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**IN THE SPECIAL TRIBUNAL ESTABLISHED IN TERMS OF SECTION 2 (1) OF THE SPECIAL INVESTIGATIONS UNIT AND SPECIAL TRIBUNALS ACT 74 OF 1996**

**JUDGMENT SUMMARY**

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| ***Special Investigating Unit and Others v Kajee*** | |
| URL | <https://lawlibrary.org.za/akn/za/judgment/zast/2023/5/eng@2023-02-28> |
| Citations | (GP22/2021) [2023] ZAST 5 |
| Date of judgment | 21 February 2023 |
| Keyword(s):[[1]](#footnote-1) | Special Investigating Unit, Special Tribunal, exception, notice of motion, application, irregular, barred, ipso facto, corrupt, collusive, plea, counterclaim, summons, compel, appropriate relief, procedure, pleading, out of time, prescribed time |
| Summary[[2]](#footnote-2) | In the main action, the plaintiffs sought to recover money from the defendant, Hassan Ebrahim Kajee (**Kajee**), for damages the State suffered as a result of the allegedly corrupt and collusive relationship between the State Attorney and Kajee. The plaintiffs issued a summons against Kajee. Kajee then attempted to compel the plaintiffs to make certain documents available to him, but this was dismissed by the Special Tribunal. The Special Tribunal directed Kajee to file either his plea and counterclaim or an exception by a prescribed date, failing which he would be barred from doing so. Kajee subsequently sought to bring an exception by way of an application procedure in terms of Uniform Rule 23(1) (the **Rule 23 Exception Application**). The plaintiffs applied in terms of Uniform Rule 30(1) to remove the Rule 23 Exception Application as the plaintiffs argued that it constituted an irregular step (the **Rule 30 Application**).    The Special Tribunal was asked to consider whether the plaintiffs had made out a proper case for the removal of Kajee’s Rule 23 Exception Application and whether Kajee was barred from filing an exception. |
| Decision/ Judgment[[3]](#footnote-3) | The Special Tribunal granted the plaintiffs’ Rule 30 Application, and set aside Kajee’s Rule 23 Exception Application as it was irregular. Kajee was also ordered to pay the costs of this application. |
| Basis of the decision[[4]](#footnote-4) | The Special Tribunal found that Kajee had failed to file an exception as envisaged in Uniform Rule 23(1) and instead had filed a notice of motion supported by an affidavit, calling on the plaintiff to file an answering affidavit. This was an irregular step as Uniform Rule 23(1), when properly interpreted, did not suggest that an application procedure may be used to bring an application. While Kajee belatedly sought to rely on Tribunal Rule 10(10) (which permitted application proceedings), the Special Tribunal held that it was inappropriate for him to do so to escape the irregularities in the procedure he had chosen in terms of Uniform Rule 23(1). It was also irregular for Kajee to seek a dismissal of the plaintiffs’ action by way of an exception. The Special Tribunal was therefore satisfied that the plaintiffs had made out a proper case for the relief they sought in terms of their Rule 30 Application.  Furthermore, the Special Tribunal also found that Kajee had filed his plea out of time, and was therefore barred from seeking an exception. |
| Reported by  Date | African Legal Information Institute ([AfricanLII](https://africanlii.org/))  28 February 2023 |

1. Clarify the type of issues that come up in the case. [↑](#footnote-ref-1)
2. Summary of the facts, the main legal questions and/or grounds of appeal, and the court’s reasoning (between 150-250 words). [↑](#footnote-ref-2)
3. The ruling/judgment of the court, as given in the Order. [↑](#footnote-ref-3)
4. A 1-2 sentence summary of the basis of the decision (i.e. which legal rules were relied on). [↑](#footnote-ref-4)