IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 41468/2018

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

15/06/23

…….. **……...**

Date **ML TWALA**

In the matter between:

THE CITY OF JOHANNESBURG

METROPOLITAN MUNICIPALITY **FIRST APPLICANT**

THE MUNICIPAL VALUER: THE CITY

OF JOHANNESBURG METROPOLITAN

MUNICIPALITY **SECOND APPLICANT**

And

THE VALUATION APPEAL BOARD FOR THE CITY OF JOHANNESBURG **FIRST RESPONDENT**

MALVERN PLAZA (PTY) LIMITED **SECOND RESPONDENT**

JUDGMENT

Delivered: This judgment and order was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the order is deemed to be the 15th of June 2023.

Summary: *Local Government: Municipality Property Rates Act No. 6 of 2004 – process of interpretation of statutory provisions restated.*

Review - powers of the Valuation Appeal Board in terms of section 52 of the Act - separation of powers - Court cannot confer a power upon the Valuation Appeal Board which has not been conferred by legislation creating it.

Rule 42 of the Uniform Rules of Court - Variation of judgment – judgment not erroneously granted – Court functus officio – Application dismissed with costs.

TWALA J

[1] This application served before this Court in the opposed motion wherein the applicant sought the declaratory relief and other ancillary orders in the following terms:

1.1 It is declared that the powers of an appeal board which is established in terms of section 56 of the Local Government: Municipality Property Rates Act No. 6 of 2004 *("the Rates Act")* to review the decision of a municipal valuer in terms of section 52 of the Rates Act does not exclude a decision on "category".

1.2 Reviewing and setting aside the decision of the Valuation Appeal Board for the City of Johannesburg ("First Respondent" or "Board") dated 17 December 2021.

1.3 Varying and amending the order of this Honorable Court in the matter of Malvern Plaza (Pty) Limited v The Valuation Appeal Board for the City of Johannesburg and the City of Johannesburg Metropolitan Municipality, per Fisher J which was granted on 19 August 2020 under case number 41468/18, by the substitution with an order as follows:

1.3.1 The decision of the Valuation Appeal Board for the City of Johannesburg, taken on 23 November 2017, to change the category of the applicant's property to "Business and Commercial" for the purposes of the 2013 general valuation roll is reviewed and set aside.

1.3.2 The decision to change the category of the applicant's property on the 2013 valuation roll to "Business and Commercial" for the purposes of the 2013 general valuation roll is remitted to the appeal board for the City of Johannesburg for reconsideration.

1.3.3 In reviewing the decision of the Municipal Valuer, dated 13 May 2014, the Appeal Board must consider the components of "value" and "category" of the said decision.

1.4 Ordering that the cost of this application be paid by the second respondent in the event of opposition.

[2] The application is opposed by the first and second respondents. It is noteworthy that the first and second respondents have raised two points in limine: firstly, that there is no resolution of the council of COJ filed authorising the institution of these proceedings, and secondly, that the deponent has no authority to depose to the founding affidavit. The second respondent has filed a notice in terms of Rule 7(1) of the Uniform Rules of Court with regard to the deponent deposing to the affidavits on behalf of the COJ. I propose to refer to the first and second respondents as the respondents and where necessary I will identify each party accordingly in this judgment.

[3] It is trite that the deponent to an affidavit need not be authorized by the party concerned to depose to the affidavit. It is only the institution of the proceedings and the prosecution thereof which must be authorised. Put in another way, a deponent to an affidavit does not need authority of the litigant to depose to the affidavit for he or she testifies on facts that are known to her or him. However, an entity needs to be authorised by a resolution if it were to institute Court proceedings.

[4] In *Ganes and Another v Telecom Namibia Ltd (608/2002) [2003] ZASCA 123; [2004] 2 ALL SA 609 (SCA)* the Court quoted with approval the case of *Eskom v Soweto City Council 1992 (2) SA 703 (W)* wherein the following was stated when it dealt with the issue of authority:

> *"Paragraph 19: there is no merit in the contention that Oosthuizen AJ erred in finding that the proceedings were duly authorized. In the founding affidavit filed on behalf of the respondent Hanke said that he was duly authorized to depose to the affidavit. In his answering affidavit the first appellant stated that he had no knowledge as to whether Hanke was duly authorized to depose to the founding affidavit on behalf of the respondent, that he did not admit that Hanke was so authorized and that he put the respondent to the proof thereof. In my view it is irrelevant whether Hanke had been authorized to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorized by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorized. In the present case the proceedings were instituted and prosecuted by a firm of attorneys purporting to act on behalf of the respondent. In an affidavit filed together with the notice of motion a Mr Kurz stated that he was a director in the firm of attorneys acting on behalf of the respondent and that such firm of attorneys was duly appointed to represent the respondent. That statement has not been challenged by the appellants. It must, therefore, be accepted that the institution of the proceedings were duly authorized. In any event, rule 7 provides a procedure to be followed by a respondent who wishes to challenge the authority of an attorney who instituted motion proceedings on behalf of an applicant. The appellants did not avail themselves of the*

procedure so provided. (See Eskom v Soweto City Council 1992 (2) SA 703 (W) at 705C-J.)"

[5] The Rule 7(1) notice filed by the second respondent was a challenge to the authority of the deponent in deposing to the founding affidavit and not to the authority of the COJ in the institution of the proceedings. If the respondents wanted to challenge the institution of the proceedings, the correct procedure available to them was to file a Rule 7 notice but they did not avail themselves of that procedure. As indicated above, the deponent does not have to have authority to depose to an affidavit and therefore there is no merit in the challenge against her authority to depose to the affidavit. The authority of the COJ to institute the proceedings was not challenged in terms of the procedure laid down in the Eskom case referred to above and therefore the respondents did not mount any challenge to the authority of the COJ instituting these proceedings.

[6] The first respondent contended further that the deponent did not give the full description of the applicants in her founding affidavit, and thus her founding affidavit does not comply with the rules. I do not agree. This application is part of a continuous litigation process between the parties under the same case number. The applicants are respondents to the previous application which was instituted by the second respondent. I am of the view that there is no prejudice that will be suffered by the respondents by such an omission on the part of the applicants. The respondents are fully aware who they are dealing with and have been involved in this litigation with the same parties for the longest of times. It seems to me that the respondents would want to prefer form over substance which cannot be countenanced by this Court.

[7] Furthermore, the first respondent launched an application for condonation for the late filing of its answering affidavit. Since the applicants did not oppose the condonation application and having considered the papers filed of record and the fact that the delay was not inordinate, and that there was no prejudice, or substantial prejudice suffered by the applicants, the application for condonation was therefore granted.

[8] The facts foundational to this case are mostly common cause and are as follows: In the 2013 General Valuation Roll *("GVR")* the property of the second respondent, Erf 1976 Malvern, Measuring in Extent 7936 square meters, appeared and was categorised as business and commercial and valued at R18 million for the period of 1st July 2012 to 1st July 2013. On the 5th of March 2013 the second respondent lodged an objection with the Municipal Valuer *("the Valuer")* for the categorisation of its property as business and commercial and its valuation of R18 million. The second respondent stated that the property had a mortgage bond in the sum of R7.5 million and requested the Valuer to adjust and change its entries in the GVR; in relation to category to "Residential" and valuation to R12 million.

[9] On the 13th of May 2014 the Valuer communicated its decision that the GVR has been changed to reflect the value of the second respondent's property as R15 360 000 and its category as residential, the date being the 1st of July 2012. Since the Valuer adjusted the value of the property by more than 10% downward, it actuated the provisions of s 52 of the Rates Act and subjected the Valuer's decision to the automatic review process of the Valuation Appeal Board *("VAB")*.

[10] The VAB considered the matter and changed the category of the property from residential to business and commercial and retained the value of the

sum of R15 360 000. This galvanised the second respondent to instituted proceedings which culminated in the granting of an order on the 19th of August 2020 *("2020 court order")* when the decision of the VAB categorising the property as business and commercial was set aside and the matter was remitted back to the VAB for reconsideration and that the second respondent be invited to participate in that process.

[11] In the execution of the 2020 court order, the matter served before the VAB for the purposes of reconsideration of the categorising of the second respondent's property as business and commercial. The second respondent participated in the process as ordered by the Court and raised a point in limine in that the VAB had no power to determine the issues of categorising properties under section 52 of the Rates Act. The VAB considered the matter and upheld the point in limine that it does not have jurisdiction to determine issues of categorising property under s 52 of the Rates Act and dismissed the application. It is this decision of the VAB that prompted the applicants to launch these proceedings.

[12] It is the case of the applicants that the provisions of s 52 of the Rates Act should be interpreted broadly to include that the VAB has the power to determine issues of categorising property and not only to the issues relating to the valuation of property. Furthermore, so the argument went, the point in limine raised at the VAB hearing was not placed before the Court when the 2020 court order was made. If the Court was aware that the VAB did not have the power to consider and determine issues of categorising property as contended by the respondents, it would not have referred the matter back to the VAB for reconsideration. Therefore, the 2020 court order was not implemented since the VAB did not determine the issue of category as ordered.

[13] Although it is not contended in the alternative, the applicants contend that, if the decision of the VAB dated 17th of December 2021 is not set aside, then the 2020 court order was erroneously sought and granted since the order to reconsider was predicated on the earlier decision of the VAB setting aside the decision categorising the second respondent's property from residential to business and commercial. Furthermore, the applicants contended that the decision of the VAB that it does not have jurisdiction to consider issues of category but only of valuation under the provisions of s 52 amounts to a narrow interpretation of the section.

[14] It is useful to restate the provisions of the Rates Act, 6 of 2004 which are relevant to this case and which provide the following:

> *"Section 51: Processing of Objections*
>
> *A municipal valuer must promptly –*
>
> *(a) Consider objections in accordance with a procedure that may be prescribed;*
>
> *(b) decide objections on facts, including the submissions of an objector, and, if the objector is not the owner, of the owner and*
>
> *(c) adjust or add to the valuation roll in accordance with any decisions taken;*
>
> *Section 52: Compulsory review of decisions of municipal valuer*
>
> *(1) If a municipal railway adjusts the valuation of a property in terms of section 51(c) by more than 10% upwards or downwards –*

(a) The municipal railway must give written reasons to the municipal manager; and

(b) the municipal manager must promptly submit to the relevant valuation appeal board the municipal values decision, the reasons for the decision and all relevant documentation, for review.

(2) An appeal board must –

(a) review any such decision; and either confirm, amend or revoke the decision.

(3) If the appeal board amends or revoke the decision, the chairperson of the appeal board and the valuer of the municipality must ensure that the valuation roll is adjusted in accordance with the decision taken by the appeal board.

Section 54: Right of Appeal

(1) An appeal to an appeal board against a decision of a municipal valuer in terms of section 51 may be lodged in the prescribed manner with the municipal manager concerned by –

(a) A person who has lost an objection in terms of of section 50 (1)(c) And who is not satisfied with the decision of the municipal valuer;

(b) N owner of a property who is affected by such a decision, if the objector was not the owner; or

(c) the council of the municipality concerned if the municipality's interests are affected.

(2) An appeal by –

(a) An objector must be lodged within 30 days after the date on which the return notice referred to in section 53 (1) Was sent to the objector or, if the objector has requested reasons in terms of section 53(2), within 21 days after the day on which the reasons were sent to the objector;

(b) An owner of such property must be lodged within 30 days after the date on which the return notice referred to in section 53(1) was sent to the owner or, if the owner has requested reasons in terms of section 53(2), within 21 days after the day on which the reasons were sent to the owner; or

(c) A municipal council must be lodged within 30 days after the date on which the decision was taken.

(3)……

Section 57: Functions

The functions of an appeal board are –

(a) to hear and decide appeals against the decisions of a municipal valuer concerning objections to matters reflected in, or omitted from, the valuation roll of a municipality in the area for which it was established in terms of section 56; and

(b) to review decisions of municipal valuer submitted to it in terms of section 52."

[15] It is now settled that, in interpreting statutory provisions, the Court must first have regard to the plain, ordinary, grammatical meaning of the words used in the statute. While maintaining that words should generally be given their

grammatical meaning, it has long been established that a contextual and purposive approach must be applied to statutory interpretation. Section 39 (2) of the Constitution of the Republic of South Africa enjoins the Courts, when interpreting any legislation, and when developing the common law or customary law, to promote the spirit, purport and objects of the Bill of Rights.

[16] In *Department of Land Affairs v Goedgelegen Tropical Fruits (Pty) Ltd [2007] ZACC 12; 2007 (6) SA 199 (CC); 2007 (10 BCLR 1027 (CC); (6 June 2007)* the Constitutional Court dealt with the interpretation of the provisions of a statute and stated the following:

> *"Paragraph 53: It is by now trite that not only the empowering provisions of the Constitution but also of the Restitution Act must be understood purposively because it is remedial legislation umbilically linked to the Constitution. Therefore, in construing 'as a result of past racially discriminatory laws or practices' in its setting of section 2 (1) of the Restitution Act, we are obliged to scrutinise its purpose. As we do so, we must seek to promote the spirit, purport and objects of the Bill of Rights. We must prefer a generous construction over a merely textual or legalistic one in order to afford claimants the fullest possible protection of their constitutional guarantees. In searching for the purpose, it is legitimate to seek to identify the mischief sought to be remedied. In part, that is why it is helpful, where appropriate, to pay due attention to the social and historical background of the legislation. We must understand the provision within the context of the grid, if any, of related provisions and of the statute as a whole including its underlying values. Although the text is often the starting point of any statutory construction, the meaning it bears must pay due*

regard to context. This so even when the ordinary meaning of the provision to be construed is clear and unambiguous."

[17] More recently, in *Independent Institution of Education (Pty) Limited v KwaZulu Natal Law Society and Others [2019] ZACC 47* the Constitutional Court again had an opportunity of addressing the issue of interpretation of a statute and stated the following:

"Paragraph 1: It would be a woeful misrepresentation of the true character of our constitutional democracy to resolve any legal issue of consequence without due deference to the pre-eminent or overarching role of our Constitution.

Paragraph 2: The interpretive exercise is no exception. For, section 39(2) of the Constitution dictates that 'when interpreting any legislation … every court, tribunal, or forum must promote the spirit, purpose and objects of the Bill of Rights'. Meaning, every opportunity courts have to interpret legislation, must be seen and utilised as a platform for the promotion of the Bill of Rights by infusing its central purpose into the very essence of the legislation itself."

[18] The Court continued and stated the following:

"Paragraph 18: To concretise this approach, the following must never be lost sight of. First, a special meaning ascribed to a word or phrase in a statue ordinarily applies to that statute alone. Second, even in instances where that statute applies, the context might dictate that the special meaning be departed from. Third, where the application of the definition, even where the same statute in which it is located applies, would give rise to an injustice or incongruity or absurdity that is at odds with the purpose of the statute, then the defined meaning would

be inappropriate for use and should therefore be ignored. Fourth, a definition of a word in the one statute does not automatically or compulsorily apply to the same word in another statute. Fifth, a word or phrase is to be given its ordinary meaning unless it is defined in the statute where it is located. Sixth, where one of the meanings that could be given to a word or expression in a statute, without straining the language, 'promotes the spirit, purport and objects of the Bill of Rights', then that is the meaning to be adopted even if it is at odds with any other meaning in other statutes."

"Paragraph 38: It is a well-established canon of statutory construction that 'every part of a statute should be construed so as to be consistent, so far as possible, with every other part of that statue, and with every other unrepealed statute enacted by the Legislature'. Statutes dealing with the same subject matter, or which are in pari material, should be construed together and harmoniously. This imperative has the effect of harmonising conflicts and differences between statutes. The canon derives its force from the presumption that the Legislature is consistent with itself. In other words, that the Legislature knows and has in mind the existing law when it passes new legislation, and frames new legislation with reference to the existing law. Statutes relating to the same subject matter should be read together because they should be seen as part of a single harmonious legal system.

Paragraph 41: The canon is consistent with a contextual approach to statutory interpretation. It is now trite that courts must properly contextualise statutory provisions when ascribing meaning to the words used therein. While maintaining that word should generally be

given their ordinary grammatical meaning, this Court has long recognised that a contextual and purposive must be applied to statutory interpretation. Courts must have due regard to the context in which the words appear, even where the words to be construed are clear and unambiguous.

Paragraph 42: This Court has taken a broad approach to contextualising legislative provisions having regard to both the internal and external context in statutory interpretation. A contextual approach requires that legislative provisions are interpreted in of the text of the legislation as a whole (internal context). This Court has also recognised that context included, amongst others, the mischief which the legislation aims to address, the social and historical background of the legislation, and, most pertinently for the purposes of this, other legislation (external context). That a contextual approach mandates consideration of other legislation is clearly demonstrated in Shaik. In Shaik, this Court considered context to be 'all-important' in the interpretative exercise. The context to which the Court had regard included the 'well-established' rules of criminal procedure and evidence and, in particular, the provisions of the Criminal Procedure Act."

[19] The provisions of s 52 of the Rates Act are clear, plain and unambiguous. For the VAB to act in terms of s 52 there must be a reconsideration of the value of the property by the Valuer after an objection has been lodged which reconsideration adjusts the value of the property by more than 10 per cent upward or downward. Section 52 is couched in a simple way that, once the Valuer reduces or increases the value of the property by more than 10 per cent, that decision of the Valuer is subject to an automatic review by the

VAB. Differently put, s 52 is there to check that the Valuer does not abuse his power but is only actuated by 10 per cent increase or decrease in the value of the property and not a change in the category of the property.

[20] I am in full agreement with the respondents that, the legislature intended that two processes be available in resolving the disputes regarding the municipal rates – hence the processes provided for in s 52 which is the automatic review which is triggered by the change in the value of the property by the Valuer by more than 10 per cent upward or downward and s 54 which is the appeal process open to parties (including the municipality) who are aggrieved by the decision of the Valuer in the categorizing and or valuation of the property. Section 57 makes it plain that the functions of the appeal board are to hear and decide appeals against the decisions of the Valuer concerning objections and to review decisions of the Valuer submitted in terms of s 52.

[21] I am therefore of the respectful view that, to ascribe any other interpretation to s 52 other than that it is for a compulsory ex parte automatic review without any appearances and representations, and is only actuated when the value of the property has been changed by the Valuer by more than 10 per cent upward or downward, would be creating and or conferring a power for the VAB which it does not have in terms of the legislation. It is trite that a functionary, as a creature of statute, has the powers as conferred upon it by the statute creating it and is limited to exercising only those powers which are conferred upon it expressly or impliedly by the statute creating it.

[22] In *Affordable Medicine Trust and Another v Minister of Health and Another (CCT 27/04) [2005] ZACC 3; 2006 (3) SA 247 (CC)* the Constitutional Court stated the following regarding the power of functionaries:

"Paragraph 49: The exercise of public power must therefore comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of that law. The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls which the exercise of public power is regulated by the Constitution. It entails that both the legislature and the executive 'are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law. In this sense the Constitution entrenches the principle of legality and provides the foundation for the control of public power,"

[23] I conclude therefore that there is nothing in s 52 which confers and empowers the VAB to determine and consider the issues of category regarding property. Section 52 is only triggered as an ex parte automatic review by the adjustment of the property value by more than 10 per cent upward or downward. Any other matter is provided for under s 54 which is an appeal process on any matter which is open to any party who is aggrieved by the decision of the Valuer. There is therefore no error of law committed by the VAB in its decision of the 17th of December 2021 in upholding the point in limine and dismissing the review.

[24] It is now opportune to state the provisions of Rule 42 of the Uniform Rules of Court which provides as follows:

"42 Variation and Rescission of Orders

(1) The Court may, in addition to any other powers it may have, mero motu or upon the application of any party affected, rescind or vary:

(a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;

(b) An order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;

(c) An order or judgment granted as the result of a mistake common to the parties.

(2)……..

[25] Recently, in *PIC SOC Ltd and Another v Trencon Construction (Pty) Ltd and Another (365/2022) [2023] ZASCA 88 (8 June 2023)*, the Supreme Court of Appeal stated the following:

"[12] It is well established in our law that 'once a court has duly pronounced a final judgment or order, it has itself no authority to correct, alter or supplement it. The reason is that it thereupon becomes functus officio: its jurisdiction in the case having been fully and finally exercised, its authority over the subject-matter has ceased'.

[13] There are exceptions to this rule. A court may within the contemplation of rule 42, for example, (a) clarify its judgment, if it is ambiguous or uncertain to give effect to its true intention, but it may not alter the sense and the substance of the judgment, or (b) correct a clerical, arithmetical or other error in its judgment or order so as to give effect to its true intention, or (c) supplement the judgment in respect of accessory or consequential matters, such as costs and interest on a judgment debt, it had overlooked or inadvertently omitted to grant. This does not equate to altering a definitive order once pronounced."

[26] More than twenty years ago, the Supreme Court of Appeal had an opportunity to deal with the issues of rescission of judgment under Rule 42 in *Colyn v Tiger Food Industries Limited t/a Meadow Feed Mills (Cape) 2003 (6) SA 1 (SCA)* where it was held that an order granted as a result of mistake by attorneys is not erroneously granted. The Court continued and stated the following:

> *"[4] The guiding principle of the common law is certainty of judgments. Once judgment is given in a matter it is final. It may not thereafter be altered by the judge who delivered it. He becomes functus officio and may not ordinarily vary or rescind his own judgment (see Firestone SA (Pty) Ltd v Gentiruco A.G.). That is the function of a court of appeal. There are exceptions. After evidence is led and the merits of the dispute have been determined, rescission is permissible only in the limited case of a judgment obtained by fraud or, exceptionally, Justus error. Secondly, rescission of judgment taken by default may be ordered where the party in default can show sufficient cause. There are also, thirdly, exceptions which do not relate to rescission but to the correction, alteration and supplementation of a judgment or order. These are for the most part conveniently summarised in the head not of firestone SA (Pty) Ltd v Gentiruco A.G. supra as follows:*
>
> *'1. The principal judgment or order may be supplemented in respect of accessory or consequential matters, for example, costs or interest on the judgment debt, that the court overlooked or inadvertently omitted to grant.*
>
> *2. The court may clarify its judgment or order, if, on a proper interpretation, the meaning thereof remains obscure, ambiguous or otherwise uncertain, so as to give*

effect to its true intention, provided it does not thereby alter "the sense and substance" of the judgment or order.

3. *the court may correct a clerical, arithmetical, or other error in its judgment or order so as to give effect to its true intention. This exception is confined to the mere correction of an error in expressing the judgment or order' it does not extend to altering its intended sense or substance.*

[27] It should be recalled that the applicants were parties to the proceedings which culminated in the granting of the 2020 court order. It is unfortunate that this Court is not disposed to the reasons or judgment regarding the 2020 court order. However, the applicants have failed to challenge the order and in fact acquiesced in it. The order is clear and unambiguous in that the decision of the VAB is set aside and remitted back for reconsideration. The facts that were before the Court when the order was made are undisputed that the second respondent was not given an opportunity to make representations before the VAB made its decision of 23rd November 2017. It was an issue of procedural fairness that was before the Court – hence the matter was remitted back for reconsideration with the second respondent participating in the proceedings.

[28] The applicants did not appeal the 2020 court order nor applied for the order to be rescinded or requested the reasons, therefore. Instead, the applicants, as respondents before the VAB contended that the VAB had the power to determine the issue of category of the property on the basis of the 2020 court order - since it reviewed and set aside the decision of the VAB which was in respect to the category of the property as the second respondent's complaint was in relation to the change in the category of its property from

residential to business and commercial. The applicants participated in the implementation of the 2020 court order. It cannot be correct that when applicants failed to achieve what they intended, then they should turn around and seek to vary the order for flimsy reasons. The applicants acquiesced in the 2020 court order.

[29] In *Dabner v South African Railways and Harbours 1920 AD 583 at 594* which was quoted with approval by this Court in *Venmop 275 (Pty) Ltd and Another v Cleverlad Projects (Pty) Ltd and Another (14286/2014) (GLDJ)*, the Court stated the following:

> *"The rule with regard to peremption is well settled and has been enunciated on several occasions by this Court. If the conduct of an unsuccessful litigant is such as to point indubitably and necessarily to the conclusion that he does not intend to attack the judgment, then he is held to have acquiesced in it. But the conduct relied upon must be unequivocal and must be inconsistent with any intention to appeal. And the onus of establishing that position is upon the party alleging it. In doubtful cases acquiescence, like waiver, must be held non-proven,"*

[30] I am unable to disagree with the respondents that there is nothing in the 2020 court order that can be interpreted to mean that it confers and empowers the VAB to determine issues of category for properties. It is trite that where the Constitution or valid statute has entrusted specific powers to a functionary, the Courts may not usurp that power nor increase or add to it. That would frustrate the doctrine of the separation of powers for the function or power to legislate is predominantly reserved for the legislature and not the Courts. It is therefore my considered view that the 2020 court order did not confer any

powers on the VAB which were not conferred upon it by the legislation that created it.

[31] The procedure laid down by the Rates Act afforded the COJ an opportunity to appeal the decision of the Valuer within 30 days of the decision having been made. The decision of the VAB was issued on the 23rd of November 2017, three years after the GVR of 2013 -2014 had expired and the COJ has not lodged any appeal against that decision. To say now that the 2020 court order was setting aside the decision of the VAB of 23rd November 2017 and should be varied as suggested by the applicants would be an absurdity. A period of four years has expired since the decision was made and has been known to the applicants and they have done nothing about it. Furthermore, the applicants have not found it necessary to file an application for condonation for the late filing of the application for review.

[32] A consideration of the conduct of the COJ is such to point indubitably and necessarily to the conclusion that it did not intend to attack and challenge the decision of the VAB of the 23rd of November 2017 and has acquiesced in it. In terms of s 54(2)(c) of the Rates Act, the municipal manager must lodge an appeal within 30 days after the date on which the decision was taken. The municipal manager has failed to lodge the appeal within 30 days, and it has taken the COJ almost four years to launch these proceedings. The COJ is, in my view, the author of its own misfortune and must suffer the consequences.

[33] In the circumstances, I make the following order:

1. The application is dismissed.
2. The applicants are jointly and severally, the one paying the other to be absolved, liable for the costs of the application.

TWALA M L

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

Date of Hearing:	**15th of May 2023**
Date of Judgment:	**15th of June 2023**
For the Applicants:	**Advocate S Ogunronbi**
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For the First Respondent:	**Advocate NO Manaka** **Advocate TC Lithole**
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For the Second	

Respondent: **Advocate SD Mitchell**

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