

High court sets aside minister's decision on Lotto operator

The Pretoria High Court yesterday set aside Trade and Industry Minister Mandisi Mphahlele's decision last year to award the new lottery operating licence to the Gidani consortium, and ordered him to review the process he followed.

Uthingo instituted review proceedings last month against the minister and the National Lottery Board because it was dissatisfied with the way Mphahlele decided to appoint Gidani.

Uthingo was pleased with the outcome of the appeal, as it would mean they continued as the operator, at least for the time being.

Gidani complained, saying that it had been preparing for the roll-out of the lottery next month, incurring millions of rands in costs.

"We maintain that the decision to award Gidani the licence to operate the national lottery was taken following a rigorous and transparent process," said Gidani chairman and interim CEO Bongani Khumalo.

Khumalo said Gidani had the experience needed to deliver a successful national lottery.

"Uthingo has not been awarded the licence, nor have they been granted an extension," Khumalo said.

"We trust that the process to review the awarding of the licence will confirm our standing as the preferred operator, and we look forward to not only fulfilling the licence obligations of the lottery but also exceeding them."

However, Uthingo CEO Oupa Monamodi said it had always maintained that the process to choose the licensee was flawed.

Efforts to get comment from Mpahlwa were unsuccessful, and it was not clear what course of action he would take as Uthingo's contract is expected to expire on March 31.

Judge Willie Seriti found that the process followed by the board was flawed. The board had failed to investigate the shareholding in Gidani and Uthingo.

Seriti said that information was material for Mpahlwa to apply his mind properly under the Lotteries Act.

The judge found that the board's failure to obtain information about the shareholders had resulted in Uthingo being recommended as the second preferred bidder, despite Education Minister Naledi Pandor having shares in a company with a stake in Uthingo.

The Lotteries Act prohibits political office bearers from holding financial interests in the successful consortium.

Seriti said this finding made it unnecessary for him to rule on whether the winning Gidani consortium should also have been excluded because its shareholders included two members of the African National Congress (ANC) national executive committee (NEC), Chris Nissen and Max Sisulu.

In its application, Uthingo claimed that Gidani did not qualify because Sisulu had a 0,33% shareholding. It regarded Sisulu as an official of a political party. The issue of whether Sisulu was a political office bearer took up most of the two-day hearing last month.

Uthingo claimed that Sisulu was a political office bearer because the party had elected him to an office that had authority. The minister said the NEC was an organ of the party, which had duties and powers as a collective body. An

individual member of the ANC's NEC did not have right to exercise power.

The minister said Uthingo had been ruled out of contention for the new lottery licence as Pandor had shares in a company with a stake in Uthingo. However, Uthingo said Pandor had sold her 7500 shares at R1 each to another person just before the court hearing, and Uthingo no longer had a political office bearer among its shareholders.

The Democratic Alliance (DA) said the board and Mpahlwa were fast building a reputation for botching important procedures in the running of the lottery.

DA trade and industry spokesman Pierre Rabie said a decent investigation of bidding companies had to be done to ensure that the mistakes that occurred in the awarding of the licence last October were not repeated.