HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 108644/2025

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 2 NOVEMBER 2026

SIGNATURE [redacted]

In the matter between:

ITHUBA LOTTERY RF (PTY) LTD	Applicant
ECONOMIC FREEDOM FIGHTERS	Intervening Party

and

THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	First Respondent
NATIONAL LOTTERIES COMMISSION	Second Respondent
SIZEKHAYA HOLDINGS RF (PTY) LTD	Third Respondent
BOSELE GAMING RF (PTY) LTD	Fourth Respondent
WINA NJALO RF (PTY) LTD	Fifth Respondent
RINGETA CONSORTIUM RF (PTY) LTD	Sixth Respondent

GIYA GAMES HOLDINGS RF (PTY) LTD	Seventh Respondent
UMBULELO LOTTERY SERVICES RF PTY LTD	Eighth Respondent
LEKALINGA RF (PTY) LTD	Ninth Respondent

CASE NO: 228028/2025

In the matter between:

RINGETA CONSORTIUM RF (PTY) LTD	Applicant

and

MINISTER OF TRADE, INDUSTRY AND COMPETITION	First Respondent
NATIONAL LOTTERIES COMMISSION	Second Respondent
SIZEKHAYA HOLDINGS RF (PTY) LTD	Third Respondent
ITHUBA LOTTERY RF (PTY) LTD	Fourth Respondent
BOSELE GAMING RF (PTY) LTD	Fifth Respondent
WINA NJALO RF (PTY) LTD	Sixth Respondent
GIYA GAMES HOLDINGS RF (PTY) LTD	Seventh Respondent
UMBULELO LOTTERY SERVICES RF (PTY) LTD	Eight Respondent
LEKALINGA RF (PTY) LTD	Ninth Respondent

Summary: *Administrative Law – Review of a decision by the Minister of Trade, Industry and Competition (the Minister) to award the Fourth National Lottery License (the License) to Sizekhaya Holdings RF (Pty) Ltd – The Request for Proposals (RFP), only provided for an Evaluation Committee, an Adjudication Committee, external quality*

assurance of the processes of these two committees and a final Quality Assurance Committee assessing the report to be tabled by the National Lotteries Commission (NLC) for the Minister's decision. Found that it was impermissible for the Minister to thereafter, unbeknown to the applicants for the License, appoint, utilise and rely on a fresh re-evaluation performed by a new body appointed by him, being a Ministerial Committee, in order to advise the Minister when making his decision. Such conduct procedurally and substantively unfair. Decision set aside and a remitted with ancillary directives ordered. A separate application by the Economic Freedom Fighters to extend the ambit of section 13(2)(b)(iv) of the Lotteries Act 57 of 1997 to include a prohibition against indirect financial interest by political office bearers in applicants for licences, as opposed to only direct interests, not granted. The RFP already provided for such extended prohibition.

ORDER

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1. The decision of the Minister of Trade, Industry and Competition (the Minister) to award the Fourth National Lottery and Sports Pools License (the License) to Sizekhaya Holdings RF (Pty) Ltd (Sizekhaya), is hereby reviewed and set aside.

2. The License Agreement concluded between the Minister, the National Lotteries Commission and Sizekhaya pursuant to the award of the License is declared invalid.

3. The issue of the award the License is referred back to the Minister for reconsideration.

4. In taking the decision to award the License afresh, the Minister is directed to disregard the report of the Ministerial Committee and the recommendations made by it.

5. The declaration of invalidity made in para 2 above, is suspended for two consecutive periods of six months from date hereof, the first period to allow the Minister the opportunity to decide to award the license afresh and the second period to allow the Minister to negotiate and conclude a new Licence Agreement and to make transitional arrangements, should the decision be to not award the Licence to Sizekhaya.

6. The application by the Economic Freedom Fighters (the EFF) is refused.

7. In respect of the application of the EFF and the costs occasioned thereby, including the applications for intervention, each party thereto shall pay its own costs.

8. In respect of the applications by Ithuba Lottery RF (Pty) Ltd and Ringeta Consortium RF (Pty) Ltd, the first, second and third respondents in the respective applications, shall jointly and separately pay the costs of these applications.

9. All costs orders shall include the costs occasioned by the briefing of multiple counsel, including Senior counsel. For purposes of taxation, such costs shall be on scale C as contemplated by Rule 67.

JUDGMENT

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 02 November 2026.

DAVIS, J

Introduction

[1] On 7 August 2023 the National Lotteries Commission (the NLC), by way of the publication of a Request for Proposal (the RFP) invited interested parties to submit applications to be awarded the Fourth National Lottery Licence (the Licence). This was done in terms of section 13(2)(a) of the Lotteries Act (the Act)[1].

[2] After a protracted process whereby numerous applications had been submitted and considered, the Minister of Trade, Industry and Competition (the Minister) announced on 28 May 2025 that he had decided to award the Licence to Sizekhaya Holdings RF (Pty) Ltd (Sizekhaya).

[3] As was the case with preceding lottery licenses[2], the award spawned litigation. The present review applications were preceded by an (unsuccessful)

[1] 57 of 1997.

[2] The first licence was awarded to Uthingo Management (Pty) Ltd. When it was unsuccessful in securing the second licence, it challenged the award thereof in *Uthingo Management (Pty) Ltd v Minister of Trade and Industry* [2007] 2 All SA 649 (T). In similar fashion, the subsequent holder of the second licence sought to challenge the award of the third licence. It attempted to do by unsuccessfully applying for an interim interdict

application for an interim interdict to prevent the implementation of the award[3]. The first review application was soon joined by other applications for review.

[4] These applications, as well as a separate application relating to a constitutionality challenge to section 13(2)(b)(iv) of the Act, form the subject matter of this judgment.

The present applications

[5] In case no 108644/2025 Ithuba Lottery RF (Pty) Ltd (Ithuba) is the applicant and the Minister is the first respondent. The NLC is the second respondent and Sizekhaya is the third respondent. The other respondents are the other applicants who were in the final running for the award of the Licence. They are Bosele Gaming RF (Pty) Ltd (Bosele), Wina Njalo RF (Pty) Ltd (Wina Njalo), Ringeta Consortium RF (Pty) Ltd (Ringeta), Giya Games Holdings RF (Pty) Ltd (Giya), Umbulelo Lottery Services RF (Pty) Ltd (Umbuleleo) and Lekalinga RF (Pty) Ltd (Lekalinga).

[6] Various of the unsuccessful applicants launched their own review applications but in the end, only Ithuba (in case no 108644/2025) and Ringeta (in case no 228028/2025) proceeded with their applications. They were heard jointly.

[7] The Economic Freedom Fighters (the EFF) was joined as an intervening party and where Ithuba and Ringeta pursued the review and setting aside of the Minister's decision on administrative law principles, the EFF pursued a constitutional challenge to section 13(2)(b)(iv) of the Act to the effect that it should be interpreted expansively to also prohibit "indirect" financial interests of

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in *Gidani (Pty) Ltd v Minister of Trade and Industry* (81420/2024) [2014] ZAGPPHC 960 (9 December 2014) (*Gidani I*) and obtained partial success in a subsequent review in *Gidani (Pty) Ltd v Minister of Trade and Industry* (81420/2024) [2015] ZAAGPPHC 457 (4 July 2015) (*Gidani II*) before unsuccessfully applying for the review and setting aside of the third licence in *Gidani (Pty) Ltd v Minister of Trade and Industry* (65337/2015) [2016] ZAGPPHC 609 (13 May 2016) (*Gidani III*).

[3] *Ithuba Lottery RF (Pty) Ltd v Minister of Trade Industry and Competition* (108644/2025) [2025] ZAGPPHC 1298 (27 November 2025).

political office-bearers in applicants for lottery licences as opposed to its current formulation which only refers to "direct" financial interests.

[8] The Minister, the NLC and the successful applicant Sizekhaya, opposed all these applications.

[9] Understandably, despite the fact that only two review applications proceeded and others fell by the wayside, the papers remained voluminous and exceed numerous thousands of pages. The heads of argument alone exceeded 650 pages. Numerous case management meetings were also needed to massage the matters ripe for hearing in order to cater, as far as possible, for the availability of the understandably large number of legal practitioners involved.

The RFP

[10] The starting point, not only of the process which ultimately led to the impugned award, but also for consideration of the arguments relating to procedural and substantive fairness of the evaluation of the applications for the License, is the RFP.

[11] It is by now settled law that an RFP such as the one applicable in this matter, constitutes an essential element of a valid evaluation process as it prescribes a procedure for the evaluation of applications or bids, as the case may be, which may not be "disregarded at whim"[4].

[12] The RFP provided for a three-stage process. First an Evaluation Committee had to evaluate the applications and prepare a report in respect of its findings. Secondly, the NLC's Adjudication Committee had to assess the report of the Evaluation Committee, which had been quality assured by and independent quality assurer appointed by the NLC "*to ensure that all criteria were applied*

[4] *Allpay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Office of the SA Social Security Agency* 2014 (1) SA 604 (CC) at para 40.

consistently and impartially". The Adjudication Committee's own report was to be independently quality assured by a further independent quality assurer, being a Quality Assurance Committee (QAC) appointed by the Minister. After such quality assurance, the Adjudication Committee was required to submit its report and recommendations to the Minister.

[13] The third and final stage was when the Minister, after consultation with the NLC, would make the "*final decision to award the Licence to the successful applicant*"[5].

[14] The first stage referred to above, itself comprised of three stages, namely a pre-qualification stage, a technical assessment stage and a final financial and B-BBEE evaluation stage. The criteria by which applications were to be assessed and the weighting accorded thereto, were meticulously circumscribed in the RFP.

[15] At the technical evaluation stage, the RFP established ten criteria, with all assigned different weightings, resulting in a total of 100 available points.

[16] The financial and B-BBEE evaluations were assessed in terms of six different criteria, also assigned specific weightings, also resulting in a total of 100 points.

[17] The RFP made it clear[6] that the technical, financial and B-BBEE evaluations would "*encompass those categories and weightings*" which would be taken into account.

[18] Any deviation from the above process by the Minister, was constrained, both in law[7] and in terms of the RFP itself. The RFP provided in clause 10.2 thereof that the Minister may only "*modify, amend or augment*" the RFP during

[5] Clause 8.2.5 of the RFP
[6] In clauses 8.5 and 8.6.3 thereof.
[7] See *Gidani II* at para 19.

the application process and then only after consulting with the NLC and if this is done, the applicants may re-apply or submit "*modifications, amendments or augmentations or changes*" to their applications.

[19] A further aspect of the RFP relevant to this litigation is clause 2.4.1 thereof, which provides that, before the License is granted "*the Minister must be satisfied that ... no political party or political office-bearer in the RSA has any direct and/or indirect interest in [an] applicant or is a significant shareholder of [an] applicant ...*".

How the evaluation process unfolded

[20] The Evaluation Committee, comprising of seven members, after the relevant evaluations referred to above had been performed, ranked Ringeta first at 73,92 points, Sizekhaya second with 72,95 points, Wina Njalo third at 72.64 points and Ithuba fourth at 72.04 points.

[21] The Adjudication Committee, comprising of four members of the NLC board, recognised certain anomalies in the Evaluation Committee's scoring process and conducted what it called an "objective analysis on moderated scores". In its report, adopted on 9 October 2024, the Adjudication Committee recommended Ringeta as the preferred bidder and Sizekhaya as the reserve bidder.

[22] The NLC had earlier appointed MMB Consulting Inc to perform a quality assurance evaluation. This evaluation should have been done before the NLC's report was finalised and presented to the Minister, but it was only done on 24 October 2024, after the report had already been submitted. As I shall indicate hereunder, nothing much turns on this irregularity, except for noting that the quality assurance evaluation undertaken, appears to have been done somewhat superficially.

[23] What is however more astounding (the Minister labelled it "perplexing") is that the second quality assurance evaluation which the RFP contemplated, being the one performed by the QAC with members appointed by the Minister, also took place after the NLC's report had already been delivered to the Minister.

[24] The QAC's quality assurance evaluation was more thorough than the first evaluation and engaged with numerous deficiencies which it had identified in the preceding processes, in particular, the failure to complete checks for fitness and propriety or to undertake a proper B-BBEE analysis.

[25] The NLC explained that the dates of the reports of the two quality assurance committees themselves, are of no moment as the first quality assurance evaluations had been conducted right throughout the whole evaluation process and was in any event not done to confirm rankings or recommendations, but to ensure that the processes were fair and that all bidders were treated equally. In respect of the second quality assurance process, the NLC explained that this "... *served the purpose of providing assurance to the Minister of the regularity of the entire process undertaken by the NLC*".

The Minister's decision

[26] After having received the second quality assurance report, the Minister consulted with the NLC's adjudication committee. He says that after this, he concluded that he was not in a position to award the licence. He was concerned that the evaluation and adjudication of applications had not been properly conducted by the respective committees. He therefore delayed taking a final decision.

[27] As a consequence of the above, the Minister appointed a new committee on 26 January 2025 to advise him on his decision. In the papers, this committee is referred to as the "Ministerial Committee" and I shall also do so. The

Ministerial Committee, which then comprised of all the members of the QAC, except for the senior advocate, one of the attorneys and the Chief Director Legal Services of the Department of Trade and Industry

[28] The terms of reference given to the Ministerial Committee were (in the words of their subsequent report) "*to reassess the bids for the Fourth National Lottery and Sports Pools Licence and to recommend to the Minister the names of the preferred and reserve bidders*".

[29] After having performed its mandate, the Ministerial Committee concluded as follows:

> "*183 Having considered all the RFP's categories, it is evident that there is a distinct difference between, on the one hand, Giya Games, Lekalinga and Umbulelo and, on the other hand, Bosele, Ithuba, Ringeta, Sizekhaya and Wina Njalo.*
>
> *184. We recommend that Giya Games, Lekalinga and Umbulelo not be considered ...*
>
> *188. Bosele's and Wina Njalo's financial models and plans are less compelling that those of Ithuba, Ringeta and Sizekhaya. Therefore Bosele and Wina Njalo are not recommended ...*
>
> *189. The economic analysis shows that both Sizekhaya's and Ithuba's financial models and business plan are feasible and attainable. Sizekhaya's projected revenue is more ambitious. Nevertheless, it is sustainable, realistic and viable ...*

190. Even if Sizekhaya's revenue projections are not attained as proposed, it is possible and likely that they will not be lower than Ithuba's, Ringeta's and Wina Njalo's ...

191. Although Ringeta is a strong applicant, it is not recommended for the following reasons:

191.2 Absent a contravention of section 13(2)(b)(iv), there is also an important risk. A widespread perception that the lottery is a vehicle for funding a political party would probably have a dramatic effect on the number of people playing, which would undermine the purpose of the lottery and negatively affect the beneficiaries of the NLDTF[8].

191.3 Ringeta's proposed percentage and Rand-contribution to the NLDTF is lower than Sizekhaya's. It is significantly lower after the exclusion of gambling games.

192. Ithuba provided stronger localisation and, supplier development strategies compared to the other bidders, and it also holds a higher overall B-BBEE rating. According to the economic experts, Ithuba, alongside Sizekhaya and Ringeta, submitted credible and pragmatic financial and business plans, with a high likelihood to grow contributions to the NLDFT. While Ithuba has proposed a relatively modest contribution percentage to the NLDTF, the feasibility and

[8] The NLDTF is a reference to the National Lottery Distribution Fund, established in terms of section 21 of the Act and managed by the Board of the NLC.

sustainability of these contributions are a key strength and an important consideration for Ithuba to be a reserve bidder.

193. *In our view, Sizekhaya meets the requirements of section 13. There are no material concerns regarding the fit and proper requirements and direct financial interest by a political party or political office-bearer. It has sound commercial and business plans and an excellent technology partner. Its proposed contributions to the NLDTF are the highest. They may be ambitions, but they are attainable.*

194. *Therefore, we recommend that the preferred bidder be Sizekhaya and the reserve applicant be Ithuba*".

[30] I have quoted the conclusions rather extensively for reasons which shall become more apparent later.

[31] The Ministerial Committee's report was delivered on 25 April 2025. On 28 May 2025 the Minister announced that Sizekhaya had been awarded the Licence and that Ithuba was the reserve applicant.

[32] On 4 July 2025 Ithuba instituted the first of the review applications referred to at the inception of this judgment. On 5 August 2025, the Minister, delivered his reasons for the reward.

[33] Following media reports by AmaBhungane, the Minister instructed the NLC to investigate Sizekhaya's political connections, including the alleged connection of two of its members with Deputy President Mashatile. Up to the time of the hearing of this matter, no report of such investigation had featured in the papers. This issue is relevant to the case advanced by the EFF, which I shall deal with later in the judgment.

[34] In the reasons furnished by the Minister, he deals with the first quality assurance process as follows: "*I am informed that during the evaluation and adjudication process, the NLC appointed independent external quality assurers ... [they] were chartered accountants. They reviewed the evaluation and adjudication processes while they were taking place. They identified a number of risks during the evaluation process, which their report states were addressed during adjudication*".

[35] In respect of the QAC and the timing of its report, the Minister stated: "*Contrary to the provisions of paragraph 8.2.4, the QAC was appointed when the NLC had already made its recommendations to me. Quite why the NLC did not wait for the QAC to perform its functions before it made its recommendations, is not clear to me. However, I was not prepared to forego the QAC process, which was important for me to make a decision. As it turned out, the QAC's findings were significant in that they brought certain material to my attention*". In his reasons, the Minister further stated that one of the terms of references of the QAC was to advise him on whether the recommendations of and processes followed by the NLC were rationally and legally compliant with, amongst others, the provisions of the Act and the RFP.

[36] In furnishing the reasons for his decision, which followed the recommendations of the Ministerial Committee, the Minister adopted paragraphs from the Committee's report virtually verbatim. The Minister's reasons for electing to award the reasons for electing to award the Licence to Sizekhaya read as follows: "*This was a close race and a tight finish, in my view, Sizekhaya pipped the others to the post. It presented a well-balanced bid. It has satisfied the requirements in section 13 of the Lotteries Act. It has an impressive technology partner. Its financial plans and modes are sound. Its projected revenue and percentage contribution to be NLDTF, Sizekhaya's contributions to the NDLTF are likely to be the highest...I chose Ithuba Lottery as the reserve applicant. The*

reasons for this were the following. Ithuba Lottery's technology partner was local. Overall, it provided stronger localisation and supplier development strategies compared to the other bidders, and it also held a higher overall B-BBEE rating. Ithuba Lottery submitted credible and pragmatic financial and business plans, with a high likelihood to grow contributions to the NLDFT. While Ithuba Lottery proposed a relatively modest contribution percentage to the NLDFT, the feasibility and sustainability of these contributions were a key strength and an important consideration".

[37] In respect of Ringeta and the issue of interests of political office bearers, the Minister's reasons were the following:

> "*58. During my consideration of this matter, a question arose about whether Ringeta's application contravened section 13(2)(b)(iv) of the Lotteries Act.*
>
> *59. The facts pertaining to Ringeta are set out in the QAC's and the Ministerial Committee's reports. For convenience, I repeat them below:*
>
> *59.1. The shareholding of Ringeta shows that the Batho Batho Trust holds 70% of the shares in Thebe Investment Consortium (Pty) Ltd; the Thebe Investment Consortium (Pty) Ltd owns 100% of the shares in Thebe SPV 021 (Pty) Ltd; the Thebe SPV 021 (Pty) Ltd owns 49% of the shares in Ringeta Consortium Holdings (Pty) Ltd; and Ringeta Consortium Holdings (Pty) Ltd owns 51% of the shares in Ringeta Consortium (RF) (Pty) Ltd, which is the applicant referred to as Ringeta.*

59.2. *Dr Sibongiseni Maxwell Dhlomo is an ANC member of Parliament and a trustee of the Batho Batho Trust. He is therefore a political officer bearer as contemplated in the Lotteries Act.*

59.3. *The original Batho Batho Trust Deed was amended in 2007 so that the term "beneficiaries" meant "any group of people and black designated groups in South Africa as defined in the Codes". The Codes are the codes issued in terms of the B-BBEE Act.*

59.4 *In 2020, the definition was amended to read: "any group of persons, including black people, black women or black designated groups, in South Africa".*

59.5 *Clauses 2.1 and 2.2 of the Trust Deed as amended in 2021 state of the following:*

2.1 *The principal object of the Trust shall be to promote, encourage and facilitate the development of black people, black women and black designated groups in South Africa in order to reverse the effects of historic disadvantage by ensuring that not less than 85% of the net income of the Trust from time to time is distributed for the benefit of black Beneficiaries.*

2.2 *The Trust shall seek to achieve its principal object as set out in clause 2.1 by focusing on programmes and initiatives for the benefit of Beneficiaries that are carried out through rural*

groups, women groups, youth leadership, community empowerment, faith based and community groups, and/or promote education or democracy".

59.6 The Batho Batho Trust is reported to be a regular funder of the ANC. According to the reports of the Independent Electoral commission ("IEC") on the declarations of the funding of political parties, the Batho Batho Trust has contributed R15 million to the ANC on each of the following dates: 21 December 2021, 20 October 2022, 4 April 2023 and 2 April 2024.

60. The NLC contended that neither the ANC nor Dr Dhlomo had a "direct financial interest" in Ringeta. Ringeta was of the same view.

61. The legal advice that I received from senior counsel was that there was indeed a contravention of this section in that Dr Dhlomo was a political office-bearer and had a direct financial interest in a shareholder or Ringeta.

62. It was also pointed out to me that there may be a contravention of paragraph 2.4.1.4 of the RFP, even though the RFP goes beyond what is stated in section 13(2)(b)(iv) of the Lotteries Act, in that Dr Dhlomo was a political office-bearer and had an indirect financial interest in a significant shareholder of Ringeta.

63. It was also pointed out to me that Mr Nhlanhla Nene, a former ANC Miniter of Finance, heads the Thebe Investment

Consortium (Pty) Ltd, which is a shareholder of Ringeta. In my view, this is irrelevant, as he is not a political office-bearer of the ANC.

Finding

64. *Notwithstanding the concerns about Ringeta's possible contravention of section 13(2)(b)(iv) of the Lotteries Act or paragraph 2.4.1.4 of the RFP, Ringeta was not my first choice because its projected rand value contributions to the NLDTF, especially after the exclusion of its gambling games, were much lower than Sizekhaya's*".

[38] So far, the formal chronology.

Ithuba's case

[39] The first leg of Ithuba's case is that the Minister's decision was vitiated by substantive irregularities. This contention was made for three reasons. The first was that there was no compliance with Section 13(3)(a) and (b) of the Act which provides that, when awarding the License the Minister shall take into account whether any person who appears to the Minister to be likely to manage the business or any part of the business of the National Lottery and that of the License, is a fit and proper person to do so and whether any person for whose benefit that business is likely to be conducted is a fit and proper person to benefit.

[40] The contention was further that the Minister could not have taken this into account because he did not have all the relevant facts before him and omitted to call for further investigations. It is common cause that the Security Services Agency conducted a probity assessment, however, it was not able to screen foreign persons or entities for fitness and propriety and had no alternative objective mechanism screening such persons. The only assessment which was

accordingly applied to foreign nationals was the "auto assessment" in terms of which bidders were only asked to explain whether shareholders were under investigation or had been found guilty of an offence, even though the RFP assessed fitness and propriety in terms of a broader set of criteria.

[41] The second ground for alleging that the Minister's decision was irregular was that Ithuba contended that the Minister could not reasonably have satisfied himself that the self-assessment or declaration by persons who said that they had not been convicted of an offence had in fact not been so convicted or were not under investigation. The contention is that the Minister was required to investigate the veracity of these declarations.

[42] The third submission was that the absence of direct financial interest of political office bearers requirement in terms of Section 13(2)(b)(iv) of the Lotteries Act has been expanded by the RFP so as to include indirect financial interests. The allegation was again that the Minister has failed to sufficiently have these investigated.

[43] The further basis of Ithuba's attack on the Minister's decision was that his decision was vitiated by procedural irregularities. A number of such irregularities were raised but the "most glaring" one, called as such by Ithuba, was that the creation and use of the Ministerial Committee was unlawful. The contention was that the RFP set out the process for evaluation and adjudication of applications and that it did not make provision for any such committee. Through the Ministerial Committee, the entire evaluation and adjudication process was effectively run afresh. Although Ithuba conceded that, in terms of *Gidani II,* the Minister was at liberty to rely on advisors, it contended that the Ministerial Committee and the mandate the Minister required it to perform, went beyond that of advice and instead usurped the roles of the Evaluation and Adjudication

Committees. This was also primarily because this scoring criteria prescribed in the RFP was "jettisoned", by the Ministerial Committee.

[44] During oral argument, Ithuba did not disavow itself any of the abovementioned aspects raised in its papers and in heads of argument filed on its behalf, but emphasised the following further contention, namely that the Minister's decision was *ultra vires* insofar as it pertains to the issue of fully committed funding at the time of the application. For purposes of this contention, Ithuba relied on clause 7.1.9 of the RFP which provides as follows: "*Each applicant must also be in a position to show, by the date of the issue of the license, that the finances for the application are irrevocably committed*".

[45] Clauses 23.15.5 and 23.15.5.5 of the RFP provide that, in terms of the "*debt and equity funding arrangements*", a successful bidder "*... must obtain fully committed financing from its funders before the Minister can award the license*".

[46] Ithuba argued that, in addition to the funds required for a performance bond and the guarantees issued in terms thereof, Sizekhaya had not indicated sufficiently that it had sufficient own resources or sufficiently committed finances. Ithuba argued that the issue is a binary question and that the Minister must, on reasonable grounds, have satisfied himself that such funding had been available prior to the award of the License. The fact that Sizekhaya had only in October 2025 obtained operational funding in addition to the performance bond, indicated that it had not, at the time of the award of the License, been in possession of fully committed funding.

[47] In *Gidani III*, where the issue was "*inadequate financial resources*" also featured, Mothle J found that a facility letter by a bidder's bank, which appeared to be "*... only subject to the standard administrative process of completing the legal and commercial documentation and that no further approval within the*

bank would be required ..." was sufficient. Mothle J found that the Minister did therefore not act irrational or unreasonably in accepting that the letter from the bank provided fully committed funding.

[48] In the present instance, Ithuba argued that the letter relied on by Sizekhaya, appeared to have more conditions than those in *Gidani III* and could be distinguished on the face thereof. The relevant annexure to Ithuba's supplementary founding affidavit indicated that Sizekhaya's banker indicated only that it had a longstanding relationship with Sizekhaya's major shareholder "*... and is therefore pleased to provide ... a letter of support for the debt and performance guarantees in an aggregate amount ... in order to facilitate the conclusion of the proposed transaction. This letter of support is subject to, inter alia ... being satisfied with the structure for proposed facility including, but not limited to ... shareholding and support provided for the proposed facilities suitable to* [the banker], *final credit and/or investment committee approval and ... the execution of all legal documentation in relation to the proposed funding the proposed transaction, the fulfilment of all conditions precedence therein and the same becoming unconditional to the satisfaction of* [the banker] ...". Ithuba's case is that this arrangement constituted a "funding gap" and did not comply with the requirements of the RFP.

Ringeta's case

[49] Ringeta relied on five grounds of attack being (1) that the appointment and mandate of the Ministerial Committee was unlawful, (2) the Ministerial Committee's re-evaluation was not contemplated in the RFP, (3) there was an unlawful and irrational exclusion of proposed games when Ringeta's bid was considered, (4) there was an irrational non-consideration of Ringeta's income feasibility, (5) there was insufficient consultation with the NLC as contemplated in the Act and the RFP.

[50] In respect of the first point, namely the appointment of the Ministerial Committee, Ringeta made common cause with the submissions made by Ithuba in this regard but underlined that the RFP expressly did not provide for a structure such as the Ministerial Committee. Its mandate by the Minister to re-evaluate that which had gone before and which was expressly provided for in the RFP, was unlawful. This unlawfulness was exacerbated by the fact that, after the QAC had already evaluated all the previous procedures, the Ministerial Committee appointed its own experts to assist with the performance of its mandate. This amounted to a true re-evaluation by a body not contemplated in the RFP.

[51] Unlike the Evaluation Committee and the Adjudication Committee, which were required to apply the criteria set out in the RFP, the Ministerial Committee was mandated to simply "*have regard to it*". It did not apply the same criteria and accordingly that prescribed in the RFP was, as already argued by Ithuba, jettisoned. An example was the revised evaluation of the technical points allocated by the evaluation committee. Where Ringeta for example passed the prescribed minimum 70% contemplated in paragraph 8.5 of the RFP, the Ministerial Committee negatively "*had regard*" to such an extent to Ringeta's technical partner, that it distorted the process contemplated by the RFP. It also had the effect of subverting the findings of the Adjudicating Committee.

[52] Ringeta also argued that the exclusion of games proposed by it was unlawful and irrational. In terms of the RFP bidders were encouraged to come up with novel games in order to generate the best return on funds. Although some "*regulatory risks*" had been identified in some of Ringeta's proposed games, this did not justify a wholesale exclusion of R17 billion potential income in the assessment. This is however what the Ministerial Committee had done by reliance on its own expert in this regard, Genesis. Even Genesis's own report was furnished in highly qualified language and did not justify any such wholesale

exclusion. The consequence is that Ringeta argued that there was no rational basis for the Minister to exclude this aspect of Ringeta's bid in making his decision.

[53] In terms of the RFP the financial case put forward by each applicant was critical if not determinative. The RFP provided for a mechanism for the assessment of the credibility or realistic expectation of each applicant's case. Applying these criteria, Ringeta argued that it was ranked first even if the aforementioned R17 billion possible revenue were to be excluded. Even if the report by the expert utilised by the Ministerial Committee were to have been relied on by the Minister, there was no reasonable explanation how he could not follow its recommendation. Ringeta therefore argued that it was irrational for the Minister to ignore the provisions of the RFP, to ignore Genesis's recommendations and to choose a successful bidder whose proposals were "*ambitious*" as opposed to proposals which were realistic.

[54] The Ministerial Committee gave its report to the Minister on 25 April 2024. The Minister said that he instructed the NLC to commence negotiations, which the NLC says it started on 30 April 2026. Apart from one meeting, identified by the NLC as having taken place on 14 April 2025, it was alleged that there was no evidence by the NLC or the Minister that it had in fact "*consulted*" with each other. This, Ringeta argued, was a mandatory requirement and not a mere formality. To override the consultation process as prescribed in the RFP amounted to a fundamental procedural irregularity.

The EFF's case

[55] As the EFF sought to attack Section 13(2)(b)(iv), which also prescribed requirements for the assessment of bidders, it was appropriate to hear its argument prior to that of the respondents.

[56] The EFF's argument was as follows: any exercise of public power must be rational. Section 13 is an anti-corruption provision that aims at excluding possible political patronage. As a matter of principle then, political players should be excluded and such exclusion should not be limited to only direct but also to indirect financial benefit.

[57] As a basis for the need for the section to be interpreted expansively, the EFF argued that the case of Sizekhaya exemplified the potential of political influence. While making the submission, the EFF was at pains to explain that it did not seek to impugn any of the role-players identified in the AmaBhungane media report referred to earlier, including the Deputy President, but merely sought to correct a deficiency in the Act. The EFF argued in addition that, where Sizekhaya was registered a mere 3 days before the February 2024 deadline for the submission of applications for the License, its application therefore requires, as is often needed in procurement environments, more careful scrutiny

The Minister's case

[58] In addition to the reasons already provided by the Minister and which form part of the record, as already referred to earlier, the Minister contended (in extensive heads filed on his behalf), that the terms of the RFP are capable of an interpretation that affords the Minister the power to appoint a committee such as the Ministerial Committee. For instance, clause 1.1.2 of the RFP defines advisors to mean *"... external third party advisers or consultants appointed by the Minister ..."*. The Minister further contends that the same objection to the Ministerial Committee raised by Ithuba and Ringeta had been considered and rejected in *Gidani II* where (at par. 24) it was found that *"... the RFP process, at this level, was not designed to identify how the Minister would make his decision ..."*.

[59] Departing from this premise, the Minister contended that neither contention by Ithuba and Ringeta, namely that he was not entitled to establish a committee that was not expressly contemplated by the RFP, nor the contention that the Ministerial Committee impermissibly assumed functions reserved for the Evaluation Committee and the Adjudication Committee, was correct. He maintained that the sole purpose of the Ministerial Committee was to assist him with evaluating concerns that had arisen from the material already before him and to provide advice on issues relevant to the exercise of his statutory powers. The objection to the manner in which the Minister chose to obtain and consider expert advice, should not be elevated to a ground of review.

[60] Counsel for the Minister argued that the issue was whether the assistance sought by the Minister from the Ministerial Committee was rationally connected to the discharge of his statutory responsibility in terms of section 13 of the Act. In this regard, the Minister expressly stated that "*... given the magnitude, complexity and importance of the matter, I formed the view that I was not in a position to make a final decision on the award of the licence ... in light of the issues identified through the evaluation, adjudication and quality assurance processes, I was not satisfied that I had sufficient clarity on all material aspects necessary to make a final decision. I accordingly determined that further focus to consideration of the material was required ... in that context, the Ministerial Committee was convened to assist me in discharging my statutory responsibilities ...*".

[61] The Minister elaborated on his concerns after he had received the recommendations and reports from the Evaluation Committee, the Adjudication Committee and the QAC which he had conveyed to the NLC at a meeting held on 20 December 2024. These concerns related to the manner in which the

evaluation and adjudication processes that have been concluded, the absence on advice on whether certain applicants ought not to have been disqualified, notwithstanding apparent non-compliance with pre-qualification requirements or failures to meet technical evaluation thresholds, whether there had been sufficient and proper consideration of the probity, B-BBEE and localisation and supply development criteria, whether a political party or political office bearer had direct or indirect financial interest in an applicant or its shareholders and whether a particular bidder was required to have a WLA-SCS certificate in terms of par. 11.21 of the RFP. In short, the Minister had concerns about all relevant considerations contemplated in the RFP

[62] A further concern had arisen regarding the nature of certain games proposed by certain bidders and whether such games constituted lottery or sport pool games or fell within the category of gambling activities regulated under the National Gambling Act. It was particularly in respect of the last issue, which the Minister described as a "*technical issue*" that the Ministerial Committee obtained input from Legends, a specialist consultancy in the gaming industry to assist in understanding the nature and classification of those games. The Minister contends that the input from the specialists contracted by the Ministerial Committee, assisted him in understanding and interrogating particular issues arising from the bids and the reports *"... and did not involve a fresh evaluation or scoring of the bids ...".*

[63] The Minister continued in his affidavit to explain that the Ministerial Committee had considered information on the technology partners associated with various other bidders, including their experience, operations, technical capabilities and ability to support the proposed lottery model. In doing so, it identified that a number of the applicants were supported by established International Technology Providers with extensive operational footprints, proven

track records in lottery environments and the capacity to support both retail and digital platforms at scale. These factors were considered indicative of the ability to support a complex, high volume national lottery over the licence period.

[64] On the issue of localisation the Minister stated that the material before the Ministerial Committee reflected that the National Lottery does not fall within sectors designated for local contact which are generally directed at manufacturing industries such as steel, plastics and cement. This gave rise to inherent difficulties in applying conventional local content measures to an activity that is predominantly technology- and service-based. The Ministerial Committee noted a number of limitations in a manner in which applicants had presented localisation and expressed it as a percentage of the overall projected expenditure rather than in terms of identifiable and verifiable components of local procurement. The Ministerial Committee had also noted that the applicants' financial models did not consistently provide itemised disclosure of forecast capital expenditure and operating costs specifically attributable to supply development and localisation. These constraints caused the Ministerial Committee to have extensive regard to the Genesis report which assessed the localisation and supply of development proposals against the criteria defined in the RFP. The Minister conceded that the localisation and supply and development had been considered by the Evaluation Committee but stated that, in the course of the Ministerial Committee's consideration, Genesis "... *was requested to revisit aspects of its earlier work to address the identified limitations, including lack of comparability, the absence of consistent financial disclosure and the need for a more structured analysis of the localisation proposals*". The Minister was at pains to explain that this did not amount to applying a new set of criteria but an "*identified set of criteria drawn down from the relevant provisions of the RFP*".

[65] In respect of the issue of whether games should be excluded if, by their nature, they resembled gambling games, the Minister stated that the financial implications of these games were considered in the context of the bidders' business and revenue models. Where projected revenue depended, in part, on games whose regulatory status was uncertain, this raised concerns regarding the liability of those projections. Genesis was accordingly requested to consider the financial models that took into account the potential non-inclusion of such games. Its investigative exercise illustrated that, in those instances where the impact of the exclusion of certain games was significant, such exclusion or adjustment affected underlying assumptions relating to growth, sustainability and long-term viability.

[66] The Ministerial Committee's investigation regarding the B-BBEE status of the applicants, reflected that all applicants, including Sizekhaya, demonstrated a commitment to the social responsibility objectives contemplated in the Act, including the advancement, upliftment and economic empowerment of persons disadvantaged by unfair discrimination. While differences existed in the manner in which the various elements of B-BBEE were structured and reflected across the various applicants, the Ministerial Committee considered these aspects together with other components of the applications and the Minister stated that he had regard to the considerations formulated by the ministerial Committee in assessing the applicants' overall credibility fee's ability and sustainability.

[67] On the issues of probity, the Minister stated that the material before the Ministerial Committee further included findings of the QAC in relation to the fit and proper requirements contemplated in section 13 of the Act. In this regard, it was recorded in respect of some of the applicants, concerns arose from credit records and related matters, whereas in respect of Sizekhaya, no material concerns were identified. In relation to Ringeta, the QAC identified a concern

whether there existed a financial interest by a political party or political office bearer. The report sets out the shareholding structure involving the Batho Batho Trust and associated entities as well as the role of Dr Sibongisene Maxwell Dhlomo, a member of parliament and a trustee of the Bahto Batho Trust. The report recorded that the Batho Batho Trust had made substantial financial contributions to a political party and that in light of the structure and role of the trustees, a legal opinion was obtained whether this constituted a direct financial interest. The Minister reported that, according to that opinion, the prohibition in section 13(2)(b)(iv) is to be interpreted broadly and the involvement of a trustee who is a political office bearer with the ability to exercise control over the trust funds gives rise to a direct financial interest for purposes of the section. The opinion apparently further recorded that on this basis, section 13(2)(b)(iv) precluded awarding the License to Ringeta. Notably, despite numerous requests therefor, the opinion was never produced as part of the record or the papers before court.

[68] Apart from having explained why he had appointed the Ministerial Committee, a separate part of the Minister's answering affidavit was devoted to the Ministerial Committee's recommendations itself. In that part of the affidavit, the Minister repeated the findings already referred to above, whereafter he stated that: "... *in considering the MC's report, I did not treat its recommendations as determinative. Rather, I had regard to the reasons advanced, the underlying material, and the extent to which conclusions were supported by the broader record. The report helped to consolidate and address matters I had already identified as required in further enquiry and it provided a structured basis for assessing the bids in light of the applicable statutory and RFP requirements. My decision was therefore not made in isolation, nor was it based on a single report. It was the product of a cumulative process, informed by multiple layers of evaluation and adjudication as well as my own consideration of the material. The*

timing of the decision following the receipt of the MC's report reflects the fact that the issues had been under consideration for some time and had been the subject of prior engagement, rather than any uncritical acceptance of the MC's recommendations".

[69] Following on the above, the Minister then set out his reasons for his decision to award the license to Sizekhaya. He again stated that he had considered all the criteria in the Act, as amplified by the RFP and he repeated his explanations regarding the Ministerial Committee's contribution and "*clarification*". After having eliminated the other unsuccessful bidders, the Minister was left with Boshele, Ithuba, Ringeta, Sizekhaya and Wina Njalo as contenders. He stated in this regard the following: "*As between those applicants, the result was fairly close. In substance, it was as described in my reasons, a photo finish. Those applicants were all capable and serious contenders. Each had access, through its technology partner or otherwise, to the requisite knowledge and experience. Each appeared to have access to sufficient financial and other resources. Their stated capacitation plans were generally satisfactory, their localisation and B-BBEE proposals were broadly sound and no material concerns were raised to me that would suggest that, in general, they lacked the competence to conduct the National Lottery and Sports Pools. The critical question therefore was what distinguished one from the other when they were assessed comparatively against the statutory and RFP criteria*".

[70] After having discussed Bosele and Wina Njalo, the Minister's reasons in respect of the remaining three bidders were set out in a separate discussion. He stated that in relation to Ithuba he recognised several strengths of its application. Ithuba had a clear localisation advantage because its technology partner, Paytronics, was locally developed and locally based. Ithuba's localisation supplier development strategies were stronger than the others and its B-BBEE

position was also comparatively strong. Its business plans were regarded as credible and pragmatic and it was assessed at being likely to meet its projected growth. At the same time however, the Minister expressed concerns. He noted that Paytronics had not been WLA-SCS certified at the time of the submission and its scale and track record were more limited than those of the larger international partners. He also expressed concerns regarding the relative modesty of Ithuba's plans to deal with competition and rejuvenate the current suite of games. The Minister says he had regard to concerns expressed regarding changes to Ithuba's Lotto and Powerball matrices which could affect the attractiveness of those games. He also concluded that Ithuba's proposed contribution percentage to the NLDTF was the lowest amongst the strong contenders.

[71] Regarding Ringeta, the Minister noted that it performed consistently well throughout the evaluation process with a well-balanced bid and a technology partner which enhanced the credibility of its proposal. Its financial model and business plans were assessed positively. The Minister stated that although Ringeta's projected Rand-value contributions to the NLDTF were significant, it was not his preferred bidder. He stated that this was because its projected contributions, particularly after excluding games outside the scope of the Act, were materially lower than Sizekhaya's projections. The Minister expressly mentioned that he did not exclude Ringeta on the basis of political involvement or any alleged contravention of section 13(2)(b)(iv) of the Act.

[72] Lastly the Minister gave his reasons for choosing Sizekhaya. He said that in his assessment Sizekhaya presented a credible and viable proposal. Its technology partner, Genlot, was an experienced provider capable of supporting the National Lottery and its technical capabilities were assessed as "robust". The Minister conceded that, "... *while certain aspects of its proposal attracted criticism, including its projected spend on new games and the need for further*

clarity regarding the lease agreement with Genlot ...", these concerns did not detract from Sizekhaya's overall viability of its technical and operational model. Sizekhaya's projected contributions to the NLDTF, even after the exclusion of games falling outside the scope of the Act, remained higher than those of the other bidders.

[73] In particular, the Minister relied on Genesis's assessment of Sizekhaya's financial model and business plans. The Minister indicated this to be a "*central strength*". Genesis assessed Sizekhaya's plans as feasible and attainable. Although its projected growth was described as "ambituous" it was not assessed as unrealistic. The Minister stated that what is of considerable importance to him, was the projected Rand-value contribution to the NLDTF, which was the highest of the leading applicants. The reason for this consideration was the statutory obligation to consider which applicant was likely to maximise the nett proceeds for distribution to good causes.

[74] Regarding the concerns about this aspect the Minister stated that even if Sizekhaya were not to achieve its projected revenues in full, the material before him indicated that it would remain "highly competitive relative to the other leading applicants". Put differently, the Minister said, it would have to underperform materially before its projected returns would fall below those of Ringeta, Ithuba or Wina Njalo. Having regard to the full record, the Minister said that he concluded that Sizekhaya "*pipped the other leading contenders to the post*".

The NLC's case

[75] The NLC, in an extensive affidavit, again explained the statutory requirements and the background facts already referred to above. It traversed the workings and processes of the Evaluation Committee and the Adjudication

Committee and detailed their reports. All these already formed part of the record and have been referred to above and by the other parties.

[76] The issue of permissible games was also dealt with the NLC. It explained that the RFP defines the License as authorising the conduct of a National Lottery and Sports Pools. It does not contain a breakdown of "*permissible game types*", or an exhaustive list of games that may or may not be offered. The game types are determined by the statutory nature of a lottery. The industry classification which distinguishes lotteries from gambling activities, indicate that lottery and lotto style games are permissible and governed by the Act, which includes sports pools, while gambling games are governed by the National and Provincial Gambling Acts. At a briefing cession on 30 and 31 August 2023 in response to applicants' questions, the NLC addressed this distinction and explained the differences to all applicants, prior to their submissions. The games that were subsequently excluded, were therefore those about which doubt existed whether they properly constituted lottery or sports pool games and whether they were not in the nature of gambling activities.

[77] Particularly in response to one of the concerns of the Minister referred to earlier, the NLC also explained the references to the WLA-SCS certification, which refers to a World Lottery Association security control standard. In this regard clause 11.21 of the RFP provides as follows: "*The applicant must ensure compliance to the following best practice standards and information technology governance frameworks: World Lottery Association's security control standard. WLA-SCS (Part A and Part B) is the lottery sector's only internationally recognised information security standard. ISO27001, the international best practice standard for information security management system and compliance requirements, is incorporated into the WLA-SCS standard and control objectives for information and related technology (COBIT) provides an IT governance*

framework that helps in delivering value from IT and the understanding and managing risks associated with IT ...".

[78] The WLA-SCS consists of four parts that specify minimum controls necessary for the effective management of security and integrity in lottery and sports betting operators, where the first part incorporates ISO27001 compliance in a global scope, the second part furnishes additional 64 lottery and gaming specific security and integrity controls representing best practice, the third party contains 21 controls based on products and services offered by lottery and sport betting suppliers and the fourth and final part contains 11 controls required to participate in games run by the US Multistate Lotteries Association. It was therefore a requirement and a necessary one that all applicants or at least their technical operating partners, have the necessary certification to ensure integrity of their operations.

[79] The NLC also expanded on its interactions with the Minister. In particular, it listed "face-to-face" interactions after the delivery of its report and asserted that the meetings between it and the Minister and "related continuous ongoing correspondence" constituted compliance with the statutorily required consultative process.

Sizekhaya's case

[80] In dealing with Ithuba's application, Sizekhaya's first contention was that, where Tolmay J had decided matters of law as opposed to matters of fact, there was no reason why this court should not follow her decisions. It further contended that Ithuba had not pleaded new factual material regarding the attack on the Minister's acceptance that Sizekhaya had fully committed funding. Sizekhaya contended that Ithuba was "simply rehashing the same legal argument that have already been rejected". It needs to be pointed out however that Tolmay

J had in her judgment expressly stated that a court dealing with an application for interim relief should be careful when taking a peek into review grounds. She expressed the view that regarding those grounds, her role was limited to an analysis of whether an interim interdict should be granted or not and was not binding on the review court. This restraint was expressed in respect of both matters of law and of fact. Furthermore, it appears that at the consideration of the application for interim relief in the urgent court, the documentation relating to Sizekhaya's funding was not dealt with as extensively as in this review court. Ringeta had also not yet featured in the litigation at that time.

[81] Nevertheless, Sizekhaya repeated the evidence adduced in the interim application (with substantial redactions in accordance with the confidentiality regime agreed to by the parties and imposed on the papers).

[82] The unredacted evidence indicated that the Gold Rush Group was a 50% shareholder of Sizekhaya. Its ultimate holding company, Gold Rush Holdings Limited was a JSE listed entity with a market capitalisation of over R1 billion. These shareholders would, through their bankers, provide funding for whatever initial capital expenditure Sizekhaya might have needed, be it in respect of lottery terminals to be installed in retailers or otherwise.

[83] Sizekhaya pointed out that Tolmay J had held (in paragraphs 14 to 18 of her judgment) that section 13(2)(b)(ii) only requires the Minister to be satisfied that a bidder has access to the necessary financial resources. This entailed forming a rational opinion and did not require absolute certainty or unconditional documentation. Insofar as the recourse to resources or loan facilities were subject to conditions precedent, including final documentation and award of the Licence, these were correctly assessed by the Minister as being standard administrative conditions. When considering the financial viability by the Minister with reliance on the Genesis report, which affirmed the credibility and viability of Sizekhaya's

structured funding, he had acted rationally. Sizekhaya also referred to the observation made in *Gidani III* that expecting any commercial entity to commit irrevocably before any final award would be absurd and that neither the Act nor the RFP required such absolute certainty or unconditionality.

[84] According to Sizekhaya, Ithuba's contention that it was not sufficient that Sizekhaya had paid the required licence fees, provided the Minister with a performance bond and had in placed a finance lease agreement for the terminals when it concluded the Licence agreement, should be rejected. The same rejection applied to Ithuba's contention that Sizekhaya and not Gold Rush, should have concluded the facility agreement for the R240 million working capital before concluding the Licence Agreement, irrespective of the fact that such working capital funding was not immediately required and would only be required much later during the transaction period.

[85] Based on the above, Sizekhaya argued that the rationality test does not require that the Minister's decision be the only or even the best of possible options, it only has to be one of a possible myriad of options, as long as it is reasonable. Even if the Minister had displayed a "risk appetite"[9], a decision based thereon was neither irrational nor unreasonable. The argument was further that, in circumstances where all applicants were ring-fenced companies, which was a requirement imposed by the RFP, it would not have been unreasonable to have regard to a bidder's main shareholders and its undertakings. This would also include the shareholders' relationships with financial institutions. When viewed from this perspective, Sizekhaya contends that the Minister's satisfaction as to Sizekhaya's committed funding via its shareholders, was neither unreasonable nor irrational.

[9] *Gidani II, at para. 51 and 52.*

[86] On the issue of how the Minister arrived at his decision, Sizekhaya argued that the Minister was not bound to use the weightings applied to various criteria by the Evaluation Committee or the Adjudication Committee. The RFP was only designed to provide a mechanism of how these two committees evaluated the applications. It was not designed to predict how the Minister makes his decision and, unless one were to find that the judgments in *Gidani II* and *III* were clearly wrong on this issue and how those judgments had evaluated the role of the RFP, then it must follow that the Minister was not bound by the rankings or determinations arrived at by these two committees, to which one can add the verification determination performed by the QAC.

[87] Sizekhaya further argued that once it is accepted that the RFP only provides for the evaluation processes, ending with recommendations to the Minister by the NLC, then the RFP does not prescribe in what manner the Minister has to reach his decision. Sizekhaya argued that the use of the Ministerial Committee by the Minister was entirely reasonable and if he had not invoked such a mechanism, he could be accused of merely rubber-stamping the recommendations of the other committees, or even the NLC.

[88] In respect of Ringeta's case, Sizekhaya advanced the same argument and argued that the Minister's reliance on the Genesis report was not unreasonable and if that had resulted in different weighting being applied, then the Minister was entirely entitled to rely thereon and that this was dispositive of the rationality argument.

[89] Regarding the issue or probity and particular the accusation by Ithuba that insufficient probity examinations had been performed in respect of the Chinese company, Genlot Game Technology Company Limited, Sizekhaya's answer was that there was no contractual relationship between Sizekhaya and the Chinese company, Sizekhaya's contract was with the South African company Genlot SA

Information Technology (Pty) Ltd. When probity is to be discussed, it is limited to shareholding of an applicant itself and neither the RFP nor the Act extends the requirement to shareholding of contractors.

Evaluation

[90] From what has been stated above, it is clear that there are three main issues which may be dispositive of the whole matter. These are the issues relating to the Ministerial Committee, the committed funding issue and the probity issue. The lastmentioned also encompasses the issue raised by the EFF. I shall deal with these three issues separately hereunder.

The Ministerial Committee

[91] The first question to be answered is whether the creation and use of the Ministerial Committee was permitted by the RFP and, if not, whether the Minister's reliance on the report of the Ministerial Committee constitutes a procedural irregularity or whether he had acted *ultra vires* in doing so. In my view, it could notionally be both.

[92] As already indicated, the RFP regulates the process for the award of the license and its contents may not be disregarded or deviated from "at whim"[10]. The RFP does not make any mention of the creation of a Ministerial Committee. It envisages evaluation by the Evaluation Committee and adjudication by the Adjudication Committee, with quality assurance throughout. Thereafter a final quality assurance is performed by the QAC, with members thereof appointed by the Minister. The final stage envisaged by the RFP was when the Minister, after consultation with the NLC, would take the final decision to award the License[11].

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[10] *Allpay* at para 40.

[11] This framework is dealt with in detail in the RFP, but features right at the commencement thereof. After the definitions set out in clause 1, clause 2.1.5 of the RFP explains the process to bidders as follows: *"The Minister, after consultation with the NLC, is responsible for issuing a license in terms of the Lotteries Act...This follows an evaluation process, independent audit thereof by external auditors and concluding negotiations for a license".*

[93] On the face of it then, the unilateral insertion of a further process, namely a re-evaluation of everything that had gone before by another body, in this case the Ministerial Committee, would be procedurally unfair. This procedural unfairness is exacerbated by the fact that *in casu* such insertion took place without the knowledge of the applicants and permitted a different weighting to be applied to the criteria which the RFP had informed the bidders would be used to assess their bids.

[94] In addition to the procedural unfairness, the creation of a new evaluative body not contemplated by the RFP, might be beyond the powers of the Minister and, if so, then *ultra vires*. It is common cause that, although he was empowered to do so[12], the Minister had not made any changes or "modifications" to the RFP to "amend or augment" it by, for example, providing for a re-evaluation process.

[95] On behalf of the Minister it was argued that the creation and use of the Ministerial Committee was permitted by the RFP and therefore neither unfair nor *ultra vires*. This argument has two legs. The first is that the RFP contemplates that the Minister (and the NLC for that matter) may make use of "advisors" and the second leg is that the RFP does not prescribe the method by which the Minister must make up his mind.

[96] Regarding the first leg, the only definition of advisors contained in the RFP, is that it "*...means external third-party advisers and consultants appointed by the Minister, the DTIC[13] or the NLC in respect of this RFP...*"[14].

[97] The Ministerial Committee, although it in turn made use of consultants, was not made up of outside third parties, nor were the members themselves

[12] In terms of clauses 2.10.1 and 6.1 of the RFP.
[13] The Department of Trade, Industry and Competition.
[14] Clause 1.1.2 of the RFP.

consultants. The members were, save for some exclusions, such as an outside senior counsel, the same as the QAC, but now acting with a different mandate.

[98] Although the RFP, when making reference in various of its provisions to decisions taken by the NLC and the Minister, such as whether a response to a query by a bidder might unduly benefit it over other bidders, include references to "advisors", all the crucial provisions relating to issues about which the Minister must be satisfied or when he makes his final election, significantly excludes such references.

[99] On a pure linguistic evaluation of the provisions of the RFP, I am therefore of the view that the first leg of the Minister's argument, namely that the RFP provided that he may make use of "advisors" to reach his conclusion and that such use extends to the creation of a new committee, is not correct. The members of the Ministerial Committee, were neither "advisors" of the category contemplated by the RFP, nor did they merely "advise". The members were firstly, as indicated earlier, largely in-house departmental employees as opposed to being third parties and secondly, they ran, in the words of the applicants a "parallel process" to that of the Evaluation Committee and the Adjudication Committee. This "parallel process" was also not an evaluation and advisory process, but a complete re-evaluation process with its own, unilaterally assessed criteria. The Minister's assertion that these criteria were "drawn down" from the RFP cannot hold water. Apart from the linguistic absence of foreseeing such a process, a purposive interpretation[15] of the RFP indicates that it contemplated a process which is fair and made known to applicants before they embarked on tailoring and submitting their applications. A subsequent re-evaluation by an unknown body was clearly not envisaged by the RFP and should therefore not have been permissible.

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[15] See *Natal joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

[100] This brings me to the second leg of the argument advanced on behalf of the Minister, namely that neither the Act nor the RFP prescribes how the Minister must make up his mind and if he chose to do so by way of input from a new committee appointed by him, then so be it. The fallacy, to my mind, with this argument lies in the terms of reference given to the Ministerial Committee. It was not required to look at or consider the reports put before the Minister and to advise him thereon, it was required to re-evaluate all the scoring criteria, which it did. New evaluations were performed with the use of new consultants, which resulted in new rankings and preferences of bidders. The results of this "parallel process" were adopted by the Minister, despite his disavowal thereof, to the extent that his reasons for his decision, as quoted earlier, often followed the Ministerial Committee's recommendations word for word.

[101] I accept the Minister's bona fides and will not go as far as to find that he had abdicated his decision-making power to the Ministerial Committee or that he had improperly followed its lead, but I do find that the creation and use of a committee not contemplated by the RFP amounted to an unlawful and procedurally unfair manner in which the Minister had decided to exercise his decision-making powers.

[102] It follows that the decision falls foul of the procedurally fair requirement for administrative actions[16] and must be set aside.

The committed funding issue

[103] As already indicated earlier, the conditions precedent for the furnishing of funding to Sizekhaya required more than the mere "*standard administrative processes*" accepted as sufficient in *Gidani III*, but the ultimate question still is

[16] Section 3 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

whether the Minister had acted reasonably in being satisfied with the proposal put forward by Sizekhaya.

[104] It is clear from the papers that the Minister had been aware that Sizekhaya's funding was subject to certain conditions precedent. When considering this aspect, the Minister permissibly had regard to the Genesis report[17], which affirmed the credibility and structure of Sizekhaya's structured funding plan. The absence of a finalised loan agreement did not render the application non-compliant and I have already referred thereto that it was remarked in *Gidani III* that to expect a commercial entity to commit irrevocably by way of a final agreement prior to the award of a license or the finalisation of the license agreement itself, would be absurd. This view was also shared by Tolmay J in the preceding application for an interim interdict. I respectfully align myself with these views.

[105] I further find that the following finding in *Gidani II*[18] is also applicable to this dispute (where the shoe was on the other foot and Ithuba was the successful applicant): "*Perhaps the decision can be characterised as displaying an excessive appetite for risk...Even if the decision to appoint Ithuba as the Preferred Applicant can be criticised on this score, it is neither irrational nor unreasonable*". Although the above comments were made in respect of projected income and turnover and not in respect of funding commitment, the funding issue is not as linear as the applicants suggest.

[106] It was not unreasonable for the Minister, when considering the prospective funding of Sizekhaya, to also look at the capability of its shareholders. I accept the argument that this is even more so when one must bear in mind that each bidder was required to be a single purpose entity, ringfenced only to run the

[17] As already found, the use of the Ministerial Committee was impermissible. The Minister may, however, have made use of consultants, such as Genesis, which fell into the definition of "advisors", as earlier indicated.
[18] At paras 51 and 52.

National Lottery and nothing else[19]. It was therefore also neither unreasonable nor irrational for the Minister to have regard to the backing and support of Sizekhaya's shareholder's relationship with its own banker. Having done so, the Minister was "satisfied", despite associated contingent risk. I find that this was neither irrational, nor unreasonable and that the review attack on this aspect must fail.

The probity issue

[107] The probity issue encompasses two aspects. One relates to possible political patronage or benefit and the other to prospective applicants being fit and proper".

[108] In terms of section 13(2)(b)(iv) of the Act, read with the definitions contained in section 1 thereof, the Minister had to be satisfied that no political party, political office bearer, which includes a member of Parliament or provincial legislature, a member of a house or council of traditional leaders, a member of a municipal council and any official of a political party, alliance or movement, has any direct financial interest in an applicant for the award of the Licence or a shareholder of such applicant. The RFP extended this requirement to include also indirect financial interests.

[109] In terms of section 13(3) of the Act, the Minister also had to take into account that the persons who would be likely to manage the business of running the national Lottery would do so "*with all due propriety and strictly in accordance with the Constitution...*".

[110] In order to assess and verify these requirements, the SSA had conducted a vetting process and another consultant, Experian, had conducted credit checks.

[19] As prescribed in clause 5.2.3 of the RFP, hence also the suffix "RF" to the applicants' names.

[111] In respect of Ringeta, the position in relation to the above issues, were found to be the following: Ringeta Consortium Holdings (Pty) Ltd (Ringeta Consortium) was a 51% shareholder of Ringeta. Thebe SPV 021 (Pty) Ltd (Thebe) was in turn a 49% shareholder of Ringeta Consortium. Thebe Investment Consortium (Pty) Ltd (Thebe Investment) was in turn the sole shareholder of Thebe. The Batho Batho Trust (BBT) was a 70% shareholder of Thebe Investment. Dr Sibongiseni Dhlomo is an ANC member of Parliament and is a trustee of BBT. Thebe Investment is headed by Mr Nhlanhla Nene, a former Minister of Finance.

[112] The AC had found that Dr Dhlomo is not a beneficiary of the BBT and therefore holds no direct or indirect financial interest therein. It further found that "*the mere receipt of funding by a political party from a shareholder of an applicant [for the License], in the absence of other direct financial interest held by the political party in an applicant or shareholder of that applicant does not fall within the scope of section 13(2)(b)(iv)* …".

[113] The QAC disagreed and recommended that the Minister obtain legal advice on this point. Apparently the Minister has sought such advice, but its outcome is unknown. In addition, the QAC recommended in respect of both Ringeta and Sizekhaya that, were the Minister to appoint either of them, that undertakings be obtained that they would not fund any political parties. I found no indication that the Minister had seriously considered this recommendation by the QAC. He will have to do so when reconsidering his decision pursuant to the finding already reached above.

[114] The EFF's contribution to this issue is that, against the backdrop of historically identified improper flows of millions of Rands to entities connected to NLC members, tabled by the Special Investigating Unit (SIU) before the Portfolio Committee on Trade, Industry and Competition, it contended that the

scope of section 13(2)(b)(iv) should not be limited to only direct financial interests, but also indirect financial interests. It incorporated by reference its papers delivered initially in the review application launched by Lekalinga. Therein, with reliance on what was labelled investigative journalism by way of reports by AmaBhungane dated 22 June 2025 and 27 June 2025, concerns were raised relating to indirect links of politically connected individuals. The allegation was that Ms Khumo Bogatso, who is the sister of Deputy President Paul Mashatile's wife, Ms Humile Mashatile, is a director and co-owner of Bellamont Gaming. She is also engaged to Mr Sibusiso Shabalala, who is a cousin of Mr Moses Tembe, who also serves as a director of Bellamont and who is the chairperson of Sizekhaya. Bellamont is a minority shareholder of Sizekhaya.

[115] I have already indicated that the EFF made it clear that it did not impugn any of the persons referred to above, but merely sought, as a matter of law, to have the requirement contained in the Act widened.

[116] A court must always guard against overstepping the line delineating the separation of powers. It is surely within the ambit of Parliament to broaden the scope of section 13(2)(b)(iv) in the manner suggested by the EFF. Must this court then tread on legislative powers? It is not necessary to do so in the present instance as the RFP has already, by its terms, broadened the prohibition to include indirect financial interests. I find that I am therefore bound by the general principle that, where it is possible for a court to decide a case, be it civil or criminal, without reaching a constitutional issue, it should do so[20]. For this reason the relief sought by the EFF, cannot be granted and should be pursued by way of legislative reform.

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[20] *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs* 2000 (2) SA 1 (CC) a para 21, reliant on *S v Mhungu* 1995 (3) SA 867 (CC).

[117] Having reached the above conclusions, I find it unnecessary to deal with the other, more peripheral issues raised by the parties.

Remedy

[118] In the event that the Minister's decision is reviewed and set aside, none of the parties seriously contended that this court should substitute any decision for that of the Minister. The circumstances indicate that, where the decision of the Minister is reviewed, the appropriate relief should be a remittal. The parties however differed in their approach to the extent of the remittal and the extent of interim relief.

[119] Ithuba, in an amended notice of motion, proposed that the Licence Agreement concluded with Sizekhaya be declared unconstitutional, unlawful and invalid and that the matter be remitted to the Minister and the NLC "to re-run the tender process in terms of the RFP". It argued that there should not be any need for a suspension of the setting aside of the award and the agreement but, if it were to be suspended timelines need be determined for the re-running of the process.

[120] Ringeta, although it initially contended for a substitution, aligned itself with the views of Ithuba.

[121] The EFF contended that a declaration should be made on the unconstitutionality of the narrow confines of section 13(2)(b) which should then result in a suspension of the licence whilst the declaration of constitutional invalidity is referred to the Constitutional Court. Apart from the fact that the relief sought by the EFF should not be granted, for the reasons already stated, the wholesale suspension of the National Lottery would prejudice so many other innocent parties, as I shall indicate hereunder, that such relief would not be in the public interest.

[122] The Minister contended that, should the review be successful, it should be limited to his decision-making and not what had gone before and accordingly a remittal to himself should be more appropriate than a re-running of the whole RFP process. The Minister is also in favour of a suspension in the meantime.

[123] The NLC argued that the only just and equitable remedy, should the review succeed, was a referral of the decision back to the Minister for reconsideration within a stipulated time period with a suspension of such declaration of invalidity for a period of 12 months, divided as follows: 6 months to enable the NLC and the Minister to reconsider the award and make a fresh decision and 6 months from the end of that period to allow for transition for the successful applicant to take over the operations from Sizekhaya, should Sizekhaya not be confirmed again as the successful applicant.

[124] Once the remittal is contemplated, a court should also be mindful of not unduly fettering he discretion of a decision-maker by ordering restrictive directives. I shall therefore restrict the directions to those relating to the Ministerial Committee.

Grounds for suspension

[125] The following relevant considerations raised by the parties are material to the issue of the suspension of any declaration of invalidity: The NLDTF is established in terms of section 21 of the Act. In terms of section 26 of the Act, the revenue of the NLDTF is allocated for distribution to fund charitable expenditure, expenditure on or connected with the development of sport and recreation; expenditure on or connected with the arts, culture and the national historical, natural, cultural and architectural heritage and expenditure in respect of any other matter approved by the Minister for that purpose. If the suspension remedy is not granted, the public interest will be adversely and irremediably affected. Old-age homes, children's homes and the like all depend on this

expenditure to fulfil their functions in the public interest. Without regular contributions to the NLDTF from the uninterrupted conduct of the National Lottery, these good causes will be adversely affected. The final determination of the review applications, including by way of appeal, will take years to achieve. In those years, the NLC will not have funds to continue supporting the good causes as envisaged in the Lotteries Act. There is every justification to avoid this consequence and a suspension of the declaration of invalidity of the License Agreement, is therefore justifiable.

Costs

[126] I fand that, despite the fact that the EFF had not achieved success in respect of its application (and would have to revert to Parliament for the legislative amendments it seeks), it still bona fide pursued what it believed to be a Constitutional issue. I find that the *Biowatch*-principle should therefore apply. In respect of the review applications, I find no cogent reason why the customary rule that costs follow the success of litigation, should not apply.

Order

[127] In the premises, the following order is granted:

1. The decision of the Minister of Trade, Industry and Competition (the Minister) to award the Fourth National Lottery and Sports Pools License (the License) to Sizekhaya Holdings RF (Pty) Ltd (Sizekhaya), is hereby reviewed and set aside.

2. The License Agreement concluded between the Minister, the National Lotteries Commission and Sizekhaya pursuant to the award of the License is declared invalid.

3. The issue of the award the License is referred back to the Minister for reconsideration.

4. In taking the decision to award the License afresh, the Minister is directed to disregard the report of the Ministerial Committee and the recommendations made by it.

5. The declaration of invalidity made in para 2 above, is suspended for two consecutive periods of six months from date hereof, the first period to allow the Minister the opportunity to decide to award the license afresh and the second period to allow the Minister to negotiate and conclude a new Licence Agreement and to make transitional arrangements, should the decision be to not award the Licence to Sizekhaya.

6. The application by the Economic Freedom Fighters (the EFF) is refused.

7. In respect of the application of the EFF and the costs occasioned thereby, including the applications for intervention, each party thereto shall pay its own costs.

8. In respect of the applications by Ithuba Lottery RF (Pty) Ltd and Ringeta Consortium RF (Pty) Ltd, the first, second and third respondents in the respective applications, shall jointly and separately pay the costs of these applications.

9. All costs orders shall include the costs occasioned by the briefing of multiple counsel, including Senior counsel. For purposes of taxation, such costs shall be on scale C as contemplated by Rule 67.

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[redacted]

N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 03 July 2026

Judgment delivered: 2 November 2026

APPEARANCES:

Case no: 108644/2025

For the Applicant:	Adv A Cockrell SC together with Adv J Davis
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For the intervening party:	Adv M Ka-Soboto together with Adv T Masvikwa
Attorney for the intervening party:	England Slabbert Attorneys Inc. c/o Lautenberg Morris Attorneys, Pretoria
For the First Respondent:	Adv IV Maleka SC together with Adv JA Motepe SC & Adv KD Magano
Attorney for the First Respondent:	Bowman Gilfillan Inc., Pretoria
For the Second Respondent:	Adv H Maenetje SC together with Adv B Lekokotla & Adv N Sakata
Attorney for the Second Respondent:	Malatji & Co Attorneys, Sandton c/o Ditsela Attorneys, Pretoria

For the Third Respondent:	Adv F Snyckers SC together with Adv I Currie and Adv N Luthuli
Attorney for the Third Respondent:	Cliffe Dekker Hofmeyr, Johannesburg c/o Asger Gani Attorneys, Pretoria
For the Sixth Respondent:	Adv A Stein SC together with Adv M Z Gwala
Attorney for the Sixth Respondent:	Nortons Inc., Johannesburg

CASE NO: 228028/2025

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