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Court rules in favour of property companies

SIU wanted the firms to pay R104m to the government

By **Jabu Tshabalala**

The Supreme Court of Appeal (SCA) has ruled in favour of two entities associated with property mogul Sisa Ngebulana in their battle with the Special Investigating Unit (SIU) over an invalid government lease reportedly valued at R612-million.

The court battle ensued from a lease concluded in September 2009 between the department of public works (DPW) and Phomella Property Investments for the department of justice (DOJ) to occupy as a tenant Phomella's

Salu building in Pretoria.

Before Ngebulana listed Rebohis on the JSE in May 2011, the Amatola Family Trust, of which Ngebulana was the "guiding mind", owned the Billion Group. Billion Group in turn held all Phomella shares.

The long-running legal battle started in February 2017, when the SIU applied in the North Gauteng High Court to set aside the lease between Phomella and the DPW and for Phomella and Rebohis to pay back R104-million in wasteful expenditure incurred during the lease.

The SIU contended the lease covered an area greater than the DOJ needed.

"The [R104-million] figure represented the SIU's calculation of the rental which had been paid



Court rules in favour of Sisa Ngebulana's property firms.

for that excess area," the SCA judges wrote.

The SIU applied for the court to declare the lease unlawful for two reasons. "First, the DPW failed to follow an open bidding process in concluding the lease. Second, and if it was found that a negotiated lease was competent, the prior requirement of a needs assessment of the space

required by the DOJ had not been met."

"There is no appeal against the declaration of unlawfulness which, accordingly, stands. Instead, the SIU sought leave to appeal against the refusal to make an order," the SCA judges wrote.

A high court judge found that the lease was invalid but did not order Phomella and Rebohis to pay the R104-million that the SIU applied to the court for.

The SCA judges agreed with the high court judge regarding the ruling not to order Phomella and Rebohis to pay back the money. They wrote that these findings by the high court included that Phomella and Rebohis were unaware of any irregularities in the conclusion of the lease, and the DOJ required less

than the entire Salu building.

"The DOJ occupied the entire building for the duration of the lease. The rental charge was a market-related one.

"To prepare the building for occupation by the DOJ, Phomella had cleared it of some 100 tenants. In addition, it had spent more than R81-million in refurbishing the building," the SCA judges added. "No undue benefit was received under the lease by Phomella, Rebohis or Mr Ngebulana," the SCA justices wrote.

"None of the high court findings can be faulted," they added.

Thus, the SCA judges found no basis to uphold the SIU's appeal against the failure of the high court not to order Phomella and Rebohis to pay R104m.

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