



**IN THE SPECIAL TRIBUNAL ESTABLISHED IN TERMS OF  
SECTION 2 (1) OF THE SPECIAL INVESTIGATIONS UNIT AND  
SPECIAL TRIBUNALS ACT 74 OF 1996  
(REPUBLIC OF SOUTH AFRICA)**

**HELD VIRTUALLY**

**CASE NO.: GP/20/2020**

In the matter between:

**SPECIAL INVESTIGATING UNIT**

**Applicant**

and

**JACOB BASIL HLATSHWAYO**

**First Respondent**

**THE GOVERNMENT EMPLOYEES PENSION FUND**

**Second Respondent**

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**JUDGMENT**

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**Mode of delivery:** *this judgment is handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 4:00pm on 12 February 2021.*

**Modiba J:**

## INTRODUCTION

[1] This judgment addresses the issues that arose on the return date of a rule *nisi* granted by this Tribunal on 17 December 2020, calling on the respondents to show cause why the Government Employees Pension Fund (“the GEPF”) should not be interdicted and restrained from releasing Mr. Jacob Basil Hlatshwayo’s (“Mr. Hlatshwayo”) pension benefits to either Mr. Hlatshwayo or to any other person.

[2] The rule *nisi* appears below for ease of reference:

*“1. A rule nisi hereby is issued calling upon the respondents to show cause, if any, on 1 February 2021 at 10:00, as to why an order in the following terms should not be confirmed:*

*“1.1 That the Second Respondent is interdicted and restrained, pending the finalisation of an action or application to be instituted, by no later than 1 March 2021 (including appeals and petitions), from making payment to the first respondent, or any other party, in respect of the first respondent’s pension benefits held in respect of membership no. 98092839.*

*“2. The relief granted in paragraph 1.1 supra shall operate with immediate effect until the return date.*

*“3. Costs to be cost in the main proceedings.*

*“4. This order shall be served on the respondents together with a copy of the application.*

*“5. The Applicant, its legal representatives as well as the personnel of the Special Tribunal may only disclose this order to the media after it has been served on the Respondents.”*

[3] Mr. Hlatshwayo is the first respondent in the application for the rule *nisi*. The Special Investigating Unit (“the SIU”) is the applicant. The GEPF is the second respondent. The GEPF did not enter the fray.

[4] In this judgment, unless otherwise specified, reference to:

- 4.1 'the Act' is to the Special Investigations Unit and Special Tribunals Act<sup>1</sup>;
- 4.2 'the Rules' is to the Rules of the Special Tribunal as amended<sup>2</sup>;
- 4.3 'Uniform Rules' is to the Uniform Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa as amended.<sup>3</sup>

[5] Although granted on 17 December 2020, the rule *nisi* was only served on Mr. Hlatshwayo on 8 January 2021. He subsequently took the following steps on 26 January 2021:

- 5.1 he filed a notice in terms of Uniform Rule 30/30A, calling on the SIU to remedy its non-compliance with Rule 10(2)(c);
- 5.2 he filed an answering affidavit seeking a discharge of the rule *nisi* on the basis of a succinct point of law. He also opposes the confirmation of the rule *nisi* on the merits.

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<sup>1</sup> 74 of 1996.

<sup>2</sup> The Tribunal President issued the Rules in terms of section 9 (1) (a) of the Special Investigating Units and Special Tribunals Act No. 74 of 1996, as amended. The Rules regulate the conduct of proceedings in the Special Tribunal, including the process by which proceedings are brought before the Special Tribunal, and the form and content of that process. The Rules were published in Government Gazette No. 43647 on 25 August 2020 and came into effect on the date of publication.

<sup>3</sup> Published in Government notice R.48 of 12 January 1965, as amended.



- [6] On the return date, the SIU was not ready for the hearing of the matter. It sought an extension of the rule *nisi* by way of a formal application. The reasons for the SIU's lack of readiness are detailed in an affidavit filed in support for the extension application. The reasons are outlined and considered at a pertinent point in this judgment.
- [7] Mr. Hlatshwayo opposes the extension application. He contends that the SIU makes out no case for the extension of the rule *nisi*. He also contends that his point of law is dispositive of the rule *nisi*. For the latter reason, his counsel urged the Tribunal to deal with his point of law first.
- [8] The Tribunal initially agreed to approach this matter as suggested by Mr. Hlatshwayo's counsel. However, after hearing counsel for the parties, the Tribunal directed that argument in the extension application be advanced. To protect the SIU's right to file a replying affidavit in the event that the Tribunal grants the extension application, the Tribunal directed counsel for the parties to confine their argument to Mr. Hlatshwayo's point of law and not traverse the merits of Mr. Hlatshwayo's opposition to the rule *nisi*. Counsel for the SIU slightly traversed the merits, inviting counsel for Mr. Hlatshwayo to do so in reply. Given the basis on which the Tribunal determines Mr. Hlatshwayo's point of law, it is really of no moment that counsel for the parties argued the point of law beyond the parameters allowed by the Tribunal.
- [9] Due to the weak internet network which rendered it impossible to hear counsel for the parties, the Tribunal gave counsel for the parties the option to either submit written argument on both the point of law and the extension application or physically appear at the seat of the Tribunal at the Booysens Magistrates Court to finalize argument. They opted for the former. The Tribunal is grateful to counsel for both parties for filing written

submissions. The Tribunal found the written submissions to be of valuable assistance in preparing this judgement.

[10] This judgment addresses the status of the Uniform Rule 30/30A notice, Mr. Hlatshwayo's point of law and the SIU's application for an extension, in this sequence.

## **UNIFORM RULE 30/30A NOTICE**

[11] In the Uniform Rule 30/30A notice, Mr. Hlatshwayo complains that the SIU failed to provide an address within 15kms of the Magistrates' Court, Booysens where it will receive service of documents in these proceedings as required by Rule 10(2)(c). Mr. Hlatshwayo gave the SIU a period of 10 days to remedy its non-compliance with Rule 10(2)(c). The ten-day period expired on 9 February 2021.

[12] By filing his answering affidavit simultaneously with the Uniform Rule 30/30A notice, Mr. Hlatshwayo took a further step in the proceedings with knowledge of the non-compliance complained of. This renders a Uniform Rule 30 application unavailable to him in the event that the SIU fails to remedy the non-compliance complained of.<sup>4</sup> Notably, Mr. Hlatshwayo also did not exercise his rights in terms of Uniform Rule 30 (4) which prevents the SIU from taking a further step in the proceedings until it has remedied its non-compliance. Rather, he insisted on his point of law being determined. While taking a further step in the proceedings bars Mr. Hlatshwayo from bringing an application in terms of Uniform Rule 30, this prohibition does not extend to a Uniform Rule 30A application.

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<sup>4</sup> Uniform Rule 30 (2) (d)

[13] Counsel for Mr. Hlatshwayo correctly agreed with the Tribunal that the Uniform Rule 30/30A notice may be ignored for the purposes of determining the point of law and the extension application. That the Uniform Rule 30/30A notice raises a different procedural point makes this approach logical.

[14] For these reasons, the Uniform Rule 30/30A notice bears no relevance to the issues to be determined. Therefore, the Tribunal does not deal with it further in this judgment.

## THE POINT OF LAW

[15] In its founding affidavit, the SIU did not indicate the rule under which it brings the application for the rule *nisi*. Mr. Hlatshwayo contends that the rule *nisi* is incompetent under either of the two rules in terms of which such an order may be sought and granted. These are Rule 23 and Rule 24. For reasons that will become apparent later in this judgment, the Tribunal only considered whether the rule *nisi* was correctly sought and granted in terms of Rule 23. The Tribunal found that the rule *nisi* was indeed correctly sought and granted in terms of this Rule. Therefore, a determination whether Rule 24 is competent became redundant.

[16] In paragraph 60 and 61 of its founding affidavit, the SIU places reliance on section 37D (1)(b)(ii) of the Pension Fund Act<sup>5</sup>. In his written submission, Mr. Hlatshwayo takes issue with the SIU's reliance on this provision.

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<sup>5</sup> 24 of 1956.



- [17] The Tribunal considers the SIU's reliance on section 37D (1)(b)(ii) of the Pension Fund Act and Rule 23 in turn.

*Section 37D(1)(b)(ii) of the Pension Fund Act*

- [18] Section 37D(1)(b)(ii) of the Pension Fund provides as follows:

***"37D. Fund may make certain deductions from pension benefits: - (1) A registered fund may-***

*"(a)*

*"(b) deduct any amount due by a member to his employer on the date of his retirement or on which he ceases to be a member of the fund, in respect of:*

*"(i) ... or*

*"(ii) compensation (including any legal costs recoverable from the member in a matter contemplated in subparagraph (bb)) in any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member, and in respect of which-*

*"(aa) the member has in writing admitted liability to the employer; or*

*"(bb) judgment has been obtained against the member in any court, including a magistrate's court,*

*"from any benefit payable in respect of the member or a beneficiary in terms of the rules of the fund and pay such amount to the employer concerned;" (Emphasis added)*

- [19] Counsel for Mr. Hlatshwayo poignantly pointed out in her written submissions that the GEPP is a creature of statute. It is regulated by its enabling statute, the Government Employees Pension Law, 1996 as amended ("the Pension Law"). It is from the Pension Law that the GEPP derives its capacity to act. Its powers are confined to the four corners of the Pension Law. It may not derive powers outside of the Pension Law. The argument

advanced on behalf of Mr. Hlatshwayo further went, the GEPF derives no power from 37D(1)(b)(ii) of the Pension Fund Act to give effect to the rule *nisi*. Therefore, the SIU's reliance on section 37D(1)(b)(ii) of the Pension Fund Act is misplaced.

[20] Poignant as this argument is, it does not sustain Mr. Hlatshwayo's point of law. The Pension Law contains a provision analogous to section 37D(1)(b)(ii) of the Pension Fund Act. Section 21 of the Pension Law provides:

***"21 Prohibition on cession and attachment of benefits***

*"(1) Subject to section 24A, no benefit or right in respect of a benefit payable under this Act shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated or, save as is provided in section 26 or 40 of the Maintenance Act, 1998 and section 7 (8) of the Divorce Act, 1979 (Act 70 of 1979), be liable to be attached or subjected to any form of execution under a judgment or order of a court of law.*

*"(2) ...*

*"(3) Notwithstanding the provisions of subsection (1) or of any other law –*

*"(c) the amount of any loss which has been sustained by the employer through theft, fraud, negligence or any misconduct on the part of any member, pensioner or beneficiary which has been admitted by such member or pensioner in writing or has been proved in a court of law;*

*"may be deducted from the benefit payable to such member, pensioner or beneficiary under this Law in a lump sum or in such instalments as the Board may determine."*  
(Emphasis added)

[21] Section 24A the Pension Law regulates the payment of a pension interest upon the divorce or dissolution of the customary marriage of a member. Therefore, Section 24A does not apply in this case.



[22] In terms of section 8(1), the Tribunal functions subject to the law and the Constitution<sup>6</sup> Even though the SIU did not specifically rely on section 21 of the Pension Law, this is a prevailing statutory provision that regulates the functions of the GEPP. Therefore, the Tribunal finds that the GEPP has the power to give effect to the rule *nisi*.

[23] The second issue that Mr. Hlatshwayo raised in relation to section 37D (1) (b) (ii) of the Pension Fund Act is that he has not admitted liability to his erstwhile employer and there is no judgment against him in favour of his erstwhile employer that entitles his erstwhile employer to execute against his pension fund as permitted by this section. Although the Tribunal has accepted, as contended on behalf of Mr. Hlatshwayo that section 37D (1) (ii) of the Pension Fund Act is not applicable, the second issue that Mr. Hlatshwayo raised remains relevant because section 21 of the Pension Law contains analogous exceptions.

[24] A literal interpretation of section 21 of the Pension Law restricts the GEPP from making a deduction from a member's pension fund to make good losses incurred by an employer at the member's instance in the two scenarios envisaged in section 37D (1) (b) (ii) of the Pension Fund Act. In *Highveld Steel*<sup>7</sup>, when determining a similar objection to that advanced on behalf of Mr. Hlatshwayo, the Supreme Court of Appeal ("SCA") rejected the literal interpretation of section 37D(1) (b) (ii) of the Pension Fund Act on the basis that it would render nugatory the benefit which the legislature has afforded employers through this provision. The SCA held that a purposeful interpretation of section 37D (1)(ii) of the Pension Fund Act best serves the intention of the legislature. In this regard, the SCA per Maya JA (as she then was) said:

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<sup>6</sup> Constitution of the Republic of South Africa, 1996.

<sup>7</sup> *Highveld Steel and Vanadium Corporation Ltd v Oosthuizen* [2009] 2 All SA 225 SCA.

*"18 These practicalities lead me to disagree with the submissions for the respondent, inter alia, that the tense used by the legislature in s37D(1)(b)(ii) (aa) and (bb), in the words "has in writing admitted liability and judgment has been obtained" reflects an intention that either proof of liability must be available on termination of the employment contract (sic). I similarly have a difficulty with the contention that the words 'as soon as possible in rule 7.3 require payment of the pension benefits to be effected immediately upon termination of an employee's service.*

*"19 Such an interpretation would render the protection afforded to the employer by s 37D(1)(b) meaningless, a result which plainly cannot have been intended by the legislature. It seems to me that to give effect to the manifest purpose of the section, its wording must be interpreted purposively to include the power to withhold payment of a member's pension benefits pending the determination or acknowledgment of such member's liability. The Funds therefore had the discretion to withhold payment of the respondent's pension benefit in the circumstances..." (Emphasis added)*

[25] Maya JA's *dictum* equally serves section 21 of the Pension Law. Mr. Hlatshwayo is implicated in Covid-19 related procurement misconduct following an investigation by the SIU as contemplated in section 2 (1) read with section 4 (1). The SIU further alleges that the alleged misconduct on the part of Mr. Hlatshwayo imperils the public interest. As evident from the rule *nisi*, the SIU intends instituting civil proceedings to recover the loss the state has incurred as a result of Mr. Hlatshwayo's alleged misconduct.

[26] While the SIU investigations were pending and prior to it instituting civil proceedings against Mr. Hlatshwayo, Mr. Hlatshwayo resigned from his employment with the Department of Rural Development and Land Reform ("the Department") where he was employed as the Chief Executive Officer when the alleged misconduct occurred. In the event that the SIU successfully establishes misconduct on his part, the SIU and/ or the Department is entitled to demand from the GEPP to deduct money from Mr. Hlatshwayo's pension fund to make good the loss the state is established to have incurred at Mr. Hlatshwayo's instance.

[27] The investigation against Mr. Hlatshwayo and the process of establishing the alleged loss will take time, especially because the SIU is inundated with similar



investigations across several national and provincial government departments involving billions of rands which the Tribunal takes judicial notice of.

[28] By virtue of his resignation from the Department, Mr. Hlatshwayo is no longer a member of the GEPF. He is entitled to access his pension fund held by the GEPF. In the event that Mr. Hlatshwayo does access his pension fund and subsequently, the SIU succeeds in the intended legal proceedings, the SIU and/ or the Department will have no security to make good the proven loss to the State.

[29] The fact that Mr. Hlatshwayo has not admitted liability to the Department or the absence of a judgment proving his liability for the alleged loss does not disempower the GEPF from giving effect to the rule *nisi*. Interpreting section 21 of the Pension Law to find that the GEPF lacks the power to give effect to the rule *nisi* under these circumstances will render section 21 of the Pension Law nugatory. As the SCA found in *Highveld Steel*, such an interpretation could not have been intended by the legislature as there will probably be very few instances where a judgment is obtained prior to or by the time a member resigns from his or her employment.

[30] The Pension Fund Adjudicator has adopted the same interpretation in similar matters on the authority of *Highveld Steel*.<sup>8</sup>

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<sup>8</sup> See *Ndlebe V Edcon Provident Fund and Others* [2015] 1 BPLR 80 (PFA) Date: 08/07/2013, Case No: PFA/GA/12863/2012/ZC; *Multimatic (Pty) Limited V Corporate Selection Umbrella Fund No 2 and Another* [2015] 1 BPLR 62 (PFA) Tribunal of the Pension Funds Adjudicator Date: 19/06/2013 Case No: PFA/GA/11658/2012/SM; *Ncobela v Edcon Provident Fund and Others* [2014] 1 BPLR 99 (PFA) Division: Tribunal of the Pension Funds Adjudicator Date: 22/11/12 Case No: PFA/KZN/10677/2012/PGM *Smith v MB Technologies Pension Fund and Another* [2014] 1 BPLR 122 (PFA) Division: Tribunal of the Pension Funds Adjudicator Date: 15/11/2012 Case No: PFA/GA/12392/2012/TN; *Smith v Chamber of Mines Retirement Fund* [2015] 1 BPLR 117 (PFA) Division: Tribunal of the Pension Funds Adjudicator Date: 04/07/2013 Case No: PFA/WC/00001036/2012/MR



[31] Therefore, the Tribunal finds that the GEPF is empowered by section 21 of the Pension Law to give effect to the rule *nisi* despite the fact that Mr. Hlatshwayo did not admit liability and there is no judgment that establishes his liability to the State as yet.

[32] The Tribunal now turns to consider the Rule under which the SIU sought and was granted the rule *nisi*.

### *Rule 23*

[33] Mr. Hlatshwayo contends that the rule *nisi* was wrongly sought and granted because in terms of Rule 23, the limited conditions under which a preservation order may be granted are absent.

[34] In terms of Rule 23, a preservation order is only competent where there are pending proceedings against a respondent either in the Tribunal or High Court, failing which the rule *nisi* application ought to be brought simultaneously with the action or application setting out the cause of action which underpins the rule *nisi*. It is common cause that the rule *nisi* was sought and granted under circumstances where none of the conditions demanded by Rule 23 were extant.

[35] I find that these conditions do not trump the SIU's capacity to seek a preservation order under the prevailing circumstances because:

35.1 an order such as the one sought by the SIU and granted by this Tribunal is competent in terms of section 21 of the Pension Law within the meaning this provision derives from *Highveld Steel*.

35.2 the Pension Law is a primary legislation while the Rules of this Tribunal is a delegated legislation. Delegated legislation may never abrogate the right that vests in a party by virtue of a primary legislation, particularly because where there is a conflict between a primary and a delegated legislation on the same subject, the delegated legislation is of no effect only to the extent of the conflict.<sup>9</sup>

35.3 a literal interpretation of Rule 23 is subject to the same criticism which the SCA visited upon section 37D (1) (b) (ii) of the Pension Fund Act in that it will frustrate the purpose of section 21 of the Pension Law, Rule 23 and the Act. The purpose of the Act as set out in the preamble to the Act is:

*“To provide for the establishment of Special Investigating Units for the purpose of investigating serious malpractices or maladministration in connection with the administration of State institutions, State assets and public money as well as any conduct which may seriously harm the interests of the public and of instituting and conducting civil proceedings in any court of law or a Special Tribunal in its own name or on behalf of State institutions; to provide for the revenue and expenditure of Special Investigating Units; to provide for the establishment of Special Tribunals so as to adjudicate upon civil matters emanating from investigations by Special Investigating Units; and to provide for matters incidental thereto.”*

35.4 the rule *nisi* operates subject to the SIU instituting legal proceedings against Mr. Hlatshwayo by 1 March 2021. The tight time frame by which the SIU has to institute proceedings against Mr. Hlatshwayo extends to him the safeguard intended by the Tribunal President when he imposed limitations for the granting of orders in terms of Rule 23 without compromising the purpose of section 21 of the Pension Law and the Act.

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<sup>9</sup> See LAWSA First Re-issue Vol 25 Part 1 par 282.

[36] For the reasons stated above, the limitations in Rule 23 are not fatal to the rule *nisi* granted by this Tribunal on 17 December 2020.

[37] Having found nothing lacking in the SIU's reliance on Rule 23, considering Mr. Hlatshwayo's submissions in relation to Rule 24 will serve no purpose. Therefore, Mr. Hlatshwayo's point of law stands to fail with costs.

### THE EXTENTION APPLICATION

[38] The SIU initially sought an extension of the rule *nisi* to 1 March 2020. After hearing oral submissions by counsel for the parties and simultaneously with its written submissions, the SIU filed an amendment to its notice of motion in the extension application, replacing '1 March 2021' with '8 March 2021'.

[39] The extension application falls within the purview of Uniform Rule 27 (1) as it relates to the extension of a time frame set by this Tribunal in respect of the return date for the Rule *nisi*. To succeed in the application, the SIU ought to:

39.1 provide a satisfactory explanation for the extension;

39.2 show good cause for the extension;

39.3 show that granting the extension will not be prejudicial to Mr. Hlatshwayo.<sup>10</sup>

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<sup>10</sup> *Smith NO v Brummer NO* 1954 (3) SA 352 (O) at 357H-358C.



[40] It is trite that organs of state are afforded more time to file papers. Uniform Rule 6(13) does so. Uniform 6(13) provides that:

*"In any application against any Minister, Deputy Minister, Administrator, officer or servant of the State, in his capacity as such, the State or the administration of any province, the respective periods referred to in paragraph (b) of subrule (5), or for the return of a rule nisi, shall not be less than 15 days after the service of the notice of motion, or the rule nisi, as the case may be, unless the court has specially authorized a shorter period."*

[41] *In re: Several Matters on the Urgent Court Roll*, the High Court confirmed the need to afford organs of state more time to file papers.<sup>11</sup> The SIU is an organ of state as contemplated by Rule 6(13). That the SIU is represented in these proceedings by the State Attorney is consistent with its status as an organ of state.

[42] Mr. Sethuu deposed to the affidavit filed in support of the SIU's extension application, explaining why the SIU requires more time to file its replying affidavit. He states that:

42.1 Mr. Seleka was the attorney for the SIU in this matter until he resigned from the Office of the State Attorney on 31 December 2020. He ("Mr. Sethuu") was only designated as the attorney of record in this matter on 11 January 2021. Only then did he start acquainting himself with the matter.

42.2 He was absent work from 18 to 25 January 2021 due to a bereavement in his family.

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<sup>11</sup> *In re: Several Matters on the Urgent Court Roll* 2013 (1) SA 549 (GSJ) at paragraph 16.

42.3 Due to his workload and lockdown 3 regulations in place, he was not able to consult with the relevant officials.

42.4 Mr. Hlatshwayo's answering affidavit was served on the Office of the State Attorney on 26 January 2021. The registry office in the Office of the State Attorney handles such process on behalf of 150 attorneys. Mr. Sethuu only received the answering affidavit on 28 January 2021, a Thursday. With the return date falling on Monday 1 February 2021, Mr. Sethuu only had one day to file a replying affidavit.

42.5 It was impossible under these circumstances for him to file a replying affidavit because he had to:

42.5.1 investigate the allegations set out in the answering affidavit;

42.5.2 consult with the relevant officials who have knowledge of the allegations;

42.5.3 obtain instructions; and

42.5.4 brief counsel to prepare a replying affidavit.

[43] These circumstances largely reflect the reality of litigating for an organ of state. Hence, organs of state require more time to prepare and file process.

[44] Having regard to the reasons for the extension as set out by Mr. Sethuu, The Tribunal finds that the State Attorney did not delay to file a replying affidavit. It simply had no time to do so.

[45] Mr. Hlatshwayo abrogated his right to anticipate the rule *nisi* on 24 hours' notice to the SIU which he enjoys in terms of Rule 12 (9), given that the rule *nisi* was granted in his absence. Under these circumstances, it is unreasonable for Mr. Hlatshwayo to criticize the SIU for taking three weeks to have the rule *nisi* served on him and for falling to file a reply within one day of service of his answering affidavit. His own conduct of the matter fails to demonstrate that these time lapses are prejudicial to him.

[46] Considering that Mr. Hlatshwayo (being an individual litigant) took three weeks to file his answering affidavit, the Tribunal finds that the four weeks required by the SIU (being an organ of state) to file a replying affidavit is reasonable.

[47] It is trite that a party who seeks an extension of time seeks an indulgence. It befits such a party to bear the associated legal costs. However, there is justification to depart from this general rule under these circumstances. Having regard to the reasons why the SIU sought an extension to file its replying affidavit as well as the time Mr. Hlatshwayo took to file his answering affidavit, the Tribunal finds that Mr. Hlatshwayo was unreasonable to oppose the extension application. It befits Mr. Hlatshwayo to bear the legal costs of opposing the extension application.

[48] Mr. Hlatshwayo took no issue with the SIU's amendment to the notice of motion in the extension application. It stands to be granted. It befits the SIU to bear the legal costs of this indulgence.



[49] The Tribunal finds that the SIU has met the requirements for the extension of the rule *nisi* as outlined in paragraph 39 above. Therefore, the extension application stands to be granted with Mr. Hlatshwayo bearing the legal costs of opposition.


[50] In the premises, the following order is made:

**ORDER**

1. Jacob Basil Hlatshwayo's ("Mr. Hlatshwayo") point of law is dismissed with costs.
2. Paragraph 1 of the Notice of Motion filed by the Special Investigation Unit ("the SIU") dated 29 January 2021 is amended to read:

*"That the rule nisi be extended to 8 March 2021, alternatively to a date determined by this Honourable Tribunal."*

3. The SIU shall bear the legal costs of amending the notice of motion referred to in paragraph 2 of this order.
4. The extension application succeeds.
5. Mr. Hlatshwayo shall bear the legal costs of opposing the extension application.
6. The rule *nisi* granted on 17 December 2020 is extended to 8 March 2021.

A handwritten signature in blue ink, appearing to read 'L. T. Modiba', is written over a horizontal line. The signature is stylized with loops and flourishes.

**JUDGE L. T. MODIBA**  
**MEMBER OF THE SPECIAL TRIBUNAL**

## APPEARENCES

Counsel for the applicant:	Adv. L. Montsho-Moloiwane SC assisted by Adv. PP Ferreira
Attorney for the applicant:	Office of the State Attorney, Pretoria
Counsel for the 1st respondent:	Adv. M.P. Moropa
Attorney for the 1st respondent:	Seabela Attorneys Incorporated
Date of hearing:	1 February 2021
Date of judgment:	12 February 2021