

Special Tribunal declares land reform lease agreement unlawful

The Special Tribunal has declared a land reform lease agreement entered into between the Department of Rural Development and Land Reform and Cultiver Investments irregular and unlawful.



Image source: Alexas Fotos from [Pexels](#)

According to the Special Investigating Unit (SIU), the agreement was entered into in 2019 after it emerged that the department's then Minister Maite Nkoana-Mashabane "ordered the Department" to conclude the agreement for a chicken farm in Limpopo despite "three independent forensic reports advising against the lease".

"The lease agreement followed an agreement reached between Cultiver Investments and Ms Nkoana-Mashabane for Cultiver Investments to withdraw a High Court application on condition that the Department will sign a lease agreement. The High Court application sought to compel the Department to conclude a lease agreement following the expiry of a one-year caretaker agreement with Cultiver Investments in respect of Mike's Chicken farm.

"In May 2013, the Department and Mike's Chicken concluded an agreement for the sale of nine immovable properties. The immovable properties comprised of chicken hatchery farms which the Department acquired as a going concern for approximately R137m and appointed Cultiver Investments as a caretaker," the SIU said.

The three independent forensic investigations found that:

- There were irregularities in the approval process for the acquisition of Mike's Chicken.
- No due diligence was conducted on the project.
- No beneficiary verification or vetting was conducted.
- There was no recapitalisation strategic partner identified for the project.
- Certain officials contravened the Public Finance Management Act in relation to the transaction.
- The business was not profitable, and its long-term viability was in question.
- There was a lack of suitable business strategies dealing with challenges, especially the high input and low local prices.
- The Directors' drawings and dividend decoration led the business to a position of perpetual liquidity and depleted working capital.

"In March 2019, the SIU was made aware of the decision to conclude a lease agreement and investigated the circumstances under which the decisions were made. The SIU instituted legal action in the Special Tribunal, a forum set up to adjudicate of matters emanating from SIU investigations, in November 2019 for the decision of Minister Nkoana-Mashabane to be declared irregular and unlawful.

"On 19 April 2023, the Special Tribunal ordered that the lease agreement entered between the Department of Rural Development and Land Reform and Cultiver Investments dated 11 January 2019 is declared irregular and unlawful. Furthermore, Special Tribunal directed the Tribunal Registrar to convene a case management meeting with the parties to determine the further conduct of the matter for the determination of the appropriate consequential remedy," the SIU said.

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