

SPECIAL TRIBUNAL OF SOUTH AFRICA
Judgment summary

<i>Special Investigating Unit and Another v Ndlovu and Others</i>	
URL	https://lawlibrary.org.za/za/judgment/special-tribunal-south-africa/2022/6
Citations	(GP 19 of 2021) [2022] ZAST 6
Date of judgment	7 June 2022
Keyword(s): ¹	Emergency procurement procedures, Covid-19 pandemic, PPE supplies, delay in instituting review application, organs of state, approved deviation, fair, equitable, transparent and cost-effective procurement process, fraud, <i>condictio ob turpem vel inustam causam</i> , enrichment claim, turpitude, tender fronting, asset forfeiture, prohibition from trading with the State
Case type ²	Application
Result	Unlawful contracts were set aside and amounts derived from the unlawful contracts were ordered to be repaid to the NHLS. Assets were also declared forfeited to the State for the purpose of repaying the NHLS.
Flynote ³	Procurement law – emergency procurement procedures – failure to meet emergency procurement requirements and remedy for non-compliance includes forfeiture of preserved assets
Legislation and International Instruments ⁴	<ul style="list-style-type: none"> ● Section 217(1) of the Constitution ● Section 76 of the Public Finance Management Act ● Treasury Regulation 16A6.4 ● Section 15 of the Preferential Procurement Policy Framework Act ● Section 8(2) of the Special Investigations Unit and Special Tribunals Act
Cases cited as authority ⁵	<ul style="list-style-type: none"> ● <i>Swifambo Rail Leasing (Pty) Ltd v PRASA 2020 (1) SA 76 (SCA)</i> ● <i>AllPay Consolidated Investment Holdings (Pty) Ltd and Others v CEO of the South African Social Security Agency</i>

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).

	<p><i>and Others</i> 2014 (1) SA 604 (CC), <i>AllPay Consolidated Investment Holdings (Pty) Ltd and Others v CEO of the South African Social Security Agency and Others</i> 2014 (4) SA 179 (CC)</p> <p>● <i>First National Bank v Perry N.O.</i> [2001] 3 All SA 33 (A)</p>
Facts ⁶	<p>The first respondent and the companies he represented, as well as the rest of the fronting companies, were involved in procurement transactions for the supply of personal protective equipment (“PPE”) to the NHLS. The procurement process deviated from normal processes and requirements of the Public Finance Management Act due to the urgent need to procure PPEs to combat the Covid-19 emergency, and the NHLS adopted emergency procurement procedures instead. The fronting companies allowed the first respondent to use their companies as a front to do business with the NHLS, and the funds received from the PPE contracts were ultimately for the benefit of the first respondent. The fronting companies were unqualified and did not have any experience in the supply of PPEs, and also supplied goods to the NHLS at non-competitive prices.</p>
Summary ⁷	<p>The tribunal reviewed the procurement transactions for the supply of PPE to the NHLS to determine whether the procurement process and transactions, as well as the payments, were irregular and unlawful in terms of the Public Finance Management Act and relevant regulations.</p> <p>The tribunal was also tasked with determining the consequential relief for the recovery of monies the respondents received in relation to the unlawful payments.</p>
Decision/ Judgment ⁸	<p>The PPE contracts were found to be unlawful and set aside. The first, fourth, ninth, tenth and thirteenth respondents were ordered to repay the NHLS the amounts they received in respect of the unlawful contracts. The eleventh, twelfth, fifteenth and sixteenth respondents were also ordered to repay the NHLS for the amounts by which they were enriched through payments derived from the NHLS. The assets belonging to the first, second, fourth, eighth and ninth respondents were declared forfeited to the State to enable the applicants to realise the forfeited assets for the NHLS’s benefit.</p>
Basis of the decision ⁹	<p>The tribunal found that the first respondent and the fronting</p>

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

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).

	<p>companies fraudulently exploited the NHLS's emergency procurement procedure, were inexperienced companies, and ultimately supplied the NHLS with goods at excessive prices despite the same goods being available from other suppliers at substantially lower prices. The majority of the funds acquired through the payments made by the NHLS made their way to accounts held or controlled by the first respondent or members of his family. The first respondent, the companies he represents as well as relevant fronting companies were therefore liable on the basis of an enrichment claim, and the tribunal ordered the liable respondents to repay the NHLS, and for the preserved assets of certain respondents to be forfeited to the State in terms of section 8(2) of the Special Investigations Unit and Special Tribunals Act.</p>
<p>Reported by Date</p>	<p>African Legal Information Institute (AfricanLII) 7 June 2022</p>

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