CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 19/04

THE CITY OF CAPE TOWN	First Applicant
MINISTER OF PROVINCIAL AND LOCAL GOVERNMENT	Second Applicant
versus	
ANITA MARIE ROBERTSON	First Respondent
GUY TREVOR ROBERTSON	Second Respondent

Heard on : 7 September 2004

Decided on : 29 November 2004.

JUDGMENT

MOSENEKE J:

Introduction

[1] Mrs and Mr Robertson sought and obtained declaratory and interdictory relief from the Cape High Court (High Court) restraining the City of Cape Town (the City) from levying and recovering property rates based on property valuations contained in a provisional valuation roll. The High Court also granted a declarator to the effect that

section 21 of the Local Government Laws Amendment Act, 2002[1] (Amendment Act) is inconsistent with the Constitution and to that extent invalid. It suspended the orders for a year from the date of the conclusion of proceedings in this Court to allow the competent authorities to correct the defects in the law.[2]

[2] As required by subsection 172(2)(a) of the Constitution, the High Court has referred its order of constitutional invalidity to this Court for confirmation. Also before us is an appeal. The City, as first appellant, and the Minister of Provincial and Local Government (Minister), as second appellant, are aggrieved by the decision of the High Court. Their appeal against the order of constitutional invalidity lies directly to this Court in terms of subsection 172(2)(d) of the Constitution and rule 16(2) of the rules of this Court. The City appeals also against the other orders of the High Court that are not subject to confirmation. There was however no objection to this procedure. It is not necessary to decide whether that appeal lies as of right to this Court in terms of subsection 172(2)(d). Even if we were to treat the appeal as an application for leave to appeal directly to this Court, it would clearly be in the interests of justice to grant the application, which would concern constitutional matters.

[3] The appeal concerns the validity of the provisional valuation roll of property within the area of jurisdiction of the City, compiled and advertised for inspection and

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[1] Act 51 of 2002.

[2] The decision of the Cape High Court is reported as *Robertson and Another v City of Cape Town and Another; Truman-Baker v City of Cape Town* 2004 (5) SA 412 (C); 2004 (9) BCLR 950 (C).

objection on 21 May 2002 and the validity of the decision of the City to levy in effect property rates on the basis of that roll as determined by its budget resolution for the 2002/2003 municipal financial year.[3] The appeal also raises the question whether, if the City's principal grounds of appeal are resolved in its favour, it remains necessary to reach the constitutional challenge against the Amendment Act. And if so, whether the declaration of constitutional invalidity ought to be confirmed by this Court.

[4] The City is a municipality with legal personality constituted as such in terms of Chapter 2 of the provisions of the Local Government: Municipal Structures Act, 117 of 1998 (Structures Act). Its power to value property and to levy property rates is under challenge. On the other hand, the Minister sponsored the enactment of the impugned national legislation and is the member of cabinet responsible for its implementation. For that reason, his interest in the appeal is confined to the orders of the High Court that declared section 21 of the Amendment Act inconsistent with the Constitution and invalid; suspended the declaration of invalidity and directed him together with the City to pay the costs of the application.

Facts

[5] The Robertsons are an elderly couple. They live in a house owned by Mrs Robertson, the first respondent, situated on erf 1829, Camps Bay. In 1969 the Robertsons purchased the erf as a vacant and unimproved lot for R7 250. Soon

[3] In terms of subsection 10G(2)(d)(i) of the Local Government Transition Act, 209 of 1993 (which remained in effect by reason of subsection 93(4) of the Local Government: Municipal Structures Act, 117 of 1998), the City's financial year began from 1 July 2002 and ended on 30 June of the following year. The impugned resolution that property rates be levied in accordance with the 2000 General Valuation Roll was passed by the City on 29 May 2002.

thereafter they built a house on it at a cost of some R15 000. Although registered in her name, she and her husband, the second respondent, consider the house to be their joint property.

[6] The residential area of Camps Bay, nestled on the shores of the Atlantic Ocean, has become one of the most desirable and expensive residential areas in South Africa. In the last applicable general valuation of the property conducted in 1979, the property was valued at R52 510, comprising land value of R8 600 and improvements value of R43 910. A little over two decades later, the City valued the property at R1, 7 million. The valuation is made up of land value of R460 000 and building value of R1 240 000. Premised on this valuation, for purposes of the 2002/2003 municipal financial year, Mrs Robertson is liable for R16 321.80 in property rates for the year. This assessment translates to R1 360.15 in property rates per month. In addition, the City has estimated her liability for a sewerage rate of R588.12 and a refuse rate of R718.56 for a year.

[7] The total rates liability of the Robertsons appears to have more than doubled. Before 1 July 2002 their rates bill was R8 203.44 over a year and R683.62 every month. The Robertsons are unhappy. They say they cannot afford the increased rates, which they describe as exorbitant in relation to their overall budget. They seek relief from what they regard as unfair and onerous property rates. This they hope to do by impugning the legal validity of the property valuation roll and the resultant property rates.

[8] It is now convenient to turn to a brief account of the background events, which gave rise to the predicament of the Robertsons over escalated property valuation and rates. These facts are by and large common cause between the parties and are most helpfully rendered in the judgment of the High Court.[4] Accordingly, a brief sketch of the events should suffice.

Local government transition

[9] On 5 December 2000 the City was established as a municipality in terms of the provisions of sections 12,[5] 14[6] and 16[7] of the Structures Act. This event marked the

[4] Above n 2 at paras 9-19.

[5] Section 12 states:

> "MECs to establish municipalities—(1) The MEC for local government in a province, by notice in the Provincial Gazette, must establish a municipality in each municipal area which the Demarcation Board demarcates in the province in terms of the Demarcation Act.
> (2) The establishment of a municipality—
> (a) must be consistent with the provisions of this Act; and
> (b) takes effect at the commencement of the first election of the council of that municipality.
> (3) The notice establishing the municipality must set out—
> (a) the category of municipality that is established;
> (b) the type of municipality that is established;
> (c) the boundaries of the municipal area;
> (d) the name of the municipality;
> (dA) in the case of a metropolitan or local municipality, the number of wards in the municipality;
> (e) the number of councillors as determined in terms of section 20;
> (eA) in the case of a district municipality, the number of councillors, determined in terms of section 23, to—
> (i) proportionally represent parties;
> (ii) be appointed by each of the local councils within the district municipality to directly represent each local municipality; and
> (iii) proportionally represent parties from each district management area within that district municipality;
> (f) which councillors of the municipality (if any) may be designated as fulltime in terms of section 18(4);
> (g) . . . .
> (h) any provisions of this Act from which the municipality has been exempted in terms of section 91; and
> (i) any other relevant detail.
>
> (4) The MEC for local government must—

(a) at the commencement of the process to establish a municipality, give written notice of the proposed establishment to organised local government by the province and any existing municipalities that may be affected by the establishment of the municipality;
(b) before publishing a notice in terms of this section, consult—
(i) organised local government in the province; and
(ii) the existing municipalities affected by the proposed establishment; and
(c) after such consultation publish particulars of the proposed notice for public comment."

[6] Section 14 states:

"Regulation of effects of establishment of municipality on existing municipalities—
(1)(a) A municipality established in terms of section 12 in a particular area, supersedes the existing municipality or municipalities to the extent that the existing municipality or municipalities fall within that area.
(b) The superseding municipality becomes the successor in law of the existing municipality subject to paragraph (c).
(c) Where a district municipality and one or more local municipalities within the area of the district municipality supersede the existing municipality or municipalities in that area, the district and local municipalities in that area become the successors in law of the existing municipality or municipalities depending on the specific assets, liabilities, rights and obligations allocated to the district and local municipalities respectively in terms of the relevant section 12 notice or notices.
(2) If subsection (1) is applicable, the section 12 notice, or any amendment of the section 12 notice, must—
(a) provide for the disestablishment of the existing municipality or, if only part of the existing municipality's area is affected, the disestablishment of the existing municipality in the affected area; and
(b) regulate the legal, practical and other consequences of the total or partial disestablishment of the existing municipality, including—
(i) the vacation of office by councillors of the existing municipality;
(ii) the transfer of staff from the existing municipality to the superseding municipality, or, if there is more than one superseding municipality, to any of the superseding municipalities;
(iii) the transfer of assets, liabilities, rights and obligations, and administrative and other records, from the existing municipality to the superseding municipality, or, if there is more than one superseding municipality, to any of the superseding municipalities, taking into account the interests of creditors of the existing municipality; and
(iv) the continued application of any by-laws and resolutions of the existing municipality to or in that area, and the extent of such application:
Provided that if the superseding municipality is a district or local municipality a transfer referred to in subparagraph (ii) or (iii) must be effected in a way that would enable the superseding municipality to perform the functions or exercise the powers assigned to it in terms of section 84 (1) or (2).
(3)(a) The transfer of a staff member in terms of a section 12 notice must be—
(i) on conditions of service not less favourable than those under which that staff member served in the existing municipality; and
(ii) in accordance with the Labour Relations Act, 1995 (Act No. 66 of 1995).
(b) A section 12 notice transferring staff of an existing municipality to a superseding municipality may determine that—
(i) the staff transferred from the existing municipality to the superseding municipality from an administrative unit that functions as such until the superseding municipality has established a staff structure and has appointed staff to positions on that staff structure; and
(ii) such administrative unit functions under the control of the municipal manager or acting municipal manager of the superseding municipality.

final phase in the long and intricate process of transforming racially based municipalities into democratically determined local government in the Cape Metropolitan Area (CMA). The process entailed the integration of 60 local authorities into a single municipality – the City of Cape Town.[8]

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(4)(a) On production of a certificate by a municipality that any asset registered in a deeds registry was transferred to it in terms of a section 12 notice, a registrar of deeds must make such entries or endorsements in or on any relevant register, title deed or other document to register that asset in the name of that municipality.
(b) No duty, fee or other charge is payable for a registration in terms of paragraph (a).
(5) The MEC for local government in a province, by notice in the Provincial Gazette, may make provision for transitional measures to facilitate the disestablishment of an existing municipality and the establishment of a new municipality. The MEC must consult the existing municipality before publishing the notice."

[7] Section 16 states:

"Amendment of section 12 notices—
(1) The MEC for local government in a province, by notice in the Provincial Gazette, may amend a section 12 notice—
(a) to change the municipality from its existing type to another type;
(b) to alter the name of the municipality;
(c) subject to section 20, to alter the number of councillors, but only with effect from the next election of the municipal council;
(d) to specify which councillors of the municipality (if any) may be designated as fulltime in terms of section 18 (4);
(e) . . . .
(f) to specify any provisions of this Act from which the municipality has been exempted in terms of section 91;
(g) to give effect to any change in boundaries; or
(h) to further regulate the matters mentioned in section 14 after consulting all affected municipalities.
(2) Any amendment of a section 12 notice must be consistent with the provisions of this Act.
(3) The MEC for local government must—
(a) at the commencement of the process to amend a section 12 notice, give written notice of the proposed amendment to organised local government in the province and any existing municipalities that may be affected by the amendment;
(b) before publishing the amendment notice consult—
(i) organised local government in the province; and
(ii) the existing municipalities affected by the amendment; and
(c) after such consultation publish particulars of the proposed notice for public comment."

[8] For a general overview of the constitutional context of the transformation of local government see *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374 (CC); 1998 (12) BCLR 1458 (CC) at paras 2-4; *African National Congress and Another v Minister of Local Government and Housing, KwaZulu-Natal, and Others* 1998 (3) SA 1 (CC); 1998 (4) BCLR 399 (CC) at paras 4-12; *Executive Council, Western Cape Legislature, and Others v President of the Republic of South Africa and Others* 1995 (4) SA 877 (CC); 1995 (10) BCLR 1289 (CC) at paras 182-86; *Rates Action Group v City of Cape Town* 2004 (12) BCLR 1328 (C).

[10] Preceding the final phase, there were two earlier stages of transition governed by the Local Government Transition Act, 209 of 1993 (Transition Act).[9] The terms of this legislation were negotiated as part of the political and constitutional settlement ahead of the commencement of the interim Constitution in April 1994. The text of the Transition Act had been agreed upon and adopted on 18 November 1993.[10] The legislation commenced on 2 February 1994. That signalled the start of the first phase known as the pre-interim phase,[11] which ran until the first democratic local government elections held for all municipalities on 29 May 1996. The second phase, known as the interim phase,[12] started from the local government elections until 5 December 2000 when the Structures Act took effect in respect of municipal areas determined under the Local Government: Municipal Demarcation Act, 27 of 1998 (Demarcation Act).

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[9] See also *Executive Council, Western Cape v Minister of Provincial Affairs and Constitutional Development and Another; Executive Council, KwaZulu-Natal v President of the Republic of South Africa and Others* 2000 (1) SA 661 (CC); 1999 (12) BCLR 1360 (CC) at para 16; *African National Congress* id at paras 6-7; *Executive Council, Western Cape Legislature* id at para 178.

[10] The text of the Transition Act was negotiated and settled by the Local Government Negotiating Forum established in March 2003. Its mandate was to seek agreement between representatives of the existing central, provincial and local government, on the one hand and the South African National Civic Association, on the other, on local government restructuring in close liaison with and within the framework of the agreements of the national negotiation process at Kempton Park. For a description and critique of the process see Cloete "Local Government Transformation in South Africa" in De Villiers (ed) *Birth of a Constitution* 1 ed (Juta & Co, Ltd, Kenwyn 1994) at 294.

[11] Section 1 of the Transition Act defines the "pre-interim phase" as:

> "[T]he period commencing on the date of commencement of this Act and ending with the commencement of the interim phase".

[12] Section 1 of the Transition Act defines the "interim phase" as:

> "[T]he period commencing on the day after elections are held for transitional councils as contemplated in section 9, and ending with the implementation of final arrangements to be enacted by a competent legislative authority".

[11] Ahead of the inception of the final phase, and by mid-1999, municipalities in the CMA namely, the Cape Metropolitan Council (CMC) and the 6 metropolitan transitional local councils found it pressing to compile a metropolitan-wide general valuation of property. Until then local authorities within the CMA had been saddled with different valuation rolls and divergent base dates. Some valuation rolls were outdated and even more than 20 years old. There were discrepancies between "rates values" and actual values of property. Moreover, in some metropolitan transitional local councils, across the board uniform property rates increases were imposed. This did not help matters. These increases led to complaints of an unfair distribution of the rates burden and a perception and complaint, in some quarters, of unfair discrimination.[13]

[12] An additional and not insignificant integration challenge for the CMA was that value based property rates could not be charged in black residential areas previously administered under the Black Local Authorities Act, 1982.[14] There had been no valuation of property in these segregated neighbourhoods.

[13] In 1997 the Council of the previous City of Cape Town completed but did not implement a new valuation roll on a "land only" basis. The Council abandoned this

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[13] See for example the judgment in *Lotus River, Ottery, Grassy Park Residents Association and Another v South Peninsula Municipality* 1999 (2) SA 817 (C); 1999 (4) BCLR 440 (C) where it was held that the uniform property rates increases perpetuated inherent inequities within one tax base and thus amounted to unfair discrimination.

[14] Act 102 of 1982.

plan because in 1998 subsection 159(1)[15] of the Constitution was amended by extending the term of the municipal councils from four to five years. In the same year the Structures Act was enacted and provided in effect for the establishment of a single metropolitan municipality to replace the 6 metropolitan local councils in the CMA and the CMC. It became clear that a common valuation methodology based on land and improvements had to be followed in the CMA and that national legislation[16] would impose a requirement of a single valuation roll for all property.

[14] These cumulative considerations impelled the CMA towards a uniform and metropolitan wide valuation of property and ad valorem property rates, being assessment rates based on the value of the property within a municipal area.[17] The practical purpose and effect of this approach is to create a single tax base and to require those with greater means, measured by the value of their immovable property, to make a proportionately larger contribution to the municipal purse. It is clear from the depositions of the City and applicable legislation[18] that the principle of one tax base is integral to the effective transformation towards non-racial local governance.

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[15] Subsection 159(1) states:

> "The term of a Municipal Council may be no more than five years, as determined by national legislation."

[16] With effect from October 2000, the provisions of subsection 10G(6)(b) of the Transition Act were made applicable to final phase municipalities by insertion of subsections 93(4) and (5) into the Structures Act. The effect of the amendment was to create a requirement that a single valuation roll of all properties within a municipality must be compiled and kept open for public inspection.

[17] For a discussion of the system ad valorem property rates in relation to subsection 229(1)(a) of the Constitution, see *Gerber and Others v Member of the Executive Council for Development Planning and Local Government, Gauteng and Another* 2003 (2) SA 344 (SCA) at paras 23-28.

[18] Subsection 10G(6)(b) of the Transition Act read with subsections 93(4) and (5) of the Structures Act.

Otherwise very prolonged material neglect and exclusion of certain areas of the City would simply persist, if not be entrenched.[19]

[15] Between June 1999 and March 2000 individual metropolitan transitional local councils adopted resolutions authorising general valuations of property within their areas of jurisdiction. The date of the valuation also known as the base date was determined as 1 January 2000. The valuation would be on a "land and improvements" basis.

[16] As a step to facilitate the transition process, the Unicity Commission (Unicom) was established on 25 November 1999.[20] It was a multi-party transitional body authorised to act, immediately after the local government elections, as a midwife to a single municipality. In April 2000 the authority of the Unicom was extended to managing the general property valuation as at 1 January 2000. The envisaged implementation date was 1 July 2002. The valuation was conducted in terms of the Property Valuation Ordinance 1993 (C) (PVO) read with subsections 93(4)[21] and (5)[22]

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[19] Compare *Fedsure* above n 8 at paras 121-5; *Gerber* above n 17 at paras 23-28; Swilling and Boya "Local governance in transition" in Fitzgerald et al (eds) *Managing Sustainable Development in South Africa* (Oxford University Press, Oxford 1995) 168 at 171.

[20] The Provincial Minister of Local Government acting under the provisions of subsection 14(5) of the Structures Act established the Unicity Commission.

[21] Subsection 93(4) of the Structures Act states:

> "Despite anything to the contrary in any other law and as from the date on which a municipal council has been declared elected as contemplated in item 26 (1) (a) of Schedule 6 to the Constitution—
>
> (a) section 10G of the Local Government Transition Act, 1993 (Act No. 209 of 1993), read with the necessary changes, apply to such a municipality; and
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> (b) any regulation made under section 12 of the Local Government Transition Act, 1993 (Act No. 209 of 1993), and which relates to section 10G of that Act, read with the necessary changes, apply to such a municipality."

of the Structures Act. The valuation process was modernised and modified by the insertion of subsection 10G(6A)[23] of the Transition Act, which permitted the use of computer-assisted mass appraisal techniques.

[17] On 24 April 2002, the City resolved to continue with the general property valuation in terms of the PVO read with subsections 10G(6) and (6A) of the Transition Act and subsections 93(4) and (5)(a) of the Structures Act; that the valuation date would be 1 January 2000 and that all actions taken by its predecessors in law in relation to the general valuation of all property within the CMA were adopted and ratified. The City caused the provisional valuation roll to be completed and submitted in terms of section 10[24] of the PVO. On 10 May 2002 the City

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[22] Subsection 93(5) of the Structures Act states:

> "For purposes of subsection (4)—
> (a) any reference in section 10G of the Local Government Transition Act, 1993 (Act No. 209 of 1993), or a regulation referred to in subsection (4) (b), to—
> (i) "chairperson of the council" must be construed as a reference to the speaker of the council;
> (ii)"chief executive officer" must be construed as a reference to the municipal manager appointed in terms of section 82;
> (iii) "local council", "metropolitan council", "metropolitan local council" and "rural council" must be construed as a reference to a municipal council;
> (iv) "MEC" must be construed as a reference to the member of the Executive Council of a province responsible for local government;
> (v) "MEC responsible for Finance" must be construed as a reference to the member of the Executive Council of a province responsible for finances in the province; and
> (vi) "remaining area" and "areas of jurisdiction of representative councils" must be construed as a reference to a district management area; . . . "

[23] Subsection 10G(6A) added by subsection 93(5)(b) of the Structures Act.

[24] Section 10 of the PVO states:

> "After the preparation of the provisional valuation roll in terms of the provisions of section 9, such roll shall forthwith be submitted to the town clerk of the local authority concerned, and the town clerk shall submit it to the local authority at its next meeting for its information."

advertised in terms of subsection 15(1)[25] of the PVO in the Provincial Gazette and in the press, that the provisional valuation roll was open for inspection from 21 May 2002. The notice invited objections as required by subsection 15(1)(b)[26] of the PVO.

[18] Importantly, on 29 May 2002, the City resolved that property rates and tariffs for the 2002/2003 municipal financial year would be levied in accordance with the 2000 general valuation roll prepared in terms of the PVO. During June 2002 the City manager published in the press, in isiXhosa, English and Afrikaans, the new rates and tariffs and a public guide to the new municipal account and budget.

[19] The decision of the City met with considerable opposition from some ratepayers and ratepayers' associations. The Robertsons were amongst the discontented property owners. As intimated earlier, the general valuation of their Camps Bay property by the City had shown a dramatic rise to R1, 7 million. The new rating system had led to a hefty 113% increase in their rates for the financial year ending 30 June 2003. The Robertsons objected to the valuation in terms of the PVO contending that the escalated value should be reduced to R380 000. This amount, they

[25] Subsection 15(1) of the PVO states:

> "Within twenty-one days after the submission of the provisional valuation roll to the local authority as contemplated in section 10, the town clerk shall in the prescribed form cause a notice to be published in the Provincial Gazette and twice with an interval of one week in at least two newspapers circulating in the area of jurisdiction of the local authority and in such further manner as the Premier may direct".

[26] Subsection 15(1) (b) states:

"[I]nviting any owner of property or his or her proxy to lodge with the town clerk within such period any objection in the form prescribed in respect of any matter relating to his or her own property recorded on the provisional valuation roll as contemplated in section 9."

argued, should be made up of a land value of R120 000 and a buildings value of R260 000.

Proceedings in the High Court

[20] On 27 June 2002 the respondents approached the High Court on motion and by way of urgency.[27] They sought an order restraining the City from levying and recovering property rates on the basis of the property valuation listed in the provisional valuation roll that the City opened for inspection and objection on 21 May 2002.

[21] Before the High Court the respondents advanced three main grounds of attack.[28] The first ground was that the PVO had lapsed and was not a law "in force". This they said because the PVO was enacted on 8 December 1993 but brought into force only on 1 July 1994.[29] Therefore, they said, it was not legislation which continued "in force" within the meaning of section 229 of the interim Constitution which took effect on 27 April 1994. They urged that the PVO could not properly be assigned by the President

[27] This was not the first challenge to the validity of the provisional valuation roll. On 27 May 2002 a body known as the Rates Action Group (RAG) launched an application in the Cape High Court under case number 4724/02, making the challenge. RAG appears to have suspended its application because by the time the matter came before this Court they had not pursued it any further.

[28] The respondents' grounds of invalidity appear to have much in common with aspects which had been identified as areas of potential vulnerability in a memorandum by an attorney representing the City. The memorandum had been submitted to the Portfolio Committee on Provincial and Local Government Affairs (Portfolio Committee) in the Legislative Assembly shortly before the institution of the application.

[29] The PVO was promulgated on 22 December 1993 but section 38 of the PVO delayed its date of operation to 1 July 1994.

to the province of the Western Cape as required by subsections 235(6)[30] and 235(8)[31] of the interim Constitution.

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[30] Subsection 235(6) of the interim Constitution states:

> "The power to exercise executive authority in terms of laws which, immediately prior to the commencement of this Constitution, were in force in any area which forms part of the national territory and which in terms of section 229 continue in force after such commencement, shall be allocated as follows:
>
> (a) All laws with regard to matters which—
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> (i) do not fall within the functional areas specified in Schedule 6; or
>
> (ii) do fall within such functional areas but are matters referred to in paragraphs (a) to (e) of section 126(3) (which shall be deemed to include all policing matters until the laws in question have been assigned under subsection (8) and for the purposes of which subsection (8) shall apply mutatis mutandis),
>
> shall be administered by a competent authority within the jurisdiction of the national government: Provided that any policing function which but for subparagraph (ii) would have been performed subject to the directions of a member of the Executive Council of a province in terms of section 219(1) shall be performed after consultation with the said member within that province.
>
> (b) All laws with regard to matters which fall within the functional areas specified in Schedule 6 and which are not matters referred to in paragraphs (a) to (e) of section 126(3) shall—
>
> (i) if any such law was immediately before the commencement of this Constitution administered by or under the authority of a functionary referred to in subsection (1)(a) or (b), be administered by a competent authority within the jurisdiction of the national government until the administration of any such law is with regard to any particular province assigned under subsection (8) to a competent authority within the jurisdiction of the government of such province; or
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> (ii) if any such law was immediately before the said commencement administered by or under the authority of a functionary referred to in subsection (1)(c), subject to subsections (8) and (9) be administered by a competent authority within the jurisdiction of the government of the province in which that law applies, to the extent that it so applies: Provided that this subparagraph shall not apply to policing matters, which shall be dealt with as contemplated in paragraph (a).
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> (c) In this subsection and subsection (8) "competent authority" shall mean—
>
> (i) in relation to a law of which the administration is allocated to the national government, an authority designated by the President; and
>
> (ii) in relation to a law of which the administration is allocated to the government of a province, an authority designated by the Premier of the province."

[31] Subsection 235(8) of the interim Constitution states:

> "(a) The President may, and shall if so requested by the Premier of a province, and provided the province has the administrative capacity to exercise and perform the powers and functions in question, by proclamation in the Gazette assign, within the framework of section 126, the administration of a law referred to in subsection (6)(b) to a competent authority within the jurisdiction of the government of a province, either generally or to the extent specified in the proclamation.
>
> (b) When the President so assigns the administration of a law, or at any time thereafter, and to the extent that he or she considers it necessary for the efficient carrying out of the assignment, he or she may—
>
> (i) amend or adapt such law in order to regulate its application or interpretation;

[22] Second, the respondents contended that even if the PVO was a law "in force" the City is not a "local authority" contemplated by the PVO which defines a "local authority" as a "local council, a metropolitan local council, a representative council, a rural council and a district council" as defined in section 10B of the Transition Act. The City is however, none of these. It is a municipality constituted in terms of the Structures Act. Therefore, they contended, it cannot validly exercise property valuation and rating powers reserved for a local authority under the PVO.

[23] Third, the respondents submitted that even if the assumption were made that the PVO was a law "in force" and that the City is a "local authority", it did not have the power to levy rates on the basis of property values tabulated in the provisional valuation roll published in terms of section 15 of the PVO as distinct from a valuation roll confirmed by certification in terms of subsections 18(1) and (2) of the PVO. They contended that there is no legislative provision corresponding to the provisions of

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(ii) where the assignment does not relate to the whole of such law, repeal and re-enact, whether with or without an amendment or adaptation contemplated in subparagraph (i), those of its provisions to which the assignment relates or to the extent that the assignment relates to them; and

(iii) regulate any other matter necessary, in his or her opinion, as a result of the assignment, including matters relating to the transfer or secondment of persons (subject to sections 236 and 237) and relating to the transfer of assets, liabilities, rights and obligations, including funds, to or from the national or a provincial government or any department of state, administration, force or other institution.

(c) In regard to any policing power the President may only make that assignment effective upon the rationalisation of the police service as contemplated in section 237: Provided that such assignment to a province may be made where such rationalisation has been completed in such a province.

(d) Any reference in a law to the authority administering such law, shall upon the assignment of such law in terms of paragraph (a) be deemed to be a reference mutatis mutandis to the appropriate authority of the province concerned.

subsection 86(1)[32] of the Municipal Ordinance, 20 of 1974 (C) permitting the City to levy and recover property rates based upon valuations of property recorded in a provisional valuation roll.

[24] The High Court dismissed the first attack, but upheld the second and third.

[25] On 24 October 2002 and before the application was heard by the High Court, the National Assembly passed section 21 of the Amendment Bill. On 7 November 2002 the National Council of Provinces adopted the Bill. On 11 November 2002, and even before its enactment into law, the respondents advised the High Court, that they would be challenging the constitutionality of the imminent legislation. By consent, the High Court joined as a party to the proceedings, the Minister who had sponsored the impugned legislation. On 5 December 2002, the amendment took effect and inserted subsections 93(7)-(10) into the Structures Act.

[26] However, this account would go somewhat limping if I did not tell what events led to the introduction of the Amendment Bill to Parliament. In mid 2001 the City initiated what it calls a "legal audit" of the general valuation process within the CMA. In June 2002, in a memorandum, its attorneys advised of four perceived or potential legal difficulties with the PVO as a valid source of power to value property and exact

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[32] Subsection 86(1) of the Municipal Ordinance states:

> "Subject to the provisions of subsections (1A), 2 and (2A), the valuations on which any rates are assessed by a council in terms of section 85 shall be the valuations appearing on the valuation roll in operation in its municipal area on the date on which such rates become due and payable."

property taxes. Shortly thereafter the respondents launched their application in the High Court. They fashioned their three principal grounds of attack against the validity of the property rates on the potential legal difficulties canvassed in the memorandum of the City's attorneys. They even attached the memorandum to their application papers.

[27] The memorandum urged the City to request that an Act of Parliament be passed to remedy the perceived legislative defects. When approached, the national Department of Provincial and Local Government did not agree that the perceived vulnerabilities existed. However, later the department took the view that in any event the Western Cape provincial legislature had the authority to amend the PVO. The Province held a different view. It concluded that its legislature did not have the power to amend the PVO as it had lapsed at the inception of the interim Constitution. Being extremely anxious to remove any possible bases of attack against its general valuation process, the City pursued and persuaded the Minister to sponsor the Amendment Bill through Parliament. As intimated earlier, the Bill was passed.

[28] In its terms, the Amendment Act reads:

> "(7) Despite Proclamation No. 148 of 8 December 1993 (Province of the Cape of Good Hope Gazette 4833 of 22 December 1993) and section 38 of the Property Valuation Ordinance, 1993 (Cape), the said Ordinance is deemed to have come into force –
>
> (a) for the purposes of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), immediately before the commencement of that Constitution; and

> (b) for all other purposes, on 1 July 1994.
>
> (8)(a) With effect from 5 December 2000 and subject to paragraph (b), any reference in a law referred to in item 2 of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), to a municipal council, municipality, local authority or applicable designation of a local government structure, must be construed as a reference to a municipal council or a municipality established in terms of this Act, as the case may be.
>
> (b) Paragraph (a) only applies to a law referred to in item 2 of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), in so far as such a law is still applicable or becomes applicable to a municipal council or municipality, as the case may be, at the time the Local Government Laws Amendment Act, 2002, comes into effect.
>
> (9) Until the legislation envisaged in section 229 (2) (b) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), is enacted, a municipality may use the valuations appearing on a provisional valuation roll or an additional valuation roll when imposing property rates.
>
> (10) Subsections (7), (8) and (9) apply to matters that are the subject of pending litigation."[33]

[29] Confronted by the new statutory provisions, the respondents altered their notice of motion and expanded the relief they claimed. In the alternative to the interdictory relief, they asked for an order declaring section 21 of the Amendment Act to be inconsistent with the Constitution and invalid by reason of failure to comply with subsections 154(2)[34] and 229(5)[35] of the Constitution.

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[33] Above n 2 at para 19.

[34] Subsection 154(2) of the Constitution states:

> "Draft national or provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organised local government, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation."

[35] Subsection 229(5) of the Constitution states:

[30] The City conceded that at one stage it had the apprehension that absent remedial national legislation, its power to levy property rates was vulnerable to litigious challenge, but argued that the apprehension was misplaced. On a proper construction of the germane laws, it argued, it is vested with the requisite authority to impose rates founded on property values. It resisted the interdictory relief. The City and the Minister also argued that the constitutional challenge aimed at the amending legislation had no merit because, first, the procedural pre-requisites of subsections 154(2) and 229(5) of the Constitution have been properly satisfied and that second, the legislation fell to be characterised as merely expository in nature. Its provisions served only to confirm and place beyond contention the City's already existing powers to value and impose rates on property even on the basis of a provisional roll of valuation.

[31] The High Court found that the amending statute was remedial and not expository in nature. It favoured the view that but for the amending legislation, the City had no power to assess property values, as it was not a local authority under the PVO and that, in any event, the City could not levy property rates on the basis of a provisional valuation roll.

[32] Having upheld two of the respondents' principal grounds of attack, the High Court considered itself impelled to decide the constitutional challenge against the

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"National legislation envisaged in this section may be enacted only after organised local government and the Financial and Fiscal Commission have been consulted, and any recommendations of the Commission have been considered."

Amendment Act. It found the legislation to offend the Constitution on two grounds. The first ground is that the provisions of the Amendment Bill, which became subsections 93(8) and (9) of the Structures Act affecting the status, institutions, powers or functions of local government, were not re-published for public comment before being introduced in Parliament as required by subsection 154(2) of the Constitution.[36] The second ground is that subsection 93(9) of the Structures Act is legislation, which regulates the power of a municipality to impose rates on property yet the Financial and Fiscal Commission (the FFC) was not consulted before its enactment as prescribed by subsection 229(5)[37] of the Constitution. Although only subsections 93(8) and (9) of the Structures Act were found to have been enacted in a manner at odds with the requirements of the Constitution, the whole of section 21 of the Amendment Act was invalidated. The Court suspended the order of constitutional invalidity for one year to allow the competent authorities to correct the defects.

Issues on appeal and confirmation

[33] The grounds of appeal advanced by the City and the Minister bring to the fore the following issues for determination by this Court:

1. Was the PVO a law "in force" at the commencement of the interim Constitution; and if not, is subsection 93(7) of the Structures Act necessary to cure the perceived lacuna?

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[36] See above n 34.

[37] See above n 35.

2. Is the City a "local authority" for purposes of the PVO; and if not, absent subsection 93(8) of the Structures Act does it have the power to conduct a general valuation of property in terms of the PVO, to compile a provisional valuation roll and based on it, to impose property rates?
3. Does subsection 10G(6) of the Transition Act read with subsections 93(4) and (5) of the Structures Act empower the City to use a provisional valuation roll as distinct from a final valuation roll; and if not, did the City have to rely on the "remedial" provisions of subsection 93(9) of the Structure Act?
4. Is it necessary for this Court to reach the constitutional challenge to the provisions of section 21 of the Amendment Act?
5. If so, is the impugned legislation inconsistent with the Constitution and therefore invalid?

It is now convenient to examine each of these issues.

Was the PVO a law in force?

[34] It will be recalled that though enacted on 8 December 1993, the PVO only came into operation on 1 July 1994. The respondents argued that the PVO had lapsed. It had not continued "in force" when the interim Constitution took effect on 27 April 1994. As it had not been preserved by the provisions of section 229 it could not be validly assigned to the Western Cape Province under the interim Constitution.[38] The High Court dismissed the respondents' contention and found that the PVO was a law in force within the meaning of section 229 of the interim Constitution[39] and that the provisions of subsection 93(7) of the Structures Act are in effect merely expository.

[38] Above at para 21.

[39] Above n 2 at para 29.

[35] In anticipation of the respondents' argument in this Court, the appellants submitted written argument in support of the finding of the High Court that the PVO had not, in the constitutional transition, lapsed but continued in force. However, before this Court the respondents, wisely so, abandoned the contention. Moreover, before oral argument, attention of all counsel was drawn to the judgment of this Court in *Mashavha*[40] delivered after the High Court judgment.

[36] In *Mashavha* the Court held that legislation which, at the inception of the interim Constitution, had been enacted but not brought into operation was law "in force" within the meaning of sections 229 and 235(6) of the interim Constitution. Van der Westhuizen J, writing for the Court,[41] explained this finding in the following terms:

> "Therefore the phrase "in force" should not be interpreted in section 235(6) to draw any distinction between laws which were actually being implemented, executed, or administered at a particular time and laws which had been enacted but not yet come into operation, or which were not being implemented actively. It simply refers to laws which existed (on the statute book, if one wishes to put it that way) immediately before 27 April 1994, and which would continue to exist in terms of section 229."[42]

[40] *Mashavha v President of the RSA and Others* 2004 (12) BCLR 1243 (CC).

[41] Id at para 25.

[42] Footnote in judgment:

> "In the 1996 Constitution transitional arrangements are dealt with in Schedule 6. Under the heading 'Continuation of existing law' s 2(1) states as follows: 'All law that was in force when the new Constitution took effect, continues in force . . . ' Law which was 'in force' therefore also refers to 'existing law', and not to law which was 'in operation'."

[37] The High Court correctly rejected the contention that the PVO had lapsed. It also held that the provision of subsection 93(7) of the Structures Act is a mere affirmation of the existing legal position. I agree. It must follow that the PVO was indeed a law in force at the time of the inception of the interim Constitution in 1994 and available to the City for purposes authorised by that Ordinance and that subsection 93(7) of the Structures Act is, in effect, merely expository.[43]

Is the City a "local authority" as defined by the PVO and is subsection 93(8) an indispensable amendment?

[38] As I have intimated earlier, the City was established on 5 December 2000 as a municipality under sections 12, 14 and 16 of the Structures Act. It is a category A municipality envisaged in subsection 155(1)(a)[44] of the Constitution. Unlike its predecessor, the City is not a metropolitan local council and at first blush is not a "local authority" as defined in the PVO.[45] For that reason the High Court concluded that the City had no power to value property as conferred by the PVO. As a

[43] For a discussion on the nature of expository legislation see *National Education Health and Allied Workers Union v University of Cape Town and Others* 2003 (3) SA 1 (CC); 2003 (2) BCLR 154 (CC) at para 66; *Patel v Minister of the Interior and Another* 1955 (2) SA 485 (A) at 493A-F; *Kantor v MacIntyre NO and Another* 1958 (1) SA 45 [F.C.] at 48 F-G; and *Ormond Investment Co v Betts* [1928] AC 143 (HL) at 156.

[44] Subsection 155(1)(a) of the Constitution provides:

> "There are the following categories of municipality:
> (a) Category A: A municipality that has exclusive municipal executive and legislative authority in its area."

[45] Section 1 of the PVO defines a local authority as:

> "[A] local council, a metropolitan local council, a representative council, a rural council and a district council as defined in section 10B of the Local Government Transition Act, 1993 (Act 209 of 1993".

This definition was introduced on 6 June 1997 by Ordinance 8 of 1997 that grafted onto the PVO the new definition by reference to section 10B of the Transition Act. It is trite that at the inception of the new definition, the Structures Act in terms of which the City is established had not been enacted.

consequence, the High Court turned to other legislation in search for a possible source of the property rating power of the City. It concluded that neither section 14 nor subsections 93(4) and (5) of the Structures Act read with subsection 10G(6) of the Transition Act confers on the City the requisite authority to conduct property valuation and rating. The High Court found that "there was indeed a *casus omissus* by which the applicability of the PVO to the newly established municipalities was not reserved or saved."[46] It held the omission to be one that a court cannot fill. It accordingly concluded that without the amending provision of subsection 93(8)[47] of the Structures Act the property valuation and rating by the City was invalid.

[39] In essence, the High Court found that the statutory transitional arrangements directed at transferring the property valuation and rating powers from existing to superseding municipalities is deficient. Clearly, this finding obliges us to scrutinise the transitional scheme, which may be gathered from the provisions of subsections 93(4) and (5) read with sections 12 and 14 of the Structures Act. Subsection 93(4) stipulates that despite anything contrary in any other law, from the date on which a municipal council has been elected[48] section 10G of the Transition Act applies to such

[46] Above n 2 at para 45.

[47] Subsection 93(8) states:

> "(a) With effect from 5 December 2000 and subject to paragraph (b), any reference in a law referred to in item 2 of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), to a municipal council, municipality, local authority or another applicable designation of a local government structure, must be construed as a reference to a municipal council or a municipality established in terms of this Act, as the case may be.
> (b) Paragraph (a) only applies to a law referred to in item 2 of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), in so far as such a law is still applicable or becomes applicable to a municipal council or a municipality, as the case may be, at the time the Local Government Laws Amendment Act, 2002, comes into effect."

[48] Item 26(1)(a) of Schedule 6 of the Constitution states:

a municipality. Subsection 93(5) in turn extends the reach of section 10G to superseding municipalities by providing that any reference in section 10G to "local council", "metropolitan council", "metropolitan local council" and "rural council" "must be construed as reference to a municipal council." The import of this transitional provision is not obscure. On its face, the text simply means that when one reads the powers, functions and duties created or conferred by section 10G of the Transition Act, a new final phase municipal council must now take the place of the existing municipality or municipalities it is replacing. Therefore a final phase municipal council assumes the powers, authority and obligations of its predecessor under section 10G. At a purposive level this construction resonates with the broader transitional objectives of the Structures Act that was enacted to give effect to the constitutional imperative of reshaping a local sphere of government into municipalities established on a wall-to-wall basis for the whole of the territory of our country in the place of existing local authorities.[49]

[40] Clearly, from 5 December 2000, the City became a municipality whose executive and legislative authority vested in a municipal council.[50] Thus the regulatory framework of section 10G of the Transition Act as preserved by

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"(1) Notwithstanding the provisions of sections 151, 155, 156 and 157 of the new Constitution−

(a) the provisions of the Local Government Transition Act, 1993 (Act 209 of (1993), as may be amended from time to time by national legislation consistent with the new Constitution, remain in force in respect of a Municipal Council until a Municipal Council replacing that Council has been declared elected as a result of the first general election of the Municipal Councils after the commencement of the new Constitution".

[49] See subsection 151(1) of the Constitution.

[50] See subsection 151(2) of the Constitution and section 1 of the Structures Act.

subsections 93(4) and (5) extended to and still applies to the City. The only residual question seems to be whether the preserved provisions of section 10G of the Transition Act pointedly or otherwise vest in a municipality the power to measure property and to levy property rates.

[41] Section 10G regulates the financial matters of every municipality. The primary purpose of its extensive and mainly peremptory provisions is to ensure that every municipality conducts its financial affairs in an effective, economical and efficient manner with a view to optimising the use of its resources in addressing the needs of the community. Of immediate importance are the provisions of subsection 10G(6) as amended[51] and subsection 10G(7)(a)(i).[52] Read together, the provisions oblige a municipality, "subject to any other law", to ensure that property within its jurisdiction

[51] Subsection 10G(6) of the Transition Act states:

> "A local council, metropolitan local council and rural council shall, subject to any other law, ensure that—
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> (a) properties within its area of jurisdiction are valued or measured at intervals prescribed by law;
> (b) a single valuation roll of all properties so valued or measured is compiled and is open for public inspection; and
> (c) all procedures prescribed by law regarding the valuation or measurement of properties are complied with:
>
> Provided that if, in the case of any property or category of properties, it is not feasible to value or measure such property, the basis on which the property rates thereof shall be determined, shall be as prescribed: Provided further that the provisions of this subsection shall be applicable to district councils in so far as such councils are responsible for the valuation or measurement of property within a remaining area or within the areas of jurisdiction of representative councils."

[52] Subsection 10G(7)(a)(i) of the Transition Act states:

> "A local council, metropolitan local council and rural council may by resolution, levy and recover property rates in respect of immovable property in the area of jurisdiction of the council concerned: Provided that a common rating system as determined by the metropolitan council shall be applicable within the area of jurisdiction of that metropolitan council: Provided further that the council concerned shall in levying rates take into account the levy referred to in item 1 (c) of Schedule 2: Provided further that this subparagraph shall apply to a district council in so far as such council is responsible for the levying and recovery of property rates in respect of immovable property within a remaining area or in the area of jurisdiction of a representative council."

is valued or measured "at intervals prescribed by law"; that a single valuation roll of all property is compiled and is open for public inspection and that all property valuation "procedures prescribed by law" are complied with. The provisions also stipulate that a municipality may by resolution levy and recover property rates provided that a common rating system is applicable throughout its area of jurisdiction.

[42] The High Court held that the transitional scheme does not authorise a municipality to exercise powers derived from the PVO because the general power to measure or value property and to exact property rates is qualified by reference to "procedures" or "at intervals prescribed by law".[53] This, it reasoned, indicates that the valuation would be governed, subject to consistency with section 10G, by the terms of whatever other ordinance or statute that may be applicable.

[43] I have considerable difficulty with this approach. In my view the transitional scheme confers in explicit terms substantive powers on municipalities to measure or value property and based on the valuation to impose property rates. It appropriately requires the exercise of the power to be in accordance with procedures prescribed by any other applicable law. I can find no reason why this trite qualification is inconsistent with or expunges the valuation and rating powers expressly conferred on a municipality by subsections 10G(6) and 10G(7)(a)(i) of the Transition Act as saved by subsections 93(4) and (5) of the Structures Act.

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[53] Above n 2 at paras 36-37.

[44] It seems to me the words "to any other law" in subsection 10G(6) must be taken to refer to property valuation legislation applicable to the predecessors of the City at the time of its enactment. There is no doubt that, in the legislative setting of the Western Cape province, the PVO is the law which regulates and defines the property valuation process by a municipality for rating purposes. It is indeed within this context that the phrase "prescribed by law" in subsection 10G(6) must be understood. Therefore the property measurement and rating powers conferred by subsections 10G(6) and 10G(7)(a)(i) are to be exercised within the procedural and other requirements of the PVO, provided that they are not inimical to the terms of subsections 10G(6) and (7)(a). The mere qualification, that the power to impose levies on property must be exercised subject to the procedural and other prescripts of another law, does not render the power ineffectual or nugatory. It simply provides for the power to be supplemented and regulated by another compatible or complementary law.

[45] I conclude that the savings provisions of subsections 93(4) and (5) properly preserve and extend to a superseding municipality established under the Structures Act, such as the City, the substantive power in its area of jurisdiction to impose and recover property rates based on property valuations. I also find that the PVO is available to the City and is the law that regulates the conduct of property valuation within its area of jurisdiction.

Sections 12 and 14 of the Structures Act

[46] In alternative argument, the City urged the High Court to find that section 14 read with section 12 of the Structures Act affords another and independent source for the power of a municipality to measure property under the PVO and to exact property rates. The High Court dismissed the contention. I have already found that such power is conferred on a municipality by section 10G of the Transition Act read with the savings provisions of subsections 93(4) and (5) of the Structures Act and must be exercised subject to the procedural prescriptions of the PVO. However, the implication of the finding of the High Court on sections 12 and 14 of the Structures Act is potentially far-reaching and likely to have a deleterious effect on other legislative bequests to new municipalities.[54] For that reason I find it appropriate to reach this matter.

[47] Section 12 empowers the MEC for local government in a province, by notice in the Provincial Gazette, to establish a municipality. The provisions of subsection 14(1)(a) state that a municipality established for a particular area under section 12 "supersedes the existing municipality or municipalities . . . within that area." Subsection 14(1)(b) amplifies that the superseding municipality becomes the "successor in law of the existing municipality".[55]

[54] Counsel for the City submitted, correctly in my view, that the judgment of the High Court has the effect that the City not being a "local authority" as defined in legislation pre-existing at the time of its establishment, it does not have power reserved for a "local authority". See for example the National Building Regulations and Building Standards Act, 103 of 1977; Fire Brigade Services Act, 99 of 1987; Criminal Procedure Act, 51 of 1977, and Electricity Act, 41 of 1987.

[55] The proviso found in subsection 14(1)(c) does not apply to the City as it regulates district municipalities.

[48] The High Court faulted these provisions for failing to go "beyond the general statement of legal succession" and "to record what statutory powers or ordinances the newly established municipality would have at its disposal".[56] Moreover, it held, the provisions do not mention powers, statutory or otherwise, which appear to vest in the municipality the right to levy rates based on a provisional roll. It examined the section 12 notice establishing the City[57] and concluded that although the notice records that the City supersedes the disestablished municipalities and becomes their successor in law, and that existing valuation rolls shall continue until the introduction of a general valuation roll for the area of the municipality, it does not empower the City to compile the contested provisional valuation roll. The High Court concluded that subsection 14(1) is not a full savings provision and in fact omits to preserve or save pre-existing empowering legislation for use by new municipalities.[58]

[49] It is so that the provisions of subsection 14(2) seem to limit matters to be regulated in a notice under section 12 to domestic agreements, matters that may be determined by by-laws, labour and other arrangements specific to the superseding municipality. It is also true that the section 12 establishment notice relating to the City preserves existing by-laws, resolutions, agreements and other domestic matters but does not contain general savings provisions of laws which were applicable to the disestablished municipalities. In my view subsections 14(1) and 14(2) regulate related

[56] Above n 2 at para 42.

[57] Provincial Gazette 5588 PN 479/2000, 22 September 2000.

[58] Above n 2 at paras 43-44 makes the point that a savings provision such as found in subsection 16(2) of the Transition Act is clearly missing in the transitional arrangement under section 14 of the Structures Act, above n 6.

but different matters. The first subsection lays down and establishes, in cryptic terms, the principle of legal succession and substitution. The second subsection regulates, in detailed terms, mainly but not exclusively, domestic transition. It would however be misplaced to reason that because the principle of succession is cast in terse terms it does not exist or that it is subsumed under domestic transitional arrangements. The wording of subsection 14(2) or the terms of the establishment notice of the City do not detract from or subvert the principle of legal succession and supersession. In other words there is no valid cause for concluding that a superseding municipality is launched into a legal vacuum, stripped of all laws that had governed its predecessors.

[50] The purpose of the provisions of subsection 14(1)(b) is clear. It is to regulate and facilitate effective and orderly transition from existing municipal structures to final phase municipalities established under section 12. The newly established municipalities take the place of or supplant or "supersede" disestablished ones and become their "successors in law". I find no justification for a construction of subsection 14(1) that leads to a drastic truncation of all pre-existing laws regulating municipalities. At the point of transition, existing laws applicable remain in force and binding on superseding municipalities unless the context demands otherwise. It is clear from the statute read as a whole and within its appropriate context that a superseding municipality succeeds to the rights, functions and obligations of its predecessors, inclusive of those arising from pre-existing legislation. Nothing suggests otherwise.

[51] The proper construction of the provisions, and in particular the expressions "successor in law" and "supersede", must therefore be informed by the history of local government,[59] the "protracted, difficult and challenging transition process"[60] of pre-interim, interim and final phases of local government, the broader transformative design discernible in the cluster of applicable legislation and the manifest object to establish the final phase as part of a vision of a "democratic and developmental local government".[61] The inexorable logic of the transition scheme is progression and not truncation. The manifest object of section 14 is to vest the powers and obligations of existing municipalities as defined in the interim phase in the new superseding municipalities established under enactment required by Chapter 7 of the Constitution.

Local government and the Constitution

[52] A central tenet of the judgment of the High Court is that there is an incurable *casus omissus* because there is no legislation empowering the City to levy rates on property. A finding of whether or not there is an omission is one of statutory interpretation of the provision in question. Implicit in the finding is that a court whose sole duty is to construe the legislation as it stands cannot fill the gap.[62] The

[59] Id at paras 10-17.

[60] See the Preamble to the Structures Act above para 4.

[61] For the role of history as part of contextual interpretation of a provision compare: *First National Bank of South Africa Ltd t/a Wesbank v Commissioner, South African Revenue Service and Another; First National Bank of SA Ltd t/a Wesbank v Minister of Finance* 2002 (4) SA 768 (CC); 2002 (7) BCLR 702 (CC) at para 64. See also Du Plessis *Re-Interpretation of Statutes* (Butterworths, Durban 2002) at 114, 115, 226 and 267; De Ville *Constitutional and Statutory Interpretation* (Interdoc Consultants, 2000) at 229-232.

[62] *Casus omissus* simply means an omitted case. When a statute or an instrument of writing undertakes to foresee and to provide for certain contingencies, and through mistake, or some other cause, a case remains to be provided for, it is said to be a *casus omissus*. See De Ville id at 135. The finding of whether or not there is a *casus omissus* is deemed to be one of statutory interpretation of the provision in question. The general *casus omissus* rule is that the legislature must be presumed to have exhaustively enacted everything and therefore it is

Constitution requires that, where plausible, legislation must now be interpreted in harmony with its objects and values.[63] Given the conclusion I have arrived at I refrain from expressing a view on the appropriateness of a finding of *casus omissus* in light of the interpretive duties of a court under the Constitution. I have construed the legislation in issue differently from the High Court. I have found that there is no legislative hiatus. The provisions of subsections 93(4) and (5) and of sections 12 and 14 of the Structures Act taken together with the PVO adequately empower the City to value property and to impose and recover property rates within its area of jurisdiction.

[53] I now turn to a related matter of considerable importance. The High Court seems to have adopted the approach that, absent empowering legislation, a municipality has no power to act. Such an approach to powers, duties and status of local government is a relic of our pre-1994 past and no longer permissible in a setting underpinned by constitutional supremacy. Under our previous order, which embraced parliamentary sovereignty, municipalities were creatures of statute and enjoyed only delegated or subordinate legislative powers derived exclusively from ordinances or

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not for the courts to furnish what has been omitted in the language of the statute. See Devenish, *Interpretation of Statutes* (Juta & Co, Ltd, Kenwyn 1992) at 77. In *Stafford v Special Investigating Unit* 1999 (2) SA 130 (E) at 140 Leach J explained the nature of this presumption as follows:

> "[T]here is a presumption that the Legislature has dealt exhaustively with the subject of the enactment and that it is therefore not for the courts to supply omissions in the provisions of a statute … As a Court cannot act upon mere conjecture and speculate as to whether or not the Legislature might have overlooked something, it cannot supplement a statute by providing what it surmises the Legislature omitted. The Court therefore must give effect to what the Act says and not to what it thinks it ought to have said . . . [A] *casus omissus* 'cannot be supplied by the Court, whose sole duty is to construe the Act as it stands'."

[63] See *Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors(Pty) Ltd and Others: In Re Hyundai Motor Distributors(Pty) Ltd and Others v Smit NO and Others* 2001 (1) SA 545 (CC); 2000 (10) BCLR 1079 (CC); *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1 (CC); 2000 (1) BCLR 39; *De Lange v Smuts NO and Others* 1998 (3) SA 785 (CC); 1998 (7) BCLR 779 (CC).

Acts of Parliament.[64] It followed that municipal regulations or by-laws that went beyond the powers conferred, expressly or impliedly, by the enabling superior legislation, were *ultra vires* and invalid.[65] Then local government was described as being mere local authorities entrusted to provincial councils to administer.[66] Courts of the time confirmed this approach in various cases.[67]

[54] In *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others*[68] this Court observed that when Parliament was supreme, the existence and powers of local government were entirely dependent upon superior legislation. The institution of local government could then have been terminated at any time and its functions entrusted to administrators appointed by the central or provincial governments.[69]

[55] Matters however, became different under the interim Constitution. This Court noted[70] that local government derived powers, functions and duties directly from the

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[64] Randell *Municipal Law in the Province of the Cape of Good Hope, South Africa* 4ed (Butterworths, Durban 1977) at 186.

[65] For an overview on the circumstances where the courts have held that by-laws that go beyond the powers granted by a statute are invalid, see Randell id at 189-91.

[66] Joubert (eds) *The Law of South Africa* Volume 15 at para 295.

[67] For instance in *Johannesburg City Council v Makaya* 1945 AD 252 at 256 it is stated that:

> "Neither a municipal council nor any other subordinate legislative body has any power to confer jurisdiction or impose duties of any kind upon courts of law established by Act of Parliament unless such subordinate legislative body is given power to do so by Parliament itself."

[68] Above n 8.

[69] Id at para 38. See also para 31.

[70] *Fedsure* id and *African National Congress* above n 8.

interim Constitution, although these powers were subject to definition and regulation by either the national or the provincial governments that were "competent authorities" for enacting such legislation.[71]

[56] Despite the powers of municipalities being subject to definition and regulation by a "competent authority", the Court held that this does not mean that the powers exercised by local government are "delegated" powers. Rather, local government does exercise "original" powers.[72] The Court then emphasised that the powers, functions and structures of local government provided for in the interim Constitution, "will be supplemented by the powers, functions and structures provided for in other laws made by a competent authority."[73]

[57] The Court restated the principle of legality and in particular the rule that an entity can only act within the powers that are lawfully conferred upon it. In the context of local government, the Court stated that the powers of local government are conferred upon it either in terms of the Constitution or the laws of a competent authority.[74]

[71] *Fedsure* id at paras 35 and 39.

[72] Id at para 39.

[73] Id at para 54.

[74] Id at paras 55, 56 and 58. See *African National Congress* above n 8 and *Executive Council, Western Cape* above n 9.

[58] The advent of the Constitution has enhanced rather than diminished the autonomy and status of local government that obtained under the interim Constitution. In the *First Certification Judgment*[75] this Court stated:

> "[Local Government] structures are given more autonomy in the [New Text] than they have in the [interim Constitution] and this autonomy is sourced in the [New Text] and not derived from anything given to [Local Government] structures by the provinces."[76]

[59] Subsection 40(1)[77] of the Constitution entrenches the institutions of local government as a sphere of government and pronounces all spheres of government to be distinctive, interdependent and interrelated. Subsections 41(e)[78] and (g)[79] articulate and preserve the geographical, functional and institutional integrity of local government. In turn, subsections 43(c)[80] and 151(2)[81] confer original legislative and

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[75] *Ex Parte Chairperson of the Constitutional Assembly: In Re Certification of the Constitution of the Republic of South Africa, 1996* 1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC).

[76] Id at para 462.

[77] Subsection 40(1) states:

> "In the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated."

[78] Subsection 41(1)(e) states:

> "All spheres of government and all organs of state within each sphere must−
> (e) respect the constitutional status, institutions, powers and functions of government in the other spheres".

[79] Subsection 41(1)(g) states:

> "[E]xercise 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".

[80] Subsection 43(c) states:

> "In the Republic, the legislative authority –
> (c) of the local sphere of government is vested in the Municipal Councils, as set out in section 156."

executive authority on municipal councils. The Constitution expressly precludes the national or a provincial government from impeding the proper exercise of powers and functions of municipalities. Thus a municipality has the right to govern the local government affairs of its area and community.[82] However the duties, powers and rights of municipalities have to be exercised subject to national or provincial legislation as provided for in the Constitution.[83]

[60] The Constitution has moved away from a hierarchical division of governmental power and has ushered in a new vision of government in which the sphere of local government is interdependent, "inviolable and possesses the constitutional latitude within which to define and express its unique character"[84] subject to constraints permissible under our Constitution.[85] A municipality under the Constitution is not a

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[81] Subsection 151(2) states:

> "The executive and legislative authority of a municipality is vested in its Municipal Council."

[82] Subsection 151(3) of the Constitution states:

> "A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution."

[83] Pimstone "Local Government" in Chaskalson et al *Constitutional Law of South Africa* (1996) [Revision Service 5, 1999] Chapter 5A at 5A-26.

[84] Id at 5A-26-27.

[85] Id at 5A-27 states:

> "It will be noted that legislative encumbrances placed on local government restrict its ability to develop individualized structures of government, but while such restrictions are substantial, there does appear to be some scope for local government to evolve variations within the structural scheme . . . . In this sense municipalities could be able individually to shape the manner in which they carry out their mandate, within the permissible confines of the Constitution and national and provincial legislation. But any benefits deriving from enhanced status carry a substantial burden. The notion of 'sphere' underwrites the substantially increased constitutional obligations that local government is now compelled to fulfil. In this

mere creature of statute otherwise moribund save if imbued with power by provincial or national legislation. A municipality enjoys "original" and constitutionally entrenched powers, functions, rights and duties that may be qualified or constrained by law and only to the extent the Constitution permits. Now the conduct of a municipality is not always invalid only for the reason that no legislation authorises it. Its power may derive from the Constitution or from legislation of a competent authority or from its own laws.

[61] It is indeed trite that when a court is seized with the delineation of the powers, functions, rights and duties of a sphere of government conceived and entrenched under the Constitution, the proper starting point of the enquiry must be the Constitution itself.[86] The nub of the challenge before the High Court was the constitutionality of the conduct of the City in valuing property and raising property rates. In that event, the inescapable point of departure must certainly be whether the Constitution contemplates municipal fiscal powers and functions. It does. Chapter 7 of the Constitution read with subsection 229(1)(a) are in this context of great import. Subsection 229(1)(a) of the Constitution expressly authorises a municipality to impose rates on property and subsection 229(2)(b) adds that the power to impose rates on

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manner, local government as a sphere of government is intimately connected to the social and economic promise of the Constitution." [footnotes omitted]

[86] *In Re Certification of the Constitution of the Republic of South Africa, 1996* above n 75 at para 194; *Pharmaceutical Manufacturers Association of SA and Another: In Re Ex parte President of the Republic of South Africa and Others* 2000 (2) SA 674 (CC); 2000 (3) BCLR 241 (CC) at paras 20, 33, 41 and 45; *Fedsure* above n 8 at para 56.

property may be regulated by national legislation. The High Court disposed of the matter without any reference to the Constitution in this context.

[62] In conclusion, I am satisfied that the City, being a municipality established under Chapter 7 of the Constitution read with the Structures Act derives, in the first instance, its power to value property and impose rates on property from subsection 229(1) of the Constitution. Evidently, the power may be defined or regulated by legislation of a competent legislative authority. Secondly, I am satisfied that, to the extent that it may be necessary, in terms of subsections 93(4) and (5) of the Structures Act read with subsection 10G(6) of the Transition Act, from 5 December 2000 the City assumed the power and indeed the obligation to valuate property as was required of its predecessors, the metropolitan local councils, "subject to any law". The PVO is clearly such law. Thirdly, I hold that one of the consequences of the provisions of section 12 and subsection 14(1)(b) of the Structures Act is that all laws that applied to an existing municipality apply to the superseding municipality which, in the context of the present matter, is the City.

[63] I am unable to support the finding of the High Court that without amending the provisions of subsection 93(8) of the Structures Act the resolution of the City to compile a property valuation and to impose property rates based on the valuation roll is invalid. These provisions are dispensable and at best expository in nature as they purport to confer power that the City already has.

Provisional valuation roll and subsection 93(9) of the Structures Act

[64] On 29 May 2002 the City resolved to levy property rates for the 2002/2003 municipal financial year on the general valuation roll which was in effect a provisional valuation roll referred to in section 9 of the PVO and not a certified roll envisaged in subsection 18(3) of the PVO. Subsection 93(9) appears to have been enacted to rectify the perceived lack of authority on the part of the City to utilise a provisional valuation roll in this way or to remove any doubt in that regard.

[65] The High Court found that the City exceeded its authority in relying on the provisional valuation roll. It reasoned that no specific provision authorising such use can be found in the PVO. In contrast, subsection 86(1A)[87] of the Municipal Ordinance, 1974 (C), specifically authorised the use of a provisional valuation roll. The High Court, however, concluded that the provisions of the Municipal Ordinance could not assist the City, as it is not a local authority within the meaning of that legislation. Before this Court the City urged us to find that the Municipal Ordinance was still effective and available to it as a source of the power to use a provisional roll of property valuations. Given the conclusion I have come to, it is unnecessary to decide the issue.

[87] Subsection 86(1A) of the Municipal Ordinance states:

> "A council may assess the general rate contemplated in subsection 82(1) on ratable property recorded on the provisional valuation roll for a financial year to which such roll is applicable, after the notice referred to in subsection 15(1)(a) of the Property Valuation Ordinance, 1993, has been published for the first time, and any general rate so assessed shall be deemed to have been assessed on the valuation roll from the date on which such rate was assessed on the provisional valuation roll; provided that, except with the approval of the Administrator, such rate shall not be so assessed for more than one financial year in succession."

[66] The City argued that section 10G of the Transition Act does not preclude it from utilising a provisional roll. The High Court concluded that section 10G does not deal exhaustively with the matter, but does not in itself authorise the use of a provisional roll. It held therefore, that the conduct of the City goes beyond its power and offends the principle of legality enunciated in *Fedsure*.[88] It concluded that in any event, the City represented to the public and property owners that it compiled a valuation roll under the PVO and must be held to the representation.

[67] I have held on three separate but interrelated bases that a superseding municipality such as the City has the power to value property and levy rates on property within its area of jurisdiction. It will be remembered that subsection 10G(7)(a) permits a municipality to levy and recover rates in respect of immovable property. Subsection 10G(6) requires a single valuation roll of all property to be compiled and opened for public inspection. I cannot find anything in these provisions that restricts the power of a municipality to the use of a final and not a provisional valuation roll for the purpose of determining property rates. Secondly, as the High Court correctly observed,[89] the PVO too is silent on this matter. It is not surprising. The PVO seems to regulate the process of property valuation including the compilation of valuation rolls, their certification and the related appeal and review processes. But it does not in itself vest in a municipality the power to impose property rates. As we have seen earlier, the property rating power derives from the

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[88] *Fedsure* above n 8.

[89] Above n 2 at para 49.

Constitution and the Structures Act. Lastly, subsection 229(1)(a) of the Constitution does not regulate valuation rolls. But more importantly, it does not prohibit the use of a provisional valuation roll for purposes of imposing rates on property.

[68] If anything, the valuation and certification scheme to be found in the PVO seems to anticipate and favour the use of a provisional roll. Many practical considerations dictate so. Once a provisional roll has been advertised it triggers an objection and appeal process inclusive of possible judicial reviews or appeals. All of these procedures are bound to delay inordinately the final certification of any general valuation under section 18 of the PVO.

[69] The manifest object of a valuation roll of property in a municipality is to fix monetary rates destined for its coffers. If the assessment of rates were to await final certification of a provisional valuation roll, the time lapse will frustrate the fiscal object of the legislation. In my view, the provisions of the PVO read as a whole point to a transparent but responsive process open to adjustments of property values at any stage between the publication of the provisional roll for inspection and its final certification. To enhance flexibility the legislation envisages supplementary and interim valuation rolls. I agree with the submission by the City that the interim valuation procedures in the PVO are directed at enhancing a real time and current ratio of rates liability in a dynamic property climate. Otherwise changes in property valuation such as rezoning, subdivisions, improvements and new developments

between general valuations would stay out of reckoning. This will be to the detriment or potential prejudice of the municipal treasury and property owners alike.

[70] It seems to me that the value of final certification may lie in bringing the curtain down on the objections and appeals and setting the stage for another general valuation. The requirement of final certification in the PVO should not be seen as precluding the imposition of property rates based on a provisional, supplementary or interim valuation roll. Lastly, a flexible and responsive valuation regime is well suited for the adjustment of rates liability upwards or downwards without any obvious prejudice to property owners or the municipality pending final certification of the roll.

[71] I am satisfied that the City was entitled to rely on the provisional valuation roll advertised on 21 May 2002 for imposing property rates in its area of jurisdiction. It must follow that whilst subsection 39(9) of the Structures Act was enacted at the request of the City, it is redundant and at best merely explanatory in effect.

Enactment of section 21 of the Amendment Act

[72] The City and the Minister suggested that should we find in their favour on the property rating power issues, as I have done, we need not decide the constitutional challenge against the manner in which the Amendment Act was enacted. These are confirmation proceedings coupled with an appeal by the Minister and the City under subsection 172(2)(d). The High Court has expressed itself on the validity of an Act of

Parliament. The question is whether in these circumstances this Court must confirm, decline to confirm or vary the order of invalidity.

[73] In the *Court Martial*[90] case, this Court held that subsection 172(2) does not require it in all circumstances to determine matters brought to it for confirmation under that subsection. The Court has a discretion to decide whether or not it should deal with a matter. In exercising the discretion it should consider whether any order it may make will have a practical effect either on the parties or on others[91] or whether there are considerations of public policy that require a decision on the constitutional validity of the impugned legislation. "Factors that must be taken into account include the nature and extent of any practical effect the order may have, 'the importance of the issue raised, its complexity and the fullness of the argument on the issue'."[92] A further factor may be added to that list, namely, the nature of the constitutional challenge.

[74] In the constitutional challenge before us, the first narrow question is whether the draft provisions that became subsections 93(8) and 93(9) of the Structures Act were passed in accordance with the requirements of subsection 154(2) of the Constitution. The High Court found that since the two subsections were added to

[90] *President, Ordinary Court Martial, and Others v Freedom of Expression Institute and Others* 1999 (4) SA 682 (CC); 1999 (11) BCLR 1219 (CC) at para 16.

[91] See *Independent Electoral Commission v Langeberg Municipality* 2001 (3) SA 925 (CC); 2001 (9) BCLR 883 (CC) at para 11 and *Uthukela District Municipality and Others v President of the Republic of South Africa and Others* 2003 (1) SA 678 (CC); 2002 (11) BCLR 1220 (CC) at para 12.

[92] *Uthukela* id.

section 21 of the Amendment Act after its publication for public comment they were invalid. The appellants argued that the new subsections 93(8) and (9) of the Structures Act are unnecessary and have no effect in law. They say the new subsection 93(10) was merely an adjunct with no independent content of its own. They further argued that the Amendment Act as a whole was not legislation that affects the status, institutions, powers or functions of local government within the meaning of subsection 154(2). They submitted that re-publication of the draft legislation after it was introduced in Parliament is not required.

[75] The second ground for constitutional challenge is that the FFC was not consulted on the draft legislation as required by subsection 229(5) of the Constitution. The Minister denied that the draft legislation was national legislation regulating the power of a municipality to impose rates on property and that in any event, as a matter of fact, the FFC was consulted. Nevertheless, the High Court found that in relation to subsection 93(9) the FFC was not consulted and that the amendment is inconsistent with the Constitution and invalid.

[76] The High Court readily appreciated that if it had dismissed the principled grounds of the application before it, it would have been unnecessary to decide the constitutional challenge against section 21 of the Amendment Act.[93] I agree. No practical benefit for the parties or any other person or body will flow from deciding the constitutionality of a statute, which I have found to serve only to clarify the law. I

[93] Above n 2 at paras 22 and 56.

can find no compelling public policy consideration to decide the constitutionality of the impugned law. Moreover the facts are obscure. The issues arising from the constitutional challenge are complex and far-reaching and relate to the procedural validity of legislation. On the other hand, even if the challenge is decided in favour of the respondents, the decision will not alter the outcome of this case or vindicate the right of any party.

[77] An additional and important consideration is that the challenge is against the manner and form in which the legislation was passed. It is therefore different to a substantive challenge. Moreover, section 21 of the Amendment Act is part of an omnibus local government legislation related to matters not connected with those that arise in this case. Therefore it may well be that other parts of the legislation may attract different manner and form challenges. In my view, it is appropriate, in a manner and form challenge, to pay appropriate respect to the legislature in relation to the regulation of its own processes. Having had regard to all the relevant considerations, I decline to decide the constitutional challenge and therefore do not confirm the order of constitutional invalidity made by the High Court.

[78] The appeal should succeed. The orders of the High Court should be set aside and replaced with an order to the effect that the application before the High Court is dismissed.

Costs

[79] The appellants are successful, but I am minded not to make costs to follow the event. The City sought to persuade us that the respondents ought to pay costs because their claim is actuated by a motive other than a personal desire to vindicate a right. We were referred to several passages in the papers containing public utterances made by the second respondent on the City's property rating policy and powers. The views are expressed in strong language. But I do not think that the only reasonable inference to be drawn from the statements is that the respondents pursued their cause with an ulterior motive. The respondents sought to vindicate a constitutional protection. Nothing before us suggests that they ought to be mulcted for costs for doing so. On the contrary, an order as to costs against the respondents would be inappropriate. I plan to make none. In my view it would be fair and just that the parties pay their own costs in the High Court and before this Court.

[80] I make the following order:

(a) The appeal of the first and second appellants is upheld.

(b) Paragraphs 1.1, 1.2, 2 and 3.1 of the orders of the Cape High Court[94] under case number 4995/02 made on 31 May 2004 are set aside and replaced with the following order:

[94] The High Court made the following order:

> "1. It is declared that:
>
> 1.1. Section 21 of the Local Government Laws Amendment Act 51 of 2002 is inconsistent with the Constitution and invalid to that extent;
>
> 1.2. The first respondent's conduct in passing its resolution of 29 May 2002 that property rates be levied in accordance with the 2000 General Valuation Roll as set out in section (d)(i) of its resolution (as recorded in Annexure RW28 to the

"The application is dismissed."

Langa ACJ, Mokgoro J, O'Regan J, Sachs J, Skweyiya J, Van der Westhuizen J and Yacoob J concur in the judgment of Moseneke J.

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opposing affidavit of R Wootton at page 595 and 596 of the record in case No 4995/02) is inconsistent with the Constitution and invalid to the extent thereof.

2. First respondent is interdicted and restrained from levying and recovering property rates on the basis of property valuations contained in the provisional valuation roll which the first respondent opened for inspection and objection on 21 May 2002.

3.1 First and second respondents, jointly and severally, the one paying the other to be absolved, are to pay the applicants' costs in case 4995/02.

3.2 The parties in case 9507/02 will each bear their own costs.

4. The order referred to in 1.1 above is referred to the Constitutional Court for confirmation.

5. The orders referred to in 1 and 2 above are suspended for a year from the date of the conclusion of the proceedings referred to in 4 above to allow the competent authorities to correct the defects which gave rise to the declarators.

6. Execution of the order in 3.1 above is suspended pending the outcome of proceedings in 4 above."

For the first appellant:	AG Binns-Ward SC and AM Breitenbach instructed by Fairbridge Ardene & Lawton Inc.
For the second appellant:	W Trengrove SC and P Coppin instructed by the State Attorney (Cape Town).
For the first and second respondents:	JL Abel instructed by Deryck Uys & Associates.