

REPUBLIC OF SOUTH AFRICA



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

Case Number: 45598/2021

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
_____	_____
DATE	SIGNATURE

In the matter between:

IGNACIO ROSSEGLIONE

First Applicant

FOROMOR INVESTMENTS NO 1411 (PTY) LTD

Second

Applicant

BLUE LOUNGE TRADING 64 (PTY) LTD

Third Applicant

DARJON CC

Fourth Applicant

DANIEL MICHAEL MOORE Fifth
Applicant

MICHAEL JOHN DOVEY Sixth
Applicant

SALIM KASKAR Seventh Applicant

CWFT INVESTMENTS (PTY) LTD Eighth
Applicant

FOLABI AYODELE OLADIPO-OSENI Ninth
Applicant

DEFACTO INVETSTMENT 205 (PTY) LTD Tenth
Applicant

TERSIA BESTER Eleventh
Applicant

ERIC JOHAN WIEHAHN N.O.

Twelfth

Applicant

JENNIFER ANN WIEHAHN N.O.

Thirteenth

Applicant

JOSIA JOHANNES JACOBUS VERMEULEN

Fourteenth

Applicant

ALARIC BARNES ROBINSON

Fifteenth Applicant

and

THE CITY OF JOHANNESBURG METROPOLITAN

Respondent

MUNICIPALITY

JUDGMENT

SENYATSI, J

Introduction

- [1] This is an opposed application in terms of which the applicants seek the categorization of their sectional title properties as sectional title business for the period 1 July 2013 to 30 June 2008 for the purposes of the 2013 General Valuation Roll (“2013 GVR”) to be set aside and be replaced by the order in terms of which their properties are categorised as residential for the said period. Alternatively, they seek the order that the matter be referred to the Valuation Appeals Board for 2013 (“the VAB for 2013”) for the reconsideration of the appeal or review. The applicants also seek that their services should not be terminated pending the crediting of the applicants’ accounts with the incorrect billing based on the alleged incorrect categorisation. It should be noted that in the amended notice of motion, the second respondent, Mr Piet Eloff who is the municipal valuer against whom the categorisation of the properties use has been challenged, was not cited in the amended notice and a point *in limine* on the non-joinder was raised.
- [2] At the hearing of the application, an application for to file supplementary affidavit was made and was granted as it was not opposed. The application related to the joinder of the second respondent. It should be noted that the amended notice of motion that was the subject of non-joinder defence was issued on 4 November 2021 and the joinder application was issued on 10 November 2021. Consequently, not much will be said in relation to the joinder defence.

Background

- [3] The applicants, fifteen in total, are the sectional-title property owners at the sectional title scheme known as Melrose Square on Oak, Sectional Scheme 429/2008. They essentially use their properties for residential purposes.

The properties were, following a valuation exercise by the second respondent classified as business sectional titles in accordance with the 2013 General Valuation Roll (“GVR”). The applicants received billing on their accounts which reflected that they were charged as business sectional title when in fact their properties are for residential use. When they took up the matter with the first respondent, it was after the expiry of the 2013 General Valuation Roll and the expiry of the 2013 Valuation Appeal Board (“2013 GAB”) and which were replaced by another GVR as well as VAB following the subsequent seven years cycle of the valuation.

- [4] The first respondent is the City of Johannesburg Metropolitan Municipality and the properties concerned are within its jurisdiction and it is responsible for the recovery of the taxes and rates from the applicants.
- [5] The second respondent has been cited in his official capacity as an independent valuer mandated by the law to perform valuation of the properties concerned for the purposes of determining what rates and taxes are to be raised by the first respondent. He is also the one responsible to categorise the properties’ use as either business or residential. The properties categorised as residential attract a lower rate and are also rebated as opposed to the properties whose use is categorised for use as business.
- [6] When the applicants discovered that there were billed based on the incorrect categorisation of the use of their properties, the first respondent was already threatening to embark on recollection proceedings which may have involved the termination of the services to the applicants properties.
- [7] In 2013, the first respondent published a General Valuation Roll (“the 2013 GVR”), and this roll would be for the period 1 July 2013 to 30 June 2018. The subject properties appeared on the 2013 GVR and were

categorised as residential sectional title properties by the second respondent. Subsequently, on or about 1 March 2017, the subject properties appeared on the 2013 Supplementary 5 Valuation Roll (“2013 S5VR”) with the category of sectional title business. The effective date for the implementation of the 2013 S5VR and amendment was effective from 1 July 2013. The applicants launched objections on 17 May 2017 in respect of the incorrect categorisation of the properties following the 2013 S5VR. The outcome of their objections to the 2013 S5VR were dated 29 March 2018 which amended the properties from business to residential. No appeals were lodged within the prescribed period following the outcomes.

- [8] The applicants contend that it was approximately on 12 January 2021 due to a debt collection attempt on the amounts owing that the applicants became aware of the fact that due to their failure to lodge appeals in 2013 S5VR, no “*live dispute*” was present as initially thought in relation to the categorisation of the properties for the 2013 valuation period.
- [9] After becoming aware of the collection steps against them, the applicants instructed their attorneys of record to lodge a section 78 query in terms of the Local Government: Municipal Property Rates Act¹ (“the MPRA”) with the first respondent to ensure that the properties appeared in the next available Supplementary Valuation Roll (“SVR”) which in this instance, so they contend, was 2013 S5VR. Their queries were lodged on 17 March 2021. Unfortunately, the messenger sent on behalf of the applicants was turned away on the ground that the first respondent was no longer accepting queries related to the roll of 2013 GVR and that the 2013 S5VR was no longer active. The first respondent refused to accept later queries after the closure of the 2013 valuation roll and its subsequent

¹ 6 of 2004

supplementary evaluation and refused to condone the late filling thereof. The refusal led to the issuance of the current litigation proceedings.

Issues

Respondent's Contention

[10] The respondents raised several legal issues and gave notice in terms of Rule 6(5)(d)(ii) of the Uniform Rules of Court.

[11] In opposing the application, the respondents filed notice in terms of Rule 6(5)(d)(iii) of the Uniform Rules of Court and the Amended Notice of its intention to raise the following questions of law at the hearing of the application which I have not put in the sequence as raised by the respondents:

(a) Whether the Court has the competence to grant the relief sought in prayer 2 so as to effect any changes to the first respondent's 2013 GVR which lapsed on 30 June 2018 in terms of section 32 of the MPRA claims in prayers 1 to 3, including prayers 3.1 to 3.17 for the period 1 July 2013 to 30 June 2018, do not constitute "debt" which are prescribed by section 11(11)(d) of the MPRA;

(b) Whether the claims in prayers 1 to 3, including prayers 3.1 to 3.17, in the Amended Notice of motion dated 4 November 2021, for the period 01 July 2023 to 30 June 2018, do not constitute "debt" which are prescribed in terms of section 11(d) of the Prescription Act.²

² 68 of 1969

- (c) whether the relief sought in prayer 1 is competent in the absence of a valid appeal before the Valuation Appeal Board (“VAB”) in terms of section 54 of the MPRA;
- (d) whether the applicants are obliged to exercise their right of appeal in terms of section 54 of the MPR and accordingly whether this application is not incompetent where the applicants have not exhausted their internal remedies;
- (e) whether the alternative relief sought in prayer 2 in the Amended Notice of Motion is not incompetent in the circumstances that:
- (i) only the first respondent's decision is impugned in this application in circumstances whereas the VAB may only hear and determine appeals or reviews against the decisions of a municipal value in terms of section 57 of the MPRA;
 - (ii) the Municipality Valuer has not, in terms of sections 34(e) or 50(1) read with section 51 of the MPRA considered and decided on the Applicants’ objection to the 2013 GVR;
 - (iii) there is no pending or finalised appeal or review before the VAB in respect of the 2013 GVR in the relation to the applicants’ properties, accordingly, whether this court may

competently refer to VAB for consideration either as an appeal or review the decision to categorise the applicants' properties.

(iv) the VAB set up in respect of the 2013 GVR has ceased to exist and in the circumstances whether the 2013 GRV may competently be considered by a VAB set up for the 2018 General Valuation Roll or any other valuation roll.

(f) whether the decision referred to in prayer 1 of the Amended Notice of Motion was taken by the first respondent in the light of section 48(2)(b) of the MPRA and accordingly, whether the relief in prayer 1 is not incompetent. Alternatively, whether the non-joinder of the Municipal Valuer to the suit is not fatal to the relief in the Amended Notice of Motion;

(g) Whether, in the light of the questions raised in relation to the relief in prayers 1 and 2, the applicants have made a valid case for the correction of the municipal accounts in prayers 3 or the interdictory order sought in prayer 4.

Applicants' Contention

[12] The applicants acknowledge the points of law raised by the respondent and contend that the respondents must respond to the merits of the application and that if the points of law are not upheld by the Court, the allegations

raised in the founding affidavit must be accepted as established facts. I agree with that proposition because it is trite in our law.³

[13] The applicants contend that because at the hearing of the appeal in respect of 2013 S5GVR for various units within the Melrose Square on Oak Sectional Scheme, Mr Eloff, the second respondent, during his oral testimony to the VAB stated, when asked whether the first respondent would consider a section 78 supplementary valuation for all units if it is found that the categorisation by the Municipal Valuer was incorrect, confirmed that the first respondent would. In other words, what the applicants are proposing to this Court is that the first respondent should be bound by what the second said. For reasons that will be provided later, I do not agree with the proposition. It should be remembered that the first and the second respondent act independently of each other and have different mandates in so far as the valuation of the properties are concerned.

[14] It was submitted on behalf of the applicants, with regards to the issue as to whether the Court has competence to grant relief sought in prayer 2 to the effect any change to the first defendant's 2013 GVR that lapsed on 30 June 2018 in terms of section 32 of the MPRA that the Court is indeed competent to review and set aside the decision irrespective of the fact that the 2013 GVR lapsed on 30 June 2018. It furthermore submitted on behalf of the applicants that section 55 of the MPRA permits adjustments or additions made to a valuation roll in terms of sections 51, 52(3) or 69 to take effect on the effective date of the valuation roll. They further contend that the adjustments to the GVR are a mandatory obligation that must be done by the first respondent's Municipal Manager and that this can be done even after the GVR has lapsed because the first respondent with the

³ Boxer Superstores Mthatha and Anther v Mbenya 2007 (5)SA450 (SCA) at 452F-G; Absa Bank Ltd v Prochaska t/a Bianca Cara Interiors 2009 (2) SA 512 (D) at 514I-J

vast properties within its jurisdiction usually considers the objections long after the GVR objected to has lapsed and that it should not be different in this case.

[15] The applicants submitted that there is no time-period specified in the sections in which the valuation roll and rates accounts must be adjusted and corrected. They contend that the adjustment must be done as soon as possible within the period to which a person can institute legal action for the recovery of a rate which is a tax and contend that section 11(a) of the Prescription Act states that “any debt in respect of any taxation, imposed or levied by or under any law prescribes after 30 years.”⁴

[16] With regards to whether what is sought to be recovered is a “*debt*”, the applicants contend that the word “*debt*” must be given a wide and general meaning. They rely on *Chantelle Jordaan & Another v Tshwane Metropolitan Municipality*⁵ where the Constitutional Court held that municipal taxes prescribed after 30 years and other municipal charges are limited to 3 years.

[17] Accordingly, so contend the applicants, the Court is competent to set aside any irrational decision in terms of Promotion of Administrative Justice Act,⁶ and can either review the decision and set it aside and refer it back, with or without further directions, or step in the shoes of the decision-maker and order an appropriate relief.

[18] On the question of whether it is competent in the absence of any appeal before a valid VAB in terms of section 54 of the MPRA, for the relief in prayer 1 of the motion, the applicants concede that no appeal has been lodged in terms of section 54 of the MPRA. They also concede that they

⁴ 68 of 1969

⁵ 2017 (6) SA 287 CC

⁶ 3 of 2000

are compelled to first exhaust all internal remedies before they approach the Court for relief. They, however, state that their attorney attempted on numerous occasions to resolve the issue administratively, with the first respondent and they contend furthermore that the fact that no appeal has been lodged does not preclude them from approaching the Court to review and set aside the impugned decisions.

[19] On the issue as to whether the applicants are obliged to exercise their right of appeal in terms of section 54 of the MPRA and accordingly, whether this application is incompetent that the applicants have not exhausted their internal remedies, they contend that the Court should not close the door on them due to technical defences given that the decisions of the respondent are evidently irrational and unfair and that the administrative process should be set aside.

[20] In answering whether the alternative relief sought in prayer 2 in the amended notice of motion is not incompetent in the circumstances that only the second respondent's decision is impugned as the VAB may only hear and determine appeals or reviews against the decision of a municipal valuer in terms of section 57 of the MPRA, the applicants contend that prayer 2 is not incompetent, as the respondents' decision constitutes, irrational and unfair administrative action and is therefore subject to review by the Court. They contend that because the VAB had already ruled that other units in the Melrose Square on Oak Sectional Scheme must be categorized as Sectional Title Residential, it should not be incompetent for the Court to intervene.

[21] The answer provided by the applicants on whether the municipal valuer has not in terms of section 34 read with section 50(1) of the MPRA considered and decided on the applicants' objection to the 2013 GRV, is

that section 34(e) deals with the lodging of an appeal against a matter reflected or omitted from the roll. They contend that their attorney objected to the incorrect categorization of the properties. They further state that the municipal valuer did consider the objections and that the outcomes of their objections were made known and dated 29 March 2013. They conceded as already indicated, that no appeals were lodged and state that nothing precludes the Court to grant appropriate relief to the applicants. They state furthermore that section 34(g) stipulates that:

“the municipal valuer must in accordance with, this act prepare a supplementary valuation roll whenever this becomes necessary”.

The applicants submit that it was necessary and is necessary for the municipal valuer to do a supplementary valuation.

[22] On the contention that there is no pending or finalised appeal or review pending before the VAB, in respect of the 2013 GVR, concerning the applicants’ properties and accordingly whether the court may competently refer it to the VAB for consideration either as an appeal or a review, the decision to categorise the applicants properties, the applicants submit that the actions and decisions of the municipal valuer constitute administrative action and therefore subject to scrutiny by the Court.

[23] On the contention by the respondents that the VAB set up in respect of the 2013 GVR has ceased to exist and that in the circumstances whether the 2013 GVR may be competently considered by a VAB set up for 2018 GVR or any other valuation roll, the applicants submit that the 2013 VAB may be specifically re constituted for that purpose, but submit it is unnecessary as any other existing VAB can, in terms of section 57 of the MPRA hear any matter reflected and /or omitted from the roll de novo and /or entertain such a review. They furthermore contend that the Court is

seized with the matter and based on the objective facts, can step in the shoes of the decision-maker, and correct the categories.

[24] On the contention whether the decision referred to in prayer 1 of the amended notice of motion was taken by the respondent in the light of section 48(2)(b) of the MPRA and accordingly whether the relief in prayer 1 is not incompetent, alternatively whether the relief in prayer 1 is not incompetent, alternatively whether the none-joinder of the municipal valuer to the suit is not fatal to the relief in the amended notice of motion, the applicants submitted that the decision to categorise the properties as sectional title business, must be done and was in all probabilities taken in accordance with section 48(2)(b) of the MPRA. They furthermore submitted that their contention and the decision of the VAB handed down on 9 October 2021 that the municipal valuer incorrectly assigned categories to the properties based on the zoning thereof and where there is more than one permitted use, incorrectly assigned applied the highest permitted use without any justification. They submit that the Court can competently intervene and issue an appropriate order to correct the injustice.

[25] On whether in light of the questions raised in relation, to the relief in the prayers 1 and 2 the applicants have made a valid case out for the correction of the municipal accounts in prayer 3 of the interdictory order they seek in prayer 4, the applicants submitted that it is common cause that the first respondent's Credit Control and Debt Collection Policy make it clear that the credit control and debt collection policy must be applied consistently and fairly. They contend furthermore that the said Policy in paragraph 16.9, stipulates that any person who has a dispute with the first respondent has the right in terms of section 34 of the Constitution to have any dispute that can be resolved by application of any law decided in a fair

public hearing before Court or where appropriate another independent or any impartial tribunal or forum.

[26] They furthermore submitted that because in terms of the Rates Policy of the 2013/2014 financial years, that the first respondent is entitled in terms of section 11 of the Prescription Act 68 of 1969 to enforce taxes up to 30 years, the first respondent is at liberty to rectify any rate account at any time, no time limit is specified by the Policy and consequently, credit notes and journal entries in respect thereof can be backdated or written of or revised in terms of the said Policy. They contend that under the circumstances, it is in the interest of justice and fairness that if any rates are owed by the applicants as a result of incorrect categorization of their properties, that the account should be rectified and be reconciled in accordance with the mandatory provisions of section 55(2)(b)(ii) of the MPRA. It follows, so submit the applicant's counsel, Mr Viviers, that the relief sought is therefore not incompetent and that a proper case has been made out for the correction of the categorisation of the applicants' properties for use as residential instead of business and therefore the correction of their incorrectly billed accounts. They seek that the points in law should be dismissed.

[27] In this judgment, I will briefly consider the provisions of rule 6(5) (d) (iii) of the Uniform Rules and thereafter deal with the contentions raised by the respondent as well as the law applicable thereto.

Legal Principles and Reasons

Rule 6(5)(d)(iii)

[28] Rule 6(5)(d) (iii) of the Uniform Rules states as follows: -

“(d) Any person opposing the grant of an order sought in the notice of motion shall—

(iii) if such person intends to raise any question of law only, such person shall deliver notice of intention to do so, within the time stated in the preceding subparagraph, setting forth such question.”

[29] The purpose of the rule is to deal with any question of law has been raised, but preferably, the respondent should generally, file his answering affidavit on the merits at the same time as he takes a preliminary objection on the point of law.⁷ If the respondent relies exclusively on the notice in terms of this subrule, as is the case in the instant case, the allegations in the founding affidavit must be taken as established facts by the Court.⁸ As already stated at the beginning of the case, the averments made in the founding affidavit are therefore established facts. I proceed to consider the principles applicable to the points raised by the respondents.

“Whether the Court has the competence to grant the relief sought in prayer 2 so as to effect any changes to the first respondent’s 2013 GVR which lapsed on 30 June 2018 in terms of section 32 of the Local Government: Municipal Property Rates Act No: 6 of 2004(“the MPRA”) claims in prayers 1 to 3, including prayers 3.1 to 3.17 for the period 1 July 2013 to 30.”

[30] In their prayer 2 of the notice of motion, the applicants seek the substitution of the respondents’ decision to categorise the applicants’ properties as sectional title business for the period 1 July 2013 to 30 June 2018, the period of which covers five years, for the 2013 GVR. In the alternative, they seek an order that the matter be remitted to the lapsed

⁷ Randfontein Extension Ltd v South Randfontein Mines Ltd 1936 WLD 1 at 4-5; Du Toit v Fourie 1965(4) SA 122(O) at 128G-129C; Ebrahim v Georgoulas 1992(2) SA 151 (B) at 154D

⁸ Boxer Superstores Mthatha and Another v Mbenya 2007(5) SA 450(SCA) at 452F -G; Absa Bank Ltd v Prochaska t/a Bianca Cara Interiors 2009 (2) SA 512(D) at 514I-J

2013 VAB for reconsideration and that the respondents be ordered to give the applicants notice of the date of the review or appeal and an opportunity to make written/verbal representations at such hearing, in the event that the opportunity is constituted by way of an appeal.

[31] The section 1(a) of MPRA defines “*category*” in relation to property, as a category of properties determined in terms of section 8. Section 8 (1) of the MPRA states that:

“Subject to section 19, a municipality may in terms of the criteria set out in its 35 rates policy levy different rates for different categories of rateable property, which may include categories determined according to the-

- (a) use of the property;
- (b) permitted use of the property; or
- (c) geographical area in which the property is situated.”

[32] Section 8(2) of the MPRA states that:-

“Categories of rateable property that may be determined in terms of subsection (1) include the following:

- (a) Residential properties;
- (b) industrial properties;
- (c) business and commercial properties;”

[33] Section 3 of the MPRA states that:

“(1) The council of a municipality must adopt a policy consistent with this Act on the on the levying of rates on rateable property in the municipality.

(2) A rates policy adopted in terms of subsection (1) takes effect on the effective date 35 levying of rates on rateable property in the municipality. of the first valuation roll prepared by the municipality in terms of this Act and must accompany the municipality’s budget for the financial year concerned when the budget is tabled in the municipal council in terms of section 16(2) of the Municipal Finance Management Act.

(3) A rates policy must-

- (a) treat persons liable for rates equitably;
- (b) determine the criteria to be applied by the municipality if it-
 - (i) levies different rates for different categories of properties;
 - (ii) exempts a specific category of owners of properties, or the owners of a specific category of properties, from payment of a rate on their properties;
 - (iii) grants to a specific category of owners of properties, or to the owners of a specific category of properties, a rebate on or a reduction in the rate payable in respect of their properties; or
 - (iv) increases”

[34] The provisions of section 8 must be applied by a municipality within seven years from 1 July 2015 when the Amendment Act came into operation⁹. Effectively the “old” section 8 of the MPRA applies to this matter.

⁹ Section 93B of the MPRA.

[35] In terms of Section 8 of the MPRA, a municipality may in terms of the criteria set out in its range policy levy different rates for different categories of rateable properties. In terms of a pre amendment version of Section 8, in municipality may determine different categories of rateable property according to the:

- (a) use of property,
- (b) immediate use of the property;
- (c) or geographical area in which the property is situated. In the amended Section 8, the word “*may*” as previously used in the pre amendment version, has now been changed to “*must*”.

[36] Section 2(3) of the MPRA prescribes the parameters within which the municipality must exercise its rating powers subject to:

- “(a) section 229 and any other applicable provisions of the Constitution;
- (b) the provisions of this Act; and
- (c) the rates policy it must adopt in terms of section 3.”

[37] The MPRA creates a mechanism for the rating of property which rests on three pillars, namely: -

- (a) the identification of rateable property;
- (b) the identification of the owner; and
- (c) the valuing of the rateable property.

[38] The rating mechanism revolves around the existence and the validity of:

- (a) valuation roll;
- (b) rate policy and by-laws;
- (c) a tariff.

[39] In *Gillyfrost 54 (Pty) Ltd v Nelson Mandela Bay Metropolitan Municipality*¹⁰ the Court held that the adoption of a rates policy and the annual resolution setting the rates for a particular financial year is a legislative act which can be challenged only based on legality. In the instant case, it is not the applicants' case that the challenge on categorization of the sectional title business is founded on legality.

[40] As already mentioned, the applicants' answer to the challenge on prayer 2 it is indeed competent to review and set aside the decision irrespective of the fact that the 2013 GVR lapsed on 30 June 2018. It was furthermore submitted on behalf of the applicants that section 55 of the MPRA permits adjustments or additions made to a valuation roll in terms of sections 51, 52(3) or 69 to take effect on the effective date of the valuation roll. They further contend that the adjustments to the GVR are a mandatory obligation that must be done by the first respondent's Municipal Manager and that this can be done even after the GVR has lapsed because the first respondent with the vast properties within its jurisdiction usually considers the objections long after the GVR objected to has lapsed and that it should not be different in this case.

[41] Section 55(1) of the MPRA does indeed permit the adjustments or additions made to a valuation roll in terms of sections 51(c), 52(3) or 69 to take effect on the effective date of the valuation roll. However, it could not have been the intention of the legislature to breathe life into a VGR that has ceased to exist and for that matter even the 2013 VAB that has ceased

¹⁰ [2015] 4 All SA (ECP) at para 43

to exist. As I understand it, each VAB is put in place to deal with the GVR finalized and appealed against during the VAB existence.

[42] Accordingly, from the provisions of section 2 (3), 3 and 8 of the MPRA, the relief which the applicants seek in prayers 2 are not in respect of the following:

- (a) the criteria set out in the first respondent's rates policy, as provided for in sections 3 and 8 of the MPRA; or
- (b) the categories of rateable property which were determined by the first respondent in the Rates Policy as referred to in section 8(2) of the MPRA; or
- (c) the levying of rates for different categories of the rateable property.

[43] The legislative scheme of the MPRA provides for a separation between the rating function from the valuation function as a measure to guarantee the integrity of the property rating system. The first respondent itself is an interested party in the valuations process. This is the reasons there is an institution of a system that allows the valuations system to be separate from municipal functioning.¹¹ At the heart of the separation of the function is a fair procedure to designed to prevent arbitrariness in the outcome of the decision.¹² The first respondent itself has the right of appeal over the decision of the municipal valuer.¹³

[44] In the *City of Johannesburg Metropolitan Municipality v The Chairman of the Valuation Appeal Board for the City of Johannesburg and Another*¹⁴

¹¹ *De Lange v Smuts NO and Others* 1998(3) SA 785 (CC).

¹² *De Lange* above para 131.

¹³ Section 54(2)

¹⁴ 2014 (4) SA 10 (SCA) para 27.

the court said the following on the importance of an independent municipal valuer: -

“[27] As already mentioned, s 39(1) requires the municipal valuer to be registered as a professional valuer or professional associated valuer under the Valuers Act. That being so, the municipal valuer is duty bound to comply with the norms of independence, objectivity and impartiality outlined in this code. That this is the case is reinforced by the further provisions in s 39 which provide that a municipal valuer or an assistant municipal valuer may not be a councillor of the relevant municipality.”

[45] The object of all of this is clear. The legislation envisages that the valuation of rateable property is not only to be done by an impartial person, but that it be seen to be so done¹⁵. Thus the appointment of an independent valuer, together with the right of objection against such valuer's compilation of the valuation roll and the right of appeal to the valuation appeal board against any decision made by the municipal valuer in respect of an objection, provides a bulwark between the interests of the municipality on the one hand and the owner of the rateable property on the other. It results in the municipality being able to levy rates against the value of a property only where the valuation had been done impartially and after the voice of the taxpayer has been heard.

[46] Now it may be so, as the appellant argued, that section 48 of the Act does not specifically direct the municipal valuer to mention any apportionment of value between different categories of use, but all this would be rendered nugatory if, after the valuation roll has been prepared, the municipal council could, off its own bat, so to speak, determine into which of the different rateable categories the property is being used and then itself apportion market value. Indeed, it would be absurd to interpret that section

¹⁵ *Roodepoort City Council v Shepherd* 1981 (2) SA 720 (A) at 735A-736B

in such a way. To do so would result not only in a municipality being able to largely turn its back on the specialised expertise in valuation that the Act has so carefully bestowed upon municipal valuers, but municipal councillors, who are specifically disqualified from being municipal valuers by section 39 of the Act, would be the persons vested with the authority to apportion market value. This could never have been intended, and really merely has to be stated to be rejected.”

[47] The constitutional power of the first respondent to read property exists independently of the power of the municipal value or of the VAB. The Rate, which is Levitt, is part of the first respondent's budget and the valuation roll does not interfere with this authority of the first respondent to rate the property. Valuation being one of the critical inputs, is not the sole criterion, for the determination of the rates.

[48] Although the rating function is not contained in schedules 4 and 5 of the Constitution but sourced from section 229, the valuation provisions of the MPRA are exercised in accordance with and pursuant to the national legislative authority expressed in section 164 read with 155 (7) which enjoin the national sphere to see to the effective performance by the municipalities of their functions.

[49] In *Executive Council of the Province of the Western Cape v Minister for Provincial Affairs and Constitutional Development and Another, Executive Council of KwaZulu-Natal v President of the Republic of South Africa and Others*¹⁶ the Constitutional Court affirmed the interdependency and interrelation of the powers of the three spheres and stated thus: -

¹⁶ CCT15/99, CCT18/99 [1999] ZACC 13; 2000 (1) SA 661; 1999 (12) BCLR 1360 (15 October 1999) at para 29.

“Municipalities have the fiscal and budgetary powers vested in them by Chapter 13 of the Constitution, and a general power to ‘govern’ local government affairs. This general power is “subject to national and provincial legislation”.¹⁷ The powers and functions of municipalities are set out in section 156 but it is clear from sections 155(7) and 151(3) that these powers are subject to supervision by national and provincial governments, and that national and provincial legislation has precedence over municipal legislation. The powers of municipalities must, however, be respected by the national and provincial governments which may not use their powers to “compromise or impede a municipality’s ability or *right* to exercise its powers or perform its functions” (emphasis supplied).¹⁸ There is also a duty on national and provincial governments “by legislative and other measures” to support and strengthen the capacity of municipalities to manage their own affairs¹⁹ and an obligation imposed by section 41(1)(g) of the Constitution on all spheres of government to ‘exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere’. The Constitution therefore protects the role of local government, and places certain constraints upon the powers of Parliament to interfere with local government decisions. It is neither necessary nor desirable to attempt to define these constraints in any detail. It is sufficient to say that the constraints exist, and if an Act of Parliament is inconsistent with such constraints it would to that extent be invalid.”²⁰

[50] The setting of the tariff by a municipality is a power derived from the Constitution and is regulated in chapter 8 through sections 73 to 75A of the Local Government Municipal Systems Act 32 of 2000 (“The Systems Act”). Those sections regulate the general duty of the municipality to give effect to the Constitution, to create a tariff policy and for By-laws to give

¹⁷ Section 157 of the Constitution of 1996.

¹⁸ Section 160 of the Constitution of 1996.

¹⁹ Section 160(1)(c) of the Constitution of 1996.

²⁰ Section 152(2) and (3) of the Constitution of 1996.

effect to the tariff policy. The power is not dependent on the valuation roll and as already stated, valuation is one of the criterion to determine the rateable property and the accordingly, the municipal valuer plays no role in that process.

[51] The implementation of the rating scheme on the properties is dealt with in chapters 4 to 6 of the Systems Act. Section 30(2) of the Systems Act deals with the valuation of what has already been identified as rateable property and the manner in which details in respect of the rateable property needs to be reflected in the valuation roll. Those provisions must be interpreted purposively and contextually as set out in the chapters referred to in order to achieve their intended purpose and objective.

[52] Based on the process that unfolds in determining the rate policy and how the properties are categorized for the purpose of rating them, I am of the view that the Court is not competent under the circumstances to give the order as prayed for by the applicants.

Whether the claims in prayers 1 to 3, including prayers 3.1 to 3.17, in the Amended Notice of motion dated 4 November 2021, for the period 01 July 2023 to 30 June 2018 , do not constitute “debt” which are prescribed in terms of section 11(d) of the Prescription Act No. 68 f 1969.

[53] I now deal with whether the prayers constitute a debt in terms of section 11(d) of the Prescription Act 68 of 1969 which provides as follows:-

“(11) Periods of prescription of debts

The periods of prescription of debts shall be the following—

(d) save where an Act of Parliament provides otherwise, three years in respect of any other debt.” The first respondent argued that the prayers related to a debt which, it contended has prescribed. This is so given that the credit or reversal sought to be given relate the charges imposed on the properties of the applicants based on the categorisation of their properties as business as opposed to the residential.”

[54] In an answer to the question that the charges sought to be reverse relate to a debt which had prescribed, the applicants rely on the testimony given by Mr Eloff for the respondent given orally as well as the judgment of the Valuation Appeal Board which held that Mr. Eloff confirmed the first respondent would consider a section 78 Supplementary Valuation for all the units if it found that the categorisation by the municipal valuer was incorrect. The applicant contends that Mr. Eloff, the second respondent had confirmed at the hearing that a supplementary valuation to the 2013 General Valuation Roll was not only a possibility but would be considered by the first respondent.

[55] As far as I am concerned, the charges relate to rates which are by their very nature, taxes imposed on the properties. They only prescribe after 30 years as opposed to any other charges imposed by the first respondent which prescribe after 5 years.

[56] I was referred to *Chantelle Jordaan & Another v Tshwane Metropolitan Municipality*,²¹ by Mr Viviers where the Constitutional Court had to consider the constitutionality of section 118(3) of Local Government: Municipal Systems Act, when the Court confirmed that the rates on the property prescribe after 30 years. I therefore find that the rates which are charged are not the debts envisaged in the Prescription Act that prescribe in five years.

²¹ 2017 (6) SA 287 CC.

[57] The applicants referred to me to the case of *Masetlha v President of Republic of South Africa and Another*²² where the Court held that: -

“The normative value system of the Constitution imposes a duty on decision makers, to act fairly towards parties who are affected by their decision”.

This is indeed correct and acceptable; however, each case depends on its own facts. In the instant case, there was an objection to the classification/ categorization of the sectional title as business sectional title instead of residential. Adjustments were done to correct the classification save for the period which is the subject of this litigation. No appeal was lodged for various reasons that the applicants provide. It is unfair to criticise the first respondent for having billed the rates of the properties in accordance with the incorrect categorization because first, it is not the first respondent who categorized the properties as business sectional titles and second and importantly, when the outcome of the objection were published, no appeals lodged with lapsed 2013 VAB.

Whether the relief sought in prayer 1 is competent in the absence of a valid appeal before the Valuation Appeal Board (“VAB”) in terms of section 54 of the MPRA.

[58] The appeals against the decisions of the second respondent are done in terms 54 of the MPRA which provides thus: -

“(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-

²² 2008 (1) SA 566(CC) at 183.

- (a) a person who has lodged an objection in terms of section 50
(1)

- (c) and who is not satisfied with the decision of the municipal valuer;

- (b) an owner of a property who is affected by such a decision, if the
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 written 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 written 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

- (e) a municipal council must be lodged within 30 days after the
date on which the decision was taken.

(3)

- (a) A municipal manager must forward any appeal lodged in terms
of subsection (1) to the chairperson of the appeal board in

question within 14 days after the end of the applicable period referred to in subsection (2).

(b) The chairperson of an appeal board must, for purposes of considering any appeals, convene a meeting of the appeal board within 60 days after an appeal has been forwarded to the chairperson in terms of paragraph (a).

(c) When an appeal is forwarded to the chairperson of an appeal board in terms of paragraph (a), a copy of the appeal must also be submitted to the municipal valuer concerned. payment of rates beyond the date determined for payment. Adjustments or additions to valuation rolls (4) An appeal lodged in terms of this section does not defer a person's liability for payment of rates beyond the date determined for payment.”

[59] It is without doubt that the section prescribes the process to be followed when the decisions of the municipal valuer are challenged. In instant case, when the outcomes of the applicants were published which left out the period concerned in terms of which the reclassification of the sectional titles were not changed to residential, no steps were taken. The Court is not competent, in my considered view to intervene and breathe life into a 2013 VAB that has ceased to exist. It was submitted on behalf of the applicants that the Court can intervene and order the 2013 VAB to be reconstituted to consider the appeals. Doing so in my view would lead to undesirable consequences. There is a reason the legislature provided that each VAB should be responsible for the applicable GVR and it would not be appropriate under the circumstances for the Court to step into a function that is left to the executive arm of the State for the reconstitution of a lapsed 2013 VAB.

There is no pending or finalised appeal or review before the VAB in respect of the 2013 GVR in the relation to the applicants' properties, accordingly, whether this court may competently refer to VAB for consideration either as an appeal or review the decision to categorise the applicants' properties.

[60] I have already referred to the provisions of section 54 of the MPRA in relation to the appeal process if any of the parties are not satisfied with the decision of the municipal valuer. I will not repeat those provisions.

[61] The applicants have conceded that they have not exhausted the internal remedies by filing their appeal on time. The question is whether under the circumstances, the Court is competent to adjudicate on the matter. The applicants submit that the door should not be closed on them based on technical reasons. I was not referred by Mr Vivier to any authority why the door should not be closed on the applicants under the circumstances.

[62] In *MEC Local Government and Traditional Affairs, KwaZulu-Natal v Botha NO and Others*²³ the Court said the following regarding a variation of the municipality's valuation roll:-

“[23] In terms of the MPRA, a variation of a municipality's valuation roll occurs in terms of s 55 as a result of objections lodged, or by means of a supplementary valuation in terms of s 78. There is no room, particularly in the present circumstances, for a variation of the 2008 valuation of the property by means of an application for condonation and late lodging of an objection in terms of s 80 of the MPRA.

[24] In terms of s 55 of the MPRA, an adjustment or addition to the valuation roll may be made in the following circumstances:

(a) after the lodging of a successful objection within the time limit specified in s 49 of the MPRA.

²³ [2015] 1 ALL SA 649; 2015(2) SA 405 (SCA) at paras 23-27.

(b) upon the compulsory review of decisions of the municipal valuer where he or she has, as a consequence of the lodging of a valid objection, adjusted the valuation of a property by more than 10 per cent upwards or downwards;

(c) upon a successful appeal to an appeal board against a decision of the municipal valuer subsequent to the lodging of a valid objection.

[25] Section 55(1) of the MPRA provides that any such adjustment or addition takes effect on the effective date of a valuation roll. In terms of s1 of the MPRA the effective date in relation to a valuation roll, means the date on which the valuation roll takes effect, ie from the start of the financial year upon which the valuation roll first takes effect. As mentioned earlier, the liquidators were not able to seek any relief under s 55 of the MPRA, as no objection had been lodged by URP against the 2008 valuation roll within the time period specified.

[26] Section 78 of the MPRA provides for the making of supplementary valuations, inter alia, where it appears that a property had been substantially incorrectly valued during the last general valuation. However, in terms of s 78(4)(a) the rates based on the valuation of a property in a supplementary valuation roll, only become payable with effect from the effective date of the supplementary roll. As I have also mentioned previously, no steps have to date been taken to cause a supplementary valuation to be made in respect of the property.

[27] It follows from the above that there is no remedy available to the liquidators under the MPRA which would entitle them to lodge an objection to the 2008 valuation at this stage. In particular, they have no remedy under s 80 of the MPRA. It is accordingly not necessary to decide whether or not the condonation and extension of time provisions of s 80 of the MPRA, extend to applications made by affected parties other than municipalities. However, as this has been the topic of much debate, I will deal with it succinctly and without elaboration.”

[63] Accordingly, in my view, there is no room to re-open a 2013 GVR because of failure to comply with the prescripts of the MPRA in so far as the exhaustion of internal remedies are concerned. This is not a technical point but is what the legislature intended to provide for the parties affected by the valuation decisions to be challenged. Consequently, the contention by the applicants that the Court is competent to intervene is without factual and legal basis even if the application is brought in terms of PAJA because the applicants have failed to comply with the internal remedies prescribed by section 55 of the MPRA.

[64] Finally, the validity of a supplementary roll is statutorily tied to the municipality's current valuation roll. A supplementary roll cannot legally be made in respect of a roll which no longer current. This is so despite what Mr. Eloff may have said in the hearing of other appeals related to the same sectional title scheme because he has no delegated authority to bind the first respondent and for that matter, the VAB in such proceedings. The powers of the municipal valuer to categorise the properties are powers he/she derives from the statute, are not the powers that the municipality itself has as the municipality also has an interest in the categorization of the properties and may challenge the decisions of the municipal valuer.

Whether, in the light of the questions raised in relation to the relief in prayers 1 and 2, the applicants have made a valid case for the correction of the municipal accounts in prayers 3 or the interdictory order sought in prayer 4.

[65] Just to recall, in prayer 1 of the notice of motion, the applicants seek that the decision to categorise the sectional title properties as business sectional title for the period 01 July 2013 to 30 June 2018 for the purposes of the 2013 GVR should be set aside. They also seek the substitution of the

respondents' decision to categorise the applicants' properties as sectional title business for the period of 01 July 2013 to 30 June 2018 for the purposes of the 2013 GVR. In the alternative, they seek an order that the matter be referred to the 2013 VAB for reconsideration and that the respondents be ordered to give the applicants notice of the date of the review or appeal and an opportunity to make written/verbal representation at such hearing if same is constituted by way of an appeal.

[66] Section 34(b) to (g) of the MPRA prescribes the following functions of the municipal valuer:-

“The valuer of a municipality must in accordance with this Act-

- (a) value all properties-in the municipality determined in terms of section 30(2).
- (b) prepare a valuation roll of all properties in the municipality determined in terms of section 30(3);
- (c) sign and certify the valuation roll;
- (d) submit the valuation roll to the municipal manager within a prescribed period;
- (e) consider and decide on objections to the valuation roll;
- (f) attend every meeting of an appeal board when that appeal board-
 - (i) hears an appeal against a decision of that valuer; or
 - (ii) reviews a decision of that valuer

(g) prepare a supplementary valuation roll whenever this becomes necessary;

(h) assist the municipality in the collection of postal addresses of owners where such addresses are reasonably determinable by the valuer when valuing properties; and

(i) generally, provide the municipality with appropriate administrative support incidental to the valuation roll.”

[67] In *Gillyfrost 54 (Pty) Ltd v Nelson Mandela Metropolitan Municipality*²⁴ in reasserting the functions of the municipal valuer the Court said the following: -

“[47] I have already dealt hereinabove with the role and functions of the municipal valuer and with the nature of the power exercised by the valuer. If, as the authorities suggest, the valuation of property and the allocation of specific property to a category of rateable property determined by the municipality are statutory functions fulfilled by a municipal valuer appointed as impartial public functionary, then grounds (a) and (c) above involve administrative action which is not ascribable to the municipality as defendant in this matter. Grounds (b) and (d) referred to above also involve administrative for the reasons which follow.”

[68] In emphasizing the importance of a separation of valuation function, the SCA in *The City of Johannesburg Metropolitan Municipality v The Chairman of the Valuation Appeal Board for the City of Johannesburg and Another*²⁵ said the following: -

“[21] The certified valuation roll is then submitted to the municipal manager and published for public information, with any person who wishes

²⁴ [2015] ZAECPEHC 47; [2015] 4 All SA 58 (ECP)

²⁵ [2014] ZASCA 5; [2014] 2 All SA 363 (SCA); 2014 (4) SA 10 (SCA) at paras 21 and 22.

to lodge an objection in respect of ‘any matter in, or omitted from, the roll’ being invited to do so.²⁶ The Act entitles a person to inspect the roll so published and to lodge an objection²⁷ that is to be considered by the municipal valuer who may, as a result, adjust or add to the valuation roll.²⁸ The objector is then entitled to be notified of the outcome of the objection and to be given reasons for the decision taken. And of course, as I have already mentioned, it is against the decision taken by the municipal valuer regarding an objection that a right of appeal lies to the valuation appeal board.

[22] In the scheme of these proceedings, the function of the municipal valuer is of considerable importance. In order to determine the market value of property, valuers should have regard to various factors in order to determine what a notional willing buyer would probably pay to a willing seller in the open market. These include comparable sales of similar properties in the open market; the extent to which the parties to previous transactions acted voluntarily and negotiated on equal terms or acted under compulsion; the motivation of the respective parties in previous transactions to buy and sell; restrictions on the use of the property and the possibility of their removal; the improvements on the land and the depreciation of those improvements; the potential uses to which the land may be put; and the income that may be derived from the property (this list is not meant to be exhaustive).²⁹ As was said more than a century ago in a passage regularly approved by this court thereafter:

‘It may not be always possible to fix the market value by reference to concrete examples. There may be cases where, owing to the nature of the property, or to the absence of transactions suitable for comparison, the

²⁶ Section 49(1)(a) (ii) of the MPRA

²⁷ Section 50 which defines the steps that an objector must take to object to the valuation as well as the assistance to be rendered to the objector by the municipal manager.

²⁸ Section 51

²⁹ Estate Marks v Pretoria City Council 1969(3) SA 227(A) 253A-255A; Minister of Agriculture v Davey 1981(3) SA 877(A) 902F-903B and Sher and Others NNO V Administrator, Transvaal [1990] ZASCA 11;1990(4) SA at 547h-48J

valuator's difficulties are much increased. His duty then would be to take into consideration every circumstance likely to influence the mind of a purchaser, the present cost of erecting the property, the uses to which it is capable of being put, its business facilities as affording an opportunity for profit, its situation, and surroundings, and so on. There being no concrete illustration ready to hand of the operation of all these considerations upon the mind of an actual buyer, he would have to employ his skill and experience in deciding what a purchaser, if one were to appear, would be likely to give. And in that way he would to the best of his ability be fixing the exchange value of the property."³⁰

[69] It is evident from the passages quoted above that the function of a valuer is critical to the determination of the rating policy once the estimated value is imposed on the property for the determination of the rates and taxes to be imposed to the rate payers. It is clearly not the first respondent who decides of the category to which the property falls for the purposes of rates payment, but the municipal valuer. Consequently, it follows that the categorization of the property cannot be imputed to the first respondent because the MPRA says so. It must follow for the reasons already stated, the Court is not competent to intervene. More importantly, Mr Viviers on behalf of the applicants, has not provided me with any authority on why the Court must intervene and grant the prayers.

[70] There are more compelling reasons why the Court cannot intervene. Section 32 of the MPRA pertaining to the commencement and period of evaluation roll stipulates as follows:

“Commencement and period of validity of valuation rolls

1.1 A valuation roll

³⁰ Pietermaritzburg Corporation v SA Breweries 1911 AD 501 at 516.

- (a) takes effect from the start of the financial year following completion of the public inspection. Required by section 49, and
 - (b) remains valid for the financial year order for one or more subsequent financial years as a municipality may decide but in total not for more than
 - (i) for financial years in respect of a metropolitan municipality; and
 - (ii) 5 financial years in respect of a local municipality.
- (2) The MEC for local government in a province may extend the period for which a valuation roll remains valid to five financial years, but only –
- (a) if the provincial executive has intervened in the municipality in terms of section 139 of the Constitution; or
 - (b) on request by the municipality, in other exceptional circumstances which (3) The valuation roll of a municipality remains valid for one year after the date on which the roll has lapsed if the provincial executive intervenes in a municipality in terms 45 of section 139 of the Constitution either before or after that date, provided that the intervention was caused by the municipality's failure- (a) to determine a date of valuation for its general valuation in terms of section (b) to designate a person as its municipal valuer in terms of section 33.”

[71] The budgets and rating policies have come and gone. The decision sought to be impugned are based on a lapsed 2013 GVR. Intervening under the circumstances would in my view, amount to unscrambling the proverbial egg and this would lead to the undesirable and unintended consequences which our Courts under similar circumstances should be slow to do.

Order

[72] The following order is made: -

(a) The application is dismissed with costs.

**ML SENYATSI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

Delivered: This Judgment was handed down electronically by circulation to the parties/ their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be April 2024.

Appearances:

For the applicants: Adv AM Viviers

Instructed by Schindlers Attorneys

For the respondent: Adv S Ogunronbi

Instructed by Prince Mudau & Associates

Date of Hearing: 25 October 2023

Date of Judgment: April 2024