

SPECIAL TRIBUNAL OF SOUTH AFRICA
Judgment summary

<i>Special Investigating Unit and Another v Jacob Basil Hlatshwayo and Others</i>	
URL	https://lawlibrary.org.za/akn/za/judgment/zast/2023/7/eng@2023-03-15
Citations	GP/20/2020
Date of judgment	15 March 2023
Keyword(s)	Special Tribunal, Special Investigating Unit, unlawful, invalid, set aside, declaratory relief, monetary relief, trial, interlocutory application, irregular procurement process, witness, offer, draft order, directive, principles, Covid-19 pandemic, surgical masks, damages, personal protective equipment, internal audit, supplier, client, delivery note, sign, confirmation, evidence, investigation, law of contract, law of delict, employment law, cause of action, balance of probabilities, onus, defect, hearsay evidence, Covid-19 travel permits, transport, admissible evidence, pension fund benefits, preservation order, discharge or variation of an order, legal costs, just and equitable
Case type	Action
Result	Dismissed
Flynote	Civil procedure – cause of action – cause of action pleaded must be supported by evidence in order to establish liability
Legislation and International Instruments	<ul style="list-style-type: none"> ● Section 38 and 45 of the Public Finance Management Act
Cases cited as authority	<ul style="list-style-type: none"> ● Special Investigating Unit V Kim Diamonds (Pty) Ltd 2004 (2) SA 173 (SPT)
Facts	<p>The Department of Agriculture, Rural Development and Land Reform (the Department) had procured surgical masks to curb the spread of the Covid-19 pandemic at the beginning of 2020. Through the first defendant, Jacob Basil Hlatshwayo (Hlatshwayo), the Department contracted with the fourth defendant to procure 40 000 masks (the Impugned Agreement).</p> <p>The plaintiffs sought an order declaring that the Impugned Agreement was unlawful and invalid and that it be set aside (Declaratory Order).</p> <p>It was also alleged by the plaintiffs that a certain quantity of the masks procured was unaccounted for. The plaintiffs, therefore, sought monetary relief from</p>

	<p>Hlatshwayo directly, as the masks had been received under his management and control (Claim 2).</p> <p>The plaintiffs also obtained a preservation order to preserve Hlatshwayo's pension benefits (Preservation Order).</p>
Summary	<p>The Special Tribunal was asked to determine whether all the masks procured in terms of the Impugned Agreement had been delivered to the Department and were fully accounted for. Hlatshwayo also asked the Special Tribunal to consider discharging or varying the Preservation Order.</p>
Decision/ Judgment	<p>By agreement between the plaintiffs and Hlatshwayo, the Impugned Agreement was declared invalid and set aside. Special Tribunal dismissed the plaintiffs' action against Hlatshwayo in respect of Claim 2, and also discharged the Preservation Order.</p>
Basis of the decision	<p>The Special Tribunal found that the plaintiffs' witnesses had failed to adduce any evidence to establish the allegation that all the masks procured was not delivered to the Department, and the methodology of the internal auditing process followed had been questionable. The Special Tribunal could not find any evidentiary basis to find that the plaintiffs had established the allegation that the 400 000 masks were not delivered to the Department. The Special Tribunal also found that the plaintiffs had failed to plead and establish a proper cause of action for Claim 2; they had also failed to discharge the onus to prove their case and had attempted to rely on hearsay evidence to prove the masks allegedly unaccounted for. The Special Tribunal, therefore, found that the plaintiff's action against Hlatshwayo in respect of Claim 2 had to be dismissed. As Claim 2 was dismissed, the Preservation Order was consequently discharged.</p>
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