

**IN THE SPECIAL TRIBUNAL
(REPUBLIC OF SOUTH AFRICA)
Held at Booysen's Magistrate Court, Johannesburg**

CASE NO: GP06/2022

In the matter between:

SPECIAL INVESTIGATING UNIT

First Applicant

TRANSNET SOC LTD

Second Applicant

and

DYNAMIC POWER ENGINEERING (PTY) LTD

with registration no. 2018/231813/07, previously
SUPERFECTA TRADING 209 (PTY) LTD with
registration no. 2018/231813/07, converted from
SUPERFECTA TRADING 209 CC with registration
no. 2002/024381/23

First Respondent

BBDM BROS ADVERTISING AGENCY (PTY) LTD

Second Respondent

ZAKHELE EZEKIEL 'THABO' LEBELO

Third Respondent

ZAKHELE EZEKIEL LEBELO N.O.

In his representative capacity as a Trustee of the
Thabo Lebelo Family Trust

Fourth Respondent

ALETTA MOKGORO MABITSI N.O.

In her representative capacity as a Trustee of the
Thabo Lebelo Family Trust

Fifth Respondent

PHATHUTSHEDZO BRIGHTON MASHAMBA

Sixth Respondent

MATLHODI PHILLICIA MASHAMBA

Seventh Respondent

**INDUSTRIAL DEVELOPMENT CORPORATION OF
SOUTH AFRICA LIMITED**

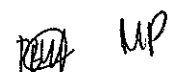
Eighth Respondent

TRANSNET RETIREMENT FUND

Ninth Respondent

AVIWE NDYAMARA N.O.

Tenth Respondent



OFFICE OF THE DEEDS REGISTRAR, PRETORIA

Eleventh Respondent

STANDARD BANK OF SOUTH AFRICA LIMITED

Twelfth Respondent

**SETTLEMENT AGREEMENT: THE SIXTH RESPONDENT AND SEVENTH
RESPONDENT**

PARTIES:

This Agreement is made between:

- (1) **THE SPECIAL INVESTIGATING UNIT**, an organ of state with juristic personality referred to in section 2(1)(a)(i) of the Special Investigating Units and Special Tribunals Act 74 of 1996 and as established by the President of the Republic of South Africa in terms of Proclamation No. R. 118 of 2001 (published in Government Gazette 22531 of 31 July 2001) ("**the SIU**");
- (2) **Transnet SOC Limited**, a state-owned company registered in accordance with the laws of the Republic of South Africa under registration number 1990/000900/30 ("**Transnet**");
- (3) **PHATHUTSHEDZO BRIGHTON MASHAMBA**, an erstwhile employee of Transnet with Identity Number 8205095107089 ("**Mr Mashamba**"); and
- (4) **MATLHODI PHILLICIA MASHAMBA**, an individual married to Mr Mashamba with Identity Number 8402110694080 ("**Mrs Mashamba**"), and who is the registered co-owner of the property at 2 Mirabel Road Dainfern Ext 19, Johannesburg ("**the Dainfern Property**"),

collectively referred to as "**the Parties**" and each individually "**a Party**".

WHEREAS:

A. On 8 August 2022, the Special Tribunal granted:

- A.1 A Preservation Order over the Dainfern Property belonging to Mr Mashamba and Mrs Mashamba, and the Dainfern Property was handed over to a *curator bonis* appointed by the Special Tribunal, the Tenth Respondent, Aviwe

Ndyamara of Tshwane Trusts Co. Proprietary Limited ("**the Curator**"). No-one, except the Curator may deal with the said property subject to the conditions and exceptions contained in the order, save with the prior written consent of the Applicants; and

- A.2 The Preservation Order will be referred to as the "**interim relief**".
- B. The SIU and Transnet launched a review application against the Respondents on 1 November 2022 ("**the review application**") wherein they sought, amongst other things, that Mr Mashamba be directed to pay Transnet:
- B.1 R 2,3 million as the bribe, gratification and secret profits Mr Mashamba unlawfully received, while employed at Transnet, for his role in the First Respondent's contracts with Transnet; and
- B.2 R 5,113,255.00 million as the bribe, gratification and secret profits Mr Mashamba unlawfully received, while employed at Transnet, for his role in the Second Respondent's contracts with Transnet,

("collectively referred to as "**the debt**").
- C. The review application is enrolled for hearing on 10 – 12 February 2025.
- D. The Applicants, and Mr and Mrs Mashamba have agreed to settle the interim relief and the review application in as far as it relates to the Sixth and Seventh Respondents on the terms and conditions contained herein ("**the Agreement**").

IT IS AGREED AS FOLLOWS:

1. ACKNOWLEDGEMENT

The Parties acknowledge that they are signing this Agreement without any duress or coercion of any kind, and with full knowledge and understanding of its contents.

2. DURATION

Notwithstanding anything to the contrary in this Agreement, this Agreement shall commence on the date on which this Agreement is signed by the Parties ("**the Signature Date**") and shall endure for so long as any of the Parties have any obligations hereunder.

3. SETTLEMENT

The Parties agree to settle the interim relief and the review application insofar as it relates to the Sixth and Seventh Respondents as follows –

- 3.1 The Sixth and Seventh Respondents abide by any decision and order that the Special Tribunal or courts of appeal may ultimately make or grant in respect of prayers 1, 2 and 3 of the Notice of Motion (as amended) that was issued by the SIU and Transnet in the Special Tribunal under Case No. GP06/2022.
- 3.2 The Sixth and Seventh Respondents acknowledge that, without prejudice, they are indebted to Transnet for the debt. The debt shall be recovered from the Sixth and Seventh Respondents as follows:
 - 3.2.1 the value of Mr Mashamba's pension with the Transnet Retirement Fund as at the Signature Date, and Mr Mashamba hereby irrevocably:
 - 3.2.1.1 agrees and undertakes without any delay to complete and submit any and all forms and documents that may be required by the Transnet Retirement Fund to process and pay-out Mr Mashamba's pension benefits; and
 - 3.2.1.2 gives his written consent to the Transnet Retirement Fund and instruct the Transnet Retirement Fund to pay his pension benefits to Transnet, which must be made into the account set out in paragraph 3.10 below;
 - 3.2.2 the proceeds from sale of the preserved Dainfern Property; and
 - 3.2.3 to the extent that the amount of the debt exceeds the total amount recovered in terms of clauses 3.2.1 and 3.2.2, payments by the Sixth and Seventh Respondents made in terms of clauses 3.9 and 3.10 of this Agreement.
- 3.3 The Parties agree that the following terms and conditions will apply to the sale of the Dainfern Property:
 - 3.3.1 Following the Signature Date, the Curator shall be instructed by the Parties to engage an estate agent to list the Dainfern Property with the intent of securing a purchaser.
 - 3.3.2 The Dainfern Property shall be listed by the estate agent at the appropriate listing amount (in this regard, the Parties agree that the Dainfern Property was

evaluated by the RLK Properties (Pty) Ltd t/a Rawson Property Group on 15 August 2024, with a valuation of between R6,500,000.00 and R6,800,000.00).

- 3.3.3 The estate agent shall accept the first reasonable offer received from a prospective purchaser, with the reasonableness of the offer assessed relative to the market conditions and the duration for which the Dainfern Property has been listed.
- 3.3.4 The Dainfern Property will be listed for a reasonable period, not exceeding 6 (six) months, after which the SIU and/or Transnet may opt to realize the proceeds through public auction. The extension of the listing period shall be at the discretion of the SIU and Transnet.
- 3.3.5 Any costs associated with the sale of the Dainfern Property, except the transfer costs, shall be borne by the Sixth and Seventh Respondents in addition to the debt. The transfer costs relating to the sale the Dainfern Property shall be borne by the purchaser.
- 3.3.6 In as far as may be required, the Sixth and Seventh Respondents will cooperate with the estate agent, the conveyancers appointed and the Curator in *inter alia*: (a) taking all necessary steps to remove any and all tenants and/or occupants (if any) from the Dainfern Property so that occupation can be offered to the new purchaser(s); (b) providing all documents required including the original title deed(s) and municipal approved building plans etc.; (c) securing all clearances/certificates required (and paying the costs associated to secure such clearances/certificates); (d) paying all rates, taxes, levies and other costs to be paid by the seller(s) of the Dainfern Property; (e) signing any and all documents relevant to the registration of the transfer of the Dainfern Property into the name(s) of the new purchaser(s); and/or (f) instructing the estate agent and conveyancers to pay the proceeds of the sale of the Dainfern Property to Transnet, which must be made into the account set out in paragraph 3.10 below.
- 3.4 All the costs of, occasioned and incurred by the Curator, as contemplated in paragraphs 2.9 and 2.10 of the order of the Special Tribunal of 8 August 2022 and in the contents of paragraph 3.3 above, shall be borne by the Sixth and Seventh Respondents in respect of the Dainfern Property in addition to the debt.

- 3.5 The Sixth and Seventh Respondents shall contribute an amount of R250,000.00 towards the Applicants' legal costs in the interim relief and review application.
- 3.6 The liabilities of the Sixth and Seventh Respondents shall be joint and several until the full amount of the debt and the further costs referred to in clauses 3.3.5, 3.4 and 3.5 have been recovered in full.
- 3.7 The costs referred to in clauses 3.3.5, 3.4 and 3.5 for which the Sixth and Seventh Respondents are liable ("**the total costs**"), shall be recovered by Transnet from the proceeds of the sale of the Dainfern Property and Mr Mashamba's pension held by the Transnet Retirement Fund to the extent that the amounts so recovered render this possible.
- 3.8 Should the proceeds from the sale of the Dainfern Property and Mr Mashamba's pension held by the Transnet Retirement Fund fail to cover the debt and the total costs for which the Sixth and Seventh Respondents are liable, the Sixth and Seventh Respondents shall remain indebted to Transnet for the outstanding amount and the provisions of clauses 3.9 and 3.10 shall apply.
- 3.9 The Parties agree that, should the amount recovered from the proceeds of the sale of the Dainfern Property and Mr Mashamba's pension benefits, be insufficient to satisfy the full amount of the debt and the total costs:
- 3.9.1 the Sixth and Seventh Respondents shall remain indebted to Transnet for the balance of the debt and the total costs; and
- 3.9.2 the Sixth and Seventh Respondents shall pay the balance of the debt and the total costs, including any applicable interest thereon at the prescribed interest rate of interest *per annum a tempore morae*, in equal instalments to Transnet within a period of 12 (twelve) months from the date of sale of the Dainfern Property.
- 3.10 All payments in terms of clause 3.9.2 shall be paid into the following account (with proof of each payment to be dispatched by electronic mail to Mxolisi Ngubane and Sue Albertyn at: Mxolisi.Ngubane@transnet.net / Sue.Albertyn@transnet.net) –

ACCOUNT NAME: Transnet Corporate Centre

BANK: First National Bank

ACCOUNT NUMBER: 62861888596
BRANCH CODE: 255005
REFERENCE: SIU and Transnet settlement

- 3.11 If Mr and Mrs Mashamba fail to make payment of any amount referred to in paragraph 3.9.2 above on the due date –
- 3.11.1 such amount will become immediately due, owing and payable by the Sixth and Seventh Respondents to Transnet; and
- 3.11.2 Transnet shall be entitled to approach the Special Tribunal, or any appropriate court, to issue a writ of execution and/or for other appropriate relief (e.g. contempt of tribunal/court proceedings etc.) against the Sixth and Seventh Respondents in respect of payment of such amount, including the prescribed interest thereon.

4. **ORDERS OF THE SPECIAL TRIBUNAL / HIGH COURT**

- 4.1 The Parties agree to make this Agreement an order of the Special Tribunal or the High Court.
- 4.2 The Sixth and Seventh Respondents hereby undertake to depose to and provide the relevant affidavits in support of the application to have this Agreement made an order of the Special Tribunal or the High Court.

5. **FULL AND FINAL SETTLEMENT**

- 5.1 Upon discharge of all amounts payable by the Sixth and Seventh Respondents to Transnet in terms of this Agreement, all terms of this Agreement, except clause 3.1, shall terminate. For the avoidance of doubt, clause 3.1 shall remain in effect until an order of the Special Tribunal or courts of appeal may ultimately be made or granted in respect of prayers 1, 2 and 3 of the Notice of Motion (as amended) that was issued by the SIU and Transnet in the Special Tribunal under Case No. GP06/2022.
- 5.2 Subject to clauses 5.3 and 8.7 neither the Sixth and Seventh Respondents nor Transnet shall have any claim of any nature whatsoever against the other arising from the subject matter of the interim relief and review application.
- 5.3 The Parties agree that this Agreement shall not extend to, cover, or provide any protection, defence, or indemnification in respect of any disciplinary/criminal

proceedings, administrative proceedings, regulatory enforcement actions, or similar legal or other proceedings that may be initiated against the Sixth to Seventh Respondents. Nothing in this Agreement shall be construed to limit, waive, or otherwise affect the rights of any Party to bring such proceedings or the obligations of the Sixth and Seventh Respondents arising therefrom.

6. COSTS

6.1 Each Party shall bear its own costs incurred in respect of the negotiations leading to this Agreement and all related attendances, including the application to the Special Tribunal to have this Agreement made an order of Special Tribunal or the High Court.

7. ADDRESSES FOR SERVICE OF LEGAL PROCESS AND NOTICES

7.1 The Parties choose for the purposes of this Agreement the following addresses, telephone numbers and email addresses:-

7.1.1 Transnet: Bowman Gilfillan Inc.
11 Alice Lane
Sandton
Johannesburg
2146
Tel: (011) 699 9433 / 9360
Email: khomotso.makapane@bowmanslaw.com /
rosalind.davey@bowmanslaw.com /
soraia.machado@bowmanslaw.com
Attention: Khomotso Makapane

7.1.2 The SIU: Bowman Gilfillan Inc.
11 Alice Lane
Sandton
Johannesburg
2146
Tel: (011) 699 9433 / 9360
Email: khomotso.makapane@bowmanslaw.com /
rosalind.davey@bowmanslaw.com /

soraia.machado@bowmanslaw.com

Attention: Khomotso Makapane

7.1.3 The Sixth Respondent: Ramabulana Attorneys
95 Leslie Avenue
Fourways
Johannesburg
2055
Tel: (011) 467 1421 / 1231
Email: info@ramabulanaattorneys.co.za /
noma@ramabulanaattorneys.co.za

7.1.4 The Seventh Respondent: Ramabulana Attorneys
95 Leslie Avenue
Fourways
Johannesburg
2055
Tel: (011) 467 1421 / 1231
Email: info@ramabulanaattorneys.co.za /
noma@ramabulanaattorneys.co.za

7.2 Any legal process to be served on any of the Parties may be served on such Party at the physical address specified for it in clause 7.1 and it chooses that address as its *domicilium citandi et executandi* for all purposes under this Agreement.

7.3 Any notice or other communication to be given to any of the Parties in terms of this Agreement shall be valid and effective only if it is given in writing, provided that any notice given by telefax or email shall be regarded for this purpose as having been given in writing.

7.4 A notice to any of the Parties which is sent by registered post in a correctly addressed envelope to the postal address specified for it in clause 7.1 shall be deemed to have been received (unless the contrary is proved) within 14 days from the date it was posted, or which is delivered to the Party by hand at the physical address specified for it in clause 7.1 shall be deemed to have been received on the

day of delivery, provided it was delivered to a responsible person during ordinary business hours.

- 7.5 Each notice by email to a Party at the email address specified for it in clause 7.1 shall be deemed to have been received (unless the contrary is proved) within one day of transmission if it is transmitted during normal business hours of the receiving Party or within one day of the beginning of the next Business Day after it is transmitted, if it is transmitted outside those business hours.
- 7.6 Notwithstanding anything to the contrary in this clause 7, a written notice or other communication actually received by any of the Parties (and for which written receipt has been obtained) shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.
- 7.7 Any Party may by written notice to the other Parties change its physical or postal address or email for the purposes of this clause 7 to any other physical or postal address or email provided that the change shall become effective on the seventh day after the receipt of the notice.

8. GENERAL

- 8.1 This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter in this Agreement and the Parties waive the right to rely on any alleged provision not contained in this Agreement.
- 8.2 No Party may rely on any representation that allegedly induced that party to enter into this Agreement, unless the representation is recorded in this Agreement.
- 8.3 No conduct or contract varying, adding to, deleting from, novating or cancelling this Agreement (including of this clause), and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.
- 8.4 No indulgence granted by a Party shall constitute a waiver or abandonment of any of the Parties' rights under this Agreement; accordingly, that Party shall not be precluded, as a consequence of having granted that indulgence, from exercising any rights against the other Party which may have arisen in the past or may arise in the future.

- 8.5 No agreement purporting to vary the terms of this Agreement (including of this clause), shall be of any force or effect unless it is reduced to writing and signed by the Parties.
- 8.6 This Agreement is governed by the laws of the Republic of South Africa.
- 8.7 Each Party shall do all such things, take all such steps and to procure the doing of all such things and the taking of all such steps as may be necessary, incidental or conducive to the implementation of the provisions, terms, conditions and import of this Agreement.
- 8.8 This Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any Party may enter into this Agreement by signing any such counterpart.
- 8.9 In the event of any condition set out in this Agreement being a nullity, such condition shall be severable from the other conditions set out in this Agreement. The unaffected conditions shall remain of full force and effect.

SIGNATURE PAGE TO FOLLOW

SIGNED at _____ on this the _____ day of _____ 20__.

For and on behalf of
THE SPECIAL INVESTIGATING UNIT

Signatory:
Capacity:
Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 20__.

For and on behalf of
TRANSNET SOC LIMITED

Signatory:
Capacity:
Who warrants his authority hereto

SIGNED at DAINFERN on this the 06th day of February 2025

PHATHUTSHEDZO BRIGHTON MASHAMBA



Signature
Capacity: Sixth Respondent

SIGNED at MIDRAND on this the 06TH day of FEBRUARY 2025

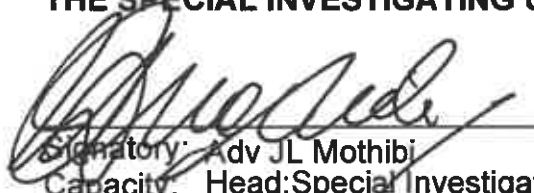
MATLHODI PHILLICIA MASHAMBA



Signature
Capacity: Seventh Respondent

SIGNED at PRETORIA on this the 14th day of February 2025

For and on behalf of
THE SPECIAL INVESTIGATING UNIT



Signatory: Adv. JL Mothibi
Capacity: Head: Special Investigating Unit
Who warrants his authority hereto

SIGNED at Johannesburg on this the 7th day of February 2025

For and on behalf of
TRANSNET SOC LIMITED



Signatory: Adv. Sandra Coetzee
Capacity: Chief Legal Officer
Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 20__.

PHATHUTSHEDZO BRIGHTON MASHAMBA

Signature
Capacity: Sixth Respondent

SIGNED at _____ on this the _____ day of _____ 20__.

MATLHODI PHILLICIA MASHAMBA

Signature
Capacity: Seventh Respondent