

**LIFE ESIDIMENI ARBITRATION**

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

**DATE: 18<sup>th</sup> OCTOBER 2017 DAY 8**

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**DAY 8 SESSION 1 – 2.**

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**BEFORE ARBITRATOR – JUSTICE MOSENEKE**

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**WITNESSES:**

**MS SANDRA DE VILLIERS**

**DR MORGAN MKHATSHWA**

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**Day 8**

**18 OCTOBER 2017**

**SESSION 1**

5 **ARBITRATOR, JUSTICE MOSENEKE**: Good morning, please state your full names for the record please?

**MS SANDRA DE VILLIERS**: My name is Sandra Johanna Susana de Villiers.

**ARBITRATOR, JUSTICE MOSENEKE**: Do you swear that the evidence that you are about to give will be truth and nothing else but the truth and if so, do raise your  
10 right hand and say 'so help me God'

**MS SANDRA DE VILLIERS**: So help me God

**ARBITRATOR, JUSTICE MOSENEKE**: Counsel?

**ADV DIRK GROENEWALD**: Thank you very much Justice

**ARBITRATOR, JUSTICE MOSENEKE**: Before we go ahead I just want to say to  
15 the families that we had a delay and we hope they explained to you its nature. We do apologise for that to keep you waiting, but the second thing is that we had to move to this venue, I hope you have been told, from today through to Friday. There were bookings which were made we have been told ages ago which they could not move, so we had to move and I apologise for this inconvenience, but we should be

good by Monday back to the bigger venue, so that we continue with the work at hand. Counsel?

**ADV DIRK GROENEWALD**: Thank you very much Justice, Mrs De Villiers I know to testify can be quite intimidating, so don't be nervous, it's your time to tell your  
5 story and take this opportunity to tell to Justice what it is exactly that happened and so on, but at any point in time if you don't feel comfortable just let us know and we will adjourn for few minutes. Mrs De Villiers, you had a family member who died as a consequence of this Gauteng Mental Health Marathon Project, can you please just confirm the name of that family member?

10 **MS SANDRA DE VILLIERS**: Jaco Stols.

**ADV DIRK GROENEWALD**: Mam how are you related to Mr Stols?

**MS SANDRA DE VILLIERS**: I am his sister

**ADV DIRK GROENEWALD**: How many children were you?

**MS SANDRA DE VILLIERS**: We were 3 children

15 **ADV DIRK GROENEWALD**: And Jaco was he the oldest or the youngest?

**MS SANDRA DE VILLIERS**: He is the middle child.

**ADV DIRK GROENEWALD**: Justice, just for the record I want to refer the parties to document ELAH4, it is the third page, and there is Jaco Stols, just confirmation that he is indeed part of the list of the patients for the sake of the records.

20 **ARBITRATOR, JUSTICE MOSENEKE**: You said I should look where Counsel?

**ADV DIRK GROENEWALD**: On Page 3, at the top there, the very first name at the top of the page.

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

**ADV DIRK GROENEWALD**: Now Mrs De Villiers, in April of 2016 where was Jaco  
5 a patient?

**MS SANDRA DE VILLIERS**: He was a patient at CCRC.

**ADV DIRK GROENEWALD**: Since when was he a patient at CCRC?

**MS SANDRA DE VILLIERS**: Since 1997, he was a patient there for about 18 years.

**ADV DIRK GROENEWALD**: Mrs De Villiers, we have evidence that the patients at  
10 CCRC were sacrificed to make room for patients from Life Esidimeni and we know that they were transferred to another facility. What I want to know from you is, were, you informed that Jaco was going to be transferred?

**MS SANDRA DE VILLIERS**: Yes, they did phone me and they informed me that they would be transferring Jaco to an NGO.

15 **ADV DIRK GROENEWALD**: When was that??

**MS SANDRA DE VILLIERS**: It was in March, 2016

**ADV DIRK GROENEWALD**: Who informed you that Jaco and the other patients were going to be transferred?

**MS SANDRA DE VILLIERS**: It was the social worker Daphne.

**ADV DIRK GROENEWALD**: Did she tell you the reason for the intended transfer?

**MS SANDRA DE VILLIERS**: At that stage, she only told me that there was a waiting list of patients who would have to come in and at that stage, I did not know about the Life Esidimeni Patients

5 **ADV DIRK GROENEWALD**: Did the Department inform you of who was now going to take care of Jaco and the other patients?

**MS SANDRA DE VILLIERS**: They did not tell me who was going to take care of him in so many words. They only told me that he was going to an NGO and I asked that Jaco having being at CCRC a long time that having him up-rooted was going to  
10 make him sick.

**ADV DIRK GROENEWALD**: Can you just explain to us exactly where it was they said they were going to transfer him to, I would like to know from you the facility, where it was and was it close to CCRC, just explain that to us?

**MS SANDRA DE VILLIERS**: She told me it's on the premises of CCRC which is  
15 now the ward that they would close off with palisading and a gate

**ADV DIRK GROENEWALD**: Did the Department give you any assurances in respect of the transfer and treatment that Jaco would receive at this new facility?

**MS SANDRA DE VILLIERS**: They told me that they would take care of him but I didn't have a good feeling about it because these people had no qualifications and  
20 one has to have qualifications to take care of these types of patients.

**ADV DIRK GROENEWALD**: Can you also please tell us why Jaco was a patient there at CCRC?

**MS SANDRA DE VILLIERS**: We kept Jaco at home when he was still small and when we moved to Pretoria with my parents, he used to attend Wen Aker in  
5 Leidenberg, but it was too far to travel and then he was placed in CCRC

**ADV DIRK GROENEWALD**: Can you just elaborate for us on his disability or his mental condition?

**MS SANDRA DE VILLIERS**: He had a brain injury at birth and resulted in brain damage and his one eye also got hurt and he was at the stage of child of 9 years  
10 old even though he was 51 years old.

**ADV DIRK GROENEWALD**: At this point in time was Jaco receiving any specific medication?

**MS SANDRA DE VILLIERS**: They did provide him medication to relax but when he got upset he got aggressive, even though he was very loving when he took this  
15 medication

**ADV DIRK GROENEWALD**: Do you know when Jaco was moved Jaco and the other patients were moved? You testified that he was at CCRC and you were informed that they were going to be transferred to another NGO, so let's perhaps start there did they give you the name of this NGO?

20 **MS SANDRA DE VILLIERS**: They did not provide me with the name at that stage.

**ADV DIRK GROENEWALD**: Do you later learn what was, this NGO's name?

**MS SANDRA DE VILLIERS**: At a later stage I found out that it was Siyabadinga that would be the NGO.

**ARBITRATOR, JUSTICE MOSENEKE**: Did you come to know what Siyabadinga means?

5 **MS SANDRA DE VILLIERS**: No Justice.

**ARBITRATOR, JUSTICE MOSENEKE**: And were you not inquisitive to know what Siyabadinga means? Your brother is there?

**MS SANDRA DE VILLIERS**: I speak under correction, but I think it means something like caring for the old and the disabled or the elderly and the disabled.

10 **ARBITRATOR, JUSTICE MOSENEKE**: It literally means 'we need them, we want them here, we would want to care for them, we desire to have them', that is what Siyabadinga means. I am just curious there are so many languages in South Africa and I am fascinated by languages, but that is what it means, that is where your brother was at Siyabadinga.

15 **ADV DIRK GROENEWALD**: Thank you Justice, do you know when he was moved and the other patients moved to Siyabadinga?

**MS SANDRA DE VILLIERS**: It was around May, 2016

**ADV DIRK GROENEWALD**: Now in your opinion since you came to learn about Siyabadinga and their facilities, would you say Siyabadinga was qualified or capable  
20 of looking after Jaco and the other patients?

**MS SANDRA DE VILLIERS**: I thought so in the beginning, but later on, I realised that they did not have enough nursing staff there wasn't enough qualifications to care for him

**ADV DIRK GROENEWALD**: Did they hide that from you, the fact that they don't  
5 have qualifications and enough resources and so on?

**MS SANDRA DE VILLIERS**: I feel they did hide it from me. It looked good, but I feel that they were hiding something.

**ARBITRATOR, JUSTICE MOSENEKE**: Why did you say that, did you go yourself to the premises of Siyabadinga?

10 **MS SANDRA DE VILLIERS**: When my brother was there, I went to visit and took food with and he was very hungry, because at that stage, we sat in the kitchen because there was no place for the families and I closed the kitchen door and all of a sudden a door opened and a child ran in and he stuffed the food into his mouth and I realised that this child was very hungry and my brother was so hungry that he  
15 almost eat the serviette brought with the food. He was also very thirsty. I gave him 500ml of cold drinks and eventually he drank a whole 2 litre of cold drink and he told me he was still thirsty and then I realised that something was wrong.

**ADV DIRK GROENEWALD**: Did you assist Siyabadinga in any way to provide for these patients?

20 **MS SANDRA DE VILLIERS**: Yes we had a fund raiser on the 4th of June, there was an open day and also Solidarity also gave multiple donations. There was a



washing machine, bakkies came full of linen and warm blankets. Meat was donated, vegetables were donated, canned food. These donations were used to keep the patients warm and to feed them

**ARBITRATOR, JUSTICE MOSENEKE**: Who told these good people that they must  
5 make donations? I asked who were these good people who made donations and who had asked them to make the donations? Did you go out there to go and tell them about the conditions at Siyabadinga?

**MS SANDRA DE VILLIERS**: We asked the family members and Solidarity also helped us, even people came as far as Witbank to come and help. It was families,  
10 friends, even strangers with good hearts, came and people who cared and yes we told them that Siyabadinga needed help to feed these patients.

**ADV DIRK GROENEWALD**: Did Siyabadinga also take part in this initiative to get donations?

**MS SANDRA DE VILLIERS**: Yes they did play their part.

15 **ADV DIRK GROENEWALD**: Do you know whether the fact that Siyanbadinga did not have the necessary resources to look after these patients, do you know whether or not that was made known to the Department? Did the Department of Health know that Siyabadinga did not have those resources? Were they were aware of the fact?

20 **MS SANDRA DE VILLIERS**: No they were not.

**ADV DIRK GROENEWALD**: Perhaps I should just refresh your memory do you know Mr Pieter de Jager?

**MS SANDRA DE VILLIERS**: Yes I do know him

**ADV DIRK GROENEWALD**: I would like to refer us to document ELAH 10, and that  
5 is a letter from Mr Pieter de Jager.

**MS SANDRA DE VILLIERS**: Oh I remember he copied me in.

**ADV DIRK GROENEWALD**: Do you have knowledge of this letter?

**MS SANDRA DE VILLIERS**: Yes

**ADV DIRK GROENEWALD**: Now in this letter, Mr de Jager, he writes to Mrs  
10 Mahlangu, who was the MEC at that point in time and Dr Selebano and Dr  
Manamela. He amongst other, makes reference to the fact that he is a committee  
member of Siyabadinga and he tells the MEC and Dr Selebano and Dr Manamela,  
that 2 weeks ago it was found that there exists minimal infrastructure for the proper  
care of these patients that cannot fend for themselves, as they have been certified  
15 to be taken care under the Department of Health. He said that the kitchen has a  
stove with 2 plates to prepare food for 73 patients. They have 1 small washing  
machine to do all the laundry, linen, can you confirm, is that more or less what the  
circumstances were at Siyabadinga?

**MS SANDRA DE VILLIERS**: Yes they even asked me at a stage to bring clothing  
20 and linen to Jaco and when I took these items to him, I realised that the air-  
conditioner was too hot inside and I asked them to please change the settings as

these patients might get sick when they go out and come back in. At the end of the day these items were gone, I don't know what happened to them

**ADV DIRK GROENEWALD**: Do you know whether or not the Department replied to this letter?

5 **MS SANDRA DE VILLIERS**: No, they did not reply to it

**ARBITRATOR, JUSTICE MOSENEKE**: When did you become aware of this letter, we know that Mr de Jager wrote the letter in June 2016, when did you become aware and know about the letter? Who else was on the committee of parents and interested parties at Siyabadinga?

10 **MS SANDRA DE VILLIERS**: I became aware of this letter, it was sent to me in that week and then the families or the people on the committee. I know of a few families, who were part of it, I know of Christine and a Koos Zuurman, I cannot remember anyone else at this moment

**ADV DIRK GROENEWALD**: Mam we know that your brother died and we will get to 15 the facts. I would just like to know did he die suddenly, or were you able to observe that his health deteriorated?

**MS SANDRA DE VILLIERS**: He lost a lot of weight and at a stage he had a really bad cough, so I brought him cough medicine but I think it was because of the air-conditioner that was so hot and what also worried me, was that there was no doctor 20 around, so if these patients got sick who would take care of them?

**ADV DIRK GROENEWALD**: Do you know that he was transferred back to CCRC at some point in time do you know when he was transferred back to CCRC?

**MS SANDRA DE VILLIERS**: No I did not know and I was not told and I was also not given a date. What I know is that Siyabadinga had to be out on the 12<sup>th</sup> of July  
5 and my worry was that were there these patents left alone there? You can't leave these people alone. They can hurt each other, someone can fall and that really worried me.

**ADV DIRK GROENEWALD**: Do you know why he was transferred back to CCRC?

**MS SANDRA DE VILLIERS**: The reason I know of, is because Siyabadinga closed

10 **ADV DIRK GROENEWALD**: Do you know what was the reason?

**MS SANDRA DE VILLIERS**: They had no license and they were not qualified to look after these patients. To look after these patients, you need to have the passion for your job and to be qualified to care for special needs. These people have special needs and not any person or any nurse can look after them. They need lots  
15 of love and lots of attention. When I arrived one time in winter, some of the patients were walking around naked outside.

**ADV DIRK GROENEWALD**: Did the Department inform you of the transfer, the fact that Jaco and the other patients were to be transferred back to CCRC?

**MS SANDRA DE VILLIERS**: No, they did not let me know

**ARBITRATOR, JUSTICE MOSENEKE**: On Exhibit ELAH4, they purport to set out some particulars of your brother. The name seems to be right, Jaco Stols, his gender is correct, it's male, but his date of birth is given as the 6<sup>th</sup> of January, 1990?

**MS SANDRA DE VILLIERS**: No, it is 1965.

5 **ARBITRATOR, JUSTICE MOSENEKE**: So that is incorrect right?

**MS SANDRA DE VILLIERS**: Yes.

**ARBITRATOR, JUSTICE MOSENEKE**: The ID seems to suggest that you are correct, it is 1965-01-06, is that his correct date of birth?

**MS SANDRA DE VILLIERS**: Yes Justice.

10 **ARBITRATOR, JUSTICE MOSENEKE**: They reflect his calculated age as 52, is that correct?

**MS SANDRA DE VILLIERS**: I don't agree, he died at the age of 51 and he would have turned 52 in this year.

**ARBITRATOR, JUSTICE MOSENEKE**: The record goes on to say that he was  
15 discharged from CCRC on the 9<sup>th</sup> of May, 2016, is that correct?

**MS SANDRA DE VILLIERS**: Yes Justice I can now remember it.

**ARBITRATOR, JUSTICE MOSENEKE**: This was after 18 years of staying at CCRC you said, is that correct?

**MS SANDRA DE VILLIERS**: Yes Justice.

**ARBITRATOR, JUSTICE MOSENEKE**: His date of death is reflected as the 14<sup>th</sup> of October, 2016 and he died at Mamelodi Hospital, tell us about that, when was he taken to Mamelodi Hospital?

**MS SANDRA DE VILLIERS**: Yes Justice.

5 **ARBITRATOR, JUSTICE MOSENEKE**: When was he taken to Mamelodi Hospital? I am sorry to interrupt you but you took him from Mamelodi Hospital or from Siyabadinga? So you took him from Siyabadinga to a private Doctor?

**MS SANDRA DE VILLIERS**: I took him to a private doctor on the 19<sup>th</sup> of September. When I arrived at the facility, I waited a long time for Jaco to come, because I was not allowed to go inside the ward. I was waiting in the waiting room and it took very long. When he arrived, he looked very bad. He cried out to me and it broke my heart. He told me Sandra I don't feel well, I don't want to come back here, they hit me, so I said to him but you are sick Jaco and he said I know I am sick but they hit me. Right then, I decided to take him doctor because at Cullinan they never had a doctor available. I took him to Doctor Lombard he was the doctor previously that was at CCRC so I took him to the doctor before he went to the hospital. So I took him from CCRC to Dr Lombard.

**ARBITRATOR, JUSTICE MOSENEKE**: Did you know your brother to be diabetic before then? But you said his sugar level was around 12?

20 **MS SANDRA DE VILLIERS**: When the Doctor saw Jaco, he was shocked and he told me this child is severely dehydrated, and I could see that his mouth was very dry. When I would give him a bit of water, he would just consume everything. The

Doctor told me that he had marks on his body and that his sugar level was at 12. I gave the report to the advocate. The Doctor gave him an injection and he gave me a letter to give to the nurse at CCRC and also provided a script to hand in at CCRC for medication that they should give him. Then I went back to CCRC and went to the  
5 ward, so no, he was not diabetic before this and the doctor said the reason why his sugar was at such a high level, was because he was severely dehydrated and he not get enough food. When I arrived at the ward, I walked through because I wanted to put him in his bed. When I opened the security gate the nurse pushed me out, it was the nurse of the ward, Nurse Mateng.

10 **ARBITRATOR, JUSTICE MOSENEKE**: In other words, he wanted to stop you from entering into the ward?

**MS SANDRA DE VILLIERS**: Yes, she did not want me to enter

**ARBITRATOR, JUSTICE MOSENEKE**: And what about your brother, did they allow him to enter the ward?

15 **MS SANDRA DE VILLIERS**: Yes, they let him enter but they stopped me.

**ARBITRATOR, JUSTICE MOSENEKE**: Did Mr Stols tell you who in particular assaulted him?

**MS SANDRA DE VILLIERS**: When he went in he kept on crying, he said Sandra don't leave me here and I felt like I was leaving him inside a jail and I asked the  
20 sister why can't I come in and she told me that families weren't allowed. I gave her the letter from the doctor and I told her to please follow the instructions from the

Doctor and also to give him the medication. When I left there I was very unhappy, and I couldn't sleep well for a few nights. I also want to mention that when I went to visit him sometimes, he would tell me that they hurt him and I would tell him that tell Sandra who is hurting you and he told me because then I will sort it out and he told  
5 me no, because they would then just hurt him more, so he was very scared.

**ADV DIRK GROENEWALD**: The incident that you are referring to, the doctor and that you took him back to the ward, that was on the 18<sup>th</sup> of September, 2016, is that correct?

**MS SANDRA DE VILLIERS**: No, it was the 19<sup>th</sup> of September, on the Monday.

10 **ADV DIRK GROENEWALD**: Mrs De Villiers, we heard evidence here by a social worker from CCRC that the patients had enough food and there was water and the beds were made and that there wasn't really anything out of the ordinary at CCRC, everything was in order, what is your response to that?

**MS SANDRA DE VILLIERS**: I don't agree with that, because when I visited Jaco,  
15 he was always hungry. I would buy him slippers because I didn't want him to walk barefoot, but when I arrived again, these slippers were gone and I had to buy him more and he would wear very thin clothing. I don't know about the linen because I was not allowed to go inside the ward so my thoughts run wild with not knowing whether he maybe slept on the floor, did he sleep on a mattress, did he have a  
20 blanket over him.

**ADV DIRK GROENEWALD**: Did you confront the staff of CCRC regarding his condition?



**ARBITRATOR, JUSTICE MOSENEKE**: Was he always in a wheelchair?

**MS SANDRA DE VILLIERS**: On the 25<sup>th</sup> of September, 2016, myself and my husband on the Saturday, we went to visit and we waited for 30 minutes in the sick bay for him to arrive. One of the nurses that came with him was a man and Jaco was in a wheelchair, where he could usually walk. I asked the nurse what happened to his slippers, because I just bought him new ones on Monday and the nurse said he doesn't know. I was very upset and in that area there was an office with 2 nurses sitting inside by the sick bay, I went to ask them what is going on with Jaco, because from Monday to Saturday, he is deteriorating and I confronted her and I wanted to know what was going on and the nurse told me not to become emotional, but how can I not be emotional when he is my brother. I asked if they gave him the medication, they said no, they didn't give him everything and that the Cullinan doctor would have to see him, but I asked then when, when he was dead? The doctor was never available when Jaco got sick and I had to take him to the doctor.

**ARBITRATOR, JUSTICE MOSENEKE**: Do we know the names of the 2 sisters who were seated in the Sick Bay? But this was on the same date and that is the date you gave us now, the 26<sup>th</sup> of September, 2016?

**MS SANDRA DE VILLIERS**: I cannot remember the nurses' names but it was the same day we visited and it was on a Saturday. So I took him to the doctor on the 19<sup>th</sup> and on that Saturday, the 26<sup>th</sup>, we were back again

**ADV DIRK GROENEWALD**: Mrs De Villiers, we know that Jaco died in Mamelodi Hospital. Now how did he end up there?

**MS SANDRA DE VILLIERS**: It was the morning of the 3<sup>rd</sup> of October, 2016, I phoned CCRC to enquire about Jaco, to know how it was going with him and I know he was either in Ward 4A or 4B, I stand to be corrected and I phoned the one ward and I was told that there was no Jaco Stols. So I asked them to please go and look  
5 at the other ward because there is not a telephone available and I was told that there is no Jaco Stols. I told them that he must be in one of these wards. The person must have realised that I became agitated and I spoke to someone else. They told me that Jaco was fine, he was not in the wheelchair anymore, he was eating and he was walking around and I was very relieved. I also realised that there  
10 was no communication happening because how did they not know what was going on. And at that stage there were lots of students who were working there as well.

**ADV DIRK GROENEWALD**: What happened thereafter?

**MS SANDRA DE VILLIERS**: A few hours later they phoned me and informed me that they were taking Jaco to Mamelodi Hospital and I asked them but you just told  
15 me that he was fine this morning? So I jumped in my car and I took my domestic worker with me and when I arrived at the hospital, Jaco was sitting in a wheelchair and one of people from CCRC was there with him and I was asked them why are you just sitting here? And I was informed that they can't find Jaco's file. So I told them that you can't just sit here and they told me that they were planning to go back  
20 to CCRC. I believe if I didn't arrive there, he would have died that evening. And so I ran up and down looking for a doctor, but all of the people were sitting in front of the consultation rooms waiting, so there was no way to get in. So I went into one of the consultation rooms and I saw a doctor there and I told him please help me, my

brother needs your help and the doctor told me Mam, don't worry, because I told him that they can't find my brother's file. He said don't worry, bring your brother and go to the reception and tell them they should open a new file for your brother. So I took Jaco and my domestic worker and the person from CCRC. The doctor  
5 immediately inserted a drip and he told me that he was severely dehydrated and he would have to be admitted.

**ARBITRATOR, JUSTICE MOSENEKE**: Is that Dr Naude who said that to you, that she sees no chance of Jaco living further?

**MS SANDRA DE VILLIERS**: I then went up to the ward, he was placed in a surgical  
10 ward and Dr Naude was the one who came to see Jaco and she said that he was severely dehydrated and underfed and that his situation was critical. He told me that he should actually be placed in ICU, but there was no space for him, and that the only space that was left, was for people who could continue with their lives and it felt as if my brother's life was gone and he was admitted into the surgical ward with  
15 multiples drips. She told me that most of the patients in the ICU were pregnant patients and they would rather help them because they have life left in them and I think that was very unfair. She also told me that because he was severely dehydrated that he would have had damage to his kidneys.

**ADV DIRK GROENEWALD**: We know that Jaco passed away on the 14<sup>th</sup> of  
20 October 2016, how did you learn of his passing? Who informed you?

**MS SANDRA DE VILLIERS**: On the 14<sup>th</sup> of October around 12:30 at night, a nurse phoned me to tell me that Jaco had passed away. It felt as if a piece of my life was taken or ripped away from me because we were very close.

**ADV DIRK GROENEWALD**: Did they inform you of the cause of death?

5 **MS SANDRA DE VILLIERS**: No, they didn't tell me what was his cause of death

**ADV DIRK GROENEWALD**: Do you know what is recorded on his death certificate?

**MS SANDRA DE VILLIERS**: Under investigation is stated.

10 **ARBITRATOR, JUSTICE MOSENEKE**: Was there any post mortem performed on Mr Stols?

**MS SANDRA DE VILLIERS**: I reported his death at the Cullinan police station and the lady who phoned me I don't know if it was Daphne that I should report it there and his body was taken to the state pathologist

15 **ADV DIRK GROENEWALD**: Did you receive the outcome of the autopsy, the autopsy report?

**MS SANDRA DE VILLIERS**: No, I have not received anything Advocate.

**ARBITRATOR, JUSTICE MOSENEKE**: But do you know whether the autopsy examination was performed?

**MS SANDRA DE VILLIERS**: He passed away on the 14<sup>th</sup> but I don't have an exact date when it happened, but it must have been around the week of the 24<sup>th</sup> of October, because I had to identify his body beforehand.

**ADV DIRK GROENEWALD**: When was his funeral?

5 **MS SANDRA DE VILLIERS**: 27<sup>th</sup> of October

**ADV DIRK GROENEWALD**: Do you know whether anyone was charged or prosecuted in respect of his death?

**MS SANDRA DE VILLIERS**: No, I don't know

10 **ADV DIRK GROENEWALD**: Have you been contacted by the SAPS to inform you of the investigation?

**MS SANDRA DE VILLIERS**: No, they haven't contacted me at all.

**ADV DIRK GROENEWALD**: Did you incur any expenses in respect of the funeral?

**MS SANDRA DE VILLIERS**: I did have a small funeral policy, but I had to make additional payments.

15 **ADV DIRK GROENEWALD**: How much was that?

**MS SANDRA DE VILLIERS**: About R4000.

**ADV DIRK GROENEWALD**: How often did you visit Jaco?

**MS SANDRA DE VILLIERS**: As often as I could, but I would try to make it twice a month at least and I would sometimes also go and visit him in the week, if possible

**ARBITRATOR, JUSTICE MOSENEKE**: Was Mr Stols ever married?

**MS SANDRA DE VILLIERS**: No Justice, he was mentally disabled he couldn't lead a normal life.

**ARBITRATOR, JUSTICE MOSENEKE**: Did he have any children of his own?

5 **MS SANDRA DE VILLIERS**: No Justice, he was never married

**ADV DIRK GROENEWALD**: Are your parents still alive?

**MS SANDRA DE VILLIERS**: My mother is still alive and she lives in an old age home and my father passed away 5 years ago and his last wish was that I should please take care of Jaco when he was not around anymore.

10 **ADV DIRK GROENEWALD**: Those visits that you had with Jaco, did you feel obligated, was it work for you, why did you go and visit him?

**MS SANDRA DE VILLIERS**: It was a pleasure for me to go and visit him. It was the highlight of my month or my week and to visit someone who was satisfied or happy with so little and he loved his teddy bear called "Oorjies", he always carried a bag  
15 with books and pens and whenever he saw someone, he would ask them for pen and paper. He loved to sing, his favourite song was Amazing Grace

**ARBITRATOR, JUSTICE MOSENEKE**: How did your mother cope with the news, did you tell her and what was her response?

**MS SANDRA DE VILLIERS**: She took it surprisingly well because she knows that from his circumstances that he would be in a better place now, but for me it is still very difficult and I can't seem to get over it.

**ADV DIRK GROENEWALD**: How does it make you feel to know that your brother's  
5 death was caused due to the negligence and reckless decision and actions of the Department?

**MS SANDRA DE VILLIERS**: I feel angry and I can't do anything and I know that nothing will bring him back and I am disappointed in the Department of Health and in our country that they let this negligence happen.

10 **ARBITRATOR, JUSTICE MOSENEKE**: The witness used the word "magteloos"?

**INTERPRETER**: Yes I can't do anything, I feel powerless.

**ADV DIRK GROENEWALD**: Mam, the purpose of these proceedings are to try and find some closure for you and you have heard evidence here in these proceedings that the 3 main people responsible for this Project, no disciplinary action has been  
15 concluded against them. No criminal action has been taken against them, so how does that make you feel to know that there has not been actual accountability?

**MS SANDRA DE VILLIERS**: It is difficult for me to answer and I feel that with everything being said and done, these people got their instructions from the top, but still it does not give anyone the right to treat these people that cannot care for  
20 themselves or speak for themselves, to be treated in such a way, not even an animal would be treated like this. There is no reason that can be given for why this

is done. We are their voice and we have to speak for these people. For those who are still alive at CCRC, there used to be a child there and when he saw me, he would take my hand and call me mommy. He would kiss me and hug me and I wonder if he is still alive.

5 **ADV DIRK GROENEWALD**: Mrs de Villiers, unfortunately these proceedings and the outcome thereof, cannot bring back your brother, but what is it that you hope will come from these proceedings?

**MS SANDRA DE VILLIERS**: I want justice to be served and you cannot put a price tag on someone's life

10 **ADV DIRK GROENEWALD**: Thank you very much Justice. Thank you Mam, unless there is anything else you like to say or add, you have been here during these proceedings, you have heard everybody testify, so if there is anything else you would like to add or to say, you are more than welcome to do so.

**MS SANDRA DE VILLIERS**: I want our government to be more aware of these  
15 people and that they should be better cared for and I believe that they are not looked after in our society and they do have a place in our society and they show us that it's the small things that matter and they need their space under the sun. They believe that it is not money that brings happiness or big presents, they only want love and to be accepted.

20 **ARBITRATOR, JUSTICE MOSENEKE**: I wish you well and I hope you find peace as you move on.



**MS SANDRA DE VILLIERS**: All that I can say is that this is very painful.

**ARBITRATOR, JUSTICE MOSENEKE**: Counsel, do you have any question for the witness?

**ADV ADILA HASSIM**: I have no questions Justice Moseneke, but I would just like  
5 to say to Mrs de Villiers that I am very sorry for your loss

**MS SANDRA DE VILLIERS**: Thank you very much, I appreciate it.

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

**ADV LILLA CROUSE**: Thank you Justice, Mrs De Villiers, I just want to say thank  
you for being so brave to be here today. I just have a few questions. I appear for  
10 the survivors in this matter. Were you offered any counselling on the first move of  
Jaco?

**MS SANDRA DE VILLIERS**: Yes, I did receive counselling from a woman

**ADV LILLA CROUSE**: With his relocation back to the Cullinan Centre, did you  
receive counselling at that stage?

15 **MS SANDRA DE VILLIERS**: No, I would usually speak to my friend about it

**ADV LILLA CROUSE**: After his death, did you receive any counselling from the  
government?

**MS SANDRA DE VILLIERS**: I went to the psychiatrist which I have mentioned

**ADV LILLA CROUSE**: Were you offered any psychological or counselling services?

**MS SANDRA DE VILLIERS**: No not at all.

**ADV LILLA CROUSE**: Mam can I just ask you, you said that the people were not properly trained. What do you mean by that at the second centre where they were at Siyabadinga? Can you give us an example if you can? Can you give us the  
5 name of the person that you spoke to lastly?

**MS SANDRA DE VILLIERS**: They did not act as people who were trained to work with these patients. I asked about his medication and they didn't know and I knew that medication was a problem at that time because all of the medication was in one heap in one of the closets or a cabinet. One of the parents came, I can't remember  
10 her name, but one of the parents came to sort out this medication. When Jaco had a cough, she didn't tell me, I realised that he was sick and I asked her how don't, you know that my brother is sick. I can't remember the nurse's' name.

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

**ARBITRATOR, JUSTICE MOSENEKE**: Counsel?

15 **ADV PATRICK NGUTSHANA**: No questions Justice.

**ARBITRATOR, JUSTICE MOSENEKE**: Counsel for the State?

**ADV TEBOGO HUTAMO**: Thank you Justice. After having heard the witness, there are no questions to be posed, safe to say that on behalf of the State, measures will be taken to assist the affected members, so that they should be able to find strength  
20 to cope and deal with the situation. Thank you.

**MS SANDRA DE VILLIERS**: Thank you very much

**ARBITRATOR, JUSTICE MOSENEKE**: Re-examination?

**ADV DIRK GROENEWALD**: No re-examination thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE**: Well, we should allow you to go. I am quiet  
saddened. I spent most of my life trying to help those who want to create a just,  
5 open, caring and inclusive society. Your story is the total opposite of all our ideals. It  
is totally far from the ideals of our constitution. I wish you well and we are going to  
hear many other stories coming. Every single one of us is valuable.

**MS SANDRA DE VILLIERS**: Every life that was lost was unnecessary and they  
could still have been here and I know inside this room, there are a lot of people that  
10 are heart broken

**ARBITRATOR, JUSTICE MOSENEKE**: Again, thank you for coming and telling us  
and telling our nation your story. I am sure many people have heard and it remains  
very valuable in itself. You are excused from the witness stand.

**MS DE VILLIERS**: Thank you Justice.

15 **ARBITRATOR, JUSTICE MOSENEKE**: It is 12:15 Counsel?

**ADV TEBOGO HUTAMO**: Thank you Justice. The next witness lined up, is DR  
MORGAN MKHATSHWA, from Life Esidimeni. Initially he was unavailable for the  
rest of today, but we requested him to try and squeeze us during the course of  
today so he managed to re-arrange his time. So, he will be available at 2:00 this  
20 afternoon to testify on what he knows about this Project. We will request that we

stand down until 2:00, because that is the only witness available for today, thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE**: I plan to adjourn from now until 2:00 PM when we will take the evidence of Dr Mkhathshwa from Life Esidimeni. In the absent  
5 of any comment. In the absence of any comment, I am going to take the adjournment now. We stand adjourned until 2:00 PM.

## **SESSION 2**

10 **ARBITRATOR, JUSTICE MOSENEKE**: Welcome Doctor, would you please place your full names on record?

**DR MORGAN MKHATSHWA**: Morgan Mkhathshwa.

**ARBITRATOR, JUSTICE MOSENEKE**: I am about to administer the oath to you. You have an option to use an affirmation or the conventional oath which ends up  
15 with so help me God. What is your choice?

**DR MORGAN MKHATSHWA**: My choice Justice will be so help me God.

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

20 **DR MORGAN MKHATSHWA**: So help me God.

**ARBITRATOR, JUSTICE MOSENEKE:** Very well, Counsel?

**ADV TEBOGO HUTAMO** Thank you Justice Moseneke. Mr Mkhathswa in 2015/16, where were you employed?

**DR MORGAN MKHATSHWA:** I was employed with Life Esidemeni till July the 11<sup>th</sup>  
5 2016.

**ADV TEBOGO HUTAMO:** July 11 2016. You were employed as what?

**DR MORGAN MKHATSHWA:** I was the Managing Director for the division  
Counsel.

**ADV TEBOGO HUTAMO:** What are your qualifications?

10 **DR MORGAN MKHATSHWA:** I hold an Honours degree in Science. I also hold a  
Master's degree in Science and Medical Microbiology. I hold the Bachelor of  
Medicine and surgery. I also have a Diploma in Occupational Medicine. I have a  
Master's degree in Business Administration.

**ADV TEBOGO HUTAMO:** Would I be correct that you are also a medical doctor?

15 **DR MORGAN MKHATSHWA:** I am a Clinician.

**ADV TEBOGO HUTAMO:** A Clinician thank you.

**ARBITRATOR, JUSTICE MOSENEKE:** So clearly, the proper address to you, is Dr  
Mkhathswa?

**DR MORGAN MKHATSHWA:** Thank you Justice.

**ADV TEBOGO HUTAMO:** Thank you Justice. As a managing director for Life Esidimeni, what did you do?

**DR MORGAN MKHATSHWA:** I oversaw the overall management of all the facilities in the country. That included business management. It included clinical  
5 management of cases it included negotiating contracts with the various departments nationally or provincially.

**ADV TEBOGO HUTAMO:** Yes and it is common cause now that there had been a contract between Life Esidimeni and the government. Which tier of government concluded that contract with Life Esidimeni in 2015?

10 **DR MORGAN MKHATSHWA:** We had a contract that was running with the Gauteng Department of Health and in 2015 we did get a notification that that contract was coming to an end.

**ADV TEBOGO HUTAMO:** How long has that contract been in existence?

**DR MORGAN MKHATSHWA:** For a very long time. I would be inaccurate if I were  
15 to stipulate the years, but it has been there for quite some time, over 10 years.

**ADV TEBOGO HUTAMO:** Over 10 years thank you.

**ARBITRATOR, JUSTICE MOSENEKE:** Well, we had a much longer number than that. Somebody talked about since the 90s.

**DR MORGAN MKHATSHWA:** Yes, it is true, Justice. The company underwent an  
20 evolution from being unlisted to being listed. In that process yes absolutely it took that long, because it started as a TB contract we also looked after the TB patients

and evolved into a different company took over and eventually ended up with Life Health Care as Life Esidimeni.

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

**ADV TEBOGO HUTAMO:** In fact, whilst you are on that, let me refer you there are  
5 a bundle of documents in front you. One of the files referred to is File 8, it is on  
Page 2792. 2792 is on the top right of the page, are you there?

**DR MORGAN MKHATSHWA:** Yes, I am there. I am there, Counsel.

**ADV TEBOGO HUTAMO:** Under 2, background information to the contract and  
then I am not going to read the entire thing, I am going to read the first sentence.  
10 Initially, the contract was entered into and implemented at a national level for all  
interested provinces. The first SLA contract was signed back in 1979 by the  
National Department of Health and then followed by the 1987 contract renewed by  
the provinces. Do you see that?

**DR MORGAN MKHATSHWA:** That is correct.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Can you just qualify the document? What  
document is this? Counsel can you just put that on record?

**ADV TEBOGO HUTAMO:** The document is referred to as The Project Plan. It  
starts from Page 2789; that is a Department of Health document.

**ARBITRATOR, JUSTICE MOSENEKE:** And who compiled the document, do we  
20 know?

**ADV TEBOGO HUTAMO:** The signatory there is Dr Manamela, the director of Mental Health at the time.

**ARBITRATOR, JUSTICE MOSENEKE:** You may proceed. It just always helps to recall the document we are dealing with every time and particularly who is the  
5 author or the composer of the document.

**ADV TEBOGO HUTAMO:** It goes on further to say that this contract has been in existence for about 36 years.

**DR MORGAN MKHATSHWA:** That is correct.

**ADV TEBOGO HUTAMO:** The signatory to the document is on Page 2824. So, it's  
10 the Department's document, do you see that?

**DR MORGAN MKHATSHWA:** Yes, it is. It was developed by the Department of Health.

**ADV TEBOGO HUTAMO:** Then whilst this contract was in existence, or before we get to that, on the next page, that is Page 2793, on your middle right, there is a  
15 reference to Randfontein Care Centre, West Rand Care Centre, Witpoort, Waverley Care Centre, Baneng and also on. Would these be some of your facilities?

**DR MORGAN MKHATSHWA:** All of them are or, were, our facilities, were, because I am no more employed by Life Esidimeni, but they are still existent.

**ADV TEBOGO HUTAMO:** For which region are these facilities?



**DR MORGAN MKHATSHWA:** These were in Gauteng, as you can see Baneng would be here in the South, Waverly in the East, Witpoort in the East and West Rand and Randfontein in the West region.

**ADV TEBOGO HUTAMO:** So you had 5 of them in Gauteng?

5 **DR MORGAN MKHATSHWA:** In Gauteng yes Counsel.

**ADV TEBOGO HUTAMO:** You had made reference to the fact that the contract you had with government was terminated?

**DR MORGAN MKHATSHWA:** Yes Counsel.

**ADV TEBOGO HUTAMO:** When was the termination effected?

10 **DR MORGAN MKHATSHWA:** We got the notification in September that the contract was going to come to an end in March the following year.

**ARBITRATOR, JUSTICE MOSENEKE:** The following year would be what? 2015?

**DR MORGAN MKHATSHWA:** 2016, Justice.

**ADV TEBOGO HUTAMO:** On the same bundle of documents, let's go to Page  
15 2830. Do you recognise that document?

**DR MORGAN MKHATSHWA:** I clearly recognise it Counsel.

**ADV TEBOGO HUTAMO:** What is it?

**DR MORGAN MKHATSHWA:** It is the letter notifying us of the termination of the contract.

**ADV TEBOGO HUTAMO**: Go to Page 2382 of that document. What is the date that appears on the bottom?

**DR MORGAN MKHATSHWA**: The date is the 29<sup>th</sup> of September 2015 signed by Dr Selobane.

5 **ADV TEBOGO HUTAMO**: Just above that, that is the first paragraph under conclusion, it reads; 'based on the above discussion as well as in compliance with the 6 months termination notice required in terms of the SLA, the management of LE is hereby given notice that the Department of Health has terminated the SLA. This notice serves to give the LE the required 6 months' notice for termination with  
10 effect from 1 October 2015 to 31 March 2016. So that was a notice given, a 6 months' notice?

**DR MORGAN MKHATSHWA**: It was Counsel.

**ADV TEBOGO HUTAMO**: Was this in compliance with the agreement that you had with the Department of Health?

15 **DR MORGAN MKHATSHWA**: Yes it was in agreement with the SLA that we signed.

**ADV TEBOGO HUTAMO**: Upon having been placed in possession of this 6 months' notice, what steps did you take to prepare yourself for this? Can you outline what occurred thereafter?

20 **DR MORGAN MKHATSHWA**: Yes Counsel may I be given permission to give background to it?

**ADV TEBOGO HUTAMO**: Yes.

**DR MORGAN MKHATSHWA**: This wasn't just the notification. There had been various discussions that we had held with the Department of Health. Those discussions culminated to the Department of Health commissioning a consultant to  
5 conduct a cost benefit analysis study of our Esidimeni facilities. That was commissioned to the Health Advanced Institute if my memory serves me well. At the initiation of the commission, we met with the Department and we were told what the terms of the reference of this study was going to be. It was agreed that at the end of the study, we would also be privé to the study so that we give our inputs and we will  
10 also discuss the way forward. This was based on the fact that the Department felt that the services were costly.

**ADV TEBOGO HUTAMO**: Your services?

**DR MORGAN MKHATSHWA**: Our services were costly.

**ADV TEBOGO HUTAMO**: How much do you charge them per day?

15 **DR MORGAN MKHATSHWA**: We charged under R300 per day. That included 24 hours clinical care in the form of nursing with caregivers also associated with that. We also provided a daily medical officer to be able to examine those cases that needed medical attention immediately. We also had a team of allied health professionals who attended to their other needs in terms of rehabilitation.

20 **ARBITRATOR, JUSTICE MOSENEKE**: This was R300 per day per person?

**DR MORGAN MKHATSHWA**: Per patient Justice.

**ADV TEBOGO HUTAMO**: How many patients did you house at that time?

**DR MORGAN MKHATSHWA**: Gauteng, when these discussions were initiated, we still had 2660 if my memory serves me well.

**ADV TEBOGO HUTAMO**: Then you said you had these discussions with the  
5 Department and they informed you that your services were costly and then what happened?

**DR MORGAN MKHATSHWA**: Besides the clinicians, the R300 included medicines it included transport for the patients when they needed to go for their follow-up visits at the nearby hospitals like Chris Baragwanath. It also included the-

10 **ARBITRATOR, JUSTICE MOSENEKE**: The last time I heard it was Chris Hani?

**DR MORGAN MKHATSHWA**: Yes, Chris Hani Baragwanath Justice, my apology. It also included their daily toiletries, it included clothing, it included the meals that they got which were 3 major meals with 4 snacks in-between. Our meals were moderated by a full time dietician for the division, so they were reviewed on a  
15 regular basis.

**ARBITRATOR, JUSTICE MOSENEKE**: Needless to say this included accommodation?

**DR MORGAN MKHATSHWA**: Absolutely Justice that is true.

**ADV TEBOGO HUTAMO**: Then what occurred?

**DR MORGAN MKHATSHWA:** We never got to see the outcome of the study. We were curious because we wanted to know how we could adjust so that we could meet their concerns. But we were categorically told that this was commissioned by the Department and the Department was not obliged to share that information with us.

**ADV TEBOGO HUTAMO:** How did you then start to prepare yourself for this move?

**ARBITRATOR, JUSTICE MOSENEKE:** Just before we get to that question, it is an important question, let me ask this, did your original contract require any specified reason for the cancellation, or was it simply a cancellation on notice? Do you understand the question Doctor? There are some agreements which you may cancel only if A B C D had occurred and there are contracts which are simply on notice, you don't have to say why you want to walk away. Did your contract require specific grounds for cancellation, or was it an on notice contract?

**DR MORGAN MKHATSHWA:** I am not quite sure, but it had time frames and at the end of the contract, we would then sit before the contract ends and try and see if it will be renewed or not. It also had some clauses on how the contract could be terminated if the following was not adhered to. As a result, we had quarterly review meetings with the Department. That was a way of monitoring an evaluation of our adherence to the SLA. They also had one annual planned inspection visit to the facilities which also included unannounced visits that they could conduct.

**ARBITRATOR, JUSTICE MOSENEKE:** Was the service level agreement separate from the master contract or the main contract?

**DR MORGAN MKHATSHWA:** I am only aware of the service level agreement which I think might have been adopted through the years from the main contract.

5 **ADV TEBOGO HUTAMO:** Do you have a copy of the service level agreement with you?

**DR MORGAN MKHATSHWA:** Unfortunately Counsel I did not know I needed to bring it, but I can forward it to you.

**ADV TEBOGO HUTAMO:** Okay thank you, we would like to have a copy of that.

10 When you were told that in 6 month's you must prepare yourself for the move of about 2260 patients, were you told how this move would be implemented?

**DR MORGAN MKHATSHWA:** We were told to reduce by the end of March 2015 by 200, which was okay because we had earlier on what they referred to as the mental health strategy for the department 2020, which indicated that they wanted to reduce  
15 the number of institutionalised mental health care users by 10% on an annual basis until 2020. So, when we received this letter, we were quiet surprised as to what happened to that arrangement. In fact it started in March 2015, when we then got a letter that said by the end of April, we should have reduced another 200 and we refused. We said it is not practical and we will keep to what we know, which actually  
20 the Strategy 2020 was for us an information sharing session. We never got a formal notification that it would be implemented.

**ARBITRATOR, JUSTICE MOSENEKE:** That is quite quick. Let us start step by step. What is Strategy 2020?

**DR MORGAN MKHATSHWA:** Strategy 2020 was a mental health strategy that the Gauteng Department of Health developed in order to comply with the national  
5 mental health framework policy which was promoting the de-institutionalisation of mental health care users so that they could be in community based settings where appropriate.

**ARBITRATOR, JUSTICE MOSENEKE:** Were you told over what period would this strategy be implemented?

10 **DR MORGAN MKHATSHWA:** The copy that was shared with us at the meeting, it would have been up to 2020. So we were just waiting for the Department just to say when will be the initial date of starting this process.

**ADV TEBOGO HUTAMO:** Let me refer you to the same document, Page 2831. Under discussions, the second sentence at the top says the rehabilitation and  
15 discharge of mental health care users to either their homes or NGO's earlier than was the practice before, is now an unavoidable priority for the Department. Furthermore, this is in line with the new policy of mental health 2020 which places emphasis on the care of users at community level and states the following in  
20 respect of mental health care users. The first bullet point, second bullet point and third bullet point, that should be provided with the list of [inaudible] form of care, local community based resources should be mobilised wherever possible and all

avenues for out-patients and community-based residential care, should be explored before any patient care is undertaken. So is this the policy you are referring to?

**DR MORGAN MKHATSHWA**: Yes, this is an extract of what the policy was aiming to achieve.

5 **ADV TEBOGO HUTAMO**: Then the next paragraph under this third bullet point, it provides, according to your appendix 7.7, 5% of mental health care users admitted before 1 January 2003, should be discharged at the end of every year and 15% of those admitted after 1 January 2003, should be discharged by the end of every year. Further, the mental health care users were expected to stay at the facilities of  
10 Life Esidimeni for 9 months and then be discharged.

**DR MORGAN MKHATSHWA**: That is true. However Counsel, the Department was fully aware of the patients that had extended stay. These patients were not your normal mental health patients. These patients had stayed at the State tertiary institutions for years and a team of psychiatrists with their multi-disciplinary teams  
15 had evaluated and agreed that these patients could not be integrated back into the community. As a result, they then came to Esidimeni. We did everything according to the SLA as we could to try and trial out how many we can discharge back to the community. We had our own psychiatrists who would evaluate and advise. We would give leave of absence to these users when we feel they need to go out, we  
20 would think they are dischargeable and our social workers would go and follow-up at their homes to see how they are adapting, how we could make the environment-

**ADV TEBOGO HUTAMO**: Just a little bit slower, we are writing.



**DR MORGAN MKHATSHWA**: So every patient that was held beyond the 9 years was discussed in detail at the quarterly reviews with the Department of Health officials, so it is no surprise that some of the patients ended up staying with Esidimeni for longer periods, not that after they have been reviewed once they  
5 would then be forgotten. They would be reviewed on a continuous basis and when our clinicians were confident that they are ready to be integrated back into the community, then they would be released back to the community.

**ADV TEBOGO HUTAMO**: So you would be advised by your clinical findings, whether these patients are ready to be discharged or not?

10 **DR MORGAN MKHATSHWA**: Clinical findings involving the allied health professionals who follow-up with the patients while they are on the trial period.

**ADV TEBOGO HUTAMO**: And hence there was a requirement for you to conduct your reviews?

**DR MORGAN MKHATSHWA**: True Counsel.

15 **ADV TEBOGO HUTAMO**: In your preparations for these patients in discussions with the Department, what was the plan?

**DR MORGAN MKHATSHWA**: We requested for an immediate meeting, because we felt 6 months to discharge 2000+ patients, was not practical within the chronic psychiatry clinical practice.

20 **ADV TEBOGO HUTAMO**: Did you inform them of that?

**DR MORGAN MKHATSHWA**: We had several meetings where we objected. We

wanted to know where these patients were going to go. We even offered that we could be part of the teams that would go out and accredit the sites where these patients would go.

**ADV TEBOGO HUTAMO**: That is the NGO's?

5 **DR MORGAN MKHATSHWA**: NGO's, we asked for the list of NGO's. We asked if we could be granted that permission to go and assist the teams in looking at these NGO's and see if they will be appropriate places for our users and that was declined. We even offered the fact that we could have workers at the NGO's come in to our facilities to get an experience of how to handle these users and that we  
10 were never taken up on. We said we cannot be able to discharge 50 patients a week.

**ARBITRATOR, JUSTICE MOSENEKE**: Why would you not be able, 50 patients a week?

**DR MORGAN MKHATSHWA**: 50 patients a week Justice would be practical in a  
15 normal hospital setting. The patients needed a team of people to evaluate, that is why when the Department said they will send their clinicians, we said impossible, because a once off visit will not help the condition of the patient.

**ADV TEBOGO HUTAMO**: Do you need some short time to recover?

**DR MORGAN MKHATSHWA**: If I could just have a drink of water please?

20 **ARBITRATOR, JUSTICE MOSENEKE**: Doctor while talking about discharges, could you look again at Page 2831. To what does Appendix 77 refer? Is that an

appendix to the policy document, or is it an appendix to your agreement?

**DR MORGAN MKHATSHWA**: It was an appendix to the SLA.

**ARBITRATOR, JUSTICE MOSENEKE**: And the SLA would contain these requirements of 5% of mental health care users being discharged at the time stipulated there?  
5

**DR MORGAN MKHATSHWA**: True Justice.

**ARBITRATOR, JUSTICE MOSENEKE**: Immediately thereafter, you see the next paragraph the HOD claims that the above targets and outputs required by the Department from LE, are not always met. Some of the reasons provided by LE for its failure to meet the required targets, whether some of the users were too old and are without families. Some families are unable to manage them, while others have no families. What is your response to that accusation?  
10

**DR MORGAN MKHATSHWA**: The accusation to me, it sounds like patenting a one-time picture. These patients it's looking only at those who remained. A number of patients had gone through the facility there was a high demand in the Department's hospitals for such beds which would then replace those that have left. From the way it sounds, it sounds as if we kept 2000 patients for over 10 years or whatever the case may be, which is not true.  
15

**ARBITRATOR, JUSTICE MOSENEKE**: But you did comply with the stipulations in the SLA?  
20

**DR MORGAN MKHATSHWA**: Yes Justice we did. If we did not, we would have

received a breach of contract.

**ARBITRATOR, JUSTICE MOSENEKE:** And you tried to discharge people in the manner that was agreed on in Appendix 77?

**DR MORGAN MKHATSHWA:** True Justice, if we did not, it would be discussed at  
5 the quarterly meetings and we would get the go-ahead from the Department of Health.

**ARBITRATOR, JUSTICE MOSENEKE:** The Department says in order, look at the next paragraph, the [inaudible] for the abovementioned concerns, the Department sought to strengthen the service provider by NGO's in order for them to  
10 accommodate the users who have been proofed but cannot be discharged yet as well as those without families, therefore LE is advised to initiate the discharge process of all the users with family as stipulated in the SLA. What did that mean in practice?

**DR MORGAN MKHATSHWA:** In practice, it meant that we could discharge users  
15 to NGO's that we felt were fit to go to the NGO's. We had absolutely no problem with that. However, we wanted to know where our users were going.

**ARBITRATOR, JUSTICE MOSENEKE:** So there were no pre-set lists of NGO's that you could go and check beforehand?

**DR MORGAN MKHATSHWA:** We requested for that time and time again and up  
20 until to the last day of the patient leaving, we still did not know where they were going.

**ARBITRATOR, JUSTICE MOSENEKE**: And were these discharges clinically supported? In other words, the letter says you must discharge patients. The question is but for those instructions, would your clinicians have discharged these patients?

5 **DR MORGAN MKHATSHWA**: The multidisciplinary teams would then sit and review these patients. We reviewed them on a weekly basis to see what their progress was and based on the clinical findings of the multidisciplinary team, they would then make a recommendation as to where these patients should go. In terms of the level of care, be it rehabilitation, be it clinical care, so that would be  
10 determined by the multidisciplinary team.

**ADV TEBOGO HUTAMO**: Perhaps let me take you back to where you had said that when you requested to discharge or prepare yourself to discharge these patients, you refused. Why did you refuse?

**DR MORGAN MKHATSHWA**: We wanted a plan. In 2007, children were taken out  
15 of our facility and sent to an NGO, some of them died, we did want a repeat of that.

**ADV TEBOGO HUTAMO**: Which facility is that that you are referring to?

**DR MORGAN MKHATSHWA**: I think it was called Kwezilaguso NGO in Soweto.

**ADV TEBOGO HUTAMO**: They were taken from which of your facilities?

**DR MORGAN MKHATSHWA**: From Baneng to the children's unit.

20 **ADV TEBOGO HUTAMO**: How many of these children were taken out of your facility then?

**DR MORGAN MKHATSHWA**: If my memory serves me well, I might not be quite accurate, but I think there were 16 of them and they came back to request that we take the ones that were still surviving. They were severely dehydrated and highly under-malnutrition.

5 **ADV TEBOGO HUTAMO**: So when you were approached in 2015, you had an experience of a failure of a mass removal of patients from one of your institutions?

**DR MORGAN MKHATSHWA**: True Counsel.

**ADV TEBOGO HUTAMO**: So having refused to discharge or to, effect, this mass discharge of patients, what did you do then?

10 **DR MORGAN MKHATSHWA**: We were reminded that these were the patients of the Department of Health and not ours. We are a service provider contracted and our contract has come to an end. Our clinicians wanted to walk out because they felt that this is just not on. We begged them to stay and assess the patients and make sure that the patients leave the facilities with records and their proper  
15 medication.

**ADV TEBOGO HUTAMO**: And ultimately, what did they leave with, each one of them?

**DR MORGAN MKHATSHWA**: When they left our facilities, they had a picture, they had their ID's, they had a discharge summary, you will understand that some of  
20 these patients had stayed with us for a long period of time, so they have volumes of files. We offered to the Department if they wanted the records, they can send their

people to come and do the copying. We will provide the service and then they come and copy, we didn't have resources at the time to be able to manage this sudden discharge of patients, so we deployed everybody to focus on just making sure that the users left the units with all necessary documents. So the discharge  
5 summary would include current, the most relevant information that is current for the patient at the time, including also their chronic medication, including also their dates for follow-ups at the hospitals that they were supposed to go to. We then also supplied them with medication. When the numbers started going up, we realised that actually we were not stocked up pharmaceutically to manage to dispense all  
10 these, so we went back to the Department and asked that the process of pharmacy procurement should be fast-tracked, that not the 2 weeks that was the cycle that we had at the time, we wanted that fast-tracked so that each patient would leave the facility with their proper medication and each and every one of them left with that in a box handed over to a DOH official.

15 **ADV TEBOGO HUTAMO**: DOH official, you are referring to Department of Health?

**DR MORGAN MKHATSHWA**: Yes Counsel Department of Health.

**ADV TEBOGO HUTAMO**: We have received reports that some of these patients were received without ID's, medication, clothing and so on. What do you have to say to that?

20 **DR MORGAN MKHATSHWA**: I am not surprised. We requested for the list of NGO's and the names of the patients where they were going to go so that we could pre-pack their stuff, we were even prepared to go and deliver those at the NGO's to

hand them over to the rightful people, but we never go that list. As a result, we would get like a list today to discharge for tomorrow, where all we did, was make sure that we packed everything for the patient and handed it over to the DOH officials because they knew where these patients were going. We had no clue.

5 Had we had that clue, we would have prepared for particular NGO's and every patient would have gotten their stuff from that box. But now we prepared for bulk. How they managed that process, I cannot understand, it was out of my hands.

**ARBITRATOR, JUSTICE MOSENEKE:** Dr Mkhathshwa on Page 2832, let's just take you back to a notice of termination, Doctor Selebano says LE is urged to work  
10 with the Department representatives in order to send users on leave of absence, initiate the discharge process as well as to assist in placing some users in 163 identified NGO's. We have allocated 4952 beds and daycare placements that are subsidized by the Department. Did that happen? Is that true?

**DR MORGAN MKHATSHWA:** I cannot say it is not true Justice. As it says 163  
15 identified, it was identified by the Department of Health. That information was never shared with us as requested. We had several meetings where there were follow-ups on these issues and we were told the plan is coming, the plan is coming, we never got to the plan in time to be able to prepare for this.

**ARBITRATOR, JUSTICE MOSENEKE:** What is sending a user on leave of  
20 absence?

**DR MORGAN MKHATSHWA:** Justice it is when you trial the user to see if he will survive in the environment that you want to discharge the patient to, which actually



is what we wanted. We recommended to the Department to say let's identify the NGO's so that the users can also have a chance to go and trial the places whilst they are still having a place at our facilities and then we will assess and see if that is suitable for that user. Also, so that when they move, they are not totally thrown into  
5 a foreign strange place that they have never been to.

**ARBITRATOR, JUSTICE MOSENEKE:** You were also required look at the same paragraph, the Department required you to initiate the discharge process. Now was that a command or did you have an option not to discharge?

**DR MORGAN MKHATSHWA:** It was a command from where I am sitting and it  
10 wasn't something new. We had been doing this, the discharge process was ongoing. The only thing that is different is that when we were discharging, we knew where our patients were, we could follow them up. In this instance, we didn't know those 163 NGO's.

**ARBITRATOR, JUSTICE MOSENEKE:** Then they say they urged you to assist in  
15 placing some users in the 163 identified NGO's. Did you know what to do about that requirement and did you do it?

**DR MORGAN MKHATSHWA:** We could not send users to places we didn't know about, we didn't know their names, we didn't know their locations, we didn't know who the contact person was.

**ARBITRATOR, JUSTICE MOSENEKE:** Did you know anything about the bed  
20 count that is set out there, that there were existing 4956 beds and daycare placements?

**DR MORGAN MKHATSHWA**: In the plan of the Department, I am sure they had calculated, those beds were known to them, but that information was never shared with me.

**ARBITRATOR, JUSTICE MOSENEKE**: That I am sure is a Black language thing,  
5 you mean you are not sure?

**DR MORGAN MKHATSHWA**: I am glad you are Black Justice.

**ARBITRATOR, JUSTICE MOSENEKE**: You mean I am not sure?

**DR MORGAN MKHATSHWA**: I do not know how, the number of beds, were calculated. The Department had that information, not us.

10 **ARBITRATOR, JUSTICE MOSENEKE**: And lastly in relation to that too, the evidence before us so far, is that the patients were fetched from your facilities. The letter suggests that you were to cooperate in transferring or taking the patients to other placements or facilities. Why were the patients fetched by the Department, do you know?

15 **DR MORGAN MKHATSHWA**: Well Justice, I would think that because they knew where they were going to take the patients to, we didn't know. Secondly, that process also we fought at some point with the Department when they sent an old open bakkie to pick up our users, we refused.

**ARBITRATOR, JUSTICE MOSENEKE**: Counsel?

20 **ADV TEBOGO HUTAMO**: This old open bakkie you refer to, were you able to identify where was it coming from, or from which NGO did it come from?

**DR MORGAN MKHATSWHA:** When I got the call, I told the hospital manager, turn that damn thing out of our facilities, these are people.

**ADV TEVOGO HUTAMO:** With this NGO, which is 163 identified NGO which you have now stated that you didn't know and that you did not know that this allocated  
5 4952 beds and daycare placements that are subsidized by the Department, this information having been shared with you, how were you then expected to discharge these patients?

**DR MORGAN MKHATSWHA:** That is the reason why I actually requested the Department officials be placed at our facilities because they would know who would  
10 go where. All we would do, would be to get the list of the users, prepare what they needed to have and hand it over to the Department to administer that process.

**ADV TEBOGO HUTAMO:** Is it not a requirement when you discharge a patient, you must discharge a patient to an identifiable institution or facility?

**DR MORGAN MKHATSWHA:** That was the practice before this came up. I cannot  
15 answer that one the Department will have to answer.

**ADV TEBOGO HUTAMO:** And how was it dealt with when the patients were fetched from the facility?

**DR MORGAN MKHATSWHA:** Counsel we would have the list prepared and then we would prepare those users for the Department to take over. Then the bus or  
20 emergency transport would come and they would manage that process. As soon as we handed the number for the day, we were preparing for the next day. So we

wouldn't know what would happen and how these users were placed and what criteria, was used, we did not know.

**ADV TEBOGO HUTAMO**: How were these patients paired? Did you pair them in terms of a particular group of friends or what, or you would just pick them randomly?

5 **DR MORGAN MKHATSHWA**: The main reason we requested for the name of the NGO, the location of the NGO and also the number of beds available in the NGO, it was for us to try and be able to group patients according to their location so that it would be easier for families to visit them. We also wanted to make sure that our users, we knew them better, they were like family to us, so we knew them better, we  
10 knew who is friends with who and we would like to have that kind of a setting where they wouldn't be total strangers in a totally strange place.

**ARBITRATOR, JUSTICE MOSENEKE**: Yesterday Ms Ncube came here who was the founder and the Executive Director of Precious Angels and she testified that she came to your hospital and she picked patients that she wanted to have and they  
15 tried to give her female care users and she refused and she said you wanted only males and she was given males. What do you say to that?

**DR MORGAN MKHATSHWA**: This was another area where we fought with the Department, because one morning I got a call that there are several NGO's at the facility and I said on what grounds and they said they are coming to choose their  
20 patients. I said I am sorry, this is not an auction, you get them the hell out of that office, I want identification, I want to know on what grounds are they coming to this facility and I phoned the Department, I phoned the Director to say this is

unacceptable, I will not have it happen in our facilities and these are not auctioned, they are people who must be treated with such dignity.

**ARBITRATOR, JUSTICE MOSENEKE**: Tell me the specific people you talked to at the Department?

5 **DR MORGAN MKHATSHWA**: Most commonly I would talk to Dr Manamela because she was the Director of the programme.

**ARBITRATOR, JUSTICE MOSENEKE**: So NGO's would come and literally pick and choose the patients that they would rather have, because she for instance, told us that she was not prepared to take any patients that did not have forms of  
10 mobility, who could either not walk themselves or who did not have wheelchairs and she insisted that she must be given wheelchairs and your facilities gave her wheelchairs in order to help the patients, but she was the one who made the selection, the choosing and the picking.

**DR MORGAN MKHATSHWA**: Justice it might have happened on that day I am  
15 talking about before I was notified. After I got to that and I had spoken to Dr Manamela, I then issued an instruction to all our facilities to say that that would not happen in the facilities. About giving the chairs, it is normal procedure for us to make sure that those, when we discharge our users, we discharge them with the appropriate devices.

20 **ADV TEBOGO HUTAMO**: There has been evidence by a social worker called Daphne Ndlovu that in May 2016, they arrived on a 27 seater bus and with an instruction to pick only 10 patients, but under the command of Dr Manamela, they

ended up leaving with 26 patients.

**DR MORGAN MKHATSWHA**: I would not be privé to the details of that Counsel, but as I indicated, we were given the list that needed to go there on a particular day and we prepared that list. As to how that list got taken and transported, we were  
5 out of the picture, we never knew what happened.

**ADV TEBOGO HUTAMO**: And the main reason she advanced forth, was that the intention of taking 10 patients, was to allow these 10 patients to adjust at the institution before they take more. What do you have to say to that?

**DR MORGAN MKHATSHWA**: I would out rightly refute it. To adjust, you would  
10 have given the patient a leave of absence to go and trial the place before you take them there permanently. What adjustment when you take there permanently, that beats me.

**ADV TEBOGO HUTAMO**: These proposals that you had referred to, that you had proposed to assist them to accredit the NGO's, their premises as well as offering  
15 your premises to train them, what other possible solutions did you provide to the Department?

**DR MORGAN MKHATSHWA**: I remember vividly after a meeting at Randfontein with the families, where they put their foot down and said this is not a consultation, you coming here to tick a box, stop this nonsense and start the consultation process  
20 and do it correctly and appropriately.

**ARBITRATOR, JUSTICE MOSENEKE**: And there was a meeting where Mr

Mosonoge was present right in Randfontein?

**DR MORGAN MKHATSHWA**: In Randfontein, yes he was present together with the HOD. However, the family was expecting the MEC to be present at that meeting, but she didn't come.

5 **ARBITRATOR, JUSTICE MOSENEKE**: Yes and he reports in his evidence, that the meeting was tumultuous. In other words, the people were very unhappy and the families of users and pushed back as much as they could. Is that the meeting?

**DR MORGAN MKHATSHWA**: That is true Justice.

**ARBITRATOR, JUSTICE MOSENEKE**: And you were present in the meeting?

10 **DR MORGAN MKHATSHWA**: I was present in the meeting and when I was asked to say my piece, I said to the parents, Life Esidimeni is prepared to re-negotiate this with the Department that was my offer to the Department.

**ADV TEBOGO HUTAMO**: When you put forth all these proposals which you now indicate that they were all rejected, to whom did you communicate these proposals?

15 **DR MORGAN MKHATSHWA**: Counsel just to fill up on that one I didn't answer your question. The proposal that I then presented to Dr Selebano was why, don't you just take over our facilities, buy us out so that there is continuity of care and he asked me to go back and put together a proposal. I did go put together and evaluated the facilities and I sent him the information which had 3 options that  
20 would be a cash payment, a 5 year plan and a 10 year plan. We never heard from the Department.

**ADV TEBOGO HUTAMO**: Any proposal to house the identified NGO's whose identities were not shared with you, did you make that proposal as well?

**DR MORGAN MKHATSHWA**: We wouldn't go to NGO's and say we can house you, because that would simply mean we would have to maintain the facility, and  
5 the NGO's will just come and use the facility. We wanted to be able to know when we hand over the facility, either we are out, or we are running the facility.

**ADV TEBOGO HUTAMO**: Thank you, anything else that you may have?

**DR MORGAN MKHATSHWA**: Ja, it was sad for me to see how clinicians could succumb to what I can call political pressure. In one meeting I was so angry that  
10 afterwards they said it can't be that bad, and I said it's bad when we forget the oath we took.

**ADV TEBOGO HUTAMO**: By the clinicians, who are you referring to, the Department's clinicians?

**DR MORGAN MKHATSHWA**: I'm referring to the head of department who is the  
15 operational person I'm referring to the officials in the directorate of the mental health section, who all have wonderful credentials as clinicians. How could they not stand up and say over my dead body, I would not do such.

**ADV TEBOGO HUTAMO**: You had mentioned the fact that you refused to, or you somehow said that it was not practical to implement this process or project within  
20 the 6 month period that you had been given, what in your view is a reasonable time period?



**DR MORGAN MKHATSHWA**: At the time, I realised that this was a very urgent process that needed to be completed. I consulted with my team and said okay we can't do it in 6 months, can we pressure it in for 12 months. I wrote a letter to request for an extension until September 2016 so that we could have the 12 months  
5 to manage this process appropriately and that was declined.

**ARBITRATOR, JUSTICE MOSENEKE**: I'd like you to look at Page 2798. Look at the vision of this project plan, let us look at the purpose, look at 3.1 to de-institutionalize the mental healthcare users from restrictive environment and thereby reducing departmental costs and non-complying to financial prescripts in the Auditor  
10 General requirements. What do you understand that to mean? It's one of your clinician colleagues who wrote this.

**DR MORGAN MKHATSHWA**: My interpretation of that paragraph was to make sure that mental health services are de-institutionalized, we all subscribe to that. From a restrictive environment, I think my understanding is they felt our facilities  
15 were restrictive. However that is relative, because we had users who would go and work and come back to the facility, we had users going out on excursions, so restrictive for me I am not so sure what it meant. Also, some of the users you would find that in an environment that is not controlled, they would get lost, they would just walk, walk and walk; I know one of the users was found at a border somewhere, so  
20 they had to return that person. So I think it would have been appropriate, we were subscribing to de-institutionalizing at the appropriate level of care.

**ARBITRATOR, JUSTICE MOSENEKE**: Let's look at the main clause there, it goes

on to say and thereby reduce departmental costs and I suppose it means reduce non-complying (whatever that means) to financial prescripts and Auditor General requirement.

**DR MORGAN MKHATSHWA**: I assume Justice that the reference to the Auditor  
5 General requirement would be around the contract. The truth of the matter is  
Esidimeni over the umpteen years of experience in looking after mentally ill patients,  
had developed the skill, the competence and the know how how to deliver that  
service at a very cost effective level compared to what this would have cost to the  
Department of Health. I therefore feel it should have been either the Department of  
10 Health would then come up with a development plan to develop their own capacity  
to develop the kind of competence that was there at Esidimeni. They have gone out  
on tenders in the Gauteng department and we never got the results of that. To me  
that illustrates the fact that Esidimeni had refined their processes to the level that is  
totally minimally possible to provide quality health care service for the mental health  
15 care users at that level. The costs and non-compliance I wouldn't understand. For  
me, the deinstitutionalization of mental health care users means that whilst you  
deinstitutionalize them, the money or the resources that you had for those users at  
the institution, would follow them into these community based places.

**ARBITRATOR, JUSTICE MOSENEKE**: Did you know about the Auditor General  
20 having required that costs for mental healthcare be reduced?

**DR MORGAN MKHATSHWA**: I was not privé to that information Justice..

**ARBITRATOR, JUSTICE MOSENEKE**: Let's look at the vision. The vision (that

was supposed to be the purpose) the vision is to deinstitutionalize all, the word all is used, all of chronic mental healthcare users currently admitted in Life Esidimeni and then ensuring provision of quality mental healthcare services in the PHC, what is PHC?

5 **DR MORGAN MKHATSHWA**: Primary Health Care.

**ARBITRATOR, JUSTICE MOSENEKE**: Primary Health Care and community based services in Gauteng province. So the plan was to remove all of your patients, was it feasible, was it clinically desirable?

10 **DR MORGAN MKHATSHWA**: Clinically we will know that there will always be a percentage of mental health care users that will not be able to thrive in the normal communities that we have. The "all" for me I would need to be qualified to really understand how that was going to be planned for and how are we going to cater for them, because if we just released everybody, then that for me is not practical.

15 **ARBITRATOR, JUSTICE MOSENEKE**: Look at goals again, to de-institutionalize all users who are currently at Life Esidimeni. Could one take every single category of users you have and without more, place them with NGOs that is what 3.4 tells us, that is the goal?

20 **DR MORGAN MKHATSHWA**: Justice I will still maintain my stance, clinically impossible. Some of these users had inflicted immense traumatic experience for families who cannot be able to take them back. The living conditions of some of the users as we visited them; they didn't have a place to sleep. How can I as a parent, be comfortable in my other room and leave my children with a mentally ill relative of

mine? How many of us can be able to do that? How many of us have got the resources to pay somebody to look after these patients when they are going to work so that they can feed that patient? It's, all those questions that comes to mind to say are we realistic? What kind of a community do we have in Gauteng? We are not in  
5 some rural village somewhere where the community still looks after our people, we are in Gauteng and everybody does not have that support system. How do we discharge? I don't know.

**ARBITRATOR, JUSTICE MOSENEKE**: Counsel?

**ADV ADILA HASSIM**: Thank you Justice Moseneke. Good afternoon Dr  
10 Mkhathshwa.

**DR MORGAN MKHATSHWA**: Good afternoon Counsel.

**ADV ADILA HASSIM**: Dr Mkhathshwa you say that a report was commissioned by the Department to do a cost benefit analysis, of the services that were being provided at Life Esidimeni and you say it was a report that was prepared by a  
15 consultancy called Health Advanced Initiative.

**DR MORGAN MKHATSHWA**: If my memory serves me well I think I can recall that it was HAI Counsel.

**ADV ADILA HASSIM**: You said that you were curious to find out the results of the study and that you requested it, but were refused the report, is that correct?

20 **DR MORGAN MKHATSHWA**: That is correct.

**ADV ADILA HASSIM**: Did you ever at any later point then receive the HAI report?

**DR MORGAN MKHATSHWA**: I never received it.

**ADV ADILA HASSIM**: So you've never seen it?

**DR MORGAN MKHATSHWA**: I have never seen it and I have no idea what its contents are.

5 **ADV ADILA HASSIM**: Did the Department tell why it deemed your charges to be excessive then?

**DR MORGAN MKHATSHWA**: We asked, we wanted to know, we would have these discussions on an annual basis, because our contract required an annual reassessment of the tariff. We would bring statistics to the Department and be they  
10 would be able to debate with them, to say this is what it cost. Relatively, we would use the normal figures that are available to the public to try and adjust our costs accordingly. They knew what was influencing our cost, they knew our cost drivers, I don't have the answer Counsel.

**ADV ADILA HASSIM**: At the quarterly review meetings, was this ever raised the  
15 problem of cost?

**DR MORGAN MKHATSHWA**: They raised it and indicated that they are going to start on reducing the number of patients and they would instruct us on an annual basis as to how many they wanted reduced.

**ADV ADILA HASSIM**: You also said that you requested the list of the NGOs, their  
20 names and addresses and that you were informed that there were many NGOs but that you were never provided that information, the names and addresses.

**DR MORGAN MKHATSHWA**: I never got that information.

**ADV ADILA HASSIM**: But we also heard that representatives of NGO's arrived at the Life Esidimeni facilities to collect users. How would the staff at the facilities know whether this was a legitimate process, how would they know whether the person  
5 who declared themselves to be coming from the NGO, is in fact an NGO that has been contacted by the Department?

**DR MORGAN MKHATSHWA**: Life Esidimeni would not know, however, that's the reason that propelled us to demand that department officials be placed at our facilities to manage that process, because they had that information.

10 **ADV ADILA HASSIM**: So was there a department official at the facility in order to manage that process?

**DR MORGAN MKHATSHWA**: True Counsel.

**ADV ADILA HASSIM**: You are saying that that process was not under your control?

**DR MORGAN MKHATSHWA**: Not under our control, we would just prepare the  
15 pack for the numbers that we've been given and hand it over to the Department.

**ADV ADILA HASSIM**: You also spoke about the items that accompanied the patients upon discharge, including a discharge summary, information about chronic medication, dates for follow-up, follow-up medical appointments. The Department has alleged that you withheld medical records and that the reason you withheld  
20 medical records, is because you were not paid by the Department, is that correct?

**DR MORGAN MKHATSHWA**: That is absolutely not true. We never held any

medical records, like I indicated earlier, all we said was, it will be impossible for us, given the timeframes that have been given to us, to make the full medical record of the patient. However the patient would leave with a discharge summary which summarized the current status of the patient. If the Department wanted copies of the full medical record, they were more than welcome to come to our facility and make copies.

**ADV ADILA HASSIM**: Did any of the department officials request the medical records from you?

**DR MORGAN MKHATSHWA**: Yes, in a meeting they raised the issue of medical records and we indicated to them that this is what is going to happen, there will be a discharge summary, if you want the full document of it, you will then have to come and do it yourself we do not have the resources for that.

**ADV ADILA HASSIM**: Did they then come to the facility to collect the medical records?

**DR MORGAN MKHATSHWA**: I have no record of that in my department.

**ADV ADILA HASSIM**: Are the medical records of the patients who were transferred still with Life Esidimeni then?

**DR MORGAN MKHATSHWA**: The originals are with us.

**ADV ADILA HASSIM**: So for those patients that received medical records, those would have been copies?

**DR MORGAN MKHATSHWA**: There will be no patient that left Esidimeni without a

discharge summary. There is no patient that left Esidemeni with their full medical record.

**ADV ADILA HASSIM**: Is it normal when a person is discharged from a health facility, to hand them their full medical record?

5 **DR MORGAN MKHATSHWA**: We are held liable by the Mental Health Act to keep the originals. However, we can make copies and certify them and give them to whoever follows the proper procedure.

**ARBITRATOR, JUSTICE MOSENEKE**: And you offered that they may make copies and they never came to make copies?

10 **DR MORGAN MKHATSHWA**: I do not recall any of the managers reporting that they came, Justice.

**ADV ADILA HASSIM**: As part of the discharge, when you provided a supply of chronic medication, for how many weeks would that chronic medication last?

**DR MORGAN MKHATSHWA**: If we are told the person is going to a hospital  
15 setting, we supply 7 days medical supply. If they are going out to an NGO we supply for 28 days. Just to also add to that Counsel, we did enquire about the capabilities of the primary health care centers in supplying this kind of medication and we were assured that the pharmaceutical division of the department is up and running and there will be no challenges in that area. We also enquired about the  
20 staffing levels at the NGOs, given the clinical competence that they were under, how will that be monitored and we were assured that the users would leave



Esidimeni for an equal or better service.

**ARBITRATOR, JUSTICE MOSENEKE**: Is it Dr Manamela who gave these assurances?

**DR MORGAN MKHATSHWA**: Even the MEC herself did, it's public knowledge, in  
5 the media she came out and said it.

**ADV ADILA HASSIM**: Dr Mkhathswa you said that you had most of your  
conversations with Dr Manamela and you said that when this proposal was made  
about the NGOs arriving to select patients, that you said in no uncertain terms, that  
this was not an auction, that you said this to Dr Manamela, how did she respond to  
10 you?

**DR MORGAN MKHATSHWA**: She apologised and that's how we got them out, I  
said I will not allow anybody to come to our facilities without proper identification,  
without proper identification, without proper documentation that entitles them to  
whatever they are coming for in the facility.

15 **ADV ADILA HASSIM**: I now need to take you to the record in your bundles in  
Volume 2, if you can turn to Page 643, please. Do you see it?

**DR MORGAN MKHATSHWA**: Thanks Counsel I've got it.

**ADV ADILA HASSIM**: This is a document that is entitled minutes of meeting 9  
February 2016 and it lists the people who are present at this meeting, do you see  
20 that?

**DR MORGAN MKHATSHWA**: Yes Counsel.

**ADV ADILA HASSIM**: And amongst the people who are present is yourself. What was the purpose of this meeting?

**DR MORGAN MKHATSHWA**: The purpose of the meeting was to get clarity on the plan that the Department had. As you can see Counsel it involved all departments, 5 you also see HR because we were also concerned about how our employees are going to be accommodated in the process. So it was an overall evaluation of where the process was and what the way forward was going to be.

**ADV ADILA HASSIM**: If you can turn over the page?

**ARBITRATOR, JUSTICE MOSENEKE**: Sorry Counsel, is it 643?

10 **ADV ADILA HASSIM**: Yes.

**DR MORGAN MKHATSHWA**: It says David Morgan Justice.

**ARBITRATOR, JUSTICE MOSENEKE**: Morgan is you? Oh I see. Thanks that helped. It's all because they all refer to titles and everybody from Life Esidimeni refers to themselves with first names.

15 **ADV ADILA HASSIM**: Page 644 item 4, the subject which is item profile, if you can have regard to sub-paragraph C, it says the following, Life noted, I take it that Life in this context means Life Esidimeni, and that you were representing Life Esidimeni, so this is now you speaking. It says Life noted that the number of patients that appear from Dr Manamela's presentation to have been discharged in January, far 20 exceeds the average monthly discharges from its facilities in the preceding months. What does that mean?

**DR MORGAN MKHATSHWA**: That refers to the record of patients that have been discharged in the facilities. This was just showing to the Department that we want to cooperate with them in discharging the patients. You would find that in the pattern of discharges in the facilities, there would be those outliers where you would discharge  
5 more patients because there were more dischargeable patients that month, so that is referring to such case.

**ADV ADILA HASSIM**: But this is referring to minutes of a meeting of 9 February 2016, so by then you are saying there had already been a number of discharges?

**DR MORGAN MKHATSHWA**: Yes Counsel.

10 **ADV ADILA HASSIM**: And then it says on the next Page 645 Paragraph E, Life undertook to provide a summary of the number of patients discharged for each month over the last 6 months. Is that just the normal discharge process that takes place at Life Esidimeni or is this part of the Marathon Project?

**DR MORGAN MKHATSHWA**: It was part of the Project.

15 **ARBITRATOR, JUSTICE MOSENEKE**: I don't understand that answer. I thought you had obligations to discharge at a certain rate under the service level agreement and the province's complaint, was that you were not discharging at a rate commensurate to what Annexure 7.7 required of you. That is besides the project that was to become the Marathon Project, you had a duty to discharge at a certain  
20 rate as stipulated in the service level agreement, or did I misunderstand that evidence?

**DR MORGAN MKHATSHWA**: It was part of the Project, however the families through Section 27 and SADAG went and put this in a court of law and it was halted for the December period until somewhere in January when it was overruled. So that Marathon Project was put on brakes for that period whilst there was the legal battle.

5 **ARBITRATOR, JUSTICE MOSENEKE**: And notice to terminate had already been given?

**DR MORGAN MKHATSHWA**: The notice had been given Justice.

**ARBITRATOR, JUSTICE MOSENEKE**: Thank you. You may, proceed Counsel.

**ADV ADILA HASSIM**: This meeting just to clarify, wasn't a quarterly review  
10 meeting, the normal meetings you have with the Department, is that correct?

**DR MORGAN MKHATSHWA**: That is true we would only be having department officials and ourselves for that review meeting

**ADV ADILA HASSIM**: So we were on Page 645, it says at Paragraph F, Life and then in bracket it says Paul, is Paul a representative of Life Esidimeni?

15 **DR MORGAN MKHATSHWA**: Paul was one of our hospital managers.

**ADV ADILA HASSIM**: Okay thank you. Life stated that the data from Dr Manamela's report that around 90% patients at Waverley were dependent and 10% were independent, was not accurate, in fact much less than 10% of the patients at Waverley were independent. He noted further that this does not accord  
20 with the Department's report that approximately a third of current residents are independent. Can you comment on that?

**DR MORGAN MKHATSHWA**: I can. It goes back to what I said earlier, mental health patients you cannot just come and see them in one consultation and then say they are okay or not. This is what the Department did, came and did their visit of the facilities, saw people and greeting "hi, how are you Morgan and whatever the case  
5 might be" and they thought this one is ready for discharge.

**ADV ADILA HASSIM**: If you turn over the page to Page 646 Paragraph E, a question was put to you earlier by Justice Moseneke about the number of beds that were available in the NGOs and in the communities, 4500 and something and this relates to that question, at paragraph B it is stated Life mentioned that the MEC  
10 mentioned at the family meetings last week, that there were 130 NGO's who are primed for Life Esidimeni patients. However that list has not been provided to the families. It goes on to say Life representatives and Dr Thalathala advised that there are no beds available for them to discharge users to and noted that they are therefore surprised to hear that so many beds are available in the NGO's. Let me  
15 pause there. First of all, were the NGO's primed in your view at this point and time, to receive Life Esidimeni patients? That's the language that is used in the minutes.

**DR MORGAN MKHATSHWA**: I have no idea I know that the Department held meetings with NGO's I have no idea of what transpired in those meetings.

**ADV ADILA HASSIM**: And what did it mean in Paragraph C, why were you  
20 surprised to hear that there were beds available?

**DR MORGAN MKHATSHWA**: Because we were busy pressuring the Department asking for the list and they just would not come forth with the list.

**ADV ADILA HASSIM**: Prior to this project, were you aware of the number of NGO's available in Gauteng to which you could discharge the patients?

**DR MORGAN MKHATSHWA**: Most of our users would discharge back to their families when we discharged. None, of the NGO's that we visited in the area just to  
5 check were really geared up to cater for our users.

**ADV ADILA HASSIM**: If we could turn now to Page 661, this reflects an email from you to a Miss Cathy Chambers on the 2<sup>nd</sup> of March 2016, is that right?

**DR MORGAN MKHATSHWA**: That is correct.

**ADV ADILA HASSIM**: What is the content of the email?

10 **DR MORGAN MKHATSHWA**: This was just a summary of the Gauteng discharges for that period.

**ADV ADILA HASSIM**: August 2015 to January 2016?

**DR MORGAN MKHATSHWA**: Correct Counsel.

**ADV ADILA HASSIM**: In your opinion, was this, the normal rate of discharge from  
15 Life Esidimeni?

**DR MORGAN MKHATSHWA**: This is what we could say clinically approved discharges.

**ADV ADILA HASSIM**: These were clinically approved discharges, so this was not transfer of patients from one facility to another to make space as part of the project?

**DR MORGAN MKHATSHWA**: No it wasn't that.

**ADV ADILA HASSIM**: Thank you. That's all with Volume 2, but with Volume 3-

**ARBITRATOR, JUSTICE MOSENEKE**: Just before you move away from Page 661, why weren't there any transfers from Baneng, I see during the period  
5 appearing on Page 661 there were none, but why weren't there any transfer discharges?

**DR MORGAN MKHATSHWA**: Baneng is a very special institution it caters for children with severe mental disability that is the reason.

**ARBITRATOR, JUSTICE MOSENEKE**: Well Mr Mosonogi says Baneng was part of  
10 the target for the discharges seen from the province's point of view, but he says he was the hero of that show, he intervened and the discharges were stopped. What do you know about that? Did the province intend to discharge these children from Baneng?

**DR MORGAN MKHATSHWA**: I know that they wanted to, but we pleaded and said  
15 we actually said go to Baneng and see for yourselves and tell us where we discharge these people to.

**ARBITRATOR, JUSTICE MOSENEKE**: And ultimately the children were not moved?

**DR MORGAN MKHATSHWA**: Yes Justice, then Baneng was a sort of a special  
20 project, hence we got 2 letters of the termination where one was for general ones, and then Baneng they said they are prepared to negotiate with us.

**ARBITRATOR, JUSTICE MOSENEKE**: Counsel?

**ADV ADILA HASSIM**: Thank you Justice, Page 1011 is in Volume 3. That page reflects again an email from you to Ms Cathy Chambers, and it's dated 2<sup>nd</sup> March 2016 and it's in response to an email from Ms Chambers to you, in which she says  
5 amongst other things, I don't know if you've had much luck with feedback from the Department of Health with regards to the figures they keep using, I'm concerned that their numbers keep changing and fluctuating and from what you have given me, there shouldn't be such a dramatic difference, do you perhaps know why they have such different numbers. Your response is, I think that they doctor the figures to  
10 support their cause. What did you mean? What figures were these?

**DR MORGAN MKHATSHWA**: These were the figures of the discharges of the mental health care users, as previously discussed, our data and their data did not reconcile, however we supply monthly statistics report to the Department as part of our obligation, so the question I had was, if we supply the figures on a monthly  
15 basis, why would the figures then differ if they are not tampered with?

**ADV ADILA HASSIM**: Thank you. Can you turn to Page 1014, I'm not done you were hoping that that was my last question I can see it, but we are almost there. Again email correspondence from Ms Chambers addressed to you, are you the Morgan addressed in this email?

20 **DR MORGAN MKHATSHWA**: Correct Counsel.

**ADV ADILA HASSIM**: And somebody named Malik.



**DR MORGAN MKHATSHWA**: Hospital manager at Randfontein.

**ADV ADILA HASSIM**: And the enquiry in this email is for you to assist her to understand the distinction between discharges and placements. Is that correct?

**DR MORGAN MKHATSHWA**: Correct Counsel.

5 **ADV ADILA HASSIM**: Were you able to provide that explanation?

**DR MORGAN MKHATSHWA**: I think I did, I think I did indicate that placement would mean you taking the user from Esidimeni to the facility that the Department had identified. A discharge would be a clinically approved by our clinical team to say this patient is ready to be discharged home.

10 **ADV ADILA HASSIM**: So a discharge would mean the patient is no longer required to be cared for as an in-patient?

**DR MORGAN MKHATSHWA**: As an in-patient in the facility, yes.

**ADV ADILA HASSIM**: On Page 101

15 **ARBITRATOR, JUSTICE MOSENEKE**: I am sorry again Counsel to interrupt, the last sentence of the first paragraph, what does that mean, the clinical team of Life Esidimeni?

**DR MORGAN MKHATSHWA**: That would mean the multidisciplinary team at Life Esidimeni facilities, are responsible to identify the patients who qualify for the normal discharge

20 **ARBITRATOR, JUSTICE MOSENEKE**: Would the obvious be also true, they are

therefore not responsible for placements?

**DR MORGAN MKHATSHWA**: They would only discharge, not for placement.

**ARBITRATOR, JUSTICE MOSENEKE**: So if the province wanted anybody placed, i.e. moved from your facility to another, they would have to tend to that process  
5 themselves?

**DR MORGAN MKHATSHWA**: We would ask our clinical team to assess the patient and then give them a summary of what the current status of the patient is.

**ARBITRATOR, JUSTICE MOSENEKE**: But you would not discharge for the purpose of placement?

10 **DR MORGAN MKHATSHWA**: If they leave our facility, then we would be discharging them from the Esidimeni facility, just to indicate that they have left Life Esidimeni facility and gone somewhere else. But in our normal Life Esidimeni process, discharge would be to discharge them back to communities.

**ARBITRATOR, JUSTICE MOSENEKE**: Counsel?

15 **ADV ADILA HASSIM**: Thank you. Page 1017, is the letter addressed to you and to two others, it's a letter from the South African Depression and Anxiety group and its dated 10 March 2016 and the content of the letter is, in the relevant part it says it has come to our attention that the Gauteng Department of Health arrived today to Life Esidimeni Randfontein and instructed that 50 residents be earmarked to be  
20 discharged and then in brackets or transferred to the Takalani home for the mentally disabled, this is to happen urgently in the following day or days. It is our

understanding that the Department instructed earmarked residents should be those without families. It has also come to our attention that a number of NGO's have today visited Life Esidimeni Randfontein and reported that they hold instructions from the DG to select residents to be discharged from Life Esidimeni to their NGO's.

5 In relation to the first paragraph, is it correct that, 50 residents of Life Esidimeni where to be discharged to the Takalani home? And would discharge be the correct word in that context?

**DR MORGAN MKHATSHWA**: Counsel, discharge would be inappropriate, it would be a placement

10 **ADV ADILA HASSIM**: And is it correct that 50 residents were to be placed at Takalani home then?

**DR MORGAN MKHATSHWA**: The numbers I would have to refer to my records to confirm the numbers, but the numbers that were supplied by the department of health officials to our facilities as indicated earlier, as to where those users were  
15 going, we had no clue.

**ADV ADILA HASSIM**: And the second paragraph that has come to our attention is that a number of NGO's have visited Life Esidimeni Randfontein with the instructions from the DG to select residents. Do you understand from this letter who is the DG?

20 **DR MORGAN MKHATSHWA**: Yes I do understand Counsel and as earlier expressed, we stopped that kind of a process because we believed a clinical process needed to be followed.

**ARBITRATOR, JUSTICE MOSENEKE**: The DG is who?

**DR MORGAN MKHATSHWA**: It will be Dr Selebano that would be the HOD of the department of health.

**ADV ADILA HASSIM**: If you turn to Page 1018, you respond to the letter that we  
5 were just reading, so you respond on 11 March 2016, to the South African Depression and Anxiety group, you confirm patients were identified to be moved to Takalani, is that correct?

**DR MORGAN MKHATSHWA**: That is correct Counsel.

**ADV ADILA HASSIM**: And you say they would be taken in groups of 10, is that  
10 correct?

**DR MORGAN MKHATSHWA**: That's correct.

**ADV ADILA HASSIM**: Were they taken in groups of 10?

**DR MORGAN MKHATSHWA**: I would have to refer to the records I don't have the records handy.

**ADV ADILA HASSIM**: And then you go on to the say the following NGO's have  
15 claimed to have been sent by the department of health to enquire about our patients. And you name 4 NGO's. Are those the only NGO's who had approached you at that point in time?

**DR MORGAN MKHATSHWA**: I asked the hospital managers to give me the names  
20 of NGO's that showed up at Randfontein and those were the names that were

provided.

**ADV ADILA HASSIM**: Why do you say the following NGO's have claimed to have been sent?

**DR MORGAN MKHATSHWA**: Because they had no proper identification, they had  
5 no letter of authority from the department of health. And thirdly, there are no  
clinicians to be able to assess our users and say I will have this one and not this  
one.

**ADV ADILA HASSIM**: Dr Mkhathswa has the department entered into a new  
agreement with the Life Esidimeni since after having it terminated?

10 **DR MORGAN MKHATSHWA**: I would not be the appropriate person to ask  
because I have left Life Esidimeni in July.

**ADV ADILA HASSIM**: So you are not aware if there is a new contract that has been  
concluded?

**DR MORGAN MKHATSHWA**: I have just seen it like anybody else in the media and  
15 I have not confirmed it with the officials.

**ADV ADILA HASSIM**: You say you no longer in the employ of Life Esidimeni, why  
is that?

**DR MORGAN MKHATSHWA**: This was a very traumatic experience for me I  
wouldn't see it another day.

20 **ADV ADILA HASSIM**: So you resigned?

**DR MORGAN MKHATSHWA**: Yes I have resigned Justice.

**ADV ADILA HASSIM**: You say it was a traumatic process and it has seemed to many of us sitting through this hearing that it's impossible to fathom, why this was necessary. In your view, who was responsible, who was giving the instructions and  
5 why do you think that person was giving these instructions?

**DR MORGAN MKHATSHWA**: I only can talk about what my experience was with the interactions with the department, the department being the HOD, the mental health care directorate. We also had a meeting with the MEC where she told us that she is cancelling the contract.

10 **ARBITRATOR, JUSTICE MOSENEKE**: HOD we are talking about Dr Selebano?

**DR MORGAN MKHATSHWA**: Yes.

**ARBITRATOR, JUSTICE MOSENEKE**: Mental health care unit you are talking about Dr Manamela?

**DR MORGAN MKHATSHWA**: Dr Manamela as the Head.

15 **ARBITRATOR, JUSTICE MOSENEKE**: And the MEC you are talking about Ms Qedani Mahlangu?

**DR MORGAN MKHATSHWA**: Yes Justice.

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

**DR MORGAN MKHATSHWA**: She told us that she doesn't have the budget for the  
20 service.

**ARBITRATOR, JUSTICE MOSENEKE**: She in this case will be the MEC?

**DR MORGAN MKHATSHWA**: Yes the MEC, she told us that she doesn't have the budget and she wanted to get out of the contract latest end of March 2017. We therefore were surprised to get that this had to be hurried over and had to be  
5 terminated in 2016.

**ADV ADILA HASSIM**: Do you know why it needed to be done in such a hurry?

**DR MORGAN MKHATSHWA**: It eludes my thinking and my reasoning, because it was beyond any rational clinically, it wasn't rational business wise from where I'm standing, I might be wrong, but I was never proven because I never got a chance to  
10 see what an independent person would say about the costs associated with the business.

**ADV ADILA HASSIM**: And in your view, the costs that were associated with your business were reasonable?

**DR MORGAN MKHATSHWA**: I would ask the house here, who can live on R300  
15 per day, for your medicines, for your grooming, for a place to sleep, for food, for transport, personally, impractical for me.

**ADV ADILA HASSIM**: Thanks Dr Mkhathshwa.

**ARBITRATOR, JUSTICE MOSENEKE**: We know from the report of the Ombud that each of the other State institutions like Sterkfontei and Weskoppies, keep and look  
20 after care users at 3 to 4 times the daily rate that Life Esidimeni charged, and the Ombud sets out the numbers. Is there anything you want to say about that?

**DR MORGAN MKHATSHWA**: It is very true, we did our benchmark. However what we realised, was that the costings from the side of the department of health is not a true reflection of the costs, because some functions are carried by another department which does not reflect on the department of health. So as much as they  
5 could appear as being 4 times higher there, they might be much higher if the true costings of the service were reflected.

**ARBITRATOR, JUSTICE MOSENEKE**: So why would your company be this hurried target for budget savings? The State should surely know what it spends on its own facilities run by the State? Every facility with patients of the State managed  
10 and owned privately, they surely should know that your daily cost of patients are the mere fact in some instances a quarter of what they have to pay for State owned and managed institutions.

**DR MORGAN MKHATSHWA**: I have no answer to that Justice, except I think Gauteng wanted to be the trailblazer in de-institutionalization of the mental health  
15 care in the country. That is all I can think about.

**ARBITRATOR, JUSTICE MOSENEKE**: Could you find out what the urgency was about? Originally the time frame at one time was 2020, at another you were told by 2017, and suddenly the timeline was much nearer, it was June 2016. What was the urgency did you ever come to find out?

20 **DR MORGAN MKHATSHWA**: Unfortunately no Justice, I think the MEC would be the rightful person to answer that question.

**ARBITRATOR, JUSTICE MOSENEKE**: I'm inviting you to speculate, an informed



speculation.

**DR MORGAN MKHATSHWA**: That is putting me on a wild chase, I don't know, I don't know.

**ARBITRATOR, JUSTICE MOSENEKE**: This is a contract that's over 3 decades  
5 long, which gets terminated with a 6months' notice, we know from the evidence was  
extended isn't it for 3 months because the province was not ready again and they  
came back to you to have it extended. I'm trying to understand what, was, the  
compelling consideration to sacrifice all sound clinical advice and to prepare a  
hurried placement that we now know with hindsight, led to multiple deaths, we know  
10 now on this current count 141. You must surely have sat down and said what was  
this all about.

**DR MORGAN MKHATSHWA**: We warned the department of the potential  
catastrophe that this haphazard process was going to result in. I personally wrote to  
the head of department, to say I am worried about these following things, amongst  
15 them was the clinical care that the users were going to get and the rest.

**ARBITRATOR, JUSTICE MOSENEKE**: Where is that letter now?

**DR MORGAN MKHATSHWA**: I probably could look for it in my files, I will look for it

**ARBITRATOR, JUSTICE MOSENEKE**: Would you try to look it and give it to  
Advocate Ngutshana?

20 **DR MORGAN MKHATSHWA**: I will try thanks Justice.

**ARBITRATOR, JUSTICE MOSENEKE**: And you warned that?

**DR MORGAN MKHATSHWA**: I warned that, number one, these users are used to this familiar environment, immediate transfer has psychological impact on these users, they need to adjust, some of them that's, the only family they knew in their life, it was us. We queried the issue around the primary health care centers in terms of what has changed, because our experience is that our primary health care centers are not yet jacked up to the level to be able to accommodate mental health care users. So we questioned that, we questioned what the implications would be for the families who have these loved ones, who have either one of the spouses would have to step down from work to look after their loved one if they are brought back to their homes. In one meeting, I got a shock of my life when the MEC said when she grew up she slept under the stove, so, so can these users. She cited Brazil as an example, to say in Brazil there are no mental institutions. When asked as to what happens when they get aggressive, the response was then they are put in chains and we said is that what the vision of the Gauteng Department of Health has for these mental health care users.

**ARBITRATOR, JUSTICE MOSENEKE**: And lastly, why or how do you think the people who died after they had left your institution died? What are the likely or probable causes of death?

**DR MORGAN MKHATSHWA**: I can only speak from experience. The 2007 experience showed us that the users we have in the facilities, one their portion of meals are managed by a qualified dietician. My question would be at the NGO, did they have a visiting dietician to look at how the meals were prepared? These patients as they are being moved from Esidimeni to where ever they were going,

they are bound to be psychologically influenced and psychologically impacted in a way that some of them would go into depression. My question is was there a care worker to feed those people or food would be put down and nobody cared who fed them? I'm wondering. We checked some of our users had co-morbidities varying  
5 from anything, from HIV to your hypertension to your diabetes the question is was there somebody checking their blood pressure and their blood sugar? I don't know. Did they take their medications? I don't know.

**ARBITRATOR, JUSTICE MOSENEKE**: Counsel?

**ADV LILLA CROUSE**: Thank you Justice Moseneke. Dr Mkhathswa I am very sorry  
10 to have to ask you more questions and prolong your stay in the box, I'm acting for the survivors in this Project and most of the questions that I wanted to ask, have been asked so I'll try not to repeat any questions. Could I just ask from you and if you don't want to answer it it's not strictly relevant, are you working at the moment?

**DR MORGAN MKHATSHWA**: I am working Counsel

15 **ADV LILLA CROUSE**: Would you be prepared to tell us where?

**DR MORGAN MKHATSHWA**: I work for the private health care hospital industry.

**ADV LILLA CROUSE**: And the effect that this had on you, we could see it in the box, but could you just tell us how you feel about this?

**DR MORGAN MKHATSHWA**: I just feel like, why couldn't we have learnt from the  
20 2007 incident? Was it because we just chose to be oblivious to it or did we choose to just ignore it totally? Why is it that when advice was put forward to say can we not

manage this better in this particular pattern that was rejected.

**ADV LILLA CROUSE**: Expert advice given?

**DR MORGAN MKHATSHWA**: Expert advice given and in these meetings with the society for the anxiety and depression group with the department, specifically

5 SASOP who actually gave their opinion on how they felt about this, were excluded from further meetings, they would only come and attend by invitation. It's all those things that I ask myself is there anything better that I could have done, I can't find the answer, I think the families actually they did better than we did in that they went and toyi-toyed outside the department of health. Did the country notice? Can

10 somebody then stand up and say I never knew, it was all in the media that was the best escalation that the families did. They stood their ground in these meetings, they demanded an apology, I remember in one meeting where the MEC arrived late and wanted to go on with her speech and they demanded an apology, they demanded to know where their loved ones were. It was unfortunate that we could

15 not supply that information to them, because we were their contact point, but we never had that information. I just felt that it just depressed me, I mean when I hear

141 I would go like oh gosh. Each death at Esidimeni was thoroughly investigated, if it meant we questioned anything we would take that body for the post mortem.

**ADV LILLA CROUSE**: Thank you Doctor. Doctor I want to talk to you a little bit

20 about the loss that this Marathon Project brought to our country and I'm not minimizing the deaths now, that's why we are here, but in what other way did we lose through this Project? Can I ask you about the jobs firstly, did we lose jobs?

**DR MORGAN MKHATSHWA**: That was negotiated by the union with the department and some of the employees got placed. However, you were placed where there was a place, which could be far away from your place of your residence, so as a result yes some retrenchments became a reality.

5 **ADV LILLA CROUSE**: Could you put a number to that?

**DR MORGAN MKHATSHWA**: Can I be able to refer to the records then I can be able to send that through?

**ADV LILLA CROUSE**: Thank you.

**ARBITRATOR, JUSTICE MOSENEKE**: Well Mr Mosonogi talked about 270  
10 clinicians and other nursing staff who were retrenched. Does that help jog your memory?

**DR MORGAN MKHATSHWA**: It could be true, we should also not forget the fact that some of the services we outsourced, so there's outsourced services, you talk laundry, you talking security, you talking catering, talking cleaning, all those people  
15 had no place to go to because the department could only take the clinical people.

**ADV LILLA CROUSE**: Would you agree with me doctor that those people that weren't placed were probably the poorest of the poor people?

**DR MORGAN MKHATSHWA**: It goes without saying, they had employment closer to where they stayed and some of them had no qualification at all, I mean even  
20 Grade 12 some of them didn't have, that were accommodated.

**ADV LILLA CROUSE**: Doctor I'm not sure if I understood it right, but some of your

hospitals were training hospitals in some of the places, were they not?

**DR MORGAN MKHATSHWA**: The company, has a college, as part of the training in the college then people would come to certain various facilities for site visits and clinical experience and exposure, so yes we did accommodate students, even from  
5 the department of health we did accommodate some of their students.

**ADV LILLA CROUSE**: Was that lost when all the contracts were terminated?

**DR MORGAN MKHATSHWA**: It was lost, where would they find the institutions to do what they had to do, I think those that belonged to the department had a better position because there are, mental health institutions in the department, but those  
10 that were private probably either had to drop out or find a different route.

**ADV LILLA CROUSE**: Doctor I was involved in the Life Esidimeni Frail Care Port Elizabeth closures as well, or intended closures and I'll speak to you in a moment about that, but the effect on staff knowing that they'd probably be terminated, what was that?

15 **DR MORGAN MKHATSHWA**: It was very traumatic for the staff, we had to call in outside service providers to be able to provide the kind of motivation, to be able to go through the process and be able to conclude it.

**ADV LILLA CROUSE**: So would you say that as a result of this, you already said there had to be extra motivation, but moving the patients away also affected the  
20 survivor's treatment, would you agree with that?

**DR MORGAN MKHATSHWA**: I fully agree with that, they needed proper care if

there is no continuity of care definitely it has affected the survivors.

**ADV LILLA CROUSE**: Justice Moseneke had asked you to speculate about what had happened now I just want to draw some parallels. Similarly to this, in the Eastern Cape, costs were also put forward as a reason for termination. Similar to  
5 what you told the court now, there was some juggling between the departments as to who paid what so in the one's books, things would look better than the other one. Thankfully we stopped those closures. But why do you think was Life Esidimeni targeted in this way? In Gauteng, it was the Department of Health and in the Eastern Cape, it was the Department of Social Development. Could you give any  
10 explanation for that?

**DR MORGAN MKHATSHWA**: In the Eastern Cape, the Department of Social Development felt some of the users were falling under the health department, so the health department had to pay for that. My question was, that it comes from the same coffer it's just that it's distributed in different centers. The patients needed the  
15 service, the communities needed the service, let's provide the service and manage these differences behind the scenes, but I left it, it wasn't resolved.

**ADV LILLA CROUSE**: Doctor that's the voice of reason, I would want to know why was Life Esidimeni targeted in all of this? Do you have any informed theory about that?

20 **DR MORGAN MKHATSHWA**: The theory I have is that there was a question about why was has it been such a long term contract? I would think probably why is it- I don't know, unfortunately it was a subdivision of a listed company that does not

have the appropriate BEE credentials, I don't know if that came into play, I don't know, I'm just thinking out loud.

**ADV LILLA CROUSE**: Are you saying there might have been a perception about Life Esidimeni?

5 **DR MORGAN MKHATSHWA**: It's highly possible Counsel.

**ADV LILLA CROUSE**: Thank you. I'm going to just move on, if you can assist us in your centers, how would you say how many staff did you employ per mental health user, just more or less, for each patient, what would the staff equivalent be?

**DR MORGAN MKHATSHWA**: It varied on the acuity of the patient, we will take for  
10 instance if you look at the Randfontein one where we had frail care, they would have the ratio of the enrolled nurse to an RN a little higher because it's more of the frail care support. But in the mental health side of things, it would depend on which ward they were in, if the need was there then we would staff it appropriately. But  
15 more of the lower categories, be it your enrolled nurse, or enrolled nurse auxiliary or your care worker.

**ADV LILLA CROUSE**: I know it's a very difficult question, if you can't answer it then I'd understand it, but what would you say should the ratio be per patient, on average?

20 **DR MORGAN MKHATSHWA**: I would have to refer to the records

**ADV LILLA CROUSE**: I'm not going to push you for that.



**DR MORGAN MKHATSHWA**: Yes thanks Counsel.

**ADV LILLA CROUSE**: If I can just speak about the hand-over now, when you hand over a patient and I'm not talking about discharge now, should there not be a clinician to receive your hand over?

5 **DR MORGAN MKHATSHWA**: There should be, as indicated earlier on, the officials of the department were clinicians, either doctors or nurses. So when we handed over our patients, we handed them over to clinicians.

**ADV LILLA CROUSE**: And if they were to hand over to an NGO, should they not have handed over to a clinician?

10 **DR MORGAN MKHATSHWA**: The normal process would yes, they should hand over to a clinician. In this instance I don't know who they handed over to.

**ADV LILLA CROUSE**: But as a clinician you should know that?

**DR MORGAN MKHATSHWA**: It would make sense to hand over to a professional nurse at least.

15 **ADV LILLA CROUSE**: If I could just speak about the handing over of the medicine, you said at least 28 days, that's probably one month's supply of medication, were given.

**DR MORGAN MKHATSHWA**: Yes Counsel.

**ADV LILLA CROUSE**: So if somebody were to testify here that 28 weeks of  
20 medicine was handed over, would that be correct?

**DR MORGAN MKHATSHWA**: It would be incorrect.

**ADV LILLA CROUSE**: You wouldn't have 4 months' worth of medication for any mental health care user, do you agree with me?

**DR MORGAN MKHATSHWA**: Absolutely no.

5 **ADV LILLA CROUSE**: Could I just place this in some sort of a better box, do you agree with me that we have a primary health care system and then we've got a regional health care system and a tertiary health care system, do you agree with me?

**DR MORGAN MKHATSHWA**: True Counsel.

10 **ADV LILLA CROUSE**: Would you also agree with me that the medicine that your health care users would use and I'm not talking about schedules, would be levels that won't be available at your primary health care clinics? I just want to make it clear that we understand it completely.

**DR MORGAN MKHATSHWA**: Some of the medications would be available, like  
15 your chronic medication, your hypertension and diabetes, it would be available, but some of the high schedule psychiatric drugs would not be available.

**ADV LILLA CROUSE**: We have the medical, I think they call it a formulary and in terms of that medicine not only in schedules but they are also divided in levels and you would have levels from 2 to 5 which is the higher levels that can only be  
20 provided by a specialist and only in tertiary setting, would you agree with me?

**DR MORGAN MKHATSHWA**: I would agree Counsel.

**ADV LILLA CROUSE**: So if somebody said that we could receive, I'm not talking about chronic medication the ordinary life schedule, but they could just get it from the primary health clinics that could never be, do you agree?

**DR MORGAN MKHATSHWA**: I agree, it would need a clinician to motivate for that  
5 medication.

**ADV LILLA CROUSE**: And as the system workS at the moment, the pharmacies at those places must order and supply the clinics, do you agree?

**DR MORGAN MKHATSHWA**: True Counsel.

**ADV LILLA COURSE**: So if somebody were just to go to the clinic and say here I  
10 am, I want medicine, they are not going to get it for our health care users, do you agree?

**DR MORGAN MKHATSHWA**: I agree.

**ADV LILLA CROUSE**: And if somebody a clinician were to write out a script without seeing the patient, what would you say about that?

**DR MORGAN MKHATSHWA**: That would be unethical.  
15

**ADV LILLA CROUSE**: It's not something that would be in terms of the oath of doing no harm?

**DR MORGAN MKHATSHWA**: You would need to see the patient, evaluate the patient and then decide on which treatment you want to put the patient on. So yes, I  
20 would find it strange to prescribe the medicine without seeing the patient.

**ADV LILLA CROUSE**: What would the lack of medicine and the lack of proper care have on a patient?

**DR MORGAN MKHATSHWA**: They would relapse and on relapse they would have to be admitted in a hospital.

5 **ADV LILLA CROUSE**: And if that didn't happen?

**DR MORGAN MKHATSHWA**: If that did not happen then the problem would stay within the location where it is at when the relapse occurs.

**ADV LILLA CROUSE**: And in the absence of water and food?

10 **DR MORGAN MKHATSHWA**: Most of our users actually their portions were larger than what I would say your normal portions because they wanted it, I think part of it could be from the side effects of the medication, so if they didn't have food that would impact on that. Water, you have to have your water otherwise you get dehydrated.

15 **ADV LILLA CROUSE**: Do I understand you correctly that the side effects of the medicine could be that you need more food, or that you want more food?

**DR MORGAN MKHATSHWA**: It is possible, that is why they had 4 snacks at Esidimeni.

**ARBITRATOR, JUSTICE MOSENEKE**: 4 snacks over and above the 3 main meals?

20 **DR MORGAN MKHATSHWA**: True Justice.

**ADV LILLA CROUSE**: Doctor just lastly if I can deal with this, you went through the 2007 with very huge problems and you take your oath seriously. Did you at any stage before the first patient died, tell the department, not that there'll be dire consequences, but that there will be deaths? Did you put it in such plain language  
5 to them or not?

**DR MORGAN MKHATSHWA**: I never put it on writing to say that there would be deaths, but they knew the 2007 experience clearly, I reminded them of that and wanted to be assured that there would be no repeat of the same incidents.

**ADV LILLA CROUSE**: What response did you get to that?

10 **DR MORGAN MKHATSHWA**: I was assured that the plan was fail-proof.

**ADV LILLA CROUSE**: The plan that you couldn't see was fail-proof.

**DR MORGAN MKHATSHWA**: True Counsel.

**ADV LILLA CROUSE**: Then the very last question, I hear that you say a certain percentage of the patients must be discharged, but surely with mental health users  
15 you don't work with percentages, you work with the case by case basis.

**DR MORGAN MKHATSHWA**: That is true Counsel.

**ADV LILLA CROUSE**: So you can't say that I will discharge X percentage this month, because you just don't know, isn't that so?

**DR MORGAN MKHATSHWA**: True Counsel, hence the need of the quarterly  
20 reviews to motivate why these percentages were not met.

**ADV LILLA CROUSE**: Thank you very much Doctor, Thank you Justice.

**DR MORGAN MKHATSHWA**: Thanks Counsel.

**ARBITRATOR, JUSTICE MOSENEKE**: Dr Kenoshi told us that for quite a while, the department of health in Gauteng has been going through a financial challenge, they've always had a budget less than the urgent demands on the department. Did you have difficulties in receiving payments for your services?

**DR MORGAN MKHATSHWA**: We did receive those non-payments however we had the cushion of the mother company who could carry us through those dry times.

**ARBITRATOR, JUSTICE MOSENEKE**: And they ultimately came around to pay you?

**DR MORGAN MKHATSHWA**: They did, we were paid.

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

**ADV DIRK GROENEWALD**: No questions from us.

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

**ADV TEBOGO HUTAMO**: Thank you Justice, I've just taken instruction that from the account given, there will be no questions posed to the doctor.

**ARBITRATOR, JUSTICE MOSENEKE**: Again that is not unhelpful, and 2 negatives are a positive, basic mathematics. We are to thank you for taking the time to come out and to tell more the nation than us and indeed these families about what happened from the official end of things. But before I'm going to release you, you

are probably the first who made the point in so many direct ways, the role of the Hippocratic Oath, in other words the place of medical ethics, when clinicians are confronted with decisions that bare the probability to threaten the wellbeing of those in need of medical care. What do you want to say about that in this particular  
5 context? Some of the decisions were made by doctors?

**DR MORGAN MKHATSHWA**: My understanding of this situation was they made decisions under duress my appeal would be to go back to putting the patient's safety first, irrespective of whatever political pressure we experience as clinicians, to have a say in how we want our patients to be looked after in the institutions that  
10 we have.

**ARBITRATOR, JUSTICE MOSENEKE**: You see Mr. Mosonogi who is not a clinician, but if you look at all the minutes he was a very high ranking officer in this Project. In fact he was a project leader, he said he felt that executive compulsion, executive duress on him. Should clinicians, should doctors ever feel that way in  
15 decision making, even if they are in executive roles?

**DR MORGAN MKHATSHWA**: Correctly we should not we should be able to stand for the right thing in the clinical setting. I think we get swayed away when we then look at what the possibilities of standing for the truth is going to mean for me as a person and not the patient first. And I think that is what led to this.

20 **ARBITRATOR, JUSTICE MOSENEKE**: But the Hippocratic Oath is unambiguous about the duty of a doctor, to provide care, for starters to [inaudible] a fear of favor, and there's a whole range of other qualifications, with regards to race, to gender, to

origin, to cause of death, to political affiliation, isn't it?

**DR MORGAN MKHATSHWA**: It is true Justice.

**ARBITRATOR, JUSTICE MOSENEKE**: The Oath specifies all of those distractions, things that might divert your attention when you provide health care. Should doctors  
5 deviate from that when they are in executive positions?

**DR MORGAN MKHATSHWA**: Personally I feel they should not, but I think where they get swallowed up in the whole place of being in a managerial position compared to being on the floor and being clinical, but correctly we should stick true to our profession.

10 **ARBITRATOR, JUSTICE MOSENEKE**: Not even the need for financial savings, ought to make a doctor to take a decision that is irrational clinically, is it not so?

**DR MORGAN MKHATSHWA**: True Justice, the patient, the life, is the primary goal for the clinician to save.

**ARBITRATOR, JUSTICE MOSENEKE**: Those are my ending questions if you want  
15 to say anything else in closure we have consistently invited our witnesses to do so.

**DR MORGAN MKHATSHWA**: I just would like to say thank you to the parents, the families for standing up. This would not have happened if they did not. Thanks for standing up in the meetings which we had. Unfortunately their voice was not heard. As part of Life Esidimeni, we share the same sentiments with you your loss was our  
20 loss. We knew you as our friends when we went to the facilities, I would joke with them some of them would ask for money, some of them would ask for a cigarette. I



remember one who actually said for the first time I came he said you look like an honest man, then later on he wanted me to buy him some cigarettes. But I'm just saying these were people, they worked, we were family, we really enjoyed them, it took a special breed of clinicians to look after the mentally ill patients and we were  
5 lucky that over the years at Life Esidimeni, we accumulated that and that is what gave us the competitive edge to be able to look after them appropriately. I want to assure you that we were engaged in a continuous quality improvement at Esidimeni. Whenever an incident happened, we investigated it thoroughly until we were fully convinced that this was exhausted, we went to the root cause, after we  
10 have identified the root cause, we then would put in corrective measures. Even if it happened in one facility, the corrective measures would be applied in all the facilities. So they were in good hands. Thank you very much and I'm sorry about the loss.

**ARBITRATOR, JUSTICE MOSENEKE**: We thank you.

15 **DR MORGAN MKHATSHWA**: Thank you Justice.

**ARBITRATOR, JUSTICE MOSENEKE**: What are we doing tomorrow Counsel?

**ADV TEBOGO HUTAMO**: Justice Moseneke tomorrow we have Dianne Noyile from Siyabadinga and she has confirmed that she will be here tomorrow morning as a witness.

20 **ARBITRATOR, JUSTICE MOSENEKE**: That's the CEO of Siyabadinga?

**ADV TEBOGO HUTAMO**: That's the CEO of Siyabadinga, in fact both the founder

and the CEO have confirmed that they are available to attend, but we'll only require one, not both of them, so that is the witness that we have available for tomorrow. And I do understand that one of the parties specifically Hunter Spies, they do have a witness if we do finish with Dianne Noyile earlier on, there will be another witness  
5 to take over so that we finish the list of our witnesses. But we would make arrangements to ensure that we line up our witnesses accordingly. I do know that Section 27 as well might want to have a view about the lineup of witnesses as well, so there might be some changes on the next witness that we would call immediately after the CEO of Siyabadinga.

10 **ARBITRATOR, JUSTICE MOSENEKE**: It's fine, as long as Counsel has it under control and we talking to each other. We are going to adjourn until 9:30 tomorrow morning.

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