

SPECIAL TRIBUNAL OF SOUTH AFRICA
Judgment summary

<i>South African Broadcasting Corporation SOC Limited and Another v Former Chief Operations Officer: George Hlaudi Motsoeneng and Others</i>	
URL	https://www.siu.org.za/judgements/judgment-in-the-matter-between-sabc-and-siu-vs-former-chief-operations-officer-george-hlaudi-motsoeneng-and-others/
Citations	TBC
Date of judgment	18 October 2022
Keyword(s): ¹	Review application, set aside, decisions, unlawful, equitable relief, points <i>in limine</i> , merits, condonation, prejudice, counter application, heads of argument, late filing, strike out, strike out, irrelevant, vexatious, wasteful and fruitless expenditure, payments, budget, policy, irrational, arbitrary, personal liability, personal knowledge, frivolous, commission, affidavits, administration of oaths, legality principle, self-review application, record, irregular filing, misjoinder, delay, prescription, objective criteria, donation, Special Tribunal
Case type ²	Review application
Result	Upheld with costs
Flynote ³	Administrative law – reviewable decision – a decision that breaches the principle of legality is reviewable if it is not authorised by an approved policy or law
Legislation and International Instruments ⁴	<ul style="list-style-type: none"> ● Sections 11(d) and 12(3) of the Prescription Act ● Sections 195 and 172(1) of the Constitution ● Sections 51 and 57(1) of the Public Finance Management Act
Cases cited as authority ⁵	<ul style="list-style-type: none"> ● Yellow Star Properties 1020 (Pty) Ltd v MEC Department of Development Planning and Local Government, Gauteng 2009 (3) SA 577 (SCA) ● Mtokonya V Minister of Police 2018 (5) SA 22 (CC)
Facts ⁶	The respondents were former executive employees of the first applicant, the South African Broadcasting Corporation SOC Limited

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>(SABC). The SABC Executive Committee (EXCO), which included some of the respondents, had taken a decision to award R50,000 to each person identified as a music legend. This decision was later ratified by the SABC's Operations Committee (OPCOM), and the first and ninth respondents served on this committee (collectively, these two decisions are referred to as the "impugned decisions"). The second applicant, the Special Investigating Unit (SIU) was thereafter authorised to investigate the impugned decisions and this resulted in the present application against the respondents.</p>
Summary ⁷	<p>The Special Tribunal was asked to determine whether the impugned decisions were reviewable, and to also consider the applicant's request to strike out certain paragraphs from the eighth and ninth respondents' answering affidavit.</p> <p>The Special Tribunal was also asked to consider the respondents' preliminary points, including whether the claim had prescribed, and the eighth and ninth respondents' counter application.</p>
Decision/ Judgment ⁸	<p>The application was successful and the Special Tribunal found the impugned decisions to be irregular and unlawful, setting them aside. However, the Special Tribunal found that the debt which the applicants sought to recover from the respondents had prescribed, and the applicants were ordered to pay costs on a punitive scale in favour of the seventh respondent in this regard. The other respondents were ordered to carry their own cost of the application.</p> <p>The Special Tribunal also dismissed all the preliminary points raised, except for the point raised regarding prescription.</p> <p>The applicant's request to strike out certain paragraphs from the eighth and ninth respondents' answering affidavits was also granted, with costs awarded on the attorney and client scale.</p> <p>The eighth and ninth respondents' counter-application was dismissed with costs.</p>
Basis of the decision ⁹	<p>The Special Tribunal found that there were no policies, laws or approvals authorising the impugned decisions or the music legend project. Additionally, there were no objective approved criteria</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).

	<p>provided for identifying the music legends for the project, the project had not been budgeted for, and the SABC derived no benefit thereof. The Special Tribunal therefore found that the respondents had failed in their responsibilities in the administration of public funds, and that the impugned decisions breached the principle of legality and were therefore unlawful.</p> <p>However, it was not possible to hold the respondents personally liable for the loss the SABC suffered as a result of the impugned decisions, as the relevant debt had expired in terms of the Prescription Act. It was regrettable that the debt had prescribed as the applicants had succeeded on the merits of the case. The applicants were ordered to pay the costs of the seventh respondent on a punitive scale, as the Special Tribunal found that the applicants had failed to play open cards regarding dates relevant for prescription purposes and instead chose to bury the relevant date in its lengthy court papers.</p> <p>The Special Tribunal granted the applicants' request to strike out certain paragraphs from the eighth and ninth respondents' answering affidavit, as the paragraphs were found to be irrelevant and vexatious.</p> <p>Finally, the Special Tribunal dismissed the eighth and ninth respondents' counter application as they had failed to make out a case for the relief sought.</p>
<p>Reported by Date</p>	<p>African Legal Information Institute (AfricanLII) 8 November 2022</p>