



**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 NUMBER: GP10/2021**

In the matter between:

**THE SPECIAL INVESTIGATING UNIT (SIU)**

Applicant

and

**PETRUS SHAKA MAZIBUKO**

First Respondent

**SHADRAK MAZIBUKO**

Second Respondent

**THEPHUNOKHEJA PROJECTS (PTY) LTD**

Third Respondent

**COMMODITY LOGISTIX MANAGERS**

**AFRICA (PTY) LTD**

Fourth Respondent

**MBULELO CLIVE BHEKUYISE KHOZA**

Fifth Respondent

**PHILIP BONGANI SIBANYONI**

Sixth Respondent

**JUDGMENT- LEAVE TO APPEAL**

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**SIWENDU J**

[1] The applicants (the respondents *a quo*) seek leave to appeal against the forfeiture order and judgement granted by the Tribunal on 4 October 2021.

[2] It merits mention at this early stage that the Seventh Respondent, Thembatlho (Pty) Ltd (a subcontractor to the fourth respondent who held the contract with Eskom), against whom the order and judgment also applies, did not oppose the final forfeiture application. It was not represented and did not advance a version at the hearing.

[3] What is more is that it is not a party to the application for leave to appeal.

**Appeal by the First to Third Respondents**

[4] The first to third respondents contend that in granting the final relief, Tribunal erred in its assessment of the facts and application of the law. It exercised its discretion on incorrect facts.

[5] I find that there is no merit to the complaint about the Tribunal's interpretation of its civil and forfeiture jurisdiction under the SIU Act. A declaration of a criminal offence is not a prerequisite, and proceeds from unlawful conduct are sufficient to engage the jurisdiction of the Tribunal. Significantly, the Tribunal enjoys the same jurisdiction as High Court. As already stated in the judgement appealed against, a finding to the contrary would incorrectly, and, improperly limit the statutory jurisdiction of the Tribunal.

[6] Consequently, the orders were competent orders in the context of civil forfeiture proceedings before the Tribunal.

[7] There is in addition no merit to the complaint about the finding that Mr Mazibuko was a *de facto* director of the third respondent. He represented himself as such to FNB, held himself and acted as such. As stated in the judgment, even if he was not, on his own version he acted as an advisor of the third respondent.

[8] I have also carefully considered the complaint that the Tribunal mischaracterised the dispute and breath of the Proclamation. There is no merit to the complaint. Firstly, the procurement and transportation of coal fell in the ambit of contracts under the investigation authorised by the Proclamation. Secondly, Eskom imposed a duty on its employees to disclose their interests in suppliers (whether direct or indirect). Mr Mazibuko as an employee, breached this duty.

[9] I find that the complaint about CLM's role and duty, a misconstruction of the true legal position and the source of its obligations. CLM's duty to disclose its *indirect* relationship with Mr Mazibuko as well as its direct relationship with Thephunokheja through the JV Partnership arose independently of the Proclamation and the investigation. The source of its undisputed obligation to disclose the relationship was its role as a supplier of Eskom, the failure of which resulted in the unlawful conduct complained of.

[10] The Tribunal's finding that there was a breach of duty and consequently unlawful conduct on CLM's part implicates the relevant legislation.

[11] The Tribunal correctly found that even though the JV agreement was purportedly concluded six months after the award of the contract, the duty imposed on CLM to disclose its interests (*qua* supplier) was an on-going one.

### **Appeal by the Fourth to Sixth Respondents**

[12] To the extent that the appeal by the fourth to sixth respondent replicates or intersects with complaints raised by the first to third respondent, it is not essential to repeat them, save to note once more that:

[12.1] The fourth to sixth respondents declined to disclose and discover material documents requested to evince legitimate business dealings with the third respondent when they had the evidentiary burden to do so.

[12.2] There was no new matter raised in the affidavits by the SIU, and in any event, impressions created from the conspectus of the papers and observations by the Tribunal are not appealable.

[13] The application fails the threshold in s17 of the Superior Courts Act 10 of 2013 and there are no compelling reasons why the matter must be heard by the Full Court.

Accordingly, I make the following order:

- a. The application for leave to appeal is dismissed with costs.



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**T. SIWENDU J**

*This judgment was handed down electronically by circulation to the parties and or parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 10h00 on 17 June 2021*

Date: 17 January 2022

Counsel for the First to Third Applicants: Adv Mphaga SC

With Him: Mr ME Manala

Instructed by: Manala & Co Incorporated

Counsel for the Fourth to Sixth Applicants: Adv Ramawele SC

Instructed by: Koikanyang Incorporated

Counsel for the Respondent: Adv Platt SC

With Her: Adv RV Mudau

Instructed by: The Office of the State Attorney

