



**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: GP05/2023**

In the matter between:

**SPECIAL INVESTIGATING UNIT**

Applicant

And

**WILLIAM ELIAS HUMA**

First Respondent

**SILVERLITE TRADING (PTY) LTD**

Second Respondent

**SAMARITAN INITIATIVE NPO**

Third Respondent

**REAGILE NPC**

Fourth Respondent

**THE NATIONAL LOTTERIES COMMISSION**

Fifth Respondent

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**JUDGMENT**

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*“Let us be clear. Corruption kills. The money stolen through corruption every year is enough to feed the world’s hungry 80 times over. Nearly 870 million people go to bed hungry every night, many of them children; corruption denies them their right to food, and, in some cases, their right to life. A human rights-based approach to anti-corruption responds to the people’s resounding call for a social, political and economic order that delivers on the promises of “freedom from fear and want”. Navi Pillay  
United Nations High Commissioner for Human Rights<sup>1</sup>*

## **Introduction**

[1] The Special Investigating Unit (SIU) seeks to declare the decisions of the National Lottery Commission, (NLC) to award funding to the Samaritan Initiative NPO (a Nonprofit Organisation) and the Reagile (NPC) (a Nonprofit Company) be declared invalid, unlawful, reviewed and set aside. It also seeks repayment of the amounts of R16,5 million and R4 658 118 million respectively from them. In the light of the conduct of Advocate Huma, (the first respondent), the SIU also seeks an order declaring him to have been negligent, dishonest and caused the NLC to suffer damages in the amount of R21 158 118.00 and therefore reimburse the SIU accordingly. The SIU also seeks an order that the Samaritan Initiative and Reagile repay the above respective amounts together with Adv Huma.

[2] On 25 February 2025 a preservation order was granted to preserve certain funds emanating from the sale of property belonging to Adv Huma and be held in an attorney’s trust account pending the outcome of this review application. That preservation order is under reconsideration and has not been heard yet. The judgment in this review application can no longer be delayed to accommodate the time line for the reconsideration. It was argued on Adv Huma’s behalf that there is an interplay

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<sup>1</sup> Pillay, Navi. 2013. “The Negative Impact of Corruption on Human Rights,” Opening Statement to the Office of the United Nations High Commissioner on Human Rights, March 13. In *The Human Rights Case against Corruption*. Geneva, Office of the High Commissioner, United Nations Human Rights, 2013, pp.8- (a South African Human Rights lawyer)

between the preservation order and this review application and the reconsideration order should be heard first. This aspect will be considered.

### **Parties**

[3] This application is brought by the applicant, Special Investigations Unit (SIU) established in terms of section 2(1)(a)(i) of the Special Investigating Units and Special Tribunals Act No. 74 of 1996. (the SIU Act) and is a Schedule 3 Public Entity. The SIU is supported in this application by the National Lotteries Commission (NLC) a public entity established in terms of the Lotteries Act No 57 of 1997 as amended (the Lotteries Act).

[4] The first respondent is William Elias Huma (Adv Huma) an adult male advocate of Pretoria. The second respondent is Silverlite Trading (Pty) Ltd (Silverlite) with its registered office in Rustenburg, North West Province. The third respondent is the Samaritan Initiative (Samaritan Initiative) a Non-Profit Organization formed on 17 March 2017 and registered with the Department of Social Development with its registered address at Marikana, North West Province. The fourth respondent is Reagile Community Development (Reagile) NPC a Non-profit company with its registered address in Rustenburg, North West Province.

### **Relevant background facts.**

[5] The SIU has been mandated in terms of Proclamation 32 of 2020, published on 6 November 2020 in Government Gazette number 43885 (the Proclamation) to conduct investigations into allegations of maladministration in connection with the affairs of the NLC.

#### *SIU's case.*

[6] The SIU seeks to vitiate the grants made to the Samaritan Initiative and Reagile by the NLC based on the impropriety involved. The central basis is the conduct of Adv Huma. Following upon a whistle blower's report on 17 April 2023, the SIU immediately commenced investigations into allegations about the conduct of



Adv Huma, Silverlite, the Samaritan Initiative and Reagile. It had to investigate any resultant loss or damage suffered by the NLC as a result of the grants awarded to the Samaritan Initiative and Reagile in the amounts of R16,500,000.00 and R4 658 118.00 respectively. It also seeks damages from Adv Huma in the amount of R21 158 118.00 comprising the two amounts.

[7] In summary, the SIU describes that at the material time the grants were awarded, Advocate Huma served on the Board of the NLC. He served from April 2017 to October 2021. The SIU asserts that whilst serving on the Board, the Samaritan Initiative was hijacked by the current directors of the Samaritan Initiative from its initial members and directors on the advice of Adv Huma. Reagile was also acquired as a shelf NPC at his direction. The modus operandi of Adv Huma was to use NPOs and NPCs as a vehicle to obtain funding from the NLC. The Samaritan Initiative received grant funding in the amount of R16,500,000.00 ostensibly to empower women, children in the villages in the Bojanala District, to provide sustainable jobs and empower rural communities. Ultimately the grant was used to install buildings and chicken farming equipment on a farm owned by Silverlite. At the instance of Adv Huma the director of the farm owned by Silverlite was his niece and later he himself became its sole director as per a CIPIC report.

[8] Needless to say, it soon transpired that after all the buildings were erected and the equipment installed on Silverlite's farm, the chicken business failed. Other than the substantial immovable structures annexed to the land belonging to Silverlite remain and are of considerable value. The farming equipment deteriorated and was looted and what is left is of little value, hence the SIU decided not to seek a preservation order for these items.

[9] One of the original members of the Samaritan Initiative was traced, Mr M J Mosime and interviewed. He deposed to an affidavit and advised the SIU that he did not recognise the names of the current directors. He had never applied for funding from the NLC, nor authorized anyone to use the NPO. Adv Huma's nephew is the

chair of the Samaritan Initiative and his niece the treasurer. Mr Mosime advised that the purpose of the Samaritan Initiative was for a day care centre and cleaning serve.

[10] Reagile has two directors one is Ms L L. Moyo who is the wife of Adv Huma and the other director is his nephew. On 19 August 2020 Reagile received the grant funding. The purpose of the grant funding from the NLC was for a community women's upliftment project. The amount granted is R4 658 118.00. There is nothing to show for that project either.

[11] The SIU contends that the grant funding arose as a result of the influence and interference of Adv Huma who was at the time a Board member of the NLC.

[12] One relative knew that Adv Huma was on the Board, others said they did not know. They all did however confirm that Adv Huma suggested to them to submit an application for funding. In relation to the Samaritan Initiative it was he who came up with the idea of running a chicken business on the farm. He provided them with an application form for funding from the NLC, a business plan and the NPO certificate for the Samaritan Initiative. He was primarily responsible for the farm's purchase through Silverlite, although his niece was made a director, but he later removed her. He had requested her to apply for a Landbank loan of R5million, but she refused. Silverlite purchased several farms in the North West Province. The whistle-blower stated that one farm was purchased with money from Reagile. Both the Samaritan Initiative and Reagile applied for funding during 2020 and both entities are directly linked to Silverlite and Adv Huma. Reagile was purportedly to provide food security, employ women, the disabled and the youth. The project was also to improve the skills of community members. It all came to naught.

[13] The SIU explained that since 2021 Adv Huma has been investigated for his alleged unlawful schemes and his modus operandi are similar to these where NLC grant funding was used. The investigations are running concurrently. The SIU only became aware of his involvement in the Samaritan Initiative in 2023. One of the other



investigations showed that an NPO in that matter obtained grant funding for R25million. R5million was paid into bank account of attorneys for the purchase of a property in the name of Silverlite where the sole director and ultimate beneficiary is Adv Huma. Another investigation related to the award of grant funding in the amount of R28million to another NPO, whereafter two tranches of R1million were transferred in Adv Huma's personal bank account. His explanation for this is that it is a personal matter. Furthermore, Adv Huma has not been able to describe what happened to the monies which the NLC granted to the Samaritan Initiative and Reagile, despite his relatives and wife being involved.

[14] The flow of money in this matter shows a paper trail of money flowing directly from NLC to the Samaritan Initiative and from the NLC to Reagile. There is a suggestion that the farm owned by Silverlite was bought with grant money awarded to Reagile.

*The case of Advocate Huma, the Samaritan Initiative and Reagile.*

[15] Adv Huma argues that the SIU's case is convoluted based on the SIU's own case. He states that there are no irregularities of a material nature that have been established. Therefore, there is no basis for the review and setting aside of the grants. Adv Huma submitted the SIU has placed reliance on sections of the Lotteries Act without proving the necessary facts to prove that he, contravened the Lotteries Act.

[16] He submits that because the SIU in seeking to set aside the grant awards, it did not take into account the principles posited in *Millenium Waste Management*<sup>2</sup> and *Moseme*,<sup>3</sup> where the SCA has held that the adverse consequences for the public at large in setting aside a tender should be assessed within the context of considerations

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<sup>2</sup> *Millenium Waste Management (Pty) Ltd v Chairperson, Tender Board: Limpopo Province and Others* 2008 (2) SA 481 (SCA).

<sup>3</sup> *Moseme Road Construction CC and Others v King Civil Engineering Contractors (Pty) Ltd and Another* 2010 (4) SA 359 (SCA).

of pragmatism and practicality. In the absence of fraud and irregularity, the court is not compelled to set aside a tender on a ground of imperfect administrative process.<sup>4</sup> Presumably this means that if there were imperfections in the process, the SIU has not gone far enough to meet the above criteria.

[17] Adv Huma also relies on the same principle upon which the SIU and the NLC rely but maintains that they have misapplied the principles. He maintains there is no evidence to demonstrate that there is any irregularity and thus no proof of the materiality of the irregularity. There are no proven facts to show non-compliance in this case thereby justifying the setting aside of the awards and indeed a finding that he must be liable in damages to the SIU and the NLC. The principle of irregularity and materiality is referred to in *Allpay* as follows:

“The materiality of compliance with legal requirements depends on the extent to which the purpose of the requirements is attained”<sup>5</sup>

[18] Adv Huma explains that as a Board member of the NLC, the board members do not have any function or input or say in relation to any application for grant funding. He denies playing any role in granting the awards. At the time the grant was made to Reagile, he was not married to his wife who was a director of Reagile. He claims his conduct was above reproach in relation to carrying out his fiduciary duties as a Board member.

[19] He maintains that the main function of the NLC Board was to provide strategic and policy direction and appoint key executives to the NLC. He was not aware of any applications for the grants and nor was he in a position to provide confidential information. He has not received any money or benefit from the grants. He has not contravened section 3C of the Lotteries Act.<sup>6</sup> He states that Silverlite also received

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<sup>4</sup> *Moseme*, paras 19 to 21.

<sup>5</sup> *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others*, 2014 (1) SA 604 (CC para 22B)

<sup>6</sup> S3C. Confidentiality and restraint of trade



no benefit as the Samaritan Initiative, as it did not pay any rental for the hire of the farm. He denies consulting with its directors or visiting the farm during building operations. In relation to the Samaritan Initiative, his relatives all say that he guided them through the application process and that he visited the farm many times in his personal capacity during the construction of the buildings.

[20] He denies the SIU's version and states there are irresolvable dispute of facts which can only be resolved by the hearing of oral evidence. He challenges and disputes the whistle-blower's testimony and argues that any information from the whistle-blower is inadmissible hearsay and there is no justification for the its admission. He explains that the relationship between Silverlite and the Samaritan Initiative was that of landlord and tenant. He asserts that the disputes of fact were foreseeable. The mere fact that family members received funding whilst he was on the Board does not implicate him. He also emphasises that the evidence presented by the SIU amounts to inadmissible hearsay as none of the material witnesses, his relatives have deposed to confirmatory affidavits.

[21] Some of the relatives have spoken to the investigators. Clearly once their receipt of the grants was under investigation, they provided information. In the analysis below consideration will be given as to whether these statements are against their own interests. Except for his niece who deposed to an affidavit pursuant to a request from the SIU, none of the relatives have deposed to affidavits on behalf of the SIU or in support of Adv Huma.

[22] He submits that the SIU would have to prove that he possessed confidential information and that his position of privilege was used. The SIU would also have to

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(1) A board member may not use his or her position or privileges, or confidential information obtained as a member of the board, for personal gain or to improperly benefit another person.

(2) A member of the board or his or her spouse, life partner, immediate family member or business partner or associate, may not during the time of his or her membership of the board or for a period of 24 months after the termination or expiry of such membership, take up employment or in any way receive any benefit from any person who received a grant or intends to apply or has applied in terms of section 13, for a licence to conduct the National Lottery.



show causality between the abuse of such privileges and his position or confidential information and personal gain by him. He asserts that the SIU has not been able to do this. He contends that s 28 of the Lotteries Act shows that it is the distribution agency that makes decisions on the allocation of grants. It is not the Board that entertains the pro-active applications or has any sway in appointing and granting the funds.

[23] Advocate Huma relies on the *Plascon Evans* test <sup>7</sup> and points out that he has not made a bold or uncreditworthy denials or raised fictitious disputes to make his version palpably implausible or farfetched or clearly untenable.

[24] He urges the Tribunal not to dismiss his version on paper. He asserts that the SIU and NLC have not requested that the matter go to oral evidence and it is too late for them to do so now.

[25] In summary, Adv Huma also points out that the entirety of the SIU's evidence and the NLC is based on hearsay evidence as there are no confirmatory affidavits in relation to the witnesses and his relatives, upon whom the SIU relies. He also argues that the disputes of fact are such that they cannot be resolved on affidavits.

*The National Lotteries Commission case and the independent investigation Report.*

[26] The NLC initiated an investigation by an independent firm of attorneys. Dabashi Nthambeleni Attorneys Inc. They produced a report. Its contents are confirmed by Mr Mukhtar Nthambeleni in an affidavit filed by him. The investigation report made the following findings. A Board member such as Adv Huma cannot use the NLC information or his position and privilege of being a Board member in order

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<sup>7</sup> *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) Sa 623 (A) .. to the effect that where there is a dispute as to the facts a final interdict should only be granted in motion proceedings if the facts as stated by the respondents together with the admitted facts in the applicant's affidavit justify such an order, or where it is clear that the facts, though not formally admitted, cannot be denied and must be regarded as admitted, requires clarification and perhaps qualification. In certain cases, the denial by the respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact.

to gain any benefit for themselves or any other person.<sup>8</sup> Accordingly, a Board member, or the family members and/or immediate family of a Board member may not benefit from grant funds or recipients of grant funding of the NLC. Importantly this includes a period of 24 months after vacating the position of the Board.<sup>9</sup> The report found that Adv Huma, Silverlite, the Samaritan Initiative and Reagile contravened the provisions of the Lotteries Act.

[27] Section 10 (4) of the Lotteries Act sets out the functions of the Board. The functions are, *inter alia*, to manage and administer the fund and hold it in trust.<sup>10</sup> Section 2A (4) sets out that the Commission may, upon request by the Minister, Board or on its own initiative in consultation with the Board, invite applications for grants for worthy good causes in the prescribed manner. This is referred to as proactive funding.<sup>11</sup>

[28] The investigation also found that Adv Huma contravened s2 F(1)(c) and (d) of the Lotteries Act where a Board member may not:

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<sup>8</sup> In terms of s 3B and 3C of the Lotteries Act

<sup>9</sup> S 3C(2) A member of the board or his or her spouse, life partner, immediate family member or business partner or associate, may not during the time of his or her membership of the board or for a period of 24 months after the termination or expiry of such membership, take up employment or in any way receive any benefit from any person who received a grant or intends to apply or has applied in terms of section 13, for a licence to conduct the National Lottery.

<sup>10</sup> S 26B. **Function, composition, appointments and conditions of service of distributing agency**

(1) The distributing agency shall be responsible for—

- (a) considering, evaluating and adjudicating applications for grants or recommendations of funding of worthy good causes received from the Commission; and
- (b) preparing reports on grants already awarded and on the performance of its functions to the board on a quarterly basis or as and when requested by the board.

<sup>11</sup> S 22(3) The fund shall be held in trust by the board for distribution of any sum paid into the fund as is allocated for expenditure referred to in section 26(3)(b), (c), (d) and (e), after the distributing agency has considered, evaluated and adjudicated an application for a grant or following a recommendation of funding of worthy good causes from the Commission after research conducted in terms of this Act.



- (c) make private use of, or profit from, any confidential information obtained as a result of performing that person's official functions in the Commission; or
- (d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official functions within the Commission.<sup>12</sup>

[29] They also found that he also contravened s2F (3) of the Lotteries Act in that he failed to advise of his conflict of interest or even perceived conflict of interest.<sup>13</sup>

[30] It is further the policy of the NLC that its Board members must make a complete declaration of interest which Adv Huma did not do. The Report confirmed the allegations made by the SIU. The investigation found that Adv Huma was a NLC Board member and is the sole director of Silverlite Trading. The Report found that the Samaritan Initiative and Reagile are made up of his family members and received NLC grants whilst he was a Board member. Thus, Reagile and the Samaritan Initiative received grant funding and Silverlite, benefitted directly from the NLC through the entities in which he had an interest and which interest Adv Huma failed to disclose. Accordingly, the Report found that Adv Huma used his position as a Board member for his personal gain and that of his family members. This is specifically prohibited in terms of sections 3B and/or 3C of the Lotteries Act.

[31] In the light of the above, the Report found that Adv Huma should have stopped executing duties within seven days of becoming aware of a conflict of interest in a

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<sup>12</sup> (c) make private use of, or profit from, any confidential information obtained as a result of performing that person's official functions in the Commission; or

(d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official functions within the Commission.

<sup>13</sup> (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.

grant.<sup>14</sup> A Board member also has to inform the Minister and the Board in the event of a conflict. If this is not done the entire situation is compromised. The NLC also pointed out that Adv Huma was invited to a consultation which he refused to attend. The grant's purpose was not achieved. A chicken business was set up instead.

[32] The Report found that Adv Huma had nothing to say in his own defence about a conflict or potential conflict. He simply refused to attend a consultation with them. The Report also found that on 19 November 2021 when he became the sole director of Silverlite he was within the 24 Month restrictive period. In the circumstances, the NLC contends that Adv Huma clearly benefitted from the grant funding within the 24 month period after he resigned from the Board. The photographs presented in the papers show significant and valuable improvements to the farm owned by Silverlite. It was pointed out that Silverlite was not an NPO or NPC and yet this juristic entity received an enormous benefit.

[33] The NLC emphasises that Adv Huma was directly involved and it cannot be said that he did receive a benefit. The NLC contends that the undisputed paper trail is clear. What makes a decision assailable is the irregularity of the decision. Section 172 of the Constitution is clear and the conduct of Adv Huma is repugnant to the Constitutional imperatives. The NLC submits that it would be just and equitable to set aside the offending decisions to grant funding. The NLC also emphasise that Adv Huma is unwilling to explain, according to it, the sum of R1million which was transferred into his personal account. He was unable to provide any persuasive version on how he had no knowledge of Ms Moyo's involvement in Reagile when the application was made in 2020. His claim that he married Ms Moyo later rings hollow. The NLC noted that both the Samaritan Initiative and Reagile were basically dormant with no business activity prior to the receipt of grant funding from the NLC.

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<sup>14</sup> S 2F (5)



[34] The NLC submit that the evidence of the three witnesses all state that they applied for funding on the advice from Adv Huma. He has not been able to gainsay this or that he acted from a position of knowledge and gave advice on how to apply for grant funding. He refused to provide answers to the investigators or meet with them. The evidence is overwhelming and he cannot possibly deny knowledge of all of the incidents. The NLC contend that the Board is the ultimate decision maker and Adv Huma cannot contend that he did not know about the funding application and this includes the pro-active funding. The NLC submit that the decision to grant funding based on his involvement cannot stand.

[35] Both the SIU and the NLC also assert that Adv Huma's fiduciary duties are deeply embedded in our jurisprudence and in this regard reliance is placed on the *SABC v Mpofu* case where Jaybhay J (Victor J concurring with Jajbay J's amplification of her judgment) said the following:

“[64] Integrity is a key principle underpinning good corporate governance. Put clearly, good corporate governance is based on a clear code of ethical behaviour and personal integrity exercised by the board, where communications are shared openly. There are no opportunities in this environment for cloaks and daggers. Such important decisions are not made in haste or in anger. There must be ethical behaviour in the exercise of dealings with fellow board members. These dealings must be dealt with in such a manner so as to ensure due process and sensitivity. “

Jaybhay J also emphasised the following:

“[65] The objective of developing African leadership philosophy and values is consistent with the constitutional values of ubuntu-botho. In the case of *Dikoko v Mokhatla* 2006 (6) SA 235, Sachs J said: “*Ubuntu-botho is more than a phrase to be invoked from time to time to add a gracious and affirmative gloss to a legal finding already arrived at. It is intrinsic to and constitutive of our constitutional culture. Historically it was foundational to the spirit of reconciliation and bridge-building that enabled our deeply traumatised society to overcome and transcend the divisions of the past: ... The spirit of ubuntu, part of the deep cultural heritage of the majority of the population, suffuses the whole constitutional order. It combines individual rights with a communitarian philosophy. It is a unifying motif of the Bill of Rights, which is nothing if not a structured, institutionalised and operational*

*declaration in our evolving new society of the need for human interdependence, respect and concern."*

"[66] Ubuntu-botho is deeply rooted in our society. These values should assist in informing corporate decisions made by directors in state owned enterprises. Proper and constructive dialogue would enable better outcomes in the decision making process. Heated and impetuous decision making is the stuff of irrational outcomes. This must be avoided. This form of governance is underpinned by the philosophy of ubuntu-botho. The time is right to incorporate the views of umuntu ngumuntu ngabantu in the King code of good governance.<sup>15</sup>

[36] Accordingly the integrity of *Ubuntu* as a constitutional value is deeply embedded in the fiduciary duties of a member of a Board. The NLC submits that the improprieties are of such a nature that Adv Huma should disgorge and pay back the undue benefit he received.

### **Issues**

37. The issues that arise in this application are:

- 37.1 whether the decision to award grant funding to the Samaritan Initiative in the amount R16 5000 million and to Reagile in the amount of R4 6859 118 be reviewed and declared invalid, unlawful and set aside;
- 37.2 Whether there are irresolvable disputes of fact in the application;
- 37.3 Whether hearsay evidence must be admitted;
- 37.4 A declaration that the conduct of Huma be declared to have caused the NLC to suffer damages in the amount of R21 158 118 as a result of his misconduct.
- 37.5 Whether the amounts in question must be repaid by the Samaritan Initiative, Reagile and Adv Huma;

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<sup>15</sup> *South African Broadcasting Corporation Ltd and Another v Mpofu* (A5021/08) [2009] ZAGPJHC 25; [2009] 4 All SA 169 (GSJ) (11 June 2009)



- 37.6 Can the amount to be repaid by Adv Huma as damages be awarded on affidavit.
- 37.7 Can the Special Tribunal grant just and equitable relief.
- 37.8 Must the review application be postponed until the preservation is disposed of.
- 37.9 Whether costs must be awarded on an attorney client scale.

### **Legislative frame work of the Lotteries Act.**

[38] The NLC, is a Schedule 3A Public Entity that was established in terms of the Lotteries Act, as amended, to regulate the National Lottery, sports pools and society lotteries, and to raise funds for worthy causes. The NLC is governed by a Board appointed by the Executive Authority. The Executive Authority of the NLC is the Minister in the Department of Trade, Industry and Competition.

[39] It therefore follows that the NLC when conducting its affairs and/or exercising its powers and functions is bound to adhere to the Constitution, the Public Finance Management Act<sup>16</sup> (“PFMA”) and the Lotteries Act.

[40] The Constitution enjoins organs of state to maintain and promote a high standard of professional ethics.<sup>17</sup> It is clear in this case that worthy causes the NLC allocated money to, turned into a failed philanthropic exercise.

[41] In this case the NLC awarded grants to the Samaritan Initiative and Reagile. This falls outside the scope of the public procurement regulations. However, where there is a contract and it is subject to the relevant thresholds being met, a fair and transparent process needs to be followed because the expenditure of public money is involved. Treasury’s Instructions impose process and approval obligations on the

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<sup>16</sup> No 1 of 1999.

<sup>17</sup> Section 195(1)(a) of the Constitution.

state entity. Treasury's Instruction 15 deals with Grants Funding (TI 15). The objective of Treasury's Instruction 15 for Grant Funding for not for profit entities is to establish appropriate accountability on the part of non-SA Government entities that receive a grant(s) from an administrative unit(s).

[42] Section 22(3) of the Lotteries Act provides for the funding of worthy good causes which can only be awarded after research by the Commission. Section 26(3)(b) provides that the fund for distribution by the Commission shall be distributed and allocated fairly and equitably amongst all persons who meet the prescribed requirements. Section 26(3), the distributing agency shall consider, evaluate and adjudicate applications for grants or recommendations of funding of worthy good causes received from the Commission after research is conducted in terms of the Lotteries Act. Section 26A empowers the Commission to also identify worthy projects itself and award grants, referred to as pro-active funding.

[43] Constitutional principles of fairness and transparency need to be followed. In addition, Adv Huma was required to follow his fiduciary duties as a Board member of the NLC. These duties are defined in the Lotteries Act. He also had to act in good faith, honestly and responsibly. He had to adhere to his statutory prescripts as a Board member and not use the NLC's information, property, or any opportunities regarding the NLC for his own or anyone else's benefit, unless disclosed to the Board. So Adv Huma's contention that he reported the matter to the Chair of the Board who advised him there was no problem, is insufficient. What is more there is no confirmatory affidavit from the Chair stating that in the particular circumstances he had no obligation to disclose his interests to the Board.

**Evaluation of the evidential objections taken by Adv Huma which include hearsay and disputes of fact.**

[44] In dealing with Adv Huma's concerns about the lack of rigour in respect of adhering to the rules of evidence, the SIU and the NLC submitted that there was



sufficient evidence bolstered by documents and juxtaposed to a dearth of affidavits which Adv Huma could so easily submitted from his relatives and his wife Ms Moyo.

[45] The SIU did not rely upon Rule 19 for the Conduct of Proceedings in the Special Tribunal which provides:

“The primary objective of these rules is to ensure the expeditious and cost- effective disposal of matters before the Tribunal which may, in fitting cases, include the Abandonment of any Rule of Evidence in accordance with section 9(3) of the Act.”

[46] Section 9(3) of the SIU Act <sup>18</sup> provides:

“A Special Tribunal may, in consultation with the parties appearing before it, take any steps in relation to the hearing of a matter before it which may lead to the expeditious and cost-saving disposal of the matter, including the abandonment of the application of any rule of evidence.”

[47] The SIU also did not specifically rely on the provisions of Law of Evidence Amendment Act (the Evidence Act in terms of which mention was made of specific sections of the Evidence Act.

[48] It is necessary, therefore, to consider whether the SIU has provided sufficient evidence to discharge the onus of proof. Accordingly, the defence of disputes of fact and the inadmissibility of hearsay evidence will be considered.

### **Disputes of fact**

[49] Adv Huma emphasised that much of the evidence presented by the SIU was disputed. The parties disagree as to whether there is a real, *bona fide* and genuine dispute of fact and as such whether the requirements of *Plascon-Evans* have been met. He argues that the test has been met and for that reason, this Special Tribunal is obliged to refer the matter to trial for oral argument and cross-examination of witnesses.

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<sup>18</sup> Special Investigating Units And Special Tribunals Act 74 Of 1996

[50] A case which expounds upon the implications of *Plascon-Evans* and is apposite in this regard is the Supreme Court of Appeal's decision in *Wightman*.<sup>19</sup> In *Wightman*, Heher JA was at pains to point out that a respondent must seriously and unambiguously address the facts to be disputed. Moreover, a bare denial will not be sufficient where

“the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment.”

[51] The Court continues thus:

“When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, *rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied.*”

[52] If one has regard to all the affidavits in this matter then the following facts are not in dispute:

- 52.1 Adv Huma was a member of the NLC Board at all the material times of the grants being awarded.
- 52.2 Adv Huma inserted himself as a sole director of Silverlite at a material time. He unilaterally replaced his niece and became the sole director.
- 52.3 Adv Huma himself through Silverlite purchased the farm on which the Samaritan Initiative built infrastructure with grant funding.
- 52.4 Adv Huma's family members were members/directors of the Samaritan Initiative and Reagile, specifically his wife, three nephews and niece. More particularly, Mr K.A. Khunou chairperson of the hijacked Samaritan Initiative, was the nephew of Adv Huma, NK Ntshole Treasure of Samaritan Initiative is the niece of Adv Huma and KR

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<sup>19</sup> *Wightman v Headfour (Pty) Ltd* 2008 (3) SA 371 (SCA).



Maumakoe the business development officer of Samaritan Initiative is the nephew of Adv Huma.

- 52.4 The Samaritan Initiative and Reagile obtained funding for grants which totalled R21 158 118.00.
- 52.6 The above NGO entered into a lease agreement for chicken farming with Silverlite. The purpose of which was to give effect and provide a vehicle for the NLC granted funding. The assertion by him that no rental was paid is of no moment. There are substantial buildings on the farm paid with NLC grant money.
- 52.7 Silverlite owns several farms in the area. This is confirmed by a Deeds search.
- 52.8 Reagile has a lease with one of the farms owned by Silverlite and Reagile's registered address is one of the farms owned by Silverlite.
- 52.9 Adv Huma did not explain why he was not responsible for the buying of all the farms registered under Silverlite despite being its sole director. These farm purchases are reflected in Deeds Office documents.
- 52.10 When his niece refused to make the loan of R5million from the Landbank she had to sign her resignation as a sole director and he installed himself as the sole director. The CIPC documents prove the change of directorship.
- 52.11 In relation to Reagile all its directors know Adv Huma or are his relatives and Ms Moyo his wife.
- 52.12 The bank statements show that services providers were paid by the Samaritan Initiative.
- 52.13 Neither the Samaritan Initiative nor Reagile addressed or reached their mission statement goals which were proffered by them as the basis for the funding request.

[53] In my view, Adv Huma's averments can only be categorised into two kinds: a bare denial or a red herring. Examples of red herrings are the allegation that he only

married his current wife on 15 April 2023. There is an affidavit from his niece mentioning their relationship as early as the years 2012/2013. There is also the murky issue of security guards and subsequent depreciation of the farm. These are only two of many examples. I refer to these as red herrings because even if they are accepted they make no material difference to the conceded facts which are required to establish the relief set out in the SIU's notice of motion.

[54] In other instances, Adv Huma simply engages in a bare denial despite the fact that he does not deny having occupied certain positions (such as being a Board member of the NLC or director of Silverlite or deny the assertion that his family members or relations of certain individuals who are intimately involved in the organisations which form the subject of the SIU's investigation) which necessitate a response that is within his personal knowledge. He had ample opportunity to take this Special Tribunal into his confidence but each time he has failed to do so.

[55] In my view based on *Wightman*, there is no real, *bona fide* or genuine dispute of fact which necessitates referring this matter to trial. One can only conclude that Adv Huma seeks to escape liability for the allegations of malfeasance which are put forth against him. While he has every right to do so, *Wightman* is instructive in this regard:

“when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them.”

For these reasons, I am hard-pressed to accept Adv Huma's contention that this matter must be referred to oral evidence.

### **The admissibility of the hearsay evidence.**

[56] Section 3(4) of the Evidence Act defines hearsay evidence as “evidence, whether oral or in writing, the probative value of which depends upon the credibility of any person other than the person giving such evidence”.



[57] The admission of hearsay evidence is governed by s 3 of Evidence Act. Hearsay evidence is admissible in three instances. First, by consent of the parties. Second, where there is oral testimony to support the evidence. Third where the interests of justice permit. The latter instance is governed by s 3 (1)(c) which sets out seven factors for the Court to guide the exercise of its discretion. These factors are as follows:

1. the nature of the proceedings;
2. the nature of the evidence;
3. the purpose for which the evidence is tendered;
4. the probative value of the evidence;
5. the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends;
6. any prejudice to a party which the admission of such evidence might entail;  
and
7. any other factor which should in the opinion of the court be taken into account,

[58] In *Secretary of the Judicial Commission into State Capture v Zuma* 2021 (5) SA 1 (CC), Khampepe J held that “the intention behind section 3(1)(c) of the Evidence Act is to create flexibility so that hearsay evidence may be admitted *when the interests of justice, and indeed common sense, demand it.*”

[59] In *S v Ndhlovu* 2002 (6) 305 (SCA), Cameron J explained that the interests of justice test in the Evidence Act must be understood in light of the values of the Constitution. In that decision, Cameron J therefore explicated upon the implications for the right to a fair trial in section 35 of the Bill of Rights. He stated that:

“admitting or relying on hearsay evidence which plays a decisive or even significant part in convicting an accused” should only be done “if there is compelling justification for doing so.”

[60] As will be explained further, several core constitutional values and principles are at stake in the SIU's investigation in these proceedings. These considerations must form part of how this Special Tribunal exercises its discretion. Importantly in *Ndhlovu* the Court stressed that the criteria in s 3(1)(c) are to be considered *in toto*.

[61] Adv Huma's submission that the SIU's evidence as tendered by the whistleblower and his family members (his nephews and niece) which allege malfeasance on his part amount to hearsay and are therefore inadmissible. Applying the interests of justice test set out in section 3(1)(c) I will determine whether this argument has any merit.

#### *The nature of the proceedings*

[62] These are proceedings before a Special Tribunal, the purpose of which is to address the epidemic of corruption in our nation which the Constitutional Court has described as "a cancer that threatens our constitutional order and the human rights to which it seeks to give meaning".<sup>20</sup> These proceedings are of an inquisitorial nature and importantly are civil - as opposed to criminal - proceedings. This is so as because in these proceedings the Special Tribunal is not making any finding on the guilt or innocence of any person. At best, a finding which can be made is a pronouncement that the respondents have contravened certain duties and obligations in terms of the applicable law. To the extent that Adv Huma suggests that the admission of hearsay evidence has an impact on his fair trial rights in terms of section 35, such reliance is in my view, misplaced.

#### *The nature and purpose of the evidence.*

[63] The whistle-blower alleges that several farms in the Rustenburg area are owned by Adv Huma through Silverlite; that one of the farms was purchased with funds given to Reagile; that the Adv Huma's wife is a member of Reagile and that it was funded by the NLC in 2020. Notably all of the latter allegations are corroborated

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<sup>20</sup> *Secretary of the Judicial Commission on State Capture v Zuma* at para 49.



by documentary evidence which is tendered by the SIU as annexures to its founding affidavit.

[64] In respect of the Samaritan Initiative, the whistle-blower alleges that Adv Huma was the progenitor of the chicken farming proposal; that it was at his behest that the proposal for funding was made and that the intention of Adv Huma was to enrich himself and his family members to the detriment of the NLC, the state and the public at large.

[65] Ms Keitumetse Ntshole (Adv Huma's niece) deposed to an affidavit where she alleges that she was the sole shareholder and director of Silverlite before she resigned and Adv Huma replaced her. As such once Adv Huma replaced her, he became its sole director and shareholder. She also states that in 2019 it was Adv Huma who put her in touch with Ms Moyo with a view to setting up the registration of Reagile. Ms Moyo requested her to take all the application forms to the other directors of Reagile. She names them. Ms Ntshole confirms that both Reagile and Silverlite were shelf companies purchased from B. Doyle and Associates. On 18 February 2019, Ms Moyo forwarded certain documents to her attaching a Board Resolution to operate a bank account for Reagile. The actual email from Ms Moyo is attached to Ms Ntshole's affidavit. Ms Ntshole states that Ms Moyo had also personally informed her that she and Adv Moyo had met in 2012/2013 and had an on and off relationship since then. She had many interactions with Ms Moyo until the marriage of her and Adv Moyo. She also alleges that Reagile applied for grant funding from the NLC on his instructions. This was conveyed to her via his wife. The suggestion that because they only got married long after the incidents in question took place and there was no foul play, is disingenuous.

[66] On the question of the admissibility of the NLC Report, Adv Huma submitted that the report of the NLC remains hearsay as there are no affidavits from the

witnesses. The Constitutional Court in *Kaunda and Others*<sup>21</sup> has sanctioned the use of reports by reputable international organisations as being materially relevant considerations in deciding human rights cases. The Court explained that:

“While this Court cannot and should not make a finding as to the present position in Equatorial Guinea on the basis only of these reports, it cannot ignore the seriousness of the allegations that have been made.”

[67] Matojane J in *SOS Support Public Broadcasting Coalition*<sup>22</sup> opined that the above approach extends to the reports of the Public Protector, the Auditor-General, the SIU as well as the PWC report. These reports raise serious concerns which are relevant and in respect of which judicial notice is taken.

Underlining for emphasis

[70] In my view, the purpose of the hearsay evidence is to support a finding that the Adv Huma and the others have contravened certain duties and obligations they owed to the State and the public at large.

This includes allegations that he:

1. failed to disclose a conflict of interest: both in respect of his family members' involvement in the Samaritan Initiative and Reagile as well as his involvement in Silverlite Trading.
2. abused his power and privileges as a Board member of the NLC; that he engaged in serious misconduct amounting to maladministration; and demonstrated complete disregard for principles of good corporate governance.

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<sup>21</sup> *Kaunda and Others v President of the Republic of South Africa and Others* 2005 (4) SA 235 (CC) (2005 (1) SACR 111; 2004 (10) BCLR 1009; [2004] ZACC 5)

<sup>22</sup> *SOS Support Public Broadcasting Coalition and Others v South African Broadcasting Corporation SOC Limited and Others; SOS Support Public Broadcasting Coalition and Others v South African Broadcasting Corporation SOC Limited and Others* (81056/14) [2017] ZAGPJHC 289 (17 October 2017)



3. and the others unduly benefitted from this unlawful scheme to the detriment of the NLC, the state and intended beneficiaries namely members of disadvantaged communities. And in doing so Adv Huma and his family members breached the restraint of trade which was imposed on him by the applicable law.
4. failed to abide by his fiduciary duties as a board member including his duty of care.
5. And all benefitted from the unlawful proceeds of crime in terms of POCA.

[71] Adv Huma treats the hearsay evidence as if it were dispositive of the issues at stake but that is not the case. In light of my discussion above of what facts are not in dispute between the parties it is clear that the hearsay evidence tips the scales in favour of the SIU's request for relief.

[72] The hearsay evidence should be regarded as the connective tissue that brings coherence to the evidence put forth by the SIU and the NLC. In this sense the allegations and relief sought in the notice of motion might be considered the bones with the documentary evidence being the muscles whilst the hearsay evidence serves as the tendons or "connective tissue" which bind it all together.

[73] In isolation the documentary evidence tendered by the SIU and NLC only points one in the direction of potential reprehensible conduct by Adv Huma, but once one adds the hearsay then on a balance of probabilities the scales are tipped in favour of a finding that the alleged malfeasance took place.

[74] The evidence shows a privity of interest between Adv Huma and his relatives. This privity of interest related to the application for grants. Whilst the transactions and actions on the part of some his relatives may not derive from their knowingly and directly participated in his unlawful scheme, but his relationship to the various tole parties is clear. Their interest is identical to his original and unlawful conduct. It follows, therefore, that the admissions made by the relatives against their interest can

be admitted. This is further supported in the dicta in the case of *Makhathini*, Navsa JA in discussing the privity of interest stated:

“the absence or presence of 'privity of interest' (an essentially foreign concept derived from substantive law) - has now been supplemented by notions of relevance, weight and the interests of justice. A reading of the analysis that had to be undertaken by Corbett JA in Quntana's case under the old hearsay rules demonstrates one of the respects in which those rules were deficient, at least if the privity there envisaged finally determined admissibility or inadmissibility. The statutory preconditions for the reception of hearsay evidence are now designed to ensure that it is received only if the interests of justice dictate its reception.”<sup>23</sup>

[75] There is a further reason why the evidence of the witnesses should be admitted. The relatives have a privity of interest in what they conveyed to the SIU investigator and Attorneys Nthambeleni Inc and the SIU investigators. This means an interest in a transaction, contract, or especially in an action that does not derive from direct participation but from a relationship to one of the parties or from having an interest identical to one, in the original subject matter.

[76] Furthermore the corroboration by other evidence reduces the prejudicial effect versus its probative value.

[77] In my view this, properly put, is the purpose served by the hearsay evidence.

#### *The probative value of the evidence*

[78] In *Ndhlovu*, Cameron J held that “The probative value of the hearsay evidence depends primarily on *the credibility of the declarant at the time of the declaration.*” Adv Huma does not appear to impugn the credibility of any of his relatives' evidence. Nor does he suggest that their statements were tendered in bad faith or for an ulterior purpose or motive. He does however suggest that the whistle-blower has failed to provide oral testimony because their evidence is either dishonest or even worse the whistle-blower does not exist and is a smokescreen to hide behind media reports of alleged malfeasance by Adv Huma.

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<sup>23</sup> *Makhathini v Road Accident Fund* 2002 (1) Sa 511 (SCA)



[79] Most of the whistle-blower's evidence is supported by the documentary evidence which the SIU has set out as annexures in its pleadings such as a deeds search of properties owned by Silverlite trading, documentation setting out the applications for grant funding from the NLC and the amounts awarded in this respect. It is quite well known that the reason whistle-blowers are hesitant to provide oral testimony is because they have a bona fide fear of reprisals: this might entail harm to their person, property or fundamental rights and interests. It seems safe to presume that for this reason - which is a legitimate one - the whistle-blower was reluctant to come forward.

[80] I therefore find no reason to have any suspicions about the credibility of any of the declarants in this regard. Moreover, if anything, the fact that so much of the whistle-blower's allegations is corroborated by other evidence suggests that what is being said is reliable and trustworthy.

*Any prejudice to the Respondents?*

[81] In *Ndhlovu*, Cameron J explained that:

“ ‘Prejudice’ in s 3 clearly means procedural prejudice to the party against whom the hearsay is tendered. It envisages the fact that the party against whom the hearsay is tendered cannot cross-examine the original.”

Importantly Cameron J went on to say that

“The suggestion that the prejudice in question might include the disadvantage ensuing from the hearsay being accorded its just evidential weight once admitted must however be discountenanced. *A just verdict, based on evidence admitted because the interests of justice require it, cannot constitute 'prejudice.'*”

[82] As I have explained already these are not criminal proceedings and Adv Huma's right to a fair trial is not at issue here. It is notable that in *Ndhlovu*, the Court also explained that

“The Bill of Rights does not guarantee an entitlement to subject all evidence to cross-examination. *What it contains is the right (subject to limitation in terms of s 36) to 'challenge evidence'.* Where that evidence is hearsay, the right entails that the accused is entitled to resist its admission and to scrutinise its probative value, including its reliability. The provisions enshrine these entitlements. *But where the interests of justice, constitutionally measured, require that hearsay evidence be admitted, no constitutional right is infringed.*”

[83] In confirmation of a more flexible and constitutionally appropriate approach, it is clear from the Constitutional Court judgment in *Kapa v S*<sup>24</sup>, it confirmed a significant departure from the approach and treatment of hearsay evidence which has been the traditional approach. It lowers the bar to the admission of hearsay evidence. Majiedt J who wrote for the majority stated that in holding that the interests of justice demand the admission of the hearsay evidence stated:

“In this approach, the first judgment impermissibly evaluates the probative value of the statement in a piecemeal fashion. It should instead apply a holistic approach, assessing whether on the whole the statement was of adequate probative value in light of all of the other circumstantial evidence taken together. Approached in this way, the outcome must be different.”<sup>25</sup>

Mbatha AJ who wrote for the minority in this judgment puts it thus; the reason for its inadmissibility is that ‘the statutory interests of justice test for the admission of hearsay evidence has a constitutional dimension, and the admission of hearsay might be so unfair as to infringe the [accused’s] fair trial rights’.

[84] If an accused does not enjoy the above rights then even less so would Adv Huma’s section 34 right of access to courts be infringed based on this Special Tribunal making any adverse ruling against him based in part on the hearsay evidence.

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<sup>24</sup> 2023 (4) BCLR 370 (CC)

<sup>25</sup> Ibid para 98



[85] Adv Huma has clearly had an opportunity to challenge the hearsay evidence in his affidavit in a substantial way. The affidavits of relatives and his wife would have put an end to this.

[86] Based on the principle established in *Plascon-Evans* and the learned extrapolations set out in *Wightman*, in my view, Adv Huma's submissions are no more than a bare denial of the facts or alternatively a series of red herrings which make no material difference to the facts which are required to establish the relief set out in the SIU's notice of motion. Adv Huma has never denied that he was a Board member of the NLC or a director of Silverlite. He does not deny that he occupied the latter positions at all material times which are relevant to the enquiry. Notably he does not impugn the validity of the lease agreement entered into between Silverlite and Reagile nor denies that he must surely have had knowledge of the said agreement.

*Any other factor which should in the opinion of the court be taken into account*

[87] Seeing as the interests of justice test in s 3(1)(c) must be considered in light of the values of the Constitution it is apposite that the extent to which the SIU's investigation and this Special Tribunals' finding gives effect to those fundamental values be considered.

[88] The Proclamation that is at the centre of the SIU's investigation into the Adv Huma and the others, touches on core constitutional values and principles including:

- The rule of law.
- The supremacy of the Constitution
- The constitutional values of openness, accountability and responsiveness
- The values of the public administration especially ensuring that public funds are disbursed prudently and for a proper purpose.

[89] The SIU and the NLC are correct that the conduct of the respondents is not only objectionable because they have usurped public funds for their own purposes

but in doing so they have also robbed deserving beneficiaries namely the poor and vulnerable from having their lives improved. In this way one can have regard to the multitude of Constitutional Court judgments which link the scourge of corruption to the systemic denial of rights under the Constitution as well as undermining the entire constitutional project which seeks to establish a democratic society based on human dignity, equality and *ubuntu*.

[90] If one has regard to all the factors under s 3(1)(c) in *toto*, then in my view, both the interests of justice and indeed common sense demand the admission of the hearsay evidence. Indeed, this Tribunal is enjoined to admit the hearsay evidence in this matter lest it allow 'rules of procedure to tyrannize the Court'.<sup>26</sup>

### **Relief sought by the SIU**

[91] Adv Huma, the Samaritan Initiative and Reagile have not argued that the jurisdiction of this Special Tribunal does not extend to order just and equitable relief. They have also not submitted that the Special Tribunal's jurisdiction does not extend to making an order in damages or an order for losses suffered by the state institution being the NLC. The SIU seeks remedial relief in the form of damages from Adv Huma.

[92] The genesis of the Special Tribunal's power to order damages flows from the provisions of Regulations published on 17 September 2019.<sup>27</sup> In particular section 5(2) defines the meaning of civil proceedings and this is relevant to the jurisdiction this Special Tribunal has in relation to granting the relief sought by the SIU.

'5.2 The words '**civil proceedings**', wherever they appear in the Act, including in the preamble and in sections 2(1)(b), 4(1)(c), 5(1)(b), 5(5) and 8 (2) of the Act, shall include civil proceedings for any relief for the recovery of any damages or losses and the prevention of potential damages or losses which may be suffered by a state institution under section 4(1)(c) of the Act, in the form of:

(a) to (c) ...

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<sup>26</sup> *Registrar of Insurance v Johannesburg Insurance Co Ltd* 1962 (4) SA 546 (W) at 547.

<sup>27</sup> Government Notice No. R. 1263



- (d) action proceedings for recovery damages or losses suffered by a state institution concerned, or
- (e) declaratory, interdictory or other forms of relief ancillary to any relief granted by the Tribunal.”

[93] Regulation 5.2 (d) refers to action proceedings for the recovery of damages or losses. In the circumstances can an award of damages be made in motion proceedings? This applies to the cause of action against Adv Huma. In respect of the others section 5.2 (d) provides for the recovery of losses. The same question applies as to whether the losses can be granted on motion against them.

#### **The award of damages/losses on affidavit**

[94] An essential legal question to be asked is whether damages/losses in these circumstances can be awarded on affidavit. Adv Huma denied all liability to have to pay damages. In so doing he has not contested the amounts granted to the Samaritan Initiative nor the amount granted to Reagile. In addition, he has not contested whether damages can be granted on affidavit. Because the undisputed documents reveal the actual amounts paid to the two entities by the SIU and NLC, these cannot be regarded as illiquid claims. Adv Huma and the two entities have not provided any analysis of how the money was spent and whether some of the funds were utilised for a lawful purpose. The evidence which should have been deposed by Adv Huma, makes it unnecessary to enter into those considerations.

[95] The amount sought against Adv Huma is an arithmetical calculation of the two amounts granted by the NLC to the two entities is R21 158 118.00. The relief in the Notice of Motion for the recoupment of the loss is not couched in joint and several terms. Repayment is sought against Adv Huma and the two entities for the repayment of the actual amounts granted. The founding affidavit places it beyond question that the amount of R21 158 118.00. is to be clawed back.

[96] A separate amount is sought from Adv Huma and the Samaritan Initiative on the one hand and a separate amount from Adv Huma and Reagile on the other. Clearly



all the respondents had an opportunity to dispute the amount, they did not. Adv Huma disputed other aspects, but not the amounts. Whilst motion proceedings are not suited to the prosecution of claims for unliquidated damages, in this case the amounts are not disputed.

[97] The question is therefore whether the words “action proceedings” can include these motion proceedings. In my view s5(2) defines civil proceedings very widely and specifically includes proceedings in terms of s 8(2) of the SIU Act. A common sense construction of s5(2)(d) of the Regulation read with s 8(2) of the SIU Act can include motion proceedings, because s 8(2) provides that a Special Tribunal shall have jurisdiction to adjudicate upon any civil dispute brought before it.

[98] I find that based on the undisputed amounts and the documentary proof provided by the SIU, it is permissible to grant the order in these motion proceedings. This includes the declarators provided in terms of s 5.2(e) of the Regulations read with s 8(2) of the SIU Act.

#### **Can final relief be granted whilst there is a preservation order in place?**

[99] In addressing this question, the nature of a preservation order and the final relief sought are two separate forms of relief. At a practical level, there would not be a preservation order if there was no review application instituted. The preservation order is a form of preserving, in this case, proceeds of a sale of a house. Whether the preservation order can remain in place does not go to the merits of the relief sought for the review and setting aside of the grant contracts. The cause of action for the preservation order is distinguishable from the cause of action in a review application. In fact, if the review fails there would be no reason to keep the preservation order in place based on the factual matrix in this matter. It therefore follows as a matter of logic that the outcome of the review application will ultimately determine the fate of the preservation order. The hearing of the review application must accordingly be determined first, including any further legal proceedings that may emanate from the review proceedings.

### *Relief*

[100] I have concluded that the award of the grants to the Samaritan Initiative and to Reagile are contrary to the dictates of the Constitution. Section 172(1)(a) of the Constitution enjoins a court to declare invalid any law or conduct that it finds to be inconsistent with the Constitution.<sup>28</sup> The grant, incorporated into the contracts concluded between the NLC and the Samaritan Initiative fall to be declared invalid. The same applies to the contract between the NLC and Reagile. The conduct of Adv Huma in relation to the manner in which he participated and benefitted at the time he was a Board member and for two years thereafter, is declared to be inconsistent with the dictates of the Constitution. Accordingly, his unlawful and dishonest conduct must yield to an order that he repay monies which cannot be recouped from the Samaritan Initiative and Reagile.

### *Costs*

[101] The conduct of Adv Huma, the Samaritan Initiative and Reagile has been reprehensible. There is no explanation or utterance from any one of them explaining the loss of money to the state. In particular Adv Huma's conduct in these proceedings should also be taken into account. He is a non-practising advocate of the High Court, he is legally trained and as such he would have been aware of his fiduciary duties to the Board, He must have been aware that his conduct was contrary to the prescripts of the Constitution. His pleaded defences were bald, obtuse and unmeritorious. His refusal to deal with simple denials to issues which called for an answer cannot be condoned. For example, a receipt of the two tranches of R1million into his personal account should have been an easy matter in which he could have taken the Special

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<sup>28</sup> Section 172(1) provides:

“When deciding a constitutional matter within its power, a court—

- (a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and
- (b) may make any order that is just and equitable, including—
  - (i) an order limiting the retrospective effect of the declaration of invalidity; and



Tribunal into his confidence. In the light of all the circumstances referred to, costs are therefore awarded against Adv Huma, the Samaritan Initiative and Reagile on the attorney client scale, the one paying the other to be absolved and to include the cost of two counsel, one being a senior counsel silk.

## **Order**

It is ordered that:

1. The decision of the fifth respondent of 2 September 2019 to award funding to the third respondent in the amount of R16 500.00 is hereby declared invalid, unlawful, reviewed and be set aside.
2. The resulting contract between the fifth respondent and the third respondent dated 12 September 2019 is declared invalid, unlawful and be set aside.
3. The decision of the fifth respondent of 19 August 2020 to award funding to the fourth respondent in the amount of R4 658 118.00 is hereby declared invalid unlawful, reviewed and be set aside.
4. The resulting contract between the fifth respondent and the fourth respondent dated 2 September 2020 is hereby declared invalid, unlawful and be set aside.
5. It is hereby declared that the conduct of the first respondent was egregious and negligent and caused the National Lotteries Commission to suffer damages in the amount of R21 158 118.00 as a result of his misconduct and dishonesty.
6. The first second and or third respondents are hereby ordered to repay the amount of R16 500 000.00.

7. The first second and or fourth respondents are hereby ordered to repay the amount of R4 658, 118.00.
8. Upon receipt of the funds as set out in paragraphs 6 and 7 above, such funds, or whatever portion thereof that is successfully recovered by the applicant will be repaid to the fifth respondent
9. The proceeds of the sale of the immovable property described as Erf 537, 446 Lawley St. Waterkloof, Pretoria are to be kept in the interest bearing trust account of Strydom, Britz, Mohulatsi Inc.in accordance with the ex parte order and the case number GP 05 stroke 2023 dated 25 February 2025 pending the outcome of the litigation between the parties
10. The first second and fourth respondents be ordered to pay the costs of this application on an attorney-client scale, jointly and severally, the one paying the others to be absolved including the cost of senior and junior counsel.



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



### Appearances

Attorneys for the applicant: DM5 Incorporated.

Counsel for the applicant: Adv. PL Mokoena SC, assisted by Adv. R Calvalheira

Attorneys for the first, second and fourth respondents: Botha, Du Plessis & Kruger Attorneys.

Counsel for first, second and fourth respondents: Adv. JA Loubser

Attorneys for the fifth respondent: Maenetja Attorneys.

Counsel for the fifth respondent: Adv. M Makoti, assisted by Adv. R Mushiana-Sigwavhulimu.

**Date of hearing:** 6 March 2025

**Date of judgment:** 30 June 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 16H00.