

# Special Tribunal orders former Transnet Executive to pay back R26.4m in secret profits, more predicted to follow

By Nicola Taljaard and Joshua Eveleigh

23 September 2021

On 31 of August 2021, Former Transnet Executive Linyenga Herbert Msagala (“**Msagala**”) was ordered to repay the amount of R26.4 million in ill-gained funds to his former employer after being found guilty of disgorging secret profits whilst managing Transnet Capital Projects. On this day, the Special Tribunal (“**Tribunal**”) reported that Msagala, acting as trustee of the Msagala Family Trust and Msagala Residence Trust, along with two of his co-trustees, are jointly and severally liable to pay the sum back to Transnet.\

The announcement came as the result of an investigation conducted by the Tribunal following an action brought by Transnet and the Special Investigating Unit (“**SIU**”) (together the “**Plaintiffs**”). The Plaintiffs aimed to expel the profits which Msagala had illegally earned through a supply contract between Transnet and IGS Consulting Engineers (Pty) Ltd (“**IGS**”), the latter of which is one of Msagala’s co-trustees, where he acts as shareholder and director.

The finding by Judge Lebogang Modiba of the SIU was premised on a range of contracts which Transnet had awarded to IGS between the 1<sup>st</sup> of January 2015 and the 31<sup>st</sup> of December 2016 under the New Multi Product Project (“**NMPP**”) of Transnet, which entailed plans for the construction of a multi-product pipeline of 715km for transporting liquid petroleum products under high pressure between Heidelberg and Durban. The Plaintiff’s alleged that IGS was paid over R160 million more than it should have according to the relevant contract.



**John Oxenham**

Director  
South Africa

[j.oxenham@primerio.international](mailto:j.oxenham@primerio.international)

Cell +27 (0)83 233 0484



**Michael-James Currie**

Director  
South Africa

[m.currie@primerio.international](mailto:m.currie@primerio.international)

Cell +27 (0)84 506 7610

## Contact details

### Johannesburg, South Africa

John Oxenham, Michael-James Currie  
[j.oxenham@primerio.international](mailto:j.oxenham@primerio.international)  
[m.currie@primerio.international](mailto:m.currie@primerio.international)  
135 Daisy Street Sandton, Johannesburg, 2031

### Nairobi, Kenya

Ruth Mosoti, Fidel Mwaki  
[r.mosoti@primerio.international](mailto:r.mosoti@primerio.international)  
[f.mwaki@primerio.international](mailto:f.mwaki@primerio.international)  
Kalson Towers, 2nd Floor, The Crescent,  
Off Parklands Road, Nairobi

### Port Louis, Mauritius

Gilbert Noël  
[g.noel@primerio.international](mailto:g.noel@primerio.international)  
Suite 401, St James Court, St Denis Street, Port Louis

Email: [info@primerio.international](mailto:info@primerio.international)

Tel: +27 (0) 11 083 2411



Subsequent to an investigation by Nexus, it was found that Msagala had been living a flamboyant lifestyle, but due to a lack of statutory powers, it could not establish how Msagala had acquired the funds necessary to sustain such a lifestyle. This prompted a lifestyle audit on the SIU's behalf, which confirmed Nexus' finding and additionally found that Msagala had been living excessively beyond what which his Transnet salary would allow.

The Plaintiff's argued that in his capacity as an employee, Msagala was subject to common law and contractual duties, including:

1. Not to derive secret profits from an employment relationship;
2. To act faithfully;
3. To act in furtherance of the interests of his employer;
4. Not to allow for the creation of a conflict of interest; and
5. To account for and hand over to the employer every advantage directly or indirectly connected with the employment relationship.

In addition to these common law and contractual duties, the Plaintiff's alleged that as Transnet exists as an Organ of State in South Africa, constitutional duties also subsist in Msagala's capacity as an employee. In this regard, section 195 of the Constitution of the Republic of South Africa, 1996 ("**Constitution**") provides that officials of Organs of State are bound to a high standard of professional ethics, efficient and effective use of public resources, accountability and transparency. Further, section 57 of the Public Finance Management Act mandates public officials to ensure that public entities use their resources in a manner that is efficient and effective.

The Tribunal found that the Plaintiff's had sufficiently established that Msagala had received secret profits to the amount of R26 423 028.77 during his tenure at Transnet. The necessary result of this finding was that Msagala's accrual of secret profits was in flagrant contravention of the above-mentioned common law, contractual and constitutional duties associated to his capacity as a public official. This finding allowed Transnet the right to disgorge the secret profits.

Furthermore, the Tribunal held that IGS and Siphon Sithole ("**Sithole**") had acted in cohorts with Msagala by aiding in the prejudicial acts against Transnet's interests and the promotion of Msagala's personal interests. In this regard, IGS and Sithole had infringed upon Transnet's contractual rights and formed the basis for them being jointly and severally liable.

Lastly, the judgment directs Msagala and the other Defendants in the matter to provide an account of all other amounts that may have arisen from his dealings with IGS and Sithole (in addition to the R26 423 028.77 of established secret profits) to the Defendants, Msagala Investment Trust, Msagala Family Trust, Msagala Residence Trust or any other person. Such account shall also become duly payable to Transnet by the Defendants on a joint and several liability basis.

This is a significant victory for the Tribunal, and will go a long way in instilling the public's confidence in the Tribunal's ability to fulfill its statutory mandate to recoup public funds depleted as a result of corruption and fraud.

The Tribunal's judgment can be accessed [here](#)

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