



**IN THE SPECIAL TRIBUNAL ESTABLISHED IN TERMS OF SECTION 2(1)
OF
THE SPECIAL INVESTIGATING UNIT AND
SPECIAL TRIBUNALS ACT 74 OF 1996
(REPUBLIC OF SOUTH AFRICA)**

CASE NO.: GP21/2023

In the matter between:

MARUBINI RAMATSEKISA

Applicant

and

SPECIAL INVESTIGATING UNIT

First Respondent

LIBERTY GROUP LIMITED

Second Respondent

NATIONAL LOTTERIES COMMISSION

Third Respondent

JUDGMENT

Introduction

[1] The Republic of South Africa is one sovereign democratic state founded on the supremacy of the Constitution and the Rule of Law. In carrying out this overarching constitutional imperative the provisions of s 2(2) of the Special Investigating Units and Special Tribunals Act No. 74 of 1996 (the SIU Act) have been enacted and provide in relevant part as follows:

- (2) The President may exercise the powers under subsection (1) on the grounds of any alleged-
 - (a) serious maladministration in connection with the affairs of any State institution;
 - (b) improper or unlawful conduct by employees of any State institution;
 - (c) unlawful appropriation or expenditure of public money or property;
 - (d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;¹

[2] In this application the applicant seeks the release of funds which form the subject matter of a preservation order granted by this Tribunal. On 12 December 2023 the Special Investigating Unit (SIU), the first respondent sought and obtained a preservation order of the pension fund of Mr Ramatsekisa, the applicant, held by the Liberty Life Group, the second respondent. The applicant seeks the release of an amount of R1.2 million from the pension fund in order to fund his litigation and living expenses. According to the National Lotteries Commission, NLC, the third respondent, the amount preserved in the pension fund is approximately R1 424 345.96. This means that if an amount of R1.2million is released, an amount of approximately R200 000 will remain.

[3] In the main review application it is alleged that the applicant facilitated a proposal for pro-active funding for a Non-Profit Organization (NPO) in the amount of R4 million. The applicant signed a proactive assessment sheet. This proactive process was a deviation from the normal grant funding. It is alleged that there was a misrepresentation by the applicant. He had prepared a grant funding proposal for an

¹ Section 2(2) of the SIU Act

NPO and lied about it. In facilitating the grants, he did not ensure that the application went through the normal process.

[4] The determination of those issues will be adjudicated when the review application is heard.

Parties

[5] The applicant is Marubini Livingstone Ramatsekisa, a former employee of the National Lottery Commission, NLC, the third respondent.

[6] The first respondent is the Special Investigations Unit (SIU) established in terms of s 2(1)(a) (i) of the SIU Act. The second respondent is the Liberty Group Limited, a licenced insurer. The third respondent is the National Lotteries Commission, (NLC), a body which inter alia regulates the National Lottery and is the former employer of the applicant.

Background

[7] The SIU has been mandated in terms of Proclamation 32 of 2020, published on 20 October 2020 in Government Gazette number 43885 (the Proclamation) to conduct investigations into maladministration in connection with the affairs of the NLC. In particular it had to investigate the maladministration of the grant funds in the National Lotteries Distribution Funds.

[8] The SIU describes that the basis for obtaining the interdict and restraining order of the pension fund, arose out of an elaborate scheme at the NLC perpetrated by its officials to siphon off money from the grant funding part of it. The SIU contended that the applicant was a key player in the scheme. It has uncovered evidence that ties him to an amount of approximately R4 million siphoned off from the NLC. He resigned before the disciplinary hearing could take place.

The applicant's case

[9] The applicant denies any wrongdoing. The applicant explains that the preservation order accelerated his financial downturn. He intended to withdraw the fund before the preservation order was granted as his employment with the NLC ended when he resigned. The SIU describes its cause of action in its founding affidavit as an interdict and a restraining order, in terms of the SIU Act. The applicant on the other hand relies entirely on the provisions of rule 23 (10) of the Tribunal rules.

[10] The current application for the release of funds is based upon the following facts asserted by the applicant. The applicant explains that he is currently facing various applications brought by the SIU which led to this preservation order against his pension fund. He lists amounts of R4 million, R5,5 million and R6 million as claims against him. He explains that the SIU alleges that he was involved in the misappropriation of funds which he denies. He explains that he made a monthly contribution of R15 088 per month towards his pension. He made these contributions from his salary until the 30th of September 2023. At the time of his resignation he believes that the pension fund benefit was about R1,7million.

[11] After resigning from his employment with the NLC and on the 11 October 2023 he tried to withdraw his benefits because he had a number of debts which were in arrears and which he wanted to pay off. To his dismay on 12 December 2023 he was met with the news that his pension benefits had been preserved in terms of the Tribunal preservation order. Since the preservation order and his inability to retrieve the funds, his financial hardships increased. He states that he is unable to keep up with his financial obligations to his family and his creditors. He has explained that he is not entitled to legal aid or pro bono assistance and that he cannot find employment. He describes that he has to incur legal expenses to defend himself.

[12] On 3 December 2024 his application for the reconsideration of the preservation order was dismissed with costs. He does not have alternative employment because he

is fully involved with this case. He explains that he has a wife of 19 years and has four children ages 16, 15, 12 and 1 year old respectively. He describes his monthly expenses which include groceries, payment of various mortgage bonds, school fees, body corporate fees, Telkom and City of Johannesburg. He also describes that he is in arrears with creditors in an amount of R1 849 903. These arrears include attorney and counsel fees and anticipated future legal fees.

[13] The applicant argues that the SIU has suffered no loss and therefore the SIU is not entitled to the amount he requires for his living expenses, his arrears with creditors and legal costs.

[14] Unfortunately the applicant's income is not described in any substantial detail at all, save to state that he is not working. He does not disclose the rental he receives from his properties. He does not attach or refer to his bank statements reflecting his financial position for the past several months. Although the rules do not enjoin him to attach several months of personal bank statements reflecting his daily living costs, this would have gone a long way to make disclosure of all his interests and indeed reflect what he did with the proceeds of the property that he sold.

The respondents' case

[15] The SIU's answering affidavit asserts that the applicant does not have a claim cognizable in law. The SIU describes how the investigation took place and pursuant to the investigation the decision was made to interdict his pension fund in terms of s 37 D of the Pension Funds Act, 24 of 1956. In relevant part:

37D. Fund may make certain deductions from pension benefits

- (1) A registered fund may—
- (b) deduct any amount due by a member to the member's employer on the date of retirement, the date on which the member ceases to be a member of the fund or the date on which the member's employment with a participating employer in a retirement fund is terminated in accordance with the Income Tax Act and the Tax Administration Act, 2011 (Act No. 28 of 2011), in respect of compensation, including any legal costs recoverable from the member in a matter contemplated in subparagraph (ii), in respect of any damage caused to

the employer by reason of any theft, dishonesty, fraud or misconduct by the member, and in respect of which—

- (i) the member has in writing admitted liability to the employer; or
- (ii) judgment has been obtained against the member in any court, including a magistrate's court, and includes a compensation order granted in terms of section 300 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977),

from any benefit payable in respect of the member or a beneficiary in terms of the rules of the fund, and pay that amount to the employer concerned;

Underlining for emphasis

[16] In this case the applicant was formerly an employee of the NLC, and therefore the allegation of wrongdoing triggered the provision of 37D of the Pension Fund Act. The SIU also explains that the applicant's financial difficulties predates the preservation of his pension fund.

[17] The SIU also argues that the relief it obtained was of an interdictory nature and not in terms of rule 23 of the Special Tribunal Rules, and that it would not be feasible to await a judgment in due course which could result in the execution of the judgment against the applicant's properties, since the arrears are substantial and there might be no equity left to satisfy a judgment in due course.

[18] The SIU confirms some of the arrears described by the applicant. The SIU contends that the applicant has an interest in at least four immovable properties one being his primary residence situated in an affluent and exclusive golf estate of Blue Valley Midrand. This is not denied but the applicant. He states that he only owns two properties.

[19] The applicant's debts exceed his pension fund benefit, therefore should the SIU succeed in the main application it would have no security for recovering any damages. As stated the SIU's claim is based alleged wrongdoing. Whilst he was employed by the NLC, it is alleged that he facilitated the awarding of grants and this resulted in the NLC suffering damages

[20] The NLC also opposes the relief sought. The NLC argues that if the amount of R1.2 million is released, there will be about R200 000 left which is wholly inadequate to protect their interests.

Issues

[21] The issues to be determined in this application are:

21.1 whether the applicant is entitled to the release of funds in the amount of R1.2million for his reasonable living and legal expenses;

21.2 Whether the applicant has made a full disclosure of all the facts necessary to grant the relief

21.3 The legislative framework governing the release of funds for living and legal expenses.

21.4 In the light of the applicant's precarious and possible insolvent position, does the preservation of funds in favour of the NLC create a ranking above other creditors.

The legislative framework

[22] It is necessary to consider the Tribunal rules referred to and note that the rules are promulgated in terms of s 9(1) of the SIU Act. The preamble to the SIU Act provides its purpose and function as follows:

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

[23] The SIU Act is the enabling statute which governs all matters pertaining to its mandate. Parliament in terms of s 43(a) of the Constitution vests the legislative authority in Parliament with the power to pass statutes which become the overarching laws passed by it. The legal origin of the right or obligation vests in the statute passed by Parliament. The rules and regulations comprise the procedural law detailing the procedures to implement the statute and steps required to place the litigation before a court or in this case the Special Tribunal.

[24] The central issue in analysing the legislative framework is whether the rules pertaining to the question of preservation of assets are internally consistent or not and whether they are also consistent with the SIU Act. No case is made out that if there are inconsistencies, this might result in irrationality or that the inconsistencies are unreasonable or unjustifiable. The core issue in analysing this legislative framework is whether the release of the preserved funds are in terms of the Tribunal rules or whether such release as sought by the SIU is solely interdictory in nature and must be determined in terms of the SIU Act.

[25] Dealing with the canons of construction of statutes, Cameron J stated in *Ruta* that there is:

... Well-established interpretive doctrine enjoins us to read the statutes alongside each other, so as to make sense of their provisions together. But it is equally clear that in this process the Immigration Act's provisions cannot be read to supersede or subordinate those of the Refugees Act. A longstanding principle of statutory interpretation points to the conclusion that a later statute's general provisions do not derogate from a statute's specific provisions (*lex generalis specialibus non derogat*).²

[26] Cameron J also referred to the judgment by Van Heerden JA in *Khumalo*:

“(I)n the absence of an express repeal, there is a presumption that a later general enactment was not intended to effect a repeal of a conflicting earlier and special enactment. This presumption

² *Ruta v Minister of Home Affairs* 2019 (2) SA 329 (CC) para 42

falls away, however, if there are clear indications that the Legislature none the less intended to repeal the earlier enactment. This is the case when it is evident that the later enactment was meant to cover, without exception, the whole field or subject to which it relate”³.

[27] Here is where the contestation between the rules and the SIU Act play out. The parties contend for two opposing approaches to the release of funds. On the question of the release of preserved funds, the applicant relies upon rule 24(10) of the Tribunal rules whilst the SIU and NLC rely on interdictory relief as envisioned by the s 4(1) and s 8(2) of the SIU Act. What is immediately evident is that rules of the Tribunal cannot nor do they purport to override the provision of the SIU Act.

[28] At first glance there appears to be a direct contradiction where the same thing, i.e. “preservation” is treated in diametrically opposite ways. It was argued on behalf of the applicant that rule 23(10) is the only legislative item that must be considered when it comes to the release of prescribed funds. In essence the applicant argues that a preservation order only relates to the preservation of evidence. Upon a close analysis of the rules however, it is clear that the rules appear not to provide solely for preservation of evidence. An analysis of all the sub-rules in rule 23 point to a bifurcated purpose. to preserve evidence or alternatively preserve the item in question with no reference to preserving evidence. This will appear from the analysis of rule 23 below.

Tribunal rule 23 framework.

[29] This is where the contestation between legislative framework of the SIU Act and the Tribunal rules begins. The applicant’s case is based in the main on the powers provided for in rule 23.

[30] In terms of rule 23(1):

“The SIU may, by way of an ex parte application and in the form of a rule nisi, apply to the Tribunal in chambers or open hearing of the Tribunal, for a preservation order, pending the final adjudication of the main application or action proceedings, including

³ *Khumalo v Director-General of Co-operation and Development and Others* 1991 (1) SA 158 (A) at 165E:

appeals arising therefrom; prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from disposing of, interfering with or dealing in any other manner with any property to which the order relates.”

[31] Rule 23(2) appears to limit a preservation order to preserving evidence in relation to the wrongdoing linked to the thing so preserved. It provides as follows:

“An application for a preservation order before the Tribunal is limited only in instances where there is a need for the preservation of evidence of the proceeds of a crime or unlawful transactions, contracts or conduct arising from any of the grounds listed in section 2 (2) of the Act;

Underlining for emphasis

[32] Rule 23(4) provides:

“The Tribunal may grant an application for a preservation order where it is proved, on a balance of probabilities that:

- (a) A prima facie case is made out in the main application or action proceedings pending;
- (b) The relief sought must be the only practicable mean of protecting the evidence;
- (c) The evidence to be attached must be material to the applicant’s main application or action proceedings;
- (d) Reasons are provided for the belief that the evidence will be removed, disposed of or destroyed;
- (e) The order should go no further than is strictly necessary for the preservation of the evidence sought to be preserved.”

In terms of rule 23(4) the Tribunal may grant a preservation order as stated in sub-rule (a). It is a stand-alone provision. Although sub-rule (4) (b) of rule 23 refers to the protection of evidence but it is not conjunctive with rules 23(4) (a) and 23(4) (b). There is no “and” between the sub rules. The sub-rules are not connected with the word 'and', which one would have expected, if it was intended for the sections to be construed conjunctively. The role of the conjunctive principle ‘and’ was referred to in *Qwelane*.⁴

[33] The wording in rule 23(10) also emphasises and provides that:

⁴ *Qwelane v South African Human Rights Commission and Another* 2020 (2) SA 124 (SCA)

“Without derogating from the generality of the powers conferred by sub-rule (1), a preservation order may make such provision as the Tribunal may think appropriate - (a) for the reasonable living expenses of a person against whom the preservation order is being made and his or her family or household; and/or (b) for the reasonable legal expenses of such person if the Tribunal is satisfied that the person whose expenses must be provided for has disclosed under oath all his interests in property subject to a preservation order and that the person cannot meet the expenses concerned out of his preserved property.

Underlining for emphasis.

[34] Clearly rule 23 (10) does not mean to derogate from the powers in 23(1)(a) which is a stand-alone sub-rule stating:

“A prima facie case is made out in the main application or action proceedings pending;”

In analysing the applicant’s approach based on rule 23 cognisance must be taken of the fact that rule 23(10) does not derogate from the powers in rule 23(1) which is wide in its reach and not limited to the preservation of evidence. This must be compared with the limitations in rule 23(2) which is expressly for the preservation of evidence. Again, these provisions are not conjunctive.

[35] This analysis of itself shows possible internal contradictions within rule 23. Is it meant to only preserve evidence of a tainted good or read disjunctively can the sub-rules cover scenarios where the preservation order is not only for the preservation of evidence but to preserve an item by way of interdictory relief. The latter almost being in the form of protecting a right that may be concretised or enforced in due course.

[36] Sub-rule 23(2) does suggest that only preservation of evidence can found a preservation order before the Tribunal. This is an important part of the applicant’s submissions. Following upon that provision, the applicant submits that the pension funds are not proceeds of a crime or unlawful transactions, contracts or conduct arising from any of the listed wrongdoings in rule 23 (2). He acquired his pension interest from his salary which he earned whilst employed by the NLC. Therefore, the money should

not have been preserved in the first instance since the pension fund that has been preserved was not obtained through proceeds of a crime but his salary.

[37] It is noted that all these sub-rules of rule 23 are disjunctive and do not rely on the other sub-rules referring to the preservation of evidence. The wording in rule 23(1) emphasises that the SIU can seek a preservation order, pending the final adjudication of the matters prohibiting any person, from disposing of, interfering with or dealing in any other manner with any property to which the order relates. In this case the order relates to the preserved pension fund. There is no reference in the order to the preservation of evidence or that the pension fund relates to a tainted source.

[38] There appears at first glance to be an explicit contradiction between sub-rules 24(1) on the one hand and sub-rules 24(2) and 24(4) on the other hand. The law of contradiction is a principle in logic where contradictory propositions can't both be true. In this case can the SIU Act and the different sub-rules themselves dealing with the same conduct and consequences both apply simultaneously. The law enjoins a court to avoid conflict and reconcile the differences. In some cases, there may be two statutes dealing with the same thing which results in frustration and apparent impasse. There are various legal tools of interpretation which deal with that scenario, one of which is that original legislation prevails over subordinate legislation. Moreover, in the absence of any reference in the subordinate legislation that the subordinate legislation must take precedence, then clearly the statute must take precedence.

[39] In this case it is unnecessary to become alarmed that there might be two irreconcilable differences between what might be two causes of action between the rules themselves on the one hand and rule 23(2), 23(4) and conversely rule 23(10) and the SIU Act. In argument the SIU eschews any reliance on the rules and the applicant similarly eschews any reliance on the provisions of the SIU Act which will be more fully referred to below.

[40] On a closer analysis of the provisions of rule 24(1), 24(2) and 24(4)(a) there is no ‘either or’ situation that arises. Rule 24(1) is of general application referring to the main application or action and prohibits the dealing in any way with the items to which the order relates. Then there is rule 24(4)(a) which enables the grant of a preservation order where it is proved that a prima facie case has been made out in the main case. It is not conjoined by the word “and” when reference is made to the rest of the provisions in rule 24(4) (b)(c) (d) and (e). The latter three sub-sections relate to the preservation of the evidence of the tainted item or conduct. Rule 24(4) (a) separately relates directly to the cause of action in the main application or action.

SIU Act framework.

[41] The SIU Act is clear. From a plain grammatical meaning of the SIU Act it is clear that net is spread very widely. Of importance is clear wording of s 8(2) of the SIU Act. It relates to interdicts that can be granted. The nature of the interdict is located in civil proceedings that the SIU may wish to bring before the Tribunal emanating from an investigation by the SIU.

[42] In terms of s 4(1) (c) (i)(ii)(iii) of the SIU Act

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

(a)...

(b)...

4(1)(c) to institute and conduct civil proceedings in a Special Tribunal or any court of law for—

(i) any relief to which the State institution concerned is entitled, including the recovery of any damages or losses and the prevention of potential damages or losses which may be suffered by such a State institution;

(ii) any relief relevant to any investigation;

(iii) or any relief relevant to the interests of a Special Investigating Unit;

[43] Proclamation N0.32 of 2020 provides as follows in relevant part.

“which took place between 1 January 2014 and the date of publication of this Proclamation or which took place prior to 1 January 2014 or after the date of publication of this Proclamation, but is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule...”

Underlining and bold for emphasis

The Schedule reads as follows in relevant part.

SCHEDULE

1. Maladministration in the affairs of the NLC in relation to the –
 - a. Investment of funds in the National Lottery Distribution Trust Fund, established in terms of s 21 of the Lotteries Act 1997 (Act No. 57 of 1997) contrary to the provisions of the said Act: and
 - b. Allocation of money in the Fund referred to in paragraph (a) to the beneficiaries who were not entitled thereto in terms of the Lotteries Act, 1997,

Including the causes of such maladministration.
2. Any improper or unlawful conduct by the officials or employees of the NLC, or any other person or entity, in relation to the allegations set out in paragraph 1 of this Schedule, including the causes of such improper conduct and any losses, damage or actual or potential prejudice suffered by the NLC or the state.”

[44] Even if there was conflict with the rules, it does not render the national legislation being the SIU Act invalid. A court must first attempt to avoid the conflict by preferring any reasonable interpretation of the two pieces of legislation which in this case would be some of the rule’s vs the SIU Act. Rules of interpretation go on to state that if the conflict persists, the statute must prevail and national legislation must enjoy supremacy. This principle is explained in *Federation of Governing Bodies for South African Schools*. In that case, although the principle emanates from the clash between the School Act and regulations, Moseneke DCJ stated that the trumped regulations don’t have to be struck down. They simply “become inoperative for as long as the conflict remains”.⁵

⁵ *Federation of Governing Bodies for South African Schools v MEC for Education, Gauteng and Another* 2016 (4) SA 546 (CC)

[45] The question to be considered then is whether the rules of conduct of the Tribunal trump or supersede the powers of s 4(1) of the SIU Act and s 37D of the Pensions Act or can they all be read as a harmonious whole.

[46] The SIU's cause of action is based on interdictory relief to justify the preservation of the pension funds. Not only does the SIU rely upon the relief embodied in S 4(1) (c) of the Act but it also relies upon the provisions of the S 37D of the Pension Fund Act No 24 of 1956 as amended. In the result what may at first glance appear to be an apparent contradiction between the rules and the statutory relief sought is indeed no contradiction at all. There are two different scenarios being dealt with by the SIU Act and what is contained in the specific rules referred to above. In addition the implementation of the provisions outlined in the Pension Fund Act, also form part of the interpretive exercise.

[47] S 37 D in relevant part provides as follows:

“37D. Fund may make certain deductions from pension benefits (1) A registered fund may—
(a) deduct any amount due on the benefit in question by the member in accordance with the Income Tax Act, 1962 (Act 58 of 1962), and any amount due to the fund in respect of—

(a) ...

(b) deduct any amount due by a member to the member's employer on the date of retirement, the date on which the member ceases to be a member of the fund or the date on which the member's employment with a participating employer in a retirement fund is terminated in accordance with the Income Tax Act and the Tax Administration Act, 2011 (Act No. 28 of 2011), in respect of compensation, including any legal costs recoverable from the member in a matter contemplated in subparagraph (ii), in respect of any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member, and in respect of which—

(i) ...

(ii) judgment has been obtained against the member in any court, including a magistrate's court, and includes a compensation order granted in terms of section 300 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977),

from any benefit payable in respect of the member or a beneficiary in terms of the rules of the fund, and pay that amount to the employer concerned;

[48] As stated, the further jurisdictional bases upon which the SIU relies are found in S 4 of the SIU Act where the functions of the Special Investigating Unit are set out. In terms of s 4(1) (c) the following is defined:

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

(a) ...

(b) ...

(c) institute and conduct civil proceedings in a Special Tribunal or any court of law for— (i) any relief to which the State institution concerned is entitled, including the recovery of any damages or losses and the prevention of potential damages or losses which may be suffered by such a State institution;

(ii) any relief relevant to any investigation; or

(iii) any relief relevant to the interests of a Special Investigating Unit;

Underlining for emphasis

[49] The SIU also relies upon s 8(2) of the SIU Act.

8. Powers and functions of Special Tribunal. —

(1) A Special Tribunal shall be independent and impartial and perform its functions without fear, favour or prejudice and subject only to the Constitution and the law.

(2) A Special Tribunal shall have jurisdiction to adjudicate upon any civil proceedings brought before it by a Special Investigating Unit in its own name or on behalf of a State institution or any interested party as defined by the regulations, emanating from the investigation by such Special Investigating Unit, including the power to—

(a) issue suspension orders, interlocutory orders or interdicts on application by such Unit or party;

(b) make any order which it deems appropriate so as to give effect to any ruling or decision given or made by it; and

(c) make any order which it deems appropriate as to costs

Underlining for emphasis

The interplay between the rules and the SIU Act.

[50] At first glance there may appear to be some dissonance between the wording of the rules and the extensive powers contained in s 4 (1), s 8(2) of the Act and S 37D of the Pension Funds Act on the one hand and the provisions of rule 23(2) and portion of rule 23(10) of the rules for the conduct of proceedings in the Special Tribunal. There is definitely an interplay between them as referred to above. It seems to me that both the rules and the statutory portions referred to, seek to achieve a valid statutory purpose and that is to protect state assets and money where there may be harm to the state.

[51] Where such a situation arises, it is necessary to apply the necessary canons of interpretation of statutes. All the statutes referred to, constitute the law. The Interpretation Act, 33 of 1957 defines 'law' as 'any law, proclamation, ordinance, Act of Parliament or other enactment having the force of law'.

[52] Therefore, an approach has to be taken to read the rules and the SIU statute in an harmonious way. The Constitutional Court held in the *Independent Institute of Education* case as follows

“It is a well-established canon of statutory construction that 'every part of a statute should be construed so as to be consistent, so far as possible, with every other part of that statute, and with every other unrepealed statute enacted by the Legislature'. Statutes dealing with the same subject-matter, or which are in *pari materia*, should be construed together and harmoniously. This imperative has the effect of harmonising conflicts and differences between statutes. The canon derives its force from the presumption that the legislature is consistent with itself. In other words, that the legislature knows and has in mind the existing law when it passes new legislation, and frames new legislation with reference to the existing law. Statutes relating to the same subject-matter should be read together because they should be seen as part of a single harmonious legal system.

[39] This canon of statutory interpretation was expressly recognised and affirmed by this court in *Shaik*. In that case it was held that the words 'any person' in s 28(6) of the National Prosecuting Authority Act, despite their wide ordinary meaning, should be construed restrictively to avoid a clash with a provision in another statute.

[40] More recently, this court in *Ruta* interpreted provisions of the Immigration Act together and in harmony with those of the Refugees Act. In a unanimous judgment, this court noted that

—
'(w)ell-established interpretive doctrine enjoins us to read the statutes alongside each other, so as to make sense of their provisions together'.

[41] This canon is consistent with a contextual approach to statutory interpretation. It is now trite that courts must properly contextualise statutory provisions when ascribing meaning to the words used therein. While maintaining that words should generally be given their ordinary grammatical meaning, this court has long recognised that a contextual and purposive approach must be applied to statutory interpretation. Courts must have due regard to the context in which the words appear, even where 'the words to be construed are clear and unambiguous'.

[42] This court has taken a broad approach to contextualising legislative provisions, having regard to both the internal and external context in statutory interpretation. A contextual approach requires that legislative provisions are interpreted in light of the text of the legislation as a whole (internal context). This court has also recognised that context includes, amongst others, the mischief which the legislation aims to address, the social and historical background of the legislation, and, most pertinently for the purposes of this case, other legislation (external context). That a contextual approach mandates consideration of other legislation is clearly demonstrated in *Shaik*⁶

Footnotes omitted in this quote.

[53] A plain reading of the SIU Act and rule 23 must be interpreted harmoniously.

In support of this approach consideration has to be given to the legislative background and purpose of the SIU Act. It is against this legislative background that the issues arising in this matter fall to be decided. In the case of *Link Africa*⁷ it was stated that bye laws may not thwart purpose of a statute. In this case the primary purpose of the SIU is to root out conduct that causes public harm. It follows therefore that the rules cannot undermine the SIU Act in its purpose.

[54] I am also mindful of the applicant's constitutional rights that he needs the preserved funds to enable him to exercise his right to legal defence, but such a right must be read together with the purpose and context of the statute. Consideration has to be given to whether the applicant's rights have been curtailed or whether he is being deprived of the use of his 'own' money. In other words, the purpose of the SIU Act and its context and the rules of the Special Tribunal all need to be weighed against the Constitution. Cameron J in *Link Africa* opined as follows on statutory interpretation

Statutory interpretation

[115] It is by now commonplace in our constitutional jurisprudence that all statutes must be interpreted through the prism of the Bill of Rights. Approached on this footing, the general rule is that a statute must be given its ordinary grammatical meaning, unless to do so would result in absurdity or create discord with the Constitution. And, most importantly, in following these interpretive precepts, where it is reasonably possible, legislation must be given a meaning that preserves its constitutional validity. These principles were clearly set out in *Cool Ideas*:

There are three important interrelated riders to this general principle, namely:

- (a) that statutory provisions should always be interpreted purposively;
- (b) the relevant statutory provision must be properly contextualised; and

⁶ *Independent Institute of Education (Pty) Ltd v Kwazulu-Natal Law Society And Others* 2020 (2) SA 325 (CC) paras 38 to 42

⁷ *Tshwane City v Link Africa and Others* 2015 (6) SA 440 (CC)

(c) all statutes must be construed consistently with the Constitution, that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity. This proviso to the general principle is closely related to the purposive approach referred to ...”

[55] A unitary exercise is necessary as well as an interpretative approach in the light of its context and purpose as is prescribed in many case. In *Kubyana*, Mnthlana J stated:

*“It is well established that statutes must be interpreted with due regard to their purpose and within their context. This general principle is buttressed by s 2(1) of the Act, which expressly requires a purposive approach to the statute's construction. Furthermore, legislation must be understood holistically and, it goes without saying, interpreted within the relevant framework of constitutional rights and norms. However, that does not mean that ordinary meaning and clear language may be discarded, for interpretation is not divination and courts must respect the separation of powers when construing Acts of Parliament.”*⁸

Footnotes omitted

[56] Unterhalter JA Stated that in *Coral Lagoon*:

“Most contracts, and particularly commercial contracts, are constructed with a design in mind, and their architects choose words and concepts to give effect to that design. For this reason, interpretation begins with the text and its structure. They have a gravitational pull that is important. The proposition that context is everything is not a licence to contend for meanings unmoored in the text and its structure. Rather, context and purpose may be used to elucidate the text.”⁹

[57] In applying this principle, it is clear that the rules must be ‘moored’ to the very structure of the SIU Act. In limiting the release of funds to the preservation only of evidence to prove its tainted origin, cannot restrain the rest of the empowering provisions in the SIU Act especially that in s8(2).

[58] In *S v Zuma and Others*¹⁰ Kentridge AJ, stated:

“I am well aware of the fallacy of supposing that general language must have a single "objective" meaning. Nor is it easy to avoid the influence of one's personal intellectual and

⁸ *Kubyana v Standard Bank of South Africa Ltd* 2014 (3) SA 56 (CC) para 18.

⁹ *Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* 2021 ZASCA

¹⁰ *S V Zuma and Others* 1995 (2) SA 642 (CC) A paras 17-18

moral preconceptions. But it cannot be too strongly stressed that the Constitution does not mean whatever we might wish it to mean.

We must heed Lord Wilberforce's reminder that even a constitution is a legal instrument, the language of which must be respected. If the language used by the lawgiver is ignored in favour of a general resort to "values" the result is not interpretation but divination.”

[59] This principle also applies to the SIU Act. The language of Parliament cannot be ignored. It is a legal instrument and cannot mean whatever the applicant may wish it to mean. While these remarks referred to constitutional interpretation, they apply equally in relation to statutory interpretation generally.¹¹

[60] Moseneke DCJ in the case of *Goedgelegen Tropical Fruits* stated that not only must text be the starting point but the purpose also has to be taken into account.¹²

[61] Jafta J stated in *Link Africa* the following on statutory interpretation:

“Although the text of a statutory provision continues to be the starting point in the process of interpretation, the meaning assigned to the provision must have appropriate regard to context, even if the language is clear. In this regard context includes other relevant provisions of the statute which may reveal the purpose of the interpreted section. The aim being that the meaning assigned to the section must give effect to the purpose which the lawmakers sought to achieve. But the process of determining that purpose and giving effect to it should also 'promote the spirit, purport and objects of the Bill of Rights'.”¹³

[63] In the result in reading the SIU Act together with the Tribunal rules as outlined above which may suggest internal conflict within the sub-rules and some of the sub-rules with the SIU Act, a sensible and harmonious reading is required. The sub-rules are dealing with different scenarios. In-depth analysis clearly indicates that the statutory imperative of the SIU Act as promulgated by Parliament must prevail. The wide powers of the SIU Act certainly does empower the Tribunal to grant interdictory relief not only for the purpose of preserving evidence but its ambit and scope is far wider. It clothes

¹¹ Mhlantla AJ stated, in *Kubyana para 18* fn 23, that even though the above remarks referred to constitutional interpretation, 'they apply even more forcefully in relation to statutory interpretation generally'.

¹² *Department of Land Affairs and Others v Goedgelegen Tropical Fruits (Pty) Ltd* 2007 (6) SA 199 (CC) para 53 and 54

¹³ *Tshwane City v Link Africa and Others* 2015 (6) SA 440 (CC) para 33

the Tribunal with judicial discretion not only in granting interdictory relief but also with the power to adjust the interdictory relief to release funds for legal and living expenses.

Conclusion relating to the release of funds.

[64] Cameron J in *Naidoo and Others v National Director of Public Prosecutions and Another*¹⁴ in discussing the interpretation of s 26 of POCA took into account the effect of giving the litigant right to a fair trial. He also emphasised that there had to be a full and fair disclosure.

[65] The facts in this case demonstrate that the applicant has not made a full and frank disclosure of his financial situation. Whilst he has provided great detail on his living expenses and legal expenses and his dire position vis a vie his creditors, he has failed to advise this Tribunal what he did with the proceeds of a property he appears to have sold during these proceedings. He has also failed to explain the rental he receives from his remaining properties. He has failed to explain how he gets to live in an affluent golfing estate without showing how he is funding that life style. What is more the applicant has not disclosed a bona fide reason why he has not sold off his remaining properties to meet his expenses. His suggestion that because a property is mortgaged it cannot be sold off, is implausible.

[66] There is simply insufficient material facts on which to grant the relief the applicant seeks. An apparent dire financial situation must be substantiated by every available fact even those which describe why an asset or interest cannot be sold off.

Ranking of creditors

[67] The question of the ranking of creditors was raised rather obliquely during argument. A two-fold problem arose. Does the very act of preserving the pension funds mean that the SIU's claim ranks above the rights and interests of other creditors? In the

¹⁴ *Naidoo and Others v National Director of Public Prosecutions and Another* (CCT 112/10) [2011] ZACC 24; 2011 (12) BCLR 1239 (CC); 2012 (1) SACR 358 (CC) (10 August 2011)

event that the Tribunal releases funds does that mean that the applicant's needs are being preferred above those of other creditors in particular secured creditors.

[68] Section 20 of the Insolvency Act No 24 of 1936 prescribes the role of the Trustee as at the date of sequestration when dealing with assets being part of the estate.

“(a) all property of the insolvent at the date of the sequestration, including property or the proceeds thereof which are in the hands of a sheriff or a messenger under writ of attachment;
(b) all property which the insolvent may acquire or which may accrue to him during the sequestration....”

[69] Arising out of an issue which arose during the hearing, s37B of the Pension Funds Act 24 of 1956 is relevant. Section 37B creates an exclusion from this general provision and determines that the pension fund of an insolvent individual may not be attached by a Trustee of an insolvent estate while those funds are still in the hands of the pension fund. This means that if the pension fund has not yet paid out at the date of sequestration, the pension payments will not fall into the insolvent estate.

[70] The issue was not fully argued and nothing more needs to be said of this, save to say that at this stage of the proceedings there is no dilution of creditors rights.

Costs

[71] The applicant has not succeeded in his claim. It is clear from the papers that the applicant is in dire financial straits, albeit that there is a paucity of evidence on what can be sold off. As can be seen from my finding he has not been frank about his income. It is unclear what the applicant's intention is in regard to resolving his financial situation. There is a clear reluctance to sell off assets moving forward, in order to resolve his financial woes. I accept that the possible resolution will take time, if for example, properties have to be sold off. It is therefore prudent to grant the applicant some time to pay the costs which he must pay. The payment of the costs of this application is deferred for 12 months. The application is dismissed with costs including the cost of counsel on the C scale.

Order

1. The application is dismissed with costs including the cost of counsel on the C scale.
2. The payment of these costs is deferred for a period of 12 months from the date of this order.



**JUDGE M VICTOR
PRESIDENT OF THE SPECIAL TRIBUNAL**

Appearances:

For the applicant:

Counsel: Adv.O Leketi

Attorney: Mr B Ramohlola, Ramohlola BM Attorneys INC.

For the first respondent:

Counsel: Adv.I Hlaethoa

Attorney: Mr J Van Schalkwyk, Office of the State Attorney Johannesburg.

For the third respondent;

Counsel: Adv. P Sokhela Attorney: Cheadle Thompson & Hayson INC

Date of hearing: 26 February 2025

Date of judgment: 17 March 2025

Amendment date: 18 March 2025

Mode of delivery

This judgment is handed down by email transmission to the parties' legal representatives, up loading on Caselines and release to SAFLII and AFRICANLII. The time for delivery is deemed to be 14H00.

