

**SPECIAL TRIBUNAL OF SOUTH AFRICA**  
**Judgment summary**

<b><i>Special Investigating Unit and Another v LNG Scientific (Pty) Ltd</i></b>	
URL	<a href="https://lawlibrary.org.za/akn/za/judgment/zast/2023/4/eng@2023-02-03">https://lawlibrary.org.za/akn/za/judgment/zast/2023/4/eng@2023-02-03</a>
Citations	(GP03/2022) [2023] ZAST 4 (3 February 2023)
Date of judgment	3 February 2023
Keyword(s): <sup>1</sup>	Civil procedure, Special Tribunal, lacuna, rules, appeal, decision, full court, review, procure, personal protective equipment, discover, impugned decision, record, automatic right of appeal, lacuna, good cause, extension, interest of justice, purposive interpretation, discretion, prospects of success on appeal, wide discretion
Case type <sup>2</sup>	Application
Result	Directives requested by applicants are granted
Flynote <sup>3</sup>	<b>Civil Procedure</b> – Tribunal’s discretion in terms of Tribunal Rule 28(1) – when invoking Tribunal Rule 28(1) to address a lacuna in the Tribunal Rules, the Tribunal may adopt a purposive interpretation
Legislation and International Instruments <sup>4</sup>	<ul style="list-style-type: none"> <li>● Tribunal Rule 28(1)</li> <li>● Uniform Rule 49(2)</li> <li>● Section 8(7) of the Special Investigating Units and Special Tribunals Act (SIU Act)</li> </ul>
Cases cited as authority <sup>5</sup>	<ul style="list-style-type: none"> <li>● Myeni v Organisation Outdoing Tax Abuse NPC [2021] ZAGPHPHC 56 (15 February 2021)</li> </ul>
Facts <sup>6</sup>	The applicants sought to review and set aside a decision taken to certain items from the respondent, LNG Scientific (Pty) Ltd ( <b>LNG</b> ) (the <b>Main Application</b> ). LNG sought to oppose and requested the applicants to file a record of the impugned decision in terms of Uniform Rule 53(1), which the applicants refused. Following LNG’s application to compel, the Special Tribunal ordered the applicants to discover the records in terms of the Tribunal Rule 17(4) instead (the <b>June Judgement</b> ). When LNG applied for leave to appeal the

<sup>1</sup> Clarify the type of issues that come up in the case.

<sup>2</sup> Whether Trial, Application or Appeal.

<sup>3</sup> **Area of law** - topic – subtopic.

<sup>4</sup> Legislation/ International instrument title and section numbers.

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

<sup>6</sup> Brief facts about the case (max 150 words).

	<p>June Judgement, this was dismissed by the Special Tribunal as LNG enjoyed an automatic right to appeal (the <b>September Judgement</b>). LNG then filed its notice to appeal the June Judgement, which was filed out of time. The applicants requested directives for the further conduct of the Main Application and submitted that, due to LNG’s failure to obtain condonation for its late filing of its notice of appeal, no proper appeal existed.</p>
Summary <sup>7</sup>	<p>Although the applicants argued that LNG’s notice of appeal was filed out of time in terms of Uniform Rule 49(2) (as invoked by the Special Tribunal in terms of Tribunal Rule 28(1), LNG argued that the 20-day appeal period provided by the Uniform Rule were not applicable as it enjoyed an automatic right to an appeal.</p> <p>The Special Tribunal was asked to consider the Special Tribunal’s discretion in terms of Tribunal Rule 28(1) in the present circumstances.</p>
Decision/ Judgment <sup>8</sup>	<p>The Special Tribunal granted the directives requested by the applicants and confirmed that it was proper in the present circumstances to invoke Tribunal Rule 28(1) to render Uniform Rule 49(2) applicable. The Special Tribunal found that no proper appeal was pending before the full court.</p>
Basis of the decision <sup>9</sup>	<p>The Special Tribunal found LNG’s argument untenable as it was not in the interest of justice to permit a party to have an open-ended period within which to appeal. To do so would frustrate the SIU Act’s objective to have matters resolved expeditiously.</p> <p>Due to the lacuna in the Tribunal Rules on the appeal procedures applicable in the present case, the Special Tribunal adopted a purposive interpretation and found that Uniform Rule 49(2) would best address this lacuna. LNG ought to then have filed its notice to appeal within 20 days of the September Judgement or to provide a full explanation for its delay and show it had good prospects of success on appeal. Neither of these requirements was met. In addition, the appeal would have no practical effect as the record sought by LNG had since been provided, and LNG had not indicated that the record was inadequate.</p>

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

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

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

	As the notice to appeal was found to have been filed out of time, the Special Tribunal found that no proper appeal was pending before the Full Court.
Reported by Date	African Legal Information Institute ( <a href="#">AfricanLII</a> ) 4 February 2023