

SPECIAL TRIBUNAL OF SOUTH AFRICA
Judgment summary

<i>SIU and Another v Lebelo and Others</i>	
URL	https://www.justice.gov.za/tribunal/jdm/ST-Judgment-GP-06-2022.pdf
Citations	(GP06/2022)
Date of judgment	8 August 2022
Keyword(s): ¹	Rule <i>nisi</i> , pension benefits, immovable properties, preservation application, curator <i>bonis</i> , discretion, purpose, pension benefits, misconduct, unlawful, profits, civil proceedings
Case type ²	Application
Result	Rule <i>nisi</i> granted and the respondents ordered to pay curator <i>bonis</i> 's costs
Flynote ³	Civil procedure – preservation order and appointment of curator <i>bonis</i> – the Tribunal ought to appoint a curator <i>bonis</i> if such appointment would give effect to the purpose of the preservation order
Legislation and International Instruments ⁴	<ul style="list-style-type: none"> ● Rule 24 of the Tribunal Rules ● Section 37D(1)(b)(ii) of the Pension Funds Act
Cases cited as authority ⁵	<ul style="list-style-type: none"> ● <i>Commissioner for the South African Revenue Services v Van der Merwe</i> 2016 (1) SA 599 (SCA) ● <i>Mngomezulu and Another v Van Den Heever NO and Another</i> [2007] 2 All SA 357 (SCA) ● <i>Fraser v Absa Bank Ltd (National Director of Public Prosecutions as Amicus Curiae)</i> 2007 (3) SA 484 (CC) ● <i>Highveld Steel & Vanadium Corporation Ltd v Oosthuizen</i> 2009 (4) SA 1 (SCA)
Facts ⁶	The Special Investigating Unit (SIU) and Transnet SOC Ltd (Transnet), as joint applicants, sought to preserve certain immovable properties owned by the first, second, third, fifth and sixth respondents, to restrain the Transnet Retirement Fund (TRF)

¹ Clarify the type of issues that come up in the case.

² Whether Trial, Application or Appeal.

³ **Area of law** - topic – subtopic.

⁴ Legislation/ International instrument title and section numbers.

⁵ List of cases considered to be important precedent (case name and citation).

⁶ Brief facts about the case (max 150 words).

	<p>from paying out pension benefits to the first respondent, and to appoint a curator <i>bonis</i> in terms of Tribunal Rule 24, at the respondents' cost. The SIU was investigating and intended to institute civil proceedings against the first respondent, Mr Lebelo, and the fifth respondent, Mr Mashamba, for the disgorgement of secret profits earned unlawfully from Transnet suppliers and service providers, as well as bribes received. Pending the civil proceedings, the applicants sought an order prohibiting the respondents from encumbering their properties.</p>
Summary ⁷	<p>The Tribunal was asked to determine whether the applicants had made out a case for the appointment of a curator <i>bonis</i>, to determine whether the respondents would be liable for the costs of such appointment and whether Mr Lebelo's pension benefits should be preserved.</p>
Decision/ Judgment ⁸	<p>The Tribunal ordered that the first, second, third, fifth and sixth respondents' properties be preserved and that a curator <i>bonis</i> be appointed to take control of these properties. The respondents were ordered to pay the costs of such appointment. The TRF was also interdicted from paying out any pension benefits due to Mr Lebelo until the final determination of civil proceedings instituted by the applicants against the respondents.</p>
Basis of the decision ⁹	<p>The Tribunal noted that when considering the appointment of a curator <i>bonis</i>, it was required to consider the circumstances of each case. When the Tribunal considered the purpose for which the preservation order was sought, it found that the appointment of a curator <i>bonis</i> would give effect to that purpose.</p> <p>The Tribunal found that it would be appropriate for the respondents to pay for the costs of the curator's appointment, as the respondents were owners of the properties and had a duty to continue paying towards the property maintenance costs.</p> <p>The Tribunal also found that TRF was entitled to exercise its discretion to withhold Mr Lebelo's pension benefits pending an investigation into his suspected misconduct, and this decision was supported by case law.</p>
Reported by Date	<p>African Legal Information Institute (AfricanLII) 10 August 2022</p>

⁷ Summary of the determination of legal questions and/or grounds of appeal (between 150-250 words).

⁸ A brief summary of the ruling/judgment of the court (max 100 words).

⁹ A 1-2 sentence summary of the basis of the decision (i.e. which legal rules were relied on).

