DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
SPECIAL TRIBUNAL
CNR AMANDA AVENUE & RIFLE RANGE ROAD, OAKDENE
2026 -07- 21
Signature of Issuing Officer [redacted]
Name
C/A No: One
REGISTRAR

SPECIAL TRIBUNAL
REPUBLIC OF SOUTH AFRICA
EST. ACT 74 OF 1996

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: GP26/2024

In the matter between:

SPECIAL INVESTIGATING UNIT	Applicant
and	
MOTHEO SPORTS AND ENTERTAINMENT FOUNDATION	First Respondent
MARUBINI RAMATSEKISA	Second Respondent
NKHESHO NJONI	Third Respondent
TEBOGO JOSEPH MOHLALA	Fourth Respondent
PETRUS SEDIBE	Fifth Respondent
MMAMADUMO DORAH MAODI	Sixth Respondent
SANELE DLAMINI	Seventh Respondent
NONTLANTLA MATSHAZI	Eighth Respondent
LONDILOX NPC	Ninth Respondent
SYNERCON (PTY) LTD	Tenth Respondent
SRSQS QUANTITY SURVEYORS (PTY) LTD	Eleventh Respondent
MARITO MABUNDA	Twelfth Respondent
ZIPHOZINHLE KHOZA	Thirteenth Respondent
PSKO (PTY) LTD	Fourteenth Respondent
MODUTHATI (PTY) LTD	Fifteenth Respondent
2MC CONSULTING CC	Sixteenth Respondent
NATIONAL LOTTERIES COMMISSION	Seventeenth Respondent

Summary: Special Tribunal and SIU Act 74 of 1996 - Proactive grant funding - National Lotteries Commission - R9 million allocated to Motheo Sports and Entertainment Foundation - Grant Agreement - two tranches of R3 million paid - funds diverted - no sports complex constructed - non-compliance with Lotteries Act ss 2A(3) and (4) - funding decision and Grant Agreement declared unlawful and invalid - preliminary objection by 11th–13th respondents upheld - no cause of action pleaded against them - application dismissed against them with costs including two counsel; - remaining respondents jointly and severally liable to restore R6 million - fifth and fourteenth respondents elected to abide by Tribunal's decision.

JUDGMENT

PETERSEN J

Introduction

[1] This application is brought by the Special Investigating Unit ('the SIU') under s 2(1) of the Special Investigating Units and Special Tribunals Act 74 of 1996 ('the SIU Act').[1] The SIU was authorised by Presidential Proclamation 32 of 2020 to investigate allegations of maladministration, corruption and unlawful conduct in connection with the affairs of the National Lotteries Commission ('the NLC'), including the allocation of proactive grant funding to the first respondent, Motheo Sports and Entertainment Foundation ('Motheo').[2]

[2] The relief sought by the SIU is two-fold. First, it seeks orders reviewing and setting aside the NLC's decision to allocate R9 million in proactive grant funding to Motheo under Project M33064, and the Grant Agreement concluded on 31 May 2021 pursuant to that decision. Secondly, it seeks consequential repayment relief directing the respondents, jointly and severally or to the extent of the amounts respectively received, to restore the sum of R6 million paid to Motheo under the Grant Agreement before the release of a third tranche was withheld. The SIU contends that the proactive funding process failed to comply with the National Lotteries Act 57 of 1997 ('the Lotteries Act'),[3] the applicable regulatory framework and the constitutional principle of legality, and that the

[1]Special Investigating Units and Special Tribunals Act 74 of 1996.

[2]Presidential Proclamation 32 of 2020, published in Government Gazette 43885, 6 November 2020.

[3]National Lotteries Act 57 of 1997.

funds disbursed were diverted from the public purpose for which they were allocated.

[3] Before the hearing, the fifth respondent, Mr Petrus Sedibe ('Mr Sedibe'), and the fourteenth respondent, PSKO (Pty) Ltd ('PSKO'), withdrew their notices of opposition and filed a notice to abide by the decision of this Tribunal on 13 April 2026. Counsel confirmed at the hearing that settlement discussions with the SIU had subsequently been entered into but had proved unsuccessful, and that those respondents maintained their election to be bound by whatever order the Tribunal considers appropriate.

Factual background

The NLC and the statutory framework

[4] The NLC is a public entity established under the Lotteries Act and listed in Schedule 3 to the Public Finance Management Act 1 of 1999. Among its functions is the administration of the National Lottery Distribution Trust Fund ('the NLDTF'), from which grants are awarded to qualifying organisations for projects advancing recognised public purposes. Funding is ordinarily allocated following applications submitted by eligible organisations. The Lotteries Act also permits the NLC to identify and support projects through a proactive funding process. Because proactive funding does not depend upon applications from prospective beneficiaries, the Act imposes a statutory safeguard. In terms of ss 2A(3) and (4) of the Lotteries Act, proactive funding proposals must be supported by independent research and stakeholder consultation before public funds are committed.

The grant allocation

[5] On 14 April 2021, the second respondent, Mr Marubini Ramatsekisa ('Mr Ramatsekisa'), then employed as the NLC's Grants Funding Projects Manager, prepared a proactive funding proposal recommending that Motheo receive R9 million to construct the Protea Glen Sports Complex in Soweto. The proposal was approved on the same day by the third respondent, Mr Nkhesho Njoni ('Mr Njoni'), then Acting Chief Operations Officer of the NLC. Acting on that recommendation, the NLC's Quality Assurance Committee subsequently resolved to approve the allocation of R9 million to Motheo under Project M33064. On 31 May 2021, the NLC and Motheo concluded a Grant Agreement that gave effect to the allocation and provided for payment in three tranches, each

conditional upon satisfactory compliance with specified reporting and monitoring requirements.

[6] Motheo is a non-profit foundation whose affairs were effectively controlled by the fifth respondent, Mr Sedibe, and the eighth respondent, Ms Nontlantla Matshazi ('Ms Matshazi'), both authorised signatories on Motheo's banking account. Mr Sedibe was the sole director of the fourteenth respondent, 'PSKO'. Ms Matshazi exercised control over the ninth respondent, Londilox NPC ('Londilox'). The sixth respondent, Ms Mmamadumo Dorah Maodi ('Ms Maodi'), was employed by the NLC and was also associated with Mr Sedibe through the fifteenth respondent, Moduthati (Pty) Ltd ('Moduthati'). The fourth respondent, Mr Tebogo Joseph Mohlala ('Mr Mohlala'), executed the Grant Agreement on behalf of Motheo on 24 May 2021.

Disbursement of the first tranche

[7] On 9 June 2021 the NLC paid the first tranche of R3 million into Motheo's First National Bank account. The funds were not applied towards the construction of the sports complex. Shortly after receipt, substantial portions of the first tranche were transferred to entities and individuals associated with those controlling Motheo. R500 000 was paid to Londilox; R400 000 to the tenth respondent, Synercon (Pty) Ltd ('Synercon'); and R950 000 to PSKO. No credible evidence has been placed before this Tribunal demonstrating that meaningful construction commenced following receipt of the first tranche.

The progress report and the second tranche

[8] Under the Grant Agreement, no further payment could be made unless Motheo submitted a satisfactory progress report demonstrating appropriate project implementation. The eleventh respondent, SRSQS Quantity Surveyors (Pty) Ltd ('SRSQS'), had been appointed by the NLC under a general service level agreement to provide professional services. The twelfth respondent, Mr Marito Mabunda ('Mr Mabunda'), is an executive member of SRSQS. The thirteenth respondent, Ms Ziphozinhle Khoza ('Ms Khoza'), is employed by SRSQS. During November 2021, Ms Khoza prepared, and Mr Mabunda approved, a progress report for the period 9 June 2021 to 30 November 2021, purporting to demonstrate satisfactory project progress, and transmitted it to the NLC. The SIU's investigation established that the report contained material inaccuracies concerning project implementation, expenditure and procurement, including falsified documentation and misrepresentations of the state of construction at the project site.

[9] The seventh respondent, Mr Sanele Dlamini ('Mr Dlamini'), joined the NLC as Senior Manager: Grant Operations in January 2022, taking over responsibility for administering the Motheo project from Mr Ramatsekisa. In early February 2022, he directed Ms Maodi to prepare internal approval documentation for the second tranche. Ms Maodi completed and signed the Progress Report Review checklist as reviewer. The SIU's evidence establishes that she did not read the progress report and that Mr Dlamini had directed her not to do so. Mr Dlamini then signed the documentation as approver. On 7 February 2022, the NLC released the second tranche of R3 million to Motheo. The second tranche was likewise not applied to the project. R2 123 000 was transferred to Mr Sedibe's personal Capitec bank account, and further payments were made to the sixteenth respondent, 2MC Consulting CC ('2MC'), which received R382 205, as well as to other parties. The sports complex was never constructed.

Investigation and proceedings

[10] The SIU investigation established that the proactive funding process had not complied with the statutory framework governing such allocations and that the monies paid under the Grant Agreement had not been utilised for the public purpose for which they were allocated. The NLC conducted a disciplinary inquiry into Mr Dlamini's conduct. He was found guilty of acting *ultra vires* his position in approving the progress report review without authority and was dismissed. His dismissal was confirmed on appeal. A related unfair dismissal dispute was referred to the CCMA and remains ongoing. The SIU launched the main application in the Special Tribunal in December 2024. On 10 June 2025 Victor J granted an interim interdict in related urgent proceedings preserving Mr Dlamini's pension benefits pending the outcome of the main application.

The parties' contentions

The SIU

[11] The SIU contends that the proactive funding decision and the Grant Agreement were unlawful because they were concluded in material non-compliance with the Lotteries Act and the constitutional principle of legality. It submits that the statutory safeguards governing proactive funding were disregarded, that the grant was procured through an irregular process, and that the monies disbursed were diverted from the public purpose for which they had been allocated. The NLC, as seventeenth respondent, has filed written submissions

supporting the application and making common cause with the SIU throughout. The NLC is the victim of the fraud.

The first, fourth, eighth, ninth and tenth respondents (Motheo, Mr Mohlala, Ms Matshazi, Londilox, Synercon)

[12] These respondents oppose the application primarily by making bare denials. Although answering affidavits have been filed, they do not meaningfully engage with the SIU's forensic analysis of the banking records, nor do they provide any satisfactory explanation of how the grant monies were expended. They do not dispute that the sports complex was never constructed.

The second respondent (Mr Ramatsekisa)

[13] Mr Ramatsekisa accepts that he prepared the proactive funding proposal but contends that he did so pursuant to instructions received from a former Acting COO within the NLC. He submits that the proposal was prepared in accordance with prevailing practice and that responsibility for subsequent disbursements rested with other officials. He accordingly denies personal liability for the losses sustained by the NLC.

The third respondent (Mr Njoni)

[14] Mr Njoni has not filed heads of argument and has not advanced substantive argument in opposition to the relief sought. His position falls to be determined upon the affidavits and documentary evidence placed before the Tribunal.

The fifth and fourteenth respondents (Sedibe and PSKO)

[15] As indicated above, Mr Sedibe and PSKO withdrew their notices of opposition and elected to abide by this Tribunal's decision. No competing factual version has been placed before this Tribunal by these respondents.

The sixth and fourteenth respondents (Moduthati and Ms Maodi)

[16] Ms Maodi accepts that she participated in the administrative processing of the documentation preceding payment of the second tranche but contends that she acted throughout under the direction of senior officials and exercised no independent decision-making authority. She denies any knowledge of fraudulent conduct and submits that her involvement was administrative rather than substantive. She further contends that, should liability arise, it ought to be confined to the second tranche and reflect the limited nature of her participation. As regards Moduthati, counsel submitted that it had been deregistered, had failed

to file annual returns, was no longer a legal entity capable of being sued, and had received no monies in connection with the scheme.

The seventh respondent (Mr Dlamini)

[17] Mr Dlamini acknowledges approving the documentation that resulted in payment of the second tranche but denies acting dishonestly or in bad faith. He submits that he relied upon documentation which appeared regular on its face, had already been processed internally, and had been supported by the NLC's own appointed professional consultants. He contends that he had no means, and no obligation, to detect documents that appeared authentic and were not obviously fraudulent. He relies on the fact that the NLC's disciplinary inquiry found him guilty only of acting *ultra vires* and made no express finding of dishonesty.

The eleventh, twelfth and thirteenth respondents (SRSQS, Mr Mabunda and Ms Khoza)

[18] These respondents raise a preliminary objection that the SIU's founding affidavit discloses no legally sustainable cause of action against them. They submit that they were neither parties to the Grant Agreement nor recipients of payments made by the NLC under it, and that the founding papers do not plead the elements of any recognised contractual, delictual or public-law claim. In the alternative, they contend that their involvement was confined to professional services rendered after the first tranche had already been paid; that they relied on information supplied by Motheo; that any loss suffered by the NLC resulted from decisions taken by NLC officials; and that the payment of R68 000 to Ms Khoza from Mr Sedibe's personal account represented personal loans substantially repaid.

The sixteenth respondent (2MC Consulting CC)

[19] 2MC Consulting CC did not file an answering affidavit and has not participated in these proceedings. The relief sought against it falls to be determined on the uncontested evidence.

Issues for determination

[20] The following issues require determination. First, whether the proactive funding decision and the Grant Agreement are unlawful and liable to be set aside. Secondly, whether the SIU has established a legally sustainable cause of action against each respondent and in particular the eleventh to thirteenth respondents. Thirdly, whether the respondents against whom repayment relief is sought are

liable to restore the public funds paid pursuant to the Grant Agreement. Last, the costs that should follow the result.

Analysis and findings

The first issue: Validity of the proactive funding decision and Grant Agreement

[21] The Special Tribunal has jurisdiction to adjudicate civil disputes brought before it by the SIU. Sections 4(1)(c) and 8(2) of the SIU Act empower the SIU to institute civil proceedings for relief to which the affected State institution is entitled, and confer on this Tribunal the power to make any order it deems appropriate. The SIU Act does not create new causes of action. The SIU can recover only what the state institution could have recovered in the ordinary courts. In *Special Investigating Unit v Ngcinwana and Another* [4], Froneman J as he then was stated:

> 'The appellant is a juristic person (s 13 of the Act). It may thus sue and be sued in its own name. Like any other natural or juristic person, however, it can only sue another party if it has a valid claim or cause of action against that party. As a statutory creation the appellant has only those functions and powers accorded to it by the Act. The only basis in the Act upon which the appellant may institute civil proceedings before the Special Tribunal is if it has obtained evidence in its investigation substantiating any allegation of maladministration, corruption or the like under s 2(2) of the Act (s 5(5) of the Act). In such a case it may institute proceedings in the Special Tribunal against the parties concerned (s 4(1)*(c)* of the Act).'

[22] Section 172(1) of the Constitution empowers this Tribunal, as with any ordinary court, to declare unlawful conduct invalid and to grant any order that is just and equitable in the circumstances.[5] In *Caledon River Properties (Pty) Ltd t/a Magwa Construction and Another v Special Investigating Unit and Another*[6] the SCA essentially confirmed that the Tribunal's s 172(1)(b) discretion is a value-laden judgment informed by all relevant facts and constitutional principles.

[23] The allocation of proactive funding constitutes the exercise of public power and must comply with both the empowering legislation and the constitutional principle of legality. The evidence establishes that these statutory safeguards were not observed. The proposal prepared by Mr Ramatsekisa on 14 April 2021

[4]*Special Investigating Unit v Ngcinwana and Another* 2001 (4) SA 774 (E) at 780C-D.

[5]Section 172(1)(a) and (b) of the Constitution of the Republic of South Africa, 1996.

[6] *Caledon River Properties (Pty) Ltd t/a Magwa Construction and Another v Special Investigating Unit and Another* (375 & 419/2024) [2026] ZASCA 05 (16 January 2026) at paras 11 and 12.

contained no independent assessment of Motheo's organisational capacity, financial standing or experience in undertaking a project of comparable scale. There is also no evidence of stakeholder consultation placed before the Quality Assurance Committee. Mr Ramatsekisa approved the proposal on the same day he received it, without any scrutiny of whether the statutory requirements had been satisfied. These deficiencies strike at the legality of the decision itself and are not merely technical irregularities.

[24] Mr Ramatsekisa's explanation that he acted pursuant to instructions from a former Acting COO does not answer the point. Public officials entrusted with statutory powers remain under a duty to ensure that those powers are exercised lawfully. A subordinate instruction cannot authorise conduct inconsistent with the governing legislation. Moreover, by 14 April 2021, the Acting COO who had allegedly given the original instruction had already been succeeded by Mr Njoni. Mr Ramatsekisa accordingly acted under the authority of a functionary who had vacated the relevant office. Mr Njoni's approval of the proposal on the same day it was prepared, without any documented verification that the statutory requirements had been met, further compounded the irregularity.

[25] As stated above, the NLC, as seventeenth respondent and the public entity that made the impugned decision, supports the relief sought by the SIU. While that concession cannot determine the outcome, it accords with the objective documentary evidence. I am accordingly satisfied that the decision to allocate proactive funding to Motheo was taken in material non-compliance with the Lotteries Act and is inconsistent with the constitutional principle of legality. Having reached this conclusion, the Grant Agreement concluded pursuant to the impugned decision cannot survive independently. It derived its legal force entirely from the unlawful allocation and must likewise be declared invalid.

The second issue: The preliminary objection of the eleventh to thirteenth respondents

[26] The eleventh, twelfth and thirteenth respondents raise a preliminary objection. They assert that the SIU's founding affidavit discloses no legally sustainable cause of action against them. The issue is not whether the SIU criticises their conduct. It plainly does. The central issue is whether the founding papers identify a recognised legal basis upon which relief may be granted against

them. In *Konyn and Others v Special Investigating Unit*[7], the Full Court stated authoritatively that:

> 'In terms of s 2(1)*(b)* of the Act, a Special Tribunal is established '. . . to adjudicate upon justiciable civil disputes . . .'. The necessity of pleading material facts whereby the cause of action appears clearly to enable the other party reasonably and fairly to plead thereto is fundamental to the aforesaid process. Unless a Special Investigating Unit pleads its cause of action with such particularity, the defendants to such proceedings will be unable properly to prepare their defences and this would infringe the defendants' rights to a fair hearing.
>
> Claassen AJ in the judgment of the Special Tribunal held that:
>
> In any event, as far as I am concerned, no formal pleadings are required as in a High Court. Therefore, such full particularity is not essential and '. . . the rules certainly do not require particulars of claim as envisaged in the Uniform Rules of the High Court.
>
> In the Court's view, it is the very absence of such particularity and uncertainty as to what pleadings are required which preclude the appellants' rights to a fair hearing before the Special Tribunal.'

[27] It is a fundamental principle that an applicant must stand or fall by the case made in its founding affidavit. The founding papers must identify both the legal basis of the claim (*facta probanda*) and the material facts (*facta probantia*) necessary to sustain it. Save in exceptional circumstances, an applicant may not introduce a new cause of action in reply. In *Bowman NO v De Souza Roldao*, Kirk-Cohen J, summarised the law as follows:

> 'Generally speaking, an applicant must stand or fall by his founding affidavit; he is not allowed to make out his case or rely upon new grounds in the replying affidavit. See, for example, *Director of Hospital Services v Mistry* 1979 (1) SA 626 (A) at 635 *in fin* - 636 where Diemont JA said the following:
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> 'When, as in this case, the proceedings are launched by way of notice of motion, it is to the founding affidavit which a Judge will look to determine what the complaint is. As was pointed out by Krause J in *Pountas' Trustee v Lahanas* 1924 WLD 67 at 68 and as has been said in many other cases
>
> "... an applicant must stand or fall by his petition and the facts alleged therein and that, although sometimes it is permissible to supplement the allegations contained in the petition, still the main foundation of the application is the allegation of facts stated therein, because those are the facts which the respondent is called upon either to affirm or deny".

[7] *Konyn and Others v Special Investigating Unit* 1999 (1) SA 1001 (TkH) at 1019A–D; *Swissborough Diamond Mines v Government of the RSA and Others* 1999 (2) SA 279 (T).

Since it is clear that the applicant stands or falls by his petition and the facts therein alleged "it is not permissible to make out new grounds for the application in the replying affidavit".'

What should be set out in the founding affidavit and the particularity required has been dealt with in a number of cases; see, for example, *Joseph and Jeans v Spitz and Others* 1931 WLD 48; *Victor v Victor* 1938 WLD 16 at 17 and *Titty's Bar and Bottle Store (Pty) Ltd v ABC Garage (Pty) Ltd and Others* 1974 (4) SA 362 (T) at 369B. Each case will depend on its own facts. The correct approach is set out in the *Titty's Bar* case *supra* as follows:

'It lies, of course, in the discretion of the Court in each particular case to decide whether the applicant's founding affidavit contains sufficient allegations for the establishment of his case. Courts do not normally countenance a mere skeleton of a case in the founding affidavit, which skeleton is then sought to be covered in flesh in the replying affidavit.'

This type of objection must be considered on the basis of an exception to a declaration or a combined summons. The relevant considerations are:

(a) the founding affidavit alone is to be taken into account;

(b) the allegations in the founding affidavit must be accepted as established facts;

(c) are these allegations, if proved, sufficient to warrant a J finding in favour of the applicant?'

[28] The founding affidavit does not plead a contractual claim against these respondents. They were not parties to the Grant Agreement. Nor does the SIU identify any contractual obligations owed by them that could give rise to personal liability to restore monies paid under that agreement. The SIU also does not plead the constituent elements of any claim with the necessary particularity. In *Special Investigating Unit v Kim Diamonds (Pty) Ltd*[8], Kuny AJ, stated as follows:

'5.2 As I have indicated above, s 2(2) of the Act does not, *per se*, create new causes of action where they do not otherwise exist. Section 2(2) merely provides grounds upon which the President may call for an investigation by the SIU and, if, consequent upon such investigation, it appears to the SIU that there are justiciable civil disputes emanating therefrom, it may, in terms of s 4(1)*(b)*, institute (civil) proceedings in a Special Tribunal against parties who may have committed acts or omissions giving rise to justiciable civil claims. Hence the present proceedings.

5.3 It is not sufficient therefore for plaintiff hereby to allege 'serious maladministration', 'improper or unlawful conduct', 'unlawful expenditure of public money and the intentional alternatively negligent loss of public money'. It must, in order to succeed against the defendant, give content to such allegations by formulating

[8] *Special Investigating Unit v Kim Diamonds (Pty) Ltd* 2004 (2) SA 173 (SpT) at 189 C – F (paras 5.2 – 5.3).

justiciable causes of action arising from such alleged conduct, and leading evidence to prove such claims on the balance of probabilities.'

[29] While allegations of false representations appear in the papers, the founding affidavit does not identify the legal duty relied upon, the basis upon which fraudulent intent is alleged against these respondents, or the causal nexus necessary to establish personal liability for the NLC's loss. The answering affidavit of SRSQS specifically denied knowledge of any falsified documentation. That denial was not controverted in the SIU's replying affidavit.

[30] Faced with those criticisms, the SIU abandoned reliance on private-law causes of action in its replying affidavit and re-characterised its claim as one founded upon public-law invalidity and the Tribunal's remedial powers under s 172(1)(b) of the Constitution. That approach is impermissible. Section 172(1)(b) empowers this Tribunal to fashion an appropriate remedy once unlawfulness has been established. It does not create an independent cause of action, nor does it relieve an applicant of the obligation to plead and prove why a particular respondent is legally liable. A public-law restitutionary claim of this character, introduced in reply, deprived the eleventh, twelfth and thirteenth respondents of the opportunity to answer it.

[31] The position of these respondents is materially different from that of the ninth, tenth, fourteenth and sixteenth respondents. The claim against those respondents rests on the traced receipt of specific portions of the grant monies after they had been paid to Motheo, a factual and legal basis pleaded in the founding affidavit. Against the eleventh, twelfth and thirteenth respondents, no such basis was pleaded. Even assuming a public-law restitutionary cause of action had been properly pleaded, the SCA confirmed in *Phomella Property Investments*[9] that restitutionary relief following the setting aside of an unlawful transaction ordinarily operates between the parties to that transaction. SRSQS, Mabunda, and Khoza were neither parties to the Grant Agreement nor recipients of NLC payments thereunder. There is no factual or legal basis on which a just and equitable remedy against them could be sustained.

[32] The SIU acknowledged in correspondence that the maximum recoverable from these respondents was the outstanding balance of the second tranche not yet recovered from other respondents, yet persisted in claiming the full R6 million jointly and severally without amending its notice of motion. That persistence,

[9] *SIU v Phomella Property Investments (Pty) Ltd and Another* [2023] ZASCA 45 (3 April 2023) at paras 18–20.

notwithstanding repeated invitations to cure the defect, is a relevant factor in the costs enquiry.

[33] The preliminary objection is upheld. The application accordingly falls to be dismissed against the eleventh, twelfth and thirteenth respondents. It is therefore unnecessary to resolve the factual disputes concerning the preparation of the progress report.

The third issue: Consequential relief against the remaining respondents

Motheo

[34] Motheo was the immediate recipient of the grant funding and the party to the Grant Agreement with the NLC. Once the Grant Agreement is declared invalid, Motheo bears the primary obligation to restore the public funds received, unless considerations of justice and equity require otherwise.[10] No such considerations arise. The uncontested forensic evidence establishes that the R6 million paid by the NLC was diverted by Motheo to Mr Sedibe personally, to PSKO, to Londilox, to Synercon, to SRSQS and to 2MC Consulting, without any construction work being performed. Motheo's answering affidavit consists of bare denials. It does not account for the disbursement of the grant monies and does not explain what construction work, if any, was performed. A bald denial without a reasonable answer to the applicant's specific allegations supported by documentary evidence cannot displace those allegations under the *Plascon-Evans* rule.[11] Motheo is therefore jointly and severally liable with the other participating respondents for the full R6 million.

Sedibe and PSKO (fifth and fourteenth respondents)

[35] Mr Sedibe was the primary directing mind of Motheo, the sole director of PSKO, and the principal beneficiary of the corrupt scheme. PSKO received R950 000 from the first tranche. Mr Sedibe personally received R2 123 000 from the second tranche. Having elected to abide by this Tribunal's decision, neither Mr Sedibe nor PSKO has advanced any version in opposition to these findings. A respondent who elects to abide accepts that the Tribunal will determine the matter on the evidence and make such order as is warranted. On the uncontested evidence, Mr Sedibe and PSKO directly benefited from the unlawful dissipation of public funds. Mr Sedibe is accordingly jointly and severally liable for the full

[10] *Umgeni Water v Naidoo* [2023] 1 All SA 857 (KZP) at para 45.

[11] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634H–I.

R6 million as co-architect of the scheme. PSKO, in turn, is jointly and severally liable for at least the R950 000 it received.

Matshazi and Londilox (eighth and ninth respondents)

[36] Ms Matshazi was a co-signatory of Motheo's bank account, was a witness to the Grant Agreement, and co-directed Londilox, which received R500 000 from the first tranche on 21 June 2021 without evidence of services rendered. The uncontroverted fund flows establish her involvement as a co-architect of the scheme alongside Mr Sedibe. Londilox has not filed an answering affidavit. Both Ms Matshazi and Londilox are accordingly jointly and severally liable with the other participating respondents for the R6 million, with Londilox's liability specifically co-extensive with the R500 000 it received.

Mr Mohlala (fourth respondent)

[37] Mr Mohlala signed the Grant Agreement as a director of Motheo on 24 May 2021, thereby participating in the formal conclusion of the fraudulently induced agreement. He filed an answering affidavit consisting of bare denials and has advanced no substantive defence. He is accordingly jointly and severally liable with the other participating respondents for the consequential loss.

The Motheo bank signatories (Mr Mohlala, Mr Sedibe and Ms Matshazi)

[38] Beyond the specific traced receipts addressed above, the forensic analysis of Motheo's First National Bank account establishes that Mr Mohlala, Mr Sedibe and Ms Matshazi, as the three signatories to that account, jointly authorised and drew down a further R1 644 795 directly from the account, comprising teller cash withdrawals totalling R750 000, ATM withdrawals totalling R423 800, and purchases, bank charges and other debits totalling R470 995. These withdrawals span both the first and second tranches and are corroborated by the independently obtained bank statements annexed to the founding affidavit. No evidence has been produced that any part of this amount was applied towards the construction of the sports complex or any other legitimate purpose of the grant. As the signatories jointly responsible for authorising disbursements from the account, Mr Mohlala, Mr Sedibe and Ms Matshazi are jointly and severally liable, in addition to their liability under the preceding paragraphs, for this further portion of the diverted funds.

Synercon (tenth respondent)

[39] Synercon received R400 000 from Motheo's FNB account following the release of the first tranche. No explanation for this payment has been provided,

and no papers were filed. On the uncontested evidence, Synercon received a portion of the diverted first-tranche proceeds without legitimate basis and is accordingly jointly and severally liable with the other participating respondents for the amount received.

2MC Consulting CC (sixteenth respondent)

[40] 2MC Consulting CC received R382 205 from Motheo on 10 February 2022, shortly after release of the second tranche. No evidence demonstrating the provision of legitimate services has been produced. 2MC Consulting CC has not participated in these proceedings. On the uncontested evidence, it received a portion of the second-tranche proceeds without legitimate basis and is accordingly jointly and severally liable with the other participating respondents for the amount received.

Mr Ramatsekisa (second respondent)

[41] Mr Ramatsekisa bore primary responsibility for initiating the unlawful allocation of grants. He compiled the proactive funding proposal for R9 million without any credible basis to identify Motheo as a suitable beneficiary, without independent research, and without the stakeholder consultation required by the Lotteries Act. His attribution of that conduct to a superior instruction does not absolve him of his independent professional obligation to ensure statutory compliance. He was the Grants Funding Projects Manager and was paid to exercise independent professional judgment. His bare contention that the proposal was requested of him falls far short of exculpation. Mr Ramatsekisa is accordingly jointly and severally liable with the other participating respondents for the losses flowing from the unlawful grant allocation, his liability being particularly directed at the first tranche of R3 million, the release of which was directly enabled by his unlawful proposal.

Mr Njoni (third respondent)

[42] Mr Njoni, as Acting Chief Operations Officer, approved Mr Ramatsekisa's proactive funding proposal on 14 April 2021, the same day it was compiled, and later executed the Grant Agreement on behalf of the NLC on 31 May 2021. No independent verification that the statutory requirements had been satisfied was performed before public funds were committed. The speed and uncritical nature of the approval demonstrate a failure to exercise the independent judgment required of him in his position. Mr Njoni did not engage with the proceedings in any meaningful way. His position is determined on the uncontested evidence. The

adverse findings against him stand. He is accordingly jointly and severally liable for the losses flowing from the unlawful grant allocation and the release of both tranches.

Mr Dlamini (seventh respondent)

[43] Mr Dlamini's position is central to the main application. He was the final approver of the progress report review, without whose approval the second tranche of R3 million could not have been released. He acknowledges that he signed the progress report review as approver. His defence is that he acted in good faith, relying on documentation that appeared regular on its face and had already been endorsed internally and by the NLC's own appointed professional consultants. He contends that he could not reasonably have been expected to detect sophisticated fraud without forensic tools unavailable to him. I accept that Dlamini received documentation that had passed through earlier stages of the NLC's internal processes and was entitled to attach weight to the endorsements of other officials and to the NLC's appointed consultants. I also accept that the disciplinary findings against him are not binding upon this Tribunal and that no express finding of dishonesty was made in the disciplinary proceedings.

[44] Those mitigating considerations do not, however, displace the adverse findings against Mr Dlamini. The progress report before him contained irreconcilable internal inconsistencies apparent on its face. The narrative asserted that earthworks were in progress and Clearview fencing had been procured, while the accompanying site photographs depicted open, undeveloped land inconsistent with any construction activity. A senior manager approving the disbursement of R3 million in public funds required no forensic expertise to observe that contradiction. He needed only to examine the photographs accompanying the document he was signing. Nor did Mr Dlamini visit the site before authorising payment, a step that would have required no forensic tool to establish that no fence had been erected and no earthworks commenced. The progress report also included invoices payable to PSKO, the entity of which Mr Sedibe, the author of the request for the second tranche, was the sole director, an obvious self-dealing arrangement that Dlamini failed to identify or ignored.

[45] On the authority question, Mr Dlamini's key performance area reference to *project management of proactively funded projects* speaks to management oversight, not financial disbursement authority, which is a formally governed and distinct matter. No delegation instrument authorising him to approve this payment was placed before the Tribunal. Mr Dlamini's own concession before the

disciplinary chair that the review of the progress report was not within his authority underpins his conviction on Charge 4. The NLC's disciplinary enquiry found Mr Dlamini guilty of gross misconduct and his appeal was dismissed. The related urgent proceedings before Victor J found an element of dishonesty arising from the facts of Charge 4. Mr Dlamini was further not a whistleblower as he postulates. The evidence shows that, after learning of Motheo's non-performance following a site visit in November 2022, he issued reminder letters rather than initiating recovery proceedings. Recovery was recommended in March 2023 by Ms Sonia van Zale, then acting provincial manager, not by Mr Dlamini.

[46] Applying that rule, Mr Dlamini's exculpatory version is untenable in the face of the undisputed failure to visit the site, the identified self-dealing in the PSKO invoices, the facial inconsistency in the progress report, the absence of any M&E unit review, and the disciplinary conviction. The circumstances compel the inference, on a balance of probabilities, that his approval was reckless at minimum and, on the probabilities, dishonest. Mr Dlamini is accordingly jointly and severally liable with the other participating respondents for the second tranche of R3 million.

Ms Maodi (sixth respondent)

[47] Ms Maodi's position requires careful analysis. Her participation was primarily administrative. She prepared a standard checklist document at Dlamini's direction and signed it as a reviewer without reading the underlying progress report. She was not a primary architect of the scheme and exercised no independent authority for financial approval. The principle of apparent authority is relevant to her position.[12] She received her instructions from Mr Dlamini, who had himself been assigned oversight of the Motheo project by Mr Njoni. Within the NLC's administrative culture, in which M&E functions had, in practice, been absorbed into secretarial roles, she reasonably believed she had the authority to perform the function she was asked to perform, so the argument went.

[48] Her position is not, however, as clear as counsel contends. Ms Maodi had a business association with Mr Sedibe through Moduthati, giving rise to an undisclosed conflict of interest directly relevant to her role in approving a payment that would benefit her business partner. She did not disclose the conflict or recuse herself. That failure is independently culpable. While her degree of fault is materially less than that of the principal decision-makers, that distinction

[12] *Makate v Vodacom (Pty) Ltd* (CCT52/15) [2016] ZACC 13 at paras 45–50.

operates at the level of contribution between joint wrongdoers under the Apportionment of Damages Act, not at the level of her external liability to the SIU. The same approach governs every respondent in this matter. They are held jointly and severally liable for the full loss, with the internal apportionment of contributions governed by s 2(6) of the Act, reflecting their respective degrees of fault. There is no principled basis to depart from that approach in Ms Maodi's case. She is accordingly jointly and severally liable with the other participating respondents for the full R6 million, with her right of contribution against co-debtors to be determined in accordance with the Apportionment of Damages Act.

Moduthati (Pty)Ltd (fifteenth respondent)

[49] It is common cause that Moduthati (Pty) Ltd has failed to file its annual returns and has ceased to operate as a functional legal entity. No evidence of any payment received by Moduthati from the grant proceeds has been placed before the Tribunal. No practical order can be made against it. The application against Moduthati stands to be dismissed with no order as to costs.

Apportionment and joint and several liability

[50] The respondents against whom relief is granted did not participate in precisely the same manner or to the same degree. Some of the respondents initiated the unlawful allocation whilst others approved subsequent disbursements. Crucially, others received specific portions of the grant proceeds. Those differences do not alter the essential character of the loss. The evidence establishes a single indivisible loss of R6 million sustained by the NLC through the unlawful allocation and dissipation of the full grant. The appropriate remedy is joint and several liability for the aggregate loss, subject to the qualifications set out in the order and without prejudice to the respondents' rights of contribution against one another under the Apportionment of Damages Act.[13]

[51] The fifth and fourteenth respondents, having elected to abide, are included in the joint and several order. As between themselves, the participating respondents are entitled to contribution in proportion to their degree of fault. The architects of the scheme, Mr Sedibe, Ms Matshazi and Motheo, bear the greatest responsibility. Mr Dlamini, as the final approver of the second tranche without whom that payment could not have been released, bears a substantial degree of fault. Mr Ramatsekisa and Mr Njoni, who initiated and approved the unlawful allocation of grants, bear significant fault. Ms Maodi bears a lesser but not

[13] Sections 1 and 2 of the Apportionment of Damages Act 34 of 1956.

negligible degree of fault for her undisclosed conflict of interest and her participation in the approval process. This judgment establishes the joint and several liability and the aggregate amount.

Costs

The eleventh to thirteenth respondents

[52] The eleventh, twelfth and thirteenth respondents succeeded on their preliminary objection. They are entitled to their costs of opposition. The SIU was alerted, both in the answering affidavits and in correspondence before the hearing, to the deficiencies in the pleaded case against them. Notwithstanding those concerns and repeated invitations to amend, it persisted in claiming the full R6 million jointly and severally without amending its notice of motion, an approach inconsistent with its own acknowledgment in correspondence that recovery against these respondents could not extend beyond the outstanding balance of the second tranche. An organ of state bears a heightened duty in litigation.[14] The SIU's persistence in pursuing an overbroad claim against professional service providers who received no grant monies from the NLC falls below the expected standard. The eleventh, twelfth and thirteenth respondents are accordingly entitled to their costs on the attorney-and-client scale, including the costs consequent upon the employment of two counsel where so employed.

The sixth respondent (Ms Maodi)

[53] Ms Maodi opposed the repayment order on good-faith grounds. The *Biowatch* principle[15] counsels against punitive costs awards against litigants who in good faith defend claims that engage constitutional values. Her defence, that she acted on the instructions of senior officials without knowledge of the fraud, was a legitimate and good-faith response to a claim of considerable financial consequence. No punitive costs order is warranted against her. Costs will follow the event.

The remaining respondents

[54] The remaining respondents who unsuccessfully opposed the application are liable to pay the SIU's costs. Having regard to the complexity of the matter, the volume of evidence and the extensive legal argument presented, the

[14] *Member of the Executive Council for Health, Eastern Cape v Kirland Investments (Pty) Ltd* [2014] ZACC 6 at para 82.

[15] *Biowatch Trust v Registrar, Genetic Resources and Others* 2009 (6) SA 232 (CC).

employment of two counsel was justified. Costs shall include the costs consequent upon the employment of two counsel where so employed.

Order

[55] In the result the following order is made:

1. The decision of the National Lotteries Commission made on 14 April 2021 to award grant funding of R9 000 000 (nine million rand) to the first respondent, Motheo Sports and Entertainment Foundation, under Project No. M33064 is declared unlawful and invalid and is reviewed and set aside.
2. The Grant Agreement concluded on 31 May 2021 between the National Lotteries Commission and the first respondent, Motheo Sports and Entertainment Foundation, in respect of Project No. M33064 is declared unlawful, invalid and void *ab initio*.
3. The fifth respondent is jointly and severally liable, in his personal capacity, for R2 123 000 of the amount in paragraph 4 below.
4. The first, second, third, fourth, fifth, sixth, seventh, eighth, fourteenth and sixteenth respondents are ordered to pay to the applicant, jointly and severally, the sum of R6 000 000 (six million rand); save that:

    4.1 The ninth respondent and eighth respondent are jointly and severally liable for R500 000 of the aforesaid amount;

    4.2 The tenth respondent is jointly and severally liable for R400 000 of the aforesaid amount;

    4.3 The fourteenth respondent is jointly and severally liable for R950 000 of the aforesaid amount;

    4.4 The sixteenth respondent is jointly and severally liable for R382 205 of the aforesaid amount;

    4.5 The fourth respondent, fifth respondent and eighth respondent, as signatories to the first respondent's bank account, are jointly and severally liable for R1 644 795 of the aforesaid amount, being funds withdrawn or spent directly from that account, comprising teller cash withdrawals of R750 000, ATM withdrawals of R423 800, and purchases, bank charges and other debits of R470 995;

4.6 As between themselves, the respondents referred to in this paragraph are entitled to contribution in proportion to their respective degrees of fault, as determined pursuant to the Apportionment of Damages Act 34 of 1956.

5. The application against the eleventh, twelfth and thirteenth respondents is dismissed with costs on the attorney-and-client scale, including the costs consequent upon the employment of two counsel where so employed.

6. The application against the fifteenth respondent is dismissed with no order as to costs.

7. The first, second, third, fourth, fifth, seventh, eighth, ninth, tenth, fourteenth and sixteenth respondents are ordered to pay the costs of the applicant jointly and severally, on Scale C, such costs to include the costs of two counsel where so employed.

8. The sixth respondent is ordered to pay the costs of the applicant in respect of the proceedings relating to the relief claimed against her, on the party-and-party scale, Scale B.

9. The interim interdict granted by Victor J on 10 June 2025 against the seventh respondent is confirmed and shall remain of force and effect pending payment in full of the amount for which the seventh respondent is jointly and severally liable under paragraph 4 above, alternatively pending further order of this Tribunal.

10. The costs reserved in paragraph 5 of the order of Victor J dated 10 June 2025 are to be paid by the seventh respondent.

[redacted]

JUDGE AH PETERSEN
MEMBER OF THE SPECIAL TRIBUNAL

APPEARANCES

For the Applicant:	Adv M.T Matlapeng
Instructed by:	The State Attorney, Pretoria
For the 1st Respondent:	Majavu Incorporated Attorneys
	(No appearance)
For the 2nd Respondent:	Adv B Nortjie
Instructed by:	Ramahlola BM Attorneys
For the 5th and 14th Respondents:	Adv L Mukome
Instructed by:	Majavu Incorporated Attorneys
For the 6th and 15th Respondents:	Adv W Maodi
Instructed by:	Maponya (K) Attorneys
For the 7th Respondent:	Mr N P Voyi
Instructed by:	Voyi Incorporated Attorneys
For the 11th–13th Respondents:	Adv I Cloete
Instructed by:	Adams & Adams
For the 17th Respondent:	Adv M Makoti
Instructed by:	Cheadle Thompson & Haysom Inc.

Date of hearing: 10,13 – 15 April 2026

Date of judgment: 21 July 2026

Mode of delivery

This judgment is handed down by email transmission to the parties' legal representatives, uploading on Caselines and release to SAFLII and AFRICANLII. The time of delivery is deemed to be 10h00.

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

SPECIAL TRIBUNAL

CNR AMANDA AVENUE & RIFLE RANGE ROAD, OAKDENE

2026 -07- 21

Signature of Issuing Officer

[redacted]

Name

C/A No: One

REGISTRAR