

**IN THE SPECIAL TRIBUNAL BOOYSENS MAGISTRATES'**  
**COURT, JOHANNESBURG**

CASE NO: GP/10/2019

DATE: 2020/01/21

In the matter between

**SPECIAL INVESTIGATING UNIT**

**& 2 OTHERS**

APPLICANT

and

**KGOSISEPHUTHABATHO GUSTAV LEKABE**

**& OTHERS**

RESPONDENT

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PRESIDING OFFICER:

: JUDGE MAKHANYA

PRESIDENT OF THE SPECIAL TRIBUNAL

ON BEHALF OF THE APPLICANT

: ADV DJ JOUBERT

ADV GVR FOUCHE

ON BEHALF OF THE RESPONDENT

: ADV D BROWN

INTERPRETER

: #

PROCEEDINGS ON 21 JANUARY 2020

JUDGMENT

COURT: This is an application where the applicant, the Special Investigating Unit and two others namely, the Minister of Police and the Minister of Justice and Constitutional Development and Correctional Services seek an order, that restrains or interdicts the second and third respondents,  
10 namely Government Employees Pension Fund and Government Pensions Administration Agency respectively, from paying out pension benefit held by them, to the first respondent, namely Mr Lekabe, pending an action instituted by the applicants against the first respondent. In addition the applicant seeks an order of costs against the first respondent, erstwhile Head of the Office of the State Attorney in Johannesburg.

In the said action the applicants who are respective plaintiffs pray for judgment against the first respondent, who is the first  
20 defendant, for damages allegedly owed to the second and third plaintiffs. The damages approximate an amount of R34m up to

approximately R40m.

The alleged damages suffered by the second and third plaintiffs are allegedly as a direct result of the first respondent's wrongful and unlawful breach of his statutory duty or duties leading to collusive and corruptive acts, with a disclosed individual, namely Advocate Kajee. The first respondent disputes all claims made by the applicants in this application and the action pending before this Tribunal. However, the action instituted by the plaintiffs on the 5<sup>th</sup> of  
10 December 2019 is not disputed.

In this application the first applicant states that it has a good reason to believe that, should the payment of the pension benefit be made to the first respondent, the applicants will suffer unmitigated losses, as they shall have no security for judgment sought against the first respondent in the pending action, should the judgment go against the first respondent. See in this regard the matters of *Highveld Steel & Vanadium Ltd Oosthuizen 2009 2 All SA 225 SCA*. See also *South  
20 African Broadcasting Corp v South African Pension Fund & Others 2019=*[[ 4 SA 608, (GJ)]. This belief has not been seriously disputed by the first respondent. In addition the pension fund, according to the applicants, will stand as security for the cost orders granted earlier against the first respondent by the High Court in Johannesburg, in a judgment.

The first respondent in this application has put forth a number of grounds, disputing claims made by the applicants. Including a denial that the applicants have established a *prima facie* right for the remedy sought.

He also submits that the applicants have unreasonably delayed bringing the action before the Tribunal involving impropriety and negligence. Seeing that they have known since 19 May 2018 about his resignation from the office of the  
10 State Attorney. He also submits that his immovable property has built up substantial equity, as it is currently valued at approximately R8m and that the equity is substantial and adequate enough to satisfy a cost order and anticipated judgment in favour of the applicants in the pending action.

Further the first respondent impugns the lack in the form of joinder of Advocate Kajee, who allegedly was in a corrupt relationship with him in the action preferred by the applicants against him.

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It is clear to me that the relief sought by the applicants is an interim or temporary relief, therefore requirements of rights infringed by the applicants are less stringent. In other words, the applicants are not expected to satisfy the court on a balance of probabilities. The interdict moreover is brought on

a semi-urgent basis. So clearly it is sufficient if *prima facie* right is shown. In my view it has been adequately shown, as the applicants only require interdict against payment of the pension as security for the damages computed to be in the region, of R34m and well up to R40m. Moreover first respondent has already applied in the High Court for payment of his pension. The claims made by the applicants, in monetary terms, far exceeds the value of the first respondent's immovable property. So I am satisfied that the

10 facts advanced by the applicants, which are not seriously disputed by the first respondent, are such that applicants should succeed. There is no dispute about the applicants' entitlement for security for damages in the action pending before the Tribunal. The first respondent conceded and suggested that the applicants' claim would be secured by the value of his house. However, facts about its value were not sufficiently canvassed in the affidavit in order to satisfy the applicants. Accordingly I am satisfied that the first respondent's pension would secure or guarantee the

20 applicants claim should they succeed in the pending action.

I do not find unreasonable delay in the bringing of the action to the Tribunal. Papers filed show extensive and quite involved investigation, which could not have been conducted and concluded overnight. This is also borne out by the founding

affidavit and its bulky annexures. A delay of approximately one year five months or so in the circumstances is reasonable. Also the first respondent was expected to face disciplinary proceedings in September 2018. A step which also required time expenditure leading to unintended delays.

Therefore requirements of interim interdict have been complied with by the applicants. These are, firstly *prima facie* right on the part of the applicants, secondly a well-grounded  
10 apprehension of irreparable harm, if an interim relief is not granted. Thirdly, a balance of convenience in favour of the applicants. Fourthly absence of any other satisfactory remedy available to the applicant.

In the premises I make the following orders:

[1] The second and third respondents, that is Government Employees Pension Fund and Government Pension Administration Agency, are restrained and  
20 interdicted from paying out pension benefit or portion thereof held by them to the Pension Fund credit of the first respondent, namely Kgosisephuthabatho Gustav Lekabe, pending the final determination of an action instituted under case number SP09/2019, on 5 December 2019, before the Special Tribunal.

[2] The First Respondent is ordered to pay costs of this application, including the costs occasioned by a briefing two counsel. I hand down the judgement.

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**JUDGE G.M. MAKHANYA**

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**PRESIDENT OF THE SPECIAL TRIBUNAL**

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**TRANSCRIBER'S CERTIFICATE****KPG LEKABE & 2 OTHERS // SIU & 2 OTHERS**

I, the undersigned, hereby certify that **so far as it is audible to me**, the foregoing is a true and correct transcript of the proceedings recorded by means of a digital recorder in the matter between:

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NAME



537 KENSON STREET | CONSTANTIA PARK | PRETORIA  
P.O BOX 32917 | GLENSTANTIA | 0100  
Tel : 012 993 1335 | Cell: +27784987479 | Fax : 086 601 5996  
Email: gauteng@verite.co.za | verite@mweb.co.za  
Website: [www.veritastranscribing.co.za](http://www.veritastranscribing.co.za)