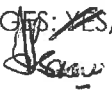


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

(1)	REPORTABLE: <input checked="" type="checkbox"/> YES / NO
(2)	OF INTEREST TO OTHER JUDGES: <input checked="" type="checkbox"/> YES/NO
(3)	REVISED. 
DATE	SIGNATURE
12 December 2018	

CASE NO: 48950/2017

In the matter between:

URBAN OCEAN PROPERTY DEVELOPMENT (PTY) LTD

Applicant

And

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

1<sup>st</sup> Respondent

THE CITY MANAGER OF THE CITY OF JOHANNESBURG

2<sup>nd</sup> Respondent

METROPOLITAN MUNICIPALITY

MR JACK SEKGOBELA (BEING THE PREPRESENTATIVE

3<sup>rd</sup> Respondent

**IN THE DEPARTMENT OF DEVELOPMENT AND PLANNING  
IN THE JOHANNESBURG METROPOLITAN MUNICIPALITY)**

**THE EXECUTIVE MAYOR OF THE JOHANNESBURG  
METROPOLITAN MUNICIPALITY**

**4<sup>th</sup> Respondent**

**THE MINISTER OF FINANCE**

**5<sup>th</sup> Respondent**

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**JUDGMENT**

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**TSOKA J**

[1] In this application, the applicant Urban Ocean Property Development (Pty) Ltd (Urban Ocean) seeks an order in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) to review and set aside the following decisions:

- 1.1 the decision of the third respondent refusing Urban Ocean's application for outdoor advertising sign (the sign) on the basis that such sign was in contravention of section 14(2)(b) of the Outdoor Advertising By-laws of the first respondent, the City of Johannesburg, which section provides that no third party sign may, in a minimum control area, exceed 200 square meters;
- 1.2 the decision of the second respondent dated 7 July 2017 dismissing Urban Ocean's appeal against the decision referred to in 1.1 above; and

1.3 the decision rejecting Urban Ocean's amended application dated 15 August 2015.

[2] The application is opposed by the first to fourth respondents. Instead of each of the four respondents filing an answering affidavit, such affidavits were not filed. The only answering affidavit filed is that of Isaac Mafoane Mogashoa, the Group Head: Group Legal and Contracts of the first respondent acting on behalf of all the respondents.

[3] The facts giving rise to the present application are the following: On 12 December 2016, Urban Ocean applied for an outdoor advertising sign with the following dimensions:

3.1 Size: 33m x 50m x 3m

3.2 Wall mounted single sided

3.3 Three sided and

3.4 Externally illuminated.

[4] On 1 March 2017, the City of Johannesburg addressed a letter to Urban Ocean which letter reads –

‘Please find attached pre-evaluation checklist indicating that the proposed application is unacceptable (It does not comply to section 14(2)(b) of the Johannesburg’s Outdoor Advertising By-laws) and therefore cannot be accepted.’

[5] Dissatisfied with the letter, on 2 March 2017, Urban Ocean pointed out that as the property, Penmore Towers, on which the sign was to be displayed, was within the Inner City renewal area and that the sign was in the interests of the aesthetic appearance of the building like any other building within the Inner City, must, in terms of the By-laws, be approved. The City of Johannesburg replied to the letter of 2 March 2017 pointing out to Urban Ocean that on the latter’s insistence, the application would be considered without however being responsible for the outcome of the said application.

[6] Simultaneously with the letter of 2 March 2017, the City of Johannesburg pointed out to Urban Ocean that its application was prohibited and could therefore not be processed. On 9 March 2017 the former sent to the latter a contravention notice in terms of the By-laws regarding the sign. As there was no compliance with the notice, on 14 March 2017, on urgent basis, the City of Johannesburg sought an order against Urban Ocean to remove the sign from the property. On 28 March 2017, the parties settled the urgent application on the basis that Urban Ocean

was to submit further documentation to enable the City of Johannesburg to process the application.

[7] On 30 March 2017, the City of Johannesburg advised Urban Ocean that its pre-evaluation application has been completed and that the former required the amount of R1 154 340, calculated on the revised size of Urban Ocean's application. The said amount was paid on 12 April 2017.

[8] To Urban Ocean's surprise, on 20 April 2017, the City of Johannesburg requested further information to which request the former responded that the information requested had long been submitted. On 2 June 2017, the City of Johannesburg's Operation Manager: Advertising Unit, the third respondent, refused Urban Ocean's application on the basis that the said sign was in contravention of section 14(2)(b) in that it was 200 square meters and in the Council's opinion, was not "in the interest of the aesthetic appearance of the building on which the sign has been proposed, and neither is it in the interest of the immediate neighbourhood of this area."

[9] Urban Ocean being dissatisfied with the third respondent's decision, on 13 June 2017 lodged an appeal to the City Manager, the second respondent, who on 7 July 2017 dismissed the appeal on the basis that Urban Ocean's proposed sign was bigger than the 200 square meters and that the proposed sign may cause a

distraction to motorists on Rissik street, a busy road. In addition, so reasoned the second respondent, because of the size of the sign, this would have a detrimental effect to the aesthetic appearance of the building and the Inner City.

- [10] On 28 July 2017, Urban Ocean submitted an amended application with the reduced size of the sign. This time the size of the sign was reduced from 5445 square meters to 4356 square meters. In spite of the amended application with the reduced size, again, on 15 August 2017, the second respondent rejected the former's amended application in that in terms of the By-laws, Urban Ocean was not entitled to bring a new application within a period of two years from the date of rejection of the first application there being no changed circumstances. The second respondent reasoned that the reduction in size of the sign did not constitute changed circumstances.

### **Legal framework**

- [11] Section 4(2) of the By-laws vests the Council of the City of Johannesburg with the discretion to either approve or refuse an application in terms of section 3(3). In approving the application, the Council may impose conditions it considers appropriate. In the event an application is granted, it may not be for a period exceeding five years. Such period of approval must be specified in the granting of such application.

[12] Urban Ocean's section 3(3) application was in terms of section 14(3) which provides –

‘Notwithstanding the provisions of subsection (1) and (2), it may in an approval in terms of section 4(2) above be permitted or required that the dimensions of any such sign be greater than those specified in those subsections, if –

(a) It is in the interests of the aesthetic appearance of a building or wall on which an advertising sign is placed as contemplated in subsection (1) and (2), and of the neighbourhood where such building or wall is situated, if the building or wall is situated in appropriate areas of either partial or minimum control;

(b) It is in the Inner City as indicated in the City's Spatial Development Framework and the approval of such sign in terms of section 4(2) is subject to an annual prescribed financial contribution to be utilized for any Inner City Renewal Project.’

[13] In terms of subsection (1) of section 14 an on premises advertising sign which is an area of partial control may not exceed 40 square meters, and in an area of minimum control, may not exceed 80 square meters. In terms of subsection (2) of section 14 which relates to third party advertising sign such as Urban Ocean's advertising sign, such sign, in an area of partial control may exceed 80 square

meters while in an area of minimum control the sign may exceed 200 square meters.

[14] The City of Johannesburg and its officials, the second and third respondents, rejected Urban Ocean's sign in terms of section 14(2) which provides that –

‘No third party advertising contemplated in this section may exceed 80 square meters in an area of minimum control.’

[15] The present application for review and setting aside of the respondents' decisions is, in the main, premised on the provisions of PAJA in particular, section 6(2)(a)(i)(ii); section 6(2)(d) and section 6(2)(e)(ii)(iii) which provisions provide that an administrative action is reviewable if the administrator who took the decision was not authorized to do so by the empowering provision; or acted under a delegation of power which was not authorized by the empowering provision; or the action was materially influenced by an error of law; or for reason not authorized by the empowering provision; or because irrelevant circumstances were taken into account or relevant considerations were not considered.

[16] To determine whether Urban Ocean's review grounds are sustainable it is necessary to first determine the former's involvement in the Inner City.



[17] It is common cause that Urban Ocean is the registered owner of Portions 66 and 87 of the Farm Turfontien No 66 and Erf 1147 Marshaltown Township. On a daily basis, it is busy fulfilling basic tasks on behalf of the local government by cleaning the streets of the Inner City, pavements and the road sides. In addition, it removes rubble and weeds along the main access routes to the City as well as the removal of refuse and illegal squatters in the Inner City. Furthermore, it provides security as well as guarding services for the City.

[18] For the optimum execution of its civic duties, Urban Ocean requires substantial financial resources. Since 2004, it has been exploring advertising opportunities in the Inner City to supplement the financial resources required to keep the Inner City clean, safe and to attract tenants. It then identified a building in the Inner City known as Penmore Towers. This building is indicated in the City of Johannesburg's Spatial Development Framework where the City has undertaken an urban renewal programme. The sign in issue in this matter was to be put up on this building. In terms of section 14(3)(b), the said sign being more than 200 square meters in extent, is subject to an annual prescribed financial contribution from Urban Ocean. It is in this context that Urban Ocean applied to the City of Johannesburg in terms of the provisions of the said section for permission to put up a sign of more than 200 square meters in extent.

[19] The third respondent's refusal of Urban Ocean's application on the basis that "...the applicant has disregarded section 14(2)(b)... in that the proposed sign does not comply with the applicable minimum 200 square meters in the area of minimum control" is reviewable in terms of PAJA. I say so, first, on the basis that Urban Ocean's application was not in terms of section 14(2) but section 14(3) of the By-laws. Secondly, in refusing the application, including the dismissal of the appeal, the respondents were not authorized to do so by the empowering provision; thirdly, acted under a delegation of power which was not authorized by the empowering provision; fourthly, their actions were materially influenced by an error of law; and lastly, the refusal was because irrelevant considerations were taken into account while relevant considerations were disregarded.

[20] In the result, I find that Urban Ocean's grounds of review are indeed sustainable. The respondents' action is reviewable in terms of PAJA. The respondent's decisions of 2 June 2017; 7 July 2017 and 15 August 2017 are thus reviewed and set aside. Any charges levied by the respondents pursuant to the actions, are also reviewed and set aside.

## **Order**

[21] Both parties being agreeable that the appropriate order in the circumstances of this matter is to have the matter referred back to the respondents for re-determination, same is referred to the respondents to deal with the application in

terms of section 14(3) of the By-laws. Thus, Urban Ocean being in a position as if no application was considered and refused, is not liable to pay a further amount of R1 154 340 calculated in terms of the size of the advertising sign to be reconsidered.

[22] The first, second and third respondents are ordered to pay the costs of the application jointly and severally, the one paying the other to be absolved.



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M TSOKA

JUDGE OF THE HIGH COURT

**Appearances:**

For the applicant: Adv GM Young

Instructed by: Froneman Roux & Streicher Attorneys

For the respondents: Adv Makola

Instructed by: Koikanyang Incorporated

Date of hearing:

22 October 2018

Date of judgment:

12 December 2018