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**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**

CASENO: GP21/2025

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: YES
	27/05/2026
_____	_____
SIGNATURE	DATE

In the matter between:

SPECIAL INVESTIGATING UNIT

Applicant

and

THE NATIONAL LOTTERIES COMMISSION

First Respondent

**SOUTH AFRICAN SPORTS CONFEDERATION
AND OLYMPIC COMMITTEE**

Second Respondent

VINESH MAHARAJ N.O. CHIEF FINANCIAL

OFFICER: SASCOC	Third Respondent
MSHANDUKANI FOUNDATION NPO	Fourth Respondent
MUKUNDU KHUMELI	Fifth Respondent
NDUNGISELO REFACE MURANDANA	Sixth Respondent
IPHI LUKOKO	Seventh Respondent
PRETTY SHANDUKANI	Eighth Respondent
MASHUDU SHANDUKANI	Ninth Respondent
BENZA CONSULTING	Tenth Respondent
IMBIZO EVENTS	Eleventh Respondent
IRONBRIDGE TRAVELLING AGENCY AND EVENTS	Twelfth Respondent
KARABO CHARLES SITHOLE	Thirteenth Respondent
KULEKA MUSIC PRODUCTION	Fourteenth Respondent
MINENHLE DLAMINI	Fifteenth Respondent
MSHANDUKANI HOLDINGS (PTY) LTD	Sixteenth Respondent
NDZHUKU TRADING CC	Seventeenth Respondent

Summary: Lotteries Act 57 of 1997— Distributing Agency— Due Diligence— Fiduciary Duty— Misrepresentation— Fraud — Ultra Vires Grant Award— Unlawful Enrichment—Legality Review— Declaration of Invalidity— Just and Equitable Remedy.

JUDGMENT

MASHILE J

Introduction

[1] This is a review application brought under the principle of legality, in terms of which the Applicant (“the SIU”) seeks the following relief:

- 1.1 An order reviewing and setting aside the decision of the First Respondent, (“National Lotteries Commission”), taken on 13 July 2016, to award funding to the Second Respondent, (“SASCOC”), in the amount of R24 980 000.00.
- 1.2 An order reviewing, setting aside, and declaring unlawful and invalid *ab initio* the grant agreement concluded on 13 July 2016 between the National Lotteries Commission and SASCOC (“the impugned agreement”).
- 1.3 An order reviewing, setting aside, and declaring unlawful and invalid the payment of R24 980 000.00 made by the National Lotteries Commission to SASCOC pursuant to the impugned agreement.

[2] In addition, the SIU seeks an order:

- 2.1 Directing SASCOC, together with all the other Respondents excluding the Fifth and Sixth Respondents (Khumeli and Murandana), to repay the

amount of R24 980 000.00 to the SIU, jointly and severally, the one paying the others to be absolved.

- 2.2 Alternatively, an order granting such appropriate consequential relief as contemplated in Section 4(1), read with Section 8(2)(b) of the Special Investigating Units and Special Tribunals Act 74 of 1996 (“the SIU Act”), for the recovery of the financial losses suffered by the National Lotteries Commission, from SASCOC and all the other Respondents, excluding Khumeli and Murandana, jointly and severally, the one paying the others to be absolved.

[3] The SIU contends that the award of the grant funding to SASCOC and the subsequent conclusion of the impugned agreement ought to be reversed as they were unlawful and invalid for the following reasons:

- 3.1 The information furnished in the application for funding was materially inaccurate and misrepresented facts that were decisive to the decision to award the grant.
- 3.2 The National Lotteries failed to properly consider, evaluate and adjudicate the grant application submitted by SASCOC on behalf of the Fourth Respondent (“the Foundation”), thereby breaching its statutory and administrative obligations.
- 3.3 The information furnished in the progress report submitted after the impugned agreement was false and misleading and did not accurately reflect the utilisation of the grant funds or the progress of the funded project.
- 3.4 The grant funding was not utilised for its intended purpose. It was instead misappropriated and used for the personal benefit of the Respondents, excluding Khumeli and Murandana, as well as their families and friends.

[4] In response to the SIU’s case, the Foundation, together with the Seventh, Eighth, Ninth and Sixteenth Respondents (collectively referred to as “the Shandukani Respondents”), raises six principal contentions—

- 4.1 Firstly, they argue that the SIU incorrectly places reliance on procurement-related case law, which they contend is inapplicable and of no assistance to the issues arising in this matter.
- 4.2 Secondly, they submit that it is incorrect to characterise SASCOC as a conduit of the Foundation in relation to the conclusion of the impugned agreement with the National Lotteries Commission, contending that there is no evidence to support such a characterisation.
- 4.3 Thirdly, they deny the SIU's contention that the Foundation, through SASCOC, applied to the National Lotteries Commission for funding, asserting that this assertion is factually incorrect.
- 4.4 Fourthly, they deny that any tripartite agreement was ever concluded between or amongst SASCOC, the National Lotteries Commission, and the Foundation, and aver further that they have no knowledge of the existence of any such agreement.
- 4.5 Fifthly, the SIU has adduced no evidence to suggest that the Shandukani Respondents were involved in any fraudulent conduct, whether in relation to the receipt of the grant funds or the manner in which such funds were subsequently distributed.
- 4.6 Sixthly, the Shandukani Respondents contend that there exist material disputes of fact which cannot be resolved on the papers alone. They further submit that this aspect of the matter should not be referred to oral evidence, on the basis that the SIU was aware of these disputes at the time it initiated the proceedings before the Tribunal and nevertheless elected to proceed by way of motion.

[5] SASCOC is legally represented and opposes the application only to the limited extent that it seeks to be excused from repaying the amount of R150 000.00, which it charged for its role in facilitating the funding application on behalf of the Foundation. Save for the foregoing, SASCOC supports the application brought by the SIU. The Third Respondent ("Maharaj"), who was the Chief Financial Officer of SASCOC at the time the application was processed, appeared in person. His position is that the

Tribunal should not hold him jointly and severally liable with the other Respondents, on the basis that his involvement in the matter was not personal but arose solely from his role as Chief Financial Officer.

[6] The Eleventh Respondent (“Imbizo Events”) has concluded a settlement with the SIU, in terms of which it undertook to repay an amount of R70 000.00 to the National Lotteries Commission. Similarly, the Fifteenth Respondent (“Dlamini”) has entered into a settlement with the SUI, agreeing to pay the R50 000.00 to the National Lotteries Commission. The SIU has accepted both these settlement proposals and the two parties have honoured their undertakings. The remaining Respondents neither oppose the application nor are they legally represented before the Tribunal.

Factual Matrix

[7] The facts in this matter are largely uncontested. The Foundation, however, has identified certain inconsistencies in the SIU’s heads of argument. Against that backdrop, I draw extensively on the facts as set out by the SIU, subject to highlighting, where necessary, those discrepancies to which the Foundation takes issue. It is common cause that the President of the Republic of South Africa (“the President”) issued Proclamation R32 of 2020 (“the Proclamation”), directing the Special Investigating Unit (“the SIU”) to investigate specified allegations relating to the affairs of the National Lotteries Commission.¹

[8] Pursuant to the issuance of the Proclamation, the SIU commenced its investigation. In the course thereof, it laid bare the existence of a scheme in terms of which *bona fide* and lawfully registered Non-Profit Organisations (“NPOs”) were established and utilised by certain individuals, acting in concert with employees and/or officials of the National Lotteries Commission. The purpose of this scheme

¹ The extended investigation, authorised by Proclamation No. R.32 of 2020, focuses on maladministration in the National Lotteries Commission's affairs, specifically concerning the investment and allocation of funds from the National Lottery Distribution Trust Fund between January 1, 2014, and November 6, 2020. Moreover, Proclamation R293 of 2025 amends that original investigation mandate (Proclamation R. 32 of 2020) in two critical ways. It extends the investigation's timeframe, allowing the SIU to probe allegations of serious maladministration from the inception of the original proclamation in November 2020 up to 10 October 2025, effectively extending the investigation period by five years. It adds 21 new categories of procurement and contracting to the investigation. These include a wide range of services in which it is alleged that procurement processes were flouted, and public funds were misused.

was to misappropriate the National Lotteries Commission's trust funds—funds statutorily earmarked for altruistic and public-interest purposes—for the personal benefit of those involved.

[9] The *modus operandi* of these characters, inter alia, involved the seizure of lawfully registered NPOs—that is, the clandestine use of their documentation and information, or the fraudulent alteration of certain of their records. These “hijacked” NPOs were then utilised to apply for grant funding from the National Lotteries Commission. Once such grant funding was approved and disbursed, the funds were unlawfully and improperly appropriated for the personal benefit of the perpetrators. The Shandukani Respondents allege that when they concluded the agreement with SASCOC, they were neither aware that SASCOC had applied to the National Lotteries Commission for funding nor that SASCOC had represented to the National Lotteries Commission that it was applying for funding on its behalf.

[10] On 7 July 2016, the SIU alleges that SASCOC submitted an application for grant funding to the National Lotteries Commission on behalf of the Foundation. The application sought a one-year conduit grant in the amount of R34 830 000.00. Attached to the application were the following documents:

- 9.1 The Constitution of the Foundation;
- 9.2 A detailed funding proposal, including a budgetary breakdown of the amount of R34 830 000.00, intended to support preparations for the Rio de Janeiro 2016 Olympic Games.

[11] The application was adjudicated by the Charities Distributing Agency, a structure accountable to the Board of the National Lotteries Commission. Its function is to consider, evaluate and adjudicate applications for grant funding or to make recommendations for the funding of worthy charitable causes. On 13 July 2016, the National Lotteries Commission, duly represented by Mr M. Ncula (“Ncula”), acting in his capacity as Chairperson of the National Lotteries Commission Adjudication

Committee, and purporting to act on behalf of the National Lotteries Commission, approved grant funding in the reduced amount of R24 980 000.00.

[12] On 15 July 2016, the Foundation and SASCOC concluded an independent implementing agreement in respect of four provinces. In terms of that agreement, SASCOC was appointed as the implementing and conduit entity responsible for the administration, disbursement, and oversight of the approved grant funds, in accordance with the approved proposal, the applicable conditions of the grant, and the objectives of the funding.

[13] On 19 July 2016, the National Lotteries Commission, represented by Mr Thabang C Mampane (“Mampane”), in his capacity as Commissioner of the National Lotteries Commission, concluded a grant agreement with SASCOC. SASCOC was represented in the conclusion of the agreement by Mr Tubby Reddy, who was at the time the Chief Executive Officer (CEO) of SASCOC. On 20 July 2016, a payment in the amount of R24 980 000.00 was made by the National Lotteries Commission to SASCOC pursuant to the said grant agreement.

[14] The Foundation was registered on 16 February 2016 as an NPO, bearing registration number 166–661 NPO. The significance of the date of registration of the Foundation will become clearer later in this judgment. The Foundation applied for the grant on 07 July 2016, approximately four months after its registration. Following the approval of the grant, SASCOC paid an amount of R24 830 000.00 to the Foundation and retained an amount of R150 000.00, as contemplated in clause 9.3 of the grant agreement, ostensibly in respect of services rendered. SASCOC submitted an undated final report to the National Lotteries Commission covering the reporting periods 15 July 2016 to 30 July 2016, and 18 July 2016 to 30 September 2016, respectively.

[15] The stated purpose of the narrative final report was to provide an overall account of the utilisation of the grant and the impact thereof. According to the final report submitted by SASCOC, a total amount of R25 000 000.00 was approved and

allegedly expended in respect of the “Send-Off to Rio Campaign”. The report is misleading as the total amount disbursed to the Foundation was R24 980 000.00, not R25 000 000.00. Furthermore, no supporting documentation or evidence was produced or annexed to the report to substantiate that the grant funds were utilised for their intended purpose.

[16] As part of its investigation, the SIU conducted a financial analysis and reviewed the bank statements and transactions of the Foundation for the period before and after the payment of the grant by SASCOC. The investigation revealed that the Foundation's bank account was opened on 12 April 2016, and as of 25 July 2016, the account reflected a balance of R500.00. On 21 July 2016, SASCOC paid an amount of R5 000 000.00 into the Foundation's bank account. On 27 July 2016, SASCOC made a further payment of R15 000 000.00 to the Foundation. On the same date, SASCOC made an additional payment in the amount of R4 830 000.00 to the Foundation.

[17] From the information set out above, it is evident that the total amount paid by SASCOC to the Foundation amounted to R24 830 000.00. An examination of the Foundation's bank account, namely First National Bank account number 626[...], revealed that on 20 July 2016 SASCOC transferred an amount of R24 830 000.00 into the account. Shortly after receipt of the grant into the Foundation's bank account, the Foundation, in turn, effected a series of payments to various companies and individuals. These payments were made within a relatively short period following the transfer and are set out below:

- 16.1 R15 350 000.00 to Ironbridge Travel Agency, FNB account, account number 625[...], with the reference being “SASCOC events” from 22 July to 28 September 2016.
- 16.2 R7 229 315.00 by the Foundation to the Sixteenth Respondent (“Mshandukani Holdings”), FNB account, with account number 622 [...], the reference number being “SASCOC events” from 22 July 2016 to 6 March 2017. The Ninth Respondent (“Mashudu Shandukani”) is a director of both Mshandukani Holdings and the Foundation.

16.3 R2 000 000.00 to the Seventeenth Respondent's ("Ndzhuku Trading's") FNB account, with account number 622 [...], with reference as "Ndzhuku SASCOC event", from 23 July to 28 July 2016.

16.4 On 22 July 2016, the Foundation paid a total amount of R245 000.00 from its account to the following beneficiaries:

Beneficiary	Amount	Banking details	Reference
Benza Consulting	R80 000.00	197[...] [FNB]	SASCOC Events
Imbizo Events	R85 000.00	625[...] [FNB]	SASCOC Events
Koleka Music Productions	R30 000.00	620[...] [FNB]	SASCOC Events
Minenhle Dlamini	R50 000.00	620[...] [FNB]	SASCOC Events

[18] The financial analysis further revealed that certain companies which received payments from Ironbridge Travel Agency were linked to former employees of the National Lotteries Commission, as well as to their respective family members and/or relatives. All the identified employees have since resigned from the National Lotteries Commission. The investigation confirmed the following payments:

17.1 R450 000.00 to Mr Philemon Letwaba, who was employed as the Chief Operations Officer of the National Lotteries Commission at the time.

17.2 R600 000.00 to Mr T.S. Maselwa, who at the time was employed as the Manager: Legal Services of the First Respondent.

17.3 R3 000 000.00 to Mosokodi Business Trust, an entity which is linked to Mr Philemon Letwaba, the former Chief Operations Officer of the National Lotteries Commission.

[19] These payments, having been made to individuals and entities connected to senior officials of the National Lotteries Commission, raise serious concerns regarding

potential conflicts of interest and the propriety of the transactions under investigation. Against this backdrop, the Special Investigating Unit (“SIU”) was duly authorised to initiate the present proceedings. Consequently, on 27 March 2024, the SIU instituted these proceedings seeking, *inter alia*, the review and setting aside of the award of the funding and the subsequent conclusion of the contract.

Issues

[20] The primary issue for determination is whether the SIU has established a proper case for the review and setting aside of the contract, and for a declaration that the contract is invalid, unlawful, and accordingly null and void *ab initio*. A related issue is whether the payment of R24 980 000.00 made to SASCOC should likewise be reviewed, set aside, and declared invalid and unlawful. In resolving these issues, the Tribunal must also determine whether the evidence supports the allegation that the Foundation, acting together with SASCOC and certain employees of the National Lotteries Commission, engaged in conduct amounting to the defrauding of the Commission.

Legal Framework

[21] The funding granted by the National Lotteries Commission to SASCOC is governed by the provisions of the Lotteries Act, No. 57 of 1997 (“Lotteries Act”), which establishes the National Lotteries Commission as a statutory body. One of the primary functions of the Commission is to fund worthy causes through the National Lotteries Distribution Trust Fund (“the Fund”), established in terms of Section 21 of the Lotteries Act. The Fund is administered by the Board of the Commission. Disbursements from the Fund are regulated by the Lotteries Act itself, together with the Regulations and any Directions issued in terms thereof. Given the centrality of the Lotteries Act to the issues arising in this matter, it is appropriate to underscore certain of its pertinent provisions below.

[22] Section 21(1) of the Lotteries Act provides for the establishment of the Fund, which is managed by the Board of the Commission. In terms of Section 26(3) of the

Act, monies standing to the credit of the Fund are allocated for distribution, at prescribed percentages, for various purposes, including:

- 21.1 Charitable expenditure;
- 21.2 Expenditure on or connected with the development of sport and recreation; and
- 21.3 Expenditure on or connected with the arts, culture, and the national historical, natural, cultural, and architectural heritage.

[23] Funding by the Commission may occur in one of the following ways:

- 22.1 Upon request by the Minister or the Board, or on the Commission's own initiative acting in consultation with the Board, the Commission may conduct research into worthy causes that may be funded without the lodging of an application as prescribed in terms of the Lotteries Act. This process is commonly referred to as pro-active funding;
- 22.2 Upon consideration of applications for grants or funding submitted by worthy causes in accordance with the prescribed requirements; and
- 22.3 Upon request by the Minister or the Board, or on the Commission's own initiative, acting in consultation with the Board, the Commission may invite applications for grants from worthy causes in the prescribed manner. Section 21(1) of the Lotteries Act provides for the establishment of the Fund, which is managed by the board.

[24] Section 22(3) of the Lotteries Act provides for the distribution of funds by a distribution agency after it has considered, evaluated, and adjudicated an application for a grant. Such adjudication may follow either the submission of an application by a worthy cause or a recommendation for funding arising from research conducted by the Commission in terms of the Lotteries Act.

[25] Section 26A of the Lotteries Act provides for the establishment of a distribution agency accountable to the Board of the Commission. The purpose of the distribution agency is to consider, evaluate, and adjudicate applications for grants, as

well as recommendations for funding of worthy causes received from the Commission following research conducted in terms of the Act. The distribution agency is accordingly responsible for the allocation of funds to approved beneficiaries. Allocations to charities are further regulated in terms of Section 28 of the Lotteries Act.

[26] In terms of Section 26H of the Lotteries Act, a decision of a distribution agency in respect of an application for a grant is subject to review by the Board only upon application by an aggrieved applicant, and in the manner prescribed. Any such review must be adjudicated by a committee of the Board established specifically for that purpose.

[27] Section 29 provides that: “So much of any sum paid into the fund as is allocated for expenditure referred to in Section 26(3)(c) shall be held in the fund for distribution by the Distributing Agency appointed by the Minister, in consultation with the Minister responsible for Sport and Recreation in the national sphere of government to distribute the allocated sum fairly and equitably amongst all persons who meet the prescribed requirements.

[28] The distribution agency is required to consider applications for grants and may, subject to Section 33 of the Lotteries Act, pay such grants to appropriate recipients in accordance with the Act, the conditions applicable to its appointment, and any directions issued by the Minister after consultation with the Minister of Sport and Recreation, or by the Minister of Finance. Such grants are payable from the monies allocated for the development of sport and recreation. In terms of Section 32(3)(a) of the Lotteries Act, when considering any application for a grant under Chapter 3, the distribution agency is obliged to comply with any criteria prescribed by, or issued pursuant to directions of, the Minister.

[29] Section 60 of the Lotteries Act makes provision for the promulgation of Regulations, including, inter alia, regulations governing the procedures for the review

of decisions taken by a distribution agency, as well as the period within which an application for a grant or a recommendation for funding must be finalised. The Regulations contemplated in Section 60 were published as the Regulations Relating to the Allocation of Money in the National Lottery Distribution Trust Fund under Government Notice R645 of 20 July 2010. These Regulations came into force on 30 July 2010 (hereafter referred to as “the Regulations”).

[30] Regulation 3 of the Regulations of Chapter II of the Directions, prescribes that a juristic person applying for a grant in terms of Section 28 of the Lotteries Act must be an organisation or institution established for charitable, benevolent, or philanthropic purposes. This includes, *inter alia*, friendly societies, welfare organisations, and conduit organisations or trusts established in respect of such organisations or institutions. An applicant must further establish that it:

- (a) funds or intends to fund projects that enable individuals to participate in activities aimed at improving the quality of life of the community as a whole;
- (b) funds or intends to fund projects that assist those who are most disadvantaged or excluded from the community, particularly projects relating to elderly persons, persons with disabilities, and children; or
- (c) provides, or intends to provide, facilities for underprivileged persons.

[31] In addition, Section 32(3)(a) of the Lotteries Act provides that, when considering any application for a grant under Chapter 3 of the Act, the distribution agency is required to comply with any criteria prescribed by, or issued by direction of, the Minister after consultation with the Board. Such criteria relate to the matters to be taken into account in determining the persons to whom grants may be awarded, the purposes for which grants may be allocated, and the conditions subject to which any such allocation is to be made.

[32] On 20 July 2010, the Directions contemplated in Section 32(3)(a) of the Lotteries Act, titled Directions for Distribution Agencies in Determining the

Distribution of Funds from the National Lottery Distribution Trust Fund, were published in the Government Gazette under Government Notice R644 of 2010. These Directions came into operation on 30 July 2010 (“the Directions”). The Directions prescribe the application process and adjudication procedures to be followed by distribution agencies.

[33] In terms of Regulation 3 of Chapter II of the Directions, upon receipt of an application for adjudication, a distribution agency is required to determine whether the application meets the prescribed criteria and whether the applicant has submitted all mandatory supporting documents required by the application form. Thereafter—

32.1 if the application does not meet the prescribed criteria or does not contain all mandatory documentation, it must be declined on the basis that it either fails to meet the criteria or constitutes an incomplete application, and the applicant must be informed accordingly; or

32.2 if the application meets the prescribed criteria and contains all mandatory documentation, the distribution agency must proceed to assess the application in accordance with Regulations 3 to 6 of the Regulations Relating to the Allocation of Money in the National Lottery Distribution Trust Fund.

[34] Regulation 3A of Chapter II of the Directions prescribes that:

33.1 In respect of an application that meets the requisite criteria a Distribution Agency must finalise its adjudication within hundred and fifty (150) calendar days from the date of receipt of the application;

33.2 in the event a Distribution Agency fails to comply with the time period stipulated in regulation 3A it must-

33.2.1 within fourteen (14) days of the lapsing of the period in 3A furnish reasons for its failure to the board in writing; and

33.2.2 take all necessary steps to finalise processing of the application within a period of thirty (30) days.

[35] Regulation 3A (4) of the Direction authorizes the Commission to, at any time, take steps to verify the applicant's information. Regulation 12 of the Regulations prescribes 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.

[36] Section 2F of the Lotteries Act regulates conflict and declaration of interests by the Commissioner or any person appointed by the Commission and precludes them from engaging in any activity that may undermine the integrity of the Commission and from participation in a decision concerning a matter in respect of which that person has a direct financial interest or any similar personal interest. Subsections 2F(3) to (8) further prescribe that:

“2F. Conflict and declaration of interest—

- (3) Should the Commissioner or any person appointed by the Commissioner become aware of any conflict of interest or perceived conflict of interest or circumstances that may compromise his or her impartiality in executing his or her duties as so appointed, he or she must immediately stop executing such duties and must within seven days of becoming aware of such conflict or perceived conflict or circumstances-
 - (a) in the case of the Commissioner, inform the board; and
 - (b) in the case of any person appointed by the Commissioner, inform the Commissioner of any such conflict or circumstance.
- (4) The board or the Commissioner may consider whether such conflict or circumstance is likely to compromise the impartiality of such a person in the performance of his or her duties.
- (5) Should the Commissioner or any employee of the Commission become aware of any conflict of interest or perceived conflict of interest or circumstances that may compromise his or her impartiality in executing his or her duties, he or she must immediately stop executing such duties and must within seven days of becoming aware of such conflict or perceived conflict or circumstances, inform the Commissioner or the board, as the case may be, of any such conflict or circumstance.

- (6) The Commissioner or the board may consider whether such conflict or circumstance is likely to compromise the impartiality of such a person in the performance of his or her duties.
- (7) The Commissioner or the board may institute disciplinary proceedings against any person who fails or refuses to comply with or contravenes this Section in accordance with applicable legislation.
- (8) The board or the Commissioner, as the case may be, may, after considering whether such conflict or circumstance is likely to compromise the impartiality of such a person, inform such a person of his or her decision which may include and is not limited to-
 - (a) suspending such a person pending any further investigations; instituting a disciplinary inquiry to probe such conflict or circumstance; or
 - (b) dismissing such a person
 - (c) from his or her employment in accordance with applicable legislation.”

[37] Section 2G, in part, precludes any employee of the First Respondent 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.

[38] Clause 14.2. of the grant agreement provides that “if the information furnished in the application for funding and/or progress report is false or misleading or the Grantee fails to comply with the request from the National Lotteries Commission in terms of clause 14.1.2, the Grantee shall be in material breach of this Agreement and the National Lotteries Commission shall have the right to recover the amounts paid to the Grantee under the grant of any property or assets purchased from the grant.

[39] Clause 17.1. of the grant agreement, provides that the management committee or directors shall at all times act in good faith and in the best interest of the Grantee and shall jointly and severally be held liable for any claim, loss, liability or damage which may arise from or be incurred in respect of the grant application.

Analysis

The Information Furnished in the Application for Funding is False or Misleading

[40] Principally, the defence advanced by the Shandukani Respondents in respect of this ground is that they were entirely ignorant of SASCOC's application to the National Lotteries Commission for funding, let alone that any funds arising therefrom were intended to have them as the ultimate destination. They further state that they were oblivious to any cooperation between SASCOC and the National Lotteries Commission to siphon funds from the Commission. In their view, even if the funds ultimately made their way to them, such funds were utilised strictly in accordance with the agreement concluded between the Foundation and SASCOC, and not pursuant to any alleged tripartite agreement, the existence of which they deny and for which, they contend, there is no evidence.

[41] This contention is hard to swallow in light of the uncontested evidence of Murandana and Khumeli, who were interviewed as directors of the Foundation. The essence of their testimony is that their identities were unlawfully appropriated and used by the Foundation to procure its registration. Thereafter, the Foundation relied on the illegally obtained information to apply for funding. Notwithstanding this, during argument at the hearing, Counsel for the Shandukani Respondents submitted that, even if the identity documents of Murandana and Khumeli were utilised without their knowledge or consent, no fraud was thereby committed.

[42] The contention advanced by the Shandukani Respondents cannot be sustained. It is not without significance that the identity books of Murandana and Khumeli were specifically targeted for use in the application process. By reason of their gender and

ages, their identities were plainly suited to advance an application of this nature. It is a matter of common experience that public bodies such as the National Lotteries Commission, as well as non-profit entities like SASCOC, are inclined to view favourably those funding applications submitted by organisations that purport to include young women or persons living with disabilities among their members or leadership. The inclusion of Murandana and Khumeli was therefore not accidental or incidental, but a deliberate and calculated decision, taken with the knowledge that it would, or at the very least was likely to, secure the outcome desired by the Shandukani Respondents.

[43] Turning to the role of SASCOC and that of the National Lotteries Commission, Maharaj's evidence is that the chairperson of the National Lotteries Commission and the Chief Executive Officer of SASCOC were central to laying the groundwork for the process that culminated in the funding. SASCOC is therefore not insulated from wrongdoing in this matter, notwithstanding its protestations to the contrary. The evidence of several witnesses points to, compellingly, the chairperson of the National Lotteries Commission as the instigator of the process. Dissatisfied with the level of prominence the Commission was receiving through its association with SASCOC, he proposed that he would identify and present an eligible entity which the Commission could fund through SASCOC.

[44] Upon the Chairperson of the National Lotteries Commission submitting the name of the Foundation as the organisation earmarked to receive the grant funding, SASCOC was instructed to prepare an application in the amount of R34 830 000.00 on behalf of the Foundation, with SASCOC acting solely as a conduit. The Foundation thereafter complied by submitting all the required documentation to SASCOC. SASCOC, in turn compiled the documents in a form of an application and presented them to the National Lotteries Commission.

[45] It was SASCOC that made the presentation to the National Lotteries Commission, in which it sought the funding. Through the funds so obtained, SASCOC

was, via the Foundation, to promote and raise awareness of SASCOC's activities. This included the implementation of an awareness campaign in support of Team South Africa at the 2016 Olympic Games, scheduled to take place in August 2016. When Professor Nevhutanda presented the name of the Foundation to SASCOC, he reassured SASCOC that the Foundation had the capacity to implement and manage the campaign.

[46] Given SASCOC's financial dependency on the National Lotteries Commission, its reluctance to contradict a decision taken by the Commission is understandable. To do so may have risked the loss of future funding from the Commission. SASCOC's acquiescence in the proposed organisation, namely the Foundation, must be understood against that backdrop. In addition, SASCOC was disinclined to disappoint the Chairperson of the National Lotteries Commission, Professor Nevhutanda, who ostensibly exercised significant influence over the Commission's funding decisions. Internal investigations conducted by SASCOC suggest that these considerations informed its acceptance of the Foundation as the entity deemed suitable to receive funding to implement the awareness campaign in support of the 2016 Olympic Games.

[47] In terms of Regulation 3, conduit funding is expressly recognised as a legitimate funding mechanism. It is intended to facilitate access to funding by smaller or informal organisations that would otherwise not qualify. Against this backdrop, the contentions advanced by the Shandukani Respondents, denying any involvement in fraudulent activities or any collaboration with the National Lotteries Commission, cannot be sustained and fall to be rejected. It could scarcely have been coincidental that Professor Nevhutanda advised SASCOC that he would identify an appropriate organisation capable of ensuring that the Commission received the prominence it had hitherto lacked. It is, moreover, reasonable to infer that, in settling upon the Foundation, Professor Nevhutanda would have conveyed and aligned the objectives of the Commission with that selection.

[48] The Shandukani Respondents' persistent denial of any involvement in fraudulent activities or collaboration with the National Lotteries Commission is difficult to reconcile with the Independent Implementing Agent Agreement to which both SASCOC and the Shandukani Respondents expressly refer in their respective affidavits. While mere awareness of the National Lotteries Commission's involvement in the Rio de Janeiro Road Show Campaign may not, in itself, establish that the Foundation knew that the funding originated from the Commission, a critical question nonetheless arises: why was the Commission explicitly referenced in an agreement that purportedly bore no relation to it?

[49] The Independent Implementing Agent Agreement is unequivocal in stating that SASCOC concluded the agreement on behalf of the National Lotteries Commission. This explicit acknowledgement materially undermines the Shandukani Respondents' protestations of ignorance and renders their denials implausible. If anything, the evidence serves to confirm that their involvement in the siphoning of funds from the National Lotteries Commission was both substantial and profound, and the Tribunal sees no basis to depart from that conclusion.

[50] While dealing with the Independent Implementing Agent Agreement, it is convenient to dispose of the alleged disputes of fact raised by the Shandukani Respondents. It is neither necessary nor desirable to traverse this issue exhaustively. The agreement is unequivocal in establishing that SASCOC did not conclude it on its own behalf. As already indicated above, the terms of the agreement evince no ambiguity in this regard. Against this backdrop, the purported disputes of fact are illusory. There is no genuine or *bona fide* dispute capable of determination by way of oral evidence. Accordingly, a referral to oral hearing would serve no purpose and would be entirely gratuitous. The evidence conclusively demonstrates that the Foundation concluded the agent agreement with SASCOC, and it is of no consequence that the agreement does not expressly employ the rubric of agency.

[51] The Shandukani Respondents' further contention, that there exist disputes of fact on the issue of the Foundation being party to the alleged fraud, is without merit and is accordingly rejected. Such assertions do not find favour in this Tribunal, in light of the Independent Implementing Agent Agreement, which SASCOC clearly concluded in its capacity as a conduit or agent. The conclusion of this agreement constitutes a crucial link in the chain of events that led to the National Lotteries Commission releasing payment in the amount of R24,980,000.00 to SASCOC. It is evident that a portion of these funds was ultimately intended for, and reached, the Foundation.

[52] The payment of R24 980 000.00 by the National Lotteries Commission to SASCOC, together with SASCOC's retention of R150 000.00 from that amount prior to paying the balance to the Foundation, corroborates Maharaj's allegations that Shandukani and the Eighth Respondent ('Ms Shandukani') instructed him to transfer the funds to the Foundation. Maharaj further alleges that the Chief Executive Officer of SASCOC, acting in consultation with its President, instructed him to give effect to the payment in accordance with those instructions. This constitutes further evidence pointing to the deep involvement of Ms Shandukani, Shandukani, and the Sixteenth Respondent ('Shandukani Holdings') in the scheme to siphon funds from the National Lotteries Commission.

[53] SASCOC confirms that no due diligence was undertaken by SASCOC in respect of the Foundation. This omission is sought to be justified on the basis that SASCOC is wholly dependent on the National Lotteries Commission for funding and therefore did not consider it necessary to question the suitability of an organisation identified by the Commission through its Chairperson. SASCOC further states that it understood that the documentation submitted in support of the funding application would be scrutinised by the relevant committee within the National Lotteries Commission, which would apply the prescribed criteria in making its selection. It submits that there was accordingly no reason for SASCOC or any of its employees to suspect that the Commission was involved in an unlawful or fraudulent transaction or

that the awareness programmes funded by the grant would not be implemented. SASCOC further confirms that it did not receive any report from the Commission's Monitoring and Evaluation Department regarding its oversight of the project that was the subject of the grant funding. All this amounts to SASCOC's dereliction of its duties under the grant agreement.

[54] I agree with the SIU that SASCOC cannot be permitted to benefit from an unlawful and fraudulent process. SASCOC is accordingly obliged to reimburse the amount of R150 000.00 retained by it from the overall grant. The evidence demonstrates that SASCOC acted dishonestly and was complicit in the scheme to siphon funds from the National Lotteries Commission. In these circumstances, it is not open to a dishonest party to seek relief from a declaration of unlawfulness on the basis that it would suffer prejudice. As was held in *Esorfranki*² at paragraph 25, considerations of prejudice cannot avail a party whose hands are tainted by illegality.³ To the extent that SASCOC contends that it is entitled to recover any expenses, it must make out a positive case for such relief by way of an appropriate application to Court.

[55] Maharaj's contention that he was not a party to the irregular payment of the grant to the Foundation is untenable. As Chief Financial Officer of SASCOC, he bore fiduciary responsibilities that encompassed honesty, good faith, and the exercise of

² *Esorfranki Pipelines (Pty) Ltd and Another v Mopani District Municipality and Others* (40/13) [2014] ZASCA 21; [2014] 2 All SA 493 (SCA) (28 March 2014) at para 25 in which Court stated:

“[25] Further, the invalidity of the tender process was not the result of negligence or incompetence on the part of anyone. That the setting aside of the contract might have been disruptive to the finalisation of the construction of the pipeline must be assessed against the fact that the tender process, and consequently the contract itself, was tainted by dishonesty and fraud. Accordingly, problems which might potentially arise, as foreseen by the high court, in the contractual relationship between the municipality and the joint venture by reason of an order setting the contract aside ‘may not be of any consequence in the case of corruption or fraud, or where the successful tenderer was complicit in the irregularity’. The joint venture dishonestly obtained the award and the contract. It is therefore hardly open to it to complain that it may suffer prejudice by an order setting the award aside and declaring the contract void. Fraud is conduct which vitiates every transaction known to the law.

‘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;’”

due care in relation to all payments authorised or effected by him. In these circumstances, Maharaj cannot avoid the consequences of the impugned transaction, nor can he escape the relief sought by the SIU against him and the remaining Respondents.

[56] The version presented by Murandana and Khumeli, whose identities were misappropriated to apply for the grant without their knowledge or consent, the grant application was founded on material misrepresentations. This is reinforced by the averments of the Shandukani Respondents, who confirm that SASCOC's application falsely represented that it was submitted on behalf of the Foundation. The Foundation and SASCOC, therefore, deliberately used the names of Muratanda and Khumeli without their knowledge to secure funding. Such conduct was fraudulent and cannot be disassociated from the financial prejudice of R24 980 000.00 suffered by the National Lotteries Commission. The grant application was premised on false representations and formed part of a concerted scheme to unlawfully benefit the perpetrators.

[57] Clause 14.1.2 of the agreement confers upon the National Lotteries Commission the right to cancel the impugned agreement and to recover any amounts paid to SASCOC pursuant to the grant, as well as any property or assets acquired with grant funds, in circumstances where the information furnished in the funding application is false or misleading. In the result, I am satisfied that the SIU has sufficiently demonstrated that the information supplied was false and misleading. Consequently, on this ground, the decision should be reviewed, set aside and declared null and void *ab initio*.

The Distributing Agency Failed to Discharge its Duty Contemplated in Section 22(3) of The Lotteries Act

[58] When considering, evaluating, and adjudicating an application, the Distributing Agency is required to take into account several statutory factors. Failure to observe these factors may have serious consequences. Thus, in terms of the Lotteries Act, the

Distributing Agency is obliged to consult with the Minister of Sport, Arts and Culture or the Minister of Finance during the consideration of an application. In the present matter, there is no record or evidence that such a consultation took place. This omission is fatal. It follows then that the Distributing Agency failed to comply with a mandatory statutory requirement and, as a result, acted beyond the scope of its powers.

[59] Regulation 3 of Chapter II of the Directions provides that, upon receipt of an application for adjudication, a Distributing Agency must determine whether the application meets the prescribed criteria and whether the applicant has submitted all mandatory documents as stipulated in the application form. In this matter, the mandatory documents were not attached to the application, most notably the entity's financial statements, which are essential for assessing the financial viability of a non-profit organisation. It is therefore unsurprising that the failure to submit the Foundation's financial statements led directly to a lapse in diligence and the failure to detect the fraud.

[60] In the absence of the mandatory financial statements, the Distributing Agency was unable to properly assess the financial viability, governance structures, and operational sustainability of the Foundation. The approval of the application under these circumstances was accordingly irrational, procedurally unfair, and inconsistent with the regulatory framework governing the adjudication process. In terms of Regulation 3 of Chapter II, where an application does not meet the prescribed criteria or is not supported by all the mandatory documents, as is the case here, the application ought to be declined on the basis that it is non-compliant and incomplete.

[61] In approving the grant application, the committee members failed to properly apply their minds and acted negligently to the prejudice of the National Lotteries Commission. The application was materially defective and internally inconsistent. Although submitted in the name of the NPO, the mandatory supporting documentation pertained almost entirely to SASCO, save for the Foundation's constitution and

business plan. These inconsistencies indicate that the decision-maker failed to assess whether the application complied with the Lotteries Act's purpose and beneficiary requirements, rendering the decision procedurally unfair and substantively irrational.

[62] Furthermore, the Distributing Agency failed to adhere to basic standards of procedural diligence. It did not undertake appropriate verification of the information provided, failed to conduct a site visit, and did not call for outstanding mandatory documentation prior to approving the grant. These omissions amount to a failure to consider relevant considerations and vitiate the lawfulness of the administrative action. The Foundation failed to comply with the mandatory requirement to submit audited Annual Financial Statements (AFS) for two consecutive financial years, duly signed and dated by a registered Auditor.

[63] It is uncontested that the Foundation was incorporated in February 2016 and that the grant application was lodged on 7 July 2016. As a consequence, the Foundation was incapable of providing financial statements for two consecutive years, having not existed for that duration. Despite this material non-compliance, the Distributing Agency proceeded to award the grant, acting on the request or recommendation of SASCO, without enforcing the prescribed eligibility and compliance criteria. In these circumstances, Regulation 3 of Part II of the Directives mandated the refusal of the application. The Distributing Agency's failure to do so renders its decision unlawful and susceptible to a declaration of invalidity.

The Information Furnished in the Progress Report is False or Misleading

[64] The SIU argues that the information contained in the report is false or misleading insofar as it states that the total value of the grant, as per the agreement, is R25 000 000.00; that the total amount received during the reporting period is R25 000 000.00; and that the total amount spent during the same period is R25 000 000.00. However, it is common cause that this information is misleading, as the amount actually paid to the First Respondent was R24 980 000.00 and not the amounts reflected in the report.

[65] The report further records that the reporting periods were 15 July 2016 to 30 July 2016, and 18 July 2016 to 30 September 2016, respectively. It is uncontested that this is misleading, as payment of the grant to SASCO was only effected on 20 July 2016. It follows that the report could not legitimately encompass a period preceding both the payment of the grant and the conclusion of the agreement. In paragraph 4 of his opposing affidavit, Maharaj alleges that he received an email from Shandukani on 25 August 2016, enclosing a final report and requesting that he sign it prior to its submission to the National Lotteries Commission.

[66] Contrary to this allegation, Annexures “VM2” and “VM3” do not support Maharaj’s averments. In particular, annexure “VM2” is an email dated 19 September 2016, which attaches annexure “VM3”. Annexure “VM3” is expressly an interim report and not a final report as alleged by Maharaj. The crux of the matter is that the final report submitted by Maharaj to the National Lotteries Commission was devoid of any corroborating documentary evidence and was materially misleading. In consequence of this material misrepresentation, the Distributing Agency ought to have rejected the report. The failure to reject the report constituted a dereliction of the Commission’s obligations under the governing framework.

[67] Over and above the fact that the contents of the report are misleading, its true significance lies in the manner in which it contradicts the Foundation’s purported lack of knowledge regarding the National Lotteries Commission’s involvement. The pertinent question arises: why would Shandukani instruct Maharaj to sign the report prior to its submission to the Commission if, as alleged, the Foundation had no involvement in the process? This conduct is irreconcilable with any claim of ignorance and points instead to conscious participation. In light of the foregoing, the decisions to award the grant and to conclude the underlying agreement fall to be reviewed and set aside.

The Grant was not used for its Intended Purpose

[68] Clause 2.2.3 of the grant agreement stipulates that the grant funds were to be utilised strictly in accordance with the items listed in Annexure “A” thereto, and for no other purpose. The SIU contends that the Shandukani Respondents, together with all the other respondents, with the exception of Khumeli and Murandana, failed to apply the grant in the manner envisaged by the agreement. The Shandukani Respondents, on the other hand, barefacedly assert that the funds were duly expended for their intended purpose and that, consequently, no breach of the agreement occurred. This stance is maintained notwithstanding the fact that an amount of R15 350 000.00 from the grant was paid to the Twelfth Respondent, Ironbridge Travelling Agency.

[69] The aforesaid amount was utilised for, *inter alia*, the purchase of motor vehicles and goats; payments to panel beaters, network installations, décor for an unveiling event and payments to Letwaba and/or entities and trusts under his control, as well as to his family members and friends and/or their entities or trusts. None of these expenditures fall within the activities or items listed in Annexure “A” of the grant agreement, nor were they the purpose for which the grant was intended to be applied.

[70] The National Lotteries Commission received no value in return for the payment of the grant, as the funds were misappropriated by all the Respondents, with the exception of Khumeli, Murandana, Eleventh Respondent (“Imbizo Events”), and Dlamini, which has settled the claim against it with the SIU. The implicated Respondents utilised the funds for their own benefit, as well as for the benefit of entities under their control and individuals associated with them or with those entities. At the relevant time, the funds received by these companies were under the control of their respective directors and trustees, as the case may be. These directors and trustees, who have been cited as Respondents in this application, authorised and caused payments to be made from the bank accounts of the entities in question.

[71] SASCOC expressly conceded that it utilised the amount of R150,000.00, which it had retained as an administrative fee in terms of the agreement, for operational costs incurred in the ordinary course of its business. This constitutes a clear and unequivocal admission that the funds were applied for a purpose other than that contemplated by the parties in the agreement. Such use is inconsistent with the agreed terms and amounts to a breach thereof. In the circumstances, the award of the grant to SASCOC, together with the underlying agreement, falls to be reviewed and set aside on the basis that the funds were utilised in a manner contrary to the provisions of the agreement.

[72] SASCOC's contention that it would be unjust and inequitable for this Tribunal to direct it to reimburse the amount of R150,000.00 to the National Lotteries Commission is without merit and must be rejected. It is immaterial that the unlawful conduct was carried out by its employees and officers in collusion with officials of the Commission. What is decisive is that SASCOC itself—and not the individuals involved—derived the benefit from the impugned transaction.

[73] This argument overlooks the fundamental principle that employees and officers were acting within the course and scope of their official duties, and there is no evidence to suggest that they personally profited from the conduct in question. In these circumstances, the acts of those individuals are attributable to SASCOC. Where SASCOC was implicated in fraudulent activity, it cannot, as a matter of law and equity, be permitted to retain the proceeds thereof. To allow it to do so would be to sanction the very wrongdoing that this Tribunal is enjoined to remedy.

[74] The Shandukani Respondents have challenged the authority of the deponent to the founding affidavit. This challenge is premised on an obvious drafting error, in that the deponent inadvertently referred to Section 5A(4) of the SIU Act instead of Section 5AA (1). The error is purely technical in nature and does not give rise to any prejudice. There is no contention to the contrary, nor does such error detract from the deponent's authority to depose to the affidavit, which is in any event properly

grounded in the applicable statutory provision. A similar situation confronted the court in *Trans-African Insurance Co Ltd v Maluleka* and it had this to say:

“Technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and, if possible, inexpensive decision of cases on their real merits.”⁴

[75] To the extent that the Shandukani Respondents contend that the Fund constitutes a separate juristic entity, a such contention is misplaced. Although the Fund owes its existence to Section 21(1) of the Lotteries Act and is administered by the Board, this does not confer upon it independent legal personality. The Fund remains a division of the National Lotteries Commission and is neither separate from nor independent of it. Accordingly, the actions and decisions of the Fund are properly attributable to the National Lotteries Commission. Thus, where decisions taken by the Fund are inconsistent with the principle of legality, the SIU is empowered to approach this Tribunal in terms of that principle for appropriate relief. Such relief may include an order reviewing and setting aside the decision to award the grant, the grant agreement itself, the payment of the grant to SASCO, as well as any expenditure incurred pursuant thereto.

Declaration of Invalidity

[76] A proper consideration of the above reveals that the provisions of the Lotteries Act, together with the Regulations and Directives promulgated thereunder, were not merely undermined but were in fact contravened. Likewise, the agreements governing the grant were disregarded and breached. The process preceding the award of the grant was tainted by illegality. It was founded upon material misrepresentations of fact. Notably, it was not disputed that the identity documents of Murandana and Khumeli were utilised without their consent and were improperly employed in support of the application for the grant.

⁴ *Trans-African Insurance Co Ltd v Maluleka* 1956 (2) SA 273 (A) at 278F-G.

[77] The grant was not used for the purpose for which it was awarded. A further analysis of all the evidence demonstrates that each of the Respondents, excluding Marandana and Khumeli, was complicit in a scheme to siphon funds from the National Lotteries Commission. SASCO was employed as a vehicle through which the grant application was made, ostensibly for legitimate purposes, but in reality, for the benefit of the respondents, certain employees of the National Lotteries Commission, and entities associated with them.

[78] Additionally, the funds received by SASCO from the National Lotteries Commission were not utilised in accordance with clause 2.2.3 of the grant agreement. Moreover, in approving the application and authorising the disbursement of the funds, the Distributing Agency failed to consult with the Minister, as required by the Lotteries Act. In the circumstances, the decisions are vulnerable to review under the principle of legality, as entrenched in Section 1(c) of the Constitution, pursuant to which this review is brought. Accordingly, the decisions are declared constitutionally invalid and are reviewed and set aside in terms of Section 172(1)(a) of the Constitution.

Just And Equitable Remedy

[79] In *Special Investigating Unit and Another v Vision View Production CC*⁵ the Court held that a Court (or tribunal) exercising its powers under Section 172(1)(b) of the Constitution has a wide remedial discretion to fashion a remedy that is just and equitable in the circumstances. This includes the power to regulate the consequences of a declaration of invalidity, and in appropriate circumstances to decline to order full restitution, instead crafting a remedy that is fair, having regard to factors such as the extent of performance, the parties' conduct, considerations of public interest, and the need to avoid unjust enrichment or undue hardship.

⁵ In *Special Investigating Unit and Another v Vision View Production CC* (2019/20801) 2020 ZAGP JHC 421 at para 60, quoting with approval, *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* (No 2) [2014] ZACC 12 (17 April 2014); 2014 (4) SA 179 (CC) at para 38.

[80] The wide discretion in crafting a just and equitable remedy requires a careful balancing of legality, fairness, and the practical consequences of setting aside the impugned transactions, and that full restitution is not an inflexible rule but one of several remedial options available depending on the circumstances. The evidence in this matter reveals an elaborate scheme to siphon funds from the National Lotteries Commission for personal gain. With the exception of Murandana and Khumeli, all the parties before this Tribunal were complicit in, and derived benefit from, the impugned scheme. While Imbizo Events and Dlamini were initially part of the unlawful arrangement, they have since concluded settlement agreements with the SIU in terms of which they have undertaken to reimburse portions of the funds received from the Foundation. The SIU has accepted those settlement agreements.

[81] In these circumstances, it would not be just and equitable to approach the question of remedy on the basis of uniform restitution across all parties. The differing degrees of participation, benefit, and subsequent conduct, including the willingness of certain parties to make restitution, must inform the remedial outcome. A nuanced remedy is therefore required, one that ensures accountability for those who participated in the scheme, avoids unjust enrichment, recognises *bona fide* settlements, and protects parties who were not implicated in the wrongdoing.

[82] I have had the benefit of the arguments presented on behalf of the National Lotteries Commission, SASCO, and the Shandukani Respondents. The SIU seeks no relief against Khumeli and Murandana. Insofar as Imbizo Events and Dlanini are concerned, the SIU has advised that it has accepted settlement offers in full and final settlement of their liabilities.

[83] The remaining Respondents did not oppose the application, notwithstanding that the relief sought is against them jointly and severally and that they stand to be directly affected by any order granted by this Tribunal. In the absence of any opposition and having regard to the nature of the relief sought, I am satisfied that those Respondents were fully aware of the proceedings and the implications thereof

and have elected not to place any facts or contentions before this Tribunal in their defence. It is therefore reasonable to infer that they have resigned themselves to the consequences that may flow from an adverse order.

[84] The essence of SASCOC's position in this matter is that it was Professor Nevhutanda who set in motion the sequence of events that ultimately culminated in these review proceedings. According to SASCOC, it was placed in an unenviable position in that it could not readily reject a proposal advanced by Professor Nevhutanda, who at the time was the Chairperson of the National Lotteries Commission and whose office was pivotal to SASCOC's access to funding.

[85] SASCOC contends that any refusal to accede to the proposal carried with it the real risk of jeopardising its prospects of securing future financial support from the National Lotteries Commission. Against that backdrop, SASCOC agreed to lend its support to a process intended to enhance the profile of the National Lotteries Commission through the Foundation, an entity identified and effectively handpicked by Professor Nevhutanda. Notwithstanding its involvement in the process, there is no evidence that SASCOC derived any substantive benefit from the impugned grant, save for the sum of R150 000.00 retained in respect of administrative functions associated with the project.

[86] All things considered, there is evidence that Mr Maharaj, the Chief Financial Officer of SASCOC, was aware that the process was potentially tainted by illegality. Notwithstanding this knowledge, he yielded to the direction of the Chief Executive Officer and the President of SASCOC, thereby disregarding his fiduciary duties and implicating SASCOC in the impugned conduct.

[87] In these circumstances, SASCOC cannot be heard to contend that it is entitled to retain the sum of R150 000.00, which was obtained through an unlawful process. To permit SASCOC to do so would be to sanction unlawful enrichment and

undermine the principle of legality. Accordingly, SASCO is obliged to repay the amount of R150 000.00 to the National Lotteries Commission.

[88] Turning to Maharaj in his personal capacity, there is no evidence that he directly benefited from the approval of the grant or the consequent disbursement of funds. However, his failure to discharge his fiduciary duties, particularly in circumstances where he was aware of potential illegality, materially contributed to the unlawful approval and payment of the grant. His conduct was not merely passive; it facilitated the impugned transaction and enabled SASCO's participation in the scheme. In these circumstances, he cannot evade accountability. The fact that he did not personally benefit does not absolve him of liability where his breach of duty was causally linked to the loss suffered. Accordingly, Maharaj is jointly and severally liable with SASCO for the repayment of the amount of R150 000.00 to the National Lotteries Commission.

[89] I have already dismissed the contentions advanced on behalf of the Shandukani Respondents. The evidence demonstrates that they were centrally and actively involved in the siphoning of funds from the National Lotteries Commission. Their participation was neither peripheral nor inadvertent but formed part of the core machinery through which the unlawful scheme was executed. It is, moreover, disconcerting that, despite the existence of documentary evidence, including the Independent Implementing Agent Agreement, the Foundation persists in asserting ignorance of the illegality that permeated the process. Such a stance is untenable when viewed against the totality of the evidence. Equally troubling is the absence of any cogent or lawful explanation for the Foundation's disbursement of funds to various parties, some of whom subsequently made payments to employees of the National Lotteries Commission. Such conduct is plainly impermissible and in direct contravention of the provisions of the Lotteries Act.

[90] Lastly, in respect of the remaining respondents, with the exception of Murandana, Khumeli, Dlamini and Imbizo Events, their failure to participate in these

proceedings, whether through legal representation or in person, as was the case with Maharaj, warrants the inference that they have elected to abide by the consequences of any order that this Tribunal may make against them. In the absence of any contrary evidence or explanation, there is no basis to insulate them from liability. All things considered, and having regard to the overall context of this matter, I am satisfied that the order set out below is just and equitable in the circumstances.

Order

[91] In the premises, I make the following order.

- (1) The decision of the National Lotteries Commission of 13 July 2016 to award funding to SASCOC in the amount of R24 980 000.00 is reviewed and set aside;
- (2) The grant agreement concluded between the National Lotteries Commission and SASCOC, dated 13 July 2016 is declared invalid and unlawful *ab initio*;
- (3) The payment of the amount of R24 980 000. 00 made to SASCOC by the National Lotteries Commission pursuant to the grant agreement is declared invalid, unlawful and is reviewed and set aside;
- (4) All the Respondents, with the exception of Murandana, Khumeli, Dlamini, Imbizo Events, SASCOC and Maharaj are directed to repay, jointly and severally, to the SIU, an amount of R24 830 000.00 unduly paid to them, the one paying the others to be absolved;
- (5) SASCOC and Maharaj are directed, jointly and severally, the one paying the other to be absolved, to repay the amount of R150 000.00 to the SIU; and
- (6) SASCOC, Maharaj and the Shandukani Respondents are liable for the costs occasioned by this application. Such costs are to include those of two counsel.

JUDGE BA MASHILE
MEMBER OF THE SPECIAL TRIBUNAL

Appearances:

For the Applicant: Adv E Baloyi-Mere SC
 Adv N January

Instructed by: Linda Mazibuko & Associates

For the Respondents: Adv M Mokoti

Instructed by: Maenetja Attorneys

For the 2nd Respondents: Adv Cassim SC
 Adv O Ben-Zeev

Instructed by: Dev Maharaj & Associates Inc

For the 3rd Respondents: Vinesh Maharaj

Instructed by: In Person

For the 4th, 7th, 8th, 9th and 16th Respondents: Q Pelser SC

Instructed by: Nevathani Attorneys

For the 11th Respondents: No Appearance

Instructed by:

For the 15th Respondents: Legodi Attorneys

Instructed by: No appearance

For the 5th, 6th, 10th, 12th, 13th, 14th and 17th Respondents: Not opposing the application

Date of judgment:

Mode of delivery

This judgment is handed down by email transmission to the parties' legal representatives, uploaded to Caselines and released to SAFLII and AFRICANLII. The date of delivery is deemed to be 27 May 2026 at 10h00.