**SPECIAL TRIBUNAL OF SOUTH AFRICA**

**Judgment summary**

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| ***Special Investigating Unit v Moyo and Another*** | |
| URL | [TBC] |
| Citations | GP/09/2022 |
| Date of judgment | 2 February 2023 |
| Keyword(s):[[1]](#footnote-1) | Special Tribunal, unauthorised gratification, employee, preserve, benefits, pension fund, ex parte application, recovery, reconsideration, unauthorised gratification, restrain, preserve, interdict, interim order, irreparable harm, balance of convenience |
| Case type[[2]](#footnote-2) | Application |
| Result | Dismissed with costs |
| Flynote[[3]](#footnote-3) | **Civil procedure –** reconsideration of interim order granted ex parte – party seeking reconsideration must cast serious doubt upon the other party’s factual averments pertaining to a *prima facie* right |
| Legislation and International Instruments[[4]](#footnote-4) |  Tribunal Rule 12(9)   High Court Rule 6(12)(c) |
| Cases cited as authority[[5]](#footnote-5) |  Simon NO v Air Operations of Europe AB and Others 1999 (1) SA 217 SCA |
| Facts[[6]](#footnote-6) | The first respondent, Duduzile Babalwa Moyo (**Moyo**), was a former employee of Eskom, and had been accused of receiving an unauthorised gratification. The applicant, the Special Investigating Unit (**SIU**), intended to claim the amount by way of action procedure (**Main Proceedings**). The SIU brought an ex parte application for the preservation of Moyo’s pension fund benefits, pending finalisation of the Main Proceedings. An order was granted to restrain and interdict Moyo from withdrawing her pension benefit (**Interim Order**). Moyo sought to have the Interim Order reconsidered. |
| Summary[[7]](#footnote-7) | The Special Tribunal was asked reconsider the Interim Order. Moyo raised several points for reconsideration, including the failure of the SIU to fulfil its duty of good faith, to explain the basis for claiming that Moyo received unauthorised gratification, to show that it would suffer any prejudice if the relief had not been granted, and not making out a case for interim relief. |
| Decision/ Judgment[[8]](#footnote-8) | The application for reconsideration of the Interim Order was dismissed with costs, and the Interim Order was confirmed. |
| Basis of the decision[[9]](#footnote-9) | The Special Tribunal found that the SIU had satisfied the 4 requisites for interim relief sought. There was well-grounded apprehension of irreparable harm to the SIU if the interim order was set aside, as Moyo was unemployed and would logically want to use her pension fund benefits – thus rendering any judgement obtained by the SIU later, to be without any effect. The balance of convenience also favoured the SIU, as Moyo was employable and could find employment in the interim. The Special Tribunal also found that no other satisfactory remedy was available to the SIU.  The Special Tribunal found the evidence presented on behalf of Moyo to be vague, lacking, and considered improbable and false, and therefore failed to cast serious doubt upon the SIU’s case. |
| Reported by  Date | African Legal Information Institute ([AfricanLII](https://africanlii.org/))  4 February 2023 |

1. Clarify the type of issues that come up in the case. [↑](#footnote-ref-1)
2. Whether Trial, Application or Appeal. [↑](#footnote-ref-2)
3. **Area of law** - topic – subtopic. [↑](#footnote-ref-3)
4. Legislation/ International instrument title and section numbers. [↑](#footnote-ref-4)
5. List of cases considered to be important precedent (case name and citation). [↑](#footnote-ref-5)
6. Brief facts about the case (max 150 words). [↑](#footnote-ref-6)
7. Summary of the determination of legal questions and/or grounds of appeal (between 150-250 words). [↑](#footnote-ref-7)
8. A brief summary of the ruling/judgment of the court (max 100 words). [↑](#footnote-ref-8)
9. A 1-2 sentence summary of the basis of the decision (i.e. which legal rules were relied on). [↑](#footnote-ref-9)