



**IN THE SPECIAL TRIBUNAL ESTABLISHED IN TERMS OF S2 (1) OF THE
SPECIAL INVESTIGATING UNIT AND
SPECIAL TRIBUNALS ACT 74 OF 1996
(REPUBLIC OF SOUTH AFRICA)**

Case No. GP21/2023

In the matter between:

MARUBINI RAMATSEKISA

Applicant

and

SPECIAL INVESTIGATING UNIT

First Respondent

LIBERTY GROUP LIMITED

Second Respondent

NATIONAL LOTTERIES COMMISSION

Third Respondent

JUDGMENT

MAKHOPA J:

[1] The applicant was employed by the National Lottery Commission (hereinafter referred to as NLC) as a Chief Risk Officer. He was employed from April 2023 until he resigned on the 1 September 2023.

[2] On 29 September 2022 the applicant was suspended due to the adverse audit report by Sekela Xabiso report, and he was placed on precautionary suspension.

[3] On 12 December 2023, the SIU obtained an order amongst others preserving the pension benefit of the applicant, in its *Ex parte* application, the SUI's basis of the interdict was based on the alleged maladministration and active facilitation on part of the applicant that caused NLC a loss in the amount of R 4 000 000-00 (Four Million Rands) due to Pro- Active Funding.

[4] On 4 March 2024 the applicant launched a reconsideration application in terms of Rule 12(9) of the Tribunal Rules and amongst others sought to rescind and/or vary the order handed down as it alleged it was erroneously sought and granted in his absence.

[5] Paragraph 2 of the order reads as follows: "2. *Pending the final determination of civil proceedings for recovery of damages or losses and disgorgement of secret profits derived from unlawful contracts, if any, ("the main proceedings"), to be instituted against the First Respondent by the Applicant in the above-mentioned Tribunal within 60 court days of the granting of this order, the Second Respondent, Liberty Life Group, is interdicted and restrained from making payment to the First Respondent, Mr Marubini Ramatsekisa ("Mr Ramatsekisa"), or any other party, any amount in respect of Mr Ramatsekisa's pension benefits held under membership number M311129B"*

[6] The first respondent contends that on 20 February 2019 the applicant prepared a proposal for pro-active funding and recommended as follows: "It is recommended

that the Acting COO approves pro-active funding of R 4 000 000.00 to conduct a study that will assist in developing Khoi-San language.

[7] This pro-active funding was awarded to a company called Zibsicraft to the grant funding of four million rand.

[8] According to the first respondent, the applicant's role in all this, is that he compiled and signed an assessment sheet whereby Zibsicraft was awarded the grant funding valued R 4 000 000.00.

[9] It is further contended that the applicant was instrumental in facilitating that Zibsicraft receives the R 4 000 000,00. He prepared the proposal for grant funding. He lied about contacting a stakeholder from the Department of Arts and Culture. He did not ensure that Zibsicraft application for grant funding went through the normal processes. He did not ensure that the people associated with that organisation had any links to the Khoisan community or had ever done any work or been involved in anything related to the Khoisan Community.

[10] It is submitted by the first respondent that the same *modus operandi* was applied by the applicant in awarding R 5 500 000.00 for developing of cricket in the Northern Cape Province.

[11] In all instances it is submitted that the applicant used the name of Mr Bonakele Jacobs from the Department of Arts and Culture as referee or refence with his knowledge, input or permission.

[12] Furthermore the applicant deviated from the National Lottery Commission Act. These pro-active funded projects were not assessed or evaluated or adjudicated by a Distributing Agency, but by Mr Letwaba and the applicant.

[13] Mr Letwaba signed the grant agreement on behalf of the NLC and the applicant signed as his witness.

[14] Counsel for the first respondent argued that the applicant was an enabler of the scheme that was designed to siphon money out of the NLC. It is further argued that the application for the reconsideration must be dismissed.

[15] The applicant states the following as reasons for the reconsideration application:

15.1 There is no evidence that the applicant colluded with the National Lottery Commission to siphon money from the NLC.

15.2 The applicant only performed administrative functions as part of his duties.

15.3 The stamping of the application was not part of the Proactive Funding Policy.

[16] Thus the applicant argued that the SIU failed to establish a *prima facie* case made out in the main case that the applicant was an active and willing facilitator.

[17] In reconsideration proceedings the evidence contained in the application that led to the granting of the *ex parte* order is considered from scratch.¹

[18] The test is whether the applicant has made out a good case for the interdict it obtained in the *ex parte* application. The court must re-look at the initial *ex parte* order afresh with the power to amend, confirm rescind or dismiss.

[19] The court finds the following short coming in the manner in which the applicant dealt with the funding of Zibsicraft entity.

¹ Hobkirk v Bricker [2023] JOL 57451 (GJ) at par 28; Oosthuizen v MIJS 2009 (60 SA 266 (W) at page 269.

19.1 The applicant made a recommendation in respect of Zibsicraft despite the fact that it had no credible financial statements.

19.2 The applicant in my view did not tell the truth or state the truth in his affidavit about contacting a stakeholder from the Department of Arts and Culture.

19.3 In granting funding the normal processes were not followed.

19.4 The so called "Khoi-san community link" did not exist in my view.

[20] The evidence before me indicates that the grant funds were not used for the intended purpose. It is my view that the applicant failed to gainsay the factual allegations made against him in the founding affidavit.

[21] The evidence presented on behalf of the first respondent shows a *prima facie* case against the applicant. Indeed, the evidence show that the applicant facilitated unlawful grant awards.

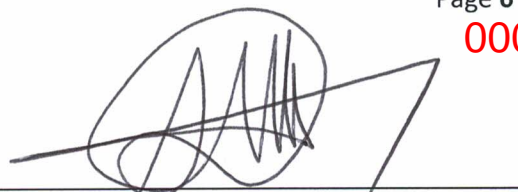
[22] In my view the applicant failed to advance cogent reasons why the balance of convenience disfavours the granting of the interdict.

[23] I make the following order:

23.1 This reconsideration application of the applicant is hereby dismissed.

23.2 The *ex parte* order granted by the Special Tribunal on 12 December 2023 is confirmed.

23.3 The applicant is directed to pay the costs of this application on Scale "A" including cost of the *ex parte* application of 12 December 2023.



JUDGE D. MAKHOB

MEMBER OF THE SPECIAL TRIBUNAL

APPEARANCES

Attorneys for the Applicant: Ramohlola Attorneys

Counsel for the Applicant: Adv. O Leketi

Attorneys for the First Respondent: State Attorney Pretoria

Counsel for the First Respondent: Adv. I Hlaletsoa

Date of hearing: **03 DECEMBER 2024**

Date of Judgement: 23 January 2025

Mode of delivery: this judgment is handed down by sending it by email to the parties' legal representatives, loading on CaseLines and release to SAFLII and AFRICANLII. The date and time for delivery is deemed to be 10 a.m.