

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED

19 March 2024

\_\_\_\_\_  
DATE

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SIGNATURE

CASE NUMBER:

49514/2017

In the matter between

SOUTH AFRICAN BROADCASTING CORPORATION SOC LTD

First Applicant

SPECIAL INVESTIGATING UNIT

Second Applicant

and

LORNAVISON (PTY) LTD

Respondent

*In re:*

SOUTH AFRICAN BROADCASTING CORPORATION SOC LTD

First Plaintiff

SPECIAL INVESTIGATING UNIT

Second Plaintiff

and

LORNAVISON (PTY) LTD

First Defendant

JAMES AGUMA

Second Defendant

**Coram:** DOSIO J

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## **ORDER**

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1. The application for default judgment is granted.
  2. The respondent is ordered to pay the sum of R62 733 556.61 with interest thereon tempore morae from date of service of summons to the date of final payment.
  3. The respondent is to pay the costs.
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## **JUDGMENT**

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**DOSIO J:**

### ***Introduction***

[1] This is an application for default judgment, brought by the first and second applicants who will be referred to as ('the SABC') and ('the SIU'), against the first respondent, ('Lornavision').

[2] Lornavision has opposed the application.

[3] The first and second applicants are the first and second plaintiffs in the main action and Lornavision is the first defendant. For purposes of this judgment, reference will be made to these parties as they appear in the main action.

### ***Background***

[4] The SABC and Lornavision concluded a written services agreement on 10 July 2015, in terms of which Lornavision was to assist the SABC with the collection of debt relating to the payment of TV licenses.

[5] The second defendant ('Mr Aguma'), was employed as the chief financial officer of the SABC and initiated an irregular, unfair, non-competitive and non-transparent process to appoint Lornavision, in a manner that contravened s217(1) of the Constitution.

[6] The SABC performed in terms of the illegal services agreement and paid Lornavision the amount of R62 733 556.61.

[7] The written services agreement was declared unlawful, reviewed and set aside by the learned Shangisa AJ on 26 July 2017 and reasons were given on 2 August 2017.

[8] Summons was issued on 19 December 2017. Mr Aguma filed a plea and is not involved in this application.

[9] Lornavision delivered four exceptions to the particulars of claim. This resulted in the SABC amending their particulars of claim to the current form as at 5 September 2019. No action was taken by Lornavision after it received the amended particulars of claim.

[10] On 22 October 2019, the SABC and the SIU delivered their notice of bar which was served on Lornavision. Lornavision had to deliver its plea by 29 October 2019.

[11] The application for default judgment was launched on 8 September 2020 and set down for hearing on 24 November 2020.

[12] Lornavision launched an application to uplift the bar on 20 November 2020 and withdrew same on 23 March 2022, tendering the wasted costs of the SABC and the SIU, up to and including 23 March 2022.

[13] There is a further matter, namely, 2020/9366 where the SIU is the plaintiff and Kubentheran Moodley ('Mr Moodley') and Lornavision are the first and third defendants respectively. The first and third defendants in matter 2020/9366 have filed a notice of exception. The second defendant in matter 2020/9366 is Frans Lodewyk Munnick Basson ('Mr Basson') and the SABC is the fourth defendant.

### ***Submissions of the SABC and the SIU***

[14] The SABC and the SIU argued that because Lornavision withdrew its application to uplift the bar, all that is before this court is a pure default judgment and Lornavision cannot be before the court at this stage.

[15] It was argued that because the court made an order that the contract was void ab initio, the SABC is entitled to claim the profits made by Lornavision, which it obtained as a result of the contract. Furthermore, the SABC in its particulars of claim makes out a case for unjust enrichment.

[16] It was argued that the exception raised by Lornavision to the particulars of claim, do not make the particulars of claim so bad, that no cause of action is apparent. It was argued that the contract was set aside and, on that basis, Lornavision must simply repay the profits that the SABC paid.

[17] It was submitted that Lornavision was unjustly enriched in the amount of R62 733 556.61 and that the SABC was impoverished in the amount of R62 733 556.61.

[18] It was contended that the enrichment of Lornavision was at the expense of the SABC and was unjustified. As a result, Lornavision is indebted to the SABC in the amount of R62 733 556.61. Reference was made to the Constitutional Court decision of *Allpay Consolidated Investment Holdings (Pty) Ltd And Others v Chief Executive Officer, South African Social Security Agency And Others*<sup>1</sup> ('Allpay 2').

[19] The plaintiffs' counsel made reference to the affidavit of Sylvia Nikiwe Tladi ('Ms Tladi') in support of their claim. In this affidavit it is stated that according to the customer communications service ('CCS'), the system was to be managed in-house by the SABC, however the CCS system was never managed in-house by the SABC and neither did the SABC have control over it.<sup>2</sup> It was argued that the CCS system also never produced the increased collections and revenue as promised by Lornavision.

[20] Reference was made to Ms Tladi's affidavit which states that:

'In my view the R2 135 000 excluding VAT that we paid for the pilot program referred to in sub-paragraph 9.1...was a total waste as Lornavision failed to deliver the increased revenue collection and the SABC have received nothing in return- for this expenditure. The whole amount paid to Lornavision for the pilot program was effectively fruitless and wasteful expenditure and we had no returns on this investment.'<sup>3</sup>

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<sup>1</sup> *Allpay Consolidated Investment Holdings (Pty) Ltd And Others v Chief Executive Officer, South African Social Security Agency And Others* 2014 (4) SA 179 (CC)

<sup>2</sup> Affidavit of Ms Tladi para 45

<sup>3</sup> Ibid para 48

[21] Counsel referred this court to a table that was prepared by Ms Tladi which shows that there was a 100% success rate on the part of the SABC in collecting rates as opposed to the very low collection rates by Lornavision.<sup>4</sup>

[22] Reference was also made to a damages affidavit filed by Brendan Daniels ('Mr Daniels'), who is employed as a senior forensic accountant by the SIU. In this affidavit it is stated that:

'I confirm that during 2017 I conducted an investigation in relation to the payments made by the First Plaintiff to the First Defendant in terms of the service agreement which was declared unlawful, reviewed and set aside by the above Honourable Court on 2 August 2017...My investigation revealed that during the period 17 September 2015 to 16 February 2017 the First Plaintiff paid the First Defendant an amount in the sum of R62 733 557. I attach a copy of a spreadsheet reflecting the payments made marked "Annexure B".<sup>5</sup>

'Accordingly, I confirm that the amounts listed in Annexure B are true and correct reflection of the loss suffered by the First Plaintiff as a result of the unlawful agreement concluded between the First Plaintiff and the First Defendant.'<sup>6</sup>

[23] Counsel referred to the judgment handed down by the learned Shangisa AJ which states that:

'There is nothing that demonstrates that Lornavision's product was in any way unique or that it was the sole provider of this type of services. Its debt collection drive could hardly be categorized as being unique or innovative. In my view, the nature of the services provided by Lornavision fall outside the scope of unique, innovative or exceptional circumstances that are contemplated in section 13.14 of the SABC's Policy. In the same vein, it is difficult to discern any exceptional cost benefit the agreement brought to bear on the SABC.'<sup>7</sup>

'...What is more, the SABC had its own internal resources and staff which were capable of executing some of the tasks for which Lornavision had been appointed.'<sup>8</sup>

### ***Submissions of Lornavision***

[24] Lornavision raised the following three issues:

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<sup>4</sup> Ibid para 88

<sup>5</sup> Affidavit of Mr Daniels para 4

<sup>6</sup> Ibid para 5

<sup>7</sup> Judgement of Shangisa AJ para 46

<sup>8</sup> Ibid para 59

**(a) *The purported affidavit of Ms Tladi had not been properly commissioned and is pro non scripto.***

Reference was made to Regulation 7(1) of the 'regulations governing the administering of an oath or affirmation'<sup>9</sup> which reads:

'(1) A commissioner of oath shall not administer an oath or affirmation relating to matter in which he has an interest.'

It was argued that the affidavit of Ms Tladi was 'commissioned' by Ruark Theron ('Mr Theron'). Mr Theron had an interest in the matter, as the affidavit of Ms Tladi is attached to his answering affidavit. This answering affidavit is in support of the plaintiffs'/respondents' contentions, in the condonation and upliftment of the bar application, brought by Lornavision against the SABC, the SIU and Mr Aguma. It was contended that if the affidavit of Ms Tladi was excluded, there is no evidence before court pertaining to the merits of the plaintiffs' claim.

**(b) *There are a number of related court actions pending, namely case number 2020/9366 and 2020/18135.***

Lornavision's counsel drew this court's attention to a case management meeting held in respect to the matter in casu, before Modiba J, held on 29 May 2020. Advocate P. Cirone, who represented the plaintiffs, indicated that '*the Plaintiffs intend to launch the consolidation application by 12 June 2020...*'. The matter referred to by Advocate P. Cirone was matter 2020/9366. Counsel argued that no consolidation took place. It was argued that in matter 2020/9366, the SIU is the plaintiff and in terms of prayer three, the same amount of R62 733 556.61 is claimed by the SIU. As a result, it was argued that this court cannot grant the default judgment as the request to pay the amount of R62 733 556.61 would not be just and equitable. Furthermore, there would be a disregard for the provisions of s172 of the Constitution. It was argued that the SABC had not made out a case for unjust enrichment.

**(c) *The plaintiffs wish to rely on the *condictio ob turpem vel iniustam causam*, as their cause of action***

It was contended that if the SABC wanted to rely on this cause of action it would have to allege and plead that the SABC and/or its officials, representatives and/or employees are free of turpitude. This is so because this *condictio* can only be successfully instituted by a plaintiff whose own conduct was free from turpitude and that he/she did not act dishonourably.

<sup>9</sup> see GN Gap R1258 of 1972, published in GG 3619 of 21 July 1972, issued in terms of in terms of section 10 of the Justices of the Peace and Commissioners of Oaths Act, 16 of 1963

## ***Evaluation***

[25] There is no plea filed by Lornavision. As a result, it is not possible or permissible in terms of the Rules of court to oppose an application for default judgment. An application for default judgment is not an opposed motion. All that Lornavision can do, once default judgment is granted, is to apply for a rescission.

[26] There is no affidavit before court explaining under what circumstances the uplifting of the bar application was withdrawn by Lornavision. If Lornavision believed in its exceptions, logic dictates that it would not have withdrawn this application.

[27] In deciding a matter by way of default, all that a court needs to decide is whether the amount claimed by the SABC is properly quantified. In this matter, the amount claimed is a liquidated amount of R62 733 556.61. The written services agreement, in terms of which this liquidated amount was paid, was declared unlawful and void ab initio. This requires restitution in the amount of R62 733 556.61. The facts as alleged by the SABC and the SIU, in the particulars of claim, stand uncontested and undisputed by Lornavision. Public policy and the interests of justice dictate that it is just and proper, that default judgment be granted.

[28] In the matter of *Allpay 2*,<sup>10</sup> the Constitutional Court held that the default position is that the consequences of an invalid and unlawful contract must be corrected where this is still possible or reversed if prevention of invalidity is no longer possible.<sup>11</sup>

[29] In the matter of *Shabangu v Land and Agricultural Development Bank of South Africa and Others*,<sup>12</sup> the Constitutional Court held that:

‘The problem of the original invalidity may be addressed in another way. Recovery of what was transferred under an invalid agreement is governed either by enrichment or what was referred to in argument as the “no-profit principle” put forward by this Court in *AllPay Remedy*.’<sup>13</sup>

‘While there is some kind of overlap between the basis for an enrichment claim (restoring a legally unjustified imbalance) and the “no-profit principle” (not allowing profit from unlawfulness), there are differences. Enrichment is a valid claim that may arise from an unlawful contract, while the no-profit principle prevents the perpetuation of unlawfulness. The latter is part of regulating the just and equitable relief of suspending the declaration of unlawfulness in respect of a contract. It is therefore bound up in

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<sup>10</sup> *Allpay 2* (note 1 above)

<sup>11</sup> *Ibid* para 30

<sup>12</sup> *Shabangu v Land and Agricultural Development Bank of South Africa and Others* (CCT215/18) [2019] ZACC 42; 2020 (1) SA 305 (CC) ; 2020 (1) BCLR 110 (CC) (29 October 2019)

<sup>13</sup> *Ibid* para 26

that just and equitable assessment and the continued (if suspended) operation/enforcement of an unlawful agreement, something different to the remedial nature of an enrichment claim.<sup>14</sup>

‘Whatever the merits or demerits are of substituting a just and equitable remedy, in keeping with the “no-profit principle”, for an ordinary enrichment claim in invalid contracts by organs of state, recovery for unjust enrichment or profit gained from an invalid agreement both seek to ameliorate or redress the consequences of the invalidity through the re transfer of unjustified gains.’<sup>15</sup>

[30] This court has already declared that the written services agreement in terms of which Lornavision allegedly performed is unlawful and void ab initio. The default position is that Lornavision is not permitted to benefit from the proceeds of an unlawful contract, irrespective of whether Lornavision is complicit or innocent in the fact of the unlawfulness.

[31] The declaration of unlawfulness and the setting aside of the contract bring into play the provisions of s172(1)(b) of the Constitution.

[32] Section 172 of the Constitution states that:

‘Powers of courts in constitutional matters

172. (1) 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

(ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect.’

[33] In the matter of *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd*<sup>16</sup> (*‘Gijima’*), the Constitutional Court held that:

‘...under s 172(1)(b) of the Constitution, a court deciding a constitutional matter has a wide remedial power. It is empowered to make “any order that is just and equitable”. So wide is that power that it is bounded only by considerations of justice and equity.<sup>17</sup>[my emphasis]

<sup>14</sup> Ibid para 27

<sup>15</sup> Ibid para 28

<sup>16</sup> *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd* 2018 (2) SA 23 (CC)

<sup>17</sup> Ibid para 53



[34] This court has a wide discretion to craft a just and equitable order. In the absence of a plea by Lornavision, the amounts referred to by Ms Tladi and Mr Daniels remain undisputed by Lornavision. Lornavision cannot raise issues from the bar disputing the amounts which should have been contained in a plea.

[35] In the context of public-procurement matters, priority should be given to the public good to ensure that the public purse is not depleted.

[36] In exercising its discretion, this court orders that Lornavision has no entitlement to keep the profits. Accordingly, default judgment is granted in the amount of R62 733 556.61

[37] Even if this court is wrong, the technicalities raised by Lornavision have no merit.

### ***The objection to Ms Tladi's evidence***

[38] Lornavision contends that Ms Tladi's affidavit must be ignored because it was commissioned by a representative of the SIU. Lornavision asserts reliance on the provisions of regulation 7 of the regulations governing the administering of an oath or affirmation which states that:

'A commissioner of oaths shall not administer an oath or affirmation relating to matter in which he has an interest.'

[39] This, however, is not the updated and prevailing regulation. The Schedule, in the Government Regulation 1428, dated 11 July 1980, substituted the previous Schedule mentioned in regulation 7, para 2 and exempts from the provisions of regulation 7(1) the following:

'A declaration taken by a commissioner of oaths who is not an attorney and whose only interest therein arises out of his employment and in the course of his duty.'

[40] Mr Theron, the SIU representative, falls squarely within the exemption. He is not an attorney and his only interest in the matter arises out of his employment with the SIU and in the course of his duty. So, the point taken by Lornavision as to the inadmissibility of Ms Tladi's affidavit is of no assistance to Lornavision. Ms Tladi has also delivered a supplementary affidavit in which she again confirms under oath the veracity and contents of her affidavit that she deposed to in front of Mr Theron. This is in line with the decision of *Radue Weir Holdings Ltd t/a Weirs Cash & Carry v Galleus Investments CC t/a Bargain Wholesalers*,<sup>18</sup> where the

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<sup>18</sup> *Radue Weir Holdings Ltd t/a Weirs Cash & Carry v Galleus Investments CC t/a Bargain Wholesalers* 1998 (3) SA 677 (E) at 681G and 682H-J

court held that someone who relies on an un-commissioned affidavit should be given the opportunity to re-attest it before a competent commissioner of oaths.<sup>19</sup> This is what Ms Tladi did.

[41] Even if Ms Tladi had not deposed to a further supplementary affidavit, this court still has a discretion to receive an affidavit attested otherwise than in accordance with the regulations, depending upon whether substantial compliance with them has been proved or not. The regulations are directory not peremptory.<sup>20</sup>

[42] As a result, there is no legal basis upon which the affidavit of Ms Tladi's should be regarded as inadmissible. As stated supra in paragraph [34], the affidavit of Ms Tladi stands uncontested and undisputed. Lornavision has not countered, disputed, denied or responded to a single one of the factual allegations that she has made in her affidavit. In the replying affidavit, in respect to the lifting of the bar, Lornavision made no comments in respect to Ms Tladi's affidavit. All that was said in the replying affidavit is that the affidavit was not properly before the court. There was no plea over in this respect.

[43] This court accordingly accepts the contents of Ms Tladi's affidavit which states that:

(a) she informed Mr Basson that there was nothing new 'by way of efficiency, advances, or additions in value..' in what Lornavision proposed;<sup>21</sup>

(b) the SABC was already in the process of doing what Lornavision offered, the approach by Lornavision demonstrated no substantial costs saving to SABC and Lornavision already had its own online platform;<sup>22</sup>

(c) the Customer Communications Service ('CCS') system never produced the increased collections and revenue as promised by Lornavision and even though the SABC paid for the CCS system in full it never had control over it;<sup>23</sup>

<sup>19</sup> Ibid at 681G and 682H-J

<sup>20</sup> see *S v Msibi* 1974 (4) SA 821 (T); *Dawood v Mahomed* 1979 (2) SA 361 (D) at 367A-B; *Lohrman v Vaal Ontwikkelingsmaatskappy (Edms) Bpk* 1979 (3) SA 391 (T) at 396H-397A; *Nkondo v Minister of Police* 1980 (2) SA 362 (O) at 365A-B; *Standard Bank of South Africa Ltd v Malefane: In re Malefane v Standard Bank of South Africa Ltd* 2007 (4) SA 461 (Tk) at 465A-D

<sup>21</sup> Affidavit of Ms Tladi see *S v Msibi* 1974 (4) SA 821 (T); *Dawood v Mahomed* 1979 (2) SA 361 (D) at 367A-B; *Lohrman v Vaal Ontwikkelingsmaatskappy (Edms) Bpk* 1979 (3) SA 391 (T) at 396H-397A; *Nkondo v Minister of Police* 1980 (2) SA 362 (O) at 365A-B; *Standard Bank of South Africa Ltd v Malefane: In re Malefane v Standard Bank of South Africa Ltd* 2007 (4) SA 461 (Tk) at 465A-D

<sup>22</sup> Ibid annexure AA2, p 056-309 par 20

<sup>23</sup> Ibid annexure AA2, p 056-317 par 46

(d) on 25 February 2016 Lornavision presented a report to the SABC in which it represented that it had a 23% success rate when in fact this was false and amounted to a false representation;<sup>24</sup>

(e) the appointment of Lornavision together with the cancellation of the debt collection agenda ('DCA') contracts caused the SABC to incur a substantial decrease in collections from arrear rentals;<sup>25</sup> and,

(f) the appointment of Lornavision caused the SABC a substantial drop in revenue collection.<sup>26</sup>

[44] There is accordingly no merit that Lornavision diligently performed under the written services agreement.

### ***Parallel litigation raised by Lornavision***

[45] The existence of an alleged 'parallel' claim by the SIU against Mr Moodley and Mr Basson, in case number 2020/9366, in their personal capacities, is not a defence.

[46] Case 2020/9366, instituted against Mr Moodley and Mr Basson, is premised on the allegations that they conducted the business of Lornavision recklessly and/or with gross negligence and/or with the intent to defraud the SABC and for fraudulent purposes. The SIU, who is the plaintiff in that matter has premised the relief that it seeks on a breach of the provisions of, inter alia, ss77(3)(b) and 77(3)(c) of the Companies Act 71 of 2008. The argument raised by Lornavision regarding the parallel litigation is devoid of merit and of no assistance to Lornavision.

[47] At paragraph 5 of the case management meeting held with Modiba J, on 29 May 2020, it was recorded that:

'...the plaintiffs are to take all steps to expedite the consolidation of the matter including barring the defendants that have not pleaded and, where appropriate apply for default judgment in case number 9366/2020.' [my emphasis]

[48] The SABC and the SIU never consolidated matter 2020/9366 with the matter in casu, however, as argued by the plaintiffs' counsel, this would only be done when the matters were trial ready. Due to the many interlocutory applications that were brought by Lornavision, the

<sup>24</sup> Ibid annexure AA2, p 056-324 paras 73 and 74

<sup>25</sup> Ibid annexure AA2, p 056-331 par above 94

<sup>26</sup> Ibid annexure AA2, p 056-330 par above 91

matter in casu was not trial ready. The failure to consolidate the matters cannot be a bar to granting a default judgment.

[49] The case management meeting held by Modiba J on 24 February 2022, is nearly two years after the case management held on 29 May 2020. Modiba J held that:

‘4.1 Ad Default Judgment

4.1.1 Judge Modiba:

4.1.1.1 noted that the Default Judgment application was too complex to determine on paper as originally intended; and

4.1.1.2 undertook to certify the application ready for hearing to enable the Plaintiffs to enrol same for hearing in open court.’ [my emphasis]

[50] Paragraph five of the case management meeting, dated 29 May 2020, must be read with paragraph four of the case management meeting dated 24 February 2022. In the former case management meeting, the matter in casu was to be consolidated with matter 2020/9366 and the plaintiffs were to bar the defendants that had not yet pleaded. In the latter case management meeting, the minutes reflect that the default judgment is too complex to determine on the papers, and that it must be heard in open court. Considering both minutes, the SABC and the SIU were in accordance with the requests of Modiba J to bring the matter before open court for a default judgment.

[51] Exceptions were being raised by Mr Moodley and Lornavision in matter 2020/9366. As a result, matter 2020/9366 was not ready to be consolidated with the matter in casu. Furthermore, Mr Aguma had pleaded in the matter in casu and Lornavision had not. The matter was trial ready in respect to Mr Aguma, but not in respect to Lornavision. It is inconceivable to expect the matter in casu to be consolidated with matter 2020/9366 when the interlocutory applications were still not finalised. As a result, a failure to consolidate, cannot be a defence to an application for default judgment.

[52] Accordingly, the argument of a lack of consolidation is without merit and on this basis there can be no reason to deny the plaintiffs a judgment by default.

***Par delictum rule***

[53] In the matter in casu, if Lornavision wanted to rely on the par delictum rule, same should have been pleaded. Lornavision did not plead.

[54] A defendant can resist a claim made under the *condictio ob turpem vel iniustam causam* by relying on the *par delictum* rule. It is for the defendant to allege and prove that the plaintiff was also in *delicto*, that is, that the plaintiff was a party to the illegality. It is then for the plaintiff to allege and prove facts that will enable the court to come to the plaintiff's assistance by not enforcing the *par delictum* rule, because justice and public policy so require.

[55] In the matter of *Klokow v Sullivan*,<sup>27</sup> the Supreme Court of Appeal stated that the question of whether the *par delictum* rule should be relaxed or not, cannot be decided on the pleadings and ought to be decided at the end of the trial.<sup>28</sup> The Supreme Court of Appeal held further that:

'...In general, where public policy considerations do not favour either party, the *par delictum* rule will operate against the plaintiff. At exception stage, however, the *par delictum* rule will generally defeat a plaintiff's claim only in the clearest of cases.'<sup>29</sup> [my emphasis]

[56] From the matter of *Klokow*,<sup>30</sup> a Court cannot decide at exception stage whether a plaintiff has or hasn't demonstrated a lack of turpitude, or whether it has pleaded sufficient allegations to justify a relaxation of the *par delictum* rule.

[57] In light of the decision of *Allpay 2*,<sup>31</sup> this becomes academic, in that the decision of *Allpay 2* states that once a contract is void, then the party that benefitted from that illegal contract must repay. As a result, this issue is also without merit.

## **Costs**

[58] The counsel for the SABC and SIU initially requested party and party costs. During the replication, this changed and costs on a punitive scale were requested.

[59] Costs are within the discretion of the court and this court does not find that a punitive cost order is warranted in this matter.

## **Order**

1. The application for default judgment is granted.
2. The respondent is ordered to pay the sum of R62 733 556.61 with interest thereon *tempore morae* from date of service of summons to the date of final payment.

<sup>27</sup> *Klokow v Sullivan* 2006 (1) SA 259 (SCA)

<sup>28</sup> *Ibid* para 24

<sup>29</sup> *Ibid* para 24

<sup>30</sup> *Ibid*

<sup>31</sup> *Allpay 2* (note 1 above)

3. The respondent is to pay the costs.

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**D DOSIO**  
**JUDGE OF THE HIGH COURT**  
**JOHANNESBURG**

*This judgment was handed down electronically by circulation to the parties' representatives via e-mail, by being uploaded to CaseLines and by release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 19 March 2024*

**Appearances:**

For the First and Second Applicants/Plaintiffs: Adv. J Motepe SC

Instructed by: Werksmans Attorneys

For First Respondent/Defendant: Adv. I Semanya SC

Adv. P Muthige

Instructed by: Mabuza Attorneys