



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

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

DATE: 17 November 2022

CASE NUMBER: 41845/2021

In the matter between:

MULBERRY PROPERTIES (PTY) LTD

Applicant

and

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

Respondent

JUDGMENT

WILSON AJ:

- 1 The applicant, Mulberry, owns two properties in Boskruin. The properties are adjacent and notoriously tied to each other, such that they cannot be sold separately without the consent of the respondent, the City of Johannesburg. There is a shopping complex erected across both properties.

2 The City caused the Municipal Valuer to value the properties for rating purposes. In doing so, the Municipal Valuer adopted what is described in the papers as a “parent and child” methodology. That methodology involved designating one of the properties as the “parent” and the other as the “child”. The “parent” property was valued at R64 million. The “child” property was valued at R0. Although not expressly dealt with in these terms on the papers, the basis of the methodology appears to be that it is easier or perhaps better practice to treat the two linked properties as one property for the purposes of valuation, and this is achieved by assigning each of the properties a “parent” or “child” role.

The dispute

3 Mulberry objects both to the valuation and the method by which it was reached. It argues that the Municipal Valuer’s work is governed by the City’s Rates Policy, adopted in terms of section 3 of the Local Government: Municipal Property Rates Act 6 of 2004 (“the Rates Act”). The Rates Policy that applied at the time of the valuation to which Mulberry objects made no mention of the parent and child methodology. For that reason, Mulberry argues, the Municipal Valuer was not entitled to rely on it in assigning values to Mulberry’s two properties.

4 Mulberry now seeks relief from me setting aside the valuation and directing the City to cause the Municipal Valuer to revalue the properties without regard to the “parent and child” methodology. The City opposes the application, principally on the basis that this relief is incompetent without the Municipal Valuer themselves being joined to the proceedings. The City

argues that the Municipal Valuer has a separate and independent legal personality in terms of the Rates Act, and falls to be joined in their own right. The City also argues that it cannot cause the Municipal Valuer to do anything, precisely because of the statutory independence that the Municipal Valuer enjoys. In any event, the City argues, the Municipal Valuer was well within their rights to value Mulberry's properties using the parent and child methodology, as that methodology is part of the generally accepted professional practice that the Municipal Valuer is expected, and required, to deploy in performing their statutory functions.

- 5 Ms. Englebrecht, who appeared for Mulberry, and Mr. Ogunronbi, who appeared for the City, each offered detailed and diametrically opposed analyses of the Rates Act in order to support the merits of their clients' competing claims. Were it necessary to reach the merits of this application, I would have to evaluate their submissions in light of a close analysis of the Rates Act.

Mulberry's failure to exhaust its internal remedies

- 6 Tempting as that is, I do not think that I can entertain the merits of Mulberry's application. As Ms. Englebrecht was constrained to accept, although the imposition of rates and levies in terms of a council resolution is not administrative action (*Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1999 (1) SA 374 (CC), paragraph 45), the decision to assign a particular value to a particular property is administrative action (see, for example, *City of Johannesburg Metropolitan Municipality v Chairman of the Valuation Appeal Board for the City of Johannesburg* 2014

(4) SA 10 (SCA)). Mulberry’s application must accordingly be dealt with in terms of the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”).

7 One of the strictures of PAJA is the duty on an applicant for judicial review to show that they have exhausted their internal remedies (section 7 (2) (a) of PAJA), or to show that there are exceptional circumstances justifying an exemption from having to pursue such remedies (section 7 (2) (c) of PAJA). Mulberry accepts that it had an internal remedy in the form of an objection to the valuation of its properties under section 51 of the Rates Act, after which, if necessary, it could have pursued an appeal to the Valuation Appeal Board under section 54 of the Rates Act.

8 Mulberry made an objection under section 51 of the Rates Act on 27 June 2019. That objection was dismissed on 18 November 2020. A right of appeal was then available. The City invited Mulberry to exercise that right by 22 January 2021. The Municipal Valuer could also have been pressed for their reasons in terms of section 53 (2) and (3) of the Rates Act. Mulberry did not pursue an appeal. It did not press the Municipal Valuer for reasons. Nor did Mulberry bring a substantive application before me to be exempted from having to pursue these avenues of redress. The absence of a substantive application may in itself be enough to refuse to entertain the merits of the review application. But I am in any event not satisfied, on the material before me, that such an application could succeed.

9 In seeking, in the course of her written and oral argument, to persuade me that there were the “exceptional circumstances” necessary to relieve Mulberry of the obligation to exhaust its internal remedies, Ms. Englebrect

relied on two central propositions. The first was that an appeal to the Valuation Appeal Board would have been an exercise in futility. There was no real basis laid for this argument, which appeared to rest on the presumption that the Valuation Appeal Board is inherently partial, or, at any rate, incapable of bringing independent judgement to bear on Mulberry's objection. There are no facts before me to support that far-reaching contention. I reject it.

10 It was also argued that Mulberry's case on review involves only pure questions of law, that a domestic tribunal such as the Valuation Appeal Board would be no better placed than me to resolve. Ms. Englebrecht submitted that what is really before me is a legality review, rather than a PAJA review. Even assuming that I can permit a legality review in circumstances where PAJA plainly applies (see, in this regard, *State Information Technology Agency Soc Ltd v Gijima Holdings* 2017 (2) SA 63 (SCA) paragraph 44 and *Tawodzera v Minister of Home Affairs* [2020] ZAGPPHC 717 (1 December 2020) paragraphs 41 to 58), it seems to me that Mulberry's case raises questions that a specialist body such as the Valuation Appeal Board is particularly well-suited to consider and decide in the first instance.

11 Mulberry's case involves potentially complex questions involving the nature of the City's Rates Policy (a full copy of which was not placed before me); its application to the Municipal Valuer's work; the extent to which the Municipal Valuer may, in the exercise of their professional judgment, depart from, or act in the interstices of, that policy; and the professional and policy

justifications for the action they may take in deciding, or refusing, to do either of these things. These, it seems to me, are matters well within the purview of the Valuation Appeal Board.

12 There was, finally, a suggestion in Mulberry's founding affidavit that the seventeen-month delay between the lodging of its objection and the rendering of a decision on that objection in terms of section 53 (1) of the Rates Act meant that any subsequent appeal against the Municipal Valuer's decision on the objection was futile. I see no reason why this was so, and Mulberry's papers provide none.

13 It follows from all this that Mulberry was required to exhaust its internal appeal under the Rates Act, and that there is no basis on which I can exempt it from doing so. In these circumstances, section 7 (2) (b) of PAJA requires me to order Mulberry to exhaust its appeal remedy before pursuing a review of the valuation it seeks to impugn. That is the order I shall make.

Costs

14 Although Mulberry has not obtained the relief it seeks, I am not inclined to mulct it in costs. The papers in this matter reveal a sorry tale of the City's delay, non-responsiveness and failure to give proper notice of important decisions affecting Mulberry's property rights.

15 In *Sandton Civic*, the City was deprived of its costs despite being successful in litigation animated by frustration at its unaccountable conduct (see *Sandton Civic Precinct (Pty) Ltd v City of Johannesburg* 2009 (1) SA 317 (SCA) paragraphs 22 to 25). The facts of this case justify a similar response.

Order

16 For all these reasons –

16.1 The application is refused.

16.2 The applicant is directed to exhaust the appeal process provided for in section 54 of the Local Government: Municipal Property Rates Act 6 of 2004 before instituting further review proceedings.

16.3 Each party will pay its own costs.

S D J WILSON
Acting Judge of the High Court

HEARD ON: 8 November 2022

DECIDED ON: 17 November 2022

For the Applicant: G Englebrecht SC
Instructed by Hennie Kotze Attorneys

For the Respondent: S Ogunronbi
Instructed by Prince Mudau and Associates