

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

<b><i>Special Investigating Unit and Another v Ndlovu and Others (Reasons for Order)</i></b>	
URL	<a href="https://lawlibrary.org.za/akn/za/judgment/zast/2023/2/eng@2023-01-31">https://lawlibrary.org.za/akn/za/judgment/zast/2023/2/eng@2023-01-31</a>
Citations	(GP 19/2021) [2023] ZAST 2
Date of judgment	31 January 2023
Keyword(s):	Special tribunal, special investigating unit, application, reasons for the orders, possession, forfeiture, asset, irreparable harm, pending, preservation order, <i>curator bonis</i> , forfeiture order, fraudulent tenders, procurement fraud, proceeds from unlawful activities, interest of justice
Case type	Provision of reasons for order granted
Result	Applicants succeeded
Flynote	<b>Court procedures</b> – application of the Superior Courts Act – the Special Tribunal is a court with a status similar to the High Court and the application of the Superior Courts Act does not give rise to any conflict between the Superior Courts Act and the SIU Act
Legislation and International Instruments	<ul style="list-style-type: none"> <li>● Section 18(3) of the Superior Courts Act</li> <li>● Section 8(2) of the Special Investigating Units and Special Tribunals Act (<b>SIU Act</b>)</li> </ul>
Cases cited as authority	<ul style="list-style-type: none"> <li>● Ledla Structural Development (Pty) Ltd v SIU [Case no. GP 07/2020] 17/23 February 2022</li> <li>● Special Investigating Unit v Nadasen and Another 2002 (4) SA 605 (SCA)</li> </ul>
Facts	<p>The Special Investigating Unit and the National Health Laboratory Service (<b>the Applicants</b>) had jointly applied for an order in terms of s 18(3) of the Superior Courts Act, to execute part of an order granted on 7 June 2022 (<b>7 June Order</b>) pending final determination of an application for leave to appeal this order, brought by the respondents (<b>the Application</b>).</p> <p>On 23 August 2022, the Special Tribunal granted the order (<b>s 18(3) Order</b>) which essentially authorised certain steps contemplated by the 7 June Order, namely for the applicants to obtain possession and control of various forfeited assets belonging to the respondents, and to preserve the assets pending finalisation of the Application.</p>

Summary	<p>The Special Tribunal provided reasons for the s 18(3) Order granted. The Special Tribunal considered the prevailing situation before 7 June 2022, whether the applicants would suffer irreparable harm if the s18(3) Order was not granted, the prospects of success on appeal, and the application of the Superior Courts Act in Special Tribunal matters.</p>
Decision/ Judgment	<p>The Special Tribunal found that the applicants had made out a proper case for the granting of the s 18(3) Order.</p>
Basis of the decision	<p>In setting out the reasons for the s 18(3) Order, the Special Tribunal considered whether the 7 June Order had changed the existing position concerning the preservation order. The Special Tribunal found that it had not changed the preservation order, and the assets remained preserved. The s 18(3) Order merely sought to entrench the situation that existed since the granting of the preservation order.</p> <p>The Special Tribunal also agreed that the applicants would suffer irreparable harm in the absence of the s18(3) Order. The respondents had not disputed the serious allegations of procurement fraud, and they had no legal basis for resisting the preservation order. The purpose of the preservation order was to preserve specific assets of the respondents and protect them against damage or loss of value pending their final forfeiture. The Special Tribunal found that it was not in the interest of justice to allow the respondents to retain possession of the preserved assets.</p> <p>The Special Tribunal confirmed that it was a court with similar status to the High Court and the present facts did not give rise to any conflict between the SIU Act and the Superior Courts Act. Thus, the applicants were entitled to seek relief in terms of s 18(3) of the Superior Courts Act.</p>
Reported by Date	<p>African Legal Information Institute (<a href="#">AfricanLII</a>) 31 January 2023</p>