

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

<b><i>Special Investigating Unit v Cultiver Investments (Pty) Ltd and Others</i></b>	
URL	<a href="https://lawlibrary.org.za/akn/za/judgment/zast/2023/9/eng@2023-04-19">https://lawlibrary.org.za/akn/za/judgment/zast/2023/9/eng@2023-04-19</a>
Citations	[2023] ZAST 9
Date of judgment	19 April 2023
Keyword(s):	Application, Special Investigating Unit, Special Tribunal, land acquisition, lease agreement, land reform, agriculture, impugned decisions, condonation, irregular, opposition, irrational, inappropriate, political interference, prejudice, food chain, farming operations, jurisdiction, shareholder agreement, caretaker agreement, shareholding, external, internal, investigation, grant funding, due diligence, business rescue practitioner, long-term lease, process, viable project, emerging farmers, fruitless and wasteful expenditure, review, principle of legality, reasonable time, discretion, delay, interests of justice, factual enquiry, prospects of success, maladministration, just and equitable relief, constitutional values, unlawful occupation
Case type	Application
Result	Granted
Flynote	<b>Special Tribunal</b> - review application - sufficient information must be placed before the Tribunal to enable the Tribunal to determine consequential relief in terms of the SIU Act
Legislation and International Instruments	<ul style="list-style-type: none"> <li>● Section 10 of the Provision of Land Assistance Act</li> <li>● Section 4(1)(c) of the Special Investigations Unit and Special Tribunals Act (<b>SIU Act</b>)</li> </ul>
Cases cited as authority	<ul style="list-style-type: none"> <li>● Buffalo City Metropolitan Municipality v Asla Construction (Pty) Limited (CCT91/17) [2019] ZACC 15; 2019 (6) BCLR 661 (CC); 2019 (4) SA 331 (CC)</li> <li>● Democratic Alliance v President of the Republic of South Africa and Others 2013 (1) SA 248 (CC)</li> <li>● Ledla Structural Development (Pty) Ltd and Others v Special Investigating Unit [2023] ZACC 8</li> </ul>
Facts	The Department of Rural Development and Land

	<p>Reform (the <b>Department</b>) acquired various properties belonging to Mike’s Chicken and appointed Cultiver Investments (Pty) Ltd (<b>Cultiver</b>) as a beneficiary on its provincial land acquisition strategy (<b>PLAS</b>) programme in respect of Mike’s Chicken. Cultiver’s application to the Department for grant funding for Mike’s Chicken’s operations was declined following investigations which revealed irregularities regarding the acquisition of Mike’s Chicken and the approval of Cultiver as a PLAS beneficiary. Cultiver then instituted an urgent application to compel the Department to extend PLAS benefits to Cultiver (<b>Polokwane Application</b>). Cultiver requested the then Minister of Rural Development and Land Reform (<b>Minister NM</b>) to intervene in the dispute. Minister NM subsequently decided to withdraw the Department’s opposition to the Polokwane Application and ordered the Department to conclude the lease with Cultiver.</p> <p>The Special Investigating Unit (<b>SIU</b>) sought to review and set aside the decision taken by Minister NM to conclude the lease agreement with Cultiver.</p>
Summary	<p>The Special Tribunal was asked to determine whether the decision taken by Minister NM to conclude the lease agreement with Cultiver should be reviewed and set aside and whether the lease agreement itself should be set aside, too. The Special Tribunal was also asked to determine whether the SIU’s condonation application should be granted.</p>
Decision/ Judgment	<p>The Special Tribunal set aside Minister NM’s decision, and declared the lease agreement unlawful and having no legal effect from inception. The Special Tribunal also accepted the SIU’s application for condonation and directed the Tribunal Registrar to convene a case management meeting with the parties to determine the further conduct of the matter for the determination of appropriate consequential remedy in terms of section 4 of the SIU Act.</p>
Basis of the decision	<p>The Special Tribunal found that Minister NM’s impugned decision and lack of reasoning for such a decision, failed to display transparency and accountability in decision-making. The Special Tribunal held that, as the Minister’s decision had been taken irrationally, the lease agreement was found to have been irregularly concluded.</p> <p>In terms of the SIU’s condonation application, the</p>

	<p>Special Tribunal did not find the SIU's delay to be unreasonable and held that any prejudice that Cultiver stood to suffer would be lessened by the just and equitable relief to be granted by the Special Tribunal.</p> <p>Finally, the Special Tribunal held that, due to the lack of information placed before it, it was not able to determine a suitable remedy and therefore ordered that a case management meeting be convened to devise an appropriate approach to determining consequential relief in terms of the SIU Act.</p>
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