IN THE SPECIAL TRIBUNAL ESTABLISHED IN TERMS OF SECTION 2(1)

OF

THE SPECIAL INVESTIGATING UNIT AND

SPECIAL TRIBUNALS ACT 74 OF 1996

(REPUBLIC OF SOUTH AFRICA)

CASE NO.: GP08/2025

In the matter between:

SPECIAL INVESTIGATING UNIT	Applicant
and	
MADUMELANI COMMUNITY PROJECT NPO	First Respondent
MR TSHIMANGADZO MUKUTU	Second Respondent
MR NDOWENI MUKUTU	Third Respondent
TSHILIDZI DAVID NETSWINGANANI	Fourth Respondent

MS THULISILE MAVIS KHOZA	Fifth Respondent
MUDONDE EVENTS AND INVESTMENT (PTY)LTD	Sixth Respondent
RUM MANAGEMENT CONSULTANCY (PTY)LTD	Seventh Respondent
NDHAVA MANAGEMENT CC	Eighth Respondent
TSHISIMBA COLLIN MUKONDOLELI	Nineth Respondent
THWALA FRONT (PTY) LTD	Tenth Respondent
KHARIVHE FULUFELO PROMISE Respondent	Eleventh
DZATA ACCOUNTANTS	Twelfth Respondent
NA MMBOYI	Thirteenth Respondent
TA LUVHA	Fourteenth Respondent
MR MARITO MABUNDA	Fifteenth Respondent
BDH FAMILY TRUST	Sixteenth Respondent
ADV. WILLIAM ELLIAS HUMA	Seventeenth Respondent
INDEPENDENT ELECTORAL COMMISSION	Eighteenth Respondent

THE NATIONAL LOTTERIES COMMISSION Nineteenth Respondent

JUDGMENT

Victor J

> **Corruption Comes in Many Forms. Although there is no single agreed-upon definition of corruption, it is widely accepted that it involves the abuse of entrusted power for private gain by individuals or institutions in the public and private sectors. Corruption has negative effects on all levels of society and risks resulting in resources being unfairly distributed and public funds being misallocated. This can lead to reduced public confidence in government and the justice system. Corruption is also a threat to human rights and undermines the rule of law, democracy, and economic development.**[1]

Introduction

[1] The applicant is the Special Investigating Unit (SIU), and the first respondent is the Madumelani Community Project (Madumelani), a Non-Profit Organisation (NPO) registered with the Department of Social Development under registration number 092-687.

[2] Following upon a Proclamation issued by the Honourable President of South Africa, the SIU undertook the investigation into the affairs of the Madumelani Community Project and, upon completion, seeks to review and set aside the decision of the National Lottery Commission (NLC), 19th respondent, to award funding to the first respondent in

[1] Raoul Wallenberg Institute

the amount of R14 000 000. It also seeks to set aside the contract dated 28 February 2018 concluded between the NLC and the first respondent, which is void ab initio.

[3] The other respondents include various antagonists who resist the relief. The principal participants in the grant funding are Mr Tshimangadzo Mukutu, the second respondent and his brother, Mr Ndoweni Mukutu. The twelfth respondent is Dzata Accountants, an accounting firm that allegedly produced false annual financial statements. Of the remaining 18 respondents, there are several are companies and close corporations.

[4] The SIU seeks a declarator that the third, fourth, sixth, seventh, eighth, ninth, and tenth respondents acted in concert to defraud the NLC. It also seeks an order piercing the corporate veil of the sixth, seventh, eighth, and tenth respondents and holding the directors liable. An order is also sought that the second, third, fourth, sixth, seventh, eighth, ninth, and tenth respondents repay the said sum of R14 000 000 jointly and severally, the one paying the others to be absolved.

[5] The 18th Respondent is the Independent Electoral Commission (IEC), whose main role is to strengthen constitutional democracy. Mr N Mukutu is an employee of the IEC and is also alleged to be a key figure in the fraudulent scheme perpetrated against the NLC.

Issues for determination

[6]

6.1 Delay in instituting review proceedings

6.2 Jurisdiction of the Special Tribunal

6.3 Merits of the Review

6.4 Piercing the corporate veil of the various companies and the close corporation.

The SIU's factual submissions

[7] The Madumelani Community project was registered on 31 August 2011. Its original members did not participate in this NLC grant application, which is the genesis of this application. The grant application was signed by Mr. T Mukutu, the second respondent, who described himself as a director of Madumelani. The signature of Mr. T Makutu was admitted by Mr N Mukutu, his brother, who is the third respondent and the only deponent to the answering affidavit in these proceedings. Mr N Mukutu was represented by counsel at this hearing. Various other people listed themselves as the chairperson, treasurer, secretary, and members of Madumelani. It is noteworthy that these individuals are not listed in the Department of Social Development's database, which requires that every NPO be registered and that member details be recorded. The original members of Madumelani were unaware of this change in membership.

[8] The SIU asserts that Mr T Mukutu obtained a copy of the Constitution of Madumelani under the guise of assisting the organisation in obtaining funding. On 16 February 2018, he applied for funding on behalf of Madumelani. It was granted. The SIU submits that the entire process was fraudulent and that the grant proceeds were used for a purpose other than the construction of a cultural village. It can be inferred from the SIU's papers that the Mukutu brothers were the main antagonists pushing this alleged fraudulent scheme forward.

[9] The SIU details some 6 fraudulent misrepresentations made to the NLC. These include:

> 9.1 The founders and real members of Madumelani did not know Mr T Mukutu. He signed himself as a director of Madumelani, and that was false. There were various affidavits confirming this falsity. The investigation showed that the original members of the NPO were unaware of the funding application and of the unlawful and fraudulent activities that followed. It was confirmed that two men visited the

project before 2018, requested the constitution, and stated that they could source funding. The constitution was handed over to them on that basis. The members of Madumelani are unaware of the grant funding document. They never received funding.

9.2 The second misrepresentation is that the name of Ms Siguca appears on the application form, and she does not know the Mukutu brothers. She deposed to an affidavit confirming that she is not a member of Madumelani and has never heard of it. She denies attesting to an affidavit at the Cato Manor police station for the purpose of the grant application to the NLC.

9.3 The third misrepresentation is that of Mr Luthuli who is listed as the secretary of Madumelani. He confirms that he is not a member, has never heard of it, knows nothing about the funding application, nor the names on the form. He knows Ms Siguca, with whom he worked at Cato Manor, and he never attended the Cato Manor police station to sign any funding request.

9.4 The fourth misrepresentation is the listing of Mr Lalela as the chairperson of Madumelani on the application form. He does not know Mr T Masuku, is unaware of the application, and did not append his signature to the application form or to the annual financial statements prepared by DZATA Accountants.

9.5 The fifth misrepresentation is that of the financial statements, which purport to reflect the affairs of Madumelani, stating that there are assets of R200 000 and that the revenue in 2016 was R1120 000 and in 2017 the sum of R102.

9.6 The sixth misrepresentation related to the purpose of the funding. It was to build a cultural village. But the cultural village had already been constructed. It was

confirmed that the village was established in 2015, as evidenced by a R300 000 grant for the construction of the five rondavels.

[10] The SIU asserts that Mr T and N Mukutu were the masterminds of the fraudulent scheme and that they intentionally designed it. These misrepresentations resulted in the NLC's grant of R14 million. The funds were deposited into a newly opened bank account by Mr N Makutu and maintained by his brother, Mr T Mukutu. Others were paid to open a bank account. Mr. N Mukutu is the deponent in these proceedings.

[11] Once the grant funds were deposited into the recently opened bank account, amounts were immediately transferred into accounts held by companies associated with the respondents, including R3,000,000 payment into a trust in respect of which Advocate Huma, a former Board member of the NLC, was a trustee. The sum of R7 489 000.00 was paid to Mr N Mukutu via some companies that he controlled.

The version of the 3rd, 6th, and 7th respondents.

[12] The 7th respondent has been deregistered. The argument at the hearing pertained only to the 3rd and 6th respondents. (the respondents)

[13] Mr Makutu states that the 7th respondent was deregistered on 7 February 2025 due to the SIU's intervention in its banking relationship. The Bank then closed the account. He transferred all the business of the 7th respondent to the 6th respondent, Mudonde Events and Investment (Pty) Ltd. (Mudonde). His affidavit is in support of the company Mudonde as well.

[14] Mr N Mukutu complains that the SIU did not interview him or his brother Mr T Mukutu. If it had done so, it would have taken a very different view of the case. He denies hijacking Madumelani. He states that the respondents developed the cultural village and that the grant funds were used for that purpose. He concedes that there were some existing

buildings on the site. He presented a series of photographs as proof of the development. He also states that the NLC received a report from a quantity surveyor confirming that the project was completed.

[15] Mr N Mukutu also states that he has very little knowledge of the facts as set out in the founding affidavit, as he was not fully involved. He assisted in opening the bank account because it was a practical option. The Madumelani members were not near the bank on that day.

[16] He explains that the services were rendered by RUM Management Consultancy (Pty) Ltd on behalf of Madumelani, and such an arrangement is in the normal course of business. He states that his friend, Mr Mukondeleli, advised on the extension of the existing cultural village. He was shown draft drawings of the project, and it was Mr Mukondeleli who advised him to prepare a funding proposal. He has experience in this field, having been involved in multiple funding applications. He attended a virtual meeting and states that members of the Madumelani were present, but he can't remember their names.

[17] The prevailing rate for project management fees is between 6% and 10%, and RUM charged this rate for its oversight of the project. He prepared a highly detailed service-level agreement. He was advised that Madumelani agreed. He prepared the funding proposal to raise capital.

[18] He also felt responsible for RUM's contractual obligations to service providers and therefore assisted in raising capital. He appointed his brother, Mr T Makutu, to act as project manager. He was not involved in preparing the application and was unaware of its submission date to the NLC. He appears to believe that Mr Mukondeleli, together with his brother, would have attended to all necessary tasks, as his brother was the project manager.

[19] He submits that the delay in bringing this review application has been excessive. If some leeway is required, the calculation should be based on March 2019, a year after the funding was granted. He also notes the non-joinder of certain of the decision-makers who approved the grant. He notes that because it was a proactive funding initiative, the NLC's usual administrative process was not involved in the decision; instead, decision-makers from another section were. He is also concerned about his employer, the IEC, being joined as a defendant, as the allegations are damaging to his reputation.

[20] He explained that companies RUM and Mudonde were established in 2014. Mudondo was in the business of organising events, including music festivals, and RUM was in the business of consulting, preparing plans, managing projects, and acquiring funding for clients. This process is what happened in this case. He contends that after RUM's bank account was closed, all the business was transferred to Mudonde.

[21] The respondents contend that the remaining material aspects of the application for a legality review are fatal to the grant of this application. A quantity surveyor's report assessing the development's performance indicates that the project was completed in May 2019. The respondents contend that the non-joinder of the quantity surveyors is fatal. The respondents also criticise the SIU for not joining those members of the NLC who were on the proactive committee and who considered the funding application. He contends that the committee members have a direct and substantial interest in the matter because they are independent of the NLC.

[22] In the alternative, the respondents argue that the allegations of fraud arising during the investigation cannot address the events surrounding the actual application for grant funding. So, the SIU evidence is circumstantial. The respondents argue that the SIU cannot dispute the factual evidence adduced by Mr N Makutu or his brother, Mr T Mukutu. The respondents contend that their evidence is not far-fetched or implausible. The allegation

that the application was a scam and that the NPO was hijacked is inadequate to prove any unlawful scheme.

[23] In response, the SIU clarified that the proactive committee is part of the NLC and, therefore, there is no need to join them. Mr. Mukondoleli's confirmatory affidavit only confirms that he took photographs and introduced Mr. Jacob Ramuhashi to Mr. N Mukutu. His confirmatory affidavit does not touch on the merits of the case.

[24] The SIU submits that it is inconceivable that the Mukutu brothers were unaware of Madumelani's business. The SIU notes that interviews with the two brothers, Mukutu, were requested on 10 and 21 June 2024, but no response was received. Hence, the allegation that he and his brother were not interviewed is false. The SIU also submits that Mr N Mukutu's claim of not having played a role in the process, other than opening a bank account, is false. The SIU points out that he received R7 489 000.00 through his companies. Moreover, the fact that Mr T Mukutu has neither defended the action nor filed an affidavit; whatever is said through Mr. N Mukutu is therefore hearsay.

[25] The SIU explains that there was no delay in launching this application. Investigations take time from when the State President issues the Proclamation until completion. Investigations are ongoing. The SIU only interviewed original members of Madumelani on 11 and 24 April 2024, Ms Siguca on 13 November 2024, and Mr Luthuli on 6 November 2024. The application was launched in March 2025.

Legal framework

[26] The SIU was established in terms of section 2(1)(a) (i) of the Special Investigating Units and Special Tribunals Act No. 74 of 1996. (the SIU Act). On 6 November 2020, the SIU was mandated by the President of South Africa, under Proclamation 32 of 2020, published in Government Gazette 43885, to conduct investigations into maladministration relating to the affairs of the National Lotteries Commission (NLC) and the respondents.

[27] The SIU has wide powers in terms of section 2(2) of the SIU Act to institute proceedings and seek relief after being authorised by the Proclamation to investigate irregularities and corruption, and serious maladministration relating to the administration and affairs of any state institution, which includes the NLC, and any conduct with the potential to seriously harm the interests of the NLC, including the public at large.

[28] The SIU, as authorised, is also empowered to investigate improper or unlawful conduct by employees of any State institution, the unlawful appropriation or expenditure of public money or property and any offences referred to in part 1 to 4 or sections 17, 20, or 21 (insofar as it relates to the aforementioned offences) of chapter 2 of the Prevention and Combatting Corrupt Activities Act, 2004, (POCA). These powers are authorised in connection with the affairs of any State institution and any unlawful or improper conduct by any person that has caused or may cause serious harm to the interests of the public or any category thereof.

[29] The Special Tribunal's jurisdiction to make an order under s 172 of the Constitution has been challenged, warranting an analysis of the legal framework.

The Powers and functions of Special Tribunal

> 8. (1) A Special Tribunal shall be independent and impartial and perform its functions without fear, favour or prejudice and subject only to the Constitution and the law.
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> (2) A Special Tribunal shall have jurisdiction to adjudicate upon any civil dispute brought before it by a Special Investigating Unit or any interested party as defined by the regulations, emanating from the investigation by such Special Investigating Unit, including the power to-
>
> (a) issue suspension orders, interlocutory orders or interdicts on application by such Unit or party; and
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> (b) make any order which it deems appropriate so as to give effect to any ruling or decision given or made by it.

Underlining for emphasis

[30] It is trite that a purposive approach must be applied when interpreting any legislation. The powers of the Special Tribunal derive from the SIU Act. In particular, the words in s 8(2) (b) provide that the Special Tribunal may:

> "make any order which it deems appropriate so as to give effect to any ruling or decision given or made by it."

[31] A purposive canon of construction is consistent with a contextual approach to statutory interpretation. It is now trite that courts must properly contextualise statutory provisions when ascribing meaning to the words used therein. While maintaining that words should generally be given their ordinary grammatical meaning, the Constitutional Court has made clear that a contextual and purposive approach must be applied to statutory interpretation.

[32] Mogoeng CJ stated the *Independent Institute of Education*:

> "Courts must have due regard to the context in which the words appear, even where the words to be construed are clear and unambiguous.
>
> This court has taken a broad approach to contextualising legislative provisions, having regard to both the internal and external context in statutory interpretation. A contextual approach requires that legislative provisions are interpreted in light of the text of the legislation as a whole (internal context). This court has also recognised that context includes, amongst others, the mischief which the legislation aims to address, the social and historical background of the legislation, and, most pertinently for the purposes of this case, other legislation (external context). That a contextual approach mandates consideration of other legislation is clearly demonstrated in Shaik. In Shaik this court considered context to be all-important in the interpretative exercise. The context to which the court had regard included the well-established rules of criminal procedure and evidence and, in particular, the provisions of the Criminal Procedure Act.' [2]

[33] It is also clear that in terms of s 4 of the SIU Act:

> Functions of the Special Investigating Unit

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[2] *Independent Institute of Education (Pty) Ltd v KwaZulu-Natal Law Society and Others* 2020 (2) SA 325 (CC) paras 41-42

4. (I) The functions of a Special Investigating Unit are, within the framework of its terms of reference as set out in the proclamation referred to in section 2(1) ·

(a) to investigate all allegations concerning the matter.

(b) to collect evidence regarding acts or omissions which are relevant to its investigation and, <u>if applicable, to institute proceedings in a Special Tribunal</u>

(c) to <u>present evidence in proceedings brought before a Special Tribunal.</u>

Underlining for emphasis

[34] The preamble of the SIU Act is clearly aimed at rooting out corruption. This context cannot be overlooked when determining whether the Special Tribunal has the power to make just and equitable orders under s 172 of the Constitution.

> "To provide for the establishment of Special investigating Units for the purpose of investigating serious malpractices or maladministration in connection with the administration of State institutions, State assets and public money as well as any conduct which may seriously harm the interests of the public, and for the establishment of Special Tribunals so as to adjudicate upon civil matters emanating from investigations by Special Investigating Units; and to provide for matters incidental thereto."

[35] It follows that it is necessary to consider the entire context and purpose of the SIU Act, and there can be no doubt that whatever powers the Legislature had in mind when promulgating the SIU Act, the Special Tribunal was given the power to make meaningful orders when adjudicating matters before it.

[36] Matojane J in *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) had no difficulty in finding that the Special Tribunal could make orders in terms of 172(1)(*a*) of the Constitution in declaring contracts invalid due to non-compliance with s 217 of the Constitution. He described the discretion under s 172(1)(b) as not mechanical or circumscribed by rigid rules.

"[8] That discretion is not mechanical, nor is it circumscribed by rigid rules. As explained in *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd* (*Trencon*),[3] it is a discretion in the true sense, requiring a value-laden judgment informed by all the relevant facts and by constitutional principle. The court is enjoined to fashion a remedy that is just and equitable in the particular circumstances, striking a careful balance between correcting constitutional invalidity, vindicating the rule of law, and avoiding outcomes that would themselves be unjust.

[9] In determining what relief was just and equitable, the Tribunal treated the matter as one of legal principle and did not engage with the extensive witness statements and expert reports filed by the applicants. It ordered that the applicants be divested of all profits derived from the unlawful contracts and limited their recovery to reasonable expenses, to be determined by way of a debatement of accounts."

[37] It follows that despite the parties in *Caledon* agreeing to the Special Tribunal having s172 (1) (a) powers, the concurrence by the entire bench is evident. If the SCA were of the view that the Special Tribunal's powers were limited, it would have said so and not accepted the agreement between the parties on the jurisdictional powers of the Special Tribunal. It follows, therefore, that the Special Tribunal has the necessary powers to order repayment or make any other order that is appropriate. S 8(2) of the SIU Act is the statutory foundation for the Special Tribunal to make any order it deems appropriate to give effect to any ruling or decision made.

Delay in launching this review application

[38] The respondents' case is that the SIU has delayed in instituting this legality review. The importance of not delaying matters derives from the principles of the Rule of Law, under which certainty is paramount.

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[3] *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another* [2015] ZACC 22, 2015 (5) SA 245 (CC); 2015 (10) BCLR 1199 (CC).

[39] The respondents concede that the Special Tribunal has a discretion to condone delay, but they submit that the delay in this case has been inordinate. The funding was granted in 2018, and these proceedings were instituted in 2025. The six-year delay is fatal.

[40] In the case of the *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd t/a Eye & Lazer Institute Member of the Executive Council for Health, Eastern Cape and Another v Kirland Investments (Pty) Limited t/a Eye & Lazer Institute*, Cameron J stated that:

> "(T)here is a higher duty on the state to respect the law, to fulfil procedural requirements and to tread respectfully when dealing with rights. Government is not an indigent or bewildered litigant, adrift on a sea of litigious uncertainty, to whom the courts must extend a procedure-circumventing lifeline."[4]

The respondents submit that the absence of a proper explanation of the SIU's delay in launching the application is fatal.

[41] The respondents urge the Special Tribunal to exercise caution. The State has all the resources at its disposal to expedite an investigation. Mabindla-Boqwana AJA opined in the case of *Engineered System Solutions*[5] that:

> "Where the delay is found to be unreasonable, there must be a basis for a court to exercise its broad discretion to overlook it. This must be gathered from the available facts. " [6]

[42] In evaluating delay, several factors must be considered. The first is —

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[4] *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd t/a Eye & Lazer Institute* 2014 (3) SA 481 (CC) A para 82.
[5] *Special Investigating Unit And Another v Engineered Systems Solutions (Pty) Ltd* 2022 (5) Sa 416 (Sca)
[6] *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd* 2019 (4) SA 331 (CC) (2019 (6) BCLR 661; [2019] ZACC 15)

'potential prejudice to affected parties as well as the possible consequences of setting aside the impugned decision. The potential prejudice to affected parties and the consequences of declaring conduct unlawful may, in certain circumstances, be ameliorated by the court's power to grant a just and equitable remedy, and this ought to be taken into account.'

The second factor to be considered is the nature of the impugned decision.

[43] The jurisprudential principles relating to delay are clear: the merits of the decision sought to be set aside must be considered, Mabindla-Boqwana AJA. She referred to the case of *South African National Roads Agency Ltd v City of Cape Town*, a judgment by Navsa JA which highlighted that the merits of the impugned decision are a critical factor in determining whether it is in the interests of justice to condone the delay. That would have to include a consideration of whether the non-compliance with statutory prescripts was egregious." [7]

[44] Mabindla-Boqwana AJA went on to explain that the Constitutional Court in *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd* endorsed the test followed by the SCA in Gqwetha and later approved by the Constitutional Court in Khumalo, that in assessing delay, the first question to be determined is the reasonableness of the delay. If the delay is found to be unreasonable, the next question is whether it should nevertheless be overlooked in the interests of justice.

"The reasonableness of the delay is assessed by considering the explanation for the delay, which must cover the entire period of the delay:

'Where the delay can be explained and justified, then it is reasonable, and the merits of the review can be considered. . . . But . . . where there is no explanation for the delay, the delay will necessarily be unreasonable.'

[30] Where the delay is found to be unreasonable, there must be a basis for a court to exercise its broad discretion to overlook it. This must be gathered from the available facts. In this evaluation a number of factors must be taken into account. The first is —

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[7] *South African National Roads Agency Ltd v Cape Town City* 2017 (1) SA 468 (SCA) ([2016] 4 All SA 332; [2016] ZASCA 122) (Sanral).

'potential prejudice to affected parties as well as the possible consequences of setting aside the impugned decision. The potential prejudice to affected parties and the consequences of declaring conduct unlawful may in certain circumstances be ameliorated by the court's power to grant a just and equitable remedy and this ought to be taken into account.' [8]

Footnotes omitted

[45] Mabindla-Boqwana AJA went on to point out that

"The Constitutional Court in *Gijima* [9] made it clear that even if there is no basis to overlook the unreasonable delay, the court is obliged by virtue of the provisions of s 172(1)*(a)* of the Constitution to declare invalid any law or conduct that is inconsistent with the Constitution, to the extent of its invalidity.[10] The Constitutional Court in *ASLA* held that this applies when the unlawfulness is clear and undisputed.[11] It further went on to state that the *Gijima* principle should 'be interpreted narrowly and restrictively so that the valuable rationale behind the rules of delay is not undermined'.[12] At the same time, it should not be ignored, but applied where there is an indisputable and clear inconsistency with the Constitution."

[46] In this matter, I find that the scheme established by the two brothers, Mukutu, is clearly fraudulent. Mr N Mukutu's lack of knowledge cannot be explained in any plausible or credible manner by him. The raising of R15million is no simple matter. Mr T Mukutu's claim that he could not afford legal representation is implausible. He is a project manager responsible for managing millions of Rand. He could have drafted his own affidavit and filed his opposition. He could have, of his own accord, sought an interview with the SIU investigator. He could have produced documentation demonstrating the project's authenticity. Instead, he sought to remain silent and ride on his brother's coattails, rather than deposing to an affidavit and opposing the relief sought.

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[8] *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd* 2019 (4) SA 331 (CC)
[9] *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd* 2018 (2) SA 23 (CC)
[10] *ASLA* para 63 referring to *Gijima* para 52.
[11] *ASLA* para 66.
[12] *ASLA* para 71.

[47] Whilst there is some merit in the respondents' assertion that no full explanation has been provided for the delay, the SIU has issued a terse response stating that it was investigating the case and that the process takes time. The question is, should this delay be overlooked in the light of the merits of this review? Consideration must be given to the merits of the case put up by the SIU, whether the delay caused prejudice to the respondent, and whether overlooking the delay undermines the public interest. When considering the delay, it must be balanced with what Navsa J described as the egregiousness of the conduct. In this case, the woeful failure of the relevant respondents to mount a credible defence leads to the ineluctable conclusion that the scheme was fraudulent, and thus the egregiousness of the conduct must overcome the delay difficulties.

[48] A lot of planning and intention went into executing the scheme from obtaining a copy of the constitution of Madumelani, to appointing fake office bearers, to inserting fraudulent signatures to the grant application, opening up a bank account and immediately paying out millions of rand, and as stated, ultimately Mr N Mukutu receiving the sum of R7 489 000.00, almost 50% of the grant amount. This leaves no uncertainty or doubt that this scheme is consistent with a pattern of corruption and thus falls in into the category foreshadowed in the case of *Gijima*.

[49] The available facts and context are clear. South Africa is in the midst of a catastrophic corruption epidemic. Numerous investigations must be conducted by the SIU. The caseloads are overwhelming. In my view, such facts as having been submitted by the SIU cannot be rejected. Of course, there is a higher duty on the State to respect the law and to move with the requisite expedition. But that is not the end of the enquiry.

Disputes of fact

[50] The respondent submits that the versions of Mr Makutu and his brother do not contain inherent improbabilities, and their conduct should not be discredited. Counsel submitted that their versions are not palpably implausible or far-fetched, or clearly

untenable, so as to warrant their rejection on paper. It was submitted that there was no obligation on them to obtain affidavits from Mr. Mukondoleli and others to support their defence. The evidence presented by the respondents did not undermine the clear paper trail and affidavits from witnesses presented by the SIU. The two brothers Mukutu did not approach their defence with any vigour. It would have been a simple matter for the brothers to invite the SIU investigator to a site visit to explain the photographs and point out the work done, thereby justifying the expenditure of R15 million. It is trite that the onus rests on the SIU, but when the principal defence of the respondents was that the buildings had been built, it required an easy step to justify a credible and plausible defence.

[51] Accordingly, I find that the delay is not an impediment to granting the relief. The questions relating to the disputes of fact are not of such a nature to overcome the objective, undisputed facts.

Piercing the Corporate Veil

[52] The SIU has sought an order lifting the corporate veil of the companies and the other juristic entities that may be part of the fraudulent scheme. When a corporate veil is pierced, a court strips the corporation of its limited liability shield. Section 20(9) of the Companies Act No 71 of 2008 (the Act) s 20(9) provides as follows:

> " 20 (9) If, on application by an interested person or in any proceedings in which a company is involved, a court finds that the incorporation of the company, any use of the company, or any act by or on behalf of the company, constitutes an unconscionable abuse of the juristic personality of the company as a separate entity, the court may—
>
> (a) declare that the company is to be deemed not to be a juristic person in respect of any right, obligation or liability of the company or of a shareholder of the company or, in the case of a non-profit company, a member of the company, or of another person specified in the declaration; and
>
> (b) make any further order the court considers appropriate to give effect to a declaration contemplated in paragraph (a).

[53] Clearly, where there is unconscionable abuse of a juristic entity, its corporate identity may be disregarded. In the case of *Knoop NO and Others v Birkenstock Properties (Pty) Ltd and Others*, no 7095/2008 Nxusani AJ stated:

> "The corporate veil may be pierced where there is proof of fraud of dishonesty or other improper conduct in the establishment or the use of the company or the conduct of its affairs and in this regard it may be convenient to consider whether the transactions complained of were part of a "device", "stratagem", "cloak" or a "sham". The shareholders can be held personally liable. This happens mostly when shareholders are involved in fraudulent activity, as found in *Cape Pacific Ltd v Lubner Controlling Investments (Pty) Ltd and Others* [13]; or if shareholders are improperly using the separate legal personality, as found in *Robinson v Randfontein Estates Gold Mining Co Ltd* [14]. See also *The Shipping Corporation of India Ltd v Evdomon Corporation and Another* [15].

[54] The courts have not applied this punitive step lightly as they try to uphold the separate legal personality. However, when the conduct is of such a nature to justify such a step, there is no hesitation to impose such a ruling. The court in *Knoop NO stated* at para 14, that:

> "When there is fraud, dishonesty or some other improper conduct, policy dictates that the court engages in a balancing exercise. The court considers the circumstances and facts of each case to determine whether, in the appropriate case, it is proper to disregard the corporate personality and apportion liability where it belongs' (see also the *Cape Pacific Ltd* case at paras 31 and 32)."

[55] S 77 of the Act also imposes an obligation on directors who knowingly engage in fraudulent activity to be held liable to the company for any damages or losses resulting from a fraudulent act, presenting false or misleading financial statements or prospectuses. In terms of s 1 of the Act, 'knows' means 'that the person either –

(*a*) had actual knowledge of the matter; or

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13 1995 (4) SA 790 (A)
14 1921 AD 168
15 1994 (1) SA 550 (A) at paras 43 to 44

(*b*) was in a position in which the person reasonably ought to have —

(i) had actual knowledge.

(ii) investigated the matter to an extent that would have provided the person with actual knowledge; or

(iii) taken other measures which, if taken, would reasonably be expected to have provided the person with actual knowledge of the matter); and

failed to vote against a prohibited act involving, for example, share issues or the approval of false financial statements.

[56] This is a clear case in which the directors of Mudonde and RUM knew of the fraud and used the companies as tools to perpetuate it; therefore, the directors must be held liable. See also ex parte *Gore*[16]

[57] As opined by Ms N Schoeman

"The courts have traditionally followed a conservative approach in piercing the corporate veil (based on the common law) – even more so in the case of the statutory provision contained in the Close Corporations Act. This is despite there being no inherent separation between management and ownership, which means piercing the veil should theoretically have been applied less conservatively by the courts. Under the new Companies Act, the wording of s 20 supports the conservative approach followed under the common-law concept of piercing the corporate veil.

In addition, in my opinion, the use of the word 'unconscionable' highlights the court's conservative approach as opposed to the common law position, which was applied conservatively. The distinction, in my view, would now be similar to that of negligence versus gross negligence."[17]

[58] In this case, the facts are such that the conduct of the antagonists is unconscionable, which justifies the piercing of the corporate veil. Money earmarked for a cultural village, a pride and joy of any community, has been lost to a fraudulent scheme.

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[16] *Ex Parte Gore and Others NNO* 2013 (3) SA 382 (WCC)

[17] Piercing the corporate veil under the New Companies Act June 1st, 2012. Is s 20(9) read with s 218 a codification of the common law concept or is it further reaching? By Nicolene Schoeman De Rebus June 2012

Conclusion

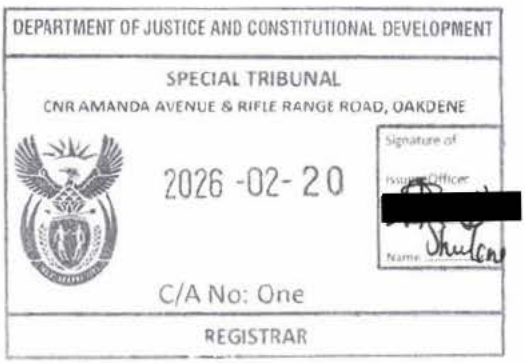
[59] The version of the two respondents that ultimately instructed counsel to argue this matter failed to attach any meaningful affidavits addressing the merits of the fraudulent scheme as described by the SIU. This woeful lack of confirmatory affidavits, in particular from T Mukutu, to describe how people, such as Ms Siguca, Mr Lethuli, and others, were described as office bearers and their signatures falsified. Further, the new members were added to the management of Madumelani, but their names were not reflected in the Social Development database. No resolution was submitted by Mr T Nkutu to reflect the change of membership. It is overwhelmingly probable that the original members knew nothing of this scheme. There are no affidavits from the Chair of the Cultural Village in support of the respondents 'version. The respondents' defence is essentially based on hearsay as Mr N Mukutu allegedly knew very little about anything relating to the project. Mr. N Mukutu's explanation is not credible. In the circumstances, the SIU has made out a proper case for the relief sought.

Order

The following order is made:

1. The decision of the National Lotteries Commission of 22 February 2018 to award funding to the first respondent in the amount of R14,000,000 is hereby declared invalid, unlawful, and is reviewed and set aside.
2. The contract between the National Lotteries Commission and the first respondent, Madumelani NPO, dated 28 February 2018, is hereby declared invalid, unlawful, and is set aside as void ab initio.
3. It is hereby declared that the 2nd, 3rd, 4th, 6th, 7th, 8th, 9th, and 10th respondents acted in concert and with the intention to defraud the National Lotteries Commission.
4. It is hereby declared that the 6th, 7th, 8th, and 10th respondents are hereby deemed not to be juristic persons in respect of any right, obligation, or liability of these companies to the National Lotteries Commission.

5. The directors are held personally liable for the repayment of the amount of R14,000,000.
6. The 2nd, 3rd, 4th, 6th, 7th, 8th, 9th, and 10th respondents are ordered to repay jointly and severally to the applicant, the amount of R14,000,000, with the one party paying the other to be absolved.
7. The respondents are ordered to pay the costs of this application, including the cost of one counsel jointly and severally, one party paying the others to be absolved.



[redacted]

JUDGE M VICTOR

PRESIDENT OF THE SPECIAL TRIBUNAL

Appearances:

For the applicant: Adv I Hlalethoa

Instructed by: Ramashu Mashile Twala Inc

For the Third & Sixth Respondents: Adv C.A Kriel

Instructed by: Machobane Kriel Attorneys

Date of hearing: 26 September 2025

Date of judgment: 20 February 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 14H00.