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)

HELD VIRTUALLY

CASE NO: GP07/2025

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED: YES

13/07/2026

In the matter between:

SPECIAL INVESTIGATING UNIT Applicant

and

MSHANDUKANI FOUNDATION NPO First Respondent

PRETTY SHANDUKANI	Second Respondent
MASHUDU SHANDUKANI	Third Respondent
MSHANDUKANI HOLDINGS (PTY) LTD	Fourth Respondent
TAKALANI ISRAEL MULANDANA	Fifth Respondent
THAMBATSHIRA MARIA KHAMELI	Sixth Respondent
PRELDON CONSTRUCTION CC	Seventh Respondent
PHILLEMON LETWABA	Eighth Respondent
IRONBRIDGE TRAVELLING AGENCY AND EVENTS (PTY) LTD	Ninth Respondent
REBOTILE MALOMANE	Tenth Respondent
NATIONAL LOTTERIES COMMISSION	Eleventh Respondent

Summary: *Lotteries Act 57 of 1997— Proclamation 32/2020— Preliminary objections— Point in limine— Disputes of Fact— Lack of Authority— Condonation— Fraudulent Misrepresentation— Companies Act 71 of 2008— Piercing of the Corporate Veil.*

JUDGMENT

MASHILE J

Introduction

[1] Following an application for grant funding by the First Respondent ("the Foundation") to the Eleventh Respondent ("the National Lotteries Commission"), the parties concluded a grant agreement on 12 March 2019. In terms of this agreement, the Foundation undertook to drill and equip boreholes in the Eastern Cape Province. The total grant amount approved for the project was R4,000,000.00. Pursuant to the agreement, the National Lotteries Commission transferred the full grant amount into the Foundation's First National Bank account on 20 March 2019. Shortly after receipt of the funds, the Foundation disbursed portions thereof to various entities, including the Fourth Respondent ("Mshandukani Holdings") and the Seventh Respondent ("Preldon Construction").

[2] Fundamentally, the Applicant ("SIU") contends that the application submitted contained material misrepresentations which induced it to conclude the grant agreement with the Foundation. It is further alleged that the funds disbursed by the Foundation to Preldon Construction were not utilised for their intended purpose. The funds were never meant for the construction of boreholes, as the boreholes claimed to have been installed were instead constructed in or about 2016. The R4 000 000.00 allocated to the Foundation was allegedly diverted by Preldon Construction and the Foundation to individuals employed by the National Lotteries Commission or to entities under their control. On this basis, the SIU asserts that the grant agreement is voidable at its instance on the grounds that it was induced by fraud. Alternatively, the SIU contends that the agreement is void due to a material breach by the Foundation.

[3] Accordingly, the SIU bases its case on allegations of fraudulent misrepresentation and/or breach of the grant agreement. Against this backdrop, the SIU has instituted this application seeking the following relief against some of the respondents:

3.1 Declaring that the decision of the National Lotteries Commission, taken on 8 March 2019 under Project M12663 and communicated to the Foundation and Ms Mshandukani on 12 March 2019, to allocate a total grant of R4,000,000.00 to the Foundation, is unlawful, invalid, and is reviewed and set aside;

3.2 Declaring that the contract concluded between the Foundation and the National Lotteries Commission, namely the Grant Agreement, is invalid and void *ab initio*;

3.3 Directing that the corporate veil of the Foundation is pierced and, for purposes of this order, the Foundation's separate legal personality is disregarded;

3.4 Directing the Foundation, Ms Mshandukani, the Fifth Respondent ("Mulandana"), the Sixth Respondent ("Khameli"), and Preldon Construction to pay, jointly and severally, the one paying the others to be absolved, an amount of R4,000,000.00 to the national Lotteries Commission;

3.5 Directing that the aforesaid amount shall bear interest at the rate of 10.75% per annum, calculated from the date of institution of this application to date of payment;

3.6 Alternatively, declaring that the Foundation is in breach of the Grant Agreement concluded on 12 March 2019 between the national Lotteries Commission and the Foundation;

3.7 Terminating the Grant Agreement concluded on 12 March 2019 between the NATIONAL LOTTERIES COMMISSION and the Foundation;

3.8 Directing the Foundation, Ms Shandukani, Mulandana, Khameli, and Preldon Construction to repay, jointly and severally, the one paying the others to be absolved, an amount of R4 000 000.00 to the NATIONAL LOTTERIES COMMISSION.

[4] Although the National Lotteries Commission is cited as the Eleventh Respondent, it does not oppose the application. Instead, it has filed an answering affidavit supporting all the relief sought by the SIU. There is no suggestion or evidence of opposition of the relief by the remaining respondents other than the Foundation, Ms Shandukani, Mshandukani Holdings, Mulandana, Khameli and Preldon Construction ("the Foundation Respondents"). They have raised several *points in limine*, which may be summarised as follows:

4.1 Proclamation 32 of 2020, the details of which will be addressed later in this judgment, authorises the Special Investigating Unit ("SIU") to investigate the affairs of the National Lotteries Commission, including, inter alia, instances of serious maladministration; improper or unlawful conduct by employees or officials of the National Lotteries Commission; the unlawful appropriation or expenditure of public funds; unlawful, irregular or unapproved acquisitive acts affecting state property; intentional or negligent loss of public money; and offences contemplated in the Prevention and Combating of Corrupt Activities Act, 2004 ("POCA"), as well as any other unlawful or improper conduct that has caused or may cause serious prejudice to the interests of the public;

4.2 The Foundation Respondents contend that there exist material disputes of fact, particularly concerning the timing of the drilling and equipping of the boreholes. They submit that these disputes are substantial and cannot properly be resolved on the papers;

4.3 A further objection is directed at the SIU's supplementary founding affidavit. The Foundation Respondents argue that, from a perusal thereof, it is apparent that the SIU seeks to introduce extracts of evidence derived from three separate applications, namely GP17A/2025, GP20/2025, and GP21/2025, which have not yet been adjudicated. They contend that such excerpts are taken out of context and can only properly be evaluated within the full evidentiary matrix of those proceedings. Accordingly, they argue that the

SIU ought not to be permitted to file the supplementary affidavit. In addition, they submit that this material was at all relevant times within the SIU's knowledge and should have been included in the founding affidavit;

4.4 In relation to the alleged fraudulent misrepresentations, the Foundation Respondents submit that neither the National Lotteries Commission nor the SIU allege that, but for such misrepresentations, the National Lotteries Commission would not have entered into the grant agreement. They contend that the absence of such an allegation is fatal to the SIU's case;

4.5 The deponent to the founding affidavit lacks authority to depose to the founding affidavit.

Points in limine

[5] It is both logical and prudent to first address the preliminary points set out above before considering any other aspects of the matter. This approach is necessary because any one of these points may prove determinative. However, a finding that one or more of the points in limine is dispositive will not preclude this Tribunal from engaging with the merits. To do otherwise may deprive an appellate court of the benefit of this Tribunal's views on those issues, in the event that it becomes necessary. Accordingly, and against this backdrop, I will proceed to consider the merits irrespective of any positive finding on the preliminary points.

Proclamation 32/2020

[6] The essence of the Foundation Respondents' argument is firstly, that the Proclamation only authorises investigations where there is implicated wrongdoing by the National Lotteries Commission itself or its officials, whether through participation, cooperation, or maladministration. Secondly, the SIU's allegations, as pleaded, go no further than asserting that the Foundation defrauded the National Lotteries Commission. Thirdly, external fraud committed against the National Lotteries Commission without any

suggestion of internal complicity or irregularity in the grant process falls outside the scope of the Proclamation.

[7] The Foundation Respondents further contend that the SIU attempts to rely on the fact of the grant application and approval to bring the matter within the Proclamation. However, mere identification of a grant made by a public body is insufficient. There must be some allegation that the process of awarding the grant itself was tainted by irregular approval, failure to follow procedures, collusion, or negligence by the National Lotteries Commission officials. Absent such allegations, they say, the SIU is effectively bootstrapping jurisdiction by linking an ordinary fraud claim to the existence of a public grant.

[8] The Foundation Respondents' narrow construction of the expression "maladministration" in the affairs of the National Lotteries Commission which excludes fraudulent misrepresentations made directly to the National Lotteries Commission that resulted in the National Lotteries Commission losing R4 000 000.00 in grant funding, is misguided. An appropriate interpretation of the Proclamation as a whole, taking into account the language used, the context in which it is employed and the purpose it seeks to achieve, demonstrates that the Proclamation empowers the SIU to investigate unlawful conduct by any person that resulted in the loss of public funds in relation to the investment of monies in the National Lotteries Distribution Fund and the allocation of monies from that Fund to entities not entitled thereto. Any interpretation to the contrary falls to be rejected as inconsistent with the interpretive approach endorsed in *Natal Joint Municipal Pension Fund v Endumeni Municipality* and is devoid of merit.[1]

[9] In any event, the Proclamation confers upon the SIU the authority to investigate, identify, and take appropriate remedial action in relation to any unlawful or irregular

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[1] *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) at para 24.

conduct involving the allocation of funds by the National Lotteries Commission. This encompasses the power to trace the flow of such funds, uncover fraudulent or corrupt schemes, and institute proceedings aimed at recovering misappropriated monies and preventing any further dissipation of assets. The contention advanced by the Foundation Respondents cannot be sustained. Section 4(1)(c) of the Special Investigating Units and Special Tribunals Act 74 of 1996 ("the SIU Act") expressly authorises the SIU to institute proceedings of this nature in circumstances such as the present.

[10] The existence of pending proceedings in the High Court, in which the review and setting aside of the Proclamation are at issue, is of no consequence to the determination of this application and does not justify its suspension. In the absence of an interdict restraining this Tribunal from proceeding with the present matter, as well as other matters involving the National Lotteries Commission, there exists no legal impediment to the continuation of its work. Accordingly, the contention that this Tribunal ought to defer to the High Court proceedings is without merit and is therefore rejected.

Disputes of Fact

[11] The Foundation Respondents contend that the central issue in dispute is whether they drilled and equipped the boreholes after receipt of the R4 000 000.00 from the National Lotteries Commission. I do not agree with that characterisation. Properly understood, the dispute is whether the National Lotteries Commission funded the drilling and equipping of boreholes that had, in fact, already been completed as early as 2016, or at least prior to the timeframe suggested by the Foundation Respondents. In this regard, it is common cause that the SIU acknowledges that Mshandukani Holdings constructed boreholes in the Ngcobo District in the Eastern Cape. However, the critical issue is not whether the boreholes exist, but rather when they were drilled and equipped. That temporal question lies at the heart of the dispute, as it determines whether the National Lotteries Commission

funds were applied to new work or impermissibly used to pay for pre-existing infrastructure.

[12] According to the version advanced by the Foundation Respondents, Mshandukani Holdings and Preldon Construction carried out the drilling of five boreholes during the period 2 to 30 April 2019, and these boreholes were handed over to the end users on 3 May 2019. In contrast, the SIU disputes this timeline and contends that Mshandukani Holdings had already constructed the boreholes in 2016, or at a time earlier than alleged by the Foundation Respondents. In support of its contention, the SIU relies on five affidavits deposed to by individuals who were physically present at the respective schools on a daily basis. Each deponent confirms that the boreholes at their respective schools were drilled in 2016.

[13] Addressing the issue of disputes of fact, the Supreme Court of Appeal in *Wightman v Headfour (Pty) Ltd*[2] had the following to say:

> "[12] Recognising that the truth almost always lies beyond mere linguistic determination the courts have said that an applicant who seeks final relief on motion must in the event of conflict, accept the version set up by his opponent unless the latter's allegations are, in the opinion of the court, not such as to raise a real, genuine or *bona fide* dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers: *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C. See also the analysis by Davis J in *Ripoll-Dausa v Middleton NO* 2005 (3) SA 141 (C) at 151A-153C with which I respectfully agree. (I do not overlook that a reference to evidence in circumstances discussed in the authorities may be appropriate.)"
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> [13] A real, genuine and *bona fide* dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit

[2] *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* [2008] 2 All SA 512 (SCA) at paras 12-13.

> seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied…"

[14] The SIU has secured evidence from five school principals whose schools received boreholes. Their evidence indicates that the boreholes were drilled and installed in 2016, or in any event prior to 2019. This version is corroborated by the Acting District Director of the Chris Hani Department of Education, who confirms that the Department received reports from the relevant schools that the boreholes were drilled in 2016 by Mshandukani Holdings, a company owned by Mr and Ms Shandukani. In these circumstances, Mshandukani Holdings would have been expected to rebut this evidence if it had not been involved in the drilling of the five boreholes during the period 2016 to 2019. Significantly, however, all the Foundation Respondents remain silent on this allegation. In the absence of a direct and substantiated challenge, no real dispute of fact arises.

[15] The Foundation Respondents' failure to meaningfully contest the serious allegations against them cannot be without consequence. First, the allegation that the Grant Application contained fraudulent misrepresentations regarding the true membership of the Foundation is met only with a bald assertion of irrelevance. Such a response is plainly inadequate. An allegation of fraud goes to the very root of the application and cannot

simply be dismissed as immaterial. The absence of a substantive denial must be regarded as significant.

[16] Second, the Respondents' answer to the allegation that the Foundation's Annual Financial Statements were misrepresented is that the issue is "of no consequence." That response again fails to engage with the substance of the allegation. Importantly, there is no clear denial. In law, allegations that are not properly traversed stand to be accepted as undisputed.

[17] Third, it is not denied that once the National Lotteries Commission disbursed the grant funds into the Foundation's bank account, those funds were transferred to private companies owned by Mr and Ms Shandukani. This is a material fact which remains uncontested and raises serious concerns regarding the diversion of public funds.

[18] Fourth, it is further undisputed that Ms Shandukani, through her company Preldon Construction, paid an amount of R500 000.00 to Iron Bridge, a company owned by the wife of Mr Letwaba. At the relevant time, Mr Letwaba served as the Chief Operations Officer of the National Lotteries Commission. The absence of any denial of this payment, when viewed in context, gives rise to a *prima facie* inference of an improper financial relationship.

[19] Taken together, the Foundation Respondents' failure to deny or properly engage with these allegations is telling. Their responses consist largely of evasions and assertions of irrelevance, rather than substantive refutations. In the circumstances, these allegations must be treated as either admitted or, at the very least, insufficiently disputed, with serious legal consequences.

[20] Even if one assumes, in favour of the Foundation Respondents, that the boreholes were indeed drilled and equipped in 2019 as alleged, by Mshandukani Holdings and

Preldon Construction, such conduct would nonetheless constitute a breach of the grant agreement. The agreement expressly requires that all procurement be conducted through transparent processes and further prohibits Foundation members, or their immediate family members, from rendering services funded by the grant, unless prior written approval for a deviation has been obtained from the National Lotteries Commission. Given the transfer of an amount of R500 000.00 by Preldon to Iron bridge the controlled by the wife of Letwaba, the then COO of the Commission, this fell within the scope of the prohibition contemplated in the grant agreement. There is no evidence before this Tribunal Court that any such written approval was sought or granted.

[21] Section 2F of the Lotteries Act further provides that where the Commissioner or any employee of the Commission becomes aware of an actual or perceived conflict of interest, or of any circumstances that may compromise his or her impartiality in the performance of official duties, such person must immediately cease performing those duties. In addition, within seven (7) days of becoming aware of the conflict or circumstances, the individual is required to disclose the matter to the Commissioner or, where applicable, to the Board. This was clearly not done. In the result, the Foundation Respondents' argument concerning disputes of fact must fail.

Supplementary Founding Affidavit

[22] The general rule in motion proceedings is that only three sets of affidavits are permitted, namely the founding affidavit, the answering affidavit, and the replying affidavit. However, this rule is not inflexible. A Court retains a discretion to admit further affidavits where the interests of justice so require. In exercising this discretion, the court will consider, among other factors, the potential prejudice to the other parties, the reasons for the additional affidavit, and the overall circumstances of the case. Accordingly, the admission of further affidavits is determined by reference to the surrounding circumstances of each case.

[23] The Foundation Respondents object to the admission of the extracts of evidence from the three cases relied upon by the SIU in its supplementary affidavit on the basis that their inclusion would occasion prejudice to them. The Foundation Respondents contend that the SIU was already in possession of this evidence at the time it deposed to its founding affidavit, and accordingly, raises the question why the SIU failed to incorporate it then. In response, the SIU adopts the position that the Foundation Respondents will not suffer any prejudice as a result of the inclusion of the information contained in the supplementary founding affidavit.

[24] The SIU contends that the Foundation Respondents had sufficient opportunity to consider and respond to the allegations contained in the supplementary affidavit. The Foundation Respondents' assertion that the evidence ought to have been incorporated into the founding affidavit is misleading. It is evident that the SIU could not reasonably have been aware of this evidence at the time the application was launched. This is borne out by the sequence of case numbers: the present application is designated GP07/2025, whereas the related matters carry case numbers commencing with GP17, GP20, and GP21/2025. This sequence clearly indicates that those proceedings were instituted subsequent to the present application, and thus the evidence arising therefrom could not have been included in the founding affidavit.

[25] Mindful of the trite principle that motion proceedings ordinarily permit only three sets of affidavits, I am nevertheless satisfied that the SIU has established sufficient grounds for this Tribunal to depart from that general rule. To the extent that the Foundation Respondents may suffer any prejudice, such prejudice is, in my view, self-inflicted, as they were afforded ample opportunity to respond to the allegations in question. There is accordingly no merit to the Foundation Respondents' objection, and it is rejected.

Fraudulent Misrepresentations

[26] The Foundation Respondents contend that the SIU's reliance on fraudulent misrepresentations is incomplete, as it fails to allege that such misrepresentations induced the National Lotteries Commission to conclude the agreement. In response, the SIU maintains that it is not necessary for the National Lotteries Commission to expressly allege inducement by fraud. According to the SIU, the objective facts placed before the Court sufficiently demonstrate the existence of fraudulent misrepresentations.

[27] To succeed with a claim based on fraudulent misrepresentation, the SIU is required to allege and establish the following:

27.1 A false representation of a material fact, which may be made by way of statement or conduct;

27.2 Knowledge on the part of the Foundation Respondents that the representations were false (or reckless disregard as to their truth or falsity);

27.3 An intention to induce the National Lotteries Commission to act on the representations, in this instance to conclude the grant agreement;

27.4 Actual reliance on the representations by the National Lotteries Commission, which reliance must have been reasonable; and

27.5 Resultant prejudice or damage suffered by the National Lotteries Commission as a consequence of such reliance.

[28] Both the Foundation Respondents and the SIU, to the extent that it alleges that it is not required to plead that the fraudulent misrepresentations induced it to conclude the agreement, are incorrect. The simple fact is that both the SIU and the National Lotteries Commission do indeed make the allegation of inducement. In the case of the SIU, paragraphs 48 and 49 of the founding affidavit unmistakably state the following:

"48. The First, Second, Fifth and Sixth Respondents intended the NLC to act on these representations. The NLC considered these representations and was induced to take the decision to grant funding, for the proposed project based on these representations.

49. The National Lotteries Commission was induced to enter into the Grant Agreement and to pay the R4 000 000,00 in terms thereof, to the NPO based on these representations."

[29] Paragraph 14 of the National Lotteries Commission's supporting affidavit contains, in express terms, the very allegation of which the Foundation Respondents complain. It provides:

> "I go as far as to state that the NLC would not provide grants to any applicant whose purpose is misaligned to the purposes espoused in legislation. Thus, regard being had to the facts put forward by the SIU, Mshandukani resorted to misleading the NLC in its application for grant funding. The NLC would not have funded any of the projects which were applied for by Mshandukani if it had not been misled by Mshandukani and its representatives."

[30] These allegations make it plain that the impugned misrepresentations are not pleaded in the abstract but are expressly linked to the decision to conclude the agreement. That is the very essence of inducement. Having pleaded that the misrepresentations operated on the mind of the National Lotteries Commission and influenced the conclusion of the agreement, the SIU cannot now seek to avoid the legal consequences of such a pleading. In the circumstances, it is untenable for the SIU to contend that inducement need not be established when its own pleaded case squarely relies on the proposition that the agreement was procured by means of fraudulent misrepresentations. The same reasoning applies to the National Lotteries Commission, whose allegations similarly incorporate inducement as a necessary component of its cause of action.

[31] In light of this, the Foundation Respondents' contention is without merit. The paragraph clearly articulates the impugned allegation. Accordingly, the argument advanced by the Foundation Respondents falls to be rejected.

Lack of Authority: – The Deponent to the Founding Affidavit

[32] The issue raised by the Foundation Respondents need not detain this Tribunal, as the answer is both straightforward and apparent. The Respondents contend that the deponent to the founding affidavit lacked the necessary authority to depose thereto. Uniform Rule of Court 7(1) (Rule) provides:

> "Subject to the provisions of subrules (2) and (3), a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed. Thereafter, such person may no longer act unless he satisfies the court that he is authorised so to act; and to enable him to do so, the court may postpone the hearing of the action or application."

[33] It is unnecessary to determine whether the deponent did, in fact, have authority to depose to the founding affidavit, as the issue has become academic. Rule 7(1) expressly requires that a party wishing to challenge the authority of another to act must do so within ten days of becoming aware of such conduct. In the present matter, the Foundation Respondents failed, first, to serve and file the notice contemplated in Rule 7(1), and secondly, the ten-day period prescribed by the Rule has long elapsed. In the absence of a timely challenge, the authority of the deponent is no longer open to dispute. The point accordingly falls to be dismissed. This reasoning applies equally to the challenge of Maharaj's authority to depose to the supporting affidavit of the National Lotteries Commission. Besides, as a witness, Maharaj required no authority to depose to the supporting affidavit.

Factual Background

[34] On 16 February 2016, the Foundation registered with the Department of Social Development ("DSD") as a non-profit organisation under registration number 166-661 NPO. A copy of the grant application, forming part of the papers filed in support of this

application, reflects that on 25 February 2019 the Foundation applied for grant funding in the amount of R4 708 000.00. The application was signed by Ms Shandukani in her capacity as chairperson of the Foundation.

[35] The grant application recorded the following individuals as members of the Foundation:

35.1 Ms Maranda — Treasurer;

35.2 Mr Mulandana — Secretary;

35.3 Ms Mukundi Khameli — Additional member (but recorded as chairperson in the DSD report);

35.4 Ms Maria Khameli — Additional member.

[36] The purpose and main objective of the Grant Application, as stated in the Project Business Plan dated 25 February 2019, is: "Community Development through provision of clean water to the community." Ms Shandukani indicated in the Grant Application that the Foundation operated in the Eastern Cape and had a staffing structure comprising 2 full-time paid employees, 3 part-time paid employees, and 5 volunteers, one of whom served full-time. She further stated that the project would result in the creation of 15 part-time employment opportunities.

[37] Additionally, she stated that approximately 6 500 children, 1 000 women, 500 unemployed persons, 300 elderly persons, and 15 persons with disabilities from Engcobo in the Chris Hani District would benefit from the project. She indicated in the Grant Application that she, in her capacity as chairperson, together with Ms Maranda (treasurer) and Mr Mulandana (secretary), were authorised signatories to operate the bank account of the Foundation. The Grant Application was accompanied by the following documents:

37.1 Copies of identity documents of the purported members of the Foundation;

37.2 The Constitution of the Foundation;

37.3 The Project Budget Template;

37.4 The Project Business Plan; and

37.5 Audited Annual Financial Statements.

[38] It is evident from the budget template accompanying the Grant Application that Ms Shandukani and the Foundation represented to the National Lotteries Commission that operational costs would be incurred, including salaries for the chairperson, treasurer, secretary, and two additional members; stipends for 15 individuals; as well as audit fees, bank charges, and travelling expenses. It is common cause that Ms Shandukani declared in the Grant Application that, should the application be successful, the organisation would utilise the grant strictly for the purposes specified therein and would comply fully with all terms and conditions governing the application.

[39] Minutes of the Pro-Active Funding Quality Assurance Committee of the National Lotteries Commission reflect that the Committee met on 8 March 2019 to consider the Grant Application, together with the project motivation presented by Mr Ramatsekisa, Manager: Grant Funding Projects. The Committee resolved to allocate an amount of R4,000,000.00 to the Foundation under project number Mshandukani M12663. On 12 March 2019, the Eighth Respondent ("Letwaba"), Chief Operating Officer of the National Lotteries Commission, informed Ms Shandukani that the Grant Application had been "duly considered" and stated further: "we are pleased to advise that the Committee has allocated a total grant of R4 000 000.00 to your organisation, as per the attached Grant Agreement".

[40] On the same date, Ms Shandukani, ostensibly acting in her capacity as chairperson of the Foundation, signed the Grant Agreement. Letwaba, in his capacity as Chief Operating Officer of the National Lotteries Commission, signed the agreement on 15 March 2019. It is common cause that, on 20 March 2019, the National Lotteries Commission paid an amount of R4,000,000.00 into the Foundation's bank account held at First National Bank under account number 626 05012963, using the reference number M12663. Unlike the grant application, which reflects Muranda and Mulandana as the only

authorised representatives of the Foundation, the bank's Account Confirmation Letter indicates that only Mr and Ms Shandukani were authorised to act on behalf of the Foundation.

[41] The sum of R4,000,000.00 paid into the Foundation's account was, shortly after deposit, transferred to bank accounts of companies controlled by Mr and Ms Shandukani. The SIU alleges that none of these funds were used for their intended purpose, the drilling and equipping of boreholes in the Elucwecwe Region, Eastern Cape, as required by the Grant Agreement. In a final report dated 5 November 2019 intended for the National Lotteries Commission and compiled on behalf of the Foundation, Ms Shandukani recorded that the borehole installation project had been successfully completed. In an earlier report from October 2019, she stated that seven boreholes had been installed at Elucwecwe Primary School and Clinic, Notas, Esikobeni, Hugris, Phakamisa Schools, and Gubenxa Clinic.

[42] The SIU, however, alleges that no boreholes were installed by the Foundation at these locations. Instead, the boreholes at the identified schools and clinics had already been installed in 2016 by Mshandukani Holdings, a company owned by Mr and Ms Shandukani. Affidavits obtained from the principals of each school confirm that the boreholes were constructed around 2016, prior to the COVID-19 pandemic. It is further common cause that, once the funds were deposited into the Foundation's account, Mr and Ms Shandukani transferred the money to entities under their control and used it for personal expenses.

[43] The SIU avers that, in view of what transpired, the Foundation, Ms Shandukani, Mulandana and Khameli fraudulently misled the National Lotteries Commission, to its detriment, in the amount of R4 000 000.00. The Foundation, Ms Shandukani, Mulandana and Khameli perpetrated this fraudulent misrepresentation by:

43.1 Submitting a Grant Application for an amount of R4 000 000.00 for the alleged drilling and equipping of boreholes in the Elucwecwe region, despite having no intention of undertaking such work, as all required boreholes in that region had already been installed in 2016 by Mshandukani Holdings;

43.2 Misrepresenting in the Grant Application that Ms Ndungiselo Reface Maranda ("Maranda") was the treasurer of the Foundation, when in fact she was neither a member nor an office bearer of the Foundation, but rather a receptionist employed by Mshandukani Holdings;

43.3 Misrepresenting that Ms Mukundi Munenyiwa Khameli ("Khameli") was an additional member of the Foundation, whereas she was in fact employed as a geologist intern at Mshandukani Holdings, and her inclusion as a member was false and misleading;

43.4 Falsely stating in the Grant Application that the grant funds would be utilised to —

43.4.1 pay stipends to 15 temporary workers for a period of 2 months at a cost of R90 000.00;

43.4.2 pay salaries to 5 members of the Foundation; and

43.4.3 cover operational expenses, including travelling, auditing, and bank charges, totalling R280 000.00.

43.5 Misrepresenting that the 2017 and 2018 audited financial statements submitted with the Grant Application were valid and authentic, whereas

43.5.1 such financial statements contained fraudulent misrepresentations; and

43.5.2 the signature of Ms Maranda was fraudulently inserted under the designation of treasurer without her knowledge or consent.

43.6 Falsely stating that the Foundation had a valid address in the Eastern Cape, whereas the address provided was not an existing or legitimate business or office address of the Foundation;

43.7 Further misrepresenting that both Khameli and Maranda were members of the Foundation, when in fact their names were used and submitted without their knowledge or consent; and

43.7.1 Furthermore, the Foundation itself was fraudulently registered, in that –

43.7.1.1 Records obtained from the Department of Social Development ("DSD") reflect Khameli as the chairperson of the Foundation;

43.7.1.2 However, the Foundation's Constitution reflects that Ms Shandukani signed it as chairperson; and

43.7.1.3 Khameli had no knowledge whatsoever of being listed as chairperson, or even as a member, of the Foundation.

Issues

[44] The central question is whether the SIU has established, on the papers, its entitlement to the relief sought. This depends on the resolution of the following subsidiary issues:

44.1 Whether the grant application submitted to the National Lotteries Commission by the Foundation Respondents contained fraudulent misrepresentations;

44.2 If so, whether the decision by the National Lotteries Commission to award funding to the Foundation in the amount of R4 000 000.00 was induced by such misrepresentations;

44.3 Whether, in the circumstances, a proper case has been made to pierce the corporate veil of the Foundation and to hold Ms and Mr Shandukani, Mulandana and Khameli personally and jointly liable for repayment of the R4 000 000.00 received pursuant to the alleged fraud;

44.4 Whether Ms Tina Maharaj ("Maharaj") had the requisite authority to depose to the National Lotteries Commission's supporting affidavit;

44.5 Whether the late filing of the National Lotteries Commission's affidavit should be condoned.

Legal Framework

[45] It will be instructive to cite those sections of the Lotteries Act that affect this matter. To begin with Section 28 of the Lotteries Act dealing with allocation to charities. It provides that:

> "(1) So much of any sum paid into the fund as is allocated for expenditure referred to in section 26(3)(b), shall be held in the fund for distribution by the Commission to distribute the allocated sum fairly and equitably amongst all persons who meet the prescribed requirements.
>
> (2) The distributing agency shall consider, evaluate and adjudicate applications for grants and the Commission shall pay such grants to appropriate recipients in accordance with this Act and subject to the conditions imposed and to any directions issued by the board, from the sum allocated for charitable purposes.
>
> (3) ...
>
> (4) …
>
> (5) Any juristic person meeting the prescribed requirements may in the prescribed form apply to the distributing agency for a grant."

[46] Regulation 8A of the Direction for the Distribution Agencies in Determining Distribution of Funds from the National Lottery Distribution Trust Fund[3] ("Direction for the Distribution Agencies"), provides that: "Every organization which received a grant from the National Lotteries Commission shall, in procuring goods or services paid for by funds so acquired, follow a transparent and competitive process as set out in the Treasury Regulations."

[47] Regulation 10(1) of the Direction for the Distribution Agencies provides that:

[3] Amendment of the Direction for Distribution Agencies in determining the distribution of funds from the National Lottery Distribution Trust Fund GNR 312 GG38687 (14 April 2015).

"(1) The National Lotteries Commission shall only receive and consider [an] application for funding from an applicant who applies through an agent representative or conduit, if :–

(a) the applicant has been in existence for less than six (6) months on the date of submission of the application; or

(b) there is a clear need for a project in a community and that community is not organised through a recognised legal entity.

(2) Where an applicant applies for a grant through an agent, representative or conduit in terms of section 26G (3), the application must be accompanied by the following-

(a) a statement by the applicant providing reasons why it requires assistance; and

(b) a statement by the agent, representative or conduit on the nature of assistance it will provide to the applicant."

(3) Where an application for a grant lodged in terms of Regulation 2 in Part III is considered and approved by the Distribution Agency:-

(a) the total amount that may be charged by the agent, representative or conduit for services rendered by it to the grant beneficiary may not exceed five per cent (5%) of the amount of the grant, provided that the maximum amount charged shall not exceed one hundred and fifty thousand rand (R150 000);

(b) the agent, representative or conduit shall before transfer of any grant funds, submit a plan to the National Lotteries Commission setting out how it will transfer the requisite skills to build the capacity of the assisted organization or community; and

(c) furnish a report to the National Lotteries Commission on the actual execution of the plan submitted in terms of regulation 3(b) in Part III within six (6) months of the transfer of the initial funds or such period as has been determined in the terms and conditions of the grant."

[48] Regulation 12 of the Regulations Relating to Allocation of Money in the National Lottery Distribution Trust Fund[4], provides that: "An applicant to whom a large grant is made must, at such period as may have been imposed at the time when a grant is made, submit to the National Lotteries Commission an audited financial statement in respect of the grant so awarded..."

Case Authority

[49] To the extent that the SIU alleges that the National Lotteries Commission was induced to conclude the impugned agreement by the Foundation Respondents' misrepresentations, it could be instructive to mention the matter of *Esorfranki Pipelines (Pty) Ltd and Another v Mopani District Municipality and Others*[5], where the Court referred with approval to Lord Denning's dicta in *Lazarus Estates Ltd v Beasley* [6] when he said: "No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever …"

[50] It is also trite law that a misrepresentation can be made by way of a positive statement (*commissio*), or by a failure to disclose material facts (*omissio*). See *FirstRand Bank Ltd t/a Rand Merchant Bank and Another v Master of the High Court, Cape Town and Others (FirstRand Bank)* [7] where the Court had the following to say: "There are two requirements for misrepresentation in the form of a fraudulent non-disclosure. The first is the existence of a duty to make the disclosure. The second is intention on the part of the representor. 'where there is a duty or an obligation to speak, and a man in breach of that

[4] Regulations Relating to Allocation of Money in National Lottery Distribution Trust Fund GNR311 GG 38687 (14 April 2015).
[5] *Esorfranki Pipelines (Pty) Ltd and another v Mopani District Municipality and Others [* 2014] 2 All SA 493 (SCA) at para 16.
[6] *Lazarus Estates Limited v Beasley* [1956] EWCA Civ J0124-1 [1956] EWCA Civ 6, [1956] 1 QB 702, [1956] QB 702, [1956] 2 WLR 502, per Denning LJ, available at: https://www.bailii.org/ew/cases/EWCA/Civ/1956/6.html accessed on 9 July 2026.
[7] *FirstRand Bank Ltd (t/a Rand Merchant Bank) and Another v Master of the High Court, Cape Town, and Others* 2014 (2) SA 527 (WCC) at para 16.

duty or obligation holds his tongue and does not speak, and does not say the thing he was bound to say, if that was done with the intention of inducing the other party to act upon the belief that the reason why he did not speak was because he had nothing to say, I should be inclined myself to hold that that was fraud also'."[8]

[51] The FirstRand Bank matter above, reinforces that non-disclosure can amount to fraud, but only where specific requirements are satisfied. Two key elements emerge clearly from the extract:

51.1 The existence of a duty to speak; silence is not, in itself, wrongful. The critical inquiry is whether the representor was under a legal duty to disclose the relevant information. Such a duty may arise in various contexts, including –

51.1.1 Where a fiduciary relationship exists;

51.1.2 Where statute or contract imposes disclosure obligations;

51.1.3 Where prior statements are rendered misleading by subsequent silence;

51.1.4 In circumstances where good faith (*bona fides*) and public policy demand disclosure as a duty;

51.1.4.1 Absent such a duty, mere silence—even if morally questionable—will not ordinarily constitute actionable misrepresentation.

51.2 The omission must be accompanied by intention, meaning:

51.2.1 The representor intentionally remains silent, knowing that disclosure is required; and

51.2.2 The silence is calculated to induce the other party to act under a mistaken belief.

[8] Quoting, with approval, Lord Blackburn's prose in *Brownlie v Campbell* (1880) 5 AC 925 at 950.

Evaluation

Whether the Application For Grant Funding and Report Contain Fraudulent Misrepresentations

[52] It is evident that the Foundation, Ms Shandukani, Mulandana, and Khameli were aware that the Grant Application submitted to the National Lotteries Commission contained material inaccuracies, in that it included fraudulent misrepresentations concerning the Foundation's membership. In particular, Maranda was presented in the application as the treasurer of the Foundation, despite that she did not hold that position. At the relevant time, Maranda was employed by Mshandukani Holdings.

[53] During an interview conducted by the SIU under oath, Ms Maranda confirmed that:

53.1 She was employed solely as a receptionist at Mshandukani Holdings and was neither a member nor the treasurer of the Foundation;

53.2 She had not authorised any person to use her identity document in connection with the Grant Application. Although she signed the Grant Agreement, she did so only in the capacity of a witness, acting under instructions from her superior at Mshandukani Holdings, Ms Shandukani;

53.3 She was unaware that her name had been used in the Grant Application and did not even know that the Foundation had applied for grant funding;

53.4 She had no knowledge of the Foundation's bank account, had no access to it, and the assertion that she was the treasurer was false; and

53.5 Significantly, Ms Maranda confirmed that the signatures appearing under her name on the Foundation's Audited Financial Statements for 2017 and 2018 were not hers.

[54] During an interview conducted by the SIU under oath with Ms Khameli, it emerged that, like Ms Maranda, she was an employee of Mshandukani Holdings and was not involved in the affairs of the Foundation. She further confirmed that:

54.1 She did not grant permission for her identity document to be used in the Foundation's Grant Application, nor did she authorise any person to include her name as an additional member of the Foundation. This is despite the fact that she was reflected as the chairperson of the Foundation without her knowledge; and

54.2 She did not know the person who certified the copy of her identity document used in the Grant Application to the National Lotteries Commission.

[55] In light of the aforegoing, and having regard to the events that subsequently transpired, the inference is inescapable that the use of the identity documents of Ms Maranda and Ms Khameli by the Foundation, Ms Shandukani, and Mulandana, without their knowledge or consent, was intended to induce the National Lotteries Commission to approve the grant allocation and to conclude the agreement. The National Lotteries Commission received and assessed the fraudulent misrepresentations, proceeded to approve the allocation, and subsequently concluded the agreement to its detriment.

[56] The Audited Financial Statements submitted with the Grant Application bore two signatures: one attributed to the purported chairperson and another to the alleged treasurer, Maranda. Maranda has since disavowed both her position as treasurer of the Foundation and the authenticity of the signature attributed to her on the Audited Financial Statements. In addition, the Annual Financial Statements reflect incorrect membership details. In light of these discrepancies, the Audited Financial Statements are materially inaccurate and contain false representations of fact.

[57] Maranda confirmed to the SIU that she had never been a treasurer of the Foundation, nor had she ever been its actual member. This information was known to Ms Shandukani, who had previously employed Maranda as a secretary at Mshandukani Holdings. Against this backdrop, the inference that when Ms Shandukani submitted the Grant Application together with the Annual Financial Statements bearing a fraudulent signature, she did so

with full knowledge that she was misleading the National Lotteries Commission, is unavoidable. Given this, fraud has been established.

[58] In line with the *Firstrand Bank* case above, Ms Shandukani was under a duty to make full and frank disclosure in the 2019 Grant Application. In particular, she was required to disclose that:

58.1 She had previously obtained a grant through Mshandukani Holdings in 2016;

58.2 The Foundation's affiliation with both Preldon and Mshandukani Holdings;

58.3 Maranda was neither a member nor the treasurer of the Foundation; and

58.4 The Annual Financial Statements lacked the requisite signatures of the relevant parties, and the identity documents of Khameli and Maranda had been included without their knowledge or consent.

[59] Ms Shandukani's failure to do so supports the conclusion that the fraudulent misrepresentations have been established. Ms Shandukani, acting personally and on behalf of the Foundation Respondents, made false representations to the National Lotteries Commission in the reports dated October and November 2019. In these reports, she stated that the Foundation had drilled and equipped boreholes at Elucwecwe Primary School and Clinic, Notas, Esikobeni, Hurgris and Phakamisa Schools, and Gubenxa Clinic. These representations were factually incorrect, as the boreholes had already been constructed in 2016 by Mshandukani Holdings, a company owned and controlled by her and her husband, Mr Shandukani. The misrepresentations were unlawful, as they were made in the context of an application for public grant funding and were intended to mislead the National Lotteries Commission into disbursing funds under false pretences. There was a legal duty on Ms Shandukani and the Foundation Respondents to provide truthful and accurate information in support of the grant application.

[60] Ms Shandukani acted with the requisite intent to defraud in that:

60.1 She, as a member of Mshandukani Holdings, knew that the boreholes had already been installed in 2016;

60.2 She knew that the Foundation Respondents did not intend to use the grant funds for the stated purpose;

60.3 She knowingly submitted false reports to create the impression that new work had been undertaken;

60.4 Her purpose was to induce the National Lotteries Commission to approve the grant funding and conclude the grant agreement.

[61] The National Lotteries Commission relied on the misrepresentations contained in the October and November 2019 reports when considering the grant application. Acting on this information, the National Lotteries Commission approved the grant funding, and entered into a grant agreement with the Foundation. The misrepresentations were therefore material and operative, inducing the National Lotteries Commission to act in a manner it otherwise would not have. The National Lotteries Commission has, in consequence of the misrepresentation and reliance on it, suffered financial loss, in that funds were allocated for a project that had already been completed, and the funds were not applied for their intended public benefit purpose. Against that backdrop, the decision to award grant funding to the Foundation was procured through fraud and cannot be sustained. Similarly, the subsequent Grant Agreement was tainted by fraud. It follows that both the Grant Application and the Grant Agreement fall to be declared invalid, reviewed, and set aside.

[62] I have already rejected the Foundation Respondents' assertion that the deponent to the founding affidavit failed to allege that the National Lotteries Commission would not have entered into the grant agreement had it been apprised of the true facts. I did not engage with that contention further because both the founding and the supporting affidavits of the SIU and the National Lotteries Commission, respectively, make this point expressly. In any event, the argument is unsustainable for an additional reason. As stated by the Supreme

Court of Appeal in *C.W v G.T*[9], it must be borne in mind, in the context of fraud inducing a contract, what was held in *Absa Bank Ltd v Moore*: whether fraud unravels a contract depends on the position of its victim, not that of the fraudster or third parties. Thus, where the victim of a fraudulent misrepresentation seeks relief, as is the case here, it does not lie in the mouth of the 'misrepresenter' (the respondent in that case) to assert that the legal convictions of the community are such that their conduct should not give rise to a claim.

[63] Mr Shandukani's unsolicited concession that he was the sole individual responsible for making negligent misrepresentations to the National Lotteries Commission ought to be rejected, as it is plainly untenable. Firstly, even if he did, which I do not accept, it is evident that they would have been made with the intention of inducing the National Lotteries Commission to allocate the funds and to conclude the grant agreement. Secondly, this concession is made in circumstances where Mr Shandukani does not appear in any of the relevant documentation, including the grant application and the grant agreement, as a member of the Foundation. This is inconsistent with the evidence demonstrating that it was his wife, Ms Shandukani, who completed the application and prepared both the interim and final reports submitted to the National Lotteries Commission. Furthermore, it was Ms Shandukani who ultimately signed the grant agreement.

[64] Events after the payment of R4 000 000.00 into the account of the Foundation reinforce the inference that the Foundation Respondents made the relevant representations with the intention to defraud the National Lotteries Commission. On 20 March 2019, the National Lotteries Commission paid an amount of R4,000,000.00 into the Foundation's bank account. It is common cause that, before this deposit, the Foundation held a positive balance of only R6,004.87. Following receipt of the funds, the Foundation effected the following payments:

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[9] *C.W v G.T* (867/2021) [2023] ZASCA 23 (13 March 2023) at para 43. In *Absa Bank Limited v Moore and Another* [2016] ZACC 34, the Constitutional Court paid mind to the requirements as laid down in *Geary & Son* (Pty) Ltd v Gove 1964 (1) SA 434 (A) at para 36.

64.1 25 March 2019: Payment of R700,000.00 to Preldon Construction;

64.2 5 April 2019: Payment of R600,000.00 to Preldon Construction;

64.3 8 April 2019: Payment of R300,000.00 to Mshandukani Holdings;

64.4 9 April 2019: Payment of R50,000.00 to Ndlozi S;

64.5 6 May 2019: Payment of R300,000.00 to Preldon Construction; and

64.6 6 May 2019: Payment of R2,000,000.00 to Preldon Construction.

[65] In total, Preldon Construction, a company owned by Ms Shandukani, received R3 600 000.00 from the Foundation. The bank statements of Preldon Construction reveal that a portion of these grant funds, received from the National Lotteries Commission through the Foundation, were subsequently transferred into the personal bank account of Ms Shandukani, as well as into the account of Mshandukani Holdings, a company owned and controlled by Mr Shandukani. The remaining funds were utilised for the benefit of Preldon Construction.

[66] The Foundation Respondents contended that this Tribunal ought not to draw any adverse inference from the flow of funds from the Foundation to Preldon Construction and Mshandukani Holdings, asserting that these entities were merely instrumental in executing the 2019 project to build and install boreholes on the Foundation's behalf. I am unable to accept this contention, especially in light of the incontrovertible evidence presented by at least three school principals and one district director, all of whom consistently indicated that the boreholes had in fact been constructed in 2016 and/or 2017.

[67] The three school principals who testified that the boreholes were constructed and installed in 2016 were Mr Mbucwa Robert Mglwa, Ms Nomamfengu Mbangi, and Mr Albert Willem. Their evidence is materially corroborated by that of the District Director who, in a letter dated 18 November 2024, confirmed that the district had been informed that five schools in the Chris Hani East area had received boreholes. The letter further

records that the installations were carried out by a company known as Mshandukani Holdings in 2016.

[68] It would be plainly misguided for the Foundation Respondents and the SIU to rely on the evidence of Ms Thimla Lucas and Mr Vuyani Luyaba. Both witnesses candidly concede that they cannot state with any precision when the boreholes were constructed. Their vague assertion that the construction occurred "before COVID-19" is wholly unhelpful and lacks any meaningful evidentiary value, given that it spans an indeterminate period that could just as easily refer to 2016 as to 2019. Such imprecision renders their testimony unreliable on the critical issue of timing. In contrast, the overwhelming, undisputed and credible evidence before this Tribunal firmly establishes that the boreholes were constructed in 2016.

[69] The above strongly suggests that the Foundation was used as a vehicle to improperly benefit Preldon Construction and Mshandukani Holdings. Both entities are owned and controlled by the same individuals, Mr and Ms Shandukani, and each received substantial deposits from the Foundation. This raises serious concerns regarding the legitimacy of the transactions. In particular, it appears that the grant funds were not applied toward their intended purpose of the development of boreholes to benefit communities in the Eastern Cape, as stipulated in both the Grant Application and the Grant Agreement. Instead, the flow of funds indicates a diversion of resources away from the agreed project objectives to the advantage of entities linked to the Foundation: Ms Shandukani, Mr Shandukani, Mulandana, and Khameli.

[70] It is apparent from the evidence that the grant funds were, in part, channelled from Preldon Construction to certain individuals who are, in terms of the provisions of the Lotteries Act, prohibited from benefitting therefrom unless proper disclosure has been made. No such disclosure was made in the present instance. After receiving the funds from the Foundation, Preldon Construction paid an amount of R500 000.00 to Iron Bridge, a

company owned and controlled by the Tenth Respondent ("Malomane"), who is the spouse of Letwaba, the erstwhile Chief Operations Officer of the National Lotteries Commission. The payment was prohibited in terms of Section 2G of the Lotteries Act, which in part, precludes any employee of the National Lotteries Commission or his or her spouse, life partner, immediate family member or business partner or associate, to during the time of his or her employment at the Commission or for a period of 24 months after the termination or expiry of his or her employment, take up employment or in any way receive any benefit from any person who received a grant.

[71] The SIU has implicated Mr Letwaba, Iron Bridge, and the Tenth Respondent, Ms Malomane, in allegations of serious corruption arising from these transactions. Notwithstanding the gravity of these allegations and despite having entered notices of opposition, the aforesaid respondents have failed to comply with the directives issued by this Tribunal. In particular, they have not delivered answering affidavits to controvert the allegations made against them. Their failure to do so leaves the material allegations advanced by the applicant effectively unchallenged.

[72] Their silence, in the face of those grave allegations, will not be without adverse legal consequences, as was stated in *S v Boesak*[10] where the Court held that:

> "The fact that an accused person is under no obligation to testify does not mean that there are no consequences attaching to a decision to remain silent during the trial. If there is evidence calling for an answer, and an accused person chooses to remain silent in the face of such evidence, a court may well be entitled to conclude that the evidence is sufficient in the absence of an explanation to prove the guilt of the accused."

[10] *S v Boesak* 2001 (1) SACR 1 (CC) at para 24.

[73] Neither the Foundation Respondents nor Letwaba, Ironbridge, and Malomane have provided any account of how the grant funds were utilised. No vouchers, bank statements, or contracts with the subcontractors who allegedly performed the work have been furnished. In this regard, the answering affidavit contains bare averments which are not worthy of reliance. In addition to the aforesaid transfers, Preldon Construction made further payments in breach of the grant agreement, namely:

73.1 R550,000.00 on 23 March 2019 to Mshandukani Holdings, purportedly as a loan. This flies in the face of Clause 2.2.7 of the grant agreement, which prohibits the Foundation from giving any benefit to persons connected to the National Lotteries Commission. The clause provides: "not give any other direct and/or indirect benefit for securing the grant or, after the grant has been awarded, to any person (juristic or natural) whatsoever, be it a member of the Board of the National Lotteries Commission or any intermediary,or to any person nominated by such an intermediary. A contravention of this clause will constitute a criminal offence."

73.2 R50,000.00 on 25 March 2019 to a money-on-call account.

73.3 R120,000.00 on 25 March 2019 to Mr Shandukani.In this instance, too, Clause 2.2.7 prohibits this transaction.

[74] The Foundation Respondents' contention that no response was required on the basis that the funds were not deposited into their personal bank accounts is without merit and is rejected. The evidence establishes that an amount of R120,000.00 was paid directly to Mr Shandukani in his personal capacity. Any suggestion to the contrary is unsustainable. In addition, Mshandukani Holdings, owned and controlled by Mr and Ms Shandukani, received R550,000.00. In substance, the true beneficiaries of the transactions are Mr and Ms Shandukani.

[75] The evidence establishes that the amounts ostensibly paid to the service providers, Mshandukani Holdings and Preldon Construction, ultimately accrued to the benefit of

Letwaba and his wife. In terms of the Regulations to the Lotteries Act, such a benefit is expressly prohibited. No explanation has been advanced as to the basis upon which Letwaba and his wife, acting through Ironbridge, were entitled to receive payments from Preldon Construction. Although the payments, viewed in isolation, may appear prima facie innocuous, I am satisfied that they were effected in contravention of Clause 7, especially 7.1.3. This conclusion is reinforced by the absence of any evidence from Letwaba, Ironbridge, or Malomane to justify or explain the flow of funds. In the circumstances, the only reasonable inference is that the payments were irregular and unlawful.

Piercing of the Corporate Veil of the Foundation

[76] The SIU contends that, because the award of the grant funding and the conclusion of the grant agreement were allegedly tainted by fraud, it would be fair and just to pierce the corporate veil of the entity involved so as to hold the individual behind it personally liable for the loss suffered by the National Lotteries Commission. Although the Foundation Respondents do not expressly dispute the legal basis advanced by the SIU for piercing the corporate veil, their denial of having defrauded the National Lotteries Commission effectively amounts to a rejection of the factual predicate necessary to justify such relief.

[77] This subject is regulated by Section 20(9) of the Companies Act 71 of 2008, which provides as follows: "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)."

[78] Directly on the provisions of Section 20(9) of the Companies Act is the matter of *Knoop NO and Others v Birkenstock Properties (Pty) Ltd and Others* (FB*)*[11], quoting with approval *The Shipping Corporation of India Ltd v Evdomon Corporation and Another*[12], where the Court held that:

> "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'."

[79] Accordingly, the corporate veil will be lifted in circumstances where there is commercial abuse, fraud, or other improper conduct on the part of those controlling the company, particularly where the corporate form is used to evade legal obligations. It is well established that this remedy is exceptional and is invoked only where there is clear evidence of fraud, dishonesty, or an abuse of the juristic personality.[13] In determining whether it is appropriate to disregard separate legal personality, a court undertakes a fact specific and policy laden inquiry, balancing the need to uphold the principle of corporate personality against the imperative to prevent injustice and the misuse of the corporate form.

[80] From the aforegoing, I am required to determine whether the facts of this matter justify the lifting of the corporate veil. It will suffice for this purpose if the SIU establishes that the Foundation was utilised as a vehicle to perpetrate fraud. I have already set out in detail how the separate juristic personality of the Foundation was exploited as part of a scheme designed to benefit Ms and Mr Shandukani, Mulandana, Khameli, Letwaba and

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[11] *Knoop NO and Others v Birkenstock Properties (Pty) Ltd and Others* (7095/2008) [2009] ZAFSHC 67 (4 June 2009) at para 11.
[12] .*The Shipping Corporation of India Ltd v Evdomon Corporation and Another* 1994 (1) SA 550 (A) at 566D-F.
[13] Section 20(9) of the Companies Act 71 of 2008. Of particular note is the discussion in P Delport *Henochsberg on the Companies Act 61 of 1973* 39 ed (2025) at 114(1)-(2) in cataloguing our jurisprudence on the term "unconscionable conduct" and its relation to fraud by referring to *Ex parte Gore NO and Others* [2013] JOL 30155 (WCC), 2013 (3) SA 382 (WCC) at para 34 (at fn 38) in which the court states: "The provision brings about that a remedy can be provided whenever the illegitimate use of the concept of juristic personality adversely affects a third party in a way that reasonably should not be countenanced; See also, *Capital SA Property Holdings Limited v Chavonnes Badenhorst St Clair Cooper and Others* 2018 (4) SA 71 (SCA) at para 28-30, in which the court determined that this includes the common law grounds for piercing the corporate veil.

Malomane. It is also highly irregular that Letwaba, who was then the Chief Operating Officer of the National Lotteries Commission, served as a signatory to the grant agreement under which he stood to benefit later. Other than the apparent conflict of interest, it is strictly prohibited by the Lotteries Act.

[81] Ms Shandukani, acting through the Foundation of which she was a member, applied for and secured grant funding. The application was tainted by numerous material fraudulent misrepresentations, to which I have alluded earlier in this judgment. The funds paid into the foundation were diverted through payments to entities associated with the perpetrators, as well as to employees of the National Lotteries Commission. This arrangement constituted a deliberate stratagem designed to evade accountability by invoking the separate juristic personality of the Foundation. Such conduct falls squarely within the mischief contemplated in Section 20(9) of the Companies Act.

[82] I am mindful that the SIU has referred this Tribunal to three additional matters involving parties implicated in the present proceedings. The SIU urged this Tribunal to take into account that Ms and Mr Shandukani are significantly implicated in fraudulent transactions in those matters. The Foundation Respondents objected to the admission of the supplementary affidavit on the basis that the information contained therein ought to have been included in the founding affidavit. I dismissed that objection. Having regard to the sequence of the case numbers, it is evident that those matters were instituted after the SIU had launched the present application. In the circumstances, the SIU could not reasonably have been expected to include such information at the time the founding papers were prepared.

[83] While the papers filed in those matters may well be relevant, it would unduly burden this judgment to engage with them in any detail. The mandate of this Tribunal is to determine the issues arising from the facts properly placed before it in this application. On those facts alone, the SIU has established fraudulent conduct and that should be adequate

to allow this Tribunal to lift the corporate veil of the entities involved thus, exposing their members to personal liability. It is for that reason that I did not consider it necessary to traverse the facts or allegations in the three additional matters.

[84] It is common cause that the Foundation presently owns no immovable property. In these circumstances, should the SIU succeed in obtaining relief, any order granted by this Tribunal would, in practical terms, be rendered hollow and devoid of effect. There would be no identifiable assets against which such order could be executed, with the consequence that the SIU would be left without any effective means of recovering the losses sustained. This conclusion is fortified by the fact that Mshandukani Holdings, Mr and Ms Shandukani, Malomane, Letwaba and the Foundation are implicated in a number of other proceedings before this Tribunal or the High Court, wherein they stand accused of having improperly benefitted either directly from funds disbursed by the National Lotteries Commission, or indirectly through entities that were recipients of such grants. In the circumstances, it will be appropriate to lift the corporate veil of the Foundation such that its members are not shielded from being personally liable.

[85] Turning to the alternative claim founded on the alleged breach of the grant agreement, two considerations arise. First, in light of the finding that the agreement was induced by fraudulent misrepresentations, it necessarily follows that the agreement falls to be declared invalid and void *ab initio*. Second, and in any event, the evidence establishes that the Foundation Respondents acted in breach of the grant agreement. In those circumstances, Clause 14 of the agreement is activated and may properly be invoked.

[86] Where any information provided in the funding application or progress reports is false or misleading, as in this case, the Foundation is deemed to be in material breach of the Grant Agreement. In such circumstances, the National Lotteries Commission is entitled to:

86.1 Cancel the Agreement;

86.2 Withhold or withdraw any outstanding (undisbursed) tranches; and/or

86.3 Recover all funds already paid, including reclaiming any property or assets acquired with those funds.

[87] In the circumstances of this matter, it is neither necessary nor appropriate to engage in a detailed consideration of the respects in which the Foundation Respondents are alleged to have contravened the grant agreement because I have already elaborately traversed them earlier. The findings already made are dispositive of the issue of breach and are sufficient to sustain the relief sought. Any further enquiry would, in my view, serve no practical purpose and would risk obscuring the central considerations that arise for determination.

[88] It is well established that a court is not required to pronounce upon every issue raised on the papers where a decisive ground has been established. Having found that the conduct of the Foundation Respondents falls within the ambit of material non-compliance contemplated in the agreement, the jurisdictional facts necessary to trigger the contractual remedies have been satisfied.

[89] In the result, the SIU is entitled to invoke the provisions of the grant agreement. In particular, the SIU is entitled to rely on and give effect to paragraphs 86.1 and 86.3 of this judgment, which regulate the consequences of such breach and the remedies available to the National Lotteries Commission upon the occurrence thereof. There is accordingly no barrier to the enforcement of those provisions.

Condonation of the Late Filing of the Affidavit of the National Lotteries Commission

[90] The Foundation Respondents object to the late filing of the supporting affidavit by the National Lotteries Commission. The National Lotteries Commission filed its supporting affidavit on 18 August 2025, approximately one and a half months after the Foundation Respondents had delivered their Answering Affidavit. The Foundation Respondents further allege that, at a case management meeting held on 11 August 2025,

attended by the National Lotteries Commission's instructing attorneys together with their counsel, it was contemplated that the Special Investigating Unit ("SIU") would bring an application for condonation for the late filing of its supporting affidavit. To date, no such condonation application has been filed. This remains the position notwithstanding correspondence addressed by the Foundation Respondents to the National Lotteries Commission on 30 September 2025, albeit in relation to Case No. GP21/2025, in which the National Lotteries Commission was expressly informed that a condonation application was expected.

[91] In the alternative, the Foundation Respondents submit that, should this Tribunal nonetheless find that it was unnecessary to file a separate condonation application supported by a notice of motion, and elect to admit the affidavit into evidence, the affidavit in question fails to provide any explanation for the default. In the circumstances, this Tribunal ought to refuse admission of the National Lotteries Commission's supporting affidavit into evidence.

[92] In *Mnisi v Nhlapo*[14], to which this Tribunal was referred by the National Lotteries Commission, the High Court considered circumstances materially indistinguishable from those presently before this Tribunal, namely, whether a failure to adhere strictly to the procedural mechanism prescribed in Rule 6 for the bringing of a condonation application is, in itself, fatal. The Court accepted that, while the procedure contemplated in Rule 6 remains the preferable course, a deviation therefrom does not warrant the disregard of a condonation request where such a request is clearly discernible from the papers.

[93] The Court further observed that it is not uncommon for litigants to seek condonation within affidavits, rather than by way of a standalone application, and although such practice is not ideal, it may nevertheless be accepted where the interests of justice so require.

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[14] *Mnisi v Nhlapo* (ZAGPJHC, Case No. 2021/53980)

Notably, the Court emphasised that judicial bodies, this Tribunal in this instance, are enjoined to regulate their own processes in a manner that promotes fairness, efficiency, and expedition, and are not slavishly bound to procedural formalities.

[94] In that context, it held that to insist on strict compliance with Rule 6, in circumstances where the opposing party is fully apprised of and has engaged with the condonation request, would amount to an elevation of form over substance and would undermine the efficient adjudication of the matter. Applying these principles and given that the request for condonation in the present matter is plainly contained in the affidavit and has been understood and addressed by the opposing party, no prejudice arises from the procedural deviation. Accordingly, this Tribunal is satisfied that it is both competent and appropriate to entertain and determine the condonation request on its merits notwithstanding the non-compliance with the formal requirements of Rule 6.

[95] To the extent that the Foundation Respondents assert that the SIU has not made a case for condonation, the starting point is Rule 14(3) of the Tribunal Rules[15], which empowers the Tribunal, upon good cause shown, to condone any non-compliance with its Rules. The granting of condonation lies within the Tribunal's discretion, to be exercised judicially upon a consideration of all relevant factors. These include, inter alia, the length of the delay, the explanation tendered therefor, the prospects of success, and, ultimately, the interests of justice.

[96] In *Grootboom v National Prosecuting Authority and Another*[16], the Constitutional Court reaffirmed that the overarching standard is the interests of justice, a concept which is inherently flexible and not amenable to precise definition. It encompasses factors such as the nature of the relief sought, the extent and cause of the delay, the effect of the delay

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[15] Rules for the Conduct of Proceedings in the Special Tribunals GN 569 GG 42783 (18 October 2019) in terms of Section 9(1)(a) of the Special Investigating Units and Special Tribunal Act 74 of 1996.
[16] *Grootboom v National Prosecuting Authority and Another* 2014 (1) BCLR 65 (CC) at paras 22–23.

on the administration of justice and other litigants, the reasonableness of the explanation provided, the importance of the issues raised, and the prospects of success. The Court emphasised that this enquiry is holistic and that the weight to be accorded to each factor will depend on the particular circumstances of the case.

[97] Amongst the considerations traditionally taken into account are the degree of lateness, the explanation therefor, the prospects of success, the prejudice to the parties, and the importance of the matter. Notwithstanding the holistic nature of this enquiry, it has consistently been emphasised that two factors assume particular significance, namely the adequacy and reasonableness of the explanation for the delay and the prospects of success on the merits. A full, detailed and acceptable explanation covering the entire period of the delay is required. Absent such an explanation, the application is ordinarily fatal. Conversely, even where the delay is not excessive, condonation may be refused if the prospects of success are poor. These considerations are interrelated and must be balanced against one another in the overall assessment.

[98] To begin with the first consideration, the degree of lateness and the explanation therefor, it is necessary to address the Foundation Respondents' contention. They complain that the National Lotteries Commission failed to comply with directives issued at the case management meeting of 5 May 2025, despite its attendance. That contention, while ordinarily weighty, overlooks that, at the time, the Commission had not yet elected to participate fully in the proceedings. This is borne out by its notice of appointment of attorneys, filed on 8 July 2025, which marks its substantive entry into the matter.

[99] The Foundation Respondents further contend that the National Lotteries Commission has failed to furnish an explanation for the late filing of its supporting affidavit. In response to this criticism, the National Lotteries Commission has drawn attention to the directives issued on 5 May 2025, which provided as follows: the SIU was to file a supplementary affidavit by 8 May 2025; the Foundation Respondents were to file

their answering affidavits by 20 June 2025; and the SIU was to deliver its replying affidavit by 10 July 2025.

[100] Having regard to the content and structure of these directives, it is evident that they were not directed at the National Lotteries Commission, which at that stage was merely a party with a potential interest in the outcome of the proceedings. Its position only crystallised subsequently, when it resolved to support the case of the SIU and formally appointed its attorneys on 8 July 2025. In these circumstances, the appropriate point from which to assess any delay is that date. From 8 July 2025, the National Lotteries Commission took approximately eight working days to file its supporting affidavit. In my view, it could not reasonably have been expected to comply with directives within the two-day period preceding the deadline for the SIU's reply, particularly given that those directives were not intended to bind it. I am accordingly satisfied that the delay has been fully and satisfactorily explained.

[101] The second of the traditional factors to be considered is that of prospects of success. I have already concluded that the SIU has established that the approval of the award in the sum of R4 000 000.00 was vitiated by fraud perpetrated upon the National Lotteries Commission by the Foundation Respondents, acting through Ms Shandukani. Flowing from that finding, I considered the legal consequences of the fraud in relation to both the approval of the award and the subsequent conclusion of the grant agreement. That enquiry reveals that, quite apart from the fraud itself, the Foundation Respondents acted in breach of the terms of the grant agreement. In this regard, it is common cause that the Foundation represented that boreholes had been drilled and equipped in the Eastern Cape, when in fact this had not occurred. This constitutes a material breach of the agreement. In the circumstances and having regard to the cumulative effect of the fraud and the contractual breaches, I am satisfied that the SIU has demonstrated strong prospects of success.

[102] Turning to prejudice, it is necessary to weigh the respective positions of the parties. Matters of this nature implicate the proper administration of public funds by a public institution established to advance socio-economic development within vulnerable communities. In that context, any prejudice that may be suffered by the Foundation Respondents cannot outweigh the public interest in ensuring accountability and the proper use of such funds. By contrast, the prejudice to the National Lotteries Commission, and by extension to the public, would be substantial were the condonation application to be refused. In my view, the balance of prejudice accordingly favours the granting of condonation.

[103] In the present matter, the enquiry does not end there. The Court is further enjoined to consider the overarching interests of justice. This entails a value-laden assessment that takes into account, inter alia, the nature of the relief sought, the impact of the decision, and the broader public interest considerations. Of particular significance in this case is the fact that the funds in question, being an amount of R4 000 000.00 allocated by the National Lotteries Commission, are intended for utilisation for the benefit of deserving and needy members of the community.

[104] The statutory framework governing such funds highlights their purpose as instruments of social upliftment and community development. It follows that any decision affecting their disbursement must be approached with due regard to the impact on the intended beneficiaries. The effective and lawful utilisation of these funds engages important considerations of transparency, accountability and equitable access, all of which are matters of public concern.

The Order

[105] For all the reasons set out above, I conclude that the SIU has established the case required in law and that the relief sought ought to be granted. I therefore make the following order:

1. The decision by the National Lotteries Commission taken on 8 March 2019, under project M12663 and communicated to the First and Second Respondents on 12 March 2019, to allocate a total grant of R4 000 000.00 to the Foundation is declared invalid and is reviewed and set aside;

2. The grant agreement entered into between the Foundation and the National Lotteries Commission, is declared invalid and void *ab initio;*

3. The corporate veil of the Foundation is pierced, and the Foundation's separate legal personality is disregarded;

4. The Foundation, Ms Shandukani, Mulandana, Khameli and Preldon Construction are directed to pay, jointly and severally, the one paying the others to be absolved, an amount of R4 000 000.00 (Four Million Rand);

5. The amount of R4 000 000.00 shall bear interest at the rate of 10.75% per *annum atempore morae*, from date of issuance of the application to date of payment.

JUDGE BA MASHILE

MEMBER OF THE SPECIAL TRIBUNAL

Appearances:

For the Applicant:	Adv I Hlalethoa
Instructed by:	VZLR Inc
For the NLC:	Adv N Makoti
Instructed by:	Maenetja Attorneys
For the First to Seventh Respondents:	Adv Q Pelser SC
Insructed by:	M Nethavhani
Date of judgment:	13 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 date of delivery is deemed to be 13/07/2026.