



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

Case No: GP/01/2022

In the Interlocutory Applications by:

SPECIAL INVESTIGATING UNIT

Applicant

and

INQABA YOKULINDA

First Respondent

AUDREY BUYISIWE KHOZA

Second Respondent

TSHEPO MONTSHO

Third Respondent

UNICUS SOLU(IT)ONS

Fourth Respondent

JABULANI SIBANDA

Fifth Respondent

TSHIFHIWA TERENCE MAGOGODELA

Sixth Respondent

BOITUMELO DIUTLWILENG

Seventh Respondent

PHILEMON RASEMATE LETWABA

Eighth Respondent

THANDISENZO ALECK SKHOSANA

Ninth Respondent

MARUBINI LIVINGSTONE RAMATSEKISA

Tenth Respondent

THABANG CHARLOTTE MAMPANE

Eleventh Respondent

GLORIA KHOZA

Twelfth Respondent

THE NATIONAL LOTTERIES COMMISSION

Thirteenth Respondent

JUDGMENT

CORAM:

NAIDOO, J

- [1] There are four applications before me for determination. They have their genesis in an application in terms of Tribunal Rule 24 (the main application), brought by The Special Investigating Unit (SIU), which resulted in such an order being granted by this Tribunal on 14 February 2022, interdicting and prohibiting the relevant respondents and other parties from dealing with the disputed property. The order related to the property of the fifth, sixth and seventh respondents. The SIU is the applicant in an application for extension of the order granted on 14 February 2022. The first, second, third, fourth, fifth, seventh and thirteenth respondents brought applications for the reconsideration of the order. The fifth respondent, in addition, applied for the striking out of certain bank statements and certain paragraphs of the Founding Affidavit in the interdict application and the seventh respondent, Boitumelo Diutlwileng (Diutlwileng) applied for the rescission of the interdict. After a discussion with the parties, it was agreed that all the applications would be argued and the court will make its ruling firstly on the Extension Application and, depending on the outcome thereof, will proceed to deal with the other applications.

[2] I pause to mention that although this was an interdict application, the parties referred to the main application as the preservation application and the resultant order as the preservation order. I am mindful of the fact that Tribunal Rule 23 specifically provides for preservation orders and that Tribunal Rule 24 interdicts dealing with such property. The effect of Rule 24 essentially serves to preserve the disputed property pending the finalisation of the main application. The ultimate aim, if the main application is successful, would be to recoup as much as possible of the public monies that were unlawfully obtained by the respondents. Preservation orders are, in essence, designed to protect and preserve material, property and evidence, relevant to the application or action proceedings brought, or to be brought by the SIU, from being destroyed or dissipated. Purely for convenience, I shall refer to the interdict as the preservation order.

Background

[3] On or about February 2018, the first respondent received grant funding from the thirteenth respondent, the National Lotteries Commission (NLC), of Fifteen Million Rand (R15 million) and subsequently a further payment of Four Million Two Hundred and Seventy Eight Thousand Rand (R4.278 million) respectively, for the construction of athletic tracks in the Northern Cape. The second respondent, Audrey Buyisiwe Khoza (Ms Khoza) was informed by the fifth respondent, Jabulani Sibanda (Sibanda), who introduced himself as a manager in the employ of the NLC, that the application on behalf of the first respondent had already been submitted to the NLC and that his company Unicus (Pty) Ltd (Unicus) would be the service provider. Athletics South Africa (ASA) would assist with drafting of the proposal and the feasibility study. ASA did in fact provide the first respondent with a letter of endorsement, signed by its president, the ninth respondent, Aleck Skhosana (Skhosana). The application form for funding was signed by the sixth respondent, Tshifhiwa Terrence Magogodela (Magogodela), who signed as the Project Coordinator of the first respondent. He was in fact an official of ASA, and was never employed by or mandated to act on behalf of the first respondent.

- [4] The grant funding was approved by NLC in the amount of R15 million. The eighth respondent, Philemon Letwaba (Letwaba), signed the grant allocation letter in his capacity as the Chief Operations Officer of the NLC, and the grant Agreement was subsequently signed by the first respondent and the NLC. The amount of R15 million was paid into the first respondent's bank account on 7 March 2018. R10 million of that money was transferred into the bank account of Unicus on 12 March 2018, after Sibanda called Ms Khoza and instructed her to do so. Sibanda is the only signatory to that bank account. No performance was rendered by Unicus or anyone else in terms of the Grant Agreement.
- [5] In September 2019, the first respondent applied for additional funding, which was approved by the NLC in the amount of R4 278 000.00. The request for additional funding was prepared by Letwaba and signed by the eleventh respondent, Ms Mampane, as the acting Commissioner of the NLC. The additional funding was approved without any progress reports being furnished, as required by the Grant Agreement. Ms Khoza alleges that she did not apply for additional funding and knew nothing about it. The SIU set out in detail the flow of the monies from the account of Unicus which was utilised to pay for various expenses, including a "loan" to Magogodela to finance the transfer of a property he purchased, as well as the purchase and payments in respect of several motor vehicles for Sibanda. This information was extracted from the bank statements and other relevant documents in respect of the bank accounts of Unicus.
- [6] After investigating and uncovering the evidence in this matter, the SIU applied for the preservation order mentioned earlier and obtained an order interdicting/preserving the property and assets of Sibanda, Magogodela and Diutlwileng. The order was granted pending the institution by the SIU of a review application within 30 days of the date of the order.

The Extension Application

- [7] The SIU sought an order in the following terms in the extension application:

- “1. That non-compliance with the timeframes determined in the directives issued pursuant to the case management meeting held between the parties on 14 March 2022 is hereby condoned;
2. That the applicant is granted an extension to file the review application referred to in prayer 2 of the court order dated 14 February 2022 to 25 April 2022;
3. That the applicant is granted an extension to file its heads of argument by no later than 15 April 2022.
4. That the applicant be ordered to file contemporaneously with its heads of argument, a detailed index to the caseline bundle”

[8] SIU’s case is that after the order was served on the respondents, presumably shortly after 14 February 2022, the various respondents filed notices to oppose the application and their Answering Affidavits between 9 March 2022 and 14 March 2022. The seventh respondent filed her application for rescission on 14 March 2022. A case management meeting was held on 14 March 2022, at which dates were agreed upon for the filing of the SIU’s Replying Affidavit in the main application, its Answering Affidavit to the seventh respondent’s rescission application and for the filing of its Heads of Argument. The date agreed for the hearing of the reconsideration applications was 5 May 2022. The fourth, fifth and seventh respondents dispute the correctness of some of the dates set out by the SIU, but agree in essence that certain dates were agreed upon. The SIU then launched the extension application seemingly on 8 April 2022.

[9] As a result, the reconsideration applications could not be heard on 5 May 2022. A further case management meeting was held on 14 April 2022, where dates were agreed upon for the filing of the various affidavits in respect of the extension application, which dates went beyond 5 May 2022. The matter was ultimately set down for hearing on 3 June 2022, when the matter came before me, for the hearing of all four of the applications I alluded to earlier.

- [10] The reason advanced by the SIU for requiring the extension is that it has uncovered evidence which directly links some of the respondents in the present matter to further unlawful activities in relation to the malfeasance that the SIU is investigating at the NLC. The SIU intends to launch review proceedings in this Tribunal in which some of the present respondents are involved. Those review proceedings will also involve parties who are not currently before the Tribunal. Preservation orders/interdicts must first be obtained against these latter-mentioned respondents before they can be joined in the review application involving the current respondents.
- [11] The SIU asserts that if it instituted the review application in this matter, it would thereafter, also have to bring a review application against those respondents who are not currently before this Tribunal, which application would include some of the respondents in this matter, leading to a multiplicity of actions against the same respondents, arising out of the same facts. It therefore required an extension of the time to bring this review application so that the “new application” could be issued and thereafter consolidated with the review application in this matter. The interests of justice dictate that the application for extension be granted.
- [12] The extension application was formally opposed by the fourth, fifth and seventh respondents and I shall refer to them as the respondents, as they, as well as the third respondent, each filed an Answering Affidavit in this application. The first, second and thirteenth respondents had initially indicated to the SIU that they had no objection to the application for extension being granted. The latter respondents did not file an Answering Affidavit but at the hearing of this matter, however, argued in respect of the lapsing of the order. Their argument was that the order provided for the review application to be brought within 30 days of the granting of the order and that the said period had lapsed on 29 March 2022. The correspondence from SIU requesting their consent to the extension was dated 31 March 2022, which was after the order lapsed. They argued that the application for extension is wrong and they are being prejudiced as it hangs over their heads. The application should be dismissed. I pause to

repeat that the property that was preserved in terms of the order of 14 February 2022, was only in respect of the property belonging to the fifth, sixth and seventh respondents and did not involve any property belonging to the first, second, third or thirteenth respondents.

[13] The respondents contend that the 30-day period provided for in the preservation order lapsed on 29 March 2022 and not 4 April 2022, as alleged by SIU. They argue that Rule 14 of the Tribunal's Rules do not apply to this matter, as the order, being a final order, is not capable of being extended or revived. Paragraph 11.2 of the order makes provision for the SIU to approach the Tribunal to vary or extend the order, but the respondents argue that this should have been done before the lapse of the thirty-day period stipulated in the order. The application was also filed out of time and ought to be dismissed.

[14] Rule 14 of the Special Tribunal's Rules is headed "Extension of time, Removal of Bar and Condonation" and provides as follows:

- (1) In the absence of agreement between the parties, the Tribunal may upon application on notice and on good cause shown, make an order extending any time prescribed by these Rules.
- (2) The Tribunal may, on good cause shown, condone any non-compliance with these Rules.
- (3) After the discharge of a Rule *nisi* by default, the Tribunal may on application revive it.

[15] The Notice of Motion indicates that this interlocutory application is brought in terms of Rule 14 of the Special Tribunal Rules. In prayer 1 thereof, the SIU seeks condonation for non-compliance with the timeframes determined at the case management meeting held on 14 March 2022. There is no indication that this application is brought on an urgent basis or that condonation was sought for a truncated period of service of the application, and the respondents filed their Answering Affidavit, albeit a few hours later than the time stipulated.

They assert that there was no basis for urgency and therefore the SIU is abusing the Tribunal's Rules in bringing the application on an urgent basis. I will deal with this later.

[16] It is common cause that the 30-day period stipulated in the preservation order has expired. There appears to be some confusion on the part of the SIU as to the date of expiry of such period. The SIU seems to think that the expiry date was 4 April 2022, while the respondents correctly point out that the expiry date was 29 March 2022. As I alluded to earlier, the respondents hold the view that the order was final and could not be extended or varied, as it had already lapsed. The respondents embarked, in their Heads of Argument, on a comprehensive exposition of the legal position with regard to the interpretation of the wording of the preservation order, and the requirements that had to be met by the SIU for the Tribunal to grant an order as prayed for in this application.

[17] The respondents correctly point out that an order granted *ex parte* is provisional in nature and its operation may be interim or final in nature. They contend that the order granted by the Tribunal is final in effect, as no *rule nisi* was granted, but that such final order was conditional upon the respondents' right to apply for a reconsideration of the order. An interim order is usually considered to be final in effect, if it is definitive of the rights of the parties and has the effect of disposing of at least a substantial part of the relief claimed in the main action. In the present matter, the order was conditional upon the institution of the review application referred to therein as well as the respondents' right to have the order reconsidered. The order makes no provision for the lapsing thereof or for the entitlement of the respondents to apply for the upliftment of the preservation of or interdict against their assets, in the event that the 30-day period is not complied with.

[18] When the wording of Rule 14(1) and (2) are considered, it is clear that the Tribunal may on good cause shown, extend any time period prescribed in the Rules and may condone any non-compliance with the Rules, on good cause shown. In my view this would not preclude an interpretation of this Rule to

include any time period stipulated by the Tribunal in any order it makes in terms of the Rules. This approach would be in accordance with the standard which, in present times, is the interests of justice, and which must underpin all orders made by courts (and, by implication, the Special Tribunal). I am unable to agree with the argument of the respondents that the order has lapsed and cannot be revived. The 30-day time period referred to therein has expired and, in my view, fairness and equity demand the interpretation that the Tribunal has the power to extend such time, on good cause shown, and upon consideration of all other relevant factors, such as the prejudice to the respondents.

[19] The SIU, clearly realised that it had to apply for the extension of the time period, and even though it appears to have erroneously miscalculated the date of the expiry of the 30-day period, it made attempts to secure the consent of the respondents in this matter. The first, second, third and thirteenth respondents did in fact consent and only belatedly took the point that the order had lapsed. I point out that the consequence of their failure to file Answering Affidavits was that the matter was unopposed in respect of them. They were allowed, in the interests of justice, to address the Tribunal in respect of this matter. It was the refusal of the fourth, fifth and seventh respondents that resulted in the launch of the extension application. The Founding Affidavit was signed on 7 April 2022, and the respondents allege that the application was served on 8 April 2022. The time delay is not great and must be viewed in conjunction with other factors.

[20] The respondents allege that the SIU have failed to show good cause by:

- 20.1 not tendering a satisfactory explanation for the delay, covering the whole period;
- 20.2 not showing that it has good prospects of success and
- 20.3 not showing that the grant of the indulgence will not cause prejudice to the respondents, and if there is prejudice, that it can be cured by an appropriate order as to costs.

- [21] The respondents lose sight of the fact that although Tribunal Rule 14 is similar to Uniform Rule 27, the context in which each is applied may require a different approach. The preamble to the Special Investigating Units and Special Tribunals Act 74 of 1996 gives insight into the purpose of the Act, the functions of the SIU and the purpose for which Special Tribunals are established. One of the core functions of the SIU is to investigate “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...”. The facts set out in the Founding Affidavit speak of an ongoing investigation into malfeasance in the business of the NLC.
- [22] The SIU indicates that it uncovered further evidence in its investigations in respect of the NLC funding, involving some of the respondents in this matter as well as others not part of the main application in this matter. I am aware of this, as a preservation order in that matter was granted in June 2022. In the preservation application in this matter, the SIU has shown that monies were paid irregularly to the first respondent and the flow of monies thereafter, also irregularly, implicate a number of the respondents in this matter, especially the fourth and fifth respondents. It is also noteworthy that the sixth respondent had, by the time this matter was heard on 3 June 2022, entered into a settlement agreement to repay monies he had received from the fourth respondent. I also note that the fourth and fifth respondents do not deny that an amount of R10 million was paid into the account of the fourth respondent on 12 March 2018, nor do they dispute that they did not render any performance in terms of the Grant Agreement.
- [23] I am satisfied that this is an ongoing investigation where the parties suspected of being involved in irregular and fraudulent dealings in respect of funding from the NLC, are intrinsically linked to the subject matter of the main application herein. An investigation of this nature is time consuming and often takes many months. It would defeat the very purpose of the investigations if these parties were not tried together, and it would not be in the interests of justice to refuse the application. I am therefore satisfied that the SIU has

established good prospects of success in this matter. Allied to this is the issue of prejudice to the respondents. By the time the extension application was brought, the reconsideration and the other applications were ripe for hearing, and in fact a date was already set for the hearing of the reconsideration applications. The prejudice to the respondents, if any, was minimal.

- [24] I have dealt with the issue of the delay and am satisfied that the explanation given by the SIU, in respect of the reasons for bringing this application when it did, is adequate. Considering the prospects of success in this matter, and even if the explanation for the delay is weak, the condonation and other relief sought by the SIU ought to be granted. The fact that pleadings were filed by all parties on a regular basis since the service of the preservation order and that regular case management meetings were held is further evidence that all parties not only intended to proceed with the main application but considered themselves bound by the directives and timeframes set by the Tribunal. This fortifies my view that Tribunal Rule 14 can be interpreted to include orders as to timeframes made by the Tribunal. The opposition to the extension application is founded largely on technical grounds, and, in my view, are trumped by considerations of the interests of justice.

The Reconsideration Application

- [25] The first to the sixth, the ninth and the twelfth respondents filed Answering Affidavits in support of their respective applications for the preservation order to be reconsidered. As I indicated earlier, only property belonging to the fifth, sixth and seventh respondents was preserved in terms of the preservation order. The sixth respondent offered to repay the monies received by him from the fifth respondent. Once he has done so, his property will be released from preservation. The second respondent confirms that the NLC paid a total amount of Nineteen Million Two Hundred and Seventy Eight Thousand Rand (R19 278 000.00) to the first respondent for the construction of athletics tracks in the Northern Cape. She neither applied for such funding, nor does the first respondent have any experience in the construction industry in general, and specifically in the construction of sports stadia or athletics

tracks. She confirmed as much in her Answering Affidavit, and indicated that the fifth respondent advised her that he would assist her to construct the stadium.

[26] The second respondent further asserted that the fifth respondent contacted her as soon as the first amount of R15 million was paid into the account of the first respondent and requested her to transfer R10 million into the account of the fourth respondent, as he needed to order materials and pay other expenses in connection with the building of the stadium. She did so, but the fourth and fifth respondents did nothing in respect of the building of the athletic tracks. The fourth and fifth respondents admit having received the R10 000 000.00 but dispute that they requested the first respondent to transfer the money to the fourth respondent. The fourth respondent issued an invoice for the R10 000 000.00 to the first respondent, which appears to be simulated for the purpose of the transfer of funds. The fourth and fifth respondents gave no indication of what happened to the money nor did they deal with the SIU's allegations that the fifth respondent had acknowledged indebtedness to the first respondent for the money and offered to repay it. This too was confirmed by the second respondent and documents evidencing this were attached to her Answering Affidavit. Nothing, therefore, turns on their denial that they instructed the second respondent to transfer the R10 000 000.00 into the bank account of the fourth respondent.

[27] As I alluded to earlier, the first respondent had no experience in the construction industry and particularly in the construction of athletics tracks. The first and second respondents were involved in community work with youth that are at risk. The fourth and fifth respondents by their own admission, in their Answering Affidavit, indicate that the fourth respondent is an IT company that provides software services. They tendered no evidence of any experience they might have in the construction of athletic tracks, in order to justify receipt of the R10 million from the first respondent. The sixth respondent conceded that he recommended the fifth respondent to the second respondent. In my view, the SIU had established a *prima facie* case for the grant of the preservation order. Additionally, there are no facts that have been presented

in the reconsideration application, which, if placed before the Tribunal on 14 February 2022, would have caused it to refuse the application for an interdict/preservation order.

[28] The fourth, fifth and seventh respondents allege that there was no urgency in this matter and that the SIU had no just cause to move an urgent application on an *ex parte* basis. As I indicated, the Notice of Motion itself makes no mention of this application being moved as an urgent application although the very nature of a preservation order/interdict requires the application to be treated urgently, and on an *ex parte* basis. It seems that the SIU and the respondents treated this application as an urgent application, and there is no reason to find otherwise. The Tribunal has the discretion to determine and decide urgent applications, and the fact that the Tribunal entertained the application and granted the order sought, indicates that the Tribunal would have exercised that discretion in favour of the SIU. The objections of the fourth, fifth and seventh respondents in this regard take their respective cases no further.

[29] I deal now with the striking out application brought by the fourth and fifth respondents, Sibanda and Unicus. They seek the “*striking out of passages and annexures in and to the founding affidavit on the basis that it constitutes inadmissible hearsay evidence*” and /or “*attacks on credibility and/or argumentative matter and/or scandalous and/or irrelevant*”. No particularity in support of such allegations or the order sought has been put forward. Before I deal with the impugned portions of the Founding Affidavit, I point out that the deponent thereof, Godsave Ngobeni who was SIU’s Chief Investigator in this matter, prefaces paragraph 12 of the Affidavit by stating that during the course of his investigation, he conducted an interview with Ms Khoza (the second respondent) who gave him what appears to be detailed information of events and facts surrounding the grant funding in this matter. He then proceeded to record the information he obtained from Ms Khoza. It should also be borne in mind that this affidavit was filed in support of an interim application, being the application for an interdict pending institution of the review application.

- [30] Sibanda and Unicus seek to strike out paras 12.1 to 12.4, a portion of 12.12, 12.14, 12.15 and 12.20. All of these paragraphs are a narration of what Ms Khoza informed Mr Ngobeni, which interview he recorded. In any event, the admission of such evidence would have been in the discretion of the Tribunal, which clearly admitted it in the interests of justice, and given the nature of the application before it. These respondents further sought to impugn paragraphs 14.2, 16.8, 17.2.2, 18.1 and 20.3, which dealt with Sibanda's ownership of three motor vehicles, the flow of monies out of the bank account of Unicus, after receipt of the R10 million from the first respondent, the purpose of the application and Mr Ngobeni's assertion that notice to respondents may have resulted in the dissipation of assets sought to be preserved.
- [31] With regard to ownership of the vehicles I mentioned and the flow of monies described above, Mr Ngobeni attached, *inter alia*, bank statements and a printout from the ENatis national database reflecting ownership of the vehicles and many other documents in support of the allegations made in respect of the various defendants, and particularly Unicus and Sibanda. Two such documents are GS017 and GS023, which Sibanda also seeks to have struck out. At the stage of the preservation application, all that was needed was *prima facie* evidence that there was malfeasance and possible misappropriation of public monies for an order preserving the assets of the relevant respondents. I mention that everything that Mr Ngobeni recorded in his Founding Affidavit about what Ms Khoza told him, was confirmed under oath by her in her Answering Affidavit. In my view, the application to strike out by Unicus and Sibanda is misguided and has no merit. The application falls to be dismissed.
- [32] As indicated, the seventh respondent, Diutlwileng brought an application for, *inter alia*, rescission of the "default judgment" granted on 14 February 2022, and return of her Audi motor vehicle which was one of the assets preserved in terms of the preservation order. The interdict application was brought in

terms of Rules 12 and 24 of the Tribunal's Rules, and procedures for opposing the application and orders granted by the Tribunal are stipulated therein. Diutlwileng alleges that the amended Notice of Motion was simply uploaded onto Caselines, without it being served on her. Two points are relevant in this regard. The Tribunal's Rules [Rule 6(c)] make provision for electronic service of process and documents in all matters that are brought before the Tribunal, and when service is being effected, all parties are given access to Caselines, so that they are able to serve and receive service of process and documents.

[33] The SIU asserts that Diutlwileng elected to receive service at the address of the fifth respondent, Sibanda. Neither party has taken issue with this, and the SIU asserts that service was effected on Sibanda and would also have been effected on Diutlwileng. This assertion is strengthened by SIU's statement that Diutlwileng is Sibanda's daughter (see the heading of para 15 of the Founding Affidavit), which Sibanda does not refute in Answer. He in fact admits that he paid the amount of R205 840.00 for the purchase of the Audi motor vehicle for Diutlwileng, with whom he is "*well acquainted*". It is noteworthy that he shies away from dealing with the allegation that she is his daughter.

[34] The order granted on 14 February 2022 was not judgment granted by default. This much was conceded by Mr Pistorius who represents Unicus, Sibanda and Diutlwileng. As rightly pointed out by the SIU, Tribunal Rule 22 deals with default judgments. Subsection 1 provides as follows:

"(1) Where the defendant or the respondent, as the case may be, remains in default of filing of a plea or the notice to oppose and answering affidavit as the case may be, the Registrar may, on notice to all parties, enrol the matter for judgment by default."

This is clearly not applicable in the present matter, as the order was obtained *ex parte*, and in terms of Tribunal Rules 12 and 24. Diutlwileng was obliged to act in accordance with Tribunal Rule 12 (9) by setting the matter down, on

notice, for reconsideration of the order, or Rule 24(7) by delivering a notice to oppose the interdict or by delivery of an application for an order to exclude her interest in the property which was subject to the interdict. The Tribunal Rules offer further options to a respondent in Diutlwileng's position, namely Tribunal Rule 10(8) and 10(9), which deal with the options of a party with a direct and substantial interest in an application brought *ex parte*.

[35] Tribunal Rule 10(8) and 10(9) provide as follows:

- (8) Any person with a direct and substantial interest in an application being brought *ex parte*, may deliver notice to oppose, supported by an affidavit setting forth the nature of such interest and the grounds upon which such person desires to be heard, whereupon the Registrar must set such application down as an opposed application.

- (9) Any person against whom an order is granted *ex parte* may anticipate the return may upon delivery of not less than twenty-four hours' notice to the applicant and, where applicable, other interested parties.

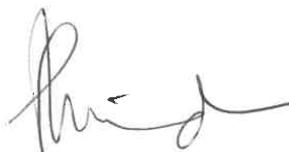
Diutlwileng did not proceed in terms of any of these Tribunal Rules, but chose impermissibly to proceed in terms of Tribunal Rule 28, and import the Uniform Rules of the High Court into these proceedings.

[36] Mr Pistorius set out an extensive argument in his Heads of Argument regarding the applicability of Uniform Rule 42(1)(a) and/or the common law for rescission of the order in this matter. He hinges his argument on the proposition that the order was erroneously granted, alternatively erroneously sought in her absence. This cannot be, as Sibanda admitted having paid for the purchase of the Audi motor vehicle for Diutlwileng. The SIU demonstrated that *prima facie*, such payment was made after the receipt by Unicus (irregularly so) of R10 million from the first respondent, which amount was derived from the grant funding, irregularly allocated to the first respondent by the NLC. This is the basis upon which the interdict included the Audi motor vehicle, in that, as required by Rule 24(2), the Audi

constituted proceeds of unlawful activities emanating from the findings of an investigation conducted by the SIU. Diutlwileng has not filed an Answering Affidavit to the Founding Affidavit and such allegations as pertain to her stand unchallenged. For the reasons, I have set out above, I am not moved by the arguments raised on her behalf, and I am of the view that the application for rescission is ill-advised and misguided. The application consequently falls to be dismissed.

[37] In the circumstances, the following orders are made:

- 37.1 Condonation for the late filing of the Extension Application by the SIU is granted, to the extent necessary. The order, particularly in respect of the time period for launch of the review application, granted on 14 February 2022, is revived and re-instated to the extent necessary. The SIU is ordered to institute the review proceedings foreshadowed in the Tribunal's order dated 14 February 2022, within thirty (30) days of the date of this order;
- 37.2 The SIU is directed to pay the costs of the Extension Application;
- 37.3 The Reconsideration Applications brought by the first, second, third, fourth, fifth, sixth, ninth and twelfth respondents are dismissed with costs;
- 37.4 The Application to Strike Out, brought by the fourth and fifth respondents, is dismissed with costs
- 37.5 The Application for Rescission brought by the seventh respondent is dismissed with costs.



JUDGE S. NAIDOO
MEMBER OF THE SPECIAL TRIBUNAL

On behalf of Applicant:

Adv MS Mphahlele SC, with
Adv I Hlalethoa

Instructed by:

The State Attorney – Pretoria
SALU Building
Thabo Sehume Street
Pretoria
(Ref: Stella Zondi)
Email: stzondi@justice.gov.za

On behalf of 1st, 2nd, 3rd
& 12th Respondent:

Adv (Ms) AC Roestorf

Instructed by:

Maharajh Attorneys
3rd Floor, FNB Building
334 Rivonia Village
Cnr Rivonia & Mutual Road
Sandton
Email: jaya@mattorneys.africa
law@mattorneys.africa

On behalf of 4th, 5th

and 7th Respondents:

Adv P Pistorius SC, with

Adv JD Mathee

Instructed by:

Machobane Kriel Inc

179 Lynnwood Road

Brooklyn,

Pretoria

Email: litigasie2@MachobaneKriek.com

Date of Hearing: 3 June 2022

Mode of delivery: this judgment is handed down by sending it by email to the parties' legal representatives and loading on Caselines. The date and time for delivery is deemed to be 10:00 am on 3 January 2023