

# **LIFE ESIDIMENI ARBITRATION**

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

**DATE: 21<sup>st</sup> NOVEMBER 2017 DAY**

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**DAY SESSION 1 – 3.**

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**BEFORE ARBITRATOR – JUSTICE MOSENEKE**

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**WITNESSES:**

**MR. ANDREW PETERSON**

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**21 NOVEMBER 2017**

## **SESSION 1**

**ARBITRATOR, JUSTICE MOSENEKE**: Thank you, you may be seated. Where do we start? Advocate Yina?

5**ADV NONTLANTLA YINA**: Good morning Justice. Justice we have received a report from the Counsel representing Dr Manemela that she is apparently not available this morning. She is not well, she will be seeing a doctor and he is requesting a stand-down, so I will allow her to address you Justice.

**ARBITRATOR, JUSTICE MOSENEKE**: Very well thank you.

10**ADV LERATA MASHILANE**: Good morning Justice, I have got instructions that my client is actually not feeling well today and in fact, what I've got, is that yesterday, she thought that maybe she might have been tired and it will better by this morning and she had prepared to come here, but things got worse. So that being the case, I have a request that the matter stand down, because I have been advised that she is  
15going to the doctor, so that maybe I will suggest that by 11:30, then maybe she would have seen the doctor and I can actually advise as to what did the doctor recommend, because it will be futile for us to actually postpone this matter. It might be possible that the doctor might recommend that by tomorrow she will be alright, so I don't know and I can't speculate. That being the case, I request that the matter  
20stand down, she get to attend to the doctor and then when we come back and then I will be able to address as per the recommendation of the doctor.

**ARBITRATOR, JUSTICE MOSENEKE**: When did Dr Manemela fall ill?

**ADV LERATA MASHILANE**: What I've got, the indication is that yesterday after she got ill, but she thought that she might have been tired and she thought that maybe in the morning she will be feeling much better-

5**ARBITRATOR, JUSTICE MOSENEKE**: Ja but the question is when? Was it after the hearing?

**ADV LERATA MASHILANE**: I am not quite certain, but the information I've got, is that yesterday.

**ARBITRATOR, JUSTICE MOSENEKE**: Advocate Hassim?

10**ADV ADILA HASSIM**: Morning Justice Moseneke.

**ARBITRATOR, JUSTICE MOSENEKE**: What should I do, what should we do?

**ADV ADILA HASSIM**: I am not sure that we have much choice if the witness is ill and is being seen to by a doctor, then we need to hear from the doctor, so I think what would be useful, is if we had a doctor's note from the witness. I am not sure I  
15understand correctly whether we are standing down in order to get further instructions as to when Dr Manamela will be available or whether we are standing down in order to proceed later today or not, so perhaps my colleague can provide a bit more clarity as to whether he is saying we should stand down and basically postpone until tomorrow. Whether there is any chance that Dr Manamela -

20**ARBITRATOR, JUSTICE MOSENEKE**: Well let's find out, we don't know what the doctor's note will say. It may tell us she can only do this in January, or whenever. I

think let's clear that up with your colleague here, so the rest of Counsel don't ask the same thing. Are you done with your remarks before I turn over to him?

**ADV ADILA HASSIM**: Yes I am Justice we are in the hands of the doctor I think, which is, the doctor attending to Dr Manemela.

5**ARBITRATOR, JUSTICE MOSENEKE**: Well in the meantime, I think you should prepare and tell me what, is, the law in arbitration when a witness does not appear. In a regular court, it is uncomplicated, you issue a warrant and pend it until further attendance, otherwise the subpoena lapses. Then you have to re-issue and that is how criminal courts normally manage that situation by issuing a warrant of arrest,  
10which is suspended pending a further appearance. In these circumstances, it will be interesting to hear from Counsel what the law requires of me as an ARBITRATOR, in these circumstances. Do you know, what is your actual request, that we stand down until 11:00 and then you will know better from the doctor, I thought that is what I understood you to say?

15**ADV LERATA MASHILANE**: Yes because the reason why I request that we stand until 11:30, the reason being that we don't know what the doctor will say. The possibility is that the doctor might say that by tomorrow, she will be ready. Therefore, to postpone, I think that would be futile, so we better stand down until 11:30 and then we find out what are the recommendations of the doctor.

20**ARBITRATOR, JUSTICE MOSENEKE**: Will your client be here at 11:30?

**ADV LERATA MASHILANE**: No I don't know, but I don't think so, I don't think so.

**ARBITRATOR, JUSTICE MOSENEKE**: Why don't you think so?

**ADV LERATA MASHILANE**: No it's my opinion which I am not comfortable to indicate as to why, other than the fact that I have been told that she is sick. So it will be fair that we stand down until 11:30 and get what the doctor would have recommended.

5**ARBITRATOR, JUSTICE MOSENEKE**: Okay thank you, that's clear. Okay would you continue Advocate Hassim would your submissions if any after that clarification?

**ADV ADILA HASSIM**: Sorry Justice could we just get confirmation that Dr Manemela is currently seeing a medical doctor?

10**ARBITRATOR, JUSTICE MOSENEKE**: That's what I understand, that is what Counsel is saying. She is currently seeing a medical doctor and by 11:30, he will know better and doesn't know whether Dr Manemela will be here then or not. That is what I hear. On that basis, are there any further submissions you would like to make?

15**ADV ADILA HASSIM**: No there are no further submissions, I will research the question you put to us.

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

**ADV LILLA CROUSE**: Thank you Justice Moseneke, I can't add anything more than what my learned friend has already said. I have looked at Section 16 of the  
20Arbitration Act that deals with witnesses. It doesn't specifically say that the arbitration is authorised to issue a warrant, but it does say, the subpoena will be subject to the same conditions as if it was in a civil action. My learned friend just

corrected me to get into course. We have no objection if the matter stands down and we have a witness ready to proceed if the arbitration wants to proceed.

**ARBITRATOR, JUSTICE MOSENEKE**: From you two, I would require submissions on what are the implications of Section 16 of the Arbitration Act in these 5circumstances.

**ADV LILLA CROUSE**: I will address the court as soon as I have an answer.

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

**ADV DIRK GROENEWALD**: Thank you Justice. Justice, we take issue with the manner in which Dr Manemela treats this arbitration proceeding. Yesterday we 10were faced with an application for a postponement at the day and at the time the matter was supposed to proceed. Once again today, it is 10:00, she is now only at the doctors. There is no explanation why she could not have gone to a doctor yesterday or this morning and Justice we submit that we will stand down, we accept that we will stand down to hear from the doctor and what the doctor has to say, but 15we submit that Dr Manemela is not treating these proceedings with the respect that it deserves and the families. That is all from us at this point, thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE**: Thank you. Advocate Yina is there anything you would like to say?

**ADV NONTLANTLA YINA**: We don't really have any submissions Justice, safe to 20say we concur with our learned friends that this is an apparent display of disregard of these proceedings by Dr Manemela and also bearing in mind that it is now 10:00, we ought to have started at 9:30 and she was warned to be here at 9:30.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes Advocate Hutamo?

**ADV TEBOGO HUTAMO:** Morning Justice, from our side, we can only rely on what the report says after her consultation with the doctor and that should guide us as to her availability, so we do agree that if the matter could be stood down for that objective and then we will be able to get an indication. We can't enquire into her fitness to be able to come to the stand now until we have been advised by the medical doctor. With regard to the aspect relating to the subpoena, our view is that the subpoena is still valid. If we accept that her absence is due to ill health, so that cannot be taken to be as intentional conduct on her part, not to attend the proceedings, so it is still valid, unless if it can be shown that despite the subpoena, she wilfully decided not to appear before these proceedings.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja I hear the point, but that's not the point I was trying to get at. The point is, a subpoena, just a matter of law, a subpoena requires a witness to appear before specified hearing at a certain date, time and place and once the witness appears and is sworn in, the witness is warned to appear the following day, so the subpoena continues to run and the proceedings, the Tribunal, like an arbitration tribunal, would then regulate that by requiring the witness to appear until the evidence required of her, has been done with. If there is a break in that and a witness is ill for a week, how will the witness know when again to appear and that is why courts would postpone proceedings to a specific date and then because the witness is not before it, it therefore cannot direct the witness to do anything, to issue a warrant which requires the witness to appear and get suspended until the witness appears on the next date of postponement. So I need

your assistance on how to manage absence, I am not questioning the illness, I am saying the witness who doesn't turn up in an arbitration tribunal, how does the law require us to manage that situation.

**ADV TEBOGO HUTAMO**: What we say is that the witness will have to be in attendance until excused by the tribunal, but in this instance, we have been given an explanation of her absence and which has been accepted that she is in the process of consulting with a doctor, who would then make that report which would give us an indication of her availability. It is only when she does not make herself available at the time when she is set to be in a position to appear, then the consequence of her failure to appear, will then kick in.

**ARBITRATOR, JUSTICE MOSENEKE**: I don't think you get the crisp narrow point I am making. If you just listen a little more carefully, I am saying if the witness does not come at all today, she has been told to appear today, then how do you again get her to appear, save and except either with a warrant, which is suspended and she is required to appear on a specific date, or ordered within the hearing to attend on a specific date. How will we, short of another subpoena, procure her attendance lawfully? That is the point.

**ADV TEBOGO HUTAMO**: Okay well our submission on the failure of a witness to appear, will come with the consequence of a warrant having to be issued for that failure. That is how it would be dealt with. The consequence of the failure will invite a warrant of arrest to be issued for that failure.



**ARBITRATOR, JUSTICE MOSENEKE:** Okay sure, no that is your submission, you will get another opportunity when your colleagues make their submissions, but I hear the point and that is why courts do that, it's because the witness is not there to be directed when to appear again, so if she doesn't appear at all today, she is out of 5the reach of the tribunal, so you would have to require another subpoena if there is no other method of coercing her which normally is a warrant which why it is suspended because the court is not able to determine whether the absence is intentional or not. It might be illness, it might be another valid excuse, that is why you suspend the warrant and the person comes and explains her absence, so I am 10inviting you Counsel to think through in arbitration tribunal, how do we secure the continued attendance of a witness that has not appeared by whatever reason, good health, bad health or other business and that matter should still engage us. If she comes here and it turns out that she was in fact ill, then that is a valid explanation, but you still have to secure the witness to a specific time, date, place and I would 15like you to think about that as a matter of law. We are back with you Counsel. Is there anything else you want to say? This is your application that we stand down. You have heard the views of your colleagues you have the right of reply.

**ADV LERATA MASHILANE:** Thank you Justice. In fact there are only two things that I would like to reply to and then the second one will be with regards to securing 20the witness, so first of all, it had been indicated by one or two of my colleagues that in fact the conduct of my client is unacceptable which I will submit that it is fair under the circumstances. One does not choose to be sick and on that particular basis, that is why I am saying it's unfair.

**ARBITRATOR, JUSTICE MOSENEKE:** No Counsel was saying there is no explanation, listen to the point, why she didn't see the doctor last night or this morning before the hearing. You haven't told us and that is the complaint. It's not whether or not Dr Manemela ought to be ill, it's that we haven't heard from you why she couldn't have procured a doctor's advice last night or this morning.

**ADV LERATA MASHILANE:** With due respect Justice, I have indicated that unless I stand to be corrected, but I think I have indicated that yesterday she might have thought that she is tired and therefore, when she wake up in the morning, she will be feeling much better. They say joy comes in the morning, so that is why I am saying it is unfair to say that my client is being unreasonable under the circumstances and the second point with regards to the attendance-

**ARBITRATOR, JUSTICE MOSENEKE:** Do you know? Have you been instructed on when she fell ill?

**ADV LERATA MASHILANE:** No, but I have indicated that since yesterday, I don't know the time, but that is what I could say with regards to that. The second point, I will come to the point wherein Chief Justice posed a question with regards to securing the attendance of my client. First of all, I would like to bring to the arbitration, that my client had been compliant. Her application had been dismissed and therefore, she came to testify and she wants to contribute meaningful as it had been indicated earlier on and we don't have an objection taking into account, the fact that the subpoena had been issued and we consider that to be a valid subpoena as it is and it will be fair that maybe a warrant of arrest, we don't have an objection if it is issued and state until the date wherein my client will have to come

and appear and obviously, that will be determined by the doctor's note that I have indicated that I requested that we stand down. That's all in that regard.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you, it appears to me, unless another Counsel has some bright idea, blindingly smart idea, I am going to adjourn until 11:30 at your bidding to listen to you. We are adjourned until 11:30.

**21 November 2017**

**SESSION 2**

**ARBITRATOR, JUSTICE MOSENEKE:** You may be seated. Counsel, it is your turn, isn't it? We are back and it is 11:30.

10 **ADV LERATA MASHILANE:** Thank you, Justice Moseneke. I have gotten instructions and I have been informed that by Thursday she will be fine. So instructions is that client will be here on Thursday and a medical certificate in that regard will be given before this arbitration. That is all. Because the reason was to stand down in order to get the opinion of the doctor, so that we don't even stand  
15 down to a date wherein we don't know. But in this regard I got instructions that by Thursday she will be ready to come and take off where she had left.

**ARBITRATOR, JUSTICE MOSENEKE:** Is this... when are we going to see the medical certificate?

**ADV LERATA MASHILANE:** I can make sure that the medical certificate reach  
20 your attention not later by the close of business today. But I will talk to my attorney. Maybe before. It is either on or before the close of business today.

**ARBITRATOR, JUSTICE MOSENEKE:** And what do you say we do in relation to your client's attendance?

**ADV LERATA MASHILANE:** As I have indicated earlier on, I don't have any objection if a warrant is issued and be stayed over until then. Since we have 5indicated that my client is happy to come and proceed with the...

**ARBITRATOR, JUSTICE MOSENEKE:** And why only on Thursday, do you know?

**ADV LERATA MASHILANE:** It is as per the recommendation of the doctor – that is what I can say.

**ARBITRATOR, JUSTICE MOSENEKE:** You have been instructed that it is the 10doctor's recommendation that Dr Manamela continue to testify only on Thursday.

**ADV LERATA MASHILANE:** My instruction is that not only on Thursday but on Thursday she will be here. We don't know how long she will be required to testify.

**ARBITRATOR, JUSTICE MOSENEKE:** You misunderstand my question. I am asking you, is it the doctor's – on your instructions, you may or may not know, but I 15want to know whether you had been instructed on whether she is indisposed until Thursday. In other words she can only testify on Thursday.

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

**ARBITRATOR, JUSTICE MOSENEKE:** Not today, not tomorrow, but Thursday.

**ADV LERATA MASHILANE:** Thursday, yes, that is my instructions.

20**ARBITRATOR, JUSTICE MOSENEKE:** And the doctor's letter is going to tell us so, on your instructions.

**ADV LERATA MASHILANE:** That is my instructions, Chief Justice. I don't know if ever there is anything that is required on her part and that is what I can say up to so far. As per the recommendation of the doctor, on Thursday.

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

5**ADV LERATA MASHILANE:** You are welcome.

**ARBITRATOR, JUSTICE MOSENEKE:** Adv. Hassim.

**ADV. ADILA HASSIM:** Justice Moseneke, we had hoped that in the time during which we agreed to stand down that we would have a medical certificate produced, rather than having to rely on evidence from the bar. So we have some difficulty with  
10that, but I don't think there is anything we can do to cure it, other than accept the undertaking of my colleague that it will be provided today. As far as the date of Thursday, we find ourselves in a strange position, because we are told there is medical opinion and we are not in a position to argue with that. If the witness is unable due to ill health to be able to testify, there is nothing that we can really do  
15about that, except ensure and seek to ensure that on the day on which she is certified to be available, that she will indeed be available. So the question then is, how do we ensure that that happens. And in my research in relation to your question, I have not been able to find a case which empowers an arbitrator to issue a warrant, every if it is to issue a warrant and stayed. The arbitrator doesn't have  
20the powers of the court, doesn't have the powers, doesn't have criminal jurisdiction. And if one has regard to the scheme of the Arbitration Act, which is what I think is foundational to how we run this arbitration and that is what should guide us, the

section 16, which deals with summons of witnesses, requires a party, it doesn't entitle an arbitrator to do so, it requires a party to the proceedings to approach a clerk of the court in order to have a subpoena issued. In the same regard, it would appear from section 16 subsection 4 of the Arbitration Act that again it lies in the 5hand of the parties to enforce that. I will say that the statute regards the failure of a witness to remain in attendance where the witness has not been excused... The Act regards it in a serious light and creates an offence in terms of section 22 of the Act, and specifically section 22 (1) (b) of the Act, which reads as follows: "Any person who, having so appeared, fails to remain in attendance until excused from further 10attendance by the arbitration tribunal, shall be guilty of an offence liable on conviction to a fine or imprisonment." But that only takes us so far, because it tells us that the Arbitration Act does confer a solemnity to these proceedings and that the failure of a witness to avail herself is an offence, is a criminal offence. What we do with it, would require us to then report it. So it will ...intervened.

15 **ARBITRATOR, JUSTICE MOSENEKE:** But that wording is exactly the same wording in the Criminal Procedure Act, isn't it? Go and look at the subpoena of witnesses in the Criminal Procedure Act, what wording is used there for failure to remain in attendance?

**ADV. ADILA HASSIM:** It similarly creates an offence. The question is whether 20what we do with that, but the question is whether the arbitrator is thereby empowered to issue a warrant.

**ARBITRATOR, JUSTICE MOSENEKE:** Well who excused a witness properly subpoenaed?

**ADV. ADILA HASSIM:** The Arbitrator does. And it is clear from 22 (1) (b) that the witness is to be excused by the arbitration tribunal.

**ARBITRATOR, JUSTICE MOSENEKE:** And if a witness is not excused by an arbitration tribunal, what are the consequences?

5**ADV. ADILA HASSIM:** I think my reading of the Act is that it then requires the party who has subpoenaed – we are also talking about a witness who was subpoenaed – is for the party who issued the subpoenaed to enforce it.

**ARBITRATOR, JUSTICE MOSENEKE:** You say tribunals never issue subpoenas. The Magistrates Court, the Prosecutor issues the subpoenas.

10**ADV. ADILA HASSIM:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** The party who would like certain evidence to be placed before the court, can't get cooperation, may also cause a subpoena to be issued. So the Act does nothing that is unusual. Parties, courts, don't issue subpoenas... tribunals don't issue subpoenas, parties do. Even the criminal system  
15or the civil system.

**ADV. ADILA HASSIM:** The difference ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** So my only question is to understand what are the consequences of not remaining in attendance once properly or lawfully subpoenaed and you appear before a tribunal, you are told it is an offence. So I am  
20saying to you, what is the wording of the Criminal Procedure Act, for instance on the same matter. And we can also go and look at the Civil Procedure Act and see what

is the wording for non-attendance of a witness. Does it come to the same language? It is important because it will help you understand what interpretation there has been up to now of failing to remain in attendance. What is open to the parties, alternatively what is open to the tribunal?

5 **ADV. ADILA HASSIM:** Justice, my understanding is that the further nuance is that what we... whatever the Criminal Procedure Act may say – and I will verify the wording – my understanding is that the court will have powers to issue a warrant. The question is whether an arbitrator under the Arbitration Act would have similar powers to a court in civil or criminal proceedings to do so. And that is based  
10 on ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Only vis-à-vis a subpoena, an arbitration tribunal does not have criminal powers in the same sense, it doesn't hear criminal trials, it does not have the power to be punitive in the sense of sentences. It is essentially a single dispute resolution method. The narrow question is, the  
15 (inaudible) powers in the Statute, how and by whom are they enforced?

**ADV. ADILA HASSIM:** Justice, this is what I am trying to get to. Because the scheme of the Act as I read it doesn't provide for coercive power for the arbitrator in these kind of circumstances. There are powers of the arbitrator and then there are powers of the court. So it also regulates the way in which this tribunal interacts with  
20 the court. For example in issues of service and discovery and other rules and it regulates the interaction between this tribunal and the courts. Which to me suggests that it is the court that would have the power to do anything as a result of the failure. Whatever we do now, it would have to be through a court. It (inaudible)



an offence, that's true, then it must be reported. There is also a question of practicality and the circumstances that happened here. We are dealing with circumstances in which there isn't an unexplained failure of a witness to appear. The witness is represented and has Counsel representing her. There is a reason 5that is given. We still believe that the basis is not laid properly evidentiary, for example through a medical certificate. But we accept the bona fides of this approach to the tribunal. So as a matter of practicality given that this witness is represented and has given a reason that is based on ill health, in other words not in her control, and the undertaking that we will receive a medical certificate. I submit 10that it would be required that the Counsel for the witness similarly provides an undertaking that she will be present at 9:30 am on Thursday and to do so as an officer of the court.

**ARBITRATOR, JUSTICE MOSENEKE:** Well if it doesn't happen, then what? I am talking about the law, not about practicality. I understand that may be a practical 15cause ultimately. We still might have to confront that issue. We might defer it maybe to Thursday and the other question is always whether undertaking of Counsel is binding on a witness and why is it? So come Thursday and we are here, we might have to argue the point again anyway. I don't see it going away. It may be a new point, it may be a point that has never been decided before. But there 20would probably be case law on section 22, is it the one with case law offence?

**ADV. ADILA HASSIM:** Yes, section 22 (1) (b).

**ARBITRATOR, JUSTICE MOSENEKE:** Yes. Is there any previous authority?

**ADV. ADILA HASSIM:** No. There is no case law on section 16 or 22 of the Arbitration Act.

**ARBITRATOR, JUSTICE MOSENEKE:** So it is (inaudible) novo, it may well be an entirely new matter, which always subject reviewable before the High Court, always. 5But it may be an entirely a new matter. I don't know what it means. Would you read the section again, section 22 (1) (b)?

**ADV. ADILA HASSIM:** 22 (1) (b) is: "Any person who having so"... sorry. Justice Moseneke, if you can excuse me just for 30 seconds?

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

10**ADV. ADILA HASSIM:** 22 (1) (b) is: "Any person who having so appeared", so (a) is... let me go through (a) and then (b). "Any person who, without good cause, fails to appear in answer to a summons to give evidence before an arbitration tribunal" or (b) "having so appeared, fails to remain in attendance until excused from further attendance by the arbitration tribunal, shall be guilty of an offence and liable on 15conviction to a fine not exceeding R100 or to imprisonment not exceeding three months."

**ARBITRATOR, JUSTICE MOSENEKE:** Shall we... our case is sub (1) (b) right?

**ADV. ADILA HASSIM:** It is sub (1) (b).

**ARBITRATOR, JUSTICE MOSENEKE:** So my simple question is, how do you 20enforce sub (1) (b)?

**ADV. ADILA HASSIM:** Well the only way I am aware of that one can enforce a provision like that in similar terms is through issuing of a warrant of arrest. And section 170 of the Criminal Procedure Act, which deals, you've asked me to have a look at, is in similar language of 22 (1) (b), in sense of creating an offence, that is section 170 subsection 1. But section 170 subsection 2 says: "The court may, if satisfied that an accused referred to" - in subsection 1 it refers to accused but later on section 188 makes this applicable to witnesses as well, so we can read accused in this provision as a witness – "has failed to appear at the place and on the date and at the time to which proceedings and questions were adjourned or has failed to remain in attendance at such proceedings as so adjourned, issue a warrant for his arrest and when he is brought before the court in a summary manner, enquire into his failure so to appear or so to remain in attendance." The same court may, unless the accused/witness satisfies the court as to the reason for not remaining in attendance, may convict the witness of an offence such as the one in section 22 (1) (b). Of course we are not there, we are just at the point of issuing a warrant. So that is the procedure that is followed in the ordinary course before the courts. There is a second thing, the Arbitration Act provides a broad parameters for a tribunal. It is also clear from the Arbitration Act that what determines the procedure, is also the terms of the agreement between the parties for the arbitration. And so were all of the parties before you to be in agreement as to how to resolve this conflict in a way that doesn't result in us coming back again and having, you know, having round 2 of the same argument, then I see no reason why you couldn't exercise the power to secure the attendance through a warrant. That might be another solution to the

problem, which is all the parties are in agreement. We have heard from the witness' own representative that they have no objection to you exercising that power. There is nothing in the Arbitration Act that says you do not have that power. It is simply silent and it has not been dealt with before by our courts, so we don't have any precedent to rely on. And in order to ensure fairness as a basic principle that guides this, I would suggest that if all the parties are in agreement, then we take whatever steps are necessary to ensure that we proceed on Thursday morning with the witness. I must add, Justice, the families that are here and that have been present throughout these proceedings, are themselves taking some strain from the non-attendance of this witness. And I don't want to fall foul of the rules by myself giving evidence from the bar, but I, in the interest of my clients, must say that it is causing some distress that they are being disrespected and that it is a sense of a repeat disrespect.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes that is what moves me and that is why I am wanting to resort to the law to make sure that we don't have abuse of process, that's precisely the point. That's why I am inviting argument before making or not making a decision, which is a prudent thing to do. You see, the Arbitration Act has a number of provisions starting with the agreement of the parties. And where the parties haven't agreed on certain things, the Act itself fills in the gaps. But probably the most important part of the Act is a requirement that the arbitration shall be conducted in accordance with the law, the valid law of the country. So the agreement draws the ambit of the arbitration process, but the Act also creates offences as you've pointed out. I am happy to know that if you wilfully insult me,

you are committing an offence, and a few other things. So actually the law tries to protect arbitration processes. And if not set aside in all respects they enjoy a possibility, so the question must be, if there is an offence created by section 22, which I have opened up and now I am looking at it, together with many other offences... If you refuse to answer fully and to the best of your knowledge and belief, any question lawfully put to you, even that is an offence. So you can compel a witness and say answer the question, like in any other proceedings.

**ADV. ADILA HASSIM:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** So it has been done to be a process that would arrive at, crafted by the parties, by agreement of the parties, at a time and place suitable to the parties and create rules that are binding on the parties, but within the broader structure of the precinct of the Arbitration Act, which then to help any other ADR from people that just walked away, (inaudible) doesn't have the same facilities.

**ADV. ADILA HASSIM:** Precisely.

**ARBITRATOR, JUSTICE MOSENEKE:** You clock when you want to and then you walk away if you don't want to anymore.

**ADV. ADILA HASSIM:** Precisely.

**ARBITRATOR, JUSTICE MOSENEKE:** This the law makes binding and creates a straitjacket that with teeth of a penalty. So my question is, a witness is obliged to remain in attendance, having appeared, does not... let's assume he is having a valid reason, how do you manage that, and if there is no valid reason, how do you

manage that? Here we are in the terrain of a valid reason possibly and that is the law I am trying to get my arms on.

**ADV. ADILA HASSIM:** I understand.

**ARBITRATOR, JUSTICE MOSENEKE:** Any further submissions you would like to make on that?

**ADV. ADILA HASSIM:** Perhaps ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** I wonder if the parties can agree to give coercive powers to an arbitrator which are otherwise not present in the Statute. I know there are many things that could be conferred by agreement, it is obvious. But I don't know whether a penalty in relation to an offence created in a Statute could be derived from the agreement of parties. It is a difficult proposition to...

**ADV. ADILA HASSIM:** You see, Justice, that is when the... so the Arbitration Act, as you said, the reason that the offences are created is to protect the integrity of these proceedings or else there would be no point to resort to arbitration and to protect the solemnity of this process. While it is by agreement between parties that we engage in this process, the process itself is governed by law and any award or ruling that you make is binding on the parties.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**ADV. ADILA HASSIM:** And that is akin to powers of court. But the Act does something else, it also regulates the interaction between the arbitration tribunal and the court, when do you need to go to court to do certain things and when can it be

done by an arbitrator. And that is why my earlier submission was that it is not apparent to me, and certainly with the absence of any guiding case law, that the power is conferred on an arbitrator, that coercive power, to issue a warrant of arrest. And so perhaps it is a conservative approach, but because the Act does more than 5just create the solemnity... the proceedings... but because it creates and distinguishes what may be done by a court and what may be done by an arbitrator...

**ARBITRATOR, JUSTICE MOSENEKE:** And also it is a method of protecting the parties, the penalties if there is offences there. you see if witnesses could stroll in 10and out an arbitration, parties have invested time, money, effort into producing an outcome and people come and go as they wish in a way that affects the reaching a speedy solution, all people come to an arbitration and spit and swear and shout, that is why it creates these offences ...intervened.

**ADV. ADILA HASSIM:** Yes.

15**ARBITRATOR, JUSTICE MOSENEKE:** You are right, to protect the integrity. The narrow thing we are at is, how do you protect that integrity? Is it anticipated that a tribunal will every time rush to another court and ask for, an offence has been committed, put this on the trial of the Magistrates Court, which means that the entire tribunal will have to stop until there has been prosecution, assuming it comes to 20that. All of those may be relevant considerations on how you construe the power.

**ADV. ADILA HASSIM:** Well what section 22 (1) (b) does not do is what the Criminal Procedure Act does.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, which is very helpful. It expresses clear and it relates the liberty of a person, so when it is expressly given, it is much more protected than when it is in fact...

**ADV. ADILA HASSIM:** Correct.

5**ARBITRATOR, JUSTICE MOSENEKE:** You don't take liberty by inference. Anyway, do you have any further submission? You have many colleagues who ...intervened.

**ADV. ADILA HASSIM:** Yes, they might be of assistance to me and to you.

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

10**ADV. ADILA HASSIM:** Those are my submissions.

**ARBITRATOR, JUSTICE MOSENEKE:** Thank you. Adv. Crouse.

**ADV. LILLA CROUSE:** Thank you, Justice Moseneke. Justice, we have thought about this issue. We can't address you in any manner that will be helpful more than what has already been said. We would want to suggest as was indicated by my  
15learned friend for Dr Manamela that you issue a warrant and hold it over until Friday, ag until Thursday, and that these issues be deferred until Thursday to give us sufficient time to apply our minds and then address you on the issue. Those are our submissions.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes. And the warrant would be in the form  
20prescribed where, in the Criminal Procedures Act or the Magistrates Act?



**ADV. LILLA CROUSE:** I suppose that should be, or in the High Court. It is the same issue.

**ARBITRATOR, JUSTICE MOSENEKE:** Or in the High Court.

**ADV. LILLA CROUSE:** Yes.

5**ARBITRATOR, JUSTICE MOSENEKE:** And you'd approach the Registrar and ask the Registrar to issue the warrant. I am just talking mechanics also.

**ADV. LILLA CROUSE:** I would submit if you order the subpoena at this stage but say that the execution thereof is still kept in abeyance until Thursday.

**ARBITRATOR, JUSTICE MOSENEKE:** You can issue a warrant and suspend it.

10**ADV. LILLA CROUSE:** Yes and on Thursday we can address you on the mechanics, which I suppose would be through the proper authority.

**ARBITRATOR, JUSTICE MOSENEKE:** If Dr Manamela comes on Thursday, we don't have to have the debate.

**ADV. LILLA CROUSE:** Absolutely.

15**ARBITRATOR, JUSTICE MOSENEKE:** If she doesn't come on Thursday, the debate will be, how do you operationalise the warrant.

**ADV. LILLA CROUSE:** That is our submission, yes.

**ARBITRATOR, JUSTICE MOSENEKE:** I hear you. That is helpful.

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

**ARBITRATOR, JUSTICE MOSENEKE:** And the interaction which Adv. Hassim was referring to between the Statute... I mean the arbitration tribunal and the court, it is always one where the court is approached to set something aside, which the tribunal might have done, or to make the tribunal's award an order of court. So usually it is a relationship where you either set aside something that i.e. an unlawful warrant or some such step that might be taken in a tribunal. But ordinarily you don't midstream run to the court, except for a few specified instances, help me, my witness doesn't come to the tribunal, it may be that you conceive the remedy to be inside the Statute, and if it is not authorised, somebody can go and find relief and that ordinarily would be by way of review before the High Court. But in any event, let's go to Adv. Groenewald.

**ADV. DIRK GROENEWALD:** Thank you Justice. Justice, we agree with our colleagues on the submissions made and the debate and discussions with Justice itself. I think one point that we would like to make, is the fact that at this point in time we do not have any evidence to suggest that the failure of Dr Manamela to attend the proceedings today, is justified. We haven't been produced with any medical certificate. And the one thing that we suggest and that we say, Dr Manamela should actually come here and explain her non-attendance. She is now saying that she has a medical certificate and she will produce that. There is a number of court cases that we have been able to peruse that suggest that the court – perhaps not arbitration proceedings per se – but the court is entitled to call upon that witness to appear before the magistrate to see whether or not the extent to which that individual is indeed ill. The long and the short of the argument being,

Justice, that a warrant of arrest needs to be issued. There is no attendance by Dr Manamela. There is evidence from the bar that she is ill. We haven't seen that. We are entitled to dispute that. We are entitled to dispute that the witness is not so ill so not to be able to attend these proceedings. So we submit that the warrant of arrest should be issued, whether or not she gives the commitment and the undertaking to appear at these proceedings on Thursday, we submit that so to ensure that these proceedings continue, it is in the interest of justice that these proceedings continue, it is in the interest of justice that these family members hear the evidence of Dr Manamela, and she is by law required to come and testify.

10 **ARBITRATOR, JUSTICE MOSENEKE:** In what form would the warrant be issues?

**ADV. DIRK GROENEWALD:** What form would the warrant be issued? We submit that similar proceedings be followed as my colleagues have debated with yourself, Justice, through the High Court if necessary. And I cannot see... we have the subpoena, the subpoena has been issued through the High Court. Her failure to appear here is not in compliance with the subpoena issued through the High Court. So we can't see why the warrant of arrest cannot also be issued through the High Court with, we submit, the support from Justice itself.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja. And you support the proposition that the warrant would be suspended pending occurrences on Thursday.

20 **ADV. DIRK GROENEWALD:** Justice, ja, that is a debate that... We do not mind that the warrant be suspended, we will agree to that, we will abide to that. In terms of the law, whether or not the warrant can be suspended that is another debate, but

the issue is more in respect of bail proceedings. But we will agree and we will abide if it is agreed.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes, it is execution.

**ADV. DIRK GROENEWALD:** Yes.

5**ARBITRATOR, JUSTICE MOSENEKE:** You can issue a warrant and direct that it may be executed only after a certain event has occurred, that happens all the time in the courts. If somebody comes on Monday and shows that indeed they were so ill that they could not even come to the court and produce a medical certificate, then the warrant gets set aside. So the warrant gets issued in perfect form, its execution 10is suspended pending a specified event, i.e. Thursday morning 9:30.

**ADV. DIRK GROENEWALD:** We will be contend with such proceedings, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Very well. Advocate Yina.

**ADV. NONTLANTLA YINA:** Thank you Justice. Justice, we also support the application to have the warrant of arrest issued and stayed over until Thursday in 15light of the submissions that were made by our learned friend, Adv. Mashilane. On the issue of form, our submission is also in line with what Adv. Groenewald has submitted that because the warrant was issued by the High Court, I mean the subpoena was issued in the High Court, it follows that the warrant also be issued in the High Court. We also submit that it will be, from the wording of the Act it will 20appear that it is the court that will have the authority to issue the warrant. And also the definition of the court is contained in the Act, in the Arbitration Act.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**ADV. NONTLANTLA YINA:** It excludes the arbitration.

**ARBITRATOR, JUSTICE MOSENEKE:** It is the arbitration tribunal that will order to be issued in other words, but the issue will be done ...intervened.

5**ADV. NONTLANTLA YINA:** In the High Courts, yes.

**ARBITRATOR, JUSTICE MOSENEKE:** By evidence leaders or any other member of a party through the ...intervened.

**ADV. NONTLANTLA YINA:** Through the Registrar of the High Court. I suppose in light of ...intervened.

10**ARBITRATOR, JUSTICE MOSENEKE:** Through the Registrar of the High Court.

**ADV. NONTLANTLA YINA:** In light of the fact that Section 27 calls the subpoena to be issued, maybe it would follow that they also apply for the warrant of arrest.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

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

15**ARBITRATOR, JUSTICE MOSENEKE:** Very well. Adv. Hutamo.

**ADV. TEBOGO HUTAMO:** Thank you Justice. Our submissions are twofold. Firstly we hold the view that the subpoena that has been issued against Dr Manamela is still valid in light of the explanation given, for as long as it will be perfected by the production of the medical report. And in that event, her  
20appearance on Thursday will still be in pursuance of that subpoena.

**ARBITRATOR, JUSTICE MOSENEKE:** Well, Counsel, what do you say to the distinction in section 22 of the Act? If you have a look at the wording, it deals with two different situations. The one is where somebody fails to appear, 22 (1) (a). And 22 (1) (b) is having so appeared, fails to remain in attendance.

5**ADV. TEBOGO HUTAMO:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** In law those are two separate jurisdiction acts ande.

**ADV. TEBOGO HUTAMO:** Justice, my reading of section 22 subsection (1) (b) will have to be understood in the context of the inability of the witness to give reasons of  
10the failure to be in attendance. If one reads that section in totality it says on conviction of that witness then the court will then either impose a fine or issue a sanction of imprisonment. So what will then happen, as a matter of course, is that the witness will then have to be given an opportunity to explain that inability, then the court will ...intervened.

15**ARBITRATOR, JUSTICE MOSENEKE:** Where do you read on conviction? We are still dealing with the interpretation of section 22, right?

**ADV. TEBOGO HUTAMO:** Yes. If I can just read section 22 (1) in totality.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**ADV. TEBOGO HUTAMO:** It says that: “Any person having so appeared, fails to  
20remain in attendance until excused from further attendance by the arbitration tribunal.” Then if you go to the paragraph after paragraph F, which is a continuation

of that subsection, it says that: “Shall be guilty of an offence and liable on conviction to a fine not exceeding R100 or to imprisonment for a period not exceeding three months.”

**ARBITRATOR, JUSTICE MOSENEKE:** No Counsel, let’s read the whole... Two deals with an entirely different thing. It is having made an affirmation and knowingly give false evidence, that is perjury provision: 22 (2) is perjury, 22 (1) (a) and (b), one failure to appear and two having appeared and failed to remain in attendance.

**ADV. TEBOGO HUTAMO:** I am reading section 22 subsection 1 subparagraph b together with the paragraph that starts with “shall be guilty”.

10 **ARBITRATOR, JUSTICE MOSENEKE:** And where is that paragraph “shall be guilty”?

**ADV. TEBOGO HUTAMO:** It is just below paragraph F.

**ARBITRATOR, JUSTICE MOSENEKE:** But then you are in subsection 2.

**ADV. TEBOGO HUTAMO:** No Justice.

15 **ARBITRATOR, JUSTICE MOSENEKE:** No? Okay, so let me read again. After F?

**ADV. TEBOGO HUTAMO:** Indeed.

**ARBITRATOR, JUSTICE MOSENEKE:** What is it numbered after F?

**ADV. TEBOGO HUTAMO:** It is not numbered ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Oh you mean “shall be found guilty of an offence and liable on conviction to a fine”, you mean that part.

**ADV. TEBOGO HUTAMO:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Which is part of F.

**ADV. TEBOGO HUTAMO:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** I see. I was looking below F. “Shall be  
5 guilty of an offence and liable on conviction to a fine not exceeding R100 or  
imprisonment for a period exceeding three months, provided that in connection with  
the interrogation of any such person or the production of such book, document or  
thing, the law related to privilege applicable to witnesses subpoenaed to give  
evidenced to produce any document or thing before a court of law shall apply.” So  
10 what part do you say should be read together? 22 (1) (b) together with the middle  
of F?

**ADV. TEBOGO HUTAMO:** Yes, like which states that if a person is found guilty for  
non-attendance, that person will then be liable and on conviction then the person  
will be liable to a fine or imprisonment. So what would ordinarily happen is that the  
15 witness will have to be convicted for having failed so to appear in line with section  
22 (1) (b).

**ARBITRATOR, JUSTICE MOSENEKE:** I don’t understand that, these are different  
offences. The offence in (a) is one, (b) is another, (c) is yet another. (A) is to fail to  
appear, (b) is to appear and fail to remain in attendance, (c) is refused to be sworn  
20 in or to affirm as a witness, (d) if you refuse to answer questions fully to the best of  
your knowledge, (e) is to fail to produce any book or document, (f) while wilfully  
insulted arbitrator or empire conducting the proceedings or wilfully interrupt the



proceedings or otherwise misbehave then you are guilty of an offence. So these are six separate offences, aren't they, or do I misunderstand something?

**ADV. TEBOGO HUTAMO:** Yes Justice. Subparagraphs (a) to (f) they are distinct offences.

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

**ADV. TEBOGO HUTAMO:** And my submission is in relation to offence referred to in subparagraph (b). Paragraph (b) which says that after having been in attendance then the witness fails to avail herself to the proceedings.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

10**ADV. TEBOGO HUTAMO:** So if you read the paragraph after the last offence after paragraph F, then what it anticipates is that, if the person is found guilty then there are consequences of such offence and the consequence will either be a fine or imprisonment. All that we want to submit is that, apart from our submission that the ...intervened.

15**ARBITRATOR, JUSTICE MOSENEKE:** You say that the penalty provision in (f) applies to all the offences.

**ADV. TEBOGO HUTAMO:** Not in F, the paragraph after (f).

**ARBITRATOR, JUSTICE MOSENEKE:** The paragraph after (f) is 2.

**ADV. TEBOGO HUTAMO:** No Justice. If Justice can look at the Statute, it lists 20paragraphs (a) to (f) as separate offences and all those paragraphs have to be read

in conjunction with the paragraph that starts with “shall be guilty”, that is what we submit. Paragraph (b) does not need to be read with paragraph (f).

**ARBITRATOR, JUSTICE MOSENEKE:** So you say “shall be guilty of an offence” refers to all the preceding offences.

5**ADV. TEBOGO HUTAMO:** Indeed so.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja, strange drafting. So you say what is in the belly of (f) actually creates an offence from (a) to (e).

**ADV. TEBOGO HUTAMO:** Not in (f), Justice, after (f). Justice should ignore paragraph (f) in the reading of the offence in paragraph (b).

10**ARBITRATOR, JUSTICE MOSENEKE:** Can I look at your Statute, does it look different from mine? Is yours also like that?

**ADV. ADILA HASSIM:** So our reading of section 22 (1) is that it creates several offences.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja, I am not inviting you to speak yet,  
15because there is somebody speaking already.

**MR. OBAKENG VAN DYK:** (Inaudible – mic not on).

**ARBITRATOR, JUSTICE MOSENEKE:** Ja but it is same as mine.

**MR. OBAKENG VAN DYK:** No, it is not. It is (f) and then there is a paragraph after (f).

**ARBITRATOR, JUSTICE MOSENEKE:** Oh I see. Well Counsel, can you ask your junior to... Obakeng. It might be a formatting thing by the computer. Look at that.

**ADV. TEBOGO HUTAMO:** Does the computer give by Obakeng like of any difference to what the Justice was relying on?

5**ARBITRATOR, JUSTICE MOSENEKE:** Yes, it is different from mine and that is why I am showing you mine. Can you see (f), after (f) shall be guilty of an offence continues ...intervened.

**ADV. TEBOGO HUTAMO:** Indeed so, yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Un-indented.

10**ADV. TEBOGO HUTAMO:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** So I was struggling with that.

**ADV. TEBOGO HUTAMO:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** But I do see, once indented it means shall be guilty of an offence and that relates to all the offences from (a) to (f).

15**ADV. TEBOGO HUTAMO:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** I agree with the submission, I understand. On my formatting you can see it is embedded in (f) itself.

**ADV. TEBOGO HUTAMO:** I have noted that, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** Okay thank you. Please proceed. I  
20understand that now. Thank you.

**ADV. TEBOGO HUTAMO:** So what we submit is that, apart from the submission which we have made relating to the validity of the subpoena, which has already been issued. Then it would be upon the party who has issued the subpoena, to approach court and apply for the warrant of arrest to be issued. And once the 5warrant of arrest has been issued, then that witness, who will be taken to have committed an offence... then once that person has appeared before court, then the court would then have to enquire into her failure to have appeared and where a finding will then have to be made to impose the sanction as anticipated in the act. Section 22... so what we say is that it is only in the event of a person having failed 10to appear before the tribunal that a party, in this instance who has issued the subpoena, will have to apply to court. And it is the court which is authorised in terms of the Arbitration Act to issue the subpoena, not the arbitrator. And if one ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** How do you apply to court?

15**ADV. TEBOGO HUTAMO:** If one reads section 16 which should be the starting point, it says that: A party shall cause a subpoena to be issued subject to the same conditions as if the reference were a civil action pending the court having jurisdiction. So like in that instance it says that the subpoena will have to be issues as if it was a pending action, a pending civil action and which authorises the court to 20issue such a subpoena. One would then have to consider what are the consequences of not complying with that subpoena and those are provided in terms of the law. And we say that the arbitrator or the Arbitration Act does not confer upon the arbitrator to issue a warrant. A warrant will have to be in accordance with

the law and then in accordance with the law, that warrant will then have to be issued out of court. And in this instance ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Issued out of court, I don't understand what you mean by that.

5**ADV. TEBOGO HUTAMO:** In this instance, the warrant will have to be issued by the High Court which has issued the subpoena.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja that we understand, but let's not collapse issue and the power to direct that as a warrant be issued. You understand the difference between... the issue is a formal thing that indeed it will have to be the  
10Registrar.

**ADV. TEBOGO HUTAMO:** Ja, well in fact our ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Like in all tribunals, any tribunals, the Registrar would issue the warrant. I am not sure what the argument is. How do you differ from your colleagues?

15**ADV. TEBOGO HUTAMO:** Well our concern is that how far is the warrant going to take us at this stage, when the submission that the failure is not wilful but is due to ill health and we have been informed that a report from the doctor will be provided.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja, but don't you collapse two issues? We don't know that. We have had evidence from the bar.

20**ADV. TEBOGO HUTAMO:** Well ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** So courts ordinarily protect their process by making sure that they secure attendance of a witness and that is done by means of a warrant if there is a default.

**ADV. TEBOGO HUTAMO:** Yes.

5**ARBITRATOR, JUSTICE MOSENEKE:** Now go and have a look at Arbitration Act section 22, go to section 16... I mean you've heard the argument from your colleagues, I don't know why ...intervened.

**ADV. TEBOGO HUTAMO:** Justice, in order to avoid prolonged argument, if Justice moves from the basis that the explanation given is not accepted, there is no proof,  
10then I cannot take the argument any further. I was arguing on the basis that there would be a medical report provided. So if that medical report is taken out of the picture and then we take it as failure to appear, then I cannot take the argument any further.

**ARBITRATOR, JUSTICE MOSENEKE:** Very well. Don't you agree it is failure to  
15appear and Counsel for the witness says to us the witness is unwell and we say we accept the bona fides of the statement, but we await evidence... it is just that simple. So there is no, you wouldn't press on me a finding that Dr Manamela is ill, would you, I don't know and I have not been given a medical certificate as yet. Prima facie a medical certificate would be an indication like that, right?

20**ADV. TEBOGO HUTAMO:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** So we have nothing but Counsel saying to us, and I accept what Counsel is saying. But if we are to preserve the integrity of

this process and to ensure attendance of the witness, the question is, what does the law require of us to do now. And I could not without more accept the evidence from the bar.

**ADV. TEBOGO HUTAMO:** Yes.

5**ARBITRATOR, JUSTICE MOSENEKE:** I accept the assurance and I await evidence.

**ADV. TEBOGO HUTAMO:** Well in that regard, Justice, we submit that as the Justice is making the point that what has been given from the bar is not accepted, then in that event there is no medical proof of the witness' inability, then in the  
10absence of proof we do accept that in those circumstances then the party would be entitled to approach court to have the warrant of arrest to be issued, which the normal consequence of an enquiry will then follow. My submission I take it was premised on the wrong assumption ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** I understand.

15**ADV. TEBOGO HUTAMO:** ...that the tribunal has accepted that the inability is due to ill health. So if that is disposed then the process to be followed is to approach court for a warrant.

**ARBITRATOR, JUSTICE MOSENEKE:** I understand. Thank you. Of course also the warrant route has been tendered by the Counsel of Dr Manamela himself. But  
20even so, thank you for your submission. Anything further?

**ADV. TEBOGO HUTAMO:** No further submissions, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** No further submissions, very well. Well you are making us work Advocate, here we are back. Do you have anything that you have to say? The law requires me to give you an opportunity to reply.

**ADV LERATA MASHILANE:** Thanks Justice Moseneke.

5**ARBITRATOR, JUSTICE MOSENEKE:** When are we going to see this medical certificate?

**ADV LERATA MASHILANE:** I have given an undertaking that before close of business hours it would have had been sent.

**ARBITRATOR, JUSTICE MOSENEKE:** Business hours today?

10**ADV LERATA MASHILANE:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** You don't need a messenger on a horseback. These days an email does it in seconds.

**ADV LERATA MASHILANE:** Yes. In fact we do have the email address of Mr. Van Dyk.

15**ARBITRATOR, JUSTICE MOSENEKE:** Oh the attorney... Mr. Van Dyk?

**ADV LERATA MASHILANE:** Obakeng.

**ARBITRATOR, JUSTICE MOSENEKE:** Oh Mr. Van Dyk, okay, who works in my office, okay, Obakeng.

**ADV LERATA MASHILANE:** Yes. So I seem to, I actually agree with the  
20interpretation of Adv. Hutamo that wherein a party has issued a subpoena against



my client, will have to actually go back to the High Court to get that particular warrant to be authorised. So I think that is in order and I don't want to make further submission. The reason being that it will be only the court that will have powers, if ever it has to find that my client had wilfully decided not to attend and only the court can sentence. On that basis that is in order. No further submission with regards to that.

**ARBITRATOR, JUSTICE MOSENEKE:** Very well. Where should the subpoena be served? I mean where should the warrant... the warrant was withheld... I am sorry, I asked the wrong question. You urged me to accept your undertaking that Dr Manamela will be here on Thursday, right?

**ADV LERATA MASHILANE:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** Very well. And therefore besides issuing the warrant for her arrest and suspending it, we don't have to do anything, the parties don't have to do anything, she will be here on Thursday morning.

15 **ADV LERATA MASHILANE:** Yes, as per my instructions.

**ARBITRATOR, JUSTICE MOSENEKE:** And she knows as fact that she will be well then and she will be here Thursday morning.

**ADV LERATA MASHILANE:** What I can say as per the recommendations of the doctor is that she will be here on Thursday so to say.

20 **ARBITRATOR, JUSTICE MOSENEKE:** What date will that be?

**ADV LERATA MASHILANE:** 23<sup>rd</sup>.

**ARBITRATOR, JUSTICE MOSENEKE:** Of which month?

**ADV LERATA MASHILANE:** Of November 2017. And the warrant can be sent to my attorney.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja, if ever it has to be executed. As things are, she will be here so the warrant won't have to be executed, because we will hear her out, right. Very well. Any further submissions from any of the Counsel? No. Clearly Section 27 will take all the steps which are necessary to have the warrant issued, which will be withheld, in other words will not be given to an officer to execute, because we have an undertaking that Dr Manamela will be here on Thursday 23<sup>rd</sup> of November 2017 at 9:30 am. Is that in order?

**ADV. ADILA HASSIM:** As Justice pleases.

**ARBITRATOR, JUSTICE MOSENEKE:** Okay, very well. You are excused, Counsel.

**ADV LERATA MASHILANE:** Thank you very much, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** We will see the void you have created, how to fill it up, because it is... I don't say much will wait until your client is here, but many-many people who are here, who are grieving and would like to find closure and they will best find it by hearing witnesses tell them what happened. So we hope and look forward to the time when we will see Dr Manamela again and listen to her. Thank you.

**ADV LERATA MASHILANE:** Thank you very much.

**ARBITRATOR, JUSTICE MOSENEKE:** Do we have any possibility of witnesses that we can proceed with, in the light of the circumstances that we find ourselves in?

**ADV. LILLA CROUSE:** Justice, from our side, our witnesses which we intended to call tomorrow are here. They feel that they are not appropriately dressed, if the court will excuse them for that, then we can proceed.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**ADV. LILLA CROUSE:** And the first witness will be Mr. Peterson, Mau Andrew Peterson.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

10 **ADV. LILLA CROUSE:** His affidavit is already before this arbitration as ELAH66.

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

**ADV. LILLA CROUSE:** And he will take the oath.

**ARBITRATOR, JUSTICE MOSENEKE:** Did you say 56, Counsel, five-six?

**ADV. LILLA CROUSE:** Sorry, Justice Moseneke, six-six.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Six-six. Thank you. Do we know who is in charge of the air conditioners? Obakeng, we should try and attend to that and get them working. During the break we should just get them cooler than that please, can we? I want you to leave them on, it is very hot, just make them cooler, colder. Thank you. You may proceed, Counsel.

20 **ADV. LILLA CROUSE:** The witness will take the oath, Justice Moseneke.

**ARBITRATOR, JUSTICE MOSENEKE:** Oh, indeed. Mr. Peterson, will you please put your full names on record?

**MR. ANDREW PETERSON:** Thank you Justice. My name is Mau Andrew Peterson.

5**ARBITRATOR, JUSTICE MOSENEKE:** Thank you, Mr. Peterson. Do you swear that the evidence you are about to give will be the truth and nothing but the truth? If so, please raise your right hand and say so help me God.

**MR. ANDREW PETERSON:** So help me God.

**ARBITRATOR, JUSTICE MOSENEKE:** Counsel.

10**ADV. LILLA CROUSE:** Thank you Justice Moseneke. Mr. Peterson, we are going to lead you on your involvement in three aspects. The first is with your family member who is a mental patient, a mental health care user. We are going to lead you in respect of the family committee and your involvement therein. We are also going to lead you in your latter role as in the mental health review board. You  
15understand it that way.

**MR. ANDREW PETERSON:** I do understand, Counsel.

**ADV. LILLA CROUSE:** Where are you residing?

**MR. ANDREW PETERSON:** I reside in Midrand, 1231 Boxford (?) Street.

**ADV. LILLA CROUSE:** Now if we can start with the mental health care user who is  
20your family, who is that?

**MR. ANDREW PETERSON:** The name is Victor Truter.

**ADV. LILLA CROUSE:** And how is he related to you?

**MR. ANDREW PETERSON:** He is my uncle by virtue of being my late mother's brother.

**ADV. LILLA CROUSE:** And tell the court for how long have you known him.

5**MR. ANDREW PETERSON:** I knew my uncle since I was 6 or 7 years old. I have known him all my life, let me put it that way.

**ADV. LILLA CROUSE:** Can you explain that? Did you grow up in the same house? How did it happen?

**MR. ANDREW PETERSON:** Yes, Counsel. I was brought up by my late  
10grandmother, because my father was a political refugee and my mother became a self-imposed refugee to Lesotho and so my grandmother had to take over when I was about a year old. And so I grew up with my grandmother in Alexandra Township. And in that environment, as I grew up, I came to the realisation that I had a sick uncle. And in my childhood understanding I thought that one get sick  
15and then you get well when you take medicine. But I eventually realised that this man is not getting well, he is just getting sick.

**ADV. LILLA CROUSE:** Okay, can you tell the court now, as an adult, what do you know is wrong with your uncle, Mr. Truter?

**MR. ANDREW PETERSON:** Well I know now that he has got chronic  
20Schizophrenia that comes with Hypertension as well.

**ADV. LILLA CROUSE:** Hypertension and?

**MR. ANDREW PETERSON:** Chronic Schizophrenia, Counsel, which is more the manic type, which means he tends to be very hyperactive, he runs around a lot. In fact in the township we were known for two things: for my grandmother's Christianity and good deeds to strangers, as well as my uncle's random running around the township. So we were sort of almost stigmatised already at that stage.

**ARBITRATOR, JUSTICE MOSENEKE:** I might have missed it, but I couldn't pick up how old is your uncle now.

**MR. ANDREW PETERSON:** My uncle ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** (Inaudible) of what age at person he was?

10**MR. ANDREW PETERSON:** Justice he was born in 1948 on the 27<sup>th</sup> of April. If my mathematics has not let me down under the stress that I am under, then he should be turning 70 next year. We are planning to celebrate him. So he is 69 years old now.

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

15**ADV. LILLA CROUSE:** Your uncle, Mr. Truter, did he stay with you in the house when you were small?

**MR. ANDREW PETERSON:** My uncle, Oomie as we fondly called him, stayed with us in the house, but most of the time he would run around and most of the time my grandmother and I either took him to somebody to pray over him or to the doctors or  
20the hospitals and so on. He suffered from cerebral spinal meningitis as a child. I don't know how old he was, but then because of the status of medicine at that time,

he wasn't timeously treated. And being in the township and of a black stock, he was neglected and so it turned into chronic schizophrenia.

**ADV. LILLA CROUSE:** Eventually in 1967 he was admitted in Life Esidimeni Benoni. Is that right?

5**MR. ANDREW PETERSON:** That is true, Counsel.

**ADV. LILLA CROUSE:** And thereafter he was referred to Waverly.

**MR. ANDREW PETERSON:** He was referred to Waverly in 19... Yes, to Waverly.

**ADV. LILLA CROUSE:** In 1975 according to your affidavit.

**MR. ANDREW PETERSON:** 1975, yes.

10**ADV. LILLA CROUSE:** And has he been there since, until the Mental Health Marathon Project?

**MR. ANDREW PETERSON:** Yes Counsel, he was there, and we saw a steady improvement in his condition. He became very-very stable, so much so, Counsel, that 10 years after my grandmother died, who died in 1994, one day I went with a  
15newspaper to visit him and he asked if he could read the newspaper. And I was quite impressed when he sat there, I still have a picture of him sitting there reading the newspaper. He is quite stabilised. His over activity had calmed down and he was beginning to orientate to time and space quite well, although he was still sick and needing care.

20**ADV. LILLA CROUSE:** And overall what happened at Waverly, how did you feel about the treatment that he was receiving there?

**MR. ANDREW PETERSON:** We were very happy, Counsel, with the treatment he received there, because he had such good improvement. We had our issues here and there with Waverly, they were by no means perfect, but I would say we were 99.9% happy with the treatment, with the environment and with his improvement over the years.

**ADV. LILLA CROUSE:** You regard yourself as the person that must care for him. Why is that?

**MR. ANDREW PETERSON:** Well Counsel, I cherish my childhood memories of my grandmother enforcing on us, not enforcing but demonstrating love and care for strangers even, in other people. But also she taught us to love him. I regularly went with my grandmother to visit him in Benoni. And also I cherished the memories of us as a family coming together with all my uncles who were staying outside of Gauteng, in the Free State and so on, coming together. So it was family reunion and we would go and visit oomie and we would have wonderful times with oomie and we even had a braai there. So for me it almost became a culture and I looked forward to it as I grew up to go and look for him. But also my grandmother, Counsel, left a letter... before she died she wrote three letters to the family when she was about 70 years old. And those letters were quite in-depth in terms of instructions and what we need to do and how we need to behave as Petersons, as Truter's and so on. And also she stipulated there that we should always take care of oomie and that we should never forget about him. And she specifically said: Maukie, jy moet after oomie kyk. If I may use Afrikaans from time to time.

**ARBITRATOR, JUSTICE MOSENEKE:** Of course.



**ADV. LILLA CROUSE:** So the instruction was that you had to look after him, you understood your grandmother that way.

**MR. ANDREW PETERSON:** That is how I understood my grandmother, Counsel.

**ADV. LILLA CROUSE:** Okay. Now if we can jump to December 2015 at the annual  
5Christmas Party at Waverly, can you explain to us what happened there?

**MR. ANDREW PETERSON:** Well, Counsel, when we arrived there, we were under  
the impression that we were going for the normal Christmas Party and we took  
some meat, because we were going to have a braai and we took some braai coal  
and other things and food for oomie. It was myself, my cousin and my aunt, who is  
10younger sister, sorry his older sister. And when we got there, there was a huge  
commotion and there were forms flying around and somebody was on a loud  
speaker saying something. And later on I realised that this person is saying  
something about this centre is closing. And so that is what immediately confronted  
me, Counsel. And eventually we were told by one of the managers there, Mr. Paul  
15Mokoena by name.

**ADV. LILLA CROUSE:** Can you spell that?

**MR. ANDREW PETERSON:** Mr. Mokoena? M O K... actually wrote it down here,  
let me just check. Mr. Mokoena is M O K O E N A. And also by Me. Buthelezi. But  
actually mainly Mr. Mokoena was on a loud speaker to say please sign the forms,  
20take the forms, fill the forms in and this centre will close in March. It became quite  
clear to us that the centre was closing, but there was no indication as to what was  
going to happen with all the patients.

**ADV. LILLA CROUSE:** What was going through your mind at that time?

**MR. ANDREW PETERSON:** I was... I mean we came in high spirited for a braai and all of a sudden the joy and all that was turned into pain, immediate pain and disappointment.

5**ADV. LILLA CROUSE:** And what forms were being referred to?

**MR. ANDREW PETERSON:** Well these were forms, apparently they wanted information and detail about families, because they wanted to know if some families could take their patients home. So this was basically an information form about the patient and the conditions of the family.

10**ADV. LILLA CROUSE:** Did you feel any pressure to take your uncle home?

**MR. ANDREW PETERSON:** Yes, I did actually. I must say... the way in which it was conducted, you know, the forms were almost chuffed into people's hands and the statement was category. And in fact Mr. Mokoena is a fantastic man, but he made it quite clear that I think you should take your family home, if you can,  
15because they had no clue what Government or where Government was intending to take these people.

**ADV. LILLA CROUSE:** What did you do with your form?

**MR. ANDREW PETERSON:** From what I can remember, Counsel, very vaguely, I think I destroyed it on the spot. I actually apprehended the mic, well I took the mic  
20nicely, from Mr. Mokoena and addressed the crowd and there was a couple of other

family members who supported me, who later became family representatives as well.

**ADV. LILLA CROUSE:** Why did you feel compelled to get hold of the loud hailer?

**MR. ANDREW PETERSON:** Well I was also angry, Counsel, I was not just disappointed, I was angry at this inhumane way of being informed of such an important event. I mean my uncle had been there for 40 years in 2015, if you do the sums, and he had been okay. So it was like they were trying to fix something that is fine, you know, you don't fix it until it is broken. And you don't do it that way. You know at least we would have expected they would have told us before we got there for the party.

**ADV. LILLA CROUSE:** What did you say to the crowd?

**MR. ANDREW PETERSON:** Well I asked the people to gather together and to oppose this apparent close and in fact to find out if we can get more information about where exactly our family members would be going and why it has to be in March. I mean the first thing that occurred to me was that March was just around the corner.

**ADV. LILLA CROUSE:** Was that the start of the family committee?

**MR. ANDREW PETERSON:** That for us was the start of the family representatives, yes, which eventually became the family committee.

**ADV. LILLA CROUSE:** Now we are going to deal with this just a little bit later, I just want to finish with your uncle. Eventually he was moved.

**MR. ANDREW PETERSON:** Yes Counsel.

**ADV. LILLA CROUSE:** Do you know when that was?

**MR. ANDREW PETERSON:** He was moved on the 30<sup>th</sup> of May 2016.

**ADV. LILLA CROUSE:** And were you at this Waverly Centre on the 30<sup>th</sup> of June, 5ag 30<sup>th</sup> of May, sorry?

**MR. ANDREW PETERSON:** Yes, I was Counsel, because I got a call a day before to say my uncle will be moved. But let me just mention that two days before that, in fact, I had organised with one of our pastors who is working with me at the Methodist church to visit my uncle with my aunt, because my aunt doesn't have 10transport, but pastor does. So the pastor collected my aunt as well as a friend in Rabiridge (?), who has also got a family member at Waverly. So they went for a normal visit and then they were told that my uncle wasn't there because he had gone for an operation, we didn't know about this. But then the day before the move, I got a call to say that the centre will be, sorry, my uncle will be moved.

15**ADV. LILLA CROUSE:** So you went to Waverly, did you go alone?

**MR. ANDREW PETERSON:** No, I went with my cousin.

**ADV. LILLA CROUSE:** What is his name?

**MR. ANDREW PETERSON:** Shrei Nolan.

**ADV. LILLA CROUSE:** What did you find when you got there?

20**MR. ANDREW PETERSON:** Well we found patients being moved, we found patients all over, some were standing in the son and we found what looked like

chaos. People moving around backwards and forwards, some patients being taken to cars and so on. There seem to me to have been no order there.

**ADV. LILLA CROUSE:** How many patients did you see standing around there?

**MR. ANDREW PETERSON:** Counsel, if my memory serves me well I would say, 5and I would estimate it about 50 or so.

**ADV. LILLA CROUSE:** Five-zero?

**MR. ANDREW PETERSON:** Five-zero.

**ADV. LILLA CROUSE:** And you say some of them stood in the son, were they all mobile?

10**MR. ANDREW PETERSON:** Some of them were not mobile, that broke my heart actually, Counsel, because we just actually jumped the stage where I was involved with the Department and engaged ...intervened.

**ADV. LILLA CROUSE:** We'll come back to that. Let's just finish your uncle.

**MR. ANDREW PETERSON:** Yes, but I was upset because some of the patients 15were standing there, some of them were in wheelchairs and some of them looked quite strained. And there was no indication of food, there was no indication of any doctors that I could see and it looked chaotic.

**ADV. LILLA CROUSE:** Any water?

**MR. ANDREW PETERSON:** There wasn't any water that I saw in the vicinity. And 20what saddened me more was that there was apparently an entrepreneur, an acquaintance I would say of my cousin, and he had come there and he said he had

heard that there was a business opportunity, an opportunity to get some people, you know and that really upset me and I said what do you mean get some people... you know these are people, these are not objects that you come and take and commodities and you go and put them on the market or something like that. That 5got me very upset, Counsel.

**ADV. LILLA CROUSE:** Did the patients have any belongings with them?

**MR. ANDREW PETERSON:** Some... sorry I am getting upset.

**ADV. LILLA CROUSE:** Take your time, we've got a lot of time.

**MR. ANDREW PETERSON:** Sorry Counsel. Some of the patients had their 10belongings with them, yes, but not all of them.

**ADV. LILLA CROUSE:** In what manner?

**MR. ANDREW PETERSON:** I think they were in bags, Counsel, if I remember well.

**ADV. LILLA CROUSE:** Black bags?

**MR. ANDREW PETERSON:** Black bags, yes.

15**ARBITRATOR, JUSTICE MOSENEKE:** Lots of belongings?

**MR. ANDREW PETERSON:** Well some had lots and some had little.

**ARBITRATOR, JUSTICE MOSENEKE:** But ...intervened.

**MR. ANDREW PETERSON:** My uncle had lost, he always loses his stuff, but he had some belongings with him.

20**ARBITRATOR, JUSTICE MOSENEKE:** But only enough to fit into a bag, isn't it?

**MR. ANDREW PETERSON:** I think it was only enough to fit into a bag, Justice.

**ADV. LILLA CROUSE:** Did you speak to any of the patients?

**MR. ANDREW PETERSON:** Yes, in fact I did. Actually I ended up lending a hand. I mean I found myself carrying patient files, you know, because this lady almost  
5dropped some files and I helped her pick them up and I said can I help you and she  
said yes, put them there next to the bus driver, put them there. but there was a  
gentleman there who really saddened me quite a bit and every time I think about  
him I get quite angry, because he was a bit disabled, he was limping a bit, and he  
was a white gentleman and he said sir, do you know where we are going and I said  
10no I don't and he said gosh where are they taking us, you know. And I didn't have  
answers for him. I didn't even know where they were going to take my uncle at that  
stage.

**ADV. LILLA CROUSE:** For how long did this process continue?

**MR. ANDREW PETERSON:** Counsel, I have to admit that my cousin was a bit  
15under pressure because he is running also his own little business that he is trying to  
get up and running, so he was under pressure and I didn't have my own transport, I  
would have loved to stay there longer. But it went for about three hours or so that  
we were there that this commotion circus was going on.

**ADV. LILLA CROUSE:** Three hours in the morning, afternoon?

20**MR. ANDREW PETERSON:** This was from sort of late morning to early  
afternoonish. If my memory recalls well, some of the transport was leaving and

there were busses, there were many busses, I saw also some vans there that ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** With patients in them?

**MR. ANDREW PETERSON:** With patients in them, yes, Justice.

5**ADV. LILLA CROUSE:** When you left, was your uncle still left behind or had he gone?

**MR. ANDREW PETERSON:** No, my uncle insisted that we should wait until my uncle leaves. We actually cleaned him up and we dressed new clothes that we had brought with him. And so when his bus started moving, in the commotion we forgot  
10to ask the driver where he was going. So when it had gone I still stayed over, but yes, I stayed over quite a while.

**ADV. LILLA CROUSE:** Did you try to get information from people around there where your uncle was going?

**MR. ANDREW PETERSON:** Counsel, I didn't really, from memory I can't  
15remember asking anyone and even now I can't figure out why I didn't actually asked that. But I think I also assumed that some of the things would be done by my cousin, because he was busy also talking to the drivers at one stage and I assumed he knew where it was.

**ARBITRATOR, JUSTICE MOSENEKE:** Could your uncle walk on his own?

20**MR. ANDREW PETERSON:** Yes Justice, but because of the operation he had a couple of days ago, he was limping.



**ARBITRATOR, JUSTICE MOSENEKE:** Did he get onto the bus himself?

**MR. ANDREW PETERSON:** I assisted him as well as other patients to get onto the bus. I must say I was unhappy because the busses were quite squeezed. They really packed the patients tightly and I complained about that and I said look this is not fair, and a rather bit of (inaudible) a nurse, I can't remember, a nurse or something and she said please sir you are obstructing our work here, we are trying to work to get the patients out of the way. I can't remember how I responded to that.

**ADV. LILLA CROUSE:** Now how did you find out where your uncle was taken?

10**MR. ANDREW PETERSON:** Counsel, as I said at that point I was already engaging with the Department and I actually even visited some of the sites and I know we will come back to that. But uh... sorry, Counsel, the question again?

**ADV. LILLA CROUSE:** How did you find out where Mr. Truter was taken?

**MR. ANDREW PETERSON:** I never really knew where he was taken at that stage  
15or even later on. Because I had a meeting with the Department and I asked them where my uncle was taken to and they didn't seem to have a clue. I also called Waverly directly but didn't somehow get that information out of them.

**ADV. LILLA CROUSE:** Was there any answer at the telephones at Waverly?

**MR. ANDREW PETERSON:** There wasn't any answer at some stage. I think at  
20some stage there wasn't any answer. Initially there was, no answer but a ring, but I think later on there wasn't even a ring going on.

**ADV. LILLA CROUSE:** So what did you do?

**MR. ANDREW PETERSON:** Because I was already talking to Mr. Moseneke, Mr. Mosenogi, sorry, and other people.

**ARBITRATOR, JUSTICE MOSENEKE:** Sjoe. I had warned that that is a kind of error that we shouldn't make.

**MR. ANDREW PETERSON:** I greatly apologise, Justice, please see my apology. Mosenego.

**ADV. LILLA CROUSE:** Mosenogi.

**MR. ANDREW PETERSON:** Mosenogi, yes. Mr. Mosenogi and also Dr Manamela. I have been talking to them, I have been engaging with them. So I actually tried to find out from them. They couldn't give me a clear answer. They said he was either at Sterkfontein or Baneng.

**ADV. LILLA CROUSE:** Did you go to Sterkfontein and Baneng, did you contact them?

15 **MR. ANDREW PETERSON:** I didn't go myself to... my cousin went but I didn't go. I contacted them several times but we just couldn't get hold of my uncle.

**ADV. LILLA CROUSE:** Was he at Baneng or Sterkfontein?

**MR. ANDREW PETERSON:** Later on I was told that he was at Baneng, but it is still not sure whether he was at Baneng or Sterkfontein or some other place.

20 **ADV. LILLA CROUSE:** For how long was your uncle missing?

**MR. ANDREW PETERSON:** Approximately two months.

**ADV. LILLA CROUSE:** And where did you find him?

**MR. ANDREW PETERSON:** Eventually I was told by somebody at the project team that I should look for him at Mosego and the argument was that they probably had taken him to Mosego because that was quite close to Midrand where I resigned. And so that is how I got to know where he was.

**ADV. LILLA CROUSE:** Did you go to Mosego?

**MR. ANDREW PETERSON:** Yes, Counsel, I did go to Mosego.

**ADV. LILLA CROUSE:** And what did you find there, was he there?

10**MR. ANDREW PETERSON:** He was there indeed, Counsel.

**ADV. LILLA CROUSE:** Now it was two months after you had last seen him. Did he still look the same as he looked at Waverly?

**MR. ANDREW PETERSON:** No, Counsel, he didn't look the same.

**ADV. LILLA CROUSE:** What was different?

15**MR. ANDREW PETERSON:** He lost a lot of weight. He was totally (inaudible). We have a culture of hugging my uncle, we would give him a hug. And I gave him a hug and my heart just sank because what I touched was just skin and bone. And he was dark, I mean he is a fair skinned person and he was very dark and he was obviously very dry.

20**ADV. LILLA CROUSE:** He was?

**MR. ANDREW PETERSON:** He was obviously very thirsty and hungry and he was in pain, Counsel. He was in pain and I said to him in Afrikaans, oomie wat makeer jou and he said my been is seer. I still thought it was his operations.

**ARBITRATOR, JUSTICE MOSENEKE:** He said my wat is seer, my rug?

5**MR. ANDREW PETERSON:** He said my thighs.

**ARBITRATOR, JUSTICE MOSENEKE:** Oh my been is seer.

**MR. ANDREW PETERSON:** My been is seer, ja.

**ADV. LILLA CROUSE:** And did you look at that?

10**MR. ANDREW PETERSON:** I didn't quite, Counsel, I didn't check it. I asked the caregiver who was there, who was around there, I asked what is this, my uncle, is it the operation or why is he in such pain and she said no in fact he has a boil, an untreated boil.

**ADV. LILLA CROUSE:** And did that go septic?

**MR. ANDREW PETERSON:** My cousin checked, he was brave enough to check.

15**ADV. LILLA CROUSE:** You didn't have the stomach to check.

**MR. ANDREW PETERSON:** I didn't have the stomach to check. I love, you know, we both love oomie a lot and it was just going to get me very angry. But he checked and he said hy lyk nie mooi nie, hy lyk regtig nie mooi nie.

**ADV. LILLA CROUSE:** It didn't look well.

20**MR. ANDREW PETERSON:** It didn't look well, ja.

**ADV. LILLA CROUSE:** Was he clean?

**MR. ANDREW PETERSON:** He wasn't clean, he was very dirty, he was scruffy. It looked like he was in some sand situation or something.

**ADV. LILLA CROUSE:** Why do you say that?

5**MR. ANDREW PETERSON:** Well because he was, as we say in Afrikaans, hy was asvaal. You know he looked like, he had a sandy look, but you could see his skin was dark, it was not his normal skin.

**ADV. LILLA CROUSE:** Tell us about his hair.

**MR. ANDREW PETERSON:** His hair was unkempt, Counsel.

10**ADV. LILLA CROUSE:** Was there sand in his hair?

**MR. ANDREW PETERSON:** There was sand in his hair, ja. I remember brushing the sand out of his hair and saying, oomie what did you do, wat het jy nou gedoen and he said nee niks nie and I brushed him off like that. But I mean he was just in pain.

15**ADV. LILLA CROUSE:** And how was he smelling?

**MR. ANDREW PETERSON:** He smelled very badly, Counsel.

**ADV. LILLA CROUSE:** Why do you say that?

**MR. ANDREW PETERSON:** Because, as I say I gave him a hug and we were close to him, we could smell that he hasn't had a bath for ages. And I asked the  
20caregiver, I said why are they so dirty, why is he in so much pain. And the caregiver

at that stage, and I said to her he looks very sick and she said you can't blame him, we haven't given the medication for quite a while, that is what she said.

**ADV. LILLA CROUSE:** Does he need medication?

**MR. ANDREW PETERSON:** Yes, he does need medication, Counsel.

5**ADV. LILLA CROUSE:** And the bathing, why did that not take place, do you know?

**MR. ANDREW PETERSON:** I have no clue, Counsel, because when we went as part of the team, the family committee, family representatives, to Mosego, they showed us some ablution facilities and they seemed to have showers there. But I think it is just indicative of this whole project. It was full of neglect, not caring, same  
10as we saw today, people not caring, people not turning up, disrespecting the judge and the system and justice as a whole.

**ADV. LILLA CROUSE:** Could you see any activities going on there at Mosego?

**MR. ANDREW PETERSON:** Activities, can you please explain, Counsel?

**ADV. LILLA CROUSE:** Were the patients engaged in any activities there?

15**MR. ANDREW PETERSON:** No. In fact, Counsel, that was one of the issues we raised with Mosego, one of our gripes was that there is not much space for activities there. So I didn't see any patients, in fact I have got pictures of patients simply hanging around in the sun. And there were three other patients that came to ask for food, because my uncle was extremely hungry and we needed to get him food  
20immediately.

**ADV. LILLA CROUSE:** Let us just stop there. Before you went there, did you buy some food for him?

**MR. ANDREW PETERSON:** Yes, we did actually.

**ADV. LILLA CROUSE:** And did you buy a lot of food or little food?

5**MR. ANDREW PETERSON:** No, Counsel. We didn't buy a lot of food, Justice, because my uncle had now come to a point where we knew that he doesn't eat a lot. He used to have a very well appetite but overtime and with him getting better, he didn't have such a big appetite.

**ADV. LILLA CROUSE:** Where is Mosego?

10**MR. ANDREW PETERSON:** Mosego is in Krugersdorp.

**ARBITRATOR, JUSTICE MOSENEKE:** Geographically. In Krugersdorp?

**MR. ANDREW PETERSON:** In Krugersdorp, ja, Ockerse Street, 25 Ockerse Street in Krugersdorp.

**ARBITRATOR, JUSTICE MOSENEKE:** Was it a home, a hall, a school, what was  
15it?

**MR. ANDREW PETERSON:** It is an urban environment, Justice, which was converted, houses which somebody rented out in order to use for this purpose.

**ARBITRATOR, JUSTICE MOSENEKE:** Ja.

**ADV. LILLA CROUSE:** You took some food to him and what happened?

**MR. ANDREW PETERSON:** Well we only took two pieces of chicken and we also took something to drink and some rolls. But to my surprise he was so hungry, he just finished all that food. He almost ate the paper with the food. I had to stop him and say, oomie wag. He wanted to eat the paper as well. I looked at my cousin  
5and my cousin looked at me and he said I thought you were talking to these people and I said we tried to stop them from bringing the people out here. You know guilt started coming in and all sorts of things. we had to go back and get him some more food so that he could eat and then we bought some food, there were two or three other patients as well asking for food, but they were promptly pushed away by the  
10caregiver who was there. And when I brought the food back, I said please can you bring those other patients, because they look very sick and very hungry and I gave her the food and she said never mind, I'll pass the food on to them.

**ADV. LILLA CROUSE:** Okay we will deal with Mosego just now. Did you visit your uncle after that again?

15**MR. ANDREW PETERSON:** Yes Counsel. I visited my uncle two weeks after that again. I also stayed in telephonic contact with Mosego about his condition and what was happening there and expressed my displeasure. We has a meeting with the Department the following day. It was a Sunday when I visited my uncle. On the Monday we were supposed to meet at Rissik Street. Department changed the  
20venue from Rissik Street to BOL without informing us. But eventually we got to BOL and when I got there I was very upset ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Can you put some date to that?



**MR. ANDREW PETERSON:** I visited my uncle on the 30<sup>th</sup>, if my memory serves me well. I think it must have been either the 30<sup>th</sup> or 31<sup>st</sup>.

**ARBITRATOR, JUSTICE MOSENEKE:** Of which month? Of May?

**ADV. LILLA CROUSE:** July.

5**MR. ANDREW PETERSON:** Of July, sorry... no that would be June.

**ADV. LILLA CROUSE:** He was missing for two months and you saw him again ...intervened.

**MR. ANDREW PETERSON:** Yes, July, sorry about that.

**ARBITRATOR, JUSTICE MOSENEKE:** No problem. So it was July.

10**MR. ANDREW PETERSON:** Yes, it was July.

**ADV. LILLA CROUSE:** Can I just go back to your uncle again? How was he dressed?

**MR. ANDREW PETERSON:** He was dressed in some clothing that both my cousin and I didn't know about and it was oversized clothes, dirty clothes and we actually  
15enquired about the clothes, because when my uncle left Waverly, we had put a suit on him, we bought some new clothes. I still have a picture where he is wearing the suit, because I took pictures on the day of the move itself, but he had lost all that clothing as well. And he was just in some normal filthy clothes really.

**ADV. LILLA CROUSE:** And eventually he was moved from Mosego.

**MR. ANDREW PETERSON:** Yes, he was eventually moved, but that was only with the relocation. I went to see him after that July, I saw him in August, I saw him regularly. He still looked bad, but the boil was now treated and he wasn't in pain, but he was very hydrated and thin. I also went back in December ...intervened.

5**ADV. LILLA CROUSE:** Was he dehydrated?

**MR. ANDREW PETERSON:** He was dehydrated, ja. I went back again in December before Christmas, we went there, the usual Christmas visit, I have pictures of us and the rest of the family, cousins, uncles, what have you, there visiting him.

10**ADV. LILLA CROUSE:** Ja, but we don't have consent to use those photographs, so... Was he still thin at that stage?

**MR. ANDREW PETERSON:** He was still thin at that stage, Counsel. In fact, if I may add, Counsel, he was thin until the following year when I went back with the rapid assessment team with Dr Lesley Robertson, the psychiatrist on site, she went  
15and actually did a thorough check on him, Justice. And she still found him dehydrated and suffering from what she called temporal dehydration, which is ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Are we still going to go back to the meeting, Counsel, in July?

20**ADV. LILLA CROUSE:** I just want to pass the family member and then we will go to that.

**ARBITRATOR, JUSTICE MOSENEKE:** Sure.

**ADV. LILLA CROUSE:** And, Mr. Peterson, where is he now?

**MR. ANDREW PETERSON:** He is now, since the 5<sup>th</sup> of April 2017 at Selby.

**ADV. LILLA CROUSE:** And how is he cared for? Are you satisfied with how he is  
5cared for?

**MR. ANDREW PETERSON:** He is cared for very well. He is improving, but his  
weight is still not where it used to be, but he is fairly happy there. I am talking as a  
committee member as well, we do have reservations about Selby, about the fact  
that it is still very much a constricted environment. But he is getting clinical support,  
10he is getting his medicine regularly, he is getting good nutritional food. Again as a  
committee member we went in there to go and look at the kind of food, the  
nutritional diets they give them and so on. We actually made a bit of noise about  
the fact that they didn't have enough OTs, which they did step up.

**ADV. LILLA CROUSE:** OTs being?

15**MR. ANDREW PETERSON:** Occupational therapists.

**ADV. LILLA CROUSE:** Yes.

**MR. ANDREW PETERSON:** So that situation was remedied. There is still some  
work to be done, but at least he is safe and sound.

**ARBITRATOR, JUSTICE MOSENEKE:** But between July 2016 to April 2017,  
20where was Mr. Truter?

**MR. ANDREW PETERSON:** July...

**ARBITRATOR, JUSTICE MOSENEKE:** You went to see him.

**MR. ANDREW PETERSON:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** You were not happy.

**MR. ANDREW PETERSON:** Yes.

5**ARBITRATOR, JUSTICE MOSENEKE:** And you required a meeting with the Department.

**MR. ANDREW PETERSON:** Yes.

**ARBITRATOR, JUSTICE MOSENEKE:** This was around July 2016.

**MR. ANDREW PETERSON:** Yes.

10**ARBITRATOR, JUSTICE MOSENEKE:** The next step you told us about, the 5<sup>th</sup> of April 2017 he was moved to Selby.

**MR. ANDREW PETERSON:** Yes Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** So my question is, where was he between July 2016 and April 2017?

15**MR. ANDREW PETERSON:** He was still at Mosego, Justice.

**ADV. LILLA CROUSE:** And has he gained weight now?

**MR. ANDREW PETERSON:** He is not what he used to be, Counsel. You know what was developed over 40 years of care and love and good food, the whatever it is called, the marathon team, managed to bring that down to zero and we are still  
20struggling to get him back to where he was.

**ADV. LILLA CROUSE:** Thank you. Now let us get back to your involvement in the family committees. So your first dealing was on the 5<sup>th</sup> of December 2015.

**MR. ANDREW PETERSON:** Yes Counsel.

**ADV. LILLA CROUSE:** And on that day did you sign a petition at all, what did you do?

**MR. ANDREW PETERSON:** Yes Counsel. On the 5<sup>th</sup> of December we ...intervened.

**ADV. LILLA CROUSE:** 2015?

**MR. ANDREW PETERSON:** 2015, yes. Some of us came together and we agreed that we are going to oppose this or at least get more information or at least retard, slow down the whole process. I think there was about five people or so that came together, but we asked family members on that day to sign petitions to say they don't want the centre – and this was at Waverly that that happened.

**ADV. LILLA CROUSE:** And what was the next engagement you had with the Department?

**MR. ANDREW PETERSON:** The next engagement was ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Sorry, on the 5<sup>th</sup> of December, what engagement did you have? I mean all I heard was that you went on like a rampokker and you took the hailer and you said something. But what engagement did you have with Government then?

**MR. ANDREW PETERSON:** No, we had no engagement with Government. At that stage, Justice, we were engaging with the management of Waverly, Paul Mokoena and Matron Buthelezi – that was our engagement. And we communicated our sadness, our dislike, our disgruntlement with what was happening, the way in which it was happening and the way in which we were being treated with disrespect. And that was the core of also the petition that we signed. And we then decided as a family that we would then meet again just before the end of December, but that meeting actually never took place, of the representatives, it only happened in January.

10 **ADV. LILLA CROUSE:** What did you do?

**MR. ANDREW PETERSON:** Well several of us went to Mr. Mokoena, to Waverly, and Me. Buthelezi and we went there just to make sure that the petitions are in and that they are communicating with the Department and that they would let the Department know that families are very unhappy and the families are against this draconian style of treating mental health care users with absolute disrespect. So we were there with them in a meeting and we asked them to set an appointment with MEC.

**ADV. LILLA CROUSE:** And then?

**MR. ANDREW PETERSON:** We did have an appointment with MEC, that happened in February or January.

**ADV. LILLA CROUSE:** 2016?

**MR. ANDREW PETERSON:** January 2016. January 2016 we then had a meeting with all the family members, most family members came. The meeting was scheduled to start at 12:00.

**ADV. LILLA CROUSE:** Where was this meeting?

5**MR. ANDREW PETERSON:** It was supposed to be at Waverly, Counsel.

**ADV. LILLA CROUSE:** And who was the MEC that you were meeting?

**MR. ANDREW PETERSON:** It was MEC Mahlangu.

**ADV. LILLA CROUSE:** The meeting was supposed to start at 12:00. What happened?

10**MR. ANDREW PETERSON:** The meeting was supposed to start at 12:00 but some of us got there a bit earlier just again to consolidate, strategize and voice our displeasure. Families were very vocal, Counsel. Families have always been vocal. Families have always been against this. These families really care and do love their loved ones, that I am certain about. And we then caucused and we waited then for  
15the meeting. In the meantime apparently she sent through some forms, similar to the previous ones, again similar forms about where do you live, what is your income... forms about the family and also about the patient and so on. And we ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Who distributed the forms?

**MR. ANDREW PETERSON:** The forms were, if my memory serves me well, Justice, those forms were distributed by Mr. Mokoena, who was the management of Waverly.

**ADV. LILLA CROUSE:** Yes, forms being distributed and what happened then?

5**MR. ANDREW PETERSON:** Yes, we then were obviously waiting for MEC  
Mahlangu who didn't turn up and then families were very irritable and they said look,  
why must we... Families had taken time off, Justice, from work, it was during the  
week, it was during the day, 12 noon. Families had made arrangements at work  
just to come to this meeting and she didn't turn up. Instead she turned up at 2 pm.  
10And at that stage some of the families had to leave. You know they took my  
number... my number was taken by many of the families, you know my cell phone  
number, and I had sleepless nights after that with my phone ringing at awkward  
times and many times. I didn't complain about that, because I realised the  
importance of this whole project.

15**ADV. LILLA CROUSE:** Yes and when she arrived what happened?

**MR. ANDREW PETERSON:** Well she arrived at 2 pm with her entourage. I think  
Mr. Mosenogi.

**ADV. LILLA CROUSE:** Mosenogi, yes.

**ARBITRATOR, JUSTICE MOSENEKE:** We speak the same language but we don't  
20have the same surname.



**MR. ANDREW PETERSON:** I stayed in Lesotho for five years, Judge, and I speak Sotho fluently. Ja, she came with her entourage basically and they came in there and wanted to start the meeting. And you know the family members ...intervened.

**ADV. LILLA CROUSE:** The remaining family members.

5**MR. ANDREW PETERSON:** The remaining family members asked her to apologise, we actually had to ask her to apologise, why are you coming late? People were very vocal. People were vocal to the point of rudeness. You can't really blame them, Counsel, I think, after the way they had treated us. You know she treated us like we didn't matter, she treated us like we were second class  
10citizens.

**ARBITRATOR, JUSTICE MOSENEKE:** How many people do you estimate were there?

**MR. ANDREW PETERSON:** If my memory serves me well, Justice, I would say maybe close to a hundred people or so.

15**ADV. LILLA CROUSE:** Did she apologise?

**MR. ANDREW PETERSON:** To be frank with you, Counsel, I don't remember her apologising. But somebody said she said something under her breath about being sorry. But it didn't communicate that with her and I think for me this is where the word demeanour means a lot. Because her demeanour was that of somebody who  
20was doing us a favour, she is a high official and we are down there and she is coming in and she is doing us a favour – that was her whole demeanour. So even if she said I am sorry, I don't think her body language communicated that, Justice.

**ADV. LILLA CROUSE:** And what happened at this meeting?

**MR. ANDREW PETERSON:** Well what happened at this meeting is that she tried to tell us what was happening, that the centre, that the contract was terminated and Government had decided to terminate the contract because it was far too costly to continue there. But she hastened to add that we shouldn't worry, because they are taking our patients to better places. In fact the patients will get the same treatment, if not better. And I remember I asked, you know, where are these places, are they NGOs, are they hospitals? And she said we have some very good NGOs and we have some good hospitals that have got empty beds and we are also building a new NGO, apparently, she said. And you know the issue was, our main issue at that point was why, because Waverly seemed to work quite well for us. And her argument was that this is more than trends, deinstitutionalisation, the whole world is going that way. Patients are moving closer to our homes. We will have our patients closer to our homes where we can visit them frequently and where they will be taken care of very well.

**ADV. LILLA CROUSE:** Did you believe her?

**MR. ANDREW PETERSON:** I didn't believe her, Counsel. And I didn't believe and none of us did that it could happen in three months, even if it would happen. At that stage I knew next to nothing about deinstitutionalisation or the policy frameworks of the Department and so on. But just instinctively all of us knew that this was disaster in three months. Because one of the questions that came out was, can you tell us who these NGOs are and she couldn't. we asked for, at that point we even asked have you got a project plan for us, something to tell us how this is going to unfold in

three months and she couldn't give us those answers. And the meeting basically ended in a bit of chaos because some people walked out on her. Remember it was already running late as well and people were really angry with her attitude and her whole demeanour.

5 **ADV. LILLA CROUSE:** What was the next contact you had with the Department?

**MR. ANDREW PETERSON:** Well the next contact was... should I mention the marches now?

**ADV. LILLA CROUSE:** Yes, of course.

**MR. ANDREW PETERSON:** Yes, we went on a march. We organised a march in 10 February with the help of Section 27 and SADAG was involved as well, if my memory serves me well.

**ADV. LILLA CROUSE:** Where did you march?

**MR. ANDREW PETERSON:** We marched, again if my memory serves me well, I think we marched from Fritz Gerald to the Department offices to express our 15 opposition to this random haphazard move.

**ADV. LILLA CROUSE:** How many people marched?

**MR. ANDREW PETERSON:** There must have been over 60 people or so, Counsel, who marched. I remember one of our leaders, one of our representatives that worked closely with us as a family representative at that stage, had a baby on her 20 back. She had a grandchild, she had just gotten her grandchild and she had the

baby on her back. People were quite committed and vocal and felt very strongly about it.

**ADV. LILLA CROUSE:** Did you have any plakkaats?

**MR. ANDREW PETERSON:** We had plakkaats, yes, we made plakkaats.

5**ADV. LILLA CROUSE:** What did it say?

**MR. ANDREW PETERSON:** Well it say down with Qedani, down with the Marathon Project, all in the same vain really. I think there were some nasty paintings of her as well, if I can remember well.

**ADV. LILLA CROUSE:** Did you hand over any document to the Department?

10**MR. ANDREW PETERSON:** Yes, we did hand over a memorandum, which we handed over. I can't remember who received it at the Department, but it wasn't MEC.

**ADV. LILLA CROUSE:** And what was the gist of this memorandum, do you know?

**MR. ANDREW PETERSON:** The gist of the memorandum as that we are opposing  
15the move, we are against the move and that the families should not be moved. Because at that stage we were a bit more educated by Section 27 in terms of what was happening, their court cases and how they had been fighting this battle as well.

**ARBITRATOR, JUSTICE MOSENEKE:** And which month was this?

**MR. ANDREW PETERSON:** It was in February 2016, Justice.

20**ARBITRATOR, JUSTICE MOSENEKE:** February 2016.

**ADV. LILLA CROUSE:** What happened after this?

**MR. ANDREW PETERSON:** Well after the march basically the Department then somehow got hold of our names as the so-called activists or those who were vocal. And I think that is when we began to team up with the Randfontein group. And then she invited us, there was a meeting to which we were invited by Dr Malebane.

**ADV. LILLA CROUSE:** Selebano.

**MR. ANDREW PETERSON:** Selebano, yes.

**ADV. LILLA CROUSE:** When was that?

**MR. ANDREW PETERSON:** Sorry?

10 **ADV. LILLA CROUSE:** Do you know when that was?

**MR. ANDREW PETERSON:** I think if my memory serves me well, it wasn't long after the march. I don't exactly remember the exact date of our first meeting.

**ADV. LILLA CROUSE:** And where was this meeting?

**MR. ANDREW PETERSON:** This meeting was, if my memory serves me well, at Rissik Street, number 1 Rissik Street, which is where they were.

**ADV. LILLA CROUSE:** And who attended?

**MR. ANDREW PETERSON:** Basically the whole project team was there with some social workers.

**ADV. LILLA CROUSE:** The whole project team, what does that mean?

**MR. ANDREW PETERSON:** Well MEC wasn't there. Mr. Mosenogi was there, Dr Malebane was there... Selebano was there and yes there were some social workers there as well, there were several people there.

**ARBITRATOR, JUSTICE MOSENEKE:** Was Dr Manamela there?

5**MR. ANDREW PETERSON:** Manamela, sorry, yes, I wanted to say Dr Manamela, yes. Dr Manamela was there. Pardon my forgetting her name, she has irritated me a bit this morning.

**ADV. LILLA CROUSE:** And how many family members were at this meeting?

**MR. ANDREW PETERSON:** I think there were four family members at that  
10particular meeting, Counsel.

**ADV. LILLA CROUSE:** And what was the gist of the meeting?

**MR. ANDREW PETERSON:** The gist of the meeting was, for us we wanted to articulate once again our opposition to this move and then to get more information. But apparently they had an agenda, I think we ended up with two agendas and then  
15we actually merged them. But they wanted just to tell us about the project. They wanted to tell us about the whole concept of deinstitutionalisation, which is a global process and so on. So that was the gist of that, I think the first meeting. But we had several meetings after that.

**ADV. LILLA CROUSE:** We will get to that. Justice, I see it is 13:30.

20**ARBITRATOR, JUSTICE MOSENEKE:** Yes. It is indeed a good time to adjourn. You are also a pastor, Mr. Peterson?

**MR. ANDREW PETERSON:** Justice, let me make that record clear. I am an ordained Evangelist with Royal Mandate Ministries, because I spent five years doing my theological training and that meant ...intervened.

**ARBITRATOR, JUSTICE MOSENEKE:** Five years?

5**MR. ANDREW PETERSON:** I spent five years studying Christian Ministries.

**ARBITRATOR, JUSTICE MOSENEKE:** That is almost how long it takes to train a doctor or a lawyer or an advocate.

**MR. ANDREW PETERSON:** I am humbled by that. Yes, I did do that, Justice.

**ARBITRATOR, JUSTICE MOSENEKE:** So you are a pastor.

10**MR. ANDREW PETERSON:** I am currently in the Methodist Church where I am involved and part of their leadership with the healing team as well as in the pipeline for deaconship. They have a very long process and it is quite a long process. My qualifications are from abroad and not with the Methodist Church necessarily. So I am not really technically an ordained priest, I must make that clear for the record,  
15yet.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

**MR. ANDREW PETERSON:** But I am an elder at the Methodist Church and I have been ordained as an Evangelist, yes.

**ARBITRATOR, JUSTICE MOSENEKE:** We might need prayers here.

20**MR. ANDREW PETERSON:** Hallelujah.

**ARBITRATOR, JUSTICE MOSENEKE:** Yes. I think it is the right time to adjourn.

We will resume at 14:30. Thank you.

**END OF SESSION 2.**

521 November 2017

### **SESSION 3**

**ARBITRATOR JUSTICE MOSENEKE:** Thank you, you may be seated.

**ADV LILLA CROUSE:** Thank you Justice Moseneke, my learned friend for Section 27 would just very briefly like to address the forum.

10 **ARBITRATOR JUSTICE MOSENEKE:** Okay.

**ADV ADILA HASSIM:** Thank you.

**ARBITRATOR JUSTICE MOSENEKE:** Good afternoon.

**ADV ADILA HASSIM:** Justice Moseneke [inaudible 00:27] and just for a minute, I would ask if I could just acknowledge one of our family members who is here today  
15– her name is Jabulile Hlatshwayo and her son, Sizwe, would have been 30 today.

**ARBITRATOR JUSTICE MOSENEKE:** Come again? I missed the second part – I heard you talk about Mrs Jabulile Hlatshwayo and you are saying?

**ADV ADILA HASSIM:** Her son, Sizwe Thabang Hlatshwayo, would have been 30 years old today.



**ARBITRATOR JUSTICE MOSENEKE:** Awww Awww

**ADV ADILA HASSIM:** That's Sizwe Thabang Hlatshwayo and he passed away on the 10<sup>th</sup> of September 2016 at Anchor.

**ARBITRATOR JUSTICE MOSENEKE:** I remember that – 'sabona mammie'

5**ADV ADILA HASSIM...**and Justice, Sizwe was the young man who liked to dance

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

**ADV ADILA HASSIM:** – traditional dances ...

**ARBITRATOR JUSTICE MOSENEKE:** I remember him quite clearly – he is photographed in my memory and you remember the questions I have asked about  
10him, and wondering whether he could keep a proper rhythm, which you require for traditional dancing. That's why others dance better – some dance better than others. [inaudible 02:52] I know you're a strong strong human being and I know you don't cry lightly [inaudible 03:05] mammie. Do you have anything else Counsel?  
[inaudible 03:41]

15**ADV ADILA HASSIM:** No Justice, I just wanted to remember him.

**ARBITRATOR JUSTICE MOSENEKE:** Yes. Yes, thank you. You know human beings are important only because they are human beings – they don't have to be anything else to be worthy of our regard – nothing more than that, and every time regard goes away, the consequences are well-known in history, very well known.  
20Advocate Crouse.

**ADV LILLA CROUSE:** Thank you Justice Moseneke - if the witness can just be reminded that he is still under oath?

**ARBITRATOR JUSTICE MOSENEKE:** Indeed. Mr PETERSEN, you are still bound by your previous oath.

5**MR PETERSEN:** Thanks Justice.

**ADV LILLA CROUSE:** Mr PETERSEN, we were speaking, before the lunch adjournment, about various meetings that you've had with the report – all in all, how many meetings, do you think, you had?

**MR PETERSEN:** We had about four meetings in all Counsel.

10**ADV LILLA CROUSE:** During which period?

**MR PETERSEN:** For the period from April to about May 2016.

**ADV LILLA CROUSE:** ...and when you say 'we' – to who are you referring to?

**MR PETERSEN:** I am referring to the family representatives cum family committee.

**ADV LILLA CROUSE:** Okay, and who else – with who at the department was  
15these meetings?

**MR PETERSEN:** The meetings were mainly with the project team Mr Masinoghi and Dr Manamela was also present in most of them. Frans Thabane was also in most of them – I recall some social workers that were there as well and there were also some members of the mental health review council – I remember one Richard  
20Thole, if my memory serves me well Justice.

**ADV LILLA CROUSE:** Could you tell Justice Moseneke who the family members were that attended – can you remember them?

**MR PETERSEN:** Yes, I can remember the family members who were there – they basically were – we are on first name basis, they were Nomphilo, Nomvula, myself

5**ADV LILLA CROUSE:** Just slowly – Nomphilo, Nomvula

**MR PETERSEN:** Nomphilo Nomjabhe

**ADV LILLA CROUSE:** I missed the last name

**MR PETERSEN:** Nomphilo Nomjabhe is one person

**ADV LILLA CROUSE:** Yes?

10**MR PETERSEN:** Sorry Nomvula Nomjabhe – I am going to get slaughtered by my team here. Okay, and then we have Nomphilo and then we have we also had a Lucas Lukhile – sorry not Lucas Lukhile, I am mixing up two people here. We had a Lucas, but not necessary Lucas Lukhile. We had a Thabogo Lukhile.

**ADV LILLA CROUSE:** Yes, and that was the family team?

15**MR PETERSEN:** That was the family team.

**ADV LILLA CROUSE:** From the committee?

**MR PETERSEN:** We also had obviously Christine Xamalo

**ADV LILLA CROUSE:** Christine?

**MR PETERSEN:** Xamalo

**ADV LILLA CROUSE:** Xamalo – thank you. I know that you can't remember the dates of each of these meetings, so I'm not going to ask you for the date of each meeting, but can you give us a general idea what was discussed at these meetings?

5**MR PETERSEN:** I think the meeting that we had on the 4<sup>th</sup> ...

**ADV LILLA CROUSE:** The 4<sup>th</sup> of?

**MR PETERSEN:** The 4<sup>th</sup> of February 2016

**ADV LILLA CROUSE:** Yes?

**MR PETERSEN:** Was basically sort of an introductory meeting, where we sort of  
10went about with the concept of the institutionalisation – my memory tells me that  
was more or less what we've covered, yes.

**ADV LILLA CROUSE:** Yes?

**MR PETERSEN:** There was a problem with the meetings, because the meetings  
tended to start late and the meetings were also often rushed by the department and  
15the meetings were the initial meeting was quite chaotic, I must say, because you  
know we had an agenda and the department an agenda and they wanted to impose  
on us what they wanted to do. We wanted specific questions answered, such as the  
list of NGOs, the project plan – you know, whether this was realistic within the time  
frame, the procedure that would be followed and they more or less wanted to tell us  
20about the concept of deinstitutionalisation and that the department had already  
decided and this was cast in stone that this project was going to go ahead and was

going to end the end of March. Counsel, may I – Justice, may I – one of our biggest grudges were the time frame – we didn't see how this could possibly happen in March, end of March and we vocalised that, I think, very very strongly. There were some rough moment in those meetings, where people left the meeting and – my understanding has always been that it is better to engage with people – one can engage and we can also demonstrate, but never lose the power of engagement, because then, in the process we can actually achieve a particular outcome, which is what we want.

**ADV LILLA CROUSE:** So, what you are saying to us - that you didn't enter into conduct that you'd think wasn't wouldn't be well received?

**MR PETERSEN:** Well, we made ourselves very strongly clear in terms of where we stand, but we sometimes were forced to move out of meetings, yes.

**ADV LILLA CROUSE:** Okay.

**MR PETERSEN:** But, I always try to get the team to go back to the next meeting. Frans Thabane and Mr Mosanoghi was quite keen and you know to engage us and I saw in him a softness and an openness and almost a willingness to accommodate us and where we are coming from, but he seemed to be under some supernatural – heaven knows what – power, compelled to do what he was about to do.

**ADV LILLA CROUSE:** Did you – as family members – ever indicate your willingness for this move?

**MR PETERSEN:** No Counsel, we always opposed this move. Our point of – our backing point – the least we hoped to get, if all else fail, was an extension, which I

must give the committee credit for, because we got an extension and no-one seem to realise that the extension from end of March to the end of June, was duly to our rigorous engagement with the department that that extension happened.

**ADV LILLA CROUSE:** In any of these meetings, which dates you cannot remember now – were the MEC there?

**MR PETERSEN:** I don't remember anyone, but I can definitely say that the MEC was in none of those meetings. Dr Manamela was in most of them, but Frans Thobane was in all of them, together with Hannah Jacobs – that name comes as well.

10 **ADV LILLA CROUSE:** What was Dr Manamela's attitude towards your committee?

**MR PETERSEN:** Dr Manamela and most of them, as I've said, I saw a softness in project leader, but there was a sense of condescending, there was a sense of hiding information, there was a sense of ...

**ADV LILLA CROUSE:** Just slowly... let's take them one by one – condescending, 15 what do you mean by that?

**MR PETERSEN:** Well, for example, I remember in one meeting – I think this was immediately after Section 27 and ourselves lost the court issue – that we asked we asked for the give us – again – the project plan and so on and at one stage somebody actually had the audacity to say: *can you guys please sit down quietly* 20 *and listen to what we had to say, because you lost your case?*

**ARBITRATOR JUSTICE MOSENEKE:** March 2016?

**MR PETERSEN:** Justice, this was in ...

**ADV LILLA CROUSE:** The court case was in March.

**MR PETERSEN:** Yes, this was in March, because we had another meeting on the 8<sup>th</sup> of March, because we had one on the 4<sup>th</sup> of February, the 18<sup>th</sup> of February and we had one on the 8<sup>th</sup> of March. I think that must have been the meeting where the condescending came through, because there is also the meeting where – they had a projection there of the various categories of patients and where and how each patient would then fit in in relation to the NGOs, but they were very vague about the names of the NGOs, especially the full names of the NGOs.

10**ADV LILLA CROUSE:** Okay, can you just stop there? Just stop there. You said they were condescending – what else did you say?

**MR PETERSEN:** About the meetings, that is? Well, the meetings were condescending, yes, and a bit chaotic as I've said from time to time, but also the department always wanted just for us to sit there, because they wanted for them to 15– almost – tick a box. It was a tick box exercise for them, and that is the impression we got, you know. They never took us seriously and I think we vocalised that and we went to the media later on – in that same year when things begin to go really wrong ...

**ADV LILLA CROUSE:** We are going to speak about that just now. As part of the 20family committee, did you visit any NGOs?

**MR PETERSEN:** Yes Counsel, I personally visited some, there were I think there were three of us who mainly went to visit NGOs with the department...

**ADV LILLA CROUSE:** On the 12<sup>th</sup> of April you visited two NGOs and that is in 2016 – the 12<sup>th</sup> of April 2016 – can you remember which?

**MR PETERSEN:** Yes, I remember it was Cullinan and Sharma(?) – I remember those quite sharply.

5**ADV LILLA CROUSE:** Just hang on there. Did you firstly go to CCRC?

**MR PETERSEN:** Yes, we first went to CCRC.

**ADV LILLA CROUSE:** Who went to CCRC?

**MR PETERSEN:** It was myself and Tebogo Loxheli(?)

**ADV LILLA CROUSE:** With whom did you go to CCRC?

10**MR PETERSEN:** Frans Thebane was always there – I can't remember, but I think Dr Manamela was probably there as well. There was somebody from infrastructure there as well.

**ARBITRATOR JUSTICE MOSENEKE:** Who is Frans Thebane?

**MR PETERSEN:** Frans Thebane is one of the officials of the health Justice, I think  
15he is the deputy to Dr Manamela – I may be wrong about that.

**ADV LILLA CROUSE:** Anybody else go with you to CCRC?

**MR PETERSEN:** CCRC, we had Hannah I think was with us as well, Hannah Jacobs was with us.

**ARBITRATOR JUSTICE MOSENEKE:** And who was she – what position was she  
20in?



**MR PETERSEN:** Hannah Jacobs was deputy I think to Dr Manamela – sorry, I get these things all wrong, but she was Hannah Jacobs was deputy I think to Dr Manamela – she was deputy of the mental health directorate.

**ADV LILLA CROUSE:** Did you enter CCRC at all?

5**MR PETERSEN:** Yes, we did Counsel.

**ADV LILLA CROUSE:** Where did you go when you went into CCRC?

**MR PETERSEN:** Well, we went into some allocated wards, that were apparently allocated for the purposes of the new NGOs that were going to be established there, but these were just empty at the time.

10**ADV LILLA CROUSE:** So you went to look at places that were empty?

**MR PETERSEN:** Yes, we did.

**ADV LILLA CROUSE:** And, you went into the buildings there?

**MR PETERSEN:** We went into the buildings – we looked at the ablution facilities that was still work in progress I think they were still busy with some of the ablution  
15facilities sorting them I think there was still some drilling away and some things still  
happening there.

**ADV LILLA CROUSE:** Were there any beds?

**MR PETERSEN:** No, I can't remember any beds, there were definitely no beds.

**ADV LILLA CROUSE:** And what were you told in connection with these wards that  
20you visited at CCRC?

**MR PETERSEN:** Well, we were not told much – something else about these visits – they were very rushed. I think the department was also taking advantage of the fact that we are depending on them for transportation – so they would say look we still have two of three other places to touch up on and therefore it was very very brief.

**ADV LILLA CROUSE:** All in all, how long did you spend at CCRC and those empty wards – if you can estimate?

**MR PETERSEN:** I think I would estimate about 10 minutes or so.

**ADV LILLA CROUSE:** Okay. Did you see CCRC's wards at all when you were there?

**MR PETERSEN:** Yes, we did Counsel.

**ADV LILLA CROUSE:** How many wards did you visit at CCRC?

**MR PETERSEN:** I think they just took us to two or so, if I remember correctly.

**ADV LILLA CROUSE:** Were there patients?

15**MR PETERSEN:** There were patients in some of those.

**ADV LILLA CROUSE:** And, what was your general impression?

**MR PETERSEN:** Well, I couldn't really come up with a general impression, because it was so quick, but it looked like normal hospital environment. Patients seemed fine, bedding seemed clean, ablution facilities clean and so on.

**ADV LILLA CROUSE:** You also went to Sharma that same day – the 12<sup>th</sup> of April 2016?

**MR PETERSEN:** Yes Counsel.

**ADV LILLA CROUSE:** Was it after CCRC?

5**MR PETERSEN:** Yes, it was immediately after CCRC. I describe Sharma as a death trap and at Sharma we said to them absolutely no no no patients there and ...

**ADV LILLA CROUSE:** Just take it slowly... why did you say it is a death trap?

**MR PETERSEN:** Well, it just – the staircase – they have a structure there where it is a – it is like a double storey situation and the manager CEO of Sharma took us up  
10to where the patients would be brought in where there is space, for additional patients, because they had existing patients there and as we walked up the stairs, the stairs started shaking I mean I, we all got worried you know – I think one of the ladies jumped aside and said: *no, I am not going up these stairs*. So, the stairs were shaky – the windows were not ideal, they were normal windows, where you know,  
15mental patients will endanger themselves.

**ADV LILLA CROUSE:** What do you mean, can you clarify?

**MR PETERSEN:** They were supposed to have certain windows – if the window is broken, if it is a normal window and the patient happens to break the window, they will have actually injured themselves. Somebody brought that up and said that  
20would be a problem, I think it was one of the team members.

**ADV LILLA CROUSE:** Yes?

**MR PETERSEN:** But the beds were not in a good condition – I mean I remember leaning on – somebody leaned on one of the beds and it just went, it just collapsed under them and we said – we didn't say anything inside Sharma, but when we came out, we made it clear to Frans that this one is an absolute NO NO. Not that we wanted to or we accepted any of these as possibilities, we were just going there basically to gather information that we will then communicate to our check group, because we had a check group at the time. So, we wanted to keep families posted about these places you know, in case this move is really forced on us – then they at least know where their family members are.

10 **ARBITRATOR JUSTICE MOSENEKE:** Where is Sharma?

**MR PETERSEN:** Sharma is on the other side of Pretoria Justice. It is not far from Cullinan actually, it is in the same vicinity as Cullinan.

**ADV LILLA CROUSE:** At Sharma, how many beds were there – how many rooms were there that beds would fit in?

15 **MR PETERSEN:** We were shown, I think, three rooms where beds could fit in, yah. I think there were three Counsel.

**ADV LILLA CROUSE:** And how many beds per room?

**MR PETERSEN:** The gentleman I think he had about six or seven beds in a room and we – one of our reservations was that it would be – it is far too tight – there is 20 no space – I think it was actually Frans Thabane with his knowledge of psychiatry and what not who said there is a certain space limit between the beds by law – we

didn't even know that, but we just instinctively knew that was ridiculously chock and block and so that was one impression that I can't forget.

**ADV LILLA CROUSE:** And beddings on the beds – can you comment on that?

**MR PETERSEN:** The bedding was a bit scanty and we asked about that and the gentleman said he was going to get the CEO said he was going to get some more bedding and probably do some renovations also on the buildings themselves, including the staircase and other things that [inaudible 22:47]

**ADV LILLA CROUSE:** Did you see any staff at Sharma?

**MR PETERSEN:** No, I don't recall seeing any staff.

10**ADV LILLA CROUSE:** Did you see security?

**MR PETERSEN:** In fact, we didn't see any security – in fact, security was one of the issues that bothered us, because I think the fence, they had a broken fence or something like that. We pointed that out and that worried us terribly – in fact, the whole environment you know at Sharma was just not the right kind of environment where you would send anyone.

**ARBITRATOR JUSTICE MOSENEKE:** Is this on a farm, plot, a build-up area...

**MR PETERSEN:** It's on a farm, plottish...Justice.

**ADV LILLA CROUSE:** You've said the fence was broken, what do you mean?

**MR PETERSEN:** I mean the part of the fence was down – the wall wasn't complete as it were – the fence and the wall weren't complete. So, you know patients - also, the other thing is - the wall is quite low and we were worried about our patients. You

know, some of them could be endangered if they were to jump over the fence you know.

**ADV LILLA CROUSE:** So you indicated that you were unhappy with the conditions there?

5**MR PETERSEN:** Yes, we indicated that we were unhappy with the conditions and we used that actually Counsel (if I may add) we actually used that as ammunition to say to them you know for one, we are not convinced that this move is properly planned – we are opposed to this move...

**ADV LILLA CROUSE:** So you reiterated your [inaudible 24:26]?

10**MR PETERSEN:** We reiterated, yes.

**ADV LILLA CROUSE:** So, on the 19<sup>th</sup> of April 2016 you visited two further NGOs – is that right?

**MR PETERSEN:** That is right Counsel.

**ADV LILLA CROUSE:** Which one did you...?

15**MR PETERSEN:** It was Matsego and Takalani.

**ADV LILLA CROUSE:** Did you go firstly to Matsego?

**MR PETERSEN:** We went firstly to Matsego, yes.

**ADV LILLA CROUSE:** Where is Matsego?

**MR PETERSEN:** Matsego is in Krugersdorp – it's on Ockerse Street, Urban  
20Environment – that is where my uncle was sent eventually.

**ADV LILLA CROUSE:** How does Matsego look from the outside?

**MR PETERSEN:** Well, from the outside you know if you were told about the institutionalisation you will think well this is a fantastic idea, because it is so urban you know it's a town situation, it's a homely house situation – so, on face value, it looks like sort of the ideal place.

**ADV LILLA CROUSE:** Did it have a fence around?

**MR PETERSEN:** Yes, they had a fence, but then again – at Matsego, at one of the fences there, they had trees around the fences, and we were concerned about the trees. Again, I think, it was Frans Thabane who pointed out to us to say: trees are not very ideal, especially positioned in that way, because if you do have somebody who's homicidal – oh sorry, suicidal – they might injure themselves using the tree. My, sort of, kind of civilian thinking and problems with the trees, patients could just climb up the tree and jump over. They had a huge main road just next to Matsego, where you know – it is a serious main road, very busy.

15 **ADV LILLA CROUSE:** With traffic?

**MR PETERSEN:** With traffic, yes Counsel.

**ADV LILLA CROUSE:** Were there any security at Matsego?

**MR PETERSEN:** I think there was one or two.

**ADV LILLA CROUSE:** Were there patients when you were there?

20 **MR PETERSEN:** There were patients when we were there.

**ADV LILLA CROUSE:** Just to put this into perspective, this was before your uncle went there – was moved there?

**MR PETERSEN:** This was before my uncle was moved there.

**ADV LILLA CROUSE:** How many patients did you see there?

5**MR PETERSEN:** I wouldn't be able to tell – they had elderly patients, apparently from the social services department. We did go and see those patients – they were elderly patients.

**ADV LILLA CROUSE:** It was a single storey house?

**MR PETERSEN:** It was a single storey, yes.

10**ADV LILLA CROUSE:** Did you enter the house?

**MR PETERSEN:** Yes, we entered.

**ADV LILLA CROUSE:** What did you find inside the house?

**MR PETERSEN:** Inside, where they keep the patients? Well, we saw rooms there – we were shown around the kitchen as well, the storage room – they showed us  
15the storage room as well, yes.

**ADV LILLA CROUSE:** Were there any adverse findings that you made there?

**MR PETERSEN:** Well, our main gripe about Matsego is that there wasn't enough space for rehabilitative sort of activities for the patients – it is quite cramped up.

**ADV LILLA CROUSE:** The yard?



**MR PETERSEN:** The yard, yah. They've got all sorts of structures in the yard, so there is not much space for play, for and for that sort of thing – that was our first thing. The second thing – they didn't have any heaters and it was just about to be winter and we said there were no heaters and there were no television sets in there you know to keep the patients entertained and also the bars that they had the security bars, we felt that it wasn't going to keep the patients – those were rather crude and inhumane in that they were huge bars – they were prison like bars and they almost detracted from the sort of homeliness you want to the environment you want to create there.

10 **ADV LILLA CROUSE:** And in the kitchen – what did you find there?

**MR PETERSEN:** Counsel, my first impression was – I wasn't happy with the kitchen. The kitchen wasn't very clean. We saw a few things that will go unmentioned here, like creepy crawlies, but we were told that obviously it was a problem that they will handle. My impression was that it wasn't fully – it wasn't a fully furnished kitchen and in that I think I mean they – it was all squashed up. In other words, it was small you know. They had one little basin there and a tap there and so on.

**ARBITRATOR JUSTICE MOSENEKE:** Counsel, you know if one looks at [inaudible 29:34] 58, the Ombuds has bunched up Matsego and Thakalani and the 20 deaths are recorded jointly and which one are we talking about?

**ADV LILLA CROUSE:** I think we are talking about Matsego – I will move to that Justice, if I may?

**ARBITRATOR JUSTICE MOSENEKE:** Because there are also issues of relevance – all this detail, I struggle to find its immediate relevance - if it is where the witnesses brother was, of course. If it is generic, we must say whether it was in the time that in fact they were patients from Life Esidimeni.

5**ADV LILLA CROUSE:** At this stage there were still no patients – it's just where the patients would be moved to.

**ARBITRATOR JUSTICE MOSENEKE:** I am starting to question whether we need all this detail, if in fact it was a stage a little in [inaudible 30:41] to people being brought there.

10**ADV LILLA CROUSE:** Thank you Justice. Mr Petersen, I am just going to move to that question then. You went to both – Matsego and Thakalani on that same day – that is the 19<sup>th</sup> of April 2016?

**MR PETERSEN:** Yes

**ADV LILLA CROUSE:** How far were Matsego and Thakalani – how far are they  
15apart?

**MR PETERSEN:** Well, Matsego is in Krugersdorp and Thakalani is in Soweto – that is about how far they are. From the one end of town to the other – it is quite a distance away.

**ADV LILLA CROUSE:** Okay. Is there anything else that you wanted to say about  
20Matsego?

**MR PETERSEN:** About Matsega, I think I've said more or less – I've said everything, yah.

**ARBITRATOR JUSTICE MOSENEKE:** Your uncle – sorry Counsel – your uncle was at Matsego in Krugersdorp?

5**MR PETERSEN:** In Krugersdorp, that is where he eventually was.

**ARBITRATOR JUSTICE MOSENEKE:** He was taken there some – well in May, wasn't it?

**MR PETERSEN:** We are not sure – that is one of the things that we are not sure about we are not sure where he was.

10**ARBITRATOR JUSTICE MOSENEKE:** But you found him two months...

**MR PETERSEN:** I found him in July.

**ARBITRATOR JUSTICE MOSENEKE:** After you have lost you found.

**MR PETERSEN:** Yes

**ARBITRATOR JUSTICE MOSENEKE:** I was basically trying to link the evidence  
15and see whether in fact it demonstrates an impact on him and whether you know the condition when you were there? But, I leave you there Counsel – I am talking relevance.

**ADV LILLA CROUSE:** Thank you Justice. Mr Petersen, did you find any improvement at Matsego when you found your uncle there?

**MR PETERSEN:** No, I couldn't tell Counsel whether there was an improvement. The situation seemed pretty much the same. The reason being that when I went – I went to visit him as an individual and family, but when I went with the department, the situation was different. They were very accommodating, very willing to talk to me, very willing to show us around, but on that day – especially when I wanted to bring food for the other patients, I was told: *please just stay in the visitor's quarters* you know, and I tried to get in touch with the director telephonically about my uncle's status. I remember getting hold of her, but then the first thing she said was when I said I was a family member, she said: *please can you not use the cell number, use the landline* and she gave me the landline and she dropped the phone. I felt quite offended about that.

**ADV LILLA CROUSE:** Let us just go very briefly to Thakalani – when you went there, with whom did you go there?

**MR PETERSEN:** Again, it was Lebogo Likheli and myself and in the department, Frans Thabane and I think Dr Manamela was there that day as well.

**ADV LILLA CROUSE:** What did you find at Thakalani?

**MR PETERSEN:** We found at Thakalani – as we came in Counsel, there was a demonstration outside – people were toy-toying ...

**ADV LILLA CROUSE:** Could you establish who the people were?

**MR PETERSEN:** No, they approached us – they thought that everyone who was there was government. I actually went to them to the ring leader and introduced myself – I said I was family I came from a family committee and he said yah, they

have some serious issues here, you know, with the payments, treatment of staff and so on. So, that was the whole thing about the march itself.

**ADV LILLA CROUSE:** So, at Thakalani – was it the staff that was demonstrating outside?

5**MR PETERSEN:** Yes, it was apparently staff that was dismissed Counsel, if I remember...

**ADV LILLA CROUSE:** What did you find inside?

**MR PETERSEN:** Inside we didn't really stay long – I think it was the department's strategy to keep us very briefly – we did find some patients there in some of the  
10wards.

**ADV LILLA CROUSE:** Adults or children?

**MR PETERSEN:** There were both adults and children at that point.

**ADV LILLA CROUSE:** Males and females?

**MR PETERSEN:** I think – if my memory serves me well – there were both males  
15and females.

**ADV LILLA CROUSE:** How did you find the living quarters?

**MR PETERSEN:** We could make really an objective assessment of that, because we were shown specific places you know.

**ADV LILLA CROUSE:** You didn't have the freedom to roam around?

**MR PETERSEN:** No, we didn't have the freedom to roam and when we requested that, there was always the issue of you know, we can't spend too much time, yah. It was a tick box exercise.

**ADV LILLA CROUSE:** Okay. Apart from the meetings and the visits, there were also a few marches that you attended – how many marches did you attend?

**MR PETERSEN:** We had three marches and I attended all of them Counsel.

**ADV LILLA CROUSE:** Okay, we've dealt with the first march, the second march – when did that happen, can you remember that?

**MR PETERSEN:** More or less, it was around June Counsel and that again was from [inaudible 36:34] to the department.

**ADV LILLA CROUSE:** How many people attended that march?

**MR PETERSEN:** We had quite a few people more in that particular march, because we've managed to rally, we managed to get ground support through obviously the help of SADAC and Section 27 to get more people – so, I'd estimate even 120 perhaps.

**ADV LILLA CROUSE:** What was the reason for this march?

**MR PETERSEN:** Well, that march in June was again to voice our opposition and I think round about that time they were already deaths already started occurring. We wanted to make it clearly that we are totally opposed to this march. We adopted a two pronged approach Justice that we would say that we would talk to the department, but at the same time we would also do our demonstrations. There were

some of our committee members who felt that talking to the department was a waste of time – I sometimes got the same impression, yah – it was a two pronged approach.

**ARBITRATOR JUSTICE MOSENEKE:** Well it is tried and tested – it is not a wrong approach. I see in Zimbabwe thousands and thousands of people are pronging the streets right now, while other are talking to the president, so you talk and march and talk and march and talk and march – it is not a bad strategy at all.

**MR PETERSEN:** Thank you Justice.

**ARBITRATOR JUSTICE MOSENEKE:** You talk and march and talk and march – tried and tested strategy.

**ADV LILLA CROUSE:** Thank you Justice and the third march – when was that?

**MR PETERSEN:** The third march was in October and again this was to ...

**ADV LILLA CROUSE:** October 2016?

**MR PETERSEN:** 2016 yah. Again this was to voice – now this time we included the deaths that occurred – we wanted the department to come clean about the number of deaths, because we were beginning to get calls – I mean, I got calls in evenings, awkward times, many times – I thought my phone was going totally crazy from the phone calls of family members who are complaining. I don't know if they were family members or something.

**ARBITRATOR JUSTICE MOSENEKE:** I am interested to know people like Dr Manamela, like Hannah Jacobs, like the other man that you've mentioned, somebody Thabane...?

**MR PETERSEN:** Frans Thabane Justice.

5**ADV LILLA CROUSE:** Frans Thabane – they are the people who were told consistently – this is not going to work and now we come into later times, ie between May and October and people are dying. What do they say to the committee? What is the response to the family committee? Which had been warning them, which had been marching, which had been giving them memoranda  
10and going to look at these facilities and coming back to say *no good*, what do they now say, because people had started dying?

**MR PETERSEN:** Justice, they – this is now what really got us [inaudible 40:07] and upset is because the department never really wanted to admit and for us that was the biggest problem. They never really – even at that stage there was secrecy about  
15the numbers – we knew the numbers – many of us appeared on SABC – I became an activist – I'm not a celebrity by any standard or stretch of imagination, but you know, we were there seeing more deaths and lots of complaints, because they couldn't give answers. The cover-up was nauseating to say the least Justice – with all respect to you. It really made us angry – it really stressed us and many of our  
20family members who were mentally, physically and otherwise, spiritually affected – people got sick – I myself had to see a psychologist, because I couldn't – I started getting memory lapses and all sorts of things.



**ARBITRATOR JUSTICE MOSENEKE:** But they ignored you from December 2015 – they granted one postponement and thereafter they went in a straight line and look at the schedule of the Ombuds – people started dying quite early. While you were talking to them on this chronology patients, mental health care users had started dying at NGOs. Did you tell them this?

**MR PETERSEN:** We told them Justice, in no certain terms, but – there was a very interesting perspective that some amongst government took or some amongst the team took – and this runs almost something like you know – these people don't matter (number one) (number two) that the opposition, the committee, was coming from political motivations, that we were used by the DA – that we were actually... I remember in the one meeting in where actually the MEC herself quietly called me aside and SASSOP was there I remember Dr Thalathala was there as well in that meeting and Dr Thalathala and myself approached her and she chaired after the meeting and because we wanted to know the numbers you know and they weren't telling us the true numbers and the names of the families of the deceased, because we wanted to have visuals to support those families and they were withholding this information. And, what upset me the most is, she said to me quietly, she said: *you know what, you must stay away from white people* and to this day I still want to ask her what she meant by that. But, I said to her – for me, for us, for the families – we are not DA Justice, we are not PAC, not ANC – my dad is PAC, my grandmother used to be ANC – I am not sure about myself, but definitely we were not politically motivated by any politician. It just so happened that the DA asked the question about the numbers in the legislature, but it was absolute absolute absolutely wrong.

**ARBITRATOR JUSTICE MOSENEKE:** Yah, I am asking this, because you are in a position where you could have said: but we don't use [inaudible 43:37] look at this happening...

**MR PETERSEN:** They still wouldn't listen Justice.

5**ARBITRATOR JUSTICE MOSENEKE:** ...and you must stop this NGO project immediately to save more lives that are likely to be lost and look at the schedule – people died essentially from around April right up to October – towards the end of 2016 – some finally died around January 2017. So, you say you couldn't get them to give you any definite answer why they pushed through despite your protest and  
10your marches and your meetings with them?

**MR PETERSEN:** I think Justice, there is an interesting word that you've just used 'pushed through' and that is exactly the sense that we got – that they felt pushed and the push was coming from the top and I think there was a sense in which – there was such a determination about this, such a madness about it and I think it  
15comes from leadership that is insecure, leadership that when they've made up their mind about something, they do not entertain different points of view and do not take in, in the decision making process inputs from the least of the least. And even from the experts I mean they didn't even listen to the experts, Justice. I mean who are we, we are not even experts we are just family members, so we were not surprised  
20but pushed, they were pushed. And as a push, I think when we dig for the truth in this particular context of the ADR with your excellent assistance Justice Moseneke. We know that we will come to the truth of where that push really came from.

**ARBITRATOR JUSTICE MOSENEKE:** Council.

**ADV LILLA CROUSE:** Thank you, Justice. Did you ever ask why was it necessary to close Life Esidimeni?

**MR PETERSEN :** Yes, we did ask why close Life Esidimeni. And the answer that we got from all of the meetings; it was that it was cost saving, that it was an empowerment project to take business away from one supplier and distribute business to smaller entrepreneurs. And then the other argument that they were throwing around was that it was taking them to better facilities at a lower cost. But the cost patient analysis argument they made it never made sense, maybe because I'm not an accountant or economist. Which I was maybe I would have understood, but I don't even think the best economist could understand the rational what they are trying to put across.

**ADV LILLA CROUSE:** You've touched already on the effect that this project and the treatment of your uncle had on you. Just explain that to us again.

**MR PETERSEN :** Council, let me start by saying I did this project, I took on this project because of my grandmother. My grandmother was a people loving person she took care of unemployed people, people who came from Kimberly and who was homeless she would take care of. And so she was a loving person she demonstrated that to me and she demonstrated Christian love to me. And it was my conviction of what she taught me that put me into this. It was never, never about anything other than that and I went into this prepared to suffer loss. I got very sick as a result of this because I took more than I could handle on my plate; I had to see

a psychologist out of my own resources. I saw a private psychologist and eventually I had to book a psychologist at the local clinic, whom I was told that will see me twelve months down the line whom I never saw.

**ADV LILLA CROUSE:** You said you gone to ill, what happened?

5 **MR PETERSEN:** Well, I was diagnosed with residual depression council.

**ADV LILLA CROUSE:** And what were the symptoms, how did you feel?

**MR PETERSEN:** The symptoms were basically sleeplessness; I remember even when during my uncle when he was missing I couldn't sleep that – those evenings. And so sleeplessness was one of the major things that affected me, but if I had to  
10 do this again I would because I believe that it is the best course, it has given shape and meaning to my life in a way that nothing else has. And I have taken it on almost as a ministry and I know that in the end justice will prevail.

**ARBITRATOR JUSTICE MOSENEKE:** Now tell me MR. Petersen, I'm looking at the ombuds report the initial report, the ombud tells us that at Masego Takalani 15  
15 people died. In the final report which is in front of you, I want you to look at LA58.

**MR PETERSEN:** Can someone quickly help me to find LA58.

**ARBITRATOR JUSTICE MOSENEKE:** LA58. I want you to look at the column Masego Takalani.

**MR PETERSEN:** There is no Masego Takalani in here.

20 **ARBITRATOR JUSTICE MOSENEKE:** No in the report you must go to page 8 of the ombuds report could you just help there.

**SPEAKER:** LA57?

**ARBITRATOR JUSTICE MOSENEKE:** No, LA 58. LA57 ja... page 8 of LA57. Do you see the block colored in blue?

**MR PETERSEN :** Yes I do.

5**ARBITRATOR JUSTICE MOSENEKE:** And do you see- you'll see the names Masego Takalani?

**MR PETERSEN :** Yes I do Justice.

**ARBITRATOR JUSTICE MOSENEKE:** According to this schedule people that were part of the marathon project started dying in March 2016, can you see that? And  
10you move on three more dies in May.

**MR PETERSEN :** Yes, Justice I can ...

**ARBITRATOR JUSTICE MOSENEKE:** And in June 6 more died, July 5 die and there is a peak period between June and November where may people died. And in the end, if you look at that you can see it is almost 10, 20, 30, 38 and Takalani  
15Masego is listed as one of the sites of death according to the ombuds. Now here comes my question do you know of any of these people died while your brother was at Masego?

**MR PETERSEN :** Yes, Justice. Because I think if I work it out he arrived probably in Masego around June.

20**ARBITRATOR JUSTICE MOSENEKE:** Now in June you can see that 6 people died according to this schedule. In July 5 people died, August 5 people then you can tell

us about the knowledge of your uncle, if he was aware of these deaths and what his response was if he was?

**MR PETERSEN** : Unfortunately I wouldn't be able to tell Justice. Because my uncle is not really in a position where he would be able to articulate to that extend. 5But I mean he did say in his own way that he was not happy with the place because we asked him " *Hoekom is jy so siek?*", he just said " *Dit is nie so goed hier so nie en ek is seer*". But the emphasis was on the pain he had, but we never engaged him gregariously because he is also polio orientated to space in time sometimes because of the schizophrenia.

10**ARBITRATOR JUSTICE MOSENEKE**: Sure, so you don't know whether he experienced the deaths of others and what this impact might have been on him?

**MR PETERSEN** : I wouldn't know Justice. What I know – what I can assure you though, is that when we looked at him we saw a man that was on the verge of dying, he was very sickly. And other patients that I saw that were hanging around 15they were also very sick and as I said my uncle is manic. In other words my [inaudible 54:09] understanding of that is he is hyper active, I mean like I say even as a child, they knew him because he was running all over Alex we lived in 4 avenue number 35 and he ran up to 19<sup>th</sup> avenue and I'm sure you know what I'm talking about Alex justice?

20**ARBITRATOR JUSTICE MOSENEKE**: Yes.

**MR PETERSEN** : And so that is the kind of energy that he had, but that day when we saw him he obviously also had depression. Because he never really had

depression but he was low, he was down and he was down and out and I will only summarise that that is only probably because of what he observed, what he saw and what transpired.

**ARBITRATOR JUSTICE MOSENEKE:** Ja, it strikes me a lot of people who are dying around him and I just wondered if he knew it and observed it and whether you heard what his responses might be, but the answer seems to be no. You didn't specifically talk about the deaths?

**MR PETERSEN :** He is in that functioning that he might perhaps express himself but not in so many words.

10 **ARBITRATOR JUSTICE MOSENEKE:** He couldn't speak could he?

**MR PETERSEN :** He could speak ja, he is not intellectual he can speak, he can talk. But he cant carry an argument through fully in that way, you know he is not like some of the other family members they testified here that high functioning patients can tell; the patient could say we were taken from here, this is what happened in my 15room and what have you and so on. But the one thing that he registered is unhappiness.

**ARBITRATOR JUSTICE MOSENEKE:** Sure, council.

**ADV LILLA CROUSE:** Thank you, Justice Moseneke. Mr. Peterson, you said the effect that it had on you but also the grey experience. What effect did this have on 20the rest of your family?

**MR PETERSEN** : Council, we, my cousin and myself decided that we are not going to talk to my aunt about this. She – he is turning 70 my uncle and my aunt is turning 80, so my cousin and I decided as a strategy that we are not going to tell her much about this. So she went to visit my uncle on that day, he wasn't there on that visit with the pastor. And after that she wanted to know what was happening, and we kept most of the facts away from her but I know that this has been very upsetting for her as well because of what believes from watching television, we cannot stop her from watching television. And when she would ask us “ *Hoe gaan dit met oomie Truter?* ” we would say you know “ *Moenie bekommerd wees nie, hy sal oraait wees.* ”. So we would assure her but we could see the concern and the trouble that she was having and you know, she could tell that we are not telling her everything. But I know also now that she is quite happy that he is doing fine and that he is in a safe place.

**ADV LILLA CROUSE**: Business wise what affected this have on you?

15 **MR PETERSEN** : I think business wise council it was very difficult for me to focus, I began to lose concentration. I'm running my own micro business as it were and I was looking at a point of several opportunities within the sitters to assist unemployed youngsters to get into learner ships. And I started that but my problems there is that I would get several set backs, several meetings that I missed out, 20 several opportunities I missed out.

**ADV LILLA CROUSE**: Because you were busy with this program?

**MR PETERSEN** : Because I was busy with this program.



**ADV LILLA CROUSE:** Mr. Peterson you are also now part of the mental health review board, is that so?

**MR PETERSEN :** Yes that is true council.

**ADV LILLA CROUSE:** When were you appointed, can you remember ?

5**MR PETERSEN :** I started on July the 1<sup>st</sup> 2017.

**ADV LILLA CROUSE:** And what is your involvement there?

**MR PETERSEN :** My role at the mental health review board is...

**ARBITRATOR JUSTICE MOSENEKE:** 20 how much, 20...?

**MR PETERSEN :** 2017.

10**ARBITRATOR JUSTICE MOSENEKE:** 2017, thank you.

**MR PETERSEN :** My role at the mental health review board is as a community member just to exercise oversight to in terms of application for patients for assisting them in, involuntary placement in various institutions.

**ADV LILLA CROUSE:** And your involvement there was as it as a direct result as  
15your direct involvement in the Life Esidimeni patients?

**MR PETERSEN :** That is so council because I was involved in the relocation which happened in February...

**ADV LILLA CROUSE:** After the ombuds report?

**MR PETERSEN :** 2017, ja after the ombuds report. We were involved in the rapid  
20assessment team, I remember one day I had blue lights and when I opened my

curtain there was blue lights, and Christine Nomalona was sitting in the front seat of a Police car and so it was quite rushed, we were rushed to Pretoria for a meeting with the team that was going to do the rapid assessment on the patients to move them urgently away from those NGO's that were identified by the ombudsman as 5critical.

**ADV LILLA CROUSE:** So that also took a lot of your time?

**MR PETERSEN :** That also took a lot of my time, but then immediately after the relocation was the process of the getting involved with the...

**ARBITRATOR JUSTICE MOSENEKE:** And when the rapid assessment was 10happening where was the MEC, Dian Mahlangu?

**MR PETERSEN :** That rapid assessment happened in January after the ombudsman's report she resigned the day before I think when the report went public. That is when she resigned, we were in a meeting with the premier on that day and the premier was still going to address us in the family committee. And 15Sasop and Saydate and section 27 and everyone was there they were just about to break the news and then the premier had to desk out and then desk back in to say I have got breaking news I just got a message from MEC Mahlangu that she is putting out her resignation and I happily accept it and we applauded and saluted him for that. And to this day we applaud and salute him for that out of...

20**ARBITRATOR JUSTICE MOSENEKE:** Him as the premier?

**MR PETERSEN :** The premier yes.

**ARBITRATOR JUSTICE MOSENEKE:** Thanks.

**MR PETERSEN :** I'm not sure if I answered your question properly about the mental health review board?

**ADV LILLA CROUSE:** Yes, thank you. You also attended the parliament did you not?

**MR PETERSEN :** Yes, we as team again, we the family committee attended the parliament with the current MEC now presented the budget, the budget speech.

**ADV LILLA CROUSE:** Did you attend parliament where minister Motsoleli spoke about the Life Esidimeni issues?

10**MR PETERSEN :** Yes I did.

**ADV LILLA CROUSE:** That was in Cape Town?

**MR PETERSEN :** That was in Cape Town.

**ADV LILLA CROUSE:** And he gave recognition to you?

**MR PETERSEN :** he did gave recognition to the committee and the work that the committee did, that the committee played a major role behind the scenes and otherwise yes.

**ADV LILLA CROUSE:** MR. Peterson then just lastly, these proceedings are part of the families doing that is here. What redress do you want to suggest would be a proper redress of what has happened here?

**MR PETERSEN** : Well, I think ...is part of the redress part of the ADR process and I must say that I was also involved in the formulation of the terms of reference for the ADR process. And I think for us this process is healing and as well just the engagement with people coming forth and telling us the truth it is a pity that DR. 5Manamela decided to get sick and I used the word decidedly are sick when we are really keen to hear from her. Because we want the truth because the truth is what will heal us in the end, we want to know why this happened, how it happened and that it doesn't ever happen to those of us who survived. I think even for those the diseased if they know that something like this will never happen again that is the 10biggest reward that we can give them and it is the biggest way which we can contribute towards their healing. But of course there are other things that can be done, such as MNO rule and I think that will go a long way to tell future generations, to tell the world that we as South Africans that we are not the [ianduable] that we will find what happened tooth and nail and that we will see justice comes to pas and we 15will remember those people and we will do all and everything in our power to make sure that something like this does not happen ever in this country or anywhere in the world. I think for us, for me if we can pull out lessons from what happened here that would be...

**ARBITRATOR JUSTICE MOSENEKE:** This would be a physical memorial in 20remembrance of those who has passed on and survivors of this marathon project, is that it?

**MR PETERSEN** : That is correct, yes that is my understanding.

**ARBITRATOR JUSTICE MOSENEKE:** And this is a physical memorial?

**MR PETERSEN** : Ja, a physical memorial.

**ARBITRATOR JUSTICE MOSENEKE**: Ok. Please go on.

**MR PETERSEN** : I was opposed by someone in the gym the other day Justice to say that...

5**ARBITRATOR JUSTICE MOSENEKE**: [inaudible 01:04:36] did you, that is impressive.

**MR PETERSEN** : To say that we neglected our family members, that most people don't visit their family members. Well, that is just not true, I've interacted with family members I've seen their social-economic circumstances, I've seen the heart that  
10they had and the love they had for their family members. We don't visit sometimes as often as we should visit that is true, but that is because of limitations that has to do with resources. And if something along those lines could come out of this deliberation out of this ADR to say how can we help families to interact more with their loved ones that will assist greatly. We are in by no means opposed to  
15deinstitutionalization, on paper and otherwise, it looks like a fantastic concept of empowerment and honour and respect to the least of the least in our societies, people with mental health problem. But what we are saying is that it needs to be done correctly, our family members need to be brought closer to us and we need to be resourced to move closer to them. So if out of this I don't have a clear cut  
20answer Justice, but if a coupon system of some kind of a system to assist these particular family members to visit more easily and frequently I'm sure a lot can be part of an equation, we can go a long way inequitable recompense.

**ADV LILLA CROUSE:** Mr. Peterson we have seen a lot of emotion during these hearings. So with the healing there is also emotion, do you think there is, is the stories causing any further hardship?

**MR PETERSEN:** Council the stories had been fantastic and I've attended most of them I must quickly add that, that almost put me in trouble with the mental health review side of my duties as well. But the testimonies here has been very healing and I think very therapeutically. But I think that we need to take family members Justice through a situation where they get further counselling and assistance in that regards. I need counselling myself I have been screaming for counselling from Saydat and I understand that their heads are full and everybody think I'm so strong but believe me I do break at time under the pressure of this. And if you have been at most of this hearings like some of us have it becomes very heavy on you. I think that we will need a proper debriefing and counselling and that should be part of the package for the families.

**ARBITRATOR JUSTICE MOSENEKE:** Well, I have a psychologist friend from Cape town who told me will I make the order, will I have the line that says counselling for Dikgang Moseneke, because I will need counselling to together with all of you. So I'm told that I will need two at the end of all of this but I did take the void that we need additional counselling in order to meet the impact of this tragedy.

You may proceed.

**ADV LILLA CROUSE:** Thank you, have you got any ideas for redress for surviving patients?

**MR PETERSEN:** I think counsel there should be monitory award given to the families of the survivors specifically to assist them to be able to take better care of their loved ones.

**ADV LILLA CROUSE:** Any other redress that you want to bring forward?

5 **MR PETERSEN:** Well I do want to mention that we had several healing sessions with premier Magoba – David Makuba sorry. And those had been very meaningful and we have heard from the minister to ask for an apology and I think that also went a long way. And I know that the minister in the premier will be appearing so I think that kind of gesture and apology will go a very long way in helping us with  
10 restorative justice. But I asked that criminal justice must be laid to the people I think it is important that those who perpetrated this hideous crime against defenceless people are worse than the people who killed whoever they were, who cared for people during the second world war or I any other context, the bomb in Kawasaki was a terrible landmark of pain in the history of mankind. But I think what these  
15 people have done is along these sides and I think they need to be brought to book for that and I'm not a lawyer so I can't say that they should be charged for murder. But I can say that they should be charged very seriously.

**ADV LILLA CROUSE:** Anything else that you want to say MR. Peterson?

**MR PETERSEN :** I will rest my case for now council.

20 **ADV LILLA CROUSE:** Thank you. Justice Moseneke.

**ARBITRATOR JUSTICE MOSENEKE:** Thank you, MR. Peterson and thank you council Adv Crouse.

**ADV LILLA CROUSE:** It was right the first time Justice. It is Crouse...

**ARBITRATOR JUSTICE MOSENEKE:** Crouse.

**ADV LILLA CROUSE:** My husband would be pleased if you have that right.

**ARBITRATOR JUSTICE MOSENEKE:** Yes, I've had it right most of the time isn't it?

**ADV LILLA CROUSE:** Yes.

**ARBITRATOR JUSTICE MOSENEKE:** Somehow late in the day, Adv Hassim?

**ADV ADILA HASSIM:** Justice, I have no further questions for the MR PETERSEN , I would just like to thank MR. Peterson for his involvement in the process and standing up for the rights of those who couldn't stand up for themselves. Thank you.

**ARBITRATOR JUSTICE MOSENEKE:** Adv Groenewald?

**ADV DIRK GROENEWALD:** Thank you very much, Justice. Justice ja we have no further questions for the MR. Petersen. We would also like on behalf of the families that we represent thank him and the family members for their efforts and everything that they have done, it is much appreciated. Thank you very much.

**ARBITRATOR JUSTICE MOSENEKE:** Adv Ngutshana?

**ADV NGUTSHANA:** Thank you, Justice. We have no further questions for the MR. Petersen.



**ARBITRATOR JUSTICE MOSENEKE:** Oh, you are still on the post sorry I did not know whether a change of MR. Petersen will mean a change of guard. But very well thank you. ADV Adila and Adv Hutamo...

**ADV TEBOGO HUTAMO:** Thank you, Justice, Good afternoon MR. Petersen.

5**MR PETERSEN :** Good afternoon council.

**ADV TEBOGO HUTAMO:** We thank you so much for taking the time to give an explanation of treatment that your uncle had to go through during the process of relocation. And we also take this opportunity to that you in your involvement to assist the government together with other family members to ensure things get to  
10be corrected. From your interaction from government officials, it appears that there is some progress which is underway and as you have said you are doing what is being referred to as oversight on the family members by virtue of your appointment to the review board. And we would like to encourage you to assist everyone else to ensure that the interest of the mental health care user are really protected and  
15guarded against and on that basis, we will not pose any questions to you, we just want to thank you. And as you said other government officials would be appearing before this proceedings to extend their apology as part of the process in terms of this arbitration proceedings and we hope that we will be able to get to the bottom of the matter for everyone to heal in this process. Thank you so much.

20**MR PETERSEN :** Thank you, council.

**ARBITRATOR JUSTICE MOSENEKE:** You know by now MR. Petersen that you are entitled to respond if you so which, and also to give us you strength song.

**MR PETERSEN** : My?

**ARBITRATOR JUSTICE MOSENEKE**: Your valedictory song, your victory song, whatever you want to say as you leave the MR. Petersen box.

**MR PETERSEN** : Well, first of all, I just want to ask that people respect this process. And I want to call upon the previous MEC Mahlangu to make herself available to give us answers because at the end of the day it is the truth that will heal us as you rightly said justice, I am in the ministry and the Bible says that the truth shall set you free. As long as the truth is out there and evasive we are still prisoners and we are still in pain but we begin to come out of that prison and come out of that prison much, much better ones the truth comes out. I want to say to those people, I want to say to doctor Manamela and others come forth tell the truth, the truth is all that will set them free to because as long as they are lying and as long as they are keeping the truth out there they will never be free and they will always be prisoners. Justice Moseneke I am honour to be pleading before you today and I must say that I have read your blog and my own liberator and there I saw a young man 12 years old imprisoned seeming hopeless, turned what looked like a very dark situation into a positive situation. You came out of prison armed, you came out of prison to make a difference in the IEC, you came out of prison and you tasked the constitution of this country. I'm going to take it to praise you Justice, but the point I'm making is Justice...

**ARBITRATOR JUSTICE MOSENEKE**: I am obliged to rule you out of order.

**MR PETERSEN** : I just want to say that we will arise out of this, my people our people we will arise out of this. We will arise!, We will arise! We will are out of the stronger South Africa will come out of this stronger. I would like to tank the Trotters for the work they have done, I like to tank the councils they piercing intense 5questions that really penetrates and bring the truth out. May God salute you and may God bless you for your work. Nothing can award you more or no monetary award or any award can award you. But one day they words well done my good and faithful servant from the Lord that will be your ultimate crown. So I bless you, so I thank you and so I thank God for you.

10**ARBITRATOR JUSTICE MOSENEKE:** Thank you, thank you, thank you MR. Peterson. Well, we had quite a full day haven't we? Maybe that is time to go home, it is time to go home I think, we might have a line in the award that says all the attorneys and advocates must submit to counselling themselves to survive all of this. But thank you so much we, any housekeeping matter?

15**ADV LILLA CROUSE:** Not from our side thank you, Justice Moseneke.

**ARBITRATOR JUSTICE MOSENEKE:** We have taken care of tomorrow have we? Because we have to keep on tracking.

**ADV LILLA CROUSE:** Yes, Justice we have 3 witnesses for tomorrow, I think that they will fill up the day.

20**ARBITRATOR JUSTICE MOSENEKE:** Ja, very good. Has anybody received the medical certificate? We were promised it before the end of the business.

**ADV TEBOGO HUTAMO:** We haven't received any notification of those analysis, we are still waiting for them.

**ARBITRATOR JUSTICE MOSENEKE:** Ja, very well. Anything else from any of the council which is important for tomorrow to go ahead? We are going to adjourn and resume tomorrow at 9:30 thank you.