



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

**CASE NO: GP/04/2020**

**BEFORE THE HONOURABLE MADAM JUSTICE MODIBA  
ON 15<sup>TH</sup> MARCH 2022**

In the matter between:

**THE SPECIAL INVESTIGATING UNIT**

**First Applicant**

**THE MINISTER OF WATER AND SANITATION**

**Second Applicant**

and

**SYSTEMS APPLICATIONS PRODUCTS  
(SOUTH AFRICA) (PTY) LTD**

**First Respondent**

**SIFISO MKHIZE**

**Second Respondent**

**ZANDILE MAKHATINI**

**Third Respondent**

**NDILEKA MOHAPI**

**Fourth Respondent**

**NBS INFOSYS (PTY) LTD**

**Fifth Respondent**

**MATSEI TECHNOLOGIES AND CONSULTING (PTY) LTD**

**Sixth Respondent**

---

**ORDER**

---

**HAVING** read the papers filed of record and by agreement between the parties, it is ordered that:

1. The Software License and Support Agreement concluded between the Department of Water and Sanitation (**DWS**) (represented in this matter by the second applicant) and the first respondent (**SAP**) on 22 December 2015 (**the 2015 licence agreement**) is declared constitutionally invalid and set aside.
2. The Software License and Support Agreement that was concluded between DWS and SAP on 26 July 2016 (**the 2016 licence agreement**) is declared constitutionally invalid and set aside.
3. Consequent upon the setting aside of the 2015 and 2016 licence agreements, it is ordered that:
  - 3.1. the DWS may not use any of the software licenced under the 2015 and 2016 licence agreements;
  - 3.2. SAP will pay DWS an amount of **R413 121 283.40** (which represents the total amount received pursuant to the 2015 and 2016 licence agreements) **less:**
    - 3.2.1. **R68 337 036.00** (being, the yearly maintenance due under the Software License and Support Agreement entered into between the DWS and SAP on or about 9 January 2012 for the six-year period from 2016 to 2021 (R11 389 506.00 x 6 years); and
    - 3.2.2. any further amount determined by the Tribunal pursuant to order 4.

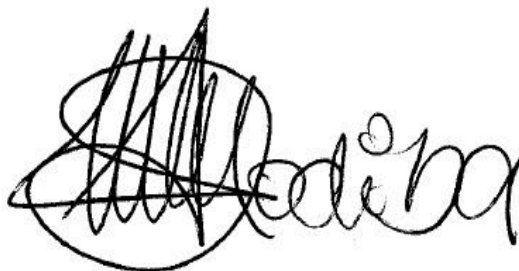
3.3. Within 5 court days of the date of this Order, SAP will pay DWS R **263 282 173.78** (which represents the undisputed amount due), with any remainder to be paid after the Tribunal's determination of whether any further amount should be deducted from the amount due in terms of order 3.2, pursuant to orders 3.2.2 and 4.

3.4. Interest, at the *mora interest* rate, will begin to run and be payable on all amounts not paid within 5 courts days of the date of this Order, including in respect of any further amount payable pursuant to the Tribunal's determination in terms of orders 3.2.2 and 4. For the avoidance of doubt, if the Tribunal determines that SAP is required to pay DWS more than R 263 282 173.78, because the Tribunal determines (pursuant to orders 3.2.2 and 4) that SAP may not make some or all of the deductions that it submits it is entitled to make, then that further amount will be payable, together with interest running from the date of this order.

4. It is recorded that the only remaining issues in dispute between the parties is whether in terms of the no-profit principle, SAP is entitled to deduct the payments it made to third-party software companies from the amount recorded in paragraph 3.2. of this order as well as the costs of determining whether this deduction should be allowed. To enable the Tribunal to determine these issues:

4.1. SAP will, within 15 court days of this order, file an affidavit solely dealing with the payments made to third-party software companies and the the factual basis for its contention that these expenses ought to be deducted from the amount to be paid to DWS in terms of paragraph 3.2 of this order;

- 4.2. Within 10 court days of receipt of SAP's affidavit, the SIU and DWS will file their affidavits in answer thereto;
- 4.3. Should it deem it necessary, SAP shall file its replying affidavit within 5 court days of expiry of the period referred to in paragraph 4.2 of this order;
5. The presiding Tribunal member is requested to convene a case management meeting within 10 court days of expiry of the period referred to in paragraph 4.3 of this order;
6. There is no order as to the costs of the review application.

A handwritten signature in black ink, appearing to read 'L Modiba', is written over a horizontal line. The signature is stylized and somewhat illegible due to the cursive nature of the writing.

---

**JUDGE L MODIBA**  
**MEMBER OF THE SPECIAL TRIBUNAL**

15 March 2022