

10 **MR. LEVY MOSENOGI:** Yes, it was in the papers. It was in the papers, I remember it clearly and that is why it was a big problem for the Department.

ARBITRATOR, JUSTICE MOSENEKE: Thank you Counsel.

ADV. DIRK GROENEWALD: Thank you very much Justice. Sir, just a few more questions. So you went to CCRC and had the meeting with the CEO. You went
15 there to the CCRC.

MR. LEVY MOSENOGI: The new one? The new CEO?

ADV. DIRK GROENEWALD: The old CEO. You said that you went there and you met with her.

MR. LEVY MOSENOGI: No, I was called to a meeting where she was meeting with
20 myself and the DDG in his office.

ADV. DIRK GROENEWALD: So in the period June 2016 till October 2016, did you ever go to CCRC and inspect and see what was going on there?

MR. LEVY MOSENOGI: I did go.

ADV. DIRK GROENEWALD: When did you go there, sir?

5 **MR. LEVY MOSENOGI:** I did go when the facilities were still being renovated, when we were taken around by the technical people, DID technical people to show us that they are finished with the renovation and showed us the facilities. I did visit. And I also did visit when there were problems where we had to go and see what was happening there.

10 **ADV. DIRK GROENEWALD:** When was that?

MR. LEVY MOSENOGI: It was after the suspension of the CEO.

ADV. DIRK GROENEWALD: Okay.

MR. LEVY MOSENOGI: When we took the new acting CEO and introduced him to the staff and labour and we also took her around to see the place.

15 **ADV. DIRK GROENEWALD:** So Siyabadinga was closed down and those patients moved back to CCRC.

MR. LEVY MOSENOGI: That time they were still there in those facilities when I went there.

ADV. DIRK GROENEWALD: Siyabadinga was still there?

20 **MR. LEVY MOSENOGI:** Yes.

ADV. DIRK GROENEWALD: Siyabadinga was still there.

MR. LEVY MOSENOGI: Mm.

ADV. DIRK GROENEWALD: Okay sir. Now sir, we are going to lead evidence of family members that will come and testify of the conditions there and they will come and testify that the patients didn't have blankets, that it was quite evident or clear
5 that these patients did not have the necessary food, that they did not receive their medication and at the end of the day and as a consequence thereof, they died. So in short, sir, they will testify that those facilities were not adequate, not nearly adequate to house those patients. Did you observe that? Did you see that, sir, when you were there?

10 **MR. LEVY MOSENOGI:** The facilities were... the infrastructure was okay, but the NGOs I think they did not have resources and it was lacking.

ADV. DIRK GROENEWALD: Now what did you do about it, sir?

MR. LEVY MOSENOGI: We did... there was an intervention team to try and arrest the situation that was led by the practitioners and we tried to address the situation.
15 A lot of work was being done that side, but I was not on the ground to do that. But my team did do the work and I think Dr Manamela can answer that.

ADV. DIRK GROENEWALD: But you cannot give us specific information as to what your team did there, what intervention.

MR. LEVY MOSENOGI: Yes.

20 **ADV. DIRK GROENEWALD:** Did they go and deliver food? If so, when did they do so? Did they go and deliver blankets? If so, when did they do so? Because we are going to testify that other NGOs came and provided food.

MR. LEVY MOSENOGI: Yes.

ADV. DIRK GROENEWALD: Other NGOs came and provided blankets and clothing.

5 **MR. LEVY MOSENOGI:** I know, but I can't be specific because I was not on the ground to do that. So I can't be specific.

ADV. DIRK GROENEWALD: Now once again, sir, the purpose of these proceedings are to provide closure for the family members.

MR. LEVY MOSENOGI: Yes.

10 **ADV. DIRK GROENEWALD:** And if we cannot provide them specifics, how would they get closure?

MR. LEVY MOSENOGI: Counsel, I am not able to be specific in everything, but there were people that we were working with, there were the district people, there were the project team. And I think other people will be able to give much more specifics to that.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Where is Dr Manamela now?

MR. LEVY MOSENOGI: She is under suspension, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Where is the HOD?

MR. LEVY MOSENOGI: The HOD is also under suspension.

ARBITRATOR, JUSTICE MOSENEKE: And we know the MEC has resigned.

20 **MR. LEVY MOSENOGI:** Yes sir.

ARBITRATOR, JUSTICE MOSENEKE: And you say no disciplinary proceedings have been instituted against you.

MR. LEVY MOSENOGI: Yes, nothing has been... nobody has told me anything, yes.

5 **ARBITRATOR, JUSTICE MOSENEKE:** Who is left in that team?

MR. LEVY MOSENOGI: It is me who was the project head and also there were most of the team members of mental health unit were mentioned by the Ombudsman and they have been... the process of discipline has been taken against them and I think they were given written notices, if I am right.

10 **ARBITRATOR, JUSTICE MOSENEKE:** And you are on your normal post. You are still working.

MR. LEVY MOSENOGI: I am still the chief director planning, yes.

ADV. DIRK GROENEWALD: Justice, a final question from my side. Unfortunately I don't have copies of the document, but the witness referred to nominees to serve
15 on mental health project team for termination of contract, Life Esidimeni. And Justice, I will endeavour to see that we provide you with a copy of this document.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ADV. DIRK GROENEWALD: In that document you set out all the individuals that was part of the subcommittees, the members.

20 **MR. LEVY MOSENOGI:** Yes.

ADV. DIRK GROENEWALD: Alright. Now the Ombudsman clearly indicated that there was... I mean there was a number of issues. There was infrastructure issues, there was transfer issues... well, issue is actually putting it lightly. And you are saying that of these committee members, the only action that has been taken is
5 against the members of the mental health unit, disciplinary action.

MR. LEVY MOSENOGI: And the HOD and Dr Manamela and the other person was the chief director of Tshwane region was also mentioned, but he was precautionally transferred to Ekurhuleni.

ADV. DIRK GROENEWALD: Precautionally transfer?

10 **MR. LEVY MOSENOGI:** Yes and he subsequently appealed the recommendation and I think he won the appeal.

ADV. DIRK GROENEWALD: He won the appeal?

MR. LEVY MOSENOGI: Yes.

ADV. DIRK GROENEWALD: So the clinical specialist who was required to ensure
15 performance of patient clinical audits or assessments, categorisation of patients, monitoring transfer, discharge of patients... those four individuals, nothing has been done, no disciplinary action instituted against them.

MR. LEVY MOSENOGI: They were not mentioned in the Ombudsman's recommendation.

20 **ADV. DIRK GROENEWALD:** Well sir, you are the project leader, you've read the Ombudsman's report.

MR. LEVY MOSENOGI: Yes.

ADV. DIRK GROENEWALD: You saw that many of the findings that he made, relates to their functions. So shouldn't they be held accountable?

MR. LEVY MOSENOGI: After the Ombudsman's report, I was no longer part of the project in terms of mental... other senior people were the ones who decided what to
5 do. I was not involved.

ADV. DIRK GROENEWALD: You were the project leader, sir.

MR. LEVY MOSENOGI: Yes.

ADV. DIRK GROENEWALD: Yes. You are the person with the best knowledge of who should have done what. And after you've studied the Ombudsman's report,
10 don't you think it would have been just fair and proper responsibility from you to draw up a memorandum and say I have read the Ombudsman's report, here is all the individuals that took part, that were appointed and were team members and clearly these individuals failed to do their work and action should be taken against them.

15 **MR. LEVY MOSENOGI:** I did not think of that.

ARBITRATOR, JUSTICE MOSENEKE: The deputy project leader has been suspended, isn't it?

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Your deputy.

20 **MR. LEVY MOSENOGI:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: Dr Lebethe, where is he or she?

MR. LEVY MOSENOGI: Still part of the Department.

ARBITRATOR, JUSTICE MOSENEKE: Has he been suspended?

MR. LEVY MOSENOGI: No.

ARBITRATOR, JUSTICE MOSENEKE: Has he been charged?

5 **MR. LEVY MOSENOGI:** No. The only people who were charged, Justice, were the people who were part of the recommendation of the Ombudsman.

ARBITRATOR, JUSTICE MOSENEKE: Mm.

MR. LEVY MOSENOGI: Yes, other people were not mentioned.

ARBITRATOR, JUSTICE MOSENEKE: You see, you'd have had Counsel put that
10 to you. The Ombud cites areas of pitfalls in the project, you are aware of that.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: In other words, once, besides all the
difficulties around the decision to implement, comes the high point, the rush period
between March and April when you really decided... March and April, is it, when
15 you really decided that you were going to go ahead.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: He points out the problems around
transport, around medical scripts and records, around accommodation, around
crowding, around licensing, service level agreements, around stipends. Now I look
20 at this document which I am seeing for the first time. There were subcommittees in
relation to each of those things.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Is that right?

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: And when you look at the Ombud's report,
5 I think that is a point that Adv. Groenewald is putting to you.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: There has been systemic failure on each
of those levels. And all of them conspired to create death ultimately. And nobody in
the subcommittees have been held to account in any way, is that right?

10 **MR. LEVY MOSENOGI:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: Do you know why it is so?

MR. LEVY MOSENOGI: Justice, I think after the 1st of February this year, there
was a sense... there was a (inaudible) in terms of leadership, because the MEC has
resigned, the HOD was suspended subsequently and there was... the morale of the
15 Department was very low, we didn't know what next. And then the new leadership
came into place and we didn't come together, you know. Maybe what should have
happened is somebody should have called people together and looked at and
assessed what has happened. But it seemed that it was a... everybody had to look
for themselves, you know.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Ja, for instance you had eight project
officers, when I look at the subcommittees. You had four people looking after
hospitals. I mean every part of the project appeared to have had warm bodies and

many have titles like doctor and mister and miss and so on. And yet this project experiences a systemic failure, in other words at every level as I put it to you, and you say none of these people have been held to account, except those at the top... your deputy and not yourself, as well as others.

5 **MR. LEVY MOSENOGI:** Yes. I don't know. Maybe the people looked at the recommendations and they took action in terms of what needed to be done. That is how I can explain it. But there was not even a debriefing for the people who remained behind. So it was a difficult period. It was a very difficult period.

ARBITRATOR, JUSTICE MOSENEKE: And your total team had 21 state officials
10 from the list you gave us.

MR. LEVY MOSENOGI: It was a departmental team, everybody in the department one way or another were involved in the project.

ARBITRATOR, JUSTICE MOSENEKE: And do you know of anyone of them who
15 shouted murder to you, who shouted dissatisfaction and unhappiness with what they were called upon to implement?

MR. LEVY MOSENOGI: The whole issue really devastated us, especially those who were closely involved in the department, who were closely involved with the project, who were very devastated. And sometimes we thought maybe we were (inaudible), it was difficult for us.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Let me put my last bee in my bonnet. I am sure Counsel will have others. You see, a state official is somebody who is

employed as a public official, is obliged in law to implement only lawful orders. Do you know that?

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: You would. With a Master Degree in
5 Public Management you would know. In other words what I am saying or putting to you, Mr. Mosenogi, you have no duty to implement unlawful orders, whoever might give them. Do you know that?

MR. LEVY MOSENOGI: Yes, I know that.

ARBITRATOR, JUSTICE MOSENEKE: Let me give you a simple example. If I
10 were to place drugs before you, even if my authority as a judge for instance, and I say consume these drugs, are you obliged to consume them?

MR. LEVY MOSENOGI: No.

ARBITRATOR, JUSTICE MOSENEKE: You know you are not.

MR. LEVY MOSENOGI: Yes.

15 **ARBITRATOR, JUSTICE MOSENEKE:** And if you are a public official and you are giving orders that (inaudible) might lead to death of others, are you obliged to execute that order?

MR. LEVY MOSENOGI: No, I am not obliged.

ARBITRATOR, JUSTICE MOSENEKE: So why did you in this instance? In this
20 project, why did you?

MR. LEVY MOSENOGI: As I said, I should have done more, except that I did... the best I did was not enough to avoid the deaths of people.

ARBITRATOR, JUSTICE MOSENEKE: And you realise that you cannot be dismissed for refusing to execute an unlawful order.

5 **MR. LEVY MOSENOGI:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: I can't order my clerk to jump through the window to his/her death and she refuses and I try and have her dismissed. The law won't allow me to do that, you realise that.

MR. LEVY MOSENOGI: Yes, I am aware, Justice.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Then why did all these educated people with all these big titles form part of a project that had all the fingerprints of death?

MR. LEVY MOSENOGI: I think in their own words they did raise issues. The clinicians did raise issues, I did raise issues. I can only explain it in answer that there was some kind of paralysis, especially looking at the number of people who
15 were involved. I think maybe we didn't anticipate the way it ended, horribly so.

ARBITRATOR, JUSTICE MOSENEKE: You see, and I am sure you know about that given your qualifications we know about you, public officials are employed and paid to serve and look after the people. That is plain is it not?

MR. LEVY MOSENOGI: Yes, we need to serve, especially with the vulnerable and
20 in the Department of Health, the patients.

ARBITRATOR, JUSTICE MOSENEKE: It is your job to help patients to have access to have all those things that the constitution talks about, you know that.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: And you knew that all the time throughout this project.

MR. LEVY MOSENOGI: Yes.

5 **ARBITRATOR, JUSTICE MOSENEKE:** And when somebody, your senior suggests otherwise, you know plainly that you are not obliged to do so.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Counsel.

ADV. DIRK GROENEWALD: Justice, I have no further questions. I am satisfied.

10 Thank you.

ARBITRATOR, JUSTICE MOSENEKE: Thank you so much.

ADV. DIRK GROENEWALD: Thank you very much sir. I can only hope that you find peace and closure yourself.

ARBITRATOR, JUSTICE MOSENEKE: Sure. Advocate.

15 **ADV. PATRICK NGUTSHANA:** Thank you Justice Moseneke. Hi Mr. Mosenogi, you have been questioned thoroughly throughout the day and for the better part of yesterday. I just want to clarify a few things with you. Firstly in one of the volumes... there is a bundle of documents, volume 7. There are a number of licenses which were signed out under the name of the director mental health
20 directorate, M.J. Manamela. And only few about, I can count one, two, three, four,

five, were signed by the HOD, Dr Selebano. And all of these licenses were issued on the same day, it was on the 1st of April 2016. Did you notice that?

MR. LEVY MOSENOGI: I did not notice that. I was not privy to those licenses.

ADV. PATRICK NGUTSHANA: So you are not aware why they were issued on the
5 same day, all of them.

MR. LEVY MOSENOGI: Yes sir, no, I wasn't aware.

ADV. PATRICK NGUTSHANA: Okay. And why were some of these licenses signed for by Dr Selebano and others by M.J. Manamela?

MR. LEVY MOSENOGI: I am not sure why it happened, because all the licenses...
10 it has been part of the task of Dr Manamela, so I am not sure why the HOD signed, except what I read from the Ombudsman's report.

ADV. PATRICK NGUTSHANA: In fact they all run from page, on volume 7, page 2370 until 2415, if I am not mistaken, let me see... no, it is not 15.

ARBITRATOR, JUSTICE MOSENEKE: 2416.

15 **ADV. PATRICK NGUTSHANA:** Is it 2416?

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ADV. PATRICK NGUTSHANA: Yes, what was the practice in the Department for the issuing of these licenses, who were supposed to sign them?

MR. LEVY MOSENOGI: It is just in a way of answering... my assumption was that
20 the practice was that the head of the mental health unit was the one signing.

ADV. PATRICK NGUTSHANA: But in terms of the legal requirements, who was supposed to sign them?

MR. LEVY MOSENOGI: The HODs should have delegated.

ADV. PATRICK NGUTSHANA: Do we know whether there was such a delegation
5 for the signing of all these licenses by Dr Manamela?

MR. LEVY MOSENOGI: I read from the Ombudsman that there was no delegation but can I explain the contest?

ADV. PATRICK NGUTSHANA: Yes.

MR. LEVY MOSENOGI: I think Gauteng Health Department has been very
10 unstable in terms of management. We never had a lasting HOD. So I think systematically it cost failures because those things ended up just falling through the cracks. There was instability in terms of senior management. Head of department, after doctor... when I joined in 2006 we had different head of department until now, they were not lasting more than two years, three years. So I think it contributed to
15 the system failure that you were speaking of that things just fell through the cracks. Ja and I think we ended up doing things that left much to be desired.

ADV. PATRICK NGUTSHANA: So it was in this confusion that remained all throughout that you ended with Dr Manamela who was not supposed to sign for these licenses. So it was as a practice, assumed as a practice.

20 **MR. LEVY MOSENOGI:** I can only ascribe it to systems failure, because if she was given delegated powers to do that, she should have been given those powers. I

assumed that maybe in the past the head of mental health was given delegated powers to do that.

ADV. PATRICK NGUTSHANA: Okay.

MR. LEVY MOSENOGI: Ja.

5 **ADV. PATRICK NGUTSHANA:** Thank you. Now the issuing of these licenses to the NGOs and specifically those which are involved in the death of patients, do you know or are you privy to the criteria which was considered by Dr Manamela?

MR. LEVY MOSENOGI: To be able to sign?

ADV. PATRICK NGUTSHANA: Yes.

10 **MR. LEVY MOSENOGI:** I think what they did, there was a whole process that details what they need to do before finally approve the (inaudible)... I think there is... all the things... there is procedures, I can't be able to verbatim say what are the procedures, but SLA has the procedures and who qualifies and who did what, ja.

ADV. PATRICK NGUTSHANA: Okay. And in relation to... there is a bundle here
15 referred to as bundle A. From the beginning of that bundle at 2718 there is a number of minutes of meetings. The first one, there is, it is dated 21 September 2015 and this (inaudible) your appointment as the project manager.

MR. LEVY MOSENOGI: Yes.

ADV. PATRICK NGUTSHANA: I'll take you to the first one where your name is
20 recorded. It is on page 2727.

MR. LEVY MOSENOGI: 2727.

ADV. PATRICK NGUTSHANA: 2727.

MR. LEVY MOSENOGI: Yes.

ADV. PATRICK NGUTSHANA: And the date for that minute is 9 November 2015, do you see that at the top?

5 **MR. LEVY MOSENOGI:** Yes.

ADV. PATRICK NGUTSHANA: There is welcome of meeting by Dr M. Mazamiza.

MR. LEVY MOSENOGI: Yes.

ADV. PATRICK NGUTSHANA: Under item project leader, it is recorded there under discussion: “Mr. Mosenogi is appointed by MEC as project manager for the
10 Life Esidimeni project.” Do you see that?

MR. LEVY MOSENOGI: Yes.

ADV. PATRICK NGUTSHANA: Then further down there under the column planning, there is reference to, there is a whole discussion about NGOs.

MR. LEVY MOSENOGI: Yes.

15 **ADV. PATRICK NGUTSHANA:** The first bullet point says: “NGOs need to create enough space to accommodate 60 patients from LE.” Do you see that?

MR. LEVY MOSENOGI: Yes.

ADV. PATRICK NGUTSHANA: Which NGOs were contemplated or referred to there? And please do take note of the fact that the licenses were signed for after
20 this date that is 9 November 2015.

MR. LEVY MOSENOGI: Yes.

ADV. PATRICK NGUTSHANA: Which NGOs were contemplated here?

MR. LEVY MOSENOGI: Counsel, I have stated before that we have partnership, the mental health unit has partnership with NGOs to take care of mentally and intellectually disabled people.

5 **ADV. PATRICK NGUTSHANA:** Yes.

MR. LEVY MOSENOGI: Outside Life Esidimeni they have been having clear contract with all these NGOs, they are funding them on an annual basis. So there are many NGOs outside the (inaudible). So they have that partnership and working relationship and inspections and all those things... procedures. So I assume when
10 it speaks, it speaks of the existing NGOs.

ADV. PATRICK NGUTSHANA: Okay very well. Then further down there, the third last bullet point, it says: "Adjudication of NGOs need to be conducted." Do you see that?

MR. LEVY MOSENOGI: Mm.

15 **ADV. PATRICK NGUTSHANA:** When was that conducted of these NGOs and which of those NGOs are referred to there?

MR. LEVY MOSENOGI: Adjudication of... it is the same NGOs that are existing.

ADV. PATRICK NGUTSHANA: Same NGOs that are existing.

MR. LEVY MOSENOGI: Yes.

ADV. PATRICK NGUTSHANA: Then the last bullet point there it says: “Professor Gina mentioned that NGOs are not well equipped and if patients relapse they send them to hospital and refuses to take them back.

MR. LEVY MOSENOGI: Counsel, where?

5 **ADV. PATRICK NGUTSHANA:** Same page.

MR. LEVY MOSENOGI: Yes.

ADV. PATRICK NGUTSHANA: The last bullet point.

MR. LEVY MOSENOGI: Yes.

ADV. PATRICK NGUTSHANA: Do you see that?

10 **MR. LEVY MOSENOGI:** Yes.

ADV. PATRICK NGUTSHANA: How, to your knowledge has this NGO which it was noted that they are not well equipped, how did you go about in equipping them? And understand that equipping them was to capacitate them so that they may be able to ...intervened.

15 **MR. LEVY MOSENOGI:** To support them and to make sure that patients ...intervened.

ADV. PATRICK NGUTSHANA: Patients who were part of this project, what steps were taken to equip them?

MR. LEVY MOSENOGI: I will not know, but the mental health unit may clarify much
20 more. But there are people tasked in the mental health unit, there are people

tasked to do that, to support the NGOs. And also in the districts, each district has district mental health coordinators who also attest to support the NGOs.

ADV. PATRICK NGUTSHANA: Okay.

MR. LEVY MOSENOGI: So I assume that that is part of the support that they
5 needed to give.

ADV. PATRICK NGUTSHANA: Okay thank you. Now let's move to the next minute.

ARBITRATOR, JUSTICE MOSENEKE: But before you move, Counsel... We know now as a matter of fact that the NGOs, at least 27 of them, were not properly
10 equipped to do the job. Prof Gina says be careful, NGOs are not properly equipped. A few months later NGOs in mass are given licenses. And when I look at the licenses, the numbers are quite high of every NGO.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Did you notice that?

15 **MR. LEVY MOSENOGI:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: Where Counsel started, in other words – and I am indebted to him for drawing my attention to that – then I look at the licenses, the numbers are incredibly high. You look at each of these, even homes they would have 50 people for instance in Rebafenye on page 2390. Can you see
20 that? If you look at page 2385, 150 people at Kalafong Heights, which you know you went there and didn't like what you saw. But move on to any of those pages, the numbers are ...intervened.

MR. LEVY MOSENOGI: Very high, ja.

ARBITRATOR, JUSTICE MOSENEKE: Quite high... why is it so? Are you chasing 2 000 beds that you needed urgently?

MR. LEVY MOSENOGI: Judge, some of the NGOs were existing NGOs. So they
5 had a previous arrangement with the Department, so we needed additional space to accommodate Life Esidimeni patients.

ARBITRATOR, JUSTICE MOSENEKE: Anchor House on page 2385 was authorised to keep 150 people.

MR. LEVY MOSENOGI: Yes.

10 **ARBITRATOR, JUSTICE MOSENEKE:** And you told us earlier today that they did not have accommodation, they had to go to Cullinan to ask for accommodation.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: But they had a license for 150 people. Can you see that?

15 **MR. LEVY MOSENOGI:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: What do you say about that? It is just random looking, but if you go right through you see quite... look at page 2376, Dumela Home.

MR. LEVY MOSENOGI: Yes.

20 **ARBITRATOR, JUSTICE MOSENEKE:** They are authorised to have 50 patients, 30 children stay there in day-care.

MR. LEVY MOSENOGI: Yes. Judge, I see the numbers and I see the licenses. And I am not able to answer. I think Dr Manamela is the appropriate person to answer there.

ARBITRATOR, JUSTICE MOSENEKE: Just to wrap it up, we know at least in one
5 instance she gave a license to an NGO that did not have the capacity to keep 150 people, isn't it? You told us so. It is fact that Anchor Life did not have this capacity.

MR. LEVY MOSENOGI: They didn't have space, ja.

ARBITRATOR, JUSTICE MOSENEKE: Counsel, you may proceed.

ADV. PATRICK NGUTSHANA: Thank you Justice Moseneke. Then to take the
10 point further in a different angle... the next minute dated 23 November 2015, which starts on page 2729 and specifically draw your attention to the next page 2730. Are you there?

MR. LEVY MOSENOGI: Yes.

ADV. PATRICK NGUTSHANA: 2730.

15 **MR. LEVY MOSENOGI:** Yes.

ADV. PATRICK NGUTSHANA: Then at the top there are different bullet points and so on and there is a first paragraph. Let's go to the second paragraph, that's the second last bullet point there. It is noted there that: "Communities cannot cater for psychiatric services as pointed out by the families" and this would be one of the
20 reports you received from the families who complained about the move from LE, that's Life Esidimeni, into NGOs. Would that be correct?

MR. LEVY MOSENOGI: Counsel, where are you.

ADV. PATRICK NGUTSHANA: 2730.

MR. LEVY MOSENOGI: Yes. Responses by the Department.

ADV. PATRICK NGUTSHANA: Just above that. Do you see that?

MR. LEVY MOSENOGI: Okay yes.

5 **ADV. PATRICK NGUTSHANA:** Yes, it says: “Communities cannot cater for psychiatric services as pointed out by the families.” Are you there?

MR. LEVY MOSENOGI: Yes.

ADV. PATRICK NGUTSHANA: And this is information that you would ordinarily receive from the families, is that correct?

10 **MR. LEVY MOSENOGI:** Mm.

ADV. PATRICK NGUTSHANA: And it then goes on: “How are NGOs assisted by the Department to render mental health services?”

MR. LEVY MOSENOGI: Yes.

ADV. PATRICK NGUTSHANA: So there was an acknowledgement as at that time
15 on 23 November 2015 that these NGOs are not capable to render these services. And because they are not capable to render these services, they need to be equipped or assisted.

MR. LEVY MOSENOGI: Mm.

ADV. PATRICK NGUTSHANA: And this follows on what Prof Gina indicated. Do
20 you see that?

MR. LEVY MOSENOGI: Mm.

ADV. PATRICK NGUTSHANA: And my question again is, how has your Department... sorry Mr. Mosenogi... How did you go about assisting these NGOs so that they are able to render these services?

5 **MR. LEVY MOSENOGI:** As I said there is an existing unit in the mental health directorate that deals with capacity and supporting the NGOs. And also the district has mental health coordinators that continuously engage and visit the NGOs to support them.

ADV. PATRICK NGUTSHANA: But is there anywhere else where this has been recorded that it has indeed been done?

10 **MR. LEVY MOSENOGI:** I will not know here but I know that there are existing support structures in the Department.

ADV. PATRICK NGUTSHANA: Will that not form part of a requirement to accredit each of these institutions to provide these specific services?

15 **MR. LEVY MOSENOGI:** Yes Counsel, it is being done, there are people who are specific for each district to support the NGOs.

ADV. PATRICK NGUTSHANA: And before you would accredit somebody else, there are certain processes that must be met. You go through training, you employ relevant people to render services and so on. Were those the requirements which were considered by your unit?

20 **MR. LEVY MOSENOGI:** By the mental health directorate.

ADV. PATRICK NGUTSHANA: So where do we find that this has indeed been done, that these institutions or NGOs were equipped to receive these patients?

MR. LEVY MOSENOGI: Maybe the appropriate people must be requested to come and give evidence.

ADV. PATRICK NGUTSHANA: That is the mental health directorate.

MR. LEVY MOSENOGI: Yes.

5 **ADV. PATRICK NGUTSHANA:** Thank you. Now part of that, further down on the pages, in relation to, you've been asked about Siyabadinga, it also relates to this issue of NGOs and so on and it is on page 2781. It is also a minute. Are you there?

MR. LEVY MOSENOGI: Yes.

10 **ADV. PATRICK NGUTSHANA:** And in the minute it seems to be... that is after introduction. Introduction was done by all, it is a minute dated 5 July 2016. And it is stated: "The chairperson indicated that MEC and various leadership visited the facility in the last week. There are problems with the NGO called Siyabadinga. The Siyabadinga NGO does not meet the criteria for the Department to give the
15 patients." Do you understand that?

MR. LEVY MOSENOGI: Yes.

ADV. PATRICK NGUTSHANA: When was this realised that Siyabadinga did not meet the criteria?

20 **MR. LEVY MOSENOGI:** As I answered Counsel Groenewald that we came to realise that there are problems in Cullinan and one of the problems that there was a NGO called Siyabadinga that has come into the picture. And that was why disciplinary action was taken against the then CEO. It came into the picture at that

time. And the purpose of this visit with the then chairperson of the visit, the head of... Dr Mfenyane, was to introduce the new acting CEO and also to brief the staff in terms of what is happening and that was the purpose of this meeting.

ADV. PATRICK NGUTSHANA: Yes.

5 **MR. LEVY MOSENOGI:** Yes.

ADV. PATRICK NGUTSHANA: And finally on this point, let me take you back to page 2765. Are you on the page?

MR. LEVY MOSENOGI: Yes.

10 **ADV. PATRICK NGUTSHANA:** And this is another minute of a meeting dated 22/02/2016.

MR. LEVY MOSENOGI: Yes.

ADV. PATRICK NGUTSHANA: And you will recall that there was this debate way back the previous year. Prof Gina raised that issue.

MR. LEVY MOSENOGI: Yes.

15 **ADV. PATRICK NGUTSHANA:** And it is recorded there: “The purpose of the meeting is to assess the readiness of the NGOs to take users from LE in terms of their capacity like staff, actual beds, availability and the space. Each NGO was asked to present to the team the status of the NGO.”

MR. LEVY MOSENOGI: Yes.

20 **ADV. PATRICK NGUTSHANA:** It is now common cause that we do have that evidence that for example your Anchor House did not have enough space, despite

given the license to accommodate an X number of patients and it had to ask for space somewhere else at the CCRC. Was that part of the assessment here?

MR. LEVY MOSENOGI: Counsel, you'll remember when I said from this meeting that I did also attend. I did notice that people are speaking of, when they said 2 000
5 beds available, they were not speaking of actual beds, they were beds that were envisaged when people have done reservations and so forth. So basically that is why I discovered that... that is why I did write that note, because it revealed to me that we are not ready.

ADV. PATRICK NGUTSHANA: And in fact on page 2767 it is stated clearly that
10 Anchor House does not have the actual beds of 150.

MR. LEVY MOSENOGI: Ja.

ADV. PATRICK NGUTSHANA: And yet at the time it had a license for that number of beds.

MR. LEVY MOSENOGI: Yes.

15 **ARBITRATOR, JUSTICE MOSENEKE:** And there are many, aren't there?

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Shalom has no beds, Shama only has 50 beds available. Tisetso Malibe House 1, House 2, no actual beds.

MR. LEVY MOSENOGI: Yes.

20 **ARBITRATOR, JUSTICE MOSENEKE:** You go through that list. Grace halfway no actual beds. Meyerton vacant.

MR. LEVY MOSENOGI: Precious Angels no actual beds. Yes.

ARBITRATOR, JUSTICE MOSENEKE: And several. Look at Takalani, 100 possible beds... possible beds.

MR. LEVY MOSENOGI: Yes.

5 **ARBITRATOR, JUSTICE MOSENEKE:** And we know Takalani got a license and we know people died there.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Maybe they are sleeping on the floor?

MR. LEVY MOSENOGI: Counsel, I think this meeting was actually to clarify where
10 do we get beds and that is why NGOs were asked to present and to look, so that we are able to have information, whether do we really have these beds. And that is how the issue of extension came about, because I realised that people are talking of 2 000 beds which are not existing.

ARBITRATOR, JUSTICE MOSENEKE: And we know that licenses were issued.
15 Any questions, Counsel, we need to move on. Do we go to lunch or do you want to continue?

ADV. PATRICK NGUTSHANA: We can go to lunch. I've got a few, but we can go to lunch. It depends on how he responds.

ARBITRATOR, JUSTICE MOSENEKE: There are a few more questions.

20 **ADV. PATRICK NGUTSHANA:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: And then we will have re-examination immediately after. We always have to anticipate what next we are going to do, so that we can keep our witnesses warm, right. They must have an idea when they are going to be called next. Our next witness, is she available and ready? Counsel
5 for the State?

COUNSEL FOR STATE: The next witness is indeed available and will be ready immediately after this witness.

ARBITRATOR, JUSTICE MOSENEKE: And that will be the Director of the National Department of Health.

10 **COUNSEL FOR STATE:** Indeed so, Me. Matsoso.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

COUNSEL FOR STATE: Thank you.

ARBITRATOR, JUSTICE MOSENEKE: Any counsel who would like to raise a specific issue before we go to lunch? It is 13:30. I think we should come back at
15 14:30 to at least allow you an hour to get your act together for the next witness. I have been asked to make an announcement, but I think I am going to ask Obakeng who has my office, to come and make the announcement. But he asked me and I think normally it should be the other way around. Do you want to come and say what you want to say, Obakeng? It is in relation to how we file out and...

20 **MR. OBAKENG:** Good afternoon everyone. Can we please allow the elder, the older members of the families to go out first so that they should be served and then the other people will be served after that? Thank you. Once Judge has left the

venue everybody else can... the old people or the older members will go and have some lunch and then the other people will follow after that. Thank you.

ARBITRATOR, JUSTICE MOSENEKE: Thank you Obakeng. Excuse me. The complaint is that younger people rush out the food and leave elderly people behind.

5 So let's just show that decorum and just make sure that they get out first, if they think they are elderly, then followed by all of you. We will resume at 14:30 and we are adjourned.

END OF SESSION 2

SESSION 3

10 **ARBITRATOR, JUSTICE MOSENEKE:** Mr. Mosenogi, you are still under oath. (Vernac). We can proceed with the examination, Counsel.

COUNSEL FOR STATE: Mr. Justice.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

15 **COUNSEL FOR STATE:** Through your permission, it has been brought to our attention that members of the media have been requested to conduct interviews by parties to these proceedings. We request that an announcement or a pronouncement should be made to all the parties in these proceedings that it has been resolved that media statements are not permitted unless agreed to by the parties.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Come again. I don't quite follow the request.

COUNSEL FOR STATE: We have been informed by members of the media that some of the family members who are party to these proceedings, have been requesting to make public statements through interviews. So what I want to bring to the attention of Mr. Justice is that this morning it has been decided that such
5 process has to be done in accordance with the terms of reference. It appears that some of the family members have not been informed of the decision which was reached this morning. If it can be announced in this gathering so that there should not be any confusion of what is expected of the parties.

ARBITRATOR, JUSTICE MOSENEKE: Ja, isn't that Counsel's duties to tell the
10 respective clients about the terms of the arbitration agreement?

COUNSEL FOR STATE: Justice, we assumed that the respective legal representatives have disseminated the very decision which has been taken this morning. But having been approached, it appears quite apparent that that information has not been submitted to the relevant clients.

ARBITRATOR, JUSTICE MOSENEKE: No, you have to be more specific. Having
15 been approached, it appears... We'll have to be tighter. I do not intend to make any order. Parties have an agreement and parties must fulfil the agreement and each of the parties has the duty to tell those that they represent to act in accordance with the terms of the agreement and that is what we concluded this morning, isn't it? I
20 don't want to come towering from the top and say what counsel should probably be saying to their clients or to go over the head of the clients and tell them. The agreement is there. The agreement requires the party to give each other notice if they intend to make press statements about the proceedings, not about the

headache and not about what they had for breakfast, about the proceedings. So all I can say, repeat again, Counsel tell your clients what the agreement says. And (2), if there are any breaches it must be specific, at this time, at this place, that client, so that your opposite number can deal with that. Do you want to say anything else
5 before I ask the rest of the counsel?

COUNSEL FOR STATE: Well I cannot add except to say members of the EMCA media group have approached me with regard to that information.

ARBITRATOR, JUSTICE MOSENEKE: With regard to an interview.

COUNSEL FOR STATE: Yes.

10 **ARBITRATOR, JUSTICE MOSENEKE:** They wanted an interview from you, Counsel?

COUNSEL FOR STATE: From members of the family who are subject to these proceedings.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Yes, they must approach counsel who are acting on behalf of those members. I think it is only appropriate that they approach the lawyers. But I don't want to be embroiled in that. There was an agreement this morning, every one of you knows what your responsibilities are and let's live by those responsibilities.

COUNSEL FOR STATE: Thank you Justice.

20 **ARBITRATOR, JUSTICE MOSENEKE:** In many ways this matter is, if you like, amongst the parties sub judice, but the court cannot or I cannot... did I say court, sorry. The ADR process cannot regulate the conduct of people other than the

parties. We can't tell anybody other than the parties what they should be saying or not saying and parties are represented before me. And the counsel and attorneys know their duties and they must do that. Let me start with each of the parties. Anything you want to say to what has been said now?

5 **ADV. NZAME SKIBI:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: Do you want to put your name on record, the new representative for Legal Aid South Africa? Give us your full names.

ADV. NZAME SKIBI: My name is Nzame, surname Skibi. I am appearing for Legal Aid South Africa.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Yes, Mr. Skibi.

ADV. NZAME SKIBI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Is there anything you want to say about what has just been said by Counsel for the State?

ADV. NZAME SKIBI: I can just clearly state that from my office or from our office I should say, our communication department, we have communicated that no media statement. Our clients, because when we entered the room this morning then we were about to start, we informed some of them but perhaps other they didn't get the message. But we undertake that we will relate the message to them.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. Advocate Hassim.

20 **ADV. ADILLA HASSIM:** Thank you Justice Moseneke. I did say earlier on this topic and I would like to repeat that we are trying to be scrupulous in respecting the integrity of this process and to the extent that if there is any suggestion that we are

not complying, I must correct that. Immediately after we clarified this issue this morning, I advised my attorneys in great detail and with great caution and they fully understood it and already prepared a statement to put out explaining that not just our clients but to the media. So we have advised our clients and we have advised
5 the media about the terms of the agreement. To the extent that there has been some approach by some unknown party about some unknown person, I cannot comment.

ARBITRATOR, JUSTICE MOSENEKE: Very well. Advocate Ngutshana.

ADV. PATRICK NGUTSHANA: Thank you Justice Moseneke. We accept to
10 confirm what has been said already. We have nothing else to add.

ARBITRATOR, JUSTICE MOSENEKE: Advocate Groenewald?

ADV. DIRK GROENEWALD: We have nothing else to add, thank you justice.

ARBITRATOR, JUSTICE MOSENEKE: Advocate Hutamo, you've heard your colleagues' responses.

15 **ADV. PATRICK NGUTSHANA:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: Are those adequate?

ADV. PATRICK NGUTSHANA: Indeed.

ARBITRATOR, JUSTICE MOSENEKE: Shall we get on with it. Counsel, please proceed.

ADV. PATRICK NGUTSHANA: Thank you Justice Moseneke. Mr. Mosenogi, let's go back to the bundle that we had been dealing with and that is 8 on page... this is another minute on page 2770. Are you there?

MR. LEVY MOSENOGI: Yes.

5 **ADV. PATRICK NGUTSHANA:** It is also another minute. I think this is during your time as well and that is why I am referring you to this as well. The date of that minute is 8 April 2016.

MR. LEVY MOSENOGI: Yes.

10 **ADV. PATRICK NGUTSHANA:** The first item there, you will recall in your testimony earlier on in relation to the Marathon project, you had indicated something that the Marathon project came after the patients were moved and so on, and yet the project and the report is titled the Marathon project. What did you mean by that?

15 **MR. LEVY MOSENOGI:** The term marathon, the way it was used by the directorate mental health unit, meant going around to the team of mental health unit and their support staff, going around to the NGOs and checking on where they have placed patients to check whether everything is okay. So that is my understanding of the marathon part of the project.

20 **ADV. PATRICK NGUTSHANA:** And the reference to NGO Marathon and verification of NGOs must be done by end of April 2016.

MR. LEVY MOSENOGI: Yes that is what the inspection by the team was going to do.

ADV. PATRICK NGUTSHANA: That is you must verify the NGO by the end of April 2016.

MR. LEVY MOSENOGI: Ja, in terms of these minutes, that's what...

ADV. PATRICK NGUTSHANA: And these are the NGOs whose licenses have
5 already been issued out by the 1st of April.

MR. LEVY MOSENOGI: I presume so.

ADV. PATRICK NGUTSHANA: Okay. Then further down there is a block, I think
from there it is one, two, three, four. It starts with: "Users from LE may be
transferred to NGO and doctors will follow them to NGO to assess them and place
10 them to the relevant facility, if there is a need." Do you see that?

MR. LEVY MOSENOGI: Yes.

ADV. PATRICK NGUTSHANA: I think my reading there, I get a sense, in fact the
clear reading of the passages that (1) there is a resolution as it is titled at the top
there for the MEC meeting with senior management on LE contract relationship
15 termination. So that is a resolution.

MR. LEVY MOSENOGI: Of that meeting.

ADV. PATRICK NGUTSHANA: Of that meeting.

MR. LEVY MOSENOGI: It was the MEC's meeting with senior managers, not only
the project manager or project team.

20 **ADV. PATRICK NGUTSHANA:** Exactly. So there was a conscious decision that
users must be moved from LE to be transferred to NGOs, that is first.

MR. LEVY MOSENOGI: Yes.

ADV. PATRICK NGUTSHANA: And after this shall have happened, then the doctors will follow them at NGO to assess them.

MR. LEVY MOSENOGI: The ...intervened.

5 **ADV. PATRICK NGUTSHANA:** “And replace them to the relevant facility, if there is a need.” So there is a conscious decision (1) to remove them, whether you refer to it as a discharge or transfer as it was debated with you earlier on – that decision has been made. Then (2) there was no assessment. Then (3) the assessment will follow after they shall have been moved. Then (4) they are not taken to the relevant
10 facility that will cater for their specific need, but that decision will be taken once they are on the receiving institution.

MR. LEVY MOSENOGI: Counsel, this was the MEC’s meeting as I said with senior managers, all the relevant managers relevant to the district managers and all the other relevant managers. So when I read this sentence, I just want to read it... my
15 understanding of the sentence the way it is written.

ADV. PATRICK NGUTSHANA: Yes.

MR. LEVY MOSENOGI: It was saying that... because the placement of patients to NGOs had already commenced.

ADV. PATRICK NGUTSHANA: True.

20 **MR. LEVY MOSENOGI:** Yes, so it was saying that when they were transferred to the NGOs... and the doctors will follow them to the respective NGOs.

ADV. PATRICK NGUTSHANA: Yes.

MR. LEVY MOSENOGI: It doesn't mean that they were not checked by doctors where they come from. That is my understanding of the sentence.

ADV. PATRICK NGUTSHANA: So why did it not read that the patients will be assessed first and then thereafter be moved and then after they shall have been
5 moved to the receiving institutions or NGOs, they shall be assessed there as well?

MR. LEVY MOSENOGI: It might be the misunderstanding of the person who was taking the minutes.

ADV. PATRICK NGUTSHANA: Okay.

MR. LEVY MOSENOGI: Yes.

10 **ADV. PATRICK NGUTSHANA:** Then the other difficulty that appears there is, why was the word and replace them to the relevant facility, do you see that?

MR. LEVY MOSENOGI: I am not sure what the replace here means because I think... I don't know whether he wanted to say and place them to the... transfer them to the relevant, if they are not suitable ...intervened.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Ja, replace means to place again. So the word may be quite appropriate. Assess them and replace them to the relevant facility, if there is a need.

MR. LEVY MOSENOGI: It doesn't sound very English, the way it is written.

ARBITRATOR, JUSTICE MOSENEKE: Nothing wrong with the word. To replace
20 is to place again.

MR. LEVY MOSENOGI: Yes, my understanding will be different, Judge.

ARBITRATOR, JUSTICE MOSENEKE: But any case the thrust of this, we must not drown in detail... as have you heard earlier I am concerned about this, you must not drown in the detail. This minute of the 8th of April slam bang in the middle of the move, we can see from the minute 950 users must be moved by end of April to
5 identified NGO beds, okay.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Can you see that?

MR. LEVY MOSENOGI: 950 users must be moved by ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Yes and yet you must still do verifications
10 which must also be done by end of April. Can you see that?

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: So the heft of the question, let's not get drowned in detail, you for instance still had to do accredit for training bigger NGOs and you are the responsible party, can you see that?

15 **MR. LEVY MOSENOGI:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: So what we take from the minute, aside from the detail, is that you have a meeting chaired by the MEC on the 8th of April. Your deadlines are end of April, by which time you would have moved 950 users to NGOs which are yet to be accredited and trained by you, personally by you, and by
20 which a number of things have to be done by that time. Is that correct? Is that a correct understanding of the minute?

MR. LEVY MOSENOGI: Justice, can I explain the training part here?

ARBITRATOR, JUSTICE MOSENEKE: Yes, please do.

MR. LEVY MOSENOGI: The training part here, Mr. Mosenogi and HOD... you remember when I raised the issue of occupational therapist in Waverly that they were concerned about their training in terms of, because they were having training
5 sessions at Waverly, the occupational therapist, those are the academic schools. So what we needed to do, myself and the HOD, we needed to get in contact with the school of health at Wits to discuss with them the possibility of accrediting the bigger NGOs to be able to continue with the training sessions that people were doing in Waverly and other facilities.

10 **ARBITRATOR, JUSTICE MOSENEKE:** But why didn't you do all these things beforehand? You take careers of young people training placed at Life Esidimeni, you make this drastic decision. You have not even talked to the University or the young people so that their training can go somewhere else.

MR. LEVY MOSENOGI: Yes.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Just like the people who lost their jobs, here young people are losing training facilities. And on these timelines, on this minute, you have 30 days in which to do all of this, make sure there are 950 beds, make sure you have this accreditation that you've just explained and make sure that transport is available to move this and find Mr. Malotana... all of these things and all
20 users must be placed by 15th of June. Can you see how tight that is?

MR. LEVY MOSENOGI: It was really tight, yes.

ARBITRATOR, JUSTICE MOSENEKE: And disregarding the interest of others, isn't it?

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Why did you people behave this way?
5 Why was it your word and frankly to hell with the rest? Why was it this way?

MR. LEVY MOSENOGI: Those are the mistakes that happened. Those are issues that have been pointed out.

ARBITRATOR, JUSTICE MOSENEKE: And 950 users will be placed and if it is not appropriate, they will be replaced, they will be put at another place. Now we heard
10 from the Ombud about the disruption of changing circumstances of mentally ill patients.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Did you have regard to that? The MEC, yourself and all these senior people who made these resolutions to place people for
15 now and then move them again if you think so. Was that fair? Was that the right way to do it?

MR. LEVY MOSENOGI: It wasn't.

ARBITRATOR, JUSTICE MOSENEKE: It?

MR. LEVY MOSENOGI: It wasn't.

20 **ARBITRATOR, JUSTICE MOSENEKE:** It was not?

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Then why did you do it? And what happened to all these young people who were training, attached to Wits who were doing their practical at Life Esidimeni, when you moved all these people, what happened to them?

5 **MR. LEVY MOSENOGI:** I did meet, myself and the HOD we did meet with the head of the school, with the dean. We did also meet with the head of occupational therapy.

ARBITRATOR, JUSTICE MOSENEKE: Okay you had a meeting, but what happened to these young people?

10 **MR. LEVY MOSENOGI:** We did discuss and we did seek possibilities of accrediting those NGOs. But I think they did find alternative means at our hospitals to continue with their training, at our psych hospitals and also at our normal hospitals.

ARBITRATOR, JUSTICE MOSENEKE: So in effect you lost the support and the
15 training skills of these young people to these patients, isn't it? They never went to the NGOs.

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: And that again ...intervened.

MR. LEVY MOSENOGI: That is what happened, yes.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Reduced the resources available to the NGOs, isn't it?

MR. LEVY MOSENOGI: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Counsel.

ADV. PATRICK NGUTSHANA: Thank you Justice Moseneke. I am not going to belabour that point, Mr. Mosenogi. It has been addressed quite sufficiently. Now let me deal, I think as a last point, with your evidence that you had recorded your
5 concerns in an email, which happened to be an annexure to the Ombud's report, just to close this point. On page, that is the first volume, on page 902, 90.2, sorry, point 2.

MR. LEVY MOSENOGI: 90?

ADV. PATRICK NGUTSHANA: 90.2.

10 **MR. LEVY MOSENOGI:** Is it the first...?

ADV. PATRICK NGUTSHANA: First volume, yes.

MR. LEVY MOSENOGI: First volume. Okay, yes, 90.2.

ADV. PATRICK NGUTSHANA: Yes, 90.2.

MR. LEVY MOSENOGI: Yes.

15 **ADV. PATRICK NGUTSHANA:** It is this one, you can use this...

MR. LEVY MOSENOGI: Ja, it is here.

ADV. PATRICK NGUTSHANA: Oh you did find it.

MR. LEVY MOSENOGI: That is signed by Dr Madigona (?).

ARBITRATOR, JUSTICE MOSENEKE: It is annexure what?

20 **ADV. PATRICK NGUTSHANA:** It is Annexure 5.

ARBITRATOR, JUSTICE MOSENEKE: Annexure 5, I have got it, thank you.

ADV. PATRICK NGUTSHANA: Do you have it? That is Annexure 5. Is that the email that you are referring to?

MR. LEVY MOSENOGI: Yes.

5 **ADV. PATRICK NGUTSHANA:** And that is the email where you record your concerns about the project.

MR. LEVY MOSENOGI: Yes.

ADV. PATRICK NGUTSHANA: And there is the document dated 12 February and that is on page 90.3. What is that document? It is addressed to MEC.

10 **MR. LEVY MOSENOGI:** It is part of the attachment.

ADV. PATRICK NGUTSHANA: It is an attachment to the email.

MR. LEVY MOSENOGI: Ja, I think it is part of the attachment.

ADV. PATRICK NGUTSHANA: And I see at the end there on page 90.4 it makes reference, recommendation: “We respectfully request that the MEC consider the
15 above alternative proposal as made by the senior management team tasked with implementation of LE termination project. The proposal has been discussed and shared amongst us as senior managers, i.e. HOD, DDG and the LE project managers.” So all of you as appears there as senior managers were not able to persuade the MEC to stop the project.

20 **MR. LEVY MOSENOGI:** Ja and that is why I had to write this memo directly to her.

ADV. PATRICK NGUTSHANA: And finally on this point, it is now on record that you voiced your concerns and made alternative proposals to the MEC as you record therein, that is in your email as well as the annexure.

MR. LEVY MOSENOGI: Mm.

5 **ADV. PATRICK NGUTSHANA:** What occurred of this communication? Did you receive a response from the MEC specifically rejecting your proposals or proposing alternatives to what you had placed on the table?

MR. LEVY MOSENOGI: The only concession that I received was on the issue of, from the MEC, was the issue of Baneng.

10 **ADV. PATRICK NGUTSHANA:** Baneng, yes.

MR. LEVY MOSENOGI: And also the (inaudible) that was made either six months or a year, the only response was that it is extended for three months. That was the only thing that I got from the MEC. But from the HOD, he requested that I ask for indicative figures from Life Esidimeni in terms of if we go the alternative route, how
15 much will it cost us. I did that and I did get the indicative figures and shared them with the HOD. But nothing happened after that. It was never considered as an option.

ADV. PATRICK NGUTSHANA: So apart from Baneng which you referred to, you never received, you assumed that it was rejected, your alternative proposals which
20 affects the entirety of the project were rejected.

MR. LEVY MOSENOGI: I assumed that the alternative was not considered.

ADV. PATRICK NGUTSHANA: Thank you Justice Moseneke, I have nothing further to add on this.

ARBITRATOR, JUSTICE MOSENEKE: Where is the written response of the MEC to your letter of the 12 February 2016, to your email?

5 **MR. LEVY MOSENOGI:** I tried to trace it when I went for the interview with the Ombudsman, but I could not really... I was not able to trace it. I don't know what happened. I even asked the IT people to come and help me.

ARBITRATOR, JUSTICE MOSENEKE: Was there a written response?

10 **MR. LEVY MOSENOGI:** I think she just responded, but I could not trace the actual response.

ARBITRATOR, JUSTICE MOSENEKE: But what about a definite answer, because the MEC might come here and I want to know was there a written response?

MR. LEVY MOSENOGI: I did not receive it but it indicated... the response was there but it was saying we will discuss it, because there was a meeting the next day.
15 I think if I remember very well it indicated that we will discuss it tomorrow.

ARBITRATOR, JUSTICE MOSENEKE: (Vernac).

MR. LEVY MOSENOGI: It was there, but I can't remember the exact words, because I couldn't trace it after. I don't know what happened.

ARBITRATOR, JUSTICE MOSENEKE: I just asked the witness in Setswana
20 language whether there was an answer and the answer is?

MR. LEVY MOSENOGI: There was an answer but I can't recall the actual words of the answer.

ARBITRATOR, JUSTICE MOSENEKE: Okay, very well. Do you know... you worked in the Department for long... has the Department built any facility of its own
5 since 1994?

MR. LEVY MOSENOGI: Justice, I came in 2006. From 2006 the facilities that were opened during the years I have been here is Bheki Mhlangeni and ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Where is Bheki Mhlangeni?

MR. LEVY MOSENOGI: Bheki Mhlangeni is in Soweto, it is a district hospital.

10 **ARBITRATOR, JUSTICE MOSENEKE:** And how many beds does it have?

MR. LEVY MOSENOGI: It has, I think, 300 beds. It is a district hospital.

ARBITRATOR, JUSTICE MOSENEKE: For mentally ill patients?

MR. LEVY MOSENOGI: No, it is a general hospital.

ARBITRATOR, JUSTICE MOSENEKE: No, I am asking... I am asking hospitals
15 for mentally ill patients since 1994, which has the province built?

MR. LEVY MOSENOGI: No, it hasn't built any.

ARBITRATOR, JUSTICE MOSENEKE: We know Sterkfontein was built before
1994, right.

MR. LEVY MOSENOGI: Yes.

20 **ARBITRATOR, JUSTICE MOSENEKE:** And we know Weskoppies was built before 1994.

MR. LEVY MOSENOGI: Yes. And Tara.

ARBITRATOR, JUSTICE MOSENEKE: We know that Tara and Cullinan were built before 1994.

MR. LEVY MOSENOGI: Yes.

5 **ARBITRATOR, JUSTICE MOSENEKE:** Since 1994 which provincial hospital for mentally ill patients has been built?

MR. LEVY MOSENOGI: They haven't been built. There were no mental health institutions that ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Re-examination, Counsel.

10 **COUNSEL FOR STATE:** Thank you, Justice. There are no questions in re-examination.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. You asked to make a closing statement, Mr. Mosenogi.

MR. LEVY MOSENOGI: Yes sir.

15 **ARBITRATOR, JUSTICE MOSENEKE:** This is the opportunity to make that statement.

MR. LEVY MOSENOGI: Mr. Justice, Counsels, relatives of the deceased and my colleagues who are here. From the questions that have been raised and I tried to answer as truthfully as I could, I might say that the project that we were involved in
20 was mammoth. It was not going to end in three months, it was short timelines and I accepted. I have said that I had a foreboding. I engaged with the families, some of

them are here, they were robust in their interaction. I visited Baneng on my own, I visited the facilities, I saw how vulnerable the patients were. I tried my best to do what I could. I interacted with you. You shouted at me, but we respected each other. And I tried to say maybe you need to go to the Minister, maybe you need to go to the Premier and also argue there. On my own I did really... It was a difficult time for me, and on my behalf I want to apologise to all those who were affected. It was difficult for you, it was also difficult for myself, it was difficult for the (inaudible) that was there and I apologise on behalf of myself, on behalf of my colleagues who were in the project team and on behalf of the Department of Health. But also I would like to say there were lessons that we learned. The lessons were that as public servants, we know it all the time to speak truth to power. And that is the lesson that I will carry on in the remaining days of my service to the people. And I will add my fellow senior managers to be strong and to be assertive and to be able to state their point, because one person sometimes is not heard, but when we are a team and we speak with one voice, it makes a difference. Finally, I would like to appeal to the Government and especially to my organisation, ANC, that health in Gauteng is a complex organisation, it has responsibilities not only for Gauteng but for the country. It has tertiary quaternary services. So any person who needs to be deployed to run that department, either as a head of department or political head, must be a seasoned experienced health person. It becomes easier when you interact with a health person, because then you can be able to speak the same language. You are able to speak and make a difference to the patients who are interested to. Thank you for giving me the chance to give evidence. I know that

you still have to get healing. I myself need to get healing and all the people that were affected, especially the mental health unit. There is always this issue that there is a (inaudible) between political and administrative interface. The administrative people, technocrats, can they be allowed to do their work and political people give oversight. Thank you very much. Thank you, Judge, for listening to me. I hope with this we have learned our lessons, thank you very much.

ARBITRATOR, JUSTICE MOSENEKE: Thank you Mr. Mosenogi. You are excused and thank you for your closing remarks, which are appropriate in the circumstances. You are well excused. I am giving assurance that there will be EMS people here, I hope they are here to give support to some of us who require intervention at this stage. I am going to adjourn for a short while, while we get the DG for National Health to take the witness stand. I'll adjourn for 10 minutes.

END OF SESSION 3

SESSION 4

ARBITRATOR, JUSTICE MOSENEKE: This must belong to somebody. I don't remember when last I put lipstick on my lips. There must be an owner of that. Okay. (Vernac). Is our witness here? Please call the DG. The Director General, welcome. There is a little button, a red button, it is green now. If you can just press it to switch that on. You are most welcome and I hope you are comfortable where you are seated. You will be asked questions in a moment by Counsel for the State who sits to your right, but I hope as you answer, you will face in my direction more or less, so that I can hear you and we can have that conversation going. But first we have to place your evidence under oath. Of course you have the option either to

make a declaration or to take a conventional oath, which ends up with so help me God, or you can simply take a declaration. Have you made up your mind which you would want to use?

ME MALEBONA PRECIOUS MATSOSO: So help me God.

5 **ARBITRATOR, JUSTICE MOSENEKE:** So help me God. Very well. The evidence... please do swear that the evidence you are about to give will be the truth and nothing but the truth. And if it is so, please raise your right hand and say so help me God.

ME MALEBONA PRECIOUS MATSOSO: So help me God.

10 **ARBITRATOR, JUSTICE MOSENEKE:** Will you please state your full names onto the record and keep the mic on throughout your evidence? But we need your full names.

ME MALEBONA PRECIOUS MATSOSO: My name is Malebona Precious Matsoso.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Thank you ever so much. I am going to hand you over to Counsel who is going to lead you and ask you questions in evidence in chief. Counsel.

COUNSEL FOR STATE: Thank you Justice. Director General Matsoso, may you please just indicate to these proceedings where are you currently employed and in
20 what capacity.

ME MALEBONA PRECIOUS MATSOSO: I am currently employed as a Director General in the National Department of Health.

COUNSEL FOR STATE: For how long have you been with the Department, the National Department of Health?

ME MALEBONA PRECIOUS MATSOSO: I was appointed as Director General on the 8th of June 2010.

5 **COUNSEL FOR STATE:** You have been called to these proceedings to assist the parties which appear herein in relation to the incidents which occurred during the period covered from 2015 up to 2017. Before you there is a document, there is a bundle of documents which is file 1. If you can get to that file and turn to page 1 thereof. The title of the document appearing there is the report into the
10 circumstances surrounding the death of mentally ill patients, Gauteng Province. Are you familiar with this document?

ME MALEBONA PRECIOUS MATSOSO: Yes, I am.

COUNSEL FOR STATE: The report emanates from the office of the Health Ombudsman of the Republic of South Africa. The families which are before these
15 proceedings, have been given the opportunity to find closure and redress in relation to the circumstances leading to the death of their beloved ones. And the object of these proceedings is to try and assist to give them information in relation to those incidents. If you can just proceed and give an indication, at what stage did you learn of this unfortunate occurrences which happened in our country?

20 **ME MALEBONA PRECIOUS MATSOSO:** When I first learned about this, it was when it was brought to my attention by Section 27.

COUNSEL FOR STATE: And in what manner were you informed about the occurrences?

ME MALEBONA PRECIOUS MATSOSO: Section 27 alerted me that the Department of Health, Gauteng Department of Health wanted to ...intervened.

5 **ARBITRATOR, JUSTICE MOSENEKE:** It is quite in order, DG, even if you look forward, as long as I can hear you. Don't strain your neck.

ME MALEBONA PRECIOUS MATSOSO: Okay. The Provincial Department of Health of Gauteng wanted to close a facility and end the contract of Life Esidimeni and relocate the patients and if there was any way I could assist in this regard.

10 **COUNSEL FOR STATE:** Can you then proceed to give an indication of your knowledge about the steps which were to be taken by the Provincial Government of Gauteng?

ME MALEBONA PRECIOUS MATSOSO: The Provincial Health Department had not in any way informed me about this closure, not in writing, not in communication
15 whatsoever. The only information I had was that that was brought to my attention by Section 27.

COUNSEL FOR STATE: And it is common cause that pursuant to the project having been undertaken, there were unfortunate deaths which occurred.

ARBITRATOR, JUSTICE MOSENEKE: Counsel, can we get some dates around
20 the approach by Section 27. When did that happen, DG?

ME MALEBONA PRECIOUS MATSOSO: It happened in October of 2015.

ARBITRATOR, JUSTICE MOSENEKE: October 2015, okay.

COUNSEL FOR STATE: And when you were informed by Section 27, can you then proceed to indicate what happened thereafter?

ME MALEBONA PRECIOUS MATSOSO: Well the statement they made at the time was that it was not in their interest to take the Department of Health to court. If
5 there as a way we could resolve this matter. To which I committed that I would communicate this with the provincial head of department, Dr Barney Selebano.

COUNSEL FOR STATE: What then transpired after your undertaking to Section 27 regarding your intervention?

ME MALEBONA PRECIOUS MATSOSO: Well indeed I did contact him and in my
10 communication with him, I said matters of this nature are not matters that are normally resolved by the courts. If there was a way that we could find arrangements to postpone this or to meet with Section 27, which he confirmed that he would do. But in addition I offered that Prof Mel Freeman, who is an expert in mental health and he is the chief director of non-communicable diseases, that could
15 he be available to assist them in any way.

ARBITRATOR, JUSTICE MOSENEKE: Is it Professor Freedman or Freeman?

ME MALEBONA PRECIOUS MATSOSO: Freeman.

ARBITRATOR, JUSTICE MOSENEKE: F R E E M A N.

ME MALEBONA PRECIOUS MATSOSO: F R E E M A N.

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

COUNSEL FOR STATE: Then can you proceed and give an indication of how that matter was ultimately resolved through your intervention?

ME MALEBONA PRECIOUS MATSOSO: I reverted back to Section 27 to confirm that he had agreed to meet with them to discuss this matter.

COUNSEL FOR STATE: Me. Matsoso, do you know of the outcome of the engagement?

5 **ME MALEBONA PRECIOUS MATSOSO:** Yes, both parties came back to me to confirm that they will be meeting. And again I reiterated that the meeting should involve Prof Freeman who was an expert in the matter.

COUNSEL FOR STATE: Was the matter ever resolved and if so, in what way?

ME MALEBONA PRECIOUS MATSOSO: The outcome was that around
10 December I received correspondence from Section 27. If I am correct it was around 22nd of December. It was an email that said we are providing you with an update of where we are. But at the time the matter was before the courts. And again I went back to the head of department, Dr Selebano to say that you committed that you are going to resolve this matter with Section 27.

15 **COUNSEL FOR STATE:** Sorry, you referred to head of department, which department?

ME MALEBONA PRECIOUS MATSOSO: Dr Selebano, Provincial Head of Department Gauteng.

COUNSEL FOR STATE: Of which department?

20 **ME MALEBONA PRECIOUS MATSOSO:** Health.

COUNSEL FOR STATE: Health, okay thank you. Sorry. Proceed.

ME MALEBONA PRECIOS MATSOSO: So Dr Selebano came back to me and confirmed that he did not also want to go to court on this matter and that they were going to settle.

COUNSEL FOR STATE: Do you know if the matter was ever settled?

5 **ME MALEBONA PRECIOS MATSOSO:** He sent me a draft agreement, settlement agreement, and made a request that he would like to send the agreement, but he had concerns about the fact that the agreement would be made a court order.

COUNSEL FOR STATE: And ultimately how was that resolved?

10 **ME MALEBONA PRECIOS MATSOSO:** He wanted me to revert back to Section 27 that they would sign the agreement on condition that it was not made a court order and that the parties had found each other.

COUNSEL FOR STATE: And then finally what happened to that application which was meant to be resolved? Was it ever concluded? Was an agreement reached?

15 **ME MALEBONA PRECIOS MATSOSO:** The agreement was signed between the parties, but he also mentioned that Life Esidimeni did not want to sign the agreement. And the copy he sent me had been signed by the parties that were represented by Section 27, at the time it was SADAG.

COUNSEL FOR STATE: Did Life Esidimeni ever got to sign the settlement
20 agreement?

ME MALEBONA PRECIOS MATSOSO: I was never given a final copy, I only had the copy that was signed by the two parties and I offered that could I meet Life Esidimeni and talk to them and facilitate that they sign.

COUNSEL FOR STATE: What is your knowledge post the signing of the
5 settlement agreement relating to the dispute which was before court?

ME MALEBONA PRECIOS MATSOSO: He sent me an email confirming that they had signed and in the email he added a sentence that why would they need courts to get them to agree on an important matter that parties could agree on.

COUNSEL FOR STATE: So in effect the email from Dr Selebano was that
10 ultimately the matter has been settled per the agreement.

ME MALEBONA PRECIOS MATSOSO: Yes. And the agreement that had to be sent was that they had to come up with a plan, develop a plan on how the project was going to be implemented.

COUNSEL FOR STATE: When next did you hear about the issues which were
15 subject to the court order or the agreement?

ME MALEBONA PRECIOS MATSOSO: The next time I heard about this... prior to that... in fact prior to December I had asked Prof Freeman to prepare submission informing the Minister about this matter.

COUNSEL FOR STATE: And then like what has been the subsequent occurrences
20 thereafter, you having informed the Minister of the matter?

ME MALEBONA PRECIOS MATSOSO: I asked Prof Freeman to follow-up with Gauteng to get access to their plan.

COUNSEL FOR STATE: Did you ever lay your hands on this plan which you made a request?

ME MALEBONA PRECIOUS MATSOSO: I never got the plan, not in writing and not in any form and neither did Prof Freeman.

5 **ARBITRATOR, JUSTICE MOSENEKE:** That is the Gauteng plan... plan on what, DG?

ME MALEBONA PRECIOUS MATSOSO: It was the project plan for the closure of Life Esidimeni facilities to relocate the mental health users to alternative facilities. So we did not even have the full details of what the project was about.

10 **ARBITRATOR, JUSTICE MOSENEKE:** But the title was known that the project plan would be an attempt... I mean to terminate the agreement with Life Esidimeni and to relocate patients to somewhere else.

ME MALEBONA PRECIOUS MATSOSO: Yes, indeed.

COUNSEL FOR STATE: To the extent that you were not able to receive the
15 requested plan, what did you get to know of the implementation of the plan that you've just mentioned?

ME MALEBONA PRECIOUS MATSOSO: I have requested Dr Selebano, the Head of Department of Provincial Health, to invite Prof Freeman to their meetings, so that he can learn, support and facilitate. So in the exchange of emails, he sent repeated
20 emails requesting plan, requesting to be invited to meetings, requesting information.

ARBITRATOR, JUSTICE MOSENEKE: These requests were directed at the HOD.

ME MALEBONA PRECIOS MATSOSO: The requests were directed at the director, because I had already made that request to the head of department.

ARBITRATOR, JUSTICE MOSENEKE: Okay.

COUNSEL FOR STATE: What has been the outcome of the requests which you
5 have made?

ME MALEBONA PRECIOS MATSOSO: We never got any responses, neither did Prof Freeman. The communication that I had with the head of department were normally telephonic. He will just say we met with civil society, we found each other, we agreed... I never received anything formal in writing, except the email with a
10 copy of the agreement that was sent in December about settlement.

COUNSEL FOR STATE: In spite of all the requests which you have made, which you have not succeeded to get proper answers, what did you get to learn about this project that you have referred to about the transfer of patients?

ME MALEBONA PRECIOS MATSOSO: The next time I heard about the project
15 was when I saw a headline, because I was travelling at the time, I was not in the country in January and I was not also in the country in March. But when I came back I saw a headline saying that Gauteng wins a court case about mental health... it was just a snippet and I didn't understand what it is and I called the head of department to find out what this court case was about, because I had understood
20 that they had settled.

COUNSEL FOR STATE: You have just mentioned of the plan. Do you know if this plan by the Gauteng Provincial Department was ever executed?

ME MALEBONA PRECIOS MATSOSO: From the response that I got from Prof Mel, it was never shared with him. So (1) we didn't have a copy, we never even knew that it was ever developed, so there was never any copy. But what I know is that in March I saw a headline about a court case and it was confusing. And I called
5 the HOD to establish what this court case was in relation to the agreement that was already signed.

COUNSEL FOR STATE: Do you know if the Gauteng Provincial Department proceeded to transfer the patients as it was indicated... I mean in relation to the plan which you were informed about?

10 **ME MALEBONA PRECIOS MATSOSO:** Yes. From what the head of department, Dr Selebano, told me, he indicated that they were proceeding, but he also expressed his concerns.

COUNSEL FOR STATE: Yes, can you proceed.

ME MALEBONA PRECIOS MATSOSO: He expressed his concerns that he was
15 not being involved closely with the project, but he didn't give me details. When I asked about the court case he said it was complicated, he didn't give me details either.

COUNSEL FOR STATE: From the report which is before you and from the evidence which has already been before these proceedings, it has been testified
20 that there is a number of patients recorded at 118 who passed away pursuant to the implementation of the project. What is your knowledge about those unfortunate events?

ME MALEBONA PRECIOUS MATSOSO: The knowledge came at a time when the Minister...

COUNSEL FOR STATE: Please proceed.

ME MALEBONA PRECIOUS MATSOSO: The knowledge came as a result of
5 firstly in... I can't remember the month, but when I came back after my travel from the World Health Assembly, I got to see a TV program about a young woman who was in one of the facilities. And I remember vividly because she did not want to take her medication. I think it was a Check Point program. This was when I realised that it means that the patients had been moved from the facilities.

10 **COUNSEL FOR STATE:** If I can take you to that bundle which is before you, Volume 1 ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Can we talk dates, please? When was this Check Point TV viewing? Roughly. I mean it must be in 2016. When was that?

15 **ME MALEBONA PRECIOUS MATSOSO:** I can't remember, Justice.

ARBITRATOR, JUSTICE MOSENEKE: But was it after June, it must have been after June 2016.

ME MALEBONA PRECIOUS MATSOSO: Yes, it was in between my travels because I was in and out of the country, so this is why I couldn't remember. But I
20 just saw that and I again realised that ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: It was 2016, wasn't it, it must have been.

ME MALEBONA PRECIOUS MATSOSO: It was 2016.

ARBITRATOR, JUSTICE MOSENEKE: I see some people in the audience wants to help you remember. Many of them are going yes, yes, but we are not doing that. (Vernac). So let's not help the witness.

COUNSEL FOR STATE: Then when did you get to learn of the passing of the
5 mental health care users?

ME MALEBONA PRECIOUS MATSOSO: When I came in the country back from duty travel, I was informed by my officials that there were deaths and this came as a result of a parliamentary question that the MEC was responding to. I got it just briefly. But I also got to know from my DDG that the Minister had established a
10 ministerial team, task team, to go and visit facilities. But this team was also part of the team that was working with the ministerial task team.

COUNSEL FOR STATE: It is on record that the Minister, the National Minister of Health, appointed the office of the Ombudsman to conduct an investigation so as to uncover the circumstances leading to the deaths of the mental health care users.
15 And if I can just refer you to that bundle, in particular page 58. You will see page 58 at the top of the document written by a marker. Top right. And that is Chapter 18 which contains the findings of the office of the Ombudsman in relation to the deaths. Are you familiar with this document?

ME MALEBONA PRECIOUS MATSOSO: Yes, I am.

COUNSEL FOR STATE: And these are the remedial actions which were
20 recommended by the office of the Ombud. Can you just indicate to these

proceedings if you have been involved in the – of so to what extent – in the implementation of the recommendations made by the office of the Ombud?

ME MALEBONA PRECIOUS MATSOSO: Yes, I was involved in the implementation.

5 **COUNSEL FOR STATE:** Can you please... there is another file there, file number 4. Yes, file number 4, if you can turn to page 1456. Did you manage to get to the document?

ME MALEBONA PRECIOUS MATSOSO: Yes.

10 **COUNSEL FOR STATE:** Can you just please read for the record the title of the document?

ME MALEBONA PRECIOUS MATSOSO: The title of the document is: Progress report on the implementation of the report of the office of the Health Ombud as at 20 April 2017.

15 **COUNSEL FOR STATE:** So will I be correct to say that this report will be in response to the recommendations appearing in file 1 at page 58?

ME MALEBONA PRECIOUS MATSOSO: Yes, it is.

COUNSEL FOR STATE: You have just read that the report is as at 20 April 2017. Was this report ever got to be updated like towards implementation of the recommendations?

20 **ME MALEBONA PRECIOUS MATSOSO:** Yes, the report was updated, because the cut-off date of April was a progress report that we were submitting, but there

was ongoing work because we had to move the mental health users back to the facilities.

COUNSEL FOR STATE: Thank you. Mr. Justice Moseneke, may I be permitted to hand up the latest progress report as at today, 11 October 2017 and I will hand up
5 copies to the witness as well as my colleagues.

ARBITRATOR, JUSTICE MOSENEKE: Indeed. Thank you.

COUNSEL FOR STATE: If you can go back to file number 1 page 58. You will note that there are 18 recommendations from page 58 to page 59. The office of the Ombudsman made 18 recommendations and in addition there are those
10 recommendations in relation to the GDOH, which is the Gauteng Department of Health. There are six bullet points. You have indicated that you were involved in the implementation of this recommendation. Can you please just take this opportunity to inform these proceedings, the entire nation of the Republic of South Africa and the whole world as to exactly what it is that the Government has done in
15 order to give effect to those recommendations made by the office of the Ombudsman? And I am going to take you through one recommendation after the other and you'll then deal with what the Government has done. And firstly I am going to refer you to recommendation number 1. If you can just make use of the report which has been handed up to you, it might be easier without cross-
20 referencing to other documents. Item number 1 ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Do all counsellors have a copy of this? You do. Very well. Please proceed.

COUNSEL FOR STATE: The first recommendation is that the Gauteng Mental Health Marathon Project must be disestablished. And on your right hand side there is a column headed status. Can you then proceed to elaborate on what was done by the Government in response to the recommendation?

5 **ME MALEBONA PRECIOS MATSOSO:** If I can respond in relation to this. On the right column it says the Gauteng Mental Health Marathon Project has been stopped as part of this aspect. A decision was taken that all Life Esidimeni patients had to be transport from the NGOs to suitable facilities.

COUNSEL FOR STATE: And that was in compliance with what the Ombudsman
10 has recommended.

ME MALEBONA PRECIOS MATSOSO: Yes, it was in line with what was recommended by the Ombud.

COUNSEL FOR STATE: Thank you. it appears that it is going to be a tedious task, because the people in attendance are eagerly waiting to get information of
15 what has the Government done in response to the incidents that has occurred and therefore we will have to go through each and every recommendation, so that it can be known to all what is it that has been done. And if you can move to recommendation number 2: The Premier of Gauteng Province must, in light of the findings herein, consider the suitability of MEC Qedani Dorothy Mahlangu to
20 continue in her current role as MEC for Health. What has been the steps taken in relation to that recommendation?

ME MALEBONA PRECIOUS MATSOSO: Well as you may know, because this was also made public, that the MEC actually voluntarily resigned. So it happened...

COUNSEL FOR STATE: As you do so, can you please just read it for the record so that it can be known of the details of exactly what has been done in the
5 implementation of the recommendations?

ME MALEBONA PRECIOUS MATSOSO: It says: “Former MEC Mahlangu voluntarily resigned her position on the 31st of January 2017. And MEC Gwen Ramokgopa was sworn in on the 6th of February 2017 as the new MEC for Health in Gauteng.”

10 **COUNSEL FOR STATE:** And then let’s go to recommendation number 3 which records that: Disciplinary proceedings must be instituted against Dr Tiego Ephraim Selebano for gross misconduct and/or incompetence in compliance with the disciplinary code and procedures applicable to SMS members in the public service. In light of Dr Selebano’s conduct during the course of the investigation, which
15 includes tampering of evidence, it is recommended that the Premier should consider suspending him pending his disciplinary hearing. Subject to comprise with disciplinary code and procedure applicable to SMS members in the public service. What has been the Government’s response in the implementation of the recommendation?

20 **ME MALEBONA PRECIOUS MATSOSO:** The disciplinary process has commenced against the head of department, Dr Selebano, who is on suspension since the 8th of February 2017. However, the disciplinary process against Dr Selebano was postponed pending the outcome of the appeal. So the Minister of

Health appointed an appeal tribunal which is chaired by Judge Moepe and the hearing is scheduled to take place in October.

COUNSEL FOR STATE: So you confirm that this has indeed been attended to.

ME MALEBONA PRECIOUS MATSOSO: Yes.

5 **COUNSEL FOR STATE:** Let's then proceed to recommendation number 4. Disciplinary proceedings must be implemented against Dr Makgabo Manamela for gross misconduct and/or incompetence in compliance with the disciplinary code and – if you turn over the page – procedure applicable to SMS members in the public service. In light of Dr Makgabo Manamela's conduct during the course of the
10 investigation, which includes tampering with evidence, it is recommended that consideration be given to suspending her, pending her disciplinary hearing, subject to compliance with the disciplinary code and procedure applicable to SMS members in the public service. Can you then deal with the implementation in relation to that recommendation?

15 **ME MALEBONA PRECIOUS MATSOSO:** Dr Manamela has been suspended since the 8th of February 2017. The disciplinary process against her has been postponed pending the outcome of the appeal and the appeal has been scheduled for the month of October. It is the same tribunal that the Minister has established that is chaired by Judge Moepe.

20 **COUNSEL FOR STATE:** Thank you. Let's then proceed to recommendation number 5. The findings against Doctors M. Manamela and T.E. Selebano must be reported to their respective professional bodies for appropriate remedial action with

regard to professional and ethical conduct. What steps were taken in relation to that recommendation?

ME MALEBONA PRECIOUS MATSOSO: Once the disciplinary cases have been finalised, the professional bodies responsible, which is the Health Professions Council and the Nursing Council, will be appropriately informed and that both
5 officials will be reported to those bodies.

COUNSEL FOR STATE: And you've already alluded to the fact that these two doctors have already been subjected to those processes.

ME MALEBONA PRECIOUS MATSOSO: Yes.

10 **COUNSEL FOR STATE:** Okay, thank you. Recommendation number 6 records that: Corrective disciplinary action must be taken against members of the DGOMH, namely ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Counsel, for the record, let's avoid acronyms. This record will be read far and wide and many people interested in
15 medical ethics and so on. So just use the full ones and not the acronyms please.

COUNSEL FOR STATE: Indeed so Justice.

ARBITRATOR, JUSTICE MOSENEKE: Thank you.

COUNSEL FOR STATE: If I can just repeat for clarity. Recommendation number 6 provides that corrective disciplinary action must be taken against members of the
20 Gauteng Department of Mental Health, namely Me. S. Mashile who is the Deputy Director, Mr. F. Tobane, also Deputy Director, Me. H. Jacobus Deputy Director, Me. S. Sinelo Deputy Director, Dr S. Lenkwane Deputy Director, Mr. M. Pitsi Chief

Director, Me. D. Masondo Chair of the Mental Health Review Board, Me. M. Nyatlo Chief Executive Officer of the Cullinan Care Rehabilitation Centre, Me. M. Malaza Acting Chief Executive Officer of the Cullinan Care Rehabilitation Centre – in compliance with the disciplinary code and procedures applicable to them for failing
5 to exercise their fiduciary duties and responsibilities. They allowed fear to cloud and overwrite their fiduciary responsibilities and thus failed to report this matter earlier to relevant authorities. Fiduciary responsibility is essential for good corporate governance. May you please proceed to tell the world what the Government of South Africa has done in response to this?

10 **ME MALEBONA PRECIOUS MATSOSO:** Me. D. Masondo who is the Chair of the Mental Health Review Board, has been removed from her position. An attorney has been appointed to lead evidence in a disciplinary inquiry against all the name public service officials. An advocate has been appointed to preside over these inquiries. In four of the six cases that are proceeding, the Mental Health Care Deputy
15 Directors pleaded guilty and the presiding officer pronounced a sanction of final written warning, as well as counselling on all four officials. The presiding officer's report is still awaited for. The cases against the remaining two deputy directors who also pleaded guilty, the case against Chief Director of Tshwane Health District, Mr. Pitsi, was stalled while awaiting the outcome if his appeal against the findings of the
20 Health Ombud, which has been referred by the Minister to the Minister of Health tribunal. Mr. Pitsi has been transferred to Ekurhuleni Health District Office and his appeal has been heard. We are awaiting the outcome. He is one of those whose appeal has already been heard.

COUNSEL FOR STATE: So you do confirm that indeed this recommendation has been implemented.

ME MALEBONA PRECIOUS MATSOSO: Yes.

COUNSEL FOR STATE: Let's then proceed to recommendation number 7. All the
5 remedial actions recommended above must be instituted within 45 days and progress be reported to the Chief Executive Officer of the Office of the Health Standards Compliance within 90 days. Can you proceed to give an indication in relation to this recommendation?

ME MALEBONA PRECIOUS MATSOSO: A steering committee was appointed by
10 the Premier and the Minister and is co-chaired by myself and the DG in the office of the Premier, as well as the Acting Head of Department of Gauteng Department of Health. The steering committee is also made up of officials from other government departments, South African Police Services, National Treasury, Department of Social Development, SASSA and Department of Justice. I must say that the 90
15 days were very tight and we had to write to the Ombud to explain that we do not want to repeat the same mistakes that happened when this project came about and we requested an extension. Because 90 days was not a reasonable period within which to implement these recommendations.

COUNSEL FOR STATE: Was the extension granted?

20 **ME MALEBONA PRECIOUS MATSOSO:** Yes, it was granted.

COUNSEL FOR STATE: Thank you. Can you just clarify ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: To which period?

ME MALEBONA PRECIOUS MATSOSO: What we did ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Was it another 30 days, 90 days, 100 days or a fixed date?

ME MALEBONA PRECIOUS MATSOSO: They extended that to end of May.

5 **ARBITRATOR, JUSTICE MOSENEKE:** End of May?

ME MALEBONA PRECIOUS MATSOSO: Yes.

ARBITRATOR, JUSTICE MOSENEKE: Okay.

COUNSEL FOR STATE: End of May of which year?

ME MALEBONA PRECIOUS MATSOSO: Of 2017.

10 **COUNSEL FOR STATE:** Then can you just clarify with whom have you been involved in the implementation of the recommendations from the office of the Ombud?

ME MALEBONA PRECIOUS MATSOSO: On the 1st when the Ombud released the report, before we could start with the implementation of the recommendations,
15 we actually wanted to go to the facilities ourselves and see what the state of affairs was. The 2nd of February, myself and the DG of the province visited Cullinan, because this is the first facility where we got the report... personally where I got the report from the Deputy Director General. But also because even when the report was released, there were two family members that expressed serious concerns that
20 they want their family members removed immediately. So on the 2nd we visited a number of facilities, Cullinan, Kalafong. We also went to Precious Angels, because we wanted to also verify that those two facilities were closed. In total in a period

of... that period of a week we had visited a total of nine facilities between myself and the DG in the office of the Premier. But what we also did on the 3rd, we invited all stakeholders, we invited civil society ...intervened.

COUNSEL FOR STATE: If I can just interrupt. You have just referred to the DG in
5 the office of the Premier. Can you just refer to that DG by name? Who is that DG that you are referring to?

ME MALEBONA PRECIOUS MATSOSO: It is DG Pindi Baleni.

COUNSEL FOR STATE: Sorry for the interruption. You may proceed.

ME MALEBONA PRECIOUS MATSOSO: So we invited experts, we invited civil
10 society, we invited various stakeholders to first listen to them as to what us it that they are concerned about with regard to this project when it was executed, so that we could not repeat the same mistakes that were made by Gauteng Department of Health. But in particular we also requested the Minister to appoint 60 experts from various multi-disciplinary teams. The reason being that again we did not want this
15 project executed by people who did not have appropriate skills.

ARBITRATOR, JUSTICE MOSENEKE: And the project was to do what? To reintegrate the patients?

ME MALEBONA PRECIOUS MATSOSO: The project was multi-fold. Firstly it was intended to identify those patients that were most at risk so that we could reduce the
20 problems, particularly with the deaths that were reported. And if you read the report of the Ombud, he already said the number is 94 and still counting and we wanted to arrest that as soon as possible.

COUNSEL FOR STATE: Let's then proceed to recommendation number 8. The Ombud fully supports the ongoing South Africa Police Service and forensic investigations underway. The findings and outcome of these investigations must be shared with appropriate agencies, so that appropriate action where deemed
5 justified, can be taken. What has been the response towards the implementation of this recommendation?

ME MALEBONA PRECIOUS MATSOSO: Firstly, the South African Police Services was invited to a steering committee that DG Pindi Baleni has established in the Office of the Premier. And there has been subsequent meetings. The initial
10 meeting could not take place. But I just want to mention, Justice, if you'll allow me... at the time when we started there was also a family meeting convened. And in the family meeting we got to hear about some family members who still could not locate their loved ones, some family members who still did not know where some members of their family were. But there were also some family members who
15 expressed concerns about how far they had to travel to go and identify their loved ones. So what we then did was to put together a team to go from mortuary to mortuary identifying some of the members of the families, so that at least we could ensure that we had everybody who was on the list. We also went back and wrote every single hospital to just tell us who were all the people who were admitted in our
20 provincial health hospitals. Now these are hospitals, they are not necessarily psychiatric hospitals. But we also went to get the list from the psychiatric hospitals so that we can assure ourselves where exactly everybody was, so that we were not

just informed that they were with NGOs when they were not. So we wanted to verify every single fact.

COUNSEL FOR STATE: Yes proceed.

ME MALEBONA PRECIOUS MATSOSO: But because the Ombud had raised the
5 question of data as a concern, we established a data work stream with the
assistance of the statistician general, he identified people to help us at least ensure
that we could verify the data. We requested the original database from Life
Esidimeni so that in that database we could account for every single person. And in
this exercise that we were involved in, we actually identified that in that database
10 there were duplicates, and I would like to use an example. I said my name is
Malebona Precious Matsoso, in that database they would have Malebona Matsoso
as one person, Precious Matsoso as another person, Precious Malebona as
another person... so you would get one person reported four times. So we went
through every single list, every single name, just to ensure that we could account for
15 every person, because this is what was also making it difficult for family members to
know exactly where their members were.

COUNSEL FOR STATE: You can then proceed in relation to the steps taken.

ME MALEBONA PRECIOUS MATSOSO: So the DG in the office of the Premier
met with the Provincial Commissioner, General De Lange, and his team, and they
20 were involved in ensuring that the Health Ombudsman recommendations are
implemented. So there is a team of eight investigators who were supposed to help
us with the inquest, because one of the problems that one of the family members
raised was that she wanted an inquest conducted and she was not getting

assistance in this regard. So the DG has also met with the DPP in Pretoria, it is Johannesburg Advocate Andrew Chauke, who referred the matter also to the prosecuting office. And the South African Police Services and NPA have currently ...intervened.

5 **COUNSEL FOR STATE:** Sorry, you just referred to DPP... will that be the Director of Public Prosecutions?

ME MALEBONA PRECIOUS MATSOSO: Yes, the Public Prosecutions but also the NPA. So they were working with NPA and the South African Police Services and they have currently opened 35 docket cases. And of these 35 docket cases,
10 about 26 post mortems have already been conducted.

COUNSEL FOR STATE: What is happening with the remainder?

ME MALEBONA PRECIOUS MATSOSO: I think we still ...intervened.

COUNSEL FOR STATE: Of the 35 cases that you've just mentioned of.

ME MALEBONA PRECIOUS MATSOSO: So far we've just done the 26 post
15 mortems. So what we have done, we actually went from mortuary to mortuary, like I was explaining. We also went as far as Limpopo, because we were told two of the Life Esidimeni patients, because we wanted to get records. But we identified some members that had been given paupers funerals and we went back to get their details so that we could accordingly have them identified. So we have taken the
20 data, went back to Department of Home Affairs, but the details of this, the DG in the Office of the Premier, Me. Pindi Baleni, will be able to give further details.

ARBITRATOR, JUSTICE MOSENEKE: But in the response to recommendation 8, there is reference to post mortem reports, is that accurate? Shouldn't that read inquest reports? Are those post mortem reports?

ME MALEBONA PRECIOUS MATSOSO: These are forensic pathology reports.

5 **ARBITRATOR, JUSTICE MOSENEKE:** Yes, which means post mortem reports.

ME MALEBONA PRECIOUS MATSOSO: Yes, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Let me just clear it in my own head. 118 people we know now have, at least 118 have died. Are they all buried?

ME MALEBONA PRECIOUS MATSOSO: Yes, some of them were buried by their
10 own family members.

ARBITRATOR, JUSTICE MOSENEKE: But in the verification task team did you find that all 118 have been buried, the 118 which the Ombud gave to us?

ME MALEBONA PRECIOUS MATSOSO: No, seven of them. In this investigation that we were doing, going from mortuary to mortuary, there were still seven that had
15 not been accounted for by family members.

ARBITRATOR, JUSTICE MOSENEKE: But who were known to have died within the Marathon Project.

ME MALEBONA PRECIOUS MATSOSO: Yes, it was our understanding.

ARBITRATOR, JUSTICE MOSENEKE: You see post mortem reports have a finite
20 time within which they can be made, i.e. before burial. So what this is telling us, it is telling us that 26... in other words SAPS and NPA have currently opened 35 docket

cases. Of these 35 cases 26 have finalised post mortem reports. What does it tell us about the balance? Are post mortems still to be made?

ME MALEBONA PRECIOUS MATSOSO: Yes.

ARBITRATOR, JUSTICE MOSENEKE: In terms of the nine, I am just trying to
5 understand what you are conveying there. The difference between 35 and 26 is
nine.

ME MALEBONA PRECIOUS MATSOSO: Yes.

ARBITRATOR, JUSTICE MOSENEKE: What does it mean? It means there have
been pathological examinations where the reports have not been written out or it
10 means the corpses are still available and will be subjected to post mortem
examination.

ME MALEBONA PRECIOUS MATSOSO: Yes, it is a matter that I will verify with
DG Baleni.

ARBITRATOR, JUSTICE MOSENEKE: Ja.

15 **ME MALEBONA PRECIOUS MATSOSO:** Because it is ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: What that means, hey.

ME MALEBONA PRECIOUS MATSOSO: Yes, precisely, because it is a process
that has been largely driven by Gauteng.

ARBITRATOR, JUSTICE MOSENEKE: We can come back to that sometime,
20 because it seems to me that it is also going to be helpful to know whether you
managed to have post mortems done in all instances, probably not if you had

paupers funerals, which raises difficult questions around exhumation and so on. But I don't want to keep you now, we can get the details some other time. You can go on to 9, I think.

COUNSEL FOR STATE: Thank you. Recommendation number 9 is that the
5 National Minister of Health should request the South African Human Rights Commission to undertake a systematic and systemic review of human rights compliance and possible violations nationally relating to mental health. What has been the steps taken to meet the recommendations of the Ombud?

ME MALEBONA PRECIOUS MATSOSO: The Minister wrote the letter to the
10 South African Human Rights Commission. They have sent questions to all of us to respond to and there is a planned hearing that I think was postponed. We don't have a new date of the hearing that the South African Human Rights Council, that the investigations have started.

ARBITRATOR, JUSTICE MOSENEKE: There was an article in the media this
15 morning, which might be totally mischievous, which I am putting it to you to get it on record. They say the Head of the South African Human Rights Commission was said to have said he will do the investigation but has no money to do it. Do you know anything about that?

ME MALEBONA PRECIOUS MATSOSO: Well ...intervened.

20 **ARBITRATOR, JUSTICE MOSENEKE:** If you don't, it is speculation and nothing more than that. If you know, of course you are at liberty to respond.

ME MALEBONA PRECIOUS MATSOSO: Justice, I don't know about it, but what I know is that he wrote us, we provided information and we were supposed to have public hearings and we haven't been given a date.

ARBITRATOR, JUSTICE MOSENEKE: I see. Very well.

5 **COUNSEL FOR STATE:** Okay thank you. Let's proceed to recommendation number 10. Appropriate legal proceedings should be instituted or administrative action taken against the NGOs that were found to have been operating unlawfully and where mental health care users have died.

ME MALEBONA PRECIOUS MATSOSO: The Minister and the Premier sent a
10 letter requesting the President to issue a proclamation so that the SIU can conduct investigations into the affairs of Gauteng Department of Health and the NGOs for any possible impropriety. The SIU has commenced its investigations. They have also started interviews. Some of my officials have been invited for questioning and so on. So this work has begun. Appropriate legal proceedings have to be taken.
15 What has happened, some NGOs challenged the process, they appealed and as part of that appeal, the hearing will be soon and we will hear of the outcome. But the letter has been issued to all the NGOs that operated or have been operating unlawfully or without proper licenses to cease activities with immediate effect. This letter was giving the NGOs the option of making representation. In compliance with
20 the principle of fairness we had to allow them to also warn them that we will be – particularly the Gauteng Department of Health being responsible for issuing those licenses. The letter mainly provide for very strict timeframes that those NGOs were supposed to make a representation. And based on this, once Gauteng Department

of Health and acting HOD receives these representations, he was supposed to ensure that firstly letter ordering them to cease operations was issued and that letter provided opportunity for them to say who was the decision maker. But also if there was a refusal, there must be reasons why. The second step was application to
5 court to set aside the licenses that were issues by head of department so that all those licences, particularly those that were unlawful, will cease immediately and that in the event they refused that the South African Police would be invited and the state attorney would have to apply for an urgent interdict, particularly those NGOs that we think were putting people at risk.

10 **COUNSEL FOR STATE:** Thank you. You have just mentioned that the President was to issue a proclamation for an investigation, a proclamation which is a public document. I do have a copy of that proclamation, copies will be made available for this proceedings and copies will be handed up at a later stage. But it is proclamation number R23 of 2017 by the President of the Republic of South Africa
15 for Special Investigation Units and Special Tribunals Act, referral of matters to existing special investigation. And it is in relation to... it provides that I hereby under section 2, subsection 1 of the Act refer the matters mentioned in the schedule in respect of the Department for investigation to the special investigating unit established by the proclamation. And in that regard I will just go straight to the
20 schedule which deals with those matters which have been referred for investigation. Under the heading schedule it is recorded that: The procurement of or contracting by or on behalf of the Department, of the service from 28 entities in whose mental health care users were entrusted and payments made in respect thereof in a

manner that was: subparagraph (a) not fair, competitive, transparent, equitable or cost effective; subparagraph (b) contrary to applicable, subparagraph roman figure 1 legislation, manuals, guidelines, practice notices, circulars or instructions issued by the National Treasury or the relevant Provincial Treasury. And then it goes
5 further to provide that in relation to manuals, policies, procedures, prescripts, instructions or practices applicable to the Department. And then subparagraph (C) conducted by or facilitated through the improper or unlawful conduct, roman figure 1, officials of the department or roman figure 2, any other person or entity to corruptly or unduly benefit themselves or others or; subparagraph (d) fraudulently
10 and related unauthorised, irregular or fruitless and wasteful expenditure incurred by the Department or the State. This as a public document, we have not had the opportunity to make copies, such copies will be made for the record in these proceedings and it will be handed up.

ARBITRATOR, JUSTICE MOSENEKE: Very well, that is fine, we can hand it up by
15 tomorrow morning.

COUNSEL FOR STATE: Thank you.

ARBITRATOR, JUSTICE MOSENEKE: By then I would have worked out a schedule of all of the documents handed up. I think they will probably be called EL1, EL2 and EL3. But we will work that out and hand that... when we hand it up it
20 will have a number as we hand it up tomorrow.

COUNSEL FOR STATE: Thank you very much, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Shall we proceed then?

COUNSEL FOR STATE: Me. Matsoso, if we may proceed to recommendation number 11. Mr. Justice Moseneke, may I just enquire, as I have indicated that this will appear to be a tedious task, the witness will have to give detail of the steps taken in relation to each and every recommendation.

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

COUNSEL FOR STATE: It appears to be late in the day. I just wanted to get direction if we may proceed or if it will be an appropriate time to take a break, so that people can be refreshed when we resume tomorrow.

ARBITRATOR, JUSTICE MOSENEKE: Yes, Counsel, it is a fine way of saying we
10 must adjourn. And I am not entirely opposed to that. That would mean, DG, you are required here tomorrow at 9:30 to continue with the process. All I can say, Counsel, is that we know that the DG must tell us the recommendations. We are aware of the... sorry the responses... so that we can allow her to run through the responses without much interruption, because we know what the recommendations
15 are. So if we allow her to do that tomorrow morning then we can get down to some cross-examination.

COUNSEL FOR STATE: Yes.

ARBITRATOR, JUSTICE MOSENEKE: But we've done well. And I understand the need to put it down all publically out there, I think it is important, so I am with
20 you there. But yes, we are going to adjourn in a short while. And immediately thereafter I think I would like to have a short meeting with Counsel before we all move out to our different directions. So if you could immediately after the

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adjournment meet in my office, I am with (inaudible) Chambers. And then there we can... there is one matter I would like to raise very quickly, which is uncontentious but which requires our collective attention. DG, as I say you are excused and we are certainly going to see you tomorrow morning. I was trying to help you away, but
5 your Counsel wants you back here. Very well, we adjourn until tomorrow 9:30.

END OF SESSION 4