



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

CASE NO: GP 09/2021

**THE SPECIAL INVESTIGATING UNIT**

Applicant

**AND**

**ZAKHENI STRATEGIC SUPPLIES (PTY)  
LTD**

First Respondent

**MEMBER OF THE EXECUTIVE COUNCIL  
GAUTENG  
DEPARTMENT OF HEALTH**

Second Respondent

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**JUDGMENT**

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**Summary**

Review and setting aside of procurement contract due to procurement irregularities – just and equitable relief.

**MODIBA J:**

[1] The Special Investigating Unit (**SIU**) has applied for an order reviewing and setting aside the contract the Gauteng Department of Health (**the Department**) awarded to Zakheni Strategic Supplies (Pty) Ltd (**Zakheni**) for the supply of Personal Protective Equipment (**PPE**). I conveniently refer to the contract as the impugned contract.

[2] Initially, the SIU sought to recover from Zakheni the amount of R21,239,472 being the difference between the amount the Department paid to Zakheni and the maximum price for the relevant PPE supplies set by National Treasury. It also sought to disgorge R15,811,132.40 being the amount of profit Zakheni realised from the unlawful and irregular procurement. During, oral argument, the SIU abandoned the claim for the amount of R15,811,132.40. It only persists with a claim for profits earned from the impugned contract as determined from a statement and debatement of account it contends Zakheni ought to be ordered to file.

[3] Zakheni is opposing the application. Zakheni has raised a number of preliminary points. These include an application to strike out certain paragraphs and annexures from the SIU's founding and replying affidavits. It has also counter-applied for an order declaring that the Department and Zakheni are bound to give effect to the impugned contract. It has tendered to perform in terms of the impugned contract. It also seeks payment of the balance of the contract price in the amount of R4,875,000.

[4] The Department has not entered the fray.

[5] I first set out the undisputed facts on which the SIU bases this application. Then, I outline the SIU's ground of review and the legal principles on which it relies, followed by Zakheni's basis for opposition. I analyse the parties' respective contentions against the applicable principles and legal authorities and make findings. I then briefly deal with Zakheni's counterclaim. An order concludes the judgment.

## UNDISPUTED FACTS

[6] On 15 March, President Cyril Ramaphosa declared a national state of disaster following the outbreak of the Covid 19 pandemic (**the pandemic**). On 18 March 2020, the Disaster Management Regulations were promulgated, setting out measures to be put in place to contain the pandemic.<sup>1</sup> These included the implementation of emergency procedures for the procurement of PPE supplies.

[7] On 19 April 2020, the Department, through its Chief Financial Officer (**CFO**), Ms. Kabelo Lehloenya (**Ms Lehloenya**), received a quotation from Zakheni for the supply to the Department of specified PPE supplies. On 20 April 2020, the Department issued a commitment letter to Zakheni, signed by the CFO. In terms of the commitment letter, Zakheni would supply PPEs to the Department to the value of R103, 770, 000. This is the contract the SIU seeks to have reviewed and set aside in these proceedings.

[8] On 23 July 2020, Proclamation 23 of 2020 was promulgated, authorizing the SIU to investigate irregularities in the procurement of PPEs. It alleges that it found irregularities in the awarding of the impugned contract to Zakheni.

## THE SIU's GROUNDS OF REVIEW

[9] The SIU relies on the following grounds of review:

- 9.1 breach of the applicable regulatory provisions;
- 9.2 the awarding of the contract to Zakheni is tainted with turpitude.

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<sup>1</sup> Government Notice No. 318 of 18 March 2020, regulations were promulgated in terms of section 27(2) of the Disaster Management Act, 2002.

## **ZAKHENI'S GROUNDS OF OPPOSITION**

[10] Zakheni denies that the awarding of the contract was irregular and unlawful or tainted with turpitude. Has raised a number of preliminary points, which I detail in paragraph 11 below. It also seeks the orders detailed in paragraph 3 above in relation to its counter claim.

[11] The following preliminary points Zakheni raises stand to be determined:

- 11.1 whether Zakheni makes out a case for the striking out of the specified material;
- 11.2 whether motion proceedings are inapplicable under the present circumstances;
- 11.3 the Tribunal's jurisdiction;
- 11.4 the SIUs locus standi to seek Zakheni's statement and debatement of account.

[12] In respect of the merits, the following issues stand to be determined;

- 12.1 whether the impugned contract was unlawfully and irregularly awarded as alleged;
- 12.2 whether the awarding of the impugned contract is tainted with turpitude;
- 12.3 in the event that the application succeeds, whether the impugned contract should be set aside and whether just and equitable relief as prayed for by the SIU is appropriate in the circumstances;
- 12.3 in the event that the application does not succeed, whether Zakheni is entitled to performance and payment in terms of the impugned contract.

## **THE APPLICATION TO STRIKE OUT**

[13] Zakheni has applied for the striking out of various paragraphs and annexures from the SIU's founding and replying affidavits for the reasons specified below. The application is properly before the Tribunal in terms of Uniform Rule 6(11), which requires that it be brought on notice. It need not be brought by way of notice of motion.<sup>2</sup> It only need to be supported by affidavit where necessary.

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<sup>2</sup> *Africa Exchange (Pty) Ltd v Financial Sector Conduct Authority* 2020 (6) SA 428 (GJ) at paragraph [6] and [8].

*Paragraphs 87 to 90 of the founding affidavit and paragraphs 8.1, 10, 19-19 of the replying affidavit*

[14] Zakheni contends that these paragraphs:

14.1 contain speculative and unsupported opinion in relation to:

14.1.1 who is a family member and the role played by such family member;

14.1.2 the alleged actions of officials in the Department in relation to Zakheni.

14.2 constitute inadmissible hearsay and/ or opinion evidence and/ or argumentative material and/ or an attack on the credibility of Zakheni. Therefore, they are irrelevant to the merits and prejudicial to Zakheni.

[15] In paragraph 87, the SIU alleges that Mr Thembile Sangoni (Sangoni), a Director in Zakheni is a family relation of one Ms Khusela Diko (Diko), nee Sangoni, the former Presidential Spokesperson. In paragraph 88, reference is made to an order Sangoni placed with K Manufacturing for PPE supplies on behalf of an entity called Ledla Structural Development. In making these allegations, the SIU relies on an affidavit Michiel De Vries van Staden (van Staden) deposed to in *SIU v Ledla Structural Development (Ledla)*.<sup>3</sup> In paragraph 90, the SIU concludes that due to his relationship with Diko, Sangoni is a politically exposed person. Given non-compliance with the prescribed prescripts in awarding the impugned contract to Zakheni, the contract was awarded in furtherance of a corrupt scheme.

[16] In her affidavit, van Staden made no allegations of malfeasance either on the part of Zakheni, Sangoni, Diko or Ledla. She simply explained K Manufacturing's dealings with Zakheni, Sangoni and Ledla. Therefore, van Staden's allegations do not sustain the conclusion the SIU is inviting the Tribunal to draw, that awarding the impugned contract to Zakheni was in furtherance of a corrupt scheme.

[17] The SIU's motive for including these paragraphs in its founding affidavit and Zakheni's case for striking out the paragraphs becomes fortified when I have regard to paragraph 91 of the founding affidavit where the SIU inappropriately and in violation

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<sup>3</sup> Tribunal Case Number GP07/2020. In this application, the SIU had obtained an *ex parte* order preserving funds held in the bank accounts held in the names of a number of entities including K Manufacturing. K Manufacturing filed an opposing affidavit, deposed to by Michiel De Vries van Staden, proclaiming its innocence and pleading for the release of its funds.

of the rule in *Hollington v Hewthorn*<sup>4</sup>, seeks to place reliance on the findings of turpitude against Ledla and Sangoni, made in *Ledla*. These were made in relation to the relationship between these parties regarding the contracts under review in *Ledla*. The findings are inadmissible in these proceedings as they are irrelevant to the question whether the impugned contract was irregularly awarded.

[18] Zakheni has not made out a case for the striking out of paragraphs 8.1, 10, 19-19 of the replying affidavit. These paragraphs detail the SIU investigations and its findings which, as contended by the SIU in its replying affidavit, Zakheni does not dispute in its answering affidavit.

[19] Therefore, only paragraphs 87 to 91 of the founding affidavit stand to be struck out.

*Paragraphs 38.3 to 38.5, paragraphs 88, 90-93 of the founding affidavit, annexures FA32 and FA33 to the founding affidavit, paragraphs 21 to 27, 36 to 37 and annexures RA2 and RA3 to the replying affidavit*

[20] Zakheni contends that these constitute inadmissible:

- 20.1 evidence in terms of section 42 of the Civil Proceedings Evidence Act,<sup>5</sup> read with the Rule in *Hollington v Hewthorn*;
- 20.2 factual issues and findings in other proceedings;
- 20.3 scandalous, and/ or vexatious and/ or irrelevant evidence prejudicial to Zakheni.

[21] Paragraphs 38.3 to 38.5 of the founding affidavit detail the findings made by the deponent to the founding affidavit. Therefore, this evidence does not fall within the rubric of section 42 of the Civil Proceedings Evidence Act.<sup>6</sup>

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<sup>4</sup> *Hollington v F Hewthorn and Company Ltd* 1943 ALL ER 35.

<sup>5</sup> Act 25 of 1965

<sup>6</sup> Section 42 provides as follows:

“42 Cases not otherwise provided for

The law of evidence including the law relating to the competency, compellability, examination and cross-examination of witnesses which was in force in respect of civil proceedings on the thirtieth day of May, 1961, shall apply in any case not provided for by this Act or any other law.”

[22] Paragraph 92 to 93 of the founding affidavit detail the findings in *Ledla* and therefore stand to be struck out for the reason stated in paragraph 17 above. Annexure FA32 is van Staden's affidavit filed in *Ledla*. Its relevance in these proceedings is not established. FA33 is the judgment in *Ledla*. As already stated, the findings in *Ledla* are inadmissible here. Therefore, Paragraph 92 to 93 and annexures FA32 and FA33 to the founding affidavit stand to be struck out.

[23] Zakhani has not made out a case for the striking out of paragraphs 21 to 27 and 36 to 37 of the founding affidavit. These fall outside the scope of its complaint. The paragraphs detail the regulatory prescripts relied on by the SIU. Annexure RA2 is a transcript of the enquiry the SIU conducted under oath with the then Head of Department Professor Lukhele in terms of section 5(2)(c) of the SIU Act. Is it admissible. Annexure RA3 is an affidavit deposed to by Ms Thandiwe Lorrain Pino, Chief Director Supply Chain and Asset Management for the Department. It is also admissible in these proceedings.

*Paragraph 40 of the founding affidavit and paragraph 10 of the replying affidavit*

[24] Zakhani contends that these paragraphs relate to a matter of law which only the Tribunal is qualified to rule on and accordingly, scandalous, and/ or vexatious and/ or irrelevant and prejudicial to Zakhani.

[25] Even though ultimately, it is for the Tribunal to make such a finding, the SIU is entitled to make the assertion it makes in paragraph 10 of the replying affidavit, that in its answering affidavit, Zakhani makes bald denials without countervailing evidence. Similarly, the SIU is entitled to make the assertion it makes in paragraph 40 of the founding affidavit regarding the Tribunal's powers. It is for the Tribunal to make a finding to that effect if there is a legal basis for it.

*Paragraphs 37, 38.1, 38.3 to 38.5, 39, 53 to 59, 61-69 of the founding affidavit and paragraphs 10, 15-19 of the replying affidavit*

[26] Zakhani contends that these paragraphs:

- 26.1 relate to administrative actions of third parties not involving Zakhani;
- 26.2 the relevant parties are not before the Tribunal;

26.3 the averments are vague and embarrassing. Zakheni is unable to plead thereto as the paragraphs contain scandalous, and/ or vexatious and/ or irrelevant evidence prejudicial to Zakheni.

[27] In paragraphs 39, 53 to 59, 61 to 69 of the founding affidavit and paragraphs 10, 15 to 19 of the replying affidavit, the SIU investigator sets out why based on his findings, having regard to the applicable regulatory prescripts, the impugned contract was unlawfully and irregularly awarded. The SIU is entitled to make these assertions. Ultimately, it is for the Tribunal to make a finding to that effect if there is a factual and legal basis for it.

[28] Paragraph 10 of the replying simply states an undisputed allegation that as part of its investigations, the SIU summoned Professor Lukhele to an enquiry. This paragraph does not stand to be struck out for the reasons advanced by Zakheni.

*A portion of paragraph 66 of the founding affidavit, paragraph 13.2 of the replying affidavit and annexure RA 1 to the replying affidavit*

[29] Zakheni seeks this material struck out because:

29.1 there is no clause 4(j) in annexure RA1;

29.2 Annexure RA 1 to the replying affidavit is a repeat of Annexure FA5 to the founding affidavit;

29.3 they are irrelevant and inadmissible.

[30] Paragraph 13.2 of the replying affidavit and annexure RA1 to the replying affidavit stand to be struck out for the reasons advanced by Zakheni.

### **WHETHER MOTION PROCEEDINGS ARE INAPPLICABLE**

[31] Zakheni contends that it is not permissible to bring an illiquid claim by means of motion proceedings. It further contends that “the quantification of the claim for “financial losses suffered by the department” is such an “illiquid claim” which is not competent in this instance.”

[32] The above complaint lacks merit. The review of decisions by organs of state are typically brought by way of application. This procedure is only inapt if there is a material foreseeable dispute of fact irresolvable on the papers.<sup>7</sup> The amounts claimed in paragraphs 3.1 and 3.2 of the SIU's notice of motion are liquid. Pertinently, Zakeni takes no issue with the quantification of these claims. In paragraph 7.3 of its answering affidavit, Zakheni takes issue with the legal basis for the monetary claims and not the quantification thereof. In any event, the SIU no longer persists with the relevant prayers. Even on the merits, Zakheni does not assert a material dispute of fact irresolvable on the papers. It is only contesting that the contract was irregularly and unlawfully awarded on the basis contended by the SIU.

[33] Therefore, this preliminary point stands to be dismissed.

#### **THE TRIBUNAL'S JURISDICTION**

[34] Zakheni attacks the Tribunal's jurisdiction on two bases. Firstly, it contends that the Tribunal is not a court of law as envisaged in Chapter 8 of the Constitution. It is only a Tribunal as envisaged in section 34 of the Constitution. Therefore, it lacks the jurisdiction to declare the contract unconstitutional in terms of section 172(1) of the Constitution. It also lacks jurisdiction to grant just and equitable relief in terms of section 172(1)(b) of the Constitution.

[35] Secondly, it contends that:

"7.3.7. Prayers 3.2 of the notice of motion amounts to civil forfeiture or a civil penalty in circumstances that:

7.3.7.1 the amount claimed is not for actual or potential damages or losses as may be suffered by a State institution;

7.3.7.2 the Special Tribunal may only make an order in relation to or connected actual or potential damages or losses as may be suffered by a State institution;

7.3.7.3 the Special Tribunal lacks jurisdiction to grant a remedy of "civil forfeiture or a "civil penalty" in terms of the SIU Act;

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<sup>7</sup> *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T)

7.3.9 the relief in prayers 3.1 and 3.2 in addition to not being authorised by the SIU Act, impermissibly impacts on constitutional rights, including economic rights to trade and engage in economic activities, and uses disproportionate means to achieve the purpose of the SIU Act.”

[36] On the Supreme Court of Appeal’s authority in *Nadasen*<sup>8</sup> and this Tribunal’s authority in *Caledon River*<sup>9</sup>, the Tribunal is a Court of law with the status of a High Court as envisaged in section 166(e) of the Constitution, with constitutional jurisdiction.

[37] The monetary claims referenced in the relevant prayers in the notice of motion are losses allegedly suffered by the Department as a result of the alleged irregular and unlawful awarding of the impugned contract. The SIU is not seeking any purported civil forfeiture or civil penalty. It is therefore not necessary to determine whether a claim for civil forfeiture or civil penalty is competent in terms of the Special Investigating Unit and the Special Tribunal’s Act<sup>10</sup> (the SIU Act). It is similarly not necessary to determine whether the claims in prayers 3.1 and 3.2 infringe Zakheni’s economic rights. In terms of section 4(1)(c) of the SIU Act, the SIU is entitled to the relief prayed for if the SIU establishes that Zakheni is not entitled to derive any profit from the impugned contract.

[38] Therefore, this point *in limine* stands to be dismissed.

### **THE SIU’S RIGHT TO A STATEMENT AND DEBATEMENT OF ACCOUNT**

[39] In paragraph 3.3 of the notice of motion, the SIU seeks an order directing Zakheni to file a statement and debatement account reflecting income received, expenses incurred and profits earned from the impugned contract. Zakheni contends that there is no fiduciary relationship, a contractual obligation or a statutory duty to account to the State or to the SIU. It further contends that in light of the monetary

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<sup>8</sup> *Special Investigating Unit v Nadasen and Another* 2002 (4) SA 605 (SCA).

<sup>9</sup> *Special Investigating Unit and Another v Caledon Properties (Pty) Ltd and Another*, Special Tribunal Case No: GP17/2020. Unreported judgment delivered on 26 February 2021.

<sup>10</sup> Act 74 of 1996.

orders the SIU seeks in prayers 3.1 and 3.2, there is no basis for a debatement of account.

[40] As earlier stated, the SIU is insistent on Zakheni filing a statement and debatement of account. The basis or it is not fiduciary relationship, a contractual obligation or a statutory duty. The power to grant such an order derives from section 172(1)(b) of the Constitution. It is a mechanism for accounting for profits were the court grants just and equitable relief divesting a respondent of profits derived from an impugned contract. There is ample judicial authority for such an order.<sup>11</sup>

### **WHETHER THE CONTRACT WAS UNLAWFULLY AND IRREGULARLY AWARDED AS ALLEGED**

#### *Breach of the prescribed regulatory prescripts*

[41] The SIU contends, for the reasons set out below, that the impugned contract was unlawfully and irregularly awarded:

- 41.1 non-compliance with Instruction Note 3 (TN3) and Note 5 (TN5);
- 41.2 non-compliance with Treasury Regulation 16. A6.4;
- 41.3 the impugned contract is tainted with turpitude.

#### *Non-compliance with TN3 and TN5*

[42] The SIU alleges that the Department was not authorised to procure PPE supplies as all procurement had been centralized and had to be referred to the National Treasury Procurement Team for procurement by Imperial Health Science (IHS). The CFO signed the commitment letter, awarding the impugned contract to Zakheni, without regard to the applicable procurement prescripts.

[43] The SIU also alleges that Zakheni priced the face mask items it supplied to the Department in excess of the maximum price set by National Treasury in terms of Annexure A of TN3.

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<sup>11</sup> See *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v CEO of the South African Social Security Agency and Others* 2014 (4) SA 179 (CC), *Special Investigating Unit and SABC v Vision View Productions CC* [2020] ZAGPJHC 19 June 2020, *SABC SOC Ltd and Another v Mott MacDonalds SA (Pty) Ltd (29070 of 2018)* [2020] ZAGPJHC 5 (08 December 2020)

[44] Zakheni concedes in paragraph 30.6 of its answering affidavit that TN3 is applicable to the impugned contract. Therefore, it is common cause that TN3 was in force when the impugned contract was concluded and that when procuring supplies under the impugned contract, the Department did not utilize the services offered by IHS. The only issue Zakheni places in dispute is that TN3 was mandatory. It contends that TN3 is only a guideline.

[45] National Treasury derives authority to issue TN3 from section 76(4)(b)(c) and (g) of the Public Finance Management Act<sup>12</sup> (PMFA).

[46] Although paragraphs 1.1 and 2.16 of TN3 are couched in discretionary terms, paragraph 8 makes it pertinently clear that TN3 applies to all organs of state listed in Schedules 2 and 3 of the PMFA. This interpretation is bolstered by item 6 which enumerates exceptions to the scope of application of TN3. More importantly, item 6 also sets out circumstances under which an organ of state may approach any other supplier to obtain quotations. It may do so if the items are to the specifications determined by the National Department of Health, the prices are equal or lower than those listed in Annexure A and the supplier is on the Central Supplier Database. There is a reporting requirement in respect of items procured under item 6.4.

[47] Therefore, there is no merit in the contention by Zakheni made in paragraph 30.3 of its answering affidavit that TN3 “is the only relevant “guideline” that may find application in the determination of the contract awarded to Zakheni”.

[48] Apart from the unmeritorious contention that TN3 is a mere guideline, Zakheni has not disputed the allegation that it sold PPE supplies to the Department in excess of the prices set out in Annexure A of TN3. I therefore find in favour of the SIU in respect of this point. The SIU has succeeded in establishing that the CFO awarded to impugned contract contrary to the requirements in TN3.

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<sup>12</sup> Act 1 of 1999.

*Non-Compliance with TN5*

[49] The SIU has not pleaded in what respect was the contract awarded contrary to TN5. As contended by Zakhani, the impugned contract is not subject to requirements that were not in place when it was awarded. TN5 was signed on 28 April 2020. The impugned contract is not subject to it.

*Non-compliance with Treasury Regulation 16. A6.4*

[50] No case is made out in the founding affidavit regarding *non-compliance with Treasury Regulation 16. A6.4*.

*Non-Compliance with Gauteng Treasury Circular 3 of 2020*

[51] It is the SIU's case that to the extent that the impugned contract was singularly awarded by the Department's CFO, it was awarded contrary to Gauteng Circular 3.

[52] Gauteng Circular 3 expressly states that the Head of Department is responsible and accountable for Covid-19 procurement decisions and the implementation thereof. It establishes a committee to coordinate PPE procurement in the province. It also makes provision for the composition of the Committee and its functions. It does not authorise the CFO to singularly make decisions on the procurement of PPE supplies.

[53] I therefore find, as contended by the SIU, that the CFO lacked the authority to singularly award the impugned contract to Zakhani.

*Turpitude on the part of Zakhani*

[54] To establish turpitude on the part of Zakhani, the SIU solely relied on the material dealt with earlier, which stand to be struck out. Therefore, this ground of review is unsustainable.

## REMEDY

[55] The irregular manner in which the contract was awarded constitutes a material infraction to the constitutional values of fairness, transparency, equity, effectiveness and cost effectiveness. Therefore, it is just and equitable to set aside the contract.

[56] On the authority in *All Pay*, Zakheni is not entitled to profit from an irregular contract. I find no basis to exercise my discretion to permit Zakheni to benefit from the contract under the present circumstances. It is therefore just and equitable that Zakheni is ordered to account to the Department for the profits has earned or stands to earn from the impugned contract and to be divested of such profits.

## ZAKHENI'S COUNTER CLAIM

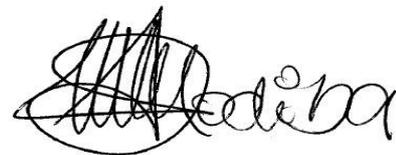
[57] Having regard to the findings made in respect of the remedy, Zakheni is not entitled to specific performance. It stands to be dismissed.

## ORDER

1. The application succeeds.
2. The counterclaim is dismissed with costs.
3. The following paragraphs are struck out with costs in favour of Zakheni Strategic Supplies (Pty) Ltd (**Zakheni**):
  - 3.1 paragraphs 87 to 93 and annexure FA32 and FA33 to the founding affidavit;
  - 3.2 paragraph 92 to 93 and annexures FA32 and FA33 to the founding affidavit
  - 3.3 paragraph 13.2 of the replying affidavit and annexure RA1 to the replying affidavit.
4. It is declared that Zakheni is divested of all the profit that has or will accrued to it under the contract the Gauteng Department of Health awarded it on 20 April 2020 for the supply of PPE items (**the impugned contract**).
5. Zakheni is ordered to render to the Registrar of this Tribunal and to the Special Investigating Unit (**SIU**), within 30 days from date of this order, audited financial statements for the financial year/s covering the period during which the parties performed under the impugned contract, to the extent that the audited financial

statements reflect all financial information pertaining to the impugned contract together with:

- 5.1.1 documents in support of all income derived from, and expenditure incurred on the impugned PPE Contract;
  - 5.1.2 any other financial information that is relevant to the income derived from, and the expenditure incurred on the impugned contract.
6. The SIU may debate the financial data referred to in paragraph 5 of this order with Zakheni within 30 days from the date service.
  7. Upon written demand by the SIU and within 60 days of service of the written demand, Zakheni is ordered to pay to the SIU the amount found to be due and payable in terms of paragraph 4 of this order after the accounting and debatement exercise referred to in paragraphs 5 of this order, together with interest thereon a *tempore morae* as prescribed from time to time, applicable from date of service of the written demand until the date of payment.
  8. In the event that any arises regarding to the execution of this order, either party shall request that a Case Management Conference be convened by this Tribunal in order to issue directions as to the further conduct of the matter.
  9. Zakheni is ordered to pay the costs of this application, such to include those consequent upon the engagement of two counsel.



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**JUDGE L. T. MODIBA**  
**PRESIDENT OF THE SPECIAL TRIBUNAL**

## APPEARANCES

Counsel for the applicants:	Adv. L Nkosi Thomas SC assisted by Adv. Nthuli
Attorney for the applicants: Attorney, Pretoria	Ms S Zondi, Office of the State
Counsel the 1 <sup>st</sup> respondent:	Adv. S Ongunronbi assisted by Adv. Z Matondo
Attorney for the 1 <sup>st</sup> respondents:	Mr Thabo Kwinana, KMNS INC
Date of hearing:	02 February 2022
Date of Judgment:	29 June 2022

**Mode of delivery:** this judgment is handed down electronically by circulation to the parties' representatives by email, uploading on Caselines and release to Saflii. The date and time for hand-down is deemed to be 10:00am on 29 June 2022.