

SOUTH AFRICA / JUDGMENT

Schmahl and Another v Special Investigating Unit (GP10/2020; LP10/2020) [2025] ZAST 2 (23 January 2025)

[2025] ZAST 2

COURT
Special Tribunal

BEFORE
D Makhoba

CASE / FILE NUMBER
GP10/2020 & LP10/2020

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IN THE SPECIAL

TRIBUNAL ESTABLISHED IN TERMS OF S2 (1) OF THE SPECIAL INVESTIGATING
UNIT AND

SPECIAL TRIBUNALS ACT

74 OF 1996

(REPUBLIC OF SOUTH
AFRICA)

Case

No. GP10/2020 & LP10/2020

In

the matter between: CAREL
SCHMAHL
First
Applicant
JOHANN
CHRISTIAAN KILIAN
Second
Applicant
and
SPECIAL
INVESTIGATING UNIT
Respondent

JUDGMENT

MAKHOB A J:

- [1] The respondent (hereafter referred to as the SUI) was mandated by Proclamation on 15 April 2016 to recover damages suffered by the Lepelle Northern Water Board (hereinafter referred to as LNW).
- [2] On or about 6 October 2020 summons was issued against the applicants. The proceedings are conducted before the Special Tribunal established in terms of section 2 (1) of the SIU Act.
- [3] The first applicant is Carel Schmahl, a major male who held the position General Manager, Maintenance and Operation until 30 September 2014, whereafter he was appointed Project Manager for Lepelle Northern Water from 1 October 2014.
- [4] The second applicant is Johann Christiaan Kilian, a major male and former Chief Financial Officer of the Lepelle Northern Water Board (“LNW”) with his place of residence at [...] P[...] A[...], Phalaborwa Limpopo Province.
- [5] The respondent is the Special Investigation Unit, an organ of State established in terms of proclamation R118 of 2001, published in Government Gazette 22531 of 31 July, which was proclaimed under s 21(1)(a) of the Special Investigating Units and Special Tribunals Act (No. 74 of 1996) referred to as “the SUI Act”)
- [6] The applicants seek an order allowing them to effectively join certain third parties who have been referred to in the aforesaid respondent’s special pleas and plea to the merits.
- [7] It is submitted that in order to promote the principle of accountability the Tribunal must utilise the provisions of Uniform Rule 13 (1)(b)[1].
- [8] It is further submitted that the equitable remedy for the applicants is apportionment which is available to the applicants in term of Rule 13(1)(b). For this assertion counsel for the applicants rely on the decision in Pikitup Johannesburg SOC Ltd v Nair and others[2].

- [9] Counsel for the applicants argued that the parties sought to be joined were party to or aware of and abided by the conduct of the defendants therein and could be held liable to the plaintiff on similar grounds.
- [10] It is contended by the applicants that the suggestion that these parties which are sought to be joined can simply be subpoenaed is without merit. The Tribunal must evaluate the evidence of such parties and make an appropriate order either for a contribution or for apportionment.
- [11] The applicants insist that the prospects of actually recouping a material part of the damages claimed require that the implicated parties should be joined and these parties are as follows.
- 11.1 Nomvula Mokonyane, erstwhile Minister of Water and Sanitation;
- 11.2 Zandile Mathe, Chief Implementing Officer nominated by the erstwhile Minister;
- 11.3 Margaret-Anne Diedericks, Director General at the Department of Water and Sanitation;
- 11.4 LTE and Thulani Majola
- 11.5 Khato Civils
- 11.6 South Zambezi;
- 11.7 Phiri; and
- 11.8 DWS Engineers.
- [12] It is finally submitted on behalf of the applicants that, the respondent cannot be prejudiced in any way should the Tribunal grant the relief sought.
- [13] On the contrary it is argued that the fiscus and public policy will all benefit from having all implicated parties accountable before the Tribunal.
- [14] The cause of action against the first applicant, is against him personally as employee and for his actions or omissions for which he, personally had responsibility for.
- [15] The respondent contends that the applicants have failed to indicate in what manner the persons and entities it seeks to join contributed to the unlawful acts and why those persons and entities should reimburse the applicants for their unlawful acts.
- [16] Counsel for the respondent argued that the applicants seek to join in this matter, they already have a case against them by the respondent in Limpopo High Court under case number 7209/2018 on the Notice of Motion.

- [17] It is further argued on behalf of the respondent that it will not be convenient for seven respondents in the Polokwane matter to have to deal with the issues raised in this matter, which have nothing to do with them. All the respondents and defendants will suffer substantial prejudice as the trial will be of long duration and the costs involved will be astronomical. Parties will have to become involved in a dispute not related to them.
- [18] It is contended further by the respondent that upon an examination of the pleadings against the first to third defendant in the main action, no cause of action in those proceeding will be disclosed against the proposed third parties and the claim by the applicants against the proposed third party is patently unfounded.
- [19] The respondent submits further that unlike in the Pikitup decision the respondent does not have a claim against the proposed third parties in terms of the Public Management Act. The pleading between the respondent and the applicants are considered closed.
- [20] In my view the parties in the Polokwane High Court matter[3] will be severely prejudiced should they be joined in this matter for reasons articulated and set out by counsel for the respondent.
- [21] Furthermore the pleadings between the applicants and respondents are closed.
- [22] I therefore conclude that the applicants have failed to make out a case in terms of the provisions of Rule 28 of the Special Tribunal rule to invoke Rule 13 of the Uniform Rule of Court.
- [23] The application is dismissed with costs, such cost to include the cost consequent upon the employment of two counsel, one of whom is senior counsel on Scale “B”.

JUDGE D. MAKHOBIA

MEMBER OF THE SPECIAL TRIBUNAL

APPEARANCES

Attorney for the First and Second Applicant: Izak J Croukamp Attorneys Incorporated

Counsel for the First and Second Applicant: ADV. SW Davies

Attorneys for the Respondent: State Attorney, Pretoria

Counsel for the Respondent: Adv. C E Puckrin SC

Date of hearing: 04 December 2024

Date of Judgement: 23 January 2025

Mode of delivery: this judgment is handed down by sending it by email to the parties' legal representatives, loading on Caselines and release to SAFLII and AFRICANLII. The date and time for delivery is deemed to be 14:00 p.m.

[1] United Democratic Movement v Speaker, Nation Assembly and other 2017 (5) SA 300.

[2] 2019

(5) SA 540 (GJ).

[3] CaseLines 089-1

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