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SELECT COMMITTEE ON PETITIONS AND EXECUTIVE UNDERTAKINGS: CONTENT OF THE MKHIZE PETITION

1. Background

The Select Committee on Petitions and Executive Undertakings (Committee) received a petition from Mr Mkhize of Gugulethu, Cape Town in relation to the death of his late wife Ms Matiwane. The said petition was tabled on the ATC on 26 September 2011.

Mr Mkhize was married to Ms Matiwane in terms of customary law. On 1 April 2004, Ms Matiwane died at Groote Schuur Hospital in Cape Town (GSH) after giving birth to their daughter. Ms Matiwane's death was treated as a natural death due to the medical complications she experienced prior to her death. Ms Matiwane was diagnosed as suffering from Gestational Proteinuric Hypertension (GPH), a condition commonly referred to as pre-eclampsia. GPH is essentially a medical condition characterized by high blood pressure and significant amounts of protein in the urine of a pregnant woman. If left untreated, GPH, may develop into the life threatening occurrence of seizures or convulsions during pregnancy. GPH is also known to cause bleeding in the brain i.e. brain hemorrhaging. The symptoms of GPH are amongst others leakage of protein into urine, back ache, abdominal pain and swollen feet and hands.

2. Content of the petition

In February 2004, Ms Matiwane (the deceased) left Durban for Cape Town in order to enroll her two children in school in the Western Cape. Her husband, Mr Mkhize, remained behind in Durban because of work commitments and the couple agreed he would follow her in due course. Prior to her departure to Cape Town, the deceased had attended a prenatal clinic but was later referred by the clinic to a hospital in Pinetown, Durban (namely St Mary's Hospital) after she was diagnosed with GPH. She informed the hospital in Durban that she was leaving for Cape Town and she was given a letter of referral for Mowbray Maternity Hospital, Cape Town (MMH).

On 9 February 2004, subsequent to her arrival in Cape Town, the deceased visited MMH after a sleepless night of severe pain and was turned away from MMH. This prompted the deceased to call her husband in tears and request that he intervene after she related to her husband how the receptionist and nurses at MMH's Ante Natal Care Unit told her to return to

the village where she had got herself pregnant.[1] Her husband accordingly intervened and called the hospital, whereupon he spoke to the sister in charge who told him for his wife to be treated at MMH, she would need to produce a bank statement; proof of residence; proof of her husband's employment in Cape Town; and a letter of referral from a hospital or clinic in Durban. In an effort to ensure that his wife received the necessary medical attention as soon as possible, Mr Mkhize began gathering the required documents to be sent to Cape Town.

Less than a week later, on 17 February 2004, the deceased once again visited MMH, this time with the necessary documents in hand. The deceased was examined and her blood pressure and general condition were found to be normal and she was told to return the following week for another examination to determine the cause of her pain. During subsequent visits to MMH by the deceased, an ultra sound was performed and her blood pressure was determined to be normal even though she continued to suffer from back ache and her hands and feet remained swollen.

On 29 March 2004, the deceased again visited MMH, again suffering from severe symptoms of GPH and her husband alleges she was not attended to for hours and she called her husband to complain about this. Her husband once again proceeded to call MMH and spoke to the same sister in charge he spoke to on 9 February 2004. Mr Mkhize demanded to know why his wife was not being attended to and the sister responded by saying who was he to tell her how to do her work. The deceased was later attended to and MMH staff decided to formally admit her after they realized her condition was serious - her blood pressure was discovered to be higher than normal and an ultrasound was ordered. The attending doctor at the time, Dr Drietrich, admitted her to the High Care Area of MMH on or about 10h00. Approximately an hour later, the deceased was examined by one Dr Lowe and by midday she was being observed on an hourly basis and her condition was relatively stable at this stage and no diagnosis of GPH had been made by any of the attending physicians.

On 30 March 2004, a reading of solid protein in the deceased's urine was made and Dr Dlamini, a registrar in Obstetrics and Gynecology in consultation with Dr Fawcus, a senior specialist at MMH, took the view that they should induce labour. It was also at this stage that the deceased was diagnosed with GPH and as soon as this definite diagnosis of GPH was made, the deceased was given misroprostol to induce labour. Dr Drietrich called upon Dr Dlamini to assist her and they incubated and ventilated the deceased. During this time, the deceased was kept under close watch.

In the early hours of 31 March 2004, at approximately 02h00, Dr Dlamini called Dr Fawcus and the anesthetist on duty (whose name is unknown) and an emergency caesarian was performed on the deceased. Whilst in theatre undergoing the emergency caesarian, the deceased was kept incubated. The flying squad arrived over an hour and a half later, at

[1] It is important to note that a Noseweek article on Ms Matiwane's death dated May 2007 confirmed that hospitals such as MMH routinely turn away patients who they believe should have gone to a primary tier medical facility, namely, primary care clinics or day hospitals because they regard themselves as second tier medical facilities that should ordinarily cater for private paying patients or those referred to them by primary care clinics or day hospitals.

approximately 03h52, to transfer the deceased to GSH's Intensive Care Unit. The flying squad was also delayed in departing MMH for GPH, despite the fact that the two medical care facilities are within a 1km radius of one another. A scan showed that the deceased had suffered massive intra-ventricular hemorrhaging as a result of the GPH.

After being summoned by MMH administration, Mr Mkhize arrived in Cape Town and by the time he arrived in Cape Town, his wife had been transferred to GSH's Intensive Care Unit and later died the same day.

On 1 April 2004, a formal brain scan was carried on the deceased and it showed that the deceased was brain dead. The deceased was declared clinically dead after the ventilator keeping her alive was switched off. The deceased's death certificate indicated that she died of natural causes and no post mortem was carried out on the deceased.

3. Relief sought

Mr Mkhize requests the assistance and intervention of the Committee in re-opening an inquest as to the cause of death of his late wife in terms of section 17 A of the Inquest Act 58 of 1959 (Inquest Act). In terms of the said section of the Inquest Act, the Minister of Justice, may after the determination of an inquest request the judge president of a Supreme Court provincial division to designate any Supreme Court judge to re-open an inquest.

Broadly speaking the petitioner, Mr Mkhize, seeks the re-opening of an inquest into his wife's death because he is of the opinion that MMH should be held liable for his wife's death on the basis of negligence. In other words, Mr Mkhize is of the view that the hospital and its staff were negligent in attending to his late wife.

Accordingly, on 3 March 2006, Mr Mkhize filed a statement and opened a case of negligence against MMH's medical and nursing staff at the Mowbray police station in connection with the death of his late wife and an investigation was carried out in this regard. However, on 26 December 2008, after considering all the evidence presented before it during an inquest into the death of the deceased, the Cape Town Magistrate Court found that the deceased received prompt and appropriate care from the medical and nursing staff at MMH and as such her death was not brought about by any act or omission on the part of MMH or any other individual.

4. Reasons for the relief sought

Mr Mkhize bases the re-opening of an inquest into his late wife's death on 3 grounds:

1) **Medical discrepancies** - a number of medical discrepancies arise upon consideration of the medical entries made by the various attending medical and nursing staff. Mr Mkhize points to the following medical discrepancies:
   - Possibility of a trigger event contributing to the deceased's sudden deterioration in the deceased's condition considering the fact she was determined to be in a stable

condition on the night of 29 March 2004. In this regard, Mr Mkhize alleges the trigger event was a fall – according to Mr Mkhize Dr Fawcus told him his wife fell from her bed on the morning of 30 March 2004 and that the student doctor who attending to wife broke his leg whilst trying to help his wife back into her hospital bed. This is supported by an entry in his late wife's MMH medical records referring to "unusual disturbances".

- The existence of unsigned entries and entries indicating that she may have received poor ante natal care.
- The deceased was induced despite being diagnosed with GPH.
- An emergency caesarian was performed on the deceased over twelve hours after induction of labour.
- The deceased was given magnesium sulphate to control the GPH but some of the attending doctors were concerned that magnesium sulphate toxicity may have occurred and a toxicology report was not carried out to determine whether this was case.
- An entry in the deceased's medical records during the emergency caesarian section stated that she was under anesthetist and when she started losing consciousness, whereupon Dr Fawcus and the anesthetist on duty immediately came through however the Theatre Summary Sheet lists Dr Fawcus as the surgeon while the anesthetist is not listed. This raises the question of whether the procedure was performed under an anesthetist.
- There was a significant delay in the transfer of the deceased from MMH to GSH.
- No post mortem was carried on the deceased but Dr Fawcus signed a death certificate stating the deceased died a natural death.
- At the inquest the presiding magistrate assumed a post mortem report has been carried out on the deceased and did not request a post mortem report.

2) **Error of judgment** – the presiding magistrate at the inquest of his late wife may have erred in her finding due to the technical nature of the evidence led by the various specialists and the absence of a post mortem report.

3) **Protection of human rights and interests of justice** – the treatment that his late wife received at MMH infringed on her rights to dignity (contained in section 10 of the Constitution) and right to access of health care services (contained in section 27 of the Constitution). Moreover, the law accords individuals with the right to request reasons where there is cause to believe an error may have occurred. The interests of justice further require that the inquest into the deceased's death be re-opened to ensure that a thorough investigation into the circumstances surrounding her death is carried out and further ensure (if necessary) that appropriate measures be taken to prevent similar occurrences. It is further in the interest of justice that those liable be held accountable.

5. Recommendations to the Committee

The Committee considered the petition in light of the legal opinion given by the Committee Legal Adviser at a Committee meeting held on 8 May 2013 and subsequently resolved to hold a meeting

with the Western Cape Department of Health (WCDH) with a view to getting clarity on some of the issues raised in the Mkhize Petition.

It is recommended that the Committee consider the petition with a view to charting a way forward on how best to resolve the petition.