



SPECIAL TRIBUNAL

EST: ACT 74 OF 1996

All Media

31 August 2021

Former Transnet Executive Ordered To Pay Back R26, 4 Million To His Former Employers

Former Transnet Executive for Capital Projects, Mr Linyenga Herbert Msagala, has been ordered to pay back an amount of R26, 4 million to his former employer after being found guilty of the disgorgement of the secret profits while in the employ of the entity.

Msagala, in his capacity as the trustee of the Msagala Family Trust and Msagala Residence Trust, Roberto Jorge Medona Velosa, his co-trustee in the Trusts, IGS Consulting Engineers (Pty) Ltd and Siphon Victor Sithole, have been ordered to jointly and severally refund R26, 4 million to Transnet.

The action was brought before the Special Tribunal by both the Special Investigating Unit (SIU) and Transnet.

The plaintiffs sought to disgorge secret profits earned improperly by Msagala from IGS Consulting Engineers (Pty) Ltd, at the time a supplier contracted to Transnet while Msagala was in the full-time employment of Transnet.

Sithole is the shareholder and director of IGS Consulting Engineers (Pty) Ltd.

Judge Lebogang Modiba found that Msagala awarded a series of contracts by Transnet Capital Projects to IGS between 1 January 2015 and 31 December 2016. The contracts were a Quip Engineering (Pty) Ltd under Transnet's New Multi Product Project (NMPP).

The NMPP involved the construction of the 715 kilometre multi-product pipeline for the high pressure transportation of liquid petroleum products from Durban to Heidelberg.

The plaintiffs allege that the IGS was paid in excess of R160 million.

Judge Modiba directed that Msagala, IGS and Sithole must account for all the monies Msagala received from either IGS or Sithole over and above what the SIU has been able to trace. The judgment directs them to provide both the SIU and Transnet with a statement of account detailing all the transactions.

IGS and Sithole notified the Special Tribunal of their decision not to participate in the proceedings because Transnet has instituted proceedings against them in the High Court based on the same cause of action.

Following the irregularities, Transnet launched an internal investigation and appointed Nexus Company to lead the probe. In the report, Nexus found that Msagala was living a flamboyant lifestyle and owned many properties.

The SIU subsequently conducted a lifestyle audit and found that he was living excessively beyond his remuneration at Transnet.

He was subsequently dismissed at Transnet.

In July 2020, both the SIU and Transnet approached the Special Tribunal in two parts: an order sought on urgent basis attaching and preserving his assets as well as his pension benefits; and an order seeking final forfeiture of the said assets in terms of Section 17 of the Prevention and Combatting of Corrupt Activities Act.

The first order, which he later challenged unsuccessfully, was granted on 17 November 2020.

In the civil recovery proceedings, the SIU adduced evidence in the form of witness statements and documentary evidence, showing that Msagala was liable to repay an amount of R26 423 028. 77.

These include:

- (a) Various amounts totalling R15 656 000. 00 which were proceeds of cash cheques drawn against the IGS bank and deposited either to Msagala's bank account or the Msagala Investment Trust;
- (b) Four cheques of R500 000 each amounting to R2 million issued by IGS and reflecting Msagala's details on the reverse side of the cheques;
- (c) Three cheques issued by IGS amounting to R1 million reflecting details of his protector acting on his instructions;
- (d) R4 million deposited in the tranches of R999 999. 99 each;
- (e) R950 000 arising from IGS of which R550 000 was deposited to his account and R400 000 retained as hard cash;
- (f) IGS cheque of R1 million on the 12th May 2016;
- (g) R50 000 EFT payment to Akani Residence Trust;
- (h) R140 000 EFT payment made on 5 December 2015 from the account of Sithole;
- (i) Payment of R77 028. 77 from Sithole;
- (j) IGS cash cheque of R1 million cashed on 2 November 2015 with Msagala's details on the reverse side of the cheque
- (k) Further amounts which the SIU and Transnet reasonably believe were paid by IGS and/or Sithole to Msagala, his family Trusts and / or relatives for which the SIU and Transnet seeks a statement and debatement of account.

During the trial, witnesses including his former VIP protector, told the Special Tribunal that on numerous occasions Msagala cashed various IGS cheques and at times sent his bodyguards to run his errands.

The evidence of the other witnesses as adduced orally and through documentary evidence pointedly indicated that Msagala received R26, 4 million from IGS in secret profits.

He used some of the monies to register several properties, valued at R15, 2 million and between September 2015 and March 2016. Two of the properties are registered in his daughter's name.

The Special Tribunal also found that during the same period, Msagala purchased 35 vehicles and registered them in the names of his family members.

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